

Chapter 5 - The e-Auction

The e-auction process in the 1st tranche was carried out from 14 February 2015 to 22 February 2015 and in the 2nd tranche from 04 March 2015 to 13 March 2015 as detailed in Chapter 2 of the report. A total of 38 coal mines were put up for auction in these two tranches, out of which 29 coal mines were successfully auctioned.

5.1 Ranking and Qualification of Bidders

Standard Tender Document (STD) - for both power and non-regulated sectors – provided (Clause 3.3.2) that the initial price offers (IPOs) of technically qualified bidders (TQBs) would be opened and they would be ranked on the basis of ascending/descending IPOs. TQBs who held first 50 *per cent* of the ranks or five TQBs, whichever was higher, would be considered as qualified for participating in the e-auction i.e. the qualified bidders (QBs). Further, the Act [Section 4 (3) (b)] and the STD (Clause 4.1.1) also provided that a joint venture company (JV) formed by two or more companies having a common specified end use (SEU) and which were independently eligible to bid in accordance with the Act, would be eligible to participate in the e-auction.

Out of 29 coal mines successfully auctioned, in 11 coal mines (two power sector and nine non-regulated sector) there was participation by the same company/parent-subsidiary company coalition/JV coalition bidding for different specified end use plants (SEUPs) (**Annexure IV**). In these cases:

- The total numbers of QBs ranged between four and seven and independent QBs¹², in Stage II, were between three and five.
- QBs ranging between two and three were from the same company/parent-subsidiary company coalition/JV coalition bidding for different SEUPs.
- In five out of these 11 cases, the competition at the Stage II bidding was effectively between one to three bidders.

Resultantly, Audit could not draw an assurance that the potential level of competition was achieved during the Stage II bidding of these coal mines.

Further, the STD did not prohibit splitting up of the units of a specified end use plant (SEUP) into different SEUPs for the purpose of participating in the coal mines auction. A company/

¹² A qualified bidder, which is not from the same company/parent-subsidiary company coalition/JV coalition as of the other qualified bidders for auction of a particular coal mine.

its JV coalition, while participating in the auction of a particular mine, projected different units/phases of a SEUP as separate SEUP and submitted bids for each such unit/phase (separately or in various permutations/combinations) through the parent company and its JV company.

A case study of the e-auction of a coal mine is given below, which showcases the means adopted by the bidders, within the provisions of the extant rules and contractual framework, to increase their presence in the auction through the combined operation of the clause allowing participation of JVs in one auction as separate entities and the fact that the STD did not prohibit splitting up of units of one SEUP into different SEUPs.

Case Study: Auction/ Vesting of Coal Mine ‘X’

A case study of how one of the companies, following the provision of the rules and the STD, increased its participation in the e-auction of this coal mine:

| | | |
|----------------------|-----------------------------------|---|
| Schedule – II | Prior Allottee - Company A | Technical Bids Received – Six ; Qualified Bidders – Five |
|----------------------|-----------------------------------|---|

- Qualified Bidders:

| | |
|--|--------------------------------|
| Company A | Same Group Company |
| Company B (a subsidiary of Company A) | |
| Company C (a subsidiary of Company A and which also had shareholding of Company D i.e. another subsidiary of Company A) | |
| Company E | Independent Bidders |
| Company F | |

- Company A became the holding company of Company C on the last date of sale of tender document.
- Two companies i.e. Company E and Company B did not participate in the bidding.
- Company C bid only once, from the same IP address as that of Company A.
- Company A bid for power plant ‘P’ (Unit I and II) as its SEUP; Company C bid for power plant ‘P’ (Unit III) and a power plant of Company D as its SEUPs

On the culmination of the Stage II bidding, Company A was declared as the ‘Preferred Bidder’ for its SEUP i.e. power plant ‘P’ (Unit I and II).

The annual ‘coal requirement’ of the power plant ‘P’ (Unit I and II) i.e. the SEUP of Company A, was 66 *per cent* of the annual production of the Mine ‘X’, within the STD provisions. The annual requirement of power plant (Unit III) i.e. one of the SEUPs of Company C was 11 *per cent* of the annual coal production of Mine ‘X’. But, Company A projected power plant (Unit III) as a separate SEUP and bid it through Company C. After becoming the successful allottee of the coal mine ‘X’, Company A issued request for diversion of coal for its various other power plants including power plant ‘P’ Unit III.

