



\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 10<sup>th</sup> October, 2025**Pronounced on: 2<sup>nd</sup> December, 2025*+ **W.P.(C) 10686/2025 & CM APPL. 44163/2025 (Directions for Stay on the Operation of the Impugned Order)**

VEDANTA LIMITED

.....Petitioner

Through: Mr. Nidhesh Gupta with Mr. Prashanto Chandra Sen, Senior Advocates, Mr. Naveen Kumar, Mr. Bikram Dwivedi, Mr. Ujjwal Kumar Rai, Mr. Rohit Ghosh, Mr. Jimut Mohapatra, Mr. Utkarsh Chandra, Mr. Prabhat Kumar Rai, Mr. Aditya Goel and Mr. Lakshay Singh, Advocates.

versus

THE NOMINATED AUTHORITY MINISTRY OF COAL  
GOVERNMENT OF INDIA & ORS.

.....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Ankur Mittal, CGSC with Mr. Aviraj Pandey, Ms. R. Jaiswal, Ms. Jutirani Talakdar, Advocates for UOI.

**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT**



**AMIT SHARMA, J.**

**W.P.(C) 10686/2025**

1. The present petition under Article 226 of the Constitution of India, 1950, has been filed seeking the following prayers: -

“In view of the foregoing facts and grounds, the Petitioner most respectfully prays that this Hon’ble Court may be pleased to:

(a) Allow the present Writ Petition and issue appropriate writ, order or directions to quash and set aside Impugned Order dated 21.07.2025 bearing file No. NA- 104/8/2020-NA (hereinafter referred as “**Impugned Order**”) issued by the Respondent No. 1 I.e., Nominated Authority, Ministry of Coal, Govt., of India; And/o

(b) Issue further appropriate orders or directions restraining the Respondent No. 1 to give effect to appropriation order dated 21.07.2025 bearing file No. NA- 104/8/2020-NA issued by the Respondent No. 1 I.e., Nominated Authority, Ministry of Coal, Govt., of India and refund any amount so appropriated; And/or

(c) Issue further appropriate writ, orders or directions directing the Respondent No. 1 to grant an extension of milestone deadlines under the Coal Mine Development and Production Agreement (CMDPA) dated 11.01.2021, executed in favour of the Petitioner with respect to the Radhikapur (West) Coal Mine situated in Angul district, Odisha in terms of the order dated 16.07.2025 filed by the Petitioner before the Respondent No. 1; And/or

(d) Issue further order or directions to the Respondents to process the applications of the Petitioner for grant of statutory clearances in a time bound manner; And/or

(e) Pass such other or further orders as this Hon’ble Court may deem just and proper in the facts and circumstances of the present case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.”**



## **FACTUAL BACKGROUND**

2. Brief facts necessary for the adjudication of the present petition, as stated by the petitioner in the present petition, are as under: -

i) On 18.06.2020, the Nominated Authority, Ministry of Coal, Government of India, (respondent No.1) issued the Tender Document for the 11<sup>th</sup> Tranche of Auction under the Coal Mines (Special Provisions) Act, 2015<sup>1</sup>, for auctioning coal mines for commercial sale including Radhikarpur (West) Coal Mine, which was subsequently allotted to the petitioner. After conducting auction under the provisions of CM (SP) Act, 2015, and associated Rules, on 28.12.2020, the petitioner was declared '**successful bidder**' for the Radhikarpur (West) Coal Mine<sup>2</sup> by respondent No.1 in accordance with the directions issued by Govt. of India *vide* Office Memorandum dated 23.12.2020 and Rule 10 (10) of the CM (SP) Rules, 2014, pursuant to final offer of 21% of the revenue share for the Coal Mine submitted by the petitioner (**successful bidder**).

ii) On 11.01.2021, Coal Mine Development and Production Agreement (CMDPA) was executed between the President of India and the Petitioner formalising the obligations and milestones to be adhered to by the petitioner for operationalising the subject mine. After execution of CMDPA, on 03.03.2021, respondent No.1 under Rule

---

<sup>1</sup> Hereinafter referred to as "CM (SP) Act, 2015"

<sup>2</sup> Hereinafter referred to as "Subject Mine"



7(2)(b) and Rule 13(1) of the Coal Mines (Special Provisions) Rules, 2014 read with Section 6(3)(b) and Section 8(3) of the CM (SP) Act, 2015, issued a Vesting Order thereby, transferring all rights, title, interest including the approved mine plan to the petitioner, enabling it to undertake further steps toward development of the mine.

**iii)** On 17.02.2021, the petitioner submitted the Schedule-C Format of the completion notice in terms of Clause 3.2.1 of the CMPDA and furnished the 1<sup>st</sup> instalment of the upfront amount of Rs.24.76 Crores along with a Performance Bank Guarantee<sup>3</sup> of Rs.263.17 Crores and a fixed amount of Rs.7.69 Crores in terms of the Tender Document. Further, on 05.04.2021, in furtherance of its obligations under CMDPA, petitioner submitted the commencement plan for starting coal mining operations at the allocated mine in terms of Clause 5.1 of the Tender Agreement. On 08.04.2021, petitioner made an application in Form-7 to the competent authority for transfer of the existing Environment Clearance (EC) in its name which was issued on 10.01.2014 in favour of prior allottee in terms of the Clauses 1 (c) & 1 (d) of the Vesting Order.

**iv)** On 19.07.2021, respondent No.1 issued an Office Memorandum granting relaxation in the timelines prescribed for achieving efficiency parameters under CMDPA, in view of the nationwide lockdown owing to the second wave of the COVID-19 pandemic. *Vide* this Office Memorandum, 3 months relaxation was given for achieving efficiency

---

<sup>3</sup> Hereinafter referred to as 'PBG'



parameters in both operational as well as non-operational coal mine by respondent No.1. In the meanwhile, the request of the petitioner for transfer of Environment Clearance (EC) and Forest Clearance (FC) were forwarded to the Ministry of Environment, Forest and Climate Change (MoEF & CC) for necessary action. On 26.11.2021, Forest Advisory Committee (FAC) considered the proposal for transfer of Forest Clearance (FC-I) submitted by the petitioner, however, the same was deferred with direction for further inspection and clarifications.

v) On 07.12.2021, petitioner submitted a formal application before Director of Mines, Govt. of Odisha, for grant of mining lease over an area of 1048 hectares based on the vesting order issued by respondent No.1. On 17.12.2021, Divisional Forest Officer (DFO), Angul, along with DGIF(C), Bhubaneswar, and Range Officer, Chhendipada, conducted a field inspection of the proposed area and in the inspection report dated 17.12.2021, it was noted that the location of the mine falls within an area critical to elephant habitat and identified the site as a high human-elephant conflict zone.

vi) On 23.12.2021, FAC in its 2<sup>nd</sup> meeting, recommended grant of stage-I FC-I in favour of the petitioner, subject to certain conditions. On 21.01.2022, the petitioner submitted all requisite documents to the Office of the Director of Mines, Odisha, seeking further action for execution of the Mining Lease in accordance with vesting order. On 04.02.2022, in a meeting held between respondent No.1, Central Mine Planning & Design Institute Limited (CMPDI), petitioner and M/s



EMMRL, issues arose regarding three different boundary coordinates viz., Mining Plan, Vesting Order, recommendations of CMPDI.

**vii)** On 08.02.2022, petitioner received 1<sup>st</sup> Show Cause Notice (SCN-I) for non-compliance of Milestone-2 (MS-2) pertaining to the submission and approval of mining plan and on the same day, the Nominated Authority issued a letter correcting the boundary coordinates and directed revision based on Odisha Space Application Centre (ORSAC) data. On 09.02.2022, petitioner wrote to CMPDI informing them about revision of boundary coordinates for the subject mine.

**viii)** On 21.02.2022, petitioner submitted its reply to SCN-I, citing reasons including delays due to the COVID-19 pandemic and issues with mine boundary coordinates. The explanation given by the petitioner was accepted and SCN-I was dropped against the petitioner based on the recommendation of Scrutiny Committee in its 18<sup>th</sup> meeting held on 23.08.2022 for providing relaxation by not appropriating Performance Bank Guarantee for non-compliance with the milestone (MS-2) and same was communicated to the petitioner by respondent No.1 *vide* letter dated 18.01.2023.

**ix)** On 06.01.2022, MoEF & CC issued in-principle approval of stage-I Forest Clearance and in view of the same petitioner applied for grant of EC in its name. However, MoEF & CC raised Essential Details Sought (EDS) on 10.01.2022 and directed the petitioner to apply afresh



for Terms of Reference (ToR) as per provisions of EIA Notification 2006. On 08.09.2022, MoEF & CC issued ToR to the petitioner for conducting a public hearing and preparing the Environment Impact Assessment (EIA) and Environment Management Plan (EMP) for obtaining Environmental Clearance. On 14.12.2022, Expert Appraisal Committee (EAC) considered the EIA-EMP report submitted by the petitioner and recommended the grant of Environment Clearance (EC). On 23.01.2023, MoEF & CC issued final EC to the petitioner and the same was allegedly, per respondent No.1, obtained after a delay of more than 4 months as per the stipulated time period prescribed under Schedule D- Efficiency Parameters. On 16.03.2024, Chief Secretary of Odisha issued a notification enforcing the Model Code of Conduct in view of upcoming General and Assembly Elections, and simultaneously suspended all public hearing activities during this period.

x) On 06.06.2024, petitioner received 2<sup>nd</sup> Show Cause Notice (SCN-II) from respondent No.1 for alleged non-completion of MS-3 specifically regarding delay in obtaining stage-II Forest Clearance (FC-II) and Environmental Clearance (EC). The petitioner submitted a detailed reply to SCN-II on 20.06.2024 explaining that due to change in land characteristics, re-initiation of clearance processes was necessary. Reference was also made to the delays caused by boundary discrepancies, new ToR/EC filings, elephant corridor issues and Model Code of Conduct. On 08-09.08.2024, 24<sup>th</sup> Scrutiny Committee meeting



was held in which deliberations were held on SCN-II issued to the petitioner and the reply submitted by petitioner to the said SCN.

**xi)** On 12.08.2024, petitioner submitted an undertaking committing to operationalise the mine in accordance with applicable laws and clearances before the due date of 06.06.2025<sup>4</sup>. On 23.05.2025, petitioner addressed a detailed representation to respondent No.1 invoking '*Force Majeure*' in terms of Clause 25 of the CMDPA thereby, seeking extension of time for achieving MS-4 & MS-5 under CMDPA, in light of intervening circumstances which were beyond its control.

**xii)** On 16.07.2025, the petitioner submitted a detailed representation seeking revision of "*Zero Date*" under the CMDPA in view of the revised forest area and consequential changes to the land schedule, as per DFO's directions. This representation was submitted highlighting the reclassification and expansion of forest area which have triggered a chain of legal consequences, including the need to restart the clearance process afresh thereby constituting classic '*Force Majeure*' scenario. As per this representation, petitioner had requested respondent No.1 that CMPDI will conduct DGPS survey to ascertain the boundaries and the petitioner is agreeable to bear the costs of reconducting the survey and as per revised boundary coordinates, fresh allocation/vesting order

---

<sup>4</sup> As per 24<sup>th</sup> Scrutiny Committee recommendations, undertaking to operationalize mine was before 03.06.2025; however, date mentioned in this letter is 06.06.2025



may be issued, and the date of issuance of such order is to be considered as fresh '*Zero Date*' for achieving Efficiency Parameters.

**xiii)** Thereafter, on 21.07.2025, respondent No.1 in purported compliance of Clause 10 and Schedule D of the CMDPA issued the impugned Appropriation Order thereby, directing the appropriation of Rs.29,23,55,117.68/- (Rupees Twenty-Nine Crore Twenty-Three Lakh Fifty-Five Thousand One Hundred Seventeen and Sixty-Eight Paise only) from the Performance Bank Guarantee of the Petitioner for alleged non-compliance with MS-3 within the timeline stipulated in Schedule D- Efficiency Parameters.

**xiv)** On 22.07.2025, petitioner submitted a letter to respondent No.1 protesting the unilateral appropriation of Performance Bank Guarantee and requesting for withdrawal of the impugned appropriation order. On 22.07.2025 itself, the present petition has been filed assailing the aforesaid Appropriation Order passed by respondent No.1 *inter alia* seeking other prayers as noted hereinbefore.

### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

**3.** Learned Senior Counsels for the petitioner in support of the present petition have made the following submissions: -

**i)** The impugned appropriation order has been passed arbitrarily and without considering the representation of the petitioner seeking



extension of the timelines for achieving the milestones and change of 'Zero Date' under CDMPA which was, at that time, pending before respondent No.1. It is submitted that the sole ground on which the Performance Bank Guarantee has been sought to be appropriated by respondent No.1 is on account of delay in obtaining environment clearance (EC) which, in turn, has resulted in delayed completion of Milestone-3 (MS-3). It is submitted that, as per respondent No.1, MS-3 was due on 03.09.2022 and time limit to achieve the same was 18 months from the completion of previous MS (MS-2), however, it was achieved on 23.01.2023, therefore, the same entitled respondent No.1 for appropriation of 10% of the Performance Bank Guarantee for delay in completion of MS-3. It is the case of the petitioner that the alleged delay of more than 4 months in completion of MS-3 is not solely attributable to the latter as the same has occurred due to various other factors such as Covid-19, disrupted administrative and field level activities, grant of statutory clearances, regarding which respondent No.1 was duly apprised by the petitioner and despite the same, impugned order was passed without considering the case of the petitioner. Learned Senior Counsels have submitted that the petitioner had given repeated representations to the Nominated Authority/respondent No.1 for seeking extension of time for completion of Milestones under CDMPA and still without adverting or sending any appropriate reply to the said representations, the impugned order has been passed. Attention of this Court has been drawn towards a letter/representation dated 16.07.2025 addressed to respondent No.1 by the petitioner for change in 'Zero Date' for subject Coal Mine on



account of change of Land Schedule as per DFO, Angul, letter dated 11.07.2025 and also, a representation dated 23.05.2025 submitted by the petitioner requesting extension of timelines to achieve the Efficiency Parameters.

ii) Learned Senior Counsels have submitted that regarding the alleged non-compliance of “Efficiency Parameters” mentioned in CMDPA executed on 11.01.2021, *i.e.*, delay in obtaining ‘Environment Clearance’ (EC) on 23.01.2023 against the due date of 03.09.2022, a show cause notice-2 was issued to the petitioner on 06.06.2024 and in response to the said SCN-II, a detailed reply dated 20.06.2024 was submitted by the petitioner. Attention of this Court has been drawn towards the contents of the said SCN-II, and it is submitted that the said SCN-II was issued in respect of delay in obtaining EC only. However, it is submitted that in the impugned order in paragraph 7, respondent No.1 has also taken into the consideration the recommendations made by Scrutiny Committee in its 24<sup>th</sup> meeting held on 08-09.08.2024 and the undertaking given on behalf of the petitioner to operationalise the mine by 03.06.2025, which was a wholly extraneous and irrelevant consideration for passing the impugned order. It is the case of the petitioner that no prior SCN was given to the petitioner to explain the said facts and respondent No.1 has, therefore, gone beyond the contents/scope of SCN-II thereby, violating the principles of natural justice. It is also the case of the petitioner that respondent No.1 had not adjudicated on their representation on the issue of delay in achieving Efficiency Parameters and has not taken into consideration the



relaxations given in achieving the same on account of Covid-19 lockdown as well as the recommendation of the 18<sup>th</sup> Scrutiny Committee meeting held on 23.08.2022.

**iii)** Learned Senior Counsels for the petitioner have further submitted that the vesting order was issued in favour of the petitioner on 03.03.2021 (vesting date: '*Zero Date*') and as per the impugned appropriation order as well as SCN-II dated 06.06.2024, due date for completion of MS-3 was 03.09.2022 and time limit to complete the same was 18 months from the completion of previous MS (MS-2). It is further submitted that as per the vesting order, all statutory licences, permits, permissions, approvals or consents as per rules, required to undertake coal mining operations in the mine, if already issued by the Central Government, to the prior allottee on the same terms and conditions as were applicable to the prior allottee shall stand fully and absolutely transferred and vested in the successful bidder. Attention of this Court has been drawn towards the following covenants of the vesting order: -



NOW, THE NOMINATED AUTHORITY DOES ORDER:

1. On and from March 03, 2021 ("vesting date") and in accordance with the provisions of sub-section (4) of section 8 of the Act, with respect to the mine, the following shall stand fully and absolutely transferred and vested in the successful bidder, namely: -

- (a) all the rights, title and interest of the prior allottee in and over the land and mine infrastructure free from all encumbrances;
- (b) entitlement to a prospecting license, mining lease or prospecting license-cum-mining lease to be granted by the State Government with the terms and conditions of CMDPA forming a part of it on making an application;
- (c) all statutory licences, permits, permissions, approvals or consents as per rules, required to undertake coal mining operations in the mine, if already issued by the Central Government, to the prior allottee on the same terms and conditions as were applicable to the prior allottee, as listed in the **Annexure 2**;
- (d) entitlement to any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in the mine, if already issued by the Central Government, to the prior allottee on making an application on the same terms and conditions as were applicable to the prior allottee, as listed in the **Annexure 3**;
- (e) entitlement to any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in the mine, if already issued by the State Government, to



Page 2 of 8

## 239

the prior allottee on making an application on the same terms and conditions as were applicable to the prior allottee, as listed in the **Annexure 4**;

- (f) rights appurtenant to the approved mining plan of the prior allottee;
- (g) any subsisting contract in relation to coal mining operations, to which the prior allottee was a party and which is assumed, adopted and continued by the successful bidder and listed in the **Annexure 5** shall stand novated (by virtue of a deemed consent from the relevant party(ies)), in accordance with the provisions of sub-section (1) of section 11 of the Act in favour of the successful bidder for the residual term or residual performance of such contract;

It is, thus, argued that the Environment Clearance (EC) stood vested, as per the vesting order dated 03.03.2021, in the petitioner on



the said date itself; however, as per the direction of Ministry of Environment, Forest and Climate Change (MoEF & CC), the petitioner had to obtain fresh EC which with all efforts was done within the prescribed timeline as per the Efficiency Parameters and the impugned appropriation order has been passed on incorrect calculation of due date and without taking into consideration the relaxation given by respondent No.1 in achieving milestones and the dropping/waiving of SCN-I.

iv) It is further submitted that respondent No.1 has calculated the time limit/due date of 03.09.2022 for completion of MS-3 from the date of issuance of vesting order and the same has been done arbitrarily and on the basis of wrong calculation. Attention of this Court has been drawn towards the 'Schedule D- Efficiency Parameters' wherein, completion time for MS-2 (Approval of Mining Plan/Project Report subject to the provisions of Clause 15) was 6 months from the completion of previous MS (MS-1)/If MS-1 is not applicable, 6 months from the date of allocation, and further, the completion time for obtaining 'Environment Clearance' (EC) (MS-3) was 18 months from the completion of previous MS (MS-2). It is, therefore, the case of the petitioner that the calculation of due date of 03.09.2022 for completion of MS-3 from the date of vesting is not correct as per Efficiency Parameters. It has been argued by learned Senior Counsels for the petitioner that the zero date was the date of vesting order (03.03.2021) and from that date a period of 6 months was to be given for completion of MS-2 which was due on 03.09.2021 and beyond the said date, a



further 18 months was to be given for completion of MS-3 which was due on 03.03.2023 and the petitioner has obtained the EC on 23.01.2023 which is well within the prescribed timeline for the completion of Milestone-MS-3. For the sake of completeness, the said **“Schedule D- Efficiency Parameters”** have been reproduced as under:

-

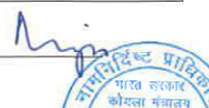


*Coal Mine Development and Production Agreement for Radhikapur (West) Coal Mine under 1<sup>st</sup> Tranche of CM(SP) Act, 2015*

**SCHEDULE D - EFFICIENCY PARAMETERS**

For Coal Mines other than Schedule II coal mines

| Activities                                                                              | Completion time                                                                                              | Milestone (MS) No. | Fully Explored Mines                                                       | Partially Explored Mines                                                   |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------|
|                                                                                         |                                                                                                              |                    | % of Performance Security to be appropriated for delay in completion of MS | % of Performance Security to be appropriated for delay in completion of MS |
| Prospecting Licence or Notification under section 4 of the CBA Act, 1957, as applicable | -                                                                                                            | MS-1               | Not Applicable                                                             | -                                                                          |
| Completion of Drilling/ Exploration in accordance with the provisions of Clause 14      | -                                                                                                            |                    |                                                                            | -                                                                          |
| Preparation of Geological Report (GR)                                                   | Within 15 months from the date of allocation                                                                 |                    |                                                                            | 0                                                                          |
|                                                                                         | After 15 months upto 24 months from the date of allocation                                                   |                    |                                                                            | 25%                                                                        |
|                                                                                         | After 24 months upto 30 months from the date of allocation                                                   |                    |                                                                            | 25 %<br>(in addition to previous 25%)                                      |
| Mining Lease Application                                                                | -                                                                                                            | MS-2               | 10%                                                                        | -                                                                          |
| Submission of Mining Plan subject to the provisions of Clause 15                        | -                                                                                                            |                    |                                                                            | -                                                                          |
| Approval of Mining Plan/Project Report subject to the provisions of Clause 15           | 6 months from the completion of previous MS/ If MS-1 is not applicable, 6 months from the date of allocation |                    |                                                                            | 10%                                                                        |
| Forest Clearance Application                                                            | -                                                                                                            | MS-3               | 10%                                                                        | -                                                                          |
| Environment Clearance Application                                                       | -                                                                                                            |                    |                                                                            | -                                                                          |
| Forest Clearance (FC)-stage 1                                                           | -                                                                                                            |                    |                                                                            | -                                                                          |
| Forest Clearance (FC)-stage 2                                                           | -                                                                                                            |                    |                                                                            | -                                                                          |
| Wildlife Clearance                                                                      | -                                                                                                            |                    |                                                                            | -                                                                          |
| Approval under PESA                                                                     | -                                                                                                            |                    |                                                                            | -                                                                          |
| Environment Clearance (EC)                                                              | 18 months from the completion of previous MS                                                                 |                    |                                                                            | 10%                                                                        |
| Approval for Nallah /River Diversion                                                    | -                                                                                                            | MS-4               | -                                                                          | -                                                                          |
| Approval for diversion of Power line/Rail/Road                                          | -                                                                                                            |                    |                                                                            | -                                                                          |



v) It is further submitted that SCN-I was issued to the petitioner on 08.02.2022 for delay in filing the mining lease which was a part of MS-



2 and for the reasons and justification for delay in submission of application for mining lease *put forth* by the petitioner in its reply submitted on 21.02.2024, the same were duly accepted by the Scrutiny Committee in its 18<sup>th</sup> Scrutiny Committee meeting held on 23.08.2022 and SCN-I against the petitioner was waived/dropped for non-compliance with the milestone (MS-2), *i.e.*, Mining Lease Application. Attention of this Court has also been drawn towards a letter dated 18.01.2023 issued by respondent No.1 to the CEO of the petitioner for the dropping of SCN-I dated 08.02.2022. It is, therefore, the case of the petitioner that SCN-II issued to it pursuant to which the impugned appropriation order has been passed is, in fact, first SCN-I.

vi) Learned Senior Counsels for the petitioner have further submitted that the delay in achieving the Milestone is also attributable to a fundamental inconsistency in the demarcation of the mining lease area as the coordinates notified in the vesting order and the mining plan differed materially from those demarcated by the Odisha Space Application Centre (ORSAC) necessitating formal correction only on 08.02.2022. It is the case of the petitioner that said discrepancy is a failure on the part of public authorities and not attributable to it. Attention of this Court has been drawn towards a letter dated 27.12.2021 written by Central Mine Planning & Design Institute Limited (CMPDIL) to Deputy Secretary, Ministry of Coal, Government of India, regarding the block boundary issue of Radhikapur East and Radhikapur West Coal mines whereby, it was informed to the latter that both the allottees have agreed for change in the black bounding



coordinates of the subject mines/coal blocks and the same are required to be revised with reference to ORSAC boundary and approved Mining Plan boundary.

**vii)** It is further submitted that the boundary of the subject mines were agreed to be revised on 04.02.2022 *vide* meeting held under the Chairmanship of Additional Secretary & Nominated Authority regarding boundary finalisation of the subject coal blocks vested in the petitioner and M/s EMMRL. Attention of this Court has been drawn towards the following minutes of meeting regarding Boundary of Radhikapur West Coal Block: -

**B. Boundary of Radhikapur West:**

1. CMPDI presented that in joint meeting with allocatee M/s Vedanta Ltd. of Radhikapur (West) coal mine; Allocatee has submitted that approved Mining plan along with Mine Closure Plan of Radhikapur West coal block has been vested to M/s Vedanta Ltd.
2. Environmental and Forest Clearance of Radhikapur (West) coal block have been approved by MoEF&CC as per the boundary of Mining Plan. Considering the same, the Allocatee requested that the bounding coordinate of Radhikapur West coal mine should be changed in a way that no revision in the Mining Plan is required.

3. Revised bounding coordinate was presented in the meeting. There were three bounding coordinates that was presented during the meeting – (i) bounding coordinates as per approved mining plan, (ii) bounding coordinates as per vesting order and (iii) bounding coordinates as recommended by CMPDIL.
4. During the meeting, AS (MN)/NA enquired whether the new bounding coordinates proposed by CMPDIL will also require the Allocatee to revise the Mining Plan and Mine Closure Plan. To this CMPDIL confirmed that the block boundary of the coal mine remains the same in the proposed revised bounding coordinates, therefore there is no need of revision of Mining Plan and Mine Closure Plan of Radhikapur West coal mine.
5. The Allocatee was asked to confirm the same, to which they raised their concern that the Odisha Government generally transfers the land as per the boundary decided by ORSAC. With ORSAC boundary, it was observed that there were two patches on eastern and southern side and that were slightly outside the proposed bounding coordinates as per point 3(iii) above.
6. The Allocatee requested Nominated Authority and CMPDI to consider, changing the bounding coordinates as per the ORSAC block boundary. The Allocatee did not agree for the recommended coordinates by CMPDIL and once more requested for revision of bounding coordinates as per ORSAC block boundary.
7. Nominated Authority took a confirmation from CMPDIL as to whether the revision of coordinates can be done keeping ORSAC block boundary into consideration.
8. CMPDIL submitted in the meeting that the request of the Allocatee can be considered.
9. Nominated Authority directed Allocatee to submit the proposal as per their request raised in the meeting to CMPDIL for revision of bounding coordinates. Also allottee was asked to confirm that revision in bounding co-ordinate will not have impact of clearances already vested to them and timelines for development of coal block.



