

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

CNR No. DLCT-001156-2019
New CC No. CBI/297/2019 (Old CC No. 05/15)
RC No. 219 2012 E 0008
Branch : CBI/EOU-IV, New Delhi
CBI Vs. JAS Infrastructure Capital Pvt. Ltd. & Ors.
U/S. 120-B/409/420 IPC
& Section 13(1)(c) and 13(1)(d) PC Act, 1988



Date of order on cognizance	: 31.07.2015
Date of framing of charge	: 22.12.2016
Date on which judgment was reserved	: 30.05.2025
Date of judgment	: 06.06.2025

Central Bureau of Investigation (CBI)

Vs.

- (1) M/s Jas Infrastructure Capital Pvt. Ltd.
39, Ambazari Layout, Nagpur,
Maharashtra - 440010 (Convicted)
- (2) Manoj Kumar Jayaswal
S/o Sh. Basant Lal Shaw
8th Floor, JP Heights,
Byramji Town, Nagpur,
Maharashtra - 440013 (Convicted)
- (3) Harish Chandra Gupta
S/o Late Shri Kisan Lal Gupta

R/o 377, Sector 15-A,
NOIDA-201301, U.P.

(Acquitted)

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

(Acquitted)

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

(Acquitted)

APPEARANCES

Present : Advocate Sh. Akshay Nagrajan for Learned Special
PP Sh. R.S. Cheema, Senior Advocate for CBI
(through VC).

Learned DLA Sh. A.P. Singh alongwith learned
DLA Sh. N.P. Srivastava and learned Senior PP
Sh. V.K. Pathak and for CBI in person.

IO/Addl. SP (Retired) Sh. Himanshu Bahuguna in
person.

Ld. Counsel Sh. Umang Katariya for Sh. Kannan
Tiruvengadam, Liquidator of A-1 M/s JICPL.

A-2 Manoj Kumar Jayaswal (through VC).

Ld. Counsels Sh. Mudit Jain and Ms. Kanishka
Bhati for A-2.

Ld. Counsels Ms. Garima Singh and Ms. Khonisha
for A-2 (through VC).

A-3 H.C. Gupta in person.

A-4 K.S. Kropcha in person.

A-5 K.C. Samria in person.

Ld. Counsel Sh. Mathew M. Philip for A-3, A-4 &
A-5 (through VC).

JUDGMENT:

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PART – A

THE ALLEGATIONS

1. The present case pertains to allocation of “Mahuagarhi Coal Block”, situated in the State of Jharkhand to M/s Jas Infrastructure Capital Pvt. Ltd. by the 35th Screening Committee, Ministry of Coal, Govt. of India.

2. A Preliminary Enquiry No. 219 2012 E0002 was initiated by the Central Bureau of Investigation (“CBI”) on the reference of Central Vigilance Commission. Subsequently, upon finding sufficient and cogent reasons to investigate the matter further, CBI chose to register a regular case vide FIR No. RC 219 2012 E0008 against M/s Jas Infrastructure Capital Pvt. Ltd. (“JICPL”) and its directors namely Manoj Kumar Jayaswal, Abhishek Jayaswal, Anand Jayaswal and other unknown persons for the offences u/s 120-B/420 of Indian Penal Code, 1860 (“IPC”) and u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (“PC Act”).

3. However, upon completion of investigation, CBI filed a final report dated 15.04.2014 recommending closure of the case opining that no offence was found to have been committed by any of the aforesaid accused persons or by any public servant involved in the entire coal block allocation process. Subsequently, a revised final report dated 14.10.2014 was also filed in the Court. In the said revised final report also,

closure of the case was recommended. It was, however, mentioned that though some incriminating evidence had come on record against the accused persons but the same was not found to be sufficient and cogent to warrant their prosecution. It was further mentioned that dishonest intention or *mens rea* could not be established.

4. It may be mentioned herein that M/s JICPL is now known as M/s Jas Infrastructure & Power Ltd. However, as the name of the company has been mentioned as M/s Jas Infrastructure & Capital Pvt. Ltd. in various documents, correspondences, notings etc., therefore, for the purpose of convenience, the name of company will be mentioned as JICPL.

5. The allegations of the prosecution, as disclosed from the two final reports, are as under:

6. Pursuant to amendments in Coal Mines Nationalisation Act, 1973 (“CMN Act”), as brought by Govt. of India in the year 1993, the coal sector was opened for allotment to private sector companies engaged in generation of power, production of iron and steel, production of cement etc. A Screening Committee was accordingly constituted in MoC in order to process all such applications as and when received from companies desirous of obtaining allotment of a captive coal block. Initially, the Screening Committee used to be headed by Additional Secretary (Coal), MoC, Govt. of India but subsequently Secretary (Coal) became Chairman of the

Screening Committee. Joint Secretary (Coal) was Member Convener of the said Screening Committee. Representatives of various Administrative Ministries such as Ministry of Power (“MoP”) with respect to coal blocks reserved for allotment to power sector or Ministry of Steel (“MoS”) or DIPP qua allotment of coal blocks reserved for other end users were members of said Screening Committee. Various State Governments where either the coal blocks proposed to be allotted were situated or the proposed end use project was to be established were also represented in the said Screening Committee besides representation from Coal India Ltd. (“CIL”), Central Mine Planning & Design Institute Limited, (“CMPDIL”) and its subsidiary companies.

7. In the month of November 2006, an advertisement was issued by MoC inviting applications from companies which were engaged in the generation of power, production of iron and steel and production of cement. In all, 38 Coal Blocks (15 Coal Blocks were earmarked for power generation and 23 for other specified end users) were sought to be allotted. In the advertisement, it was also specified that within the power sector preference would be accorded to projects with more than 500 MW capacity and in the steel sector priority should be given to projects with more than 1 million ton per annum capacity. Five sets of the applications were to be submitted with Director, CA-I, MoC latest by 12.01.2007. The further details of the process such as application format, how to apply, documents to be enclosed,

details regarding coal blocks on offer, processing of applications and other guidelines governing allocation of captive coal blocks were made available on the website of MoC i.e. www.coal.nic.in.

8. The procedure to be followed in applying for allotment of a captive coal block and the documents which were required to be annexed with the applications were stated as follows:

"How to apply?"

I. Application in the prescribed format (five copies) should be filled up. Please note that separate application is to be submitted for each block in case application is made for more than one block. Similarly, separate application is to be submitted in case application is made for more than one end use plant. The details in the format should be filled up in respect of the specific end use plant for which application is made. The details of experience in respect of other plants may be provided in separate sheets.

(i) If the applicant is an end user, the details of the company alongwith the relevant details of the end use plant (for which block is being applied) are to be filled up at relevant places.

(ii) In case the applicant is a JV Mining company (consortium of end user companies) or an Independent Mining company (with firm back-to-back tie up with permitted end users) list of promoter companies or the list of companies with whom tie up for supply of coal has been finalized, quantities to be shared/supplied, and certified copies of agreement/contract etc. are to be provided. The details in respect of finances, end use plant and previous allocation of blocks i.e. SI. No. 8 to 25 and 28, 29 of the application for are to be provided in respect of all the companies with whom the supply agreement is executed. Such details may be provided on separate sheets, in the proforma as given in Form A, with suitable explanation. (Refer Form A)

II The following documents should be enclosed along with the application form:

Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy)

Document showing the person/s who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies)

Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 copies.)

Audited Annual Accounts/reports of last 3 years. (5 copies)

Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies)

Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies)

Scheme of disposal of unuseables containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies)

The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.

Demand draft of Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi

A soft copy of details, as filled in the Application

Form, is also to be furnished in the specified Database Form (in MS-Excel format) in a CD along with the Application.

III Applications without the above accompaniments would be treated as incomplete and shall be rejected."

9. Further for ascertaining *inter se* priority of various applicants for allocation of coal blocks for captive use, the following guidelines were uploaded on the website:

"9. Inter-se priority for allocation of a coal block among competing applicants for a captive block may be decided as per the following guidelines:

Status (stage) level of progress and state of preparedness of the projects;

networth of the applicant company (or in the case of a new SP/JV, the networth of their principles);

Production capacity as proposed in the application;

Maximum recoverable reserve as proposed in the application;

Date of commissioning of captive mine as proposed in the application;

Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;

Technical experience (in terms of existing capacities in coal/lignite mining and specified end use);

Recommendation of the Administrative Ministry concerned;

Recommendation of the State Government concerned (i.e. where the captive block is located);

Track record and financial strength of the company.

Preference will be accorded to the power and the steel sectors. Within the power sector also, priority shall be accorded to projects with more than 500MW capacity. Similarly, in steel sector, priority shall be given to steel plants with more than 1 million tonne per annum capacity."

10. As regard the procedure for processing the applications, the following guidelines were also put up on the website:

“PROCESSING OF APPLICATION

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

11. Pursuant to the said advertisement and guidelines so issued by MoC, M/s JICPL also applied for allotment of a number of coal blocks situated in various States for captive use in their proposed power generation project. As regard "Mahuagarhi coal block" situated in the State of Jharkhand, the end use plant i.e. 1215 MW power project was proposed to be established in "Mirzapur, District Burdwan, West Bengal". It was further stated in the application for "Mahuagarhi coal block" that company M/s JICPL was a 'Special Purpose Vehicle' ("SPV") managed by M/s Inertia Iron & Steel Industries Private Limited ("IISIPL") and IL&FS Group. Accordingly networth of IL&FS Group, IISIPL and that of M/s JICPL was mentioned in the application as Rs. 812.03 crores, 206.48 crores and Rs. 0.01 crores respectively. As per the procedure to be followed for processing of applications,

four out of five sets of each of the applications were sent to the concerned Administrative Ministries i.e. MoP in the present case, the State Governments where the impugned coal blocks were situated or the end use projects were proposed to be established and to CMPDIL. One set was, however, retained in MoC itself.

12. Upon receipt of one set of applications, MoP entrusted the work of analyzing the claims of various applicant companies to Central Electricity Authority (“CEA”). MoP also undertook a number of correspondences with MoC. In one such communication dated 20.06.2007, it was informed by Sh. Anil Razdan, Secretary (Power) to Sh. H.C. Gupta, Secretary (Coal) that the official recommendation on behalf of MoP would be made only after presentation was made by the applicant companies before the Screening Committee and feedback form, if any, were submitted and the same were thereafter analyzed by CEA and thereafter processed in the MoP.

13. On 20.06.2007 itself, as per the schedule issued by MoC, a presentation was made on behalf of M/s JICPL before the Screening Committee and a feedback form was also submitted. However, in the said feedback form and the presentation so made, the location of the proposed end use project was stated to be “Pirpainti, District Bhagalpur, Bihar” as different from “Mirzapur, District Burdwan, West Bengal” as was stated in the application earlier submitted qua allocation of “Mahuagarhi coal block”. Subsequently, CEA examined the matter at their own end.

However as MoC had not issued any guidelines either to the Administrative Ministry or to the State Governments while seeking their views/comments on the applications of various applicant companies so sent to them, so CEA at the instance of MoP laid down its own criteria for short-listing the companies to be recommended by MoP for allocation of coal blocks.

14. Initially, 187 number of applicants who had made presentation before the Screening Committee were screened by CEA for pre-qualification on the basis of (a) Networth and (b) Project capacity. For the purpose of assessing the networth of the company, CEA used the criteria of Ultra Mega Power Projects (UMPP). It broadly stipulated requirement of Rs. 0.50 crore networth per MW in case the capacity does not exceed 2000 MW. In case the capacity of the projects exceeded 2000 MW, the networth requirement was Rs. 1000 crore or Rs. 0.25 crore per MW. The CEA in this regard relied on the figures of networth supplied by the companies in their feedback forms/presentations made before the Screening Committee.

As regard the project capacity, CEA decided on a minimum limit of 500 MW as the pre-qualification criteria. In fact MoC had also stated in the initial advertisement that priority would be accorded to the projects with 500 MW capacity or more.

15. Thus out of a total of 187 applicants, only 115 applicant companies pre-qualified. Thereafter, CEA shortlisted

44 applicant companies from out of the said 115 pre-qualified applicant companies on the basis of their preparedness to execute the projects. The criteria followed in this regard was as follows:

- a) Land acquisition (fully acquired, partially acquired, process initiated),
- b) Water allocation (fully allotted, partially allotted) and
- c) Award i.e. status of placement of order for main plant equipment.

16. The recommendation of CEA were sent to MoP with the rider that the details/data submitted by the applicant companies might be got verified before allocation of coal blocks. The recommendations of CEA were accordingly communicated by MoP to MoC and requested it to verify the claims/particulars of the applicant companies before allocation of coal blocks vide its letter dated 30.07.2007.

17. Accordingly, pursuant to directions of Screening Committee as given in its meeting dated 30.07.2007, MoC proceeded to get financial strength of the applicant companies scrutinized independently with the help of Financial Experts from Coal India Ltd. ("CIL"). Two officers of CIL i.e. Sh. Samiran Dutta, Senior Manager (Finance) and Ms. Sushmita Sen Gupta, Chief Manager (Finance), CIL were entrusted with the job of cross-tallying the networth of the companies as stated in their application forms vis-a-vis the respective balancesheets which were annexed with the application forms.

18. The 35th Screening Committee, however, deliberated

the issue of allotment of coal blocks to different companies in a number of its meetings and finally vide its meeting as held on 13.09.2007 recommended allotment of “Mahuagarhi Coal Block” in Jharkhand jointly to M/s JICPL and M/s CESC. The said recommendation of the Screening Committee thereafter came to be approved by the Prime Minister as Minister of Coal. After undertaking all necessary proceedings, a joint allocation letter dated 09.01.2008 came to be finally issued by MoC in favour of the two companies.

19. During the course of investigation, the IO collected two Memorandum of Understanding (“MoU”) dated 15.11.2006 and 08.01.2007 from the accused persons. The MoU dated 15.11.2006 was executed between M/s IISIPL and M/s JICPL. The second MoU dated 08.01.2007 was executed between M/s IISIPL and IL&FS. By virtue of MoU dated 15.11.2006, M/s IISIPL had expressed its desire to develop an Integrated Energy Project of 1215 MW capacity based on a captive coal mine and to be located in the State of Jharkhand/Orissa/West Bengal (“Project”). It also stated that M/s IISIPL desired to partner with IL&FS in this regard. M/s JICPL had further agreed to be appointed as a Special Purpose Vehicle (SPV) for the said power project and IISIPL had agreed to approach M/s IL&FS IDC to join the SPV and the SPV in turn was to apply to MoC for allotment of a captive coal block.

20. The MoU dated 08.01.07, however, talked of an

agreement between M/s IISIPL and IL&FS to jointly invest in the SPV i.e. M/s JICPL for the establishment of the Integrated Energy Project of 1215 MW capacity based on a captive coal mine and to be located in the State of Jharkhand/Orissa/West Bengal.

21. During the course of investigation, it was found that as network was an important factor governing allocation of coal blocks to an applicant company, so the network of IL&FS was consciously used by the accused persons so as to inflate the network of M/s JICPL. Independent of the network of IL&FS, the network of IISIPL and M/s JICPL was only Rs. 206.48 crores and Rs. 0.01 crores respectively. Accordingly, in view of the criteria laid down by CEA to short-list the companies which were to be recommended by MoP for allotment of coal blocks, M/s JICPL would have certainly failed to meet the requisite criteria. The minimum network which was required as per the criteria laid down by CEA for establishing a power project of 1215 MW was Rs. 607.5 crores i.e. @ of Rs. 0.50 crores per MW.

22. Apart from the aforesaid material misrepresentation made by M/s JICPL regarding its network, it was also found that it had deliberately withheld information about allocation of previous coal blocks to its group companies both in the application form and in the feedback form by stating that no coal block had been previously allocated. It was however found

during the course of investigation that four other coal blocks were earlier allocated to Abhijeet group of companies of which M/s JICPL was a group company. It is alleged that the said information was deliberately withheld as the performance of the group companies qua the development of said earlier four coal blocks allocated was unsatisfactory.

23. During the course of investigation, IO collected yet another MoU dated 31.03.06, executed between the family members of Jayaswal family namely Basant Lall Shaw, Arbind Jayaswal and Ramesh Jayaswal (Jointly first party) and Manoj Jayaswal, Anand Jayaswal, Abhishek Jayaswal and Avneesh Jayaswal (Jointly second party). As per the said MoU, the companies which fell to the share of the second party to the said MoU formed part of “Abhijeet Group of Companies”. The companies falling to the share of first party to the MoU fell in the share of “NECO group of companies”. The said MoU mentioned the principle operating companies of both groups as under :

Neco Group of Companies	Abhijeet Group of Companies
1. Jayaswals Neco Limited	1. Abhijeet Infrastructure Limited
2. Neco Castings Limited	2. Corporate Ispat Alloys Limited
3. Jayaswal Holdings Private Limited	3. JAS Toll Road Company Limited
4. Neco Ceramics Limited	4. Jayaswals Ashoka Infrastructure Private Limited
5. NSSL Limited	5. Chitarpur Coal and Power Limited
6. Maa Usha Urja Limited	

24. Thus beside M/s IISIPL which was part of “Abhijeet Group of Companies”, there were five other group companies as mentioned above under the “Abhijeet Group of Companies”. During investigation, it also transpired that three Coal Blocks namely “Brinda”, “Sisai” and “Meral” at Jharkhand were earlier allotted to M/s Abhijeet Infrastructure Limited and one Coal Block namely “Chitarpur” at Jharkhand was allotted to M/s Corporate Ispat Alloys Limited.

25. From the statement of Sudhir Gupta who was working as Chief Executive Officer with M/s Abhijeet Group of Industries and had signed the application form coupled with the statement of Harshad Pophali, Manager, Mining Department in the Abhijeet Group of Industries and that of Dr. Vidya Sagar Garg who was a Director of M/s Corporate Ispat Alloys Ltd., it also became clear that the information submitted in the application form was provided by accused Manoj Kumar Jayaswal, i.e. the promoter of Abhijeet Group of companies.

26. However, despite having garnered sufficient incriminating evidence against the accused persons which could have warranted filing of a charge-sheet against them, as is evident from the aforesaid circumstances, CBI chose to file a closure report.

27. The conclusion of the investigation was thus that M/s JIPCL had not obtained any undue benefit from MoC by not declaring previous allocation. Further no material was found to

show commission of any offence of criminal conspiracy or cheating.

28. As such a closure report was filed by the CBI on 15.04.2014.

29. My Learned Predecessor considered the closure report. On 09.09.2014, it was stated on behalf of CBI that they would be filing a revised closure report which would be detailed and explanatory in nature. As such revised closure report was filed on 14.10.2014.

30. Vide detailed order dated 20.11.2014, my Learned Predecessor disagreed with the closure report and observed that the private parties i.e. the company and its directors appeared to have committed offence of cheating by obtaining allocation of coal block on the basis of false representations and that there was active connivance between them and public servants i.e. officials of MoC. He also observed that offences under Prevention of Corruption Act, 1988 ("PC Act") were also revealed. In para No. 53 and 54 of the order dated 20.11.2014 it was observed as under:

"53. In view of my above discussion the conclusion drawn by the investigating agency to close the case thus cannot be accepted. Prima facie offence of cheating i.e. u/s 420 IPC by the private parties involved has been committed in furtherance of a criminal conspiracy i.e. u/s 120-B IPC hatched between them and the officers of MOC and Screening Committee. At the same time the MOC Officers and the Screening Committee have prima

facie committed offences of criminal breach of trust and of criminal mis-conduct i.e. u/s 409 IPC and Section 13 (1) (c) and 13 (1) (d) (iii) PC Act in furtherance of the criminal conspiracy i.e. u/s 120-B IPC entered into by them with the private parties involved. The crucial question which now arises is as to against which of the persons, be the private parties or the public servants the cognizance of various offences needs to be taken.

54. Besides M/s JICPL, the company which applied for allocation of Coal Block, its director M.K. Jayaswal at whose instance the false information was submitted or the misrepresentation was made are prima facie liable to be proceeded against. It is also prima facie clear that Sh. H.C. Gupta, who was Secretary, MOC and was also the Chairman of Screening Committee, Sh. K.S. Kropha, the then Joint Secretary, MOC and who was also the Member Convener beside Sh. K.C. Samaria, the then Director, CA-I, MOC (all the applications were received in the office of Director CA-I, and his office supervised the entire process of processing the applications right through the entire process of allocation of Coal Blocks) were the persons responsible to take all those necessary safeguards which were necessary to protect the public interest and thus they ought to be proceeded against. Their conduct clearly falls within the four corners of the offence of criminal mis-conduct as defined in Section 13 (1) (c) and 13 (1) (d) (iii) PC Act besides offence u/s 409 IPC r/w Section 120-B IPC.”

31. Thereafter my Learned Predecessor observed that sanction was required for prosecution of K.S. Kropha and K.C. Samria as they were in service whereas no sanction was required against accused H.C. Gupta as he had retired. As such he sent the matter for further investigation for obtaining sanction.

32. Thereafter, the matter was going on awaiting sanction. However, the sanction did not come. As such on

22.07.2015, vide a detailed order, my Learned Predecessor held that in the given facts and circumstances, and as the competent sanctioning authority had failed to take any decision on the request of CBI for according sanction to prosecute public servants u/s 19 PC Act, the sanction should be deemed to have been granted. Thus, sanction against K.S. Kropcha and K.C. Samra u/s 19 PC Act was deemed to have been granted.

33. Thereafter vide another detailed order dated 31.07.2015, my Learned Predecessor took cognizance of the offences u/s.120-B IPC and that of offences u/s. 120-B IPC, r/w Section 409/420 IPC and Section 13(1)(c)/13(1)(d) PC Act, 1988 against all the accused persons i.e. M/s. Jas Infrastructure Capital Pvt. Ltd., its Director Manoj Kumar Jayaswal, H.C. Gupta, the then Secretary, Ministry of Coal, K.S. Kropcha, the then Joint Secretary, Ministry of Coal and K.C. Samra, the then Director, Ministry of Coal. He also took cognizance of the offence u/s. 13(1)(c)/13(1)(d) PC Act, 1988 and section 409 IPC against accused H.C. Gupta, K.S. Kropcha and K.C. Samra. He also took cognizance of the offence u/s. 420 IPC against accused M/s. Jas Infrastructure Capital Pvt. Ltd., and its Director Manoj Kumar Jayaswal.

34. All the accused persons appeared and were admitted to bail. Company M/s JICPL appointed Sh. Sanjeev Kumar as its AR u/s 305 CrPC. Copies of the chargesheet were supplied to the accused persons as per Section 207 CrPC.

PART – B

THE CHARGE

35. Thereafter my Learned Predecessor heard parties on the point of charge and vide detailed order dated 07.12.2016, charge for the offences u/s 120-B IPC; 120-B/409/420 IPC & Section 13(1)(c) and 13(1)(d) P.C. Act 1988 was ordered to be framed against all the accused persons i.e. company M/s JICPL, its director Manoj Kumar Jayaswal, and the three public servants i.e. accused H.C. Gupta, K.S. Kropcha and K.C. Samria. Charge for the substantive offence i.e. u/s 409 IPC and Section 13(1)(c) and 13(1)(d) P.C. Act, 1988 was also ordered to be framed against accused H.C. Gupta; Charge for the substantive offence of cheating i.e. u/s 420 IPC was ordered to be framed against company M/s JICPL and its director Manoj Kumar Jayaswal. Charge for the substantive offence u/s 13(1)(d) P.C. Act, 1988 was also ordered to be framed against the two public servants i.e. accused K.S. Kropcha and K.C. Samria.

36. All the accused persons, however, pleaded not guilty to all the charges so framed against them and claimed trial.

37. The charges so framed are being reproduced here for ready reference, as follows:

CHARGE

A-1 to A-5

“That during the year 2006-09 at Maharashtra, West Bengal, Bihar, New Delhi and other places, you all i.e. Manoj Kumar Jayaswal, M/s Jas Infrastructure Capital Pvt. Ltd., H.C. Gupta, K.S. Kropcha, and K.C. Samria entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of a captive Coal Block, in favour of M/s Jas Infrastructure Capital Pvt. Ltd. by adopting various illegal means viz by making false claims about the net worth of M/s Jas Infrastructure Capital Pvt. Ltd., appraisal and syndication of debt, promoters of M/s Jas Infrastructure Capital Pvt. Ltd. and also concealed information about previous allocation of coal blocks to the group or associate companies of M/s Jas Infrastructure Capital Pvt. Ltd. in the application form and the feedback form and by way of various acts of omission and commission amounting to criminal misconduct/criminal breach of trust/criminal misappropriation by the public servants i.e. MOC officers, the details of which have been described in the detailed order on charge dated 07.12.2016 passed separately and you all thereby committed the offence of criminal conspiracy being punishable u/s 120-B IPC and within my cognizance.

Secondly, during the aforesaid period and in furtherance of the common object of the criminal conspiracy as described above you all did various acts of cheating, criminal breach of trust and criminal

misconduct by public servants as described above and qua which substantive charges have been framed separately and you all thereby committed offences punishable u/s 120-B r/w 409, 420 IPC and 13(1)(c) & 13(1)(d) PC Act, 1988 and within my cognizance.”

CHARGE

A-1 & A-2

“That you all i.e. Manoj Kumar Jayaswal and M/s Jas Infrastructure Capital Pvt. Ltd. during the year 2006-09 at Maharashtra, West Bengal, Bihar, New Delhi and other places in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) hatched by you all with your other co-accused persons i.e. HC Gupta, KS Kropha and KC Samria, officers of MoC cheated Ministry of Coal, Government of India by dishonestly or fraudulently making false claims about the net worth of M/s Jas Infrastructure Capital Pvt. Ltd., appraisal and syndication of debt, promoters of M/s Jas Infrastructure Capital Pvt. Ltd. and also concealed information about previous allocation of coal blocks to the group or associate companies of M/s Jas Infrastructure Capital Pvt. Ltd. in the application form and feedback form, and thereby induced Ministry of Coal, Govt. of India to allocate “Mahuagarhi coal block” in favour of M/s Jas Infrastructure Capital Pvt. Ltd., and you both thereby committed an offence u/s 420 IPC and within my cognizance.”

CHARGE

A-3

“That you being the Secretary, Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, in the year 2006-09 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) as hatched with your co-accused persons i.e. Manoj Kumar Jayaswal, M/s Jas Infrastructure Capital Pvt. Ltd., KS Krophra and KC Samria in order to procure allocation of a captive coal block in favour of M/s Jas Infrastructure Capital Pvt. Ltd., in as much as you being Secretary, Ministry of Coal, Govt. of India and Chairman 35th Screening Committee, Ministry of Coal did not ensure the checking of applications to see their completeness and eligibility and that the application of M/s Jas Infrastructure Capital Pvt. Ltd. was liable to be rejected out rightly, as beside being incomplete the company M/s Jas Infrastructure Capital Pvt. Ltd. had also dishonestly used net worth of M/s. Inertia Iron & Steel Industries Pvt. Ltd. and IL&FS in the application form and feedback form and in the presentation and you also did not ensure the checking/scrutiny of applications either before the applications were considered by the Screening Committee or even after recommendations were made by the Screening Committee, when limited applications were only left to be scrutinised and that you also did not follow the guidelines laid down by the Ministry of Coal for making final recommendations for allotment of coal blocks and thereby committed various acts of omission and commission as also described in detail in the order on

charge dated 07.12.2016 passed separately, and the said acts of omission and commission committed by you amounted to acts of criminal misconduct by a public servant with a view to secure allocation of “Mahuagarhi” Coal Block situated in state of Jharkhand in favour of M/s Jas Infrastructure Capital Pvt. Ltd from MoC and you thereby committed an offence punishable u/s 13(1)(d) PC Act, 1988 and within my cognizance.

Secondly you in your capacity as the Secretary Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, during the aforesaid period were having dominion over the nationalized natural resources of the country i.e. “coal” as available in various coal blocks including that of “Mahuagarhi” situated in the state of Jharkhand and which coal blocks were to be allocated to the eligible companies on the recommendation of the Screening Committee (as constituted by MOC) to be made in accordance with the guidelines for allocation issued in this regard by Ministry of Coal and knowing fully well that the allocation of various coal blocks to different applicant companies shall be on the basis of recommendation of the Screening Committee headed by you but you in furtherance of the common object of the criminal conspiracy (as mentioned in the charge separately framed) as hatched with the other co-accused persons dishonestly and fraudulently recommended part allocation of “Mahuagarhi” in violation of the guidelines issued in this regard governing such allocation of coal blocks and in violation of the trust so imposed in you by law and thereby facilitated M/s Jas Infrastructure Capital Pvt. Ltd. and its directors to misappropriate and convert to their own use the

impugned coal block i.e. “Mahuagarhi coal block” and you thereby committed an offence punishable u/s 13(1)(c) PC Act, 1988 and within my cognizance.

Thirdly you in your capacity as Secretary Ministry of Coal, Government of India and Chairman, 35th Screening Committee, Ministry of Coal, during the aforesaid period were having dominion over the nationalized natural resources of the country i.e. “coal” as available in various coal blocks including that of “Mahuagarhi coal block”, situated in the State of Jharkhand and which coal blocks were to be allocated to the eligible companies on the recommendation of the Screening Committee (as constituted by MOC) to be made in accordance with the guidelines for allocation issued in this regard by Ministry of Coal and knowing fully well that the allocation of various coal blocks to different applicant companies shall be on the basis of recommendation of the Screening Committee headed by you but you dishonestly in furtherance of the common object of the criminal conspiracy (as mentioned in the charge separately framed) hatched with your co-accused persons recommended part allocation of “Mahuagarhi coal block”, in favour of M/s Jas Infrastructure Capital Pvt. Ltd. in violation of the guidelines issued in this regard governing such allocation of coal blocks and the mode in which the trust so imposed in you by law was to be discharged and thereby facilitated allocation of impugned coal block i.e. “Mahuagarhi coal block” in favour of M/s Jas Infrastructure Capital Pvt. Ltd. and thus disposed of the said property i.e. coal block as above and you thereby committed an offence punishable u/s 409 IPC and within my cognizance.”

CHARGE

A-4

“That you being Jt. Secretary, Ministry of Coal, Government of India and Member Convener, 35th Screening Committee, Ministry of Coal, in the year 2006-09 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) and as hatched with your co-accused persons i.e. Manoj Kumar Jayaswal, M/s Jas Infrastructure Capital Pvt. Ltd., H.C. Gupta and K.C. Samria in order to procure allocation of a captive coal block in favour of M/s Jas Infrastructure Capital Pvt. Ltd. in as much as you being Jt. Secretary, Ministry of Coal, Govt. of India and Member Convener, 35th Screening Committee, Ministry of Coal did not ensure the checking of applications to see their completeness and eligibility and that the application of M/s Jas Infrastructure Capital Pvt. Ltd. was liable to be rejected out rightly, as beside being incomplete the company M/s Jas Infrastructure Capital Pvt. Ltd. had also dishonestly used net worth of M/s. Inertial Iron & Steel Industries Pvt. Ltd. and IL&FS in the application and feedback form and you also did not ensure the checking of applications either before the time when applications were considered by the Screening Committee or even after recommendations were made by the Screening Committee, when limited applications were only left and that you also did not ensure that the guidelines laid down by Ministry of Coal for making final recommendations for allotment of coal blocks

are followed and thereby committed various acts of omission and commission as described in detail in the order on charge dated 07.12.2016 passed separately, and the said acts of omission and commission committed by you amount to acts of criminal misconduct by a public servant with a view to secure allocation of “Mahuagarhi” situated in state of Jharkhand, in favour of M/s Jas Infrastructure Capital Pvt. Ltd. from MoC and you thereby committed an offence punishable u/s 13(1)(d) PC Act, 1988 and within my cognizance.”

CHARGE

A-5

“That you being Director, CA-I, Ministry of Coal, Government of India in the year 2006-09 at New Delhi and while working as such public servant showed undue favour in furtherance of the common object of the criminal conspiracy (as described in the charge separately framed) as hatched with your co-accused persons i.e. Manoj Kumar Jayaswal, M/s Jas Infrastructure Capital Pvt. Ltd., H.C. Gupta and K.S. Kropcha in order to procure allocation of a captive coal block in favour of M/s Jas Infrastructure Capital Pvt. Ltd., in as much as you being Director, CA-I, Ministry of Coal, Govt. of India did not ensure the checking of applications qua their completeness and eligibility and that the application of M/s Jas Infrastructure Capital Pvt. Ltd. was liable to be rejected out rightly, as beside being incomplete the company M/s Jas Infrastructure Capital Pvt. Ltd. had also dishonestly used

net worth of M/s. Inertia Iron Industries Pvt. Ltd. and IL&FS in the application and feedback form and you also did not ensure the checking of applications either before the time when applications were considered by the Screening Committee or even after recommendations were made by the Screening Committee, when limited applications were only left and thereby committed various acts of omission and commission as described in detail in the order on charge dated 07.12.2016 passed separately and the said acts of omission and commission committed by you amount to acts of criminal misconduct by a public servant with a view to secure allocation of “Mahuagarhi” situated in state of Jharkhand, in favour of M/s Jas Infrastructure Capital Pvt. Ltd., from MoC and you thereby committed an offence punishable u/s 13(1)(d) PC Act, 1988 and within my cognizance.”

38. Admission/denial of the documents u/s 294 CrPC was carried out by all the accused persons. Various documents were admitted and thus exhibited. Thereafter, prosecution examined its witnesses.

PART – C

THE PROSECUTION EVIDENCE

39. Prosecution, thereafter, in order to prove the charges, examined 18 witnesses. However, examination-in-chief of

witnesses namely Sh. Piyush Goyal, Sh. S.P. Rana, Sh. Ved Prakash Sharma, Sh. Ram Naresh, Sh. A. Sanjay Sahay, Sh. K.P Singh and Sh. Gordhan Singh was led by way of affidavits u/s 296 CrPC as their evidence was of formal character only. Though all the said witnesses were also tendered for cross-examination but accused persons chose not to cross-examine them.

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

Witness(es) from:	PW's Number & Name
From NECO Group of Companies and Abhijeet Group of Companies including JICPL	PW-1 Sh. Harshad Pophali PW-2 Sh. Murli Lahoti PW-3 Sh. Sanjay Dey PW-6 Sh. Sudhir Gupta PW-10 Sh. P.N. Krishnan
IL&FS IDC	PW-7 Sh. S. Baskaran PW-8 Sh. Sanjay Mundley PW-9 Sh. Pankaj Sakhuja
Office of Coal Controller	PW-4 Sh. R.K Sutradhar
Ministry of Coal	PW-11 Sh. V.S. Rana PW-18 Sh. S.K. Shahi
Ministry of Power or CEA	PW-14 Sh. Anil Kumar Kutty PW-15 Sh. Manjit Singh Puri
Govt. of WB	PW-12 Sh. Bhaskar Khulbe

Coal India Ltd.	PW-13 Ms. Sushmita Sengupta
CBI	PW-5 Dy. SP Tej Pal Singh PW-16 Dy. SP K.L. Moses PW-17 Dy. SP Himanshu Bahuguna

From NECO Group of Companies and Abhijeet Group of Companies including JICPL

41. **PW-1 Harshad Pophali** was working as General Manager in M/s Corporate Ispat Alloys Ltd. (“CIAL”). He had joined the said company in 2005 and resigned in January 2014. He told that Manoj Kumar Jayaswal/A-2 was the Chairman of the company and Sh. Abhishek Jayaswal was the Group Managing Director. He told that he was working in the Mining Division so he used to report to Dr. V.S. Garg who was heading the Mining Division in the company and was also a director therein.

42. PW-1 told that Manoj Kumar Jayaswal/A-2 and his elder brother Sh. Arbind Jayaswal were directors in JICPL/A-1 company. However, he himself was never an employee of JICPL.

43. He deposed that a number of applications were prepared for seeking allocation of different coal blocks and which were to be submitted to MoC qua various companies such as M/s AMR Iron & Steel Ltd., M/s JLD Yavatmal and M/S

JICPL. He told that the application of JICPL was prepared in the mining department of M/s CIAL itself where he was working. He told that he was the only mining engineer working there. He told that the application was signed by Sh. Sudhir Gupta, Chief Executive Officer.

44. He told that various applications were prepared in their department for different coal blocks and the same were prepared as per the instructions which used to be given by Manoj Kumar Jayaswal/A-2 and Dr. V.S. Garg. Accordingly, he used to get the applications prepared. The application of M/s JICPL alongwith covering letter and authority letter is **Ex. PW 1/A (Colly.) (D-3)**. He told that the different annexures numbering twelve as annexed with the application form Ex. PW 1/A (Colly.) were received from various departments working at the said office. He told that documents related to accounts / balance sheets were received from the office of Manoj Kumar Jayaswal. He told that all the information was filled up upon instructions of Manoj Kumar Jayaswal/A-2. He particularly referred to the information at point 8, 9 and 10 in the application form in this regard.

45. PW-1 further deposed about previous allocations to companies of the group. He told that prior to the submission of the present application, four coal blocks were already allotted to two group companies of "Abhijeet Group". He gave details that "Chitarpur Coal Block" was already allotted to M/s CIAL and

"Brinda", "Sisai" and "Meral" Coal Blocks were already allotted to M/s Abhijeet Infrastructure Ltd. ("AIL"). He further told that "Moitra" and "Gare Palma IV /4" Coal Blocks were already allotted to M/s Jayaswal Neco Ltd. He told that Sh. Basant Lal Shaw, father of Manoj Kumar Jayaswal, used to look after the work of M/s Jayaswal Neco Ltd. along with his two other sons namely Sh. Ramesh Jayaswal and Sh. Arbind Jayaswal.

46. He told that the information regarding earlier allocation of blocks to applicant company or to group or associated company at point 29 and 30 in the application of M/s JICPL was mentioned as "NO" as per the instructions of Manoj Kumar Jayaswal.

47. He identified signatures of Dr. V.S. Garg on letter dated 13.07.2007 addressed to the Director, Office of the Coal Controller, Kolkata submitting status report for the period ending 31.06.2007 for Chitarpur Coal Block allotted to M/s CIAL. The letter is **Ex. PW1/B (Colly.) (D-49)**. He further identified signature of Dr. V.S. Garg on another letter dated 02.10.2007 whereby status report for the period ending 30.09.2007 for Chitarpur Coal Block allotted to M/s CIAL was sent to Deputy Assistant, Coal Controller, Office of Coal Controller. The letter is **Ex. PW1/C (Colly.)(D-50)**.

48. He deposed that he had also attended Screening Committee meeting of MoC in connection with the aforesaid application of M/s JICPL seeking allocation of Mahuagarhi Coal

Block. He told that in fact Sh. P.N. Krishanan who was a Director in one of the Company was to attend the Screening Committee Meeting but Manoj Kumar Jayaswal directed him to accompany Sh. Krishanan as copies of the presentation were to be distributed to the members of Screening Committee and he was to distribute the copies. Along with the presentation, a feedback form was also submitted to the Screening Committee. He told that the presentation and the feedback form were prepared in their department/office at Nagpur itself and the same were prepared as per the instructions of Manoj Kumar Jayaswal. He told that two officers of IL&FS were also present along with them at the Screening Committee Meeting.

49. He identified his signature on attendance sheet of Screening Committee meeting as held on 20.06.2007 (available from page 60 to 66 in D-29). The attendance sheet is **Ex. PW1/D**.

He identified signature of Sh. P.N. Krishanan on feedback form (available on page 1383 to 1384 in D-34). The feedback form is **Ex. PW1/E**. He told that the presentation before the Screening Committee on behalf of M/s JICPL was made by Sh. P.N. Krishanan himself. The copy of presentation of M/s JICPL is **Ex. PW1/F (D-34, Pg. 68 onwards)**.

50. He identified signature of Sh. Vivek Kumar on search list dated 04.09.2012 which is **Ex. PW1/G (D-15)**. According to PW-1, no one from IL&FS was a Director in M/s JICPL.

51. He told that the information furnished at point 6 regarding Core business of the company was also furnished at instance of A-2 Manoj Kumar Jayaswal which was to the following effect:

"JICPL is an SPV managed by Intertia Iron & Steel Industries Private Limited and IL&FS Group and the core business includes Steel Making and providing finances for development of infrastructure. The company has now decided to diversify into Coal Mining & Power Generation"

52. In cross-examination on behalf of A-1 & A-2, he denied that at the time of preparation of application Ex. PW1/A (Colly.), he used to report to Sh. A.K. Srivastava as he was Head of Mining Department.

53. He told that Sh. Sudhir Gupta signed the application after first confirming from Manoj Kumar Jayaswal. He told that Manoj Kumar Jayaswal/A-2 used to give verbal instructions. He told that when he took the application Ex. PW1/A (Colly.) to Sh. Sudhir Gupta for signing then at that time he was not aware that any information mentioned in the application was false.

54. He told that during the course of investigation, his statement U/s 161 CrPC had been recorded in various cases. It has come that at the time when he took the application Ex. PW1/A (Colly.) to Sh. Sudhir Gupta for getting it signed, then at that time also he was aware that no Mining Division of M/s JICPL had been established till then. At that time he was also aware that four coal blocks had already been allocated to two

other group companies of Abhijeet Group. He denied the suggestion that at the time of filing of application Ex. PW1/A (Colly.) with MoC, the Mining Division of M/s JICPL was already established.

55. He told that he did not understand the meaning of the term "Group or Associated Company". He admitted that he did not understand the meaning of the term "Group or Associated Company". He denied that being in Mining Department, he had filled up all the information in the application on his own volition or that no instructions were ever given to him in this regard by Manoj Kumar Jayaswal. He was confronted with his statement U/s 161 CrPC **Ex. PW1/DX-1**, wherein he had stated that he was not associated with the preparation of feedback form. He was further confronted regarding various portions of his examination-in-chief.

56. **PW-2 is Murli Lahoti.** He is from M/s. Jayaswal Neco Industries Ltd., Nagpur. He had handed over some documents to CBI.

57. The production-cum-seizure memo dated 02.05.2013 is **Ex. PW-2/A (D-23)**. He had handed over one MoU dated 31.03.2006, executed between Sh. Basant Lal Shaw and his family members. The copy of MoU dated 31.03.2006 is **Ex. PW2/B (D-24)**.

58. **PW-3 is Sh. Sanjay Dey.** He told that he had joined

M/s Abhijeet Power Ltd. in 2010. He told that A-2 Manoj Kumar Jayaswal was the Chairman of the said company. He had also worked in CIAL and M/s Jas Toll Road Company Ltd. prior to joining M/s Abhijeet Power Ltd. He told that all these companies were part of same group.

59. He told that earlier all the companies were part of one group of family companies headed by Sh. Basant Lal Shaw and the said companies were commonly known as "NECO Group of Industries". He told that during the period 2006-08, a split in the Basant Lal Shaw family took place and the various companies came to be categorised under two separate heads i.e. "NECO Group of Industries" and "Abhijeet Group of Industries". He further told that "Abhijeet Group of Industries" had come into existence prior to the said formal split in the family.

60. He was aware of documents related to the split. One such document was called "Vyavastha Patra" and another one was "Indenture of Family Settlement". He told that as per MoU dated 31.03.2006 [Ex. PW2/B, D-24], the various family companies were divided under NECO Group of Companies and Abhijeet Group of Companies as under:

Neco Group of Companies	Abhijeet Group of Companies
1. Jayaswals Neco Limited	1. Abhijeet Infrastructure Limited
2. Neco Castings Limited	2. Corporate Ispat Alloys Limited
3. Jayaswal Holdings Private Limited	3. JAS Toll Road Company Limited

4. Neco Ceramics Limited	4. Jayaswals Ashoka Infrastructure Private limited
5. NSSL Limited	5. Chitarpur Coal and Power Limited
6. Maa Usha Urja Limited	

61. He knew about IISIPL and JICPL. He identified his signature on MoU executed between IISIPL and JICPL dated 15.11.2006 which is **Ex. PW3/A (D-17, Pg. 1 to 3)**. He identified signature of H.C. Joshi on MoU executed between IISIPL and IL&FS IDC dated 08.01.2007 which is **Ex. PW3/B (D-17, PG. 5 to 12)** regarding submission of application to MoC for seeking allocation of coal block and for working together for establishing steel and power projects. He deposed that he had participated in meetings where talks between Abhijeet Group and IL&FS regarding partnering together were held. He told that on behalf of Abhijeet Group, A-2 Manoj Jayaswal, Abhishek Jayaswal, P.N. Krishnan and he himself used to participate in the said meetings and on behalf of IL&FS, Sh. Pankaj Sakhuja, Sh. Sanjay Mundley and Sh. Alok Verma used to participate in the said meetings.

62. He told that the MoU dated 08.01.2007 [Ex. PW3/B] was initially entered into for a period of six months from the date of execution. He knew that an application was submitted on behalf of M/s JICPL to MoC for seeking allocation of a coal block. He told that he was neither an employee of IISIPL nor was on the Board of Directors of the said company.

63. He identified his signature on another MoU dated 02.04.2007, entered into between IISIPL and IL&FS regarding developing a 2 MTPA integrated steel plant and an integrated energy project of 1215 MW capacity based on captive coal mines, to be located in Distt. Burdwan, in the State of West Bengal. The MoU dated 02.04.2007 is **Ex. PW3/C [D-7, Pg. 1-7]**. The MoU dated 02.04.2007 Ex. PW3/C was effective for a period of 12 months from the date of execution. He told that he had signed the MoU Ex. PW3/C on the directions of Manoj Kumar Jayaswal.

64. He also deposed about previous allocation to different companies of Abhijeet Group. He further told that subsequently Mahuagarhi coal block was jointly allotted to M/s JICPL and M/s CESCL by MoC. He told that both JICPL and CESCL formed a joint venture company and accordingly a joint venture agreement dt. 04.12.2007 was entered into between them. The copy of joint venture agreement **Ex. PW3/D [D-32, Pg. 221-243]**. The said joint venture agreement was sent to MoC vide letter dated 04.12.07 jointly by JICPL and CESC Ltd. The copy of said letter dated 04.12.2007 is **Ex. PW3/E [D-32, Pg. 220]**.

65. He told that one Indenture of Family Settlement (“IFS”) dated 31.07.2008 was executed amongst Sh. Basant Lal Shaw and his three sons namely Arbind Kumar Jayaswal, Manoj Kumar Jayaswal/A-2 and Ramesh Kumar Jayaswal. In order to

ensure that no dispute might arrive in future, all the other family members i.e. the spouses and children of the executants of the aforesaid IFS also signed the same. He identified signatures of Sh. Basant Lal Shaw, Arbind Jayaswal, Manoj Jayaswal, Ramesh Jayaswal and signatures of Sh. B.K. Aggarwal and Sh. Sohan Chaturvedi. The Indenture of Family Settlement (IFS) is **Ex. PW 3/F (Part of D-20)**.

66. As per the said IFS **Ex. PW 3/F**, M/s JICPL had come to the share of "MKJ Group" i.e. that of Manoj Kumar Jayaswal/A-2 as is mentioned in the fifth schedule [at Pg. 99] of the family settlement. M/s IISIPL had come to the share of "BLS Group" i.e. that of Sh. Basant Lal Shaw as is mentioned in the fourth schedule of the family settlement.

