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510312PRIME MINISTER'S OFFICE

South Block, New Delhi-110011

Subject: Issues pertaining to the process of selection of Mine Developer-cum-Operator (MDO)-regarding

This is with reference to NITI Aayog's report on Mines, Minerals and Coal Sector. In this connection, the undersigned is directed to inform that issues pertaining to process of selection of Mine Developer-cum-Operator have been raised from time to time. After examination of these issues, following has been observed:

- I. There are different regulatory provisions, different approaches and practices for engagement of Mine Developer-cum-Operators (MDOs).
- II. In certain cases, MDO Agreement pre-dates the date of allotment of coal block.
- III. Cabinet Secretary opined that "appointment of MDOs before the allotment of mineral block appears inappropriate and this may not be allowed in the future".
- IV. Considering the differing legal positions, practices and approaches and lack of consistency and transparency, the current practice of MDO appointment may continue to be questioned in public domain.
- V. It is necessary that there is a proper and pervasive legal framework and policy regime for appointment of MDOs to be followed by all concerned in all possible sectors, including Coal and major Minerals.

2. Accordingly, the undersigned is directed to request that NITI Aayog may frame guidelines for selection and appointment of MDOs in consultation with Secretaries of Ministry of Mines, Ministry of Coal, Ministry of Steel and Ministry of Finance, considering the observations mentioned above. Thereafter the same may be submitted to Cabinet Secretary for examination, issuing and implementation.

✓ CEO, NITI Aayog

PMO ID No. 200/31/C/6/2019-I

Copy to : Cabinet Secretary

(Dr. Hardik Shah)
Deputy Secretary
Tel: 23013586

Dated: 4.3.2020

1/3712769/2020 - CR

**F.No. M-12026/1/2020-Coal (P&E)
Government of India
NITI Aayog
(Energy Vertical)**

**NITI Bhawan, Sanasd Marg,
New Delhi, dated 21st Nov, 2020**

Office Memorandum

Subject: Issues pertaining to the process of the selection of Mine Development-cum-Operator- regarding.

The undersigned is directed to refer to Cabinet Secretariat I.D. No. 122/2/1/2019-Cab.III dated 12th October, 2020 & PMO ID No. 200/31/C/6/2019-IR dated 4th March, 2020 and to forward herewith proposed guidelines for selection & appointment of the MDO.

2. This issues with the approval of Competent Authority in NITI Aayog

**Sd/-
(Rajnath Ram)
Adviser (Energy)**

**Sh. Ashutosh Jindal,
Joint Secretary
Cabinet Secretariat
Rashtrapati Bhawan
New Delhi**

Copy to:

1. CEO, NITI Aayog
2. Secretary (Revenue & Finance), Ministry of Finance, North Block, New Delhi-11001
3. Secretary, M/o Coal & Mines, Shastri Bhawan, New Delhi-110001
4. Secretary, M/o Steel, Udyog Bhavan, New Delhi-110107
4. Additional Secretary(Energy), NITI Aayog
5. Sh. Arvind Shrivastava, Joint Secretary to PM, South Block, New Delhi-110001

Proposed guidelines for selection & appointment of MDO

Background

Vide PMO ID No. 200/31/C/6/2019-IR dated 4.3.2020, the following issues have been highlighted:

- There are different regulatory provisions, different approaches and practices for engagement of Mine Developer and Operator (MDO)
- In certain cases, MDO Agreement pre-dates the date of allotment of coal block.
- Cabinet Secretary opined that "appointment of MDOs before the allotment of mineral block appears inappropriate and this may not be allowed in the future".
- Considering the differing legal positions, practices and approaches and lack of consistency and transparency, the current practice of MDO appointment may continue to be questioned in public domain.
- It is necessary that there is a proper and pervasive legal framework and policy regime for appointment of MDOs to be followed by all concerned in all possible sectors, including Coal and major Minerals

Vide the above PMO ID, NITI Aayog was asked to frame guidelines for selection and appointment of MDOs in consultation with Secretaries of Ministry of Mines, Ministry of Coal, Ministry of Steel and Ministry of Finance, Thereafter the same may be submitted to Cabinet Secretary for examination, issuing and implementation.

