**ANNEXURE- A**

**PUNJAB STATE POWER CORPORATION LIMITED**
**Office of Chief Engineer/Fuel**
PSEB Head Office, The Mall, Patiala – 147001
**Ph.** 0175–2219883 **Fax:** 0175–2215897 **email ID:** cefuelpspcl@gmail.com

To

Sh. Amrita Acharya,
Coal Controller,
Ministry of Coal, Government of India
1, Council House Street, Kolkata – 700 001

**Fax: 033-22482459**
**Email : coalcont-wb@nic.in**

Memo. No. 2368/70 /CE/Fuel/C-273 Dated: 31.12.2014

**Sub: Demand for payment for the additional levy imposed by the Hon'ble Supreme Court in its Judgement dated 25.08.14 and Order dated 24.09.14 for Pachwara (Central) coal block.**

Sir,

1. This has reference to your letter No. CC/MCBA/101.37/2014-15 dated 18.12.2014 on the above subject.

2. In the meanwhile the Coal Mine (Special Provision) Second Ordinance 2014 has been promulgated on 26.12.2014. In terms of the above ordinance the liability to pay the additional levy of Rs 295 per Tonne is on the "prior allottee" and in regard to Pachwara (Central) coal block, the prior allottee is M/s PANEM Coal Mines Limited, a Joint Venture Company with EMTA as the majority shareholder and Punjab State Power Corporation Ltd (PSPCL) of 26%. In this regard, your office has also written to M/s PANEM Coal Mines Limited vide letter No. CC/MCBA/101/37/2014-15 dated 30.12.2014 with a copy forwarded to PSPCL. We have also written to M/s PANEM vide letter No. 2365/66/CE/Fuel/C-145 (34) dated 30.12.2014 impressing upon them to pay the additional levy as claimed forthwith.

3. Though the liability is essentially of M/s Panem and the majority shareholder EMTA, PSPCL by way of abundant caution and without prejudice to our rights, is depositing the additional levy to the extent of 26% of our share in M/s PANEM. Accordingly as per your above referred letter dated 18.12.2014, we have made arrangements to deposit the amount towards additional levy with respect to the coal extracted till 24$^{th}$ September 2014 (inclusive of 24$^{th}$ September 2014) being 26% of Rs 295/- per MT on or before 31$^{st}$ December 2014 through RTGS to the account specified in your above letter. The audited statement of the production of coal in the above mine from the Start Date till 24$^{th}$ September 2014 has already been furnished to you vide our letter dated 26.12.2014 (copy enclosed for ready reference). This deposit is subject to the liability of making the deposit by M/s PANEM as per your above mentioned letter.

4. So, today i.e. on 31.12.2014, PSPCL has deposited sum of Rs. 391,46,36,262 (to the extent of PSPCL share in M/s Panem) i.e. 26% of Rs. 295/- MT of coal corresponding to 51038282.42 Metric Tonnes coal extracted upto 24.09.2014 from Pachwara (Central) coal block, through RTGS vide **UTR No. STBPR52014123100659044** in Coal Controller's Account No. 0389050190862 with United Bank of India, Old Court House Street Branch, Kolkata-700001 having Bank IFSC Code No. UTBI0OCH175. This deposit is subject to the liability of making the deposit by M/s PANEM as per your above mentioned letter.

5. The Punjab State Power Corporation Limited is in critical need of the allotment of the Pachwara (Central) Coal Block in Jharkhand and, therefore, has consistently maintained that we would comply with the required terms and conditions for getting such allotment. However, if in terms of the provisions of the new Ordinance, no liability is to be imposed on the State Utilities such as Punjab State Power Corporation Limited or West Bengal and Karnataka State Utilities etc. We may also be given necessary adjustments for the amount deposited. This would avoid huge financial outflow to Punjab State Power Corporation Limited, which need to be arranged through borrowings from the Lenders. The additional levy, is required to be passed on to the public at large i.e. the consumers in the State of Punjab by increase in the retail supply tariff.

We are also sending a copy of this letter to Joint Secretary to the Govt. of India and Nominated Authority under the CM(SP) Ordinance, 2014 and to Joint Secretary Coal, Ministry of Coal, Government of India for issue of necessary clarification

DA/As above

31/12/14

Chief Engineer/Fuel,
PSPCL, Patiala.

CC:

1. Joint Secretary (Coal), Ministry of Coal, Govt. of India, 12, Rajendra Prasad Road, Shastri Bhawan, New Delhi - 110001
   **Fax No.011-23384285 /23382787 Email: jscoal.moc@nic.in**

2. Joint Secretary to the Govt. of India and Nominated Authority under the CM(SP) Ordinance, 2014, Ministry of Coal, Govt. of India, 12, Rajendra Prasad Road, Shastri Bhawan, New Delhi - 110001
   **Fax No.011-23384893 Email: nomauthority.moc@nic.in**

PSPCL **PUNJAB STATE POWER CORPORATION LIMITED**
**Office of Chief Engineer/Fuel**
PSEB Head Office, The Mall, Patiala – 147001
**Ph.** 0175–219883 **Fax:** 0175–2215897 **email ID:** cefuelpspcl@gmail.com

To

Shri B.G Datta
Dy.Asstt.Coal controller,
Office of the Coal Controller
1,Council House Street, Kolkata – 700001
Ministry of Coal,
Govt. of India

**E-mail:coalcont-wb@nic.in**
**Fax- 033-22482459**

Memo. No. 2331/32/CE/Fuel/C-277 Dated: 26.12.2014

**Sub: Demand for payment of the additional levy imposed by the Hon'ble Supreme court in its judgement dated 25.08.2014 and Order dated 24.09.2014.**

Sir,

Please refer to your letter No. CC/MCBA/101/37/2014-15 dated 18.12.2014 on the subject cited issue.

It is respect it is submitted that Punjab State Electricity Board (PSEB) now Punjab State Power Corporation Limited (PSPCL) had signed a Joint Venture Agreement (JVA) dated 21.3.2001 with Eastern Mineral & Trading Agency (EMTA) and its partners to form a J.V. Company named as Panem Coal Mines Ltd. for development & operation of captive coal block to be allotted to PSEB by the Ministry of Coal, Govt. of India. PSEB was allotted Pachwara (Central) coal block in the State of Jharkhand in December, 2001. The supply of coal to PSPCL thermal power stations from Pachwara (Central) coal block is as per the Coal Purchase Agreement (CPA) dated 30.08.2006 signed between PSEB and M/s Panem Coal Mines Ltd. Pursuant to the provision of the said agreement, the responsibility of development and operation of the coal mine including obligation for resource mobilization were entrusted to the strategic Joint Venture partner Eastern Mineral & Trading Agency i.e. (EMTA) and its partners. To give effect to the responsibility entrusted to M/s EMTA as per the joint venture agreement, a separate agreement dated 22.01.2002 (Mining Operational Agreement) was signed between M/s Panem Coal Mines Ltd. and M/s EMTA & Partners. Ministry of Coal & Mines (Department of Coal) Gazette Notification dated 22.02.2002, Central Government has specified as an end use the supply of the coal from Pachwara (Central) Coal Block by Panem Coal Mines Limited (a joint venture company of PSEB & M/s EMTA) on an exclusive basis to the power plants of Punjab State Electricity Board for generation of power.

**Mining lease of Pachwara (Central) Coal Block is in favour of Panem Coal Mines Limited**. The audited production data from the date of production till 24.09.2014 in respect of Pachwara (Central) coal block of PSEB (now PSPCL) as received from M/s Panem Coal Mines Ltd. (JV company of PSPCL and EMTA) vide their letter No. PANEM/KOL/PSPCL/412/2014-15 alongwith its enclosures is enclosed herewith.

This is for your information and further necessary action, please.

DA/As above

Chief Engineer/Fuel
PSPCL, Patiala.

CC: Joint Secretary to Govt. of India/Nominated Authority, Ministry of Coal, Govt. of India, 12, Rajendra Prasad Road, Shastri Bhawan, New Delhi – 110001, in reference to letter of Office of the Coal Controller No. CC/MCBA/101/37/2014-15 dated 18.12.2014 of referred above. Fax No.011-23384285 /23382787
Email: jscoal.moc@nic.in

Ref. : PANEM/KOL/PSPCL/412/2014-15 December 22, 2014

The Chief Engineer / Fuel
Punjab State Power Corporation Ltd.
Patiala - 147001

Sir,

**Sub : Audited production data of Pachwara (Central) Coal Block from the date of production till 24th September, 2014**

**Ref : Your Memo No. 2281/CE/F/C-145(34) dated 19th December 2014**

With reference to your above letter we enclose herewith the audited production data from the date of production till 24th September, 2014 of Pachwara (Central) coal block allotted to Punjab State Electricity Board (now Punjab State Power Corporation Limited) vide certificate no. CBR/CERT/PCML/201/20145-15 dated 20.12.2014 of M/s. Chowdhury Basu & Ray, Chartered Accountants.

Thanking you,

Yours faithfully,
**for PANEM COAL MINES LIMITED**

**(BIKASH MUKHERJEE)**
**Director**

Encl. as stated above

**PANEM Coal Mines Limited**

5B, Nandalal Basu Sarani, Kolkata - 700 071, Tel.: +91 33 3054-3054, 3054-5454 Fax : +91 33 3054-5352
E-mail : emtagroup@emta.in / emtagroup@gmail.com
Regd. Office 6, Poorvi Marg, Vasant Vihar New Delhi-110 057, Ph.: (011) 4107 4107, Fax (91) (011) 4150 2808, E-mail : emta@ndc [illegible]
CIN : U99999DL2001PLC110319

*Chowdhury Basu & Ray*
**CHARTERED ACCOUNTANTS**
**12, Chowringhee Square, Kolkata - 700 069 Phone : +91-33-2248 6424**
**Fax : +91-33-2248 6423 e-mail : office@cacbr.com / cbrca@cacbr.com**

No. CBR/CERT/PCML/201/2014-15

This is to certify that the Production of Coal at Pachwara(Central) coal block situated in the district of Pakur , state of Jharkhand allotted to **Punjab State Electricity Board** (PSEB) [now Punjab State Power Corporation Ltd (PSPCL)] by Ministry of Coal Govt. of India vide letter no. 47011/1(4)/2000-CPAM dated 26th December,2001 achieved Production of Coal from the Financial Year 2005-2006 to 2014-2015 (till 24th September 2014) (inclusive of 24th September 2014) for exclusive captive consumption at the thermal power stations of the allottee, PSPCL as under:-

| Financial Year | Quantity ( In Tonnes) |
|---|---|
| 2005 - 06 | 34325.000 |
| 2006 - 07 | 1629344.190 |
| 2007 - 08 | 3797243.000 |
| 2008 - 09 | 6175059.000 |
| 2009 - 10 | 8475669.000 |
| 2010 - 11 | 8031260.950 |
| 2011- 12 | 8301340.280 |
| 2012 - 13 | 6926086.000 |
| 2013 - 14 | 5878935.000 |
| 2014 – 15 (Till 24.09.2014 ) | 1789020.000 |
| **Total** | **51038282.420** |

The above production quantity is in agreement with the Return filed by Panem Coal Mines Ltd to the office of Coal Controller.

This certificate is issued in pursuance to the communication vide reference no. CC/MCBA/101/37/2014-15 dated 18.12.2014 of Dy. Asstt. Coal Controller, Ministry of Coal, Government of India addressed to All Prior Allottees of Schedule-II coal mines of the Coal Mines (Special Provisions) Ordinance, 2014.

**For Chowdhury Basu & Ray**
**Chartered Accounts**

CHOWDHURY BASU & RAY KOLKATA Chartered Accountants

**S. N. Roy**
**Partner**
**Membership No. 54984**

**Dated: 20th December, 2014**
**Place: Kolkata**

## ANNEXURE- B

**..ATE POWER CORPORATION LIMITED**
**O/O CHIEF ENGINEER/ARR&TR, F4-SHAKTI VIHAR, PATIALA**
**FAX NO. 0175-2302416**

To

**Registrar,**
Punjab State Electricity Regulatory Commission,
SCO No. 220-221, Sector-34-A,
Chandigarh.

Memo No. 5230 / TR-5/ 679 Dated 5/3/15

**Subject:** **Filling of Petition by the PSPCL under section 86 (1) (a) read with section 62 of the Electricity Act, 2003 regarding recovery due to payment of additional levy as per Hon'ble Supreme Court order dated 24.9.14.**

Enclosed please find herewith 7 No. sets of the above noted petition to be filed by PSPCL before the Hon'ble PSERC along with requisite affidavit for kind consideration. A DD No.390097 dated 5.3.2015 amounting to Rs. 20,000/- is also enclosed herewith towards fee for filing the petition.

DA/ As above DYCE/TR-2 **Chief Engineer /ARR&TR,**
PSPCL, Patiala.

5/3/15

BEFORE THE PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
CHANDIGARH

PETITION NO. OF 2015

**IN THE MATTER OF:**

**FILLING OF PETITION BY THE PSPCL UNDER SECTION 86 (1) (A) READ WITH SECTION 62 OF THE ELECTRICITY ACT, 2003 REGARDING RECOVERY DUE TO PAYMENT OF ADDITIONAL LEVY AS PER HON'BLE SUPREME COURT ORDER DATED 24.9.14.**

**IN THE MATTER OF:**
Punjab State Power Corporation
The Mall,
Patiala - 147001

....Petitioner

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner, Punjab State Power Corporation Limited is a Company incorporated under the provisions of the Companies Act, 1956 with registered office at Patiala, Punjab.

2. The Petitioner is engaged in the business of generation, distribution and retail supply of electricity in the State of Punjab and has been supplying power to the public at large.

3. The Punjab State Electricity Board was allotted the Pachwara Central Block coal mine for the exclusive use by the generating stations of Punjab State Electricity Board. The said block is included at Serial No. 25 in the list of 40 coal blocks in issue before the Hon'ble Supreme Court in

the coal block allocation case wherein the mining lease had been granted and mining had already started.

4. The above Pachwara Central Block Coal mine is in operation with mining of coal being undertaken since Feb 2006, the coal mined is used exclusively for 3 thermal power stations and all such thermal power stations are under commercial operation and generating electricity to maintain the distribution and supply of electricity to the consumer at large. The Punjab State Power Corporation Limited is undertaking both generation and distribution of electricity and accordingly, there is no power purchase agreement, as in the case, where the generating company and the distribution companies are independent entities.

5. The Punjab State Electricity Board was constituted under Section 5 of the Electricity (Supply) Act, 1948 as the state Electricity Board for the state of Punjab and inter-alia vested with the functions of generation, transmission and distribution of electricity as an integrated utility in the State of Punjab.

6. The Punjab State Electricity Board has established the following generating stations in the state of Punjab:

(a) Guru Gobind Singh Super Thermal Power Plant, Ropar, Punjab with an installed capacity of 1260 MW (6x210 MW) which units have been under commercial operation w.e.f the following dates:
Unit 1: 01.01.1985

Unit 2: 01.10.1985
Unit 3: 25.09.1988
Unit 4: 01.08.1989
Unit 5: 29.09.1992
Unit 6: 14.12.1993

(b) Guru Hargobind Thermal Plant, Lehra Mohabbat, Punjab with an installed capacity of 920 MW (2 x 210 + 2 x 250 MW) which units have been under commercial operation w.e.f the following dates:

Unit 1: 26.06.1999
Unit 2: 04.01.1999
Unit 3: 16.10.2008
Unit 4: 25.01.2010

(c) Guru Nanak Dev Thermal Plant, Bhatinda, Punjab with an initial installed capacity of 440 MW (4 x 110 MW) which units have been under commercial operation w.e.f the following dates:

Unit 1: 22.09.1974
Unit 2: 19.09.1975
Unit 3: 29.03.1978
Unit 4: 31.01.1979

The Punjab State Power Corporation has also been renovating and modernizing the above units to ensure sustained operation of generation with higher efficiency for the benefit of consumer at large.

7. The above generating stations are thermal generating stations which use coal as the fuel for generation and supply of electricity.

8. For the purpose of the coal requirements of the generating stations of Punjab State Electricity Board, the Government of India has allotted the



3/4/2015

Pachwara (Central Block) coal mine in the State of Jharkhand to the Punjab State Electricity Board.

**9.** Pursuant to the above, a Special Purpose Vehicle namely Panem Coal Mines Limited was created only for mining of coal from the said Pachwara Central Block coal mine maintaining exclusive use for the power plants of Punjab State Electricity Board. By notification dated 22/02/2002, the Government of India specified the end use of the supply of coal from the Pachwara Central Block by Panem Coal Mines Limited on an exclusive basis to the power plants of Punjab State Electricity Board for generation of thermal power and further subject to the condition that the Punjab State Electricity Board Hold at least 26% of the voting equity share capital of Panem Coal Mines Limited.

**10.** The Government of India, Ministry of Coal & Mines by communication dated 25/08/2004 addressed to the Government of Jharkhand communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachwara Central Block covering an area of the 1278 hectares to M/s Panem Coal Mines Limited for a period of 30 years, inter-alia, subject to the condition that the coal extracted shall be exclusively supplied to the power plants of Punjab State Electricity Board for use in generation of power.

11. The mining lease was granted by the Government of Jharkhand to M/s Panem Coal Mines Limited by Mining Lease Deed dated 16/11/2004 for an area of 905.41 hectares and by Mining Lease Deed dated 30/03/2005 for an area of 372.96 hectares aggregating to a total of 1278.37 hectares.

12. Pursuant to the above, the mines were developed and the mining and supply of coal began from March, 2006 and is continuing till date. The coal mined from the Pachwara Central Block coal mines are exclusively supplied to the three generating stations of the Punjab State Power Corporation Limited as specified above.

13. The specific condition under the coal allotment as well as the mining lease is that the coal is to be used exclusively for the generation of electricity from the power plants of Punjab State Electricity Board and this has been scrupulously followed during all these years without any deviation whatsoever.

14. Pursuant to the unbundling and reorganisation of the Punjab State Electricity Board in terms of Section 131 of the Electricity Act, 2003, with effect from 16/04/2010 the generation and distribution functions of the erstwhile Punjab State Electricity Board have been vested in the Punjab State Power Corporation Limited. As mentioned above, Punjab State Power Corporation Limited is a wholly owned Government of Punjab

entity and is engaged in the business of generation of electricity from the thermal generating stations as well as distribution and retail supply of electricity to the consumers at large in the State of Punjab.

**15.** The entire coal mined from the Pachwara Central Block is exclusively supplied only to Punjab State Power Corporation Limited and to no other person.

**16.** The above coal mine was subject to proceedings before the Hon'ble Supreme Court in the coal block allocation case, wherein orders were passed for cancellation of the coal blocks. Further, in the Orders dated 25th August 2014 and 24th September 2014, the Hon'ble Supreme Court has been further pleased to direct payment of additional compensation in the sum of Rs 295 per MT in regard various coal blocks including Pachhwara Coal Mine Block.

**17.** In pursuance of the above decision of the Hon'ble Supreme Court, the Government of India notified the Coal Mines (Special Provisions) Second Ordinance, 2014 providing for the terms and conditions subject to which the Petitioner could get the allotment of the said Pachhwara (Central) Coal Block directly in the name of the Petitioner. In terms of the said Ordinance, the Petitioner being 26% shareholder in PANEM Coal Mines Limited, a Joint Venture Company of the Petitioner and EMTA Limited had to deposit a sum of Rs. 391,46,36,262/- being 26% of the compensation payable at the rate of Rs 295/- per MT for the

51038282.42 Metric Tonnes coal extracted from the Pachhwara (Central) Coal Block since inception till 24.09.2014 in accordance with the Order of the Hon'ble Supreme Court pending decision by the Central Government on the allocation of the said mine to the Petitioner. The Petitioner is also to deposit compensation at the rate of Rs. 295/- per MT upto June 2015 for the coal extracted from the Pachhwara (Central) Coal Block from 25.09.2014 to 31.03.2015 in accordance with the Order of the Hon'ble Supreme Court.

**18.** Accordingly, the Petitioner deposited a sum of Rs. 391,46,36,262/- with the Central Government on 31.12.2014 through RTGS vide **UTR No. STBPR52014123100659044 (Annexure-A)** in Coal Controller's Account No. 0389050190862 with United Bank of India, Old Court House Street Branch, Kolkata-700001 having Bank IFSC Code No. UTBIOOCH175 and had applied for the allocation of the Pachhwara (Central) Coal Block for the end-use of the various power stations mentioned herein above. This payment has been made by the petitioner after availing loan of Rs. 195.00 Crore each from REC & PFC.

**19.** The Petitioner will be applying to the Central Government for refund of the above amount deposited by the Petitioner after the process of allocation of the Pachhwara (Central) Coal Block is completed pursuant to the action initiated by the Central Government and the application made by the Petitioner. The Petitioner submits that it will be the discretion of the Central Government to refund the said amount.

**20.** The Petitioner is filing the present application for consideration of the above amount actually deposited by the Petitioner with the Central Government as a part of the revenue requirements of the Petitioner for the period from 1.4.2015 onwards. In the event, the Petitioner is able to obtain the refund of the said amount from the Central Government, the Petitioner will file an appropriate application for the amount being excluded from the revenue requirements of the Petitioner.

**21.** In the circumstances mentioned herein above, this Hon'ble Commission may be pleased to consider the amount of Rs.391,46,36,262/- already paid and the amount that may be paid in future for the coal extracted from 25.09.2014 to 31.03.2015 by the Petitioner towards compensation as per the Orders of the Hon'ble Supreme Court in the revenue requirements of the Petitioner and allow the same to be recovered alongwith interest in the tariff for the financial year 01.04.2015 onwards.

**22.** The Petitioner submits that the Petitioner was required to pay the above amount in view of the directions of the Hon'ble Supreme Court and in the circumstances provided in the Coal Mines (Special Provisions) Second Ordinance, 2014. The Petitioner would not have become entitled to the allocation of the Pachhwara (Central) Coal Block if the Petitioner had not deposited the said amount by or before 31.12.2014. The Petitioner has acted in the interest of the public and consumers of electricity by depositing the above amount and fulfilling the conditions for becoming eligible to the allotment of the Pachhwara (Central) Coal Block. The Pachhwara (Central) Coal Block is of absolute necessity to the Petitioner in order to meet the coal requirements for its various generating stations as mentioned herein above. The non-allocation of the Pachhwara (Central) Coal Block would lead to a substantial difficulty in getting the coal and also at the economic price, the burden of which will be faced by the public at large.

23. The Petitioner submits that the Petitioner has acted in a prudent and bona fide manner by depositing the above amount required to be paid as a pre-condition for the allocation of the Pachhwara (Central) Coal Block.

24. It is, therefore, respectfully prayed that this Hon'ble Commission may be pleased to:

(a) consider the amount of Rs. 391,46,36,262/- already paid by the Petitioner and such other amounts as may become payable in terms of the Orders passed by the Hon'ble Supreme Court (mentioned herein above) and in terms of the Coal Mines (Special Provisions) Second Ordinance, 2014 notified by the Central Government in the Revenue Requirements of the Petitioner;

(b) allow the Petitioner to recover the said amount alongwith interest in the tariff for distribution and retail supply of electricity to be determined by the Hon'ble Commission for the financial year 1.4.2015 to 31.3.2016; and

(c) pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

Chief Engineer/ ARR&TR,
PSPCL, Patiala.

5/3/15

**ANNEXURE- C**

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

## e-Stamp

सत्यमेव जयते

| | | |
|---|---|---|
| Certificate No. | : | IN-DL78396186640737N |
| Certificate Issued Date | : | 12-Mar-2015 12:54 PM |
| Account Reference | : | IMPACC (IV)/ dl780803/ DELHI/ DL-DLH |
| Unique Doc. Reference | : | SUBIN-DLDL78080353673893712619N |
| Purchased by | : | PSPCL PSEB HEAD OFFICE |
| Description of Document | : | Article 5 General Agreement |
| Property Description | : | THE MALL PATIALA-147001 |
| Consideration Price (Rs.) | : | 0<br>(Zero) |
| First Party | : | PSPCL PSEB HEAD OFFICE |
| Second Party | : | Not Applicable |
| Stamp Duty Paid By | : | PSPCL PSEB HEAD OFFICE |
| Stamp Duty Amount(Rs.) | : | 500<br>(Five Hundred only) |

Please write or type below this line

**THE ALLOTMENT AGREEMENT BY AND BETWEEN THE PRESIDENT OF INDIA AND PUNJAB STATE POWER CORPORATION LIMITED IN RESPECT OF PACHHWARA CENTRAL COAL MINE**

This Stamp-paper forms an integral part of this deed of Allotment Agreement.



Vivek Bhardwaj

नामनिर्दिष्ट प्राधिकारी भारत सरकार कोयला मंत्रालय Govt. of India M/o Coal Nominated Authority

PUNJAB STATE POWER CORPN. LTD. PATIALA CE/FUEL

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## CONTENTS



नामनिर्दिष्ट प्राधिकारी भारत सरकार कोयला मंत्रालय Govt. of India M/o Coal Nominated Authority

PUNJAB STATE POWER CORP. LTD. CE/FUEL PATIALA

नामनिर्दिष्ट प्राधिकारी भारत सरकार कोयला मंत्रालय Govt. Nominated Authority

CEC JEL

This Allotment Agreement is made by and between following:

**PARTIES:**

1 **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Ordinance, 2014) read with Coal Mines (Special Provisions) Second Ordinance, 2014 (the "**Nominated Authority**").

2 **Punjab State Power Corporation Limited** incorporated in India under the Companies Act, 1956 with corporate identity number U40109PB2010SGC033813, whose registered office is at PSEB Head Office, The Mall, Patiala – 147001, Punjab, India (the "**Allottee**").

**BACKGROUND:**

A. The Supreme Court of India through its judgment dated August 25, 2014 read with its order dated September 24, 2014 (collectively the "**Supreme Court Judgment**") had cancelled allotment of 204 coal blocks.

B. Subsequent to the Supreme Court Judgment, the Coal Mines (Special Provisions) Ordinance, 2014 read with Coal Mines (Special Provisions) Second Ordinance, 2014 (collectively the "**Ordinance**") were promulgated and the Coal Mines (Special Provisions) Rules, 2014 (the "**Rules**") were framed for auction and allotment of all blocks which were subject to cancellation pursuant to the Supreme Court Judgment.

C. The Coal Mine (*as defined in Clause 1.1.18*) was included in the list of such 204 coal blocks and accordingly, its allotment to the Prior Allottee (*as defined in Clause 1.1.40*) was cancelled pursuant to the Supreme Court Judgment, with effect from the 'appointed date' (as defined in the Ordinance).

D. Thereafter, the Central Government issued an order under Rule 8(2) of the Rules, dated December 18, 2014, as amended, to the Nominated Authority for allotment of the Coal Mine pursuant to Section 5 of the Ordinance. In such order, generation of power was the "**Specified End Use**" with respect to the Coal Mine.

E. Pursuant to a allotment process conducted in accordance with the Ordinance, the Rules, the Allotment Document, dated January 22, 2015 and receipt of a direction from the Central Government under Rule 11(9) of the Rules, the Allottee has become entitled to enter into an agreement with the Nominated Authority pursuant to Rule 13(5) of the Rules with respect to allocation of the Coal Mine to the Allottee for use in the Specified End Use Plant (*as defined in Clause 1.1.45*).

F. Accordingly, the Nominated Authority and the Allottee are entering into this Agreement with respect to matters related to allocation of the Coal Mine, including without limitation development of the Coal Mine and production and utilisation of coal from the Coal Mine.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Agreement, and other good and valuable consideration (the adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound hereby agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this clause apply in this Agreement.

### 1.1. Definitions

1.1.1. "**Acceptable Bank**" shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934 excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.

1.1.2. "**Agreement**" means this Allotment Agreement and all attached annexure, schedules, exhibits and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.

1.1.3. "**Agreement Date**" shall mean the date on which execution of this Agreement by both the Allottee and the Nominated Authority is completed.

1.1.4. "**Allotment Conditions**" shall have the meaning given to such expression in Clause 3.1.

1.1.5. "**Allotment Date**" shall have the meaning given to such expression in Clause 4.3.

1.1.6. "**Allotment Document**" shall have the meaning given to it under the Rules and shall include the Allotment Document dated February 18, 2015 for allotment of the Coal Mine.

1.1.7. "**Allotment Order**" shall have the meaning given to such expression in the Ordinance and the Rules.

1.1.8. "**Applicable Law**" shall mean all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental Authority or court or other law, rule or regulation approval from the relevant Governmental Authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India.

1.1.9. "**Appropriation Event**" shall have the meaning given to such expression in Clause 6.2.1.

1.1.10. "**Arrangement**" shall have the meaning given to such expression in Clause 8.3.1.

1.1.11. "**Arrangement Application**" shall have the meaning given to such expression in Clause 8.3.1.

1.1.12. "**Authorised Representative**" shall have the meaning given to such expression in Clause 4.4.

1.1.13. "**Business Day**" shall mean a day which is not a Saturday, Sunday or any other day declared as a public holiday by the Central Government.

1.1.14. "**Central Government**" shall mean the Government of India, acting through the Ministry of Coal.

1.1.15. "**CIL**" shall mean Coal India Limited (a Government of India undertaking).

1.1.16. "**CIL Notified Price**" shall mean the prevailing notified price of relevant grade(s) of coal by CIL or any of its subsidiaries, as may be territorially relevant to the Coal Mine, as on the date of sale of coal.

1.1.17. "**Claim**" shall have the meaning given to such expression in Clause 18.3.

1.1.18. "**Coal Mine**" shall mean the coal mine as more particularly described in SCHEDULE A.

1.1.19. "**Companies Act**" means the Companies Act, 1956 or the Companies Act, 2013, as applicable, as now enacted or as the same may from time to time be amended, re-enacted or replaced.

1.1.20. "**Control**" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

1.1.21. "**Commencement Plan**" shall have the meaning given to such expression in Clause 5.1.

1.1.22. "**Designated Bank Account**" shall mean the following bank account of the Nominated Authority:

Name of the bank: State Bank of India
Account number: 34823879210
Name of the account holder: Nominated Authority, Account -II (Allotment), Ministry of Coal, Government of India
IFSC Code: SBIN0003771

1.1.23. "**Diversion Notice**" shall have the meaning given to such expression in Clause 8.4.1.

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1.1.24. "**Efficiency Parameters**" shall have the meaning given to such expression in Clause 10.1.

1.1.25. "**Eligibility Conditions**" shall mean the eligibility conditions specified in the Ordinance and the Rules including all the eligibility conditions listed in Clause 3.2 of the Allotment Document.

1.1.26. "**Encumbrances**" means any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.

1.1.27. "**Governmental Approval**" means any authorization, approval, consent, licence or permit required from any Governmental Authority.

1.1.28. "**Governmental Authority**" means any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof.

1.1.29. "**Event of Force Majeure**" shall have the meaning given to such expression in Clause 23.1.

1.1.30. "**Good Industry Practice**" means, in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances.

1.1.31. "**Indemnified Party**" shall have the meaning given to such expression in Clause18.1.

1.1.32. "**Mine Plan**" shall mean a plan which has been approved in accordance with the Applicable Laws in relation to the Coal Mine.

1.1.33. "**Mining Lease**" shall have the meaning given to such expression in Clause 5.3.1.

1.1.34. "**Monthly Payment**" shall have the meaning given to such expression in Clause 9.1.1.

1.1.35. "**Ordinance**" shall have the meaning given to such expression in Clause B of the Background.

1.1.36. "**Other Plants**" shall have the meaning given to such expression in Clause 8.4.1.

1.1.37. "**Parties**" means and refers to the Nominated Authority and the Allottee collectively and "**Party**" refers to any one of them.

1.1.38. "**Performance Security**" shall have the meaning given to such expression in Clause 6.1.1.

1.1.39. "**Person**" means any individual, sole proprietorship, unincorporated association, body corporate, corporation, company, partnership, limited liability company, joint venture, Governmental Authority or trust or any other entity or organization.

1.1.40. "**Prior Allottee**" shall have the meaning given to it in the Ordinance and for the purposes of the Coal Mine, the Prior Allottee shall be Panem Coal Mines Limited incorporated in India under the Companies Act with corporate identity number U99999DL2001PLC110319, whose registered office is at 3rd Floor, 6 Poorvi Marg, Vasant Vihar, New Delhi-110057, India.

1.1.41. "**Reference Index**" shall have the meaning given to such expression in Clause 9.2.1.

1.1.42. "**Reserve Price**" shall mean INR 100/Tonne (Indian Rupees One hundred/Tonne).

1.1.43. "**Rules**" shall have the meaning given to such expression in Clause B of the Background.

1.1.44. "**Selectee**" shall have the meaning given to such expression in Clause19.3.3(b).

1.1.45. "**Specified End Use Plant**" shall mean the plant engaged in generation of power situated at 1) Village: Ghanauli, Distt. Ropar, Punjab, India, 2) Village Lehra Mohabbat, Distt. Bathinda, Punjab, India and 3) Bathinda City, Punjab, India, as prescribed for the Coal Mine under Rule 8(2) of the Rules, as more particularly described in SCHEDULE B.

1.1.46. "**State Government**" shall mean the Government of the state where the Coal Mine is located.

1.1.47. "**Substitution Notice**" shall have the meaning given to such expression in Clause19.3.3(b).

1.1.48. "**Supreme Court Judgment**" shall have the meaning given to such expression in Clause A of the Background.

1.1.49. "**Taxation**" (including with correlative meaning, the terms "**Tax**" and "**Taxes**") means (a) any and all taxes, assessments and other charges, duties, impositions and similar liabilities imposed by any Governmental Authority, including without limitation taxes based upon or measured by gross receipts, income, profits, sales and value added, withholding, payroll, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; (b) any liability for the payment of any taxes, assessments and other charges, duties, impositions and similar liabilities by the

Allottee as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (c) any taxes, assessments and other charges, duties, impositions and similar liabilities for the payment of any amounts by the Allottee as a result of any express obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any liability for Taxes of a predecessor entity.

1.1.50. **"Third Party"** means any Person that is not a signatory to this Agreement.

1.1.51. **"Term"** shall have the meaning given to such expression in Clause 24.2.

1.1.52. **"Termination Event"** shall have the meaning given to such expression in Clause24.3.1.

1.1.53. **"Upfront Amount"** shall mean an amount equal to INR 70,59,92,001 (Indian Rupees Seventy Crore Fifty Nine Lakh Ninety Two Thousand and One) payable by the Allottee in terms of Clause 5.2.

1.1.54. **"Warranties"** shall have the meaning given to such expression in Clause 17.1.

1.2. **Interpretation**

1.2.1. Any reference to any statute or statutory provision shall include:

(i) all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);

(ii) such provision as from time to time amended, modified, re-enacted or consolidated (whether before or after the date of this Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement prior to the Agreement Date and (to the extent liability there under may exist or can arise) shall include any past statutory provision (as from time to time amended, modified, re-enacted or consolidated) which the provision referred to has directly or indirectly replaced;

1.2.2. Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.

1.2.3. References to the masculine, the feminine and the neuter shall include each other.

1.2.4. References to a **"company"** shall include a company, corporation or other body corporate, wherever and however incorporated or established.

1.2.5. The recitals and schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this

Agreement shall include any recitals and schedules to it. Any references to clauses and schedules are to clauses and schedules to this Agreement. Any references to parts or paragraphs are, unless otherwise stated, references to parts or paragraphs of the schedule in which the reference appears.

1.2.6. A reference to **this Agreement** or **any other document** shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time.

1.2.7. A reference to **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.

1.2.8. A reference to a **party** shall include that party's representatives, successors and permitted assigns.

1.2.9. Each of the representations and warranties provided in this Agreement is independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.

1.2.10. Headings to Clauses, parts and paragraphs of schedules and schedules are for convenience only and do not affect the interpretation of this Agreement.

1.2.11. A reference to "**in writing**" includes any communication made by letter or fax **but not e-mail** (unless otherwise expressly provided in this Agreement).

1.2.12. Unless otherwise specified, any reference to a time of day is to Indian Standard Time.

1.2.13. Any words following the terms **including, include, in particular, for example or any similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.14. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.2.15. References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

1.2.16. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 2. ALLOCATION OF THE COAL MINE

2.1. The Allottee hereby represents and warrants to the Nominated Authority that it has complied with all the terms and conditions of the Ordinance, the Rules, the Allotment

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Document and other Applicable Laws, as were required to be complied with by the Allottee, with respect to allotment process for the Coal Mine and the Allottee is eligible in all respects to receive allocation of the Coal Mine. The Allottee also 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.

2.2. Relying on the representations and warranties of the Allottee and the information, documents and other undertaking provided by the Allottee, including the Warranties provided under Clause 17, the Nominated Authority is pleased to enter into this Agreement with the Allottee for allocation of the Coal Mine to the Allottee subject to terms and conditions specified in this Agreement.

## 3. CONDITIONS FOR ALLOTMENT

### 3.1. Allotment Conditions

The issuance of the Allotment Order in favour of the Allottee shall be subject to satisfaction of the following conditions (collectively the "**Allotment Conditions**"):

(a) the Allottee continuing to be in compliance with all the Eligibility Conditions;

(b) the Allottee having paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1 or has submitted an undertaking for the payment of first instalment of the Upfront Amount in substantially the same form as provided in SCHEDULE G;

(c) the Allottee having furnished the Performance Security or has submitted an undertaking for furnishing the Performance Security in substantially the same form as provided in SCHEDULE G;

(d) the Allottee having deposited an amount equal to INR 0 (Indian Rupees Zero), being the Fixed Amount, in the Designated Bank Account or has submitted an undertaking for the payment of Fixed Amount in substantially the same form as provided in SCHEDULE G;

(e) only in the event that the Allottee is a Prior Allottee for the Coal Mine or any other Schedule I coal mine (as defined in the Ordinance), the Allottee having paid the Additional Levy within the due date for payment of such Additional Levy as specified in Rule 18 of the Rules; and

(f) The Allottee having provided a written intimation to the Nominated Authority in substantially the same form as provided in SCHEDULE C regarding: (i) the movable property which the Allottee has not negotiated to own or utilise and

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3.2. **Completion of Allotment Conditions and Notice**

3.2.1. Upon satisfaction of each of the Allotment Conditions specified in Clause 3.1, the Allottee shall provide a written notice to the Nominated Authority in substantially the same format as provided in SCHEDULE D (the "**Completion Notice**")

3.2.2. In the event the Allottee does not provide a Completion Notice with respect to each of the Allotment Conditions listed in Clauses 3.1(a); 3.1(b); 3.1(c); 3.1(d); 3.1(e) (in cases where the Allottee is a Prior Allottee for the Coal Mine or any other Schedule I coal mine (as defined in the Ordinance)) and Clause 3.1(f), within 4 Days of the Agreement Date, then the Nominated Authority may terminate this Agreement without incurring any liability whatsoever by providing a written notice to the Allottee. It is clarified that in such event the Allottee shall not be entitled to receive the Allotment Order and the Nominated Authority shall be entitled to dispose the Coal Mine in the manner provided in the Ordinance and the Rules, including through re-auction/re-allotment or through appointment of a designated custodian.

3.2.3. If the Allottee does not provide a Completion Notice with respect to 3.1(f) and fails to provide a written intimation in substantially the same form as provided in SCHEDULE C within 4 Days of the Agreement Date, then it shall be deemed that the Allottee is not desirous of owning or utilising any movable property or continuing any contract. In such cases, without prejudice to Clause 3.2.2, the Nominated Authority may elect to issue the Allotment Order without including aforementioned particulars in the Allotment Order; if all other Allotment Conditions have been satisfied by the Allottee and corresponding Completion Notice have been provided to the Nominated Authority.

3.2.4. In case the Allottee submits an undertaking in fulfilment of Clause 3.1 (b), (c) and (d) in substantially the same form as provided in Schedule G, the said undertaking so submitted shall be fulfilled, failing which the Allotment Order made to the Allottee shall stand Terminated as per Clause 24.3.1 of the Agreement.

## 4. THE ALLOTMENT ORDER

4.1. Upon receipt of the Completion Notice evidencing compliance with each of the applicable Allotment Conditions, the Nominated Authority may issue the Allotment Order, subject to the Ordinance, the Rules, the Allotment Document and other Applicable

Laws, in the manner provided in this Clause 4.

4.2. The Allotment Order shall be issued by the Nominated Authority in substantially the same format as specified by the Central Government.

4.3. Prior to issuance of the Allotment Order, the Nominated Authority shall provide a written notice to the Allottee specifying the date of the Allotment Order (the "**Allotment Date**") and the date and time on which and place from where the Allotment Order may be collected by the Allottee.

4.4. The Allottee shall depute an authorised representative of the Allottee ("**Authorised Representative**") to receive the Allotment Order on behalf of the Allottee on the date, time and place specified by the Nominated Authority under Clause 4.3.

4.5. The Authorised Representative shall be provided the Allotment Order in duplicate and shall be required to acknowledge the receipt of the Allotment Order. In the event, the Authorised Representative is not present on the date and time specified by the Nominated Authority under Clause 4.3, then the Nominated Authority shall dispatch the Allotment Order by registered post with acknowledgment due, to the registered office of the Allottee.

4.6. The Allottee shall, within seven Business Days of the receipt of the Allotment Order through the Authorised Representative or through registered post, as the case may be, sign and return the duplicate copy of the Allotment Order in acknowledgement thereof. In the event the duplicate copy of the Allotment Order duly signed by the Allottee is not received by the aforementioned date, the Nominated Authority may, unless it consents to extension of time for submission thereof, appropriate the Performance Security and other payments made by such Allottee as damages and also terminate this Agreement and cancel and withdraw the Allotment Order.

## 5. POST ALLOTMENT OBLIGATIONS

### 5.1. Commencement Plan

5.1.1. Within 30 Business Days of the date of the Allotment Order, the Allottee shall be required to submit a detailed plan (the "**Commencement Plan**") towards commencement of mining operations at the Coal Mine. The Commencement Plan shall include all actions that the Allottee may be required to perform to commence mining operations at the Coal Mine and shall include such information as may be required by the Nominated Authority, including without limitation, information regarding the following:

(a) the Governmental Approvals, including the Mining Lease which shall be required for commencement of mining operations at the Coal Mine and the time within which the Allottee would make applications for such Governmental Approvals;

and

(b) revisions to the Mine Plan if any, as may be proposed by the Allottee.

5.1.2. The Commencement Plan shall be prepared by the Allottee to ensure strict compliance with the Efficiency Parameters.

5.2. **Payment of the Upfront Amount**

5.2.1. *First Instalment of fifty per cent*

The first instalment of fifty per cent of the Upfront Amount being an amount equal to INR 35,29,96,000.50 (Indian Rupees Thirty Five Crore Twenty Nine Lakh Ninety Six Thousand and Fifty Paise), shall be deposited by the Allottee in the Designated Bank Account in the manner provided in Clause 3.1(b) as a Allotment Condition.

5.2.2. *Second Instalment of twenty five per cent*

The second instalment of twenty five per cent of the Upfront Amount being an amount equal to INR 17,64,98,000.25 (Indian Rupees Seventeen Crore Sixty Four Lakh Ninety Eight Thousand and Twenty Five Paise), shall be deposited by the Allottee in the Designated Bank Account, on or prior to expiry of six months from the Allotment Date.

5.2.3. *Third Instalment of twenty five per cent*

The third instalment of twenty five per cent of the Upfront Amount being an amount equal to INR 17,64,98,000.25 (Indian Rupees Seventeen Crore Sixty Four Lakh Ninety Eight Thousand and Twenty Five Paise), shall be deposited by the Allottee in the Designated Bank Account, on or prior to expiry of twelve months from the Allotment Date.

5.2.4. *Failure to pay the Upfront Amount*

In the event the Allottee fails to pay the second instalment or the third instalment of the Upfront Amount within the time specified in Clause 5.2.2 or Clause 5.2.3, respectively, then the Nominated Authority shall be entitled to appropriate the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and such failure may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

5.3. **The Mining Lease**

5.3.1. Pursuant to Section 8(4)(b) and Section 8(8), read with Section 8(12) of the Ordinance, the Allottee shall become entitled to the mining lease with respect to the Coal Mine (the "**Mining Lease**") to be granted by the State Government upon issuance of the Allotment Order.

5.3.2. The Allottee shall promptly upon issuance of the Allotment Order make an application to the State Government for grant of a Mining Lease in the name of the Allottee.

## 6. PERFORMANCE SECURITY AND APPROPRIATION

### 6.1. Performance Security

6.1.1. The Allottee shall provide an irrevocable and unconditional guarantee from an Acceptable Bank payable at Delhi for an amount equal to INR 1,92,50,00,000 (Indian Rupees One Hundred Ninety Two Crore and Fifty Lakh) (the "**Performance Security**") in substantially the same form as provided in SCHEDULE F for the performance of its obligations within such time as specified in Clause 3.2.2

6.1.2. The Performance Security shall be an amount which is equal to aggregate of: (a) one year royalty calculated on the basis of peak rated capacity of the Coal Mine as per the approved Mine Plan, payable to respective State Government with respect to the Coal Mine; and (b) the annual peak rated capacity of the Coal Mine as per the approved Mine Plan multiplied by the Reserve Price.

6.1.3. In case of any revision in the Mine Plan in accordance with Clause 14, the amount of Performance Security shall be revised accordingly.

6.1.4. In such case, bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the enhanced value issued in accordance with this Clause 6, within a period of 15 Business Days of receipt of approval for revision to the Mine Plan.

6.1.5. The Performance Security should remain valid until such time when the Coal Mine achieves the annual peak rated capacity.

### 6.2. Events for appropriation of the Performance Security

6.2.1. The Performance Security may be appropriated by the Nominated Authority upon occurrence of any of the following events (the "**Appropriation Event**"), to be determined by the Nominated Authority in its sole discretion:

(a) failure of the Allottee to provide the duly acknowledged duplicate copy of the Allotment Order as required under Clause 4.6;

(b) failure of the Allottee to make payment of the first instalment, second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively;

(c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1;

(d) failure of the Allottee to comply with the Efficiency Parameters as required under Clause 10;

(e) any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;

(f) failure to make payment of the Monthly Payment in accordance with this Agreement;

(g) any utilisation of coal which is not in conformity with Clause 8; or

(h) any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure as provided in Clause 23, which could not have been mitigated by the Allottee through Good Industry Practice, then the Performance Security shall not be appropriated for such specific Appropriation Event.

6.3. **Manner of appropriation of the Performance Security**

6.3.1. Upon occurrence of an Appropriation Event, to be determined by the Nominated Authority, the Nominated Authority shall have the unconditional right to appropriate the Performance Security by providing a written notice to the Allottee, in the following proportion:

| # | Appropriation Event | Amount of the Performance Security to be appropriated |
|---|---|---|
| 1. | Failure of the Allottee to provide the duly acknowledged duplicate copy of the Allotment Order as required under Clause 4.6 | Entire Performance Security. |
| 2. | Failure of the Allottee to make payment of the first instalment, second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively | An amount equal to the first instalment, and/or second instalment and/or third instalment of the Upfront Amount together with 12% per annum simple interest |

| # | Appropriation Event | Amount of the Performance Security to be appropriated |
|---|---|---|
| | | on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |
| 3. | Failure of submission of Commencement Plan within the time specified in Clause 5.1.1 | An amount equal to 10% of the Performance Security |
| 4. | Failure of the Allottee to comply with the Efficiency Parameters as required under Clause 10 | Such per cent of the Performance Security for each failure to comply with the Efficiency Parameters as specified in SCHEDULE E. |
| 5. | Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13 | Entire Performance Security. |
| 6. | Any utilisation of coal which is not in conformity with Clause 8 | Entire Performance Security. |
| 7. | Failure of the Allottee to make payment of the Monthly Payment | The amount of Monthly Payment due and payable, along with a simple interest of twelve per cent per annum, starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |
| 8. | Any other breach or non-compliance with any of the provisions of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever. | Such proportion as may be determined by the Nominated Authority in its sole discretion. |

6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 24 (EFFECTIVE DATE, TERM

AND TERMINATION).

6.3.3. In the event of a part appropriation of the Performance Security, the Allottee shall be required to: (i) rectify the Appropriation Event; and (ii) top-up the bank guarantee constituting the Performance Security within fifteen Business Days of receipt of a notice under Clause 6.3.1, failure to do so shall be a Termination Event for the purposes of Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event, except as mentioned in clause 6.2.1(d), shall be rectified within seven Business Days of receipt of a notice under Clause 6.3.1. Appropriation Event mentioned in clause 6.2.1 (d) shall be rectified within the time specified in SCHEDULE E.

6.3.4. In the event that on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security is appropriated in aggregate in one or more instances, the same shall be a Termination Event for the purposes of Clause 24(EFFECTIVE DATE, TERM AND TERMINATION).

## 7. INFORMATION

7.1. In addition to information that may be required to be provided in accordance with Applicable Laws, the Allottee shall provide periodic reports to the Nominated Authority (or such other Governmental Authority as may be specified by the Nominated Authority) regarding mining operations at the Coal Mine, including compliance with the Efficiency Parameters, in accordance with the following provisions:

***(a) Pre-Commencement Report***

Prior to commencement of mining operations at the Coal Mine, the Allottee shall provide a written intimation ("**Pre-commencement Report**") to the Nominated Authority and the Central Government once every thirty calendar days regarding the following:

(i) the actions taken by the Allottee towards commencement of the mining operations at the Coal Mine, including compliance with the Commencement Plan;

(ii) any deviations from the Commencement Plan, the reasons for such deviations and the steps taken by the Allottee to rectify such deviation; and

(iii) whether in the opinion of the Allottee, it shall be able to commence mining operations at the Coal Mine within the time mentioned in the Commencement Plan.

The Allottee shall also inform the Nominated Authority in writing within 3 Business Days of receipt of the mine opening permission from the state pollution control board of the relevant State where the Coal Mine is located.

*(b)* ***Commencement Report***

Within three Business Days of the commencement of mining operations at the Coal Mine, the Allottee shall provide a written intimation to the Nominated Authority confirming commencement of mining operations at the Coal Mine (the "**Commencement Report**").

*(c)* ***Monthly Report***

Subsequent to the Commencement Report, the Allottee shall provide a written intimation ("**Monthly Report**") to the Coal Controller's Organisation within seven Business Days of end of each calendar month comprising: (i) a declaration regarding compliance with the Efficiency Parameters in the immediately preceding calendar month. In the event of a non-compliance with the Efficiency Parameters, complete particulars of the same, including the reasons for such non-compliance, and the corrective steps proposed to be undertaken; and (ii) such other information as may be required to be provided by the Nominated Authority.

*(d)* ***Yearly Report***

Within seven Business Days of conclusion of the annual general meeting of the Allottee, it shall provide the following information to the Coal Controller's Organisation:

(i) two certified copies of its balance sheets, cash flow statement and profit and loss account, along with a report thereon by its statutory auditors; and

(ii) such other information as may be required to be provided, by the Nominated Authority.

7.2. The Pre-Commencement Report, the Commencement Report, the Monthly Report and the Yearly Report shall be provided to the Nominated Authority or the Coal Controller's Organisation as attachments to an email addressed to the following e-mail address: (i) nomauthority.moc@nic.in in case of the Nominated Authority; or (ii) coalcont-wb@nic.in in case of the Coal Controller's Organisation. Such attachments must be digitally signed by the Allottee using a Class III digital signature certificate issued by a certifying authority in India.

7.3. The Nominated Authority shall have the right to seek such further information regarding the Pre-Commencement Report, the Commencement Report, the Monthly Report or the

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Yearly Report and also seek independent verification of the same.

## 8. UTILISATION OF COAL

### 8.1. Utilisation of Coal in the Specified End Use Plant

Except as otherwise provided in this Clause 8, the coal extracted from the Coal Mine shall be utilised by the Allottee strictly in the Specified End Use Plant; and shall not be utilised for any other purpose whatsoever, either directly or indirectly.

### 8.2. Middling or washery rejects

8.2.1. The Allottee shall adhere to Good Industry Practice with respect to mining of coal and make best efforts to reduce generation of middling or washery rejects and utilise the same in any captive power plant of the Allottee. In any case the middling or washery rejects generated from the Coal Mine shall not exceed normative limits.

8.2.2. Any middling or washery rejects generated from the Coal Mine may be sold by the Allottee and the Allottee shall maintain separate records for the middling or washery rejects generated, utilised and sold. However, the middling or washery rejects generated from the Coal Mine should in no event, exceed the normative limits.

### 8.3. Arrangements for optimal utilisation

8.3.1. In terms of Section 20 of the Ordinance and Rule 19 of the Rules, the Allottee shall be permitted to enter into arrangements for optimum utilisation of the Coal Mine (the "**Arrangement**"). In the event the Allottee is desirous of entering into an Arrangement, it shall make an application (the "**Arrangement Application**") to the Central Government in accordance with Rule 19 of the Rules.

8.3.2. The Arrangement Application shall be filed by the Allottee prior to undertaking any Arrangement and no Arrangement shall be given effect to until the Arrangement Application has been approved by the Central Government.

8.3.3. The Arrangement Application shall be made in writing and shall include complete particulars of the proposed Arrangement, including the particulars required to be provided under Rule 19(2) of the Rules i.e. (a) parties to the proposed Arrangement; (b) the proposed Arrangement; (c) the manner in which such Arrangement would achieve optimal utilisation of the relevant coal mines and cost efficiencies.

8.3.4. In the event that the Central Government grants its approval to the Arrangement, then prior to implementation of the Arrangement, the Allottee shall provide to the Central Government duly certified copy of all agreements and other documents related to the Arrangement.

**8.4. Utilisation in any other plant of the Allottee**

8.4.1. In the event that the Allottee is desirous of utilising the coal extracted from the Coal Mine in any other plants of the Allottee or its subsidiary company (in terms of the Companies Act, 2013) engaged in the same specified end use as the Specified End Use Plant ("**Other Plant(s)**") pursuant to Section 20(2) of the Ordinance, then the Allottee shall provide a written intimation ("**Diversion Notice**") to the Central Government.

8.4.2. In accordance with Rule 20(2) of the Rules, the Diversion Notice shall be provided at least thirty Business Days prior to the intended date of such utilisation.

8.4.3. In the event that, upon submission of the Diversion Notice the Central Government seeks further information regarding the aforementioned utilisation, then the Allottee shall provide the same within seven Business Days. The Allottee shall not utilise the coal extracted from the Coal Mine in any Other Plant(s) if: (i) the Central Government determines in its sole discretion that such utilisation is not in accordance with Section 20(2) of the Ordinance or Rule 20(2) of the Rules; or (ii) information regarding compliance with Section 20(2) of the Ordinance or Rule 20(2) of the Rules with respect to such utilisation is not provided to the Central Government in the manner stipulated under this Clause 8.4.

8.4.4. The Diversion Notice shall include complete particulars of the proposed utilisation of coal extracted from the Coal Mine in any Other Plant, including without limitation:

(i) name and address of the Other Plant(s);

(ii) the ownership of the Other Plant(s). It is clarified that such Other Plant(s) should be owned solely by the Allottee or its subsidiary company (in terms of the Companies Act, 2013) to be eligible to get coal in terms of Section 20(2);

(iii) the mechanism for transportation of coal from the Coal Mine to the Other Plant(s);

(iv) the requirement of coal of the Other Plant(s); the sources from which such requirement is being met; and the per cent of such requirement being proposed to be met from the Coal Mine; and the manner in which such diversion would affect the Specified End Use Plant originally associated with the Coal Mine.

8.4.5. In the event that coal extracted from the Coal Mine is being diverted to any Other Plant(s) pursuant to this Clause 8.4, then the Allottee or any of its subsidiary company owning such Other Plant(s) shall also be required to adhere to the stipulations under this Agreement with respect to the utilisation of coal from the Coal Mine and the Specified

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End Use and any Applicable Law.

8.5. **Sale to CIL**

8.5.1. Any coal extracted from the Coal Mine which is in excess of the requirements of coal for the Specified End Use Plant and the Other Plant(s) shall be required to be supplied to CIL at the CIL Notified Price.

8.5.2. It is clarified that for the purposes of sale of coal to CIL, the determination of grade of coal shall be based on joint analysis of coal carried out by the Allottee and CIL. It is further clarified that, the Allottee shall continue to make Monthly Payments with respect to the coal extracted from the Coal Mine as per Clause 9 including on the coal sold to CIL.

8.5.3. All Taxes applicable on such sale of coal shall be payable additionally.

9. **MONTHLY PAYMENTS AND ESCALATION**

9.1. **Monthly Payment**

9.1.1. The Allottee shall be required to make monthly payments (the "**Monthly Payment**") with respect to the coal extracted from the Coal Mine on the basis of the Reserve Price (as escalated in accordance with Clause 9.2).

9.1.2. The Monthly Payment is required to be made in the Designated Bank Account within 20 calendar days of expiry of each month with respect to coal extracted from the Coal Mine in such calendar month.

9.1.3. All payments required to be made by the Allottee shall be made net of all applicable Taxes. In the event, Taxes are payable, the Allottee shall gross-up the amount payable and make payment of the aggregate amount.

9.2. **Escalation**

9.2.1. For the purposes of computation of the Monthly Payment, the Reserve Price shall be subject to an escalation on a year-on-year basis every financial year on the basis of the pre-specified escalation formula that is prescribed in the relevant Standard Bidding Document for Design, Build, Finance, Own and Operate (DBFOO) bidding as formulated by Ministry of Power for escalation of fuel cost from captive mines (the "**Reference Index**"), and the Reserve Price shall stand increased by the per cent increase of the Reference Index on a year-on-year basis. It is clarified that for the purposes of escalation in a subsequent financial year, the escalated Reserve Price of the immediately preceding year shall be considered. The last published Reference Index shall be used for computing the escalation. The subject escalation would be applicable after the issuance of the Allotment Order.

9.2.2. In the event that the failure of the Allottee to make payment of the Monthly Payment exceeds for more than three instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

9.3. It is clarified that in addition to the aforementioned payments any royalty payable under Applicable Laws shall be payable additionally.

## 10. EFFICIENCY PARAMETERS

10.1. The conduct of mining operations at the Coal Mine shall be subject to the milestones listed in SCHEDULE E (the "**Efficiency Parameters**").

10.2. The Allottee would provide periodic information to the Nominated Authority and the Central Government regarding compliance with the Efficiency Parameters in the manner stipulated in Clause 7 (INFORMATION).

10.3. Any non compliance with the Efficiency Parameters would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (PERFORMANCE SECURITY) and in case where such non-compliance exceeds for more than five instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

## 11. GENERAL RIGHTS AND OBLIGATIONS

### 11.1. Limited Mining Rights

The Allottee shall be entitled to receive a Mining Lease for conduct of mining operations only in the Coal Mine and shall not be entitled to conduct the mining operations in any other area pursuant to this Agreement. The rights granted to the Allottee herein to conduct mining operations are exclusive within the Coal Mine. The Government undertakes not to grant any rights to mine coal in the Coal Mine to any Third Party during the Term.

### 11.2. Authorisations

The Allottee shall obtain and maintain all Governmental Approvals required for conducting the mining operations at the Coal Mine and performing its obligations under this Agreement. The Government undertakes, on a no-obligation basis, to expeditiously provide all necessary approvals and assistance for conducting mining operations and as otherwise may be reasonably required by the Allottee in relation to the rights granted to it under this Agreement.

### 11.3. Geological and Archaeological Finds

It is expressly agreed that other than rights to mine for coal (as may be granted under any Mining Lease pursuant hereto), geological or archaeological rights do not form part of the rights granted to the Allottee under this Agreement and the Allottee hereby acknowledges that except in relation to coal (as may be granted under any Mining Lease pursuant hereto), it shall not have any mining rights or interest in the underlying minerals, metals (including gold, silver etc.), gas, oil, fossils, antiquities, structures or other remnants or things either of particular geological or archeological interest and that such rights, interest and property on or under the Coal Mine shall vest in and belong to the relevant Central/ State Government or the concerned Governmental Authority. The Allottee shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the relevant Central/ State Government forthwith of the discovery thereof and comply with such instructions as the concerned Governmental Authority may reasonably give for the removal of such property.

11.4. **Health, Safety, Welfare, Social Security and Minimum Wages**

11.4.1. The Allottee shall comply with all Applicable Laws and observe Good Industry Practice for the protection of the general health, safety, welfare, social security and minimum wages of employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement.

11.4.2. Without prejudice to the generality of the foregoing, the Allottee shall ensure payment of minimum wages to the employees engaged at the Coal Mine and in related activity including employees of any contractor or sub-contractor.

11.4.3. The Allottee shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Allottee shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment constructed or acquired in connection with mining operations and required for ongoing operations.

11.4.4. The Allottee shall train employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, in accordance with the Good Industry Practice.

11.4.5. The Allottee shall construct, maintain, and operate health programs and facilities to serve the employees engaged at the Coal Mine, including employees of any contractor or sub-contractor and of all other persons having legal access to the area covered by this Agreement, which programs and facilities shall install, maintain and use modern health devices and equipment and shall practice modern health procedures and precautions in accordance with Good Industry Practice.

11.4.6. Without prejudice to the generality of the foregoing, in the event the Allottee provides housing, the same shall be built to a standard that provides suitable living environments adequate for health and well-being, and which meet applicable sanitation standards in terms of Good Industry Practice.

**12. CONTRACTORS AND SUB-CONTRACTORS**

12.1. In the event the Allottee enters into any agreement with any contractor in relation to the mining operations at the Coal Mine, then a duly certified copy of such agreement shall also be submitted to the Nominated Authority within fifteen Business Days of its execution.

12.2. Any Agreement between the Allottee and its contractors shall contain appropriate terms by which the contractor shall acknowledge and comply with the terms of this Agreement, and the contractor shall also cause its sub-contractors to acknowledge and comply with the same.

12.3. Nothing in this Agreement shall exempt the Allottee from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

12.4. Terms and Conditions for appointment of contractor(s) in relation to coal mining operations may be formulated in line with the terms and conditions specified in the Auction by Competitive Bidding of Coal Mines Rules, 2012 (as amended by notification dated 27.12.2012) framed under Sec. 11A of the MMDR Act. The terms and conditions may be as follows:

12.4.1. In case the Coal Mine is developed through contractor(s), the selection of the contractor(s) in relation to coal mining operation shall be through a competitive bidding process and the Allottee company shall inform the State Government concerned, the Central Government and the Nominated Authority about the engagement of such contractor(s) and the terms and conditions of such engagement, as soon as it is finalised.

12.4.2. The Allottee shall ensure that the criteria of bidding for engagement of the contractor(s) are not linked to CIL Notified Price.

12.4.3. The contractor(s) shall maintain all records as required to be maintained and shall provide such records for the inspection by the Allottee, the State Government concerned, the Central Government and the Nominated Authority.

## 13. CHANGE IN CONTROL AND TRANSFER

### 13.1. Change in Control of the Allottee

13.1.1. Change in Control of the Allottee or 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 the Nominated Authority and the Central Government if:

(a) such change in Control does not result in the Allottee becoming non compliant with any of the Eligibility Conditions or the transferee is also compliant with the applicable Eligibility Conditions, as the case may be. It is clarified that no company other than a Government company or corporation shall be permitted to hold more than twenty-six per cent of the paid up share capital in the Allottee, either directly or through any of its subsidiary company or associate company; and

(b) such change in Control or transfer does not require any prior consent, approval, no-objection certificate or the like under any Applicable Law.

13.1.2. In the event that any change in Control of the Allottee or any proposed transfer of the Specified End Use Plant along with the rights in relation to the Coal Mine requires prior Governmental Approval under any Applicable Laws, then such Governmental Approval shall be granted (in addition to any other requirement under Applicable Law) only if:

(a) the transferee of such right, title or interest or the Allottee subsequent to change of Control, as the case may be, also meets all the applicable Eligibility Conditions; or

(b) the Allottee continues to meet all the applicable Eligibility Conditions, as the case may be

### 13.2. Change in Control in case of a joint venture

13.2.1. In the cases where allotment has been made to a joint venture of any two or more Government companies or corporations, such companies shall be prohibited from alienating or transferring any interest, except for taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a Third Party.

### 13.3. Consequences of default

13.3.1. In the event of any change in Control or any transfer of right, title or interest in the Coal Mine which is not in conformity with this Agreement or any Applicable Law, then in addition to any rights, remedy or consequences as may be applicable under Applicable Laws, the Nominated Authority or the Central Government may, in its sole discretion, appropriate the Performance Security, disqualify the Allottee from participating in any further auction or allotment process conducted by the Nominated Authority; terminate this Agreement; and/or terminate and withdraw the Allotment Order as the case may be.

13.3.2. Any transfer of right, title or interest which is not in conformity with this Agreement or Applicable Laws shall be deemed to be void *ab-initio*.

**14. MINE PLAN**

14.1. The Mine Plan approved in relation to the Prior Allottee, if any shall also be applicable to the Allottee.

14.2. Upon allocation of Coal Mine, the Allottee may revise the Mine Plan for extraction of more coal as compared to the Mine Plan being subject to revision in accordance with the provisions of Applicable Law and the Agreement.

14.3. The Allottee may increase mine production to the maximum possible extent and utilise the coal in accordance with Clause 8. Subject to Applicable Laws, the Allottee may apply for coal linkages or participate in auction/ allotment for the Specified End Use Plant three years prior to the exhaustion of extractable reserves in the Coal Mine.

**15. MINE CLOSURE**

15.1. Upon exhaustion of the extractable coal reserves at the Coal Mine the Coal Mine shall be closed, in the manner provided in the mine closure plan and Applicable Laws.

**16. COMPLIANCE AND RECORD KEEPING**

16.1. The Allottee shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Allottee in connection with this Agreement, the development of the Coal Mine, mining operations and matters incidental thereto and the steps taken by the Allottee to comply with Applicable Laws. Such records and books of accounts shall be required to be maintained for a period of six years. The Allottee shall ensure that such records and books of accounts are sufficient to enable verification of the Allottee's compliance with its obligations under this this Agreement.

16.2. The Allottee shall permit the Nominated Authority and its representatives, to access and take copies of the Allottee's records and any other information held at the Allottee's premises and to meet with the Allottee's personnel to audit the Allottee's compliance with its obligations under this Agreement. Such audit rights shall continue for three years after termination of this Agreement. The Allottee shall give all necessary assistance to the conduct of such audits during the Term of this Agreement and for a period of three year after termination of this Agreement.

## 17. REPRESENTATIONS AND WARRANTIES

17.1. The Allottee represents and warrants to the Nominated Authority (save as otherwise disclosed to the Nominated Authority in writing), as of the Agreement Date, in the manner as detailed in SCHEDULE H ("**Warranties**").

17.2. None of the representations, warranties and/ or statements contained in this Agreement shall be treated as qualified by any actual or constructive knowledge on the part of the Nominated Authority or the Central Government or any of its respective agents, representatives, officers, employees or advisers.

17.3. In the event that any of the representations or warranties made or given by the Allottee ceases to be true or stands changed, the Allottee shall promptly notify the Nominated Authority of the same. The Allottee hereby waive all its rights to invoke and shall not invoke the Nominated Authority's knowledge (actual, constructive or imputed) of a fact or circumstance that might make a statement untrue, inaccurate, incomplete or misleading as a defence to a claim for breach of Warranties or covenant or obligation of the Allottee.

## 18. INDEMNITIES

18.1. In this clause, a reference to the Nominated Authority shall include the Nominated Authority; the Government of India; any of the departments or ministries of Government of India; and of the officers, employees, staff, advisors, representatives or agents of the Government of India (collectively the "**Indemnified Party**") and the provisions of this Clause shall be for the benefit of the Indemnified Party, and shall be enforceable by each such Indemnified Party.

18.2. The Allottee shall indemnify the Indemnified Party against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:

(a) any breach of the Warranties

(b) Allottee's breach or negligent performance or non-performance of this Agreement;

(c) the enforcement of this Agreement;

(d) any claim made against the Indemnified Party for actual or alleged infringement of a Third Party's rights arising out of or in connection with mining operations at the Coal Mine or performance or non performance of any of the obligations under this Agreement to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Allottee, its employees, agents or contractors;

(e) any claim made against the Indemnified Party by a Third Party for death, personal injury or damage to property arising out of or in connection with mining operations at the Coal Mine or performance or non performance of any of the obligations under this Agreement;

(f) any loss or damages caused on account of breach of any Applicable Law by the Allottee, including without limitation any costs incurred by the Nominated Authority in cleaning or rectifying of any environmental damages caused by the Allottee on account of, lack of Good Industry Practice; breach, negligent performance or failure or delay in performance of this Agreement; or non-compliance with Applicable Law.

18.3. If any Third Party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (a "**Claim**"), the Indemnified Party shall as soon as reasonably practicable, give written notice of the Claim to the Allottee, specifying the nature of the Claim in reasonable detail.

18.4. Subject to the Allottee providing security to the Indemnified Party, to the Indemnified Party's sole and absolute satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, the Allottee may take such action as it may reasonably deem fit to avoid, dispute, compromise or defend the Claim.

18.5. Payments of the amount of Claim shall become due and payable within thirty Business Days of receipt of notice of Claim. If a payment due from the Allottee under this clause is subject to Tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Allottee such amounts as shall ensure that the net receipt, after Tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to Tax.

## 19. ASSIGNMENT, SECURITY FOR FINANCING

### 19.1. Prohibition on Assignment

19.1.1. Except as provided in this Clause 19, the Allottee shall not assign this Agreement, either directly or indirectly, save and except with the prior consent in writing of the Nominated Authority, which consent the Nominated Authority shall be entitled to decline without assigning any reason.

19.1.2. Subject to compliance with provisions of Clause 19.2, this Agreement may be assigned by the Allottee in the following events:

(a) upon occurrence of a change in Control or transfer which is permissible in terms of Clause 13, to the transferee; or

(b) upon occurrence of an enforcement event, to a transferee as may be determined by a bank or financial institution in terms of Clause 19.3.

19.2. **Assignment Conditions**

Assignment of this Agreement shall also be subject to the following conditions precedent:

(a) the proposed assignee must meet the applicable Eligibility Conditions;

(b) the proposed assignee must agree to unconditionally and irrevocably adhere to the provisions of this Agreement and must enter into a deed of adherence in the manner as prescribed by the Nominated Authority;

(c) the proposed assignee must have furnished the Performance Security, to substitute any subsisting Performance Security provided by the Allottee;

(d) the proposed assignee must have paid any other amount due from the Allottee and agree to indemnify and hold the Nominated Authority harmless in all respects against any claims from any Third Party or the Allottee with respect to such assignment.

19.3. **Security for financing, enforcement Event**

19.3.1. Subject to Applicable Laws, the Allottee shall be entitled to create security over the Coal Mine through mortgage for the purposes of availing financing from a bank or financial institutions for the purposes of financing of the Specified End Use Plant or mining operations at the Coal Mine and such security creation shall not require prior approval by the Nominated Authority or the Central Government. It is clarified that the Allottee shall be permitted to enter into any agreement with bank or financial institutions with respect to assignment of this Agreement in terms of this Clause 19 and in such case the assignment conditions mentioned in Clause 19.2 shall not be applicable and the conditions specified in Clause 19.3 shall be applicable.

19.3.2. The Allottee shall keep the Nominated Authority promptly informed about: (i) any default in its obligation under any arrangement with any bank or financial institution; (ii) any security interest created over the Coal Mine; and (iii) any action initiated by the bank or financial institution regarding enforcement of security.

19.3.3. In the event of a default, the banks or financial institutions, as the case may be shall be entitled to enforce their security interest, provided that the conditions listed in Clause 19.2 are met, in the manner provided below:

(a) the security interest shall be exercised in accordance with the provisions of Applicable Laws and any inter-se agreement between the secured creditors, if any.

(b) the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), shall be entitled to seek a substitution of the Allottee by providing a written notice (the "**Substitution Notice**") to the Nominated Authority;

(c) the Substitution Notice shall contain complete particulars of the proposed transferee (the "**Selectee**"), particulars of compliance of the Selectee with all the Eligibility Conditions, particulars of the debt due and such data and information as would be necessary and relevant for the Nominated Authority to decide as to the acceptability of the Selectee;

(d) the Nominated Authority may require such other information as it may deem fit regarding the suitability of the Selectee to receive rights and obligations with respect to the Coal Mine;

(e) the Substitution Notice must be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by the Nominated Authority observe, comply with, perform and fulfil the residual terms, conditions and covenants of this Agreement as if the Selectee had been the Allottee under this Agreement and to assume, discharge and pay the debt due on the terms and conditions agreed to by the Selectee with the secured creditors. The Selectee shall also undertake to enter into such documents and agreements with Nominated Authority as may be necessary or required to give effect to the substitution of the Allottee by the Selectee;

(f) the Nominated Authority shall convey its acceptance or otherwise of the Selectee within sixty Business Days of (a) the date of receipt of the Substitution Notice; or (b) the date of receipt of the additional information and clarifications requested in respect of any data, particulars or information comprised in the Substitution Notice, whichever is later.

(g) In the event that the Nominated Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Substitution Notice, within the time specified in sub-clause (f) above, the Nominated Authority shall be deemed to have accepted the Substitution Notice and the Selectee.

19.3.4. Upon acceptance of the Selectee by the Nominated Authority or the Nominated Authority having been deemed to have accepted the Substitution Notice, this Agreement shall be deemed to be assigned in favour of the Selectee without any further act or deed of the Allottee.

## 20. INSURANCE

20.1. At all times during the Term hereof, the Allottee will maintain, and cause its contractors and sub-contractors to maintain, with financially sound and reputable insurers, insurance against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with Good Industry Practice.

