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

CNR No. DLCT110019792019
CBI/434/19
RC No. 219 2014 E 0019
Branch: CBI/EO-I/New Delhi
CBI vs M/s Kohinoor Steel Pvt. Ltd & Ors.
U/s 120-B r/w 420 IPC and
Section 13(2) r/w 13(1)(d) of PC Act, 1988
and substantive offences thereof

04.04.2025

ORDER ON CHARGE

1. Vide this order, I shall decide as to for which offences, if any, charge is made out against the accused persons i.e. A-1 M/s Kohinoor Steel Pvt. Ltd., A-2 Vijay Bothra, A-3 H.C. Gupta, A-4 K.S. Kropha and A-5 Rakesh Khare.

2. The present case relates to allocation of Mednirai Coal Block situated in the state of Jharkhand to M/s Kohinoor Steel Pvt. Ltd. ("M/s KSPL") by the 34th Screening Committee. The FIR in the case was registered on 07.08.2014 upon outcome of preliminary enquiry PE-219 2012 E-0002. The enquiry was initiated upon reference of Central Vigilance Commission against officials of Ministry of Coal, Govt. of India for alleged corruption in the matter

of allocation of coal blocks to private companies during the period 2006-2009.

3. The necessary facts of prosecution case, as per the final report filed u/s 173 of the Criminal Procedure Code, 1973 ("CrPC"), are as under:

3.1. An advertisement was issued by Ministry of Coal ("MoC"), Govt. of India on 09.09.2005 (D-129), inviting applications for allocation of 20 Coal and 11 Lignite Blocks including Mednirai Coal block situated in the State of Jharkhand for captive mining by the companies engaged in generation of power, production of iron & steel and cement. The advertisement was also uploaded on the website of the Ministry of Coal i.e. www.coal.nic.in.

3.2. A-1 M/s KSPL and 19 other companies applied for Mednirai Coal block located in the State of Jharkhand. In its application dated 20.10.2005 accompanied with forwarding letter dated 25.10.2005 (D-22), signed by its Director A-2 Vijay Bothra, M/s KSPL mentioned that it was newly incorporated on 16.02.2005 having networth of Rs. 1 lac only as on 31.03.2005. However, M/s KSPL claimed the networth of Rs. 56.99 crores which was networth of various companies i.e. of 28 other companies (21 Nepalese & 7 Indian) as its own networth without submitting audited balance sheets of any of the said 28 companies. These companies were described as group companies. Further no document / record showing the relationship of M/s KSPL with other claimed 28 group companies was submitted alongwith the application form.

3.3. A-2 Vijay Bothra (formerly known as Bijay Bothra) was Promoter/ Director of M/s KSPL, who in the forwarding letter dated 25.10.2005 signed by him had mentioned that M/s KSPL was incorporated on 16.02.2005 and was promoted by T.M. Group which was one of the leading business house of Nepal. However, no explanation was given as to how these 28 group companies (including 21 based in Nepal) became the associate companies of M/s KSPL and how T.M. Group and Bothra Group were promoters of the company. Neither any legal document qua relationship of M/s KSPL with T.M. Group was submitted with the application nor in the Memorandum of Association of M/s KSPL anything was mentioned about T.M. Group. As per the subscription clause of the Memorandum of Association of M/s KSPL, entire shareholding was subscribed by two persons who were the promoter shareholders i.e. Bijay Bothra and Anjani Agarwal having 5000 shares each, in their individual capacity and none of the shares was subscribed by any other company or firm.

3.4. The claim of M/s KSPL on account of networth of Rs. 56.99 crore was found baseless. It is stated that the purpose of claiming the net worth of group companies was to project the better preparedness compared to other competing applicants.

3.5. As per guidelines, applications for allocation of coal blocks for captive mining for the specified end uses were required to be made to the Joint Secretary, MoC in five copies. In addition to any other relevant documentation that the applicant might submit, the

applications were also required to be accompanied by the following :

- *Certificate of registration showing that the applicant is a company registered under S.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 report is appraised by a lender, the appraised report shall also be submitted. (5 copies)*
- *Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project 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)*
- *Demand draft for Rs.10,000/- in favour of PAO, Ministry of Coal payable at New Delhi.*

Applications without the above accompaniments were be treated as incomplete and were to be rejected.

3.6. As per the guidelines, *inter se* priority for allocation of a coal

block among the competing applicants was to be determined considering following parameters:-

> *a. Main factors to be considered are:*
>
> - *Suitability of coal grade in the block, (D grade and above coal is to be preferred for the non-power sector)*
> - *Techno economic viability / feasibility of the project,*
> - *Status/stage/level of progress and state of preparedness of the projects,*
> - *Track record and financial strength of the applicant*
> - *Recommendation of the concerned administrative ministry*
> - *The views of the concerned state govt.*
> - *Matching of requirement of the applicant with the mineable reserves available.*
>
> *b. All factors above being equal, from the coal mining development and conservation point of view, the larger the per annum extraction planned the higher shall be the priority.*

3.7. As per the guidelines, applications received in the MoC in five copies, after being checked for their eligibility and completeness were required to be sent to the Administrative Ministry/State Government concerned for their recommendations and views. After receipt of recommendations of the Administrative Ministry/ views of State Government concerned, the individual applicants were to be heard by the Screening Committee in its meeting where they would be given an opportunity to present their

respective case. Finally based on the recommendations of the Screening Committee, MoC had to determine the allocation.

3.8. The application of M/s KSPL was received in MoC on 31.10.2005 alongwith demand draft of Rs.10,000/-**.**

3.9. As per the guidelines of the MoC, submission of audited annual accounts/reports of 3 years was mandatory. However, M/s KSPL qua its networth claim of Rs. 56.99 Crores of its 28 group companies (21 Nepalese & 7 Indian) did not submit the audited annual accounts / reports of 3 years prior to the date of application of these group companies on the plea that the company was incorporated on 16.02.2005. It was found that no scrutiny of applications of applicant companies including application of M/s KSPL was conducted to check their completeness and eligibility in MoC. Thus the application of M/s KSPL was incomplete and was liable to be rejected at the outset.

3.10. It is stated that as the company had applied for the allocation of Mednirai Coal Block for its end use plant of Sponge Iron at Distt-Saraikela-Kharswan (Jharkhand) so the application of M/s KSPL was forwarded to the Secretary, Department of Mining & Geology of Govt. of Jharkhand (being the concerned state) and also to Ministry of Steel ("MoS") (being the Administrative Ministry) by MoC for final comments.

3.11. In the application form at column no.6, it was also mentioned that "*As the company is newly incorporated in the year 2005 only,*

following figures are being given in respect of "THE GROUP".

		02-03	**03-04**	**04-05**
Turnover in the last 3 years	*(Rs. in crore*	*227.66*	*231.00*	*242.80*
Profit in Last 3 years	*(Rs. in crore*	*6.60*	*3.91*	*4.38*
Networth as on 31.03.2005 (Rs. in crore)				*56.99*
Networth of M/s Kohinoor Steel (P) Ltd. (as on 31.03.2005) (Rs. in crore)				*0.01*

3.12. It was found that M/s KSPL was not engaged in the production of iron and steel as in the application form at Sl. No. 6 - Core Business of applicant was mentioned as **"***Manufacturing of FMGC Product, Import and Trading of Agro Products, Automobiles and Finance & Investment***".** Whereas, applications were invited from the companies engaged in generation of power, production of iron and steel or cement.

3.13. At the time of submission of application, M/s KSPL had no existing capacity and thus the company was not to be treated as engaged in production of iron and steel.

3.14. In order to support its claim, M/s KSPL had enclosed a two page detail/statement titled "*Details of Group Companies/Firms*" along with application as Annexures-IV wherein name, activity, turnover, PBT and TNW in respect of 21 Nepalese Companies and 7 Indian companies were mentioned. As per the statement, the 21 Nepalese companies were engaged in the business of Export / Import, Manufacturing of Rice, Pulses, Edible Oil, Food grain, Solvent Extraction, Fruit Juice, Automobile, Mineral Water, Ice and

Cold Storage and Plastic Household Appliances, whereas 7 Indian Companies, were claimed to be engaged in the automobile dealership and investments.

3.15. Vijay Bothra (A-2), Director M/s KSPL claimed inflated networth of 4 Indian companies out of 7 Indian companies. The details of which are as under:-

SL. No.	***Name of Company/firm***	***Networth claimed in the application***	***Actual Networth***
1.	*M/s Bothra Automotives*	*Rs. 163.85 lacs*	*160.14 lacs.*
2.	*M/s Sankalp Motors Pvt. Ltd.*	*Rs. 12.26 lacs*	*11.85 lacs.*
3.	*M/s Janpragati Commodities Pvt. Ltd.*	*Rs. 627.41 lacs*	*581.90 lacs.*
4.	*M/s Manimaya Holdings Pvt. Ltd.*	*Rs. 854.30 lacs*	*757.22 lacs.*

3.16. A notice u/s 91 CrPC was issued to Vijay Bothra (A-2) to provide documents/records showing relationship of M/s KSPL with T.M. Group of Nepal. However, no documentary evidence was provided. Thus, the information given in the application of M/s KSPL that the company was promoted by T.M. Group of Nepal was found false and incorrect.

3.17. It is stated that in order to take benefit of the networth of group companies, Vijay Bothra (A-2) Director, M/s KSPL had manipulated the format of application form and inserted the information of "*Group Company*" despite the fact that the guidelines nowhere mention about group companies.

3.18. A-2 Vijay Bothra bolstered the claims before MoC by

enclosing the profile of M/s Ravi Udyog Pvt. Ltd. thereby claiming it to be an associate company engaged in the mining and excavation activities. However, in the list of 28 Group Companies, name of M/s Ravi Udyog Pvt. Ltd. was not mentioned.

3.19. On the date of application i.e. on 25.10.2005, A-2 Vijay Bothra and Anjani Aggarwal both were holding 5000 shares each in M/s KSPL. Sh. Vivek Dugar and Sh. Moti Lal Dugar who are from T.M. Group were the other Directors in the Company without holding any share. They were not the promoters of M/s KSPL. As per the Annual Returns filed by M/s KSPL for the year 2005-2008 with the Registrar of Companies, Ministry of Corporate Affairs, no share / equity was held either by Sh. Motilal Dugar or by Sh. Vivek Dugar of T.M. Group of Nepal in M/s KSPL.

3.20. Letter no. KSPL/CBI/007 dated 09.02.2015 shows that A-2 Vijay Bothra had informed that equity of 21 Nepalese Companies of T.M. Group was not invested into M/s KSPL or vice versa.

