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THE MINERAL LAWS (AMENDMENT) ORDINANCE - KEY CHANGES

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Introduction

The mining industry has historically been one of the more heavily regulated industries in India, with a strong legal and regulatory structure governing the same. With a view to leverage this market and to ensure continuity in mining operations, the Mineral Laws (Amendment) Ordinance, 2020 (the “**Ordinance**”) was promulgated on January 10, 2020.

The Ordinance brings in certain amendments to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (the “**MMDR Act**”) and the Coal Mines (Special Provisions) Act, 2015 (the “**CMSP Act**”).

This paper discusses the key changes that have been brought into effect by the Ordinance and certain specific issues arising therefrom.

Amendments Applicable to Mining of Coal & Lignite

Broadening the playing field

Prior to the Ordinance being propounded, only companies that were previously engaged in coal mining operations, were entitled to bid for reconnaissance, prospecting or mining permits. This criterion has now been done away with, by similar amendments having been made to the provisions of Section 11A(1) of the MMDR Act and Section 4(2) of the CMSP Act, respectively¹.

Another significant change brought in by the Ordinance, has been the omission of Section 4(3) of the CMSP Act, which provided for the eligibility criteria for bidders of Schedule II and Schedule III coal mines.² Under Section 4(3), only bidders engaged in a specified end-use³ were entitled to make bids in auctions of Schedule II and Schedule III coal mines. This restriction has now fallen away with the deletion of the aforesaid provision.

The abovementioned reforms will enable companies which do not having any mining experience, or which are not engaged in a specified end-use, to make bids in auctions, alongside the established players in the market.

Composite Licences

A ‘prospecting licence-cum-mining lease’ (composite licence) is “a two stage concession granted for the purpose of undertaking prospecting operations followed by mining operations”⁴ for a specified area. The composite licence, which was heretofore granted by the State Government for certain minerals (excluding coal, lignite or atomic minerals), is a licence whereby the holder is authorised to undertake mining operations after completing prospecting operations over a

¹ Amended by Sections 7 and 10 of the Ordinance, respectively. It may be noted that Section 4(2) is only applicable to Schedule I coal mines.

² Section 10 of the Ordinance.

³ Under Section 3(v) of the CMSP Act, ‘specified end-use’ has been defined as “any of the following end-uses and the expression “specified end-user” shall with its grammatical variations be construed accordingly,— (i) production of iron and steel; (ii) generation of power including the generation of power for captive use; (iii) washing of coal obtained from a mine; (iv) cement; (v) such other end-use as the Central Government may, by notification, specify; (w) “vesting order” means the vesting order issued under section 8”.

⁴ Section 3(ga) of the MMDR Act.

particular area.⁵ By the present set of amendments made effective under the Ordinance, a bidding company may now bid for a prospecting licence-cum-mining lease for coal and lignite as well, thereby streamlining the process of allocation.⁶

Subsidiaries & Holding Companies

The *erstwhile* Section 20(2) of the CMSP Act allowed a successful bidder or allottee to use coal from a Schedule I coal mine “for any of its plants engaged in common specified end-uses”. From a reading of the substituted Section 20(2)⁷, it now appears that coal mined from a Schedule I coal mine, may not only be used by the successful bidder or allottee in its own plants, but also in the plants of its subsidiaries or holding companies; provided that, such subsidiaries and/or holding companies are engaged in the same specified end-use.

Termination of Vesting Orders and Allotment Orders

Section 8 of the CMSP Act lays down the procedure for issuance of vesting orders by the competent authority, in respect of Schedule I coal mines. Section 8(12) thereof, particularly provides that certain provisions of Section 8 shall *mutatis mutandis* apply to allotment orders as well. This section has now been amended, and 3 (three) new provisions have been introduced, viz. sub-sections 8(13), 8(14) and 8(15), under which the competent authority has the right to terminate a vesting order or an allotment order, and also has the power to auction the concerned coal mine in pursuance of such termination.⁸

It may be noted that the allottee whose vesting order or allotment order is so terminated, shall be considered to be a ‘prior allottee’, who shall be entitled to receive compensation for land and mine infrastructure, in accordance with the provisions of the CMSP Act.⁹

Certain consequential changes have also been made in Sub-sections (4), (8) and (9) of Section 8 of the CMSP Act.¹⁰ With reference thereto, we note a minor typographical error in the Ordinance, wherein it has been stated that amendments have been made in Section 8(4)(d), whereas the correct reference, in our view, should be ‘Section 8(4)(b)’.

