

F.No-104/34/2015/NA
Government of India
Ministry of Coal
O/o Nominated Authority

Shastri Bhawan, New Delhi - 110001
Dated 18th July, 2018

To,

Shri Mukti Nath Jha
Advisor (Coal)
Jaypee Cement Corporation Limited
Nirman Sadan ,Sector 128, Noida
Uttar Pradesh-201304

Also to,

The Manger,
Axis Bank Limited,
2nd Floor, Red Fort Capital Parsavnath Tower,
Bhai Veer Singh Marg, Gole Market,
New Delhi-110001

Subject:- Termination of Coal Mine Development and Production Agreement and Vesting Order in respect of Majra Coal Mine.

Sir,

I am to refer to the Coal Mine Development and Production Agreement (CMDPA) dated 31.08.2015 signed between Nominated Authority and M/s Jaypee Cement Corporation Limited in respect of Majra Coal Mine.

2. In terms of the Clause 2.1 of the CMDPA , “.....*The Successful Bidder represents and warrants to the Nominated Authority that it is in compliance with all the Eligibility Conditions and would continue to be in compliance with all the Eligibility Conditions during the Term*” .

3. Further, as per Clause 4.1.2 (b) (i) of Tender Document , “ A Bidder shall be considered eligible for bidding for the Coal Mine only if its requirement of coal for Specified End Use matches the reserves of the Coal Mine, in accordance with the parameters specified below:-

Extractable reserves of the Coal Mine should not exceed 150% of the annual coal requirement of the Specified End Use Plant(s), taken over a period of 30 (thirty) years, less the requirement of coal of such Specified End Use Plant met from any other coal mine allocated to the Preferred Bidder, Successful Bidder, Preferred Allottee or Allottee, as the case may be, pursuant to any other auction or allotment process conducted by the Nominated Authority under the Act and the Rules.”

4. Further, as per Clause 13.1.1 of the CMDPA , “..... any transfer of the Specified End Use Plant along with the rights in relation to the Coal Mine, shall be permissible with prior intimation to Nominated Authority and the Central Government

5. However, it has been intimated by the M/s Jaypee Cement Corporation Limited to O/o of Nominated Authority vide letter dated 18.12.2017 that following 3 End Use Plants out of the 4 End Use Plants for which Majra Coal Mine was allocated to them have been sold, without the rights in relation of coal mine, to Ultra Tech Cement Limited on 29th June 2017.

S. No.	Name of Specified End Use Plant	Coal Entitlement
1	Jaypee Balaji Cement Plant (1 X 3.65 MTPA)	23.04 MT
2	Captive Thermal Power Plant- Jaypee Balaji Cement Plant (1 X 35 MW)	6.63 MT
3	Captive Thermal Power Plant- Jaypee Balaji Cement	4.73 MT

Plant

(1 X 25 MW)

6. Subsequent to the intimation by the Successful Bidder about the sale of 3 End Use Plants to Ultra Tech Cement Limited, the eligibility of the Successful Bidder, for Majra Coal Mine, on the basis of Coal entitlement for the remaining plant i.e Captive Thermal Power Plant- Jaypee Shahabad Cement Plant (1 X 60 MW) has been recalculated. The same has been tabulated below:-

End Use Plant	Coal Entitlement @ 150% (MT)
Coal Entitlement with the remaining 1 End Use plant i.e Captive Thermal Power Plant 1X60 (after deducting the coal entitlement met from Mandla South coal mine i.e 3.31 MT)	8.05
Extractable reserve of the coal mine	14.92

7. It has been observed that while the coal entitlement of remaining plants is 8.05 MT, the extractable reserve of the coal mine is 14.92 MT i.e the extractable reserve exceed 150 % of the coal requirement of the remaining Specified End Use Plant. As such, with the sell off the 3 End Use Plants without the transfer of rights in relation to the mine, the Successful Bidder has failed to ensure continued compliance with the eligibility conditions. This is in violation of the Clause 2.1 of the CMDPA as well as 4.1.2 (b) (i) of the Tender Document. Further, change in control of Specified End Use Plants without the rights in relation to the Coal Mine is in violation of Clause 13.1.1 of the CMDPA. These violations constitute termination events in terms of Clause 24.3(k) & 24.3 (n) of the CMDPA respectively.

