IN THE COURT OF SH. SANJAY BANSAL:
SPECIAL JUDGE (PC ACT) (CBI)
(COAL BLOCK CASES)-02:
ROUSE AVENUE DISTRICT COURTS: NEW DELHI.

CBI Case No. 292/2019
CNR No. DLCT110011382019
RC No. 219 2012 E 0011
Branch: CBI/EOU-IV/EO-II, New Delhi
CBI Vs. Y. Harish Chandra Prasad & Ors.
U/s. 120-B IPC, 406 IPC, 409 IPC, 420 IPC
U/s 120-B/409/420 IPC
U/s 13(1)(c) & 13(1)(d) PC Act, 1988

Date of order on cognizance	:	28.07.2015
Date of framing of charge	:	21.10.2016
Date on which judgment was reserved	:	05.11.2024
Date of judgment	:	11.12.2024

Central Bureau of Investigation (CBI)

Vs.

(1) Y. Harish Chandra Prasad
S/o Y. Sreeramalu
R/o Villa No. A14, Lake Community,
Boulder Hills, Opposite Microsoft Gachibowli,
Serilingampally, Telangana – 500032

(Acquitted)

(2) P. Trivikrama Prasad
S/o Sh. Venkateswara Rao Pinannamaneni
R/o Plot No. 27, Navodaya Colony,
Road No.14, Banjara Hills, Hyderabad

(Acquitted)

(3) Brahmani Thermal Power Pvt. Ltd. (BTPPL)
No. 11 K.K. Marg,
Mahalaxmi Mumbai-400034
Through its AR Sh. Srikar Gopalrao

(Acquitted)

(4) Harish Chandra Gupta
S/o Late Shri Kisan Lal Gupta
R/o 377, Sector 15-A,
NOIDA-201301, U.P.

(Acquitted)

(5) K.S. Kropha
S/o Late Sh. Sukh Das Kropha
R/o 258, Gulmohar Enclave,
New Delhi – 110049.

(Acquitted)

(6) K.C. Samria
S/o Sh. G.L. Samria
R/o E-3, Senior Officers Colony,
Khanapara, Guwahati-781022.

(Acquitted)

APPEARANCES

Present : Learned Special PP Sh. R.S. Cheema, Senior Advocate for CBI (through VC).
Learned DLA Sh. A.P. Singh alongwith learned DLA Sh. N.P. Srivastava and learned Senior PP Sh. V.K. Pathak for CBI in person.

Learned Counsel Sh. Shri Singh for A-1 YHCP; Learned Counsel Sh. Faraz Maqbool for A-2 PTP; Learned Counsel Sh. Sanjay Abott for A-3 NPPL/BTPPL; and Learned Counsel Sh. Mathew M. Philip for A-4 to A-6.

JUDGMENT:

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PART – A

THE ALLEGATIONS

1. The allegations of the prosecution, as disclosed from the report u/s 173 Criminal Code Procedure, 1973 ("CrPC"), are as under:

2. The present case was registered on 03.09.2012 pursuant to a Preliminary Enquiry No. 219 2012 E0002 dated 01.06.2012 on the basis of a reference made by the Central Vigilance Commission ("CVC") which had recommended investigation against officials of Ministry of Coal ("MoC"), Govt. of India for alleged corruption in allocation of coal blocks to private companies during the period 2006 to 2009.

3. It is alleged that for the purpose of obtaining the coal block, the company M/s Navabharat Power Pvt. Ltd. ("NPPL") made fraudulent misrepresentations through its Managing Director Y. Harish Chandra Prasad which were so made as per the authorization of Chairman P. Trivikrama Prasad regarding its networth and land.

4. It is stated that the networth of the applicant companies applying for the coal block at Rampia, Dipside of Rampia and Mandakini, Orissa (now Odisha) was a significant factor to determine the financial strength of the applicant(s) so as

to judge its capacity to successfully implement the project and develop the coal block.

5. It was further alleged that as per OM No. FU5/2003-IPC dated 03.11.2006 published on the website of Ministry of Power ("MoP"), Govt. of India, the networth of the company, internal source generation and annual turnover were mentioned as normative criteria to determine the eligibility for coal block allotment. It is alleged that this important aspect was known to M/s NPPL, its Managing Director and Chairman.

6. It is further alleged that in order to obtain the coal block, M/s NPPL misrepresented/fraudulently claimed in its application form dated 12.01.2007 submitted to Director, CA-I, MoC that it was supported by M/s Globeleq Singapore Pvt. Ltd. ("Globeleq"), M/s Nava Bharat Ventures Ltd. ("NBVL") and M/s Malaxmi Group Ltd. ("MGL") and showed the networth of Rs. 307 crore approximately of NBVL and Rs. 1778 crore approximately of Globeleq as belonging to applicant NPPL.

7. It is also the case of prosecution that the company Globeleq was substituted with M/s Suez Energy International Pvt. Ltd. ("Suez") later on. It is alleged that it was also claimed before the Screening Committee in presentation dated 23.06.2007 as well as in the feedback form that the company NPPL had the networth of NBVL worth Rs. 307 crore approximately and networth of Suez worth Rs. 1.05 lacs crore approximately thereby bolstering their claims although they had no legal basis

to claim so. It is also alleged that NPPL was not authorized to use networth of Suez nor there was any agreement in force between NPPL and Suez in this regard. Hence, NPPL could not have pre-qualified for allocation of coal blocks. It is alleged that though the claims of networth in the application form to the Director, CA-I and the presentation before the Screening Committee were made on the basis of MoU dated 13.11.2006 entered into by M/s NPPL with M/s Globeleq and a Letter of Expression of Interest dated 14.06.2007 with M/s Suez, however, none of these documents authorized the company NPPL to claim their networth for the purpose of allocation of the coal blocks.

8. Another misrepresentation allegedly made by the company NPPL was qua land acquired by it. It was claimed by NPPL that it had acquired 40 hectares of land against the total requirement of 761 hectares. The said claim was also found to be false as no land was/had been acquired. This false representation was found/surfaced as per letter dated 05.09.2007 of the Additional Secretary, Department of Energy, Government of Orissa.

9. It is further the prosecution case that the applications moved for the purpose of allocation were to be received in MoC. Thereafter, they were to be sent to Administrative Ministry/State Government concerned for their evaluation and recommendation which were to be then sent to, and considered by, the 35th Screening Committee and on the basis of recommendations of

Screening Committee, the MoC would make the necessary allocations.

10. It was alleged that despite these false claims/fraudulent misrepresentations, the Administrative Ministry and the State Government recommended allocation of the coal blocks to the Screening Committee which in turn recommended the same to the MoC which finally allocated the coal blocks Rampia and Dipside of Rampia to NPPL vide allocation letter dated 17.01.2008.

11. It was alleged that the officials of MoC in pursuance of the criminal conspiracy did not scrutinize the false claims and thus facilitated the company in getting undue advantage in allocation of the coal blocks.

12. Though the FIR was registered u/s 120-B r/w section 420 Indian Penal Code, 1860 ("IPC") and section 13(2) r/w section 13(1) of Prevention of Corruption Act, 1988 ("PC Act"), however, the chargesheet was filed by CBI only u/s 120-B r/w section 420 IPC concluding that investigation was still pending.

13. Initially, the CBI had filed the report u/s 173 CrPC, chargesheeting only the private parties i.e. M/s NPPL, its Chairman P. Trivikrama Prasad and its Vice Chairman Y. Harish Chandra Prasad for the offences u/s 120-B/420 IPC. As regards the public servants involved, it was stated that further investigation in the matter was in progress.

14. As the case at that stage pertained to offences under IPC only and which were triable by the Court of Metropolitan Magistrate, so the then learned Special Judge, CBI transferred the case to the Court of learned CMM, Patiala House Courts, New Delhi, who further assigned it to the Court of the then learned ACMM.

15. However, as further investigation in the matter was pending qua the role of public servants, so learned ACMM chose to not take cognizance of any of the offences even against the private parties involved. Vide a detailed order dated 13.05.2014, he issued a number of directions to the investigating agency regarding various aspects which were to be covered during further investigation.

16. However, upon constitution of the Special Court for coal block allocation matters, the matter was sent to the Special Court and a supplementary report u/s 173 CrPC dt. 29.08.2014 was filed by CBI in the said court. It was stated therein that no incriminating evidence could emerge on record which could warrant chargesheeting of any of the public servants involved. Thereafter, vide order dated 30.08.2014, it was observed by my learned Predecessor that the further investigation report had not covered various aspects of the matter as were highlighted by learned ACMM.

17. Accordingly, a revised supplementary final report (2nd supplementary report) dt. 29.09.2014 was filed but it was

stated that though some incriminating evidence could come on record against the public servants but the said evidence was found to be not sufficient and cogent to warrant their prosecution. It was, however, stated that a report had been sent to MoC for initiating necessary action against K.S Kropha, the then Joint Secretary (Coal) and Member Secretary, Screening Committee and K.C. Samria, the then Director, CA-I, Ministry of Coal (MoC).

18. A 3rd supplementary report dt. 15.05.2015 was also filed vide which some documents were placed on record.

19. My learned Predecessor, however, differed with the the conclusion drawn by CBI and vide a detailed order dated 12.11.2014, followed by order dated 28.07.2015, took cognizance of various offences not only against private accused persons but also against public servants. He took cognizance of the offence u/s 120-B IPC and also of the offences u/s. 120-B/409/420 IPC and Sec. 13(1)(c)/13(1)(d) PC Act against M/s. NPPL, its Chairman P. Trivikrama Prasad, its Vice Chairman Y. Harish Chandra Prasad, H.C. Gupta, Secretary (Coal), K.S. Kropha, Joint Secretary (Coal) and K.C. Samria, Director CA-I MoC, Govt. of India besides also taking cognizance of the substantive offence u/s. 13(1)(d) PC Act against accused H.C. Gupta, K.S. Kropha and K.C. Samria. Cognizance of the offences u/s 409 IPC and 13(1)(c) PC Act was further taken against accused H.C. Gupta and cognizance of the substantive offence u/s 420 IPC was

also taken against company M/s. NPPL, its Chairman P. Trivikrama Prasad and Vice Chairman Y. Harish Chandra Prasad. Sanction u/s 19 of PC Act was accorded in respect of accused K.S. Kropha and K.C. Samria. As accused H.C. Gupta had already retired, no sanction was required for taking cognizance with respect to him.

20. It may be mentioned herein that the name of company M/s NPPL was later on changed to Brahmani Thermal Power Private Ltd. ("BTPPL"). However, for the sake of convenience, the company shall be continued to be referred to as NPPL in the present judgment as the documents to be considered mention the name of applicant company as NPPL.

21. All the accused persons were summoned. They appeared and were admitted to bail.

22. Copies of the chargesheet and documents were supplied to the accused persons as per Section 207 CrPC.

PART – B

THE CHARGE

23. Thereafter, my learned Predecessor heard parties on the point of charge and vide detailed order dated 05.10.2016 formal charges were ordered to be framed against all the accused persons i.e. M/s. NPPL, its Chairman P. Trivikrama Prasad, its

Vice Chairman Y. Harish Chandra Prasad, H.C. Gupta, Secretary (Coal), K.S. Kropha, Joint Secretary (Coal) and K.C. Samria, Director CA-I, MoC, Govt. of India

24. Charge for the offence u/s 120-B IPC and u/s 120-B/409/420 IPC and 13(1)(c) & 13(1)(d), PC Act, 1988, was framed against all the six accused persons i.e. accused A-1 Y. Harish Chandra Prasad ("YHCP"), A-2 P. Trivikrama Prasad ("PTP"), A-3 company M/s NPPL, A-4 H.C. Gupta, A-5 K.S. Kropha and A-6 K.C. Samria.

25. Charge for the substantive offence of cheating i.e. u/s 420 IPC was framed against A-1 YHCP, A-2 PTP and A-3 NPPL.

26. As against the three public servants i.e. accused A-4 H.C. Gupta, A-5 K.S. Kropha and A-6 K.C. Samria, charge for the substantive offence u/s 13(1)(d) PC Act, 1988 was also framed. Charge for the substantive offence i.e. u/s 409 IPC and Section 13(1)(c) PC Act, 1988 was also framed against accused A-4 H.C. Gupta.

27. Though not invoked in the chargesheet, charge for the offence of criminal breach of trust i.e. offence punishable u/s 406 IPC was also ordered to be framed against both A-1 YHCP and A-2 PTP. This charge was framed as later on i.e. after allocation of the coal blocks, both accused A-1 and A-2 sold off their shareholding in the company NPPL to one M/s Essar Power

Ltd. ("EPL") for a total sum of Rs. 231 crores approx. My learned Predecessor held that by selling the shareholding in this manner, these accused persons earned huge profits over the nationalized natural resources of the country i.e. the coal blocks.

28. Charges were accordingly framed and all the six accused persons pleaded not guilty to all the charges so framed and claimed trial.

29. The charges so framed against the accused persons are being reproduced here for ready reference, as follows:

> *"CHARGE*
>
> *A-1 to A-6*
>
> *That during the year 2006-08 at Hyderabad, Orissa, New Delhi and other places, you all i.e. M/s NPPL, Y. Harish Chandra Prasad, P. Trivikrama Prasad, H.C. Gupta, KS Kropha, and KC Samria entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of Coal Block "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL by adopting various illegal means viz by making false claims about the net-worth of M/s NPPL i.e. by using the net-worth of M/s. Globaleq Singapore Pvt. Ltd. and that of M/s. Suez Energy International Pvt. Ltd. in the application form and the feed back form respectively and also misrepresented about having acquired 40 Hectares of Land both in the Application Form and in the feedback form and by way of various acts of omission and commission amounting to criminal misconduct/criminal breach of trust/criminal misappropriation by the public servants, the details of which have been described in the detailed order on charge dated 05.10.2016 passed separately and you all thereby committed the offence of criminal conspiracy being punishable u/s 120-B IPC and within my cognizance.*
>
> *Secondly, during the aforesaid period and in furtherance of the common object of the criminal*

conspiracy as described above you all did various acts of cheating, criminal breach of trust and criminal misconduct by public servants as described above and substantive charges framed separately and you all thereby committed offences punishable u/s ***120-B r/w 409, 420 IPC and 13(1)(c) & 13(1)(d) PC Act, 1988*** *and within my cognizance.*

And I hereby direct that you all be tried by this Court for the said offences."

*"**CHARGE***

A-1 to A-3

That you all i.e. M/s. NPPL, Y. Harish Chandra Prasad and P. Trivikrama Prasad during the year 2006-08 at Hyderabad, Orissa, New Delhi and other places in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) hatched by you all with your other co-accused persons i.e. HC Gupta, KS Kropha and KC Samria, cheated Ministry of Coal, Government of India dishonestly or fraudulently by making false claim about having acquired 40 Hectares of land and by using dishonestly the net worth of M/s. Globeleq Singapore Pvt. Ltd. and M/s. Suez Energy International Pvt. Ltd. in the application form and feedback form, respectively and thereby induced Ministry of Coal, Govt. of India to allocate "Rampia and Dipside Rampia" coal block in favour of M/s NPPL and you all thereby committed offence u/s ***420 IPC*** *and within my cognizance.*

And I hereby direct that you all be tried by this Court for the said offences."

*"**CHARGE***

A-1 (YHCP)

That M/s NPPL was allotted Rampia Dipside Rampia coal block by MOC, Govt. of India in the year 2008 and you being a director of M/s NPPL holding about 50% equity of the company M/s NPPL through yourself, family members and companies promoted by you and were thereby exercising dominion over the affairs and business interests of M/s NPPL and as a result were also

exercising dominion over the coal block so allotted in favour of M/s NPPL dishonestly disposed off your aforesaid equity holding in the company in favour of M/s Essar Power Ltd. for a sum of Rs. 79,08,24,000/- approximately in violation of the terms of the legal contract which came into being between M/s NPPL and Ministry of Coal, Government of India leading to allocation/entrustment of coal block in favour of M/s NPPL and in accordance with which the property so entrusted by MOC was to be used and you thereby earned huge undue profits over the nationalized natural resources of the country i.e. coal block (the entire issue has also been explained in the order on charge dated 05.10.2016 passed separately) and you thereby committed offence u/s ***406 IPC*** *and within my cognizance.*

And I hereby direct you be tried by this Court for the said offence."

*"**CHARGE***

A-2 (PTP)

That M/s NPPL was allotted Rampia Dipside Rampia coal block by MOC, Govt. of India in the year 2008 and you being a director of M/s NPPL holding about 50% equity of the company M/s NPPL through yourself, family members and companies promoted by you and were thereby exercising dominion over the affairs and business interests of M/s NPPL and as a result were also exercising dominion over the coal block so allotted in favour of M/s NPPL dishonestly disposed off your aforesaid equity holding in the company in favour of M/s Essar Power Ltd. for a sum of Rs. 169,00,00,000/- approximately in violation of the terms of the legal contract which came into being between M/s NPPL and Ministry of Coal, Government of India leading to allocation/entrustment of coal block in favour of M/s NPPL and in accordance with which the property so entrusted by MOC was to be used and you thereby earned huge undue profits over the nationalized natural resources of the country i.e. coal block (the entire issue has also been explained in the order on charge dated 05.10.2016 passed separately) and you thereby committed offence u/s ***406 IPC*** *and within my cognizance.*

And I hereby direct you be tried by this Court for the said offence."

"CHARGE

A-4 (H.C. Gupta)

That you being the Secretary, Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, in the year 2006-08 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) as hatched with your co-accused persons i.e. M/s NPPL, Y. Harish Chandra Prasad, P. Trivikrama Prasad, KS Kropha and KC Samria in order to procure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL, in as much as you being Secretary, Ministry of Coal, Govt. of India and Chairman 35th Screening Committee, Ministry of Coal did not ensure the scrutiny of applications to see their completeness and eligibility and that the application of M/s. NPPL was liable to be rejected out rightly, since M/s. NPPL dishonestly used net worth of M/s. Globalec Singapore Pvt. Ltd. in the application form in order to enhance its own net-worth and thereafter dishonestly used the net worth of M/s. Suez Energy International Pvt. Ltd. in the feed back form and in the presentation and on none of the occasions any supporting document of the claim so made having been filed by M/s. NPPL and you also did not ensure the scrutiny of applications either before the applications were considered by the Screening Committee or even after recommendations were made by the Screening Committee, when limited applications were only left to be scrutinised and that you also did not follow the guidelines laid down by the Ministry of Coal for making final recommendations in favour of M/s. NPPL and also the criteria of inter se priority wherein status, level of progress, stage of preparedness, of the project, tecno economic viability/feasibility of the project, etc. were the main factors to be considered and thereby committed various acts of omission and commission as also described in detail in the order on charge dated 05.10.2016 passed separately, and the said acts of omission and commission committed by you amounted to acts of criminal misconduct by abusing your official position as such public servant with a view to secure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL from MoC and that too without any public interest and you thereby committed an offence punishable

u/s 13(1)(d) PC Act, 1988 and within my cognizance.

Secondly you in your capacity as the Secretary Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, during the aforesaid period were having dominion over the nationalized natural resources of the country i.e. "coal" as available in various coal blocks including that of "Rampia and Dipside Rampia" situated in state of Orissa and which coal blocks were to be allocated to the eligible companies on the recommendation of the Screening Committee (as constituted by MOC) to be made in accordance with the guidelines for allocation issued in this regard by Ministry of Coal and knowing fully well that the allocation of various coal blocks to different applicant companies shall be on the basis of recommendation of the Screening Committee headed by you but you in furtherance of the common objective of the criminal conspiracy (as mentioned in the charge separately framed) as hatched with the other co-accused persons dishonestly and fraudulently recommended part allocation of "Rampia and Dipside Rampia" in violation of the guidelines issued in this regard governing such allocation of coal blocks and in violation of the trust so imposed in you by law and thereby facilitated M/s NPPL and its directors to misappropriate and convert for its own use the impugned coal block i.e. "Rampia and Dipside Rampia" and you thereby committed an offence punishable u/s 13(1)(c) PC Act, 1988 and within my cognizance.

Thirdly you in your capacity as Secretary Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, during the aforesaid period were having dominion over the nationalized natural resources of the country i.e. "coal" as available in various coal blocks including that of "Rampia and Dipside Rampia", situated in the State of MP and which coal blocks were to be allocated to the eligible companies on the recommendation of the Screening Committee (as constituted by MOC) to be made in accordance with the guidelines for allocation issued in this regard by Ministry of Coal and knowing fully well that the allocation of various coal blocks to different applicant companies shall be on the basis of recommendation of the Screening Committee headed by you but you dishonestly in furtherance of the common objective of the criminal conspiracy (as mentioned in the charge separately framed)

hatched with your co-accused persons recommended part allocation of "Rampia and Dipside Rampia", in favour of M/s NPPL in violation of the guidelines issued in this regard governing such allocation of coal blocks and the mode in which the trust so imposed in you by law was to be discharged and thereby facilitated allocation of impugned coal block i.e. "Rampia and Dipside Rampia" in favour of M/s NPPL and thus disposed of the said property i.e. coal block as above and you thereby committed an offence punishable ***u/s 409 IPC*** *and within my cognizance.*

And I hereby direct that you be tried by this Court for the said offence."

*"**CHARGE***

A-5 K.S. Kropha

That you being Jt. Secretary, Ministry of Coal, Government of India and Member Convener, 35th Screening Committee, Ministry of Coal, in the year 2006-08 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) as hatched with your co-accused persons i.e. M/s NPPL, Y. Harish Chandra Prasad, P. Trivikrama Prasad, H.C. Gupta and K.C. Samria in order to procure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL, in as much as you being Jt. Secretary, Ministry of Coal, Govt. of India and Member Convener 35th Screening Committee, Ministry of Coal did not ensure the scrutiny of applications to see their completeness and eligibility and that the application of M/s. NPPL was liable to be rejected out rightly, since M/s. NPPL dishonestly used net worth of M/s. Globalec Singapore Pvt. Ltd. in the application form in order to enhance its own net-worth and thereafter dishonestly used the net worth of M/s. Suez Energy International Pvt. Ltd. in the feedback form and in the presentation and on none of the occasions did not file any supporting documents of the claim made and you also did not ensure the scrutiny of applications either before the time when applications were considered by the Screening Committee or even after recommendations were made by the Screening Committee, when limited applications were only left to be scrutinised and that you also did not ensure

that the guidelines laid down by Ministry of Coal for making final recommendations in favour of M/s. NPPL are followed or the criteria of inter-se priority are followed which included status/stage, level of progress, state of preparedness, of the project, tecno economic viability/feasibility of the project, etc. as the main factors to be considered and thereby committed various acts of omission and commission as described in detail in the order on charge dated 05.10.2016 passed separately, and the said acts of omission and commission committed by you amount to acts of criminal misconduct by abusing your official position as such public servant with a view to secure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL from MoC and that too without any public interest and you thereby committed an offence punishable ***u/s 13(1)(d) PC Act, 1988*** *and within my cognizance.*

And I hereby direct that you be tried by this Court for the said offence.

"CHARGE

A-6 K.C. Samria

That you being Director CA-I, Ministry of Coal, Government of India in the year 2006-08 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) as hatched with your co-accused persons i.e. M/s NPPL, Y. Harish Chandra Prasad, P. Trivikrama Prasad, H.G. Gupta and K.S. Kropha in order to procure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL, in as much as you being Director CA-I, Ministry of Coal, Govt. of India did not ensure the scrutiny of applications to see their completeness and eligibility and that the application of M/s. NPPL was liable to be rejected out rightly, since M/s. NPPL dishonestly used net worth of M/s. Globalec Singapore Pvt. Ltd. in the application form in order to enhance its own net-worth and thereafter dishonestly used the net worth of M/s. Suez Energy International Pvt. Ltd. in the feedback form and in the presentation and on none of the occasions filed any supporting documents of the claim made and you also did not ensure the scrutiny of applications either before the time when applications were considered by the Screening

Committee or even after recommendations were made by the Screening Committee, when limited applications were only left to be scrutinized and thereby committed various acts of omission and commission as described in detail in the order on charge dated 05.10.2016 passed separately, and the said acts of omission and commission committed by you amount to acts of criminal misconduct by abusing your official position as such public servant with a view to secure allocation of "Rampia and Dipside Rampia" situated in state of Orissa, in favour of M/s NPPL from MoC and that too without any public interest and you thereby committed an offence punishable ***u/s 13(1)(d) PC Act, 1988*** *and within my cognizance.*

And I hereby direct that you be tried by this Court for the said offence."

30. Thereafter admission/denial of the documents u/s 294 CrPC was carried out by the accused persons and various documents were admitted and marked/exhibited during the said proceedings. These documents are **Ex. P-1** to **Ex. P-229**.

PART – C

THE PROSECUTION EVIDENCE

31. Prosecution, in order to prove the charges, examined a total of 38 witnesses. Thirty three witnesses were examined in Court and five witnesses were examined through affidavits. However, initially affidavits of two more witnesses namely Sanjay Lohia and SI Suresh Kumar were filed but later on they were also examined in Court despite filing their affidavits and were given PW No. 4 and 5. The five witnesses whose affidavits were submitted are SP Rana (Dy. SP CBI), J.R. Katiyar

(Inspector CBI), V.P. Sharma (Section Officer, MoC), Ct. Gordhan Singh (Assistant Malkhana In-charge, EO-II, CBI) and HC K.P. Singh (Malkhana Incharge EO-I, CBI).

32. Affidavit of Sh. Sanjay Lohia was taken on record as **Ex. PW-4/A (Colly.)** and File D-28 was exhibited as **Ex. PW 4/B (Colly.)**. One letter dated 07.06.2013 of PW Sanjay Lohia addressed to Sh. O.P. Galhotra, Joint Director, CBI alongwith its annexure was marked as **Ex. PW 4/C (colly) (D-139)**.

33. The affidavit of SI Suresh Kumar was marked as **Ex. PW 5/A (colly).**

34. For the purpose of clear understanding, the witnesses can be grouped as follows:

Witness(es) from:	PW's Number & Name
Independent Witnesses of Search & Seizure	PW-1 Mohd. Fasihuddin (Dy. Manager, State Bank of India) PW-2 Sh. K. Venkat Ratnam (Sr. Manager Legal, Zonal Office Bangalore, Corporation Bank) PW- 6 Sh. A. Ajay Babu Venkata (Branch Head of Banjara Hills Branch of Axis Bank, Hyderabad.) PW- 7 Jitender Somnath (Dy. Manager Barakhamba Road Branch, Axis Bank, New Delhi.)
Ministry of Coal	PW- 3 Sh. Ram Naresh

	PW 17 Sh. Basant Kumar PW- 18 Sh. V.S. Rana
Office of Coal Controller Kolkata	PW-10 Sh. Lambodar Mallik PW-11 Sh. Kirtan Chandra Modak PW-12 Sh. Amalendu Khamaru PW-13 Sh. Manoj Karmakar
M/s Suez Energy India Pvt. Ltd.	PW-14 Sh. Rajaraman
Coal India Ltd.	PW-15 Smt. Susmita Sengupta PW-16 Sh. Jyotirindra Bagchi
From Govt. of Orissa.	PW-20 Sh. Suryanarayan Mishra PW-21 Sh. Sanjit Kumar Mohanty PW-22 Sh. Naba Kumar Nayak
Govt. of Maharashtra	PW-24 Sh. Vinesh Kumar Jairath
Ministry of Power and CEA	PW-19 Sh. Kamal Khemchandani PW-23 Sh. Rohtash Dahiya PW-25 Sh. Manjit Singh Puri PW-26 Sh. Anil Kumar Kutty
M/s NPPL	PW-27 Sh. P.N.S. Bhaskara Rao PW-28 Sh. K.V. R. Raju PW-30 Sh. Godavarthi Veera Bhadra Chowdary
M/s EPL	PW-29 Sh. Sudip Rungta
DoPT, Govt. of India	PW-31 Sh. Raj Kishan Vatsa
Govt. of West Bengal	PW–32 Sh. Bhaskar Khulbe
PMO	PW-4 Sh. Sanjay Lohia
CBI	PW-5 SI Suresh PW-8 Dy. SP Himanshu Bahuguna PW-9 Dy. SP Manoj Kumar PW-33 Dy. SP. K.L. Moses

35. It may be mentioned here that various objections were taken during recording of evidence as to mode of proof of various documents. However, at the time of final arguments, no such objections were pressed into service and thus are presumed

to have been given up.

Independent Witnesses of Search & Seizure

36. **PW-1** is **Mohd. Fasihuddin.** He is from State Bank of India, Zonal Office Secunderabad. He deposed about proceedings conducted regarding raid on 04.09.2012 at office of NPPL at Rajbhawan Road, Somagigoda, Hyderabad. He deposed about seizure of certain documents/files by CBI and preparation of a panchnama qua seizure of all such documents/files.

37. The search list dated 04.09.2012 is **Ex. PW1/A (D-120)**. He identified the files which were seized during the course of search operation vide search list Ex. PW1/A. The files are **Ex. PW1/B (Colly.) (D-151), Ex. PW1/C (Colly.) (D-152), Ex. PW1/D (Colly.) (D-153), Ex. PW1/E (Colly.) (D-154), Ex. PW1/F (Colly.) (D-155), Ex. PW1/G (Colly.) (D-156), Ex. PW1/H (Colly.) (D-157), Ex. PW1/J (Colly.) (D-158), Ex. PW1/K (Colly.) (D-159), Ex. PW1/L (Colly.) (D-160), Ex. PW1/M (Colly.) (D-161), Ex. PW1/N (Colly.) (D-162),** and **Ex. PW1/O (Colly.) (D-163)**.

38. Nothing has come out in cross-examination.

39. **PW-2** is **Sh. K. Venkat Ratnam.** He is from Hyderabad Zonal office of Corporation Bank. He also deposed about search operation carried out on 04.09.2012 by the CBI at the other place i.e. Jublee Hills, Hyderabad at the house of A-1.

He deposed that Himanshu Bahuguna from CBI was also present. He deposed about seizure of photocopies of various documents from house of A-1 YHCP. He also deposed about seizure of various documents from his office at Mahalakshmi. The search list is **Ex. PW2/A (D-119)**. He identified the documents also.

40. The documents are **Ex. PW2/B (Colly.) (D-5), Ex. PW2/C (Colly.) (D-6), Ex. PW2/D (Colly.) (D-17), Ex. PW2/E (Colly.), Ex. PW2/F (Colly.) (D-146), Ex. PW2/G (Colly.) (D-147), Ex. PW2/H (Colly.) (D-148), Ex. PW2/J (Colly.) (D-149),** and one pen drive is **Ex. PW2/K (D-150).** Another search list dated 04.09.2012 is **Ex. PW2/L(D-251)**.

41. Nothing has come out in cross-examination.

42. **PW- 6 Sh. A. Ajay Babu Venkata** is from Axis Bank. During the year 2012-13, he was posted as Branch Head of Banjara Hills Branch of Axis Bank, Hyderabad. He proved documents relating to savings bank account number 910010001078812 at Banjara Hills Branch of Axis Bank in the name of one Mr. Harish Chandra Prasad Yarlagadda i.e. A-1. It was opened on 21.01.2010. The savings bank account opening form alongwith documents is **Ex. PW6/A (Colly.) (D-45)**.

43. The statement of account of the aforesaid savings bank account number 910010001078812 for the period 23.01.2010 till 20.12.2012 (running into 28 pages) alongwith

certificate u/s 2-A, Banker's Book of Evidence Act, 1891, is **Ex. PW 6/B (Colly.) (D-46)**. One demand draft bearing No. 976049 of Rs. 45 crores is **Ex. PW 6/C (D-47)**. The cheque bearing No. 047623 for a sum of Rs. 25 crores in favour of "*Reliance Medium Term Fund*" is **Ex. PW 6/D (D-48)**. The cheque bearing No. 047624 for a sum of Rs. 20 crores in favour of "*Birla Sunlife Saving Fund*" is **Ex. PW 6/E (D-49)**. He told that on 21.04.2011 a sum of Rs. 5 crores was transferred in the aforesaid savings bank account by clearing from Madhapur Branch of Axis Bank. A print out of the clearing screen shot authenticated by Ms. Anupriya Sinha, Dy. Manager, Axis Bank, Banjara Hills Branch is **Ex. PW 6/F (D-50).** As per the statement of Account Ex. PW 6/B (Colly.) a sum of Rs. 22,51,990.87 P. was the closing balance.

44. Nothing has come out in cross-examination.

45. **PW- 7 Jitender Somnath** is from Axis Bank, New Delhi. On 29.01.2013 he was posted as Dy. Manager Barakhamba Road Branch, Axis Bank, New Delhi.

46. He deposed about handing over various documents to CBI vide seizure memo dated 29.01.2013. The memo is **Ex. PW 7/A (D-123)**. He told that those documents were received from Banjara Hills Branch at Hyderabad of Axis Bank by their branch. The documents from D-45 to D-61 are **Ex. PW 7/B (Colly.)**.

Ministry of Coal

47. **PW- 3** is **Sh. Ram Naresh.** During the year 2012, he was posted as Section officer, MoC, Govt of India and was looking after the work of CA-I Section. CA-I Section was dealing with matters relating to monitoring of coal blocks allotted by MoC and other related matters.

48. He deposed about handing over various files/ documents to CBI. He did so vide production-cum-receipt memo dated 06.07.2012 as available in D-275. Copy of the memo is **Ex. PW3/A.** He identified the documents also. The copy of a register as is available as D-30 titled "Advertisement November, 2006" is **Ex. PW3/B**. He deposed that vide production-cum-receipt memo dated 12.09.2013 as available in D-166, various documents as mentioned therein were handed over by him to SI Suresh Kumar, CBI. Copy of the memo is **Ex. PW3/C.** Copy of a file available as D-165 bearing no.13016/52/2013/CA-I is **Ex. PW3/D (Colly.)**. Copy of a file available as D-164 and titled "Information furnished by State Govt, Excel sheets, Networth" is **Ex. PW3/E(Colly.)**.

49. He proved a note dated 02.09.2013 as is available in file Ex. PW3/D (Colly.) from page 8-10. The note is **Ex. PW3/F** (Part of D-165 already exhibited as Ex. PW3/D (Colly.)). The note is regarding search in the office chamber of JS (Coal) Sh. A.K. Bhalla which was carried out pursuant to orders of Hon'ble

Supreme Court to MoC to locate papers relating to coal blocks. The search was carried out so as to check all the old papers that were left by the predecessors of Sh. A.K. Bhalla in the said office chamber which prior to him was occupied by them. Sh. K.S. Kropha was the predecessor of Sh. A.K. Bhalla as JS (Coal) in the said office chamber. The note is **Ex. PW3/G**. (Part of D-165 already exhibited as Ex. PW3/D (Colly.)).

50. Another note dt. 07.09.2013 in file Ex. PW 3/D (Colly.) (D-165) is regarding approval from senior officers regarding handing over of the documents recovered in the search carried out in the office of Joint Secretary Coal to CBI. The note sheet page is **Ex. PW 3/H**. CBI was accordingly requested vide letter dated 09.09.2013 **Ex. PW 3/J** (available at page 12 in other pages in file Ex. PW 3/D (Colly.) (D-165).

51. Nothing has come out in cross-examination.

52. **PW 17** is **Sh. Basant Kumar.** He was posted as PS to Director CA-I Sh. K.C. Samria in MoC during the period 2006 to 2008. He was conversant with writing and signatures of Sh. Samria and Sh. Kropha.

53. He told that in the present case, CBI had made enquiry from him and had shown an Excel sheet chart and asked him as to whether he ever prepared the said chart while being posted in MoC. He denied so and told that in fact Sh. K.C.

Samria used to work on Excel sheets on his own and on his computer in his office. On his (PW-17's) computer in the PS room there was no facility to prepare Excel sheet chart as were shown to him or to a take print out thereof. He was shown certain excel sheet charts in original but he was unable to identify as to whether those very excel sheet charts which were shown to him by CBI officer or not. (copies available at page 1 to 21 and from page 22 to 31 in D-164). He told that at page no. 24, 26, 28 and 29 there are certain hand written notes in Ink on the right side in the hand of Sh. K.S. Kropha (encircled in red).

54. The excel sheet chart titled "information furnished by the state governments" available from pages no. 1 to 21 and excel sheet chart titled "as per feedback form" and "as on 28.07.2007" available from page 22 to 31 are all part of document Ex. PW 3/E (Colly.). As regard other pages mentioned in Ex. PW 3/E (Colly.) (D-164) witness stated that remarks in hand in pencil / pen at pages 32, 33, 40, 72, 73, 74 and 75 and upon documents available at page 78, 80, 81 and 84 (all part of Ex. PW 3/E (Colly.) (D-164)) are in the hand of Sh. K.S. Kropha. He was unable to identify the author of other remarks on the said pages or on the other pages be it in pencil or ink. Attention of the witness was drawn to the words "As on 28.7.07" as mentioned on page 22 in Ex. PW 3/E (Colly.) (D-164). However, he showed his inability to identify the person in whose hand the said words were written.

55. In cross-examination, he denied that he was identifying the various remarks on different pages to be in the hand of Sh. K.S. Kropha at the instance of CBI.

56. **PW- 18** is **V.S. Rana**. He is from MoC. He is the most important witness for the prosecution. He remained associated with the process for allocation throughout the entire period.

57. He deposed that the coal block allocation matters were dealt with by CA-I section in MoC. The allocation of coal block was for captive use to Govt. Companies as well as for Pvt. Companies through a Screening Committee route. In the year 2006 till the month of November Sh. Sibhu Soren was the Minister of Coal and thereafter Dr. Manmohan Singh, the Hon'ble Prime Minister was holding the charge of Ministry of Coal also as Minister In-charge.

58. During this period Sh. H.C. Gupta was the Secretary (Coal) with K.S. Kropha as Joint Secretary (Coal). Sh. Sanjiv Mittal was the Director CA-I till about February/March 2007 and thereafter he was succeeded by Sh. K.C. Samria in April/May 2007. Initially Sh. K.C. Samria was Dy. Secretary CA-I section and thereafter he was promoted as Director CA-I section. He told that during this period Sh. Prem Raj Kuar followed by Sh. R.N. Singh were Section Officers, CA-I section under him. Sh. R.S. Negi was the Dealing Assistant. He was well acquainted

with handwriting and signatures of various officials of MoC.

59. He deposed about almost entire process of coal block allocation. He deposed that in the year 2006 in order to allocate coal blocks to pvt. companies, various coal blocks were first identified with the help of Coal India Ltd. ("CIL") and thereafter an advertisement was issued inviting applications from private companies seeking allocation of captive coal blocks and the coal blocks were to be allocated through Screening Committee route. The coal blocks were to be finally allocated pursuant to approval of Minister In-charge, MoC. The Chairman of Screening Committee was Secretary (Coal) Sh. H.C. Gupta with Sh. K.S. Kropha Joint Secretary (Coal) as Member Convener.

60. The applications as were invited by way of advertisement were received in five sets. After receipt of the applications four sets thereof of each of the applications used to be sent to concerned Administrative Ministry, State Governments where either the coal block whose allocation was sought for was situated or the end use plant (existing or proposed) was situated and also to CMPDIL for their views/comments. In the advertisement so issued the place where the applications were to applied was specified under the title "where to apply". It was also mentioned as to what all documents were to be annexed with the applications under the title "how to apply". There were other number of guidelines mentioned over there.

61. He told that after the views and comments were received from various authorities as above or even when complete views and comments from all the authorities were not yet received, Screening Committee meetings used to be called under the chairmanship of Secretary (Coal). In the Screening Committee meeting, the representatives of applicant companies used to make presentations and after hearing the presentations so made, the Screening Committee used to make its recommendations. The said recommendations of Screening Committee used to be processed by them in the file and used to be sent to MoC for approval. After approval by MoC, necessary allocation letters used to be issued to single allocattee company and in case of joint allocattee companies, option letters used to be issued or other directions of MoC as were given used to be complied with. He had dealt with file of MoC bearing no. 13016/65/2006-CA-I (Vol. I) (D-2). The file is **Ex. PW 18/A (Colly.)**. The note sheet pages from page 1-49 are **Ex. P-193** and the correspondence side pages from pages 1-233 are **Ex. PW 18/A-1 (Colly.)**. After seeing the file, he told that vide PMO I.D. note dated 25.07.2006 as available from page 38 to 40, copy of minutes of 7th meeting of Energy Co-ordination Committee held on 19.07.2006 under the chairmanship of Prime Minister were received in MoC from PMO along with list of participants of the said meeting. The PMO I.D. Note is **Ex. PW 18/B-1 (Colly.)** [part of Ex. PW 18/A-1 (Colly.) (D-2)].

62. The following three decisions taken in the said

meeting of 7th Energy Co-ordination Committee were communicated to MoC.

> *(i) The Ministry of Coal shall complete the proceedings of the Screening Committee in respect of the 20 coal blocks (2.1 BT) and 7 lignite blocks (.74 BT) for which advertisements had been issued and finalise the actual allocation within two months (by 19th September, 2006).*
>
> *(ii) The Coal Ministry will immediately invite fresh applications for the coal blocks for which detailed exploration has been completed. It should be clearly mentioned in the advertisement that preference will be accorded to the power and the steel sectors and that others would be considered only after the requirements of these two Sectors are fully met. Within the power sector, priority should be accorded to projects with more than 500 MW capacity. For the steel sector, similar priority should be given to steel plants with more than 1 million M.T. Capacity.*
>
> *(iii) The remaining 41 blocks for which detailed exploration is yet to be carried out, would be immediately opened up for captive mining. Application for these blocks would also be invited immediately with priority for the power and steel sectors as laid out in (ii) above. Further, it was decided that the detailed exploration would be done by the allottee(s) under the general supervision of CMPDIL."*

63. Letter dated 06.11.2006 as addressed to Director, DAVP vide which he had requested for publication of advertisement issued by MoC in Prominent National Dailies of the country available at page 69 in D-2 is **Ex. PW 18/B-2**. The advertisement is available at page 74 which was to be got published in National Dailies. Letter available at page 70 sent to CIL vide which CIL was asked to get the advertisement

published in Newspapers through DAVP is **Ex. PW 18/B-3**. Letter dated 06.11.2006 available at page 71 vide which Sh. Piyush Goel Technical Director NIC was requested to upload the advertisement on the website of MoC is **Ex. PW 18/B-4**. The advertisement as above from page 73-94 is **Ex. P-59 (D-2) [part of Ex. PW 18/A-1 (Colly.)].** The copy of newspaper "The Hindu" dated 13.11.2006 available at page no. 105 in D-2 in which advertisement from point P to P was published is **Ex. PW 18/B-5**.

64. After seeing note sheet page 5 in note sheet pages **Ex. P-193,** he stated that the advertisement was issued with the approval of Secretary (Coal) Sh. H.C. Gupta and that too after the file was routed through the desk of Sh. K.S. Kropha Joint Secretary (Coal). The note in this regard was put up by Section Officer Sh. R.N. Singh vide his detailed note as available from page 3-4 in note sheet pages Ex. P-193. In the said note the following papers were put up for approval of Secretary (Coal) and which were finally approved by Secretary (Coal):

(I) Title of web pages
(ii) Advertisement to be published in newspaper and uploaded on website.
(iii) How to apply.
(iv) Where to apply.
(v) Details of Coal Blocks.
(vi) Guidelines for allocation of coal blocks and

conditions of allotment.

(vii) Processing of application.

(viii) Screening Committee.

65. As per the advertisement issued under the signatures of Sh. K.S. Kropha, the eligibility of the applicant was specified by stating that the companies registered under the Indian Companies Act, 1956 might apply for one or more of the blocks. It was also stated that MoC intended to allocate 38 coal blocks for captive coal mining to companies engaged in generation of power, production of iron and steel and production of cement. It was also specified that out of 38 coal blocks on offer, 15 coal blocks were earmarked for power generation and that 23 coal blocks would be available for other specified end uses.

66. It was also specified in the advertisement that preference would be accorded to the power sector and steel sector. Within the power sector it was stated that priority should be accorded to projects with more than 500 MW capacity. Similarly, in the steel sector, it was stated that priority should be given to steel plants with more than One million tonne per annum capacity. He told that some corrections were made in the advertisement in the hand of Sh. K.S. Kropha.

67. He also identified the format of application form as available from page 3-11 with guidelines titled "How to apply",

"Where to apply", "list of blocks on offer", "guidelines for allocation of captive blocks and conditions of allotment through the Screening Committee", "general conditions of allocation", "processing of application" and "composition of the Screening Committee" as available from page 3-29 in correspondence side pages Ex. PW 18/A-1 (Colly.) to be the same draft of advertisement as was put up to Secretary (Coal) for approval. The advertisement as above from page 1-29 is **Ex. PW 18/B-6 (Colly.)**. [part of Ex. PW 18/A-1 (Colly.)]. The guidelines as were put up were mentioned in para no. 4 of the note dated 04.11.2006 of Sh. R.N. Singh.

68. The applications were invited in five copies to be addressed to Director CA-I MoC and to be submitted in the CIL office Scope Minar Laxmi Nagar latest by 12.01.2007. As per the guidelines so issued the following documents as mentioned at page 82-83 under the title "How to apply" were to be enclosed with the applications:

> *"The following documents should be enclosed along with the application form:-*
>
> • *Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the company Secretary of the company. (1 copy).*
>
> • *Document showing the person/s who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company*

Secretary of the Company. (5 copies).

- *Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 copies).*
- *Audited Annual Accounts/reports of last 3 years. (5 copies).*
- *Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies).*
- *Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies).*
- *Scheme for disposal of unuseables containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies).*
- *The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.*
- *Demand draft for Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi."*

69. It was also specified that applications without the above accompaniments would be treated as incomplete and shall be rejected.

70. As per the guidelines so issued the composition of the Screening Committee was as follows:

COMPOSITION OF THE SCREENING COMMITTEE.

1	Secretary, Ministry of Coal.	Chairman

2	Joint Secretary (Coal), Ministry of Coal.	Member-Convener
3	Adviser (Projects), Ministry of Coal.	Member
4	Joint Secretary (LA), Ministry of Coal.	Member
5	Representative of Ministry of Railways, New Delhi.	Member
6	Representative of Ministry of Power, New Delhi.	Member
7	Representative of Concerned State Govt.	Member
8	Director (Technical), CIL, Kolkata.	Member
9	Chairman-cum-Managing Director, CMPDIL, Ranchi.	Member
10	CMD of concerned subsidiary company of CIL/NLC.	Member
11	Representatives of Ministry of Steel.	Member
12	Representatives of Department of Industrial Policy & Promotion (Ministry of Industry).	Member
13	Representative of Ministry of Environment and Forest.	Member

71. He told that initially one or two officials from CA-I Section i.e. Sh. R.S. Negi and one Daftri were sent to Scope Minar Laxmi Nagar to receive the applications but as the number of applications being received increased in the last three days, so certain counters were created over there to receive the applications. Initially a register was maintained over there to receive the applications but subsequently when different counters were created then separate registers were maintained for

receiving the applications and on the last day entries of all the registers so differently maintained were compiled in one main register i.e. the register which was being maintained from day one and was containing more entries.

72. Witness pointed out that in the note dated 04.11.2006 of R.N. Singh as available from page 3-4 in note sheet pages Ex. P-193 it was stated by Sh. R.N. Singh that as large number of applications are expected to be received, so it would not be possible to receive them in the Ministry and therefore CIL was being requested to make space in Scope Minar in Laxmi Nagar to receive applications by a team of CMPDIL under supervision of the Ministry. He proved letter dated 20.12.2006 [at page 102] vide which a request was made to depute at least four officials for their assistance for the purpose of receiving applications etc. as **Ex. PW 18/B-7**. The said letter was issued pursuant to note dated 20.12.2006 of R.N. Singh at note sheet page 6 in note sheet pages Ex. P-193.

73. He referred to a note dated 08.02.2007 [Ex. PW 12/C, page 113, in D-3] i.e. a file of Ministry of Coal and told that that four officials namely A.K. Khamaru, K. Halder, Manas De and P. Bandopadhyaya from the office of Coal Controller were deputed to MoC. The said coal officials were deputed at CIL office Laxmi Nagar and Sh. R.S. Negi was sent alongwith them. They were told to segregate the applications block-wise, state-wise, end use wise.

74. He told that as per page 52 of the register, three applications of M/s NPPL for allocation of "Mandakini", "Rampia" and "Dipside of Rampia" coal blocks were respectively received vide entry Numbers 438, 439 and 440. He identified the applications of NPPL for these coal blocks.

75. He told that after the applications were received in Ministry and were got segregated as above with the help of officials of the office of Coal Controller and availability of processing fee demand draft of Rs. 10,000/- was checked then four sets of the applications were sent to Administrative Ministries, State Governments and to CMPDIL for their views/comments.

76. In the advertisement and guidelines so issued i.e. Ex. P-59, the following guidelines were mentioned under the title "Processing of applications" as under:

> *"The applications received in the Ministry of Coal in five copies, after being checked for eligibility and completeness, would be sent to the administrative Ministry/State Government concerned for their evaluation and recommendations. After receipt of recommendations of the administrative Ministry/State Government concerned, the Screening Committee would consider the applications and make it recommendations. Based on the recommendations of the Screening Committee, Ministry of Coal will determine the allotment."*

77. However he also told that before sending the various

set of applications to State Governments and Administrative Ministries as above, the applications were not checked for their completeness and eligibility and were only given a cursory glance as they were not having sufficient manpower, knowledge i.e. technical and financial and they had informed the higher officers about the process being undertaken stating that the eligibility of the applicants was not being checked and they did not receive any further directions from them.

