

Most Immediate

CA 1.No.13018/3/2016-CA-I

Government of India

Ministry of Coal

New Delhi, dated 20th December, 2016

OFFICE MEMORANDUM

Sub: Minutes of 37th Meeting of the Inter-Ministerial Group (IMG) held on 05.12.2016 under the Chairmanship of Additional Secretary (Coal) to review the issue of Bank Guarantees of prior allocatees - reg.

The undersigned is directed to refer to Ministry of Coal's OM of even number dated 8th December, 2016 on the above subject circulating therewith a copy of the draft Minutes of 37th Meeting of the Inter-Ministerial Group (IMG) held on 05.12.2016 under the Chairmanship of Additional Secretary (Coal) to review the issue of Bank Guarantees of prior allocatees, with the request that the comments of your Ministry/Department on the draft minutes may be furnished to Ministry of Coal **within 07 days** from date of issue of the said OM.

As no comments were received from any of the members of the IMG within the stipulated period, the **minutes** of the 37th IMG meeting has been **finalized** and is hereby forwarded to all concerned for information and necessary action.

Encl: As above



(Rishan Ryntathieng)

Under Secretary to the Govt. of India

Tel: 011-23073936

To

1. **Ms. Sharmila Chavly**, Joint Secretary (I E), Deptt. of Economic Affairs, Room No.67B, North Block, New Delhi.
2. **Shri Aniruddha Kumar**, Joint Secretary (Thermal), Ministry of Power, Shram Shakti Bhawan, New Delhi
3. **Shri Shailendra Singh**, Joint Secretary, Dept. of Industrial Policy & Promotion, Room No.259, Udyog Bhawan, New Delhi.
4. **Shri Syedain Abbasi**, Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
5. **Shri G.S. Yadav**, Joint Secretary, Deptt. of Legal Affairs, Shastri

Bhawan, New Delhi.

6. **Shri R.P. Gupta**, Joint Secretary, Ministry of Coal
7. **Shri Vivek Bhardawaj**, Joint Secretary, Ministry of Coal
8. **Smt. Reena S. Puri**, JS&FA, Ministry of Coal
9. **Shri D.N. Prasad**, Advisor (Projects), Ministry of Coal

10. **Shri Shekar Saran**, CMD, CMPDIL, Gondwana Place, Kanke Road, Ranchi.
11. **Shri Anjani Kumar**, Coal Controller, 1, Council House Street, Kolkata-700001.
12. AM (Legal), Legal Cell, Ministry of Coal.

Copy to PS to Hon'ble MoS(I/C) for Power, Coal, Mines & NRE, OSD to MoS(I/C), PSO to Secretary(Coal)/Sr.PPS to Additional Secretary(Coal) & Chairman, IMG.

Copy also to Director (T), NIC Cell, Ministry of Coal for uploading on the Website of MoC.

MINUTES OF THE 37th MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) TO REVIEW THE ISSUE OF BANK GUARANTEES SUBMITTED BY ALLOTTEE(S)/ PRIOR ALLOTTEE(S) OF COAL BLOCKS ON 05.12.2016 AT 11.00 AM IN MINISTRY OF COAL IN CONFERENCE ROOM, A-WING, 3RD FLOOR, SHASTRI BHAWAN, NEW DELHI.

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A list of participants is enclosed at Annexure-I.

Welcoming the participants, Additional Secretary (Coal) & Chairman, IMG informed the members that the present IMG meeting has been convened to deliberate upon the issues discussed during the 36th IMG meeting held on 02.11.2016 regarding deduction/release of Bank Guarantee of Pachwara North and Kerandari B & C coal blocks submitted by the allocatee companies.