**viii)** It is pointed out that based on the aforesaid discussion, petitioner addressed a letter dated 07.02.2022 to respondent No.1, proposing that if the Mining Plan boundary coordinates are kept as it is on the three sides, *i.e.*, East, South and West, and if only, the north side is extended further north to coincide with the new bounding coordinate line, it will cover the entire mining boundary without creating too many changes as per existing approved bounding coordinates and same will also cover the ORSAC boundary. Learned Senior Counsels have submitted that immediately after the issuing of vesting order, respondent No.1 was informed that there was an area overlapping between the adjoining Radhikapur East Coal Block requiring reconciliation and that mining boundary coordinates differed as mentioned in the approved mining plan, vesting order and recommendation given by CMPDIL. It is further submitted that despite the revision of the boundary coordinates in the aforesaid joint meeting held on 04.02.2022 and letter dated 07.02.2022 submitted to respondent No.1 by the petitioner, the necessary revision in the vesting order along with revised boundary coordinates for the Radhikapur West Coal Block (subject mine allotted to the present petitioner) is still pending and despite repeated requests by the petitioner, regarding the same, as it has created several impediments in obtaining necessary clearances, the issue is still unresolved. It is further the case of the petitioner that the aforesaid developments have taken place after the issuance of vesting order in favour of the petitioner thereby, resulting in 11 months of delay in completion of milestones as elucidated in the Schedule D- Efficiency



Parameters which have not been taken into consideration by respondent No.1 while passing the impugned appropriation order.

**ix)** Learned Senior Counsels for the petitioner have handed up in Court, during the course of arguments, an Office Memorandum dated 31.01.2025 issued by Ministry of Coal, Govt. of India, in respect of Guidelines for Preparation of Mining Plan and Mine Closure Plan for Coal and Lignite blocks 2025 in Rule 2.7 envisaged in Chapter-II 'Mining Plans' providing for 'Project Area', it has been mentioned that, 'For all coal blocks, the project boundary shall be delineated based on the DGPS (Differential Global Positioning System) survey with certification by CMPDIL and the certificate must be attached with the Mining Plan along with the KML file'. In view of the same, it has been contended that without there being a survey the discrepancy crept in the boundary coordinates could not have been rectified as it required DGPS survey along with certification by CMPDIL which was to be undertaken by respondents and the same was also reflected in the letter dated 27.12.2021 sent by CMPDIL to Ministry of Coal. It is also pointed out that the petitioner and other allottee had requested the respondents for conducting DGPS survey and delay in conducting the same cannot be attributed to the petitioner. The said Guidelines have been taken on record.

**x)** Learned Senior Counsels for the petitioner have submitted that as per the vesting order approved Mine Plan & EC dated 10.01.2014 issued to the prior allottee stood vested in the petitioner. It is further



submitted that the petitioner applied for transfer of EC to MoEF &CC; however, same was denied without obtaining Forest Clearance-I over the area. Subsequently, MoEF expedited the process for grant of FC (Forest Clearance) and FC-1 was obtained on 06.01.2022. It is also the case of the petitioner that with the revised boundary coordinates being clarified after joint meeting held on 04.02.2022, there was no change in the area and land schedule with change in boundary coordinates, however, EC was again denied on the ground that, as per MoEF guidelines, FC-1 had to be submitted within 18 months. It has been argued that even after aforesaid intervening circumstances, and delay fresh EC was granted on 23.01.2023, *i.e.*, 23 months, as against the allotted 24 months as per CMDPA including the period of 11 months during which there was confusion of Boundary Coordinates and effectiveness of the vested Mine Plan.

**xi)** Learned Senior Counsels have drawn attention of this Court towards the clauses (c) & (d) of the vesting order dated 03.03.2021 and it is submitted that the petitioner in terms of the said clauses applied for transfer of EC on 08.04.2021 by submitting Form-7. It is further submitted that respondent No.1 *vide* its Office Memorandum dated 04.10.2021 issued regarding the transfer of EC and FC of the subject Coal Mine in favour of the petitioner forwarded the request letter of the latter along with copy of undertaking for abiding by all the conditions of EC & FC for further needful transfer of EC & FC (process till consideration by FAC) in the name of the petitioner. However, despite the same being forwarded on 04.10.2021, no EC & FC was transferred



to the petitioner. But on 10.01.2022, MoEF &CC published on its website that the proposal for transfer of EC cannot be executed in absence any formal EC letter, which was not issued by this Ministry, because as per extant rule of EIA, Notification, 2006, the applicant has to apply afresh application for grant of TOR as per the provisions of EIA, Notification, 2006 and the lapse of previous EC for the want of FC-1 clearance. It is submitted that subsequent to the aforesaid intimation published on 10.01.2022, the petitioner made a fresh application for obtaining EC and the same was obtained on 23.01.2023.

**xii)** Further, learned Senior Counsels for the petitioner has drawn attention of this Court towards the 24<sup>th</sup> Screening Committee meeting held on 08.08.2024 and 09.08.2024 and particularly towards, the observation and recommendations of the Committee in respect of the Radhikapur (West) Coal Mine and SCN-II dated 06.06.2024 issued to the petitioner for non-achievement of efficiency parameter within stipulated time pertaining to Forest Clearance Stage-II, and Environment Clearance, wherein the Committee has admitted that there was delay in completion of this milestone (MS-3) due to initial confusion about the boundary coordinates of the mine and rearrangement of a part of CA (compensatory afforestation) land. The Committee also took note of the fact that despite the delay in achievement of this milestone (MS-3), the Allottee (petitioner herein) has confirmed that the mine will be operationalised within 51 months' timeline given in CMDPA, *i.e.*, by 03.06.2025. It is submitted that



despite the said explicit admission of delay in completion of milestone on behalf of respondent No.1, the impugned order was passed.

**xiii)** Learned Senior Counsels for the petitioner have submitted that *vide* letter dated 23.05.2025 addressed to respondent No.1, a representation was made by the petitioner invoking “*Force Majeure*” in terms of Clause 25 of the CMDPA and further, seeking appropriate orders/directions for extension of timeline for achieving Milestones under Schedule D of CMDPA due to the delay in completion of Milestone 4 (Land Acquisition and R&R) primarily due to factors beyond its control such as discrepancy in area proposed vis-à-vis area demarcated as per ORSAC, which are intensified by the location of the mine in an Elephant Zone and ecologically sensitive forest area, which entitled the petitioner to benefit of *force majeure* clause. It is, therefore, the case of the petitioner that respondent No.1 has not passed any order on the said representation submitted by the petitioner nor on the other representation dated 16.07.2025 submitted for the change in ‘*Zero Date*’ for the subject mine on account of change of Land Schedule and has arbitrarily passed the impugned appropriation order.

**xiv)** In view of the aforesaid submissions, it has been prayed that the present petition be allowed and the impugned appropriation order be set aside and respondent No.1/Nominated Authority be directed to grant extension of milestone deadlines under CMDPA to the petitioner.



## **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

4. Learned Additional Solicitor General of India for the respondents, while refuting the submissions made by learned Senior Counsels for the petitioner, has made the following submissions: -

i) At the very outset, the respondents have raised preliminary issue in respect of the maintainability of the present petition on the ground that the petitioner has not availed alternate efficacious remedy under CM (SP) Act, 2015, prior to the filing of the present petition before this Court under Article 226 of the Constitution of India. It is submitted that it is a well-established principle of law that writ jurisdiction ought not be invoked without first exhausting the alternate efficacious remedy. It is further submitted that as per Section 27 of the CM (SP) Act, 2015, which provides for ***“Dispute settlement and Bar of Jurisdiction of civil courts”***, any proceedings arising from or in connection to the decision of the Scrutiny Committee *vide* the impugned Appropriation Order is subject to the jurisdiction of the Tribunal constituted under Coal Bearing Areas (Acquisition and Development) Act, 1957, which is established and situated at Talchar, Odisha. Attention of this Court has also been drawn towards paragraph 16 of the impugned order wherein, it has been noted as under: -

“16. Attention is invited to Section 27 of the Coal Mines (Special Provisions) Act, 2015 providing for adjudication by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957. For the instant Coal Mine the Tribunal situated at Talcher, Odisha shall have jurisdiction.”



In view of the aforesaid, it is contended that the petitioner has deliberately ignored the aforesaid clause and has circumvented the jurisdiction of the learned Tribunal at Talchar, Odisha, by filing the present petition without first approaching the Tribunal. It is pointed out that there is no averment in the present petition as to why the petitioner has not approached the learned Tribunal constituted for the purpose of seeking redressal of its grievance, if any, and has directly approached this Court in writ jurisdiction. Reliance has been placed on **Radha Krishan Industries v. State of H.P.**<sup>5</sup>, particularly on paragraph 27, to contend that the High Court has discretion not to entertain a writ petition as one of the restrictions placed on the exercise of power of the High Court under Article 226 of the Constitution is where an effective alternate remedy is available to the aggrieved person. Reliance has also been placed on **Joshi Technologies International Inc. v. Union of India**<sup>6</sup>, particularly on paragraph 69, to contend that the whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration. Therefore, it is the case of the respondents that the present petition ought to be dismissed as not maintainable and the petitioner be relegated to seek appropriate remedy in accordance with law before the Court of competent jurisdiction/appropriate forum.

---

<sup>5</sup> 2021 SCC OnLine SC 334

<sup>6</sup> (2015) 7 SCC 728



ii) Learned ASG has drawn attention of this Court towards Schedule D- 'Efficiency Parameters' to submit that completion time for obtaining Environment Clearance ('EC') was 18 months from completion of previous MS (MS-2). It is further pointed out that completion time for 'Approval of Mining Plan/Project Report subject to the provisions of Clause 15' was 6 months from the completion of previous MS/If MS-1 is not applicable, 6 months from the date of allocation. It is submitted that the case of the petitioner regarding non-lapse of 18 months from the completion of previous milestone as provided under Schedule D- 'Efficiency Parameters' is completely misplaced and based on incorrect reading of the said schedule and CMDPA. It is the case of the respondents that the petitioner was not required to do anything to achieve MS-1 since the subject mine is a fully explored mine. Insofar as MS-2 is concerned, it is contended that for the purposes of 'approval of mining plan/project report subject to Clause 15', the petitioner was not required to do anything in respect of MS-2 as the vesting order dated 03.03.2021 itself records in Annexure-2 thereof, that the approval of mining plan and mine closure plan has already been granted by Ministry of Coal on 23.06.2011. Therefore, the period of 18 months from the completion of previous milestone (MS-2) for obtaining 'Environmental Clearance' would commence from the date of vesting order, *i.e.*, 03.03.2021, and the same was due on 03.09.2022 and EC was obtained by the petitioner on 23.01.2023 against the said due date, and therefore, the partial appropriation of performance bank guarantee in terms of CMDPA rightly done by the respondents.



iii) It is further submitted that dispute in the present case is purely contractual in nature, and thus, not amenable to present jurisdiction. It is the case of the respondents that the penalty imposed on the petitioner is in strict abidance with the provisions of CMDPA. Attention of this Court has been drawn towards the following Clauses of the CMDPA which read thus: -

**“6.2 Events for appropriation of the Performances Security**

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

- (a) failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6;
- (b) failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 3.1(6) and Clause 5.2;
- (c) failure of submission of Commencement Plan within the time specified in Clause 5.1.1;
- (d) **failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;**
- (e) any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;
- (f) failure to make payment of the Monthly Payment in accordance with this Agreement;
- (g) any sale and/or utilisation of coal which is not in conformity with Clause 8;
- (h) failure to make payments of monthly revenue share for CBM as per Clause 8.2.3;
- (i) failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2;



- (j) cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any event of force majeure;
- (k) surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the Coal Mine, whichever is earlier;
- (l) any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever; or
- (m) failure of the Successful Bidder to submit the revised Performance Security in accordance with Clause 6.1.

6.2.2. Provided however that in the event an Appropriation Event has occurred solely on account of an Event of Force Majeure which could not have been mitigated by the Successful Bidder through Good Industry Practice as provided in Clause 25, then the Performance Security shall not be appropriated for such specific Appropriation Event.