## 21. ACCOUNTS AND AUDIT

### 21.1. Audited Accounts

The Allottee shall maintain books of accounts recording all its receipts, income, expenditure, payment, assets and liabilities in accordance with Good Industry Practice and Applicable Laws.

### 21.2. Appointment of Auditors

The Nominated Authority shall have the right, but not the obligation, to appoint at its cost, from time to time and at any time, an auditing firm or an auditor to audit and verify all those matters, expenses, costs, realizations and things with respect to the Coal Mine or which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

### 21.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Allottee to the Nominated Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its statutory auditors.

## 22. GOVERNMENT INSPECTION

22.1. The Nominated Authority, through its authorized representatives shall have the right to free ingress and egress within any part of the Coal Mine at any time to inspect works or activities being undertaken or implemented by the Allottee in order to monitor and verify compliance with the terms of this Agreement and all Applicable Laws.

22.2. The Nominated Authority, through its authorized representatives, shall have access to the Allottee's financial and other records and transactions (relatable to any period) at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Allottee with the terms of this

Agreement and all Applicable Laws, rules and regulations or to aid in the enforcement of the same.

22.3. The Nominated Authority shall have the right to conduct, either directly or indirectly through any Third Party, a performance audit to verify compliance by the Allottee, of its obligations hereunder.

## 23. EVENT OF FORCE MAJEURE

23.1. Event of Force Majeure means any of the following events or circumstances or combination of the following events or circumstances which are beyond the reasonable control of the Allottee, which could not have been prevented by Good Industry Practice or by the exercise of reasonable skill and care and which or any consequences of which, have a material and adverse effect upon the performance by the Allottee of its obligations or enjoyment of its rights:

(i) acts of God, flood, drought, earthquake or other natural disaster;

(ii) epidemic or pandemic;

(iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(iv) nuclear, chemical or biological contamination or sonic boom;

(v) collapse of buildings, fire, explosion or accident;

(vi) any labour or trade dispute, strikes, industrial action or lockouts (other than those solely affecting Allottee claiming the same as an Event of Force Majeure and attributable to such Allottee's policies regarding labour, compensation or employment or labour related conditions).

23.2. Provided it has complied with Clause 23.3, if the Allottee is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an Event of Force Majeure, the Allottee shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.

23.3. Upon occurrence of an Event of Force Majeure, the Allottee shall:

(i) as soon as reasonably practicable after the start of the Event of Force Majeure but no later than thirty Business Days from its start, notify the Nominated Authority and the Central Government in writing of the Event of Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Event of Force Majeure on its ability to perform any of its obligations under this

Agreement; and

(ii) use all reasonable endeavours to mitigate the effect of the Event of Force Majeure on the performance of its obligations including following of Good Industry Practice.

23.4. If an obligation is suspended by reason of an Event of Force Majeure for more than one month continuously, the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changed circumstances, provided that this Agreement shall remain in effect during the period during which the Parties are negotiating the terms of any such revision.

23.5. Notwithstanding Clause 23.4, in the event that performance of obligations under this Agreement remain suspended for a period of: (a) six months continuously; (b) or nine months over a period of one year, then the Nominated Authority may in its sole discretion terminate this Agreement in the manner provided in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION).

## 24. EFFECTIVE DATE, TERM AND TERMINATION

### 24.1. Effective Date

This Agreement shall come into effect on the Agreement Date. It is clarified that the provisions of this Agreement shall also be included in the Mining Lease.

### 24.2. Term

This Agreement shall commence on the dates mentioned in Clause 24.1 and shall continue for the period of validity of the Mining Lease granted to the Allottee ("**Term**"), unless agreed otherwise by the Parties and unless this Agreement is terminated earlier in accordance with its terms prior to the expiry of the Term.

### 24.3. Termination

24.3.1. This Agreement may be terminated upon occurrence of any of the following events (each a "**Termination Event**"):

(a) failure of the Allottee to make payment of the Upfront Amount in the manner provided in Clause 5.2;

(b) failure of the Allottee to complete the Allotment Conditions within the time specified in Clause 3.2;

(c) failure of the Allottee to make payment of additional levy within the time specified under Rule 18 of the Rules, if required to be paid;

(d) occurrence of any Appropriation Event resulting in appropriation of the entire Performance Security or on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security being appropriated in aggregate (in one or more instances) as provided in Clause 6.3;

(e) failure of the Allottee to replenish the Performance Security within a period of 15 Business Days, in the event that a part of the Performance Security has been appropriated;

(f) non compliance of the Allottee with the Efficiency Parameters for more than five instances (in aggregate and not over a specified period) as provided in Clause 10.3;

(g) suspension of obligations on account of an Event of Force Majeure for a period longer than as specified in Clause 23.5;

(h) failure to make payment of the Monthly Payment for more than three instances (in aggregate and not over a specified period) in terms of Clause 9.2.2;

(i) failure to provide any information requested by the Nominated Authority in terms of this Agreement;

(j) failure of the Allottee to ensure continued compliance with the Eligibility Conditions;

(k) in case the Allottee is a joint venture company, alienation or transfer of any interest, except the taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a Third Party;

(l) a company other than a Government company or corporation holding more than twenty-six per cent of the paid up share capital of the Allottee, either directly or through any of its subsidiary company or associate company (such expressions having meaning ascribed under the Companies Act, 2013);

(m) the Allottee dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, or commences any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganization;

(n) any other breach of any of the provisions of this Agreement (including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever), which is not cured by the Allottee within thirty Business Days of becoming aware of the same, on it own accord or upon receipt of a notice from the Nominated Authority;

(o) surrender of the Coal Mine by the Allottee;

(p) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any Event of Force Majeure;

(q) termination of the Mining Lease granted to the Allottee; or

(r) in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement.

24.3.2. 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 Allottee. The determination of the Nominated Authority regarding occurrence of a Termination Event shall be final and binding on the Allottee.

24.3.3. In case the Nominated Authority elects to terminate this Agreement, then the Performance Security and all other payments made by the Allottee shall be forfeited and the Allottee 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

24.4. **Retention of Books and Records**

Upon termination of this Agreement, the Allottee shall retain all documents, books and records related to the Coal Mine for a period of three years or such longer period as may specified under Applicable Law. It is clarified that the Allottee may also retain such books and records in electronic form if permitted under Applicable Laws.

## 25. GOVERNING LAW AND DISPUTE RESOLUTION

25.1. This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India, without regard to its principles of conflicts of laws.

25.2. Any dispute, controversy or claim arising out of or relating to or in connection with the Agreement including a dispute as to the validity or existence of this Agreement, or any breach or alleged breach thereof, shall be settled through mutual discussions between the Parties. In this regard, the Allottee shall nominate an officer not below the rank of a director to participate in the discussions on its behalf.

25.3. In the event that the Allottee fails to nominate an officer in the manner required under Clause 25.2; or the Parties are unable to resolve any dispute in accordance with Clause

25.2 within a period of 30 Business Days starting from the date on which the first notice of dispute was provided by either Party, such dispute shall be resolved in accordance with Section 27 of the Ordinance.

25.4. It is expressly agreed between the Parties, that any existence of a dispute shall not affect in any manner any of the rights of the Nominated Authority under this Agreement, including without limitation the right to appropriate Performance Security or terminate this Agreement, until a final determination in this regard is made.

25.5. The provisions contained in this Clause 25 shall survive the termination of this Agreement.

**26. MISCELLANEOUS**

26.1. **Time of Essence**

Each of the Parties hereby agrees that, with regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

26.2. **Publicity**

The Allottee shall not issue any information, document or article for publication in any news or communications media or make any public statement in relation to this Agreement without the prior written consent of the Nominated Authority unless required to do so by Applicable Law, provided that prior to any disclosure of any such information required by Applicable Law, the Allottee must first notify the Nominated Authority, who shall then have the opportunity to respond to and/or dispute such intended disclosure.

26.3. **Severability**

26.3.1. If any term, provision, covenant or restriction of this Agreement or the application thereof to any Person or circumstance shall be held invalid, void or unenforceable by a court of competent jurisdiction or other Governmental Authority to any extent, the remainder of the terms, provisions, covenants and restrictions of this Agreement and the application thereof to Persons or circumstances (other than those as to which any portion of this Agreement is held invalid, void or unenforceable) shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

26.3.2. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

26.4. **Costs and Expenses**

26.4.1. The Allottee shall bear its own costs in connection with the negotiation, preparation and execution of this Agreement.

26.4.2. The stamp duty payable for this Agreement shall be borne by the Allottee.

26.5. **Further Assurance**

The Allottee shall cooperate with the Nominated Authority and execute and deliver to the Nominated Authority such instruments and documents and take such other actions as may be requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

26.6. **Legal And Prior Rights**

All rights and remedies of the Nominated Authority hereto shall be in addition to all other legal rights and remedies belonging to the Nominated Authority and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid and it is hereby expressly agreed and declared by and between the Parties hereto, that the determination of this Agreement for any cause whatsoever shall be without prejudice to any and all rights and claims of the Nominated Authority, which shall or may have accrued prior thereto.

26.7. **Waiver**

26.7.1. The waiver of any default or breach under this Agreement by the Nominated Authority shall not constitute a waiver of the right to terminate this Agreement for any substantial default of a similar nature or under any other terms and conditions of this Agreement.

26.7.2. No failure or delay by the Nominated Authority in exercising any right or remedy provided by Applicable Law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy. The rights and remedies of the Nominated Authority under or pursuant to this Agreement are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights and remedies under Applicable Law.

26.7.3. Submission of any document, information, report or notice, which contains any information or reference to any default or breach under this Agreement or any Applicable Law, to the Nominated Authority shall not be construed to be a deemed approval of such breach or default and the Nominated Authority may exercise any rights or remedies with respect to such default at any time.

26.8. **Amendments**

No amendment of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it. The expression "amendment" shall include any amendment, variation, supplement, deletion or replacement however effected. Unless expressly agreed, no amendment shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of amendment, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so amended.

26.9. **Counterparts**

This Agreement may be executed in two counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, but all of which together will constitute one and the same instrument.

26.10. **No Agency or partnership**

The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency for and on behalf of any other Party. None of the provisions of this Agreement shall be deemed to constitute a partnership between the Parties hereto and no Party shall have any authority to bind the other Party or shall be deemed to be the agent of the other Party in any way.

26.11. **Notices**

All notices, requests, demands or other communication ("**Notice**") required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post with acknowledgment due, or transmitted by facsimile transmission to the other Parties at the address indicated in SCHEDULE I hereof or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified to the Party giving the same in the manner provided in this Clause, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 26.11 shall be deemed to have been given and received on the day of its receipt at such address.

A copy of the Notice sent by registered post with acknowledgment due, or transmitted by facsimile transmission may also be sent through email to the email addresses specified in

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SCHEDULE I solely for the information of the recipient and shall take effect only when the registered post is actually delivered or the fax is received by the recipient, as the case may be.

26.12. **Entire Agreement**

This Agreement (including all such deeds and documents issued or executed pursuant hereto or referred to herein) and the Allotment Document constitutes and represents the entire agreement between the Parties with regard to the rights and obligations of each of the Parties and cancels and supersedes all prior arrangements, agreements or understandings, if any, whether oral or in writing, between the Parties on the subject matter hereof or in respect of matters dealt with herein. In the event of a conflict between this Agreement and the Allotment Document, the provisions of this Agreement shall prevail to the extent of the conflict.

26.13. **Specific Performance of Obligations**

The Nominated Authority shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to seek or enforce specific performance of this Agreement, in addition to any other legal rights and remedies, without the necessity of demonstrating the inadequacy of monetary damages.

26.14. **Power of the Central Government**

The Allottee acknowledges that for the purposes of this Agreement, the Central Government is acting through the Nominated Authority pursuant to the Ordinance and the Rules. However, for the purposes of exercise of rights and obligations hereunder and any Applicable Law, the Central Government shall be entitled to act through any of its relevant departments, ministries or any Governmental Agencies and all such relevant departments, ministries or any Governmental Agencies shall be entitled to exercise rights and obligations under this Agreement as if such relevant departments, ministries or any Governmental Agencies were a Party hereto.

**[Remaining part of this page intentionally left blank, schedules follow.]**

## SCHEDULE A - PARTICULARS OF THE COAL MINE

| | |
|---|---|
| **Coal Mine** | **Pachhwara Central** |
| **Latitude** | From 24°31'30" to 24°32'30" N |
| **Longitude** | From 87°25' to 87°30' E |
| **Coalfield** | Rajmahal Group of Coalfield |
| **Villages** | Singdehri, Taljhari, Kataldih, Bisunpur, Chilgo, Dangapara, Anjhari, Alubera, Pachwara |
| **District** | Pakur |
| **State** | Jharkhand |

## SCHEDULE B - PARTICULARS OF THE SPECIFIED END USE PLANT

| S. No. | Name of Specified End Use Plant | Address | Configuration | Capacity |
|---|---|---|---|---|
| 1 | Guru Gobind Singh Super Thermal Plant | Village: Ghanauli, Distt. Ropar, Punjab | 6 x 210 MW | 1260 MW |
| 2 | Guru Hargobind Thermal Plant | Village Lehra Mohabbat, Distt. Bathinda, Punjab | 2 x 210 MW<br>2 x 250 MW | 920 MW |
| 3 | Guru Nanak Dev Thermal Plant | Bathinda City, Punjab | 2 x 110 MW<br>2 x 120 MW | 460 MW |

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कोयला मंत्रालय
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M/o Coal
Nominated Authority

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CE/FUEL
PATIALA

## SCHEDULE C - FORMAT OF INTIMATION TO THE NOMINATED AUTHORITY

To
The Nominated Authority
[address]

[*date*]

**Sub: Intimation under Clause 3.1(f) of the Allotment Agreement (the "Agreement").**

Dear Sir,

We write with reference to Clause 3.1(f) of the Agreement read with the Ordinance and the Rules, including Section 10 and Section 11 of the Ordinance in terms of which we intend to own and utilise certain movable property of the Prior Allottee and also adopt certain contracts as detailed below:

(a) particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we intend to own and use in terms of Section 10(1) of the Ordinance is enclosed as Annexure A;

(b) particulars of movable property along with the details of the current owner, the terms of negotiations, related documentation and other details, which we do not intend to own and use and which we intend to move in terms of Section 10(4) of the Ordinance is enclosed as Annexure B;

(c) the list of contracts (including contracts with secured creditors[1]) which we intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure C;

(d) the list of contracts (including contracts with secured creditors) which we do not intend to adopt and continue, along with complete particulars of such contracts is enclosed as Annexure D.

Apart from the particulars of the movable property and the contracts listed in this letter, we do not intent to own, use, continue or adopt any other movable property or contracts, as the case may be and do hereby relinquish our rights with respect to the same. We acknowledge that any information not provided in this letter may not be included by the Nominated Authority in the Allotment Order.

Your Sincerely,

[1] Not applicable if the Allottee is the Prior Allottee in which case the secured creditors shall have an option to continue in terms of Section 12(1) of the Ordinance.

……………………

(Authorised Signatory)
Name:
Designation:

**Enclosed: As Above**

**Annexure A**

**Annexure B**

**Annexure C**

**Annexure D**

भारत सरकार कोयला मंत्रालय नामनिर्दिष्ट प्राधिकारी Govt. of India M/o Coal Nominated Authority

## SCHEDULE D - FORMAT OF THE COMPLETION NOTICE

To
The Nominated Authority
[address]

[*date*]

**Sub: Completion Notice under Clause 3.2.1 of the Allotment Agreement (the "Agreement").**

Dear Sir,

We write with reference to Clause 3.2.1 of the Agreement. We have completed each of the Allotment Conditions specified in Clause 3.1 of the Agreement and the particulars of the same are provided below:

(a) We continue to be in compliance with all the Eligibility Conditions;

(b) we have paid the first instalment of the Upfront Amount, in accordance with Clause 5.2.1 through [*particulars of payment to be mentioned*] / submitted an undertaking as per Schedule G;

(c) we have furnished the Performance Security through [*particulars of performance security and its manner of delivery to be mentioned*] / submitted an undertaking as per Schedule G;

(d) we have paid the Fixed Amount through [*particulars of payment to be mentioned*] / submitted an undertaking as per Schedule G;

(e) Additional Levy as was required to be paid has been paid through [*particulars of payment to be mentioned*][2]; and

(f) we have provided a written intimation as was required under Clause 3.1(f) of the Agreement through a letter dated [*particulars to be mentioned*].

Documentary evidence with respect to completion of each of the Allotment Conditions is enclosed.

Your Sincerely,

......................

(Authorised Signatory)
Name:
Designation:

**Enclosed: As Above**

[2] Not applicable if the Allottee is not the Prior Allottee.

## SCHEDULE E - EFFICIENCY PARAMETERS

| S. N. | Milestone | Time Limit in Months (From the date of the Allotment Order) |
|---|---|---|
| 1 | Application for transfer of Statutory permission to the successful bidder | 1 |
| 2 | Completion of transfer of Statutory permissions obtained by the Prior Allottees | 3 |
| 3 | Reporting of Deviations from approved Mining Plan (if any) | 4 |
| 4 | Ratification of Deviations/ Approval of Revised Mining Plan including Mine Closure Plan (if necessary) | 10 |
| 5 | Approval of Mine Closure Plan (if not approved earlier) | 6 (In case of no deviation) |
| 6 | Opening of Escrow Account (if not opened earlier) | 6 (In case of no deviation) |
| 7 | Schedule of Production/ Reaching Rated Capacity | As per approved Mining Plan |
| 8 | EUP Synchronisation | As per approved Mining Plan |

*(a) The percentage for appropriation of Performance Security shall be calculated in proportion to the failure/ delay in compliance with the timelines mentioned for achievement of Efficiency Parameters which shall be broadly based on the weightages prescribed in the recommendations of Inter-Ministerial Group.*

*(b) In case of non-compliance with the Efficiency Parameters mentioned above, the Successful Bidder shall be required to rectify the same within such time as may be prescribed.*

Govt. of India M/o Coal Nominated Authority

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## SCHEDULE F - FORMAT OF PERFORMANCE SECURITY

[*Reference number of the bank*] [*date*]

To

The Nominated Authority

[*address*]

**WHEREAS**

A. **[Name of the Allottee]** incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Allottee], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] (the "**Allottee**") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [*figures*] (Indian Rupees [*words*]) as a performance security for a period of [*period of performance bank guarantee*].

B. The Performance Security is required to be provided to **The President of India**, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Ordinance, 2014 read with Coal Mines (Special Provisions) Second Ordinance, 2014 (the "**Nominated Authority**") for discharge of certain obligations under the Allotment Agreement dated [*date*] (the "**Agreement**").

C. We, [***name of the bank***] (the "**Bank**") at the request of the Allottee do hereby undertake to pay to the Central Government an amount not exceeding INR [*figures*] (Indian Rupees [*words*]) to secure the obligations of the Allottee under the Agreement on demand from the Nominated Authority on the terms and conditions herein contained herein.

**NOW THEREFORE**, the Bank hereby issues in favour of the Nominated Authority this irrevocable and unconditional payment bank guarantee (the "**Guarantee**") on behalf of the Allottee in the amount INR [*figures*] (Indian Rupees [*words*]).

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Nominated Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Nominated Authority, a sum or sums (by way of one or more claims) not exceeding in the aggregate the amount of INR [*figures*] (Indian Rupees [*words*]) without the Nominated Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein

and notwithstanding any dispute or difference between the Nominated Authority and Allottee on any matter whatsoever. The Bank undertakes to pay to the Nominated Authority any money so demanded notwithstanding any dispute or disputes raised by the Allottee in any suit or proceeding pending before any court or tribunal relating thereto the Bank's liability under this present being absolute and unequivocal.

2. The Bank acknowledges that any such demand by the Nominated Authority of the amounts payable by the Bank to the Nominated Authority shall be final, binding and conclusive evidence in respect of the amounts payable by Allottee to the Nominated Authority under the Agreement.

3. The Bank hereby waives the necessity for the Nominated Authority from demanding the aforesaid amount or any part thereof from the Allottee and also waives any right that the Bank may have of first requiring the Nominated Authority to pursue its legal remedies against the Allottee, before presenting any written demand to the Bank for payment under this Guarantee.

4. The Bank further unconditionally agrees with the Nominated Authority that the Nominated Authority shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:

   (i) vary and/or modify and of the terms and conditions of the Agreement;
   (ii) extend and / or postpone the time for performance of the obligations of the Allottee under the Agreement, or
   (iii) forbear or enforce any of the rights exercisable by the Nominated Authority against the Allottee under the terms and conditions of the Agreement.

   and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the Allottee or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Nominated Authority receives the full amount due hereunder as if no such withholding had occurred. It is clarified that even in such case the obligation of the Bank shall not in any manner exceed in the aggregate the amount of INR [*figures*] (Indian Rupees [*words*]).

6. The Bank agrees that Nominated Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Allottee.

7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Allottee under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the Nominated Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Allottee and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the [date of expiry of bank guarantee] the Bank shall be discharged from all liability under this guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the Nominated Authority shall have no claim against the Bank for making such payment.

9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Delhi.

10. The Bank has the power to issue this Guarantee in favour of the Nominated Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.

11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Nominated Authority in writing.

12. The Nominated Authority may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the President of India. The Nominated Authority may also assign this Guarantee in favour of the Governor of a State, with prior intimation to the Bank. Save as provided in this Clause 12, this Guarantee shall not by assignable or transferable.

Dated the [day] day of [month] [year] for the Bank.

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Nominated Authority

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In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

____________________________

(Signature)

____________________________

(Name and Designation)

____________________________

(Bank Stamp)

## SCHEDULE G - FORMAT OF DEED OF UNDERTAKING

*(May be submitted by the Allottee pursuant to Clause 3.2.4)*

*(To be executed on non-judicial Stamp Paper of requisite value)*

Ref. No. Date: March......, 2015

To

Nominated Authority

[Address]

Dear Sir,

We, [*name of the allottee company*] (the "**Allottee**") have read and examined the Allotment Agreement dated [date] (the "Allotment Agreement") relating to Allotment of [Name of Coal Mine] coal mine through the application process which commenced on February 18, 2015 and the Order of Ministry of Coal dated March 24, 2015.

Capitalised expressions used in this undertaking but not defined herein have the same meaning as ascribed to them in the Allotment Agreement.

The Allottee hereby unconditionally and irrevocably undertakes to submit a Performance Security as required under Clause 6.1.1, the first instalment of Upfront Amount as required under Clause 5.2.1 and Fixed Amount as required under Clause 3.1 (d) of the Allotment Agreement within a period of 30 days from the Agreement Date i.e. [*date of Allotment Agreement*].

We hereby further undertake that if any Appropriation Event occurs prior to furnishing of a Performance Security, the Allottee shall immediately deposit such amount which would have been appropriated had the Performance Security been provided in the Designated Bank Account and in this regard the provisions of Clause 6 of the Allotment Agreement shall apply *mutatis mutandis* to this undertaking

We acknowledge that any liability on account of non-furnishing of the Performance Security shall be solely on the account of the Allottee and the acceptance of this undertaking shall not relieve the Allottee from such liability.

Should this undertaking be accepted, I also agree to abide by and fulfil all the terms and conditions and provisions of Allotment Agreement.

This undertaking has been issued pursuant to a [*particulars of corporate authorisation of the Allottee e.g. date of board resolution etc. as applicable*]

Signature along with seal of the Company

(Duly authorized to sign the Undertaking on behalf of the Allottee)

Name:

Designation:

Date:

Name of Company:

Address:

Witness:

Signature

Date:

Name & Address:

## SCHEDULE H – WARRANTIES

### 1. INFORMATION

1.1. The information, provided to the Nominated Authority during the allotment process and any time thereafter, including but not limited to the information contained in this Agreement, by the Allottee is true, accurate and not misleading in any manner whatsoever.

1.2. Neither this Agreement nor any of the information and documents provided during the allotment process exercise contains any untrue statement of fact, or omits to state a material fact necessary to make the statements herein or therein not misleading. The documents provided to the Nominated Authority and/or its advisors during the conduct of the allotment process, are true and complete copies of such documents and none of the information provided to the Nominated Authority and/or its advisors during the allotment process was incorrect, inaccurate or misleading in any manner whatsoever.

### 2. AUTHORITY

2.1. The Allottee has full legal capacity to enter into this Agreement and to perform its obligations under it and has taken all action necessary to authorise such execution and delivery and the performance of such obligations.

2.2. This Agreement has been duly executed and delivered by the Allottee, and (assuming due authorisation, execution and delivery and performance by the Parties), constitutes a legal, valid and binding obligation of the Allottee, enforceable against the Allottee in accordance with the terms of the Agreement.

2.3. The Allottee has obtained requisite corporate authorisation, including passing of all necessary resolutions to execute this Agreement and carry out all transactions and actions contemplated under this Agreement and do all necessary acts incidental to this Agreement.

2.4. The execution and delivery of this Agreement by the Allottee and the performance of the obligations under it do not and shall not:

(a) conflict with or violate any provision of the memorandum of association or articles of association of the Allottee;

(b) require on the part of the Allottee, any filing with, or permission, authorisation, consent or approval of, any Governmental Authority;

(c) conflict with, result in breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in favour of any party any right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which the Allottee is party or by which it is bound or to which its assets are subject;

(d) violate, conflict with or constitute a default under any Applicable Law, lien, lease, judgement, award, ordinance, order, writ, injunction, decree, statute, rule or regulation or any other restriction of any kind or character applicable to the Allottee or its properties or assets;

2.5. No person is entitled to any brokerage, finder's, or other similar fee or commission in connection with the transactions contemplated by this Agreement.

3. **GENERAL**

The Allottee

(a) is a Government company duly organised, validly existing and in good standing under the laws of India;

(b) meets all the Eligibility Conditions prescribed under the Ordinance read with the Rules and the Allotment Document;

(c) has the financial standing and capacity to undertake mining operations at the Coal Mine in accordance with the Efficiency Parameters;

(d) is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;

(e) there are no actions, suits, proceedings or investigations pending or to the Allottee's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute an event of default hereunder;

(f) has neither violated or defaulted nor has knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority;

(g) has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities;

(h) except as set forth in any Mining Lease, all rights and interests of the Allottee in and to the Coal Mine shall pass to and vest in the relevant Governmental Authority on the date of termination or expiry hereof, free and clear of all Encumbrances without any further act or deed on the part of the Allottee or the Central Government;

(i) no bribe or illegal gratification or any other illegal amount has been paid or will be paid in cash or kind by or on behalf of the Allottee to any Person to procure the rights granted hereunder; and

(j) Without prejudice to any express provision contained in this Agreement, the Allottee acknowledges that prior to the execution of this Agreement, the Allottee has after a complete and careful examination made an independent evaluation of the Coal Mine and the information provided by the Nominated Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Allottee in the course of performance of its obligations hereunder. The Allottee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Nominated Authority and any Governmental Authority shall not be liable for the same in any manner whatsoever to the Allottee.

मनोनिर्दिष्ट प्राधिकारी भारत सरकार कोयला मंत्रालय Govt. of India M/o Coal Nominated Authority

PUNJAB STATE POWER CORP. LTD. CE/FUEL PATIALA

## SCHEDULE I - ADDRESS FOR PROVIDING NOTICES

### A. Notice to the Nominated Authority

| | |
|---|---|
| **Address** | Nominated Authority, Ministry of Coal, World Trade Tower, Ground Floor, Barakhamba Lane, New Delhi - 110001 |
| **Telephone** | 011-23414136 |
| **Fax** | 011-23414136 |
| **E-mail (only for information)** | nomauthority.moc@nic.in |

**With CC to the Central Government**

| | |
|---|---|
| **Address** | Ministry of Coal, Shastri Bhawan, New Delhi - 110001 |
| **Telephone** | 011-23073933 |
| **Fax** | 011-23381678 |
| **E-mail (only for information)** | soca3.moc@nic.in |

### B. Notice to the Allottee

| | |
|---|---|
| **Address** | Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Patiala – 147001, Punjab, India |
| **Telephone** | 0175-2219883 |
| **Fax** | 0175-2215897 |
| **E-mail (only for information)** | cefuelpspcl@gmail.com |

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorised representatives on the date and year written below, at New Delhi:

**Signatories**

The Nominated Authority

Vivek Bharadwaj

..............................................

Name: Mr Vivek Bharadwaj
Date: March 26, 2015

Punjab State Power Corporation Limited

..............................................

Name: S K Bagga
Designation: Chief Engineer
Date: March 26, 2015
Duly authorized to execute this Agreement pursuant to resolution passed by the board of directors of the Punjab State Power Corporation Limited.

भारतीय गैर न्यायिक

भारत

पचास रुपये

FIFTY RUPEES

रु.50

Rs.50

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INDIA

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W 694668

## PERFORMANCE SECURITY

| | |
|---|---|
| B.G.No. | 6535IPEBG150004 |
| B.G Date | 24.04.2015 |
| B.G. Amount | Rs. 1,92,50,00,000/-<br>(Rupees One Hundred Ninety Two Crores and Fifty Lacs Only) |
| B.G. Valid upto | 23.10.2016 |
| Claim Period | 12 months |

To

**The Nominated Authority**
**Ministry of Coal, World Trade Tower,**
**Ground Floor, Barakhamba Lane,**
**New Delhi – 110001.**

WHEREAS

A. **Punjab State Power Corporation Limited** incorporated in India under the Companies Act, 1956 with Corporate Identity Number **U40109PB2010SGC033813**, whose registered office is at **PSEB Head Office, The Mall, Patiala, Punjab, India** (the **"Allottee"**) is required to provide an unconditional and irrevocable bank guarantee for an

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W 694659

amount equal to **Rs. 192,50,00,000/- (Rupees One Hundred Ninety Two Crores Fifty Lacs Only)** as a performance security for a period of **18 months**.

B. The Performance Security is required to be provided to '**The President of India,** acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Ordinance, 2014 read with Coal Mines (Special Provisions) Second Ordinance, 2014 (the "**Nominated Authority**") for discharge of certain obligations under the Allotment Agreement dated **26 March 2015** (the "**Agreement**").

C. We, **Bank of India** (the " **Bank**") at the request of the Allottee do hereby undertake to pay to the Central Government an amount not exceeding **Rs. 192,50,00,000/- (Rupees One Hundred Ninety Two Crores Fifty Lacs Only)** to secure the obligations of the Allottee under the Agreement on demand from the Nominated Authority on the terms and conditions herein contained herein.

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**NOW THEREFORE,** the Bank hereby issues in favour of the Nominated Authority this irrevocable and unconditional payment bank guarantee (the "**Guarantee**") on behalf of the Allottee in the amount **Rs. 192,50,00,000/- (Rupees One Hundred Ninety Two Crores Fifty Lacs Only)**

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Nominated Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Nominated Authority, a sum or sums (by way of one or more claims) not exceeding in the agreegate the amount of **Rs. 192,50,00,000/- (Rupees One Hundred Ninety Two Crores Fifty Lacs Only)** without the Nominated Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Nominated Authority and Allottee on any matter whatsoever. The Bank undertakes to pay to the Nominated Authority any money so demanded notwithstanding any dispute or disputes raised by the Allottee in any suit or proceeding pending

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पचास रुपये

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W 694661

before any court or tribunal relating thereto the Bank's liability under this present being absolute and unequivocal.

2. The Bank acknowledges that any such demand by the Nominated Authority of the amounts payable by the Bank to the Nominated Authority shall be final, binding and conclusive evidence in respect of the amounts payable by Allottee to the Nominated Authority under the Agreement.

3. The Bank hereby waives the necessity for the Nominated Authority from demanding the aforesaid amount or any part thereof from the allottee and also waives any right that the Bank may have of first requiring the Nominated Authority to pursue its legal remedies against the Allottee, before presenting any written demand to the Bank for payment under this Guarantee.

4. The Bank further unconditionally agrees with the Nominated Authority that the Nominated Authority shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to :

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रु.50

FIFTY RUPEES

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W 694662

(i) vary and/or modify and of the terms and conditions of the Agreement;

(ii) extend and / or postpone the time for performance of the obligations of the Allottee under the Agreement, or

(iii) forbear or enforce any of the rights exercisable by the Nominated Authority against the Allottee under the terms and conditions of the Agreement.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Nominated Authority or any indulgence by the Nominated Authority to the Allottee or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or

BANK OF INDIA

भारतीय गैर न्यायिक

भारत

पचास रुपये रु.50

FIFTY RUPEES Rs.50

सत्यमेव जयते

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W 694663

withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Nominated Authority receives the full amount due hereunder as if no such withholding had occurred. It is clarified that even in such case the obligation of the Bank shall not in any manner exceed in the aggregate the amount of **Rs. 192,50,00,000/- (Rupees One Hundred Ninety Two Crores Fifty Lacs Only).**

6. The Bank agrees that Nominated Authority at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Allottee.

7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Allottee under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its

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पचास रुपये

FIFTY RUPEES

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W 694664

claims satisfied or discharged or till the Nominated Authority certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Allottee and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the **23.10.2017,** the Bank shall be discharged from all liability under this guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment there under and the Nominated Authority shall have no claim against the Bank for making such payment.

9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at Delhi.

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भारत

पचास रुपये

FIFTY RUPEES

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Rs.50

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W 694665

10. The Bank has the power to issue this Guarantee in favour of the Nominated Authority. This guarantee will not be discharged due to the change in the constitution of the Bank.

11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Nominated Authority in writing.

12. The Nominated Authority may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the President of India. The Nominated Authority may also assign this Guarantee in favour of the Governor of a State, with prior intimation to the Bank.

Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.

**Notwithstanding anything contained herein above our liability under this Bank Guarantee is restricted to Rs.1,92,50,00,000/- (Rupees One Hundred Ninety Two**

भारतीय गैर न्यायिक

भारत

पचास रुपये

FIFTY RUPEES

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Rs.50

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W 694666

**Crores and Fifty Lacs Only) and this guarantee is valid upto 23.10.2016 and we shall be released and discharged from all liabilities hereunder unless a written claim for payment under this guarantee lodged to us within 12 months from the date of expiry of the guarantee i.e. on or before 23.10.2017 irrespective of whether or not the original guarantee is returned to us.**

This guarantee is governed as per India law.

The confirmation of that guarantee is available with our controlling office. The beneficiary in his own interest can obtain such confirmation from them.

Address of Controlling Office:
Bank of India
Divisional Manager Office North-II
579-R, 1st Floor, Model Town
Ludhiana -141001
Telephone no: 0161-2421001, 2400175

**Dated the 24th day of April 2015 .**

भारतीय गैर न्यायिक

भारत

पचास रुपये

रु.50

FIFTY RUPEES

Rs.50

सत्यमेव जयते

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ਪੰਜਾਬ पंजाब PUNJAB

W 694667

For Bank of India
Ludhiana MCB, 579-R, 1st Floor, Model Town, Ludhiana -141001
Telephone no: 0161-2400169, 2424445

**In witness whereof the Bank, through its authorized officer, has set its hand and stamp.**

Meenakshi 174325
(Meenakshi Garg)
Senior Manager
Ludhiana MCB

162668
(Dr. O.P. Lal)
Assistant General Manager
Ludhiana MCB

BANK OF INDIA

भारतीय गैर न्यायिक

भारत

पचास रुपये रु.50

FIFTY RUPEES Rs.50

सत्यमेव जयते

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ਪੰਜਾਬ पंजाब PUNJAB

Z 206866

To,

**The Nominated Authority, Ministry of Coal,
131, Ground Floor, World Trade Tower,
Babar Road,, New Delhi – 110001.**

कार्यालय
नामित प्राधिकारी
O/o Nominated Authority
Receipt No. :
Dated : 21/12/16

Arpit Kumar
011-23414135

| | |
|---|---|
| B.G. NO. | 6535IPEBG150004 |
| B.G. DATE | 24.04.2015 |
| B.G. AMOUNT | Rs. 1,92,50,00,000/- |
| Original Expiry Dt. | 23.10.2016 |
| Extended By | 12 Month. |
| B.G. VALID UP TO | 23.10.2017 |
| Claim Period | 12 Months. |

**WE BANK OF INDIA, LUDHIANA MID CORPORATE BRANCH, 579-R, 1st FLOOR, MODEL TOWN, LUDHIANA** had issued unconditional and irrevocable bank guarantee for an amount equal to **Rs. 192,50,00,000/- (One Hundred Ninety Two Crores Fifty Lacs Only)** as a performance security for a period of **18 months** (Bank Guarantee No. 6535IPEBG150004 dated 24.04.2015) in favour of **The Nominated Authority, Ministry of Coal,** which was valid upto 23.10.2016. Now at the request of **M/s Punjab State Power Corporation Limited (Allottee),** we have extended the same by 12 months and henceforth the abovementioned guarantee 6535IPEBG150004 for amount **Rs. 192,50,00,000/- (One Hundred Ninety Two Crores Fifty Lacs Only)** is valid upto 23.10.2017 against any loss or damage caused to or suffered by or that would be caused to or be suffered by the Nominated Authority, Ministry of Coal by any reason of any breach by the said Allottee of any of terms or conditions contained in the Allottment Agreement dated 26.03.2015 or by reason of Allottee's failure to perform the said agreement.

2. Not with standing anything contained herein as aforesaid:

a. Our liability under this guarantee shall not exceed **Rs. 192,50,00,000/- (One Hundred Ninety Two Crores Fifty Lacs Only).**

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11472 13/7/2006 60

No. ___ Date ___ Rs. ___
SOHAN LAL STAMP VENDER
Distt. Courts, LUDHIANA No. 57

भारतीय गैर न्यायिक

भारत

पचास रुपये रु.50

FIFTY RUPEES Rs.50

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Z 206862

b. WE, **BANK OF INDIA, LUDHIANA MID CORPORATE BRANCH, 579-R, 1st FLOOR, MODEL TOWN, LUDHIANA**, further declare that this Bank Guarantee in favour of **The Nominated Authority, Ministry of Coal** will be valid upto 23.10.2017.

c. And that, we are liable to pay the guarantee amount or any part thereof under this guarantee only if you serve upon us a written claim or demand on or before 23.10.2018 (including one year claim period) and thereafter all your rights under this guarantee shall be forfeited and we shall be relieved and discharged from all the liability irrespective of whether or not the original guarantee is returned to us.

d. Other terms and conditions remain the same as per original guarantee issued earlier. This guarantee is governed as per Indian Law.

3. The confirmation of the extension of this guarantee is available with our controlling office. The Beneficiary in his own interest can obtain such confirmation from them.

Address of Controlling Office:
Bank of India
Ludhiana Zonal Office
Surya Kiran Complex, Ist Floor, Phase-II,
The Mall, Near Rakh Bagh, Civil Lines
Ludhiana -141001
Telephone no: 0161-2405977, 2409847

Dated this day 7th of December, 2016 at Ludhiana

Meenakshi
174325
(Meenakshi Garg)
Senior Manager

164907
(Anupam Trehan)
Assistant General Manager

For Bank of India, Ludhiana MCB, 579-R, 1st Floor, Model Town, Ludhiana -141002,
Telephone no: 0161-2400169, 2421010

[illegible]

91468 13/7/2006 87

SOHAN LAL STAMP VENDER
Distt. Courts LUDHIANA ... No 57

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**
**SCO 220-21, SECTOR – 34-A, CHANDIGARH**

**Petition No. 13 of 2015**
**Date of Order: 01.09.2015**

| | |
|---|---|
| Present: | Smt. Romila Dubey, Chairperson.<br>Er. Gurinder Jit Singh, Member. |
| In the matter of: | Petition under Section 86 (1) (a) read with section 62 of the Electricity Act, 2003 regarding recovery due to payment of additional levy as per Hon'ble Supreme Court order dated 24.09.2014 |
| | AND |
| In the matter of : | Punjab State Power Corporation Limited, Patiala. |

**ORDER:**

Punjab State Power Corporation Limited (PSPCL) has filed the present petition under section 86 (1) (a) read with section 62 of the Electricity Act, 2003 regarding recovery due to payment of additional levy as per Hon'ble Supreme Court order dated 24.09.2014. It has been submitted by PSPCL that the erstwhile Punjab State Electricity Board was allotted the Pachwara Central

Block coal mine for the exclusive use by the generating stations of erstwhile Punjab State Electricity Board. The coal mine is being used exclusively since February, 2006 for State owned thermal power stations namely GGSSTP, Ropar, GHTP, Lehra Mohabbat and GNDTP, Bathinda. These thermal power stations are under commercial operation and generating electricity to maintain the distribution and supply of electricity to the consumers. PSPCL is undertaking both generation and distribution of electricity. PSPCL has also been renovating and modernizing the units of above said thermal plants to ensure sustained operation of generation with higher efficiency. These generating stations use coal as fuel for generation of electricity.

2. For the purpose to meet with coal requirements of the thermal generating stations of erstwhile Punjab State Electricity Board, the Government of India allotted the Pachwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board. A special purpose vehicle namely Panem Coal Mines Limited was created only for mining of coal from the Pachwara Central Block coal mine. By notification dated 22.02.2002, the Government of India, specified the end use of the supply of coal from the Pachwara Central block by Panem Coal Mines Ltd. for exclusive use for the power plants of erstwhile Punjab State Electricity Board for generation of thermal power and further with the condition that the erstwhile Punjab State Electricity Board will hold at least 26% of the voting equity share capital of Panem Coal Mines Limited.

The Government of India, Ministry of Coal & Mines by communication dated 25.08.2004 addressed to the Government of Jharkhand communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachwara Central Block covering an area of 1278 hectares to Panem Coal Mines Limited for a period of 30 years.

The mining lease was granted by the Government of Jharkhand to Panem Coal Mines Limited by Mining Lease Deed dated 16.11.2004 for an area of 905.41 hectares and by Mining Lease Deed dated 30.03.2005 for an area of 372.96 hectares, aggregating to a total of 1278.37 hectares.

Pursuant to the above, the mines were developed and the mining and supply of coal began from March, 2006. The specific condition of coal allotment as well as the mining lease is that the coal is to be used exclusively for the generation of electricity from the power plants of erstwhile Punjab State Electricity Board and this has been scrupulously followed during all these years without any deviation whatsoever.

3. Pursuant to the unbundling and reorganization of the erstwhile Punjab State Electricity Board with effect from 16.04.2010, in terms of Section 131 of the Electricity Act, 2003, the Generation and Distribution functions of the erstwhile Punjab State Electricity

Board have been vested in the Punjab State Power Corporation Limited (PSPCL), a wholly owned Government of Punjab entity.

4. PSPCL further submitted that the coal block in question is included at Serial No. 25 in the list of 40 coal blocks in the issue before the Hon'ble Supreme Court in coal block allocation case, wherein Orders were passed for cancellation of the coal blocks. In the Orders dated 25th August, 2014 and 24th September, 2014, the Hon'ble Supreme Court has directed payment of additional compensation in the sum of ₹295 per MT for the entire extracted coal with regard to various coal blocks including Pachwara Coal Mine Block.

In compliance to the above decision of the Hon'ble Supreme Court, the Government of India notified the Coal Mines (Special Provisions) Second Ordinance, 2014 providing for the terms and conditions subject to which the PSPCL could get the allotment of the said Pachwara (Central) Coal Block directly in its name. In terms of the said Ordinance, the PSPCL being 26% shareholder in Panem Coal Mines Limited, (a Joint Venture Company of the PSPCL and EMTA Limited) had to deposit a sum of ₹391,46,36,262 being 26% of the compensation payable at the rate of ₹295/- per MT for 51038282.42 MT coal extracted from the Pachwara (Central) Coal Block since inception till 24.09.2014 in compliance with the order of the Hon'ble Supreme Court pending decision by the Central Government on the allocation of the mine to the PSPCL. Further, PSPCL is also required to deposit compensation at the rate of ₹295/- per MT upto June, 2015 for the coal extracted from the Pachwara (Central) Coal Block from 25.09.2014 to 31.03.2015 in compliance to the Order of the Hon'ble Supreme Court. Accordingly, PSPCL deposited a sum of ₹391,46,36,262 with the Central Government and applied for the allocation of Pachwara (Central) Coal Block for the end use of the various power stations of PSPCL mentioned in above paras. This payment has been made after availing loan of ₹195 crore each from REC and PFC.

5. PSPCL has further submitted that it will be applying to Central Govt. for refund of the above amount deposited by it, after the process of allocation of the Pachwara (Central) Coal Block is completed pursuant to the action initiated by the Central Govt. and the application made by it. PSPCL is filing the present application for consideration of the above amount deposited by it with the Central Govt. as a part of the revenue requirements of PSPCL for the period from 01.04.2015 onwards. Further, in the event, PSPCL is able to obtain the refund of the said amount from the Central Govt., it will file appropriate application for the amount being excluded from the revenue requirements of PSPCL. PSPCL has requested to consider this amount along with interest in the tariff for the financial year 01.04.2015 onwards.

PSPCL has further submitted that it was required to pay the above amount in view of the directions of the Hon'ble Supreme Court and in the circumstances provided in the Coal Mines (Special Provisions) Second Ordinance, 2014. PSPCL would not have become entitled to the allocation of the Pachwara (Central) Coal Block if it had not deposited the said amount by or before 31.12.2014. PSPCL has acted in the interest of the public and consumers of electricity by depositing the above amount and fulfilling the conditions for becoming eligible for allotment of the Pachwara (Central) Coal Block. The Pachwara (Central) Coal Block is of absolute necessity to PSPCL in order to meet the coal requirements for its various generating stations. The non allocation of Pachwara (Central) Coal Block would lead to substantial difficulty in getting the coal; the economic burden of which will be borne by the public at large. PSPCL has acted in a prudent and bonafide manner by depositing the above amount required to be paid as a precondition for the allocation of the Pachwara (Central) Coal Block.

PSPCL has prayed to the Commission to: -

(i) Consider the amount of ₹391,46,36,262 already paid by it and such other amount as may become payable in terms of the orders passed by the Hon'ble Supreme Court and in terms of the Coal Mines (Special Provisions) Second Ordinance, 2014 notified by the Central Govt. in the revenue requirements of petitioner;

(ii) Allow PSPCL to recover the said amount along with interest in the tariff for distribution and retail supply of electricity to be determined by the Commission from 01.04.2015 to 31.03.2016; and

(iii) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.

6. The petition was admitted vide order dated 17.03.2015 and PSPCL was informed that any additional information, if required, after scrutiny of the petition shall be asked subsequently. The next date of hearing was fixed as 07.04.2015.

7. During hearing of Petition on 07.04.2015, PSPCL informed the Commission that coal mine at Pachwara has again been allocated/allotted to the State.

   The Commission vide its order dated 09.04.2015 observed that the petition is required to be put on the website of the Commission and a public notice inviting comments/suggestions/ objections from the stakeholders and general public is required to be issued immediately. PSPCL was directed to submit a copy of the mine allotment order alongwith detailed terms and conditions by 28.04.2015.

8. A public notice was issued for inviting objections/comments from the general public and stakeholders on this petition by 15.05.2015 and public hearing was also fixed for 21.05.2015. Comments/ objections from the following seven objectors were received :-

   (a) Sh. Dalip Sharma, Director, PHD Chamber of Commerce and Industry, Chandigarh.

   (b) Sh. Padamjit Singh, 45, Ranjit Bagh, Opp. Modi Mandir, Patiala.

(c) Siel Chemical Complex, Charatrampur, Vill. Khadauli/Sardargarh, Rajpura.

(d) Asstt. Director/Electrical, Lovely International Trust, Electrical Deptt., Chaheru (Phagwara).

(e) Sh. M.P.S.Rana, General Manager, (Materials & HR), Punjab Alkalies & Chemicals Ltd., Chandigarh.

(f) Sh. Jaswant Singh Birdi, President, Cycle Trade Union, Kharbanda Complex, Ludhiana.

(g) Sh. Gurpargat Singh Kahlon, President, Auto Parts Manufacturers Association, Focal Point, Ludhiana.

The comments/objections are summarised as under:

(i) The amount was deposited by PSPCL on 31.12.2014 but the Petition has been filed in April, 2015. The reasons for delay have not been explained in the petition. It seems to be tactics of PSPCL to delay the issue of Tariff Order for FY 2015-16 for the reasons best known to them. As per para 16 of the Petition, the Orders of Hon’ble Supreme Court were issued on 25.08.2014 and 24.09.2014, whereas the ARR for FY 2015-16 was submitted on 30.11.2014 by PSPCL. This anticipated expenditure was not made part of the ARR for Revised Estimates for FY 2014-15 or projections for FY 2015-16. This expenditure was also not made a part of subsequent correspondence on ARR. Even the approval of the Commission for depositing the amount of ₹391.46 crore was not obtained though the liability was known to the petitioner.

(ii) As per para 19 of the petition, the amount sought by PSPCL is to be returned back by GoI after allocation of the mine is made to PSPCL. For this, PSPCL will be filing the application for refund of this amount after the mine is allocated to PSPCL. As per Press report dated 23rd March, 2015, the mine has already been allocated again to PSPCL but the fact has not been brought out by PSPCL in the petition. The petition should have been filed for the interest burden only. The position regarding refund may be intimated by PSPCL along with efforts/copy of representation to Govt. of India for the refund of the amount paid.

(iii) The petition filed is mischievous, ill conceived and with ulterior motive. It is an attempt to load an amount on to the consumers, which is in the form of earnest money and deserves only interest on actual. PSPCL is submitting the claims for amounts knowing well that such expenditures will not be incurred and will be adjusted in true up against its losses in one way or the other. It is the tactics of the PSPCL to reduce the drawl of working capital.

(iv) This petition has been filed in April, 2015, wherein the interest has also been claimed. Claiming of interest is not justified as PSPCL itself has delayed the filing of petition by over three months.

(v) The petition is incomplete and without requisite supporting documents. Whatever specific documents/supporting documents have been referred to in the petition or relied upon by the petitioner, must and should have been provided as annexures to the petition, otherwise, the petition will remain non-transparent and incomplete. Apart from Annexure 'A', there is no other Annexure provided in the petition as referred to in the petition.

(vi) Position regarding resumption of coal mining and coal supply from the Pachwara Mine to PSPCL has not been given/confirmed by the Petitioner whereas the entire purpose of making the payment of levy was to ensure that this mine is given back to PSPCL, so that coal supply to the thermal plants can be resumed.

(vii) PSPCL should get the recovery of levy paid of ₹391.46 crore not from consumers through the ARR but from the coal mining company EMTA.

CAG report has given specific instances where EMTA has been over charging and over recovering the cost of coal from PSPCL and earning unjustified profit from the very beginning, when coal mining was commenced. The huge profit recovered at the expense of PSEB/PSPCL is sufficient justification to adjust/recover the levy from EMTA. Paras 3.1.4.2, 3.1.5.3, 3.1.6.3, 3.1.7.1, 3.1.8.1, 3.1.8.2 and 3.1.8.3 from the CAG report (extracts from pages 51 to 59 of CAG Report on Public Sector Undertakings for the year ended 31st March, 2014) have been quoted in this regard by one of the objectors.

9. PSPCL submitted its reply to the comments of 4 objectors vide its email/letter dated 20.05.2015, which are summarized as under:

(i) PSPCL was in critical need of the allotment of the Pachwara Central Coal Block, therefore, as a matter of abundant caution to become eligible for allotment of coal mine, PSPCL after getting the opinion of legal counsel of PSPCL Sh. M.G.Ramachandran, Advocate, New Delhi, deposited a sum of ₹391.46 crore. The amount of additional levy was released to the Central Govt. based upon the decision of the BoDs taken in its 36th meeting held on 29.12.2014 at Mohali on Agenda Item No. 23/FA/L&D dated 18.12.2014 of the office of Financial Advisor. The formal communication in this regard was communicated by Company Secretary, PSPCL vide letter dated 13.02.2015. The BoDs in its decision has authorised Chief Engineer/Fuel to file a separate petition through Chief Engineer/ARR&TR with PSERC for recovery of the amount. The petition to be filed before PSERC regarding recovery of ₹391.46 crore was got drafted from Sh. Ramachandran and the same was forwarded on 02.03.2015 to the office of Chief Engineer/ARR&TR after getting the same approved from CMD, PSPCL for filing it before PSERC. The petition was placed for hearing before the Commission on 17.03.2015.

PSPCL has taken prompt action for filing of the petition before the PSERC after communication of decision dated

13.02.2015 of the BoDs of PSPCL in this regard and there was no delay on the part of PSPCL.

(ii) The order of Hon'ble Supreme Court was issued on 24.09.2014 regarding instructions to deposit the requisite amount of additional levy. Matter was taken up with legal counsel of PSPCL to give advice in this matter. Based on the advice received, an application was filed by PSPCL & other states in Hon'ble Supreme Court on 13.11.2014, wherein it was specifically requested by PSPCL as under: "*waive the payment of ₹295/- per MT as additional compensation in terms of the Orders dated 25th August 2014 and 24th September 2014 as a special case in view of the peculiar circumstances of the case.*"

The application was heard by the special bench of Hon'ble Supreme Court on 08.12.2014, but it was rejected.

The ARR petition for FY 2015-16 was filed on 30.11.2014, so this amount could not be made part of the ARR. A reference in this regard was made by PSPCL in the ARR petition at Sr. No. 5.6.3 on page no. 93 regarding implication of ₹1503 crore on account of additional levy and it was submitted that actual impact of the same shall be claimed as pass through as and when the same is paid.

(iii) There are no provisions in the order of the Hon'ble Supreme Court and Coal Mines Ordinance dated 26.12.2014 that additional levy shall be returned to the mine allottee after allotment of coal mine. The additional levy was paid to the Central Govt. as a matter of abundant caution to become eligible for allotment of coal mine. While depositing the additional levy to Ministry of Coal vide Memo No. 2368/90/CE/Fuel/C-273 dated 31.12.2014, it has been specifically mentioned at Sr. No. 5 of the letter by PSPCL as under:

"*The Punjab State Power Corporation Limited is in critical need of the allotment of the Pachwara (Central) Coal Block in Jharkhand and, therefore, has consistently maintained that we would comply with the required terms and conditions for getting such allotment. However, if in terms of the provisions of the new Ordinance, no liability is to be imposed on the State Utilities such as Punjab State Power Corporation Limited or West Bengal and Karnataka State Utilities etc. We may also be given necessary adjustments for the amount deposited. This would avoid huge financial outflow to Punjab State Power Corporation Limited, which need to be arranged through borrowings from the Lenders. The additional levy, is required to be passed on to the public at large i.e. the consumers in the State of Punjab by increase in the retail supply tariff.*"

(iv) Karnataka Power Corporation Limited has also paid the additional levy to the Ministry of coal to be eligible for allotment of coal mine in line with decision taken in this regard by PSPCL.

(v) Pachwara Central coal mine was allotted to PSPCL vide Allotment Order dated 31.03.2015. After getting the advice of legal counsel of PSPCL Sh. Ramachandran, PSPCL vide it letter dated 11.05.2015 has requested Secretary (Coal), Ministry of Coal GOI for refund of the amount.

(vi) PSPCL has filed the petition before the PSERC for the entire amount deposited to Ministry of Coal alongwith its interest as PSPCL has physically deposited the additional amount of ₹391.46 crore to the Ministry of coal. As and when, this amount is refunded back to PSPCL by Ministry of Coal, PSPCL shall apprise the whole position to the PSERC.

(vii) PSPCL has been receiving coal from Pachwara Central coal mine since March, 2006, which was at the discounted rates w.r.t. the coal from CIL sources. The benefit of this cheaper coal was also passed on to the consumers of the State. As such, any additional financial liability on this coal needs to be passed on to the consumers of the State.

10. A public hearing in the matter was held on 21.05.2015 and the Commission in its order dated 26.05.2015 observed and ordered as under:

*"The following objectors/representatives of the objectors attended the public hearing in connection with the petition held on 21.05.2015:*

1. *Shri Sanjeev Gupta, Dy.C.E./TR-2*
2. *Shri Harminder Singh, Dy.CE Fuel*
3. *Shri D.K.Mongia, Mawana Sugars Mill*

4. *Shri Pawan Prashar, Punjab Alkalies & Chemicals Ltd.*
5. *Shri Padamjit Singh, Chief Engineer (Retd.)*
6. *Shri Jaswant Singh Birdi, Cycle Trade Union, Ludhiana*
7. *Shri H.G.C.Sharma, 1296B, Phase-X, Mohali*

*During the public hearing, the objectors raised the following issues:*

1. *Shri Jaswant Singh Birdi, on behalf of Cycle Trade Union, Ludhiana objected to the demand of ₹391.46 crore of PSPCL in the petition and desired that this amount may not be charged to the consumers. He further desired that the copies of judgments of the Hon'ble Supreme Court dated 25.08.2014 & 24.09.2014 be supplied.*
2. *Shri Padamjit Singh raised the following issues:-*
   - *(i) PSPCL should supply the copies/relevant abstracts of the documents mentioned in the petition, such as judgments of the Hon'ble Supreme Court dated 25.08.2014 & 24.09.2014; GoI notification of coal mines (special provisions) Second Ordinance, 2014; Annexure-I of the allotment order issued by Ministry of Coal, GoI; copy of the agreement entered with EMTA; copy of the report of the committee constituted by PSPCL to look after the affairs of the mine allotted afresh; comments on the relevant paras of the CAG report and copies of the correspondence*

*exchanged with GoI regarding refund of amount deposited.*

*(ii) PSPCL should intimate the fate of balance 74% out of the total amount of ₹1505 crore liable to be paid as per orders of the Hon'ble Supreme Court.*

*(iii) PSPCL should intimate the status of the refund of this amount of ₹391.46 crore from GoI.*

*(iv) PSPCL should indicate the time to be taken for development of the mine and extraction of coal from it.*

*(v) PSPCL should keep in view and not repeat the mistakes made in the past during the processing of the case for development of mine, as pointed out in the CAG report. On this, the representative of PSPCL intervened and informed that they have received certain guidelines from GoI and the comments on which have been sent for approval of GoI. On receipt of the comments from GoI, PSPCL will initiate further action in the matter of finalization of tender documents. It was also informed by PSPCL officers that it will take about 6-7 months for development of mine and start extraction of coal.*

*(vi) The objector informed the Commission that presently there is fire in the mine allotted to PSPCL and steps need to be taken to extinguish this fire. It was informed by PSPCL officers that they have already*

*initiated steps in this direction and will intimate the latest status in the matter to the Commission and objector.*

*(vii) The amount of ₹391.46 crore should be recovered from EMTA who have earned a lot due to various irregularities as pointed out by CAG in its report.*

3. *The representative of Siel desired that the impact of this demand raised by PSPCL in the petition should not be loaded on the consumers and tariff for FY 2015-16 should not be revised.*

*After hearing the objectors and PSPCL, the Commission directed PSPCL as under:*

*(i) Copies of the documents mentioned below, as desired by the various objectors, should be sent to all the objectors, with a copy to the Commission, within 15 days i.e. by 08.06.2015:*

*(a) Copies/relevant abstracts of the documents mentioned in the petition, i.e. judgments of the Hon'ble Supreme Court dated 25.08.2014 & 24.09.2014, (b) copy of GoI notification of coal mines (special provisions) Second Ordinance, 2014, (c) copy of Annexure-I of the allotment order issued by Ministry of Coal, GoI, (d) copies of the correspondence exchanged with GoI regarding refund of amount paid to GoI, (e) copies of the report(s) of the committee(s) constituted by PSPCL to look after the affairs of the Pachwara mine allotted on 31.03.2015, (f) copy of the*

*agreement (alongwith amendments) entered with PANEM for supply of coal to PSPCL (g) copy of agenda memorandum, put up to the Board of Directors and decision taken by the Board of Directors of PSPCL for depositing the amount (₹391.46 crore) with GoI. (h) copy of the Legal Advice obtained in this case from the counsel of PSPCL and copies of the letters vide which amount of ₹391.46 crore was deposited by PSPCL with the concerned authorities of Ministry of Coal, Government of India.*

*(ii) PSPCL was also directed to supply to the Commission its comments on the CAG report on Public Sector Undertakings for the year ended on 31st March, 2014, as and when the same are finalized. PSPCL should try to finalize the comments as early as possible because various observations raised by CAG in the report are very serious and effects the consumers' interest. Latest status of the CAG para relating to this mine be supplied.*

*(iii) The parawise reply on the objections/comments raised by various objectors in their objections and in the public hearing should be supplied to them immediately, with copy to the Commission. Further, the comments on the remaining objections should also be supplied to the Commission within 7 days of this order.*

*(iv) The objectors may submit their further comments, if any, to the Commission in the matter by 23.06.2015."*

11. PSPCL vide its letter no. 5919-25 dated 08.06.2015 submitted the reply in compliance with the Commission's order, which is as under:-

(i) PSPCL has supplied the various documents as directed by the Commission in its order dated 26.05.2015, to the objectors and the Commission as under:-

(a) Copy of Hon'ble Supreme Court Judgement dated 25.08.2014 and 24.09.2014.

(b) Copy of Coal Mines (Special Provisions) Second Ordinance, 2014.

(c) Copy of allotment Order No. 103/11/2015/NA dated 31st March, 2015 issued by the Nominated Authority, Ministry of Coal, Govt. of India in respect of allotment of Pachwara Central coal mine to PSPCL (except Annexure-1 mentioned in the Allotment Order).

(d) Copy of letter no. 843/46 dated 11.05.2015 to Secretary (Coal), Ministry of Coal regarding refund of amount paid as additional levy.

(e) Copies of the report(s) of the committee(s) constituted by PSPCL to look after the affairs of the Pachwara Central coal mine.

(f) Copy of the Coal Purchase Agreement dated 30.08.2006 signed between PSPCL and Panem Coal Mines Ltd.

(g) Copy of the Agenda put up to the Board of Directors of PSPCL alongwith its decision for depositing the additional levy.

(h) Copy of the advice taken from legal counsel of PSPCL for depositing the additional levy.

(i) Copy of the letter dated 31.12.2014 to Coal Controller, Ministry of Coal, Kolkata vide which additional levy was deposited by PSPCL.

(ii) The reply to the observations of CAG was not submitted by PSPCL as the same has been stated to be under preparation.

(iii) The parawise reply in respect of remaining 3 objectors and the issues raised in the public hearing was also submitted by PSPCL.

(iv) PSPCL submitted that LOI for the work of extinguishing of fire at Pachhwara Central Coal Mine has been given to EMTA Coal Ltd.

12. OSD/Power Reforms, Govt. of Punjab, Deptt. of Power (Power Reforms Wing) vide letter dated 15.06.2015 has submitted in its comments that since PSPCL meets 50% of its coal requirements from Pachwara (Central) Coal Block, the non-allocation of the same would have led to a substantial difficulty in getting the coal at a cheaper price in comparison to the other coal linkages. Now as the Pachwara (Central) Coal Block has been re-allocated to PSPCL, therefore, action of PSPCL to deposit the above mentioned amount seems to be right. As the benefit of cheaper

coal has already been passed on to the consumers in the shape of reduced tariff, hence, passing this burden now to the consumers is also justified.

13. Er. Padamjit Singh on the basis of documents supplied by PSPCL to him, has submitted additional comments vide his email dated 02.07.2015, as under:-

(i) Whereas, the Hon'ble Supreme Court had ordered the levy of ₹295 per tonne in respect of each coal mine, in the case of Pachwara Coal Mine, the levy was payable by PANEM. However, practically, PSPCL has paid its 26% share while EMTA did not pay its 74% share, which is highly anomalous.

(ii) From the letters written by PSPCL dated 26.12.2014 and dated 31.12.2014 to the Coal Controller, Govt. of India and the advice rendered by Sh. M.G.Ramachandran, Advocate in his letter dated 29.12.2014, it is concluded that the payment of ₹295 per tonne should have been made by PANEM, while PSPCL made this payment of 26% only to protect the allocation of coal mine subsequently to Punjab.

(iii) In the process of coal mining, while the profits have been pocketed by EMTA right from the beginning, in the matter of making payment as ordered by the Hon'ble Supreme Court, the same has been totally avoided by PANEM resulting in a situation where PSPCL had to make the payment so as to retain its claim on the coal mine during the subsequent process of reallocation.

(iv) As per para 6 of Article 3 of agreement dated 21.03.2001 on captive coal mining project of PSEB through a joint venture, PSEB shall not be required to make any financial contribution to the company at any time. Further as per Article 6 of the ibid agreement, EMTA and its partners shall not require PSEB to undertake or to be a party to any guarantee obligation or otherwise to give any security or assurance or such raising of finance and funds. As per above mentioned paras of the ibid agreement, EMTA should have made the entire payment of ₹1505 crore in compliance to the Hon'ble Supreme Court order. The fact that PSPCL has made 26% contribution, while 74% shareholder has made nil contribution is highly anomalous and unacceptable.

(v) The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Therefore, this coal mine was allocated to Govt. of Punjab after the unbundling of PSEB on 16.04.2010. The matter of payment related to Govt. of Punjab and not to PSPCL.

(vi) PSPCL in its letters to Coal Controller dated 26.12.2014 and 31.12.2014 has made the claim that the liability of making payment is of PANEM and the majority shareholder EMTA. Now, by filing this Petition, PSPCL seeks to put the burden of 26% payment share on the consumers of the State. This is contradicting and contravening the stand taken by PSPCL before the Coal Controller through its letter dated 26.12.2014 and 31.12.2014. In case, the claim of ₹391.46 crore is allowed to PSPCL, it will finish or sink the claim of PSPCL before Coal Controller. This will amount to giving a huge financial benefit to EMTA at the cost of power consumers of Punjab.

(vii) PSPCL should refer this matter for legal advice to Sh. M.G.Ramanchandran, Advocate, as the claim made in this petition will have serious adverse repercussions on stand of PSPCL before the Coal Controller. Even the Coal Controller has written to PANEM to make the entire payment of ₹295 per MT and this implies that even as per Coal Controller, the entire payment is required to be made by PANEM. It will not be proper to undermine the stand taken by Coal Controller as above.

14. PSPCL vide its memo no. 5273 dated 28.07.2015 submitted its reply to the additional comments of Sh. Padamjit Singh as under:-

PSPCL has reiterated its earlier version that since PSPCL was in critical need of the allotment of the Pachhwara Central Coal Mine, therefore, as a matter of abundant caution to become eligible for allotment of coal mine as per Coal Mines (SP) ordinance, PSPCL had deposited with the Ministry of Coal, Government of India, Coal Controller's Account, a sum of ₹391,46,36,262/- calculated at the rate of 26% of ₹295/- per MT in respect of the coal extracted from the Pachhwara Central coal mine from March 2006 to 24$^{th}$ September 2014 vide Letter No. 2368/70/CE/Fuel/C-273 dated 31.12.2014. As per Section 3(1)(n) of Coal Mines (Special Provisions) Act 2015, Panem

Coal Mines Ltd. is the Prior Allottee for the Pachhwara Cenral coal mine and as such the liability on account of additional levy in case of Pachhwara Central coal mine is of Panem only and not of PSPCL. Accordingly, PSPCL requested Secretary (Coal), MOC, GOI vide Letter No. 843/46/CE/Fuel/C-273 dated 11.05.2015 for taking immediate steps for early refund of this amount of ₹391,46,36,262 deposited by PSPCL with the Ministry of Coal as the said amount is urgently required for meeting various financial needs of PSPCL as this payment was made after taking loan from REC and PFC.

It is further mentioned by PSPCL that the Nominated Authority, Ministry of Coal, Govt. of India vide its email dated 04.07.2015 has asked PSPCL to make payment of “Fixed Amount” amounting to ₹90,26,73,773.76 latest by 13.07.2015, in respect of Pachhwara Central coal mine allotted to PSPCL. PSPCL vide letter No. 1350/CE/Fuel/C-145 dated 08.07.2015 has requested the Nominated Authority that the payment of the “Fixed Amount” of ₹90,26,73,773.76 to be paid now by PSPCL may kindly be adjusted against the payment of additional levy amounting to ₹391,46,36,262 made by PSPCL, the refund of which is awaited from the Ministry. Nominated authority was also requested by PSPCL that if there is any legal hitch in adjusting this amount from the earlier payment made by PSPCL, then this amount of ₹391,46,36,262 deposited by PSPCL with the Ministry of Coal may kindly be refunded immediately to PSPCL and simultaneously PSPCL may be permitted for making payment of this “Fixed Amount” in six monthly installments in view of the financial hardships being faced by PSPCL, as this will help in improving the liquidity position of PSPCL. Inspite of regular follow up with the Ministry of Coal in this regard, the said amount is yet to be refunded by the Ministry.

PSPCL has further submitted that in the present scenario PSPCL has rightly filed the petition before PSERC for recovery of ₹391,46,36,262 crore alongwith its interest from the consumers of the State. In case the said amount of additional levy is refunded by the Ministry of coal to PSPCL then PSPCL shall immediately apprise the same to PSERC.

15. Er. Padamjit Singh submitted additional comments vide letter dated 29.07.2015 as under:-

(i) As per the news item dated 28.07.2015, the coal ministry has issued a notice on Punjab for failure to follow the due process of tendering in engaging EMTA as mine development operator. The news item also states that the Supreme Court has issued a contempt notice to EMTA for its failure to pay the levy of ₹295 per tonne corresponding to their 74% share.

(ii) As this is a new development, information regarding the show cause notice, reply and related necessary documents must be obtained from PSPCL.

(iii) PSPCL may also be required to supply all the documents, memorandum etc. by which it has taken the decision to allot the mine to EMTA without following the tender process and to explain how the directions of ministry of coal for following due process of tendering were not adopted.

(iv) These above stated documents are directly related to the matter of the levy of ₹295 per tonne and also related to issue of non payment of 74% share by EMTA. In the objection letter of the undersigned, it was suggested that 100% amount should be paid by EMTA. Instead, EMTA has not paid its 74% share for which the Supreme Court has issued contempt notice as per the press report.

(v) The above submissions may be taken into account while deciding the Petition for recovery of coal levy through tariff.

16. PSPCL vide its letter no. 5404 dated 19.08.2015 has filed response to the submissions filed by the objector (Sh. Padamjit Singh) vide his letter dated 29.07.2015 and submitted as under:

(i) & (ii) Copies of the “Show Cause Notice” dated 23.07.2015 issued by Nominated Authority, Ministry of Coal, GOI and reply to the “Show Cause Notice” given by PSPCL to the Nominated Authority vide Memo No. 1563/CE/Fuel/C-273 dated 03.08.2015 have been submitted by PSPCL.

(iii) PSPCL has not taken any decision to allot the mine to EMTA as has been alleged by the objector.

(iv) PSPCL has submitted that the detailed position regarding payment of additional levy to the Ministry of Coal, Govt. of India has already been brought out by it in the reply submitted vide memo no. 5273/TR-5 dated 28.07.2015 w.r.t. the objections raised earlier by the objector in this regard.

**17. Findings and Decision :**

After going through the submissions made by PSPCL, the issues raised by various objectors in their objections, reply filed by PSPCL to the issues raised by the objectors, the additional submissions made by one of the objectors and the reply of the PSPCL on the additional submissions of the objector, Commission observes and decides as under: -

A. The Comptroller and Auditor General of India (CAG) in para 3.1.9.3 of its report on Public Sector Undertakings for the year ending 31st March, 2014 has observed as under: -

*"The Supreme Court while deciding on a writ petition held the allotment of coal blocks made by the Screening Committee of MoC, GoI, as also the allotments made through the Government dispensation route as arbitrary and illegal and quashed all these allotments including allotment of Pachwara (Central) block allotted to erstwhile PSEB. PSPCL was requested (October 2014) to convey the implications of the above judgement on the working of PSPCL and other related aspects.*

*PSPCL intimated that they have deposited (31 December 2014) ₹391.46 crore towards additional levy @ ₹295 per metric tonne with respect to the coal extracted till 24 September 2014 with Central Government as per the Coal mines (Special Provision)*

*Ordinance 2014. The basis of calculation of ₹391.46 crore deposited towards additional levy and other details though asked for (October 2014 and January 2015) were not furnished.*

*The matter were referred to the Government (July 2014), their reply was awaited (December 2014).”*

PSPCL in its reply submitted vide memo no. 5919 dated 08.06.2015 has intimated that the reply to the observations of CAG is under preparation.