Ministry of Coal (MOC) informed that the conjoint operation of Clauses 4.1.2 (d) [Limitations on number of bids] and 3.3.2 of the STD was challenged in Delhi High Court in Sharda Energy and Minerals Ltd. V/s Union of India, wherein the Hon'ble High Court had observed that the methodology adopted appeared to be working well.

Audit, however, noted that for the coal mines auctioned in the 3rd tranche, the STD provided, *“in the event that Qualified Bidders are the same Company or Corporation or the Qualified Bidders belong to the same Group and they have submitted distinct Initial Price Offers, then the Technically Qualified Bidders at next such number of ranks which shall be equal to total number of ranks held by such Qualified Bidders in the first fifty per cent of the ranks minus Number of Distinct Qualified Bidders, shall also be declared as Qualified Bidders.”* Operation of this clause apparently had the implication on same company/parent– subsidiary company coalition/JV coalition bids, which were technically qualified, being treated as one bid for the purpose of ranking and qualification of qualified bidders.

MOC in its replies (October/November 2015 and March 2016) and also during the Exit Conference (March 2016) stated that:

- Joint ventures actually enabled smaller companies to participate in the auction and thus increased competition.
- Even after the participation of a company and its JV with own subsidiary company/ another company, there were at least three independent companies which participated in all the e-auctions.

MOC's reply needs to be viewed in light of the following:

- In order to *overcome the possibility of misuse of the provision and to prevent a company submitting multiple bids to stifle competition in Final Price Offer (FPO)*, MOC has made changes in the Clause 4.1.1, containing the provision for participation of JVs with the *objective of increasing the overall competition*, for the coal mines auctioned in the 3rd tranche.
- As detailed in **Annexure IV**, the total numbers of independent bidders were lesser than the total numbers of QBs.
- Most of the 'ready' and 'ready to produce' mines identified for allocations through auctions had been put up for auction in the first two tranches.

Audit could not draw an assurance that the potential level of competition was achieved during the Stage II bidding of 11 coal mines auctioned in the first two tranches. This was due to the provision of allowing the same company/parent-subsidiary company coalition/JV coalition to independently participate in e-auction of a particular coal mine, when there was a cap on the number of technically qualified bidders being allowed participation during the Stage II bidding.

5.2 Technical Disqualification of a Bidder

West Bengal Power Development Corporation Limited (WBPDCCL) submitted its bid for participation in the e-auction of Sarisatolli and Trans Damodar coal mines (both Schedule II power sector coal mines). These mines were put up for auction in the 1st tranche and the STD was issued on 27 December 2014. As per the Schedule I of the Act, WBPDCCL was the prior allottee of five¹³ Schedule II coal mines. However, the mining leases for these coal mines were executed in favour of Bengal Emta Coal Mines Limited, a JV between WBPDCCL, Durgapur Projects Limited and Emta Coal Limited.

Audit noticed that the bids of WBPDCCL for Sarisatolli and Trans Damodar coal mines were technically rejected (26 February 2015) with the observations of the technical committee that it *'is a prior allottee and has not deposited such levy within the prescribed time'*. In this connection, it was noticed that:

- In terms of the STD, one of the pre-requisites for participating in the e-auction of coal mines was that in the event that a bidder was a prior allottee, then it must have paid the additional levy within the time period prescribed in the Rule.
- The Coal Mines (Special Provisions) Second Ordinance was promulgated on 26 December 2014. As per Section 3 (1) (n) of the Ordinance, *"prior allottee" means prior allottee of Schedule I coal mines as listed therein whose allotments have been cancelled pursuant to the judgment/orders of the Hon'ble Supreme Court.* However, an *'Explanation'* was given below this definition, which provided that *'In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I coal mines, then, the third party shall be deemed to be the prior allottee'*.
- As the mining lease for these coal mines were executed in favour of Bengal Emta Coal Mines Limited, WBPDCCL was not a prior allottee in terms of the *'Explanation'* given

¹³ Tara (West); Gangaramchak; Gangaramchak Bhadhulia; Barjora; and Pachwara (North).

below the definition of prior allottee. Hence, the rejection of bids of WBPDCCL for Sarisatolli and Trans Damodar on this ground was not correct.

- Further, WBPDCCL was allotted six coal mines (through the allotment route)¹⁴ on 26 March 2015 (date of issue of vesting order), taking cognizance of the 'Explanation' given below the definition of 'prior allottee' in the Act.

