

## Chapter 1 - Introduction

### 1.1 Background

Coal is a natural mineral and one of the largest sources of energy in the world. It is used as a fuel for generation of electricity and for industrial purposes such as refining metals etc. The Indian Constitution has put mines and mineral development at entry 54 of the List I of Seventh Schedule of the Constitution, i.e. Union List. Therefore, the Parliament is competent to legislate for its regulation. Between 1993 and 2011, the Central Government allocated 218 coal blocks through the Screening Committee<sup>1</sup> route and through Government dispensation route<sup>2</sup>. The Comptroller and Auditor General (C&AG) of India in its Performance Audit (PA) Report No. 7 of 2012-13 for the year ended March 2012 highlighted the issues of lack of transparency and objectivity in the allocation process of coal blocks and financial gains of ₹1.86 lakh crore to the private parties, a part of which could have been tapped by the Government by taking timely decision on competitive bidding for allocation of coal blocks. The said report of C&AG of India was under examination of the Public Accounts Committee. The Hon'ble Supreme Court of India in its judgment<sup>3</sup> (25 August 2014) held that the allotment of coal blocks made by the Screening Committee of the Government of India (GoI) since 1993, as also the allotments made through the Government dispensation route, were arbitrary and illegal. Thereafter, the Hon'ble Supreme Court pronounced its order on 24 September 2014 and cancelled the allocation of 204 coal blocks. Cancellation in case of 42 coal blocks under 'producing' and 'ready to produce' category was to take effect from 31 March 2015. The remaining 162 coal blocks stood cancelled from the date of the Hon'ble Supreme Court's order. The allottees of the 42 coal blocks were required to pay an amount of ₹295 per metric tonne (PMT) of coal extracted till 31 March 2015, as an additional levy.

After the cancellation of the allocation of the coal blocks by the Hon'ble Supreme Court in September 2014, the GoI, within a short span of time, laid down the framework and successfully auctioned 29 coal mines in two tranches by March 2015.

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<sup>1</sup> The Screening Committee consisting of Additional Secretary, Ministry of Coal (MOC) and Advisor (Projects), MOC, Joint Secretary, and Financial Advisor, representatives of Ministry of Railways, Power and the concerned State Government as member was constituted by the Government of India (GoI) in July 1992 for screening proposals received for captive mining by the private power generation companies.

<sup>2</sup> The direct allocation of coal blocks made by MOC for Public Sector Enterprises for captive use or commercial mining was termed as Government dispensation route.

<sup>3</sup> Manohar Lal Sharma V/s the Principal Secretary & Others (Writ Petition (CRL.) No. 120 of 2012)

## 1.2 Sequence of Events

The sequence of events, subsequent to cancellation of allocation of 204 coal blocks by the Hon'ble Supreme Court, was as given below:

**Table 1 : Sequence of Events**

Date	Event
21 October 2014	Promulgation of Coal Mines (Special Provisions) Ordinance, 2014 to empower the Government to re-allocate 204 coal blocks cancelled by the Hon'ble Supreme Court
29 October 2014	Pursuant to Section 6 of the Ordinance, the GoI appointed Nominated Authority (NA) to take all the necessary action for allocation of cancelled coal blocks
11 December 2014	Notification of Coal Mines (Special Provisions) Rules, 2014 to operationalise provisions of the said Ordinance
26 December 2014	Promulgation of the Coal Mines (Special Provisions) Second Ordinance, 2014
27 December 2014	Uploading of Standard Tender Document (STD) on MSTC Limited website
14 February 2015 – 22 February 2015	Auction for 1 <sup>st</sup> tranche
04 March 2015 – 13 March 2015	Auction for 2 <sup>nd</sup> tranche
30 March 2015	Notification of Coal Mines (Special Provisions) Act, 2015

## 1.3 Coal Mines (Special Provisions) Ordinance, 2014

Government of India (GoI) promulgated (21 October 2014) an Ordinance 'The Coal Mines (Special Provisions) Ordinance, 2014' with the objective to re-allocate 204 coal blocks cancelled by the Hon'ble Supreme Court and ensure smooth transfer of right, title and interests in the mine along with its land and other associated mining infrastructure to the new allottee to be selected through an auction or allotment to Government companies, as the case may be. The Ordinance provided the legal framework for allocation of the cancelled coal blocks.

GoI introduced a Bill in the Parliament to replace the Ordinance. The Bill was passed in the Lok Sabha and was pending in the Rajya Sabha. Therefore, GoI promulgated the Coal Mines (Special Provisions) Second Ordinance, 2014 on 26 December 2014. Subsequently, the Bill was passed by the Parliament and after receipt of assent of the President, the Coal Mines

(Special Provisions) Act, 2015 (the Act) was notified on 30 March 2015. It was deemed to have come into force from 21 October 2014.

The Ordinance/Act was promulgated/ passed:

- to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest, and
- to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimise any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation.

#### **1.4 Coal Mines (Special Provisions) Rules, 2014**

For carrying out the provisions of the Ordinance promulgated in October 2014 for auction of the coal mines, GoI notified Coal Mines (Special Provisions) Rules, 2014 (the Rules) on 11 December 2014. The Rules laid down enabling provisions for carrying out the auction and allotment processes and prescribed e-auction comprising of technical and financial parameters as the process for conducting auctions, among others.

## Chapter 2 - The e-Auction: Design and Process

The legal framework for allocation of cancelled coal blocks was provided through the Coal Mines (Special Provisions) Act, 2015 (preceded by the two Ordinances in October 2014 and December 2014), Coal Mines (Special Provisions) Rules, which were followed by issue of Standard Tender Document (STD). Within this framework, the prescribed system of auction of coal mines is as follows:

### 2.1 Classification and Earmarking of Coal Mines/Blocks

The Act contained three Schedules, each containing a list of coal mines/blocks:

- **Schedule I** was the master schedule, containing list of all the 204 cancelled mines/blocks.
- **Schedule II** had 42 coal mines/blocks, which were producing/ready to produce.
- **Schedule III** had 32 coal mines/blocks, which were at an advanced stage of their statutory clearances.

The Act provided for two methods of allocation of the cancelled coal mines. These were:

- Public auction for specified end uses (SEUs) viz. generation of power/ captive power; production of iron/steel/cement. Those SEUs were grouped under 'power' and 'non-regulated' sector categories.
- Allotment to a Government company or corporation or to a joint venture between two or more Government companies or corporations or to a company which had been awarded a power project (including ultra mega power projects).

Ministry of Coal (MOC) constituted an Inter-Ministerial Technical Committee (IMTC) on 29 October 2014 to formulate criteria for earmarking of mines for (i) auction and allotment; (ii) classification under power and non-regulated sectors; (iii) suggesting transfer of coal mines from Schedule I to Schedule III.

### 2.2 Valuation of Coal Mines

Valuation of coal mines was necessary before allocation of the cancelled coal blocks. Accordingly, MOC prescribed a methodology for fixing (i) floor price for auction for non-regulated sector coal mines and (ii) reserve price for auction of power sector coal mines. The methodology provided for calculation of the intrinsic value of the coal mines/blocks for the purpose of fixation of the floor and reserve price. A minimum rate of ₹150 per tonne for the

floor price and ₹100 per tonne (fixed) for the reserve price was prescribed. The methodology also provided for fixation of a ceiling price for power sector coal mines, which was to be Coal India Limited (CIL) notified price for the equivalent grade of coal. Bidding for the non-regulated sector coal mines/blocks was to start from the floor price. For the power sector coal mines, reserve price was to be paid by the successful bidders for the coal extracted and bidding for these mines was to start below the ceiling price.

The methodology for valuation also provided that the successful allottees of the coal mines would also have to make payment of 10 *per cent* of the intrinsic value as upfront payment.

Central Mine Planning and Design Institute Limited (CMPDIL) carried out detailed exercise for calculation of intrinsic value and corresponding floor and additional reserve price<sup>4</sup> of the coal mines.

### **2.3 Information Provided by Prior Allottees**

The prior allottees provided the approved mining plan and other details related to various clearances and approvals taken and land acquired etc. The exercise of earmarking, classification and valuation was carried out on the basis of data and information relating to individual coal mine (including extractable reserves, grade of coal) as provided by the prior allottees.

### **2.4 Prioritisation of Coal Mines for Auction**

Coal mines were prioritised for auction as detailed below:

- 1<sup>st</sup> tranche: 20 out of the 42 Schedule II coal mines (earmarked for auction), which were either producing or ready to produce.
- 2<sup>nd</sup> tranche: 18 out of the 32 Schedule III coal mines (earmarked for auction).

### **2.5 Payment of Additional Levy**

The Hon'ble Supreme Court's order dated 24 September 2014 provided for payment of 'additional levy' by the prior allottees of the cancelled coal blocks @ ₹295 PMT of coal extracted. This was also a pre-condition for any prior allottee to participate in the e-auction process for any of the coal mines.

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<sup>4</sup> The reserve price was fixed @ ₹100 per tonne in the methodology and the additional reserve price was the price, based on the intrinsic value of coal mine (minimum ₹150 per tonne), which was required to be paid by the allottee for quantum of coal used for merchant sale of power.

## 2.6 Standard Tender Documents/Tender Documents

An approach paper was prepared by MOC for finalising the process of e-auction and was put in public domain for comments and feedback. The STDs were prepared and finalised after incorporating the views of various stakeholders on the approach paper and the views of CIL/its legal counsel. Thereafter, the tender documents for individual coal mines were uploaded on the website of MSTC Limited (the service provider for conducting e-auction of coal mines).

## 2.7 Auction Process

### 2.7.1 Coal Mines Earmarked for Power Sector

Coal mines earmarked for power sector were auctioned with the twin objectives of increasing the generation of power along with providing cheaper coal for the benefit of consumers of power. In this context, the STD for power sector coal mines, issued on 27 December 2014, prescribed a two stage bidding methodology viz. Stage I and Stage II.