B. Shri M.G. Ramachandran, Advocate advised PSPCL on this issue as under: -

*“i. This has reference to the discussions I had with your officials in regard to the allotment of Pachhwara (Central) Coal Block by the Government of India to the Punjab State Power Corporation Limited (PSPCL) in accordance with the recent Ordinance promulgated.*

*ii. In the Ordinance, the prior allottee had been defined as 1 entity to which the allotment of coal block was made. This entity in the case of Pachhwara (Central) Coal Block will be PANEM Coal Mines Limited, the Joint Venture Company in which PSPCL holds 26% shares and the balance majority and controlling shares are held by EMTA Limited.*

*iii. On the strict construction of the provisions of the Ordinance, the liability to pay the entire amount of ₹295 per MT will be on PANEM Coal Mines Limited and not on PSPCL as a shareholder of PANEM Coal Mines Limited. However, in the discussions with the Ministry of Coal in an* *informal basis, the officials of PSPCL have been advised that the allotment of Pachhwara (Central) Coal Block in favour of PSPCL will be considered only if PSPCL deposits 26% of the additional levy of ₹295/- per MT. This amount need to be deposited by 31st December 2014 as per the Ordinance failing which the Coal Controller may consider that the conditions of the Ordinance is not satisfied by PSPCL for allotment of the above mine.*

*iv. At this stage, it may not be appropriate for PSPCL to enter into any deliberations with the Ministry of Coal or the Coal Controller on the aspect of the liability of PSPCL to deposit the 26% of the additional levy claimed. It may not be possible to get any kind of valid confirmation from the Ministry of Coal, Government of India or the Coal Controller in regard to the above liability. This is so, despite the fact, that the Coal Controller has written to PANEM calling upon them to deposit the entire amount of ₹295/- per MT in pursuance to the Orders of the Hon'ble Supreme Court.*

*v. I am of the opinion that PSPCL should not take chance of not depositing the amount equivalent to 26% shares and allowing the Coal Controller or the Ministry of Coal of taking the view that there has been no compliance on the part of PSPCL. The approach adopted by the Hon'ble Supreme Court in the coal allocation matter has been very strict. The Supreme Court may not grant any relief to PSPCL in case the Coal Controller or the Ministry of Coal declines the allotment of Pachwara (Central) Coal Block to PSPCL on* *the ground that there has been a failure to deposit the requisite amount.*

*vi. In my opinion, PSPCL need to first protect the allotment of Pachwara (Central) Coal Block and, therefore, should err on the right side by complying with the requirements of the deposit of 26% of ₹295/- per MT to fulfil the conditions of the Ordinance, as now being orally interpreted by the officials of the Ministry of Coal at this stage. Such a deposit be made despite the fact that the interpretation advised by the Ministry of Coal may not be correct and there may not be any legal liability on PSPCL to pay the said amount, namely, 26% share for the additional levy. The amount equivalent to 26% of the additional levy may be deposited with the Coal Controller with a letter to be written to the Coal Controller as per the draft attached. The draft letter sufficiently protects the interest of PSPCL, namely, in case the amount is not required to be deposited by PSPCL to the extent of 26% of the shares, PSPCL can claim adjustments in future.*

*vii. In addition to the above, PSPCL can write a letter to PANEM with a copy to EMTA to the effect that PANEM may proceed to deposit the amount of ₹295 per MT forthwith with the Coal Controller in compliance with the letter sent by the Coal Controller to PANEM.*

*viii. After few days, PSPCL can write a letter to the Coal Controller with copy to the Ministry of Coal referring to the letter addressed by the Coal Controller to PANEM and* *asking for the refund/adjustment of the amount deposited by PSPCL with the Coal Controller. The draft of the letter to be addressed to PANEM with copy to EMTA is attached."*

From the perusal of the advice rendered by Sh. M.G.Ramachandran Advocate, it is clear that the liability to pay the entire amount of ₹295/MT was on PANEM Coal Mines Limited and not on PSPCL as a shareholder of PANEM Coal Mines Limited. Even the Coal Controller has written to PANEM calling upon them to deposit the entire amount of ₹295/MT in pursuance to the Orders of the Hon'ble Supreme Court. PSPCL was also advised to write a letter to PANEM with a copy to EMTA to the effect that PANEM may proceed to deposit the amount of ₹295/MT forthwith with the Coal Controller in compliance with the letter sent by the Coal Controller to PANEM. It was also advised to PSPCL to write a letter to the Coal Controller with a copy to the Ministry of Coal referring to the letter addressed by the Coal Controller to PANEM and request for the refund/adjustment of the amount deposited by PSPCL with the Coal Controller.

C. In compliance to the advice rendered by the Advocate, PSPCL wrote a letter dated 31.12.2014 to Shri Amrita Acharya, Coal Controller, Ministry of Coal, Govt. of India, Kolkata, as under: -

*"i. This has reference to your letter No. CC/MCBA/101.37/2014-15 dated 18.12.2014 on the above subject.*

ii. *In the meanwhile the Coal Mine (Special Provision) Second Ordinance 2014 has been promulgated on 26.12.2014. In terms of the above ordinance the liability to pay the additional levy of ₹295 per tonne is on the "prior allottee" and in regard to Pachwara (Central) coal block, the prior allottee is M/s PANEM Coal Mines Limited, a Joint Venture Company with EMTA as the majority shareholder and Punjab State Power Corporation Ltd (PSPCL) of 26%. In this regard, your office has also written to M/s PANEM Coal Mines Limited vide letter No. CC/MCBA/101/37/2014-15 dated 30.12.2014 with a copy forwarded to PSPCL. We have also written to M/s PANEM vide letter No. 2365/66/CE/Fuel/C-145 (34) dated 30.12.2014 impressing upon them to pay the additional levy as claimed forthwith.*

iii. *Though the liability is essentially of M/s PANEM and the majority shareholder EMTA, PSPCL by way of abundant caution and without prejudice to our rights, is depositing the additional levy to the extent of 26% of our share in M/s PANEM. Accordingly as per your above referred letter dated 18.12.2014, we have made arrangements to deposit the amount towards additional levy with respect to the coal extracted till 24$^{th}$ September 2014 (inclusive of 24$^{th}$ September 2014) being 26% of ₹295/- per MT on or before 31$^{st}$ December 2014 through RTGS to the account specified in your above letter. The audited statement of the production of coal in the above mine from the Start Date till 24$^{th}$ September 2014 has already been furnished to you* *vide our letter dated 26.12.2014 (copy enclosed for ready reference). This deposit is subject to the liability of making the deposit by M/s PANEM as per your above mentioned letter.*

iv. *So, today i.e. on 31.12.2014, PSPCL has deposited sum of ₹391,46,36,262 (to the extent of PSPCL share in M/s Panem) i.e. 26% of ₹295/- per MT of coal corresponding to 51038282.42 Metric Tonnes coal extracted upto 24.09.2014 from Pachwara (Central) coal block, through RTGS vide UTR No. STBPR52014123100659044 in Coal Controller's Account No. 0389050190862 with United Bank of India, Old Court House Street Branch, Kolkata-700001 having Bank IFSC Code No. UTBI0OCH175. This deposit is subject to the liability of making the deposit by M/s PANEM as per your above mentioned letter.*

v. *The Punjab State Power Corporation Limited is in critical need of the allotment of the Pachwara (Central) Coal Block in Jharkhand and, therefore, has consistently maintained that we would comply with the required terms and conditions for getting such allotment. However, if in terms of the provisions of the new Ordinance, no liability is to be imposed on the State Utilities such as Punjab State Power Corporation Limited or West Bengal and Karnataka State Utilities etc. We may also be given necessary adjustments for the amount deposited. This would avoid huge financial outflow to Punjab State Power Corporation Limited, which need to be arranged through borrowings from the Lenders.*

*The additional levy, is required to be passed on to the public at large i.e. the consumers in the State of Punjab by increase in the retail supply tariff.*

*We are also sending a copy of this letter to Joint Secretary to the Govt. of India and Nominated Authority under the CM (SP) Ordinance, 2014 and to Joint Secretary Coal, Ministry of Coal, Government of India for issue of necessary clarification."*

D. PSPCL also wrote a letter dated 11.05.2015 to Secretary (Coal), Ministry of Coal, Govt. of India, New Delhi regarding refund of the amount paid by PSPCL as per orders of the Hon'ble Supreme Court and submitted as under:-

*" (i) This has reference to the allocation of Pachwara Central Coal Block in the State of Jharkhand to the Punjab State Power Corporation Limited (PSPCL) in pursuance of the Coal Mines (Special Provisions) Ordinance, 2014 (which has since become the Act passed by the Parliament) to PSPCL in its capacity as a wholly owned Government of Punjab Undertaking and for the end use of the specified generating station of the said Corporation in the State of Punjab.*

*(ii) At the time of making the application, PSPCL had by way of abundant caution deposited with the Ministry of Coal, Government of India, a sum of ₹391,46,36,262/- calculated at the rate of 26% of ₹295/- per MT in respect of*

*the coal extracted from the above mine and used by PSPCL in its generating station in Punjab during the past period. However, as per the Orders of the Hon'ble Supreme Court dated 25th Augu0st, 2014 and 24th September 2014, read with the above Ordinance, the entire amount of ₹295/- per MT was the liability of Messrs PANEM Limited, a Joint Venture Company of PSPCL and EMTA Limited and is not the liability of PSPCL. This is also so provided in the Explanation contained in the Coal Mines (Special Provisions) Ordinance, 2014 defining the term "Prior Allottee". PANEM being the prior allottee, the entire amount of ₹295/- per MT being payable by PANEM, the amount of ₹391,46,36,262/- crore deposited by PSPCL needs to be refunded to PSPCL.*

*(iii) It is submitted that the amount of ₹391,46,36,262/- crore has been deposited by PSPCL with the Ministry of Coal vide letter no. 2368/70/Ce/Fuel/C-237 dated 31.12.2014 (copy enclosed) through RTGS vide UTR No. STBPR52014123100659044 in Coal Controller's Account No. 0389050190862 with United Bank of India, Old Court House Street Branch, Kolkata- 700001 having Bank IFSC Code No. UTBI0OCH175.*

*(iv) It is submitted that the position of PSPCL is akin to the West Bengal State Utilities which has also been allotted the coal block in a similar manner. The West Bengal Utilities had not deposited the amount equivalent to 26% as in the cases of PSPCL.*

(v) *It is, therefore, requested that immediate steps be taken for refund of the amount of ₹391,46,36,262/- crore deposited by PSPCL with the Ministry of Coal and duly credited in Coal Controller's Account at the earliest as the said amount is urgently required for meeting various financial needs of PSPCL. As you are aware, PSPCL is already under financial stress and is suffering interest burden on the above amount as the same has been borrowed from REC and PFC. The refund of the amount at the earliest will reduce the financial burden of PSPCL."*

E. In response to a communication received by PSPCL from the Nominated Authority Ministry of Coal regarding payment of "Fixed Amount" of ₹90,26,73,773.76 in respect of Pachhwara Central Coal Mine, PSPCL wrote a letter to the Nominated Authority, Ministry of Coal, New Delhi dated 08.07.2015 as under:-

*"In this respect, it is submitted that since PSPCL was in critical need of the allotment of the Pachhwara Central Coal Mine, therefore as a matter of abundant caution to become eligible for allotment of coal mine as per Coal Mines (SP) ordinance PSPCL had deposited with the Ministry of Coal, Government of India in Coal Controller's Account, a sum of Rs. 391,46,36,262/- calculated at the rate of 26% of Rs. 295/- per MT in respect of the coal extracted from the Pachhwaa Central coal mine from March 2006 to 24$^{th}$ September 2014 vide Letter No. 2368/70/CE/Fuel/C-273*

*dated 31.12.2014 (copy enclosed). However, in terms of the explanation to Section 3 (1) (n) of Coal Mines (Special Provisions) Act 2015, Panem Coal Mines Ltd. is the Prior Allottee for the Pachhwara Central coal mine and as such the liability on account of additional levy in case of Pachhwara Central coal mine is of M/s Panem only and not of PSPCL. Accordingly, PSPCL requested Secretary (Coal), MOC, GOI vide Letter No. 843/46/CE/Fuel/C-273 dated 11.05.2015 (copy enclosed) for taking immediate steps for early refund of this amount of Rs. 391,46,36,262 deposited by PSPCL with the Ministry of Coal as the said amount is urgently required for meeting various financial needs of PSPCL and PSPCL is facing acute financial crunch as this payment was made after taking loan from REC and PFC. However, this amount has not been refunded to PSPCL so far.*

*In view of the already tight financial position of PSPCL, as expressed above, it is requested that the above referred payment of the "Fixed Amount" of Rs. 90,26,73,773.76 to be paid now by PSPCL may kindly be adjusted against the above payment of additional levy amounting to Rs. 391,46,36,262 made by PSPCL, the refund of which is awaited from the Ministry in the light of the provisions of the Act brought out above. However, it is also requested that if there is any legal hitch in adjusting this amount from the earlier payment made by PSPCL, then this amount of Rs. 391,46,36,262 deposited by PSPCL with the Ministry of*

*Coal may kindly be refunded immediately to PSPCL and simultaneously PSPCL may be permitted for making payment of this "Fixed Amount" in Six monthly installments in view of the financial hardships being faced by PSPCL as this will help in improving the liquidity position of PSPCL.*

*Your personal intervention in this regard and an early reply is requested please."*

From the contents of the letters dated 31.12.2014, 11.05.2015 and 08.07.2015, written by PSPCL to Ministry of Coal and Nominated Authority, it is gathered that as per Coal Mine (Special Provision) Second Ordinance 2014, the liability to pay the additional levy of ₹295 per tonne is on the "prior allottee" i.e. Panem Coal Mines Ltd. The amount deposited by PSPCL is subject to the liability of making the deposit by Panem Coal Mines Ltd. The amount deposited by PSPCL is refundable and this fact has been admitted by the PSPCL in the Petition also.

F. The clauses of Agreement of Captive Coal Mining Project of Punjab State Electricity Board through the joint venture signed on 21st March, 2001, relevant in the matter, are reproduced as under:

i) Article 3(2) states as under:

*"PSEB's right on the PSEB Coal Mines shall be valued at ₹1.30 crore (Rupees one crore, thirty lacs only) and such value shall be*

*treated as consideration for the allotment to PSEB of 13,00,000 shares of Rupees 10 each of the company".*

ii) Article 3(5) states as under:

*"For maintaining PSEB's equity capital holding at 26% of the total paid up equity capital, if PSEB is to be allotted shares which will increase its total shareholding beyond 13,00,000 shares then consideration for allotment of such additional shares shall be brought in by EMTA and partners and PSEB shall be allotted the 26% shares in the additional shares capital being mobilized with equivalent voting rights".*

iii) Article 3(6) states as under:

*"PSEB shall not be required to make any financial contribution to the company at any time"*

*iv) Article 6 states as under:-*

*"Subject to other provisions of this Agreement, EMTA and PARTNERS as the selected bidder shall ensure that the Company raises capital and other finances required for the business of the Company. EMTA and PARTNERS shall not require PSEB to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds."*

In the light of above, the Commission observes that any refundable payment made by PSPCL to MoC, GoI cannot be treated as payment towards cost of material (coal) and the same cannot be treated as expenses in accounting and for tariff determination.

G. The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, Government of Punjab on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to Government of Punjab which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB's equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB's equity which has been transferred to Govt. of Punjab but has not been re-vested in PSPCL.

In the light of above, it is concluded that the refundable amount of ₹391,46,36,262 (paid by PSPCL to GoI), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff.

The petition is dismissed.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Gurinder Jit Singh)** | **(Romila Dubey)** |
| **Member** | **Chairperson** |

**Chandigarh**
**Dated: 01.09.2015**

**ANNEXURE- F**

**Office of the Director, Ground Water Directorate,**
**Water Resources Department, Govt. of Jharkhand,**
**"Abhiyantran Bhawan", Kutchery Chowk, Ranchi 834001**

**Phone/Fax0651-2217141**
**E Mail-dirgwatran-wrd-jhr@nic.in**

Letter No.-**G.W.D/ 145 / 2015** /..131..Ranchi. Dated..23/05/2017

From,

Director,
Ground Water Directorate,
Jharkhand, Ranchi.

To,

Chief Engineer/Fuel.
Punjab State Power Corporation Limited
PSEB Head office,
The Mall, Patiala 147001
Punjab.

**Sub:-** **Regarding transfer of Ground Water clearance in respect of Pachhwara Central Coal Mine in the name of PSPCL.**

Ref:- Your memo no.-743/45/CE/Fuel/C-273 dated-08.05.2017

Sir,

As per the Hydrogeological studies carried out by CMRS Dhanbad in the year 2004, the annual ground water draft found well within the permissible limit. It was suggested that Artificial Recharge to Ground Water measures through existing shafts & mining pits may be undertaken, so that the ground water balance will improve in the areas.

In the long span of time about 10 years of the previous hydrogeological survey, the apprehension of adverse effect on ground water level & water quality in and around the mining area, fresh study was suggested by this office & accordingly Rain Water Harvesting & Ground Water Recharging arrangements for Pachhwara Coal Block (Central) to be done.

In reference to this office letter no.-G.W.D./145/2015/198/Ranchi, dated-19.09.15 related to above said matter, you have requested to transfer the ground water clearance awarded to previous allottee i.e. PANEM in the same manner vide Deputy Director, Ground Water Investigation Division, Ranchi letter no.-142 dated-29.04.2004.

In this regard the transfer of ground water clearance is awarded by directing that elaborate arrangements for Rain Water Harvesting through series of Check dams and Recharge pits in the area to harness as much rain water as possible in order to offset the loss of ground water due to mining activities.

With regards,

Yours sincerely,

23/05/17

Director,
Ground Water Directorate,
Jharkhand, Ranchi.

**ANNEXURE- G (COLLY)**

No. 38011/4/2002-CA
Government of India
Ministry of Coal

.....

New Delhi, dated 5.11.2003

To

**M/s Panem Coal Mines Ltd.**
**Ganga Plaza, 2nd floor,**
**18/13 W.E.A. Karol Bagh,**
**New Delhi**

Subject :- Grant of Mining Plan in respect of Captive Coal Mine at Pachwara Central OCP.

-----------------

Sir,

I am directed to refer to your letter No. PANEM/KOL/MCM/023/02-03 dated 19.10.2003 on the subject mentioned above and to convey the approval of the Central Government under the proviso to Section 5 (2) (b) of the MMDR Act, 1957 to the mining plan for Pachwara Central OCP to be undertaken by Panem Coal Mines Ltd. This approval is subject to the following conditions :-

i) That the mining company will conduct detailed exploration of the underground portion of the proposed mining lease area.

ii) Thereafter the mining company will submit a Mining Plan for the underground portion of the mining lease area for approval.

iii) The composite production plan taking into consideration the entire reserves of the allotted area from both opencast and underground mining will also be submitted along with the underground Mining Plan.

iv) The above underground Mining Plan should be submitted as early as possible but not later than 3 years from July, 2003 (i.e. the date of submission of revised Mining Plan of Pachwara Central Block OCP).

v) The company will not dump any overburden over the underground portion of the allottee block or in any way sterilise the reserves of underground portion of the allotted mining block

One copy of the approved mining plan is enclosed herewith with the request that the company may approach the State Government with the copy of the approved mining plan, for grant of mining lease.

Yours faithfully,

( S.K.Kakkar)
Under Secretary

Encl : As above

Copy to Government of Jharkhand ( Attn. Shri S.P. Singh, Deputy Secretary), Mines & Geology Department, Government of Jharkhand, Ranchi with a copy of the approved mining plan for record and reference.

No. 38011/4/2002-CA
Government of India
Ministry of Coal

.....

New Delhi, dated 14.11.2003

To

M/s Panem Coal Mines Ltd.,
Ganga Plaza, 2nd floor,
18/13 W.E.A Karol Bagh
New Delhi.

**Subject :- Grant of mining plan in respect of captive coal mine at Pachwara Central OCP.**

**CORRIGENDUM**

In the letter of even number dated 5.11.2003 issued by this Ministry on the above mentioned subject the date 19.10.2003 has wrongly been mentioned in 2nd line of the letter. Therefore, the date 19.10.2003 may be substituted by 19.10.2002.

(S.K.Kakkar)
Under Secretary

**No.34011/02/2017-CPAM**
**Government of India**
**Ministry of Coal**

Shastri Bhawan, New Delhi.
New Delhi, the 12th Sept, 2017

To

**M/s Punjab State Power Corporation Limited**
**Office of Chief Engineer/Fuel**
**PSEB Head Office, The Mall**
**Patiala – 147001**
**Email ID : cefuelpspcl@gmail.com, sefuelpspcl@gmail.com**

**Subject: Mine Closure Plan of Pachwara Central Coal Block of M/s Punjab State Power Corporation Ltd. (PSPCL).**

Sir,

I am directed to refer to your letter 2541/CE/Fuel/C-291 dt. 22-12-2016 for approval of Mining Closure Plan of Pachwara Central Block OCP, Jharkhand of M/s. Punjab State Power Corporation Limited for approval of the Central Government and to state that the Mining Closure Plan of Pachwara Central Block OCP, Rajmahal coalfields, Distt Pakur, State- Jharkhand of M/s. Punjab State Power Corporation Limited to be read along with company's letter No. 1433/CE/Fuel/C-291 dt. 10-08-2017 has been considered and the approval of the Central Government thereon is hereby conveyed under Section 5(2)(b) of the Mines & Minerals (Development & Regulation) Act, 1957 subject to the following conditions:-

I. The Mining Company shall come up with revised mining plan for the entire reserve of the allotted area within 3 years of the allocation of the block i.e by March 2018;

II. The company will not dump any overburden over the underground portion of the allotted block or in any way sterilise the reserves of underground portion of the allotted block;

III. Mining company shall develop an action plan by 31st March 2019 for net zero energy consumption through solar energy as a part of mine closure activities;

IV. The Mining company shall take all necessary precautions regarding safety of mine workings and persons deployed therein;

V. Mining lease of this block shall not encroach into any other adjacent block;

VI. The cost of abandonment for carrying out the closure activities envisaged in the Mine closure plan is indicative; the actual cost for carrying out the activities at the time of final closure may be higher. The actual cost of abandonment will have to be borne by the project proponent for carrying out the closure activities.

VII. The approval of the mine closure plan is without prejudice to the requirement of approvals from competent /prescribed authority under the relevant rules/ regulations etc;

Two copies of the approved mine closure plan duly signed by the competent authority are returned herewith with the request that a copy of the approved mine closure plan may be submitted to the concerned State Government for necessary action and also a photocopy of the approved mine closure plan may be sent to the Coal Controller for monitoring the block.

Yours Faithfully

Signature valid
Digitally signed by ANANDA KUMAR MANDAL
Date: 2017.09.12 14:27:43 IST
Reason: Approved

(A.K. Mandal)
Under Secretary to the Govt. of India.
Ministry of Coal

Encl: As Above

Copy:-

1. **Under Secretary, CA-III Section with a copy of Approved Mine Closure Plan.**
2. **Section Officer, Nominated Authority, MoC.**
3. **Chief Secretary, Jharkhand**
4. **Anjani Kumar, Coal Controller, West Bengal.**

# ANNEXURE- H

Through E-Mail/ Speed Post

**No. 110/03/2017/NA**

**Government of India**

**Ministry of Coal**

**O/o Nominated Authority**

**131 Ground Floor, World Trade Centre, Babar Road**
**New Delhi-110001, Dated: 6th Nov, 2017**

To,

The Chairman and Managing Director,

Punjab State Power Corporation Limited,

PSEB Head Office,

The Mall, Patiala- 147001.

**Subject: Show Cause Notice for non-compliance with Efficiency Parameter of Allotment Agreement in respect of Pachhwara Central coal mine.**

Sir,

I am to refer the Allotment Agreement dated 26.03.2015 executed between the Nominated Authority and M/s Punjab State Power Corporation Limited (PSPCL) in respect of Pachhwara Central coal mine. As per clause 10.1 of the Allotment Agreement, *"conduct of mining operations at the coal mine shall be subject to the milestones listed in Sch 'E' (the "Efficiency Parameter")".*

2 . However, it has been noticed that the timelines for the following milestones in respect of Pachhwara Central coal mine has not been adhered to:-

| Sl. No. | Milestone as per Efficiency Parameters | Due Date for completion of Milestone | Actual Date of transfer of permission/ achievement of Milestone |
|---|---|---|---|

| | | | |
|---|---|---|---|
| 1. | Transfer of Statutory permissions which has not been complied with. | | |
| i | Grant/Execution of Mining Lease | 01.07.2015 | NO |
| ii | Environment Clearance | 01.07.2015 | 06.07.2015 |
| iii | Mine opening permission | 01.07.2015 | NO |
| iv | Permission from DGMS | 01.07.2015 | NO |
| v | Ground Water Clearance | 01.07.2015 | 23.05.2017 |
| vi | Explosive License | 01.07.2015 | NO |
| vii | Consent to Establish | 01.07.2015 | NO |
| viii | Consent to operate | 01.07.2015 | NO |
| ix | Land Mutation | 01.07.2015 | NO |
| x | Power Line from State Electricity Board | 01.07.2015 | NO |
| 2. | Approval of Mine Closure Plan | 01.10.2015 | NO |
| 3. | Opening of Escrow Account | 01.10.2015 | NO |
| 4. | Schedule of Production/Reaching Peak Rated Capacity | Target Schedule of Production | Actual Production |
| | For year 2015-16 | 7 MT | NO |
| | For year 2016-17 | 7 MT | NO |

3. Under the above circumstances, you are hereby called upon to show cause to this office within 15 days from the date of receipt this show cause notice alongwith necessary documentary evidence, as to why action as deemed suitable including termination of the Allotment Agreement under clause 24.3 of the Agreement should not be taken against M/s PSPCL.

**(N.K. Singh)**
Deputy Secretary to the Government of India

Copy to:

1. The Secretary, Ministry of Power, Shram Shakti Bhawan, New Delhi
2. The Chief Secretary, State Government of Punjab/ Jharkhand
3. US(CBA-II), Ministry of Coal
4. The Coal Controller Organization, Kolkata

ITEM NO.17 COURT NO.13 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) D. No.34422/2016

EMTA COAL LTD. & ANR. Petitioner(s)

VERSUS

WEST BENGAL POWER DEVELOPMENT CORPORATION Respondent(s)

Date : 29-11-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AMITAVA ROY
[IN CHAMBERS]

For Petitioner(s) Ms. Roohina Dua, Adv.
For Mr. Naveen Kumar, AOR

For Respondent(s) Mr. Sakya Singha Chaudhuri, AOR
Ms. Shikha Panday, Adv.

Mr. Gunnam Venkateswara Rao, AOR

UPON hearing the counsel the Court made the following
O R D E R

As prayed for, further two weeks' time is granted to the learned counsel for the petitioners to cure the defects as pointed by the Registry and also to deposit the costs as per order dated 04.09.2017, failing which the Special Leave Petition shall stand dismissed without further reference to the Court.

(RACHNA)
SENIOR PERSONAL ASSISTANT

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**
**(Appellate Jurisdiction)**

**ORDER IN APPEAL NO. 259 OF 2015 &**
**ON THE FILE OF THE**
**APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI**

**Dated:** **19th January, 2018**

**Present:** **Hon'ble Mr. Justice N.K. Patil, Judicial Member**
**Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**Punjab State Power Corporation Ltd.**
The Mall, Patiala-147001,
Punjab ….. Appellant(s)

***Versus***

**Punjab State Electricity Regulatory Commission**
SCO NO 220-221, Sector-34-A,
Chandigarh-160022 …... Respondent(s)

Counsel for the Appellant(s) : Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

**The Appellant has sought the following reliefs in Appeal No. 259 of 2015:**

(a) "Allow the appeal and set aside the orders dated 01.09.2015 passed by the State Commission in Petition No.13 of 2015 and direct the State Commission to decide the dispute on merits.

(b) Pass such other order(s) and this Hon'ble Tribunal may deem just and proper".

**The Appellant has presented in this Appeal for consideration under the following Question of Law:**

(a) "Whether in the facts and circumstances of the case the State Commission was right in rejecting the servicing the recovery of the deposit of Rs.391,46,36,262/-made by the Appellant along with interest thereon being a necessary and legitimate expenditure incurred by the Appellant for securing allotment of the Pachwara Central Coal Block, subject to adjustments, upon refund, if any?

(b) Whether the requirement for depositing the 'additional levy' at Rs.295/- per MT as compensation for extraction of coal from the Pachwara Central Coal Block pursuant to the orders dated 25.08.2014 & 24.09.2014 passed by the Hon'ble Supreme Court and implemented by way of the Coal Mines (Special Provisions) First and Second Ordinance, 2014 by 31.12.2014 was a mandate of law and resultantly any deposit made was a legitimate expense, recoverable from the retail supply tariff to be charged from the consumers?

(c) Whether the non-transfer of the 26% equity shareholding held in Panem Coal Mines Ltd. to the Appellant by the Government of Punjab at the time of the re-organization of the erstwhile Punjab Electricity Board in terms of the transfer scheme notified under Section 131 of the Electricity Act, 2003 disentitled the Appellant from claiming recovery of the deposit made along with interest as expenditure for procurement of coal.

(d) Whether the nature of deposit made by the Appellant being refundable or not changed the character and treatment of such expenditure for recovery as part of the revenue requirement from the retail supply tariff to be charged from the consumers in the state of Punjab, when the Appellant had duly agreed to the adjustment in revenue requirement if and when the amount deposited was refunded by the Ministry of Coal, Government of India?".

## ORDER

Punjab State Power Corporation Limited, the Appellant herein, has filed the instant Appeal, being Appeal No. 259 of 2015, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, questioning the legality and validity of the Impugned Order dated 1.9.2015 passed in Petition No. 13 of 2015 on the file of the Punjab State Electricity Regulatory Commission, Chandigarh and to direct the State Commission to decide the dispute on merits and to pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice and equity.

2. The learned counsel appearing for the Appellant, Mr. M.G. Ramachandran, has filed a Memo on 19.01.2018 and the same was take on record. The submissions made in the Memo reads as under:-

1. *"The Appellant, Punjab State Power Corporation Limited (herein after referred to as 'PSPCL') has filed the above appeal challenging the decision dated 1.9.2015 passed by the Punjab State Electricity Regulatory Commission in Petition No.13 of 2015.*

2. *The matter in issue relates to the issue whether the Appellant is entitled to seek the pass through in the Tariff the amount of Rs.391,46,36,262 {Rs. 391.46 cores} paid to the nominated authority of the Central Government, in terms of the Coal Mine (Special Provisions) Second Ordinance, 2014.*

3. *In the Impugned order the State Commission has decided against the Appellant on the ground that refundable amount {and the interest thereon} cannot be treated as expenditure revenue requirements of the Appellant and is not chargeable to the consumers of the state through Tariff {Page 64 para G}. In the earlier part the State Commission had observed that the refundable payment made by the Appellant to the Ministry of Coal, Government of India cannot be treated as payment towards the cost of material {Coal} and the same cannot be treated as expenses in accounting and for Tariff determination.*

4. *Without prejudice to the Appellant's rights and contention on merits, it is respectfully stated that till date the Appellant has not been given any refund of the amount by the Government of India and the Appellant has not been able to recover any amount towards the above either from PANEM Coal Mines Limited, despite efforts made. In the circumstances the*

*basis on which the impugned decision has been made has not fructified till date and it seems that refund may not be possible at all.*

5. *In the circumstances it is respectfully submitted that the State Commission may be directed to consider the case of the Appellant afresh in the light of the above developments and the Appellant be given an opportunity to place all the relevant material in support of its claim. The Appeal may be disposed o in terms of this Memo".*

3. We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the Punjab State Electricity Regulatory Commission.

4. The learned counsel appearing for the Appellant submitted that the statement made in the memo dated 19.01.2018, as stated above, may be placed on record and the instant Appeal may be disposed of in terms of the statement made in the Memo dated 19.01.2018 in the interest of justice and equity.

5. ***Per-contra***, the learned counsel appearing for the Punjab State Electricity Regulatory Commission, *inter-alia*, contended and submitted that, the statement made in the Memo dated 19.01.2018 filed by the

learned counsel appearing for the Appellant, as stated above, may be placed on record. Further, he submitted that the Appellant may be directed to impleadment of State of Punjab as necessary party to adjudicate the matter effectively. Therefore, he submitted that appropriate direction may be issued to implead the State of Punjab also one of the proposed Respondent in addition to impleading, PANEM Coal Mines Limited, EMTA Limited. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent and the statement made in the Memo dated 19.01.2018, as stated above, the instant Appeal, being Appeal No. 259 of 2015, filed by the Appellant, stands disposed of in terms of the Memo dated 19.01.2018 in the interest of equity and justice.

7. The Punjab State Electricity Regulatory Commission is directed to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed Respondent as expeditiously as possible at any rate within a

period of six months from the date of appearance for the Appellant personally or through his Counsel.

8. The Appellant, herein, Punjab State Power Corporation Limited is directed to appear before Punjab State Electricity Regulatory Commission through the Counsel on 06.02.2018 at 11.30 A.M. to collect the next date of hearing.

All the contentions of the Appellant and Respondents are left open.

9. Having regard the facts and circumstances of the case, as stated above, the instant Appeal filed by the Appellant, stands disposed of. Order accordingly.

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| **(S.D. Dubey)**<br>**Technical Member** | **(Justice N.K. Patil)**<br>**Judicial Member** |

*pr/js*

**ANNEXURE- K**

**Through Email/Speed Post**

F.No. 110/6/2017/NA
Government of India
Ministry of Coal
O/o Nominated Authority
****

Shastri Bhawan, New Delhi
Dated: 16th March, 2018

**OFFICE MEMORANDUM**

**SUBJECT:- Minutes of the 5th meeting of the Scrutiny Committee, held on 30.01.2018 at Shastri Bhawan, New Delhi.**

The undersigned is directed to refer the subject mentioned above and to forward herewith the minutes of the 5th meeting of the Scrutiny Committee, held under the Chairmanship of Shri OM Prakash, on 30.01.2018 at Shastri Bhawan, New Delhi for information please.

**(N K Singh)**
**Deputy Secretary to Government of India**
**Tel no – 011-23384104**

**Encl : as above**

To,

All the participants

## Minutes of the 5th meeting of the Scrutiny Committee held on 30.1.18 at Shastri Bhawan, New Delhi

1. **Baranj I-IV, Kiloni&Manora Deep (Allottee: Karnataka Power Corporation Limited)**

**Allotment Date- 01st April 2015**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice(s) | Observation of the Committee |
|---|---|---|
| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| i.Delay in submission of application for Explosive License i.e. on 30.05.2015(Due Date-01.05.2015) | Application for transfer of Explosive license requires submission of annexures such as Original License, NOC from District Collector etc., In this regard, the application for NOC from District Collector, Chandrapur was made on 17.04.2015 and the Original License was received only on 24.05.2015 after much follow up, from the prior allottee (i.e M/s Karnataka EMTA Coal Mines Limited). Hence, the application was made on 30.05.2015. | • The delay of one month was caused since NOC from District Collector, Chandrapur was obtained on 24.05.2015. As, the delay is beyond the control of SB.<br>• The delay is intermediate stage not directly resulting in delay in production.<br>• The delay is of small duration (~ one month) |
| ii.Delay in submission of application for DGMS Permission i.e. on 30.05.2015(Due Date-01.05.2015): | Submission of Form-I- Notice for Opening of Mines and for filing of application for various permissions under various regulation of Coal Mines Regulation, 1957, it is mandatory that a Mine Manager had to be appointed. As KPCL is a Govt. of Karnataka Undertaking, KPCL had to get the approval of the Board of KPCL, for appointment of Mine Manager. Only after finalizing of appointment of Mine Manager, application could be made and the same was made on 30.05.2015. | The delay of one month was caused since appointment of Mine Manager got delayed at the end of the Allottee. Hence no relaxation is recommended on this count. |
| iii. Delay in submission of application for Land | Application for land mutation has to be made along with the land documents (which were to be sourced from the prior allottee (M/s KECML) | The delay may be attributed to the delay in handing over the Annexure-I i.e. the Land |

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| Mutation i.e. on 03.06.2015 (Due Date-01.05.2015) | and also along with Annexure-1 (showing the land details) to the Allotment Order dated 31.03.2015. The Annexure-1 to the Allotment Order was handed over to KPCL in Dec 2015. However, a formal application for Land Mutation has been submitted to District Collector, Chandrapur on 03.06.2015. | Details to the Allottee by MoC which was provided in Dec 2015. |
| 2. Transfer of statutory clearances | | Weightage assigned for appropriation is 8% |
| i. Delay in grant/execution of Mining Lease i.e. on 07.11.2015(Due Date-01.07.2015) | 1. Application was submitted to The Director, Geology & Mining, Govt. of Maharashtra, Nagpur on 06.04.2015 (Within Timelines).<br>2. The Director Geology and Mining, Nagpur vide letter dt. 17.04.2015, had intimated regarding royalty dues from KECML and for payment of Rs. 19,78,11,247/-. In response, KPCL vide its letter dt 25.04.2015 quoted Nominated authority letters regarding Notice for submission of claims in relation to allotment of Schedule-II & Schedule-III mines and requested to process the seamless grant of mining lease against the ML application submitted without insisting for payment of the outstanding royalty.<br>3. The Director Geology and Mines vide letter dt. 06.05.2015 intimated that claim has been made with Nominated Authority for an amount of Rs.32.88 crores towards dues of royalty and interest on the company as on 31.03.2015 and however requested that royalty dues as communicated in the claim letter to Nominated Authority shall be cleared by KPCL and that processing of Mining Lease application shall be made as per vesting order and Coal Mines (Special Provisions) Act, 2015. In order to expedite transfer of Mining Lease in favour of KPCL and execution of mining lease agreement, an amount of Rs 19,78,11,247/- and Rs.39,56,225/- (tax collection at source) towards royalty has been paid vide M/s KECML on 25.06.2015 to the District Collector, Chandrapur.<br>4. The Dy. Secretary, Department of Industries and Labour ,GoM granted Mining Lease on 16.07.2015.<br>5. A letter dt. 05.08.2015 was addressed to The District Mining Officer | • The application for ML was made timely by the Allottee i.e. on 06.04.2015.<br>• The delay is of small duration (~ five days)<br>• The delay is intermediate stage not directly resulting in delay in production.<br>• The subsequent delay of four months in execution of ML i.e. on 07.11.2015 was caused due to non- clarity regarding payment of Royalty at the end of the State Government. |

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| | enclosing a draft Form–K Mining Lease agreement and seeking advice on execution of Mining lease. State Govt. vide its letter dtd 05.11.2015 intimated the amount of Stamp Duty payable as Rs. 7,50,44,800/- with respect to Mining lease agreement. Accordingly, the payment of stamp duty was made by e-payment mode in the mahakosh website of Govt. of Maharashtra on 06.11.2015 and the Mining lease agreement has been executed on 07.11.2015. | |
| ii. Delay in transfer of Environment Clearance i.e. on 06.07.2015(Due Date- 01.07.2015 | 1. KPCL timely filed an application to MoEFCC on 17/20.04.2015.<br>2. MoEFCC office vide e- mail dt. 18.06.2015 directed KPCL to submit an undertaking. The same was submitted by KPCL on 19.06.2015.<br>3. Subsequently, EC was transferred on 06.07.2015. | • The application for EC was made timely by the Allottee i.e. on 17/20.04.2015<br>• The delay is of small duration (~ five days)<br>• The delay is intermediate stage not directly resulting in delay in production.<br>Five days' delay by MoEF&CC is beyond the control of SB. |
| iii. Transfer of Forest Clearance not done(Due Date- 01.07.2015) | 1. Forest Stage-II clearance was not obtained by the Prior allottee (KECML). However, for filing an application with MoEFCC, GoI for Forest Stage-II (84.41 Ha) clearance, the Forest Rights Act (FRA) certificate and Forest Stage-I clearance are essential.<br>2. FC-I was transferred from KECML to KPCL on 13.05.2015. As part of the compliances to be made for Forest Stage-I clearance, a FRA certificate is to be submitted to District Forest Officer(DFO), Chandrapur, after obtaining the same from DC, Chandrapur.<br>3. Earlier, the FRA certificate was in the name of Karnataka EMTA Coal Mines Limited (KECML). On liasoning, GoM informed that the FRA Certificate in new format (as per MoEF&CC, GoI letter dated 5th July 2013) has to be obtained and the earlier FRA certificate issued in the name of KECML cannot be considered.<br>4. Application was made to DC, Chandrapur vide letter dtd 02.09.2015 for issuance of FRA certificate. DC, Chandrapur vide letter dated 4.07.2016 has | It is to state that only FC-I was vested vide Allotment order which was transferred to KPCL on 13.05.2015.<br>However, Forest Stage-II clearance was not obtained by the Prior allottee and as such had to be obtained afresh by SB.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Because, stage II forestry clearance is not separately mentioned but included in Forestry clearance as mentioned in the CMPDPA needs to be clarified by the office of Nominated Authority. |

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| | addressed to the Block Development Officer, Bhadrawati, to conduct the Panchayat meeting & submit a report, for issuance of FRA certificate by the DC, Chandrapur. The matter is being regularly followed up by KPCL but issuance of FRA certificate is pending till date. | |
| iv. Transfer of Mine Opening Permission not done (Due Date-01.07.2015) | Application was made to CCO, Kolkata on 28.04.2015(within timelines), for transfer of the Mine Opening Permission. However, on Liasoning with CCO office, Kolkata, it was informed that a fresh application for mine opening permission is to be filed along with other permissions/ approvals as per allotment order. Hence, a fresh application for mine opening permission was filed on 19.11.2015, along with the available/ transferred approvals as on that date. A reminder letter dtd 18.08.2016 was addressed to Coal Controller, Kolkata for issue of the subject permission. To our fresh application filed on 19.11.2015, a letter dtd 16.05.2017 has been received from CCO indicating that "After achieving all the milestones for re-opening permission of Baranj I-IV, Manoradeep and Kiloni coal blocks, it is requested to resubmit the application online through CCO web portal". In view of the above, KPCL has to re-submit online Application along with the approvals obtained including the DGMS permission. This would mean that until the MDO is appointed, KPCL would not be in a position to apply. | Application was made by Allottee to CCO on 28.04.2015(within timelines), for transfer of the Mine Opening Permission.<br>CCO vide its letter dt.16.05.2017 advised the Allottee to resubmit the application online through CCO web portal after achieving all the milestones for re-opening permission.<br>Since Mine opening Permission is contingent upon obtaining all the statutory clearances including FC-II (which is pending), the delay on this count cannot be attributed to the SB. |
| v. Transfer of Permission from DGMS not done(Due Date-01.07.2015) | It is to inform that, for submission of Form-I- Notice for Opening of Mines and for filing of application for various permissions under various regulation of Coal Mines Regulation, 1957, it is mandatory that a Mine Manager had to be appointed. As KPCL is a Govt. of Karnataka Undertaking, KPCL had to get the approval of the Board of KPCL, for appointment of a Mine Manager. After finalizing of the appointment of Mine Manager, application was made on 30.05.2015.<br>DGMS vide its letter dt. 05.02.2016 sought documents/ compliances such as statutory manpower, Mining equipment details etc., for the transfer of the subject permission in favour of KPCL. However, during the discussion had with Dy. Director, DGMS, Nagpur by SE (Mines), KPCL, it has been intimated | DGMS had sought documents/ compliances such as statutory manpower, Mining equipment details etc., for the transfer of the subject permission in favour of KPCL. However, the above permissions/exemptions can be transferred only after appointment of MDO, which is pending (sub-judice) at the end of the Allottee.<br>Hence, the delay on this count may not be condoned. |

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| | that the above permissions/exemptions under various regulations of the Coal Mines Regulations 1957 can be transferred in favour of KPCL only after appointment of a Mine Operator (MO), deployment of statutory personnel and mining equipment's etc. At this juncture, it is to intimate that the appointment of MDO is beset with legal hurdles and the case is pending before the Hon'ble Supreme Court of India. | |
| vi.Transfer of Explosive License not done(Due Date- 01.07.2015) | 1. It is to inform that application for transfer of Explosive license requires submission of annexures such as Original License, NOC from District Collector etc. , In this regard, it is pertinent to inform that the application for NOC from District Collector, Chandrapur in the name of Technical Director, Nominated Owner, KPCL was made on 17.04.2015. However, the Original License was received only on 24.05.2015, from the prior allottee. Hence, the application was filed on 30.05.2015 with the Chief Controller of Explosives, Nagpur.<br>2. CCE, Nagpur vide letter dated 29.03.2016 has insisted for land documents and NOC from prior allottee. In response, KPCL vide letter dated 11.04.2016, submitted the NOC from the Prior allottee (KECML) and Allotment order dtd 31.03.2015 as document for land ownership.<br>3. Again, CCE, Nagpur, vide letter dt. 05.05.2016 insisted on physical possession of Land of Explosive Magazine. But, the issue of Land Mutation is pending with DC, Chandrapur. In this circumstances, CCE, Nagpur, has been again requested vide letter dated 13.04.2017 to consider the Allotment Order dtd 31.03.2015 as land ownership document and transfer the magazine license to KPCL by enclosing the sale deed of the magazine land in the name of KECML along with the NOCs from KECML and District Collector, Chandrapur. As such there has been no procedural delay from KPCL side. | The submission of application for the said clearance, which was done on 30.05.2015, got delayed by one month since NOC from District Collector, Chandrapur received on 24.05.2015.<br>CCE, Nagpur, vide letter dt. 05.05.2016 insisted on physical possession of Land of Explosive Magazine. But, the issue of Land Mutation is pending till date with DC, Chandrapur.<br>Since the said clearance is contingent upon Land Mutation and is pending with the State Government, which is beyond the control of SB. |
| vii.Land Mutation not done(Due Date- 01.07.2015) | KPCL was of the apprehension that application for land mutation has to be made to the District Collector, Chandrapur along with the land documents [which were to be sourced from the prior allottee and also along with Annexure-1 (showing the land details) of the Allotment Order. The Annexure-1 to the Allotment Order was handed over to KPCL by Ministry of Coal only in December 2015. However, in the meantime, on receipt of the letter dated 19.05.2015 from Secretary, Ministry of Coal addressed to Chief | The Annexure-1 to the Allotment Order i.e. the Land Details was handed over to Allottee by MoC in December 2015.<br>However, KPCL had submitted a formal application to District Collector, Chandrapur vide letter dt. 03.06.2015, requesting to mutate land in favour of KPCL. R&R |

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| | Secretary, Govt. of Maharashtra regarding mutation of land in favour of successful bidders, KPCL has submitted a formal application to District Collector, Chandrapur vide letter dt. 03.06.2015, requesting to mutate land in favour of KPCL. R&R agreement was executed with GoM on 09.11.2015.However, Hon'ble Chief Minister of Maharashtra conducted meetings on 29.12.2015 and 16.05.2016 at Mumbai and as per the minutes of the meeting of 16.05.2016, it was agreed that work shall be allowed to commence after execution of revised R&R agreement which was executed on 15.12.2016.<br>Tahsildar Bhadrawati has sought clarifications/ guidance regarding land mutation from, District Collector, Chandrapur, who has further sought clarification from the Inspector General of Registration(IGR), Pune on stamp duty, if any, to be imposed for land mutation. DC, Chandra pur has intimated the Allottee that it has not received any information from IGR, Pune. | agreement was executed with GoM on 09.11.2015. Currently, the matter is pending with the State Government.<br>The delay in making application to District Collector, Chandrapur almost six months after the receipt of Annexure-I is attributable to the SB |
| viii.Delay in transfer of Power Line from State Electricity Board i.e. on 02.02.2016(Due Date-01.07.2015) | Application submitted to Superintending Engineer (O&M), MSEDCL, Chandrapur vide Letter dt. 27.04.2015.<br>2. KPCL vide its letters dt. 24.07.2015 and dt. 24.07.2015, submitted the documents sought such as Form-U, NOC from prior allottee, undertakings.<br>3. Maharashtra State Electricity Distribution Company Limited (MSEDCL), Chandrapur vide Notice dated 27.10.2015 has requested for payment of Electricity charges within 15 days of receipt of the notice failing which Electricity Supply will be disconnected. After taking legal opinion, the payment of electricity bills amounting to about Rs. 22 lakhs was made on 23.12.2015. Finally, MSEDCL, transferred the electrical installations in the name of KPCL on 02.02.2016. | Application was submitted timely i.e. on 27.04.2015.<br>Maharashtra State Electricity Distribution Company Limited (MSEDCL), Chandrapur vide Notice dated 27.10.2015 requested for payment of Electricity charges , which was made by Allottee on 23.12.2015. Subsequently, MSEDCL, transferred the electrical installations in the name of KPCL on 02.02.2016.<br>Although this delay in making payment by allotteeis case of violation of CMDPA, hence can not be condoned to that extent. |

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| ix. Schedule of Production for year 2015-16 and year 2016-17 not done | Appointment of MDO is pending due to court case. | Although appointment of MDO is subjudice but Mine opening Permission is pending, for want of some other clearances pending at the State level. Hence, the delay can not be attributed solely to the allottee. |

**Recommendation:**

**1.** From the above deliberations it is clear that delays on some issues are although beyond the control of SB butthese arenot covered under the ambit of force majeure.

**2.** As no representative form the State Government of Maharashtra was present in the meeting it could not be ascertained whether the aforesaid delays are administrative/procedural delays or abnormal delays beyond the control of SB/concerned state authority. State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.

**3.** On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it i.e. 8% and 12 % respectively, after issuing a Show Cause Notice to the Allottee . However if no view is obtained in a given timeframe from the State Govt., the Nominated Authority may take any action including appropriation of Performance Security as deemed fit.

**2. BARJORA (Allottee- M/s West Bengal Power Development Corp. Ltd.)**
**Allotment Date- 01st April 2015**

| Deviation from Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
|---|---|---|
| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| i. Delay in submission of application for Ground Water clearance i.e. on 24.07.2015(Due Date-01.05.2017) | 1. No Ground Water clearance was vested vide Allotment order.<br>2. Also, Annexure 1 having land details was received on 02.12.2015. For submission of application for Ground Water Clearance, land details of the mine area was required.<br>3. However, application for said clearance was made on 24.07.2015 and now the Ground Water clearance has been issued on 30.06.2016. | No Ground Water Clearance was vested vide Allotment Order.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for application for **transfer** of Statutory Clearances within one month from Allotment Date. Hence in the present case, the timeline of one month is not applicable since the said clearance had to be obtained afresh.<br>Further, Annexure-1 containing land details was not available with the Allottee which is required for making the said application. |
| ii. Land Mutation application not done(Due Date-01.05.2015) | 1.Annexure I of the Allotment order received on 02.12.2015.<br>2.MDO had to take up Land Acquisition. MDO appointment was done on 12.08.2016, after being delayed due to court case. | As the annexure I was handed over in Dec 2015, all time-lines are to be counted from 2.12.2015.<br>The Allottee has not commenced the Land Mutation even after appointment of MDO.<br>Hence no relaxation is recommended on this count. |
| iii. Application for Power Line not done(Due Date-01.05.2015) | The power connection was not disconnected by WBSEDCL (West Bengal State Electricity Distribution Company) and they are paying electricity bills regularly since allotment of the said coal mine | Since the earlier power connection is being continued, there is no need for separate connection and hence application for new Power Line is not required to be submitted. Hence, the Allottee may be given relaxation on this issue. |

| 2. Transfer of statutory clearances | | Weightage assigned for appropriation is 8% |
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| i. Delay in grant/execution of Mining Lease ie. on 04.08.2015(Due Date-01.07.2015) | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC. However on application, earlier Mining lease was transferred by Govt. of West Bengal on the mentioned date.<br><br>On which date the mining lease was transferred?<br>Date may please be mentioned. | Application for the said clearance was made timely by the Allottee and ML was executed by Govt. of West Bengal even without requirement of Annexure 1, on 04.08.2015. Despite the delay in handing over of the Annexure I, there is delay of only four days in getting ML. |
| ii. Delay in transfer of Environment Clearance i.e. on 06.07.2015(Due Date- 01.07.2015) | Application for transfer of Environment Clearance was done to the MOEF&CC on 21.04.2015 within the stipulated period as per the Allotment Agreement. MOEF&CC transferred the Environment Clearance vide their letter dated 06.7.2015. | Application for the said clearance was made timely by the Allottee and EC was transferred by MoEF& CC on 06.07.2015. There is a delay of 5 days. |
| iii. Delay in transfer of Forest Clearance i.e. on 10.07.2015(Due Date-01.07.2015) | Application for transfer of Forest Clearance was done to the MOEF&CC on 21.4.2015 within the stipulated period as per the Allotment Agreement. MOEF&CC transferred the forest clearance vide their letter dated 10.07.2015. | Application for the said clearance was made timely by the Allottee and FC was transferred by MoEF& CC on 10.07.2015. There is a delay of 9 days. |
| iv. Delay in transfer of Mine Opening Permission i.e. on 29.08.2017 (Due Date- 01.07.2015) | 1. Mine Opening Permission can only be obtained after opening of Escrow Account on approval of Mine Closure plan and after obtaining of all the required clearances including DGMS permission.<br>2. Annexure –I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC.<br>3. Process of placement of order on RQP for preparation of Mine Closure Plan got delayed due to the imposition of Model Code of Conduct for Election to the West Bengal Legislative Assembly'2016 from 04.03.2016 to 21.05.2016.<br>4. Order placed on RQP on 25.05.2016 for preparation of Mine Closure Plan. | Subsequent to approval of the Mine Plan along with final Closure Plan on 19.07.2017, the mine opening permission was granted on 29.08.2017. The delay on account of approval of mining plan may however be confirmed from the concerned Authority in MoC.. |

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| | 5. Thereafter Mine Closure Plan was prepared and submitted to MOC for approval on 19.08.2016.<br>6. While making presentation before the standing committee of MOC, GOI, on 24.10.2016, it was observed by the committee that the earlier Mine Plan from which the Mine Closure Plan was derived had expired due to lapse of the time period by which the coal was required to be extracted by the prior allottee as per the Mine Plan along with final Closure Plan with the revised schedule of year wise production. Accordingly WBPDCL prepared the revised Mine Plan along with final Closure Plan and submitted the same for approval of MOC on 27.03.2017.After presentation before the Standing Committee on 10.04.2017, and 10.07.2017,the Mine Plan along with final Closure Plan was approved of MOC on 19.07.17.<br>7. Escrow Account opened on 25.08.2017.<br>8. Mine Opening Permission obtained from CCO on 29.08.2017. | |
| v. Delay in transfer of DGMS Permission i.e. on 22.08.2017(Due Date- 01.07.2015) | Subsequent to approval of the Mine Plan along with final Closure Plan on 19.07.2017, the mine working plan was prepared and submitted to DGMS for approval. As such, permission from DGMS obtained on 22.08.2017. | Subsequent to approval of the Mine Plan along with final Closure Plan on 19.07.2017, the mine working plan was prepared and submitted to DGMS for approval. As such, permission from DGMS obtained on 22.08.2017 and this activity is contingent upon the approval of mining plan. |
| vi.Delay in transfer of Ground Water Clearance i.e. on 30.06.2016(Due Date- 01.07.2015) | 1. No Ground Water Clearance was vested vide Allotment order.<br>2. For submission of application for Ground Water Clearance, land details of mine area was required. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry Of Coal, Government of India.<br>3. However application for Ground Water Clearance was made to DM, Birbhum on 24.07.2015.Subsequently Ground Water Clearance was issued on 30.06.2016. | No Ground Water Clearance was vested vide Allotment Order.<br>Annexure I to the Allotment order containing Land Details was received on 02.12.2015 from MoC.<br>However application for Ground Water Clearance was made to DM, Birbhum on 24.07.2015 and the Ground Water Clearance was issued on 30.06.2016.<br>Timelines of Milestones stipulated in Efficiency |

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| | | Parameters provides for application for **transfer** of Statutory Clearances within one month from Allotment Date. Hence in the present case, the timeline of one month is not applicable since the said clearance had to be obtained afresh. Hence in absence of predefined timeline in such case delay can not be adjudged, |
| vii.Delay in transfer of Consent to Operate i.e. on 20.05.2016(Due Date- 01.07.2015 | 1. Application for transfer of consent to operate was done on 21.04.2015 i.e. within the stipulated period as per allotment agreement.<br>2. Consent to establish was obtained on 15.06.2015.<br>3. Thereafter consent to operate was transferred in favour of WBPDCL vide memo dated 24.06.2015.<br>4. Subsequently the consent was renewed vide consent letter noCO88164 dated 04.08.2015 from WBPCB with validity till 30.04.2016 .Thereafter again the same was renewed with validity till 31.07.2021 vide consent letter no CO107809 dated 28.07.2017 from WBPCB. | Application for transfer of consent to operate was done timely i.e. on 21.04.2015 and the same was transferred in favour of WBPDCL on 24.06.2015 i.e. within timelines.<br>Hence the Show Cause against the said Milestone may be withdrawn. |
| viii.Land Mutation not done(Due Date- 01.07.2015) | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC.<br>2. Appointment of MDO, which had to take up Land Acquisition, got delayed due to Court Case. MDO was appointed on 12.08.2016.<br>3. Procurement is under process for 10.68 acres of land out of which 2.1 acres have already been procured. | The Allottee has not commenced the Land Mutation even after appointment of MDO.<br>Hence no relaxation is recommended in the present case, hence action as per CMDPA may be taken on this account. |
| ix. Power Line not obtained(Due Date- 01.07.2015) | The power connection was not disconnected by WBSEDCL and WBPDCL is paying the electricity bill regularity since allotment of the coal block by Ministry of Coal .Hence question of reconnection does not arise. | Since the earlier power connection is being continued, there is no need for separate connection and hence application for new Power Line is not required to be submitted. Hence, the Allottee may be given relaxation. |
| x.Delay in approval of Mine Closure Plan i.e. on | 1 Annexure-I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC. | Annexure-I of the allotment order regarding land including description of mine was received |

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| 20.07.2017(Due Date-01.10.2015) | 2. Process of placement of order on RQP for preparation of Mine Closure Plan got delayed due to the imposition of Model Code of Conduct for Election to the West Bengal Legislative Assembly'2016 from 04.03.2016 to 21.05.2016.<br>3. Order placed on RQP on 25.05.2016 for preparation of Mine Closure Plan.<br>4. Thereafter Mine Closure Plan was prepared and submitted to MOC for approval on 19.08.2016.<br>5. While making presentation before the Standing Committee of MOC, GOI, on dated 24.10.2016 it was observed by the committee that the earlier Mine Plan from which Mine Closure Plan was derived had expired due to lapse of the time period by which the coal was required to be extracted by the prior allottee as per the Mine Plan and directed WBPDCL, to prepare a revised schedule of year wise production. Accordingly WBPDCL prepared the revised Mine Plan along with final Closure Plan and submitted the same for approval of MOC on 27.03.2017.<br>6. After presentation before the Standing Committee on 10.04.2017 and 10.07.2017 , the Mine Plan along with final Closure Plan was approved on 19.07.2017. | on 02.12.2015. As such, relaxation upto 02.12.2015 should be given to the Allotteesuniformly in all such cases. However, Model Code of Conduct was from March 2016, so the Allottee had time from Jan 2016 till March 2016 for placing order for RQP. So, no relaxation is recommended on account of such delay. |
| xi.Delay in opening of Escrow Account i.e. on 25.08.2017(Due Date-01.10.2015) | Escrow account can be opened only after approval of Mine Closure Plan, which was approved on 19.07.2017. | Escrow account was opened on 25.08.2017 after approval of Mine Closure Plan on 19.07.2017. |

**Recommendation:**

1. It is observed that there is a delay in application for transfer of Land Mutation as well as transfer of Land Mutation and Mine Opening Permission from the Prior Allottee to WBPDCL.
2. Also, there are delays in processing of application for transfer of various statutory clearances by the concerned authorities, the State Government of West Bengal.

3. As the representative form the State Government of West Bengal was not present in the meeting, it cannot be ascertained whether the aforesaid delays are administrative/procedural or abnormal.State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.
4. On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it i.e. 8% and 12 % respectively, after issuing a Show Cause Notice to the Allottee . However if no view is obtained from the State Govt. within a given timeframe the Nominated Authority may take any action including appropriation of Performance Security, as deemed fit.

**3. Barjora North (Allottee – M/s West Bengal Power Development Corporation Limited)**
**Allotment Date – 01st April, 2015**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| i. Delay in submission of Forest clearance application i.e. on 09.09.2015(Due Date-01.05.2015 | 1. Detail information required to make the application for FC Stage-I was not provided by the prior allottee.(M/s DVC). After gathering the required information application was done on 09.09.2015.<br>2. Prior allottee did not carry out DGPS survey of neither forest nor CA land. WBPDCL has placed order for DGPS survey of both Forest and CA land on 06.05.2016 through tendering process, which is underway. Also, finalization of CA land is under process.<br>3. MDO appointment was subjudice. | Delay on account of obtaining the information from the Prior Allottee may not be considered for relaxation. Most of the information was available in the Mine Dossier. |
| ii. Delay in submission of application for Ground Water clearance i.e. on 27.07.2015(Due Date-01.5.2015**):-** | 1. Annexure 3 of the Allotment order did not have any information about the Ground Water clearance of the prior Allottee(M/s DVC) Also, Annexure 1 having land details was received on 02.12.2015.<br>2 For submission of application for Ground Water clearance, land details of the mine area was required.<br>3. Application for said clearance was made on 27.07.2015 and now the Ground Water clearance has been issued on 18.07.2016. | No Ground Water Clearance was vested vide Allotment Order.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for application for **transfer** of Statutory Clearances within one month from Allotment Date. Hence in the present case, the timeline of one month is not applicable since the said clearance had to be obtained afresh.<br>Further, Annexure-1 containing land details was not available with the Allottee which is required for making the said application. |
| iii.Application for Land | 1. Annexure I of the Allotment order received on 02.12.2015. | The time line may be shifted from |

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| Mutation not done(Due Date- 01.07.2015): | 2. NIT for selection of MDO done on 19.10.2015. M/s EMTA Coal Ltd had filed an application in the Hon'ble High Court of Calcutta for quashing/setting aside the RFPs issued for selection of MDO for the said coal mine. The matter was disposed of on 12.05.2016. Initiation for land mutation will be taken up shortly. | 2.12.2015, i.e .the date of handing over Annex I uniformly in all such cases.<br>Since Land Mutation is still pending even after disposal of court case, no relaxation is recommended on this count |
| (iv) Application for Power Line not made (Due Date- 01.07.2015): | The Power Connection was not disconnected by WBSEDCL and WBPDCL is paying the electricity bill regularly since allotment of the coal block by Ministry of Coal. | Since the earlier power connection is being continued, there is no need for separate connection and hence application for new Power Line is not required to be submitted. Hence, the Allottee may be given relaxation. |
| 2. Transfer of statutory clearances | | Weightage assigned for appropriation is 8% |
| i. Delay in Grant/Execution of Mining Lease on 04.08.2015(Due Date- 01.07.2015):- | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC. ML was granted by GoWB on 04.08.2015. | As annexure I of the allotment order was received by the allotee on 2.12.2015, the due date for this activity may have been revised. However delay was only 1 month 3 days from original schedule. |
| ii. Not obtained Environment Clearance(Due Date- 01.07.2015):- | 1. Application for transfer of Environment Clearance (EC) was done to MOEF&CC on 22.04.2015 within the stipulated period as per the allotment agreement.<br>2. MOEF&CC vide letter dated 12.08.2015 informed that the FC Stage-I is mandatory for grant/transfer of EC.<br>3. On 12.07.2016 , WBPDCL requested MOEF&CC, for transfer of EC for 260.14 Ha of non-forest land for which Mining Lease has already been | Application for transfer of Environment Clearance (EC) was done within the stipulated period. However, after bidding by the bidder forestry clearance stage I (not vested/available with prior allottee) has become mandatory for grant of EC, hence, EC was not |

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| | transferred by Govt. of West Bengal.<br>4. The issue of transfer of the said EC was presented before Expert Appraisal Committee (EAC) in its 62nd meeting on 24.08.16 and EAC pointed out that in the light of the Gazette Notification dated 23.03.15, it was not empowered to take up consideration of the proposal, and referred the matter back to the MoEF&CC for appropriate action.<br>5. Subsequently , a meeting was conducted by the Secretary, Ministry of Coal, Govt. of India on 26.10.2016, which was attended by the Joint Secretary, MOEF&C, wherein it was decided that the project proponent WBPDCL may apply for EC separately for forest and non-forest area and prepare the Mining Plan accordingly, vide letter dated 18.11.2016 of Ministry of Coal, Govt. of India.<br>6. Accordingly WBPDCL prepared a Mining Plan for the non-forest area of 260.14 Ha with 3MTPA coal production which was approved by Ministry of Coal in the standing committee meeting held on 29.08.2017.<br>7. Thereafter WBPDCL applied to MOEF&CC for transfer of EC for non-forest area of 260.17 Ha with 3MTPA of coal production vide letter dated 29.08.2017. MOEF&CC referred the issue to the 17th Expert Appraisal Committee (EAC) Meeting on 31.08.2017.<br>8. EAC opined that the proposal with the revised Mining Plan covering an area of 260.14 Ha has to be considered afresh, as per the provisions of the EIA Notification 2006. Accordingly, WBPDCL was asked to first submit the proposal for grant of ToR. EAC approved TOR on 26.09.17 and conveyed the approval vide letter dated 29.09.17 of MOEF&CC.<br>9. Draft EIA/EMP report is under preparation. After submission of draft EIA/EMP report Public Hearing will be conducted by WBPCB, scheduled on 16.02.2018. | transferred. Submission of revised Mining Plan in MoC for approval, contingent upon revealation of forest land, was delayed by the allotee.<br>Subsequent direction of MoEF& CC to obtain EC, a fresh, after revision of mining plan(excluding forest land) further delayed in grant of EC.<br>Hence, the delay may not be attributable to the SB. |
| iii. Not obtained Forest Clearance(Due Date-01.07.2015):- | 1. As prior allottee did not have Forest Clearance Stage-I, question of transfer does not arise.<br>2. Quantum of land equivalent to Forest Land diversion, for the purpose of | As prior allottee did not have Forest Clearance Stage-I, question of transfer does not arise. |

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| | Compensatory Afforestation (CA) needs to be provided to the Dept. of Forest. Several encumbrance free land was offered but suitability of requisite quantum of CA land is yet to be received from Dept. of Forest. | Timelines of Milestones stipulated in Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh. Hence a fresh timeline need to be given for achieving this milestone.<br>Hence, the delay may not be attributable to the SB. |
| iv. Not obtained Mine Opening Permission(Due Date- 01.07.2015):- | For obtaining Mine Opening Permission all other statutory permissions need to be obtained including Environmental Clearance. After obtaining EC and Opening of Escrow Account Mine Opening Permission will be obtained. | For obtaining Mine Opening Permission all other statutory permissions need to be obtained including Environmental Clearance, and reason for delay in obtaining EC is explained above. |
| *v.* Not obtained permission from DGMS(Due Date- 01.07.2015):- | Not obtained permission from DGMS(Due Date- 01.07.2015):-<br>1. Application for transfer of Mine Opening Permission was done to the DGMS on 22.04.2015, within the stipulated period as per the allotment agreement.<br>2. Grant of Environmental Clearance is pending till date. WBPDCL prepared a separate Mine Plan including Mine Closure Plan for the non-forest area of 260.14 Ha with 3MTPA coal production which was approved by Ministry of Coal in the standing committee meeting held on 29.08.2017. Thereafter mine working plan has been prepared and submitted to DGMS for obtaining the permission. | Application was done to the DGMS timely i.e. on 22.04.2015.<br>Mine Plan including Mine Closure Plan for the non-forest area(for obtaining EC for non forest area) has been approved by MoC on 29.08.2017. Thereafter mine working plan has been prepared and submitted to DGMS for obtaining the permission. |
| vi. Delay in transfer of Ground Water Clearance i.e. on 18.07.2016(Due | 1. No Ground Water Clearance was vested vide Allotment order.<br>2. For submission of application for Ground Water Clearance, land details of mine area was required. Annexure I of the allotment order regarding land | No Ground Water Clearance was vested vide Allotment order.<br>Timelines of Milestones stipulated in |

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| Date- 01.07.2015):- | including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India.<br>3. However application for Ground Water Clearance was made to DM, Bankura on 27.07.2015 followed by application to Geologist, SWID Bankura along with all enclosures in prescribed Form-I including plot schedule of Mining Lease hold area. Subsequently Ground Water Clearance was issued on 18.07.2016 by Geologist, SWID Bankura to WBPDCL. | Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months may not be applicable as the said clearance had to be obtained afresh. Further, zero date may be shifted to 2.12.2015 i.e. the date of handing over of Schedule I. Hence, the delay may not be attributable to the SB. |
| vii. Delay in transfer of Explosive License i.e. on 28.04.2017(Due Date- 01.07.2015):- | 1. Application for transfer of Explosive License was done on 22.04.2015 i.e. within the timelines.<br>2. But instead of seamless transfer PESO has advised to process out application as it has been a fresh case for issuance of license. As such, fresh application to PESO was done on 11.12.2015.<br>3. Thereafter, PESO directed to submit corrected drawing of magazine on 27.01.2016 which was submitted to PESO on 08.03.2016.<br>4.Also, application for issue of NOC to DM-Bankura was done on 19.11.2015. Reminder letter to DM-Bankura for issue of NOC was given on 04.05.16. 2nd letter to DM-Bankura for issue of NOC along with endorsed drawing was given on 26.08.2016.<br>5.NOC from DM-Bankura was obtained on 13.07.2016 and the same was submitted to PESO on 17.11.2016.<br>6. Explosive license was obtained on 28.04.17. | Application for transfer of Explosive License was done within the timelines. But instead of seamless transfer PESO has advised to process out application as it has been a fresh case for issuance of license. As such, fresh application to PESO was done on 11.12.2015. Timelines of Milestones stipulated in Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months may not be applicable since the said clearance had to be obtained afresh. Hence, the delay may not be attributable to the SB. |
| viii. Delay in obtaining Consent to Operate i.e. on | 1. Application for transfer of Consent to Operate was done to the WBPCB on 22.04.2015 within the stipulated period as per allotment agreement. | There is delay of 1 month & 2 days. |

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| 28.07.2017(Due Date- 01.07.2015):- | 2. Consent to Establish was obtained from WBPCB vide Memo dated 15.06.2015.<br>3. Thereafter Consent to Operate was renewed vide consent letter no. CO88162 dated 03.08.15 from WBPCB with validity till 30.11.16. Thereafter again the same was renewed with validity till 30.11.2021 vide consent letter no. CO107810 dated 28.07.17 from WBPCB. | |
| ix. Land Mutation not completed(Due Date- 01.07.2015):- | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. 2. Appointment of MDO was done on 12.05.2016. It got delayed due to court case filed by earlier MDO. MDO had to take up Land Acquisition process. 3. Procurement is under process for 4.08 acres of land out of which 0.89 acre has already been procured. | The committee could take no view in absence of the outcome of court case and in absence of any view by State Authority. |
| x Transfer of Power Line Permission not done(Due Date- 01.07.2015):- | The power connection was not disconnected by WBSEDCL and WBPDCL is paying the electricity bill regularly since allotment of the coal block by Ministry of Coal. Hence question of reconnection does not arise. | Since the earlier power connection is being continued, there is no need for separate connection and hence fresh application for a new Power Line is not required.<br>Hence, the Allottee may be given relaxation. |
| xi. Reporting of Deviation from Approved Mine Plan not done(Due Date- 01.08.2015):- | Revised Mining Plan along with Mine Closure Plan for non-forest area of 260.14 Ha was necessary for obtaining EC for non forest area, as directed by Ministry of Coal vide letter dated 18.11.2016. Accordingly revised Mining Plan along with Mine Closure Plan for non-forest area of 260.14 Ha was prepared and got it approved from Ministry of Coal on 29.08.2017. | Application for transfer of Environment Clearance (EC) was done within the stipulated period. However, after bidding by the bidder forestry clearance stage I (not vested/available with prior allottee) has become mandatory for grant of EC, hence, EC was not transferred. Submission of revised Mining Plan in MoC for approval, contingent upon revealation of forest |

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| | | land, was delayed by the allotee.<br>Subsequent direction of MoEF& CC to obtain EC, a fresh, after revision of mining plan(excluding forest land) further delayed in grant of EC.<br>But after approval of revised mining plan by exclusion of forest land, if not, reported to Nominated Authority in time, action as deemed fit may be taken against the allottee. |
| xii. Ratification of Deviation from Approved Mine Plan including Mine Closure Plan(Due Date-01.02.2016):- | 1. WBPDCL prepared Mine Closure Plan including both forest and non-forest area and obtained approval from Ministry of Coal on 08.11.2016. 2. Transfer of EC was still pending with MoEF&CC. 3. On 26.10.2016, a meeting was conducted by the Secretary, Ministry of Coal, Govt of India with MOEF&CC, wherein it was decided that the project proponent WBPDCL may apply for EC separately for forest and non-forest area and prepare the Mining Plan accordingly. For obtaining EC for non-forest area of 260.14 Ha, as directed by Ministry of Coal, revised mining Plan along with Mine Closure Plan was prepared and obtained approval from Ministry of Coal on 29.08.2017. | As explained above, delay has been observed in the preparation and submission of revised Mining Plan including Mine Closure Plan. |
| xiii. Delay in approval of Mine Closure Plan i.e. on 08.11.2016(Due Date-01.10.2015):- | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. 2. Thereafter Mine Closure Plan including both forest and non-forest area was prepared and submitted to MOC followed by presentation before the Standing Committee on 08.08.16 and approval obtained on 08.11.2016. 3. Since transfer of Environmental Clearance was pending with MOEF&CC, as advised by MoC vide letter dated 18.11.2016 accordingly WBPDCL prepared a Mining Plan including Mine Closure Plan for the non-forest area of 260.14 Ha with 3MTPA coal production which was approved by Ministry of Coal in the standing committee meeting held on 29.08.2017. | As explained above, delay has been observed in the preparation and submission of revised Mining Plan including Mine Closure Plan. |

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| xiv. Escrow Account not opened(Due Date-01.10.2015):- | Escrow Account will be opened as soon as Environmental Clearance is obtained from MOEF&CC. | It can be decided after getting the answer of point no.1 as EC is contingent upon approved Mine and Mine closure Plan |
| xv. Not achieving Schedule of Production/Reaching Peak Rated Capacity for year 2015-16 and year 2016-17. | Transfer of EC is pending. | Environmental Clearance is pending. The delay is beyond the control of Allottee. |

**Recommendation:**

1. It is observed that there is a delay in application for transfer of Land Mutation as well as submission of Forest clearance application.
2. There is a delay in reporting of deviation from the approved mine plan, ratification of deviation in mine plan including mine closure plan and approval of mine closure plan.
3. Also, there are delays in processing of application for transfer of various statutory clearances by authorities concerned primarily the State Government of West Bengal. As the representative from the State Government of West Bengal was not present in the meeting, in absence of their view it cannot be ascertained whether the aforesaid delays are administrative/procedural or abnormal. State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.
4. On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it i.e. 8% and 12 % respectively as per the provisions of CMDPA, after issuing a Show Cause Notice to the Allottee. However, if no reply is received from State Authority in a given timeframe, appropriate actionincluding the appropriation of Performance Security, as deemed fit, may be taken by Nominated Authority.