67. The companies mentioned in the 5th schedule of the settlement were to come to the share of "MKJ Group" i.e. of Manoj Kumar Jayaswal. He identified signatures of Manoj Jayaswal on various other documents executed under Companies Act 1956, and that of Anand Jayaswal and his own signatures on the office copy of a letter dated 11.01.2008 addressed to IL&FS (available at page 22 of D-16). He further identified signatures of Manoj Jayaswal on various other documents such as certified true copy of Board Resolution dated 04.03.09 of JICPL and Directors report of JICPL (available from page 25 -30 in D-16). Witness has also identified his own signatures on an application submitted to National Securities Depository Ltd. on behalf of

JICPL for demating of the shares of JICPL and as is available from page 31-36 in D-16. He also identified signatures of Arbind Jayaswal and that of A.D. Karajgaonkar on Memorandum and Articles of Association of JICPL. He identified Certificate of Incorporation of JICPL as issued on 16.07.2002 and fresh certificate of incorporation consequent upon change of name whereby the earlier name M/s Jas Infrastructure Capital Pvt. Ltd. was changed to M/s Jas Infrastructure Capital Ltd. All these documents (available in D-16) are **Ex. PW3/G (Colly.)**.

68. He identified signature of Manoj Jayaswal on letter dated 06.05.13 addressed to SP, CBI (available in D-25) and also on copy of agreement dated 02.03.2009 as enclosed with the letter. The letter alongwith copy of agreement dated 02.03.2009 is **Ex. PW3/H (Colly.)(D-25)**.

69. He deposed that subsequent to allocation of coal block in favour of JICPL by MoC, about 10% shares in JICPL were issued in favour of IL&FS. The share certificate is **Ex. PW3/J [D-12, Pg. 12]** vide which shares numbering 23660 of JICPL were issued to IL&FS. One copy of a letter dated 14.10.08 (D-14, Pg. 10) vide which IL&FS had sent to JICPL details of the transactions undertaken by it is **Ex. PW3/K**. He told that around the year 2010 or 2011, IL&FS had transferred their equity in JICPL in favour of Abhijeet Group.

70. Clarifying about the term "Special Purpose Vehicle (SPV)" with reference to a company, he told that though the same

has not been defined under Companies Act but it is usually understood as a company which is brought into existence/ designated to achieve any particular objective and after the said objective comes to an end then the said company also ceases to exist. A subsidiary company and a holding company both have been defined under Section 2 companies Act, 1956 as well as under 2013 Act.

71. In cross-examination on behalf of A-1 & A-2, he stated that in view of Clause 27 and 28 of Memorandum of Association of the company, there was no bar for A-1 company in applying for allocation of a coal block.

72. He admitted receiving a proposal of IL&FS given to IISIPL which is **Ex. PW3/DX-2 [D-9, Pg. 5-26]**. He told that in none of the meetings or discussions which he held with IL&FS officers, they never stated or expressed any objection either towards the contents of the application or that of the presentation or feedback form. He admitted that the following were mentioned as incidental or ancillary objects of JICPL in its Memorandum of Association:

27. To carry on business of setting up facilities, plants for generation, distribution of all kinds and/or forms of energy, whether from conventional sources such as thermal, hydel and gases or from non conventional sources such as wind, solar, coal bed methane, synthetic gas, and biomass including operation/ maintenance of facilities for generation of all forms of energy.

28. To carry on the business of prospecting, surveying, mining, digging, raising, manipulating,

washing, beneficiating and operating coal mines for mining, supplying and distributing coal and other natural resources or reserves.

73. **PW-6 is Sh. Sudhir Gupta.** At the relevant time he was working with Abhijeet Group of companies as CEO of the Group. He told that Manoj Jayaswal was the Managing Director of the Abhijeet Group. He told that there were lot of companies in Abhijeet Group such as Abhijeet Infrastructure Ltd.; JAS Toll Road company limited; Abhijeet Roads Limited, etc.

74. He told that Manoj Jayaswal was MD of JICPL/A-1. PW-6 deposed that he had signed the application for seeking coal block allocation on behalf of JICPL. He identified the signatures at various places on the application which is **Ex. PW6/A (Colly.)** (D-3). He told that the application was prepared by Sh. Harshad Pophali and was brought to him only for signatures. He had signed six applications on behalf of the company for seeking allocation of coal blocks. The covering letter along with application of company JICPL for Mahuagarhi coal block is **Ex. PW6/E (Colly.)**. The others are **Ex. PW6/B (Colly.)**; **Ex. PW 6/C (Colly.)**; **Ex. PW6/D (Colly.)**; **Ex. PW6/F (Colly.)**; **Ex. PW 6/G (Colly.)**; and **Ex. PW6/H (Colly.)**. He was not aware as to which coal block was finally allotted to company JICPL.

75. He identified his signature on a copy of letter dated 14.09.2007 [Ex. PW5/B (Colly.), D-18, Pg. 64-65]. He told that this letter was written by him at the asking of Manoj Kumar

Jayaswal/A-2. The letter is **Ex. PW6/J (part of D-18)**. He further identified his signatures on a letter dated 17.09.2007 which is addressed to Secretary Coal, Govt. of India which is **Ex. PW6/K [D-18, Pg. 77-79)**.

76. In cross-examination on behalf of A-1 & A-2, he stated that when Harshad Pophali (PW-1) had brought the various applications to him for his signatures then he had asked PW-1 as to whether PW-1 had seen them and PW-1 told that he had seen the applications and had verified the information mentioned in the said applications and found them correct. He told that before signing the applications, he had talked to Manoj Kumar Jayaswal on intercom. He (Manoj Kumar Jayaswal) told him to sign the same.

77. He was confronted with his statement u/s 161 CrPC dated 05.09.2012 [**Ex. PW6/DX-1**] wherein there was no reference of letter dated 14.09.2007 [Ex. PW 6/J].

78. **PW-10 is Sh. P.N. Krishnan.** He had made presentation on behalf of JICPL. He told that he made presentation before the Screening Committee on behalf of JICPL in electronic form. He further stated that in fact he was asked to make a presentation before the Screening Committee on behalf of MADC as Abhijeet Group had entered into a contract with them and MADC had applied for allocation of a coal block to Screening Committee, MoC. As regard JICPL, the presentation was to be made by one Sh. Arun Gupta who was CEO of power

projects of Abhijeet Group. However Sh. Arun Gupta did not come to the meeting venue on that day and so Sh. Manoj Jayaswal asked him to make the presentation on behalf of JICPL also. However, as regard MADC project, no presentation was made as Screening Committee had not considered application of any company for a power project of less than 500 MW capacity. He deposed that Manoj Jayaswal/A-2 had told him in the morning of 20.06.2007 itself at his office at Defence Colony, Delhi that Arun Gupta was not coming so he (PW-10) might have to make presentation on behalf of JICPL. He told that all the relevant documents were provided to him at the meeting venue itself by Harshad Pophali (PW-1). The said document also included a feedback form.

79. He identified his signature on the feedback form Ex. PW1/E. He told that when the feedback form was given to him by Sh. Harshad Pophali then as the said feedback form was containing a number of information so he rang up Manoj Kumar Jayaswal and informed him about the same and he asked him to sign it and submit the same to Screening Committee. Accordingly, he signed the feedback form and submitted the same to Screening Committee on behalf of JICPL.

80. In the cross-examination on behalf of A-1 & A-2, he admitted that the two officers of IL&FS IDC also saw the presentation and the feedback form as they were present in the meeting hall. They did not object that any information over there

was incorrect.

81. He told that at the time of Screening Committee meeting held on 20.06.2007, it was in his knowledge that both CIAL and AIL had earlier been allotted captive coal blocks. He denied not having any talks with Sh. Manoj Jayaswal either regarding the Screening Committee meeting or as regard feedback form or the presentation submitted to the Screening Committee.

From IL&FS IDC

82. **PW-7 S. Bhaskaran** is from IL&FS IDC. He could identify signatures and handwriting of various officials of the said company. He told that as coal block matters were being dealt with by Thermal Department of their company, so he was not much aware about allocation of any coal block to JICPL. He came to know about MoU dated 08.01.2007 after he was posted in the Thermal Department. He identified the MoU dated 08.01.2007 [Ex. PW 3/B (part of D-17)].

83. He referred to various clauses of the MoU and explained their purpose. The purpose of entering into the said MoU by the two entities has been mentioned in the initial recitals in clause 3 at page 2 of the MoU as under:

“(3) The Parties wish to partner with each other to develop an Integrated Energy Project of 1215 MW capacity based on a captive coal mine and to be located in the State of Jharkhand / Orissa / West

Bengal (“the Project”). The Project, which would entail development of a power generation project along with a captive coal block is proposed to be domiciled in “Jas Infrastructure Capital Private Limited” (“JICPL”), a Special Purpose Vehicle (“SPV”) incorporated by IISIPL as its 100% subsidiary for undertaking development, implementation & subsequent operation of the Project.”

84. The scope of the agreement and the terms "Board", "project" and "Shareholders agreement" have been defined in clause 1 and in the definition clause at page 3 and 4 in clauses 2(d), 2(f) and 2(g) as under:

*" (1) **Scope***

The purpose and intent of this MoU is to outline the broad contours of partnership between IISIPL and IL&FS IDC for the promotion, development, implementation and operation of an Integrated Energy Project comprising of a captive coal mine and a power generation project to be located in the State of Jharkhand / Orissa / West Bengal. The “Project is proposed to be domiciled in JICPL, a SPV incorporated as a 100% subsidiary of IISIPL.

Definitions

(d) “Board” shall mean the Board of Directors of JIPCL.

(f) “Project” shall mean the proposed Integrated Energy Project of 1215 MW capacity based on a captive coal mine and to be located in the State of Jharkhand / Orissa / West Bengal.

(g) “Shareholder’s Agreement” shall mean the agreement to be entered between IISIPL and IL&FS IDC as shareholders of JIPCL, inter alia, setting out the privileges, regulations, rights, obligations of the shareholders and ownership and management of JIPCL, the provisions whereof would be incorporated in the Articles of Association of JIPCL.”

85. The equity participation of the two entities has been discussed in clause 3 at page 4 of MoU as under:

“(3) Equity Participation

(a) JICPL has been incorporated with an initial Authorized capital of Rs. 20,000,000 divided into 2,000,000 equity shares of Rs. 10 each. The paid-up share capital of JICPL as on date is Rs. 100,000 (Rupees One Hundred thousand only) divided into 10,000 shares of Rs. 10 each issued at par. JICPL is managed by a Board of Directors.

(b) Upon allocation of a captive coal block to JICPL, IL&FS IDC / its associates / funds shall have the right to subscribe upto 26% of the paid up Equity Share Capital of JICPL at par value. The parties shall enter into a detailed Shareholders’ Agreement (SHA) within 60 days of the allocation of the coal block to JICPL.

(c) IISIPL shall immediately upon and in any case not later than seven (7) days from the date of allocation of the captive coal block offer to transfer, at par, in favour of IL&FS IDC not less than 26% of paid up Equity Share Capital of JICPL, so as to enable IL&FS IDC to subscribe to and hold Equity Share Capital of JICPL in terms of clause (b) above.

(d) Subsequent to the execution of the SHA of JICPL, the Board of JICPL shall be reconstituted to provide proportionate representation to IL&FS IDC on the Board.

(e) IL&FS IDC / its associates / funds under management shall also have an unqualified right to subscribe to upto 26% of all the future equity share issuance by JICPL at par.”

86. The utilization of advisory services of IL&FS IDC have been mentioned in clause 4 at page 4 and 5 of the MoU as under:

“(4) Utilisation of Advisory Services of IL&FS IDC

(a) The Parties have agreed to utilize the resources and expertise of IL&FS IDC for Project Development. The scope of services of IL&FS IDC as the Sole Transaction Advisor cum Fund Arranger and its fees thereof shall be as per the provisions and in accordance with the Advisory Proposal. The Advisory Proposal shall be fully binding and operative by and against IISIPPL till its adoption & ratification by JICPL as described in Clause (4) (b) below.

(b) The Parties agree and confirm that JICPL, at its next Board meeting held pursuant to execution of this MoU, shall adopt and ratify the Advisory Proposal and confirm the same to IL&FS IDC through a written communication. Thereafter, the provisions of the Advisory Proposal shall be fully binding and operative by and against JICPL as if JICPL was originally a party to the Advisory Proposal.”

87. The roles and responsibilities of the two entities

under the MoU have been mentioned in clause 5 at page 5 of the MoU as under:

“(5) Roles & Responsibilities

(a) The roles & responsibilities of IL&FS IDC prior to allocation of coal block shall be as follows:

To provide services as per the Advisory Proposal agreed upon between IL&FS IDC and IIS IPL

To submit application with the Ministry of Coal as a co-promoter for allocation of captive coal blocks

To conduct an appraisal of the Project

To provide a letter of support/commitment for financing the Project.

(b) The roles & responsibilities of IIS IPL shall be as follows:

To identify viable coal blocks

To liason with State Governments / State Mining Corporations etc. so as to obtain State Government recommendation for coal blocks which would enable setting up of Projects

To prepare a detailed project report for the Project

To prepare final submissions for coal bids

To divest equity shareholding in JICPL in favour of IL&FS IDC to the extent specified in this MoU

To pay fees to IL&FS IDC as per the terms of the Advisory Proposal.”

88. The effectiveness and term of the MoU has been mentioned in clause 9 at page 6 of the MoU as under:

“(9) Effectiveness and Term

This MoU shall be automatically terminated in case a captive coal block is not allocated to JIPCL within six (6) months from the date of execution of this MoU unless otherwise extended by the Parties by mutual agreement. Under such termination, IL&FS IDC shall be entitled to fees under the Advisory Proposal only to the extent of the milestones achieved till the date of such termination."

89. He told that at no point of time any officer or representative of IL&FS IDC was ever inducted on the board of JICPL. No shareholders agreement was ever executed with IL&FS IDC. However, IL&FS IDC had invested a sum of Rs. 2,36,600/- as 26% of equity in JICPL. At the time of submission of application to MoC for allocation of a coal block i.e. in January 2007 IL&FS IDC was having no equity holding in JICPL.

90. The equity of IL&FS IDC remained invested in JICPL from March 2008 till March 2011. Though initially the percentage of equity holding of IL&FS IDC in JICPL was 26% but later on at the time of exit in March 2011 it had become 0.68%. The dilution in equity as above was effected without any permission, knowledge or consent of IL&FS IDC and thus he was not aware of any reason as to how the equity of IL&FS IDC in JICPL came to be diluted.

91. He also came to know about another MoU dated 02.04.2007 entered into between IISIPL and IL&FS IDC which is Ex. PW 3/C.

92. He deposed that in September 2012, CBI had conducted a search in their office at Ambiance Mall, Gurgaon. He was also present during the raid. He had signed search list dated 04.09.2012 (D-6). The search list is **Ex. PW 7/A (D-6)**. He also identified documents seized during the search such as MoU dated 08.01.2007 which is **Ex. PW7/B** and MoU dated 02.04.2007 which is **Ex. PW 3/C**. The document D-7 is **Ex. PW 7/C (Colly.)**. The annual reports of 2007 and 2008 of IL&FS are **Ex. PW 7/D (Colly.)**. The Transaction Approval Memorandum (TAM) is **Ex. PW 7/D-1 (Pg. 1-4 of D-9)**. Part of this document from page 5-26 is already Ex. PW 3/DX-2. The whole document D-9 is **Ex. PW 7/D-2 (Colly.)**.

93. Some other documents are **Ex. PW 7/E (D-10)**; **Ex. PW 7/F (D-11)**; **Ex. PW 7/G (D-12)**; **Ex. PW 7/H (D-13)**; and **Ex. PW 7/J (D-14)**. Ex. PW 7/F pertains to internal approval of IL&FS IDC regarding investing 26% of equity in JICPL. Ex. PW 7/G pertains to the internal decision taken in IL&FS IDC to exit from JICPL.

94. In cross-examination on behalf of A-1 & A-2, it has come that he was not aware as to what all studies or due diligence was carried out by IL&FS IDC before entering into the MoU. He explained that prior to obtaining internal approval in IL&FS IDC for entering into any MoU with any entity intended to develop a project, the project team of IL&FS IDC interacts with the representatives of the said entities to identify the

projects contours and potential for providing advisory services and also any investment opportunity. He also told that depending upon the nature of the project, there might be some exchange of documents but the same might not take place in every case.

95. He admitted that as per Ex. PW7/F (D-11), the power generation project was to be located in the state of Bihar. Upon being asked as to why in the disbursement memo dated 01.04.2008 (Ex. PW7/F), the location of the project was mentioned as Bihar despite the said location was mentioned as Jharkhand/Orissa/West Bengal in MoU dated 08.01.2007 [Ex. PW3/B], the witness stated that the MoU was executed on 08.01.2007 whereas disbursement memo is dated 01.04.2008 so during this period of about one year and four months there might have been change in the location of the power plant project.

96. He admitted that in the MoU Ex. PW3/B dated 08.01.2007, the role and responsibilities of IL&FS IDC inter alia is mentioned as under:

To submit application with the Ministry of Coal as a co-promoter for allocation of captive coal blocks

To conduct an appraisal of the Project

To provide a letter of support/commitment for financing the Project.

97. **PW-8 is Sh. Sanjay Mundley.** He is also from IL&FS IDC. He was working as Senior Manager, Power Projects at

Mumbai. As Sr. Manager, his job was to evaluate the technical bids, technical proposals on behalf of IL&FS IDC. He was acquainted with handwriting and signature of various officials of IL&FS IDC.

98. He deposed that when he joined IL&FS IDC, he came to know that a MoU had been entered into between IL&FS IDC and IISIPL, and that in the name of JICPL, an application had been submitted to MoC, Govt. of India for allocation of a captive coal block. He deposed that he had discussions in this regard with Sh. Sanjay Dey of JICPL. The discussions pertained to clearances required for the project or other modalities to be undertaken. He had also come to know that their Delhi office had entered into another MoU with IISIPL on 02.04.2007. He told that since IL&FS IDC had a documentary approval procedure, so subsequent to MoU dated 02.04.2007, he had prepared a Transaction Advisory Memorandum (“TAM”) for *post facto* approval from senior officers and Managing Director. The TAM is Ex. PW7/E (D-10).

99. He deposed that he had also attended one Screening Committee meeting of MoC in June 2007 along with one Sh. Ankur Rajan, another officer of IL&FS IDC. From Abhijeet Group, one Sh. P.N. Krishnan was present along with one other person. He deposed that Sh. P.N. Krishnan of Abhijeet Group made a presentation before the Screening Committee which was very short lasting about 05/10 minutes. He and Ankur Rajan,

however, merely sat in the meeting and did not do anything. He told that no document was provided to them in the said meeting such as copy of either the feedback form or of the presentation so made by officials of Abhijeet Group. The Screening Committee members did not ask any question either from him or Ankur Rajan.

100. After seeing MoU dated 08.01.2007, [Ex. PW 3/B (part of D-17)], the witness stated that as per the said MoU the power project was to be located in Jharkhand/Orissa/West Bengal. He did not remember that he and Ankur Rajan were ever told about the location of the end use plant to be in Bihar. He resigned from the services of IL&FS IDC on 24.12.2007 and was relieved on 27.02.2008. Till the time he remained in the services of IL&FS IDC, no officer or representative of their company was a director on the Board of Directors of JICPL. Till that time no money was invested in the equity of JICPL by IL&FS IDC. No shares were either allotted in favour of IL&FS IDC till that time or acquired by our company in JICPL. No shareholders agreement was executed till that time.

101. In cross-examination on behalf of A-1 & A-2, it has come that he had not seen any TAM in the present matter of IL&FS IDC of the period prior to execution of MoU dated 08.01.2007.

102. He identified few signatures of officers of IL&FS IDC on the attendance sheet dated 21.06.2007 of 35th Screening

Committee meeting [Pg. 8-16 in D-29]. The attendance sheet dated 21.06.2007 as above is **Ex. PW8/DX-1**.

103. He did not remember whether IL&FS IDC was associated with other entities also for development of certain projects and which entities had applied for allocation of captive coal blocks.

104. He told that IL&FS IDC was primarily a paperless office and thus very little paper work was carried out. Print out of only important papers such as MoU etc used to be taken out and kept in a file but all other record used to be in electronic form. He told that signatures at point A on disbursement memo Ex. PW 7/F (D-11) were of Ankur Rajan. He denied the suggestion that during the Screening Committee meeting Ankur Rajan was told about the location of EUP to be in Bihar. He told that since it was a very short presentation so at that time, as per him, nothing wrong was stated in the said presentation.

105. After seeing Annexure-I titled 'Milestones for Payment of Advisory Fee' as is part of advisory proposal Ex. PW3/DX-2 [part of Ex. PW7/D-2 (Colly.), D-9], he admitted that IL&FS IDC used to charge various amounts of fee for different activities including presentation to Committee constituted by MoC for coal mine allocation etc. as mentioned in the annexure.

106. He did not remember whether the amount of 0.50 million was paid to IL&FS IDC towards presentation to

Committee or not. Even after seeing the hard copy of the presentation of JICPL (Ex. PW1/F), PW-8 could not recall whether it was the same presentation which he witnessed. He denied that he was giving evasive answers.

107. He did not remember as to whether at the time of presentation before the Screening Committee, the location of end use plant was stated as Bihar or not. He also did not remember as to whether in the said presentation the financials of JICPL, IL&FS IDC and IISIPL for the last three years were shown jointly or as combined financials. At the time of presentation before the Screening Committee he was not aware that Abhijeet Infrastructure Ltd. had already been allotted any captive coal block. He told that he had not seen the feedback form. As such, he cannot tell anything about water and electricity tie-up. He denied that the presentation and feedback from of JICPL as submitted to Screening Committee were prepared by IL&FS IDC or that they were in his knowledge. He denied that he knew that location of EUP was in Bihar.

108. He was confronted with his statement u/s 161 CrPC dated 03.11.2012 (**Ex. PW8/DX-2**) wherein it is not mentioned that he and Ankur Rajan were not provided with any copy of either the feedback form or of the presentation so made by officials of Abhijeet Group.

109. **PW-9 is Sh. Pankaj Sakhuja.** He is also from IL&FS IDC. He worked there from December 2005 till July 2007 as

Assistant Manager and was posted at Delhi. During that period Sh. D.K. Mittal was the Managing Director of the company. PW-9 used to report to Sh. Sanjay Sethi who in turn used to report to the Managing Director.

110. PW-9 deposed that as Assistant Manager he used to assist the senior officers in project appraisals in which IL&FS IDC used to have any involvement. IL&FS IDC was engaged in the business of project advisory services, project development and infrastructure development. He was well acquainted with handwriting and signature of Sh. Sanjay Sethi and Sh. D.K. Mittal.

111. He was aware about MoU dated 08.01.2007 [Ex. PW3/B (D-17)] executed between IL&FS IDC and IISIPL regarding a proposed power plant.

112. He deposed that during this period, he had interacted with Sh. Sanjay Dey of JICPL but other interactions must have taken place with senior officers of IL&FS IDC. He identified the TAM dated 26.12.2006 [Ex. PW 7/D-1, part of Ex. PW 7/D-2 (Colly.), D-9]. As per the MoU, IL&FS IDC was to provide advisory services and was to take upto 26% equity in JICPL and beyond that no other role was to be played by IL&FS IDC.

113. He told that since IL&FS IDC had not entered into any shareholders agreement with JICPL, and had also not acquired any equity holding in JICPL, so IL&FS IDC had no role in the preparation of application by JICPL for seeking allocation of captive coal block and to be submitted to MoC, Govt. of India.

To the best of his knowledge, the application of JICPL seeking allocation of captive coal block as was submitted to MoC, Govt. of India was not provided to them in IL&FS IDC.

114. He deposed that as per the MoU dated 08.01.2007 [Ex. PW 3/B], the location of the power project was to be either in Jharkhand or Orissa or West Bengal.

115. He deposed that as IL&FS IDC was not having any equity holding in JICPL or any directorship in the board of directors of JICPL so it cannot be stated that JICPL was an SPV managed by IISIPL and IL&FS Group. He deposed that to his knowledge the DPR as mentioned in the application was never appraised by IL&FS Group.

116. In his cross-examination on behalf of A-1 & A-2, it has come that prior to entering of MoU dated 08.01.2007, discussion had taken place between senior officers of IISIPL and IL&FS IDC. He admitted that in the MoU dated 08.01.2007 Ex. PW 3/B in clause 5 titled "Roles and Responsibilities" it is inter alia mentioned in the roles and responsibilities of IL&FS IDC as under:

"To submit application with the Ministry of Coal as a coal promoter for allocation of a captive coal block".

117. Witness was confronted with his statement u/s 161 CrPC dated 17.12.2012 which is **Ex. PW9/DX-1**. He did not remember whether any project file relating to the present matter in question was prepared in their office at IL&FS IDC.

118. He admitted that in the proposal Ex. PW 3/DX-2, it was mentioned that IL&FS IDC would assist the SPV in selecting the most appropriate site for the power project keeping in perspective its proximity to the mine location, water availability and evacuation of power. He told that the MoU dated 08.01.2007 Ex. PW 3/B would have been prepared by the legal department but the technical input must have been provided by them.

119. He explained that though on the day when proposal Ex. PW3/DX-2 was prepared then on the said date i.e. 08.01.2007 IL&FS IDC was having no equity in JICPL or directorship in its board of directors but still the word "SPV" has been used at different places in the proposals since the same has been prepared on the basis of standard proposal format.

120. He admitted that in the MoU dated 08.01.2007 Ex. PW3/B, it was stated that the parties should enter into a detailed shareholders agreement (SHA) within 60 days of the allocation of the coal block to JICPL.

From Office of Coal Controller, KOLKATA

121. **PW-4 R.K. Sutradhar** is from the Office of Coal Controller Kolkata. He had produced certain documents to the CBI on 14.01.2015. The production-cum-receipt memo dated 14.01.15 is **Ex. PW4/A (D-46)**. The documents handed over by him are available as D-47, D-48, D-49 and D-50.

122. Vide letter dated 02.10.07 (D-47) of Mr. Shekhar Berde, Sr. Manager, Abhijeet Infrastructure Ltd., the company AIL had submitted status report for the quarter ending September 2007 with respect to "Brinda", "Sisai" and "Meral" coal blocks which were allotted to the company. The said letter along with status report is **Ex. PW4/B (Colly.)(D-47)**.

123. Vide letter dated 11.07.07 (D-48) of Mr. Shekhar Berde, Sr. Manager, AIL, the company had submitted status report for the quarter ending June 2007 with respect to "Brinda", "Sisai" and "Meral" coal blocks which were allotted to the company. The said letter along with status report as above is **Ex. PW4/C (Colly.)(D-48)**.

124. Vide letter dated 13.07.07 (D-49) of Dr. V.S. Garg, Director, the company CIAL had submitted status report for the quarter ending 31.06.2007 with respect to "Chitarpur" coal block which was allotted to the said company. The said letter along with status report is **Ex. PW1/B (Colly.)(D-49)**.

125. Vide letter dated 02.10.07 (D-50) of Dr. V.S. Garg, Director, CIAL, vide which the said company had submitted status report for the quarter ending 30.09.2007 with respect to "Chitarpur" coal block which was allotted to the said company. The said letter along with status report is **Ex. PW1/C (Colly.)(D-50)**.

126. He told that some of the milestones whose scheduled

date of completion was mentioned in the status report by the company were not achieved.

127. In cross-examination on behalf of A-1 & A-2, one letter bearing no. 121210/3/RC-219-2012-E-0008 dated 16.12.14 was marked as **Ex. PW4/DX-1**.

128. He admitted that if any allocatee company failed to achieve the stipulated milestones then the MoC could forfeit the bank guarantees submitted by the said allocatee company at the time of allocation. He was not aware as to whether bank guarantees furnished by the two companies were forfeited by MoC or not in the present matter.

From Ministry of Coal

129. **PW- 11 is Sh. V.S. Rana.** He is from MoC. He is the most important witness for the prosecution as he had remained associated with the process of allocation of coal block from beginning to the end.

130. He deposed that during the period November 2006 to September 2007, H.C. Gupta/A-3 was the Secretary (Coal) and K.S. Kropcha/A-4 was Joint Secretary (Coal). He further told that from November 2006 to February/March 2007, Sh. Sanjeev Mittal was Director CA-I Section and thereafter in March/April 2007 K.C. Samria/A-5 took over as Dy. Secretary, CA-I Section.

131. He deposed that the captive coal block allocation

matters were dealt with by CA-I Section. During November 2006 till the year 2011, Sh. R.N. Singh was the Section Officer, CA-I Section followed by Sh. L.S. Janoti who joined in the year 2008. He was succeeded by Sh. S.K. Singh and Sh. Ram Naresh as CA-I Section was divided in two sections. Sh. R.S. Negi was the Dealing Assistant in CA-I section and subsequently when Sh. R.S. Negi was transferred then Sh. Sewak Paul had joined as Dealing Assistant.

132. During the period 2006-2011, Sh. Sibhu Soren was initially the Minister of Coal and thereafter Dr. Manmohan Singh, the then Prime Minister held the charge of Minister of Coal. He deposed that he was well acquainted with handwriting and signatures of abovesaid Ministers and Officials of MoC.

133. He deposed that in November 2006, an advertisement was issued by MoC inviting applications for allocation of captive coal blocks. The 38 coal blocks so offered for allocation were already identified in MoC with the help of CIL. Out of the said 38 coal blocks, 15 were earmarked for companies engaged in power sector and 23 were earmarked for companies engaged in non-power sector. The said advertisement was got published in leading newspaper through DAVP. In the entire process, help of CIL was taken by MoC. The said advertisement was uploaded on the website of MoC also. The last date of receipt of applications was specified as 12.01.2007. The applications were to be received at Scope Minar, Laxmi Nagar.

The advertisement was issued after approval in this regard was given by Secretary (Coal).

134. He deposed that at Scope Minar, Laxmi Nagar, a register was maintained wherein entries of all applications being so received were made. However, in the last 2-3 days of the receipt of applications, certain counters were increased as rush to submit applications increased and on the last date i.e. 12.01.2007, 4-5 counters were made operational to receive the applications.

135. He deposed that in the initial days when the applications were being received then though some cursory glance was given to them but later on as the number of applications increased so they were simply received after checking the availability of demand draft. Entries of total number of applications so received were made in the register.

136. He told that after receipt of applications i.e. post 12.01.2007, the applications were segregated end use wise, state wise and block wise. The applications were thereafter sent to concerned Administrative Ministries as per the end use mentioned in the applications and also to State Governments concerned where the coal block applied for was situated or the end use plant was established or was proposed to be established for their comments / recommendations.

137. Copy of one MoC file bearing no. 13016/65/2006-CA-I (Vol. I)(D-37) was marked as **Ex. PW11/A (Colly.)**. The

note sheet pages from page 1-49 are **Ex. PW11/A-1 (Colly.)** and the correspondence pages from page 1-233 are **Ex. PW11/A-2 (Colly.)**. This file relates to issuance of advertisement.

138. He identified an ID note of PMO dated 25.07.2006 at page 38-40/c therein and told that vide the said ID note, summary record of 7th Energy Coordination Committee meeting held on 19.07.2007 under Chairmanship of Prime Minister were received in MoC. The ID note is **Ex. PW11/A-3 (Colly.)**.

139. The notesheet relating to issuance and uploading of the advertisement is at pages 3-5/n in note sheet pages **Ex. PW 11/A (Colly.)**. Copy of letter dated 06.11.2006 available at page 69/c is **Ex. PW11/A-4** vide which request was made to DAVP for publication of the advertisement. Copy of letter available at page 70/c vide which a request was made to CGM, CIL to get the advertisement published in national dailies is **Ex. PW11/A-5**. Copy of letter dated 06.11.2006 available at page 71/c vide which a request was made to Sh. Piyush Goel, Technical Director, NIC to upload the material for advertisement issued by MoC on the website of MoC is **Ex. PW11/A-6**. The advertisement along with all other details available from Pg. 73-94 in **Ex. PW11/A-2 (Colly.)** is **Ex. PW11/A-7 (Colly.)**.

140. The draft advertisement available from page 1-29 put up for approval wherein corrections were made regarding the last date of receipt of applications by A-4 K.S. Kropcha in accordance with his note dated 04.11.2006 [available at page 4/n-

5/n] is **Ex. PW11/A-8 (Colly.)**. He referred to page no. 30/c which is an extract of a note from file no. 38039/25/2005-CA-I wherein there is a reference to a meeting to be taken by Secretary (Coal) in his room to earmark coal blocks for power sector.

141. He told that at page 82-83 of the advertisement Ex. PW11/A-7 (Colly.), the guidelines under the title “How to Apply” specified the procedure and the documents to be annexed with the applications. Same are already noted in para 7 of this judgment.

142. Thereafter, under the title “Guidelines for allocation of captive coal blocks and conditions of allotment through the Screening Committee”, available from page 88-92/c the *inter se* priority guideline for allocation of a block among competing applicants were also specified in clause 9 as already noted in para 8 of this judgment.

143. The procedure as to how the applications would be processed in MoC was also specified under the title “Processing of Application” as already mentioned in para 9 of this judgment.

144. The Composition of the Screening Committee was mentioned at page 94/c as under:

Composition of the Screening Committee

1	Secretary, Ministry of Coal	Chairman
2	Joint Secretary (Coal), Ministry of Coal	Member-Convener

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

145. The copy of advertisement published in Newspaper Hindu on dated 13.11.2006, available at page 105/c, is **Ex. PW11/A-9**.

146. Copy of one register titled “Advertisement November, 2006” available in D-5 is the register wherein entries of applications received were made. The same is **Ex. PW11/B**. Six applications of M/s JICPL were received and corresponding entries in that regard were made from srl. no. 225-230 in the register at page 29.

147. He told that all the applications including that of JICPL were segregated end use wise, block wise and state wise.

He told that copies of all the applications including that of M/s JICPL were sent to concerned stakeholders for comments/recommendations. The segregation work was carried out keeping in view the blocks applied for and for what purpose the end use project was to be established. The demand draft of Rs. 10,000/- received towards processing fees were separated from the applications.

148. He deposed that as regards the guidelines titled “Processing of Application”, the applications of JICPL were, however, not checked for their eligibility and completeness in MoC. Similarly, the applications of other applicant companies were not checked for their eligibility and completeness.

149. The office copy of letter dated 19/28.02.2007 [available at page 130-140/c in file Ex. PW 11/A (Colly.)], vide which one copy of the applications as per the list enclosed were sent to Chief Secretary, Govt. of Jharkhand with the request that applications might be examined and comments thereon might be furnished to MoC is **Ex. PW 11/A-10 (Colly.)**. As per enclosed list, the four applications of M/s JICPL for the coal blocks Amarkonda, Patal East, Ashok Karkata Cer and for Ganeshpur were sent to Govt. of Jharkhand.

150. Office copy of another letter dated 19/28.02.2007 [available at page 183-190/c in file Ex. PW 11/A (Colly.)] vide which one copy of the applications as per the list enclosed were sent to Chief Secretary, Govt. of West Bengal with the request to

examine the applications and furnishing comments thereon is **Ex. PW 11/A-11 (Colly.)**. As per the list, two applications of M/s JICPL for the coal blocks Mahuhagarhi and Gourangdih ABC were sent to Govt. of West Bengal.

151. Office copy of another letter dated 19/28.02.2007 [available at page 220-222/c in file Ex. PW 11/A (Colly.)] vide which one copy of the applications as per the list enclosed were sent to Chief Secretary, Govt. of Bihar with the request to examine the applications and furnishing comments thereon is **Ex. PW 11/A-12 (Colly.)**. As per list, four applications of M/s JICPL for the coal blocks Amarkonda, Patal East, Ashok Karkata Cer and for Ganeshpur were sent to Govt. of Bihar.

152. Office copy of another letter dated 19/28.02.2007 [available at page 199/c in file Ex. PW 11/A (Colly.)] vide which one copy of all the applications as per the list enclosed were sent to Chairman-cum-Managing Director, CMPDIL with the request to examine the applications and furnish comments thereon is **Ex. PW11/A-13**.

153. He deposed that as per page 9/n in Ex. PW 11/A-1 (Colly.), file was put up with the request that applications were required to be dispatched to concerned States/Ministries and thus 130 big size trunks were required beside transport arrangements to be made by CIL. The letter dated 14.02.2007, available at page 126/c, was sent to Sh. R.K. Joshi General Manager, CIL requesting for 130 big size trunks and for making transportation

arrangements for dispatch of applications to various states/ministries. The letter dated 14.02.2007 is **Ex. PW11/A-14**.

154. He told that vide note dated 19.02.2007 at page 10/n, it was mentioned that the applications received for allocation of coal blocks were ready for dispatch to CMPDIL, State Government, Administrative Ministries i.e. Ministry of Power, Ministry of Steel and Ministry of Industry and Commerce, Departmental of Industrial Policy and Promotion.

155. He deposed that vide letter dated 20.12.2006 at page 102/c, the Coal Controller was requested to depute at least four officials for a period of 20 days for the purpose of receiving applications etc. The letter dated 20.12.2006 is **Ex. PW11/A-15**.

156. Copy of MoC file bearing no. 13016/65/2006-CA-I (Vol. II) available in D-38 is **Ex. PW11/C (Colly.)**. This file relates to sending of applications to administrative ministries.

157. Office copy of letter dated 17.04.2007 [available from page 2-75/c in file Ex. PW 11/C (Colly.)] vide which one copy of the applications as per the list enclosed were sent to Secretary, MoP, Govt. of India with the request to examine the applications and furnish comments is **Ex. PW11/C-1 (Colly.) (D-38)**. As per list, six applications of JICPL were sent to MoP. Note in this regard is at page 18/n. He told that earlier the MoP had refused to receive the applications on the ground that they would not be giving recommendations on case to case basis as they had

already issued guidelines for processing of applications.

158. He deposed that vide letter dated 11.04.2007 page 76/c in file Ex. PW 11/C (Colly.), all the application forms (Block-wise) and CDs received from the applicants who had applied for allocation of coal blocks in power sector were sent for preparation of data base. It was also stated that the application forms in respect of Steel and Others (Block-wise) along with CDs would be sent soon. The letter dated 11.04.2007 is **Ex. PW 11/C-2**.

159. However, after seeing note sheet pages Ex. PW 11/A-1 (Colly.) in file Ex. PW11/A (Colly.) (D-37) witness stated that no corresponding note sheet / notings are there in the said pages. After seeing note sheet page 22/n in file Ex. PW 11/A (Colly.) (D-37), witness stated that vide note dated 31.05.2007, a reminder was proposed to be issued to those who had not sent comments. The said letter dated 07.06.2007 is **Ex. PW11/C-3 (D-38)**.

160. Copy of one MoC file bearing no. 38011/1/2007-CA-I (Vol. I) available in D-30 is **Ex. PW11/D (Colly.)**.

161. One letter dated 25.04.2007 available at page 28/c in file Ex. PW11/D (Colly.) vide which Govt. of West Bengal had sought some more time to submit their comments / views is **Ex. PW11/D-1**. Letter dated 18.06.2007 available at page 215/c-219/c vide which Govt. of West Bengal recommended Adhunik

Corporation Limited and JICPL for Mahuagarhi coal block as captive power producers for iron and steel plants is **Ex. PW11/D-2 (Colly.)**. He told that vide letter dated 08.06.2007 available at page 65 in file Ex. PW 11/D (Colly.) (D-30), Govt. of Bihar had conveyed the in-principle approval by State Investment Promotion Board which is **Ex. PW11/D-3**.

162. About how the applications so received were processed in the files in MoC, the witness stated that the applications of various companies were not individually processed in the files and all the applications so received were collectively processed.

163. He had dealt with file of MoC Ex. PW6/A (Colly.) (D-3). He deposed that in the meeting which took place in the office of Joint Secretary (Coal) after issuance of advertisement, it was discussed therein that applications would not be examined on case to case basis. He stated that as such the senior officers were well aware of the procedure being adopted in MoC about processing of applications and in fact Joint Secretary (Coal) had even visited Scope Minar, Laxmi Nagar when the officials of the office of coal controller were segregating the applications. He referred to noting dated 07.05.2007 at notesheet page 20/n in file Ex. PW 11/A (Colly.) wherein it was recorded as under:

“As directed by DS(CA-I) over inter-com that a meeting of the Screening Committee has been proposed to to be held under the Chairmanship of Secretary (Coal) on 11.05.2007 at 10.30 A.M. in his Chamber. It has further been directed to issue notice

to M/Power/M/Steel/M/Commerce & Industry (DIPP)/CIL/CMPDIL. Accordingly, a draft notice is put up for approval”.

164. Office copy of OM dated 07.05.2007 available at page 87-88 in file Ex. PW 11/C (Colly.) (D-38) vide which Secretary MoP, MoS, Ministry of Commerce and Industries, Director (Technical) CIL, Chairman / Managing Director CMPDIL and Coal Controller Kolkata were requested to attend a meeting of the Screening Committee to be held on 11.05.2007 at 10.30 am under Chairmanship of Secretary Coal in his chamber at Shashtri Bhawan, New Delhi so as to consider the criteria / detailed modalities for allocation of 38 coal blocks is **Ex. PW 11/C-4**. He deposed that contrary to Ex. PW11/C-4 and the corresponding note sheet pages, no agenda of the said meeting was either prepared or approved.

165. The list of participants who attended the Screening Committee meeting dated 11.05.2007 is available at page 93/c in file Ex. PW11/C (Colly.) (D-38). However, he told that he had not attended the said meeting. After seeing note sheet page 23/n in file Ex. PW11/A (Colly.), he told that he had made some corrections in the draft minutes available at page 105-106 in file Ex. PW11/C (Colly.) (D-38) and forwarded the same to Dy. Secretary CA-I. He further told that the corrections in the draft minutes in black ink are in his hand and the corrections in blue ink on the first page are in the hand of K.S. Kropcha and on the second page is in the hand of K.C. Samria. The draft minutes are

Ex. PW11/C-5 (D-38). He told that the draft minutes of the Screening Committee meeting held on 11.05.2007 Ex. PW 11/C-5 were however put up by the Section on the directions and guidance of Joint Secretary Coal and Director CA-I. After approval of Secretary (Coal), final minutes were prepared. The final minutes are **Ex. PW11/C-6 (Colly.)** [D-38, Pg. 102/c-104/c].

166. Copy of MoC file No. 38011/1/2007-CA-I (Vol. VI) available in D-34 is **Ex. PW11/E (Colly.)**. The note sheet pages from page 1-71/n are **Ex. PW11/E-1 (Colly.)** and the correspondence side pages from page 1-186/c are **Ex. PW11/E-2 (Colly.)**.

167. The letter dated 20.06.2007 available from page 88-89/c in file portion Ex. PW11/E-2 (Colly.) vide which Govt. of Jharkhand had sent its recommendations is **Ex. PW11/E-3**. He told that vide the said letter, Govt. of Jharkhand had recommended M/s CESC Limited and M/s Maithili Energy Pvt. Ltd. for allotment of Mahuagarhi Coal Block with M/s CESC Limited as Lead Project partner. However, the company M/s JICPL was not recommended for any of the coal blocks by it.

168. The office copy of letter dated 06.06.2007 at page 39/c in file Ex. PW11/D (Colly.) (D-30) vide which CIL was requested to make necessary arrangements for booking of venue of meeting i.e. Scope Complex, Lodhi Road and for arrangements for refreshment, lunch, tea, laptops and projectors is **Ex. PW11/D-4**.

169. Copy of another letter dated 06.06.2007 available at page 43/c vide which all the applicants for power block were informed about the 35th Screening Committee meetings to be held from 20.06.2007 to 23.06.2007 and that they were to make a presentation and to also submit at the time of presentation a feedback form (25 copies) containing updated information in respect of each application is **Ex. PW11/D-5**.

170. Office copy of another letter dated 06.06.2007 available from page 44-45/c in file Ex. PW11/D (Colly.) (D-30) vide which members of Screening Committee were requested to attend the 35th meeting of the Screening Committee from 20.06.2007 to 23.06.2007 is **Ex. PW11/D-6**.

171. OM dated 06.06.2007 vide which Sh. Piyush Goel, Technical (Director), NIC, Coal was requested to upload a notice of 35th Screening Committee meeting to be held from 20.06.2007 to 23.06.2007 along with other papers i.e. letter to members of Screening Committee, letter to applicants for power blocks, schedule of meeting and feedback format is **Ex. PW 11/D-7**. The format of feedback form, available at page 37 and also at page 38 is **Ex. PW 11/D-8**.

172. Letter dated 08.06.2007 vide which all the applicant companies were informed about the change of venue of meeting is **Ex. PW 11/D-9**. Office copy of OM dated 08.06.2007 vide which all the Members of Screening Committee were also informed about the change of venue of meeting is **Ex. PW 11/D-**

10.

173. Copy of letter dt. 31.05.2007 [Ex. PW 11/D (Colly.), D-30, Pg. 31] which was sent to Coal Controller Kolkata with request to depute three officials from his office to MoC CA-I section initially for three weeks commencing from 04.06.2007 onwards is **Ex. PW11/D-11**.

174. The file titled “Agenda For 35th Screening Committee meeting for Power Sector to be held from 20.06.2007 to 23.06.2007 Mahuagarhi” is available in D-44 and contains the agenda note prepared for the aforesaid Screening Committee meetings qua Mahuagarhi coal block. At page 100-104, there is copy of application form of M/s JICPL. The agenda note is **Ex. PW11/F (Colly.) (D-44)**.

175. Letter dt. 15.06.2006 of Sh. B.G. Datta, Dy. Assistant Coal Controller in response to MoC letter dated 31.05.2007 vide which three officials namely Sh. Manoj Karmaker, UDC, Sh. Sumanta Biswas, UDC and Sh. Debasis Das, UDC were deputed at MoC is **Ex. PW 11/D-12**. A copy of this letter which was marked to K.C. Samria/A-5 is available at page 214 and is **Ex. PW 11/D-13**.

176. OM dated 01.06.2007 [available at page 49-51 in file Ex. PW 11/D (Colly.) (D-30)] was sent by Sh. N.R. Dash, Director, MoS vide which the detailed guidelines of MoS for categorizing the applications were also enclosed. The OM is **Ex.**

PW 11/D-14 (Colly.). The said office memorandum was sent by MoS in response to the Screening Committee meeting held on 11.05.2007 and it was stated that all the applicants be called for presentation before the Screening Committee.

177. Letter dt. 08.06.2007 [available at page 66 in file Ex. PW11/D (Colly.) (D-30)] was sent by the Principal Secretary, Department of Industries, Government of Bihar in response to website notice dated 06.06.2007 of MoC and vide which Govt. of Bihar requested Secretary (Coal) to ensure the representation of Bihar State in the Screening Committee. The letter dt. 08.06.2007 is **Ex. PW 11/D-15**.

178. PW-11 further deposed that in the 35th Screening Committee meetings held at Scope Minar, Laxmi Nagar from 20.06.2007 to 23.06.2007, the various applicant companies made their presentations before the Screening Committee. While some of the companies made their presentations in soft copy but some of the companies only did so by way of hard copy. He told that A-3 H.C. Gupta, Secretary (Coal) chaired the said meetings. Apart from him, A-4 K.S. Kropcha, Joint Secretary (Coal) who was also Member Convener was present besides A-5 K.C. Samria, Director CA-I.