#### 2.7.1.1 Stage I Bidding

The Stage I bidding comprised of submitting two envelopes containing:

- Technical bid, in which the bidders were required to provide details regarding compliance with the eligibility conditions; and
- Financial bid, to the extent of specifying the initial price offer (IPO), which was not to be higher than the ceiling price<sup>5</sup>;
  - The financial bid was the run of mine (ROM) cost i.e. which the bidders were allowed to charge the power consumers as energy charges under the power purchase agreements (PPA).

Thereafter, on 31 January 2015 MOC issued corrigendum No.3 to the STD, which amended the condition relating to the submission of the financial bid upto the extent of specifying the IPO. The amendment provided that the IPO *should be greater than or equal to INR 0 (Indian Rupees Zero) and lower than the ceiling price.*

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<sup>5</sup> The ceiling price for the coal mine was the CIL notified price for the equivalent grade of coal.

After the technical bids were received, they were opened at a pre specified date and venue in the presence of the participating bidders who wished to be present. A committee formed for the purpose, evaluated the technical bids. Those who qualified the technical evaluation were called as 'Technically Qualified Bidders' (TQB).

Thereafter, IPOs of TQBs were opened and the TQBs were ranked on the basis of ascending IPOs. The TQBs quoting the lowest rates (holding first 50 *per cent* of the ranks or five TQBs, whichever was higher) were considered to be qualified bidders (QBs), for participating in the e-auction in the Stage II bidding. The lowest IPO was to be treated as the applicable ceiling price i.e. the maximum price below which reverse bidding in the Stage II would start.

### **2.7.1.2 Stage II Bidding**

Stage II bidding was conducted by MSTC on pre declared date and time. The QBs could submit their final price offer (FPO) as many times as they wished against the same coal mine during the scheduled time. The FPO (final reverse bid by a bidder) was the ROM cost i.e. which the bidders were allowed to charge the power consumers as energy charges under the power purchase agreements (PPA).

The initial STD issued in December 2014 provided that the QBs were to submit their bids (FPO) which were to be lower than the displayed lowest bid by at least ₹2. The QB that submitted the lowest price offer during the e-auction process was to be declared as the "Preferred Bidder".

The corrigendum No. 3 to the STD (January 2015) changed the bidding methodology from 'reverse' to 'reverse then forward'. The amendment provided that in the event the applicable ceiling price was equal to ₹ zero or during the Stage II bidding, a QB quoted ₹ zero, then the bidding would convert into a forward bidding. After that the QBs were to quote an "additional premium" as their bid, which was an additional payment for coal extracted from the coal mine, in addition to all other payments required to be made.

The QB, which submitted the highest additional premium, was declared as the "preferred bidder" under the reverse then forward auction/bidding.

Nominated Authority (NA) recommended name of the preferred bidder to Ministry of Coal (MOC) and on approval, the preferred bidder was declared as the "successful bidder".

The successful bidder was required to make monthly payments to NA with respect to the coal extracted from the coal mine on the basis of ₹100 per tonne (the “fixed rate” i.e. the reserve price) plus the “additional premium”, if applicable, in addition to the applicable statutory levies.

### **2.7.1.3 Provision for Sale of Power on Merchant Basis**

The STD also provided that the successful bidder could sell a maximum of 15 *per cent* of the generation capacity of the specified end use plant (SEUP) as merchant<sup>6</sup> power. It also stipulated that the fixed rate of ₹100 per tonne would stand revised to ₹ XXX<sup>7</sup> for the quantum of coal utilised for generation of power sold on merchant basis. The STD further stipulated that ‘additional premium’ was not payable on the quantum of coal utilised for generation of such power sold on merchant basis.

## **2.7.2 Auction Process for Non-Regulated Sector Coal Mines**

The STD issued in December 2014 for non-regulated sectors, prescribed a two stage bidding methodology viz. Stage I and Stage II.

### **2.7.2.1 Stage I Bidding**

The Stage I bidding comprised of submitting two envelopes containing:

- Technical bid, in which the bidders were required to provide details regarding compliance with the eligibility conditions; and
- Financial bid to the extent of specifying the IPO, which was to be not less than the floor price.

After the technical bids were received, they were opened at a pre specified date and venue in the presence of the participating bidders who wished to be present. A committee formed for the purpose, evaluated the technical bids. Those who qualified the technical evaluation were called as TQBs.

Thereafter, the IPOs of TQBs were opened and the TQBs were ranked on the basis of descending IPOs. The TQBs quoting the highest rates (holding first 50 *per cent* of the ranks or five TQBs, whichever was higher) were considered to be qualified bidders (QBs), for participating in the e-auction in the Stage II bidding. The highest IPO was to be treated as the

<sup>6</sup> Power sold outside the medium and long term PPAs contracted under Section 62/63 of the Electricity Act, 2003.

<sup>7</sup> Fixed for each coal mine separately on the basis of the intrinsic value of the coal mine.



applicable floor price i.e. the minimum price above which forward bidding in the Stage II would start.

#### **2.7.2.2 Stage II Bidding**

Stage II bidding was conducted by MSTC on pre declared date and time. The QBs could submit their final price offer (FPO) as many times as they wished against the same coal mine during the scheduled time.

The STD provided that the QBs were to submit their bids (FPO), which were to be higher than the displayed highest bid by at least ₹2. The QB that submitted the highest price offer during the e-auction process was to be declared as the “preferred bidder”.

#### **2.8 Approval of MOC for Declaring the Successful Bidder**

After completion of the bidding, NA sent its recommendations in respect of the preferred bidder of each coal mine to MOC for approval, to declare the preferred bidder as successful bidder. After receipt of such recommendation MOC may direct NA to issue a vesting order in favour of the successful bidder or may provide such other binding directions to the NA as may be deemed appropriate.

It was noticed from the records relating to auction of coal mines in the first two tranches, MOC either gave its approval for declaring the preferred bidder as successful bidders or returned the cases to NA for re-examination and giving its recommendations. In the scenario where cases were sent for re-examination, MOC, after taking cognizance of the recommendations of NA after such re-examination, either gave its approval for declaring the preferred bidder as successful bidder or rejected the bids.

#### **2.9 Signing of Coal Mine Development and Production Agreement**

After declaration of successful bidder, NA executed the Coal Mine Development and Production Agreement (CMDPA) with the successful bidder.

#### **2.10 Issue of Vesting Order**

The successful bidder was to pay a fixed amount for the value of land and mine infrastructure, cost of preparation of geological report, cost of obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations, the

transaction expense<sup>8</sup> (collectively the ‘fixed amount’), performance security and the first installment of upfront amount.

Upon receipt of performance security and other payments, the vesting order was issued, by NA to the successful bidder.

CMDPA for the coal mines auctioned in the 1<sup>st</sup> and 2<sup>nd</sup> tranche provided that the performance security would remain valid till the coal mine achieved the annual peak rated capacity. This was amended in the CMDPA of the coal mines auctioned in the 3<sup>rd</sup> tranche wherein it was stipulated that performance security would remain valid (a) until the expiry of the period for which mining lease (including renewed mining lease) has been granted or will be granted, or (b) until extractable reserves are remaining in the coal mine, whichever is earlier.

## **2.11 Post Vesting Order Obligation of the Successful Bidder**

The Coal Mine Development and Production Agreement (CMDPA) stipulated various ‘post vesting obligations’ which included:

- Submission of commencement plan within 30 business days of the date of vesting order;
- Undertaking various activities for commencement of production of coal;
- Making monthly payments on the basis of the FPO, in addition to other statutory levies including royalty;
- Provisions for various returns/information that the successful bidder was required to furnish to NA and Coal Controller’s Organisation (CCO).

## **2.12 Role of Various Stake Holders**

Details of the entities involved in the process of auctioning of the coal mines are given below.

### **2.12.1 Ministry of Coal**

Role of Ministry of Coal (MOC) included:

- Earmarking and classifying coal mines for auction/allotment for power/non-regulated sector;
- Issuing orders for the manner of allocation of the Schedule I coal mines;
- Modifying Schedule III by adding any other Schedule I coal mine;
- Giving approval for declaring preferred bidder as successful bidder.

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<sup>8</sup> A fixed amount of ₹1685400 towards cost and expenses incurred by the NA for conduct of auction process.

### **2.12.2 Nominated Authority (NA)**

Government of India (GoI) appointed NA to act for and on behalf of GoI for the purposes relating to the e-auction process, whose role included:

- Notifying the prior allottees to enable them to furnish information required for notifying the particulars of coal mines to be auctioned;
- Determining the floor price or reserve price in consultation with the Ministry;
- Conducting the auction process with assistance of experts;
- Executing the CMDPA;
- Issuing vesting orders for transfer and vesting of coal mines pursuant to the auction.

### **2.12.3 MSTC Limited (MSTC)**

NA engaged (11 December 2014) MSTC as the e-auction service provider for conducting e-auction of the coal mines and entered into a Memorandum of Understanding (MoU) which was to remain valid for the period till the 204 coal mines were allocated through e-auction and allotment.

### **2.12.4 Central Mine Planning and Design Institute Limited (CMPDIL)**

MOC entrusted (October 2014) CMPDIL the work relating to preparation of the mine dossier for each mine identified by MOC. The mine dossier consisted of geological report, mine plan, mine closure plan and environmental and forest clearance. CMPDIL also determined intrinsic value/NPV and floor price of each mine as per guidelines/methodology issued by MOC.

### **2.12.5 Coal Controller's Organisation (CCO)**

The Coal Controller's Organisation (CCO) is a subordinate office under the administrative control of MOC. The functions of CCO, *inter alia*, included laying down procedure and standard for sampling of coal, inspection of collieries so as to ensure correctness of the class, grade or size of coal, granting opening/re-opening permission of coal mine. In addition to the statutory functions, work relating to monitoring the progress of captive coal mines and their associated end use projects were to be done by CCO.