**4. Gangaramchak&Gangaramchak-Bhadulia - Allotee- M/s West Bengal Power Development Corp. Ltd.**

**Allotment Date – 01st April, 2015.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| (i) Non submission of application for Land Mutation(Due Date- 01.05.2015): | Annexure I of the Allotment order received on 02.12.2015 and NIT for selection of MDO done on 16.02.2016. M/s EMTA Coal Ltd had filed an application in the Hon'ble High Court of Calcutta for quashing/setting aside the RFPs issued for selection of MDO for the said coal mine. The judgement in the matter was delivered on 21.07.2016. Initiation for land mutation will be taken up shortly. | Subsequent to receipt of Annexure-1 in Dec, 2015 and appointment of MDO on 16.02.2016, Land Mutation has not yet been done.<br>The reason for delay in land mutation could not be explained by the allotee or the same could could not be verified as no representative from the State was present in the meeting. |
| (ii)Non submission of application for Power Line(Due Date- 01.05.2015):- | The Power Connection was not disconnected by WBSEDCL and the electricity bill is being paid regularly since allotment of the coal block. | Since the earlier power connection is being continued, there is no need for separate connection and hence application for new Power Line is not required to be submitted.<br>Hence, the Allottee may be given relaxation. |
| **2.Transfer of Statutory Clearances** | | **Weightage assigned for appropriation is 8%** |
| i. Delay in grant/execution of ML i.e. on 04.08.2015(Due Date- 01.07.2015):- | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. However, application for transfer of earlier Mining Lease was submitted on 14.04.2015(within timelines i.e. 01.05.2015) and the same was transferred by Govt. of West Bengal on 04.08.2015. | There is a delay of 1 month 3 days. |
| ii. Transfer of Environment Clearance not done(Due | 1.Application for further transfer of Environment Clearance (EC) was done to the MOEF&CC on 21.04.2015 within the stipulated | Forestry clearance stage I was not vested/available with prior allottee which has become mandatory for grant of |

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| Date-01.07.2015):- | period as per the allotment agreement.<br>2. MOEF&CC vide letter dated 13.08.2015 informed that the Stage-I Forest Clearance (FC) in mandatory for grant/transfer of EC. Prior allottee did not have Stage-I Forest Clearance hence question of transfer does not arise.<br>3. After arrangement of Stage-I Forest Clearance, Environment Clearance (EC) will be transferred by MOEF&CC. | EC, hence, EC was not transferred. The issue of acquisition of forest land cropped up post allotment of coal block, and is not a case of transfer from the prior allotee. |
| iii. Transfer of Forest Clearance not done(Due Date-01.07.2015):- | 1. As prior allottee did not have Forest Clearance Stage-I question of transfer does not arise.<br>2. After arrangement of suitable Compensatory Afforestation land online application in MOEF&CC portal was done on 15.05.2017 for Grant of Stage-I Forest Clearance and is under process by MOEF&CC. | As prior allottee did not have Forestry Clearance Stage-I, question of transfer does not arise.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh, hence, a revised timeline need to be given for this activity. |
| iv. Mine Opening Permission not obtained(Due Date-01.07.2015):- | 1.Mine Opening Permission can only be obtained after obtaining of all the required clearances including Environment Clearance (EC).<br>2.Mine Closure Plan has been prepared and approved from MoC on 08.05.17.<br>3.Mine Opening Permission will be obtained from CCO after transfer of Environment Clearance (EC) and opening of Escrow Account. | Mine Opening Permission can only be obtained only after obtaining all the clearances including Environment Clearance, forestry clearance etc. hence the mine opening permission is delayed. |
| v. Permission from DGMS not obtained(Due Date-01.07.2015):- | As mine working plan needs to be prepared and submitted to DGMS for obtaining the permission, it will be obtained after grant of Forest Clearance and subsequent transfer of Environment Clearance (EC). | As mine working plan cannot be prepared without EC & FC, DGMS permission could not be granted. |
| vi. Delay in transfer of Ground Water Clearance i.e. | 1. Application for transfer of Ground Water clearance was done on 22.04.2015 within the stipulated period as per the allotment | For submission of application for Ground Water Clearance, land details of mine area was required. |

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| on 30.06.2016(Due Date-01.07.2015):- | agreement.<br>2. For submission of application for Ground Water Clearance, land details of mine area was required. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. Subsequently Ground Water Clearance was issued on 30.06.16 by Geologist, SWID Birbhum to WBPDCL. | Annexure I of the allotment order regarding land including description of mine was received by the allotee on 02.12.2015 from Ministry of Coal, Govt. of India. Hence the zero date may be revised and then the delay may be calculated and action accordingly be taken against allotee. |
| vii. Explosive License not obtained(Due Date-01.07.2015):- | 1. Earlier there was no separate explosive license obtained for this mine by prior allottee, explosive from Tara (E&W) coal mine used to be shared in this time.<br>2. WBPDCL applied to PESO for grant of explosive license for portable magazine on 13.12.2016 exclusively for Gangaramchak after appointment of MDO on 12.08.2016.<br>3.Application to DM-Birbhum for issue of NOC was made on 09.02.2017 and reminder was given on 04.04.2017.<br>4.Online application to PESO for grant of explosive license was made on 19.04.2017.<br>5. PESO directed to submit portable magazine purchased certificate on 05.05.17 and the same was submitted on 26.07.2017.<br>6. Provisional NOC from DM-Birbhum was obtained on 17.08.2017.<br>7. PESO requested to submit portable magazine installation certificate on 24.08.17. Presently there is paddy cultivation in the plot where the magazine will be installed for which installation is getting delayed. Shortly installation will be done and the installation certificate will be submitted to PESO. | Earlier there was no separate explosive license obtained for this mine by prior allottee and explosive from Tara (E&W) coal mine was shared for this mine.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for **transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh. |
| viii. Delay in transfer of Consent to Operate i.e. on 28.07.2017(Due Date- | 1. Application for transfer of Consent to Operate was done to the WBPCB on 21.04.2015 within the stipulated period as per allotment agreement. | Consent to Operate was transferred in favour of WBPDCL on 24.06.2015 i.e. within timelines.<br>Hence the Show Cause against the said Milestone may be |

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| 01.07.2015):- | 2. Consent to Establish was obtained on 15.06.2015.Thereafter Consent to Operate was transferred in favour of WBPDCL on 24.06.2015<br>3. Subsequently the consent was renewed vide consent letter no. CO88179 dated 05.08.15 from WBPCB with validity till 31.07.16. Thereafter again the same was renewed with validity till 31.07.2021 vide consent letter no. CO107809 dated 28.07.17 from WBPCB. | withdrawn. |
| ix. Land Mutation not done (Due Date- 01.07.2015):- | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC.<br>2. Appointment of MDO , which had to take up Land Acquisition, got delayed due to Court Case. MDO was appointed on 12.08.2016.<br>3. Land Mutation process will be initiated at the earliest after grant of Forest Clearance and Environment Clearance. | Delay in MDO appointment after obtaining Annexure I on 2.12.2015, in fact delayed all activities including land mutation. As regards court case, stay in appointment of MDO is not clarified by allotee. |
| x. Not obtaining Power Line from State Electricity Board(Due Date- 01.07.2015):- | The power connection was not disconnected by WBSEDCL and WBPDCL is paying the electricity bill regularly since allotment of the coal block by Ministry of Coal. Hence question of reconnection does not arise. | Since the earlier power connection is being continued, there is no need for separate connection and hence fresh application for a new Power Line is not required.<br>Hence, the Allottee may be given relaxation. |
| (xii) Delay in approval of Mine Closure Plan i.e. on 08.05.2017(Due Date- 01.10.2015):- | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt of India.<br>2. Process of placement of order on RQP for preparation of Mine Closure Plan got delayed due to the imposition of Model Code of Conduct for Election to the West Bengal Legislative Assembly’2016 from 04.03.2016 to 21.05.2016. Order placed on RQP on 25.05.2016 for preparation of Mine Closure Plan.<br>3. Mine Closure Plan prepared and submitted to Ministry of Coal on 23.08.2016 for approval. | Annexure-I of the allotment order regarding land including description of mine was received by the allotee on 02.12.2015. Hence, timeline should be revised uniformly for all cases. However in the instant case, the Model Code of Conduct was imposed from March 2016, so the Allottee had time from Jan 2016 till March 2016 for placing order for RQP for preparation of Mine Closure Plan. Hence, allottee is responsible for the delay to that extent. |

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| | 4. Observations of the Standing Committee were communicated to Allottee vide letter dated 27.10.16. Accordingly, re-submission of Mine closure plan with compliance to the observations done on 02.12.2016.<br>5. Thereafter Mine Closure Plan has been prepared and approved from MoC on 08.05.17. | |
| (xiii) Escrow Account not opened (Due Date-01.10.2015):- | 1. Opening of Escrow account requires approval of Mine closure plan. Mine Closure Plan has been prepared and approved from MoC on 08.05.17.<br>2. Escrow account will be opened after transfer of Environment Clearance from MOEF &CC. | Opening of escrow account is contingent upon approval of Mine Closure plan hence delay. |
| (xiv) Not achieving Schedule of Production(for Year 2015-16 & year 2016-17):- | MOEF&CC, Govt. of India is yet to transfer/issue the Environmental Clearance till date. | Delay in appointment of MDO delayed all the activities including forestry clearance, environment clearance, approval of mine closure plan etc. hence the delay in achieving schedule of production. |

**Recommendation:**

1. It is observed that there is a delay in application for transfer of Land Mutation.
2. There is a delay in placing order for preparation of the Mine Closure Plan.
3. Also, there are delays in processing of application for transfer of various statutory clearances by authorities concerned primarily the State Government of West Bengal. As the representative form the State Government of West Bengal was not present in the meeting, it cannot be ascertained whether the aforesaid delays are administrative/procedural or abnormal. State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.
4. On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays, as per the provisions of CMDPA, after issuing a Show Cause Notice to the Allottee. However, if no reply is received from State Authority in a given timeframe appropriate actionincluding the appropriation of Performance Security, as deemed fit, may be taken by Nominated Authority.

**5. Pachhwara North Allotee – M/s West Bengal Power Development Corp. Ltd.**

**Allotment Date- 01st April, 2015.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| i. Application for Land Mutation not done(Due Date- 01.07.2015): | 1. Annexure I containing land details received on 02.12.2015.<br>2. WBPDCL has already applied to the District Collector, Pakur, Jharkhand for transfer of the prior allotte's land in favour of WBPDCL on 11.08.2015.Matter is being pursued with Govt. of Jharkhand. | Annexure I containing land details received from MoCon 02.12.2015. However, the Allottee applied for Land Mutation on 11.08.2015. Hence, there is no delay on the part of the Allottee, on this count. |
| ii. Application for Power Line not done(Due Date-01.07.2015): | 1. There was no Power Connection of the Prior Allottee, M/s BECML.<br>2. Application for Transfer of Mining Lease was done on 14.04.2015. However the same has not been granted till date. Until and unless Mine Plan is approved and Mining Lease is granted, application for Power Line from State Electricity Board cannot be done. | Application for new power line connection has not been submitted as yet. Thus, allotee is responsible for the delay. |
| 2. Transfer of Statutory Clearances | | Weightage assigned for appropriation is 8% |
| i. Delay in Grant/Execution of Mining Lease (Due Date-01.07.2015):- | 1. Application for transfer of Mining Lease submitted within the stipulated period on 14.04.2015.<br>2. Director (Mines) Govt. of Jharkhand directed to submit the application in Form-I vide letter dated 19.05.2015, which was submitted by WBPDCL on 15.06.2015. Stage-I Forest Clearance has been transferred to WBPDCL on 14.05.15and Environmental Clearance on 06.07.2015 by MOEF&CC.<br>3. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC.<br>4. FC-II could not be obtained due to issue of Compensatory Afforestation land.<br>5. As such, in line with MoEF& CC's guidance dated 10.11.2015, | Application for transfer of Mining Lease submitted within the stipulated period on 14.04.2015.<br>Since FC-II is pending due to the issue of Compensatory Afforestation land (CA land) notified earlier has been rejected by the State government. As such, the grant of ML was not possible without forestry clearance.<br>It appears that because of the delay in FC II clearance for want of CA land, the allottee applied for ML for non forestarea after approval of revised mining plan by MoC on 21.12.17.<br>The allotee had to go for revised mining plan for |

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| | application for grant of Mining Lease for non-forest area of 846.93 Ha was submitted on 06.02.2016.Accordingly, Govt. of Jharkhand directed for submission of separate Mining Plan for the non-forest area on 09.09.2016.<br>6. Revised Mining plan within non-forest area of 846.93 Ha with peak production capacity 6 MTPA was prepared and submitted to Ministry of Coal, Govt. of India on 20.03.2017. Ministry of Coal, Govt. of India intimated that there is no reason to revise the Mining Plan approved earlier and issued directive to approach Govt. of Jharkhand for facilitating the mining lease.<br>7. Accordingly 3rd application for grant of Mining Lease was submitted in consultation with Govt. of Jharkhand on 23.05.2017.However, GoJ declined to issue mining lease for non-forest area without approval of the Revised Mining plan within non-forest area by MoC.<br>8. Hence again a separate Mining Plan for non-forest area of 846.93 Ha with peak production capacity 15 MTPA was prepared & presented before the Standing Committee on 30.08.2017 for approval from MoC.. Standing committee has provided their observations and after compliance of those observations, the same were submitted to MoC for approval on 06.11.17.Now Mine Plan has been approved by MoC on 21.12.2017. | non forest area as a consequence of delay in FC II clearance, but in ordinate delay has been observed on the part of allottee in submission of revised mining plan after State Authority asked for the same on 9.9.2016. Because, revised mining plan was submitted to MoC initially for 6MTY on 20.3.2017 which was not agreed and subsequently revised for 15MTY & presented in MoC on 30.08.2017.<br>The above circumstances has delayed the process in totality mainly on two counts, firstly delay in FC II clearance due to rejection of CA land by the State Authority and secondly delay in submission of revised mining plan by the allottee. |
| ii. Delay in transfer of Environment Clearance i.e. on 06.07.2015(Due Date-01.07.2015):- | Application for transfer of Environment Clearance was done to the MOEF&CC on 17.04.2015 within the stipulated period as per the allotment agreement. MOEF&CC transferred the Environment Clearance vide their letter dated 06.07.2015. It may kindly be noted that timely action for the transfer of the clearance has been initiated by WBPDCL but its subsequent grant depended on MOEF&CC, on which WBPDCL does not | There is a delay of 5 days. |

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| | have any control. | |
| iii. Delay in transfer of Forest Clearance Stage II (Due Date-01.07.2015):- | 1. Application for transfer of Stage-I Forest Clearance was done to the MOEF&CC on 17.04.2015, within the stipulated period as per the allotment agreement.<br>2. MOEF&CC transferred the Stage-I Forest Clearance vide their letter dated 14.05.2015.<br>3. After accordance and subsequent transfer of the Stage I forest clearance for Pachhwara North Coal Mine, the CA land whose suitability was earlier accepted was later on rejected by DFO Pakur on 04.01.16 due to "damini-i-koh" notification of the year 1894 issued by the then Govt. of Bengal. WBPDCL was asked to provide the requisite amount to compensatory afforestation (CA) land of around 340 Ha afresh.<br>4. Govt. of Jharkhand provided 839.80 Acre land from their land bank situated in Peterwar, district Bokaro for compensatory afforestation. Joint inspection by Circle officer and Forest Range Officer, Peterwar has been done. Final acceptance report regarding suitability from concerned DFO is pending. | Application for transfer of Stage-I Forest Clearance was done within the stipulated period and MOEF&CC transferred the FC-I on 14.05.2015.<br>The delay is caused in grant of stage II FC because of CA land in Pakur Dist. Of Jharkhand whose suitability was earlier accepted but later on rejected by DFO Pakur on 04.01.16 and allottee has been asked to look for requisite quantity of CA land in Bokaro District, as confirmed by State Representative who was of the opinion that the allotee lacks initiative in resolving the issue of compensatory land for afforestation. |
| iv. Not obtaining Mine Opening Permission(Due Date- 01.07.2015):- | Application for transfer of Mine Opening Permission was done to the Coal Controller on 17.04.2015, within the stipulated period as per the Allotment Agreement. Mine Opening Permission can only be obtained when all statutory permissions are obtained. Grant of Mining Lease is pending till date. | Application for transfer of Mine Opening Permission was done within the stipulated period. However, grant of Mine Opening Permission is subject to all other clearances including Mining Lease which is still pending.<br>Hence, the delay cannot be attributed to the Allottee, alone. |
| v. Not obtained permission from DGMS(Due Date- 01.07.2015):- | 1. Application for transfer of Mine Opening Permission was done to the DGMS on 17.04.2015, within the stipulated period as per the allotment agreement.<br>2. Grant of Mining Lease is pending till date. Due to this, mine working plan could not be prepared for further submission to | DGMS permission is contingent upon all other clearances including mining lease. But, grant of Mining Lease is pending.<br>Hence, the delay cannot be attributed to the Allottee, alone. |

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| | DGMS for obtaining the permission. | |
| vi. Delay in obtaining Ground Water Clearance i.e. on 23.05.2017(Due Date-01.07.2015):- | 1. Application for transfer of Ground Water Clearance was made to the Ground Water Directorate, Ranchi on 17.04.2015, within the stipulated period as per the allotment agreement.<br>2. Inspection team from Ground Water Investigation Division, Dumka directed WBPDCL vide letter dated 19.09.2015 to submit the information as per their checklist along with the plan for rain water harvesting and ground water recharging. Accordingly WBPDCL furnished the desired information vide letter dated 18.11.2015.<br>3. Ground Water Clearance was transferred to WBPDCL on 23.05.2017.The delay in getting the approval happened due to non-placement of any Director to the Directorate after transfer of the previous one for a period of around one year. | Application for transfer of Ground Water Clearance was made within the stipulated period. Ground Water Clearance was transferred to WBPDCL on 23.05.2017.The delay in getting the approval , as claimed, is due to non-placement of any Director to the Directorate after transfer of the previous one for a period of around one year. The State representative present in the meeting confirmed the same. Thus, the delay cannot be attributed to the allottee. |
| vii. Not obtained Explosive License(Due Date- 01.07.2015):- | 1. Application for transfer of Explosive License was made to the Chief Controller of Explosives, PESO, Nagpur on 29.04.2015, within the stipulated period as per allotment agreement.(No license was vested)<br>2. WBPDCL applied afresh for Explosive License to PESO Ranchi for grant of license on 13.12.2016.<br>4. WBPDCL applied to DC-Pakur for issue of NOC on 21.10.2016. Due to non-availability of proof of ownership of land, revised plot for explosive magazine was identified and subsequently revised application for grant of NOC was applied to DC-Pakur on 21.06.17. However, DC-Pakur directed to submit ownership proof of the identified new land on 10.07.2017. Ownership proof to DC-Pakur was submitted on 28.07.2017.10. DC-Pakur has not issued the NOC yet.<br>5.Online application to PESO Ranchi was made on 04.08.17 for grant of explosive license with new identified plot.11. PESO | Application for transfer of Explosive License was made within the stipulated period. However, as advised by PESO, fresh application was made on 13.12.2016 since the earlier license was for Pachhwara (Central).<br>Timelines of Milestones stipulated in Efficiency Parameters provides for**transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh.<br>Hence the delay due to the circumstances, as explained by the allotee cannot be attributed to him. |

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| | Ranchi requested to submit Mining Lease with other documents on 01.09.17. Mining lease has not been obtained yet. As such compliance of PESO could not be done. | |
| viii. Not obtained Consent to Establish/ Operate(Due Date-01.07.2015) | 1. Application for Consent to Establish/Operate was submitted to the Jharkhand State Pollution Control Board on 17.04.2015 within the stipulated period as per allotment agreement.(Said clearance was not vested)<br>2. Govt. of Jharkhand is yet to Grant the Mining Lease for Pachhwara (North) Coal Mine till date. Transfer of Consent to Establish/Operate will be done after grant of Mining Lease. | Application for Consent to Establish/Operate was submitted within the stipulated period. Moreover, the said clearance was not vested. Timelines of Milestones stipulated in Efficiency Parameters provides for**transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh.<br>Now Consent to establish/operate is pending for want of grant of mining lease. Hence the delay can not be attributed to allotee. |
| Ix. Not getting Land Mutation done(Due Date-01.07.2015):- | Annexure-I of the Allotment Order received on 02.12.2015. WBPDCL had applied to the District Collector, Pakur, Jharkhand, for transfer of the prior allottee's land in favour of WBPDCL on 11.08.2015.WBPDCL is pursuing the matter with Govt. of Jharkhand. | Annexure-I of the Allotment Order received on 02.12.2015. However, WBPDCL had applied for transfer of the prior allottee's land in favour of WBPDCL on 11.08.2015. The same is yet to mutated by the State Govt. Thus, the delay is beyond control of the allotee. |
| x.Not obtaining Power Line from State Electricity Board(Due Date-01.07.2015):- | Prior Allottee had not taken any Power Connection for their Pachhwara (North) Coal Mine, therefore, transfer of Power Connection does not arise. WBPDCL will apply for Power Connection afresh only after obtaining Mining Lease for the same. Presently approved Revised Mining Plan along with Mine Closure Plan for non-forest area has been submitted for grant of Mining Lease as instructed by Govt. of Jharkhand. | The allotee did not apply for power line connection as yet, hence he can obtain the same in 3 months time. Thus the allotee is solely responsible for this delay.<br>However, a timeline of 3 months may not be applicable in this case because this is not a case of transfer of statutory clearance. |

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| xi.Date of reporting of Deviation/ Approval of Revised Mining Plan including Mine Closure Plan(Due Date- 01.08.2015)/ Ratification of Deviation/ Approval of Revised Mining Plan including Mine Closure Plan(Due Date- 01.02.2016):- | 1. Director (Mines), Govt. of Jharkhand directed for submission of separate Mining Plan for the non-forest area on 09.03.2016 for grant of Mining Lease for non-forest area since Stage-II FC was pending.<br>2. Revised Mining plan within non-forest area of 846.93 Ha with peak production capacity 6 MTPA was prepared and submitted to Ministry of Coal, Govt. of India on 20.03.2017. Ministry of Coal, Govt. of India intimated that there is no reason to revise the Mining Plan approved earlier and issued directive to approach Govt. of Jharkhand for facilitating the mining lease.<br>3. Govt. of Jharkhand declined to issue mining lease for non-forest area without approval of the Revised Mining plan within non-forest area by MoC, GoI.<br>4. Hence again a separate Mining Plan for non-forest area of 846.93 Ha with peak production capacity 15 MTPA has been submitted & which has been approved by MoC on 21.12.17. | The allotee had to go for revised mining plan for non forest area as a consequence of delay in FC II clearance, but in ordinate delay has been observed on the part of allottee in submission of revised mining plan after State Authority asked for the same on 9.9.2016. Because, revised mining plan was submitted to MoC initially for 6MTY on 20.3.2017 which was not agreed by MoC and subsequently revised for 15MTY & presented in MoC on 30.08.2017.<br>Thus there is clear delay in submission of revised mining plan by the allotee. |
| x. Delay in approval of Mine Closure Plan(Due Date- 01.10.2015):- | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. Thereafter Mine Closure Plan including both forest and non-forest area was prepared and submitted to MOC on 13.07.16 and approval obtained on 09.11.2016. | Subsequent to receipt of Annexure-1(Land Details) in Dec 2015, the Allottee took time of around six months for preparation of Mine Closure Plan (submitted to MoC on 13.07.2016). The delay is attributable to the Allottee. |
| xi. Escrow Account not opened(Due Date- 01.10.2015):- | 1. As advised by Director (Mines), Govt. of Jharkhand, for Grant of Mining Lease for non-forest area, the separate Mining Plan for non-forest area of 846.93 Ha including Mine Closure Plan with peak production capacity 15 MTPA, has been prepared and submitted to MoC for approval. Presentation before the Standing Committee was done on 30.08.2017 for approval from MoC. | Even after approval of Mine Closure plan or revised mining plan for non forest area, the allotee did not open escrow account. Hence allotee is responsible for the same. |

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| | 2. After approval of the Mining Plan for non-forest area of 846.93 Ha including Mine Closure Plan, Escrow Account will be opened.(Mine Plan including MCP for non forest area has been approved on 21.12.2017). | |
| xii. Not achieving schedule of Production/ Reaching Peak Rated Capacity (For year 2015-16 & year 2016-17):- | Grant the Mining Lease is pending till date. | Grant the Mining Lease is still pending. Hence schedule of production could not be achieved. |

**Recommendation:**

It is observed that there has been delay in obtaining approval of Mining Plan even for non forest area, delay in reporting of deviation from the approved mine plan including mine closure plan and approval of mine closure plan.The allotee even did not apply for power line connection. Also, there are delays in processing of application for transfer of various statutory clearances by authorities concerned primarily the State Government of Jharkhand especially compensatory land for FC II. As such, in the first instance as an interim measure, Nominated Authority may proceed with appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it after issuing a Show Cause Notice to the allottee. Further action is recommended as per CMDPA.

**6. Tara (East) & Tara (West)** **Allottee- M/s West Bengal Power Development Corp. Ltd.**

**Allotment Date- 01st April, 2015.**

**The reply submitted by Allottee in respect of Show Cause Notices issued for non compliance of the timelines of various Milestones is as under.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| i. Delay in application for Ground Water clearance i.e. on 24.07.2015(Due Date-01.05.2015): | Annexure 3 of the Allotment order did not have any information about the Ground Water clearance of the prior Allottee(M/s WBPDCL & M/s West Bengal State Electricity Board). Also, Annexure 1 having land details was received on 02.12.2015. For submission of application for Ground Water clearance, land details of the mine area was required. Application for said clearance was made on 24.07.2015 and Ground Water clearance has been issued on 30.06.2016. | The delay of three months was caused since the Allotment order did not have any information about the Ground Water clearance of the prior Allottee. Also, Annexure 1 having land details was received on 02.12.2015. But the application should have been made in time. Allotee is responsible for the delay. |
| ii. Application for Land Mutation not done(Due Date-01.05.2015):- | 1. Annexure I having land details was received on 02.12.2015. 2. Prior Allottee had done excess coal production of 7.41 MT. Before de-allocation Prior allottee had placed second revised Mining Plan to MoC for approval and presentation before the standing committee held on 09.05.14. 3. After receiving Annexure I of the allotment order on 02.12.2015 from MoC, WBPDCL sought approval from MoC vide its letter dated 30.03.2016 for the regularization of the deviation along with a request for allowing to prepare of 2nd revised mining plan. 4. WBPDCL prepared revised Mining plan including Mine Closure Plan of 2 MTPA and submitted for approval on 20.03.17. However MoC informed that there is no reason to revise the | Annexure I having land details was received on 02.12.2015.<br>Further, Mine Plan had to be revised since Prior Allottee had extracted excess coal, as reported by SB. The Allottee informed in the meeting that the Revised Mine Plan was subitted to MoC for approval on 29.01.2018. Until the Mine Plan is approved by Ministry of Coal, land procurement for coal bearing areas followed by mutation cannot be done.<br>There has been excessive delay by the allotee in submission of revised mining plan to MoC for approval. The reason of delay in submission of revised mining plan to MoC, time taken by allotee in replying |

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| | Mining Plan approved earlier vide letter dated 17.04.2017. 5. Allottee requested for reconsideration of the proposal for Revision of the Mining Plan and Mine Closure Plan vide its letter dated 26.05.17. After due deliberation with MOC, WBPDCL is in process of preparation and resubmission of 2nd revised mining plan including mine closure plan. 6. Until the Mine Plan is approved by Ministry of Coal, land procurement for coal bearing areas followed by mutation cannot be done. | to the querriesof Standing Committee of MoC and circumstances leading to requirement of 2$^{nd}$ revised mining plan could not be considered by this committee because of lack of relevant informations, hence, view can be taken only after obtaining clarification from the concerned official of Standing Committee of MoC constituted for approval of Mining Plan regarding delay on this count. |
| iii.Not submitting application for getting Power Line (Due Date- 01.05.2015): | The Power Connection was not disconnected by WBSEDCL and the electricity bill is being paid regularly since allotment of the coal block. New agreement executed with WBSEDCL for supply of power on 09.06.2016. | Since the earlier power connection is being continued, there is no need for separate connection and hence application for new Power Line is not required to be submitted. Hence, the Allotee may be given relaxation. |
| **2. Transfer of Statutory Clearances** | | Weightage assigned for appropriation is 8% |
| i. Delay in Grant/Execution of Mining Lease on 04.08.2015(Due Date- 01.07.2015):- | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. However, application for transfer of earlier Mining Lease was submitted on 14.04.2015(within timelines i.e. 01.05.2015) and the same was transferred by Govt. of West Bengal on 04.08.2015. | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. However, application for transfer of earlier Mining Lease was submitted on 14.04.2015(within timelines i.e. 01.05.2015) and the same was transferred by Govt. of West Bengal on 04.08.2015 with delay of 1 month 3 days. If 2.12.2015 is considered as zero date in all such cases uniformly by competent authority then alottee can be given relaxation. |
| ii. Delay in transfer of Environment Clearance on 06.07.2015(Due Date- 01.07.2015) | Application for transfer of Environment Clearance was done to the MOEF&CC on 21.04.2015 within the stipulated period as per allotment agreement. However, MOEF&CC transferred the Environment Clearance vide their letter dated 06.07.2015. | Application for transfer of Environment Clearance was done to the MOEF&CC on 21.04.2015 within the stipulated period as per allotment agreement. However, MOEF&CC transferred the Environment Clearance vide their letter dated 06.07.2015 with a |

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| | | delay of 5 days |
| iii. Not obtained Mine Opening permission/ Permission from DGMS(Due Date- 01.07.2015):- | 1.Mine Opening Permission can only be obtained after approval of revised Mining plan including Mine Closure plan, obtaining of all the required clearances including DGMS permission and Opening of Escrow Account. 2. As the Calendar plan along with the area earmarked for mining in the earlier approved mining plan of 4MPTA has been exhausted by the prior allottee, with an excess coal production of 7.41 MT, revised mining plan is required to be approved for further preparation of mine working plan to obtain DGMS permission. Also, earlier approved Mine Plan does not have the closure cost and details of closure activities. 3. Environment Clearance transferred in favour of WBPDCL needs to be revised in view of change in peak production capacity and area earmarked for mining. For this, preparation of a revised mining plan is essential and is under process. | Mine Opening Permission can only be obtained after approval of revised Mining plan which has been submitted very late by allotee as explained earlier. Thus this consequential action is also delayed. |
| iv. Delay in transfer of Ground Water clearance on 30.06.2016(Due Date- 01.07.2015):- | 1. Annexure-3 allotment order did not have any information about the Ground Water Clearance of the prior allottee. Hence application for transfer could not be made. 2. For submission of application for Ground Water Clearance, land details of mine area was required. However, Annexure I of the Allotment order regarding land including description of mine was received on 02.12.2015 from Ministry of Coal, Govt. of India. 3. Application for Ground Water Clearance was made to DM, Burdwan on 24.07.2015 and the clearance was issued on 30.06.2016 | The Allotment order did not have any information about the Ground Water clearance of the prior Allottee. Also, Annexure 1 having land details was received on 02.12.2015. Application for Ground Water Clearance was made to DM, Burdwan on 24.07.2015 and the clearance was issued on 30.06.2016 with delay of more than 1 year. |
| v. Not obtaining Explosive License(Due Date- 01.07.2015):- | 1. Application for transfer of Explosive License was done timely on 21.04.2015. But instead of seamless transfer PESO had advised to process the application as it has been a fresh case for issuance of license. | Application for transfer of Explosive License was done timely on 21.04.2015. But instead of seamless transfer PESO had advised to process the application as it has been a fresh case for issuance of license. In order to |

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| | 2. In order to apply fresh, WBPDCL had to submit all necessary applications along with the drawings of the permanent magazine(prior allottee did not provide the same) which was submitted on 28.07.2016 to the Controller of Explosive, Kolkata.<br>3. Controller of explosive replied on 23.08.16 that the drawing (replica drawing of prior allottee) was not as per Explosive rule 2008.Revised application (in hard copy) was submitted to PESO but application in hard copy was not entertained by PESO and as such online application for grant of explosive license has been made to Controller of Explosive, Kolkata, on 22.05.2017.PESO has again intimated for modification of drawing on 22.09.2017. The required modification in under process. | apply fresh, WBPDCL had to submit all necessary applications along with the drawings of the permanent magazine(prior allottee did not provide the same) which was submitted on 28.07.2016.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for**transfer** of Statutory Clearances within three months from Allotment Date. Hence in the present case, the timeline of three months is not applicable since the said clearance had to be obtained afresh.<br>Inspite of the above, delay has been observed on the part of allotee for submission of application. |
| vi. Delay in obtaining Consent to Operate on 18.11.2015(Due Date- 01.07.2015):- | 1. Application for transfer of Consent to Operate was done on 21.04.2015 within the stipulated period as per allotment agreement.<br>2. Consent to Establish was obtained from WBPCB vide letter no. 501-3N/2000(vol.5) dated 15.06.2015.<br>3. Thereafter Consent to Operate was transferred in favour of WBPDCL on 06.07.2015 of WBPCB with validity till 31.10.2015.Subsequently it was renewed through online application and received the certificate vide consent letter dated 18.11.2015. | Application for transfer of Consent to Operate was done within the stipulated period and the same was transferred in favour of WBPDCL on 06.07.2015 with a delay of five days. |
| vii. Not completing Land Mutation(Due Date-01.07.2015) | 1. Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015 from MoC.<br>2. The area earmarked for mining in the earlier approved mining plan of 4MTPA has been exhausted by the prior allottee, with an excess coal production of 7.41 MT.<br>3. WBPDCL has identified fresh land to be purchased after receiving the Annexure I for starting mining operation.<br>4. Land procurement is a time taking process. The matter has | Annexure I of the allotment order regarding land including description of mine was received on 02.12.2015. WBPDCL has identified fresh land to be purchased after receiving the Annexure I for starting mining operation. As, land acquisition has to be done afresh, a new timeline need to be given to the alloteeallottee and delay cannot be ascertained in absence of such revised timeline. |

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| | been taken up with the district administration and negotiation with the land owners under the guidance of district administration is in progress for procurement and transfer of land in the name of WBPDCL. | |
| viii. Delay in getting Power line from State Electricity Board on 09.06.2016(Due Date-01.07.2015):- | The power connection was not disconnected by WBSEDCL and WBPDCL is paying the electricity bill regularly since allotment of the coal block by Ministry of Coal. Hence question of reconnection does not arise. New agreement executed with WBSEDCL for supply of power on 09.06.2016. | Since the earlier power connection is being continued, there is no need for separate power line connection and hence application for new Power Line is not required to be submitted. Hence relaxation may be given to the allotee on this count. |
| ix. Not reporting Deviation from Approved Mining Plan(Due Date-01.08.2015) ; Ratification of Deviations/Approval of Revised Mine Plan<br>including MCP not done(Due Date-01.02.2016) and Not getting approval of Mine Closure Plan(Due Date-01.10.2015):- | 1. Prior Allottee had done excess coal production of 7.41 MT. Before de-allocation Prior allottee had placed second revised Mining Plan to MoC for approval and presentation before the standing committee held on 09.05.14.<br>2. After receiving Annexure I of the allotment order on 02.12.2015 from MoC, WBPDCL sought approval from MoC vide its letter dated 30.03.2016 for the regularization of the deviation along with a request for allowing to prepare of 2nd revised mining plan.<br>3. WBPDCL prepared revised Mining plan including Mine Closure Plan of 2 MTPA and submitted for approval on 20.03.17. However MoC informed that there is no reason to revise the Mining Plan approved earlier vide letter dated 17.04.2017.<br>4. Allottee requested for reconsideration of the proposal for Revision of the Mining Plan and Mine Closure Plan vide its letter dated 26.05.17. After due deliberation with MOC, WBPDCL is in process of preparation and resubmission of 2nd revised mining | After receiving Annexure I of the allotment order on 02.12.2015 from MoC, WBPDCL sought approval from MoC vide its letter dated 30.03.2016 for the regularization of the deviation. The delay was of about four months and was caused at the end of the Allottee. Hence, no relaxation may be given and action as per CMDPA may be taken on this count. |

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| | plan including mine closure plan. | |
| x. Not opened Escrow Account(Due Date-01.10.2015):- | 1. Escrow Account can be opened only after approval of Mine Closure Plan.<br>2. Also, earlier approved Mine Plan does not have the closure cost and details of closure activities. | Escrow Account can be opened only after approval of Mine Closure Plan, which is pending. The delay in submission of revised mine plan on the part of allotee is clearly visible as such this activity being consequential in nature, is also delayed. |

Recommendation:

1. It is observed that there is delay on the part of allotee in submission of revised mining plan, mine closure plan, application for explosive license etc.
2. Also, there are delays in processing of application for transfer of various statutory clearances by authorities concerned primarily the State Government of West Bengal. As the representative form the State Government of West Bengal was not present in the meeting, it cannot be ascertained whether the aforesaid delays are administrative/procedural or abnormal. State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.
3. On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays,as per the provisions of CMDPA, after issuing a Show Cause Notice to the Allottee. However, if no reply is received from State Authority in a given timeline appropriate action including appropriation of Performance Security, as deemed fit, may be taken by Nominated Authority.

**7. Parbatpur Central - Allottee- M/s SAIL**

**Allotment Date- 23rd March, 2016.**

**The reply submitted by Allottee in respect of Show Cause Notices issued for non-compliance of the timelines of various Milestones is as under.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| 1. Transfer of all the Statutory permissions.<br>2. Ratification of Deviations/Approval of Revised Mining Plan including Mine Closure Plan.<br>3. Opening of Escrow Account<br>4. Schedule of Production/Reaching Peak Rated Capacity | 1. The said coal block was allocated to SAIL for an area of 880 Hectares and SAIL was entitled to have a mining lease over the entire block of 880 Hectares . In terms of the allocation the approved mining plan was also transferred to SAIL and SAIL was entitled to develop the mine in terms of the same. The prior allottee had already started development of the mine and had made developments in both parts of the lease i.e., eastern and western.<br>2. However, pursuant to the allocation order when SAIL took steps for execution of the mining lease complications arose on account of Petroleum Mining Lease having been granted to the consortium of CIL and M/s. ONGC Ltd on 30.07.2015 over total area of 6760 Hectares out of which 797 Hectares directly overlapped with allocated mining block 880 Hectares. CIL-ONGC started developing the mine for the purpose of extraction of CBM and has already inserted steel castings for the purpose of extraction of CBM in parts of the lease area.<br>3. Therefore, when SAIL requesting the State of Jharkhand to execute the lease deed for mining coal, due to the aforesaid fact situation of having given lease to CIL-ONGC, the State vide letter dated 4.1.2017 raised a query to the Ministry of Coal as to whether mining lease for coal can be granted over the very same area over which Petroleum Mining Lease already stands executed in favour of consortium of ONGC-CIL. The said letter dated 04.01.2017 issued by the Secretary Department of Mines and Geology Jharkhand has not yet been answered. | The Allottee informed that there is an unresolved issue of grant of mining lease on a block on which CBM lease has already been granted. Further, the representative of the allotee present in the meeting informed that mining may not be technically and economically feasible on such a block where drilling with steel casing is continued for CBM. As such, suitable decision regarding surrender of the coal block may be communicated to Ministry of Coal by Feb 2018, subsequent to approval of the Company Board.<br>The matter related to the dispute on mining lease is beyond the control of SB.<br><br>However, no relaxation on the issue of viability, as claimed by |

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| | 4. MoC has issued Prior Approval for ML on 12.01.2018.However, the queries raised by the Jharkhand State Govt. vide letter dt. 04.01.2017 have not been addressed. The issuance of the prior approval at this late stage, without which the lease could not be executed, is purely attributable to the Ministry of Coal and therefore, in any event there can be no allegations of SAIL having not met the efficiency parameters. Moreover, the conditions that are now being sought to be imposed while granting the prior approval amount to unilaterally changing the terms of the grant of lease. Firstly the grant of the lease has been made subject to a co-development agreement being executed between ONGC and SAIL. However, there can be no co-development of the mine. Therefore, in effect there can be no grant of lease at all to SAIL, in the absence of which the grant of block is rendered futile and unenforceable and SAIL is entitled to receive back to the amounts it has paid to the Government towards the said coal mine.<br>5. Director General of Mines Safety in the minutes of meeting dated 18.1.2017 has already expressed his view that the said mine cannot be simultaneously operated for the extraction of CBM and coal. Even otherwise due to various factors there cannot be any co-development of the mine and any such endeavor, would be at a massive risk to the life of miners/workers and as such would be impermissible in law.<br>6. Further as no mining operations could have been taken by SAIL in the absence of a mining lease and therefore, no delay can be attributed to SAIL with regard to the alleged non-compliance of efficiency parameters. More importantly the contract stands frustrated and is impossible to perform due to the grant of a Petroleum Mining Lease over 90% of the coal block area. | the allotee, can be given and the action in line with the provisions of CMDPA may be taken. However, if technical feasibility is considered for mining on a block already allotted for CBM, as also opined by DGMS authorities, coal mining is ruled out. |

**Recommendation:**

1. The committee observed that there is an unresolved mining lease issue which is beyond the control of SB.

2. The allottee has informed that mining is not economically viable and a suitable decision regarding surrender of the coal mine may be communicated by SAIL to Ministry of Coal by Feb 2018 after approval by their Board Of Directors, as informed by SAIL representative in the meeting,
3. No relaxation can be given on the issue of viability and the action in line with the provisions of CMDPA may be taken on this count. However, if technical feasibility is considered for mining on a block already allotted for CBM, as also opined by DGMS authorities, coal mining is ruled out.

**8. Pachhwara Central Allottee- M/s Punjab State Power Corporation Limited**

**Allotment Date- 01st April, 2015.**

**The reply submitted by Allottee in respect of Show Cause Notices issued for non compliance of the timelines of various Milestones is as under.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| (i Delay in submission of application for Land Mutation i.e. on 02.07.2015(Due Date- 01.05.2015):- | 1. Application for Land Mutation application could not be submitted in time since no land detail was available at that time with M/s PSPCL because the Annexure-I of the Allotment order containing land details was not provided along-with allotment order.<br>2. Subsequently, matter was taken up with the prior allotee(M/s Panem Coal Mines Ltd.) and State Govt .to provide the land details. On receipt of the land details, application for Land Mutation was made on 02.07.2015 | The delay of two months was caused since Annexure-1 containing Land Details were not available with the Allottee. Application was submitted after arranging for land details from the prior allottee. The delay is beyond the control of the SB. |
| **2.Transfer of Statutory Clearances** | | Weightage assigned for appropriation is 8% |
| i. Grant /Execution of ML not done(Due Date- 01.07.2015):- | 1. Application for grant of mining lease was originally submitted to District Mining Officer, Pakur on 13.04.2015, i.e. within the timelines. PSPCL cleared all the queries raised by District Mining Officer, and again submitted application with clarifications & revised map and land schedule for 1271.87 Ha of land on 27.06.2015.<br>2. Director Mines vide its letter dated 26.06.2015 sought some clarifications regarding pending issues of Panem from Nominated Authority. Nominated Authority vide letter dated 06.07.2015 informed that since the total mining lease area is more than 10 Sq.KM, so they will process for grant of previous approval of Central Government under Sec.6(1)(b) on receipt of proposal from the state Government as it was not obtained earlier by the Prior Allottee. As such, application | Application for grant of mining lease was submitted within the timelines.<br>The grant of Mining Lease is pending since Previous Approval of the Central Government for grant of ML had to be obtained afresh since the earlier one (vested) was not acceptable. The previous approval is pending till date.<br>The state representative informed that as prior approval under section 6(i)(b) was given by MoC, GoI which was asked in the case. Subsequently, MoC asked for the draft |

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| | for grant of mining lease u/s 6(1)(b) was again submitted on 10.07.2015 with DMO Pakur with revised map & Land schedule for 1271.87 Ha of land.<br>3. Application for grant of previous approval of Central Government for grant of Mining Lease was sent to MoC on 18.08.2015. But the same was sent back to Director(Mines) vide MoC's letter dated 13.11.2015 with the request to enclose draft lease deed duly filled with the proposal.<br>4. GoJ vide letter dated 28.12.2015 asked PSPCL to submit draft Mining Lease form (Form K) along-with the Revised Mining Schedule and mining Map which were submitted by PSPCL on 27.02.2016.DMO Pakur again raised some objections and asked PSPCL to submit the details of Land Schedule, which were submitted at the time of getting Environment Clearance. The same was submitted to DMO Pakur vide letter dated 26.04.2016.<br>5. A meeting in this regard was held on 05/06.05.2016 with GoJ wherein PSPCL was asked to submit another land plan showing area of the land for which Environment Clearance has been obtained and area of land which is reserved for Underground Mining purposes separately. PSPCL submitted 6 sets of revised land schedule & revised land map for Pachhwara Central Coal Mine with the office of District Mining Office, Pakur vide letter dated 27.05.2016.<br>6. District Mining Officer/Pakur vide letter dated 10.06.2016 again asked PSPCL to submit the revised boundary Area/Plan of Pachhwara Central coal mine certified from CMPDI. During the meeting with DC Pakur held on 25.07.2016 at Pakur, it was mutually agreed to submit the CMPDI certified map at a later stage. The Revised Draft Lease deed form (Form K) was submitted by PSPCL to DMO Pakur on 25.08.2016 for the revised land of 1151.7 Ha.<br>7. Again, as directed by GoJ in meeting held on 13.09.2016, PSPCL | mining lease which has been sent to the office of Nominated Authority but reply is still awaited.<br>The delay appears to be abnormal at the end of State Authority due to repeated requirement of land details/plan as informed by the allotee. As such, the delay does not appear to be attributable to the Allottee. |

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| | was asked to submit CMPDI certified Boundary Map of 1151.7 Ha of land. CMPDI issued certified boundary map on 03.10.2016, copy of the same along-with revised Lease deed form and Land schedule were submitted to DMO Pakur on 05.10.2016 for processing the application of grant of mining lease in the name of PSPCL.<br>8. Further as discussed during the meeting dated 03.01.2017 held with Commissioner Mines, Dept. of Industries, Mines & Geology, revised lease deed form (Form-K) and land schedule were submitted to DMO Pakur on dated 10.01.2017.<br>9. The draft mining lease for prior approval of MoC, GoIwas sent to MoC vide letter dated 31.03.2017 (Received at MoC on 03.05.2017). On 10.08.2017, MoC sent the file back to Commissioner Mines, Govt. of Jharkhand with the request to resubmit the proposal after getting the issues addressed viz. composite Mine Plan. Director Mines, GOJ, Ranchi vide letter dated 05.10.2017 has asked PSPCL for rectification of the said observations , which were submitted on 27.10.2017.<br>10. The approved Mining Plan vested in the name of PSPCL was only for opencast area of the mine which has been adopted by PSPCL.. Ministry of Coal vide letter dated 12.09.2017 has approved the Mine Closure Plan of Pachhwara Central Coal Mine with the condition that PSPCL shall submit the Composite Mining Plan for entire reserve of the block including opencast and underground area by March 2018. | |
| ii. Delay in transfer of Environment Clearance i.e. on 06.07.2015(Due Date- 01.07.2015):- | Application for EC was submitted timely on 17.04.2015. EC was granted by MoEF& CC on 06.07.2015. | Application for EC was submitted timely on 17.04.2015. EC was granted by MoEF& CC on 06.07.2015.with a delay of 5 days. |
| iii. Transfer of Mine Opening Permission not done(Due Date-01.07.2015):- | PSPCL applied for Mine opening Permission on 17.04.2015 to CCO Kolkata. Application of PSPCL has not been processed by CCO due to want of Mining Lease in the name of PSPCL. | PSPCL applied for Mine opening Permission to CCO timely. However, it has not been processed by CCO for want of Mining Lease.[The matter is discussed above in point no. 2.ii in detail]. Thus the delay is not |

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| | | within the control of the Allottee. |
| iv. Transfer of DGMS Permission not done(Due Date- 01.07.2015):- | PSPCL applied for Mine opening Permission timely on 17.04.2015 to DGMS, Sitarampur. However the same is pending due to Non issuance of Mining Lease in the name of PSPCL. | Allottee applied for Mine opening Permission to DGMS within timelines. As, Mine Opening Permission has not been processed by DGMS for want of Mining Lease, thus the delay is not within the control of the Allottee. |
| v. Delay in transfer of Ground Water Clearance i.e. on 23.05.2017 (Due Date- 01.07.2015):- | PSPCL applied for Ground water clearance timely on 17.04.2015. Ground water clearance has been awarded in the name of PSPCL vide Director, Ground Water Directorate letter dated 23.05.2017. | PSPCL applied for Ground water clearance timely and the clearance has been awarded in the name of PSPCL vide Director, Ground Water Directorate letter dated 23.05.2017. The delay in getting the approval was mainly due to non-posting of any Director in the Directorate after transfer of the previous one for a period of nearly one year.<br>Thus the delay is not within the control of the Allottee. |
| vi. Transfer of Explosive License not done(Due Date- 01.07.2015):- | PSPCL applied for transfer of Licence in its name timely on 28.04.2015. Application of PSPCL is pending with Chief Controller of Explosives, Nagpur as NOC from DC Pakur is a pre-requisite. As per DC Pakur, Mining Lease is per-requisite for issuance of NOC for the use of explosive. | PSPCL applied for transfer of License timely. Application of PSPCL is pending with Chief Controller of Explosives, Nagpur as NOC from DC Pakur is a pre-requisite. As per DC Pakur, Mining Lease is per-requisite for issuance of NOC for the use of explosive. Thus the delay occurred mainly because of consequential activities, is not within the control of the Allottee. |
| vii. Transfer of Consent to Establish not done(Due Date- 01.07.2015):- | PSPCL applied vide Letter dated 09.06.2015 for grant of Consent to Establish, however the same is not required as mine is already in working condition. | As per the Allottee, the said clearance is not required as mine is already in working condition. Hence, the Show Cause against the said delay should be withdrawn. |

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| viii. Transfer of Consent to Operate not done(Due Date- 01.07.2015):- | PSPCL applied timely on 17.04.2015 to the Member-Secretary, Jharkhand State Pollution Control Board for granting approval for "Consent to Operate." However, this is also pending for want of Mining Lease. | PSPCL applied timely for granting approval for "Consent to Operate." However, this is also pending for want of Mining Lease. Thus the delay is not within the control of the Allottee. |
| ix. Land Mutation not done(Due Date- 01.07.2015):- | 1. Application for transfer and vesting of clearance regarding "Land Mutation" was submitted by PSPCL to Deputy Commissioner, Pakur on 02.07.2015 since the Land details were not available. (Annexure -I was given late by MoC.)<br>2. A demand of Rs.43.80 Cr was first raised by DC Pakur vide letter dated 12.08.2015 for transfer of Govt. Land. In view of the clarification given by the Ministry of Coal, GOI vide its letter dated 13.10.2015 that new allottee of Pachhwara Central coal mine need not to pay any amount for Land Mutation, PSPCL vide letter dated 15.10.2015 requested DC, Pakur to review the demand and take necessary steps for transfer of Land in the name of PSPCL. Govt. of Jharkhand also issued Gazette Notification No.834 Ranchi dated 26.11.2015 in this regard, however Registration fee to be paid by PSPCL, if any, for Land Mutation.<br>3. In view of this notification, registration feeis yet to be intimated by DC, Pakur.Recently, DC Pakur vide his office letter dated 13.09.2017 asked PSPCL to deposit Rs. 95,27,49,186 (80% of total amount of Rs. 1,19,09,36,483) through the Challan for transfer of Govt. land in respect of Pachhwara Central Coal Mine. In response to that PSPCL has submitted its reply vide letter dated 15.09.2017 with a request to review the demand in light of MoC's letter dated 13.10.2015 and thereafter Gazette Notification dated 26.11.2015 issued by the Dept. of Revenue, Registration & Land Reform, Govt. of Jharkhand. Reply of DC Pakur is still awaited | Annexure-1 containing Land Details could be provided late to the Allottee by MoC.<br>Further delays are on account on lack of clarity on amount to be paid for land which is post allotment which is still unresolved. The delay is beyond the control of the SB. |
| x. Transfer of Power Line not | This clearance is not mandatory for start of mining operations as | The Allottee has submitted that the said |

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| done(Due Date- 01.07.2015):- | backup power is available through DG Sets. It is further submitted that while approving the Mine Closure Plan by MOC on 12.09.2017, a condition has been imposed to develop an action plan by 31st march 2019 for net zero energy consumption through solar energy as a part of mine closure activities. This provision has been made in the scope of MDO. | clearance is not mandatory for start of mining operations as backup power is available. As such, the Show Cause Notice against the said Milestone may be withdrawn. |
| xi. Approval of Mine Closure Plan (Due Date-01.10.2015):- | Mine Closure Plan was submitted online on 20.12.2016 on the website of MOC. The hard copy of MCP was submitted on 27.12.2016.Mine Closure Plan of Pachhwara Central Coal Mine has been approved by Ministry of Coal on 12.09.2017. | The delay seems to be caused since the submission of Mine Closure Plan was delayed by the Allottee. As such, no relaxation is recommended on this count. |
| xii. Opening of Escrow Account not done(Due Date- 01.10.2015):- | PSPCL is in the process of opening of Escrow Account with CCO Kolkata. | The delay has been caused since the Mine closure Plan has been approved on 12.09.2017. As Mine Closure Plan being part of mining plan has been submitted late by the Allottee, no relaxation is recommended on this count. |
| xiii. Schedule of Production/ Reaching Rated Capacity not acheived for year 2015-16 and year 2016-17. | The target schedule of production has not been achieved during 2015-2016 and 2016-2017 as mining operations at Pachhwara Central coal mine could not be started after its allotment in March 2015, due to delay in selection of MDO on account of litigations pending in the Punjab & Haryana High Court and due to pendency of various approvals/clearance in the name of PSPCL. | The delay has been caused because the grant of ML is still pending and as already explained above, the delay in grant of ML is beyond the control of the SB. |

**Recommendation:**

1. It is observed that there is delay in preparation and approval of mine closure plan and opening of Escrow Account on the part of Allottee. No relaxation can be given and the action in line with the provisions of CMDPA may be taken.
2. Also, there are delays in processing of application for transfer of various statutory clearances including mining lease by authorities concerned primarily the State Government of Jharkhand. These delays are beyond the control of the allottee.

3. Nominated Authority may initiate action as per CMDPA including appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it after issuing a Show Cause Notice to the Allottee.

**9. Parsa East &KantaBasan Allottee- M/s Rajasthan RajyaVidyutUtpadan Nigam Ltd.**

**Allotment Date- 01st April, 2015.**

**The Allottee has been issued Show Cause Notice for deviation from scheduled production of coal.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
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| (i) Transportation Issues: | 1. As per revised Mine Plan, planned production for the year 2015-2016 was 10 MT and not 15 MT(as per SCN by MOC).<br>2. Scheduled production could not be achieved as the said coal mine is located in Greenfield location which is devoid of rail infrastructure required for evacuation of coal.<br>3. The construction of railway siding from the coal mine is expected to be completed by mid 2018. As of Oct 2015, 33 km out of 75 km have been completed.<br>4. The coal from the said coal mine is transported to available nearest railway siding via road and further to RRVUNL via rail.<br>5. Road transportation of coal has met with public resistance and also restrictions of no-entry time imposed by Collector-Surguja and Collector- Surajpur on routes to Kamalpur and Ramanujnagar respectively.<br>6. Additionally Collector Surguja has limited road transportation to 550 trucks.<br>7. As per RRVUNL, after completion of railway connectivity upto mine head, which is expected by mid 2018, the company may be in a position to adhere to the Mining Plan from 7th year (2018-19) onwards i.e. 15 MTPA. | This issue has already been addressed in the previous meetings. |
| (ii) NGT Issues: | 1. The principal bench of NGT of Delhi on 24.03.2014 suspended all mining and other activities from the coal mines.<br>2. Hon'ble Supreme Court on 28.04.2014 granted stay on the NGT order causing further delay due to remobilization of resources and | The period of one month i.e. time period from 24.03.2014 (date on which NGT of Delhi suspended all mining and other activities from |

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| | manpower.<br>3. Further due to cancellation of 204 coal blocks by the Hon'ble Supreme Court on 24.09.2014, the MDO ramped down the production and fresh investments also stopped.<br>Production of 8.27 MT of coal was achieved in FY 2017 and 10 MT production is expected to be achieved in FY 2018.<br><br>In the 3rd meeting of the Scrutiny Committee, Allottee was asked to submit the documentary evidence in regard to NGT order banning mining operations and subsequent resumption of mining activity. Allottee submitted documentary evidence with respect to the suspension of mining activity by NGT (dated 23.04.2014). However, the Allottee did not submit any documentary evidence in relation to lifting of the said ban. It was decided by the Committee members that the allotteemay be advised to submit within 10 days the documentary evidence regarding lifting of the said ban by NGT and a decision would be taken accordingly.<br><br>The Allottee has now submitted a copy of Supreme Court's order dated 28.04.2014granting stay on the NGT order. | the coal mines) till 28.04.2014 (date on which Hon'ble Supreme Court granted stay on the NGT order) may be considered as delay under force majeure. |

**Recommendation:**

1. The stay order is for the actions in the period prior to re-allotment of coal mines to M/s. RRVUNL and as such may be considered as force majeure.
2. For delay in achieving coal production due to non-availability of transport facility no relaxation is recommended. For the deviation from the scheduled production as per mine plan, the Nominated Authority may proceed with actions as stipulated in CMDPA including appropriation of Performance Security for the aforesaid delays as per the weightage assigned against it after issuing a Show Cause Notice to the Allottee.

**10. KhagraJoydev Allottee- M/s Damodar Valley Corporation**

**Allotment Date- 01st April, 2015.**

**The reply submitted by M/s DVC in respect of Show Cause Notices issued for non-compliance of the timelines of various Milestones is as under.**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
|---|---|---|
| **1. Application for transfer of Statutory Clearances** | | Weightage assigned for appropriation is 12% |
| (i) Non submission of application for Ground Water clearance(Due Date- 01.05.2015): | 1. The prior allottee had not obtained the said clearance.<br>2. Application for Ground Water clearance could not be made since the documents pertaining to ownership of the land in which pumps shall be installed for withdrawal of ground water were not available.<br>3. Annexure I containing Land Details were provided by MoC in Jan' 2016.Moreover, the land acquired by the prior allottee was vested with the State Govt. and the transfer of said land in the name of DVC is still pending. Unless, the land is transferred/ given on long term lease by GoWB in favour of DVC, DVC cannot claim ownership to the said land.<br>4. The land acquired by the prior allottee (M/s DVC EMTA Coal Mines Ltd.) is yet to be transferred in the name of M/s DVC. As such, they application for ground water clearance cannot be done. | The prior allottee had not obtained the said clearance on the plea of land details. Moreover, even after obtaing annexure I containing Land Details from MoC in Jan' 2016, the application has not been submitted for ground water clearance.<br>Hence, the allotee is responsible for the delay. |
| ii. Non submission of application for Explosive License(Due Date- 01.05.2015): | 1. The prior allottee had not obtained the said clearance.<br>2. The MDO, which was yet to be appointed, shall decide upon the type of explosives to be used in order to minimize the cost of production, and as such shall obtain the Explosive License. Now, MDO has been appointed in March ' 2017. | Even after obtaining land details in Annexure I in Jan 2016, the allotee did not apply for explosive licence on the plea of appointment of MDO. This cannot be accepted, as the Occupier of the explosive magazine cannot be MDO rather allotee representative has to be appointed as |

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| | | Occupier as per statute.<br>Hence allotee is responsible for the delay. |
| **2. Transfer of Statutory Clearances** | | Weightage assigned for appropriation is 8% |
| i. Delay in grant/execution of Mining Lease i.e. on 14.10.2015(Due Date-01.07.2015):- | 1. Application for transfer of Mining Lease was submitted to Government of west Bengal on 27.4.2015 i.e. within the timelines.<br>2. State Govt. vide letters dated 06.5.2015 &dt.01.6.2015 sought certain documents which were submitted on 7.5.2015 and 19.6.2015 respectively along-with necessary fees & draft of Mining Lease Deed.<br>3. State Govt. vide letter dated 26.6.2015 asked for submission of (i) Geo reference Map with plot-wise granted area dully vetted by the Chief Mining Officer, West Bengal, which was vetted on 10.07.2015 and (ii) latest Plot the proposed lease area duly authenticated by the District Land & Land Reform Officer, Birbhum District, West Bengal, which was vetted on 30.09.2015.<br>4. Mining Deed executed on 14.10.2015. | Delay of 3 months 13 days. |
| ii. Delay in transfer of Environment Clearance i.e. on 06.07.2015(Due Date-01.07.2015):- | 1. Application for transfer of Environment Clearance(EC) was submitted timely to MoEF& CC on 07.04.2015.<br>2. MoEF& CC vide email dated 17.06.2015 asked for submission of an undertaking which was submitted by email on 18.06.2015.<br>3. EC was transferred in favour of DVC on 06.07.2015 by MoEF& CC. | Delay of 5 days. |
| iii. Not obtaining Mine Opening Permission (Due Date-01.07.2015):- | 1. Application for transfer of Mine Opening Permission was submitted timely to the Coal Controller Office on 27.04.2015.<br>2. CCO vide letter dated 26.05.2015 sought certain documents which were submitted on 01.06.2015. Vide letter dated 29.06.2015 the Coal Controller directed DVC to submit application for opening permission in the prescribed form along-with documents like | Application for transfer of Mine Opening Permission was submitted timely to the Coal Controller Office.<br>However, only a part of the required land was purchased by the prior allottee. Further, Annexure I containing Land Details |

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| | Mining Lease, Environment Clearance, land in favour of new allottee. In this respect, it is to mention that only a part of the required land was purchased by the prior allottee. Annexure I containing Land Details were provide by MoC in Jan' 2016.Moreover, the land acquired by the prior allottee was vested with the State Govt. and the transfer of said land in the name of DVC is still pending. After getting possession of total land required for commencement of mining operation application to the Coal Controller shall be made for Mine Opening permission. | were provided by MoC in Jan' 2016. Moreover, the land acquired by the prior allottee wasvested with the State Govt. and the transfer of said land in the name of DVC is still pending. Without possession of land required for commencement of mining operation application to the Coal Controllercan not be lodged for Mine Opening permission.<br>Hence, the delay may be not be attributed to the Allottee. |
| iv. Not obtaining transfer of Ground Water Clearance(Due Date- 01.07.2015):- | 1. The prior allottee had not obtained the said clearance.<br>2. Application for Ground Water clearance could not be made since the documents pertaining to ownership of the land in which pumps shall be installed for withdrawal of ground water were not available.<br>3. Annexure I containing Land Details were provided by MoC in Jan' 2016.Moreover, the land acquired by the prior allottee was vested with the State Govt. and the transfer of said land in the name of DVC is still pending. Unless, the land is transferred/ given on long term lease by GoWB in favourod DVC, DVC cannot claim ownership to the said land.<br>4. The land acquired by the prior allottee (M/s DVC EMTA Coal Mines Ltd.) is yet to be transferred in the name of M/s DVC. As such, they application for ground water clearance cannot be done. | The allotee has not applied for ground water clearance even after receipt of annexure I with land details. Hence the allotee is responsible for the delay. |
| v. Not obtaining transfer of Explosive License(Due Date- 01.07.2015):- | 1. The prior allottee had not obtained the said clearance.<br>2. The MDO, which was yet to be appointed, shall decide upon the type of explosives to be used in order to minimise the cost of production, and as such shall obtain the Explosive License. MDO has been appointed in March ' 2017. | Even after obtaining land details in Annexure I in Jan 2016, the allotee did not apply for explosive licence on the plea of appointment of MDO. This cannot be accepted, as the Occupier of the explosive |

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| | 3. The land required for mining and other infrastructure facility including Explosive magazine shall be purchased through direct negotiation with the land owners as the State Government is yet to notify rules for acquisition of land under the RTFCTLARR Act, 2013. District Administration vide Notice dated 06.06.2017 formed a committee for settlement of issues related to compensation for land including Rehabilitation & Resettlement package. Social Impact assessment is under progress. Thereafter, the committee will decide upon the R & R package & compensation for land. After the same is agreed upon, registration of land in favour of DVC will take place. Application for license for storage, handling and use of Explosives shall be submitted to the concerned Government Authority on getting land in favour of DVC. | magazine can not be MDO rather allotee representative has to be appointed as Occupier as per statute.<br>Regarding timeline for obtaining explosive license may not be 3 months because it is not a case of transfer of statutory clearance from the previous allotee.<br>Hence,allotee is responsible for the delay. |
| vi. Not getting Land Mutation(Due Date-01.07.2015):- | 1. Annexure-I of the Allotment Order containing Land Details was issued in Jan 2016 and October, 2016 by the Nominated Authority. However, the said land was already vested with the State Government being ceiling surplus land under Section 14Y of the West Bengal Land Reforms Act.<br>2. Meanwhile, DVC had already submitted application to Land & Land Reform Department, Govt. of West Bengal on 29.04.2015 (on time) for Long Term Settlement of the said land.<br>3. The L & LR department, GoWB vide letter dated 26.08.2015 requested the District Magistrate & Collector. Birbhum for initiation of process for Long Term Settlement of the Vested Land in favour of DVC. Proposal submitted by the District Authorities to the State Land & Land Reforms Department, West Bengal for issuance of necessary orders. Issuance of necessary order and demand notice for payment of the transfer fee etc. is awaited from the State Government for Long Term Settlement of the said land in favour of DVC. Regular persuasion is being done with the | Annexure-I of the Allotment Order containing Land Details was issued in Jan 2016. However, DVC had submitted application to Land & Land Reform Department, Govt. of West Bengal on 29.04.2015 (on time) for Long Term Settlement of the said land, which is yet to be done by the State Government. Since no representative of the State Govt. was present in the meeting it is not possible to ascertain the reasons for delay. |

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| | department. | |
| vii. Not obtaining transfer of Power Line from State Electricity Board(Due Date- 01.07.2015): | 1. It is to mention that the prior allottee i.e. M/s DVC EMTA Coal Mines Limited, had not applied to the State Electricity Board for Power Line.<br>2. Application to the State Government utility shall be submitted after registration of land for setting up of sub-station at site | The allotee has not submitted application for the powerline on the plea that previous allotee had not applied for the same. This is not desirable. Regarding timeline this may not be a case of transfer of statutory clearance but even considering a fresh application there appears to be excessive delay attributable to allotee. |
| viii. Approval of Mine Closure Plan(Due Date- 01.10.2015):- | 1. Application for approval of Mine Closure Plan was submitted by the prior allottee to MoC on 25.09.2012. On the date of de-allocation of the coal block, it was under active consideration of MoC.<br>2.On 27.04.2015, DVC submitted application to MoC to approve the Mine Closure Plan submitted by the prior allottee and transfer the approval in favour of DVC. A reminder was sent on 01.07.2015.<br>3.Director (Technical), MoC, vide email dated 29.09.2015 advised DVC to update the earlier submitted Mine Closure Plan, if required, and also give consent that DVC agree with the said plan and submit it for approval. A copy of Mine Closure Plan along with undertaking by DVC was submitted to Ministry of Coal on 03.11.2015.<br>4. Thereafter, MoC vide letter dated 04.12.2015 advised to summit fresh Mine Closure Plan.Accordingly, fresh Mine Closure Plan prepared by M/s CMPDIL was submitted to MoC on 04.05.2017.Presentation before Expert Committee held on 30.11.2017. Committee has directed to get the OB dump area explored and in case of existence of coal, advised to come up with revised mining plan and mine closure plan so that dumping over coal bearing area could be avoided. | On 27.04.2015(within timelines), DVC submitted application to MoC to approve the Mine Closure Plan submitted by the prior allottee and transfer the approval in favour of DVC. However, MoC directed the Allottee to submit fresh Mine Closure Plan on 04.12.2015 and the same was submitted by Allottee on 4.5.2017.<br>This clearly indicates delay on part of the alottee. |

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| ix. Escrow Account not yet opened(Due Date- 01.10.2015):- | On approval of the Mine Closure Plan by Ministry of Coal. Government of India, Escrow Account will be opened. | Opening ofEscrow Account is a consequential activity after approval of the Mine Closure Plan by MoC, GoI. And this activity is delayed as a consequence of delay in approval of Mine Closure Plan which is on part of allotee. |

**Recommendation:**

1. There are delays in making applications for statutory clearances as well in transfer of statutory clearances from the previous allotee i.e. M/s DVC EMTA Coal Mines Ltd.) comprising the present allotee also.
2. There has been delay in processing of application for transfer of various statutory clearances by authorities concerned primarily the State Government of West Bengal. As no representative form the State Government of West Bengal was present in the meeting it could not be ascertained whether the aforesaid delays are administrative/procedural delays or abnormal delays beyond the control of SB/concerned state authority. State Government may be requested to confirm whether delays as stated by the Allottee are in-ordinate without any fault of SB or not.
3. On receipt of the reply, Nominated Authority may take appropriate decision including the appropriation of Performance Security for the aforesaid delays as per the weightage assigned, after issuing a Show Cause Notice to the Allottee. However if no view is obtained from the State Govt. in a given time frame, the Nominated Authority may take action including the appropriation of Performance Security, as deemed fit.

**11. GarePlama IV/5 Allottee- M/s Hindalco Industries Limited**

**Vesting Order- 01.04.2015**

**The reply submitted by M/s Hindalco Industries Limited in respect of Show Cause Notices issued for non compliance of the timelines of milestones is as under:**

| Deviation from the Efficiency Parameters | Reply of Allottee to Show Cause Notice | Observation of the Committee |
|---|---|---|
| (i) Non submission of application for Mutation of Land (Due Date- 01.05.2015): | The Prior Allottee (M/s. Monnet Ispat& Energy Limited) had not shared any details of the vested land due to which a significant time was spent to obtain details of land from Land and Revenue Department. | The Successful Bidder was well aware of the documents available in respect of the mines as all the available details were uploaded in the Mine Dossier and the Successful Bidders must have gone through the same before bidding for the mine. Hence, delay is attributed to the Bidder, hence, may not be condoned. |
| (ii)Non submission of application for Power Line from State Electricity Board (Due Date- 01.05.2015): | There was no power supply connection in Gare Palma IV/5 coal mine. The power for operation was supplied through DG Set. Inspite of availability of power supply through DG Set, applied for new connection to State Electricity Board on 09.10.2015. | As no power supply has been vested through Vesting Order, hence, question of transfer of the same does not arise. Also, power for operation is being supplied through DG Set.<br>Timelines of Milestones stipulated in Efficiency Parameters provides for application for **transfer** of Statutory Clearances within one month from Allotment Date. Hence in the present case, the timeline of one month is not applicable since the said clearance had to |

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| | | be obtained afresh.<br>Thus the delay is not attributable to the allottee. |

**<u>Recommendation:</u>**It is observed that there is a delay in submission of application for mutation of land. As such, in the first instance, Nominated Authority may proceed with actions as per CMDPA including appropriation of Performance Security for the aforesaid delay as per the weightage assigned against it after issuing a Show Cause Notice to the Allottee.