MOC stated (March 2016) that as per the schedules to the Coal Mines (SP) Act, 2015, WBPDCCL was the prior allottee for Barjora, Gangaramchak and Gangaramchak-Bhadulia. It was therefore, technically disqualified from participation. After the amendment (26 December 2014) wherein it was clarified that in the event the mining lease had been executed in favour of third party, then the third party would be treated as the prior allottee, it was determined that though the prior allottee for Tara East and West coal mines was WBPDCCL, the mining lease had been executed in favour of Bengal Emta Limited and therefore, the liability to pay the additional levy did not lie with WBPDCCL and it was, therefore, qualified for the allotment.

During the Exit Conference (March 2016), MOC stated that as the name of WBPDCCL was in the list of prior allottees in the Schedule I, the bid was technically rejected.

MOC's reply needs to be viewed in light of the facts that as per the explanation given with the definition of prior allottee in the Second Ordinance promulgated on 26 December 2014, in case a mining lease has been executed in favour of a third party, then, the third party shall be deemed to be the prior allottee. Sarisatolli and Trans-Damodar coal mines were put up for auction in the 1st tranche on 27 December 2014 i.e. after the definition of prior allottee had already been clarified. Thus, WBPDCCL was not a prior allottee in terms of the 'Explanation' of the amended definition for any of the mines including any of the three mines¹⁵, even though its name featured in the Schedule I of the Ordinance and its bid should have been considered especially as MOC allotted six coal mines to WBPDCCL in March 2015 taking cognizance of the 'Explanation' of 26 December 2014.

Disqualification of WBPDCCL from participating in the auction of Sarisatolli and Trans-Damodar coal mines, on the basis of it being a prior allottee and not depositing the additional levy within the prescribed time, was not as per the existing provisions.

¹⁴ Tara (East) & Tara (West); Gangaramchak & Gangaramchak Bhadhulia; Barjora; Barjora (North); Kasta (East) and Pachwara (North).

¹⁵ Gangaramchak & Gangaramchak Bhadhulia; Barjora as stated by MOC in its reply

5.3 Re-examination of Selected Cases by MOC

Clause 3.3 of the Standard Tender Documents (STDs) for auction of both power sector coal mines and non-regulated sector coal mines described the process to be followed for the auction. As per the provisions of the said clause, the qualified bidder who submits the lowest price offer for power sector coal mines and highest price offer for non-regulated sector coal mines was to be declared as the preferred bidder. The Nominated Authority recommended the preferred bidder to the Central Government as provided under provisions of Rule 10 (9) of the Coal Mines (Special Provisions Rules) 2014 for selection of successful bidder. Rule 10 (10) of the said Rules empowered the Central Government to direct the Nominated Authority to issue vesting order for the coal mine in favour of the successful bidder or provide such other binding directions to the Nominated Authority as deemed appropriate.

Clause 3.3.2 of the STD stated that the Nominated Authority shall evaluate the technical bid against the Eligibility Conditions and against the Test of Responsiveness in accordance with Clause 3.4 of the STD. Clause 3.4 laid down the parameters that the Nominated Authority should consider with respect to responsiveness of the technical bid. These parameters *inter alia* included compliance with prescribed format and procedure, documentary evidence to support eligibility conditions to participate in the auction, availability of all required information including initial price offer, presence of any condition or qualification included by the bidder, limiting the technical bid to a particular End Use Plant and any other parameter considered relevant by the Nominated Authority.

Audit could not find any laid down parameters for evaluation of the final price bids before the Nominated Authority made recommendation to Central Government on the preferred bidder except the provisions of Clause 3.3.2 (c) of the STD which stated that the qualified bidder that submits the lowest price offer for power sector coal mines and highest price offer for the non-regulated sector coal mines shall be declared as the 'Preferred Bidder'. Similarly, Audit could not find any laid down guidelines to be followed by the Central Government before giving directions to the Nominated Authority on the recommendations made by the said Authority. The absence of broad guidelines for evaluation of final price bids by the Nominated Authority and the Central Government, may, in the opinion of audit, impact the degree of robustness, transparency and fairness of the bidding process.

