

**IN THE COURT OF MS. SUNENA SHARMA
SPECIAL JUDGE, (PC ACT) (CBI), (COAL BLOCK
CASES)-02, ROUSE AVENUE DISTRICT COURT
NEW DELHI**



CNR No. DLCT11-001306-2019

CBI Case No. CBI/316/2019

RC No. 219 2012 E 0009

CBI/EOU-IV/New Delhi dated 27.03.2014

**U/s 120-B/420 IPC and Sections 9/13(1)(d)
Prevention of Corruption Act, 1988**

In the matter of:-

Central Bureau Of Investigation

Versus

- 1. Manoj Kumar Jayaswal**
S/o Sh. Basant Lal Shaw
Director of M/s AMR Iron & Steel Pvt. Ltd.
R/o 8th Floor, J.P. Heights, Byramjji Town,
Nagpur, Maharashtra.
- 2. Vijay Darda**
S/o Sh. Jawaharlal Darda
Ex-Member of Parliament (Rajya Sabha)
and Chairman, Lokmat Group,
R/o Yavatmal House, Swatantra Senani Jawaharlal
Darda Marg,
Pandit Jawaharlal Nehru Marg,
Nagpur, Maharashtra.
- 3. Devendra Darda**
S/o Sh. Vijay Darda
Managing Director of Lokmat Media Pvt. Ltd.
R/o Shubdha, B-Wing, 5th Floor,
Opp. Traffic Police HQs.,
Sir Pochkhanwala Road, Worli, Mumbai, Maharashtra.
- 4. M/s AMR Iron & Steel Pvt. Ltd.**
Registered Office at F-8, MIDC Industrial Area,
Hingna Road,

Nagpur, Maharashtra.

5. Santosh Bagrodia

S/o Sh. Mahabir Prasad Bagrodia
Then Minister of State for Coal
(Discharged vide order dated 23.07.2019).

6. Harish Chandra Gupta

S/o Late Sh. K.L. Gupta
Ex- Secretary, Ministry of Coal & Chairman
36th Screening Committee (Since Retired)
R/o 377, Sector-15A, Gautam Budh Nagar
Noida, Uttar Pradesh.

7. L.S. Janoti

S/o Sh. D.S. Janoti
Then Section Officer, CA-I Section, Ministry of Coal
(Discharged vide order dated 23.07.2019).

....Accused Persons

Date of order on cognizance : 26.05.2017
Date of framing of charge : 02.06.2023
Date of conclusion of arguments : 16.03.2026
Date of judgment : 27.03.2026

INDEX

S.No.	Particulars	Page no.
1.	Introduction	4-5
2.	General Procedure adopted at Ministry of Coal for allocation of Captive Coal Blocks	5-7
3.	Allegations in the FIR	7-9
4.	Factual Matrix emerging out from the Chargesheet	9-23
5.	Investigation	23
6.	Result of Investigation	23-31
7.	Order on Cognizance/Summoning qua private accused (A-1 to A-4)	31
8.	1 st Supplementary Final Report and its	31-35

	conclusion	
9.	Order on Cognizance/Further Investigation qua public servants	35-38
10.	2nd Supplementary Final Report and its conclusion	38-40
11.	Framing of Charge	40-43
12.	Allegations in Formal Charge	43-46
13.	Admission/Denial of documents	47
14.	Prosecution Evidence	47-112
	A. Witnesses from Ministry of Coal	50-62
	B. Witnesses from Ministry of Steel	62-66
	C. Witnesses from PMO	66-72
	D. Witnesses from Irrigation Department, Nagpur, Maharashtra.	72-74
	E. Witnesses from MIDC, Maharashtra	74-75
	F. Witnesses, who were the Directors/officials of AMR, Abhijeet Group Companies, Lokmat Group and IL&FS Group	75-95
	G. Witnesses pertaining to the allegations relating to <i>quid pro quo</i>	95-96
	H. Witnesses of Preliminary Inquiry, Investigation and Searches.	96-110
	I. Witnesses from banks	110-111
	J. Other Witnesses	111-112
15.	Statement of Accused U/s 313 Cr.PC	112-125
	➤ Statement of Sh. Manoj Kumar Jayaswal (A-1)	112-115
	➤ Statement of Sh. Vijay Darda (A-2)	116-117
	➤ Statement of Sh. Devendra Darda (A-3)	117-119
	➤ Statement of Sh. Jitender Singh Negi, AR of AMR (A-4)	119-121
	➤ Statement of Sh. H.C.Gupta (A-6)	121-125
16.	Defence Evidence	125-141

17.	Prosecution Argument	142-150
18.	Defence Argument	150-169
	➤ Submissions on behalf of A-1 and A-4	150-161
	➤ Submissions on behalf of A-2	161-162
	➤ Submissions on behalf of A-3	162-163
	➤ Submissions on behalf of A-6	163-169
19.	Discussion and Analysis of Material	170-274
	Undisputed Facts	172-181
	Contentious Issues	181-184
	Points of Determination	184-274
	Point of Determination No.1 to 3	185-229
	➤ Misrepresentation on facts in the Application Form dated 10.01.2007	192-205
	➤ Misrepresentation on facts in the Feedback Form and Presentation both dated 07.12.2007	205-229
	Point of Determination No.4 and 5	229-246
	Point of Determination No.6	246-268
	Point of Determination No.7	268-274
20.	Conclusions	274-285
21.	Final Conclusion	285-287

J U D G M E N T

Introduction

1. This judgment shall dispose of the oldest pending case of this court pertaining to the allocation of Bander Coal Block situated in the State of Maharashtra to M/s AMR Iron & Steel Pvt. Ltd by 36th Screening Committee of Ministry of Coal, Govt. of India. The instant CBI Case No. CBI/316/2019 is arising out of the chargesheet filed in RC 219 2012 E 0009 dated 27.03.2014. The FIR/RC is the

outcome of Preliminary Enquiry No. 219 2012 E 0002 dated 01.06.2012, which was registered by the CBI on the reference made by Central Vigilance Commission (CVC) in the matter of alleged malpractices and corruption in the allocation of coal blocks to private companies by the Ministry of Coal (MoC) during the period 2006-2009.

1.1. The instant RC/FIR was registered under Section 120B read with Section 420 of Indian Penal Code, 1860 (*hereinafter referred to in short as 'IPC'*) and under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (*hereinafter referred to in short as 'PC Act'*) against M/s AMR Iron & Steel Private Limited (*hereinafter referred to in short as 'AMR'*); its three Directors namely Sh. Arbind Kumar Jayaswal, Sh. Manoj Kumar Jayaswal & Sh. Ramesh Jayaswal; Sh. Devendra Darda; unknown public servants of Ministry of Coal; and other unknown for allocation of Bander Coal Block, Maharashtra to AMR (jointly with M/s J.K. Cement Limited and M/s Century Textiles & Industries Limited) for its proposed End Use Plant (EUP) having capacity of 0.3 Million Tonnes Per Annum (MTPA) of sponge iron at Maharashtra, on the basis of the recommendation of 36th Screening Committee in its meeting held on 03.07.2008.

General Procedure Adopted at Ministry of Coal for Allocation of Captive Coal Block

2. Before delving deep into the factual matrix of this case, it is deemed necessary to first note the stepwise procedure adopted by the Ministry of Coal, Government of India for allocation of captive coal blocks. As per the prevailing policy at the relevant time, the Ministry of Coal, Government of India used to allocate captive coal blocks to

the eligible private sector companies for their End Use Plants (EUPs) in steel, cement or power sectors based on the recommendations of Screening Committee chaired by the Secretary, Ministry of Coal. In accordance with the prescribed guidelines, Ministry of Coal was required to advertise coal blocks for allocation to the companies and pursuant thereto, the desirous companies were required to apply for the same to the Ministry of Coal in the prescribed format along with the requisite documents, as detailed in the guidelines (in total 05 sets).

2.1 After verifying the completeness of the applications in relation to the requisite accompaniments, the Ministry of Coal, after retaining one set thereof, was required to forward one set each to the concerned Administrative Ministry, concerned State Government where coal block was located, the State Government where End Use Plant (EUP) was situated or proposed to be set up and CMPDIL for their views/comments. After receiving the recommendations/views from all the stakeholders, the Screening Committee was authorized to afford an opportunity to all the applicant companies for presenting their respective cases. Thereafter, the Screening Committee was empowered to make recommendations to the Ministry of Coal for allocation of the particular coal block to the specified applicant company, singly or jointly with other companies after taking into account the following factors for determination of *inter se* priority amongst the applicants:-

- (1) Status (Stage) level of progress and state of preparedness of the projects;
- (2) Net worth of the applicant company (or in case of a new SPV/JV, the net worth of their principals);

- (3) Production capacity as proposed in the application;
- (4) Maximum recoverable reserve as proposed in the application;
- (5) Date of commissioning of captive mine as proposed in the application;
- (6) Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;
- (7) Technical experience (in terms of existing capacities in coal/ lignite mining and specified end-use);
- (8) Recommendations of the Administrative Ministry concerned;
- (9) Recommendations of the State Government concerned (i.e. where the captive block is located); and
- (10) Track record and financial strength of the company.

2.2 The present case relates to 36th Screening Committee, that was Chaired by Secretary (Coal) and its Members included the representatives of the concerned State Governments and representatives of Administrative Ministries in addition to the representatives of the other Departments concerned.

Allegations in the FIR

3. The allegations in this FIR are as follows:-

- (1) Despite the fact that group companies of AMR had earlier been allocated 05 coal blocks, in its application dated 10.01.2007 to

Ministry of Coal for allocation of Bander Coal Block for its proposed Integrated Steel Plant (EUP) of 1 MTPA at Village Tarsi, District Nagpur, Maharashtra, the AMR (A-4) fraudulently and wilfully misrepresented that its group companies had never been previously allocated any coal blocks;

(2) In its feedback form and presentation dated 07.12.2007 before the 36th Screening Committee, the AMR (A-4) fraudulently claimed that it was a proposed SPV of Lokmat Group and IL&FS and on that basis, artificially inflated its net worth to Rs.1,821.64 Crores by aggregating the net worth of 'Proposed Promoters' (Lokmat Group and IL&FS Group) thereby, overstating its financial strength. However, as per its application form dated 10.01.2007, its net worth was Rs.1.96 Crores only (as on 31.03.2006). In absence of net worth of IL&FS and Lokmat Groups, the case of AMR (A-4) would not have been considered on the basis of its sole net worth;

(3) The presentation before the 36th Screening Committee on 07.12.2007 was made by Sh. Devendra Darda (A-3) and he also signed the feedback form as Director of AMR (A-4) though he was not its Director;

(4) The representative of AMR (A-4) attended the meeting on 18.09.2008 with the Minister of State for Coal in his Chamber wherein, he falsely claimed that it was not a part of the

Jayaswal Group but, its equity was held by Lokmat Group, M/s Abhijeet Infrastructure Ltd. and IL&FS. In the said meeting, he also admitted that the said equity holders were allocated 05 coal blocks earlier. However, the said facts were concealed in the application form dated 10.01.2007 and feedback form dated 07.12.2007;

(5) In its letter dated 22.09.2008 addressed to Minister of State for Coal, AMR (A-4) again misrepresented that it was not part of Jayaswal Group;

(6) Despite having notice of earlier allocations to the group companies of AMR (A-4), the public servants in the Ministry of Coal in pursuance of criminal conspiracy, willfully allowed undue advantage to AMR in the process of allocation of Bander Coal Block to it; and

(7) In pursuance of criminal conspiracy, officials of Ministry of Coal willfully and purposefully did not scrutinize the documents regarding the false claims/concealment of facts by AMR (A-4) and thus, facilitated it in getting undue advantage in allocation of the Bander Coal Block.

Factual Matrix as emerging out from Chargesheet

4. The relevant facts as emerging out from the chargesheet are that on 13.11.2006, the Ministry of Coal, Government of India published an advertisement inviting applications for allocation of 38 coal blocks including Bander Coal Block in the State of Maharashtra. In response to the said advertisement, total 23 applications from different

companies including AMR were received in the Ministry of Coal for the said coal block. In its application dated 10.01.2007 filed by AMR through Sh. Harshad Pophali (PW-1), the allocation of Bander Coal Block for its proposed 1 MTPA Integrated Steel Plant was sought to be set up in Village Tarsi, District Nagpur, Maharashtra.

4.1 The said application (D-2) was filed along with duly filled up prescribed application format and requisite documents. Against a query at Serial No. 30 of said application pertaining to any prior allocation of blocks to its group or associate companies, AMR gave its response as 'No'. Thereafter, as per the prescribed procedure, the copies of all the applications received for all the coal blocks including Bander Coal Block were sent to the concerned Administrative Ministries and State Governments for their comments/review/recommendations, if any. Similarly, the copies of the application of AMR were also sent to the Administrative Ministry i.e. Ministry of Steel and the State Government of Maharashtra for the aforementioned purpose.

4.2 Vide an Official Memorandum/Notice dated 16.11.2007, uploaded by Ministry of Coal on its website for screening proposals relating to captive mining of coal blocks for non-power sector in 36th meeting of the Screening Committee to be held on 07.12.2007, 08.12.2007, 17.12.2007 and 18.12.2007, the applicants for all the coal blocks for non-power sector including AMR were instructed to give their presentations and submit feedback forms as per the feedback format annexed with the said memorandum regarding the latest status of End Use Plant (EUP) for which application for the block had been made.

4.3 Pursuant thereto, AMR submitted its feedback form (D-33) as per the requisite format on 07.12.2007, duly signed by Sh. Devendra Darda claiming himself to be the Director and in consonance with the feedback form, the written presentation dated 07.12.2007 (D-10) was also made to the Screening Committee. Sh. Rajendra M. Ganatra on behalf of M/s AMR, Sh. Devendra Darda on behalf of Lokmat Group and Sh. Anup Kumar Behara on behalf of Infrastructure Leasing and Financial Services Ltd., Infrastructure Development Corporation (IL&FS IDC) attended the presentation before the Screening Committee.

4.4 In the feedback form (D-33) and presentation (D-10), M/s AMR was claimed to be a proposed Special Purpose Vehicle (SPV) of Lokmat Group and IL&FS and net worth of AMR SPV was claimed as Rs.887.37 Crores as on 31.03.2006 and Rs.1,821.64 Crores as on 31.03.2007. Whereas, in its application form dated 10.01.2007, M/s AMR had claimed its net worth to be Rs.1.96 Crores only. In the feedback form and presentation, the location of its EUP was also changed from Village Tarsi, District Nagpur, Maharashtra to District Yavatmal, Maharashtra and its capacity was altered from 1 MTPA to 2 MTPA vis-a-vis to the application dated 10.01.2007.

4.5 Further, in said documents, it was claimed by AMR that for its EUP, 370 acres of land had been allotted to it by Maharashtra Industrial Development Corporation (MIDC) in District Yavatmal, Maharashtra and for its water requirement, it had tied up with Irrigation Department, Maharashtra for supply of water from Wardha River. However, no Detailed Project Report (DPR) for its changed EUP was enclosed with the feedback form or presentation.

4.6 In response to the recommendations/views sought by Ministry of Coal from State Government of Maharashtra qua the applications related to coal blocks situated within its territory including Bander Coal Block, Government of Maharashtra through its Principal Secretary (Industries) Sh. V.K. Jairath sent a letter dated 15.06.2007 to the Secretary (Coal), Ministry of Coal. In the said letter, it was stated that the State Government of Maharashtra had already recommended the applications of M/s Murali Industries Ltd. and M/s Jawaharlal Darda Yavatmal Energy Ltd. for allotment of Bander Coal Block. In respect of other 03 coal blocks namely (a) Khapa and Khapa Extension; (b) Gond Khairi; and (c) Dahegaon Makardhokara-IV, it was mentioned in the said letter that the State Government had recommended the applications of the companies as listed in Annexures-I to III for the said respective coal blocks.

4.7 Significantly, name of M/s AMR was mentioned in all the said three Annexures stating that it had the capability and resources to set up the plants as proposed in its project report. Therefore, in essence, as per said letter dated 15.06.2007, Government of Maharashtra recommended the name of AMR for its 1 MTPA proposed project for all the aforementioned 03 coal blocks but not for Bander Coal Block even though it was classified as capable and prepared for setting up of its proposed plant. However, vide another letter dated 27.11.2007, to the Secretary (Coal), Ministry of Coal, Government of Maharashtra through its Principal Secretary (Industries), recommended the allocation for Bander Coal Block to AMR for setting up of 2 MTPA Integrated Steel Plant at District Yavatmal, Maharashtra.

4.8 Further, in response to the recommendations/ views sought by Ministry of Coal from the concerned Administrative Ministry i.e. Ministry of Steel qua the applications related to coal blocks including Bander Coal Block proposed to be used for the prospective Iron & Steel Plant, an Office Memorandum dated 06.12.2007 was written by Sh. N.R. Dash, Director, Ministry of Steel to Joint Secretary, Ministry of Coal with the subject 'Verification of Application for Captive Coal Block for End-Use by Steel Projects'. Vide said memorandum, Ministry of Steel categorized the eligible companies for allotment of coal block in total 06 categories and the AMR for its 1 MTPA project at Village Tarsi, District Nagpur, Maharashtra was kept in Category-VI. However, considering the proposal in the application of AMR and the norms of Ministry of Steel (EUP to be commissioned before December, 2010), only 0.3 MTPA capacity for AMR was recommended out of the proposed 1 MTPA capacity in the application dated 10.01.2007.

4.9 Thereafter, vide Office Memorandum dated 14.12.2007, guidelines on the categorization of the companies to be followed for consideration of allotment of coal block was sent by Ministry of Steel to Ministry of Coal. As per the said guidelines, Category-VI included those companies having no existing capacity but proposes eligible capacity to be commissioned by December, 2010. Thus, the crux of the said memorandums is that Ministry of Steel recommended allocation of coal block to AMR for only 0.3 MTPA capacity of its proposed EUP at Village Tarsi, District Nagpur, Maharashtra without specifying the name of the coal block. As per said memorandums, the categorization

carried out was only indicative in nature and subject to deliberations in the Screening Committee.

4.10 On 03.07.2008, the meeting of 36th Screening Committee, was held under the Chairmanship of Sh. H.C. Gupta (A-6), Secretary (Coal) to consider recommendation for allocation of coal blocks including Bander Coal Block for non-power sector. The meeting was attended by Sh. V.S. Sawakhande, Director as the representative of Government of Maharashtra and Sh. U.P. Singh, Joint Secretary along with Sh. N.R. Dash, Director as the representatives of Ministry of Coal in addition to the other representatives of the concerned Departments, Ministries and State Governments. As per the minutes of the said meeting, the Screening Committee decided to recommend allocation of Bander Coal Block to AMR (for its 0.3 MTPA capacity) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd, and said decision was taken by the Screening Committee after deliberations and based upon the data furnished by the applicants, the feedback received from the State Governments, the Ministry of Steel and Department of Industry Policy and Promotion.

4.11 As per the minutes of the meeting, the suitability for allocation of coal block was assessed on the basis of techno-economic feasibility of End Use Project, status of preparedness to set up the End Use Project, past track record in execution of projects, financial and technical capabilities of applicant companies as well as the recommendations of the State Governments and the Administrative Ministries concerned etc. All the representatives of Ministry of Steel and Government of Maharashtra in addition to all other attendees of the said

meeting signed the said recommendations as a mark of approval to the same. Significantly, in the very same meeting, decisions to recommend several other coal blocks situated across the country were also taken unanimously by all its members. On 14.07.2008, the said minutes were approved by Secretary (Coal) and the file was sent to the Hon'ble Minister of State for Coal and Hon'ble Prime Minister as Minister of Coal for approval. On 14.07.2008 itself, Minister of State (Coal) forwarded the same to the Hon'ble Prime Minister (as Minister of Coal).

4.12 Thereafter, the said file was processed in Prime Minister's Office (PMO). On 16.07.2008, Ms. Vini Mahajan, Joint Secretary to Hon'ble Prime Minister made a note in the said file to the effect that the Principal Secretary discussed the matter with Coal Secretary and Steel Secretary, who have confirmed that the proposal is based strictly on the merits of the applicants including the recommendations of the State Governments where the blocks are located.

4.13 Finally, Hon'ble Prime Minister as Minister of Coal approved the afore-mentioned allocation of Bander Coal Block in addition to several other coal blocks to different companies subject to Ministry of Coal satisfying itself that in case the allocatees who had been allocated coal blocks earlier, there had been no undue delay in development of those blocks. It was further directed that after due enquiry, in case Ministry of Coal was satisfied that any proposed allocatees had been responsible for undue delay in development of block allotted to them earlier, the matter regarding the proposed present allocation be referred back to the Minister of Coal for orders.

4.14 The above approval given by PMO, was duly conveyed to the Secretary, Ministry of Coal by Director, PMO Sh. Ashish Gupta vide letter dated 21.07.2008. On its receipt, Secretary, Ministry of Coal marked the matter to his subordinate in hierarchy for compliance and further necessary action. Thereafter, the file moved down the hierarchal ladder through successive markings to the respective subordinate authorities until it reached the Dealing Assistant, CA-I Section, Sh. Sewak Paul. While considering the afore-mentioned subjective approval of Bander Coal Block to AMR, the Dealing Assistant (CA-I Section) Sh. Sewak Paul prepared a note dated 18.08.2008.

4.15 In Para No.2(iii) of said note dated 18.08.2008, Sh. Sewak Paul noted that AMR had not been allocated any coal block previously but, on looking at the MoA/AoA (Memorandum of Association/Articles of Association) of the company, it was established that its shareholders were same who were also having shares in other companies of Jayaswal Group. He further noted that Jayaswal Group had been allocated a number of blocks in the past. Gare Palma-IV/4, Gare Palma-IV/8, Moitra, Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahugarhi Coal Blocks (total 09) were allocated to different companies of Jayaswal Group and the performance of Gare Palma-IV/4, Gare Palma-IV/8, Brinda, Sisai and Meral was not satisfactory. In Para No.3 of his said note, he recommended that the companies including Jayaswal Group may be advised to expedite the progress therein in order to enable the Ministry of Coal to decide allocation of the proposed coal blocks and for the said purpose, they may be called in a meeting.

4.16 The said note dated 18.08.2008 containing the above observations in respect of Bander Coal Block was placed before his senior officer and finally through proper official channel, it reached Secretary (Coal) who on 03.09.2008, put up a note that the proposed meeting be called at the level of Minister of State for Coal. Accordingly, on 11.09.2008, file was sent to the Minister of State for Coal for seeking convenient date and time for the said meeting. Pursuant thereto, a meeting was scheduled for 18.09.2008 by Sh. Santosh Bagrodia, Hon'ble Minister of State for Coal in his Office Chamber and it was attended by Sh. Harshad Pophali on behalf of AMR as its representative.

4.17 As per the minutes of said meetings, the said representative of AMR informed that AMR was not a part of Jayaswal Group but its equity was held by the Lokmat Group, M/s Abhijeet Infrastructure Ltd. and IL&FS. It further reflects that he informed that the previously allocated blocks to these equity holders were Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahugarhi. The minutes further manifest that AMR was asked to give in writing its ownership pattern (main shareholders) as well as the commitment made about developing the coal blocks along with specific milestones with timelines for each milestone within next 07 days. In reference to the discussions held in the meeting dated 18.09.2008, Sh. Somdatt Bhardwaj, Authorized Representative of AMR sent a letter dated 22.09.2008 on behalf of AMR to the Minister of State for Coal wherein, it was recorded that AMR confirmed that it was not associated with Jayaswal Group.

4.18 Upon receipt of aforementioned letter from AMR dated 22.09.2008, Sh. L.S. Janoti, Section Officer, CA-I

Section, Ministry of Coal, prepared a note dated 25.11.2008 to the effect that the representative of AMR had informed that the company was not a part of the Jayaswal Group and he was asked to give in writing its ownership pattern as well as the commitment made about developing the coal blocks. In the said note, it was further mentioned that the AMR company vide its letter dated 22.09.2008 had confirmed that it was not associated with Jayaswal Group. Therefore, it can be taken that no coal block has been allocated to them earlier. The note further contained that if approved, option letters be issued in respect of Bander Coal Block as recommended by the Screening Committee. The said note was processed and moved upwards through hierarchical levels by way of successive markings, and eventually reached the Secretary (Coal) Sh. H.C. Gupta (A-6), who sought clarification qua other coal blocks mentioned in the said note.

4.19 In the subsequent notes of CA-I Section, Ministry of Coal, the position regarding Bander Coal Block remained same as mentioned in the previous note dated 10.10.2008. Significantly, the note dated 10.10.2008 was not approved at the first instance due to the clarifications required in respect of coal blocks other than Bander Coal Block. Again a fresh note dated 25.11.2008 was prepared by Sh. L.S. Janoti, Section Officer, CA-I Section, Ministry of Coal, wherein qua Bander Coal Block, he reiterated the same facts as noted by him in his previous note dated 10.10.2008. It followed the similar hierarchical path through successive markings before reaching to Secretary (Coal) Sh. H.C. Gupta (A-6), who approved the same on 28.11.2008 by recording that in view of the assurance given, we may

issue allotment letters in respect of Bander Coal Block. With this note, the file was again sent to Hon'ble Prime Minister for approval.

4.20 In Prime Minister's Office the Joint Secretary vide note dated 10.12.2008 recorded a note to the effect that the allotment is already approved at the level of Prime Minister; he need not be bothered again and said note was approved by the Principal Secretary, PMO to the effect that the Ministry's proposal qua the Bander Coal Block and AMR is in order and may be approved. The said approval qua Bander Coal Block and AMR was returned to the Ministry of Coal. Accordingly, on 23.12.2008, option letter for allocation of Bander Coal Block to the AMR jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. was issued by Sh. V.S. Rana, Under Secretary, Ministry of Coal, Government of India wherein, it was specified that AMR was allocated the said block only for 0.3 MTPA capacity of its EUP at Village Tarsi, District Nagpur, Maharashtra. In the said letter, three options were offered to the said three companies including AMR.

4.21 The receipt of option letter was acknowledged by all the said three companies vide a common and joint letter dated 08.01.2009, wherein, they informed that all the Consortium Members have unanimously decided to exercise Option-I for development of Bander Coal Block. In the said letter, they further recorded that as defined under Option-I, the Consortium shall constitute a Joint Venture Company/Special Purpose Vehicle (SPV) with equity participation in proportion to the assessed requirement of coal. They requested 60 days time for formulation and finalization of legally binding and enforceable agreement of

their consortium as required by Ministry of Coal for the said allocation.

4.22 Subsequently, Joint Venture Agreement dated 09.03.2009 was submitted by the consortium through their authorized signatories with a request for issuance of final allocation letter in their favours. Pursuant thereto, final allocation letter dated 29.05.2009 for Bander non-coking Coal Block was issued by Ministry of Coal through its Under Secretary to all the said three companies including AMR whereby, EUP capacity of Integrated Steel Plant of AMR at Village Tarsi, District Nagpur, Maharashtra was capped at 0.3 MTPA in accordance with Option Letter dated 23.12.2008 of Ministry of Coal.

4.23 But, after the allocation of coal block, neither the AMR was able to set up the proposed EUP nor to obtain the requisite clearances including environmental clearance. Consequently, no mining lease of the said coal block was executed between State Government of Maharashtra and the Consortium including AMR. Therefore, AMR could not extract any coal from the coal reserves of the said block, which was finally de-allocated by the Inter Ministerial Group for Review of Coal Block in its meeting held on 07-08.02.2014.

4.24 The facts alleged against Sh. Vijay Darda (A-2), the then Member of Parliament, Rajya Sabha and Chairman, Lokmat Group are that he had sent three representations to Hon'ble Prime Minister for requesting allocation of Bander Coal Block to AMR including letter no. AMR/ISP/08/58 dated 04.02.2008 wherein, he mentioned that AMR was promoted by his Lokmat Group and requested for allocation of Bander

Coal Block exclusively to AMR for meeting coal requirement of its proposed 2 MTPA Steel Plant at District Yavatmal, Maharashtra. In the said letters, he claimed that AMR had arranged 370 acres of land in Yavatmal Industrial Area through Maharashtra Industrial Development Corporation (MIDC) and also the permission for drawl of 23.65 MCM water per annum from Wardha River for its said proposed EUP of 2 MTPA Steel Plant, had been obtained.

4.25 The additional facts allegedly related to present case are that a company namely M/s Asera Banka Power Ltd. (*hereinafter referred to in short as 'ABPL'*) was incorporated on 21.09.2010 with an initial paid up capital of Rs.1,00,000/- (10,000 equity shares of Rs.10/- each) and its 99% shareholdings were held by M/s Asera Power Ltd., (*hereinafter referred to in short as 'APL'*), a company belonging to family of Sh. Vijay Darda (A-2) and Sh. Devendra Darda (A-3). On or around 13.10.2010, M/s Hilltop Projects Pvt. Ltd. and M/s Eclat Ventures Pvt. Ltd., both belonging to Abhijeet Group, paid an amount of Rs.2.50 Crores to M/s Bicharshil Traders Ltd., while M/s Abhijeet Ventures Ltd., also belonging to Abhijeet Group, paid Rs.1.50 Crores to M/s Lissom Suppliers Pvt. Ltd. which in turn transferred the said amount to M/s Bicharshil Traders Ltd. Thereafter, the said total amount of Rs.4 Crores sourced from Abhijeet Group was remitted by M/s Bicharshil Traders Ltd. to ABPL, belonging to Sh. Vijay Darda and Sh. Devendra Darda by way of four RTGS all dated 13.10.2010 for Rs.1 Crore each as a consideration for purchase of its 4,496 equity shares having face value of Rs.10/- at a premium of Rs.8,885/- each.

4.26 In other transactions of the same date i.e. 13.10.2010, M/s Bullpower Vyapaar Ltd. transferred Rs.4 Crores, received from three companies of Abhijeet Group, to ABPL by way of four RTGS all dated 13.10.2010 for Rs.1 Crore each as a consideration for purchase of its 4,496 equity shares having face value of Rs.10/- at a premium of Rs.8,885/- each. Thus, on 13.10.2010, Rs.4 Crores each (total Rs.8 Crores) were received by ABPL from M/s Bicharshil Traders Ltd. and M/s Bullpower Vyapaar Ltd. as a consideration for sale of its 4,496 equity shares each to them. Significantly, the afore-said amount of Rs.8 Crores that was used for the said transactions originated from different companies of Abhijeet Group.

4.27 On 31.03.2012, Abhijeet Projects Ltd. (Abhijeet Group Company) remitted total amount of Rs.10.60 Crores to M/s Rodhan Vanijya Pvt. Ltd. as a trade advance and the said company further transferred the said amount to five different companies controlled by Sh. Santosh Jain. Thereafter, on the same date i.e. 31.03.2012, the said amount was transferred to ABPL by the said five companies for purchase of its equity shares at the face value of Rs.10/- and premium of Rs.8,885/- each.

4.28 Thereafter, on 06.08.2012, an amount of Rs.3 Crores each was transferred by Abhijeet Projects Ltd. (Abhijeet Group Company) to the accounts of M/s Wonder Procon Pvt. Ltd. and M/s Truthful Devcon Pvt. Ltd. as a trade advance. These two companies transferred the said Rs.6 Crores to five different Kolkata based companies and on 07.08.2012, the said five companies transferred the said amount of Rs.6 Crores to ABPL through RTGS towards call money.

4.29 Thus, in the aforesaid three transactions dated 13.10.2010, 31.03.2012 and 06/07.08.2012, the ABPL (belonging to Sh. Vijay Darda and Sh. Devendra Darda) received total amount of Rs.24.60 Crores originally sourced from Abhijeet Group Companies. Subsequently, the said amount of Rs.24.60 Crores was used by ABPL for subscribing the shares of M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.) worth Rs.24.50 Crores, as per its balance sheet on 30.06.2013.

Investigation

5. During investigation, IO examined the relevant witnesses including members of 36th Screening Committee; officials of Ministry of Coal; officials of Ministry of Steel; officials of Maharashtra State Government; officials of PMO; officials of Irrigation Department, Nagpur, Maharashtra; officials of MIDC, Maharashtra; officials of Coal India Ltd. (CIL); and Directors/officials of AMR, Abhijeet Group Companies, Lokmat Group, IL&FS Group and the companies involved in afore-detailed transactions of Rs.24.60 Crores between the Abhijeet Group Companies, ABPL and M/s JAS Infrastructure Power Ltd. He also seized the relevant documents including files of the Ministry of Coal, 36th Screening Committee, Ministry of Steel, PMO and Maharashtra Government related to the allocation of Bander Coal Block to AMR.

Result of Investigation

6. After conclusion of investigation, the chargesheet dated 27.03.2014 was filed before the court on the same date against three accused namely, Sh. Manoj

Kumar Jayaswal (A-1); Sh. Vijay Darda (A-2); Sh. Devendra Darda (A-3); and AMR (A-4) for the offence punishable under Sections 120B read with Section 420 IPC and Section 9 PC Act. In brief, the allegations in the charge-sheet are as follows:-

(1) In its application form dated 10.01.2007 (D-2) to the Ministry of Coal for allocation of Bander Coal Block, AMR (A-4) falsely claimed that no coal block had been allocated to its group or associate company;

(2) The said application (D-2) was signed and submitted by Sh. Harshad Pophali as authorized signatory of AMR (A-4) as per the directions of Sh. Manoj Kumar Jayaswal (A-1), Director of AMR;

(3) On 07.12.2007, AMR (A-4) made a presentation (D-10) before the 36th Screening Committee through its representatives namely Sh. Devendra Darda (A-3), Director; Sh. R.M. Ganatra, Director; and Sh. Anup Kumar Behara, General Manager (Projects), IL&FS. They also submitted feedback form dated 07.12.2007 (D-33) at the time of presentation duly signed by Sh. Devendra Darda as Director of AMR though he was never its Director;

(4) In the said presentation (D-10) and feedback form (D-33), it was falsely claimed that AMR (A-4) was a SPV of Lokmat Group and IL&FS Group;

(5) Further, in the said documents (D-33 and D-10), it was falsely mentioned that 370 acres of land had been allotted by MIDC to AMR (A-4) in District Yavatmal, Maharashtra whereas no such land had been allotted to it;

(6) Moreover, in the said documents (D-9 and D-10), it was falsely claimed that for water requirement of its proposed EUP, AMR (A-4) had tied up with Irrigation Department, Maharashtra for supply of water from Wardha River;

(7) In its meeting held on 03.07.2008, the 36th Screening Committee recommended the allocation of Bander Coal Block located in Maharashtra to AMR (A-4) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. for its proposed EUP at village Tarsi, District Nagpur, Maharashtra with capacity 0.3 MTPA;

(8) Thereafter, the said recommendation was communicated to the Hon'ble Prime Minister (in his capacity as Minister of Coal) through Minister of State for Coal for the approval. The said recommendation was approved by Hon'ble Prime Minister as Minister of Coal with the following *inter alia* relevant observation:-

"the allotment of the proposed allocates shall be subject to the Ministry of Coal satisfying itself that in case of allocates who have been allocated coal blocks earlier, there has been no undue delay in development of those block by the allocates. In case Ministry of Coal is satisfied after due enquiry that the proposed allocates have been responsible for undue delay in development of blocks allotted to them

earlier, the matter should be referred back to Minister of Coal for orders”.

(9) The said approval was communicated to the Secretary (Coal), who marked it to his subordinate in hierarchy for necessary action and through successive downwards marking, it ultimately reached CA-I Section, Ministry of Coal. On the basis of observation made by PMO, Sh. Sewak Paul, Dealing Assistant, CA-I Section prepared a note dated 18.08.2008 stating that looking at the MoA/AoA of AMR (A-4), it is established that its shareholders are same as shareholders of other companies of the Jayaswal Group who have been allotted a number of blocks in the past out of which progress report of Gare Palma-IV/4, Gare Palma-IV/8, Brinda, Sisai and Meral Coal Blocks are not satisfactory.

(10) Consequently, a meeting was held on 18.09.2008 in the Chamber of Minister of State for Coal which was attended by Sh. Harshad Pophali, representative of AMR, wherein he informed that AMR is not a part of Jayaswal Group but its equity is held by Lokmat Group, M/s Abhijeet Ltd. and IL&FS. In the said meeting, AMR was asked to give in writing its ownership pattern (main shareholders) as well as the commitment made about developing the coal blocks. The said information was false as Lokmat Group was never the equity holder of AMR and there is no evidence

on record to show that Lokmat Group had an agreement with AMR in this regard;

(11) In response to the said meeting dated 18.09.2008, AMR (A-4) sent a letter dated 22.09.2008 to Minister of State for Coal reiterating that AMR is not associated with Jayaswal Group. However, the other information i.e. ownership pattern and commitment of AMR as sought in this said meeting were not furnished in the said letter dated 22.09.2008. But, despite the fact that the sought information was lacking and incomplete, the file of AMR was processed in the Ministry of Coal and allocation of Bander Coal Block to AMR was finally approved jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. for its proposed EUP for its capacity of 0.3 MTPA at Village Tarsi, District Nagpur, Maharashtra;

(12) Sh. Vijay Darda (A-2), Member of Parliament (Rajya Sabha) and Chairman Lokmat Group submitted three representations to the Hon'ble Prime Minister for allocation of Bander Coal Block to AMR (A-4) including letter no. AMR/ISP/08/58 dated 04.02.2008, whereby he requested for allocation of Bander Coal Block exclusively to AMR for meeting the coal requirement of its proposed 2 MTPA Steel Plant at District Yavatmal, Maharashtra;

(13) In the said three representations, Sh. Vijay Darda (A-2) falsely misrepresented that AMR (A-4) was promoted by Lokmat Group. In the

said communications, he also made misrepresentations to the effect that AMR for its proposed EUP at District Yavatmal, Maharashtra had made arrangement of 370 acres of land in Yavatmal Industrial Area through MIDC and obtained permission for drawl of 23.65 MCM water per annum from Wardha River from Water Resource Department, Government of Maharashtra;

(14) In view of the said three communications written by Sh. Vijay Darda (A-2) to the Hon'ble Prime Minister, it is evident that he was instrumental in securing allotment of Bander Coal Block to AMR (A-4);

(15) As per Indenture of Family Settlement (IFS) dated 31.07.2008 relating to Jayaswal Family and Company Petition No.111/397-398/CLB/MB/2009 dated 11.09.2009, filed before the Mumbai Bench of Company Law Board by Sh. Manoj Kumar Jayaswal (A-1), the signatories of IFS who were members of Jayaswal Family and Directors of their 05 different companies including AMR (A-4) agreed that the company that gets the allocation of coal block, its 26% free equity shall be allotted to the person who would be instrumental in securing the coal block allocation;

(16) Since Sh. Vijay Darda (A-2) was instrumental in securing Bander Coal Block in favour of AMR (A-4), as per the IFS Sh. Manoj

Kumar Jayaswal (A-1) intended to allocate 26% free equity shares of AMR to Sh. Vijay Darda (A-2). The said fact is evident from an unsigned typed letter dated 21.08.2009 purportedly written by Sh. Basant Lal Shaw, father of Sh. Manoj Kumar Jayaswal (A-1) and addressed to Sh. Vijay Darda (A-2) which was recovered from the residence of Sh. Vijay Darda;

(17) In accordance with the said intention and to give reward to Sh. Vijay Darda (A-2) for being instrumental in securing allocation of Bander Coal Block to AMR, Sh. Manoj Kumar Jayaswal (A-1) through his 07 Abhijeet Group Companies arranged and routed Rs.24.60 Crores through 11 Kolkata based shell companies, operated by a relative of Sh. Manoj Kumar Jayaswal namely Sh. Santosh Jain, to transfer it to ABPL, a company owned by Sh. Vijay Darda along with his son Sh. Devendra Darda (A-3). The said transaction was shown as purchase of equity shares of ABPL by Kolkata based shell companies at a premium of Rs.8,885/- per equity share of Rs.10/-. The Balance Sheets of ABPL do not support valuation of shares. ABPL invested the said funds in the equity of M/s JAS Infrastructure Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.) also controlled by Sh. Manoj Kumar Jayaswal. Therefore, in essence, it is alleged that the said amount of Rs.24.60 Crores was given by Sh. Manoj Kumar Jayaswal (A-1) as a *quid pro quo* to Sh. Vijay Darda (A-2) for securing Bander Coal Block

to his AMR company through the veiled/covert transactions of purchase of shares;

(18) Based upon the afore-mentioned details of investigation, the CBI concluded in its charge-sheet that the facts, circumstances and evidence *prima facie* disclose that Sh. Manoj Kumar Jayaswal (A-1) (Director, AMR) in criminal conspiracy with Sh. Vijay Darda (A-2) [Member Parliament (Rajya Sabha) & Chairman, Lokmat Group], Sh. Devendra Darda (A-3) (Managing Director, Lokmat Media Pvt. Ltd.) and AMR (A-4) (through its Director, Sh. Manoj Kumar Jayaswal) have cheated Ministry of Coal by dishonestly obtaining allocation of Bander Coal Block.

(19) Further, in pursuance to the said criminal conspiracy, Sh. Manoj Kumar Jayaswal paid an amount of Rs.24.60 Crores to ABPL company owned by Sh. Vijay Darda and Sh. Devendra Darda for exercising personal influence in securing Bander Coal Block in favour of AMR. Thus, it was alleged in the charge-sheet that Sh. Manoj Kumar Jayaswal, Sh. Vijay Darda, Sh. Devendra Darda and AMR (A-1 to A-4 respectively) have committed offences punishable under Sections 120B/420 IPC and Sh. Vijay Darda (A-2) has committed the offence punishable under Section 9 of PC Act.

(20) As per the initial charge-sheet, further investigation to unearth the role of public servants was still in progress.

Order on Cognizance/Summoning Qua Private Accused (A-1 to A-4)

7. Vide order dated 07.05.2014, Ld. Predecessor of this Court took cognizance for the offences punishable under Section 9 of PC Act read with Section 420/120B IPC against all the four accused persons and they were directed to be summoned for the said offences.

1stSupplementary Final Report and its Conclusion

8. After conclusion of further investigation, supplementary final police report dated 12.12.2014 under Section 173(8) CrPC was filed in the court on 17.12.2014. In addition to the facts revealed and allegations made in the charge-sheet dated 27.03.2014, the following relevant facts and allegations were mentioned in the supplementary final police report:-

(1) No evidence surfaced indicating the commission of the present offence by two Directors of AMR (A-4) namely Sh. Arbind Jayaswal and Sh. Ramesh Jayaswal. Consequently, they were not sent up for trial in the present case;

(2) As per evidence, the day-to-day affairs of AMR during the relevant period was looked after by Sh. Manoj Kumar Jayaswal (A-1) who played active role in getting Bander Coal Block allocated to AMR (A-4);

(3) The coal block allocatee companies were required to submit a quarterly report regarding the status of the development of coal blocks with regard to the milestones given by the Ministry of Coal, to the Office of the Coal

Controller, Kolkata, as per the conditions of allocation. During investigation, quarterly status reports for the period April-June 2008, July-September 2008 and October-December 2008 submitted by M/s Abhijeet Infrastructure Ltd. with the Office of Coal Controller, Kolkata regarding development of Brinda, Sisai and Meral Coal Blocks and quarterly status reports for the period July-September 2008 and October-December 2008 submitted by M/s Corporate Ispat Alloys Ltd. with the Office of Coal Controller, Kolkata regarding development of Chitarpur Coal Block were collected.

(4) Sh. Sewak Paul, Dealing Assistant, on being shown the above-mentioned quarterly reports regarding the status of the development of coal blocks with regard to the milestones given by the Ministry of Coal stated that development of these coal blocks on the major milestones was not as per the time schedule given by the Ministry of Coal, as such the performance of the company regarding development of coal blocks was not satisfactory. Accordingly, in his note dated 18.08.2008, he mentioned that the progress reports of the said coal blocks were not satisfactory;

(5) During examination, Sh. Harshad Pophali, General Manager (Mining), M/s Corporate Ispat Alloys Ltd. stated that he represented AMR (A-4) in the meeting with Minister of State for Coal on 18.09.2008 and his submissions on behalf of

AMR during the said meeting were based on the directions issued by Sh. Manoj Kumar Jayaswal (A-1), Director AMR;

(6) Subsequent to the explanation given by AMR (A-4) in the meeting dated 18.09.2008 held in the Chamber of Minister of State for Coal and pursuant letter dated 22.09.2008 of AMR, a note dated 25.11.2008 was prepared by Sh. L.S. Janoti, Section Officer, CA-I Section, Ministry of Coal, wherein it was mentioned in its Para No.6 that *"The representative of M/s AMR Iron & Steel Pvt. Ltd. has informed that the company is not a part of Jayaswal Group. He was also asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22/09/2009 has confirmed that M/s AMR Iron & Steel Pvt. Ltd. is not associated with Jayaswal Group and requested to allocate Bander Coal Block to their company in order to develop the backward district of Vidarbha Region. Therefore, it can be taken that no coal block has been allocated to M/s AMR Iron & Steel Pvt. Ltd. Earlier"*.

(7) On the basis of the above mentioned note dated 25.11.2008 of Sh.L.S.Janoti and the subsequent notes/markings of his senior officers in hierarchy, the said file finally reached Secretary (Coal) who on 28.11.2008, noted that in view of the assurance given, allotments letters may be issued in respect of Bander Coal Block and marked the file to Minister of State for Coal. Sh. Santosh

Bagrodia, the then Minister of State for Coal processed the file on 05.12.2008 and signed the note sheet in token of having endorsed the recommendation. Thereafter, the same was put up to Prime Minister, being Minister of Coal;

(8) At Prime Minister's Office, the said matter was processed. Sh. Ashish Gupta, the then Director, PMO while processing the note dated 28.11.2008 of Secretary (Coal) mentioned the facts of the matter as given in the Ministry of Coal file vide note dated 08.12.2008 in the PMO file. He marked the said file to Joint Secretary (Vigilance). Ms. Vini Mahajan, Joint Secretary, PMO in her note dated 09.12.2008 mentioned that allotment was already approved at the level of Prime Minister and he need not be bothered at this stage. The said file was marked by Ms. Vini Mahajan to Principal Secretary who approved the said note on 09.12.2008. The said approval was communicated to Secretary (Coal) vide PMO ID No.200/31/C/83/06-ES.I dated 10.12.2008. After the approval, option letter dated 23.12.2008 was issued by Ministry of Coal to AMR (A-4), M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. for calling of options regarding allocation of Bander Coal Block in the State of Maharashtra for the proposed EUP of 0.3 MTPA capacity of AMR at Village Tarsi, District Nagpur, Maharashtra;

(9) Sh. L.S. Janoti, Section Officer in contradiction to the submissions made by the

representative of AMR (A-4) regarding previous allocation of coal blocks to its equity holders, wrongly mentioned that no coal blocks have been allocated to the said company earlier. Further, there is no evidence on record regarding the assurance given by AMR (A-4) for development of coal blocks. On the contrary, the said company in its letter dated 22.09.2008 claimed that it was not part of Jayaswal Group.

9. After conclusion of further investigation, the CBI concluded in its supplementary final police report that there was no sufficient and cogent evidence to warrant a prosecution of the public servants of Ministry of Coal, Government of India. Further, no evidence with regard to any pecuniary advantage taken by the public servants has come on record. Hence, their dishonest intention/*mens rea* could not be established.

Order on cognizance/further investigation qua Public Servants

10. Vide order dated 30.01.2015, Sh. Bharat Parashar, Ld. Predecessor of this Court observed that the said supplementary final police report dated 12.12.2014 is in essence, a closure report qua the public servants. In the said order, Ld. Predecessor observed that the recommendations of the 36th Screening Committee in the meeting held on 03.07.2008 proposing inter alia allocation of Bander Coal Block to AMR (A-4) and two other companies were conditionally approved by Hon'ble Prime Minister as Minister of Coal while observing that the performance of the said proposed allocatee companies with respect to earlier coal blocks, if any, allotted to them be seen and in case

Ministry of Coal is satisfied that any proposed allocatee has been responsible for delay in the development of blocks earlier allotted to them then proposed present allocation by way of 36th Screening Committee be referred back to the Minister of Coal for orders.

10.1 The order dated 30.01.2015 also noted that a meeting dated 18.09.2008 was held in the Chamber of Minister of State for Coal for ascertaining the status of progress of previously allocated coal blocks to the proposed allocatee companies including AMR. In the said meeting, representative of AMR told that it was not part of the Jayaswal Group and indeed, the equity of AMR was then held by Lokmat Group, M/s Abhijeet Group of Infrastructure Ltd. and IL&FS. He further informed that 06 coal blocks previously stood allotted to these equity holder companies. Accordingly, AMR was directed to give in writing its ownership pattern (main shareholders) as well as the commitment made about developing the coal blocks along with specific milestones with timelines for each milestone within next 07 days. Thereafter, on 22.09.2008, a letter was written by the AMR to Minister of State for Coal wherein incomplete information was furnished to the effect that AMR is not a part of Jayaswal Group.

10.2 Subsequently, without obtaining the complete information in that regard, Sh. L.S. Janoti, Section Officer (CA-I Section), Ministry of Coal in his note dated 25.11.2008 proceeded to record that no coal block had been allotted to AMR earlier. The said file was put up before Sh. H.C. Gupta, Secretary (Coal) (A-6) who also chose to overlook the non-furnishing of complete information by AMR in accordance with minutes of meeting held on 18.09.2008 in the

Chambers of Minister of State for Coal and preferred to put up the file to Minister of State for Coal noting that in view of the assurance given, the allotment letters of Bander Coal Block may be issued. Similarly, Minister of State Sh. Santosh Bagrodia for Coal also chose to overlook the said aspect in violation of the clear directions of PMO.