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

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

| #  | Appropriation Event                                                                                                                | Amount of the Performance Security to be appropriated |
|----|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| 1. | Failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6 | Entire Performance Security.                          |



|    |                                                                                                                                         |                                                                                                                                                                                                                                                                                                                          |
|----|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. | Failure of the Successful Bidder to make payment of any of the instalment of the Upfront Amount within the time specified in Clause 5.2 | An amount equal to the first instalment, and/or second instalment and/or third instalment and/or fourth instalment of the Upfront Amount together with 12% per annum simple interest on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |
| 3. | Failure of submission of Commencement Plan within the time specified in Clause 5.1.1                                                    | An amount equal to 10% of the Performance Security                                                                                                                                                                                                                                                                       |
| 4. | Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10                                   | Such per cent of the Performance Security for each failure to comply with the Efficiency Parameters as                                                                                                                                                                                                                   |



|    |                                                                                                                                                   |                                                                                                                                                                                                                               |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                                                                                                                   | specified in SCHEDULED.                                                                                                                                                                                                       |
| 5. | Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13                          | Entire Performance Security.                                                                                                                                                                                                  |
| 6. | Any sale and/or utilization of coal which is not in conformity with Clause 8                                                                      | Entire Performance Security.                                                                                                                                                                                                  |
| 7. | Failure of the Successful Bidder to make payment of the Monthly Payment                                                                           | The amount of Monthly Payment due and payable, along with a simple interest of twelve per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |
| 8. | Cessation of coal mining operation exceeding a period of one year continuously, or 18 months over a period of two years without occurrence of any | Entire Performance Security.                                                                                                                                                                                                  |



|      |                                                                                                                                                                                                                                                                                                                                           |                                                                                         |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
|      | event of force majeure                                                                                                                                                                                                                                                                                                                    |                                                                                         |
| 9.   | Surrender of the Coal Mine by the Successful Bidder or termination of the Mining Lease granted to the Successful Bidder before (a) the expiry of the period for which Mining Lease (including renewed Mining Lease) has been granted or will be granted, or (b) extractable reserves are remaining in the coal Mine, whichever is earlier | Entire Performance Security                                                             |
| 10 . | Any other breach or non-compliance with any of the provision of this Agreement, including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever.                                                                                                                                                     | Such proportion as may be determined by the Nominated Authority in its sole discretion. |
| 11 . | Failure of the Successful Bidder to submit the revised Performance                                                                                                                                                                                                                                                                        | Entire Performance Security.                                                            |



|      |                                                                                                       |                                                                                                                                                                                                                                   |
|------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | Security in accordance with Clause 6.                                                                 |                                                                                                                                                                                                                                   |
| 12 . | Failure to make payments of monthly revenue share for CBM as per Clause 8.2.3                         | The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |
| 13 . | Failure to pay revenue to the Government in case of shortfall in coal production as per Clause 16.2.2 | The amount of revenue share due and payable, along with a simple interest of 12% [twelve] per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security. |



6.3.2. Any Appropriation Event resulting in appropriation of the entire Performance Security shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION).

6.3.3. In the event of a part appropriation of the Performance Security, the Successful Bidder shall be required to: (i) rectify the Appropriation Event; and (ii) top-up the bank guarantee constituting the Performance Security within fifteen Business Days of receipt of a notice under Clause 6.3.1, failure to do so shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION). Appropriation Event except as mentioned in Clause 6.2.1 (d) shall be rectified within seven Business Days of receipt of a notice under Clause 6.3.1. Appropriation Event mentioned in Clause 6.2. 1 (d) shall be rectified within the time specified in SCHEDULED.

6.3.4. In the event that on account of one or more Appropriation Events, an amount equal to hundred per cent of the Performance Security is appropriated in aggregate in one or more instances, the same shall be a Termination Event for the purposes of Clause 26 (EFFECTIVE DATE, TERM AND TERMINATION)."

**iv)** Learned ASG has further submitted that Clause 6 of the CMDPA provided for performance security in the form of an irrevocable and unconditional guarantee in the format provided in Schedule E of the contract/CMDPA. Attention of this Court has been drawn towards the following clauses/conditions of the Bank Guarantee furnished by the petitioner in favour of the respondent No.1 in terms of CMDPA: -

"1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Nominated Authority without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the Nominated Authority, a sum or sums (by way of one or more



claims) not exceeding in the aggregate the amount of INR [figures] (Indian Rupees [words]) without the Nominated Authority needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Nominated Authority and Successful Bidder on any matter whatsoever. The Bank undertakes to pay to the Nominated Authority any money so demanded notwithstanding any dispute or disputes raised by the Successful Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank's liability under this present being absolute and unequivocal.

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

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

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

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



It is therefore, submitted that the aforesaid bank guarantee categorically provides that the same is unconditional in nature, with an undertaking to pay to nominated authority (respondent No.1) without any demur, reservation, caveat, protest, or recourse immediately upon receipt of first written demand. Further, that respondent No.1 is not required to prove or show to the bank any grounds or reasons for such demand and the existence of any dispute between respondent No.1/nominated authority and the petitioner on any matter will not be ground for not honouring the bank guarantee.

v) It is also the case of the respondents that the invocation of bank guarantee and its encashment cannot be injuncted merely because there are disputes raised by the petitioner as to the validity of the impugned order and the demand raised by respondent No.1. It has been argued that the adjudication of such disputes has no correlation with the encashment of bank guarantee which is an independent contract in terms of the bank guarantee issued by the bank. Reliance has been placed on the judgment of Hon'ble Supreme Court in **BSES Ltd. v. Fenner India Ltd.**<sup>7</sup>, to contend that the appropriation of the part-performance security cannot be deemed to be an irretrievable harm by any stretch of imagination.

vi) Learned ASG has submitted that SCN-II dated 06.06.2024 was issued by respondent No.1 for the deviations from achievement of 'Efficiency Parameters' noted in MS-3 within stipulated time pertaining

---

<sup>7</sup> (2006) 2 SCC 728



to Forest Clearance Stage-II and Environment Clearance to which the petitioner had submitted a detailed reply on 20.06.2024 and same was duly considered in a personal hearing given to the petitioner before 24<sup>th</sup> Scrutiny Committee meeting held on 08.08.2024 and 09.08.2024 and based on the deliberation held, following observations and recommendations were made by the Committee: -

“Based on the deliberations and the assurance of the Allottee, the Committee made the following recommendations:-

1. The Allottee will give an undertaking in next 3 days to O/o NA that they will operationalize the mine before the scheduled timeline, i.e by 03.06.2025.
2. In the event the operationalization of the mine happens on or before the due date, the matter will be put up to the Scrutiny Committee for the final decision on the Show Cause Notice for MS-3.
3. However, in the event the mine is not operationalized by 03.06.2025, the Committee recommended for imposition of penalty in the form of appropriation of PBG as per the provision of CMDPA.”

In view of the aforesaid recommendation made by the Scrutiny Committee in paragraph 3 thereof, penalty in the form of appropriation of Performance Bank Guarantee has been imposed for failure in completion of MS-3 within the scheduled timeline. Learned ASG has also drawn attention of this Court towards a letter dated 12.08.2024 with subject ‘Reply to SCN dated 06.06.2024’ sent by petitioner to respondent No.1/Nominated Authority post the issuance of SCN-II whereby, the petitioner had given undertaking as per the aforesaid



recommendation to operationalise the subject mine before the due date of 06.06.2025<sup>8</sup>. It is pointed out by learned ASG that in terms of the said undertaking, the subject mine has still not been operationalised by the petitioner. It is further the case of the respondents that *vide* minutes of 24<sup>th</sup> Scrutiny Committee meeting held on 08.08.2024 and 09.08.2024, petitioner was not given any clean chit and the Scrutiny Committee had deferred the exercise of its right to appropriate the proportionate performance security as per CMDPA. It is further submitted that perusal of the deliberations happened in the said meeting would reveal that the Committee did not accept the reasons given by the petitioner and it was recommended that only in the event, if the petitioner was able to operationalise the mine on or before 03.06.2025, the matter was required to be put before Scrutiny Committee again for taking decision on SCN-II. It is further pointed out that post the submission of response to SCN-II on 20.06.2024, the petitioner gave the above undertaking and therefore, all the issues pertaining to SCN-II stood subsumed and it is on account of said undertaking given by the petitioner, respondents did not impose any penalty at the relevant point in time; however, as the subject mine was not operationalised till date, the impugned order for part-appropriation of the Performance Bank Guarantee was passed. It is also the case of the respondents that the reasons elucidated in representation dated 23.05.2025 seeking an extension of time to achieve milestones were already in knowledge of the petitioner when the aforesaid undertaking was made by it. It is further submitted that the impugned

---

<sup>8</sup> As per 24<sup>th</sup> Scrutiny Committee recommendations, undertaking to operationalize mine was before 03.06.2025; however, date mentioned in this letter is 06.06.2025



order has been passed after providing an opportunity of hearing to the petitioner and under due intimation to it, and thus, the contention of the petitioner that the impugned order has been passed in violation of principles of natural justice is incorrect.

**vii)** Regarding the contention of the petitioner that EC stood vested in favour of the petitioner on 03.03.2021 from the date of vesting order itself, learned ASG has drawn attention of this Court towards Annexure-5 of the Vesting Order dated 03.03.2021 wherein, it has been mentioned that, “The Successful Bidder does not intend to adopt and continue with any of the contracts of the Prior Allottee”. It is, therefore, submitted that the petitioner has itself agreed to not continue with the earlier EC issued by Central Government on 10.01.2014 to the prior allottee and therefore, now they cannot contend that respondent No.1 had forced them to obtain fresh EC arbitrarily as fresh EC has to be obtained as earlier EC was discontinued.

**viii)** Regarding the 1<sup>st</sup> Forest Clearance, learned ASG has drawn attention of this Court towards a letter dated 06.01.2022 whereby, Central Government had accorded approval for transfer of process of seeking approval under Forest (Conservation) Act, 1980, to the petitioner subject to certain conditions which need to be complied prior to handing over of forest land. It is submitted that said conditions were to be complied prior to Stage-II approval; however, same have not been complied with by the allottee/petitioner till date and in view of the same,



the Forest Clearance is still pending. The relevant conditions enlisted in the said letter reads as under: -

**“A. Conditions which need to be complied prior to handing over of forest land by the State Forest Department and compliance is to be submitted prior to Stage-II approval**

**1. Compensatory Afforestation:**

i. The Compensatory afforestation over equivalent non-forest land, shall be raised shall be raised by the State Forest Department at the project cost. At least 1000 saplings per ha shall be planted over admissible CA land. If this is not possible to plant these many seedlings in the identified NFL, the balance seedlings will be planted in degraded forest land as per the prescription of the Working Plan at the cost of the User Agency. In such cases CA cost will be revised and duly approved by the competent authority and deposited online in the CAF managed by the CAMPA;

ii. 25% of the CA cost additionally will be spent towards soil and moisture conservation activities in the proposed CA area as per site requirement and deposited in CAF;

iii. The cost of compensatory afforestation at the prevailing wage rates as per compensatory afforestation scheme and the cost of survey, demarcation and erection of permanent pillars, if required on the CA land, shall be deposited in advance with the Forest Department by the user agency. The CA will be maintained for 10 years. The scheme may include afforestation of indigenous species with appropriate provision for anticipated cost increase for works scheduled for subsequent years;

iv. The non-forest land identified for CA shall be transferred and mutated in favour of the State Forest Department and subsequently notified by the State Government as RF under Section - 4 or PF under Section-29 of the Indian Forest Act, 1927 or under the relevant Section(s) of the local Forest Act before Stage-II approval. A copy of the final Notification shall be submitted along with the compliance of Stage-I approval;

\*\*\*\*

\*\*\*\*

\*\*\*\*

**14. Wildlife Management Plan:**



i. *It is reported that the area comes under elephant zone and human wildlife conflict area. The elephant habitat may be fragmented due to Radhikarpur (East) and Radhikapur (West) Coal Blocks on one side and Railway line traversing the forest area on another side, which need to be addressed. User Agency should submit a comprehensive site-specific Wildlife Conservation Plan approved by the Chief Wildlife Warden encompassing suitable measures to address Wildlife conservation and Human Wildlife conflicts. Comments of the Project Elephant Division of the MoEF&CC shall be obtained and addressed in the said Plan and a copy of approved Plan shall be submitted to the Ministry along with the compliance of Stage-I approval;*

ii. *Cost of implementation of the provisions of the Wildlife Management Plan, on pro rata basis, shall be deposited into the account of CAMPA of the State;”*

**ix)** Insofar as the issue of mismatch in the Mining Plan (mining lease area) along with Mine Closure Plan and the issue of revision of boundary coordinates of the subject mine are concerned, it is submitted that in terms of the meeting held under the chairmanship of Additional Secretary and respondent No.1/Nominated Authority on 04.02.2022 (minutes of which were issued on 08.02.2022) regarding boundary of subject mine, the petitioner/allottee was to submit the proposal for their request that the bounding coordinate of subject mine should be changed in a way that no revision in the Mining Plan is required and the same will not have impact of clearances already vested to them and timelines for development of coal block. It is further submitted that the petitioner on 09.02.2022 submitted the request proposing that, *‘the Mining Plan bounding coordinates are kept as it is on three side, i.e., East, South and West side and if only the north side is extended further North to coincide with the new bounding coordinate line, it will cover the entire mining boundary without creating too many changes as per existing approved*