179. He told that in the said Screening Committee meetings, the copy of agenda note prepared in MoC was provided to all the members beside copy of recommendations which were received from State Governments and Administrative

Ministries till then were also supplied. The representatives of applicant companies during the course of their presentations used to themselves supply the hard copies of their presentations, if available to the members of Screening Committee along with copy of feedback form brought by them. He told that probably till that time the comments of MoP were not yet received in MoC. However, one letter from Secretary Power was received by that time. He told that no individual or separate minutes of the said meetings were prepared in MoC.

180. The copy of MoC file bearing no. 38011/1/2007-CA-I (Vol. II) available in D-29 is **Ex. PW 11/G (Colly.)**.

181. One DO letter dt. 20.06.2007 [available from page 136-137 in file Ex. PW 11/G (Colly.)] sent by Secretary (Power) Sh. Anil Razdan to MoC is **Ex. PW 11/G-1**. In the said communication, Secretary (Power) had communicated the following facts to Secretary (Coal) in para 3 and 4.

“3. The Screening Committee of the Ministry of Coal is holding presentations by the applicants for four days – 20th to 23rd June. The Ministry of Power has so far not made any case by case examination of the applications and has also not made any recommendations to the Ministry of Coal. I had indicated in my earlier reference that the views of the Ministry of Power would be communicated by the Ministry's representative at the Screening Committee. However, considering that over 740 presentations will be made before the Screening Committee, the official recommendations of the Ministry of Power would be possible only if all the data and presentations made by the developers before the Screening Committee are analysed and

processed on the file for approval.

4. We have, therefore, asked CEA to attend the presentations and document the same for analysis within the Ministry. CEA have been advised not to make any recommendations in the Screening Committee. The formal recommendations from the Ministry would follow shortly after due deliberations in the Ministry with the approval of the Minister of Power”.

182. Another DO letter dt. 11.05.2007 [available at page 135] sent by Secretary (Power) to Secretary (Coal) is **Ex. PW 11/G-2**. In the said letter also Secretary Power had mentioned the following facts in the last para:

“I, would therefore, request that instead of a specific case by case recommendations, if considered necessary, we could meet at your convenience to further discuss the broad approach to be followed in allocation of these blocks by the Screening Committee”.

183. The attendance sheets of 35th Screening Committee meetings held on 20.06.2007 to 23.06.2007 of the applicants’ representatives is **Ex. PW11/G-3 (Colly.)** [available from page 60-88 in file Ex. PW11/G (Colly.) (D-29)]. The representatives of JICPL had signed at page 61.

184. The attendance sheets of 35th Screening Committee meetings held from 20.06.2007 to 23.06.2007 of the members of the Screening Committee is **Ex. PW11/G-4 (Colly.)** [available from page 108-115 in file Ex. PW11/G (Colly.) (D-29)].

185. OM dated 19.07.2007 [available at page 140-141 in file Ex. PW 11/G (Colly.) (D-29)] is **Ex. PW11/G-5**.

186. He did not remember whether he had attended the 35th Screening Committee meeting held on 30.07.2007 or not.

187. One DO letter dated 30.07.2007 [available from 215-218 in file Ex. PW 11/G (Colly.)] vide which Secretary (Power) sent a short list of companies recommended for allocation to Secretary (Coal) is **Ex. PW 11/G-6**. As per this letter, the company M/s JICPL was recommended for its Bhagalpur, Bihar Project qua Patal East (Jharkhand) coal block for its 1 x 540 MW Ph-I and 1 x 660 MW Ph-II capacity power project.

188. The attendance sheet of the meeting held on 30.07.2007 of the members of Screening Committee is **Ex. PW 11/G-7** [available at page 148-149 in file Ex. PW 11/G (Colly.) (D-29)] .

189. PW-11 referred to note sheet page 11 in file Ex. PW 11/E (Colly.) (D-34) and to note dated 31.07.2007. Copy of letter dated 02.08.2007 [available at page 151 in file Ex. PW 11/G (Colly.) (D-29)] vide which Chairman, CIL was requested to depute two financial experts from CIL for scrutinizing financial details of applicants for coal blocks is **Ex. PW11/G-8**.

190. Copy of letter dated 02.08.2007 [available at page 155 in file Ex. PW11/G (Colly.)(D-29)] vide which Coal

Controller Kolkata was requested to depute four officials for scrutinizing applications for coal blocks earmarked for allocation through the Screening Committee is **Ex. PW 11/G-9**.

191. Office copy of letter dated 02.08.2007 [available at page 174-175 in file Ex. PW 11/G (Colly.) (D-29)] vide which Chief Secretary, Govt. of West Bengal was requested to get the status of preparedness of applicant companies verified in terms of the factors mentioned in the letter and to submit the report in the enclosed proforma within 10 days is **Ex. PW 11/G-10 (Colly.)**. The factors mentioned in the letter were the following:

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

192. In the enclosed proforma the names of applicant companies were mentioned qua whom verification report was sought and the name of M/s JICPL was also mentioned qua its proposed power plant at Burdwan, West Bengal of capacity 1215 MW.

193. Copy of letter dated 02.08.2007 [available at page 195-196 in file Ex. PW 11/G (Colly.) (D-29)] vide which Chief

Secretary, Govt. of Bihar was requested to get the status of preparedness of applicant companies verified is **Ex. PW 11/G-11 (Colly.)**. The factors were the same as in letter Ex. PW 11/G-10 (Colly.). In the enclosed proforma the names of applicant companies were mentioned qua whom verification report was sought and the name of M/s JICPL is also mentioned qua its proposed power plant at Aurangabad, Bihar of capacity 1215 MW.

194. He told that no separate minutes of the meeting held on 30.07.2007 was prepared in MoC.

195. He also told that reminders to State Governments were also sent as no reply to the earlier letters were received. The office copy of reminder letter dt. 10.08.2007 [available at page 200 in file Ex. PW 11/G (Colly.) (D-29)] sent to Chief Secretary, Government of West Bengal is **Ex. PW11/G-12** and sent to Chief Secretary, Government of Bihar is **Ex. PW11/G-13**.

196. The copy of MoC file bearing no. 38011/1/07-CA-I (Vol. VII) available in D-35 is **Ex. PW 11/H (Colly.)**.

197. The letter dated 24.08.2007 received from Govt. of West Bengal [available at page 22-50 in file Ex. PW 11/H (Colly.) (D-35)] in response to letter of MoC and vide which report was furnished by the said Govt. is **Ex. PW11/H-1 (Colly.)**.

198. The information as regard M/s JICPL under various heads was furnished was as under:

Information to be furnished by the State Governments.

Co. Sl. No.	Company Name	Proposed Capacity of end use plant (mw/mt pa)	District	State	EU P	Land		Water		Civil Construction	Status of Environmental clearance for End use Plant	Remarks	Email	Tel/ FAX No.
						Total Requirement (as per feedback form)	Already acquired in possession (as per feedback form)	Total Quantity required (as per feedback form)	Quantity already allotted by State Govt.	Status of Civil construction (in terms of Percentage)				
92	JAS Infrastructure Capital Pvt. Ltd	1215	Burdwan	W.B.	P	2500	Nil	NA	7700 cu.m/ hr	Not started	Not applied.			

199. One copy of letter dated 24.08.2007 [available from page 70-72] which is copy of letter Ex. PW 11/H-1 (Colly.) is **Ex. PW11/H-2 (Colly.)**. Another copy of the same letter [available from page 73-75] is **Ex. PW11/H-3 (Colly.)**.

200. Copy of letter dated 30.08.2007 [available from page 88-200 in file Ex. PW 11/H (Colly.) (D-35)] received from Govt. of Bihar in response to MoC letter dated 02.08.2007 and vide which report was furnished by said Govt. is **Ex. PW11/H-4 (Colly.)**.

201. Copy of MoC file bearing no. 38011/1/2007-CA-I (Vol. III) available in D-31 is **Ex. PW11/J (Colly.) (D-31)**.

202. Copy of OM dt. 6/8.09.2007 [available at page 47] vide which notice of the Screening Committee meeting to be held on 13.09.2007 at 02.30 PM in Conference Room, MoC Shastri Bhawan was issued to members of Screening Committee

is **Ex. PW11/J-1**.

203. He was present in the said meeting held on 13.09.2007. He told that in the said meeting, the Screening Committee finalized its recommendations qua various applicant companies block wise. He deposed that though he did not remember as to what all documents were supplied in the said meeting to the members but they had made available in the meeting hall the agenda note and all the recommendations received from State Governments and Administrative Ministries. As regard the decision arrived at by the Screening Committee recommendation sheets were signed by the members in the meeting hall itself.

204. The attendance sheet of the members of the Screening Committee meeting held on 13.09.2007 [available from page 81-82 in file Ex. PW 11/J (Colly.) (D-31)] is **Ex. PW 11/J-2**.

205. The recommendation sheets [available from page 83-87 in file Ex. PW 11/J (Colly.) (D-31)] which were signed by the members in the meeting hall and the same mentions the recommendations made by the Screening Committee is **Ex. PW 11/J-3**.

206. He told that in all the five recommendations sheets, the names of the recommended companies and the location of their respective end use plant are in the hand of K.C.

Samria/A-5.

207. He told that company M/s JICPL was however recommended for joint allocation of Mahuagarhi Coal Block in Jharkhand for its end use plant at West Bengal along with M/s CESC whose end use plant was located in Jharkhand. Secretary (Coal) Sh. H.C. Gupta had Chaired the said meeting. The minutes of the aforesaid meeting were also subsequently drawn up in MoC on the guidance and directions of Joint Secretary and Director CA-I.

208. He told that vide detailed note dt. 14.09.2007 [available from note sheet page 15-20 in file Ex. PW 11/E (Colly.) (D-34)], the minutes of the 35th Screening Committee were put up for approval of Secretary (Coal). Secretary (Coal) Sh. H.C. Gupta thereafter forwarded the file to Minister of State for Coal for Orders/approval qua para 16 of the note of Sh. R.N. Singh dt. 14.09.2007 which read as under:

“16. If the Minutes are approved by Secy (C), then the file may be submitted for approval of the Minister of Coal to the following:

- (i) Allocation of coal blocks to the recommended allocatees as indicated in Table above in para 11.
- (ii) For orders on Gourangdih ABC block of West Bengal, in the light of the facts mentioned at para 12 above.
- (iii) The suggestions made in para 13 above regarding allotment to the joint allocatees.”

209. The minutes of 35th Screening Committee meetings held on 20.06.2007 to 23.06.2007; 30.07.2007 and on 13.09.2007 available from page 1-41 in file Ex. PW 11/J (Colly.) (D-31) which were finally approved by Secretary Coal are **Ex. PW 11/J-4 (Colly.)**.

210. He deposed that before the minutes could be approved by Prime Minister as Minister of Coal, certain representations were received from some companies in PMO and said representations were referred to MoC by PMO and the same were dealt with at note sheet page 21 to 26 by MoC and also by Minister of State for Coal Sh. Dasari Narayan Roa vide his note dt. 11.10.2007.

211. Referring to notesheet page 26 in file Ex. PW 11/E (Colly.) (D-34), PW-11 stated that the file was thereafter returned from PMO with a note of Sh. Ashish Gupta Director PMO stating that Prime Minister as Minister of Coal had approved the recommendations of the Screening Committee regarding allocation of 16 coal blocks for the power sector as at para 16(I) on page 20 and also the suggestion on joint allocattee at para 16 (III).

212. He told that when the file was sent for approval to PMO, then along with the file containing the minutes of Screening Committee, a separate folder containing the

recommendations received from State Governments and Administrative Ministries and copies of the applications and the feedback forms of the recommended companies were also sent but in the note sheet there is no mention of the said folder so sent to PMO.

213. Copy of file of MoC bearing no. 38011/1/2007-CA-I (Vol. IV) available in D-32 is **Ex. PW 11/K (Colly.)**.

214. Office copy of letter dt. 06.11.2007 [available from page 131-133] which is option letter issued to the two joint allocattee companies of Mahuagarhi Coal Block i.e. M/s CESC Limited and M/s JICPL is **Ex. PW 11/K-1**. The response of the two companies was received vide letter dated 04.12.2007 [Ex. PW 3/E, Pg. 220 in file Ex. PW 11/K (Colly.) (D-32)]. A JV agreement so executed between the two companies [Ex. PW 3/D, Pg. 221-246] was also enclosed with the letter.

215. Copy of MoC file bearing no. 38011/1/2007-CA-I (Vol. V) available in D-33 is **Ex. PW 11/L (Colly.)**. The office copy of allocation letter dt. 09.01.2008 (available from page 71-89 and also page numbered 97 i.e. in all 20 pages) is **Ex. PW 11/L-1 (Colly.)**.

216. He told that vide letter dt. 25.02.2008 [available at page 15-16 on correspondence side pages Ex. PW 11/E-2 (Colly.) in file Ex. PW 11/E (Colly.) (D-34)], M/s JICPL sought amendment in the allocation letter dated 09.01.2008 [Ex. PW

11/L-1 (Colly.)] issued by MoC. The company explained that during the presentation made by them on 20.06.2007 before the Screening Committee, it was informed that the plant was being set up in Bihar and in the feedback form submitted to the Screening Committee, also it was clearly indicated that M/s JICPL was setting up the power project in Bihar. The allocation letter, however, was issued for EUP at District Burdwan, West Bengal. The letter dt. 25.02.2008 is **Ex. PW 11/E-4**.

217. Vide note sheet at page 45-46 in file Ex. PW 11/E (Colly.) (D-34), the aforesaid letter dt. 25.02.2008 of M/s JICPL was processed by CA-I section vide note dt. 20.03.2008. Another letter dated 29.04.2008 [available from page 34-36] M/s JICPL again requested for amendment in allocation letter. The letter dated 29.04.2008 is **Ex. PW 11/E-5 (Colly.)**.

218. A-3/H.C. Gupta Secretary (Coal) forwarded the file to Minister of State for Coal vide his endorsement and signature dt. 25.06.2008 stating *inter alia* that the proposal of M/s JICPL might be agreed as in the presentation also M/s JICPL had indicated that the power plant would be in Bihar and he also stated that in fact the allocation letter ought to have been issued by MoC for Bihar and not for West Bengal.

219. After seeing note sheet page 56 witness stated that the then Minister of State for Coal Sh. Santosh Bagrodia returned back the file vide his detailed note dt. 05.11.2008 bearing his signatures at point F and the note regarding JICPL read as under:

“Jas Infrastructure Capital Pvt. Ltd

The Company has been allocated Mahuagarhi coal block jointly with CESC for setting up 1000 MW power plant each in Mirzapur in Burdwan, West Bengal. The company has requested for change of location of end use plant from West Bengal to Bihar.

At the time of allocation, the Company has mentioned location of EUP both at West Bengal and Bihar. But at the time of furnishing feedback form, the Company has mentioned the location as Bihar.

Since the block has been jointly allocated, only the JV company formed can have the mining lease and the block has to be developed jointly as per the option opted for.

The company has pointed out immediately for change of location from West Bengal to Bihar. However, the change of location must meet the criteria and guidelines for allocation of coal block which would require scrutiny of land and water tie up, preparedness etc.

The above issues may be clarified and file resubmitted’.

220. Another letter dated 07.07.2009 of M/s JICPL addressed to Secretary (Coal), [available at page 42-84 on correspondence side in file Ex. PW 11/E (Colly.) (D-34)] vide which the company again requested for amendment in the allotment letter by seeking change of location of end use power plant to Bihar is **Ex. PW11/E-6 (Colly.)**.

221. The office copy of OM dt. 06.08.2009 [available from page 105-120 on correspondence side in file Ex. PW 11/E (Colly.) (D-34)] vide which comments of MoP were sought regarding change of location of EUP is **Ex. PW11/E-7 (Colly.)**. The MoP sent OM dt. 01.01.2010 in response to above said letter. The OM from page 121-124 is **Ex. PW11/E-8 (Colly.)**.

222. Vide office copy of letter dated 19.08.2010 [available at page 127-128 on correspondence side in file Ex. PW 11/E (Colly.) (D-34)], the request of the company was allowed and location of EUP was changed from Mirzapur, District Burdwan, West Bengal to Banka in Bihar. The letter dt. 19.08.2010 is **Ex. PW11/E-9**.

223. PW-11 told that neither in any correspondence received from M/s JICPL nor in any note sheet page as referred to by him, there was any mention of project report of the power plant proposed to be established by M/s JICPL at Banka, Bihar. He also told that the matter regarding final approval qua change of location of end use plant from West Bengal to Banka, Bihar was never placed before the Screening Committee for its consideration and approval.

224. Copy of OM dt. 21.05.2008 [available at page 166 in file Ex.PW 11/C (Colly.) (D-38)], the MoP made request to return the 22 unopened trunks which were containing applications for allotment of captive coal blocks and which were sent to MoP by MoC vide communication dt. 17.04.2007. The office memorandum is **Ex. PW 11/C-7**.

225. Another OM dt. 10.06.2008 [available at page 221-222] vide which a fresh request was received from MoP seeking to return the trunks is **Ex. PW 11/C-8 (Colly.) (D-38)**.

226. Office copy of OM dt. 20.08.2008, available at page

211, vide which MoP was informed to retain the applications as per past practice is **Ex. PW 11/C-9**.

227. In cross-examination on behalf of A-1 & A-2, he told that as per his knowledge, no special treatment of any nature whatsoever was accorded to any of the applicant companies including M/s JICPL either at the stage of processing of the applications in MoC or while considering them in the Screening Committee or even subsequent thereto.

228. Upon being asked as to the meaning of the words “Cursory Glance”, he told that it meant that the persons who were deputed to receive the applications checked the name of the coal block(s) for which application was being moved, location of the coal block, nature of end use project and location of end use project and also as to whether five sets of applications were there or not.

229. His statement u/s 161 CrPC dt. 30.10.2012 was marked as **Ex. PW 11/DX-1**.

230. He told that the meaning or definition of the word “Net Worth” was not put up in public domain by MoC for the information of applicants at large. Similar was his reply with regard to the meaning or definition of the words “Principal”, “Group” and “Promoter”.

231. He told that the scrutiny of the applications for their eligibility and completeness was not carried out for various

reasons i.e. there were no directions in this regard from the senior officers and there was also shortage of man power in CA-I Section. Moreover, they in CA-I Section were not having any knowledge of technical, financial or legal matters involved.

232. He admitted writing note dt. 25.10.2006 at page 1/n in file portion Ex. PW 11/A-1 (Colly.)(D-37) to the following effect:-

“Discussed with JS(C) on 25/X/2006. Issue the proposed letter to CMD, CMPDI & put up file again”.

233. He told that the meeting in the Chamber of Joint Secretary (Coal) to work out the modalities for receiving and processing of applications was held prior to 20.12.2006 but he did not remember the exact date of meeting except that it was held after issuance of advertisement.

234. Upon being asked as to who was responsible to check the applications for their completeness and eligibility, the witness stated that he was unable to comment anything in that regard.

235. He admitted that in the letters vide which copy of applications of different applicant companies were sent to various concerned stake holders, it was not mentioned that the applications had not been checked for their eligibility in MoC.

236. He also admitted that in the minutes of the

meeting held on 11.05.2007 [Ex. PW 11/C-6 (Colly.), D-38, Pg. 102-104/c], it was nowhere mentioned that the applications had not been checked for the eligibility and completeness.

237. During cross-examination, certified copy of the counter affidavit dated 07.11.2008 filed in WP(C) No. 7135 of 2008 titled “M/s Prakash Industries Ltd. Vs. Union of India” and signed by PW-11 himself was marked as **Ex. PW 11/DX-2**.

238. He admitted that following facts were mentioned in para 4, 12 and 13 of preliminary submissions in the counter affidavit:

“PRELIMINARY SUBMISSIONS:-

4. Coal mining blocks are recommended for allocation by the Screening Committee headed by Secretary (Coal) as the Chairman, out of the blocks, which have been identified and offered for captive purposes. The Screening Committee has, as its members, representatives from Ministries of Steel, Power, Industry & Commerce, Environment & Forests and Railways, Coal India Limited (CIL), Central Mines Planning and Design Institute Limited (CMPDIL) and the concerned State Governments where block is located and the end use plant is to be set up. Applications received for allocation of coal blocks are referred to the State Governments where block is located and the end use plant is to be set up and the administrative Ministries concerned, which, inter-alia, scrutinize them in view of track record of applicant company, techno-economic viability of the end-use projects, and assessment of coal requirement in terms of quality and quantity etc and make their comments/recommendations to the Screening Committee. CMPDIL/CIL also scrutinize the

applications from the point of qualitative and quantitative matching of the projected coal requirement with that available in the sought block and other associated matters and submit feedback of block, to the Screening Committee. The Screening Committee with the benefit of these comments/recommendations and records provided by CMPDIL/CIL, after giving an opportunity to the applicants to present their case, decides each case on its relative merits.

12. The Screening Committee, therefore, deliberated at length over the information furnished by the applicant companies in the application forms, during the presentations and subsequently. The Committee also took into consideration the views/comments of the Ministry of Power, Ministry of Steel, State Governments concerned, guidelines laid down for allocation of coal blocks etc and made the recommendations for allocation of coal blocks including Fatehpur block. The Screening Committee recommendations were placed for consideration and approval of the Govt. The approval of the Govt. was conveyed on 23.10.2007. A copy of the Minutes of the 35th meeting of the Screening Committee is enclosed herewith as Annexures-II.

13. Based on the recommendations of the Screening Committee as approved by the Government, the Fatehpur captive coal block has been jointly allocated to M/s SKS Ispat Ltd and M/s Prakash Industries Ltd. for their power plant of 1000MW and 625MW capacity respectively. Therefore, the capacity of M/s SKS Ispat Ltd. has been taken as 1000MW, as per the capacity indicated in its application form subject to the maximum of 1000MW as per the guidelines of the Ministry of Power, which are already explained in the foregoing paragraphs. It may be noted that the guidelines of the Ministry of Power and the Ministry of Coal for allocation of captive coal blocks have been applied uniformly to all applicants before deciding the allocation of coal blocks and consequent equitable proportionate distribution of shares of geological reserves. So far as the representations of the

petitioner dated 13th November, 2007, 16th November, 2007, 28th August, 2008 and 15th September, 2008 are concerned, the same did not warrant any action afresh, since the petitioner has been fully aware of the proceedings of the Screening Committee meetings held which were based on the guidelines enumerated and the presentations given by the petitioner before the Screening Committee. Further, the recommendations of the Screening Committee meeting has the approval of the competent authority and revisiting the same would be offsetting the recommendations and scrutiny done by the Screening Committee based on the guidelines. Hence, re-looking the recommendations of the Screening Committee would have undone the exercise of allocation already finalized.”

239. In cross-examination on behalf of accused public servants, he admitted that he had been examined as a prosecution witness in various cases of coal block allocation matters such as CBI Vs. M/s VMPL & Ors., CBI Vs. M/s KSSPL & Ors., CBI Vs. M/s NPPL & Ors. and CBI Vs. M/s JLD Yavatmal Energy Ltd. & Ors. etc.

240. He told that the applications received qua 35th and 36th Screening Committee were processed in the same manner as the applications received for 34th Screening Committee. He told that the applications received qua 35th and 36th Screening Committee were processed together by CA-I Section. He told that the checking of applications for their eligibility and completeness did not take place even at the time of 34th Screening Committee.

241. His previous cross-examination dated 06.10.2017 as conducted in case CC No. 74/2016 titled CBI Vs. Y. Harish Chandra Prasad & Ors. (NPPL) was put to him which he admitted. He had told as follows:

“At the time when the officials were deputed to receive the applications then at that time itself it was told to them to cursory check the annexures of the application being submitted including the draft. Witness further stated that the officials were told to cursory check as to whether annexures were there or not. Vol. There were five sets of the applications and the set in which there was draft was to be checked.”

242. He admitted that aforesaid directions were given to CA-I Section officials who were deputed to receive the applications. He also admitted that the availability of annexures of the applications were also told to be cursorily checked.

243. His previous cross-examination dated 06.11.2017 as conducted in abovesaid case was also admitted wherein he told as follows:

“Question: Is it correct that checking of applications for eligibility and correctness was carried out only in one set of the applications and not in the other four sets of the applications?”

Ans. As stated by me in my earlier deposition that a cursory glance was given to the documents as were available in all the five sets. However the contents of the documents were not seen by us but it was only seen as to whether all documents were available or not”.

244. His previous cross-examination dt. 21.10.2016 recorded in case CC No. 03/16 CBI vs VMPL & Ors. was put to him and he admitted having stated while referring to the application of M/s VMPL that the incomplete applications were not entertained by MoC.

245. He told that the “incomplete applications” referred to by him were regarding the availability of draft and five sets of the applications. However, he admitted that in his deposition recorded in the case CBI vs VMPL and Ors., he had stated that incomplete applications were not entertained by MoC with reference to the availability of project report along with the application of M/s VMPL and not with reference to draft of processing fees.

246. He denied the suggestion that the applications were checked for their completeness at the time of 34th Screening Committee and in the same manner they were checked at the time of 35th and 36th Screening Committee.

247. He was shown List A titled “Applications found complete on first scrutiny (subject to change subsequently)” and List B titled “Applications found in-complete/in-valid on first scrutiny (status may change on second scrutiny)” available from pg. 10-27 in MoC file bearing no. 38011/3/2006-CA-I (Vol. II) available as D-3 in case CC No. 296/2019 titled “CBI vs. Grace Industries Ltd.”, which pertained to 34th Screening Committee and he was asked that the two lists as above showed that the

applications were checked for their completeness in MoC and he had dealt with the said file. In response, after going through the file, he stated that though the said file had been dealt with by him but to his knowledge no such exercise was ever undertaken and also stated that no noting in the said file existed in this regard and nothing was ascertainable as to who had prepared the said lists. Copy of list A and list B are **Ex. PW 11/DX-3 (Colly.)**.

248. A copy of communication dated 22.07.2006 of M/s Kesoram Industries Ltd is **Ex. PW 11/DX-4 (Colly.)**. Similarly, a copy of communication dt. 09.08.2006 of Dr. Sabhyasachi Sen is **Ex. PW 11/DX-5**. PW-11 was also shown note sheet page 29 in MoC file bearing no. 13016/23/2005-CA-I [available as D-12 in case CC No. 296/19 titled “CBI Vs. Grace Industries Ltd.”] and wherein a note of R.N. Singh dated 04.09.2006 was put up before the witness regarding complete/incomplete applications and which read as under:

“It is noted that some D.D. submitted along with application lost validity period as some were not deposited in account well in time. Probably some applications were considered as incomplete for that reason D.D. might have not been deposited. As we are inviting all the applications irrespective of status of complete/incomplete, it is proposed that available DDs be returned to concerned parties for sending to Govt after revalidation.

DFA
For decision

Sd/-
(R.N. Singh)
4/9/06

US(CA-I)

In view of the above note, we may send the demand draft to the concerned party/company for revalidation of draft.

Submitted for approval, please.

Sd/-
(V.S. Rana)
5/9/06”

249. Witness was thus asked as to whether he was now able to recollect the facts regarding preparation of said two lists. Witness in response however stated that he was still not able to recollect as to on what basis the applications were stated as complete/incomplete.

250. He admitted that as per guidelines issued by MoC, the applications were to be stated as complete only when all the required documents as were asked for were annexed with the same.

251. He admitted that during the course of investigation of various coal block allocation matters, when the IO pointed out to him deficiencies in various applications then only it came to his knowledge that some of the applications were incomplete.

252. He did not remember whether he had earlier deposed

in any case or had stated in any statement before CBI that in the initial 2-3 days of receiving of applications, the same were segregated state-wise and nature of end use wise but later on when the number of applications increased then the segregation exercise was undertaken after the last date of receipt of applications. He was confronted with his deposition earlier recorded in the case(s) CC No. 04/14 titled CBI Vs. KSSPL & Ors; CC No. 03/16 titled CBI Vs. VMPL & Ors; CC No. 06/14 titled CBI Vs. Grace Industries Ltd; CC No. 07/14 titled CBI Vs. VISUL & Ors; CC No. 04/15 titled CBI Vs. PSMPL & Ors; CC No. 02/14 titled CBI Vs. Y. Harish Chandra Prasad & Ors and CC No. 06/15 titled CBI Vs. JLD Yavatmal Energy Ltd & Ors which are **Ex. PW 11/DX-6; Ex. PW 11/DX-7; Ex. PW 11/DX-8; Ex. PW 11/DX-9; Ex. PW 11/DX-10; Ex. PW 11/DX-11 and Ex. PW 11/DX-12** respectively.

253. He was also confronted with his statements u/s 161 CrPC recorded during the course of investigation of other coal block allocation matters i.e. CBI Vs. PSMPL & Ors; CBI Vs. VMPL; CBI Vs. VISUL; CBI Vs. KSSPL; CBI Vs. JLD Yavatmal Energy Ltd; CBI Vs. Grace Industries Ltd; CBI Vs. Y. Harish Chandra Prasad; CBI Vs. SKS Ispat (RC No. 15/14) and CBI Vs. Revati Cement which are **Ex. PW 11/DX-14 (Colly.) ; Ex. PW 11/DX-15; Ex. PW 11/DX-16; Ex. PW 11/DX-17; Ex. PW 11/DX-18 and Ex. PW 11/DX-19 (Colly.)**. The copy of statements u/s 161 Cr.PC recorded by CBI in the cases, CBI Vs. Y. Harish Chandra Prasad; CBI Vs. SKS Ispat (RC No. 15/14)

and CBI Vs. Revati Cement are **Ex. PW 11/DX-20; Ex. PW 11/DX-21 and Ex. PW 11/DX-22.**

254. He denied that he had informed K.C. Samria/A-5, Deputy Secretary, MoC while he was posted in CA-II Section, MoC that preliminary scrutiny of applications and sorting would be carried out between 12.01.2007 and 05.02.2007.

255. After seeing a communication dated 22.01.2007 sent by K.C. Samria/A-5 to Director (CA-I), Director, (CPD), Director (Tech.) with copy to US (CPD), US (CA-I), US(CRC), US(CPAM), US(CA-II) alongwith with response sent to the said communication by the PW-11 on 31.01.2007, available from page 67-72 in MoC file bearing No. 47011/4/2003-CB-CA(Pt) [available as D-40 in case CC No. 3/16, titled “CBI Vs. VMPL & Ors.”], he admitted having sent his response vide endorsement dated 31.01.2007 and thereby furnishing requisite information in respect of identification of policy measures and other specific initiatives to be taken up by the Ministry in the current year for allocation of coal block under Government as well as captive dispensation. Copy of the aforesaid communication of K.C. Samria and response of the witness is collectively **Ex. PW 11/DX-13 (Colly).**

256. He admitted that as per the guidelines issued by MoC, the applications were supposed to be treated as ready for dispatch to Administrative Ministries / State Governments / CMPDIL only when they were checked for their eligibility and

completeness in MoC. He admitted that note dt. 19.02.2007 of R.N. Singh at pg. 10/n in file Ex. PW 11/A (Colly.) (D-37) was approved by him and it was not sent to any senior officer by him. He further admitted that subsequently R.N. Singh put up a note dt. 01.03.2007 (available at pg. 10/n) seeking to upload list of applicants on the website of MoC as per a format proposed in DFA. One office copy of communication dt. 16.03.2007 available at pg. 128 in file Ex. PW 11/A (D-37) is **Ex. PW 11/DX-23**.

257. He denied that the lists of applicant companies uploaded at the time of 34th Screening Committee were two lists i.e. of complete applications and of incomplete applications. He denied that lists Ex. PW 11/DX-3 (Colly.) were the lists uploaded at the time of 34th Screening Committee or the lists as were seen by him while sending letter dt. 16.03.2007 Ex. PW 11/DX-23 (D-37).

258. He admitted that only such states were members of Screening Committee where the coal blocks were situated.

259. He admitted that MoC did not prepare any *inter se* priority list of the applicant companies qua 35th/ 36th Screening Committee on its own or ever submitted any such list/recommendation to 35th/ 36th Screening Committee. No such exercise was even carried out with respect to the applications received qua 31st to 34th Screening Committee.

260. As per his knowledge, no written communication was received from any member of Screening Committee relating to 31st to 36th Screening Committee wherein any request was made to MoC to provide them any such *inter se* priority list or recommendations of the applicant companies.

261. He told that the agenda of 35th Screening Committee was provided to all the members and the same contained the applications submitted by all the applicant companies in the prescribed proforma without any accompanying documents.

262. He did not remember whether the recommendations of MoP as were received on 30.07.2007 were supplied to all the members of Screening Committee or not. He also did not remember whether the said recommendations of MoP were subsequently supplied to the members prior to the final meeting held on 13.09.2007 or not.

263. He admitted his cross-examination dated 11.09.2018 recorded in the case “CBI Vs. M/s JLD Yavatmal Energy Ltd. CC No. 06/15” at page 4 of 6 and admitted having stated the following facts:

“It is correct that till the final decision was arrived at by 35th Screening Committee the applications along with their annexures as were lying at Scope Minar Laxmi Nagar were never brought to the office of MoC at Shastri Bhawan, New Delhi. In the Screening Committee meetings the members used to be accompanied with one or two officials of their department, who used to carry some documents but I am not aware as to what all documents they used to carry.”

264. It is correct that the officials of office of coal controller were called for assisting in receiving the applications.

265. He admitted that as per the guidelines issued by MoC governing allocation of captive coal blocks, the applicant should be an incorporated company to be eligible for allocation of captive coal block.

266. He admitted that as per the guidelines issued by MoC, the applications were to be scrutinized for their eligibility and completeness before sending applications to State Government and the Administrative Ministries by MoC. As per the guidelines, no other scrutiny of the applications was to be carried out by MoC.

267. As to whether after 14th and 18th Screening Committee meetings, it was the job of Administrative Ministry and State Governments to verify the correctness of the claims made by various applicant companies, PW-11 stated he did not remember the exact directions so given in the aforesaid two Screening Committee meetings but in so far as he was able to recollect there were some directions relating to verification of track records of applicant companies by the State Governments and Administrative Ministry before sending their recommendations.

268. Though it was nowhere specified as to who will

check the correctness of the claims made by any applicant company regarding its financial strength but Ministry of Coal did not use to check the same and in so far as State Governments / Administrative Ministry are concerned, he was not aware as to whether they used to check the same or not.

269. He admitted his cross-examination dated 06.10.2017 recorded in the case CBI Vs. M/s NPPL (Y. Harish Chandra Prasad & Ors.) CC No. 74/2016 at page 27 of 32 and admitted having stated the following facts:

“Q. Was it thus your understanding in the year 2012 that Ministry of Power shall examine the claims made in the applications?”

A. At that time I was under the impression / understanding that Ministry of Power will examine and thereafter will make recommendation to MoC.”

270. He admitted that his aforesaid understanding was based on past practice being followed.

271. About in what context the applications could not be properly scrutinized, the witness stated that the applications could not be individually scrutinized by opening separate files qua them.

272. He admitted that fresh advertisement qua 35th and 36th Screening Committee was issued by MoC pursuant to directions given in Energy Coordination Committee Meeting held in PMO.

273. He admitted his cross-examination dated 29.05.2018 recorded in the case CBI Vs. M/s JLD Yavatmal Energy Ltd. CC No. 06/15 at page 3 of 18 and admitted having stated the following facts:

“That after approval of the advertisement a meeting was held in the office of Joint Secretary Coal and where the process/manner in which the applications were to be dealt with in MoC was discussed and the applications were accordingly dealt with in the same way in MoC.

There is no noting in the file pertaining to the aforesaid meeting held in the chamber of Joint Secretary Coal. The said meeting however took place after issuance of advertisement but before receipt of applications.”

274. He did not remember as to whether the reports received from State Governments pursuant to decision of Screening Committee held in the meeting dt. 30.07.2007 and as was asked for vide communication dt. 02.08.2007 was put up before the Screening Committee in the next meeting or not.

275. He was confronted with his statement u/s 161 Cr. PC dt. 13.01.2015 recorded in case CBI vs SKS and Ors. bearing RC No. 219 2014 E 0015 from portion A to A, wherein it is recorded that the complied reports of the State Governments were placed before the members of Screening Committee. The certified copy of said statement u/s 161 Cr. PC is **Ex. PW11/DX-24**.

276. He admitted his cross-examination dated 11.09.2018 recorded in the case CBI Vs. M/s JLD Yavatmal Energy Ltd. CC

No. 06/15 at page 1-2 of 6 and admitted having stated the following facts:

“It is correct that whenever any senior officers takes any decision on any point or decides a particular course of action on any point then his subordinate officers are supposed to follow and execute the same. If the Director takes a decision on any issue in writing then I as Under Secretary is not empowered to issue any directions to the Section Officer to act either contrary to the said direction of Director or to not to follow the same unless confirmed by the same officer. Vol. However, if in the intervening period any verbal directions are given by the same senior officer then there may be a change in the course of action to be undertaken.

During the year 2007-08, I was not aware that M/s AMR Iron & Steel Ltd was a related company of M/s JLD Yavatmal Energy Ltd or not.

In the hierarchy if a senior officer has given a particular direction or has decided a course of action then an officer junior to him cannot change the said directions or the said course of action unless approved by the same senior officer. Vol. If the same senior officer in the meantime gives some verbal directions then the decision or course of action may be changed.”

277. He further admitted his cross-examination dated 10.09.2018 recorded in the case CBI Vs. M/s JLD Yavatmal Energy Ltd. CC No. 06/15 at page 22 of 22 and admitted having stated the following facts:

‘Since I was not present in the meeting held on 11.05.2007, in the office of Secretary Coal so I have no personal knowledge as to what transpired in the said meeting. The minutes were prepared and put up by CA-I Section. Since I do not remember as to whether the directions by the senior officers qua preparation of minutes of the meeting held on 11.05.2007 were given

in my presence or not to CA-I Section so I can neither admit nor deny the suggestion that no such directions were given to CA-I Section in my presence. Similar is my answer with respect to the question as to what directions were given by the senior officers to CA-I Section towards preparation of minutes of meeting held on 11.05.2007 or as to who were the senior officers who gave the directions.”

278. He could not comment to the suggestion that thorough and comprehensive examination, appraisal and evaluation of all the applications was being made by the Administrative Ministries and the State Governments concerned; and thereafter by the Screening Committee and thereafter by the office of Minister of State for Coal; and finally by the Prime Minister's Office (PMO).

279. **PW-18 Sh. S.K. Shahi** is also from MoC. He was posted in MoC from February 2013 till July 2016.

280. During the year 2013, he had made certain correspondence with CBI with regard to investigation of coal block allocation matters. Letter dated 04.06.2013 which is already **Ex. P-6/PW-17 (D-42)** is signed by him. Vide this letter he had furnished details of the coal blocks allocated to M/s AIL, M/s CIAL and M/s Jayaswal Neco Industries Ltd. Vide Office Memorandum dated 03.05.2013 [**Ex. P-4/PW-17(Colly.) (D-26)**], he had provided a clarification in response to CBI's letter No. 1043/3/coal scam cases dated 04.02.2013. The OM reads as under:

“New Delhi dated 3rd May, 2013

OFFICE MEMORANDUM

Sub: Investigation of CBI case No. RC 219-2012-E-0008, RC 219-2012-E-0009 and RC 219-2012-E-0010-Reg.

Reference is invited to CBI's letter No. 1043/3/Coal scam cases dated 04.02.2013 on the above subject and to say that the column No. 29 and 30 of the application format for applying for allocation of coal blocks are meant for furnishing the information by the applicant company regarding earlier coal blocks allocated to the applicant company or its group/associated companies. From the records available, the rationale/logic for keeping column No. 29 & 30 in the application form could not be ascertained. However, the Guidelines for allocation (copy enclosed) inter alia provide for the evaluation criterion of technical experience (in terms of existing capacities in coal/lignite mining and specified end use) and track record, which could have possible link to the column no. 29 and 30 in the application form.

Encls: AA

1

*Sd/-
(S.K. Shahi)
Director”*

281. Further vide OM dated 02.05.2013 [Ex. P-5/PW-17 (D-27)], PW-18 had furnished response to various queries of CBI. The queries of CBI were received through following communications:

- i. CBI's letter No. 2225/3/15/2012 EOU-V, DELHI dated 21.03.2013 received from Shri V. Murugesan, DIG/CBI, EO.II.*
- ii. CBI's letter No. 2226/3/15/2012 EOU-V, DELHI dated 21.03.2013 received from Shri V. Murugesan, DIG/CBI, EO.II.*

iii. CBI's letter No. 2553/RC: 219 2012 E 0011/EOU-IV, dated 02.04.2013 received from Shri K.L. Moses, Inspector of Police/CBI, EOU-IV.

iv. CBI's letter No. 2131/3/RC-219-2012-E-0010 dated 15.03.2013 received from Dr. V. Murugesan, HOB/CBI, EO-II.

v. CBI's letter No. 2629/3/16/2012, EO-V, DELHI dated 05.04.2013 received from Shri Sanjay Dubey, Inspector of Police/CBI, EOU-V.

vi. CBI's letter No. 12054/3/16/2012, EO-V, DELHI dated 05.12.2012 received from Shri Sanjay Dubey, Inspector of Police/CBI, EOU-V.

282. The response of PW-18 to the aforesaid queries was as follows:

“2. In this regard, it is informed that from the records/documents as available, it is seen that the applications received from the applicant companies for allocation of 38 coal blocks (15 power blocks which were considered in 35th Screening Committee meetings and 23 non-power blocks which were considered in 36th Screening Committee meetings) advertised in November, 2006 do not appear to have been checked for the eligibility and completeness in the Ministry of Coal before sending to administrative Ministries/State Governments for examination and comments thereon. However, a set of applications received was also sent to CMPDIL, which is a technical organization under CIL, for examination and comments. Further, as per the minutes of 35th Screening Committee, it is seen that it was decided that the State Governments may be asked to carry out a quick verification of the data used by the Ministry of Power for techno-economic evaluation of end use projects. Minutes further record that the verification reports were received from most of the State Governments. It also appears from the records that the Screening committee had not entrusted the job of checking of applications to any official.

The Feedback form and presentation made by M/s

Kamal Sponge Steel & Power Ltd. Could not be located in the concerned Section in the Ministry No. circulars/office orders/guidelines etc. describing the role of officers/officials of Ministry of Coal during the process of allocation of coal blocks by 35th and 36th Screening Committee were found to have been issued.”

283. In cross examination on behalf of A-2, it has come that PW-18 was not posted in MoC at the time of receiving the applications and their processing.

284. He stated that to check the applications for their eligibility and completeness received in the year 2006-07 was the job of the then CA-I Section, MoC.

285. He was also cross-examined on behalf of accused public servants on similar lines as A-2.

From Ministry of Power or CEA

286. **PW-14 is Sh. Anil Kumar Kutty.** He is from MoP.

287. He proved copy of one file of MoP as **Ex. PW14/A (Colly.) (D-40)**. He referred to some notesheets at pages 44-47/n therein and also to the guidelines regarding *inter se* priority as per which the following factors were to be considered:

- “Status (stage) level of progress and state of preparedness of the projects.
- Net worth of the applicant company (or in the case of a new SP/JV, the net worth of their principals).
- Production capacity as proposed in the

application.

- *Maximum recoverable reserve as proposed in the application.*
- *Date of commissioning of captive mine as proposed in the application.*
- *Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application.*
- *Technical experience (in terms of existing capacities in coal/lignite mining and specified end use).*
- *Recommendation of the Administrative Ministry concerned.*
- *Recommendation of the State Government concerned (i.e. where the captive block is located).*
- *Track record and financial strength of the company.”*

288. He told that after the file was put up before him, he put up a detailed note under his signatures dated 19.06.2007 at pages 46-47/n and observed in para 3 as under:

“3) From the point of view of the Ministry of Power, the following issues needs to be taken into account while deciding our response.

a) the representative of Ministry of Power is only one among the 13 members of the Screening Committee.

b) the Ministry of Coal has already announced the “guidelines for inter-se priority for allocation of blocks among competing applicants” and the recommendation of the administrative ministry is just one (S. No. 10) out of the ten criteria.

c) however, an examination of the conditions shows that the Ministry of Power would directly/indirectly have to be associated with the Sl. Nos. 1, 2*, 7*, 8* and 10* (para 2 above).”*

289. He deposed that he had proposed in his note that as

MoC was holding presentation by the applicants i.e. from 20th to 23rd June and as MoP had so far not made any case-wise examination of the applications and had also not made any recommendations to MOC, and also that Secretary (Power) had already intimated to Secretary (Coal) in his letter that the views of MoP would be communicated by the ministry's representatives at the Screening Committee, so, considering that over 740 presentations would be made before Screening Committee, the official recommendations of the MoP would be possible only if the data and presentations made by the developers before the Screening Committee were analyzed and processed on file for approval of the Secretary/MoP. His note was approved by Sh. Anil Razdan Secretary Power vide his signatures dated 20.06.2007.

290. He told that thus the network which was required to be seen was for the purpose of assessing the capacity of the organization to raise sufficient funds for establishing the power project in question.

291. The note sheet pages from page 1-64/n in file Ex. PW 14/A (Colly) (D-40) are **Ex. PW14/A-1 (Colly.)** and the correspondence side pages from page 1-295/c are **Ex. PW14/A-2 (Colly.)**.

292. The office copy of one DO letter dated 20.06.2007 at pages 66-67/c in Ex. PW14/A-2 (Colly) is **Ex. PW14/A-3**. The response of MoC to letter dated 30.06.2007 is **Ex. PW14/A-4**.

Office copy of letter dated 26.06.2007 at pages 68-70/c is **Ex. PW14/A-5 (Colly.)**. It was mentioned as follows in the said letter:

“Please refer to this Ministry's D.O. letter of even number dated 20.06.2007 from Secretary, Ministry of Power to Secretary, Ministry of Coal (copy enclosed). Since the presentations made by the developers before the Screening Committee on coal blocks in the Ministry of coal are now over, I would request you to kindly have these presentations expeditiously documented on the parameters already indicated. The level and state of preparedness being an important criteria, these should be analyzed in a transparent manner against tangible and verifiable yardsticks like land acquisition, water linkages and other required statutory clearances etc. The net worth of the applicant company should be only a qualifying criteria and the yardstick adopted for the UMPPs may be adopted for analyzing these projects also. I request you to kindly complete this analysis and get it computerized and sent to us latest by 2nd July, 2007 so that the matter could be further taken up for making formal recommendations to the Ministry of Coal.

The matter may be treated as Most Immediate”

293. He also proved copy of MoP file bearing No. FU-10/2003-IPC B-II as **Ex. PW14/B (Colly.) (D-41)**.

294. Copy of letter dated 30.07.2007 at page 49-78 in file Ex. PW14/B (Colly.) vide which the blockwise recommendations for allocation of coal blocks to IPPs/CPPs alongwith summary of recommendations was sent by CEA to MoP is **Ex. PW14/B-1 (Colly.)**. He told that a note dated 30.07.2007 was put up by him vide note sheet page 53 in file Ex. PW14/A (Colly.)(D-40) to

Secretary, Power for approval.