10.3 In the said order dated 30.01.2015, it was further observed that Sh. Sewak Paul, Dealing Assistant in CA-I Section, Ministry of Coal vide his note dated 18.08.2008 pointed that the Jayaswal Group had been allocated a number of coal blocks in the past and the progress of 06 of them was unsatisfactory. Therefore, the Ministry of Coal was aware about said fact and the requisite information was sought from the AMR (A-4) in a meeting held before Minister of State for Coal on 18.09.2008. But Sh. L.S. Janoti, Section Officer, CA-I Section; Sh. H.C. Gupta, Secretary Coal (A-6); and Sh. Santosh Bagrodia, the then Minister of State for Coal omitted to obtain complete information from the AMR in accordance with the conditional approval of the PMO and thereby, *mala fidely* facilitated it in obtaining allocation of Bander Coal Block.

10.4 Taking into account the aforementioned facts and other facts of this case including alleged misrepresentation of certain relevant facts in the application and feedback form of AMR, this Court concluded that it was *prima facie* clear that Sh. L.S. Janoti, Sh. H.C. Gupta and Sh. Santosh Bagrodia entered into a criminal conspiracy with the private parties involved in the impugned coal block allocation to AMR and thereby, facilitated it to obtain allocation of 'Bander Coal Block' unlawfully.

10.5 In the light of above, vide said order dated 30.01.2015, this Court took cognizance against Sh. H.C. Gupta (A-6) and Sh. Santosh Bagrodia for the offence punishable under Section 120B/420 IPC and under Section 13(1)(d) read with Section 13(2) PC Act. In addition to the afore-mentioned offences, cognizance for the offence punishable under Section 409 IPC and under Section 13(1) (c) PC Act was also taken against the accused Sh. H.C. Gupta (A-6). In respect of Sh. L.S. Janoti, the matter was directed to be further investigated as he was a serving public servant at that time which required sanction under Section 19 PC Act before proceeding to take cognizance against him.

10.6 On 29.06.2015, IO filed a report of further investigation stating that Sh. L.S. Janoti has retired on 31.05.2015. Therefore, vide order dated 21.07.2015, this Court took cognizance against him while observing that after his retirement, there is no bar in taking cognizance of the offence under PC Act against him. Vide said order, he (Sh. L.S. Janoti) along with other two accused persons namely Sh. H.C. Gupta (A-6) and Sh. Santosh Bagrodia were summoned for the offences as detailed in order dated 30.01.2015.

2nd Supplementary Final Report Under Section 173(8) CrPC and its conclusion

11. On 27.10.2017, second supplementary final report dated 13.10.2017 under Section 173(8) CrPC was filed in the Court. In addition to the previous two reports i.e. charge-sheet dated 27.03.2014 and first supplementary final police report dated 12.12.2014, some more relevant

facts were revealed during further investigation and on that basis, following additional allegations were leveled:-

- (1) The documents which were collected during investigation of RC No.219 2012 E0008 & RC No.219 2012 E0010 and relevant for this case were taken on record during its further investigation;
- (2) Certain documents relating to the signing of agreement of Joint Venture dated 02.04.2007 signed between AMR and IL&FS IDC were seized and certain additional witnesses relating to the said documents were examined;
- (3) Certain additional witnesses pertaining to the financial transaction of Rs.24.60 Crores between Abhijeet Group Companies and ABPL as well as in relation to purchase of equity shares of M/s JAS Infrastructure & Power Ltd. by ABPL were examined;
- (4) Sh. Abhijeet Jayaswal was examined as a witness regarding the shareholders agreement dated 29.10.2010 entered amongst Sh. Manoj Kumar Jayaswal (A-1), Sh. Abhishek Jayaswal, Sh. Abhijeet Jayaswal, Sh. Vijay Darda (A-2), Sh. Devender Darda (A-3), ABPL, M/s Abhijeet Infrastructure Capital Pvt. Ltd. and M/s JAS Infrastructure & Power Ltd. As per the said agreement, the above mentioned parties agreed to part finance the project, by way of subscribing to the equity shares of M/s JAS Infrastructure & Power Ltd. Further it was mentioned in the said

Shareholders Agreement that M/s Abhijeet Infrastructure Capital Pvt. Ltd., a Abhijeet Group company was to contribute towards the paid up equity of Rs.2,885 Crores while ABPL, a Darda Family company was to contribute towards the paid up equity of Rs.115 Crores from the "Effective Date" i.e. 29.10.2010. However, in the said shareholder agreement, no reference was made of any financial transaction between ABPL and M/s JAS Infrastructure & Power Ltd. prior to the signing of the said agreement; and

(5) Statement of Sh. S.S. Khare, Assistant Vice President, Lokmat Group was recorded to the effect that there was no agreement or MoU signed by Lokmat Group with IL&FS or AMR to develop steel plant in District Yavatmal, Maharashtra.

Framing of Charge

12. In compliance of Section 207 CrPC, copies of charge-sheet and documents annexed therewith were supplied to all the 07 summoned accused persons (i.e. 04 originally summoned accused persons and 03 accused public servants, summoned vide order dated 21.07.2015). Thereafter, arguments on charge were heard.

12.1 Vide detailed order on charge dated 23.07.2019, five accused persons namely Sh. Manoj Kumar Jayaswal [(A-1) (Director of AMR)]; Sh. Vijay Darda [(A-2) (Member of Parliament (Rajya Sabha) and Chairman, Lokmat Group)]; Sh. Devendra Darda [(A-3) (Managing Director of Lokmat Media Pvt. Ltd.)]; AMR (A-4); and Sh. H.C. Gupta

[(A-6) (Then Secretary, Ministry of Coal & Chairman, 35th Screening Committee)] were charged for the offence of criminal conspiracy punishable under Section 120B IPC read with Section 420 IPC and Section 9 & 13(1)(d) PC Act.

12.2 The private 04 accused persons namely Sh. Manoj Kumar Jayaswal, Sh. Vijay Darda, Sh. Devendra Darda and AMR were also charged for the substantive offence punishable under Section 420 IPC. The accused Sh. Vijay Darda was additionally charged for the substantive offence punishable under Section 9 PC Act. Whereas, accused Sh. H.C. Gupta was additionally charged for the offence punishable under Section 13(1)(d) PC Act.

12.3 However, accused Sh. H.C. Gupta (A-6) was discharged for the offence punishable under Section 409 IPC and Section 13(1)(c) PC Act. Further, accused persons namely Sh. Santosh Bagrodia (A-5) (the then Minister of State for Coal) and Sh. L.S. Janoti (A-7) (the then Section Officer, CA-I Section, Ministry of Coal) were discharged for all the offences alleged against them.

12.4 Sh. Santosh Bagrodia (A-5) (the then Minister of State for Coal) and Sh. L.S. Janoti (A-7) (the then Section Officer, CA-I Section, Ministry of Coal) were discharged on the ground that no criminality could be found in their conduct in relation to ascertainment of the fact relating to conditional approval of PMO to the recommendation of 36th Screening Committee in the meeting held on 03.07.2008 qua the Bander Coal Block to AMR. The PMO had given conditional approval to the said recommendation subject to satisfactory progress report of the previous coal blocks allocated to the proposed allocatees.

12.5 In the light of the order on charge, the domain of Ministry of Coal qua the said conditional approval was confined to ascertain the progress report of the previously allocated coal blocks to AMR only and not to its group companies or associate companies. However, due to misconception or wrong understanding of the said conditional approval, the Ministry of Coal based upon the initial note dated 18.08.2008 of Sh. Sewak Paul, Assistant Section Officer, CA-I Section, Ministry of Coal, unnecessarily drifted towards irrelevant realm by unwarrantably initiating an inquiry qua coal blocks allocated to the group companies of AMR and exceeded the mandate of the conditional approval. Admittedly, the AMR had not been previously allocated any coal block. Hence, no further inquiry was warranted in the present case qua the conditional approval of the PMO. The progress report of the coal blocks allocated to the group companies of AMR was irrelevant in relation to the conditional approval of the PMO.

12.6 Therefore, non-furnishing or non-obtaining of complete information regarding the progress report of coal blocks allocated to the group companies of AMR was inconsequential for allocation of Bander Coal Block to it. As per the notes of the public servants including summoned accused public servants in the official file, they correctly expressed their satisfaction that no coal block was previously allocated to AMR before processing it further. The said satisfaction constituted sufficient compliance with the conditional approval granted by the PMO.

12.7 In view thereof, while discharging both the said accused persons, this Court did not find any illegality or culpability in the act of any person including private

individuals or public servants in compliance of conditional approval accorded by the PMO up to the stage of final approval of the impugned allocation pursuant to recommendation of 36th Screening Committee in its meeting held on 03.07.2008.

12.8 In the light of said order on charge, it clarified that in absence of any charge of illegality committed after 03.07.2008 in relation to the allocation of Bander Coal Block to AMR by the officials of Ministry of Coal or any other public servant, the same shall not be considered in the subsequent part of this judgment.

Allegations in the Formal Charge

13. The accused persons have been charged for the following offences:-

(1) They entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of Bander Coal Block, Maharashtra in favour of AMR (A-4) by adopting following illegal means:-

(a) AMR (A-4) made false claim in its application dated 10.01.2007 (D-2) that its group or associate company have not been previously allocated coal block;

(b) In its feedback form (D-33) and presentation (D-10) both dated 07.12.2007, AMR (A-4) falsely claimed it to be SPV of Lokmat Group and IL&FS, IDC;

(c) In the said documents dated 07.12.2007, AMR (A-4) falsely claimed its net worth to be Rs.1,821 Crores by aggregating net

worth of Lokmat Group and IL&FS, IDC (its purposed SPV) in order to show its inflated net worth though its net worth was Rs.1.96 Crores only;

(d) In the said documents dated 07.12.2007, AMR (A-4) falsely claimed about the Detailed Project Report (DPR) of the proposed sponge iron project of 2 MTPA capacity to be established in District Yavatmal, Maharashtra without placing on record any supporting document in that regard;

(e) In the said documents dated 07.12.2007, AMR (A-4) misrepresented that it has been allotted 370 acres of land in District Yavatmal, Maharashtra by MIDC for establishment of its proposed End Use Plant (EUP) of 2 MTPA capacity;

(f) In the said documents dated 07.12.2007, AMR (A-4) further misrepresented that it has tied up with Irrigation Department, Maharashtra for obtaining water from Wardha River for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra;

(g) In the said documents dated 07.12.2007, AMR (A-4) changed its proposed EUP to 2 MTPA capacity at District Yavatmal, Maharashtra vis-a-vis to EUP of 1 MTPA capacity from Village Tarsi, District Nagpur, Maharashtra, as per application form dated 10.01.2007; and

(h) Accused Sh. Devendra Darda (A-3) submitted the said feedback form dated 07.12.2007 falsely claiming himself to be the Director of AMR (A-4).

(2) In furtherance of said criminal conspiracy, the 36th Screening Committee chaired by Sh. H.C. Gupta (A-6) recommended allocation of Bander Coal Block to AMR (A-4) jointly with two other companies for its EUP of 0.3 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra (as mentioned in the application of AMR) though in view of the feedback form and presentation both dated 07.12.2007, the Screening Committee knew that AMR had abandoned/dropped its plan to set up the said EUP, as detailed in the application. Thus, accused Sh. H.C. Gupta (A-6) being Chairman of 36th Screening Committee showed undue favour to AMR (A-4) for recommending allocation of Bander Coal Block in its favour and thereby, abused his official position as public servant without any public interest;

(3) In furtherance of said criminal conspiracy, Sh. H.C. Gupta, Chairman of 36th Screening Committee (A-6) misrepresented to the PMO that the recommendation in favour of AMR (A-4) has been made on the basis of recommendation of Administrative Ministry and concerned State Government knowing fully well that the concerned Government of Maharashtra had recommended AMR for allocation of a captive coal block for its sponge iron plant of 2 MTPA capacity at District

Yavatmal, Maharashtra and not for its proposed EUP of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra

(4) In furtherance of said criminal conspiracy, accused Sh. Vijay Darda (A-2) made various communications to different Government Authorities i.e. Government of Maharashtra, Ministry of Coal, Government of India and Prime Minister of India (having charge of Minister of Coal) on his letter head of Member of Parliament (Rajya Sabha) wherein, all the afore-mentioned misrepresentations in the feedback form dated 07.12.2007 were reiterated so as to unduly influence the Government Authorities with a view to procure allocation of Bander Coal Block in favour of AMR (A-4) for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra knowing very well that no application in that regard was submitted to Ministry of Coal; and

(5) In furtherance of said criminal conspiracy, a sum of Rs.24.60 Crores was paid as a *quid pro quo*/reward/gratification to the accused Sh. Vijay Darda (A-2) by the accused Sh. Manoj Kumar Jayaswal (A-1) for being instrumental in procuring allocation of Bander Coal Block to AMR (A-4) by unduly influencing the Government of Maharashtra and Ministry of Coal in that regard. The said amount was paid by Sh. Manoj Kumar Jayaswal through his group companies i.e. Abhijeet Group of Companies to the accused Sh. Vijay Darda (A-2) through his company ABPL in the garb

of purchase of its shares at unreasonably high price by routing the said amount through 11 Kolkata based companies.

Admission/Denial of Documents

14 Admission/denial of documents was carried out under Section 294 CrPC wherein, total 185 prosecution documents (D-1 to D-185) were put to the accused persons and they admitted certain prosecution documents as per their respective statements under Section 294 CrPC recorded on 05.03.2020. The admitted documents have been marked as Ex.P-1 to Ex.P-131.

Prosecution Evidence

15. In order to prove its case, 44 witnesses were examined by the prosecution and their examination-in-chief is succinctly discussed herein below. All the witnesses were cross examined at length by the Ld. Defence Counsels. For the sake of convenience, witnesses have been categorized in following 10 broad categories (A-J):-

- A. Witnesses from Ministry of Coal
- B. Witnesses from Ministry of Steel
- C. Witnesses from PMO
- D. Witnesses from Irrigation Department, Nagpur, Maharashtra.
- E. Witnesses from MIDC, Maharashtra
- F. Witnesses, who were the Directors/officials of AMR, Abhijeet Group Companies, Lokmat Group and IL&FS Group
- G. Witnesses pertaining to the allegations relating to quid pro quo
- H. Witnesses of preliminary inquiry, investigation and search
- I. Witnesses from banks
- J. Other witnesses

A. Witnesses from Ministry of Coal.

- (1) Sh. B.G. Datta, Deputy Assistant Coal Controller in the Office of Coal Controller, Kolkata (PW-3)
- (2) Sh. V.S. Rana, Under Secretary, CA-I Section, Ministry of Coal (PW-39)
- (3) Sh. Sewak Paul, Dealing Assistant in CA-I Section, Ministry of Coal (PW-40)

B. Witnesses from Ministry of Steel

- (1) Sh. Ram Naresh, Section Officer, CA-I Section, Ministry of Steel (PW-12)
- (2) Sh. Nihar Ranjan Dash Director, Ministry of Steel (PW-43)

C. Witnesses from PMO

- (1) Sh. Sanjay Lohia Director, Prime Minister's Office, New Delhi (PW 14)
- (2) Ms. Vini Mahajan, Director (PW-41)

D. Witness from Irrigation Department, Nagpur, Maharashtra.

- (1) Sh. Kishor Eknathji Warambhe, Assistant Chief Engineer, Office of the Chief Engineer, Irrigation Department, Nagpur (PW-15)

E. Witnesses from MIDC, Maharashtra

- (1) Sh. G.M. Parate was posted as Manager, District Industries Center, Nagpur(PW-21)
- (2) Sh. Vijay Sahadeorao Bhakare was posted as Regional Officer, MIDC, Nagpur (PW-22)
- (3) Sh. Gajanan Wasudevrao Suranje was posted as Regional Officer, MIDC, Amrawati(PW-38)

F. Witnesses, who were the Directors/officials of AMR, Abhijeet Group Companies, Lokmat Group and IL&FS Group

- (1) Sh. B.G. Datta was posted as Deputy Assistant Coal Controller in the Office of Coal Controller, Kolkata (PW-1)
- (2) Sh. Sanjay Dey Company Secretary (PW-2)
- (3) Sh. Hirak Ghosh Company Secretary in M/s Corporate Ispat Alloys Ltd.(PW-4)

- (4) Sh. Rajendra M. Ganatra, Group Director in Abhijeet Group(PW-5)
- (5) Sh.Avinash Dinkar Karajgaonkar, Company Secretary Jayaswal Neco Industries Ltd (PW-6)
- (6) Sh. Bhaskar Subramanian, Sr. Manager with IL&FS Infrastructure Ltd (PW-7)
- (7) Sh. Sanjay Mundley, Sr. Manager, IL&FS, IDC (PW-8)
- (8) Sh. Ankur Ranjan, Sr. Manager in IL&FS (PW-9)
- (9) Sh. Sombhatt Bhardwaj, Manager in Abhijeet Group(PW-10)
- (10) Sh. Rajeev Ranjan Sr. Manager (Accounts) in M/s Corporate Power Ltd.(PW-16)
- (11) Sh. Sanjay Shambhu Dayal Khare is Vice President with M/s Lokmat Media Pvt. Ltd.(PW-18)

G. Witnesses pertaining to the allegations relating to *quid pro quo* :

- (1) Sh. Ajay Kumar Lahoti (in respect of companies M/s Bicharshil Traders Ltd. and M/s Lakeview Energy Ltd.)(PW-24)
- (2) Sh. Arihant Jain (qua M/s Ricon Infrastructure Ltd.) (PW-25)
- (3) Sh.Akshay Kumar Parida (in relation to M/s Brijwasi Distributors Pvt. Ltd. and M/s Abhijeet Infrastructure Pvt. Ltd.) (PW-26)
- (4) Sh. Dhruva Narayan Jha (qua M/s Bullpower Vyaapar Ltd.) (PW-27)
- (5) Sh.Goutam Karmakar (qua M/s Bicharshil Traders Ltd.)(PW-28)
- (6) Sh. Arun Nath (qua M/s Silicon Valley Infotech Ltd.) (PW-29)
- (7) Sh. Gautam Saha (qua M/s Abhijeet Projects Ltd. and M/s Silicon Valley Infotech Ltd.)(PW-30)
- (8) Sh.Kamal Kanti Bakhandi (qua M/s ATN International Ltd.) (PW-31)
- (9) Sh. Prabhat Jain (qua M/s Rangbarshi Projects Ltd.) (PW-32)
- (10) Sh. Prakash Chandra Shukla (qua M/s Rodhan Vanijya Pvt. Ltd.) (PW-33)
- (11) Sh. Ramen Chatterjee (qua M/s Eclat Ventures Pvt.Ltd.) (PW-34)
- (12) Sh.Susanta Sengupta [qua M/s Abhijeet Ventures Ltd. (previously known as M/s Parichay Sales Pvt. Ltd.)] (PW-35)
- (13) Sh. Sandeep Dey (qua M/s Salt Lake Energy Ltd. and M/s Rangbarshi Projects Ltd.) (PW-36)

- (14) Sh. Tanmoy Ghosh (qua M/s Rodhan Vanijya Pvt. Ltd. (PW-37)

H. Witnesses of preliminary inquiry, investigation and search

- (1) Sh. S.P. Rana, Deputy S.P., Economic Offence-III, CBI(PW-11)
- (2) Sh. Madhusudan Manoharrao Shembekar, Assistant Manager in United India Insurance Company Ltd., Nagpur(PW-17)
- (3) Sh. P.K. Jha Deputy S.P. in CBI, EO-II Branch, Delhi (PW-23)
- (4) Sh. Himanshu Bahuguna /IO (PW-42)
- (5) Sh. K.L. Moses Inspector in EO-II, CBI(PW-44)

I. Witnesses from banks

- (1) Sh. Bidhan Bhattacharjee, Manager, Canara Bank, Princep Street Branch, Kolkata (PW-19)
- (2) Sh. Gautam Datta, Assistant General Manager, Canara Bank, Princep Street Branch, Kolkata(PW-20)

J. Other witness

- (1) Sh. Aditya Singh Pathania, Assistant Manager (Security) with Interglobe Aviation Ltd. (Indigo) (PW-13)

Witnesses from Ministry of Coal

16.1.1 **PW-3 Sh. B.G. Datta** was posted as Deputy Assistant Coal Controller in the Office of Coal Controller, Kolkata from the year 2013 to January, 2015. He deposed that on 12.06.2013, he had handed over certain documents relating to M/s Abhijeet Infrastructure Ltd. and M/s Corporate Ispat Alloy Ltd., as that were available in his office, to the IO of CBI. The same were seized by the IO vide production-cum-seizure memo dated 12.06.2013 Ex.PW-3/A (D-148). The details of the seized documents are mentioned in the said memo. The said documents were relating to the status of progress made by the said companies in the coal blocks earlier allocated to them.

16.2.1 **PW-39 Sh. V.S. Rana** was posted as Under Secretary, CA-I Section, Ministry of Coal between September, 2005 till November, 2011. He deposed that during the period 2006-08, CA-I Section, Ministry of Coal was dealing with allocation of captive coal blocks matters to private parties. In his deposition, he has explained the procedure adopted by Ministry of Coal for identification of captive coal blocks, the procedure adopted for the recommendation of applicant companies by the Screening Committee, chaired by Secretary (Coal) Sh. H.C. Gupta (A-6) and the procedure adopted for approval of the said recommendation by the Minister of Coal who was the Hon'ble Prime Minister at that time.

16.2.2 PW-39 stated that in the year 2010, he had handed over certain documents to the CBI in relation to the investigation of coal block allocation matters. He proved the copy of Office Memorandum dated 27.07.2010 (D-172) bearing his signatures and the same is Ex.P-157/PW-39. He also exhibited photocopies of 04 files i.e. available in the present case as D-173 to D-176 as Ex.P-158/PW-39 (Colly), Ex.P-159/PW-39 (Colly), Ex.P-160/PW-39 (Colly) and Ex.P-161/PW-39 (Colly) respectively. He proved the advertisement related to the present coal block in November, 2006, along with guidelines as is available from page 73 to 94 in file (D-184) and the same is collectively Ex.P-166/PW-39 (Colly).

16.2.3 PW-39 deposed further that the applications for allocation of coal blocks for non-power sector were taken up for consideration during 36th Screening Committee Meetings. The Chairman of Screening Committee was Secretary (Coal) Sh. H.C. Gupta (A-6) and Joint

Secretary (Coal) was the Member Convener of the Screening Committee. PW-39 identified the application of AMR (A-4) in D-2, already Ex.PW-1/A (Colly). He deposed that as per the advertisement and various other instructions/guidelines issued with respect to processing of applications, the Ministry of Coal was to check the applications so received for their eligibility and completeness and only thereafter, the applications were to be sent to Administrative Ministries/State Governments concerned for their evaluation and recommendations. He deposed that vide letter dated 19/28.02.2007 addressed to Chief Secretary, Government of Maharashtra (available at page No.167 in D-184), one set of the application relating to Government of Maharashtra were sent. The said letter is Ex.P-174/PW-39. He further deposed that vide letter 19.02.2007/12.03.2007 (as available at page No.169 in D-185), one set of the application was sent to Ministry of Steel. The said letter is Ex.P-177/PW-39 (Colly). The application of AMR (A-4) for Bander Coal Block was also sent along with afore-mentioned letters to Government of Maharashtra and Ministry of Steel.

16.2.4 PW-39 deposed that later, views/comments/ recommendations were received from Government of Maharashtra and Ministry of Steel with respect to various applications as sent to them. The Office Memorandum dated 06.12.2007 (as available on page Nos.830-835 in D-174), containing views of Ministry of Steel along with Annexures-I and II was received from Sh. N.R. Dash, Director, Ministry of Steel. The same is Ex.P-178/PW-39. Subsequently, vide Office Memorandum dated 14.12.2007, issued under the signatures of Sh. N.R. Dash,

Director, Ministry of Steel, another annexure titled 'guidelines to be followed for the consideration of allotment of coal block as framed by Ministry of Steel for their internal use' was also received. The copy of the same is available at page 288-290 in file D-173 and it is Ex.P-179/PW-39 (Colly). He further deposed that from State Government of Maharashtra, letter dated 27.11.2007 (available at page 207 in D-173) was received qua recommendations in favour of different applicant companies with respect to allocation of various coal blocks and the same is Ex.P-181/PW-39.

16.2.5 PW-39 further deposed that the 36th Screening Committee meetings were held on 07/08.12.2007 and on 07/08.02.2008 and the final meeting was on 03.07.2008. He testified that one feedback form was also uploaded on the website of Ministry of Coal and all the applicant companies were directed that in the forthcoming Screening Committee meeting not only they shall appear for making presentation but shall also submit filled up feedback forms after downloading the format thereof from the website of Ministry of Coal. They were also directed to bring 25 copies of said filled up feedback form at the time of presentation. The purpose of seeking information in the feedback form was to obtain latest status/stage of preparedness of the company with respect to their EUP as from the time when the applications were received considerable time had elapsed. He identified the format feedback form (available at page 111 to 112 in D-173) and stated that it was uploaded on the website of Ministry of Coal. The copy of format of feedback form is Ex.P-182/PW-39.

16.2.6 The schedule as per which various applicant companies were to make presentations in the Screening Committee was also uploaded on the website of Ministry of Coal. During the course of presentation to be made in the Screening Committee meetings, the representatives of various applicant companies used to come and before entering the meeting hall, they used to sign the attendance sheet kept outside the hall and also used to hand over one copy of the filled up feedback form to Ministry of Coal officials present there. After entering inside the meeting hall, the representatives used to make audio/video presentation as may be available with them or used to simply hand over the hard copy of their presentation only beside also circulating one copy of the feedback form to each of the Screening Committee members. The Screening Committee members also used to sign on an attendance sheet. He further deposed that the final meeting held on 03.07.2008, the Screening Committee arrived at the decision in respect of coal block recommendation i.e. which coal block is to be recommended in favour of which company.

16.2.7 PW-39 further deposed that in the first three meetings of the Screening Committee as held on 07/08.12.2007 and 07.02.2008, the Ministry of Coal had prepared an agenda based on the information supplied by applicant companies in their applications as submitted in the prescribed format and the said agenda was circulated for information to all members during the course of Screening Committee. However, in the meeting held on 03.07.2008, no document was supplied by Ministry of Coal to the members of the Screening Committee. He deposed that in

the meeting held on 03.07.2007, recommendation sheets as per the decision of the Screening Committee were accordingly prepared and same were signed by the members of the Screening Committee.

16.2.8 PW-39 proved the attendance sheet of the members of the Screening Committee in its meeting held on 08.12.2007 (available at page 218-219 in D-173) as Ex.P-189/PW-39 (Colly). He also proved attendance sheet of the representatives of the companies who attended the said meeting held on 07.12.2007, already exhibited as Ex.PW-1/G (as available from page 221 to 225 in D-173). He identified the attendance sheet of members of Screening Committee (available at page 460 in file D-174) prepared in the meeting held on 03.07.2008. The same is Ex.P-193/PW-39. He identified the recommendation sheets (available from page 714 to 720 in file D-174) to be the recommendation sheets prepared during the course of Screening Committee meeting held on 03.07.2008. As per the said recommendation sheets, the Bander Coal Block was recommended for allocation to 1. M/s AMR Iron & Steel Pvt. Ltd. 2. M/s Century Textiles & Indrajit Sabarwal. Ltd. and 3. M/s J.K. Cement Ltd. The same is Ex.P-194/PW-39 (Colly).

16.2.9 PW-39 further deposed that subsequently, in the Ministry of Coal, minutes of the meeting were prepared on the guidance and directions of Joint Secretary Sh. K.S Kropcha and Sh. K.C Samria Director, CA-I Section. The said minutes were thereafter put up for approval beside proposal for allocation of coal block to be sought from Minister, In-Charge. A detailed note dated 10.07.2008 bearing signatures of Sh. R.N. Singh at Point-A was prepared in the Section in this regard, which was finally put

up before Secretary (Coal). The said note runs from page 36 to 43, in note sheet pages D-176 and the same is Ex.P-195/PW-39 (Colly).

16.2.10 He stated further that vide another detailed typed note running from note sheet (available at page 44 to 45) of Sh. H.C Gupta (A-6) dated 14.07.2008, the file was marked to Minister of State for Coal. He also proved the minutes of the 36th Screening Committee meeting (page 872 to 928 in file D-175) as Ex.P-196/PW-39. Thereafter, he deposed regarding the details of conditional approval received from the PMO (in capacity as Minister of Coal) and pursuant thereto, the proceedings that were conducted in Ministry of Coal.

16.2.11 PW-39 also proved the relevant documents relating to the proceedings conducted in the Ministry of Coal after the above conditional approval from PMO including the notes in the files of Ministry of Coal prepared by Sh. Sewak Paul, Dealing Assistant, CA-I Section, Ministry of Coal dated 26.07.2008 & 18.08.2008; notes of Sh. H.C. Gupta (A-6), Secretary (Coal) dated 25.08.2008 & 03.09.2008; minutes of meeting held in the Chambers of Minister of State for Coal with the prospective allottees including AMR (A-4) on 18.09.2008, notes of Sh. L.S. Janoti, Section Officer, CA-I Section, Ministry of Coal dated 10.10.2008 & 25.11.2008; note of Sh. H.C. Gupta (A-6), Secretary (Coal) dated 25.11.2008; note of Sh. Ashish Gupta, Director, PMO dated 28.11.2008; and offer letter dated 23.12.2008 addressed to the AMR (A-4) and two other companies by Ministry of Coal for joint allocation of Bander Coal Block. The said offer letter is Ex.P-202/PW-40 (D-31 page 122).

16.2.12 PW-39 also proved the relevant notes in the file of Ministry of Coal regarding the proceedings conducted after issuance of offer letter dated 23.12.2008 till issuance of final allocation letter dated 29.05.2009 of Bander Coal Block jointly to AMR (A-4) and two other companies by Ministry of Coal for the EUP of AMR with capacity of 0.3 MTPA at Village Tarsi, District Nagpur, Maharashtra. The said allocation letter is Ex.P-215/PW-40 (D-188 page 84).

16.2.13 In his cross-examination on behalf of A-1 to A-4, PW-39 deposed that he did not know who all were involved in actual drafting of the present advertisement and guidelines. He deposed that Ministry of Coal had filed a counter-affidavit dated 07.11.2008 in a writ petition before Hon'ble High Court of Delhi filed by M/s Prakash Industries Ltd. against Union of India & Ors. He deposed that he had filed the said affidavit in his official capacity on behalf of Union of India. The said affidavit is Ex.P-227/PW-39. He admitted that in its Para No.15, it was stated that Government had acted and made allocations as per the guidelines. He volunteered that all the facts as were stated in it were in accordance with the approval accorded by Union of India. He admitted that he filed another counter-affidavit dated 16.07.2009 before Hon'ble Delhi High Court in another writ petition of M/s Prakash Industries Ltd. Vs. Union of India & Ors. and its copies are Ex.P-228/PW-39. He admitted that in the reply to Para Nos.9 & 10 of the writ petition the following facts were mentioned in the said counter-affidavit:-

".....Such representations from various quarters are of routine nature and have nothing to do with

the selection and recommendations procedure of the Screening Committee. Such letters received are not a part of the examination and scrutiny of the applications including the applications made by Respondent No. 4 nor these are taken into consideration during any stage and therefore, do not have any currency during the selection procedure”.

16.2.14 In his further cross-examination on behalf of A-1 to A-4, PW-39 deposed that the facts contained in the said affidavits were correct as contained in the relevant files. He deposed that no records were maintained of the documents submitted by the applicant companies during presentation before the Screening Committee. The feedback form was given to Ministry of Coal officials while making the entry for attending the Screening Committee meetings and copies of the feedback forms were given to the Screening Committee members during the Screening Committee meeting. No register was being maintained for recording the receipt of feedback form. All the feedback forms were kept in a folder. No such folder has been shown to him in which the various feedback forms were kept. He volunteered that at the time of making allocation of coal blocks, the feedback forms of successful company whichever were available, were kept in its file. He further admitted it to be correct that none of his senior officer had asked him to extend any favour to any applicant company including AMR (A-4). Sh. Manoj Kumar Jayaswal (A-1) did not approach him for seeking any favour in the instant case. He deposes that as far as he remembers, during investigation, the IO did not seek any clarification from him as to the meaning, purport or intent of the information sought in Column Nos.29 and 30 (dealing with “Earlier Allocation of Blocks – to applicant company, to group or associated company”) of the

application form. He deposed that he did not come across any document which had specified the intent/meaning of various columns in the application.

16.2.15 In his cross-examination on behalf of A-6, PW-39 testified that it was correct that Section was the lowest functional unit in a Ministry and it was headed by a Section Officer. Under Secretary, Deputy Secretary/Director, Joint Secretary, Additional Secretary, Special Secretary and Secretary are supervisory officers, who supervise the work of various sections in a Ministry. The immediate supervisory officer of a section is the Section Officer. The immediate supervisory officer of a Section Officer is the Under Secretary. He deposed that the agenda for the Screening Committee was prepared by the Section under his supervision. While preparing the agenda, he dealt with the application of AMR (A-4). The information given in the applications in prescribed proforma was compiled in the agenda which consisted of applications of applicant companies minus their annexures.

16.2.16 It was further deposed by PW-39 in his cross-examination on behalf of A-4 that he had checked the agenda before placing the same in the Screening Committee. By 'placing before Screening Committee' means every member of the Screening Committee was given a copy of the agenda. He admitted that copies of the agenda were given to the Members at the time of presentation made by the applicant companies. The feedback forms were not placed in any file in Ministry of Coal. He volunteered that they were in a separate folder. He deposed that he did not remember having received charts/compilations from CMPDIL in Ministry of Coal during the coal block allocation process.

He deposed that as per his understanding, a company which was allocated coal block for captive purposes, could not have mined the coal without establishing the EUP. As per the proforma of the application, the applicant company had to give information either about existing EUP or proposed EUP. The recommendations of Screening Committee were only recommendatory in nature and the final decision had to be taken by the competent authority i.e. Minister of Coal. He admitted that the following decision was taken in the 18th Screening Committee Meeting:-

"(ii) The Administrative Ministries were requested to appraise the projects from the point of view of the genuineness of the applicant, techno-economic viability of the project and the state of preparedness/progress in the project while indicating the quantity and quality of coal requirement of the project and recommending allocation of captive block to the applicant. In case there were more than one applicant for the same block the Administrative Ministry should rank them based on the project appraisal and the past/track record of the applicant without necessarily naming the block to be allotted. This would facilitate the Screening Committee in allotting a suitable block to the applicant more objectively."

16.2.17 In his further cross-examination on behalf of A-6, PW-39 admitted that the task of verifying if the information given by the applicant companies is genuine or not was to be done by the Administrative Ministry and the State Governments. He admitted that it appears that the database was shared with all the members of the 36th Screening Committee. He deposed that the application form (except the annexures) and the feedback form of AMR (A-4) were available with the members of the Screening Committee meeting. He admitted that it may be correct that Sh. H.C. Gupta (A-6) may have retired on 30.11.2008. He

admitted that the proposal for issuance of allocation letter in favour of AMR was put up after his retirement and during the tenure of Sh. C. Balakrishnan.

16.3.1 **PW-40 Sh. Sewak Paul** was Dealing Assistant in CA-I Section, Ministry of Coal in the year 2008. In his deposition he has detailed about the proceedings that took place in Ministry of Coal post recommendation of Bander Coal Block to AMR (A-4) by the 36th Screening Committee in its meeting held on 23.07.2008. He deposed about the note dated 10.07.2008 prepared by him in the file whereby minutes of 36th Screening Committee were put up before his senior officers in hierarchy for approval. Thereafter, the said note was approved by Sh. H.C. Gupta (A-6), Secretary (Coal) on 14.07.2008 and the file was sent to Minister of State for Coal for the approval. He deposed about the movement of the file to the Hon'ble Prime Minister as Minister of Coal and its return with conditional approval vide note dated 21.07.2008 of the PMO.

16.3.2 PW-40 also detailed about the subsequent proceedings conducted by him on the said file including preparation of note dated 18.08.2008, which was ultimately approved by Sh. H.C. Gupta (A-6), Secretary (Coal) on 25.08.2008 for calling of meeting of the representatives of prospective allocattee companies in the Office of Minister of State for Coal. He identified the signatures of Sh. L.S. Janoti, Section Officer, CA-I Section, Ministry of Coal on the draft minutes prepared by Sh. L.S. Janoti in the meeting held in the Chamber of Minister of State for Coal on 19.09.2008. He identified the signatures of Sh. L.S. Janoti on his note dated 25.11.2008 and its approval by Sh. H.C.

Gupta (A-6), Secretary (Coal) vide his note dated 28.11.2008.

16.3.3 PW-40 also gave the details of the proceedings that took place from issuance of offer/option letter dated 23.12.2008 to the AMR (A-4) jointly with two other companies for the allocation of Bander Coal Block for its EUP having capacity of 0.3 MTPA at Village Tarsi, District Nagpur, Maharashtra to issuance of final allotment letter dated 29.05.2009. He also proved the relevant connected documents of the said proceedings.

16.3.4 In his cross-examination on behalf of A-6, PW-40 admitted that he was never asked by any senior officer to make any misleading or incorrect note by either concealing relevant information or by giving wrong information. He was never given any direction by Sh. H.C. Gupta (A-6) while he was Secretary (Coal) as to how to put a particular note. He deposed that A-6 never expressed any displeasure to him for drafting the note dated 18.08.2008. He deposed that feedback forms never came to his notice till initiation of investigation in this case by the CBI. Feedback forms might have been kept in any other folder not known to him.

Witnesses from Ministry of Steel

17.1.1 **PW-12 Sh. Ram Naresh** was posted as Section Officer, CA-I Section, Ministry of Steel from June, 2009 till October, 2014. During said period, he handed over certain documents with respect to coal block allocation matters to CBI Officers and in regard to the said proceedings, he submitted his affidavit dated 21.08.2020 Ex.PW-12/A (Colly). In his cross-examination on behalf of

A-1 to A-4, PW-12 deposed that Ex.PW-12/A (Colly) was drafted by CBI Office and it was provided to him for signatures by Sh. Himanshu Bahuguna, Deputy S.P.

17.2.1 **PW-43 Sh. Nihar Ranjan Dash** was the Director, Ministry of Steel in the year 2006-2011. He deposed that during the 36th Screening Committee consideration regarding coal blocks, Sh. U.P. Singh had joined as Joint Secretary, Ministry of Steel. During his tenure, applications pertaining to 36th Screening Committee i.e. applications qua non-power coal blocks were dealt with in Ministry of Steel by him. Applications qua steel sector projects only were received in February/March, 2007 from Ministry of Coal for the views and comments of Ministry of Steel. In the matter of steel projects, Ministry of Steel was the Administrative Ministry. He deposed that the minimum capacity of the EUP for coking coal block was fixed at 0.5 MTPA and for non-coking coal blocks it was fixed at 0.3 MTPA both for existing as well as proposed capacity to be achieved by December, 2010. Accordingly, they examined the various applications so received and thereafter, recommendations were sent to Ministry of Coal under his signatures.

17.2.2 PW-43 identified his signatures on the Office Memorandum dated 06.12.2007, Ex.P-178/PW-39 (Colly) (D-174 page 830-835). He also identified his signatures on the Office Memorandum dated 14.12.2007 Ex.P-179/PW-39(colly) (D173 page 288-290) containing an annexure detailing the guidelines on categorization. On being shown, D-174, Page No.840 Annexure-II Srl. No.8, which refers to recommendations with regard to M/s AMR Iron and Steel Private Limited (A-4), Tarsi District, Nagpur,

Maharashtra, he deposed that the said the company was kept in Category-VI. This category was for those companies having no existing capacity but proposed eligible capacity to be commissioned by December, 2010. It was also noted that the proposed capacity of the project as per the details of application format (in Column No.12 i.e. Proposed Capacity) would be 1 MTPA by June, 2009, 2x500 TPD by 2008-09, 2x500 TPD by 2010-11 and 2x500 TPD by 2012-13. Therefore, the total capacity of AMR as per Ministry of Steel's norms to be commissioned before December, 2010 was assessed to be 0.3 MTPA.

17.2.3 It was further deposed by PW-43 that though the seven categories as were mentioned in Annexure-III to the O.M. dated 14.12.2007 were indicative in nature but certainly the companies falling in higher categories were given a preference as compared to the companies falling in lower categories. He deposed that he was present in the last meeting of Screening Committee held on 03.07.2008 where the final recommendations for the Screening Committee were made. He identified his signatures and signatures of Sh. U.P. Singh in the attendance sheet of 36th Screening Committee of the meeting held on 07.12.2007 and the same is Ex.P-189/PW-39 (D-173 page 218-219) Similarly, he identified his signatures and signatures of Sh. U.P. Singh in the attendance sheet of 36th Screening Committee of the meeting held on 03.07.2008. The same is Ex.P-193/PW-39 (D-174 page 460).

17.2.4 PW-43 also identified signatures of Sh. U.P. Singh, Joint Secretary in the recommendation sheet dated 03.07.2008 containing the recommendations of the

36th Screening Committee in respect of coal blocks earmarked for non-power sector including Bander Coal Block in favour of AMR (A-4) jointly with M/s Century Textile & Industries Ltd. and M/s J.K. Cement Ltd. The said recommendation sheet is Ex.P-194/PW-39. He has deposed that since he was not member of the Screening Committee, his signatures were not taken on the recommendation sheet dated 03.07.2008. He had accompanied the Joint Secretary, Ministry of Steel who was member of the Screening Committee. He has deposed that during the initial meetings of the 36th Screening Committee, a compilation chart detailing the details of information contained in the applications were circulated to the Screening Committee members. There was never any *inter se* seniority list circulated by the Ministry of Coal. State Government recommendations were never provided to the Ministry of Steel either officially or informally.

17.2.5 In his cross-examination on behalf of A-6, PW-43 admitted that no specific recommendation in respect of any particular company or in respect of any particular block under consideration by the 36th Screening Committee was sent to Ministry of Coal by O.M. dated 06.12.2007. He admitted that the companies which were not found eligible by the Ministry of Steel as per the guidelines approved by the Secretary (Steel), were not given any category by Ministry of Steel in the Annexures sent with O.M. dated 06.12.2007.

17.2.6 In his cross-examination on behalf of A-1 and A-4, PW-43 deposed that in the O.M. dated 06.12.2007 Ex.P-178/PW-39 (Colly) (page 830-835 in D-174), it was stated that 696 complete applications were received by this

Ministry which were examined and the detailed status and categorization in respect of these applications is available at Annexure-I (coking coal) and Annexure-II (non-coking coal) in the enclosure. In response to the query of the Court, he clarified that applicant companies had applied for more than one block and as such all the companies are covered in Annexures-I and II. Sh. Vijay Darda (A-2) and Sh. Devendra Darda (A-3) preferred not to cross-examine the said witness.

Witnesses from PMO

18.1.1 **PW-14 Sh. Sanjay Lohia** was posted as Director in Prime Minister's Office, New Delhi in the years 2011-2013. During his said tenure, on the request of CBI, he handed over certain relevant documents of the Prime Minister's Office to it. He gave details of the proceedings in the form of his affidavit dated 13.08.2020 Ex.P-7/PW-14 (Colly).

18.1.2 In his cross-examination on behalf of A-1 to A-4, PW-14 deposed that the files were provided by him to the CBI pursuant to the request letter dated 13.05.2013 sent by CBI to the JS (Coal) which in turn forwarded it to PMO. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

18.2.1 **PW-41 Ms. Vini Mahajan** was the Director in Prime Minister's Office in the year 2005 and became Joint Secretary in the year 2007. She remained in the said office till the year 2012. She deposed that the Hon'ble Prime Minister, Dr. Manmohan Singh was holding the charge of Minister of Coal in the year 2007. Sh. T.K.A. Nair was the Principal Secretary to Hon'ble Prime Minister and

Sh. Ashish Gupta was Director in PMO in the year 2007. She deposed that an Energy Co-ordination Committee was set up by Prime Minister in PMO and was chaired by him only. On seeing an Office Memorandum dated 25.07.2006 of the office of PMO along with its enclosures Ex.P-170/PW-39 (D-184, from page 38 to 40), she deposed that vide said office memorandum, copy of the minutes of 7th meeting of the Energy Co-ordination Committee as was held on 19.07.2006 under the Chairmanship of the Prime minister were sent for information and necessary action to various ministers and other officers as mentioned therein.

18.2.2 As per the version of PW-41, during the period 2006-08, the issue of allocation of various coal blocks situated across the country to various companies both in the private as well as government sector used to be dealt with by an inter-ministerial body called Screening Committee as constituted in Ministry of Coal. The said Screening Committee comprised of representatives from various state governments, administrative ministries and other necessary departments. After the finalization of the recommendations of the Screening Committee same used to be sent to Minister In-Charge for Coal for approval. After approval by Minister In-Charge necessary allocation letters used to be issued by Ministry of Coal. Secretary Coal was the Chairman of the Screening Committee with Joint Secretary Coal as the Member Convener.

18.2.3 PW-41 proved the note dated 16.07.2008 [running from page 52 to 58 in file of the office of PMO (D-19)] bearing signatures of Sh. Ashish Gupta on the file received from Ministry of Coal regarding allocation of 23 coal blocks for specified end-users other than power, which

was processed in PMO. She deposed that the said note was approved by the Hon'ble Prime Minister on 17.07.2008. The file thereafter moved downwards. She has proved the note sheet (from page 1 to 72) in the said file as Ex.P-218/PW-41(Colly)(D-19). She deposed that vide Office Memorandum dated 21.07.2008, the approval of PM as Minister In-Charge subject to various conditions as specified therein was conveyed by Sh. Ashish Gupta, Director PMO to Secretary, Ministry of Coal. The correspondence pages from 1-118 are collectively exhibited as Ex.P-219/PW-41 (Colly) (D-19).

18.2.4 PW-41 further deposed that in her note dated 16.07.2008, she had recorded that Principal Secretary discussed the matter on 16.07.2008 itself with Secretary (Coal) and Secretary (Steel) and they confirmed that the proposal was based strictly on merits of the applicants, including the recommendations of the State Governments where the blocks were located. On being shown file D-20 i.e. file of PMO Ex.P-5/PW-14 (Colly), she stated that in this file, there was one letter dated Nil (available at page 1) which was received from Sh. Vijay Darda (A-2), Member of Parliament, Rajya Sabha in PMO on 28.10.2007. She identified the initials of Dr. Manmohan Singh, the then Hon'ble PM, Sh. T.K.A. Nair the then Principal Secretary and her initials on this letter. The said letter is Ex.P-220/PW-41 (D-20). She deposed that Sh. Ashish Gupta, Director, PMO vide his letter dated 13.12.2007 forwarded said letter of Sh. Vijay Darda (A-2) to Secretary, Ministry of Coal.

18.2.5 PW-41 deposed similarly in respect of another letter dated 04.02.2008 (available at page 1-2) (along with annexures 3-9) of Sh. Vijay Darda (A-2), Member of Parliament, Rajya Sabha on his letterhead. On

being shown file D-22 i.e. file of PMO Ex.P-6/PW-14 (Colly), she deposed that there was a FAX received from Sh. Vijay Darda on 18.03.2008 in PMO. It bears the signatures of Sh. T.K.A. Nair and her initials. The FAX copy is Ex.P-223/PW-41. She also proved the note dated 08.12.2008 (available on page 67/n-68/n in file D-19) put up by Sh. Ashish Gupta, Director, PMO on the file processed after it was again received from Ministry of Coal. She has deposed that she endorsed it as "*The Ministry's proposal at Para 8 is in order and may kindly be approved. The allotment is already approved at level of PM; he need not be bothered again.*". The reason for not bothering the Hon'ble Prime Minister as recorded in the note itself was that the allotment had already been approved at the level of the Hon'ble Prime Minister and this matter was a matter which could be decided at the level of Principal Secretary to Hon'ble Prime Minister as per the normal course of working.

18.2.6 In her cross-examination on behalf of A-6, PW-41 admitted that the Ministry of Coal (MoC) while putting up the recommendations of the Screening Committee for approval of the Hon'ble Prime Minister as Minister of Coal used to send the concerned and relevant files for examination in the PMO. She further admitted that the PMO at various levels used to examine the relevant files/documents sent by MoC along with the recommendations of the Screening Committee and the observations made by the Minister of State for Coal before putting it up to the Hon'ble Prime Minister. She further admitted that PMO used to examine the recommendations made by the Screening Committee in light of the

advertisement and guidelines published by MoC governing the allocation of coal block.

18.2.7 She (PW-41) admitted in her cross-examination that the recommendations of the concerned State Governments or the Administrative Ministries were one of the many factors prescribed in MoC guidelines for determination of *inter se* priority and these recommendations were not binding on the Screening Committee. She further admitted that the recommendations of the Screening Committee were not binding on the Minister of Coal and he could differ from the recommendations of the Screening Committee. She also admitted that as per the MoC guidelines, the Screening Committee was not bound to recommend a company which was recommended both by the concerned State Government and the Administrative Ministry. She deposed that usually, a Committee where no special majority was provided for taking its decision, used to decide by a simple majority.

18.2.8 In her further cross-examination on behalf of A-6, PW-41 admitted that it is the duty of the Chairperson of a Committee to sum up sense/view taken by the Committee and announce the decision taken by the Committee. She admitted that such announcement of the decision by the Chairman did not mean that the decision was taken by him individually. She further admitted that when the Members of the Screening Committee had appended their signatures on the recommendation sheets, it was taken by the PMO that they had agreed to the decision taken by the Screening Committee.