MOC in its replies (December 2015 and March 2016) and during the Exit Conference (March 2016) stated that there are numerous factors which influenced the decision of the bidder while bidding for a mine and that those factors varied from bidder to bidder while bidding for a particular coal mine. Further, considering the fact that the auction was being undertaken for the first time, absence of past precedent and data, and the issues being contextual, it would not be feasible to formulate broad guidelines/criteria incorporating all the relevant aspects. MOC also referred to the opinion of the Ld. Attorney General (AG) that the absolute right to cancel the auction/tender process lies with the tendering authority, which is subject to it being bonafide and free from arbitrariness. If the Government were to frame such guidelines, it would undermine its absolute right to safeguard its economic interests.

MOC's reply needs to be viewed in light of the following:

The Nominated Authority made the recommendations in respect of the preferred bidder for a total of 11 coal mines of power sector and 21 coal mines of non-regulated sector that were put to auction during 14 February 2015 and 9 March 2015 solely on the basis of amount of bid received as per provisions of Clause 3.3.2 (c) of the STD. However, the Ministry returned the cases of eight coal mines (two power sector coal mines and six non-regulated sector coal mines) to the Nominated Authority for re-examination and giving its recommendations for consideration of the competent authority. These cases were identified as needing re-examination on the basis of lower number of bids made by the qualified bidders.

Audit observed that the Nominated Authority evaluated the final price bids of each of these eight cases during the re-examination on the basis of parameters consisting of total number of bids received in those cases vis-à-vis other coal mines of same sector put to auction during the same period, the coal requirement that would have been met for each bidder (End Use Plant of the bidders), the value of bids received vis-à-vis other coal mines of same sector put to auction during the same period and the quantum of increment achieved over the applicable floor/ceiling price. Nominated Authority submitted the results of evaluation on the basis of the above parameters to the Ministry with an overall conclusion that there was no conclusive proof of collusive bidding and there was no complaint received regarding obstruction of bidders or any procedural irregularity and requested the Ministry to take an appropriate decision on the matter.

Audit observed that the Ministry reviewed the recommendations of the Nominated Authority and examined these eight cases. On the basis of this examination, the Ministry rejected the

recommendation of the Nominated Authority for declaration of the 'Preferred Bidder' as 'Successful Bidder' in respect of three coal mines (two power sector coal mines and one non-regulated sector coal mine). In respect of the other five cases, the 'Preferred Bidder' was declared as 'Successful Bidder'.

Audit observed that the preferred bidders of the coal mines for which the recommendations of the Nominated Authority were rejected filed petition before the Hon'ble High Court of Delhi for setting aside the order cancelling the auction on the grounds of, *inter alia*, unreasonableness and arbitrariness of the action of cancellation.

The reply of the Ministry that broad guidelines for evaluation could not be laid down is not acceptable since both the Nominated Authority and the Ministry have applied certain parameters while deciding on the acceptability or otherwise of the eight bids subjected to re-examination.

While not commenting on any individual case, Audit is of the view that guidelines incorporating the parameters to be applied by the Nominated Authority and by Ministry of Coal for evaluation of final bid prices would enhance the transparency of the bidding process and may eliminate avoidable litigation.

5.4 e-Auction of Power Sector Coal Mines

Generation of power is an important end use of coal production. As already discussed in Chapter 2, coal mines were specifically earmarked for power sector and a separate methodology was prescribed for auction of these power sector coal mines. These mines were auctioned with the twin objectives of increasing the generation of power along with providing cheaper coal for the benefit of consumers of power.

Audit noticed that auction of coal mines for power as SEU was meant for power plants with:

- (a) Generation capacity having cost-plus power purchase agreements (PPAs), or tariff based PPAs; and;
- (b) Generation capacity to be contracted in future through cost plus PPAs/tariff based PPAs (Case-1)¹⁶.

¹⁶ Case-1 PPAs were those where fuel sourcing is entirely the responsibility of the bidder.

The tariff for power generated by various power stations was decided on the basis of capacity charge (fixed cost) and energy charge (variable cost).

As power sector coal mines were planned to be allocated on the basis of reverse bidding at cheaper rates, it was important that the benefit of cheaper coal was passed on to the consumers. For this objective, it was provided in the Cabinet Committee on Economic Affairs (CCEA) approved methodology for valuation of coal mines that, in respect of all existing and future PPAs, the appropriate commission (concerned electricity regulatory commissions) should ensure that the energy charges quoted under PPAs were based on the actual bid price of coal and make necessary revisions in the ongoing PPAs also to that effect.

As brought out at Para 2.7.1.2 of Chapter 2 of this report, reverse then forward bidding was introduced in corrigendum No. 3 to the STD as the methodology for conducting e-auction of power sector coal mines.