- I. **Issue of deduction/release of BG submitted by M/s. Jharkhand Integrated Power Ltd. in respect of Kerandari B&C coal block (Tilaiya UMPP) and transfer of Kerandari B&C coal block in favour of Jharkhand Infrapower Ltd.**

The IMG noted that Ministry of Power vide OM dated 03.11.2016 furnished its comments/clarification in the matter. Ministry of Power in its comments also forwarded the comments of State Government of Jharkhand. The IMG noted that the comments furnished by Ministry of Power were incomplete in nature since it could not establish the fact as to who were responsible for delay in the development of Kerandari B & C coal block.

Joint Secretary, Ministry of Power clarified that in regard to development of coal blocks earmarked for UMPPs, Ministry of Power was no way involved and the actual responsibility for development of coal block was of the procurers of this project. He further informed that the procurers had accepted the termination of PPA, however refused to accept the delay in development of coal block on their part. He reiterated that as per the PPA, it was the responsibility of the procurers to fulfill their obligations, which as per JIPL claim have not been complied with.

The IMG thus noted that the comments received from Ministry of Power and State Government of Jharkhand did not reveal anything specific so as to facilitate decision making on the issue of release/deduction of BG. The Chairman, IMG stated that the BG *per se* was one of the parts of the terms and conditions of the allocation letter dated 20.07.2007 of the said block issued in favour of Power Finance Corporation. As such, the examination of the case should be strictly on the terms and conditions of the said allocation letter.

The Chairman, IMG thus noted that in absence of any concrete comments/reply from Ministry of Power, no decision on the matter could be taken. IMG, therefore, recommended seeking fresh specific comments from Ministry of Power, PFC and Jharkhand Urja Vikas Nigam Ltd. and place them before the IMG for further consideration.

Receipt No : 52796/2016/CA1

- II. To consider deduction/release of BG submitted in respect of Pachwara North coal block allotted to West Bengal Power Development Corporation Ltd. (WBPDC) as per directions of Hon'ble Kolkata High Court in AST No.217 of 2016.

IMG recalled that M/s. WBPDC filed AST No.217 of 2016 before High Court of Calcutta against Union of India challenging MoC's BG deduction order dated 03.05.2016. Vide order dated 01.07.2016, Hon'ble Calcutta High Court *inter alia* set aside the MoC's BG invocation order dated 03.05.2016 and directed MoC to consider WBPDC's supplementary reply along with its reply dated 10.02.2015 and pass a reasoned order within a period of 10 weeks from the date of submission of reply and communicate the same to WBPDC within a week thereafter. The Court also directed WBPDC to validate the BG till December 2016.

IMG was informed that Ministry of Coal asked the Ministry of Law & Justice, Kolkata Branch Secretariat on 25.11.2016 to seek extension of time from the High Court for a further period of 12 weeks to decide the representation of the petitioner.

The members of the IMG were informed that as per the decision taken in the 36th meeting of IMG, Inquiry Officer had visited the Office of Coal Controller in Kolkata to verify the facts regarding grant of Mine Opening Permission in respect of Pachwara (North) coal blocks and submitted an Inquiry Report. The same was placed before the IMG.

IMG noted in the Report that the prior allottee had not given any undertaking during making application for mine opening permission that it had not obtained clearance from State Pollution Control Board (SPCB). The standard format of application to seek the Mine Opening Permission submitted by the prior allottee of Pachwara North Coal Block had no mention of SPCB(Water) and SPCB(Air). It was also noted that while on 28.03.2013 permission to open the coal mine was given by the Coal Controller, no undertaking was sought by the CCO. The Report also mentioned that there has been a lapse on the part of the office of CCO in providing the Mine Opening Permission since despite the fact that inspection report of OSD/Dhanbad had blank entries of SPCB for air and water, there was no mention in Mine Opening permission letter dated 28.03.2013 of CCO that all the required clearances were not available. The Report also concluded that there is also a lapse on the part of the prior allottee of Pachwara North coal block who had not taken all the clearances from competent authority under the relevant rules/regulations before applying for mine opening; nor the prior allottee brought it to the notice of the CCO even after obtaining the mine opening permission which they were supposed to as per the conditions mentioned at serial No.2 of the Mine Opening permission letter.