8. Here it is pertinent to mention that earlier on the receipt of the intimation by M/s JCCL about the sale of aforesaid End Used Plants , the office of Nominated Authority had issued a Show Cause Notice dated 07.03.2017 as to why the action as per Clause 24 of the CMDPA should not be taken against them . The Successful Bidder was also informed that the surrender

of the coal mine (as requested by Successful Bidder) and /or sale of the End use Plants will attract Termination event in terms of provisions of CMDPA. In pursuance, the Successful Bidder informed that actual sale/transfer of End Used Plants had not taken place and they were in compliance with the provisions of CMDPA as on date. Considering the reply of Successful Bidder, a letter dated 01.06.2017 was issued directing them to strictly adhere to the terms and conditions of Tender Document/ CMDPA failing which action as deemed fit shall be initiated against them. The Successful Bidder was also instructed to communicate any further developments in the matter/updated status in this regard. However, no intimation was received from Successful Bidder. The o/o Nominated Authority got to know about the sale of End Use Plant only on when Successful Bidder was asked about the matter vide letter dated 7th/12th December 2017. Hence, despite of various notices & letters from the Office of Nominated Authority to adhere to the terms and conditions of the CMDPA, the Successful Bidder had sold the End Use Plants, which is major lapse on the part of Successful Bidder and also shows the clear intention of Successful Bidder of being not serious about the development of the Coal Mine.

9. As per Rule 13(6) of the Coal Mines (Special Provisions) Rules 2014, the Vesting Order shall be cancelled by the Nominated Authority in case of breach of terms of the agreement (CMDPA). As per Clause 24.3.1 (k) and (n) of the CMDPA, the above lapses on the part of the Successful Bidder constitutes Termination Events. Accordingly, this letter may be treated as notice under Clause 24.3.2 of the CMDPA. **On the completion of notice of 15 business days on 08.08.2018, the CMDPA and Vesting Order shall stand terminated and the Performance Security and all other payments made by the Successful Bidder shall be forfeited** and the Successful Bidder shall not be entitled to any benefit under CMDPA but would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the surrender /termination and also for the obligations that must be fulfilled after termination.

10. Accordingly, the Branch Manger, Axis Bank Limited, Parsvnath Towers, Gole Market, New Delhi is requested to treat this as notice of demand under bank guarantee no 16090100003500 dated 28.09.2015 (further revised on 29.08.2017 and 28.06.2018 upto the amount of Rs 73,1164,800/- and Rs 75,40,80,000/- respectively) issued by Axis Bank Limited in favour of President of India, acting through the Central Government represented by the Nominated Authority, and deposit an amount of Rs 75,40,80,000/- (in words: Rupees Seventy Five Crores Forty Lakh Eighty Thousand only) which is the entire guaranteed amount under the said bank guarantee to the account of PAO, Ministry of Coal, United Bank of India, Account no 0276050414586, Branch- Connaught Circus (New Delhi), IFSC code- UTBIOCON702 on 08.08.2018 for the reason of termination of CMDPA.

Yours faithfully,


(N K Singh)

Deputy Secretary to Government of India

Copy to:-

1. The Chief Secretary, Government of Maharashtra.
2. Deputy Secretary (CBA-II), Ministry of Coal.
3. Coal Controller, Coal Controller Organisation, Kolkata.
4. US (IFD)/US (CLD), Ministry of Coal, Government of India.
5. Pay & Accounts Officer, Pay & Accounts Office, Ministry of Coal- for necessary action.
6. Bank Manager, United Bank of India, Connaught Circus Branch, New Delhi.