18.2.9 PW-41 further admitted that no Member of Screening Committee or their respective Ministry/Organization/State Government complained to the PMO or MoC that their signatures on the recommendation sheets were obtained under any kind of duress, coercion or any other kind of pressure by Ministry of Coal officials. She admitted that if any Member in the Screening Committee representing a Government of India Department did not agree with the decision taken by the Screening Committee then the matter needed to be decided by the Cabinet. She volunteered that no such disagreement was brought before the Cabinet during her tenure in the PMO. PW-4 deposed further that before Sh. Gupta joined Ministry of Coal as Secretary, the procedure being followed by Ministry of Coal was that the recommendations of the Screening Committee were not sent to Minister of Coal for approval and were approved by the Secretary himself.

18.2.10 It is further submitted by PW-41 that after Sh. Gupta joined as Secretary, Ministry of Coal he had started seeking approval of the Minister of Coal to the recommendations of Screening Committee. She deposed that the purpose of policy of allocation of coal blocks to private parties for captive mining in Power, Steel and Cement Sectors was introduced to improve the availability of coal to private/public sectors entities dealing with the said sectors. She admitted that no complaint was received in PMO from any Ministry/Government represented in the Screening Committee stating that due to non-giving of *inter se* priority chart by Ministry of Coal, the recommendations of the Screening Committee were flawed.

18.2.11 It was further admitted by PW-41 that as per practice, it was the responsibility of State and the Administrative Ministry to verify/cross-check the data provided by the applicant companies seeking allocation of coal blocks. She deposed further that the minutes of the Screening Committee meeting, applications of the applicant companies in whose favour recommendations were made and recommendations of State Governments and Administrative Ministries were part of Ministry of Coal Files which were sent to PMO seeking approval of the Hon'ble Prime Minister to the recommendations of the Screening Committee. She deposed that it was implicit from the minutes that no objection was raised by the Secretary Steel with respect to allocation in favour of AMR.

18.2.12 In her cross-examination on behalf of A-1 to A-4, PW-41 was shown D-19, page 11, Ex.P-4/PW14 (Colly), where with regard to M/s JSPL and M/s Gagan Sponge Pvt. Ltd. having the same ownership, the note made by Sh. Ashish Gupta, Director, PMO quotes the comments of Ministry of State (Coal) *"If common ownership is a disqualification for allocation of coal to different companies, CEA/Ministry of Power should not have recommended the proposals of Sterlite Energy Limited and Vedanta Alumina Limited, both belonging to same group, for allocation of coal blocks as they have done. Each applicant is a separate corporate legal entity irrespective of ownership."*

Witness from Irrigation Department, Nagpur, Maharashtra.

19.1.1 **PW-15 Sh. Kishor Eknathji Warambhe** was posted as Assistant Chief Engineer in the Office of the Chief Engineer, Irrigation Department, Nagpur from the year

2006 to 30.06.2010. He identified signatures of Sh. M.I. Sheikh, Chief Engineer and Sh. Chitley, Assistant Engineer on letter dated 03.12.2007 addressed to AMR (A-4) and the same is Ex.P-11/PW-15 (D-24 page 12). He deposed that AMR had made a demand of 23.65 Million Cubic Meter (MCM) of water per year for proposed 2 MTPA Integrated Steel Plant in District Yavatmal, Maharashtra. The said request from AMR was received vide letter dated 26.11.2007 Ex.P-12/PW-15 (D-24 page 7). He deposed that the demand of the AMR was from Wardha River which was a seasonal river and post monsoon, the company would have required to make own storing arrangement for water. For this, the AMR was required to submit the proposal for water availability certificate which was to be scrutinized by the Executive Engineer and thereafter, it was to be sent to Chief Engineer, Nasik for approval. He deposed that letter dated 03.12.2007 Ex.P-10/PW-15 (D-24 page 13) was not final permission for water availability certificate. Final permission for want of water availability certificate was not given as no such proposal for water availability was ever received from the applicant company.

19.1.2 In his cross-examination on behalf of A-1 to A-4, PW-15 deposed that as per note of Sh. Chitley, Assistant Engineer Ex.P-9/PW-15 in the file of the Irrigation Department, the location of the plant of the company was near location of M/s JLD Yavatmal Energy Ltd. M/s JLD was given permission to draw water to the tune of 43.80 MCM. He deposed that as per the said note, M/s JLD had shifted to somewhere else and therefore, it was inquired by the Chief Engineer whether the water that was to be provided to M/s JLD can be supplied to AMR (A-4). He deposed that only

after the said note and discussion with the Chief Engineer, letter dated 03.12.2007 was issued to AMR. He deposed that as per the translation of letter dated 07.11.2007 Ex. P-15/PW-15 (page 3 in D-24) sent to Superintendent Engineer, Nagpur, for scrutiny, the Circle Office ought to prepare the water availability certificate proposal with the help of the company.

19.1.3 Thereafter, PW-15 was shown page 11 of D-24 Ex.P-16/PW-15 wherein it was mentioned 'the water reservation proposal shall be processed further after submission of water availability certificate obtained from the competent authority by the company'. He deposed that the same was the draft letter in the handwriting of Sh. Chitley, upon which he (PW-15) suggested a change to the effect that the company was required to submit the proposal for water availability certificate of competent authority in due course of time. It is only after receipt of said certificate, necessary permission for lifting of water from the river was to be issued by the competent authority. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

Witnesses from MIDC, Maharashtra

20.1.1 **PW-21 Sh. G.M. Parate** was posted as Manager, District Industries Center, Nagpur since the year 2009 till 2013. He deposed that CBI had made investigation from him regarding permission for acquisition of land by AMR (A-4) by District Collector or Commissioner of Industries. He deposed that no such permission for acquisition of land in Nagpur was given by his office. He gave reply in that regard to the CBI vide letter dated 13.06.2013 Ex.P-116/PW-21(D-25).

20.2.1 **PW-22 Sh. Vijay Sahadeorao Bhakare** was posted as Regional Officer, MIDC, Nagpur in the year 2013. He deposed that in the year 2013, on the request of CBI, he verified his records and informed the CBI that no land is allotted to AMR (A-4) at Village Tarsi, District Nagpur, Maharashtra. He gave the said information vide letter dated 13.06.2013 Ex.P-117/PW-22(D-26). In his cross-examination on behalf of A-1 to A-4, PW-22 deposed that MIDC only maintains records of industrial or non-agricultural land.

20.3.1 **PW-38 Sh. Gajanan Wasudevrao Suranje** was posted as Regional Officer, MIDC, Amrawati from June, 2012 to June, 2013. He deposed that in June, 2013, some CBI Officers visited Nagpur in connection with investigation regarding allotment of land to AMR (A-4). After verification, it was found that no such land was ever allotted to AMR in District Yavatmal, Maharashtra. In that regard, he gave a letter dated 13.07.2013 to the CBI and the same is Ex.P-156/PW-38(D-27).

Witnesses, who were the Directors/officials of AMR, Abhijeet Group Companies, Lokmat Group and IL&FS Group.

21.1.1 **PW-1 Sh. Harshad Pophali** is the person who had signed the application and application form both dated 10.01.2007, filed by AMR with the Screening Committee for seeking allocation of captive Bandar Coal Block. As per his deposition in the year 2007-08, he was working as Manager in M/s Corporate Ispat Alloys Ltd. at Nagpur, Maharashtra. Sh. Manoj Kumar Jayaswal (A-1) was its Chairman and it belonged to Abhijeet Group of Companies. He testified that M/s JAS Infrastructure Capital Pvt. Ltd., M/s Abhijeet

Infrastructure Ltd., M/s JLD Yavatmal Energy Ltd., etc. were other companies of Abhijeet Group of Companies headed by Sh. Manoj Kumar Jayaswal (A-1). As per prosecution case, the Neco Group of Companies was headed by Sh. Basant Lal Shaw, father of Sh. Manoj Kumar Jayaswal (A-1) and in the said group, the companies were M/s Jayaswal Neco Ltd., M/s Neco S. Pvt. Ltd., M/s Inertia Iron & Steel Ltd., etc. He deposed further that prior to year 2007, Chitarpur Coal Block was allotted in favour of M/s Corporate Ispat Alloys Ltd.; 03 coal blocks i.e. Brinda, Sisai and Meral were allocated in favour of M/s Abhijeet Infrastructure Ltd.; and 02 coal blocks i.e. Gare Palma IV/4 and Moitra were allocated in favour of M/s Jayaswal Neco Ltd. He further deposed that Sh. Rajendra M. Ganatra was also a Director in Abhijeet Group of Companies. Sh. Devendra Darda (A-3) was a family friend of Sh. Manoj Kumar Jayaswal and they were in the process of establishing some steel project.

21.1.2 PW-1 deposed further that the application for seeking allocation of captive Bander Coal Block on behalf of AMR (A-4) along with 05-06 other applications for seeking other coal blocks for proposed EUP of sponge iron plant of 1 MTPA capacity to be established at Village Tarsi, District Nagpur was submitted under his signatures. He proved his signatures on the said application and application form (running into 05 pages) both dated 10.01.2007. They are Ex.PW-1/A (Colly) (D-2) and Ex.PW-1/A-1 (Colly) (D-2) respectively. He further deposed that he also enclosed copy of Memorandum of Association and Articles of Association of AMR (A-4) with the said application. He testified that he was not an employee of AMR but he was authorized to file the said application by AMR vide authority letter dated

10.01.2007 [available at page 10 in Ex.PW-1/A (Colly) (D-2)].

21.1.3 PW-1 further deposed that he was working in the Mining Department of M/s Corporate Ispat Alloys Ltd. being a Mining Engineer and all the applications for captive coal blocks were prepared in the said department. The information in the afore-mentioned application Ex.PW-1/A (Colly) (D-2) was given as per the instructions given by Sh. Manoj Kumar Jayaswal (A-4). He deposed that 'No' in Column No.30 of the application to the query of previously allocated coal blocks to group or associated company was written by him as per the instructions of Sh. Manoj Kumar Jayaswal. He further deposed that in September, 2008, he had attended a meeting in the Office of Minister of State for Coal on the directions of Sh. Manoj Kumar Jayaswal. The said meeting was held in order to inform the progress made with respect to coal blocks earlier allocated to group or other associated companies. He deposed that in the said meeting, he submitted the status of progress made qua the coal blocks earlier allocated to the group and associated companies of AMR (A-4) and also informed that Lokmat Group, IL&FS and Abhijeet Group were all three together establishing the said proposed sponge iron plant. He testified that the said information was shared with him by Sh. Manoj Kumar Jayaswal before he went to attend the said meeting. He deposed that he was told in the meeting that he should submit the ownership details of AMR to the Ministry of Coal. After attending the meeting, he had briefed Sh. Manoj Kumar Jayaswal about the proceedings of the meeting. He identified signatures of Sh. Somdatt Bhardwaj on a letter dated 22.09.2008 addressed to Minister of State

for Coal (available at page 106 in Ministry of Coal File available at D-31) and the same is Ex.PW-1/J.

21.1.4 In his cross-examination on behalf of A-1 to A-4, PW-1 testified that as per his understanding, the various companies belonging to Abhijeet Group were considered to be its group companies. He conceded that in his earlier depositions in the court in other two cases of coal block, he had stated that he did not understand the concept of 'Group or Associated Companies'. He testified that as per his knowledge at that time, no information in the application Ex.PW-1/A (Colly) (D-2) or information furnished in the meeting held in the Office of Minister of State for Coal was false as he gave only such information qua which he had received instructions.

21.1.5 He deposed further in his cross-examination that as per his knowledge, though AMR (A-4) belonged to Jayaswal Family headed by Sh. Basant Lal Shaw, but it was controlled by Sh. Manoj Kumar Jayaswal (A-1). He was confronted with his statement under Section 161 CrPC wherein he has stated that AMR was controlled by the Jayaswal Family consisting of Sh. Basant Lal Shaw along with his sons namely Sh. Arbind Jayaswal, Sh. Manoj Kumar Jayaswal and Sh. Ramesh Jayaswal. He deposed that after leaving M/s Corporate Ispat Alloys Ltd. in the year 2014, he had joined M/s Jayaswal Neco Ltd. belonging to Neco Group which was looked after by Sh. Arbind Jayaswal and Sh. Ramesh Jayaswal. He left M/s Jayaswal Neco Ltd. in August, 2017. He admitted that a litigation is pending between Sh. Manoj Kumar Jayaswal and his brothers Sh. Arbind Jayaswal and Sh. Ramesh Jayaswal. He has deposed that both Sh.

Arbind Jayaswal and Sh. Ramesh Jayaswal were also the Directors in AMR.

21.1.6 In his cross-examination conducted by Sh. H.C. Gupta (A-6), PW-1 admitted that in his statement under Section 161 CrPC dated 18.12.2012, he had not stated about the presence of Sh. H.C. Gupta (A-6), Secretary (Coal) in the meeting held in the Office of Minister of State for Coal.

21.2.1 **PW-2 Sh. Sanjay Dey** is a qualified Company Secretary, who joined M/s JAS Toll Road Company Pvt. Ltd. as Secretary and Assistant Manager in the year 2001. As per his version, he was transferred to M/s Corporate Ispat Alloys Ltd and Sh. Manoj Kumar Jayaswal (A-1) was the Chairman of both the said companies and M/s Abhijeet Power Ltd also belonged to same family/group company. He deposed that when he joined in the year 2001, M/s JAS Toll Road Company Pvt. Ltd. and said companies along with other companies were part of one group of family companies headed by Sh. Basant Lal Shaw and the said companies were commonly known as 'Neco Group of Industries'. During the period 2006-2008, a split in Sh. Basant Lal Shaw family took place and various companies came to be categorized under two separate heads i.e. 'Neco Group of Industries' and 'Abhijeet Group of Industries'. He further deposed that Abhijeet Group of Industries came into existence prior to the said formal split in the family. He identified the signatures of the executants of Memorandum of Understanding dated 31.03.2006 [Ex.P-8 (Colly) (D-155)] which was executed between family of Sh. Basant Lal Shaw i.e. Sh. Basant Lal Shaw, Sh. Arbind Jayaswal and Sh. Ramesh Jayaswal as one party and Sh. Manoj Kumar

Jayaswal, Sh. Anand Jayaswal, Sh. Abhishek Jayaswal and Sh. Avneesh Jayaswal as the second party. As per the said MoU, the various family companies were divided under Neco Group of Companies and Abhijeet Group of Companies as under:-

Neco Group of Companies	Abhijeet Group of Companies
1. Jayaswal Neco Ltd.	1. Abhijeet Infrastructure Ltd.
2. Neco Castings Ltd.	2. Corporate Ispat Alloys Ltd.
3. Jayaswal Holdings Pvt. Ltd.	3. JAS Toll Road Company Ltd.
4. Neco Ceramics Ltd.	4. Jayaswal Ashoka Infrastructure Pvt. Ltd.
5. NSSL Ltd.	5. Chitarpur Coal and Power Ltd.
6. Maa Usha Urja Ltd.	

21.2.2 PW-2 further testified that prior to submission of application for captive block on behalf of AMR (A-4), M/s Corporate Ispat Alloys Ltd. and M/s Abhijeet Infrastructure Ltd. of Abhijeet Group of Companies were allotted Chitarpur Coal Block and Brinda, Sisai and Meral Coal Blocks respectively. Further, 03 coal blocks namely Gare Palma IV/4, Gare Palma-IV/8 and Moitra were allocated to M/s Jayaswal Neco Industries Ltd., part of Neco Group of Companies. He further deposed that in the year 2007, he was associated with respect to execution of a Joint Venture (JV) between AMR (A-4) and IL&FS, IDC. He had signed the said JV dated 02.04.2007 (D-178) on behalf of AMR and he also proved his signatures on it. The said document is Ex.PW-2/A (D-178). He deposed that as per the said agreement, the parties had intended to partner with each other to develop an Integrated Steel Plant having a capacity of 2 MTPA based on a captive coal mine and to be located in the State of Maharashtra (the project). He

deposed that he had signed the said JV on the authorization of Sh. Manoj Kumar Jayaswal (A-1). He testified that as per the said JV, Lokmat Group had no role to play.

21.2.3 PW-2 also proved Shareholder Agreement dated 29.10.2010 [Ex.P-7 (Colly) (D-145)] executed between Sh. Manoj Kumar Jayaswal (A-1), Sh. Abhishek Jayaswal, Sh. Abhijeet Jayaswal, Sh. Vijay Darda (A-2), Sh. Devendra Darda (A-3), ABPL, M/s Abhijeet Infrastructure Capital Ltd. and M/s JAS Infrastructure Power Ltd. by identifying signatures of all the afore-mentioned signatories on the said document. He also identified signatures of Sh. Vijay Darda on a letter dated 04.02.2008 addressed to Dr. Manmohan Singh, Hon'ble Prime Minister. The said letter is Ex.PW-2/B (D-21). He also identified signatures on a similar letter dated 13.12.2007 written by Sh. Vijay Darda to Dr. Manmohan Singh, Hon'ble Prime Minister and the same is Ex.PW-2/C (D-21). He also identified signatures of the signatories of 'Indenture of Family Settlement' (IFS) dated 31.07.2008 between the family members of Sh. Basant Lal Shaw. The said document stood already admitted by the accused persons under Section 294 CrPC and same is available on record as Ex.P-5 (Colly) (D-158). He deposed that as per the said document, AMR (A-4), as on the said date of settlement, was a company in joint fold of Sh. B.L. Shaw family.

21.2.4 In his cross-examination on behalf of A-1 to A-4, PW-2 was shown the written presentation made by AMR (A-4) before 36th Screening Committee on 07.12.2007. However, he was unable to recall having seen the said presentation. The same is Ex.PW-2/DX-1 (D-10). He deposed that some Board Resolution of AMR must have

been passed in his favour before he signed the JV Agreement with IL&FS, IDC. He admitted that as per Clause 5A of the said JV Agreement (D-178 Ex, PW2/A), the role and responsibility of IL&FS, IDC *inter alia* included 'to represent before the Ministry of Coal and the Government of Maharashtra as a co-promoter for allocation of captive coal block for the project'. He testified that the two terms 'family company' and 'group company' could be used synonymously. He deposed that his said explanation was based upon general parlance and not with reference to any definition given in any statute. As per his version, 'family company' has not been defined in the Companies Act. He agreed that persons belonging to the same family may be having their own independent companies with no interference from other members of the family. He deposed that he did not have any document to show that he was authorized by Sh. Manoj Kumar Jayaswal (A-1) to sign the JV Agreement on behalf of AMR (A-4). Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

21.3.1 PW-4 Sh. Hirak Ghosh was working as a Company Secretary in M/s Corporate Ispat Alloys Ltd., company of Abhijeet Group. In the year 2013, he handed over certain documents relating to various companies to the IO of CBI who seized the same vide seizure memo Ex.PW-4/A (D-34). The details of the seized documents were mentioned in the said memo. He deposed that Sh. Manoj Kumar Jayaswal (A-1) was the Chairman of Abhijeet Group and he was looking after the affairs of M/s Abhijeet Ventures Ltd. and Abhijeet Projects Ltd.

21.3.2 In his cross-examination on behalf of A-1 to A-4, PW-4 was confronted with his statement under

Section 161 CrPC wherein he has mentioned that Sh. Abhishek Jayaswal and Sh. Manoj Kumar Jayaswal (A-1) were the Directors in M/s Abhijeet Ventures Ltd. and Joint Managing Directors in Abhijeet Projects Ltd and he admitted to have made said statement. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

21.4.1 **PW-5 is Sh. Rajendra M. Ganatra.** He has joined Abhijeet Group as a Group Director in August, 2007 and he was on the Board of Company M/s Corporate Ispat Alloys Ltd. He deposed that Sh. Manoj Kumar Jayaswal (A-1) was the Chairman of the said company. He deposed that he was never part of AMR (A-4) but he knew that it had applied to Ministry of Coal for seeking allocation of coal block. In December, 2007, on the instructions of Sh. Manoj Kumar Jayaswal, he made presentation before Committee of Ministry of Coal in Delhi. At that time, Sh. Devendra Darda (A-3) had accompanied him and both of them had made joint presentation.

21.4.2 PW5 identified his signatures on the attendance sheet of the executives participating in 36th Screening Committee meeting held on 07.12.2007 at Delhi. He also identified the signatures of Sh. Anup Kumar Behara on the said attendance sheet to be the representative from IL&FS, IDC to have attended the said meeting. He identified the presentation Ex.PW-2/DX-1 (D-10) and feedback form Ex.PW-1/H (D-33) to be the same which were submitted on the said date to the Screening Committee on behalf of AMR under the signatures of Sh. Devendra Darda. He deposed that during the course of said presentation, certain queries were raised by the Members of the Committee regarding viability and feasibility of the project proposed to be

established by AMR and in response, they stated that the proposed project to be established in District Yavatmal would aid in development of the area which was one of the poorest and backward district of Vidarbha Region in Maharashtra.

21.4.3 In his cross-examination on behalf of A-1 to A-4, PW-5 deposed that he had working knowledge of Companies Act, 1956 as well as that of Companies Act, 2013. He admitted that 'associate company' has not been defined in the Companies Act, 2013. However, he was not sure about the definition of 'group company' in either of the said two Acts. He admitted that in the attendance sheet of 36th Screening Committee meeting held on 07.12.2007, he mentioned his designation as Director of AMR (A-4). He volunteered that he mentioned the same erroneously. He deposed that he did not know who had filled the information in the feedback form Ex.PW-1/H. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

21.5.1 **PW-6 Sh. Avinash Dinkar Karajgaonkar** deposed that he joined Jayaswal Neco Industries Ltd. in 1994 as Company Secretary. He testified that in addition to the affairs of the said company, he was also looking after the corporate law matters of other companies of Jayaswal Neco Group. Sh. Basant Lal Shaw was heading Jayaswal Neco Group. Sh. Arbind Jayaswal was the Managing Director and Sh. Ramesh Jayaswal was the Joint Managing Director of the said company. There were about 20-25 companies in the group. In and around July, 2008, pursuant to a split in B.L. Shaw Family Group, another group of companies was carved out from it and it

was known as Abhijeet Group of Companies which was held by Sh. Manoj Kumar Jayaswal (A-1).

21.5.2 PW-6 deposed further that AMR (A-4) was incorporated in the year 2003 and before that it was a partnership firm in the name of 'AMR Associates'. In the year 2003 at the time of its incorporation, all its existing partners became its Promoters. He gave details of the Directors, Shareholders and Promoters of the AMR based upon its Memorandum of Association and Articles of Association Ex.PW-6/A (Colly) (from page 11 to 36 in D-2). The three annual returns dated 30.09.2006, 29.09.2007 and 30.09.2008 of the AMR, which were enclosed with the application form (D-2) as Ex.PW-6/B, Ex.PW-6/B1 and Ex.PW-6/B2 respectively (D-5). He also gave the details of Directors of AMR on 30.09.2006, 29.09.2007 and 30.09.2008 on the basis of the afore-mentioned annual returns.

21.5.3 He further testified that during aforesaid period, Sh. Devendra Darda (A-3) or Sh. Rajendra M. Ganatra were neither shareholders nor Directors of the AMR. He testified that as per his knowledge, AMR was a family controlled company with no shareholding or involvement of any outsider. As per his knowledge, it was never a Special Purpose Vehicle (SPV).

21.5.4 In his cross-examination by A-1, PW-6 deposed that at the time of split in B.L. Shaw family, as per Indenture of Family Settlement dated 31.07.2008, no valuation of the companies was carried out. The merger/de-merger of the companies in terms of IFS was finally completed in the year 2010-11. He volunteered that the

appointed date under the scheme of arrangements was April, 2008. He deposed that he had heard of *Vyawastha Patrak* executed amongst B.L. Shaw family members but he had never seen its original. Its reference is also there in the Indenture of Family Settlement. He denied to have any knowledge as to whether at the time of execution of IFS, Sh. Manoj Kumar Jayaswal (A-1) ever insisted upon valuation of the companies and properties of the family or that Sh. B.L. Shaw refused to get the same done. The remaining four accused persons preferred not to cross-examine the said witness.

21.6.1 **PW-7 Sh. Bhaskar Subramanian** was working as a Senior Manager with IL&FS Infrastructure Ltd. during the period 2007-08. The said company was primarily working in the field of infrastructure development projects as Project Advisor. He identified signatures of Sh. Alok Verma, the then Assistant Vice President, IL&FS on JV Agreement dated 02.04.2007 Ex.PW-2/A (D-178) between AMR (A-4) and IL&FS. He deposed that at no point of time any officer of IL&FS was ever a Director or Shareholder of AMR. He deposed that on 04.09.2012, CBI Officers searched their office and seized certain documents. He testified that 'Transaction Approval Memorandum' (TAM) (available at D-180) was one of the documents seized by the CBI. Its copy is Ex.PW-7/C (Colly) (D-180). He deposed that no Shareholder Agreement or Extension of Time Agreement were ever executed between IL&FS and AMR.

21.6.2 In cross-examination on behalf of A-2 to A-4, PW-7 deposed that IL&FS was primarily working on fee-based model but in certain cases, it had also invested in some joint venture companies. He was shown a letter dated

21.08.2007 purportedly written by Sh. D.K. Mittal, the then Managing Director, IL&FS to Principal Secretary, Industry, Energy and Labour Department (available at page 6 in PMO File) (D-21). He identified signatures of Sh. D.K. Mittal on it and same was exhibited as Ex.PW-7/DX-1/A-4 (D-21). The subject of the said letter is 'Setting Up of 2 MTPA Integrated Steel Plant by AMR Iron & Steel Pvt. Ltd. in Maharashtra-Regarding Financial Closure'.

21.6.3 PW-7 also identified signatures of Sh. D.K. Mittal on letter dated 21.08.2007 addressed to Director, AMR (available at page 7 in PMO File) (D-21). The same is Ex.PW-7/DX-2/A-4 (D-21). He admitted that in the said letter, it was mentioned that in accordance with the Memorandum of Agreement executed for the development of the project, IL&FS was committed to participate in the project to the extent of 20%. He deposed that as per the roles and responsibilities of IL&FS, IDC mentioned in JV Agreement, it was to conduct an appraisal of the project. In his cross-examination on behalf of A-1, PW-7 deposed that as per JV Agreement, IL&FS, IDC had a right to subscribe up to 20% of the paid up equity share capital of AMR at par value. PW-7 was also not cross-examined on behalf of Sh. H.C. Gupta (A-6).

21.7.1 **PW-8 Sh. Sanjay Mundley** deposed that in February, 2007, he had joined IL&FS, IDC as Senior Manager but was relieved from the said company in February, 2008. He deposes that he was looking after the technical bid preparation for power projects for the clients of IL&FS, IDC. Thus, he dealt with the matter related to AMR (A-4). He was probably associated with the preparation of Transaction Approval Memorandum (TAM) with respect to

AMR which was prepared pursuant to the JV Agreement executed between AMR and IL&FS, IDC.

21.7.2 As per his version, the TAM was primarily towards obtaining *post-facto* approval internally in his company qua the execution of JV Agreement. He proved the TAM dated 01.10.2007, signed by him on behalf of IL&FS, IDC. He also identified the JV Agreement dated 02.04.2007. He deposed that it was executed with AMR qua some Integrated Steel Plant of 2 MTPA capacity to be established in the State of Maharashtra. As per JV Agreement, the role of IL&FS prior to allocation of coal block is to represent before the Ministry of Coal and the Government of Maharashtra as a co-promoter for allocation of captive coal blocks for the project.

21.7.3 In his cross-examination on behalf of A-2 to A-4, PW-8 was shown letter dated 21.08.2007 written by Sh. D.K. Mittal, the then Managing Director, IL&FS to Secretary, Ministry of Steel and he identified signatures of Sh. D.K. Mittal on it. The copy of the said letter is Ex.PW-8/DX-1/A-4 (D-21). He admitted that in the said letter, it was mentioned that IL&FS has joined AMR (A-4) as co-promoter for its 2 MTPA Integrated Steel Plant in Maharashtra. Remaining two accused persons i.e. Sh. Manoj Kumar Jayaswal (A-1) and Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

21.8.1 **PW-9 Sh. Ankur Ranjan** worked as Senior Manager in IL&FS from August, 2006 till 15.01.2009. He attended 36th Screening Committee meeting held on 07.12.2007 in Delhi on behalf of IL&FS in the matter relating to allocation of coal block to AMR (A-4). As per his

version, he did not remember what all transpired in the said meeting. In his cross-examination on behalf of A-2 to A-4, PW-9 deposed that he did not remember whether during the course of presentation on behalf of AMR, any query was raised by the Screening Committee Members or not.

21.9.1 PW-10 Sh. Somdatt Bhardwaj was working as a Manager in Abhijeet Group during the period from 2007 to 2014. He deposed that initially, he was on the rolls of M/s Corporate Power Ltd., which was a part of Abhijeet Group but later, he was transferred to M/s Abhijeet Projects Ltd. at Delhi Office. He deposed that during that time, Sh. Manoj Kumar Jayaswal (A-1) was the Chairman of Abhijeet Group. He never worked in the AMR (A-4). He identified his signatures on a letter dated 22.09.2008 Ex.PW-1/J (D-31) wherein he signed it as authorized signatory of AMR. The said letter was addressed to Minister of State for Coal. He deposed that he did not know who had prepared the said letter but certainly it was not prepared by him. He volunteered that he signed it only upon receiving instructions from Nagpur Office and therefore, he did not have any knowledge about the correctness of the contents of the said letter.

21.10.1 PW-16 Sh. Rajeev Ranjan was working as a Senior Manager (Accounts) in M/s Corporate Power Ltd. with effect from August, 2010 to January, 2014. He deposed that he was a qualified Chartered Accountant and in the year 2013, he had joined investigation of this case. He deposes that he provided requisite documents including original Shareholders Agreement dated 29.10.2010 (Ex.P-7) (D-145) to CBI as detailed in production-cum-receipt memo dated 08.03.2013 Ex.P-19/PW-16 (D-142).

21.11.1 **PW-18 Sh. Sanjay Shambhu Dayal Khare** is Vice President with M/s Lokmat Media Pvt. Ltd. He deposed that in the year 2007-08, he was working with the said company as GM (Accounts) and at that time, the company was looked after by Sh. Vijay Darda (A-2) as Chairman and Sh. Devendra Darda (A-3) as Director. He identified signatures of Sh. Vijay Darda on letter dated 13.12.2007 addressed to Hon'ble Prime Minister Ex.P-2/B. He also identified signatures of Sh. Devendra Darda at page 3 of the feedback form dated 07.12.2007 Ex.PW-1/H (D-33). He deposed that on 06.02.2014, he had joined the investigation of this case and provided documents related to ABPL as detailed in their seizure memo Ex.P-25/PW-18(D-161). He deposed that ABPL was incorporated on 21.09.2010 with initial Directors Sh. Devendra Darda and Sh. Karan Darda. Its initial paid up capital at that time was Rs.1,00,000/- (10,000 equity shares of Rs.10/- each).

21.11.2 PW-18 deposed further that main object of the company was detailed in its Memorandum of Association. However, it did not achieve the main objective as no business was conducted in that regard. He deposed that its authorized capital was increased from Rs.1,00,000/- to Rs.1.50 lacs, as evident from its balance sheet dated 31.03.2011. He gave the details of assets, the transactions, shareholding patterns and annual returns of ABPL from the date of its inception till the year 2013. He has deposed that ABPL made investments in equity shares of M/s JAS Infrastructure Capital Pvt. Ltd. As per the balance sheet of ABPL as on 31.03.2011, Rs.8 Crores had been invested by ABPL for purchase of the shares of M/s JAS Infrastructure Capital Pvt. Ltd., which was further increased to Rs.18.50

Crores as on 30.06.2012 and upto Rs.24.50 Crores as on 30.06.2013.

21.11.3 He deposed that as per balance sheet as on 30.06.2013, Pink Banana Farms Ltd., company controlled by Sh. Devendra Darda (A-3), had 1,28,000 shares of ABPL. He brought and proved the financial statements, balance sheets & annual returns in support of the said statements qua M/s JAS Infrastructure Capital Pvt. Ltd. and Pink Banana Farms Ltd. He deposed that ABPL had equity shares having a par value of Rs.10/- per share. As per its shareholder register, it issued shares at a premium of Rs.8,885/- each to Kolkata based companies. He deposed that no reason is reflected in the balance sheet for charging Rs.8,885/- each for the said share.

21.11.4 In his cross-examination on behalf of A-4, PW-18 deposed that he was aware that Lokmat Media had planned expansion by way of IPO and some consultants were hired for this purpose. Initially, the equity was to be raised by private participation but on the advise of consultants, public issue was considered as better option. Accordingly, the company decided to go for public issue in the year 2008-09. He admitted that for the IPO process, the company was required to prepare a Draft Red Herring Prospectus (DRHP) and to file it to SEBI. DRHP for Lokmat Media was filed in December, 2010. He admitted that the company was advised not to diversify its funds for fetching the favourable valuation. The same includes that the company will not part with investments or create any charge on the assets of the company.

21.11.5 PW-18 admitted in his cross-examination that as per Shareholder Agreement dated 29.10.2010 Ex.P-7 (Colly)(D-145), ABPL was in need of funds for investment in M/s JAS Infrastructure Power Ltd. He also admitted that JAS Infrastructure was setting up a thermal power plant in the State of Jharkhand in which Lokmat Media Pvt. Ltd. was not a participant. He admitted that for the purpose of raising funds for ABPL, Sh. Devendra Darda (A-3) was involved with him and ABPL was ready to pay interest and/or additional amount by way of gain in return to investors. He deposed that Kolkata based companies had agreed to pay funds to ABPL. In general business practice, a company raises funds either by way of loan or contribution by way of issue of shares/debentures.

21.11.6 PW-18 deposed further that Kolkata based company invested in ABPL in the form of equity contribution. He admitted that he had advised about the manner of investment by the Kolkata based companies in ABPL. He had advised issuance of share of ABPL at the premium to Kolkata based companies instead of obtaining loan from them as the later option would have caused them additional financial burden in the form of tax on the interest of the loan. This transaction with the Kolkata based companies had taken place during the time when Lokmat Media Ltd. was in the process of IPO and thus, not in the position to arrange funds for ABPL.

21.11.7 In his further cross-examination on behalf of A-4, PW-18 deposed that ABPL has complied the applicable Income Tax Laws and no objection was raised in any manner by the Income Tax Authority or the Ministry of Corporate Affairs on the above-said transactions. He further

deposed that if the shares were not issued at a premium, ABPL would have been required to increase its authorized share capital which would have led to huge cost towards stamp duty, filing fee to RoC and other legal expenses for the said capital increase. Further, if shares were not issued at a premium, the Kolkata based companies would have become the majority shareholders of ABPL. In order to overcome the above situations and for issuing shares at premium, ABPL agreed to pay 15% return on the investment to the Kolkata based companies.

21.11.8 In his cross-examination, PW-18 testified further that in the year 2012-13, Pink Banana Farms Pvt. Ltd. of Sh. Devendra Darda (A-3) returned the investments of Kolkata based companies with 15% return on behalf of ABPL. He deposed that the said refund was arranged by Sh. Devendra Darda. He gave the details of the sources used by Sh. Devendra Darda for arrangement of the said refund. He deposed that during investigation, he had not informed the CBI about M/s Pink Banana Farms Pvt. Ltd. or its transaction with above-mentioned Kolkata based companies as no question in that regard was asked.

21.11.9 He deposed that net worth of AMR (A-4) would have been about Rs.2.50 Crores during the year 2008-2012. He admitted that during the entire transaction of ABPL and Pink Banana Farms Pvt. Ltd. with the Kolkata based companies, Sh. Vijay Darda (A-2) was not involved at all. He admitted that the said transactions were related to M/s JAS Infrastructure Capital Pvt. Ltd. and not to AMR. Remaining accused persons preferred not to cross-examine the said witness.

21.11.10 At the request of Ld. DLA for CBI, PW-18 was allowed to be re-examined. In his re-examination by Ld. DLA for CBI, PW-18 stated that no document was prepared in relation to plan of Lokmat Media to go public in the year 2008-09. He deposed that during investigation, he did not inform the CBI that he was involved with Sh. Devendra Darda (A-3) in the said transaction of ABPL. He deposed that no written agreement was entered into between the Kolkata based companies and the ABPL or Sh. Devendra Darda for raising of funds by ABPL through issuance of its shares to the said companies. He did not know about the details of business activities of Kolkata based companies.

21.11.11 He deposed that since funds were received through bank, they did not examine the capacity/financial capacity of the Kolkata based companies. He deposed that they were in contact with Sh. Santosh Jain only for Kolkata based companies. Thereafter, the shareholder register of ABPL was produced by PW-18. The said register having signatures of Sh. Devendra Darda at its different pages is Ex.P-120/PW-18. He deposed that as per law, at least 02 shareholders are required for forming a company. Sh. Devendra Darda was named as a nominee of M/s Asera Power Ltd. which was another different company from ABPL. The shareholders of ABPL were Sh. Devendra Darda and M/s Asera Power Ltd.

21.11.12 In his further re-examination by Ld. DLA for CBI, PW-18 produced share applications received from 07 Kolkata based companies for allotment of shares of ABPL. 02 of the said applications are dated 13.10.2010 and 05 of the said applications are dated 31.03.2012. All the

said applications are Ex.P-122/PW-18 (Colly) (D-187). He deposed that he could not identify the signatures on the said applications of the applicant companies. In his cross-examination on behalf of all the accused persons, PW-18 deposed that a total number of shareholders of ABPL was less than 50 all around from the date of its inception till date and therefore, as per law, index of the register of members was not required to be prepared for ABPL.

Witnesses relating to the allegations of *quid pro quo*

22.1.1 **PW-24 Sh. Ajay Kumar Lahoti** (in respect of companies M/s Bicharshil Traders Ltd. and M/s Lakeview Energy Ltd.), **PW-25 Sh. Arihant Jain** (qua M/s Ricon Infrastructure Ltd.), **PW-26 Sh. Akshay Kumar Parida** (in relation to M/s Brijwasi Distributors Pvt. Ltd. and M/s Abhijeet Infrastructure Pvt. Ltd.), **PW-27 Sh. Dhruva Narayan Jha** (qua M/s Bullpower Vyaapar Ltd.), **PW-28 Sh. Goutam Karmakar** (qua M/s Bicharshil Traders Ltd.), **PW-29 Sh. Arun Nath** (qua M/s Silicon Valley Infotech Ltd.), **PW-30 Sh. Gautam Saha** (qua M/s Abhijeet Projects Ltd. and M/s Silicon Valley Infotech Ltd.), **PW-31 Sh. Kamal Kanti Bakhandi** (qua M/s ATN International Ltd.), **PW-32 Sh. Prabhat Jain** (qua M/s Rangbarshi Projects Ltd.), **PW-33 Sh. Prakash Chandra Shukla** (qua M/s Rodhan Vanijya Pvt. Ltd.), **PW-34 Sh. Ramen Chatterjee** (qua M/s Eclat Ventures Pvt. Ltd.), **PW-35 Sh. Susanta Sengupta** [qua M/s Abhijeet Ventures Ltd. (previously known as M/s Parichay Sales Pvt. Ltd.)], **PW-36 Sh. Sandeep Dey** (qua M/s Salt Lake Energy Ltd. and M/s Rangbarshi Projects Ltd.) **and PW-37 Sh. Tanmoy Ghosh** (qua M/s Rodhan Vanijya Pvt. Ltd.) are 14 witnesses related to 11 Kolkata based companies belonging to Sh. Santosh

Kumar Jain. They deposed about the total transactions of Rs.24.60 Crores between 13.10.2010 to 07.08.2012 from Abhijeet Group Companies to ABPL (company of Darda Family) routed through the said 11 Kolkata based companies.

Witnesses of preliminary inquiry, investigation and search

23.1.1 **PW-11 Sh. S.P. Rana**, Deputy S.P., Economic Offence-III, CBI deposes that in the year 2012, while he was posted as Deputy S.P. in CBI, EOZ, New Delhi, a Preliminary Enquiry No.219 2012 E 0002 registered with respect to coal block allocation matters was assigned to him and after about 09 weeks i.e. on 06.08.2012, it was transferred to Sh. Vivek Dutt, S.P., CBI. Thereafter, he assisted him as an Assistant Inquiry Officer till September, 2012. He deposed that the inquiry carried out by him during the said period was submitted by him through an affidavit dated 21.08.2020 Ex.PW-11/A. In his cross-examination on behalf of A-1 to A-4, he deposed that he did not know what final recommendation was made in the said PE qua the matter relating to AMR (A-4). Sh. H.C. Gupta (A-6) preferred not to cross-examine even said witness.

23.2.1 **PW-17 Sh. Madhusudan Manoharrao Shembekar** deposed that in the year 2012, he was posted as Assistant Manager in United India Insurance Company Ltd., Nagpur. On the instructions of Chief Manager, he attended the CBI Office, CGO Complex, Nagpur on 04.09.2012 at 05:30 am. He is a search witness who accompanied the CBI Officer and other independent witness Sh. Ramteke of LIC to Darda House at Rahate Colony, Warda Road, Nagpur at 06:00 am. The said premises was

searched in his presence and some bunch of papers were seized during the said proceedings. *Panchnama* in that regard was prepared by the IO Sh. G.S. Rai and he (PW-17) signed the same. The witness identified his signatures on the search list/*panchnama* dated 04.09.2012 and the same is Ex.P-23/PW-17 (D-13). He was also shown 14 pages (D-14) which was the bunch of papers seized by the IO in the said proceedings. He identified his signatures on first and last page of bunch of 14 pages. The said bunch of papers is Ex.P-24/PW-17 (Colly).

23.2.2 In his cross-examination on behalf of A-1 to A-4, PW-17 deposed that as per his knowledge, the search proceedings were not videographed. He deposed that he had not conducted personal search of CBI Officers. The search was conducted by three CBI Officer together. The documents that were seized were not sealed and their photocopy was not given to the occupant of the said premises namely Smt. Jyotsana Darda. Sh. H.C. Gupta (A-6) opted not to cross-examine the said witness.

23.3.1 **PW-23 Sh. P.K. Jha** was posted as Deputy S.P. in CBI, EO-II Branch, Delhi in the year 2012. He deposed that the present case was entrusted to him by the then HOB, CBI, EO-I Sh. Ravi Kant on 03.09.2012. He deposed that after entrustment of this FIR to him, searches were conducted at 08 places. He along with witnesses conducted searches at 02 places at Nagpur on 04.09.2012. In a search at the registered office of AMR (A-4) at Nagpur, relevant documents as detailed in list (D-4) (already Ex.P-4) were seized in presence of two independent witnesses.

23.3.2 He deposed further that on the same day, in a search at the registered office of M/s Abhijeet Group at Nagpur, relevant documents as detailed in list (D-7) (already Ex.P-1/K) were seized in presence of two independent witnesses. The investigation of this case remained with him till 19.09.2012 and thereafter, it was transferred to Inspector Sh. Himanshu Bahuguna. In his cross-examination on behalf of A-1 to A-4, PW-23 deposed that videography of the search proceedings were not conducted. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

23.4.1 **PW-42 Sh. Himanshu Bahuguna** is the IO of the case. He deposed on the lines of the case of the prosecution. Therefore, his entire testimony is not reproduced herein for the sake of brevity and to avoid repetition. He deposed that he collected relevant documents and files pertaining to allocation of Bander Coal Block to AMR (A-4) and in relation to Rs.24.60 Crores transactions (from companies controlled by Sh. Manoj Kumar Jayaswal to 11 Kolkata based companies and from there to ABPL which further used it for purchase of shares of M/s JAS Infrastructure and Power Ltd.) from the office of AMR, M/s JAS Infrastructure and Power Ltd., Lokmat Media Ltd., IL&FS, ABPL, 11 Kolkata based companies, Ministry of Coal, Ministry of Steel, Government of Maharashtra, MIDC, Water Resource Department, Nagpur and PMO.

23.4.2 PW-42 (IO) gave the details of seizure of the said documents along with their details. He seized the certified copy of Company Petition No.111/397-397/CLB/MB/2009 filed by Sh. Manoj Kumar Jayaswal (A-1) in the Company Law Board (Mumbai Bench), Mumbai

(admitted under Section 294 CrPC as Ex.P-18). He also seized statements of bank accounts and transaction details of 11 Kolkata based companies which were involved in dealing with Abhijeet Group Companies and ABPL in relation to transactions of total Rs.24.60 Crores from Abhijeet Group to ABPL routed through the said Kolkata based companies from Canara Bank, Princep State Branch, Kolkata.

23.4.3 PW-42 further deposed that during the course of investigation, he had received a letter dated 08.03.2013 from Sh. Rajeev Ranjan, Senior Manager (Accounts), M/s JAS Infrastructure and Power Limited (earlier known as JAS Infrastructure Capital Private Limited) as available in D-141. The letter is marked as Mark P-22/PW-16. Vide said letter, it was informed by the company that M/s JAS Infrastructure and Power Limited had allotted 1,56,12,000 fully paid shares and 4,44,40,000 partly paid shares @ Rs.2/- per share to ABPL. Against the allotment of above mentioned shares, the company had received an amount of Rs.24.50 Crores from ABPL.

23.4.4 In his cross-examination on behalf of A-1 and A-4, PW-42 admitted that recommendation sheet of 36th Screening Committee was signed by all the members present in the meeting dated 03.07.2008. The decision of recommendation of 36th Screening Committee was unanimous of all its members. He deposed that he had examined Sh. N.R. Dash, representative of Ministry of Steel, who was present in the 36th Screening Committee. He admitted that no statement of any member of the Screening Committee was recorded to ascertain what actually transpired in its meeting held on 03.07.2008.

23.4.5 He admitted that as per the charge-sheet, no evidence had come on record to show that the public servants had knowledge of misrepresentation done by the private accused persons in this case. He admitted that the CBI did not find any guilty intention on the part of public servants. He deposed that no evidence in regard to any pecuniary advantage taken by the public servants came on record. AMR (A-4) did not do any mining in this case and it did not extract even a single gram of coal. He admitted that there was no minimum threshold of net worth required for the purpose of allocation of coal blocks. He admitted that after the filing of application form and before the submission of feedback form, a Joint Venture Agreement dated 02.04.2007 was entered into between AMR and IL&FS, IDC.

23.4.6 PW-43, in his cross-examination on behalf of PW-1 to PW-4 deposed further that he did not conduct any investigation to find out who had provided the information in the feedback form to the individual who had filled the feedback form. He admitted that during investigation, he had seized letter dated 04.02.2008 written by Sh. Vijay to the then Prime Minister and with that letter a copy of letter dated 21.08.2007 from Sh. D.K. Mittal, MD, IL&FS addressed to Secretary, Ministry of Steel was also enclosed and the same is Ex.PW-8/DX-1(D-21 page 5).

23.4.7 He admitted that as per the guidelines mentioned in the advertisement, there was no mention that *inter se* priority was mandatory for deciding allocation of coal blocks. He deposed that no threshold of any of the factor or priority of the factor for determining *inter se* priority was ever decided throughout the process of allocation of coal block. The need for preparing *inter se*

priority chart was never emphasized by any of the members of the Screening Committee or any of the Ministries associated with the process, at any stage. The recommendations of the 36th Screening Committee was unanimous as all the members had signed the final recommendation.

23.4.8 In his further cross-examination on behalf of A-1 and A-4, PW-42 deposed that no evidence emerged with regard to *quid pro quo* between officials of Ministry of Coal and Sh. Manoj Kumar Jayaswal (A-1). Nothing came to his notice that any complaint was ever received in respect any favoritism or injustice in respect of *inter se* priority from the applicant companies in allocation of Bander Coal Block to AMR (A-4). He admitted that there is no allegation against Sh. Vijay Darda (A-2) in respect of allocation of coal block to M/s JAS Infrastructure Capital Pvt. Ltd. He admitted that in the feedback form, there was no specific column regarding previous allocation of coal block to group/associate companies. He deposed that closure reports in two other connected cases i.e. RC No.219 2012 E 0010 in relation to M/s JLD and RC No.219 2012 E 0008 in relation to M/s JAS were filed and in the said two cases also no information regarding previous allocation of coal block to group/associate companies was disclosed in Column Nos.29 and 30 of their respective application forms.

23.4.9 He further testified that a query in that regard was made to Sh. S.K. Sahi, Director, Ministry of Coal who responded in the said cases vide letter dated 03.05.2013 and the said document is Ex.P-290/PW-42 (Colly). In respect of the said letter, PW-42 deposed that the instant letter was issued by Head of Branch in connection

with general investigation of coal block scam cases which was not only specific to this RC/FIR even though in the subject matter the instant case number has been mentioned. As the said letter was not specifically issued in the instant case as such it was not part of the case records.

23.4.10 In his further cross-examination on behalf of A-1 and A-4, PW-42 deposed that during investigation, no public servant gave him any statement that he got induced by any particular factor (i.e. land, net worth, water tie up, previous allocation, appraisal of DPR) by accused company in application/feedback form for deciding to allocate a coal block in favour of AMR (A-4). He admitted that Para 'C' of the note of Sh. Ashish Gupta, Director, PMO dated 21.07.2008 Ex.P-219/PW-41 (D-19 page 1-118) did not refer to previous allocation to group companies of the proposed allocatees. He deposed that he did not carry out any specific investigation as to what is the meaning of 'group/associate company'. He denied that as the first tranche of money of Rs.8 Crores out of total alleged Rs.24.60 Crores as the reward for exercising personal influence for allocation of Bander Coal Block to AMR (A-4) was paid after 02 years and 10 months there was no correlation between writing of letters to Hon'ble Prime Minister by Sh. Vijay Darda (A-2) and the said money.

23.4.11 IO, however, admitted that no evidence has come on record that aforesaid letter written by Sh. Vijay Darda were placed before Screening Committee at the time when the unanimous recommendations were made by it to jointly allocate Bander Coal Block in favour of AMR. He volunteered that the letter written by Sh. Vijay Darda to the then Prime Minister were sent to Ministry of Coal but the file

in which these letters were dealt with by Ministry of Coal was not found, for which a PE was registered, which was subsequently closed.

