

(2020) 04 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Petition No. 2957 Of 2020, Civil Miscellaneous No. 10268, 10270 Of 2020

Indrajit Power Private Limited

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 28-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Coal Mines (Special Provisions) Act, 2015 — Section 27
Mumbai Tenancy and Agriculture Land Act (Vidharbha), 1958 — Section 49(A)
Maharashtra Land Revenue Code, 1966 — Section 44A

Citation : (2020) 04 DEL CK 0066

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Sandeep Sethi, Purti Marwaha, Maninder Acharya, Jasmeet Singh

Final Decision : Dismissed

Judgement

,,,,,

Suresh Kumar Kait, J",,,,,

CrI. M.A.10268-69/2020,,,,,

1. Allowed, subject to all just exceptions.",,,,,

2. Applications are disposed of.,,,,,

W.P.(C) No.2957/2020 & CrI.M.A.10270/2020,,,,,

3. The instant writ petition under Article 226/227 of the Constitution of India has been filed praying for issuance of a writ of Certiorari for quashing the,,,,,

email dated 04.04.2020 received by the petitioner company on 06.04.2020 whereby the respondent no.1 has passed a decision to appropriate the Bank,,,,,

Guarantee No. 0018215IPG000019 dated 13.04.2015. Consequently, a writ of

Mandamus for direction to the respondent no.1 to refrain from",,,,,

appropriating the Bank Guarantee dated 13.04.2015. Further, a writ of Mandamus directing the respondent no.5 to renew the Bank Guarantee dated",,,,,

13.04.2015 which is due to expire on 12.04.2020 and a writ of Mandamus for direction to the respondent no.1 to grant extension to time to complete,,,,,

the pending 17% milestones to make the mine operational at Nerad Malegaon Coal Mine, Maharashtra.",,,,,

4. Hearing of the present petition has been conducted through video conferencing.,,,,,

5. Notice issued and accepted by the respective counsel of the respondents. With the consent of counsel for the parties, the present petition is being",,,,,

taken up for final disposal.,,,,,

6. Petitioner is a company incorporated on 20.09.1994 which was formed to generate thermal and green power. At present, petitioner has a 80 MW",,,,,

coal based thermal power plant based at Wardha, Maharashtra.",,,,,

7. Respondent no.1 is the Union of India. The respondent no.2 is the nominated authority, Ministry of Coal, represented through Secretary, that",,,,,

regulates and deals with availability of coal to meet the demand of various sectors of the economy in an eco-friendly, sustainable and cost effective",,,,,

manner. Respondent no.1 also regulates the Coal Mines in the territory of India. The respondent no.3 is the Scrutiny Committee set up by the Ministry,,,,,

of Coal. The respondent no.4 is the office of the Coal Controller i.e. subordinate office of the respondent no.1. The respondent no.5 is Allahabad Bank,,,,,

which issued the Bank Guarantee on behalf of the petitioner company.,,,,,

8. On 21.10.2014, respondent no.1 introduced the Coal Mines (Special) Provisions Ordinance, which provided for allocation of Coal Mines and vesting",,,,,

right, title and interest in and over the land mine infrastructure together with mining leases to successful bidders and allottees with a view of 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 for matters connected therewith or incidental thereto. It was vide this Ordinance, permission for commercial mining",,,,,

had been permitted in India and therefore, the bids were to be invited for re allotment of the mines, after the cancellation of coal blocks by the",,,,,

Honâ??ble Supreme Court of India vide its judgment dated 25.08.2014 in

Manohar Lal Sharma vs. Principal Secretary: (2014) 9 SCC 516.,,,,,,

9. On 02.03.2015, the petitioner became the technically qualified bidder, alongwith 4 other bidders, and on 13.03.2015, the petitioner was declared as a",,,,,,

successful bidder of the electronic auction conducted by the respondent no. 1 for Nerad Malegaon Coal Mine. Thereafter, a Coal Mine Development",,,,,,

and Production Agreement (â??CMDPAâ??) dated 16.03.2015 was entered into by the petitioner and respondent no.1.,,,,,,

10. On 03.03.2015, the Coal Mine (Special Provisions) Act, 2015 was notified. The CMDPA, laid down the post vesting obligations under Clause 5,",,,,,

which is being reproduced as under:-,,,,,

â??5. POST VESTING OBLIGATIONS,,,,,

5.1 Commencement Plan,,,,,

5.1.1 Within 30 Business days of the date of the Vesting Order, the Successful Bidder shall be required to submit a detailed plan (the",,,,,,

â??Commencement Planâ??) towards commencement of mining operations of the Coal Mine. The Commencement Plan shall include all,,,,,

actions that the Successful Bidder may be required to perform to commence mining operations at the Coal Mine and shall include such,,,,,

information as may be required by the Nominated Authority, including without limitation, information regarding the following:",,,,,

(a) The Government Approvals, including Mining Lease which shall be required for commencement of mining operations at the Coal Mine",,,,,

and the time within which the Successful Bidder would make applications for such Governmental Approvals; and,,,,,

(b) Revision to the Mine Plan, if any, as may be proposed by the Successful Bidder.",,,,,