295. The communication dated 13/16.07.2007 available from page 131-219 in file Ex. PW14/A (Colly.) is **Ex. PW14/A-6 (Colly.)**. The communication dated 26.07.2007 available from page 220-229 in file Ex. PW 14/A (Colly.) is **Ex. PW14/A-7 (Colly.)**.

296. He told that subsequently, vide letter dated 30.07.2007 (available from page 38-41), the recommendations of MoP as were received from CEA were sent to MoC for being placed before the Screening Committee for their consideration. The copy of letter dated 30.07.2007 alongwith summary of recommendations as enclosed is **Ex. PW14/B-2 (Colly.) (D-41)**.

297. He told that A-1 company M/s JICPL was recommended jointly with M/s Bhushan Power & Steel Ltd. for Patal East (Jharkhand) coal block for its proposed project at Bhagalpur, Bihar.

298. He told that vide letter dated 24/27.08.2007, the methodology adopted by CEA in short-listing the applicant companies at the stage of pre-qualification or thereafter short-listing and making block-wise recommendations was enclosed. The said letter is **Ex. PW14/B-3 (Colly.) (D-41)** (from page 80-85).

299. One OM dated 29.05.2007 [available from page 55-59 in a file of MoC Ex. PW11/D (Colly.) (D-30)] vide which

minutes of the Coal Coordination Committee meeting held on 18.05.2007 in MoP were sent to MoC is **Ex. PW14/C (Colly.) (D-30)**.

300. In cross-examination on behalf of A-1, he stated that networth was an important factor for considering *inter se* priority. He told that he was aware that IL&FS or IDFC used to associate with other companies to set up power projects in the country. He almost agreed that the purpose of aforesaid association with IL&FS and IDFC was to consider their financial strength for the project of applicant company getting associated with them.

301. Upon being asked as to what weight was to be assigned to the ten factors mentioned in the *inter se* priority guidelines issued by MOC, the witness stated that it was for the Screening Committee to consider and decide and not for MoP.

302. A question regarding what weightage was to be given to the different factors as mentioned in note dt. 19.06.2007 was disallowed by my learned Predecessor.

303. He was confronted with his statement u/s 161 CrPC dated 22.05.2013 which is **Ex. PW14/DX-1/A-1** wherein the following facts were not mentioned:

“Applications of various companies were received in 22 trunks in Ministry of Power from MOC but as Ministry of Power had already taken a decision not to make recommendations on case to case basis and also we were told that presentations shall be made before the Screening Committee by all the applicant

companies so we asked CEA (Central Electricity Authority) officers to attend the presentations in MOC.”

304. In cross-examination on behalf of accused public servants, copy of one OM dated 12.10.2006 [available from page 24-27, in file Ex. PW14/B (Colly.) (D-40)] vide which MoP had informed Secretary (Coal) about three lists of coal blocks which had been identified by MoP in consultation with MoC was marked as **Ex. PW14/DX-2 (Colly.)/A-5.**

305. He admitted that since 2004, MoC was trying to do away with Screening Committee route for allocation of captive coal blocks. According to PW-14, MoP had taken a view that MoC should continue with Screening Committee route for allocation of captive coal blocks.

306. Copy of one note dated 13.12.2006, titled “*Note for the cabinet*” issued by Ministry of Mine, Government of India [available from page 366-403 (running into 38 pages) in MoP file i.e. FU-5/2003 IPC Volume-II] is **Ex. PW14/DX-3 (Colly.)/A-5.** This note contains views of various Ministries and that of State Governments in para 8.

307. He admitted that the application forms were sent to MoP by MoC and thereafter they were sent to CEA. He told that he came to know later on that CEA had not taken the said applications which were in 22 boxes and they had attended the presentation and where they had received the required papers.

This fact came to his notice much later i.e. even after the allocation of coal blocks had taken place. He told that he had never instructed CEA not to accept the applications or not to peruse them.

308. He admitted that vide DO letter dt. 20.06.2007 [Ex. PW14/A-3 (D-40)] sent by Sh. Anil Razdan Secretary (Power) to Secretary (Coal), it was conveyed that MoP would be associated with only certain specific aspects of the *inter se* priority guidelines issued by MoC. He admitted that vide the said DO letter MoP had agreed to give its recommendations on the basis of *inter se* guidelines issued by MoC, though qua some aspects only.

309. About how in the absence of approval of Minister of Power on 30.07.2007 in the file, the recommendations were sent to Screening Committee on 30.07.2007 itself, the witness stated that the Secretary (Power) might have obtained such consent of Minister on telephone itself.

310. **PW-15 is Sh. Manjit Singh Puri.** At the relevant time, he was posted in CEA which comes under MoP. He described his role as an official of CEA.

311. He deposed that in the month of June 2007, he along with some other CEA officers had attended some meetings of 35th Screening Committee on the directions of his ministry i.e. MoP. In the said Screening Committee meetings, presentations were

made by various applicant companies.

312. He deposed that the instructions given to him were to listen to the presentations being made in the Screening Committee meetings and to collect information, if any, made available in the meetings. The said Screening Committee meetings were chaired by Secretary (Coal) H.C. Gupta and Joint Secretary (Coal) was also there.

313. He told that during the aforesaid meetings, the applicant companies had supplied to them a feedback form beside also providing hard copy of their presentations so made before the Screening Committee.

314. He identified his signatures on the attendance sheet of Screening Committee meeting held on 21.06.2007 [part of Ex. PW11/G-4 (Colly.) (D-29)]. The attendance sheet dated 21.06.2007 is **Ex. PW15/A (page 110-111)**. Similarly, attendance sheet of Screening Committee meeting held on 23.06.2007 [part of Ex. PW11/G-4 (Colly.) (D-29)] is **Ex. PW15/A-1 (page 114-115)**.

315. He deposed that after few days of attending the aforesaid meetings, their Chief Engineer directed them to compile the information pertaining to various applicant companies received during the course of Screening Committee meetings in a given format. The said format was prepared under the supervision of Chief Engineer (TPI) Sh. S. Seshadri.

316. He told that the aforesaid information was compiled in three different divisions of CEA i.e. TPI division, Integrated Resource Planing (IRP) division and Operation Monitoring (OM) division. The aforesaid compilation of data was based on the information as was mentioned in the feedback forms and the presentations made by the companies. At that time CEA was not having applications of any of the aforesaid applicant companies. He also told that the applications were subsequently forwarded to CEA by MoP much after the allocation of coal blocks by MoC probably in 2010.

317. He deposed that after compilation of all the aforesaid data, the first exercise carried out by CEA was as regard the pre-qualification criteria i.e. the criteria pertaining to network and capacity of proposed project. He told that the network criteria which was adopted was that of UMPP as per letter of Joint Secretary (Power). The said network criteria was that of 0.5 crore per MW. After seeing communication dated 13/16.07.2007 Ex. PW14/A-6 (Colly.) (*available from page 131-219 in D-40*) of Sh. S. Seshadri, Chief Engineer TPI, CEA and as addressed to Sh. A.K. Kutty, Joint Secretary, MoP, PW-15 stated that the second criteria regarding capacity was stated as under:

‘(b) Project Capacity

Min. of Coal while inviting applications for coal block allocations had indicated that priority shall be accorded to projects with more than 500 MW capacity. Since for each coal block there are more than one applications, the applicants who have applied for projects having less than 500 MW

capacity have not been prequalified.”

318. After pre-qualification criteria was applied, thereafter, short listing of applicant companies was also carried out in accordance with the criteria mentioned in para 4 of aforesaid communication Ex. PW 14/A-6 (Colly.) (D-40).

319. Accordingly, Annexure-I contains the list of all applicant companies whose information has been complied. Annexure-II contains the list of applicant companies, who qualified at the initial stage i.e. at the stage of pre-qualification. Annexure-III contains the list of applicant companies, who were finally short-listed. Annexure-IV contains the list of short-listed applicant companies block-wise.

320. He told that CEA however had not carried out verification of any of the aforesaid information furnished by the applicant companies. In fact in the communication Ex. PW 14/A-6 (Colly.) in para 6 the following facts were also mentioned:

“6. It is suggested that while allocating the coal blocks, the following aspects may be considered by the Screening Committee:

i) Some of the coal blocks are bigger in size and these may be allocated to more than one applicants.

ii) Only one block per applicant may be allocated.

iii) Coal blocks may also be allocated to the applicants for captive power plants as per MoP letter No. FU- 10.2005-IPC dated 12.10.06 addressed to Ministry of Coal,

iv) Priority may be given to projects proposed to be located near the coal blocks to avoid burden on

Railways for coal transportation.

The short listing of the applicants has been made based on the information furnished by the applicants in their feedback form/ presentation made to the Screening Committee. It is suggested that the details as presented by them may be got verified before allocating the blocks.

This issues with the approval of Chairperson, CEA.”

321. He further told that some of the applicant companies supplied some additional information directly to CEA. Upon receipt of said updated information, fresh communication was also sent to MoP by CEA based on the said updated information.

322. He deposed that he had dealt with file of CEA bearing no. 144/GC/BO/CE (TPI)/2007. Copy of the said file is **Ex. PW15/B (Colly.) [AD-1] (from page 1-235).**

323. He identified his signature on communication dated 17.07.2007 issued to Sh. A.K. Kutty, Joint Secretary, MoP [page 229 in file of CEA Ex. PW15/B (Colly.)]. Copy of the aforesaid communication is **Ex. PW15/B-1 (AD-1).**

324. He had also dealt with file of CEA bearing no. 144/GC/BO/CE (TPI). Copy of the said file is **Ex. PW15/C (Colly) [AD-2] (from page 1-301).**

325. He identified copies of charts available in AD-3 and AD-4 as the rough work sheets of CEA, which were worked upon by them before sending block-wise recommendations to MoP.

326. The charts available from page 1-12 in AD-3 are **Ex. PW15/D (Colly.)**. The charts available from page 1-6 in AD-4 are **Ex. PW15/E (Colly.)**.

327. Copy of communication dated 26.07.2007 [available from page 1-51 in file Ex.15/C (Colly.) (AD-2)] vide which further updated information was sent to MoP by CEA is **Ex. PW 15/C-1 (Colly.)**.

328. The office copy of another communication dated 30.07.2007 [available from page 58-86 in file Ex. PW 15/C (Colly) (AD-2)] vide which the block-wise recommendation for allocation of coal blocks to IPPs / CPPs along with summary of recommendations were sent with the approval of Chairperson CEA is **Ex. PW 15/C-2 (Colly)**.

329. Letter dated 26.06.2007 [page 233-235 in file Ex. PW 15/B (Colly) (AD-1)] vide which Sh. A.K. Kutty, Joint Secretary Power had asked Chairman CEA, Sh. Rakesh Nath to document the presentations made before the Screening Committee, MoC on the basis of parameters already indicated and other factors which were mentioned in a communication dated 20.06.2007 to Secretary (Coal) by Secretary (Power) Sh. Anil Rajdan is **Ex. PW 15/B-2 (Colly) (AD-1)**.

330. In the letter of Secretary, Power as was addressed to Secretary Coal, the following facts were mentioned in para 2:

“2. The Ministry of Coal had indicated that “priority

shall be allocated to projects with more than 500 MW capacity”. Further, Ministry of Coal had indicated that the “inter-se priority for allocation of a block among competing applicants for a captive block may be decided as per the following guidelines:

1. Status (stage) level of progress and state of preparedness of the projects.*

2. Net worth of the applicant company (or in the case of a new SP/JV, the net worth of their principals).*

3. Production capacity as proposed in the application.

4. Maximum recoverable reserve as proposed in the application.

5. Date of commissioning of captive mine as proposed in the application.

6. Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application.

7. Technical experience (in terms of existing capacities in coal/lignite mining and specified end use).*

8. Recommendation of the Administrative Ministry concerned.*

9. Recommendation of the State Government concerned (i.e. where the captive block is located).

10. Track record and financial strength of the company.*

An examination of the conditions reveals that the Ministry of Power would have to be associated with the SL Nos 1, 2*, 7*, 8* and 10* above.”*

331. The office copy of communication dated 24/27.08.2007 [page 179-184 in file Ex. PW 15/C (Colly) (AD-2)], vide which the methodology adopted for pre-qualification, short-listing and block-wise recommendation for allocation of coal block to IPPs/CPPs was sent to MoP is **Ex. PW 15/C-3 (Colly) (AD-2)**.

332. Vide communication dated 30.07.2007, Ex. PW 15/C-2 (Colly) (AD-2), as regard the company JICPL, the recommendation was made by CEA in favour of the company qua allocation of Patal East (Jharkhand) coal block to be shared jointly with one other company i.e. M/s Bhushan Power and Steel Ltd. in the ratio of 540:250 for Bhagalpur, Bihar project of the company.

333. The five recommendation sheets available from page 37-41 are **Ex. PW15/F (Colly.) [Part of Ex. PW 11/J-4 (Colly.)]**.

334. After seeing feedback form of M/s JICPL Ex. PW 1/E (D-34), PW-15 told that no document was annexed which could show that JICPL was joint venture between IISIPL and IL&FS.

335. In cross-examination on behalf of A-1 company, it has come that he was not aware as to on what basis or on what considerations MoP took the decision to use UMPP criteria for pre-qualification. He was also not aware as to whether MoP communicated their said decision to MoC or not.

336. He told that UMPP guidelines were part of standard bid documents qua tariff based competitive bidding process. The UMPP were power projects of capacity 4000 MW. It has come that the pre-qualification criteria was received in CEA vide letter dated 26.06.2007 of Sh. A.K. Kutty [Ex. PW15/B-2 (Colly) (AD-

1)] and it was so received after the Screening Committee meetings held on 20.06.2007 till 23.06.2007 were already over. It has come that the decision that the companies would be pre-qualified by CEA on the basis of UMPP guidelines was never uploaded on the website of CEA. He was not aware as to whether MoP ever uploaded the said decision on their website or not.

337. In cross-examination on behalf of accused public servants, it has come that large thermal power projects of capacity 4000 MW were categorized as UMPPs. The allocation qua UMPP was undertaken by MoP through Power Finance Corporation (PFC) by inviting bids. The coal blocks were earmarked for UMPPs. Land for such projects used to be identified by MoP through CEA and PFC. They all collectively also used to identify coal blocks which were to be earmarked for UMPPs. Some of the clearances such as Water and Environmental clearances and Land availability etc. used to be tied up by MoP through PFC and CEA before inviting the bids.

338. He told that in the Screening Committee meetings, he did not ask for the application forms from anyone. He was not aware as to on 20.06.2007 the applications forms of all the applicant companies in the nature of Agenda Form was given to all the members of Screening Committee or not. He admitted that the exercise of compilation and analysis of the information so collected was started in CEA after receipt of communication dt. 26.06.2007 **Ex. PW15/B-2 (Colly.) (AD-1)** from MoP in CEA.

339. Copy of one file bearing No. 144/GC/BO/CE(TPIA) containing note sheet pages from 1-11 is **Ex. PW15/DX-1/A-3**).

340. He identified signature of Sh. A.K. Kutty on letter dated 26.06.2007, **Ex. PW15/B-2 (Colly.) (AD-1)** addressed to Sh. Rakesh Nath Chairperson, CEA and issued under the signatures of Sh. A.K. Kutty Joint Secretary, MoP. He identified his signature also on the said letter.

341. He told that the status of DPR of any applicant company was relevant as the same reflected the nature of project or its requirements and other details which was to be established.

342. After seeing a communication dated 24.08.2007 **Ex. PW15/C-3(Colly.) (AD-2)**, he stated that in the said communication sent to MoP under the signatures of Sh. S. Sheshadari, Chief Engineer, CEA, a brief note on the methodology adopted for pre-qualification, short-listing and block-wise recommendation was communicated and in the said communication in para 3.1 (d) the following facts were mentioned:

“3. 1 d) Considering that the sufficient twelve 12 of applicants in the category of CPPs could not be shortlisted, 2 CPP applicants namely, Tata Steel Ltd. in Chhattisgarh and Bhushan Power & Steel Ltd. in , Jharkhand were also considered for block-wise recommendations. M/s Tata Steel Ltd. was earlier not shortlisted due to non-tie-up of land. M/s Tata Steel Ltd. subsequently intimated that land acquisition is under progress for which

Section 4, Section 6, Section 9 notice already issued. Further, the project is proposed in tribal dominated backward district of Bastar hence, it has been included in the list. Similarly, Bhushan Power & Steel Ltd. who was earlier not shortlisted due to non tie-up of water has subsequently intimated that Chief Engineer (WRO) vide letter dated 25.7.07 conveyed that their proposal for water requirement for the proposed Steel Plant & Captive Power Plant was under process. This project has been short listed considering that this is the prequalified captive power project for this block which has made some progress. "

343. He did not remember whether or not draft of communication **Ex. PW15/C-3 (Colly.) (AD-2)** was prepared by him before Mr. Sheshadri signed it. He did not remember as to when the decision was taken that a suggestion be made in the communication dated 13/16.07.2007 **Ex. PW 14/A-6 (Colly.) (D-40)** in para No.6 (ii) and as sent to Ministry of Power that only one block per applicant may be allocated. It is correct that in the communication dated 24.08.2007 **Ex. PW 15/C-3 (Colly.) (AD-2)** it is mentioned in para No. 3.2 (iv) that "allocation to not more than one project of same category i.e. IPPs or CPPs belonging to the same group of companies".

344. Upon being asked as to when change in the earlier condition as mentioned in communication **Ex. 14/A-6 (Colly.) (D-40)** to the one mentioned in communication **Ex PW 15/C-3 (Colly.) (AD-2)** took place, the witness stated that the condition mentioned in communication **Ex. PW 15/C-3 (Colly.) (AD-2)** is in fact a further refinement of the condition mentioned in **Ex. PW**

14/A-6 (Colly.) (D-40). However, the earlier condition did not stand diluted as a result thereof. The condition as mentioned in communication Ex. PW 15/C-3 (Colly.) (AD-2) was arrived at when the block-wise recommendations were being made so as to avoid a situation that in view of less number of coal blocks available it should not happen that all the coal blocks are allocated to same group of company or to only IPPs and no coal block is allocated to CPPs.

345. He admitted that in terms of the condition mentioned in communication Ex. PW 15/C-3 (Colly.) (AD-2) it was possible to allocate to same group of company two coal blocks i.e. one for IPPs and another for CPPs.

346. Upon being asked as to who decided as to which particular block shall be allocated to any given company, the witness stated that the aforesaid recommendation arose from out of the entire exercise which was undertaken in CEA and thus, no particular person can be identified in this regard.

347. He did not remember in what manner the marking criteria as was adopted in CEA was used in preparing the summary of recommendation i.e. the comparison of the applicant companies was *inter se* companies short-listed for CPPs and IPPs or was even *inter se* in between the two categories of CPPs and IPPs.

348. The factors which were considered while preparing the block-wise recommendations and the summary of recommendations are mentioned in the methodology as was sent to MoP on 24.08.2007 i.e. **Ex. PW 15/C-3(Colly.) (AD-2)**. The aspects/criteria which were considered are mentioned in para 3.2 of communication dated 24.08.2007 as under:

“3.2 Following aspects/criteria have been considered for preparing the block wise recommendations. i. Preparedness of the projects in regard to land and water as well as status of placement of order for main plant and equipment of the applicants for which coal block had been applied. ii. Optimum utilization of coal reserves in each block. iii. Allocation of bigger size coal block to more than one applicant. iv. Allocation to not more than one project of same category i.e. IPP or CPP belonging to the same group of companies. v. Projects located nearer to the coal blocks to have priority as far as possible. vi. Allocation of coal blocks to captive power plants were also ensured.”

349. Upon being asked as to what documents were considered while making block-wise recommendations and summary of recommendations, the witness stated that as mentioned in para 4 of communication dated 24.08.2007 **Ex. PW 15/C-3 (Colly.) (AD-2)**, the information furnished by the applicants in their feedback form, presentation made to the Screening Committee and information subsequently furnished were considered.

350. Upon being asked as to on what basis the

companies belonging to any given group of companies were identified, the witness stated that such companies were identified during the course of discussion and by referring to the presentations available and also by obtaining information from other officers who had attended the presentations in the Screening Committee.

351. He admitted that during the course of their exercise they would not have recommended the company JICPL and M/s JLD Yavatmal Energy Pvt. Ltd for two different coal blocks had they been aware that companies belong to same group of companies. He admitted that from the documents available with them it could not be found that the two companies belong to same group of companies.

352. He admitted that the decision to not recommend more than one company of same group for allocation of more than one IPP was a decision taken during the course of their internal exercise undertaken in CEA and was not directed by MoP and was also not mentioned in the guidelines issued by MoC.

353. The copy of one office order dt. 06.07.2007 whereby a committee was constituted in CEA to *inter alia* recommend allocation of coal blocks to thermal project promoters including captive plants was constituted is **Ex. PW 15/DX-2/A-3 (available at pg. 95 in AD-1).**

354. He told that sometime in October 2007 or so, he had downloaded the minutes of 35th Screening Committee from the website of MoC.

355. Copy of feedback form of Rashmi Cement Ltd. was marked as **Mark PW15/P-1/A-3**. Copy of presentation of Rashmi Cement Ltd. was marked as **Ex. PW15/DX-3/A-3**.

356. He admitted that different marks were allotted to applicant companies whose status was considered tied up but the stages of acquisition of land were different. He told about the marking system as follows:

Input	Process initiated /in principle allocated /sea water	FirmAllocation				
		<20%	40%	60%	80%	100%
Land	4	5	6	7	8	10
Water	4	5	6	7	8	10

Order for main plant&equipments	Notice issued	Letter of Intent issued	Letter of Award issued
	1	3	5

357. Two charts i.e. chart titled “Block wise short listed applicants for IPPs and CPPs” are **Ex. PW 15/D (Colly.)**

(AD-3); and copy of chart titled “Statement of applicants short-listed from the list of pre-qualified applicants” is **Ex. PW 15/E (Colly.) (AD-4)**.

358. He admitted that one company namely EMCO Energy Ltd. mentioned at serial No. 60 in Annexure-I to letter dated 13/16.07.2007 **Ex. PW14/A-6 (Colly.) (D-40)** was not further short-listed earlier as it was not having water tie-up of 500 MW but later on was subsequently short-listed as additional information was furnished by the company.

359. No maximum limit of distance between the proposed project from the coal block in question was fixed so that any project beyond the said distance will not be recommended.

360. Attention of the witness was drawn to recommendation made qua Fatehpur East (Chhattisgarh) coal block) as mentioned in chart **Ex. PW 15/D (Colly.) (AD-3)** and was asked as to why M/s JLD Yavatmal Energy Ltd. was recommended even though it had only 10 points towards preparedness and the project was situated about 560 Kms from the coal block, the witness stated that all the suitable companies keeping in view the potential reserves of the coal block in question were recommended after necessary discussion, considering all the factors.

361. A-2 adopted the cross-examination done on behalf

of A-1 company M/s JICPL.

From Govt. of West Bengal

362. PW-12 is **Bhaskar Khulbe**. He is from Govt. of West Bengal. He had attended meetings of the 35th Screening Committee as a representative of Govt. of West Bengal. He has been examined to show working of the 35th Screening Committee meetings.

363. He told about examination of applications pertaining to coal blocks situated in West Bengal or pertaining to EUP to be established in West Bengal by a Committee headed by him. The Committee headed by him made its recommendations in favour of certain applicant companies qua Gourangdih ABC coal block to State Govt. of West Bengal.

364. He told that he had attended only some of the meetings of the 35th Screening Committee. He told that Sh. Arun Sen, CMD of WBMDTC had also attended meetings alongwith him.

365. About what happened in the meeting held on 30.07.2007, he told that in the said meeting MoP had put up its recommendations qua various applicant companies and had asked that the preparedness of the applicant companies might be got verified from the applicants through the State Governments concerned. As such, they were also asked to obtain report about the preparedness of the applicant companies pertaining to State

of West Bengal in a given format which was provided to them by MoC. Subsequently, Govt. of West Bengal had submitted the requisite information in the said proforma to the MoC.

366. About what proceedings took place in the final meeting of 35th Screening Committee held on 13.09.2007, he told that in the said meeting when the matter regarding allocation of Gourangdih ABC coal block situated in the State of West Bengal was taken up then being a representative of State of West Bengal he stated that the State Govt. of West Bengal had already sent its recommendations for allocation of the said coal block in favour of WBMDTC. He further stated that he also stated in the meeting that if Govt. of India was unable to allot the said coal block in favour of WBMDTC then the said coal block might not be allotted in favour of any other company.

367. He told that in the meeting held on 30.07.2007, one consolidated chart containing recommendations of all State Govt. qua various coal blocks under consideration was provided to all the members of the Screening Committee but no document was supplied to the members in the meeting held on 13.09.2007. He also told that in the earlier meetings of 35th Screening Committee held from 20.06.2007 till 23.06.2007, a bunch of documents containing applications of all the applicant companies who had applied for allocation of any given coal block was supplied to all the members in the Screening Committee meeting itself.

368. He stated that the final decision about

recommendations qua various coal blocks in favour of different applicant companies was taken by 35th Screening Committee in the meeting held on 13.09.2007.

369. As to how the recommendations of the Screening Committee were arrived at, PW-12 told that when in the meeting held on 13.09.2007, he stated that the Gourangdih ABC coal block be allotted in favour of WBMDTC in accordance with the recommendations of Govt. of West Bengal already sent to MoC, then the Chairman stated that since WBMDTC had not applied for allocation of the said coal block and was thus not an applicant before them, so the recommendation of State Govt. in favour of said corporation could not be considered. However, when he responded back that in such a situation the said coal block might not be allotted in favour of any company, then the Chairman responded that such a decision had to be taken by the Central Govt. but they shall be however making recommendations in the Screening Committee for allocation of said coal block.

370. About his role with respect to allocation of coal blocks situated in States other than West Bengal, the witness stated that no other role was to be played by the members representing different State Governments in the Screening Committee meeting except putting forth the recommendations of their respective State Governments, which were already sent to MoC.

371. About how the suitability of any given coal block

for any specific end use project of any given applicant company was decided, the witness stated that after the State Govt. representative put forth their views or the representatives of Administrative Ministries used to put forth their views then the Chairman used to decide as to which coal block be recommended for allocation in favour of which applicant company. No document regarding suitability of any given coal block for any specific end use project of any given applicant company was supplied to them in the meeting.

372. He told that no document to assess the Techno-Economic Feasibility of any given applicant company was provided to the members of Screening Committee. He told that the issue of Techno-Economic Feasibility of any given applicant company was not discussed in the meeting. No discussion was even held in the meeting as regard the past track record of the applicant companies in execution of the projects or as regard the financial and technical capabilities of the applicant companies and also no document in this regard was supplied to the members of Screening Committee.

373. He told that the recommendations made by the Administrative Ministries qua various applicant companies i.e. of MoP was however not supplied to the members of Screening Committee. No discussion with respect to the recommendations of MoP took place in the Screening Committee meeting. He told that no discussions took place to assess *inter se* priority or *inter*

se merit or *inter se* data of the applicant companies. No document was supplied to them in that regard. He told that no methodology or system was adopted in the Screening Committee meeting held on 13.09.2007 from which it could be ascertained as to which of the applicant company was better placed than the others. He told that the Chairman was having the final say.

374. He also stated that the decisions arrived at by 35th Screening Committee could not be termed as “unanimous” or by “consensus”.

375. He deposed that after the meeting held on 13.09.2007 was over then each member of the Screening Committee present were asked to sign the recommendation sheets even if the coal blocks mentioned over there did not pertain to the State to which the said member was representing. The said recommendation sheets were prepared in the meeting itself. The minutes were however not prepared in the meeting. The said minutes were subsequently downloaded by them in Govt. of West Bengal from the website of MoC but were otherwise not received from MoC. No draft of the said minutes for confirmation was received in Govt. of West Bengal prior to approval of said minutes in MoC.

376. He identified his signatures on recommendation sheets, Ex. PW 11/J-3 (Colly.) [from pg. 83-87 in file Ex. PW 11/J (Colly.) (D-31)]. He identified the minutes of 35th Screening Committee meeting, Ex. PW 11/J-4 (Colly.) (D-31)

[jointly of all the meetings of 35th Screening Committee as are available from pg. 1-41 in MoC file Ex. PW 11/J (Colly.) (D-31)].

377. He was asked as to whether the following facts mentioned in para 9, 10 and 13 of the minutes of 35th Screening Committee meeting held on 13.09.2007 were correct.

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

10. Based on the data furnished by the applicants, and the feedback received from the State Governments and the Ministry of Power, the Committee assessed the applications having regard to matters such as techno-economic feasibility of end-use projects, status of preparedness to set up the end-use project, past track record in execution of projects, financial and technical capabilities of applicant companies, recommendations of the State Governments and the Administrative Ministry concerned etc. Taking cognisance of the advice given by the Ministry of Power that in view of the capacity constraints in transmission network, plant capacity should be limited to 500-1000 MW, the Committee agreed that this should be taken as the guiding principle. Therefore, 1000 MW would be taken as the maximum

limit for allocation of coal blocks, in case the capacity indicated in the application is higher than that. In view of the large number of applications and limited number of coal blocks on offer, the Committee felt that it would be reasonable to have a satisfaction level in the range of around 40-70%, to the extent feasible.

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

	Name of Block	Recommended Companies	End Use Plant
1
2
3
4
5

378. Witness after reading the facts mentioned in para 9

as above stated that no verification report received from State Govt. was placed before the Screening Committee Members. Also no report regarding financial strength of applicant companies as is stated to have been scrutinized independently with the help of financial experts from CIL was placed before the Screening Committee Members. Witness stated that a compilation chart containing the recommendations of State Governments was given but no verification report of State Governments was given and even the said compilation chart was given in the meeting held on 30.07.2007.

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

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

381. He told that it was the duty of MoC to first check the applications and thereafter send them to the State Governments

or Administrative Ministries. He stated that it was not informed to the members by MoC officers that the applications had not been checked for their eligibility and completeness.

382. Upon being asked as to whether the witness played any role with respect to recommendation made by 35th Screening Committee in favour of M/s JICPL qua allocation of Mahuagarhi Coal Block, the witness stated that he did not play any role in that regard.

383. He told that Sh. V.K. Jairath was representing the State Govt. of Maharashtra in the Screening Committee Meeting held on 13.09.2007 and he was in urgency to return to Mumbai and thus requested the Screening Committee to take up the matter relating to Maharashtra Govt. in the beginning and which request of his was duly acceded to by the Chairman. Accordingly the matter relating to Maharashtra was taken up in the first and soon thereafter he left the meeting. He told that before Sh. V.K. Jairath left the Screening Committee Meeting, he was asked to sign the recommendation sheet and on account of the said fact his signatures appear at srl. no. 1 on all the five recommendation sheets.

384. Upon being asked as to whether the Govt. of West Bengal had recommended M/s JICPL for allocation of a captive coal block, the witness after seeing a letter dated 18.06.2007 addressed to Secretary, MoC and written under the signatures of Sh. Sabyasachi Sen, Principal Secretary, Commerce and Industry

Department, Govt. of West Bengal [page 1-5 in file Ex. PW11/G (Colly.) (D-29)] stated that Govt. of West Bengal had recommended JICPL for Mahuagarhi coal block under the category “*Captive power producers for iron and steel plants*” and not as “*Independent power producers*”. Witness identified signatures of Sh. Sabyasachi Sen at point A on page 2 of letter dated 18.06.2007. The letter dated 18.06.2007 is **Ex. PW 12/A (Colly.) (D-29)**.

385. After seeing a letter dated 21.06.2007 [page 43-48 in file Ex. PW 11/G (Colly.) (D-29)], witness stated that vide the said letter, addressed to Secretary, Govt. of India, M/s Himachal EMTA Power Ltd. as independent power producer was also recommended for allocation of Mahuagarhi coal block in addition to the earlier recommendation sent vide letter dated 18.06.2007. The copy of earlier letter dated 18.06.2007 was also appended to the said letter. The fax copy of letter dated 21.06.2007 of Sh. Sabyasachi Sen is **Ex. PW 12/B (Colly.)**. The original letter dated 21.06.2007 is however available at page 49. The original letter dated 21.06.2007 is **Ex. PW 12/C (D-29)**.

386. After seeing letter dated 24.08.2007 [Ex. PW 11/H-1 (Colly.) (D-35), page 22-49], witness stated that vide the said letter issued under the signatures of Dr. Jiban Chakraborty, Deputy Secretary, Department of Commerce and Industry, Govt. of West Bengal and as addressed to Sh. K.C. Samria, Deputy Secretary, MoC, the response of Govt. of West Bengal to letter

dated 02.08.2007 of MoC, containing required information as regard 16 applicant companies was sent while mentioning that qua other 12 companies no inputs were received.

387. In cross-examination on behalf of A-1 & A-2, he told that no chart containing various particulars of the applicant companies was provided to the members during the course of meetings of 35th Screening Committee. However during the course of meeting, the particulars of individual applicant companies used to be given.

388. He told that during the course of presentation made by representatives of applicant companies, the Screening Committee members did ask questions from them.

389. The statement u/s 161 Cr. PC dated 07.02.2013 of the witness is **Ex. PW12/DX-1**. He was confronted on various aspects.

390. In cross-examination on behalf of accused public servants, some documents were exhibited such as a copy of an Order dt. 05.07.2006 issued in file bearing no. 247-CI/O/Coal/001/03/M-1 [available at page 10 in the file bearing No. A(1)/III/9/WBIDC-06 of the Office of Advisor (Industry) i.e. MR No. 3768/16] as **Ex. PW 12/DX-2**; another Order dt. 03.05.2007 issued in file no. 10014-CI/O/Coal/13/06/M-1 (Pt-II) as **Ex. PW 12/DX-3**; one DO letter dt. 24.05.2007 [available at page 91 in the file bearing

No. A(1)/III/9/WBIDC-06 of the Office of Advisor (Industry) i.e. MR No. 3768/16] as **Ex. PW 12/DX-4**; the minutes of the meeting held on 14.06.2007 [available from page 1-4 in the file bearing no. A(I)/III/9/WBIDC-06 i.e. the file of Office of Advisor (Industry) as brought from EO-I Malkana CBI] as **Ex. PW 12/DX-5**; page no. 69 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) as **Ex. PW 12/DX-6**; one letter dated 04.06.2007 [at pg. no. 92 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16)] as **Ex. PW 12/DX-7**; some pages at pg. no. 158-156 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) as **Ex. PW 12/DX-8**; some pages at pg. no. 155-111 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) as **Ex. PW 12/DX-9**; one letter dated 11.06.2007, at pg. no. 96 in file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) as **Ex. PW 12/DX-10**.

391. He told that during the course of investigation of any of the coal block allocation matters, he was never shown any file of any Govt. Department by the IO.

392. Upon being asked as to whether the witness as Chairman of the committee spelt out or laid down any procedure which shall be followed by the committee in arriving at its recommendations, the witness stated that as the matter is about 12 years old so it is difficult for him to recollect as to what exactly transpired at the beginning of the meeting. However, he told that the minutes of the meeting were correctly recorded.

393. He denied the suggestion that it was the part of job to be carried out by State Governments to check the applications for their eligibility and completeness. However, State Govt. of West Bengal did carry out checking of the applications for their eligibility and completeness.

394. He admitted that letter dt. 24.05.2007 [Ex. PW 12/DX-4] contained the following facts:

“Expectedly, Shri Kropha believes that the State Committee would follow Ministry of Coal guidelines & conditions (copy downloaded from Ministry website enclosed) for allocation of coal blocks to enable harmonious observance of norms, especially in view of large number of applications received this year. He indicated that until the Committee decides to change the procedure, the convention of personal interaction with the applicants is likely to be continued. Informally, his suggestion was that the State committee need not resort to such interaction, lest it raises expectation levels unnecessarily. I think vast number of applications with us would also preclude such possibility.”

395. He admitted that it was not prudent to put any specific weightage to any of the nine factors as were mentioned in the guidelines issued by MoC for arriving at the *inter se* priority and decision in this regard was to be taken in a holistic manner by reconciling the views of the various members of the committee which ensured that all the factors were duly considered while making the recommendations.

396. He admitted that the role of Chairman in a meeting is two fold i.e. to conduct a meeting in an orderly fashion so that everyone present may express their views and towards the end

the chairman sums up the essence of the discussion which was held in the meeting and thereby to arrive at a decision. He admitted that summing up of discussion in a meeting done by the chairman is undertaken by way of reconciling the views expressed by various members of the committee. He also admitted that if any member in a meeting does not agree with the said summing up of the discussion by the chairman then he can get his dissent recorded.

397. He admitted that if no member gets his dissent recorded then the decision arrived at in the meeting shall be considered as decision taken in the meeting by unanimity or by broad consensus. He admitted that as a common practice the decision in a meeting like that of internal committee is announced by the chair but the same is taken as a decision of the committee.

398. He admitted that after the final meeting of 35th Screening Committee, he had written a communication to Govt. of West Bengal informing as to what had transpired in the meeting. After seeing pg. no. 349 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16), he told that the said letter was office copy of a communication dated 13.09.2007 sent to Dr. Sabyasachi Sen, Principal Secretary, C&I Department, Govt. of West Bengal by him and the same is **Ex. PW 12/DX-11**.

399. He admitted that in the said communication, he had had written that recommendations in respect of other states

(Orissa, Jharkhand, Maharashtra and Chhatisgarh) were finalised by reconciling between the states' evaluation, power Ministry opinion and the criteria suggested by the Chairman.

400. He did not remember whether during the course of discussion in respect of other states, the members who participated in the said discussion expressed divergent views or not. He admitted that the views expressed by the members were reconciled before arriving at the final decision. He admitted that the final decision was announced by the chairman after reconciliation of views.

401. He denied that the recommendations of MoP were supplied to him in the Screening Committee meeting. He was shown pg. no. 212-211 in a file bearing no. A(I)/III/9/WBIDC-06 (MR No. 3768/16) i.e. a communication dated 03.08.2007 sent to Dr. Sabyasachi Sen, Principal Secretary, C&I Department, Govt. of West Bengal by him and he admitted that from the said communication it was clear that the recommendations as were made by CEA and were endorsed by the Power Ministry were circulated and deliberated upon in the meeting. The communication dated 03.08.2007 is **Ex. PW 12/DX-12**. He further admitted that in the said communication dated 03.08.2007, he had stated that in the meeting, the State Governments, Coal Ministry and Power Ministry unanimously agreed that sanctity of the criteria announced by the coal Ministry while advertising the coal blocks for allotment was of

utmost importance. He admitted that the views expressed by State Govt. representatives and that of MoP were considered in the meeting.

402. He was not able to recollect the contents of the chart containing the State Govt. recommendations which was supplied to the members in the Screening Committee meeting held on 30.07.2007. He did not remember as to whether or not any member in the meeting held on 13.09.2007 raised any issue of non-supplying of verification report received pursuant to the decision of Screening Committee meeting held on 30.07.2007.

403. He admitted that during the course of Screening Committee meetings when presentation were made by the applicant companies then Members used to take their own notes and also used to ask clarifications as and when required from the representatives of the applicant companies. He told that after downloading the minutes of 35th Screening Committee meetings from the website of MoC and after going through the same, he did not submit any comments or report to Govt. of West Bengal that the minutes of the meetings had not been correctly recorded.

404. To the suggestion that a compilation chart [available from pg. 1-21 in file of MoC Ex. PW 3/E (Colly.) (D-164)] containing information regarding applicant companies as was prepared pursuant to verification report received from State Governments after the decision taken in the meeting held on 30.07.2007 was placed before 35th Screening Committee

Members in the meeting held on 13.09.2007, he stated that he did not remember that any such chart was placed before 35th Screening Committee members in the meeting held on 13.09.2007 or not and thus he could neither admit nor deny the suggestion.

405. He admitted that it was the job of the State Govt. to evaluate the applications of a company seeking allocation of coal block and to verify the same with the documents supplied along with the application and in case, there was any further clarification required, the State Govt. would also undertake a physical verification of the facilities to ascertain the financial strength and ground capabilities of a company and that such a ground verification was undertaken by you under the instructions of State Govt. in the case of M/s JAS Infrastructure Ltd and was duly reported to the State Govt. also.

From Coal India Ltd.

406. **PW-13 is Sushmita Sengupta.** She is from CIL. In the year 2007, she was working as Finance Manager in CIL at Kolkata. In August 2007, she alongwith Sh. Samiran Dutta who was also working as Manager (Finance) in CIL was sent to MoC office, New Delhi by their superior officers.

407. She told that they met Sh. K.S. Kropcha, Joint Secretary (Coal) on 06th or 07th August, 2007. She told that Sh. K.S. Kropcha called Sh. K.C. Samaria, the then Director, MoC to

his room.

408. She deposed that they were given a spreadsheet containing the names of various companies alongwith their networth mentioned against their names. They were told to cross-check the networth as mentioned over there in the spreadsheet with the balance sheets of the said companies. They were told that the balance sheets of the said companies have been kept at Scope Minar, Laxmi Nagar.

409. She deposed that two officials of MoC accompanied them to the said Scope Minar, Laxmi Nagar office and over there they met Sh. Joshi who was General Manager, CIL. He arranged sitting space for them and also made available a Stenographer with an electronic typewriter.

410. Thereafter they started cross-tallying the networth mentioned in the spreadsheet of various companies with their respective balance sheets. The said balance sheets were made available to them by the MoC officials one by one. She told that initially they were deputed for 2-3 days but when they could not complete their job even on the third day so they met Sh. K.S. Kropha who told them to stay back for another day so as to complete the job. On the next day they completed their job as was assigned to them and they submitted the said spreadsheet which also was containing their comments to Sh. K.S. Kropha, in the presence of Sh. K.C. Samria.

411. She deposed that Sh. K.S. Kropcha then told them that the job undertaken by them was confidential and they should not disclose about it to anyone. He also told them to destroy the rough papers, if there were any, prepared in the course of their aforesaid job. Accordingly they destroyed the rough papers as were with them. Thereafter she and Sh. Samiran Dutta went back to Kolkata to their office.

412. She deposed that they had cross-checked the networth figures mentioned in the spread-sheet with the figures mentioned in the balance sheets of the respective companies.

413. The networth of the companies from their respective balance sheets were calculated in the following manner:

“The sum total of share capital and reserves and surplus. Reserve is created out of profit net of expenses or provisions. However revaluation of assets, write back of depreciation and amalgamation were not considered.”

414. In the remarks column they mentioned the word “OK” wherever the networth of any given company as mentioned in the spreadsheet matched with the networth so calculated by them from the face of the balance sheets and wherever it did not tally they mentioned the word “Not OK”. However, in cases where name of the company mentioned on the spreadsheet did not tally with the name of the company mentioned on the balance sheets made available to them, then they made a comment against the name of the said company in the remarks column as

“Balance sheet not available”. In case there was only a certificate of Chartered Accountant instead of balance sheet made available to them then in the case of said companies they did not accept the said certificate and gave the remark *“Balance sheet not available”*. They only considered such balance sheets as were signed by Director Finance, Chairman and Auditor. All the remarks as above were got typed on the spread-sheet.

415. In some cases certain bunch of papers other than balance sheets were provided to them but they did not go through them due to paucity of time.

416. She deposed that in case of a company being a Special Purpose Vehicle (SPV) or a Joint Venture Company, if balance sheet of the SPV or JV company was made available then they might have considered the same but in case the name of the company on the balance sheet provided to them did not tally with the name of SPV or JV company then they did not consider it because in such a case the MoU or JV agreement or agreement constituting SPV was required. They did not do any other work other than the one stated by her.

417. In cross-examination on behalf of accused public servants, she stated that at the time of undertaking the job of cross-checking the networth of the applicant companies, she was not aware of the guidelines issued by MoC governing allocation of captive coal blocks.

418. About whether from the balance sheet of any company can it be ascertained that the said company is a JV company or SPV company, she stated that in case the balance sheet is of a JV company or SPV company, then in the balance sheet it is so mentioned.

419. She denied the suggestion that no electronic typewriter were given to them at CIL office, Laxmi Nagar or that a computer was provided to them for working.

420. She was confronted with her statement u/s 161 CrPC dated 25.09.2012 where nothing is mentioned about use of electronic typewriter. The statement u/s 161 CrPC is **Ex. PW 13/DX-1/A-4**.

421. She told that the formula of calculating the net worth used by them was as per law and nobody had told them as to how to calculate the network at that time.

422. In cross-examination on behalf of A-1 & A-2, it has come that the spread sheet on which they had put their remarks by cross-checking the net worth. She told that the said spread sheet were also probably not shown to her by the IO even when her statement was recorded in the present case.

423. After seeing application form Ex. PW 1/A (Colly.) of JICPL in which network of IL&FS, IISIPL and JICPL had been separately mentioned, she told that they had asked for balance sheets of companies whose names were mentioned in the spread-

sheet and thus they did not see balance sheets of IL&FS or IISIPL.

424. She did not remember as to what remarks were put by them in the spreadsheets against the name of M/s JICPL.

425. She told that the spread sheet submitted to Sh. K.S. Krophra was not submitted by them in any file cover.

From CBI

426. **PW-5 is Dy. SP Tej Pal Singh.** He had conducted search operation on 04.09.2012 at Nagpur. The search was carried out in the premises belonging to JICPL.

427. The search list is Ex. PW 1/G (D-15). The documents seized vide this search list are Ex. PW 3/G (Colly.) (D-16), **Ex. PW 5/A (Colly.)**(D-17), **Ex. PW 5/B (Colly.)**(D-18), **Ex. PW 5/C (Colly.)**(D-19), **Ex. PW 5/D (Colly.)**(D-20), **Ex. PW 5/E (Colly.)**(D-21(i) and D-21(ii)) and **Ex. PW 5/F (Colly.)**(D-22).

428. He also recorded statement of Sudhir Gupta u/s 161 CrPC. Thereafter investigation was transferred to Inspector Himanshu Bahuguna by the orders of DIG.

429. He had submitted report to the concerned Court also. The application along with its enclosures in this regard is **Ex. PW 5/G (Colly.)**.

430. He identified signature of Sh. Ravi Kant, DIG, CBI on all pages of FIR of case RC No. 219 2012 E 0008. The FIR is **Ex. PW 5/H (Colly.)**.

431. He was generally cross-examined on the issue of search operation but nothing substantial has come on record.

432. **PW-16 is Dy. SP. K.L. Moses.** He had filed his affidavit dated 12.03.2020 in his examination-in-chief which is **EX. PW 16/A**. He had conducted part investigation. He had recorded statement of Sh. Anil Kumar Kutty u/s 161 CrPC and had also shown him some documents of MoP which were available with him in connection with investigation of another case.

433. In cross-examination on behalf of A-2, it has come that he had not shown to Sh. Kutty the communication dt. 26.07.2007 [Ex. PW 14/A-7 (Colly.), pg. 220-229 in D-40] or communication dt. 30.06.2007 [Ex. PW 14/A-4, pg. 71 in D-40].