23.4.12 He admitted that in view of closure of PE and non-availability of afore-said file, no evidence came on record as to who all dealt with and had knowledge of aforesaid letters of Sh. Vijay Darda at Ministry of Coal. As the file remained untraceable, he could not collect any document to indicate as to whether said representation/letter was taken into consideration favourably during scrutiny of application in recommending and selection procedure of coal block. He could not point out any evidence from the records by which it appears that weightage was accorded by Ministry of Coal to the aforesaid letters of Sh. Vijay Darda while recommending allocation of Bander Coal Block to AMR.

23.4.13 In his further cross-examination on behalf of A-1 and A-4, PW-42 deposed that during investigation, it came to his knowledge that M/s Pink Banana Farms Pvt. Ltd. repurchased the shares of ABPL at 15% profit from Kolkata bases companies. He volunteered that the same was after the registration of RC in this case. He further deposed that it had come to his knowledge during investigation, that money received by ABPL from Abhijeet Group through Kolkata based companies got placed in M/s JAS on one hand and on another hand, M/s Pink Banana Farms Pvt. Ltd. (Darda company) gave 24.60 crores + 15% to Kolkata based companies. He volunteered that ABPL has received shares of JAS in lieu of Rs.24.60 Crores received from Kolkata based companies and the agreement for purchase of shares signed by M/s Pink Banana Farms Pvt. Ltd. with Kolkata based

companies was subsequent to the registration of case and initiation of investigation by CBI.

23.4.14 He further deposed that it did not come to his knowledge that transactions between Kolkata companies, Abhijeet Group of Companies, ABPL, JICPL, M/s Pink Banana Farms Pvt. Ltd. were barred by any law. It did not come to his knowledge whether any red flags were raised or any enquiry was initiated in respect of these transactions by any auditor by RoC by Ministry of Corporate Affairs/SEBI or Income Tax Department or any other statutory agency prior to RC by CBI.

23.4.15 He admitted that he did not make any of the Directors of 07 Abhijeet Group Companies and 08 Kolkata based companies that allegedly facilitated the said transaction as an accused in this case. He deposed that he did not investigate the concept of free equity contained in Clause 'J' of IFS. He deposed that no equity was transferred to Sh. Vijay Darda (A-2). However, Sh. Manoj Kumar Jayaswal (A-1) had filed Company Petition No.111/397-398/2009 before the Company Law Board, Mumbai Bench claiming 26% equity in respect of associate who had helped him in the allocation of coal block.

23.4.16 In his further cross-examination on behalf of A-1 and A-4, PW-42 deposed that in respect of two unsigned typed letters purportedly written by Sh. Basant Lal Shaw addressed to one Sh. Vijay Babu, Sh. B.L. Shaw stated that he was unable to recollect whether the said letters were got typed by him as they did not bear his signatures. He admitted that during investigation, it could not be established that 26% free equity was allotted to

Dardas in AMR (A-4). He admitted that in IFS, there was an express reference of a Vyawastha Patrak.

23.4.17 He admitted that during the course of investigation, it had come to his knowledge that vide letter dated 14.08.2007, MIDC had informed M/s JLD Yavatmal Energy Ltd. that their application for grant of land was under active consideration of MIDC and MIDC intended to issue a LoI for 150 hectare (370 acre) of land subject to conditions mentioned in that letter, D-29 Page No.6, Ex.P-4 (Colly) (u/s 294 CrPC).

23.4.18 IO/PW-42 deposed that he did not conduct any investigation to find out whether land allotted by MIDC to a company/other person was transferable or not. He deposed that Sh. Ashish Gupta, authorized representative of AMR (A-4) with reference to his application dated 27.10.2007, submitted letter dated 26.11.2007 requesting for permission for drawl of 23.65 MCM from Wardha River. In response to the said letter dated 26.11.2007 of Sh. Ashish Gupta, letter No.4541 dated 03.12.2007 was issued by Assistant chief Engineer, Water Resource Department, Nagpur addressed to AMR informing the company to submit the proposal for water availability certificate of competent authority in due course of time. It was further mentioned in the letter that after receipt of the said certificate, necessary permission for lifting of water from the river will be issued by the competent authority.

23.4.19 In his cross-examination on behalf of A-2 and A-3, PW-42 deposed that with regard to feedback form and presentation made on behalf of AMR (A-4), he did not inquire from any Member of the Screening Committee about

the nature of queries, if any, put to the presenter, presenting the case of AMR. He did not make any investigation from any member of the Screening Committee as to who had given the presentation on behalf of AMR during Screening Committee meeting (SCM).

23.4.20 He deposed that did not ask from any member of the SCM whether they had made any notes during presentation made on behalf of AMR during the meeting or not. He did not ask any member of the Screening Committee whether they had carried with them the presentation of the companies including AMR to their respective departments after the meeting. He did not ask any member of the Screening Committee whether he had compared the facts and figures given by applicant companies including AMR in their application form with facts and figures in feedback form/presentations.

23.4.21 He deposed that he did not conduct any investigation from the members of Screening Committee viz-a-viz application form, feedback form and presentation. He had recorded only the statement of Sh. N.R. Dash Director (Ministry of Steel), who had attended the Screening Committee meeting. He deposed that no objection was raised to the presentation/feedback by anyone from IL&FS or Lokmat Group during Screening Committee meeting held on 07.12.2008. He deposed that no investigation was conducted to verify the explanation given by Sh. Manoj Kumar Jayaswal (A-1) in his letter dated 16.01.2013 Ex.P-2 (Colly) (D-16) that there was an oral agreement between Lokmat Group and Abhijeet Group that Lokmat Group will join the project and hold equity in AMR once the coal block is allocated to it.

23.4.22 In his further cross-examination on behalf of A-2 and A-3, PW-42 deposed that during his investigation, no document has come on record to show that the matter as mentioned in Clause No.7 (f) or Clause No.26 of IFS was referred to Sh. Shriprakashji Jayaswal of Kanpur for his decision. He deposed that he examined four signatories of IFS namely Sh. B.L. Shaw, Sh. Manoj Kumar Jayaswal (A-1), Sh. Abhijeet Jayaswal and Sh. B.K. Aggarwal. He did not receive/collect any written communication from the signatories to the IFS wherein who was the "outsider" referred to in the IFS was specified.

23.4.23 He volunteered that it was mentioned in the unsigned letter purportedly of Sh. B.L. Shaw dated 21.08.2009 Ex.P-24/PW-17 (Colly) (part of D-14) addressed to Sh. Vijay Darda (A-2), seized from the residence of Sh. Devendra Darda (A-3). During investigation, Sh. B.L. Shaw stated that he did not recollect having written the said letters but he also stated that the letters reflected his feelings during the period 2008-09 when his family was getting divided.

23.4.24 PW-42 deposed that when he examined Sh. Vijay Darda, he told him that he had received these letters but he was of the view that someone mischievously got sent those letters purportedly on behalf of Sh. B.L. Shaw and were not actually sent by Sh. B.L. Shaw. He deposed that as far as letter dated 21.08.2007 of Sh. D.K. Mittal, MD, IL&FS addressed to the Principal Secretary, Industry and Labour Department, Government of Maharashtra, Mumbai is concerned, no investigation was conducted. He volunteered that it was not found to be relevant because the application was for 1 MTPA project EUP

at District Nagpur whereas these letters referred to 2 MTPA project at District Yavatmal.

23.4.25 In his further cross-examination on behalf of A-2 and A-3, PW-42 deposed that as Sh. Vijay Darda wrote letters to PMO requesting allocation of Bander Coal Block to AMR (A-4), Sh. Devendra Darda (A-3) signed the feedback form as Director of AMR, in IFS dated 31.07.2008 amongst the member of Jayaswal Family, it was mentioned that free equity to an extent of 26% will be allotted to the person/outsider instrumental in securing coal block and without genuine business transaction, Rs.24.60 Crores were received by ABPL, a company controlled by Darda Family, from companies owned and controlled by Sh. Manoj Jayaswal Family, he concluded that the amount of Rs.24.60 Crores given by Sh. Manoj Kumar Jayaswal companies to ABPL was in lieu of help provided by them in securing allotment of Bander Coal Block.

23.4.26 He deposed that no recommendation letter written by Sh. Vijay Darda to Ministry of Coal for allocation of a coal block in favour of M/s JAS Infrastructure Capital Pvt. Ltd. had come to his knowledge during investigation. He deposed that during investigation, Sh. Devendra Darda (A-3) told him about the process of bringing IPO for the planned expansion of Lokmat Media but no document was given in that regard. He did not collect documents pertaining to Lokmat Media Ltd. He did not investigate that the Draft Red Herring Prospectus (DRHP) for Lokmat Media Ltd. was filed in December, 2010. He did not investigate that the company Lokmat Media Ltd. was advised not to diversify its funds for fetching favourable

valuations. He did not investigate what was the worth of 26% shares of AMR during the period 2010-2012.

23.4.27 In his cross-examination on behalf of A-6, PW-42 admitted that there was no evidence of *quid pro quo* between the private accused and public servants. He admitted that he could not find any evidence of any direct nexus/communication between any official/agent/representative of AMR (A-4) with Sh. H.C. Gupta (A-6). He further admitted that he did not find any evidence that the letters written by Sh. Vijay Darda (A-2) and forwarded by the PMO to the Ministry of Coal were actually put up before Sh. H.C. Gupta or that he had referred to those in any noting or during the discussion in the Screening Committee meetings.

23.4.28 He further admitted that he did not reduce into writing any statement of any member of the Screening Committee in the present case because he did not find any irregularities in the recommendation process adopted by the Screening Committee in favour of AMR. He admitted that he cannot rule out the possibility of the Screening Committee informing AMR during the presentations that their case will be considered only for EUP at Tarsi as mentioned in the application as was done for those companies which had not appeared for presentations.

23.4.29 He admitted that he examined the Screening Committee Members in a number of cases but not in this case. He further admitted that during the course of investigation, he came across no evidence that any member of the Screening Committee found the fact that AMR had submitted feedback form and made presentation for

proposed EUP at Yavatmal during the Screening Committee interactions as making the company's application based on EUP at Tarsi liable for rejection.

23.5.1 **PW-44 Sh. K.L. Moses** was posted as Inspector in EO-II, CBI and he conducted part-investigation in this case at Nagpur, Maharashtra. He conducted investigation in relation to land and water details/information given by AMR (A-4) in its application, feedback form and presentation. For the said purpose, he collected the relevant documents from Water Resource Department, Nagpur and MIDC, Nagpur. He deposed in respect of the said part of investigation conducted by him in this case.

23.5.2 In his cross-examination on behalf of A-1 and A-4, he deposed that no handing over memo was prepared while handing over the documents/statements of witnesses collected/recorded by him to the IO Sh. Himanshu Bahugana. In his cross-examination on behalf of A-2 and A-3, he deposed that he did not record the statement of Sh. V.M. Kulkarni, Chief Engineer, Water Resource Department, Government of Maharashtra, Nagpur. Sh. H.C. Gupta (A-6) preferred not to cross-examine the said witness.

Witnesses from Banks

24.1.1 **PW-19 Sh. Bidhan Bhattacharjee** was posted as Manager, Canara Bank, Princep Street Branch, Kolkata in the year 2012-13. He deposed that he had handed over to the CBI the copies of relevant statements of bank accounts maintained with his said bank, relevant applications and pay in slips as detailed in two separate

seizure memos both dated 10.01.2013 Ex.P-26/PW-19 (D-101) and Ex.P-51/PW-19 (D-88).

24.2.1 **PW-20 Sh. Gautam Datta** was posted as Assistant General Manager, Canara Bank, Princep Street Branch, Kolkata with effect from May, 2012 to June, 2013. He deposed that he had handed over to the CBI the copies of relevant statements of bank accounts maintained with his said bank, relevant applications and pay in slips as detailed in two separate seizure memos both dated 09.01.2013 Ex.P-64/PW-20(D-49) and Ex.P-103/PW-20(D-126). Pertinently, the said documents and documents seized from PW-19 Sh. Bidhan Bhattacharjee are alleged to be in relation to the transactions of Rs.24.60 Crores allegedly given as a reward/incentive by Sh. Manoj Kumar Jayaswal (A-1) to Sh. Vijay Darda (A-2) by routing it through Kolkata based companies for being instrumental in getting Bander Coal Block allocated to AMR (A-4).

Other witnesses

25.1.1 **PW-13 Sh. Aditya Singh Pathania** was working as Assistant Manager (Security) with Interglobe Aviation Ltd. (Indigo) in the year 2009 and he was posted at Indigo Headquarters, Gurugram, Haryana. He deposed that on the request of CBI, he had provided the air travel details of two passengers namely Sh. Basant Lal Shaw and Sh. Vijay Darda (A-2) during the year 2009 from Nagpur to Calcutta. He deposed that as per records, both of them had traveled from Nagpur to Calcutta on 15.08.2009 in the same flight no.403. He furnished the said information to the CBI vide letters dated 27.05.2013 (D-159) and 19.06.2013 (D-

160). The said letters are Ex.P-1/PW-13 and Ex.P-2/PW-13 respectively.

25.1.2 As per record, prosecution filed affidavits of 03 witnesses namely Sh. Raja Chatterjee, Sh. V.P. Sharma and Sh. Sanjeev Srivastava under Section 296 CrPC. They were taken on record and the accused persons gave in writing that they did not intend to cross-examine the said witnesses. On 08.11.2024, PE was closed and the matter proceeded for recording statements of accused persons under Section 313 CrPC. Statements of all the 05 accused persons under Section 313 CrPC were separately recorded wherein they were put all the incriminating evidence against them to seek their response to the same.

Statements of accused persons under Section 313 CrPC

26. The statement of all the accused persons were recorded wherein they denied all the incriminating evidence which came on record against them during the course of trial, and pleaded their innocence. They came up with the plea that they have been falsely implicated by the CBI in the instant case simply on the basis of presumptions and assumptions without any cogent and conclusive evidence. To the incriminating evidence put to them, each accused came up with their specific responses and their respective defence pleas are as under :-

26.1 **Statement of accused Sh. Manoj Kumar Jayaswal (A-1) under Section 313 CrPC**

(i) That consequent to a spat with PW-1 Sh. Harshad Pophali over his pending dues, he (PW-1) left M/s Corporate Ispat Alloys Pvt. Ltd. and joined M/s Jayaswal NECO Industries Ltd. {owned and

controlled by his (A-1's) father with whom he (A-1) had pending litigation in the year 2014} and he (PW-1) kept working there.

(ii) That there was no "Abhijeet Group" in existence till the execution of IFS in the year 2008. Such term was used only for convenience without having any legal existence or legal character and he (A-2) did not understand the meaning of the term "Group of Companies", which had no legal recognition and it is a loosely used phrase having no relevance in any official parlance and specifically in the coal block allocation process.

(iii) That the previous allocation of coal blocks was never any impediment in allocation of block to the group companies as it is evident from the fact that the 03 blocks were earlier allocated to Abhijeet Infrastructure Ltd. and 02 blocks were allocated to Jayaswal Neco Ltd.

(iv) That he (A-1) had no personal knowledge of the application form (D-2) so filled or about the facts mentioned therein nor he ever issued any authority letter in favour of PW-1 for filling up of application form (D-2) on behalf of AMR. The application form was never filled up by PW-1 as per his (A-1) instructions as alleged by PW-1.

(v) That PW-1 had independent knowledge and prevailing understanding about the information given in the application as he was a Mining Engineer in the Mining Department of M/s Corporate Ispat Alloys Pvt. Ltd, and had access to

all the records. A-1 stated that neither he had seen the application form nor the feedback form nor he was involved in the process.

(vi) That in the Article of Association of the AMR, which were filed along with the application form (D-2), name of his family members including his name was duly reflected and therefore, there was no concealment from the Ministry of Coal.

(vii) That in September 2008, PW-1 had attended meeting in the office of Ministry of State without his instructions as he was not aware about the said meeting because after execution of IFS, his father Sh. Basant Lal Shaw assumed control over the affairs of AMR being its majority shareholder and at the relevant time, he (A-1) had even filed a petition, which corroborates his aforementioned submissions qua control of AMR with Sh. Basant Lal Shaw in the year 2008.

(viii) That on 31.03.2006, MoU was executed by the members of BLS Family and AMR was not part of loosely referred term Abhijeet Group in the MoU. The actual separation took place vide IFS dated 31.07.2008.

(ix) That the application for coal block allocation for different group companies were filled as per the instructions of his father Sh. B.L. Shaw and the inputs used to be received from him (B.L.Shaw).

(x) That he (A-1) did not authorize PW-2 Sh. Sanjay Dey to sign any document including JV

Agreement with IL&FS and he had no role to play in the presentation of AMR in the 36th Screening Committee nor did he give any instruction in that regard to PW-5 Sh. Rajendra M. Ganatra.

(xi) That AMR had nothing to do with the transactions of investments made by Abhijeet Group Companies in Kolkatta based companies or their investment in ABPL nor AMR had any role to play in relation to investment of ABPL in the equity shares of M/s JAS Infrastructure Capital Ltd.

(xii) That the assumption drawn by the CBI with respect to Rs.24.60 Crores transaction is fallacious and it has nothing to do with the allocation of coal block to the AMR. The figure of 26% as mentioned in Para No.7(j) of IFS dated 31.07.2008 has nothing to do with the Dardas. Third parties such as IL&FS IDC and IDFC etc. had been promised shares in the respective SPVs on the basis of the support extended by them towards the coal block allocation. Without any basis, the CBI has tried to project it as a case of exercise of undue influence and illegal gratification.

(xiii) That the company petition was filed by him as his father Sh. B.L. Shaw along with his brothers tried to shun him out of the AMR after it got allotted the coal block.

(xiv) That it is a false case filed by CBI on the basis of presumption/assumptions and inadmissible evidence.

26.2 **Statement of accused Sh. Vijay Darda (A-2)
under Section 313 CrPC**

(i) That he has no personal knowledge about the application form (D-2), feedback form (D-33) and presentation filed by AMR (A-4) for allocation of Bander Coal Block to it.

(ii) That he had no personal knowledge about the process and proceedings of the allocation of coal block to AMR in the Screening Committee, Ministry of Coal and PMO.

(iii) That he had no personal knowledge of JV Agreement (Ex.PW-2/A) of AMR with IL&FS, about the shareholding pattern of AMR, group companies of Jayaswal Neco Group or Group Companies of Abhijeet Group.

(iv) That Sh. Manoj Kumar Jayaswal (A-1) was his friend and he (A-1) might have traveled with him (A-2) on 15.08.2009 in Indigo Flight No.403 from Nagpur to Kolkata, but not with Sh. B.L. Shaw as alleged by CBI.

(v) That PW-18 Sh. Sanjay Shabhu Dayal Khare was working as Vice President (Accounts) with M/s Lokmat Media Pvt. Ltd and letter dated 04.02.2008 (Ex. PW-2/B) addressed to Hon'ble Prime Minister of India was written by him but, he (A-2) was not involved in the preparation of the letters and he had not personally verified the averments made therein and had trusted them to be correct.

(vi) That said letter were written with a *bonafide* intention with no knowledge that any submissions made therein were factually incorrect.

(vii) That he was the Member of Parliament from Yavatmal and it is a general practice for Members of Parliament to write letters for the purpose of development of their constituency.

(viii) The record reflects that the Coal block has however not been allotted for plant at Yavatmal and his requests were not even considered and there is no material to show that the said letters were even considered by the Screening Committee.

(ix) That he did not have any personal knowledge about the details of ABPL and its transactions with Kolkata based companies and M/s JAS Infrastructure Capital Pvt. Ltd nor any unsigned letter was written by Sh. Basant Lal Shaw to him.

(x) That false allegations have been levelled against him with respect to transaction of amount of Rs.24.60 Crores. The same was neither *quid pro quo* to him or to anyone related to him nor it has any relation/connection with letters written by him or with AMR.

26.3 **Statement of accused Sh. Devendra Darda (A-3) under Section 313 CrPC**

(i) That he had no personal knowledge about the application form (D-2) filed by AMR (A-4) for allocation of Bander Coal Block to it. Although he

had attended the screening committee meeting on behalf of AMR but he did not attend it as its Director. Rather he attended it owing to his connection with Lokmat, but he was not involved in preparation of the feedback form or presentation and had no personal knowledge about their contents and he was asked to sign the said documents few minutes before entering the Screening Committee Meeting hall believing their contents to be true.

(ii) That Lokmat Group and IL&FS had joined together for establishing the proposed Sponge Iron Plant of 2 MTPA capacity at Yavatmal and each page of the presentation which was submitted by the AMR in presence of the officials of IL&FS and Lokmat bears the words/logos AMR, Lokmat (in Hindi) and IL&FS.

(iii) That he did not have any personal knowledge about the process and proceedings of the allocation of coal block to AMR in the Screening Committee, Ministry of Coal and PMO nor about the JV Agreement (Ex.PW-2/A) of AMR with IL&FS or shareholding pattern of AMR, Group Companies of Jayaswal Neco Group or Group Companies of Abhijeet Group.

(iv) That PW-18 Sh. Sanjay Shabhu Dayal Khare was working as Vice President (Accounts) with M/s Lokmat Media Pvt. Ltd and the details of ABPL and its transactions with Kolkata based companies and M/s JAS Infrastructure Capital Pvt.

Ltd given by him are a matter of record and the reasons behind the said transactions given by PW-18 are correct.

(v) That the allegations levelled against him with respect to transaction of amount of Rs.24.60 Crores are false as neither the same was *quid pro quo* to him or anyone related to him nor it has any relation/connection with letters written by A-2.

26.4

Statement of accused Sh. Jitender Singh Negi, AR of AMR (A-4) under Section 313 CrPC

(i) That there was no "Abhijeet Group" in existence till the execution of IFS in the year 2008. Such term was used only for convenience without having any legal existence or legal character, the term "Group of Companies" is a loosely used phrase having no legal recognition nor it had any relevance in any official parlance and specifically in the coal block allocation process.

(ii) That the previous allocation of coal blocks was never any impediment in allocation of block to the group companies as it is evident from the fact that the 03 blocks were earlier allocated to Abhijeet Infrastructure Ltd. and 02 blocks were allocated to Jayaswal Neco Ltd.

(iii) That application seeking allocation of Bander Captive Coal Block was submitted in the Ministry of Coal in the name of AMR by PW-1 who was responsible for filling it up and about the facts mentioned therein and no attempt was made by

the AMR to conceal or misrepresent the fact in the said application.

(iv) That PW-1 was authorized to sign the said application and at that time, PW-1 was working as a Mining Engineer in Mining Department of M/s Corporate Ispat Alloys Pvt. Ltd and the information mentioned in the application form including its Column Nos.29 and 30 was furnished by PW-1 as per the records and the then prevailing understanding he had.

(v) That Article of Association of the AMR were filed along with the application form (D-2), wherein the names of the family members were reflected and therefore, there was no concealment from the Ministry of Coal.

(vi) That the shareholding pattern of the Neco Group Companies and Abhijeet Group of Companies as stated in the prosecution evidence is a matter of record but AMR was not part of loosely referred term Abhijeet Group in the MoU and AMR is an independent legal entity and shareholding agreement dated 29.10.2010 [Ex.P-7 (colly)] has no concern with the AMR.

(vii) That it was the responsibility of PW-2 Sh. Sanjay Dey to prepare the feedback form and presentation along with others and in discussion with IL&FS. Officials of IL&FS were present during the screening committee meeting signifying their continued relationship with a project; and JV

agreement dated 02.04.2007 of AMR with IL&FS and IFS dated 31.07.2008 are matter of record.

(viii) That AMR has nothing to do with the transactions of investments made by Abhijeet Group Companies in Kolkata based companies and their investment in ABPL. AMR has no role to play in relation to investment of ABPL in the equity shares of M/s JAS Infrastructure Capital Ltd.

(ix) That land freed from the power plant of JLD project was to be *bonafidely* used towards the setting up of the steel plant of AMR in Yavatmal. However, information mentioned in the feedback form was never considered and the company was not allotted coal block towards its proposed 2 MTPA project at Yavatmal.

(x) That all the information mentioned in the feedback form and presentation was mentioned *bonafidely* and as per the prevailing understanding from the records.

(xi) That the assumption drawn by the CBI with respect to Rs.24.60 Crores transaction is fallacious and it has nothing to do with the allocation of coal block to the AMR.

26.5 **Statement of accused Sh. H.C. Gupta (A-6) under Section 313 CrPC**

(i) That as per the JV Agreement, IL&FC IDC was a co-promoter of AMR and had committed to finance the project. The representative of IL&FC IDC was present in the meeting at the time of the presentation/feed back form but he never objected

to anything contained in the presentation made by the AMR (A-4).

(ii) That copy of the feedback form was given to every Member of the Screening Committee including the representative of Government of Maharashtra, who was a party to the recommendations made by the Committee.

(iii) That full application with annexures was sent both to the Ministry of Steel as well as the Government of Maharashtra. As per the Ministry of Coal Guidelines and the process then in vogue, they were required to evaluate the application and verify the relevant facts.

(iii) That all other Members, including him were given the application (without annexures) as part of Agenda in the first sitting of the Screening Committee. Thus, all the Members were aware as to what was mentioned in the application. However, responsibility for verification of facts contained in the application was that of the Ministry of Steel and the State Government of Maharashtra and representatives of both of them were present in the meeting of the Screening Committee.

(iv) That the recommendation by the Screening Committee was made and signed by all the Members of Screening Committee. The decision of Screening Committee was based primarily on the insistence of the State Government and the representatives of the State Government or the

Ministry of Steel never informed that there was anything wrong in the application.

(v) That the fact regarding feedback form with end use plant of 2 MTPA capacity at Yavatmal was in the knowledge of every Member of the Screening Committee including the representatives of Government of Maharashtra and Ministry of Steel.

(vi) That the allocation was made on the basis of application form, for which there was a project report. Further, as per the decision of the Screening Committee, the allocation was only for a capacity of 0.3 MTPA based on the recommendation made by Ministry of Steel.

(vii) That both the representatives of the Government of Maharashtra and the Ministry of Steel had signed the recommendation sheets along with the other Members. Further, even after circulation of the minutes, they never denied that they had agreed with the recommendations in the screening committee, as such the recommendation was made by the Screening Committee with the consent of all the Members and the same was approved by the Hon'ble PM [as Minister of Coal], after due examination of the whole exercise in the PMO.

(viii) That there was no justification for making him (A-6) accused, holding him singularly responsible, for the alleged wrong allocation of coal block, which was duly recommended by the Screening Committee on the insistence of the

Government of Maharashtra, and duly approved by the Minister of Coal. Even CBI did not find any criminality on his part and initially filed a closure report qua public servants.

(ix) That copy of the feedback form and the presentation were available with all the Members of the Screening Committee and the Committee made its recommendations on 03.07.2008 in the presence of all the Members of Committee, who signed the recommendation sheets, without demur, as a token of their consent.

(x) That such all authorized representatives of the concerned State Government and the Administrative Ministry had also signed the recommendation sheets, therefore, he (A-6) cannot be held responsible for any wrong information furnished by the applicant company. Further, the representative of IL&FS IDC was also present at the time of presentation and he also did not raise any objection during the presentation or at any time subsequent thereto.

(xi) That the representative of the Ministry of Steel was present in the meeting of the Screening Committee held on 03.07.2008 and he was a party to the recommendations made by the Committee and he never objected to the recommendation made in favour of AMR neither in the meeting of the Screening Committee nor at any time subsequent thereto, rather he (representative of

the Ministry of Steel) signed it as a token of his consent.

(xii) That no *inter se* priority chart was given by Ministry of Coal. It was never done by Ministry of Coal. Determination of *inter se* priority was the mandate/prerogative of the Screening Committee and it did so based on the recommendations and views of the Administrative Ministries and the concerned State Government, who were present in the meeting of the Screening Committee and the final view was taken by the Screening Committee collectively as per the applicable guidelines.

27. As per statement of accused persons under Section 313 Cr.P.C, they all expressed their willingness to lead evidence in defence. DW-1 and DW-4 are the witnesses examined on behalf of A-3; DW-2, DW-5 to DW-7 are the witnesses examined on behalf of A-1 to A-4 and DW-3 was examined on behalf of A-6.

Defence Evidence

27.1.1 **DW-1 Sh. Vijay Madhukar Baviskar** is the Group Editor of Lokmat Newspapers and working with the said organization for the last 42 years. He deposed that Sh. Vijay Darda (A-2) was the Chairman, Editorial Board of Lokmat Newspapers since beginning and Sh. Devendra Darda (A-3) was the Managing Director of the Lokmat Newspaper Pvt. Ltd. He deposed that the newspapers were published in three languages i.e. Marathi, Hindi and English since 1971. It was the largest newspaper of Maharashtra having its base in Nagpur but it had the circulation in Maharashtra, Goa and Delhi. He deposed further that a

physical copy of newspapers was maintained in archives. He produced 12 newspapers of Lokmat Marathi, Hindi and English of different date of the year 2012 and same are available on record as Ex.D-1/DW-1 to Ex.D-12/DW-1 respectively. In the said newspapers, the news with respect to CAG Report pertaining to coal blocks and alleged coal scam were published.

27.1.2 In his cross-examination by Ld. DLA for CBI, DW-1 deposed that the source of relevant news from Point 'A' to 'A' in newspaper dated 23.03.2012 Ex.D-1/DW-1 was 'bureau' and as per his understanding, it was the team of correspondents/reporters of Lokmat Newspaper. He admitted that newspapers Ex.D-1/DW-1 to Ex.D-11/DW-1 were all Nagpur Editions and Ex.D-12/DW-1 was Nagpur and Aurangabad Edition. He deposed that in 2012, he was the Editor of Pune Edition of Lokmat Newspapers. He volunteered that this news appeared in all editions of the Lokmat Newspapers at different places. He volunteered that all editions of their newspapers were archived at Nagpur. He admitted that in these newspapers, there was no news of registration of any case against Sh. Vijay Darda (A-2) or Sh. Devendra Darda (A-3) or AMR (A-4) by CBI or any forwarding of any such complaint by CVC to CBI.

27.2.1 **DW-2 Sh. Manish Rajvaidya** is a Company Secretary, who joined M/s JAS Toll Road Company Ltd., Nagpur, Maharashtra as Assistant Manager in the year 2006. He deposed that in the said company, initially he was reporting to Sh. Sanjay Dey, General Manager (CS). In August, 2006, Sh. A.B.P. Kesan joined M/s Corporate Ispat Alloys Ltd. as a General Manager (CS) and thereafter, he

started reporting him. As per his version, BLS family was running both the said companies.

27.2.2 DW-2 testified that he used to report to Sh. A.B.P. Kesan who in turn, used to report to Sh. B.L. Shaw. AMR (A-4) was incorporated on 10.06.2003. Sh. B.L. Shaw was the Chairman of BLS family companies. He deposed that as he was working under Sh. A.B.P. Kesan and who in turn, was looking after the work of number of other companies of the group so he also used to deal with work of number of other companies besides that of M/s JAS Toll Road Company Ltd. Accordingly, he also used to look after the work of AMR. Since Sh. B.L. Shaw did not use to trust his three sons, all the decisions relating to various companies of the group were used to be taken by him (B.L. Shaw) only. He deposed that Sh. B.L. Shaw used to consider Sh. Manoj Kumar Jayaswal (A-1) as an irresponsible person because of his flamboyant nature. He had restricted Sh. Manoj Kumar Jayaswal's role only to administrative work such as HR related issues of the companies, bill passing of employees etc. He did not use to allow Sh. Manoj Kumar Jayaswal to deal with any matters in any public offices.

27.2.3 In his examination-in-chief, DW-2 deposed further that various companies of BLS Family used to work independently but matters relating to applying for coal blocks as well as formalities in that respect used to be dealt with by a centralized office of the BLS Family which was personally monitored, managed and controlled even at micro level by Sh. B.L. Shaw. All the work relating to allocation of coal block on behalf of various companies including filing of application forms or submitting other documents to concerned public offices was looked after by

Sh. B.L. Shaw along with Sh. A.B.P. Kesan. He deposed that in respect of AMR, in matters relating to allocation of coal blocks, the decisions used to be taken by Sh. B.L. Shaw and not by the Directors of the company. Accordingly, all the decisions relating to submitting of application on behalf of AMR to Ministry of Coal or making presentation before Screening Committee or submitting feedback form on behalf of the company were taken by Sh. B.L. Shaw. He testified that Sh. Manoj Kumar Jayaswal (A-1) had no role to play in furnishing information relating to any of the columns in the application form, feedback form or the presentation of AMR submitted to Ministry of Coal for seeking allocation of coal block. He has deposed that the said information was provided by Sh. B.L. Shaw and Sh. A.B.P. Kesan.

27.2.4 It was deposed further by DW-2 that in the year 2013, Sh. Harshad Pophali had filed some litigation against his employer i.e. M/s Corporate Alloys Ispat Ltd. One petition was pertaining to claiming his gratuity amount from the company and another was filed for winding up of the company on account of his pending dues. He was claiming some salaries dues and some other dues which were under dispute. Though the cases were filed against the company but he actually had a fight with Sh. Manoj Kumar Jayaswal as it was he who had been denied his certain dues. He testified that Sh. Harshad Pophali had even said to Sh. Manoj Kumar Jayaswal that he was a prosecution witness so he must clear all his dues failing which he would depose against him. DW2 deposed further that in the family owned companies, it was a normal practice that decisions were used to be taken by the person at the helm of affairs of the

family though the same were shown to have been passed by Directors or shareholders.

27.2.5 DW-2 deposed further that Sh. Manoj Kumar Jayaswal (A-1) had no role in AMR (A-4) though he was made Director. All the decisions used to be taken by Sh. B.L. Shaw in respect of this company. However, Sh. Manoj Kumar Jayaswal used to sign some documents like balance sheet, annual returns etc. as Director, upon instructions of Sh. B.L. Shaw. He testified that Sh. B.L. Shaw along with Sh. A.B.P. Kesan started with the process of preparing and filing application for coal block allocation to AMR. He further deposed that IL&FS was already co-partner with M/s JAS Infrastructure Capital Pvt. Ltd., an independent SPV, for allocation of coal blocks. Sh. D.K. Mittal, MD of IL&FS, had discussions with Sh. B.L. Shaw, showing interest to participate in Application filed by AMR.

27.2.6 DW2 deposed that Sh. D.K. Mittal of IL&FS was of the opinion that since the applicant company was the end user company, there was no need to give information about allocation of coal blocks to other group companies in the application form. The said view of Sh. D.K. Mittal was discussed by Sh. A.B.P. Kesan with Sh. V.S. Rana from Ministry of Coal on telephone who informed him that there was no clarity regarding purpose of information to be given in Column No.30 (Prior Allocation of Coal Block to Group Companies). He deposed that the said conversation was heard by him as it was done on speaker mode.

27.2.7 DW-2 testified that feedback form was prepared by Sh. H.G. Joshi in consultation with IL&FS officers. Thereafter, Sh. Joshi discussed it with Sh. B.L.

Shaw and it was finalized. With respect to presentation, Sh. B.L. Shaw had asked mining department to prepare it. Sh. Manoj Kumar Jayaswal had no role in the above said subjects. Sh. B.L. Shaw was Karta of BLS family and he used to take all the decisions. However, there was no document to show that he was taking all the decisions with regard to the finalization of the application form, feedback form, presentation and deeds relating to allocation of coal block for AMR (A-4). He further deposed that Sh. Manoj Kumar Jayaswal had not signed any document of this case, he did not have authority to give any instructions, everyone in the company knew that Sh. Manoj Kumar Jayaswal was not authorized to instruct anyone and he could only have passed on the instructions given by Sh. B.L. Shaw but could not have been originator of the instructions.

27.2.8 DW-2 further deposed that the documents Ex.D-17/DW-5, Ex.D-16/DW-5 and Ex.D-15/DW-5 from the period 2004-2007 showed that Sh. B.L. Shaw had been exercising control over the affairs of BLS Family companies and micromanaging their affairs even though he was not a director in those companies and that he used to issue directions to the Members of the board on policy decisions such as splitting of companies, reconstitution of board, signing of any important documents such as Minutes of the Board Meeting and Sh. A.B.P. Kesan, Sh. Sanjay Dey, Sh. H.G. Joshi and Sh. S.K. Moitra etc., the senior officers used to carry out these instructions. Sh. B.L. Shaw had requested Sh. R.M. Ganatra and Sh. Anoop Kr. Behera to attend the presentation. He testified that they reported back to Sh. B.L. Shaw in his presence that they had attended the Screening Committee meeting.

27.2.9 In his cross-examination by Ld. DLA for CBI, DW-2 deposed that there was no Company Secretary in AMR (A-4) either at the time of incorporation or at the time of applying for coal block. He denied the suggestion of the prosecution that Sh. Manoj Kumar Jayaswal (A-1) was looking after and managing the affairs of M/s Corporate Alloys Ispat Ltd. and M/s Abhijeet Infrastructure Ltd. as Managing Director. He admitted that as per Clause 3.1 of MoU dated 31.03.2006 D-155, Ex.P-8 (Collectively), it was *inter alia* stated that Neco group shall not interfere with the affairs and conduct of business of Abhijeet group. He volunteered that this MoU was never acted upon and this fact was mentioned in indenture of family settlement that it was only for commercial convenience of BLS family. He further deposed that he had neither seen nor he had been shown any minutes of AMR wherein name of Sh. B.L. Shaw was mentioned as the decision maker in respect of joint venture between IL&FS and AMR and filing of the application for allocation as well as feedback form and presentation before Screening Committee.

27.2.10 DW-2 admitted that he was not employee of AMR and that after the execution of IFS dated 31.07.2008, he was working with MKJ Group led by Sh. Manoj Kumar Jayaswal. He further admitted that the documents Ex.D-15/DW-5 to Ex.D-17/DW-5 did not pertain to AMR. He volunteered that these documents pertained to working of BLS family and more particularly control of Sh. B.L. Shaw over the companies irrespective of him being its Director or shareholder. He deposed that he remained associated with Sh. Manoj Kumar Jayaswal since March,

2006 till September, 2016. He deposed that in fact he had close association with Sh. B.L. Shaw.

27.3.1 **DW-3 Sh. Shivraj Singh** was an IAS Officer of Chhattisgarh Cadre and retired from his service on 31.07.2008 as Chief Secretary, State of Chhattisgarh. He deposed that from the year 2003 to 2007, he was posted as Principal Secretary/Addl. Chief Secretary, Industries & Mineral Resources Departments, Government of Chhattisgarh. During that period, he attended around 04 to 05 Screening Committee meetings held for allocation of coal blocks for the steel and cement sector. He deposed that as representative of Chhattisgarh, he attended a number of Screening Committee meetings. As regard 36th Screening Committee, he participated in its meeting held on 03.07.2008 along with Sh. B.L. Thakur, Secretary, Mineral Resources Departments, Government of Chhattisgarh. Sh. H.C. Gupta, Secretary (Coal) (A-6) was the Chairman of the Screening Committee. He deposed that in the meeting, notified coal blocks were taken up for making recommendations State by State and block by block.

27.3.2 As per the version of DW-2, while considering any specific block, the Chairman used to ask the views of the Administrative Ministry i.e. Ministry of Steel, DIPP and the State Government in which the coal block was located. After knowing their views, the Chairman used to ask the other members of the Screening Committee present, if they had any views or opinion to offer. If there were no differing views, then the unanimous recommendation used to be made for allocation of the coal block. As per his version, in Government working, whether in the Central Government or in the State Governments, the

consensus or unanimous decision were used to be normally announced by the person chairing the meeting and same was the case here, Chairman announced the decision. DW-3 deposed further that if in the case of some coal block, there were differing views, matter used to be further discussed and a logical consensus used to be arrived at, in particular about the views of the State Government representatives who normally used to insist that the coal blocks located in their States should be allocated to meet the coal requirement of the EUPs located within their own States.

27.3.3 DW-3 further testified that in one or two cases, Chairman had clarified that since coal blocks were located only in a limited number of States whereas, EUPs requiring captive coal were located pan India therefore, a balance had to be struck between the need of the coal bearing State and the EUPs located in States having no coal blocks. Generally, this being a very valid logic, members and the State representatives used to agree to the said suggestion and did not use to not press for allocation of coal blocks to the EUPs situated in their States only.

27.3.4 He deposed that all recommendations in the meeting held on 03.07.2008 were either unanimous or by general consensus of its all the members. All the members of the said committee had signed the recommendations sheet as a token of acceptance of the recommendations of the committee. He testified that in case of disagreement, the concerned member, on receipt of the copy of the minutes of the meeting of the Screening Committee, could have written to the Ministry of Coal for correcting the minutes to include the views expressed by him during the meeting.

27.3.5 Further, even during the meeting such member could have recorded his dissent on the recommendations sheet. In some other Screening Committee Meeting perhaps 25th or 26th, he himself (DW-3) had sent a letter of dissent for correction of the minutes. He further testified that the minutes of the Screening Committee meeting having recommendations sheet as annexure used to be uploaded on the official website and their hard copies also used to be received by the members for their information.

27.3.6 DW-3 in his examination-in-chief further deposed that the status of the EUP as also the details furnished by the applicant companies for allocation of captive coal blocks used to be verified by the concerned Administrative Ministry of the Central Government. He further deposed that perhaps this was the reason that the Chairman used to ask the views of the representative of the Administrative Ministry first. He deposed that the role of the Screening Committee was limited to making a recommendation to allocate coal blocks to the Ministry of Coal. The recommendations of the Screening Committee used to be processed by the Ministry of Coal for approval of the competent authority. After approval of the competent authority, which normally was the Minister of Coal, allocation letters to the successful allocatees used to be sent by the Ministry of Coal with copies to the State Governments. Based upon these allocation letters, the allocatees companies used to obtain various statutory clearances from different departments and organizations of the State and Central Governments. It was only after completion of these formalities, a mining lease could be

granted by the State Government under the MMDR Act, 1959.

27.3.7 In his cross-examination by Ld. DLA for CBI, DW-3 deposed that he did not remember if in the meeting of 36th Screening Committee held on 03.07.2008, its Chairman had informed the committee that AMR (A-4) had not applied for their End Use Project (EUP) situated in the District Yavatmal, Maharashtra. He volunteered that in respect of coal blocks, not located in his State and EUP also not located in his State, he just participated in listening and not in active discussion for coal blocks to EUPs situated in other States. However, if some principles or general policy were to be adopted for allocation of coal blocks then he participated in the discussion as everyone. He admitted that he did not offer any views in respect of the allocation of coal blocks situated in Maharashtra.

27.3.8 DW-3 in his cross-examination admitted that on 03.07.2008, no presentations were given by the applicants. He deposed that it was permissible for Screening Committee to permit or allow the change of location but not change of capacity of EUP on the request of the applicant. He further deposed that representative of Ministry of Steel had explained to the Screening Committee that they had categorized the applicants in different groups of hierarchy based upon the criteria adopted by the said Ministry.

27.3.9 He stated further that the guidelines contained in the advertisement did not have *inter se* weightage because of which *inter se* priority list of all companies could not have been prepared. He further deposed that he had seen the Office Memorandum of

Ministry of Steel which contained categorization of different applicants/companies but, there was no recommendation company wise for a particular coal block and therefore, there was no question of receipt of specific recommendation for M/s AMR Iron and Steel Ltd. for a coal block from Ministry of Steel.

27.4.1 **DW-4 Sh. Mohan Arvind Joshi** deposed that he had joined M/s Lokmat Media Pvt. Ltd. on 15.12.1992 as Finance Officer. In April, 2008, he was promoted as a General Manager (Finance) in the said company. In August, 2010, he was promoted as Finance Controller and still working as such in the same company. The said company was in the business of newspaper publication. Besides that, it was also running IBN Lokmat Marathi TV News Channel. Sh. Vijay Darda (A-2) was the Chairman and Managing Director of the said company at the time of his joining and he remained as such till the year 2010. Sh. Devendra Darda (A-3) became its Managing Director in the year 2010 by substituting Sh. Vijay Darda. Sh. Vijay Darda was Member of Parliament from the year 1998 to 2016 and he stopped actively looking Lokmat work during his tenure as Member of Parliament.

27.4.2 In his further examination-in-chief, DW-4 deposed that the company decided to raise funds through IPO and for the said purpose, Draft Red Herring Prospectus (DRHP) was required to be prepared. The work for the same began in the month of March, 2010. It was a lengthy process requiring appointment of Lead Managers, Legal Advisors, Registrar to the Issue, Statutory Auditor, Independent Directors and Company Secretary. The first draft of DRHP was prepared by the Lokmat team and

submitted to the Advisors as well as Lead Managers for their vetting. Thereafter, several meetings/communications took place for the purposes of making changes in the draft which was finally to be submitted with the SEBI. He deposed that the DRHP was submitted with the SEBI on 27.12.2010 wherein his name had been mentioned.

27.4.3 During his examination, DW-4 was shown original of the final DRHP submitted with SEBI and he identified the same. The photocopy of the relevant pages of the said DRHP are Ex.D-13/DW-4 (Collectively) (running into 02 pages) (OSR). He further deposed that during the said process, it was advised by the Advisors and Lead Managers that the company should maintain consistency and continuity in information and there should be no diversification during the process of preparation of DRHP and consideration of the same by the SEBI, as the same would otherwise, impact the success of the IPO. He deposed that he also advised and corroborated the said advise. SEBI approved the DRHP in January, 2012 and within six months, company was required to file its RHP. However, ultimately, the IPO did not go through. He further deposed that the company was contemplating further investment opportunity in May-June, 2012. However, Mrs. Jyotsana Darda, late wife of Sh. Vijay Darda, fell ill around July, 2012 and was later detected with cancer. CBI conducted a raid in September, 2012 and therefore, any further plans to raise investment were dropped.

27.4.4 In the cross-examination by Ld. DLA for CBI, DW-4 admitted that Sh. Devendra Darda (A-3) and Sh. Vijay Darda (A-2) were the shareholders of ABPL. However, he did not know with certainty whether they were the

Directors in the said company. He further admitted that as per Page No.167 of DRHP, Sh. Vijay Darda was holding 74% of the equity shares in the said company at the time of preparation of DRHP. The copy of the said page is Ex.D-14/DW-4 (OSR). He deposed that agreement dated 29.10.2010 [Ex.P-7 (Colly)] between M/s JAS Infrastructure Capital Pvt. Ltd., M/s Abhijeet Infrastructure Capital Pvt. Ltd., Sh. Vijay Darda, Sh. Devendra Darda and ABPL was not mentioned in DRHP dated 27.12.2010.

27.5.1 **DW-5 Sh. Sohan Chaturvedi** is a Chartered Accountant and he deposed that around the year 1999, he had started his own firm namely Chaturvedi Sohan & Co. wherein he was one of the partners. He deposed that the office of the said firm and office of Sh. B.L. Shaw were in the same building. In the year 1992, Sh. B.L. Shaw had asked him to advise their Companies in the capacity of an auditor and he accepted them as a client of Chaturvedi & Shah. He deposed that he became very close to him after demise of his wife in the year 2000. He deposed that sometime in 2000-2002, Sh. B.L. Shaw informed him that as per the advice of his Financial Advisor, he was intending to separate 4-5 of his healthy and debt-free companies as being under a separate promoter ship i.e. of his son Sh. Manoj Kumar Jayaswal (A-1) and of his grandsons Sh. Abhishek Jayaswal, Sh. Avneesh Jayaswal and Sh. Anand Jayaswal and with the name of 'Abhijeet Group' because the flagship company of his family M/s Jayaswal Neco Industries Ltd. was facing the risk of bankruptcy and on the other hand, one of his sons Sh. Manoj Kumar Jayaswal had turned out to be of a very flamboyant nature and an incompetent person.

27.5.2 Further that he had come to know a *Vyavastha Patra* had been executed by members of the BL Shaw Family at the time of the preparation of the Indenture of Family Settlement (IFS) and Sh. B.L. Shaw had told him that he was preparing IFS to show that all the companies were created by him and under his control and the separation was only for commercial convenience and that he had the exclusive control over the policy decisions, so that if any situation happened to arise wherein his control or authority was challenged, he might use this document to show case his absolute control over the members of the family. DW-5 deposed further that for clarification purpose, reference to the *Vyavastha Patra* and MoU/Non-Interference Agreement were got included in the IFS to establish that the division of the family was effected with the said document.

27.5.3 He stated further that with this view in mind and for the said purpose, recitals 'H' to 'N' were specifically added to the IFS as dictated by Sh. B.L. Shaw. He deposed that he along with Sh. B.K. Aggarwal, Chartered Accountant, were made facilitators for division of the family by Sh. B.L. Shaw. He testified that Sh. B.L. Shaw had personally dictated all the clauses of the IFS. He took the decision of which company and which assets should go to which party as per his vision and calculations. The other family members accepted his decisions as the businesses were set up by him.

27.5.4 In his further examination-in-chief, DW-5 deposed that Sh. B.L. Shaw did not like Sh. Manoj Kumar Jayaswal due to his flamboyant lifestyle. He felt that Sh. Manoj Jayaswal was incompetent and due to these reasons he wanted to separate Sh. Manoj Kumar Jayaswal from the

family business within his lifetime. He testified that later when he used to visit the office of Sh. B.L. Shaw during around 2006-2007, many aspects relating to coal block were often being discussed between Sh. B.L. Shaw and his officers Sh. A.B.P. Kesan and Sh. Manish Rajvaidya and sometimes, Sh. H.G. Joshi used to be also present there. He further testified that both Sh. A.B.P. Kesan and Sh. Manish Rajvaidya were taking directions from Sh. B.L. Shaw on the applications to be filled for coal block allocation and other coal block related matters. He deposed that Sh. A.B.P. Kesan was overseeing the entire process related to allocation of coal block.

