IN THE COURT OF SHRI DHEERAJ MOR
SPECIAL JUDGE, (PC ACT) (CBI), (COAL BLOCK CASES)-01,
ROUSE AVENUE DISTRICT COURT : NEW DELHI

CNR No.	DLCT11-001271-2024
CBI Case No.	CBI/01/2025
RC No.	221 2015 E 0002
Branch	CBI/EO-III/New Delhi
Under Section	Section 120B read with Sections 420/409 IPC and Section 13(1)(c) & (d) PC Act, 1988

CENTRAL BUREAU OF INVESTIGATION

….Prosecution

Versus

1. **M/s Hindalco Industries Ltd.**
(Formerly known as M/s Indian Aluminum Company Ltd.)
21st Floor, One Unity Centre, Senapati Bapat Marg, Prabhadevi, Mumbai-400013
Through its Authorized Representative
Sh. Vivek Kumar S/o Late Sh. Pratap Narayan Singh,
Assistant Vice President and Legal Head for the Units Renukoot, Renusagar and Mahan Office at Hindalco Industries Ltd., Renukoot, PO Renukoot, District Sonbhadra-231217, UP

2. **Sh. S.K. Tamotia S/o Late Sh. S.L. Tamotia**
(President & CEO M/s. Hindalco Industries Ltd.)
R/o D-801, Gymkhana Palm Heights, near SUM Hospital, Bhubaneshwar-751003

3. **Sh. P.R.S. Mani S/o Late Sh. S. Raman**
General Manager (Corporate Affairs), M/s Hindalco Industries Ltd.
H.No. 4/49, 2nd Floor, WEA Karol Bagh,
New Delhi-110005

….Accused Persons

ORDER ON CHARGE

1. Arguments on charge have been heard at considerable length. The charge-sheet, documents annexed thereto and the written submissions filed on behalf of the prosecution/Central Bureau of Investigation (CBI) as well as the accused persons have been carefully perused.

FACTUAL MATRIX AS ALLEGED IN THE FIR

2. Based upon preliminary inquiry no.219 2012 E0004 dated 26.09.2012 initiated by the CBI on the basis of directions from the Central Vigilance Commission (CVC) under Sections 8(1)(d) and 8(1)(h) of the Central Vigilance Commission Act, 2003, the present FIR/RC No.221 2015 E 0002 dated 22.01.2015 was lodged under Section 120B read with Section 406 of Indian Penal Code, 1860 *(hereinafter referred to in short as 'IPC')* and under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 *(hereinafter referred to in short as 'PC Act')* against M/s Hindalco Industries Limited (erstwhile M/s Indian Aluminum Company Limited - INDAL) *(hereinafter referred to in short as 'company')*, unknown public servants of Ministry of Coal, Government of India and unknown others, alleging malpractices and illegalities in relation to the allocation of Talabira-1 Coal Block, Odisha to the said company by the Ministry of Coal, Government of India.

3. The coal blocks for captive purposes were allocated to private companies engaged in power generation, apart from companies in the Iron & Steel and Cement Sectors, from the year 1993 onwards through the mechanism of a Screening Committee constituted by the Ministry of Coal.

The Screening Committee was chaired by Additional Secretary, Coal till the year 2003 and thereafter, by the Secretary, Coal. In the year 1993, the 1st Screening Committee adopted guidelines framed by the Board of Coal India Limited (CIL) for identification of coal blocks to be allocated to private companies for captive purposes.

4. As per present FIR, in the year 1993, INDAL requested the Ministry of Coal, Government of India for allocation of a coal block in Khinda-Talabira area to meet its captive requirement of non-coking coal for its existing power plant of 67.50 MW capacity at Hirakud, Odisha as well as for its proposed expansion capacity of 120 MW at Hirakud, Odisha; and for its proposed power plant having capacity of 50 MW at Rayagada, Odisha. In the 4th Screening Committee meeting held on 12.01.1994, the said request was considered and the said company was offered Talabira Block-1 Coal Block for development as a captive source of coal supply for its proposed 120 MW expansion capacity Captive Thermal Station at Hirakud and for its proposed 50 MW coal based Captive Power Plant (CPP) at Rayagada, Odisha. Thereafter, vide coal block allocation letter dated 25.02.1994, the Ministry of Coal conveyed the said identification to the said company for the aforesaid proposed Captive Power Plants (CPPs). Further, the said allocation letter stipulated that the existing linkage for the Captive Power Plant (CPP) of the company at Hirakud will not undergo any change. It is asserted that at the relevant time, the company was procuring coal for its existing 67.50 MW Captive Power Plant (CPP) at Hirakud through coal linkage from Mahanadi Coalfields Limited *(hereinafter referred to in short as 'MCL')*.