As per the Act and the Rules, MOC authorised (December 2014) CCO to collect the additional levy from the prior allottees of Schedule II coal mines and deposit the same in the Government account.

### 2.12.6 Transaction Advisor to NA

Nominated Authority appointed (January 2015) SBI Capital Markets Limited as the Transaction Advisor (TA) to assist it on matters relating to e-auction of coal mines which included computing the reserve/floor price; designing the auction process and arrange for submission of draft of notice inviting tender; allotment and auctioning of coal mines in the time frame prescribed; drawing up CMDPA and vesting order.

### 2.13 Results of e-Auction

Summary of the coal mines put up for e-auction and successfully auctioned during 1<sup>st</sup> and 2<sup>nd</sup> tranche is given in table 2 below. The details are given in **Annexure I**.

**Table 2 : Summary of Coal Mines Auctioned during the 1<sup>st</sup> and 2<sup>nd</sup> Tranche**

Tranche	No. of Coal mines put up for auction			No. of Coal mines successfully auctioned		
	Power	Non-regulated	Total	Power	Non-regulated	Total
1 <sup>st</sup> Tranche (All Schedule II)	06	14	20	05	11	16
2 <sup>nd</sup> Tranche (All Schedule III)	05	13	18	04	09	13
<b>Total</b>	<b>11</b>	<b>27</b>	<b>38</b>	<b>9</b>	<b>20</b>	<b>29</b>

Analysis of the above table revealed that of the 38 coal mines put up for auction, 29 coal mines were successfully auctioned. Remaining mines were not successfully auctioned due to the reasons mentioned below:

- Less than three technical bids were received in respect of two coal mines each (non-regulated sector) of Schedule II and Schedule III;
- Three coal mines (one of non-regulated sector and two of power sector) were cancelled by MOC due to non-receipt of fair value of coal; and
- Two Schedule III coal mines (non-regulated sector) were withdrawn from the auction process by MOC.

## Chapter 3 - Audit Approach

### 3.1 Audit Objectives

Audit was conducted to ascertain:

- Robustness and efficacy of the design adopted for allocation of coal mines through e-auction.
- Proper implementation of the planned e-auction process and procedures and that the e-auction was conducted in a fair and transparent manner.

### 3.2 Methodology and Scope of Audit

An entry meeting was held with Ministry of Coal (MOC) and Nominated Authority (NA) on 28 May 2015, wherein the scope and objectives of audit were discussed. Audit examined the coal mines e-auctioned in the first two tranches. Audit examined the records at MOC, NA, Central Mine Planning and Design Institute Limited (CMPDIL), MSTC, Coal Controller's Organisation (CCO) and collected necessary documents from the other stakeholder Ministries/Department viz. Ministry of Power, the Ministry of Steel and the Department of Industrial Policy and Promotion. During field audit, audit requisitions and audit queries were issued. Draft audit report, after duly incorporating the replies received, was issued to MOC on 08 January 2016. Modified draft audit report was issued to MOC on 26 February 2016 after considering the issues raised by MOC on 04 February 2016. Reply of MOC on the modified draft audit report was received vide letter dated 10 March 2016. An Exit Conference was held on 31 March 2016 with the Secretary, MOC and other officers. Additional comments of MOC were received on 01 April 2016. Replies and comments received from MOC and the views expressed during the Exit Conference have been duly considered while finalising this report. Status of operationalisation of mines has been updated in the report on the basis of information received from MOC in May 2016.

As per the scope of this audit, Audit covered the coal mines auctioned in the first two tranches of the e-auction. For the purpose of a comprehensive analysis of the e-auction and the mines allocated thereof, Audit has covered the allocations from the stage of design of the e-auction mechanism to the stage of production of coal and monitoring thereof.

### **3.3 Sources of Audit Criteria**

The sources of audit criteria were as given below:

- The Coal Mines (Special Provisions) Ordinance, 2014
- The Coal Mines (Special Provisions) Second Ordinance, 2014
- The Coal Mines (Special Provisions) Act, 2015
- The Coal Mines (Special Provisions) Rules, 2014
- The Coal Mines (Nationalisation) Act, 1973
- Mines and Minerals (Development and Regulation) Act, 1957
- General Financial Rules, 2005
- Orders/Circulars/Office Memoranda issued from time to time
- Methodology issued for fixing floor/reserve price of coal mines
- Contractual documents, tender documents and other relevant documents

### **3.4 The e-Auction Mechanism**

Ministry of Coal laid down the new mechanism and carried out the 1<sup>st</sup> tranche of e-auction within five months of the Hon'ble Supreme Court judgment cancelling the allocation of 204 coal blocks. Audit appreciates the efforts made by MOC in planning and implementing a new paradigm of allocation of natural resources within this short span of time. As the mechanism has emerged, a substantial amount of financial resources has accrued/would accrue to the public exchequer from the mining activities carried out by the allottees of the coal mines.

Audit of this new system of e-auction was conducted and comments relating to the system and processes of the e-auction mechanism are given in this Report.

### **3.5 Acknowledgement**

Audit acknowledges the co-operation provided by MOC, NA and all other stake holders viz. CMPDIL, MSTC and CCO.

## Chapter 4 - Valuation of Coal Mines

The methodology of valuation of coal mines had been under consideration of Ministry of Coal (MOC) for some time. Prior to the de-allocation of 204 coal blocks by the Hon'ble Supreme Court in 2014, 'auction by competitive bidding of coal mines rules, 2012' was notified in February 2012 by MOC. Thereafter, MOC engaged (May 2012) M/s CRISIL Infrastructure Advisory (CRISIL) as consultant through Central Mine Planning and Design Institute Limited (CMPDIL), to formulate the methodology for calculation of floor and reserve price under these rules. Based on the suggestions of CRISIL, MOC prescribed (November 2013) a methodology for calculating intrinsic value of the mine by computing its net present value (NPV) (based on discounted cash flow method). The final NPV (after subtracting 10 *per cent* intrinsic value as upfront payment) was then proposed to be annuitised to become equal to a unit rate (₹ per tonne). The methodology also prescribed that average of imported coal prices for last five years (Indonesia, Australia) were to be used for calculation of intrinsic value. These were prescribed as in the scenario of shortage in coal production by Coal India Limited (CIL), the only realistic option for end use companies was to either import coal or use coal from overseas coal mines that those companies had acquired and therefore, were willing to pay international price of coal.

Thereafter, MOC prescribed a methodology for fixing floor price and reserve price for coal mines proposed to be auctioned/allotted. The methodology was based on the recommendations of an Inter Ministerial Committee (IMC), which changed the aspect of international price to CIL notified price from the earlier prescribed methodology. The committee stated that taking international prices might serve as an incentive for people to go for linkage rather than mining and might also have a long term implication for cost competitiveness vis-à-vis other countries. The pricing methodology was approved by the Cabinet Committee on Economic Affairs (CCEA) on 24 December 2014.

Audit examined the valuation carried out by CMPDIL and the results are discussed in the following paras:

### 4.1 Computation of Intrinsic Value by CMPDIL

Computation of intrinsic value of coal mines based on NPV required projections of cash flows, which in turn was dependent upon projections of revenue and costs (capital and revenue) associated with functioning of the concerned coal mine. CMPDIL carried out the

computation with capital costs including cost of land, buildings, plant and machinery, furniture and fittings, vehicles, development cost, etc. and revenue costs including cost incurred towards salaries and wages, stores, annual mine closure, power, etc. Revenue was measured by sale prices of coal as notified by CIL.

CMPDIL engaged CRISIL for suggesting ways for determining intrinsic value of coal mines. In addition, certain assumptions<sup>9</sup> were made for estimating cash flows. The basis of taking these assumptions included practices followed by CMPDIL for estimation of cash flows for preparation of project reports of subsidiaries of CIL and recommendations of CRISIL.

Audit examined the records relating to computation of intrinsic value of 29 coal mines by CMPDIL. Issues noticed by Audit, *inter alia*, included instances of inconsistencies and inaccuracies in following certain assumptions, errors in consideration of aspects of revenue and costs. Details of the observations on the above deficiencies, reply of MOC and CMPDIL and audit comments thereon are contained in **Annexure II**. Summary of the issues noticed are as follows:

**Table 3 : Summary of Issues Noticed by Audit Relating to Valuation by CMPDIL**

Nature of deficiency	Deficiency noticed in number of Coal mines	Impact of the deficiency on number of Coal mines	
		As under valuation	As over valuation
Deficiencies in consideration of grade of coal	Four	Three	One
Deficiencies in consideration of mine closure costs	Twenty Four	Twenty	Four
Consideration of lower rates of crushing charges	Six	Six	-
Deficiencies in consideration of cost of land	Five	Two	Three
Consideration of cost of heavy earth moving machines in opencast mines	Three	Three	-
Incomplete treatment of indirect taxes and levies	All	All	-
Deficiencies in consideration of cost of manpower	Two	-	Two
Inconsistencies in implementation of adopted assumptions and deviation from mine plans	Five	One	Four
Consideration of incorrect cost	Two	One	One

Analysis of the above table revealed that each of the individual deficiency noticed by Audit

<sup>9</sup> Consideration of discounted cash flow (DCF) at the rate of 10 per cent, project life or 25 years, whichever is lower, equity and loan component of capital in ratio of 80:20, royalty at the rate of 14 per cent, income tax at the rate of 33.99 per cent etc.



had an impact in the form of under valuation or over valuation in respect of a particular coal mine. Audit noticed that all these deficiencies cumulatively resulted in under valuation of 15 coal mines. For the remaining 14 coal mines, the intrinsic value was in negative or the floor price was less than ₹150 per tonne (in case of non-regulated sector coal mines) and therefore, there was no cumulative impact on the calculation of intrinsic value of these coal mines as a result of these deficiencies.