27.5.5 DW-5 further stated that in the year 2013-14, Sh. Harshad Pophali used to publicly threaten Sh. Manoj Kumar Jayaswal that he would depose against him if his pending dues were not cleared. He further testified that Sh. Manoj Kumar Jayaswal was specifically asked by Sh. B.L. Shaw to not get involved in any process concerning coal block allocation or any other aspect involving policy decision because the relations between the two were strained as Sh. B.L. Shaw did not use to listen to him and considered him incompetent.

27.5.6 In his cross-examination by Ld. DLA for CBI, DW-5 admitted that he was Auditor of M/s Jayaswal Ashoka Pvt. Ltd. which was a joint venture company of Abhijeet Group and Ashoka Group and therefore, the said company could not be said to be exclusively of Sh. Manoj Kumar Jayaswal (A-1). He deposed that he did not have any personal knowledge about the allocation of coal block to AMR (A-4) except of what was mentioned in the IFS.

27.6.1 **DW-6 Sh. Avik Mukherjee** is working in the office of Sh. Kannan Tiruvengadam (CA), Official Liquidator, M/s JAS Infrastructure & Power Ltd. erstwhile known as M/s JAS Infrastructure Capital Pvt. Ltd. He brought Form No.2 (Return of Allotment) dated 14.05.2010 pertaining to M/s JAS Infrastructure Capital Pvt. Ltd. filed pursuant to Section 75(1) Companies Act, 1956 along with Table 'A' and 'B' (running into 05 pages). The copy of the said form along with annexures are Mark D-23/DW-6 (Collectively) (running into 05 pages).

27.7.1 **DW-7 Sh. Samir Hembrom** brought the certified copy of Form No.2 (Return of Allotment) dated 14.05.2010 pertaining to M/s JAS Infrastructure Capital Pvt. Ltd. filed along with Table 'A' and 'B' (running into 05 pages) from the Office of Registrar of Companies, West Bengal. The said Form No.2 is Ex.D-24/DW-7 (running into 04 pages) (Collectively) and the single page containing the said Table 'A' and Table 'B' is Ex.D-25/DW-7.

Final Arguments

28. Arguments were advanced at length by Ld. Counsels Sh. Mudit Jain for A-1 to A-4 and Sh. Rahul Tyagi for A-6. On behalf of CBI, the arguments were addressed by Ld. DLA, Sh. Sh. A.P. Singh, Ld. DLA. Written submissions were also filed on behalf of CBI as well as the accused persons. I have given my thoughtful consideration to the rival contentions raised from both the sides and also carefully perused the entire record including the written arguments and the supporting judgments filed on record by the parties.

Final arguments on behalf of CBI/Prosecution

29. Sh. A.P. Singh, Ld. DLA for CBI assisted by the IO Sh. Himanshu Bahuguna has argued that CBI has been able to prove its case beyond any reasonable doubt. He has contended that though cogent and credible evidence which has been duly proved on record, CBI has successfully proved the allegations against all the accused persons. He drew attention of the court to the testimony of PW-1 and PW-2 through whom CBI is said to have established on record the dishonest misrepresentation on the part of A-1 and A-4. He submitted that PW-1 Sh. Harshad Pophali, on the instructions of Sh. Manoj Kumar Jayaswal (A-1), had filed an application dated 10.01.2007 Ex.PW-1/A-1 (D-2) on behalf of AMR (A-4) for seeking allocation of Bander Coal Block, Maharashtra for its proposed EUP of Integrated Steel Plant having capacity of 1 MTPA at Village Tarsi, District Nagpur, Maharashtra.

29.1 It was submitted that in said application dated 10.01.2007, a false and dishonest information was given on behalf of AMR (A-4) regarding prior allocation of coal block to its group or associate companies in the form of 'No' to the said query in the application form. He has further contended that PW-1 has corroborated said fact. He has contended that the said information has been established to be false as more than 06 coal blocks were previously allocated to group or associate companies of the AMR. The said fact is also corroborated by PW-2 Sh. Sanjay Dey and the same has not been refuted/denied by the accused persons. He has contended that based upon the said false information/concealment, AMR dishonestly induced the

Screening Committee to secure Bander Coal Block in its favour.

29.2 In respect of feedback form Ex.PW-1/H (D-33) and presentation Ex.PW-2/DX-1(D-10) both dated 07.12.2007, Ld. DLA for CBI has contended that the said documents were filed by the AMR (A-4) in accordance with feedback format Ex.P-182/PW-39 (D-173) uploaded by the Ministry of Coal on its website. The purpose of seeking those documents was to obtain latest status/stage of preparedness of the companies with respect to their EUP as from the time when the applications were received considerable time had already elapsed. The said fact has been proved by PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal.

29.3 It was further contended that the feedback form and presentation have not been disputed by the accused persons including AMR (A-4). He has contended that PW-5 Sh. Rajendra M. Ganatra, Group Director in Abhijeet Group of Companies has deposed that he was instructed by Sh. Manoj Kumar Jayaswal (A-1) who was one of the Directors of AMR to attend the presentation on 07.12.2007. He has contended that the said witness has deposed that Sh. Anup Kumar Behara, representative of IL&FS, IDS and Sh. Devendra Darda (A-3) also attended the 36th Screening Committee meeting held on 07.12.2007 for presentation on behalf of AMR. He has contended that PW-5 has deposed that Sh. Devendra Darda signed the feedback form Ex.PW-1/H (D-33) as Director of AMR.

29.4 It was further argued that in the said two documents dated 07.12.2007 (feedback form and

presentation both dated 07.12.2007), M/s AMR (A-4) on the instructions of Sh. Manoj Kumar Jayaswal (A-1) furnished false information regarding land, water, DPR, net worth and the name of its Director. He has further contended that in the said documents, AMR falsely claimed itself to be the SPV of IL&FS, IDC and Lokmat Group. In the said documents, the EUP was changed from 1 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra as proposed in the application form of AMR dated 10.01.2007 to 2 MTPA capacity at District Yavatmal, Maharashtra. Therefore, it is apparent that on furnishing of feedback form for 2 MTPA at District Yavatmal, Maharashtra, the AMR tacitly abandoned/gave up its proposed project of 1 MTPA at Village Tarsi, District Nagpur, Maharashtra.

29.5 Ld. DLA further argued that in the said documents (feedback form and presentation), the AMR (A-4) falsely claimed it to be SPV of IL&FS, IDC & Lokmat Group and wrongly projected its net worth to be Rs.1,821.64 Crores by aggregating their net worth with its net worth. It was contended that the accused persons have admitted that the net worth claimed in the said documents is not the correct net worth of AMR, which was around Rs.1.96 Crores at the time of its application. He has further contended that in the said documents, AMR has falsely claimed that it has acquired 370 acres of land from MIDC and through PW-21 Sh. G.M. Parate, PW-22 Sh. Vijay Sahadeorao Bhakare and PW-38 Sh. Gajanan Wasudevrao Suranje, CBI has duly have established that no land was allotted by MIDC to AMR in District Yavatmal, Maharashtra. He has further contended that even accused persons have not disputed the said fact.

29.6 In relation to false claim regarding water in the said documents, he has argued that AMR claimed that for the requirement of 23.65 MCM per annum for its proposed EUP at District Yavatmal, it has tied up through Irrigation Department, Maharashtra from Wardha River. However, PW-15 Sh. Kishor Eknathji Warambhe, Assistant Chief Engineer in the Office of the Chief Engineer, Irrigation Department, Nagpur has testified that final permission for water was not given to the AMR as Water Availability Certificate was never received from it. He has further contended that in the said documents, it was mentioned that the DPR for the altered EUP of 2 MTPA has been appraised by IL&FS, IDC. However, no such DPR was annexed with the said documents. He has further contended that Sh. Devendra Darda (A-3) signed the said documents as the Director of the AMR (A-4) though he was not its Director. The said facts have not been disputed by the accused persons. He has contended that by dishonestly furnishing the afore-mentioned false information in the feedback form and presentation both dated 07.12.2007, the AMR, on the instructions of Sh. Manoj Kumar Jayaswal (A-1) in conspiracy with the other accused persons, dishonestly induced the Ministry of Coal through the Screening Committee to allocate Bander Coal Block to it. Thus, the prosecution has successfully established its case of criminal conspiracy and cheating against the accused persons.

29.7 In respect of accused public servant Sh. H.C. Gupta (A-6), Ld. DLA for CBI has contended that pursuant to his criminal conspiracy with the private accused persons, he being Chairman of the 36th Screening Committee, recommended allocation of Bander Coal Block to AMR jointly

with two other companies for its EUP of 0.3 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra though in view of the feedback form and presentation both dated 07.12.2007, the Screening Committee knew that AMR had abandoned/dropped its plan to set up the said EUP. He has contended that the accused Sh. H.C. Gupta (A-6) being Chairman of 36th Screening Committee showed undue favour to AMR (A-4) for recommending allocation of Bander Coal Block in its favour and thereby, abused his official position as public servant without any public interest.

29.8 He has further contended that pursuant to the said criminal conspiracy, Sh. H.C. Gupta, Chairman of 36th Screening Committee (A-6) misrepresented to the PMO that the recommendation in favour of AMR (A-4) has been made on the basis of recommendation of Administrative Ministry and concerned State Government knowing fully well that the concerned Government of Maharashtra had recommended AMR for allocation of a captive coal block for its sponge iron plant of 2 MTPA capacity at District Yavatmal, Maharashtra and not for its proposed EUP of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra.

29.9 It was further contended on behalf of CBI that the recommendation of Government of Maharashtra dated 27.11.2007 has been proved by PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal as Ex.P-181/PW-39 (D-173) and the same was in contradiction with the afore-mentioned misrepresentation of Sh. H.C. Gupta (A-6) to the PMO. He has further contended that PW-43 Sh. Nihar Ranjan Dash, the then Director, Ministry of Steel (Administrative Ministry) has proved the documents/Office Memorandums dated 06.12.2007 and

14.12.2007 of Ministry of Steel as Ex.P-178/PW-39 (Colly) (D-173) and Ex.P-179/PW-39 (Colly) (D-173) respectively. The said misrepresentation of Sh. H.C. Gupta (A-6) is also in contravention of said documents. It was further argued that the accused public servant did not follow the guidelines laid down by the Ministry of Coal for making final recommendation in favour of AMR i.e. the criteria of *inter se* priority wherein status, level of progress, stage of preparedness of the project, techno-economic viability, feasibility of the project, etc. were the main factors to be considered.

29.10 In respect of the accused Sh. Vijay Darda (A-2), Ld. DLA for CBI has contended that pursuant to the criminal conspiracy, A-2 had made various communications to different Government Authorities i.e. Government of Maharashtra, Ministry of Coal, Government of India and Prime Minister of India (having charge of Minister of Coal) on his letter head of Member of Parliament (Rajya Sabha) wherein, all the afore-mentioned misrepresentations in the feedback form dated 07.12.2007 were reiterated so as to unduly influence the Government Authorities with a view to procure allocation of Bander Coal Block in favour of AMR (A-4) for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra knowing very well that no application in that regard was submitted to Ministry of Coal. The said letters/FAX i.e. letter dated Nil Ex.P-220/PW-41 (D-20), letter dated 04.02.2008 Ex.P-6/PW-14 (Colly) (D-22) and FAX dated 18.03.2008 Ex.P-223/PW-41 have been admitted by Sh. Vijay Darda (A-2).

29.11 He has further contended that pursuant to the said criminal conspiracy, total sum of Rs.24.60 Crores (i.e.

Rs.8 Crores on 13.10.2010, Rs.10.60 Crores on 31.03.2012 and Rs.6 Crores on 06/07.08.2012) was paid as a *quid pro quo*/reward/illegal gratification to the accused Sh. Vijay Darda (A-2) by the accused Sh. Manoj Kumar Jayaswal (A-1) for being instrumental in procuring allocation of Bander Coal Block to AMR (A-4) by unduly influencing the Government of Maharashtra and Ministry of Coal in that regard. It was contended that the said amount of money was paid by Sh. Manoj Kumar Jayaswal through his group companies i.e. Abhijeet Group of Companies to the accused Sh. Vijay Darda (A-2) through his company ABPL in the garb of purchase of its shares at unreasonably high price by routing the said amount through 11 Kolkata based companies.

29.12 The ABPL purchased shares of M/s JAS Infrastructure and Power Ltd. (earlier known as M/s JAS Infrastructure Capital Pvt. Ltd.) belonging to Abhijeet Group controlled by Sh. Manoj Kumar Jayaswal (A-1) from the money received by it in the above transactions. Thus, ABPL purchased the shares of company of Sh. Manoj Kumar Jayaswal on the basis of the money provided by Sh. Manoj Kumar Jayaswal from its other companies through the route of 11 Kolkata based companies. He has contended that the said transactions have been duly proved by the prosecution witnesses i.e. PW-18 Sh. S.S. Khare and PW-24 to PW-37 and except denying the alleged purpose of said transactions, there is no contest from the defence as to the factum of said transactions.

29.13 Ld. DLA further argued that on account of the following facts, it can be conclusively inferred that the said amount of Rs.24.60 Crores was given by Sh. Manoj Kumar

Jayaswal (A-1) to ABPL of Dardas through 11 Kolkata based companies in lieu of unlawful help provided by Sh. Vijay Darda (A-2) in securing allotment of Bander Coal Block to AMR (A-4):-

(1) Sh. Vijay Darda (A-2) wrote letters to PMO requesting allocation of Bander Coal Block to AMR (A-4);

(2) Sh. Devendra Darda (A-3) signed the feedback form (D-33) as Director of AMR (A-4);

(3) In IFS dated 31.07.2008 Ex.P-5 (Colly) (D-158) amongst the members of Jayaswal Family, it was specifically mentioned that free equity of the company to the extent of 26% will be allotted to the person/outsider instrumental in securing coal block for it;

(4) The unsigned typed letter dated 21.08.2009 purportedly written by Sh. Basant Lal Shaw, father of Sh. Manoj Kumar Jayaswal (A-1) and addressed to Sh. Vijay Darda (A-2) also corroborates the purpose of the said transactions; and

(5) In Company Petition No.111/397-398/CLB/MB/2009 dated 11.09.2009 Ex.P-18 filed before the Mumbai Bench of Company Law Board by Sh. Manoj Kumar Jayaswal (A-1), it was claimed by the petitioner that the signatories of IFS who were members of Jayaswal Family and Directors of their 05 different companies including AMR (A-4) had agreed that the company that would get the allocation of coal block, its 26% free equity shall be allotted to the person who would be instrumental in securing the coal block allocation.

29.14 It has been argued by Ld. DLA that based upon the conclusive evidence led by the prosecution, it is evident that the accused persons not only had a reason to believe but actually knew that the claims made by them qua the actual production capacity or steps qua preparedness and existing installed capacity of their end use project were false. It is also clear that the accused persons knowing fully well that the said facts were false represented them to be true and thus, misled Screening Committee and thereby, Ministry of Steel, Ministry of Coal, Government of India to believe in the existence of said facts as true and thereby, inducing it to part with the important nationalized natural resources of the country i.e. coal.

29.15 It has been vehemently argued that by way of their said misrepresentations the accused persons also induced Screening Committee and thereby Ministry of Coal, Government of India to part with much higher quantity of coal in their favour than was warranted, if at all allocation of any coal block was to be made. He had further contended that based upon the cogent and uncontroverted evidence led by the prosecution, the respective charges against all the accused persons have been duly proved and consequently, they are liable to be convicted for the same.

Final arguments on behalf of Sh. Manoj Kumar Jayaswal (A-1) and AMR (A-4)

30. A multi-fold argument has been raised by Sh. Mudit Jain, Ld. Counsel for A-1 and A-4 to raise the contention that the prosecution has miserably failed to prove any of the alleged charges against the accused persons. In respect of alleged misrepresentation at Serial

No.30 of the application form dated 10.01.2007 (D-2) of the AMR (A-4) wherein 'No' has been mentioned in respect of the query regarding previous allocation of coal block to the group or associate companies of the AMR, he has contended that no falsity of information or dishonest intention can be attributed to the AMR in furnishing of said information because, the information was given in accordance with Clause 7 of the Guidelines of Ministry of Coal (D-184 page 19), which required only JV and Mining companies to disclose the name of their group companies and since, A-4 itself was an EUP, names of group companies was not disclosed in the application form. However, Articles of Association, Memorandum of Association and audited balance sheets of AMR for three years were duly annexed with the application form from where it was apparent and could be conveniently deduced that the group or associate companies of AMR had been previously granted coal blocks.

30.1 Ld. Counsel further argued that said fact regarding previous allocation of coal block was even otherwise, within the knowledge of Ministry of Coal before issuance of option letter dated 23.12.2008 as depicted from the notes dated 18.08.2008 Ex.P-161/PW-39 (Colly) of PW-40 Sh. Sewak Paul, Dealing Assistant, Ministry of Coal which was brought to the knowledge of all his senior officers up to the level of Minister of Coal. Even Sh. Sewak Paul, got the knowledge regarding previous allocation of coal block to group or associate companies of M/s AMR from its Articles of Association, Memorandum of Association annexed with the application form.

30.2 He has further contended that no evidence has been led to show the purpose or purport or rationale for

which the said information was sought in the application form. Further, there is no evidence on record in the form of testimony of any of the members of the Screening Committee or in any other manner to suggest that the said alleged misinformation or concealment formed the basis for the alleged inducement of the Screening Committee in recommending Bander Coal Block to the AMR (A-4).

30.3 It has been argued that even otherwise, there is no evidence on record to suggest that the information with respect to group was significant for recommendation of coal block by the Screening Committee. Moreover, neither in guidelines nor in advertisement nor in the extant policy there was bar or impediment in allocation of coal block to the company if the coal block had been previously allocated to its group or associate company. Rather, there were multiple instances where coal blocks were allocated not only to the group or associate companies but even to the same companies. In view thereof, there was no ulterior reason or motive for the AMR (A-4) to conceal the said information. Thus, the allegation of the prosecution that the said misrepresentation was dishonest with an intention to conceal any relevant fact is unfounded.

30.4 In respect of the alleged misinformation in the feedback form Ex.PW-1/H (D-33) and the presentation Ex.PW-2/DX-1 (D-10) both dated 07.12.2007, Sh. Mudit Jain, Ld. Counsel for A-1 and A-4 has argued that the alleged misinformation in said documents was related to proposed EUP of AMR (2 MTPA steel plant) at District Yavatmal, Maharashtra, whereas, Bander Coal Block allocated by the screening committee was in respect of proposed EUP of AMR (0.3 MTPA capacity) at village Tarsi,

District Nagpur, Maharashtra. Thus, alleged misinformation in said documents was never considered by the Screening Committee and therefore, any alleged misinformation in the said documents is of no consequence as it did not lead to any inducement to the Screening Committee in arriving at its decision for allocating Bander Coal Block to AMR.

30.5 It was further argued that even otherwise, none of the information in the said two documents was false or misleading. He has contended that in both the said documents, the AMR (A-4) had claimed that it is proposed SPV of IL&FS, IDC and Lokmat Group. It was never claimed to be an existing SPV. The said SPV was supposed to come in existence only after allocation of coal block to the AMR for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. He has contended that as AMR was not allocated coal block for the said proposed EUP, the proposed SPV was not required to be formed. He has contended that the representatives of IL&FS, IDC and Lokmat Group were present in the meeting of 36th Screening Committee held on 07.12.2007 and they never objected to the claim of AMR that it is a proposed SPV of Lokmat Group and IL&FS, IDC. Rather, they supported the same by their presence in the said meeting of the Screening Committee and it is further evident from the fact that logos of all the three companies including AMR were affixed on each page of the presentation.

30.6 Ld. Counsel contended that there was no requirement for the SPV agreement to be in writing. Even otherwise, JV agreement dated 02.04.2007 Ex.PW-2/A was executed between AMR (A-4) and IL&FS, IDC reflecting that AMR intended to include IL&FS, IDC as one of its partners as

its SPV for allocation of coal block and establishment of its proposed EUP. He has contended that there is no allegation that net worth of the said two companies was wrongly mentioned in the feedback form. The only allegation is that the said net worth could not be clubbed with the net worth of AMR while depicting its net worth in the feedback form. He has further contended that the net worth of AMR mentioned in the said two documents includes the net worth of the said two companies and as AMR was proposed to be their SPV, it was legally permissible as per the guidelines to include their net worth. Therefore, there is no misrepresentation in respect of the proposed SPV or net worth in the feedback form and presentation both dated 07.12.2007.

30.7 Ld. Counsel argued that MIDC had issued Comfort Letter dated 14.08.2007 Ex.P-4 (Colly) for 150 hectares (370 acres) of land to M/s JLD Yavatmal Energy Ltd., group company of Abhijeet Group, for its proposed power plant. However, on 06.11.2007, Fatehpur East Coal Block was allocated to the said company in Chhattisgarh instead of Maharashtra. Therefore, considering the cost of transportation of coal, the said company decided to shift location of its power plant from Maharashtra to Chhattisgarh. Therefore, it was decided that the said land may be used for the AMR (A-4). He has contended that the said figure of 370 acres is not a fanciful figure but based upon the afore-mentioned hard facts. Further, there is no evidence on record to suggest that any of the public servants considered the feedback form and was induced by the information regarding land therein for recommending the Bander Coal Block to the AMR.

30.8 As regard the alleged misinformation in respect of water resources in the feedback form, it was contended that in that regard, the applicant AMR had stated in the feedback form that it has 'Tied up from Irrigation Department, Maharashtra from Wardha River'. He has contended that the said information was not incorrect as they had applied for water for its EUP from Wardha River through the Irrigation Department, Maharashtra and vide letter dated 03.12.2007 Ex.P-10/PW-15, the Irrigation Department principally agreed to the request of AMR subject to furnishing of Water Availability Certificate. He has contended that even if final permission was not granted by the Irrigation Department, Maharashtra for the want of Water Availability Certificate, it is apparent that AMR had got conditional approval for the supply of water from Irrigation Department to its proposed EUP at District Yavatmal, Maharashtra. However, as coal block for the said proposed EUP was not allocated to the AMR, the further formalities for obtaining final permission of water from Wardha River were not followed up with the Irrigation Department. He has, therefore, contended that there is no misinformation or false information on the aspect of water in the feedback form dated 07.12.2007.

30.9 He has further contended that Sh. Devendra Darda (A-3) signed the feedback form as Director of Lokmat Group, proposed promoter of SPV of AMR and not as the Director of the AMR (A-4). In his designation, he has merely mentioned that he is signing it as a Director without indicating himself to be the Director of AMR. Even otherwise, he signed the said document in a perfunctory manner without any motive or *mens rea* as he assumed that

he can sign it as a Director of one of the promoters on behalf of the proposed SPV. He has contended that the proposed project was to be implemented *inter alia* by Lokmat Group, a company in which Sh. Devendra Darda (A-3) was a Director. He has contended that his said signatures are innocuous as it did not lead to any inducement. He has further contended that filing of the DPR along with feedback form was not mandatory and so, its non-filing with the feedback form does not attract any culpable omission. He has contended that the DPR for the proposed EUP of 1 MTPA capacity was duly filed along with the application as per the relevant guidelines.

30.10 Ld. Counsel argued that even otherwise the feedback form and presentation itself were the chance events and their absence was not a disqualification. The said fact is evident from the letter written by PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal dated 26.02.2007 (D-174 page 377) and Para Nos.6 and 7(1) of the minutes of the meeting of 36th Screening Committee held on 03.07.2008 (D-175 page 874-875) wherein, it was mentioned that the companies who did not appear for the presentation despite notices issued to them, their applications have been considered as per the information submitted by them in their application forms.

30.11 It has been vehemently argued that there is no evidence to the effect that any of the members of the Screening Committee claimed the feedback form to be mandatory for the grant of coal block. Further, neither in the minutes of 36th Screening Committee nor in the documents of Ministry of Coal nor in the documents of PMO it is anywhere mentioned that feedback form of AMR was

considered at any stage and same is also evident from the fact that as per Minutes of Screening Committee, feedback forms of only Revati Cement was considered. Thus, in absence thereof, any alleged misrepresentation based upon the contents of the feedback form or presentation had no consequence of inducing Screening Committee in arriving at its decision.

30.12 He has further contended that there is no evidence that application form dated 10.01.2007 of the AMR (A-4) was withdrawn or deemed to be dropped. Rather, the circumstances show that the feedback form dated 07.12.2007 of the AMR was rejected and not considered for want of any beforehand application in support thereof. The recommendation for allotment of Bander Coal Block in favour of AMR is in consonance with its application form which clearly depicts that its feedback form, presentation and their contents were neither relevant nor considered by the Screening Committee.

30.13 He has further contended that no money in the alleged form of *quid pro quo* to Sh. Vijay Darda (A-2) or his family or his agent or his company was ever directly or indirectly transferred by the AMR (A-4) for the letters written by him to the PMO for seeking favour in allocation of Bander Coal Block to the AMR. Further, there is no evidence on record to suggest that the said letters of Sh. Vijay Darda were considered or instrumental in decision of Screening Committee to recommend Bander Coal Block in favour of AMR. There is no evidence on record to manifest that the said letters were even placed before the Screening Committee for consideration. Therefore, the said letters are

irrelevant and inconsequential for the recommendation of Bander Coal Block to the AMR.

30.14 It has been further contended that indeed, the allocation of Bander Coal Block to the AMR is wholly contrary to the request made by Sh. Vijay Darda in his letters wherein he had requested the allocation of Bander Coal Block exclusively to the AMR for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. Whereas, the said coal block was jointly allocated to the AMR with two other companies for its proposed EUP of 0.3 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra in consonance with the application of AMR uninfluenced by the said letters of Sh. Vijay Darda or the contents of the feedback form.

30.15 It was argued that there was no connection of the alleged transactions of Rs.24.60 Crores with either AMR or the afore-mentioned letters written by Sh. Vijay Darda. Admittedly, there are no allegations or charge regarding the legality of the transactions of Rs.24.60 Crores. The allegations are confined to the purpose of the said transactions and not regarding its manner. However, in absence of any connection between the said letters and allocation of Bander Coal Block to AMR, the alleged purpose of transactions has remained unsubstantiated. PW-18 Sh. S.S. Khare from Lokmat Group explained the purpose of the said transactions in detail which establishes that the said transactions were absolutely unrelated to allocation of Bander Coal Block to AMR. His testimony has been corroborated by the unimpeached testimony of DW-4 Sh. Mohan Arvind Joshi. He has further contended that the said transactions took place pursuant to the written shareholder agreement dated 29.10.2010 Ex.P-7 (Colly) but the

prosecution has whimsically and unsuccessfully tried to connect it with coal block allocation to the AMR.

30.16 It was contended further that the reliance of the prosecution on Clause No.7(J) of IFS dated 31.07.2008 Ex.P-5 to connect the said transactions of Rs.24.60 Crores with the allocation of Bander Coal Block to AMR (A-4) was highly misplaced and capricious. It is evident that the letters written by Sh. Vijay Darda (A-2) not only failed to secure favourable results to the AMR but they were never considered by the Screening Committee. Therefore, he cannot be considered to be instrumental in securing Bander Coal Block to the AMR so as to be entitled to any consideration on that count.

30.17 Further, as per the balance sheets (D-12) of the AMR, its entire net worth was Rs.2 Crores making its 26% shares worth around Rs.50 Lacs. Therefore, even if the allegations of the prosecution that Sh. Vijay Darda was instrumental in securing allocation of Bander Coal Block in favour of AMR is believed to be correct, as per the said clause of IFS, he would have been entitled to receive equity worth Rs.50 Lacs only. The transactions of Rs.24.60 Crores is highly disproportionate to the 26% equity shares of the AMR. Therefore, it is unreasonable and preposterous to assume that the said transactions have any relation to the alleged help rendered by Sh. Vijay Darda through his letters in securing coal block to the AMR. He has further contended that the prosecution has not examined any of the signatories of the IFS to ascertain the meaning or interpretation of said clause in the IFS.

30.18 It has been further argued that the Company Law Board Petition dated 11.09.2009 Ex.P-18 of Sh. Manoj Kumar Jayaswal (A-1) reflects that a dispute arose between him on one side and his father & brothers on other side in the management, administration and control of AMR immediately after allocation of Bander Coal Block to AMR. In view of the said dispute, the EUP could not be established and finally, the allocation of coal block to AMR was revoked in the year 2014 even before mining lease agreement could be executed or a single gram of coal could be extracted.

30.19 In respect of two unsigned typed letters written by Sh. B.L. Shaw to Sh. Vijay Darda, Ld Counsel has contended that the same are inadmissible as the purported author of the said letters has not been examined by the prosecution. He has further contended that even the contents of the said unsigned and unsubstantiated letters are untrustworthy and against the factual record thereby rendering it wholly unreliable. Therefore, the said unsubstantiated unsigned letters should be deemed to be non-existent having no bearing whatsoever on the decision of this case.

30.20 He has contended that PW-1 Sh. Harshad Pophali had strained relations with Sh. Manoj Kumar Jayaswal (A-1) in the year 2014 owing to their dispute regarding dues of PW-1. Therefore, he has falsely attributed responsibility of filling up of the information in the application form dated 10.01.2007 (D-2) of the AMR (A-4) upon A-1 who was only one of the Directors of the said company. He has contended that Sh. B.L. Shaw, father of Sh. Manoj Kumar Jayaswal was head of the BLS family and founder of its group companies including AMR company.

30.21 It was contended that Sh. B.L. Shaw used to take all the decisions in respect of functioning of AMR including preparation and filing of its application for coal block allocation. The said facts have been proved by DW-2 Sh. Manish Rajvaidya and DW-5 Sh. Sohan Chaturvedi. It was submitted that the said witnesses had categorically deposed that Sh. Manoj Kumar Jayaswal had nothing to do in filling up of application form of AMR for allocation of coal block. Therefore, the version of PW-1 that he had filled up the information in the application form (D-2) as per the instructions of Sh. Manoj Kumar Jayaswal is liable to be rejected as untrue as the same has been contradicted by credible testimonies of the defence DW-2 and DW-5.

30.22 With these submissions, Ld. Counsel for A-1 and A-4 has contended that the prosecution has miserably failed to prove its case and therefore, both of them are entitled to be acquitted for the charges framed against them.

Final Arguments on behalf of Sh. Vijay Darda (A-2)

31.1 In addition to the arguments advanced on behalf of A-1 and A-4, Sh. Mudit Jain, Ld. Counsel for A-2 has argued that there is no alleged role of A-2 in preparation of application form dated 10.01.2007 and feedback form & presentation both dated 07.12.2007. In respect of letters written by him to the PMO with the request for securing allocation of Bander Coal Block to the AMR (A-4), he has contended that his said requests were neither considered nor the allocation of Bander Coal Block to the AMR was recommended in accordance with said letters. In relation to the allegation of *quid pro quo* against him and the purpose of transactions of Rs.24.60 Crores from

Abhijeet Group of Companies to 11 Kolkata based companies then to his ABPL and then to M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.), Ld. Counsel has adopted same arguments as advanced on behalf of A-1 and A-4. He has further contended that the prosecution has failed to prove its case against A-2 as there is no credible and admissible evidence to connect him with the present case or to its alleged conspiracy.

Final arguments on behalf of Sh. Devendra Darda (A-3)

32. In addition to the arguments advanced on behalf of A-1, A-2 and A-4, Sh. Mudit Jain, Ld. Counsel for A-3 has argued that there is no evidence that A-3 dishonestly signed the feedback form (D-33) as Director of AMR (A-4) and thus, no *mens rea* can be attributed to him. He has contended that even PW-5 Sh. Rajendra M. Ganatra testified that he erroneously signed on the attendance sheet of 36th Screening Committee held on 07.12.2007 as Director of AMR. It was also contended that separate standards and scales cannot be used for two persons for the similar act by making one of them as accused and citing other one as a prosecution witness.

32.1 He has further argued that A-3 had appeared in the said meeting as a representative of Lokmat Company in which he was a Director. As per the feedback form, AMR (A-4) was proposed to be SPV of Lokmat Group and IL&FS, IDC. Therefore, he *bonafidely* signed it as Director of one of the promoter companies of proposed SPV without specifically indicating that he signed it as Director of AMR. Further, there is no evidence that his signing of the feedback

form as a Director has induced any member of the Screening Committee in arriving at the final decision of recommending Bander Coal Block to the AMR.

32.2 In respect of the contents of the feedback form and presentation both dated 07.12.2007, he has adopted the same arguments as advanced on behalf of A-1 and A-4. In relation to purpose of transactions of Rs.24.60 Crores also, he has adopted the arguments advanced on behalf of A-1, A-2 and A-4.

Final arguments on behalf of Sh. H.C. Gupta (A-6)

33. Arguments on behalf of A-6 were advanced by Ld. Counsel Sh. Rahul Tyagi, who was assisted by Sh. Mathew M. Philip, Adv. He contended that CBI case is absolutely lacking on admissible or credible evidence to connect A-6 to the alleged offence. It was argued that initially a closure report was filed by CBI against all the public servants including A-6. Admittedly, neither there is any allegation nor any proof to show that there was any *quid pro quo* between A-6 and any of the private accused persons including representatives of AMR (A-4). Further, there is no evidence of any nexus or prior meeting of mind between A-6 and private accused persons. The prosecution has conceded that the application of AMR for its proposed EUP of 1 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra was complete in all respects. There is no evidence that A-6 was aware of any alleged misrepresentation made by AMR to the Screening Committee or Ministry of Coal.

33.1 There was no adverse comment from the administrative ministry, which in the instant case was

Ministry of Steel. Indeed, Ministry of Steel had recommended that AMR was eligible company for allocation of coal block by placing it in Category-VI. Whereas, Government of Maharashtra vide its letter dated 15.06.2007, recommended that AMR had the resources and capability for setting up of its 1 MTPA plant.

33.2 Ld. Counsel Sh. Rahul Tyagi submitted that final recommendation for Tarsi Plant for the capacity of 0.3 MTPA in favour of AMR jointly with two other companies was done by the Screening Committee which is Inter Departmental Committee on 03.07.2008 in the presence of representatives of the Administrative Ministry of Steel and the concerned Government of State of Maharashtra. The said decision was taken unanimously and none of the members of the Screening Committee objected to or gave dissenting note to said recommendation. They signed the recommendation sheet as a mark of the approval. It was further contended that as per DW-3 Sh. Shivraj Singh, who was one of the members of 36th Screening Committee, all its decisions in its meeting held on 03.07.2008 were either unanimous or by general consensus of all its members.

33.3 It was argued further that as per Manual of Office Procedure, in Inter Departmental Meetings/Consultations, the representatives are empowered to take decisions for the departments. In the instant case, the recommendation sheet was signed by all the representatives without any objection or demur reflecting that they supported and approved the collective decision of the Screening Committee. The decision of the Screening Committee for recommendation of Bander Coal Block to AMR (A-4) was collective and unanimous. There is no

allegation that A-6 imposed his individual decision upon the members of the Screening Committee against their consent or that he exercised Veto Power to change the collective decision of the Screening Committee in order to favour AMR.

33.4 Ld. Counsel submitted that as per the guidelines of 18th Screening Committee, the responsibility of verifying the details furnished by the applicant companies for allocation of captive coal blocks was on the Administrative Ministries of the Central Government and they were not required to specify the name of the coal block while recommending the company for allocation of coal block. He has contended that as per PW-41 Ms. Vini Mahajan, the then Joint Secretary, PMO, the recommendations of the concerned State Government or Administrative Ministry were not binding on the Screening Committee and the recommendations of the Screening Committee were not binding on the Ministry of Coal.

33.5 It was argued further that the feedback form and the presentation both dated 07.12.2007 of AMR (A-4) were not considered by the Screening Committee as the requisite application for the proposed EUP in the said documents was never filed. As per the guidelines, separate application for separate EUP was a pre-requisite condition for consideration for recommendation for coal block allocation. However, as there was no application for the proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra in the feedback form and presentation, the same were not considered for allocation of coal block to AMR.

33.6 Ld. Counsel contended that the application form dated 10.01.2007 along with the recommendations of the Ministry of Steel and State Government of Maharashtra but not the feedback form/presentation dated 07.12.2007 were considered by the Screening Committee and the same fact was conveyed to the Minister of Coal. Thus, nothing was concealed by A-6 from the Hon'ble Prime Minister (as Minister of Coal) in relation to recommendation of Bander Coal Block to the AMR (A-4). The said recommendations were not binding upon the Minister of Coal and they were of no value unless approved by him. He has argued that there are no allegations that A-6 was impelled by *mens rea* or dishonest intention in recommending Bander Coal Block jointly to AMR (A-4) with two other companies in his capacity as Chairman of the 36th Screening Committee.

33.7 Further, the decision to carry out the exercise of allocating coal blocks was a policy decision taken upon the specific instructions of the 7th Energy Coordinate Committee (ECC) and the PMO, which clearly shows that the public interest was the prime consideration in the said exercise.

33.8 It was further contended that AMR (A-4) had never withdrawn its application for EUP in Village Tarsi, District Nagpur, Maharashtra and therefore, it cannot be arbitrarily assumed that they had dropped or abandoned the said EUP. The companies were entitled to separately apply for same coal block for different EUPs. However, in the instant case, there was no application for 2 MTPA EUP at District Yavatmal, Maharashtra. Therefore, the feedback form (D-33) and presentation (D-10) of AMR containing the details about the said EUP was rightly and lawfully not considered by the Screening Committee.

33.9 Even otherwise, Screening Committee was not bound to make recommendations based upon the feedback forms or presentations given by the applicant companies. Rather, it was consciously decided by the Screening Committee that even those applicant companies who did not appear for giving representations shall be considered for the recommendation of the coal block based upon their applications. The said fact is evident from Para No.6 of the Minutes of 36th Screening Committee held on 03.07.2007 (D-175 page 874).

33.10 It has been further argued that the allegation of the prosecution that A-6 misled PMO is incorrect. The said allegations has been contradicted by the prosecution witness herself i.e. PW-41 Ms. Vinni Mahajan, the then Joint Secretary, PMO. In her deposition, she clarified that the Secretary, Coal was satisfied by the decision of the Screening Committee in respect of the Steel Sector and he had raised no grievance. She further clarified that no member of the Screening Committee or their Principals had raised any dissent and they signed the recommendations as a mark of approval.

33.11 It was argued that the letters of Sh. Vijay Darda (A-2) were never placed before A-6 or the Screening Committee and therefore, there is no question of being influenced by the said letters qua AMR (A-4). It was submitted that PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal in his cross-examination has deposed that he filed an affidavit before Hon'ble Delhi High Court in another connected matter to the effect that representations received in PMO/Ministry of Coal from various quarters were a routine matter, but they were

not part of the examination and scrutiny of applications and as such, they did not affect the recommendation making process.

33.12 He has further argued that no evidence has been led by the prosecution to show that it was the Ministry of Coal's responsibility to determine *inter se* priority amongst applicant companies or that there was any dereliction of duties by the accused public servant in this regard. Rather as per 18th Screening Committee meeting, the exercise of determination of *inter se* priority among the applicant companies was the job and responsibility of the Administrative Ministry i.e. Ministry of Steel in the instant case.

33.13 It was further argued that the name of the AMR (A-4) was recommended by the Screening Committee in the presence of the representatives of the State Government and Administrative Ministry with their consent on the basis of application form dated 10.01.2007 (D-2) of AMR, recommendation of Government of Maharashtra vide letter dated 15.06.2007 whereby, it was stated that it had the capability and resources to set up the plant as proposed in their project reports and recommendation of Administrative Ministry i.e. Ministry of Steel vide Office Memorandums dated 06.12.2007 and 14.12.2007.

33.14 The recommendation was unanimously made in the meeting of 36th Screening Committee held on 03.07.2008 after due deliberations between all its members. Further, A-6 cannot be made scapegoat and arbitrarily held responsible for collective and unanimous decision taken by the Screening Committee merely because he chaired the

said Committee. Even otherwise, the prosecution has failed to attribute any culpable flaw or error in the recommendation of Screening Committee of Bander Coal Block in favour of AMR jointly along with two other companies.

33.15 It had been vehemently argued that A-6 had acted with *bona fide* intention to serve the public interest by diligently adopting and following the process of recommendation as per the applicable guidelines. With these submissions, it was contended that the prosecution has miserably failed to prove the essential ingredients of the alleged offences and in view thereof, A-6 deserves to be acquitted for all the alleged offences.

Arguments of CBI in rebuttal

34. Sh. A.P. Singh, Ld. DLA for CBI has countered the above arguments of the defence. In addition to the reiterating his arguments, he contended that no evidence has been led by the defence to show that 370 acres of land that was allotted by MIDC to M/s JLD Yavatmal Energy Ltd. at District Yavatmal, Maharashtra was transferable and its management agreed to transfer its use to AMR (A-4) for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. In view of lack of any such material, there is no reason to assume that the information qua land furnished by AMR in its feedback form and presentation both dated 07.12.2007 is correct.

34.1 He has further contended that Sh. Manoj Kumar Jayaswal (A-1) did not confront PW-1 Sh. Harshad Pophali in his cross-examination for his alleged bias against him. He has therefore, contended that the defence of A-1 regarding

strained relations with PW-1 is an afterthought and therefore, it is incredible and deserves to be rejected. On the other hand, the testimony of PW-1 against A-1 is clinching, credible and inspires confidence. He has concluded his rebuttal arguments by reiterating that prosecution has proved all the respective charges against all the five accused persons beyond any reasonable doubt by leading cogent, consistent and convincing evidence.

34.2 Ld. DLA also placed reliance on the judgments **'Kanumukkala Krishna Murthy v. State of Andhara Pradesh' 1965 AIR 333**, to contend that deception of Screening Committee is the deception of Ministry of Coal and Government of India. He also relied upon the judgment titled as **'Abhayanand Mishra v. The State of Bihar' 1961 AIR 1698** to buttress his argument that even the recommendation of Screening Committee also had an immense value for AMR to become entitled for allocation of coal block and therefore, it is liable to be construed as valuable thing for the purpose of Section 13(1)(d) PC Act. Without said recommendation, AMR could not have been issued the allocation letter, he argued.

Discussion and Analysis of material by the Court

35. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. Thus the prosecution has to establish all essential of charge framed to allay this presumption of innocence. Evidence is the only way to prove or disprove any fact or circumstance and oral testimony apart from the

documentary evidence are the ways through which evidence is brought on record. In the instant case, both oral and documentary evidence has been adduced on record but, the prosecution case is primarily based on documentary evidence. As already noted above, two of the accused A-5 and A-7 were discharged in this case and against rest of the accused, following charges have been framed:-

- (i) Charge for the offence punishable under Section 420 IPC against A-1 to A-4.
- (ii) Charge for the offence punishable under Section 9 of PC Act, 1988 against A-2.
- (iii) Charge for the offence punishable under Section 13(1)(d) PC Act against A-6.
- (iv) Charge for the offence punishable under Section 120-B IPC and 120B IPC r/w Section 420 IPC and clause 13(1)(d) and Section 9 of Prevention of Corruption Act, 1988 against all the 05 accused persons (A-1 to A-4 and A-6).

36. As is evident from above, the charge of criminal conspiracy under Section 120-B PC Act has been framed against all the accused persons. However, the charge for the offence of cheating under Section 420 IPC is alleged only against the private persons (A-1 to A-4). The charge for the offence under Section 9 of PC Act has been additionally framed against the private person Vijay Darda (A-2). Whereas, against the accused public servant A-6 besides the charge of criminal conspiracy, an additional charge of criminal misconduct under Section 13(1)(d) PC Act has also been framed.

37. It is a settled principle of criminal law that the prosecution case has to stand on its own legs and it has to prove its case against the accused beyond any reasonable doubt by leading cogent and conclusive evidence. Burden of

proving its case exclusively lies upon the prosecution and in order to succeed, it has to discharge the said burden. If the prosecution case appears to be improbable or lacks credibility, the benefit of doubt necessarily has to go to the accused.

Undisputed Facts

38. Before culling out the points of determination, it is necessary to first identify the disputed and undisputed facts emerging out of the record. The relevant undisputed/admitted facts which also stand corroborated during the course of trial are delineated as under:-

(1) On 13.11.2006, an advertisement Ex.P-166/PW-39 (Colly) (D-184, page Nos.73 to 94 including guidelines) was published by the Ministry of Coal, Government of India for inviting applications in prescribed format for allocation of 38 coal blocks located at different places in India including Bander Coal Block in the State of Maharashtra. In response to the said advertisement, total 23 applications from different companies including AMR (A-4) were received in the Ministry of Coal for the said coal block;

(2) In its application dated 10.01.2007 Ex.PW-1/A (Colly) (D-2) filed by AMR (A-4) through Sh. Harshad Pophali (PW-1), it sought allocation of Bander Coal Block for its proposed 1 MTPA Integrated Steel Plant to be set up in Village Tarsi, District Nagpur, Maharashtra. The said application was filed along with duly filled prescribed application format and requisite

documents. In the said application form, AMR mentioned 'No' against the query at its Serial No.30, which pertained to any prior allocation of blocks to its group or associate companies;

(3) In response to the recommendations/views sought by Ministry of Coal from State Government of Maharashtra qua the applications related to coal blocks situated within its territory including Bander Coal Block, Government of Maharashtra through its Principal Secretary (Industries) Sh. V.K. Jairath sent a letter dated 15.06.2007 (D-173) to the Secretary (Coal), Ministry of Coal whereby name of AMR (A-4) was recommended for allocation of three coal blocks (other than Bander Coal Block) stating that it has the capability and resources to set up the plants as proposed in its project report annexed with its application. Subsequently, vide letter dated 27.11.2007, Ex.P-181/PW-39 (D-173), Government of Maharashtra through its Principal Secretary (Industries) sent a letter to the Secretary (Coal), Ministry of Coal recommending the allocation for Bander Coal Block to AMR for setting up of 2 MTPA Integrated Steel Plant at District Yavatmal, Maharashtra;

(4) In response to the recommendations/views sought by Ministry of Coal from the concerned Administrative Ministry i.e. Ministry of Steel qua the applications related to coal blocks including Bander Coal Block proposed to be used for the prospective Iron & Steel Plant,

an Office Memorandum dated 06.12.2007 Ex.P-178/PW-39 (Colly) (D-23) was written by Sh. N.R. Dash, Director, Ministry of Steel to Joint Secretary, Ministry of Coal whereby Ministry of Steel categorized the eligible companies for allotment of coal block in total 06 categories and the AMR (A-4) for its 1 MTPA project at Village Tarsi, District Nagpur, Maharashtra was kept in Category-VI. However, considering the proposal in the application of AMR and the norms of Ministry of Steel (EUP to be commissioned before December, 2010), only 0.3 MTPA capacity for AMR was recommended out of the proposed 1 MTPA capacity in the application dated 10.01.2007. Thus, vide said memorandum, Ministry of Steel recommended allocation of coal block to AMR for only 0.3 MTPA capacity of its proposed EUP at Village Tarsi, District Nagpur, Maharashtra without specifying the name of the coal block. In the said memorandum, it was further stated that the categorization carried out was only indicative in nature and subject to deliberations in the Screening Committee;

(5) On 16.11.2007, Ministry of Coal uploaded an Official Memorandum/Notice Ex.P-184/PW-39 (D-173) on its website for screening proposals relating to captive mining of coal blocks for non-power sector in 36th meeting of the Screening Committee to be held on 07.12.2007, 08.12.2007, 17.12.2007 and 18.12.2007 whereby the applicants for all the coal blocks for non-power

sector including AMR (A-4) were instructed to give presentations and submit feedback forms as per the feedback format annexed with the said memorandum regarding the latest status of End Use Plant (EUP) for which application for the block had been made.

(6) In response to said memorandum of Ministry of Coal, AMR furnished feedback form Ex.PW-1/H (D-33) as per the requisite format on 07.12.2007 duly signed by Sh. Devendra Darda (A-3) claiming himself to be Director and in consonance with the feedback form, the written presentation dated 07.12.2007 Ex.PW-2/DX-1 (D-10) was made before the 36th Screening Committee. The said presentation was attended by PW-5 Sh. Rajendra M. Ganatra on behalf of AMR, Sh. Devendra Darda on behalf of Lokmat Group and Sh. Anup Kumar Behara on behalf of Infrastructure Leasing and Financial Services Ltd., Infrastructure Development Corporation (IL&FS IDC);

(7) In the said feedback form Ex.PW-1/H (D-33) and presentation Ex.PW-2/DX-1 (D-10), it was claimed that AMR (A-4) was a proposed Special Purpose Vehicle (SPV) of Lokmat Group and IL&FS. Further, in the said documents, the net worth of M/s AMR SPV was claimed as Rs.887.37 Crores (as on 31.03.2006) and Rs.1,821.64 Crores (as on 31.03.2007) whereas, in its application form dated 10.01.2007 Ex. PW1/A (colly) D-2, AMR had claimed its net worth to be Rs.1.96

Crores only. Besides that, in the said documents, the location of its EUP was changed from Village Tarsi, District Nagpur, Maharashtra to District Yavatmal, Maharashtra and its capacity was also altered from 1 MTPA to 2 MTPA vis-a-vis to the application dated 10.01.2007 Ex.PW-1/A (Colly) (D-2);

(8) In the said two documents i.e feedback form Ex.PW-1/H(D-33) and presentation Ex. PW-2/DX-1 (D-10) both dated 07.12.2007, it was claimed that for its EUP, 370 acres of land had been allotted to the AMR (A-4) by Maharashtra Industrial Development Corporation (MIDC) in District Yavatmal, Maharashtra and for its water requirement, it had tied up with Irrigation Department, Maharashtra for supply of water from Wardha River. Moreover, no Detailed Project Report (DPR) for its changed EUP was enclosed with the feedback form or presentation;

(9) The meeting of 36th Screening Committee to consider recommendation for allocation of coal blocks for non-power sector including Bander Coal Block was held on 03.07.2008 under the Chairmanship of Sh. H.C. Gupta (A-6), Secretary (Coal). This meeting was attended by Sh. V.S. Sawakhande, Director as the representative of Government of Maharashtra and Sh. U.P. Singh, Joint Secretary along with Sh. N.R. Dash, Director as the representatives of Ministry of Coal in addition to the other representatives of the

concerned Departments, Ministries and State Governments.