78. The office copy of letter dated 19/28.02.2007 [available at page 158-166 in file Ex. PW 18/A (Colly.) (D-2)] vide which one set of various applications as per the list enclosed was sent to Chief Secretary, Govt. of Orissa for their comments is **Ex. PW 18/B-8 (Colly.)**. Similarly, office copy of another letter dated 19/28.02.2007 [available at page 199 in D-2] vide which one set of applications of all companies was sent to CMPDIL for their comments is **Ex. PW 18/B-9**. Further, letter dated 17.04.2007 [available at page 2 and 3 in D-3] vide which one set of the applications as per the list enclosed as available from page 4-75 was sent to MoP for their comments is **Ex. P-194.** He told that the same were sent to MoP after approval of note dt. 17.04.2007 [at page 18 in note sheet pages Ex. P-193 (D-2)] by A-6 K.C. Samria.

79. He deposed that before sending the applications to Administrative Ministries, State Governments and CMPDIL, they had informed the senior officers that the applications had not

been checked case by case for their eligibility and completeness. The aforesaid fact was informed both to Director CA-I Sh. Sanjiv Mittal and to Sh. K.S. Kropha Joint Secretary and on one occasion to Sh. H.C. Gupta Secretary Coal. He told that he had informed the aforesaid senior officers verbally. However, he also stated that he did not remember if before sending the applications to MoP, Sh. K.C. Samria was informed about applications having been not checked for their eligibility and completeness or not.

80. After seeing note dated 07.05.2007 on note sheet page 20 in note sheet pages Ex. P-193 in file Ex. PW 18/A (Colly.) (D-2), he told that as instructed by Dy. Secretary CA-I over intercom, a meeting of the Screening Committee was proposed to be held under the chairmanship of Secretary (Coal) on 11.05.2007 at 10.30 am in his Chamber. Notice for the meeting was thus directed to be issued to MoP, Ministry of Steel, Ministry of Commerce and Industry (DIPP)/CIL/CMPDIL. The office memorandum dated 07.05.2007 [available from page 87-88 in D-3] in this regard is **Ex. PW 18/C-1** (D-3). The attendance sheet of the participants who attended the Screening Committee meeting as above on 11.05.2007 at 10.30 am in the Chamber of Secretary Coal is **Ex. PW 18/C-2**. The draft minutes of the said meeting are available from page 105-106 in D-3 and are **Ex. PW 18/C-3**. The final minutes are available from page 102-104 and are **Ex. PW 18/C-4 (Colly.)**. [Ex. PW 18/C-3 and Ex. PW 18/C-4 (Colly.) are thus part of Ex. P-195].

81. He proved another file of MoC bearing no. 38011/1/2007-CA-I (vol. II) (D-9) as **Ex. PW 18/D (Colly.) (D-9)**. The letter dated 19.06.2007 [available from page 20-31] vide which Govt. of Orissa had sent its recommendations in favour of 13 applicant companies in order of priority for allocation of coal blocks is **Ex. PW 18/D-1 (Colly.)** (D-9). Another file of MoC bearing no. 38011/1/2007-CA-I (vol. VI) (D-13) is **Ex. PW 18/E (Colly.) (D-13)**. The note sheet pages are Ex. P-207. The correspondence side pages are **Ex. PW 18/E-1 (Colly.)**. Another file of MoC bearing no. 38011/1/2007-CA-I (vol. I) (D-8) is **Ex. PW 18/F (Colly.)** (D-8). The office memorandum along with format of form for feedback as available at page 37 and 38 is already Ex. P-96. Office copy of the letters which were sent by post under the signatures of Sh. K.C. Samria Dy. Secretary as available at page 43 for the earlier venue i.e. Scope complex, Lodhi Road is already exhibited as Ex. P-97. The office copy of letter sent to members of Screening Committee for the venue Scope Complex, Lodhi Road as available from page 44-47 are **Ex. PW 18/F-1 (Colly.)**.Letter dated 08.06.2007 vide which change of venue was intimated is at page 52 and is **Ex. PW 18/F-2**. Another letter dated 08.06.2007 available at page 53-54 is **Ex. PW 18/F-3**.

82. He told that the draft minutes of Screening Committee meeting held on 11.05.2007 [Ex. PW 18/C-3] were attempted in CA-I Section based on the directions and guidance of Director CA-I, Sh. K.C. Samria. The said meeting was

chaired by Secretary Coal Sh. H.C. Gupta. He told that the purpose of calling the meeting on 11.05.2007 is mentioned in minutes of the meeting i.e. Ex. PW 18/C-4 (Colly.). Witness had referred to para 2 of the minutes wherein *inter alia* it is mentioned as under:

> "*Also in order to determine the most eligible applicant, it needs to be considered whether a set of more specific bench mark criteria, in conformity with the broad parameters indicated in the guidelines, could be evolved against which the eligibility of the applicants could be measured based on information furnished in the application form. He also sought the views of the members on whether based on such criteria, non-serious applicants could be filtered in the first round of scrutiny, leaving only the more serious contenders who only could be called for personal hearing. This would ensure more objective and critical evaluation of the competing applicants."*

83. He also referred to following words also regarding the purpose of meeting:

> *"To discuss the modalities for scrutiny and evaluation of applications received for allocation of 38 coal blocks for captive use. List of participants is attached as annexure."*

84. He told that after the aforesaid meeting took place on 11.05.2007, then all the three officers i.e. Secretary (Coal) Sh. H.C. Gupta, Joint Secretary (Coal) Sh. K.S. Kropha and Dy. Secretary CA-I Sh. K.C. Samria had knowledge that applications had not been checked for their completeness and eligibility. In the meetings of 35th Screening Committee held on 20.06.2007

and 23.06.2007, the applicant companies were called upon to make presentation before the Screening Committee.

85. The Screening Committee meetings as were held from 20.06.2007 till 23.06.2007 were presided by Sh. H.C. Gupta, Secretary (Coal) being Chairman, Screening Committee. The representatives of various applicant companies who were invited for the said meetings used to come and sign the attendance sheet kept outside the meeting hall and, after depositing one copy of the feedback form to the officials of MoC sitting over there, used to go inside the meeting hall. There was a projector available inside the meeting hall on which the representatives of the applicant companies could give their presentation in electronic form.

86. The attendance sheet of the officers/executives participating in the meeting held from 20.06.2007 till 23.06.2007 [available from page 108-109 for 20.06.2007, from page 110-111 for 21.06.2007, from page 112-113 for 22.06.2007 and from page 114-115 for 23.06.2007] is **Ex. PW-18/D-3 (Colly.).**

87. After seeing the recommendation sheets [available from page 83-87 **Ex. P-205** in D-10 i.e. a file of MoC], witness stated that Sh. K.S. Kropha, Joint Secretary (Coal), Sh. H.C. Gupta, Secretary (Coal) and Sh. P.R. Mandal were present on behalf of MoC. He told that in the recommendation sheets, the portion where the name of recommended allocatee and the name

of state of end use plant have been mentioned are in the hand of Sh. K.C. Samria. He told that the role of Director CA-I Sh. K.C. Samria was to facilitate Member Convener and Chairman Screening Committee regarding the documents to be considered by Screening Committee and to provide all necessary documents as might be asked for.

88. His own role in the said meetings was to facilitate the meetings arrangements both inside and outside the meeting hall. He was also to facilitate the availability of documents to Sh. K.C. Samria as might be asked for. His job was also to ensure that all other arrangements i.e. tea, water etc. were available to the representatives of the applicant companies present outside the meeting hall. As far as he remembered, during the course of presentation being made in the Screening Committee meetings held from 20.06.2007 till 23.06.2007, only three officers from MoC were present besides other members of Screening Committee. The three officers of MoC so present were Secretary (Coal) Sh. H.C. Gupta, Sh. K.S. Kropha Joint Secretary (Coal) and Sh. K.C. Samria Director CA-I.

89. He told that the agenda for the aforesaid meetings of Screening Committee held on 20.06.2007 till 23.06.2007 was prepared at Scope Minar, Laxmi Nagar under the supervision of CA-I section official. While preparing the agenda, the filled in application forms in the prescribed format of all the applicant companies were placed without any annexures of the

applications. The agenda note which was prepared for the Screening Committee meetings held from 20.06.2007 till 23.06.2007 [available in D-21 and D-22] is **Ex. PW 18/G-1 (Colly.)** and **Ex. PW 18/G-2 (Colly.)**. He also identified the application form of NPPL [available from page 222 to 228 Ex. P-223 in D-21] for Rampia coal block and [available from page 153-159 Ex. P-224 in D-22] for Dip-Side of Rampia coal block.

90. The attendance sheet of executives participating in the meeting held on 20.06.2007 to 23.06.2007 [available from page 60 to 89 in D-9 i.e. file of MoC i.e. Ex. PW 18/D (Colly.)] is **Ex. PW 18/D-2 (Colly.)**. The attendance sheet showing NPPL's officers is Ex. P-98 as per which on behalf of NPPL Sh. Y. Harish Chadra Prasad, Sh. K. Brahaspati, Sh. Anil Mehta, Sh. Pawan Kumar, Sh. Raja Raman and Sh. P. Girish were present. Sh. Anil Mehta and Sh. Pawan Kumar were from Essel Mining and Sh. Raja Raman was from Suez. The attendance sheet of the officers/executives participating in the Screening Committee meeting held from 20.06.2007 till 23.06.2007 [available from page 108 to 115 in D-9 Ex. PW 18/D (Colly.)] is **Ex. PW 18/D-3 (Colly.)**.

91. He told that till 23.06.2007, the recommendations from MoP i.e. the Administrative Ministry were not yet received in MoC. He also told that when the applications were initially sent to MoP in 20-22 trunks then the MoP had initially refused to receive them stating that they did not have so much of space and

thereafter some communication took place between MoC and MoP regarding delivery of said applications to them and to thereafter make their recommendations. Certain letters were received from MoP in MoC in this regard and same were also responded to by MoC. One letter dated 11.05.2007 as addressed to Sh. H.C. Gupta and signed by Sh. Anil Razdan Secretary (Power) [available at page 135 in file Ex. PW 18/D (Colly.) (D-9)] is **Ex. PW 18/D-4**. Vide this letter Secretary (Power) informed MoC that detailed scrutiny of all the 746 applications by CEA and MoP was not be possible in any time frame of less than six months.

92. Another letter dated 20.06.2007 sent by Sh. Anil Razdan Secretary (Power) [available at page 136-137, D-9] is **Ex. P-199.** MoP informed MoC that it had so far not made any case by case examination of the applications and had also not made any recommendations to the MoC. Letter dated 30.06.2007 **Ex. P-201** was sent to Sh. Anil Razdan Secretary Power by Sh. H.C. Gupta in response.

93. In the said meeting of Screening Committee held on 20.06.2007 till 23.06.2007, no final decision was taken. Thereafter another meeting of Screening Committee was called for 30.07.2007. PW-18 did not remember whether he was present at the meeting venue on 30.07.2007 or not. He told that on behalf of Govt. of Orissa, Sh. L.N. Gupta and Sh. U.P. Singh were present. On behalf of MoP, Sh. Harish Chandra, Principal

Advisor was present. The attendance sheet available from page 148-149 in file Ex. PW 18/D (Colly.) (D-9) is **Ex. PW 18/D-5**.

94. From perusal of letter dated 30.07.2007, **Ex. P-203** as addressed to Sh. H.C. Gupta Secretary Coal under the signatures of Sh. Anil Razdan Secretary Power [available from page 215-218 in D-9], PW-18 told that the said letter alongwith recommendations as enclosed therewith were probably given in the meeting held on 30.07.2007 itself. Vide the said letter MoP had recommended the name of NPPL alongwith that of Jindal Steel and Power Ltd. and GMR Energy Ltd. for Mandakini coal block in Orissa as mentioned at serial number 10. He told that feedback form Ex. P-93 [available at page 187-188 in MoC file D-7] is of NPPL and it was also received.

95. From perusal of note dated 31.07.2007 [available at note sheet page 11 in note sheet pages Ex. P-207 in file Ex. PW 18/E (Colly.) (D-13)], he told that in the Screening Committee meeting held on 30.07.2007, it was decided that MoC would verify applications in terms of financial details, status of preparedness of end use plant. Letter dated 02.08.2007 **Ex. P-213** [available at page 151 in D-9] was issued under the signatures of Sh. K.C. Samria to Chairman CIL seeking services of two financial experts for scrutinizing financial details of applicants. Another copy thereof at page 152 in D-9 is **Ex. PW 18/D-6**. Vide another letter dated 02.08.2007 Ex. P-214 (D-9) issued under the signatures of Sh. K.C. Samria, addressed to Coal

Controller, Kolkata, request for services of four officials from coal controller organization for scrutinizing applications for coal blocks earmarked for allocation through the Screening Committee was made. The FAX copy of the said letter available at page 156 is **Ex. PW 18/D-7** (D-9).

96. Another letter dated 02.08.2007 [available from page 184-186 in D-9] was sent to Chief Secretary, Govt. of Orissa with request to verify on priority the status of preparedness of applicant companies pertaining to Govt. of Orissa as per the factors mentioned in the letter. The factors so mentioned in the letter are as under:

> *(i) Land already acquired by the company (in possession) (Column No.VIII under head 'Land' of the enclosed sheet).*
> *(ii) Quantity of water already allotted by State Government. (Column No.X under head 'water' of the enclosed sheet).*
> *(iii) Status of Civil Construction (in terms of percentage) (Column No. XI).*
> *(iv) Status of environment clearance in respect of end use plant. (Column No. XII).*

97. Along with the letter a format in which information as asked for in the letter was to be submitted by the State Government was also enclosed. In the said format names of various companies including that of NPPL was mentioned beside the information as was already available with MoC. The letter as above along with its enclosures is **Ex. P-202** (available from page

184-186 in D-9). Letter dated 05.09.2007 [available from page 123 in D-10] is reply of Govt. of Orissa and is **Ex. PW 18/H (Colly.)** (D-10). He was not aware as to what work was carried out by the two financial experts from CIL who had come to MoC in response to letter Ex. PW 18/D-6. To his knowledge, it did not come that any report submitted by the said two financial experts was placed upon the files of MoC.

98. After being shown certain charts in excel sheets as are available from page 1-21 and from page 22-31 and also from page 30-39 and thereafter from page 40-48 and chart as available from page 49-61 [all part of Ex. PW 3/E (Colly.) (D-164)] witness was asked whether he had any knowledge about the said charts but the witness claimed ignorance about the said charts. Upon being asked as to whether he could identify the handwriting as appearing on various pages of the said chart the witness after going through different pages stated that at page no. 24 the endorsement in blue ink in the right side margin encircled in red at point A is in the hand of Sh. K.S. Kropha. Similarly at page 40 witness stated that the handwriting in blue ink on right side margin to be that of Sh. K.S. Kropha encircled in red at point A.

99. He deposed that another meeting of Screening Committee was thereafter held on 13.09.2007. He told that he was present at the meeting venue at the time when Screening Committee meeting took place on 13.09.2007. In the said

meeting only the members of Screening Committee were called. On behalf of MoC, Director CA-I Sh. K.C. Samria, Joint Secretary (Coal) Sh. K.S. Kropha and Secretary (Coal) Sh. H.C. Gupta were present. Sh. P.R. Mandal Advisor (Project) was also present on behalf of MoC in the said meeting. Secretary (Coal) Sh. H.C. Gupta presided over the said meeting.

100. In the said Screening Committee meeting, the final decision of Screening Committee qua allocation of coal block reserved for power sector was taken. He deposed that as far as he remembered, in the said meeting, no document was provided to the members of Screening Committee. During the course of said meeting, he along with other officials of CA-I section were present inside the meeting room and were sitting on the back benches. Record relating to the decision as above taken in the Screening Committee meeting held on 13.09.2007 was prepared. The attendance sheet of officers/executives participating in the meeting held on 13.09.2007 [available from page 81-82 in D-10] is **Ex. PW 18/H-1**. After seeing recommendation sheets **Ex. P-205** as available from page 83-87 in file D-10, witness stated that the said recommendation sheets were prepared at the time of meeting itself. As per the said recommendation sheet, NPPL was jointly recommended along with 5 other companies for Rampia and Dip-Side of Rampia coal block. He told that names of companies and name of State where end use plant is situated were in the hand of Sh. K.C. Samria.

101. On being asked as to whether the verification report as was earlier sought by Screening Committee in its meeting held on 30.07.2007 from State Governments was placed before the Screening Committee members in the meeting held on 13.09.2007 or not, the witness stated that as earlier stated by him he did not remember as to whether any document was put up before Screening Committee members in the said meeting held on 13.09.2007 or not. The verification report as were received from State Governments subsequent to letter dated 02.08.2007 sent to them were in the records of ministry and the same were with the Director CA-I Sh. K.C. Samria and Joint Secretary Sh. K.S. Kropha. Witness further stated that the copy of the agenda which was prepared was also kept by them on the back benches in the meeting room so that if required the same could be made available to the members of Screening Committee. He had no knowledge as to whether at the time of taking final decision by the Screening Committee any *inter se* priority chart of the various applicant companies was prepared or not.

102. Soon after the meeting held on 13.09.2007 the minutes thereof were prepared by CA-I section on the directions and guidance of Director and Joint Secretary (Coal). Some inputs in this regard were even received from higher officers. Witness again stated that he did not remember properly now as to whether the inputs were received from Director or Joint Secretary. The minutes as above were drawn up in common for all the meetings of 35th Screening Committee as were held till 13.09.2007.

103. After seeing file D-13, note sheet page 15-20 in note sheet pages Ex. P-207, witness stated it to be the note vide which the file after recommendations were made by Screening Committee was sent for approval of competent authority i.e. Minister of Coal. At that time Dr. Manmohan Singh was Minister of Coal. Witness pointed out at para 15 of the note at page 20 wherein it is mentioned that file was submitted for approval of the minutes of the meeting by Secretary (Coal) and that thereafter in para 16 it is mentioned that if the minutes were approved by Secretary (Coal) then the file might be submitted for approval of Minister of Coal qua allocation of coal blocks to the recommended allocattees as indicated in table in para 11 and with respect to facts mentioned in para 12 and 13 of the note. The said note had been put up under the signatures of Sh. R.N. Singh dated 14.09.2007.

104. After seeing note sheet page 26 in note sheet pages Ex. P-207 in D-13, witness stated that vide note dated 23/10 of Sh. Ashish Gupta, Director PMO, it was conveyed that the recommendations of the Screening Committee regarding allocation of 16 coal blocks for the power sector as at para 16(i) at page 20 had been approved by Prime Minister as Minister of Coal. It was also stated that the suggestion on joint allocattee at para 16(iii) at page 20 had also been approved.

105. Prior to sending the minutes of 35th Screening Committee for approval of competent authority, the said minutes

were not sent for confirmation to the members of Screening Committee. Witness drew attention to para 14 of note dated 14.09.2007 at note sheet page 20 stating that it was mentioned in the note itself that since the recommendations of the committee were unanimous and signed by all the members present in the meeting, there was no need to circulate the same for its confirmation. After seeing and reading the minutes of 35th Screening Committee as available along with its annexures from page 1-41 i.e. Ex. P-204, witness stated them to be the minutes of all meetings of 35th Screening Committee as were finally approved. After the minutes as above were approved and approval of recommendation of joint allocattee was also given by competent authority then draft allocation letter/option letters were prepared and placed for approval vide note dated 02.11.2007 (available at note sheet page 27 in note sheet pages Ex. P-207).

106. After seeing and reading letter dated 06.11.2007 **Ex. P-99** [page 122-124 in file document D-11], he stated that vide the said letter, the six joint allocattee companies i.e. M/s Sterlite Energy Limited, M/s GMR Energy Limited, M/s Arcelor Mittal India Limited, M/s Lanco Group, M/s Navbharat Power Private Limited and M/s Reliance Energy Limited were asked to exercise one of the three options as were mentioned in the letter and to submit an agreement duly signed by all the parties concerned within 30 days of the date of issue of letter. The six joint allocattee companies as above thereafter sent a memorandum of

agreement dated 04.12.2007 to Secretary, MoC vide their joint letter dated 05.12.2007 **Ex. P-100 (Colly.)** (page 291-309 in D-11).

107. Upon receipt of aforesaid Memorandum of Agreement dated 04.12.2007, the same was put up for consideration as to whether on the basis of said agreement signed/executed by the allocattee among themselves, allocation letters might be issued. The said fact is mentioned in para 14 of detailed note dated 17.12.2007 as is available from page 30-32 in note sheet pages Ex. P-207 in D-13. The allocation letter from page 202-220 is collectively exhibited as **Ex. PW 18/J (Colly.) [Ex. P-102 i.e. from page 202-206 is thus part of Ex. PW 18/J (Colly.)]**

108. He deposed that as per the guidelines issued by MoC governing allocation of captive coal blocks, the audited annual accounts of past three years were to be annexed with their applications by the applicant companies. Those three years were thus prior to 2006.

109. After seeing and reading page 3 on correspondence side in file Ex. PW 18/A (Colly.) (D-2), witness stated that as per the proforma of the application form uploaded on the website of MoC, the turnover and profit of the last three years ie. 2003-04, 2004-05 and 2005-06 was to be mentioned. The net-worth as on 31.03.2006 was to be mentioned. After seeing the guidelines as

issued by MoC, witness stated that audited annual accounts/reports of last three years in five copies were to be annexed. It was also mentioned that net-worth of the applicant company (or in the case of a new SP/JV, the net-worth of their principals was to be considered for deciding *inter se* priority for allocation of a block among competing applicants for a captive block).

110. He stated that he had not dealt with the application Ex. PW 12/A (Colly.) (D-4) (Volume-I and Volume-II) i.e. the application of M/s NPPL. The agenda of the Screening Committee meeting was prepared from the applications of the companies submitted in the prescribed application format. Similarly qua M/s NPPL also agenda was prepared. He also stated that he was associated with the preparation of agenda of the Screening Committee meeting. He deposed that till the time of issuance of allocation letter Ex. PW 18/J (Colly.), he had not seen in the files any balance sheet or audited accounts of M/s Suez.

111. In cross-examination on behalf of accused public servants, PW-18 stated that duties of Section Officer are defined in Manual of Office Procedure. He did not remember whether in his statement u/s 161 CrPC, he had stated that NPPL was an eligible company for allotment of a coal block or not. He was confronted with his statement u/s 161 CrPC dated 21.08.2013 (**Ex. PW 18/DX-1**) wherein it was so stated. He stated that as per

advertisement issued by MoC, NPPL was eligible to apply for allocation of a captive coal block. However, he was not sure whether its application was complete also for allocation of a coal block.

112. PW-18 was asked to check the application of NPPL as available in D-4 Volume I and Volume II. Various documents of the application i.e. Ex. P-60 to Ex. P-92 were also shown to him. After seeing the application and documents, he stated that all the documents as were required to be annexed with the application were available. However, he also told that in the application in column NO. 8 titled "Turnover in the last three years" the words "Promoter and Globeleq" were mentioned but alongwith the application the audited annual accounts of Nava Bharat Ferro Alloys Ltd. for the year 2003-04, 2004-05 and 2005-06 were annexed but that of Globeleq the consolidated report and accounts for the year ending 31.12.2004 and year ending 31.12.2005 were only annexed. He also pointed out that the authority of the authorised officer Ex. P-63 as available alongwith the application had not been certified by the Company Secretary of the company as was required by the guidelines issued by MoC.

113. He did not remember whether in his statement u/s 161 Cr.PC, he had stated to the IO or not that the authority letter Ex. P-63 was not duly certified by the company secretary. He was confronted with his statement u/s 161 CrPC dated

30.10.2012 [**Ex. PW-18/DX-2**], 21.08.2013 [**Ex. PW-18/DX-1**] and 23.05.2014 [**Ex. PW-18/DX-3**] wherein it was not so mentioned.

114. He was further confronted with following portion of his statement u/s 161 Cr.PC dated 21.08.2013 Ex. PW 18/DX-1 and was asked as to whether he stated so to the IO or not.

> *"(b) Regarding Document showing the person authorised to sign on behalf of the applicant company in all matters connected with the allocation of coal blocks with Govt./its agencies, I state that it is enclosed. But the same is signed by the Chairman of M/s NPPL instead of the Company Secretary. In this regard I state that since the Chairman is the head of the Company and higher in position to be Company Secretary, therefore the authorization signed by the Chairman instead of the Company Secretary is acceptable."*

115. Witness however stated that he might have stated the said fact as a general comment but he did not remember having stated so specifically to the IO. As per his knowledge Chairman in a company occupies the highest position and thus as compared to Company Secretary he is at a higher footing. He admitted that in letter dated 19.06.2007 [Ex. PW 18/D-1 (Colly.) in D-9], Government of Orissa had strongly recommended name of NPPL. He was not aware as to what all discussion took place regarding the application of NPPL in the Screening Committee meeting. He was also not aware as to what all documents were seen by the Screening Committee while discussing the

application of NPPL or what parameters were considered by it.

116. He admitted that in the guidelines issued by MoC, no minimum net-worth of applicant companies was prescribed. Similarly, no minimum requirement of possession of land with the applicant company was even prescribed in the guidelines. He told that since applications were received in bulk, so they were as it is sent to concerned entities. He also told that the procedure adopted for processing of applications received qua 35th and 36th Screening Committee was almost the same as was adopted for processing of applications received qua 34th Screening Committee. He stated that it was not in his knowledge that applications received for 34th Screening Committee were checked for their completeness in MoC. He was confronted with copy of his deposition recorded in the case CBI Vs. KSSPL & Ors. (CC No. 04/2014) which is **Ex. PW-18/DX-4**. PW-18 was confronted with his earlier deposition recorded in the case CBI Vs. VMPL & Ors (CC No. 03/16) which is **Ex. PW-18/DX-5**, regarding which officials of MoC were deputed to receive the applications and he had stated that he did not remember. However, in the present case, he stated that Sh. R.S. Negi and one Sh. Sharma were deputed to receive the applications.

He denied the suggestion that he was improving upon his earlier depositions in every successive case. He denied the suggestion that he was putting the blame on others as he feared that he might be made an accused if he did not depose against accused public servants.

117. He told that as per the guidelines issued by MoC governing allocation of captive coal block, it was not the job of CA-I section to check the completeness and eligibility of the applications and thus the question does not arise that it was the job of CA-I section to verify the correctness of the claims made in the applications. He admitted that in the guidelines, the work of checking the eligibility and completeness of the application was part of the guidelines titled "processing of application". However, he also stated that as coal block allocation matters were dealt with by CA-I section so processing of applications was done by CA-I section as per directions. He told that no communication was received from any state government or the administrative ministries in response to letter dated 19/28.02.2007 [Ex. PW-18/B-8 (Colly.)] that any document was short.

118. When he was asked as to if it was responsibility of MoP to check the net worth quoted / used by M/s NPPL or that of the company whose financial data / net-worth was used / quoted by the applicant company being the principal of NPPL, PW-18 could not say anything in this regard. He was confronted with his statement u/s 161 Cr. PC [Ex PW 18/DX-2] wherein it was so stated.

119. Upon being asked as to whether he had stated incorrect facts in his statement u/s 161 Cr. PC as above, the witness stated that he had not stated incorrect facts even at that

time as in terms of the minutes of 14th and 18th Screening Committee meeting it was decided that the administrative ministry shall verify the claims of the applicant companies and accordingly in that context he had stated so to the IO. He told that in 2012, it was his understanding that MoP was to examine the claims made in the applications.

120. He admitted that as per guidelines, networth of principals could be used if applicant company was SPV or JV. He could not say how the application of NPPL was checked but told that draft of Rs. 10,000/- was only seen. He also stated that at the time when the officials were deputed to receive the applications then at that time itself it was told to them to cursorily check the annexures of the application being submitted including the draft. He also told that the set in which the draft was there was to be checked. He also told that the applications remained at Scope Minar, Laxmi Nagar. Only after recommendation of Screening Committee was approved by Minister of Coal, the application of the allottee company alongwith annexures used to be brought to Shastri Bhawan.

121. One letter dated 16.03.2007 (D-2, Pg. 128) was under his signature. The same is **Ex. PW-18/D-6**. He admitted that Secretarial assistance to Screening Committee was being provided by CA-I Section. He was also confronted with his statement u/s 161 CrPC dated 05.03.2015, recorded in CBI Vs. VMPL and the same is **Ex. PW 18/DX-7**. He admitted that

applications were sent to state govts., administrative ministries and to CMPDIL after note in this regard [Ex. PW-18/A (colly.), D-2, Pg. 10] was approved on 19.02.2007 which mentioned that applications were ready to be dispatched. He also admitted that after MoP refused to receive the applications, vide note dated 19.03.2007, matter was again put up by R.N. Singh and one DO letter dated 23.03.2007 [Ex. P-208] was sent to Addl. Secretary, MoP. He told that as on 23.03.2007, Sh. K.C. Samria was not yet posted as Director, CA-I. He admitted that vide note dated 17.04.2007 approved by K.C. Samria, applications were again sent to MoP.

122. He admitted that in his deposition recorded in the case CBI Vs. VMPL & Ors. [Ex. PW 18/DX-5], he had stated that as per guidelines issued by MoC, the applications could have been stated to have been ready for being sent to State Government and Administrative Ministries only after they would have been checked for completeness and eligibility. The aforesaid facts are correct as per the guidelines issued by MoC. He did not remember whether he was present in the meeting held on 11.05.2007.

123. One OM dated 01.06.2007 [D-8, Pg. 49] was marked as **Ex. PW-18/DX-8** which is of Ministry of Steel. He admitted that state govts. representatives were not called in the meeting held on 11.05.2007. He told that information from state governments was received about the quick verification of status

of end use plants as was sought from them in the given proforma sent to them subsequent to meeting held on 30.07.2007. However, he did not remember whether the said information so received was put in the files of Screening Committee or not. Witness however stated that as per procedure they ought to have been placed in file. One letter dated 05.09.2007 of Government of Orissa [D-14, Pg. 282-289] which was placed in the files of Screening Committee was marked as **Ex. PW 18/DX-9 (Colly.)** A copy of the said letter is also **Ex. P-219** [D-14, Pg. 292-299].

124. Similarly, letter dated 14.08.2007 [D-10, Pg. 297-2999] which is **Ex. PW-18/DX-10 (Colly.)** was received from Govt. of Maharashtra was also placed in the file of Screening Committee. Similarly, letter dated 05.09.2007 of Govt. of Chhattisgarh [**Ex. PW-18/DX-11 (Colly.),** D-10, Pg. 301-322]; letter dated 21.09.2007 of Govt. of M.P. [**Ex. PW-18/DX-12 (Colly.)**, D-10, Pg. 326-328]; letter dated 30.08.2007 of Govt. of Jharkhand [**Ex. PW-18/DX-13 (Colly.)**, D-14, Pg. 1-8]; letter dated 25.08.2007 of Govt. of Karnataka [**Ex. PW-18/DX-14 (Colly.)**, D-14, Pg. 12-13]; letter dated 24.08.2007 of Govt. of WB [**Ex. PW-18/DX-15 (Colly.)**, D-14, Pg. 22-24] and letter dated 29.08.2007 of Govt. of A.P. [**Ex. PW-18/DX-16 (Colly.)**, D-14, Pg. 50-55] were also found placed in the files of Screening Committee.

125. After cross-examination of the witness was over, a Court question was put to the witness. The question and the

answer is being reproduced for clear understanding:

> *'Que: In your examination in chief recorded on 04.09.2017 at page 21 of 37 you stated the following facts:*
>
> > *'However before sending the various set of applications to State Governments and Administrative Ministries as above the applications were not checked for their completeness and eligibility and were only given a cursory glance as we were not having sufficient manpower, knowledge i.e. technical and financial and we had informed the higher officers about the process being undertaken stating that the eligibility of the applicants is not being checked and we did not receive any further directions from them."*
>
> *However, in your cross-examination as was conducted by Ld. Counsel Sh. Rahul Tyagi for accused K.C. Samria on 06.11.2017 you stated at pages 29 and 30 of 33 in response to the following questions put by Ld. Defence Counsel, the following answers:*
>
> > *'Question: Is it correct that checking of applications for eligibility and correctness was carried out only in one set of the applications and not in the other four sets of the applications?*
> >
> > *Ans. As stated by me in my earlier deposition that a cursory glance was given to the documents as were available in all the five sets. However the contents of the documents were not seen by us but it was only seen as to whether all documents were available or not.*
> >
> > *Question: Is it correct that when in earlier part of your deposition you stated that checking of applications for eligibility and completeness was not done by CA-I Section you meant that the contents of those documents were not checked or verified by CA-I Section?*
> >
> > *Ans. It is correct that earlier also I stated that the contents were not seen and availability of draft of 10,000/- and availability of documents were also seen. Thus for this reason only I had earlier stated that checking of applications for completeness*

and eligibility was not carried out by CA-I Section."

Would you please explain in view of the aforesaid answers given by you as to whether the applications were checked for completeness or not in as much as the availability of all the documents which were required to be annexed with the application in terms of the guidelines issued by MoC, governing allocation of captive coal blocks.

Ans: The fact stated by me in my examination in chief is correct in as much as we in CA-I section only checked the availability of draft qua processing fees only but the availability of other documents as were required to be annexed with the applications in terms of the guidelines issued by MoC governing allocation of coal blocks were not checked. A cursory glance was thus given to the applications."

126. The witness was recalled for further cross-examination on behalf of accused public servants twice i.e. on 20.09.2021 and 18.07.2024.

127. In further cross-examination on 20.09.2021 he was confronted with his statement u/s 161 CrPC dated 13.01.2015, recorded in the case CBI Vs. SKS IPL & Ors. (RC No. 219 2014 E 0015) which is **Ex. PW-18/DX-A** and wherein it has been recorded that compiled report of state governments were placed before the members of the Screening Committee.

128. In further cross-examination, recorded on 18.07.2024, he was shown MoC files and some notings. One letter dated 11.04.2007 (D-3, Pg. 76/C) vide which CMPDIL was asked to prepare a chart compiling all the information given by the applicant companies and to send the same to MoC is **Ex. PW-**

18/DX-17.

129. It has also come that during 31st to 34th Screening Committee meetings, two lists were prepared. One was regarding names of companies whose applications were found complete and the second was regarding incomplete/invalid applications. These two lists are **Ex. PW-18/DX-18 (Colly.)**. One letter dated 22.07.2006 (D-12 in case titled CBI Vs. Grace Industries Ltd., CC No. 296/2019) was marked as **Ex. PW-18/DX-19**. Similarly, one letter dated 09.08.2006 (D-17 in the case of Grace Industries) was marked as **Ex. PW-18/DX-20**. From these letters, PW-18 confirmed that these two lists were prepared.

130. He was confronted with his previous statement recorded u/s 161 CrPC in the case of CBI Vs. VMPL which is **Ex. PW-18/DX-21** and in which he had stated that incomplete application was not entertained by MoC. He also admitted that application of VMPL related to the process concerning 35th and 36th Screening Committee.

131. He also admitted that applications could not have been stated to be ready to be sent to administrative ministries and state governments in terms of the guidelines unless they were checked for completeness and eligibility. One note dated 22.01.2007, sent by A-6 (who was posted as Dy. Secretary, CA-II at that time) to Under Secretary, CA-I (available as D-111, Pg. 67-72 in case titled CBI Vs. Vinni Iron & Udyog Ltd.) was taken

on record as **Ex. PW-18/DX-22**. At page 68 thereof, there was noting in the hand of PW-18 in which some course of action was specified which included timeline for preliminary scrutiny and sorting of applications to be done by 05.02.2007. However, he clarified that as 7000 applications were received, it was not possible to scrutinize the applications by 05.02.2007 and thus directions were given to simply segregate the applications and send them to administrative ministries and other authorities.

132. He was further shown notesheet dated 29.03.2007 (D-2, Pg. 16). It was suggested to him that from this notesheet it appeared that applications were being scrutinized by Sh. R.S. Negi but PW-18 denied the suggestion. He was also shown his previous testimony in CBI Vs. JICPL (RC No. 08 E 2012, EO-I) which is **Ex. PW 18/DX-23** and he reiterated that senior officers were verbally told about the procedure being followed but nothing specifically was stated to them regarding non-scrutiny for completeness and eligibility.

133. He admitted that he was not present during the meeting dated 11.05.2007 which was called by Secretary Coal/A-4. He admitted that it was an inter-departmental meeting. He was shown file D-3 but he could not locate agenda of the said meeting, however, he pointed out one OM dated 07.05.2007 bearing his signature which is Ex. PW-18/C-1 (at Pg. 87 and 88 of D-3). He was further shown file D-97 (from the case of CBI Vs. Vinni Iron & Steel Udyog) which is file of Ministry of Steel

and where such agenda was available with OM dated 07.05.2007 and copy of the said agenda was marked as **Mark PW-18/DX-24.** However, he did not confirm whether this agenda was prepared in CA-I Section or not. One OM dated 01.06.2007 [Part of Ex. PW-18/F (Colly.) D-8, Pg. 49] is response of Ministry of Steel to the meeting dated 11.05.2007. He did not know if similar response was sent by MoP or not. He was shown notesheet page 1-3 [part of Ex. PW-18/E (Colly.), D-13] and he admitted that from this notesheet, it appeared that database format would have been shared with the members of the Screening Committee.

134. He was shown notesheet dated 12.07.2007 (D-176 from the case titled CBI Vs. AMR Iron & Steel Ltd., CBI Case No. 316/2019) and wherein it was recorded that "In addition to agenda, which contain copies of applications, supporting papers in form of data base of all the companies shall be prepared as was done for power block." This notesheet related to 36th Screening Committee and is **Ex. PW18/DX-25**. After seeing this note, he stated that it was possible that database might have been shared with the members of the 35th Screening Committee. However, he clarified that he could not say whether this database was the one prepared by CMPDIL or the one given at the time of presentation which was prepared by CA-I Section indicating the schedule of presentations by applicant companies before the Screening Committee. He admitted that during the Screening committee meeting the recommendations of the State Government and the Administrative Ministry were supplied to the members of the

Screening Committee as were available at that time in the MoC.

Office of Coal Controller

135. **PW-10** is **Lambodar Mallik.** In the year 2007, he was posted as Assistant in the office of Coal Controller Kolkata. In January 2007, he had come to Delhi in connection with applications being received in MoC regarding coal block allocation matters.

136. He stated that he was deputed to MoC by his office i.e. the office of Coal Controller. He had come to Delhi alongwith Sh. K.C. Modak, Sh. Shubasis Das and Mohd. Aftab Alam, all officials of the office of Coal Controller Kolkata. He deposed about meeting Sh. V.S. Rana and Sh. R.S. Negi at Scope Minar. He told that they were provided with a register and were told to make entries of the applications being received. In the register, they were to enter the serial number, name of the applicant company, name of block for which application had been submitted and particulars of bank draft attached. He identified copy of the said register as **Ex. PW 10/A (D-43)**. He pointed out entry numbers 102, 103 and 104 in the register which pertained to receipt of applications of M/s NPPL for "Mandakini", "Rampia" and "Dipside Rampia" coal blocks respectively. He told that they performed duties for about 10 days. They had also filled-up TA claim forms. The TA claim form filled by him for the period 03.01.2007 till 15.01.2007 is available in D-207 and is

Ex. PW 10/B.

137. In cross-examination on behalf of accused public servants, he told that there were certain other persons also at Scope Minar who were receiving applications beside them. There were different counters where various officials were working but 2-3 officials were working at one single counter. He told that he had made entries only in register Ex. PW 10/A bearing No. MR-313/12, titled *"Advertisement November 2006"*. However, later on he also told that some entries on page No. 4 of register bearing No. MR 310/12 (D-252), i.e. entry No. 19-23 are also in his hand. The register bearing MR No. 310/12 is **Ex. PW 10/DX-1 (D-252)**. Similarly, he told that entries on page No. 14, 21-27, 32-35, 38 and 43-46 of register bearing No. MR 319/12 (D-30), entries at No. 107-110, 164-206, 210-212, 250-277, 301, and 338-377 respectively are also in his hand. The register bearing MR No. 319/12 is Ex. PW 3/B (D-30). His statement u/s 161 Cr.PC dated 12.07.2013 is **Ex. PW 10/DX-2**.

138. **PW-11** is **Sh. Kirtan Chandra Modak.** He was posted as Assistant in MCBA Section in the office of Coal Controller, Kolkata. He deposed on the same lines as Lambodar Malik/PW-10. He told that they stayed in Delhi for about 7-8 days. Thereafter they went back to Kolkata. After reaching their office, they had submitted their TA bills. The TA bill is **Ex. PW11/A(D-208)**.

139. He further told that in the month of June 2007, he was again deputed to MoC by his office. At that time, he was accompanied by Sh. Partho Bandopadhyay. At that time also they met Sh. V.S. Rana at MoC office. This time Sh. V.S Rana told them that the applications which were received for allocation of coal blocks were lying at Scope Minar Laxmi Nagar and that they had to sort them out blockwise. On this occasion, they stayed for about a week. Again after returning back to office the TA bill was submitted. The TA bill is **Ex. PW11/B (D-214)**.

140. He deposed that again in the month of August 2007, he was deputed to MoC by his office. On this occasion he was accompanied by Sh. Partho Bandhobadhyay, Sh. Debashis Das and Sh. Sumanta Bishwas. Again they reported to Sh. V.S. Rana in MoC. On this occasion they were told to flag the balance sheets as were attached with the various applications received for allocation of coal blocks. On this occasion also they stayed for about a week. Again after returning back to his office the TA bill was submitted. The TA bill is **Ex. PW11/C (D-221)**. He deposed that on these three visits to MoC they were not assigned any other work by MoC officers except the work told by him. Vide seizure memo dated 11.07.2013, he had handed over various TA bills of different officials of the office of Coal controller who were deputed on different occasions to the IO. The memo is **Ex. PW11/D (D-205)**. The TA bills are **Ex. PW11/E(Colly.)** (**D-206 to 221**).

141. In cross-examination on behalf of accused public servants, he told that he was not aware as to vide which conditions the eligibility of any applicant company was to be governed. Similarly he was also not aware as to vide which conditions any given application was to be considered as complete.

142. **PW-12** is **Amalendu Khamaru.** He is from the office of Coal Controller at Kolkata. He deposed about his visit to Delhi in January 2007 along with Manas Kumar De, Kanailal Haldar and P .Bandhopadhyay to MoC office, Shastri Bhawan, New Delhi from Kolkata after a letter was received in their office from MoC for deputing certain staff.

143. He deposed that they had come to Delhi probably in the 3rd week of January, 2007. Copy of a letter dated 19.01.2007 addressed to V.S. Rana, Under Secretary, MoC and signed by Sh. B.G. Datta Dy. Asst. Coal Controller is **Mark PW12/A-1**.

144. He deposed about meeting Sh. V.S. Rana who called Sh. R.S. Negi and told him to take them to Scope Minar, Laxmi Nagar. PW-12 told that they were asked to assist in sorting out of the applications. Sh. R.S. Negi used to call the names of the companies and they accordingly after finding the application of the said companies which were lying in a room used to pick up the same and after separating all the five sets of each of the applications used to place them in five different boxes. The five

boxes were so classified as one set of the applications used to be put in one box meant for CMPDIL, second box meant for MoC, third box meant for concerned State Govt., 4th box meant for concerned administrative ministry and the 5th box meant for others. They also marked the set of the application meant for CMPDIL.

145. He was shown application of M/s NPPL for Rampia Captive Coal Block as available in D-4 and he identified the no. "439" and the letters "CMPDIL" written in black ink on the top of the folder stating that the same was written by one of his colleagues at the time when the applications were being sorted out. The application is **Ex. PW12/A (Colly.)(D-4)**. The second application of M/s NPPL is **Ex. PW12/B (Colly.)(D-228).**

146. He also told that none of the MoC officers ever asked them to check the applications for their eligibility or completeness. The applications so sorted out by them were approximately 1400. They had given request for grant of honorarium as the work undertaken by them was very laborious. The said request was given by them to Sh. R.S. Negi. The same is request dated 08.02.2007 as available at page 113 in file of MoC as available in D-3 and is **Ex. PW12/C (D-3)**. However, no honorarium was ever granted to them.

147. In cross-examination on behalf of accused public servants, he was generally questioned on the process of receipt of

the applications.

148. **PW- 13** is **Sh. Manoj Karmakar**. In June/July 2007, he was posted in MCBA Section of the office of Coal Controller. In July 2007, on the directions of his office, he alongwith Chandan Bandopadhyay, Debasis Das and Sumanto Biswas had come to MoC Office, Shashtri Bhawan, New Delhi.

149. After reaching MoC office, they reported to Sh. R.N. Singh and Sh. R.S. Negi and they told them that they had to sort out coal block wise the applications received by MoC for allocation of captive coal blocks.

150. They went to Scope Minar, Laxmi Nagar i.e. office of CIL. Over there they found large number of applications lying in a room. They were told to place the applications of each applicant company without any enclosure or annexures in separate folders block wise and in alphabetical order. Accordingly they took out the main application pages of each of the applicant company and placed them in separate folders which were kept block wise. All the applications so placed in the folders were put in alphabetical order. They only carried out the aforesaid sorting work.

151. He told that apart from the aforesaid work carried out by them, they did not carry out any other work qua the said applications much less the scrutiny of the applications for their

eligibility or completeness as they were not asked to do any other work except the aforesaid sorting out of the applications alphabetically and block wise and keeping the main application forms in separate folders.

152. He also told that Sh. R.S. Negi used to often visit them in order to supervise their work. He deposed about submitting his TA Bill.

153. In cross-examination, he also admitted that he had no knowledge as to on what factors application of any applicant company was to be considered as complete or on what factors any applicant company was to be considered as eligible for allotment of a captive coal block.

M/s Suez Energy India Pvt. Ltd.

154. **PW- 14** is **Sh. Rajaraman Ramchandran** who was working with M/s Suez Energy India Pvt. Ltd. at the relevant time. He told that Suez was a wholly owned subsidiary of Suez Group of France & Belgium and its area of work was to identify and develop power and energy projects in India.

155. He deposed that in the beginning of May 2007 they at Suez had come to know about a company NPPL through an Investment Consultant and that the said company NPPL is engaged in developing a power project in Orissa and is a

company where potentially investment can be made by Suez Group subject to all necessary approvals and after entering all necessary agreements and undertakings etc. In this regard he alongwith the Investment Consultant namely Mr. Siddharth Kohli had a meeting with Sh. Y. Harish Chandra Prasad and his team namely Sh. Bhaskar Rao and Sh. Brahaspati Rao at Hyderabad.

156. Subsequently towards the end of May 2007 the team of officers came from Suez Dubai office for further discussion with M/s NPPL. On this occasion also he was also present alongwith Suez Dubai office representatives in the meeting which again was held at Hyderabad. A confidentiality undertaking was entered into between M/s Malaxmi Energy Ventures India Pvt. Ltd. (MEVL), NPPL and SEIPL. PW-14 signed the said undertaking on behalf of SEIPL. The purpose of the aforesaid undertaking was to exchange information for the purposes of carrying out due diligence. The confidentiality agreement is dated 18.05.2007 and is at page 2-7 of Ex. PW 2/C (Colly.) (D-6).

157. He told that a letter dated 14.06.2007, available at page 1 in Ex. PW 2/C (Colly.) (D-6), was written under his signatures as NPPL had asked for a confirmation of expression of interest from them and thus vide the said letter, they confirmed their interest in carrying out due diligence of the project to explore the possibility of entering the project subject to future

investment approval and also subject to satisfaction of the due diligence process. However it was also mentioned in the letter that the same was not binding and did not reflect a commitment to invest on the part of Suez, until such time a shareholders agreement is executed between the current promoters of the project and Suez.

158. He told that around mid of June 2007, they as M/s Suez Energy India Pvt. Ltd. were invited by A-1/YHCP to witness the Screening Committee proceedings before Ministry of Coal (MoC) Govt. of India at Delhi in order to satisfy themselves about the availability of supply of coal for the project. Accordingly he went to the said Screening Committee meeting alongwith YHCP, Sh. Brahaspati Rao and there were one or two employees of NPPL. There was some other person also present from a mining company i.e. Essel Mining company. In the meeting YHCP and Sh. Brahspati Rao made a presentation to the Screening Committee on the status of the project and the application of NPPL seeking allocation of captive coal block.

159. He stated that his role during the course of presentation was merely that of an observer. During the course of presentation no document was supplied to him by anyone who were present on behalf of NPPL or M/s Essel Mining Company. However a few minutes before making the presentation, he was shown the hard copy of the presentation which was to be made before the Screening Committee. Presentation was given through

soft copy.

160. At this stage, upon being shown a hard copy of the presentation, Ex. PW 2/D (Colly.) (D-17), witness identified it to be the same presentation which was shown to him a few minutes before the presentation and stated that soft copy of the presentation was run on the screen before the Screening Committee. The whole process as above took about 20-30 minutes. He identified his signature on attendance sheet Ex. P-98 (page 85 in file D-9, i.e. a file of MoC).

161. He told that at no stage, any representative of Suez Group including M/s Suez Energy India Pvt. Ltd. became a director in NPPL. No amount was ever invested in the said power project on behalf of Suez Group as Suez Group was still in the stage of carrying out due diligence. Similarly Suez Group was having no shareholding in NPPL. No shareholders agreement was ever executed involving Suez Group. He further deposed that around middle of June before the presentation before Screening Committee was made by NPPL, they had provided the website link of Suez Group to NPPL for downloading the balance sheet of Suez Group. The said balance sheets were made available to NPPL as like Suez Group was carrying out due diligence qua the power project to be established by NPPL similarly NPPL was also to carry out due diligence of Suez Group.

162. He stated that Suez Group never allowed or permitted NPPL to use its net-worth for any purpose whatsoever. In the year 2012, a copy of the feedback form was received by Suez Group from Malaxmi Energy Ventures Ltd. and at that time they had responded that the said document was not seen by them at any time before. It was also stated by them in their said communication to Malaxmi Energy Ventures Ltd. that the net-worth of Suez Group had been used without their authorisation and this fact should be brought to the notice of all concerned authorities. The copy of the feedback form is **Ex. P-93**. He told that no shareholders agreement could be executed between the promoters of NPPL and Suez as other promoters of NPPL were not willing to enter into any agreement with any third party or investor.

