APP

APP Comments on Discussion Paper on Key Terms and Conditions pertaining to Auction of Coal Mines for Sale of Coal

1. **Chapter 1** – Regarding list of mines proposed to be auctioned

   Suggestions:

   a. **It is suggested that coal blocks which were operating and are under Schedule-II category like Gare Palma IV/1, Gare Palma IV/7, etc should be brought in the first list.**
   b. **Coal blocks with severe surface constraints like railway line, HT Powerline, perennial water streams, National Highways, heavily built up areas, sensitive areas, etc should be avoided. Such constraints will delay the approval process and delay the block development**
   c. **MOC should assess the possibility of amalgamating adjacent coal blocks having underground mining potential.**
   d. **It is suggested that the mine size may be commensurate to enable large-scale mining and ensure economy of scale.**
   e. **Some of the blocks appear to have a combination of UC and OG reserves. There should be clear delineation of open cast and underground reserves in Information Memorandum of blocks to be offered for auctioning.**

   Rationale: The country is importing huge quantity of coal and major chunk of our foreign exchange is spent on buying imported coal. Last year country imported 235 Mt of coal (including coking) and it is expected that during FY20, imports will further increase. There is an urgency to augment domestic coal production on fast track basis. In the list of coal blocks earmarked for Commercial Sale of coal, there are few Schedule-II mines which can be brought to production within few months' time. **MOC should bring all such Schedule-II mines for Auction under the 1st Tranche.**

   Further, by **amalgamating adjacent coal blocks having underground mining potential** precious resource can be saved and could be mined which otherwise be blocked under the barriers left between two adjacent properties. Also, amalgamating two blocks identified for underground coal mining may justify capital investment due to increase in resources, extent of mine and justify deploy of latest technology & modern mining methods which will also reduce overall gestation period considerably.

   Further, the **mine size should be commensurate to enable large-scale mining and ensure economy of scale** so that investors are able to recover their fixed costs over mine life at a given production rate. Following perspectives may be kept in view while offering coal blocks for auctions:

- feasibility of aligning / merging blocks in contiguous / adjacent areas to form larger mining tracts;
- mineable reserves to be in the range of 100-200 MT to enable annual production of at least 10 MT under open cast mining and 2 MT under underground mining;
- strike length of seams to be in the range of 6-7 km to enable mechanised and sustainable mining with high-end technology application.

Further, a few of the blocks under both CM(SP)A and MMDRA Lists are stated having a combination of OC / UG reserves [Vide MoC Lists dated 26-7-10 and 12-9-14 and MoC OM dated 17-10-18 respectively], in which case the corresponding coal grades will differ, as also the applicable price. **To avoid information asymmetry, we suggest clear delineation of open cast and underground reserves in Information Memorandum of blocks to be offered for auctioning.**

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2. **<u>Chapter 2</u>** – Regarding Bid Parameter

<u>Suggestion</u> – **Bids should be accepted in consistent increments in multiples of 0.05% throughout the auction process.**

Rationale:

The Discussion Paper states that – *"The floor price shall be 4% of the revenue share. Bids would be accepted in multiples of 1% of the revenue share till the percentage (%) of revenue share is up to 10% and thereafter bids would be accepted in multiples of 0.50% of the revenue share."*

In our view, increments of 1% of revenue share is an extremely high amount and it is suggested to adopt the same provisions in line with Model Tender Document from Mineral Auctions (Ministry of Mines) where the bids are accepted in consistent increments in multiples of 0.05% throughout the auction process. This will maintain uniformity and consistency in approach to mineral and coal auctions.

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3. **<u>Chapter 2</u>** – Regarding determination of Qualified Bidder

<u>Suggestions</u> –

a. **A single technically qualified bidder in the IPO round should also be considered as Qualified bidder and the Auction process for that coal block should not be annulled.**
b. **It is suggested that there should be no elimination of Technically Qualified Bidders if there are up to 5 Technically Qualified Bidders.**

c. **If there are 6 or more Technically Qualified Bidders, then only the last ranked Technically Qualified Bidder may be eliminated.**

Rationale - A coal block may not be lucrative to other bidders due to location, logistics, commercial angle & other factors and there could be only one bidder interested to bid for the block due to its vicinity to his plant and commercial/logistical aspects. It is therefore suggested that Single technically qualified bidder in the IPO round should also be considered as Qualified bidder and the Auction process for that coal block should not be annulled.

Similar provisions have been provided in other mineral auctions. The ultimate objective is to develop additional coal blocks and augment the country's output, thereby overcoming the perennial coal shortage situation and lessening the burden on Coal India.