Removal of Superfluous Approvals

The *proviso* to Section 5(1) of the MMDR Act *inter alia* specifies that a written approval of the Central Government is required prior to the grant of any reconnaissance permit, prospecting licence or mining lease for coal or lignite. Prior to the Ordinance being promulgated, such approvals were also required if such allocation, reservation, vesting or allotment of the area was carried out by the Central Government, which in turn resulted in delays and repetition of the approval process.

⁵ Section 11 of the MMDR Act.

⁶ *Vide* amendments made to Sections 11A and 13 of the MMDR Act and Sections 4(2), 5(1), 8, and 31 of the CMSP Act.

⁷ Substituted by Section 15 of the Ordinance.

⁸ Sections 8(13), 8(14) and 8(15) of the CMSP Act inserted by Section 12 of the Ordinance.

⁹ Section 8(15) read with Section 9 and Section 16 of the CMSP Act.

¹⁰ Amended by Section 12 of the Ordinance.

Pursuant to the Ordinance, another *proviso* has now been inserted in Section 5(1) of the MMDR Act¹¹, which clarifies that in case: (i) an allocation order under Section 11A of the MMDR Act; or (ii) a notification for reservation under Section 17A of the MMDR Act; or (iii) a vesting order or allotment order under the CMSP Act, has been issued by the Central Government, then in such circumstances, no further approval of the Central government is required to be obtained.¹²

Additional Purposes

With respect to the purposes for which coal and lignite may be used, language has now been inserted *vide* the Ordinance in Section 11A(1) of the MMDR Act, and Sections 4(2) and 5(1) of the CMSP Act, respectively¹³, whereby the Central Government has reserved for itself, the power to prescribe additional end-uses for the minerals, i.e. other than use of the minerals for captive consumption and/or sale.

Designated Custodian

Prior to the Ordinance, under Section 18 of the CMSP Act, the Central Government had the power to appoint a designated custodian for operation and management of such Schedule I coal mines for which the auction or allotment procedure was yet to be completed. Section 18(1) has been amended by the Ordinance¹⁴, to the effect that, a designated custodian may now be appointed for management and/or operation of the following coal mines: (i) Schedule II coal mines for which the auction or allotment process remains incomplete; or (ii) coal mines under production, whose vesting order or allotment order has been terminated.

Amendments Applicable to Mining of Other Minerals¹⁵

Smoother Transitions

Certain provisions have been introduced in the MMDR Act *vide* the Ordinance, with a view to facilitate transfer of mining operations by the competent authority from one allottee to another. For instance, a *proviso* has been inserted in Section 8A(4) of the MMDR Act¹⁶, which clarifies that the State Government has the power to take actions in advance, with respect to auction of a mining lease which is about to expire¹⁷. Further, the newly inserted Section 8B of the MMDR Act *inter alia* provides that, where a mining lease has been auctioned, after having expired in pursuance of Section 8A, the successful bidder of such mining lease shall be: (i) deemed to have acquired all valid licenses, approvals and clearances from the previous lessee for a period of 2 (two) years, provided the successful bidder obtains all such requisite approvals in its name within such 2 (two) year period; and (ii) entitled to continue mining operations on the land on which such operations

¹¹ Inserted *vide* Section 3 of the Ordinance.

¹² Consequential amendments made to Section 17A of the MMDR Act by Section 9 of the Ordinance.

¹³ Amended by Sections 7, 10 and 11 of the Ordinance, respectively.

¹⁴ Amended by Section 14 of the Ordinance.

¹⁵ These reforms are applicable for mining of minerals, other than coal, lignite and atomic minerals.

¹⁶ Section 8A(4) of the MMDR Act reads as follows: “On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act”.

