

Captive coal mining is a mechanism envisaged to encourage private sector participation in coal mining on account of the perceived limitations of the CIL to increase production to meet the growing demand for coal. Captive coal mining would also ensure assured supply of coal to the core infrastructure areas like Power, Steel and Cement. Coal sector needs substantial investments to increase production and meet the fuel requirements of a growing economy. With the declared objective for “Power to all by 2012”, the Government embarked on the task of allocating coal blocks for captive mining for power and other sectors in a big way.

This chapter analyses the efforts of the Government in ensuring ‘objectivity’ and ‘transparency’ in the procedures adopted for allocation of captive coal blocks.

4.1

Allocation procedure for captive coal blocks

Till 1993, there were no specific criteria for allocation of coal blocks. Most of the allocations were done based on letters of recommendation from the concerned State Government indicating that the party was planning to set up a permitted end use project of specified capacity. From 1993 onwards, MOC, in consultation with CIL/ CMPDIL and SCCL, identifies coal blocks, which can be allocated for captive mining to the eligible coal using companies. The allocation of coal blocks is made by MOC based on the recommendations of an Inter-Ministerial Screening Committee under the chairmanship of Secretary (Coal) or through direct allocation. The latter is made for PSEs only for captive use or commercial mining. Such allocation is termed as Government Dispensation route while the allocation through Screening Committee is termed as Captive Dispensation. Besides, blocks are allocated for UMPPs as per the competitive bidding guidelines of the Ministry of Power (tariff based bidding).

The following are the criteria for selection by the Screening committee:

- Captive blocks can be applied for additional requirements, of end-users without affecting the linkages, which were in force with Coal India Limited (CIL)/ Singareni Collieries Company Limited (SCCL);
- Allowing captive mining in Joint ventures with CIL/SCCL as lead partner;
- Allowing coal produced during the mine development phase to be sold to CIL and/or SCCL at a transfer price to be determined by the Government;

- Specifying the period for implementation of the mine plan duly backed by a bank guarantee;
- Specifying provisions for cancellation of the allocation for non-adherence to milestones laid down for achieving various steps leading to coal production;
- Providing for monitoring of the progress by the MOC and by the Coal Controller.

Test check of file/ documents maintained by MOC in respect of Fatehpur and Rampia & dip side of Rampia by audit in April, 2012 revealed that:

- In case of Fatehpur coal block, 69 applications were received against the advertisement for allocation of coal blocks. Out of these 69 applicants only 36 applicants were scheduled for making presentation before the Screening Committee. The Screening Committee recommended S K S Ispat & Power Limited and Prakash Industries Limited for allocation of Fatehpur coal block.
- Similarly in case of Rampia and dip side of Rampia coal block, 108 (67 + 41) applications were received against the advertisement for allocation of coal blocks. Out of these 108 applicants only 2 applicants were scheduled for making presentation before the Screening Committee. The Screening Committee, however, recommended six companies (viz. Sterlite Energy Limited, GMR Energy Limited, Lanco Group Limited, Navbharat Power Limited, Mittal Steel India Limited and Reliance Energy Limited) for allocation of Rampia and Dip side of Rampia coal blocks.

It was also noted that the Screening Committee recommended the allocation of coal block to a particular allottee / allottees out of all the applicants for that coal block by way of minutes of the meeting of the Screening Committee. However, there was nothing on record in the said minutes or in other documents on any comparative evaluation of the applicants for a coal block which was relied upon by the Screening Committee. Minutes of the Screening Committee did not indicate how each one of the applicant for a particular coal block was evaluated. Thus, a transparent method for allocation of coal blocks was not followed by the Screening Committee.

