

File No: NA-104/5/2023-NA
Government of India/भारत सरकार
Ministry of Coal/कोयला मंत्रालय
Nominated Authority / नामनिर्दिष्ट प्राधिकारी

R.No.120- 1st Floor, F-Wing Shastri Bhawan,
New Delhi, Dated: November 07, 2024

To,

Shri Jayant Acharya,
Jt. Managing Director & CEO,
JSW Steel Ltd.,
JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400051

Subject: Termination of Coal Block Development and Production Agreement – Banai & Bhalumunda Coal Blocks

Ref:

1. CMDPA dated 29.03.2023 executed between the Nominated Authority, Ministry of Coal, and JSW Steel Ltd.
2. Your letter dated 08.05.2023 requesting extension for completion of vesting conditions.
3. Your letter dated 23.05.2023 requesting surrender of Banai & Bhalumunda coal block.
4. Your letters dated 09.06.2023 and 03.07.2023 intimating the appointment of CMPDIL for techno-feasibility report.
5. Your letter dated 06.12.2023 retracting surrender request and seeking approval to comply with the vesting conditions.
6. Letter dated 24.08.2024 from this office requesting undertaking for complying with vesting conditions reg

Sir,

This is in reference to the Coal Block Development and Production Agreement (the “Agreement”) dated 29.03.2023, executed between the Nominated Authority and M/s JSW Steel Limited concerning the Banai & Bhalumunda Coal Blocks. As per Clause 3, sub-clause 3.1 of the Agreement, the issuance of the Vesting order is contingent upon fulfillment of the following Vesting Conditions:



- Payment of the first installment of the Upfront Amount in accordance with Clause 5.2.1;
- Furnishing of Performance Security;
- Payment of the Fixed Amount;
- Payment of the additional levy, if applicable, as per the CM(SP) Act, 2015, in cases where the Successful Bidder is a Prior Allottee.

2. Clause 5.2.1 stipulates that as the Banai & Bhalumunda Coal Blocks are explored mines, M/s JSW Steel Limited was required to remit the first installment of the Upfront Amount within 40 business days of the Agreement's execution. Furthermore, per Clause 6.1.1, the Performance Security of INR 10,60,98,22,823.86 was to be submitted within the timeframe outlined in Clause 3.2.2. Failure to provide a Completion Notice, as per Clause 3.2.1, within 40 days from the Agreement date may result in termination by the Nominated Authority, as specified under Clause 3.2.2. It may be mentioned that submission of all aforementioned stipulated payments alongwith Completion Notice is pending till date.

3. M/s JSW Steel Limited, via correspondence dated 08.05.2023, 12.05.2023, and 18.05.2023, sought extensions for compliance with these conditions, citing difficulties in securing the necessary Performance Security, Upfront Amount, and Fixed Amounts. The Nominated Authority, through emails dated 09.05.2023, 10.05.2023, 16.05.2023 and 19.05.2023, requested documentary evidence demonstrating the steps taken towards meeting these obligations.

4. Despite the deadline for completion of the Vesting Conditions expiring on 08.05.2023, M/s JSW Steel Limited failed to provide satisfactory documentary evidence to justify an extension and has not complied with Clauses 3.1, 3.2.2, and 6.1.1. Instead, the Successful Bidder submitted a communication dated 23.05.2023, requesting to surrender the coal blocks due to site issues, including an NTPC MGR Railway Line and the Pajhar River crossing the block.

5. It is noteworthy that Coal Block Development and Production Agreement (CBDPA) includes provisions for the mine allocatee to issue a 'Completion Notice' upon fulfilling the 'Vesting Conditions.' However, the agreement also allows for a 'Change Notice,' where the Nominated Authority may extend the time period for meeting these conditions. This office has received numerous requests for extensions beyond the 40-day limit. To ensure consistency in handling such requests, a Standard Operating Procedure (SOP) was established on March 3, 2023, with the approval of the Hon'ble Minister of Coal. The SOP permits a maximum extension of 90 days for Change Notice requests under the CMDPA/CBDPA.

6. M/s JSW Steel Limited submitted further representation dated 09.06.2023 stating that they are in process of appointing CMPDIL for carrying out a techno commercial feasibility study of the coal block and requested that no coercive action be taken against JSWSL till such study is concluded by CMPDIL. Ministry considered the view that an auction process entails substantial resource allocation and time requirements. In line with the vision of Atmanirbhar Bharat and the coal auction's implications in supporting this vision, a grant of two week extension was given to JSWSL till 07.07.2023. However, despite this extension, no substantive progress was made regarding compliance with the Vesting Conditions.

A handwritten signature in blue ink, consisting of a stylized 'N' or 'D' shape, with a blue arrow pointing to the right below it.

7. On 06.12.2023, M/s JSW Steel Limited retracted its surrender request and sought approval to proceed with compliance, stating that CMPDIL had completed the feasibility study, and the coal block was deemed viable with a proposed capacity of 12 MTPA.

8. Notwithstanding the representations and the Ministry's continued willingness to cooperate, M/s JSWSL was issued a letter dated August 22, 2024 requesting them to specify the duration for extension sought and submit an undertaking to this effect failing which CBDPA shall be treated as terminated and Bid Security shall be forfeited. M/s JSW Steel Limited failed to submit the requisite undertaking till date, despite repeated reminders, constitutes a breach of the Agreement.