Further, we suggest that there should be no elimination of Technically Qualified Bidders if there are up to 5 Technically Qualified Bidders. If there are 6 or more Technically Qualified Bidders, then only the last ranked Technically Qualified Bidder may be eliminated. This would ensure the maximum competition between technically qualified bidders.

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4. **Chapter 2** – Regarding determination of Successful Bidder

Suggestion – **Any condition(s) due to which the preferred bidder may not be declared as the successful bidder should be mentioned beforehand.**

Rationale – We have seen instances in the past where winning bids have not been accepted due to perception of the winning bid being low. Any such expectation of minimum bid or any other reason due to which the bidder may not be declared as successful bidder should be indicated upfront. Any subjective imposition of acceptance criteria threshold post-bidding has the potential of inviting litigation. An upfront disclosure of any such conditions/threshold would help participating bidders to prevent their bids from getting rejected after they become successful bidders as well as justify rejection, if that be the case.

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5. <u>Chapter 3</u> – Regarding quantum of Upfront Amount

Suggestions:

a. **It is suggested that for explored coal blocks, <u>extractable reserves</u> shall be considered for determining the Upfront Amount. A bidder should not be burdened to pay Upfront Payment for non-mineable proportions.**
b. **Upfront Amount is presently very high and requires moderation. It is suggested that the Upfront Amount may be reduced to 0.5% of the coal value to be produced in the first 5 years or alternatively, 0.1% of value of Extractable Reserves.**
c. **Further, in order to help manage the cash flows of the successful bidder, it is suggested that the Upfront Amount may be collected in the following 5 equal instalments applicable to both Explored as well as Unexplored/Partially Explored Coal Blocks:**
    1. Within 15 days of Grant of ML
    2. Within 15 days of receiving Mine Opening Permission
    3. Within 15 days of commencement of coal production
    4. Within 15 days of first anniversary of commencement of coal production
    5. Within 15 days of second anniversary of commencement of coal
d. **Applicable price based on National Coal Index may be determined for the grade of coal to be mined and not for the overall average grade including the un-economical resources or deep seated deposits. Further, there is lack of clarity on how the Performance Security amount will be calculated for a mine with multiple seams of different grades of coal.**

Rationale:

The Discussion Paper states that:

*"The Upfront Amount shall be 0.5% of the value of estimated resources of the coal mine. Value of estimated **resources** shall be equal to the product of (i) mineral **resources** in the coal mine, and (ii) applicable price based on National Coal Index." (emphasis supplied)*

1. It is pertinent to mention that 'resources' is a very vague term and may include proven, indicated and inferred reserves, out of which economically mineable proportions could be less. Some of the resources might not be projectized due to geological disturbances, burnt coal, barriers against rivers, roads, railway & other surface infrastructures.

   Therefore, it is suggested that for explored coal blocks, **extractable reserves** shall be considered for determining the Upfront Amount. A bidder should not be burdened to pay Upfront Payment for non-mineable proportions.

2. Upfront amount of 0.5% of extractable resources will lead to extremely high values. It is suggested that this amount may be moderated so that the successful bidder has sufficient funds available to meet production deadlines instead of blocking such a huge financial amount. Such a high upfront amount may also result in restricting adequate competition for the auctions.

   Therefore, it is suggested that the **Upfront Amount should be reduced to 0.5% of the coal value to be produced in the first 5 years or alternatively, 0.1% of value of Extractable Reserves.** Further, in order to help manage the cash flows of the successful bidder, it is suggested that the Upfront Amount may be collected in the following **5 equal instalments** applicable to both Explored as well as Unexplored/Partially Explored Coal Blocks:

   1. **Within 15 days of Grant of ML**
   2. **Within 15 days of receiving Mine Opening Permission**
   3. **Within 15 days of commencement of coal production**
   4. **Within 15 days of first anniversary of commencement of coal production**
   5. **Within 15 days of second anniversary of commencement of coal**

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6. <u>Chapter 3</u> – Regarding possible difference between estimated coal grade as per bid document and actual mined grade, and its corresponding financial impact on Upfront Amount, Performance Security, Monthly Payments etc.