5.1.2 The Commencement Plan shall be prepared by the Successful Bidder to ensure strict compliance with the Efficiency Parameters. (page,,,,,

15),,,,,,

5.2 Payment of the Upfront Amount,,,,,

5.2.1 First Instalment of fifty per cent,,,,,

The first instalment of fifty per cent of the Upfront Amount being an amount equal to INR 2,19,26,204 (Indian Rupees Two Crores Nineteen",,,,,,

Lakh Twenty Six Thousand Two Hundred and Four), shall be deposited by the Successful Bidder in the Designated Bank Account in the",,,,,,

manner provided in Clause 3.1(b) as a Vesting Condition.,,,,,,

5.2.2. Second Instalment of Twenty Five Per cent.,,,,,,

The second instalment of twenty five per cent of the Upfront Amount being an amount equal to INR 1,09,63,102 (Indian Rupees One Crore",,,,,,

Nine Lakh Sixty Three Thousand One Hundred and Two), shall be deposited by the Successful Bidder in the Designated Bank Account, on",,,,,,

or prior to expiry of 15 Business Days from the date of execution of the Mining Lease by the relevant State Government.,,,,,,

5.2.3 Third Instalment of Twenty Five Per Cent.,,,,,,

The third instalment of twenty five per cent of the Upfront Amount being an amount equal to INR 1,09,63,102 (Indian Rupees One Crore",,,,,,

Nine Lakh Sixty Three Thousand One Hundred and Two), shall be deposited by the Successful Bidder in the Designated Bank Account, on",,,,,,

or prior to expiry of 15 Business Days from the date of grant of mine opening permission from the state pollution control board of the.,,,,,,

relevant State where the Coal Mine is located.,,,,,,

5.2.4 Failure to pay the Upfront Amount.,,,,,,

In the event the Successful Bidder fails to pay the second instalment or the third instalment of the upfront Amount within the time specified in.,,,,,,

Clause 5.02.2 or Clause 5.2.3, respectively, then the Nominated Authority shall be entitled to appropriate the Performance Security in the",,,,,,

manner stipulated in Clause 6 (PERFORMANCE SECURITY) and such failure may also result in termination of this Agreement as provided.,,,,,,

in Clause 24 (EFFECTIVE DATE, TERM AND TERMINATION) .",,,,,,

5.3 The Mining Lease.,,,,,,

5.3.1 Pursuant to Section 8(4)(b) read with Section 8(8) of the Ordinance, the Successful Bidder shall become entitled to the mining lease",,,,,,

with respect to the Coal Mine (the Mining Lease) to be granted by the State Government upon issuance of the Vesting Order.,,,,,,

5.3.2 the Successful Bidder shall promptly upon issuance of the Vesting Order make an application to the State Government for grant of a.,,,,,,

Mining Lease in the name of the Successful Bidder.,,,,,,

11. The CMDPA, laid down the details of the petitioners obligation to submit a Performance Security under Clause 6, which is being reproduced as",,,,,

under:-,,,,,

â??6. PERFORMANCE SECURITY AND APPROPRIATION,,,,,

6.1. Performance Security,,,,,

6.1.1. The Successful Bidder shall provide an irrevocable and unconditional revolving guarantee from an Acceptable Bank payable at,,,,,

Delhi for an amount equal to INR 30,76,56,000 (Indian Rupees Thirty Crores Seventy Six Lakh and Fifty Six Thousand) (the",,,,,

â??Performance Securityâ?) in substantially the same form as provided in SCHEDULE F for the performance of its obligations within such,,,,,

time as specified in Clause 3.2.2.,,,,,,

6.1.2. The Performance Security shall be an amount which is equal to aggregate of (a) one year royalty, to be computed on the basis of",,,,,

peak rated capacity of the Coal Mine as per the approved Mine Plan payable to the relevant State Government with respect to the Coal,,,,,

Mine; and (b) the annual approved Mine Plan multiplied by the Final Price Offer,,,,,

6.1.3. In case of any revision in the Mine Plan in accordance with Clause 14, the amount of Performance Security shall be revised",,,,,

accordingly.,,,,,,

6.1.4. In such case, bank guarantee constituting the Performance Security shall be substituted with another bank guarantee of the",,,,,

enhanced value issued in accordance with this Clause 6, within a period of 15 Business Days of receipt of approval for revision to the Mine",,,,,

Plan.â??,,,,,,

12. Accordingly, the petitioner deposited with the respondents a bank guarantee dated 13.04.2015 for an amount of Rs.30,76,56,000/- (Rupees Thirty",,,,,

Crores Seventy Six Lacs Fifty Six Thousand Only) made in favour of The President of India, acting through the Central Government represented by",,,,,

the Nominated Authority, under the Schedule F of the Coal Mine Development and Production Agreement for Nerad Malegaon Coal Mine. On",,,,,

14.04.2015, the petitioner also paid the first upfront instalment to the respondent no.1, and the petitioner received the Vesting order dated 22.04.2015",,,,,

in its name with regards to Nerad Malegaon Coal Mine and in view thereof, the petitioner received the approved mining plan dated 22.04.2015",,,,,

no.104/25/2015/NA.,,,,,

13. The CMDPA, further laid down the details of the events and the manner in which the petitioners Performance Security would be appropriated by",,,,,

the respondents under Clause 6.2 and 6.3, which are being reproduced as under:-",,,,,