Two meetings were held i.e. on 25th August, 2020 and 7th October, 2020 respectively with the Ministry of Steel, Ministry of Mines, Ministry of Coal and Department of Revenue, Ministry of Finance under the chairmanship of CEO, NITI Aayog to finalize guidelines for selection & appointment of MDO. The following were discussed:

1. Existing Practice Regarding Mine Developer and Operator (MDO)

Since coal mining sector has been opened up beyond coal public sector units. Blocks were allocated to public sector units such as State mine development corporations, state and central generation companies, therefore, development of mines through mine development and operator (MDO) has gained prominence.

The role of MDO is to undertake the design, engineering, procurement, construction and operations of the mines for the excavation and delivery of the coal. However, MDOs are also assigned additional work by the state/central companies for post-allotment development activities such as assistance in securing clearances, land acquisitions, ensuring mine access, physical possession of land, implementing rehabilitation and resettlement, equipment handling and maintenance, coal production as per mining plan, etc.

2. Existing Regulatory Provisions:

2.a. The Mines and Mineral (Development & Regulation), Act, 1957 which governs both coal and mining sectors does not mention about MDO. However, in exercise of the powers conferred under section-13 (**Annexure-1**) of the Act, the **Coal Blocks Allocation Rules, 2017** was framed which makes provision of the "Mine Developer Organisation" as per rules 8 (2) (ix,x, xi). The above rules state that selection of the MDOs shall be through a competitive bidding process. (**Annexure-2**).

2b). Similarly, Under powers conferred by section 13, MMDR Act, 1957, Ministry of Mines framed the **Mineral Concession Rules (MCR), 1960** which deals with prospecting license or mining lease for minerals except minor minerals and atomic minerals. MCR, 1960 does not deal with selection and appoint of MDO.

2c). Ministry of Coal dated 5th August, 2015 notified the draft Modal Contract Agreement (MCA) with a caveat that the draft MCA is suggestive one for use of the states and UTs. The States and UTs can modify clauses of the draft MCA as per their requirement/suitability. This MCA acted as base document which is being followed by CIL, NTPC and Ministry of Steel for selection of the MDOs through competitive bidding process based on their requirement/suitability subject to the following conditions as mentioned in the notification:

1. While making any modification in draft MCA, it must be ensured that any of such modification is neither infringing nor contradicting the conditions of the terms of allocation of Ministry of Coal.
2. In the event the state Government, at its discretion, makes the mine operator responsible for land acquisition activities, taking possession of land, rehabilitation of project affected families and their engagement/employment, etc., it must be expressly stipulated/understood that states/allottee shall continue to be responsible for any instances of non-compliance with the terms of allocation of the coal blocks and consequential action.

2d). **Coal Mines Special Provisions, Act 2015** was formulated by Ministry of Coal for re-allocation of the coal mines cancelled in 2014 by Hon'ble Supreme Court of India. Section 11(1) of the Coal Mines Special Provisions, Act 2015 (**Annexure-3**) provides an option for select class of allottees to continue such contracts which may be existing with any of the prior allottees. It was observed that there was only one case, namely by the "Parasa East and Kanta Basan Coal Mines, Rajasthan".

3. **Based on the discussions and feedback provided by the respective Ministries, the following is recommended for pervasive legal Framework and policy for selection of MDOs**

3.1 No Change is proposed in the Mines and Minerals (Development and Regulation) Act, 1957 as the rules framed thereunder i.e. Coal Blocks Allocation Rules, 2017 takes care the appointment of MDO.

3.2 In the Sub-rule 2(ix) of the Rule 8 of The Coal Block Allocation Rules, 2017, and in the interests of transparency, the word "transparent" may be inserted before sentence "competitive bidding process"(Annexure-1).

The above rules are applicable to the government companies. The provision of MDO shall not be made applicable to the players which have been appointed through auctions under rules 5 of Coal Block Allocation Rules, 2017. This should also not be made applicable to the players which have been appointed through commercial mining to mine coal commercially without end-use restrictions.

3.3 Appointment of MDOs before the allotment of coal block takes cue from **Section 11(1) of the Coal Mines Special Provisions, Act 2015**. To avoid such appointments of MDO, It is recommended that instead of amending the above Act, the Ministry of Coal may insert a clause in the Coal Mine Development & Production Agreement signed between Government and the Allottee barring "appointment of MDOs before the allotment of coal block".