434. He had asked Sh. A.K. Kutty as to on what basis the UMPP criteria was applied by MoP to which Sh. Kutty referred to note dt. 18.06.2007 of Sh. Sanjay Chadha, Director, MoP.

435. **PW- 17 is IO Dy. SP Himanshu Bahuguna.** He deposed that in June, 2012 he had remained associated with a preliminary enquiry bearing PE No. 219 2012 E0002 registered in EO-I Branch, CBI regarding coal block allocation matters. Subsequently, in September 2012 three regular cases relating to

coal block allocation matters were assigned to him for investigation and the present case i.e. pertaining to M/s JICPL was one of them. The initial investigation was conducted by Dy. SP T.P. Singh. The initial IO Dy. SP T.P. Singh had already conducted search operations at various places and collected/seized various documents.

436. He told that the investigation of the present case was handed over to him on 19.09.2012 vide order dated 18.09.2012 of Sh. O.P. Ghalotra, the then Head of EO Zone-I. At that time Sh. Ravi Kant, the then DIG, was the Incharge of EO-I. He told that in the FIR, there were allegations against the company M/s JICPL and its officers/directors that they had misrepresented before 35th Screening Committee, MoC with a view to procure allocation of a captive coal block, i.e. Mahuhagarhi coal block in Jharkhand. It was also alleged that the misrepresentation made by the company was overlooked by the MoC officers.

437. He deposed about collecting various documents from various departments and individuals besides also obtaining explanation of the accused persons and also recorded statements of relevant witnesses.

438. He deposed about collecting photocopy of application form of JICPL in respect of allocation of Mahuhagarhi coal block alongwith enclosures containing pages 1-323 vide production-cum-receipt memo **Ex. P-1/PW-17 (OSR) (D-2)**.

439. He deposed about collecting one register **Ex. PW 11/B** vide production-cum-receipt memo **Ex. P-2/PW-17 (D-4)**.

440. He told that vide copy of a letter dated 03.05.2013 [available in **D-26**], Sh. S.K. Shahi of MoC informed that regarding the rationale/logic for keeping column No. 29 and 30 in the application form could not be ascertained. The photocopy of letter dated 03.05.2013 alongwith annexures is **Ex. P-3/PW-17** and the original brought by the witness is marked as **Ex. P-4/PW-17(Colly.)**.

441. The copy of office memorandum dt. 02.05.2013 (**D-27**) vide which information as to whether the applications received for 35th and 36th Screening Committee were checked for their completeness and eligibility in MoC or not was supplied is **Ex. P-5/PW-17**.

442. The copy of communication dated 04.06.2013 (**D-42**) vide which MOC had informed about the details of various coal blocks allocated to M/s Abhijeet Infrastructure Ltd., M/s CIAL and M/s Jayaswal Neco Ltd. is **Ex. P-6/PW-17**.

443. He had collected various documents vide production-cum-receipt memo dated 02.06.2012 (D-28) which is **Ex. P-7/PW-17**; vide production-cum-receipt memo dated 18.06.2012 (D-36) which is **Ex. P-8/PW-17**; vide production-cum-receipt memo dated 27.07.2012 (D-39) which is **Ex. P-9/PW-17 (OSR)**; and vide production-cum- receipt memo

dated 06.06.2012 (D-43) which is **Ex. P-10/PW-17 (OSR)**.

444. He deposed that upon completion of aforesaid investigation, the matter was discussed with senior officers and it was decided that as no prosecutable case was made out against any accused person, so a Closure Report might be filed in the Court. Therefore, a closure report was prepared and filed in the Court.

445. The Closure Report/Final Report u/s 173 CrPC dt. 11.04.2014 is **Ex. P-11/PW-17**.

446. Subsequent to filing of final report u/s 173 CrPC [**Ex. P-11/PW-17**], Hon'ble Supreme Court constituted a Special Court for trying coal block allocation matters and Learned Sr. Advocate Sh. R.S. Cheema was appointed as Special P.P. in the matter. Subsequent to his appointment as above the present matter was discussed with Sh. R.S. Cheema and pursuant to which it was decided that a detailed supplementary report u/s 173 CrPC elaborating the outcome of investigation might be filed. Accordingly, on 14.10.2014 a detailed supplementary final report u/s 173 CrPC dated 13.10.2014 was filed in the Court which is **Ex. P-12/PW-17 (Colly)**.

447. However, subsequent to order 20.11.2014 passed by this Court, the matter was sent to CBI with the direction that the record of the case be placed before the Competent Sanctioning Authority for considering the issue of according sanction to

prosecute the two serving public servants namely Sh. K.S. Kropcha and Sh. K.C. Samria. On 05.01.2015, CBI sent all the relevant record to the competent sanctioning authority for considering according of sanction to prosecute the aforesaid two public servants. He informed the Court on 29.01.2015 about the said progress. However, no communication was received from the office of Competent authority regarding the decision, if any, taken by it with regard to grant or refusal of sanction to prosecute the two public servants. He thus filed further investigation report dated 21.07.2015 in the court which is **Ex. P-13/PW-17**.

448. The affidavit of Sh. Piyush Goel dated 05.07.2017 as above is **Ex. P-14/PW-17 (Colly.)**. The documents available in D-45 are **Ex. P-15/PW-17 (Colly.) (D-45)**.

449. The response of Sh. A. Sanjay Sahay, the then Under Secretary, Government of India dated 19.02.2015 is **Ex. P-16/PW-17 (Colly.) (D-51)**.

450. He referred to order dated 22.07.2015 vide which it was decided that there was deemed sanction to prosecute the said public servants u/s 19 P.C. Act and vide order dated 31.07.2015, the Court took cognizance of various offences against the accused persons and ordered their summoning.

451. He deposed that during investigation, it was found that in its application form M/s JICPL had claimed that M/s JICPL was a SPV of M/s IISIPL and M/s IL&FS. However, no

document was filed by the company in support of its claim of JICPL being the SPV. He found that no officer or employee of IL&FS was ever a director in M/s JICPL.

452. During investigation it was also found that the company had misrepresented in its application in column No. 30 that no earlier coal block had been allocated to its group or associated company. However during investigation it was found that M/s Abhijeet Infrastructure Ltd. and M/s CIAL which were the Group Companies of Abhijeet Group had been earlier allotted four coal blocks and the said information was withheld from MoC by the applicant company in its application form. The aforesaid misrepresentation regarding previous allocation of coal block was also found to be there in the feedback form **Ex. PW 1/E (D-34)** as was submitted by the applicant company to the 35th Screening Committee, MOC.

453. Upon being asked as to what was found during the course of investigation regarding the checking of applications for their eligibility and completeness in MoC, the witness stated that during the investigation it was found that no such checking was carried out in MoC.

454. Upon being asked about the checking of financial strength of applicant companies in MoC, the witness stated that in the minutes of 35th Screening Committee, it was mentioned that the financial strength of the applicant companies shall be got verified through financial experts of Coal India Ltd. (CIL).

However when the said officers of CIL were examined during the course of Investigation then they not only stated that they were no financial experts but also stated that they had not checked the financial strength of the applicant companies but had only scrutinized the financial documents as were given to them qua the financial strength of the applicant companies. It was also found that the Screening Committee or MoC, had not prepared any *inter se* priority chart or *inter se* merit chart of the applicant companies. Nothing was found during the course of investigation which could show that any deliberation or discussion took place in the Screening Committee as to on what basis any given coal block be allotted or has been allotted to any particular company.

455. Upon being asked as to under what circumstances a closure report was filed in the Court u/s 173 CrPC when so many misrepresentations and other factors regarding allocation process had come to the notice of the witness during the course of investigation, the witness stated that though as per the evidence collected by him he was of the opinion that sufficient incriminating evidence warranting charge sheeting of various accused persons had come on record but the final competent authority was of the opinion that the said misrepresentations did not have any direct bearing on the allocation of coal block as such and there was no sufficient incriminating evidence warranting chargesheeting of the accused persons.

456. He also referred to affidavits of seven other

prosecution witnesses namely Sh. SP Rana, DySP/CBI, Sh. Ram Naresh Section Officer/MoC, Sh. VP Sharma, Section Officer/MoC, Sh. A Sanjay Sahai, Under Secretary/MoC, Sh. Gordhan Singh, Ct. Assistant Malkhana In-charge, EO-II, CBI, Sh. K.P. Singh, HCt. Malkhana Incharge EO-I, CBI and Sh. KL Moses, Dy. SP/CBI were also filed on record u/s 296 CrPC as their evidence was found to be of formal character. Affidavit of Sh. SP Rana, Dy. SP/CBI dated 26.02.2020 is **Ex. P-17/PW-17(Colly.)**, that of Sh. Ram Naresh Section Officer/MoC dated 26.02.2020 is **Ex. P-18/PW-17 (Colly.)**, that of Sh. VP Sharma, Section Officer/MoC dated 26.02.2020 is **Ex. P-19/PW-17 (Colly.)**, that of Sh. A Sanjay Sahai, Under Secretary/MoC dated 26.02.2020 is **Ex. P-20/PW-17 (Colly.)**, that of Sh. Gordhan Singh, Ct Assistant Malkhana In-charge, EO-II, CBI dated 02.03.2020 is **Ex. P-21/PW-17** and that of Sh. K.P. Singh, Hd Ct. Malkhana Incharge EO-I, CBI dated 02.03.2020 is **Ex. P-22/PW-17**.

457. In cross-examination on behalf of A-2, he was questioned about closure reports filed by him. He told that he personally had recommended prosecution but senior officers recommended closure and hence he filed closure reports. One list of unrelayed statements was marked as **Ex. P-23/PW-17**.

458. It has come that he did not investigate as to who drafted the proforma application to be made by the applicant companies for the allocation of coal block. He admitted that

during investigation, it could not be established as to what was the purpose and utility for seeking information to be provided in column no. 29 & 30 of the proforma application form i.e. relating to previous allocation.

459. It has come that the allegation that M/s JICPL in order to embellish its claim for allocation of coal block had in its application fraudulently claimed that M/s JICPL was a SPV managed by M/s IISIPL and IL&FS Group, and had in its support claimed networth of Rs. 812.03 Crores of M/s IL&FS Group and Rs.206.48 Crores of M/s IISIPL could not be substantiated. It has come that allocation of earlier coal blocks either to the applicant company or group/associate company was not to be a disqualification for getting a fresh coal block. It was further found that no company was disqualified on basis of previous allocation of coal blocks.

460. During investigation, it was revealed that in the minutes of the 35th Screening Committee, it was mentioned that the Screening Committee took into consideration the view/comments of the Ministry of Power, Ministry of Steel, State Govt. concerned, guidelines laid down for allocation of coal blocks.

461. During investigation it could not be established that M/s JAS Infrastructure Capital Pvt. Ltd. had obtained any undue benefit from MoC with regard to its non-declaration of previous coal blocks to its group/associate companies.

462. During investigation it was revealed that in the guidelines pre-decided for allocation of coal blocks there was a concept to take into consideration the *inter se* priority for allocation of block among competing applicants and the factors required to be considered were also decided. However, it was not a mandatory provision as the word 'may be' has been used and that no threshold of any of the factor or the priority of the factor was ever decided throughout the process.

463. During investigation, it was revealed that the need for preparing *inter se* priority chart was never emphasized by any of the members of the Screening Committee or any of the ministries associated with the process, at any stage; and moreover there was no document to suggest that the task of preparing a block wise *inter se* priority chart was ever undertaken by the officials of MoC or they asked any department to do so.

464. During investigation, no evidence could be found to show that there was criminal conspiracy of the members of the Screening Committee with the concerned company i.e. M/s JAS Infrastructure Capital Pvt. Ltd.

465. During investigation, it was revealed that the final recommendations of coal blocks were signed by all the members present, which showed that the recommendations made by the Screening Committee was a unanimous decision having consent of all the members.

466. He admitted that as per D-11 (Ex. PW7/F) i.e. 'Photocopy of the Disbursement Memo Equity Investment dt. 01.04.2008 of M/s IL&FS IDC' the location of the project is mentioned as Bihar.

467. He admitted that during investigation in the instant case the allegations that M/s JICPL had fraudulently claimed in its application the network of IL&FS could not be substantiated.

468. Some certified copies were marked as **Ex. PW17/DX-1**.

469. In cross-examination on behalf of A-3 and A-4, It has come that MoP did not even open the applications of companies seeking allocation of coal block as sent to them by MoC for their examination and evaluation before making their recommendations. The recommendations made by them were based on the presentations and feedback form submitted subsequently by the applicants.

470. One Inter Se Priority Chart annexed as Annexure A with the Supplementary Final Report dt. 13.10.2014 was marked as **Ex. PW-17/DX-3**. It was prepared by PW-17 himself.

PART – D

STATEMENTS OF ACCUSED PERSONS U/S 313 CRPC

471. Statements of A-2 to A-5 were thereafter recorded u/s 313 CrPC in detail. Liberty was also given to all the accused persons to file their written statements u/s 313 (5) CrPC, however, they opted not to file the same. A-2 to A-5 opted to lead defence evidence. As A-1 company was being represented by Official Liquidator, statement u/s 313 CrPC qua A-1 company was not recorded. All the accused either denied the incriminating circumstances or tried to explain them.

PART - E

THE DEFENCE EVIDENCE

472. A-2 Manoj Kumar Jayaswal examined Sh. Manish Rajvaidya as DW-1, Sh. Sohan Chaturvedi as DW-2, Sh. Ashok Kumar Suryanarayan Patro as DW-3, his son Sh. Abhishek Jayaswal as DW-5 and himself as DW-6.

473. A-3 H.C. Gupta examined Sh. Nirmal Parkash Manchanda as DW-4 in his defence and Sh. Shiv Raj Singh as DW-7.

474. Despite seeking opportunity, no witness was examined by A-4 and A-5 on their behalf.

475. **DW-1 is Manish Rajvaidya.** In March 2006, he had joined Jas Toll Road Company Ltd. as Assistant Manager in the department of Company Secretary. He was transferred to

Abhijeet Ashoka Infrastructure Pvt. Ltd. in 2012. Subsequently, he resigned from the job in September 2016. Thereafter he had been practicing independently as Company Secretary.

476. He deposed that initially while he was working in Jas Toll Road Company Ltd. then for a period of 4-5 months he was reporting directly to Sh. Sanjay Dey, Company Secretary. Thereafter he was reporting to Sh. A.B.P. Kesan, Company Secretary. He told that Sh. ABP Kesan was responsible for compliances under Companies Act and considering new business opportunities including applying for coal blocks. He told that while he used to report to Sh. A.B.P. Kesan and Sh. Kesan used to report to Sh. B.L. Shaw.

477. Sh. B.L. Shaw was the Chairman of BLS family companies. He told that since Sh. A.B.P. Kesan was not very comfortable with the use of computers, so many a times he used to take him (DW-1) along in his meetings with Sh. B.L. Shaw. He also looked after work of JICPL.

478. He told that Sh. B.L. Shaw had three sons namely Sh. Arbind Jayaswal, Sh. Manoj Jayaswal and Sh. Ramesh Jayaswal and because Sh. B.L. Shaw did not use to trust his three sons so all the decisions relating to various companies of the group used to be taken by Sh. B.L. Shaw himself only.

479. He deposed that Sh. B.L. Shaw used to consider Manoj Jayaswal/A-2 as an irresponsible and incompetent person

because of his flamboyant nature. Sh. Shaw had restricted Manoj Jayaswal's role only to administrative work such as HR related issues of the companies, Bill passing of employees etc.

480. DW-1 told that various companies of the BLS Family used to work independently but matters relating to applying for coal blocks as well as formalities in that respect used to be dealt with by a centralised office of the BLS Family which was personally monitored, managed and controlled even at micro level by Sh. B.L. Shaw. All the work relating to allocation of coal block on behalf of various companies including filing of application forms or submitting other documents to concerned public offices was looked after by Sh. B.L. Shaw alongwith Sh. ABP Kesan. He also used to assist them in this work. All the policy decisions in such matters used to be taken by Sh. B.L. Shaw only.

481. He deposed that in respect of M/s JICPL, in matters relating to allocation of coal blocks, the decisions used to be taken by Sh. B.L. Shaw and not by the directors of the company, though it used to be recorded on papers that the decisions had been taken by directors. Accordingly all the decisions relating to submitting of application on behalf of M/s JAS Infrastructure Capital Pvt. Ltd. to MoC or making presentation before Screening Committee or submitting feedback form on behalf of the company were taken by Sh. B.L. Shaw.

482. He told that Manoj Jayaswal had no role in providing

any information relating to any of the columns in the application or in the feedback form or in the presentation as was submitted to MoC on behalf of the company. The information as was mentioned in the application, feedback form or in the presentation was provided by Sh. B.L. Shaw and Sh. ABP Kesan.

483. He also told that Harshad Pophali (PW-1) had some dispute regarding his dues with Manoj Jayaswal and threatened to give evidence against A-2 if his dues were not cleared.

484. He told that CBI did not record his or ABP Kesan's statement though they had volunteered to CBI officer for getting their statement recorded.

485. He further told that post 2006, Sh. Shaw decided that JICPL would be turned into a special purpose vehicle of M/s IL&FS and M/s IISIPL.

486. In respect of M/s IISIPL too, all decision making at policy level was done by Sh. B.L. Shaw. He used to run it with aid and assistance of his trusted advisor Sh. H.G. Joshi. This company was eventually to be merged with Jayaswal Neco Industries Ltd. and it was so amalgamated after family settlement in 2008. This fact is also recorded in IFS.

487. He told that Sh. H.G. Joshi was trusted person of Sh. B.L. Shaw. He was son-in-law of Sh. M.M. Vyas, who was Director in M/s Jayaswal Neco Ltd. Sh. H.G. Joshi was looking

after bringing new businesses. With respect to M/s JICPL, he was co-ordinating with IL&FS. The MoU dt. 08.01.2007, Page 5 to 12 of D-17, already Ex. PW3/B bears signature of Sh. H.G. Joshi. Similarly, MoU dt. 15.11.2006, Page 1 to 3 of D-17, already Ex. PW3/A bears signature of Sh. H.G. Joshi. In the same manner, some balance sheets contained in Ex. PW-6/A (Colly.), D-3 i.e. the balance sheet for FY 2005-06 (pages 28 to 42) and balance sheet for the FY 2004-05 (at pages 58 to 77) bear signature of Sh. H.G. Joshi.

488. He deposed that Manoj Kumar Jayaswal had no role in M/s JICPL though he was made Director. However, Sh. Manoj Kumar Jayaswal used to sign some documents like balance sheet, annual returns etc. as Director, upon instructions of Sh. B.L. Shaw. Sh. Manoj Kumar Jayaswal was made Director by Sh. B.L. Shaw in this company.

489. He also told that Manoj Kumar Jayaswal had no role in M/s IISIPL. This company was incorporated with a view to install Sinter Plant at Raipur and Manoj Kumar Jayaswal was made Director in the company with a limited purpose of to be able to provide personal guarantee to the bankers and this fact is recorded in IFS. This Sinter Plant was necessary for Integrated Steel Plant of Jayaswal Neco Ltd. at Siltara, Raipur. This company was later on amalgamated into Jayaswal Neco Ltd.

490. The company IISIPL was formed for the purpose of amalgamation with Jayaswal Neco Ltd. after installation of Sinter

Plant.

491. Sh. Manoj Kumar Jayaswal had no role in Jayaswal Neco Ltd.

492. He referred to one letter dated 03.05.2007 written by Mr. A.B.P Kesan to Sh. Hari Gopal Joshi which is **Ex. D-1/DW-1**, an inter-office communication dated 25.10.2005 signed by Sanjay Dey which is **Ex. D-2/DW-1** and a handwritten note which is **Ex. D-3/DW-1 (Colly.)** to show exercise of control on companies by Sh. B.L. Shaw. He also exhibited one letter dated 23.04.2007 of M/s IL&FS as **Ex. D-4/DW-1**, affidavits of Harshad Pophali as Supporting Creditor as **Ex. D-5/DW-1 (Colly.)** and **Ex. D-6/DW-1**, his appointment letter dated 14.03.2006 as **Ex. D-7/DW-1**, his Certificate of Practice issued in October, 2016 as **Ex. D-8/DW-1**.

493. In cross-examination on behalf of CBI, it has come that DW-1 had met Sh. D.K. Mittal only once in office of Sh. B.L. Shaw at Nagpur sometime in November/December, 2006.

494. He was further cross-examined about previous allocations to various companies such as CIAL and Abhijeet Infrastructure Ltd.

495. DW-1 denied various suggestions of the learned DLA. DW-1 also explained about date of application as 05.01.2007 and date of MoU dt. 08.01.2007 and about fact of there being SPV and told that the application though is dt. 05.01.2007 but it was

submitted to MoC after signing of MoU.

496. He denied that copy of MoU dt. 08.01.2007, Ex. PW3/B was not annexed with the application as it contained a clause no.1 in first line wherein it was mentioned that “IISIPL is a part of Abhijeet Group”.

497. He admitted that after the execution of IFS dt. 31.07.2008, M/s JICPL came in the group of MKJ in 5th schedule.

498. He was questioned about some litigation initiated by Manoj Kumar Jayaswal/A-2 which was Civil Suit No. 603/2008 filed in the Court of Civil Judge, Senior Division Nagpur on 07.05.2008 against M/s Neco Leasing and Finance Pvt. Ltd., Basant Lal Shaw, Arvind Jayaswal and Ramesh Jayaswal. Photocopy of certified copy of plaint, application for withdrawal of the suit, documents filed with the plaint and order of the Court [which are part of documents of case titled CBI Vs. Manoj Kumar Jayaswal (Abhijeet Infrastructure Pvt. Ltd.), Case No. CBI/41/2020, (D-74) (Page 1-40) were marked as **Ex. D-9/DW-1 (Colly)**.

499. He denied that he had falsely put the blame on Sh. B.L. Shaw to save accused A-2 Manoj Kumar Jayaswal.

500. **DW-2 is Sohan Chaturvedi.** He is a chartered accountant by profession. He knows Sh. Basant Lal Shaw. He deposed that he had audited accounts of various companies of Sh.

Shaw.

501. He also knew Sh. HG Joshi who was son-in-law of Sh. MM Vyas. He told that Sh. Joshi was a director of M/s IISIPL. He had audited accounts of IISIPL also. He identified his signatures on the balance sheet and auditor's report for the FY 2005-2006 [Part of Ex. PW 6/A (Colly.)]. Sh. HG Joshi had also signed the same.

502. DW-2 further told that Sh. B.L. Shaw used to closely monitor and control all activities relating to M/s IISIPL. He claimed close association with Sh. B.L. Shaw.

503. He was aware of Vyavastha Patrak and IFS. In 2007, he was made facilitator of division of family along with Sh. BK Agarwal by Sh. BL Shaw as per IFS (Ex. PW 3/F, D-20).

504. He told that before execution of the IFS, all the companies of the BLS family were under the exclusive control of Sh. BL Shaw. And after execution of the IFS, it became an MKJ Group Company. M/s IISIPL was amalgamated with M/s JNIL as per the long term vision of Sh. BL Shawn as also recorded in the IFS at recital N and Clause 11.

505. DW-2 too stated that A-2 Manoj Kumar Jayaswal had no role in preparation of application for allocation of coal block on behalf of JICPL and it was prepared under supervision and control of Sh. B.L. Shaw.

506. In cross-examination on behalf of CBI, he denied all the suggestions given by learned DLA.

507. **DW-3 is Sh. Ashok Kumar Suryanarayan Patro.** He was on the rolls of M/s Jayaswal NECO Industries Ltd. (M/s JNIL) between the years 2001 to 2006. He was heading the account team of two companies, namely M/s Ashutosh Casting Ltd. and M/s NECO Casting Ltd. He told that decisions with respect to M/s JNIL were taken by Sh. Basant Lal Shaw. He told that since Sh. BL Shaw was head and karta of the family, all the family functioned as per his decision only. He told that there was a Mining Division which was common for all the companies. There were various teams headed by different heads.

508. He had signed on MoU dated 31.03.2006 (Ex. PW2/B (D-24)) as a witness. He told that this MoU was executed to show existence of two groups i.e. Abhijeet Group and NECO Group to avail bank loans easily.

509. DW-3 told that as a matter of fact, it was Sh. B.L. Shaw who was controlling the affairs of all the companies of both the groups. He stated that the Abhijeet Group was created for commercial convenience by Sh. BLS but the same was only on papers.

510. In cross-examination on behalf of CBI, he denied that NECO group and Abhijeet group were distinct groups since 2002. He further denied that M/s JICPL was not being controlled

by Sh. BL Shaw as a company of BLS family or that it was Manoj Kumar Jayaswal who was looking after affairs of the M/s JICPL. He denied various other suggestions as well.

511. **DW-5 is Abhishek Jayaswal.** He is son of accused Manoj Kumar Jayaswal/A-2.

512. He deposed about Vyawastha Patrak which was executed on 28.03.2005. He told that it was executed in first person by his grandfather Sh. Basant Lal Shaw in his presence. He identified his signature and that of his grandfather, father and other family members. He told that purpose of Vyawastha Patrak was to seek affirmation from all the family members that the business of BL Shaw family was one and for the benefit of all. The purpose was also to reiterate that Sh. B.L. Shaw was the karta controlling the entire business for the family. It was also the intention that loan from financial institutions would be taken by Abhijeet Infrastructure Limited and CIAL but that would be for the benefit of Jayaswal Neco Group. The same was done as Jayaswal Neco Group was under Corporate Debt Restructuring (CDR) and hence was unable to take loan and hence the loans were taken under AIPL and CIAL, projecting it only for commercial convenience and to show to banks that it was a different company but actually was managed by Sh. B.L. Shaw. The Vyawastha Patrak is **Ex. D-39/DW-5 (5 pages)**. He told that the family and the companies got actually divided in the year 2008 after the execution of the IFS. Till then they shared a

common kitchen and all other resources and there was no division in the family.

513. DW-5 also claimed that his father/A-2 had no role in obtaining allocation of coal block for JICPL.

514. In cross-examination on behalf of CBI, he told that Sh. Arbind Jayaswal is his Tauji. He has one son Sh. Anand Jayaswal and one daughter. Sh. Ramesh Jayaswal is his Uncle (Chachaji). He has two sons namely Sh. Avneesh Jayaswal and Archit Jayaswal and one daughter. Smt. Kamini Jayaswal is his Buaji. She has three sons and one daughter. DW-5 are two brothers and one sister. His younger brother is Sh. Abhijeet Jayaswal and his younger sister is Ms. Swati Tayal.

515. He told that Vyawastha Patrak (Ex. D-39/DW-5) was only an internal document. It was not got registered. He denied that there was division in BLS family before execution of Indenture of Family Settlement dt. 31.07.2008 (Ex. PW3/F, D-20). He denied that his father Manoj Jayaswal was managing or looking after the affairs of M/s CIAL and M/s AIL during 2006 to 2008.

516. Regarding Ex. PW2/B which is MoU dt. 31.03.2006, he explained that though various companies were assigned to each group but there was no actual division as sons of his uncles alongwith his father were also shown to be operating Abhijeet Group.

517. As to the purpose of clause 3.1 of the MoU with heading Non-interference wherein it is stated inter-alia that Neco group shall not interfere with the affairs and conduct of business of Abhijeet group, DW-5 explained that it was to show to the outside world that both the groups were separate and Neco Group was not controlling the Abhijeet Group. However, in reality, his uncles through their sons were involved and were rather controlling the affairs of Abhijeet Group.

518. He denied various other suggestions given by learned DLA.

519. **Manoj Kumar Jayaswal/A-2** himself appeared as **DW-6**.

520. He deposed that his father Sh. Jayaswal Basant Lal Shaw had written his autobiography titled as "Mera Jeevan Pravaha" which has been published by Basant Lal Shav Institute of Indological Research, Nagpur. It is edited by Sh. Madhup Pandey and Smt. Hemlata Mishra "Manvi". It is compiled by Sh. Manoj Gokhale and printed at Vardaan Bora, Print Tek, Nagpur. It is the first edition published on 03.08.2019, which is the birthday of his father and is treated as Founders Day and celebrated by entire family.

521. He told that this book was released by Sh. Nitin Jairam Gadkari, the then Hon'ble Cabinet Minister. The autobiography was marked as **Ex. D-40/DW-6**. There was

objection by learned DLA to marking of exhibit. However, the objection is liable to be overruled as no plausible ground has been raised.

522. DW-6 referred to various pages of the book/biography. He particularly referred to page 140 wherein there is a separate chapter about the division of the family with the heading "Bachon me Dayitva ka Vibhajan" and it is stated in first line that "unfortunately my family got divided in 2008". DW-6 deposed that there is a controversy regarding the actual date of division in their family. All coal block cases wherein he was an accused including this case pertain to a period prior to 2008. He deposed that he has been prosecuted by getting singled out from the family in the cases set up against him on the ground that he was the one who having been separated in 2002 was conducting business independently.

523. He deposed that his father and his brothers decided to separate in 2008 and they decided to be with my father and the family was divided in the ratio of 3:1 and out of four people i.e. his father and two brothers kept three shares and one share was given to him. He told that all companies had cross-holdings. Further slowly shareholdings were divided into two groups -- one was called Neco Group of BLS and second Abhijeet Group i.e. belonging to him.

524. He also referred to Chapter starting from Page 178

with the heading "Santane Ho Toh Aisi Ho, Beta Arvind" and Page 185 where there is a chapter "Beta Ramesh". He told that his father praised both of his brothers Arvind and Ramesh and gave all the credit to them for making growth in the business. He stated that his father did not mention his (Manoj's) name anywhere.

525. He further referred to a specific chapter on himself at page 182 titled "Beta Manoj" wherein it is mentioned that Manoj/A-2 was extravagant and lives with *thaath baath* and that his father was not liking his extravagancy and living with *thaath baath*. He stated that his father had criticized him in the book.

526. He deposed that his relations with his father were never good. He told that his son persuaded his father not to write about him (DW-6/A-2) that he was doing only HR work and bill passing work and thus his father wrote good words about him like he was a very hardworking person. The gist of opinion of his father in his autobiography about his three sons is summarized by DW-6 in the form of a chart which is **Ex. D-41/DW-6**.

527. He deposed to the effect that his father was the person who controlled all the work relating to applying for coal block allocation matters.

528. He brought on record copy of a lease agreement

dated 01.12.2006 between M/s Abhijeet Infrastructure Ltd. and M/s Jayaswal NECO Industries Ltd. as **Ex. D-42/DW-6** and a copy of the lease agreement dated 26.03.2007 between M/s CIAL and M/s Jayaswal NECO Industries Ltd. as **Ex. D-43/DW-6**.

529. In cross-examination on behalf of CBI, he explained that HR related work means supervising attendance, leaves, gratuity etc. of employees working with his father and his companies. Passing of bills means work related to bills of employees relating to travelling, hotel stay, air fare etc.

530. A copy of IFS dt. 31.07.2008 available as D-158 in the case CBI Vs. AMR Iron & Steel Pvt. Ltd. & Ors., CC No. 316/2019, which was notarized was taken on record as **Ex. D-44/DW-6**. He admitted that in the copy of IFS Ex. PW3/F, signatures of three persons namely Ms. Swati Manoj Jayaswal, Abhijeet Manoj Jayaswal and Ms. Ritika Ramesh Jayaswal are not there, whereas in the copy of IFS Ex. D-44/DW-6, signatures of two persons namely Abhijeet Manoj Jayaswal and Ms. Ritika Ramesh Jayaswal are not there.

531. He referred to record when it was suggested that location of EUP in the present case was changed from West Bengal to Bihar after approval of Shriprakash Jayaswal as he was a Minister of State (Incharge for Coal and S&PI) in the Central Govt. as reflected from File Ex. PW11/E (Colly.) (D-34, page 71/n, dt. 19.08.2010). He denied that M/s JICPL was part of Abhijeet Group at the time of applying for allocation of coal

block. He denied that he had shifted the burden upon others to save himself.

532. **DW-4** is **Sh. Nirmal Parkash Manchanda**. He has been examined on behalf of A-3 H.C. Gupta.

533. **DW-4** was working in Coal India Ltd. since June 1982 as Stenographer.

534. He deposed that in 2007, desktop computers were available for typing work. In the year 2007, he had assisted Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta in their typing work. He told that the typing work was carried out on desktop computer situated adjacent to GM chamber. These two Officers were posted at headquarters at Kolkata and they were financial experts. He told that he simply typed the matter that they had given to him.

535. After seeing one Excel Sheet from Page 32 to 39 and another Excel Sheet from Page 70 to 77 of **Ex. D-21 (Colly.)** [available as D-14 in case file titled as 'CBI Vs. M/s Jindal Steel & Power Ltd., RC 6 (E) 2013 EO-I DLI], he told that he had not typed these documents.

536. After seeing running matter titled 'Notes as per remark column' at Page 78 to 84 attached to second Excel Sheet of **Ex. D-21 (Colly.)**, he told that he had typed similar matter but he was not sure whether he had typed these pages or not as it was an old matter.

537. In cross-examination on behalf of CBI, he told that he had used electronic typewriter till year 2000. He was not aware if anyone had used electronic typewriter in their office after year 2000.

538. He was cross-examined on behalf of A-4 and A-5 also. In the said cross-examination, he admitted that Sh. Manoj Kumar, Dy. SP, CBI, EO1, New Delhi had examined him with respect to visit of Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta on 02.07.2018. He admitted that in 2007 there was no electronic typewriter in their office. He admitted that Sh. Samiran Dutta and Mrs. Sushmita Sen Gupta were not provided with any electronic typewriter. He admitted that whatever they themselves typed or got typed by him was on his office computer and printed from laser printer.

539. **DW-7 is Sh. Shiv Raj Singh.** He was officer of Indian Administrative Services (1973 Batch) of Madhya Pradesh Cadre. From 2003 up to 2007, he was posted as Principal Secretary, Industries & Mineral Resources Department, Govt. of Chhattisgarh. He told that he had attended around 4 to 5 screening committee meetings held for allocation of coal blocks for the steel and cement sector. He had also attended 35th screening committee meeting held on 30.07.2007 for allocation of coal block for the power sector alongwith Sh. Vivek Dhand, Principal Secretary, Energy & Water Resources Department.

540. He told that the said meeting lasted for about one

hour. He told that first of all, attendance was taken by MoC officials of all the participants. Thereafter, Chairman of the screening committee namely Sh. H.C. Gupta, Secretary, Coal briefed the participants that presentations by various applicants had already been made with the participation of representatives of various states and on that date it was proposed to consider various applications for IPPs and CPPs for recommendation by the screening committee. Chairman also mentioned that the views of representatives of the administrative ministries of the government of India and the concerned state governments would be considered alongwith availability of coal from CMPDIL and various coal companies so that just and equitable coal reserves could be allocated to the selected applicants. The Chairman also mentioned that in the recommendations received from various state governments, emphasis had been laid to allocate coal blocks located in the respective states to the projects being proposed in their states, however, there were states not having coal reserves their requirement would also need to be met. Before the start of the discussion by the participants, some junior officials of MoC had circulated recommendations received from various state governments and MoP. One chart showing names of various applicant companies which had some information about the applicants was also given to the participants.

541. In cross-examination on behalf of CBI, he told that his statement was not recorded by CBI in connection with the present case. He also told that he had gone through the

advertisement issued in November, 2006 by MoC. He stated that it was not responsibility of MoC officers alone to check the applications and documents. According to him, it was joint responsibility of MoC Officers as well as Officers of Administrative Ministries and State Govt.

542. Regarding his role as representative of Govt. of Chhattisgarh in the 35th screening committee meeting, he told that it was to put forth the views of the state government and to secure allocation of coal blocks to the IPPs and CPPs proposed to be set up in Chhattisgarh State and recommended by the state government. Regarding his as representative of Govt. of Chhattisgarh in the 35th screening committee meeting in relation to EUPs proposed to be set up and coal blocks situated in other states, he told that the screening committee meeting proceedings and discussions could broadly be divided into two parts. The first part pertained to the methodology and the process of deliberations based on which the applicant companies were to be recommended for allocation of coal blocks. In this part of the meetings, representative of all the State Govt. and the Administrative Ministries participated and broadly a methodology to be followed was agreed upon. As regards the second part in which individual applications were deliberated upon, he had no role qua those applications which related to coal blocks or EUPs situated/proposed to be set up in other states.

543. He denied that the role which he had described in

the first part, nothing of those issues were discussed in the meeting dt. 30.07.2007. He asserted that in the meeting, those issues as mentioned in the first part were definitely discussed. He was shown minutes of the meeting dt. 30.07.2007 Ex. PW11/J-4 (Colly.), D-31 and he told that those minutes were incomplete as various issues that were discussed and the decision taken thereon had not been mentioned in those minutes. He denied that that recommendations of MoP were not circulated to the members of the 35th screening committee on 30.07.2007.

544. In cross-examination on behalf of A-4 and A-5, he admitted that during the meeting held on 30.07.2007, the representative of MoP had informed the screening committee that MoP had made its recommendations by considering network of the company, tie up of water and land and he requested the committee that these recommendations be accepted by the committee.

545. He admitted that the representative of MoP never informed the screening committee on that day that the recommendations of MoP were arrived at by applying the UMPP criteria vis a vis the minimum network i.e. a minimum network of Rs. 50 Lakhs per MW as a qualifying criteria.

546. He admitted that during discussions, H.C. Gupta/A-3 had told Sh. Harish Chandra (from MoP) that MoC had not formally received the recommendations from MoP and upon this, some official from MoP handed over the letter containing formal

recommendations made by MoP during the meeting itself.

547. He admitted that after reading formal letter of MoP, H.C. Gupta/A-3 was visibly upset about the fact that MoP had not verified the facts on the basis of which it had made the recommendations and he suggested to the screening committee that before finalizing the recommendations, the said facts should be got verified. He also admitted various other suggestions.

548. He admitted that the state government of Chhattisgarh had entered into MoUs with companies for establishment of power plants which did not have existing production capacities and assured them all help for establishing such EUPs and supporting them in allocation of coal blocks for their projects by recommending their case.

549. He admitted that all along it was the view of the screening committee that a company not already engaged in production of power could be allocated a coal block for its proposed EUP.

550. DW-7 was further cross-examined by CBI to explain some facts. In further cross-examination, he was shown D-34, page 129 which is letter dt. 05.09.2007 and page 148 which is letter dt. 11.09.2007. These letters are **Ex. D-45/DW-7 (Colly.)** and **Ex. D-46/DW-7 (Colly.)**.

PART – F

THE ARGUMENTS

551. Detailed final arguments in the matter were heard as were addressed by Sh. A.P. Singh, Learned DLA on behalf of CBI, by Sh. Umang Kataria, Learned Counsel on behalf of A-1 company, by Sh. Mudit Jain, Learned Counsel on behalf of A-2 and by Sh. Rahul Tyagi, Learned Counsel on behalf of accused persons A-3 to A-5.

552. Written submissions, in support of the arguments, were also filed. I have gone through the same as well. Additional written submissions were also filed on behalf of A-2 and I have gone through the same as well.

ARGUMENTS ON BEHALF OF PROSECUTION

553. Sh. A.P. Singh, learned DLA for CBI had stated as Bar that prosecution was not pressing charge for offence u/s 409 IPC and 13(1)(c) PC Act against accused A-3 H.C. Gupta. Consequently, it was also not pressing charge of conspiracy i.e. u/s 120-B r/w 409 IPC & 13(1)(c) PC Act against any of the accused persons. As such, the aforesaid offences are being kept out of consideration. And now the charge of conspiracy was restricted to offence u/s 120-B r/w 420 IPC & 13(1)(d) PC Act.

554. Learned DLA for CBI argued that the prosecution

has proved its case beyond reasonable doubts. Referring to the testimonies of the witnesses and the documents, he submitted that the prosecution has proved the charges. He emphasized that the conspiracy among the accused persons stands established and the offences of cheating and criminal misconduct/corruption are clearly made out.

555. Learned Prosecutor highlighted the relevant documents and testimonies and submitted that CBI has established that accused persons made misrepresentations to MoC while making application, and also in the feedback form and during presentation.

556. Learned DLA for CBI contended that JICPL/A-1 was the applicant company which was incorporated on 16.07.2002 and it belonged to the Abhijeet Group. A-2 Manoj Kumar Jayaswal alongwith his brother Arbind Jayaswal were the initial directors of the company. He pointed out that Sudhir Gupta/PW-6 had signed on the application form [Ex. PW-1/A (Colly.), D-3] as authorised signatory. The application was for allocation of Mahuagarhi coal block situated in Jharkhand and EUP was proposed at Burdwan, West Bengal.

557. Learned DLA referred to testimonies of PW-1 Harshad Pophali and PW-6 Sudhir Gupta and submitted that both the witnesses have shown that the application and feedback form and presentation were prepared under directions of A-2 Manoj Kumar Jayaswal.

558. Learned DLA contended that in the application various misrepresentations were made. One of such misrepresentation is that JICPL was stated to be an SPV managed by IISIPL and IL&FS. Learned DLA pointed out to various documents to show that JICPL was not an SPV and certainly not one managed by IISIPL and IL&FS. He also referred to evidence of PW-9 Pankaj Sakhuja in this regard. Learned DLA highlighted that the accused company did not annex any MoU with the application to show that JICPL was an SPV or that it was managed by IISIPL and IL&FS. He pointed out that IL&FS had not subscribed to any shares or equity of JICPL and as such it cannot be said that IL&FS was managing JICPL in any manner.

559. Learned DLA submitted that another misrepresentation was regarding core business of applicant company/A-1. He contended that it was not engaged in any such work or business.

560. Another misrepresentation pointed out by Learned DLA is that network of IL&FS was also claimed as part of network of JICPL which was not legally justified. No document was filed to show connection of IL&FS with JICPL and thus its network could not be joined with network of JICPL.

561. The next misrepresentation pointed out is regarding appraisal and syndication. Learned DLA submitted that it was falsely claimed by the applicant in the application that DPR was appraised. He pointed out that no appraisal report was annexed

with the application.

562. He also pointed out to misrepresentation regarding non-disclosure of previous allocations. He submitted that it was stated in the application that there was no previous allocation whereas there were various allocations to companies of Abhijeet Group. He referred to the testimonies of PW-1 and PW-6.

563. Learned DLA then pointed out misrepresentations in the feedback form [Ex. PW1/E, D-34, Pg. 1383-1384]. He submitted that in the feedback form it was again claimed that syndication of total debt of Rs. 4445 crores was arranged which was incorrect statement.

564. He further submitted that at the time of presentation, the company made presentation for EUP at Bihar for which there was no application.

565. Further, he submitted that A-3 to A-5 were hand in glove with A-1 & A-2 and deliberately assisted them in achieving their objective of allocation of coal block. Learned DLA submitted that they were in conspiracy with private accused persons and are guilty of many acts and omissions and thus committed offence of criminal misconduct under PC Act.

ARGUMENTS ON BEHALF OF A-1 COMPANY

566. Sh. Umang Katariya, learned Counsel for Sh. Kannan Tiruvengadam who is the Official Liquidator of accused

No. 1 company/JICPL made some brief submissions. He also filed written submissions.

567. Learned Counsel for the OL pointed out that on 16.10.2019, Hon'ble NCLT, Kolkata Bench had ordered for moratorium u/s 14 of the Insolvency & Bankruptcy Code, 2016 ("IBC"). Further, vide order dated 17.07.2020, the Hon'ble NCLT directed for liquidation of accused No. 1 company JICPL and Sh. Kannan Tiruvengadam was appointed as Official Liquidator.

568. Learned Counsel referred to Sec. 32-A of IBC and relied upon **Manish Kumar Vs. UOI, (2021) 5 SCC 1**. Learned counsel also referred to an order of Sh. Arun Bhardwaj, the then Ld. Special Judge, PC Act (CBI), CBC-01, RADC, New Delhi, in the case of CBI Vs. M/s Sunil Hitech Engineers Ltd. & Ors., whereby learned Special Judge had discharged the company by resorting to provisions of Sec. 32-A IBC.

569. Learned counsel contended that even if accused No.1 company is convicted in the present matter, no purpose will be served as no action can be taken against any property of the company in terms of Sec. 32-A of IBC. He pointed out that A-1 company is under liquidation as on today.

570. Learned counsel also relied upon **Directorate of Enforcement Vs. Manoj Kumar Agarwal, 2021 SCC OnLine NCLAT 121** and as per the law laid down therein, the properties

of A-1 company have to remain available till the same are sold during liquidation in terms of Sec. 32-A IBC.

571. He thus prayed for passing appropriate orders in respect of A-1 company.

ARGUMENTS ON BEHALF OF A-2

572. Sh. Mudit Jain, learned Counsel for A-2/Manoj Kumar Jayaswal made manifold submissions.

573. Learned Counsel submitted that IL&FS was a constituent of the SPV namely JICPL and thus was its principal as well. Further, IL&FS was also co-applicant for allocation of coal block. As such its network could be used. He contended that there was no requirement of filing the MoU with the application.

574. He submitted that the main allegations of prosecution are that A-1 & A-2 misrepresented about network of JICPL by claiming that it was SPV managed by IISIPL and IL&FS; that application of A-1 company was incomplete as appraisal report and documents regarding syndication were not filed alongwith the application; that IL&FS was wrongly shown as promoter of JICPL; and that information about previous allocation was concealed because performance in earlier cases was below par.

575. Regarding issue of network, learned counsel

pointed to the covering letter which accompanied the application and submitted that everything was disclosed in the said covering letter. He contended that nothing was concealed regarding the SPV.

576. Regarding non-filing of appraisal report and syndication documents, learned counsel argued that A-2 or A-1 company were never informed about any deficiency in the application by MoC. He further submitted that non-filing of these documents was no offence. Additionally, he contended that no false statement was made qua these two issues. He explained that in the application, it was indeed mentioned that appraisal was done but it was never claimed that appraisal report was also prepared. He wanted to convey that if it was claimed that appraisal report was also prepared but the report was not filed, then prosecution could have a case on this issue. Regarding syndication, he contended that IL&FS had nowhere disputed that it had not syndicated the debt. He referred to some documents to show that syndication for loan amount worth Rs. 4450 crores had been arranged by IL&FS.

577. Learned counsel further contended that there was no requirement to annex any MoU with the application. He contended that even otherwise IL&FS has never stated that there was no MoU.

578. Regarding non-disclosure of previous allocation, learned counsel contended that JICPL had applied as an SPV and

not as a group company. As such, there was no requirement of disclosing previous allocations. He argued that there was no misrepresentation regarding previous allocation as no coal block was earlier allocated to JICPL. He contended that JICPL was an eligible company as it was engaged in power generation.

579. He vehemently submitted that as far as A-2 is concerned, there is no evidence that he committed any offence under PC Act. He pointed out that prosecution has failed to show that there was any meeting of minds between A-2 and accused public servants. He vehemently submitted that no case was made out against A-2.

580. Learned counsel submitted that prosecution has failed to establish that various informations in the application form or feedback form or the presentation were filled up/provided upon instructions of A-2. He contended that reliance of prosecution on evidence of PW-1 is without any basis. He contended that evidence of PW-1 is not reliable and his evidence is full of contradictions and improvements.