Audit noticed that an approach paper for 'auctioning of coal mines' was prepared and placed in the public domain on 17 December 2014 for comments and some of the comments received on the approach paper were considered. The STD was uploaded on MSTC website on 27 December 2014. A reverse bidding scenario had the inherent possibility of the bids reaching zero, which was also brought (22 December 2014) to the notice of the Ministry, during the process of seeking comments on the approach paper. However, a new aspect in the bidding process i.e. reverse then forward bidding (which catered to the possibility of reverse bidding reaching zero) was introduced on 31 January 2015, i.e. after more than a month from the tender uploading date which was the bid due date itself. The bid due date was thereafter extended to 3 February 2015.

The basis of the change in the auction methodology from 'reverse' to 'reverse then forward' for power sector coal mines was not available in the records furnished to Audit.

MOC stated (March and April 2016) that during the process of public consultations, one such possibility (reverse then forward bidding) was expressed among more than hundred comments received; however, it did not seem plausible. Subsequently, consultations were held and such bidding pattern seemed possible. This remote possibility was also factored in the auction design before due date. Revised auction methodology was formulated in consultation with SBI Capital Markets Limited, draft of which was received on 31 January 2015. As per the Clause 5.8.1 of the tender document, NA had the right to issue addendum/corrigendum to the document from time to time till the bid due date.

5.4.1 Sustainability of Model Adopted for e-Auction of Power Sector Coal Mines

Audit noticed that certain conditions were laid down in the bidding documents, corrigenda and pre-bid conferences as to the cost which could be charged from the tariff for electricity produced and supplied. When a bidder was declared as a successful bidder, two scenarios emerged with respect to recovery of the costs, as given below:

Table 4 : Scenarios of Recovery of Costs

| Scenarios | Costs that could be passed through |
|--|--|
| Scenario I: Reverse bidding | <ul style="list-style-type: none"> The final price offer (run-of-the-mine cost, pursuant to which the successful bidder has received the vesting order); and; The fixed rate¹⁷ (₹100 per tonne) |
| Scenario II: Reverse then forward bidding | <ul style="list-style-type: none"> The fixed rate (₹100 per tonne) |

Audit noticed that all the nine¹⁸ mines of the power sector, auction of which had been successfully completed, were auctioned at additional premium ranging between ₹202 per tonne and ₹1,010 per tonne. Additional premium was not allowed to be charged from the power consumers under the ‘reverse then forward’ methodology with the objective of keeping the tariff low.

In this scenario, the risk of non-compliance with contractual conditions and commitments can be high, necessitating a robust monitoring system for sustainability of the model.

On an audit enquiry in this regard, MOC replied (December 2015 and March 2016) that:

- All the bidders were fully aware of all the terms and conditions including the provision that the additional premium shall not be reckoned for the purposes of determination of tariff for electricity. They were free to bid after considering their own viability. In an open auction it was not possible to restrain bidders from bidding in any manner. Such restrictions would have invited severe criticism and possible charges of causing loss to the exchequer. It would have also been in contravention to Article 19 of the Constitution.

¹⁷ It is the minimum “reserve price” fixed as per the order of MOC dated 26 December 2014 on “methodology for fixing floor/ reserve price for auction and allotment of coal mines/ blocks”

¹⁸ Schedule II – Talabira-I, Sarisatolli, Trans-Damodar, Amelia North and Tokisud North; Schedule III – Jitpur, Mandakini, Ganeshpur and Utkal C

- It would not be correct to say that the impact of the non-recovery of cost may affect the objective of providing cheaper coal to the power sector as the successful bidders have undertaken to provide coal at nominal cost to power producers. Coal is but one component of the total cost and the power producer can lower the overall cost through efficiency gains. In case the successful bidders are unable to sustain their operations, the NA has fully secured the amounts due to the Government by obtaining bank guarantee.
- Out of the five Schedule II power sector coal mines, which were successfully auctioned, three coal mines had started production and were regularly making monthly payments.

Reply of MOC may be viewed in light of the fact that:

- The concept of reverse then forward bidding was introduced on the originally scheduled last day of submission of bids for the 1st tranche. Further, as per MOC reply, the possibility of bids touching zero did not seem plausible during formation of the STD and subsequently consultations were held and such bidding pattern seemed possible. This scenario indicates that the model for auction of power sector coal mines was conceptualised in a fragmented manner.
- As various charges/costs for mining of coal were non-recoverable, the risk of non-compliance with the contractual obligations and commitments relating to production and utilisation of coal was higher.
- Further, it has been noticed that the monitoring system itself was vulnerable due to inadequacies in its planning and implementation, as commented upon in Chapter 8 of this Report.
- Also, the bank guarantees themselves were valid only till the time the mines achieved their peak rated capacity. Thereafter, the amount due to the Government would not be secured by any bank guarantee.

