

Chapter 8 - Monitoring Mechanism

8.1 Introduction

The e-auction mechanism of coal mines had multiple²⁷ 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
Pre commencement report	<ul style="list-style-type: none"> • Information for commencement of the mining operation including commencement plan, every thirty calendar days. • Also provide details of deviation from the commencement plan, reason for the deviation and rectification thereof. 	Nominated Authority
Commencement report	Intimation regarding commencement of mining operation within three business days of the commencement.	Nominated Authority
Monthly report	Details of compliance with efficiency parameters and reasons for non-compliance, if any.	Coal Controller's Organisation
Yearly report	Copies of final accounts along with statutory auditor's report	Coal Controller's Organisation
Engagement of contractors	Certified copy of any contract relating to mining operation to be submitted within 15 business days of its execution.	Nominated Authority

²⁷ 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-1²⁸), 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:

²⁸ 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 31st 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)
Gare Palma IV/5	Monnet Ispat Energy Limited	8573105	8657005	83900	2.48
Ardhagram	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 1st and 2nd 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.