**12. MarkiMangli I Allottee- M/s TopworthUrja& Metals Limited**

**Vesting Order- 30.09.2015**

**In the 3rd meeting, the matter regarding deviation from the Scheduled production as per Mine Plan, was placed before the Committee. The representative from the Successful Bidder had not attended the meeting and Committee had recommended that as representatives of the Successful Bidder were not present in the meeting decision regarding the delay in achieving PRC and subsequent appropriation of Performance Security may be based on the reply to Show Cause Notice, as submitted by the Bidder.**

**Accordingly, reply to Show Cause Notice submitted by the Successful Bidder as well as subsequent letter dated 05.01.2018 submitted by the Bidder was placed before the Committee but because of paucity of time this could not be discussed. It was decided to deliberate in the next meeting.**

**13. Ardhagram M/s. OCL Iron & Steel Ltd.**

**Vesting Order- 16.07.2016**

**In its 2nd meeting, the Scrutiny Committee had recommended initiation of proceedings against SB in terms of Clause 10 read with Clause 6 of the CMDPA. As per Clause 10.3 " any non- compliance with the Efficiency Parameter would result in appropriation of the Performance Security in the manner stipulated in Clause 6 (Performance Security) and in case where such non-compliance exceeds for more than five instances, such non-compliance may also result in termination of this Agreement as provided in Clause 24 (Effective date, Term and Termination)". For this purpose a Show Cause Notice was issued to the SB, the reply of which was placed before the Scrutiny Committee for final decision.**

**In the 4th meeting, the Committee noted that no new facts have been brought to light in these replies, hence, NA may initiate action as decided in 2nd Scrutiny Committee meeting. However, members expressed that representative of West Bengal Government did not attend any of the meetings of the Scrutiny Committee, as such, it was opined that NA may like to obtain relevant information from the State Government within a stipulated time frame before taking final action against SB.**

**Accordingly, State Government vide letter dated 18.12.2017 was requested to furnish their comments and relevant information in order to facilitate further decision in the matter. However, no reply was received from the State Government of West Bengal.**

**The matter was again placed before the Committee in its 5th meeting wherein the Committee opined that it may not be possible to arrive at a conclusion until the confirmation is received from the State Government. However, nominate authority may proceed to take penal action including appropriation of Performance Security and/or de-allocation of the coal block as applicable vide CMDPA without further loss of time.**

**Annexure I**

**LIST OF PARTICIPANTS**

**A. LIST OF MEMBERS**

| S. No. | Name | Designation | Organization |
|---|---|---|---|
| 1. | Shri Om Prakash | Chairman, Professor, IIT ISM, Dhanbad | IIT, ISM, Dhanbad |
| 2. | Shri N K Singh | Member Convenor& Dy. Secretary to the Government of India | Ministry of Coal |
| 3. | Shri A K Rana | Member & GM, UMD, CMPDIL | CMPDIL |
| 4. | Dr. Sujoy Majumder | Member &OSD (Mining & RM) | Coal Controller Organization |
| 5. | Shri Sanjay Khare | Member &Dy. Director | DM Govt. of Chhattisgarh |
| 6. | Shri Arun Kumar | Member &I/c Coal | DIGM Govt. of Jharkhand |
| 7. | Shri Vineet Austin | Member &Director | DGM MP |
| 8. | Shri BRV Susheel Kumar | Member & Director | Govt. of Telangana |

**B. LIST OF ALLOTTEE/BIDDERS**

| S. No. | Name | Designation | Organization |
|---|---|---|---|
| 1 | Shri Amalesh Kumar | Director (Mines) | West Bengal Power Development Corporation Limited |
| 2 | Shri Ambar Roy | Advisor (MMC) | West Bengal Power Development Corporation Limited |
| 3 | Shri H J Rama Swamy | S E (Mines) | KPCL |
| 4 | Shri S N Sharma | Resident Engineer | KPCL |
| 5 | Shri A K Sahay | Advisor | KPCL |
| 6 | Shri Sanjay Gupta | Additional SE/Fuel | PSPCL Patiala |
| 7 | Shri Harminder Singh | Dy. CE | PSPCL Patiala |
| 8 | Shri MukeshSaxena | GM | SAIL |
| 9 | Shri Anil Kumar Rai | Dy. GM | SAIL |
| 10 | Shri Vivek Mishra | Head President | HIL |

| | | | |
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| 11 | Shri ShouvikMajumder | Vice President | HIL |
| 12 | Shri Sudhir Mukherjee | Dy. CE (M) Mining | DVC |
| 13 | Shri Jagesh Kumar Mandiye | Dy. CE (Mining) | DVC |

**ANNEXURE- L**

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BEFORE THE PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-221, SECOR 34-A, CHANDIGARH

PETITION NO. OF 2018

**IN THE MATTER OF:**

Petition under Section 86 (1) (a) read with Section 62 of the Electricity Act, 2003 regarding recovery of the payment of additional levy made in pursuance to the Order of the Hon'ble Supreme Court dated 24.9.2014

**AND**

**IN THE MATTER OF:**

Punjab State Power Corporation Limited
The Mall, Patiala-147001
Punjab - Petitioner

Versus

1. PANEM Coal Mines Limited
   3rd Floor, 6 Poorvi Marg,
   Vasant Vihar, New Delhi-110057

2. Eastern Minerals & Trading Agencies Limited
   5 B Nandalal Basu Sarani, Kolkata,
   West Bengal 700071

3. Government of Punjab
   Through the Secretary,
   Department of Energy,
   Sector-9, Secretariat,
   Chandigarh-160017 - Respondents

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner- Punjab State Power Corporation Limited is a Company incorporated under the provisions of the Companies Act, 1956 with its registered office at Patiala, Punjab.

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2. The Petitioner is engaged in the business of generation, distribution and retail supply of electricity in the state of Punjab and has been supplying power to the Public at large.

3. The Pachhwara central block coal mine was allotted to the erstwhile Punjab State Electricity Board for the exclusive use of the generating stations of Punjab State Electricity Board. The said coal block is included at Serial No. 25 in the list of 40 coal blocks in issue before the Hon'ble Supreme Court in the coal block allocation case wherein the mining lease had been granted and mining had already started.

4. The above Pachhwara Central Block Coal mine have been in operation with the mining of coal being undertaken since February, 2006. The coal mined from the said mine is exclusively used for the 3 thermal power stations and all such thermal power stations are under commercial operation and generating electricity to maintain the distribution and supply of electricity to the consumer at large. The Punjab State Power Corporation Limited, the Petitioner herein is undertaking both generation and distribution of electricity and accordingly, there is no power purchase agreement, as in the case where the generating company and the distribution companies are independent entities.

5. The Punjab State Electricity Board was constituted under Section 5 of the Electricity (Supply) Act, 1948 as the State Electricity Board for the State of Punjab and inter-alia vested with the functions of generation, transmission and distribution of electricity as an integrated utility in the State of Punjab.

6. The Punjab State Electricity Board (now succeeded by PSPCL) has established the following generating stations in the state of Punjab:

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(a) Guru Nanak Dev Thermal Plant, Bhatinda, Punjab with an initial installed capacity of 440 MW (4 x 110 MW) the units of which have been under commercial operation w.e.f. the following dates:

Unit 1: 22.09.1974
Unit 2: 19.09.1975
Unit 3: 29.03.1978
Unit 4: 31.01.1979

(b) Guru Gobind Singh Super Thermal Power Plant, Ropar, Punjab with an installed capacity of 1260 MW (6x210 MW) the units of which have been under commercial operation w.e.f. the following dates:

Unit 1: 01.01.1985
Unit 2: 01.10.1985
Unit 3: 25.09.1988
Unit 4: 01.08.1989
Unit 5: 29.09.1992
Unit 6: 14.12.1993

(c) Guru Hargobind Thermal Plant, Lehra Mohabbat, Punjab with an installed capacity of 920 MW (2 x 210 + 2 x 250 MW) the units of which have been under commercial operation w.e.f. the following dates:

Unit 1: 26.06.1999
Unit 2: 04.01.1999
Unit 3: 16.10.2008
Unit 4: 25.01.2010

7. Pursuant to the unbundling and reorganisation of the Punjab state Electricity Board in terms of Section 131 of the Electricity Act, 2003,

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with effect from 16/04/2010 the generation and distribution functions of the Punjab State Electricity Board have been vested in the Punjab State Power Corporation Limited, the Petitioner herein. As mentioned above, the Petitioner is a wholly owned Government of Punjab entity and is engaged in the business of generation of electricity from the thermal generating stations as well as distribution and retail supply of electricity to the consumers at large in the State of Punjab.

8. The Petitioner, Punjab State Power Corporation has also been renovating and modernising the above units to ensure sustained operation of generation with higher efficiency for the benefit of consumer at large.

9. The above generating stations are thermal generating stations which use coal as the fuel for generation and supply of electricity.

10. For the purpose of the coal requirements of the generating stations of erstwhile Punjab State Electricity Board, the Government of India had allotted the Pachhwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board.

11. Pursuant to the above, a Special Purpose Vehicle, namely Panem Coal Mines Limited was created for mining of coal from the said Pachhwara Central Block coal mine maintaining the exclusive use for the power plants of erstwhile Punjab State Electricity Board. By notification dated 22/02/2002, the Government of India specified the end use of the supply of coal from the Pachhwara Central Block by PANEM Coal Mines Limited on an exclusive basis to the power plants of the erstwhile Punjab State Electricity Board for generation of thermal power and further, subject to the condition that the Punjab State Electricity Board shall hold at least 26% of the voting equity share capital of PANEM Coal Mines Limited.

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12. The Government of India, Ministry of Coal & Mines, by communication dated 25/08/2004 addressed to the Government of Jharkhand, communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachhwara Central Block covering an area of the 1278 hectares to M/s PANEM Coal Mines Limited for a period of 30 years, inter-alia, subject to the condition that the coal extracted shall be exclusively supplied to the power plants of Punjab State Electricity Board for use in generation of power.

13. The mining lease was granted by the Government of Jharkhand to M/s PANEM Coal Mines Limited by Mining Lease Deed dated 16/11/2004 for an area of 905.41 hectares and by Mining Lease Deed dated 30/03/2005 for an area of 372.96 hectares aggregating to a total of 1278.37 hectares.

14. Pursuant to the above, the mine was developed; the mining and supply of coal began from March, 2006 and continued upto 31.03.2015. The coal mined from the Pachhwara Central Block coal mine is exclusively supplied to the three generating stations of the Petitioner- Punjab State Power Corporation Limited as specified above.

15. The specific condition under the coal allotment as well as the mining lease is that the coal is to be used exclusively for the generation of electricity from the power plants of erstwhile Punjab state Electricity Board and this has been scrupulously followed during all these years without any deviation whatsoever.

16. Pursuant to the unbundling and reorganisation of the Punjab state Electricity Board in terms of Section 131 of the Electricity Act, 2003, with effect from 16/04/2010 the generation and distribution functions

of the erstwhile Punjab State Electricity Board have been vested in the Punjab State Power Corporation Limited, the Petitioner herein. Therefore, with effect from 16/04/2010 the entire coal mined from the Pachhwara Central Block is exclusively supplied to the Petitioner and to no other person.

17. The above coal mine was subject to proceedings before the Hon'ble Supreme Court in the coal block allocation case, wherein orders were passed for cancellation of the coal blocks. Further, in the Orders dated 25th August 2014 and 24th September 2014, the Hon'ble Supreme Court has been further pleased to direct payment of additional compensation in the sum of Rs. 295 per MT for the coal extracted and used till 24.09.2014 in regard to various coal blocks including Pachhwara Central Coal Mine Block.

18. In pursuance of the above decision of the Hon'ble Supreme Court, the Government of India notified the Coal Mines (Special Provisions) Second Ordinance, 2014 providing for the terms and conditions subject to which the Petitioner could get the allotment of the said Pachhwara (Central) Coal Block directly in the name of the Petitioner. In terms of the said Ordinance, PANEM Coal Mines Limited, a Joint Venture Company of the PSEB and EMTA Limited, had to deposit a sum of Rs. 391,46,36,262/- being 26% of the compensation payable at the rate of Rs. 295/- per MT for the 51038282.42 Metric Tonnes coal extracted from the Pachhwara (Central) Coal Block since inception till 24.09.2014 in accordance with the Order of the Hon'ble Supreme Court, pending decision by the Central Government on the allocation of the said mine to the Petitioner. The erstwhile PSEB was also required to deposit compensation at the rate of Rs. 295/- per MT upto June 2015 for the coal extracted from the Pachhwara (Central) Coal

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Block from 25.09.2014 to 31.03.2015 in accordance with the order of the Hon'ble Supreme Court.

**19.** Accordingly, the Petitioner deposited a sum of Rs. 391,46,36,262/- with the Central Government on 31.12.2014 through RTGS vide UTR No. STBPR52014123100659044 **(Annexure 'A')** in Coal controller's Account No. 0389050190862 with United Bank of India, Old Court House Street Branch, Kolkata-700001 having Bank IFSC Code No. UTBI0OCH175 and had applied for the allocation of the Pachhwara (Central) Coal Block for the end-use of the various power stations mentioned herein above. This payment has been made by the petitioner after availing loan of Rs. 195.00 Crore each from REC & PFC.

**20.** In the circumstances mentioned above, on or about 05.03.2015, the Petitioner filed a petition before this Hon'ble Commission being Petition No. 13 of 2015 praying for the following reliefs:

> *"24. It is, therefore, respectfully prayed that this Hon'ble Commission may be pleased to:*
>
> *(a) consider the amount of Rs. 391,46,36,262/- already paid by the Petitioner and such other amounts as may become payable in terms of the orders passed by the Hon'ble Supreme Court (mentioned herein above) and in terms of the Coal Mines (Special Provisions) Second Ordinance, 2014 notified by the Central Government in the revenue requirements of the Petitioner;*
>
> *(b) allow the Petitioner to recover the said amount alongwith interest in the tariff for distribution and retail supply of electricity to be determined by the Hon'ble Commission for the financial year 1.4.2015 to 31.3.2016; and*
>
> *(c) pass such further order or orders as this Hon'ble commission may deem just and proper in the circumstances of the case"*

21. By judgement and order dated 01.09.2015 this Hon'ble Commission was pleased to decide the said petition, inter alia, holding as under:

> *"From the contents of the letters dated 31.12.2014, 11.05.2015 and 08.07.2015, written by PSPCL to Ministry of Coal and Nominated Authority, it is gathered that as per Coal Mine (Special Provision) Second Ordinance 2014, the liability to pay the additional levy of Rs.295 per tonne is on the "prior allottee" i.e. Panem Coal Mines Ltd. The amount deposited by PSPCL is subject to the liability of making the deposit by Panem Coal Mines Ltd. The amount deposited by PSPCL is refundable and this fact has been admitted by the PSPCL in the Petition also.*
>
> *F. The clauses of Agreement of Captive Coal Mining Project of Punjab State Electricity Board through the joint venture signed on 21st March, 2001, relevant in the matter, are reproduced as under:*
>
> *i) Article 3(2) states as under:*
> *treated as consideration for the allotment to PSEB of 13,00,000 shares of Rupees 10 each of the company".*
>
> *ii) Article 3(5) states as under:*
> *"For maintaining PSEB's equity capital holding at 26% of the total paid up equity capital, if PSEB is to be allotted shares which will increase its total shareholding beyond 13,00,000 shares then consideration for allotment of such additional shares shall be brought in by EMTA and partners and PSEB shall be allotted the 26% shares in the additional shares capital being mobilized with equivalent voting rights".*
>
> *iii) Article 3(6) states as under:*
> *"PSEB shall not be required to make any financial contribution to the company at any time"*
>
> *iv) Article 6 states as under:-*
> *"Subject to other provisions of this Agreement, EMTA and PARTNERS as the selected bidder shall ensure that the Company raises capital and other finances required for the business of the Company. EMTA and PARTNERS shall not require PSEB to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds."*

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*In the light of above, the Commission observes that any refundable payment made by PSPCL to MoC, GoI cannot be treated as payment towards cost of material (coal) and the same cannot be treated as expenses in accounting and for tariff determination.*

*G. The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, Government of Punjab on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to Government of Punjab which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB's equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB's equity which has been transferred to Govt. of Punjab but has not been re-vested in PSPCL.*

*In the light of above, it is concluded that the refundable amount of Rs. 391,46,36,262 (paid by PSPCL to GoI), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff.*

*The petition is dismissed."*

22. Aggrieved by the said decision, the Petitioner filed an appeal being Appeal No. 259 of 2015 before the Hon'ble Appellate Tribunal for Electricity. A copy of the Memorandum of Appeal filed before the Hon'ble Appellate Tribunal on 12.10.2015 (without annexures) is attached hereto and marked as **Annexure 'B'.**

23. By judgement and Order dated 19.01.2018, the Hon'ble Appellate Tribunal has been pleased to direct as under:

*"Punjab State Power Corporation Limited, the Appellant herein, has filed the instant Appeal, being Appeal No. 259 of 2015, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi,*

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*questioning the legality and validity of the Impugned Order dated 1.9.2015 passed in Petition No. 13 of 2015 on the file of the Punjab State Electricity Regulatory Commission, Chandigarh and to direct the State Commission to decide the dispute on merits and to pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice and equity.*

2. *The learned counsel appearing for the Appellant, Mr. M.G. Ramachandran, has filed a Memo on 19.01.2018 and the same was take on record. The submissions made in the Memo reads as under:-*

1. *"The Appellant, Punjab State Power Corporation Limited (herein after referred to as 'PSPCL') has filed the above appeal challenging the decision dated 01.09.2015 passed by the Punjab State Electricity Regulatory Commission in Petition No.13 of 2015.*

2. *The matter in issue relates to the issue whether the Appellant is entitled to seek the pass through in the Tariff the amount of Rs. 391,46,36,262 {Rs. 391.46 cores} paid to the nominated authority of the Central Government, in terms of the Coal Mine (Special Provisions) Second Ordinance, 2014.*

3. *In the Impugned order the State Commission has decided against the Appellant on the ground that refundable amount {and the interest thereon} cannot be treated as expenditure revenue requirements of the Appellant and is not chargeable to the consumers of the state through Tariff {Page 64 para G}. In the earlier part the State Commission had observed that the refundable payment made by the Appellant to the Ministry of Coal, Government of India cannot be treated as payment towards the cost of material {Coal} and the same cannot be treated as expenses in accounting and for Tariff determination.*

4. *Without prejudice to the Appellant's rights and contention on merits, it is respectfully stated that till date the Appellant has not been given any refund of the amount by the Government of India and the Appellant has not been able to recover any amount towards the above either from PANEM Coal Mines Limited, despite efforts*

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*made. In the circumstances the basis on which the impugned decision has been made has not fructified till date and it seems that refund may not be possible at all.*

5. *In the circumstances it is respectfully submitted that the State Commission may be directed to consider the case of the Appellant afresh in the light of the above developments and the Appellant be given an opportunity to place all the relevant material in support of its claim. The Appeal may be disposed o in terms of this Memo".*

*3. We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the Punjab State Electricity Regulatory Commission.*

*4. The learned counsel appearing for the Appellant submitted that the statement made in the memo dated 19.01.2018, as stated above, may be placed on record and the instant Appeal may be disposed of in terms of the statement made in the Memo dated 19.01.2018 in the interest of justice and equity.*

*5.* ***Per-contra,*** *the learned counsel appearing for the Punjab State Electricity Regulatory Commission, inter-alia, contended and submitted that, the statement made in the Memo dated 19.01.2018 filed by the learned counsel appearing for the Appellant, as stated above, may be placed on record. Further, he submitted that the Appellant may be directed to impleadment of State of Punjab as necessary party to adjudicate the matter effectively. Therefore, he submitted that appropriate direction may be issued to implead the State of Punjab also one of the proposed Respondent in addition to impleading, PANEM Coal Mines Limited, EMTA Limited. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.*

*6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent and the statement made in the Memo dated 19.01.2018, as stated above, the instant Appeal, being Appeal No. 259 of 2015, filed by the Appellant, stands disposed of in terms of the Memo dated 19.01.2018 in the interest of equity and justice.*

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*7. The Punjab State Electricity Regulatory Commission is directed to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed Respondent as expeditiously as possible at any date within a period of six months from the date of appearance for the Appellant personally or through his Counsel.*

*8. The Appellant, herein, Punjab State Power Corporation Limited is directed to appear before Punjab State Electricity Regulatory Commission through the Counsel on 06.02.2018 at 11.30 A.M. to collect the next date of hearing.*

*All the contentions of the Appellant and Respondents are left open.*

*9. Having regard the facts and circumstances of the case, as stated above, the instant Appeal filed by the Appellant, stands disposed of. Order accordingly."*

24. In pursuance of the above, the Petitioner is filing the present petition impleading PANEM Coal Mines Limited; Eastern Minerals and Trading Agencies Limited and the Government of Punjab as Respondents. The Petitioner states that even after the expiry of 28 months of the passing of the Order dated 01.09.2015 by this Hon'ble Commission, the Petitioner has not been paid any amount by the Government of India towards the refund of the amount of Rs 391,46,36,262/- paid by the Petitioner in terms of the directions of the Government of India as a condition for re-allotment of Pachhwara (Central) Coal Mine Block to the Petitioner under the Coal Mines (Special Provisions) Second Ordinance, 2014. The Petitioner has made efforts with the Central Government for such refund of the amount deposited by the Petitioner after the process of allocation of the Pachhwara (Central) Coal Mine Block was completed. The copies of the communication sent by the Petitioner to the Government of India in regard to the above are attached hereto and marked collectively as **Annexure 'C' (colly).**

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25. The Petitioner has also made efforts to claim the amount of Rs. 391,46,36,262/- from PANEM Coal Mines Limited and Eastern Minerals and Trading Agencies Limited. PANEM Coal Mines Limited is a shell company and has no business after the cancellation of the Pachhwara (Central) Coal Mine Block in terms of the Orders of the Hon'ble Supreme Court. There is, therefore, no possibility of any recovery of any amount. In fact, the Petitioner is now pursuing for the liquidation of PANEM Coal Mines Limited as the spectrum of business of PANEM Coal Mines Limited is lost and the said company has no assets, interest, licence or otherwise any benefit which can be in any manner encashed for recovery of the amount due to Petitioner or otherwise.

26. As regards Eastern Minerals and Trading Agencies Limited, the Petitioner has filed a claim in the arbitration. The said claim has been filed as a counter claim in a petition filed by Eastern Minerals and Trading Agencies Limited seeking arbitration and recovery of the amount from the Petitioner. The copies of the statement of claim and counter claim filed by the Eastern Minerals and Trading Agencies Limited and the Petitioner are attached hereto and marked as **Annexure 'D'** and **Annexure 'E'** respectively.

27. The Petitioner states that the arbitration is pending before the Arbitral Tribunal of Hon'ble Justice Permod Kohli (Retd.)-*Presiding Arbitrator*, Hon'ble Justice V.K. Gupta (Retd.)-*Co-Arbitrator* and Sh.R.S. Mann IAS (Retd.)-*Co-Arbitrator*. The proceedings in the arbitration are at the stage of filling of Evidence affidavits of the witnesses by the Claimants and Respondents. The Petitioner is filing herewith the Record of Proceedings before the Arbitral Tribunal and marked as **Annexure 'F'.**

28. In the facts and circumstances mentioned above, the Petitioner has not been able to recover any part of the amount of Rs. 391,46,36,262/-

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either from PANEM Coal Mines Limited or from Eastern Minerals and Trading Agencies Limited till date.

29. The Petitioner states that the Government of Punjab has also not paid any money to the Petitioner as against the Rs. 391,46,36,262/-. It is respectfully submitted that the fact that 26% of the equity shareholding in PANEM Coal Mines Limited was held by the Government of Punjab cannot lead to a legal obligation on the part of the Government to pay the amount of Rs 391,46,36,26/- to the Petitioner. The coal was being supplied by PANEM Coal Mines Limited to the Petitioner for use in the generating stations of the Petitioner. The procurement of coal from Pachhwara (Central) Coal Mine Block was by the Petitioner and not by the Government of Punjab. The re-allocation of the Pachhwara (Central) Coal Mine Block has been in the name of the Petitioner. The Petitioner is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation with the right to use the coal extracted from the mine for generation by its generating stations. The entire benefit of re-allocation of the Pachhwara (Central) Coal Mine Block is that of the Petitioner. The payment of Rs. 391,46,36,262/- was by the Petitioner to sustain its operation with the coal from the Pachhwara (Central) Coal Mine Block being available to it on a long term basis.

30. The Petitioner further states that the re-allocation of the Pachhwara (Central) Coal Mine Block is in the larger interest of the consumers in the State as the benefit of cheaper coal from the said mine will reduce the cost of supply of electricity to the consumers.

31. The benefit of cheaper coal being procured by the Petitioner from the Pachhwara Central Coal Mine Block prior to cancellation pursuant to the order dated 25.08.2014 and 24.09.2014, was being passed on to the consumers resulting in reduced tariff. Resultantly, the additional

financial liability owing to the expenditure incurred to secure the allotment of Pachhwara Central Coal Mine Block, representing 50% of the Petitioner coal requirement, was also required to be passed on to the consumers of the state of Punjab, as it was expenditure incurred for the procurement of coal.

**32.** The allotment of the Pachhwara Central Coal Mine Block being cancelled pursuant to the decision of the Hon'ble Supreme Court, the Petitioner would still have been required to procure coal of the same quantity from alternate sources, at a higher cost. Such costs towards energy charges would still have had to be considered as a pass through in the retail tariff and chargeable from consumers of the state of Punjab, which would have unduly increased the economic burden on the consumers.

**33.** In the circumstances mentioned above, the payment of Rs. 391,46,36,262/- by the Petitioner to the Government of India for securing the re-allocation of the Pachhwara (Central) Coal Mine Block is a legitimate and prudent expenditure incurred by the Petitioner in discharging its functions as a generating and distribution company and in the maintaining the supply of electricity to the consumers at large in the State. It was a prudent act on the part of the Petitioner to make the part payment and get the allotment of Pachhwara Central Coal Mine Block to meet the Coal requirements of the Petitioner's own generating stations. The electricity generated based on such coal availability is for maintaining the retail supply of electricity in the State of Punjab. It is therefore an act to safeguard the interest of the consumers and legitimate cost to be duly allowed as revenue requirement.

**34.** In view of the above, the said payment of Rs. 391,46,36,262/- is required to be considered as a part of the revenue requirements of the Petitioner. The Petitioner has funded the above amount through borrowings and internal accrual. The said amount ought to be allowed with carrying cost as revenue expenditure of the Petitioner. The Petitioner has already suffered the above financial exposure including the interest cost on the borrowings since the year 2015 which has affected the Petitioner adversely. The Petitioner, therefore, should be permitted to recover the said amount along with the carrying cost through tariff. The Petitioner undertakes that it will continue to make efforts to secure the above amount from the Government of India and/or from Eastern Minerals and Trading Agencies Limited and if and when any sum is recovered, the same will be adjusted as a revenue in the Annual Revenue Requirements of the Petitioner and thereby the benefit of the recovery will be passed on to the consumers.

35. In view of the above, it is respectfully submitted that the Hon'ble Commission may be pleased to allow the recovery of the amount of Rs.391,46,36,292/- along with carrying cost for the past period from the tariff payable by the consumers at large.

36. The Petitioner has paid the requisite court fees.

37. The Petitioner is filing the present petition in pursuance to the directions contained in the Order dated 19.01.2018 passed by the Hon'ble Appellate Tribunal for Electricity.

38. It is, therefore, respectfully prayed that this Hon'ble Commission may be pleased to:

(a) take on record the petition filed and issue notice to the Respondents;

(b) direct that the amount of Rs. 391,46,36,291/- paid by the Petitioner to the Government of India along with interest cost

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from the date of the payment till date is allowed to be recovered as a part of the Annual Revenue Requirements through tariff in the ensuing financial year subject to adjustment in the event of any recovery of the said amount from the Government of India and/or Eastern Minerals and Trading Agencies Limited as mentioned in the petition;

(c) pass any such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

**PUNJAB STATE POWER CORPORATION LIMITED, PETITIONER**

**PLACE:**

**DATED:**

# ANNEXURE- M

**PUNJAB STATE POWER CORPORATION LIMITED**
**Office of Chief Engineer/Fuel**
PSEB Head Office, The Mall, Patiala – 147001
**Ph.** 0175–2219883 **Fax:** 0175–2215897 **email ID:** cefuelpspcl@gmail.com
Website: www.pspcl.in Corporate Identity No. U40109PB2010SGC033813

To

Dy. Secretary/Public Relations,
PSPCL, Patiala.

Memo. No. 1028/CE/Fuel/C-300(III) Dated: 30.04.2018

**Sub: Publication of e-Tender Notice against Global Tender Enquiry No. 7/CE/FUEL/C-300 (III) dated 30.04.2018 "For selection of Mine Developer cum Operator for development and operation of Pachhwara Central Opencast Coal Mining Project, Distt. Pakur, Jharkhand."**

Enclosed please find herewith 5 (Five) copies of NIT for publication in Newspapers by the PSPCL in classified form. The Publication in different reputed Newspapers of New Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ranchi (Jharkhand) may be got done as per the PSPCL's standard instructions. The detail for publication is as under:-

| | | |
|---|---|---|
| 1. | Name of charge/accounting unit | AO/Cash, PSPCL, Patiala. |
| 2. | Location Code | 800 |
| 3. | Chargeable Head of Account | 76.261 (Revenue) |
| 4. | Name of work alongwith the name of the scheme. | Selection of MDO for Pachhwara Central Coal Block. |

**The issue being of immense importance, the publication of NIT be ensured on urgent basis.**

DA/As above

Chief Engineer/Fuel
PSPCL, Patiala.

Endst. No: 1029/33/CE/Fuel/C-300(III) Dated: 30.04.2018

Copy of above (along with a copy of NIT) is forwarded to the following being members of the Core Committee, for information, please:-

1. Chief Engineer, GGSSTP Ropar.
2. Chief Engineer, GHTP Lehra Mohabbat.
3. Chief Engineer, Thermal Designs, PSPCL, Patiala
4. Chief Cost Controller, PSPCL, Patiala.
5. Legal Advisor, PSPCL, Patiala.

Chief Engineer/Fuel
PSPCL, Patiala.

**CC: 1034/36 dated 30.04.2018**

1. OSD / Power Reforms, Govt. of Punjab, Deptt. of Power (Power Reforms Wing), Chandigarh with the request for publishing the above Tender Enquiry on the Website of Govt. of Punjab, please. **(Fax. No. 0172-2773126)**

2. Sr. PS to Director/Generation, for kind information of Director/Generation, please.

3. SE/IT, PSPCL, Patiala, with the request to publish the above Tender Enquiry on the Website of PSPCL, please.

PUNJAB STATE POWER CORPORATION LIMITED
Office of Chief Engineer/Fuel
PSEB Head Office, The Mall, Patiala – 147001
Ph. 0175–2219883 Fax: 0175–2215897 email ID: cefuelpspcl@gmail.com
Corporate Identification Number(CIN) : U40109PB2010SGC033813
Registration Number: 33813 website: www.pspcl.in
e-tendering portal: www.mstcecommerce.com

# OPEN e-TENDER NOTICE

Office of Chief Engineer/Fuel,
PSEB Head Office, The Mall, PSPCL, Patiala-147001

**Tenders are invited through e-Tendering against Global Tender Enquiry No. 7/CE/FUEL/C-300 (III) dated 30.04.2018, as per details given below:**

| | | |
|---|---|---|
| i. | Item No. | 1 |
| ii. | Description | e-tender for selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Opencast coal mining project, Distt. Pakur, Jharkhand. |
| iii. | Start date for downloading of Specifications/Tender documents from MSTC's web site | 30.04.2018 |
| iv. | Last date for receipt of pre-bid queries | 11.05.2018 |
| v. | Date & Time of Pre bid Conference at VIP Guest House, PSPCL, Sec-51, Adjoining YPS School, Mohali. | 15.05.2018 - 1100 hours<br>Venue: VIP Guest House, Mohali |
| vi. | Last date for clarification of Pre–bid queries | 21.05.2018 |
| vii. | Last Date & Time for downloading of Specifications/Tender documents from MSTC's Website | 13.06.2018 - 1600 hours |
| viii. | Last Date and Time for submission of Tenders by the Bidders | 14.06.2018 - 1600 hours |
| ix. | Date & time for opening of Tenders | 15.06.2018 - 1200 hours |
| x. | Cost of Tender documents | Rs. 50,000/- [Rupees Fifty Thousand Only] + 18% GST, totalling to Rs. 59,000/- [Rupees Fifty Nine Thousand Only] |

Detailed NIT and Specifications may be downloaded from PSPCL e-Tendering portal **https:// mstcecommerce.com**.

**NOTE: It is informed that in case tender process is not completed due to any reason, no corrigendum will be published in newspapers, Details regarding corrigendum may be seen on official PSPCL website:www.pspcl.in and MSTC website: www.mstcecommerce.com.**

Chief Engineer/Fuel
PSPCL, Patiala.

**"Waste of Electricity is crime towards society"**

Punjab State Power Corporation Limited
(PSPCL)
(A Government of Punjab Undertaking)

# Request for Proposal

For
Selection of Mine Developer cum Operator for
Development and Operation of
Pachhwara Central Coal Mine

(Global Competitive Bidding)

**RFP No. 07/CE/Fuel/C-300(III) dated 30 April 2018**

# Table of Contents

# Advertisement

**Punjab State Power Corporation Limited**
The Mall, PSEB Head Office
Patiala, Punjab 147001

**Request for Proposal for Selection of Mine Developer cum Operator (MDO) for Development and Operation of Pachhwara Central Coal Mine**

PSPCL invites bids from experienced mine developer & operators and mining contractors for development and operation of the Pachhwara Central Coal Mine located in Jharkhand, India with a peak rated capacity of 7 Mtpa.

The Request for Proposal (RFP) (RFP No. 07/CE/Fuel/C-300(III) dated 30 April 2018) shall be available on the website of MSTC Ltd. (www.mstcecommerce.com) from 30 April 2018. The entire bid document set can be downloaded from the website of MSTC Ltd. after registration on the MSTC website and payment of the bid document cost of **Rs. 50,000/- [Rupees Fifty Thousand Only] + 18% GST, totaling to Rs. 59,000/- [Rupees Fifty Nine Thousand Only]** from 30 April 2018.

The last date and time for submission of bids is **1600 hours IST on 14 June 2018**. Any further communications, amendments etc. shall be available on the above website of MSTC.

PSPCL reserves the right to reject any or all bids without assigning any reasons whatsoever.

Nodal officer for this bidding process: Deputy Chief Engineer (Fuel), PSPCL
Email: cefuelpspcl@gmail.com; Phone: +91 96461 07111

Sd/-
Chief Engineer (Fuel), PSPCL

## Schedule of Bidding Process

<table>
<tr><th>Sl. No.</th><th colspan="2">Event</th><th>Tentative Schedule</th></tr>
<tr><td>1</td><td colspan="2">Availability of RFP on the web site of MSTC – to be made available free of cost</td><td>30 April 2018</td></tr>
<tr><td>2</td><td colspan="2">Start of registration of bidders on MSTC website</td><td>30 April 2018</td></tr>
<tr><td>3</td><td colspan="2">Start of receipt of bid document cost and download of bid documents</td><td>30 April 2018</td></tr>
<tr><td>4</td><td colspan="2">Last date for receipt of pre-bid queries</td><td>11 May 2018</td></tr>
<tr><td>5</td><td colspan="2">Pre-bid meeting</td><td>15 May 2018<br>Time: 1100 hours<br>Venue: VIP Guest House, Mohali</td></tr>
<tr><td>6</td><td colspan="2">Training of bidders on e-tendering submission by MSTC</td><td>15 May 2018<br>Time: 1100 hours<br>To be held after the pre-bid meeting, at the same venue</td></tr>
<tr><td>7</td><td colspan="2">Issue of responses to pre-bid queries, addendum/ corrigendum if required</td><td>21 May 2018</td></tr>
<tr><td>8</td><td colspan="2">Start date for submission of bids</td><td>22 May 2018</td></tr>
<tr><td>9</td><td colspan="2">Last date for registration and receipt of bid document cost</td><td>11 June 2018 - 1600 hours</td></tr>
<tr><td>10</td><td colspan="2">Last date for download of bid documents</td><td>13 June 2018 - 1600 hours</td></tr>
<tr><td>11</td><td rowspan="3">Bid Submission Date</td><td>Last date for submission of Techno-Commercial Proposal and Initial Price Offer on the MSTC website</td><td>14 June 2018 - 1600 hours</td></tr>
<tr><td>12</td><td>Last date for physical submission of Original Documents and hard copies (in triplicate) of the Techno-Commercial Proposal</td><td>14 June 2018 - 1600 hours<br>To be submitted at the MSTC office at Panchkula</td></tr>
<tr><td>13</td><td>Last date for physical submission of Techno-Commercial Proposal in three copies (one original and two copies)</td><td>14 June 2018 - 1600 hours<br>To be submitted at the MSTC office at Panchkula</td></tr>
<tr><td>14</td><td colspan="2">Opening of envelope containing Original Documents which have been physically submitted by bidders</td><td>15 June 2018 - 1200 hours<br>Venue: PSPCL office, Patiala</td></tr>
<tr><td>15</td><td colspan="2">Opening of Techno-Commercial Proposals received and display of comparative statements on the MSTC website<br>(the Techno-Commercial Proposals of only those bidders who have submitted the requisite Original Documents shall be opened)</td><td>15 June 2018<br>(post opening of the envelopes containing the Original Documents submitted by bidders)</td></tr>
<tr><td>16</td><td colspan="2">Announcement of technically qualified bidders and intimation to the bidders by email</td><td>To be communicated later</td></tr>
<tr><td>17</td><td colspan="2">Opening of Initial Price Offers</td><td>To be communicated later</td></tr>
<tr><td>18</td><td colspan="2">Intimation to technically qualified bidders on whether they are eligible to participate in Reverse Auction</td><td>To be communicated later</td></tr>
<tr><td>19</td><td colspan="2">Reverse Auction process</td><td>To be communicated later</td></tr>
<tr><td>20</td><td colspan="2">Declaration of L1 Bidder</td><td>To be communicated later</td></tr>
<tr><td>21</td><td colspan="2">Issue of Letter of Award</td><td>To be communicated later</td></tr>
</table>

| Sl. No. | Event | Tentative Schedule |
|---|---|---|
| 22 | Signing of Coal Mining Agreement | To be communicated later |

Any deviations from the above schedule shall be intimated and communicated on the MSTC website.

# Data Sheet

| Sl. No. | Parameter | Details |
|---|---|---|
| 1 | Ceiling Price | **Rs. 1145 (Rs. One thousand one hundred and forty five only) per tonne** |
| 2 | Base Mining Charge | **70% (seventy percent) of the L1 Price** |
| 3 | Base Transportation & Handling Charge | **30% (thirty percent) of the L1 Price** |
| 4 | Amount of Bid Security (to be furnished in the form of a Bank Guarantee) | **Rs. 30,00,00,000/- (Rupees Thirty Crores only)** |
| 5 | Amount of Performance Security (to be furnished by the Selected Bidder in the form of a Bank Guarantee) | **Rs. 150,00,00,000/- (Rupees One Hundred and Fifty Crores only)** |
| 6 | Nodal Officer | Deputy Chief Engineer (Fuel), PSPCL<br>Email: cefuelpspcl@gmail.com<br>Phone: +91 96461 07111 |
| 7 | Email address for submitting pre-bid queries | aadhikari@mstcindia.co.in |
| 8 | Address of PSPCL | Punjab State Power Corporation Limited<br>The Mall, PSEB Head Office<br>Patiala, Punjab – 147001 |
| 9 | Address of MSTC Ltd. | MSTC Limited<br>Telephone Exchange Building, 2nd Floor,<br>Sector-5, Panchkula - 134109 |
| 10 | Venue for pre-bid meeting | VIP Guest House, Mohali<br>PSPCL, Sector - 51, Adjoining YPS School, SAS Nagar (Mohali), Punjab - 160055 |
| 11 | RFP No. | 07/CE/Fuel/C-300(III) dated 30 April 2018 |
| 12 | E-tender No. | MDO/18-19/ET/2 |
| 13 | E-Reverse auction No | MDO/18-19/RA/1 |

# 1. Disclaimer

1.1. The Nominated Authority acting on behalf of the Government of India, has allotted the Pachhwara Central coal mine to Punjab State Power Corporation Limited (PSPCL) for utilization of coal in its end use plants located in the state of Punjab, under the provisions of the Coal Mines (Special Provisions) Second Ordinance 2014, subsequently covered by an act of parliament namely, the Coal Mines (Special Provision) Act 2015. At the outset it is made clear to all the bidders / prospective bidders that the present bidding process is for engaging a Mine Developer cum Operator (MDO) to carry out the scope of work narrated herein below only as a service contractor at Pachhwara Central coal mine and restricted to the extent permitted under the above law. The Selected Bidder appointed as MDO for this mine shall have no right/claim, whatsoever, in respect of the coal contained or produced from the mine or over the land or any other material produced there from or otherwise in the mine other than as a service contractor of PSPCL.

1.2. This document is not an agreement or an offer by PSPCL to bidders or any third party. The purpose of this document is to provide interested parties with information to facilitate the formulation of their proposal.

1.3. This document does not purport to contain all the information each bidder may require. This document may not be appropriate for all persons, and it is not possible for PSPCL to consider the particular needs of each party who reads or uses this document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in this document and obtain independent advice from appropriate sources.

1.4. Neither PSPCL nor its employees or its consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this document.

1.5. Neither PSPCL nor its employees or its consultants shall have any liability to any bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with this document, or any matter deemed to form part of this document, the award of the work, or the information and any other information supplied by or on behalf of PSPCL or its employees, any consultants to otherwise arising in any way from the selection process for the project.

1.6. The issue of this document does not bind PSPCL to shortlist technically qualified bidders or select a bidder. PSPCL reserves the right to annul the bidding process and/or to reject all bids, at any stage, without incurring any liability to the bidders or any third parties.

1.7. The bidder should confirm that the document downloaded by them from the MSTC website is complete in all respects including all annexures and attachments. No extension of time shall be granted to any bidder for submission of its bid on the ground that the bidder did not obtain the complete set of the document. In the event that the document or any part thereof is mutilated or missing, the bidder shall notify PSPCL immediately at the following address:

Deputy Chief Engineer (Fuel)
Punjab State Power Corporation Limited
The Mall, PSEB Head Office
Patiala, Punjab - 147001
Email: cefuelpspcl@gmail.com
Phone No: +91 96461 07111

1.8. If no intimation is received up to the last date for submission of pre-bid queries, it shall be considered that the bid documents received by the bidder is complete in all respects and that the bidder is fully satisfied with the document.

1.9. The RFP comprises of general guidelines and conditions for bidding but not an offer by PSPCL to bidders or any third party. The purpose of the RFP is to provide interested parties with information to facilitate the formulation of their bids to undertake this Project and to convey the terms on which the work shall be awarded by PSPCL.

1.10. This document and the information contained herein are strictly confidential and privileged and is for the exclusive use of the bidder to whom it is issued. This document shall not be copied or distributed by the recipient to third parties (other than, to the extent required by applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound by confidentiality restrictions at least as strict as those contained in this document). In the event that after the issue of the document the recipient does not continue with its involvement in the bidding process for any reason whatsoever, this document and the information contained herein shall be kept confidential by such party and its professional advisors at all times.

1.11. PSPCL reserves the right to change, modify, add or alter the document at any time during the bidding process. All such changes shall be uploaded on the MSTC website. It is the duty of bidders to visit the MSTC website regularly and keep themselves updated on the bidding process and any communication made in relation to the bidding process. In case of any dispute regarding the tender documents, the decision of Chief Engineer (Fuel), PSPCL shall be final.

1.12. The bidders or any third party shall not object to such changes/ modifications/ additions/ alterations explicitly or implicitly. Any such objection by the bidder shall make the bidder's bid liable for rejection by PSPCL. Further objection by any third party shall be construed as infringement on confidentiality & privileged rights of PSPCL with respect to this document.

1.13. PSPCL reserves the right in its sole discretion, without any obligation or liability whatsoever, to accept or reject any or all of the bids at any stage of the bidding process without assigning any reasons. Further PSPCL reserves the right to annul the bidding process and / or to reject any or all bids at any stage prior to the signing of the coal mining agreement without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for PSPCL's action. Decision of PSPCL shall be final and binding in this regard.

1.14. The bidder shall not make any public announcements with respect to this bidding process or this document. Any public announcements to be made with respect to this bidding process or this document shall be made exclusively by PSPCL. Any breach by the bidder of this clause shall be deemed to be in non-compliance with the terms and conditions of this document and shall render the bid liable for rejection. PSPCL's decision in this regard shall be final and binding on the bidder.

1.15. It is clarified that the provisions of this Section 1 (Disclaimer) shall not apply to information relating to this document already available in the public domain prior to the issue of this document.

1.16. The bidder shall bear all costs associated with the preparation and submission of all the bids and communications associated with the RFP. PSPCL and its consultants shall not, under any circumstances, be responsible or liable for any such costs.

1.17. By responding to the RFP, the bidder shall be deemed to have confirmed that it has fully satisfied and understood the terms and conditions of the RFP. The bidder hereby expressly waives any and all claims in respect thereof.

1.18. Submission of bid by the bidder shall amount to an undertaking for not challenging the provisions of the bid document. In case of any ambiguity in the bid document or in the bid submitted by the bidders, the interpretation of PSPCL shall be final.

## 2. List of Abbreviations

| | |
|---|---|
| BCM/ bcm | Bank Cubic Meters |
| BDO | Block Development Officer |
| BH | Bore Hole |
| CHP | Coal Handling Plant |
| CIMFR | Central Institute of Mining and Fuel Research |
| CMPF | Coal Mines Provident Fund |
| COA | Consortium Operating Agreement |
| CPI (IW) | Consumer Price Index (Industrial Workers) |
| CSR | Corporate Social Responsibility |
| Cum/ cum | Cubic Meters |
| DA | Dearness Allowance |
| DMF | District Mineral Fund |
| DFO | District Forest Officer |
| DGMS | Directorate General of Mines Safety |
| DSC | Digital Signature Certificate |
| EC | Environment Clearance |
| ED | Excise Duty |
| EIA | Environment Impact Assessment |
| EMP | Environmental Management Plan |
| ESI | Employee’s State Insurance |
| ETP | Effluent Treatment Plant |
| FC | Forest Clearance |
| FY | Financial Year |
| GCV | Gross Calorific Value |
| GST | Goods and Services Tax |
| HEMM | Heavy Earth Moving Machinery |
| HRA | House Rent Allowance |

| | |
|---|---|
| INR; ₹ | Indian Rupee / legal tender currency of India |
| MCLR | Marginal Cost of Funding Based Lending Rate of SBI |
| MDO | Mine Developer cum Operator |
| MIS | Management Information Systems |
| MOC/ MoC | Ministry of Coal, Government of India |
| MoEF | Ministry of Environment, Forest and Climate Change, Government of India |
| MSTC | MSTC Ltd. |
| MSTC website | www.mstcecommerce.com |
| Tonne | Metric Tonne |
| Mt | Million Metric Tonne |
| Mtpa | Million Metric Tonne Per Annum |
| NABL | National Accreditation Board for Testing and Calibration Laboratories |
| NCB | National Council for Cement and Building Materials |
| NCWA | National Coal Wage Agreement |
| NIOH | National Institute of Occupational Health |
| OB | Over Burden |
| OEM | Original Equipment Manufacturer |
| PAF | Project Affected Family |
| PAP | Project Affected Person |
| PCB | Pollution Control Board |
| PESO | Petroleum and Explosives Safety Organization |
| PSU | Public Sector Undertaking |
| RBI | Reserve Bank of India |
| RFP | Request for Proposal |
| ROM | Run of Mine |
| R&R | Rehabilitation and Resettlement |
| RR | Railway Receipt |

| | |
|---|---|
| SBI | State Bank of India |
| SPV | Special Purpose Vehicle |
| PSEB | Punjab State Electricity Board |
| PSPCL | Punjab State Power Corporation Limited |
| WPI | Wholesale Price Index |

# 3. Definitions and Rules of Construction

## 3.1 Definitions

Unless defined otherwise, the following terms wherever used in this RFP document shall have the following meanings:

3.1.1 **"Annual Production Programme"** shall have the meaning given to it in clause 19.2 of the Coal Mining Agreement.

3.1.2 **"Applicable Ceiling Price"** shall have the meaning given to it at clause 9.4.1.

3.1.3 **"Applicable Laws"** means any law, legislation, statute, rule, directive, ordinance, notification, exemption, regulation, judgments /orders of a competent court, tribunal, regulatory bodies and quasi-judicial body or any interpretation thereof enacted, issued, or promulgated by any Authority and applicable to either PSPCL, to bidders or to the MDO, as may be applicable from time to time.

3.1.4 **"Appointed Date"** shall mean the date on which PSPCL certifies or declares the satisfaction or waiver of all Conditions Precedent as per clause 4.1.6 of the Coal Mining Agreement.

3.1.5 **"Authority"** means any government department, local government council, inspection authority, courts, tribunal, regulatory bodies and quasi-judicial body, any other statutory authority of Government of India or the Government of Punjab or the Government of Jharkhand, authority exercising any sovereign function, and includes any municipal or local authority.

3.1.6 **"Authorized Signatory"** shall have the meaning given to it in clause 7.11.

3.1.7 **"Base Mining Charge"** shall have the meaning given to it at clause 9.4.4 and shall be 70% (seventy percent) of the L1 Price.

3.1.8 **"Base Transportation & Handling Charge"** shall have the meaning given to it at clause 9.4.4 and shall be 30% (thirty percent) of the L1 Price.

3.1.9 **"Bid/bid/ Proposal"** shall mean the documents submitted by a bidder pursuant to this RFP, including the Techno-Commercial Proposal along with any additional information/clarifications required/ sought by PSPCL, the Original Documents to be physically submitted and the Financial Proposal. The Bid shall be strictly in the formats provided by PSPCL (where provided).

3.1.10 **"Bidder/ bidder/ Bidding Company"** shall be either a single corporate entity, incorporated under the Applicable Laws of India or a consortium of up to two such corporate entities, who if awarded the Project, undertake to form an SPV incorporated under the applicable Indian Laws prior to the execution of the Coal Mining Agreement, that has submitted a bid in response to the RFP.

3.1.11 **"Bid Document"** or **"Bidding Document"** or **"RFP Document"** or **"RFP"** means documents issued by PSPCL vide RFP No. 07/CE/Fuel/C-300(III) dated 30 April 2018 for Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central coal mine and shall include any modifications, amendments/corrigenda or alterations or clarification thereto. The documents are as follows:

a) This RFP document
b) Draft Coal Mining Agreement
c) Allotment letter vide order No. 103/11/2015/NA dated 31 March 2015
d) Land details/ schedule
e) Technical documents including:
    a. Approved mining plan along with related drawings
    b. Geological report along with related drawings
    c. R&R related documents
    d. List and details of statutory clearances (received so far and applied for and pending clearance)
    e. Hydrological study report
    f. Mine closure plan
    g. Environment Impact Assessment and Environment Management Plan related documents[6]
    h. Draft composite mining pan

Any Corrigendum (a)/Clarification(s) to the RFP Document issued by PSPCL subsequent to the issue of the RFP Document will also be considered an integral part of the RFP Document. Any reference to the RFP Document in the Coal Mining Agreement shall include such Corrigendum (a) and Clarification(s).

3.1.12 **"Bid Process/ Bidding Process"** shall mean the process governing the submission and evaluation of the bids as set out in this RFP document.

3.1.13 **"Bid Security"** shall mean the Bank Guarantee of the amount specified in the Data Sheet and in the format given in Annexure 8 hereof, that has to be submitted by bidders in accordance with clause 8.1.

3.1.14 **"Bid Submission Date"** shall mean the last date and time for submission of bids, as mentioned as in the Schedule of Bidding Process hereof.

3.1.15 **"Bid Validity Period"** shall mean a period of 270 (two hundred and seventy) days from the Bid Submission Date or such extended period as may be requested by PSPCL to all bidders.

3.1.16 **"Business Day"** means a day other than a Sunday or a Saturday or a public holiday as declared by the Government of Punjab for conduct of business by PSPCL.

3.1.17 **"Ceiling Price"** shall be the price in Rs. per tonne of coal as specified in the Data Sheet.

3.1.18 **"CMR"** means the Coal Mines Regulations, 1957 and all subsequent amendments made to the Regulation.

3.1.19 **"Coal Mining Agreement"** means the agreement to be entered into between PSPCL and the Special Purpose Vehicle incorporated under the Companies Act, 2013 by the Selected Bidder / members of the Consortium, as the case may be, selected through the bidding process, for execution of the Project; the draft Coal Mining Agreement is attached hereof.

3.1.20 **"Coal Production Start Date"** means the day of start of actual coal production.

3.1.21 **"Commencement Date" or "Effective Date of Contract"** means the date of issue of the Letter of Award by PSPCL.

3.1.22 **"Company" or "Corporate Entity"** means a company as defined in the Companies Act 1956/2013.

3.1.23 **"Composite Mining Charge"** shall have the meaning given to it in clause 9.5.4 and shall mean the sum of the Mining Charge and the Transportation & Handling Charge.

3.1.24 **"Conditions Precedent"** shall have the meaning given to it in Article 4 of the Coal Mining Agreement.

3.1.25 **"Corrigendum (a)/Amendment(s)"** shall have the meaning given to it in clause 7.6.

3.1.26 **"Consortium Operating Agreement" or "COA"** shall have the meaning given to it at clause 8.5.

3.1.27 **"Contract Period"** shall have the meaning given to it in clause 5.2.

3.1.28 **"Declared Grade"** shall mean the grade of coal/ GCV band declared as per the Colliery Control Order, 2000 and the rules and notifications made thereunder.

3.1.29 **"Delivery Point"** shall have the meaning given to it in clause 5.13.

3.1.30 **"Final Price Offer"** at any point of time (subject to the provision of clause 9.4.2) shall mean the lowest price that has been submitted during the Reverse Auction by a Technically Qualified Bidder who is eligible to participate in the Reverse Auction.

3.1.31 **"Financial Criteria"** shall have the meaning given to it in clause 6.2.

3.1.32 **"Financial Proposal"** means the Financial Proposal submitted by the bidder, in accordance with the terms and conditions of this RFP document.

3.1.33 **"Financial Year"** means the 12 (twelve) month period corresponding to the audited annual accounts.

3.1.34 **"Fixed Charge"** shall have the meaning given to it in Clause 19.2.4 of the Coal Mining Agreement.

3.1.35 **"Freight Costs"** shall mean the cost of transportation of coal by railway, from the Loading Point to the Delivery Point(s), including all taxes in relation thereto. For the avoidance of doubt, Freight Costs shall not include costs of transportation of the coal from the mine to the Loading Point.

3.1.36 **"Government/ Government Instrumentality/ government/ government instrumentality"** means the Government of India or the Government of Punjab or the Government of Jharkhand or any other state Government, as the context requires, or an authorized representative, agency, ministry, corporation, department, division or subdivision, undertaking, enterprise, office, joint venture, subsidiary, holding, public sector undertaking of the Government of India or the Government of Punjab or the Government of Jharkhand or any other state Government, and includes any commission, board, authority, municipal and other local authority or statutory body including panchayat, under the control of the Government of India or the Government of Punjab or the Government of Jharkhand or any other state Government, as the context requires.

3.1.37 **"Holding Company"** shall have the meaning given to it under the Companies Act, 2013.

3.1.38 **"Independent Engineer"** shall mean the independent engineer that may be appointed by PSPCL as per Article 23 of the Coal Mining Agreement.

3.1.39 **"Initial Price Offer"** shall mean the price offer required to be submitted by a bidder as part of the Financial Proposal and which shall be at or below the Ceiling Price in accordance with Clause 9.2.

3.1.40 **"Joint Operating Agreement"** shall have the meaning given to it in clause 8.6.

3.1.41 **"L1 Bidder"** shall have the meaning given to it in clause 9.4.1 and 9.4.2.

3.1.42 **"L1 Price"** shall have the meaning given to it in clause 9.4.3.

3.1.43 **"Lead Member"** shall have the meaning given to it in clause 6.4.2.

3.1.44 **"Letter of Award"** means the written official intimation by PSPCL notifying the Selected Bidder that its bid has been accepted as per the terms and conditions mentioned therein.

3.1.45 **"Loading Point"** shall initially mean existing railway siding at Pakur. After the existing railway siding is extended by PSPCL, the Loading Point shall be the extended railway siding, from where the excavated coal shall be transported using railway rakes to the Delivery Point(s).

3.1.46 **"Mine" or "mine"** shall refer to the Pachhwara Central coal mine allocated to PSPCL by the Ministry of Coal, Government of India, vide allotment order no. 103/11/2015/NA dated 31 March 2015.

3.1.47 **"Mine Developer cum Operator"** or **"MDO"** shall have the meaning given to it in the preamble to Coal Mining Agreement.

3.1.48 **"Mining Charge"** shall have the meaning given to it at clause 9.5.2 and shall mean the charges that shall be payable by PSPCL to the MDO for the excavation of coal and associated activities and bringing the coal to the Coal Depot located at the mine pit top. The Mining Charge shall be calculated after applying the Price Variation formulae given in Clause 9.5 to the Base Mining Charge (as derived from the L1 Price in terms of Clause 9.4.4); for avoidance of doubt, it is made abundantly clear that the Mining Charge shall be separate from the Transportation & Handling Charge.

3.1.49 **"Mining Operations"** or **"mining operations"** means the act of excavation of overburden and/or the production of coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore and also includes any associated activities that may have been undertaken as part of the excavation of overburden and/or the production of coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore.

3.1.50 **"Mining Plan"** means the mining plan approved by Ministry of Coal, Government of India for the Pachhwara Central coal mine.

3.1.51 **"Mining Lease"** shall mean the lease granted, or deemed to have been granted, by the Government of Jharkhand to PSPCL under Applicable Laws for the purpose of developing/ undertaking coal mining and related activities.

3.1.52 **"Monthly Capacity"** shall have the meaning given to it in Clause 19.2.2 of the Coal Mining Agreement.

3.1.53 **"MSTC website"** shall mean www.mstcecommerce.com

3.1.54 **"Nodal Officer"** shall mean Deputy Chief Engineer (Fuel), PSPCL.

3.1.55 **"Original Documents"** means the original documents which are to be physically submitted by the bidder, in accordance with the terms and conditions of this RFP document.

3.1.56 **"Over burden"** or **"OB"** shall mean the rock, soil etc. that lies above and between the coal seams and is to be removed during mining and may be used to restore the mining site post mining. The term "Over burden" includes interburden and stone bands as well.

3.1.57 **"Peak Rated Capacity"** shall have the meaning given to it in Clause 19.2.2 of the Coal Mining Agreement.

3.1.58 **"Performance Security"** shall have the meaning given to in Article 9 of the Coal Mining Agreement.

3.1.59 **"Person"** includes firms, companies, corporations and association or bodies of individuals, whether incorporated or not.

3.1.60 **"Pre-Bid Meeting"** means pre-bid meeting to be held as per the schedule indicated in the Schedule of Bidding Process hereof.

3.1.61 **"Price Index"** shall have the meaning given to it in Article 24 of the Coal Mining Agreement.

3.1.62 **"Project"** shall have the meaning given to it in Clause 4.1.11.

3.1.63 **"Quarterly Capacity"** shall have the meaning given to it in Clause 19.2.2 of the Coal Mining Agreement.

3.1.64 **"RBI Reference Rate"** shall mean the RBI Reference Rate published on the RBI website (https://www.rbi.org.in/home.aspx). Please refer to Clause 6.2.4 for further details.

3.1.65 **"Reference Index Date"** shall mean that last day of the preceding quarter with reference to the date on which the Price Index is revised.

3.1.66 **"Reverse Auction"** shall have the meaning given to in Clause 11.11.

3.1.67 **"Selected Bidder"** means the bidder selected by PSPCL pursuant to terms and conditions of the RFP through the Bidding Process and is awarded the Letter of Award after due diligence.

3.1.68 **"Site"** means the site at which the Pachhwara Central coal mine is located and also includes the railway siding currently located at Pakur, located at distance of about 55 km from the mine.

3.1.69 **"Standard Industry Practices"** means at the reference time, the then recognized methods and practices in open cast mining that would reasonably be expected from experienced and competent coal mining operators under conditions comparable to those applicable to the Site.

3.1.70 **"Stripping Ratio"** or **"Strip Ratio"** means the ratio of bank overburden (measured in cubic meters) to coal (measured in tonnes) excavated from the site by the mining operator in accordance with Coal Mining Agreement.

3.1.71 **"Subsidiary"** shall have the meaning given to it under the Companies Act, 2013.

3.1.72 **"Technical Criteria"** shall have the meaning given to it in Clause 6.1.

3.1.73 **"Technically Qualified Bidder"** means a bidder whose Techno-Commercial Proposal is responsive and meets the requirements to the satisfaction of PSPCL as per terms and condition of the RFP and is shortlisted for opening of their Financial Proposal.

3.1.74 **"Techno-Commercial Proposal"** means proposal submitted by the bidder in accordance with section 8 hereof.

3.1.75 **"Tonne"** means 1000 (thousand) kilogram as defined in Standards of Weights and Measures Act, 1976 (including rules and regulations framed under the said act, policies and amendments from time to time as notified by Government of India).

3.1.76 **"Transportation & Handling Charge"** shall have the meaning given to it at Clause 9.5.3 and shall mean the charges that shall be payable by PSPCL to the MDO for the transportation of coal from the mine to the railway siding, operation & maintenance of the siding, loading of coal at the siding and delivery of coal to the Delivery Points; the Freight Costs however, shall be directly payable by PSPCL to the Indian Railways. The Transportation & Handling Charge shall be calculated after applying the Price Variation formulae given in Clause 9.5 to the Base Transportation & Handling

Charge (as derived from the L1 Price in terms of Clause 9.4.4); for avoidance of doubt, it is made abundantly clear that the Transportation & Handling Charge shall be separate from the Mining Charge.

3.1.77 **"PSPCL"** or **"Owner"** means Punjab State Power Corporation Limited (a Government of Punjab Undertaking) and shall include its legal representatives, successors, administrators and permitted assigns.

## 3.2 Rules of Construction

3.2.1 a reference to singular includes the plural and vice-versa where the context so requires;

3.2.2 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;

3.2.3 the metric system of measurement shall be used for the purpose of the Agreement;

3.2.4 headings do not affect the interpretation of this RFP Document;

3.2.5 a reference to any person includes that person's executors, administrators, substitutes, successors and permitted assigns;

3.2.6 a reference to a day, month or year is relevant to a day, month or year in accordance with the Gregorian calendar; unless otherwise specified in this RFP Document;

3.2.7 a reference to ₹, Rs., INR or Rupees is to the lawful currency of the Republic of India unless specified otherwise;

3.2.8 a reference to an agreement, deed, instrument or other document include the same as amended, novated, supplemented, varied or replaced from time to time;

3.2.9 the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";

3.2.10 The expression "writing" or "written" shall include communications by facsimile, electronic mail and letter;

## 3.3 Governing Law and Jurisdiction of Courts

The RFP and Bidding Process shall be governed by and construed in accordance with the laws of India and the Courts at Patiala shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Process.

# 4. Introduction

## 4.1 Background

4.1.1 The Punjab State Power Corporation Limited ("PSPCL") is the power generation and distribution company in the state of Punjab and is fully owned by the Government of Punjab. The entity was formed in 2010 when the Punjab State Electricity Board (PSEB) was unbundled into two companies – Punjab State Power Corporation Limited (PSPCL) and Punjab State Transmission Corporation Limited (PSTCL). PSPCL owns three thermal power plants in the state of Punjab – Guru Nanak Dev Thermal Plant (Bathinda), Guru Gobind Singh Super Thermal Plant (Ropar) and Guru Hargobind Thermal Plant (Lehra Mohabbat) with installed capacities of 460 MW, 1260 MW and 920 MW respectively.

4.1.2 On 28 December 2001, the Pachhwara Central coal mine was allotted to PSEB (now PSPCL) by the Ministry of Coal under the Government Dispensation route for supplying coal to the power plants of PSEB (now PSPCL). PSEB had opted to operate the coal mine in a strategic joint venture partnership with EMTA & Partners, now known as EMTA Coal Limited. With this objective a joint venture company by the name of PANEM Coal Mines Limited was incorporated as a separate company under the Companies Act 1956.

4.1.3 PANEM was entrusted the sole responsibility of development and operation of the mine for exclusive delivery of coal to the above said thermal power plants of PSEB.

4.1.4 As per the approved mining plan, the overall open cast reserves of the mine is 289 million Mt with an average stripping ratio of 4.72 cum/tonne. The peak capacity of the mine is 7 Mtpa and it has a life of mine of around 44 years. The mine has already operated for 10 (ten) years, from February 2006 to 31 March 2015. The mine is bounded by latitudes 24°31'17.664" N to 24°32'41.251" N and longitudes 87°25'29.857" E to 87°29'55.557" E. The mine has 10 (ten) coal seams, details of which are provided in the approved mining plan and the geological report.

Further, as per the directions of the Ministry of Coal, Government of India (received vide letter no. 34011/02/2017-CPAM dated 12 September 2017), PSPCL has initiated the process for preparation and approval of a composite mining plan which also covers the underground portion of the mining lease area. In this regard a draft composite mining plan (please see Annexure 24) also consisting of the mine closure plan has been prepared and approved by the competent authority of PSPCL. The same has been submitted by PSPCL to the Ministry of Coal, Government of India (vide letter no. 762/CE/Fuel/C-304 dated 5 April 2018) for further necessary action and approval. As per the draft composite mining plan submitted, the overall open cast reserves of the mine is 435 Mt with an overall waste volume of 1094 million cum. Considering the production already undertaken, the mine has balance mineable reserves of 383 Mt which amounts to a remaining life of about 55 years with a peak rated capacity of 7 Mtpa and an average strip ratio of 2.63 for the remaining life of mine. Hence bidders should study and consider both the approved mining plan as well as the draft composite mining plan (submitted to the Ministry of Coal, Government of India for approval) while preparing and submitting their bids.

4.1.5 After completion of the required predevelopment activities and obtaining the required approvals to commence the mining operations in the allotted coal mine, the production of coal through opencast mining was commenced in the mine from February 2006. Up to 31 March 2015, a total of 82.37 million cubic meter overburden was removed and 52.68 Mt of ROM coal has been extracted from the mine. The peak rated capacity of the mine is 7 Mtpa and the peak rated capacity of the mine has already been achieved during the prior period of production.

4.1.6 The Hon'ble Supreme Court, vide their judgement dated 25 August 2014 read along with its order dated 24 September 2014, had cancelled the allocation of this mine along with 203 other coal mines for the reasons set out in the said decisions.

4.1.7 Keeping in view the energy security of the country and to minimise the impact of the above referred cancellations, the Government of India took immediate action and The Coal Mines (Special Provisions) Second Ordinance 2014 was promulgated. Pursuant to this, a fresh round of allocation was carried out and PSPCL was allotted the Pachhwara Central coal mine on 31 March 2015 (vide Allotment Order No. 103/11/2015/NA dated 31 March 2015) for the purposes mentioned above. Global Tender Enquiry No. 4/CE/FUEL/C-273 (V) dated 31 August 2015 was issued by PSPCL for Selection of a Mine Developer cum Operator **[MDO]** for development and operations of the mine in question. On 15 December 2015 which was the due date of bid submission, 5 firms submitted their bids. Out of the five bidders who participated in the tender process, four bidders were disqualified for not fulfilling the conditions laid down in clause 6.2.4 and 6.4.6 of the tender specifications. These bidders were disqualified mainly due to termination of their contracts with Government undertakings. This led to litigation in the High Court, delay and resultant recurring losses to PSPCL. The Board of Directors, in its meeting held on 30 June 2017 taking note of this resolved to float a fresh tender after incorporating the modifications in the clauses of the tender so as to ensure maximum participation of bidders and competitive bidding. It was further resolved that the previous global tender enquiry dated 31 August 2015 be cancelled, a consultant be appointed, to appropriately approve and scrutinize from a Core Committee and then approved by the Board of Directors the terms of such fresh RFP, action regarding forfeiture of the EMD deposited by the 4 disqualified bidders be taken after the decision in the High Court pending writs and a short affidavit be filed by PSPCL regarding the above retendering without prejudice to PSPCL's rights.

4.1.8 PSPCL has decided to select and engage a Mine Developer cum Operator (MDO) with adequate open cast mining experience and financial strength to develop and operate the Pachhwara Central coal mine and deliver coal to the Delivery Point(s), in accordance with the approved mining plan, the Coal Mining Agreement (to be executed) and accepted Standard Industry Practices. It is made abundantly clear that PSPCL is not offering or intending to enter into any joint venture or any other arrangement wherein the Selected Bidder may participate in the rights of PSPCL and the current tender is for selection of a suitable MDO for the development and operations of the Pachhwara Central coal mine and supply of coal up to the Delivery Point(s).

4.1.9 PSPCL has decided to carry out a single stage three part competitive bidding process for the selection of a MDO. Bidders are required to submit their Proposal in three parts, namely the Original Documents, the Techno-Commercial Proposal, and the Financial Proposal. The Original Documents shall be opened first to check whether all the necessary documents have been physically submitted by the bidder; thereafter for those bidders, whose Original Documents are found to be in order, the Techno-Commercial Proposal shall be evaluated by the PSPCL in accordance with the Technical Criteria and the Financial Criteria and other terms & conditions set-out in this RFP document. Based on the evaluation, a list of Technically Qualified Bidders shall be prepared and the Financial Proposals of such Technically Qualified Bidders shall be opened by PSPCL. The Technically Qualified Bidders whose Initial Price Offer fulfils the criteria given in section 9 hereof shall be eligible to participate in the Reverse Auction process. The details of the Reverse Auction are given in section 11 hereof.

4.1.10 The publication of the RFP, publication of any addendum/ corrigendum, as well as the submission of Techno-Commercial Proposal, Original Documents and Financial Proposals as well as the Reverse Auction shall be conducted on the MSTC website and the physical submission of all documents shall be at the MSTC office address given in the Data Sheet hereof. The details of the Bidding Process are given in section 7 hereof.

4.1.11 The Selected Bidder should either be a company (in case of a single bidder) or a consortium of such companies incorporated under the Companies Act, 1956/2013 and in case of a consortium, undertakes to incorporate as a SPV prior to execution of the Coal Mining Agreement, within 30 (thirty) days of the date of the Letter of Award. The Selected Bidder shall be responsible for planning, designing, engineering, financing, procurement, construction, operation and maintenance of the coal mine and delivery of coal to PSPCL (the "**Project**") in accordance with the Coal Mining Agreement to be entered into between the Selected Bidder and PSPCL, in the form provided by PSPCL as part of the Bidding Documents pursuant hereto.

4.1.12 The scope of work for the MDO will broadly include the following: drilling and blasting in OB (including supply, transportation and storage of explosives), excavation of OB, hauling the OB from the bench to the designated OB dump locations, the cutting and extraction of coal using surface miner, hauling of coal from the coal face to the designated coal stockyards at the mine pit top, haul road construction, procurement, operations and maintenance of HEMM, transportation of coal from the mine to the siding, loading of coal onto railway rakes at the siding, operation and maintenance of the siding, ensuring security of coal, transportation and delivery of coal at the Delivery Point(s), electrical power distribution, initial dewatering the mine and pumping and drainage of mine water, lighting, fire-fighting arrangement, rehabilitation & resettlement (R&R), corporate social responsibility (CSR) related activities, reclamation of OB dump, construction of related infrastructure facilities (including industrial as well as residential & non-residential buildings), etc. and any other activities that may be required to make the mine operational. The scope of work is detailed in section 5 hereof.

4.1.13 Bidders shall submit the Techno-Commercial Proposal, the Original Documents and the Financial Proposal in accordance to the terms set forth in this RFP document and as modified, altered, amended and clarified from time to time by PSPCL. The Techno-Commercial Proposals, the Original Documents and the Financial Proposals shall be submitted on or before the Bid Submission Date and as per the Schedule of Bidding Process hereof.

## 4.2 Description of the Mine

**4.2.1 Location**

The Pachhwara Central coal mine is located in the Pakur district of Jharkhand, India. It is bounded by the latitudes 24°31'17.664" N to 24°32'41.251" N and longitudes 87°25'29.857" E to 87°29'55.557" E.

**4.2.2 Coal Block**

The Pachhwara basin is named after the village Pachhwara and forms an integral part of the Rajmahal master basin. The Pachhwara Central coal mine has been allocated to PSPCL by the Government of India. The block falls in the Rajmahal area of Eastern Coalfields Ltd.

**4.2.3 Access**

The coal block is approachable both by rail and road. The nearest railheads are at Murarai and Pakur at a distance of about 44 km and 55 km respectively from the mine. The area is approachable by road from Amrapara along the Amrapara-Alubera metallic road and from Durgapur along the Durgapur-Silingi forest road.

**4.2.4 Reserves**

As per the approved mining plan, the Pachhwara Central coal mine has total open cast coal reserves of about 289 Mt with an average stripping ratio of 4.72. As per the draft composite mining plan, the total open cast coal reserves of the mine is 435 Mt with an average stripping ratio of 2.51 across the life of the mine (including production already done)

**4.2.5 Geology**

There are ten co-relatable coal seams, which are named seam-I to to seam-X in ascending order. Each coal seam excepting IX and X is a composite seam comprising more than one coal seam section with shaly and sandy interbands. The seams are as follows:

| Sl. No. | Range of thickness (m) | No. of coal sections | Aggregate thickness of coal sections (m) | Ash (%) | Grade |
|---|---|---|---|---|---|
| X | 3.15-3.40 | 1 | 3.15-3.40 | 19.30-26.90 | D-E |
| IX | 1.85-7.15 | 1-2 | 1.85-4.50 | 16.60-28.16 | C-E |
| L-9 | 1.75 | 1 | 1.75 | 29.16 | F |
| VIII | 1.15-3.94 | 1-2 | 1.15-1.76 | 25.20-46.30 | E-G |
| VII | 3.12-13.76 | 1-3 | 3.12-10.55 | 28.43-44.39 | E-G |
| L-7 | 1.65 | 1 | 1.65 | 29.00 | E |
| VI | 1.05-9.57 | 1-3 | 1.05-6.42 | 19.10-47.20 | C-G |
| V | 0.90-16.37 | 1-3 | 0.90-8.25 | 14.30-47.00 | B-G |
| L-5 | 1.20-3.39 | 1-2 | 1.20-3.39 | 22.90-29.50 | D-F |
| IV | 1.15-11.60 | 1-2 | 1.15-3.55 | 12.60-31.90 | B-F |
| III T | 0.90-4.20 | 1 | 0.90-4.20 | 11.50-26.50 | B-E |
| III B | 1.16-7.02 | 1-2 | 0.80-5.70 | 11.90-33.52 | C-F |
| III B | 0.71-5.80 | 1 | 0.71-5.80 | 14.50-39.43 | C-F |
| III | 6.28-41.20 | 1-4 | 6.28-25.64 | 17.20-44.10 | C-G |

| Sl. No. | Range of thickness (m) | No. of coal sections | Aggregate thickness of coal sections (m) | Ash (%) | Grade |
|---|---|---|---|---|---|
| II | 2.00-21.49 | 1-6 | 2.00-15.79 | 21.70-39.84 | C-G |
| I + II | 13.0-60.80 | 2-6 | 19.60-30.82 | 19.60-30.82 | C-G |

4.2.6 **Coal Quality**

The coal is non-coking coal with average grade between G6 to G17. The GCV range is 1834 kcal/kg to 5201 kcal/kg. Further details on the coal quality are available in the geological report.