3.21. It is stated that in the forwarding letter dated 25.10.2005/application form dated 20.10.2005 submitted to MoC, various false and incorrect claims were made by M/s KSPL. The same are as under:

Serial number of forwarding letter/application form	***Claim***	***Result of Investigation***
Serial no. 4 under head	*We have already obtained*	*The copy provided by M/s Kohinoor Steel Pvt. Ltd. is*

"Environmental Clearance" of forwarding letter dated 25.10.2005 and Serial No. 18 under head "Clearances" sub head-(ii).	*Environmental Clearance. The copy of same is enclosed for your ready reference as Annexure-XIX.*	*not an Environmental Clearance which was to be obtained from Ministry of Environment and Forest, rather a No Objection Certificate under section 25 & 26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21 of the Air (Prevention & Control of Pollution) Act, 1981 issued by Jharkhand State Pollution Control Board, Ranchi for the setting up a plant for manufacturing of Sponge Iron at plot no. 4, Mauza-Dhunaburu, PO-Chandil, Distt- Saraikela-Kharsawan for the capacity of 400 MT/day with various condition mentioned therein.*
Serial no. 10 under head "Physical Progress" of forwarding letter dated 25.10.2005.	*Soil testing for DRI, Power and Steel Ingot Plants is completed.*	*M/s Kohinoor Steel Pvt. Ltd. (A-1) did not provide the soil testing report in spite of issuing of order u/s 91 Cr.PC.*
Serial no. 10 under head "Experience in Mining" of forwarding letter dated 25.10.2005.	*Our associate company M/s Ravi Udyog Pvt. Ltd. have expertise in working in opencast mines, Iron ore mines, lime stone mines & quarries by having worked for various projects under.*	*The claim of M/s Kohinoor Steel Pvt. Ltd. (A-1) that M/s Ravi Udyog Pvt. Ltd. is their associate company has been found false and incorrect.*
Serial no. 19- (ii) of application form.	*Investment already made Rs. 15 Crores.*	*M/s Kohinoor Steel Pvt. Ltd. (A-1) did not provide the documents in support of their claim in-spite of issuing of order u/s 91 Cr.PC.*

3.22. It is stated that vide letter No. 571/M.C. dated 29.08.2006, Govt. of Jharkhand recommended the name of M/s Jharkhand State Mineral Development Corporation Ltd. ("JSMDCL") for Mednirai Coal block. Thereafter, vide letter dated 21.09.2006 sent to MoC, the State Govt. of Jharkhand recommended Mednirai Coal Block to M/s JSMDCL alongwith M/s Rungta Mines Ltd. ("RML"). However, the State Govt. of Jharkhand never recommended Mednirai Coal Block to M/s KSPL.

3.23. Vide letter dated 06.09.2006, MoS forwarded their comments to the MoC. As per the information provided by M/s KSPL in the application form received by the MoS from MoC, M/s KSPL was to be kept in Category-VI, however, name of the company was kept in category-II-(a) by MoS.

3.24. It was found that vide letter dated 17.03.2006 addressed to the Secretary, MoS, A-5 Rakesh Khare who was General Manager (Resources)/ authorized signatory, M/s KSPL had informed that the plant of M/s KSPL was inaugurated by lightening the 1st Kiln of DRI Unit on 02.03.2006 and all the four Kilns were expected to be made operational for production within two months. However, during investigation the said fact was found false and incorrect.

3.25. Vide their memo no. V-509 dated 21.09.2005, Jharkhand State Pollution Control Board ("JSPCB"), Ranchi, issued No Objection Certificate (NOC) u/s 25 & 26 of the Water (Prevention

and Control of Pollution) Act, 1974 and u/s 21 of the Air (Prevention and Control of Pollution), Act, 1981 to M/s KSPL with several conditions mentioned therein for the establishment of Sponge Iron plant of the capacity of 400 MT/day.

3.26. It is further stated that on 10.03.2006, in the presence of A-5 Rakesh Khare who was an employee of A-1 KSPL, JSPCB, Jamshedpur had conducted inspection of the unit of M/s KSPL located at Village- Kuchidih, PS- Chandil, Distt. Saraikela Kharsawan. During inspection, it was found that plant of the unit was under construction and various conditions mentioned in the Consent to Establish (CTE) letter no. N-509 dated 21.09.2005 issued by the JSPCB, Ranchi to M/s KSPL were not complied with by the company. Hence, in the Inspection report dated 29.03.2006, it was recommended that consent might not be considered till installation of Air Pollution Control Devices at the plant. It was also found that Electro Static Precipitator (ESP) Equipment for Dust Control from the Chimney was under construction at the plant of M/s KSPL.

3.27. Inspection of the unit of M/s KSPL was again carried out on 09.05.2006 by JSPCB and it was observed that ESP was under construction and the plant was under operation without installing of ESP. Further it was also found that only one 100 TPD Capacity Kiln was operational and that too without “Consent to Operate”.

3.28. It was also found that no lightening work was carried out by M/s KSPL as no blackish spots on the chimney attached with Kiln

as well as on the Raw Material feeding point / section were found visible. Besides, conveyer belts were also not covered, which indicated that no iron dust / coal dust was visible. Therefore, the claims made by the company in its letter dated 17.03.2006 to the MoS was false and incorrect.

3.29. JSPCB, Ranchi vide their Memo No. B-10 dated 19.08.2006 informed A-5 Rakesh Khare that consent application for both Air and Water had been rejected due to non-compliance of condition mentioned in the No Objection Certificate (Consent to Establish).

3.30. It was found that A-5 Rakesh Khare and A-1 company M/s KSPL had furnished false information about kilns in letter dated 17.03.2006 and thereby they induced MoS to place them in better category and thus they had cheated the MoS.

3.31. On 07.09.2006 and 08.09.2006, 34th Screening Committee meeting was held at Scope Complex, Lodhi Road, New Delhi which was convened by the MoC and chaired by Special Secretary (Coal) as the Secretary (Coal) was away to the State of Jharkhand due to a mine accident. During meeting on 07.09.2006 and 08.09.2006, only presentations were made by the various companies as per the schedule. The officials from various Ministries/State Govt. as well as from other departments had attended the said meeting. No decision qua recommendation was taken by 34th Screening Committee during the said meeting.

3.32. A-5 Rakesh Khare made presentations before 34th Screening

Committee on 08.09.2006 and also submitted feedback form i.e. Present Status of End Use Plant in respect of Mednirai Coal Block. During the meeting, it was decided by the 34th Screening Committee that recommendations regarding 11 Coal blocks including Mednirai would be finalized in the next meeting.

3.33. During the meeting before Screening Committee on 08.09.2006, A-5 Rakesh Khare had misrepresented that 04 Kilns of 100 TPD had become operational which was false and incorrect.

3.34. Investigation revealed that A-5 Rakesh Khare made various claims in the Feedback form i.e. "*Present Status of End Use Plant*" submitted before 34th Screening Committee during the meeting held on 08.09.2006 in respect of Mednirai Captive Coal block, which have been found false & incorrect. The said claims are as under:

Serial number of feedback form	***Claim***	***Result of Investigation***
Serial No. 7 under Head- "Status of Land Acquisition- sub head (iii)- Present Status.	*120 acres under final stage acquisition by the State Govt.*	*The District Land and Acquisition Officer, Saraikela-Kharsawan vide their letter No. 707 dated 01.08.2018 has informed that 120 acres of land was not under final stage of acquisition by the State Govt. as claimed by Company in the feedback form. As such this information has been found false and incorrect.*
Serial No. 7 under Head- "Status of Land Acquisition- sub head (iv)- Likely date of acquisition/ possession	*As acquisition process by state govt. is being done under emergent category, acquisition is expected shortly.*	

Serial No. 3 under head- "Nature of End Use Plant, sub head- (i)- Existing Capacity.	*400 TPD*	*M/s Maa Nisha Engineering, Rajganpur, Distt. Sundergarh, Odisha vide their letter dated 11.06.18 has informed that that 02 numbers of Kilns were installed by M/s Maa Nisha Engineering by doing the fabrication and erection work at the plant of M/s Kohinoor Steel Pvt. Ltd. (KSPL) located at Village- Kuchidih, PS Chandil, Distt. Saraikela-Kharsawan, Jharkhand from the period 1st week of March, 2007 till Dec., 2007. This shows that false information about installation of plant and machinery was submitted in the feedback form by the accused Rakesh Khare (A-5).*
Serial No. 8- under Head-"Status of Installation of Plant and Machinery.	*Installation is on the verge of completion*	
In the forwarding letter dated 25.10.2005 under head Table-I- Phase wise unit configuration with commissioning schedule of proposed facilities.	*4X 100 TPD would be commissioned by March, 2006.*	

3.35. M/s KSPL had submitted form E.R.-7 (Annual Installed Capacity Statement) to the Department of Central Excise, Chandil Range, Jamshedpur, Jharkhand as on 31.03.2008, 31.03.2009, 31.03.2010 and 31.03.2011. In these Forms, M/s KSPL mentioned that 4x100 TPD Rotary Kilns were installed in the year 2006 and Annual Production Capacity of Sponge Iron were 132000 MT per annum. The statement given by M/s KSPL regarding Annual Installed Capacity of Kilns in the above mentioned Form E.R.-7 was also found false and incorrect.

3.36. Final meeting of 34th Screening Committee Meeting was held on 22.09.2006 under the chairmanship of A-3/H. C. Gupta,

Secretary (Coal). As per minutes of this meeting Mednirai Coal Block was recommended for allocation to M/s RML and M/s KSPL jointly for their end use plants in Saraikela Kharswan, Jharkhand.

3.37. The recommendations of the 34th Screening Committee was approved by the Prime Minister as Minister (Coal) on 16.02.2007 and the same was conveyed to MoC, Govt. of India by the Director (PMO).

3.38. Vide letter dated 28.05.2009, MoC allocated Mednirai Coal block jointly to M/s Rungta Mines Ltd. and M/s Kohinoor Steel Pvt. Ltd. (A-1) .

3.39. It is alleged that H.C. Gupta (A-3), the then Secretary (Coal) being Chairman 34th Screening Committee, did not follow the guidelines of MoC for the allocation of Coal blocks and recommended the name of M/s KSPL for Mednirai Coal block. The application of company was incomplete as per the guidelines and was liable to be rejected but he recommended the name of M/s KSPL for Mednirai Coal Block. He did not utilize/look into the database prepared by the CMPDIL in respect of the applicant companies who applied for the Mednirai Coal block as well other blocks despite it was in his knowledge.

3.40. Despite the fact that Mednirai Coal block was not recommended to M/s KSPL by Govt. of Jharkhand, he recommended the same to M/s KSPL. During the discussion with Principal Secretary to Prime Minister, he apprised Principal

Secretary to Prime Minister that **"***State Government had strongly recommended these cases***".** Thus, H.C. Gupta (A-3), gave undue favour to M/s KSPL (A-1) by giving false information to the PMO.

3.41. It was also found that being Joint Secretary (Coal), A-4 K.S. Kropha was the designated Member Secretary of the Screening Committee. It was the duty & responsibility of Joint Secretary (Coal) being Member Secretary to prepare & present the relevant data/recommendations of the concerned Administrative Ministry and State Govts. to facilitate the Screening Committee for taking objective decision. The CMPDIL had prepared the database of the competing applicant companies on various parameters as mentioned in the guidelines for the allocation of coal block. The database was neither provided nor placed before the Screening Committee to make objective decision. A-4 K.S. Kropha was in the knowledge about the processing of applications / preparation of database by the CMPDIL, but he did not ensure to provide the same to the members of Screening Committee during the meeting on 22.09.2006.

3.42. It is alleged that A-3 H.C. Gupta, the then Secretary (Coal) and A-4 K.S. Kropha, the then Joint Secretary, MoC deliberately overlooked the apparent discrepancies and change in the application format to favour M/s KSPL and recommended Mednirai Coal Block, despite the fact that the company claimed the networth of 28 group companies and in the guidelines there was no concept of group companies.

3.43. It is further stated that to verify the networth of 21 Nepalese

Companies, Letter Rogatory (LR) was issued by this Court on 15.10.2015 to the Competent Judicial Authorities, Govt. of the Federal Democratic Republic of Nepal u/s 166-A of the CrPC. Further, Letter Rogatory (LR) was forwarded by the IPCC, CBI, New Delhi vide their letter no. IP-05/040/2015/1013 dated 29.10.2015 to His Excellency, Ambassador of India, The Embassy of India in Nepal, Post Box No. 292, Lainchaur, Kathmandu, Nepal with the request that the original request may be forwarded to the Competent Authority in Nepal for execution. Reminders including dated 03.02.2017 and 20.04.2018 were sent by the IPCC, CBI, New Delhi to Embassy of India, Kathmandu, Nepal for early execution of Letter Rogatory (LR). However, the execution report on the Letter Rogatory (LR) from the concerned Nepalese Authorities was awaited.

3.44. Thus it is stated that accused persons had conspired together and cheated MoS, MoC and State of Jharkhand by furnishing false information / documents and thereby committed offences punishable u/s 120-B r/w 420 of IPC and section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof.