â??6.2. Events for appropriation of the Performance Security,,,,,

6.2.1 The Performance Security may be appropriated by the Nominated Authority upon occurrence of any of the following events (the,,,,,

â??Appropriation Eventâ??), to be determined by the Nominated Authority in its sole discretion:",,,,,

(a) Failure of the Successful Bidder to provide the duly acknowledged duplicate copy of the Vesting Order as required under Clause 4.6;,,,,,

(b) Failure of the Successful Bidder to make payment of the first instalment second instalment or the third instalment of the Upfront Amount,,,,,

within the time specified in Clause 3.1(b), Clause 5.2.2 or Clause 5.2.3, respectively;" ,,,,,

(c) Failure of submission of Commencement Plan within the time specified in Clause 5.1.1.,,,,,

(d) Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;,,,,,

(e) Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with Clause 13;" ,,,,,

(f) Failure to make payment of the Monthly Payment in accordance with this Agreement;,,,,,

(g) Any utilization of coal which is not in conformity with Clause 8; or,,,,,

(h) Any other breach or non-compliance of any of the provisions of this Agreement including in case of the Warranties being untrue or,,,,,

misleading or incorrect in any manner whatsoever.,,,,,

#,Appropriation Event,Amount,,,

1., "Failure of the Successful Bidder to

provide the duly acknowledged

duplicate copy of the Vesting order

as required under clause 4.6",Entire Performance Security,,,

2., "Failure of the Successful bidder to make payment of the first instalment second instalment or the third instalment of the Upfront Amount within the time specified in Clause 3.1(b), clause 5.2.2 or Clause 5.2.3, respectively.", "A n amount equal to the first instalment, and/or second instalment and/or third instalment of the Upfront Amount together with 12% per annum simple interest on such amount starting from the date on which such amount was due and until the date of appropriation of the Performance Security.",,,

3., "Failure of submission of Commencement Plan within the time specified in Clause 5.1.1", "A n amount equal to 10% of the Performance Security",,,

4., "Failure of the Successful Bidder to comply with the Efficiency Parameters as required under Clause 10;", "Such percent of the Performance Security for each failure to comply with the Efficiency Parameters as specified in SCHEDULE E.",,,

5., "Any change in Control or transfer of right, title or interest in the Coal Mine which is not in conformity with

Clause 13",Entire Performance Security,,,

6., "Any utilization of coal which is not in conformity with clauses",Entire Performance Security.,,,

7., "Failure of the Successful Bidder to make payment of the Monthly Payment", "The amount of Monthly Payment due and payable, along with a simple interest of twelve per cent per annum starting from the date on which such amount was due and until the date of appropriation of the Performance Security." ,,,

8., "Any other breach or noncompliance of the provisions of this Agreement including in case of the Warranties being untrue or misleading or incorrect in any manner whatsoever", "S uc h proportion as may be determined by the Nominated Authority in its sole discretion." ,,,

a) The percentage for appropriation of performance security shall be calculated in proportion to the failure/delay in compliance with the,,,,, timeline mentioned for achievement of efficiency parameters which shall be broadly based on abovementioned weightages.,,,,,

b) In Case of Non Compliances with the efficiency parameters mentioned above the successful bidder shall be required to rectify the same,,,,, within such time as may be prescribed by the competent authority after examination on a case to case basis.,,,,,

15. Thereafter, the Petitioner submitted the Mining Lease in Form-I before the Director of Geology and Mines (DGM) Maharashtra on 16.05.2015",,,,, and immediately thereafter, on 16.05.2015, the Petitioner submitted the Mining Lease Application." ,,,,,

16. Since the State of Maharashtra is governed by the Mumbai Tenancy and

Agriculture Land Act (Vidharbha) 1958, the petitioner submitted an" ,,,,, application dated 02.06.2015 to Development Commissioner (Industries), Government of Maharashtra, Mumbai regarding purchase of Land i.e." ,,,,, Bombay Tenancy and Agriculture Land, the petitioner was thereafter granted the Environment Clearance Transfer completed vide letter no. J-" ,,,,, 11015/292/2008-IA-II (M) on 06.07.2015. The Petitioner was successfully granted the Mining Lease order, vide order MMN-0615/C.R. S9/IND-9" ,,,,, from Industries, Energy and Labour Department of Government of Maharashtra." ,,,,,

17. Accordingly, petitioner began the Process of Execution of Mining Lease Deed and the District Mining Officer (DMO) Yavatmal issued a letter" ,,,,, dated 26.08.2015 to the DYSLR Wani/Zari Jamni Taluka to execute the measurement and demarcation of the 450 Hactare lease area of the Nerad ,,,,, Malegaon Coal Mine. However, vide corrigendum dated 02.09.2015, Government of the State of Maharashtra, amended the errors apparent in the" ,,,,, Mining Lease dated 16.07.2015 alongwith the coordinates of the Coal Mine. ,,,,,