4.2.7 **Status of Statutory Clearances**

The Pachhwara Central coal mine has been in operation from February 2006 till 31 March 2015. Hence most of the activities required for project development prior to commencement of operations has already been completed. The current status of the project activities is tabulated below:

| Sl. No. | Activities | Current Status |
|---|---|---|
| **1.** | Statutory approvals | |
| | Allotment of coal block to PSPCL | • Obtained from MoC, Government of India vide Order No. 103/11/2015/NA dated 31 March 2015 |
| | Mining Plan and Mine Closure Plan | • Approval for Mining Plan granted by MoC, Government of India vide Order No. 38011/4/2002-CA dated 5 November 2003 and vested upon PSPCL vide allotment order no. 103/11/2015/NA dated 31 March 2015<br>• Approval for Mine Closure Plan has been obtained from the Ministry of Coal, vide letter no. 34011/02/2017-CPAM dated 12 September 2017.<br>• PSPCL has applied to the Ministry of Coal, Government of India for approval of the composite mining plan, vide letter no. 762/CE/Fuel/C-304 dated 5 April 2018 |
| | Environment clearance | • Obtained from MoEF vide letter No J-11015/5/2004-IA-II(M) dated 6 July 2015 |
| | Forest clearance | • Approval for both Stage I and Stage II FC obtained from MoEF on 15 May 2015. The clearance from the Forest Department, Government of Jharkhand is awaited<br>• All formalities have been completed from PSPCL side and all requisite documents have been submitted to the Government of Jharkhand |
| | Consent to establish | • To be obtained from Jharkhand State Pollution Control Board |
| | Consent to operate | • To be obtained from Jharkhand State Pollution Control Board |

| | | |
|---|---|---|
| **2.** | Land acquisition | • Land acquisition was substantially done by the Prior Allottee. |
| **3.** | Mining Lease | • To be obtained<br>• All formalities have been completed from PSPCL side and all requisite documents have been submitted to the Government of Jharkhand |
| **4.** | Infrastructure (power/ water/ explosives) | • To be developed by MDO |
| **5.** | Site development and other infrastructure | • To be developed by MDO |

4.2.8 **Land Details**

The tentative details of balance land to be acquired is given below:

| Type of Land | Total land required (Acre) | Land already acquired (Acre) | Balance land to be acquired (Acre) |
|---|---|---|---|
| Government land | 506.86 | 417.78 | 89.08 |
| Private land | 2524.33 | 1903.47 | 620.86 |
| Forest Land | 1016.67 | 988.40 | 28.27 |
| **Total** | **4047.86** | **3309.65** | **738.21** |

4.2.9 **Coal Evacuation**

The evacuation of coal from the Pachhwara Central coal mine is planned by rail using the existing railway siding at Pakur (till it is extended), located at a distance of around 55 km from the mine.

# 5. Scope of Work for MDO

## 5.1 Scope of work of MDO

The scope of work for the MDO broadly covers the following:

5.1.1. Assisting PSPCL in any pending land acquisition including acquisition of government land, forest land and private land etc. The documented cost of acquisition of such land and the one time R&R cost for the same (as certified by the District Magistrate or the District Collector) shall be borne by PSPCL. The MDO shall secure physical possession of the land. Please see Clause 5.3 for further details.

5.1.2. Undertaking R&R activities for the mine, including providing employment to eligible PAPs at its own costs. Please see Clause 5.4 for further details.

5.1.3. Pre-development activities with respect to the mine including dewatering of the mine and assisting PSPCL is obtaining the pending approvals required for restarting operations at the mine. Please see Clause 5.5 for further details.

5.1.4. Employ adequate manpower for the development, operation and maintenance of the mine. Please see Clause 5.6 for further details.

5.1.5. Drilling and blasting operations with appropriate safeguards and compliance to statutory requirements. Please see Clause 5.7 for further details.

5.1.6. Procurement, operation and maintenance of adequate number of Heavy Earth Moving Machinery (HEMM) and other equipment required for the development, operations and maintenance of the mine. The HEMM and other equipment deployed shall be as per the approved mining plan. The MDO shall also procure and deploy adequate number of ancillary equipment required for supporting the operations of the HEMM. Please see Clause 5.8 for further details.

5.1.7. Excavation of OB by excavators and transportation by dumpers to OB dumping locations as per the approved mining plan and maintenance of slope stability and profile as per the statutory requirements and the approved mining plan. Please see Clause 5.9 for further details.

5.1.8. Production of coal by surface miner at peak rated capacity of 7 Mtpa, in accordance with the approved mining plan and transportation of coal by dumpers to the Coal Depot within the mine. Please see clauses 5.9 and 5.10 for further details.

5.1.9. Maintaining the quality of coal, segregation of other material from coal and preventing the pilferage and loss of coal. Please see Clause 5.11 and 5.24 for further details.

5.1.10. Transportation of coal from the mine to the Loading Point, i.e. the railway siding at Pakur. In case the railway siding is extended in the future, the Loading Point shall be the extended railway siding. Please see Clause 5.12 for further details.

5.1.11. Operation and maintenance of the siding including loading of coal onto railway rakes and ensuring delivery and security of the coal up to the Delivery Point(s). Please see Clause 5.13 for further details.

5.1.12. Development, operation and maintenance of the various infrastructure of the mine, including the existing infrastructure. Please see clauses 5.16, 5.17, 5.18, 5.19, 5.20 and 5.21 for further details.

5.1.13. Undertake reclamation and progressive and final mine closure related activities as well as the payment of mine closure costs. Please see Clause 5.22 for further details.

5.1.14. Ensuring overall safety of the mine operations, including adherence to extant statutory, DGMS and environmental provisions. Please see Clause 5.25 for further details.

5.1.15. Play a facilitation role and assist PSPCL in securing the pending clearances and approvals required to restart the mining operations. Please see Clause 5.26 for further details.

5.1.16. Undertake CSR, community development and welfare activities in the local community, in consultation with the district administration as required. Please see Clause 5.28 for further details.

5.1.17. Open local office in Ranchi and Pakur and also post an officer in Patiala on permanent basis throughout the Contract Period. Please see Clause 5.29 for further details.

## 5.2 Contract Period

5.2.1 The Contract Period for the MDO shall commence from the Appointed Date, as defined in Clause 4.1.6 of the Coal Mining Agreement, i.e. the date when the Conditions Precedent are satisfied. The Contract Period shall be for the remaining life of the mine or till exhaustion of the mineable reserves of the mine or till termination of the Mining Lease, whichever is earlier. The life of mine as per the approved mining plan is 44 (forty four) years and the mine has already operated from February 2006 to 31 March 2015. The Contract Period may be extended if there are extractable reserves (through open cast mining) remaining in the mine at the end of the life of the mine on terms and conditions that may be mutually decided between PSPCL and the MDO.

5.2.2 The Pachhwara Central coal mine also has certain reserves which had not been considered as suitable for exploitation by open cast mining as per the approved mining plan and hence kept outside the scope of the approved mining plan. However, as per the directions of the Ministry of Coal, Government of India, PSPCL has got a draft composite mining plan prepared (and submitted to the Ministry of Coal, Government of India for approval), which also covers the hitherto considered underground portion. The draft composite mining plan proposes open cast mining for the entire reserves of the mine (435 Mt) and a remaining life of mine of 55 years. Based on the approval of the draft composite mining plan, the Contract Period of the MDO may be extended by PSPCL till the life of the mine. At the end of the currently envisaged Contract Period or any extensions thereof, the remaining reserves of the mine shall be evaluated and the most techno-commercially optimal methodology & technology (if any) to exploit the same shall be determined based on consultation between PSPCL and the MDO and the extant government policy, prevailing coal mining technology for deep seated deposits and prevailing DGMS guidelines at that point of time. Based on the same, the Contract Period may be extended on terms and conditions that may be mutually decided between PSPCL and the MDO.

5.2.3 During the Contract Period, if both PSPCL and the MDO mutually agree that there is a need for review of one or more terms and conditions of the Coal Mining Agreement, they may revise such terms and conditions as may be mutually agreed. However, such review can be carried out only after 5 (five) years from the Appointed Date. Provided, further, that once a review of one or more terms and conditions of the Coal Mining Agreement is successfully completed, the next review of the terms and conditions of the Coal Mining Agreement may only be undertaken after a period of at least another 5 (five) years thereafter.

5.2.4 PSPCL shall not be responsible for any investment/ loss/ damages etc. caused to MDO in the event of discontinuation/ termination/ modification/ variation/change in the Mining Lease. The risk of all such consequences shall be to the account of MDO.

## 5.3 Balance Land Acquisition

5.3.1 The MDO shall assist PSPCL in completing the balance land acquisition activities. The documented cost for the land acquisition shall be borne by PSPCL. In case of government land and forest land, the payment shall be made directly by PSPCL to the government authorities/ departments concerned. In case of private land, the document cost of purchasing the land shall be paid by PSPCL through cheque in the name of beneficiaries and the cheques shall be handed over to MDO for distribution to the beneficiaries.

5.3.2 The MDO shall also assist PSPCL in securing the physical possession of the land. The MDO shall interact with PAPs for obtaining various approvals/clearances, assistance for disbursement of compensation payments to PAPs, including squatters/forest dwellers, valuation of assets on land. At all times, the MDO shall ensure the physical possession of land required for at least the next 1 (one) year of mining.

## 5.4 Rehabilitation and Resettlement (R&R)

5.4.1 The MDO shall undertake all the R&R activities for the PAF and PAPs (existing as well as new) as per the R&R policy of the Government of Jharkhand, including construction of R&R colony, as required. The MDO shall also be responsible for providing employment to the eligible PAPs as per the R&R policy of the Government of Jharkhand.

5.4.2 The MDO shall be responsible to incur all expenditure on the R&R activities for the PAFs/PAPs and CSR activities as per the approved scheme, provided in Annexure 19 hereof. If as per the directions of PSPCL, any expenditure is required to be incurred by MDO towards the R&R activities for the Pachhwara Central coal mine including for R&R and CSR activities related to any period prior to the issue of Letter of Award to the MDO, then the same shall also be borne by MDO. It shall be entirely the liability and responsibility of the MDO to manage and organize all the R&R activities with respect to the mine and PSPCL shall not in any manner be required to pay / contribute/reimburse any amount whatsoever to MDO in this regard. The MDO shall also submit to PSPCL every month documentary evidence of having made payments to the eligible PAPs and PAFs as per the R&R policy of the Government of Jharkhand. The submission of such documentary evidence by the MDO shall be a pre-requisite for the payment of the monthly invoices of the MDO and PSPCL may withhold the monthly invoices submitted by the MDO upon non-receipt of documentary evidence of the requisite R&R related payment being made for the previous month to the eligible PAPs and PAFs.

5.4.3 The MDO shall be responsible to incur any expenditure that may be required towards meeting the unpaid salary and other salary related components towards the erstwhile employees of the mine, as may be required for restarting the smooth operations at the mine. It may be noted that the salary and other salary related components payable towards such employees in the months of April 2015 and May 2015 have already been paid by PSPCL; any further expenditure in this regard shall be borne by the MDO and PSPCL shall not in any manner be required to pay/ contribute/ reimburse any amount whatsoever to the MDO in this regard. Bidders may visit the mine site on their own and at their own costs in order to get first-hand information in this regard and ascertain the expenditure required to meet the unpaid salary, other salary related components and other dues of the erstwhile employees, PAPs and PAFs of the mine and any other expenditure that may be required to be made by the MDO towards any pending dues or otherwise to make the mine operational.

## 5.5 Pre-development activities

5.5.1 The Prior Allottee had obtained the required statutory approvals and clearances for opening and operating the mine. PSPCL has initiated the process of transferring these approvals and clearances from the Prior Allottee to PSPCL. The current status of the statutory clearances and approvals in the name of PSPCL as of date of publication of this RFP in given in Annexure 14 hereof. The MDO shall be responsible for ensuring that the pending statutory clearances are vested/ transferred in the name of PSPCL. Any fees or costs to be paid to any statutory authority for the same shall be borne by PSPCL.

5.5.2 The initial dewatering of the mine shall be undertaken by the MDO at its own costs. The MDO shall ensure that the dewatering is done in a controlled and gradual manner and in accordance with the relevant DGMS guidelines such that it causes no safety hazard, subsidence or fire incidence due to sudden dewatering.

## 5.6 Manpower

5.6.1 The MDO shall employ adequate manpower for the development, operation and maintenance of the mine and the railway siding and for ensuring delivery of coal up to the Delivery Point(s). The MDO shall also provide employment to the PAPs who are eligible for employment as per the R&R policy of the Government of Jharkhand. The employment provided by the MDO shall be at its own terms and conditions and the manpower employed by the MDO (including PAPs) shall have no legal right to employment in PSPCL at the expiry or termination of or during the subsistence of the Coal Mining Agreement.

5.6.2 The MDO shall abide by the applicable statutory provisions on minimum wages, payment of wages, CMPF, gratuity, health care, uniform, ESI and compensation to its employees and workmen. Local people and erstwhile employees of the mine who were on the rolls as on a date which is 6 (six) months before the date of allocation of the coal mine to PSPCL, i.e. 31 March 2015, shall be given preference in employment. The details of the erstwhile employees of the mine (as available with PSPCL) as on 31 March 2015 is provided in Annexure 23.

5.6.3 The financial, social & legal obligations of the manpower employed by the MDO or/and its subcontractors shall at all times be the responsibility of the MDO. PSPCL shall have no liability, whatsoever, with regard to the manpower deployed or employed by the MDO within or after the Contract Period, including the manpower employed by its subcontractors.

5.6.4 PSPCL shall at its own costs appoint the statutory manpower of the mine including the Agent, Mine Manager and other positions as required by extant statutes or as directed by the Director General of Mines Safety (DGMS). The MDO shall also employ its manpower for ensuring that all statutory duties and activities are properly performed. The manpower employed by the MDO for these statutory duties shall be in accordance with the applicable statutory laws, including the qualification requirements under the Mines Act, 1952 and Coal Mine Regulations, 1957 and other Applicable Laws. The MDO shall be responsible for all statutory requirements with respect to the mine, including preparation and submission of periodic reports although such reports will be reviewed and signed by the statutory manpower of PSPCL before submission.

5.6.5 The MDO may engage sub-contractors subject to prior approval from PSPCL, as per Clause 5.2.6 of the Coal Mining Agreement. However, the MDO is not allowed to subcontract or outsource the following activities: overall mine supervision and management, mining operations i.e. drilling, blasting, operations & maintenance of the explosive magazine, excavation & haulage (excluding coal transportation by road outside the mine premises, operation & maintenance of the railway siding, security operations), safety of manpower & equipment and compliance of all statutory obligations

5.6.6 The MDO and its subcontractors shall deploy adequately qualified, skilled and trained manpower, who must be imparted periodic training as per existing statutes.

5.6.7 The MDO shall have to make payment to all workers engaged and the minimum wage shall not be less than the wage which is the higher of the minimum wages prescribed by the Government of India under the Minimum Wages Act, 1948 and the minimum wages prescribed by the Government of Jharkhand during the period of execution of work. The wage payable shall consist of all the components payable under extant law, viz. basic pay, DA and benefits of provident fund. The MDO shall be responsible for payment of salary & wages, provident fund, gratuity, health care services, housing, compensation etc. to its manpower in accordance to the Minimum Wages Act, other statutory rules & regulations in force in India and Government notifications issued from time to time. The MDO's manpower will have no legal right to the employment in PSPCL.

5.6.8 The MDO shall engage manpower according to the statutory provisions specified in several employment Acts and comply with the provisions thereof during the Contract Period including but not restricted to the following:

i) Mines Act, 1952

ii) Mines Vocational Training Rules, 1966

iii) Employee's Compensation Act, 2010

iv) Payment of Bonus Act, 1965 and rules framed thereunder

v) Apprentices Act 1961 and rules framed thereunder

vi) Contract Labor (Regulation and Abolition) Act, 1986; in this context it is made abundantly clear that the MDO shall be regarded as the Principal Employer

vii) Payment of Wages Act, 1936 and Rules, 1950

viii) Maternity Benefit Act, 1961

ix) Employer's Liability Act, 1923

x) Employment of Children's Act, 1938

xi) NIOH guidelines with respect to the periodic medical examination of all workers engaged in the mine and NIOH guidelines with respect to safety equipment

xii) Minimum Wages Act, 1948,

xiii) Mines Crèche Rules, 1966

xiv) Mines Rules, 1955

xv) The Coal Mines Regulations, 1957

xvi) Mines (Rescue) Rules, 1985

xvii) The Maternity Benefits (Mines) Rules, 1963

xviii) Factories Act, 1948

xix) Child Labour (Prohibition and Regulation) Act 1986

xx) Any other applicable statutory acts of the Government of India or the Government of Jharkhand

## 5.7 Drilling & Blasting (as per guidelines of DGMS)

5.7.1 Drilling & blasting is only envisaged for OB production; coal production is envisaged through non-blasting means by deployment of surface miners. However, in case excavation of coal through surface miner is not possible at any point of time during the Contract Period due to the prevailing geological conditions, the MDO shall carry out drilling & blasting in the coal face and excavate the coal using excavator/ front end loader and dumper combination. In this respect it may be noted that the draft composite mining plan proposes production of 1 Mtpa of coal (out of total coal production of 7 Mtpa) through the employment of shovel-dumper combination and hence drilling & blasting may be necessary for this portion of the coal production. The MDO shall carry out drilling and blasting activities along with the associated responsibility of meeting the different statutory obligations with respect to procurement, storage, transportation and handling of explosives. The MDO shall also take all necessary precautions to reduce noise, dust and fly rock generation due to the drilling and blasting operations.

5.7.2 The MDO shall prepare the bench by deploying adequate dozers, graders and thereafter carry out the drilling operations. The MDO shall always deploy adequate supervision personnel for carrying out the drilling & blasting operations; PSPCL may also from time to time deploy its personnel for supervision of the drilling & blasting operations. The MDO shall ensure that the DGMS stipulations in respect of safe drilling and blasting practices are followed.

5.7.3 The MDO shall be completely responsible for the construction of magazine, procurement, transportation, storage and use of explosives and associated drilling & blasting accessories. The MDO must ensure that the blasting norms of the DGMS are strictly followed and must give an undertaking in writing (in a format that may be prescribed by DGMS) that they will be held responsible for any such failure to do so. The MDO must construct a magazine and ensure that the storage of explosives in the magazine, adequate round the clock security at the magazine, transportation of explosive to the blasting site and blasting of charged holes is done as per existing statutes and requirements of DGMS and PESO. The MDO shall bear the costs and efforts required to procure all necessary approvals for the storage and transportation of explosives.

5.7.4 In case stone/shale is encountered, segregated extraction shall be undertaken by the MDO. The MDO shall also engage stone pickers to segregate shale and stone from the coal. Additionally, the MDO shall also have provision for a rock breaker, at the mine to be used as needed for the extraction of coal from some coal seams.

5.7.5 The MDO shall procure the necessary explosive license and also submit the online drilling and blasting reports in consultation with PSPCL. The MDO shall ensure that there is no misuse or pilferage of explosives and in case of any such misuse or pilferage, PSPCL shall initiate appropriate actions against the MDO as per law. The MDO shall be fully responsible for the safe custody, transportation, use, disposal of explosives and associated accessories and absolve PSPCL fully in this regard. In case of any violation with respect to the same, the liability and responsibility of the same shall fully lie with the MDO.

## 5.8 Procurement of Mining Equipment

5.8.1 The MDO shall employ appropriate mining equipment and procure adequate after sales maintenance support and comply with the OEM's recommendations for operations and maintenance of the mining equipment. The minimum size and capacity of equipment that the MDO shall deploy in the mine shall be as per the approved mining plan and as per the composite mining plan, post approval of the same by the competent authority. Any change in the size of equipment being deployed at the mine shall be done only with the prior approval of PSPCL. If any approval is required from any statutory authority due to the change in the equipment deployment plan, the same shall be procured by the MDO at its own cost.

5.8.2 The mining equipment configuration deployed by the MDO shall at all times during the Contract Period comply with the Applicable Laws, including those related to environment and any conditions thereof, as imposed by the MoEF and those related to safety, as imposed by DGMS. Any cost implication with respect to the mining equipment arising out of stipulations of MoEF, DGMS or any other Authority shall be incurred by the MDO without any liability to PSPCL.

5.8.3 For production of coal, the MDO shall deploy surface miner such that there is no need for drilling and blasting in the coal face and also sized coal at (-) 100 mm is obtained without having to further crush or size the coal. In this respect, it may be noted that the draft composite mining plan proposes production of 1 Mtpa of coal through the deployment of shove-dumper combination.

5.8.4 For the initial two years of mine operations from the Coal Production Start Date, the MDO may hire the HEMM and other equipment as per its requirements. However, before the expiry of two years of operation the MDO shall submit documentary evidence of having acquired or leased HEMM and other equipment required for operation of the mine.

## 5.9 Production Schedule

5.9.1 The annual coal and OB production schedule as per the approved mining plan is given below:

| Year of Operation | OB Production (million cum) | Coal Production (Mtpa) | Stripping Ratio (cum/tonne) |
|---|---|---|---|
| 1 | 4.81 | 1.00 | 4.81 |
| 2 | 9.63 | 2.00 | 4.81 |
| 3 | 14.44 | 3.00 | 4.81 |
| 4 | 24.06 | 5.00 | 4.81 |
| 5 | 28.88 | 6.00 | 4.81 |
| 6th to 7th year | 33.69 | 7.00 | 4.81 |
| 8th to 12th year | 33.79 | 7.00 | 4.83 |
| 13 | 30.53 | 7.00 | 4.36 |
| 14th to 21st year | 24.87 | 7.00 | 3.55 |
| 22 | 28.20 | 7.00 | 4.03 |
| 23rd to 29th year | 33.56 | 7.00 | 4.79 |
| 30 | 35.03 | 7.00 | 5.00 |
| 31st to 34th year | 35.18 | 7.00 | 5.03 |

| | | | |
|---|---|---|---|
| 35 | 35.48 | 7.00 | 5.07 |
| 36th to 43rd year | 38.58 | 7.00 | 5.51 |
| 44 | 33.77 | 6.13 | 5.51 |
| **Total** | **1364.37** | **289.13** | **4.72** |

The operations of the mine started in February 2006 and continued till year 31 March 2015. The year-wise production till date is tabulated below:

| Year of Operation | OB production (mn cum) | Coal Production (Mtpa) |
|---|---|---|
| FY 2005-06 | 0.94 | 0.03 |
| FY 2006-07 | 1.76 | 1.63 |
| FY 2007-08 | 3.74 | 3.80 |
| FY 2008-09 | 7.09 | 6.17 |
| FY 2009-10 | 11.88 | 8.48 |
| FY 2010-11 | 17.19 | 8.03 |
| FY 2011-12 | 4.67 | 8.30 |
| FY 2012-13 | 13.42 | 6.93 |
| FY 2013-14 | 21.88 | 5.88 |
| FY 2014-15 | 5.80 | 3.43 |
| **Total** | **88.37** | **52.68** |

Thus the mine has been operating for about 10 (ten years). Hence, it may be assumed that the mine will resume operations from the 11th (eleventh) year, as per the production schedule given in the approved mining plan. Thus, the MDO should start production of both coal and OB as per the 11th (eleventh) year of the production schedule given in the approved mining plan, as per the Annual Production Programme given in Clause 19.2 of the Coal Mining Agreement. Post approval of the draft composite mining plan by the competent authority, the Annual Production Programme for the MDO shall be as per the production schedule of the approved composite mining plan.

5.9.2 If the Coal Production Start Date does not fall on the first day of the financial year, the annual coal and OB production schedule shall be adjusted on a pro-rata basis.

5.9.3 Based on the Annual Production Programme or any modification thereof that may be mutually agreed between PSPCL and the MDO, the Quarterly Capacity and Monthly Capacity of coal to be produced and delivered by the MDO at the Delivery Points in each financial quarter and each month of the Contract Period (as the case may be) shall be computed in terms of Clause 19.2.2 of the Coal Mining Agreement. PSPCL reserves the right to increase or decrease the Monthly Capacity of coal to be produced and delivered by the MDO to PSPCL, for any or all the months of the Contract Period as required by PSPCL, by up to 50% (fifty percent) subject to the upper limit of the peak rated capacity of the mine, i.e. the annual coal production in any financial year shall not exceed the Peak Rated Capacity of the mine. The communication for increase or decrease in the Monthly Capacity of coal to be produced and delivered to PSPCL shall be in the form of a written advance notice of at least 7 (seven) days before the start of the month, in terms of Clause

19.2.2 of the Coal Mining Agreement. The office of Chief Engineer-Fuel, PSPCL shall be the nodal agency for communicating any change in the Monthly Capacity to the MDO. In case of any reduction in the Monthly Capacity for a month, the corresponding Quarterly Capacity shall also be reduced accordingly.

5.9.4 PSPCL agrees and undertakes that it shall ordinarily not reduce the Monthly Capacity of coal by more than 50% (fifty percent), as mentioned in Clause 5.9.3. In the event PSPCL reduces the Monthly Capacity of coal below such quantity, it shall pay to the MDO, a Fixed Charge equal to 25% (twenty five percent) of the prevailing Composite Mining Charge for and in respect of any such reduction below 50% (fifty percent) of the Monthly Capacity, as computed in terms of terms of Clause 19.2.2 of the Coal Mining Agreement. Provided, however, that such charges shall not be payable when the reduction in the Monthly Capacity of coal to be produced and delivered to PSPCL has been initiated by the MDO due to operational and/or production related issues or problems in the mine and the same has been approved by PSPCL or is due to any Force Majeure event (as defined in the Coal Mining Agreement) or is due to any MDO Default (as defined in the Coal Mining Agreement). Provided, further, that the short offtake (if any) and the corresponding Fixed Charge shall be computed and payable to the MDO on an annual basis and that any short offtake of coal in a particular month can be made up by PSPCL during the subsequent months of the same financial year. Such Fixed Charge (if any) shall be payable by PSPCL as per the time period indicated in Clause 5.30 of this RFP. In case of delayed payments, PSPCL shall be liable to pay the MDO interest on the outstanding amount at the prevailing Marginal Cost of Funding Based Lending Rate (MCLR) of the State Bank of India (SBI) as on the date of the payment.

5.9.5 The MDO shall adhere to the Annual Production Programme (or any modification thereof that may be mutually agreed between PSPCL and the MDO) for the production of coal; the MDO shall ensure that in each financial quarter of the Contract Period, it produces and delivers to PSPCL (at the Delivery Points) the Quarterly Capacity of coal or any reduction thereof in terms of Clause 5.9.3. The MDO shall be liable to pay to PSPCL damages for shortfall in the production and delivery of coal below the specified Quarterly Capacity (except in cases of Force Majeure or PSPCL Default, as defined in the Coal Mining Agreement) and the level of damages payable by the MDO shall increase with the increase in the shortfall in production, as mentioned in Clause 19.5.1 of the Coal Mining Agreement. Provided, however, that such damages shall be computed on a financial quarter basis and the MDO may make up the shortfall in any month in the remaining months of the financial quarter. Provided, further, that in case the Quarterly Capacity is reduced by PSPCL in terms of Clause 5.9.3, the damages payable by the MDO shall be calculated in case of any production shortfall below such reduced Quarterly Capacity. Provided, further, that in case the Quarterly Capacity is increased by PSPCL in terms of Clause 5.9.3, the damages payable by the MDO shall be calculated in case of any production shortfall below the Quarterly Capacity before any increase thereof by PSPCL.

5.9.6 The MDO shall conform to the approved mining plan in terms of the boundaries of the mining area, the internal and external dumping locations and the progress of the mine. The MDO shall ensure sufficient width of working benches to provide space for mining equipment to work, systematic progress of the mining front, optimal height and width, alignment and grade of haul roads and ramps, optimal back filling arrangements and safe dump profile. The development and operations of the mine shall conform to the approved mining plan and accepted Standard Industry Practices. The same shall be liable to be regularly assessed and monitored by PSPCL and/or its authorized representatives in terms of the Coal Mining Agreement.

5.9.7 The MDO shall plan the OB dumping within the dumping limits as per the approved mining plan and maximize internal dumping and ensure that the slope of the dump meets the statutory safety requirements. The MDO shall always maintain the overall profile of the mine in all respects in conformity to the approved mining plan. The working places on the dumps shall be maintained in safe and tidy condition at all times, with adequate watering for dust suppression. The MDO shall follow all DGMS stipulations with respect to dump height and other safe OB dumping practices.

5.9.8 Topsoil and subsoil shall be stockpiled separately from the OB dump at a minimum distance (or any other approved distance) to ensure that such soil is not contaminated by the OB dumps. An access to/from the soil dump shall be available at all times. The topsoil and subsoil management by the MDO shall aim to recover as much soil as possible and minimize the waste of soil.

5.9.9 The MDO shall follow the approved mining plan throughout the Contract Period. If any change to the approved mining plan is proposed by the MDO due to prevailing mine conditions and for reasons of increased operational flexibility, such changes must be first approved by PSPCL and thereafter the MDO shall be responsible for getting the modified mining plan approved from the Ministry of Coal, Government of India and other statutory Authorities as required, without any cost implications to PSPCL. All costs associated with the revision of the approved mining plan shall be borne by the MDO, without any liability to PSPCL. The benefits, if any, due to increased operational flexibility or reduction in operating & maintenance expenses, shall be to the account of the MDO. Provided that the MDO shall have no claims to any benefits accruing to PSPCL (either directly or indirectly) due to the revision of approved mining plan. Provided, further, that any revision of the approved mining plan shall be in terms of Clause 13.6 of the Coal Mining Agreement.

5.9.10 The MDO shall make every effort to ensure the quality and grade of coal and minimize any coal losses and prevent any coal loss or contamination by non-coal material. Preparation of coal seams including ripping of the seam shall be done by the MDO. The MDO shall adopt proper procedures to prevent contamination of the coal by foreign objects, in particular ground engaging tools, steel nuts and bolts, and wastes etc.

5.9.11 The MDO shall submit daily MIS reports to PSPCL's statutory manpower, giving daily updates on the production of OB, coal, the exposure of coal and the progress of mine development.

5.9.12 For each financial year of the mine operations, the MDO shall prepare and submit to PSPCL a rolling annual production plan. The rolling annual production plan for a financial year shall be submitted to PSPCL for approval at least three months prior to the start of the financial year. PSPCL may engage other consultants for review of the rolling annual production plan and normally the rolling annual production plan shall be approved and finalized by PSPCL within one month of submission, after due discussions with the MDO. The rolling annual production plan shall consist of the following:

i) Description of the methodology and sequence of mining operations planned during the financial year

ii) Production schedule for the year (for both OB and coal) including drill down to monthly production schedules for both OB and coal

iii) Planned mining sequence for the financial year

iv) Equipment deployment schedule

v) Land availability for production and OB dumping for the financial year

vi) Estimated remaining coal reserves at the start and end of the financial year and reconciliation with survey report(s)

vii) Any projects/ equipment replacement/ major repair and maintenance planned to be undertaken by the MDO during the financial year

viii) Any other major issue which may impact production and progress of the mine during the financial year

## 5.10 Timeframe to Start Production

Since the Pachhwara Central coal mine was an already operating mine, the MDO shall have to start the excavation and haulage of OB within a time period of 90 (ninety) days from the Appointed Date and also start the production of coal within a time period of 120 (one hundred and twenty) days from the Appointed Date. The MDO shall have to achieve the COD (as defined in Clause 12.3.2 of the Coal Mining Agreement) within a period of 180 (one hundred and eighty) days from the Appointed Date, as per the provisions of Clause 12.3.1 of the Coal Mining Agreement.

## 5.11 Coal Quality (as per MoEF guidelines)

5.11.1 The MDO shall produce coal as per Declared Grade/ GCV band of the mine. The grade of coal would be declared as per the provisions of the Colliery Control Order. The sampling and testing of the delivered coal would be done on a daily basis to ascertain that the quality of coal delivered to PSPCL is as per the Declared Grade of the mine. The sample collection point shall be the Delivery Point(s) of the coal; the testing shall be done every day on a rake to rake basis, and the testing shall be carried at PSPCL's laboratories at the Delivery Point(s). The sampling and testing of coal shall be done by PSPCL or its representatives and at the cost of PSPCL. The MDO's representatives may choose to be present for the sampling and testing at the Delivery Point(s). The sampling and testing procedure shall be as per the procedure set out in Schedule-J of the Coal Mining Agreement.

5.11.2 PSPCL shall provide all reasonable facilities like accommodation at the Delivery Point(s) (if available) at market rates, and office space (if available) on free of cost basis to the representative of MDO witnessing the implementation of sampling and analysis in terms of the aforesaid Clause.

5.11.3 Additionally the MDO shall also set up a laboratory for coal testing at the mine and conduct daily sampling and testing of coal dispatched from the mine to ensure that the requisite coal quality is dispatched. The results shall be shared with PSPCL. The costs related to the sampling and testing of coal at the mine end shall be borne by the MDO. However, the coal quality as determined by PSPCL at the Delivery Points shall be final and the coal quality tests undertaken by the MDO at the mine shall have no financial implication on PSPCL.

5.11.4 In case of any dispute, the referee sample shall be sent to either of CIMFR, Nagpur, CIMFR Dhanbad, NCB Ballabgarh or any other government owned NABL accredited laboratory (to be chosen by the party other than the objecting party) and such third party results shall be binding on both the parties. The Delivery Point weighment and quality report shall be made available to MDO by PSPCL within 7 (seven) working days from the coal rake being received at the Delivery Point(s). The charges of the referee lab shall be paid by the party challenging the test results.

5.11.5 The Gross Calorific Value (GCV) on equilibrated basis of the coal delivered to the Delivery Point(s) on rake to rake basis shall be 4301 Kcal/Kg & above. For coal having GCV less than 4301 Kcal/kg, the Composite Mining Charge payable to the MDO shall be adjusted as follows: the Composite Mining Charge shall be reduced proportionately to the reduction in GCV from the GCV of 4601 Kcal/kg (i.e. the Composite Mining Charge payable shall be = prevailing Composite Mining Charge X actual GCV as analyzed / 4601). This shall be applicable for the coal rakes having GCV less than 4301 Kcal/Kg and up to 3701 Kcal/kg. PSPCL shall not pay the Composite Mining Charge for the rakes having GCV <= 3700 Kcal/kg. Further, Freight Costs and other charges payable by PSPCL including government taxes & duties for the coal having GCV<=3700 Kcal/kg shall be borne by PSPCL. However, all penalties with respect to over-loading or under-loading of coal and any other penalties and demurrage (except for charges which are attributable to the Delivery Points) levied by the Indian Railways shall be payable by the MDO.

5.11.6 The MDO shall on a rake to rake basis deliver coal with total moisture (on as received basis) within a maximum limit of 7% (seven percent) over and above the inherent moisture (on equilibrated basis) during non-rainy season (October to May) and within a maximum limit of 9% (nine percent) over and above the inherent moisture (on equilibrated basis) during rainy season (June to September). In case total moisture content on as received basis exceeds the maximum limits specified above, then the weighment of coal shall be reduced on pro rata basis by 1.5% (one point five percent) for every 1% (one percent) excess moisture over and above the limits specified above and the Composite Mining Charge shall be paid accordingly. The additional Freight Costs incurred by PSPCL on account of the total moisture (on as received basis) of the coal exceeding the maximum limits (as specified in this Clause 5.11.6) shall be recovered from the invoices payable to the MDO. Further, all penalties with respect to over-loading or under-loading of coal and any other penalties and demurrage (except for charges which are attributable to the Delivery Points) levied by the Indian Railways shall be payable by the MDO.

5.11.7 The percentage ash content of the coal received at the Delivery Point(s), including diverted-in rakes, from the Pachhwara Central coal mine, on monthly weighted average (on equilibrated basis) shall not be more than 34% (thirty four percent). In case the monthly weighted average ash percentage (on equilibrated basis) exceeds 34% (thirty four percent), the Composite Mining Charge in respect of such rakes supplied during the month, whose ash content is more than 34% (thirty four percent) on equilibrated basis, shall be recovered from the invoices payable to the MDO. Further, PSPCL shall not recover the Freight Costs and Government taxes, duties & levies paid, from the charges of the MDO for the coal rakes having ash content more than 34% (thirty four percent) as described above. However, all penalties with respect to over-loading or under-loading of coal and any other penalties and demurrage (except for charges which are attributable to the Delivery Points) levied by the Indian Railways shall be payable by the MDO.

5.11.8 The MDO shall ensure the delivery of properly sized coal of (-) 100 mm, even with respect to any coal that may be extracted using shovel-dumper combination and shall deploy adequate number of crushers, as may be required. The procedure for checking the size of coal shall be as per the procedure set out in Schedule-J of the Coal Mining Agreement. In case the size of coal in a rake received at the plant end is found to be more than 100 mm twice a month on consigned basis, then the Composite Mining Charge shall be deducted for the remaining rakes of oversized coal received during the month at the rate of 5% (five percent) of the prevailing Composite Mining Charge.

5.11.9 The MDO shall use its best efforts to prevent mixing of in-seam partings and stones / shale / foreign material extraneous to the coal during mining itself. The MDO shall also make efforts to segregate stones from the coal supplies. In case stones/ shales/ other foreign or extraneous material are received, quantity of the stones/ shales/ other foreign or extraneous material shall be jointly assessed (on rake to rake basis) with representative of the MDO and the Composite Mining Charge and the Freight Costs payable by PSPCL to the Indian Railways for the quantity stones/ shales/ other foreign or extraneous material shall be adjusted accordingly from the invoices payable to the MDO. The MDO shall also take suitable steps to ensure supply of coal free from tramp iron and metallic foreign material.

5.11.10 The MDO shall build and operate Coal Depots both within the Pachhwara Central coal mine for the storage of coal and also at the railway siding which is being used for evacuation of the coal from the mine. Each of the Coal Depots shall also have adequate space for the loading and dispatch of coal and the capacity for storage of at least 15 (fifteen) days of the average production of coal. Both the Coal Depots shall be maintained by the MDO as per Standard Industry Practices and be kept free of spontaneous heating and fire by taking suitable measures. Initially the railway siding shall be the existing railway siding at Pakur, which may be extended by PSPCL at a later date. The MDO at its own costs shall also have to shift the Coal Depot from Pakur accordingly, in case the railway siding is extended. The documented cost of any additional land that may be required for setting up the new Coal Depot at the extended railway siding and the one time R&R cost for the same (as certified by the District Magistrate or the District Collector) shall be borne by PSPCL. In case the new Coal Depot is not constructed by the MDO within the reasonable timelines as may be allowed by PSPCL, then the Coal Depot shall be constructed by PSPCL and the costs incurred therein plus a departmental charge of 27% (twenty seven per cent) shall be recovered by PSPCL from the invoices payable to the MDO.

5.11.11 The operational and planning issues with respect to the Coal Depots at the mine and at the railway siding, such as the entry and exit points for trucks, circulation of trucks within the mine premises and the siding, loading areas etc. shall be finalized by the MDO in consultation with PSPCL.

## 5.12 Loading Point of Coal

5.12.1 During the operations of the mine by the Prior Allotee, coal was evacuated using the railway siding at Pakur, located at a distance of about 55 km from the mine. During the initial years of the Contract Period of the MDO, the coal is also planned to be evacuated through this siding.

5.12.2 The MDO shall be responsible for transportation of the coal from the mine top to the railway siding at Pakur, unloading of the coal at the siding, maintenance and security of the coal stock at the railway siding at Pakur, stacking and shifting of coal at the siding as required and loading of the coal on the railway rakes through the rapid loading system on a full rake basis. When the rapid loading system is not functional, the MDO shall load the coal onto the railway rakes through deployment of payloaders, although no extra cost would be payable by PSPCL towards this activity.

5.12.3 The MDO shall also be responsible for all associated tasks for operation and maintenance of the siding, including but not limited to, lime spraying of coal loaded in the wagons, door gutka fitting, ensuring closing of wagon doors, cleaning of the railway tracks in the siding, adequate lighting and illumination in the railway siding area with diesel generator set for power back-up and operation & maintenance of the weigh bridge(s) at the siding.

5.12.4 The transportation of coal from the mine to the railway siding at Pakur shall be through tipper trucks; the trucks shall be covered by tarpaulin during the transportation of coal. The MDO shall be responsible for providing adequate security to prevent any theft and pilferage of coal, at the mine, during transportation and during its storage at the railway siding. The MDO shall deploy adequate security at the railway siding at Pakur and also construct a barbed wire fencing around the siding to prevent the theft and pilferage of coal. The security of coal till its delivery at the Delivery Point(s) shall be the sole responsibility of the MDO. The MDO shall ensure that all guidelines of Pollution Control Board (PCB) of the Government of Jharkhand with respect to the transportation of coal are followed and adhered to.

5.12.5 All costs related to transportation of coal from the mine to the Loading Point, loading of coal at the siding, operation and maintenance of the railway siding at Pakur, including costs related to providing security for transportation and stocking of coal, salaries and wages of security personnel employed by the MDO shall be borne by the MDO. PSPCL shall pay the MDO the Composite Mining Charge which shall be the sum of the Mining Charge payable for the mining of coal (as defined in Clause 9.5.2 hereof), and the Transportation & Handling Charge (as defined in Clause 9.5.3 hereof) for the transportation of coal from the mine to the Loading Point as well as for the handling of coal at the Loading Point, up to the loading of coal on to the railway rakes and delivery of coal up to the Delivery Points, although the Freight Costs shall be directly paid by PSPCL to the Indian Railways.

5.12.6 Given the large distance between the mine and the existing railway siding at Pakur, PSPCL has plans to extend the railway siding towards the mine in the near future. However, the location of the extended railway siding has not yet been determined. The extended railway siding shall be constructed by PSPCL at its own cost including the cost of land, by employing suitable agencies and its own personnel. The MDO shall facilitate and extend cooperation to PSPCL and its appointed agencies and personnel for the extension of the railway siding, particularly for land acquisition and obtaining physical access of the land. Any infrastructure that may be required at the extended siding such as coal handling plant, rapid loading system, receiving hopper, in-motion weighbridge etc. shall also be constructed by PSPCL at its own costs. Any failure or delay by PSPCL in construction of the rapid loading system or any other mechanized system for coal loading shall not absolve the MDO of the responsibility of loading coal onto the rakes. In case of any such failure or delay by PSPCL in construction of the rapid loading system or any other mechanized system for coal loading, the MDO shall continue to ensure the required loading of coal onto the rakes at its own costs using payloaders or other equipment suitable for this purpose.

5.12.7 After extension of the railway siding, the Loading Point of coal shall be the extended railway siding and the MDO shall be responsible for the operation and maintenance of the extended railway siding; all the responsibilities of the MDO with respect to the existing siding at Pakur shall be also its responsibility for the extended railway siding, including construction and maintenance of a Coal Depot at the extended siding. To take into the account the reduction in distance of transportation of coal from the mine to the extended railway siding, the Base Transportation & Handling Charge shall be commensurately decreased as per the below formula. The Base Mining Charge shall not be reviewed due to change in the distance from the mine to the extended siding.

Base Transportation & Handling Charge (new) = Base Transportation & Handling Charge (existing) X (0.3 + 0.7 X Distance of extended railway siding from the mine / Distance of existing railway siding at Pakur from the mine).

<u>Illustrative example</u>

Let us assume that Base Transportation & Handling Charge (existing) = Rs. 300 per tonne
Distance of existing railway siding at Pakur from the mine = 55 km
Let us assume that distance of extended railway siding from the mine = 27.5 km

Thus, Base Transportation & Handling Charge (new) = Rs. 300 X (0.3 + 0.7 X 27.5/55) per tonne
= Rs. 300 X (0.3 + 0.35) per tonne
= Rs. 195 per tonne

The Base Transportation & Handling Charge (new) shall be considered for calculation of the Transportation & Handling Charge (in terms of Clause 9.5.3) payable to the MDO.

5.12.8 PSPCL shall give the MDO an advance notice of at least 60 (sixty) days before the commissioning of the extended railway siding and before the change of the Loading Point of the coal from the railway siding at Pakur to the extended railway siding.

## 5.13 Delivery Point of Coal

5.13.1 The Delivery Point(s) of coal shall be the railway sidings at the thermal power plants of PSPCL. The coal shall be delivered as per the plant-wise coal requirements and schedule to be communicated by PSPCL to the MDO with an advance notice of at least 10 (ten) days. The office of Chief Engineer-Fuel, PSPCL shall be the nodal agency for communicating the plant-wise coal requirements and schedule to the MDO.

5.13.2 The MDO shall be responsible for the transportation of coal from the Loading Point to the Delivery Point(s). However, the unloading of coal at the Delivery Point(s) shall be undertaken by PSPCL and any demurrage and penalty payable to Indian Railways which are attributable at the Delivery Point(s) shall be borne by PSPCL.

5.13.3 The Freight Costs shall be borne directly by PSPCL. Any demurrage and any other penalties charged (including penalties for underloading, overloading and excess charges) by the Indian Railways shall be the liability of the MDO. Any demurrage and penalty payable which are attributable at the Delivery Point(s) shall be payable by PSPCL. The demurrage and penalty amounts payable by the MDO shall be deducted from the monthly invoices payable to the MDO.

5.13.4 The indenting of rakes shall also be done by the MDO. The MDO shall also regularly follow up with the Indian Railways for the regular supply of rakes as per the indents. Any fees such as wagon registration fee or any license fee with respect to the railway siding (either existing siding or the extended siding) which are payable to the Indian Railways shall be payable by the MDO.

5.13.5 The MDO shall dispatch coal in full rake loads to the Delivery Point(s) on freight-paid basis and shall comply with all documentation formalities laid down by the Indian Railways to ensure that the Freight Costs are charged by as per the extant rates. Any failure in this regard resulting in payment of higher Freight Costs by PSPCL shall be borne by the MDO and shall be adjusted by PSPCL from the Composite Mining Charge payable by PSPCL to the MDO.

5.13.6 In case any diversion of rakes(s) takes place enroute, PSPCL shall not be liable to make any payments to the MDO. The MDO shall be paid for the coal that actually reaches the Delivery Point(s). However, PSPCL shall be obliged to make the payments for such diverted rake(s)/ wagon(s), only when reimbursement of the price of coal of such diverted rake(s) / wagon(s) and / or adjustment to the credit of PSPCL is made by the Indian Railways and in no event exceeding the said credit. PSPCL shall provide the Railways reconciliation statement of such diverted rakes to the MDO.

5.13.7 The MDO shall:

i) ensure the accuracy of the weight of coal loaded into each wagons at the Loading Point and shall be responsible for delivery of the same quantity of coal at the Delivery Point(s);

ii) ensure that the loading of coal at the Loading Point is in accordance with the carrying limits prescribed by the Indian Railways;

iii) comply with all documentation formalities laid down by the Indian Railways for charging freight on full rake load basis only;

iv) ensure that the wagons are not over-loaded and to such extent the MDO shall be liable for any penalties, costs or additional freight payable in this regard;

v) in the event that PSPCL proposes to recover any additional railway freight paid, undertake to lodge such claims and recover such amounts from the Indian Railways. In case any refunds are received by the MDO in relation to the additional freight, the same shall be returned to PSPCL;

vi) ensure that all wagons dispatched to the Delivery Point(s) are weighed at the Loading Point and a copy of the receipt of such weighment is submitted to PSPCL. In case any of the wagons are not weighed, the MDO shall ensure that the Railway Receipt clearly indicates the same;

vii) after the loading of the wagons and before the dispatch of coal, obtain Railway Receipts with all details of the dispatched coal clearly identified and submit the same to the PSPCL within 15 (fifteen) days from the date of the Railway Receipt;

viii) submit adequate indents of the railway wagons to the Indian Railways and obtain regular allotment of rakes from the Indian Railways;

ix) acquaint itself with the complete procedure relating to the movement of coal by rail and stay updated on changes in such procedure as may be made from time to time and liaise periodically with the relevant Government Instrumentalities in this regard;

x) be conversant with the rules and regulations of the Indian Railways and other related Government Instrumentalities including restrictions in relation to the route and allotment, breaches, paucity of wagons and other related matters and also keep PSPCL duly informed in this regard;

xi) liaise with the Indian Railways and other Government Instrumentalities, in relation to the transportation of coal from the Loading Point to the Delivery Point(s) by all rail route, placement of wagons and loading of coal onto the wagons at the Loading Point;

xii) to ensure at the time of loading of coal onto the railway wagons at the Loading Point, that there is no deficiency or breach of any nature, including short-loading and loading of stones and other extraneous material; ensure that all issues, concerns and bottle-necks in the delivery of coal shall be referred immediately to the relevant Government Instrumentalities and other related agencies and undertake to resolve the same at the earliest without any disruption in the delivery of coal;

xiii) ensure that the wagons are properly labelled, where the label is clearly visible and includes complete details of the type of coal (in full form), its grade, whether it has been sampled and such other details. The labels are required to be on the wagons till the wagon reaches the Delivery Point(s) to enable clear identification of wagon for sampling;

xiv) monitor the movement of coal rakes to ensure the safety of the coal and that there is no undue delay in transportation of coal to the Delivery Point(s);

xv) ensure that there is no loss of coal in transit and if necessary, appoint security personnel to travel along with wagons to prevent pilferage;

xvi) ensure, as far as is possible, that the wagons / rakes which are booked to travel to the Delivery Point(s) are not diverted by the Indian Railways and other related agencies. In the event the Indian Railways diverts any of the wagons/rakes, the MDO shall immediately inform PSPCL of such diversion;

xvii) liaise with the Indian Railways to seek delivery of missing wagons, if any and examine the calibration of weighbridges located at the Loading Point and submit the relevant certificates in this regard.

xviii) on behalf of PSPCL, liaise with the Indian Railways on all matters, including to make all necessary claims and demands from the Indian Railways for any missing wagons, diverted wagons and other related matters and shall seek necessary authorization letters, if required, from PSPCL.

## 5.14 Measurement of Coal

5.14.1 The quantity of coal dispatched from the Loading Point shall also be measured and recorded at the electronic in-motion weighbridges at the railway siding at Pakur or at the extended railway siding. An electronic in-motion weigh bridge is already installed at the railway siding at Pakur, but is yet to be commissioned. The MDO shall ensure that this in-motion weighbridge is commissioned at the earliest; the final testing of this weighbridge shall be in the presence of representatives of PSPCL.

5.14.2 The weighbridge at the Loading Point shall be operated and maintained by the MDO and the MDO shall ensure that the weighbridge is maintained and regularly calibrated at its own costs at least once in every 12 (twelve) months in accordance with the manufacturer’s recommendations and as per Standard Industry Practices and in the presence of representatives of PSPCL. If there is any need to calibrate the weighbridge more frequently, i.e. before the elapse of 12 (twelve) months, the MDO shall also ensure that the weighbridge is calibrated on such date, in accordance with the manufacturer’s recommendations and as per Standard Industry Practices and in the presence of representatives of PSPCL. The MDO shall also ensure that the weighbridges are stamped regularly by the Controller of Legal Metrology (Weights & Measures), Government of Jharkhand in accordance with the extant rules and regulations in this regard. The weighments in this weighbridge shall form the basis of preparation of the Railway Receipt. However, till the in-motion weighbridge is commissioned, the loading and weighment of coal shall be as per prevailing practices of the Indian Railways. Apart from the MDO’s personnel, PSPCL may also deploy its own personnel at the railway siding. In addition, Indian Railways may also deploy its personnel at the railway siding. The MDO and its personnel shall extend all cooperation to the personnel of both PSPCL and the Indian Railways.

5.14.3 The MDO shall be paid the Composite Mining Charge based on the quantity of coal received by PSPCL at the Delivery Point(s) or the weight recorded on the Railway Receipt or the en-route weight, whichever is less. The quantity of coal received by PSPCL at the Delivery Point(s) shall be measured and recorded by the electronic in-motion weighbridges operated and maintained by PSPCL at the railway sidings at the Delivery Point(s) and shall be adjusted as per Clause 5.9, if required. PSPCL shall ensure that these weighbridges are maintained and regularly calibrated at least once in every 12 (twelve) months in accordance with the manufacturer's recommendations and as per Standard Industry Practices and in the presence of representatives of MDO. If the weighbridge at the Delivery Points is non-operational due to any reason, then the weight recorded on the Railway Receipt or the en-route weight, whichever is less, shall be considered for payment of the Composite Mining Charge.

5.14.4 In addition to measurement of coal at the Loading Point (by the MDO) and at the Delivery Point(s) (by PSPCL), the MDO shall ensure that the quantity of coal dispatched from the mine via tipper trucks is weighed and recorded at an electronic road weighbridge located near the loading area of the Coal Depot within the mine.

5.14.5 The quantity of coal excavated from the mine and the quantity of coal as received by PSPCL at the Delivery Point(s) shall be reconciled on a monthly basis. The reconciliation shall be done on the basis of monthly survey undertaken using Laser Measurement (as defined in Clause 17.7 of the Coal Mining Agreement) wherein the stockpile of coal in the seams and at the Coal Depots shall be measured using laser technology and the volume of coal shall be converted to quantity of coal based on the corresponding specific gravity of coal (in-situ or otherwise, as the case may be). The monthly production reports of the mine, normal loss of coal due to spontaneous combustion/ heating, quantity of carpet coal shall also be taken into consideration while undertaking the monthly reconciliation. Based on the results of the monthly reconciliation, the loss of coal (if any) shall be determined by PSPCL and the MDO shall be liable to pay PSPCL penalties for any loss of coal, in terms of Clause 5.15.2 hereof.

5.14.6 PSPCL may also appoint agencies or auditors such as CIMFR or others to undertake the monthly reconciliation exercise or to check the quality and/or quantity of coal produced from the mine. The MDO shall cooperate with such agencies to the fullest extent and the results of such audit shall also be binding upon the MDO.

## 5.15 Security of Coal

5.15.1 The MDO shall be responsible for providing adequate security for preventing the loss, theft and pilferage of coal up to the Delivery Point(s). The quantity of coal excavated from the mine shall be determined on a monthly basis based on the results of the Laser Measurement, monthly production reports of the mine and weighment of coal at the Loading Point and at the Delivery Point(s). The difference in the quantity of coal excavated from the mine vis-à-vis the quantity of coal received at the Delivery Point(s) shall be basis of calculating the quantum of coal loss. The MDO shall indemnify PSPCL from any loss, theft or pilferage of coal in the mining, handling, transportation, stocking, loading and delivery of coal up to the Delivery Point(s) and no loss of coal shall be allowed by PSPCL.

5.15.2 In case the coal loss is up to 1% (one percent), the quantum of damages shall be the quantity lost multiplied by the prevailing Composite Mining Charge. In case the actual coal loss is greater than 1% (one percent), the then the quantum of damages shall be calculated as:

{1% X prevailing Composite Mining Charge + (Actual % of coal loss – 1%) X 3 X prevailing Composite Mining Charge.

<u>Illustrative example</u>

Let the quantity of coal excavated in a month be 500,000 tonne of G8 grade and let the level of coal loss (as determined through the monthly reconciliation exercise) be 1.25%. The coal loss percentage shall be computed up to 2 (two) decimal places.

Let the prevailing Composite Mining Charge be Rs. 1000 per tonne;

| | |
|---|---|
| Thus quantum of damages payable | = Rs. 500,000 X {(1% X 1000) + (1.25% - 1%) X 3 X 1000} |
| | = Rs. 500,000 X {10 + 7.5} |
| | = Rs. 87.50 lacs |

The damages shall be calculated and recovered by PSPCL on a quarterly basis from the invoices payable to the MDO.

## 5.16 Mine Infrastructure and Workshop Facilities

5.16.1 The MDO shall design and construct at its own costs the following mine site infrastructure for the maintenance of HEMM and other plant & machinery and to accommodate the employees of the mine. Some of these infrastructure have already been created by the Prior Allotee and have been vested in PSPCL by the Government of India. PSPCL shall grant the MDO the right to utilize this infrastructure on an **as-is-where-is basis**. The MDO shall operate and maintain the same at its own costs. Bidders may visit the mine site on their own and at their own costs to assess the adequacy and conditions of the existing infrastructure and also asses the expenditure required for revival, operation and maintenance of such infrastructure.

i) Workshop with different sections for maintenance of different types of equipment and with portable cabins for maintenance team

ii) Store shed

iii) Explosive magazine

iv) Diesel dispensing unit with underground tankage

v) Administrative office

vi) First aid and medical center

vii) Vocational training center

viii) School

ix) Hospital

x) Coal testing laboratory

xi) Environmental laboratory

xii) Boundary wall

xiii) Restrooms and toilets

xiv) Canteen

xv) Rest shelter

xvi) Guest house and bachelor's accommodation

xvii) Adequate number of electronic weighbridges at the mine (road weighbridge) and at the Loading Point (in-motion weighbridge)

xviii) Time office for recording entry and exit of tipper trucks

xix) Township with associated infrastructure & facilities

xx) Effluent treatment plant and settling pond

xxi) Primary health center

xxii) Barbed wire fencing

xxiii) Any other infrastructure that may be required to make the mine operational and as required for the welfare of PAPs and PAFs

xxiv) Any other infrastructure that may be required for meeting all statutory requirements

5.16.2 The MDO shall allow PSPCL's representatives to also use (on payment basis at extant market rates) the facilities at the mine constructed and/or operated and maintained by the MDO such as guest house, office space etc. However, in case of the statutory manpower of PSPCL with respect to the mine, the MDO shall allow the statutory manpower to use such infrastructure and facilities on a free of cost basis.

5.16.3 The MDO shall constantly maintain the existing utilities/facilities at the mine and augment/modify the same as per the requirement of the Project, including electricity, communications, water (industrial water & drinking water), and accommodation and mess facilities at its own cost and also pay for all charges for metering, connection and consumption of those utilities. The MDO shall also arrange for the supply of all utilities like office accommodation and conveyance as required by statutory manpower of PSPCL at the mine and make arrangements of the same for PSPCL's representatives.

## 5.17 Maintenance of Haul Roads and other Roads

5.17.1 The MDO shall construct and maintain all haul roads required for the purpose of mining and transportation of coal, OB and top soil, and for access to dumps yards and stockyards as may be required.

5.17.2 Construction & maintenance of all approach roads to the workshop and other mine facilities shall also be the responsibility of the MDO. The MDO shall also construct & maintain connecting roads and general pit and dump roads as may be required.

5.17.3 The haul roads constructed and maintained by the MDO shall have the requisite width, gradient, drainage, signage and other safety measures, as per regulations and in accordance with the guidelines circulated by DGMS and relevant DGMS circulars issued from time to time and other relevant provisions of Coal Mines Regulations, 1957.

5.17.4 The MDO shall design and construct any additional access roads as may be required for the development and maintenance of the mine. In case any additional access roads are to be constructed, including connecting roads from the mine to the siding (existing siding or new extended siding), the documented cost of any additional land that may be required for construction of such additional access or connecting roads and the one time R&R cost for the same (as certified by the District Magistrate or the District Collector) shall be borne by PSPCL. In case the additional access or connecting roads are not constructed by the MDO within the reasonable timeline as may be allowed by PSPCL, then such roads shall be constructed by PSPCL and the costs incurred therein plus a departmental charge of 27% (twenty seven per cent) shall be recovered by PSPCL from the invoices payable to the MDO.

5.17.5 The MDO shall also be responsible for maintenance of ramps and dozing/grading in the mining area.

5.17.6 The MDO shall construct safety berms along all bench crests and drop offs which vehicles could possibly access. The safety berms are to be constructed in line with acceptable haul road construction standards.

5.17.7 The MDO shall operate and maintain the connecting roads between the mine and the Loading Point, both when the Loading Point is the existing railway siding at Pakur or the extended railway siding in the near future. In case any diversion of the connecting road or construction of a new connecting road is required, all costs for the same shall be borne by the MDO, although in case of the connecting road to the extended railway siding, the documented cost of land acquisition and the one time R&R costs, as certified by the District Magistrate or the District Collector, shall be borne by PSPCL. Other costs including but not limited to cost of construction of the new connecting road(s), cost of operation and maintenance of such roads and ongoing R&R costs shall be borne by the MDO. The MDO shall undertake the construction and commissioning of such new connecting road(s) as may be required, within the time period allowed by PSPCL for the same.

## 5.18 Dust Suppression and Water Sprinkling

Water sprinkling shall be done by the MDO in the mine for dust suppression on the roads, face, dumps to the satisfaction of mining laws and guidelines. The MDO shall deploy and continuously operate sufficient number of water sprinklers of capacity as per the approved mining plan for suppression of dust. The MDO shall also undertake dust suppression at the Coal Depots both at the mine and at the Loading Point. The MDO shall also ensure dust suppression and water sprinkling on the connecting road between the coal mine and the Loading Point.

## 5.19 Pumping and Drainage (as per DGMS guidelines)

The MDO shall be responsible for operation and maintenance of the pumping and drainage infrastructure at the mine as per the guidelines of DGMS and the approved mining plan, including construction and maintenance of garland drains to minimize the amount of runoff water entering the mining pits and dumps. The initial dewatering of the mine required to start the mining operations shall also be undertaken by the MDO at its own costs.

## 5.20 Power Supply, Illumination & Communication

5.20.1 The MDO shall make necessary arrangement for power supply at the main sub-station of the mine, including civil works related to construction of the sub-station, procurement, operation and maintenance of breaker panels, switchgear and associated electrical equipment for meeting the electrical power requirement of the mine. The cost of extending the power connection to the mine, including the cost of constructing of the substation shall be borne by the MDO. In case any application is required to be made by PSPCL to the power distribution utility, PSPCL shall assist the MDO with the same.

5.20.2 The costs related to further distribution of power supply within the mine including costs related to construction of further sub-stations at the township, workshop etc. shall also be borne by the MDO. The MDO shall also make necessary arrangements to distribute the power supply from main receiving sub-station to various parts of the mine.

5.20.3 All charges related to power consumption shall be payable by the MDO. The MDO shall ensure compliance to all the guidelines of the local electricity distribution company, which is presently Jharkhand Bijli Vitran Nigam Limited.

5.20.4 The MDO shall also make adequate arrangement for the backup power through the diesel generator sets. The MDO shall be responsible for operation and maintenance of diesel generator set including arrangement of diesel and any capital replacement of the diesel generator set, if required.

5.20.5 No claim on PSPCL is admissible in case of non-availability of power supply.

5.20.6 The power supply arrangement and power distribution arrangement shall be substantially in accordance with the approved mining plan.

5.20.7 The MDO shall arrange for adequate quarry illumination, illumination of the haul roads, illumination of the dump areas, illumination at the Loading Point and the Coal Depots etc. and communication for their own use.

5.20.8 The MDO shall comply with the conditions stipulated by the Ministry of Coal, Government of India in their letter no. 34011/02/2017-CPAM dated 12 September 2017 regarding approval of the Mine Closure plan (provided in Annexure 16 of this RFP). In particular the MDO shall comply with the third condition of the said letter, regarding net zero energy consumption through solar energy as a part of mine closure activities. The MDO shall mandatorily install a solar energy powered system, in accordance with the directions of the Ministry of Coal, Government of India.

## 5.21 Civil Works

5.21.1 The MDO shall construct various civil works required for the mine such as the following:

i) roads and culverts

ii) diversion and construction of roads as required

iii) water treatment and sewerage treatment plant of adequate capacity

iv) township and guest house including associated infrastructure and facilities

v) approach roads to the mine and access roads within the mine area

vi) settling tanks for effluent treatment and

vii) any other miscellaneous civil works required for the operation of the mine and as recommended in the approved mining plan, or as required for the welfare of the PAPs and PAFs as per the R&R policy of the Government of Jharkhand or as required as part of the CSR activities to be undertaken by the MDO at its own costs.

5.21.2 The civil works shall be constructed by the MDO at its own costs.

## 5.22 Reclamation and Mine Closure

5.22.1 The MDO shall be responsible for all reclamation activities including backfilling/dumping and plantation on excavated areas and dumps for reclamation purposes and to bring back to the state of normal ground/ altered ground in accordance to the Environmental Management Plan, the approved mining plan and the approved mine closure plan. Re-contouring and rehabilitation shall continue concurrent with the mining operations.

5.22.2 The MDO shall be responsible for undertaking all progressive and final mine closure activities, reclamation activities including backfilling/dumping and plantation on excavated areas and dumps for reclamation purposes and to bring back to the state of normal ground/ altered ground in accordance with the Environmental Management Plan, the approved mining plan and the approved mine closure plan. Re-contouring and rehabilitation shall continue concurrent with the mining operations.

5.22.3 The MDO shall assist PSPCL in opening the escrow account for mine closure and shall also make all the required payments (including prior period payments, if any) to the mine closure escrow account. The MDO shall also be entitled to refunds (if any) from the escrow account for undertaking the mine closure activities till the end or termination of the Contract Period or extension thereof.

## 5.23 Environmental

5.23.1 The MDO shall comply with the requirements of the Environmental Management Plan (EMP) as well as all Applicable Laws. The MDO has to comply with all the requirements of the Environment Clearance and Forest Clearance at all points of time during the Contract Period. In case of tree cutting, if the Forest Department raises demand for tree cutting activities, the payment for the same shall be made by the MDO; ensuring the timely cutting of the trees, following up with the Forest Department officials concerned shall also be the responsibility of the MDO.

5.23.2 The MDO shall comply with all applicable laws, authorization and guidelines of the MoEF and other state & central government, statutory agencies and any rules, regulations or order from Government of Jharkhand and its various agencies.

5.23.3 The MDO shall prepare a disaster management plan and implement and comply with the requirements of the plan. All employees of the MDO, PSPCL and other sub-contractors working in the mine shall be made aware of the disaster management plan and mock drills in this regard shall be conducted from time to time.

## 5.24 Coal Washery

5.24.1 No washery of coal is presently envisaged as majority of the coal resource of the mine has ash percentage of less than 34% (thirty four percent); further details are provided in the geological report. The MDO shall ensure that the percentage ash content in the coal received at the Delivery Point(s) (including diverted-in rakes) from the Pachhwara Central coal mine, on monthly weighted average (on equilibrated basis) shall not be more than 34% (thirty four percent).

5.24.2 The MDO shall ensure compliance to the coal quality with ash percentage of less than 34% (thirty four percent). In case a coal washery is required to be set-up due to Change in Law (as defined in Article 36 of the Coal Mining Agreement) or any other reason, the same shall be mutually discussed between PSCPL and the MDO in terms of the procedure set out in Clause 5.24.3 and Clause 19.6 of the Coal Mining Agreement.

5.24.3 In case the coal is required to be washed in the future due to Change in Law or any other reason, the MDO would be required to conduct at its own costs a washability study of the coal; such study shall be conducted by CIMFR/ CMPDIL. Based on the results of the washability study, the MDO shall also prepare a detailed project report for setting up of the washery (which shall also cover the quantum and cost of additional land, as required) and submit the same to PSPCL for review and approval. The MDO shall bear all costs associated with the preparation of such detailed project report. The MDO shall bear the capital expenditure required for setting up the washery. In case any additional land is required for setting up of the coal washery and for storage of washery rejects and middlings, the documented cost of the additional land and the one time R&R cost, as certified by the District Magistrate or District Collector, shall be borne by PSPCL. The selection of a contractor by the MDO for construction of the washery and if required, for the operation and maintenance of the coal washery, shall be done by the MDO through a competitive tendering process, and with the full knowledge of PSPCL. The per tonne coal washing charge payable by PSPCL to the MDO (in case the coal from the coal mine has to be washed) shall be mutually agreed between PSPCL and MDO based on the following factors: washability of the coal, proportion and total quantity of the coal (both year-wise and on a cumulative basis) that has to be washed, capacity of the coal washery, the capital expenditure and the operating expenditure of the coal washery (as estimated in the detailed project report and to be reviewed based on the results of the tender process conducted by MDO for construction and operation (if required) of the coal washery), yield and resultant ash content and grade of the coal after washing, and estimated benefits to PSPCL due to the washing of the coal. The per tonne coal washing charge shall be payable by PSCPL to the MDO only for the quantity of coal that is washed and delivered by the MDO to PSPCL at the Delivery Points.

5.24.4 In case a coal washery is set-up, the ownership rights on the rejects and middlings from the washing of coal shall be with PSPCL and the rejects and middlings shall be disposed off/sold by PSPCL as per extant guidelines of the Ministry of Coal. The MDO shall separately stack and store the rejects and middlings within the coal mine or the coal washery premises and also assist PSPCL in handling and disposing the same in accordance with the extant guidelines of MoEF and MoC.

## 5.25 Safety

5.25.1 The MDO shall comply with all the stipulations and requirements of DGMS as well as with other Applicable Laws concerning mine safety. The MDO shall at all times be responsible to carry out all mining operations as per the extant Applicable Laws. The MDO shall also be responsible for complying with the statutory obligations of the state PCB and other environmental and safety regulations. The MDO shall ensure proper illumination and dewatering within the mine site and shall ensure that adherence and practice of safe mining practices is of the highest order. The MDO shall ensure that the mining carried out in the Pachhwara Central coal mine and transportation & evacuation of coal creates no hazards or disturbance for the surrounding inhabitants and areas.

5.25.2 The MDO shall submit a written safety management plan, to be reviewed and approved by PSPCL. The plan shall incorporate guidelines of general safety and care to be observed by the MDO in the mine.

5.25.3 The MDO shall provide suitable alarms, signals and public address system to caution its employees from imminent dangers. All employees of the MDO and PSPCL as well as employees/ staff of any subcontractors working in the mine premises shall be made aware of such signals so that timely evacuation can be made.

5.25.4 PSPCL shall from time to time audit the safety practices employed at the mine and the implementation of the safety plan. The MDO shall comply with the recommendations/ directions made by PSPCL as a result of such audit. At the end of each month, the MDO shall submit a monthly safety report as per the provisions of Clause 15.4 of the Coal Mining Agreement.

5.25.5 During the course of the Contract Period, if any accident occurs whether major or minor, the MDO or his supervisory staff shall immediately inform PSPCL and DGMS without delay and shall take steps in accordance with the Mines Act and other relevant laws. This however, does not absolve the MDO and/or his supervisory staff from penal action as per existing statutes.

5.25.6 The MDO shall indemnify PSPCL from any liability falling on PSPCL due to any accident, whether minor or major, or by any act of commission/omission by the MDO or by its representatives or by its employees or by any subcontractor. If PSPCL is made liable for such claim by the court of law or any other Authority, the same should be reimbursed to PSPCL (as the case maybe) by the MDO as if PSPCL has paid on their behalf. The same shall be adjusted from the Composite Mining Charge payable by PSPCL to the MDO, if not paid within a period of 30 (thirty) days of such payment being made by PSPCL.

5.25.7 The MDO shall ensure that all workers and operators engaged by it or its subcontractors within the mine site shall wear appropriate personal protective equipment including mining helmets and mining shoes as per the existing statutes.

## 5.26 Facilitation Role of the MDO

5.26.1 The MDO shall facilitate, assist PSPCL and co-ordinate on behalf of PSPCL with statutory authorities, in various activities related to:

i) Pending land acquisition and obtaining physical possession of land

ii) Administrative assistance for grant of Mining Lease from the Government of Jharkhand and implementing provisions thereof.

iii) Assistance in securing all the requisite statutory approvals in respect of the draft composite mining plan, including approval of the draft composite mining plan itself. The MDO shall undertake at its own costs all activities required for securing the necessary statutory approvals with respect to the composite mining plan prepared by PSPCL.

iv) Extension of railway siding and construction of associated infrastructure

5.26.2 The MDO shall on behalf of PSPCL obtain physical possession of all the private, government and forest land free from all encumbrances in phases for mining and other purposes including land required for external dumps, R&R colony, approach and access roads, and other infrastructure facilities (if any). At all times, the MDO shall ensure the physical possession of land required for at least the next 1 (one) year of mining.

5.26.3 The facilitation role of the MDO shall cover liaison and follow up with the district administration, the Government of Jharkhand, the Government of India and interactions with PAPs. The facilitation role shall cover all the activities necessary for obtaining various approvals/clearances, assistance for disbursement of compensation payments to PAPs, including squatters/forest dwellers, valuation of assets on land etc.

5.26.4 The above list of activities where the facilitation role of the MDO is envisaged is illustrative only and not exhaustive. The MDO shall need to undertake other facilitation activities as may be required for the development, operations and maintenance of the mine and for securing the pending statutory clearances required to operationalize the mine. No separate payment shall be made by PSPCL to the MDO for this facilitation role and shall be deemed to have been considered as part of the Composite Mining Charge.

## 5.27 Role of PSPCL

5.27.1 Facilitate the MDO in land acquisition including acquisition of government land, forest land and private land etc.

5.27.2 Facilitate the MDO to secure physical access of the mine and the railway siding at Pakur

5.27.3 Obtaining statutory clearances

5.27.4 Extension of the railway siding at Pakur

5.27.5 PSPCL shall make all the documented payments towards land acquisition. In case of government land and forest land, the payment shall be made directly by PSPCL to the government authorities/ offices concerned. In case of private land, the documented cost of acquisition of the land and the one time R&R cost (as certified by the District Magistrate or District Collector) shall be paid by PSPCL through cheque in the name of beneficiaries and the cheques shall be handed over to MDO for distribution to the beneficiaries.

5.27.6 Payment of statutory taxes and levies related to the mining of coal viz. Goods and Services Tax (GST), Reserve Price payable to the Government of India (as per the terms and conditions of the allotment agreement and any amendments thereof) and other statutory taxes (as applicable). These shall be first paid by the MDO and then reimbursed by PSPCL on submission of documentary evidence of such payment by the MDO. However, any penalties on account of delay in payment in statutory taxes and levies shall be borne by the MDO and not be reimbursed by PSPCL.