163. In cross-examination on behalf of A-1, he admitted that in the year 2007, he had an E-mail ID i.e. Rajaraman.Ramachandran@suezenergymea.com and he used the said E-mail ID in May/June 2007 to correspond with NPPL. He told that he had gone to Hyderabad and had a meeting with YHCP and PNS Bhaskar Rao in May 2007.

164. He admitted that between 10.05.2007 and 18.05.2007 i.e. after the first meeting which he had with YHCP, there was an internal review in Suez wherein a keen interest was shown to convert the said meeting into a mutually satisfactory agreement subject to result of due diligence process. He also

admitted that that the confidentiality agreement dated 18.05.2007 [part of Ex. PW 2/C (Colly.)] was sent by him to YHCP only after the aforesaid internal meeting so that next phase of due diligence process might start. He admitted that in May 2007 the proposed power project of NPPL had not yet attained financial closure. He was aware that in June 2007, as regard the proposed power project of NPPL, the lead financial institution was Power Finance Corporation (PFC).

165. He told that in June 2007 a Detailed Project Report (DPR) qua the proposed power project of NPPL was prepared by M/s Lahmeyer International India Private Limited and he was aware that the proposed power project had received in-principle sanction of finance from UCO Bank and SBI had sanctioned non-fund limits for the projects, even though NPPL had not achieved financial closure till then qua the power projects.

166. He admitted that between 14.06.2007 and 23.06.2007 a lot of E-mails were exchanged between him, YHCP and Sh. PNS Bhaskar Rao. He told that the link of Suez Group balance sheets was sent to NPPL by way of an E-mail so that they may download the balance sheets. He admitted that as the link of Suez Group balance sheets was available, therefore, the balance sheets itself were already available in public domain.

167. He told that he was invited to be present in the Screening Committee meeting by the NPPL after 14.06.2007 and

probably a week before the meeting i.e. which took place on 23.06.2007. He admitted that on the morning of 22.06.2007 at about 01.18 am in the morning, he had sent certain sample financial calculations of 2005 annual statement to Sh. PNS Bhaskar Rao by way of an e-mail. He had on 22.06.2007 at about 11.46 am sent an email to YHCP and Sh. PNS Bhaskar Rao enclosing therewith certain power point slides relating to Suez and its financial capabilities.

168. He told that at the time of presentation made inside the meeting on behalf of NPPL he did not raise any objection to any of the slides. He admitted that he attended the Screening Committee meeting on 23.06.2007 on behalf of Suez Group as a potential strategic investor in NPPL.

169. He admitted that during the course of Screening Committee meeting, some members of the Committee had asked as to whether Suez Group had invested in the project and upon which he replied that the Suez Group was in the process of investigating the project so as to potentially become a strategic investor. But when he changed stand regarding giving reply, he was confronted with his statement u/s 161 Cr. PC dated 05.10.2012 which is **Ex. PW 14/DX-1**.

170. He denied the suggestion that neither at the time of presentation nor subsequent thereto Suez Group had any objection to the use of their financial details or net worth by

NPPL in the presentation made before the Screening Committee. He admitted that the information so used by NPPL of Suez Group was already available in public domain and was thus an exception to the confidentiality agreement.

Coal India Ltd.

171. **PW- 15** is **Susmita Sengupta.** In August 2007, she was posted as Manager (Finance) CIL, Kolkata. She is by qualification a Cost Accountant.

172. She deposed that she alongwith Sh. Samiran Dutta came to Ministry of Coal Office, New Delhi and met Sh. K.S. Kropha Joint Secretary Coal at his office at Shastri Bhawan. She told that they had met Sh. Kropha who then called Director Coal Sh. K.C. Samria and thereafter Sh. Kropha told them that they had to cross check the net-worth of certain companies from the balance sheets of said companies. They also gave them a spread sheet wherein the names of various companies were mentioned along with their corresponding net-worth mentioned across their names. They were asked to cross check the net worth of the said companies as mentioned in the spreadsheets vis-a-vis their respective balance sheets. The aforesaid instructions were given to them by both K.S. Kropha and K.C. Samria who were present together in the room. They also told them that the balance sheets of the companies have been kept at Scope Minar, Laxmi Nagar Office of CIL. She told that thereafter two MoC officials

were asked to accompany them to Scope Minar Laxmi Nagar Office of CIL where one Mr. Joshi, who was the General Manager, CIL Delhi Office, met the. He arranged their sitting arrangement in one room of the office and one Stenographer/typist was made available to them with an electronic typewriter.

173. She told that they started their job of cross-checking net-worth of various companies whose names were mentioned in the spread sheets from the respective balance sheets as were being made available to them by the two MoC officials who had accompanied them to Laxmi Nagar office. They asked for the balance sheets of various companies as per the serial number in which the names of various companies were mentioned in the spread sheets. She also told that the approval of their tour was for about 2-3 days and their return tickets were booked for 09.08.2007 evening. However as their work was not yet complete by 09.08.2007 so she and Samiran Dutta went to Shastri Bhawan MoC office and met Sh. K.S. Kropha Joint Secretary Coal and told him that they had return tickets for 09.08.2007 evening but their work was not yet complete. Sh. Kropha however told them to stay back for one more day so as to complete the work.

174. In order to cross-check the net worth of various companies as mentioned above they used to check the balance sheets as used to be made available to them by the MoC officials and if the name of the company mentioned in the spread sheets

tallied with the name mentioned in the balance sheets provided to them then the net-worth used to be calculated by them from the balance sheets as appeared on the face of said balance sheets and if the said figure also tallied with the one mentioned in the spread sheet then in the spread sheet against the name of the said company they used to mention "OK". However in those cases where the net worth so calculated from the balance sheets did not tally with the one mentioned in the spread sheet then they used to mention the words "Not OK" against the name of the said company in the spread sheet. Moreover, in respect of those companies whose name did not tally with the balance sheets provided to them then in the spread sheet against the name of the said company they used to mention the words "Company name do not tally". However there were certain cases where some certificates issued by Chartered Accountants certifying the net-worth of any given company were made available to them then in those cases they mentioned the words "Balance sheets not available" and they did not consider any such certificates while cross-checking the net-worth. They considered and accepted only those balance sheets which was signed by the Directors, Chairman and Auditor of the Company. She told that they were not asked by MoC to check or scrutinize the financial strength of the applicant companies and thus they did not undertake any such exercise.

175. All the aforesaid remarks were mentioned by them in the spread sheets itself as were given to them by MoC officers.

Wherever the remarks "Not OK", "Balance sheets not available", "Company name do not tally" or "Chartered Accountants certificates were available", they had accordingly given the said reasons in the remark column in the spread sheet itself. She told that they used to mention their remarks and other observations in rough papers and the typist made available to them used to type those remarks and observations in the spread sheets.

176. After completion of their work they again went to MoC office Shastri Bhawan and gave the spread sheets to Mr. Kropha. Both at the time of entrusting the job to them and later on when they returned back the spread sheets so filled up by them, he had told them to maintain complete confidentiality about the work to be undertaken or finally undertaken by them and to destroy the rough papers as may be used by them while undertaking the said work. Accordingly they destroyed the rough papers. When they had handed over the spread sheets upon completion of their work to Sh. Kropha then at that time Sh. K.C. Samria was also present.

177. She also told that in order to check the net-worth of a joint venture company or a special purpose vehicle company, one also needs to have the agreement/MOU vide which the said joint venture company had come into existence or the special purpose vehicle had come into existence. She did not remember now as to what observation or remarks were made qua M/s NPPL in the spread sheet. Copy of TA bill of witness Susmita Sengupa

is **Ex. PW 15/A (D-256)**. Copy of TA bill of Sh. Samiran Dutta is **Ex. PW 15/B (D-254).**

178. In cross-examination on behalf of accused public servants, she told that she could calculate the net-worth of any given company but in order to calculate the net-worth of any company one required lot of time may be even a day as one needs to have as to whether there are any contingent liabilities or there are any financial/non-financial agreements creating any liability upon the company or not. She told that the spread sheets so finally prepared by them and handed over to MoC officers were not signed by them. She told that the data as was cross-checked by them was for the year(s) 2003-04, 2004-05 and 2005-06. She denied the suggestion that upon completion of work, the spread sheets were not handed over to Sh. K.S. Kropha. She denied that the same were handed over to CA-I Section MoC.

179. She told that they calculated the net-worth from the balance sheets on the basis of following formula:

> *"Sum total of Share Capital + free reserves -- net of expenses or provision. Reserve is created out of Profits and Share Premium. However, reserve does not include revaluation of assets, write back of depreciation and amalgamation."*

180. She explained that since they had not undertaken the checking of the complete balance sheet as the said job would have undertaken considerable time for each balance sheet so the

question of finding any suspicious entry or any wrong entry in the balance sheet did not arise during those four days. Accordingly, no such observation was made qua any applicant company in the spread sheet. She told that they had highlighted certain entries by marker on the spread sheets. She told that the remarks and observations were made by her on the very same spread sheets which were supplied to them by the MoC officers. The spread sheets were probably legal paper size sheets. The typist who was typing on the spread sheets was sitting in the adjacent room. During the course of our work they used to visit said adjacent room also. She denied that no electronic typewriter was available at that time in the office of Delhi CIL.

181. PW-15 was re-examined on request of prosecution.

182. In re-examination, she was shown a chart titled "Informations furnished by the State Governments" as available from page 1 to 21; chart titled "As per original application" and "As per feedback form" available from page 22 to 31; chart titled "Net worth for coal block applicants" available from page 32 to 39; chart available from page 40 to 48 and chart available from page 72 to 77 in file Ex. PW 3/E (Colly.) (D-164). She told that these were not the said spread sheets which were given to them by MoC officers and on which they had put their remarks/observations. As regard chart available from page 32 to 39 and page 70 to 77 as above, witness stated that the said two charts were computer print outs whereas remarks / observations

as were put on the spread sheets by them were put by way of an electronic typewriter.

183. In further cross-examination, she told that she did not remember the remarks or observations as were mentioned by them in the spread sheets against the names of different companies.

184. **PW- 16** is **Sh. Jyotirindra Bagchi.** He is from Coal India Ltd. He told that a letter dt. 18.10.2012 was received in their office from Chief Manager (Vig.) CIL asking them to hand over certain documents as mentioned in the letter to CBI. Copy of said letter is Mark PW 16/X-1. Accordingly on 26.11.2012 he had come to CBI office New Delhi and handed over the following documents (in original) to Inspector Himanshu Bahuguna of CBI:

> *i. "Coal India Ltd. Travelling Allowance Bill dated 20.08.2007 in the names of Sh. Samiran Dutta for visiting New Delhi and back during the period 07.08.2007 to 10.08.2007 and TA Bill dated nil for the period 02.08.2007 to 03.08.2007 along with enclosures such as Air Tickets, Tour Approvals, Invoices and Payment Vouchers. (19 sheets).*
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> *ii. Coal India Ltd. Travelling Allowance Bill dated 11.09.2007 in the names of Sh. Samiran Dutta for visiting New Delhi and back during the period 07.09.2007 to 09.09.2007 along with enclosures such as Air ticket, Tour Approval and Payment voucher. (9 sheets).*
>
> *iii. Coal India Ltd. Travelling Allowance Bill dated 20.08.2007 in the name of Smt. Susmita Sengupta for visiting New Delhi and back during the period*

16.08.2007 to 17.08.2007 and TA Bill dated nil for the period 07.08.2007 to 10.08.2007 along with enclosures such as Air Ticket, Tour Approval, Invoices and Payment Voucher. (14 sheets).

185. All the aforesaid documents were taken into possession by Inspector Himanshu Bahuguna vide production cum seizure memo dated 26.11.2012. Copy of seizure memo as available in D-253 and is **Ex. PW 16/A**. He also identified the original travelling allowance bills as mentioned above to be the one which were handed over by him to CBI. The travelling allowance bills as above are respectively Ex. PW 15/B (D-254), **Ex. PW 16/B** (D-255) and Ex. PW 15/A (D-256) (corresponding to entry no. 1, 2 and 3 of seizure memo Ex. PW 16/A).

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186. **PW- 19** is **Sh. Kamal Khemchandani.** He is from CEA, MoP. He was conversant with writing and signature of Sh. M.S. Puri, Director, TPI, Sh. Rakesh Bhanot, Dy. Director, TPI and Sh. N.S. Mondal, Director, TPI.

187. He told that during the period 2005-2007, TPI Division used to monitor New Thermal Power Projects upto the placement of main plant equipment order. They in TPI used to undertake site visits for New Thermal Power Projects for selection of sites. They were also involved in the development of Ultra Mega Power Projects. However in the year 2007 they were

also involved in the recommendation of CEA for coal blocks. The recommendations for coal blocks used to be made on the asking of Ministry of Power. He told that he had handed over two files to CBI in the year 2014 vide production-cum-seizure memo dated 23.05.2014 **Ex. PW 19/A** as available in D-222. He had also handed over the "Block wise shortlisted applicants for IPPs and CPPs" running into 12 pages **Ex. PW 19/B (Colly.) (D-223)**. The "Statement of applicants shortlisted from the list of pre-qualified applicants" running into 6 pages is **Ex. PW 19/C (Colly.) (D-224)**. He told that written notes/remarks on document Ex. PW 19/B (Colly.) (D-223) and Ex. PW 19/C (Colly.) (D-224) are in the hand of Sh. M.S. Puri and Sh. Rakesh Bhanot on both the documents. He told about handing over two more files to CBI. He identified signature of Sh. N.S. Mondal on letter dated 22.05.2014 addressed to Dy. SP K.L. Moses vide which two files i.e. bearing no. File No. 144/GC/BO/CE(TPI)/2007-Volume 7 (Pages 1 to 235) and File No. 144/GC/BO/CE(TPI)-Volume-8 (pages 1 to 301) were provided to the IO. The letter dated 22.05.2014 is **Ex. PW 19/D (D-225)**. File no. 144/GC/ BO/ CE(TPI)/2007-Volume 7 (Pages 1 to 235) is **Ex. PW 19/E (Colly.) (D-226)** and File No. 144/GC/BO/CE(TPI)-Volume-8 (pages 1 to 301) is **Ex. PW 19/F (Colly.) (D-227)**.

188. He was generally cross-examined by accused public servants.

189. **PW- 23** is **Sh. Rohtash Dahiya.** He had retired as Member (Thermal) CEA, MoP, Government of India in January 2009. He told that in CEA on the advice of MoP, they framed the policy on the basis of which the applications were to be scrutinized. The first criteria was thus to find out the financial strength of the company to establish the proposed power plant. In this regard the yardstick taken by CEA was 0.50 crore per mega watt of proposed capacity. The said criteria was earlier also adopted by CEA and MoP for Ultra Mega Power Projects (UMPP).

190. Based on the aforesaid criteria, they pre-qualified various applicant companies and thereafter further scrutiny of such qualified applicant companies was carried out on the basis of preparedness to establish the project i.e. the availability of land and water as these were the two prime inputs required for establishing a power project.

191. He deposed that on the basis of aforesaid methodology, CEA sent its recommendation to MoP qua various applicant companies. He told that the aforesaid scrutiny of applications was undertaken purely on the basis of information given in the feedback form which were submitted by companies to MoC and from where the same was received by them. Through MoP it was also communicated by CEA to MoC that CEA was not having sufficient manpower to verify the information/data furnished by various applicant companies and MoC should get

the same verified at their own end.

192. He told that NPPL had applied for allocation of three coal blocks i.e. Mandakini, Rampia and Dipside of Rampia. However, as Mandakini coal block was nearest to proposed power plant of M/s NPPL, so CEA recommended M/s NPPL for joint allocation of Mandakani coal block along with M/s Jindal Steel and Power Limited and M/s GMR Energy Limited. As regard M/s NPPL also, CEA in making its recommendation in its favour went by the same criteria as has been stated by him. In the feedback form submitted by the company the total net worth of the group companies was stated as about 307 crores and in addition thereto net worth to the tune of more than one lac crore of M/s Suez was also mentioned and thus as per the criteria adopted by CEA a total net worth of about 1120 crore was required for the proposed power plant of 2240 MW capacity to be established by the company. Thus, going by the information furnished by the company in its feedback form, CEA proceeded ahead to make recommendation in favour of the company.

193. He further deposed that in the meeting it was discussed as to how the various coal blocks under consideration should be allocated. He informed the Committee that MoP already sent their recommendation to MoC. The representatives of various state government were also pleading their cases saying that the mines located in their states should be given on priority to the projects proposed to be established in their states. However

Secretary (Coal) stated that since coal was a national resource so they could not accommodate all the views and the same had to be allocated optimally. During the meeting it was also told by MoC officers that they had already got the financial strength of the applicant companies verified from experts of CIL and as regard other inputs such as land, water etc the concerned states had already got the same verified.

194. He deposed that as regard M/s NPPL, since MoP had already recommended it for allocation of a coal block and it was stated that other inputs and financial strength had already been got verified so he as representative of MoP agreed with the recommendation made by the Screening Committee in favour of M/s NPPL. Though, MoP had recommended M/s NPPL for allocation of Mandakani Coal Block but Screening Committee thought it more appropriate to recommend it for Rampia and Dipside Rampia coal block so he also agreed with the same.

195. He told that as far as he could recollect, no document was provided to him in the said meeting. Further, no document even as regard verification of financial strength of the applicant companies or as regard other inputs was provided to them in the meeting. He identified his signature on the attendance sheet. He identified his signature on the recommendation sheet Ex. P-205. He did not remember having received the minutes of the said meeting.

196. In cross-examination on behalf of A-1, he did not remember if the criteria vide which the various applications received in CEA through MoP were scrutinized was ever put in public domain. He did not remember if or when the criteria adopted by CEA, MoP for scrutinizing the applications was communicated to MoC. He also did not remember when the said criteria was communicated to MoP by CEA.

197. One office copy of DO letter dated 20.06.2007 [page 66-67 in D-15] was marked as **Ex. PW 23/DX-1**. One note dated 10.09.2007 [D-15, Pg. 58/n to 59/n] was marked as **Ex. PW 23/DX-2 (Colly.)**. One letter dated 13/16.07.2007 of Sh. S. Seshadri [D-15, Pg. 131 to 219] was marked as **Ex. PW 23/DX-3 (Colly.) (D-15)**.

198. He told that the criteria was exclusively adopted by CEA in consultation with MoP. As per recommendation of CEA communicated to MoC through MoP the following companies were recommended for Mandakani, Rampia and Dipside of Rampia coal blocks:

Sl No.	Name of Coal Block (State) Coal Reserve (MT)/OC/UG (Power Generation Potential)	Name of Power Project.	Location	Category	Total Capacity	Capacity for which block recommended
10	Mandakini (Orissa)	Navbharat Power Pvt. Ltd.	Dhenkenal, Orissa	IPP	2240 MW	To be shared equally

	290.517 (E)/OC (1600 MW)	Jindal Steel and Power Limited	Angul, Orissa	CPP	900 MW	
		GMR Energy Ltd.	Denkanal District, Orissa	IPP	1050 MW	
11	Rampia (Orissa) 285.235 (RE)/OC (1400 MW)	Sterlite Energy Ltd.	Jharsuguda, Orissa	IPP	4x600 MW	To be shared equally
		Vedanta Alumina Ltd.	Jharsuguda, Orissa	CPP	9x135 MW (1215 MW)	
12	Dipside of Rampia (Orissa) 360 (RE)/OC (1700 MW)	Monnet Ispat and Energy Ltd	Angul, Orissa	IPP	1005 MW	To be shared equally
		Jindal Photo Ltd.	Angul, Orissa	IPP	1000 MW	
		Mittal Steel India Ltd.	Keonjarh, Orissa	CPP	3x250 MW	

199. However in the Screening Committee meeting the following companies were recommended for the aforesaid three blocks:

Orissa	Recommended allocattee	End Use Plant
Blocks		
Mandakini	Monnet Ispat & Energy Ltd. Jindal Photo Ltd. Tata Power Corp. Ltd.	Orissa. Orissa. Orissa.
Rampia	Sterlite Energy Ltd. GMR Energy Ltd. Lanco Group Ltd.	Orissa. Orissa. Orissa.
Dip side of Rampia	Navbharat Power Pvt. Ltd. Mittal Steel India Ltd. Reliance Energy Ltd.	Orissa. Orissa. Orissa.

200. He admitted that Reliance Energy Ltd. was not recommended by CEA for any of the three coal blocks in Orissa.

201. Upon being asked as to whether the witness could tell as to what criteria was adopted in the Screening Committee meeting for recommending Reliance Energy Ltd. for Rampia and Dipside of Rampia coal blocks, witness stated that as CEA (MoP) was one of the recommending authority and MoC had to consider views of State Governments also, so the witness stated that he thinks that after considering the views of all concerned, decision must have been taken by the Screening Committee.

202. In cross-examination on behalf of accused public servants, he admitted that not much discussion used to take place in the meeting qua the companies which were recommended both by State Government as well as by the Administrative Ministry.

203. He told that CEA started scrutinizing the applications only after receipt of communication dated 26.06.2007 from Sh. Anil Kumar Kutty, Joint Secretary, MoP. The said letter dated 26.06.2007 of Sh. A.K. Kutty [available at page 233 in file Ex. PW 19/E (Colly.) (D-226)] is **Ex. PW 23/DX-4 (Colly.)**. He also told that CEA had considered only first three factors for *inter se* priority as were specified by MoC.

204. One office order 06.07.2007 [available at page 95-96 in file Ex. PW 19/E (Colly.) (D-226)] vide which Secretary

CEA Sh. B.K. Mishra had constituted a Committee to make recommendation qua long term coal linkages and also for allotment of coal blocks for upcoming projects is **Ex. PW 23/DX-5**. One office copy of a note dated 17.07.2007 [available at page 229 in file Ex. PW 19/E (Colly.) (D-226)] was marked as **Ex. PW 23/DX-6**. One letter dated 13/16.07.2007 of CEA vide which its recommendations were also sent under the signatures Sh. M.S. Puri who signed it for S. Seshadri, Chief Engineer (TP & I) [page 129-217 of D-226] is **Ex. PW 23/DX-7 (Colly.)**. One letter dated 26.07.2007 sent by CEA to MoP [available from page 1-10 in D-227] is **Ex. PW 23/DX-8 (Colly.)**. Letter dated 30.07.2007 of CEA to MoP [available from page 58-86 in D-227] is **Ex. PW 23/DX-9 (Colly.)**.

205. One comfort letter dated 13.07.2007 is **Ex. PW 23/DX-10** [page 230-231) (D-226)]. One letter dated 23.07.2007 of MIDC [Ex. PW 19/F (Colly) (D-227)] is **Ex. PW 23/DX-11**. One letter dated 17.07.2007 issued by State Investment Promotion Board, Government of Chhattisgarh in favour of M/s DB Power Ltd. [available at page 12 in file Ex. PW 19/F (Colly) (D-227)] is **Ex. PW 23/DX-12**. One letter dated 24.07.2007 issued by Department of Water Resources, Government of Orissa in favour of M/s CESC Ltd. [available at page 13 in file Ex. PW 19/F (Colly) (D-227)] is **Ex. PW 23/DX-13**. One letter dated 19.07.2007 issued by Gujarat Industrial Development Corporation in favour of M/s Hindustan Zinc Ltd. [available at page 14 in file Ex. PW 19/F (Colly) (D-227)] is **Ex. PW 23/DX-**

14. He could not explain why few companies were also recommended later on by CEA. He admitted that MoP had never authorized CEA to receive documents directly from the companies to fulfill any lacunas but also stated that there was no bar. One letter dated 23.07.2007 sent by Himachal EMTA Power Ltd. to Chairman CEA [available from page 41-51 in D-227] is **Ex. PW 23/DX-15 (Colly)**.

206. One letter dated 23.07.2007 [available at page 261 in file bearing No. 38011/1/07-CA-I (vii) of MoC as is available in D-14] is **Ex. PW 23/DX-16.**

207. In further cross-examination by A-1, office copy of a communication dated 24/27.08.2007 [available from page 179-184 in file Ex. PW 19/F (Colly) (D-227)] vide which a brief note on the methodology adopted for pre-qualification, short-listing and block-wise recommendation for allocation of coal block to IPPs/CPPs was sent to MoP was marked as **Ex. PW 23/DX-17 (Colly)**.

208. **PW-25** is **Manjit Singh Puri.** During the period 2006-07, he was posted as Director in Thermal Project Investigation (TPI) Unit of CEA. He told that MoP used to receive applications of various applicant companies from MoC seeking allocation of captive coal blocks for their existing or proposed power projects and the said applications used to be sent to CEA by MoP for submitting its comments on them.

209. He deposed about attending meetings of the 35th Screening Committee in MoC when presentations were being made before it. The applicant companies submitted their feedback forms duly signed by them containing information about their networth, preparedness towards establishing the proposed project etc. He deposed that they were given copies of the said feedback forms and hard copy of the presentations. He told that his role in the said meeting was to listen to the presentations being so made and to collect the information as above being supplied by them and bring them back to the office. Beside himself, Sh. S. Seshadri, the then Chief Engineer (TPI), Sh. Rakesh Bhanot, Dy. Director (TPI), Sh. S.H. Khan, Chief Engineer (OM), Sh. A.K. Mishra from OM Division and Sh. Arora from IRP Division were also present.

210. He told that after few days, all the three divisions of CEA as above were asked to compile the information pertaining to the feedback forms and the presentations which were collected by the officers of various divisions during the course of meeting. Subsequently, all the information so compiled was coordinated and collated at one place in TPI Division in a tabular form. The said exercise of collation of entire information was carried out under the guidance of Sh. S. Seshadri, Chief Engineer, TPI.

211. He told that the aforesaid exercise of compilation of all the information was started after a letter in this regard was received in CEA from MoP wherein it was also directed that

networth of the applicant companies be considered for the purposes of submitting comments on the basis of guidelines of UMPP. CEA was also asked to give its analysis on the basis of preparedness parameters of various applicant companies.

212. Accordingly in the TPI division a pre-qualification exercise of various applicant companies was carried out on the basis of networth requirement of 0.5 crores per megawatt as was stipulated in UMPP guidelines. Another parameter adopted for pre-qualification exercise was the proposed capacity of the power project. He told that they considered only those applicant companies for the purposes of pre-qualification who were proposing to establish a power project of minimum capacity of 500 MW.

213. The companies which got qualified after the aforesaid initial exercise were further short listed based on the basis of status of their preparedness towards establishing the proposed power project. Thereafter all the applicant companies were listed against the names of the various coal blocks for which they had applied for. The said lists were thereafter sent to MoP.

214. He also told that subsequently some additional information also started coming to CEA qua the status of preparedness of applicant companies towards establishing their proposed power projects or even as regard the enhanced

networth. Based on the said additional information, CEA again sent the updated status of the said applicant companies to MoP. The said additional information was being received in CEA directly from various applicant companies. He could not tell as to how the applicant companies started sending such additional information directly to CEA. He told that CEA never asked any of the applicant companies to send additional information as above to CEA.

215. The networth of a company was calculated on the basis of "equity share capital + reserves" of the company. The other details regarding calculation of networth formula were mentioned in their communication to MoP.

216. When the aforesaid exercise of pre-qualification or subsequent short listing of applicant companies or thereafter comments were sent to MoP then at that time the applications of various applicant companies were neither sent to CEA by MoP nor they were available with CEA. Subsequently when various coal blocks were finally allocated by MoC to different applicant companies then MoP sent to CEA various trunks containing the applications of different applicant companies as were received by them from MoC for the purposes of retaining them.

217. He deposed that CEA never informed MoC about the methodology adopted by them for shortlisting the various applicant companies. However the methodology so adopted by

CEA was duly informed to MoP. In the meetings of 35th Screening Committee which took place in June 2007, no decision was taken regarding allocation of coal blocks. He identified various signatures on attendance sheets Ex. PW 18/D-3 (Colly) available from page 108-115 in file Ex. PW 18/D (Colly) (D-9)

218. He identified signatures on a letter dated 26.06.2007 Ex. PW 23/DX-4 (Colly) available at page 233 in file Ex. PW 19/E (Colly) (D-226). Vide the said letter, CEA was asked to expeditiously document the presentations made by various applicant companies on the parameters already indicated. It was also stated that the level and state of preparedness being an important criteria thus should be analysed in a transparent manner against tangible and verifiable yardstick like land acquisition, water linkages and other required statutory clearances etc. It was also stated that the networth of the applicant company should be only a qualifying criteria and the yardstick adopted for the UMPPs may be adopted for analysing these projects also. Alongwith the said letter copy of a letter dated 20.06.2007 written by Secretary Power Sh. Anil Rajdan to Secretary Coal Sh. H.C. Gupta was also enclosed. In the said letter MoP had informed MoC that they have asked CEA to attend the presentations and document the same for analysis within the Ministry. It was also stated that CEA have been advised not to make any recommendation in the Screening Committee and that the formal recommendation from the Ministry would follow after due deliberation in the Ministry and

with the approval of MoP. In the letter the following facts were also stated in para 2:

> *"2. The Ministry of Coal had indicated that "priority shall be allocated to projects with more than 500 MW capacity". Further, Ministry of Coal had indicated that the "inter-se priority for allocation of a block among competing applicants for a captive block may be decided as per the following guidelines:*
>
> *1) Status (stage) level of progress and state of preparedness of the projects.*
> *2) Net worth of the applicant company (or in the case of a new SP/JV, the net worth of their principals).*
> *3) Production capacity as proposed in the application.*
> *4) Maximum recoverable reserve as proposed in the application.*
> *5) Date of commissioning of captive mine as proposed in the application.*
> *6) Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application.*
> *7) Technical experience (in terms of existing capacities in coal/lignite mining and specified end use).*
> *8) Recommendation of the Administrative Ministry concerned.*
> *9) Recommendation of the State Government concerned (i.e. where the captive block is located).*
> *10) Track record and financial strength of the company.*
>
> *An examination of the conditions reveals that the Ministry of Power would have to be associated with the SL Nos 1*, 2*, 7*, 8* and 10* above."*

219. After seeing office copy of a letter dated 13/16.07 Ex. PW 23/DX-7 (Colly) (available from page 129 to 217 in file Ex. PW 19/E (Colly) (D-226) witness stated that vide the said letter the recommendations of CEA were sent to Sh. A.K. Kutty,

Joint Secretary, MoP. Witness further stated that the said letter was issued under his signatures at point A. Alongwith the letter the details of 187 applicant companies were sent out of whom 115 companies had prequalified in the first criteria and 44 companies were finally shortlisted at the second stage. The total annexures so enclosed were four in number.

220. In the said letter itself the following facts were also mentioned by CEA:

> "*The short listing of the applicants has been made based on the information furnished by the applicants in their feedback form/presentation made to the Screening Committee. It is suggested that the details as presented by them may be got verified before allocating the blocks.*
> *This issue with the approval of Chairperson, CEA."*

221. Upon being asked as to why the witness signed the letter when the name of signatory typed on the letter is S. Seshadri, Chief Engineer and the witness stated that though the entire letter was drafted under the guidance of Sh. S. Seshadri and the same was got approved from Chairman also by him only but by the time the letter came to be put up for his signatures then Sh. S. Seshadri had to leave for abroad and thus in these circumstances the witness stated that he signed the letter for Sh. S. Seshadri.

222. After seeing office copy of another communication dated 17.07.2007 Ex. PW 23/DX-6 available at page 229 witness

stated that vide the said communication updated status qua M/s Dhariwal Infrastructure Pvt. Ltd. was sent to MoP on the basis of additional information received from the company.

223. Witness further stated that the said communication was also sent under his signatures at point A only and he signed it for Chief Engineer as Sh. S. Seshadri was still on leave and was thus not available.

224. He identified his signature on letter dated 26.07.2007 Ex. PW 23/DX-8 (Colly) (available from page 1-10 in file Ex. PW 19/F (Colly) (D-227); letter dated 30.07.2007 Ex. PW 23/DX-9 (Colly) (available from page 58-86 in D-227); on rough sheets Ex. PW 19/B (Colly) (D-223) and Ex. PW 19/C (Colly) (D-224). He proved communication dated 24/27.08.2007 available from page 80-85 in a file of MoP (D-16) as Ex. PW 25/A (Colly).

225. After seeing communication dated 13/16.07.2007 Ex. PW 23/DX-7 (Colly) witness stated that as regard M/s Navabharat Pvt. Ltd. the following information was submitted

S. No	Name of Co./State	Plant Location and Capacity (MW)	Coal Blocks Applied	Site Identification	Land tie up	Water tie up	DPR Preparation	Any Coal Block Already allocated	Net Worth (Rs. Crores)	Remarks
34	Navbharat Power Pvt. Ltd.	Mearmandali - Khadgaprasad Dhenkenal, Orissa 2240 MW (25 Km from Mandakini Coal Block)	Mandakini Rampia, Dip side of Rampia	Identified	Partially acquired (40 HA against 761 HA). Balance land is being acquired through IDCO.	Partially tied up (42 cusec for Phase I 1040 MW tied up)	Prepared	No	Rs. 307.12 Cr. NavBharat . Rs. 1,05,740 Cr. – SUEZ (as on 12/06)	MOU signed with Govt. of Orissa, PPA with GRIDCO and PTC.

226. The aforesaid information was so collated by them on the basis of information as was stated by the company in its feedback form and presentation available with them in CEA.

227. In cross-examination on behalf of private accused persons, he told that the methodology so adopted by CEA for shortlisting the companies was finalized after they had attended the Screening Committee meetings in June 2007. He admitted that some of the guidelines of UMPP which were adopted by them in shortlisting the applicant companies at the pre-qualification stage were taken from UMPP standard bid document.

228. He admitted stating the following portion in his further statement u/s 161 Cr. PC recorded on 31.05.2014 by the IO while referring to work sheet Ex. PW 19/B (Colly) (D-223) and Ex. PW 19/C (Colly) (D-224):

> *"After referring to the aforesaid chart/Statement (Which is a reproduction of my work sheet bearing MR No. 1360/14), I state that even if a score of 1 point is deducted from overall score of 12.5 points of M/s NPPL i.e. for not acquiring the 40 Hectares of Land as mentioned in the Feed Back Form, NPPL would still have a score of 11.5 points, which is higher then the score of the seven companies mentioned above. Thus, CEA would still have recommended the name of M/s NPPL for allocation of a coal block."*

229. And the following portion in statement u/s 161 Cr. PC dated 23.11.2012:

> *"In the aforesaid context, on being asked I am to state that companies who had not acquired any land but who*

have initiated the process of land acquisition like deposit of money for land acquisition with the state government, obtained clearances obtained from village gram sabhas or stated to have identified land and submitted application via the designated agency were given credit during short listing. After going through Annexure-III CEA letter No. 144/GC/BO/CE(TPI)/2007/1471 dated 13/16.07.2007 placed at pages 131 to 135 of the MoP file FU-10/2003-IPC Vol.II, B-I (MR No. 397/12), I state that companies such as Bhushan Energy Ltd., Essar Power Ltd., Tata Power Co. Ltd., AES Chhattisgarh Energy Pvt. Ltd., Jindal Photo Ltd., Simhapuri Energy Pvt. Ltd., Dheeru Powergen Pvt. Ltd., Green Infrastructure Pvt. Ltd., Lanco Infratech Ltd., Nagpur Energy and Infrastructure Ltd., M/s GMR Energy Ltd., Jewarigi Power Pvt. Ltd., RKM Powergen Pvt. Ltd., Navabharat Power Pvt. Ltd. And Hindalco Industries Ltd. were given the benefit of this parameter and shortlisted."

230. In cross-examination on behalf of accused public servants, he told that office order dated 06.07.2007 [Ex. PW 23/DX-5 (D-226)] was issued while constituting a Committee to give recommendations for long term coal linkages/allotment of coal blocks for power plants and to also recommend allocation of coal blocks to Thermal Project Promoters including captive plan whenever specific request was received by CEA from Ministry of Power.

231. One letter dated 10.09.2007 was marked as **Ex. PW 25/DX-1 (Colly)**. Similarly, letter dated 09.09.2007 was marked as **Ex. PW 25/DX-2**. One copy of letter received by FAX on 07.09.2007 available at page 185 is **Ex. PW 25/DX-3**. One form for feedback of Jaiprakash Associates Ltd. was marked ss **Ex. PW 25/DX-4 (D-7)**. Similarly, feedback form of M/s Jindal Steel

and Power Ltd.was marked as **Ex. PW 25/DX-5 (D-7)**; that of Simhapuri Energy Pvt. Ltd.was marked as **Ex. PW 25/DX-6 (D-7)**; that of M/s R.K.M. Powergen Pvt. Ltd. was marked as **Ex. PW 25/DX-7**; that of Rashmi Cement Ltd. was marked as **Ex. PW 25/DX-8**; that of Rashmi Metaliks Ltd. was marked as **Ex. PW 25/DX-9**; and that of Maithan Ispat Ltd. was marked as **Ex. PW 25/DX-10**.

232. One letter dated 11.09.2007 [available at page 194 in file Ex. PW 19/F (Colly) (D-227)] sent by Sh. S. Narayanan Under Secretary Ministry of Power to Chairperson CEA was marked to him and vide which it was from CEA to confirm as to whether the criteria communicated to Ministry of Power by CEA by its communication dated 13/16.07.2007 was applied or not is **Ex. PW 25/DX-11**. Reply of CEA is dated 20/24.09.2007 and is **Ex. PW 25/DX-12 (D-16)**.

233. **PW-26** is **Sh. Anil Kumar Kutty.** From April 2002 to September 2007, he was posted as Joint Secretary, MoP, Government of India.

234. He told that during the year 2007, he was associated with the process of allocation of captive coal blocks by MoC, Government of India on behalf of MoP. Since MoC had taken a policy decision to allocate various coal blocks across the country for captive use to private power producers and accordingly towards their proposed captive power plants the comments of

MoP were sought by MoC.

235. He told that Secretary (Coal) had written a letter to Secretary (Power) seeking comments of MoP on about 10 points as were mentioned in the said letter qua the applications of various applicant companies which were sent to MoP by MoC. However, the then Secretary (Power) Sh. Anil Razdan wrote back to the then Secretary (Coal) that MoP could give its comments only qua 4 points out of said 10 points. Since the applications received were voluminous in nature and were received by MoP in about 22 boxes and also as MoP primarily played the role of policy making so it was thought appropriate that Central Electricity Authority (CEA) which was a field unit of MoP would be more appropriate authority to submit comments in this regard. In the meantime MoC had arranged for presentations to be made by various applicant companies so we asked CEA to depute its officers to attend the said meetings where presentations were to be made.

236. Witness further stated that prior to receiving of aforesaid applications from MoC, the MoP had already conducted a similar nature of activity with respect to Ultra Mega Power Projects (UMPP) to be established in the country. In this regard detailed study was made with the help of foreign consultants and accordingly MoP was already having with it the policy decision so framed and decided for UMPP and CEA was accordingly asked by MoP to also make use of said UMPP

criteria in evaluating the claim of various applicant companies. The primary criteria being the viability and feasibility of an applicant company in establishing the proposed power projects. Subsequently, CEA after having attended the said presentations in MoC completed their analysis and sent their findings to MoP. However, in MoP a policy decision was taken with the consent of Minister of Power that no further examination of the findings of CEA as were received in MoP should be carried out and the same should be forwarded to MoC for being placed before the Screening Committee. Two of the important qualifying criteria adopted by CEA in arriving at its findings were the capacity of the proposed power project and the financial capability of the applicant company in arranging the required fund for establishing the said proposed captive power plant and in developing the coal block. Since a power plant was a capital intensive project and even during the said period the cost of construction of a power plant (coal based) would have required an approximate investment of Rs. 4 crores per mega watt. Accordingly, for establishing a power plant of capacity of 500MW the investment required would have been approximately Rs. 2000 crores in addition to cost involved in opening and developing the coal mine. Thus, even keeping in view the debt equity ratio as 3:1 the developer would have required to raise around Rs. 500 crores as equity. In these circumstances the financial capacity of the developer was considered as one of the important qualifying criteria.

237. He told that since the UMPP criteria was arrived at after extensive discussion with various experts in India and abroad and also after discussion with Indian Industry people and the said criteria was widely accepted so it was thought appropriate to use the said criteria. Witness further stated that initially it was thought appropriate to require a higher capital net worth of around Rs. 1 Crore per MW of the developer but as very few companies would have met such a criteria so in order to attract more investment in the power sector in the country it was thought appropriate to reduce the said requirement of Rs. 1 Crore per MW to Rs. 0.50 crores per MW. The said criteria of UMPPs was very much available in the public domain as having been not only widely advertised but was also available on the website of MoP. The said criteria was also to the knowledge of State Governments.

238. He deposed that he knew Sh. Sanjay Chadha as he was working as Director under him in MoP. He also knew Sh. Anil Razdan and Sh. R.V. Shahi as they wereposted as Secretary (Power) one after the other during the period he was posted in there. He proved file of MoP bearing no. FU-5/2003 IPC Vol. II [D-18] as **Ex. PW 26/A (Colly.)** The note sheet pages from page 1-66 are **Ex. PW 26/A-1 (Colly.)** and the correspondence side pages from page 1-713 are **Ex. PW 26/A-2 (Colly.)**. He also proved some documents from the said file.

239. He further proved copy of file of MoP bearing no.

FU-10/2003 IPC Vol. II B-I [D-15] as **Ex. PW 26/B (Colly.) (D-15)**. The note sheet pages from page 1-64 are **Ex. PW 26/B-1 (Colly.)** and the correspondence side pages from page 1-295 are **Ex. PW 26/B-2 (Colly.)**. He proved signatures on various notesheets in this file. He had proposed that as MoC was holding presentation by the applicants i.e. from 20th to 23rd June and as MoP had so far not made any case-wise examination of the applications and had also not made any recommendations to the MoC and also that Secretary (Power) had already intimated to Secretary (Coal) in his letter that the views of MoP would be communicated by the Ministry's representatives at the Screening Committee so considering that over 740 presentations would be made before Screening Committee so the official recommendation of the MoP would be possible only if the data and presentations made by the developers before the Screening Committee were analyzed and processed on file. This note was approved.

240. He also proved copy of letter dated 20.06.2007 (Ex. PW 23/DX-1) of Sh. Anil Razdan, Secretary, Power written to Secretary, Coal. The office copy of letter dated 26.06.2007 is **Ex. PW 26/B-3 (Colly.)**. Letter dated 26.07.2007 received from CEA furnishing details of certain other companies who were earlier not short-listed but had since furnished some additional information regarding tie-up of land or water or as regard enhanced networth figures is **Ex. PW 26/B-4 (Colly.)** [available from page 220-229 in file Ex. PW 26/B (Colly.) (D-15)].

241. He further proved file of MoP bearing No. FU-10/2003-IPC B-II [available in D-16], as **Ex. PW 26/C (Colly.)** (from page 1-318). Letter dt. 10.09.2007 [available at page 91 in file Ex. PW 26/C (Colly.)] alongwith copy of one earlier communication dated 17.07.2007 sent by CEA to MoP is **Ex. PW 26/C-1 (Colly.)** (available at page 91-92). Letter dated 30.07.2007 [available from page 49-78 in file Ex. PW 26/C (Colly.)] is **Ex. PW 26/C-2 (Colly.)**. The office copy of letter dated 30.07.2007 alongwith summary of recommendation as enclosed is **Ex. PW 26/C-3 (Colly.)** (available from page 38-42). Another letter dated 24/27.08.2007 [available from page 80-85 in file Ex. PW 26/C (Colly.)] is **Ex. PW 26/C-4 (Colly.) (D-16)**.

242. In cross-examination, he told that vide office memorandum dated 12.10.2006 [available from page 24-27 in file Ex. PW 26/C (Colly.) (D-16)], MoP had informed Secretary (Coal) that three lists of coal blocks had been identified by MoP. The office memorandum 12.10.2006 is **Ex. PW 26/DX-1 (Colly.) (D-16)**. Letter dated 22.09.2006 of Sudhakar Shukla Director (PP) of MoP is **Ex. PW 26/DX-2 (Colly.)**. The copy of letter dated 17.07.2006 available at page 178-180 in file Ex. PW 26/A (Colly.) (D-18) is **Ex. PW 26/DX-3**.

243. He was subjected to further detailed cross-examination.

Govt. of Orissa (Odisha)

244. **PW-20** is **Sh. Suryanarayan Mishra.** He is from Government of Odisha. In the year 2007, he was posted as Superintending Engineer, Level-II, Department of Energy, Bhubaneshwar, Government of Odisha. As Superintending Engineer, he was looking after rural electrification projects i.e. electrification of rural area and any other work as used to be entrusted to me by the senior officers.

245. He told that during the year 2007, Energy Department, Government of Odisha had received certain applications from MoC of various applicant companies, who were desirous of obtaining allocation of captive coal blocks. He told that he along with Mr. Mohanty, who was probably working as Manager in Energy Department and belonged to Odisha Power Generation Corporation (OPGC) and other officers of Energy Department scrutinized the applications. In the said process certain deficiencies were found in some of the applications and which was duly communicated to MoC, Government of India. Subsequently our senior officers told us to prepare a list of Independent Power Producers (IPPs). Accordingly, a list was prepared.

246. He proved the file of Energy Department, Government of Odisha as available in D-29 as **Ex. PW 20/A (Colly.)**. The note sheet pages from page 1-16 are **Ex. PW 20/A-1 (Colly.)** and correspondence side pages from page 1-147 are **Ex. PW 20/A-2 (Colly.)**. He referred to note dated 21.03.2007 at note

sheet page 3. One letter dated 22.03.2007 as is available at page 19 on correspondence side in file Ex. PW 20/A (Colly.) is **Ex. PW 20/B-1**. He also referred to note sheet dated 31.03.2007 as is available at note sheet page 6. He identified the list of 13 companies who had entered into MOU for IPP with Government of Odisha as is available from page 29-31 to be the one which was put up by him vide his note dated 31.03.2007. The list is **Ex. PW 20/B-2**. He further identified the detailed chart containing information about various applicant companies for coal block (power plant) as is available at page 20 to be the other list which was also put up by him vide his note dated 31.03.2007. The list is **Ex. PW 20/B-3**.

247. In cross-examination, he admitted that vide letter dated 19/28-02-2007 of MoC, 10 number of boxes containing applications of various applicant companies were received by Government of Orissa. The letter dated 19/28-02-2007 of MoC is **Ex. PW 20/DX-1**. He admitted that in the list Ex. PW 20/B-2, there is no reference to 40 hectares of land against the name of M/s Navbharat Power (P) Ltd at serial number 3. He told that he had not dealt with letter dated 14.08.2007 of Orissa Industrial Infrastructure Development Corporation [available from page 109-112 in file Ex. PW 20/A (Colly.)]. The letter is **Ex. PW 20/DX-2 (Colly.)**. He was also confronted with his statement dated 04.06.2014 u/s 161 Cr. PC from portion A to A. The same is **Ex. PW 20/DX-3**.

248. In cross-examination on behalf of accused public servants, he was questioned about the process of verification by Govt. of Orissa.

249. **PW-21** is **Sh. Sanjit Kumar Mohanty.** He is also from Govt. of Odisha. He was also posted in Energy Department. He deposed about scrutiny of the applications for allocation of coal blocks received from MoC. He was part of the Committee constituted by Department of Energy to scrutinize the information submitted by 13 IPPs i.e. the IPPs which had signed MOU with State Government of Orissa.

250. He deposed that they had compiled in a tabular form the various information received from the two Government Departments of Odisha, mentioning therein the names of said IPPs and submitted the said information to Additional Secretary. The office order dated 13.08.2007 available at page 108 in file Ex. PW 20/A (Colly.) regarding constitution of the Committee is **Ex. PW 21/A**. The letter dated 10.08.2007 available at page 107 vide which information regarding water allotted to 13 MOU signed IPPs was sought from Water Resources Department, Government of Orissa is **Ex. PW 21/B**. The letter dated 10.08.2007 available at page 106 vide which information regarding land allotted to 13 MOU signed IPPs was sought from Managing Director, IDCO, Bhubaneshwar is **Ex. PW 21/C**. The letter dated 06.08.2007 available at page 100-101, vide which the 13 MOU signed IPPs were asked to furnish information in the

enclosed format and were also asked to attend a meeting in the office chamber of Commissioner-cum-Secretary, Energy Department on 08.08.2007 is **Ex. PW 21/D (Colly.)**. The letter dated 14.08.2007 of IDCO as is available from 109-112 Ex. PW 20/DX-2 (Colly.) vide which information about land allotted to 13 MOU signed IPPs was received by Department of Energy.

251. As regard M/s Navbharat Power Pvt. Ltd. the column regarding land transferred and in possession of company was blank and as regard status of acquisition of land it was stated as under:

> *"Draft 4(1) papers to be sent to Govt. by LAO, Dhenkanal for notification*"

252. The report of the scrutinizing committee as is available from page 128-135 in file Ex. PW 20/A (Colly.) is **Ex. PW 21/E (Colly.)**.

253. As regard land acquired or in possession of M/s Navbharat Power Pvt. Ltd. it was stated by us in List A as "Nil, applied to IDCO". The said information was furnished by them as per the report received from IDCO. The letter dated 05.09.2007 available from page 140-147 in file Ex. PW 20/A (Colly.), vide which the information regarding MOU signed IPPs companies in 3 lists i.e. List A, B and C was communicated to MoC is **Ex. P-229 (Colly.).** Another letter dated 05.09.2007 as is available in file of MoC available in D-14 from page 292 to

299is **Ex. P-219** (Colly.). He deposed about handing over file to the IO vide production-cum-seizure memo dated 08.10.2012 as is available in D-131. He had handed over file bearing No. PPD-TH-112/2011 to Insp. K.L. Moses. The memo dated 08.10.2012 is **Ex. PW 21/F (D-131)**. The file is **Ex. PW 20/A (Colly.) (D-**29) .