3.45. Charge sheet was accordingly filed on 21.12.2019. However, further investigation was also continuing.

3.46. After conducting further investigation, a supplementary charge sheet has been filed on 17.11.2022.

3.47. During further investigation it was found that accused

company (A-1) had made false claim of investment of Rs. 15 crores. It was also found that the entire cost of the project was deliberately shown as Rs. 98 crores in the DPR so as to avoid obtaining environmental clearance. It was also found that in the feedback form submitted on 08.09.2006, at serial No. 5, it was mentioned that 40 acres of land had already been purchased and 120 acres was in the process of acquisition. However, the land which was purchased was only 32 acres as on 08.09.2006. And as far as acquisition of 120 acres of land is concerned, the same was also found to be false as the company had not deposited compensation amount with the authorities.

3.48. Alongwith other documents, sanction order in respect of A-4 H.C. Gupta and A-5 K.S. Kropha was also filed. The sanction was granted against both these accused for prosecution u/s 19 of PC Act as well as u/s 197 CrPC. Vide letter dated 31.08.2022 (D-628), sanction for prosecution qua A-3 H.C. Gupta and A-4 K.S. Kropha was received from Competent Authority u/s 19 P.C. Act as well as u/s 197 CrPC.

4. Thereafter, vide order dated 02.06.2023 cognizance of the offences u/s 120-B r/w Section 420 IPC and Section 13 (2) r/w 13 (1) (d) PC Act and substantive offences thereof was taken against all the accused persons i.e. A-1 M/s Kohinoor Steel Pvt. Ltd. ("M/s KSPL"), A-2 Vijay Bothra, A-3 H.C. Gupta, A-4 K.S. Kropha and A-5 Rakesh Khare.

5. After appearance of the accused persons, copies were

supplied to them in compliance of Sec. 207 CrPC.

6. After due compliance of Section 207 CrPC, arguments on charge were heard at length as were addressed by learned ALA Sh. Sanjay Kumar for CBI, learned Counsel Ms. Rupali Francesca Samuel on behalf of A-1 company M/s KSPL, learned Counsel Sh. Shri Singh on behalf of A-2 Vijay Bothra, learned Counsel Sh. Rahul Tyagi on behalf of A-3 H.C. Gupta and A-4 K.S. Kropha and by learned Counsel Sh. Dhruv Kumra for A-5 Rakesh Khare.

ARGUMENTS ON BEHALF OF PROSECUTION

7. Learned ALA Sh. Sanjay Kumar argued that in order to take benefit of the networth of Group Companies, Vijay Bothra (A-2) Director, M/s KSPL had manipulated the format of application form and inserted the information of 'Group Company' despite the fact that the guidelines nowhere mentions about group companies.

8. He further submitted that in the application (D-22), A-1 company claimed networth of Rs. 56.99 Crores of its 28 group companies (21 Nepalese & 7 Indian) but did not submit the audited annual accounts/reports of 3 years prior to the date of application of these group companies.

9. It was also submitted that A-2 Vijay Bothra falsely claimed in the application that A-1 KSPL was a group company of T.M. Group of Nepal. He referred to the application (D-22, copy also available as D-118) to show the various misrepresentations made by the applicant company.

10. He also submitted that at Serial no. 4 under head 'Environmental Clearance' of forwarding letter dated 25.10.2005 and Serial No. 18 under head 'Clearances' sub head-(ii) of the application, A-2 Vijay Bothra made false claim that they had already obtained Environmental Clearance and that the copy of the same was enclosed as Annexure-XIX. However, instead of Environmental Clearance from Ministry of Environment and Forest, only a 'No Objection Certificate' was provided.

11. He also submitted that false claim was also made at Serial no. 10 under head 'Physical Progress' of forwarding letter dated 25.10.2005 that Soil testing for DRI, Power and Steel Ingot Plants was completed.

12. Learned ALA submitted that the applicant company also tried to show its experience in mining by describing M/s Ravi Udyog Pvt. Ltd. as their associate company. He alleges that M/s Ravi Udyog Pvt. Ltd. was in no manner an associate company of KSPL. He referred to statement of LW-97 Deepak Kumar Loyolka in this regard. LW-97 is Managing Director of Ravi Udyog Pvt. Ltd. and has stated that the said company was never an associate company of KSPL. He also stated that no shares were ever held by A-2 Vijay Bothra or his family members in Ravi Udyog Pvt. Ltd.

13. Learned ALA further submitted that the company made false claim about investment of Rs. 15 crores. He pointed out that during investigation, only investment worth Rs. 12 crores could be substantiated.

14. Learned ALA further pointed out that the envisaged investment was Rs. 505 crores. However, it was reduced to Rs. 98 crores in the DPR to avoid obtaining environmental clearance. He contended that this was done to take benefit of 1994 notification providing for exemption from obtaining environmental clearance in respect of project in which investment amount was less than Rs. 100 crores.

15. Learned ALA further alleged that networth of 4 Indian companies out of 7 was inflated to induce MoC/Screening Committee and MoS.

16. Regarding A-5 Rakesh Khare, Learned ALA submitted that vide letter dated 17.03.2006 (D-37), A-5 made misrepresentation before MoS by informing that the plant of M/s KSPL was inaugurated by lightening the 1st Kiln of DRI Unit on 02.03.2006 and all the four Kilns were expected to be made operational for production within two months. Due to this mis-representation, MoS placed M/s KSPL in highest category i.e. Category II(a) instead of lowest category i.e. Category VI. He also referred to statements of LW-6 K.A.S. Deo and LW-12 Kamlakant Pathak in this regard.

17. Learned ALA further submitted that A-5 made various misrepresentations in the feedback form (D-214, also available as D-171) submitted on 08.05.2006 before 34th Screening Committee regarding (a) status of land acquisition falsely claiming that 120 acres of land was under final stage of acquisition by the State Govt. and that acquisition was expected shortly, (b) that existing capacity

was 400 TPD, (c) that installation of plant and machinery was on verge of completion, and (d) that project cost for phase-I was less than Rs. 100 crores, therefore, environmental clearance was not required. He referred to various documents such as D-173, D-214, D-240, D-295 to D-297, D-308, D-310, D-323, D-327, D-330, D-427, D-428 and D-429 etc. to show the falsity of various representations/claims made in the feed-back form and presentation.

18. Learned ALA referred to letter dated 11.06.2018 (D-240) sent by M/s Maa Nisha Engineering informing that work order for installation of two kilns was placed by KSPL only on 01.03.2007. This belied claim of KSPL made in the feedback form on 08.09.2006 that plant and machinery installation was on verge of completion.

19. Learned ALA further submitted that A-5 while making presentation before the Screening Committee on 08.09.2006 falsely claimed that 04 kilns of 100 TPD had become operational which was false and incorrect.

20. Regarding public servants i.e. A-3 H.C. Gupta and A-4 K.S. Kropha, learned ALA submitted that they deliberately overlooked the apparent discrepancies and changes made in the application format to favour M/s KSPL and recommended Mednirai Coal Block, despite the fact that the company had claimed the networth of 28 group companies and in the guidelines there was no concept of group companies. Learned ALA also submitted that A-3 mislead the PMO by falsely stating that "State government had strongly

recommended these cases" and thereby obtained the approval of the Prime Minister for allocation of coal block in favour of M/s KSPL.

21. Learned ALA contended that A-3 & A-4 did not consider the recommendation of the Govt. of Jharkhand which had not recommended M/s KSPL for allocation of Medinirai Coal Block. They also did not ensure checking of application of M/s KSPL qua eligibility and completeness and entertained the incomplete application (without three years balance sheet) in violation of the guidelines laid down by MoC.

22. He further submitted that in the minutes of 34th Screening Committee held on 22.09.2006 (D-8, Pg. 122), A-3 & A-4 falsely mentioned that the views/comments of the State Government and guidelines of MoC have been taken into consideration while making recommendations for allocation of coal blocks to the applicant companies.

23. He contended that during the course of 34th Screening Committee meeting, A-3 & A-4 deliberately did not share with the members the database prepared by the CMPDIL in respect of the applicant companies who had applied for the Mednirai Coal block as well other blocks to ensure the application of *inter se* merits.

24. Learned ALA has referred to statement of LW-20 Lakshman Jha who is from Coal India Ltd. He was a member of the Screening Committee. Learned ALA submits that LW-20 had stated that he was not aware of the methodology adopted by the Screening

Committee nor any other group which was allocating the coal blocks and thus there was no question of agreeing to the recommendation of KSPL. Learned ALA contends that from this statement it is apparent that A-3 & A-4 were the only persons who were taking the decisions. Learned ALA also referred to statement of LW-42 Hem Pande who is from Govt. of West Bengal and who stated that no fact sheet/comparative chart/*inter se* priority chart was provided to him during the meetings of the Screening Committee. Learned ALA thus contended that A-3 & A-4 deliberately did not provide the same to the members of the Screening Committee. He further referred to the statement of LW-71 Harish Chandra who attended meetings of 34th Screening Committee as representative of MoP and who stated that no opinion or views were sought from him during the meeting.

25. Learned ALA referred to statement of LW-7 A. Ravi Shanker who is from CMPDIL wherein he has stated about preparing a database of information supplied by all the applicants for the coal blocks and lignite blocks and he also told that the said database could be used to determine *inter se* priority/merit chart on the basis of various quantifiable parameters. Learned ALA referred to D-5 and D-94 and submitted that the database prepared by CMPDIL despite being available was not used.

26. Learned ALA referred to PMO file (D-26). At page 11/n of the file, there is note dated 31.01.2007 containing justification for recommending name of RML and KSPL for Mednirai Coal Block.

In the said note, it was informed by A-3 that State Govt. had strongly recommended these cases. Thus according to learned ALA, A-3 had misled the PMO by asserting this false fact.

27. Learned ALA referred to letter dated 09.01.2007 of Govt. of Jharkhand to MoC (D-7, Pg. 12/c) through which the state government expressed its dissent relating to recommendations made by 34th Screening Committee. He thus contended that A-3 & A-4 differed with the recommendations made by the state government without giving any reason.

28. Learned ALA also referred to the minutes of the 34th Screening Committee (D-8, relevant Pg. 126) where it has been mentioned in para No. 5.8 that:

> *"The Screening Committee discussed in detail the presentations made and the applications submitted by the companies. Taking into consideration the views/comments of the Ministry of Power, Ministry of Steel, concerned State Governments, and considering the guidelines laid down for the allocation of coal/lignite blocks, the Screening Committee decided to recommend the allocation of the coal blocks as follows:"*

29. Learned ALA contended that no such discussion had taken place and it is falsely recorded in the minutes.

30. Learned ALA relied upon **Manohar Lal Sharma Vs. Principal Secretary (2014) 9 SCC 516.**

ARGUMENTS ON BEHALF OF A-1 COMPANY M/S KSPL

31. Learned Counsel Ms. Rupali Francesca Samuel made detailed submissions for A-1 which was now being represented by Sh. Ashok Kumar Sarawagi, Resolution Professional.

32. She contended that Section 32-A of the Insolvency and Bankruptcy Code, 2016 ("IBC") is a mandatory provision of law which requires the discharge or abatement of criminal proceedings against a company that has successfully undergone the Corporate Insolvency Resolution Process ("CIRP").

33. She submitted that A-1 M/s KSPL has gone into insolvency proceedings before the National Company Law Tribunal ("NCLT") Kolkata Bench on the application of one Operational Creditor M/s. Rahul Carbond Commercial Private Limited and vide order dated 20.11.2019, Mr. Ashok Kumar Sarawagi was appointed as the Interim Resolution Professional. Thereafter, on 31.12.2019, he was appointed as Resolution Professional by Hon'ble NCLT, Kolkata and presently the CIRP is under process.