5.27.7 Freight Costs shall be paid by PSPCL directly through e-payment system of the Indian Railways. The MDO shall on a daily basis provide advance information of at least 14 (fourteen) days on the rakes to be placed for evacuation of coal from the Pachhwara Central coal mine so that there is no outstanding balance payable by PSPCL to the Indian Railways.

5.27.8 Supervision and monitoring of mining related activities; supervision and monitoring of excavation of coal as per the approved mining plan and supervision and monitoring of dispatch of coal to the Delivery Point(s) and unloading of coal at the Delivery Point(s). For the purpose of the supervision and monitoring of the development, operations and maintenance of the mine, PSPCL may appoint an Independent Engineer (in terms of Article 23 of the Coal Mining Agreement) or any other agency that shall be duly authorized by PSPCL to supervise the operations of the MDO and the mine. In case of such appointment, the MDO shall cooperate and act as per the advice and instructions of the Independent Engineer or any authorized agency appointed by PSPCL (as the case may be) in terms of the Coal Mining Agreement.

5.27.9 Facilitate the MDO to adhere to the mine safety measures etc. as per relevant acts/ rules and also facilitate timely submission of all statutory returns related to the mine. However, all statutory returns related to the mine, including GST related returns, shall be prepared by the MDO and placed before PSPCL for approval and further necessary action in this regard.

## 5.28 Community welfare and CSR activities

The MDO shall undertake community development, CSR and other welfare activities in the local community at its own cost. The same shall be finalized and undertaken in consultation with PSPCL and the BDO and other district level authorities.

## 5.29 Local Office

5.29.1 In order to ensure regular coordination and communication with the Government of Jharkhand and also with various district level officials, the MDO shall open offices in Ranchi and in Pakur. These offices should be operational at least from the Appointed Date to the end of the Contract Period.

5.29.2 The MDO shall also post an officer in Patiala for regular coordination and communication. The officer should be a permanent employee of the MDO and should be posted in Patiala from the Appointed Date to the end of the Contract Period.

## 5.30 Payment Mechanism

5.30.1 The MDO shall submit its invoices on a monthly basis for Composite Mining Charge payable by PSPCL in respect of the quantity of coal delivered at each Delivery Point. The monthly invoices submitted by the MDO shall be accompanied by the submission of documentary evidence of the MDO having made the requisite monthly R&R related payments for the previous month to the eligible PAPs and PAFs (as per the R&R policy of the Government of Jharkhand). PSPCL may not process the monthly invoices submitted by the MDO in case of non-receipt of such documentary evidence. The other documents to be submitted by the MDO along with its invoices shall be as per the list specified in Clause 25.1 of the Coal Mining Agreement.

5.30.2 With respect to the payment of the Composite Mining Charge, the MDO shall submit separate invoices for each Delivery Point; the quantity of coal in the invoice should be the quantity of coal delivered to the corresponding Delivery Point during the period under consideration. The computation of any damages, penalties and other adjustments with respect to the quality of coal received (as specified in Clause 5.11) shall also be computed separately for each Delivery Point based on the coal received at such Delivery Point. Similarly payments shall be made separately from each Delivery Point after adjusting the invoice amount accordingly.

5.30.3 The MDO shall also submit at the end of every financial year, the invoices for payment of Fixed Charge (if any) for short offtake of coal by PSPCL, as per Clause 5.9.5. The Fixed Charge payable by PSPCL shall be considered on an aggregate basis, across all the Delivery Points of PSPCL.

5.30.4 95% (ninety five percent) of the invoice (monthly invoice for payment of the Composite Mining Charge and annual invoice for the payment of Fixed Charge (if any) shall be paid by PSPCPL within a period of 30 (thirty) days of invoice submission and the remaining amount within 60 (sixty) days of invoice submission after reconciliation and further verification, if required. In case of delayed payments, PSPCL shall be liable to pay the MDO interest on the outstanding amount at the prevailing Marginal Cost of Funding Based Lending Rate (MCLR) of the State Bank of India (SBI) as on the date of the payment.

5.30.5 The payments by PSPCL to the MDO shall be made in terms of Article 25 of the Coal Mining Agreement and shall be made after adjusting for any damages, penalties or any other adjustments, which are payable by the MDO to PSPCL. Any unabsorbed damages or adjustment against an individual payment shall be adjusted with the next payment.

## 5.31 Non solicitation

The Selected Bidder/ MDO shall not, without the prior written consent of PSPCL, either directly or indirectly, on its own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by PSPCL. Provided, further, that the provisions of this Clause 5.31 shall not apply in case of employees of PSPCL who have superannuated.

# 6. Qualification Requirements

A bidder should adequately demonstrate mining experience in India or abroad and shall have to satisfactorily fulfill the following qualification requirements, i.e. the Technical Criteria (Clause 6.1) and the Financial Criteria (Clause 6.2). In case the bidder happens to be a foreign entity, it should have an office in India for the entire Contract Period.

## 6.1 Technical Criteria

A bidder shall meet the following technical criteria through any one of the following routes:

**Route A (MDO route)**

6.1.1 The bidder should have in the last 7 (seven) years, reckoned from the last date of submission of bids, been awarded/owned and developed and operated a single open cast **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** mine having an annual capacity of at least **5 Mtpa** and achieved production of at least **2 Mtpa** of **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from that mine.

6.1.2 Operated means that the bidder shall have performed the mining activities of drilling, blasting, excavation, hauling etc. either by itself or through sub-contracting.

6.1.3 Developed means that the bidder shall have performed the activities of land acquisition or assisted in land acquisition, obtained statutory clearances or assisted in obtaining statutory clearances and carried out infrastructure development of the mine such as construction of CHP, workshops or statutory buildings in the mine.

**OR**

**Route B (Contractor route)**

6.1.4 The bidder should have in any continuous 12 (twelve) month period in the last 7 (seven) years, reckoned from the last date of submission of bids, mining experience of having operated and produced at least **30 million bcm** of aggregate composite volume of overburden and **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from a maximum of **5 (five)** open cast mines. The same continuous 12 (twelve) month period shall be considered across the mines. The bidder should have also achieved a production of **2 Mtpa of Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from such mines during the last 7 (seven) years, reckoned from the last date of submission of bids.

**AND**

6.1.5 The bidder should have in any continuous 12 (twelve) month period in the last 7 (seven) years, reckoned from the last date of submission of bids, mining experience of having operated and produced at least **15 million bcm** of aggregated volume of overburden and **Coal/ Lignite/ Bauxite/**

**Iron Ore/ Limestone/ Copper Ore** from a single open cast mine, which should be from within the list of the 5 (five) mines being considered with respect to Clause 6.1.4.

6.1.6 The specific gravity (tonnes/ cubic meter) to be used for converting tonnes of the pay mineral (coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore) to bcm are:

i) Coal – 1.50
ii) Lignite – 0.80
iii) Bauxite – 1.3
iv) Iron ore – 2.5
v) Limestone – 2.0
vi) Copper ore – 2.2

6.1.7 The aggregate volume in bcm shall be calculated as = (Quantity of pay material produced in tonne / specific gravity) + overburden removed in cubic meters

## 6.2 Financial Criteria

6.2.1 The average net worth of the bidder during any 3 (three) consecutive financial years out of the last 4 (four) financial years (2013-14, 2014-1 q, 2015-16 and 2016-17) should be at least **Rs. 250,00,00,000/- (Rupees Two Hundred and Fifty Crores only)** or equivalent in foreign currency. Additionally, the net worth of the bidder (and for a consortium bidder, each member of the consortium) shall be greater than zero in each of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17). Further, the net worth of the bidder (and for a consortium bidder, additionally the net worth of the lead member of the consortium) shall be greater than or equal to its paid up share capital in each of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17). The net worth shall be calculated as per the definition given in the Companies Act, 2013 i.e.

*"the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;"*

6.2.2 The average cash accrual of the bidder in any 3 (three) consecutive financial years out of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17) should be at least **Rs. 50,00,00,000/- (Rupees Fifty Crores only)** or equivalent in foreign currency. Cash accrual shall be calculated as the sum of profit after tax (PAT), depreciation and non-cash expenses.

6.2.3 The bidder should have unutilized credit limits (duly certified by its Bank) for fund based and non-fund based limits together with cash and bank balances including fixed deposits as on a date not earlier than 30 (thirty) days from the bid submission date, of at least **Rs. 45,00,00,000/- (Rupees Forty Five Crores only)** or equivalent in foreign currency. Only unutilized credit limits with Banks shall be considered.

6.2.4 Foreign currency figures in GBP, USD, JPY or EURO shall be converted to Indian Rupees using the RBI Reference Rate for the corresponding date. In case of any other foreign currency, the amount shall be first converted to USD using the conversion rate of the respective country's Central Bank for the corresponding date and then to Indian Rupees using the RBI Reference Rate for the corresponding date.

## 6.3 Experience of Subsidiaries/ Subsidiaries of Holding Company/ Holding Company

6.3.1 A bidder may fulfill the Technical Criteria and the Financial Criteria either on its own or on the basis of its own experience and credentials as well as the experience and credentials of its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company. However, bidders who are participating as part of a consortium are not allowed to utilize the experience and credentials of their Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of their Holding Company.

6.3.2 The experience and credentials of such Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company shall be added and considered for meeting the Technical Criteria of Route A or Route B (as the case may be) and the Financial Criteria of Clause 6.2. The bidder may use the experience and credentials of up to 2 (two) such Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company only.

6.3.3 A bidder who uses the experience and credentials of its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company must submit as part of its Techno-Commercial Proposal a legally enforceable **Joint Operating Agreement**, executed between such companies and the bidder. The format for the Joint Operating Agreement is provided in Annexure 7 hereof. The Joint Operating Agreement shall be submitted by the bidder as part of the Techno-Commercial Proposal and the Original Documents.

## 6.4 Consortium

6.4.1 The bidders may be a consortium having up to 2 (two) corporate entities; the experience and credentials of the consortium members shall be added up and considered for meeting the Technical Criteria. For meeting the Technical Criteria of Clause 6.1.4, the total number of mines being considered cannot exceed 5 (five) mines from across the members of the consortium. However, bidders who are participating as part of a consortium are not allowed to utilize the experience and credentials of their Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of their Holding Company.

6.4.2 The consortium members shall nominate one of the members as the **Lead Member** through a binding Consortium Operating Agreement as per the format provided in Annexure 6 hereof. The Lead Member must fulfill on its own 100% (one hundred percent) of the Financial Criteria for net worth, cash accrual and unutilized credit limit, as given in Clause 6.2 hereof.

6.4.3 The members of the consortium shall execute a legally enforceable Consortium Operating Agreement and submit the same as part of the Techno-Commercial Proposal and the Original

Documents, holding themselves jointly and severally liable to the PSPCL to perform all the contractual obligations. The Consortium Operating Agreement shall be in force for the entire Contract Period and shall be as per the format provided in Annexure 6 hereof.

6.4.4 If awarded the contract, the consortium members shall form a SPV (Special Purpose Vehicle) within 30 (thirty) days of the date of the LOA. The Lead Member shall hold at least 51% (fifty one percent) of the equity of the consortium throughout the Contract Period. The non-lead member shall hold at least 26% (twenty six percent) of the equity of the consortium throughout the Contract Period.

## 6.5 Other Conditions for Bidders

6.5.1 A bidder, whether it is bidding as a single bidder or as a member of a consortium must be registered as a company under Indian laws, shall have its registered office in India and shall be registered under the GST Act.

6.5.2 In case a bidder (whether as a single bidder or as a member of a consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, its experience shall be considered limited to the proportion of its ownership in such consortium or joint venture, as the case may be.

Illustration: If a bidder is claiming experience where it is part of a consortium and has 50% (fifty percent) interest/ share in such consortium, then it can claim only up to 50% (fifty percent) of the credentials of such consortium for the purpose of meeting the Technical Criteria.

6.5.3 A bidder can submit only one bid either singly or as part of a consortium.

6.5.4 Conditional or qualified bids shall be treated as being non-responsive.

6.5.5 PSPCL reserves its right to waive non-substantial deviations without being bound to do so.

6.5.6 The bidder or any constituent thereof (i.e. in case of a consortium bidder each member of the consortium and in case of a single bidder, the bidder and any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of the bidder’s Holding Company, whose experience and credentials are being used by the bidder to meet the Qualification Requirements) should not have been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations issued by PSPCL or any government or any government instrumentality where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only).** However, if the bidder has been cleared of such blacklisting as on the RFP publication date, then the bidder shall be considered to be eligible as per this clause. Provided further that if such blacklisting is subjudice as on the RFP publication date, then also the bidder shall be considered to be eligible as per this clause.

## 6.6 Documentary Evidence

6.6.1 For the Technical Criteria under Route A, in case a bidder is seeking qualification as a mine owner, the bidder shall submit a certificate from its Statutory Auditor, certifying the peak rated capacity of the mine and the details of the coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore production achieved by the bidder till date and during the period being considered and the activities undertaken by the bidder for development of the mine. Additionally the bidder shall also submit a notarized copy of the executive summary or relevant extract of the approved mining plan, which mentions the peak rated capacity of the mine.

6.6.2 For the Technical Criteria under Route A, in case a bidder is seeking qualification as a MDO working under a contract, the bidder shall submit a notarized copy of the mining agreement/contract and a certificate from the owner certifying the peak rated capacity of the mine, details of the coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore production achieved by the bidder till date and during the period being considered and the activities undertaken by the bidder for development of the mine. Additionally the bidder shall also submit a notarized copy of the executive summary or relevant extract of the approved mining plan, which mentions the peak rated capacity of the mine.

6.6.3 For the Technical Criteria under Route B, in case a bidder is seeking qualification as a mine contractor working under a contract, the bidder shall submit a notarized copy of the contract and a certificate from the mine owner certifying the overburden and coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore production achieved by the bidder till date and during the period being considered.

6.6.4 In case a bidder (whether as a single bidder or as a member of consortium) is claiming mining experience where it is operating as part of a consortium or a joint venture, it shall also submit a notarized copy of the consortium agreement or joint venture agreement (as the case may be), which clearly spells out the extent of its ownership in such consortium or joint venture, as the case may be.

6.6.5 In case a bidder (whether as a single bidder or as a member of consortium) is claiming mining experience where it is working as an MDO or as a contractor, it shall also furnish the contact details (including name, designation, email id and mobile phone number) of the mine manager employed by the owner of the mine. In case the mine manager is not employed by the owner of the mine, the bidder shall share similar contact details of the authorized representative of the owner of the mine, who is involved in monitoring the mine operations from the owner's side.

6.6.6 For the Financial Criteria in clauses 6.2.1 and 6.2.2, the bidder/ each member of the consortium shall submit its audited financial statements as a standalone entity. The bidder shall also submit a certificate from its Statutory Auditor, certifying its net worth and cash accrual over the last four financial years (2013-14, 2014-15, 2015-16 and 2016-17), as per the formula given in clauses 6.2.1 and 6.2.2 respectively.

6.6.7 For the Financial Criteria in Clause 6.2.3, the bidder shall submit a certificate from the Bank. In case of multiple banks, multiple certificates shall be submitted.

6.6.8 In case of foreign currency figures other than GBP, USD, JPY or EURO, the bidder shall also submit the USD conversion rate published by the respective country's Central Bank for the corresponding date and the same shall be certified by its Statutory Auditor.

6.6.9 Bidders shall submit their contact details including registered office address, official email address for communication, phone number and mobile number of the Authorized Signatory of the bidder.

## 6.7 Change in Ownership

Change in the members of the consortium of the MDO shall not be permitted during the Bidding Process and throughout the Contract Period, except with prior written permission from PSPCL Such prior written approval of PSPCL may be issued at its sole discretion subject to the condition that if the Selected Bidder is a single entity it shall continue to hold during the Contract Period at least 75% (seventy five percent) of equity in the SPV even after such change. However, if the Selected Bidder is a consortium, the Lead Member shall hold at least 51% (fifty one percent) of the equity of the SPV/MDO throughout the Contract Period. The non-lead member shall hold at least 26% (twenty six percent) of the equity of the SPV/ MDO during the Contract Period. The SPV shall not undertake any other business during the Contract Period except for execution of the Project or in connection therewith.

## 6.8 Conflict of Interest

A bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. A bidder(s) found to have a Conflict of Interest shall be disqualified. A bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(a) the bidder, its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company and any other bidder, Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a bidder, Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such bidder, Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company, as the case may be) in the other bidder, its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by the government, bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 6.8 (a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-Clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this subclause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

i. a constituent of such bidder is also a constituent of another bidder; or

ii. such bidder, or its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other bidder, or any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company or has provided any such subsidy, grant, concessional loan or subordinated debt to any other bidder, its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company; or

iii. such bidder has the same legal representative for purposes of this Bidding Process as any other bidder; or

iv. such bidder, or any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company has a relationship with another bidder, or any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or

v. such bidder, or any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company has participated as a consultant to PSPCL in the preparation of any documents, design or technical specifications of the Project

(b) A bidder shall be liable for disqualification if any legal, financial or technical adviser of PSPCL in relation to this Project is engaged by the bidder, any Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company, as the case may be, in any manner for matters related to or incidental to this Project. This disqualification shall not apply where such adviser is engaged after a period of 6 (six) months from the date of the Letter of Award.

In case a bidder is a consortium, then the term bidder as used in Clause 6.8 (a), shall include each member of the consortium

# 7. Description of the Bidding Process

## 7.1 Publication of RFP document

The main RFP document shall be available for download free of cost on the MSTC website. The other tender related documents shall be available upon registration and payment of the Bid Document Cost.

## 7.2 Payment of Bid Document Cost

Bidders are first required to register on the MSTC website. The details of the registration process as well as the process for payment of Bid Document Cost, as well as the process for the e-submission of the Techno-Commercial Proposal and the Financial Proposal as well as the details of the Reverse Auction process are provided in section 11 hereof.

## 7.3 Site Visit

7.3.1 No separate site visit would be organized by PSPCL. Interested bidders are free to visit the site at their own costs and make necessary arrangements for the same. Bidders may apprise themselves of the site conditions and its surroundings and obtain for themselves, on their own responsibility, all information that may be necessary for preparing their bids and entering into the Coal Mining Agreement.

## 7.4 Pre-Bid Meeting

7.4.1 A pre-bid meeting would be held to clarify and discuss issues with respect to the Bidding Process and the Bidding Documents. The pre-bid meeting shall be held as per the schedule given in the **Schedule of Bidding Process** hereof.

7.4.2 A bidder may raise queries and suggestions during pre-bid meeting. Bidders are requested to send their queries at least 3 (three) days before the pre-bid meeting so as to give PSPCL sufficient time to prepare responses to such queries for the pre-bid meeting. PSPCL may in its sole discretion respond to such queries submitted by any bidder or amend the RFP as required, but is under no obligation to do so. Attendance of the bidders at the pre-bid meeting is not mandatory.

7.4.3 Bidders who have paid the Bid Document Cost may subject to production of documentary proof of payment of such Bid Document Cost, attend the pre-bid meeting; a maximum of 2 (two) representatives from each bidder shall be allowed to attend the pre-bid meeting. The representatives shall carry the confirmation of the payment of Bid Document Cost by the bidder.

7.4.4 Bidders who are interested to attend the pre-bid meeting shall inform the Nodal Officer of the Project at least 2 (two) calendar days before the date of the pre-bid meeting, along with the number of representatives who would be attending the pre-bid meeting. This is required so that

PSPCL can make adequate arrangement for hosting the pre-bid meeting, depending upon the number of attendees.

7.4.5 Post the pre-bid meeting, MSTC shall also conduct a presentation on the e-tendering submission process to be followed for this bid. The schedule for the same is given in the **Schedule of Bidding Process** hereof.

## 7.5 Clarifications on the Bidding Documents

7.5.1 Bidders may send their queries on the Bidding Documents or the Bidding Process. The queries may only be sent to the email address given in the **Data Sheet** hereof.

7.5.2 The responses to the queries as well as the minutes of the pre-bid meeting shall be published on the MSTC website and shall be freely available for download. The source of the query or suggestion shall not be revealed.

7.5.3 Bidders are advised to regularly check the MSTC website regarding the posting of clarifications, if any.

7.5.4 The last date for receipt of queries is indicated in the Schedule of Bidding Process hereof. Queries received after this date may not be considered.

## 7.6 Issue of Corrigendum and Amendment to the Bidding Documents

7.6.1 At any time prior to the Bid Submission Date, PSPCL may at its own initiative or in response to a clarification requested by a bidder, amend the provisions of RFP Documents by issuing **Corrigendum (a) / Amendment(s)** to the RFP Documents which shall be freely available for download on the MSTC website. The Corrigendum (a) / Amendment(s) will be binding on the bidders and it will be assumed that the information contained therein will have been taken into account by the bidder in its bid. Any corrigendum (a) / amendment(s) issued by PSPCL subsequent to the issue of RFP document will also be considered an integral part of the Bidding Document and any reference to the RFP document in the Coal Mining Agreement shall include such corrigendum (a)/amendment(s) also. Bidders are also advised to regularly check the MSTC website regarding posting of Amendments, if any. The amendment shall only be notified on the website of MSTC.

7.6.2 No verbal clarifications and information provided by PSPCL or its employee(s) or its representative(s) or its consultant(s) shall in any way be binding on PSPCL unless subsequently confirmed through the issuance of Corrigendum (a)/Amendment(s).

7.6.3 In order to afford prospective bidders reasonable time in which to take the corrigendum (a) /amendment(s) into account, PSPCL may, at its discretion, extend the Bid Submission Date.

## 7.7 Acknowledgement by the Bidder

It shall be deemed that by submitting the Bid, the bidder has:

a. made a complete and careful examination of the Bidding Documents

b. received all relevant information requested from PSPCL;

c. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of PSPCL relating to any of the matters referred to in Clause 7.5 and Clause 7.6 of this RFP document;

d. satisfied itself about all matters, things and information necessary and required for submitting an informed bid, execution of the Project in accordance with the bidding documents and performance of all of its obligations thereunder;

e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the bidding documents or ignorance of any of the matters shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from PSPCL; and

f. agreed to be bound by the undertakings provided by it under and in terms hereof.

PSPCL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by PSPCL.

## 7.8 Right to Accept or Reject any / all Bids

7.8.1 Notwithstanding anything contained in this RFP, PSPCL reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In case of any dispute regarding the tender documents, the decision of Chief Engineer (Fuel), PSPCL shall be final.

7.8.2 PSPCL reserves the right to reject any Bid if:

a. at any time, a material misrepresentation is made or uncovered, or

b. the bidder does not provide, within the time specified by PSPCL, the supplemental information sought by PSPCL for evaluation of the Application, or

c. the bid is conditional or qualified

7.8.3 If such disqualification/ rejection occurs after the Bids have been opened and the L1 Bidder gets disqualified/ rejected, then PSPCL reserves the right to take appropriate measures against the L1

Bidder in terms of this RFP and in such a case PSPCL also reserves the right to ask the Technically Qualified Bidder who has submitted the next lowest Financial Proposal (in case there is such a bidder), either the Final Price Offer or the Initial Price Offer, as the case may be to match the L1 Price. In case such bidder agrees to match the L1 Price, PSPCL shall proceed with the bidder; in case such a bidder does not agree to match the L1 Price, PSPCL reserves the right to ask the Technically Qualified Bidder(s) who has submitted the next lowest Financial Proposal, (either the Final Price Offer or the Initial Price Offer, as the case may be) and ask such bidder to match the L1 Price, till there is a Technically Qualified Bidder who agrees to match the L1 Price or till there are no more Technically Qualified Bidders left.

7.8.4 In case it is found during the evaluation or at any time before signing of the Coal Mining Agreement or after its execution and during the period of subsistence thereof, that one or more of the Qualification Requirements have not been met by the Selected Bidder, or that the Selected Bidder has made material misrepresentation or has given any materially incorrect or false information, the Selected Bidder shall be disqualified forthwith if not yet appointed as the MDO either by issue of the LOA or entering into of the Coal Mining Agreement, and if the MDO has already been issued the LOA or has entered into the Coal Mining Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by PSPCL to the bidder, without PSPCL being liable in any manner whatsoever to the bidder and without prejudice to any other right or remedy which PSPCL may have under this RFP document, the Bidding Documents, the Coal Mining Agreement or under Applicable Law.

7.8.5 PSPCL reserves the right to verify all statements, information and documents submitted by the bidder as part of its Bid including by verification with third parties. Any such verification or lack of such verification by PSPCL shall not relieve the bidder of its obligations or liabilities hereunder nor will it affect any rights of PSPCL thereunder.

## 7.9 Language of the Bid

7.9.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in the English language. Supporting documents and printed literature furnished by the bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

7.9.2 The English translation of the documents shall be carried out by professional translators and the translator shall certify that he is proficient in both languages in order to translate the document and that the translation is complete and accurate. Further, translation shall be authenticated by the Indian Consulate located in the country where the documents have been issued or the Embassy of that country in India.

## 7.10 Bid to be Submitted by Bidders

The Bid shall comprise of the Techno-Commercial Proposal, the Original Documents and the Financial Proposal. The contents of the Techno-Commercial Proposal and the Financial Proposal are detailed in section 8 and section 9 of this RFP Document.

## 7.11 Signing of Proposals

Both the Techno-Commercial Proposal and the Financial Proposal shall be digitally signed using Class-III digital signature by the "**Authorized Signatory**" of the bidder. The Authorized Signatory shall represent the bidder in all matters pertaining to its Proposal. The Authorized Signatory should hold the Power of Attorney duly authorizing him/her to perform all tasks including but not limited to sign and submit the bid, to participate in all stages of the Bidding Process including the Reverse Auction, to conduct correspondence for and on behalf of the bidder, and to execute the Coal Mining Agreement on behalf of the bidder and any other documents required to give effect to the outcome of the Bidding Process.

## 7.12 Submission of Bids

7.12.1 The bids to be submitted shall consist of the following 3 (three) parts:

i) Original Documents: The bidders shall physically submit the following Original Documents related to their bid:

(a) Bid Security, as per the format provided in Annexure 8

(b) Power of Attorney, as per the applicable format provided in Annexure 4 or Annexure 5

(c) Consortium Operating Agreement (if applicable), as per the format provided in Annexure 6

(d) Joint Operating Agreement (if applicable), as per the format provided in Annexure 7

(e) Affidavit, as per the format in Annexure 9

(f) Certificate of Total Compliance, as per the format in Annexure 10

**The Original Documents should not contain any information on the Financial Proposal of the bidder.**

ii) Techno-Commercial Proposal: The contents of the Techno-Commercial Proposal are given in Section 8 hereof. **The Techno-Commercial Proposal should not contain any information on the Financial Proposal of the bidder.**

iii) Financial Proposal: The contents of the Financial Proposal are given in Section 9 hereof.

7.12.2 Bidders shall submit their Techno-Commercial Proposal and Financial Proposal on the MSTC website using their individual user id and password within the Bid Submission Date given in the Schedule of Bidding Process hereof. Late bids shall not be accepted by the MSTC website.

7.12.3 The Original Documents are to be submitted physically in a sealed envelope bearing the caption "**Original Documents related to Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**". Additionally the bidder shall also physically submit in triplicate hard copies of the Techno-Commercial Proposal (one original and two copies) in a sealed envelope bearing the caption "**Hard Copy of Techno-Commercial Proposal related to Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**". The documents shall be submitted at the MSTC office (address provided in the Data Sheet) within the Bid Submission Date.

7.12.4 The name of the bidder as well as the communication address, mobile number and email of its Authorized Signatory of the bidder shall be typed on the envelopes.

7.12.5 The details and last date for physical submission of the Original Documents and hard copy of the Techno-Commercial Proposal is given in the Schedule of Bidding Process hereof.

## 7.13 Extension of Bid Submission Date

PSPCL may, at its discretion, extend the Bid Submission Date by amending this RFP in accordance with Clause 7.6 of this RFP, in which case all rights and obligations of PSPCL and the bidders will thereafter be subjected to the deadline as extended. The Bid Submission Date may also be extended after expiry of the existing Bid Submission Date which is being extended, but before any bids are opened.

## 7.14 Modification of Bids

The bidder may modify its bid after submission, by modifying its bid on the MSTC website, till the Bid Submission Date or extension thereof. The procedure for modification of bids is given in Clause 11.9. Bidders may please note that they may modify their bids up to the Bid Submission Date by clicking the **"Delete Bid"** option on the MSTC website. **However, the bidder should not click on the "Withdraw Bid" option for the purpose of modifying its bid, as by withdrawing its bid, the bidder will lose the opportunity to re-submit its bid.**

## 7.15 Bid Validity Period

The bid shall initially remain valid and binding on the bidder for at least 270 (two hundred and seventy) days from the Bid Submission Date ("**Bid Validity Period**"). Any bid with a shorter validity period shall be rejected by PSPCL. Under exceptional circumstances, PSPCL may in writing request the bidders to extend the Bid Validity Period of their bids. Along with the extension of the Bid Validity Period, the bidder shall also extend the Bid Security by an equivalent period of time, failing which, the agreement to extend the Bid Validity Period shall be invalid. A bidder may refuse the request without forfeiting its Bid Security and the Bid Security will be returned to the bidder, subject to the provisions of Clause 8.1.7. However, such Bids shall not be evaluated further.

## 7.16 Bid Preparation Cost

The bidder shall be solely responsible and shall pay for all of the costs associated with the preparation of its bid and its participation in the Bidding Process. PSPCL shall not be responsible in any way for such costs, regardless of the conduct or outcome of the Bidding Process.

## 7.17 Opening of Original Documents and the Techno-Commercial Proposal

7.17.1 The envelope containing the Original Documents shall be opened first as per the date and time as indicated in the Schedule of Bidding Process hereof, in front of bidders or their authorized representatives, who choose to attend the same. In case the date is declared a holiday for PSPCL, the bids shall be opened at the appointed time on the next working day. In case all the necessary Original Documents (as mentioned in Clause 7.12.1 (i) are not received by PSPCL, the bid shall be rejected as being non-responsive and the corresponding online Techno-Commercial Proposal shall not be opened or considered for further evaluation. The Financial Proposal of such non-responsive Techno-Commercial Proposal shall not be opened as mentioned in Clause 7.8.

7.17.2 For the Techno-Commercial Proposals, wherein PSPCL has received the necessary Original Documents, the online Techno-Commercial Proposals shall be opened as per the schedule given in the Schedule of Bidding Process hereof. In case the date is declared a holiday for PSPCL, the bids shall be opened at the appointed time on the next working day. The opening of the Techno-Commercial Proposals received shall be done from the MSTC website as per the Schedule of Bidding Process hereof.

## 7.18 Evaluation of Techno-Commercial Proposals

7.18.1 PSPCL shall evaluate the Techno-Commercial Proposals received and opened by it. PSPCL may also involve its advisors and consultants to assist it in the evaluation process.

7.18.2 The Techno-Commercial Proposals shall be first evaluated to determine whether they are complete, whether the required documents have been submitted in the correct formats and whether the documents have been properly signed and whether the Techno-Commercial Proposal is generally in order. It will be determined whether the Techno-Commercial Proposal is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive Techno-Commercial

Proposal is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionalities or reservations.

7.18.3 A Techno-Commercial Proposal which is not substantially responsive, may be rejected by PSPCL, and may not subsequently be made responsive by the bidder by correction of the non-responsiveness as defined in Clause 7.25.

7.18.4 The responsive Techno-Commercial Proposals shall then be evaluated in detail to determine whether they are fulfilling the Qualification Requirements specified in section 6 hereof.

7.18.5 During the evaluation of the Techno-Commercial Proposals, PSPCL may, at its discretion, ask the bidder for clarifications on their Techno-Commercial Proposals including on the documentary evidence submitted by for the purpose of meeting the Qualification Requirements specified in section 6 hereof. The request for clarification shall be sent to the bidder in writing (by email) and the request shall also specify the timeline within which the bidder has to submit its clarification(s), failing which such clarification(s) may not be considered by PSPCL. However, no change in the substance of the Techno-Commercial Proposals including substitution of the reference mines (i.e. the mines whose credentials and experience are being used for meeting the Technical Criteria) for meeting the Qualification Requirements shall be allowed.

7.18.6 The Techno-Commercial Proposals which meet the Qualification Requirements shall be considered as being qualified and such Technically Qualified Bidders shall be considered for opening of their Financial Proposals.

7.18.7 In the event that there are less than 3 (three) Technically Qualified Bidders, then PSPCL may decide to go for a fresh tender. In such a case the Financial Proposals of the Technically Qualified Bidders shall not be opened and the Bid Security of such Technically Qualified Bidders shall be returned, subject to the provisions of Clause 8.1.7 hereof.

## 7.19 Opening and Evaluation of Financial Proposal

7.19.1 The Financial Proposals of the Technically Qualified Bidders shall be opened by PSPCL. The date, venue and other details related to the opening of Financial Proposals shall be communicated through MSTC to the Technically Qualified Bidders.

7.19.2 The process to be followed for Financial Proposals and modalities for participation in the Reverse Auction are given in section 9 and section 11 hereof.

## 7.20 Issue of Letter of Award

7.20.1 PSPCL shall determine the L1 Bidder through the Reverse Auction in accordance to the process outlined in sections 9 and 11 hereof. Before issue of the Letter of Award or at any stage thereafter, PSPCL reserves its right to conduct a due diligence on the bidder at its own costs including right to visit the mines owned/ operated by the bidder and whose experience it had claimed for meeting the Qualification Requirements. PSPCL reserves the right to conduct due diligence on the bidder on the following:

(i) Peak rated capacity of the mine being owned/ operated by the bidder

(ii) Total production of OB and coal/ lignite/ bauxite/ iron ore/ limestone/ copper ore achieved till date

(iii) Development of the mine undertaken by the bidder

(iv) Veracity and authenticity of the documents submitted by the bidder as part of the Techno-Commercial Proposal and the Original Documents

PSPCL may also involve its consultants and advisors in conducting the due diligence and the bidder shall cooperate with PSPCL in the above exercise. The LOA may not be issued to the L1 Bidder if any claim is found to be misleading or untrue in any respect. PSPCL also reserves the right to negotiate with the L1 Bidder.

7.20.2 Upon satisfaction with the due diligence on the bidder, PSPCL shall issue the bidder with the **Letter of Award (LOA)** confirming that the bidder is the **Selected Bidder,** the L1 Price of the Selected Bidder and asking it to furnish the Performance Security Bank Guarantee and sign the Coal Mining Agreement within a period of 30 (thirty) days of the date of the Letter of Award.

7.20.3 In case PSPCL is not satisfied with the result of such due diligence (which may be conducted by PSPCL before issue of the LOA or at any stage thereafter) and any document submitted by the L1 Bidder is found to be not genuine or forged or a material misrepresentation, the Bid Security of the L1 Bidder shall be appropriated by PSPCL in terms of Clause 8.1.7. In such a case PSPCL also reserves the right to ask the Technically Qualified Bidder who has submitted the next lowest Financial Proposal, (either the Final Price Offer or the Initial Price Offer, as the case may be) to match the L1 Price. In case such bidder agrees to match the L1 Price, PSPCL shall proceed with the bidder; in case such a bidder does not agree to match the L1 Price, PSPCL reserves the right to ask the Technically Qualified Bidder(s) who has submitted the next lowest Financial Proposal, (either the Final Price Offer or the Initial Price Offer, as the case may be) and ask such bidder to match the L1 Price, till there is a Technically Qualified Bidder who agrees to match the L1 Price or till there are no more Technically Qualified Bidders left.

7.20.4 The Coal Mining Agreement shall come into force from the date mentioned in the draft Coal Mining Agreement and shall constitute valid and binding obligations enforceable against either PSPCL or the Selected Bidder or the MDO in accordance with and subject to its terms and conditions.

## 7.21 Signing of Coal Mining Agreement

7.21.1 Along with the Letter of Award, PSPCL shall also send to the Selected Bidder the Coal Mining Agreement (the draft Coal Mining Agreement is attached in Annexure 13 hereof), incorporating all the Corrigendum (a) issued from time to time by PSPCL, along with all the supporting documents and annexures.

7.21.2 Within 30 (thirty) days of receipt of the Coal Mining Agreement, the Selected Bidder shall submit the Performance Security Bank Guarantee as per the terms and conditions given in the Coal Mining Agreement and sign and date the Coal Mining Agreement along with all the supporting documents and annexures and return the same to PSPCL. The Bid Security of the Selected Bidder shall be returned to it after it furnishes the Performance Security. The amount of the Performance Security Bank Guarantee is indicated in the Data Sheet hereof. The submission of the Performance Security Bank Guarantee by the Selected Bidder shall be a necessary condition for PSPCL to sign the Coal Mining Agreement.

7.21.3 In case the Selected Bidder is a consortium, within 30 (thirty) days of issuance of Letter of Award, the bidder shall form a SPV company incorporated under the applicable Indian Laws. The Authorized Signatory of each Consortium member shall also sign the Coal Mining Agreement and shall remain jointly & severally bound by the terms and conditions of the Coal Mining Agreement and shall be responsible and liable to PSPCL for the performance of all contractual obligations throughout the Contract Period, as if it were, individually, the MDO.

7.21.4 In case the Selected Bidder has used the experience and credentials of its Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company to fulfill the Technical Criteria or Financial Criteria either partly or fully, such Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of the Holding Company shall also sign the Coal Mining Agreement and shall remain jointly & severally bound by the terms and conditions of the Coal Mining Agreement and shall be responsible and liable to PSPCL for the performance of all contractual obligations throughout the Contract Period, as if it were, individually, the MDO.

7.21.5 In case the Selected Bidder fails to form a SPV (in case of a consortium bidder), furnish the Performance Security Bank Guarantee and sign the Coal Mining Agreement within a period of 30 (thirty) days from the date of the LOA, PSPCL reserves the right to appropriate the Bid Security of the Selected Bidder in terms of Clause 8.1.7. In such a case PSPCL also reserves the right to ask the Technically Qualified Bidder who has submitted the next lowest Financial Proposal, (either the Final Price Offer or the Initial Price Offer, as the case may be) to match the L1 Price. In case such bidder agrees to match the L1 Price, PSPCL shall proceed with the bidder; in case such a bidder does not agree to match the L1 Price, PSPCL reserves the right to ask the Technically Qualified Bidder(s) who has submitted the next lowest Financial Proposal, (either the Final Price Offer or the Initial Price Offer, as the case may be) and ask such bidder to match the L1 Price, till there is a Technically Qualified Bidder who agrees to match the L1 Price or till there are no more Technically Qualified Bidders left.

## 7.22 Confidentiality

PSPCL shall at all times treat all information, submitted or received by it as part of Bids, in confidence and treat the same in confidence (except for the purpose of verification in terms of Clause 7.8.5 of the RFP). PSPCL shall not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to seek such information. Bidders will not disclose any confidential information to third parties without the prior written consent of PSPCL except as expressly permitted in this document.

## 7.23 Proprietary Data

All documents and other information supplied by PSPCL or submitted by a bidder to PSPCL shall remain or become the property of PSPCL. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bids. During the Contract Period, the MDO will not, without the prior written consent of PSPCL, either directly or indirectly, on its own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by PSPCL, provided that, the provisions of this Clause 7.23 shall not apply in case of employees of PSPCL who have superannuated.

## 7.24 Right to Annul Bidding Process

PSPCL reserves the right to annul the Bidding Process at any point in time and without providing any explanation to the bidders.

## 7.25 Material Deviation

Material deviations in the bids received shall include, inter alia, the following:

i) The Techno-Commercial Proposal or any accompanying document or Financial Proposal submitted by the bidder is not in accordance with the formats given in this RFP.

ii) Techno-Commercial Proposal not accompanied by all the documents required to be submitted in terms of this RFP.

iii) It does not contain all the information (complete in all respects) as requested in this RFP and/or bidding documents (in formats same as those specified);

iv) The Techno-Commercial Proposal not accompanied by physical submission of the original Bid Security, appropriate Power of Attorney, Joint Operating Agreement (if applicable), Consortium Operating Agreement (if applicable), Affidavit.

v) The Techno-Commercial Proposal not accompanied by documentary evidence of the credentials of the bidders(s).

vi) The Financial Proposals with Initial Price Offer above the Ceiling Price.

vii) The Techno-Commercial Proposal or Financial Proposal submitted by the bidder is conditional or qualified.

viii) The Techno-Commercial Proposal or Financial Proposal submitted by the bidder is not valid for the minimum validity period of 270 (two hundred and seventy) days from the Bid Submission Date.

ix) It is otherwise in material deviations in terms hereof.

# 8 Contents of Techno-Commercial Proposal

## 8.1 Bid Security

8.1.1 Bidders as part of their Techno-Commercial Proposal shall submit a Bid Security of the amount as indicated in the Data Sheet hereof. The Bid Security shall be in the form of a Bank Guarantee issued by a Scheduled Commercial Bank in India.

8.1.2 For the Technically Qualified Bidders who are not the Selected Bidder, the Bid Security shall be returned within 30 (thirty) days from the signing and execution of the Coal Mining Agreement with the Selected Bidder.

8.1.3 The Bid Security should be valid for a period of at least 270 (Two Hundred and Seventy) days from the Bid Submission Date.

8.1.4 The original Bid Security shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Bid Security shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Bid Security shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

8.1.5 Any bid not accompanied by physical submission of the original Bid Security within the time as specified in the Schedule of Bidding Process hereof shall be rejected as being non-responsive. No bidder shall be exempted from the requirement of submitting the Bid Security.

8.1.6 The Bid Security of bidders whose Techno-Commercial Proposals are found to be unresponsive or whose Techno-Commercial Proposals do not qualify as per the Qualification Requirements, shall be returned within 30 (thirty) days of announcement of the list of the Technically Qualified Bidders, subject to the provisions of Clause 8.1.7 below.

8.1.7 The Bid Security may be forfeited and appropriated by PSPCL as a genuine pre-estimated compensation and damages payable to PSPCL for, inter alia, the time, cost and effort of PSPCL without prejudice to any other right or remedy that may be available to PSPCL hereunder, or otherwise, under the following conditions:

(a) if the bidder withdraws or alters or modifies or revokes its Bid, partially or fully, during the Bid Validity Period or any extension granted thereof as per terms of this RFP document, except in accordance with Clause 7.14 hereof. No bids may be withdrawn in the interval between the Bid Submission Date and the expiration of the Bid Validity Period specified in Clause 7.15 hereof. The withdrawal of a bid during this interval shall result in the forfeiture of the Bid Security.

(b) if any of the claims, confirmations, statements or declarations of the bidder is found to be incorrect or inconsistent or in case of any material misrepresentation of facts;

(c) if the Selected Bidder fails to furnish the Performance Security Bank Guarantee and/or fails to sign the Coal Mining Agreement within 30 (thirty) days of receipt of the Letter of Award;

(d) if a bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging as specified in this RFP document;

(e) if a bidder withdraws its Bid before completion of the Bidding Process during the Bid Validity Period, except in accordance with Clause 7.14 hereof;

(f) if the bidder is otherwise in breach of the terms of this document;

(g) in case the Selected Bidder, does not comply with the requirements of the Financial Proposal;

(h) in case the Techno-Commercial Proposal of a bidder contains any information on the Financial Proposal of the bidder;

(i) if a bidder submits a conditional or a qualified Bid;

(j) if a bidder submits more than one Bid, either as a single bidder or as part of a consortium.

## 8.2 Documentary Evidence of Meeting Technical Criteria and Financial Criteria

Bidders as part of their Techno-Commercial Proposal shall submit detailed and comprehensive information in support of their qualifying as per the Technical Criteria and Financial Criteria set out in this RFP document. The information shall be provided in the formats provided in Annexure 2 and Annexure 3 hereof. Documentary evidence regarding the same shall also need to be submitted as part of the Techno-Commercial Proposal. These documents shall be a part of the Techno-Commercial Proposal being uploaded on the MSTC website; it is reiterated that the hard copies of the Techno-Commercial Proposal shall also be submitted in triplicate by the bidders, as mentioned in Clause 7.12 hereof.

## 8.3 Covering Letter

Bidders as part of their Techno-Commercial Proposal shall submit a Covering Letter as per the format given in Annexure 1 hereof. The letter shall be signed by the Authorized Signatory of the bidder/ the consortium. A scanned copy of the Covering Letter shall be uploaded on the MSTC website as part of the Techno-Commercial Proposal, while the original Covering Letter shall be submitted as part of the hard copies (as part of the original) of the Techno-Commercial Proposal to be submitted in triplicate by the bidders, as mentioned in Clause 7.12 hereof.

## 8.4 Power of Attorney

8.4.1 Bidders as part of their Techno-Commercial Proposal shall submit the appropriate Power of Attorney in the name of the Authorized Signatory of the Bidder. The Power of Attorney shall be executed on a Rs. 100 non-judicial stamp paper and shall be duly notarized.

8.4.2 For single bidders, the Power of Attorney shall be in the format given in Annexure 4 hereof. It shall be accompanied by a copy of Board resolution of the bidder, affixed with common seal of company, authorizing the issuer who issues Power of Attorney in favor of the Authorized Signatory of the bidder.

8.4.3 For consortium bidders, the Authorized Signatory shall be from Lead Member of the consortium. The Power of Attorney shall be in the format given in Annexure 5 hereof in favor of the Authorized Signatory, signed by authorized signatories of all the consortium members. The Power of Attorney shall be backed by copies of Board Resolutions /other relevant documents of each consortium member, affixed with common seal of the consortium members, to demonstrate the authority of the persons issuing the Power of Attorney in favor of the Authorized Signatory of the bidder, who shall be from Lead Member of the consortium.

8.4.4 The original Power of Attorney shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Power of Attorney shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Power of Attorney shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

## 8.5 Consortium Operating Agreement

8.5.1 If applicable, bidders as part of their Techno-Commercial Proposal shall submit a **Consortium Operating Agreement** as per the format given in Annexure 6 hereof. The original Consortium Operating Agreement shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Consortium Operating Agreement shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Consortium Operating Agreement shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

## 8.6 Joint Operating Agreement

8.6.1 If applicable, bidders as part of their Techno-Commercial Proposal shall submit the **Joint Operating Agreement** as per the format given in Annexure 7 hereof. The original Joint Operating Agreement shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Joint Operating Agreement shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Joint Operating Agreement shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

## 8.7 Affidavit

8.7.1 The bidder as part of their Techno-Commercial Proposal shall submit an Affidavit as per the format given in Annexure 9 hereof, declaring inter alia that in respect of any tender/ contract issued by or contract entered into with PSPCL, or any government or any government instrumentality:

(a) they have not been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only);**

**OR**

they have been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only)** but as of the RFP publication date they have been cleared of such blacklisting;

**OR**

they have been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only)** but as of the RFP publication date such blacklisting in subjudice;

(b) they have not been found guilty of offences involving bribery, corruption, fraud, offences against the state;

(c) they have examined and have no reservations to the RFP document, including any Corrigendum/ Addendum issued by PSPCL;

(d) they do not have any conflict of interest in accordance with Clause 6.8 of the RFP document;

(e) they have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging, as defined in Clause 10.2 of the RFP document; and

(f) they certify that they have taken steps to ensure that in conformity with the provisions of Clause 10.2 of the RFP document, and no person acting for them or on their behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging.

8.7.2 In case of consortium bidders, 3 (three) affidavits are to be submitted (as per the format given in Annexure 9 hereof), one each by each member of the consortium and one by the consortium. The affidavit by the consortium and the Lead Member of the consortium shall be signed by the Authorized Signatory of the bidder, whilst the Affidavit of the non-lead member shall be signed by a director (as defined in the Companies Act, 2013) of the non-lead member.

8.7.3 In case of a single bidder who is using the credentials and experience of their Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company to fulfill the Technical Criteria or Financial Criteria either partly or fully, apart from the bidder, such Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of the Holding Company shall also submit similar above mentioned affidavits (as per the format given in Annexure 9 hereof) and such affidavits shall be signed by a director (as defined in the Companies Act, 2013) of such companies.

8.7.4 The original Affidavit(s) shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Affidavit(s) shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Affidavit(s) shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

## 8.8 Certificate of Total Compliance

Bidders as part of their Techno-Commercial Proposal shall submit a Certificate of Total Compliance as per the format given in Annexure 10 hereof. The original Certificate of Total Compliance shall be submitted as part of the Original Documents being submitted physically, as specified in Clause 7.12.1 (i) hereof. A scanned copy of the Certificate of Total Compliance shall be uploaded by the bidder in the MSTC website as part of its Techno-Commercial Proposal and photocopies of the Certificate of Total Compliance shall be submitted as part of the hard copy submission of the Techno-Commercial Proposal.

## 8.9 Checklist of Documents as part of the Techno-Commercial Proposal

Bidders as part of their Techno-Commercial Proposal shall submit a duly filled in checklist of documents being submitted, as per the format given in Annexure 17 hereof. The bidder shall tick mark the column titled "**Submitted by Bidder**" to indicate that the respective document is being submitted as part of the Techno-Commercial Proposal. The bidder shall also tick mark the column titled "**Original Documents"** for the relevant rows. The columns titled "**Verified during Evaluation**" and **"Remarks"** shall be left blank by the bidder. A scanned copy of the checklist shall be uploaded on the MSTC website as part of the part of the Techno-Commercial Proposal, while the original checklist shall be submitted as part of the hard copies (as part of the original) of the Techno-Commercial Proposal to be submitted in triplicate by the bidders, as mentioned in Clause 7.12 hereof.

# 9 Contents of Financial Proposal

## 9.1 Submission of Financial Proposal

The Financial Proposal shall be submitted online through the MSTC website.

## 9.2 Initial Price Offer

9.2.1 The Financial Proposal to be submitted shall consist of the Initial Price Offer to be quoted by bidders. The Financial Proposal to be submitted shall be in the format set out in Annexure 20 hereof.

9.2.2 The Initial Price Offer shall be in Rs. per tonne (without any decimal part).

9.2.3 The Initial Price Offer shall be less than or equal to the Ceiling Price indicated in the Data Sheet hereof. The MSTC site shall not accept any Initial Price Offer above the Ceiling Price.

9.2.4 The Initial Price Offer shall be quoted exclusive of applicable taxes (which are payable by PSPCL), which shall be reimbursed by PSPCL on actuals.

## 9.3 Opening of Financial Proposals

9.3.1 The Financial Proposals of only the Technically Qualified Bidders shall be opened.

9.3.2 All the Technically Qualified Bidders shall be eligible for participating in the Reverse Auction. In the event that the total number of bidders who are eligible to participate in the Reverse Auction is less than 3 (three), PSPCL may decide to go for a fresh tender or proceed with the Reverse Auction.

## 9.4 Reverse Auction

9.4.1 The lowest Initial Price Offer submitted by a Technically Qualified Bidder shall become the **Applicable Ceiling Price** for the Reverse Auction. During the Reverse Auction, the Technically Qualified Bidders who are eligible for participating in the Reverse Auction shall be permitted to place their Final Price Offer on the MSTC website, provided that it is lower than the Applicable Ceiling Price by at least the minimum decrement amount of Rs. 2/- (Rupees Two only). The Technically Qualified Bidder that submits the lowest Final Price Offer at the conclusion of Reverse Auction process shall be the “**L1 Bidder**”.

9.4.2 In the event that none of the Technically Qualified Bidders participate in the Reverse Auction within the specified time duration of the Reverse Auction, then PSPCL reserves the right to scrap the Reverse Auction and proceed with the lowest Initial Price Offer from amongst the Technically Qualified Bidders and declare the Technically Qualified Bidder who had submitted lowest Initial Price Offer as the “**L1 Bidder**”. In such a case, PSPCL reserves the right to further negotiate the L1 price with such L1 Bidder.

9.4.3 The lowest Financial Proposal submitted by the L1 Bidder, either the lowest Final Price Offer submitted during the Reverse Auction or the lowest Initial Price Offer, as the case maybe, shall be considered as the **L1 Price.**

9.4.4 The L1 Price of the L1 Bidder shall be split into two parts:

i) **Base Mining Charge** shall be considered to be **70% (seventy percent)** of the L1 Price – this shall be the base charge for the production of coal and all associated activities and bringing the coal to the pit top of the mine.

ii) **Base Transportation & Handling Charge** shall be considered to be **30% (thirty percent)** of the L1 Price - this shall be the base charge for transportation of coal from the coal mine pit top to the existing railway siding at Pakur, including loading of coal onto the railway rakes and ensuring proper operation, maintenance and security of the railway siding and delivering coal up to the Delivery Points; however, the Freight Costs shall be directly paid by PSPCL to the Indian Railways.

iii) Both the Base Mining Charge and the Base Transportation & Handling Charge shall be computed up to 2 (two) decimal places.

## 9.5 Price Variation

9.5.1 The Base Mining Charge and the Base Transportation & Handling Charge of the L1 Bidder shall be revised on the 1st April and 1st October of every financial year as outlined in Article 24 of the Coal Mining Agreement. In case the financial year followed in India is changed by the competent Authority, the revision of the Base Mining Charge and the Base Transportation & Handling Charge shall be done on the first day of every such revised financial year and the date which falls six months hence from the first day of every such revised financial year.

9.5.2 The Base Mining Charge shall be revised on every 1st April and 1st October (or the corresponding dates as mentioned Clause 9.5.1 in case of any change of the financial year) that fall after the Bid Submission Date to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Submission Date and the Reference Index Date for the quarter preceding the date of such revision, and the amount so determined shall be the prevailing Mining Charge till the date of the next revision. The Mining Charge shall be computed up to 2 (two) decimal places.

9.5.3 The Base Transportation & Handling Charge shall be revised on every 1st April and 1st October (or the corresponding dates as mentioned Clause 9.5.1 in case of any change of the financial year) that fall after the Bid Submission Date to reflect the variation in Price Index occurring between the Reference Index Date of the quarter preceding the Bid Submission Date and the Reference Index Date for the quarter preceding the date of such revision, and the amount so determined shall be the prevailing Transportation & Handling Charge till the date of the next revision. The Transportation & Handling Charge shall be computed up to 2 (two) decimal places. Provided, further that, in case of any revision of the Base Transportation & Handling Charge due to extension of the railway siding by PSPCL (as per the provisions of Clause 5.12.7), the Transportation & Handling Charge shall also be revised in terms of this Clause 9.5 on the date of such revision of the Base Transportation & Handling Charge.

9.5.4 The **Composite Mining Charge** shall be the sum of the Mining Charge and the Transportation & Handling Charge and shall be the charges payable by PSPCL to the MDO.

9.5.5 The Price Index shall be construed in the following manner:

i) 20% (twenty per cent) of the component will be fixed and will not be subjected to any escalation whatsoever

ii) 25% (twenty five per cent) of WPI;

iii) 25% (twenty five per cent) of CPI (IW); and

iv) 30% (thirty per cent) of WPI for high speed diesel oil

9.5.6 Thus the revision of the Mining Charge shall be undertaken in the following manner:

(a) Let $WPI_o$ be the WPI value on the Reference Index Date of the quarter preceding the Bid Submission Date

(b) Let $WPI_1$ be the WPI value on the Reference Index Date for the quarter preceding the date of revision

(c) Let $CPI_o$ be the CPI (IW) value on the Reference Index Date of the quarter preceding the Bid Submission Date

(d) Let $CPI_1$ be the CPI (IW) value on the Reference Index Date for the quarter preceding the date of revision

(e) Let $HSD_o$ be the WPI value high speed diesel oil on the Reference Index Date of the quarter preceding the Bid Submission Date

(f) Let $HSD_1$ be the WPI value high speed diesel oil on the Reference Index Date for the quarter preceding the date of revision

Mining Charge = Base Mining Charge X $\{1 + (WPI_1 – WPI_o)/WPI_o$ X 25% + $(CPI_1 – CPI_o)/CPI_o$ X 25% + $(HSD_1 – HSD_o)/HSDI_o$ X 30%$\}$

The price variation for the Transportation & Handling Charge shall also be similarly calculated.

Illustration

Let the Base Mining Charge be Rs. 700.00 and let the Base Transportation & Handling Charge be Rs. 300.

At Bid Submission Date, Let $WPI_o$ = 178.6, $CPI_o$= 263 and $HSD_o$ = 207.3

For a particular date when revision is being done, let $WPI_1$ = 200, $CPI_1$ = 280 and $HSD_1$= 220

Mining Charge = Rs. 700 X {1 + (200 - 178.6)/178.6 X 25% + (280 - 263)/263 X 25% + (220 – 207.3)/207.3 X 30%}

= Rs. 700 X {1 + 3% + 1.62% + 1.84%}

= Rs. 700 X 1.0645 = Rs. 745.15 per tonne

Similarly, Transportation & Handling Charge = Rs. 300 X 1.0645 = Rs. 319.35 per tonne

Thus Composite Mining Charge = Rs. (745.15 + 319.35) = Rs. 1064.50 per tonne

Reference rates to be used

i) WPI – the figures published by the Office of the Economic Advisor, Government of India, Ministry of Commerce & Industry on their website (http://www.eaindustry.nic.in/home.asp) shall be used. The figure published for WPI Series (2011-12) for **All Commodities** shall be used.

ii) CPI (IW) – the figures published by the Labor Bureau, Government of India on their website (http://labourbureaunew.gov.in/LBO_indnum.htm) shall be used. The figure published as the **All India Index** with base year as 2001 shall be used.

iii) WPI for High Speed Diesel - the figures published by the Office of the Economic Advisor, Government of India, Ministry of Commerce & Industry on their website (http://www.eaindustry.nic.in/home.asp) shall be used. The figure published for WPI Series (2011-12) for **High Speed Diesel** shall be used.

# 10. Information to Bidders

## 10.1. Transfer of Bidding Documents

The Bidding Documents are not transferable and can be used for submitting Bids by the prospective bidder who has registered on the MSTC website, either as a single bidder or as the Lead Member of a consortium.

## 10.2. Corrupt or Fraudulent Practices

10.2.1. Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, PSPCL may reject a Bid without being liable in any manner whatsoever to the bidder if it determines that the bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice, collusive bidding or bid rigging in the Bidding Process.

10.2.2. Without prejudice to the rights of PSPCL under Clause 10.2 hereinabove, if a bidder is found by PSPCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice or collusive bidding or bid rigging during the Bidding Process, such a bidder shall not be eligible to participate in any tender or RFP issued by PSPCL during a period of 2 (two) years from the date such bidder is found by PSPCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice or restrictive practice, as the case may be. PSPCL shall also take remedial measures against such bidder available to it under the provisions of the Competition Act, 2002 in case of collusive bidding or bid rigging.

10.2.3. For the purposes of this Clause 10.2, the following terms shall have the meaning hereinafter respectively assigned to the

(a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of PSPCL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Letter of Award or has dealt with matters concerning the Coal Mining Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of PSPCL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging during the Bidding Process or thereafter i.e. till the date which is 6 (six) months from the date of the Letter of Award, any person or persons in any manner for matters related to or incidental to this Project, who at any time has been or is a legal, financial or technical adviser of PSPCL in relation to any matter concerning the Project;

(b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "**coercive practice**" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by PSPCL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest;

(e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process; and

(f) "**collusive bidding**" or "**bid rigging**" means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

## 10.3. Miscellaneous

10.3.1. PSPCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

b. change, modify, add or alter the document at any time during the bidding process. All such changes shall be uploaded on the MSTC website. It is the duty of bidders to visit the MSTC website regularly and keep themselves updated on the bidding process and any communication made in relation to the bidding process. In case of any dispute regarding the tender documents, the decision of Chief Engineer (Fuel), PSPCL shall be final.

c. consult with any bidder in order to receive clarification or further information

d. pre-qualify or not to pre-qualify any bidder and/ or to consult with any bidder in order to receive clarification or further information

e. retain any information and/ or evidence submitted to PSPCL by, on behalf of, and/ or in relation to any bidder; and/ or

f. independently or otherwise verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any bidder

10.3.2. It shall be deemed that by submitting its bid, the bidder agrees and releases PSPCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future

# 11. Instructions on e-tendering and Reverse Auction on MSTC website

## 11.1. Synopsis

11.1.1 The selection of MDO for the development and operations of the Pachhwara Central coal mine shall be through e-tendering followed by Reverse Auction. The entire process shall be held on the MSTC website (www.mstcecommerce.com). The RFP is available on the website.

11.1.2 Bidders are requested to read these instructions and terms & conditions before submitting their bids.

## 11.2. Contact Persons from MSTC

| Sl. No. | Name of Contact Person | Email | Mobile No |
|---|---|---|---|
| 1 | Shri Sabyasachi Mukherjee | smukherjee@mstcindia.co.in | 07278030407 |
| 2 | Shri Himanshu Agarwal | hagarwal@mstcindia.co.in | 09808570722 |
| 3 | Shri Nikhil Mittal | nmittal@mstcindia.co.in | 09674550002 |
| 4 | Shri A Adhikari | aadhikari@mstcindia.co.in | 09654531675 |

## 11.3. Configuration

11.3.1 The bidder may note that the following configurations will be required to be undertaken in their Internet Explorer browsers for smooth functioning of the website and the e-auction website.

11.3.2 The system requirements are as follows:

i) Operating System- Windows XP Service Pack 3 or above

ii) Web Browser- IE 7 and above

iii) Active-X Controls Should be enabled as follows:
Tools =>Internet Options =>Security =>Custom Level =>Enable all Active-X Controls =>Disable “Use Pop-up Blocker”

iv) Java (JRE7 and above)

11.3.3 To disable “Protected Mode” for DSC to appear in the signer box following settings may be applied:

i) Tools => Internet Options =>Security => Disable protected Mode If enabled- i.e, Remove the tick from the tick box mentioning “Enable Protected Mode”.

ii) Other Settings:

Tools => Internet Options => General => Click On Settings under "browsing history/ Delete Browsing History" => Temporary Internet Files => Activate "Every time I Visit the Webpage"

## 11.4. Registration

11.4.1 All intending bidders are required to register their firms/ companies as vendors on MSTC website (www.mstcecommerce.com). For online registration, the bidder is required to click on the link **'Register as Vendor'** provided on the above webpage. The bidder needs to fill up the online form with appropriate details and submit. The bidder should note that it is required to create its own user id and password during the process of filling up this form and no separate communication will be send for user id and password. The bidder shall itself remain responsible for maintaining the secrecy of its user id and password.

11.4.2 Upon successful submission of the online registration form, the bidder shall receive an e-mail in its registered e-mail address confirming the registration. The bidders shall have to pay a onetime registration fee of **Rs 10,000/- (Rupees Ten Thousand only)** along with GST at the rate of 18% (eighteen percent) **{Total Rs 11,800/- (Rupees Eleven Thousand Eight Hundred only)}** in favor of MSTC Limited. The payment can be made through NEFT or e-payment to MSTC's following bank account.

| | | |
|---|---|---|
| Bank Details | : | Indusind Bank |
| Account Details | : | 201001334303 |
| IFSC Code No. | : | INDB0000014 |

11.4.3 After remittance of the payment, the bidder should send the details of payment like remitting bank, date of payment, UTR number, outward settlement report, amount, name of the remitter, GST ID and name of the bidder as registered in MSTC's website through e-mail to hagarwal@mstcindia.co.in , nmittal@mstcindia.co.in and aadhikari@mstcindia.co.in.

11.4.4 The bidder can then login in the same website as mentioned above through the 'Vendor Login' section. The bidder shall need a valid Digital Signature Certificate (DSC) along with user id and password to login. The DSC which shall be used during the first login shall get mapped with the user id and the same DSC shall have to be used for all subsequent logins and bidding. Hence the DSC should be in the name of the Authorized Signatory of the bidder.

11.4.5 A bidder needs to register only once with the above website. The same registration can be used for bidding in various RFPs being processed in the above website.

## 11.5 Bid Document Cost

11.5.1 The amount of bid document cost is indicated in the **Data Sheet** hereof.

11.5.2 The payment towards the bid document cost is to be remitted in favor of MSTC Limited through NEFT or e-payment to MSTC's bank account as per following detail.

| | | |
|---|---|---|
| Bank Details | : | Indusind Bank |
| Account Details | : | 201001334303 |
| IFSC Code No. | : | INDB0000014 |

After remittance of the payment, the bidder should send the details of payment like remitting bank, date of payment, UTR number, outward settlement report, amount, name of the remitter, GST ID and name of the bidder as registered in MSTC's website through e-mail to hagarwal@mstcindia.co.in , nmittal@mstcindia.co.in and aadhikari@mstcindia.co.in.

11.5.3 It may be noted that bidders can download the RFP document, attend the site visit and the pre-bid meeting and submit their Bids only after payment of the Bid Document Cost.

11.5.4 The RFP document shall be available for free to all bidders. Bidders who have paid the Bid Document Cost shall be able to download the other tender documents through the link **'Download Tender Document'**. For this the bidder shall need to login and click on the above link.

## 11.6 Bid Submission

11.6.1 This stage will comprise of:

i) online submission of the Techno-Commercial Proposal and the Financial Proposal to the extent of the Initial Price Offer; and

ii) offline physical submission of the Original Documents and hard copies (in triplicate) of the Techno-Commercial Proposal as mentioned in Clause 7.12 hereof

## 11.7 Online Submission of Techno-Commercial Proposal and the Financial Proposal

11.7.1 This stage shall be open to all bidders who have paid the bid document cost for the specific coal mine. In this process, the bidder, after logging in to the above stated website, will have to click on the link **"AUC Floor Manager"**. Thereafter the bidder has to click on Live Events and then on the e-tender number. The bidder shall be directed to a screen where it can fill up the Techno-Commercial Proposal template and save the data. The bidder can edit such data as many times as it wishes till the final submission is made by clicking the **"Final Submission"** button.

11.7.2 After saving the Techno-Commercial Proposal, the link / button for Initial Price Offer (button named **"Financial Proposal"**) shall get activated. The bidder, on clicking this button, shall be directed to a screen having a template where it can fill up its Initial Price Offer and save the same. The bidder can edit such data as many times as it wishes till the final submission is made by clicking the **“Final Submission”** button.

11.7.3 The final submission of Techno-Commercial Proposal and the Financial Proposal consisting of the Initial Price Offer shall be digitally signed by the bidder using the digital signature which was used at the time of registration. Any digital signature certificate other than the above shall not be acceptable for Bid submission by the system.

11.7.4 The bidder may note that the **“Final Submission”** button for both the Techno-Commercial Proposal and the Financial Proposal consisting of the Initial Price Offer is common and will be activated only after both the Techno-Commercial Proposal and the Financial Proposal consisting of the Initial Price Offer have been saved.

## 11.8 Uploading Documents

11.8.1 The bidder shall also have to upload the supporting documents along with the Techno-Commercial Proposal, as specified in the RFP. These supporting documents will need to be uploaded in pdf format only (the file size should be limited to 4 MB; in case of larger files, they may be split into multiple files with suitable nomenclature). Files in formats other than pdf shall not be accepted. For this, the bidder shall first click on the link **“Upload documents”** and upload the files in support of its Techno-Commercial Proposal.

11.8.2 The bidder should note that only a file which is “attached” with a specific e-tender shall be considered during opening / evaluation of the Techno-Commercial Proposal. Files which are not attached to any e-tender shall not be considered for evaluation.

11.8.3 The bidder should also note that a Bid will be considered as submitted if and only if the bidder has clicked on the **“Final Submission”** button. Only such Bids will be opened which have been finally submitted. It is further clarified that saving of Techno-Commercial Proposal and the Financial Proposal consisting of the Initial Price Offer without final submission will be treated as non-submission of bid.

11.8.4 Upon successful final submission, the bidder shall receive a bid acknowledgement from the system automatically.

11.8.5 The bidders may note that the Techno-Commercial Proposal and the Financial Proposal consisting of the Initial Price Offer submitted online as above will be encrypted by the MSTC’s own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

## 11.9 Delete / Modification/ Withdrawal of Bid

11.9.1 If after final submission of bid and before the scheduled Bid Submission Date, a bidder wishes to make changes in its bid, it can do so by clicking the **“Delete Bid”** option. By doing so, the entire bid submitted by the bidder will get deleted. A system generated email will be sent to the bidder acknowledging the deletion. The bidder will be able to save and submit its new bid again. If a bidder deletes its bid and does not submit its new bid in the same manner as stated above, its bid will not come up for opening or further processing.

11.9.2 If after final submission of bid and before the scheduled Bid Submission Date, a bidder wishes to withdraw its bid, it can do so by clicking the **"Withdraw Bid"** option. By withdrawing a bid, a bidder will lose the opportunity to re-submit its bid against the same mine.

11.9.3 A bidder shall also be able to delete, withdraw and re-submit its bids in case of any extension of the Bid Submission Date by PSPCL.

## 11.10 Offline Physical Submission of Documents

11.10.1 The list of documents to be physically submitted is provided in Clause 7.12 hereof.

11.10.2 As mentioned in Clause 7.12, the Original Documents shall be submitted in an envelope bearing the caption **"Original Documents related to Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**". Additionally the bidder shall also physically submit in triplicate hard copies of the Techno-Commercial Proposal (one original and two copies) in a sealed envelope bearing the caption **"Hard Copy of Techno-Commercial Proposal related to Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine"**. The name of the bidder as well as the communication address, mobile number and email of its Authorized Signatory of the bidder shall be typed on all the envelopes.

11.10.3 The sealed envelopes shall be dropped in the tender box kept at the office of MSTC Limited at the address given in the Data Sheet hereof, within the Bid Submission Date as indicated in the Schedule of Bidding Process hereof.

11.10.4 Documents submitted elsewhere and/ or after the Bid Submission Date shall not be considered.

11.10.5 The bidders shall also note that online submission of Techno-Commercial Proposal and the Financial Proposal and along with the offline physical submission of the Original Documents and hard copies (in triplicate) of the Techno-Commercial Proposal shall be allowed only up to closing time of online bid submission. Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup / technical problems. No complaints shall be entertained in this regard at any stage.

## 11.11 Reverse Auction

11.11.1 After opening of the Initial Price Offer, the bidders who shall become eligible to participate in the Reverse Auction as per conditions of the RFP shall be known as the Technically Qualified Bidders who will be intimated about their qualification for electronic auction for the specific mine through notification in the MSTC website within their secured login as well as a system generated email. It shall be the sole responsibility of the bidder to regularly check the MSTC website and login to see whether it has qualified for a certain mine or not. PSPCL or MSTC will not be responsible for non-receipt of email by the bidder and its consequences.

11.11.2 The Reverse Auction is the process of inviting binding Final Price Offer from Technically Qualified Bidders through internet for the purpose of determination of the L1 Bidder (i.e. the bidder who submits the lowest Final Price Offer at the conclusion of the Reverse Auction). During this process, the Technically Qualified Bidders shall be able to submit its Final Price Offer as many times as it wishes against the same coal mine. The Technically Qualified Bidders will remain anonymous to other Technically Qualified Bidders participating in the Reverse Auction process as well as to MSTC. The Technically Qualified Bidders shall be able to see the prevailing lowest Final Price Offer against the coal mine, but the name of the lowest Technically Qualified Bidder at any point of time will not be displayed. A Technically Qualified Bidder shall have to put its Final Price Offer below the displayed lowest bid by a decrement of at least Rs 2 per tonne or multiples thereof to become the lowest Technically Qualified Bidder. The Reverse Auction process will have a scheduled start and close time which will be displayed on screen. A Technically Qualified Bidder will be able to put its Final Price Offer after the start of bid time and till the close time of the Reverse Auction. The current server time (IST) will also be displayed on the screen. In the event a bid is received during the last 8 (eight) minutes before the scheduled close time of Reverse Auction, the close time of the Reverse Auction will be automatically extended by 8 (eight) minutes from the last received bid time to give equal opportunity to all other Technically Qualified Bidders. This process of auto extension will continue till there is a period of 8 (eight) minutes during which no Final Price Offer are received.

11.11.3 For example, assuming that the initial scheduled close time for a particular Reverse Auction is 1:00 pm and a Final Price Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm. Again if a Final Price Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Price Offer received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and the Technically Qualified Bidders should keep refreshing its webpage to get on screen the latest information. The above example is only illustrative and meant for guidance only.

11.11.4 During the tender process for electronic auction, the bidder shall be required to sign their Bids with their respective digital signature certificate (DSC) which has been used to login. Any digital signature certificate other than the above shall not be acceptable for Bid submission by the system.

## 11.12 Digital Signature

11.12.1 A bidder shall be required to possess a valid Digital Signature Certificate (DSC) of signing type to be able to submit its bid and to participate in the Reverse Auction on MSTC's website. For this purpose bidders shall be required to authorize its Authorized Signatory to procure a class III DSC of signing type from any certifying authority or their authorized agencies in India.

11.12.2 Bidders may kindly note that only one user id will be mapped with a given DSC for the Authorized Signatory. DSC once mapped with a particular User ID of a bidder will normally not be changed and therefore bidders are advised to carefully select the DSC before forwarding the same to MSTC Limited for mapping.

11.12.3 The Digital Signature Certificate will be used to digitally sign the bids that the bidder shall submit online.

11.12.4 It will be the sole responsibility of the bidder and its respective Authorized Signatory to maintain the secrecy of the password for the Digital Signature Certificate. The bidder and its contact person shall be solely responsible for any misuse of the DSC and no complaint / representation in this regard shall be entertained at any stage by MSTC Limited / PSPCL.

# Annexures

# Annexure 1: Format for Covering Letter

*(To be submitted on the letterhead of the bidder or the letterhead of the Lead Member of the consortium)*

Letter No. [●]

Dated: [●]

From

Bidder's / Lead Member of consortium's Name and Address
Details of Authorized Signatory
Name :
Designation :
Telephone No. :
Mobile No. :
Fax No. :
Email :

To
Chief Engineer (Fuel)
Punjab State Power Corporation Limited
The Mall, PSEB Head Office
Patiala, Punjab – 147001

Dear Sir,

**Subject: Submission of Techno-Commercial Proposal for Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**

1. With reference to your RFP No. [●] dated [●],we have examined the RFP document and understood its contents, hereby submit our Bid for Selection as Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine. Our Bid is unconditional and unqualified. We are submitting our Techno-Commercial Proposal as part of the requirements of the Bidding Process.