254. Nothing substantial has come out in cross-examination.

255. **PW-22** is **Sh. Naba Kumar Nayak.** In the year 2007, he was posted as Joint Secretary in the Department of Steel and Mines, Government of Odisha. The Energy Department Government of Odisha had formed a committee headed by Additional Secretary, Department of Energy with Joint Secretary Steel and Mines and Joint Secretary Industry as Members thereof. He was also a member of the said Committee.

256. He told that depending upon the prevailing circumstances and papers available, the Committee decided that only the companies which had signed MOU with State Government of Odisha would be recommended for allocation of captive coal blocks. The said companies were from Steel Sector, Power Sector as well as from Cement Sector. The committee accordingly submitted its report to Energy Department, Government of Odisha.

257. The notification dated 16.06.2007 available at page 40 in file Ex. PW 20/A (Colly.) (D-29) vide which the committee comprising of Sh. S.K. Paikaray, Sh. D.P. Ray and him was constituted is **Ex. PW 22/A**. The screening committee report available at page 72-81 in Ex. PW 20/A is **Ex. PW 22/B (Colly.)**.

258. The committee had recommended that as 13 companies had signed MOU with State Government for setting up independent power plant and had also entered into power purchase agreement with GRIDCO prior to 30.09.2006 so the State Government might recommend all 13 companies as per Annexure-II of the report for allotment of coal blocks.

259. During cross-examination, his statement u/s 161 Cr. PC dated 03.06.2014 was marked as **Ex. PW 22/DX-1**. He told that as the State Government had signed MOU with M/s NPPL and other companies, it was natural for it to promote such companies in setting up the proposed projects by way of assisting in land acquisition, water allocation and recommendations of a coal block. He also told that since the companies had executed MOU with State Government so the committee presumed that the said companies had capacity to establish the proposed projects. All the MOUs so executed by State Government were taken into consideration by the State Government.

260. He admitted that in the MOU **Ex. P-71**, the following clauses are mentioned.

'(iv) The MOU shall remain valid for a period of three years from the date of signing and may be further extended by Government on a request made by NPPL in this regard. However, no such extension shall be considered unless NPPL has made substantial progress on implementation of the project in terms of the project development activities covering land acquisition statutory approvals of project contracts, etc.

(v) The MOU may be terminated by either party in the event of failure of the other party to fulfill the terms and conditions of the MOU or inadequate progress of implementation without any obligations to either party, by giving three months notice in writing. Further, during this period, the MOU can be terminated by mutual consent of the Parties if it is jointly agreed that due to certain insurmountable reasons, it is not possible to proceed further with the Project.

(vi) NPPL shall be required to produce document towards financial closure for phase-I within 18 months from the signing of this MOU. Financial closure for the second phase should be produced within 36 months from the date of signing of the MOU.

(vii) Declared milestones will be prepared by the NPPL in consultation with the Government and the Government will consider the progress of implementation of these milestones like acquisition of land, establishment of water and coal linkage etc. while calculating the effective time available to the NPPL for commissioning of the project.

(viii) In the event of non-implementation of the project or part thereof, the corresponding support/commitment of the Government indicated in the MOU with regard to the Project and coal blocks/linked coal mines, incentives and concessions of the Government in particular shall be liable to be cancelled.

(ix) It shall be obligatory for NPPL to furnish information required by the Government relevant to planning, formulation, lay out, financing and implementation of the Project as wee as the financial and management status and performance of the promoters to the Government or to its nominated agency as and when so required as expeditiously as

possible."

Govt. of Maharashtra

261. **PW-24** is **Vinesh Kumar Jairath.** He was Principal Secretary Industries in Government of Maharashtra in the year 2007. Department of Mines was also under the purview of Department of Industries. Accordingly, the coal block allocation matters were dealt with by him during the said period.

262. On 13.09.2007, he had attended one meeting of 35th Screening Committee at Shastri Bhawan in MoC office in Delhi as a representative of Government of Maharashtra. He told that on that day after reaching Delhi at around 12.30 PM, he went to Shastri Bhawan office of MoC and reached there at around 02.00/02.15 PM. He straight away went to the meeting hall where some people were already present. After some time meeting started and Joint Secretary (coal) stated that Secretary (coal) would be joining in few minutes. Sh. K.S. Kropha Joint Secretary (coal) thereafter gave some brief introduction of the purpose of meeting. He however requested Sh. Kropha that as there was only one coal block situated in State of Maharashtra under consideration in the said meeting so the same might be taken up first for consideration as he had some urgent work to attend in Mumbai in the evening and accordingly wanted to go back. The said coal block situated in State of Maharashtra was

Lohara West and Extension Coal Block.

263. During the meeting Secretary (Coal) Sh. H.C. Gupta and some other officers of MoC were also present beside Joint Secretary (coal) as above. Sh. Vishwash Sawakhande Director Mining, Government of Maharashtra was also present. He told that he stayed in the said meeting for around 30-35 minutes only till about 03.00 pm and immediately left for the Airport and took his return flight to Mumbai at around 04.30/04.45 pm. The meeting was chaired by Secretary Coal Sh. H.C. Gupta.

264. He told that during the course of introduction given by Sh. K.S. Kropha it was stated as to which all coal blocks are there in the Agenda for consideration. It was also stated that views/information from the State were also sought qua those coal blocks and the financial strength of the applicant companies has been got independently verified from CIL. Thereafter he requested for taking up Lohara West and Extension Coal Block first for discussion.

265. He told that after discussion on the abovesaid coal block, he sought leave to go back to Mumbai and upon which he was asked to sign a tabular sheet on which name of Lohara West and Extension Coal Block was mentioned and he was also asked to sign similar other tabular sheets where names of other coal blocks which were under consideration were mentioned. He questioned that since he was concerned only with Lohara West

and Extension Coal Block so why his signatures were being obtained on tabular sheets containing names of coal blocks situated in other states. Ii was told to him that as the other members present would be signing the tabular sheet for Lohara West and Extension Coal Block so he was also supposed to sign the tabular sheets qua other coal blocks situated in other states. He accordingly signed all the said tabular sheets and accordingly his signatures were at number one on all such tabular sheets as he was the first one to leave the meeting hall. He had also signed on an attendance sheet.

266. He also told that in the meeting there was a small folder on the table before the members and which contained the Agenda beside some papers. He did not remember as to what all said papers were. However, during the time when discussion qua Lohara West and Extension Coal Block took place no comparative chart qua various applicant companies was made available to him. He also did not remember that any report/chart containing any verification report of financial strength of applicant companies as was stated to have been carried out by experts from CIL was supplied to them in the meeting.

267. At this stage after seeing attendance sheet of Screening Committee meeting held on 13.09.2007 Ex. PW 18/H-1 (D-10) witness has identified his name, designation and signatures at sl. no. 12 i.e. at point P-2 and stated that the same has been written in his own hand. Witness also identified name

and initials of Sh. Vishwas Shawakhande at sl. no. 16 i.e. at point P-3 stating that as Sh. Vishwas Shawakhande worked under him so he is well acquainted with his handwriting and signatures having seen him writing and signing during the course of discharge of official duties. He identified his signature on the attendance sheet and tabular sheets/recommendation sheets.

268. In cross-examination, one letter dated 21.02.2007 [available at page 15 in file Ex. PW 18/F (Colly) (D-8)] was marked as **Ex. PW 24/DX-1**. Another letter dated 28.02.2007 [available at page 18 in file Ex. PW 18/F (Colly) (D-8)] similarly marked is **Ex. PW 24/DX-2**. And letter dated 23.05.2007 [available at page 35 in file Ex. PW 18/F (Colly) (D-8)] is **Ex. PW 24/DX-3**. Further, letter dated 28.02.2007 [available at page 17 in file Ex. PW 18/F (Colly) (D-8)] is **Ex. PW 24/DX-4**. The application of Adani Power Private Limited [available from page 170-173 in file D-10] is **Ex. PW 24/DX-5 (D-10)**.

Navabharat Power Pvt. Ltd.

269. **PW-27** is **Sh. P.N.S. Bhaskara Rao.** He had worked in NPPL from August 2006 till July 2010, as senior Vice President (Finance) at Hyderabad.

270. He told that accused YHCP/A-1 was looking after the day to day functioning of M/s NPPL. As Senior Vice President (Finance) of the company, his duty was to take care of

all financial matters such as applying to the financial institutions for grant of loan and also in finalizing the accounts of the company. Two persons were working under him in the finance department. He told that NPPL/A-3 had applied to MoC for allocation of captive coal block for its proposed power plant. In connection with submission of said application, he was asked to compile financial data of the company and thus he was aware about submission of such application by M/s NPPL to MoC. Accordingly the balance sheet details were provided by him including the financial data of the promoter companies and also the past financial history of the promoter companies. YHCP had asked him to provide the said data.

271. He was also aware about the company called M/s Globeleq. In November 2006, a MOU was executed between M/s NPPL and M/s Globeleq towards participation in the equity of M/s NPPL by M/s Globeleq as a strategic investor. The said MOU was executed at Delhi. He was present at the time of execution of the said MOU in his capacity as Senior Vice President (Finance) and YHCP had asked him to be present at that time. He identified signature of A-1 YHCP, Sh. Arun Sen and Sh. D. Ashok on MOU dated 13.11.2006 [Ex. PW 2/B (Colly.) (D-5)]. The said MOU was executed among Globeleq Singapore Pvt. Limited, Nava Bharat Ventures Limited, Malaxmi Group Private Limited and Navabharat Power Private Limited.

272. In the said MOU the following Clause was

mentioned in Clause 4.1 as regard validity of the said MOU:

> *"**4.1 Term.** This Agreement shall be in effect from the Effective Date until the earlier to occur of the expiry of a period of ninety (90) Business Days from the Effective Date or an election by the Existing Shareholders to abandon development of the Project pursuant to Section 8 of this Agreement, unless otherwise extended by mutual agreement of the Parties. (the "Term")."*

273. He told that the term of the said MOU was never extended beyond what was mentioned in the initial MOU itself. No share holders agreement was ever executed between the executants of said MOU as was mandated in the MOU.

274. He identified signature of A-1 on covering letter dated 12.01.2007 to the application of M/s NPPL as was submitted to MoC seeking allotment of Rampia captive coal mining block i.e. Ex. P-60 (D-4). PW-27 also identified signatures of A-1 on the application form of M/s NPPL submitted alongwith the aforesaid covering letter. The application form as above is already exhibited as Ex. P-61.

275. In the said application form Ex. P-61, the financial information is mentioned at points 8, 9 and 10 as under:

> *8. TURNOVER IN THE LAST 3 YEARS (Amount in Crores) Promotor & Globeleq:*

03-04	*04-05*	*05-06*
494.42	*1685.36*	*2490.72*

9. PROFIT IN LAST 3 YEARS (Amount in Crores)

Promotor & Globeleq:

03-04	*04-05*	*05-06*
60.25	*177.6*	*188.74*

10. NETWORTH (as on 31.03.06) (Amount in Crores)

Promotor & Globeleq:

05-06
2490.72

276. He told that the figures so mentioned regarding turnover, profit and net-worth are that of M/s Navabharat Ventures Limited and Globeleq. Upon being asked about the connection of M/s Navabharat Ventures Limited with M/s NPPL witness stated that Sh. D. Ashok and Sh. P. Trivikrama Prasad were from Navbharat Ventures Limited. Upon being asked as to who were the promoters of M/s NPPL, witness after seeing the detailed project report Ex. P-66 qua 2240 MW Malaxmi Mega Thermal Power Project as was enclosed with application of M/s NPPL i.e. Ex. P-61 pointed out the following facts mentioned at point 1 in the detailed project report under the title "background and objective".

"1. Background and Objective

Nava Bharat Ventures Ltd *formerly known as "Nava Bharat Ferro Alloys Ltd (NBFA)" is a multi-Division company with Corporate Headquarters in Hyderabad (India) and manufacturing units in Andhra Pradesh and Orissa. Nava Bharat Ventures Ltd is a leading manufacturer and exporter of Ferro alloys in the country and is one of the largest fully integrated manufacturers of Ferro alloys in India with Captive Power Plants. The Company diversified into other product lines like manufacture of sugar and its by-products and power generation. Nava Bharat Ventures Ltd also has developed, executed and is operating two captive coal fired power plants of total capacity of 80MW in Andhra Pradesh and one plant of 30 MW in Orissa.*

Nava Bharat Ventures Ltd and the Malaxmi Group a company promoted by Mr. Y. Harish Chandra Prasad, has set up a new joint venture called "Malaxmi NBFA Ventures Pvt. Ltd". For the purpose of implementation of 2240 MW Malaxmi Mega Thermal Power Project in the state of Orissa, Malaxmi NBFA Ventures Pvt Ltd has established a Special Purpose Vehicle (SPV) called ***Nava Bharat Power Pvt. Ltd.*** *(herein referred as* ***NPPL****). The Power Project will be constructed in two phases i.e. 1040MW in Phase-I and 1200 MW in Phase-II."*

277. Upon being asked as to how the various figures of financial strength i.e. turnover, profit and networth as are mentioned in application Ex. P-61, were calculated, witness stated that the same were calculated on the basis of audited balance sheets of M/s Navabharat Ventures Ltd. and M/s Globeleq i.e. Ex. P-65 and Ex. P-68 respectively. He knew about company M/s Suez Energy International Pvt. Ltd. He identified signature of A-1 on form **for feed-back Ex. P-93 (**available at page 187-188 in D-7). In the said feed-back form, the net-worth of applicant company M/s NPPL as on 31.03.2006 is mentioned

at point 4 as under:

"4. Net worth (as on 31.03.06) : Nava Bharat : Rs. 307.12 Crores

SUEZ : Rs. 1,05,740 Crores

(December 2006)"

278. As a presentation was to be made before the Screening Committee on behalf of company M/s NPPL with respect to the application submitted to MoC for seeking allocation of a captive coal block so towards preparation of said presentation the financial data of M/s Navabharat Ventures Limited and M/s Suez Energy International Pvt. Ltd. was asked for from him by the Technical Department of the company M/s NPPL. Accordingly on the basis of audited balance sheets of the company M/s Navabharat Ventures Ltd. and the balance sheets of Suez Energy International Pvt. Ltd as were available with us having been provided by M/s Suez Energy International Pvt. Ltd., he had provided the said financial data.

279. Upon being shown the presentation Ex. PW 2/D (Colly.) (D-17) witness stated that he does not remember the details of the said figures of the two companies as were provided by him to the technical department towards preparation of the presentation but further volunteered that it must be the same figures. He did not remember as to whether any shareholders agreement was ever executed between M/s

NPPL and M/s Suez Energy International Pvt. Ltd.

280. In cross-examination on behalf of A-1, he told that while working in NPPL, he was using two E-mail IDs i.e. pns@malaxmi.in and pnsbr@rediffmail.com.

281. He admitted sending letter dated 19.09.2006 [Ex. PW 2/F (Colly.) (D-146)] to General Manager, PFC requesting it to continue the process of appraisal and sanction of financial facilities for the proposed power project. He told that along with the said letter, certain annexures [available from page 2-14 in D-146 as part of Ex. PW 2/F (Colly.)] were also sent. The copy of a letter dated 06.10.2006 addressed to the witness himself under the signatures of Sh. Manoj Sharma Senior Manager, PFC is **Ex. PW 27/DX-1**.

282. Upon being shown copy of a letter dated 01.11.2006 of M/s Globeleq addressed to PFC limited witness admitted that after letter dated 06.10.2006 of PFC limited i.e. Ex. PW 27/DX-1 was forwarded by M/s NPPL to M/s Globeleq and in response thereto the letter dated 01.11.2006 was received from M/s Globeleq in M/s NPPL. Witness further admitted that the said letter of M/s Globeleq dated 01.11.2006 was subsequently forwarded by him to PFC vide E-mail. I had also sent a copy of the said E-mail to Sh. Y. Harish Chandra Prasad at his E-mail ID harish@malaxmi.in.

283. A copy of print out of E-mail dated 02.11.2006 sent by witness to Manoj Sharma at his E-mail ID manojsharma@pfc.delhi.nic.in with a certificate u/s 65 B Indian Evidence Act are **Ex. PW 27/DX-2 (Colly.)**. Copy of letter dated 01.11.2006 of M/s Globeleq as is available in additional documents i.e. AD-1 (Colly.) was also exhibited as **Ex. PW 27/DX-2A**. He also stated that vide the E-mail dt. 28.11.2006 sent by him to one Sh. Vijay Sirse of M/s Globeleq he had sought various financial details of M/s Globeleq. A copy of the said E-mail was also sent to Sh. Y. Harish Chandra Prasad. The print out of the E-mail along with certificate u/s 65B Indian Evidence Act as above is **Ex. PW 27/DX-3 (Colly.)**.

284. Upon being shown a letter dated 30.11.2006 available as annexure-IV in documents AD-1 (Colly.) witness stated that vide the said letter issued under his signatures at point A he had sent various documents to M/s PFC limited. The documents so sent were as under:

1. Letter from M/s Globeleq as to the equity commitment.
2. Copy of audited accounts for the year 2005.
3. Copy of Board Resolution of Nava Bharat Ventures.

285. Witness also identified the various documents enclosed with the said letter and as are available in Annexure-III in additional documents AD-1 (Colly.) to be the same documents,

which were sent by him. The letter dated 30.11.2006 along with its enclosures as above has been exhibited as **Ex. PW 27/DX-4 (Colly.)**. He admitted that these documents belonging to M/s Globeleq were received by him through email from Globeleq. A printout of the said email dated 29.11.2006 alongwith annexures is Ex. PW-27/DX-4A (Colly.). One letter dated 01.12.2006 [Part of Ex. PW-2/F (Colly.), D-146, Pg. 17-21] was sent by PW-27 to PFC and the same is **Ex. PW 27/DX-5**.

286. PW-27 had also done correspondence with M/s Suez in connection with the talks that took place between NPPL and Suez. Copy of one email dated 18.05.2007 alongwith enclosures and certificate u/s 65-B Evidence Act is **Ex. PW 27/DX-6 (Colly.)**.

287. Similarly, copy of email dated 25.05.2007 along with its enclosures and certificate u/s 65B Evidence Act is **Ex. PW 27/DX-7 (Colly.)**. Printout of email dated 03.06.2007 along with its trailing mails and certificate u/s 65B Evidence Act received from Suez is **Ex. PW 27/DX-8 (Colly.)**. Printout of email dated 08.06.2007 along with its enclosures and certificate u/s 65B Evidence Act sent by PW-27 to Suez is **Ex. PW 27/DX-9 (Colly.)**. Printout of another email dated 09.06.2007 along with its enclosures and certificate u/s 65B Evidence Act which was sent to Suez and which contained application forms of NPPL qua various coal blocks including Dipside of Rampia coal block is **Ex. PW 27/DX-10 (Colly.)**. Printout of email dated 11.06.2007

along with its trailing mails and certificate u/s 65B Evidence Act received from Suez is **Ex. PW 27/DX-11 (Colly.)**. Printout of email dated 14.06.2007 along with certificate u/s 65B Evidence Act received form Suez is **Ex. PW 27/DX-12 (Colly.)**. Vide this email Suez had permitted NPPL to download its annual report for 2006. Printout of another email dated 22.06.2007 along with enclosures and certificate u/s 65B Evidence Act received from Suez is **Ex. PW 27/DX-13 (Colly.)**. Printout of email dated 20.07.2007 along with trailing mail and certificate u/s 65B Evidence Act sent to Suez is **Ex. PW 27/DX-14 (Colly.)**. Printout of email dated 24.07.2007 along with enclosure and certificate u/s 65B Evidence Act received from Suez is **Ex. PW 27/DX-15 (Colly.)**. Printout of email dated 31.07.2007 along with certificate u/s 65B Evidence Act received from Suez is **Ex. PW 27/DX-16 (Colly.)**. Printout of another email dated 22.06.2007 received from Rajaraman by the witness at his email ID pns@malaxmi.in is **Mark PW 27/P-1.**

288. In cross-examination on behalf of A-2, he admitted that the employees of NPPL were using the domain name "Malaxmi.in" in their email IDs. He told that A-2/P. Trivikrama Prasad never interfered in the day to day affairs of M/s NPPL.

289. **PW- 28 Sh. K.V. R. Raju** had also worked in NPPL. He joined in January 2008 as Company Secretary and worked there till July 2010.

290. He told that while the day to day affairs of the company were looked after by Managing Director cum Vice Chairman of the Board i.e. Sh. Y. Harish Chandra Prasad, the Chairman of the Board of Directors i.e. Sh. P. Trivikrama Prasad used to attend the Board meetings beside also chairing the said Board meetings. As Company Secretary, he was responsible for conducting the Board meetings, general body meeting of shareholders, preparation of minutes of meetings, looking after share allotment matters, share transfers, appointments of Director, if any, and such other like duties. He proved the Minutes Book [available in D-19] of the meetings of Board of Directors of M/s NPPL. The minute book is **Ex. PW 28/A (Colly.)** [documents Ex. P-104 (Colly.) is thus part of **Ex. PW 28/A (Colly.)**].

291. In cross-examination on behalf of A-2, the print out of Form-32 qua appointment of PW-8 as Company Secretary was marked as **Ex. PW 28/DX-1.** He admitted that towards the end of the year 2009, some dispute had arisen between P. Trivikrama Prasad/A-2 and Y. Harish Chandra Prasad/A-1 and some correspondence had also taken place between them with copies having been addressed to him or he having communicated the message of one to another. The said correspondence pertained to transfer/encumbrance of equity shares of M/s NPPL to Essar Power Limited.

292. **PW- 30** is **Sh. Godavarthi Veera Bhadra Chowdary.**

He is a practicing Chartered Accountant since year 1988. His firm's name is M/s G.P. Associates at Hyderabad. His firm was the statutory auditor of M/s NPPL since year 2005-06 to 2009-10.

He told that the net-worth of a company is calculated on the basis of their books of accounts by applying the formula as under:

		Paid up share capital
		+
		Share application money
Networth	=	+
		Reserves and surpluses
		--
		Accumulated losses

293. He told that he had handed over some balance sheets to CBI at their office at New Delhi. The seizure memo dated 05.11.2012 available in D-121 is **Ex. PW30/A (D-121)**. The following annual reports of M/s NPPL for different years were handed over to Inspector K.L. Moses of CBI:

i. Self attested Photocopy of the First Annual Report (2005-2006) of M/s Navabharat Power Pvt Ltd containing 11 sheets.

ii. Self attested Photocopy of the Second Annual Report (2006-2007) of M/s Navabharat Power Pvt Ltd containing 10 sheets.

iii. Self attested Photocopy of the Third Annual Report (2007-

2008) of M/s Navabharat Power Pvt Ltd containing 16 sheets.

iv. Self attested Photocopy of the Fourth Annual Report (2008-2009) of M/s Navabharat Power Pvt Ltd containing 17 sheets.

v. Self attested Photocopy of the Fifth Annual Report (2009-2010) of M/s Navabharat Power Pvt Ltd containing 27 sheets.

294. These are Ex. P-115 to 119. Vide letter dated 29.04.2013 **Ex. PW 30/B (D-144),** he had provided the details of funds invested into M/s NPPL by (i) M/s Malaxmi Energy Ventures (India) Pvt Ltd; (ii) M/s Navabharat Projects Limited; (iii) Sh. Y. Harish Chandra Prasad and (iv) Sh. P. Trivikrama Prasad. He also told that in the FY 2007-08 the fixed assets of the company were Rs. 91,68,272 (Gross Block); in the FY 2008-09 the fixed assets of the company were Rs. 93,19,605 (Gross Block); and in the FY 2009-10 the fixed assets of the company were Rs. 78,36,335 (Gross Block). He told that by the term "Fixed Assets" is meant availability of land, building, furniture and fixtures, vehicles, office equipments, computers, air conditioner and such like items. He had also calculated the net-worth of the company M/s NPPL for different financial years when CBI had made enquiries from him as under:

Sl. No.	Financial Year	Net Worth (Rs.)
1	2005-2006	Rs. 1,00,000/-
2	2006-2007	Rs. 1,00,000/-

3	2007-2008	Rs. 1,82,609/-
4	2008-2009	Rs. 18,04,85,707/- (Inclusive of Share application money of Rs. 17,89,15,800/-)
5	2009-2010	Rs. 22,54,75,083/- (Inclusive of Share application money of Rs. 4,58,95,800/-

295. There is no cross-examination.

ESSAR Power Ltd.

296. **PW- 29 Sh. Sudip Rungta** is from EPL. He worked there from July 2004 or July 2005 till April 2017. He told that he had participated in the acquisition process of the NPPL company on behalf of Essar Group. He told that Sh. Vikas Saraf had initiated the initial discussions and in principle it was agreed that Essar Group could acquire M/s NPPL. Sh. Vikas Saraf accordingly signed a "Term Sheet" with one Sh. Y. Harish Chandra Prasad, who through Malaxmi Energy Ventures (India) Pvt Ltd owned 50% equity in M/s NPPL so as to acquire 50% shareholding in M/s NPPL.

297. He deposed that thereafter the due diligence process was commenced and the same was led by him along with other

officer of EPL. They had also appointed J. Sagar and Associates i.e. a Law firm to conduct legal due diligence process on behalf of Essar Power Limited. We also appointed Ernst & Young to conduct the financial due diligence. After completion of due diligence process as above, the definitive documents were worked upon. During the period when due diligence process was in progress another term sheet was executed with PTP and on behalf of Essar Power Limited it was executed by Sh. V. Suresh so as to acquire the balance 50% shareholding in M/s NPPL as Sh. P. Trivikrama Prasad was holding the same.

298. Subsequently in about July 2010 the various definitive documents were duly executed and the respective documents were signed both by Sh. P. Trivikrama Prasad and Sh. Y. Harish Chandra Prasad and on behalf of Essar Power Limited, he signed the said documents. He identified the relevant documents also i.e. share subscription agreement dated 06.11.2009 **Ex. P-109 (D-32)**; term-sheet **Ex. P-138 (D-196)**; another term-sheet **Ex. P-173 (D-197)**; share purchase agreement dated 12.07.2010 **Ex. P-110 (Colly.) (D-33)**; another share purchase agreement dated 12.07.2010 **Ex. P-111 (Colly.) (D-34);** share purchase agreement dated 12.07.2010 **Ex. P-112 (Colly.) (D-35)**; payment details **Ex. P-169 (D-36)**; **Ex. P-113 (D-37)** and **Ex. P-114 (D-38)**. He told that a total sum of Rs. 168,90,83,574/- was paid to M/s Navabharat Projects limited for its shareholding and a sum of Rs. 916426/- was paid to PTP towards his shareholding and the details of the said payment are mentioned in

Ex. P-169 (D-36). Similarly, a total sum of Rs. 50 crores was paid to YHCP for his shareholding and a sum of Rs. 12,17,00,000/- was paid to Malaxmi Energy Ventures Pvt. Ltd. towards his shareholding and the details of the said payment are mentioned in Ex. P-113 (D-37).

299. He told that as per the assessment carried on behalf of EPL, the total valuation of M/s NPPL was arrived at Rs. 264.60 crores. The aforesaid valuation was arrived at by using the discounted cashflow method. They had used the future potential earnings and discounted the same to arrive at the net present value. A Court question was put to the witness in which he explained the factors which were considered for calculating the value of the company. This question and its answer will be reproduced in later part of the judgment at the relevant place. He also identified various seizure memos and documents handed over vide those seizure memos.

300. During cross-examination on behalf of A-1, copy of one prospectus titled "ESSAR ENERGY PROSPECTUS" which was the prospectus of company Essar Energy Plc released at the time of its listing at London Stock Exchange was shown to the witness and was marked as **Mark PW-29/PA-1**. He told that the two proposed power projects were code named internally by Essar Group as "Neptune-I and Neptune-II" representing the two phases of the proposed power project of M/s NPPL, code named as "Neptune".

301. In cross-examination on behalf of A-2, one letter dated 23.11.2009, addressed to Malaxmi Energy Ventures (India) Pvt. Ltd. available at page 200 in D-160, was marked as **Ex. PW 29/DX-1 [Part of Ex. PW 1/L (Colly.) (D-160)]**.

DoPT, Govt. of India

302. **PW-31** is **Sh. Raj Kishan Vatsa.** He was examined to prove the grant of sanction for prosecution in respect of A-5 and A-6 under PC Act.

303. He told that Department of Personnel & Training (DoPT) is the cadre controlling department of IAS Officers. Central Government through DoPT is the appointing and removing authority of IAS Officers. The Prime Minister himself was the Minster-in-Charge of DoPT and Dr. Jitender Singh was the Minister of State, DoPT in 2015.

304. He deposed that whenever any request for considering according of sanction to prosecute any IAS officer is received in DoPT from CBI then first of all the request so received is checked as to whether the same is complete and is in accordance with the procedure specified by DoPT or not. After such a request is found to be complete and in proper order then they in DoPT process the said request. In case any deficiency is found in the said request either qua any document or any any procedural aspect then CBI is requested to fulfill the said

requirement. After such a request is processed in DoPT then it gets routed through the various officers in DoPT and finally after approval from secretary DoPT the file is sent to CVC for their advice. After receipt of the advice of CVC then the entire file containing all the records along with the views of their own department is processed further to be sent to PMO through the office of Minister of State. After the file along with all records reaches PMO then the matter is considered by the competent sanctioning authority i.e. the Prime Minister and after his decision either to grant sanction or to refuse the file is again received back in DoPT through the same channel. Thereafter in DoPT the sanction order is prepared, if the competent sanctioning authority has decided to accord sanction and in case grant of sanction has been refused then also necessary orders in this regard is prepared in DoPT. Normally, approval of all such sanction orders so prepared is taken from Joint Secretary DoPT and in case Joint Secretary desires then he may put up the file before Secretary DoPT. After approval of the said sanction orders is accorded as above then the necessary sanction orders are issued under the signatures of Under Secretary, who is authorized to authenticate the same.

305. He deposed that in the present case sanction to prosecute two IAS officers i.e. Sh. K.S. Kropha, the then Joint Secretary, MoC and Sh. K.C. Samria, the then Director, CA-I, MoC was accorded by the competent sanctioning authority and after approval of the draft sanction orders by his senior officers,

he had issued the two formal sanction orders dated 21.07.2015 with respect to both the aforesaid public servants. The sanction order dated 21.07.2015 issued against Sh. K.S. Kropha is **Ex. PW 31/A**. The sanction order dated 21.07.2015 issued against Sh. K.C. Samria is **Ex. PW 31/B**.

306. In cross-examination on behalf of A-5 and A-6, he told that the process to consider according of sanction to prosecute K.S. Kropha and K.C. Samria in the present case had been dealt with by DOPT only in file No. 107/1/2015 AVD-I (the file was brought in the Court by the concerned official of DOPT).

307. He denied that the file does not contain any document which could show as to what all documents were sent by CBI to DOPT He pointed out to a list of documents (available from page 275-283) and the same is **Ex. PW 31/DX-1**. The list of witnesses is **Ex. PW 31/DX-2**.

308. He denied that the file in question had been tempered with or that documents from other files had been inserted into it. However, it was noticed that in the file, after page 45 in notesheet portion, the serial number 21-23 had come to be mentioned instead of serial number 46-48. One note dt. 19.07.2015 was there at page number 21. The said note sheet dated 19.07.2015 of Sh. Sanjay Kothari is **Ex. PW 31/DX-3.** He was asked to point out as to whether the seven reminders dated

18.03.2015, 27.03.2015, 24.04.2015, 12.05.2015, 14.05.2015, 05.06.2015 and 06.07.2015 (Flag Y) as had been referred to in the note dated 19.07.2015 of Sh. Sanjay Kothari were available in the file to which he answered that as 2-3 matters were received from CBI, various reminders were sent for comments of MoC/CBI, so office copy of said reminders might be available in other files.

309. One check-list about documents sent to PMO is **Ex. PW 31/DX-4**. A check-list of items of the present case from page 166-167 as part of a communication dated 27.01.2015 of CBI addressed to the witness himself is **Ex. PW 31/DX-5 (Colly.).** One statement of Sh. K.S. Kropha having been recorded by Inspector Sanjay Dubey in case RC No. 219 2012 E 0016 running on page 198, 199, 197, 198 and 199 is **Ex. PW 31/DX-6**. One other page in the file which is also bearing no. 197 i.e. a letter dt. 18.07.2015 addressed to Sh. Anil Sinha by Sh. Jishnu Barua is **Ex. PW 31/DX-7**. He admitted that the present case pertains to RC No. 219 2012 E 0011.

310. He admitted that from page 168-190 there was a photocopy of representation of K.C. Samria addressed to Sh. Sanjay Kothari, Secretary, DoPT and which pertained to another coal block allocation matter i.e. one relating to M/s Kamal Sponge Steel and Power Ltd. He explained that many matters were being processed together so this might have happened. His note dt. 19.07.2015 proposing declining sanction is **Ex. PW**

31/DX-8.

311. He told that the file came back to him on 21.07.2015 i.e. after sanction to prosecute was accorded by the competent authority. He admitted that in the PMO ID note dated 21.07.2015 issued under the signatures of Sh. V. Sheshadri, Director, PMO and as addressed to Secretary DOPT, it was not mentioned that Prime Minister had examined or considered the record of the present case or the material facts before according sanction to prosecute. He further admitted that it was also not mentioned in the said ID note that while according to sanction to prosecute, the competent authority had come to the conclusion that all ingredients of the offence u/s 13 (i) (d) P.C. Act was made out against both the accused persons. The said ID note is **Ex. PW 31/DX-9.** He also admitted that in the ID note it was mentioned that Prime Minister had approved the proposal of DOPT for grant of sanction for prosecution against the two officers as advised by CVC.

312. He admitted that no order dated 30.10.2014 passed by the Court in the present matter is available in the record of the present case. He admitted that after receipt of ID note dated 21.07.2015 Ex. PW 31/DX-9, the file was never sent back to PMO. He admitted that the draft sanction order and the final sanction order were prepared after receipt of aforesaid ID note from PMO and same were not sent to PMO. Upon being asked as to why in the sanction order Ex. PW 31/B of Sh. K.C. Samria

there was reference of 36th Screening Committee and order dated 13.10.2014 and 30.10.2014 while no such orders had been passed in the present case, witness expressed his inability to explain the same. Similar was his answer with reference to orders dated 13.10.2014 and 30.10.2014 in the sanction order Ex. PW 31/A issued against Sh. K.S. Kropha.

313. The section 19 referred to in the two sanction orders is of P.C. Act, 1988. As per my understanding the words referred to in the two sanction orders i.e. "*Under other provisions of law*" refers to other acts also i.e. other than P.C. Act.

314. He admitted that CBI in its proposal had not asked for any sanction u/s 197 Cr.PC for any offence committed under IPC by any of the two accused persons. Upon being asked as to in which document it was mentioned that Sh. K.S. Kropha or Sh. K.C. Samria had allegedly favoured the accused company in allocating Rampia and Dipside Rampia coal block in Orissa to the company M/s NPPL, and which fact has been mentioned by the witness in the two sanction orders Ex. PW 31/A and Ex. PW 31/B, witness pointed out to the CVC advice available from page 220-225 and which is **Ex. PW 31/DX-10**. He denied that the sanction orders in this case had been issued by copying the matter from another case relating to M/s KSSPL. The original file of DoPT was kept on record as **Ex. PW 31/CA (Colly.).** Copy of one Notification dt. 30.09.1986 bearing no. 134/2/85-AVD-I was taken on record as **Ex. PW 31/CA-I.**

Govt. of West Bengal

315. **PW – 32** is **Sh. Bhaskar Khulbe**. He was officer of Govt. of West Bengal at the relevant time. During the year 2007-08, he was posted as Advisor (Industry) Government of West Bengal at New Delhi.

316. He told that some applications were received from MoC by the Govt. of WB. The Department of Commerce and Industries, Government of West Bengal had examined the said applications so received from MoC. A Committee headed by him was constituted to make recommendations in favour of various applicant companies. In the 35th Screening Committee of MoC which was dealing with coal blocks reserved for Power Sector, only one coal block namely "Gourandih ABC" situated in West Bengal was under consideration.

317. He told that the Committee headed by him had made its recommendations in favour of certain applicant companies qua Gourandih ABC coal block to State Government of West Bengal. Subsequently, the Government of West Bengal sent its recommendations to MoC, Government of India but the said recommendations were not the same recommendations, which were made by the Committee headed by him. The Government of West Bengal had in fact recommended that the coal block in question might be allocated to West Bengal Mineral Development and Trading Corporation ("WBMDTC") under

government dispensation route. The said recommendation was sent to MoC by Government of West Bengal in writing.

318. He told that he had meetings dt. 23.06.2007, 30.07.2007 and 13.09.2007 of the 35th Screening Committee. He told that in the meeting held on 30.07.2007, MoP had put up its recommendations qua various applicant companies and had asked that the preparedness of the applicant companies might be got verified from the applicants through the State Governments concerned. So, they were also asked to obtain report about the preparedness of the applicant companies pertaining to State of West Bengal in a given format. Subsequently, Government of West Bengal had submitted the requisite information in the said proforma to the MoC.

319. He told that all the aforesaid meetings of 35th Screening Committee were chaired by the then Secretary Coal Sh. H.C. Gupta. He told that Sh. K.S. Kropha the then Joint Secretary Coal was the Member Convener of the Screening Committee. He also told that one Sh. K.C. Samria and Sh. V.S. Rana of MoC had also attended the said meetings.

320. He told that in the final meeting of 35th Screening Committee held on 13.09.2007, when the matter regarding allocation of Gourandih ABC coal block situated in the State of West Bengal was taken up, then being a representative of State of West Bengal he stated that the State Government of West Bengal

had already sent its recommendations for allocation of the said coal block in favour of WBMDTC. Upon being asked as to whether any document was provided to the Members in the said Screening Committee meeting, the witness stated that in so far as he remembers one consolidated chart containing recommendations of all State Government qua various coal blocks under consideration was provided to all the Members of the Screening Committee in the said meeting itself. Upon being asked as to whether any document was provided to the Members in the earlier meetings of 35th Screening Committee, the witness stated that in the meetings held from 20.06.2007 till 23.06.2007 a bunch of documents containing applications of all the applicant companies who had applied for allocation of any given coal block was supplied to all the Members in the Screening Committee itself. He told that in the meeting held on 30.07.2007 no document was supplied to the Members of Screening Committee except the chart containing recommendations of all State Governments qua any given coal block. However, the witness corrected himself and stated that the said chart was in fact supplied in the meeting held on 30.07.2007 and not in the meeting held on 13.09.2007. Witness further stated that in the meeting held on 13.09.2007 no document was supplied to the Members of Screening Committee.

321. Upon being asked as to how the recommendations of the Screening Committee were arrived at, the witness stated that when in the meeting held on 13.09.2007 he stated that the

Gourandih ABC coal block be allotted in favour of WBMDTC in accordance with the recommendations of Government of West Bengal already sent to MoC, then the Chairman stated that since West Bengal Mineral Development and Trading Corporation Ltd had not applied for allocation of the said coal block and was thus not an applicant before them, so the recommendation of State Government in favour of said corporation could not be considered. However, when he responded back that in such a situation the said coal block might not be allotted in favour of any company then the Chairman responded that such a decision had to be taken by the Central Government but they shall be however making recommendations in the Screening Committee for allocation of said coal block. The Chairman also stated that the views as above expressed by him would be duly recorded in the minutes.

322. Upon being asked as to what other role was played by the witness in the allocation of coal blocks situated in States other than West Bengal, the witness stated that no other role was to be played by the members representing different State Governments in the Screening Committee meeting except putting forth the recommendations of their respective State Governments, which were already sent to MoC.

323. Upon being asked as to how the suitability of any given coal block for any specific end use project of any given applicant company was decided, the witness stated that after the

State Government representative put forth their views or the representatives of Administrative Ministries used to put forth their views then the Chairman used to decide as to which coal block be recommended for allocation in favour of which applicant company. No document regarding suitability of any given coal block for any specific end use project of any given applicant company was supplied to them in the meeting. Upon being asked as to whether any document so as to assess the Techno-Economic Feasibility of any given applicant company was provided to the Members of Screening Committee, the witness replied in negative. The issue of Techno-Economic Feasibility of any given applicant company was not discussed in the meeting. He told that no discussion was even held in the meeting as regard the past track record of the applicant companies in execution of the projects or as regard the financial and technical capabilities of the applicant companies and also no document in this regard was supplied to the Members of Screening Committee.

324. The recommendations made by the Administrative Ministries qua various applicant companies i.e. of Ministry of Power was however not supplied to the Members of Screening Committee. No discussion with respect to the recommendations of Ministry of Power however took place in the Screening Committee meeting.

325. Upon being asked as to how the inter se priority or

inter se merit or inter se data of the applicant companies was discussed in the final Screening Committee meeting, the witness replied in negative and stated that no such discussion took place in the said meeting. Even no document with respect to the inter se priority or inter se merit or inter se data of the applicant companies was provided to the Members in the meeting.

326. Upon being asked as to what was the methodology or system adopted in the Screening Committee meeting held on 13.09.2007 from which it could be ascertained as to which of the applicant company was better placed than the others, the witness stated that no such methodology or system or means were provided from which it could be ascertained as to which of the applicant company was better placed than the others.

327. Upon being asked as to who had the final say as to which coal block be recommended in favour of which applicant company in the Screening Committee meeting, the witness stated that the Chairman was having the final say.

328. Upon being asked as to whether the decisions arrived at by 35th Screening Committee could be termed as "unanimous" or by "consensus" the witness replied in negative and stated that the said decisions of 35th Screening Committee cannot be termed as "unanimous" or by "consensus".

329. He told that after the meeting held on 13.09.2007

was over then each Member of the Screening Committee present were asked to sign the recommendation sheets even if the coal blocks mentioned over there did not pertain to the State to which the said member was representing. The said recommendation sheets were prepared in the meeting itself. The minutes were however not prepared in the meeting. The said minutes were however subsequently downloaded by us in Government of West Bengal from the website of MoC but were otherwise not received from MoC. No draft of the said minutes for confirmation was received in Government of West Bengal prior to approval of said minutes in MoC.

330. He identified his signature on recommendations sheets Ex. P-205 (Colly.) [from Pg. 83-87 (D-10)]. He also identified the minutes of 35th Screening Committee meeting Ex. P-204 (Colly.) (jointly of all the meetings of 35th Screening Committee as is available from Pg. 1-41 in MoC file D-10).

331. When asked about whether the following facts mentioned in para 9, 10 and 13 of the minutes of 35th Screening Committee meeting held on 13.09.2007 were correct or not, he told that these were not correct:

> *9. The next meeting of the Screening Committee was convened on 13.09.2007. The verification reports from most of the State Governments, as requested, were received. The information received was compiled and placed before the Screening Committee. Financial strength of applicant companies was scrutinized independently with the help of financial experts from*

CIL.

10. Based on the data furnished by the applicants, and the feedback received from the State Governments and the Ministry of Power, the Committee assessed the applications having regard to matters such as techno-economic feasibility of end-use projects, status of preparedness to set up the end-use project, past track record in execution of projects, financial and technical capabilities of applicant companies, recommendations of the State Governments and the Administrative Ministry concerned etc. Taking cognisance of the advice given by the Ministry of Power that in view of the capacity constraints in transmission network, plant capacity should be limited to 500-1000 MW, the Committee agreed that this should be taken as the guiding principle. Therefore, 1000 MW would be taken as the maximum limit for allocation of coal blocks, in case the capacity indicated in the application is higher than that. In view of the large number of applications and limited number of coal blocks on offer, the Committee felt that it would be reasonable to have a satisfaction level in the range of around 40-70%, to the extent feasible.

13.The Screening Committee, thereafter, deliberated at length over the information furnished by the applicant companies in the application forms, during the presentation and subsequently. The Committee also took into consideration the views/comments of the Ministry of Power, Ministry of Steel, State Governments concerned, guidelines laid down for allocation of coal blocks, and other factors as mentioned in paragraph 10 above. The Screening Committee, accordingly, decided to recommend for allocation of coal blocks in the manner as follows:

	Name of Block	Recommended Companies	End Use Plant
1	….	….	….
2	….	….	….

3	….	….	….
14	….	….	….
15	Gourangdih ABC	1. M/s Himachal Emta Power Ltd. and M/s JSW Steel Ltd. on equal share basis. 2. Representative from the West Bengal Govt. suggested that either the block be allotted to WBMDTC Bengal or else, be left unallotted. The committee felt that since WBMTDC Bengal had not applied for the block, it would not be possible to consider them. Regarding non-allotment, the matter may be placed for consideration of the Govt.	

332. Witness after reading the facts mentioned in para 9 as above stated that no verification report received from State Government was placed before the Screening Committee Members. Also no report regarding financial strength of applicant companies as was stated to have been scrutinized independently with the help of financial experts from CIL was placed before the Screening Committee Members. Witness stated that a compilation chart was given but no verification report of State Governments was given.

333. As regard the facts mentioned in para 10 witness stated that the facts mentioned in the said para that the Committee assessed the applications having regard to matters such as techno-economic feasibility of end use project, status of preparedness to set up the end use project, past track record in execution of projects, financial and technical capabilities of applicant companies were not correct as no such factors were assessed.

334. As regard the facts mentioned in para 13 witness stated that fact mentioned over there that the Screening Committee deliberated at length over the information furnished by the applicant companies in the application form during the presentation and subsequently is not correct.

335. Upon being asked as to which compilation chart was supplied as had been stated by the witness above, he stated that the said compilation chart contained the recommendations of various State Governments. Upon being asked as to whose duty was it to check the applications in terms of the guidelines issued by MoC governing allocation of captive coal blocks qua the eligibility and completeness of the applications, the witness stated that it was the duty of Ministry of Coal to first check the applications and thereafter send them to the State Governments or Administrative Ministries. Upon being asked as to whether in the Screening Committee meetings, it was informed to the Members by MoC officers that the applications had not been

checked for their eligibility and completeness, the witness stated that nothing in this regard was stated in the meeting. Upon being asked as to whether the witness played any role with respect to recommendation in favour of M/s NPPL of Rampia and Dipside Rampia coal block, the witness stated that he did not play any role in that regard.

336. In cross-examination on behalf of accused public servants, one office copy of Order dt. 05.07.2006 issued in file bearing no. 247-CI/O/Coal/001/03/M-1 [available at page 10 in the file of Office of Advisor (Industries)] was marked as **Ex. PW 32/DX-1/A-4** vide which a Committee at level of Govt. of West Bengal was constituted. He told that vide Office Order dt. 03.05.2007 issued in file no. 10014-CI/O/Coal/13/06/M-1 (Pt-II) [available at page 85 in the file of Office of Advisor (Industry) i.e. MR No. 3768/16], the Committee headed by him was constituted. The order dated 03.05.2007 is **Ex. PW 32/DX-2/A-4**. One DO letter dt. 24.05.2007 is **Ex. PW 32/DX-3/A-4**.

337. He told that during the course of investigation of any of the coal block allocation matter, he was never shown any file of any Government Department by the IO. The minutes of the meeting held on 14.06.2007 titled "Minutes of the meeting of the Committee for allotment of coal block held in the Board Room of WBIDC, 5, Council House Street, Kolkata-700001 on 14th June, 2007" [available from page 1-4 in the file bearing no. A(I)/III/9/WBIDC-06 i.e. the file of Office of Advisor (Industry)

as brought from EO-I Malkana CBI] are **Ex. PW 32/DX-4/A-4**.

338. Page no. 69 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) containing some handwritten notes was admitted by the witness to be in his handwriting. Page number 69 is **Ex. PW 32/DX-5/A-4**. Page no. 92 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) i.e. a letter dated 04.06.2007 written by the witness to Ms. Roshni Sen is **Ex. PW 32/DX-6/A-4**. Similarly, Pg. no. 158-156 in file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) is a document titled "Suggested Modalities for recommendation to allocate Coal Blocks" is **Ex. PW 32/DX-7/A-4**. Likewise, Pg. no. 155-111 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) i.e. a document in tabular form titled "particulars of applications furnished by the Ministry of Coal, Government of India for allocation of coal blocks in response to advertisement published through Newspaper" and witness admitted that as the said tabulated particulars of applications are available in the file of the office of Advisor (Industry) so the same must have been received in his office but further stated that earlier without seeing the records, he was not able to recollect facts regarding receiving the same. The document available from page no. 155-111 as above is **Ex. PW 32/DX-8/A-4**. At Pg. no. 96 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) is a letter dt. 11.06.2007 written by the witness to Smt. Roshni Sen and is **Ex. PW 32/DX-9/A-4**.

339. He admitted that the role of Chairman in a meeting is two fold i.e. to conduct a meeting in an orderly fashion so that everyone present may express their views and towards the end the chairman sums up the essence of the discussion which held in the meeting and thereby to arrive at a decision. He admitted that summing up of discussion in a meeting done by the chairman is undertaken by way of reconciling the views expressed by various members of the committee. He also admitted that if any member in a meeting does not agree with the said summing up of the discussion by the chairman then he can get his dissent recorded.

340. He admitted that if no member gets his dissent recorded then the decision arrived at in the meeting shall be considered as decision taken in the meeting by unanimity or by broad consensus. He admitted that after the final meeting of 35th Screening Committee, he had written a communication to Government of West Bengal informing as to what transpired in the meeting. He admitted Pg. no. 349 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) to be office copy of a communication dated 13.09.2007 sent by him to Dr. Sabyasachi Sen, Principal Secretary, C&I Department, Government of West Bengal. Page number 349 is **Ex. PW 32/DX-10/A-4**.