4.2 Evolution of policy on competitive bidding of coal blocks

In the X Plan and thereafter, the number of applicants for coal blocks increased as compared to the availability of blocks due to increased demand of coal in the country. There was an urgent need to bring in a process of selection that was not only objective but also demonstrably transparent. Allocation through competitive bidding was considered as one such acceptable selection process. The concept of allotment through competitive bidding was first made public by the Government on 28 June 2004. Further, sequence of events in this regard till 2012 is indicated below:

Date	Events on the issue of competitive bidding
28.06.2004	The concept of allocation of captive coal blocks through competitive bidding was first made public.
16.07.2004	Comprehensive note on 'Competitive Bidding for allocation of coal blocks' placed by then Secretary (Coal) to MoS (Coal and Mines), mentioning that ".....since there is a substantial difference between price of coal supplied by Coal India and coal produced through captive mining, there is a windfall gain to the person who is allotted a captive block.....". The note further indicated that ".....the bidding system will only tap part of the windfall profit for the public purposes.....".
30.07.2004	Secretary (Coal) mentioned that the present system of allocation in the changed scenario, even with modifications would not be able to achieve the objectives of transparency and objectivity in the allocation process.
20.08.2004	Minister (Coal and Mines) directed that a draft Cabinet Note be prepared for placing the same before the Cabinet for consideration and decision.
11.09.2004	A note was initiated from the PMO detailing certain disadvantages of allocation of coal blocks through competitive bidding.
25.09.2004	In response, Secretary (Coal) submitted draft Cabinet Note to MoS with the remarks that there was hardly any merit in the objections raised. Different kinds of pulls and pressures experienced by the Screening Committee during the decision-making process was also highlighted. The note stressed on the desirability of taking decision in respect of all pending applications on the basis of competitive bidding.
04.10.2004	MoS stated that the proposal for competitive bidding may not be pursued further as it would invite further delay in the allocation of blocks, considering that the Coal Mines (Nationalisation) Amendment Bill 2000 envisaging competitive bidding as a selection process for allocation of blocks for commercial purposes was pending in the Rajya Sabha with stiff opposition from Trade Unions and others concerned. MoS disagreed with the views that the Screening Committee could not ensure transparent decision-making and added that this alone was not an adequate ground for switching over to a new mechanism.
15.10.2004	Secretary (Coal) stated that the policy of allotment of coal blocks through competitive bidding was discussed in the PMO and it was felt that since a number of applicants requested for allotment of blocks based on the current policy, it would not be appropriate to change the allotment policy through competitive bidding in respect of applications

	received on the basis of existing policy. Accordingly, the policy of allotment through competitive bidding could be made prospective and pending applications might be decided on the basis of the existing policy. Therefore, the cut-off date for considering applications as per the current policy and the proposed revised policy was taken as 28 June 2004.
01.11.2004	<p>The PMO directed Secretary (Coal) to amend the draft Cabinet Note for approval of the Minister (Coal and Mines) after taking into account the following:</p> <ul style="list-style-type: none"> • the cut-off date for competitive bidding • the fact that the MOC had already moved the Coal Mines (Nationalisation) Amendment Bill 2000 envisaging competitive bidding as a selection process for allocation of coal blocks for commercial purposes. • the change in the policy of allocation of coal blocks for captive mining will be made effective prospectively. <p>The PMO stated, “.....The change in the policy of allocation of coal blocks for captive mining will be made effective prospectively. Therefore, there is no urgency in the matter. Accordingly, there is no need to bring in the required amendment in the Coal Mines (Nationalisation) Act through an Ordinance. It would be appropriate to bring in the required amendment through a Bill to be moved in the coming Parliament Session.....”.</p>
25.02.2005	On resubmission (23 December 2004) of the revised draft Cabinet Note, Minister (Coal) opined that he was in complete agreement with the views expressed by MoS in his note dated 04 October 2004 and as such the proposal need not be proceeded further.
07.03.2005	The Secretary (Coal) put up a note for approval of the Draft Cabinet Note to the Minister (Coal), stating that decision on all applications received as on 28 June 2004 would have been taken by the end of March 2005 and if the revised procedure for allocation of coal blocks was not put in place quickly enough, pressures would again mount on the Government for continuing with the present procedure, which might not be desirable in the interests of bringing about total transparency in allocation of coal blocks.
16.03.2005	The PMO communicated that the draft Cabinet Note be updated and sent back urgently.
24.03.2005	The PMO communicated the approval of the updated draft Cabinet Note by the Minister (Coal).
21.06.2005	The draft Cabinet Note incorporating the views of various States and