<u>Suggestion</u> **- The bid documents should account for the fact that estimated grades are usually of higher quality than actual mined grades. This possible difference in grades can have huge impact on Upfront Amount, Monthly Payments, Performance Security etc. There should be a reconciliation mechanism to account for such grade difference, if any arises in the future.**

Rationale:

It has been found that estimated grades are always of higher quality than the actual mined grades. There are Schedule-II coal blocks where there is a difference of 2-3 grades (downward) with estimated grades by CMPDIL despite observing best of the mining practices to reduce contamination. Coal grades declared by CCO also confirm the grades similar to the mined coal grades and are below estimated grades by CMPDIL. This needs to be rectified as there is huge implication on the payment of Upfront Amount. Accordingly, there needs to be put in place a reconciliation mechanism to account for such grade difference if any.

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7. **Chapter 3** – Regarding Bid Security

Suggestions:

a. **For Fully Explored Mines, quantum of Bid Security may be lowered to 10% of the Upfront Amount, subject to an upper cap of maximum INR 50 Crore.**
b. **For Unexplored/Partially Explored Mines, quantum of Bid Security may be lowered to 10% of the estimated exploration expense.**
c. **An option may be given to deposit the Bid Security in the form of cash, instead of a Bank Guarantee. This will ensure a wider participation in the auction process.**

Rationale:

In the current situation of economic slowdown and widespread industrial stress, the PSU banks have put in place stringent norms for making credit facilities available. This has impacted the ability of Companies to raise Non Fund based limits like Bank Guarantee etc. Further, the banks are seeking very high margins (like 100% of the BG value), plus collateral securities of equivalent value, which impacts the ability of the Bidder to spend money on the actual mining project requirements.

The Discussion Paper seeks Bank Guarantees against Bid Security for 20% of Upfront Amount as Bid Security for Fully Explored Mines or 25% of the estimated exploration expense for Unexplored/Partially Explored Coal Mines.

While it is appreciated that the Bid Security is required in order to ensure the participation of serious bidders and recovery of loss to MoC in case bid process fails due to default of a bidder, **it is felt that the amounts sought are unreasonably high.**

We suggest that Bid Security should be lowered to 10% of the Upfront Amount for fully explored mines. Even this amount would become very high for coal blocks having reserves of more than 1000 MT, and therefore **we suggest that apart from lowering Bid Security to 10% of Upfront Amount, there should also be a cap of Rs 50 Crore for Bid Security for fully explored mines.**

Regarding **Unexplored/Partially Explored Mines**, it is likely that CMPDIL will provide estimate of exploration expenses which could be more than the required extent of exploration as per the International practices. For example, it is understood that CMPDIL will determine exploration expense based upon the estimated meterage of exploratory drilling to be done in the block so as to enable preparation of Geological Report and provide required borehole density to prepare a justified Mine Plan.

This is a very outdated and conventional method and may involve unnecessary & higher meterage of drilling. The international practice is to reduce drilling meterage by adopting new techniques like seismic surveys to ascertain seam structures, adopt packer testing for hydrogeological survey, use latest technology for geo-tech & gas testing, etc. Use of such technology will drastically reduce drilling meterage. In China & Australia, modern mines are planned with borehole density of 1 borehole/sq. km as compared to Indian practice of 8-12 boreholes/sq. kms. **Therefore, for Unexplored/Partially Explored Mines, the Bid Security may be lowered to 10% of the estimated exploration expense**.

Further, an option may be given to deposit the Bid Security in the form of cash, instead of a Bank Guarantee. This will ensure a wider participation in the auction process.

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8. **Chapter 3** – Regarding Performance Security

Suggestions:

a. **Value of Performance Security may be reduced to a more reasonable amount for Explored Mines. It is suggested that the Performance Security may be considered as the aggregate of:**
    - **2 months of royalty amount and**
    - **2 months of revenue share as per FPO**
b. **There should also be an upper cap on value of Performance Security – suggested as maximum INR 100 Crore.**
c. **The above suggestions pertaining to value and maximum limit of Performance Security should also be applicable in case of Unexplored Mines when the amount of Performance Security is revised after in-principle approval of Mining Plan.**
d. **Performance Security should be initially for a period of 5 years with provision for extension if needed. In any case, the Performance Security should be returned on achieving PRC for the mine.**

Rationale:

For Explored Mines, the Discussion Paper seeks Performance Security at 50% of one year royalty based on PRC + 50% of one year revenue to Government on the basis of PRC.

Similar to our suggestions regarding Bid Security, we feel strongly that the **value of the Performance Security should be reduced to a more reasonable amount.**

In the illustration given on page 8 of the Discussion Paper, the Performance Security works out to Rs. 137.40 Crore for a 10 MTPA mine. If Rs. 137.40 crore get blocked towards margin money as per present banking requirements, serious impact will be felt on the ability of the Bidder to spend funds on mine development.