Since the objectives of auction of coal mines for the power sector were to augment power production for benefit of the economy and to provide cheaper coal to the power sector for the benefit of consumers of power, Audit is of the view that the above stated weaknesses in the system may affect the sustainability of the model adversely in the long run.

5.4.2 Merchant Power

Merchant power was described as sale of power outside medium and long term PPAs by the power companies and the price of such power was not regulated. As discussed in Para 2.7.1.3 of Chapter 2 of the report, the successful bidders were mandated to cap their merchant capacity at 15 *per cent* of the generation capacity linked to the allotted coal mines. This provision was apparently incorporated to ensure that the benefit of cheaper coal was passed on to the power consumers through the regulated sale of power.

Audit noticed that the “Methodology for fixing floor/reserve price for auction and allotment of coal mines/blocks”, as approved by CCEA, stipulated (in respect of the coal mine for power sector), *inter alia*, that a ‘reserve price of ₹100 per tonne of coal shall be payable, as per actual production by the successful allottee’. It also stipulated that ‘the bidder shall have to pay an additional reserve price for the quantum of coal used for power sold in the merchant market. The additional reserve price for coal used for merchant sale of power shall be based on the intrinsic value of the coal mine/block...The additional reserve price shall not be less than ₹ 150 per tonne’. Evidently, the objective of the Government was to charge higher rates for coal utilised for production of power sold on merchant basis as such power was to be sold in the open market where the power tariff was not regulated.

Audit noticed that along with the corrigendum to STD issued for introducing the concept of reverse then forward bidding and ‘Additional Premium’, an additional provision was added in the STD, which provided that “the Additional Premium is **not payable** on the quantum of coal utilized for generation of such power sold on merchant basis”.

Inclusion of the provision for not including additional premium on the quantum of coal utilised for generation of power sold on merchant basis did not appear to be in consonance with the CCEA approval, as it resulted in a scenario where the power producers would be paying less amount to the Government on coal utilised for producing power which would be sold on merchant basis, where prices are not regulated, as compared to the coal utilised for production of power sold under PPAs where benefits of cheaper coal is to be passed on to the power consumers. Details are depicted in the table on next page:

Table 5 : Impact of Non-Recovery of Additional Premium for Power Sold on Merchant Basis

| S. No | Coal mine | Allottee | Fixed rate for power to be sold under PPAs (in ₹ per tonne) | Additional premium (in ₹ per tonne) | Rate of coal utilised for generation of power to be sold under PPAs (in ₹ per tonne) | Rate of coal utilised for generation of power to be sold on merchant basis (in ₹ per tonne) | Difference (in ₹ per tonne) |
|-------|---------------|--|---|-------------------------------------|--|---|-----------------------------|
| (A) | (B) | (C) | (D) | (E) | (F)=(D)+(E) | (G) | (H = F-G) |
| 1. | Talabira-I | GMR Chhattisgarh Energy Limited | 100.00 | 378.00 | 478.00 | 262.86 | 215.14 |
| 2. | Sarisatolli | CESC Limited | 100.00 | 370.00 | 470.00 | 426.49 | 43.51 |
| 3. | Trans Damodar | The Durgapur Projects Limited | 100.00 | 840.00 | 940.00 | 150.00 | 790.00 |
| 4. | Amelia North | Jaiprakash Power Ventures Limited | 100.00 | 612.00 | 712.00 | 345.15 | 366.85 |
| 5. | Tokisud North | Essar Power MP Limited | 100.00 | 1010.00 | 1110.00 | 326.49 | 783.51 |
| 6. | Jitpur | Adani Power Limited | 100.00 | 202.00 | 302.00 | 150.00 | 152.00 |
| 7. | Mandakini | Mandakini Exploration and Mining Limited | 100.00 | 550.00 | 650.00 | 358.26 | 291.74 |
| 8. | Ganeshpur | GMR Chhattisgarh Energy Limited | 100.00 | 604.00 | 704.00 | 273.10 | 430.90 |
| 9. | Utkal – C | Monnet Power Co. Limited | 100.00 | 670.00 | 770.00 | 150.00 | 620.00 |

Further, the ‘revised fixed rate’ for generation of merchant power was to be based on the intrinsic value of coal mine. However, as observed in Para 4.1 of Chapter 4 of this Report, the calculation of intrinsic value was fraught with various deficiencies and as a result, the revised fixed rates themselves were fixed on a lower side.