	<p>comments of the Ministries and Departments with the observations of the Minister of Coal was placed by the Secretary (Coal) before the MoS for approval of the Minister (Coal), stating that it was desirable that decision on allocation of captive block through bidding route was taken at the earliest so that the process of allocation of coal blocks could continue unhindered.</p>
04.07.2005	<p>MoS in his note to the Minister (Coal), <i>inter alia</i>, stated that the implications of such a decision by the Cabinet needed to be considered in great detail and that there was a general reluctance on the part of power utilities to participate in the competitive bidding due to cost implications.</p>
25.07.2005	<p>A meeting was taken by the PMO wherein it was decided that MOC would amend the Cabinet Note to take into account the concerns of the State Governments, where the coal blocks were located. The Coal Mines (Nationalisation) Act, 1973 would need to be amended before the proposed competitive bidding became operational. Since this was likely to take considerable time, it was decided that MOC would continue to allot coal blocks for captive mining through the extant Screening Committee procedure till the new competitive bidding procedure became operational. In the meeting, Secretary (Coal) stated that “.....the competitive bidding procedure will only tap part of the windfall profit that accrued to the companies which were allocated captive coal blocks under the Screening Committee procedure for public purposes.....”.</p>
09.08.2005	<p>The PMO requested MOC to take urgent action as per the decisions taken in the meeting held on 25 July 2005.</p>
12.01.2006	<p>MoS stated that the PMO had taken a view to amend the Coal Mines (Nationalisation) Act which was a time consuming exercise and as such allowed the Department to proceed with the allocation of captive coal blocks under the extant mechanism. MoS stated that “.....several applications were received in respect of coal and lignite blocks already put on offer and which were under process and as such there was no immediacy in the matter and that the Note be resubmitted at an appropriate time keeping in view the issues involved.....”.</p>
07.02.2006	<p>Secretary (Coal) submitted a note to the Minister (Coal) through MoS, stating that the PMO had been pressing for expeditious submission of the Cabinet Note. The matter was seen by the Minister (Coal) on 07 March 2006.</p>
16.03.2006	<p>Secretary (Coal) approved the submission of the final note to the Cabinet Secretariat.</p>
07.04.2006	<p>A meeting was held in the PMO wherein it was generally felt that it</p>

	would be more appropriate to make an amendment in the Mines and Minerals (Development and Regulation) Act, (MMDR Act) 1957 so that the system of competitive bidding could be made applicable to all minerals covered under the said Act.
20.04.2006	Secretary (Coal) approved a draft note to the Ministry of Mines with a request to obtain the comments of the Department of Legal Affairs on the legal feasibility of the proposed amendment to the MMDR Act, 1957 to address competitive bidding.
27.04.2006	MoS opined that the issue to amend the MMDR Act should be revisited as it involved withdrawing the current powers of the State Governments and it had the potential to become a controversial issue. Minister of Coal stated that the views expressed by the MoS were appropriate and MOC should refrain from making suggestions which had implications for federal polity.
02.05.2006	The advice of the Minister (Coal) was sent to the Ministry of Mines to suggest appropriate modifications in the tentative draft. The draft with the suggestions of the Ministry of Mines was referred to the Ministry of Law and Justice, Department of Legal Affairs for their views on the legal feasibility of the proposed amendment.
15.09.2006	MOC communicated to the PMO and the Cabinet Secretariat that the Ministry of Law and Justice has advised MOC to initiate suitable measures for amendment of the MMDR Act, 1957 for addressing the Competitive Bidding.
17.10.2008	A Bill to amend the MMDR Act, 1957 was introduced in the Parliament by the Ministry of Mines.
31.10.2008	The Amendment Bill was referred to the Standing Committee on Coal and Steel for examination and report.
19.02.2009	The Standing Committee submitted its report to the Parliament and made certain recommendations.
10.08.2009	MoS held a meeting with the State Ministers of Mining and Geology of coal and lignite bearing States.
18.02.2010	The Minister (Mines) moved the motion for passage of the MMDR Amendment Bill, 2008 in the Budget Session of Parliament (2010) after the Cabinet approved (28 January 2010) the Cabinet Note.
09.09.2010	The MMDR Amendment Act, 2010 was notified in the Gazette of India (Extraordinary) after the same was passed by both the Houses of the Parliament in the Monsoon Session (26 July 2010 to 31 August 2010).