Calculation of the intrinsic value was an important stage of the whole e-auction process as the extent of upfront amount payable by the successful bidders, the floor price from which the bidding was to start for the non-regulated sector coal mines and the revised fixed rate payable for coal used for generation of power to be sold on merchant basis were derived from the intrinsic value only. In this context, Audit attempted to carry out a revised calculation of intrinsic value by incorporating revised elements of cost and revenue after considering all the deficiencies together in individual coal mines. Net impact of all the observations (including that of Para 4.2 below) on 15 out of the 29 coal mines (details in **Annexure-III**) was:

- Under valuation of 15 coal mines, which resulted in under determination of upfront amount by ₹381.83 crore (41 *per cent* of the total upfront amount of ₹932.44 crore).
- In six non-regulated sector coal mines, floor prices were under determined by amounts ranging between ₹4.70 per tonne and ₹1264.44 per tonne.
- In all the nine power sector coal mines, revised fixed rates (price for coal used for power produced for sale on merchant basis) were under determined by amounts ranging between ₹32.28 per tonne and ₹142.57 per tonne.

Audit noticed that the detailed calculations for NPV and intrinsic value of the coal mines were carried out by CMPDIL using their valuation model in MS Excel. Audit requested CMPDIL to provide the valuation model so as to calculate the impact of these audit observations using the same model. However, CMPDIL did not furnish the same and furnished only the final MS Excel sheets covering details of various elements of costs and revenue and the final result. CMPDIL stated that it did not have a standardised/proved valuation model with formulae for valuation of coal mine. Therefore, Audit attempted to re-calculate the NPV of the coal mines within the same Excel sheets for each of the coal mine, revising the relevant factors. Thereafter, the revised calculations were forwarded to CMPDIL for confirmation. However, CMPDIL stated that they could neither confirm nor refute the calculations made by Audit.

MOC in its reply (March 2016) and during the exit conference (March 2016) stated that:

- Fifteen cases of over valuation had been identified by Audit. As cases of over valuation would lead to higher upfront amount and consequently larger revenue realisation, Ministry refrains from commenting on its accuracy. CCEA approved methodology mandated that for the non-regulated sector the floor price should be a minimum of ₹150 per tonne notwithstanding the intrinsic value, which meant that for coal mines where the intrinsic value was negative or less than ₹150 per tonne the floor price should be fixed at ₹150 per tonne. Several cases noted by Audit were of that category.
- There was no information asymmetry for the bidders affecting the fairness and transparency of the e-auction process. Even if there was any inadvertent omission resulting in the valuation on the lower side (though it really was not), it would be taken care of by the bidding itself. Those mines had received bids in multiples of the floor price. Similarly, even if the upfront amount was “lower”, it would get factored in the bidding and its initial valuation would not result in any loss to the state exchequer.

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

- As per the methodology for fixing floor/reserve price, intrinsic value of the coal mine was to be calculated by computing its NPV. The audit analysis was on the fact whether all the relevant assumptions and aspects of revenue and costs were correctly taken into consideration for calculation of the intrinsic value of the coal mines irrespective of the fact whether the resultant intrinsic value was negative or less/more than ₹150 per tonne (in case of non-regulated sector coal mines) or ₹100 per tonne (in case of power sector coal mines). As already explained above, the impact as over valuation/under valuation in table 3 was for individual deficiencies only. The net impact of all those components in individual mines was under valuation of 15 coal mines.
- Upfront amount was to be calculated as 10 *per cent* of the intrinsic value. It was independent of the final bid amount and was to be paid subsequent to signing of the agreement, irrespective of the operationalisation of mines. Thus, it was fixed by the Government and the receipt of which was certain at the initial stage itself. However, MOC’s reply reflected that the onus of correction of errors in the calculation and resultant under valuation, which was controllable, was left on the bidding process, which was outside its control and the result of which was uncertain.

- Calculation of floor prices/additional reserve prices reflected Government's perception of the fair value of the coal mines. Bidding process and the resultant bids received reflected the perception of the bidders regarding fair value of those mines. Both these perceptions would have had an impact on the bidding process. Moreover, the calculation of floor prices/additional reserve prices was controllable by the Government and errors in their calculation should not have been left for correction in the bidding process, which was outside its control and the result of which was uncertain.

**Inconsistencies and inaccuracies in following some of the assumptions and various errors in computation of intrinsic values resulted in under determination of upfront amounts in 15 coal mines, under determination of floor prices in six non-regulated sector coal mines and revised fixed rates in all nine power sector coal mines.**

#### 4.2 Valuation of Coking Coal Mine

Intrinsic valuation implies calculation of inherent value of the underlying asset. For calculation of true inherent value of any underlying asset, it was important that its individual characteristics were factored in. This was also inherent in the CCEA approved methodology's provision for taking notified price of relevant grade of coal. CMPDIL implemented the same by taking necessary data and information from the mine dossiers submitted by prior allottees for computation of intrinsic value of coal mines.

Audit noticed that the coal mines auctioned in the two tranches also included coal mine having coking<sup>10</sup> coal reserves. Out of the 29 successfully auctioned coal mines, one i.e. Moitra mine, of non-regulated sector, had 97 *per cent* coking coal out of its total coal reserves. It was noticed that the mine had been explored by Geological Survey of India (GSI) and CMPDIL. As per their estimation, the mine had geological reserves of 215.78 million tonne (121.93 million tonne of proved reserves), out of which 203.15 million tonne reserves were of coking coal. The mining plan of the mine, however, depicted the geological reserves and extractable reserves as 38.16 million tonne (37.01 million tonne of coking coal) and 29.91 million tonne (29.01 million tonne of coking coal) respectively, considering opencast mining upto a depth of 215 meter. Audit noticed that, the information for reserves up to 215 meter depth was used for classification and valuation of Moitra coal mine.

<sup>10</sup> Coking coal, when heated in the absence of air, form coherent beads, free from volatiles, with strong and porous mass, called coke. These have coking properties, mainly used in steel making and metallurgical industries and also used for hard coke manufacturing.

Due to the presence of coking coal, the mine plan also envisaged installation of coal washery for production of clean coal for supply to steel plant. As per the mine plan, the clean coal was to be produced at a yield rate of 40 *per cent* and rest was to be treated as ‘middling and rejects’ which was to be used in power houses. Audit noticed that the CCEA approved methodology laid down broad guidelines for calculation of intrinsic value by computing its net present value taking CIL notified prices. CIL notified prices did not provide for price of washed coking coal. However, CIL’s subsidiary companies were selling washed coking coal at different and higher prices than the notified price of raw coking coal. Moitra was the only coking coal mine auctioned in the two tranches and MOC approved mine plan provided for establishment of washery, washing of coking coal for the mine and production of clean coal, middling and rejects.

However, CMPDIL did not consider price of washed coking coal, middling, slurry and rejects<sup>11</sup> for valuation of Moitra coal mine. It also did not consider the capital cost of washery and related expenditure. Audit calculated the intrinsic value of Moitra coal mine, taking value of washed coking coal, cost of installation of washery and other related operating costs. Audit considered price of washed coking coal at which it was sold by subsidiaries of CIL to public sector undertakings (PSUs). This analysis indicated that the mine was under valued, which had an effect of under determination of upfront amount by ₹101.24 crore and under determination of floor price by ₹1264.44 per tonne.

CMPDIL and MOC, in their replies (March 2016) and during the Exit Conference (March 2016) stated that:

- The valuation of the mine was done as per the methodology for fixing floor/reserve price approved by the CCEA, which was based on the criteria of specified end uses and not on the grade of coal. The extant notified price of CIL for the non-regulated sectors for the corresponding gross calorific value (GCV) bands was to be taken into account for computing NPV.
- There was no statutory provision for calculation of intrinsic value or NPV of a coal mine. The mining plan did not have any provision for valuation of the mine. Neither the Order nor the Ordinance speaks about washery, or the negotiated price. As per the Act, washeries were clearly not part of mine infrastructure. Therefore, it would not be

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<sup>11</sup> Price of washed coking coal has been taken @ ₹5871.15/tonne at 17 *per cent* ash as per Memorandum of Understanding between Central Coalfields Limited (CCL) and Steel Authority of India Limited. Further, the prices of middlings, slurry and rejects have been taken @ ₹2858.93, ₹2248 and ₹1257 per tonne respectively as per the rates prescribed for coking coal washeries of CCL vide notification dated 16 April 2012.

appropriate to consider coal washeries or washed coal. Audit had taken the negotiated price of washed coking coal for valuation of the mine and CMPDIL was not given any mandate for that.

- As per mining plans, there were ten mines with washery provisions, but only one mine (Moitra) was considered in the draft report for valuation with washery. If washeries should have been considered in calculation of intrinsic values, in all such ten coal mines, intrinsic value should have been calculated. The combined intrinsic values calculated on the basis of the notified CIL price would be less than the one calculated by CMPDIL earlier.
- In view of the explicit provision in the Colliery Control Rules, 2004 that coal included coking coal, such a distinction could also not have been made by the Ministry/CMPDIL.

MOC also stated that the matter was referred to the Ld. Attorney General (AG) for obtaining his opinion on the issue. While quoting the opinion of the Ld. AG, MOC, *inter alia*, stated that decisions taken by the Cabinet constituted fundamental policy directives for implementation by the Ministries and it was bound to follow the decision of the CCEA.