34. She referred to Section 32A of IBC and contended that as on today, the prosecution against A-1 company cannot continue.

35. Learned Counsel further submitted that M/s KSPL was a newly incorporated company having been incorporated on 16.02.2005, therefore, it had no audited annual accounts/reports that had been prepared and it was stated in the application form as well as the forwarding letter. The Certificate of Incorporation was also

annexed with the application form. Thus, it cannot be said that M/s KSPL submitted an incomplete application form.

36. She further submitted that it was not stated in the guidelines that annual accounts/reports of the group companies or any specific documents was to be annexed in support of the claims made relating to the networth.

37. She further submitted that there was no inducement by virtue of the fact that the networth of group companies was mentioned in the application form. She submitted that networth was introduced as a relevant criterion only later in the 2006 advertisement.

38. She submitted that Serial No. 7 of the guidelines mentions groups of companies getting allocation under a joint venture arrangement and Serial No. 8(ii) talks about associate companies. Thus, it cannot be said that the concept of group or associate companies was alien to the application scheme and to MoC.

39. She also submitted that T.M. Group was a promoter group of KSPL. Explaining the connect which made KSPL a group company of T.M. Group, learned Counsel submitted that KSPL was started jointly by Sh. Motilal Dugar and Sh. Vivek Dugar on one hand and Sh. Vijay Bothra on the other hand. She told that Sh. Vijay Bothra is father-in-law of Sh. Vivek Dugar who is son of Sh. Motilal Dugar. The Dugars set up the company alongwith Vijay Bothra for the purpose of setting up a steel plant in India. She submitted that the company was set up as a quasi partnership within a small family

unit. She also informed that the word 'Kohinoor' belongs to T.M. Group brand and thus KSPL can be said to be group company of T.M. Group. She further submitted that M/s Ravi Udyog Pvt. Ltd. can also be termed as an associate company for relevance experience in mining.

40. Learned Counsel also submitted that MoS had also recognized concept of group companies as is apparent from their guidelines of August 2006 (D-31).

41. She submitted that the application process was authorised and steered by all directors and was not the sole prerogative of A-2 alone. Each director was severally authorised to engage with statutory bodies, licensing bodies, banks etc. towards the setting up of a steel plant, which included obtaining a coal block. A-2 and A-5 acted in terms of the authority granted to them by the Board of Directors.

42. She contended that there was no misrepresentation in letter dated 17.03.2006 since it was correct that lighting of the 1st kiln had occurred.

43. She submitted that Form ER-7 dated 26.04.2011 regarding annual installed capacity statement submitted by KSPL to the Excise Deptt. (D-111) states that kiln was installed in 2006 and Form ER-7 dated 27.11.2008 regarding annual installed capacity statement submitted by KSPL to the Excise Deptt. states that the DRI was installed as on 2006. She also submitted that the order for the parts

for the kilns was placed on 30.10.2004 with M/s Beekay Engineering Corporation, Bhilai (D-123) and order for the kilns was placed with M/s Hari Machines in July 2005.

44. Referring to the statement of LW-12 Kamla Kant Pathak, Junior Environmental Engineer (JEE), Jharkhand State Pollution Board, Ranchi, she submitted that he had conducted an inspection on 10.03.2006 and its report dated 29.03.2006 (D-65) states that the plant was under construction as on the date of the inspection. The report says that the production capacity is "Sponge Iron – 400 MT/day", which was yet to be completed. The report does not state that not even a single kiln had been lit. Another report dated 10.05.2006 of LW-12 Kamla Kant Pathak, LW-32 Mani Kant Prasad and LW-105 Prabhat Kumar states that the ESP was under construction and that 1 kiln was operational.

45. She submitted that the letter dated 17.03.2006 cannot be said to be the basis for a wrong reliance that all 4 kilns were operational, since the only requirement was that they were to be operational by December 2009 to be categorized as Category II(a).

46. Learned Counsel for A-1 company relied upon the following case law:

i. **Cox and Kings Vs. SAP Pvt. Ltd., 2023 INSC 1051**

ii. **Manish Kumar Vs. Union of India & Anr. (2021) 5 SCC 1**

iii. **Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corpn. of India Ltd., (2023) 10 SCC 545.**

iv. **P. Mohanraj Vs. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC**

258.

v. **Sunil Bharti Mittal Vs. CBI (2015) 4 SCC 609**

vi. **Iridium India Telecom Ltd. Vs. Motorola Incorporated, (2011) 1 SCC 74.**

vii. **Vijay Rajmohan Vs. CBI (2023) 1 SCC 329.**

viii. Orders dated 20.11.2019, 31.12.2019 & 19.02.2024 in CP (1B) No. 82/KB/2019 in Rahul Carbon Commercials Pvt. Ltd. Vs. M/s Kohinoor Steel (P) Ltd. passed by NCLT, Kolkata.

47. Learned Counsel relied upon Manish Kumar's case (*supra*) and submitted that it was held that the extinguishment of the criminal activity of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. The Hon'ble Supreme Court upheld the validity of several provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, including Section 10 which introduced Section 32-A.

48. While relying upon P. Mohanraj (*supra*) she submitted that on the interplay between the provisions enabling the moratorium regarding proceedings concerning debt of companies (Section 14, IBC) and the provisio enabling the abatement of criminal proceedings (Section 32-A IBC), Hon'ble Supreme Court held has under:

> *"41. Section 32-A can not possibly be said to throw any light on the true interpretation of Section 14(1)(a) as the reason for introducing Section 32-A had nothing whatsoever to do with any moratorium provision. At the heart of the section is the extinguishment of*

> *criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32-A(1) operates only after the moratorium comes to an end. At the heart of Section 32-A is the IBC's goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability."*

49. Learned Counsel also relied upon Ajay Kumar Radheyshyam Goenka (*supra*) and submitted that no criminal proceedings can continue even in the case of dissolution of the company against the company.

50. While relying upon Cox and Kings (*supra*), learned Counsel submitted that Hon'ble Supreme Court has defined "group companies" as follows:

> *"Para 82: The phenomenon of group companies is the modern reality of economic life and business organization. Group companies are a set of separate firms linked together in formal or informal structures under the control of a parent company. The group companies can be defined in the Indian context as "an agglomeration of privately held and publicly traded firms operating in different lines of business, each of which is incorporated as a separate legal entity, but which are collectively under the entrepreneurial, financial, and strategic control of a common authority, typically a family, and are linked by trust-based relationships forged around a similar persona, ethnicity, or community."*

51. While relying upon, Iridium India Telecom Ltd. (*supra*), she

submitted that on the 'alter ego' theory of criminal liability, it can not be said that KSPL was merely the alter ego of the individual accused persons, to do as they wish. Therefore, no *mens rea* can be attributed to the company.

52. Learned Counsel prayed for discharge of accused no. 1 company.

ARGUMENTS ON BEHALF OF A-2 VIJAY BOTHRA

53. Sh. Shri Singh, learned Counsel for A-2 addressed detailed submissions on the aspect of charge.

54. Learned Counsel contended that networth was not a relevant aspect for allocation of coal block considered by the 34th Screening Committee. He submitted that networth had no connection with preparedness of project. He argued that the amount of networth was not considered by MoS while categorizing various applicants.

55. Learned Counsel also contended that it is a misconception on the part of prosecution that a new company could not be allocated any coal block. He submitted that there was no such condition in the advertisement dated 09.09.2005. He referred to statements of LW-4 Sh. Prem Raj Kuar and LW-8 Sh. Sujit Gulati wherein they state that application of the company was complete. In a way, learned Counsel suggested that furnishing of three years audited annual accounts was of no consequence in case of a new company.

56. Learned Counsel argued that production of steel is

mentioned as one of the objects in the Memorandum of Association of the company.

57. Learned Counsel further submitted that insertion of information regarding group companies in the application form cannot be termed manipulation of the format of application. Learned Counsel pointed out that no witness was asked by CBI to tell whether inserting information about group company amounted to manipulation of format or not. He contended that rather by supplying the information about group companies, applicant company showed its *bona fide*.

58. Learned Counsel vehemently submitted that the company had established the steel plant and, therefore, no cheating was done by it.

59. Learned Counsel argued on similar lines on the issue of T.M. Group being promoter of applicant company. He referred to the fact that daughter of A-2 was married to Sh. Vivek Dugar. He submitted that A-2 and Vivek Dugar decided to set up a steel manufacturing unit in India sometime in 2005 and thus Vivek Dugar and his father Motilal Dugar were made directors in KSPL. Vivek Dugar wrote a letter dated 09.03.2005 (D-47, Pg. 6) to Govt. of Jharkhand expressing intention to set up steel plant in Jharkhand. He referred to some other documents such as MoM of High-powered Committee dated 24.06.2005 (D-47), MoU dated 18.07.2005 between KSPL and State of Jharkhand (D-22 and D-185) and loan of Rs. 20 crores sanctioned by OBC to KSPL (D-22, Pg. 245). He contended that

T.M. Group has been referred to as promoter group of KSPL at various places in these documents. He submitted that insistence of CBI on a formal document regarding this fact is misconceived.

60. Regarding Ravi Udyog Pvt. Ltd., learned Counsel submitted that its name was mentioned to show early extraction capability of the applicant company. He submitted that Ravi Udyog Pvt. Ltd. itself had consented to use of its name in the application of KSPL. In the alternative, learned Counsel argued that capability for early extraction did not influence making of recommendation in favour of KSPL as mining was to start a long time after allocation of coal block.

61. Regarding inflated networth of four Indian Companies out of seven, learned Counsel submitted that same was result of minor discrepancies in calculations. He contended that these figures did not influence MoC or MoS at all and no case can be made out for offence of cheating qua this inflated networth.

62. Regarding figures of investments, he submitted that out of claimed amount of Rs. 15 crores, CBI has found that investment worth Rs. 12.25 crores was actually made by the company. So far as the remaining amount is concerned, he referred to balance sheet of FY 2005-06 wherein Capital Work in Progress is mentioned as Rs. 45.28 crores.

63. Regarding non-obtaining of environmental clearance, learned Counsel submitted that it was not required to be obtained in

view of notification of the Govt. as the project cost was less than 100 crores.

64. Regarding alleged false claim regarding purchase of 30 acres of land, Learned Counsel submitted that KSPL had undertaken measures to acquire/partly acquire land mentioned in the application.

65. He relied upon the following judgments:

a) **Satish Mehra Vs. State, (2012) 13 SCC 614;**
b) **Yogesh @ Sachin Joshi Vs. State, (2008) 10 SCC 394;**
c) **UoI Vs. Prafulla Samal, (1979) 3 SCC 4;**
d) **Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135;** and
e) **L. Krishna Reddy Vs. State by SHO, (2014) 14 SCC 401**

66. He prayed for discharge of A-2.

ARGUMENTS ON BEHALF OF A-5 RAKESH KHARE

67. Sh. Dhruv Kumra, learned Counsel for A-5 submitted that A-5 had joined A-1 company in September, 2005 and left it in September, 2006. He submitted that A-5 remained under employment of company for a little over one year only.

68. Learned Counsel contended that A-5 was merely an employee of the applicant company. He submitted that coal block was allocated by MoC in 2009 whereas A-5 had already left the

company in September, 2006.

69. Learned Counsel submitted that reference to letter dated 17.03.2006 (D-37) which is signed by A-5 is misplaced. He argued that A-5 had merely supplied information which was gathered from the records of the company relating to the application for allocation of the coal block.

70. Learned Counsel also contended that attending the meeting of the 34th Screening Committee by A-5 does not show or prove that A-5 was in any conspiracy with the other accused persons. He pointed out that in the meeting dated 22.09.2006, no decision was taken by the Screening Committee recommending any allocation.

71. Learned Counsel pointed out that original presentation and feedback form are not available or traceable. As such, case against A-5 is only based upon copies of some documents and thus it is a weak case against A-5.