581. Learned counsel prayed for his acquittal.

ARGUMENTS ON BEHALF OF A-3 TO A-5

582. Sh. Rahul Tyagi, learned Counsel for accused public servants A-3 to A-5, made detailed submissions.

583. Learned Counsel firstly challenged the trial

proceedings itself terming the same as void *ab initio* on the ground that there was no sanction obtained by the prosecution u/s 19 of the PC Act against accused A-4 & A-5. He contended that the course adopted by my learned Predecessor of deeming that sanction had been granted as recorded in order dated 22.07.2015 was unsustainable in law. He submitted that there cannot be deemed sanction under the law. He also submitted that the question relating to sanction can be raised at any time.

584. Learned counsel further questioned the trial on the ground no sanction was obtained by prosecution u/s 197 CrPC against any of the three accused public servants. He contended that all the three accused public servants cannot be denied protection of Sec. 197 CrPC and thus trial for the offences under IPC is also void.

585. Learned counsel further submitted that prosecution has not proved the ingredients of the offences against any of the accused public servants. He vehemently submitted that none of the offences under any of the clauses (i), (ii) & (iii) of Sec. 13(1) (d) of PC Act is made out. Learned counsel contended that *mens rea* is necessary even in case for offence u/s 13(1)(d)(iii) PC Act.

586. He countered the allegations of the prosecution that the allocation of the coal block to JICPL was against public interest. He contended that the allocation was for captive use and it was for an EUP of power production which was in accordance with the policy of the Govt. Therefore, there was no violation of

public interest.

587. Learned counsel forcefully submitted that A-3 who was the Chairman of the Screening Committee and A-4 who was Member Convener cannot be singled out for the decisions taken by the Screening Committee. He further submitted that A-5 who was Director, CA-1 had joined MoC quite late and was not part of initial processing of applications and therefore he too cannot be held responsible. He contended that decision taken by the Committee was decision of a group and not of any individual.

588. He emphasized that minutes of the meeting were never challenged. The recommendation sheets also bear signature of all the members of the Screening Committee and it was a unanimous decision or at least a decision by a majority.

589. Regarding conspiracy, learned counsel argued that prosecution has failed to establish any conspiracy between accused public servants and private accused persons.

590. Learned Counsel vehemently submitted that all the guidelines were followed while recommending allocation of coal block to A-1 company. As to non-checking of applications for completeness and eligibility, learned counsel highlighted that the prosecution has misconception and has confused checking of the applications with verification of the claims made therein. He contended that what the prosecution is emphasizing is verification of the information/claims made in the applications.

According to learned counsel this was the task of administrative ministry i.e. MoP and the concerned state governments. He submitted that MoC was never supposed to verify the claims made in the applications as it never had the expertise to do so. He explained that checking for completeness as envisaged in the guidelines was only to see that all the documents were annexed with the application including demand draft of Rs. 10,000/-. And checking for eligibility only meant that it was to be seen that the EUP was for power production. Learned counsel referred to various documents and testimonies to show that checking for completeness and eligibility had indeed taken place.

591. Regarding misrepresentations made by A-1 company, learned counsel submitted that accused public servants did not know any of those misrepresentations and as a matter of fact they themselves have also been induced as they were part of MoC itself. Learned counsel contended that accused public servants being part of MoC were also misled.

592. For A-5, learned counsel additionally submitted that A-5 had joined CA-1 Section on 26.03.2007. At the relevant time it was Sh. Sanjiv Mittal who was Director, CA-1. It was during tenure of Sh. Mittal that all the applications were received. As such all the alleged acts or omissions prior to 26.03.2007 cannot be attributed to A-5. He also pointed out that applications were even sent to MoP prior to joining of A-5, however, MoP had refused to receive the same and were sent back. Some

correspondence took place between MoP and MoC and only thereafter applications were sent again on 17.04.2007. Learned counsel contended that all the boxes which were lying as received back on earlier occasion were sent to MoP in the same condition. A-5 had no occasion or opportunity to see the same.

593. Learned counsel also pointed out that A-5 was not a member of the Screening Committee in any capacity. He also pointed out that against A-5, off late the PMO has been denying sanction for prosecution after it understood that A-5 had no role in sending the applications to administrative ministries.

594. Learned counsel prayed for acquittal of these accused public servants.

REBUTTAL ARGUMENTS

595. Learned DLA rebutted all the contentions of the learned defence counsels.

596. Regarding contentions raised on behalf of A-1, learned DLA submitted that A-1 is yet to undergo liquidation and Sec. 32-A IBC does not apply.

597. Regarding contentions raised on behalf of A-2, learned DLA submitted that the same are misconceived and show misinterpretation of documents.

598. Regarding contentions raised on behalf of accused

public servants i.e. A-3 to A-5, learned DLA contended that those contentions have no weight and substance.

599. Further, learned defence counsels were also given opportunity to explain few of the rebuttal submissions.

600. The contentions of respective learned counsels for the parties will be noted in detail at the time of analysis and discussion.

PART-G

THE ANALYSIS AND DECISION OF THE COURT

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

POINTS FOR DETERMINATION

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

I. Was there no proper sanction u/s 19 of PC Act and

thus cognizance was bad against accused A-4 and A-5?

II. Whether cognizance was bad in respect of A-3 to A-5 for want of sanction u/s 197 CrPC?

III. Whether offence of criminal misconduct/corruption u/s 13(1)(d) of PC Act is made out against A-3 to A-5?

IV. Were there any misrepresentations?

V. Whether those misrepresentations deceived any person?

VI. Who is responsible for making those misrepresentations and thereby deceiving and fraudulently or dishonestly inducing the said person?

VII. Whether the offence of cheating u/s 420 IPC is made out against A-1 and A-2?

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

603. The case can be broadly considered in two compartments. One compartment relates to case against public servants and the other relates to case against private individuals and company. One common issue is regarding offence of conspiracy.

604. Points for determination no. I to III are concerning case against public servants. Points for determination no. IV to VII relate to case against private accused persons. Point for determination no. VIII is common and relates to all the accused

persons. This point for determination no. VIII will be discussed in the last.

CASE AGAINST ACCUSED PUBLIC SERVANTS

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

POINT FOR DETERMINATION NO. I

Was there no proper sanction u/s 19 of PC Act and thus cognizance was bad against accused A-4 and A-5?

606. Learned Counsel Sh. Rahul Tyagi for A-3 to A-5 vehemently submitted that cognizance was wrongly taken against the accused public servants as there was no sanction u/s 19 of PC Act in respect of A-4 and A-5. He contended that order dt. 22.07.2015 providing for deemed sanction is unsustainable.

607. Learned Counsel Sh. Rahul Tyagi for the accused public servants contended that there was no sanction u/s 19 of PC against accused A-4 and A-5 and as such cognizance was taken without jurisdiction. He contended that the trial conducted in the absence of the sanctions is void *ab initio*. He relied upon **Nanjappa Vs. State of Karnataka (2015) 14 SCC 186** and **A.R. Antulay Vs. S. Nayak & Anr., (1988) 2 SCC 602**.

608. Learned Counsel criticized order dated 22.07.2015 vide which it was ordered that sanction against A-4 and A-5 was deemed to have been granted. Learned Counsel submitted that

reliance placed by my Learned Predecessor on the judgment of **Vineet Narain & Ors. Vs. UOI & Anr., (1998) 1 SCC 226** was misplaced and misconceived. He referred to the recent decision given by Hon'ble Supreme Court in the case of **Vijay Rajmohan Vs. CBI (Anti-Corruption Branch), (2023) 1 SCC 329**. The Hon'ble Apex Court has held in this case that delay in grant of sanction by the Competent Authority beyond mandatory period will neither result in quashing of the proceedings nor it will lead to conclusion that sanction has been deemed to have been granted.

609. Hon'ble Supreme Court has observed as under:

“23. Noticing that there is no legislation prescribing the period within which a decision for sanction is to be taken, this Court, in *Vineet Narain (supra)*, sought to fill the gap by setting a normative prescription of three months for grant of sanction.

58. (1)(15) Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG'S office.

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31. In the first place, non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the Rule of law. This is also a non-sequitur. It must also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. At the same time, a decision to grant deemed sanction may cause prejudice to the rights of the Accused as there would also be non-application of mind in such cases.”

610. It further held that the only course of action available when sanction is not granted in the stipulated time is that the aggrieved party including complainant, accused or victim may approach the writ Court seeking directions for action on the request for sanction. It observed as under:

"37. In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears...."

611. He thus submits that it is a case of no sanction against A-4 and A-5 and they must be discharged.

612. Learned DLA has not disputed the factual position that there was no sanction granted by the Competent Authority and it was only deemed to have been granted vide order dated 22.07.2015 but he submits that the judgment in Vijay Rajmohan (*supra*) will apply only prospectively. He further submitted that the objections have been raised belatedly and even otherwise there has been no failure of justice. Learned DLA relied upon **Girish Kumar Suneja Vs. CBI, Criminal Appeal No. 1137 of 2017 decided on 13.07.2017 by Hon'ble Supreme Court of India.**

613. The answer of Learned Counsel of the accused public servants is that the judgment in **Vijay Rajmohan (*supra*)** will apply retrospectively. Relying upon **Dr. Suresh Chandra**

Verma & Ors Vs. The Chancellor, Nagpur University & Ors., MANU/SC/0351/1990, he submitted that whenever Hon'ble Apex Court interprets a provision of law, it declares law as it has been from the inception. Learned Counsel argued that all declarations of law are retrospective in its application unless specifically declared otherwise. He also relied upon **P.V. George and Ors. Vs. State of Kerala and Ors. (2007) 3 SCC 557** in this regard.

614. He further answered that issue of sanction can be raised at any time. He referred to the observations made in the case of Nanjappa (*supra*) which were as under:

"13. What is important is that, not only was the grant of a valid sanction held to be essential for taking cognizance by the Court, but the question about the validity of any such order, according to this Court, could be raised at the stage of final arguments after the trial or even at the appellate stage. This Court observed:

"Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefore or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage.

But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an

appellate court."

(Emphasis supplied)

615. Regarding no failure of justice shown by the accused, Learned Counsel for the accused public servants submitted that reliance on Girish Kumar Suneja (*supra*) by the prosecution is misplaced. He submitted that Hon'ble Supreme Court was not dealing with the issue of deemed sanction. He contended that the requirements of showing failure of justice by the accused with a reference to S. 19(3) of PC Act is only in the cases of appeal or revision or confirmation proceedings. Learned Counsel pointed out that a separate application has also been filed in this regard.

616. I have considered these submissions..

617. When my Learned Predecessor passed the order dated 22.07.2015 deeming that sanction had been granted, it must be noticed that it was a possible course of action. My Learned Predecessor had relied upon Vineet Narain (*supra*) and **Subramanian Swamy Vs. Manmohan Singh & Another, (2012) 3 SCC 64.**

618. Thus the said order cannot be faulted with now. Moreover, what is important is that none of the accused public servants had challenged the said order dated 22.07.2015 at any point of time. They participated in the trial and now when the matter was at the final stage, they have come up with this plea. The judgment of Vijay Rajmohan (*supra*) has been delivered

recently. Therefore to my mind there is nothing wrong with the order dated 22.07.2015.

619. There is another important aspect. This plea was raised for the first time when the matter was at the stage of final arguments. It is obvious that the provision of Sec. 19 of the PC Act is in nature of shield for public servants to save them from frivolous prosecutions. It is also noteworthy that the requirement of sanction is at the time of taking cognizance. It is so because the protection will become ineffective if criminal prosecutions are allowed to begin and then later on decision is taken regarding protection of public servants. This course of action will make the protection ineffective and useless. With aim of providing protection at the very threshold, requirement of sanction was provided at the time of taking cognizance.

620. In the present case, deemed sanction was ordered before taking cognizance. The accused public servants appeared and participated in the proceedings. They did not raise any objection that cognizance was taken against them without sanction or that the order providing for deemed sanction was bad. They continued participating in the trial. And now when the matter has reached the final stage, they have come up with this plea. It appears that this plea would not have been raised if the judgment in Vijay Rajmohan had not come.

621. However, learned counsel for accused public servants is right in submitting that question whether there

occurred failure of justice or not due to absence of, or error in, any sanction is a matter to be seen by appellate court or revisional court and not by the trial court. The aspect of failure of justice is relevant when the question of sanction is being considered before the appellate or revisional court. Therefore, it follows that if an accused raises plea regarding absence of sanction or its invalidity before the trial court, the prosecution cannot take a plea that no failure of justice has occurred due to such absence or invalidity. The prosecution has either to show existence of sanction or to prove its validity. The concept of failure of justice is to be applied in those cases in which there is no sanction for prosecution but no objection is taken qua it before the trial court and the matter reaches appellate court or revisional court where it is so raised. The judgment in Girish Kumar Suneja (*supra*) has to be considered accordingly. Thus learned Counsel for accused public servants is right in submitting that question whether there occurred failure of justice or not due to absence of, or error in, any sanction is a matter to be seen by appellate court or revisional court.

622. However, considering the facts and circumstances of the case, it is held that there is no error in order providing for deemed sanction.

POINT FOR DETERMINATION NO. II

Whether cognizance was bad in respect of A-3 to A-5 for want of sanction u/s 197 CrPC?

623. Learned Counsel for the accused public servants also focused on the lack of sanction u/s 197 CrPC against all the three accused public servants. He relied upon **A. Srinivasulu Vs. The State Rep. by the Inspector of Police, 2023 Live Law SC 485** and contended that sanction u/s 197 CrPC was must. He further relied upon **R. Balakrishna Pillai Vs. State of Kerala, (1996) 1 SCC 478** and **State of Madhya Pradesh Vs. Sheetla Sahai & Ors., MANU/SC/1425/2009**.

624. Learned DLA has replied that the issue regarding lack of sanction u/s 197 CrPC was raised at the time of charge also and was decided against the accused persons. He also relied upon **Parkash Singh Badal Vs. State of Punjab & Ors. MANU/SC/5415/2006** and contended that entering into conspiracies cannot be considered as an act performed during the discharge of official duties and as such there was no requirement of sanction u/s 197 CrPC. He contended that the present case is a case of abuse of power and as such no protection is available to the accused public servants u/s 197 CrPC. He relied upon **Chaudhary Parveen Sultana Vs. State of WB, 2009 CriLJ 1318**.

625. Learned Counsel for the accused persons refuted these contentions and submitted that the judgment in the Prakash Singh Badal (*supra*) was already discussed and clarified in the judgment of A. Srinivasulu (*supra*). He referred to the following observations made therein:

or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy. Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.

48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal vs. State of Punjab. It reads as follows:-

"50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.

50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the

observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authorised by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.”

626. Learned Counsel thus argued that prosecution for offences under IPC without sanction under 197 CrPC is bad in law. He submitted that protection of Section 197 CrPC was available not only to A-4 and A-5 but even to A-3 H.C. Gupta who had retired.

627. My Learned Predecessor has already dealt with the aspect of sanction u/s 197 CrPC at the time of order on charge. He has already observed that the alleged acts as committed by A-3 to A-5 cannot be called to have been done by them in the discharge of official duties or in the purported discharge of their official duties. He has held that their offices merely provided them an opportunity to commit such acts of misdemeanour.

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

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

630. There is another aspect of the present matter. At the time of order on charge, the question regarding sanction u/s 197 CrPC was finally decided. The question was not kept open for final stage. It was not deferred till recording of evidence. Thus the same has attained finality.

631. In view of the above, it is held that there was no

requirement of sanction u/s 197 CrPC against any accused public servant.

POINT FOR DETERMINATION NO. III

Whether offence of criminal misconduct/corruption u/s 13(1)(d) of PC Act is made out against A-3 to A-5?

632. As already mentioned, charge for offence u/s 409 IPC and 13(1)(c) PC Act against accused A-3 H.C. Gupta has been given up.

633. The charge against accused public servants A-3 to A-5 now is for offence u/s 13(1)(d) of PC Act. The said provision has three clauses (i), (ii) and (iii). Learned Counsel for these accused has submitted that all the three clauses make out separate offences. He referred to **Rajiv Kumar & Ors. Vs. State of UP & Ors., MANU/SC/0932/2017.**

634. Sh. Rahul Tyagi, learned counsel for accused public servants contended that there is no case made out u/s 13 (1)(d)(i) and (ii) of the PC Act against A-3 to A-5. He relied upon the case of **Neeraj Dutta Vs. State (Govt. of NCT of Delhi), (2023) 4 SCC 731** and **Dileepbhai Nanubhai Sanghani Vs. State of Gujarat & Anr., MANU/SC/0273/2025.** Learned Counsel has contended that it is admitted case of prosecution that there was no demand or acceptance of any illegal gratification or any pecuniary advantage by any accused public servants. He submitted that no such evidence was found during investigation or produced during

trial.

635. 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.”

636. 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.”

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

638. Having perused the judgment of the Constitution Bench, there remains no doubt that proof of demand and acceptance of gratification is must for securing conviction u/s 13

(1)(d)(i) & (ii) PC Act. This is because in case of abuse of official position, there cannot be obtainment unless there is demand from the side of public servant. In the present case, there is neither any allegation nor any 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 A-3 to A-5.

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

640. Learned Counsel for the accused referred to **Madhu Koda Vs. CBI, MANU/DE/1079/2020**, passed by Hon'ble Delhi High Court and submitted that *mens rea* is required for proving offence u/s 13(1)(d)(iii) PC Act. 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. He also referred to **C. Surendranath Vs. State of Kerala, 2024 SCC OnLine Ker 210**.

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

“17

That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public-servant'. A similar view has also been expressed

by this Court in M. Narayanan Nambiar US. State of Kerala MANU/SC/0164/1962 : (1963) Supp. (2) SCR 724 while considering the provisions of section 5 of Act of 1947. If the totality of the materials on record indicate the above position, we do not find any reason to allow the prosecution to continue against the Appellant. Such continuance, in our view, would be an abuse of the process of court and therefore it will be the plain duty of the court to interdict the same."

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

643. 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 of Delhi 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 in 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.””

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

645. Thus guided, the guilt of the accused public servants A-3 to A-5 for the offence under PC Act has to be determined.

Whether the offence u/s 13(1)(d)(iii) of PC Act is made out?

646. Learned DLA pointed out various acts and omissions

on the part of accused public servants to show that they are guilty of the offence under consideration. He referred to the charge framed against them as well as to the order on charge dt. 07.12.2016.

647. Learned DLA referred to the guidelines issued by MoC [Ex. PW-11/A-7 (Colly.), D-37, Pg. 73-94/c] and pointed out that it was clearly stated therein that the applications after receipt would be checked for their completeness and eligibility before further processing. He pointed out that it was further provided therein that the applications without the specified accompaniments would be treated as incomplete and were to be rejected. Learned DLA contended that application of A-1 company was incomplete and was liable to be rejected forthwith but instead of doing so, the same was processed by A-3 to A-5 and ultimately coal block was allocated to A-1.

648. Learned DLA elaborated that the application of A-1 JICPL was incomplete as (i) in the application, in column no. 1, it was not mentioned that JICPL was a JV or SPV, (ii) in column no. 6 of the application, it was falsely claimed that JICPL was SPV managed by IISIPL and IL&FS Group and that core business included Iron & Steel making and providing finances and company was diversifying into Coal Mining and Power Generation, (iii) in column no. 10 of the application network of IISIPL and IL&FS was mentioned and (iv) in column no. 21 of the application, it was mentioned that DPR was appraised but

appraisal report was not annexed. He argued that it was requirement that if DPR was appraised, then the appraisal report was also to be annexed.

649. Learned DLA alleged that no checking was done prior to sending the applications to MoP and state governments. He referred to the letter dated 30.07.2007 of Sh. Anil Razdan, Secretary MoP [Ex. PW-11/G-6, D-29, Pg. 215-218/c] vide which it was specified by MoP to MoC that the claims/particulars of applicant companies be got separately verified before allocation of coal blocks.

650. Learned DLA vehemently contended that accused public servants A-3 to A-5 did not ensure scrutiny of the applications to see their completeness and eligibility. They did not bother to note that the application of A-1 JICPL was liable to be rejected outrightly being incomplete. Rather, the accused public servants processed the said application and recommended allocation of coal block to the company.

651. Learned DLA also submitted that a meeting was held in MoC on 11.05.2007 which was also attended by all the three public servants A-3 to A-5. This meeting was called to discuss the modalities for scrutiny and evaluation of the applications for allocation vide OM dated 07.05.2007 [Ex. PW-11/C-4, D-38, Pg. 87-88/c]. Learned DLA wanted to convey that from this meeting, it is apparent that all the three public servants were very much aware of the fact that no scrutiny of the

applications had been carried out by MoC.

652. He also referred to letter dated 11.05.2007 sent by Sh. Anil Razdan, Secretary MoP to A-3 [Ex. PW-11/G-2, D-29, Pg. 135/c] intimating him that at MoP scrutiny of the applications had not been carried out. Learned DLA referred to letter dated 20.06.2007 of Sh. Anil Razdan to A-3 [Ex. PW-11/G-1, D-29, Pg. 136-137/c] through which MoP informed MoC that MoP had not made case by case examination of the applications and had also not made any recommendations till that date. He further referred to response of A-3 dated 30.06.2007 [D-29, Pg. 139/c]. Learned DLA submits that from these correspondences also, it is apparent that A-3 was aware that scrutiny of the applications had not been carried out till that date.

653. Learned DLA pointed out that recommendations of MoP were received on 30.07.2007 at 1200 hours vide letter Ex. PW-11/G-6 [D-29, Pg. 215-218/c]. In the letter though recommendations were made by MoP yet it had also informed that authenticity of the data/documents supplied by the applicant companies needed to be separately verified.

654. Learned DLA referred to letter dated 02.08.2007 [Ex. PW-11/G-8, D-29, Pg. 151/c] sent by A-5 K.C. Samria to CIL for deputing financial experts for scrutinizing financial details of applicant companies. A-5 had also written letter dated 02.08.2007 to Coal Controller [Ex. PW-11/G-9, D-29, Pg. 155/c] for deputing four officials for scrutinizing applications for coal

blocks. Letters were also sent to various State Governments.

655. Learned DLA thus contended that all through this process, A-3 to A-5 were fully aware that scrutiny of the applications had not been conducted but still went ahead to recommend allocation of the coal block.

656. Learned DLA extensively referred to evidence of PW-11 V.S. Rana to show that no checking was done to ascertain completeness and eligibility before sending them to administrative ministry i.e. MoP and various state governments. He referred to letter dated 19/28.02.2007 sent to Govt. of Jharkhand [Ex. PW-11/A-10 (Colly.), D-37, Pg. 130-140/c], letter dated 19/28.02.2007 sent to Govt. of West Bengal [Ex. PW-11/A-11 (Colly.), D-37, Pg. 183-190/c], letter dated 19/28.02.2007 sent to Govt. of Bihar [Ex. PW-11/A-12 (Colly.), D-37, Pg. 220-222/c] and letter dated 19/28.02.2007 sent to CMPDIL [Ex. PW-11/A-13, D-37, Pg. 199/c]. He contended that before sending these letters, no checking was done for completeness and eligibility.

657. It is to be noted that MoP had refused to receive the applications and the applications were sent later vide letter dated 17.04.2007 [Ex. PW-11/K-1, D-38, Pg. 2/c]. Learned DLA submitted that even before 17.04.2007, no scrutiny was done for completeness and eligibility.

658. Learned DLA forcefully argued that the first time

MoC took step for scrutiny was on 02.08.2007 when letters were sent to state governments as well as CMPDIL. He submitted that the reports so received from the state governments was never placed before the Screening Committee.

659. Learned DLA submitted that the data which was got verified from financial experts was never put before the Screening Committee nor discussed during Screening Committee meeting on 13.09.2007. He alleged that it was falsely got recorded in the minutes of the meeting of Screening Committee dated 13.09.2007 that financial strength of the applicant companies was got scrutinized independently with help of financial experts of CIL and the information received was compiled and placed before the Screening Committee. He referred to statements of PW-12 Bhaskar Khulbe in this regard. These facts, according to learned DLA, show that accused public servants deliberately did not place the reports for consideration of the Screening Committee members to help the accused company.

660. Learned Prosecutor further submitted that even after recommendations were made by the Screening Committee, and when only limited applications remained, accused public servants did not get them checked for completeness and eligibility. This was again done to conceal the defects in the application of A-1 company.

661. Learned DLA stressed upon the fact that no document was filed alongwith the application to show that JICPL

was SPV. As such, the applicant company/JICPL could not have joined network of IISIPL and IL&FS. He contended that accused public servants also failed to take notice of this fact and considered network of these two companies as network of JICPL. He pointed out that only during search, one MoU dated 15.11.2006 [Ex. PW-3/A, D-17, Pg. 1-3] and MoU dated 08.01.2007 [Ex. PW-3/B, D-17, Pg. 5-12] were seized.

662. Learned DLA also referred to letter dated 24.08.2007 sent by Govt. of West Bengal [Ex. PW-11/H-1, D-35, Pg. 22-50/c] and letter dt. 30.08.2007 sent by Govt. of Bihar [Ex. PW-11/H-4, D-35, Pg. 82-200/c] to MoC in response to letters dated 02.08.2007 sent to them [Ex. PW-11/G-10 (Colly.), D-29, Pg. 174-175/c and Ex. PW-11/G-11 (Colly.), D-29, Pg. 195-196/c respectively] of MoC asking them to verify the informations supplied by applicant companies. He asserted that from the reports of the said governments, it was apparent that there was no preparedness on part of A-1 company.

663. Learned DLA referred to various documents and statement of witnesses to show that A-3 to A-5 were in conspiracy with A-1 to A-2 and deliberately processed incomplete application of an ineligible applicant. Learned DLA contended that prosecution has proved the offence u/s 13(1)(d) (iii) 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 and caused obtainment against public interest.

664. He thus contended that offence u/s 13(1)(d)(iii) of PC Act is made out against A-3 to A-5.

665. *Per contra*, learned counsel Sh. Rahul Tyagi forcefully argued that even the offence u/s 13(1)(d)(iii) of PC Act is not made out at against A-3 to A-5 as none of the ingredients of the said offence have been satisfied.

666. Learned Counsel contended that prosecution case against public servants is founded upon several erroneous assumptions of law as well as assumptions of facts (which do not exists). He argued that it is a case based on inferences. He contended that A-3 to A-5 did nothing to cause any obtainment. He submitted that ingredients of Section 13(1)(d)(iii) also have not been satisfied.

667. Regarding checking of the applications, learned counsel highlighted that the word 'checking' and 'verification' have been confused with the word 'scrutiny' in the order on charge dated 07.12.2016. He argued that checking and verification cannot be equated with scrutiny. He submitted that

the word scrutiny is not used in any of the guidelines. He contended that checking of the applications for completeness and eligibility was to be done by MoC whereas verification of the claims made in those applications was to be done by the administrative ministries and the state governments. He submitted that checking of the applications was done before sending the applications to administrative ministries and state governments.

668. Learned counsel submitted that reliance of prosecution on testimony of PW-11 V.S. Rana to show that checking was not done is misplaced as V.S. Rana himself was not the person who had done the checking. Learned counsel pointed out that main person who actually handled and supervised the said work were R.N. Singh (Section Officer) and R.S. Negi (Dealing Assistant). But both of them have not been examined by the prosecution. He highlighted that even statement of R.S. Negi was not recorded u/s 161 CrPC.

669. He referred to statement u/s 161 CrPC of R.S. Negi recorded in another case i.e. CBI Vs. Vandana Vidhyut which was recorded by the same IO i.e. Insp. Himanshu Bahuguna and which shows that checking of the applications was done not only at the time of receiving them but also later on before sending them to other stake holders.

670. He further contended that PW-11 never stated in his

statement u/s 161 CrPC that checking of the applications was never done. He argued that PW-11 has deposed falsely in the court when he said that checking of the applications for completeness and eligibility did not take place at the time of 35th & 36th Screening Committee meetings.

671. He referred to notesheet page 3-4/n in file D-37 wherein R.N. Singh vide his note dated 04.11.2006 had proposed detailed guidelines which specifically provided for checking of the applications before sending them to other stake holders. This note was of CA-1 Section and approved by the Secretary (Coal). It had come to knowledge of PW-11 also. Learned counsel has referred to evidence of PW-11 wherein he stated that they had not given any directions to the staff to not check the accompanying annexures.

672. Learned counsel further pointed out that the process for checking of the applications for completeness and eligibility was adopted from previous round relating to 31st to 34th Screening Committee. He contended that as checking was done at the time of 34th Screening Committee, PW-11 cannot take a stand that it was not done at the time of 35th Screening Committee particularly when the same procedure was to be adopted. He referred to judgment in the case of Grace Industries of Sh. Arun Bhardwaj, the then learned Special Judge PC Act, CBI, Coal Block Cases-01, RADDC wherein it was held that checking was indeed conducted at the time of 34th Screening

Committee. Learned counsel also referred to order dated 04.04.2025 of this Court in the case of Kohinoor Steel in which also it has been held that checking was done at the time of 34th Screening Committee. He referred to statement of Sh. Prem Raj Kuar recorded u/s 161 CrPC in the case of Kohinoor Steel in which also it was stated that checking was done. He also pointed out that A-3 & A-4 both had directed to carry out checking in the same manner as was done at the time of 34th Screening Committee and therefore it must be held that checking was done at the time of 35th Screening Committee also.

673. Learned counsel pointed out that PW-11 V.S. Rana had taken stand that no checking was done at the time of 34th Screening Committee but he stands exposed and falsified after he was confronted with documentary evidence i.e. the two lists prepared for incomplete and complete applications at the time of 34th Screening Committee. Learned counsel contended that when PW-11 has deposed falsely about checking not being done at the time of 34th Screening Committee, it is no great deal that PW-11 has deposed falsely about checking not being done at the time of 35th Screening Committee as well.

674. Learned Counsel for the accused persons submitted that the applications were checked by the officials of CA-I Section as it was their job. Learned Counsel submitted that as the same procedure was followed for the 35th Screening Committee, as was followed for the 34th Screening Committee, it must be

held that checking of the applications had taken place. He referred to cross-examination of PW-11 Sh. V.S. Rana also in this regard.

675. Learned Counsel contended that PW-11 has stated that a cursory glance was given to the documents as were available in all the five sets. He also pointed out that incomplete applications were not entertained.

676. Learned Counsel contended that while scrutiny of the applications was job of MoC but verification of information given in the applications was the task of Administrative Ministries/State Govts. He submitted that the CBI is confusing scrutiny of information with scrutiny of applications. He argued that accused public servants cannot be held responsible for any fault in verification of information given in the applications. In the present case, said responsibility lied with MoP which was Administrative Ministry and Govts. of West Bengal, Jharkhand and Bihar.

677. Learned Counsel highlighted that PW-11 could not show any file noting to the effect that the fact of alleged non-checking was brought to notice of any superior officer. He submits that the natural inference should be that applications were checked for completeness and eligibility. He referred to various notings in this regard such as communication dated 22.01.2007 of A-5 and detailed response dated 31.01.2007 of

PW-11 [Ex. PW-11/DX-13 (Colly.)]; note dated 19.02.2007 at page 10/n in D-37; note dated 29.03.2007 of R.S. Negi at page 16/n of D-37; and note dated 04.06.2007 of Section Officer at page 1/n in D-34. Learned counsel contended that the phrase ‘preliminary scrutiny’ means nothing but checking the applications for completeness and eligibility. Learned counsel referred to the explanation given by R.S. Negi about his note dated 29.03.2007 in his statement u/s 161 CrPC in Vandana Vidhyut case and his explanation is as under:

“I had mentioned in my note that in view of work pressure relating to scrutiny of applications, it has not been possible to establish the actual date of receipt in the Ministry. As I have already stated I was busy in receiving and checking the applications for quite some time and by scrutiny I meant checking of the applications for completeness and availability of Demand Drafts as stated earlier. I meant the same while referring to work pressure relating to scrutiny of applications in my said note.”

678. He further referred to testimony of PW-11 wherein he admitted that directions were given to the officials deputed to receive the applications to cursorily check the applications to see if the annexures were there or not. It has also come that cursory glance was given to the documents as were available in all the five sets. He also admitted that while ascertaining the EUP, annexures must also have been seen by the officials.

679. Learned counsel also emphasized that PW-11 had

stated that during his 161 CrPC statement recorded in case of Vikash Metal Pvt. Ltd. that incomplete applications were not entertained by MoC. He thus forcefully submitted that checking was carried out.

680. As to letter of Sh. S.K. Shahi (PW-18) wherein it was stated that applications were not checked for completeness and eligibility before these were sent to other stakeholders, learned counsel contended that PW-18 has himself admitted that he was not posted in MoC at the relevant time and therefore his assertion means nothing. He further submitted that this letter which was sent to CBI by PW-18 cannot be looked into as it is hit by Sec. 162 CrPC.

681. Regarding claim of PW-11 V.S. Rana that a meeting was held in the office of JS (Coal) to discuss the modalities for receiving the applications and in that meeting direction was given to only segregate the applications and not to check them, learned counsel submitted that it is a completely false claim. He referred to the note dated 04.11.2006 of Sh. R.N. Singh, Section Officer [Pg. 3-4/n of D-37] wherein detailed guidelines were proposed which provided for checking also and, therefore, there was no need to hold any such meeting as deposed to by PW-11. Learned counsel pointed out that this alleged meeting was never referred to in any of the notings or correspondences in MoC files. He also pointed out that PW-11 did not seek confirmation of such oral directions purportedly given in the said meeting. He argued that

it was so because no such meeting was held. He referred to cross-examination of PW-11 wherein he has been confronted regarding various facts stated by him. He was confronted with his previous statements given to CBI and statements made in the court during evidence in various cases.

682. He argued that misrepresentations were not known to accused public servants. He also submitted that guidelines of MoC were not binding and their violation cannot lead to prosecution. He submitted that even otherwise prosecution did not specify which guideline was violated. He also submitted that UMPP criteria was not in the knowledge of A-3 to A-5 as it was never communicated to MoC. He contended that network criteria adopted by CEA/MoP was only internal mechanism of MoP and it was not in the knowledge of A-3 to A-5. 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 forcefully submitted that there was no initiative on the part of accused public servants to cause allocation of the coal block. He argued that which guidelines of the MoC were violated has not been specified in the order on charge. He further submitted that there is no evidence of conspiracy. There was no duty upon A-3 to A-5 to check the applications for their eligibility and completeness. He contended that charge as was framed was also defective.

683. Another contention of learned Counsel is that if MoC was cheated, so were A-3 to A-5 as they were also part of

the MoC.

684. He also contended that there was no demand or acceptance by any of the accused public servants. Learned Counsel argued that PW-11 Sh. V.S. Rana has deposed that A-3 to A-5 did not ensure checking of applications for eligibility and completeness. However, Learned Counsel submitted that it was not the duty of A-3 to A-5 to check the same. The immediate superior of Sh. V.S. Rana was Director who was Sh. Sanjeev Mittal at the relevant time and not K.C. Samria/A-5.

685. Learned Counsel also pointed out that A-3 to A-5 did not see the applications before the Screening Committee meeting. He contended that it was responsibility of the Section Officer to scan through the applications.

686. He pointed out that additional information was being given by the applicant companies to the Administrative Ministry i.e. MoP and the said ministry added names to its recommendations vide subsequent communications sent to MoC. According to him, this also shows that verification of informations was task of MoP and not MoC.

687. Another contention of learned Counsel for A-3 to A-5 was that recommendations of the Nodal Ministry/Administrative Ministry and all the State Govts. were not binding on the Screening Committee. Further recommendations of the Screening Committee were not binding

on MoC. He referred to the letters dated 11.05.2007 and 20.06.2007 of D-23 and pointed out that MoP had undertaken some responsibilities. He also pointed out that MoP guidelines were never sent to the MoC or the applicant companies. There was no criteria for minimum networth. He argued that MoP guidelines were not binding as there were MoC guidelines already available. He also highlighted that the guidelines do not use the term 'promoter' and rather it uses the term 'principal'.

688. He questioned the reliability of evidence of PW-11 Sh. V.S. Rana submitting that he does not remember many facts and suffers from poor memory and is thus not reliable. Learned Counsel contended that prosecution did not declare him hostile despite he stated many facts against prosecution case.

689. 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.

690. Another contention of learned Counsel is that allocation only happened after acceptance by MoC and not before that. He argued that merely by making recommendation, the Screening Committee did not actually allocate the coal block to the company. He contended that only upon allocation of coal block there could be a case of criminal misconduct. He pointed

out that the Minister of Coal i.e. the then Prime Minister had approved the recommendation of the Screening Committee and only thereafter obtainment happened.

691. Learned Counsel also vehemently contended that there was no challenge to the minutes of the meetings of 35th Screening Committee. As per the minutes, charts were supplied whereas as per PWs charts were not supplied. He contended that after 12 years, minutes cannot be challenged in this manner. He argued that prosecution has failed to establish that charts were not placed before the Screening Committee. He submitted that recommendation sheet bear signatures of member of the Screening Committee. He contended that the signature on the said sheet signifies consent/assent of the members of the Screening Committee to the said recommendations. He further contended that there is presumption that a person has read the document and understood it and thereafter affixed his signatures. He relied upon i) **Mathu V. Cherchi, MANU/KE/0515/1989**, ii) **Grasim Industries Ltd. & Anr. V. Agarwal Steel, MANU/SC/1763/2009**, iii) **Municipal Corporation of Greater Bombay V. P.S. Malvenkar, MANU/SC/0288/1978** and iv) **Jose Mathew & Ors xxxxxx, MANU/KE/0112/2016**. Referring to cross-examination of PW-12 Bhaskar Khulbe, learned counsel submitted that PW-12 had admitted that by signing the minutes, all the members had agreed with the recommendations of the Committee.

692. 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.

693. He also vociferously argued that case against accused public servants has been made out of ignorance of legal principles about decision making in the Govt. He referred to **State of Bihar & Ors. Vs. Kripalu Shankar & Ors. MANU/SC/0166/1987** wherein it was observed:

“13. It cannot be disputed that the appeal raises an important question of law bearing upon the proper functioning of a Democratic Govt. A Govt. functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on matters coming before them through the files. This is so even when they consider orders of courts. Officers of the Govt. are often times confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the courts would not have passed these orders if full facts were placed before them. The expression of opinion by the officers in the internal files are for the use of the department and not for outside exposure or for publicity. To find the officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Govt. These internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of

contempt action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the notings, which may sometimes even amount ex-facie disobedience of the courts orders, will not amount to contempt of court. These notings are not meant for publication.

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16. Articles 166(1) requires that all executive action of the State Govt. shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this Article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Govt. A study of this Article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2).”

694. He also relied upon **Sethi Auto Service Station & Ors. v Delhi Development Authority & Ors., [MANU/SC/8127/2008]** wherein it was observed:

“17. From the afore-extracted notings of the Commissioner and the order of the Vice Chairman, it is manifest that although there were several notings which

recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice Chairman, the final decision making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of State Level Co-ordinator (oil industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision making process, in our view, are of no consequence and shall not bind the DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference.”

695. He also submitted that it was a decision of the Screening Committee and not of an individual officer. He referred to the testimony of PW-12 Sh. Bhaskar Khulbe in this regard. Particularly referring to the role of A-4 K.S. Kropha, learned Counsel submitted that as per Shackleton, convening means ‘causes to come together’. His limited role is to get notices issued and take steps for holding the meetings.

696. He referred to **R. Sai Bharathi Vs. J. Jayalalitha & Ors.**, MANU/SC/0956/2003 and **Ravi Yashwant Bhoir Vs. District Collector, Raigad**, MANU/SC/0186/2012.

697. He submitted that members of the Screening

Committee had attended meetings and they took part in it and also appended their names and signatures to the recommendations therefore it was a collective decision.

698. He also contended that rules of the game cannot be changed midway. He argued that prosecution wrongly pleaded that UMPP criteria adopted by CEA/MoP was to be applied by the Screening Committee. He pointed out that this criteria of minimum network was not present in the guidelines of MoC. He argued that the criteria adopted by MoP after publication of the advertisement, submission of applications and recommendations of State Govts. and presentations of the applications was itself illegal as rules of the game cannot be changed midway. He referred to **Monarch Infrastructure (P) Ltd. v Commissioner, Ulhasnagar Municipal Corporation and Ors. (2000) 5 SCC 287; Hemani Malhotra Vs. High Court of Delhi, 2008 (7) SCC 11; and Nitu Gogoi Vs. State of Assam, MANU/GH/0984/2017.**

699. 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 cannot 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.**

700. Regarding Govt. of Jharkhand, learned counsel submitted that representative of the said government was present who was Sh. Aditya Swarup but he was not called as a witness. Learned counsel pointed out that even Sh. Aditya Swarup had agreed with the recommendation in favour of JICPL as he had also signed the recommendation sheet. He contended that failure to examine this witness must lead to adverse inference against prosecution. He relied upon **Habeeb Mohd. Vs. State of Hyderabad, MANU/SC/0034/1953**. He further submitted that the burden was on the prosecution to prove its case and prosecution cannot contend that defence should have called any particular witness. He relied upon **S.K. Kale Vs. State of Maharashtra, MANU/SC/0139/1976**.

701. Learned counsel emphatically submitted that JICPL had not withdrawn its application for EUP in West Bengal. He countered learned DLA's insistence that JICPL had abandoned its EUP at West Bengal and therefore recommendation for Mahuagarhi coal block for EUP at Burdwan, West Bengal was unjustified. Learned counsel contended that prosecution did not ask PW-12 who represented State of West Bengal or PW-11 who was Under Secretary, MoC as to whether presentation for EUP at West Bengal was made or not. He also pointed out that presentation for West Bengal EUP was found and same is Ex. PW-5/E (Colly.) [D-21]. Learned counsel pointed out to the report sent by Govt. of West Bengal vide its letter dated 24.08.2007 [Ex. PW-11/H-1 (Colly.), D-35, Pg. 22-49] alongwith

which the letter/information sent by JICPL dated 23.08.2007 was also enclosed. The same is available at page 36. In its letter, JICPL had given information about the steps taken by it for its EUP at West Bengal. He also highlighted that in the report of the Govt. of West Bengal at page 23, reference has been made to the information given in the feedback form by A-1 JICPL for its EUP at West Bengal. He thus submitted that said EUP was not abandoned.

702. Learned counsel referred to the minutes of the 18th Screening Committee meeting as per which the administrative ministry was not supposed to name the coal block for any applicant as it would facilitate the Screening Committee in allotting a suitable block to a company objectively.

703. Regarding reliance of prosecution on communications post allocation of coal block for EUP at West Bengal sent by A-1 company and from which prosecution wanted to show that no presentation was made for West Bengal EUP, learned counsel contended that same is an instance of misreading the said communications.

704. Learned counsel also submitted that offence of conspiracy is not made out at all against any accused public servant.

705. Regarding non-filing of appraisal report, learned counsel submitted that A-3 & A-4 were never informed about it.

He pointed out that even PW-11 came to know about incompleteness only during the course of investigation. He also pointed out that the administrative ministries and the state governments also did not bring out this fact to their notice that appraisal report was not there and rather recommended name of JICPL for allocation of coal block. He alternatively submitted that appraisal report was not an eligibility criterion and non-filing of it was to not lead to disqualification. He also contended that failure to notice non-filing of appraisal report was only an inadvertent error and which does not qualify as a criminal omission on the part of accused public servants.

706. Regarding verification of the information given in the application, learned counsel strenuously argued that the same was to be done by the administrative ministries under state governments as per decisions taken in the 14th and 18th Screening Committee meetings. He again referred to the observations of Sh. Arun Bhardwaj, the then learned Special Judge PC Act, CBI, Coal Block Cases-01, RADC in Grace Industries case as well as of this Court in the case of NPPL and Kohinoor Steel.

707. He referred to testimony of PW-12 Bhaskar Khulbe who deposed about carrying out such an exercise at the level of State Govt. of West Bengal. He also referred to testimony of DW-7 Shiv Raj Singh who told that Energy Department of Govt. of Chhattisgarh had also examined the applications before making recommendations.

708. He also pointed out that MoP which was supposed to verify the information did not do so. And when accused public servants came to know about it, they directed for verification of the information as recorded in the minutes of the meeting dated 30.07.2007. This verification was got done through state governments and two financial experts of CIL. He referred to note dt. 31.07.2007 at page 11/n in D-34. Pursuant thereto, letters dt. 02.08.2007 [Ex. PW-11/G-8 and G-9] were sent to CIL (for deputing two financial experts) and Coal Controller (for deputing four officials to assist them). Letters dt. 02.08.2007 were also sent to state governments of West Bengal and Bihar for verification. He submitted that reports received from them were compiled in the form of a chart titled “Informations furnished by the State Governments” and the same were placed before the Screening Committee in the final meeting on 13.09.2007. He referred to note dt. 14.09.2007 at page 16/n in D-34 in this context. He pointed out to para 9 of minutes of the said meeting [Ex. PW-11/J-4] wherein this finds mention.

709. He argued that prosecution allegation that this chart/information was not placed before the Screening Committee members is false. He referred to testimonies of PW-12 Bhaskar Khulbe and PW-11 V.S. Rana. He asserted that PW-12 initially claimed no document was supplied in the meeting dt. 13.09.2007 but in cross-examination, his said claim was exposed and it has come out that such information was supplied. PW-11 was confronted with his previous statement given to CBI in

another case [Ex. PW-11/DX-24] wherein he had stated that compiled reports of state governments were placed before the Screening Committee. He also reasoned that as the meeting dt. 30.07.2007 was deferred for obtaining verification reports, it was unimaginable that in the very next meeting dt. 13.09.2007 no one would ask for the said reports.

710. He also contended that the CIL expert has tried to disown the verification charts shown to her as the same which were prepared by her and her colleague on the ground that the charts were prepared on an electronic typewriter and not on computer. One expert namely Sushmita Sengupta was examined as PW-13. Learned counsel also referred to testimony of DW-4 Nirmal Manchanda who had actually assisted these persons and who has deposed that the same were prepared on computer. DW-4 also told that electronic typewriters were used only till the year 2000.

711. He also submitted that the figures of networth of JICPL as calculated by these two experts are correctly mentioned in the charts Ex. D-21 (Colly.) which shows that these are the same charts which were placed before the Screening Committee.

712. He also countered the contention of learned DLA that as these charts are not mentioned in any MoC files, it should be assumed that these were not placed before the Screening Committee. Learned counsel contended that there were many

documents which were not mentioned in MoC files but which have been relied upon by prosecution such as various applications, feedback forms, presentations, charts of CMPDIL etc. He informed that all MoC files were not collected during investigation and many files got burnt in fire at MoC office.

713. As to scrutiny of applications after making of recommendations, learned counsel contended that it was not contemplated anywhere in any guidelines or practices.

714. He also contended that subsequent change of location of EUP from West Bengal to Bihar cannot be taken as a circumstance against accused public servants.