341. He admitted that in the said communication he had written that recommendations in respect of other states (Orissa, Jharkhand, Maharashtra and Chhatisgarh) were finalised by reconciling between the states evaluation, power Ministry

opinion and the criteria suggested by the Chairman. He admitted that the views expressed by the members were reconciled before arriving at the final decision and that the final decision was announced by the chairman after reconciliation of views. He denied that the recommendations of Ministry of Power were supplied to him in the Screening Committee meeting.

342. He admitted Pg. no. 212-211 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) was a communication dated 03.08.2007 sent by him to Dr. Sabyasachi Sen, Principal Secretary, C&I Department, Government of West Bengal and after seeing it he stated that from the said communication it was clear that the recommendations as were made by CEA and were endorsed by the Power Ministry were circulated and deliberated upon in the meeting. The communication dated 03.08.2007 is **Ex. PW 32/DX-11/A-4**. He admitted that in the said communication dated 03.08.2007, he had stated that in the meeting, the State Governments, Coal Ministry and Power unanimously agreed that sanctity of the criteria announced by the Coal Ministry while advertising the coal blocks for allotment was of utmost importance. He admitted that the views expressed by State Government representatives and that of Ministry of Power were considered in the meeting.

343. He stated that after he downloaded the minutes of 35th Screening Committee meetings from the website of MoC and

after going through the same, he did not submit any comments or report to Government of West Bengal that the minutes of the meetings had not been correctly recorded. He did not remember whether a compilation chart [available from Pg. 1-21 in file of MoC Ex. PW 3/E (Colly.) (D-164)] containing information regarding applicant companies as was prepared pursuant to verification report received from State Governments after the decision taken in the meeting held on 30.07.2007 was placed before 35th Screening Committee Members in the meeting held on 13.09.2007 or not.

344. PW-32 was recalled for further cross-examination. During the said further cross-examination, he admitted that it was the job of the State Government to evaluate the applications of a company seeking allocation of coal block and to verify the same with the documents supplied along with the application and in case, there was any further clarification required, the State Government would also undertake a physical verification of the facilities to ascertain the financial strength and ground capabilities of a company and that such a ground verification was undertaken by him under the instructions of State Government in the case of M/s JAS Infrastructure Ltd. and was duly reported to the State Government also.

PMO

345. **PW-4 Sanjay Lohia** is from PMO. As already noted

before, affidavit of Sh. Sanjay Lohia was filed initially but later on he examined also. Affidavit of Sh. Sanjay Lohia was taken on record as **Ex. PW-4/A (Colly.)** and File D-28 was exhibited as **Ex. PW 4/B (Colly.)**. One letter dated 07.06.2013 of PW Sanjay Lohia addressed to Sh. O.P. Galhotra, Joint Director, CBI alongwith its annexure was marked as **Ex. PW 4/C (colly) (D-139)**.

CBI

346. **PW-5** is **SI Suresh Kumar.** The affidavit of SI Suresh Kumar was marked as **Ex. PW 5/A (Colly.).**

347. **PW- 8** is **Dy. S.P. Himanshu Bahuguna, CBI, New Delhi.** He deposed about being part of search operations carried out in the month of September 2012 at Hyderabad.

348. He told that on 04.09.2012, Inspector Manoj Kumar handed over to him two search warrants issued u/s 165 Cr.P.C. relating to the search to be carried at the residence of one Sh. Y. Harish Chandra Prasad and the other at the office of one company namely M/s. Malaxmi Infra Ventures (India) Pvt. Ltd. of which Sh. Y. Harish Chandra Prasad was one of the directors. Along with the search warrants, list of incriminating documents to be searched for was also given to him.

349. Photocopy of the two search warrants both dated 04.09.2012 are respectively **Ex. PW8/A (Colly.)** and **Ex. PW8/B**

(Colly.). He told that a team of CBI officials along with two independent witnesses namely Sh. Venkataraman and Sh. Satyanarain Murty who were two bank officials was formed under his leadership.

350. At around 7 am the team led by him reached the residence of Sh. Y. Harish Chandra Prasad at Jubilee Hills, Hyderabad. They thereafter carried out search of the house but were not able to find any incriminating document over there and accordingly a 'nil' search report was prepared by him. The search list is Ex.PW2/L.

351. The search operation at the house concluded at around 10 am. Thereafter, the entire team led by him and accompanied by Sh. Y. Harish Chandra Prasad went to the office of his company M/s. Malaxmi Infra Ventures (India) Pvt. Ltd. After seeing the search warrant Ex.PW8/B (Colly.) witness stated the address of the office to be at Survey no.157, Golkonda Post Hyderabad.

352. The search of the office premises was carried out in the presence of Sh. Y. Harish Chandra Prasad and the independent witness. Whatever incriminating documents were recovered were mentioned in a search list Ex.PW2/A. The documents / files which were so recovered were signed by the independent witnesses on the first and last page. The loose pages thereof of were serially numbered. The search operation

concluded at around 2 pm.

353. He identified the documents also as Ex. PW2/B (Colly.) (D-5); Ex. PW2/C (Colly.) (D-6); Ex. PW2/D (Colly.) (D-17); Ex. PW2/E (Colly.) (D-145); Ex. PW2/F (Colly.) (D-146); Ex. PW2/G (Colly.) (D-147); Ex. PW2/H (Colly.) (D-148) and Ex. PW2/J (Colly.) (D-149).

354. He told that one pen drive was also recovered from the office premises which is Ex.PW2/K (D-150).

355. Nothing has come out in cross-examination.

356. **PW- 9** is **Dy. SP Manoj Kumar** from CBI. He also deposed about the search operations carried out in September 2012 at Hyderabad. He deposed about giving two search warrants to Dy. SP Himanshu Bahuguna.

357. He himself carried out search operations at the residence of Sh. P. Trivikrama Prasad and office of his company M/s Nava Bharat Projects Ltd. He too prepared a team under his leadership. The search warrant alongwith list is **Ex. PW 9/A (Colly.)**.

358. He deposed that nothing was found at P. Trivikrama Prasad's residence. And accordingly a nil search list was prepared by him. The search list is **Ex. PW 9/B**. He deposed about search carried out at the office of M/s Nava Bharat Projects

Ltd. The search warrant is **Ex. PW 9/C (Colly.)**. They accordingly carried out search at the said office premises and a number of incriminating documents were recovered from over there. The same were accordingly taken into possession and a search list was prepared. In the said search list details of all such documents/files so recovered were mentioned. The search list is Ex. PW 1/A.

359. He identified the documents also which are Ex. PW 1/B (Colly.) (D-151); Ex. PW 1/C (Colly.) (D-152); Ex. PW 1/D (Colly.) (D-153); Ex. PW 1/E (Colly.) (D-154); Ex. PW 1/F (Colly.) (D-155); Ex. PW 1/G (Colly.) (D-156); PW 1/H (Colly.) (D-157); PW 1/J (Colly.) (D-158); PW 1/K (Colly.) (D-159); PW 1/L (Colly.) (D-160); PW 1/M (Colly.) (D-161); PW 1/N (Colly.) (D-162) and PW 1/O (Colly.) (D-163).

360. He also identified documents Ex. PW2/B (Colly.) (D-5); Ex. PW2/C (Colly.) (D-6); Ex. PW2/D (Colly.) (D-17); Ex. PW2/E (Colly.) (D-145); Ex. PW2/F (Colly.) (D-146); Ex. PW2/G (Colly.) (D-147); Ex. PW2/H (Colly.) (D-148) and Ex. PW2/J (Colly.) (D-149) to be those which were handed over to him by Insp. Himanshu Bahuguna.

361. He told that one pulanda was also handed over to him by Insp. Himanshu Bahuguna containing a Pen Drive which was recovered during the course of search operation. They returned to Delhi and deposited the seized documents and

material with the Malkhana. He also sent compliance report to the Court. The intimation alongwith copies of all the documents including that of the search lists and the search warrants is **Ex PW 9/D (Colly.)**.

362. He told that thereafter on 19.09.2012 on the directions of senior officers, the further investigation of the matter was transferred to Insp. K.L. Moses. Copy of the order issued by Sh. O.P. Galhotra under his signatures dt. 18.09.2012 is **Ex. PW 9/E.** The FIR is **Ex. PW 9/F (D-1)**.

363. Nothing has come out in cross-examination.

364. **PW – 33** is **Dy. SP. K.L. Moses** i.e. the IO. He deposed about the investigation conducted by him.

365. He deposed that the initial IO Insp. Manoj Kumar had already conducted search operations at various places and collected/seized various documents. He collected case diary from him. He also collected various documents of the case. He referred to various exhibits. Some documents were exhibited during his evidence.

366. The FIR is Ex. PW 9/F. He had collected photocopies of various MoC files. He collected a file of MoP bearing No. FU-5/2003-IPC (Vol. II) consisting of two files containing note sheet pages 1-66 and correspondence side pages 1-713 vide seizure memo dated 10.12.2012 which is **Ex. PW**

33/A. The file is Ex. PW 26/A (Colly.). The office copy of one letter dated 31.05.2013 is **Ex. PW 33/B (D-259)**. The office copy of letter dated 02.11.2012 is **Ex. PW 33/C (D-260)**. The office copy of letter dated 16.11.2012 is **Ex. PW 33/D (D-261)**. The office copy of letter dated 19.12.2012 is **Ex. PW 33/E (D-262)**. The letter dated 28.12.2012 and the accompanying documents are **Ex. PW-33/F (Colly.) (D-27) (Part-1)** and **Ex. PW 33/F-1 (Colly.) (D-27)(Part-2)**.

367. The office copy of the notice u/s 91 Cr.PC dated 15.02.2013 is **Ex. PW 33/G (D-263)**. The office copy of letter dt. 25.07.2013 is **Ex. PW 33/G-1(D-264)**. Various payments proofs/documents are **Ex. PW 33/G-2** to **Ex. PW 33/G-12** alongwith other documents. The office copy of other notices u/s 91 CrPC are **Ex. PW 33/H (D-265), Ex. PW 33/H-1 (D-279)** and **Ex. PW 33/H-2 (D-280)**. One memo is **Ex. PW 33/H-3 (D-129)**. One letter of Branch Manager, Bank of India, D.N. Road, Fort, Mumbai branch along with documents are **Ex. PW 33/H-4 (Colly.) (D-65)**.

368. The office copy of another notice u/s 91 CrPC is **Ex. PW 33/H-5 (D-266)**. One letter alongwith the documents are **Ex. PW 33/H-6 (Colly.) (D-66)**. Various documents collected by him are **Ex. PW 33/H-7 (Colly.)** and few others. The office copy of notice u/s 91 CrPC is **Ex. PW 33/H-8 (D-281)**. The office copy of notice dt. 12.12.2012 u/s 91 CrPC is **Ex. PW 33/H-9 (D-283)**. The office copy of letter dt. 15.02.2013 is **Ex. PW**

33/J (D-242). The office copy of some other letters are exhibited **Ex. PW 33/J-1 (D-243)**. The office memorandum of MoC dt. 21.03.2013 is **Ex. PW 33/J-2 (D-140)**. One communication dated 02.04.2013 is **Ex. PW 33/J-3 (D-244)**. One office memorandum dated 02.05.2013 of MoC is **Ex. PW 33/J-4 (D-141)**.

369. The office copy of the notice dt. 05.12.2012 is **Ex. PW 33/J-5 (D-246)**. The office copy of the notice as above is exhibited as **Ex. PW 33/J-6 (D-247)**. The seizure memo dated 22.05.2014 is **Ex. PW 33/K (D-167)**. The memo dated 05.10.2012 is **Ex. PW 33/K-1 (D-168).** The documents collected are **Ex. PW 33/K-2 to K-8.** The seizure memo dated 31.01.2013 is **Ex. PW 33/K-9 (D-190)**. The letter dated 16.05.2014 is **Ex. PW 33/K-10 (D-257)**. The letter dated 06.06.2013 is **Ex. PW 33/L (Colly.) (D-278).** The letter dated 23.07.2013 alongwith its enclosures except the application of M/s NPPL available in D-228 is **Ex. PW 33/L-1 (Colly.) (D-277)**.

370. The office copy of the notice dt. 09.12.2014 u/s 91 CrPC is **Ex. PW 33/L-2 (D-232)**. The office copy of the notice dt. 09.12.2014 u/s 91 CrPC is **Ex. PW 33/L-3 (D-234)**. The letter of Sh. A. Sanjay Sahay dt. 16.12.2014 is **Ex. PW 33/L-4 (D-237)**. The office copy of letter dt. 16.12.2014 is **Ex. PW 33/L-5 (D-238)**. The communication dt. 26.12.2014 of Sh. A. Sanjay Sahay is **Ex. PW 33/L-6 (D-240)**. The office copy of notice dt. 24.09.2012 u/s 91 CrPC is **Ex. PW 33/L-7 (D-258)**.

371. The letter dt. 01.10.2012 along with the documents are **Ex. PW 33/M (Colly.) (D-248)** [documents Ex. P-147 (Colly.) are part of Ex. PW 33/M (Colly.)]. The letter dt. 22.11.2012 along with enclosed documents is **Ex. PW 33/N (Colly.) (D-249)** [documents Ex. P-148; Ex. P-149; Ex. P-150; Ex. P-151; Ex. P-152; Ex. P-153; Ex. P-154; Ex. P-155; Ex. P-156; Ex. P-157; Ex. P-158; Ex. P-159; Ex. P-160; Ex. P-161; Ex. P-162 and Ex. P-163 are all part of Ex. PW 33/N (Colly.)].

372. The affidavit of Dy. SP CBI, SP Rana is **Ex. PW 33/O (Colly.)**. The affidavit of Inspector CBI J.R. Katiyar is **Ex. PW 33/O-1 (Colly.)**. The affidavit of V.P. Sharma, Section Officer, MoC, **Ex. PW 33/O-2 (Colly.)**. The affidavit of Ct. Gordhan Singh, Assistant Malkhana In-charge, EO-II, CBI, is **Ex. PW 33/O-3 (Colly.)**. The affidavit of HC K.P. Singh, Malkhana Incharge EO-I, CBI is **Ex. PW 33/O-4 (Colly.)**.

373. He deposed that during the course of investigation carried out by him, he found that the applicant company M/s NPPL and its directors were aware that net-worth constituted an important factor for allocation of a captive coal block by MoC and they had accordingly with a malafide intention misrepresented in this regard both in their application as well as in the feedback form and the presentation so made before 35th Screening Committee. He also found that the company and its Director had misrepresented to MoC and the Screening Committee about 40 hectares of land having already been

acquired by the company. He also found that after obtaining allocation of the coal block they sold away all the shares of the company so as to earn undue profit.

374. He was cross-examined at length by accused persons.

375. In cross-examination on behalf of A-2 PTP, he told that the allegation that the shares of M/s NPPL were sold of for a windfall gain of more than Rs.200 Crores on account of the coal block was only regarding windfall gain made by the accused persons through sale of shares. During investigation no concrete material could be collected which showed that shares could not be sold. He told that no clear answer was given regarding this by the Ministry of Coal.

376. He admitted that even after the sale of shares to M/s Essar Power Ltd., the allocation of coal block remained with M/s NPPL for the same end use project. He admitted that both Navabharat Group and Maalaxmi Group had 50% share holding each in NPPL and nominee of Navabharat Group had a casting vote in the board meetings in the event of a tie. He admitted that during investigation, he had come across the fact that the Navabharat Group and the Malaxmi Group had *inter se* disputes during the period 2007-08.

377. He admitted that a Law Firm J. Sagar Associates

was involved with the documentation of the share purchase agreement between Essar Power Ltd. and accused no.2 and Navabharat Projects Ltd. and similar agreement between Essar Power Ltd. with accused no.1.

378. One notice u/s 91 CrPC dated 06.12.2012 issued to accused no.2 is **Ex. PW33/DX-2**. The reply of A-2 is **Ex.PW33/DX-3 (Colly.)**. He admitted that Navabharat Projects Ltd. had engaged Spark Capital Advisors (India) Pvt. Ltd., Chennai as strategic and financial advisor for providing services including advising, representing, negotiating, structuring and finalization of the proposed sale transaction to Essar Power Ltd.

379. He told that the valuation/price of the sale transaction was done on the basis of Discounted Cash Flow methodology of valuation. He told that as per letter Ex. PW-33/DX-3 (Colly.), the sale transaction did not attribute any value to the shared coal block. He admitted that the venture undertaken by M/s NPPL was a greenfield project at the time of sale of shares to Essar Power Ltd. He admitted that he had seized DCF valuation of M/s NPPL based on coal supply through coal linkage (Ex.P-180/D-41) and DCF valuation of M/s NPPL based on coal supply through e-auction (Ex.P-181/D-42) vide memo (Ex.P-184/D-124). He told that these documents were prepared at his request during investigation.

380. He admitted that valuation of the transaction

between M/s Essar Power Ltd. and Navabharat Group included value ascribed as premium for getting a controlling stake in M/s NPPL. He admitted that the various approvals, clearances and agreements in favour of M/s NPPL gave it significant commercial value for any prospective purchaser since it reduced the risk and the time required for the purchaser to put up a power project.

381. He admitted that the Share Purchase Agreements [Ex. P-110 (Colly.)/D-33 & Ex.P-111 (Colly.)/D-34] provided for Conditions Precedent which needed to be complied with and without which the sale of shares would not have taken place and the subsistence of the coal block allocation or the execution of a prospecting license or a mining lease was not a condition precedent to the said transaction. He admitted that letter dt. 13.04.2006 (Ex.P-128, D-184) was signed by accused P. Trivikrama Prasad on behalf of a company Navabharat Ferro Alloys Ltd. (subsequently named Navabharat Ventures Ltd.) and not on behalf of the accused company NPPL. He also admitted that when accused P. Trivikrama Prasad issued this letter, the same was not for the purpose of facilitating the allocation of coal block.

382. In cross-examination on behalf of accused company A-3/BTPPL, statements of Mr. Vikas Saraf dt. 06.11.2012 and 09.11.2012 u/s 161 CrPC were marked as **Ex. PW33/DX-4 & 5** respectively. Similarly, statements of Mr. Sudip Rungta u/s 161

CrPC dated 08.11.2012 and 20.11.2012 u/s 161 CrPC were marked as **Ex.PW33/DX-6 & 7** respectively.

383. He did not recollect if he had examined documents i.e. Legal Due Diligence Reports both dt. 03.11.2009 of JSA, Advocates & Solicitors titled 'Project Neptune' which were marked as **Mark PW33/D3-X1 & X2.** Similarly, he did not recollect if had examined documents i.e. Legal Due Diligence Reports both dt. 19.10.2009 of Ernst & Young, titled 'Project Neptune' which were marked as **Mark PW33/D3-X3 & X4.**

384. In cross-examination on behalf of accused public servants, he admitted that he did not find any evidence of *quid pro quo* or any benefit having been passed by M/s NPPL or its officials to Sh. H.C. Gupta/A-4, Sh. K.S. Kropha/A-5 or Sh. K.C. Samria/A-6.

385. He told that he had not examined all the members of the 35th Screening Committee. He located the list of the public servants who had dealt with coal block allocation files. The same is available at Page 349 of chargesheet file and the same is **Ex. PW-33/DX-8**. The said list contained names of officials of MoC only. He admitted that name of Sh. Sanjeev Mittal, who was Director, CA-I, MoC was not mentioned in the said list despite the fact that the preparation and publication of guidelines, receipt of applications, their scrutiny and segregation and sending them to the Administrative Ministries and State Govt. had taken place

while he was the Director of CA-I. He explained that he did not mention his name as he himself had not dealt with segregation of the applications.

386. He admitted that during investigation, he did not find any material which suggested even remotely that the accused public servants directed their subordinates to treat the application/case of NPPL in any manner different from other applicant companies or they themselves treated the case of NPPL differently from other applicant companies. He admitted that he had shown the application of M/s NPPL to Sh. V.S. Rana, the Under Secretary of CA-I Section and after examining it he found it to be complete. He admitted that he found no evidence that any member of the screening committee objected to the recommendation made in favour of NPPL by it.

387. He admitted that neither Ministry of Power nor State Govt. of Odisha objected to the recommendation of the Screening Committee in favour of NPPL at any point of time. He admitted that he had not come across any document/evidence which would prescribe the duties/powers of the convener or the chairman of the screening committee. He admitted that he found no evidence that Mr. H.C. Gupta/Mr. K.S. Kropha had overruled or changed the recommendation made by the majority of the members of the screening committee in favour of any company or specifically NPPL. He also found no evidence of any member of the screening committee ever objected to the correctness of

minutes recorded qua the 35th Screening Committee after these were placed on the website of the MoC.

388. He admitted that no member of the screening committee (other than the accused persons) had stated to him that they had considered the networth of either M/s Suez or M/s Globeleq while the screening committee recommended the name of NPPL in the final meeting.

389. He admitted that adoption of UMPP criteria by MoP was its internal exercise. He told that he had examined Sh. N.R. Dash u/s 161 CrPC in this case and Sh. Dash had informed him that a chart containing details of applicant companies was circulated in the 35th Screening Committee Meeting.

PART – D

STATEMENTS OF ACCUSED PERSONS U/S 313 CRPC

390. Statements of all the six accused persons were thereafter recorded u/s 313 CrPC in detail. Liberty was also given to the accused persons to file their written statements u/s 313(5) CrPC. However, only A-1, A-2 and A-3 filed written statements u/s 313(5) CrPC. A-1 YHCP explained about mentioning networth of Globeleq and Suez. A-2 PTP also explained his position and stated that he was not involved in day to day affairs of A-3 company. A-4 to A-6 i.e. accused public servants also gave explanation of their version.

PART - E

THE DEFENCE EVIDENCE

391. A-1, A-3 and A-6 led evidence in their defence.

392. **DW–1 Sh. Sarada Prasad Das** is from the office of Directorate of Printing, Stationery and Publication, Odisha, Madhupatna, Cuttak-10.

393. He produced photocopies of 13 Gazette notifications which were printed in their Directorate. These Gazette notifications were printed as per the requisition of the Revenue & Disaster Management Department. He told that the original Gazette notifications were printed in Oriya language. He also produced English translation of the first and last page of each Gazette notification. The certified copies of the Gazette notifications alongwith English translations of the first and last pages which were in Court File titled 'Documents filed on App. U/s 91 CrPC on behalf of A-1 Sh. Y. Harish Chandra Prasad'. The file is **DW1/X**.

394. He told that the notifications and translations were enclosed with letter no.522/PSP dt. 05.02.2021 sent by the Joint Director, DPS&P, Cuttak to this Court. The said letter is **Ex. DW1/A**. The certified copies of Gazette notifications are **Ex. DW1/B-1** to **Ex. DW1/B-14.** The English translations are **Ex. DW1/C-1** to **Ex. DW1/C-14**.

395. The photocopies of Gazette notifications alongwith English translations of first and last page brought by him are **Ex. DW1/D-1** to **Ex. DW1/D-13**. He told that he could not bring copy of Gazette notification bearing no.2300 dt. 18.12.2008 as it was not in their office records.

396. In cross-examination, he told that he had no personal knowledge regarding actual acquisition of aforesaid lands.

397. **DW–2 Sh. Praveen Bhaskaran** is from PFC. He proved letter dt. 18.05.2018, signed by Sh. Siddharth Dahiya (Officer, Legal), Sh. Tushar Ballarpure (Sr. Manager, Projects) and Sh. Ilas Khairnar (Asst. Manager) as **Ex.DW2/A (Colly.)**. He told that the letter was sent to this Court alongwith enclosures which were the official correspondence between PFC and M/s NPPL, M/s Globeleq and M/s Nava Bharat Ventures Ltd. He stated that from the abovesaid records, it was clear that the proposal for part financing the Power Project at Dhenkenal, Odisha was under appraisal at that time.

398. In cross-examination, he admitted that that M/s NPPL was not sanctioned any loan by PFC for implementation of 1040 MW Mahalaxmi Power Project, Dhenkenal, Odisha.

399. **DW–3 Dr. Sushama Barik** is from IDCO. She produced some record from IDCO which is as under:

> (1) Letter from M. Tirumal Srinivas, General Manager (Infrastructure), Navabharat Power Private

Limited to the Chief General Manager (P&A), Orissa Industrial Infrastructure Development Corporation dt. 02.11.2006, bearing reference No. NPPL/IDCO:476:2006.

(2) Letter from the Chief Manager (P&A), Orissa Industrial Infrastructure Development Corporation to the Land Acquisition Officer, Dhenkaanal dt. 28.04.2007, bearing reference No. HO/P&A-LA-E-4526/06-7632, with the following documents enclosed:

(a) Copy of administrative approval for acquisition of private land measuring 1093.23 acres in Dhenkanal accorded by Sh. B.S. Panda, Additional Secretary, Department of Energy, Government of Orissa, to the Chief General manager (P&A), Orissa Industrial Infrastructure Development Corporation dated 26.04.2007 bearing reference No.PPD-TH-3/2007__/E.

(3) Letter from the Chief Manager (P&A), Orissa Industrial Infrastructure Development Corporation to M/s Navabharat Power Private Limited dt. 08.06.2007 bearing reference no. HO/P&A- LA-E-4526/06-10723.

(4) Letter from M. Tirumal Srinivas, 'Vice-President (Power), Navabharat Power Private Limited to Chief General Manager, (P&A), Orissa Industrial Infrastructure Development Corporation dt. 05.07.2007, bearing reference no. NPPL:IDCO:654:2007.

(5) Money receipt of Orissa Industrial Infrastructure Development Corporation bearing MR. No. 892 dt. 05.07.2007 recording receipt of Rs. 12,02,900/- (Rupees Twelve Lakhs Two Thousand Nine Hundred Only) from Navabharat Power Private Limited.

(6) Money receipt of Orissa Industrial Infrastructure Development Corporation bearing MR. No. 891

dated 05.07.2007 recording receipt of Rs. 1,00,00,000/- (Rupees One Crore Only) from Navabharat Power Private Limited.

(7) Letter from the Asstt. Defence Estates Officer, Asstt. Defence Estates Office, Bhubaneswar, Orissa (S.R.DAS) to the Asstt. Manager (Infrastructure), Navabharat Power Private Limited dated 13.07.2007 bearing reference No. OR/LAND/MISC.

(8) Letter from the Chief General Manager (P&A), Orissa Industrial Infrastructure Development Corporation to the Chief Engineer, Central Electricity Authority, TP&I Division dated 12.02.2009 bearing reference No.HO/P&A-LA-E-4670/07/4526/06-2868, enclosing the following document:

(a) Declaration issued by the District Office, Dhenkanal, regarding administrative approval received from the Energy Department for land allotted to NPPL, dated 27.12.2008 bearing no. 1764.

(9) Letter from M. Tirumal Srinivas, Vice President (Power), Navabharat Power Private Limited to the Chief General Manager (P&A), Orissa Industrial Infrastructure Development Corporation dated 16.05.2009 bearing reference No. NPPL: IDCO:1098:2009.

400. She told that following document could not be located in their record:

(1) Letter from the Chief General Manager (P&A), Orissa Industrial Infrastructure Development Corporation to M/s Navabharat Power Private Limited dated 12.07.2007 bearing reference No. HO./P&A/LAE-4526/06-10842.

401. These documents except document mentioned at srl.

no. 9 above, were marked as **Ex. DB-1 to DB-9.**

402. In cross-examination, she told that she herself had not dealt with any of the abovesaid communications as she was not posted there at the relevant time.

403. A-3 had also summoned Ernst & Young LLP to produce Due Diligence Report of Project Neptune dt. 19.10.2009 but it could not be located by the said firm

404. **DW–4 Pawan Kumar Yadav** was summoned on behalf of A-3 BTPPL. He is working as Dy. Manager (IT) in law firm JSA Advocates & Solicitors since 2015. He had joined the said law firm in the year 2010 at which time its name was J. Sagar & Associates.

405. He produced one downloaded Draft Legal Due Diligence-Project Neptune Executive Summary Report dt. 05.11.2009 which he had downloaded from the archives of the server maintained by the law firm on 14.09.2023 and put the stamp on each and every page of the report. He told that the said report duly existed in the server without any tempering of the same. The same is **Ex. DW4/A.** He also brought duly notarized certificate u/s 65-B of the Indian Evidence Act which is **Ex. DW4/B**.

406. In cross-examination on behalf of prosecution, it has come that he had no personal knowledge of the document.

407. **DW-5 Nirmal Parkash Manchanda** was examined on

behalf of A-6.

408. He was working in Coal India Ltd. In the year 2007, he was Sr. PA and attached with Mr. R.K. Joshi, the then GM at Delhi at Scope Minar, Laxmi Nagar, Delhi.

409. He told that in 2007, desktop computers were available for typing work. In the year 2007, he had assisted Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta in their typing work. The typing work was carried out on desktop computer situated adjacent to GM chamber. He told that he had simply typed the matter that these officers had given to me.

410. He was shown one Excel Sheet from Page 32 to 39 and another Excel Sheet from Page 70 to 77 of D-164 (MR 340/12) already exhibited as Ex. PW 3/E (Colly)] and he told that he did not type these documents. He was further shown running matter titled 'Notes as per remark column' at Page 78 to 84 attached to second Excel Sheet of D-164 and he told that he had typed similar matter but he was not sure whether he had typed these pages or not as it was an old matter.

411. In cross-examination on behalf of prosecution, he told that Sh. Samiran Dutta and Smt. Sushmita Sen Gupta used to visit Scope Minar Office 5-6 times in a month. He told that he had used electronic typewriter till year 2000. I am not aware if anyone had used electronic typewriter in their office after year 2000. To the suggestion that two officials from MoC were

provided to aforesaid officers for assistance and they were assisting them in their work at the office, he answered that he had no idea.

412. In cross-examination on behalf of A-5, he admitted that in 2007, there was no electronic typewriter in their office. He admitted that Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta were not provided with any electronic typewriter. He admitted that whatever these officers themselves typed or got typed by him was on his office computer and printed from laser printer.

413. He told that Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta mostly did the typing work on their own as they had to prepare some charts in excel sheet. He admitted that Sh. Samiran Dutta had given hand written script and he had typed it on his computer. He further admitted that whatever they had typed, they had taken out print from his computer printer.

414. **DW-6 Rishan Ryntathiang** has been examined on behalf of A-1. He is working as Under Secretary in MoC.

415. He produced the following documents:

(i) Authenticated copies of letter dated 14.09.2010 from Essar Power/NPPL to Joint Secretary, MoC (Annexure-2 of application dated 24.08.2023),

(ii) Letter dated 16.11.2010 from MoC in response to letter from NPPL (Annexure-3 of application dated 24.08.2023),

(iii) Letter dated 30.08.2011 from Essar Power/NPPL to MoC

(Annexure-4 of application dated 24.08.2023),

(iv) Letter dated 15.05.2012 from MoC to NPPL (Annexure-5 of application dated 24.08.2023),

(v) Letter dated 31.05.2012 from Essar Power/NPPL to MoC (Annexure-6 of application dated 24.08.2023).

416. The authenticated copies of these letters are **Ex. DW 6/A-1 to DW 6/A-5**.

417. Photocopy of show cause notice dated 23.09.2009 issued by MoC to M/s NPPL is **Mark DW 6/B**. Photocopy of letter dated 05.12.2014 of Essar/NPPL alongwith annexures sent to Director, CA-I, MoC is **Ex. DW 6/C (Colly.).**

418. Nothing has come out in cross-examination.

PART – F

THE ARGUMENTS

419. Detailed arguments were addressed by all the parties. Sh. A.P. Singh, learned DLA made submissions on behalf of the prosecution. Sh. Shri Singh, learned counsel addressed submissions on behalf of A-1 YHCP. Sh. Siddharth Aggarwal, learned Senior Advocate, addressed arguments on behalf of A-2 PTP. Sh. P.K. Dubey, learned Senior Advocate, made brief submissions on behalf of A-3 NPPL/BTPPL. And Sh. Rahul Tyagi, learned Counsel addressed detailed arguments on behalf of the accused public servants i.e. A-4 to A-6.

ARGUMENTS ON BEHALF OF PROSECUTION

420. Sh. A.P. Singh, learned DLA submitted that prosecution has brought sufficient material on record to prove the charges beyond reasonable doubt.

421. He referred to the application of A-3 company submitted to MoC for allocation of coal block. He pointed out that in the said application, false claims about networth of the company as well as land in possession were made by the company. He further referred to the feedback form and pointed out that false claim about land in possession was again made in it. Further, in the feedback form, the A-3 company stated networth of another company different from the one mentioned in the application form.

422. In the application form A-3, company had mentioned networth of Globeleq whereas in the feedback form, networth of Suez was mentioned. He contended that firstly A-3 could not claim networth of Globeleq as its own and secondly it could not change it to Suez at the time of feedback form. In either situation, A-3 company made misrepresentations.

423. He further submitted that A-1 and A-2, after getting allocation of coal block, sold the company to M/s EPL at exorbitant price and earned huge profits. He alleged that A-1 and A-2 misappropriated natural resources by selling their shareholding. He referred to D-11 and submitted that there was

restriction on sale of equity of the JV formed for allocation of coal block.

424. Regarding role of the public servants, learned DLA submitted that the three public servants did not adhere to the guidelines formed for the purpose of processing the applications. He submitted that the accused public servants did not ensure scrutiny of applications to ascertain their eligibility and completeness. He contended that the accused public servants did not scrutinize the applications initially nor after recommendation made by Screening Committee. He pointed out various lapses on their part.

425. Learned DLA submitted that accused public servants knew fully well as to which companies were eligible to apply for allocation of coal blocks as per CMN Act 1973. These companies, as per advertisement Ex. PW 18/A (Colly.)/Ex. P-59 (Colly.), were companies engaged in generation of power, production of iron and steel and production of cement only. Learned DLA contended that NPPL was not such a company. Learned DLA argued that it was not a case of mistake of fact but rather a case of mistake of law and which is no defence. He submitted that A-4 & A-5 were the originators of the advertisement and guidelines and both were also members of the Screening Committee. A-6 had approved applications to be sent to MoP. None of them cared to see that applications of ineligible companies were not sent to MoP.

426. Learned DLA submitted that the application of the company was incomplete as annual returns of Malaxmi Group were not annexed and annual returns of Globeleq were not certified by the Company Secretary and thus application was liable to be rejected but on the contrary it was processed. He submitted that it is not a case of dereliction of duties rather it is a case of pre-planned course of action to allocate coal block to an ineligible company. He referred to the guidelines of MoC and as per which it was for the MoC to scrutinize the applications for eligibility and completeness and only thereafter the applications were to be sent to Administrative Ministries and State Govts.

ARGUMENTS ON BEHALF OF A-1 YHCP

427. Sh. Shri Singh, learned Counsel for A-1 Y. Harish Chandra Prasad made detailed submissions on his behalf.

428. Learned Counsel argued that A-1 YHCP was promoter of Malaxmi Group whereas A-2 PTP was promoter of Navbharat Group. Both of them had joined hands and incorporated company NPPL.

429. He contended that the company NPPL did not make any misrepresentation in its application for allocation of coal block. He pointed out that all the facts and figures mentioned in the said application were correct. He submitted that the networth figures were separately mentioned for NPPL and Globeleq and the figures were also correctly mentioned. He submitted that

NPPL never claimed that Globeleq was promoter of NPPL or there was any joint venture between Globeleq and NPPL. He contended that Globeleq had merely extended support to the project of NPPL.

430. Regarding information qua land, learned Counsel submitted that again no misinformation was given. He submitted that Govt. of Orissa was in the process of acquiring land for the company. Regarding 40 hectares of land, he contended that the said land was available with sister concern of NPPL and was available to NPPL and, therefore, it was so mentioned in the application that 40 hectares of land was available.

431. Learned Counsel forcefully contended that CEA had made recommendation in favour of NPPL after examining the application. He pointed out that CEA did not seek any information from NPPL regarding the claims made by it in the application. He also argued that 40 hectares of land was very small compared to the land required for setting up power plant. He contended that such a small quantity of land could not influence decision making of the Screening Committee or of the MoC. Even if this much of land was not available, NPPL would still have qualified. He contended that NPPL had mentioned 40 hectares of land as 'partly acquired'. He argued that the prosecution was rather focusing on ownership. He submitted that NPPL never claimed that it was owner of the 40 hectares of land.

432. He also submitted that the financial institutions such

as PFC, UCO Bank and SBI had supported the project. He argued that if the company was not genuine, these institutions would not have supported the project.

433. He also informed that later on Govt. of Orissa had acquired large amount of land and given the same to the company for the purpose of power project which shows that company was a genuine applicant.

434. He also contended that prosecution did not produce Arun Sen of Globeleq in the witness box for which adverse inference must be drawn against the prosecution.

435. Regarding charge u/s 406 IPC, learned Counsel contended that there was no violation of any contract with MoC. The value which was fixed at the time of transfer of shares was not dependent solely on coal block and rather it was due to various other factors.

ARGUMENTS ON BEHALF OF A-2 PTP

436. Sh. Siddharth Aggrawal, learned Senior Advocate, made detailed submissions on behalf of A-2 P. Trivikrama Prasad.

437. He contended that qua representation regarding networth in the application, A-2 PTP had no role. However, qua land, A-2 had sent a letter dated 13.04.2006 in which he had given permission to the company NPPL to use 40 hectares of

land available with another company of Navabharat Group.

438. Explaining his argument regarding networth, learned Senior Counsel submitted that relations between A-1 YHCP and A-2 PTP were not cordial. He gave the entire history of the company NPPL starting from its incorporation till sale of its shares. He referred to minutes of the board meetings of NPPL and submitted that A-2 had no role even in applying for the coal blocks allocation. He submitted that it was A-1 who had gone ahead and applied to MoC for allocation of coal block. He asserted that it was A-1 who had provided all the information in the application form and feedback form.

439. As far as land is concerned, learned Senior Counsel emphasized that the letter dt. 13.04.2006 was issued even much before publication of the advertisement by MoC. The advertisement was published in November, 2006 and as such the said letter cannot be connected with any offence.

440. Regarding sale of shares, learned Senior Counsel vehemently submitted that there was no bar against sale of shares of NPPL. He also submitted that sale of shares of NPPL did not amount to sale of coal block itself. He submitted that it is misconception on the part of prosecution that selling those shares of the company amounted to sale of the coal block. He informed that the coal blocks remained in the name of the company later on as well.

441. He also highlighted that the intention of A-2 was to get out of the mess which was existing between him and A-1. He informed that A-1 had started negotiations with EPL without consulting A-2. He submitted that A-2 realizing that his position would be diminished if EPL had also joined in the management of NPPL and thus thought it better to move out. He informed that A-2 individually had got only Rs. 9 Lakhs through sale of his shares.

442. He also contended that the coal block was allocated to six companies including NPPL. He submitted that NPPL did not move out of the joint venture which was formed for mining the coal block between the six allocatees. Regarding value of the shares, he too submitted that value of the shares was not attributable to allocation of coal block alone. \

ARGUMENTS ON BEHALF OF A-3 NPPL / BTPPL

443. Sh. P.K. Dubey, learned Senior Advocate, made few submissions qua the company A-3. He mainly focussed on the contention that after change of name of company NPPL to BTPPL, the new management cannot be held liable for previous acts of NPPL.

ARGUMENTS ON BEHALF OF ACCUSED PUBLIC SERVANTS A-4 to A-6

444. Sh. Rahul Tyagi, learned Counsel for accused public

servants A-4 to A-6, made detailed submissions on their behalf.

445. First and foremost, Sh. Rahul Tyagi, learned Counsel for accused public servants made submissions relating to sanction i.e. both u/s 19 of PC Act as well as u/s 197 CrPC.

446. He vehemently argued that the present trial is a trial without jurisdiction. He contended that no sanction u/s 197 CrPC was obtained against any of the three accused public servants. Thus, even the cognizance taken in the present case was defective and is *non est* in the eyes of law which goes to the root of the matter and vitiates the whole trial. He further contended that sanction u/s 19 PC Act obtained against A-5 and A-6 was granted without application of mind and without consideration of material. Therefore, the said sanction is invalid. Consequently, cognizance of offences under PC Act is also bad.

447. He also contended that the offence u/s 13(1)(d) PC Act is not made out under any of the clauses (i) to (iii). He argued that ingredients of the said offences have not been proved by the prosecution. He submitted that role of A-4 as Chairman and A-5 as Member Convener of the 35th Screening Committee is not covered under any of the offences defined u/s 13(1)(d) PC Act.

448. He vehemently argued that for the acts of the Screening Committee which was a group, A-4 & A-5 cannot be singled out. He relied upon **State of MP & Ors. Vs. Mahendra**

Gupta & Ors., MANU/SC/0097/2018 and **Centre for PIL & Ors. Vs. UOI & Ors., MANU/SC/0179/2011**.

449. Regarding A-6, learned Counsel submitted that he was not even posted in CA-I Section when the applications were received or sent to MoP. A-6 had joined quite later. He pointed out that exercise of checking the applications was carried out during the period which A-6 was not posted in the said section. He also pointed out that sanction for prosecution of A-6 is being denied now a days as the clarification of A-6 has been understood by the government.

REBUTTAL ARGUMENTS

450. Learned DLA had replied to all the contentions of the accused persons.

451. The arguments of the parties will be noted in detail in the next part of the judgment and at relevant places.

PART – G

THE ANALYSIS AND DECISION OF THE COURT

452. I have duly considered the submissions made on behalf of the parties. I have gone through the record as well as written submissions.

453. At the outset, however, it needs to be mentioned that Sh. A.P. Singh, learned DLA had stated at the Bar that prosecution is not pressing the charge for the offence u/s 409 IPC and u/s 13(1)(c) PC Act against accused A-4 H.C. Gupta. Consequently, it was also not pressing charge of conspiracy i.e. u/s 120-B IPC r/w 409 IPC & 13(1)(c) PC Act against any of the accused persons and conspiracy charge was now restricted to offence u/s 120-B IPC r/w 420 IPC & 13(1)(d) PC Act. As such, the aforenoted offences are being kept out of consideration.

POINTS FOR DETERMINATION

454. Based on the arguments and submissions of the learned counsels for the parties, the following points for determination arise in the present case:

I. Was there no proper sanction u/s 19 of PC Act and thus cognizance was bad against accused A-5 and A-6?

II. Whether cognizance was bad in respect of A-4 to A-6 for want of sanction u/s 197 CrPC?

III. Whether offence of criminal misconduct/corruption is made out against A-4 to A-6?

IV. Were there any misrepresentations?

V. Who is responsible for making those misrepresentations?

VI. Whether those misrepresentations deceived any person and thereby fraudulently or dishonestly induced any person?

VII. Whether the offence of cheating is made out against A-1 to A-3?

VIII. Whether the offence of criminal breach of trust u/s 406 IPC is made out against A-1 and A-2?

IX. Whether there was any conspiracy among all the accused persons?

455. The case can be broadly considered in two compartments. One compartment relates to case against public servants and the other relates to case against private individuals and company.

456. Points for determination no. I to III are concerning case against public servants. Points for determination no. IV to VIII relate to case against private accused persons. Point for determination no. IX is common and relates to all the accused persons. This point for determination no. IX will be discussed in the last.

CASE AGAINST ACCUSED PUBLIC SERVANTS

457. Firstly, the case against accused public servants is being considered.

POINT FOR DETERMINATION NO. I

Was there no proper sanction u/s 19 of PC Act and thus cognizance was bad against accused A-5 and A-6?

458. Qua sanction u/s 19 of PC Act, Sh. Tyagi submitted that the same suffers from non-application of mind by the competent authority. He contended that the prosecution sanction granted in respect of A-5 & A-6 has not been proved by the

prosecution to have been issued after due application of mind. He emphasized that the material brought on record in this regard rather shows the opposite i.e. grant of sanction is result of total non-application of mind.

459. Giving various reasons for the abovesaid contentions, learned Counsel submitted that the sanction order suffers from following defects:

i. It is silent about the material placed before the competent authority. It does not record/show that the entire relevant record i.e. the FIR, disclosure statements, statements of witnesses, recovery memos, draft chargesheet and the material/document, if any, which may tilt the balance in favour of the accused was sent to the competent authority.

ii. It is silent about whether the competent authority had done complete and conscious scrutiny of the whole record itself so produced by the prosecution independently.

iii. It does not state that the competent authority had applied its mind on the same.

460. Learned Counsel relied upon **CBI Vs. Ashok Kumar Aggarwal, MANU/SC/1220/2013** and submitted that prosecution had to satisfy the legal propositions enumerated in the said judgment.

461. Learned Counsel also referred to the file of DoPT [Ex. PW-31/CA (Colly.)] which is file bearing No. 107/1/2015 AVD-I. This is the file relating to processing of request of CBI for grant of sanction for prosecution against A-5 & A-6. Referring to the file, learned Counsel highlighted various aspects showing non-application of mind by the competent authority. He pointed out that there are various errors in the file showing that some manipulations must have been done by the concerned officials. Learned Counsel submitted that order dated 12.11.2014 of this Court was made available to the sanctioning authority and it cannot be denied that the said order did influence the sanctioning authority. He pointed out that despite various officers opining that it was not a fit case for granting sanction yet the sanction was granted under influence of order dated 12.11.2014 as well as advice of CVC.

462. He further contended that issue of sanction can be raised at any time. He referred to the observations made in the case of **Nanjappa Vs. State of Karnataka (MANU/SC/0788/2015).**

463. Learned Counsel for the accused public servants vehemently contended that prosecution has failed to prove as to what material was considered by the sanctioning authority while granting sanction. He submitted that there is no evidence of what documents were sent to PMO by DoPT i.e. in file Ex. PW-31/CA (Colly.). He further submitted that PW-31 is also unaware of

what documents were sent to PMO. Learned Counsel also contended that there is no evidence as to in what manner the matter was dealt with in PMO. He also contended that the ID note dated 21.07.2015 (Ex. PW-31/DX-9) and the sanction orders dated 21.07.2015 (Ex. PW 31/A and B) do not bear signature of the PM as Minister of DoPT. Learned Counsel argued that prosecution has been unable to show that the matter was even considered by the PM. He submits that even this is not clear as to what material was placed before the PM at the PMO. He further pointed out that the draft sanction order was not sent to PM for his approval.

464. Learned Counsel submitted that the order dated 12.11.2014 had heavily influenced the mind of the sanctioning authority. He submitted that the sanctioning authority was under the impression that the Court had taken cognizance against public servants also and grant of sanction was a mere formality. He referred to para 5 of sanction order Ex. PW 31/A and B in this regard. He contended that as a matter of fact, the Court had not taken cognizance of any offence on 12.11.2014.

465. Learned Counsel pointed out that sanction was granted in three cases in a single day. He submitted that it was impossible to go through all the records of the three cases which were running into tens of thousands of pages in one day and apply one's mind to the same. He further submitted that erroneous reference to orders dated 13.10.2014 and 30.10.2014

in the sanction order further shows non-application of mind. He submitted that there was no such order dated 13.10.2014 or 30.10.2014 in the present case i.e. case relating to NPPL. He argued that it was a state of confusion at DoPT as well as PMO and thus there could be no proper application of mind.

466. Learned Counsel submitted that A-6 had joined CA-I Section on 26.03.2007 whereas the sanction order attributes responsibility upon A-6 to scrutinize the applications which related to the period prior to his joining CA-I Section. He submits that the DoPT is not granting sanction against A-6 since 2020 after A-6 had clarified that he was not posted in CA-I Section when the applications were invited and processed.

467. Learned Counsel for the accused public servants has referred to the evidence of PW-31 and contended that PW-31 had no knowledge as to what documents were sent to PMO alongwith the file. Learned Counsel submitted that in the notesheets of DoPT, no details of the said documents have been mentioned and which has been admitted by PW-31 also. Learned Counsel further contended that PW-31 had no knowledge as to how the file was dealt with in PMO and what material was considered by the sanctioning authority. He also contended that the sanction orders Ex. PW-31/A and B were never placed before the PM for his approval. The drafts were prepared by the Under Secretary and approved by the Joint Secretary only. He submits that these facts have been admitted by PW-31 also.

468. Learned Counsel referred to cross-examination of PW-31 and pointed out that the said witness has admitted that it was not mentioned anywhere in the PMO ID note dated 21.07.2015 that the Prime Minister had examined or considered the records of the case and the material facts before according sanction. He further admitted that he had not confirmed the said facts from the PMO but still mentioned these words in the final sanction order. Learned Counsel also referred to the portion of the cross-examination of PW-31 wherein the witness admitted that it was not mentioned in the ID note that the competent authority had come to conclusion about all the ingredients of the offence u/s 13(1)(d) PC Act. Learned Counsel thus submitted that the sanction orders state incorrect or unverified facts about examination and consideration of the material facts by the sanctioning authority.

469. Learned Counsel thus contended that the sanction was granted without application of mind.

470. On the other hand, learned DLA for CBI had repelled all these contentions. He contended that prosecution has duly showed that all the material was placed before the sanctioning authority and the said authority had considered the said material. He further argued that sanction was granted after due application of mind. Learned DLA submitted that at the stage of charge also, this issue was raised and decided.

471. Learned DLA referred to letter dated 16.12.2014 of Sh. Ravikant, DIG/CBI (Coal) wherein it is mentioned that all the relied upon documents and statements of witnesses of the case were being sent to the sanctioning authority.

472. Regarding contentions relating to there being no signature of the sanctioning authority, learned DLA submitted that the file of the PMO is not available on record but it is evident from the letter dated 21.07.2015 of Sh. V. Seshadri that the Prime Minister had accorded sanction for prosecution.

473. Regarding mentioning date of the order as 13.10.2014 or 30.10.2014, learned DLA submitted that the same was merely inadvertent error which amounts to irregularity at the maximum and not illegality.