*bounding coordinates and the same will also cover the ORSAC boundary'* and in view of the same, request was made for needful action. As per respondents, the change in bounding coordinates was proposed by the petitioner itself on the touchstone that Odisha Govt. generally transfers the land as per boundaries decided by ORSAC. It is, therefore, submitted that the mis-match of boundary coordinate stood resolved in view of the letter sent by the petitioner on 09.02.2022 as the change in bounding coordinates as per the specific requirement of the petitioner (though not mandated under CMDPA or otherwise) would not have any impact either on the clearances of timelines for development of coal mines. Learned ASG has submitted that, even otherwise, the concept of "boundary of a coal mine" is different from "bounding coordinates" and there is no dispute with respect to the boundary of the coal mine in the present case and the petitioner, if at all, only wanted a slight change in the bounding coordinates of the subject mine. Attention of this Court has been drawn towards the representation dated 23.05.2025 submitted by the petitioner invoking "*force majeure*" and further seeking appropriate orders/directions for extension of timeline for achieving Milestones under Schedule D of CMDPA, to show that the petitioner has now taken a stand that it had no clarity on the Mining Boundary Coordinates ever since the issuance of Vesting Order till 08.02.2022, when they received a letter from respondent No.1 finally correcting the Bounding Latitude and Longitude thereby, clarifying that the Bounding Coordinates were to be revised as per ORSAC without any changes in the mining plan.



x) Regarding elephant corridor passage, it is submitted that FAC in its second meeting on 23.12.2021 had granted Stage-I FC approval which was recommended on 06.01.2022 with certain conditions as pointed out hereinabove, which have not been complied by the petitioner. It is further submitted that the issue of Elephant corridor had emerged on 17.12.2021, when the file inspection was done by DFO and the petitioner had ample opportunity from the said date to take appropriate steps to obtain requisite permits.

xi) It is further submitted that Essential Details Sought (EDS) for Compensatory Afforestation (CA) were sought from the petitioner on 08.08.2022 and it was requested to comply with the conditions imposed by MoEF & CC. It is pointed out that the natural growth of Sal trees over approximately 36 acres of land resulting in a change in the legal nature and over the extent of government land was observed during the inspection of site on 14.02.2023; however, by that time EC was already obtained by the petitioner on 23.01.2023. Therefore, it is submitted that same cannot be taken into consideration as it was an event which had occurred post obtaining EC and, the petitioner had ample time and opportunity to take appropriate steps to ensure timely operationalisation of the mine. Learned ASG has thus, submitted the failure to operationalise the mine has occurred due to the petitioner failing to obtain requisite FC, EC and Land Acquisition and Possession of Land in a timely manner and the said issues were already in the knowledge of the petitioner when the aforesaid undertaking to operationalise the subject mine was given. Attention of this Court has also been drawn towards a



letter dated 29.05.2024 sent by petitioner seeking clarification to show that the issue with respect to the Elephant Corridor and CA were raised by the petitioner without specifying the impact of the same as to how they were creating hindrance in obtaining any particular permit from the concerned department.

**xii)** Insofar as the dropping of SCN-I dated 08.02.2022 issued for non-compliance with 'Efficiency Parameter' is concerned, it is submitted that the said SCN was dropped in view of the reply submitted by the petitioner on 21.02.2022 and the fact that the petitioner had complied with the requirements of Clause 15 for MS-2 and in view of the same, no penalty was imposed on the petitioner.

**xiii)** Learned ASG has submitted that the letter dated 11.07.2025 was issued by DFO, Angul, for filing of FC application for additional lookalike forest land to the stage-I approval for subject mine, however, the same will have no bearing in the present case as EC was obtained on 23.01.2023 against the due date of 03.09.2022 and therefore, the same cannot now be a ground to assail the impugned order, after a lapse of two years, which has been passed for non-completion of MS-3 within the stipulated time period in terms of Schedule D- Efficiency Parameters. It is further submitted that the said letter has been issued independent of the impugned appropriation order. It is also the case of the respondents that this letter cannot come to the aid of the petitioner as they have



defaulted in making good of their own undertaking given for operationalising the subject mine by 03.06.2025<sup>9</sup>.

**xiv)** It is, thus, prayed that the impugned appropriation order need not be interfered and the present petition be dismissed.

### **REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER**

5. Learned Senior Counsels for the petitioner have made the following rejoinder submissions: -

**i)** Firstly, regarding the preliminary issue of maintainability of the present petition, learned Senior Counsel has submitted that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of Constitution. Further, availability of alternative remedy cannot operate as an absolute bar in cases where the writ petition has been filed for the enforcement of Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. It is further submitted that the existence of an adequate or suitable alternative remedy available to the litigant is merely a factor which the Court entertaining a petition under Article 226 of the Constitution will consider for exercising the discretion to issue writ in said jurisdiction; however, the same does not impinge upon the jurisdiction of the High

---

<sup>9</sup> The date mentioned in the letter dated 12.08.2024 is 06.06.2025



Court to deal with the matter itself when it is in position to do so on the basis of the affidavits filed. Reliance has been placed on the judgments of Hon'ble Supreme Court in **Whirlpool Corpn. v. Registrar of Trade Marks**<sup>10</sup>, **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**<sup>11</sup>, **Union of India v. Tania Construction (P) Ltd.**<sup>12</sup>, **T.N. Cements Corpn. Ltd. v. Unicon Engineers**<sup>13</sup>, **India Glycols Ltd. v. S.R. Technologies**<sup>14</sup>, in support of this contention. Learned Senior Counsels have drawn attention of this Court towards Section 27(4) of the CM (SP) Act, 2015, to submit that the jurisdiction of the High Court is not affected by Section 27 of the said Act and this Court is entitled to exercise jurisdiction, powers or authority in relation to matters connected with the Act. It is further submitted that the plea of alternate efficacious remedy before the learned Tribunal is misconceived as the said Tribunal is not fully functional, and in fact, no case is being heard as it has been recently constituted and has not started fully functioning due to the lack of supporting staff and required infrastructures. It is further submitted that the said Tribunal has been established for the purpose of dealing with the cases relating to the land acquisition issued relating to coal bearing areas and for adjudicating on the disputes pertaining to land acquisition/compensation and thus, given the nature of the dispute arising in the present case, the same cannot be subject to the jurisdiction of the said Tribunal.

---

<sup>10</sup> (1998) 8 SCC 1, particularly on paragraphs 14 & 15 at page 9

<sup>11</sup> (2004) 7 SCC 166

<sup>12</sup> (2011) 5 SCC 697; (2011) 3 SCC (Civ) 117 at page 708

<sup>13</sup> (2025) 4 SCC 1: SCC OnLine SC 127 at page 14

<sup>14</sup> (2025) 5 SCC 780



ii) It is further submitted that the impugned order is contrary to the express terms of CMDPA wherein, it has been mentioned that the Performance Bank Guarantee/security will be appropriated only when there is failure on the part of the petitioner. It is the case of the petitioner, based on the facts already pointed out hereinbefore, that since the delay in obtaining EC for achieving MS-3 is not solely attributable to the petitioner the appropriation of the bank guarantee by respondent No.1 is therefore, based on incorrect construction of facts. Attention of this Court has been drawn towards Clause 6.3 of the CMDPA which provides for '*Manner of appropriation of the performance security*' and it is submitted that conditions mentioned for the appropriation of the Performance Bank Guarantee are not fulfilled in the present case.

iii) It is further submitted that as per the impugned order, the direction for appropriation of the Performance Bank Guarantee was given for non-completion of MS-3 and particularly, for not obtaining Environment Clearance within the time limit prescribed in Schedule D – Efficiency Parameters; however, the computation of due date for MS-3 by respondent No.1 is wholly arbitrary and based on incorrect construction of facts/timelines. It is submitted that as per SCN-II dated 06.06.2024, the petitioner was to obtain EC within 18 months from the completion of previous MS (MS-2) and respondent No.1 has erred in calculating the due of 03.09.2022 for completion of MS-3 from the date of vesting order, i.e., 03.03.2021, and the same was not be calculated from 03.09.2021 as for completion of MS-2, the time limit as per



Schedule D was 6 months from the completion of previous MS (MS-1) or if MS-1 is not applicable, 6 months from the date of allocation. Therefore, it is pointed out that respondent No.1 has not considered/added the said period of 6 months while calculating the completion time for MS-3 and if, 18 months from completion of MS-2 is calculated from 03.09.2021 then, the EC obtained on 23.01.2023 is well within the stipulated time limit. It is further submitted that respondent No.1 *vide* letter dated 18.01.2023 issued to the petitioner, in view of the recommendation of 18<sup>th</sup> Scrutiny Committee meeting held on 23.08.2022, had dropped/waived off SCN-I dated 08.02.2022. Attention of this Court has also been drawn towards SCN-I to show that respondent No.1 while issuing said SCN for non-compliance with Efficiency Parameters for MS-2 had calculated the due date as 03.09.2021 and whereas in SCN-II, respondent No.1 had considered due date as 03.09.2022. In view of the same, it is contended that the said due date of 03.09.2022 has been incorrectly calculated because as per Efficiency Parameters, MS-3 was to be completed within 18 months from the completion of MS-2 and the due date for completion of MS-3 should have been 03.03.2023 and the same was to be 18 months from the due date for completion of MS-2, *i.e.*, 03.09.2021. Thus, the EC obtained on 23.01.2023 is within the stipulated time as per Efficiency Parameters.

**iv)** It is further submitted that as SCN-I was waived off based on recommendation of 18<sup>th</sup> Scrutiny Committee meeting held on 23.08.2022 and therefore, the said period of delay stood condoned and



the same cannot be counted towards calculating due date for completion time for MS-3. Attention has been drawn towards the following recommendation of 18<sup>th</sup> Scrutiny Committee meeting held on 23.08.2022: -

**“Observation &Recommendation: -**

The committee observed that there was delay of only 3 months in achievement of given milestone and sincere efforts were made by the Allottee for completion of milestone within given timeline. The committee also agreed with the explanation given by the Allottee and concluded that the delay cannot be attributed to them. The committee recommended that penalty should not be imposed through appropriation of PBG and Show Cause notice be waived off.”

In view of the above, it has been contended on behalf of the petitioner that the aforesaid recommendation confirms that the due date for MS-3 must be computed from 03.09.2021 after taking into consideration the aforesaid relaxation given by Scrutiny Committee by waiving off SCN-I.

v) Learned Senior Counsels have drawn attention of this Court towards Annexures-3 & 4 of the vesting order dated 03.03.2021 to show that statutory licences, permits, permissions, approvals or consents issued by Central Government to prior allottee were to be transferred on the same terms and conditions to the present petitioner (successful bidder) on application by the latter which has not been done and the petitioner had to apply afresh for obtaining EC. It is submitted that the petitioner had moved an application for transfer of EC on



08.04.2021 and further that, respondent No.1 *vide* Office Memorandum dated 04.10.2021 had forwarded the request letter of the petitioner for transfer of EC issued to the prior allottee. It is further submitted that the petitioner got to know that it has to apply afresh application for grant of TOR as per provision of EIA Notification, 2006, on 10.01.2022 and even if, period of 18 months in terms of Efficiency Parameters is calculated from 10.01.2022 then, also the EC obtained on 23.01.2023 is well within the stipulated time period.

vi) Learned Senior Counsels have further drawn attention of this Court towards an order dated 20.06.2025 passed by a Coordinate Bench of this Court in ***W.P.(C) 8484/2025*** titled as ***“M/S JSW Cement Limited v. Union of India & Ors.”***, to show that the said petition was filed by a successful bidder of Marwatola VI Coal Mine and the Coordinate Bench while issuing notice had also stayed the appropriation of Bank Guarantee subject to the same being kept alive. It is the case of the petitioner that the latter stands on a better position in comparison to the petitioner in the aforesaid petition as there MS-3 was yet to be achieved and Scrutiny Committee therein, had deferred the imposition of penalty in the form of appropriation of PBG as per CMDPA till MS-3 is completed; however, in the present case, MS-3 has been completed and the impugned order has been passed based on incorrect calculation of the due date as pointed out hereinbefore.

vii) Lastly, it is the case of the petitioner that the Tribunal under Section 27 of the Act is non-functional and therefore, the alternate



efficacious remedy could not be effectively exercised by the petitioner. Attention of this Court has been drawn towards Clause 6.2.2 of the CMDPA to show that the appropriation of PBG could not have been sought in case the appropriation event has occurred solely on account of a '*Force Majeure*' which could not have been mitigated by the successful bidder.

**viii)** It is therefore, submitted that the present petition be allowed and the respondents be directed to grant extension of milestone deadlines and to process the applications of the petitioner for grant of statutory clearances in a time bound manner.

6. During the course of hearing, learned ASG has handed over an order dated 09.05.2025 passed by learned Tribunal constituted under Coal Bearing Areas (Acquisition and Development) Act, 1957, established and situated at Talchar, Odisha, to show that the said Tribunal is functional and the petitioner can exercise their alternate efficacious remedy before the said Tribunal. It has further been pointed out that by learned ASG that, during the pendency of the present petition, respondent No.1 had rejected the representation dated 16.07.2025 filed on behalf of the petitioner requesting a change in "*Zero Date*" for the subject mine and, it was observed that all the issues cited by the petitioner in their representation were already within its knowledge at the time of vesting order and the same have also been deliberated in various forums including the Scrutiny Committee and accordingly, the request for change in "*Zero Date*" was rejected and the petitioner has been advised to ensure full compliance with the conditions stipulated in Schedule D-Efficiency



Parameters and operationalise the mine in accordance with CMDPA provisions.