72. Even otherwise, learned Counsel submitted that it was not mandatory or necessary for an applicant company to file feedback form. He contended that feedback form was of no consequence.

73. Learned Counsel for A-5 submitted that the prosecution has relied upon two inspection reports dated 29.03.2006 and 10.05.2006 to show that there was no such kiln functional on 17.03.2006.

74. Learned Counsel argued that there are various contradictions in the report dated 29.03.2006. He contended that inspection was

allegedly made on 10.03.2006 and report was made on 29.03.2006. This delay, according to learned Counsel, is enough to create doubt about this report. He pointed out that at one place the date beneath handwriting is mentioned as 28.03.2006 which also creates doubt about authenticity of the said report. Learned Counsel contended that the observations in the said report are to be discarded as there are serious doubts about the truthfulness of the said report.

75. Learned Counsel also referred to inspection report dated 09.05.2006. He cast doubt about this inspection report as well. He also pointed out that some prosecution was initiated on the basis of this report which was challenged by A-1 company and the proceedings were stayed upon orders of Hon'ble Jharkhand High Court.

76. He pointed out that A-5 was not a director or shareholder of A-1 company and prayed for his discharge.

ARGUMENTS ON BEHALF OF A-3 H.C. GUPTA & A-4 K.S. KROPHA

77. Sh. Rahul Tyagi, learned Counsel addressed arguments on behalf of A-3 & A-4 i.e. the accused public servants.

78. Sh. Rahul Tyagi, learned Counsel for A-3 & A-4 contended that though the prosecution has obtained the sanction for prosecution u/s 19 of PC Act against both the accused public servants for offences under PC Act, however, they did not obtain sanction u/s 197 CrPC for their prosecution for offences under IPC.

79. Learned Counsel contended that requirement of prosecution sanction u/s 197 CrPC is mandatory for the offences u/s 420 and 120-B IPC. He submitted that Hon'ble Supreme Court in the case **A. Srinivasulu Vs. State, MANU/SC/0723/3023**, has distinguished the observations made in Prakash Singh Badal's case as mere general observations and not the ratio, and held that sanction u/s 197 CrPC is mandatory.

80. Learned Counsel also relied upon **R. Balakrishnan Pillai vs. State of Kerala, MANU/SC/0212/2003** and **State of Madhya Pradesh Vs. Sheetla Sahai & Ors., MANU/SC/1425/2009**, and submitted that the facts of these cases are not too dissimilar and it was held that the sanction order u/s 197 CrPC in cases of conspiracy to cheat and to commit criminal misconduct is a must.

81. Qua sanction u/s 19 of the PC Act, Learned Counsel submitted that the same was granted without application of mind. He, however, submitted that he will demonstrate non-application of mind later on during trial, if any charge is framed.

82. On merits, learned Counsel argued that the provision u/s 13(1)(d) of PC Act contains three independent offences i.e. Section 13(1)(d)(i), 13(1)(d)(ii) and 13(1)(d)(iii). Reference has been made to **Rajeev Kumar and Others vs. State of U.P., MANU/SC/0932/2017**. He submitted that offence u/s 13(1)(d)(i) and (ii) are not made out at all. Reliance is placed upon Constitution Bench judgment in **Neeraj Dutta Vs. State of NCT of Delhi, 2022 SCC OnLine SC 1724**. It is contended that there is no evidence of

any demand and thus there cannot be obtainment.

83. 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."

84. 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."

85. He submitted that the offence u/s 13(1)(d)(iii) is also not made out as the ingredient of obtainment is not satisfied as A-3 and A-4 did not obtain any valuable thing or pecuniary advantage for anyone. It is contended that they merely recommended the allocation of coal block and actual allocation was made by the Minister of Coal i.e. the Prime Minister. Learned Counsel has

contended that the CBI has not taken into consideration the legal principles applicable to the present case. He relied upon **State of Bihar & Ors. V Kripalu Shankar & Ors. [MANU/SC/0166/1987]** and **Sethi Auto Service Station & Ors. v Delhi Development Authority & Ors., [MANU/SC/8127/2008]**

86. It is also contended that there was no effort or initiative on the part of any of the accused public servants and thus it cannot be said that they have obtained valuable thing or pecuniary advantage for the allocatee. It is also contended that there was no effort or initiative on the part of A-3 or A-4 which is essential for obtainment. Reliance has been placed upon R. Balakrishnan Pillai (*supra*).

87. 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 MANU/DE/1079/2020**. 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.

88. Learned Counsel has also relied upon **Dileepbhai Nanubhai Sanghani Vs. State of Gujarat & Ors., MANU/SC/0273/2025** wherein it has been held that mere misuse of authority without any allegation of demand and acceptance of bribe will not attract offence under PC Act. It held that offence u/s 13(1)(d)(iii) PC Act was not made out.

89. Regarding the phrase "*without any public interest*", it is contended that the said ingredient has also not been satisfied. He submitted that the recommendation was not against public interest rather it was in public interest.

90. On other aspects, Learned Counsel informed that Sh. P.C. Parakh was Secretary (Coal) at the relevant time i.e. till December, 2005. One Sh. Sujit Gulati was Director, CA-I.

91. Learned Counsel contended that minutes of the meeting were correctly recorded. He referred to statement of LW-8.

92. He contended that the accused public servants had taken all the steps as were required to fairly carry out the exercise of allocation of coal blocks.

93. Learned Counsel also argued that various allegations have been made in the chargesheet which constitutes commission or omission of various acts by accused public servants but which do not fall in category of criminal acts.

94. Regarding non-submission of three years audited annual accounts/balance sheets, learned Counsel submitted that as A-1 company was incorporated only on 16.02.2005, it could not have submitted last three years audited annual accounts/balance sheets. Learned Counsel contended that it was never the intention of MoC that a new company could not apply for allocation. There was no requirement of a company being operational for at least last three years.

95. Regarding non-submission of audited annual accounts/balance sheets of 28 companies whose networth was clubbed by A-1 company in its application, learned Counsel contended that there was no requirement of submitting audited annual accounts/balance sheets of such companies. He referred to statement of LW8 Sh. Sujit Gulati who was Director, CA-1 at the relevant time.

96. Learned Counsel contended that the case against the accused public servants has been made out of ignorance of the legal principles about decision-making in Government. He relied upon Kripalu Shankar's case (*supra*) and submitted that the notings made on the file on a particular matter by officers are just their feelings, views and suggestions, which may be conflicting and differing till they ultimately get finality at the hand of the Minister or the competent authority. Notings in a file get culminated into an order affecting right of parties only when it reaches the Head of the Department. He submitted that Minister of Coal was the competent authority in the present case who decided the matter.

97. Learned Counsel relied upon Sethi Auto Service Station's case (*supra*) and submitted that the 'recommendations' of Screening Committee were not binding on the competent authority and did not create any right unless and until these were accepted and approved by the competent authority and further communicated to the concerned person.

98. He referred to R. Balakrishnan Pillai (*supra*) 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."

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

100. Learned Counsel relied upon **Saju Vs. State, MANU/SC/0688/2000** and contended that the accused public servants were not directly involved in either the initial processing of the applications nor were they responsible for verification of the information by the applicant companies at the later stage. He submitted that the officials who were directly incharge of the said activities have not been made an accused in the present case. As such, the acts or omissions of those officials cannot be read against the accused public servants to infer conspiracy.

101. Learned Counsel submitted that M/s KSPL was not engaged in production of iron and steel but for this reason it cannot be said that the company was not eligible to apply. He relied upon **Welfare Society of Orissa Vs. UOI & Ors., 2010 SCC OnLine Ori 67 :**

AIR 2010 Ori 183 and submitted that the issue of 'engaged' is no longer *res integra.*

102. Learned Counsel relied upon **Harendra Narian Singh vs. State of Bihar, MANU/SC/0416/1991** and submitted that if two views are possible, whether in law or on facts, then the view favouring the accused has to be adopted by the Court.

103. He vehemently argued that for the acts of the Screening Committee which was a group, A-3 & A-4 cannot be singled out. He relied upon **State of MP & Ors. Vs. Mahendra Gupta & Ors., MANU/SC/0097/2018; Centre for PIL & Ors. Vs. UOI & Ors., MANU/SC/0179/2011; R. Sai Bharathi V. J. Jayalalitha & Ors., MANU/SC/0956/2003** and **Jethsur Surangbhai Vs. State of Gujarat, MANU/SC/0109/1983.**

104. Learned Counsel contended that the applications were received at MoC during the tenure of Sh. P.C. Parakh who was the predecessor Secretary (Coal) of Sh. H.C. Gupta, hence, A-3 cannot be held responsible for checking of applications for their completeness and eligibility.

105. Learned Counsel referred to the statements u/s 161 CrPC of LW-4 Sh. Premraj Kuar dated 03.12.2014 and LW-8 Sh. Sujit Gulati, dated 26.12.2014 and submitted that checking of applications was indeed carried out in terms of MoC guidelines.

106. While referring to letter dated 22.07.2006 (D-16) of M/s Kesoram Industries Ltd. written to V.S. Rana and DO letter dated

09.08.2006 (D-20) of Dr. Sabyasachi Sen, Principal Secretary, Commerce & Industries Department, Govt. of West Bengal addressed to Secretary (Coal), learned Counsel contended that two lists A and B (D-4) prepared after first scrutiny of documents show that checking of documents was done as out of 740 applications submitted, demand drafts were received with 732 applications. The said two lists were uploaded on the website of MoC.

107. Learned Counsel further submitted that in another case pertaining to 34th Screening Committee i.e. case No. CBI/296/2019, tilted CBI Vs. M/s Grace Industries Ltd. & Ors., decided by the Court of Sh. Arun Bhardwaj, Learned Special Judge, PC Act (CBI), Coal Block Cases-01, RADC, vide judgment dated 29.07.2022, it was concluded that checking for eligibility and completeness was done in the Ministry.

108. Learned Counsel further contended that since the checking for completeness was to be carried out by CA-I Section so the alleged lapses of the section cannot be read against A-3 as no official of the Section is part of the conspiracy. He submitted that the officials never brought it on record that the application was incomplete nor did they inform the higher officers about it.

109. Learned Counsel contended that the guidelines of MoC published with the advertisement/ notice inviting applications did not stipulate that audited annual accounts of group companies should also be submitted with the applications. The Screening Committee had taken a liberal view in the matter. He referred to the

statement of LW-8 Sh. Sujit Gulati, Director CA-I.

110. While referring to the statements of LW-73 Sh. Sanjiv Mittal, Director CA-1, LW-2 Sh. V.S. Rana and LW-83 Sh. Prashant Kumar Singh, Dy. Secretary/Director, MoS, learned Counsel contended that verification of the information furnished by the applicant companies in their applications was to be done by the Administrative Ministries and State Governments concerned after their receipt, in terms of the decisions taken in the 14th and 18th Screening Committee meetings.

111. Learned Counsel further referred to statement of LW-73 Sh. Sanjiv Mittal, LW-2 Sh. V.S. Rana, LW-6 Sh. Kumar Arvind Singh Deo and LW-18 Sh. P.R. Mandal and submitted that accused public servants alone cannot be held responsible for the decision to recommend M/s KSPL as it was a unanimous decision taken by the Screening Committee. He further contended that there is no evidence of any dissent being recorded by any of the members of the Screening Committee with respect to recommendation of the coal block to M/s KSPL either in the minutes of 34th Screening Committee or in any of the files of MoC, MoS, or Govt. of Jharkhand.

112. Learned Counsel contended that MoS had placed the company in Category II(a) and had vouched for the existing capacity of M/s KSPL based on direct and exclusive communication between MoS and M/s KSPL vide letters dt. 17.03.2006 and 01.05.2006. There was no other applicant available to the Screening

Committee having higher category than M/S KSPL.

