

F.No-104/8/2015/NA  
Government of India  
Ministry of Coal  
O/o Nominated Authority

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Shastri Bhawan, New Delhi - 110001  
Dated 12th March, 2018

To,

Shri Mukti Nath Jha  
Advisor (Coal)  
Jayprakash Associate Limited  
Nirman Sadan , Sector 128, Noida  
Uttar Pradesh-201304

**Subject:- Termination of Coal Mine Development and Production Agreement and Vesting Order no 104/8/2015/NA in respect of Mandla North Coal Mine.**

**Sir,**

I am to refer to the Coal Mine Development and Production Agreement (CMDPA) dated 02.03.2015 signed between Nominated Authority and M/s Jayprakash Associate Limited as well as the Tender Document in respect of Mandla North 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 Jayprakash Associate Limited to O/o of Nominated Authority that following 3 End Use Plants out of the 6 End Use Plants for which Mandla North Coal Mine was allocated to them have been sold, without the rights in relation of coal mine, to Ultra Tech Cement Limited on 29<sup>th</sup> June 2017.

S. No.	Name of Specified End Use Plant	Coal Entitlement
1	Clinker - Dalla Cement Factory 2.19 MTPA	13.82 MT
2	Clinker - Jaypee Himachal Cement Plant 3.65 MTPA	23.04 MT
3	Captive Thermal Power Plants - Dalla Cement Factory 27 MW	5.12 MT

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 Mandla North Coal Mine, on the basis of Coal Entitlement for the remaining plants has been recalculated. The same has been tabulated below:-

S. No.	Name of Specified End Use Plant	Coal requirement	Coal Entitlement @150%
1	Clinker - Jaypee Rewa Cement Plant -3.72 MTPA	15.66	23.49 MT
2	Captive Thermal Power Plants - Jaypee Rewa Cement Plant - 65.5 MTPA	8.27	12.41 MT
3	Clinker - Jaypee Super Cement Plant- 2.19 MTPA	9.21	13.82 MT
Total Coal Entitlement			49.72 MT
Extractable reserve of the coal mine			84 MT

7. It has been observed that while the Coal Entitlement of remaining plants is 49.71 MT, the extractable reserve of the coal mine is 84 MT i.e the extractable reserve exceed 150 % of the Coal Entitlement of the remaining Specified End Use Plants. 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 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 receipt of the intimation by M/s JAL about the sale of aforesaid End Used Plants, the Office of Nominated Authority vide letter dated 10.03.2017 had informed the Successful Bidder 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. The Successful Bidder was also directed 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. 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. However, no intimation was received from Successful Bidder regarding the actual sale/transfer of End Use Plants . 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 13<sup>th</sup> 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 period of 15 business days on 04.04.2018, the CMDPA and Vesting Order shall stand terminated and the Performance Security and all other payments made by the Successful Bidder shall be appropriated 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.

Yours faithfully,



**(N K Singh)**

Deputy Secretary to the Government of India

Copy to:-

1. The Chief Secretary, Government of Madhya Pradesh.
2. Deputy Secretary (CBA-II), Ministry of Coal.
3. The Manger, State Bank of India, CAG-II, 5<sup>th</sup> Floor, Red Fort Capital Parsavnath Towers, Bhai veer Singh Marg, Gole Market New Delhi-110001- with a request to treat this as notice of demand under bank guarantee no 1731315BG0000014 dated 20.03.2015 issued by State Bank of India in favour of President of India, acting through the Central Government represented by the Nominated Authority , and deposit an amount of Rs 418,38,00,000/- (in words: Rupees Four Hundred Eighteen Crore Thirty Eight Lakh only) which is the entire guaranteed amount under the said bank guarantee towards Performance Security to the account of PAO, Ministry of Coal, United Bank of India, Account No. 0276050414586, Branch- Connaught Circus (New Delhi), IFSC code- UTBI0CON702 on 27.03.2018 for the reason of termination of CMDPA.
4. Coal Controller, Coal Controller Organisation, Kolkata.
5. US (IFD)/US (CLD), Ministry of Coal, Government of India.
6. Pay & Accounts Officer, Pay & Accounts Office, Ministry of Coal- for necessary action.
7. TD (NIC), Ministry of Coal - for uploading on the website of Ministry of Coal.