

MOST IMMEDIATE
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No.CA-13016/4/2015-CA1
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi
Dated : the ~~2nd October~~, 2015
November

OFFICE MEMORANDUM

Subject : 32nd Meeting of the Inter-Ministerial Group (IMG) under the Chairmanship of Additional Secretary (Coal) to review the issue of Bank Guarantees of prior allottees of coal blocks- reg.

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In continuation of Ministry of Coal's OM of even number dated 28.09.2015 on the above subject, the undersigned is directed to forward herewith the minutes of 32nd IMG meeting held on 30.09.2015 for information and necessary action.


[M. RAJKUMAR]

Director & Member-Convener
Tel : 23384594

To,

1. **Ms. Sharmila Chavly**, Joint Secretary, Deptt. of Economic Affairs, North Block, New Delhi.
2. **Shri A.K. Singh**, Joint Secretary (Thermal), Ministry of Power, Shram Shakti Bhawan, New Delhi
3. **Shri Shailendra Singh**, Joint Secretary, Dept. of Industrial Policy & Promotion, Udyog Bhawan, New Delhi.
4. **Shri Syedain Abbasi**, Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
5. **Joint Secretary**, Deptt. of Legal Affairs, [Attn. : **Dr. R.S. Shrinet, ALA**] Shastri Bhawan, New Delhi.
6. **Ms. Sujata Prasad**, JS&FA, Ministry of Coal
7. **Shri R.P. Gupta**, Joint Secretary, Ministry of Coal
8. **Shri Vivek Bhardawaj**, Joint Secretary, Ministry of Coal
9. **Shri R.K. Sinha**, Coal Controller, 1, Council House Street, Kolkata-700001.
10. **Shri D.N. Prasad**, Advisor (Projects), Ministry of Coal
11. **Shri A.K. Debnath**, CMD, CMPDIL, Gondwana Place, Kanke Road, Ranchi.

COPY TO :-

1. PS to Hon'ble MoS (I/c) for Power, Coal & NRE, OSD to MoS (I/c) for Coal, PSO to Secretary (Coal)/ Sr. PPS to AS (Coal)/ Chairman, IMG, for information.
2. Director (T), NIC Cell, Ministry of Coal for uploading on the Website of MoC.

MINUTES OF THE 32nd MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) ON 30.09.2015 AT 11.30 HRS. TO REVIEW THE ISSUE OF BANK GUARANTEE OF PRIOR ALLOTTEES OF COAL BLOCKS AT ROOM NO.330-A WING, SHASTRI BHAWAN, NEW DELHI-110001.

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A list of participants is enclosed at Annexure-I.

2. Welcoming the participants, Additional Secretary (Coal) & Chairman, IMG informed that based on the recommendations of the IMG in its 31st meeting and its acceptance by the Government, vide letter dated 04.08.2015, Ministry of Coal withdrew the show cause notice dated 16.01.2015 issued to the prior allottees of Radhikapur (East) coal block and communicated that the deduction/forfeiture of the bank guarantees shall be made as already ordered by the Ministry of Coal vide its order dated 23.11.2012. One of the prior allottees of Radhikapur (East) coal block, viz. M/s. Tata Sponge Iron Ltd. (TSIL), challenged Ministry of Coal's above-mentioned letter dated 04.08.2015 before Hon'ble Delhi High Court wherein the Hon'ble Court vide order dated 12.08.2015 *inter alia* directed the Government to take a decision regarding deduction / release of BG after affording an opportunity to the petitioner within 8 weeks from the date of order. In compliance with Hon'ble Delhi High Court's order dated 12.08.2015, representatives of TSIL were granted an opportunity of making presentation before the IMG.

3. The representatives of TSIL submitted their written submissions as well as presented their case before the IMG. In order to ensure that their averments are presented accurately, they were requested that they could furnish written arguments should they prefer that. Then they furnished written submissions too vide letter dated 30.09.2015. Their main contentions were the following :-

- (i) In view of the judgement of the Hon'ble Supreme Court of India in *Manohar Lal Sharma Vs. Principal Secretary & Ors. reported at*

(2014) 9 SCC 516 and (2014) 9 SCC 614, the issue of BG does not survive.

- (ii) The Governments and its agencies were responsible for delay in development of Radhikapur (East) coal block.
- (iii) Non-supply of documents which are being taken into consideration by the IMG for the purpose of determining the issue of BG.

