

File No.23011/113/2006 –CPD
Government of India
Ministry of Coal

New Delhi, the 16th January, 2014

Office Memorandum

Subject: Guidelines for considering requests from of coal linkage/LOA holders for change of name of the company due to amalgamation, take over, change in ownership/ shareholding pattern, etc.

The undersigned is directed to refer to the Minutes of the meeting of the Standing Linkage Committee (Long-Term)) for Power/Sponge/ Cement held on 20th December, 2013 to review the status of existing coal linkages/LoAs and other related matters.

2. Agenda item No. 2 (1) of the minutes was related to the formulation of Guidelines for considering requests from of coal linkage/LOA holders for change of name of the company due to amalgamation, take over, change in ownership/ shareholding pattern, etc. The matter was discussed in the meeting. The Committee decided that MoC will shortly circulate the discussion paper for comments of other Ministries.

3. Accordingly, the discussion paper so prepared is enclosed herewith. It is requested to examine the same and furnish the comments to this Ministry at the earliest.

Encl: as above


(Sanjib Bhattacharya)

Under Secretary to the Government of India
Tel:23384285

To:

1. Secretary,, Planning Commission, Yojana Bhawan, New Delhi
2. Secretary (Thermal), Ministry of Power, shram Shakti Bhawan, New Delhi
3. Secretary, Ministry of Finance, Department of Economic Affairs, North Block, New Delhi
4. Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi
5. Secretary, Ministry of Finance, Department of Financial Services, Jeevan Deep Building, Parliament Street, New Delhi
6. Secretary (Ports), Ministry of Shipping, Transport Bhawan, New Delhi
7. Secretary, Ministry of Steel, Udyog Bhawan, New Delhi

8. Secretary, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi
9. Secretary, Ministry of Railways, Rail Bhawan, New Delhi

Copy to:

1. PS to Minister of Coal, 2. PS to MoS (coal), 3. Sr. PPS to Secretary (Coal),
4. PPS to Additional Secretary (Coal), 5. Joint Secretary (SKS), 6. Joint Secretary (AKB), 7. Joint Secretary (VB), 8. PPS to Adv (Project),
9. Director (Marketing), CIL, 15, Park Street, Kolkata
10. Chairman-cum-Managing Director, SCCL, P.O. Kothagudem Collieries, Distt. Khammam-507101
11. Director (Technical), CIL, 10, NS Road, Kolkata

Copy also to: Director, NIC, MoC with the request to place the same on the website of this Ministry.

DISCUSSION PAPER

Guidelines for considering requests of coal linkage / LoA holders for change of name of the company due to amalgamation, take over, change in ownership / shareholding pattern etc.

After the commencement of NCDP, coal Linkages are granted on the recommendation of the Standing Linkage Committees, for the respective sectors, keeping in view the recommendations of the concerned Administrative Ministry, coal availability etc. Each linkage is granted specific to a project, at a particular location and to a particular developer company. The grant of coal linkage is in the form of Letter of Assurance (LoA) which subsequently leads to the signing of a Fuel Supply Agreement (FSA). For this the developer is expected to achieve certain milestones towards development of the project for which linkage is granted within the time frame specified under the LoA.

2. There have been instances where the status of the developer company (LoA holder) has undergone changes due to various reasons like change from private limited to public limited company or vice versa, change in the ownership pattern of the company (total or partial), takeover of the developer company by another company, merger of developer company with another company, de-merger of the project specific arm into a separate company or for any other reason permitted under the law. The instances mentioned above are only illustrative. Such changes take effect after the developer has complied with the relevant provisions of the Companies Act and finally with the issue of a fresh certificate of incorporation by the Registrar of Companies (ROC), wherever necessary. These changes are in the normal course of business operations of the company and are prima facie not in violation of any laws.

3. In the past, such changes in the name of company so granted LoA have been permitted broadly on the basis of the following principles:

- (i) The project for which linkage was given remained unaltered and its location is not changed.
- (ii) The condition under which the original linkage was given would also remain un-altered.

4. The Standing Linkage Committee (Long Term) for Power in its meeting held on 18.04.2011 considered the issues relating to change of name and made the following recommendations :-

“The Committee noted that at present, the linkage/LoA holders apply to Ministry of Coal seeking change in name of the company, due to various factors as a result of change in management, change in shareholding pattern, approval by the Registrar of Companies (ROC), amalgamation, demerger, court orders etc. The Committee decided that in future, all requests from linkage/LoA holders for change in the name of the company, duly certified by ROC/Assistant ROC, without involving any change in management/shareholding pattern would be examined by the concerned coal company and decide them suitably. The coal company would prescribe the procedure to be followed for considering such requests. On effecting any such change of name, the concerned coal company shall inform the Ministry of Coal accordingly. However, the requests for change in name of the company as a result of other reasons(s) like change in management/shareholding pattern, amalgamation, demerger, court orders etc. shall continue to be processed in the Ministry of Coal, as per extant procedure.

The request(s) already received in the Ministry of change of name on the basis of ROC approval till the date of issue of these minutes will be decided by the Ministry of Coal and the revised procedure shall be applicable in respect of the requests(s) received thereafter.”