474. Learned DLA relied upon **Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620**. He also relied upon **Vivek Batra Vs. Union of India & Ors., 2017 CrLJ 157**. He contended that the accused persons have not shown that any failure of justice has occurred due to invalidity of sanction u/s 19 PC Act.

475. Learned DLA submitted that the file Ex. PW-31/CA (Colly.) was summoned by the Court upon application by the accused persons and it was not relied upon document of the prosecution, therefore, no question arises for putting up exhibit mark on the letter dated 21.07.2015 (Ex. PW-31/DX-9).

476. Learned DLA also countered submissions of the

defence that the CVC advice dated 18.07.2015 [at Pg. 220 in file Ex. PW 31/CA (Colly.)] was based on wrong facts. According to learned Counsel for accused, as accused K.C. Samria was not posted as Director in CA-I Section at relevant time, the said CVC advice was defective. Learned DLA clarified that accused K.C. Samria was very much posted as Director on 17.04.2007 when the applications were processed to be sent to MoP. Learned DLA referred to **A. Srinivasa Reddy Vs. Rakesh Sharma, 2023 INSC 682; Hom Karan Vs. State, Govt. of NCT of Delhi, 2023 DHC 4933** and **Shadakshari Vs. State of Karnataka, 2024 INSC 42** .

477. Learned Counsel for accused public servants countered these submissions of learned DLA for CBI regarding there being no failure of justice shown by the accused persons. Learned Counsel contended that requirement of showing failure of justice is to be met before the Appellate Courts and not before Trial Courts.

478. I have considered the submissions.

479. It is obvious that the provision of Sec. 19 of the PC Act is in nature of shield for public servants to save them from frivolous prosecutions. It is also noteworthy that the requirement of sanction is at the time of taking cognizance. It is so because the protection will become ineffective if criminal prosecutions are allowed to begin and then later on decision is taken regarding protection of public servants. This course of action will make the

protection ineffective and useless. With aim of providing protection at the very threshold, requirement of sanction was provided at the time of taking cognizance.

480. In Nanjappa's case (*supra*), it was recognized by Hon'ble Apex Court that trial for offence under PC Act without requisite sanction u/s 19 of the said Act is *non est*. The same reads as follows:

> "15. The legal position regarding the importance of sanction Under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of Clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be *non-est* in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

481. In Nanjappa's case (*supra*) itself, Hon'ble Supreme Court had further observed as under regarding the aspect of failure of justice contained in Sec. 19(3) of PC Act :

> "13. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court,

could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:

> "Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.
>
> Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.
>
> But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court."

x x x x x

x x x x x

16. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of Sub-section (3) to Section 19, which starts with a *non-obstante* clause. Also relevant to the same aspect would be Section 465 of the Code of Criminal Procedure which we have extracted earlier. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive

but does not, in our opinion, stand closer scrutiny. A careful reading of Sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that Sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required Under Section 19(1). Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The language employed in Sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in Sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of Sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion

> and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution Under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

482. The question regarding validity of sanction can be raised at different stages. Sometimes, the validity of the sanction is a question of fact and which can be decided only after recording of evidence. In the present case, the evidence has already been recorded and now the matter is at the final stage.

483. Learned Counsel for accused public servants is right in submitting that question whether there occurred failure of justice or not due to absence of, or error in, any sanction is a matter to be seen by appellate court or revisional court and not by the trial court. The aspect of failure of justice is relevant when the question of sanction is being considered before the appellate or revisional court. Therefore, it follows that if an accused raises plea regarding absence of sanction or its invalidity before the trial court, the prosecution cannot take a plea that no failure of justice has occurred due to such absence or invalidity. The

prosecution has either to show existence of sanction or to prove its validity. The judgment in Girish Kumar Suneja (*supra*) has to be considered accordingly. Thus learned Counsel for accused public servants is right in submitting that question whether there occurred failure of justice or not due to absence of, or error in, any sanction is a matter to be seen by appellate court or revisional court.

484. The contentions qua invalidity of sanction u/s 19 of PC Act i.e. various errors as have been pointed out by Sh. Rahul Tyagi are mostly relating to pagination of the DoPT file and also to some references in the notings of DoPT file and sanction orders.

485. The various errors pointed out by learned Counsel for A-5 & A-6 relating to pagination are not significant errors which may lead to invalidity of the sanction.

486. The mistakes in pagination of the file are errors which have to be ignored. However, some errors relating to references in the notings in DoPT file and sanction orders need to be deliberated upon.

487. Learned counsel for the accused public servants pointed out that in the sanction order Ex. PW-31/B (relating to accused K.C. Samria), there was reference to 36th Screening Committee whereas the present case relates to 35th Screening Committee. He further pointed out that in both the sanction

orders i.e. PW-31/B (relating to accused K.C. Samria) and PW-31/A (relating to accused K.S. Kropha), there was reference to court orders dated 13.10.2014 and 30.10.2014 whereas no such orders were passed in the present case. Rather the order passed in this case is dated 12.11.2014. He thus submitted that this shows that there was utter confusion at DoPT level as well as PMO which was never resolved and there was non-application of mind.

488. It is true that the present case relates to 35th Screening Committee. As such there should not have been any reference to 36th Screening Committee in the sanction order. Similarly, there should not have been any reference to orders dated 13.10.2014 and 30.10.2014. However, to say that these instances show non-application of mind is somewhat misdirected. Rather these are instances of some mistakes which are typographical and/or inadvertent errors. The prosecution was required to show application of mind by the sanctioning authority i.e. the PM who was Minister-in-charge of DoPT.

489. The errors in some notings are also insignificant as they do not have any bearing on the question of application of mind by the sanctioning authority. The reference to facts of another case in the notings of DoPT file of this case does not lead to conclusion that the sanctioning authority did not consider the facts of the present case. The sanctioning authority was provided all the material to take decision regarding sanction. The sanctioning authority considered the said material and granted

sanction.

490. The contentions relating to placing order of the Court dated 12.11.2014 before the sanctioning authority are also without any substance. Merely by placing on record the copy of the said order, it does not mean that the sanctioning authority was influenced by the same. The order dated 12.11.2014 had to be furnished to the sanctioning authority as by this order, the court had disagreed with the conclusion of the investigating agency qua public servants and had opined that the said public servants also needed to be proceeded against. Furnishing copy of the said order cannot be said to be an act to influence the mind of the sanctioning authority. The contention of learned Counsel that from this order dated 12.11.2014, the sanctioning authority presumed that cognizance had been taken and thus granted sanction as a formality has to be rejected being without any substance. In the various notings, as already pointed out, the DoPT officials had in fact proposed declining the sanction. Therefore, the presumption on part of DoPT officials that court had taken cognizance vide order dated 12.11.2014 had no effect as they had proposed declining sanction. As such the order dated 12.11.2014 had not influenced in any manner.

491. Even if the officers of DoPT did not recommend grant of sanction and still the sanctioning authority i.e. the Hon'ble PM granted sanction, that is not to be taken adversely against prosecution. The ultimate decision was to be taken by the

sanctioning authority and not by the officers of DoPT. It has to be kept in mind that this Court is not sitting in appeal over the sanction order. Rather this Court has to only see as to whether all the material was placed before the sanctioning authority or not and whether the sanctioning authority applied its mind or not. In other words, the Court is concerned only with the process of granting sanction.

492. Learned Counsel had also contended that the ID Note dated 21.07.2015 [Ex. PW-31/DX-9] does not bear signature of sanctioning authority. The said Note reads as under:

-49-

PRIME MINISTER'S OFFICE

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South Block,
New Delhi – 110 011

Subject: Sanction for Prosecution against Shri K.S. Kropha, IAS [AM:82], then Joint Secretary, Ministry of Coal and Shri K.C. Samaria, IAS [AM:93], then Director, Ministry of Coal in case of coal block allocation to M/s Navbharat Power Private Ltd.

Reference is invited to DoPT's note dated 19.07.2015 at pages 21-48/N of file No. 107/1/2015-AVD.I on the subject cited above.

2. Prime Minister has approved the proposal of DoPT for grant of sanction for prosecution against the officers, i.e. Shri K.S. Kropha, IAS (AM:82), then Joint Secretary, Ministry of Coal and Shri K.C. Samaria, IAS (AM:93), then Director, Ministry of Coal, as advised by CVC, in the case of coal block allocation to M/s Navbharat Power Private Ltd. (NPPL), Orissa.

3. DoPT's file / folder No. 107/1/2015-AVD.I, alongwith one other folder, is returned herewith.

(V. Sheshadri)
Director
Tel. No. 2301 3485

Secretary, Department of Personnel & Training
PMO ID no. 600/58/C/13/2015-ES.2 Dated. 21.07.2015

JS (JB) (by email)

21/7/15

Ex PW-31/DX-9
SPL Judge
5/3/2019

493. The contentions regarding there being no order bearing signature of the sanctioning authority on the noting intimating grant of sanction i.e. ID note dated 21.07.2015 (Ex. PW-31/DX-9), it must be stated that vide Ex. PW-31/DX-9, it was conveyed that the sanctioning authority had in fact granted sanction and, thereafter, formal sanction orders Ex. PW-31/A and B were prepared. No fault can be attributed to this approach. There is no doubt whatsoever that all the material was placed before the sanctioning authority for its perusal and consideration. Thus, prosecution has showed that sanction was granted after due application of mind.

494. Prosecution has duly shown that the entire material was forwarded to the sanctioning authority for its perusal and consideration. The contentions of learned Counsel that specific words "that the Prime Minister had examined or considered the records of the case and the material facts before according sanction" are not there in the ID note Ex. PW-31/DX-9 are to be rejected as it has been shown that the entire material was placed before the sanctioning authority.

495. His contention that the conclusion about the ingredients of the offence u/s 13(1)(d) PC Act are also not mentioned in the ID note is also not worth consideration. When the sanctioning authority is granting sanction after perusing the entire material, it is to be assumed that the ingredients of the

offence were also duly considered by it.

496. Learned counsel has also raised forceful objection that three different cases were considered for sanction simultaneously and it was impossible to go through all the records of the three cases and that too within a day or two and thus there was non-application of mind. To this contention, it can only be said that different individuals have different capabilities and capacities. It is a difficult task to consider such a huge material in a short span of time but it is not impossible one.

497. That sanctioning authority had in fact considered the entire material before granting sanction has been duly shown by the prosecution. Therefore, the question whether the sanctioning authority could do so in a day or two has no significance or relevance. The validity of sanction does not get affected on this count.

498. Thus, prosecution has clearly shown that sanction u/s 19 PC Act against A-5 and A-6 was granted after due application of mind.

POINT FOR DETERMINATION NO. II

Whether cognizance was bad in respect of A-4 to A-6 for want of sanction u/s 197 CrPC?

499. Regarding sanction u/s 197 CrPC, learned Counsel submitted that as the offence of conspiracy u/s 120-B IPC and the offence of cheating u/s 420 IPC which are alleged to have been

committed were so committed during the course of discharge of official duties, therefore, sanction u/s 197 CrPC was required. All the three accused public servants fall within the definition of public servants as covered u/s 197 CrPC. Learned Counsel contended that none of the alleged acts and omissions can be said to be not connected with discharge of official duties of these public servants. Learned Counsel distinguished the case of **Parkash Singh Badal Vs. State of Punjab & Ors. MANU/SC/5415/2006.** Relying upon **A. Srinivasulu Vs. The State (MANU/SC/0723/2023)**, learned Counsel submitted that observations in Prakash Singh Badal's case were mere general observations and it was not the ratio of the said case. He further relied upon **R. Balakrishnan Pillai Vs. State of Kerala, (MANU/SC/0237/1996)** and **State of MP Vs. Sheetla Sahai & Ors. (MANU/SC/1425/2009)**.

500. Sh. Rahul Tyagi further submitted that issue of prosecution sanction u/s 197 CrPC can also be raised at any stage. He repelled the submissions of learned DLA that issue of sanction cannot be raised now as the same has already been considered and rejected at the stage of charge. Learned Counsel again relied upon Nanjappa's case (*supra*) and contended that the issue of sanction can be raised at the stage of final arguments and even at the appellate stage.

501. Learned Counsel thus argued that prosecution for offences under IPC without sanction under 197 CrPC is bad in

law. He submitted that protection of Section 197 CrPC was available even to A-4 H.C. Gupta who had retired.

502. Learned DLA has replied that the issue regarding lack of sanction u/s 197 CrPC was raised at the time of charge also and was decided against the accused persons. He also relied upon Prakash Singh Badal (*supra*) and contended that entering into conspiracies can not be considered as an act performed during the discharge of official duties and as such there was no requirement of sanction u/s 197 CrPC. He contended that the present case is a case of abuse of power and as such no protection is available to the accused public servants u/s 197 CrPC. He relied upon **Chaudhary Parveen Sultana Vs. State of WB, 2009 CriLJ 1318**.

503. Learned DLA pointed out that the issue qua sanction u/s 197 CrPC was raised before Hon'ble Supreme Court by A-4 in the matter of CBI Vs. Jindal Steel & Power Ltd. but the same was decided against the accused vide order dated 13.07.2017 in the matter of Girish Kumar Suneja Vs. CBI (*supra*). Regarding judgment in A. Srinivasulu (*supra*), learned DLA referred to judgment in A. Srinivasa Reddy Vs. Rakesh Sharma (*supra*) and submitted that the same has been clarified in the said judgment.

504. I have considered the submissions.

505. My learned Predecessor has already dealt with the aspect of sanction u/s 197 CrPC at the time of order on charge.

He has already observed that the alleged acts as committed by A-4 to A-6 can not be called to have been done by them in the discharge of official duties or in the purported discharge of their official duties. He has held that their offices merely provided them an opportunity to commit such acts of misdemeanour.

506. It has to be kept in mind that whether the sanction u/s 197 CrPC was required or not is to be considered at the stage of taking cognizance and, therefore, the allegations as they stood on that date are to be taken note of. As on the date of cognizance, considering the allegations against accused public servants, their acts and omissions were not such which could be said to have been performed in the discharge of official duties.

507. The various acts of omission and commission as were allegedly committed by the accused public servants cannot be stated to have been committed by them while acting or purporting to act in the discharge of their official duties. Assuming that those acts were committed in discharge of their duties, then it was their position as such public servants which provided them the opportunity to commit such acts of omission and commission while choosing to enter into a criminal conspiracy with the private parties involved and it cannot be stated that they so acted either in the discharge of their official duties or in the purported discharge of their official duties.

508. In the case **Rajib Ranjan & Ors vs R. Vijay Kumar, (2015) 1 SCC 513** and **Inspector of Police & Anr. Vs Battenapatla Venkata Ratnam & Anr., C.A. No. 129 of 2013 (SC)**, it has been categorically held by Hon'ble Supreme Court that when a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and therefore, provisions of Section 197 CrPC will not be attracted. Reference in this regard can also be had to **K. Satwant Singh vs State of Punjab, 1960 (2) SCR 89; Amrik Singh vs State of Pepsu, 1955 (1) SCR 1302** and **Om Prakash Gupta vs State of U.P., 1957 SCR 423.**

509. As A-4 H.C. Gupta had since retired from Govt. service, so no sanction u/s 19 PC Act, 1988 was required for taking cognizance of the offences under PC Act. However, as the very acts which were allegedly committed by A-4 H.C. Gupta were primarily also on account of offence relating to corruption, therefore, those acts can not be termed as acts done in the discharge of his official duties warranting any requirement of sanction u/s 197 Cr.PC qua him also. Consequently no sanction u/s 197 Cr. PC is required for the offence of criminal conspiracy to commit any offence under IPC or PC Act, 1988 qua either of the three accused MoC officers.

510. Learned Counsel for the accused persons submitted that the judgment in the Prakash Singh Badal (*supra*) was

discussed and clarified in the judgment of A. Srinivasulu (*supra*). He referred to the following observations:

> "47. For the purpose of finding out whether A-1 acted or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy. Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.
>
> 48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal vs. State of Punjab. It reads as follows:-
>
> > "50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."
>
> 49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

> 50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside it purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authorised by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.
>
> 51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation."

511. There cannot by any quarrel with the abovesaid proposition. However, if the material on record shows *prima facie* that public servants indulged in conspiracy i.e. at the time of taking cognizance, then there is no requirement of sanction u/s

197 CrPC. As already observed, the position on the date of cognizance is relevant.

512. Moreover, at the time of order on charge, the question regarding sanction u/s 197 CrPC was finally decided. The question was not kept open for final stage. It was not deferred till recording of evidence. Thus the same has attained finality.

513. In view of the above, it is held that there was no requirement of sanction u/s 197 CrPC against any accused public servant.

POINT FOR DETERMINATION NO. III

Whether offence of criminal misconduct/corruption is made out against A-4 to A-6?

514. The charge against accused public servants is for offence u/s 13(1)(d) of PC Act. The said provision has three clauses (i), (ii) and (iii). Learned Counsel for accused has submitted that all the three clauses make out separate offences.

515. Learned Counsel for accused public servants contended that there is no case made out u/s 13 (1)(d)(i) and (ii) of the PC Act. He relied upon the case of **Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731.** Learned Counsel has contended that it is admitted that there was no demand or acceptance of any illegal gratification or any pecuniary

advantage by any accused public servants. He submitted that no such evidence was found during investigation or produced during trial. He also relied upon **A. Sivaprakash Vs. State of Kerala, MANU/SC/0541/2016.**

516. It was observed in Neeraj Dutta (*supra*) as under:

> "74. What emerges from the aforesaid discussion is summarised as under: (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.
>
> (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
>
> (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.
>
> (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:
>
> > (i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.
> >
> > (ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a **case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates

> from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.
>
> (iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act."

517. Learned Counsel referring to Neeraj Dutta (*supra*) submitted that the Constitution Bench has now settled the law and it has held that ……. " To hold a public servant guilty of an offence u/s 13(1)(d)(i) & (ii) it must be proved that the said public servant must have made a demand and the bribe giver must have accepted the demand and he tenders demanded gratification which in turn is accepted by the public servant. This is the case of 'obtainment' which is an offence u/s 13(1)(d)(i) & (ii) PC Act."

518. Learned Counsel for the accused also referred to **Madhu Koda Vs. CBI, MANU/DE/1079/2020**, passed by Hon'ble Delhi High Court.

519. Learned Counsel submitted that further *mens rea* is required for proving offence u/s 13(1)(d)(iii) PC Act. For this he relied upon judgment titled **Madhu Koda Vs. CBI (*supra*)**. He contended that from the judgment it is clear that *mens rea* is an essential part of offence u/s 13(1)(d)(iii) PC Act. He contended that it is corruption which is to be punished and not perceived bad, arbitrary or wrong administrative decisions.

520. He referred to **R. Balakrishnan Pillai vs. State of Kerala, MANU/SC/0212/2003** and **C.K. Jaffar Shareif Vs. State through CBI, MANU/SC/0962/2012** wherein it was observed:

> "17 ……..
>
> That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public-servant'. A similar view has also been expressed by this Court in M. Narayanan Nambiar US. State of Kerala MANU/SC/0164/1962 : (1963) Supp. (2) SCR 724 while considering the provisions of section 5 of Act of 1947. If the totality of the materials on record indicate the above position, we do not find any reason to allow the prosecution to continue against the Appellant. Such continuance, in our view, would be an abuse of the process of court and therefore it will be the plain duty of the court to interdict the same."

521. He contended that there was no *quid-pro-quo*.

522. Learned Counsel contended that prosecution case against public servants is founded upon several erroneous legal assumptions as well as assumptions of facts which do not exists.

He argued that it is a case based on inferences. He also contended that ingredients of none of the three wings of Section 13(1)(d) of PC Act have been satisfied in the present case. He contended that A-5 did nothing to cause any obtainment. He submitted that ingredients of Section 13(1)(d)(iii) also have not been satisfied.

523. Learned DLA has argued that judgment of the Constitution Bench in Neeraj Dutta (*supra*) was clarified in the subsequent judgment while applying the said principles of law to the individual case of Neeraj Dutta which was reported as **Neeraj Dutta Vs. State of NCT of Delhi, 2023 SCC Online SC 280.**

524. Learned DLA replied that prosecution has proved the offence u/s 13(1)(d)(ii) & (iii) PC Act. Regarding offence u/s 13(1)(d)(ii) PC Act, he submitted that it is a clear case of abuse of position as public servants. He contended that accused public servants were fully aware that A-3 company was never eligible for allocation of any coal blocks in view of the provisions of CMN Act, 1973 as it was not engaged in any of the specified end uses but still recommended allocation in its favour. He argued that recommendation to an illegible company amounts to an abuse of official position.

525. Learned Counsel for the accused public servants also argued that merely by making recommendation, the Screening Committee did not actually allocate the coal block to the

company. He contended that only upon allocation of coal block there could be a case of criminal misconduct. He pointed out that the Minister of Coal i.e. the then Prime Minister had approved the recommendation of the Screening Committee and only thereafter obtainment happened.

526. Having perused the judgment of the Constitution Bench, there remains no doubt that proof of demand is must for securing conviction u/s 13 (1)(d)(i) & (ii) PC Act. This is because in case of abuse of official position, there cannot be obtainment unless there is demand from the side of public servant. In the present case, there is no evidence of any demand by any accused public servant. As such the offence u/s 13(1)(d)(i) or (ii) PC Act is not made out against the accused public servants.

527. However, as far as offence u/s 13(1)(d)(iii) PC Act is concerned, prosecution may have an arguable case.

528. The issue of requirement of guilty intention/*mens rea* for the offence of criminal misconduct as provided u/s 13(1)(d)(iii) PC Act has been discussed by Hon'ble High Court in the case **Runu Ghosh Vs. CBI, MANU/DE/6909/2011**. It has been observed that if the other requirements of the provisions i.e. Section 13(1)(d)(iii) PC Act are fulfilled then there is no requirement of *mens rea* or guilty intention to prove the said offence. The Hon'ble Court while discussing the provisions of PC Act in detail *inter alia* observed as under:

"79. What then is the behaviour or act which attracts such opprobrium as to result in criminal responsibility? It is not every act which results in loss of public interest, or that is contrary to public interest, that is a prosecutable offence. There can be no doubt that all acts prejudicial to public interest, can be the subject matter of judicial review. In those cases, courts consider whether the decision maker transgressed the zone of reasonableness, or breached the law, in his action. However, it is only those acts done with complete and manifest disregard to the norms, and manifestly injurious to public interest, which were avoidable, but for the public servant's overlooking or disregarding precautions and not heeding the safeguards he or she was expected to, and which result in pecuniary advantage to another that are prosecutable under Section 13(1)(d)(iii). In other words, if the public servant is able to show that he followed all the safeguards, and exercised all reasonable precautions having regard to the circumstances, despite which there was loss of public interest, he would not be guilty of the offence. The provision aims at ensuring efficiency, and responsible behaviour, as much as it seeks to outlaw irresponsibility in public servant's functioning which would otherwise go unpunished. The blameworthiness for a completely indefensible act of a public servant, is to be of such degree that it is something that no reasonable man would have done, if he were placed in that position, having regard to all the circumstances. It is not merely a case of making a wrong choice; the decision should be one such as no one would have taken.

80. In this context, it would be useful to notice the following passage from the work Errors, Medicine and the Law by Alan Merry and Alexander McCall Smith:

"Criminal punishment carries substantial moral overtones. The doctrine of strict liability allows for criminal conviction in the absence of moral blameworthiness only in very limited circumstances. Conviction of any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrongdoing, levels four and five are classification of blame, are normally blameworthy but any conduct falling short of that should not be the

subject of criminal liability. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high -- a standard traditionally described as gross negligence.

* * *

Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its inappropriate use, however, distorts tolerant and constructive relations between people. Some of life's misfortunes are accidents for which nobody is morally responsible. Others are wrongs for which responsibility is diffuse. Yet others are instances of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis."

81. As noticed previously, the silence in the statute, about the state of mind, rules out applicability of the mens rea or intent standard, (i.e. the prosecution does not have to prove that the accused intended the consequence, which occurred or was likely to occur). Having regard to the existing law Section 13 (1) (e) (which does not require proof of criminal intent) as well as the strict liability standards prevailing our system of law, therefore, a decision is said to be without public interest, (if the other requirements of the provision, i.e. Section 13(1)(d)(iii) are fulfilled) if that action of the public servant is the consequence of his or her manifest failure to observe those reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was his or her duty to have adopted.

82. It would be useful to in this context, take recourse to certain examples. For instance, in not adopting any discernible criteria, in awarding supply contracts, based on advertisements calling for responses, published in newspapers having very little circulation, two days before the last date of submission of tenders, which result in a majority of suppliers being left out of the process, and the resultant award of permits to an unknown and untested supplier, would result in advantage to that individual, and also be without public

interest, as the potential benefit from competitive bids would be eliminated. Likewise, tweaking tender criteria, to ensure that only a few applicants are eligible, and ensure that competition (to them) is severely curtailed, or eliminated altogether, thus stifling other lines of equipment supply, or banking on only one life saving drug supplier, who with known inefficient record, and who has a history of supplying sub-standard drugs, would be acts contrary to public interest. In all cases, it can be said that the public servant who took the decision, did so by manifestly failing to exercise reasonable proper care and precaution to guard against injury to public interest, which he was bound, at all times to do. The intention or desire to cause the consequence may or may not be present; indeed it is irrelevant; as long as the decision was taken, which could not be termed by any yardstick, a reasonable one, but based on a complete or disregard of the consequence, the act would be culpable.

83. "The test this Court has indicated is neither doctrinaire, nor vague; it is rooted in the Indian legal system. A public servant acts without public interest, when his decision or action is so unreasonable that no reasonable man, having regard to the entirety of circumstances, would have so acted; it may also be that while deciding or acting as he does, he may not intend the consequence, which ensues, or is likely to ensue, but would surely have reasonable foresight that it is a likely one, and should be avoided. To put it differently, the public servant acts without public interest, if his action or decision, is by manifestly failing to exercise reasonable precautions to guard against injury to public interest, which he was bound, at all times to do, resulting in injury to public interest. The application of this test has to necessarily be based on the facts of each case; the standard however, is objective. Here, one recollects the following passage of Justice Holmes in United States v. Wurzbach 1930 (280) US 396:

"Wherever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk.""

529. From this judgment, it is apparent that no *mens rea* is required for the offence u/s 13(1)(d)(iii) PC Act.

530. Thus guided, the guilt of the accused public servants for the offence under PC Act to be determined.

531. Regarding role of public servants, learned DLA referred to the guidelines issued by MoC [Ex. P-59 (Colly.), D-2, Pg. 73-94] and pointed out that it was clearly stated therein that the applications after receipt would be scrutinized for their completeness and eligibility before further processing. He pointed out that it was further provided therein that the applications without the accompaniments would be treated as incomplete and were to be rejected. Learned DLA contended that application of A-3 company was incomplete and was liable to be rejected forthwith but instead of doing so, the same was processed and ultimately coal block was allocated to A-3.

532. Learned DLA referred to various documents and statement of witnesses to show that A-4 to A-6 were in conspiracy with A-1 to A-3 and deliberately processed incomplete application of an ineligible applicant.

533. Learned DLA referred to the letter dated 30.07.2007 of Sh. Anil Razdan, Secretary MoP vide which it was specified by MoP to MoC that the claims/particulars of applicant companies be got separately verified before allocation of coal blocks. Learned DLA submitted that the data which was got

verified from financial experts was never put before the Screening Committee nor discussed during Screening Committee meeting on 13.09.2007. He alleged that it was falsely got recorded in the minutes of the meeting of Screening Committee dated 13.09.2007 that financial strength of the applicant companies was got scrutinized independently with help of financial experts of CIL and the information received was compiled and placed before the Screening Committee. He referred to statements of PW-32 Bhaskar Khulbe, PW-23 Rohtash Dahiya and PW-24 V.K. Jairath in this regard.

534. Learned DLA also referred to letter dated 05.09.2007 [Ex. PW-18/H (Colly.), D-10, Pg. 123, also as Ex. P-229 (Colly.), D-29, Pg. 140-147] sent by Govt. of Orissa to MoC in response to letter dated 02.08.2007 [Ex. P-202, D-9, Pg. 184-186] of MoC. In its report, the Govt. of Orissa had mentioned that A-3 NPPL was having NIL land and words "Applied to IDCO" were also mentioned.

535. Learned DLA vehemently contended that accused public servants did not ensure scrutiny of the applications to see their completeness and eligibility. They did not bother to note that the application of A-3 NPPL was liable to be rejected outrightly being incomplete. Rather, the accused public servants processed the said application and recommended allocation of coal block to the company.

536. Highlighting the reasons showing incompleteness of

the application, learned DLA submitted that (i) the application did not contain annual returns/balance sheets qua promoter M/s Malaxmi Group Pvt. Ltd., (ii) balance sheets/annual reports of M/s Globeleq were not annexed and (iii) it was not specified in the application whether NPPL was a joint venture or a special purpose vehicle ("JV/SPV"). Learned DLA highlighted that as per Clause 9 of the guidelines, it was specified that if an applicant was a JV/SPV, then networth of its principals was to be mentioned. He argued that as it was not mentioned that NPPL was JV or SPV, the accused persons could not have referred to networth of Globeleq in support of their application. Therefore, the application was incomplete and was liable to be rejected. However, the accused public servants did not ensure the same. He referred to testimonies of various witnesses in this regard.

537. Learned DLA also submitted that a meeting was held in MoC on 11.05.2007 which was also attended by all the three accused public servants. This meeting was called to discuss the modalities for scrutiny and evaluation of the applications for allocation. Learned DLA wanted to convey that from this meeting, it is apparent that all the three accused public servants were very much aware of the fact that no scrutiny of the applications had been carried out by MoC.

538. He also referred to letter dated 11.05.2007 sent by Sh. Anil Razdan, Secretary MoP [Ex. PW-18/D-4, D-9, Pg. 135] to A-4 intimating him that at MoP scrutiny of the applications

had not been carried out. Learned DLA referred to letter dated 20.06.2007 of Sh. Anil Razdan [Ex. P-199, D-9, Pg. 136-137] to A-4. Through this letter, MoP informed MoC that MoP had not made case by case examination of the applications and had also not made any recommendations till that date. He further referred to response of A-4 dated 30.06.2007 [Ex. P-201, D-9, Pg. 139]. Learned DLA submits that from these correspondences also, it is apparent that A-4 to A-6 were aware that scrutiny of the applications had not been carried out till that date.

539. Learned DLA pointed out that recommendations of MoP were received on 30.07.2007 at 1200 hours vide letter Ex. P-203 (Colly.), D-9, Pg. 215-218. In the letter though recommendations were made by MoP yet it had also informed that authenticity of the data/documents supplied by the applicant companies needed to be separately verified.

540. Learned DLA referred to letter dated 02.08.2007 [Ex. P-213, D-9, Pg. 151] sent by A-6 K.C. Samria to CIL for deputing financial experts for scrutinizing financial details of applicant companies. Sh. Samria had also written letter dated 02.08.2007 to Coal Controller [Ex. P-214, D-9, Pg. 155] for deputing four officials for scrutinizing applications for coal blocks. Letters were also sent to various State Govts. Letter dated 02.08.2007 sent to Govt. of Orissa is Ex. P-202 [D-9, Pg. 184-186] vide which verification of status of preparedness was called for. The Govt. of Orissa sent letter dated 05.09.2007 [Ex. PW-

18/H (Colly.), also as Ex. P-219, D-10, Pg. 123] giving its inputs as sought for vide letter dated 02.08.2007.

541. Learned DLA thus contended that all through this process, A-4 to A-6 were fully aware that scrutiny of the applications had not been conducted but still went ahead to recommend allocation of the coal block.

542. Per contra, learned counsel Sh. Rahul Tyagi for A-4 to A-6 forcefully argued that the offence u/s 13(1)(d)(iii) of PC Act is also not made out at against any of the accused public servants.

543. He argued that misrepresentations were not known to A-4 to A-6. He also submitted that guidelines of MoC were not binding and their violation cannot lead to prosecution. He submitted that even otherwise prosecution did not specify which guideline was violated. He also submitted that UMPP criteria was not in the knowledge of A-4 to A-6 as it was never communicated to MoC. He stressed that there is no allegation of any demand on the part of accused public servants and there is no quid pro quo. He argued that which guidelines of the MoC were violated has not been specified in the order on charge. He further submitted that there is no evidence of conspiracy. There was no duty upon A-4 to A-6 to check the applications for their eligibility and completeness. He contended that order on charge was also defective.

544. Another contention of learned Counsel is that if MoC was cheated, so were A-4 to A-6 as they were part of the MoC.

545. He contended that networth criteria was only internal mechanism of MoP and it was not in the knowledge of A-4 to A-6.

546. Regarding K.C. Samria/A-6, learned Counsel submitted that he joined CA-I Section, MoC on 17.04.2007 and he was not part of any conspiracy. Learned Counsel contended that verification of the applications was not the duty of MoC and rather it was to be done by Administrative Ministry or the concerned State Govt.

547. He also contended that there was no demand or acceptance by any of the accused public servants. Learned Counsel argued that PW-18 Sh. V.S. Rana has deposed that A-4 to A-6 did not ensure checking of applications for eligibility and completeness. However, Learned Counsel submitted that it was not duty of A-4 to A-6 to check the same. The immediate superior of Sh. V.S. Rana was Director who was Sh. Sanjeev Mittal at the relevant time and not K.C. Samria/A-6.

548. Learned Counsel also pointed out that A-4 to A-6 did not see the applications before the Screening Committee meeting. He contended that it was responsibility of the Section Officer to scan through the applications.

549. He questioned the reliability of evidence of Sh. V.S. Rana submitting that he does not remember many facts and suffers from poor memory and is thus not reliable.

550. He pointed out that additional information was being given by the applicant companies to the Administrative Ministry and/or the concerned State Govt. but not to MoC as MoC had no role.

551. Another contention of learned Counsel for A-4 to A-6 was that recommendations of the Nodal Ministry/Administrative Ministry and all the State Govts. were not binding on the Screening Committee. Further recommendations of the Screening Committee were not binding on MoC. He referred to the letters dated 11.05.2007 and 20.06.2007 of D-23 and pointed out that MoP had undertaken some responsibilities. He also pointed out that MoP guidelines were never sent to the MoC or the applicant companies. There was no criteria for minimum networth. He argued that MoP guidelines were not binding as there were MoC guidelines already available. He also highlighted that the guidelines do not use the term 'promoter' and rather it uses the term 'principal'.

552. Regarding evidence of PW-18 V.S. Rana, learned Counsel contended that prosecution did not declare him hostile despite he stated many facts against prosecution case.

553. He also expressed his views on the word 'engaged

in' as appearing in the CMN Act. He highlighted that since 1993 coal blocks were being given to companies proposing to engage in power production.

554. He also highlighted that no witness has stated that coal block was to be given to the company already engaged in the production of power, cement, iron and steel.

555. Another contention of learned Counsel is that allocation only happened after acceptance by MoC and not before that.

556. Learned Counsel also vehemently contended that there was no challenge to the minutes of the meetings of 35th Screening Committee. As per the minutes, charts were supplied whereas as per PWs charts were not supplied. He contended that after 12 years, minutes can not be challenged in this manner. He argued that prosecution has failed to establish that charts were not placed before the Screening Committee.

557. Referring to the work of the Screening Committee, he submitted that when Chairman takes a decision and no member objects then the decision is final and unanimous. He argued that if the recommendation is false, the fault lies with the State Govt. or the Administrative Ministry.

558. He also vociferously argued that case against accused public servants has been made out of ignorance of legal

principles about decision making in the Govt. He referred to **State of Bihar & Ors. Vs. Kripalu Shankar & Ors. MANU/SC/0166/1987**.

> "13. It cannot be disputed that the appeal raises an important question of law bearing upon the proper functioning of a Democratic Govt. A Govt. functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on matters coming before them through the files. This is so even when they consider orders of courts. Officers of the Govt. are often times confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the courts would not have passed these orders if full facts were placed before them. The expression of opinion by the officers in the internal files are for the use of the department and not for outside exposure or for publicity. To find the officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Govt. These internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of contempt action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the notings, which may sometimes even amount ex-facie disobedience of the courts orders, will not amount to contempt of court. These notings are not meant for publication.
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> 16. Articles 166(1) requires that all executive action of the State Govt. shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this Article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Govt. A study of this Article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2)."

559. He also relied upon **Sethi Auto Service Station & Ors. v Delhi Development Authority & Ors., [MANU/SC/8127/2008]** wherein it was observed:

> "17. From the afore-extracted notings of the Commissioner and the order of the Vice Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice Chairman, the final

> decision making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of State Level Co-ordinator (oil industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision making process, in our view, are of no consequence and shall not bind the DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference."

560. He also submitted that it was a decision of the Screening Committee and not of an individual officer. He referred to the testimony of PW-32 Sh. Bhaskar Khulbe in this regard. Particularly referring to the role of A-5 K.S. Kropha, learned Counsel submitted that as per Shackleton, convening means 'causes to come together'. His limited role is to get notices issued and take steps for holding the meetings.

561. He referred to **R. Sai Bharathi Vs. J. Jayalalitha & Ors., MANU/SC/0956/2003** and **Ravi Yashwant Bhoir Vs. District Collector, Raigad, MANU/SC/0186/2012**.

562. He submitted that members of the Screening Committee had attended meetings and they took part in it and also appended their names and signatures to the recommendations therefore it was a collective decision.

563. He also contended that rules of the game can not be changed midway. He argued that prosecution wrongly pleaded that UMPP criteria adopted by CEA/MoP was to be applied by the Screening Committee. He pointed out that this criteria of minimum networth was not present in the guidelines of MoC. He argued that the criteria adopted by MoP after publication of the advertisement, submission of applications and recommendations of State Govts. and presentations of the applications was itself illegal as rules of the game can not be changed midway. He referred to **Monarch Infrastructure (P) Ltd. v Commissioner, Ulhasnagar Municipal Corporation and Ors. (2000) 5 SCC 287; Hemani Malhotra Vs. High Court of Delhi, 2008 (7) SCC 11;** and **Nitu Gogoi Vs. State of Assam, MANU/GH/0984/2017**.

564. He also contended that guidelines published by MoC did not have force of law and they were not issued under MMDR Act or CMN Act. There was no duty cast under any law which was to be performed. He contended that it was mere non-observance of some administrative guidelines and as such can not be called illegal or criminal. He submitted that it may lead to departmental action but certainly not criminal action. He referred to the case of **Dr. P.B. Desai Vs. State of Maharashtra & Anr. MANU/SC/0937/2013**.

565. Learned DLA replied that the guidelines were not under MMDR Act but they were certainly under CMN Act.

566. Learned Counsel for the accused however countered this submission also contending that these guidelines can not be called to have been issued under CMN Act.

567. He referred to the testimony of PW-18 Sh. V.S. Rana wherein he stated that there is no reference of any Act, Rule or Regulations in any of the notings leading to the finalization of the guidelines. He relied upon **G. J. Fernandez Vs. State of Mysore, MANU/SC/0050/1967; Chief Commercial Manager, South Central Railway, Secunderabad Vs. G. Ratnam MANU/SC/7843/2007 and Gulf Goans Hotels Company Ltd. Vs. Union of India, MANU/SC/0848/2014**.

568. Learned DLA repelled these contentions.

569. I have considered the submissions.

570. The contentions of the learned defence Counsel that recommendation of Screening Committee was not of any value is misconceived. The Screening Committee was empowered to make recommendation as per the policy decision of the Govt. The function of the Screening Committee can not be said to be merely expressing opinions. The Screening Committee undertook a complex exercise which required decision making at various steps. A-4 being the Chairman, A-5 being the Convener and A-6 being the Director, CA-I Section, MoC must own their actions. Moreover, it is a case of conspiracy and the actions of A-4 to A-6 have to be appreciated in the light of these circumstances.

571. The objection of learned Counsel that adoption of UMPP criteria by CEA/MoP is not worth consideration. It is true that criteria of minimum networth was not present in the guidelines of MoC, but it can not be said that for this reason no minimum criteria could be fixed by MoP/CEA. It must be noted that MoC had sent the applications for views/ comments/ recommendations of MoP. Due to large number of applications MoP adopted a pre-qualification criteria which can be said to be justified in these circumstances. The CEA/MoP adopted the UMPP criteria which was 0.50 crores per MW. It can not be said that this amounted to change of rule of the game midway. The guidelines of MoC had taken capacity of minimum 500 MW in respect of power plant.

572. The CMN Act, 1973 was amended in 1993 so as to provide for allocation of captive coal blocks to companies in private sector also, who were engaged in specified end uses. At that time, an inter-departmental/inter-governmental body called the "Screening Committee" was constituted in MoC to screen all such proposals as may be received in MoC seeking allocation of captive coal blocks. Beside MoC which was the Nodal Ministry, various other Administrative Ministries such as Ministry of Steel, Ministry of Power or Department of Industrial Promotion and Policy, various State Govts. of states where coal blocks which were proposed to be allocated were situated or where the proposed end use project was to be situated were members of Screening Committee. Central Mine Planning & Design Institute

Limited, (CMPDIL), Coal India Ltd. (CIL) and its other subsidiary companies were also part of the Screening Committee. The purpose was to have views of all concerned at one single platform so as to not only expedite the coal block allocation process but to also have a body which may screen the proposals in an objective and transparent manner. Thus the various Screening Committees started laying down its own procedures to screen the proposals and to make its recommendations in an objective and transparent manner.

573. Initially no advertisement used to be issued by MoC for inviting applications for allocation of captive coal blocks but the 34th Screening Committee issued an advertisement in the year 2005 inviting applications for allocation of captive coal blocks. The past practices and procedure as used to be followed by the earlier Screening Committees were also compiled at one place and with suitable additions/modifications and guidelines were issued to govern the coal block allocation process. Similarly at the time of 35th and 36th Screening Committee also, applications were invited by way of an advertisement. After making suitable modifications in the earlier guidelines issued and besides incorporating the recommendations of 7th Energy Co-ordination Committee headed by Prime Minister and as were communicated to MoC vide I.D. note of PMO dated 25.07.2006 [Ex. PW 18/B-1 (Colly)], fresh guidelines governing allocation of captive coal blocks were issued by MoC. Thus these guidelines issued at the time of inviting applications in November 2006 were to govern

the allocation of captive coal blocks by 35th and 36th Screening Committees.

574. It has been vehemently argued by learned Counsel for the accused public servants that as the guidelines issued by MoC were not issued under any Act, rules or regulations having any statutory backing or force and were not even published in the Gazette or authenticated in the manner required by law for giving the guidelines force of law, so the said guidelines which were only in the nature of administrative guidelines/instructions issued by MoC did not cast any legal duty. It was thus argued that since the said guidelines did not have any binding force of law so any act of omission or in contravention of such instructions/guidelines does not become illegal *per se* unless the same also contravened some law, making such act or omission illegal.

575. It is pertinent to mention that the said guidelines were issued by MoC purportedly to provide a mechanism to implement the provisions of MMDR Act, 1957 and that of CMN Act, 1973 as it stood amended in the year 1993. In its order dated 25.08.14, Hon'ble Supreme Court observed that the procedure adopted by MoC and by Screening Committee was not in accordance with the provisions of aforesaid Acts. However Hon'ble Supreme Court in the said order proceeded further to consider various acts undertaken by MoC and the Screening Committee in the allocation of various captive coal blocks

assuming that Central Govt. had powers to allot captive coal blocks under MMDR Act, 1957 and CMN Act, 1973. Thus the exercise being undertaken by this Court in the present proceedings is also primarily confined to examination of various acts of omissions and commissions of accused MoC officers as were undertaken by them in the coal block allocation process which led to allocation of Rampia and Dipside of Rampia coal blocks in favour of M/s NPPL, with the assumption that the Central Govt. was acting under the two Acts believing bonafidely that it had power to so act. Thus what is required to be seen in the present proceedings is whether the rules/regulations or procedures as were devised by MoC for allocating captive coal blocks were adhered to by the accused MoC officers and by the Screening Committee and if not, then reasons therefor and the intention in not doing so. However it is certainly true that before proceeding to examine the aforesaid aspects, it also needs to be seen as to whether the guidelines so issued by MoC governing allocation of captive coal blocks were binding in nature or not, for only then the issue relating to any violation of the guidelines can be more appropriately examined.

576. As earlier also mentioned, the very purpose of issuance of guidelines by MoC to govern allocation of captive coal blocks and their subsequent uploading on the website of MoC was to bring them to the notice of public at large. A bare reading of said guidelines, as have been earlier reproduced, shows that the same not only controlled but also regulated the

exercise of discretion by MoC and the Screening Committee in allocation of captive coal blocks. The purpose was also to inform the public at large as to how the allocation of captive coal blocks would be made by MoC.

577. Some observations of Hon'ble Supreme Court in cases where Govt. was dealing with private persons in matters relating to award of contracts, grant of largesse etc. are worth noting.

578. In the case **Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal (1975) 1 SCC 70**, it was observed by Hon'ble Supreme Court as under:

> "When the Govt. is trading with the public, 'the democratic form of Govt. demands equality and absence of arbitrariness and discrimination in such transactions'. The activities of the Govt. have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure."

579. The aforesaid observations were again approved by Hon'ble Supreme Court in the case **Ramana Dayaram Shetty Vs. International Airport Authority of India 1979 (3) SCC 489** as under:

> "This proposition would hold good in all cases of dealing by the Govt. with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Govt. is dealing with the public, whether by way of giving jobs or

entering into contracts or issuing quotas or licences or granting other forms of largess, the Govt. cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant."

580. In **Kasturi Lal Lakshmi Reddy Vs. State of J&K, 1980 4 SCC 1,** Hon'ble Supreme Court while again referring to **Ramana Dayaram Shetty case (*supra*)** further observed as under:

"**10.** It was pointed out by this Court in "Ramana Dayaram Shetty v. International Airport Authority of India **[1979 (3) SCC 489]** that with the growth of the welfare state, new forms of property in the shape of Govt. largess are developing, since the Govt. is increasingly assuming the role of regulator and dispenser of social services and provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc. There is increasing expansion of the magnitude and range of governmental functions, as we move closer to the welfare state, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Govt. largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Govt. discretion in the matter of grant of such largess. The discretion of the Govt. has been held to be not unlimited in that the Govt. cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Govt. in this behalf. The

first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Govt. is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Govt. is still the Govt. and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Govt. cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Govt. has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Govt. must be in public interest; the Govt. cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Govt. awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

12. Now what is the test of reasonableness which has to be applied in order to determine the validity of governmental action. It is undoubtedly true, as pointed out by Patanjali Shastri, J. in State of Madras v. V.G. Rau, [1952] SCR 597 that in forming his own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judge participating in the decision, would play an important part, but even so, the test of reasonableness is not a wholly subjective test and its contours are fairly

indicated by the Constitution. The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in Maneka Gandhi v. Union of India[1978] 2 SCR 621 clearly demonstrated that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the directive principles. It has been laid down by this Court in E.P. Royappa v. State of Tamil Nadu [1974] 2 SCR 348, and Maneka Gandhi case that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is protected by this article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Article 21 in the full plenitude of its activist magnitude as discovered by Maneka Gandhi case, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other Articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they setforth the standards or norms of reasonableness which must guide and animate governmental action. Any action taken by the Govt. with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other over-riding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would prima facie incur the reproach of being unreasonable.

13. So also the concept of public interest must as far as possible receive its orientation from the directive principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the directive principles and they embody par excellence the constitutional concept of public interest. If, therefore, any governmental action is calculated to implement or give effect to a directive principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Govt. cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Govt., therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some directive principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations to only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Govt. in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Govt. in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest

and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Govt. is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Govt. in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law if there is any transgression the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every Govt. to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala-fides though it may, in a given case, furnish evidence of mala-fides.

15. The second limitation on the discretion of the Govt. in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in Ramana D. Shetty v. International Airport Authority of India that the Govt. is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the

> Govt. need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Govt. is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess the Govt. cannot act arbitrarily at its, sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The Court referred to the activist magnitude of Article 14 as evolved in E. P. Royappa v. State of Tamil Nadu and Maneka Gandhi case and observed that it must follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground. (SCC p. 512, para 21). This decision has reaffirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure."

581. In **Food Corpn. of India Vs. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71**, Justice J.S. Verma speaking for the Bench observed as under: (SCC p. 76, paras 7 and 8)

> "In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to

Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is `fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

12. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and

operates in our legal system in this manner and to this extent."

582. In **Navjyoti Coop. Group Housing Society Vs. Union of India AIR 1993 SC 155** Hon'ble Supreme Court held as under:

"In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's Laws of England - Fourth Edition (Re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Union v. Minister for the Civil Service. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We,

> have not been shown any compelling reasons taken into consideration by the Central Govt. to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline."

583. In the case **Sudhir Shantilal Mehta Vs. CBI (2009) 8 SCC 1**, while dealing with certain directions issued by RBI to public sector banks, Hon'ble Supreme Court observed as under:

> **67.** It is one thing to say that any circular letter issued by the Reserve Bank of India being not within the public domain would not be law but it would be another thing to say that it did not contain any direction of law so as to attract the liability in terms of Section 405 of the Penal Code. Lawful directions were issued by the Reserve Bank of India. The circular letter was meant for all scheduled banks. The authorities and/or officers running the affairs of the scheduled banks therefore were aware thereof. If it is binding on the banks, it would be binding on the officers.
>
> **68.** Any act of omission or commission on the part of any authority of the Bank would amount to acting in violation of any direction of law. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom.

584. In the case **Rajiv Kumar Vs. State of U.P. (2017) 8 SCC 791**, Hon'ble Supreme Court observed as under:

> "On appreciation of evidence and materials on record, both the trial court and the High Court recorded concurrent findings that the appellants acted in clear abuse of position, Plot No.27 in the developed Sector-14A was converted from guest house to 'residential' and in violation of the norms and circulars, the same was allotted to the appellant to gain pecuniary

> advantage to him (Rajiv Kumar). The concurrent findings recorded by the courts below are well balanced and we do not find any reason warranting interference."