113. He told that M/S KSPL was recommended by Jharkhand to MoC for allocation of Sitanala coal block**.**

114. Learned Counsel further contended that M/s KSPL, having its EUP in sponge iron, had applied for Mednirai Coal Block, which is a non-coking coal block suitable for use in sponge iron plants. However, vide letter dt. 29.06.2006, [Pg. 214-213 of D-207], Govt. of Jharkhand had inadvertently recommended the name of M/s KSPL for Sitanala coal block, which is a coking coal block and not suited for iron & steel plants and could not have been used for manufacture of sponge iron.

115. Learned Counsel contended that the Govt. of Jharkhand sent another letter dt. 21.09.2006 to MoC wherein it revised its earlier recommendations for allocation of non-coking coal blocks and included the name of M/s RML along with M/s JSMDCL for allocation of the block. [Pg. 220 of D-207]

116. He further contended that the recommendations of the Screening Committee was unanimously made after reconciling the views and recommendations of the administrative ministry and state government. He submitted that M/s KSPL was recommended by MoS which had placed it in Category II(a) and M/s RML was recommended by Jharkhand. As a result, the Screening Committee considered both the recommendations and jointly allocated the coal block to M/s KSPL and M/s RML with the larger share (3/4th) of the

allocation being awarded to Jharkhand's recommendation. Thus, two EUPs were expected to be set up for the same block instead of one.

117. He submitted that the coal block was jointly allocated to M/s RML with majority share of 75% and to M/s KSPL having remaining 25% share. M/s JSMDCL could not have been allocated the coal block as it hadn't even applied for the same and, therefore, such an allocation would have been illegal.

118. 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. He further submitted that there is no evidence of conspiracy. There was no duty upon A-3 & A-4 to check the applications for their eligibility and completeness.

119. Another contention of learned Counsel is that if MoC was cheated, so were A-3 & A-4 as they were part of the MoC.

120. Another contention of learned Counsel for A-3 & A-4 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.

121. 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. 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.

122. Another contention of learned Counsel is that allocation only happened after acceptance by MoC and not before that.

123. Learned Counsel also vehemently contended that there was no challenge to the minutes of the meetings of 34th 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.

124. 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.

125. 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.

126. Learned ALA replied that the guidelines were not under MMDR Act but they were certainly under CMN Act.

127. Learned Counsel for the accused however countered this submission also contending that these guidelines cannot be called to have been issued under CMN Act.

128. He referred to the statement of 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**.

129. Learned Counsel prayed for discharging both A-3 & A-4.

REBUTTAL ARGUMENTS

130. Learned ALA for CBI rebutted all these contentions and contended that there is enough material to frame charges against all the accused persons.

131. Learned ALA 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.**

132. Learned ALA replied that charge for the offence u/s 13(1)(d) (ii) & (iii) PC Act is made out. 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-1 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.

133. He also referred to subsequent statement of LW4 Prem Raj Kuar dated 18.05.2018 wherein he stated that applications were not checked for eligibility and completeness.

OPINION OF THE COURT

134. I have considered the submissions. I have carefully gone through the record as well.

135. The law regarding framing of charge is well settled.

136. In the case titled **State of Tamil Nadu vs. N. Suresh Rajan and Ors., (2014) 11 SCC 709**, Hon'ble Supreme Court observed that if at the stage of charge the Court thinks that the accused might

have committed the offence on the basis of the material on record on its probative value it can frame the charge; though for conviction the court has to come to the conclusion that the accused has committed the offence. Hon'ble Supreme Court observed as under:

> "*We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not Warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.*"

137. Further in **"State of Bihar Vs. Ramesh Singh", 1977 CriLJ 1606** with respect to the issue of framing of charge, Hon'ble Supreme Court observed as under:

"4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S.227 or S.228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by S.227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S.228.

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.

It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.

If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, it cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable.

We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227."

138. Regarding the offence of conspiracy, the observations of Hon'ble Supreme Court on the issue of criminal conspiracy as were made in the case **State through Superintendent of Police, CBI/SIT Vs. Nalini & Ors.(1999) 5 SCC 253** would also be worth referring to. Hon'ble Supreme Court summarized the broad principles governing the law of conspiracy as under*:*

"591. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons

agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the

crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

139. In the case titled **E.G. Barsay Vs. State of Bombay, AIR, 1961 SC 1762**, the view whereof was affirmed and applied in several later decisions, such as **Ajay Aggarwal Vs Union of India 1993 (3) SCC 609; Yashpal Mittal Vs. State of Punjab 1977 (4) SCC 540; State of Maharastra Vs. Som Nath Thapa 1996 (4) SCC 659; Firozuddin Basheeruddin Vs. State of Kerala, (2001) 7 SCC 596,** Hon'ble Supreme Court also observed as under:

> *"—The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."*

140. Thus direct evidence qua the offence of criminal conspiracy is hard to come up, therefore, the same is to be ascertained from the overall facts and circumstances of a given case.

141. Primarily, the offences alleged in the present case are of cheating. The offence of cheating is defined u/s 415 IPC. 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."

142. 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."

143. From perusal of the above-noted provisions, and as held in **Ram Jas v. State of UP (1970) 2 SCC 740**, 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.

144. It will also be fruitful to note definitions of 'dishonestly' and 'fraudulently'. 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".*

145. 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.*

146. 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.*

147. What is the meaning of the phrase "deceiving any person" as

used in the definition of cheating as provided in Section 415 IPC?

148. 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.

149. 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.

150. 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.

151. 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 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.

152. 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.

153. The deception within the meaning of section 415 IPC can happen through misrepresentation.

154. 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.

155. 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 deceived. 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.

156. Keeping the above exposition of law in mind, let us examine the case at hand.

157. The case can be broadly divided into two categories for clear

understanding i.e. (a) Role of accused public servants and (b) Role of private accused persons.

(A) ROLE OF ACCUSED PUBLIC SERVANTS

158. As far as the contentions relating to non-obtaining of sanction u/s 197 CrPC are concerned, the same are misconceived for the simple reason that vide sanction order dated 31.08.2022, sanction for prosecution has not only been granted u/s 19 of PC Act but it has also been granted u/s 197 CrPC. Viewed thus, all these contentions are liable to be rejected.

159. So far as sanction u/s 19 of PC Act is concerned, learned Counsel has already mentioned that he will show non-application of mind during trial, if accused public servants are charged with any offence.

160. As far as the submissions regarding offence u/s 13(1)(d) PC Act are concerned, having perused the judgment of the Constitution Bench, there remains no doubt offences u/s 13(1)(d)(i), (ii) and (iii) PC Act are distinct offences and that proof of demand is must for making out an offence u/s 13 (1)(d)(i) & (ii) thereof. 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.

161. However, as far as offence u/s 13(1)(d)(iii) PC Act is

concerned, prosecution may have an arguable case.

162. 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.""

163. From these observations, it is very much apparent that no *mens rea* is required for the offence u/s 13(1)(d)(iii) PC Act. If a public servant had observed reasonable safeguards against detriment to the public interest, he cannot be charged for committing offence u/s 13(1)(d)(iii) PC Act.

164. Now let us see if charge for any offence is made out against these accused public servants.

165. One of the allegation of the prosecution is that checking of applications in terms of the guidelines of MoC had not been conducted. This has been described as a major lapse on the part of accused public servants. Prosecution has contended that due to non-checking of the applications, even those applications were processed

which were required to be rejected at the initial stage itself.

166. Learned ALA has pointed out that checking for eligibility and completeness did not take place. However, Learned Counsel for the accused public servants has referred to statements of various witnesses such as LW-4 Prem Raj Kuar and LW-8 Sujit Gulati and pointed out that according to these witnesses, this exercise was conducted.

167. Perusal of statement of LW-4 Prem Raj Kuar in fact shows that application of KSPL was scrutinized as per guidelines of MoC. It has further come in the said statement that the application was found to be complete. It has further come that the scrutiny of the application was carried out under overall supervision of Director, CA-I.

168. LW-4 has also tried to explain meaning of eligibility and criteria. His answer to question 15 is being reproduced here as under:

> "Q-15 In the processing of application to the guidelines for allocation of Captive blocks and condition of allotment, it was mentioned that "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". Please tell what does eligibility means? Whether it was checked by the Ministry of Coal? If not, why.
>
> Ans- As the eligibility criteria, the company must have submitted the certificate of Incorporation as a company under the Company Act, 1956. As regards

> completeness, the company must have submitted all the documents listed in the guidelines for allocation of coal blocks and condition of allotment. The eligibility criteria as well as the completeness of the applications were checked by CA-I section, Ministry of Coal at the time of applications received by us.
>
> In the instant case, in file MR No. 02/2012 of Ministry of Coal shown to me, a list at pages- 10 to 25 regarding first scrutiny of applications of applicant companies received in response to the advertisement by Ministry of Coal for allotment of 20 Coal blocks & 8 lignite blocks for captive mining are placed. As per the scrutiny, application of M/s Kohinoor Steel Pvt. Ltd. for Mednirai Coal block mentioned at serial No. 316 at page-17 was found complete as per the guidelines for the allocation of captive blocks and condition of allotment placed at pages- 2 to 6 in this file. However, on checking of application of M/s Kohinoor Steel Pvt. Ltd. bearing MR No. 292/ 12, it appears that erroneously the name of this company was included in the list of first list of scrutiny of application of applicant companies as the application of this company should have been rejected at the time of scrutiny of application of M/s Kohinoor Steel Pvt. Ltd. because company had not submitted the Audited annual accounts/ reports of last 3 years of its group companies as stipulated in the guidelines for allocation of Captive blocks and Conditions of Allotment."

169. In addition to LW-4, LW-8 Sujit Gulati who was Director, CA-I at the relevant time has also stated that checking was carried out for eligibility and completeness.

170. It is also found that two lists i.e. List A and List B were prepared by officials of MoC. List A contained names of companies whose applications were found to be complete whereas List B contained names of companies whose applications were found to be incomplete. List A is available at page 10/c in file D-4 and List B is available at page 26/c in the same file. It is noticed that these two

lists were also uploaded on the website of MoC.

171. It is also to be noted that in a case titled CBI Vs. M/s Grace Industries Ltd. & Ors., CBI/296/2019, decided by the Court of Sh. Arun Bhardwaj, Learned Special Judge, PC Act (CBI), Coal Block Cases-01, RADC, vide judgment dated 29.07.2022, it has been held that scrutiny of applications for completeness and eligibility was carried out in MoC before sending the applications to State Govts. and Administrative Ministries (in para 154 of the judgment). That case related to 34th Screening Committee itself.

172. Reference to statement dt. 18.05.2018 of LW4 Prem Raj Kuar is not of any value. The manner and purpose of recording said statement is shrouded in mystry. Firstly this later statement has been recorded almost four years after recording initial statement. Secondly, and more importantly, questions were asked about the same issues about which the witness had already stated in the initial statement. Not only this, the witness gave diametrically opposite responses in this later statement. This delay on the part of the IO and this volte face of the witness shows that this later statement is better not considered. The complete u-turn appearing in the answers is nothing but improvement. Moreover, the version given in the later statement is contrary to the finding given by the court of Sh. Arun Bhardwaj. Thus this later statement is not being considered.

173. Having considered the material on record, I am also of the view that exercise for checking the applications for eligibility and completeness had in fact been conducted at MoC. This allegation of

the prosecution is not made out from the material on record. Preparation of List A and B indicates that some exercise of filtering out the applications had taken place at MoC. This filtering out was nothing but checking for eligibility and completeness.

174. The other allegation of the prosecution is that the application of KSPL was incomplete and should have been rejected. It has been stated that alongwith the application, three years audited annual accounts of the company were not annexed. Further, audited annual accounts of the 28 companies, networth of which was claimed by the applicant company, were also not annexed.