22.09.2010	The Secretary (Coal) chaired a meeting with the representatives of the Ministries of Power, Mines, Petroleum and Natural Gas, Steel, Department of Industrial Policy and Promotion and the Planning Commission to discuss various issues on finalisation of the modalities for competitive bidding as the selection process for allocation of coal and lignite blocks.
31.01.2011	Draft bid documents were discussed in the meeting of the Committee.
25.07.2011	A meeting with the stakeholders was convened by the Minister (Coal) to have further discussions on competitive bidding.
02.02.2012	Amendment in the MMDR Act, rules for auctions by competitive bidding of coal mines were notified.

In the above perspective the following audit observations emerge.

- The Government decided to bring in transparency and objectivity in the allocation process of coal blocks, with 28 June 2004 taken as the cut-off date. This process kept getting delayed at various stages. Even after a lapse of seven years, the same is yet to materialize (February 2012). As per the note of the Secretary (Coal), steps could have been taken to allocate coal blocks through competitive bidding as of September 2004. The revised procedure needed to be in place at the earliest so that the next round of allotment of captive coal blocks, after the cut- off date was through competitive bidding.
- MOC referred the matter of introduction of competitive bidding process for allocation of coal blocks to the Department of Legal Affairs (DLA) in June 2004 for seeking an opinion whether coal blocks could be allocated through auction/ competitive bidding route by making rules under the Coal Mines (Nationalisation) Act, 1973 (CMN Act) read with Mines and Minerals (Regulation and Development) Act (MMDR Act), 1957 and Mineral Concession Rules, 1960. After a series of correspondences and after two years DLA stated (28 July 2006) that it was open to the government to introduce the auctioning of coal mining blocks for captive use through competitive bidding as the selection process for allocation was possible by amending the existing administrative instructions and such a process could be governed by the provisions of the Indian Contract Act, 1872. **Thus, competitive bidding could have been introduced in 2006 (as per the advice of DLA in July 2006).** DLA also stated that the course which was to be adopted in the instant case, *i.e.*, to amend the Act or to effect changes in the administrative instructions, was a matter of policy to be decided by the referring Ministry. The same opinion was reiterated by the Law Secretary in August 2006 also.

- Despite such clear advice, MOC went ahead for allocation of coal blocks through Screening Committee and advertised in September 2006 for allocation of 38 coal blocks and continued with this process till 2009.
- Notwithstanding the clear advice of DLA (28 July 2006) that MOC might introduce the auctioning of coal mining blocks for captive use through competitive bidding as the selection process for allocation by amending the existing administrative instructions, there was prolonged legal examination of the issue which delayed the decision making process to move ahead with competitive bidding for allocation of coal blocks.
- As of June 2004, 39 coal blocks (net) stood allocated. During the period from July 2004 to September 2006 (till the time the matter was referred to the Ministry of Mines for taking action on the issue of amendment of MMDR Act for introduction of competitive bidding), 71 more blocks (net) were allocated. In all, since July 2004, 142¹¹ coal blocks (net) were allocated to various Governments and private parties following the existing process of allocation which lacked transparency, objectivity and competition. The position is shown in table below:

Allottees	OC/Mixed Mines		UG Mines		Total	
	No. of blocks	GR in million tonne	No. of blocks	GR in million tonne	No. of blocks	GR in million tonne
Govt.	49	19014.075	18	3435.967	67	22450.04
Pvt.	57	12105.181	18	2417.747	75	14522.93
Total	106	31119.256	36	5853.714	142	36972.97