It is therefore required that process does not Auction Process does not drain out funds of the Bidder and accordingly we suggest that Performance Security may be considered as the aggregate of:

- **2 months of royalty amount and**
- **2 months of revenue share as per FPO:**

Further, for both there should also be an upper cap on value of Performance Security – suggested as maximum INR 100 Crore.

The above suggestions pertaining to value and maximum limit of Performance Security should also be applicable in case of Unexplored Mines when the amount of Performance Security is revised after in-principle approval of Mining Plan.

Further, in case of Performance Security, the Bank Guarantee validity cannot be till the lease period as the Banks do not give for such a long time and the commission charges are very high as well in such cases. **Therefore, it is suggested that the Performance Security BG may be kept for 5 years and be extendable after 5 years after Government's confirmation.**

Once a mine achieves PRC, majority of the operating risks which depend on the Bidder are already addressed. **Thus, the Performance Security should be returned to the bidder on achieving PRC for a mine.**

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9. **Chapter 3** – Regarding Fixed Amount and claims of the Prior Allottee

Suggestions:

a. **Fixed Amount mentioned in the Tender Document shall be final and binding on the bidders / Mine Owners and MoC. No change should be made in the said Fixed Amount payable by bidder / Mine Owner even due to the outcome of litigation process, if any. Essentially, winning bidder shall not be liable to any past litigation and no claim may be brought to successful bidder related to past coal block allocation.**
b. **Further, it is our estimate that in case of old mines, assets of Prior Allottee would have lost significant value and proper reassessment is needed before seeking payments from the new bidders.**

Rationale:

It has been experienced that post implementation of CM (SP) Act, 2015, the new allottees have been subjected to lengthy legal suits by the prior allottees. This mainly happens due to the difference in the Fixed Amount recognised by the Nominated Authority, Ministry of Coal and the amounts claimed by the Prior Allottee. In such cases, it is observed that the Nominated Authority disowns the dispute and starts pressurising the New Allottee to meet milestones of the allotment.

Any change in the Fixed Amount after the electronic auction for FPO will affect the commercial viability of the coal mine won by the Mine Owner during auctions. Hence, the Fixed Amount mentioned in Tender Document shall remain binding on MoC and Mine Owner.

Moreover, MoC shall ensure that the new Allottee i.e. bidder / Mine Owner is in no way a party to the ongoing / new litigations of the Prior Allottee with the MoC / GoI w.r.t coal blocks de-allocated in 2014.

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10. **Chapter 3** – Regarding National Coal Index

Suggestions:

a. **National Coal Index should be published well before submission of the Initial Price Offer (IPO).**
b. **Further, details of how National Coal Index would be made relevant and comparable to mine specific quality should be made clear upfront as NCI is proposed to have only 3 bands for non coking coal while published grades for non coking coal are 17.**
c. **Weightage of imported coal in the National Coal Index should be kept to a minimum**

Rationale:

Right now, it is unclear as to what would be the basis for National Coal Index for a coal mine, i.e whether it would be an overall index or a sub-index or a combination of sub-indices. More clarity regarding the same is required prior to IPO.

The Discussion Paper also states that the National Coal Index would contain three sub-indices for the grade categories of non-coking coal. Considering that there are 17 published grades for non-coking coal, each with different pricing, it implies that there would be significant price variation within these proposed sub-indices. More clarity is required on the composition of the National Coal Index.

Therefore, the National Coal Index needs to be published well in advance as it is crucial for determination of the Upfront Amount, Payment Security amount and Monthly Payments.

Further, it would need to be considered that currently we are importing large amounts of coal at present (about 245 MT in FY20 and 235 MT in FY19), due to the current domestic coal shortage scenario. After a few years when many captive mines and these commercial mines start production, then import of coal will likely be restricted to only coking coal and thermal coal for coastal based power plants only. **Hence, the weightage of imported component while framing the National Coal Index should be kept to a minimum level**. Also, if the share of imported coal is more, then the bidder will calculate its margins with current index which is actually inflated and later when imports reduce drastically then bidders' margins will reduce. Buyers will always negotiate prices with bidders/mine operators according to the prevailing Index.