175. Regarding this allegation, it is to be noted that LW-4 has explained that as the company was incorporated only on 16.02.2005, it could not have annexed three years annual audited accounts alongwith its application filed on 20.10.2005. Not only this, LW-4 has further explained that there was no requirement of annexing audited annual accounts of the group companies. LW-8 has also stated on similar lines about audited annual accounts of group companies.

176. When the witness of MoC is himself explaining the absence of audited annual accounts, this allegation also does not survive. The name of KSPL was kept in List A i.e. companies whose applications were complete. As such, it cannot be said that application of KSPL was incomplete. It may be that the application was treated as complete erroneously but for this lapse A-3 & A-4 cannot be held responsible. If LW-4 or any other official of MoC treated the

application as a complete application though erroneously or wrongly, this does not make A-3 & A-4 criminally liable.

177. Another allegation of the prosecution is about non-verification of the informations mentioned in the application by the company.

178. Learned ALA had contended that A-3 & A-4 did not get the facts and figures stated in the application verified. They did not bother to check whether the claims made in the application were true or false. Regarding this allegation, learned Counsel for accused public servants has submitted that the verification of the claims was to be done by Administrative Ministry alongwith concerned State Govt. He referred to the decisions taken in the 14th and the 18th Screening Committee meetings. He submitted that MoC was not to carry out this exercise. He also referred to statements of LW-2 V.S. Rana, (Under Secretary, MoC), LW-73 Sanjiv Mittal (Director CA-I) and LW-83 Prashant Kumar Singh (Dy. Secretary/Director in MoS).

179. LW-2 has stated that as per practice, verification of the data/information was not done by MoC. LW-73 has stated that MoC did not have the manpower or the expertise to verify such information and this verification was expected to be carried by the Administrative Ministry i.e. MoS in the present case. LW-83 has informed that MoS used to refer few cases for field verification.

180. Learned Counsel has also referred to a letter dated

15.04.2006 (D-31, Pg. 43-45/c) and letter dated 06.09.2006 (D-31, Pg. 54/c). The letter dated 15.04.2006 shows that some details were furnished by Govt. of Orissa to MoS regarding one company thus showing that MoS used to verify informations given by applicant companies. Further the letter dated 06.09.2006 which was sent by MoS to MoC, shows that as per Annexure-B of the letter, a detailed exercise of verification of the data was carried out by MoS.

181. The decision taken in the 14th & 18th meeting of the Screening Committee are also of relevance. The same were referred to in the judgment in Manohar Lal Sharma's case (*supra*). The same is as follows:

> "124. In its 14th meeting held on 18/19.06.1999, the Screening Committee decided as follows:
>
> > "(i) The Administrative Ministries will assess the soundness of the proposals in consultation with the State Govt. before sending their comments/recommendations to the Screening Committee for consideration of allotment of a captive mining block; and
> >
> > (ii) The Administrative Ministries should consult State Governments as well as use their own agencies for assessing the progress of the implementation of end 98 use plants for which blocks have already been allotted by the Screening Committee and send a report to the Screening Committee for further action."
>
> 124.1 x x x
>
> 128. In the 18th meeting held on 05.05.2003, the Screening Committee, for the first time, considered the issue of determining *inter se* merit of applicants for the same block as well as certain other issues to bring in transparency and felt that guidelines for determining *inter se* priority among claims for blocks between public sector

and private sector for captive use and between public sector for non-captive use and private sector for captive use need to be evolved. The Chairman of the Committee put the following few general guidelines for consideration:

> (i) The blocks in captive list should be allocated to an applicant only after the same have been put in the pubic domain for a reasonable time and not immediately upon their inclusion in the list of block identified for captive mining, so as to give an opportunity to interested parties to apply for the same and make the process more transparent. The need for giving very cogent and detailed reasons before withdrawal of a block from captive list by CIL was also emphasized.
>
> (ii) The Administrative Ministries were requested to appraise the projects from the point of view of the genuineness of the applicant, techno-economic viability of the project and the state of preparedness/progress in the project while indicating the quantity and quality of coal requirement of the project and recommending allocation of captive block to the applicant. In case there were more than one applicant for the same block the Administrative Ministry should rank them based on the project appraisal and the past/track record of the applicant without necessarily naming the block to be allotted. This would facilitate the Screening Committee in allotting a suitable block to the applicant more objectively.
>
> (iii) Only those power projects would be considered for allocation which are included in the Xth Plan Period."

182. In the case titled CBI Vs. M/s Grace Industries Ltd. & Ors., CBI/296/2019, decided by the Court of Sh. Arun Bhardwaj, Learned Special Judge, PC Act (CBI), Coal Block Cases-01, RADC, vide

judgment dated 29.07.2022, it has also been held that genuineness of the applicant which included analyzing its annual audited accounts to find out its networth had to be carried out by Administrative Ministry. It was further held that these two public servants were not to ensure analysis of balance sheets of applicant companies to verify its networth.

183. Having perused all these material, there is no doubt any more that MoC was not supposed to verify the informations/data supplied by the applicant companies. Such an exercise was mandated for Administrative Ministries and concerned State Governments. The decisions taken in the 14th and the 18th Screening Committee meetings also show the same. The perusal of the decisions taken in those meetings convey that the scrutiny of the claims made in the applications was the task of the Administrative Ministries and state governments. The subsequent issuance of advertisement does not change the obligation.

184. The stress of the prosecution on the aspect of verification of data is that if MoC had carried out the said exercise, it would have exposed the false claims made in the application by KSPL. However, this emphasis of prosecution gets uprooted when it is found that MoS i.e. the Administrative Ministry kept name of KSPL in Category II (a) which was the highest category. If the claims were false, the action of MoS in ranking KSPL to Category II (a) is certainly astonishing. It shows that the MoS was itself induced to grant higher ranking. The MoC did not have the expertise to analyse

the data relating to steel sector. The MoS which had the expertise too could not detect the shortcomings or false claims. Thus, it is apparent that A-3 & A-4 cannot be held responsible for non-verification of data.

185. The prosecution has alleged that A-3 & A-4 favoured KSPL and recommended its name for allocation of Mednirai Coal Block.

186. It is worth noting that the decision to recommend the name of KSPL for allocation of Mednirai Coal Block was taken by the 34th Screening Committee. The said coal block was jointly recommended alongwith M/s RML. It is further to be noted that Govt. of Jharkhand had recommended name of M/s RML and M/s JSMDCL for Mednirai Coal Block. What is important to further note is that JSMDCL had not even applied for any coal block. As such, recommendation of its name by Govt. of Jharkhand was not justified and it could not have been accepted by the Screening Committee. The other recommendation i.e. in favour of M/s RML was accepted by the 34th Screening Committee.

187. Further name of KSPL was recommended by Govt. of Jharkhand for Sitanala coal block. However, the said coal block was not suitable for sponge iron production. The Screening Committee thus recommended KSPL, jointly with RML for Mednirai Coal Block. It is also to be seen that RML was allocated major share (upto 3/4th) in the coal block. It is clearly visible that the Screening Committee attempted to reconcile contrasting recommendations. RML was recommended by Govt. of Jharkhand whereas A-1 KSPL

was recommended by MoS. The approach of the Screening Committee, in the present case, cannot be faulted with.

188. Perusal of statements of LW-2 V.S. Rana, LW-6 Kumar Arvind Singh Deo, LW-18 P.R. Mandal and LW-73 Sanjiv Mittal shows that one single person cannot be held responsible for decision taken by the Screening Committee. It is also seen that there was no dissent from any member of the Screening Committee to recommendation of name of KSPL for Mednirai Coal Block. Reference may also be made to Mahendra Gupta's case (*supra*) and R. Sai Bharathi's case (*supra*) etc. wherein it has been observed that in cases where decisions are taken by a committee, one or the other individual cannot be held responsible for the decisions made by the committee. Responsibility is diffused in such cases.

189. As far as eligibility of KSPL is concerned, prosecution has referred to Sec. 3(3)(a)(iii) of CMN Act and it has been contended that as KSPL was not engaged in production of steel on the date of application, it was not eligible to apply.

190. 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;"

191. According to Learned ALA, to be an eligible applicant, it was required to be a company engaged in the specified end uses e.g. production of iron and steel in the present case.

192. Applicant company KSPL/A-1 described itself as a company intending to establish sponge iron plant. The contention of learned ALA is that a company proposing to engage in production of iron and steel was not entitled to apply for allocation of coal block. According to him, the applicant company should already have been engaged in production of iron and steel as per 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*) which are as follows:

> "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."

193. On the other hand, learned Counsel for accused public servants has vehemently submitted that a company proposing to engage in production of iron and steel 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 (*supra*). 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."

194. According to Sh. Rahul Tyagi, from this cited judgment, it follows that a company proposing to engage in production of iron and steel was also entitled to apply.

195. The applicant company KSPL was a registered company under the Companies Act, 1956. It had applied for allocation of coal block for its sponge iron plant which was yet to be established.

196. Though the judgment in Welfare Society's case (*supra*) relates to production of power but the ratio of the judgment is equally applicable to cases of production of iron and steel. From the judgment of Hon'ble Orissa High Court, there remains no doubt that a company proposing to engage in production of iron and steel 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.

197. 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. It is a fact that many of the allocatees were companies which were only proposing to engage in production of iron and steel. The MoC had considered those companies as eligible. In such a fact situation, it will not 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 end uses as specified in Sec. 3(3)(a)(iii) of CMN Act 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.

198. 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.

199. 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 for acts done in

2006-07.

200. 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 production of iron and steel were eligible to apply for allocation of coal block.

201. Considered so, it is apparent that companies proposing to engage in production of iron and steel 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.

202. 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."

203. 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 needed to be modified. This Court has modified its view on aspect of eligibility in the case titled CBI Vs. Y. Harish Chandra Prasad & Ors., CBI Case No. 292/2019, decided on 11.12.2024. Thus, it is held that a company which was proposing to establish specified EUP was also eligible to apply for allocation of coal block.

204. KSPL was also proposing to establish sponge iron plant. Viewed thus, it is held that KSPL was an eligible company to apply for allocation of coal block.

205. As far as the allegation regarding non-sharing of database prepared by CMPDIL is concerned, it is worth noting that official of CMPDIL was present in the meetings of the Screening Committee. He did not raise any alarm that there was a database which was not shared. This silence is inexplicable. CMPDIL official was a member of the Screening Committee. It was also his duty to inform other members about the database but he kept quiet. This puts the allegations of prosecution in area of doubt. It shows that the database was not important or that CMPDIL official was agreeable to the manner of the proceedings of the Screening Committee. Even otherwise, the purpose of the database was to draw *inter se* priority of the applicant companies but when recommendations were

available from administrative ministries and state governments, the utility of the said database was rendered nugatory.

206. Regarding change of format of the application, it only needs to be observed that upon checking, the MoC official did not find anything wrong in it. The application of KSPL was put in List A i.e. of complete applications.

207. The emphasis of Learned ALA to some statements of persons who were members of the Screening Committee wherein they have stated that they were not aware of the methodology adopted by the Screening Committee and thus there was no question of consenting to the recommendations is misdirected. What is visible is that none of such persons ever raised any objection to the recommendations at the time of making them or soon thereafter. All these objections are coming up when cases were registered and investigation was taken up. No dissent note was made by any member of the Screening Committee at any point of time.

208. If the prosecution wants to suggest that only A-3 and A-4 were liable to make the recommendations and other members were not involved, then it must be said that it was the Screening Committee which had done that task. A-3 and A-4 cannot be singled out for making the recommendations.

209. As already observed, doing the task of making recommendations improperly is not similar to committing offence of corruption. A-3 and A-4 may be departmentally liable but they are

not criminally liable for these acts. The mistakes, the lapses, the shortcomings or the erroneous decisions made cannot be equated with criminal acts. An improper execution of public duty is not an offence u/s 13(1)(d) of PC Act unless it is done for any reward. There is no such allegation that any reward was given to or demanded by A-3 and A-4.