(10) As per the minutes of the said meeting held on 03.07.2008 Ex.P-196/PW-39 (page Nos.872 to 928, D-175), the Screening Committee decided to recommend allocation of Bander Coal Block to AMR (for its 0.3 MTPA capacity) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. The minutes further recorded that the said decision was taken by the Screening Committee after deliberations and based upon the data furnished by the applicants, the feedback received from the State Governments, the Ministry of Steel and Department of Industry Policy and Promotion. The afore-mentioned representatives of Ministry of Steel and Government of Maharashtra in addition to all other attendees of the said meeting signed the said recommendations as a mark of approval to the same;

(11) After the said recommendation were finally approval by Hon'ble Prime Minister (as Minister of Coal), an option letter dated 23.12.2008 Ex.P-202/PW-40 was issued for allocation of Bander Coal Block to the AMR (A-4) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd. In said letter issued by PW-39 Sh. V.S. Rana, the then Under Secretary, Ministry of Coal, Government of India, it was specified that AMR was allocated the said block

only for 0.3 MTPA capacity of its EUP at Village Tarsi, District Nagpur, Maharashtra;

(12) After criteria laid down in said option letter dated 23.12.2008, was fulfilled by the AMR (A-4) and said two companies, final allocation letter dated 29.05.2009 Ex.P-215/PW-40 for Bander non-coking Coal Block was issued by Ministry of Coal through its Under Secretary to all the said three companies including AMR (A-4);

(13) After allocation of coal block, AMR (A-4) did not set up the proposed EUP and also failed to obtain the requisite clearances including environmental clearance. Consequently, no mining lease of the said coal block was executed between State Government of Maharashtra and the Consortium of said three companies. Therefore, no coal was extracted from the coal reserves of the said block by the AMR (A-1). It was finally de-allocated by the Inter Ministerial Group for Review of Coal Block in its meeting held on 07-08.02.2014;

(14) Pertinently, at the stage of charge, in relation to the proceedings in the Ministry of Coal and PMO after 03.07.2008 regarding allocation of Bander Coal Block to the AMR (A-4), no illegality was found by this court, which led to no charge being framed against anyone in that respect. No evidence has come on record during trial of this case to displace said findings nor said findings were disturbed by any superior court.

(15) AMR (A-4) was incorporated on 10.06.2003 and it had three Directors namely Sh. Arbind Kumar Jayaswal, Sh. Manoj Kumar Jayaswal (A-1) and Sh. Ramesh Jayaswal. AMR was one of the companies of BLS Family Companies and Sh. B.L. Shaw was the Chairman of BLS Family Companies.

(16) A Memorandum of Understanding dated 31.03.2006 Ex.P-8 (Colly) (D-155) was executed between family of Sh. Basant Lal Shaw i.e. Sh. Basant Lal Shaw, Sh. Arbind Jayaswal and Sh. Ramesh Jayaswal as one party and Sh. Manoj Kumar Jayaswal, Sh. Anand Jayaswal, Sh. Abhishek Jayaswal and Sh. Avneesh Jayaswal as the second party. In accordance with IFS dated 31.07.2008 Ex.P-5 (Colly) (D-158), the companies of the BLS Family were divided into two groups i.e. 'Neco Group of Industries' and 'Abhijeet Group of Industries'.

(17) JV Agreement dated 02.04.2007 Ex.PW-2/A (D-178) was executed between AMR (A-4) and IL&FS, IDC whereby both the parties intended to be the partners with each other to develop an Integrated Steel Plant Project in the State of Maharashtra, with a capacity of 2 MTPA based on a captive coal mine.

(18) A Company Petition No.111/397-398/CLB /MB/ 2009 dated 11.09.2009, Ex.P-18, was filed by Sh. Manoj Kumar Jayaswal (A-1) before the Mumbai Bench of Company Law Board

claiming his rights in the AMR (A-4) against his father and brothers;

(19) Sh. Vijay Darda (A-2), the then Member of Parliament, Rajya Sabha and Chairman, Lokmat Group sent letter dated Nil Ex.P-220/PW-41 (D-20), letter dated 04.02.2008 Ex.P-6/PW-14 (Colly) (D-22) and FAX dated 18.03.2008 Ex.P-223/PW-41 (D-22) to Hon'ble Prime Minister for requesting allocation of Bander Coal Block to AMR (A-4) exclusively on the strength of the claim that AMR was promoted by his Lokmat Group and allocation of Bander Coal Block to AMR for meeting coal requirement of its proposed 2 MTPA Steel Plant at District Yavatmal, Maharashtra, would lead to various job opportunities for unemployed youth of backward area of Yavatmal.

(20) ABPL was incorporated on 21.09.2010 with an initial paid up capital of Rs.1,00,000/- (10,000 equity shares of Rs.10/- each) and its 99% shareholdings were held by APL, a company belonging to family of Sh. Vijay Darda (A-2) and Sh. Devendra Darda (A-3);

(21) Shareholder agreement dated 29.10.2010 Ex.P-7 (Colly) (D-145) was executed between Sh. Manoj Kumar Jayaswal (A-1), Sh. Abhishek Jayaswal, Sh. Abhijeet Jayaswal, Sh. Vijay Darda (A-2), Sh. Devendra Darda (A-3), ABPL, M/s Abhijeet Infrastructure Capital Ltd. and M/s JAS Infrastructure Power Ltd., whereby M/s Abhijeet Infrastructure Capital Pvt. Ltd. and ABPL

agreed to contribute towards the paid up equity shares capital of M/s JAS Infrastructure & Power Ltd. as per commitment of Rs.2,885 Crores and Rs.115 Crores respectively;

(22) During the period from 13.10.2010 to 06/07.08.2012, total amount of Rs.24.60 Crores was transferred from Abhijeet Group Companies in different transactions to 11 Kolkata based companies who in turn used the said amount for subscribing the shares of ABPL at the rate of Rs.8,885/- per share. Out of the said amount of Rs.24.60 Crores received by ABPL in said transactions, it used Rs.24.50 Crores for subscribing the shares of M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.); and

(23) The said transactions of Rs.24.60 crores are stated to be relevant in this case only because the said amount of Rs.24.60 Crores is alleged to be *quid pro quo* to Sh. Vijay Darda (A-2) for helping AMR (A-4) in securing Bander Coal Block through his afore-mentioned letters/FAX written to the PMO. However, no challenge has been raised by CBI to the legality of said transaction.

Contentious issues

39. Based on the disputed factual and legal position emerging out of record, rival contentions of parties, the averment contained in the chargesheet and the evidence

adduced on record, following contentious issues have arisen in this case:-

1. Whether the claim made by the AMR (A-4) in its application dated 10.01.2007 Ex.PW-1/A (Colly) (D-2) at Srl. No.30 as 'No' regarding the previous allocation of coal block to its group or associate companies was made dishonestly or fraudulently with intention to cheat the Ministry of Coal, Government of India and whether the said misrepresentation of the AMR induced the 36th Screening Committee in its meeting held on 03.07.2008 to recommend the allocation of Bander Coal Block to it?
2. Whether the claim made by the AMR (A-4) in its feedback form Ex.PW-1/H (D-33) and presentation Ex.PW-2/DX-1 (D-10) both dated 07.12.2007 regarding its proposed SPV status, net worth, land, water and change of the location & capacity of its proposed EUP vis-a-vis its application dated 10.01.2007 Ex.PW-1/A (Colly) (D-2) was false, dishonest or fraudulent misrepresentation to the 36th Screening Committee in its meeting held on 07.12.2007?
3. Whether the said feedback form and presentation of AMR (A-4) were imperatively required to be considered by the Screening Committee and if reply to this is in affirmative, whether the same was considered by the 36th Screening Committee in its meeting held on 03.07.2008 at the time of recommendation of

Bander Coal Block to it and whether the alleged false information in the said documents dishonestly induced the 36th Screening Committee in arriving at the said decision for recommendation?

4. Whether furnishing of feedback form Ex.PW-1/H (D-33) and presentation Ex.PW-2/DX-1 (D-10) both dated 07.12.2007 by the AMR (A-4) with its proposed SPV and different EUP at District Yavatmal amounted to giving up/abandoning/withdrawal of its proposed EUP at Village Tarsi, District Nagpur in its application dated 10.01.2007 Ex.PW-1/A (Colly) (D-2) and whether said inferred abandonment should have been taken into account by the 36th Screening Committee thereby declining to recommend Bander Coal Block as per its tacitly withdrawn application?

5. Whether Sh. H.C. Gupta (A-6), Chairman of 36th Screening Committee wrongly claimed to the Hon'ble Prime Minister (being Minister of Coal)/PMO that the recommendation of Bander Coal Block for AMR (A-4) is based upon the recommendations of the Government of Maharashtra and Administrative Ministry i.e. Ministry of Steel?

6. Whether the letters/FAX written by Sh. Vijay Darda (A-2) were ever placed before the Screening Committee and if yes, whether the said letters induced or influenced the Screening Committee in arriving at its decision qua AMR (A-4)?

7. Whether the said letters/FAX have any relation to the alleged transactions of Rs.24.60 Crores between Abhijeet Group Companies, 11 Kolkata based companies, ABPL and M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.) and whether the said transactions are *quid pro quo*/bribe/illegal gratification to Sh. Vijay Darda (A-2) for the alleged help rendered by him in securing Bander Coal Block in favour of AMR (A-4)?

Points of Determination

40. Now, based on the aforementioned disputed & undisputed facts and contentious issues, the following points of determination are framed in the present case:

- (1) Whether any misrepresentation(s) was/were made to Ministry of Coal/ Screening Committee/Govt. Of India during the process of seeking allocation of captive Bander Coal Block. if so, who were the persons responsible for making those misrepresentations?
- (2) Whether those misrepresentations deceived any person?
- (3) Whether the offence of cheating is made out against A-1 to A-4?
- (4) Whether A-2 had accepted any gratification from A-1? If so, whether it was accepted as a motive or reward for inducing by exercise of personal influence any public servant for allocation of Bander Coal Block in favour of AMR (A-4)?

(5) Whether offence under Section 9 PC Act is made out against A-2?

(6) Whether offence of criminal misconduct/corruption is made out against A-6?

(7) Whether there was any criminal conspiracy? If so, what was the object of said conspiracy and who all were the part of it ?

41. **Points of Determination No. (1-3)**

(1) Whether any misrepresentation(s) was/were made to Ministry of Coal/ Screening Committee/Govt. Of India during the process of seeking allocation of captive Bander Coal Block. if so, who were the persons responsible for making those misrepresentations?

(2) Whether those misrepresentations deceived any person?

(3) Whether the offence of cheating is made out against A-1 to A-4?

42. The above three Points of Determination (1 to 3) have been taken together as they all are pertaining to the offence of cheating and involve evidence common and interconnected. However, before reverting to the evidence adduced on these issues and its appraisal in the light of rival contentions of the parties, it would be appropriate to first refer to the relevant provisions of law dealing with the offence of cheating and also to navigate through the legal landscape by referring to some important case law relating to said offence.

Cheating

43. Primarily, the offence concerning the private persons in the present case is the offence of cheating. The word 'cheating' is defined u/s 415 IPC and it reads as under:

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

44. Section 420 IPC reads as under:

"420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

45. In the light of above-noted provisions, following are the ingredients of the offence of cheating:-

- (i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

- (iii) in cases covered by (ii)(b) above, the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

(As held in *Ram Jas v. State of UP* (1970) 2 SCC 740)

46. In '**Mariam Fasihuddin vs State By Adu Godi Police Station', Crl. Appeal no. 235 to 2024, decided on 17 September, 2021**, Hon'ble Apex Court held that in order to attract the provision of Section 420 IPC, the prosecution has to prove not only the act of cheating but it also needs to prove that the act of cheating resulted into an inducement to deliver the property resulting in a loss to the person induced. Relevant portion of the judgment reads as under:-

"10. Section 420 IPC provides that whoever cheats and thereby, dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term 'cheating'. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as 'cheating' if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e. (i) the deception of any person, (ii) fraudulently or

dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

12. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement."

47. It will also be fruitful to note definitions of 'dishonestly' and 'fraudulently'. **Dishonestly** has been defined under **S. 24 IPC** as under:

24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Fraudulently has been defined under **S. 25 IPC** as under:

25. "Fraudulently".—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

48. What is wrongful gain and wrongful loss are provided in S. 23 IPC. as under:

23. "Wrongful gain".—"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss".—"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.—A person is said to gain wrongfully when such person

retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

49. To know the meaning of the phrase "deceiving any person" as used in the definition of cheating as provided in Section 415 IPC, we may refer to the case in **Swami Dharendra Brahamchari Vs. Shailendra Bhushan, 1995 Cr. L.J. 1810 (Delhi)**, wherein Hon'ble Delhi High Court while dealing with the word deceiving as used in S. 415 IPC, observed that generally speaking "deceiving" is to lead into error by causing a person to believe what is false or to disbelieve what is true and such deception may be by words or by conduct. A fraudulent representation can be made directly or indirectly. Hon'ble Allahabad High Court in the case of **P.M. Natrajan Vs. Krishna Chandra Gupta, 1975 Cr. L.J. 899 (All.)** explained the word "deceive" as indicating inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine. Hon'ble Supreme Court in the case of **Ellerman & Bucknall Steamship Co. Ltd. vs Sha Misrimal Bherajee, AIR 1966 SC 1892**, explained "deceit" as a false statement of a fact made by a person knowingly or recklessly with the intent that it shall be acted upon by another who does act upon it and thereby suffers damage.

50. Thus, it is clear that in all such cases of deception, the object of the deceiver is fraudulent. He intends to acquire or retain wrongful possession of that to which some other person has a better claim. So, where a person parts away with a property while acting on such a representation of an accused believing in the truth thereof,

it clearly amounts to deceiving the person. However, it is also important that the person practicing the deceit knows or has reason to believe the said representation to be false. Though in the true nature of things, it is not always possible to prove dishonest intention by direct evidence. It can be, however, proved by number of circumstances from which a reasonable inference can be drawn. Further the explanation to Section 415 IPC provides that a dishonest concealment of facts is a deception within the meaning of this section.

51. Deception is not defined under Indian Penal Code. However, it is now well settled through various decisions that a person deceives another when he causes that another to believe what is false or misleading as to a matter of fact, or leads him into error. A wilful misrepresentation of a definite fact with intent to defraud constitutes an offence of cheating. Further, it is not sufficient to prove that a false representation had been made but it must be proved that the representation was false to the knowledge of the accused and was made to deceive the complainant.

52. As regards inducing fraudulently or dishonestly, Hon'ble Supreme Court, in the case of '**Dr. Vimla vs Delhi Administration AIR' 1963 SC 1572**, observed that while the definition of "dishonestly" involves a pecuniary or economic gain or loss but as regard "fraudulently", it is primarily the intent to defraud which is an important ingredient. The word "defraud" includes an element of deceit. It was also observed that by way of their very definition as provided under IPC, the word "fraudulently" by its construction excludes the element of pecuniary economic gain or loss.

53. It was observed that if the expression "fraudulently" were to be held, to involve the element of injury to the persons or the persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice-versa, it need not necessarily be so. It should be held that the concept of fraud would include not only deceit but also some injury to the person deceived. It would be thus appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy definition of "fraudulently" it would be sufficient if there was a non-economic advantage to the deceiver or non-economic loss to the deceit. Both need not co-exist. It was also observed by Hon'ble Supreme Court that the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore the definition of one may give colour to the other. The aforesaid observations of Hon'ble Supreme Court culling out the difference between the words "dishonestly" and "fraudulently" have been followed consistently in all subsequent cases involving the issue of cheating.

54. It is also a settled position in law that for proving the offence of cheating, it must be shown that the fraudulent or dishonest intention was existing right at the beginning of the transaction. Reference may be made to **Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257** wherein it was observed that:

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of

making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be pd. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption.”

55. The deception within the meaning of section 415 IPC can happen through misrepresentation. In the present case, the prosecution has alleged that A-4 company had misrepresented about previous allocation of coal blocks to its group companies, its proposed status of SPVs, networth, land and capacity of the End Use Plant.

56. As per the prosecution case, AMR (A-4), through A-1, A-2 and A-3, dishonestly and fraudulently misrepresented the facts before the 36th Screening Committee at different stages of process of allocation of Bander Coal Block and same was done with an intention to cheat the Ministry of Coal/Govt. of India.

Misrepresentation of facts in the Application Form dated 10.01.2007

57. It has been alleged that AMR (A-4) in his application dated 10.01.2007 Ex. PW1/A (colly) (D-2), gave its response as 'No' to the query regarding allocation of coal block to its group or associate companies. As per record, there is no dispute to said factual position that the answer to said query was given in negative in said application filed by the AMR (A-4) for seeking allocation of Bander Coal Block in its favour.

58. It has already been noted in preceding paras that for proving the offence of cheating it is not sufficient to only prove that a false representation has been made, but it must also be proved that the representation was false to the knowledge of accused and was made to deceive the complainant.

59. In the light of above, following questions will fall for consideration before this court:-

1. Whether the aforementioned claim of AMR (A-4) in its application regarding status of allocation of Bander Coal Block to its group or associate companies, was actually a false claim, if so, whether it was made with the knowledge of the accused persons?

2. If the answer to the above question is affirmative. Whether said false claim was made dishonestly and fraudulently with an intention to cheat Ministry of Coal, Govt. of India?

3. Whether said misrepresentation induced the 36th Screening committee to recommend allocation of Bander Coal Block to AMR (A-4)?

60. The prosecution is thus required to prove that accused persons by deceiving the Ministry of Coal/Government of India fraudulently or dishonestly induced it to deliver the allocation letter. The prosecution is further required to prove that the representations made by the accused persons were misrepresentations being false statements and that they were false to the knowledge of the accused persons and further that the misrepresentations were made with the intent that they should be acted upon.

Prosecution is also required to show that the dishonest intention existed from the inception of the transaction. Guided as above, the acts of the accused persons have to be evaluated.

61. Before referring to the evidence adduced in this regard, it is necessary to take a look of the relevant contents of the application form dated 10.01.2007 Ex. PW1/A and its covering letter. For ready reference, the covering letter is reproduced as under :-

A M R IRON AND STEEL PRIVATE LIMITED
(Formerly AMR Associates)

178 - C, Light Industrial Area,
Bhilai - 490 026
(INDIA)

Phones : 2381858, 2381859,
2381860 to 62
Fax No. : 0788-2381409
E-mail : inispdbhi@sify.com

AMR/DRI/MOC/07/113

January 10, 2007

To
The Director (CA-I),
Ministry of Coal,
Shastri Bhawan,
New Delhi

Sub: -Application for allocation Bander Coal Block for meeting the coal requirement of the 1 million tonnes per annum Sponge Iron Plant of M/s AMR Iron & Steel Pvt. Limited in Nagpur District of Maharashtra.

Sir,

AMR Iron & Steel Pvt. Limited (AMR), a company engaged in the business of Iron & Steel is setting up a 1.0 million tonnes per annum (mtpa) Sponge Iron Plant in Village Tarsi in Nagpur District of Maharashtra.

For meeting the 1.20 mtpa coal requirement for its Sponge Iron Plant, AMR is herewith applying for allocation of Bander Coal Block in Maharashtra. The application in the prescribed format along with required annexures and fees is enclosed.

The Project Report for the plant is ready and all the project activities like conducting Environmental Studies, application for grant of Environmental Clearance, application to State Government for permission for withdrawal of water from nearby Vena River etc have been initiated.

In this context, we would like to submit that AMR has already procured and have in possession 75 Acres of land in Village Tarsi for installation of the Sponge Iron Plant.

AMR has also approached Financial Institutions for arrangement of finance and the **Financial Closure is expected by December 2007.**
We request you to kindly allot Bander Coal Block to AMR Iron & Steel Private Limited for its 1 mtpa Sponge Iron Plant.

Thanking you.

Yours faithfully,
 For AMR Iron & Steel Pvt. Limited
 Harshad Popali
 General Manager

Regd. Office : F-8, MIDC, HINGNA ROAD, NAGPUR, Ph. (07104) 236251, 236252, 237276, 237461, 237462 Fax : 237583, 236255
Admn. Office : 32-A, Chitranjan Avenue, 5th Floor, Kolkata – 700 012 Ph. : (033) 22375502, 2237468, Fax : 2225260

62. In the enclosed application form, the details of turn-over, profit and net-worth of the applicant company M/s AMR were mentioned as under:-

	03-04	04-05	05-06
8 TURNOVER IN THE LAST 3 YEARS	Rs. 36.02	Rs. 62.60	Rs. 55.52
9 PROFIT IN LAST 3 YEARS PBT	Rs. 0.08	Rs. 0.76	Rs. 0.51
10 NETWORTH (as on 31.03.06)	Rs. 1.96 Crores		

63. Further, as regard the details of the proposed end use project, the following particulars were mentioned in the application:

III PROPOSED END USE (PROJECT)				
(Tick the main end use project, associate and use not to be indicated)				
	Capacity of end use plant	LINKAGE Quantity	LINKAGE	LINKAGE
	MW/mtpa	mtpa	Grade	Source
11 EXISTING CAPACITY	Nil	Nil	NA	NA
12 PROPOSED CAPACITY	1.0 mtpa	NA		
13 ULTIMATE	1.0 mtpa	NA		

CAPACITY (TOTAL)		
14 ROM COAL REQUIREMENT	1.20	NA
15 LOCATION (District, State)	Village-Tarsi, District-Nagpur, State-Maharashtra	

XXXXX

VI PHASING OF PROJECT				
26	END PROJECT	USE	CAPACITY	1.0 mtpa
				COMMISSIONING DATE : June 2009

64. Under the heading “*project status*”, the following facts were mentioned in the application qua the availability of land and water:

V PROJECT STATUS					
18	LAND		Yes	No	Remarks if any
	i)	Requirement (Sq. km/Hectare)	1.20 sq. km (120 ha)	--	75 Acres (30 ha) land has already been procured have in possession and acquisition of balance land is under progress.
	ii)	Identified	Yes	--	
	iii)	Applied for Acquisition	Yes	--	
	iv)	Partly Acquired	Yes	--	
	v)	Likely date of full possession	Dec-08	--	
	vi)	In possession	--	--	
	vii)	Others	--	--	
19	WATER		Yes	No	Remarks if any
	i)	Quantity Required	1195 m ³ /hr	--	Permission from Maharashtra Government for withdrawal of water from Vena River is being obtained.
	ii)	Source Identified	Yes	--	
	iii)	Applied	Yes	--	
	iv)	Likely date of finalisation	Dec-07	--	
	v)	Already Tied up	--	--	
	vi)	Others	--	--	

65. It was also mentioned in the application that the DPR for the said end use plant has been prepared and the same is being appraised by the financial institutions. Towards the end of the application wherein information

about earlier allocation of blocks was to be furnished, the following facts were mentioned in Serial No. 29 and 30:

VII EARLIER ALLOCATIONS OF BLOCKS		
29	TO APPLICANT COMPANY	No
30	TO GROUP OR ASSOCIATED COMPANY	No

66. PW-1 Sh. Harshad Pophali had filled up the details/information in the said form on behalf of AMR. As per substance of his deposition, it emerges that at the time of filing of the application form in the year 2007, he did not understand the concept of 'group' or 'associate' companies. However, during his deposition in the year 2020, he testified that as per his understanding, the various companies belonging to the Abhijeet Group would qualify as its group companies. Thus, while he was ignorant about the said concept at the time of submission of the said application, he became conversant about it at a later stage.

67. Pertinently, PW-1 was working as a Mine Engineer in the Mining Department of M/s Corporate Ispat Alloys Ltd. and all the applications for captive coal blocks were prepared in the said department. Therefore, he was expected to possess an understanding of the concept of 'group companies' while filling up of the application form as without discerning its connotation, he was likely to falter in furnishing the correct/desired information. He has deposed that he filled up all the information in the said application form on the instructions of Sh. Manoj Kumar Jayaswal (A-1) but, he simultaneously testified that as per his knowledge at that time, no information in the said application form was false. Consequently, he did not believe the said information to be false at the time of submitting the application form.

68. PW-2 Sh. Sanjay Dey, is a qualified Company Secretary and joined M/s Corporate Ispat Alloys Ltd in the year 2004. He has testified that in common parlance, the terms 'group company' or 'family company' can be used synonymously. However, he clarified that such usage is not traceable to or governed by any definition contained in any statute. Further, PW-5 Sh. Rajendra M. Ganatra, Chartered Accountant has deposed that he had the working knowledge of Companies Act, 1956 and as well as that of Companies Act, 2013. But he was not sure if 'group company' was defined in either of the said two Acts. The testimony of these two expert witnesses reinforces the ambiguity surrounding the expression 'group company' and demonstrates that even professionals well versed in corporate and statutory framework did not have clarity on its precise legal meaning.

69. Significantly, in the year 2007, none of the statutes defined the expressions 'group company' or 'associate company'. The definition of 'associate company' was first time incorporated in the Companies Act, 2013. However, even the said Act did not define 'group company'. Thus, it becomes clear that in the year 2007 i.e. when the application form was filled, there existed no statutory definition of 'group company' or 'associate company'. They were loose and undefined terms, and devoid of any precise legal connotation. In the absence of a statutory definition, the said expressions were susceptible to varied interpretations, depending upon the subjective understanding of the person interpreting them.

70. Moreover, the Ministry of Coal, either through its guidelines or otherwise, never clarified the meaning of the

two expressions nor specified the object for which the said query was incorporated in the application format. Besides, no instructions or explanatory notes were ever issued by the Ministry of Coal to guide the applicants in appreciating the scope, intent or purport of the said expressions. Significantly, none of the prosecution witnesses including PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal was able to elucidate the said aspect or explain the rationale underlying the incorporation of the said query.

71. Pertinently, during cross-examination, IO/PW42, was confronted with a document Ex.P-290/PW2 (from case file of CBI vs. JAS, D-26), which is the letter dated 03.05.2013 of Mr. S.K. Shahi, Director, Ministry of Coal, written in response to the query of CBI regarding column no. 29 and 30 of the application format where the information regarding earlier coal block allocated to the applicant company or its group/associate companies was required to be furnished by the applicant. In the said letter dated 03.05.2013, it was mentioned that as per records available, the rationale/logic for keeping said columns in the application form could not be ascertained except that it could have possible link with the criterion of technical experience and track record provided in the guidelines for allocation.

72. In response to the question as to why said document Ex.P-290/PW2, which was sought also in respect of the instant case, was never placed on the record of this case, the IO/PW42 replied that since instant RC 219 2012 E 0009 was pertaining to 36th Screening Committee and during the finalization of the recommendations of 36th

Screening Committee, the Competent Authority (PMO) had directed Ministry of Coal to check the previous allocation of coal block to the allocatee companies only therefore, the said reply was not found relevant to be placed on the record of the instant case. Hence, even as per the IO, in the light of observation of competent authority, said information was found to be no more relevant since the queries pertaining to previous allocation were only in respect of the allocatees and not regarding their group companies.

73. Thus, it is apparent that the said query was incorporated in the application format in a mechanical and perfunctory manner, without any identifiable or specific perceivable objective to be achieved. In these nebulous circumstances, the applicants were left unguided and were constrained to construe the meaning of the said expressions and to furnish their responses solely on the basis of their own subjective understanding. Thus, a response furnished to an inherently ambiguous query in the application format can not, by itself, be made foundation for fastening criminal liability upon the applicant.

74. Further, as per the Ministry of Coal guidelines, under the heading 'How to Apply' (part of Ex.P-1/166/PW39, D-184 page 12-13), it was provided in Sub clause II of Clause 7 that in case the applicant is a JV Mining company or an Independent Mining company, the details in respect of finances, end use plant and previous allocation of blocks i.e. Sl. No. 8 to 25 and 28, 29 of the application form are to be provided in respect of all the companies with whom the supply agreement is executed. It has been argued on behalf of A-1 to A-4 that in the light of said clause of the guidelines, the column no. 29 and 30 of the application form

were also perceived to be applicable only on JV mining company. And since A-4 was an end use company and not a JV mining company, it gave negative response to the information sought regarding previous allocation of coal blocks to itself or to its group or associate companies.

75. Assuming for the sake of argument that the said two expressions bear the same meaning as sought to be attributed by the prosecution and the information furnished in response to the said query is false as multiple coal blocks had been previously allocated to the companies belonging to BLS Family Group, including Jayaswal Neco Group and Abhijeet Group. Nevertheless, the mere existence of an alleged factual incorrectness does not *ipso facto* attract criminal liability, unless it induces any one and leads to deception.

76. As is evident from record, neither the applicable guidelines nor policy framework imposed any bar or embargo on the allocation of a coal block to the applicant company merely on the ground that coal blocks had been previously allocated to its group or associate companies. On the contrary, there were several instances upfront of allocation of coal block to the company notwithstanding the fact that their group or associate companies had been allocated coal blocks earlier. Indeed, there were several precedents wherein the same company was allocated multiple coal blocks. In this regard testimony of Sh. Sanjay Dey may be referred wherein he deposed that M/s Corporate Ispat Alloys Ltd. was allocated Chitarpur Coal Block and M/s Abhijeet Infrastructure Ltd. was allocated Brinda, Sisai and Meral Coal Blocks prior to submission of

application form by the AMR (A-4). Pertinently, both the said companies are part of the Abhijeet Group of Companies.

77. Besides that, as reflected from the minutes of meeting held in the Chamber of Minister of State for Coal on 18.09.2008 (part of D-31), JSIPL had been allocated as many as five coal blocks. Thus, it is evident that as per the applicable guidelines and consistent past practice, there was no impediment or restriction on the allocation of coal block to a company merely because it or its group companies had previously been allocated coal block. In such circumstances, the said alleged mis-statement neither conferred any undue advantage nor operated as an inducement capable of influencing the allocation process.

78. In the above backdrop of the facts and circumstances all of which were within the knowledge of AMR (A-4), there was no conceivable benefit that could have accrued to it by concealing the prior allocation of coal blocks to its 'group' or 'associate' companies. Consequently, the alleged false claim of the AMR qua the said aspect in its application dated 10.01.2007 cannot be held to have been made with a dishonest or *malafide* intention to derive any wrongful gain.

79. Moreover, as per prosecution itself the said alleged misrepresentation did not attract any criminality and this can be inferred from the testimony of PW-42/IO Sh. Himanshu Bahuguna who in his cross-examination dated 30.08.2024, conceded that he had filed closure reports in two other connected cases i.e. RC No.219 2012 E 0010 in relation to M/s JLD and RC No.219 2012 E 0008 in relation to M/s JAS wherein also, no information regarding previous

allocation of coal block to group/associate companies was disclosed in Column Nos.29 and 30 of their respective application forms. The prosecution or investigating agency cannot be permitted to apply double standards or adopt divergent protocols for different companies while dealing with identical allegations.

80. Strangely, the prosecution has not examined even a single member of the 36th Screening Committee or official of Ministry of Coal to establish that the said aspect was so crucial or determinative that the Committee would not have recommended allocation of Bander Coal Block to AMR (A-4) had it known that the information furnished to the said query was incorrect. Therefore, the prosecution has not only failed to establish that the said alleged misinformation was material or vital and was furnished with a dishonest intention, but it has also failed to establish the another essential ingredient of the offence of cheating punishable under Section 420 IPC namely that the said alleged misrepresentation induced the 36th Screening Committee to recommend the allocation of Bander Coal Block in favour of AMR (A-4). In the absence of proof of inducement and *mens rea*, the charge under Section 420 IPC is rendered wholly unsustainable.

81. In this regard, I draw support from the judgment of Hon'ble Supreme Court in case titled as '**Jupally Lakshmikantha Reddy Vs. State of Andhra Pradesh & Anr.**' **2025 INSC 1096**, wherein Hon'ble Apex Court concluded that dishonest use of fake NOC from the Fire Department to obtain recognition/renewal of affiliation to run the Education Institution is not sufficient to attract the offence of cheating unless the said document was

necessary for grant of such recognition/renewal as in its absence, the said NOC could not have induced the Education Department to grant recognition/renewal. The relevant portion in the said judgment is reproduced as under:-

"16. It is strenuously argued the appellant had used a fake NOC from the Fire Department and thereby held out a false representation that he possessed a valid NOC to obtain recognition/renewal of affiliation for his institution. Uncontroverted allegations in the charge sheet including the order in the writ proceedings, unequivocally show NOC from the Fire Department was not necessary for grant of such recognition/renewal of affiliation as the height of the appellant's building was below 15 metres. Given this situation, the representation of the appellant that he possessed a valid NOC cannot be said to have induced the Education Department to grant recognition or renew the affiliation. **To attract penal consequences, it must be shown that the false representation was of a material fact which had induced the victim to either part with property or act in a manner which they would not otherwise do but for such false representation. In the absence of such vital link between the alleged false representation and the issuance of recognition/renewal of affiliation, the essential ingredient of offence is not satisfied.**"

82. Hence, it is quite clear that mere dishonest misrepresentation is not sufficient to attract the offence of cheating punishable under Section 420 IPC unless the said representation is material and induced the deceived person to part away with the property.

83. In the present case, for the reasons discussed hereinabove, it is established that AMR (A-4) did not make said alleged false representation in its application dated 10.07.2007 Ex.PW-1/A (Colly) (D-2) with any dishonest or fraudulent intention. Consequently, one of the essential

ingredients for the offence of cheating punishable under Section 420 IPC is glaringly absent. Even assuming, for the sake of arguments, that the said misrepresentation was maliced with dishonest or fraudulent intention of the AMR, there is no evidence on record to demonstrate that the said claim was material or it led to the inducement of the Screening Committee in recommending the allocation of Bander Coal Block to AMR.

84. In the above circumstances, even the second ingredient of the offence of cheating namely dishonest inducement is not satisfied in this case. The failure of the prosecution to establish either *mens rea* or inducement renders the charge under Section 420 IPC wholly untenable in relation to the application form dated 10.01.2007 Ex.PW-1/A (Colly) (D-2).

Misrepresentation of facts in the Feedback Form and Presentation both dated 07.12.2007

85. As per chargesheet, during the course of investigation, it was found that M/s. AMR has grossly misrepresented about number of facts in the feedback form submitted to 36th Screening Committee, Ministry of Coal and also in the presentation made before the 36th Screening Committee. Crucial information about earlier allocation of coal blocks to group companies is alleged to been withheld in the application form as well as in the "*Form for feed-back*".

86. It was found that AMR in the feed-back form falsely claimed a highly inflated net-worth of Rs.1821.64 crore as on 31.03.2006 stating AMR to be a Special Purpose Vehicle (SPV) of Lokmat Group and IL&FS. However, the

actual net-worth of AMR as on 31.03.2006 was Rs.1.96 crores only. The aforesaid false information was also reiterated by Sh. Devendra Darda who appeared before the Screening Committee on 07.12.2007 for making presentation while also submitting the feedback form under his signatures as Director. It was also found during the course of investigation that Lokmat Group was in no way associated with AMR and Devendra Darda was never a Director of AMR.

87. For ready reference the Feedback Form Ex.PW2/H(D-33) and the presentation Ex.PW2/DX-1 (D-10) are reproduced as under:-

Form for Feed Back

Latest Status of End Use Plant for which application for block has been made. Feedback Form to be filled-up separately if more than one enduse plant is proposed.

1	Name of the applicant company (as in application)	AMR Iron & Steel Pvt. Limited <u>The socially motivated project is being implemented by Lokmat Group & IL & FS through a SPV viz. AMR Iron & Steel Pvt. Limited.</u> Lokmat Group is one of the prominent media groups in the country. Lokmat is the largest circulated and read newspaper of Maharashtra and the 4th largest read newspaper in India. It is seeking to enhance the development of the backward region viz. Yavatmal by entering Core Sector. IL & FS Infrastructure Development Corporation (IL & FS IDC) is a wholly owned subsidiary of IL & FS and is engaged in advisory and project development activities in infrastructure sector. Through AMR IL & FS IDC is seeking to enter the Core Sector i.e. Steel and thus contribute to the national growth.
2	Location with Capacity of End Use Plant (as in application)	<u>Location: - Yavatmal; Project: 2 mtpa ISP</u> <u>District - Yavatmal, State-Maharashtra</u> <u>Capacity: First Phase</u> <u>Sponge Iron Plant - 2 mtpa</u> WHRB Power Plant - 156 MW Capacity: Second Phase Iron Ore Pellitization Plant - 4 mtpa

		SMS & Hot Rolled Coil – 2 mtpa
3	Name of the block applied for	1. Bander 2. Khappa & Extension 3. Dahegaon / Makardhokra IV 4. Gondkhari
4	Net Worth	<u>Rs. 887.37 Crores (As on 31-03-06)</u> <u>Rs. 1821.64 Crores (As on 31-03-07)</u>
	Land	
5	a. Total Requirement	2000 Acres
		<u>370 Acres land allotted by MIDC in Yavatmal</u>
	b. Already Acquired	Industrial Area : Acquisition of balance land through MIDC is in progress.
	Water	
6	a. Total Quality Required	23.65 MCM per annum
	b. Quantity tied up	<u>Tied-up from Irrigation Department Maharashtra from Wardha River.</u>
	Equipment	
7	Status of Commissioning of Equipment (In terms of %age)	10% EPC Contract amounting to Rs. 400 Crores for Sponge Iron Kilns has already been issued to Coastal Ferrotech Pvt. Limited, Kolkata.
		Negotiations for WHRB are being finalized with M/s SEPCO, China and Orders worth Rs. 234 Crores for 78 MW shall be placed shortly.
	DPR for End Use Project	
8	a. DPR Prepared	<u>Yes</u>
	b.If yes, whether appraised by FI	<u>Appraisal by IL & FS</u>
	Civil Construction	
9	Status of Civil Construction (In terms of %age)	5% Civil Contractors have been identified and work orders are being placed.
10	Finance	
	a. Total Envisaged Investment	Rs. 5439.95 Crores
	b. Financial Closure	IL & FS will have 20% equity. The balance would be held by Lokmat Group and financial strategic investors. The entire debt is being syndicated by IL & FS. The letters confirming arrangement of Project Finance by IL & FS has already been submitted to Ministry of Coal and Ministry of Steel.
	c.Investment already made	Investment so far: Rs. 38 Crore - On

		feasibility studies, land, EPC, Environmental Studies, Water Permission & other project development activities.
11	Status of Environmental Clearance for End Use Plant	Application for grant of Environmental Clearance has been submitted to Ministry of Environment & Forests, New Delhi.
12	In case of Regionally Explored Blocks, Schedule of exploration programme including preparation of GR (in terms of number of months)	All the applied blocks are explored blocks.
13	Number of months to achieve End Use Capacity	The first phase of 2 mtpa DRI Plant & 156 MW WHRB is expected to be commissioned by 2010. The other components of the ISP shall be commissioned by 2012.
	Proposed Mine Development	
14	a. Commencement of Production (in terms of number of months)	36 months: The mine is expected to be commissioned by 2010 i.e. within 36 months timeframe approved by Ministry of Coal.
	b. Reaching Peak Capacity (in terms of number of months)	In 12 months from start of coal production
	Status of Development of earlier allotted block	
15	a. Name(s) of blocks allotted	Nil
	b. Present Status	Not Applicable

Sd/-
Devendra Darda
Director

88. The presentation slides are reproduced as under :-

Slide 1

Presentation to The 36th Screening Committee, Ministry of Coal (07.12.2007) For Allocation of Captive Coal Block For 2 Million tonnes per annum (mtpa) Steel Plant Of AMR Iron & Steel Pvt. Limited SPV of Lokmat Group & IL&FS

Slide 2

<u>Index</u>		AMR लोकमत 
Sr.No.	Particulars	Slide No.
1	Introduction	3-3
2	Project Proponents	4-4
3	Coal Requirement & Blocks Applied	5-5
4	Project Details	6-6
5	Financials	7-7
6	Key Project Development Activities	8-10
7	Request	11-11

Slide 3

Introduction	AMR लोकमत 
The proposed 2 mtpa Integrated Steel Plant (ISP) is being developed in Yavatmal which is one of the poorest and backward districts of Vidarbha Region in Maharashtra. Yavatmal has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. There is virtually no industry in the district and hence there is no source of alternative employment. The project is expected to generate direct/indirect employment opportunities ultimately resulting in the development of the area in specific & State in general.	

Slide 4

Project Details

AMR
लोकमत
IL&FS

Project

2 mtpa Integrated Steel Plant

Phase I

Sponge Iron Plant – 2 mtpa

WHR Power Plant – 156 MW

Phase II

Iron Ore Pellet Plant – 4 mtpa

Steel Melt Shop – 2 mtpa

Hot Rolled Coil – 2 mtpa

Location

Yavatmal, Maharashtra

Project Capital Cost

Rs. 5439.95 Crores

Phase I – Rs. 1546.84 Crores

DRI Plant = Rs. 876.03 Cr.

WHRB = Rs. 670.81 Cr.

Phase II – Rs. 3893.11 Crores

Pellet Plant = Rs. 518.43 Cr.

SMS & HRC = Rs. 3374.68 Cr.

Slide 5

Financials					AMR लोकमत IL&FS	
The combined financials of proposed promoters for the last four years are as under :						
						All Figures in Rs. Crores
Particulars	Year 03-04	Year 04-05	Year 05-06	Year 06-07		
Turnover	765.62	831.61	992.54	1555.76		
PBDIT	107.73	143.29	180.09	645.24		
Present Net Worth = Rs.1821.64 Crores						

Slide 6

Key Project Development Activities	AMR लोकमत IL&FS
Support of State Government Government of Maharashtra has already recommended the allocation of Bander coal block for meeting the requisite coal requirement. The company has initiated steps for arranging requisite iron ore / fines and has already applied for grant of Mining Lease in Gadchiroli in Maharashtra.	

Detailed Project Report and its Appraisal

DPR for the Steel Project - Appraisal by IL & FS.

Financial Closure

IL & FS will have 20% equity. The balance would be held by Lokmat Group and financial / strategic investors.

The entire debt is being syndicated by IL & FS.

The letters confirming arrangement of Project Finance by IL & FS has already been submitted to Ministry of Coal & Ministry of Steel

Slide 7**Key Project Development Activities**

AMR
लोकमत
 **IL&FS**

Investment so far

Rs. 38 Crores On feasibility studies, land, EPC, Environment Studies, Water Permission & other project development activities.

Commissioning Schedule for End Use Plant

The first phase of 2 mtpa DRI Plant & 156 MW WHRB is expected to be commissioned in year 2010. The other components of the ISP shall be commissioned by 2012.

Commissioning Schedule for Captive Coal Mining Project

The mine is expected to be commissioned by 2010 i.e. within 36 months timeframe approved by Ministry of Coal.

Slide 8**Key Project Development Activities**

AMR
लोकमत
 **IL&FS**

Investment so far

Rs. 38 Crores On feasibility studies, land, EPC, Environment Studies, Water Permission & other project development activities.

Commissioning Schedule for End Use Plant

The first phase of 2 mtpa DRI Plant & 156 MW WHRB is expected to be commissioned in year 2010. The other components of the ISP shall be commissioned by 2012.

Commissioning Schedule for Captive Coal Mining Project

The mine is expected to be commissioned by 2010 i.e. within 36 months timeframe approved by Ministry of Coal.

Slide 9**Request**

AMR
लोकमत
 **IL&FS**

The Screening Committee is requested to kindly allot Bander

Coal Block to AMR in view of the following:

1. The project is being developed in Yavatmal which is one of the poorest and backward districts of Vidarbha Region in Maharashtra and needs industrial development.
2. Bander Coal Block is the only block located near to the Steel Plant Project Site in Yavatmal.
3. Project has been supported by IL&FS who will also be co-promoters and syndicate entire debt for the company.
4. The Steel Plant and Coal Block Development shall be implemented on fast track basis.
5. The allocation has been recommended by the State Government of Maharashtra.

Thank you

89. It is an undisputed position that AMR (A-4) furnished the above information in the feedback form and presentation both dated 07.12.2007. Therefore, there is no controversy regarding submitting of the said documents by the AMR on the said date and their contents. In order to determine the culpability of the accused persons for the offence under which they have been charged in relation to the said documents, it is necessary to consider following issues :-

- (i) Whether the said documents (Feedback form and Presentation dated 07.12.2007) were crucial or material for determination of the allocation of coal block by the 36th Screening Committee in favour of AMR?
- (ii) Whether the same were, in fact, considered by the Screening Committee?
- (iii) Whether the information furnished therein was false and furnished with dishonest or fraudulent intention, thereby dishonestly inducing the Screening Committee to part with the property in the

form of recommending allocation of Bander
Coal Block in favour of AMR?

90. The said documents were furnished by the AMR (A-4) on 07.12.2007 pursuant to the Office Memorandum dated 16.11.2007 along with feedback format [available at page Nos.76 to 112 in Ex.P-158/PW-39 (D-173)] uploaded on the website of Ministry of Coal whereby all the applicant companies were directed to appear in the forthcoming Screening Committee meetings for making presentation and to submit feedback form in the said prescribed format for furnishing latest status/stage of preparedness of the companies with respect to their EUP.

91. The prosecution has placed and proved on record a letter dated 26.02.2008 Ex.159/PW-39 (page No.277 of D-174) written by PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal to three different companies namely M/s Special Blast Ltd., M/s Shanno Business India Pvt Ltd. and M/s Shanti G. D. Ispat & Power Private Ltd. in relation to their feedback form and presentation for screening proposals relating to captive mining of coal block for non-power blocks. Vide said letter, it was informed that their inability to make a presentation before the Screening Committee would not constitute a disqualification and their application would be still considered by the Screening Committee.

92. The above communication unequivocally manifests that the feedback form and presentation of the applicant companies before the Screening Committee were not mandatory and their applications were to be considered on merits even in their absence. This position is more clear

from Para No.6 of the minutes of 36th Screening Committee meeting dated 7th-8th December 2008 and 3rd July, 2008 Ex.P-262/PW-43 (D-182), which clearly indicates that even the applications of the companies that did not appear for presentation were considered by the Screening Committee as per the information submitted by them in their application forms. In these circumstances, it is clearly evident that the said documents were neither mandatory nor determinative factors to be considered by the 36th Screening Committee for allocation of coal block.

93. As per the guidelines of allocation of captive blocks issued by Ministry of Coal, which is part of Ex. P-262/PW-43 (D-182)(internal page no. 4216 and 4217), the application for allocation of coal block of active mining for the specified end use was required to be accompanied with certain documents including the project report of the End Use Plant (EUP) and without requisite documents/accompaniments, the application was liable to be rejected. For the purpose of clarity, we may refer to the relevant pages of the aforementioned guidelines and same read as under :-

How to Apply?

I. Application in the prescribed format (live copies) should be filled up. Please note that separate application is to be submitted for each block in case application is made for more than one block. Similarly, separate application is to be submitted in case application is made for more than one end use plant. The details in the format should be filled up in respect of the specific end use plant for which application is made. The details of experience in respect of other plants may be provided in separate sheets.

i) If the applicant is an end user, the details of the company alongwith the relevant details of the end use

plant (for which block is being applied) are to be filled up at relevant places.

ii) In case the applicant is a JV Mining company (consortium of end user companies) or an Independent Mining company (with firm, back-to-back tie up with permitted end users) list of promoter companies or the list of companies with whom tie up for supply of coal has been finalized, quantities to be shared/supplied, and certified copies of agreement/ contract etc. are to be provided. The details in respect of finances, end use plant and previous allocation of blocks i.e Sl. No. 8 to 25 and 28, 29 of the application form are to be provided in respect of all the companies with whom the supply agreement is executed. Such details may be provided on separate sheets, in the proforma as given in Form A, with suitable explanation. (Refer Form A)

II. The following documents should be enclosed along with the application form:

- Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy)
- Document showing the person's who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies.)
- Certified copy of the Memorandum and Articles of Association of the applicant Company (5 copies)
- Audited Annual Accounts/reports of last 3 years. (5 copies)
- Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies)
- Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies)
- This Scheme for disposal of unuseables containing carbon obtained during mining of coal or at any stage thereafter including washing. scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies)
- The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.

- Demand draft for Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi.
- A Soft Copy of details, as filled in the Application Form, is also to be furnished in a specified Database Form (in MS-Excel format) in a CD along with the Application.

III. Applications without the above accompaniments would be treated as incomplete and shall be rejected.

94. As is evident from above guidelines, under the heading 'How to Apply' of said guidelines Ex.P-166/PW-39 (Colly) (D-184), it was expressly stipulated that a separate application is to be submitted in case application is made for more than one End Use Plant (EUP). Thus, it is evident that there was no prohibition against a single company submitting multiple applications for different EUPs provided separate applications were submitted for each EUP. However, the feedback form and the presentation were required to strictly conform to the application and could not be furnished in a manner contrary to or inconsistent therewith.

95. Therefore, in terms of the applicable guidelines, the competent authority in the present case i.e. 36th Screening Committee, was under an obligation to reject the said documents since they were neither related to the End Use Plant (EUP) specified in the original application nor there was any separate application moved in respect of the End Use Plant (EUP) mentioned therein. Being bound by the said legal obligation, the 36th Screening Committee rightly and consciously chose not to consider the feedback form and presentation both dated 07.12.2007 of the AMR (A-4) as the same were unrelated to the EUP (1 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra) specified in its

original application dated 10.01.2007 and no separate application qua the EUP (2 MTPA capacity at District Yavatmal, Maharashtra) mentioned in the said two documents was ever submitted on behalf of A-4.