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

- Though there was no specific provision for calculation of intrinsic value or NPV of a coal mine, MOC had taken CCEA's approval for the methodology. Audit has commented on the issues observed in implementation of the CCEA approved methodology.
- The methodology approved by the CCEA prescribed calculation of intrinsic value of the mine by computing its NPV, based on discounted cash flow method. Intrinsic value calculation implies calculation of inherent value of the underlying asset and for that purpose, it was important that the basic characteristics of the underlying assets were considered. The mine dossier including mine plan for each individual coal mine contained specific details of that particular mine including area, total reserves, grade-wise reserves, annual target and mine life, assets among others. Accordingly, the valuation methodology was implemented by carrying out valuation of each coal mine on the basis of the details provided in the mine dossier by CMPDIL.
- CIL did not notify the prices of washed coking coal. However, CIL's subsidiaries were selling washed coking coal at a much higher price than notified price of raw coking coal.
- Moitra was the only coal mine put up for auction having coking coal reserves (97 per cent of its total coal reserves). It contained washery grade coking coal, which was to be

supplied to steel plant(s) mainly for steel production. This was confirmed from the fact that all the bidders for this mine had mainly steel plants as the specified end use plants (SEUPs). Further, washery grade coal is to be washed in a washery for use in a steel plant. Therefore, washed coal should have been considered for valuation of the coking coal mine. Scrutiny of the mine plans of the mines referred by MOC revealed that provision for washery was there in six mines (excluding Moitra coal mine). Further, MOC's another contention that combined intrinsic values calculated *on the basis of the notified CIL price* will be lesser after considering washeries for non-coking coal mines may be viewed in light of the fact that CIL did not notify prices for washed non-coking coal also and details of calculation carried out were not provided to Audit. Considering prices of the washed non-coking coal (along with slurry and rejects) on which it was sold by subsidiary of CIL, the impact on intrinsic value was higher in two mines, lesser in one mine and there was no impact on three mines.

- Moitra had 97 per cent coking coal out of its total coal reserves and there was a provision for installation of washery in the approved mine plan, clearly showing that coking coal produced from the mine was to be washed. Hence, the price of washed coking coal should have been considered for calculation of the intrinsic value.
- Though washery was not specifically covered under the definition of mine infrastructure, but it was noticed in Audit that there were various types of assets including movable and intangible assets which were also not covered under the definition of Mine Infrastructure given under section 3 (j) of the Act, which were taken into consideration for calculation of intrinsic value of the coal mines by CMPDIL.

**Moitra coal mine contained washery grade coking coal, which was to be washed before utilisation in the SEUP. Approved mine plan for this mine also contained provision for installation of washery for washing of coking coal produced. However, this aspect of washing of coking coal was not considered during calculation of intrinsic value. CMPDIL should have flagged the issue while carrying out the valuation and the matter should have been referred to the CCEA for reconsideration. Otherwise, keeping in mind the spirit of CCEA's approval, the price at which CIL's subsidiaries were selling washed coking coal, should have been considered for calculation of intrinsic value of this mine, the absence of which resulted in under determination of upfront amount and floor price of the mine.**

### 4.3 Non-Inclusion of Mine Closure Plans in Mine Dossiers

CMPDIL was entrusted to prepare mine dossiers in respect of all coal mines to be auctioned. As per the definition of mine dossier given in the Rules, “mine dossier” means the mine dossier as referred to in sub-rule (6) of Rule 9. Rule 9 (6) provided that Nominated Authority (NA) shall finalise a mine dossier for each Schedule I coal mine, based on the information received from prior allottee under Rule 9 (1). MOC asked (November 2014) prior allottees to provide various information for determination of intrinsic value, which included approved mine plan and mine closure plan. Therefore, the information, which included mine closure plan, called for by NA from the prior allottees was to form part of the mine dossier. However, it was noticed that mine dossiers did not include approved mine closure plan in case of nine coal mines and thus remained incomplete.

MOC, in its reply (March 2016) stated that scores of items of information, including mine closure plans was sought from the prior allottees. It carried out auctions in a very compressed time frame, meeting very aggressive timelines to complete the auctions and it might be possible that one or two of those voluminous items of information in some cases were not part of mine dossiers. Therefore, the absence of mine closure plan should not be considered as deviation from the rules. Also, there was no information asymmetry for the bidders of those nine mines affecting the fairness and transparency of the e-auction process.

**The mine dossiers remained incomplete in the absence of the mine closure plans, in respect of nine coal mines.**

## Chapter 5 - The e-Auction

The e-auction process in the 1<sup>st</sup> tranche was carried out from 14 February 2015 to 22 February 2015 and in the 2<sup>nd</sup> 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 QBs<sup>12</sup>, 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/

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<sup>12</sup> 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:

<b>Schedule – II</b>	<b>Prior Allottee - Company A</b>	<b>Technical Bids Received – Six ; Qualified Bidders – Five</b>
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- Qualified Bidders:

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

- 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 (WBPDC) 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 1<sup>st</sup> tranche and the STD was issued on 27 December 2014. As per the Schedule I of the Act, WBPDC was the prior allottee of five<sup>13</sup> 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 WBPDC, Durgapur Projects Limited and Emta Coal Limited.

Audit noticed that the bids of WBPDC 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, WBPDC was not a prior allottee in terms of the *'Explanation'* given

<sup>13</sup> 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)<sup>14</sup> 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 1<sup>st</sup> 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 mines<sup>15</sup>, 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.**

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

<sup>15</sup> 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)<sup>16</sup>.

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<sup>16</sup> 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
<b>Scenario I: Reverse bidding</b>	<ul style="list-style-type: none"> <li>The final price offer (run-of-the-mine cost, pursuant to which the successful bidder has received the vesting order); and;</li> <li>The fixed rate<sup>17</sup> (₹100 per tonne)</li> </ul>
<b>Scenario II: Reverse then forward bidding</b>	<ul style="list-style-type: none"> <li>The fixed rate (₹100 per tonne)</li> </ul>

Audit noticed that all the nine<sup>18</sup> 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.

<sup>17</sup> 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”

<sup>18</sup> 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 1<sup>st</sup> 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 payments<sup>19</sup> made for generation of power to be sold under PPAs would be more than the total payments<sup>20</sup> 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.**

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<sup>19</sup> Fixed rate + additional premium (for power sold under PPAs)

<sup>20</sup> Only revised fixed rate (for power sold on merchant basis)

## Chapter 6 - The e-Auction Platform

### 6.1 Introduction

The methodology and modalities of the e-auction process has been elaborated in Chapter 2 of this Report. Nominated Authority (NA) engaged (11 December 2014) MSTC Limited (MSTC) as the e-auction service provider. Accordingly, a memorandum of understanding (MoU) was signed on 23 December 2014 between NA and MSTC and the same was to remain valid for the period till the 204 coal blocks were allocated through e-auction and allotment.

As per the agreement, the following responsibilities were assigned to MSTC:

- online registration of prospective bidders;
- arranging publicity of e-auction through website;
- draw up the calendar and duration for e-auctions in consultation with NA;
- display the floor price in the e-auction catalog for the information of the prospective bidders;
- to conduct e-auction in a fair, smooth and transparent manner;
- on completion of e-auction, to make available system generated bid sheet to NA.

The auction was to be carried out online on the platform for e-auction provided by MSTC on its website.

### 6.2 Design of e-Auction Platform

MSTC was a mini ratna category-I public sector undertaking (PSU) under the administrative control of the Ministry of Steel, Government of India (GoI). The company worked mainly in two wings, viz. – i) trading and ii) e-commerce through their own e-auction portal. As per the MoU, it designed a sub-domain under its main e-commerce website for conducting the e-auction of the coal mines.

All intending bidders were required to register themselves with the said website free of cost. The registration process involved accepting certain general and specific terms and conditions and filling up the online form after submission of certain documents like company permanent account number (PAN), ID of contact person, digital signature certificate (DSC) of that contact person, letter of authorisation etc. A bidder had to make the registration only once and could participate in the bidding for multiple coal mines with the same registration.

NA had provided various documents for uploading in the e-auction portal of the company. Among those documents, some were categorised as ‘public documents’ viz. Standard Tender Document (STD), standard Coal Mine Development and Production Agreement (CMDPA), standard vesting orders, mine summary, consumption norms etc. which were freely available and others were categorised as ‘paid documents’ viz. – tender document for individual mine, mine dossier, etc. which were available on payment of ₹ five lakh per coal mine. MSTC collected the fees of ₹ five lakh through its online payment system from the intending bidders on behalf of NA and provided access to such bidders for downloading the paid documents from the MSTC website. Bidders were allowed to submit bids for only such coal mines for which the fee was paid by them. Apart from such documents, the company also uploaded the schedule of bidding (for Stage I and Stage II), bidder's guide and corrigendum, etc.

### **6.3 IT System Infrastructure**

MSTC e-auction platform for all types of e-auction activities, including e-auction of coal mine, was a client-server based system which helps in marketing, sales and related decision support system. The operating system was IBM AIX with IBM DB2 as the relational database management system (RDBMS). The platform was developed in-house and was considered as mission-critical as it directly put an impact on the primary function of the organisation. Ministry informed that a third party security audit of MSTC’s e-auction portal was conducted, all vulnerabilities were rectified and the company also obtained certification.

### **6.4 Audit Findings**

#### **6.4.1 Inadequate Audit Trail**

The system as developed by the company did not capture the logout details of the bidders from the system during e-auction. As such, the audit trail of the complete activities of the bidders could not be traced. The company should have designed their system to capture the bidder logging out activities.

While accepting the facts, MSTC stated (September 2015) that their system did not capture logout details of the bidders from the system and they agreed to capture logout details of bidders in future auctions. This was also accepted by MOC in the Exit Conference.

**Complete audit trail was not captured by the e-auction platform provided by MSTC.**



## 6.4.2 System Customisation

### *Linking of Specified End-Use Plant (SEUP) with Registration Ids*

Creation of registration ids for the bidders through which a bidder would access the e-auction platform and participate in the e-auction process was an important step in the whole process. Audit noticed that 245 registration ids were created in the system for the initial two tranches of the e-auction process.