4. In respect of the first contention of TSIL, the IMG observed that although the Hon'ble Supreme Court had declared allocation of coal blocks as arbitrary and illegal, there was no direction regarding release of BG submitted by the erstwhile allottees of coal blocks. It has been appreciated by the Government that subsequent development or consequence cannot override the condition precedent or bounden stipulations of allocation of coal blocks. As per the conditions of allocation letter, allocatees were bound to develop the coal blocks within the time period stipulated in the allocation letter and for default, if any, allocatees were liable to consequences including damages to be paid by them. Due to delay in achievement of milestones stipulated for the development of coal block by the prior allottees, natural resource of the nation remained idle/blocked. Had the coal block come under production, it would have definitely benefitted the country by way of making more coal available in the economy. Hon'ble Delhi High Court vide order dated 12.08.2015 had directed the Government to take a decision regarding deduction / release of BG after affording an opportunity to the petitioner. Hence, the order of Hon'ble Delhi High Court dated 12.08.2015 also makes it unambiguously clear that the issue of BG remains alive, therefore, this contention raised by TSIL is not acceptable.

5. In respect of the second contention of TSIL, IMG observed that progress of development of Radhikapur (East) coal block was reviewed from time to time earlier by the Review Committee and subsequently by the IMG. In the review meeting held on 11/12.01.2012, it was noticed that no serious efforts had been made by the company to develop the Radhikapur East Coal block, even after repeated assurances tendered by the company during the period. Accordingly, show cause notice dated 04.05.2012 was issued to the prior allottees of Radhikapur (East) coal block to show cause as to why the

delay in development of coal block should not be held as violation of the terms and conditions of the allotment of Radhikapur (East) coal block, failing which it would be presumed that the prior allottees had no explanation to offer and action as appropriate would be taken against the prior allottees for de-allocation of Radhikapur (East) coal block. In the 5th meeting of IMG held on 07.09.2012, due opportunity was granted to TSIL to make presentation before the IMG in respect of status of development of Radhikapur (East) coal block. The IMG duly considered the show cause notice dated 04.05.2012, the reply and the presentation made by TSIL alongwith the latest status papers presented to the IMG at the relevant time. In its 8th meeting held on 15.09.2012, the IMG recommended to deduct the BG submitted by TSIL for delay in development of Radhikapur (East) coal block. The same was accepted by the Government and accordingly, vide letter dated 23.11.2012 TSIL was conveyed that BG to the extent to Rs.32.50 crores had been decided to be deducted and deposited in the Government account. TSIL challenged the letter dated 23.11.2012 [W.P. (C) No.7430 of 2012] before the Hon'ble High Court of Delhi wherein vide orders dated 30.11.2012 and 11.04.2013, the Hon'ble High Court directed Ministry of Coal to consider the representation of TSIL dated 30.04.2012 for revision of the zero date. In compliance, Ministry of Coal considered the said representation of TSIL and after due examination, speaking order dated 11.02.2014 was passed rejecting the request of TSIL for revision of the zero date.

6. Subsequently, the IMG in its 24th meeting held on 7/8.2.2014 wherein the allottees of 61 coal blocks, including Radhikapur (East) coal block, made presentation before the IMG. After due deliberation, the IMG recommended de-allocation of Radhikapur (East) coal block since EC & FC Stage-I was not obtained. The recommendation of IMG was accepted by Government. Meanwhile TSIL filed W.P. (C) No.790/2014 before the Hon'ble Delhi High Court inter-alia challenging the notice dated 15.01.2014. Accordingly, letter dated 17.2.2014 was issued conveying to prior allottees of Radhikapur (East) coal block that Government had accepted the recommendations of 24th IMG for de-allocation of Radhikapur (East) coal block but further action was put on hold in view of interim order passed by Hon'ble Delhi High Court and

decision regarding deduction of BG will be communicated subsequently. No new facts had been brought forth by TSIL and the issue of deduction of BG due to delay on part of TSIL has already been considered by the IMG in its earlier meeting. Therefore, the second contention of TSIL that delay was attributable to Government and its agencies is not tenable since opportunity of personal hearing was granted to TSIL at each and every relevant time to present its case for delay in development and the IMG at every relevant time duly considered as to whether the delay was on the part of TSIL or Government/its agencies and accordingly a final decision regarding deduction of BG was recommended which was accepted by the Government.

7. The third contention of TSIL regarding non-supply of documents which are being taken into consideration by the 31st IMG for the purpose of determining the issue of BG is also not acceptable since the Ministry of Coal had already communicated vide letter dated 04.08.2015 that the deduction/forfeiture of the bank guarantees shall be made as already ordered by the Ministry of Coal vide its order dated 23.11.2012. The decision of BG deduction dated 23.11.2012 was based on the reply, presentation and the latest status papers submitted to IMG till that relevant time and not on the documents submitted by Government and its agencies after issue of show cause notice dated 16.01.2015.

