



Liberalising the Mining Sector – Recent Developments

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The Government of India (GoI) has introduced various measures aimed at liberalising the mining sector and enhancing investor interest and confidence. On 18 September 2019, the GoI had permitted 100% foreign direct investment (FDI) under the automatic route for entities engaged in the sale of coal and coal mining activities. However, the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Coal Mines (Special Provision) Act, 2015 (CMSP Act) imposed certain end-use restrictions on minerals extracted from a significant number of coal mines, which warranted amendments as well.

In order to remedy the policy mismatch and provide operational flexibility, the Cabinet Committee on Economic Affairs (CCEA) approved the Mineral Laws (Amendment) Ordinance, 2020 (Ordinance) on 8 January 2020 to amend the MMDR Act and CMSP Act. Pursuant to the approval by the CCEA, GoI promulgated the Ordinance on 11 January 2020. The amendments specifically aim at building confidence among bidders participating in the auction of 46 operational iron ore mines whose mining leases are set to expire in March 2020.

The Government of India has taken various measures towards promoting ease of doing business by removing restrictions that inhibited the growth and development of the mining sector. This is likely to boost investor confidence, drive competition and reduce the dependency on import of substitutable minerals.

1 Key Amendments under the CMSP Act

1.1 Removal of eligibility conditions for auction vis-à-vis specified end-use

In 2014, the Supreme Court of India declared the allotment of a large number of coal and lignite mines made by the GoI as arbitrary and illegal. Consequently, the CMSP Act provided for the allotment of 204 of the de-allotted coal and lignite mines. Section 4(3) of the CMSP Act had certain eligibility conditions that allowed the GoI to auction coal and lignite mining licenses for Schedule II and Schedule III mines only to companies engaged in '*specified end-uses*', such as iron and steel, power, cement and coal washing sectors. This meant that only entities with a specified end-use could participate in an auction for a coal or lignite mine under Schedule II and Schedule III of the CMSP Act.

Through the Ordinance, Section 4(3) of the CMSP Act has been removed. The omission of the restrictive eligibility conditions has provided flexibility to the GoI in deciding the end-use of the coal and lignite mines under Schedule II and Schedule III of the CMSP Act.

1.2 No requirement to be already carrying on mining operation

Prior to the Ordinance, the reconnaissance permit, prospecting license and mining lease (collectively, **Mining Concessions**) for coal mining could only be granted to companies that 'carry on coal mining operations in India'. The Ordinance now provides that carrying on coal mining operations in India is no longer a requirement to participate as a bidder in coal and lignite mine auctions. This implies that any company can participate in the auction of coal and lignite mines and, upon selection, can carry on mining operations and extract minerals for its own consumption, sale or for any other purposes, as may be specified by the GoI. This could enable companies that do not possess any prior coal mining experience in India but are financially strong and/or have

mining experience in other minerals or in other countries to participate in the auction of coal and lignite mines in India.

This is likely to allow the implementation of 100% FDI through the automatic route for the sale of coal and lignite, which should lead to wider participation in the auction of coal and lignite mines, subject to compliance with the bidding criteria specified for the auction. Previously, only state-run entities such as Coal India Limited could mine and sell coal and lignite in India. Now, private sector involvement is likely to bring in greater efficiency.

1.3 Utilisation of coal by a holding or subsidiary company

The CMSP Act permitted an allottee of a Schedule I coal mine (which includes the 204 coal and lignite mines the allocation of which was cancelled by the Supreme Court in 2014) to use the coal or lignite mined by the allottee in its own plants which were engaged in the specified end-use. However, the Coal Mines (Special Provision) Rules, 2015 (**CMSP Rules**) provided that coal mined by an allottee of a Schedule I mine could be used for any plants owned by the allottee or its subsidiary companies for the same specified end-use with a prior written notice to the GoI.

To provide further clarity, the Ordinance reiterates the position in the CMSP Rules and also extends the usage of coal and lignite mined by the allottee to the plants owned by its holding company (in addition to any subsidiary company).