7. Heard learned Senior Counsels for the petitioner as well as learned ASG for the respondents and perused the records.

### **ANALYSIS AND FINDINGS**

8. For the adjudication of the present petition, following dates and events are relevant: -

| <b>Date</b>       | <b>Event</b>                                                                                                                                                                                                                                                                                                                  |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>11.01.2021</b> | Coal Mine Development and Production Agreement (CMDPA) was executed between the Petitioner and the President of India                                                                                                                                                                                                         |
| <b>03.03.2021</b> | Respondent No.1 under Rule 7(2)(b) and Rule 13(1) of the Coal Mines (Special Provisions) Rules, 2014 read with Section 6(3)(b) and Section 8(3) of the Coal Mines (Special Provisions) Act, 2015, issued a Vesting Order thereby, transferring all rights, title, interest including the approved mine plan to the petitioner |
| <b>05.04.2021</b> | Petitioner submitted the commencement plan for starting coal mining operations in the subject coal mine in terms of Clause 5.1 of CMDPA                                                                                                                                                                                       |



**08.02.2022** Show Cause Notice (SCN-I) was issued by respondent No.1 for alleged non-compliance with Efficiency Parameters for delay in achieving MS-2, *i.e.*, Mining Lease Application. The said SCN-I issued to the petitioner reads thus: -



2025:DHC:10744



File No. NA-104/8/2020-NA

Government of India

Ministry of Coal

O/o Nominated Authority

\*\*\*\*\*

120, F- Wing, First Floor, Shastri Bhawan,  
New Delhi, Dated: February 08, 2022

To,

Mr. Sunil Duggal,  
Chief Executive Officer  
Vedanta Limited  
Core-6, 3rd Floor, SCOPE Complex  
7 Lodhi Road, New Delhi 110003**Subject: Show Cause Notice for non-compliance with Efficiency Parameter of in respect of Radhikapur West coal mine.**

Sir,

I am directed to refer the CMDPA dated 31.12.2020 signed in between the Nominated Authority and M/s The Vedanta Limited in respect of Radhikapur West coal mine. As per clause 10.1 of Allotment Agreement, "conduct of mining operations at the coal mine shall be subject to the milestones listed in Schedule 'D' (the "Efficiency Parameters")".

2. It has been noticed that following milestone in respect of Radhikapur west coal mine have not been achieved as per the stipulated timelines.

| Sl. No. | Activities MS-2                                                                | Due date           | Actual date        | Remarks                                                                                                                                                                                                                                                                                                                                            |
|---------|--------------------------------------------------------------------------------|--------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Mining Lease Application                                                       | September 03, 2021 | Date not available | The date of ML application is not available in the pre- commencement report.                                                                                                                                                                                                                                                                       |
| 2.      | Submission of Mining Plan subject to the provisions of clause 15               | September 03, 2021 | Not Submitted      | The Mining Plan and MCP (letter no. 13016/77/2006-CA-I (Part) dated 23.06.2011) has been vested vide Vesting Order dated 03.03.21. No application for revision has been received under clause 15. It has also not been ensured that the schedule coal production as per approved Mining Plan is equal to or more than the year -on-year production |
| 3.      | Approval of Mining Plan/ Project Report subject to the provisions of Clause 15 | September 03, 2021 |                    |                                                                                                                                                                                                                                                                                                                                                    |



|  |  |  |  |                                                                                                                                                                                                                        |
|--|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  |  | schedule of the coal mine as specified in Schedule I (Production Schedule) . Further, no submission have been made as to whether any prospecting operations are required to be carried out for any part of coal mine . |
|--|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. Under the above circumstances, you are hereby called upon to show cause to this office within 15 business days from the date of receipt of this show cause notice, as to why the above milestones have not been achieved in respect of Radhikapur west coal mine as per the CMDPA.

Yours faithfully,

(Manish Uniyal)

Under Secretary to Government of India

Tel: 011-23384106

**Copy to:**

1. The Chief Secretary, State Government of Odisha
2. DS (P&S), Ministry of Coal
3. The Coal Controller Organization, Kolkata

**23.08.2022** Scrutiny Committee in its 18<sup>th</sup> meeting accepted the explanation given by the petitioner and concluded that delay in achievement of MS-2 cannot be attributed to the petitioner. The committee recommended that penalty should not be imposed through appropriation of Performance Bank Guarantee and show cause notice be waived off. The relevant minutes of meeting of 18<sup>th</sup> Scrutiny Committee reads as under: -



**Minutes of 18<sup>th</sup> meeting of Scrutiny Committee held on 23.08.2022 to consider/examine the submissions/replies of allottees against Show Cause Notices for deviation from the milestones mentioned in Coal Mines Development and Production Agreement.**

The Chairman of the Committee welcomed all the members of the committee and participants. Mine wise discussions on Show Cause Notices and corresponding replies were held and Allottees were given opportunity to share their point of views.

**1. Radhikapur West- M/s Vedanta Limited**

Show Cause Notice (SCN) dated 08.02.2022 for failure in submitting application for Mining Lease within scheduled timeline and corresponding reply of Allottee was considered by the Scrutiny Committee.

| Show Cause                                         | Deliberation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date-<br>03.09.2021<br>Mining Lease<br>Application | <p>The Allottee informed that there was overlapping of a part of area of this coal block with Radhikapur East coal block due to ambiguity in the boundary coordinates. There have been several rounds of discussion among MoC, CMPDIL, Odisha Government and the Project Proponents for resolving the boundary coordinates issue. During the periods of April-August, 2021, there was sudden surge in Covid-19 pandemic cases and it stalled majority of the operations. The collection/arrangement of necessary documents required for application of Mining Lease and their examination got delayed due to pandemic.</p> <p>The office of NA agreed with the issue raised by the Allottee regarding overlapping in part of area of this mine with neighboring Radhikapur East mine and the efforts made by Allottee for resolving it.</p> |

**Observation & Recommendation: -**

The committee observed that there was delay of only 3 months in achievement of given milestone and sincere efforts were made by the Allottee for completion of milestone within given timeline. The committee also agreed with the explanation given by the Allottee and concluded that the delay cannot be attributed to them. The committee recommended that penalty should not be imposed through appropriation of PBG and Show Cause notice be waived off.

**06.06.2024** Petitioner received SCN-II for delay in achievement of MS-3, i.e., Forest Clearance stage-2 and Environment Clearance. SCN-II reads as under: -



2025:DHC:10744



By Speed Post/ Email

File No. NA-104/08/2020-NA

Government of India

Ministry of Coal

Nominated Authority

\*\*\*\*\*

120, F-Wing, 1st Floor, Shastri Bhawan,  
New Delhi, Date: 06.06.2024

To,

Chief Executive Officer-Mines,  
M/s Vedanta Limited,  
Core 6, 3<sup>rd</sup> Floor, SCOPE Complex,  
7, Lodhi Road, New Delhi -110003**SHOW CAUSE NOTICE -2**

**Subject: Show Cause Notice against M/s Vedanta Limited, against non-compliance of 'Efficiency Parameters' mentioned in Coal Mine Development and Production Agreement (CMDPA) executed on 11.01.2021 in reference to Radhikapur West coal mine located in Odisha.**

Sir,

Reference is invited to Coal Mine Development and Production Agreement (CMDPA) executed on 11.01.2021 in reference to Radhikapur West coal mine located in Odisha.

2. As per Clause 10.1 of the CMDPA, the conduct of mining operations at the Coal Mine shall be subject to the 'Efficiency Parameters'. List of 'Efficiency Parameters' may be referred to Schedule D of the CMDPA. Further, as per Clause 10.3 of the CMDPA, any non-compliance with the 'Efficiency Parameters' would result in appropriation of the Performance Security. In case where such non-compliance exceeds for more than three instances, such non-compliance may also result in termination of CMDPA. Further, in terms of Clause 6.2.1 (d), the Nominated Authority, in its sole discretion, may determine the failure of the Successful Bidder to comply with the Efficiency Parameters, as required under Clause 10 as an 'Appropriation Event'.

3. Moreover, Clause 6.3 provides for manner of appropriation of the Performance Security. Clause 6.3.1 item 4 provides that the failure of the Successful Bidder to comply with the 'Efficiency Parameters' as required under Clause 10 shall attract an appropriation of such percent of the Performance Security for each failure to comply with the 'Efficiency Parameters' as specified in Schedule D.

4. In respect of the Radhikapur West coal mine the following deviations from achievement of 'Efficiency Parameters' have been noted in MS-3:

| Milestone No | Activity                 | Time Limit                                   | Due Date   | Actual Date of Completion/ Activity Pending | Percentage to be appropriated |
|--------------|--------------------------|----------------------------------------------|------------|---------------------------------------------|-------------------------------|
| MS-3         | Forest Clearance Stage 2 | 18 months from the completion of previous MS | 03.09.2022 | Pending                                     | -                             |
|              | Environment Clearance    |                                              |            | 23.01.2023                                  | 10%                           |



5. The Performance Security in form of Bank Guarantee as on the due date of completion of the aforementioned 'Efficiency Parameter' amounts to Rs. 292,35,51,176.82 /-. As per the table in paragraph 4 above, the total amount which may be appropriated is Rs 29,23,55,117.68/- i.e., 10 %age of PBG.

However, in accordance with Clause no 6.1.4 of CMDPA, due to the downward revision of Performance Security upon difference in NCI for the month of March to the previous FY, the current PBG available with Nominated Authority is amounting to Rs 263,16,91,085.52/-.

6. In view of this Show Cause Notice, you are hereby requested to submit your response in writing with supporting documents within 15 days of receipt of this notice as to why action as per Clauses 6.3 and 10.3 of CMDPA should not be taken by the Nominated Authority including appropriation of the amount mentioned in paragraph number 5 above against deviations mentioned in paragraph 4 above. The response so received shall be placed before the Scrutiny Committee and an opportunity of hearing shall also be granted to you before reaching the final decision. The response may be sent to the following address:-

Office of the Nominated Authority  
Room No. 120-F,  
Ministry of Coal, Shastri Bhawan  
Dr. Rajendra Pd. Road,  
New Delhi-110001

Copy of the response also be e-mailed to [nomauthority.moc@nic.in](mailto:nomauthority.moc@nic.in).

7. In case no response is received within 15 days of receipt of this notice it shall be deemed that the allocatee has no response to offer against the instant notice, and the matter shall be placed before the Scrutiny Committee, unless the Nominated Authority decides otherwise.

8. This is being issued on behalf of the Nominated Authority and with its approval.

Yours faithfully,

(Alok Verma)

Under Secretary to the Government of India  
Tel: 011-23384106

Copy to: -

1. The Chief Secretary, Odisha
2. US (P&S-II), MoC
3. Coal Controller, Coal Controller's Organization, New Delhi

**08.09.2024** Scrutiny Committee in its 24<sup>th</sup> meeting considered the  
&  
**09.09.2024** petitioner's reply to SCN-II and recommended that the  
petitioner will give an undertaking in next three days that the  
mine will be operational by 03.06.2025 and in the event of non-  
happening of same, recommendation was made for imposition  
of penalty in the form of appropriation of Performance Bank  
Guarantee as per CMDPA. It was also recommended that if the  
mine is operational by 03.06.2025, the matter will be before  
screening committee for final decision on SCN-II. The relevant



minutes of meeting of 24<sup>th</sup> Scrutiny Committee reads as under: -

**11. Radhikapur (West) Coal Mine**

Show Cause Notice dated 06.06.2024 was issued for non-achievement of efficiency parameter within stipulated time pertaining to Forest Clearance Stage -II, and Environment Clearance. The show cause notice and the corresponding reply of the Allottee were considered by the Scrutiny Committee.

| Show Cause | Deliberation |
|------------|--------------|
|------------|--------------|

TRUE

43

| Show Cause                                                        | Deliberation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Due Dates -<br>Forest Clearance Stage-II<br>Environment Clearance | <p>Office of the Nominated Authority stated that the Radhikapur (West) coal mine has been vested to M/s Vedanta Limited on 03.03.2021. As per CMDPA, the completion time for obtaining Forest Clearance (FC) and Environmental clearance (EC) is 18 months from the previous milestone, i.e., by 03.09.2022 as the Mining Plan was vested to M/s Vedanta Limited. The EC was obtained on 23.01.2023 with a delay of 4 months and FC stage 2 is yet to be obtained. It is pertinent to mention that FC Stage-1 was granted on 06.01.2022. The compliance of the conditions mentioned in FC Stage- I and in the DFO's report dated 24th Feb 2023 has not been completed by M/s Vedanta Ltd.</p> <p>The Allottee stated that there were discrepancies in Boundary Coordinates with an adjacent coal block. After several joint meetings, this issue was clarified on 8th February 2022. The Allottee stated that although the mine was vested on 3rd March 2021, the finalization of their boundary coordinates occurred only on 8th February 2022. Therefore, compliance of the milestones began only after this boundary clarification. However, Office of the Nominated Authority Stated that till date M/s Vedanta has not requested MoC for revision of the Zero date.</p> <p>The Allottee stated that they applied for transfer of EC on 8th April 2021. Since FC Stage I was not vested, they had to obtain it, which was granted on 6th January 2022. Consequently, they approached MoEF&amp;CC, which instructed them to apply for a fresh TOR as the earlier EC had lapsed. After receiving boundary clarification on 8th February 2022 and completing all necessary studies, they approached MoEF&amp;CC, received the fresh TOR on 8th September 2022, and the EC was granted on 23rd January 2023. The Allottee also emphasized that as per CMDPA, only the EC and not FC stage-II is a milestone for penal action in case of failure in completion within the scheduled timeline.</p> <p>The Allottee stated that the Forest Clearance Stage I proposal faced delays due to deferrals and additional conditions, with final approval granted on 6th January 2022. A part of the vested CA land was not acceptable to MoEF&amp;CC and therefore they have to arrange fresh CA land. Additionally, concerns were raised about the impact of mining in the coal block on an elephant corridor. All these issues delayed the approval of FC stage-I.</p> <p>The Allottee also assured that they will cover up the delay in approval of FC stage-II and will operationalize the mine within the scheduled 51 months timeline given in CMDPA.</p> |

**Observations and recommendations of the Committee:**

The Committee observed that due to initial confusion about the boundary coordinates of the mine and rearrangement of a part of CA land, there was delay in completion of this milestone. The issue of EC and FC stage-II matter was



considered in detail. The Committee also took note of the fact that despite the delay in achievement of this milestone, the Allottee has confirmed that the mine will be operationalized within the scheduled 51 months timeline given in CMDPA, i.e by 03.06.2025.