5. It is further alleged in the FIR that despite identification of the coal block in the year 1994, the company failed to establish the proposed End Use Plants (EUPs), namely, the expansion capacity of 120 MW CPP at Hirakud and the proposed 50 MW CPP at Rayagada, Odisha. The mining lease deed in respect of the said coal block was executed between the company and the Government of Odisha on 03.06.2003. The company started mining operations in Talabira-1 Coal Mine in October 2003, allegedly without prior permission from the Coal Controller for opening the coal mine.

6. The FIR further alleges that on 26.05.2003, the progress of coal mine development was reviewed by the 19th Screening Committee wherein representative of the company requested that, till commission of its additional 100 MW power plant, the coal extracted from the said mine be permitted to be utilized in its existing 67.50 MW power plant at Hirakud. However, it was clarified to the company that the coal mined from the Talabira-1 Coal Block was to be used exclusively for the proposed Captive Power Plants (CPPs) and not for the existing power plant of 67.50 MW. The additional guidelines issued by the Ministry of Coal in November 2003 for allocation of captive mines stipulated that no coal block for captive mining of coal would be allocated where such allocation would result in replacement of coal linkage. However, despite the stipulations contained in proceedings of the 4th and 19th Screening Committees, as reiterated in identification/allocation letter issued by the Ministry of Coal on 25.02.1994 prohibiting utilization of coal extracted from Talabira-1 Coal Block in the existing power plant of 67.50 MW capacity at Hirakud,

Odisha *(hereinafter referred to in short as 'impugned stipulation')*, the company utilized the extracted coal in its said existing power plant.

7. The FIR further alleges that after MCL noticed such utilization, it took up the matter with the Ministry of Coal, Government of India vide letter dated 04.12.2003. Thereupon, vide letter dated 05.01.2004, the Ministry of Coal directed the company not to act in contravention of the conditions of allotment. Despite instructions, the company continued illegal consumption of coal in its existing Captive Power Plant (CPP). MCL again informed the Ministry of Coal on 27.01.2004 that the company continued with the mining and consumption in its existing 67.50 MW CPP and sought intervention in the matter. However, the public servants in Ministry of Coal did not take appropriate action against the company in that regard despite complaints from MCL and CIL. It is further alleged that till March 2005, the company neither expanded its Captive Power Plant (CPP) nor ceased utilization of coal extracted from Talabira-1 Coal Block in its existing CPP of 67.50 MW in suspected connivance with unknown public servants.

8. The FIR further alleges that at the time of allocation of Talabira-1 Coal Block, its estimated coal reserves were approximately 15 million tonnes. Whereas, during the years 2003-04 to 2013-14, the company reportedly extracted 17.91 million tonnes and continued mining operations thereafter. The excess coal mined over and above the approved mine plans during the years 2004-05 to 2010-11 was approximately 4.80 million tonnes, which resulted in undue gain to the company.

THE ALLEGATIONS IN THE FIR IN NUTSHELL

9. In substance, the allegations made in the FIR are as follows:-

(i) As per allocation letter dated 25.02.1994, Talabira-1 Coal Block was allocated to the company exclusively for its proposed Captive Power Plants (CPPs) with impugned stipulation. However, despite said specific prohibition as reflected in the said allocation letter and the proceedings of 4th and 19th Screening Committees, the said company, after execution of mining lease dated 03.06.2003 of the said coal block in its favour, used/utilized the coal extracted from the said coal block in its existing power plant of 67.50 MW;

(ii) The company started mining operations in Talabira-1 Coal Block in October 2003 without any prior permission from the Coal Controller for opening the coal mine;

(iii) The company did not establish its proposed CPP up to March 2005 and continued to consume/utilize the coal produced from Talabira-1 Coal Block in its existing CPP of 67.50 MW in suspected connivance with unknown public servants;

(iv) The public servants in the Ministry of Coal did not take appropriate suitable action against the company for their said violation; and

(v) During the years 2004-05 to 2010-11, the company extracted 4.80 million tonnes more than its estimate coal reserves of approximately 15 million tonnes thereby deriving undue gain in the said process.