Audit scrutiny of registration data revealed that the registration ids were allotted to the companies participating in the e-auction process without linking the SEUP in respect of which bids would be placed, whereas, bidding was to be made for SEUP/s and only one bid could be submitted for one coal mine for a SEUP. Audit further observed that:

- Out of 245 registration ids, 34 registration ids were allotted to 11 entities who submitted same tax identification number (TIN) for their respective registration. TIN is a state-specific registration number for the purpose of assessing central sales tax (CST), value-added tax (VAT), etc. Out of the above cases, companies like – Bharat Aluminium Company Limited (BALCO), Jindal Steel and Power Limited (JSPL), Ultratech Cement Limited (UCL), etc. created multiple ids with same TIN but submitted SEUPs, which were outside the State of their registered TIN.
- Out of three registration ids created by a company, it used two registration ids (i.e. 64845 and 65340), with same TIN of the State of Delhi and submitted bids for the same SEUP of Chhattisgarh for five different coal mines. Further, bids were submitted for different coal mines for same SEUP with different registration ids, as depicted in the table below:

**Table 7 : Different Registration IDs for Same SEUPs**

Coal mine	Registration ID	SEUP
Belgaon	64845	810 MW (4x67.5MW 4x135) Korba, Chhattisgarh
Chotia; Gare Palma IV/5; Gare Palma IV/4; and Gare Palma IV/7	65340	810 MW (4x67.5MW 4x135) Korba, Chhattisgarh

As the e-auction platform was an automated platform, linking SEUPs with registration ids at the registration stage itself would have reduced the vulnerability of the system from element of human error, which was not the case as that linking was not provided resulting in making the system vulnerable.

MSTC and Ministry of Coal (MOC) in their replies (October 2015 and March 2016) stated that system for bidder registration did not require a bidder to identify and map the end use plant (EUP) against a specific registration id for registration purpose. There was no bar on a company creating more than one ID to make bids. The tender document prescribed for a unique EUP for placing bids which was verified at the time of the technical scrutiny. No provision of the Act, Rules or the tender document has been violated, nor has multiple IDs affected the fairness and transparency when the same was anyway permitted and widely known and no principle of auction has been compromised. There was no case of multiple bids being placed from a single EUP in contravention of the tender conditions.

MOC's reply needs to be viewed in light of the fact that in the e-auction process, bidding was to be made for SEUP/s and only one bid could be submitted for one coal mine for a SEUP. So the automated system (i.e. the e-auction Platform of the MSTC) should be designed in a manner where the registration (which was unique) was linked and mapped to the SEUP also. This would also have resulted in a validation check in the system itself. Further, the fact whether a single company had submitted two bids in an auction with same SEUP, was only being checked manually at the time of 'Technical Evaluation' by the technical committee, which made the system vulnerable to human error.

**The registration process and the registration number issued were not linked with the SEUP, even though the bidding was to be made for SEUP/s and only one bid could be submitted for one SEUP for one coal mine.**

## Chapter 7 - Operationalisation of Coal Mines

The Act had categorised the coal mines/blocks in various schedules. As discussed in Chapter 2, Schedule II included 42 Schedule I mines that were under production at the time of their cancellation or were about to start production. Schedule III mines included 32 Schedule I mines that were earmarked for specified end use.

In the wake of the Hon'ble Supreme Court's judgment, a preliminary contingency plan was prepared by Ministry of Coal (MOC) in October 2014, which analysed the 'preparedness of captive coal blocks for mining'. It brought out that out of 32 Schedule III mines/blocks, eight mines were such where environment clearance (EC) and forest clearance (FC) had been received and substantial land had been acquired. These mines could be opened/mined in 3-6 months period after obtaining mining lease (ML) and mine operation permission. Further, remaining 24 coal mines were such mines which were fully explored, the mining plans were ready, substantial amount of land had been acquired and statutory clearance such as EC and FC (Stage I) had been obtained. In such cases, mining could be started within a period of six-eighteen months after obtaining remaining clearances and approvals.

In this context, Audit analysed the status of production of coal from the successfully auctioned coal mines in the first two tranches of e-auction. Results of Audit are as follows:

### 7.1 Status of Operationalisation of the Successfully Auctioned Coal Mines

Audit noticed from scrutiny of records provided by MOC that out of the 29 successfully auctioned coal mines, vesting orders had been issued in respect of 26 coal mines (15 of Schedule II and 11 of Schedule III as detailed in **Annexure V**). In case of the remaining three coal mines (Ardhagram, Utkal-C and Mandakini) vesting orders were not issued due to pending court cases.

MOC informed (May 2016) that in ten<sup>21</sup> Schedule II coal mines and one<sup>22</sup> Schedule III coal mine, production of coal was started/mine opening permission was granted.

### 7.2 Status of Remaining Schedule II Coal Mines

As per the Coal Mines Development and Production Agreement (CMDPA), pre-commencement reports were to be submitted by successful bidders once every thirty calendar

<sup>21</sup> Amelia North, Belgaon, Bicharpur, Chotia, Gare Palma IV/4, Gare Palma IV/5, Mandla North, Sarisatolli, Sial Ghoghri, Talabira-I.

<sup>22</sup> Mandla South.

days prior to commencement of mining operations. These reports were to contain, *inter alia*, details of action taken by the successful bidders towards commencement of the mining operations. Scrutiny of the pre-commencement reports for March 2016, furnished by MOC in May 2016, revealed that various approvals/clearances were pending for five<sup>23</sup> Schedule II coal mines (two of power sector<sup>24</sup>) at the Central Government level, State Governments level and at the level of allottees themselves. Vesting orders for these coal mines were issued in March 2015 (for four coal mines) and April 2015 (for one coal mine<sup>25</sup>). Details of the pending processes at various levels are given below:

**Table 8 : Process Pending with Central Government (details in Annexure VI)**

Permissions/ Approvals	Time limit in months for completion (from issue of vesting order)	Name of coal mine	
Opening permission from CCO <sup>26</sup>	03	Gare Palma IV/7	Trans Damodar
Ground water clearance	03	Kauthatia	Trans Damodar
Mine closure plan	06	Gare Palma IV/7	-

**Table 9 : Process Pending with State Governments (details in Annexure VII)**

Permissions/ Approvals	Time limit in months for completion (from issue of vesting order)	Name of coal mine			
Opening permission from DGMS	03	Gare Palma IV/7	Trans Damodar		
Consent to operate	03	Kauthatia	Tokisud North		
Land Diversion/ Mutation	03	Tokisud North		Kauthatia	
Explosive Licence	03	Kauthatia	Marki Mangli III	Tokisud North	Trans Damodar
Railway siding approval	03	Tokisud North			
Grant of mining lease	03	Kauthatia	Marki Mangli III	Tokisud North	Gare Palma IV/7

<sup>23</sup> Gare Palma IV/7, Trans Damodar, Kauthatia, Tokisud North, Marki Mangli III

<sup>24</sup> Two mines of Power Sector i.e. Trans Damodar and Tokisud North

<sup>25</sup> Marki Mangli III coal mine (non-regulated sector).

<sup>26</sup> Coal Controller's Organisation

**Table 10 : Process Pending on the Part of Allottees (details in Annexure VIII)**

Permissions/ Approvals	Time limit in months for completion (from issue of vesting order)	Name of coal mine	
Ground Water Clearance	03	Marki Mangli III	-
Environment Clearance	03	Marki Mangli III	-
Electricity Supply	03	Trans Damodar	-
Opening permission from DGMS	03	Marki Mangli III	-
Opening of Escrow Account	06	Trans Damodar	Tokisud North
Mine Closure Plan (MCP)	10 (For revised MCP)	Marki Mangli III	-

All these cases should be further seen in light of the fact that as per the efficiency parameters given in the CMDPA, these clearances should have been completed within six months from the signing of vesting order i.e. by September/October 2015. This became more significant in cases where the process was pending at the level of allottees themselves.

### 7.3 Status of Remaining Schedule III Coal Mines

Audit also analysed the status of pending clearances/approvals in 10 out of 11 successfully auctioned Schedule III coal mines where production had not started. The vesting orders for these coal mines were issued in April 2015. As per the efficiency parameters laid down in CMDPA, various statutory approvals/clearances were to be obtained by the allottee within a period of three months to forty four months. Analysis of the status of clearances/approvals, which were to be issued in 12 months from issue of vesting order, revealed that the allottee of Nerad Malegaon coal mine had submitted the mine closure plan (MCP) to MOC for approval in October 2015. However, the MCP was not approved by MOC till March 2016 as against the prescribed time of 11 months under CMDPA. This delay might lead to delayed operationalisation of the coal mine.

The above analysis revealed that production in the auctioned coal mines was pending for various approvals/clearances at the Central Government and State Governments level and for necessary action at the level of individual allottees also. Further, it was noticed in audit that the risk of sustainability of the model adopted for auctioning of power sector coal mines

could have contributed in the delays in operationalisation of the pending power sector coal mines.

#### **7.4 MOC's Reply and Comments**

Ministry in its replies (November 2015, January 2016 and March 2016) stated that specific pending issues have been taken up with the relevant authorities and many issues are getting resolved. Several mines could not be operationalised due to court cases instituted by the prior allottees. The Central Government transferred the entitlement to the mining plans, mine closure plans and prior approvals for grant of mining lease with the vesting orders itself to expedite the process. A predominant majority of pending permits/clearances etc are at the State level. The status with regard to the coal mines for which vesting order had been issued was being reviewed regularly at the highest levels.

The main objective for early auctioning of the Schedule II and Schedule III coal mines was that they could be brought under production speedily, as they were already producing/likely to produce at the time of de-allocation and to achieve the objectives of energy security of the country and minimising impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation. Though efforts were made at the Government level to start production from these coal mines, the fact remained that only in 11 out of 26 coal mines production could be started/mine opening permission was granted till May 2016.

**Pendency of various approvals at the level of the Central Government, State Governments and with the allottees themselves affected the achievement of the very objectives of early auctioning of these coal mines.**

## Chapter 8 - Monitoring Mechanism

### 8.1 Introduction

The e-auction mechanism of coal mines had multiple<sup>27</sup> conditions for extraction and utilisation of coal by the successful bidders. Those conditions were necessary to ensure that the coal resources were optimally extracted as per the plan, utilised in the manner and purpose for which the mines were allocated and interest of exchequer was protected.