210. As far as allegation of misleading the PMO is concerned, it is worth noting that the name of RML was recommended by the state govt. of Jharkhand for Mednirai Coal Block. Further, name of KSPL was also recommended by it though for Sitanala coal block. Thus if it was stated that state govt. had strongly recommended these cases, it was not false *per se.*

211. A very strange trend has been noticed by this Court. It is apparent that non-scrutiny/non-checking of the applications has been highlighted as a major lapse on the part of accused public servants in cases in which the public servants have been chargesheeted like the present case. However, non-scrutiny/non-checking of the applications has been completely ignored where only private parties are being prosecuted. One of such case is CBI Vs. SKS Ispat & Power Ltd. & Ors., CBI/299/2019, RC 219 2014 E0017, which is pending in this court. The said case also relates to allocation of coal block by the 34th Screening Committee and that too for sponge iron plant. The administrative ministry was Ministry of Steel in that case also. Perusal of the chargesheet of the said case shows that it relates to exactly the same processing procedure which

is subject matter of the present case. The same office notings have been referred to in both the cases. However, in case of SKS Ispat, nothing adversely is stated against the accused public servants. The minutes of the meeting dated 22.09.2006 are relied upon as correctly recorded in that case. The case of CBI in that matter is that the said company and other accused induced even these public servants who have been chargesheeted in the present case.

212. The difference in approach of CBI in these two cases is because of the fact that while in the present case, the CBI found that the documents annexed with the application were incomplete whereas in the case of SKS Ispat, the documents were found to be complete. Non-scrutiny/non-checking of applications was common to both the cases but the CBI adopted selective approach. This was only because the documents and the application in one case were found incomplete while in the other they were found to be complete. The same minutes of meeting are referred to as wrongly recorded in one case i.e. the present case whereas the same minutes are relied upon to show consideration of information supplied by the applicant company in the other case i.e. case of SKS Ispat. This is completely unacceptable. Either the non-scrutiny/non-checking was to be taken adversely in both type of cases or it has to be ignored completely. The fate of accused public servants cannot hinge upon *per chance* discovery of completeness or incompleteness of documents filed with the application.

213. This variance is also noted in cases related to 35th and 36th

Screening Committee cases as well.

214. This circumstance also leans in favour of the accused public servants.

215. In view of the above discussion, it is held that both the accused public servants A-3 and A-4 are entitled for discharge and are hereby discharged.

(B) ROLE OF PRIVATE ACCUSED PERSONS

216. Firstly, the contention relating to Sec. 32-A IBC is taken up. It must be observed that reference to Section 32-A of IBC by learned Counsel for A-1 is misconceived. The relevant portion of Sec. 32-A of IBC is as follows:

> "32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—
>
> (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
>
> (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the

relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

x x x x"

217. As can be seen, the provisions of the abovesaid section do not apply to the present case. It has been provided that the liability for an offence shall cease only if the resolution plan has been approved by the Adjudicating Authority under Section 31 of IBC. Not only this, there is further condition that the resolution plan must result in change of management or control of the company. Only when these conditions are met, the provisions of Section 32-A will apply. As this stage has not been reached i.e. the resolution plan has not been approved by Adjudicating Authority u/s 31, A-1 company cannot claim benefit of provisions of Section 32-A IBC. This contention is rejected.

218. A-1 company had filed the application along with a forwarding letter (D-22) seeking allocation of Mednirai Coal Block in its favour. Various misrepresentations were allegedly made in the said application and letter.

219. A-1 company being the applicant and A-2 being the signatory have to take the responsibility for various claims made in the application and the forwarding letter. These claims have been found to be false after conducting the investigation.

220. The company claimed itself to be a group company of T.M. Group but it did not supply any document showing its relationship with T.M. Group.

221. The company also used networth of the other companies as its own on the premise that all were group companies. However, there appears to be no justification, as on today, for using networth figures of various companies as its own by A-1 company for the simple reason that no connection could be shown by A-1 company with T.M. Group.

222. There is nothing on record, as on date, to indicate that KSPL was group company of T.M. Group or that T.M. Group was promoter of KSPL.

223. It has been found that the company deliberately stated lower value of the project cost in order to avoid assessment for environmental impact. Learned ALA has rightly referred to the

notification of 1994 which provided that for a project of Rs. 100 crore or above, environmental impact assessment study was mandatory. It appears that the company wanted to avoid this assessment and deliberately stated lower value of the project cost. The breaking up of cost of project/investment in project phase-wise manner was not justified. Further, the company annexed one letter as Annexure XIX to the application which was not Environmental Clearance but rather was only a No Objection Certificate issued by JSPCB.

224. The networth of KSPL/A-1 company was only Rs. 1 lakh as on 31.03.2005. It was a newly incorporated company on 16.02.2005. Thus when the company applied for allocation of coal block vide its application dated 25.10.2005, it did not have audited balance sheets of the last three years. Naturally, the company could not have annexed such balance sheets as it was newly born. The company mentioned networth of various other companies which it claimed were companies of the group to which A-1 also belonged i.e. T.M. Group. It claimed networth to the tune of Rs. 56.99 crores which was cumulative networth of 28 companies (21 Nepalese and 7 Indian companies).

225. The applicant company/A-1 did not annex three years audited balance sheets of these group companies with its application. The contention of the accused company is that there was no requirement of annexing such balance sheets of group companies as the requirement was of annexing balance sheets of the

applicant company only.

226. Learned Counsels for accused have contended that networth was not an important factor for consideration as it did not affect *inter se* priority. They contended that for this reason, mentioning networth of the group companies cannot be termed inducement. Learned Counsel pointed out that networth became relevant criterion only when advertisement was issued in 2006.

227. Whether the application was complete or not looses its relevance when we consider the question of inducement. If networth was not relevant, why the networth of the group companies was even mentioned in the application? The only inference is that it was mentioned to boost the credentials of the applicant company. The higher amount of networth would definitely show higher worth of an applicant company. Even if it is assumed that networth was specifically not included as a factor for determining *inter se* priority, its importance in determining the worth of an applicant company cannot be understated. The networth indeed contributed to prospects of allocation to the company.

228. It is noteworthy that the applicant company did not annex any document either showing that the companies whose networth was claimed were group companies or showing the amount of networth of those companies in black and white.

229. Learned Counsel had argued that there are references to group companies in the application form and from these references,

it can be presumed that concept of group companies/associate companies was not alien to MoC. And for this reason, networth of group companies could be used by an applicant company.

230. I am not impressed with this argument. If the accused company wanted to use networth of the group companies genuinely, it should have annexed documents showing actual networth of those companies. It should have also annexed documents showing that those companies were group companies belonging to the same group. However, no such documents were filed.

231. The applicant company/A-1 i.e. KSPL mentioned about M/s Ravi Udyog Pvt. Ltd. in its application to boost up its prospects. The plea of the accused that it was only mining associate is not worth consideration because there is nothing which connects M/s Ravi Udyog Pvt. Ltd. with KSPL. The mention of Ravi Udyog Pvt. Ltd. does not seem to be justified, at least at the stage of filing the application for allocation of coal block. The accused will have to show that the applicant company had some connection with Ravi Udyog Pvt. Ltd. and that it could mention its name in the application.

232. In considered view of this Court, it will be too early to give any finding as to whether KSPL can be called group company of T.M. Group or not. Further, it requires evidence to find out if M/s Ravi Udyog Pvt. Ltd. can be called associate company or not. These issues need evidence and can be decided only later on.

233. The contention of learned Counsel for A-2 that networth was not relevant has already been dealt with hereinabove. It might not have been relevant specifically but networth of an applicant did have an impact on decision making.

234. The company also claimed in the application that Soil Testing for DRI, Power and Steel Ingot Plants was completed but it failed to supply any supporting documents in that regard despite issuance of notice u/s 91 CrPC.

235. It was also found during further investigation that the company had misrepresented about the amount of investment of Rs. 15 Crores. The company could substantiate investment only upto Rs. 12 Crores.

236. In addition to the above, networth of four Indian companies was inflated which is also not justified. This also amounts to misrepresentation.

237. As far as A-5 is concerned, he had sent a letter dated 17.03.2006 (D-37) on behalf of the company. He had also attended the Screening Committee meeting held on 22.09.2006. He had also signed on presentation and feedback form and also made a presentation before the Screening Committee. The original feedback form and presentation are not available. Vide letter dated 17.03.2006 some information was given to MoS.

238. In the letter dated 17.03.2006 (D-37), A-5 allegedly made false averment that plant of A-1 company was inaugurated and first

kiln was made functional on 02.03.2006. Learned Counsel for A-5 has submitted that prosecution is relying upon two inspection reports dated 29.03.2006 (D-65, Pg. 1 to 8) and 10.05.2006 (D-65, Pg. 9 & 10) to show falsity of the averments made in the letter dated 17.03.2006. However, according to learned Counsel, these inspection reports were in themselves unreliable and are shrouded in doubt. His contentions qua these inspection reports have already been noted.

239. In considered view of this Court, the truthfulness or falsity of the inspection reports can be decided only after recording evidence. As such, the truthfulness of the averments made in the letter dated 17.03.2006 also can be decided only after recording of evidence. As on date, the averments appear to be false.

240. In the feedback form also various misrepresentations were made. It was claimed therein that 40 acres of land had been purchased and 120 acres of land was under final stage of acquisition by state govt. which claim was found to be false. Only 32 acres of land was purchased and no fee was deposited for acquisition of land. It was further claimed that 400 TPD capacity was already reached and installation of machinery was on verge of completion. These claims were also found false. Letter of M/s Maa Nisha Engineering shows that only two kilns were erected by them and that too from March, 2007 to December, 2007. The feedback form, however, was submitted on 08.09.2006. Thus misrepresentations were made to the authorities.

241. As far as making of presentation by A-5 is concerned, Learned Counsel submitted that original presentation and feedback form have not been collected and case of the prosecution is based on mere photocopies. He thus contended that no charge can be made out against A-5.

242. This contention has to be rejected. The present stage is stage of charge. Merely because original of a document is not available, case of the prosecution cannot be thrown away. The photocopy of the document is available as D-214. The prosecution must be given a chance to prove its case through secondary evidence.

243. The defence of A-5 can be appropriately considered only after recording of evidence.

244. As far as establishment of steel plant is concerned, the said fact, at this stage, is not relevant because the intention of the applicant at the inception of the transaction i.e. at the time of filing the application seems to be to obtain recommendation for allocation of a coal block by inducing MoS and MoC. It is a matter of trial, even otherwise.

245. A-2 had signed the application in the name of A-1 company as its authorised signatory. He was director of the company as well. As already noted, various false claims were allegedly made in the said application. Further, false claims were made in the feedback form and presentation. A-5 had signed the feedback form and made presentation.

246. The company A-1, its director A-2 and its employee A-5 are liable to be charged. They dishonestly and fraudulently induced MoS, MoC and Govt. of India to allocate Mednirai Coal Block to the company KSPL/A-1.

247. A-1, A-2 and A-5 appear to have been in conspiracy with one another. The circumstances tend to show existence of such a conspiracy. The contention that A-5 remained with A-1 company for a short duration is without any weight as it is settled law that a conspirator may join the conspiracy in between and leave the conspiracy after playing his part. The picture will become clear only after recording evidence.

248. Considered so, it is held that prima facie case for framing charge for the offence punishable u/s 120-B r/w 420 IPC is made out against A-1, A-2 and A-5. Further prima facie case for framing charge for the substantive offence punishable u/s 420 IPC is made against A-1, A-2 and A-5.

249. Let charges be framed accordingly.

SANJAY BANSAL

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(Sanjay Bansal)
Special Judge, (PC Act)
(CBI), (Coal Block Cases)-02,
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