96. For the above reasons, the said feedback form and the presentation both dated 07.12.2007 were not considered by the 36th Screening Committee and rightly so. Thus, the said documents neither induced nor impelled the 36th Screening Committee to arrive at its decision recommending Bander Coal Block in favour of AMR (A-4). The content of said documents indeed remained wholly irrelevant and non-existent for the 36th Screening Committee in reaching to said decision.

97. Hence, the inference sought to be drawn by the prosecution that the submission of a feedback form and a presentation for a different EUP by the AMR (A-4) necessarily implies abandonment of the EUP mentioned in its application form is neither logical nor supported by any material on record. Admittedly, AMR never revoked or withdrew its application dated 10.01.2007. There was no legal prohibition on a company applying for the same coal block for different proposed EUPs, provided that separate applications were submitted for each such proposed EUP. Thus, applying for the same coal block for different proposed EUPs was legally permissible.

98. Accordingly, merely because feedback form and presentation, which are later in point of time, relate to a proposed EUP different from that mentioned in application form, no presumption can be drawn that the earlier proposed EUP has been abandoned by the applicant

company. There is no reason or evidence on record to prove that at the time of submitting of its application dated 10.01.2007, the AMR did not intend to set up EUP having capacity of 1 MTPA at Village Tarsi, District Nagpur, Maharashtra or that it did not have sufficient resources or capacity to set up the same.

99. It is also pertinent to note here that pursuant to M/s AMR having directly approached the Government of Maharashtra with a request for allocation of Bander Coal Block to AMR for setting up of 2 MTPA Integrated Steel Plant at District Yavatmal, Maharashtra, Government of Maharashtra through its Principal Secretary (Industries) recommended the allocation for Bander Coal Block to AMR for setting up of 2 MTPA Integrated Steel Plant at District Yavatmal, Maharashtra and communicated it to Ministry of Coal vide letter dated 27.11.2007 Ex.P-181/PW-39 (page no. 207 of D-173).

100. In the above facts and circumstances, AMR (A-4) is entitled to benefit of doubt that it submitted its feedback form and presentation with a sanguine hope that it may get allocation of coal block for different EUP at different location with higher capacity on the strength of its proposed SPV with two other companies without appreciating that such allocation could not be considered in the absence of the separate preceding supporting application. The said intention cannot be termed to be dishonest as there is nothing wrong in looking for a better or more viable alternative. At the best, the said innocuous and futile attempt is nothing more than a *bona fide* endeavour to seek a better alternative without giving up of the proposal in its original application.

101. Admittedly, the said proposed EUP at village Tarsi, District Napur, Maharashtra was never set up even after allocation of coal block to the AMR (A-4) on 29.05.2009. The reason for the same is discernible from the documents produced and proved by the prosecution itself i.e. IFS dated 31.07.2008 Ex.P-5 (Colly) (D-158) and Company Petition No.111/397-397/CLB/MB/2009 dated 11.09.2009 filed by Sh. Manoj Kumar Jayaswal (A-1) in the Company Law Board (Mumbai Bench), Mumbai (Ex.P-18). The said documents reflect that the AMR was one of the companies of BLS Family at the time of its incorporation in the year 2003. Subsequently, pursuant to the settlement between the members of the said family, several companies of the said family were divided into two separate groups whereas, AMR was retained in its joint fold.

102. Thereafter, owing to internal family feud as evident from the said company law petition filed by Sh. Manoj Kumar Jayaswal (A-1) in the year 2009, a dispute arose between the Directors of the AMR regarding its control and management. Thus, on account of the said dispute, AMR became embroiled in prolonged litigation and managerial deadlock, which ultimately rendered the establishment of the proposed EUP impossible. Consequently, in the year 2014, the competent authority revoked the allocation of Bander Coal Block in favour of AMR, without even a single gram of coal having been extracted from the said coal block.

103. In these admitted circumstances, no *mens rea* can be attributed to the AMR (A-4) or its Directors to suggest that at the time of submitting of the application, they never intended to set up its proposed EUP at Village

Tarsi, District Nagpur, Maharashtra. The failure to establish EUP was the result of afore-discussed supervening circumstances and not due to any initial lack of intention or dishonest design as alleged by the prosecution. Accordingly, the claim of the AMR in its application that it intended to set up EUP at Village Tarsi, District Nagpur, Maharashtra cannot be characterized as dishonest or fraudulent.

104. Having determined that the 36th Screening Committee remained wholly uninfluenced by the feedback form and presentation both dated 07.12.2007 submitted by the AMR (A-4) while arriving at its decision to recommend allocation of Bander Coal Block to it, the next question that arises for consideration is whether the contents of the said two documents regarding (i) SPV status and networth (ii) available land (iii) water resource (iv) location and capacity of EUP (v) names of directors of AMR, were false and if so, whether such information was furnished with any dishonest or fraudulent intention. The said aspects are proposed to be discussed in the succeeding paragraphs.

False claim of SPV status and Networth

105. In the afore-said two documents, the AMR (A-4) claimed that it is proposed Special Purpose Vehicle (SPV) of Lokmat Group and IL&FS, IDC. Significantly, it was never claimed therein that it was existing or presently constituted SPV. The proposed SPV, on its plain reading, denotes that an arrangement contemplated to be formed in future. Admittedly, there was no tripartite agreement between the AMR and the said two entities. Even the Joint Venture Agreement dated 02.04.2007 Ex.PW-2/A (D-178) was executed between AMR (A-4) and IL&FS, IDC showing that

AMR intended to include IL&FS, IDC as one of its partners as its SPV for allocation of coal block and establishment of its proposed EUP and parties had agreed to enter into a Shareholder's Agreement within 60 days of the allocation of the coal block to AMR. However, there was no legal requirement mandating that such an understanding of the members of SPV had to be reduced to writing at that very stage. At that time, the applicant was only conveying its intention to enter into SPV with the said two entities in future after allocation of coal block to it.

106. Admittedly, the representatives of all the three companies including AMR i.e. Sh. Ranjendra M. Gantara/PW-5 on behalf of AMR, Sh. Devendra Darda (A-3) on behalf of Lokmat Group and Sh. Ankur Ranjan/PW-9 on behalf of IL&FS, IDC were present in the meeting of 36th Screening Committee held on 07.12.2007. The said representatives not only supported the said documents but even logos of all the three companies were affixed on each page of the said documents. Although, Lokmat is not shown to be the party to said JV Agreement but, significantly, the prosecution has not examined any witness from the said three entities to dispel the said claim of proposed SPV and Lokmat and IL&FS, IDC having agreed to collaborate with AMR for development of an integrated plant of 2MTPA capacity at Yavatmal, Maharashtra. The deposition of PW-7, PW-8 and PW-9 from IL&FS and that of PW-18 from Lokmat nowhere falsify or contradict said claim that M/s AMR was proposed SPV of IL&FS, IDC and Lokmat. Thus, there is no reason to assume that the said claim was false. On the contrary, the cumulative effect of the above discussed material on record establishes that the said claim was factually correct.

107. In so far as issue of net worth is concerned, the prosecution has contended that the net worth of the said three companies including the AMR (A-4) could not be clubbed or aggregated while depicting the net worth of AMR in the said documents and therefore, it is misrepresentation. However, the said contention is unreasonable and untenable. As per the applicable guidelines (D-184), more specifically Para 9, it was legally permissible for the AMR to include the net worth of all its partners in its proposed SPV. Consequently, there is no misrepresentation or false claim in respect of the proposed SPV or net worth reflected in both the said documents of AMR. Even otherwise, as already noted above, there is no evidence on record to suggest that the said documents or any of their contents weighed with or influenced the 36th Screening Committee in recommending allocation of Bander Coal Block to AMR.

False claim of available land

108. Admittedly, AMR (A-4) did not own or possess any land in District Yavatmal, Maharashtra i.e. the place where the altered/changed EUP of 2 MTPA capacity was proposed to be set up in said documents feedback form and presentation. Nevertheless, in the said documents, it claimed that MIDC had already allotted 370 acres of land to it in Yavatmal Industrial Area for its proposed EUP. The defence sought to explain this assertion by contending that MIDC had issued a Comfort Letter dated 14.08.2007 Ex.P-4 (Colly) for 150 hectares (370 acres) of land to M/s JLD Yavatmal Energy Ltd., group company of Abhijeet Group, for its proposed power plant. It was further contended that on 06.11.2007, Fatehpur East Coal Block was allocated to the said company in Chhattisgarh instead of Maharashtra.

Therefore, considering the cost of transportation of coal, the said company decided to shift location of its power plant from Maharashtra to Chhattisgarh and it was decided that the said land be used for the AMR (A-4).

109. However, neither any evidence has been led to show that the said land was transferable nor any evidence in the form of Board Resolution of M/s JLD Yavatmal Energy Ltd. has been placed on record depicting the transfer or earmarking of the said land to AMR. Thus, the said defence has remained bald assertion and so, deserves to be discarded. Accordingly, the said information/claim in the feedback form and presentation is established to be false and misleading.

110. Having concluded as above, it becomes necessary to consider whether the said false information was furnished with any dishonest intention. Undoubtedly availability of required land with the applicant for development of proposed End Use Plant (EUP) is one of the determinative factor for ascertaining the preparedness of the applicant for development of said project (EUP). But, at the cost of repetition, it is reiterated that the said misrepresentation was not even considered by the 36th Screening Committee while recommending allocation of Bander Coal Block to AMR (A-4) because, the same was allocated for its proposed EUP at Village Tarsi, District Nagpur, Maharashtra, whereas, the above misrepresentation in respect of available land is concerning its proposed EUP at District Yavatmal, Maharashtra, in respect of which requisite application was never filed with Ministry of Coal or with 36th Screening Committee. Thus, there was no occasion for the 36th Screening Committee to be induced by the said

misinformation while arriving at its afore-said impugned decision. This completely negates one of the essential ingredients of the offence of cheating punishable under Section 420 IPC.

False claim regarding water resource

111. In response to the query related to water availability, AMR (A-4) mentioned in the said documents that it 'Tied Up from Irrigation Department, Maharashtra from Wardha River'. Indisputably, AMR had applied with Irrigation Department, Maharashtra, for water drawl permission from Wardha River for its proposed EUP in District Yavatmal, Maharashtra and vide letter dated 03.12.2007 Ex.P-10/PW-15 (D-24 page 13), the Irrigation Department principally agreed to the request of AMR subject to furnishing of Water Availability Certificate. Significantly, the prosecution has not examined any witness from the Ministry of Coal including draftsman of feedback format to elucidate or clarify the meaning of 'tying up' mentioned at Srl. No. 6 of the feedback format. In these circumstances, there is no clarity whether the said expression was intended to signify a final and unconditional approval or whether it also encompassed an in-principal or conditional approval subject to fulfillment of technical formalities.

112. In these ambiguous expressions, the applicant was left in lurch and compelled to furnish the information based on its own subjective understanding. Before 07.12.2007, the AMR had already received the said letter from the Irrigation Department and thus, it had received a conditional approval for water. In these circumstances, no culpable fault can be attributed to the AMR for having *bona fide* assumed that receipt of such conditional approval for

water amounted to tying up with Irrigation Department for drawl of water from Wardha River. Although, the same could not finally materialize as coal block for the proposed EUP of AMR at District Yavatmal, Maharashtra was not allocated.

113. Hence, the above information qua water in the said documents cannot be held to be false or dishonest. Furthermore, as in the case of other alleged misinformation in the said documents, the said information also did not have any bearing on the decision of the 36th Screening Committee in allocating Bander Coal Block to AMR (A-4). Therefore, this allegation also falls short of one of the most essential ingredient of the offence of cheating.

False claim of location and capacity of EUP

114. In its application form dated 10.01.2007 Ex.PW1/A (Colly), the applicant AMR (A-4) had mentioned its proposed EUP to be of 1 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra. Whereas in the said documents, it specified its proposed EUP to be of 2 MTPA capacity at District Yavatmal, Maharashtra. As discussed above, there was no legal prohibition or bar for the applicant company to apply for same coal block for its two different EUPs at different locations and of different capacity provided separate applications were submitted for each such EUP. In the instant case, the AMR did not submit any application for the proposed EUP as detailed in its feedback form and presentation both dated 07.12.2007 which is different from the proposed EUP specified in its application dated 10.01.2007.

115. However, AMR cannot be criminally penalized for gullible acting on the assumption that it can alter the

location and capacity of its proposed EUP through said documents without submitting any application in that regard. Such an assumption, even if erroneous, does not by itself constitute a criminal act. In any event, the said attempted alteration in the proposed EUP did not result in any benefit or advantage to the AMR as the said documents were not even considered by the 36th Screening Committee while arriving at its impugned recommendation for allocation of Bander Coal Block to AMR (A-4) for its 1MTPA EUP at Tarsi, Maharashtra.

116. The same is discernible from the fact that as per Para 5 of minutes of meetings of the Screening Committee held on 03.07.2008 (Ex. P-196/PW-39, D-175 Pg 872-928), the details of each applicant company in respect of core business, proposed capacity of end-use plant, location etc. as per the application forms are given in Annexure-IV. In Annexure-IV of the minutes, the net worth of AMR as on 31.03.2006 is mentioned as 1.96 Cr, core business of proposed EUP as IS (Iron & Steel), proposed capacity of EUP as 1MTPA and location of District & States as Nagpur and Maharashtra, which are in consonance with the details furnished by AMR in its application dated 10.01.2007. In view thereof, said discrepancies regarding location and capacity of proposed EUP in the feed back form neither resulted in any inducement nor it led to any dishonest gain to AMR.

117. In this regard, testimony of IO/PW-43 (cross-examination dated 07.10.2024) can also be referred to, wherein he admitted that he did not make any investigation regarding AMR's presentation for establishing EUP at Yavatmal because, on account of the fact that Screening

Committee had recommended allocation of coal block in favour AMR in respect of its EUP at Tarsi as sought in AMR's application, he (IO) found it irrelevant.

False claim regarding director of AMR Sh. Devendra Darda (A-3)

118. As per prosecution case, Devender Darda (A-3) had signed the feedback form dated 07.12.2007 in his capacity as director of AMR (A-4). Admittedly, Sh. Devendra Darda (A-3) was never the Director of AMR (A-4). He signed the feedback form as a Director without expressly indicating to be the Director of AMR. However, since the feedback form was submitted on behalf of AMR, his signatures would rightly be construed to be the signatures of the Director of AMR. Nevertheless, his signatures on the said document are to be expounded and appreciated by taking into consideration all the surrounding circumstances.

119. We cannot ignore the fact that Devender Darda (A-3) had attended the presentation on 07.12.2007 before the 36th Screening Committee in his capacity as the representative of Lokmat Group. There is no dispute that he represented Lokmat Group in said presentation. The AMR had submitted the feedback form contemplating that it would work with Lokmat Group and IL&FS, IDC as its partners for their proposed SPV in setting up of EUP of 2 MTPA capacity at District Yavatmal, Maharashtra.

120. With the said factual scenario in the backdrop, Sh. Devendra Darda (A-3) attended said presentation and signed the feedback form with the innocuous belief that he is signing it as one of the Directors of the partner entities of the proposed SPV. His signing as Director of AMR on the feedback form cannot be said to have conferred any undue

advantage upon himself or to AMR. Significantly, it is not the case of the prosecution that his signatures as the Director of AMR influenced the members of 36th Screening Committee to unduly recommend Bander Coal Block in favour of AMR.

121. On the contrary, as discussed above, his signed feedback form was not even considered by the 36th Screening Committee as it was in violation of the prescribed guidelines for being not preceded by any application in that regard. Thus, his signatures as Director on the feedback form of the AMR is, at the most, an irregularity or procedural aberration that cannot be arbitrarily or unreasonably elevated to the level of criminality.

122. As discussed threadbare in the foregoing paragraphs with respect to the said documents and the alleged misrepresentation therein, the prosecution has failed to substantiate beyond reasonable doubt that any such misrepresentation was made dishonestly by AMR (A-4) with the intent to induce or impel the 36th Screening Committee in extending any undue favour to it in the form of recommendation of allocation of coal block. Further, it is conclusively established that the said documents were not considered by the 36th Screening Committee as requisite application qua the proposed EUP (at District Yavatmal, Maharashtra) mentioned in the said documents did not precede them.

123. In view thereof, it can be indisputably concluded that the 36th Screening Committee was not induced by the said documents in arriving at its impugned decision of recommending allocation of Bander Coal Block to AMR (A-4) as the said documents were irrelevant for their

consideration/decision. In absence of inducement, the very foundation of the offence of cheating is lacking. Therefore, in the light of the judgment of **Jupally Lakshmikantha Reddy (supra)** and applying the same analogy as applied in respect of the alleged misinformation in the application form dated 10.01.2007, it can be safely held that one of the essential ingredients of the offence of cheating under Section 420 IPC in relation to said two documents i.e. said feedback form and presentation both dated 07.12.2007 is conspicuously missing. Consequently, no criminality can be attributed to the accused persons on account of submission of the said documents.

Points of Determination No. (4) & (5)

(4) Whether A-2 had accepted any gratification from A-1? If so, whether it was accepted as a motive or reward for inducing by exercise of personal influence any public servant for allocation of Bander Coal Block in favour of AMR (A-4)?

(5) Whether offence under Section 9 PC Act is made out against A-2?

Illegal Gratification

124. Section 9 PC Act addresses the offence where a person accepts or obtains or attempt to accept or obtain any gratification (a bribe or undue advantage) as a motive or reward for inducing any public servant, by exercise of personal influence, to do or forbear to do any official act, or in exercise of the official function of such public servant to show favour or disfavour to any person. Section 9 of PC Act, 1988, equally applies to both public servants as well as to

private persons. For the sake of ready reference, Section 9 of PC Act, 1988 (as it existed prior to Amendment Act 16 of 2018), is reproduced as under:-

9. Taking gratification, for exercise of personal influence with public servant-

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than three years] but which may extend to seven years] and shall also be liable to fine.

125. In the light of the case put forward against accused Vijay Darda (A-2), following contentious issues are required to be answered before recording any finding on the aforementioned points of determination :-

1. Whether the letters/FAX written by Sh. Vijay Darda (A-2) were ever placed before the Screening Committee and if yes, whether the said letters induced or influenced the Screening Committee in arriving at its decision qua AMR (A-4)?
2. Whether the said letters/FAX have any relation to the alleged transactions of Rs.24.60 Crores between Abhijeet Group Companies, 11 Kolkata based companies, ABPL and M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS

Infrastructure Capital Pvt. Ltd.) and whether the said transactions are *quid pro quo*/bribe/illegal gratification given to Sh. Vijay Darda (A-2) for the alleged help rendered by him in securing Bander Coal Block in favour of AMR (A-4)?

1st Contentious issue regarding exercise of personal influence for seeking favours for AMR

126. It is alleged against accused Sh. Vijay Darda (A-2) that he rendered undue help to AMR (A-4) by writing recommendatory letters/fax to Prime Minister's Office (PMO) for seeking allocation of Bander Coal Block in its favour and he secured said favour by exercising his personal influence upon PMO/Screening Committee/Ministry of Coal vide aforementioned letters and he (A-2) accepted illegal gratification of Rs. 24.60 crores from AMR (A-4) as a *quid pro quo*.

127. Indisputably, three letters/FAX i.e. a letter dated Nil Ex.P-220/PW-41 (D-20), a letter dated 04.02.2008 Ex.P-6/PW-14 (Colly) (D-21) and a FAX dated 18.03.2008 Ex.P-223/PW-41 (D-22) were written by Sh. Vijay Darda (A-2), as a Member of Parliament (Rajya Sabha) to Hon'ble Prime Minister (as Minister of Coal) for requesting allocation of Bander Coal Block to AMR (A-4) stating therein that AMR was promoted by his Lokmat Group and requesting for exclusive allocation of Bander Coal Block to AMR for meeting coal requirement of its proposed 2 MTPA Steel Plant at District Yavatmal, Maharashtra.

128. As is evident from the letter Ex. P-220/PW-41 (D-20) and Ex.P-6/PW-14 (Colly) (D-21), request for Bander Coal Block was made by stating that otherwise, it shall

again result in shifting of steel plant from Yavatmal as it happened earlier in respect of their proposed Power Project in Maharashtra, which had to be shifted to Chattisgarh upon allocation of Coal Block in Chattisgarh instead of Maharashtra.

129. For ready reference the contents of the aforementioned letters are reproduced as under:-

VIJAY DARDA Member of Parliament (Rajya Sabha) Lokmat Group of Newspapers	 सत्यमेव जयते	Member Standing Committee on Finance Consultative Committee for Ministry of Information & Broadcasting Consultative Committee for Ministry of Civil Aviation Consultative Committee for Ministry of Petroleum & Natural Gas (PSI) Railway Convention Committee Central Consumer Protection Council for Ministry of Consumer Affairs Organizing Committee of the Commonwealth Games-2010
AMR Iron & Steel Pvt. Limited (Promoter Lokmat Group)		
<u>The Project</u>		
Capacity : 2 mtpa Integrated Steel Plant		
Location : Yavatmal, Maharashtra		
Project Cost : Rs. 5439.95 Crores		
Co-promoter for the project:		
a. Infrastructure Leasing & Financial Services Limited (IL & FS)		
The 2 mtpa Integrated Steel Plant of AMR is being developed in Yavatmal is one of the poorest and backward districts of Vidarbha Region. It has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. There is virtually no industry in the district and hence there is no source of alternative employment.		
The various industrial projects proposed in Yavatmal could not come up due to apathy of State Government as well as Central Government towards providing necessary support in terms of availability of required raw material and infrastructure.		
Captive Coal Blocks		
Ministry of Coal advertised a list of 38 coal blocks, out of which 15 blocks were earmarked for Power Sector, allocation of which has been finalized.		
Out of balance 23 blocks earmarked for Steel Sector, following 4 blocks are located in Maharashtra:		
i) ✓ Bander (YAVATMAL NEAR)		
ii) Khappa & Extension		
iii) Dahegoan / Makardhokra IV		
iv) Gondkhari		
v)		
AMR has applied for allocation of Bander Coal Block located about 60 kms in adjacent Chandrapur District for meeting the requirement of coal for its 2 mtpa Sponge Iron Plant which is part of its Integrated Steel Plant.		
Request: Bander Coal Block may be allocated to AMR for fast track implementation of the Steel Project which is expected to bring the era of industrialization in the most backward Yavatmal District of Vidarbha Region.		
LOKMAT		
"Yavatmal House", 49, Lodhi Estate, New Delhi (India)- 110003, Phone: +91-11-24601726-27 "Lokmat Bhavan", Post Box No.: 216, Nagpur, Maharashtra (India)-440 012, Phone: +91-712-2435115 Fax: +91-712-2435666 E-mail: vijaydarda@lokmat.com/ vijaydarda@sanad.nic.in		

Given to PM
Please find it
Referred to
consultation with
the Coal & Steel
Minister
26.10

Principal
Secretary
26/10

Cons Sec
for a/c
26/10

Dir (S)
26/10

26/10
26/10
26/10

387 VIP/1074/107

969808

17/01/2010

VIJAY DARDA
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member
Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

AMR/ISP/08/58
February 04, 2008

Sub: - Development of Yavatmal District in Maharashtra through industrialization;

Joint implementation of a socially motivated 2 mtpa Integrated Steel Plant by Lokmat Group, IL & FS Group and AMR Iron & Steel Pvt. Limited.

Respected Sir,

26.12.2007

I request you to kindly recall the discussions we had on 26-10-2007 about my larger vision for the development of Yavatmal region by setting up an Integrated Steel Complex and Cement Plant apart from the proposed 1215 MW Power Project.

You are kindly aware that due to allocation of coal block in Chhattisgarh in place of Maharashtra for our ambitious power project, we have left with no other option but to shift the power plant from Yavatmal.

However, my commitment towards Yavatmal and the poor farmers and unemployed youths of the Region still stands and I expect your whole hearted support for another socially motivated 2 mtpa Integrated Steel Plant of Lokmat Group, IL & FS Group and AMR Iron & Steel Pvt. Limited to be set up in Yavatmal.

I take this opportunity to bring to your kind notice that the proposed Steel Plant is being set-up with an investment outlay of Rs. 5400 Crores and would be half the size of the Bhilai Steel Plant. You will kindly agree that as the entire landscape of Bhilai Region had transformed after the steel plant came up there, our socially motivated project too would transform the Yavatmal District.

You will appreciate that feasibility of the proposed Steel Plant shall depend on availability of coal from the nearest captive source. For meeting the coal requirement, therefore, we have applied to Ministry of Coal for allocation of Bander Coal block located near to the project site in adjacent Chandrapur District.

In this context, I would again like to bring to your kind notice that the allocation of coal block is made on the basis of Net Worth and Project Preparedness of the company. With Net Worth of Rs. 1822 Crores and profit of Rs. 645 Crores, we are eligible for allocation of Bander Coal Block on merit basis.

However, I would like to bring to your kind notice that Ministry of Coal had advertised 23 coal blocks for allocation to Iron & Steel Sector. But allocation of the coal block other than Bander shall again result in shifting of our Steel Plant from Yavatmal as has happened to our Power Project and thus the social motive behind the Steel Plant shall again be jeopardized.

Handwritten notes:
Bannu 5/2
JS/69
Coal levy for 4/2
m/G
6/2
Ex/2
Sh. H. 108
VII

LOKMAT

1020519
3110/10/108
5/2

"Yavatmal House", 49, Lodhi Estate, New Delhi (India)- 110003, Phone: +91-11-24621726-27
Lokmat Bhavan", Post Box No.: 216, Nagpur, Maharashtra (India)-440 012, Phone: +91-712-24351-5 Fax: +91-712-2435566
E-mail: vijaydarda@lokmat.com/ vijaydarda@sanand.in



You will appreciate the Project Preparedness as under:

1. The Project Report for the 2 mtpa Integrated Steel Plant is ready and has been appraised by IL & FS IDC.
2. 370 Acres have been arranged in Yavatmal Industrial Area through Maharashtra Industrial Development Corporation; Procurement of balance land through private negotiation in progress.
3. Permission for drawal of 23.65 MCM water per annum from Wardha River has been obtained from Water Resources Department, Government of Maharashtra (Annexure - I).
4. EPC Contract amounting to Rs. 400 Crores for Sponge Iron Kilns has already been issued to M/s Coastal Ferrotech Pvt. Limited, Kolkata. Negotiations for WHRB are being finalized with M/s SEPCO, China and orders worth Rs. 234 Crores for 78 MW shall be placed shortly.
5. IL & FS has issued letter for arrangement of Project Finance and has already informed Ministry of Coal, Ministry of Steel and Government of Maharashtra about their participation in the Project (Annexure - II, III, IV & V).
6. Environment Clearance Application for grant of Environment Clearance is under consideration of Ministry of Environment & Forests, Government of India.

You will kindly appreciate that a lot of work has already been done for installation of the 2 mtpa Steel Plant in Yavatmal. Further, the Government of Maharashtra has strongly recommended the allocation of Bander Block to AMR for its Steel Plant (Annexure - VI).

I reiterate that the proposed 2 mtpa Steel Plant shall come up in Yavatmal only if Bander Coal Block located near to the Project Site is allotted to AMR Iron and Steel Pvt. Limited.

Bander Block has been categorized as Underground Block & contains coal reserves of 126.105 million tonnes. Considering extraction percentage of 40%, Bander Block can provide 52.50 % satisfaction level for AMR.

Considering the importance of this Steel Plant for Yavatmal and to bring the your dream, to see Vidarbha Region prosper, to ground realities, I personally request you to kindly advice Ministry of Steel to recommend and Ministry of Coal to allot Bander Coal Block EXCLUSIVELY to AMR Iron & Steel Pvt. Limited for meeting the coal requirement of its 2 mtpa Steel Plant in Yavatmal.

With warm regards

Yours sincerely,

(VIJAY DARDA) 05/02/08

Dr. Manmohan Singh
Hon'ble Prime Minister,
Government of India

LOKMAT

FROM : VIJAY DARDIA

FAX NO. : 91 11 24601727

Mar. 18 2008 09:17AM P1

AMR Iron & Steel Private Limited

Project	2 mtpa Integrated Steel Plant
Location	Yavatmal, Maharashtra The 2 mtpa Integrated Steel Plant is being developed in Yavatmal which is one of the poorest and backward districts of Vidarbha Region. It has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. There is virtually no industry in the district and hence there is no source of alternative employment. The project is expected to generate direct/indirect employment opportunities ultimately resulting in the development of the area in specific & State in general.
Investment	Rs. 5439.95 Crores First Phase - Rs. 1546.84 Crores as under: Sponge Iron Plant = Rs. 876.03 Crores WHRB Power Plant = Rs. 670.81 Crores Second Phase - Rs. 3893.11 Crores as under: Iron Ore Pellet Plant = Rs. 518.43 Crores Steel Melt Shop & Hot Rolled Coil = Rs. 3374.68 Crores
Project Promoters	The socially motivated project is promoted by Lokmat Group, IL & FS and AMR Iron & Steel Pvt. Limited. The implementation shall be done through a SPV having equity participation of Lokmat, IL & FS and AMR. IL & FS Infrastructure Development Corporation (IL & FS IDC) is a wholly owned subsidiary of IL & FS and is engaged in advisory and project development activities across diverse sectors in Public Private Partnership (PPP) basis in collaboration with Government of India, State Governments and the Private Sector. Lokmat Group is one of the prominent media groups in the country. Lokmat is the largest circulated and read newspaper of Maharashtra and the 4th largest read newspaper in India. AMR Iron & Steel Pvt. Ltd (AMR) is engaged in the business of Iron & Steel.

Kind Attention

Resp. Shri T.K.A. Nair

6/10/11/2008

1043513
18/3/08

255/ES

130. Notably, none of the 36th Screening Committee members has been examined by the prosecution to establish that said letters were ever placed before Screening Committee or the impugned decision recommending allocation of Bander Coal Block to AMR was influenced in any manner by the said letters/FAX of Sh. Vijay Darda. Significantly, the said letters could not even be seized from the office of Ministry of Coal or Screening Committee.

131. It is also pertinent to note that PW-39 Sh. V.S. Rana, the then Under Secretary, CA-I Section, Ministry of Coal in his cross-examination admitted that he filed a counter-affidavit dated 16.07.2009 Ex.P-228/PW-39 before Hon'ble Delhi High Court in certain proceedings wherein he deposed that *'.....Such representations from various quarters are of routine nature and have nothing to do with the selection and recommendations procedure of the Screening Committee'*. Thus, there is no evidence on record to suggest that the said letters were ever placed before the 36th Screening Committee or that they had any bearing in moulding or shaping its decision qua AMR.

132. Moreover, there is no charge against Sh. H.C. Gupta (A-6), Chairman of 36th Screening Committee that he unilaterally influenced, vetoed or steered the collective decision of 36th Screening Committee to align it with the request made by Sh. Vijay Darda in his said recommendatory letters. Consequently, the said letters have been conclusively established to be inconsequential and irrelevant in relation to the impugned decision of 36th Screening Committee.

133. Furthermore, in its meeting dated 03.07.2008, 36th Screening Committee qua AMR (A-4) recommended allocation of Bander Coal Block for its proposed EUP of 0.3 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra jointly with two other companies. In stark contrast, in the said letters, Sh. Vijay Darda (A-2) had requested that AMR be allocated Bander Coal Block exclusively for its proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. Thus, the recommendation of 36th Screening Committee qua AMR bears no nexus with the letters of Sh. Vijay Darda and in fact, it runs contrary to the contents of the said letters.

134. Sh. Vijay Darda had made a request for exclusive allocation, the 36th Screening Committee recommended Bander Coal Block in favour of AMR jointly with two other companies and that too with only a minor share in its favour. Besides, while the request was for different capacity and location, the allocation was made for an altogether different EUP, capacity and site. These material deviations further buttresses the conclusion that the said letters had no relation or connection whatsoever with the impugned recommendation of 36th Screening Committee in its meeting held on 03.07.2008.

135. Additionally, the prosecution has demonstrably adopted a pick and chose approach as it did not attribute any criminality to the similar two recommendatory letters dated 21.08.2007 written by Sh. D.K. Mittal, the then Managing Director, IL&FS to Secretary, Ministry of Coal and Principal Secretary, Industry, Energy and Labour Department [(page Nos.5 and 6 in PMO File) (Ex.PW-8/DX-1(Colly)/A-4 (D-21)]. The Investigation Officer PW-42 Sh. Himanshu Bahuguna astonishingly sought to justify the non-

investigation of Sh. D.K. Mittal qua the said letters on the untenable ground that the application was for 1 MTPA project EUP at District Nagpur whereas, his letters were referred to 2 MTPA project at District Yavatmal. This explanation is wholly absurd, preposterous and unconvincing particularly when the content and tenor of both set of letters are materially similar. CBI appears to have applied disparate standards and protocols in dealing with similarly situated persons and it further erodes its case.

136. In the light of above material, the prosecution has miserably failed to establish that the AMR (A-4) secured the recommendation for allocation of Bander Coal Block based upon any undue influence exercised by Sh. Vijay Darda (A-2) through said three letters/FAX. There is no iota of evidence on record even to indicate that Sh. Vijay Darda (A-2), in any other manner, made any attempt to personally influence any member of the 36th Screening Committee to recommend allocation of Bander Coal Block in favour of AMR (A-4). Accordingly, no criminality whatsoever can be attributed to Sh. Vijay Darda for merely routinely addressing the said letters to the Prime Minister's Office in his capacity as a Member of Parliament (Rajya Sabha) for the development of his constituency and more so, when it is conclusively established that such letters were never considered for the impugned recommendation for allocation of Bander Coal Block to the AMR.

2nd Contentious issue of transfer of illegal gratification of Rs.24.60 crores from AMR (A-4) to Sh. Vijay Darda (A-2) for unduly helping it in securing Bander Coal Block

137. It has been alleged by CBI that a total sum of Rs.24.60 Crores was paid by Sh. Manoj Kumar Jayaswal (A-

1) on behalf of AMR (A-4) to Sh. Vijay Darda (A-2) as illegal gratification for rendering assistance in securing the recommendation for allocation of Bander Coal Block in favour of AMR by the 36th Screening Committee in its meeting held on 03.07.2008. According to the prosecution, the said amount was not paid directly, but it was clandestinely routed through veiled multiple and layered financial transactions involving companies of Abhijeet Group, 11 Kolkata based companies and ABPL belonging to the Dardas.

138. It has been alleged that said amount was transferred during the period from 13.10.2010 to 06/07.08.2012 from Abhijeet Group Companies in different transactions to 11 Kolkata based companies who in turn used the said amount for subscribing the shares of ABPL, belonging to Dardas, at the rate of Rs.8,885/- per share. Out of the said amount of Rs.24.60 Crores received by ABPL in said transactions, ABPL used Rs.24.50 Crores for subscribing the shares of M/s JAS Infrastructure and Power Ltd. (previously known as M/s JAS Infrastructure Capital Pvt. Ltd.), a company belonging to Abhijeet Group of Companies.

139. At the outset, it is required to be noted that the defence has not disputed the existence of the aforesaid financial transactions. However, the defence has consistently denied the purpose attributed to them by the prosecution. Significantly, the prosecution has neither alleged any illegality in the mode, structure or legality of the said transactions nor any charge has been framed against any of the accused persons alleging that the transactions themselves were sham, fictitious or in violation of any

statutory provision. The sole charge framed qua these transactions pertains to their alleged purpose, namely, that they constituted illegal gratification paid to Sh. Vijay Darda (A-2) by the AMR (A-4) for allegedly exercising undue influence in securing Bander Coal Block in favour of AMR.

140. In the preceding discussion, it has already been conclusively and categorically held that the recommendatory letters/FAX of Sh. Vijay Darda (A-2) to Prime Minister's Office were neither placed before nor considered by the 36th Screening Committee for recommending allocation of Bander Coal Block to the AMR (A-4). The evidence on record further establishes that none of the members of the 36th Screening Committee was influenced by or even aware of any such communications. Consequently, it is conclusively evident that Sh. Vijay Darda did not play any role, direct or indirect, in the decision making process culminating in the recommendation for allocation of Bander Coal Block to the AMR. Once, it is held that Sh. Vijay Darda had no role to play in the allocation of the coal block, the very foundation of the prosecution case regarding payment of illegal gratification collapses. In the absence of any role attributable to Sh. Vijay Darda in securing the allocation of Bander Coal Block to AMR, there was neither any occasion nor any plausible motive for AMR to pay any illegal gratification to him.

141. Moreover, the prosecution has failed to examine any witness who could establish a live and proximate nexus between the alleged financial transactions and the charge of illegal gratification. There is no evidence, either oral or documentary, to demonstrate that the said transactions

were undertaken pursuant to any prior demand, agreement or purpose of influencing the allocation of coal block.

142. As per prosecution case, the purported purpose of above transactions of Rs.24.60 Crores routed through 11 Kolkatta based companies, rests solely on the inference and assumptions drawn on the following factual basis, which shall be discussed one by one to consider if, the inference drawn by the prosecution is reasonable, rational and conclusive.:-

(1) In IFS dated 31.07.2008 Ex.P-5 Colly) (D-158) amongst the members of Jayaswal Family, it was mentioned that free equity of the company to the extent of 26% will be allotted to the person/outsider instrumental in securing coal block for it;

(2) In Company Petition No.111/397-398/CLB/ MB/2009 dated 11.09.2009 Ex.P-18 filed by Sh. Manoj Kumar Jayaswal (A-1) before the Mumbai Bench of Company Law Board, he claimed that the signatories of the said IFS who were members of Jayaswal Family and Directors of their 05 different companies including AMR (A-4) had agreed that the company that would get the allocation of coal block, its 26% free equity shall be allotted to the person who would be instrumental in securing the coal block allocation.

(3) Sh. Vijay Darda (A-2) wrote letters to PMO requesting allocation of Bander Coal Block to AMR (A-4);

(4) The unsigned typed letter dated 21.08.2009 purportedly written by Sh. Basant Lal Shaw, father of Sh. Manoj Kumar Jayaswal (A-1) and addressed to Sh. Vijay Darda (A-2) also corroborates the purpose of the said transactions.

143. In respect of the 1st factual basis, the prosecution has failed to lead any conclusive evidence to show that the phrase 'persons/outsideers, who have been instrumental in securing coal blocks to the respective companies' in Clause (J) of IFS dated 31.07.2008 Ex. P-5 (Colly) (D-158) refers to Sh. Vijay Darda especially when as per said clause of IFS dated 31.07.2008, besides AMR, application for allocation of coal blocks of four more group companies namely (1) Corporate Ispat Alloys Limited (CIAL), (2) Corporate Power Limited (CPL), (3) Jayaswal Neco Industries Limited (JNIL) and (4) Jas infrastructure Capital Private Limited (JICPL), were also pending with Ministry of Coal, Government of India, and the condition for allotment of 26% equity share was equally applicable to all the 5 companies. None of the signatories of IFS was examined by the IO to ascertain the meaning of said term 'persons/outsideers' instrumental in securing coal blocks to the respective companies.

144. Further, the entire net worth of AMR (A-4) based upon its balance sheets available on record (D-12) was around Rs.2 Crores making its 26% shares to be around Rs.50 Lacs. Therefore, even if it is assumed that Sh. Vijay Darda was instrumental in securing allocation of Bander Coal Block in favour of AMR, as per IFS dated 31.07.2008, he would have been entitled to get 26% shares of the total network of AMR, which is computed to be

around Rs.50 Lacs only. However, Rs.24.60 Crores is highly disproportionate figure which is around 50 times more than what Sh. Vijay Darda would have been entitled based upon said IFS had he been instrumental in securing allocation of Bander Coal Block in favour of AMR. Therefore, the assumption drawn by CBI to connect Vijay Darda with said transaction is wholly unfounded and untenable.

145. In respect of the 2nd factual basis, I may note that the careful perusal of the Company Petition No.111/397-398/CLB/MB/2009 dated 11.09.2009 Ex.P-18 (D-17) filed before the Mumbai Bench of Company Law Board by Sh. Manoj Kumar Jayaswal (A-1), shows that it nowhere states that 26% free equity shares of AMR were agreed to be paid to Sh. Vijay Darda. In view thereof, the said ground is of no benefit to the prosecution. Even otherwise, there is a gap of around two and a half years in the recommendation for allocation of Bander Coal Block in favour of AMR (A-4) and first transaction of the said Rs.24.60 Crores. It is highly implausible that alleged bribe would be given after about two and a half years of getting alleged undue favour. Besides, the alleged undue favour was secured by the AMR but the alleged transactions of Rs.24.60 Crores does not involve the said company.

146. Admittedly, the said transactions involve companies of Abhijeet Group with Sh. Manoj Kumar Jayaswal (A-1) in their pivotal position. However, in view of the company board petition dated 11.09.2009 Ex.P-18, on account of a family feud between Sh. Manoj Kumar Jayaswal on one side and his father and two brothers on other side, the management and control of AMR came in dispute in the year 2009 and Sh. Manoj Kumar Jayaswal lost the control

on its management. Therefore, there was no occasion for him to have complied the Clause (J) of IFS dated 31.07.2008 Ex.P-5 (Colly) (D-158) by paying Rs.24.60 Crores to the companies of Sh. Vijay Darda (A-2) in the year 2010-12 from his group companies for the alleged help rendered by Sh. Vijay Darda in securing coal block for the AMR. The said fact further makes the inference of the prosecution illogical and unreasonable.

147. In respect of 3rd factual basis, it has already been conclusively held after detailed discussion that the recommendatory letters/FAX of Sh. Vijay Darda (A-2) were of no consequence in securing allocation of Bander Coal Block in favour of the AMR (A-4). Therefore, the foundation of the inference based upon the said factual basis is also liable to crumble.

148. In respect of 4th basis i.e. unsigned typed letter dated 23.12.2008 & 21.08.2009 (Ex. P-24/PW-17, part of D-14) purportedly written by Sh. Basant Lal Shaw, father of Sh. Manoj Kumar Jayaswal (A-1) and addressed to Sh. Vijay Darda, the said letters remained unproved as per the law. Neither the purported author of said letters Sh. B.L. Shaw has been examined to prove them nor they bear his signatures. The said documents having not been proved in accordance with law is of no help to the prosecution and therefore, their contents cannot be read for the determination of this case. Even otherwise, its contents also do not conclusively validates the inference drawn by the prosecution qua the afore-mentioned transactions of Rs.24.60 Crores.

149. Interestingly, the said unsigned letter dated 21.08.2009, purportedly written by B.L.Shaw, refers to a family settlement IFS dated 31.07.2008 Ex.P-5 (D-158) as *Parivarik Samjhota*, whereby, Manoj Kumar Jayaswal (A-1) allegedly agreed to give 26% share to the person who helped in the allocation of Coal Block of 110 MTPA in favour of JICPL, 99.12 MTPA in favour of JLD and 31.53 MTPA in favour of AMR. However, as on 31.07.2008, no Coal Block was even allocated to AMR. Secondly, JLD was not even part of the five companies mentioned in clause 7(J) of the said IFS. Thirdly, no letter was written by Vijay Darda for JICPL and same could not have been part of 26% of share allegedly attributed to Vijay Darda. In the light of said apparent factual discrepancies in the content of said letter, no reliance can be placed on the same. Hence, the said basis is also of no legal consequence for the prosecution.

150. On the other hand, the defence has come up with the palpably justifiable explanation regarding the purpose of the transactions of Rs.24.60 Crores, as it is submitted that said transactions of Asera Banka Private Limited (Company of Darda family) with M/s JAS ICPL are based upon Shareholders Agreement dated 29.10.2010 Ex.P-7 (Colly) (D-145). Testimonies of PW-18 Sh. Sanjay Shambhu Dayal Khare and unimpeached testimony of DW-4 Sh. Mohan Arvind Joshi can be referred in this regard. Significantly, the said explanation seems to be more plausible as compared to the whimsical inference of the prosecution. Though, the said explanation has not been proved beyond reasonable doubt, which is also not the legal requirement for proof of defence plea which can be sufficiently proved on the standard of preponderance of

probability. Resting its defence on said anvil of proof, the defence has been able to create a sufficient dent in the prosecution story qua the alleged illegal gratification which is based upon conjectures and surmises without any substantial basis or cogent evidence.

151. In the absence of any credible evidence establishing the alleged purpose of the transactions as illegal gratification and in view of the categorical finding that Sh. Vijay Darda (A-2) had no role in the allocation of Bander Coal Block to the AMR (A-4), the prosecution has miserably failed to prove the charge relating to illegal gratification arising out of the aforesaid transactions. Further as already noted above, material is completely lacking to demonstrate that the said transactions were undertaken pursuant to any prior demand, agreement or purpose of influencing the allocation of coal block. Thus, the charge under Section 9 of PC Act against A-2 and under Section 120-B IPC against all the accused persons qua the alleged illegal gratification through the aforesaid transactions has remained unsubstantiated and liable to fail.

Point of Determination No. 6

(6) Whether offence of criminal misconduct/corruption is made out against A-6?

152. 'Criminal Misconduct' has been defined under Section 13 (1)(d) of PC Act. Section 13 of PC Act as it existed prior to Amendment Act 1 of year 2014, reads as under:-

13. Criminal Misconduct by a Public Servant:-

(1) A public servant is said to commit the offence of criminal misconduct,--

(a) xxx xxx xxx

- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) if he,-- :-
 - (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) xxx xxx xxx

Section 13(2) of Prevention of Corruption Act, 1988 Act reads as under:-

"(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

153. Criminal misconduct under Section 13(1)(d) of the PC Act, may lie in any of the three categories provided in sub clause(i),(ii),(iii) of Section 13 (1) (d) of PC Act. But, it is quite clear that the said three categories of clause (d) of Section 13(1), are independent, alternative and disjunctive and if the elements of any of the three sub-clauses of Section 13(1)(d) of PC Act are met, the same would be sufficient to constitute an offence of 'criminal misconduct' within the meaning of said provision.

154. Thus, obtaining for himself or for any other person, any valuable thing or pecuniary advantage either by corrupt or illegal means or by abusing his official position by a public servant, in itself would amount to criminal misconduct under Section 13(1)(d)(i) & (ii) of the PC Act. While under Section 13(1)(d)(iii) of the PC Act, if a public servant, while he holds office, obtains for any other person

any valuable thing or pecuniary advantage without any public interest, it would also amount to criminal misconduct.

155. In order to invoke Clause (i) and Clause (ii) of Section 13(d) of the PC Act, the prosecution is bound to establish the dishonest intention on the part of the public servant. But for invoking Clause (iii) of Section 13(d) of the PC Act, no *mens rea* is required to be proved in the light of Division Bench judgment of Hon'ble Delhi High Court in '**Runu Ghosh Vs. CBI**' **Crl. MANU/DE/6909/2011 decided on 21.12.2011**. In said judgment, the Hon'ble High Court also laid down the objective criteria to determine the kind of behaviour which would amount to be an "act" resulting in someone, "obtaining pecuniary advantage" or "valuable thing" "without public interest". The relevant para of the judgment reads as under:-

"79. What then is the behaviour or act which attracts such opprobrium as to result in criminal responsibility? It is not every act which results in loss of public interest, or that is contrary to public interest, that is a prosecutable offence. There can be no doubt that all acts prejudicial to public interest, can be the subject matter of judicial review. In those cases, courts consider whether the decision maker transgressed the zone of reasonableness, or breached the law, in his action. However, it is only those acts done with complete and manifest disregard to the norms, and manifestly injurious to public interest, which were avoidable, but for the public servant's overlooking or disregarding precautions and not heeding the safeguards he or she was expected to, and which result in pecuniary advantage to another that are prosecutable under Section 13(1) (d) (iii). In other words, if the public servant is able to show that he followed all the safeguards, and exercised all reasonable precautions having regard to the circumstances, despite which there was loss of public interest, he would not be guilty of the offence. The provision aims at ensuring efficiency, and responsible behaviour, as much as it seeks to outlaw irresponsibility in public servant's

functioning which would otherwise go unpunished. The blameworthiness for a completely indefensible act of a public servant, is to be of such degree that it is something that no reasonable man would have done, if he were placed in that position, having regard to all the circumstances. It is not merely a case of making a wrong choice; the decision should be one such as no one would have taken."

156. The aforementioned judgment of Division Bench of Hon'ble Delhi High Court was also referred by the Hon'ble Kerala High Court in '**State v. K.Mohanachandran and ors'** MANU/KE/1215/2017 decided on 23.08.2017. The relevant part of the judgment reads as under :-

"30. On an examination of the Division Bench decision of the Delhi High Court cited supra, what I find is that the Delhi High Court interpreted sub-clause (iii) of Section 13(1) (d) of the P.C Act to mean that in any case where the public servant transgressed the zone of reasonableness and acted in total violation of the accepted procedure meant for securing public interest or public revenue, and the public servant acted irrationally or in utter disregard to the interest of the public revenue, or acted in such a way as to cause loss from public revenue without any justification in public interest, or where the public servant acted in violation of accepted principles and without ensuring measures to save and protect public interest or public revenue, the public servant can be prosecuted under sub-clause (iii) of Section 13 (1) (d) of the P.C Act. I find that, what the Delhi High Court practically meant is that the act of a public servant must involve some mental element, though not in the form of mens rea or guilty intention, or in the form of dishonest intention. **Practically what emerges from an interpretation of the subclause in the light of the various authorities, is that though mens rea or guilty intention as commonly understood is not required for an offence punishable under sub-clause (iii) of Section 13 (1) (d) of the P.C Act, there must be some material to show some sort of link or nexus between the public servant and the person who made benefit.** This mental element need not be in the form of dishonest intention. It can even be the

knowledge of the consequence of the acts of the public servant, that such acts done without any public interest, or in total violation of the accepted principles and procedure by transgressing the zone of reasonableness, or irrationally committed in manifest disregard to public interest may cause loss to the public revenue and corresponding gain or advantage to somebody....”