715. Learned counsel alternatively argued that even going by the principles laid down in Runu Ghosh's case (*supra*), no offence u/s 13(1)(d)(iii) PC Act is made out as the acts of the accused public servants cannot be termed unreasonable and those acts did not lead to allocation of coal block without public interest. He explained that accused public servants had taken all the decisions in conformity with course of action of a reasonable and prudent person. He argued that accused public servants did not favour A-1 company at all. He submitted that making recommendation in favour of A-1 JICPL was justified as the company was eligible to apply and had earned recommendation from MoP and Govt. of West Bengal. Learned counsel has mentioned the following reasons in his written submissions as

justification for recommending name of JICPL:

(i) Application of the company was for West Bengal EUP.

(ii) There was a formal recommendation from the State Government of West Bengal in favour of M/s JICPL and its EUP in West Bengal; it was extending full support for establishment of the EUP in West Bengal.

(iii) Representative of West Bengal Government was present in the Screening Committee and would have strongly pitched for allocation of coal block for West Bengal EUP for its recommended company i.e. M/s JICPL, especially when his recommendation qua Gourangdih ABC coal block was not accepted by the Screening Committee.

(iv) Ministry of Power had recommended M/s JICPL and Bhushan Power and Steel Ltd. for allocation of Patal East coal block.

(v) Government of Jharkhand, the coal-bearing state, had also recommended Patal East for M/s Bhushan Power and Steel Ltd.

(vi) Since Patal East had limited mineable reserves, in view of common recommendations of both the Administrative Ministry and the coal-bearing State, this coal block was allocated to M/s Bhushan Power and Steel Ltd. exclusively. Even after exclusive allocation to Bhushan, the block had a mine-capacity of 43% of Bhushan's coal requirement. Therefore, Screening Committee was not able to allocate the Patal East block jointly with M/s Bhushan Power for M/s JICPL's EUP in Bihar.

(vii) Hence, primarily to accommodate a candidate recommended by MoP, M/s JICPL was accommodated in Mahaugarhi coal block with the consensus of all concerned stakeholders, i.e. MoP, and Governments of Jharkhand and West Bengal, all of whom were present in the Screening Committee meeting. In this manner, the recommendations of all the three stakeholders - MoP, Jharkhand and West Bengal were reconciled and consensus emerged.

(viii) This is also confirmed by PW-12 Sh. Bhaskar Khulbe, who stated that the recommendations of the Screening Committee were unanimously made after reconciling the views and recommendations of the Administrative Ministry and the State Governments concerned.

(ix) Further, even after the decisions were arrived at after the reconciliation of differing views, no member of the Screening Committee expressed any dissent against the decisions/recommendations made at that time or even afterwards, as was stated by PW-12 Sh. Bhaskar Khulbe.

(x) In terms of relative merit between M/s JICPL's EUPs for Bihar and West Bengal, the Screening Committee found that both were similarly placed. Both the State governments had recommended and assured to extend all the help in setting up the EUPs in their respective states. IL&FS, present in the Committee, was supporting and willing to finance both the projects and assured the Screening Committee for backing M/s JICPL. Water was available for

both the projects. Land was not acquired for either of the projects but land was being offered by the respective state governments for both the projects.

(xi) Since the coal-block is situated in Jharkhand, only the representative from Government of Jharkhand could have expressed dissent over the recommendation being made for Mahuagarhi coal block. However, LW-16 Sh. Aditya Swarup, the only representative from Government of Jharkhand, had also supported the decision as is borne out by the fact that he had signed the Recommendation Sheet and had also stated so in his statement u/s 161 Cr. P.C. recorded by CBI, where he reaffirmed that despite some difference of opinion qua allocation of coal blocks to only those projects which were proposed to be set up in Jharkhand, he did not disagree with the final recommendation as a number of companies recommended by the Government of Jharkhand were accommodated through a process of reconciliation.

716. In respect of A-5, learned counsel made few additional submissions. He vehemently pointed out that A-5 had joined CA-I Section on 26.03.2007. Prior to that he was posted in CA-II Section. He submitted that the applications were received during tenure of Sh. Sanjiv Mittal, Director CA-I. Sh. Mittal remained as Director till February/March 2007. He thus contended that for acts and omissions prior to 26.03.2007 cannot be attributed to A-5. He referred to various notings and correspondences and pointed out that identification of coal

blocks, earmarking of coal blocks for power and non-power sectors, finalization of guidelines for allocation of captive coal blocks, methodology for processing of applications, issuance of advertisement dated 13.11.2006, and receipt of applications till 12.01.2007, checking of applications and forwarding them to concerned administrative ministries and state governments had already been taken place before A-5 joined CA-I Section.

717. Regarding sending of applications to MoP, learned counsel pointed out that same could not be sent earlier as MoP had refused to receive the same which is apparent from notesheet pages in file Ex. PW-11/A-1 (Colly.), D-37. He submitted that PW-11 V.S. Rana has also confirmed this fact. He referred to note dated 19.03.2007 at page 12/n in file Ex. PW-11/A-1 (Colly.), D-37, wherein fact of refusal by MoP is recorded. The Director, CA-I at that time was Sh. Sanjiv Mittal and not A-5. A DO letter was sent on 23.03.2007 to Additional Secretary, MoP upon instructions of A-4 and applications were directed to be sent by 28.03.2007. Learned counsel pointed out that applications which were ready since February 2007 were ultimately sent on 17.04.2007 as noted at page 18/n. He thus contended that A-5 had no role therein.

718. He further contended that A-5 was not a member of the Screening Committee. He described the role of CA-I Section as that of secretarial assistance to the Screening Committee. He vehemently submitted that A-5 never evaluated or verified any

application nor recommended any applicant company.

719. He also submitted that case was not fairly investigated regarding role of A-5. He also pointed out that the IO had submitted a list dated 07.10.2014 regarding details of officials of MoC who were associated with the 35th Screening Committee relating to allocation of coal blocks to A-1 company and one company namely JLD Yavatmal and in that list name of A-5 was wrongly mentioned as officer dealing with stage of checking of applications for completeness and scrutiny. He submitted that A-5 has been wrongly prosecuted.

720. Learned counsel thus submitted that offence u/s 13(1)(d)(iii) PC Act is not made out against any accused public servant.

721. Learned DLA rebutted all these contentions. He submitted that the guidelines were not under MMDR Act but they were certainly under CMN Act.

722. Learned DLA submitted that it cannot be said that the recommendation for allocation of Mahuagarhi coal block in favour of JICPL was not against public interest. He elaborated that as no checking was done to determine eligibility and completeness, as applications were forwarded to MoP and state governments without such checking, as incomplete applications were placed before the 35th Screening Committee for presentation, as presentation was made for EUP at Pirpainti,

Bhagalpur, Bihar and not for Burdwan, West Bengal which shows that JICPL did not intend to set up EUP in West Bengal, as MoP did not recommend JICPL for EUP in West Bengal for Mahuagarhi coal block and rather recommended JICPL for EUP in Bihar for Patal East coal block which shows that MoP was not satisfied with preparedness/progress of the company of for its EUP in West Bengal, as Govt. of West Bengal did not recommend JICPL for coal block situated in West Bengal, as Govt. of Jharkhand did not recommend JICPL for any coal block, it cannot be said that the recommendation of the Screening Committee was not against public interest.

723. He also pointed out that a letter dated 08.06.2007 [Ex. PW-11/D, D-30, Pg. 65] was received from Govt. of Bihar supporting EUP of the company in Bihar. He submitted that this letter was seen by A-4 and A-5 but despite this, recommendation was made for EUP in West Bengal.

724. Learned DLA pointed out to various letters received from A-1 company and on the letterhead, there was logo of 'Abhijeet' showing association of the company with Abhijeet Group.

725. He referred to Ex. D-21 (Colly.) and contended that even if these charts are considered, it shows that there was no preparedness for EUP at Burdwan, West Bengal. Despite this recommendation was made for EUP at Burdwan, West Bengal

and both A-3 and A-4 did not object.

726. Learned DLA submitted that A-3 and A-4 deliberately recommended JICPL for EUP at Burdwan, West Bengal as they could not have recommended the said company for EUP at Bhagalpur, Bihar because there was no application of the company for Mahuagarhi coal block for EUP at Bhagalpur, Bihar. He submitted that presentation was made by the company for EUP at Bhagalpur, Bihar and not for Burdwan, West Bengal. Further, he pointed out that vide another letter dated 17.08.2007 [D-35, Pg. 83], the company again changed location of EUP to Banka, Bihar. Learned DLA contended that the company was continuously changing location of its EUP.

727. Regarding deemed sanction, learned DLA contended that it was a possible course of action at that point of time.

728. Regarding decisions in the 14th & 18th Screening Committee meetings, learned DLA contended that after issuance of the advertisement, those decisions lost relevance and now it was upon MoC to verify all the claims.

729. Regarding charts prepared by CIL experts, learned DLA alleged that the same were destroyed in all probability as there is no noting about them in any of the MoC files.

730. Regarding contentions relating to Runu Ghosh's judgment (*supra*), learned DLA submitted that various acts and

omissions are there on the part of accused public servants showing that the recommendation for allocating Mahuagarhi coal block to A-1 company for its EUP in Burdwan, West Bengal was against public interest. He highlighted that (a) No checking was done to ascertain eligibility and completeness, (b) Incomplete applications were sent to state governments and administrative ministries i.e. MoP, (c) Incomplete applications were placed before the 35th Screening Committee for the purpose of presentations, (d) Mahuagarhi coal block was sought by A-1 company for its EUP in Burdwan, West Bengal as per the application whereas presentation was made for EUP in Bhagalpur, Bihar, (e) MoP had recommended A-1 company JICPL for Patal East coal block for EUP in Bhagalpur, Bihar, (f) Govt. of Jharkhand did not recommend name of JICPL for any coal block and (g) Govt. of West Bengal did not recommend any coal block situated in that state to JICPL and rather recommended Mahuagarhi coal block which was situated in Jharkhand.

731. Learned DLA argued that recommendation in favour of JICPL for Mahuagarhi coal block for EUP in Burdwan, West Bengal was wrong for various reasons. He elaborated that A-1 company JICPL had filed six applications out of which four applications related to EUP in Bihar and two applications related to EUP in West Bengal. There was no application for Mahuagarhi coal block for EUP at Bhagalpur, Bihar. Learned DLA referred to guidelines [Ex. PW-11/A-7 (Colly.), D-37, Pg. 73-94/c] and

according to guidelines titled 'How to Apply', an applicant company was required to file separate application for every coal block and for every EUP.

732. Learned DLA highlighted that presentation was made only for EUP at Bhagalpur. He contended that accused public servants were very well aware of the said fact but despite this, they recommended Mahuagarhi coal block for EUP at West Bengal. He submitted that after the allocation letter, A-1 company filed application for amendment in the allocation letter and for changing the EUP from Burdwan, West Bengal to Bhagalpur, Bihar. He contended that this shows that company was never intending to set up any EUP in West Bengal.

733. Learned DLA also argued that the Screening Committee recommended Mahuagarhi coal block for EUP at West Bengal because the Committee could not recommend allocation of said coal block for EUP at Bhagalpur because there was no application for said EUP. He referred to the minutes of the meeting dt. 13.09.2007 [Ex. PW-1/J-4, D-31, Pg. 1-41] in this regard. He pointed out that for Gourangdih coal block, Govt. of West Bengal had sought its allocation for its government company/corporation namely WBMTDC but Screening Committee noted that as there was no application on behalf of WBMTDC, no allocation could be recommended in its name. Drawing the same analogy, learned DLA contended that there was no application on behalf of JICPL for Mahuagarhi coal block

for its EUP at Bihar.

734. Learned DLA also referred to the feedback form Ex. PW-1/E (D-34). In the feedback form also, location of the EUP is mentioned as Bhagalpur, Bihar.

735. Learned Counsel for the accused however countered the submission of learned DLA that these guidelines can be said to have been issued under CMN Act. He referred to the testimony of PW-11 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.**

736. I have considered the submissions.

737. The contentions of the learned defence Counsel that recommendation of Screening Committee was not of any value is misconceived. The Screening Committee was empowered to make recommendation as per the policy decision of the Govt. The function of the Screening Committee cannot be said to be merely expressing opinions. The Screening Committee undertook a complex exercise which required decision making at various steps. A-3 being the Chairman, A-4 being the Convener and A-5

being the Director, CA-I Section, MoC must own their actions. Moreover, it is a case of conspiracy and the actions of A-3 to A-5 have to be appreciated in the light of these circumstances.

738. The objection of learned Counsel that adoption of UMPP criteria by CEA/MoP is not worth consideration. It is true that criteria of minimum networth was not present in the guidelines of MoC, but it cannot be said that for this reason no minimum criteria could be fixed by MoP/CEA. It must be noted that MoC had sent the applications for views/ comments/ recommendations of MoP. Due to large number of applications MoP adopted a pre-qualification criteria which can be said to be justified in these circumstances. The CEA/MoP adopted the UMPP criteria which was 0.50 crores per MW. It cannot be said that this amounted to change of rule of the game midway. The guidelines of MoC had taken capacity of minimum 500 MW in respect of power plant.

739. The CMN Act, 1973 was amended in 1993 so as to provide for allocation of captive coal blocks to companies in private sector also which were engaged in specified end uses. At that time, an inter-departmental/inter-governmental body called the "Screening Committee" was constituted in MoC to screen all such proposals as were received in MoC seeking allocation of captive coal blocks. Beside MoC which was the Nodal Ministry, various other Administrative Ministries such as Ministry of Steel, Ministry of Power or Department of Industrial Promotion and

Policy, various State Govts. of states where coal blocks which were proposed to be allocated were situated or where the proposed end use project was to be situated were members of Screening Committee. CMPDIL, CIL and its other subsidiary companies were also part of the Screening Committee. The purpose was to have views of all concerned at one single platform so as to not only expedite the coal block allocation process but to also have a body which may screen the proposals in an objective and transparent manner. Thus the various Screening Committees started laying down its own procedures to screen the proposals and to make its recommendations in an objective and transparent manner.

740. Initially no advertisement used to be issued by MoC for inviting applications for allocation of captive coal blocks but the 34th Screening Committee issued an advertisement in the year 2005 inviting applications for allocation of captive coal blocks. The past practices and procedure as used to be followed by the earlier Screening Committees were also compiled at one place and with suitable additions/modifications and guidelines were issued to govern the coal block allocation process. Similarly at the time of 35th and 36th Screening Committee also, applications were invited by way of an advertisement. After making suitable modifications in the earlier guidelines issued and besides incorporating the recommendations of 7th Energy Co-ordination Committee headed by Prime Minister and as were communicated to MoC vide I.D. note of PMO dated 25.07.2006 [Ex. PW 11/A-3

(Colly.), D-37, Pg. 38-40/c], fresh guidelines governing allocation of captive coal blocks were issued by MoC. Thus these guidelines issued at the time of inviting applications in November 2006 were to govern the allocation of captive coal blocks by 35th and 36th Screening Committees.

741. It is pertinent to mention that the said guidelines were issued by MoC purportedly to provide a mechanism to implement the provisions of MMDR Act, 1957 and that of CMN Act, 1973 as it stood amended in the year 1993. Hon'ble Supreme Court, in the said order, proceeded further to consider various acts undertaken by MoC and the Screening Committee in the allocation of various captive coal blocks assuming that Central Govt. had powers to allot captive coal blocks under MMDR Act, 1957 and CMN Act, 1973. Thus the exercise being undertaken by this Court in the present proceedings is also primarily confined to examination of various acts of omission and commission of accused MoC officers as were undertaken by them in the coal block allocation process which led to allocation of Mahuagarhi coal block in favour of M/s JICPL, with the assumption that the Central Govt. was acting under the two Acts believing bonafidely that it had power to so act. Thus what is required to be seen in the present case is whether the rules/regulations or procedures as were devised by MoC for allocating captive coal blocks were adhered to by the accused MoC officers and by the Screening Committee and if not, then reasons therefor and the intention in not doing so. However it is

certainly true that before proceeding to examine the aforesaid aspects, it also needs to be seen as to whether the guidelines so issued by MoC governing allocation of captive coal blocks were binding in nature or not, for only then the issue relating to any violation of the guidelines can be more appropriately examined.

742. The very purpose of issuance of guidelines by MoC to govern allocation of captive coal blocks and their subsequent uploading on the website of MoC was to bring them to the notice of public at large. A bare reading of said guidelines shows that the same not only controlled but also regulated the exercise of discretion by MoC and the Screening Committee in allocation of captive coal blocks. The purpose was also to inform the public at large as to how the allocation of captive coal blocks would be made by MoC.

743. It is clarified that in the present proceedings what is being examined is whether the actions of accused public servants i.e. of MoC officers involved in the process of allocation of Mahuagarhi coal block in favour of company M/s JICPL had any element of culpability in the said actions or not.

744. It is in the light of aforesaid well settled proposition of law that it needs to be seen as to whether the guidelines issued by MoC governing allocation of captive coal blocks were binding upon the MoC officers and also upon the Screening Committee or not.

745. As earlier also mentioned, the guidelines so issued by MoC, and as were also uploaded on the website of MoC for information of the public at large, were clearly issued to regulate the exercise of discretion by the MoC officers and that of the Screening Committee in the matter of allocation of captive coal blocks. The purpose was to rule out any element of arbitrariness in the said exercise of discretion. The said guidelines undisputedly provided the logical and reasoned steps as to how the MoC officers and the Screening Committee shall undertake the decision making process vide which allocation of captive coal blocks in favour of private applicant companies will be made. Yet another important purpose of issuance of guidelines was also to inform the public at large as to how the exercise of allocation of captive coal blocks shall be undertaken and that the discretion of Ministry of Coal or that of Screening Committee was not unfettered. It was thus represented to the public at large that MoC will undertake the said exercise fairly without discrimination and by following a fair procedure.

746. From the aforesaid observations, it is thus clear that in so far as the officers of the department which issued those guidelines are concerned, they were clearly bound to follow the said guidelines. The said officers can always be punished by the Govt. or department concerned for violation of the said guidelines by them. It is altogether a different matter that such a violation of the guidelines may in a given case entail initiation of departmental enquiry only but at the same time the violation of

said guidelines in a given case may also show existence of commission of an offence on the part of public servants concerned and in which case penal action may also be initiated against them.

747. Thus in the light of aforesaid circumstances, it is held that the guidelines issued by MoC governing allocation of captive coal blocks though may not be termed as law under Article 13 of the Constitution of India but were clearly binding upon the accused MoC officers. The said guidelines clearly sought to control the exercise of discretion by MoC and of the Screening Committee in disbursing the largesse i.e. allocation of nationalized natural resource (Coal) of the country by way of allocation of captive coal blocks and it was represented by MoC to the public at large as to how the applications are to be submitted or how the same will be dealt with by MoC and by the Screening Committee. It clearly cast a mandatory duty upon the accused public servants to act in accordance with the said guidelines. By no stretch of imagination, the accused MoC officers can claim that even though the guidelines were issued by them intimating the public at large as to how captive coal blocks shall be allocated but while exercising the said discretion they were not bound to follow the said guidelines. In fact the said guidelines in no way took away the discretion either from the MoC officers or from the Screening Committee but simply regulated the exercise of such discretion so vested in them, lest their actions may venture into the arena of unreasonableness,

arbitrariness or in any sort of illegality.

748. The guidelines clearly mandated certain eligibility conditions and certain requirements to be fulfilled by the applicant companies, failing which, it was mentioned in the guidelines itself that the applications would be rejected. It was also clarified in the guidelines itself as to in what manner the *inter se* priority of various competing applicant companies which had applied for any given coal block should be arrived at. In fact mentioning of these very factors in the guidelines were the prime reasons for various applicant companies to inflate their various claims so as to show a better status/stage of preparedness qua their proposed end use project. A legitimate expectation thus arose in the mind of various applicant companies that their applications would be considered objectively and in a transparent manner in accordance with the guidelines so issued by MoC. In these circumstances, it cannot be claimed by accused MoC officers that they were not bound by the guidelines so issued by MoC governing allocation of captive coal blocks and as were also uploaded on the website of MoC.

749. It is worth noting that when the guidelines were issued by the MoC, it was the common belief that coal blocks could be allocated by the Central Govt. by Screening Committee route. It was understanding of the Govt. of the day that allocation could be made under CMN Act in that manner. It is further worth noting that coal blocks were being allocated earlier also in

similar manner. It was only when judgment in **Manohar Lal Sharma Vs. Principal Secretary (2014) 9 SCC 516** was pronounced by Hon'ble Supreme Court that this practice of allocation of coal blocks was termed illegal. Therefore, the validity and sanctity of the guidelines will have to be adjudged as per the common practice and procedure which was prevalent at that time.

750. Considered as such, there remains no doubt that the guidelines issued by the MoC were issued under CMN Act and were mandatorily to be followed. Any violation of those guidelines will have to be scrutinized and not just ignored.

751. Even otherwise, if it is assumed that the guidelines were not issued under CMN Act, still the same were binding on the MoC and the Screening Committee. At least in respect of allocation of coal block the guidelines were very much binding and applicable because the same were issued for the said purpose. If not bound by the guidelines, what other Rule or Regulation was binding on the Screening Committee for recommending coal blocks?

752. A-3 to A-5 cannot take the defence that guidelines were not binding. They were bound to follow the said guidelines in the process of making recommendations for allocation. Any violation of the guidelines will invite action whether administrative or criminal.

753. The next issue is whether the guidelines were followed or not. In other words, whether the applications were checked in MoC for completeness and eligibility before being sent to administrative ministries/state Govts.?

754. Before finding out whether checking for completeness and eligibility was done or not, it is essential that meaning of ‘completeness’, ‘eligibility’ and ‘checking for completeness and eligibility’ must be clear.

What is the meaning of ‘completeness’?

755. As far as completeness is concerned, the meaning of the said word is to be ascertained on the basis of the material available on record. The guidelines provide that an application was to be accompanied with the following documents:

“II The following documents should be enclosed along with the application form:

Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy)

Document showing the person/s who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies)

Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 copies.)

Audited Annual Accounts/reports of last 3 years. (5 copies)

Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies)

Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies)

Scheme of disposal of unusable containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies)

The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.

Demand draft of Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi

A soft copy of details, as filled in the Application Form, is also to be furnished in the specified Database Form (in MS-Excel format) in a CD along with the Application.”

756. The contention of learned DLA is that completeness meant not only that application was having all the documents annexed with it as were required but also that the claims made in the application were based on facts. He contended that it was the duty of the accused public servants to check the aspect of completeness of the applications after issuance of advertisement and guidelines.

757. On the other hand, learned Counsel for A-3 to A-5 contended that completeness only meant that all the documents were annexed with the application as was specified in the

guidelines/advertisement.

758. Guideline (III) provides as under:

*“(III) Applications without the above accompaniments would be treated as **incomplete** and shall be rejected.”*

759. From the guideline (III), it is apparent that completeness cannot mean anything but availability of specified documents as mentioned in guideline (II). It cannot travel beyond that. If any of the specified document was not annexed, it was provided in guideline (III) that the application would be treated as incomplete and was liable to be rejected. This shows that completeness meant availability of documents. It did not extend to ascertaining truthfulness or correctness of the claims/informations mentioned in the application.

What is the meaning of ‘eligibility’?

760. Now it is to be seen what is the meaning of eligibility?

761. Regarding eligibility, learned DLA submitted that the applicant should have been a company registered under the Companies Act and it must have also been engaged in the production of power which was the EUP for coal blocks considered by 35th Screening Committee. According to him, a company proposing to engage in power production was not entitled to apply for allocation of coal block. Learned DLA

referred to Sec. 3(3)(a)(iii) of CMN Act. He also referred to following observations of Hon'ble Supreme Court in the case of Manohar Lal Sharma (*supra*):

“160. The entire exercise of allocation through Screening Committee route thus appears to suffer from the vice of arbitrariness and not following any objective criteria in determining as to who is to be selected or who is not to be selected. There is no evaluation of merit and no inter se comparison of the applicants. No chart of evaluation was prepared. The determination of the Screening Committee is apparently subjective as the minutes of the Screening Committee meetings do not show that selection was made after proper assessment. The project preparedness, track record etc., of the applicant company were not objectively kept in view. Until the amendment was brought in Section 3(3) of the CMN Act w.e.f. 9-6-1993, the Central Government alone was permitted to mine coal through its companies with the limited exception of private companies engaged in the production of iron and steel. By virtue of the bar contained in Section 3(3) of the CMN Act, between 1976 and 1993, no private company (other than the company engaged in the production of iron and steel) could have carried out coal mining operations in India. Section 3(3) of the CMN Act, which was amended on 9-6-1993 permitted private sector entry in coal mining operations for captive use. The power for grant of captive coal block is governed by Section 3(3) (a) of the CMN Act, according to which, only two kind of entities, namely, (a) Central Government or undertakings/corporations owned by the Central Government; or (b) companies having end-use plants in iron and steel, power, washing of coal or cement can carry out coal mining operations. The expression "engaged in" in Section 3(3)(a)(iii) means that the company that was applying for the coal block must have set up an iron and steel plant, power plant or cement plant and be engaged in the production of steel, power or cement. The prospective engagement by a private company in the production of steel, power or cement would not entitle such private company to carry out coal mining operation. Most of the companies, which have been allocated coal blocks, were not engaged in the

production of steel, power or cement at the time of allocation nor in the applications made by them any disclosure was made whether or not the power, steel or cement plant was operational. They only stated that they proposed to set up such plants. Thus, the requirement of end-use project was not met at the time of allocation.”

762. On the other hand, learned Counsel for A-3 to A-5 vehemently submitted that companies which were proposing to engage in the generation of power were also entitled to apply because that was an accepted position at the relevant time. He submitted that at the relevant time, this was the common understanding of all the concerned authorities as well. Further, he has referred to one judgment titled **Welfare Society of Orissa Vs. UOI & Ors., 2010 SCC OnLine Ori 67 : AIR 2010 Ori 183**. Relying upon this judgment, learned Counsel submitted that even the Hon’ble Orissa High Court while considering the provisions of CMN Act had observed that the guidelines read with statutory provisions did not provide anywhere that a person must have the experience in the field of power generation at the time of submission of its application. It held the concerned company as eligible applicant for allocation of coal block.

763. To ascertain this requirement, one has to only look at the advertisement [Ex. PW-11/A-7 (Colly.), D-31, Pg. 73-94/c] and the CMN Act.

764. The advertisement provided as under [at Pg. 74/c]:

“ The Ministry of Coal, Government of India intend to allocate 38 coal blocks for captive coal mining by companies engaged in generation of power, production

of iron and steel and production of cement. Out of these, 15 coal blocks are earmarked for power generation and 23 coal blocks would be available for other specified end uses.....”

765. 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;”

766. Thus to be an eligible applicant, it was required to be a company engaged in the specified end uses e.g. power sector in the present case.

767. The emphasis of learned DLA is that the company must have been already engaged in power generation. According to him, prospective engagement was not envisaged.

768. The Hon’ble Orissa High Court made certain

observations in this regard in Welfare Society's case (*supra*) which 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) xxxxxx

(iii) xxxxxx

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.”

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

770. From the judgment of Hon’ble Orissa High Court, there remains no doubt that it was understood at that point of time that a company proposing to engage in power production was entitled to apply. However, later on, Hon’ble Supreme Court vide its judgment in Manohar Lal Sharma’s case (*supra*) had held that various allocations of coal blocks made to various companies as illegal. Hon’ble Supreme Court had observed that many of the companies were not engaged in specified end uses.

771. 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.

772. It is a fact that many of the allocatees were the companies which were only proposing to engage in production of power. The MoC had considered those companies as eligible. In such a fact situation, will it be proper to ascertain guilt for an

offence under PC Act on the basis of a later interpretation contrary to the prevalent understanding of the provisions and guidelines? When Hon'ble Orissa High Court could take a view (although which has subsequently been overruled) that company proposing to engage in power production was an eligible company, same is the possibility with the authorities also that they also understood the provisions and guidelines on those lines. In my view, criminal liability should not be decided only on the basis of taking a particular view about the guidelines and the provisions especially when such a view was a possible view.

773. As regarding eligibility, the primary requirement for every applicant was that it should be a company registered under Indian Companies Act. The second requirement of being eligible was that the company should be engaged either in generation of power or production of iron or steel or in production of cement. The present case relates to power sector.

774. 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.

775. 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 and omissions made in 2007.

776. It thus follows that the eligibility of the company has to be decided as per the guidelines and provisions of CMN Act but with the understanding which existed at that point of time i.e. that companies proposing to engage in power production were eligible to apply for allocation of coal block.

777. Considered so, it is apparent that companies proposing to engage in power production were also eligible to apply for allocation of coal block. No doubt, there were some applicants who had one or the other EUP either fully or partly operational but most of the companies were only proposing to establish their EUPs. Thus, no fault can be found in the approach of the companies in firstly ensuring supply of coal through allocation of coal block.

778. 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.”

779. 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 and which was done in the case of CBI Vs. Y. Harish Chandra (NPPL’s case). The company which was proposing to establish specified EUP was also eligible.

What is the meaning ‘checking for completeness and eligibility’?

780. Having shed light on meaning of completeness and eligibility, now it is to be considered what is meant by ‘checking’ for completeness and eligibility?

781. The addition of word ‘checking’ before completeness and eligibility does not change the scope of the exercise. It will still be checking for (i) availability of documents (which is relating to completeness) and (ii) registration status of applicant i.e. it must be a company and the nature of its End Use Project (which is relating to eligibility).

782. Further, at some places in the notings, the word ‘scrutiny’ has been used. Scrutiny to ascertain completeness and eligibility is similar to checking for completeness and eligibility. However, scrutiny of applications for evaluation is an exercise which was verification of truthfulness and correctness of

claims/information made/given by the applicant companies. However, it was the domain of the administrative ministry and state governments.

783. In my view, the stress of learned DLA that application was not scrutinized is rather relating to verification of truthfulness and correctness of the claims made in the application. Verification of the claims was to be done by administrative ministry in consultation with the state government concerned. The decisions taken in the 14th and 18th meeting of the Screening Committee provide a clue on this issue and are also of relevance. The same were referred to in the judgment in Manohar Lal Sharma's case (*supra*). The same are 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 public 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.”

784. The meeting of 11.05.2007 held in the chamber of

A-3 pursuant to OM dt. 07.05.2007 [Ex. PW-11/C-4, D-38, Pg. 87-88/c] was with a view to consider the criteria / detailed modalities for allocation. This exercise was for the purpose of scrutiny/verification of the claims made in the applications. It could be done by technical experts of various sectors only. The technical expertise for power sector was available with MoP and not MoC. This exercise was not to be done before sending the applications. It was decided in that meeting that respective administrative ministries would suggest some criteria based on specific parameters. However, MoP i.e. the concerned administrative ministry did not suggest anything. MoP got evaluated the applications through CEA and made recommendations. It was also decided in the meeting that all the applicants would be given opportunity to make presentations.

785. It must be mentioned here that earlier this Court was also under the impression the checking for completeness and eligibility included verification of claims made in the applications. However, now after the judgment in Welfare Society's case was brought to notice of this Court, the earlier view regarding checking needs to be modified. The aspect of checking for eligibility is restricted to ascertaining whether the applicant was a company registered under the Companies Act and whether its existing or proposed EUP was for power sector or not.

786. If the meaning as put forward by learned DLA is

adopted, then that would mean that the truthfulness and correctness of the claims were also to be verified by MoC, and that too before sending the applications to MoP and state governments (as per the guidelines). However, truthfulness and correctness of the claims or in other words the verification/scrutiny of the claims was not possible without assistance of MoP and state governments as they possessed the technical expertise for it. And if their assistance was needed, then the copies of the applications and documents were required to be supplied to them by MoC because without copies of the applications and documents, they could not have evaluated the claims made in the applications. Therefore, the meaning which learned DLA wants to suggest was unworkable and would lead to anomalous situation.

787. The role of administrative ministry and state governments was still traceable to 14th and 18th Screening Committee meetings. The verification or scrutiny of claims made in the applications was the task of these stakeholders.

788. Thus checking for completeness and eligibility merely meant that (a) applications were to be checked to see availability of required documents and (b) status of applicant as a company and purpose of its existing or proposed EUP.

Whether checking was done?

789. The guidelines [Ex. PW-11/A-7 (Colly.), D-37, Pg.

73-94/c] provided that the applications after being received in MoC were to be checked for their completeness and eligibility before being sent to Administrative Ministries and concerned State Govts.

790. The guidelines issued by MoC clearly mandated under the title “*Processing of application*” that the applications received in MoC in five copies after being checked for their eligibility and completeness would be sent to the Administrative Ministries and State Govts. concerned for their evaluation and recommendation. The guidelines also specified certain documents which were required to be annexed by every applicant company alongwith its applications. It was also stated that applications without the said accompaniments would be treated as incomplete and shall be rejected. Thus in the light of aforesaid nature of guidelines, it becomes clear that before copies of the applications were to be sent to Administrative Ministries/State Govts., the same were required to be checked in MoC as regard their completeness and eligibility.

791. It can be said that it was job of CA-I Section to check the applications but it must also be said that it was responsibility of A-3 to A-5 to ensure that such an exercise was indeed carried out. Even as per Manual of Office Procedure, the responsibility of a Secretary is absolute.

792. Learned DLA, as already noted, has contended that application of JICPL was incomplete as (i) in the application, in

column no. 1, it was not mentioned that JICPL was a JV or SPV, (ii) in column no. 6 of the application, it was falsely claimed that JICPL was SPV managed by IISIPL and IL&FS Group and that core business included Iron & Steel making and providing finances and company was diversifying into Coal Mining and Power Generation, (iii) in column no. 10 of the application networth of IISIPL and IL&FS was mentioned and (iv) in column no. 21 of the application, it was mentioned that DPR was appraised but appraisal report was not annexed. He argued that it was requirement that if DPR was appraised, then the appraisal report was also to be annexed.

793. The instances of incompleteness as mentioned in (i), (ii) and (iii) above are not connected with incompleteness and are rather instances of false statements or incorrect statements. The only instance of incompleteness worth consideration is (iv) which is relating to not furnishing appraisal report despite claiming that DPR was appraised.

794. The testimony of PW-11 is heavily relied upon by the prosecution to show that no checking was done. However, there are various circumstances indicating that it was done.

795. Vide note dt. 04.11.2006 [at Pg. 3-4/n in D-37], R.N. Singh had proposed detailed guidelines which provided for checking of applications before sending them to other stakeholders. In the previous round i.e. 31st to 34th Screening Committee, it is now more than apparent that checking was done

and two lists of complete and incomplete applications were prepared. It has been so held by Sh. Arun Bhardwaj, the then learned Special Judge PC Act, CBI, Coal Block Cases-01, RADC in Grace Industries case and also by me in the case of Kohinoor Steel Pvt. Ltd. It appeals to common sense that when a procedure followed in earlier round is specifically included for fresh round also, it must have been followed. It is noteworthy that there is no noting in MoC file that no checking was ever done. There is further no noting that fact of non-checking was ever brought to notice of superior officers.

796. PW-11 initially denied that checking was done at the time of 34th Screening Committee but his statement has been rendered false when he was confronted with documents showing preparation of lists and uploading of those lists on website of MoC. His denial of fact of checking for 35th Screening Committee is also to be viewed with suspicion.

797. Further, communication dated 22.01.2007 and its response dated 31.01.2007 by PW-11 [Ex. PW-11/DX-13 (Colly.)] showing some time schedule for checking of applications, and notings such as dated 19.02.2007 [at Pg. 10/n in D-37] showing applications were ready to be dispatched; dated 29.03.2007 [at Pg. 16/n in D-37] showing discussion about some applications and it talks about work pressure relating to scrutiny of applications; and dated 04.06.2007 [at Pg. 1/n in D-34] showing discussion about holding meeting of 35th Screening

Committee, all indicate that some kind of checking or scrutiny or screening or filtering had taken place.

798. PW-11 had also acknowledged that directions were given to cursorily glance the documents filed with the applications at the time of receipt of applications. He also admitted that he had stated in the case of Vikas Metal that incomplete applications were not entertained by MoC.

799. The assertion of PW-11 that a meeting was held in the office of A-4 i.e. JS (Coal) to discuss the modalities for receiving applications has been shown to be an imaginary assertion. When detailed guidelines were proposed vide note dt. 04.11.2006, where was the need to hold this meeting. This meeting is nowhere reflected in any noting or there is any confirmation of directions given vide this meeting. Everything is oral account qua this meeting. It is difficult to believe.

800. The notings highlighted by learned DLA are actually relating to verification exercise which was primarily to be done by MoP assisted by state governments but which was taken up later on by MoC as MoP had not co-operated and asked MoC to get verification done. This scrutiny of informations given/claims made in the applications cannot be equated with checking for completeness and eligibility. The state governments had carried out this verification which was subsequent to checking of applications.

801. The above discussion shows that some checking for completeness and eligibility was done. It must be kept in mind that this checking is not to be confused with scrutiny of applications for the purpose of evaluation because that exercise related to finding out truthfulness and correctness of the claims.

Whether recommendation is justified?

802. Having found that applications were checked for completeness and eligibility, now it is to be seen as to whether the recommendation is justified or not? To put it differently, whether A-3 to A-5 acted reasonably in processing application of JICPL/A-1 and recommending its name for allocation of Mahuagarhi coal block for EUP at Burdwan, West Bengal?

803. After checking, the application of JICPL was sent to MoP as well as Govt. of West Bengal, Jharkhand and Bihar. The MoP recommended name of JICPL for Patal East coal block for its Bhagalpur EUP (on the basis of feedback form). State govt. of West Bengal recommended JICPL for Mahuagarhi coal block for Burdwan EUP (though for a captive power plant). State govt. of Jharkhand did not recommend JICPL for any coal block. Rather it recommended M/s CESC Limited and M/s Maithili Energy Pvt. Ltd. for allotment of Mahuagarhi Coal Block.

804. It is an admitted position that MoP had not informed MoC about criteria adopted by CEA for pre-qualifying the applicants. So the MoC officials or Screening Committee

members cannot be faulted for considering applications which did not fall into criteria of CEA/MoP.

805. In the meeting of 30.07.2007 when MoP informed that authenticity of the data needed to be separately verified, the meeting was deferred awaiting reports of the state governments.

806. Notices were sent to concerned state governments. Their reports were received. Accused public servants have taken the plea that those reports were placed before the members of the Committee on 13.09.2007. Whereas, prosecution alleges that those reports were not so placed. Prosecution heavily relies upon testimony of PW12 Bhaskar Khulbe.

807. PW-12 had claimed that recommendations of MoP were not supplied in the meeting dt. 30.07.2007. However, when he was confronted with his own letter dt. 03.08.2007 [Ex. PW-12/DX-12] which he had sent after attending the said meeting to his superior, his claims fell to the ground like a pack of cards. From that letter, he admitted that it was clear that the recommendations as were made by CEA and were endorsed by the MoP were circulated and deliberated upon in the meeting.

808. He had further claimed that nothing was discussed in the meeting dt. 13.09.2007. This claim was also belied when he was shown his letter dt. 13.09.2007 [Ex. PW-12/DX-11] which was also sent to his superior and it was apparent from it that recommendations in respect of other states (Orissa, Jharkhand,

Maharashtra and Chhattisgarh) were finalised by reconciling between the states' evaluation, power ministry opinion and the criteria suggested by the Chairman. This reconciliation was not possible at all without taking into consideration the reports of the state governments. This shows that discussions took place between members of the Screening Committee.

809. Regarding not placing of reports of State Govts. and of CIL experts before the members of the Screening Committee, the prosecution has tried to establish that such charts were not placed before the Screening Committee through oral testimonies of PW-11 and PW-12. Oral testimonies of these witnesses regarding events which took place around 14-15 years ago is not good evidence as the same suffers from errors of memory as well as the same are against file notings and other documentary evidence. Reference may be made to note dated 14.09.2007 made by Sh. R.N. Singh, Section Officer, CA-I [D-34, Pg. 15-20/n]. The same fact is also mentioned in the minutes of the meeting of 35th Screening Committee held on 13.09.2007 [Ex. PW-11/J-4, D-31, Pg. 1-41).

810. None of these witnesses had objected to minutes of the meeting and had accepted its correctness. In the minutes, it is recorded that the reports of state governments were compiled and placed before the members. Thus prosecution cannot allege that these charts were not supplied.

811. If even after checking, some incomplete applications

have been treated as complete and were forwarded to MoP and state governments, then it is not to be taken as a criminal act or omission on part of A-3 to A-5. It was fault of CA-I Section. On their part as well, it was rather an error. Moreover, A-5 is not responsible at all for this lapse as he joined CA-I Section much later. On 17.04.2007 when applications were sent to MoP, the trunks which were already lying were ready since February, 2007 were only dispatched.

812. It is also worth noting that it has come on record that no special treatment was given to any company. No application was treated with any preference. It has to be kept in mind that A-3 being Secretary Coal and A-4 being Joint Secretary Coal were not supposed to personally check the applications for completeness and eligibility. It was the task of CA-I Section whose Director at relevant time was Sh. Sanjiv Mittal and not A-5.

813. The applicant company JICPL/A-1 was a registered company under the Companies Act, 1956. It had applied for allocation of coal block for its power plant which was yet to be established. In other words, JICPL was also proposing to establish power plant of 2240 MW. Viewed thus, it is held that JICPL was an eligible company to apply for allocation of coal block.

814. PW-11 had no clue that appraisal report was missing in the application. It shows that the checking was done casually

by staff of CA-I Section.

815. When the application was treated as complete even though erroneously and the applicant has been found to be an eligible applicant, and allocation was recommended to a company which had recommendation from state government of West Bengal and MoP (though for a different coal block), the accused public servants cannot be held accountable for any offence. For any lapse on their part, the accused public servants may be administratively liable but are certainly not criminally liable, in the facts and circumstances of the present case.

816. The exercise done by CIL experts loses relevance as figures of networth were not incorrect. The real issue was about joining networth of two entities.

817. Moreover, even if the worst case is taken against A-3 and A-4, it cannot be lost sight of the fact that the recommendation was made by the Screening Committee. A decision of a committee is a collective decision for which one or two persons cannot not be singled out and held responsible for the said decision. None of the members have ever objected to the recommendations written on the recommendation sheet and everyone had signed the same. Thus after so many years, it cannot be stated that the said decision was of A-3 and A-4 alone.

818. A-5 was not posted in CA-I Section initially. The exercise of checking took place before he joined the said Section.

As such, for any lapse in checking, A-5 cannot be held responsible. Regarding acts and omissions of later period i.e. after he joined CA-I Section, it is relevant to note that A-5 was not member of the Screening Committee. As such, again, he is not liable.

819. Learned DLA had forcefully contended that A-3 and A-4 had acted in dual capacity i.e. both were officials of MoC as well as members of the Screening Committee and as such must be held responsible. Further A-5 was Director, CA-I Section and must be held responsible as well.

820. I do not find any merit in this contention as ultimately the recommendations were made by the Screening Committee of which A-3 was the Chairman and A-4 was Member Convener. Their alleged acts or omissions as Secy. Coal and Jt. Secy. Coal do not amount to criminal acts. A-5 was certainly not member of the Screening Committee.

821. The accused public servants did not force either MoP or any state governments to make recommendation in favour of A-1 company. The MoP and state governments did so on their own and on the basis of their evaluation. Their representatives were also present in the meetings of the Screening Committee.

822. The record of MoC reveals that there were contesting recommendations both from the administrative

ministry as well as concerned state governments. There were instances where for one coal block, some companies/applicants had recommendation in their favour from MoP only and some from concerned state government only. The Screening Committee was thus tasked with working out a solution and necessarily it had to balance the interests of all the stakeholders. As a consequence, allocation of coal blocks was made in favour of some companies which had recommendation of only MoP and some which had recommendation of only the concerned state government.

823. The alleged acts and omissions on the part of A-3 to A-5 may come under the category of lapses but such lapses, at the most, are only administrative lapses for which they may be departmentally liable but certainly not criminally liable.

824. As already observed in the case of Kohinoor Steel, this court had taken note of a strange trend. It was observed that apparently 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 concerning private parties only, and relating to 35th Screening Committee, was CBI Vs. Himachal EMTA Pvt. Ltd. & Ors., CC/319/2019, RC 219 2014 E0020, which has been decided by

this court on 31.08.2022. The said case also related to allocation of coal block for power plant. The administrative ministry was Ministry of Power in that case also. Perusal of the judgment 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 Himachal EMTA, nothing adversely is stated against the accused public servants. The minutes of the meeting dated 13.09.2007 are relied upon as correctly recorded in that case. The case of CBI in that case was that the said company and other accused induced even these public servants who have been chargesheeted in the present case.

825. 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 Himachal EMTA, 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 to be 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 Himachal EMTA. This is completely perplexing. Either the non-scrutiny/non-

checking was to be taken adversely or it has to be ignored completely in both type of cases. The fate of accused public servants cannot hinge upon *per chance* discovery of completeness or incompleteness of documents filed with the application. This variance is also noted in cases related to 34th Screening Committee cases as well.

826. Moreover, in the present case itself, the minutes of 13.09.2007 are being labelled by the prosecution as ‘wrongly recorded’ when considered for case against public servants; and when these are being considered for case against private accused persons, the prosecution is relying upon these very minutes (particularly para 10 and 13) to show consideration of various informations supplied by applicant companies.

827. The conclusion is that the minutes of the meeting dt. 13.09.2007 were apparently recorded correctly. The informations provided by the state governments were placed before the members of the committee. The claims made in the applications by the applicant companies were considered and deliberated upon and only thereafter recommendations were made.

828. It is thus held that no offence u/s 13(1)(d)(iii) PC Act is made out against any accused public servants.

CASE AGAINST PRIVATE ACCUSED PERSONS

829. Now the case against the private accused persons is

being discussed. The points of determination no. IV to VII can be considered together.

POINTS FOR DETERMINATION NO. IV TO VII

- IV). Were there any misrepresentations?**
- V). Who is responsible for making those misrepresentations?**
- VI). Whether those misrepresentations deceived any person and thereby fraudulently or dishonestly induced any person?**
- VII). Whether the offence of cheating is made out against A-1 and A-2?**

830. 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.”

831. 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.”

832. From perusal of the above-noted provisions, it is found that the ingredients of the offence of cheating are:

- (i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) in cases covered by (ii)(b) above, the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

(As held in *Ram Jas v. State of UP (1970) 2 SCC 740*)

833. It will also be fruitful to note definitions of ‘dishonestly’ and ‘fraudulently’.

834. 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".

835. 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.

836. 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.

837. What is the meaning of the phrase "deceiving any person" as used in the definition of cheating as provided in Section 415 IPC.

838. In the case of **Swami Dharendra 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.

839. 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.

840. 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.

841. Thus, it is clear that in all such cases of deception, the object of the deceiver is fraudulent. He intends to acquire or retain wrongful possession of that to which some other person has a better claim. So, where a person parts away with a property while acting on such a representation of an accused believing in the truth thereof, it clearly amounts to deceiving the person.

However, it is also important that the person practicing the deceit knows or has reason to believe the said representation to be false. Though in the true nature of things, it is not always possible to prove dishonest intention by direct evidence. It can be, however, proved by number of circumstances only from which a reasonable inference can be drawn. Further the explanation to Section 415 IPC i.e. cheating states that a dishonest concealment of facts is a deception within the meaning of this section.

842. 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.