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11. **<u>Chapter 4</u>** – Regarding Flexibility in Coal Production

<u>Suggestions:</u>

a. **The requirement of producing at least 70% of the scheduled production in any block of 3 years may be relaxed to a block of 5 years.**
b. **Statutory duties such as DMF, Royalty, NMET etc shall NOT be payable in case of shortfall.**
c. **Shortfall in production due to factors beyond the control of Mine Owner or Force Majeure events - we propose that such instances may be referred to a Project Review Committee who should be empowered to take a decision based on the representation of the developer and adjudicate if the shortfall was due to genuine reasons beyond the control of the Mine Owner.**

Rationale:

The Discussion Paper states that:

"Further, in the event the coal production for a block of 3 years is less than 70% of the scheduled production as per approved mine plan, the Successful Bidder shall make payment towards such shortfall in coal production (above 50% and less than 70%) such that the revenue to the Government for a block of 3 years is towards at least 70% of the scheduled coal production. Statutory levies such as DMF, Royalty, NMET etc. shall also be payable on such shortfall quantity."

As proposed in Methodology for Coal Block Auction for Sale of Coal dated 27.02.2018 by MoC to provide a degree of flexibility to the successful bidders to manage its quantity in the event of economic downturn or other such event, it is suggested that the requirement of producing at least 70% of the scheduled production in any block of 3 years may be relaxed to a block of 5 years.

Further, there is no rationale of levying statutory duties in case of shortfall in coal production as such statutory duties are not applicable on quantity of coal not produced. **Statutory levies such as DMF, Royalty, NMET etc should not be payable on shortfall quantity and should be charged on despatched coal only as per current practice, which is also being followed by Coal India.**

The Discussion Paper has not mentioned anything about Force Majeure events or events beyond the control of bidder which may impact the ability of the Bidder to operate the coal mine at desired levels of production. Shortfall in production due to factors beyond the control of Mine Owner or Force Majeure may be referred to a Project Review Committee who should be empowered to take a decision based on the representation of the developer and adjudicate if the shortfall was due to genuine reasons beyond the control of the Mine Owner.

12. **Chapter 4** – Regarding Mine Plan and enhancement of production

Suggestions:

a. **In order to provide flexibility to the Mine Owner to enhance production capacity of the Mine, the Mine Owner should be granted EC for 150% of PRC of Coal Block.**
b. **Land acquisition under CBA Act should be allowed for private entities as well for coal mining purpose.**
c. **Process for acquisition of Forest Land should be made the same as that for Govt. Land to expedite land acquisition process, though with some additional conditions such as payment of necessary amounts for NPV, Compensatory Afforestation, etc. as per statute. In other words, for example, requirement of FC-I and FC-II should be done away with.**
d. **There should be provision for land bank for Compensatory Afforestation related land acquisition.**

Rationale:

The above measures will help to streamline and accelerate the process of coal production from the mines while also improving the possibility of enhanced coal production.

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13. **Chapter 4** – Regarding Mine Plan and downward revision of Mine Plan

Suggestion: Provision may be introduced for downward revision of Mine Plan as an ex-ante measure but only under extraordinary circumstances. We suggest setting up of a Project Review Committee who should be empowered to take a decision if the circumstances/factors justify downward revision of the mining plan.

Rationale:

In exceptional cases outside developer's control, we would suggest an enabling provision for downward revision of Mine Plan to account for geological surprises not anticipated at the time of bidding; for example, fault lines not intercepted during seismic surveys and at the time of Geological Report and Mine Plan preparation may require re-alignment of the mine pit and consequent adjustments in annual production plans.

In order to ensure sanctity of bidding while providing for downward revision of Mine Plan as an ex-ante measure but only under extraordinary circumstances, we would propose setting up of a Project Review Committee who should be empowered to take a decision if the circumstances/factors justify downward revision of the mining plan.

These suggestions are on the lines of Kelkar Committee Report on Revisiting and Revitalising PPP Model of Infrastructure. Such function can be performed by a Coal Regulator as and when instituted by an act of statute.

Suggestion for downward revision of Mine Plan may be viewed in the context of MoC Guidelines for preparation of Mining Plan for the Coal and Lignite Blocks dated 16-12-19, which allows modifications of Mine Plan, inter-alia citing the triggers as:

a. change in mining method;
b. changes in business environment;
c. change in lease area;
d. considerations of safe and scientific mining;
e. considerations of protection of environment

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14. **Chapter 4** – Regarding Change in Control and Transfer of the Coal Mine

Suggestions:

a. **For Fully Explored Coal Blocks, transfer of mine or change in control should be allowed after commencement of coal production.**
b. **Similarly, for Unexplored/Partially Explored Coal Blocks, after submission of application for mining lease, any change in control or transfer of mine should be allowed after commencement of coal production.**

Rationale:

There is significant investment required in development of mine (land, R&R, CHP and coal evaluation facilities, deployment of HEMM, washery etc.). To meet such huge CAPEX, Successful Bidder may like to or be required to dilute stake (giving stake to strategic partner / Financial Institutions) for induction of fresh capital and technology in order to scale up mining operations efficiently.