585. It is clarified that in the present proceedings this Court is not carrying out any judicial review of the actions of MoC officers or that of the Screening Committee. What is being examined is whether the actions of accused public servants i.e. of MoC officers involved in the process of allocation of Rampia and Dipside of Rampia coal blocks in favour of company M/s NPPL had any element of culpability in the said actions or not.

586. It is in the light of aforesaid well settled proposition of law that it needs to be seen as to whether the guidelines issued by MoC governing allocation of captive coal blocks were binding upon the MoC officers and also upon the Screening Committee or not.

587. As earlier also mentioned, the guidelines so issued by MoC, and as were also uploaded on the website of MoC for information of the public at large, were clearly issued to regulate the exercise of discretion by the MoC officers and that of the Screening Committee in the matter of allocation of captive coal blocks. The purpose was to rule out any element of arbitrariness in the said exercise of discretion. The said guidelines undisputedly provided the logical and reasoned steps as to how the MoC officers and the Screening Committee shall undertake the decision making process vide which allocation of captive coal

blocks in favour of private applicant companies will be made. Yet another important purpose of issuance of guidelines was also to inform the public at large as to how the exercise of allocation of captive coal blocks shall be undertaken and that the discretion of Ministry of Coal or that of Screening Committee was not unfettered. It was thus represented to the public at large that MoC will undertake the said exercise fairly without discrimination and by following a fair procedure.

588. A perusal of the cases cited by learned Counsel shows that in all these matters, the enforcement of the guidelines or regulations issued by the Department were sought by a third person claiming himself to be either a victim or a person affected by the decision of the public servants concerned. It is in that context Hon'ble Supreme Court observed that since the said guidelines did not have the force of law so no right vested in a third party to seek enforcement of said guidelines and regulations. However, at the same time, Hon'ble Supreme Court also observed that the department concerned may initiate departmental proceedings against its officers responsible for following the said guidelines or to act in accordance with the said guidelines, if there is any act of omission or neglect to comply with the said guidelines.

589. From the aforesaid observations, it is thus clear that in so far as the officers of the department which issued those guidelines are concerned they were clearly bound to follow the

said guidelines. The said officers can always be punished by the Govt. or department concerned for violation of the said guidelines by them. It is altogether a different matter that such a violation of the guidelines may in a given case entail initiation of departmental enquiry only but at the same time the violation of said guidelines in a given case may also show existence of commission of an offence on the part of public servants concerned and in which case penal action may also be initiated against them.

590. Thus in the light of aforesaid circumstances, it is held that the guidelines issued by MoC governing allocation of captive coal blocks though may not be termed as law under Article 13 of the Constitution of India but were clearly binding upon the accused MoC officers. The said guidelines clearly sought to control the exercise of discretion by MoC and of the Screening Committee in disbursing the larges i.e. allocation of nationalized natural resource (Coal) of the country by way of allocation of captive coal blocks and it was represented by MoC to the public at large as to how the applications are to be submitted or how the same will be dealt with by MoC and by the Screening Committee. It clearly cast a mandatory duty upon the accused public servants to act in accordance with the said guidelines. By no stretch of imagination, the accused MoC officers can claim that even though the guidelines were issued by them intimating the public at large as to how captive coal blocks shall be allocated but while exercising the said discretion they

were not bound to follow the said guidelines. In fact the said guidelines in no way took away the discretion either from the MoC officers or from the Screening Committee but simply regulated the exercise of such discretion so vested in them, lest their actions may venture into the arena of unreasonableness, arbitrariness or in any sort of illegality.

591. The guidelines clearly mandated certain eligibility conditions and certain requirements to be fulfilled by the applicant companies, failing which, it was mentioned in the guidelines itself that the applications would be rejected. It was also clarified in the guidelines itself as to in what manner the *inter se* priority of various competing applicant companies who had applied for any given coal block should be arrived at. In fact mentioning of these very factors in the guidelines were the prime reasons for various applicant companies to inflate their various claims so as to show a better status/stage of preparedness qua their proposed end use project. A legitimate expectation thus arose in the mind of various applicant companies that their applications would be considered objectively and in a transparent manner in accordance with the guidelines so issued by MoC. In these circumstances it can not be claimed by accused MoC officers that they were not bound by the guidelines so issued by MoC governing allocation of captive coal blocks and as were also uploaded on the website of MoC.

592. It is worth noting that when the guidelines were

issued by the MoC, it was the common belief that coal blocks could be allocated by the Central Govt. by Screening Committee route. It was understanding of the Govt. of the day that allocation could be made under CMN Act in that manner. It is further worth noting that coal blocks were being allocated earlier also in similar manner. It was only when judgment in Manohar Lal Sharma's case (*supra*) was pronounced by Hon'ble Supreme Court that this practice of allocation of coal blocks was termed illegal. Therefore, the validity and sanctity of the guidelines will have to be adjudged as per the common practice and procedure which was prevalent at that time.

593. Considered as such, there remains no doubt that the guidelines issued by the MoC were issued under CMN Act and were mandatorily to be followed. Any violation of those guidelines will have to be scrutinized and not just ignored.

594. Even otherwise, if it is assumed that the guidelines were not issued under CMN Act, still the same were binding on the MoC and the Screening Committee. At least in respect of allocation of coal block the guidelines were very much binding and applicable because the same were issued for the said purpose. If not bound by the guidelines, what other Rule or Regulation was binding on the Screening Committee for recommending coal blocks?

595. A-4 to A-6 cannot take the defence that guidelines were not binding. They were bound to follow the said guidelines in the process of making recommendations for allocation. Any violation of the guidelines will invite action whether administrative or criminal.

596. The next issue is whether the guidelines were followed or not. In other words, whether the applications were checked in MoC before being sent to administrative ministries/state Govts.?

597. The guidelines provided that the applications after being received in MoC were to be checked for their completeness and eligibility before being sent to Administrative Ministries and concerned State Govts.

598. Learned Counsel for the accused persons submitted that the applications were checked by the official of CA-I Section as it was their job. He referred to judgment of Sh. Arun Bhardwaj, learned Special Judge PC Act, CBI, Coal Block Cases-01, RADC in a case related to 34th Screening Committee, and in which it was held that checking of the applications for completeness and eligibility had indeed taken place. Learned Counsel submitted that as the same procedure was followed for the 35th Screening Committee, as was followed for the 34th Screening Committee, it must be held that checking of the

applications had taken place. He referred to cross-examination of PW-18 Sh. V.S. Rana also in this regard.

599. Learned Counsel contended that while scrutiny of the applications was job of MoC but verification of information given in the applications was the task of Administrative Ministries/State Govts. He submitted that the CBI is confusing verification of information with scrutiny of applications. He argued that accused public servants can not be held responsible for any fault in verification of information given in the applications. In the present case, said responsibility lied with MoP which was Administrative Ministry and Govt. of Orissa which was state government concerned.

600. Learned Counsel vehemently submitted that PW-18 Sh. V.S. Rana, in cross-examination, had initially taken a stand that no checking was done in earlier rounds i.e. 31st to 34th Screening Committee. However, upon being confronted with documentary evidence, he gave up his false plea and admitted that checking was done earlier also. Learned Counsel highlighted that PW-18 could not show any file noting to the effect that the fact of non-checking was brought to notice of any superior officer. He submits that the natural inference should be that applications were checked for completeness and eligibility. He referred to various notings in this regard such as page – 10/n of D-2; Pg. 68/c (Ex. PW 18/DX-22); etc.

601. Learned Counsel contended that PW-18 has stated that a cursory glance was given to the documents as were available in all the five sets. He also pointed out that incomplete applications were not entertained. He further submitted that PW-18 had stated in cross-examination that application of NPPL was complete and eligible and therefore the issue regarding checking looses its significance. He pointed out that during cross-examination, PW-18 was asked to check the application of NPPL lying in the record. PW-18 had replied that the application was complete in all respect. PW-18 stated that all the documents which were required to be annexed were there.

602. Regarding placing of reports of State Govts. and of CIL experts before the members of the Screening Committee, Learned Counsel pointed out that the said informations were compiled in the form of charts and those charts were indeed placed before the members of the Screening Committee. He submitted that the prosecution has tried to establish that such charts were not placed before the Screening Committee through oral testimonies of PW-23, PW-24 and PW-32. Learned Counsel contended that oral testimonies of these three witnesses regarding events which took place around 10-15 years ago is not good evidence as the same suffers from errors of memory as well as the same are against file notings and other documentary evidence. He referred to note dated 14.09.2007 made by Sh. R.N. Singh, Section Officer, CA-I (D-13, Pg. 16/n). He submitted that the same is also mentioned in the minutes of the meeting of 35th

Screening Committee (D-10, Pg. 5).

603. Learned Counsel forcefully submitted that none of these witnesses had objected to minutes of the meeting and accepted its correctness. In the minutes it is recorded that the compilation charts were supplied to the members. Thus, Learned Counsel submits that prosecution cannot allege that these charts were not supplied.

604. Learned DLA has vehemently refuted these contentions. He referred to various note sheets in the files of MoC and letters etc. and submitted that these show that applications were not checked for their completeness and eligibility and were not processed as per the guidelines.

605. Referring to minutes of meeting dated 11.05.2007, he submitted that it shows that there was no checking.

606. Learned DLA contended that from the above it is apparent that applications were not checked for their completeness and eligibility.

607. The guidelines issued by MoC clearly mandated under the title "*Processing of application*" that the applications received in MoC in five copies after being checked for their eligibility and completeness would be sent to the Administrative Ministries and State Govts. concerned for their evaluation and recommendation. The guidelines also specified certain

documents which were required to be annexed by every applicant company alongwith its applications. It was also stated that applications without the said accompaniments would be treated as incomplete and shall be rejected. Thus in the light of aforesaid nature of guidelines, it becomes clear that before copies of the applications were to be sent to Administrative Ministries/State Govts., the same were required to be checked in MoC as regard their completeness and eligibility.

608. As regarding eligibility, the primary requirement for every applicant was that it should be a company registered under Indian Companies Act. The second requirement of being eligible was that the company should be engaged either in generation of power or production of iron or steel or in production of cement.

609. As regarding completeness, for an application to be complete, in accordance with guidelines, it was required that all the documents as were specified in the guidelines had been annexed with the application.

610. It can be said that it was job of CA-I Section to check the applications but it must also be said that it was responsibility of A-4 to A-6 to ensure that such an exercise was indeed carried out. Even as per Manual of Office Procedure, the responsibility of a Secretary is absolute.

611. What is the meaning of completeness and eligibility?

612. As far as completeness is concerned, the meaning of the said word is to be ascertained on the basis of the material available on record. The guidelines provide that an application was to be accompanied with the following documents:

> "*II The following documents should be enclosed along with the application form:*
>
> *Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy)*
>
> *Document showing the person/s who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies)*
>
> *Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 copies.)*
>
> *Audited Annual Accounts/reports of last 3 years. (5 copies)*
>
> *Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies)*
>
> *Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies)*
>
> *Scheme of disposal of unusable containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies)*
>
> *The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.*

Demand draft of Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi

A soft copy of details, as filled in the Application Form, is also to be furnished in the specified Database Form (in MS-Excel format) in a CD along with the Application."

613. Learned DLA submitted that completeness meant not only that application was having all the documents annexed with it as were required but also that the claims made in the application were based on facts. He contended that it was the duty of the accused public servants to check the aspect of completeness of the applications.

614. Regarding eligibility, learned DLA submitted that the applicant should have been a company registered under the Companies Act and it must have also been engaged in the production of power which was the EUP for coal blocks considered by 35th Screening Committee. He referred to the judgment of Hon'ble Supreme Court in Manohar Lal Sharma's case and provisions of CMN Act in this regard.

615. On the other hand, learned Counsel for A-4 to A-6 contended that completeness only meant that all the documents were annexed with the application as was specified in the guidelines/advertisement. Regarding eligibility, he submitted that companies which were proposing to engage in the generation of power were also entitled to apply because that was an accepted position at the relevant time.

616. Learned Counsels for private accused persons also made similar submissions as made by Sh. Rahul Tyagi in this regard.

617. Learned DLA, as already noted, has contended that application of NPPL was incomplete as (i) It did not contain annual returns/balance sheets qua promoter M/s Maalaxmi Group Pvt. Ltd. (ii) Balance sheet/ annual report for the year 2006 of M/s Globeleq was not annexed with the application and (iii) It was not mentioned anywhere in the application that NPPL was a JV or SPV.

618. Learned Counsels for the accused persons have forcefully submitted that the grievance regarding completeness of the application does not survive because PW-18 has himself stated in cross-examination, after checking the application in the Court, that the application of NPPL was having all the documents annexed with it as were required by the guidelines. They submitted that whatever was done or not done by the MoC officials, when the witness of MoC himself is saying that the application was complete, nothing survives regarding issue of completeness. They also pointed out that the prosecution did not re-examine PW-18 in this regard which means that it accepts the said piece of testimony.

619. I have considered the submissions.

620. The application of NPPL is Ex. P-60 & 61. PW-18

V.S. Rana has stated that all the documents which were required to be annexed were there. However, he also stated that the authority to sign on behalf of applicant company was to be duly signed and stamped by Company Secretary of the company. On this aspect, PW-18 was cross-examined and it has come that A-2 was Chairman of the company and Chairman is higher in rank and position from Company Secretary.

621. When PW-18 has stated that all the documents that were required to be annexed were there with the application, that should be the end of the topic. When the MoC official himself is saying that all the documents were there with the application, it means that the application was complete. This witness was not cross-examined by the prosecution on this issue which means that prosecution had accepted the said part of his evidence. Whether checking for completeness was done or not looses significance after this answer.

622. The applicant company NPPL did not describe Globeleq as JV or SPV constituent. The company fully explained the character of Globeleq in the covering letter. Therefore, even if any document relating to annual account of Globeleq was not filed, it did not matter.

623. The stress of learned DLA that application was not scrutinized is rather relating to verification of truthfulness and correctness of the claims made in the application. Verification of the claims was to be done by administrative ministry in

consultation with the state government concerned i.e. MoP and Govt. of Orissa respectively in the present case.

624. The application of NPPL was thus complete.

625. Now it is to be seen whether the recommendation for allocation of coal block in favour of NPPL was for an eligible company?

626. To ascertain this requirement, one again has to only look at the advertisement and CMN Act.

627. Sec. 3(3)(a)(iii) of CMN Act provides as follows:

> "3. **ACQUISITION OF RIGHTS OF OWNERS IN RESPECT OF COAL MINES**.
>
> (1) x x x x
> (2) x x x x
>
> (3) On and from the commencement of Section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976:--
>
> (a) no person, other than--
>
> (i) x x x x
>
> (ii) x x x x
>
> (iii) a company engaged in--
>
> (1) the production of iron and steel,
>
> (2) generation of power,
>
> (3) washing of coal obtained from a mine, or
>
> (4) such other end use as the Central Government may, by notification, specify.
>
> shall carry on coal mining operation, in India, in any form;"

628. To be an eligible applicant, it was required to be a

company engaged in the specified end uses e.g. power sector in the present case.

629. Applicant company NPPL has described itself as a company intending to establish power plant of 2240 MW. The contention of learned DLA is that a company proposing to engage in power production was not entitled to apply for allocation of coal block. According to him, the applicant company should already be engaged in production of power. Learned DLA referred to Sec. 3(3)(a)(iii) of CMN Act. He also referred to observations of Hon'ble Supreme Court in the case of Manohar Lal Sharma (*supra*).

> "160. The entire exercise of allocation through Screening Committee route thus appears to suffer from the vice of arbitrariness and not following any objective criteria in determining as to who is to be selected or who is not to be selected. There is no evaluation of merit and no inter se comparison of the applicants. No chart of evaluation was prepared. The determination of the Screening Committee is apparently subjective as the minutes of the Screening Committee meetings do not show that selection was made after proper assessment. The project preparedness, track record etc., of the applicant company were not objectively kept in view. Until the amendment was brought in Section 3(3) of the CMN Act w.e.f. 9-6-1993, the Central Government alone was permitted to mine coal through its companies with the limited exception of private companies engaged in the production of iron and steel. By virtue of the bar contained in Section 3(3) of the CMN Act, between 1976 and 1993, no private company (other than the company engaged in the production of iron and steel) could have carried out coal mining operations in India. Section 3(3) of the CMN Act, which was amended on 9-6-1993 permitted private sector entry in coal mining operations for captive use. The power for grant of captive coal block is governed by Section 3(3)

> (a) of the CMN Act, according to which, only two kind of entities, namely, (a) Central Government or undertakings/corporations owned by the Central Government; or (b) companies having end-use plants in iron and steel, power, washing of coal or cement can carry out coal mining operations. The expression "engaged in" in Section 3(3)(a)(iii) means that the company that was applying for the coal block must have set up an iron and steel plant, power plant or cement plant and be engaged in the production of steel, power or cement. The prospective engagement by a private company in the production of steel, power or cement would not entitle such private company to carry out coal mining operation. Most of the companies, which have been allocated coal blocks, were not engaged in the production of steel, power or cement at the time of allocation nor in the applications made by them any disclosure was made whether or not the power, steel or cement plant was operational. They only stated that they proposed to set up such plants. Thus, the requirement of end-use project was not met at the time of allocation."

630. On the other hand, learned Counsel for accused public servants has vehemently submitted that a company proposing to engage in power production was entitled to apply for allocation of coal block. He submitted that at the relevant time, this was the common understanding of all the concerned authorities as well. Further, he has referred to one judgment titled **Welfare Society of Orissa Vs. UOI & Ors., 2010 SCC OnLine Ori 67 : AIR 2010 Ori 183**. Relying upon this judgment, learned Counsel submitted that even the Hon'ble Orissa High Court while considering the provisions of CMN Act had observed that the guidelines read with statutory provisions did not provide anywhere that a person must have the experience in the field of

power generation at the time of submission of its application. It held the concerned company as eligible applicant for allocation of coal block. The relevant observations run as follows:

> "22. With regard to the above rival contentions, the following questions are framed for consideration of this Court:
>
> > (i) Whether the JPL, in whose favour award of the contract of coal blocks was made for establishment of power generation plant, is a eligible person to submit the application pursuant to the notification under Annexure-3?
> >
> > (ii) xxxxx
> >
> > (iii) xxxxx
>
> 23. To answer the first question, it is necessary for us to refer the guidelines at Annexure-6 and the same are considered in the backdrop of the statutory provisions of Sub-Section (3) to Section 3 of the Act, 1973. On careful reading of the notification and guidelines, it appears that the applications were invited by opposite party No. 1 for the purpose of allotment of coal blocks for generating power by establishing the plant. In our considered view, the contention urged by the petitioner's counsel that the JPL is ineligible as it did not have engaged itself in any power generation as on the date of filing the application, cannot be accepted by this Court for the reason that the guidelines are read with the statutory provisions referred to supra, did not provide anywhere that a person must have the experience in the filed of power generation at the time of submission of its application. Such type of interpretation of the notification by the learned counsel for the petitioner cannot be accepted. If such an interpretation is given, the same would be contrary to the statutory provisions and the guidelines. As long as the statutory provision and the guidelines are intact, this Court cannot go beyond the same and fix a criteria that if a person not having existing power generation plant cannot submit the application as contended by the petitioner, which would run contrary to the statutory

> provisions and defeat the purpose for which the applications were invited by the opposite party no. 1 for allotment of coal blocks in favour of a successful Tenderer for establishment of power generating plant. Accordingly the first question is answered against the petitioner."

631. According to Sh. Rahul Tyagi, from this cited judgment, it follows that a company proposing to engage in production of power was also entitled to apply.

632. The applicant company NPPL was a registered company under the Companies Act, 1956. It had applied for allocation of coal block for its power plant which was yet to be established.

633. From the judgment of Hon'ble Orissa High Court, there remains no doubt that a company proposing to engage in power production was entitled to apply. However, later on, Hon'ble Supreme Court vide its judgment in Manohar Lal Sharma's case (*supra*) had held that various allocations of coal blocks made to various companies as illegal. Hon'ble Supreme Court had observed that many of the companies were not engaged in specified end uses.

634. The fact that Hon'ble Orissa High Court had considered company proposing to engage in power production as an eligible applicant shows that this was a common understanding at the relevant time or at least a possible

connotation/interpretation.

635. It is a fact that many of the allocatees were companies which were only proposing to engage in production of power. The MoC had considered those companies as eligible. In such a fact situation, will it be proper to ascertain guilt for an offence under PC Act on the basis of the prevalent understanding of the provisions and guidelines? When Hon'ble Orissa High Court could take a view (although which has subsequently been overruled) that company proposing to engage in power production was an eligible company, same is the possibility with the authorities also that they also understood the provisions and guidelines on those lines. In my view, criminal liability should not be decided only on the basis of taking a particular view about the guidelines and the provisions especially when such a view was a possible view.

636. What Hon'ble Supreme Court had decided was civil consequences of administrative action. Hon'ble Apex Court had not decided criminal liability for those actions.

637. The interpretation of Sec. 3(3)(a)(iii) of CMN Act given by Hon'ble Supreme Court in the year 2014 was relevant for cancellation of allocation of coal blocks but the same cannot be basis for drawing inference about criminal liability.

638. It thus follows that the eligibility of the company has to be decided as per the guidelines and provisions of CMN Act

but with the understanding which existed at that point of time i.e. that companies proposing to engage in power production were eligible to apply for allocation of coal block.

639. Considered so, it is apparent that companies proposing to engage in power production were also eligible to apply for allocation of coal block. No doubt, there were some applicants who had one or the other EUP either fully or partly operational but most of the companies were only proposing to establish their EUPs. Thus, no fault can be found in the approach of the companies in firstly ensuring supply of coal through allocation of coal block.

640. As already mentioned above, criminal liability is not to be decided from the observations of Hon'ble Supreme Court in Manohar Lal Sharma's case (*supra*) as only civil consequences were determined in that judgment. Hon'ble Apex Court itself had mentioned in para No. 6 that the consideration of the matter was confined to prayer for quashing of the allocation of the coal blocks to private companies and it did not touch upon directly or indirectly the investigation being conducted by CBI and ED into the allocation matters. The same read as under:

> "6. The present consideration of the matter is confined to the first prayer i.e. for quashing the allocation of coal blocks to private companies made by the Central government between the above period. At the outset, therefore, it is clarified that consideration of the present matter shall not be construed, in any manner, as touching directly or indirectly upon the investigation

being conducted by CBI and ED into the allocation of coal blocks."

641. The judgment in Welfare Society's case (*supra*) was not brought to notice of this Court earlier. Consequently, the earlier view of this court regarding eligibility needs to be modified. The company which was proposing to establish specified EUP was also eligible.

642. NPPL was also proposing to establish power plant. Viewed thus, it is held that NPPL was an eligible company to apply for allocation of coal block.

643. The application was sent to MoP as well as Govt. of Orissa. Both of them made favourable recommendation in favour of NPPL/A-3.

644. At this stage, some observations of Hon'ble Supreme Court regarding 35th Screening Committee may also be noted.

"153. In 2006, the Ministry of Coal invited applications for allocation of 38 coal blocks, of which 15 were reserved for the power sector. The advertisement indicated that preference will be accorded to the power sector and steel sector. Within the power sector, it was indicated that priority shall be accorded to projects with more than 500 MW capacity. Similarly, in the steel sector, priority would be given to steel plants with more than 1 million tonne per annum capacity. In response to the advertisement, more than 1400 applications were received for 38 coal blocks.

154. The allocation of coal blocks earmarked for power generation was considered by the Screening Committee in its 35th meeting which was held on 20-6-2007 to 23-6-2007, 30-7-2007 and 13-9-2007. The coal block that was numbered as one block in the advertisement was subsequently considered as two blocks. Thus, 15 coal blocks, namely, Amarkonda - Murgadangal, Ashok Karkata Central, Durgapur-II/Sariya, Durgapur-II/ Taraimar, Fatehpur, Fatehpur (East), Ganeshpur, Gourangdih ABC, Lohara West & Lohara East, Mahuagarhi, Mandakini, Patal East, Rampia Dip Side of Rampia, Sayang and Seregarha were considered. The status of geological reserve of 15 blocks was indicated.

155. The minutes of the 35th meeting briefly record the proceedings of the meeting held on 20-6-2007 to 23-6-2007, 30-7-2007 and 13-9-2007.

155.1 The Screening Committee in that meeting recommended to allocate all the 15 blocks reserved for power sector, many of which were recommended jointly in favour of two or more companies. The minutes do not contain the particulars showing consideration of each application. They also do not disclose any comparative assessment or evaluation of the applicant companies. In what manner and for what reasons the companies were selected for recommendation are neither disclosed nor are they discernible from the minutes.

155.2. Though, the guidelines provide for norms for consideration for inter se priority for allocation of a block among competing applicants for a captive block but the minutes do not disclose at all how the norms for inter se priority are met by the companies selected for recommendation by the Screening Committee.

155.3. Many of the companies selected by the Screening Committee had no recommendation from the State Government or from the Ministry of Power and CEA and some of them had no recommendation either from the State Government or the Ministry of Power and CEA at all. For example, for Durgapur-II/Taraimar, the selected company Balco had no

recommendation at all from the State Government, Ministry of Power and CEA. Although the group company M/s. Vedanta Alumina Ltd. was recommended by Ministry of Power and CEA, but it was not selected. Similarly, for Mandakini block, M/s. Tata Power Co. Ltd. had no recommendation from the State Government and Ministry of Power and CEA. For Rampia and Dip Side of Rampia, Reliance Energy Ltd. did not have any recommendation from the State Government, Ministry of Power and CEA. For Fatehpur East, the selected company Visa Power Ltd. had no recommendation from Ministry of Power and CEA. For Fatehpur block, Prakash Industries Ltd. had neither recommendation from the State Government nor from the Ministry of Power and CEA.

155.4. The Screening Committee, as a matter of fact, did not select eight companies which were recommended by the Ministry of Power but selected eleven companies which were not recommended by Ministry of Power. Though in additional counter-affidavit, some justification in this regard has been sought to be made but we are afraid that the said justification hardly merits acceptance as the minutes of the 35th meeting of the Screening Committee do not disclose anything what is now stated in the additional counter- affidavit.

155.5. The eight companies which were recommended by the Ministry of Power but not selected by the Screening Committee are: (1) M/s. Rashmi Cement Ltd.; (2) M/s. TRN Energy (P) Ltd.; (3) M/s. Maithon Power Ltd.; (4) M/s. Mahavir Global Coal Ltd.; (5) M/s. Rosa Power Supply Ltd.; (6) M/s. Bhushan Energy; (7) M/s. Lanco Amarkantak Power Ltd. and (8) M/s. Vedanta Alumina Ltd. The minutes do not disclose any reason at all for not selecting these companies which were recommended by the Ministry of Power.

155.6 The eleven companies which were not recommended by the Ministry of Power and selected by the Screening Committee are (1) M/s. Tata Power Co. Ltd.; (2) M/s. Reliance Energy Ltd.; (3) M/s. BALCO; (4) M/s. SKS Ispat and Power Ltd.; (5)

M/s. Prakash Industries Ltd.; (6) M/s. Green Infrastructure (P) Ltd.; (7) M/s. Visa Power Ltd.; (8) M/s. Vandana Vidyut Energy Ltd.; (9) M/s. GVK (Govindwal Sahib) Ltd.; (10) M/s. Gagan Sponge Iron (P) Ltd.; and(11) M/s. Lanco Group Ltd. The reasons for selecting above eleven companies which were not recommended by the Ministry of Power are neither disclosed nor discernible."

xxxxxxxx

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159.21. A certain company which has no recommendation/categorisation was also recommended for allocation and ultimately allocation was made. The recommendation to allocate 15 blocks reserved for power sector by the Screening Committee in its 35th meeting does not contain the particulars showing consideration of each application. Though, at that time, the guidelines provided for norms for consideration of inter se priority for allocation of a block among competing applicants for a captive block, but the minutes do not at all disclose how the norms for inter se priority are met by the company selected for recommendation by the Screening Committee. Many of the companies selected by the Screening Committee had no recommendation from the State Government or from the Ministry of Power and CEA and some of them had no recommendation from the State Government, Ministry of Power and CEA at all. As many as eight companies which were recommended by the Ministry of Power were not recommended by the Screening Committee while eleven companies which were not recommended by the Ministry of Power were recommended by the Screening Committee."

645. It is noteworthy that Hon'ble Supreme Court had viewed with suspicion allocations in cases where the Screening Committee allocated coal block to companies which had recommendation of administrative ministry but not of state

government. It also viewed with suspicion allocations in cases where the Screening Committee allocated coal block to companies which had recommendations of state governments but not of administrative ministry. It further viewed with suspicion those allocations in which cases there was neither recommendation of administrative ministry nor of the state government. However, it made no comment qua those allocations where there was recommendation both from the administrative ministry as well as state governments. It thus follows that where there was recommendation from administrative ministry and also the concerned state government, there was no wrongdoing. This is understandable also because had there been rejection of name of a company which was recommended both by the administrative ministry and state government, then it would have amounted to clear cut case of unfairness. The Screening Committee would have been in the dock straightway if it had adopted such a course of action.

646. The present case is also one where there was recommendation both from the administrative ministry i.e. MoP and the concerned state government i.e. Govt. of Orissa. It has been admitted by those PW's who were members of Screening Committee that there used not to be much discussion qua those applicants in whose favour there was recommendation from both administrative ministry and state government. This stands to reason also. If a company had been recommended by both the said authorities, there could not be any possible reason to reject

its name.

647. If the Screening Committee had gone against recommendation in favour of NPPL which was there in favour of the company from both administrative ministry and state government, it would have been viewed with suspicion.

648. It is an admitted position that MoP had not informed MoC about criteria adopted by CEA for pre-qualifying the applicants. So the MoC officials or Screening Committee members cannot be faulted for considering applications which did not fall into criteria of CEA/MoP.

649. It is also to be seen that the company NPPL had got various permissions from different authorities. It had made substantial progress for development of the coal block as well as completion of its power project. These facts show that NPPL was a competent company and allocation of coal block to it was not a wrong decision and was not against public interest.

650. When the application has been found to be complete and the applicant has been found to be an eligible applicant, and allocation was recommended to a company which had recommendation from MoP and state government of Orissa, the accused public servants cannot be held accountable for any offence. For any lapse on their part, the accused public servants may be administratively liable but are certainly not criminally liable, in the facts and circumstances of the present case.

651. It is thus held that no offence u/s 13(1)(d)(iii) PC Act is made out against any accused public servants.

CASE AGAINST PRIVATE ACCUSED PERSONS

652. Now the case against the private accused persons is being discussed. The points of determination no. IV to VII can be considered together.

POINTS FOR DETERMINATION NO. IV TO VII

Were there any misrepresentations?

Who is responsible for making those misrepresentations?

Whether those misrepresentations deceived any person and thereby fraudulently or dishonestly induced any person?

Whether the offence of cheating is made out against A-1 to A-3?

653. Section 415 of IPC reads as under:

> "415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
>
> Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

654. Section 420 IPC reads as under:

> "420. Cheating and dishonestly inducing delivery of property.—
> Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

655. From perusal of the above-noted provisions, it is found that the ingredients of the offence of cheating are:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b) above, the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

(As held in ***Ram Jas v. State of UP (1970) 2 SCC 740***)

656. It will also be fruitful to note definitions of

‘dishonestly’ and ‘fraudulently’.

657. Dishonestly has been defined under S. 24 IPC as under:

> 24. “Dishonestly”.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

658. Fraudulently has been defined under S. 25 IPC as under:

> 25. “Fraudulently”.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

659. What is wrongful gain and wrongful loss are provided in S. 23 IPC. as under:

> 23. “Wrongful gain”.—“Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.
>
> “Wrongful loss”.—“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.
>
> Gaining wrongfully, losing wrongfully.—A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

660. What is the meaning of the phrase "deceiving any person" as used in the definition of cheating as provided in Section 415 IPC.

661. In the case of **Swami Dhirendra Brahamchari Vs. Shailendra Bhushan, 1995 Cr. L.J. 1810 (Delhi),** Hon'ble Delhi High Court while dealing with the word deceiving as used in S. 415 IPC, observed that generally speaking "deceiving" is to lead into error by causing a person to believe what is false or to disbelieve what is true and such deception may be by words or by conduct. A fraudulent representation can be made directly or indirectly.

662. Hon'ble Allahabad High Court in the case of **P.M. Natrajan Vs. Krishna Chandra Gupta, 1975 Cr. L.J. 899 (All.)** explained the word "deceive" as indicating inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine.

663. Hon'ble Supreme Court in the case of **Ellerman & Bucknall Steamship Co. Ltd. vs Sha Misrimal Bherajee, AIR 1966 SC 1892,** explained "deceit" as a false statement of a fact made by a person knowingly or recklessly with the intent that it shall be acted upon by another who does act upon it and thereby suffers damage.

664. Thus, it is clear that in all such cases of deception, the object of the deceiver is fraudulent. He intends to acquire or retain wrongful possession of that to which some other person has a better claim. So, where a person parts away with a property while acting on such a representation of an accused believing in

the truth thereof, it clearly amounts to deceiving the person. However, it is also important that the person practicing the deceit knows or has reason to believe the said representation to be false. Though in the true nature of things, it is not always possible to prove dishonest intention by direct evidence. It can be, however, proved by number of circumstances only from which a reasonable inference can be drawn. Further the explanation to Section 415 IPC i.e. cheating states that a dishonest concealment of facts is a deception within the meaning of this section.

665. Deception is not defined under Indian Penal Code. However, it is now well settled through various decisions that a person deceives another when he causes that another to believe what is false or misleading as to a matter of fact, or leads him into error. A willful misrepresentation of a definite fact with intent to defraud constitutes an offence of cheating. Further, it is not sufficient to prove that a false representation had been made but it must be proved that the representation was false to the knowledge of the accused and was made to deceive the complainant.

666. The deception within the meaning of section 415 IPC can happen through misrepresentation. In the present case, the prosecution has alleged that various misrepresentations were made by the accused persons.

667. As regards inducing fraudulently or dishonestly, Hon'ble Supreme Court after extensively referring to various case law on the issue in the case of Dr. Vimla (*supra*), observed that while the definition of "dishonestly" involves a pecuniary or economic gain or loss but as regard "fraudulently", it is primarily the intent to defraud which is an important ingredient. The word "defraud" includes an element of deceit. It was also observed that by way of their very definition as provided under IPC, the word "fraudulently" by its construction excludes the element of pecuniary economic gain or loss.

668. It was observed that if the expression "fraudulently" were to be held to involve the element of injury to the persons or the persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice-versa, it need not necessarily be so. It should be held that the concept of fraud would include not only deceit but also some injury to the person deceived. It would be thus appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy definition of "fraudulently" it would be sufficient if there was a non-economic advantage to the deceiver or non-economic loss to the deceit. Both need not co-exist. It was also observed by Hon'ble Supreme Court that the Juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore the definition of one may give

colour to the other. The aforesaid observations of Hon'ble Supreme Court culling out the difference between the words "dishonestly" and "fraudulently" have been followed consistently in all subsequent cases involving the issue of cheating.

669. It is essential to find out whether there were any misrepresentation(s) or not because only if there were such misrepresentation(s), the prosecution could sustain its case. This is because only if there was/were misrepresentation(s), there could be deception and ultimately dishonest inducement.

670. In the present case, only two kinds of misrepresentations have been alleged by the prosecution. One relates to **networth** and the other relates to **land**.

671. Learned DLA referred to various documents such as application, feedback form, MoU etc. He further referred to testimonies of various witnesses.

672. Learned DLA has submitted that networth of an applicant company was a vital factor in deciding *inter se* merit amongst various applicant companies. Learned DLA submitted that accused persons were having the knowledge of importance of networth. He pointed out to covering letter dated 12.01.2007 [Ex. PW-12/A (Colly.), D-4] wherein reference has been made to OM dated 03.11.2006 of MoC.

673. Learned DLA had contended that NBVL and MGL cannot be called promoters of NPPL as they did not have any

shareholding in the said company till 23.08.2007. As such, the claim made in the application dated 12.01.2007 that NPPL was promoted by NBVL and MGL was a misrepresentation. Learned DLA submitted that even the networth of NBVL was wrongly used in the application. He contended that NBVL cannot be called promoter of NPPL as it had not subscribed to the shares of NPPL. Therefore, use of figures of networth of NBVL of Rs. 307.12 crores was also unjustified.

674. He pointed out that M/s NPPL (A-3) was allegedly promoted by M/s NBVL and M/s MGPL with objective of setting up coal based power project. He referred to forwarding letter dated 12.01.2007 and application, [Ex. PW-12/A (Colly.), D-4] in this regard. He also highlighted that the applicant company, in the relevant columns, mentioned combined figures of networth of both the promoter and M/s Globeleq. He referred to MoU dated 13.11.2006, [Ex. P-69, part of D-4, Vol. II, Pg. 620 to 643 or Ex. PW-2/B (Colly.), D-5]. He also referred to various paragraphs of the order on charge dated 05.10.2016. He contended that NPPL was not authorised to use networth figures of Globeleq.

675. Learned DLA further referred to feedback form [Ex. P-93, D-7] and the presentation [Ex. PW-2/D (Colly.), D-17]. He pointed out that Suez has been described as one of the promoters of NPPL which was a misrepresentation. He submitted that in these documents, networth of NPPL as on 31.03.2006 is mentioned as :

NPPL - Rs. 307.12 Crores

Suez - Rs. 1,05,740.00 Crores

676. Learned DLA argued that M/s Suez had never permitted M/s NPPL to use its networth figures in the feedback form and presentation. He relied upon testimony of PW-14 Rajaraman Ramachandra who is from M/s Suez. PW-14 had stated that feedback form submitted by NPPL to the Screening Committee was not shown to him either before or after the presentation. He stated that NPPL was not authorised to use networth figures of M/s Suez.

677. Learned DLA contended that the MoP had considered the networth figures to make its recommendation in favour of NPPL. He referred to testimonies of PW-23 Rohtash Dahiya, PW-25 Manjeet Singh Puri and PW-26 Anil Kumar Kutty who are from MoP. Learned DLA submitted that CEA had also considered these figures. Learned DLA wanted to convey that accused persons obtained recommendation of MoP only on the basis of these inflated figures. He pointed out that networth of NPPL was only Rs. 1 Lakh for the financial years 2005-06 and 2006-07. It was Rs. 1,82,609 for the year 2007-08. Thus, it is apparent that NPPL by its own networth was not eligible to earn recommendation of MoP.

678. Learned DLA thus argued that accused persons dishonestly used figures of networth of M/s Globeleq and M/s

Suez to induce MoC and MoP to obtain recommendation for allocation of coal block.

679. Learned DLA submitted that another misrepresentation by the accused persons was qua land. He referred to the application form [Ex. PW-12/A (Colly.), D-4] and feedback form [Ex. P-93, D-7] wherein it had been claimed by the company that they had already acquired/were in possession of 40 hectares of land.

680. Learned DLA referred to letter dated 10.12.2012 [Ex. P-120, D-142] vide which one lease deed in respect of 9.64 acres was provided to CBI by the company. He submits that from Clause 4 of the lease deed, it is apparent that the lessee i.e. NBVL could not have assigned or transferred or parted with its interest in the land without approval of lessor i.e. OIIDC. He thus contended that the NBVL could not have transferred the said land in favour of NPPL and consequently NPPL could not have claimed in the application or feedback form that it had partly acquired 40 hectares of land.

681. Learned DLA also referred to a letter dated 13.04.2006 [Ex. P-128, D-184] written by A-2 to A-1. This letter was written on the letter head of NBFAL and by which A-2 had authorised A-1 to use the surplus land which was allotted to NBFAL.

682. He referred to letter dated 05.09.2007 of Govt. of

Orissa [Ex. PW-18/H (Colly.), D-10, Pg. 123] wherein the Govt. of Orissa has stated quantity of land in possession of NPPL as NIL and also mentioned APPLIED TO IDCO. (This letter dated 05.09.2007 is also available in D-29 as Ex. P-229 (Colly.) from page 140-147).

683. Learned DLA thus vehemently submitted that accused persons falsely claimed availability of 40 hectares of land in the application and feedback form whereas no land whatsoever was available or could be legally available with the A-3 company. He therefore contended that again misrepresentation was made dishonestly to induce MoC and other authorities to recommend allocation of coal block.

684. Learned DLA argued that prosecution has proved the charge for the offence u/s 420 IPC.

685. Sh. Shri Singh, learned Counsel for A-1 YHCP, however, contended that A-1 had never claimed that NPPL was a joint venture or a special purpose vehicle. He submitted that it was only stated that there was in-principle agreement between NPPL and Globeleq for investment by Globeleq. Learned Counsel also countered the contentions of learned DLA and asked where was the bar against use of networth of Globeleq by NPPL. He contended that it was for CBI to answer but they have failed to do so.

686. Learned Counsel vehemently contended that

Globeleq's interest in the project was clearly mentioned in the application form. He referred to the covering letter of the application form and pointed out that it was clearly mentioned therein that Globeleq was actively looking at investing into the equity of NPPL. He highlighted that networth of Globeleq was separately mentioned in the application form. He stressed upon the words 'Promoter and Globeleq'. He emphasised that copy of the MoU between and NPPL and Globeleq was also enclosed with the application thus leaving no room from any false statement.

687. He submitted that in the feedback form also, networth of NPPL and Suez was separately mentioned. He pointed out that in the meeting dated 23.06.2007 of the Screening Committee, Sh. Rajaraman Ramchandran (PW-14) was present on behalf of Suez. Presentations were made in the said meetings. He referred to the evidence of PW-14 wherein upon a question being asked about Suez, A-1 clearly stated that Suez was in the process of carrying out due diligence and reference was also made to letter dated 14.06.2007 [EX. PW-27/DX-12 (Colly.)] by the witness. Learned Counsel thus contended that no misrepresentation was made. He argued that reference to networth of Globeleq in the application form and to that of Suez in the feedback form was a routine commercial custom as it is usually mentioned in large infrastructure projects.

688. Sh. Shri Singh, learned Counsel for A-1 vehemently

submitted that prosecution has not examined the most crucial witness on this issue who is Sh. Arun Sen. He submitted that prosecution rather dropped him. According to learned Defence Counsel, prosecution cannot prove the misrepresentation regarding networth without evidence of Sh. Arun Sen as he was from Globeleq. Learned Counsel submitted that non-production of this witness must lead to adverse inference against prosecution as it is clear that if he had appeared, he would have deposed against the prosecution case.

689. Learned Counsel informed that Globeleq had decided to exit power projects worldwide and therefore further steps could not be taken regarding alliance between NPPL and Globeleq.

690. Sh. Shri Singh countered the submissions of learned DLA that had networth of Globeleq not been mentioned, NPPL would not have been pre-qualified by CEA. Learned Counsel for A-1 contended that no minimum networth was prescribed by MoC. He submitted that the benchmark of 0.50 crore per megawatt was adopted by MoP/CEA which was their internal exercise. He forcefully submitted that this criteria was not within the knowledge of A-3 or other accused persons at the time of filing application and thus there was no occasion whatsoever to falsely state networth.

691. Learned Counsel also pointed that this criteria of 0.50 crores per megawatt was UMPP criteria and it was adopted

for coal allocation process by MoP vide letter dated 26.06.2007 [Ex. PW-26/B-3 (Colly.), Part of D-15, Pg. 69/c]. The application was submitted quite early i.e. 12.01.2007. Thus, in January 2007, accused persons could not have foreseen that MoP would adopt such a criteria. As such there was no motive to state inflated networth. He submitted that even on the date of making presentation i.e. from 20.06.2007 to 23.06.2007, it was not known to A-3 or any other applicant company that MoP would adopt such a criteria. He further pointed out that letter dated 26.06.2007 was never put in public domain. Learned Counsel thus contended that there was no dishonest intention on the part of accused persons.

692. Learned Counsel further contended that recommendation of MoP was not *sine qua non* for consideration for allocation by Screening Committee. He pointed out that various companies which did not have recommendation in their favour from MoP were also recommended for allocation and which shows that recommendation of MoP was not the sole factor. As such, alleged misrepresentation qua networth had no relevance.

693. Learned Counsel for A-1 highlighted that Globeleq had expressed its in-principle interest to invest in the project through the above said MoU. He further emphasised that willingness of a strong player in the energy market like Globeleq was proof of the value and scope of the project of the applicant

company. According to him, execution of this MoU showed status (stage) of progress and state of preparedness of the project of NPPL. He pointed out that level of preparedness was a relevant criterion as per the guidelines also.

694. Learned Counsel alternatively submitted that Globeleq's involvement was akin to partner of a SPV, if not partner of a fully established SPV. He referred to **New Horizons Ltd. Vs. UOI, (1995) (1) SCC 478** and contended that Hon'ble Supreme Court has held that terms and conditions of a document inviting offers for a commercial transaction have to be construed from the stand point of a prudent businessman.

695. Learned Counsel for A-1 argued that the feedback form was to be supplied as directed by MoC. This was decided by MoC because a long time had elapsed between making the application and giving presentation, therefore, if any changes had taken place during the *inter regnum* period, those could be informed by an applicant company. In line with the same intention, accused submitted feedback form duly and correctly informing that Globeleq had withdrawn globally from power sector and now Suez had expressed its interest in the project of the company.

696. Learned Counsel referred to various communications via email between company and PW-14 Raju Ramachandran and contended that Suez itself had provided its financial figures for the purpose of presentation. He again

submitted that Suez had filled the place vacated by Globeleq.

697. Learned DLA replied that the said witness Arun Sen was summoned 3-4 times but could not be served as he was out of India. He further pointed out that the MoU between NPPL and Globeleq was admitted document and is Ex. P-69, part of D-4, Vol. II, Pg. 620 to 643 or Ex. PW-2/B (Colly.), D-5. The contents of the same can be read in evidence. He referred to the observations in para 46 of order on charge. Learned DLA contended that NPPL could not have used networth of Globeleq as there was no further agreement for investment by Globeleq into NPPL. Rather Globeleq was changed with Suez at the time of feedback form. He further submitted that if witness Arun Sen was so important, he could have been summoned by the defence also.

698. Regarding Suez, learned DLA contended that even networth of Suez could not be used as there was no shareholding agreement executed between NPPL and Suez. He referred to the observations of my learned Predecessor in order on charge wherein it was observed that Suez had merely expressed some interest in investing in NPPL and there was no concrete step taken in that direction.

699. Sh. Shri Singh, learned Counsel for A-1 contended that there was no misrepresentation with respect to land either. He referred to the application form and covering letter and submitted that it was clearly informed to MoC that A-3 NPPL

was in possession of 40 hectares of land through NBVL. Regarding feedback form, learned Counsel submitted that the said form was merely to be used as an aid in the process and it had pre-printed columns. As such, no false information can be said to have been supplied by A-3 in the said feedback form. Alternatively, learned Counsel argued that even otherwise, A-3 company did not gain any advantage on the basis of this information regarding 40 hectares of land. Learned Counsel submitted that as a matter of fact, process for land acquisition had been initiated by the State Govt. of Orissa which could not be mentioned by A-3 in the feedback form as company was not aware that this was to be mentioned. Learned Counsel contended that progress towards land acquisition was much higher than claim of 40 hectares of land.

700. Sh. Shri Singh, learned Counsel for A-1 submitted that the claim regarding availability of 40 hectares of land did not influence the decision of Screening Committee or the MoC as the total land required for the project was 1043 hectares and 40 hectares was merely 3.83 % of the said requirement. According to him, the 40 hectares land was so small in quantity to have any effect upon decision making of Screening Committee or MoC.

701. Learned Counsel submitted that CBI is misunderstanding the words “partly acquired” appearing in the application. He submits that CBI is looking for legal title qua land whereas what was to be shown was only availability.

Learned Counsel also pointed out that Govt. of Orissa had later on acquired land for the project. He referred to evidence of PW M.S. Puri who had stated that even if land was not considered, still NPPL would have qualified.

702. Learned DLA replied that CEA had considered the statement regarding 40 hectares of land which is evident from EX. PW-19/E (colly) [D-226, Pg. 158 at Sr. No. 122]. He submitted that CEA had also considered land which was to be acquired by IDCO. Regarding meaning of 'in possession', learned DLA submitted that the said aspect had already been considered by my learned Predecessor in the case of CBI Vs. M/s. Rathi Steel & Power Ltd., CC No.01/15.

703. Sh. Siddharth Aggarwal, learned Senior Counsel for A-2 PTP submitted that A-2 had no role in preparation of the application for allocation of coal block. He submitted that A-2 had no role in making any claim in the said application as it was prepared without his knowledge and without consulting him. Learned Senior Counsel referred to various documents especially the minute book of the company NPPL and submitted that there were disputes between A-1 & A-2 which remained for quite a long period. He pointed out that A-2 had not even attended any meeting of the Board of Directors in the year 2007 and he had rejoined only in February 2008 that too after litigation. He specifically pointed out that last meeting attended by A-2 was before making application and the next meeting attended by A-2

was after allocation of the coal block. Learned Senior Counsel contended that A-2 had no role even in preparation of the feedback form.

704. Learned Senior Counsel also pointed out that there was an MoU with Globeleq for equity participation. He informed that Globeleq, after the application had been made for allocation of coal block, had decided to exit from power sector in February 2007. Due to such an exit, the other company Suez stepped in and supported the project of the company. He informed that MoU was signed on 13.11.2006, however, discussions and negotiations were going on even prior to that, and it has been admitted by the IO also in his cross-examination. He further submitted that during those discussions and negotiations, allocation of coal block was never a point of discussion. He, however, also contended that A-2 had no idea that A-1 was trying to rope in Suez. He submitted that no meeting ever took place between A-2 and those relating to Suez. He contended that fact of involvement of Suez was concealed from A-2 at behest of A-1. There is no mention of A-2 or Nava Bharat Group in the Draft Confidentiality Agreement dated 18.05.2007.