9. It may be noted that as per Clause 3.6.1 of the Tender Document,

"3.6.1 Prior to submission of Technical Bid, the Bidders are encouraged to undertake the site visit to Coal Mine, at their own cost and risk and ascertain for themselves the site conditions, location, communication, climate, availability of power, Applicable Laws and regulations, and any other matter considered relevant by them in the manner provided herein. This Tender Document does not however give the unconditional or unrestricted right to access the Coal Mine or the right to the Bidders to prospect for coal in the Coal Mine or carry out any drilling in the Coal Mine."

Accordingly, it is the responsibility of the M/s JSW Steel Limited to conduct site visits for the coal blocks for which they are going to participate in the auction process and make an informed decision regarding participation in the auction of the coal blocks.

10. Further, the sub-clause 26.3.1 (d) under clause 26.3 of the agreement clearly states that the agreement may be terminated upon failure of the Successful Bidder to complete the vesting conditions within the time specified in Clause 3.2. Relevant sub-clauses 26.3.2 and 26.3.3 are mentioned below:

"26.3.2. Upon occurrence of a Termination Event, the Nominated Authority may elect to terminate this Agreement by providing a 15 Business Days written notice to the Successful Bidder. The determination of the Nominated Authority regarding occurrence of a Termination Event shall be final and binding on the Successful Bidder."

"26.3.3. In case the Nominated Authority elects to terminate this Agreement except under Clause 26.3.1(j), then 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 benefits under this Agreement 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. In case Nominated Authority elects to terminate this Agreement under Clause 26.3.1(j) after accepting the Event of Force Majeure, then i) the Performance Security submitted by the Successful Bidder shall not be forfeited and ii) the balance Upfront Amount, if any, after adjustment of Monthly Payments in accordance with Clause 9.4 shall be refunded. The

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Successful Bidder shall not be entitled to any benefits under this Agreement 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.”


11. In view of the above, in terms of sub-clause 3.2.2 under clause 3.2 of the agreement, the Coal Block Development and Production agreement (CBDPA) dated 29.03.2023 with respect to Banai & Bhalumunda Coal Blocks executed between Nominated Authority and M/s JSW Steel Limited hereby stands terminated. Termination of the Agreement shall take effect from 15 business days from the date of issue of this Termination Letter.

12. Further, clause 5.12.3 (k) of the Tender Document provides that in the event a Bidder is declared as Successful Bidder, and such Successful Bidder, within the specified time limits, fails to furnish Performance Security, pay the fixed amount and pay the upfront amount, the Nominated Authority reserves the right to reject any bid. The clause 6.1.5 of the Tender Document provides as under:

“6.1.5 The Nominated Authority shall be entitled to forfeit and appropriate the Bid Security as damages, inter-alia in any of the events specified in Clause 5.12.3 of this Tender Document, without prejudice to its other rights or remedy available under this Tender Document, the Agreement or Applicable Law, without incurring any liability whatsoever. The Bidder, by submitting its Bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that the Nominated Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder”

13. In view of the above, the Bid Security [BG No. LOBG401012300200 dated 27.01.2023] amounting to INR 1,00,00,00,000.00/- (Rs. Hundred Crores only/-) submitted by JSW Steel Limited stands forfeited as damages.

14. This decision is taken in the interest of safeguarding the public interest and ensuring the timely development of the coal block, which is critical for achieving the nation's coal production targets. The continuous failure of M/s JSW Steel Limited to meet its obligations has caused undue delays, obstructing the commencement of production from the coal block, which cannot be further tolerated.


[Rupinder Brar] 7.11.24

Additional Secretary & Nominated Authority

Enclosure:

1. Bid Security [BG No. LOBG401012300200 dated 27.01.2023] amounting to Rs. 1,00,00,00,000.00/- INR

Copy to:-

1. **Branch Manager, IDFC First Bank Ltd.,** Express Building, 2nd Floor,9-10 Bahadur Shah Zafar Marg, New Delhi-110002 **with a request to treat this letter as Demand under Bank Guarantee No.: BG No. LOBG401012300200 dated 27.01.2023 and to IMMEDIATELY encash 100%, i.e. an amount of Rs. 1,00,00,00,000/- (Rs. Hundred Crore only/-) and transfer the same to the account of PAO Ministry of Coal whose details are as below:**

Bank Name	PUNJAB NATIONAL BANK (PNB)
Bank Branch	CONNAUGHT CIRCUS
Account No.	0276050414586
IFSC	PUNB0027620
MICR Code	110024773
Bank Address	J C DAS BUILDING 90/8, CONNAUGHT CIRCUS NEW DELHI-110001
Bank Contact No	(011)-23360661, 23347012

This encashment is on account of non-compliance of M/s JSW Steel Ltd. with the provisions of Coal Block and Development Agreement signed between Nominated Authority and M/s JSW Steel Ltd in respect of Banai & Bhalumunda Coal Blocks.

2. Coal Controller, Coal Controller Organisation, Kolkata.
3. US (P&S-II)/ US(IFD), MoC
4. PAO, Ministry of Coal with request to deposit the amount received in detailed head 8443.00.117.03.07.00 until further directions from this office to deposit the above mentioned amount in CFI.


[Rupinder Brar] 7.11.24

Additional Secretary & Nominated Authority