Commencement of coal production is one of the most critical milestones and the project risk reduces significantly once coal production starts. Accordingly, once the production of coal from the mine commences, the Successful Bidder should be allowed to change the control / dilute stake to bring capital for the project.

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15. **<u>Chapter 4</u>** – Regarding Minimum Work Programme for Unexplored/Partially Explored Mines

<u>Suggestions:</u>

a. **Bidders to be given the choice of whether to undertake prospecting by own organisational machinery or outsourcing to an accredit agency.**
b. **Bid documents and timelines should also factor in the possibility of delay in approval of Geological Report.**

Rationale:

The Discussion Paper states that:

> *"The Successful Bidder shall conduct geological prospecting/ exploration of the area as per the Minimum Work Program provided by the Nominated Authority"*

In the context of PL-cum-ML auctioning, we suggest that Minimum Work Programme (MWP) may be a set of work conditions, tests and validations that will be carried out during exploration and will include timelines and costs, borehole drilling plan with depth of drilling and deliverables of auditable mining data, Geological Report (GR) and Mining Plan. As part of their eligibility, bidders will demonstrate their work plan of man-machine deployment of the required skill sets and work specifications. We propose **choice to be left to bidders for undertaking prospecting by own organisational machinery or outsourcing to an accredited agency;** in turn, bidders will have the responsibility of engaging Competent / Qualified Persons (CP / QP) for validating the exploration results and certifying the mineral resource / ore reserve estimate based on risk and sensitivity analysis to establish economic mineability.

Further, we believe that CMPDIL does not have sufficient bandwidth to vet work program of exploration and geological reports due to lack of sufficient experts. Hence **there could be delay in approving the GR of unexplored coal blocks and the same needs to be factored in the bid document and timelines.**

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16. **<u>Chapter 4</u>** – Regarding Surrender of Unexplored / Partially Explored mine before applying for Mining Lease

<u>Suggestions:</u>

a. **A mechanism has to be established which would ensure that the Bidder who has surrendered the block will be expeditiously paid back the cost of preparation of Geological Report, on par with amounts paid to CMPDI for GRs prepared by them.**
b. **After completing the Prospecting Operations, the successful bidder should be allowed to relinquish part of coal mine for Prospecting and Grant of Mining Lease.**

Rationale:

It is stated that the Successful bidder of an Unexplored / Partially Explored mine has option to relinquish the mine on completion of exploration and preparation of Geological Report after submitting all the reports, studies and other documentation related to geological prospecting / exploration of the area to Nominated Authority and state Government. However, the document does not specify the compensation that the bidder who has completed the exploration work will be entitled to. As the results of exploration and the reports generated would be utilized in the future, a mechanism has to be established which would ensure that the Bidder who has surrendered the block will be expeditiously paid back the cost of preparation of Geological Report, on par with amounts paid to CMPDI for GRs prepared by them.

Further, the Discussion Paper states that relinquishment of part of the coal mine shall not be allowed. It is suggested to remove this provision so as to maintain harmony and consistency with the provisions of Mineral Conservation & Development Rules (Amendment) 2017.

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17. **Chapter 4** – Regarding Exploitation of Coal Bed Methane

Suggestions:

a. **Regarding applicable revenue share percentage and payments, in order to incentivize the exploitation of Coal Bed Methane, the monthly payments should be made on the basis of 50% of FPO and not 100% of FPO as envisaged in the current document.**
b. **Further, the Royalty and Monthly Payment should be the lesser of the following:**
    - **Market discovered price**
    - **Price notified by PPAC**

Rationale:

A large number of mines are not being developed by CIL and are proposed to be auctioned to private sector owing to difficulties in mining and CBM extraction prior to extraction of coal. Considering CBM extraction for mines surrendered by CIL is difficult task, Bidder should be encouraged by providing some incentives to extract CBM in addition to the mining of coal, which will also help address energy security and sustainable exploitation of natural resources.

