

Ordinance promulgated for amendment of MMDR Act and CMSP Act; paves way for growth in Coal and Mining sector

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The ordinance for amendment in the MMDR Act 1957 and the CMSP Act 2015 has been promulgated. The Union Cabinet had earlier approved the amendments intending to open up new areas of growth in the coal & mining sector.

The amendments in the Acts would enable the following:

- a. Enhancing the ease of doing business
 - b. Democratization of coal mining sector by opening it up to anyone willing to invest.
 - c. Offering of unexplored and partially explored coal blocks for mining through prospecting license-cum-mining Lease (PL- cum-ML).
 - d. Promoting Foreign Direct Investment in the coal mining sector by removing the restriction and eligibility criteria for participation.
 - e. Allowing of successful bidder/allottee to utilise mined coal in any of the plant of its subsidiary or holding company
 - f. Attracting large investment in coal mining sector as restrictions of end use has been dropped.
- The details are as given below:

A. Amendments in respect of Ministry of Coal

Amendment 1: *To provide for allocation of coal blocks for composite prospecting licence-cum-mining lease (PL-cum-ML)*

Earlier, there was no provision for grant of composite prospecting licence-cum-mining lease (PL-cum-ML) in respect of coal/ lignite. A coal / lignite block could be either be allocated for PL or for ML. The Amendment has enabled the allocation of coal blocks for composite prospecting licence-cum-mining lease (PL-cum-ML) which will help in increasing of the inventory of coal/ lignite blocks for allocation. Coal blocks with different grades and in a wide geographical distribution will now be available for allocation.

The Sections involved were Section 4(2), 5(1), 8(4), 8(8), 8(9) and 31(2)(b) of the CMSP Act and Section 11A and 13(2) of the MMDR Act

Amendment 2: *Clarifying the power of Central Government to specify the purpose of allocation and that 'any' company can participate*

There was lack of clarity earlier in the language of the provisions in the Acts leading to restrictive interpretation of the eligibility conditions in the auction. It has now been clarified that any company selected through auction/ allotment can carry on coal mining operation for own consumption, sale or for any other purposes, as may be specified by the Central Govt. allowing wider participation and competition in auction.

Thus, the companies which do not possess any prior coal mining experience in India but are financially strong and or have mining experience in other minerals or in other countries can now participate in auction of coal/lignite blocks. This would also allow the implementation of the 100% FDI through automatic route for sale of coal.

The Sections involved are 11A of the MMDR Act and Section 4(2) and 5(1) of the CMSP Act.

Amendment 3: *Flexibility in deciding the end use of Schedule II and III coal mines*

Hitherto, the Schedule II and III coal mines could only be auctioned to companies that are engaged in specified end use. Now, the omission of sub-section (3) of Section 4 of CMSP Act has provided flexibility to the Central Govt. in deciding the end use of Schedule II and III coal mines under the CMSP Act. This would allow wider participation in auction of Schedule II and III coal mines, for a variety of purposes such as own consumption, sale or for any other purpose, as may be specified by the Central Govt.

Amendment 4: *Termination of the allocations made under the CMSP Act, their reallocation and compensation*

The CMSP Act and the CMSP Rules were silent on subsequent allocation of coal mines upon termination of allocations made under the Act as well as rights and liabilities of the allottee, whose allocation has been terminated. With the amendment of Section 8 (insertion of sub section (13), (14) and (15) in CMSP Act), it is has become possible to provide for allocation of the coal mine to next successful bidder or allottee, subsequent to termination of its allocation along with the matters incidental to it. The Act now also provides for compensation to the allocattee whose allocation has been terminated.

Amendment 5: *Appointment of Designated Custodian in mines under production:*

Earlier, there was no provision for appointment of designated custodian for management of the mines under production whose vesting/ allotment order has been cancelled. By amending the Section 18 of the CMSP Act, it is now possible for appointment of designated custodian for management of the mines, apart from Schedule II mines, which have come under production and whose vesting/ allotment order has been cancelled. It therefore addresses the issue of management and operation of the mines after their termination, which have come under production.

Amendment 6: *Dispensing with the requirement of previous approval in certain cases*

With the amendment of the Section 5 and 17A of the MMDR Act, the repetitive and redundant provision requiring previous approval of Central government even in cases where the allocation or reservation of coal/ lignite block has been made by the Central Govt. itself has been done away with. This would significantly reduce the time taken for operationalisation of coal/ lignite mines.