157. During the course of arguments, Ld DLA fairly conceded that the verification of the information furnished by the applicants in the application form was the job of Administrative Ministry i.e the Ministry of Steel in the instant case. The Ministry of Coal was required to only verify the completeness of the application i.e whether the application was accompanied with the requisite documents. He also conceded to the fact that the application dated 10.01.2007 filed by the AMR with the Ministry of Coal for allocation of Bander Coal Block for its proposed EUP of 1MTPA capacity at District Tarsi, Nagpur, Maharashtra, was complete in all respects.

158. In the instant case, admittedly, there is no allegation of *quid pro quo* qua the public servant Sh. H.C.Gupta (A-6). Against him, criminal misconduct has been alleged on following two broad allegations:-

1. Firstly that, in the meeting of 36th Screening Committee held on 03.07.2008, he recommended allocation of Bander Coal Block to the AMR (A-4) for its EUP of 0.3 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra despite the fact that in view of feedback form and presentation both dated 07.12.2007 for EUP at different place and with different capacity, the AMR had abandoned/dropped its intention of setting up

of EUP at Village Tarsi, District Nagpur, Maharashtra.

2. Secondly that, Sh. H.C. Gupta (A-6), Chairman of 36th Screening Committee has wrongly claimed to the Hon'ble Prime Minister (being Minister of Coal)/ PMO that the recommendation of Bander Coal Block for AMR (A-4) is based upon the recommendations of the Government of Maharashtra and Administrative Ministry i.e. Ministry of Steel.

1st Allegation of dropping the intention of 1st EUP at Village Tarsi

159. The careful analysis of the entire material on record, however, compels this court to hold that the assumption of the prosecution that on account of the feedback form and presentation both dated 07.12.2007, in respect of EUP at different place (Yavatmal, Maharashtra) with different capacity (2MTPA), AMR had abandoned its previous application for setting up EUP at village Tarsi, District Nagpur, Maharashtra, which is the basis of the 1st allegation, is wholly unreasonable, irrational and preposterous and in the early part of this judgment, this issue has been specifically discussed in detail.

160. The feedback form and the presentation both dated 07.12.2007 were not considered by the Screening Committee as the requisite application for the proposed EUP mentioned in the said documents was never filed. As per the guidelines Ex. P-166/PW39 (D-184, page 12) under the heading "How to Apply", separate application was required to be filed in case the applicant was desirous to apply for more than one End Use Plant. But, since there was no

application for the proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra for which allocation was sought in the feedback form and presentation, there was no question of consideration of said EUP for allocation of coal block by the Screening Committee.

161. On the other hand, failure of any applicant company to file the feedback form or presentation before the Screening Committee was no disqualification for consideration of its application and same is discernible from the minutes of the meeting of 36th Screening Committee held on 03.07.2008, more specifically Para Nos.6 and 7(1) (D-175 page 874-875) wherein, it was mentioned that the companies who did not appear for the presentation despite notices issued to them, their applications had been considered as per the information submitted by them in their application forms.

162. Hence, in the light of applicable guidelines, no such inference that the AMR had abandoned/dropped its intention of setting up of EUP at Village Tarsi, District Nagpur, Maharashtra can be drawn. This line of thought and reasoning is fundamentally flawed. The 36th Screening Committee, in accordance with the applicable guidelines had correctly and legally gone ahead with consideration on the information given in the application dated 10.01.2007 of AMR (A-4) and rightly chose not to consider its feedback form and presentation both dated 07.12.2007 with different EUP for lack of any preceding requisite application in that regard. Thus, the said allegation deserves to be rejected without any further deliberations. The foregoing paras of this judgment may also be referred in this regard.

2nd Allegation of lack of any recommendation from State of Maharashtra for the EUP at village Tarsi

163. The 2nd allegation against the accused public servant Sh. H.C. Gupta (A-6) is that, he misinformed the Prime Minister's Office (PMO) that the recommendation in favour of M/s AMR (A-4) is based upon the recommendation of the State Government of Maharashtra and the Administrative Ministry i.e. Ministry of Steel despite knowing it fully well that the concerned Government of Maharashtra had recommended AMR for allocation of a captive coal block for its sponge iron plant of 2 MTPA capacity at District Yavatmal, Maharashtra and not for its proposed EUP of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra. However, the later part of this allegation that the Maharashtra Government did not recommend the AMR for allocation of a captive coal block for its proposed EUP of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra, is factually incorrect and contrary to record.

164. At the cost of repetition, I may note here that in response to the recommendations/views sought by the Ministry of Coal, the Government of Maharashtra, through its Principal Secretary (Industries) Sh. V.K. Jairath had sent a letter dated 15.06.2007 Ex. P-58 (D-173, page 160) wherein, it was informed that Government of Maharashtra had already recommended the applications of M/s Murali Industries Ltd. and M/s Jawaharlal Darda Yavatmal Energy Ltd. for allotment of Bander Coal Block but, in respect of the other 03 coal blocks namely (a) Khapa and Khapa Extension; (b) Gond Khairi; and (c) Dahegaon Makardhokara-IV, it recommended the names of applicant

companies as listed in Annexures-I to III for the said respective coal blocks.

165. Notably, the name of M/s AMR (A-1) was mentioned in all the said three Annexures stating that it has the capability and resources to set up the plants as proposed in its project report. In effect, Government of Maharashtra recommended the name of M/s AMR for its 1 MTPA proposed project for all the afore-mentioned 03 coal blocks but not for Bander Coal Block even though it was classified as capable and prepared for setting up of its proposed plant. However, vide subsequent letter dated 27.11.2007 Ex.P-181/PW-39 (page 207 of D-173), the Government of Maharashtra through its Principal Secretary (Industries), recommended the allocation for Bander Coal Block to AMR for setting up of 2 MTPA Integrated Steel Plant at District Yavatmal, Maharashtra.

166. As already noted above, the recommendations/views were also sought by Ministry of Coal from the concerned Administrative Ministry i.e. Ministry of Steel qua the applications related to coal blocks including Bander Coal Block proposed to be used for the prospective Iron & Steel Plant. In response thereof, an Office Memorandum dated 06.12.2007 Ex. PW-178/PW39 (page 830-835 of D-174) was written by Sh. N.R. Dash, Director, Ministry of Steel to Joint Secretary, Ministry of Coal with the subject 'Verification of Application for Captive Coal Block for *End-Use by Steel Projects*'. Vide said memorandum, Ministry of Steel categorized the eligible companies for allotment of coal block in total 06 categories and the AMR for its 1 MTPA project at Village Tarsi, District Nagpur, Maharashtra was kept in Category-VI. However, considering the proposal in

the application of AMR and the norms of Ministry of Steel (EUP to be commissioned before December, 2010), only 0.3 MTPA capacity for AMR, was recommended out of the proposed 1 MTPA capacity in the application dated 10.01.2007.

167. Thereafter, vide Office Memorandum dated 14.12.2007 Ex. P-179/PW39 (page 288-290 of D-174), the guidelines followed by the Ministry of Steel for aforementioned categorization of the companies were also sent to Ministry of Coal. As per the said guidelines, Category-VI included those companies having no existing capacity but proposed eligible capacity to be commissioned by December, 2010. Thus, the crux of the said memorandums is that Ministry of Steel recommended allocation of coal block to AMR for only 0.3 MTPA capacity of its proposed EUP at Village Tarsi, District Nagpur, Maharashtra without specifying the name of the coal block.

168. With regard to the aforementioned correspondence of Ministry of Coal with Ministry of Steel and Govt of Maharashtra, the reference can be made to the testimony of PW-39 Sh.V.S.Rana, who also while deposing about the procedure followed in the Ministry of Coal for allocation of captive Coal block by 36th Screening Committee, referred to all the aforementioned letters/memorandums/ guidelines received by the Ministry of Coal except the letter dated 15.06.2007, vide which Government of Maharashtra recommended the name of M/s AMR for its 1 MTPA proposed project for 03 coal blocks other than Bander Coal Block, for which it stated to have already recommended the names of other two applicant companies. In said letter, AMR was though classified as capable and

prepared for setting up of its proposed plant by the Government of Maharashtra but, its name was recommended for coal blocks other than Bander Coal Block.

169. Pertinently, there is no mention of said letter dated 15.06.2007 in the body of chargesheet or supplementary chargesheet though it was filed with the chargesheet as part of D-173 at Page 160. In the formal charge, the accusation against Sh. H.C.Gupta, is that he being the Secretary, Ministry of Coal, Government of India and Chairman of 36th Screening Committee dishonestly recommended the name of AMR (A-1) for allocation of Bander Coal Block for its 1 MTPA capacity End Use Plant at Village Tarsi, District Nagpur, Maharashtra by misleading the PMO that the decision was taken strictly on the merits of the applicants and in accordance with the recommendation of concerned State Government while concealing it from PMO that the recommendation of Government of Maharashtra was qua sponge iron project of 2 MTPA capacity to be established in District Yavatmal, Maharashtra. Hence, the recommendation Bander Coal Block in the name of AMR is alleged to be contrary to the recommendation of Maharashtra Government.

170. However, what has been completely ignored by the prosecution is that the Ministry of Coal had sought comments/feedback from the Government of Maharashtra only in respect of the application dated 10.01.2007 filed by AMR for allocation of Bander Coal Block for its proposed EUP of 1 MTPA at Village Tarsi, District Nagpur, Maharashtra. Pursuant thereto, Government of Maharashtra, vide aforementioned letter dated 15.06.2007 Ex P-58 (D-173 Pg 160), sent through its Principal Secretary (Industries) Sh.

V.K. Jairath, had recommended the names of applicant companies as listed in Annexures-I to III and the name of AMR for its 1 MTPA capacity End Use Plant at Village Tarsi, District Nagpur, Maharashtra was mentioned in all three Annexures for the respective Coal Blocks Khapa and Khapa Extension; Gond Khairi; and Dahegaon Makardhokara-IV. Since Bander Coal Block was already recommended by the Government of Maharashtra in the name of other two companies namely M/s Murali Industries Ltd. and M/s Jawaharlal Darda Yavatmal Energy Ltd, AMR was not considered for said Coal Block. Though, it was categorically recorded in said letter that AMR was capable and prepared for setting up of its proposed plant.

171. But surprisingly, vide subsequent letter dated 27.11.2007 Ex. P-181/PW-39 (page 207 of D-173), Government of Maharashtra recommended the name of M/s AMR for the allocation of Bander Coal Block for its another proposed EUP of 2 MTPA capacity in District Yavatmal, Maharashtra. As per said letter, despite having already recommended said coal block in favour other four companies (1) M/s Jawaharlal Darda Energy Ltd. Yavatmal, (2) M/s. Murli Industries Ltd, (3) M/s. Gujrat Ambuja Cement Ltd. and (4) M/s. Century Textiles & industries Ltd., the Government of Maharashtra still preferred to recommend AMR (A-4) for Bander Coal block for said EUP by citing the reason that Yavatmal District was covered under the Prime Minister's Package for Farmers Scheme and the proposed EUP of 2 MTPA capacity in District Yavatmal, Maharashtra would bring investment and employment for said District.

172. It is also pertinent to mention that the said letter dated 27.11.2007 was issued only after AMR directly approached the Government of Maharashtra and informed that it had already applied with the Ministry of Coal for allocation of Bander Coal block for its aforementioned EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. Notably, Ministry of Coal had never sought any recommendation from the Government of Maharashtra on AMR's request for allocation of Bander Coal Block for its proposed EUP of 2 MTPA capacity in District Yavatmal, Maharashtra, as their request for said EUP, which was presented before the Screening Committee by way of feedback form and presentation both dated 07.12.2007, was never considered by the Screening Committee for lack of requisite application in that regard.

173. As already noted above, in absence of any separate application in respect of 2nd proposed EUP of 2 MTPA capacity at District Yavatmal, Maharashtra, there was no question of consideration of said recommendation of State Government contained in their 2nd letter dated 27.11.2007 by the Screening Committee. However, since the report of the State Government in its earlier letter dated 15.06.2007 was positive regarding capability and preparedness of M/s AMR in respect of its proposed 1 MTPA capacity End Use Plant at Village Tarsi, District Nagpur, Maharashtra, no fault can be found on the part of the 36th Screening Committee or the accused H.C.Gupta (A-6), who was heading it, in recommending allocation of Bander Coal Block in favour of AMR (A-1) for said EUP at Village Tarsi, District Nagpur, Maharashtra.

174. While the suitability of the applicant for allocation of any Coal Block was to be assessed by the concerned State Government but, as per the decision taken in 18th Screening Committee meeting held on 05.05.2003, as also referred in Para 133 of the judgment in **Manohar Lal Sharma Vs. Principal Secretary and ors (2014) 9 SCC 516 decided on 25.08.2014**, the decision on the name of the Coal Block to be allocated in favour the applicants was within the domain of Ministry of Coal/Screening Committee. Prosecution has failed to adduce any contrary evidence to show that it was the prerogative of State Government to specify the name the Coal Block proposed to be allocated to the applicants.

175. As per the minutes of the meeting of 36th Screening Committee held on 03.07.2008, more specifically Para No.13 (Ex. P-196/PW-39, D-175, page 879), as regard *inter-se* distribution of shares among the joint allocatees, it was decided that capacity of end use projects shall be ascertained from i) The capacity indicated in the application form; ii) The capacity indicated in the MoU entered into between the applicant company and the State Government Concerned; iii) The realistic capacity addition likely to materialize by the year 2010, as assessed by the Nodal Ministry/Department concerned, and whichever is found to be the lowest, shall be the share of joint allocatee. The allotted share of AMR (0.3 MTPA) was also decided in accordance with the said parameters laid down by the Committee. In the backdrop of said circumstances, the allegation that accused public servant Sh. H.C. Gupta (A-6) had mis-informed the Prime Minister's Office (PMO)

regarding recommendation in favour of M/s AMR (A-4) is totally unfounded.

176. In view of above, both the above allegations remained unproved and unsubstantiated as there is absolutely no material to establish that the impugned recommendation of the Screening Committee in favour of AMR was in violation of any extant guidelines or that it was not in accordance with the recommendations of concerned Administrative Ministry or the State Government. Even assuming for the sake of arguments that both the above allegations mentioned in the charge framed against the public servant Sh. H.C.Gupta (A-6) have been proved in accordance with law, yet the prosecution case has to cross few more thresholds for proving the applicability of Section 13(1)(d) of PC Act. In the light of said attending aspects which are also relevant for judging the applicability of said provision, the following questions are framed and shall be discussed hereunder one by one:-

1. Whether the impugned recommendation of 36th Screening Committee in favour of AMR, in the minutes of meeting held on 03.07.2008, was the individual decision of A-6 or it was collective unanimous decision of a group or body?
2. Whether the impugned recommendation of Screening Committee in favour of AMR, in the minutes of meeting held on 03.07.2008, led to obtainment of any 'valuable thing' or 'pecuniary advantage' to AMR within the meaning of Section 13 (1)(d) of PC Act,1988. If so, whether it was so obtained by A-6 while he was holding office as a public servant?

3. Whether the said impugned recommendation of Screening Committee in favour of AMR were 'without any public interest' within the meaning of Section 13(1)(d)(iii) of PC Act, 1988?

Individual decision of A-6 or collective unanimous decision of a group or body

177. It is worthwhile to mention here that the meeting of 36th Screening Committee on 03.07.2008, was held under the Chairmanship of Sh. H.C. Gupta (A-6), Secretary (Coal) and it was attended by Sh. V.S. Sawakhande, Director as the representative of Government of Maharashtra and Sh. U.P. Singh, Joint Secretary along with Sh. N.R. Dash, Director as the representatives of Ministry of Coal in addition to the other representatives of the concerned Departments, Ministries and State Governments.

178. Admittedly, there is no allegation that, A-6 had imposed his individual decision upon the other members of the Screening Committee against their consent or that he exercised Veto Power to change the collective decision of the Screening Committee in order to favour AMR. CBI has also failed to examine any member of the Screening Committee to adduce any evidence to show that the decisions of the Screening Committee in its meeting held on 03.07.2008 were not unanimous.

179. On the other hand, DW-3 Sh. Shivraj Singh, who was one of the members of 36th Screening Committee and attended it as representative of Government of Chattisgarh, was examined in defence and he categorically deposed that all the decisions in said meeting held on 03.07.2008 were

taken unanimously by general consensus of all its members. He also deposed that recommendation sheet was signed by all the members of said committee as a token of acceptance of the recommendation of the committee.

180. As per the minutes of the said meeting of 03.07.2008 Ex. P-196/PW39 (D-175), the Screening Committee decided to recommend allocation of Bander Coal Block to AMR (for its 0.3 MTPA capacity) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd and said decision was taken by the Screening Committee after deliberations and based upon the data furnished by the applicants, the feedback received from the State Governments, the Ministry of Steel and Department of Industry Policy and Promotion. Prosecution failed to adduce any evidence to show that any dissent was recorded by any member of the Screening Committee against the allocation in favour of AMR either in the minutes or on the recommendation sheets or even subsequently, after the minutes were uploaded and circulated.

181. Moreover, as per the version of PW41/Ms. Vini Mahajan, Joint Secretary, PMO, the recommendation of concerned State Governments or the Administrative Ministries were one of the many factors prescribed in the Ministry of Coal guidelines for determining *inter-se* priority, and these recommendations were not binding on the Screening Committee. She further deposed in her cross-examination dated 13.12.2023 that, where no special majority was provided for a committee to take its decision, decisions were usually taken by simple majority. She also confirmed that the recommendation of screening committee

were not binding on the Minister of Coal and he could differ from the recommendation of the Screening Committee.

182. In the instant case, all the representatives of Ministry of Steel and Government of Maharashtra in addition to all other attendees of said meeting signed said recommendations as a mark of approval to the same. Significantly, in the very same meeting, decisions to recommend several other coal blocks situated across the country were also taken unanimously by all its members. In this backdrop of circumstances, the A-6 cannot be singled out to indict criminality upon him for the impugned decision of the Screening Committee.

183. The Screening Committee was a collective group/body of all the concerned departments and ministries where the decisions were taken either by consensus or unanimously. It is nowhere the prosecution case that the Chairman, Sh. H.C.Gupta (A-6) had any Veto Power to change the collective decision of the Committee. Therefore, for a conscious and collective decision taken by the committee only chairman cannot be arbitrarily picked up to make him the scape goat.

‘Valuable thing’ or ‘Pecuniary advantage’

184. The material brought on record, clearly established that the recommendations of the Screening Committee were not binding on the Minister of Coal who could differ from the same. Taking note of said position on record, without the approval of the competent authority, the recommendations of the Screening Committee were not sufficient to create any valuable/bankable right in favour of AMR. Therefore, mere recommendations of the Screening

Committee cannot be considered as 'valuable thing' or 'pecuniary advantage' within the meaning of section 13 (1) (d) of PC Act. As per the judgment of Hon'ble Apex Court in **Manohar Lal Sharma (Supra)**, it is the allocation letter which confers a valuable right in favour of the allocatee to apply for execution of mining lease with the Government. Hence, it is only the allocation letter which can be construed as a 'valuable security' for the purpose of section 420 IPC or 'valuable thing' for the purpose Section 13 (1) (d) PC Act.

185. But, in the instant case, by the time the option letter dated 23.12.2008 or the final allocation letter dated 29.05.2009 were issued by the Ministry of Coal in favour of AMR, Sh. H.C.Gupta (A-6) had already retired from the Ministry of Coal i.e. he was no more holding any office as a public servant when the said letters were issued in favour of AMR. As is evident from provision itself that for invoking the offence of criminal misconduct under Section 13 (1) (d) (iii) PC Act, the impugned act of a public servant must have led to an obtainment of a 'valuable thing' or 'pecuniary advantage' for any person while such the public servant holds the office.

186. It has been strenuously argued by Ld DLA that although Sh. H.C.Gupta (A-6) had retired on 30.11.2008, but just 2 days prior to his retirement, he had prepared a note (16/N) dated 28.11.2008 (part of D-31), to the effect that in view of the assurance given, allotment letters in respect of Urtan North and Bander Coal Block may be issued, and it is pursuant to said note only, the option letter dated 23.12.2008 and the final allocation letter dated

29.05.2009 were issued by the Ministry of Coal in favour of AMR.

187. However, I do not find any merit in the above contention because, the fact remains that at the time when the allocation letter dated 29.05.2009, was issued in favour of AMR, A-6 was no more a public servant as he had already retired from Ministry of Coal by that time. Even otherwise, vide letter 21.07.2008 of PMO, a conditional approval of recommendation of Screening Committee was conveyed to the Ministry of Coal. It is the misreading of said conditional approval by Sh. Sewak Paul, Section Officer, CA-1 Section, Ministry of Coal, which led to various proceedings undertaken at the Ministry of Coal for collection of information regarding previous coal blocks allocated to group companies of AMR.

188. But, in Para 12.5 to 12.8 of this judgment, it has been specifically clarified that in absence of any charge of illegality committed after 03.07.2008 in relation to the allocation of Bander Coal Block to AMR by the officials of Ministry of Coal or any other public servant, the same shall not be considered even in the subsequent part of this judgment and accordingly, even the aforementioned note dated 28.11.2008, cannot be used to indict any criminality against Sh. H.C. Gupta (A-6).

Without any public interest

189. Moreover, for attributing criminality under Section 13(1)(d)(iii) PC Act, the blameworthiness for a completely indefensible act of a public servant, is to be of such degree that it is something that no reasonable man would have done, if he were placed in that position, having

regard to all the circumstances. It is not merely a case of making a wrong choice; the decision should be one such as no one would have taken, as noted by Hon'ble Delhi High in **Runu Ghosh (supra)**.

190. Pertinently, Section 13(1)(d)(iii) of PC Act stood already repealed after the Amendment Act 16 of 2018. In the amended PC Act, there is no provision corresponding to the provision of Section 13(1)(d)(iii). In **Madhu Koda Vs. State MANU/DE/1079/2020**, Hon'ble Delhi Court has made a very important observation that by substituting Section 13 of PC Act, the legislature addressed the concerns raised by the stakeholders after the decision of the Division Bench in **Runu Ghosh (supra)**, which made the requirement of *mens rea* as inessential for the purpose of Section 13(1)(d)(iii). It was observed that "The enactment of PC (Amendment) Act, 2018 to substitute the provisions of section 13 does indicate the legislative intent to exclude any such act, which was construed as criminal misconduct only for the reason that the conduct was against public interest."

191. The reason to refer to the aforementioned observation in **Madhu Koda** case is to underscore the fact that even in pending cases of criminal misconduct under Section 13(1)(d)(iii) of PC Act, 1988, a higher degree of proof is required for seeking conviction. An erroneous administrative decision taken in good faith should not be construed as unlawful in absence of clear, clinching and cogent evidence establishing all the essential ingredients of the offence.

192. In view of the fact that Section 13(1)(d)(iii) of PC Act, 1988, (as it existed prior to Amendment Act 16 of

2018) no more exists in the statute books nor any similar provision has been introduced in the amended PC Act, it is incumbent upon the court to look for greater degree of proof before recording any conviction under said provision. Because, the purpose is to punish for corruption not for erroneous administrative decision taken in good faith.

193. In '**J. Jayalalitha v. State**', **MANU/TN/1423/2001**, it was observed by the Hon'ble Madras High Court that the words, "without any public interest" show that for the offence under Section 13(1)(d)(iii), the prosecution must establish that the interest shown for obtaining pecuniary advantage or valuable thing, was private interest and even if the act serves one public interest and if the said one public interest is against another public interest, a person cannot be prosecuted, since the Section states emphatically that the act shall be done without any public interest. The word 'any' is therefore, to be understood that there should be a zero public interest.

194. Whereas, in the case in hand, the decision to carry out the exercise of allocating coal blocks was a policy decision, which was taken in accordance with the specific instructions of the 7th Energy Coordination Committee (ECC) and the PMO. In accordance with the extant guidelines, the Screening Committee recommended the allocation of Bander Coal Block to AMR (for its 0.3 MTPA capacity) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd and said decision was unanimously taken after due deliberations on the information furnished by the applicants and the feedback received from the State Governments and the Ministry of Steel. By no stretch of

imagination, said decision can be treated as 'without any public interest'.

195. In the light of above discussed factual and legal position on record, the charge of criminal misconduct against accused Sh. H.C.Gupta (A-6) is bound to fail on all the essential ingredients of Section 13(1)(d) PC Act, as the impugned decision/recommendation of 36th Screening Committee neither led to obtainment of any valuable thing or pecuniary advantage for AMR during the service tenure of Sh.H.C.Gupta (A-6) nor the decision was his individual decision nor it was without any public interest.

Point of Determination No. 7

(7) Whether there was any criminal conspiracy? If so, what was the object of said conspiracy and who all were the part of it?

196. The above point of determination involves the following contentious issue:-

"Whether there was any prior meeting of mind amongst the accused persons for the commission of alleged offences?"

197. Criminal conspiracy is a substantive and independent offence under Indian law. A conspiracy precedes the commission of the crime and thus, acquittal of accused for the substantive offence does not automatically negate the charge of conspiracy. The gist of the offence is the "meeting of minds" or the agreement to commit an illegal act and not the successful completion of the act itself. Hence, an accused can be convicted for the offence of criminal conspiracy under Section 120B IPC even if the

substantive offence for which the conspiracy was allegedly hatched has failed or the accused is acquitted of it. The offence of conspiracy is complete the moment two or more persons agree to do an illegal act, or a legal act by illegal means.

198. Section 120A of Indian Penal Code defines 'criminal conspiracy' as an agreement of two or more persons to do or cause to be done an illegal act, or an act not illegal by illegal means. This section will apply in cases where either the ultimate object or means of committing the act is illegal. As per the proviso to this section, *actus reus* i.e some act besides the agreement is required to be done in pursuance of said agreement except in agreement to commit an offence.

199. In the instant case, the offence of Criminal conspiracy under Section 120B IPC has been framed against all the accused persons on the allegation that they entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of Bandar Coal Block in favour of AMR by adopting various illegal means such as, A-1 (Sh. Manoj Kumar Jayaswal) and A-4 (M/s AMR Iron & Steel Pvt. Ltd.) made various false claims in the application and the feedback form; A-3 (Sh. Devendra Darda) falsely presented himself as Director of AMR in the feedback form; A-2 (Sh. Vijay Darda) wrote various letters containing false factual information to different Government Authorities with a view to influence them to seek favours for AMR in allocation of said Coal Block for which, he obtained Rs. 24.6 Crores as *quid pro quo* through his company M/s Asara Banka Pvt. Ltd. from Manoj Kumar Jayaswal (A-6)

through his group company Abhijeet Group of Companies; and A-6 (public servant Sh. H.C. Gupta) by various acts and omission indulged into criminal misconduct to facilitate issuance of allocation letter dated 29.05.2009/offer letter dated 23.12.2008 in favour of AMR (A-4). In furtherance of said conspiracy, the accused A-1,2,3 and A-4 allegedly committed the substantive offence of cheating under Section 420 IPC, the offence under Section 9 PC Act is allegedly committed by Accused A-2 and the offence U/s 13 (1)(d) read with Section 13(2) PC Act by A-6.

200. Thus, for the purpose of bringing the charge of criminal conspiracy read with above mentioned provisions of PC Act and IPC, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing home the charges of alleged substantive offences. We are not oblivious of the fact that often conspiracies are hatched in secrecy and for proving the said offence, substantial direct evidence may not be possible to be obtained, but it can be very well proved by way of circumstantial evidence.

201. As has been held above while recording findings on Points of Determination No. 1 to 6, the prosecution has failed to prove the charge of any of the substantive offences, for the commission of which the criminal conspiracy was allegedly hatched by the accused persons. Even for the offence of criminal conspiracy, which is an independent offence, there is no direct or indirect evidence to establish the prior meeting of mind amongst the accused person. There is absolutely no evidence on record to show any nexus or communication verbal or written between AMR

(A-4) or its representatives including accused Manoj Kumar Jayaswal (A-1) with the accused public servant Sh. H.C. Gupta (A-6) or with accused Vijay Darda (A-2). No conspiracy can be inferred even from the admitted facts or from the circumstances proved on record which has been already discussed in detail in the foregoing paras of this judgment.

202. Admittedly, there is no allegation of *quid pro quo* qua public servant (A-6). While the said allegation qua accused Vijay Darda (A-2) has remained unsubstantiated as already discussed in the discussion on the Point of Determination No. 4 and 5. Against accused Sh. Devendra Darda (A-3), the only allegation is that he falsely presented himself as Director of AMR in the feedback form which was containing various false claims relating to SPV status, land, networth and water resources. However, while recording findings on the Points of Determination 1-3, it has been conclusively held that the said feedback form or the presentation were never considered by the Screening Committee nor it led to any inducement for the recommendation of coal block in favour of AMR. Thus, the alleged false claims in the feedback form remained inconsequential for arriving at the impugned decision of recommendation in favour of AMR.

203. There is no evidence that the recommendatory letters written by Vijay Darda (A-2) to various government authorities were ever placed before the Screening Committee so as to be able to influence its decision. All the circumstances through which prosecution seeks to prove the charge of criminal conspiracy have also remained unproved

for lack of any cogent and credible evidence. The entire case of prosecution for the offence of criminal conspiracy is based on conjectures and surmises without any substantial basis.

Requirement of Sanction under Section 197 Cr.P.C qua public servants.

204. A legal argument has been raised on behalf of accused public servant (A-6) that, as per the latest position of law, even the cognizance taken qua A-6 for the offence under Section 120-B IPC was bad in law for lack of requisite sanction under Section 197 Cr.P.C. The said contention has been strongly repelled by the Ld. DLA on the ground that vide order dated 23.07.2019, this court has already taken a view that the impugned acts and omission alleged against the public servant (A-6), which led to invocation of alleged offence of conspiracy against him, could not be said to have been done in discharge of his official duty so as to seek any protection of Section 197 Cr.P.C. In this regard, Ld DLA has drawn the attention to Para 191 to 194 of said order dated 23.07.2019. He further submitted that the findings of this court on the aforementioned issue has already attained finality as said order was never challenged by A-6 before any superior court. Therefore, the said issue can neither be re-agitated by the defence at this stage nor it can be gone into by this court as this court is not vested with any powers of review.

205. Ld. Counsel Sh. Rahul Tyagi rebutted the above arguments by submitting that the issue of prosecution sanction can be raised by the defence at any stage of proceedings. To buttress his arguments, he placed reliance on the judgments in '**Nanjappa v. State of Karnataka (Manu/SC/0788/2015)**' and '**Prakash Singh Badal**

and Ors. Vs. State of Punjab (Manu/SC/5415/2006)'.

He further argued that even otherwise, the observations made by the court at the stage of charge are based on a *prima facie* view of the material and cannot create any bar for the court to reconsider any issue already dealt with, at the stage of final arguments.

206. There is no fight to the legal proposition that the question of requisite prosecution sanction can be raised at any stage of proceedings. However, there lies a distinction between lack of requisite sanction and validity of sanction. The question of lack of sanction is generally required to be agitated at the very threshold of prosecution i.e at the stage of cognizance or charge. However, once the question of lack of sanction is agitated before the court at the stage of charge and a categorical finding has been recorded by the court, it cannot be re-agitated before the same court at the subsequent stage as it would amount to seeking review of the order.

207. The situation would have been different, had it been the case that the question of validity of sanction was decided on a *prima facie* view of the matter leaving it to be decided conclusively after the completion of trial. But here, the question raised before my Ld. Predecessor was regarding the very requirement of sanction, which was decided against the accused public servant (A-6) with a conclusive finding that the offence of conspiracy impugned against said accused was not done in discharge of his official duty hence, the umbrella of Section 197 Cr.PC was not made available to him. The said issue once decided, cannot be re-agitated before this court. The reliance placed by the

defence on the aforementioned judgments is of no help as the both judgments are distinguishable on facts. The contention is hence, rejected being not sustainable. But in any case, the charge of conspiracy has miserably failed even on merits. Therefore, the rejection of said contention is inconsequential and is of no help to the prosecution.

CONCLUSIONS

208. The conclusions arrived at by the court while deciding aforementioned points of determination can be summarised as under:-

1. The expressions 'group companies' or 'associate companies' in the application form dated 10.01.2007 were loose and undefined expressions, lacking any precise statutory or legal connotation which made them susceptible to varied interpretations as per subjective understanding of the person interpreting them. Further the query regarding earlier allocation of coal Block to 'group companies' or 'associate companies' in the application form was incorporated in a mechanical and perfunctory manner without any identifiable or specific perceivable objective to be achieved. Thus, a response furnished to an inherently ambiguous query in the application format can not, by itself, be made foundation for fastening criminal liability upon the applicant.

2. As per the applicable guidelines and consistent past practice, there was no impediment or restriction on the allocation of coal block to a company merely because it or its group companies had previously been allocated coal Block. In view thereof, the alleged false claim of AMR qua previous allocation of coal block to its group companies

cannot be held to have been made with a dishonest or *malafide* intention to derive any wrongful gain nor it could have operated as an inducement capable of influencing the allocation process.

3. Even assuming for the sake of arguments, that the said misrepresentation in the application form dated 10.01.2007 was actuated with dishonest or fraudulent intention of the AMR, there is no evidence on record to demonstrate that the said claim was material or it led to the inducement of the Screening Committee in recommending the allocation of Bander Coal Block to AMR. Indeed the office note dated 18.08.2008 of Sh. Sewak Paul, Dealing Assistant, CA-I Section, Ministry of Coal and pursuant to said note, the consequent proceedings that took place in the Ministry of Coal and PMO till the issuance of final allocation letter on 29.05.2009, clearly demonstrate that the Ministry of Coal and PMO were aware of the prior allocation of coal blocks to the group companies of AMR.

4. Interestingly, the said information regarding previous allocation to group companies of AMR was gathered from the very documents filed by AMR with its application dated 10.01.2007, i.e Memorandum of Association, Article of Association and Audited Annual Balance Sheets. But, despite such knowledge, the competent authorities never considered it vital or disqualifying factor in determining the allocation of coal block, which again shows that the alleged misrepresentation in the application form dated 10.01.2007, was wholly innocuous as the said aspect was never considered relevant for the recommendation of coal block.

5. Furnishing of feedback form and presentation in the meeting of Screening Committee on 07.12.2007 was merely a chance event which was never contemplated by Ministry of Coal at the time of inviting application for allocation of captive coal block. This additional stage was introduced just to ascertain the latest status/stage of preparedness of the applicant companies with respect to their EUPs as there happened to be a delay of 11 months since the submission of the application form.

6. As per the minutes of 36th Screening Committee meeting, even the applications of the companies that did not appear for presentation were considered by the Screening Committee as per the information submitted by them in their application forms. This makes it abundantly clear that feedback form and presentation were neither mandatory nor determinative factors to be considered by the 36th Screening Committee for allocation of coal block.

7. As per the applicable guidelines, there was no prohibition against a single company submitting multiple applications for different EUPs provided separate applications were submitted for each EUP. However, the feedback form and the presentation were required to strictly conform to the application. In the instant case, the 36th Screening Committee rightly and consciously chose not to consider the feedback form and presentation both dated 07.12.2007 of the AMR (A-4) as the same were unrelated to the EUP (1 MTPA capacity at Village Tarsi, District Nagpur, Maharashtra) specified in its application dated 10.01.2007 and no separate application qua the EUP (2 MTPA capacity at District Yavatmal, Maharashtra) mentioned in the

feedback form and presentation dated 07.12.2007 was ever submitted on behalf of A-4. Thus, the said documents neither induced nor impelled the 36th Screening Committee to arrive at its decision recommending Bander Coal Block in favour of AMR (A-4). The content of said documents indeed remained wholly irrelevant and non-existent for the 36th Screening Committee in reaching to said decision.

8. The inference sought to be drawn by the prosecution that the submission of a feedback form and a presentation for a different EUP by the AMR (A-4) necessarily implies abandonment of the EUP mentioned in its application form is neither logical nor supported by any material on record. The feedback form and presentation appear to have been submitted with a sanguine hope that it may get allocation of coal block for different EUP at different location with higher capacity on the strength of its proposed SPV with two other companies without appreciating that such allocation could not be considered in the absence of the separate preceding supporting application.

9. Admittedly, AMR never revoked or withdrew its application dated 10.01.2007. But in the feedback form and presentation both dated 07.12.2007, AMR sought for allocation of coal block for its another EUP at District Yavatmal, Maharashtra with higher capacity of 2 MTPA. As there is nothing wrong in looking for a better or more viable alternative, the said act of altering the capacity and location of the proposed EUP cannot be said to be indicative of any dishonest intention of the applicant company (A-4). At the best, the said innocuous and futile attempt is nothing more

than a *bona fide* endeavour to seek a better alternative without giving up the proposal in its original application.

10. The failure of AMR to establish the proposed EUP at village Tarsi, District Nagpur, Maharashtra even after allocation of coal block on 29.05.2009, was not due to any initial lack of intention or dishonest design as alleged by the prosecution. Rather, it was the result of internal family feud which led to filing of Company Petition No.111/397-397/CLB/MB/2009 dated 11.09.2009 by Sh. Manoj Kumar Jayaswal (A-1) in the Company Law Board (Mumbai Bench), Mumbai. The prolonged litigation and managerial deadlock, rendered the establishment of the proposed EUP impossible and as a consequence, the competent authority revoked the allocation of Bandar Coal Block in favour of AMR in the year 2014.

11. Though the information regarding allotted land furnished by AMR in the feedback form and presentation was false but, there was no misrepresentation either in respect of proposed SPV, networth or water resource in said documents. In the feedback form as well as in the presentation, AMR claimed it to be the proposed Special Purpose Vehicle of Lokmat and IL&FS, IDC and never claimed it to be the existing or presently constituted SPV. As per Para 9 of the applicable guidelines Ex. P-166/PW-39 (D-184), it was legally permissible for AMR to include the net worth of all partners of its proposed SPV.

12. The proposed SPV, on its plain reading, denotes that an arrangement contemplated to be formed in future. There was no legal requirement mandating that such an understanding of the members of SPV had to be reduced to

writing at that very stage. At that time, the applicant was only conveying its intention to enter into SPV with the said two entities in future after allocation of coal block to it.

13. Vide letter dated 03.12.2007, AMR had already received a conditional approval for water drawl from the Irrigation Department for its proposed EUP at District Yavatmal. In view of the fact that CBI has failed to adduce any material to elucidate or clarify the meaning of expression 'tying up' used in the feedback form for seeking information regarding water resources, no culpable fault can be attributed to the AMR for having bona fide assumed that receipt of such conditional approval for water amounted to tying up with irrigation department. Due to such ambiguous expressions, the applicant was left in lurch and compelled to furnish the information based on its own subjective understanding.

14. Even otherwise, there is no evidence on record to suggest that said feedback form or the presentation or any of their contents even weighed with or influenced the 36th Screening Committee in recommending allocation of Bander Coal Block to AMR. At the cost of repetition, it is reiterated that the said misrepresentation was not even considered by the 36th Screening Committee while recommending allocation of Bander Coal Block to AMR (A-4) because, the same was allocated for its proposed EUP at Village Tarsi, District Nagpur, Maharashtra, whereas, the above misrepresentation in respect of available land is concerning its proposed EUP at District Yavatmal, Maharashtra, in respect of which requisite application was

never filed with Ministry of Coal or with 36th Screening Committee.

15. Sh. Devender Darda (A-3) had attended the presentation on 07.12.2007 before the 36th Screening Committee in his capacity as the representative of Lokmat Group and AMR submitted the feedback form contemplating that it would work with Lokmat Group and IL&FS, IDC as its partners for their proposed SPV in setting up of EUP of 2 MTPA capacity at District Yavatmal, Maharashtra. Sh. Devendra Darda (A-3) signed the feedback form with the innocuous belief that he is signing it as one of the Directors of the partner entities of the proposed SPV. His signing as Director of AMR on the feedback form cannot be said to have conferred any undue advantage upon himself or to AMR. The said feedback form was not even considered by the 36th Screening for want of any application in that regard. Thus, his (A-3's) signatures as Director on the feedback form of the AMR is, at the most, an irregularity or procedural aberration that cannot be arbitrarily or unreasonably elevated to the level of criminality.

16. The recommendation of 36th Screening Committee qua AMR bears no nexus with the letters of Sh. Vijay Darda and in fact, it runs contrary to the contents of the said letters. Sh. Vijay Darda had made a request for exclusive allocation, the 36th Screening Committee recommended Bander Coal Block in favour of AMR jointly with two other companies and that too with only a minor share in its favour. Besides, while the request was for different capacity and location, the allocation was made for an altogether different EUP, capacity and site. These

material deviations further buttresses the conclusion that the said letters had no relation or connection whatsoever with the impugned recommendation of 36th Screening Committee in its meeting held on 03.07.2008.

17. No criminality whatsoever can be attributed to Sh. Vijay Darda (2) for merely routinely addressing the said letters to the Prime Minister's Office in his capacity as a Member of Parliament (Rajya Sabha) for the development of his constituency and more so, when it is conclusively established that such letters were never considered for the impugned recommendation for allocation of Bander Coal Block to the AMR.

18. Once, it is held that Sh. Vijay Darda had no role to play in the allocation of the coal block, the very foundation of the prosecution case regarding payment of illegal gratification of 24.60 Crores collapses. In the absence of any role attributable to Sh. Vijay Darda in securing the allocation of Bander Coal Block to AMR, there was neither any occasion nor any plausible motive for AMR to pay any illegal gratification to him. Moreover, the prosecution has failed to examine any witness who could establish a live and proximate nexus between the alleged financial transactions and the charge of illegal gratification. There is no evidence, either oral or documentary, to demonstrate that the said transactions were undertaken pursuant to any prior demand, agreement or purpose of influencing the allocation of coal block.

19. The entire net worth of AMR (A-4) based upon its balance sheets available on record was around Rs.2 Crores making its 26% shares to be around Rs.50 Lacs.

Therefore, even if it is assumed that Sh. Vijay Darda was instrumental in securing allocation of Bander Coal Block in favour of AMR, as per IFS dated 31.07.2008, he would have been entitled to get 26% shares of the total network of AMR, which is computed to be around Rs.50 Lacs only. However, Rs.24.60 Crores is highly disproportionate figure which is around 50 times more than what Sh. Vijay Darda would have been entitled based upon said IFS had he been instrumental in securing allocation of Bander Coal Block in favour of AMR. Therefore, the assumption drawn by CBI to connect Sh. Vijay Darda with said transaction is wholly unfounded and untenable.

20. In the light of applicable guidelines, no inference that on account of having filed feedback form and presentation both dated 07.12.2007 with different EUP with altered capacity and location, the AMR had abandoned/dropped its intention of setting up the EUP at Village Tarsi, District Nagpur, Maharashtra as proposed in the application 10.01.2007, can be drawn. This line of thought and reasoning is fundamentally flawed. The 36th Screening Committee, in accordance with the applicable guidelines had correctly and legally gone ahead with consideration on the information given in the application dated 10.01.2007 of AMR (A-4) and rightly chose not to consider its feedback form and presentation for lack of any preceding requisite application in that regard.

21. Since the report of the State Government in its earlier letter dated 15.06.2007 was positive regarding capability and preparedness of AMR in respect of its proposed 1 MTPA capacity End Use Plant at Village Tarsi,

District Nagpur, Maharashtra, no fault can be found on the part of the 36th Screening Committee or the accused H.C.Gupta (A-6), who was heading it, in recommending allocation of Bander Coal Block in favour of M/s AMR (A-1) for said EUP at Village Tarsi, District Nagpur, Maharashtra.

22. The letter dated 27.11.2007, of Government of Maharashtra to Ministry of Coal for recommending allocation of Bander Coal Block to AMR for its proposed EUP at District Yavatmal, Maharashtra was written only after AMR directly approached the State Government for allocation of Bander Coal block for its said EUP at District Yavatmal, Maharashtra. Notably, Ministry of Coal had never sought any recommendation from the Government of Maharashtra on AMR's request for allocation of Bander Coal Block for its said proposed EUP at District Yavatmal, Maharashtra, as their request for said EUP, which was presented before the Screening Committee by way of feedback form and presentation both dated 07.12.2007, was never considered by the Screening Committee for lack of requisite application in that regard.

23. As per the judgment of Hon'ble Apex Court in **Manohar Lal Sharma (Supra)**, it is the allocation letter which creates and confers a valuable right upon the allottee to apply for execution of mining lease with the Government. Hence, in the instant case also, it is only the allocation letter which can be a 'valuable security' for the purpose of Section 420 IPC or 'valuable thing' for the purpose Section 13 (1) (d) PC Act. In view thereof, mere recommendation of the Screening Committee in favour of AMR without any the

approval from the competent authority was not sufficient to create any valuable right in favour of AMR.

24. Furthermore, for invoking the offence of criminal misconduct under Section 13 (1) (d) (iii) PC Act, the impugned act of the public servant in obtaining 'valuable thing' or 'pecuniary advantage' is required to have been done by him while he holds the office as a public servant and it must have been done 'without any public interest'. But in the instant case, by the time the final allocation letter dated 29.05.2009, was issued by the Ministry of Coal in favour of AMR, Sh. H.C.Gupta (A-6) had already retired and was no more holding the office as a public servant.

25. Moreover, the decision to carry out the exercise of allocating coal blocks was a policy decision, which was taken in accordance with the specific instructions of the 7th Energy Coordination Committee (ECC) and the PMO. In accordance with the extant guidelines, the Screening Committee recommended the allocation of Bander Coal Block to AMR (for its 0.3 MTPA capacity) jointly with M/s Century Textiles & Industries Ltd. and M/s J.K. Cement Ltd and said decision was unanimously taken after due deliberations on the information furnished by the applicants and the feedback received from the State Governments and the Ministry of Steel. By no stretch of imagination, said decision can be treated as 'without any public interest' especially, when there is no allegation of *quid pro quo*.

26. Even for the offence of criminal conspiracy, the prosecution case is based only on conjunctures and surmises without there being any direct or indirect evidence sufficient to draw any reasonable, rational or conclusive

inference regarding any agreement or prior meeting of mind amongst the accused person for the commission of alleged offences. Admittedly, there is no allegation of *quid pro quo* qua public servant (A-6). Whereas, the allegation of *quid pro quo* qua accused Vijay Darda (A-2) remained unsubstantiated. There is absolute lack of evidence to show any communication verbal or written between AMR (A-4) or its representatives including accused Manoj Kumar Jayaswal (A-1) with the accused public servant Sh. H.C. Gupta (A-6) or with accused Vijay Darda (A-2) to suggest any prior meeting of mind. No conspiracy can be inferred even from the admitted facts or from the circumstances proved on record. All the circumstances, through which the prosecution seeks to prove the charge of criminal conspiracy have remained unsubstantiated for lack of any cogent and credible evidence.

FINAL CONCLUSIONS

209. In the light of above discussion and the findings recorded by the court, all the points of determination framed in this case are answered in negative with following final conclusions:-

1. That the evidence adduced on record is highly insufficient to conclusively establish any of the essential ingredients viz. deception, inducement, dishonest intention or wrongful gain for the alleged offence of cheating punishable under Section 420 IPC. The prosecution has failed to substantiate the allegations for said offence against accused Sh. Manoj Kumar Jayaswal (A-1), Sh. Vijay Darda (A-2), Sh. Devendra Darda (A-3) and the accused company AMR

(A-4), beyond reasonable doubt. In view thereof, A-1 to A-4 are acquitted for the offence of cheating under Section 420 IPC.

2. The prosecution has miserably failed to prove that the impugned recommendation of Screening Committee for allocation of Bandar Coal Block in favour of AMR (A-4) led to obtainment of any valuable thing for AMR while A-6 was holding office as a public servant or that the recommendation was made without any public interest within the meaning of Clause (iii) of Section 13(1)(d) PC Act, 1988. No element of *mens rea* or pecuniary advantage for the offence of Section 13(1)(d)(i) & (ii) PC Act, 1988 are inferable from the evidence adduced on record. Accordingly, Sh. H.C.Gupta (A-6), has been acquitted for the offence under Section 13(1)(d) of PC Act, 1988.

3. The offence of illegal gratification under Section 9 of PC Act, 1988, against Sh. Vijay Darda (A-2), also remained unproved as the prosecution miserably failed to establish any live or proximate nexus between the alleged financial transactions of Rs.24.6 Crores and the alleged charge of illegal gratification. There is no evidence, either oral or documentary to demonstrate that the said transactions were undertaken pursuant to any prior demand, agreement or for the purpose of influencing the allocation of coal block. Accordingly, Vijay Darda (A-2), also stands exonerated for the offence under Section 9 of PC Act, 1988.

4. The prosecution case for the charge of criminal conspiracy under Section 120-B IPC, has also failed miserably against all the accused for lack of any iota of evidence, direct or indirect, to establish any prior meeting of mind amongst the accused persons for the commission of alleged offences. Accordingly, all accused are acquitted for the offence of criminal conspiracy under Section 120-B IPC and Section 120-B IPC r/w Section 420 IPC, Section 9 and Section 13(1) (d) PC Act, 1988.

210. In view of the aforementioned final conclusions drawn by this court, all the five accused, A-1 to A-4 and A-6 are hereby acquitted from all the charges framed against them.

211. However, before parting with this judgment, this court owes a duty to mention that Sh. H.C.Gupta (A-6), Ex-Secretary, Ministry of Coal, who had been summoned by the court on a closure report filed by CBI qua him, has been honourably acquitted for lack of any evidence for the alleged charges framed against him.

212. Bail Bonds in compliance to Section 437A Cr.P.C be furnished by the accused. File be consigned to record room after due compliance.

(Announced in the open court
on 27th March, 2026)

(SUNENA SHARMA)
Special Judge, (PC Act), (CBI),
(Coal Block Cases)-02
Rouse Avenue District Courts,
New Delhi.