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18. **<u>Annexure I</u>** – Regarding Efficiency Parameters

<u>Suggestions:</u>

a. **Critical activities/milestones which have significant impact on timely development of the coal block should be given a grace period of 50% of the respective timelines, subject to the condition that overall grace period shall not exceed 25% of the time granted for the last milestone of development (mine opening permission).** The critical activities/milestones which require grace period are:
   - MS-3A : Grant of Stage I FC
   - MS-3B : Grant of Stage II FC
   - MS-4 : Grant of EC
   - MS-6 : Land Acquisition and possession of land, R&R to reach rated capacity.

b. **Additionally, the Mine Owner should be given relaxation for the period of delay occurring due to factors beyond the control of Mine Owner or Force Majeure conditions.**

c. **If Mine Owner is penalized for delay in fulfilling any of the milestones, but finally fulfils Mine Opening Permission as per the stated timeline, the earlier levied penalties should be reimbursed to the Mine Owner.**

Rationale:

Activities such as grant of FC and EC are long and tedious processes wherein past experience has shown that there may be considerable unforeseen delays with these approvals. Hence it is crucial to provide a suitable enough buffer to the Successful Bidder to complete these critical milestones.

Delay in achieving any of the timelines due to factors beyond the control of Mine Owner or Force Majeure may be referred to a Project Review Committee who should be empowered to take a decision based on the representation of the developer and adjudicate if the delay was due to genuine reasons beyond the control of the Mine Owner.

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19. **<u>Other Comments and points where clarification is needed:</u>**

a. **Avoidance of information gaps** – All efforts should be made to avoid information gaps and integrate mine-related site details so that the constraints are discernible and a realistic assessment of extractable and mineable reserves is possible. From a combined perusal of Discussion Paper-linked CMPDI Lists read with Mine Dossiers, MoC Lists dated 26-7-10 and 12-9-14 for Allocation of Captive Coal Blocks to Government Companies and Permissible End-user Companies, MoC OM dated 17-10-18 with List of 81 Non-CIL Blocks available for Allocation under MMDR Act, it can be seen that mining may be handicapped as a result of:

* forest cover of 5-100%;
* necessity for rail / road / highway / river diversions;
* lack of overburden dumping space;
* existence of populated villages / townships interfering with mining area;
* fault lines affecting coal seam structure and mineability.

To provide investor comfort and establish the bankability of projects, we would suggest a structured compilation of Information Memorandum related to each mine, inter-alia highlighting field constraints, if any, and a broad indication that these have been accounted for, while estimating the geological reserves included in Bid Document.

b. **Improving efficiency of obtaining clearances** – The process of obtaining clearances should be made more transparent and less time consuming. There should be Single Window system for all the clearances/ approvals/ permits/ licenses/ permissions etc in order to smoothen and fast-track the operationalization of coal blocks. MOC and State Govt. should provide proper handholding to expedite clearances and development of coal blocks. Online project monitoring system to track various clearances and location of files under process at various Departments will immensely help the bidders.

c. **Coal Evacuation** – Coal evacuation is an important aspect considered by bidders to evaluate coal mines put up for commercial mining. The absence of coal evacuation infrastructure acts as hindrance and will discourage many potential bidders to participate in the auction process. Govt. can assist Mine Owners in coal evacuation by undertaking development of coal evacuation infrastructure by utilizing the corpus created under DMF or through PPP basis. This way, Govt. will not have to undertake complete capital expenditure but can offload it by engaging private players, which have the capability to establish evacuation infra in an expeditious manner.

   Therefore, it is suggested that the Govt. may develop & provide Mine Owners with cluster-wise common coal evacuation infrastructure like Rail corridor, waterways, road connectivity from mines to nearest railway siding/waterways loading terminal etc, for the proposed commercial coal blocks. Such common coal evacuation infrastructure may be developed by utilizing the DMF corpus or through a PPP model with engagement of private players.

d. **Whether consortium bids are allowed** - The discussion paper does not clearly suggest whether consortium (Company) is allowed to bid or not. It is submitted that consortium bids may be allowed with lead member taking atleast 26% and other members to take atleast 10% of the total equity requirement.

e. **Assurance from Government of India not to hamper coal production -** If the Government of India signs any treaty that requires it to cut down coal production in direct or indirect manner, the obligations of the Bidder will be obliterated. It is therefore required that **an assurance is made by the Government of India while auctioning of the coal blocks that it shall not take any steps which will hamper the ability of the successful bidders to produce coal from their mines**, as the impact of any such event will have severe financial repercussion on the bidders. However in case any step is taken which hampers coal production from the mine or impairs the ability of the developer to fulfil his obligations, then such event should be treated as Change in Law.