Based on the deliberations and the assurance of the Allottee, the Committee made the following recommendations:-

1. The Allottee will give an undertaking in next 3 days to O/o NA that they will operationalize the mine before the scheduled timeline, i.e by 03.06.2025.
2. In the event the operationalization of the mine happens on or before the due date, the matter will be put up to the Scrutiny Committee for the final decision on the Show Cause Notice for MS-3.
3. However, in the event the mine is not operationalized by 03.06.2025, the Committee recommended for imposition of penalty in the form of appropriation of PBG as per the provision of CMDPA.

**12.08.2024** Petitioner, in terms of the recommendations of 24<sup>th</sup> Scrutiny Committee meeting, submitted its undertaking to operationalise the subject mine before the due date of 03.06.2025. The said letter of submission of undertaking reads thus: -



2025:DHC:10744



Ref.No. VL/RWCM/121

Date: 12.08.2024

To  
The Nominated Authority  
Ministry of Coal  
Government of India  
120, F-Wing, First Floor, Shastri Bhawan,  
New Delhi-110001

**Subject: Reply to the Show Cause Notice dated 06.06.2024 issued against alleged non-compliance with Efficiency Parameter of (Coal Mine Development and Production Agreement) in respect of Radhikapur (West) Coal Mine**

**Reference:** Undertaking as per the 24<sup>th</sup> Meeting of Scrutiny Committee.

Dear Sir,

With above mentioned subject and reference, please accept the Undertaking: -

Radhikapur (West) Coal Block was vested to M/s Vedanta Limited (allottee) on 03<sup>rd</sup> March 2021. Despite of time loss to the allottee for reasons which were beyond its control such as Corona pandemic, clarification of mine block-boundary co-ordinates, re-issuance of already vested EC, issue of increase in forest area, identification of alternate CA Land, impending elephant corridor and imposition of model code of conduct, allottee achieved MS-3 on 23<sup>rd</sup> January 2023. These facts were accepted by Scrutiny Committee considering genuine and beyond human control.

As per the direction of the Hon'ble Scrutiny Committee, M/s Vedanta Limited hereby undertakes to operationalize the mine before the due date of 06<sup>th</sup> June 2025 as stated in the meeting of Hon'ble Scrutiny Committee,

**Vedanta Limited - Aluminium & Power:** Vill- Bhurkamunda, P.O- Kalimandir, Dist- Jharsuguda (Odisha)- 768202  
T +91-664 566 6000, F +91-664 566 6427, www.vedantalimited.com

**Registered Office:** Vedanta Limited 1st Floor, 'C' wing, Unit 103, Corporate Avenue, Atul Projects, Chakala, Andheri (East), Mumbai 400093, Maharashtra, India, CIN: L13209GA1965PLC000044

**630**

MOC, dated 08<sup>th</sup> August 2024, if nothing happens adverse and beyond control. All intent and efforts shall be part of this Undertaking and M/s Vedanta Limited confirms its commitment.

This undertaking is being executed by M/s Vedanta Limited, today; 12<sup>th</sup> August 2024, as part of its responses and pleadings in Ministry of Coal and M/s Vedanta Limited will abide to it.

The present reply is being issued without prejudice to the rights of M/s Vedanta Ltd. under the Agreement and as per the law.

Thanking you.

Yours faithfully,

Prahlad Rawat  
Authorized Signatory  
Vedanta Limited



- September 2024 to May 2025** It was stated that the petitioner was in discussion with the local authorities to seek clarifications regarding the issues pertaining to FC compliances, Elephant Corridor, Compensatory Afforestation and for conducting GPS (DGPS) survey
- 23.05.2025** Petitioner made a representation to respondent No.1 invoking “*force majeure*” in terms of Clause 25 of CMDPA and further seeking appropriate directions for extension of timeline for achieving milestones under Schedule D-Efficiency Parameters of CMDPA
- 20.06.2025** Petitioner was informed by Nominated Authority/respondent No.1 that an opportunity of personal hearing would be provided to it on 18.07.2025
- 11.07.2025** Petitioner submitted a representation before Nominated Authority/respondent No.1 seeking extension of timeline for achieving milestones under CMDPA
- 18.07.2025** Personal hearing was provided to the petitioner by Nominated Authority/respondent No.1
- 21.07.2025** Respondent No.1 issued the impugned appropriation order for invocation of 10% of the Performance Bank Guarantee for non-completion of MS-3 especially for delay in obtaining



Environment Clearance. The relevant portion of the impugned appropriation order reads thus: -

7. Additionally, it is to state that during the 24<sup>th</sup> meeting of the Scrutiny Committee, the Committee observed delays but took note of Vedanta's assurance to operationalize the mine within the scheduled timeline of **03.06.2025**. Accordingly, the Committee recommended:

1. The Allottee will give an undertaking in next 3 days to O/o NA that they will operationalize the mine before the scheduled timeline, i.e by 03.06.2025.
2. In the event the operationalization of the mine happens on or before the due date, the matter will be put up to the Scrutiny Committee for the final decision on the Show Cause Notice for MS-3.
3. However, **in the event the mine is not operationalized by 03.06.2025, the Committee recommended for imposition of penalty in the form of appropriation of PBG as per the provision of CMDPA.**

8. The Scrutiny Committee upon careful deliberation placed its recommendations before the Nominated Authority vide Minutes of Meeting dated 13.09.2024. A copy of the same is enclosed for reference. The said recommendations have been further deliberated upon by the Nominated Authority and the Central Government. The Nominated Authority and the Central Government have accepted the recommendations of the Scrutiny Committee. Further, in terms of Clause 6.2.1 (d), the Nominated Authority, has determined that the failure of the Successful Bidder to comply with the Efficiency Parameters mentioned in Table-1 above is an 'Appropriation Event'. The Central Government has also accepted the said decision.

9. M/s Vedanta Ltd submitted a representation vide letter dated 23.05.2025, wherein the allottee reiterated its earlier claims regarding delays arising from factors allegedly beyond its control. The representation dated 23.05.2025 does not bring forth any new grounds or facts that were not already considered during the 24th Scrutiny Committee meeting held on 08.08.2024 and 09.08.2024. Further, no additional documents or concrete evidence of on-ground progress have been submitted post the said meeting.

10. Despite the assurance provided by M/s Vedanta Ltd during the 24th Scrutiny Committee meeting to operationalize the mine within the prescribed timeline, no substantial progress has been observed thereafter. The commitments made remain unfulfilled, and the explanations

2 | Page

## 54

offered are not supported by verifiable outcomes. In view of the above, the submissions made by M/s Vedanta Ltd are not found to be tenable.

11. Therefore, in view of the clauses referred to in paragraphs 2 and 3 above, the Nominated Authority is may direct for the following appropriation from the Performance Bank Guarantee (as it stood on the prescribed due date of completion of milestone):-

Table-2

| S. No. | Milestone No. | Activity(ies)         | Percentage to be appropriated |
|--------|---------------|-----------------------|-------------------------------|
| 1.     | MS- 3         | Environment Clearance | 10%                           |



9. At this stage, it is apposite to refer to the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee. The Hon'ble Supreme Court in **Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.**<sup>15</sup>, while elucidating the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee, had observed and held as under: -

“14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a bank guarantee or a letter of credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a bank guarantee or a letter of credit:

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional bank guarantee or letter of credit is given or accepted, the beneficiary is entitled to realise such a bank guarantee or a letter of credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The courts should be slow in granting an order of injunction to restrain the realisation of a bank guarantee or a letter of credit.

(iv) Since a bank guarantee or a letter of credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of bank guarantees or letters of credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a bank guarantee or letter of credit and the beneficiary seeks to take advantage of the situation.

---

<sup>15</sup> (2007) 8 SCC 110



(vi) Allowing encashment of an unconditional bank guarantee or a letter of credit would result in irretrievable harm or injustice to one of the parties concerned.”

**10. The Hon’ble Supreme Court in *Standard Chartered Bank v. Heavy Engineering Corporation Ltd. & Anr.*<sup>16</sup>, with respect to encashment of bank guarantee, has observed and held as under: -**

“**23.** The settled position in law that emerges from the precedents of this Court is that the bank guarantee is an independent contract between bank and the beneficiary and the bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and is of no consequence. There are, however, exceptions to this rule when there is a clear case of fraud, irretrievable injustice or special equities. The Court ordinarily should not interfere with the invocation or encashment of the bank guarantee so long as the invocation is in terms of the bank guarantee.

\*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

**26.** In our considered view, once the demand was made in due compliance with bank guarantees, it was not open for the appellant Bank to determine as to whether the invocation of the bank guarantee was justified so long as the invocation was in terms of the bank guarantee. The demand once made would oblige the bank to pay under the terms of the bank guarantee and it is not the case of the appellant Bank that its defence falls in any of the exception to the rule of case of fraud, irretrievable injustice and special equities. In absence thereof, it is not even open for the Court to interfere with the invocation and encashment of the bank guarantee so long as the invocation was in terms of the bank guarantee and this is what has been observed by the Division Bench of the High Court in the impugned judgment [*Heavy Engg. Corpn. Ltd. v. Standard Chartered Bank*, 2019 SCC OnLine Cal

---

<sup>16</sup> (2020) 13 SCC 574



617 : (2019) 3 Cal LT 133] and that reflected the correct legal position.”

**11.** Recently, the Hon’ble Supreme Court in **Jindal Steel and Power Ltd. & Anr. v. Bansal Infra Projects Pvt. Ltd. & Ors.**<sup>17</sup>, while emphasising that bank guarantees serve as the backbone of commercial transactions and same must be honoured in accordance with their terms, has observed and held as under: -

“11. We are aware of the established legal principle that the Courts should refrain from interfering with the invocation of a bank guarantee except in cases of fraud of an egregious nature or in cases where allowing encashment would result in irretrievable injustice. This Court in *Hindustan Construction Co. Ltd. v. State of Bihar*<sup>5</sup>, emphasized that bank guarantees serve as the backbone of commercial transactions and must be honoured in accordance with their terms. The following paragraphs are pertinent in this regard:

“8. Now, a bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realise the whole of the amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary. In contracts awarded to private individuals by the Government, which involve huge expenditure, as, for example, construction contracts, bank guarantees are usually required to be furnished in favour of the Government to secure payments made to the contractor as “advance” from time to time during the course of the contract as also to secure performance of the work entrusted under the contract. Such guarantees are encashable in terms thereof on the lapse of the contractor either in the performance of the work or in paying back to the Government “advance”, the guarantee is invoked and the amount is recovered from the bank. It is for this reason that the courts are reluctant in granting an

---

<sup>17</sup> 2025 SCC OnLine SC 1041



*injunction against the invocation of bank guarantee, except in the case of fraud, which should be an established fraud, or where irretrievable injury was likely to be caused to the guarantor. This was the principle laid down by this Court in various decisions. In U.P. Coop. Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.<sup>6</sup>, the law laid down in Bolivinter Oil SA v. Chase Manhattan Bank<sup>7</sup> was approved and it was held that an unconditional bank guarantee could be invoked in terms thereof by the person in whose favour the bank guarantee was given and the courts would not grant any injunction restraining the invocation except in the case of fraud or irretrievable injury. In Svenska Handelsbanken v. Indian Charge Chrome<sup>8</sup>, Larsen & Toubro Ltd. v. Maharashtra SEB<sup>9</sup>, Hindustan Steel Works Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd.<sup>10</sup>, National Thermal Power Corporation Ltd. v. Flowmore (P) Ltd.<sup>11</sup>, State of Maharashtra v. National Construction Co.<sup>12</sup>, Hindustan Steel Works Construction Ltd. v. Tarapore & Co.<sup>13</sup> as also in U.P. State Sugar Corporation v. Sumac International Ltd.<sup>14</sup>, the same principle has been laid down and reiterated.*