MOC stated (March 2016) that the term used in the CCEA Order was additional reserve price while in the tender document the equivalent term used was fixed rate. In accordance with the CCEA approval the tender document for power sector mines stipulated that a ‘fixed rate’ shall be payable on the quantum of coal utilised for generation of power sold on merchant basis. This was to be based on the intrinsic value of the coal mine as stipulated by the CCEA, which was to be arrived at as per the existing approved methodology for the non-regulated sector but would not be less than ₹150 per tonne. MOC further stated that it was correct that the coal used for merchant power was to cost more than the coal used for generation of

electricity to be sold at regulated rates and was faithfully complied with in the auction process as the 'Fixed Reserve Price' for non-merchant power for all the power sector coal mines were ₹100 per tonne whereas the 'Fixed Rate' of coal for sale on merchant basis ranged between ₹150 per tonne and ₹426 per tonne and therefore, Audit view was not correct.

MOC, during the Exit Conference (March 2016), also stated that the reason for exclusion of additional premium on merchant power was because there was no provision for it in the methodology approved by CCEA. Moreover, as the mines were allocated through open public auction and there was no information asymmetry, the bidders would have taken all the available factors into consideration and bid accordingly. Therefore, it would not have any impact on the total revenue to accrue to the exchequer.

MOC's reply needs to be viewed in light of the following:

- The terms used and their implications are as depicted below:

Table 6 : Implementation of the Concepts of Pricing of Coal for Power Sector in the Standard Tender Document (STD)

| Particulars | Concept of pricing as per CCEA approved order | Original STD | Revised STD |
|--|--|------------------------------|--|
| For coal used for power generation (regulated sales) | Reserve price of ₹100 per tonne | Fixed rate of ₹100 per tonne | Fixed rate of ₹100 per tonne plus additional premium |
| For coal used for generation of merchant power | Additional reserve price (based on intrinsic value and not less than ₹150 per tonne) | Revised fixed rate | Revised fixed rate (additional premium was not to be paid) |

- The CCEA approved methodology of December 2014, prescribed that a ceiling price for power sector coal mine would be fixed, which would be the CIL notified price for the equivalent grade, and the bidders would be mandated to quote lower than the ceiling price. The bidder quoting the lowest would be the successful bidder. It also prescribed that a reserve price/fixed rate of '₹100 per tonne' was required to be paid for coal extracted and utilised for generation of power to be sold under PPAs and additional reserve price/revised fixed rate of 'not less than ₹150 per tonne' was to be paid for coal utilised for generation of power sold under merchant basis, i.e. the coal used for generation of merchant power was to cost more than the coal used for generation of power to be sold under PPAs. Further, MOC's contention that the intrinsic value was to be arrived at as per the existing approved methodology for the non-regulated sector

should be seen in light of the fact that the CCEA approval provided that the intrinsic value “*can be arrived at with the existing approved methodology for steel/sponge iron/cement sectors/captive power*”.

- The concept of reverse then forward auction for power sector and the concept of additional premium arising therefrom were introduced only in January 2015 i.e. after the CCEA had approved the methodology for fixing floor/reserve price for auction and allotment of coal mines/blocks. Hence, the CCEA approved methodology did not contain any provision regarding reverse then forward auction or the additional premium.
- As per the corrigendum No. 3 to the STD, the additional premium was payable for coal extracted and utilised for generation of power to be sold under PPA, in addition to the fixed rate of ₹100 per tonne. However, payment of the additional premium, for coal extracted and utilised for generation of merchant power, was explicitly excluded.

Due to exclusion of payment of additional premium on coal used for generation of the power sold on merchant basis, the total payments¹⁹ made for generation of power to be sold under PPAs would be more than the total payments²⁰ made for generation of power to be sold on merchant basis (where the power tariff was not regulated). This appeared to be not in consonance with the objectives of the CCEA approval in this regard.

¹⁹ Fixed rate + additional premium (for power sold under PPAs)

²⁰ Only revised fixed rate (for power sold on merchant basis)