In terms of rule 13(5) of the Rules, the successful allottees entered into Coal Mine Development and Production Agreement (CMDPA) with Nominated Authority (NA). CMDPA prescribed various conditions for extraction and utilisation of coal, which were to be adhered by the allottee of the coal mines. CMDPA also prescribed the following reports/returns to be prepared and sent by allottees to the Government to monitor compliance with the agreement:

**Table 11 : Reports/Returns to be Provided by Successful Bidders as per CMDPA**

Reports	Information to be provided	Returns/Report to be submitted to
<b>Pre commencement report</b>	<ul style="list-style-type: none"> <li>• Information for commencement of the mining operation including commencement plan, every thirty calendar days.</li> <li>• Also provide details of deviation from the commencement plan, reason for the deviation and rectification thereof.</li> </ul>	Nominated Authority
<b>Commencement report</b>	Intimation regarding commencement of mining operation within three business days of the commencement.	Nominated Authority
<b>Monthly report</b>	Details of compliance with efficiency parameters and reasons for non-compliance, if any.	Coal Controller's Organisation
<b>Yearly report</b>	Copies of final accounts along with statutory auditor's report	Coal Controller's Organisation
<b>Engagement of contractors</b>	Certified copy of any contract relating to mining operation to be submitted within 15 business days of its execution.	Nominated Authority

<sup>27</sup> Extraction of coal as per mine plan; use of extracted coal in specified end use plant only; in case of utilisation of coal in any other specified end use plant prior permission required; coal extracted in excess of the entitlement should be supplied to Coal India Limited (CIL) at fixed rate offer for power sector and at CIL notified price for non-regulated sector etc.

Further, as per the CMDPA, NA had the right to:

- Inspect, through its authorised representative, the mining activities in order to monitor and verify the compliance with CMDPA.
- Have access, through its authorised representative, to the successful bidder's financial and other records (related to any period) at any time upon reasonable advance notice.
- Conduct performance audit directly/indirectly or through third party.

The above reveals that it was planned that the two offices i.e. NA and Coal Controller's Organisation (CCO) were to be responsible for monitoring the adherence of CMDPA conditions by the allottees of e-auctioned coal mines. Further, the agreement had provided for regular sources of information and powers for checking adherence to the CMDPA conditions to the Government.

In this context, Audit checked the preparation for and status of the monitoring mechanism at both these organisations.

## **8.2 Monitoring by Nominated Authority**

Audit noticed that NA had adopted/planned to adopt following mechanism to monitor the compliance with all the terms and conditions specified in CMDPA:

- Directed all the successful bidders to furnish information related to commencement plan and also designed a report on production of coal and payments (Form MRPC&P-1<sup>28</sup>), to be submitted on monthly basis.
- A stand-alone database to monitor the financial obligations by the successful bidder covering monthly payments, upfront amount, fixed amount and performance security.
- The physical performance in respect of each mine was being monitored based on the information received from successful bidders vis-à-vis the conditions laid in the CMDPA.
- A web-based application for online monitoring of the compliance covering post vesting obligations by the successful bidder was under development. It planned to cover submission of commencement plan, payment of upfront amount, performance security and appropriation, submission of periodic reports to NA (regarding mining operations), utilisation of coal, monthly payments and escalation etc.

During the audit of NA, it was noticed that:

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<sup>28</sup> Monthly Report for Production of Coal and Payments



- Form MRPC&P-1 was designed for bidders to submit self-certified monthly report to NA in respect of quantity produced, quantity dispatched and payment due thereon. The said proforma did not capture, *inter alia*, destination of quantity dispatched, destination where extracted coal was used, quantity of coal used and extent of merchant and regulated power produced by the allottee (for power sector mines).
- Absence of these information would have an inherent risk of lack of comprehensive and effective monitoring over utilisation of coal for intended purpose and end use plants. Further, the quantities of actual utilisation of coal also could not be tracked from this form.
- The monitoring mechanism at NA was still under process of evolution (March 2016), after expiry of more than 11 months of the issue of the first set of vesting orders in respect of coal mines e-auctioned.
- Audit could not find details of any plan for and mechanism by which the physical inspections to check the actual status in field would be ensured by NA.

Ministry of Coal (MOC) replied (March 2016) that CMDPA clearly mentioned the details of end use plant, where the extracted coal would be dispatched/used including the penal clauses on diversion of coal. There was, therefore, no need for capturing the destination and end use plant of dispatched coal in the proforma. The monitoring mechanism, as laid down in CMDPA, included pre-commencement reports, commencement plans etc. which were regularly monitored by NA. Several measures had been implemented, while others were under implementation including an online web based portal. It was true that the monitoring mechanism of NA was still under process of evolution.

MOC's reply needs to be viewed in light of the facts that Audit could not find any document relating to the plan and methodology to monitor actual dispatch and utilisation of coal to a specific end use plant. Further, CMDPA's penal clauses would have no impact till a proper monitoring mechanism was put in place which could detect instances of violations, so that these penal clauses could be used. Moreover, MOC accepted that the monitoring mechanism of NA was still under process of evolution.

**The monitoring mechanism at NA was inadequate and under evolution even after a lapse of 11 months (March 2016) since the allocation of the mines for first two tranches.**

### 8.3 Monitoring by Coal Controller's Organisation

The duties and functions of CCO have been discussed in Chapter 2 of this report. MOC, as per existing order (January 2005), decided that close monitoring of the progress made by the successful allottees of the captive mine might be carried out by CCO. In respect of mines permitted for operation, as approved by MOC, the copy of mining plan was forwarded to CCO. CCO was also required to furnish six-monthly report to MOC with regard to each allottee after obtaining required confirmation from the allottees, which were to be placed before a committee headed by the Additional Secretary (Coal) to monitor the development of allocated coal mines. Further, CCO was entrusted to accord opening permission for the mines, checking of coal grades, collection of stowing excise duty and monitoring of various infrastructural works at the mines of allottees. The monitoring of coal mines including captive coal mines in terms of various rules framed by MOC were carried out by CCO through its officers on special duty (OSD) stationed in seven regions, spread over the country. The monitoring activities of OSD mainly involved quality surveillance through collection of coal samples and analysis for determining the quality of coal produced, physical verification of activities and monitoring of compliance of the allottees on mine closure plans.

#### 8.3.1 Emerging Role of CCO for Monitoring of e-Auctioned Mines

The vesting orders, issued after conduct of e-auction of coal mines, *inter alia*, envisaged transfer of the erstwhile approved mine plan to the new allottees on the same terms and conditions as approved for the prior allottees. The CMDPA, *inter alia*, stipulated various terms and conditions for utilisation of coal by the allottees and monitoring mechanism for operation of the mines, as discussed in Para 8.1 above. In addition to the duties mentioned in table 11 (in respect to CMDPA), CCO was also authorised by MOC in December 2014 to collect additional levy in respect of Schedule II coal mines.

However, Audit could not find any record/system at CCO to show that these conditions were to be monitored and the system by which this monitoring was to be done. It was also noticed that this was not included in the work of monitoring being done by CCO through the OSD. Therefore, the monitoring system at CCO was inadequate to that extent.

Further, scrutiny of records relating to the activities of successful bidders monitored by CCO revealed that based on opening permission accorded to seven coal mines, six mines commenced operation from April 2015. They had been providing information on the monthly production and dispatch of coal only. No other information or reports were submitted by them as required under CMDPA.

From the monthly report submitted by them, it could not be ascertained whether the coal was being used in the specified end use plant and whether the bidders had complied with the efficiency parameters regarding extraction and utilisation of coal. Further, Audit could not find any document relating to devising of any mechanism for monitoring of the mining activities of the bidders vis-à-vis the terms of various statutes, rules, mining plans etc.

As highlighted earlier in the Performance Audit Report of Comptroller and Auditor General of India on Allocation of coal blocks and Augmentation of Coal Production (Report No. 7 of 2012-13), CCO did not have adequate sanctioned strength or men-in-position for effective monitoring of coal blocks. Further, the Standing Committee on Coal and Steel in its 31<sup>st</sup> report presented in Parliament in April 2013 had also strongly recommended the Government to take immediate steps to strengthen the office of CCO.

CCO in reply (September 2015) stated that CCO had not been entrusted by MOC to monitor freshly allotted/vested mines. The reply, however, was silent on the non-compliance of monitoring mechanism as contemplated under CMDPA.

MOC in its reply (March 2016) stated that as per the Colliery Control Rules, 2004 CCO already had the authority to seek information on production, including the authority to inspect collieries. There was, therefore, no need to put a new legal framework in place for the purpose.

MOC's reply needs to be viewed in light of the fact that CCO stated that they had not been entrusted by MOC to monitor freshly allotted/vested mines. Moreover, analysis of the monitoring being carried out by CCO revealed that, successful bidders had been providing information on the monthly production and dispatch of coal only. No other information or reports were submitted by them to CCO as required under CMDPA.

Further, contradictory replies of MOC and CCO clearly implied that there was lack of clarity for the respective roles and responsibilities for carrying out various aspects of monitoring to ensure compliance of the terms and conditions of CMDPA.

**The monitoring mechanism at CCO was suffering from weaknesses in planning and implementation especially in the evolving scenario after the e-auctions.**

### 8.3.2 Discrepancies in the Production Data Furnished by Prior Allottees

It was noticed that production figures certified by statutory auditors were furnished by prior allottees for the purpose of calculation and deposit of additional levy to CCO. Production figures submitted to CCO by 19 prior allottees situated in four States (West Bengal, Jharkhand, Chhattisgarh and Maharashtra), based on which additional levy was collected by CCO, were cross checked in audit with reference to the production figures submitted by them to the respective State Directorate of Mines for assessment and payment of royalty.