705. Learned Senior Counsel vehemently submitted that case of the prosecution against A-2 has not moved any further from where it was at the stage of charge.

706. Learned DLA replied by submitting that A-2 never disputed the claims made in the application and feedback form at

any point of time. Therefore, now A-2 cannot escape from his liability. He submitted that A-2 never agitated the actions of A-1 till allocation of coal block. A-2, however, agitated vide his letters dated 07.01.2008 and 09.01.2008 which was after allocation. Learned DLA pointed out that A-1 was authorised by A-2 vide authorisation dated 18.12.2006. He pointed out that A-2 never disputed the claim made in the application that A-3 NPPL was promoted by NBVL and Malaxmi Group. He submitted that A-2 very well knew that Malaxmi Group was not promoter of NPPL.

707. Learned DLA repelled these contentions and contended that not only networth of Globeleq was wrongly mentioned but also Globeleq was replaced with Suez at the time of presentation and networth of Suez was mentioned in the feedback form which was also wrongly done. He submitted that no guideline provided that an applicant could do that.

708. Qua misrepresentation regarding land, Sh. Siddharth Aggarwal, learned Senior Counsel for A-2 submitted that the letter dated 13.04.2006 [Ex. P-128, D-184] which has been heavily relied upon by prosecution was issued much before publication of the advertisement for allocation of coal block. He contended that the said letter cannot be connected with the alleged conspiracy. He submitted that A-2 did not know in April 2006 that MoC would issue advertisement in November 2006.

709. Learned Senior Counsel argued that in this letter

dated 13.04.2006, there is no mention of quantification of 40 hectares of land and as such this letter does not prove anything against A-2. Alternatively, learned Senior Counsel submitted that the letter only indicated availability of land. Moreover, he referred to evidence of the IO wherein the IO sort of admitted that this letter was not used for the purpose of allocation of the coal.

710. Learned DLA replied that A-2 had also written letter dated 30.07.2007 [Ex. PW-1/J (Colly.), D-158, Pg. 1] in which there is mention of coal based power plant at Dhenkanal Orissa. He submits that this shows that A-2 was also involved in the conspiracy. Regarding letter dated 13.04.2006/14.06.2006, he referred to the observations in the order on charge.

711. Sh. P.K. Dubey, learned Senior Advocate for A-3/company vociferously contended that A-3/NPPL cannot be prosecuted as the name of the company has been changed to Brahmani Thermal Power Pvt. Ltd. (BTPPL) and the management had also changed hands. He contended that the new management cannot be held responsible for the acts done by the earlier management. He argued that the identity of the company had completely changed and NPPL was no more a corporate entity. He relied upon **Tata Steel BSL Ltd. & Anr. Vs. UOI & Anr., 2020 SCC OnLine Del 1985** and argued that under similar circumstances, the new management of the company was absolved of criminal liability.

712. Learned DLA has rebutted these submissions. He referred to **Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609; The Assistant Commissioner Vs. M/s Velliappa Textiles Ltd. & Anr., AIR 2004 SC 86; Standard Chartered Bank & Ors. Vs. Directorate of Enforcement & Ors., AIR 2005 SC 2622; Brooke Bond Lipton India Ltd. Vs. State of Assam, MANU/GH/0578/2004;** and contended that a company can be prosecuted even for the offences involving *mens rea.* Learned DLA submitted that only the name of the company was changed but the entity or body remained the same. Learned DLA pointed out that in the SPA's, nothing has been mentioned about liability for previous acts of NPPL. Therefore, BTPPL has to face the consequences for those acts.

713. Learned DLA has forcefully contended that networth of Globeleq and Suez were used by accused persons so as to become eligible for processing of applications by outshining others. He referred to the MoP criteria of 0.50 crore per Mega Watt. He contended that NPPL could not have pre-qualified the MoP criteria if it had not used networth of Globeleq and Suez.

714. Learned Counsels for A-1 & A-2 have countered these submissions by contending that the MoP criteria was not even in the knowledge of the accused persons and therefore, how could any motive could be imputed to them. He pointed out that MoP adopted this criteria as per letter of CEA dated 13/16.07.2007 [Ex. PW-23/DX-7, D-226, Pg. 129 to 217]. They

also pointed out that it was purely internal exercise of CEA which was part of MoP. Final recommendation was made by CEA and communicated to MoC only on 30.07.2007 [Ex. PW-23/DX-9, D-227, Pg. 58-86]. They contended that the said criteria was not in public domain and thus was not in their knowledge when they moved the application on 12.01.2007 or filed the feedback form on 23.06.2007. Learned Counsels thus emphasised that no misrepresentation was made qua networth.

715. They again submitted that MoP had asked for verification of the claims made by the applicant companies and MoC had sought such verification. The MoC got verified networth through two CIL Experts. The MoC got availability of land verified through concerned state governments. Learned Counsels forcefully submitted that it cannot be called a case of misrepresentation.

716. Learned DLA argued that the accused persons wrongfully took benefit of networth of Globeleq and Suez due to which they pre-qualified in the criteria adopted by MoP/CEA. He contended that only because of claiming networth in this wrongful manner, NPPL could earn recommendation of MoP. He also argued that recommendation of MoP was a necessary condition. According to learned DLA, recommendation from MoP weighed heavily in favour of an applicant in getting allocation of coal block.

717. On the other hand, learned Counsel for the accused

submitted that it was not necessary to have recommendation of MoP in one's favour to get allocation of coal block. He cited various examples to show that the companies which did not have favourable recommendation from MoP were also allocated coal blocks.

718. I have considered the submissions.

719. Let us first deal with contentions of Sh. P.K. Dubey, learned Senior Counsel for A-3 NPPL/BTPPL.

720. As far as contentions of Sh. Dubey are concerned, the same cannot be accepted. The consequences after change of the management, as suggested by learned Senior Counsel, are not deducible from any material. There is no term in any document relating to sale of shares of NPPL to BTPPL which provides that the new management will not be liable for the acts already accomplished by or on behalf of the company.

721. The identity of the company did not change after sale of shares. Subsequent change of name also does not alter identity of the company. It is merely change of name of a company. Unless and until any condition or term is included in any document relating to change of the management, it cannot be contended that the new management cannot be prosecuted for previous acts.

722. The judgment cited by learned Senior Counsel specifically relates to Insolvency and Bankruptcy Code, 2014

("IBC"). Section 32-A of IBC specifically provides that the new management of a company undergoing revival/reconstruction will not be prosecuted for previous acts. It was due to this provision that relief was granted to the company in the cited case. There is a reason for enacting such provision. If the new management which is taking over a sick company is allowed to be prosecuted for previous acts of the sick company, same will act as discouragement for such new management. No new management will come forward to take care of sick companies if they are going to be prosecuted for previous acts of such sick companies. It is only for encouraging new management to come forward to help sick companies that such a beneficial provision was enacted.

723. The provision of 32-A of IBC are not applicable to the present case. Hence, contentions of learned Senior Counsel are rejected. BTPPL cannot evade liability only on the ground as taken by learned Senior Counsel. If the offence is made out, the company BTPPL will be squarely liable.

(a) Whether NBVL and Malaxmi Group can be said to be promoters of NPPL?

724. The certificate of incorporation of company NPPL/A-3 is Ex. P-62 [D-4, Vol. I]. The Memorandum of Association and Articles of Association are on record [D-4, Vol. I] as per which initial directors were A-1 YHCP and A-2 PTP. The company was incorporated on 13.12.2005. It is almost an

admitted position that A-2 PTP is heading Navabharat Group and A-1 YHCP is heading Malaxmi Group. Both the groups have various companies under their fold.

725. A-1 YHCP represents Malaxmi Group and he was initial director as well. Similarly, A-2 PTP represents Navabharat Group and he too was initial director of the company. Formally, Malaxmi Group subscribed to the share capital of NPPL in 23.08.2007. However, informally, Malaxmi Group was a promoter of NPPL through A-1 YHCP and Navabharat Group was a promoter through A-2 PTP. Since both A-1 & A-2 had established the company NPPL/A-3, both the said groups which they were heading i.e. Malaxmi Group and Navabharat Group can be conveniently called promoters of NPPL.

726. Moreover, while ordering framing of charges vide order dated 05.10.2016, my learned Predecessor had lifted the corporate veil and had held that A-1 & A-2 had used device of company to earn windfall gain by sale of shares of NPPL. The payment made to NBPL (of which NBVL was a shareholder) was regarded as payment made to A-2. Similar was the case with MGL and A-1. It follows that when the identity of MGL and NBVL/NBPL has been merged with identity of A-1 & A-2 respectively, the prosecution now cannot allege that MGL and NBVL were not promoters of NPPL. It is an admitted position that A-1 & A-2 in their personal capacities were initial shareholders in NPPL. Therefore, Malaxmi Group and

Navabharat Group were promoters of NPPL.

(b) Whether networth was an important factor?

727. Learned DLA forcefully contended that networth was an important factor as it showed capacity and capability of an applicant to establish the EUP and work the coal mine. He referred to the relevant guidelines in this regard. He further submitted that the fact that networth was an important factor was within the knowledge of accused persons. He highlighted that only because NPPL had joined networth of Globeleq and Suez, the company could clear the criteria adopted by MoP/CEA.

728. Learned Counsel for A-1, however contended that networth was not a relevant factor as no minimum threshold of networth was specified in the guidelines. He contended that the MoP had on its own adopted criteria of minimum networth without knowledge of applicant companies and that too very late in the process. He submitted that when accused did not know that any minimum amount of networth was required, there cannot be any assumption that accused had any *mens rea* of stating inflated networth.

729. Sh. Rahul Tyagi, learned Counsel for A-4 to A-6 also made similar submissions and contended that networth was not an important factor. Rather it was to be considered alongwith various other factors. Thus, an applicant company having lessor networth but higher rating on other factors could be allocated

coal block.

730. Having heard learned Counsels for the parties, it can be safely concluded that networth was an important factor but it was not the sole factor for recommending allocation of coal block. The networth of an applicant company provided some insight regarding capacity of the company to complete the project. However, it is equally true that there are various other factors which contribute towards completion of a project and networth is only one part of it.

(c) Whether recommendation of MoP was a necessary condition?

731. The process for allocation of coal blocks was specified from time to time through various guidelines issued by MoC. In one of such guidelines, it was provided that copies of the applications would be sent to administrative ministry for its comments. In the present case also, the copies of the applications were sent to MoP being the administrative ministry. The MoP gave its comments on 30.07.2007 after evaluating claims of the applicants pursuant to their presentations.

732. It is a fact that coal blocks have been allocated to various companies which did not have recommendation of MoP in their favour. In the guidelines also, it is no where provided that it was mandatory to have favourable recommendation from MoP in one's favour.

733. The record of MoC reveals that there were

contesting recommendations both from the administrative ministry as well as concerned state governments. There were instances where for one coal block, some companies/applicants had recommendation in their favour from MoP only and some from concerned state government only. The Screening Committee was thus tasked to work out a solution and necessarily, it had to balance the interests of all the stake holders. As a consequence, allocation of coal blocks was made in favour of some companies which had recommendation of only MoP and some which had recommendation of only the concerned state government. In such a situation, it cannot be held that obtaining recommendation from MoP was a condition precedent. Had it been so, it would have been provided in the guidelines i.e. that recommendation from both administrative ministry and concerned state government was necessary. But it was not so.

734. The present case relates to allocation of Rampia and Dipside of Rampia coal block to A-3 company. In the beginning an advertisement [Ex. P-59 (Colly.), D-2, Pg. 73-94] was issued regarding 38 coal blocks out of which 15 coal blocks were reserved for power sector and the rest were for other end uses.

735. A-3 company submitted application [Ex. PW-12/A (Colly.), D-4, Vol. 1, Pg. 1328] seeking allocation of Rampia and Dipside of Rampia coal block. It was signed by A-1 YHCP. However, the authorization to sign the same has been given by A-2 PTP. Therefore, both A-1 and A-2 will be liable if any

misrepresentation is found to have been made out. It is true that almost everything was done by A-1 i.e. from filing of application to making presentation, but it cannot be said that A-2 had no knowledge of the happenings. From letter 30.07.2007 [Ex. PW-1/J (Colly.)] which was written by A-2 as Executive Director of NBVL to HPGCL, it is apparent that A-2 was in the knowledge of the fact of applying for coal block by A-1 on behalf of NPPL/A-3. So, their fate are bound together.

736. The application of NPPL was sent to Govt. of Orissa vide letter dated 19/28.02.2007 [Ex. PW-18/B (Colly.), D-2, Pg. 158-166]. The application was also sent to MoP vide letter dated 17.04.2007 [Ex. P-194, D-3, Pg. 4-75]. In the meantime, vide OM dated 07.05.2007 [Ex. PW-18/C-1, D-3, Pg. 87-88] a meeting of the Screening Committee was scheduled for 11.05.2007. The draft minutes of the said meeting are Ex. PW-18/C-3, [D-3, Pg. 105-106]. The final minutes are Ex. PW-18/C-4 (Colly.), [D-3, Pg. 102-104]. The attendance sheet is Ex. PW-18/C-2 (Colly.), [D-3, Pg. 93].

737. The accused persons have been charged with mentioning the networth of M/s Globeleq in the application form and M/s Suez in the feedback form wrongly. The wrongfulness does not relate to the figures of the networth. Rather it relates to the very act of considering the said networth worth mentioning in the application form and feedback form alongside networth of NPPL. In other words, the prosecution has alleged that accused

persons wrongly relied upon the networth of M/s Globeleq and M/s Suez and was not entitled to mention the same in the application form and feedback form.

738. Learned Counsels for accused argued that to prove the offence of cheating, prosecution must prove misrepresentation on the part of accused which consequentially led to deception. He contended that prosecution has not proved that A-1 misrepresented networth of A-3/NPPL. He referred to the application form and feedback form. He submitted that neither A-1 nor A-3 made any false statement in these forms. He further submitted that no false statement was made by them before the Screening Committee in its meeting dated 23.06.2007.

739. Alongwith the application form [Ex. P-60 & 61, D-4, Vol. I, Pg. 1 to 616 or Ex. PW-12/A (Colly.), D-4], the accused company had also sent covering letter [Ex. P-60, D-4, Vol. 1, Pg. 1 to 12]. Alongwith the said application, copy of one MoU dated 13.11.2006 [Ex. P-69, part of D-4, Vol. II, Pg. 619-643 or Ex. PW-2/B (Colly.), D-5] between NBVL, Malaxmi Group, NPPL and Globeleq was also annexed.

740. Learned DLA has contended that even as per this MoU, NPPL was not entitled to use networth of Globeleq in the application.

741. The answer of the defence is that it was mentioned in the covering letter that Globeleq had only given in-principle

consent to be part of the consortium and, therefore, nothing was concealed from the authorities. It is contended that it is case of bonafide use of prospective in-principle participant's networth and it cannot be called misrepresentation. Learned Counsel for A-1 submitted that Globeleq itself had represented to PFC on similar lines when PFC was evaluating NPPL's proposal for financial closure. He referred to copy of letter dated 01.11.2006 of M/s Globeleq [Ex. PW-27/DX-2A] and e-mail dated 29.11.2006 along with its annexures [Ex. PW-27/DX-4A (Colly.)] in this regard.

742. The relevant portion of the covering letter dt. 12.01.2007 [Ex. P-60] is as under:

Navabharat Power Private Limited
'Malaxmi House', 8-2-583/3, Road # 9, Banjara Hills, Hyderabad - 500 034 A.P., INDIA.
Phone : 91 40 2335 8953/54, Fax : 91 40 2335 8950, E-mail : mail@malaxmi.in Web : www.malaxmi.in

Mālaxmi
Committed Regardless

Ref:NPPL:MOC:523:2007

Friday, January 12, 2007

Shri Sanjiv Mittal
The Director (CA-I)
Ministry of Coal
Government of India
Shastri Bhavan
New Delhi

Sub: Application for allotment of RAMPIA Captive Coal Mining Block at Ib – River in the state of Orissa –Reg.

Dear Sir,

In reference to your advertisement published in "The Hindu" dated 13th November 2006, we herewith submit our application along with relevant Exhibits, Annexures and Demand Draft towards allotment of the captioned Captive Coal Mining Block.

I) **PREAMBLE**

We, Navabharat Power Private Limited (NPPL) are a company promoted by M/s. Nava Bharat Ventures Limited, Hyderbad and M/s. Malaxmi Group Pvt Ltd; Hyderabad with the objective of setting up of Coal based Power Projects. Based on the progress achieved thus far M/s. Globeleq, (a subisdary of U.K. based Commonwealth Development Corporation) is actively looking at investing into the equity of NPPL (copy of the MoU among the Promoters and Globeleq is enclosed as **Exhibit-I**). The project is being developed in two phases with an ultimate capacity of 2240 MW (1040MW as Phase-I & 1200MW as Phase-II) at Meeramundali & Kharagprasad Villages, Dhenkanal District, Orissa (Malaxmi Mega Thermal Power Project). **The location of the power plant is about 20km from Talcher mines and as such it is a pit head station.**

The techno financial strengths of the promoters and Globeleq are given below:

I **Nava Bharat ventures Limited:** Nava Bharat Ventures Ltd (NBVL)(formerly known as Nava Bharat Ferro Alloys Limited) is a reputed company engaged in the business of power generation, ferro alloys, sugar and various down stream products.

Financials of Nava Bharat Ventures Limited are given below:

For Navabharat Power Private Limited

Y. HARISH CHANDRA PRASAD
Vice Chairman & Managing Director

743. It is worth noting that the figures of networth are correct figures. The company did not inflate the figures of the networth either of the NPPL or of Globeleq. It shows that the company had no intention to state wrong figures of networth to take any undue advantage. It considered Globeleq as prospective participant for the power project and with that vision in mind stated networth of Globeleq conjointly with its networth.

744. The MoU between Globeleq and NPPL shows that both the sides were contemplating entering into co-operation and participation for executing the power project. Globeleq intended to subscribe to the shares of NPPL. The company NPPL had stated networth of Globeleq separately in the covering letter. It also described networth as of "promoter and Globeleq" in the application.

745. What is of more importance is that the MoP never considered networth of Globeleq while giving its recommendation. The MoP officials did not even see the application. Rather it formed its opinion on the basis of feedback form and presentation. In such circumstances, the networth of Globeleq did not matter at all. And therefore, whether NPPL could state networth of Globeleq or not becomes an irrelevant issue.

746. As per the guidelines, MoP being the administrative ministry was to evaluate the claims made in the applications. As such, it was task of MoP to go through the applications.

However, instead of doing so, the MoP through CEA evaluated the claims on the basis of feedback forms and presentations.

747. It was further provided in the guidelines that the applicant companies were to intimate any changes that might have taken place between the date of filing the applications and date of presentations. A-3 NPPL, in all fairness and honesty, informed MoC about withdrawal of Globeleq and interest shown by Suez in its project. The company NPPL did not conceal anything from MoC. Representative of Suez was rather present in the meeting of the Screening Committee at the time of making presentation. NPPL could have concealed the fact of withdrawal of Globeleq but it chose to bring it to notice of MoC the said fact. This goes in favour of the company.

748. The objection of prosecution to replacement of Globeleq with Suez is misconceived. It is to be kept in mind that Globeleq was not presented as promoter or principal of NPPL. It was presented as prospective investor, as clarified in covering letter. The company Globeleq withdrew from power sector worldwide. Suez came forward to take its place. This replacement was possible with no rule or regulation or law prohibiting the same. Thus this objection is rejected.

749. The description of Suez as promoter of NPPL in the presentation was an incorrect statement. However, it has come in evidence of PW-14 (from Suez) that questions were asked by members of Screening Committee about association of Suez and

it was clarified that Suez was there for due diligence. Thus the mis-statement was corrected in the meeting itself and, therefore, the same cannot be called misrepresentation. And the same did not cause any deception.

750. Suez had provided its networth figures to NPPL as is visible from various communications between them. Therefore, Suez cannot claim now that NPPL was not authorised to use its networth figures. Rather, the material on record e.g. email dt. 22.06.2007 [Ex. PW27/DX13] shows that Suez had even contributed in making the presentation as it had provided some slides for making presentation. This is indicative of implied consent of Suez to use of its networth at the time of presentation. PW-14 who is from Suez was present in the Screening Committee meeting. It has come in evidence that he did not object to any slides of the presentation. Suez was described as promoter of NPPL in those slides. The claim of PW-14 that Suez did not know the contents of presentation is falsified from his cross-examination.

751. As already noted in this judgment, in the present case, there was recommendation both from administrative ministry/MoP and concerned state government/Govt. of Orissa. Thus, there was not much left to be considered by the Screening Committee members or its chairman.

752. Learned DLA contended that MoP was induced to make recommendation in favour of NPPL by making

misrepresentations in the application and the feedback form.

753. Firstly, there is no evidence that MoP made its recommendation on the basis of claims made in the application. As already mentioned above, MoP made its recommendation on the basis of feedback form and presentation. Secondly, and more importantly, the MoP had asked MoC for verification of the claims made by the applicant company. This circumstance shows that MoP did not believe in the claims made by the applicant company and rather sought verification of the said claims. As MoP had made recommendation without believing the claims, it cannot be said that it was misled by those claims or that there was any inducement. The very fact that MoP suggested MoC to verify the claims gives insight into the manner of making recommendation and clearly demonstrates that there was no inducement made by NPPL.

754. As far as Govt. of Orissa is concerned, the said government was fully supporting the project of NPPL. Even after verification of the claims, particularly about land, the government did not withdraw its recommendation in favour of the said company. These circumstances show that there was no misrepresentation and inducement.

755. It is also to be noted that neither officials of MoP nor those of Govt. of Orissa have been prosecuted. It is not the case of CBI that officials of MoP and Govt. of Orissa made recommendation in favour of NPPL illegally or wrongfully.

Rather CBI is alleging that they were induced into making the recommendation. However, material on record suggests otherwise.

756. It can also be seen that MoP made its recommendation in favour of NPPL fully knowing the status of Suez, as official of Suez was present in the Screening Committee meeting. At least, MoP had opportunity to question Suez about its involvement. PW-14 is from Suez and it appears from his evidence that questions were indeed asked about Suez in the Screening Committee meeting. As such, MoP had full opportunity to know the truth. There cannot be any inducement where a party had complete opportunity to know the true facts. NPPL, on its part, had disclosed everything about Globeleq and Suez.

757. It cannot be said that NPPL had no basis at all to claim association of Globeleq at the time of application and Suez at the time of presentation. NPPL and Globeleq had entered into an MoU. Suez had issued letter of Expression of Interest.

758. Sh. Arun Sen who was cited as a witness from Globeleq was not examined by prosecution as he could not be served. The defence argues that only the said witness could prove that NPPL was not authorised to use its networth. The prosecution, on the other hand, submits that if it could not examine the said witness, accused could have called him and examined him. Learned DLA submits that for prosecution even

the MoU is sufficient to show that NPPL was not authorised to use networth of Globeleq.

759. In my view, the prosecution has to stand upon its own legs. The burden to prove the case is always on the prosecution. It is a fact that prosecution could not bring this witness. As far as MoU is concerned, the same is also evidence that Globeleq was intending to invest in NPPL. The company NPPL did not claim that Globeleq had invested in it and rather made full and true disclosure in the covering letter that Globeleq had shown in-principle interest to invest. Therefore, onus to show the fact to the contrary was upon the prosecution. The material on record also shows that Globeleq had participated in discussions regarding financial closure and had provided its networth figures to NPPL.

760. Similar was the situation qua Suez. The representative from Suez was present in the meeting of the Screening Committee and Suez had also provided its networth figures to NPPL.

761. The contention of learned DLA that accused persons used networth of Globeleq and Suez to show better preparedness whereas in fact they had no authority to use the same is without merits. It is a fact well established that Globeleq was intending to partner with NPPL and similarly Suez too. Both were energy sector giants. Therefore, in a way, NPPL was in fact better prepared than other applicants.

762. Learned DLA contended that no one from Globeleq was director or promoter or shareholder in NPPL and thus Globeleq was not principal of NPPL, therefore, it has not been explained why networth of Globeleq was considered. Regarding this contention, it is to be noted that NPPL never claimed that Globeleq was principal of NPPL. It had described status of Globeleq in the covering letter. Further, there is no material to show that networth of Globeleq was considered. As already indicated above, MoP did not consider networth of Globeleq as it made recommendation on the basis of feedback form and presentation only. Alternatively, even if it is assumed that MoP considered networth of Globeleq, it is apparent that MoP had not taken those figures as true figures because it had sought verification of the claims. As far as MoC is concerned, the claims were to be evaluated by MoP and Govt. of Orissa. There is no material to show whether MoC considered NPPL as JV or SPV. In the charts, networth of NPPL is mentioned only as Rs. 307.12 Crores. This shows that neither the figures of Globeleq or that of Suez were considered by MoC.

763. The pre-qualification exercise done by CEA which is part of MoP was an internal exercise of MoP. The CEA conducted this exercise only after presentations were made by the applicant companies. The MoC was kept in the dark about the criteria of this pre-qualification exercise. The applicant companies too were never aware of this criteria. Therefore, dishonest intention cannot be imputed to the applicant company

NPPL in stating networth of Globeleq or Suez. Whatever might have been the intention of NPPL to state those figures of networth, it was not to deceive or to induce MoP to clear pre-qualification hurdle. NPPL had its own reasons/grounds to state those figures, as already observed.

764. It is held that no misrepresentation was made with respect to networth.

765. As far as land is concerned, again no misrepresentation seems to have been made.

766. The fact of availability of 40 hectares of land was represented on the basis of a letter dt. 13.04.2006 written by A-2 as Executive Director of NBFAL [Ex. P-128, D-184]. The letter reads as under:

D-184 LAND Related

Sl. No 1
27.10.2012

NAVA BHARAT FERRO ALLOYS LIMITED

"NAVA BHARAT CHAMBERS", RAJ BHAVAN ROAD, HYDERABAD-500 082. A.P. INDIA.

NBFA

NBFA/3840:2006-2007

Thursday, April 13, 2006

C.B.I./SIU (VIII)/New Delh
Case No. 11/2012
M R No. 1679/12

Sri. Y. Harish Chandra Prasad
Vice Chairman
Navabharat Power Private Limited
Malaxmi House, 8-2-583/3
Road NO.9, Banjara Hills
Hyderabad – 500 034

Phone # 040 - 23358951
Fax # 040 - 23358950

Sub: **1040 MW (2 x 520 MW) Malaxmi Mega Thermal Power Project in Nuahata Village, Angul District, Orissa – Land required for the project – Reg.**

Dear Mr. Harish Chandra Prasad,

This is with reference to the several discussions we had over the last few days in connection with the land required for setting up of the 1040 MW (2 X 520 MW) Malaxmi Mega Thermal Power Project in Dhenkanal/ Angul Districts, in the close proximity of our exiting Ferro Alloys Plant and Captive Power Plant in Orissa.

I am happy to confirm that we will be able to provide you the surplus land available with us, which is adjacent to our existing Ferro Alloys Plant for setting up of the 1040 MW Malaxmi Mega Thermal Power Project. This land is already in our possession and you may commence necessary soil investigation and environmental monitoring activities immediately. As Navabharat Power Private Limited is promoted by our company, there will be no hurdles for the immediate commencement of these activities.

The necessary survey drawings/documents and other relevant information pertaining to the land will be provided to you by our officials in the Dhenkanal Plant. At the appropriate time and when all the required statutory permits and consents for the power plant are available, we will arrange to transfer the subject land at the then prevailing market price in favour of the Special Purpose Vehicle i.e.; Navabharat Power Private Limited.

Thanking you

Very truly yours,
For **NAVA BHARAT FERRO ALLOYS LIMITED**

P. Trivikrama Prasad

P. TRIVIKRAMA PRASAD
EXECUTIVE DIRECTOR

P. Trivikrama Prasad
27/10/12

Telephone : (040) 23402064, 23403501, 23403540, Fax : (040) 23403013
E-mail : nabfal@nettlinx.com nbfa@sify.com Website : www.nbfal.com

ISO 9001 ISO 14001

767. The company NBFAL had permitted use of its land for the project. It was between them as to how the said use was to be operationalized. NBFAL had expressed its consent for allowing NPPL to use some land which was available with it (NBFAL). Even if the said land was leased land, and further that permission of OIDC/IDCO was required before transferring the said land, it cannot be said that any misrepresentation was made. The letter from NBFAL showed that NPPL could have used the said land for its project. As far as permission from IDCO is concerned, it is not that the said permission could not have been obtained under any circumstances by the company. It is common knowledge that such type of requests are entertained by the authorities and are usually granted also.

768. Even if it is held that the company had wrongly stated about acquiring 40 hectares of land, as noted above, the same merely constituted roughly about 4 % of total land required for the EUP. Availability of such a small quantity of land can hardly influence any decision making process of the authorities. Whether NPPL had or did not have land which merely constituted 4% of total requirement of land could not make any difference on the decision to recommend or not to recommend allocation of coal block.

769. It has come in evidence of PW-25 Sh. M.S. Puri that one point was awarded to NPPL towards 40 hectares of land and even if that one point is deducted, still NPPL would have been

recommended by CEA. This clearly demonstrates that the claim about 40 hectares of land was of no relevance.

770. On the other hand, there is evidence on record that the process for acquisition of land had been started by Govt. of Orissa. A-3 NPPL had paid 10% cost towards land acquisition as processing charges which is recorded vide Ex. DB-1 which is letter dated 02.11.2006 sent by NPPL to IDCO. This fact also shows that the company was serious in completing the project. The application was filed with MoC on 12.01.2007. Thereafter, NPPL deposited further payment of 10% with IDCO which is visible from Ex. DB-4 which is letter dated 05.07.2007 sent by NPPL to IDCO. The feedback form was submitted on 23.06.2007.

771. It is also to be kept in mind that all the information about land had to be considered as a whole. When the claim about acquisition of land by the state government has been found to be genuine, there appears to be no reason for NPPL to falsely state about a small portion of 40 hectares of land. The applicant company had duly shown its efforts to secure availability of land for the project.

772. It is also noteworthy that even after verifying availability of land as NIL, the Govt. of Orissa did not withdraw its recommendation in favour of NPPL nor did it stop the process of acquisition of land for the project. This is enough to show that the claim regarding acquiring 40 hectares of land did not matter

at all. Rather the Govt. of Orissa was taking steps to acquire land for the project of the company.

773. Apart from the above, the IO has himself stated that this letter from NBFAL was not used for allocation of coal block.

774. Therefore, no misrepresentation was made qua land as well.

775. As far as offence of cheating is concerned, although I have held that no misrepresentations were made but even if it is assumed that such misrepresentations were made, especially in presentation describing Suez as one of the promoter of NPPL, still no case of cheating is made out as no one was induced by such misrepresentations.

776. The representations qua land available with NPPL and networth of Globeleq made in the application were not considered by MoP. It considered claims made in the feedback form and presentation regardind land of NPPL and networth which related to Suez. The MoP considered networth of Suez despite being aware of the true facts or at least had opportunity to know true facts. The Govt. of Orissa was never induced to support the project. Rather it actively supported the same after duly considering all pros and cons. The MoC considered recommendations made by MoP and Govt. of Orissa in favour of NPPL. MoC never knew about pre-qualification criteria adopted by MoP. Even after verification of claims about networth and

land, neither MoP or Govt. of Orissa withdrew their recommendations. As such there was no inducement. Thus the company NPPL/A-3 or its Chairman/A-2 or Managing Director/A-1 are not liable for any cheating.

POINT FOR DETERMINATION NO. VIII

Whether the offence of criminal breach of trust u/s 406 IPC is made out against A-1 and A-2?

777. Learned DLA submitted that after obtaining allocation of the coal block, A-1 & A-2 sold off their shares in the company A-3 and earned huge profits therefrom. He pointed out that shares were sold by A-1 & A-2 for combined value of Rs. 231 crores to M/s Essar Power Ltd. ("EPL"). He contended that parting with the entire equity holding in A-3 company by A-1 & A-2 was not a simplicitor case of sale of shares. He argued that the corporate veil has to be lifted and actual nature of the transaction has to be determined.

778. Learned DLA argued that sale of shares by A-1 & A-2 literally amounted to sale of the company A-3 to EPL. Learned DLA also referred to the order on charge and submitted that the corporate veil was lifted at that point of time. According to him, the accused persons, therefore, cannot hide behind the corporate veil. He submitted that sale of entire equity by A-1 & A-2 amounts to use of company A-3 as a device by them to earn huge profits. Learned DLA forcefully contended that huge profit was earned only because of allocation of coal block to the company

A-3. He alleged that coal block was purposefully obtained by A-1 & A-2 to earn huge profits. He adopted the same line of argument that issuance of allocation letter conferred a dominion over the coal block in favour of A-3 company which was actually enjoyed by A-1 & A-2. Later on, A-1 & A-2 made exorbitant profit by selling their shares. He thus contended that offence u/s 406 IPC has been clearly proved.

779. Learned DLA referred to Memorandum of Agreement dated 04.12.2007 [Ex. P-100 (Colly.), D-11, Pg. 291-309] which was entered into by six allocattee companies. After submission of this document, allocation letter dated 17.01.2008 [Ex. P-102 (Colly.) which is part of Ex. PW-18/J (Colly.), D-12, Pg. 202-220] was issued. After some time, A-1 & A-2 entered into Share Subscription Agreement ("SSA") dated 06.11.2009 with M/s EPL for transfer of 45,60,000 equity shares of A-3 NPPL to EPL. The SSA is Ex. P-109, D-32. Another SSA dated 12.07.2010 was executed between M/s Malaxmi Energy Ventures (India) Pvt. Ltd. and EPL for transfer of 88,08,500 equity shares A-3 company to EPL. This second SSA is Ex. P-110 (Colly.), D-33. Similarly, SSA dated 12.07.2010 was executed between EPL and A-1 & A-3 for transfer of 5000 equity shares of NPPL to EPL. This is Ex. P-111, D-34. Yet another SSA dated 12.07.2010 was executed between EPL, A-2, Navabharat Projects Ltd. and A-3 NPPL for transfer of 88,08,500 and 5000 equity shares held by Navabharat Projects Ltd. and A-2 respectively to EPL.

780. Learned DLA pointed out that Rs. 169 crores was paid towards transfer of 88,13,500 and 5000 equity shares to EPL. The payment details are documented vide Ex. P-169 (Colly.), D-36. Similarly, Rs. 62.17 crores were paid towards transfer of 88,08,500 and 5000 equity shares held by M/s Malaxmi Energy Ventures (India) Pvt. Ltd. and A-1 respectively to EPL. The payment details are documented vide Ex. P-113 (Colly.), D-37. The total payment is thus Rs. 231.17 crores.

781. Learned DLA again referred to Manohar Lal Sharma's case (*supra*) and pointed out that Hon'ble Supreme Court had held that allocation of coal block amounted to grant of largesse. He thus contended that issuance of allocation letter itself conferred dominion over coal block in favour of the allocatee company i.e. NPPL. He further contended that grant of mining lease was not a requirement.

782. Sh. Shri Singh, learned Counsel for A-1, at the outset, contended that prosecution has invoked both Sec. 420 and 406 IPC, however, both the offences cannot co-exist for the same cause of action. Learned Counsel relied upon a recent judgment of Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Ltd. & Ors. Vs. State of UP & Anr., 2024 INSC 626**, wherein Hon'ble Apex Court has observed that offence u/s 420 and 406 IPC are independent and distinct offences and both cannot co-exist simultaneously in the same set of facts and they are antithetical to each other.

783. In addition to the above, learned Counsel argued that even otherwise prosecution has been unable to prove the said offence u/s 406 IPC. He contended that there was no law prohibiting transfer of shareholding of allocattee company i.e. NPPL in the present case. He submitted that MoC was duly informed about sale of the shareholding and no objection was raised by the said Ministry.

784. Learned Counsel forcefully submitted that acquisition of NPPL by EPL was not because of the coal block. Rather it was on the basis of substantial progress made in the project. Learned Counsel referred to testimony of PW-29 Sandeep Rungta who upon being asked by the Court stated the factors which were considered in arriving at the value of the company NPPL. The same reads as under:

> "Court Question: What all factors were considered in arriving at the probable value of company M/s NPPL?
>
> Ans. Since M/s NPPL was proposing to establish 1050 MW thermal power plant in Orissa and was also having a license to set up another 1200 MW thermal power plant in Orissa itself and the company had already made substantial progress towards establishing the initial 1050 MW thermal power plant such as obtaining environmental clearance, NOC for land, water allocation, approval for installation of chimneys, clearance from defence and some other similar nature of approvals. The company had also already executed a power purchase agreement probably with Power Trading Corporation (PTC) and GRIDCO. The company was also having coal linkage and a coal mine allocated to it.
>
> The view of technical team of Essar Power Ltd. was that with the amount of progress already made by M/s

> NPPL towards setting up its 1050 MW thermal power project, our company i.e. Essar Power Ltd. will save at least 2 years of its time in reaching the said stage, if it intends to establish such a thermal power project. Accordingly based on the aforesaid factors and further inputs from our other experts of Essar power Limited who were already working in the power sector to arrive at the future earning potential of M/s NPPL and the value of the company i.e. NPPL."

785. He thus vehemently submitted that it has been shown by the accused that coal block was not the factor which contributed to the value of the shares of NPPL. Learned Counsel submitted that EPL was also aware that coal block might be deallocated but still went ahead for acquisition of NPPL which further shows that coal block did not matter to EPL. He referred to a prospectus Mark PW-29/PA-1 wherein it was stated by the company that even if coal allocation was revoked, the overall impact on the company would be minimal.

786. Learned Counsel submitted that the real reason that led to sale of shares of NPPL was disputes between A-1 & A-2. As both of them were unable to carry on the activities of the company jointly, they decided to sell their shares. He referred to statement of A-1 u/s 313(5) CrPC. He further referred to various documents showing emergence of disputes between A-1 & A-2 and which ultimately led to sale of shares.

787. Learned Counsel also raised legal arguments that merely by allocation of coal block, there was no entrustment of property or granting dominion over property. He pointed out that

even the prospecting license was not granted after allocation. He contended that ingredients of the offence of Sec. 406 IPC are missing.

788. He submitted that prosecution has failed to prove the charge u/s 406 IPC.

789. Sh. Siddharth Aggarwal, learned Senior Counsel also submitted that there was no bar to sale of shares of NPPL. He submitted that sale of shares of NPPL did not amount to sale of the coal block itself. He contended that intention of A-2 at the time of sale of shares must be seen. He submitted that A-2 had serious disputes with A-1 regarding running the company A-3 which led to various litigations between A-1 & A-2.

790. Learned Senior Counsel pointed out that sale of the shares happened quite later after allocation letter dated 17.01.2008. Giving the details of the same, learned Senior Counsel submitted that sale of shares happened on 11.05.2010 and 12.07.2010. Between these two dates i.e. between 17.01.2008 and 11.05.2010, no effort had been made by A-2 to sell his shares in NPPL. He submitted that A-2 tried his level best to continue in the company, however, all those efforts were in vain. He referred to various documents relating to the litigations between A-1 & A-2.

791. Learned Senior Counsel submitted that NPPL did not sell the coal block. The coal block continued to be in the

name of NPPL even after sale of shares by A-1 & A-2. As such there was no violation of any condition of allocation letter.

792. Learned Senior Counsel submitted that A-2 personally got only Rs. 9.16 Lakhs towards sale of his 5000 shares. The major amount was paid to NBPL which has not been made an accused. Therefore, charge u/s 406 IPC qua receipt of Rs. 169 crores by A-2 from sale of shares of A-3 company is a wrong charge and must fail. He referred to **Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609; Maksud Saiyed Vs. State, (2008) 5 SCC 668; Shiv Kumar Jatia Vs. State, (2019) 17 SCC 193; and SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla (2007) 4 SCC 70**.

793. Learned Senior Counsel referred to evidence of PW-29 Sudip Rungta wherein upon a Court question, the said witness gave details of all the factors which were considered in arriving at the probable value of the company NPPL. Learned Counsel contended that from the factors told by the said witness, it is crystal clear that allocation of coal block had nothing to do in increasing the valuation of the company.

794. Learned Senior Counsel also highlighted that so called high premium received by A-2 or his group had justified basis. He pointed out that the higher premium was on account of having the casting vote. He referred to the evidence of IO/PW-33 wherein the IO also acknowledged importance of casting vote and the same leading to higher value given to the 50% share of A-2 or his group. Learned Senior Counsel thus vehemently

contended that the value of A-2's share was not a high value due to allocation of coal block.

795. He too submitted that there was no restriction on sale of shares of an allocatee company. No such restriction was provided either in the guidelines or in the allocation letter. He referred to evidence of IO/PW-33 who admitted the said fact situation.

796. Learned Senior Counsel also took up the same plea that shares had to be sold due to *inter se* disputes between A-1 & A-2.

797. He also pointed out that valuation of the shares was not on any flimsy grounds but rather was result of due diligence as valuation was got done by NPPL as well as EPL through expert valuers.

798. Learned DLA rebutted these submissions.

799. Regarding valuation having not been got done by CBI during investigation, learned DLA submitted that prosecution has examined PW-30 Sh. GVB Chowdary who had calculated networth of NPPL for the year 2009-10 as Rs. 22.55 crores approx.

800. Regarding not prosecuting NBPL, learned DLA referred to the SPA dated 12.07.2010 [Ex. P-112 (Colly.), D-35] and payment details [Ex. P-169 (Colly.), D-36]. He submits that

it was A-2 who has signed on both these documents on behalf of NBPL and NPPL. Learned DLA thus contended that A-2 cannot say that he has nothing to do with payment received by NBPL because the said company also belonged to A-2. He further submitted that as per the minutes of the meeting of Board of Directors dated 12.07.2010, A-2 had attended the said meeting on behalf of NBPL.

801. I have considered the submissions.

802. The offence of criminal breach of trust is defined u/s 405 IPC and its punishment is provided u/s 406 IPC. The relevant part of Section 405 IPC reads as under:

> "**405. Criminal breach of trust.—**
>
> Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

803. In Delhi Race Club's case (*supra*), Hon'ble Apex Court has expressed its anguish regarding trial courts" understanding of the difference between the offence punishable u/s 406 IPC and 420 IPC. It has held that both the offences cannot be invoked upon the same set of facts. In the present case also, prosecution is pressing charges for the offence u/s 420 IPC

as well as 406 IPC which is not permissible. When a property is obtained through inducement, it is the offence of cheating u/s 420 IPC. But if the property is obtained legally and later on either (a) is misappropriated or converted to one's own use or (b) is disposed off in violation of any law or contract, then it is offence of criminal breach of trust. The observations of Hon'ble Supreme Court in the cited case are worth quoting and same are as under:

> "DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING
>
> 24. This Court in its decision in **S.W. Palanitkar & Ors. v. State of Bihar & Anr.** reported in **(2002) 1 SCC 241** expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -
>
> > "9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.
> >
> > 10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived;

and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see: **S.W.P. Palanitkar** (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: **Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712** : (2009) Cr.L.J. 3462 (SC)).

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. xxxxxxx

28. xxxxxxx

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. **In such a situation, both the offences cannot co-exist simultaneously.**"

804. Thus, both offences cannot be made out on same set of facts. This being the position, the charge u/s 406 IPC is misconceived.

805. Nevertheless, even if the charge u/s 406 IPC is considered on merits, the prosecution's case is that it was the coal block which alone contributed to the high value of the shares of NPPL whereas the case of the defence is that coal block alone did not contribute towards the said value. The defence heavily relied upon the answer of PW-29 Sudip Rungta to the Court question.

806. Having perused reply of PW-29 to the Court question (already quoted hereinabove), it stands clear that the high value of the shares of NPPL was not because of the coal block but it is traceable to various other factors enumerated by PW-29 himself. This witness is from EPL itself. When the witness belonging to EPL himself is giving details of the factors contributing to high value of the shares, and which factors include coal block allocation as one of the factors only and that too as a minor factor, nothing survives in this charge u/s 406 IPC. The prosecution did not counter this witness on this aspect at all and seems to have accepted his version. The witness has clearly stated that the purchaser company i.e. EPL saved at least two years of time as NPPL had already obtained various permissions. This saving on time contributed to high value for the most part. The valuation done by EPL was of the project and not of coal block alone.

807. Moreover, there seems to be no bar anywhere to sale of shares of a company after allocation of coal block. Learned Counsels for A-1 & A-2 have rightly submitted that there was no legal bar to sale of shares.

808. They have also demonstrated the circumstances under which A-1 & A-2 resorted to sale of shares. There were differences between them which could not be sorted out and thus it was not feasible for them to work together. This confrontation between A-1 & A-2 is a reasonable cause for them to exit the company. It has to be kept in mind that the coal block remained with the company NPPL which was one of the allocatees. Further, NPPL remained in the JV company formed by all the allocatee companies of the coal blocks. There was no resistance from either MoC or Govt. of Orissa to this sale of shares.

809. The ingredients of the offence u/s 406 IPC are not fulfilled. There was no entrustment of any property i.e. coal mine merely by issuing allocation letter. There were various steps to be taken by the company before getting mining lease. Only after obtaining mining lease there could be entrustment of property. The observations of Hon'ble Supreme Court in Manohar Lal Sharma's case, as highlighted by learned DLA, were in the context of the question as to whether issuing allocation letter was similar to grant of state largesse and not qua offence u/s 406 IPC.

810. Therefore, the charge u/s 406 IPC cannot be said to

have been made out.

POINT FOR DETERMINATION NO. IX

Whether there was any conspiracy among all the accused persons?

811. Learned DLA referred to various documents and statement of witnesses to show that A-4 to A-6 were in conspiracy with A-1 to A-3 and deliberately processed incomplete application of an ineligible applicant.

812. Learned DLA vehemently contended that accused public servants did not ensure scrutiny of the applications to see their completeness and eligibility. They did not bother to note that the application of A-3 NPPL was liable to be rejected outrightly being incomplete. Rather, the accused public servants processed the said application and recommended allocation of coal block to the company.

813. Learned DLA thus contended that all through the process, A-4 to A-6 were fully aware that scrutiny of the applications had not been conducted but still went ahead to recommend allocation of the coal block.

814. He thus submitted that all accused were in conspiracy with one another.

815. Sh. Shri Singh, learned Counsel for A-1, submitted that prosecution has not established any circumstance proving

conspiracy. He submitted that the process of allocation was very vast and involved Central Govt. and several State Govts. and various *ad hoc* changes were made which shows that allegations of conspiracy are absurd and untenable. He pointed out that at various levels, verifications were also carried out by the concerned authorities and thus possibility of any conspiracy has been belied. He referred to **Kehar Singh & Ors. Vs. Delhi Administration, (1988) 3 SCC 609**.

816. Learned Counsel highlighted that in the final report dated 29.08.2014, the prosecuting agency had reached to the conclusion that there was no involvement of any public servant. This conclusion was repeated in the supplementary final report dated 29.09.2014. This shows that there was no conspiracy at all. He contended that even after the order dated 12.11.2014, the prosecution has failed to bring any material on record showing existence of any conspiracy. Learned Counsel contended that no conspiracy has been proved by the prosecution.

817. Sh. Siddharth Aggarwal, learned Senior Counsel for A-2 also made similar submissions. He further contended that when relations between A-2 and A-1 were not cordial, where does the question of conspiracy arise.

818. Sh. Rahul Tyagi, learned counsel for accused public servants also argued that no case at all is made for offence of conspiracy.

819. Learned Counsel for A-4 to A-6 has presented a different approach. According to him, Globeleq was not a principal of NPPL as NPPL was not a JV or SPV. As such, networth of Globeleq was not considered by MoC or Screening Committee. He contended that there is no evidence at all that MoC or Screening Committee gave any benefit to NPPL on account of networth of Globeleq.

820. Regarding Suez, Sh. Tyagi again submitted that there is no evidence that Screening Committee had treated Suez as principal or promoter of NPPL. He referred to chart (D-164, Pg. 14) wherein networth of NPPL has been taken only as Rs. 307.12 crores.

821. However, I am not going into detail with respect to charge of conspiracy in view of findings recorded qua points for determination no. I to VIII. When the application has been found to be complete, when the applicant company NPPL has been found to be eligible company and when no misrepresentations were made by the company, no question arises for existence of any conspiracy. It is held that prosecution has failed to prove any conspiracy.

CONCLUSION

822. In view of the above discussion, all the accused are hereby acquitted of all the charges.

823. All the accused except company A-3 NPPL/BTPPL

are directed to furnish bail bonds u/s 437-A CrPC for the same amount as already furnished during trial.

824. A-1 Y. Harish Chandra Prasad & A-2 P. Trivikrama Prasad have furnished bail bonds u/s 437-A CrPC and same are accepted for the purposes of the said section.

825. A-4 H.C. Gupta, A-5 K.S. Kropha and A-6 K.C. Samria request for accepting bonds already furnished by them for the purposes of 437-A CrPC also. Heard. In view of request of A-4 to A-6, the bail bonds already furnished by them are accepted further for the purposes of section 437-A CrPC.

826. Digitally signed copy of the judgment be uploaded on the website.

827. File be consigned to Record Room.

Announced in the Open Court today on 11th day of December, 2024

SANJAY BANSAL

Digitally signed by SANJAY BANSAL
Date: 2024.12.11 15:05:46 +0530

(Sanjay Bansal)
Special Judge, (PC Act)(CBI),
(Coal Block Cases)-02,
Rouse Avenue District Courts,
New Delhi: 11.12.2024