18. The petitioner was granted permission by the Development Commissioner (Industries), for purchase of agriculture land vide letter no." ,,,,, DI/Land/Permission/205(2015)2015/C/6989 dated 04.09.2015 to the extent of 563.25 Hectares at Villages â?" Malegaon, Nerad, Hivadhara, Tal." ,,,,, Wani and Village â?"Sindhivadhona, Tal. Zari Jamni, District Yavatmal and the Petitioner had undertaken to comply With the provisions Section" ,,,,, 49(A) of Mumbai Tenancy and Agriculture Land Act (Vidharbha), 1958 and Section 44A of the Maharashtra Land Revenue Code, 1966." ,,,,,

19. Thereafter, the Director of Geology and Mines, Maharashtra recommended that the Mining Leased Deed be executed by the petitioner with" ,,,,, stipulated conditions on 19.09.2015 and on the same date the petitioner was also granted the transfer of consent to establish vide consent No. ,,,,, BO/JD(APC)TB1/R/CC-372 from Maharashtra pollution Control Board. ,,,,,

20. The petitioner received permission from GSDA vide letter No.734/2015 dated 29.09.2015 to install 5 numbers of bore well and to start ,,,,, withdrawing 0.15 MLD of water to initiate the preliminary work required for making the Coal Mine operational. The Sub Divisional Officer issued an ,,,,, order dated 30.10.2015, whereby mutation of 61.92 hectares of land was done in favour of the Petitioner and the Petitioner got completed the DGPS" ,,,,,

and topographic Survey for the Coal Mine Operation at Nerad Malegaon Coal Mine from an empanelled agency which was approved by the,,,,,

Directorate of Geology and Mining in January 2016.,,,,,,

21. Thereafter, the petitioner was directed to pay a revised stamp duty amount of Rs. 2,44,80,000/- (Rupees Two Crore Forty Four Lakh Eighty",,,,,,

Thousand only), which the Petitioner duly paid to the Department of Registration and Stamps, Government of Maharashtra on 13.01.2016.",,,,,,

22. In pursuance of the Petitioner achieving its milestones to be able to execute the Mining Lease, Petitioner vide letter dated 25.01.2016, submitted",,,,,,

the map along with the vesting order, and requested the Deputy Superintendent, Land Record, Wani and Zari Jamani to conduct a survey of the",,,,,,

mauzani area under the Villages, Malegaon, near, Hiwardhara and Sindhiwadhona to enable the petitioner to start acquiring the said lands from the",,,,,,

rightful owners.,,,,,,

23. Accordingly, the petitioner sought a three month extension for execution of Mining Lease vide its letter dated 10.02.2016, the Petitioner also",,,,,,

received notice dated 03.03.2016 issued by the Talathi Kayar regarding the payment of Non-Agriculture tax for the Financial year 2015-2016, which",,,,,,

was thereafter paid on 14.03.2016 for the already acquired land of 61.92 Hectare by the Petitioner.,,,,,,

24. Thereafter, the Petitioner made the payment of the Second instalment of twenty five percent [25%]of the Upfront payment being an amount equal",,,,,,

to INR 1,09,63,102/- (Rupees One Crore Nine Lakh Sixty Three Thousand One Hundred and Two only) which amount was deposited with the Pay",,,,,,

and Accounts Officer, of the respondent no.1 vide Bank Transaction ref no. PMCBR92016042800004634, dated 28.04.2016, which was intimated to",,,,,,

the above respondent vide a letter dated 30.04.2016, issued by the petitioner.",,,,,,

25. On 05.04.2016, the petitioner executed the Mining Lease at the DMO Office, Yavatmal, which was further registered with the office of the Sub-",,,,,,

Registrar, Wani vide registration Number 1109/2016 and thereafter, the Petitioner's Mine Closure Plan was also approved by Respondent no. 1",,,,,,

vide letter No. 34011/16/2015/CPAM on 06.04.2016.,,,,,,

26. Thereafter, the DMO issued a letter dated 13.04.2016 to the Petitioner, regarding the execution of the Mining Lease Deed and registration of the",,,,,,

Nerad Malegaon Coal Mine. On 26.04.2016, the Central Mine Planning & Design Institute Limited vide its letter dated 26.04.2016 provided the",,,,,

Petitioner the Certification on the Geological Coordinates used in the preparation of the Mining Plan of the Coal Mine and therefore on 18.05.2016, the",,,,,

Petitioner Submitted necessary payment with DYSLR WANI/ZARI JAMNI vide Challan MTR Form Number-6 for Malegaon, Nerad & Hiwardhara",,,,,

respectively. The petitioner again deposited new re-validated cheque of Rs.1,34,000/- (Cheque no 137528 Dated 29.08.2016) drawn in favour of Bank",,,,,

of India payable to DYSLR Zari Jamni, since the earlier cheque deposited issued by the Petitioner for the same on 24.05,2016 was misplaced due to",,,,,

lapses of bank officials of Bank Of India.,,,,,

27. Thereafter, petitioner received an e-mail dated 09.09.2016 from respondent no.1 regarding payment of incremental amount towards compensation",,,,,

of land equivalent to an amount of Rs.52,72,310.86/-. Subsequently, on 27.09.2016, petitioner was also intimated by the DYSLR Wani that there is an",,,,,

upward revision in fees which need to be paid towards Village Nerad, Malegaon and Hiwardhara and in view thereof, the Petitioner received letters",,,,,

dated 13.10.2016 from office of DYSLR informed vide letter no 941, 942 & 943 that as per online measurement fee for Hiwardhara, Malegaon &",,,,,