843. The deception within the meaning of section 415 IPC can happen through misrepresentation. In the present case, the prosecution has alleged that various misrepresentations were made by the accused persons.

844. 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.

845. It was observed that if the expression "fraudulently" were to be held to involve the element of injury to the persons or the persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice-versa, it need not necessarily be so. It should be held that the concept of fraud would include not only deceit but also some injury to the person deceived. It would be thus appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy definition of "fraudulently" it would be sufficient if there was a non-economic advantage to the deceiver or non-economic loss to the deceit. Both need not co-exist. It was also observed by Hon'ble Supreme Court that the Juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore the definition of one may give colour to the other. The aforesaid observations of Hon'ble Supreme Court culling out the difference between the words

"dishonestly" and "fraudulently" have been followed consistently in all subsequent cases involving the issue of cheating.

846. It is essential to find out whether there were any misrepresentation(s) or not because only if there were such misrepresentation(s), the prosecution can sustain its case. This is because only if there was/were misrepresentation(s), there could be deception and ultimately dishonest inducement.

847. In the present case, various misrepresentations have been alleged by the prosecution to have been made by private accused persons i.e. A-1 and A-2. One of the misrepresentation is regarding **networth**. Then it is **information about promoters** of JICPL. These two are closely related and involve issue of **location of EUP** also. The other is regarding **appraisal and syndication**. Another misrepresentation in the form of concealment is regarding **non-disclosure about previous allocations** to group/associate companies.

848. Learned DLA referred to various documents such as the application, the feedback form, the presentation, etc. He further referred to testimonies of various witnesses.

849. Learned DLA has submitted that networth of an applicant company was a vital factor in deciding *inter se* merit amongst various applicant companies. Learned DLA submitted that private accused persons were having the knowledge of importance of networth.

850. He pointed out to application alongwith covering letter dated 05.01.2007 [Ex. PW-1/A (Colly.), D-3] which was submitted to MoC on 12.01.2007.

851. Learned DLA contended that IL&FS cannot be termed promoter of JICPL as it did not have any shareholding in A-1 company on 12.01.2007. As such, the claim made in the application dated 12.01.2007 that JICPL was managed by IISIPL and IL&FS was a misrepresentation. Learned DLA submitted that even the network of IISIPL was wrongly used in the application. Therefore, use of figures of network of IISIPL and of IL&FS was also unjustified. There was no document suggesting that JICPL was SPV of which IISIPL and IL&FS were principals.

852. Learned DLA further referred to feedback form [Ex. PW-1/E, D-34, Pg. 66-67/c] and the presentation [Ex. PW-1/F, D-34, Pg. 68-79/c]. He pointed out that IL&FS has been described as one of the promoters of JICPL which was again a misrepresentation. He submitted that in these documents, network of IL&FS was again joined with network of JICPL and IISIPL.

853. Learned DLA argued that IL&FS had not subscribed to share capital of JICPL even on date of presentation i.e. 20.06.2007 and thus cannot be called promoter. Consequently, network of IL&FS could not have been joined with network of JICPL. He relied upon testimonies of witnesses from IL&FS i.e.

PW-7 S. Bhaskaran, PW-8 Sanjay Mundley and PW-9 Pankaj Sakhuja.

854. Learned DLA again raised the issue of location of EUP and contended that there was no SPV for EUP at Pirapainti, Bhagalpur, Bihar. He also referred to the MoUs wherein the location of EUP was agreed to as at Jharkhand or Orissa or West Bengal. During presentation, however, EUP at Bihar was highlighted. He further pointed out that when Govt. of West Bengal, during exercise of verification pursuant to letter dated 02.08.2007 of MoC, sought response of JICPL, a letter dated 23.08.2007 [D-35, Pg. 36] was sent by the said company and therein it gave details of the progress made by the company for its EUP at Burdwan, West Bengal. This letter of JICPL forms part of letter dt. 24.08.2007 sent by Govt. of West Bengal [Ex. PW11/H-1 (Colly.), D-35, Pg. 22-49]. Learned DLA argued that despite its interest only in the EUP at Bihar, the company still gave details of its EUP in West Bengal which shows that the company wanted a coal block at all cost.

855. Learned DLA contended that the MoP had considered the networth figures to make its recommendation in favour of JICPL. He referred to testimonies of PW-14 Anil Kumar Kutty and PW-15 Manjit Singh Puri who are from MoP and CEA respectively. Learned DLA submitted that CEA had also considered these figures. Learned DLA wanted to convey that accused persons obtained recommendation of MoP only on

the basis of these networth figures. He pointed out that networth of JICPL was only Rs. 1 lakh for the financial years 2003-04, 2004-05 and 2005-06. He submitted that thus it is apparent that JICPL by its own networth was not eligible to earn recommendation of MoP which had followed criteria of networth of 0.5 crore per MW i.e. of UMPP.

856. Learned DLA thus argued that accused persons dishonestly used figures of networth of IL&FS to induce MoP and MoC to obtain recommendation for allocation of coal block. He contended that misrepresentation was thus made regarding networth as well as promoters/principals and also about location of EUP.

857. Learned DLA submitted that another misrepresentation by the accused persons was regarding appraisal and syndication. He referred to the application form [Ex. PW-1/A (Colly.), D-3] and feedback form [Ex. PW-1/E, D-34, Pg. 66-67/c] wherein it had been claimed by the company that DPR had been appraised by IL&FS group but appraisal report was not annexed with the application. He alleged that there was no appraisal report as in fact no appraisal had been done. He referred to testimony of PW-9.

858. Regarding syndication, learned DLA referred to feedback form and contended that debt was yet to be syndicated but it was falsely claimed that it had been syndicated. In the feedback form it was claimed that syndication had been arranged

for Rs. 4445 crores but no supporting document was annexed.

859. Another misrepresentation pointed out by learned DLA is concealment of previous allocation. In the application Ex. PW1/A (Colly.), in para 29 and 30, it was mentioned that there was NO previous allocation to applicant company and to any group or associated company. Learned DLA argued that there were previous allocations to companies of Abhijeet group to which JICPL also belonged. He referred to IFS dated 31.07.2008 [Ex. PW-3/F, Part of D-20] and asserted that JICPL belonged to Abhijeet Group which was under control of A-2 Manoj Kumar Jayaswal.

860. He referred to MoU dated 31.03.2006 [Ex. PW-2/B, D-24] which was between NECO Group of Companies and Abhijeet Group of Companies. He further referred to IFS dt. 31.07.2008 [Ex. PW-3/F, Part of D-20] which acknowledged that JICPL was part of Abhijeet Group. He referred to evidence of PW-3 Sanjay Dey. He pointed out that M/s AIL had been allocated Brinda, Sisai and Miral coal blocks whereas M/s CIAL had been allocated Chitarpur coal block. This fact was also confirmed vide letter dated 04.06.2013 of PW-18 S.K. Shahi which is Ex. P-6/PW-17 [D-42].

861. Learned DLA explained that disclosure about previous allocation was necessary as it provided information about performance of a company which was group or associate company of the applicant. He referred to testimony of PW-4 R.K.

Sutradhar who is from office of Coal Controller and produced record about development of coal blocks earlier allocated to group companies of Abhijeet Group. Such record is Ex. PW-4/B (Colly.), Ex. PW-4/C (Colly.), Ex. PW-1/B (Colly.) and Ex. PW-1/C (Colly.) [D-47, D-48, D-49 and D-50 respectively]. Referring to these reports, learned DLA contended that the reports show that development of the earlier allocated coal blocks was poor and to hide this fact, previous allocations were not disclosed.

862. Learned DLA referred to the testimony of PW-1 Harshad Pophali and submitted that all the misrepresentations were made upon instructions of A-2 Manoj Kumar Jayaswal. He also referred to testimony of PW-3 Sanjay Dey who had attended meetings of the Screening Committee alongwith A-2 and who has deposed that the presentation was also made upon instructions and directions of A-2.

863. Learned DLA submitted that A-2 was also instrumental in execution of MoU dated 15.11.2006 between JICPL & IISIPL [Ex. PW-3/A, D-17, Pg. 1-3], MoU dated 08.01.2007 between IISIPL and IL&FS [Ex. PW-3/B, D-17, Pg. 5-12] and MoU dated 02.04.2007 again between IISIPL and IL&FS [Ex. PW-3/C, D-7, Pg. 1-7].

864. He thus, contended that A-1 & A-2 have committed the offence punishable u/s 420 IPC. Learned DLA thus argued that prosecution has proved the charge for the offence u/s 420 IPC.

865. The submissions of Sh. Umang Katariya, learned counsel for A-1/JICPL have already been noted.

866. Sh. Mudit Jain, learned counsel for A-2 Manoj Kumar Jayaswal strongly refuted the contentions of learned DLA.

867. Learned counsel termed the testimony of PW-1 as unreliable. He contended that false accusations have been made by PW-1 against A-2. He submitted that earlier PW-1 had stated that various applications for allocation were prepared as per instructions of A-2 as well as Dr. V.S. Garg. However, later on he changed his stand and put the entire blame upon A-2 only. Learned counsel contended that there is no evidence to show that A-2 had given instructions for filling up the informations in the application, feedback form and presentation. He contended that PW-1's statement is a result of improvement and embellishments and thus cannot be relied upon. He referred to testimony of PW-6 who had stated that application was prepared by PW-1.

868. Learned counsel thus contended that A-2 had no role in preparation of the application, the feedback form or the presentation.

869. Regarding network and promoter issue, learned counsel argued that everything was disclosed by the accused in the covering letter which is also part of the application. He relied upon **Vesa Holdings (P) Ltd. vs. State of Kerala, (2015) 8 SCC**

293 and contended that there was no intention to cheat.

870. He countenanced the stand of prosecution that there was no SPV. Learned counsel heavily relied upon MoU dated 08.01.2007 [Ex. PW-3/B, D-17, Pg. 5-12] showing that there was agreement between IL&FS one side and IISIPL and JICPL on the other side that JICPL would be SPV for establishing the power plant. Learned counsel pointed out that it was also agreed between the executants of the MoU that network of IL&FS could be used and mentioned in the application and other documents.

871. Learned counsel referred to general guidelines issued by MoC [Ex. PW-11/A-7 (Colly.), D-37, Pg. 73-94/c] and particularly referred to guideline No. 9 wherein it was provided that network of the principals of JV/SPV company was to be considered to determine *inter se* priority. Learned counsel vehemently submitted that IL&FS as well as IISIPL were principals of SPV namely JICPL and thus their network could be mentioned and considered. He further submitted that there was no restriction in the MoU dated 08.01.2007 [Ex. PW-3/B, D-17, Pg. 5-12] about use of network of IL&FS.

872. Learned counsel referred to testimony of PW-14 A.K. Kutty and contended that financial strength of financial institutions could be taken into consideration as per policy and as told by PW-14.

873. Learned counsel forcefully highlighted that officials of IL&FS were present during Screening Committee meetings relating to presentations. One was Sanjay Mundley (PW-8) and the other was Ankur Rajan. Learned counsel again pointed out that Ankur Rajan has not been examined by the prosecution and adverse inference should be drawn against prosecution. Learned counsel contended that these two officials of IL&FS did not object to any of the contents of the presentation. They did not dispute that IL&FS was a co-promoter of JICPL or about use of its network. Learned counsel referred to the judgment of this court delivered in the case of Y. Harish Chandra (NPPL's case) and submitted that under similar facts, it was held that presence of official of co-applicant/co-promoter indicated consent to use of network.

874. Learned counsel additionally submitted that network was not the only criteria for allocation of the coal block. Further, there was no minimum threshold of network provided anywhere by MoC. He contended that the MoP had adopted UMPP criteria on its own and which was not within the knowledge of applicant companies. He also emphasized that meaning of the word 'network' was not specified by MoC and its definition was never put in public domain as has been stated by PW-11 in cross-examination. Similarly, he contended that there was no clarity regarding SPV or JV as well as Principal.

875. Learned counsel also referred to cross-examination

of IO/PW-17 wherein he admitted that during investigation it could not be substantiated that JICPL had fraudulently claimed itself to be SPV managed by IISIPL and IL&FS in order to embellish its claim about network.

876. Learned counsel also referred to testimony of DW-1 Manish Rajvaidya who told that it was understanding between the constituents of SPV that IL&FS will be co-applicant and co-promoter and its network could be used.

877. Learned counsel specified that the figures of network provided in the application are not incorrect. He submitted that the figures are correct. However, the issue is regarding whether the network figure of IL&FS could even be mentioned or not. According to learned counsel, there is enough material on record to show that network figure of IL&FS could be mentioned alongside network figures of IISIPL and JICPL.

878. Regarding location of the EUP, first and foremost contention of learned counsel is that no charge was framed regarding the said aspect. There are only some observations in the order on charge and prosecution was allowed to lead evidence on it.

879. Learned counsel vehemently submitted that since the beginning, it was the intention of the applicant company that EUP would be set up in Bihar only. He referred to covering letter [D-3], presentation [D-34, Pg. 68], feedback form [D-34, Pg. 66-

67], Disbursement Memo [D-11, Pg. 1], letter dated 14.09.2007 [D-18, Pg. 64-65] and letter dated 17.09.2007 [D-18, Pg. 77-78].

880. Learned counsel pointed out that it was specified in the covering letter that depending on the allocation of coal block, plant will be set up in Bihar or West Bengal. He referred to the MoU dated 08.01.2007 [Ex. PW-3/B, D-17, Pg. 5-12] and to Clause 5(a) wherein roles and responsibilities were described. It was specified that it was role and responsibility of IL&FS to submit application to MoC for allocation of coal block as a co-promoter. It was further mentioned in the proposal of IL&FS [D-7, Pg. 19] that IL&FS would assist the SPV in selecting the most appropriate site for the power project. Learned counsel submitted that there was agreement between the parties to set up the power plant/EUP in Bihar. He asserted that the Screening Committee wrongly noted that EUP was to be in West Bengal which was clarified later on and has been taken note of vide noting dated 15.05.2008 [D-34, Pg. 49/n]. He pointed out that Govt. of Bihar had issued letter of support dated 25.04.2007 which was mentioned in the feedback form itself [D-34, Pg. 36/c]. He pointed out that in the presentation also, location of EUP was mentioned as Bihar.

881. Learned counsel referred to the Disbursement Memo [D-11, Pg. 1] issued by IL&FS and pointed out that in this document also, location of the power plant was mentioned as Bihar.

882. He also referred to letter dated 14.09.2007 [D-18, Pg. 64] sent by JICPL to the Hon'ble PM and wherein also, the company emphasized that location of its EUP was in Bihar and thus sought change of location. Another letter sent in this regard is dated 17.09.2007 sent by JICPL to MoC [D-18, Pg. 77] and thereby change of location of EUP to Bihar was sought.

883. Learned counsel referred to Clause 2 of MoU dated 15.11.2006 [Ex. PW-3/A, D-17, Pg. 1-3] and Clause 3 of MoU dated 08.01.2007 [Ex. PW-3/B, D-17, Pg. 5-12] and contended that conjoint reading of the two clauses would show that intention was that coal mine was to be located either in Jharkhand, Orissa or West Bengal and not the EUP. He submitted that the word 'and' had inadvertently crept in the sentence in later MoU. He also contended that there is no evidence that change of location was made upon instructions of A-2.

884. Learned counsel thus contended that no misrepresentation was made with respect to location of the EUP.

885. Regarding appraisal, learned counsel put forth that the prosecution has not substantiated the said allegation. He argued that no evidence has been led on this issue. Learned counsel contended that this allegation was not part of allegations as appear in the FIR nor it is part of the closure report. It was only in the order on charge that the said issue has cropped up. Learned counsel submitted that there is no explicit allegation that appraisal report was fraudulently withheld. He pleaded that no

misrepresentation was made regarding appraisal. He referred to the application [Ex. PW1/A (Colly.), D-3] and also to serial number 21 in the form and submitted that it was correctly mentioned that DPR had been appraised by IL&FS group. He argued that no evidence has been led that DPR was not so appraised by IL&FS. He referred to the covering letter as well as the feedback form wherein also it was so claimed. He further referred to the presentation affirming the said fact.

886. Learned counsel forcefully submitted that filing of appraisal report was not mandatory. He contended that filing of appraisal report was required only if appraisal report was prepared after appraisal. According to him, merely if appraisal was done, there was no obligation to file the appraisal report because the report was not in existence.

887. He also emphasized that the duty to appraise the DPR and prepare the appraisal report was upon IL&FS and not JICPL. Therefore, for the absence of the appraisal report, JICPL/A-1 or A-2 cannot be held responsible. He again pointed out that officials of IL&FS were present during presentations and they did not raise any objection at any point of time. He also pointed out that no question was asked from A-2 regarding appraisal report in his statement u/s 313 CrPC which is fatal to the prosecution case. He relied upon **Naresh Kumar Vs. State of NCT of Delhi, 2024 INSC 464**.

888. Learned counsel alternatively submitted that non-

filing of the appraisal report was merely a procedural omission and it was not an offence.

889. Regarding syndication, learned counsel contended that the said issue was not part of FIR or closure report. Same was also not impressed upon in the order on charge but there was only slight reference.

890. Learned counsel submitted that there are various documents showing that syndication of debt had been arranged. He referred to proposal of IL&FS dated 08.01.2007 [D-7, Pg. 16-30] wherein IL&FS had offered to develop financial model using its syndication experience. He referred to the application form [Ex. PW-1/A (Colly.), D-3] wherein there is no averment regarding syndication and hence no false statement was made. He also pointed out that in the guidelines issued by MoC [D-37, Pg. 88/c] there is no reference to syndication. At the most, it could be considered as parameter of financial preparedness. He further referred to letter dated 11.01.2007 [D-17, Pg. 4] written by Sh. Sabyasachi Mukherjee, Assistant Vice President-Syndication, IL&FS and in which IL&FS promised to syndicate Rs. 4450 crores. Learned counsel referred to the feedback form [Ex. PW1/E, D-34, Pg. 66/c] wherein also it was stated that IL&FS had arranged syndication of Rs. 4450 crores; and to the presentation [Ex. PW-1/F, D-34, Pg. 68/c to 79/c] wherein it was stated that syndication for more than USD 1.8 billion had been arranged. He further contended that prosecution has not led any

evidence showing that A-2 had instructed to make these claims.

891. Learned counsel further argued that officials of IL&FS were present during presentations and did not object to any such claim. Again reference was made to judgment of this Court in NPPL's case.

892. Learned counsel referred to letter dated 11.01.2007 of IL&FS [D-17, Pg. 4] and argued that in this letter IL&FS had undertaken to syndicate Rs. 4450 crores as debt requirement. He also referred to another letter dated 23.04.2007 of IL&FS [D-18, Pg. 73] wherein again commitment for arranging the debt was made on behalf of IL&FS. He further pointed out that this letter is signed by Sh. D.K. Mittal, Managing Director of IL&FS. Learned counsel contended that prosecution did not examine Sh. D.K. Mittal to show that any other inference can be drawn about letter dated 23.04.2007.

893. Learned counsel also submitted that there is no evidence that this information was even considered by the Screening Committee. He again complained that no question was asked from A-2 in his statement u/s 313 CrPC on this issue.

894. Regarding issue of previous allocation, learned counsel argued that nothing was required to be disclosed as JICPL had applied as an SPV and not as a group company. He contended that no concealment was made. Further, no inducement was caused due to such non-disclosure.

895. Learned counsel vehemently submitted that JICPL was an SPV as a matter of fact. The said SPV cannot be called a group company. He also argued that it was nowhere provided in the guidelines or otherwise that previous allocation would operate as a disqualification for a fresh allocation.

896. Learned counsel extensively referred to internal file notings of the CBI wherein there was discussion about this issue and it was opined that disclosure of previous allocation was not mandatory nor it was discussed during Screening Committee meetings. Learned counsel pointed out that no company was disqualified due to this issue.

897. Learned counsel referred to the testimony of PW-18 S.K. Shahi and to his Letter/Office Memorandum dated 03.05.2013 [Ex. P-4/PW-17(Colly), D-26] wherein purpose of seeking information about previous allocation was not stated and only possible relevance was described for performance/track record.

898. He also contended that meaning of ‘group’ or ‘associate’ company was nowhere explained and there was state of confusion among applicant companies. He further submitted that information about previous allocation was not of any value for the purpose of deciding allocation. He pointed out that even MoC did not know the purpose of seeking such information about previous allocation.

899. He referred to testimony of DW-1 and contended that even otherwise it cannot be said that JICPL was a company of Abhijeet Group. He submitted that Memorandum of Association and Articles of Association of JICPL were annexed with the application giving all the relevant informations. He thus contended that there was no misrepresentation on this issue as well.

900. Learned Counsel for A-2 highlighted that IL&FS had agreed to invest in the project through the above referred MoUs. He further emphasised that it has come in evidence that IL&FS used to be associated with such projects for allocation of coal blocks and used to allow its network to be mentioned in the application.

901. Learned DLA rebutted all these contentions also.

902. Regarding consideration of claim of appraisal of DPR by the Screening Committee, learned DLA referred to para 10 and 13 of the minutes of the meeting dated 13.09.2007 of the 35th Screening Committee [Ex. PW-11/J-4 (Colly.), D-31, Pg. 1 to 41] wherein it has been recorded that based on the data furnished by the applicant, and the feedback received from state governments and MoP, the Committee assessed the applications, and that the Screening Committee deliberated at length over the information furnished by the applicant companies in the application forms, during presentations and subsequently.

903. Regarding non-filing of appraisal report, he referred to the guidelines wherein it was provided that if the project report was appraised by a lender, then appraisal report was to be filed. He referred to testimony of PW-9 to show that DPR was never appraised by IL&FS. Learned DLA contended that MoU dated 08.01.2007 was also concealed to hide the fact that EUP was not to be located in Bihar. He further pointed out to letter dated 23.04.2007 of Sh. D.K. Mittal of IL&FS [D-18, Pg. 73] from which it appears that IL&FS was still working on achieving financial closure. He further referred to letter dated 11.01.2007 [D-17, Pg. 4] from which it is apparent that even DPR was not prepared.

904. Learned DLA has contended that network of IL&FS was used by accused persons so as to become eligible for processing of applications by outshining others. He referred to the MoP criteria of 0.50 crore per Mega Watt. He contended that JICPL could not have pre-qualified the MoP criteria if it had not used network of IL&FS.

905. Regarding meaning of the word 'principal', learned DLA referred to the order on charge dated 07.12.2016 and contended that this issue has already been explained in that order. He also referred to para 9 of the guidelines (D-37). He highlighted that filing of appraisal report was mandatory if the project report was appraised by a lender.

906. He has referred to evidence of PW-9 Pankaj Sakhuja

wherein the witness has stated that to his knowledge, DPR was not appraised by IL&FS.

907. Regarding parity with the case of NPPL, learned DLA pointed out various dissimilarities between the two cases. Rather learned DLA submitted that this case is on parity with the case of JLD. Learned DLA argued that in NPPL's case, copy of MoU was annexed with the application which is not the case here. He also pointed out that copy of MoU was not filed and rather concealed to hide that JICPL was a group company of Abhijeet Group. As various allocations were made to other companies of Abhijeet Group, and as progress in those cases was not good, A-1 & A-2 decided to conceal the fact that JICPL was group company of Abhijeet Group. He also submitted that NPPL had made progress on various fronts which is also absent in the present case. Further, the state govt. and the administrative Ministry both had recommended allocation in favour of NPPL whereas in case of JICPL, MoP had made recommendation for Patal East coal block for EUP in Bihar and state govt. of West Bengal had made recommendation for Mahuagarhi coal block for EUP in Burdwan District, West Bengal but said EUP was replaced with EUP in Bihar at the time of presentation.

908. Regarding non-examination of Sh. D.K. Mittal from IL&FS as a witness by the prosecution, learned DLA relied upon **Rajesh Yadav & Anr. Vs. State of UP**, Crl. A. No. 339/2014 decided on 04.02.2022 and contended that if Sh. Mittal was

important witness for the defence, they could have called him.

909. Regarding reliability of PW-1 Harshad Pophali, learned DLA submitted that he is a reliable witness and his testimonies have been accepted in the case of JLD (by this Court) and in the case of Abhijeet Infrastructure Pvt. Ltd. [by the Court of Sh. Arun Bhardwaj, the then Learned Special Judge, PC Act (CBI), CBC-01, RADDC].

910. Regarding relevance of network, learned DLA argued that network was of extreme importance. He pointed out that network of JICPL was only Rs. 1 lakh and it thus used network of IL&FS and IISIPL to obtain allocation of coal block.

911. Referring to MoU dt. 08.01.2007 (Ex. PW-3/B, D-17, Pg. 5-12), learned DLA pointed out that the project as per this MoU was to be set up either in Jharkhand or Orissa or West Bengal. There was no mention of any project in Bihar.

912. Learned DLA highlighted that six applications were filed by A-1 company out of which four applications were for EUP at Aurangabad, Bihar and two were for EUP at Burdwan, West Bengal. He pointed out that in the application for Mahuagarhi coal block, EUP was mentioned as at Burdwan, West Bengal whereas during presentation same was changed to Pirpainti, Bihar. He submitted that there was no application for EUP at Pirpainti, Bihar. The EUP at Burdwan, West Bengal was admittedly given up during presentation. He referred to meeting

notice dt. 06.06.2007 (D-30, Pg. 43) in which it was provided that applicant company was to make presentation for all its applications. Learned DLA thus highlighted that presentation was made for EUP at Pirpainti for which there was no application. He also referred to various letters to show that JICPL was company of Abhijeet Group. He also referred to one letter dated 17.08.2007 sent by JICPL to govt. of Bihar [D-35, Pg. 83] in which place of EUP was mentioned as at Banka, Bihar again for which there was no application.

913. Learned counsel for A-2 repelled all these contentions as well. He had filed additional writtten submissions in the form of rebuttal submissions and therein contended that presentation was made for EUP in West Bengal also. He contended that location of EUP was changed from West Bengal to Bihar and it was duly intimated during presentation and mentioned in the feedback form. He relied upon **Geeta vs. State of UP & Ors., 2007 CriLJ 2222** and contended that there was no cheating as alternative option was mentioned by the applicant company. He submitted that the company was simultaneously making efforts to establish EUP at Bihar and West Bengal. He further contended that prosecution has not proved that A-2 had any connection with letter dt. 23.08.2007 [D-35, Pg. 36] sent to govt. of West Bengal.

914. I have considered the submissions.

915. I shall firstly deal with submissions of learned

counsel for JICPL/A-1.

916. Learned counsel for A-1 company has taken resort to Sec. 32A of IBC. It will have to be seen firstly whether the said provision is applicable to the facts of the present case or not.

917. The relevant provision of Sec. 32A IBC reads as under:

“32A. Liability for prior offences, etc.—(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 (6 of 2009), or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 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.

(2) x x x x ”

918. Thus for Sec. 32A to be applicable, it is required that (i) the Resolution Plan has been approved by the Adjudicating Authority under Sec. 31, and (ii) the same should result in change in Management or control of corporate debtor. Further such new management (or controlling persons) must not consist of or be persons as are mentioned in clause (a) and (b) of Sec. 32A(1).

919. Section 32-A of IBC specifically provides that the new management of a company undergoing revival/reconstruction will not be prosecuted for previous acts. There is a reason for enacting such provision. If the new management which is taking over a sick company is allowed to be prosecuted for previous acts of the sick company, same will act as discouragement for such new management. No new management will come forward to take care of sick companies if they are going to be prosecuted for previous acts of such sick companies. It is only for encouraging new management to come forward to help sick companies that such a beneficial provision was enacted.

920. Nothing has been shown by learned counsel which

indicates that resolution plan has been approved by the Adjudicating Authority u/s 31 IBC or if approved plan has resulted in change in management of the kind envisaged under the provision of Sec. 32A IBC. Hence, contentions of learned counsel are rejected. JICPL/A-1 cannot evade liability only on the ground as taken by learned counsel for the OL. If the offence is made out, the company JICPL/A-1 will be squarely liable.

921. Now as to the case on merits against A-1 and A-2, as per the certificate of incorporation, company JICPL/A-1 was incorporated on 16.07.2002. The Memorandum of Association and Articles of Association are on record in D-3 as per which initial directors were A-2 Manoj Kumar Jayaswal and his brother Arbind Jayaswal.

922. Networth was an important factor although it was not the sole factor for recommending allocation of coal block. The networth of an applicant company provided insight regarding capacity of the company to complete the project. Importance of networth cannot be undermined. A-1 and A-2 knew the importance of networth and therefore joined IL&FS to use its networth.

923. The accused persons have been charged with mentioning the networth of M/s IL&FS in the application form and the feedback form wrongly. The wrongfulness does not relate to the figures of the networth. Rather it relates to the very act of considering the said networth worth mentioning in the

application form and feedback form alongside network of JICPL and IISIPL. In other words, the prosecution has alleged that accused persons wrongly relied upon the network of M/s IL&FS and was not entitled to mention the same in the application form and feedback form.

924. Two MoUs were executed between the three companies. Firstly, MoU dt. 15.11.2006 was executed between JICPL and IISIPL which is Ex. PW-3/A [D-17, Pg. 1-3]. Secondly, MoU dt. 08.01.2007 was executed between IISIPL and IL&FS which is Ex. PW-3/B [D-17, Pg. 5-12]. By virtue of first MoU, IISIPL proposed to set up Integrated Energy Project (IEP) of 1215 MW and JICPL agreed to be the SPV. By virtue of the second MoU, IL&FS agreed to join the said SPV.

925. However, it is important to note that as per clause 3 of MoU dt. 08.01.2007, the IEP was to be located in state of Jharkhand/Orissa/West Bengal only. Further, as per the definition of 'The Project' in 2(f), the IEP was to be located in these three states only.

926. Therefore, when A-2 says that it was mentioned in covering letter that EUP could be set up in Bihar also, then the said EUP was out of purview of the two MoUs and as such, there was no SPV for Bihar project. It has been argued that the company always intended to set up power plant in Bihar only. If this is the case, then it must be stated that there was no SPV for project at Bihar.

927. It was primarily the reason for non-filing of the MoUs also alongwith the application. Because application was filed for West Bengal project but company intended to set up project in Bihar and for Bihar there was no MoU.

928. Learned counsel also made an interesting argument. He contended that what was envisaged in the MoUs was location of coal mine at Jharkhand/Orissa/West Bengal and not location of EUP.

929. The MoU dt. 15.11.2006 provided as under:

“2. IS IPL wish to develop an Integrated Energy Project of 1215 MW capacity based on a **captive coal mine to be located in** the State of Jharkhand / Orissa/ West Bengal ("Project") ...”

930. The MoU dt. 08.01.2007 provided as under:

“(3) The Parties wish to partner with each other to develop an Integrated Energy Project of 1215 MW capacity based on a **captive coal mine and to be located in** the State of Jharkhand / Orissa / West Bengal ("the Project").....”

931. Learned counsel argued that from MoU dt. 15.11.2006, it is apparent that location of captive coal mine was to be either in Jharkhand or Orissa or West Bengal. He contended that in the MoU dt. 08.01.2007 also, the intention was the same but inadvertently, the word ‘and’ was typed and which probably conveyed that location of EUP was to be at Jharkhand or Orissa or West Bengal whereas it was still location of captive coal mine.

932. I am not impressed with this arguments. This contention is without any substance at all. The perusal of the sentences in the MoUs clearly show that what was intended was location of the project and not the coal mine. In both the MoUs, location of IEP was being described as either at Jharkhand or Orissa or West Bengal.

933. IL&FS was an established funds supplier or arranger. It was a government company. Association of IL&FS definitely contributed to present better preparedness.

934. No one from IL&FS was director or shareholder in JICPL and thus IL&FS was not principal/promoter of JICPL. For this reason, network of IL&FS or for that matter network of IISIPL could not been included in network of JICPL. It is true that reliance of financial strength of IL&FS could be taken into consideration but it was always subject to such association being legally valid. As there was no SPV for Bihar project, network of IL&FS could not have been joined.

935. The presence of Sanjay Mundley/PW-8 and one Ankur Rajan (both from IL&FS) in the Screening Committee at the time of presentation does not bolster the case of the defence. Though they did not dispute any of the assertions made in the presentation for EUP in Bihar yet it does not mean that there was an SPV for EUP in Bihar either in fact or in law.

936. Further, place of setting up of EUP could not have

been kept flexible. A fixed place of EUP was required to be stated. It was provided in the guidelines that separate application was required for each separate EUP and Coal Block. It means that if Coal Block 'X' was sought for two different EUPs 'Y' and 'Z', then two applications were required. Similarly, if for EUP 'X' different Coal Blocks 'Y' or 'Z' were sought, still separate applications were required.

937. JICPL/A-1 had filed six applications for power plant. One application was for Mahuagarhi coal block for EUP at Burdwan, West Bengal [Ex. PW1/A (Colly.), D-3; and another copy is also marked as Ex. PW6/E (Colly.), D-18]; others were for Amarkonda Murgadangal for EUP at Aurangabad, Bihar [Ex. PW6/B (Colly.), D-18, Pg. 1-7], Patal East for EUP at Aurangabad, Bihar [Ex. PW6/C (Colly.), D-18, Pg. 19-27], Ashok Karketa Central for EUP at Aurangabad, Bihar [Ex. PW6/F (Colly.), D-18, Pg. 39-45], Ganeshpur for EUP at Aurangabad, Bihar [Ex. PW6/G (Colly.), D-18, Pg. 46-52] and Gourangdih ABC for EUP at Burdwan, West Bengal [Ex. PW6/H (Colly.), D-18, Pg. 53-59].

938. As per feedback form [Ex. PW1/E, D-34, Pg. 1383-1384], location of EUP was mentioned as Pirpainti, Distt. Bhagalpur, Bihar. Firstly, there was no application of Mahuagarhi coal block for EUP in Pirpainti, Bhagalpur, Bihar. Secondly, for Patal East coal block, EUP was mentioned as Aurangabad, Bihar whereas in feedback form, location of EUP

was Pirpainti, Bhagalpur, Bihar. Thus there was no application for the said EUP at Pirpainti, Bhagalpur, Bihar.

939. In the additional written submissions, it is mentioned that alternative location was also mentioned as Burdwan, West Bengal. However, there is no substance in this submission because there was no provision for mentioning alternative location. If the company intended to mention alternative location, it should have filed separate application for that.

940. Learned counsel for A-2 has forcefully relied upon Disbursement Memo, D-11 wherein location of EUP is mentioned as Bihar. Again, this reliance is also misconceived as there was no application for Mahuagarhi coal block for Bihar EUP.

941. The grievance of learned counsel about not putting any question regarding letter dt. 23.08.2007 in statement u/s 313 CrPC to give opportunity to A-2 to explain his stand is ill-founded. It must be pointed out that letter dt. 24.08.2007 of Govt. of West Bengal [Ex. PW11/H-1 (Colly.), D-35, Pg. 22-49] of which letter dt. 23.08.2007 formed part of [at Pg. 36] was put to the accused and sufficient opportunity was given for explanation. After putting letter dt. 24.08.2007 to A-2, as mentioned in Q. No. 253, the information supplied by JICPL to govt. of West Bengal was specifically put to A-2 in Q. No. 254. As such, no prejudice has been caused to A-2.

942. Regarding grievance of learned counsel about no charge being framed about location of EUP, it must be mentioned that in the charge itself, reference was made to order on charge dt. 07.12.2016. Further, the misrepresentation regarding networth has a co-relation with location of EUP as well. Thus no prejudice has been caused to the accused in this regard.

943. JICPL/A-1 was the applicant which ultimately came to Abhijeet Group as is visible from Fifth Schedule of IFS dt. 31.07.2008 [Ex. PW-3/F, D-20, Pg. 99]. There are various letters on letterhead of JICPL where name of Abhijeet is also mentioned by the side. Further, in the MoU dt. 08.01.2007 itself, IISIPL has been described as a part of Abhijeet Group. These circumstances do show association of JICPL and IISIPL with Abhijeet Group. As such, JICPL should have disclosed about previous allocation of coal blocks to other companies of the Abhijeet Group. Non-disclosure has to be viewed with suspicion.

944. The motive of concealment of previous allocation is also apparent. The progress of development of those coal blocks was dismal. Therefore, to hide this failure, previous allocations were concealed.

945. Reference to internal notings of the files of CBI prepared during investigation is uncalled for and such notings cannot be used for any purpose.

946. Regarding appraisal and syndication, it appears that

misrepresentations were made.

947. As far as appraisal is concerned, the argument of learned counsel for A-2 – that only fact of appraisal was stated and fact of preparation of appraisal report was not stated – seems fanciful. If it was stated that appraisal was done then appraisal report had to be filed. If report was not prepared, it should have been got prepared and filed. That was the requirement of the guidelines. The absence of appraisal report strongly indicates that no appraisal was done.

948. As far as syndication is concerned, again false statement was made. Learned counsel for the A-2 has greatly relied upon some documents to show the syndication of Rs. 4450 Crores had been arranged. However, letter dt. 11.01.2007 [D-17, Pg. 4] itself has exposed the falsity in those claims.

949. This letter itself shows that though IL&FS had undertaken to syndicate Rs. 4,450 Crores as debt but it was also stated that this syndication was subject to preparation of Detailed Project Report, etc. Thus on 11.01.2007, even the DPR was not ready and available. How could be there appraisal and appraisal report and where was the occasion for syndication?

950. The claims made in documents such as proposal of IL&FS dated 08.01.2007 [D-7, Pg. 16-30]; feedback form [Ex. PW1/E, D-34, Pg. 66/c]; and presentation [Ex. PW-1/F, D-34, Pg. 68/c to 79/c] are rendered false from letter dt. 11.01.2007 [D-17,

Pg. 4] and from the fact that there was no DPR for EUP at Pirpainti, Bhagalpur, Bihar. Also, letter dt. 23.04.2007 of IL&FS [D-18, Pg. 73] further shows that IL&FS was still working on achieving financial closure.

951. The circumstance of appraisal not being done was put to A-2 in his statement u/s 313 CrPC also vide Q. No. 136. There should be no grievance on this issue.

952. The present case relates to allocation of Mahuagarhi coal block to A-1 company. In the beginning an advertisement [Ex. PW 11/A-7 (Colly.). D-37, Pg. 73-94/c] was issued regarding 38 coal blocks out of which 15 coal blocks were reserved for power sector and the rest were for other end uses.

953. A-1 company submitted application [Ex. PW-1/A (Colly.), D-3] seeking allocation of Mahuagarhi coal block. It was signed by PW-6 Sudhir Kumar Gupta.

954. The application of JICPL was sent to Govt. of West Bengal and Bihar. The application was also sent to MoP. Presentation was made by JICPL/A-1 on 20.06.2007. Feedback form was also submitted.

955. Alongwith the application form [Ex. PW-1/A (Colly.), D-3], the accused company had also sent covering letter dt. 05.01.2007 [at Pg. 8-9 in D-3]. As per list of annexures [at Pg. 7 in D-3], various documents were annexed but MoUs were not annexed which could show existence of SPV.

956. In the application, Mahuagarhi coal block was sought for EUP at Burdwan, West Bengal. However, in presentation and feedback form, EUP was changed to Pirpainti, Bhagalpur, Bihar.

957. MoP recommended Patal East coal block for EUP at Bhagalpur, Bihar [vide Ex. PW-14/B-1 (Colly.), D-41, Pg. 49-78]. Govt. of West Bengal recommended Mahuagarhi for EUP at Burdwan, West Bengal [vide Ex. PW 11/D-2 (Colly.), D-30, Pg. 215-219]. Govt. of Jharkhand did not recommend any coal block for JICPL. Govt. of Bihar supported EUP in Bihar [vide Ex. PW 11/D-3, D-30, Pg. 65].

958. It is most important to note that when Govt. of West Bengal undertook verification exercise pursuant to letter of MoC, JICPL gave information of progress made for EUP at Burdwan, West Bengal vide letter dt. 23.08.2007 [in file Ex. PW-11/H (Colly.), D-35, Pg. 36].

959. It is apparent that though it was being claimed that the EUP would be set up in Bihar still the company claimed to have made progress in EUP in West Bengal. This act of the company is the most clinching circumstance showing inducement. Despite claiming to set up EUP in Bihar, the company did not give up EUP in West Bengal and thus induced MoC into belief that it would set up EUP in Burdwan, West Bengal. The report of Govt. of West Bengal also refers to feedback form given for EUP at Burdwan. What appears is that

the company wanted the coal block under any circumstances.

960. Learned counsel for A-2, in his additional written submissions in the form of rebuttal submissions, has contended that there was no inducement as presentation was made for EUP at Bihar as well as for EUP at West Bengal.

961. This plea is, however, not of any help to A-2 or for that matter to A-1. In various letters of A-1 company for change of location of EUP, it was claimed that presentation was made only for EUP at Bihar for Mahuagarhi coal block. In his statement u/s 313 CrPC also, A-2 has stated that presentation was made for EUP in Bihar. His answer to Q. 134 may be referred to. This shift in the stand of A-2 has occurred now.

962. Nonetheless it appears from the record, particularly (i) report of government of West Bengal furnishing verification report [PW-11/H-1 (Colly.), D-35, Pg. 22-49] having reference to feedback form of EUP in West Bengal and (ii) recovery of presentation for EUP at West Bengal, that a presentation was possibly made for EUP at West Bengal also.

963. However, it is worth noting that there was no application of the company for Mahuagarhi coal block for EUP at Bihar. Probably, it was realized by these accused and, therefore, they made presentation for West Bengal EUP also. They induced MoC to believe that EUP at Burdwan was still alive. The Screening Committee fell for the trap and recommended

allocation of Mahuagarhi coal block for EUP at Burdwan, West Bengal.

964. The MoP through CEA evaluated the claims on the basis of feedback forms and presentations only. However, in the feedback form and presentation also, there were misrepresentations. It was claimed that JICPL was SPV for Bihar Project but it was not so. The MoP had asked MoC for verification of the claims made by the applicant company. This circumstance shows that MoP did not believe in the claims made by the applicant company and rather sought verification of the said claims. However, the recommendation of MoP in favour of JICPL for EUP in Bihar shows that JICPL had no intention to set up EUP in West Bengal.

965. It is also worth noting that after recommendation of the Screening Committee, when option letter was issued, JICPL went ahead and formed a Joint Venture with CESC and obtained allocation letter dt. 09.01.2008 [Ex. PW 11/L-1 (Colly.)] and thereafter applied for change of location of EUP to Bihar. The option letter was naturally for EUP at West Bengal. A-1 and A-2 had this knowledge that MoC was considering allocating Mahuagarhi coal block for its EUP at Burdwan, West Bengal which is apparent from its letters dt. 14.09.2007 sent to the PM [D-18, Pg. 64] and 17.09.2007 sent to MoC [D-18, Pg. 77]. In those letters, A-1 company insisted for allocation for Bihar EUP. So, JICPL although told MoC that it was intending to set up EUP

at Bihar and not at West Bengal but still obtained allocation letter dt. 09.01.2008 for West Bengal EUP by entering into JV with CESC. These acts show the intention of the accused A-1 and A-2.

966. The term 'person' includes the government. Reliance is placed upon **Kanumukkala Krishna Murthy vs. State of AP**, decided on 23/03/1964 by Hon'ble SC in which it has been held that the word 'person' includes government also.

967. The inducement has been caused to the Screening Committee as well as MoC, Govt. of India. Govt. of West Bengal was fully supporting the project of JICPL at Burdwan without knowing that JICPL had no intention to set up the said project in its state. It too was induced.

968. The opinion of the IO that during investigation it could not be substantiated that JICPL had fraudulently claimed itself to be SPV managed by IISIPL and IL&FS has no value. Once the case reaches the court, the opinion of the court matters. All previous opinions are rendered irrelevant.

969. The company JICPL/A-1 is liable for making misrepresentations and inducing various authorities. A-2/Manoj Kumar Jayaswal is also liable. It is appearing from the record that he was the person at whose instructions everything was being done. The evidence of PW-1, PW-3 and PW-6 show the same. He was a Director since beginning. The company JICPL

came to his group later on.

970. Reference to judgment of this court in NPPL's case is uncalled. One or the other fact makes a whole lot of difference. In NPPL's case, the MoU was filed by the company alongwith the application itself. Here, in this case, the MoUs were never filed. This fact is alone enough to differentiate the two cases.

971. Both A-1 and A-2 are thus held responsible for making misrepresentations about networth and promoters which also involves location of EUP, about appraisal and syndication and also about previous allocations; and dishonestly or fraudulently inducing the Screening Committee, MoC and Govt. of India to allocate Mahuagarhi Coal Block to A-1 company.

972. Prosecution has proved the charge u/s 420 IPC against A-1 and A-2.

POINT FOR DETERMINATION NO. VIII

Whether there was any conspiracy among all the accused persons?

973. It has already been held that no offence u/s 13(1)(d) (iii) of PC Act is made out against A-3 to A-5. There is no material to show that these three accused were in conspiracy with A-1 and A-2 for any offence.

974. Now the conspiracy charge is limited to u/s

120-B/420 IPC only and that too only against A-1 company and A-2/Director.

975. Learned DLA referred to various documents and statement of witnesses to show that A-1 and A-2 were in conspiracy with each other and obtained allocation of the coal block through deception.

976. Learned Counsel for A-2 submitted that prosecution has not established any circumstance proving any conspiracy. He submitted that the process of allocation was very vast and at various levels, verifications were also carried out by the concerned authorities and thus possibility of any conspiracy has been belied.

977. I have considered the submissions.

978. 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 gist 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.”

979. 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.”

980. 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.

981. The material on record is sufficient enough to show existence of conspiracy to cheat the government of India to obtain allocation of Mahuagarhi coal block. A concerted effort is visible from the beginning. The accused persons A-1 and A-2 ultimately succeeded also in getting the coal block allocated.

982. As such, it is held that both A-1 and A-2 were in conspiracy to cheat government of India.

CONCLUSION

983. In view of the above discussion, A-1 M/s Jas Infrastructure & Capital Pvt. Ltd. (now known as M/s Jas Infrastructure & Power Ltd.) and A-2 Manoj Kumar Jayaswal are held guilty and both are convicted for the offence punishable u/s 420 IPC and also u/s 120-B/420 IPC.

984. A-3 H.C. Gupta, A-4 K.S. Kropcha and A-5 K.C. Samra are hereby acquitted of all the charged. They are directed to furnish bail bonds u/s 437-A CrPC for the same amount as already furnished during trial.

985. A-3 H.C. Gupta, A-4 K.S. Kropcha and A-5 K.C. Samra request for accepting bonds already furnished by them for the purposes of S. 437-A CrPC also. Heard. In view of request of A-3 to A-5, the bail bonds already furnished by them are accepted further for the purposes of section 437-A CrPC for a period of six months.

986. Digitally signed copy of the judgment be uploaded on the website. Hard copies be prepared and be supplied to the convicts free of cost.

987. Let convicts A-1 M/s JICPL and A-2 Manoj Kumar Jayaswal be heard on sentence.

**Announced in the Open Court today
on 06th day of June, 2025**

**(Sanjay Bansal)
Special Judge, (PC Act)(CBI),
(Coal Block Cases)-02,
Rouse Avenue District Courts,
New Delhi: 06.06.2025.**