8. After the decision of deduction of BG and further de-allocation of Radhikapur (East) coal block, only one factor comes to picture, i.e. de-allocation of coal blocks by Hon'ble Supreme Court vide its judgement / order passed in W.P. (Crl.) No.120/2012. However, the same has been addressed at para 6 above.

9. It is contextual and pertinent to recall that on the issue of Bank Guarantee, the Hon'ble High Court of Delhi vide its order dated 30.10.2014 in Shyam Mettalics and Energy Ltd Vs Coal India Ltd (WP 4653 of 2014) and 41 other connected matters held as follows :-

"The aforesaid petitions have been filed inter alia praying for the cancellation of the de-allocation of the coal blocks which were allocated to the petitioners. In view of the decision of the Supreme Court

in Manohar Lal Sharma v. The Principle Secretary and Ors.: W.P. (Crl.) No.120/2012, decided on 24.09.2014, no relief for cancelling the de-allocation of the coal blocks can be granted.

The only issue that remains is with regard to invocation of bank guarantees which were furnished by the petitioners for allocation of the coal blocks.

The petitioners contend that the delay in achieving the specified milestones in development of coal blocks were for reasons beyond their control and mostly on account of delays on the part of respondents and/or their agencies. In these circumstances, the petitioners pray that the bank guarantees furnished by them ought to be released. It is further submitted that the guarantees were in the nature of performance guarantees and in view of the de-allocation of coal blocks the invocation of those guarantees would not be justified and the petitioners would be entitled for their release.

The learned counsel for the respondents states that the issue of invocation of bank guarantees furnished by the petitioners (prior allottees) is currently under consideration of the Ministry of Coal, Government of India.

In this view, I deem it appropriate that the present petitions be disposed of with the following directions:

- 1. That the petitioners would keep alive all bank guarantees that are currently alive in favour of the respondents, for a further period of three months.*
- 2. That the respondents shall take a decision in respect of each individual case whether the bank guarantees ought to be invoked or released within a period of eight weeks from today.*
- 3. The said decision of the respondents would be communicated to the petitioners within a period of one week, thereafter.*
- 4. In the event the respondents decides to invoke the bank guarantee or pursue its encashment, the respondents shall not do so for a further period of two weeks after communicating their decision to the petitioners, to enable the petitioners to take appropriate action in accordance with law."*

10. The matter of invocation/ deduction of Bank Guarantee was then referred to the Ministry of Law and Justice for opinion on the said matter

and thereafter the 28th meeting of IMG was convened on 30th December 2014 for taking decision in the said matters. In the said IMG, it was decided that show-cause notices may be issued to the prior allottees of all coal blocks in order to comply with the order of Hon'ble High Court of Delhi dated 30.10.2014. The relevant extracts of minutes of the 28th Meeting of the IMG are as follows :-

"The IMG deliberated upon the order of Hon'ble Delhi High Court as well as the opinion of DLA. Questions were raised as to whether it would be appropriate to invoke BG submitted by the allocatees of cancelled coal blocks for not developing the coal blocks as per the milestones laid down in the allocation letter, keeping in view the fact that the allocation of coal block itself had been declared as arbitrary and illegal by Hon'ble Supreme Court. IMG observed that subsequent annulment of coal blocks cannot exempt the allocatees of cancelled coal blocks from invocation/deduction of BG because even if subsequently de-allocated, it was a fact that coal blocks were allocated to them. Subsequent development or consequence cannot override the condition precedent or bounden stipulations of allocation of coal blocks. As per the conditions of allocation letter, allocatees were bound to develop the coal blocks within the time period stipulated in the allocation letter and for default, if any, allocatees were liable to paying consequences including damages. The order of Hon'ble Delhi High Court also makes it unambiguously clear that the issue of BG remains alive. DLA has also opined to evaluate the extent of breach and invocation/deduction of BG on a case to case basis, taking into consideration the delay and lapses attributable on the part of the allocatees as well as the Government, if any.

6. *The Group felt that it was a fact that apart from delays and lapses on the part of the prior allottees, the same might have also been caused due to delay both on the part of agencies of Central Government as well as of the State Governments. For example, mining leases were not executed by various State Governments in spite of all the statutory clearances obtained by the prior allottees.*

7. *After due deliberations, IMG recommended to issue show cause notices (SCN) afresh to all such coal block allocatees as to why the BG should not be deducted for delay in development of coal block until it were held by the allocatees and for not adhering to the milestones chart prescribed for block development. The reply to show cause notice should indicate in detail the reasons for slippage in respect of each milestone and agency responsible for such delay. Further, while*

considering the reply to show cause notice, allocatees may be given opportunity to present their case before the IMG, if they so desire. The IMG for considering the reply to SCN may co-opt representative from the State Government concerned as well as MoEF so that a considered view would be taken whether delay could be on account of the Government agencies. Further, based on the replies to SCNs, Coal Controller Organisation would prepare a chart indicating slippage with reference to each milestone and reasons indicated by the prior allottee for presentation before the IMG.”