Nerad Village have been revised and instructed to deposit the difference amount of revised fees of Rs.19,000/-, Rs.60,000/- & Rs.1,76,000/-.",,,,

Accordingly, petitioner on 28.10.2016 deposited necessary incremental amount towards Taluka Inspector of Land Record Survey of Nerad, Malegaon",,,,,

and Hiwardhara villages vide cheque nos. 164213, 164314 & 164315 drawn in favour of Union Bank of India WARDHA Branch.",,,,

28. The DYSLR issued Notice for commencement of Taluka Inspector Of Land Record survey of Sindhiwadona Village of Zari Jamni Taluka from",,,,,

18.11.2016, which survey was successfully completed on 01.12.2016 and further Notices were issued by DYSL Wani on 02.12.2016 for",,,,,

commencement of Taluka Inspector of Land Record survey of Malegaon Village vide notice Number 1486-1558, which Survey field work started for",,,,,

Malegaon Village on 06.12.2016 and successfully completed on 20.12.2016. After completion of Taluk's Inspector of Land Record survey of",,,,,

Sindhwadona and Malegaon Taluka Inspector of Land Record the office of the DYSLR started Survey Plan Preparation Of the said Villages on",,,,,

21.12.2016.,,,,,,

29. A Second Amendment to the Coal Mine Development and Production Agreement was carried out between the petitioner and the respondent no.1.,,,,,

on 26.12.2016. Thereafter, a notice dated 25.01.2017 was issued by the Talathi Malegaon regarding Land Revenue Tax for the financial year 2016-" ,,,,,

2017 for already acquired land of 61.92 in Malegaon Village, which demand was cleared by the Petitioner on 21.03.2017 by depositing the yearly Non-" ,,,,,

Agricultural Revenue tax of Rs.8,35,920.00/- for the acquired land." ,,,,,

30. The DYSLR Wani issued notice dated 05.04.2017 for commencement of Taluka Inspector of Land Record Survey of Hiwardhara Village from ,,,,,

24.04.2017 and the petitioner submitted letter to DYSLR office (Wani & Zari Jamni) marking copies to SLR (Yavatmat) requesting to provide duly ,,,,,

approved signed copies of Taluka Inspector Of Land Record survey plans Of village Malegaon and Sindhiwadona vide letter number IPPL/Coal/NM- ,,,,,

DYSLR/2017-18/001 & 002 respectively and on 12.04.2017 petitioner received the duly approved and signed copy Of Taluka Inspector Of Land ,,,,,

Record survey plans for Sindhiwadona village from DYSLR Zari Zamni Office vide letter no Bhumapan/Mauzani/Sindhivadona/2017 and the same ,,,,,

was also sent to DMO office Vavatmal by DSLR Zari Jamni office and further on 18.04.2017 the petitioner received duly approved and signed copy ,,,,,

of Taluka Inspector of Land Record survey plans for Malegaon Village on 18.04.2017 from DYSLR office Wani and Yavatmal. The Taluka ,,,,,

Inspector of Land Record survey field work for Hiwardhara commenced on 24.04.2017 and was successfully completed on 29.04.2017. The ,,,,,

Petitioner submitted letter dated 21.08.2017 to DYSLR to request for expediting the process of plan preparation work of Hiwardhara village and also ,,,,,

to start the work of Nerad Village Taluka Inspector of Land Record Survey, marking a copy to the Superintendent of Land Record Yavatmal for" ,,,,,

information and records and therefore DYSLR Wani issued Notice for commencement of TALUKA INSPECTOR OF LAND RECORD survey of ,,,,,

Nerad Village from 15.11.2017 till its completion. ,,,,,

31. The Petitioner submitted the land schedule for Nerad village as per approved mining lease deed agreement to DSLR Wani vide letter dated ,,,,,

06.11.2017, as required by DYSLR office Wani and further requested to expedite Taluka Inspector Of Land Record Survey at Nerad Village." ,,,,,

32. The Petitioner on 07.11.2017 deposited the incremental fee towards lands for Nerad Malegaon Coal Block equivalent to an amount of,,,,,

Rs.52,72,311/- (Fifty Two Lakh Seventy Two Thousand and Three Hundred Eleven Only) through RTGS and intimated the Nominated, Authority",,,,,

accordingly.,,,,,

33. The Taluka Inspector of Land Record had conducted survey for Nerad Village commenced from 15.11.2017, however after the field visit, the",,,,,

surveyor of DVSLR Wani office had declined to carry out the survey on grounds of obstructions on the sites due to the field being fully covered with,,,,,

Cotton & Tur, which were hindering the normal target visibility for survey at Nerad Village and hence, the survey was temporarily stopped.",,,,,

Thereafter, on 20.11.2017, the petitioner again requested the DYSLR Wani and Yavatmal, to re- commence the Taluka Inspector of Land Record",,,,,