*9. What is important, therefore, is that the bank guarantee should be in unequivocal terms, unconditional and recite that the amount would be paid without demur or objection and irrespective of any dispute that might have cropped up or might have been pending between the beneficiary under the bank guarantee or the person on whose behalf the guarantee was furnished. The terms of the bank guarantee are, therefore, extremely material. Since the bank guarantee represents an independent contract between the bank and the beneficiary, both the parties would be bound by the terms thereof. The invocation, therefore, will have to be in accordance with the terms of the bank guarantee; or else, the invocation itself would be bad.””*

**12.** In view of the aforesaid principles, it is incumbent on the petitioner to show that their case falls within any of exceptions, i.e., fraud, irretrievable injustice, and special equities. The Nominated Authority/respondent No.1 has passed the impugned appropriation order primarily based on the failure of the petitioner to operationalise the subject mine by 03.06.2025 in terms of their



own undertaking submitted *vide* letter dated 12.08.2024 in pursuance of the recommendations of 24<sup>th</sup> Scrutiny Committee meeting held on 08-09.08.2024. Perusal of the letter dated 12.08.2024, as reproduced hereinbefore, shows that the petitioner, despite claiming time loss for the reasons beyond its control, chose to submit the undertaking to operationalise the subject mine before the due date of 03.06.2025. It is also pertinent to note that the said undertaking was not given under protest to the recommendations of the 24<sup>th</sup> Scrutiny Committee meeting nor it is the case of the petitioner that they had taken recourse to the remedies as permissible in law to assail the recommendations of the 24<sup>th</sup> Scrutiny Committee meeting. The said recommendations were given after considering the reply of the petitioner to SCN-II submitted on 06.06.2024 wherein, similar issues were raised which were allegedly prevailing and were within the knowledge of the petitioner. Perusal of the deliberations of 24<sup>th</sup> Scrutiny Committee shows that the issues of discrepancies in boundary coordinates and transfer of EC had been agitated in response to SCN-II dated 06.06.2024 and it was observed by the Committee that no request for revision of 'Zero Date' was made on behalf of the petitioner till that day. As already noted, that the said findings of the Committee were never assailed by the petitioner. Thus, in the considered opinion of this Court, the case of the petitioner, *prima facie*, does not fall within any of the exceptions as noted hereinbefore.

**13.** It is the case of the petitioner that after submission of the aforesaid undertaking to operationalise the mine *vide* letter dated 12.08.2024, petitioner was in discussion with the local authorities to seek clarifications regarding the issues pertaining to FC compliances, Elephant Corridor, Compensatory



Afforestation and for conducting GPS (DGPS) survey; however, it is pertinent to note that these issues were well within petitioner's knowledge at the time of giving the said undertaking.

14. Even otherwise, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India as the petitioner has an alternate efficacious statutory remedy as provided under Section 27 of the CM (SP) Act, 2015, which reads as under: -

**“27. Dispute settlement and Bar of Jurisdiction of civil courts.—(1)**

Any dispute arising out of any action of the Central Government, nominated authority or Commissioner of payment or designated custodian, or any dispute between the successful bidder or allottee and prior allottee arising out of any issue connected with the Act shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957).

(2) Where the Central Government is of the opinion that any dispute arising out of any issue connected with the Act exists or is apprehended and the dispute should be adjudicated by the Tribunal referred to in sub-section (1), then, the Central Government may by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to the Tribunal for adjudication.

(3) The Tribunal referred to in sub-section (1) shall, after hearing the parties to the dispute, make an award in writing within a period of ninety days from the institution or reference of the dispute.

(4) On and from the commencement of the Act, no court or other authority, except the Supreme Court and a High Court, shall have, or be entitled to exercise, any jurisdiction, powers or authority, in relation to matters connected with the Act.”



15. In this regard, it is apposite to refer to a judgment of learned Division Bench of this Court in **Trimula Industries Limited v. Union of India, Ministry of Coal and Others**<sup>18</sup>, wherein, learned Division Bench was dealing with a challenge to an order passed by learned Coordinate Bench of this Court whereby, the appellant therein, was directed to approach the Authority as provided for under Section 27 of the CM (SP) Act, 2015, for assailing the similar appropriation order issued to the said appellant for non-compliance with the efficiency parameters. The relevant facts of the aforesaid judgment are as under: -

“8. The vesting order dated 22nd April, 2015 was, thereafter, issued by Respondent No. 1 in favour of the Appellant, which indicated that the Coal Mine allocated to the Appellant does not have forest area. However, it is the case of the Appellant that vide letter dated 12th March, 2016 issued by the Respondent No. 3, for the first time, it came to light that land allocated for mining to the Appellant also includes forest land of around 74 hectares. The Appellant contends that there was no mention of any forest area in the contents of the summary, which was uploaded on the website portal of Metal Scrap Trade Corporation Limited (MSTC) and therefore the Appellant verily believed that it has available a total mining lease area of 949.87 hectares and this does not include any forest area. The Appellant contends that non-disclosure of existence of forest area is a gross misrepresentation by Respondent No. 1.

9. However, disputes arose as a Show Cause Notice (SCN) dated 25th May, 2023 was issued by the Nominated Authority of Respondent No. 1 to the Appellant for non-compliance with the efficiency parameters.

10. The Nominated Authority of Respondent No. 1 thereafter passed [first] appropriation order on 02nd August, 2023 and directed appropriation of amount of Rs. 42,34,29,600/- against the performance Bank Guarantee for non-compliance of efficiency parameters. This appropriation order was challenged by the Appellant before the learned Single Judge in a separate writ petition i.e., WP(C) 10453/2023. The

---

<sup>18</sup> 2024 SCC OnLine Del 3350



learned Single Judge vide interim order dated 08th August, 2023 stayed the encashment of bank guarantee primarily in view of the dispute pertaining to disclosure/non-disclosure of the forest area.

11. Subsequently, vide minutes of the 21st meeting of the Scrutiny Committee held on 10th January, 2024, the Respondent No. 1 recommended for [further] appropriation of performance Bank Guarantee to the tune of Rs. 3,93,88,800/-, citing failure of Appellant in advancement of milestone within given timeline. In pursuance to the said recommendation, [second] appropriation order dated 06th March, 2024 was issued by the Nominated Authority of Respondent No. 1.

12. The [second] appropriation order dated 06th March, 2024 passed by the Nominated Authority of Respondent No. 1 was challenged by the Appellant before the learned Single Judge in the underlying writ petition i.e., WP(C) 3789 of 2024. This writ petition has been disposed of by the impugned judgment dated 14th March, 2024 and order dated 02nd April, 2024 with a direction to the Appellant to avail the statutory remedy of appeal against the second appropriation order.”

In the aforesaid facts, after hearing learned counsel for the parties and perusing the record, learned Division Bench had observed and held as under: -

“17. The primary contention of the Appellant is that the impugned judgment dated 14th March, 2024 and impugned order dated 02nd April, 2024 declining to entertain the writ petition are inconsistent, inasmuch as, the learned Single Judge has entertained W.P. (C) No. 10453/2023 pertaining to the first appropriation order, arising from the same CMDPA and pertaining to the same performance Bank Guarantee.

18. The Appellant does not dispute the existence of alternate remedy under Section 27 of the Act of 2015, especially after perusing the compilation of the orders of the Tribunal filed by Respondent No. 1 during the course of the hearing. It, however, assails the direction to avail the same on the ground that since the facts in issue are admitted, the same can be adjudicated in the underlying writ petition.

19. The Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh*<sup>1</sup> summarised the principles with respect to maintainability of a



writ petition when the aggrieved person has an effective alternate remedy in law and held as under:

*“27. The principles of law which emerge are that:*

*27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

***27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.***

*27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

*27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

***27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.***

*27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

*(Emphasis supplied)*

**20. The principle laid down by the Supreme Court in paragraph 27.5 is attracted in the facts of this case and therefore, we find no infirmity in the impugned judgment directing the Appellant to avail its statutory remedy of appeal. The issues of fact agitated by the Appellant including non-declaration of forest land in the NIT are issues which the Appellate Authority is competent to decide.**



**21. Further, in our opinion, the passing of the interim order dated 08th August 2023 by the learned Single Judge in WP(C) 10453/2023 cannot act as a bar to the Court relegating a party to avail its statutory remedy of appeal. In fact, the impugned judgment/order is in consonance with the law laid down by the Supreme Court on this issue. The compilation of orders shown by Respondents No. 1 and 2 also evidence that the Court has in similar matters consistently directed the writ petitioner to assail the appellate remedy against the orders passed by the Nominated Authority.**

22. The learned Single Judge vide orders dated 14th March, 2024 and 02nd April, 2024 granted interim protection to the Appellant in the application of stay by the Appellate Authority and directed the Appellant herein to approach the Appellate Authority on or before 30th April, 2024. We, hereby, extend the time for the Appellant to approach the Appellate Authority till 30th May, 2024 on the same terms and conditions.

23. The Appellant is, however, directed to extend the validity of the Bank Guarantee for a period of six months, within one week from today.

24. The Appellate Authority is directed to hear and decide the appeal expeditiously preferably within two months from the first date of hearing.

25. The contention of the Appellant that the learned Single Judge ought to have entertained the underlying writ petition as the other writ petition i.e., W.P. (C) 10453/2023 remains pending, is without any merit. In our opinion, the Appellant ought to have challenged the first appropriation order dated 02<sup>nd</sup> August, 2023 also before the Appellate Authority under Section 27 of the Act of 2015. We, therefore, direct the Registry to list W.P. (C) 10453/2023 before the learned Single Judge on 08<sup>th</sup> May, 2024 for directions. The parties are directed to remain present before the learned Single Judge on the said date.”

**(emphasis supplied)**

**16.** The aforesaid judgment passed by learned Division Bench of this Court in similar factual context is in relation to availability of statutory



remedy under Section 27 of CM (SP) Act, 2015, and is binding on this Court. The issues raised by the petitioner in the present case have been disputed by the respondents. The contentions raised by the petitioner pertains to disputed questions of fact in respect of provisions of CMPDA over which learned Tribunal established under Section 27 of the CM (SP) Act, 2015, has jurisdiction/authority to adjudicate upon. Even otherwise, said disputed facts cannot be decided by this Court in the present jurisdiction.

17. Reliance has been placed by learned Senior Counsels for the petitioner on **Whirlpool Corpn. v. Registrar of Trade Marks**<sup>19</sup>, **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**<sup>20</sup>, **Union of India v. Tania Construction (P) Ltd.**<sup>21</sup>, **T.N. Cements Corpn. Ltd. v. Unicon Engineers**<sup>22</sup>, **India Glycols Ltd. v. S.R. Technologies**<sup>23</sup>, to contend that the existence of an adequate or suitable alternative remedy available to the litigant is merely a factor which the Court entertaining a petition under Article 226 of the Constitution will consider for exercising the discretion to issue writ in said jurisdiction; however, the same does not impinge upon the jurisdiction of the High Court to deal with the matter itself when it is in position to do so on the basis of the affidavits filed. The aforesaid legal position is not disputed; however, the present case is squarely covered by the decision of learned Division Bench in **Trimula Industries Limited (supra)**.

---

<sup>19</sup> (1998) 8 SCC 1, particularly on paragraphs 14 & 15 at page 9

<sup>20</sup> (2004) 7 SCC 166

<sup>21</sup> (2011) 5 SCC 697; (2011) 3 SCC (Civ) 117 at page 708

<sup>22</sup> (2025) 4 SCC 1: SCC OnLine SC 127 at page 14

<sup>23</sup> (2025) 5 SCC 780



18. Similarly, reliance placed by learned Senior Counsels for the petitioner on order dated 20.06.2025 passed by Coordinate Bench in **W.P.(C) 8484/2025** titled as “**M/s JSW Cement Limited v. Union of India & Ors.**” will not benefit the petitioner, in view of the aforesaid judgment of the learned Division Bench of this Court in **Trimula Industries Limited (supra)** which pertains to Section 27 of the CM (SP) Act, 2015, and is binding on this Court.

19. In view of the aforesaid discussion and in facts and circumstances of the present case, the present petition is disposed of with liberty to the petitioner to avail its alternate efficacious remedy in accordance with Section 27 of the CM (SP) Act, 2015, before the concerned learned Tribunal situated at Talchar, Odisha, within a period of 10 days from today.

20. It is further directed, till that time, interim order dated 23.07.2025 passed by this Court directing maintenance of *status quo* with respect to Performance Bank Guarantee No. 1637622BG0000209 dated 15.06.2022 (amended on 25.09.2025) shall continue to operate. It is clarified that this extension of interim order is for ten days or till the time the petitioner approaches learned Tribunal under the aforesaid provision, whichever is earlier. It is further directed that the Bank Guarantee should be kept alive.

21. Needless to state that, nothing stated hereinabove, should be construed as an expression of opinion (*prima facie* or otherwise) as to the merits of the dispute. All rights and contentions of the parties are reserved.

22. Pending applications, if any, also stand disposed of accordingly.



2025:DHC:10744



23. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA  
(JUDGE)**

**DECEMBER 02, 2025/bsr/ns**