11. In this regard, it is submitted that true meaning of the allocation letter has been observed by Hon’ble Supreme Court in its judgement dated 25.08.2014 in WP (Crl) No. 120/2012- Manohar Lal Sharma Judgement. The Hon’ble Supreme Court was pleased to observe as under :-

“70. It is true that allocation letter by itself does not authorise the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments, who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.”

12. Further, for the sake of argument, even in case the letter of allocation is treated as a contract, then the remedy to the petitioners will lie in filing a civil suit and not in a writ petition. Besides, Sec. 74 of the Indian Contract Act, 1872 provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so

named or, as the case may be, the penalty stipulated for. Further, the exception to Sec. 74 stipulates that when any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

13. The underlying premise was that the coal blocks were allocated to be utilised in a manner that is optimal and beneficial to the economy in public interest, with certain terms and conditions including strict adherence to the time-line for development of the block and end-use plant. The adherence to time-line was a condition of allocation, like 'condition precedent' and the allocatee had to achieve the milestones within the prescribed timelines for the development of the block. If the allocatee was not adhering to the conditions of the allocation specified in the allocation letter and not developing the block in the prescribed time-frame, it would obviously defeat the very purpose of allocation of the coal block. It could not have been anyone's case that the earlier allocatee could be permitted to squat over the allotted coal block without going into production and holding up the production in perpetuity. The imposition of bank guarantee is to remind the allocatee of his failure to achieve the objectives for going into production, and to prompt him for expeditious development of the block. Thus, the Government is within its rights and powers to invoke bank guarantee in the larger interest of public. Additionally, as per Sec. 65 of the Indian Contract Act, when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. It is submitted that as observed by Hon'ble Supreme Court, by grant of the letter of allocation, prior allottees, including the present petitioners, received instrument which created certain rights in their favour. Banks and other financial institutions recognised as well accepted the said letter to finance the project of prior allottees. Various

government authorities acted upon the basis of the said letter. Hence, the petitioners herein are bound to compensate for the same.

14. In view of the above, the IMG hereby recommends that since there was delay on the part of prior allottees in respect of milestones stipulated for development of the coal block, BG submitted by prior allottees of Radhikapur (East) coal block is deductible. Therefore, the earlier order dated 23.11.2012 of Ministry of Coal for deduction of BG in respect of Radhikapur (East) coal block stands and there is no need to change it.

15. The meeting ended with a vote of thanks to the Chair.

ANNEXURE-I

32nd MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) ON 30.09.2015 AT 11.30 HRS. TO REVIEW THE ISSUE OF BANK GUARANTEE OF PRIOR ALLOTTEES OF COAL BLOCKS AT ROOM NO.330-A WING, SHASTRI BHAWAN, NEW DELHI-110001.

LIST OF PARTICIPANTS

S. No.	Name & Designation	Ministry / Department/ Organization/ Company	Signature & Telephone No.
1.	Dr. A.K. Dubey, Addl. Secretary (Coal)	In the Chair	-
2.	Shri R.P. Gupta, Joint Secretary	Ministry of Coal	-
3.	Shri Vivek Bharadwaj, Joint Secretary	Ministry of Coal	23383356
4.	Shri Rajesh Sinha, JS (Coal) and Coal Controller	Ministry of Coal	-
5.	Shri D.N. Prasad, Advisor (P)	Ministry of Coal	-
6.	Shri M. Rajkumar, Director (CA-I), MoC	Member-Convener, IMG	23384631
7.	Shri Manvendra Goyal, Director	Ministry of Steel	23063770
8.	Shri V.K. Sinha, Director (Tech.)	CMPDIL	07763806733
9.	Dr. R.S. Shrinet, Assistant Legal Adviser	Ministry of Law & Justice, Department of Legal Affairs	23368260
10.	Shri Harish C. Upadhyay, US (Energy)	Department of Economic Affairs	23095754
11.	Shri Kuriakose Varghese	Tata Sponge	-
12.	Shri KN Swain, Head (Legal Services)	Tata Sponge	-
13.	Shri Apoorv Danoparan	Tata Sponge	-
14.	Shri Kundan Kumar, Chief (RMS)	Tata Sponge	-