While admitting the above facts, *the Ministry stated in March 2012 that the view that the system of bidding could be introduced through administrative instructions was given by the Ministry of Law and Justice (MoLJ) on 28 July 2006 for the first time and in the light of the conflicting opinions, a reference was again made. MoLJ in its opinion dated 30 August 2006 after clarifying rationale for earlier opinion, finally opined that the administrative ministry may initiate measures for amendment in the MMDR Act. Pending amendment in the Act, it proceeded to allocate coal blocks on the advice of the ECC of July 2006. Finally with the amendment in the MMDR Act, rules for auctions by competitive bidding of coal mines were notified on 2 February 2012 after inter ministerial consultations.*

¹¹ Out of 216 blocks (Para 5.1) allocated, 22 blocks (net) were de-allocated, 39 blocks were allocated prior to June 2004, 12 blocks were allocated to UMPP and one block pertains to SCCL.

Audit is not in agreement with the Ministry's contention as MoLJ had categorically mentioned on 28 July 2006 itself that the competitive route could be adopted through administrative arrangements. In fact, it was left to the MOC to take action for introduction of competitive bidding through administrative instructions. Amendment in the Act was advised by MoLJ (August 2006) on the request of the MOC that the process may be given legal footing.

4.3 Financial gains to the private parties

Delay in introduction of process of competitive bidding has rendered the existing process beneficial to a large number of private companies as had been observed by the then Secretary (Coal) in July 2004 itself.

Audit has attempted to estimate the financial impact of the benefit to the coal blocks allottees restricting itself to private parties. Briefly, the methodology adopted for estimating the benefit passed on to the allottees is as under:

- Captive coal blocks allocated to private parties can be mined either as Opencast (OC) mines, Underground (UG) mines or Mixed mines (i.e. partly as Opencast and partly as Underground).
- Out of 75 private allottees, 57 allottees were allotted blocks with OC/ Mixed mines. The financial impact of the benefit to the private allottees has been estimated confining to Open Cast (OC)/ OC reserve of Mixed mines only.
- Underground mines are mostly loss making as per available data regarding average cost of production from CIL's underground mines. However, underground mines are rich with superior grades of coal and private allottees may have an advantage over the cost of production by introducing new mining technology etc. In absence of reliable data regarding operating cost of UG mines by private parties, the UG mines have been excluded from the computation of financial benefit.
- In case of joint ventures of PSUs with the private parties, the allottee has been considered as Government parties and not included in the calculation of benefit.
- 12 coal blocks (GR: 4,846.26 million tonne) allocated for UMPPs were not considered as the same were allocated on the basis of tariff based bidding, where the coal blocks were included in the bids.
- Geological Reserve (GR) figure for each coal block has been taken from Mine Plans (MP) where available. In other cases figures available from the Status Report prepared by Coal Controller's Organisation or website of MOC have been considered.

- Where MP is available, the Extractable Reserve (ER) has been taken from MP. Where MPs are not available, the ER has been considered at 73 per cent¹² of GR in cases of OC blocks based on the Expert Committee Report on Road Map for Coal Sector Reforms (Chaired by Shri T.L. Sankar). The MOC had also stated that Mineable Reserve (MR) for OC would range between 75 and 80 per cent of GR. Thus the audit norm is conservative.
- In Mixed mines, where MPs were not available, the OC extractable reserve has been considered at 37 per cent¹³ of GR on conservative basis.
- Average per tonne cost of production of all grades of coal produced in open cast mines of CIL and its subsidiaries pertaining to the year 2010-11 as per Final Cost Sheet have been considered.
- Sale price has been taken on average basis of all grades of coal produced in OC mines of CIL for the year 2010-11 as per Final Cost Sheet.
- As per MOC, the Financing Cost ranges from ₹ 100 to ₹ 150 per tonne over and above CIL's cost of extraction. Therefore, an additional financing cost of ₹ 150 per tonne has been considered.
- Total extractable reserve of a coal block could be extracted over the lifetime of a block as per its mining plan. In the absence of future year wise quantity of coal extracted, sale price, cost price, financing cost etc pertaining to a coal block over its lifetime, Audit has taken the currently available audited figures (sale price, cost price, financing cost) of Coal India Limited (since CIL accounts for majority of coal production in the country) as reference values in order to arrive at financial gain to allottees on indicative basis.