Survey of Nerad Village in the month of December 2017. However, the Petitioner on 24.11.2017 received a notice issued by Talathi Malegaon",,,,,

regarding Land Revenue Tax for the financial year 2017-2018 for already acquired land of 61.92 Hactare in Malegaon Village and the Petitioner on,,,,,

22.01.2018 deposited a part payment of the Land Revenue Tax and balance of the Land Revenue Tax was deposited by the Petitioner on 14.03.2018.,,,,,

In the meanwhile, the petitioner received notice regarding the commencement of the Taluka Inspector Of Land Record Survey on 06.03.2018,",,,,

however, thereafter received intimation, that the Survey was stopped for want of a Surveyor and therefore on 08.03.2018, the Petitioner vide its letter",,,,,

dated 08.03.2018 requested that the Survey be completed by arranging an alternative surveyor.,,,,,

34. Vide letters dated 27.03,2018, the petitioner submitted a monthly pre-commencement report to the Director of Geology and Mining, Government of",,,,,

Maharashtra as well as the status of the Taluka Inspector of Land Record Survey of Nerad Malegaon Coal Mines to the Deputy Secretary, Industries",,,,,

& Labour Department, Government of Maharashtra.",,,,

35. The Petitioner submitted a letter dated 16.05.2018 before the DYSLR Wani, for making available the ETS instrument and also requested for an",,,,,

expedited survey at the Nerad Village. The petitioner also submitted an update report to the Nominated Authority vide its letter dated 22.06.2018.,,,,,

36. Mr. Sandeep Sethi, learned Senior Advocate appearing on behalf of the

petitioner submitted that the petitioner runs a captive power plant for the",,,,,
company called Uttam Value Steels Limited (UVSL), which has been closed down
because of lockdown in the country due to spread of COVID-19",,,,,
pandemic. In these circumstances, the petitioner has no immediate source of
revenue and has only limited funds in its bank account to pay the salaries",,,,,
of around 500 employees for 1-2 months. However, if the amount is appropriated
in the instant case, the Company will have to pay Rs.5,23,01,520/- to",,,,,
the Bank and the same would be from the working capital account of the
petitioner company and shall lead to non-payment of salaries of the",,,,,
employees. The company shall be pushed into default and effectively towards
being declared as NPA.,,,,,

37. Further submitted that a series of interim orders have been passed
restraining the invocation of bank guarantees in coal mine matters, which
were",,,,,

issued prior to the spread of pandemic Covid-19, which is evident from the order
dated 24.08.2015 in W.P.(C) No. 8087/2015 titled as M/s Arcelor",,,,,

Mittal India Private Limited vs. Union of India & Ors. Therefore, on the ground of
parity, similar interim order may be passed in favour of the",,,,,

petitioner herein.,,,,,

38. Ld. Senior counsel further submitted that the order dated 17.07.2018 passed
by this Court in W.P. No. 7268/2018 being Rajasthan Rajya Vidyut",,,,,

Utpadan Nigam Limited Vs. Union of India, Ministry of Coal & Anr., relied upon by
the Ld. ASJ is not applicable to the present case since relief of",,,,,

representation was given in the said matter. Further, the said representation
might have been accepted or the matter might not have been pursued.",,,,,

Accordingly, the reliance placed on the said matter is misplaced. In the instant
case, it is evident from the Minutes of the Review Committee Meeting",,,,,

held on 03.01.2020 that the matter had to be examined by the Scrutiny
Committee. However, the Scrutiny Committee examined the matter but
passed",,,,,

a non-speaking order. Thus, the invocation of the Bank Guarantee is unfair and
inequitable. The decision invoking the Bank Guarantee is unreasoned",,,,,

and it does not consider the submissions made by the petitioner in the reply to
show cause notice and the said decision is in gross violation of principles",,,,,

of natural justice. Accordingly, submitted that an unreasoned administrative
order affecting the right of the parties, is contrary to law lay down in case",,,,,

of Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors.: (2010) 9 SCC 496.,,,,,,

39. Ld. senior counsel submitted that the said committee examined the matters of 12 other companies, which have not taken the basic steps and are in",,,,,

much more delay than the petitioner company, however, no action has been taken against them. The names of these parties are mentioned in the",,,,,

Minutes of Scrutiny Committee Meeting dated 05.02.2020/06.02.2020.,,,,,

40. It is further submitted, since the issue of invocation of Bank Guarantee is involved and only the petitioner company is being penalized, giving",,,,,

reasons for rejection of submission is all the more essential. Accordingly, relied upon the case of Mekaster Trading Corporation vs. Union of India &",,,,,

Ors.: 2003 (71) DRJ 376 and Prakash Atlanta JV & Ors. vs. National Highways Authority of India & Ors.: 2010 (5) ILR (Del) 38.,,,,,

41. Mr. Sethi, learned senior advocate argued that the government cannot allege non-seriousness on the part of the petitioner company as admittedly",,,,,

the petitioner has completed 83% of the steps required to be taken by it and the balance steps could not be taken timely because of civil commotion at",,,,,