5. Subsequent to the acceptance of the above recommendation, MoC has been receiving requests for change of name due to change in ownership/ shareholding pattern, amalgamation etc. While considering such requests, it has been noticed that over a period of time when coal demand in the country has increased exponentially and the international prices of coal are such higher than the domestic prices, the coal linkages have become more attractive and difficult to get. Therefore, concerns have been expressed about the possibilities that the linkage obtained by a developer is traded in the market at a premium in the guise of change of name / management structure of the developer company etc. Considering such a possibility, requests for the change of name /management structure of the linkage holders are now needed to be more carefully scrutinized.

6. Taking into account the above concerns, in a number of recent cases, a view has emerged in MoC which is based on the following principles:-

- (i) The project for which long term coal linkage / "Letter of Assurance" (LoA) has been given must remain unaltered and its location should not change.
- (ii) The conditions under which long term coal linkage / "Letter of Assurance" (LoA) has been given will remain unaltered.
- (iii) The LoA/ Linkage holder shall inform the Ministry of Coal and Coal company:-
 - (a) Any change in the company's shareholding which affects the ownership or changes present owner's holdings significantly;
 - (b) Any change in the objectives/ scope of business which is mandated by the present Memorandum of Association or Articles of the Company which significantly impacts the business from the particular

plant/ units (for which the coal linkages was given)
e.g. by way of hiving off the business unit.

- (iv) Coal linkage is plant / unit specific and also site and company specific. Change in ownership of plant/ unit or site or company shall render the coal linkage liable to be reviewed by this Ministry since the new or Successor Company is a new juridical person. If in the opinion of the ministry such changes contravene these conditions, the coal linkage shall be liable to be cancelled.

7. Above conditions have been laid down keeping in view a provision of the LoA issued to the developers by the coal companies which states as under:-

“The Assured shall not, without the express prior written consent of the Assurer, assign to any third person the LoA, or any right, benefit, obligation or interest therein or thereunder.”

Further, the Model Fuel Supply Agreement to be followed for signing FSA requires that the project developer would give a declaration that “There had been no change in ownership pattern of the company from the date when LoA was given till signing of FSA”.

8. A few cases have been decided, *inter-alia* on the basis of above principles. Subsequent to this, there have been representations from the developers, pointing out that in the LoAs issued by the coal companies of CIL, there was no restriction on the project developer raising the equity of the company or transfer of equity. The matter was examined and it was found that though the LoA issued did not have any specific provision for barring the transfer/ induction/ enhancement of equity by the LoA holder, there is a provision in the LoA expressly prohibiting assignment of the LoA to any third party without prior approval. Further, Milestone No. 2 prescribed under the LoA relating to investment decision of the company for executing the project provides

opportunity to the coal company to verify the equity commitments of the LoA holder in developing the project.

9. While considering the requests of developers for change of name, it has to be borne in mind that coal availability situation has been evolving over a period of time and the situation with regard to possibility of obtaining a linkage for a project now is different from one that existed a few years ago. At present coal companies are indicating negative coal balance. Should the entire demand for coal materialise at a time, the coal supply will come under stress. It is in this backdrop that it has been decided in the meeting of SLC(LT) for Power held on 31.05.2013 that no fresh application for grant of coal linkage would be accepted for new projects in the power sector.

10. As coal is being supplied at notified prices to power sector and some core sectors at cheaper rates than the international market rates, a LoA obtained for a project is perceived as a premium commodity. A situation may arise where a linkage holder does not stick to the time schedule for developing the project and transfers his entire equity or majority equity, which could be done at a premium because of LoA. To obviate such an eventuality, public interest would demand that such transfer of LoAs should be subjected to measures that would ensure proper development of the venture for which LoA is granted. The principles laid down in para 7 above are based on this reasoning.

11. While there is a need to ensure that the coal linkage granted to a developer is not traded for business purposes and is used only for bonafide purpose, it is also necessary that the measures adopted by the Ministry of Coal to prevent such trading or profiteering does not hamper bonafide equity investment in the developer company. In order to attain a balance between these two objectives, suitable guidelines need to be formulated for which the matter should be referred to SLC(LT) for deliberation and appropriate recommendations.

12. Under these circumstances, the followings guidelines shall be adopted for permitting change of name :-

- (i) The project for which coal linkage is given remains unaltered and its location is not changed.
- (ii) The conditions under which Long Term Linkage/ LoA has been granted remains un-altered.
- (iii) The LoA/ Linkage holder shall give prior intimation to the Ministry of Coal and Coal company of :-

(a) Any change in the company's shareholding which affects the ownership or changes the present owner's holdings;

(b) Any change in the objectives/ scope of business which is mandated by the present Memorandum of Association or Articles of Association or the Company which significantly impacts the business from the particular plant/ units (for which the coal linkage was given) e.g. by way of hiving off this business unit.

(iv) Promoters of LoA Holder Company should not have divested majority shareholding in the company without achieving significant level of investment in the project.

(v) Divestment of majority shareholding may however be taken into account after the project has been commissioned.

SLC(LT) may consider the issue and make appropriate recommendations.