Based on the above method, financial gain of ₹ 185,591.34 crore to private parties in respect of 57 OC /Mixed mines as on 31 March, 2011 has been calculated by audit and summarized in the table below:

¹² Working of 73 per cent : Let, Gross GR = 100 MT, Net GR = 90 MT (Gross GR – 10% of Gross GR), MR = 81 MT (Net GR – 10% of Net GR). The Extraction or Recovery Ratio of MR in OC mines = 72.9 MT, say 73 MT (90% of 81 MT). As per the Expert Committee, the Extraction or Recovery ratio is as high as 90-95 % of mineable reserve in OC mines.

¹³ 37% has been worked out based on the average quantity of Extractable OC reserves of Mixed mines where Mine Plans were available.

Particulars	Extractable Reserves of OC (Figure in million tonne)	Average Sale Price of all grades of CIL OC Mines for 2010-11 (₹ per tonne)	Average Cost Price of all grades of CIL OC Mines for 2010-11 (₹ per tonne)	Financing Cost as stated by MOC (₹ per tonne)	Net Gain (₹ per tonne)	Financial Benefit (₹ in Crore)
Opencast Mines allocated to Private Parties (Annexure-III)	3,969.890	1028.42	583.01	150	295.41	117,274.52
Mixed Mines allocated to Private Parties where Mining Plans are available (Annexure-IV)	1,010.575	1028.42	583.01	150	295.41	29,853.40
Mixed Mines allocated to Private Parties where Mining Plans are not available (Annexure-V)	1,302.035	1028.42	583.01	150	295.41	38,463.42
Total	6,282.500					185,591.34

A part of this financial gain could have been tapped by the Government by taking timely decision on competitive bidding for allocation of coal blocks.

The Ministry stated (February and March 2012) that:

- *The inference that the Government wanted to tap a part of it through competitive bidding appeared to be based on incomplete appreciation of the circumstances prevailing then and sequence of events thereafter;*
- *The coal produced from captive blocks was not available for commercial sale. Further 17 coal blocks were allotted to power sector where tariff is regulated on the basis of input costs and the transfer price of coal is assessed on actual cost basis;*
- *In the case of steel and cement sector, though prices of end products are not regulated but a competitive market ensures the best benefit for the consumers;*
- *Allocation through screening committee route was in vogue for 15 years and allocation was not looked as potential source of revenue for central government but*

with the intent to induce rapid development of infrastructure. There would not be any gain to allottees as CIL was not in a position to supply additional coal to the allottees.

The contention of the Ministry is not acceptable to Audit in view of the following:

➤ In the meeting held in the PMO on 25 July 2005 to discuss competitive bidding as a selection method for allocation of coal and lignite blocks for captive mining, it was observed that the rational method would ensure that the cost of coal through the competitive bidding route is less than that of coal sourced from CIL or imports. **Secretary (Coal) had then stated that the competitive bidding procedure will only tap part of the profit that accrued to the companies which were allocated captive coal blocks under the screening committee procedure for public purposes.** It was further deliberated in the said meeting that CIL and SCCL should address the national concerns of energy security. While private captive blocks would be available to the allottees for their own needs alone they would not require to carry a huge cost of social overheads and excessive manpower like that of CIL or SCCL. It was thus clear that MOC itself had acknowledged that there was gain to the allottees of coal blocks.

➤ Most importantly, the contention of MOC in 2004-2006 when it was making attempts to introduce transparency/ competition in allocation of coal blocks was exactly along the lines of the conclusions of audit. The Hon'ble Supreme Court, in the judgement on 2G spectrum, has also directed to introduce transparency/competition in allocation of scarce natural resources.

Therefore, audit is of the strong opinion that there is a need for strict regulatory and monitoring mechanism to ensure that the benefit of cheaper coal is passed on to the consumers.