Sl No,Milestones,"Time Limit from

Zero Date (in

months)","D u e date of

Completion","D a t e of

Completion (only

in Date format)","Weightage

assigned for the

appropriation of

Performance

Security

1,"Land Acquisition

(to reach rated

capacity)","36,22.04.2018,Still Pending,5%

2,"O p e n i n g of

Escrow Account",37,22.05.2018,Still Pending,8%

3,"Application of

Opening

Permission",37,22.05.2018,Still Pending,2%

4,"Grant of Opening

Permission",38,22.06.2018,Still Pending,2%

Sl. No.,Particulars,,Date of order,,

,Title,W.P. No.,,,

1,"Jindal Steel and Power

Limited and Anr. Vs. Union

of India & Anr.",W.P.(C) 7818/2015,18.08.2015,,

2,"J S W Steel Limited Vs

Union of India & Ors.",.W.P.(C) 7863/2015,18.08.2015,,

3,"Ambuja Cements Limited

Vs. Union of India & Ors.",W.P.(C) 7987/2015,21.08.2015,,

4,"Maharashtra Seamless

Limited Vs. Union of India

& Ors.",W.P.(C) 7988/2015,21.08.2015,,

5,"Jindal Steel & Power

Limited & Anr. Vs. Union

of India & Ors.",W.P.(C) 7990/2015,21.08.2015,,

6,"M/s. Lafarge India Private

Limited Vs. Union of India

& Ors.",W.P.(C) 7991/2015,21.08.2015,,

7,"Jindal Stainless Ltd. Vs

UOI & Ors.",.W.P.(C) 7992/2015,21.08.2015,,

8,"M/s. DB Power Limite

Vs. Union of India & Anr.",dW.P.(C) 7998/2015,21.08.2015,,

9,"Bhushan Steel Ltd. & Ors

Vs. UOI & Ors.",.W.P.(C) 8000/2015,21.08.2015,,

10,"JSW Energy Limited Vs

Union of India & Ors.",.W.P.(C) 8002/2015,21.08.2015,,
11,"M/S. Arcelor Mittal India
Private Limited & Anr. Vs.
Union of India & Anr.",W.P.(C) 8087/2015,24.08.2015,,
12,"IST Steel and Power Ltd
Vs. Union of India & Ors.",.W.P.(C) 8111/2015,24.08.2015,,
13,"M/s. Kesoram Industries
Limited Vs. Union of India
& Ors.",W.P.(C) 8163/2015,28.08.2015,,
14,"Steel Authority of India Ltd
Vs. Union of India & Ors.",.W.P.(C) 8432/2015,02.09.2015,,
15,"Uttar Pradesh Rajya Vidyut
Utpadan Nigam Ltd. And
Ors. Vs. Union of India &
Ors.",W.P.(C) 8529/2015,04.09.2015,,
16,"S K S Ispat And Power
Limited & Anr Vs. Union
of India & Ors.",W.P.(C) 8144/2015,22.09.2015,,
17,"Rohne Coal Co. Ltd. Vs
Union of India & Ors.",.W.P.(C) 11551/2015 & CM
No. 30596/2015",11.12.2015,,
18,"Rajasthan Rajya Vidyut
Utpadan Nigam Limited Vs.
Union of India & Anr.",W.P.(C) 4040/2016,06.05.2016,,
19,"Sunflag Iron And Stee
Company Ltd. Vs. The
Union of India & Ors.",IW.P.(C) 5174/2016,30.05.2016,,
20,"Electrosteel Castings
Limited and Anr. Vs. Union
of India & Anr.",W.P.(C) 6727/2016,03.08.2016,,

Sl No,Milestones,"Time Limit from

Zero Date (in

months)","D u e date of

Completion","D a t e of

Completion (only

in Date format)","Weightage

assigned for the

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Permission",38,22.06.2018,Still Pending,2%

Dealing with the question of fraud it has been held that fraud has to be an established fraud. The following observation of Sir John,,,,,

Donaldson, M.R. in Bolivinter Oil SA V. Chase Manhattan Bank (1984) 1 All ER 351, CA are apposite:",,,,,

The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment",,,,,

already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of fraud and as",,,,,

to the bank's knowledge. It would certainly not normally be sufficient this rests on the uncorroborated statement of the customer, for",,,,,

irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction,,,,,

and an application by the bank to have it charged."",,,,,

(emphasis supplied),,,,,

The aforesaid passage was approved and followed by this court in U.P. Coop. Federation Ltd. Vs. Singh consultants and Engineers (P) Ltd. (1988) 1,,,,,

SCC 174.,,,,,

22.The secondly exception to the rule of granting injunction, i.e., the resulting of irretrievable injury, has to be such a circumstance which would make",,,,,

it impossible for the guarantor to reimburse himself, if he ultimately succeeds. This will have to be decisively established and it must be proved to the",,,,,

satisfaction of due Court that there would be no possibility whatsoever of the recovery of the amount from the beneficiary. by way of restitution.â??",,,,,

65. Further, this Court in case of NHPC Ltd. Vs. HCC Ltd.: 2018 SCC Online Del 11469, observed as under:-",,,,,

â??17. The law in relation to the Bank Guarantee is no longer res integra and infact has been reiterated by the Supreme Court in a number,,,,,

of decisions. In Dwarikesh Sugar Industries Ltd. (supra), the Supreme Court has held as under:-",,,,,