3.5 For ensuring consistency & maintaining transparency for selection of MDO, a Model Concession Agreement (MCA) for Public Private Partnership in Coal Mining which was published after extensive consultation with all stakeholders including with the Ministry of Coal & CIL by the erstwhile Planning Commission in April, 2014 may be utilized for framing guidelines for engaging MDO. Ministry of Mines, Ministry of Coal & Ministry of Steel may suitably adopt MCA to meet their requirements.

4. Conclusion

With the proposed amendment in The Coal Block Allocation Rules, 2017 and insertion of a clause in the Coal Mine Development & Production Agreement, and by utilizing the template of the existing the Model Concession Agreement, the a regime for consistent regulatory provision, approach and practice for engagement of Mine Developer and Operator can be achieved.

Mines and Mineral (Development & Regulation), Act, 1957

13. Power of Central Government to make rules in respect of minerals.—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of 2 [reconnaissance permits, prospecting licences and mining leases] in respect of minerals and for purposes connected therewith. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the person by whom, and the manner in which, applications for 3 [reconnaissance permits, prospecting licences or mining leases] in respect of land in which the minerals vest in the

Government may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such application may be sent;

(c) the matters which may be considered where applications in respect of the same land are received on the same day;

(d) the terms and conditions of auction by competitive bidding for selection of the company under section 11A;

(e) the authority by which 2 [reconnaissance permits, prospecting licences or mining leases] in

respect of land in which the minerals vest in the Government may be granted;

(f) the procedure for obtaining 5 [a reconnaissance permit, a prospecting licence or a mining

lease] in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such 6 [a permit, licence or lease] may be granted or renewed;

(g) the terms on which, and the conditions subject to which, may other 1 [reconnaissance permit, prospecting licence or mining lease] may be granted or renewed;

(h) the facilities to be afforded by holders of mining leases to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

2 [(i) the fixing and collection of fees for 3 [reconnaissance permits, prospecting licences or mining leases] surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;]

(j) the manner in which rights of third parties may be protected (whether by payment of compensation or otherwise) in cases where any such party may be prejudicially affected by reason of any 4 [reconnaissance, prospecting or mining operations]; 5 [(jj) parameters of existence of mineral contents under clause (a) of sub-section (2) of section 5;]

(k) the grouping of associated minerals for the purposes of section 6;

(l) the manner in which, and the conditions subject to which, 6 [a reconnaissance, permit, a prospecting licence or a mining lease] may be transferred;

(m) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passages for water for mining purposes on any land comprised in a mining lease;

(n) the form of registers to be maintained under this Act;

(p) the reports and statements to be submitted by holders of 8 [reconnaissance permits or prospecting licences] or owners of mines and the authority to which such reports and statements shall be submitted;

(q) the period within which applications for revision of any order passed by a State Government or other authority in exercise of any power conferred by or under this Act, may be made 9 [the fees to be paid therefore and the documents which shall accompany such applications] and the manner in which such applications shall be disposed of; and

[(qq) the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any prospecting or mining operations shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the prospecting licence or mining lease;]

11[(qqa) the amount of payment to be made to the District Mineral Foundation under sub-sections (5) and (6) of section 9B;

(qqb) the manner of usage of funds accrued to the National Mineral Exploration Trust under sub-section (2) of section 9C;

(qqc) the composition and functions of the National Mineral Exploration Trust under sub-section (3) of section 9C;

(qqd) the manner of payment of amount to the National Mineral Exploration Trust under sub-section (4) of section 9C;

(qqe) the terms and conditions subject to which mining leases shall be granted under sub-section (3) of section 10B;

(qqf) the terms and conditions, and procedure, subject to which the auction shall be conducted including the bidding parameters for the selection under sub-section (5) of section 10B;

(qqg) the time limits for various stages in processing applications for grant of mining lease or prospecting licence-cum-mining lease under sections 10B, 11, 11A, 11B, and section 17A, and their renewals;

(qqh) the terms and conditions for grant of non-exclusive reconnaissance permits under sub-section (1) of section 10C;

(qqi) the terms and conditions for grant of prospecting licence-cum-mining leases under sub-section (4) of section 11;

(qqj) the terms and conditions, and procedure, including the bidding parameters for the selection under sub-section (6) of section 11;

[(qqja) the terms and conditions and amount or transfer charges under the proviso to sub-section (6) of section 12A;] (qqk) the amount to be payable by a Government company or corporation, or a joint venture for grant of mining lease under sub-section (2C) of section 17A; and]

(r) any other matter which is to be, or may be, prescribed under this Act.

