

MOST IMMEDIATE/BY FAX/SPEED POST

No.38036/06/2012-CA-I

Government of India

Ministry of Coal

New Delhi, the 14th January, 2014

To,

Shri J.K. Mohapatra, IAS,

Chief Secretary,

Government of Odisha,

Bhubaneswar, Odisha

Sub: Processing for grant of Mineral Concessions for coal blocks allocated prior to insertion of Section 11A in MMDR Act, 1957-Clarification regarding.

Sir,

I am directed to refer to your D.O. letter No.LC-48/12(Pt.) 9975/CS(S&M) dated 23rd October, 2013 on the subject mentioned above wherein clarifications have been sought on the following two issues :-

- (i) Whether Government of Odisha may go ahead with grant of Mineral Concessions (Mining Leases) for the coal blocks allocated in view of the pending litigations and investigation by the CBI / other agencies.
- (ii) In view of the fact that only in case of one coal block, mining lease has been executed and the remaining cases are at different stages of processing of grant / execution of Mineral Concession, whether the State Government, after insertion of Section 11A in MMDR Act, 1957, is mandated to grant Mineral Concessions only to applicants that have been selected through auction by competitive bidding as prescribed under Section 11A.

2. These issues have been examined and in this regard, following clarifications are offered:-

- (a) As far as the issue at (i) above is concerned, the State Government may take all steps for executing the mining leases making it clear in the order that this would be subject to final orders to be passed by the Hon'ble Supreme Court and without prejudice to the investigation or registration of cases by the CBI.
- (b) With regard to the issue at (ii) above, the matter was examined in response to a similar letter from the Government of Maharashtra in consultation with Department of Legal Affairs, Ministry of Law & Justice,

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wherein Department of Legal Affairs, *inter alia*, clarified the issue as under :-

"The Mines & Minerals (Development & Regulation) Amendment Act, 2010 (Amendment Act) came into force on 13.02.2012 vide Notification S.O. (E) 263. By the said Amendment Act, new section 11A was inserted in the MMDR Act. The new section 11A provides that, for the purpose of granting RP, PL or ML in respect of an area containing coal or lignite, the Central Government may, select through auction by competitive bidding on such terms and conditions as may be prescribed, a company engaged in production of iron and steel, generation of power, washing of coal obtained from a mine or such other end-use as the Central Government, may, by Notification in the Official Gazette, specify, and the State Government shall grant such RP, PL or ML to such company selected through auction by competitive bidding. However, the auction by competitive bidding shall not be applicable for the companies or corporations mentioned in the proviso to Section 11A. Clause (d) was also inserted in Section 13(2) of the MMDR Act by the Amendment Act, to enable the Central Government to frame rules prescribing the terms and conditions of auction by competitive bidding for selection of a company u/s 11A.

The coal blocks have been allocated by the administrative Ministry u/s 3(3)(a)(iii) of the Coal Mines (Nationalisation) Act, 1973 to the companies engaged in the production of iron and steel, generation of power, washing of coal obtained from a mine or other specified end-use. On and from the date of coming into force of the Amendment Act, for the purpose of granting RP, PL or ML for coal or lignite, a company mentioned in section 11A (except the companies and corporations mentioned in its proviso) can only be selected through competitive bidding. However, if any such selection / allocation has been made prior to 13.02.2012, that may not be affected by the provisions of section 11A, as section 11A only states about the selection of a company by competitive bidding and it does not in specific terms restrain granting of prior approval by the Central Government u/s 5(1) of the MMDR Act / RP, PL or ML by the State Governments or nullifies the allocations / selections already made prior to its commencement."

3. In view of the above advice, it is clear that amendment to MMDR Act, 1957 was not given retrospective effect and the State Government may continue to process the cases of allocation made prior to 13.02.2012 in the light of the then prevailing legal provisions.

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4. Further, it has been decided to issue notices to coal block allocatees who have all approvals in place for execution of mining lease, to obtain an order from the State Government that the mining lease will be executed within three weeks from today, failing which their block allocations will be cancelled within one week thereafter.

Yours sincerely,

Vivek Bharadwaj 14/1/14

(VIVEK BHARADWAJ)

Joint Secretary to the Govt. of India

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Chief Secretaries (By Name) of other coal bearing States Governments of Maharashtra, Madhya Pradesh, Jharkhand, Chhattisgarh, West Bengal.

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