2. We, [●][1] being a company duly incorporated under the laws of [●][2] and having its registered office at [●], India (hereinafter referred to as the "Bidder") are hereby submitting our Bid as a Single Bidder

   OR

[1] Name of Bidder
[2] Jurisdiction in which the company is incorporated

We, [●][3] being a company duly incorporated under the laws of [●][4] and having its registered office at [●], India (hereinafter referred to as the "Bidder") are hereby submitting our Bid as a Single Bidder while using the technical credentials and experience and/ or financial strength of our Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of our Holding Company[5].

The Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of our Holding Company[6] whose technical credentials and experience and/ or financial strength are being used for meeting the Qualification Requirements are:

(i) [●][7] being a company duly incorporated under the laws of [●][8] and having its registered office at [●];

and

(ii) [●][9] being a company duly incorporated under the laws of [●][10] and having its registered office at [●];

OR

We, [●][11] (hereinafter referred to as the "Bidder") are hereby submitting our Bid as a consortium, comprising of the following members:

(i) [●][12] being a company duly incorporated under the laws of [●][13] and having its registered office at [●], India as the Lead Member;

and

(ii) [●][14] being a company duly incorporated under the laws of [●][15] and having its registered office at [●], India.

3. I/ We acknowledge that PSPCL will be relying on the information provided by us in the Techno-Commercial Proposal and the documents accompanying the Techno-Commercial Proposal for qualification of the Bidders, and we certify that all information provided in the Techno-

[3] Name of Bidder
[4] Jurisdiction in which the company is incorporated
[5] To be retained as applicable
[6] To be retained as applicable
[7] Name of Bidder
[8] Jurisdiction in which the company is incorporated
[9] Name of Bidder
[10] Jurisdiction in which the company is incorporated
[11] Name of consortium
[12] Name of Bidder
[13] Jurisdiction in which the company is incorporated
[14] Name of Bidder
[15] Jurisdiction in which the company is incorporated

Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Techno-Commercial Proposal are true copies of their respective originals.

4. This Techno-Commercial Proposal is being submitted for the express purpose of qualifying as a Bidder for the Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine.

5. We shall make available to PSPCL any additional information it may find necessary or require to supplement or authenticate our Techno-Commercial Proposal.

6. We acknowledge the right of PSPCL to reject our Techno-Commercial Proposal/ Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

7. We understand that PSPCL may cancel the Bidding Process at any time and that you are neither bound to accept any Techno-Commercial Proposal/ Bid that you may receive nor to invite the bidders to Bid for the Project, without incurring any liability to the bidders, in accordance with Clause 10.3.1 of the RFP document.

8. We believe that we/ our proposed consortium satisfy(s) all the Qualification Requirements as specified in the RFP document and are/ is qualified to submit a Bid.

9. We declare that we/ any member of the consortium, or our/ their Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of such Holding Company are not another Bidder/ or a member of a/ any other consortium submitting a Techno-Commercial Proposal/ Bid for Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine.

10. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate PSPCL of the same immediately.

11. All information furnished in the offer is true to best of our knowledge and belief. We hereby undertake the responsibility to prove to the satisfaction of PSPCL the genuineness of any information given in our bid. We note that in the event of finding them false eventually, our bid shall stand to be rejected automatically without any notice or reference to us.

12. The Techno-Commercial Proposal and Bid submitted by us shall be valid for a minimum period of 270 (two hundred and seventy) days from the Bid Submission Date or any extension thereof as requested by PSPCL.

13. We further declare that by submitting this Bid, we agree to be bound by the terms and conditions of the RFP document.

Thanking you,

Yours faithfully,

(Signature of Authorized Signatory)

Name:

Designation:

Common Seal:

Date:

Place:

# Annexure 2: Format for Qualifying on the Technical Criteria

*(To be submitted on the letterhead of the bidder or the letterhead of the Lead Member of the consortium)*

**Route A (MDO route)**

The bidder should have in the last 7 (seven) years, reckoned from the last date of submission of bids, been awarded/owned and developed and operated a single open cast **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** mine having an annual capacity of at least **5 Mtpa** and achieved production of at least **2 Mtpa** of **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from that mine.

| Sl. No. | Particulars | Details |
|---|---|---|
| 1 | Name of mine | |
| 2 | Location | |
| 3 | Type of mine | |
| 4 | Mine owner with contact details | |
| 5 | Experience of [16] | |
| 6 | Experience as mine owner or MDO? | |
| 7 | Contract period | From - To |
| 8 | Peak rated capacity of the mine (Mtpa) | |
| 9 | Peak production achieved by the bidder | |
| 10 | Pay material | Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore |
| 11 | Development work undertaken in land acquisition | Give details on whether done or not and if done, whether done on your own or through sub-contracting |
| 12 | Development work undertaken in acquiring statutory clearances | Give details on whether done or not and if done, whether done on your own or through sub-contracting |
| 13 | Development work undertaken in infrastructure development | Give details on the different types of infrastructure developed, whether developed on your own or through sub-contracting |
| 14 | Scope of work done | |
| | Drilling | Yes/No |
| | Whether done on your own or through sub-contractors | Give details |
| | Blasting | Yes/No |
| | Whether done on your own or through sub-contractors | Give details |
| | Excavation | Yes/No |

[16] Provide the name of the Bidder, consortium member or name of the Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company

| | | |
|---|---|---|
| | Whether done on your own or through sub-contractors | Give details |
| | Haulage | Yes/No |
| | Whether done on your own or through sub-contractors | Give details |
| 15 | Date of commencement of production | |
| 16 | Total production till date | |

Documentary evidence to be provided as per Clause 6.6 hereof.

**Route B (Contractor route)**

**Requirement 1**

The bidder should have in any continuous 12 (twelve) month period in the last 7 (seven) years, reckoned from the last date of submission of bids, mining experience of having operated and produced at least **30 million bcm** of aggregate composite volume of overburden and **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from a maximum of **5 (five)** open cast mines. The same continuous 12 (twelve) month period shall be considered across the mines. The bidder should have also achieved a production of **2 Mtpa of Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from such mines during the last 7 (seven) years, reckoned from the last date of submission of bids.

| **Sl. No.** | **Particulars** | **Mine 1** | **Mine 2** | **Mine 3** | **Mine 4** | **Mine 5** |
|---|---|---|---|---|---|---|
| 1 | Name of mine | | | | | |
| 2 | Location | | | | | |
| 3 | Type of mine | | | | | |
| 4 | Mine owner with contact details | | | | | |
| 5 | Experience of [17] | | | | | |
| 6 | Experience as mine owner or contractor? | | | | | |
| 7 | Contract Period | From - To | | | | |
| 8 | Pay material | | | | | |
| 9 | 12 month period being considered | From - To | | | | |
| 10 | Annual production of pay material (Mt) | | | | | |
| 11 | Annual production of pay material (million BCM) | | | | | |
| 12 | Annual production of OB (million BCM) | | | | | |
| 13 | **Total annual production (million BCM)** | | | | | |
| 14 | Description of scope of work including any work done for mine development | | | | | |
| 15 | Brief description of scope of work of sub-contractors | | | | | |

Documentary evidence to be provided as per Clause 6.6 hereof.

[17] Provide the name of the Bidder, consortium member or name of the Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company

**Requirement 2**

The bidder should have in any continuous 12 (twelve) month period in the last 7 (seven) years, reckoned from the last date of submission of bids, mining experience of having operated and produced at least **15 million bcm** of aggregated volume of overburden and **Coal/ Lignite/ Bauxite/ Iron Ore/ Limestone/ Copper Ore** from a single open cast mine.

| Sl. No. | Particulars | Mine details |
|---|---|---|
| 1 | Name of mine | |
| 2 | Location | |
| 3 | Type of mine | |
| 4 | Mine owner with contact details | |
| 5 | Experience of [18] | |
| 6 | Experience as mine owner or contractor? | |
| 7 | Contract Period | From - To |
| 8 | Pay material | |
| 9 | 12 month period being considered | From - To |
| 10 | Annual production of pay material (Mt) | |
| 11 | Annual production of pay material (million BCM) | |
| 12 | Annual production of OB (million BCM) | |
| 13 | **Total annual production (million BCM)** | |
| 14 | Description of scope of work including any work done for mine development | |
| 15 | Brief description of scope of work of sub-contractors | |

Documentary evidence to be provided as per Clause 6.6 hereof.

[18] Provide the name of the Bidder, consortium member or name of the Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company

# Annexure 3: Format for Qualifying on the Financial Criteria

*(To be submitted on the letterhead of the bidder or the letterhead of the Lead Member of the consortium)*

**Requirement 1**

The average net worth of the bidder during any 3 (three) consecutive financial years out of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17) should be at least **Rs. 250,00,00,000/- (Rupees Two Hundred and Fifty Crores only)** or equivalent in foreign currency. Additionally, the net worth of the bidder (and for a consortium bidder, each member of the consortium) shall be greater than zero in each of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17). Further, the net worth of the bidder (and for a consortium bidder, additionally the net worth of the lead member of the consortium) shall be greater than or equal to its paid up share capital in each of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17). The net worth shall be calculated as per the definition given in the Companies Act, 2013 i.e.

| **Particulars** | **Bidder/ Lead Member** | | **Member 2**[19] | | **Total** | |
|---|---|---|---|---|---|---|
| Name | | | | | | |
| Currency | In other currency [20] | In INR | In other currency | In INR | In other currency | In INR |
| Net Worth as on 31st March 2017 | | | | | | |
| Paid-up Share Capital as on 31st March 2017 | | | | | | |
| | | | | | | |
| Net Worth as on 31st March 2016 | | | | | | |
| Paid-up Share Capital as on 31st March 2016 | | | | | | |
| | | | | | | |
| Net Worth as on 31st March 2015 | | | | | | |
| Paid-up Share Capital as on 31st March 2015 | | | | | | |
| | | | | | | |
| Net Worth as on 31st March 2015 | | | | | | |
| Paid-up Share Capital as on 31st March 2015 | | | | | | |

**Requirement 2**

[19] Member 2 may be other consortium member or the Bidder's Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company, as the case may be
[20] If applicable

The average cash accrual of the bidder in any 3 (three) consecutive financial years out of the last 4 (four) financial years (2013-14, 2014-15, 2015-16 and 2016-17) should be at least **Rs. 50,00,00,000/- (Rupees Fifty Crores only)** or equivalent in foreign currency. Cash accrual shall be calculated as the sum of profit after tax (PAT), depreciation and non-cash expenses.

| **Particulars** | **Bidder/ Lead Member** | | **Member 2**[21] | | **Total** | |
|---|---|---|---|---|---|---|
| Name | | | | | | |
| Currency | In other currency [22] | In INR | In other currency | In INR | In other currency | In INR |
| Cash Accrual as on 31st March 2017 | | | | | | |
| Cash Accrual as on 31st March 2016 | | | | | | |
| Cash Accrual as on 31st March 2015 | | | | | | |
| Cash Accrual as on 31st March 2014 | | | | | | |

**Requirement 3**

The bidder should have unutilized credit limits (duly certified by its Bank) for fund based and non-fund based limits together with cash and bank balances including fixed deposits as on a date not earlier than 30 (thirty) days from the bid submission date, of at least **Rs. 45,00,00,000/- (Rupees Forty Five Crores only)** or equivalent in foreign currency. Only unutilized credit limits with Banks shall be considered.

| **Particulars** | **Bidder/ Lead Member** | | **Member 2** | | **Total** | |
|---|---|---|---|---|---|---|
| Name | | | | | | |
| Date | | | | | | |
| Bank Name[23] | | | | | | |
| Currency | In other currency | In INR | In other currency | In INR | In other currency | In INR |
| Total Unutilized Line of Credit | | | | | | |
| Cash and Bank Balances | | | | | | |
| Fixed Deposits | | | | | | |
| **Total** | | | | | | |

[21] Member 2 may be other consortium member or the Bidder's Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company, as the case may be
[22] If applicable
[23] Add more rows in case there is more than one bank for each member

Documentary evidence to be provided as per Clause 6.6 hereof.

# Annexure 4: Format for Power of Attorney for Single Bidder

*(to be executed on Rs. 100 non judicial stamp paper)*

Whereas the Punjab State Power Corporation Limited ("PSPCL") has invited applications from interested parties for **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**(the "Project").

Know all men by these presents, we…………………………………………….. (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), …………………… son/daughter/wife of ……………………………… and presently residing at …………………., who is presently employed with us and holding the position of ……………………………. , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine** being developed by PSPCL including but not limited to signing and submission of all applications, bids and other documents and writings, participate in pre-bid meeting and other meetings and providing information/ responses to PSPCL, representing us in all matters before PSPCL, signing and execution of all contracts including the Coal Mining Agreement and undertakings consequent to acceptance of our bid, and generally dealing with PSPCL in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Coal Mining Agreement with PSPCL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, …………………………., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ……… DAY OF …………. 2018

For

…………………………..
(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted [Notarized]

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *The bidder should submit for verification the extract of the charter documents and documents such as a board resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostle certificate.*

# Annexure 5: Format for Power of Attorney for Lead Member of Consortium

*(to be executed on Rs. 100 non judicial stamp paper)*

Whereas the Punjab State Power Corporation Limited ("PSPCL") has invited applications from interested parties for **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**(the "Project").

Whereas, …………………….. and …………………….. (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ……………………..having our registered office at …………………….., M/s. …………………….. having our registered office at …………………….., and (hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s …………………….. having its registered office at …………………….., (acting through Mr. [•], its [•]), being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the prequalification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in the pre-bid meeting and other meetings, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with PSPCL, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Contract Agreement is entered into with PSPCL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …………………. DAY OF ………. 2018.

For ……………………..

(Signature)

……………………..
(Name & Title)

For ……………………..
(Signature)

……………………..
(Name & Title)

(To be executed by both Members of the Consortium)

Witnesses:

1.

2.

………………………………………

Accepted [Notarized]

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *The bidder should submit for verification the extract of the charter documents and documents such as a board resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostle certificate.*

# Annexure 6: Format for Consortium Operating Agreement

*(to be executed on Rs. 100 non judicial stamp paper)*

THIS CONSORTIUM OPERATING AGREEMENT is entered into on this the ……….. day of ……….. 2018

**AMONGST**

1. ……….., a company being a company duly incorporated under the laws of [●][24] and having its registered office at [●], India (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. ……….., a company being a company duly incorporated under the laws of [●][25] and having its registered office at [●], India (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST PART and SECOND PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party**"

**WHEREAS**,

A. Punjab State Power Corporation Limited (PSPCL), a Government of Punjab Undertaking and a company incorporated under the Companies Act, 1956, and having its registered office at The Mall, PSEB Head Office, Patiala, Punjab-147001 (hereinafter referred to as the "**PSPCL**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the "**Bids**") by its RFP No. [●] dated [●] (the "**RFP**") for pre-qualification and short-listing of bidders for **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine** (the "**Project**").

B. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other Bidding documents in respect of the Project, and

C. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Consortium Operating Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows**:

**1. Definitions and Interpretations**

[24] Jurisdiction in which the company is incorporated
[25] Jurisdiction in which the company is incorporated

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning given thereto under the RFP.

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a Special Purpose Vehicle (the "**SPV**") under the Indian Companies Act, 1956 for entering into the Coal Mining Agreement with PSPCL and for performing all its obligations as the MDO in terms of the Coal Mining Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the **Lead Member** of the Consortium and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing date of the Coal Mining Agreement when all the obligations of the SPV shall become effective;

(b) In addition to the above, the role of the Party of the First Part shall be as follows: -

*(please provide)*

The role of the Party of the Second Part shall be as follows: -

*(please provide)*

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP, RFP and the Coal Mining Agreement.

**6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party: **[●]%**

Second Party: **[●]%**

6.2 The Parties undertake that no change in the above ownership of the subscribed and paid up equity share capital of the SPV shall be permitted throughout the Contract Period, without the prior written approval of PSPCL.

6.3 The Parties undertake that a minimum of 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till expiry or termination of Coal Mining Agreement, be held by the Party of the First Part.

6.4 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till expiry or termination of Coal Mining Agreement, be held by the Party of the Second Part.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the RFP and Coal Mining Agreement.

**7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

i. require any consent or approval not already obtained;

ii. violate any Applicable Law presently in effect and having applicability to it;

iii. violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

iv. violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry or termination of Coal Mining Agreement in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the bidder is not pre-qualified or upon return of the Bid Security by PSPCL to the bidder, as the case may be.

**9. Miscellaneous**

9.1 This Consortium Operating Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of PSPCL.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

| | |
|---|---|
| SIGNED, SEALED AND DELIVERED | SIGNED, SEALED AND DELIVERED |
| For and on behalf of<br>LEAD MEMBER by: | For and on behalf of<br>SECOND PART |
| (Signature)<br>(Name)<br>(Designation) | (Signature)<br>(Name)<br>(Designation) |

(Address) (Address)

In the presence of:

1. 2.

*Notes*:

1. The mode of the execution of the Consortium Operating Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Consortium Operating should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Consortium Operating executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

# Annexure 7: Format for Joint Operating Agreement

*(to be executed on Rs. 100 non judicial stamp paper)*

This Joint Operating Agreement ("**JOA**") is executed on this [ ] day of [ ] Two thousand [ ] between M/s [ ], a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ], India (hereinafter called the "Bidder" which expression shall include its successors, executors and permitted assigns)

And

[ ] a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the "Operating Partner - 1", which expression shall include its successors, executors and permitted assigns);

And

[ ] a company incorporated under the laws of [ ] and having its registered office or principal place of business at [ ] (hereinafter called the "Operating Partner - 2", which expression shall include its successors, executors and permitted assigns).

The Operating Partner – 1 is the Subsidiary Company[26]/ Holding Company/ Subsidiary of Holding Company of the Bidder. The Operating Partner – 2 is the Subsidiary Company[27]/ Holding Company/ Subsidiary of Holding Company of the BidderThe Operating Partner – 1 and Operating Partner – 2 are collectively referred to as the "**Operating Partners".**

The Bidder and the Operating Partners are hereinafter referred to individually as Party and collectively as Parties.

[Note to Bidders: The bidders should provide details of their Subsidiary (ies) and/or Holding Company and/or Subsidiary (ies) of its Holding Company whose experience had been offered for evaluation in the Covering Letter of Techno-Commercial Proposal; such details should also include details of the shareholding between the bidder and Subsidiary (ies) and/or Holding Company and/or Subsidiary (ies) of its Holding Company]

**WHEREAS**

A. Punjab State Power Corporation Limited (PSPCL), a Government of Punjab Undertaking and a company incorporated under the Companies Act, 1956, and having its registered office at The Mall, PSEB Head Office, Patiala, Punjab-147001, India ("**PSPCL**") intends to select a Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine.

[26] Whichever is applicable
[27] Whichever is applicable

B. In order to meet the Technical Criteria and/or Financial Criteria of the Qualification Requirements stipulated in section 6 of the RFP document, the Bidder has relied on the strength of its Subsidiary (ies) and/or Holding Company and/or Subsidiary (ies) of its Holding Company and is therefore required to enter into this JOA to bind the Operating Partners to the provisions of the Coal Mining Agreement ("**Coal Mining Agreement**").

C. The Parties now wish to enter into this JOA in order to create binding obligations in favor of PSPCL to the extent set forth as follows.

**NOW THEREFORE THIS AGREEMENT WITNESSETH AS UNDER**:

1. All capitalized terms used herein if not otherwise defined shall have the same meaning as those given to them in the Coal Mining Agreement.

2. In consideration of PSPCL awarding the Coal Mining Agreement, to and in favor of the Bidder inter alia relying on the strength and support of the Operating Partners to the Bidder pursuant to the terms of the RFP Documents, the Operating Partners hereby irrevocably and unconditionally agree and undertake to be jointly and severally be bound and liable for any and all acts and omissions of the Bidder, in the same manner and to the same extent as set forth in the Coal Mining Agreement. For the avoidance of doubt, it is clarified that:

   (a) any service by PSPCL of a notice pursuant to terms of the Coal Mining Agreement shall be deemed to be services of notice to the Operating Partners, on a several basis;

   (b) the Parties hereby assume full responsibility and liability for the performance by the Bidder of its obligations in accordance with and subject to the terms of the Coal Mining read with this JOA;

   (c) subject to Clause 3 of this JOA, upon any default, whatsoever by the Bidder in performing, meeting or otherwise complying with any of its obligations in accordance with the terms of the Coal Mining Agreement, PSPCL may at any time as it deems fit and/or appropriate in its sole discretion, without giving any opportunity of recourse to the Bidder, require the Operating Partners to hold PSPCL harmless from and against any and all damages, losses, liabilities, obligations, claims of any kind, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) suffered, incurred or paid by PSPCL, as a result of, in connection with or arising out of such default; and

   (d) the obligations of the Operating Partners or the rights of PSPCL hereunder, shall not stand revoked, or otherwise be impaired or mitigated in any manner whatsoever, if there exists at any time any dispute before any court (whether in India or abroad), arbitration, claims, settlements, obligations, expert determination or similar proceedings under the Coal Mining Agreement between the Bidder and PSPCL;

3. Notwithstanding anything to the contrary contained in this JOA or the Coal Mining Agreement, the aggregate liabilities and obligations of the Operating Partners under or in connection with this JOA shall not exceed the aggregate liabilities and obligations of the Bidder under the Coal Mining

Agreement and it shall continue to remain in force at all times till expiry or termination of Coal Mining Agreement; provided that nothing contained in this Clause 3 shall deem to affect the rights of PSPCL that arise before such time referred to above.

4. The Operating Partners hereby irrevocably and unconditionally undertake, agree and acknowledge that their respective obligations hereunder:

   (a) are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the services of the Coal Mining Agreement, or the insolvency, bankruptcy, reorganization, dissolution, winding-up or liquidation of the Bidder or any change in the ownership of the Bidder, or any purported assignment by the Bidder or any other circumstances whatsoever which might otherwise constitute a defense or discharge of a guarantor or surety;

   (b) shall not be affected by the existence of or release or variation of any guarantee of or security for any of the obligations of the Bidder under the Coal Mining Agreement;

   (c) shall not be affected by any failure by PSPCL to pay or perform any of their obligations under the Coal Mining Agreement, or any waiver of any of such obligations;

   (d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Bidder under the Coal Mining Agreement; and

   (e) shall not be affected by any failure, omission or delay on PSPCL's part to enforce, assert or to exercise any right, power or remedy conferred on PSPCL in this JOA or any such failure, omission or delay on PSPCL's part in connection with any obligation of the Bidder under the Coal Mining Agreement.

5. Each Party hereby represents and warrants that:

   (a) it shall not be affected by any failure, omission or delay on PSPCL's part to enforce, assert or to exercise any right, power or remedy conferred on PSPCL in this JOA or any such failure, omission or delay on PSPCL's part in connection with any obligation of the Bidder under the Coal Mining Agreement.

   (b) it is duly organized and validly existing under the laws of the jurisdiction of their organization, with full power, authority and capability to enter into this JOA and to perform all acts and obligations contemplated herein;

   (c) the signature and delivery of this JOA on its behalf and the exercise of its rights and performance of its obligations under this JOA have been duly authorized;

   (d) this JOA has been duly signed and delivered by it and its obligations described in this JOA are legal, valid and binding obligations of such Party; and

(e) the execution and/or performance of this JOA:

i. will not conflict with or violate any provision of any of its constitutional documents / charters or other organizational document
ii. will not require any notice to or filing with, or any Approval of, any Authority or the consent of any third party;
iii. will not conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any person the right to terminate, modify or cancel, or require any notice, consent or waiver under, any contract or instrument to which such Party is a party or by which such Party is bound or to which any of such Party's assets are subject;
iv. will not result in the creation or enforcement of any security interest upon any assets of the Bidder;
v. will not violate any Applicable Law or any order, writ, injunction, or decree applicable to it; and
vi. will not harm the interests of PSPCL in any way.

6. This JOA shall be construed and interpreted in accordance with the laws of India. In the event of any dispute or claim of any kind whatsoever that may arise between the Parties or PSPCL as a result of construction, interpretation or application of any of the terms and conditions of this JOA, such dispute shall be settled in accordance with terms of the Coal Mining Agreement. The courts of Patiala shall have exclusive jurisdiction in all matters under this agreement.

7. Subject to Clause 3, the Parties hereby acknowledge and agree that this JOA has been executed for the sole benefit of PSPCL and for the specific purpose of ensuring that PSPCL receives the benefits of the Bidder's services under and in accordance with the Coal Mining Agreement. Accordingly, PSPCL shall, notwithstanding anything contained herein, at all times have the right to enforce the performance by the Operating Partners of their obligations pursuant to this JOA read with the Coal Mining Agreement and the Operating Partners hereby irrevocably and unconditionally waive any defense, rights or protection that they may have in law, contract or otherwise in this regard.

8. None of the Operating Partners shall assign or delegate its rights, duties or obligations under this JOA and the Coal Mining Agreement in any manner whatsoever, except with prior written consent of PSPCL.

9. We, the Operating Partners agree that this Agreement shall be irrevocable and shall form an integral part of the Coal Mining Agreement. We further agree that this Agreement shall continue to be enforceable till the expiry or termination of Coal Mining Agreement.

10. The terms and conditions of this JOA shall not be amended or modified, except with prior written consent of PSPCL.

IN WITNESS WHEREOF, the Parties have, through their authorized representatives, executed these presents and affixed the common seals of their respective companies on the day, month and year first mentioned above at _______________ (Place).

**On behalf of the Bidder**
Name:
Designation:
Common Seal of the Bidder
Witness-1
Witness-2

**On behalf of the Operating Partner -1**
Name:
Designation:
Common Seal of the Operating Partner 1
Witness-1
Witness-2

**On behalf of the Operating Partner –2**
Name:
Designation:
Common Seal of the Operating Partner 2
Witness-1
Witness-2

Note:

1. *Notarized Power of Attorney of the Persons signing the Joint Operating Agreement along with Board Resolution in support of Power of Attorney shall necessarily be furnished and to be attached with the signed Joint Operating Agreement.*

# Annexure 8: Format for Bid Security

*(to be executed on Rs. 100 non judicial stamp paper)*

*B.G. No.* *Dated:* [•]

1. In consideration of you, Punjab State Power Corporation Limited, having its office at The Mall, PSEB Head Office, Patiala, Punjab-147001 (hereinafter referred to as "PSPCL", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the bid of _________ {a Company registered under the provisions of the Companies Act, 1956 / [●][28]}}and having its {registered office/ office} at _________ [and acting on behalf of its Consortium] (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for "**Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine"**(hereinafter referred to as the "Project") pursuant to the RFP Document vide RFP No. **[•]** dated [●] issued in respect of the Project and other related documents (hereinafter collectively referred to as "Bidding Documents"), we [Name of the Bank] having our registered office at ______ and one of its branches at ________ (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 8.1 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to PSPCL an amount of Rs. **[•]**/- (Rupees **[•]** only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by PSPCL stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of PSPCL is disputed by the Bidder or merely on the first demand from PSPCL stating that the amount claimed is due to PSPCL by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its bid open during the bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [●].

4. This Guarantee shall be irrevocable and remain in full force for a period of 270 (two hundred and seventy) days from the Bid Submission Date or for such extended period as may be mutually agreed

[28] Mention relevant legislation under which entity is registered, as applicable

between PSPCL and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that PSPCL shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its bid open during the bid validity period set forth in the said Bidding Documents, and the decision of PSPCL that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between PSPCL and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Government body.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person/ body/ company etc. as the case may be.

7. In order to give full effect to this Guarantee, PSPCL shall be entitled to treat the Bank as the principal debtor. PSPCL shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the bid validity period or the period for conveying acceptance of letter of intimation of award of contract by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to PSPCL, and the Bank shall not be released from its liability under these presents by any exercise by PSPCL of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of PSPCL or any indulgence by PSPCL to the said Bidder or by any change in the constitution of PSPCL or its absorption, merger or amalgamation with any other person/ body/ company etc. as the case may be, or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered post to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.

10. It shall not be necessary for PSPCL to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which PSPCL may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of PSPCL in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

13. The Bank hereby agrees that this guarantee shall be governed by and construed in accordance with the laws of India and any claim or dispute arising under this deed shall fall within the jurisdiction of competent courts at Patiala.

14. Notwithstanding anything contained herein

    i. Our liability under this Bank Guarantee shall not exceed Rs. [●] (Rupees [●] only).

    ii. This Bank Guarantee shall be valid up to [●]; and

    iii. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before [●].

Signed and Delivered by ________ Bank

By the hand of Mr./Ms. ________, its ________ and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)

# Annexure 9: Format for Affidavit *

*(to be executed on Rs. 100 non judicial stamp paper)*

Dated: [●]

To
Chief Engineer (Fuel)
Punjab State Power Corporation Limited
The Mall, PSEB Head Office
Patiala, Punjab – 147001

Subject: **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**

Sir,

We hereby solemnly declare that in respect of any tender/ contract issued by PSPCL, any government or any government undertakings or any government departments or any PSUs:

(a) we have not been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only);**

**OR** [29]

we have been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees**

* In case of consortium bidder, three affidavits are to be submitted, one each by each member of the consortium and one by the consortium. The affidavit by the consortium and the Lead Member of the consortium shall be signed by the Authorized Signatory of the bidder, whilst the Affidavit of the non-lead member shall be signed by a director (as defined in the Companies Act, 2013) of the non-lead member. In case of a single bidder who is using the credentials and experience of their Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of its Holding Company to fulfill the Technical Criteria or Financial Criteria either partly or fully, apart from the bidder, such Subsidiary/ Subsidiaries and/or Holding Company and/or the Subsidiary/ Subsidiaries of the Holding Company shall also submit the affidavit and such affidavits shall be signed by a director (as defined in the Companies Act, 2013) of such companies

[29] Whichever is applicable

**Five Hundred Crores Only)** but as of the RFP publication date we have been cleared of such blacklisting;[30]

**OR**

we have been blacklisted in the last 7 (seven) years reckoned from the RFP publication date with respect to any tender/ contract for mining operations where the aggregate value of the tender/contract over the entire life of the tender/ contract is above **Rs. 500,00,00,000/- (Rupees Five Hundred Crores Only)** but as of the RFP publication date such blacklisting in subjudice;[31]

(b) we have not been found guilty of offences involving bribery, corruption, fraud, offences against the state;

(c) we have examined and have no reservations to the RFP document, including any Corrigendum/ Addendum issued by PSPCL;

(d) we do not have any conflict of interest in accordance with Clause 6.8 of the RFP document;

(e) we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging, as defined in Clause 10.2 of the RFP document in respect of any tender or request for proposal issued by or any agreement entered into with PSPCL or any other public sector enterprise or any government, Central or State; and

(f) we certify that we have taken steps to ensure that in conformity with the provisions of Clause 10.2 of the RFP document, and no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging.

(Signature of the Authorized Signatory)

(Official Seal)

Name:

Designation:

[30] Along with the Affidavit, bidders are also required to submit adequate documentary evidence about the blacklisting and documentary evidence of being cleared of such blacklisting

[31] Along with the Affidavit, bidders are also required to submit adequate documentary evidence about the blacklisting and documentary evidence of such blacklisting being subjudice

# Annexure 10: Format for Certificate of Total Compliance

(On letterhead of the bidder/Lead Member of the consortium)

Letter No. [●]

Dated: [●]

To
Chief Engineer (Fuel)
Punjab State Power Corporation Limited
The Mall, PSEB Head Office
Patiala, Punjab – 147001

Subject: Undertaking of Total Compliance with the scope of work, roles & responsibilities as mentioned in the Bidding Documents for **Selection of Mine Developer cum Operator for Development and Operation of Pachhwara Central Coal Mine**

Sir,

1. We..........................................................................................unconditionally offer to undertake the works as indicated in the Bidding Documents and hereby bind myself/ ourselves to execute the work as per the scope stipulated in the Bidding Documents and under the subject- stated above.

2. We hereby confirm that the bid submitted by us is in “Total Compliance” with the Bidding Documents. All documents in support of compliance are placed in our Techno-Commercial Proposal.

3. All information furnished in the offer is true to best of our knowledge and belief. We hereby undertake the responsibility to prove to the satisfaction of PSPCL the genuineness of any information given our bid. We note that in the event of finding them false eventually, our bid shall stand to be rejected automatically without any notice or reference to us.

4. We unconditionally accept any penalty that may be decided by PSPCL furnishing false or misleading information in our bid.

5. We have read the conditions of Bidding Documents, attached hereto and agree irrevocably to abide by such conditions. We agree to execute the work and achieve the target without any let or demur or hindrance.

6. We bind ourselves to furnish the required security deposit, failing which we shall have no objection to the forfeiture of the Bid Security submitted by us with PSPCL and bear all the liabilities.

(Signature of the Authorized Signatory)

(Official Seal)

Name:

Designation:

# Annexure 11: Mining Plan (attached)[32]

[32] Shall be available for download to bidders who have paid the bid document cost

# Annexure 12: Geological Report (attached) [33]

[33] Shall be available for download to bidders who have paid the bid document cost

# Annexure 13: Draft Coal Mining Agreement (attached)[34]

[34] Shall be available for download to bidders who have paid the bid document cost

# Annexure 14: Status and Details of Statutory Clearances (attached)[35]

[35] Shall be available for download to bidders who have paid the bid document cost

# Annexure 15: Details on Land (attached)[36]

[36] Shall be available for download to bidders who have paid the bid document cost

# Annexure 16: Mine Closure Plan (attached)[37]

[37] Shall be available for download to bidders who have paid the bid document cost

# Annexure 17: Duly Filled-in Checklist of Documents to be submitted as part of the Techno-Commercial Proposal

| Document to be Submitted | Submitted by bidder (please tick) | Submission as part of Original Documents (please tick) | Verified during Evaluation | Remarks |
|---|---|---|---|---|
| Checklist of documents to be submitted as part of the Techno-Commercial Proposal | | | | |
| Covering Letter (as per the format given in Annexure 1 hereof) | | | | |
| Details of meeting the Technical Criteria (as per format given in Annexure 2 hereof) | | | | |
| Documentary evidence in support of meeting the Technical Criteria | | | | |
| Details of meeting the Financial Criteria (as per format given in Annexure 3 hereof) | | | | |
| Documentary evidence in support of meeting the Financial Criteria | | | | |
| Power of Attorney (as per format given in Annexure 4 or Annexure 5 hereof, whichever is applicable) | | | | |
| Consortium Operating Agreement, if applicable (as per format given in Annexure 6 hereof) | | | | |
| Joint Operating Agreement, if applicable (as per format given in Annexure 7 hereof) | | | | |
| Bid Security (as per format given in Annexure 8 hereof) | | | | |
| Affidavit (as per format given in Annexure 9 hereof) | | | | |
| Certificate of total compliance | | | | |
| Techno-Commercial Proposal or Original Documents do not contain any information on the Financial Proposal of the bidder | | | | |

# Annexure 18: Allotment Documents (attached) [38]

[38] Shall be available for download to bidders who have paid the bid document cost

# Annexure 19: R&R related information and documents[39]

[39] Shall be available for download to bidders who have paid the bid document cost

# Annexure 20: Format for Financial Proposal

The online format for the Financial Proposal submission (both Initial Price Offer and Final Price Offer) shall be demonstrated by MSTC after the pre-bid meeting

# Annexure 21: EIA and EMP report[40]

[40] Shall be available for download to bidders who have paid the bid document cost

# Annexure 22: Hydrological Study Report[41]

[41] Shall be available for download to bidders who have paid the bid document cost

# Annexure 23: Details of erstwhile employees of the mine as on 31 March 2015 (details as available with PSPCL)[42]

[42] Shall be available for download to bidders who have paid the bid document cost

# Annexure 24: Draft composite mining plan[43]

[43] Shall be available for download to bidders who have paid the bid document cost

**ANNEXURE- N**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No. 15561 of 2018**
**Date of decision: 02.7.2018**

**Punjab State Power Corporation Limited**

**… Petitioner**

**Versus**

**Union of India and others**

**… Respondents**

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE**
**HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Vinod S. Bhardwaj, Advocate
for the petitioner.

***

**KRISHNA MURARI, CHIEF JUSTICE** (Oral)

After the matter was heard at some length, learned counsel for the petitioner stated at the Bar that the petitioner has already approached the authority for settlement of the dispute in accordance with the provisions of allotment agreement, and thus, he does not want to press this writ petition.

In view of the above, the writ petition stands dismissed with liberty to the petitioner to pursue the said remedy.

**(KRISHNA MURARI)**
**CHIEF JUSTICE**

**(ARUN PALLI)**
**JUDGE**

**July 02, 2018**
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: NO

## ANNEXURE- O

**F. No. 103/11/2015/NA**
**Government of India**
**Ministry of Coal**
**O/o Nominated Authority**
****

**120, F- Wing, 1st Floor, Shastri Bhawan,**
**New Delhi, Dated: 13th July, 2018**

To,
The Chairman and Managing Director,
Punjab State Power Corporation Limited,
PSEB Head Office,
The Mall, Patiala- 147001.

**Subject: Appropriation of Bank Guarantee No. 6535IPEBG150004 dated 24.04.2015 constituting Performance Security for an amount of ₹ 48,12,50,000/- (Rupees Forty Eight Crore Twelve Lakh and Fifty Thousand Only) in terms of Clause 6.2.1 (d) read with Clause 10.3 of Allotment Agreement dated 26.03.2015 in respect of Pachhwara Central coal mine.**

Sir,

I am to refer to the Allotment Agreement dated 26.03.2015 signed between the Nominated Authority and M/s Punjab State Power Corporation Limited (PSPCL) in respect of Pachhwara Central coal mine. As per clause 10.1 of the Allotment Agreement, *"conduct of mining operations at the coal mine shall be subject to the milestones listed in Sch 'E' (the "Efficiency Parameter")".*

2. M/s PSPCL has been issued two Show Cause Notices dated 21.07.2016 and 06.11.2017 for non compliance with the timelines of various Milestones listed in Allotment Agreement in respect of Pachhwara Central coal mine, as detailed below.

| Sl. No. | Milestone as per Efficiency Parameters | Due Date for completion of Milestone | Actual Date of achievement of Milestone | Weightage prescribed for apportion of Performance Security (in %) |
|---|---|---|---|---|
| 1. | Application for Land Mutation | 01.05.2015 | 02.07.2015 | 12 |
| 2. | Transfer of following Statutory permissions which has not been complied with. | | | 8 |
| i | Grant/Execution of Mining Lease | 01.07.2015 | NO | |
| ii | Environment Clearance | 01.07.2015 | 06.07.2015 | |
| iii | Mine opening permission | 01.07.2015 | NO | |

| | | | | |
|---|---|---|---|---|
| iv | Permission from DGMS | 01.07.2015 | NO | |
| v | Ground Water Clearance | 01.07.2015 | 23.05.2017 | |
| vi | Explosive License | 01.07.2015 | NO | |
| vii | Consent to Establish | 01.07.2015 | NO | |
| viii | Consent to operate | 01.07.2015 | NO | |
| ix | Land Mutation | 01.07.2015 | NO | |
| x | Power Line from State Electricity Board | 01.07.2015 | NO | |
| 3. | Approval of Mine Closure Plan | 01.10.2015 | NO | 10 |
| 4. | Opening of Escrow Account | 01.10.2015 | NO | 15 |
| 5. | Schedule of Production/Reaching Peak Rated Capacity | Target Schedule of Production | Actual Production | |
| | For year 2015-16 | 7 MT | NO | 20 |
| | For year 2016-17 | 7 MT | NO | 20 |

3. It is mentioned that a Scrutiny Committee has been constituted to consider/examine the submissions/ replies made by the Successful Bidders/ Allottees of the coal mines in respect of deviation from the Efficiency Parameter as mentioned in the Coal Mine Development and Production Agreement/ Allotment Agreement. The reply to the said Show Cause Notice(s) submitted by the Allottee was placed before the Scrutiny Committee in its fifth meeting held on 30.01.2018. The Allottee company was also given the opportunity to present its case before the Committee. After due deliberation of the submissions in respect of the said coal mine, the final recommendation of the Committee, where it has been found that the non compliance is attributable to the Allottee and as such action for appropriation of Performance Security in terms of provisions of the Allotment Agreement may be taken, is as detailed below:-

| **Sl. No** | **Show Cause Reason** | **Weightage of Performance Bank Guarantee to be apportioned as prescribed guidelines as per Milestones (in %)** | **Recommendation of the Scrutiny Committee** |
|---|---|---|---|
| 1 | Delay in Approval of Mine Closure Plan | 10 | The delay seems to be caused since the submission of Mine Closure Plan was delayed by the Allottee. **As such, no relaxation is recommended on this count.** |
| 2 | Delay in Opening of Escrow Account | 15 | The delay has been caused since the Mine closure Plan has been approved on 12.09.2017. As Mine Closure Plan being part of mining plan has been submitted late by the Allottee, **no relaxation is recommended on this count.** |
| **TOTAL** | | **25** | |

** Apart from the above , in respect of certain Milestones for which Show Cause Notice has been issued for the said coal mine, the recommendation of the Scrutiny Committee is under deliberation of the Nominated Authority/Central Government and further action will be taken subsequent to a decision taken in the matter.*

4. On this subject, as per clause 6.2.1(d) of the Allotment Agreement dated 26th March 2015, Performance Security may be appropriated by the Nominated Authority upon failure of the Allottee to comply with the Efficiency Parameters as required under clause 10. Further, Clause 6.3.1 read with Schedule 'E' provides the Nominated Authority unconditional right to appropriate the Performance Security for deviation from timeline of Milestones as stated at para 3 above , to the extent of 25 %, on the basis of weightages imputed by the Central Government vide its O.M. dated 21.04.2015.

5. The recommendation of the Scrutiny Committee has been deliberated by the Nominated Authority and Central Government and it has been decided to impose a penalty of an amount equal to 25 % of Performance Security for deviation from the timelines of Milestones as stated at para 3 above.

6. Accordingly, for non-compliance with the timeline of certain Milestones specified in Schedule 'E' of the Allotment Agreement, an amount **₹ 48,12,50,000/- (Forty Eight Crore Twelve Lakh and Fifty Thousand Only)** i.e an amount equal to 25 % of ₹ 1,92,50,00,000/- from the Bank Guarantee No. 6535IPEBG150004 constituting Performance Security submitted by M/s PSPCL has been appropriated in terms of Clause 6.2.1 (d) read with Clause 10.3 of the Allotment Agreement, in respect of Pachhwara Central coal mine.

7. You are, hereby, advised to top-up the Bank Guarantee constituting the Performance Security with **fifteen** Business Days of the receipt of this notice as per Clause 6.3.3 of the CMDPA, failure to do so shall be a Termination Event for the purposes of Clause 24 of the Allotment Agreement.

**(N.K.Sudhansu)**

Joint Secretary to the Government of India/Nominated Authority

**Copy to:-**

1. The Assistant General Manager, Bank of India, Ludhiana Mid Corporate Branch, 579-R, 1st Floor, Model Town, Ludhiana with a request to treat this notice as demand under Bank Guarantee No. 6535IPEBG150004 dated 24.04.2015 as amended on 07.12.2016 and further amended on 23.10.2017 in favour of President of India, acting through Central Government represented by Nominated Authority, and to encash an amount of **₹ 48,12,50,000/- ( Rupees Forty Eight Crore**

**Twelve Lakh and Fifty Thousand only)** and transfer to the account of PAO, Ministry of Coal, Bank- United Bank of India, Branch Name- Connaught Circus, New Delhi ,Account No.-0276050414586, IFSC Code- UTBI0CON702, MICR Code-110027022- towards non-compliance with the Efficiency Parameter mentioned in Schedule E of the Allotment Agreement dated 26.03.2015 signed between Nominated Authority and M/s Punjab State Power Corporation Limited in respect of Pachhwara Central coal mine. You are requested to return the Bank Guarantee of remaining amount in original after transferring the above said amount.

2. The Chief Secretary, Government of Jharkhand/ Punjab.
3. Coal Controller, Coal Controller Organization, Kolkata
4. US (CBA-II)/US (IFD), Ministry of Coal
5. PAO, Ministry of Coal- for information and necessary action please.
6. Branch Manager, United Bank of India, Connaught Circus, New Delhi.

**ANNEXURE- P**

CWP-17264-2018 (O&M)

Punjab State Power Corporation Limited vs. Union of India and others

Present: Mr. Atul Nanda,Sr. Advocate with
Mr. Vinod S. Bhardwaj and Ms. Rameeza Hakim,
Advocates for the petitioner

..

Notice of motion.

Shri Arun Gosain, Central Government Counsel, who is present in Court, accepts notice on behalf of all the respondents. He prays for and is allowed a week's time to file response.

Considering the facts, till the next date of listing respondents are restrained from encashing the amount of Rs.48,12,50,000/- from the performance security in pursuance to the impugned order dated 13.07.2018.

To come up on 31.07.2018.

Copy dasti under the signatures of the Bench Secretary.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

17.07.2018
parkash

*For Subsequent orders see CM-16245-CWP-2021, CM-16739-CWP-2023, -- and 1 more.*

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

Petition No. 13 of 2015
(In compliance to Hon‟ble APTEL Order dated 19.01.2018 in Appeal No. 259 of 2015)
Date of Order: 31.07.2018

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

In the matter of: Petition under Section 86 (1) (a) read with Section 62 of the Electricity Act, 2003 regarding recovery due to payment of additional levy as per Hon‟ble Supreme Court Order dated 24.09.2014.

AND

In the matter of: Punjab State Power Corporation Limited (PSPCL), The Mall, Patiala.

…….Petitioner

Versus

1. PANEM Coal Mines Limited (PANEM), 3rd Floor, 6 Poorvi Marg, Vasant Vihar, New Delhi-110057.
2. Eastern Minerals & Trading Agencies Limited (EMTA), 5 B Nandalal Basu Sarani, Kolkata, West Bengal-700071.
3. Government of Punjab (GoP) through the Secretary, Department of Energy, Sector-9, Punjab Civil Secretariat-II, Chandigarh-160017.

.......Respondents

**ORDER**

Hon‟ble APTEL vide its Order dated 19.01.2018 in Appeal

No. 259 of 2015 filed by PSPCL against the Commission‟s Order dated 01.09.2015 in Petition No 13 of 2015 ordered as under:

> *"……3. We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the Punjab State Electricity Regulatory Commission.*
>
> *4. The learned counsel appearing for the Appellant submitted that the statement made in the memo dated 19.01.2018, as stated above, may be placed on record and the instant Appeal may be disposed of in terms of the statement made in the Memo dated 19.01.2018 in the interest of justice and equity.*
>
> *5. Per-contra, the learned counsel appearing for the Punjab State Electricity Regulatory Commission, inter-alia, contended and submitted that, the statement made in the Memo dated 19.01.2018 filed by the learned counsel appearing for the Appellant, as stated above, may be placed on record. Further, he submitted that the Appellant may be directed to impleadment of State of Punjab as necessary party to adjudicate the matter effectively. Therefore, he submitted that appropriate direction may be issued to implead the State of Punjab also one of the proposed Respondent in addition to impleading, PANEM Coal Mines Limited, EMTA Limited. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.*
>
> *6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel*

*appearing for the Respondent and the statement made in the Memo dated 19.01.2018, as stated above, the instant Appeal, being Appeal No. 259 of 2015, filed by the Appellant, stands disposed of in terms of the Memo dated 19.01.2018 in the interest of equity and justice.*

*7. The Punjab State Electricity Regulatory Commission is directed to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed Respondent as expeditiously as possible at any rate within a period of six months from the date of appearance for the Appellant personally or through his Counsel.*

*8. The Appellant, herein, Punjab State Power Corporation Limited is directed to appear before Punjab State Electricity Regulatory Commission through the Counsel on 06.02.2018 at 11.30 A.M. to collect the next date of hearing…….”*

Accordingly, PSPCL appeared before the Commission on 06.02.2018 and submitted memo no. 6343 dated 05.02.2018 containing its submissions and impleading PANEM, EMTA and the GoP as Respondents.

2. Submissions made by PSPCL, are summarized as under:

i) PSPCL is engaged in the business of generation, distribution and retail supply of electricity in the State of Punjab and has been supplying power to the public at large.

ii) The Pachwara Central Block Coal Mine was allotted to the erstwhile Punjab State Electricity Board for the exclusive use of the generating stations of Punjab State Electricity Board. The said coal block is included at Serial No. 25 in the list of 40 coal blocks in issue before the Hon'ble Supreme Court in the coal block allocation case wherein the mining lease had been granted and mining had already started.

iii) The above Pachhwara Central Block Coal mine has been in operation with the mining of coal being undertaken since February, 2006. The coal mined from the said mine was exclusively used for the 3 thermal power stations and all such thermal power stations are under commercial operation and generating electricity to maintain the distribution and supply of electricity to the consumer at large. PSPCL, the Petitioner herein is undertaking both generation and distribution of electricity and accordingly, there is no power purchase agreement, as in the case where the generating company and the distribution companies are independent entities.

iv) For the purpose of coal requirements of the generating stations of erstwhile Punjab State Electricity Board, the Government of India had allotted the Pachwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board.

v) Pursuant to the above, a Special Purpose Vehicle, namely Panem Coal Mines Limited was created for mining of coal from the said Pachhwara Central Block Coal Mine maintaining the exclusive use for the power plants of erstwhile Punjab State Electricity Board. By notification dated 22/02/2002, the Government of India specified the end use of the supply of coal from the Pachhwara Central Block by Panem Coal Mines Limited on an exclusive basis to the power plants of the erstwhile Punjab State Electricity Board for generation of thermal power and further, subject to the condition that Punjab State Electricity Board shall hold at least 26% of the voting equity share capital of Panem Coal Mines Limited.

vi) The Government of India, Ministry of Coal & Mines by communication dated 25.08.2004 addressed to the Government of Jharkhand, communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachwara Central Block covering an area of the 1278 hectares to Panem Coal Mines Limited for a period of 30 years, inter-alia, subject to the condition that the coal extracted shall be exclusively supplied to the power plants of Punjab State Electricity Board for use in generation of Power.

vii) The mining lease was granted by the Government of Jharkhand to Panem Coal Mines Limited by Mining Lease Deed dated 16.11.2004 for an area of 905.41 hectares and by Mining Lease Deed dated 30.03.2005 for an area of 372.96 hectares, aggregating to a total of 1278.37 hectares.

viii) Pursuant to the above, the mines were developed and the mining and supply of coal began from March, 2006 and continued upto 31.03.2015. The coal mined from the

Pachhwara Central Block Coal Mine is exclusively supplied to the three generating stations of PSPCL.

ix) The above coal mine was subject to proceedings before the Hon‟ble Supreme Court in the coal block allocation case, wherein orders were passed for cancellation of the coal block. In the orders dated 25.08.2014 and 24.09.2014, the Hon‟ble Supreme Court was pleased to direct payment of additional compensation in the sum of Rs. 295/- per MT for the coal extracted and used till 24.09.2014 in regard to various coal blocks including Pachhwara Central Coal Mine Block.

x) In pursuance of the above decision of the Hon‟ble Supreme Court, the petitioner deposited Rs. 391,46,36,262/- with the Central Government on 31.12.2014, being 26% of the compensation payable at the rate of Rs. 295/- per MT for the 51038282.42 Metric Tonnes coal extracted from the Pachhwara (Central) Coal Block since inception till 24.09.2014 in consonance with its equity share in PANEM Coal Mines Limited and applied for the allocation of the Pachhwara (Central) Coal Block for the end use of the various power stations. This payment has been made after availing loan of Rs. 195.00 crore each form REC & PFC.

xi) PSPCL filed petition no. 13 of 2015 before the Commission praying to allow the petitioner to recover the amount of Rs. 391,46,36,262/- already paid and such other amounts as may become payable in terms of the orders passed by Hon‟ble Supreme Court and in terms of Coal Mines (Special Provisions) second

Ordinance, 2014 alongwith interest in the tariff for distribution and retail supply of electricity to be determined by the Commission for FY 01.04.2015 to 31.03.2016. The Commission vide order dated 01.09.2015 decided the aforesaid petition holding that:

> *"….In light of above, the Commission observes that any refundable payment made by PSPCL to MoC, GoI cannot be treated as payment towards cost of material (coal) and the same cannot be treated as expenses in accounting and for tariff determination.*
>
> *G. The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, Government of Punjab on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to Government of Punjab which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB's equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB's equity which has been transferred to Govt. of Punjab but has not been re-vested in*

*PSPCL.*

*In the light of above, it is concluded that the refundable amount of Rs. 391,46,36,262/- (paid by PSPCL to GoI), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff. The Petition is dismissed…."*

xii) Aggrieved by above said order dated 01.09.2015 passed by the Commission in petition no.13 of 2015, PSPCL filed an Appeal No. 259 of 2015 before the Hon"ble APTEL and the Hon"ble APTEL has disposed of the appeal vide order dated 19.01.2018, directing the Punjab State Electricity Regulatory Commission to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed respondent as expeditiously as possible at any rate within a period of six months from the date of appearance for the Appellant personally or through his Counsel.

xiii) In pursuance to the order dated 19.01.2018 passed by the Hon"ble APTEL and the directions given therein, PSPCL has filed the present submissions for impleading PANEM, EMTA and the GoP as Respondents.

xiv) Even after the expiry of 28 months of the passing of the Order dated 01.09.2015 by the Commission, PSPCL has not been paid any amount by the Government of India towards the refund of the amount of Rs. 391,46,36,262/- paid by PSPCL in terms of the directions of the Government of India as a condition for re-allotment of Pachhwara (Central) Coal Mine Block to the Petitioner under the Coal Mines (Special Provisions) Second Ordinance, 2014. PSPCL has made efforts with the Central Government for such refund of the amount deposited by PSPCL after the process of allocation of the Pachhwara (Central) Coal Mine Block was completed.

xv) PSPCL has also made efforts to claim the amount of Rs. 391,46,36,262/- from PANEM and EMTA. PANEM Coal Mines Limited is a shell company and has no business after the cancellation of the Pachhwara (Central) Coal Mine Block in terms of the Orders of the Hon"ble Supreme Court. There is, therefore, no possibility of any recovery of any amount. PSPCL is now pursuing for the liquidation of PANEM Coal Mines Limited as the spectrum of business of PANEM Coal Mines Limited is lost and the said company has no assets, interest, license or otherwise any benefit which can be in any, manner encashed for recovery of the amount due to Petitioner or otherwise.

xvi) As regards EMTA, PSPCL has filed a claim in the arbitration. The said claim has been filed as a counter claim in a petition filed by EMTA seeking arbitration and recovery of the amount from the Petitioner.

xvii) The arbitration is pending before the Arbitral Tribunal of

Hon‟ble Justice Permod Kohli (Retd.) - Presiding Arbitrator, Hon‟ble Justice V.K. Gupta (Retd.) - Co-Arbitrator and Sh. R.S. Mann IAS (Retd.) - Co-Arbitrator.

xviii) In the facts and circumstances mentioned above, PSPCL has not been able to recover any part of the amount of Rs. 391,46,36,262/- either from PANEM or from EMTA till date.

xix) The GoP has also not paid any money to PSPCL as against the Rs. 391,46,36,262/-. It is respectfully submitted that the fact that 26% of the equity shareholding in PANEM was held by the GoP cannot lead to a legal obligation on the part of the Government to pay the amount of Rs. 391,46,36,262/- to the Petitioner. The coal was being supplied by PANEM to PSPCL for use in the generating stations of PSPCL. The procurement of coal from Pachhwara (Central) Coal Mine Block was by PSPCL and not by the GoP. The re-allocation of the Pachhwara (Central) Coal Mine Block has been in the name of PSPCL and hence PSPCL is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation with the right to use the coal extracted from the mine for generation by its generating stations. The entire benefit of re-allocation of the Pachhwara (Central) Coal Mine Block is that of PSPCL. The payment of Rs. 391,46,36,262/- was made by PSPCL to sustain its operation with the coal from the Pachhwara (Central) Coal Mine Block being available to it on a long term basis.

xx) The re-allocation of the Pachhwara (Central) Coal Mine

Block is in the larger interest of the consumers in the State as the benefit of cheaper coal from the said mine will reduce the cost of supply of electricity to the consumers. Further, the benefit of cheaper coal being procured by PSPCL from the Pachhwara (Central) Coal Mine Block prior to cancellation pursuant to the Order dated 25.08.2014 and 24.09.2014, was being passed on to the consumers resulting in reduced tariff. Resultantly, the additional financial liability owning to the expenditure incurred to secure the allotment of Pachhwara (Central) Coal Mine Block, representing 50% of the Petitioner coal requirement, was also required to be passed on the consumers of the State of Punjab, as it was expenditure incurred for the procurement of Coal.

xxi) The allotment of the Pachhwara (Central) Coal Mine Block being cancelled pursuant to the decision of the Hon‟ble Supreme Court, PSPCL would still have been required to procure coal of the same quantity from alternate sources, at a higher cost. Such costs towards energy charges would still have had to be considered as a pass through in the retail tariff and chargeable from consumers of the State of Punjab, which would have unduly increased the economic burden on the consumers.

xxii) Thus, the payment of Rs. 391,46,36,262/- made by PSPCL to the Government of India for securing the re-allocation of the Pachhwara (Central) Coal Mine Block is a legitimate and prudent expenditure incurred by PSPCL in discharging its functions as a generating and distribution company and in maintaining the supply of electricity to the consumers at large in the State. It is therefore an act to safeguard the interest of the consumers and legitimate cost to be duly allowed as revenue requirement.

xxiii) The said payment of Rs. 391,46,36,262/- is required to be considered as a part of the revenue requirements of PSPCL as it has funded the above amount through borrowings and internal accrual. The said amount ought to be allowed with carrying cost as revenue expenditure of PSPCL.

xxiv) PSPCL has already suffered the above financial exposure including the interest cost on the borrowings since the year 2015 which has affected PSPCL adversely. PSPCL, therefore, should be permitted to recover the said amount along with the carrying cost through tariff.

xxv) PSPCL undertakes that it will continue to make efforts to secure the above amount from the Government of India and /or from EMTA and if and when any sum is recovered, the same will be adjusted as a revenue in the Annual Revenue Requirements of the Petitioner and thereby the benefit of the recovery will be passed on to the Consumers.

3. The Commission observed that the prayer made by PSPCL in its submissions was not in consonance with the Order of the Hon‟ble APTEL dated 19.01.2018 and PSPCL was given liberty to amend its prayer accordingly. The petition was fixed for hearing on

04.04.2018.

4. PSPCL vide memo no. 6638/41 dated 21.03.2018 submitted the revised/amended prayers as under:

a) Take on record the petition filed and issue notice to the Respondents.

b) Direct that the amount of Rs. 391,46,36,291/- paid by the petitioner to the Government of India along with interest cost from the date of the payment till date is allowed to be recovered as a part of the Annual Revenue Requirements through tariff in the ensuing financial year subject to adjustment in the event of any recovery of the said amount from the Government of India and/or EMTA and/or PANEM and/or any payment made by GoP, as mentioned in the petition.

c) Pass any such further order or orders as the Commission may deem just and proper in the circumstances of the case.

5. The petition was taken up for hearing on 04.04.2018. No one was present on behalf of PANEM and EMTA and fresh notices were ordered to be issued to PANEM and EMTA. PSPCL was directed to file status report with regard to proceedings in various fora i.e. Hon‟ble High Court of Punjab and Haryana, Arbitration Tribunal etc. along with the agenda note and decision of the Board of Directors of PSPCL regarding re-tendering for selection of MDO and the petition was fixed for hearing on 09.05.2018. Accordingly, PSPCL submitted the status report and the decision of the Board of Directors vide memo no. 6797 dated 11.04.2018.

6. GoP through OSD (Power Reforms) vide memo no. 1/24/2015-EB(PR)/490 dated 13.04.2018 submitted reply to the

petition. In the reply, it was submitted that:

i) It was Punjab State Electricity Board which was an equity shareholder in PANEM. The GoP was not a shareholder in PANEM.

ii) The Pachhwara Central Block Coal Mine was allotted to the Punjab State Electricity Board by the Central Government on 26.12.2001, for the exclusive use of Thermal Generating Stations of the Punjab State Electricity Board. Accordingly, vide notification dated 22.02.2002, Central Government specified the end use of supply of coal from the Pachhwara Central Block.

iii) The Coal mined from the Pachhwara Central Block Coal Mine was exclusively supplied to the three generating stations of the Punjab State Electricity Board (now succeeded by PSPCL, the Petitioner herein).

iv) On 16.04.2010, consequent to the re-organization of the Punjab State Electricity Board in terms of Section 131 of the Electricity Act, 2003, the generation and distribution function of the erstwhile Punjab State Electricity Board have been vested in PSPCL.

v) W.e.f. 16.04.2010, the Directors on the Board of PANEM were being nominated by PSPCL and EMTA and such nominees have been attending the Board meetings and it is PSPCL which has been listed as the shareholder of PANEM.

vi) That in the circumstances mentioned above, it will not be appropriate to proceed on the basis that Pacchwara Coal Block Mine at any time vested with the GoP except that under the Transfer Scheme, the interest in the Pachhwara Coal Block (which belonged to and was operated by the JV Company – PANEM with the due approval of the Central Government) went through the process of vesting in the GoP and immediately re-vesting in PSPCL as per Section 131 of the Electricity Act, 2003. Accordingly, the Order dated 01.09.2015 referring to opening balance sheet of PSPCL, not reflecting the Pachhwara Coal Block Mine as a part of the assets of PSPCL and therefore, the same belonged to the GoP, is not correct. After the formation of the JV Company, PSEB was the shareholder and on re-organization, PSPCL became the shareholder. Under the Transfer Scheme, such shareholding right is represented by the rights vested in PSPCL along with the undertaking. There was however, no cash contribution for equity holding, either by PSEB or by PSPCL or by GoP.

vii) Thus, GoP was not liable for any payment or otherwise to the nominated authority. Accordingly, in terms of the Coal Mine (Special provisions) Second Ordinance, 2014, the GoP cannot be said to be a prior allottee.

viii) In any event the coal supplied by PANEM to the petitioner was for exclusive use in the generation stations of the petitioner. The petitioner is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation/re-allocation with the right to use the coal extracted from the mine for generation by its generation stations.

7. During the hearing on 09.05.2018, none was present on behalf of PANEM and EMTA. GoP through OSD (Power Reforms) reiterated its reply submitted vide its letter dated 13.04.2018. The Commission vide its Order dated 14.05.2018 directed PSPCL to submit information as to the other States where mines were cancelled and allocation/ reallocation of the same applied for and whether the additional compensation @ Rs.295 per MT was deposited along with percentage of the amount deposited and whether the said amount has been allowed as a pass through in the tariff orders. PSPCL was also directed to submit Profit & Loss statement of PANEM since inception of the company. The petition was fixed for hearing on 30.05.2018.

8. PSPCL vide memo no. 5000 dated 29.05.2018, requested for the adjournment of the matter for six weeks to enable it to submit the information in compliance of the interim order dated 14.05.2018. In its Order dated 31.05.2018, the Commission observed that Hon‟ble APTEL vide order dated 19.01.2018 had directed the Commission to dispose of the matter as expeditiously as possible and at any rate within a period of six months from the date of appearance of PSPCL. PSPCL made its submissions vide memo. no. 6343 dated 05.02.2018 and was heard by the Commission on 06.02.2018. Accordingly, as the Commission was bound to dispose of the matter by 05.08.2018, PSPCL was directed to submit the requisite information latest by 02.07.2018 with the direction that no further opportunity shall be given.

During the hearing the Commission desired PSPCL to submit a copy of legal opinion rendered by Sh. M.G. Ramachandran, Advocate to PSPCL regarding payment of additional levy of Rs.295/- per MT as a precondition for allotment of Pachhwara (central) Coal Block. PSPCL submitted a copy of the same which was taken on record. The matter was fixed for hearing on 04.07.2018.

9. PSPCL vide memo no. 5178 dated 03.07.2018 submitted its reply. In the reply, it submitted that the other States with respect to which the Mines were cancelled pursuant to the judgment of the Hon‟ble Supreme Court in the case of Manohar Lal Sharma v Principal Secretary and Ors. (2014) 9 SCC 615 are Karnataka (Kiloni, Manoradeep and Baranj I to IV coal mines) and West Bengal (Pachhwara (North) Coal Mine Block). It was further submitted that in case of Karnataka, the issue whether the additional levy is payable by EMTA or Karnataka Power Corporation Ltd. (KPCL), two Judge‟s of a Division Bench of Hon‟ble High Court of Karnataka have given divergent view and the matter is pending before the third Judge. KPCL has deposited the additional levy and raised invoices on the distribution companies considering it as sale of power. However, the amount has not yet been recognized as income because of disputed nature of transaction and pending court cases.

In case of West Bengal, PSPCL has submitted that as per Section 3(1) (n) of the Coal Mines (Special Provisions) Second Ordinance, 2014, "prior allottee" means prior allottee of Schedule I Coal Mines as listed therein, whose allotments were cancelled. However, an „Explanation‟ was given below the definition of "prior allottee" which provided that „In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I Coal mines, then, the third party shall be deemed to be the prior allottee‟. As the mining lease for these coal mines were executed in favour of Bengal Emta Coal Mines Limited, West

Bengal Power Development Corporation Limited (WBPDCL) was not considered a prior allottee in terms of the „Explanation‟ given below the definition of prior allottee. Allotment letters in respect of Coal Block were issued in favour of WBPDCL. PSPCL has submitted that it has been unable to determine whether any amount was paid by WBPDCL as additional levy. PSPCL has also annexed the Report of the Comptroller and Auditor General of India on e-auction of coal mines.

10. After hearing all the parties on 04.07.2018, the petition was reserved for Orders.

**11. Commission's Observations and Findings**

**The Commission after perusing the petition, replies, submissions, all the documents and pleadings submitted by the parties makes the following observations and findings.**

i) The Commission vide its Order dated 01.09.2015 had dismissed the Petition No. 13 of 2015 filed by PSPCL, for considering the amount of Rs. 391,46,36,262/- already paid and such other amount as may become payable in terms of the orders passed by the Hon‟ble Supreme Court and in terms of the Coal Mines (Special Provisions) Second Ordinance, 2014 notified by the Central Govt. in the revenue requirements of petitioner and to allow recovery of the said amount along with interest in the tariff for distribution and retail supply of electricity to be determined by the Commission from 01.04.2015 to 31.03.2016, with following observations:

a) *From the perusal of the advice rendered by Sh. M.G.Ramachandran Advocate, it is clear that basis the* *strict construction of the provisions of the Ordinance, the liability to pay the entire amount of ₹295/MT was on PANEM and not on PSPCL as a shareholder of PANEM. Even the Coal Controller has written to PANEM calling upon them to deposit the entire amount of ₹295/MT in pursuance to the Orders of the Hon'ble Supreme Court. PSPCL was also advised to write a letter to PANEM with a copy to EMTA to the effect that PANEM may proceed to deposit the amount of ₹295/MT forthwith with the Coal Controller in compliance with the letter sent by the Coal Controller to PANEM. It was also advised to PSPCL to write a letter to the Coal Controller with a copy to the Ministry of Coal referring to the letter addressed by the Coal Controller to PANEM and request for the refund/ adjustment of the amount deposited by PSPCL with the Coal Controller.*

b) *Also, from the contents of the letters dated 31.12.2014, 11.05.2015 and 08.07.2015, written by PSPCL to Ministry of Coal and Nominated Authority, it is gathered that as per Coal Mine (Special Provision) Second Ordinance 2014, the liability to pay the additional levy of ₹295 per tonne is on the "prior allottee" i.e. PANEM. The amount deposited by PSPCL is subject to the liability of making the deposit by PANEM. The amount deposited by PSPCL is refundable and this fact has been admitted by the PSPCL in the Petition also.*

c) *The clauses of Agreement on Captive Coal Mining Project of PSEB through the Joint Venture signed on 21$^{st}$ March, 2001, relevant in the matter, states as under:*

*Article 3(6):"PSEB shall not be required to make any financial contribution to the company at any time"*

*Article 6:"Subject to other provisions of this Agreement, EMTA and PARTNERS as the selected bidder shall ensure that the Company raises capital and other finances required for the business of the Company. EMTA and PARTNERS shall not require PSEB to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds."*

*d) The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, GoP on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to GoP which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB's equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB's equity which has been transferred to GoP but has not been re-vested in PSPCL.*

***In the light of above, it was concluded that the refundable amount of Rs. 391,46,36,262 (paid by PSPCL to GoI), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff.***

ii) Aggrieved by the said decision, PSPCL filed an Appeal being Appeal No. 259 of 2015 before the Hon‟ble Appellate Tribunal for Electricity (APTEL). On the directions passed by the Hon‟ble APTEL vide Order dated 19.01.2018 in the above said Petition, PANEM, EMTA and GoP were impleaded as Respondents and issued notices for appearance before the Commission. However, PANEM and EMTA neither submitted their reply to the submissions of PSPCL nor appeared before the Commission despite the issuance of repeated reminders/notices. GoP vide its memo no. 1/24/2015-EB (PR)/490 dated 13.04.2018 has submitted that, after the formation of the JV Company, PSEB was the shareholder and on re-organization, PSPCL became the shareholder and PSPCL is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation/re-allocation with the right to use the coal extracted from the mine for generation by its generation stations. PSPCL in its submission has also submitted that it is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation. **Accordingly, the Commission decides to omit the reference of GoP made in its Order dated 01.09.2015.**

iii) Now, to decide upon the prayer of the petition, the Commission needs to first ascertain whether the said payment was at all payable by PSPCL and if payable, whether the utility is justified in seeking the same as a pass through to the consumers of the State through tariff.

iv) From the submissions of PSPCL, it is clear that the Government of India allotted the Pachhwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board. Further, the

Government of India, Ministry of Coal & Mines by communication dated 25.08.2004 addressed to the Government of Jharkhand communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachhwara Central Block covering an area of 1278 hectares to Panem Coal Mines Limited for a period of 30 years and accordingly, the mining lease was granted by the Government of Jharkhand to Panem Coal Mines Limited by Mining Lease Deed dated 16.11.2004 and by Mining Lease Deed dated 30.03.2005.

v) Further, pursuant to Hon‟ble Supreme Court Order, Coal Mines (Special Provisions) Second Ordinance was promulgated on 26 December 2014, followed by Coal Mines (Special Provisions) Act, 2015. As per Section 3(1)(n) of the said Act, "prior allottee" means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No. 120 of 2012 and „Explanation‟ inserted below this definition, provides that ***'In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I coal mines, then, the third party shall be***

***deemed to be the prior allottee'. (Emphasis Added).***

vi) PSPCL in its submissions and during various hearings could not submit or produce any document /evidence which could prove that the additional levy paid by it to the nominated authority of the Central Government, in terms of the Coal Mines (Special Provisions) Act, 2015, was actually payable by PSPCL and not by PANEM. On being asked by the Commission to submit information about payment of additional levy by similarly placed other States/State owned utilities, whose mines were also cancelled along with that of PANEM and whether the said amount has been allowed as a pass through in the tariff orders of the respective States. PSPCL in its reply dated 03.07.2018, submitted that the other States with respect to which the Mines were cancelled pursuant to the judgment of the Hon‟ble Supreme Court are Karnataka and West Bengal. It was further submitted that in case of Karnataka, the issue whether the additional levy is payable by EMTA or Karnataka Power Corporation Ltd. (KPCL), the matter is pending before the Hon‟ble High Court at Karnataka. KPCL has deposited the additional levy and raised invoices on the distribution companies considering it as sale of power, but the amount has not yet been recognized as income because of disputed nature of transaction and pending court cases.

In case of West Bengal, PSPCL has submitted that West Bengal Power Development Corporation Limited (WBPDCL) was not considered a prior allottee in terms of the „Explanation" given below the definition of prior allottee and allotment letters in respect of Coal Block were issued in favour of WBPDCL. From the report of the Comptroller and Auditor General of India on e-auction of coal mines it emerges that WBPDCL had not deposited the additional levy.

**Thus, in light of the Hon'ble Supreme Court's Order read with Coal Mine (Special Provision) Second Ordinance 2014 and Coal Mines (Special Provisions) Act, 2015, the Commission is of the view that, the liability of additional levy of ₹295 per tonne is on the "prior allottee" i.e. PANEM Coal Mines Limited and not on PSPCL as its shareholder.**

vii) Further, as per Agreement of Captive Coal Mining Project of PSEB (now PSPCL) through the joint venture signed on 21st March, 2001, PSEB (now PSPCL) is not required to make any financial contribution to the company at any time".

**In view of above, it can be inferred that PSPCL was not liable to make the said payment and its decision to deposit the same was purely at its own risk and the question of allowing the same as pass through to the consumers of the State through tariff doesn't arise.**

The Commission also noticed that PSPCL has been making efforts with the Central Government for the refund of the additional levy deposited by it and has also claimed the same from PANEM Coal Mine Limited and Eastern Minerals and Trading agencies Limited in an arbitration proceeding pending before the Arbitral Tribunal. The Commission directs PSPCL to expedite the matter with the concerned Authorities and try to recover the said amount at the earliest instead of seeking to burden the consumers by passing the same in the ARR.

Accordingly, the Commission‟s Order dated 01.09.2015 is amended to the extent of views expressed above in this Order.

| | | |
|---|---|---|
| -Sd/- | -Sd/- | -Sd/- |
| **(Anjuli Chandra)** | **(S.S. Sarna)** | **(Kusumjit Sidhu)** |
| **Member** | **Member** | **Chairperson** |

Chandigarh
Dated:31.07.2018