1.4 Grant of composite prospecting license–cum–mining lease

Earlier, coal and lignite mines could either be allocated for prospecting license or for mining lease. The Ordinance has introduced a composite prospecting license-cum-mining lease which would offer auction of unexplored and partially explored coal and lignite mines for mining. A holder of such a composite license will have the right to move from prospecting to mining without obtaining another license. This should help in increasing the inventory of coal and lignite mines which will be available for allotment.

1.5 Reallocation of coal mines upon termination of allocation

The CMSP Act and the CMSP Rules were silent on how coal mines would be re-allotted in case of termination as well as the rights and liabilities of the entity, whose allocation is terminated. The Ordinance allows for termination of a vesting order or allotment order of a coal mine in accordance with a procedure to be prescribed by the Government. Further, the Ordinance also provides that upon such termination, the coal mine will be re-allotted to the next successful bidder.

In addition, the Ordinance also provides for the right of the erstwhile allottee of a Schedule I mine to receive compensation on account of the cost of land and mine infrastructure valued in accordance with the CMSP Act.

2 Key Amendments under the MMDR Act

2.1 Provision for advance auction

The MMDR Act provided for auction of leases upon their expiry. There was ambiguity in respect of State Governments initiating an advance action/process to notify the expiring leases for auction.

The Ordinance allows State Governments to undertake advance steps to auction of s before the expiry of the lease period thereby mitigating the administrative delays caused by auction processes. State Governments can now plan the auction processes of expiring s in order to ensure the continuous production of minerals.

2.2 Extension of validity of clearances

For minerals other than those specified in Part A and Part B of the First Schedule of the MMDR Act (i.e., other than coal, lignite and atomic minerals), a lessee was required to obtain numerous approvals to commence mining operations from different ministries of both the Central Government and the relevant State Government. The Ordinance provides that a successful bidder is now deemed to hold all statutory rights, approvals, clearances and licenses vested with the outgoing lessee for a period of two years, within which period the new allottee is required to reapply and obtain these approvals.

This is likely to ensure a smooth transition of the mining leases expiring in March 2020 as successful bidders of the expiring/expired mining leases will get a two-year extension for these approvals. This addresses the predicament of the delay in operationalising the mining leases for lack of the requisite approvals.

2.3 Removal of approval redundancies

State Governments have the right to grant permission to mine for minerals located within the boundaries of the state. However, the MMDR Act required State Governments to obtain prior approval of the Central Government to grant Mining Concessions for minerals specified in Part A (i.e. coal and lignite) and Part B (i.e. atomic minerals) of the First Schedule of the MMDR Act. Prior approval of the Central Government was required even where the allocation or reservation of land for such Mining Concessions was made by the Central Government.

The Ordinance now provides that for coal and lignite, prior approval of the Central Government will not be required where the allocation order or the notification of reservation of land has been made by the Central Government. Consequently, the time taken for operationalisation of the coal and lignite mines is expected to reduce.

2.4 Right accorded to holder of NERP

Under the MMDR Act, non-exclusive reconnaissance permit (**NERP**) holders were not entitled to make any claim for the grant of a mining lease or a composite prospecting license-cum-mining lease. This restriction deterred private participation in exploration, particularly, for 'deep-seated minerals'.

The Ordinance now provides that NERP holders who undertake a specified level of exploration for deep-seated minerals or other specified minerals will be allowed to apply for grant of a mining lease or a composite prospecting license-cum-mining lease through an auction process. This is likely to help entities explore and unlock the potential of deep-seated mineral resources in India with some level of capital protection.

3 Conclusion

The developments mentioned above are important as they are the means to 'democratise' the mining sector. The GoI has taken what could be significant steps to promote ease of doing business in the mining sector in India by removing restrictions that inhibited the growth and development of the mining sector. The GoI is likely to notify subordinate legislation to implement the provisions of the Ordinance. These steps should help

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to boost investor confidence, drive competition in the mining sector and reduce the dependency on import of substitutable minerals.

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