¹⁷ Inserted by Section 4 of the Ordinance.

were being carried out by the previous lessee for a period of 2 (two) years, from the date of commencement of the new lease.¹⁸

Exemption for Deep Seated Minerals

Under Section 10C(2) of the MMDR Act, holders of non-exclusive reconnaissance permits (“NERP”) are ordinarily not permitted to make any claims for grant of either mining leases or composite licences. However, an exemption has now been made by the Ordinance, for holders of NERP who carry out exploration of deep seated minerals¹⁹ or other minerals notified in this regard.²⁰ Such NERP holders would therefore be entitled to make an application for grant of a mining lease or a composite licence, as the case may be, in accordance with the provisions of the MMDR Act. It may be noted that bidding parameters and other procedures relating thereto are yet to be notified by the Central Government.

Drafting Issues

While the reforms made by the Ordinance may have far reaching implications for the industry, we note that there are certain grey areas, for which clarifications may be required from the competent authorities in the times ahead. Certain key issues have been noted in the following paragraphs of this paper:

- In view of the competent authority allowing composite licences for coal mines, various consequential changes have been made in both the MMDR Act, as well as the CMSP Act, for including the term ‘*prospecting licence-cum-mining lease*’ at the appropriate places. However, we note that, this term has not been included in the newly added *proviso* to Section 5(1) of the MMDR Act²¹, which dispenses with the requirement of obtaining a consent of the Central Government “*for grant of reconnaissance permit, prospecting licence or mining lease*” in instances where the allocation, reservation, etc. was made by the same authority. The absence of the term ‘*prospecting licence-cum-mining lease*’, from the said *proviso*, may imply that, the exemption from obtaining an approval of the Central Government as provided therein, would not apply in the case of a composite licence.
- It may be noted that a *proviso* has been inserted in Section 11A(1) of the MMDR Act by the Ordinance²², which *inter alia* provides that an area containing coal or lignite would not be auctioned by competitive bidding in the event that the same is either being allotted to a government company or to a company that has been awarded a power project based on a competitive bid. Interestingly, a similar provision was already existing as a *proviso* to Section 11A(3), which should have been deleted as the same has been made redundant by the new *proviso* inserted in Section 11A(1).

¹⁸ Inserted by Section 5 of the Ordinance. Also see Section 4B which has been inserted in the MMDR Act by the Ordinance, for enabling the Central Government to prescribe conditions for “*commencement and continuation of production by the holders of mining leases who have acquired rights, approvals, clearances and the like under Section 8B*”.

¹⁹ The Explanation to the *proviso* to Section 10C(2) of the MMDR Act defines ‘*deep seated minerals*’ as “*such minerals which occur at a depth of more than three hundred meters from the surface of land with poor surface manifestations*”.

²⁰ *Proviso* to Section 10C(2) of the MMDR Act inserted by Section 6 of the Ordinance.

²¹ Inserted *vide* Section 3 of the Ordinance.

²² Inserted *vide* Section 7 of the Ordinance.

- The erstwhile Section 4(2) of the CMSP Act covered the eligibility criterion for making bids for all coal mines. However, from a bare reading of the amended Section 4(2)²³, it appears that the applicability thereof has now been limited to only Schedule I coal mines. Moreover, with the deletion of Section 4(3), there are no references of Schedule II and Schedule III coal mines in Section 4 of the CMSP Act. On a separate note, the words “*subject to the provisions in sub-section (3) of this section*” are still appearing in the beginning of Section 4(2) of the CMSP Act, even though Section 4(3) has been omitted *vide* the Ordinance.
- While amendments have been made in Section 18(1) of the CMSP Act for appointment of designated custodians for Schedule II and other coal mines as discussed hereinabove, we note that corresponding amendments in pursuance thereof, have not been made in Section 18(2). As a result, while the amended Section 18(1) of the CMSP Act refers to Schedule II and other coal mines, Section 18(2) thereof still refers to Schedule I coal mines.

Conclusion

In light of the aforementioned concerns, a comprehensive review of the rules, regulations and guidelines, as and when the same are propounded, would be essential for a holistic view of the reforms. Even so, by omission of restrictive eligibility conditions and doing away with redundancies in procedures, the Ordinance has, without a doubt, brought a wave of liberalisation for this sector.

This paper has been written by Nidhi Arya (Partner). The author would like to acknowledge the invaluable inputs received from Mr. Arka Majumdar (Partner).

²³ Inserted *vide* Section 10 of the Ordinance.

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