It was noticed that in case of eight prior allottees, there was a mismatch in both sets of figures. In case of two allottees, production figures reported at CCO were less than those reported to respective State Governments. In six cases, the production figures submitted to the respective State Governments were less than the ones reported to CCO. Details of the two cases are as follows:

**Table 12 : Cases where Production Reported to CCO were Lesser than those Reported to the State Governments**

Name of Coal mine	Prior allottee	Production figures (to CCO) (in MT)	Production figures (to State Governments) (in MT)	Difference in production (in MT)	Difference in additional levy (₹ in crore)
<b>Gare Palma IV/5</b>	Monnet Ispat Energy Limited	8573105	8657005	83900	2.48
<b>Ardhagram</b>	Sova Ispat Limited and Jai Balaji Sponge	733416	764916	31500	0.93

CCO in its reply (September 2015) stated that additional levy was collected on the basis of certificate of Chartered Accountant/statistical return for coal production as furnished by the prior allottees. No other mechanism to check the authenticity of production data was available with CCO.

**There was no mechanism to cross check the production figures given by the prior allottees indicating absence of regular monitoring and inspections of coal mines, which was one of the important activities of CCO.**

#### 8.4 Imposition and Collection of Additional Levy

During the scrutiny of records relating to imposition and collection of additional levy at CCO office it was noticed that out of 42 Schedule II mines, 39 mines were operational and produced coal and were required to deposit additional levy. These mines had produced 34.46 crore MT of coal up to 31 March 2015 as per certificates from Chartered Accountants/self-certificates submitted by the prior allottees, which were considered for collection of additional levy. Based on the above production figure, the prior allottees were required to deposit ₹10165.12 crore against which ₹6628.56 crore only was collected as additional levy till May 2016. Details of cases where additional levy was not received or less amount was received are given in **Annexure IX**. Thus ₹3536.56 crore was pending as additional levy for collection from the prior allottees.

It was also noticed that a contempt petition had been filed by MOC in February 2015 against the defaulters who had not paid additional levy.

#### 8.5 Compliance with Mine Closure Plans

MOC issued guidelines on mine closure plan in August 2009, which was subsequently amended in January 2012, April 2012 and January 2013. In terms of the guidelines for mine closure plan, 42 producing captive coal mines/blocks included in Schedule II and 32 non-producing captive coal mines/blocks under Schedule III were required to submit the approved mining closure plans to CCO. Further, these 42 producing mines/blocks of Schedule II were required to open escrow accounts and deposit annual mine-closure cost in the account. Audit observed that CCO failed to ensure the compliance of various provisions of the mine closure plan as discussed below:

- Prior allottees of 22 (out of the 42) Schedule II coal mines, and 24 (out of the 32) Schedule III mines had not submitted approved mine closure plans to CCO.
- Out of the 20 prior allottees of Schedule II coal mines, who had submitted approved mine closure plans and also opened escrow account, only seven prior allottees (of mines e-auctioned during 1<sup>st</sup> and 2<sup>nd</sup> tranche) had deposited the mine closure cost in the escrow account. Further, out of the seven prior allottees, five allottees had made a short deposit of ₹8.30 crore against the liability of ₹17.48 crore in this regard.

- The prior allottees of captive mines that had opened escrow account and deposited mine closure cost upto 2014-15 had not submitted the details of land use activities to determine the extent of expenditure to be reimbursed to prior allottees from the escrow account on account of mine closure activities already carried out by them and further liability, if any.
- As required under the guidelines, they had not submitted any annual report to CCO regarding the extent of protective and rehabilitative work carried out by them for the mines. MOC/CCO had also not initiated any penal action against the defaulting prior allottees in terms of guidelines.

CCO stated (September 2015) that they were regularly pursuing the defaulting party to open the escrow account and to deposit the required amount. The matter of defaulting cases was being reported to MOC regularly. Further, necessary communications were made (September 2015) to all the prior allottees whose coal mines had been cancelled to get the certification of work done and submit the same to CCO for further action.

**Though the CMDPA prescribed various conditions relating to production and utilisation of coal from the e-auctioned coal mines, these were not being properly monitored at any level. Moreover, the roles and responsibilities for various aspects of monitoring and corresponding coordination mechanism were not adequately defined. This was further accentuated by the fact that CCO was ineffective in even performing the existing responsibilities relating to the coal mines and was also devoid of necessary resources for that purpose.**

## **8.6 Other Significant Issues**

### **8.6.1 Diversion of Coal**

The Act and the CMDPA provided that the allottee may use the coal from an allocated coal mine for any plant of the company or its subsidiary company, engaged in common specified end uses after providing written intimation (Diversion Notice) to the Central Government. Audit noticed that CESC Limited, the allottee of Sarisatolli coal mine, diverted coal from this mine to its 'other plants'.

Power sector coal mines were auctioned with the objective of providing cheaper power to the consumers. In such a scenario it was important to ensure that the benefit of the low cost of diverted coal was passed on to the consumers of the power produced by the 'other power

plants'. It was, however, not clear as to how MOC and/or Ministry of Power (MOP) ensured, that benefit of the low costs of diverted coal was passed on to the consumers of the power produced by the 'other power plants', to the extent of the coal diverted to the 'other power plant'.

MOC replied (January 2016 and March 2016) that:

- MOP had issued directions to Central Electricity Regulatory Commission (CERC) and State Governments, on 16 April 2015, for the power projects using coal from the auctioned/allotted coal mines, to ensure that the benefits of the mined coal are passed on to the consumers and were also applicable for the diverted coal from auctioned/allotted coal mines.
- All the concerned stakeholders have been apprised of all the diversion notices received so far and have been requested to ensure that the benefit of the cost of coal extracted from the coal mine is passed on to the consumers of the plants, in accordance with the tender conditions.
- Comments of the MOP were sought on diversion proposals before approval and there was no delay on the part of MOC. MOP was aware of the issue well before the decision was taken.

MOC's replies need to be viewed in light of the fact that though the vesting order of Sarisatolli coal mine was issued on 23 March 2015 and the proposed diversions were approved in August 2015, but the intimations of the proposed diversions were given to the MOP, CERC, SERC and the concerned State Government only on 20 January 2016, after the issue was raised by Audit.

**Audit could not draw an assurance that a system was put in place to ensure that the diversion details are sent timely to the concerned authorities to ensure passing of benefit of the low costs of diverted coal to the consumers of the 'other power plant' where coal was diverted.**

## Chapter 9 - Conclusion

In September 2014, the Hon'ble Supreme Court of India cancelled the allocation of 204 coal blocks made by Ministry of Coal (MOC) since 1993. A new framework for allocation of the cancelled coal mines was laid down by Promulgation of Coal Mines (Special Provisions) Ordinance 2014. This was followed by notification of Coal Mines (Special Provisions) Rules, 2014 to operationalise provisions of the said Ordinance and uploading Standard Tender Document (STD) in December 2014. The notification of the Coal Mines (Special Provisions) Act, 2015 was done in March 2015.

- The new mechanism for e-auction of coal mines was an improvement over the earlier system and attempted to incorporate the principles of objectivity, transparency and fairness in allocation of natural resources to private sector participants. However, Audit observed that there were some systemic and procedural issues which needed to be addressed for further improvement in the e-auction mechanism.
- Cabinet Committee on Economic Affairs (CCEA) approved a methodology for valuation of coal mines/blocks by calculating their intrinsic value and the floor/reserve price. Audit noticed inconsistencies and inaccuracies in following certain assumptions and various errors in computation of intrinsic values. Revised calculation of intrinsic value was carried out by incorporating revised elements of costs and revenue after considering all the deficiencies together in individual coal mines. There was under determination of upfront amounts in 15 coal mines by ₹381.83 crore, under determination of floor prices in six non-regulated sector coal mines and revised fixed rates in all nine power sector coal mines.
- After the Nominated Authority (NA) made the recommendations in respect of the preferred bidder for 32 coal mines, MOC returned the cases of eight coal mines to NA for re-examination. After submission of results of re-examination carried out on various parameters by NA, MOC examined these eight cases and thereafter, rejected the recommendation of the Nominated Authority for declaration of the 'preferred bidder' as 'Successful Bidder' in respect of three coal mines and preferred bidders were declared as successful bidders in the other five cases. Audit is of the view that there was a need for framing of broad guidelines including various parameters considered relevant by MOC



for evaluation of final bid prices to enhance transparency of the bidding process and help in eliminating avoidable litigation.

- The ultimate objective of auction of coal mines for the power sector is to augment power production for benefit of the economy. Audit is of the view that in the light of vulnerabilities like stipulations regarding non-recovery of various charges from power consumers, weaknesses in the monitoring system and bank guarantee not being valid for the life of the mine, the risk of non-compliance with contractual obligations was high. These may adversely affect the sustainability of the model in the long run.
- The e-auction was planned to provide cheaper coal to power producers for the ultimate objective of providing cheaper power. In this context, the CCEA approved methodology for fixing floor/reserve price provided 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. However, after introduction of reverse then forward bidding, the concept of additional premium was introduced. But this component of additional premium was excluded for the quantum of coal utilised for generation of power sold on merchant basis. This resulted in a scenario where the power producers would be paying lesser amount to the Government on utilisation of coal for producing power to be sold on merchant basis as compared to the coal utilised for production of power to be sold under the power purchase agreements (PPAs).
- The e-auction process was carried out on the online e-auction platform provided by MSTC Limited. It was noticed in audit that there was inadequate audit trail and non-linking of specified end use plants with the registration ids.
- Though various efforts were being made by the Government to start production from the successfully auctioned coal mines, only in 11 out of 26 coal mines, for which vesting orders were issued, production could be started/mine opening permissions were granted till May 2016. In respect of the remaining coal mines, production could not start as various statutory approvals were pending at the Central Government level, State Governments level and also at the level of allottees themselves. Delay in operationalisation of these coal mines had the potential to adversely affect an important objective of early auctioning of these coal mines, which was to ensure continuity in coal