21. Numerous decisions of this Court rendered over a span of nearly two decades have laid down and reiterated the principles which the",,,,,

courts must apply while considering the question whether to grant an injunction which has the effect of restraining the encashment of a,,,,,

bank guarantee. We do not think it necessary to burden this judgment by referring to all of them. Some of the more recent pronouncements,,,,,

on this point where the earlier decisions have been considered and reiterated are Svenska Handelsbanken v. Indian Charge Chrome,"",,,,,

Larsen & Toubro Ltd. v. Maharashtra SEB, Hindustan Steel Workers Construction Ltd. v. G.S. Atwal & Co. (Engineers) (P) Ltd. and U.P."",,,,,

State Sugar Corpn. v. Sumac International Ltd. The general principle which has been laid down by this Court has been summarised in the,,,,,

case of U.P. State Sugar Corpn. as follows:,,,,,

The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional",,,,,

bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any",,,,,

pending disputes. The bank giving such a guarantee is bound to honour it as per

its terms irrespective of any dispute raised by its customer.,,,,,

The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an",,,,,

injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with,,,,,

such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary,,,,,

seeks to take the advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of",,,,,

an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases,,,,,

payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given," ,,,,,

the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of,,,,,

the guarantee and the adverse effect of such an injunction on commercial dealings in the country.""" ,,,,,

Dealing with the question of fraud it has been held that fraud has to be an established fraud. The following observations of Sir John,,,,,

Donaldson, M.R. in *Bolivinter Oil SA v. Chase Manhattan Bank* are apposite:",,,,,

.... The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for",,,,,

payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of",,,,,

fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the,,,,,

customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such",,,,,

an injunction and an application by the bank to have it discharged."" (emphasis supplied)",,,,,

The aforesaid passage was approved and followed by this Court in *U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.*,,,,,

22. The second exception to the rule of granting injunction, i.e., the resulting of irretrievable injury, has to be such a circumstance which",,,,,

would make it impossible for the guarantor to reimburse himself, if he ultimately

succeeds. This will have to be decisively established and it",,,,,

must be proved to the satisfaction of the court that there would be no possibility whatsoever of the recovery of the amount from the,,,,,

beneficiary, by way of restitution.""" ,,,,,

18. The Supreme Court further held that the principle of unjust enrichment would have no application in case of encashment of the Bank,,,,,

Guarantee.,,,,,

19. In BSES Ltd. (supra), the Supreme Court held that the ground of irretrievable injustice cannot be said to have been made out only",,,,,

because the arbitral proceedings were pending.,,,,,

20. In Vinitec Electronics Private Ltd v HCL Infosystems Ltd. (2008) 1 SCC 544 it was reiterated that:-,,,,,

11. The law relating to invocation of bank guarantees is by now well settled by a catena of decisions of this court. The bank guarantees",,,,,

which provided that they are payable by the guarantor on demand is considered to be an unconditional bank guarantee. When in the,,,,,

course of commercial dealings, unconditional guarantees have been given or accepted the beneficiary is entitled to realize such a bank",,,,,

guarantee in terms thereof irrespective of any pending disputes.""" ,,,,,

21. On pendency of arbitration proceedings it was held that:-,,,,,

29. There is no dispute that arbitral proceedings are pending. The appellant can always get the relief provided he makes his case before",,,,,

the Arbitral Tribunal. There is no allegation that it would be difficult to realize the amounts from the respondent in case the appellant,,,,,

succeeds before the Arbitral Tribunal.""" ,,,,,

22. In Rail Vikas Nigam Ltd. (supra), this Court has held that merely because the Arbitral Tribunal considers that it would be able to",,,,,

adjudicate on the disputes pending before it expeditiously, is no ground for injuncting the invocation/encashment of the Bank Guarantee. It",,,,,

was held that the harm or injustice contemplated under the head of irretrievable injury or injustice must be of such an exceptional and,,,,,

irretrievable nature as would override the terms of the guarantee.â??,,,,,

66. Also this Court in Umaxe Projects Pvt. Ltd. Vs. Air Force Naval Housing Board & Anr.: 2019 SCC Online Del 9126, while relying upon another",,,,,

judgment of this Court in Classic KSM Bashir JV Vs. Rites Ltd. & Ors.: 2018 SCC Online Del 8888 wherein law related to invocation of Bank,,,,,

Guarantee has been analyzed in detail and concluded that merely because invocation will cause financial distress is not a ground of stay, however," ,,,,,

exception of irrevocable injury should be invoked.,,,,,

67. Regarding the issue of parity, why the respondents have granted extension to other 12 allottees, the details of those cases are not before this" ,,,,,

Court, therefore, this Court has not given any opinion on this issue. Undisputedly, one extension for 12 months has already been granted to petitioner" ,,,,,

and after proper hearing, the respondents have passed impugned order which is neither illegal nor perverse or discriminatory." ,,,,,

68. In view of above discussion and settled position of law, this Court is of the view that there is no merit in the present petition." ,,,,,

69. Accordingly, the writ petition is dismissed with no order as to costs." ,,,,,

70. Pending application also stands disposed of.,,,,,