The IMG noted that the prior allottee made an application on 09.05.2013 to the Jharkhand State Pollution Control Board (JSPCB) for consent to operate. This consent to operate was issued on 28.12.2013. Only thereafter, the mine could be operated.

IMG noted the terms and conditions of the allocation letter. As per the allocation letter, the Bank Guarantee (BG) of Pachwara North coal block

Receipt No : 52796/2016/CA1

is linked 100% to production of coal. The IMG observed that since on 28.12.2013, i.e. when the consent to operate was obtained after which the coal production commenced, F.Y. 2013-14 be taken as the first year of production and BG deduction calculation be made on pro-rata basis for the remaining months of F.Y. 2013-14 vis-à-vis production schedule approved in the mining plan for 1st year of production.

The representative from Coal Controller's Organisation was asked to give details of commencement of production and whether there is any lag in production as per the approved mining plan. The representative informed that after the 35th IMG, the Ministry had asked CCO to re-calculate the BG as per the contention of WBPDCCL that mine could be opened only after it obtained the approval of SPCB in December 2013. Accordingly, CCO prepared the BG deduction calculation taking the first financial year of coal production as F.Y. 2013-14 which is reckoned from the date of consent to operate i.e. 28.12.2013. Accordingly, there was only 3 months' time, during which period the prior allottee produced 0.098 MT of coal as against 0.5 MTPA approved in the mining plan for 1st year on pro-rata basis. Thereafter, for the full financial year, 2014-15, the prior allottee produced 3,9498 MT coal as against the target of 4 MTPA specified in the approved mining plan for 2nd year. Thus there was lag in production. Thereafter, the cancellation of this block has taken effect from 31.03.2015 as per the judgement/ order of Hon'ble Apex Court passed in W.P. (Crl.) No.120/2012.

Accordingly, the BG deduction calculation as prepared by CCO for lag in production from Pachwara (North) coal block was placed before the IMG which was **Rs.4.592514 crores**. Earlier the IMG in its 34th meeting recommended for deduction for an amount of Rs.19.799514 crores from the BG as calculated by CCO.

In view of the above, the IMG recommended invoking BG amounting to Rs.4.592514 crores from the total BG submitted by the prior allottee of Pachwara (North) coal block and returning the remaining BG.

The meeting ended with a vote of thanks to the Chair.

Receipt No : 52796/2016/CA1

ANNEXURE-I

37th MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) TO REVIEW THE ISSUE OF BANK GUARANTEES SUBMITTED BY ALLOTTEE(S)/ PRIOR ALLOTTEE(S) IN SHASTRI BHAWAN, NEW DELHI.

LIST OF PARTICIPANTS

S. No.	Name & Designation	Ministry / Department / Organization/Company
1.	Shri Suresh Kumar, Additional Secretary (Coal)	In the Chair
2.	Shri R.P. Gupta, Joint Secretary	Ministry of Coal
3.	Smt. Reena S. Puri, JS&FA	Ministry of Coal
4.	Shri Anirudhha Kumar, Joint Secretary	Ministry of Power
5.	Shri H.S. Pruthi, Director	Ministry of Power
6.	Shri R.S. Verma, Assistant Legal Adviser	Ministry of Law & Justice, Deptt. of Legal Affairs
7.	Shri Nand Lal, Consultant	Department of Industrial Policy & Promotion
8.	Shri V.K. Sirha, Director (Technical)	CMPDIL
9.	Shri A.V. Sahay, Advisor (Geology)	CMPDIL
10.	Shri Sujoy Majumdar, OSD (Mining)	Coal Controller's Org.
11.	Shri Ramesh Kumar, Director	Central Electricity Authority
12.	Shri Kamal Sethy, Deputy Director	Central Electricity Authority