f. **Regarding coal linkages** - In the event where the Successful Bidder wishes to sell total coal from its mine in open market, while at the same time, acquire coal for its EUP from CIL through linkage due to logistics constraints, will the possession of a commercial coal block negatively affect Successful Bidder's chances of getting a coal linkage from CIL for any of its EUP? The document does not touch upon this crucial aspect and **it is suggested that it may be clearly provided that the Successful Bidders possession of a commercial coal mine should not be a ground for either denial or reduction of coal quantity allotted through coal linkage from CIL.**

g. **Freedom of pricing** – While the Discussion Paper states that there shall be no restriction on the sale/utilization of coal, it may be explicitly clarified that the Government will not impose any restrictions on the Successful Bidder regarding the sale price of coal. The Successful Bidder should be free to sell coal at any price as mutually agreed by selling & purchasing parties.

h. **Treatment regarding washing of coal** – In case a coal washery is situated within the lease area and coal is despatched after washing, clarity is required on how the revenue sharing (FPO), royalty, cess and other taxes will be levied? It is our submission that the FPO should be levied on coal despatched, such as the provisions for royalty, cess etc as per current policy.

i. **Exploration Expense** - It is suggested that the "estimated exploration expense" as prepared by any Govt./Private agencies should subsequently be certified by MoC/ CMPDIL. It should be part of the tender document.

j. **Regarding Performance Security** - It is suggested to keep the performance security amount in a fixed deposit/escrow account or similar financial instrument so that the Successful Bidder can avail reasonable return in the form of interest on this locked amount at the end of mine lease period.

k. **Upward revision in Mine Plan & Incentive** – Some clarity is required on what would be the baseline production capacity considered for upward revision & incentive? Whether it will be the production capacity as per previous approved Mine Plan or capacity indicated by MoC in the tender document? It is our suggestion to keep the PRC of previous approved Mine Plan, if present, as the PRC in the tender document.

l. **Incentive for early production** - In case of early production, the incentive should be enhanced for the Successful Bidder. The revenue share of Govt should be reduced from 80% & 90% to 40% & 50% respectively.

m. **Option to continue operations of the mine -** In case a coal mine with following features is auctioned, **the Ministry Coal must allow the successful bidder to continue or commence coal mining, without waiting for modification of the clearances required for the mine** :
   i. The mine was already in operations
   ii. The mine was in operations, but the operations stopped for any other reasons
   iii. All major clearances including execution of Mining Lease, Consent to Establish are available.

   This will ensure that there is quick addition to coal production of the Country.

n. **NOC from Ministry of Environment and Forests -** There may be cases where a coal mine has been granted Environmental Clearance with a Particular Sponge Iron plant or a Power Plant as end use beneficiary. However, once a block is now allotted for Sale of Coal, the Environment Clearance / Forest Clearance will need to undergo change, before any action can be taken by the Bidder on ground. It may also require conducting Public Hearing process all over again.
   It is therefore crucial that the Ministry of Coal takes a no objection from the Ministry of Environment and Forests on all the coal blocks which are now sought to be auctioned / allotted for Sale of Coal.

o. **Grade of Coal – GCV (As received) or GCV (Equilibrated as per CIL) -** In the market, the buyer of coal pays for the Gross Calorific Value on 'As Received Basis', which is also the norm for all the imported coal contracts. However, Coal India follows the grading on 'Equilibrated basis', which inflates the calorific value of coal on theoretical basis and lacks practical utility.

   As the payments of Revenue Share are linked to the Grade of Coal, which is stated as G11, G12, G13 etc in the illustration, it is required that the Ministry of Coal adopts the grading of coal which is followed world over, ie on 'As Received Basis' and 'Not on Equilibrated basis'.

p. **Land survey** - It is suggested to update the land records by state govt after due survey and include the updated land records in the tender document.

q. **Export Regime** - It is suggested to provide a level playing field to all coal producers and sellers. It is our submission that the Govt. should not impose any additional taxes, duty etc., for private entities while exporting coal.

r. **Additional coal blocks from IB Valley region** - The eastern region coal fields, especially IB valley region has good coal bearing potential and a number of industrial coal consumers are in need of coal in the region. E.g. Jharsuguda & Lapanga have many coal consumption centres both in form of CPPs and IPPs. However, in the list of 80 prospective coal blocks, there is only one coal block from IB valley. **Hence, we request that additional coal blocks from IB valley to be added for auction.**

s. **Regarding Bank Guarantees** – Usually as per the tender documents, BG is always sought to be provided by Banks in Delhi as well as to be executed by a Delhi Branch. Instead of such a provision, BG may be allowed to be given from all Branches or atleast from Branches of Banks situated in major metro cities.