Amendment 7: *Entitlement to successful allocattee to utilise the coal mined in plants of Holding and Subsidiary company:*

Earlier a successful allocattee was entitled to utilise the mined coal only in any of its plants. With the amendment of Section 20(2) of the CMSP Act now the reference of Holding company and Subsidiary company has been added. This would make the successful bidder/allottee entitled to utilise mined coal in any of its plants or plants of its subsidiary or holding company.

Amendment 8: *Certain Consequential and clarificatory Amendments:*

Certain consequential and clarificatory amendments were required in language of various provisions for smooth implementation of the CMSP Act. Section 9 and 20(1) of the CMSP Act have now been amended which has resulted in the clarification of language of Section 9 (related to priority of disbursal) Further, language of Section 20(1) has been clarified to avoid any arrangement between two coal linkage holders as the same is not subject matter of the CMSP Act.

B. Amendments in respect of Ministry of Mines

Amendment 1: *Insertion of new section 4B (after section 4A) to enable the Central Govt. to prescribe conditions for ensuring sustained production by the holder of mining leases, who have acquired rights/approvals/clearances etc. transferred from the previous lessee, as per the provisions under section 8B, which is incorporated in this amendment:*

The pre-amended MMDR Act, provided a time period of two years for the new lessee for starting the mining operation, whereas the newly introduced section 8B of this Act, provides for deemed acquiring of valid rights /approvals /clearances by the new lessee. The objective of the amendment is to ensure the continuity of production of minerals. Hence, there is need to specify the conditions for production by the new lessee, who will avail benefits of section 8B. Further, the Central Government derives power to prescribe the conditions for the new lessees to commence production without prejudice to the time period of two years for starting the production prescribed in

Section 4A.

Amendment 2: *Amendment of Section 8A by introducing a proviso to clarify the intent of Section 8A(4) of the MMDR Act:*

The previous section 8A(4) of the MMDR Act provided for auction of leases on the expiry of the lease. There existed scope for ambiguity about initiating the advance action/process by the State Government for notifying the expiring leases for auction. With the amendment it has been clarified that State Government can take up advance steps for auction of blocks before the expiry of lease period. This would ensure that the production of the minerals from such blocks can be seamlessly continued.

Amendment 3: *Provisions to ensure that the successful bidder of mining leases expiring under Section 8A(5) &8A(6), shall acquire all valid rights / approvals / clearances; for a period of two years and within which period he/she shall apply for fresh licence:*

The working mining leases of Odisha are expiring during 2020. These leases produced about 58 Million Tonne of iron ore, 1.80 Million Tonne of chromite and 0.77 Million Tonne of manganese during the year 2018-19. Statutory clearances required to start the mining operations for the new leases have to be granted expeditiously to enable the new lessees to continue the mining operations.

The new lessee has to obtain 20 approvals to start the mining operations, of which 9 are related to different Central Govt. Ministries and the remaining are from the State Government. In normal course, the minimum time period required to obtain these approvals vary from two to three years. This whole process would delay the commencement of mining operations by the new lessees. Any delay in commencing the mining operations by the new lessee would adversely affect the mineral production in the country, which in turn would impact the important downstream industries like steel, cement etc.

With the insertion of new section 8B (after section 8A) of the MMDR Act, the successful bidders of the mining leases expiring under section 8A(5) &8A(6) of the MMDR Act, deemed to have acquired all valid rights/ approvals/ clearances/ licenses and the like; for a period of two years and can start mining operation without loss of time. Seamless continuance of mining operations is in public interest as this will prevent disruption in supply of raw material (mineral) to the industries.

The above amendments (1,2&3 pertaining to Mines will promote ease of doing business and will benefit the holders of auctioned brown field mining leases on expiry of their lease period starting from March 2020 and then from March 2030.

Amendment 4: *Provisions to enable the holders of Non-Exclusive Reconnaissance permit of deep seated minerals and other minerals of the national interest to obtain composite licence (PL-cum-ML) or Mining Lease:*

The previous legislative provisions did not allow the non-exclusive reconnaissance permit holders to apply for mining lease. The private participation in exploration was therefore negligible. In order to enhance exploration of deep seated minerals a facilitating environment has been envisaged to be provided with the insertion of new proviso after sub-section 2 of section 10C. This amendment would allow NERP holders of deep seated minerals or any minerals of the national interest to apply for composite licence (PL-cum-ML) or Mining Lease. This would hence augment the exploration of the deep seated minerals and minerals of national interest, some of which are strategically important for the country.

Amendment 5: *Empowers the Central Government to frame rules in respect of newly introduced sections:*

The difficulty of the Central Govt. which had to derive power to make rules to implement the provision of the amended Act has now been removed with the insertion of new clauses in sub-section 2 of section 13. This would give the Central Government power to frame subordinate legislation to implement the intent of the Ordinance.

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