Note: The above provisions may be read with subsequent amendments carried out in MMDR, ACT, 1957, Coal Mines (Special Provisions) Act- 2015 and the Mineral Laws (Amendment) Act- 2020 as notified by the Ministry of Law and Justice vide Gazette Notification dated 13th March, 2020.

Annexure: 2

The Coal Block Allocation Rules, 2017

8. Procedure after declaration of successful bidder or successful allottee.—(1) The successful bidder declared in accordance with the provisions of rule 5 or the successful allottee declared in accordance with the provision of rule 6 or rule 7, that is, the successful allocatee shall enter into an agreement with the Central Government wherein the terms and conditions of the allocation shall be specified and which shall be terminated in accordance with sub-rule (7).

(2) In case of allotment under rule 6, the agreement with successful allottee shall contain inter-alia, following conditions, namely:—

(i) The successful allottee shall utilise the coal for the specified purpose only for which the coal block has been allocated.

(ii) In case the coal block is allotted for the purpose of own consumption, if the allottee washes coal obtained from the coal block, then the middlings, rejects, tailings, jhama or any other type of coal obtained on washing, which cannot be utilised for the purpose for which the coal block has been allocated, shall be sold or disposed of by the successful allottee only with the prior approval of the Coal Controller's Organisation.

(iii) In case coal block is allotted for purpose of sale of coal, then the coal produced from the coal block shall be sold or distributed through a non-discriminatory, reasonable and transparent mechanism.

(iv) In case the purpose of allotment of coal block is specified as consumption of coal in generation of electricity through generating station, the allottee shall utilise coal for the power plants owned by it for which power purchase agreement had been signed as per the prevailing policy issued by the Central Government from time to time.

(v) The production of coal shall be as per the approved mining plan and the terms and conditions of the mining lease.

(vi) The allocatee Company shall be responsible for development of coal block as per the milestones as specified in the agreement and approved mining plan.

(vii) No company other than a Government company or corporation shall hold more than twenty-six per cent of the paid-up share capital in the successful allottee either directly or through any of its subsidiary company or associate company.

(viii) The allocatee company shall file such periodical return, as may be specified, regarding distribution and utilisation of coal to the Coal Controller and any other agency authorized by the Central Government or the State Government: Provided that in case the allotment is made under sub-rule (10) of rule 6 to a Government company or corporation for utilisation of coal in the linked power.

project awarded on the basis of competitive bid for tariff (including Ultra Mega Power Project), periodical return shall be filed by the operating special purpose vehicle after award of power project on the basis of competitive bidding in accordance with the guidelines issued by the Central Government in the Ministry of Power.

(ix) In case the coal block is to be developed through a mine developer and operator, the selection of such mine developer and operator shall be through a **transparent &** competitive bidding process and the successful allocatee shall inform the Central Government and the State Government about the engagement of the mine developer and operator and the terms and conditions of such engagement, as soon as it is finalised.

(x) The successful allottee shall ensure that the criteria of bidding for engagement of mine developer and operator is not linked to the notified price of the Coal India Limited.

(xi) The mine developer and operator shall maintain all records required to be maintained and shall make available such records for inspection to the successful allottee, the State Government and the Central Government.

Coal Mines Special Provisions, Act 2015

11. Discharge or adoption of third party contracts with prior allottees.

(1) Notwithstanding anything contained in any other law for the time being in force, a successful bidder or allottee, as the case may be, in respect of Schedule-I coal mines, may elect, to adopt and continue such contracts which may be existing with any of the prior allottees in relation to coal mining operations and the same shall constitute a novation for the residual term or residual performance of such contract:

Provided that in such an event, the successful bidder or allottee or the prior allottee shall notify the nominated authority to include the vesting of any contracts adopted by the successful bidder.

(2) In the event that a successful bidder or allottee elects not to adopt or continue with existing contracts which had been entered into by the prior allottees with third parties, in that case all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mine and the remedy of such contracting parties shall be against the prior allottees.