INVESTIGATION

10. During investigation, IO examined the relevant witnesses including members of 19th and 21st Screening Committee, officials of Ministry of Coal, officials of Coal India Limited, officials of MCL, officials of department of Steel & Mine and Department of Industries, Government of Odisha; officials of State Pollution Board, Government of Odisha; officials of the Director of Mines, officials of Ministry of Environment and Forest, Government of India; and officials of the company. The IO also seized the relevant documents/records and files pertaining to the allocation and operation of Talabira-1 Coal Block, including files of the Ministry of Coal; proceedings/minutes of the 4th, 14th, 19th, 20th and 21st Screening Committees; records of the Government of Odisha; Director of Mines; Coal Controller and MCL. These documents, *inter alia*, included the letter of request of the company dated 16/22.11.1993 seeking allocation of coal block; coal block allocation/identification letter dated 25.02.1994; approved mine plans of the company; the correspondences between the Ministry of Coal and the Government of Odisha regarding previous approval of the mining lease deed; the mining lease dated 03.06.2003; minutes of the Screening Committee meetings, file notings of the Ministry of Coal concerning allocation of Talabira-1 Coal Block and record pertaining to utilization/alleged misuse of the coal extracted therefrom, apart from the other connected documents.

OUTCOME OF INVESTIGATION

11. The result of investigation in this case, as reflected in the charge-sheet, may broadly be classified into two categories:- (i) the statutory

framework, regulatory regime and guidelines governing allocation of coal blocks to the private companies, execution of mining lease deed and the utilization or misutilization of the allocated coal blocks by the private entities; and (ii) the specific facts emerging from investigation concerning the allocation and utilization of Talabira-1 Coal Block by the company.

GENERAL STATUTORY FRAMEWORK AND PROCESSES GOVERNING ALLOCATION OF COAL BLOCKS TO THE PRIVATE COMPANIES

12. The statutory framework, regulatory rules and guidelines related to allocation of coal blocks to the private companies, as mentioned in the charge-sheet, are summarized as under:-

(i) The Principal statutes governing coal mining are the Coal Mines (Nationalization) Act, 1973 *(hereinafter referred to in short as 'CMN Act')* and Mines and Minerals (Development and Regulation) Act, 1957 *(hereinafter referred to in short as 'MMDR Act')*. While the CMN Act governs the category of entities entitled to undertake coal mining in India, the MMDR Act regulates the grant of mining rights, mining leases and mineral development. Entities authorized to carry on coal mining in India under the CMN Act, follow the provisions of MMDR Act and Rules thereunder for acquiring minerals rights, mining lease and other matters related to mineral administration;

(ii) As per Section 10 of MMDR Act, the power to grant mining lease lies with State Government. Section 4(1) of the MMDR Act stipulates that no person shall undertake any mining operations in

any area except under, and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the rules made thereunder. As per Section 4(2) of the MMDR Act, lease has to be granted as per the said Act and the rules made thereunder. Section 10(1) of the MMDR Act provides that application for a mining lease, in respect of any land, in which the minerals vests, shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee. Section 10(3) provides that on receipt of an application the State Government may, having regard to the provisions of the MMDR Act and any rules made there under, grant or refuse to grant the lease;

(iii) Since Coal and Lignite are specified as minerals in Part A of the First Schedule to the MMDR Act, the proviso to Section 5(1) of the MMDR Act comes into play, which provides that in respect of any mineral specified in the First Schedule, no mining lease shall be granted by the State Government except with the previous approval of the Central Government. For grant of a mining lease for a coal block previous approval of the Central Government is necessary. Chapter IV of the Mineral Concession Rules, 1960 *(hereinafter referred to in short as 'MC Rules')* governs the procedure for grant of mining lease in respect of areas where the minerals vest in the Government;

(iv) As per Section 5(2)(b) of the MMDR Act, approval of a mining plan by the Central Government is a pre-requisite for execution of mining lease by the State Government. Rule 22(5) of MC Rules stipulates what a Mining Plan should incorporate. Rule

22A of MC Rules clarifies that mining operations can only be undertaken in accordance with the duly approved mining plan;

(v) Coal mining in India was nationalized through the Coking Coal Mines (Nationalization) Act, 1972 and the CMN Act. Section 3 of the 1973 Act was amended in 1976, and sub-section (3) was introduced with effect from 29.04.1976. The amendment in 1976 Act introduced two exceptions to the policy of nationalization, viz. (a) permitting mining by private companies engaged in production of iron and steel and (b) sub-lease for coal mining to private parties in isolated small pockets not amenable to economic development and not requiring rail transport;

(vi) Subsequently, the amendment in Section 3(3) of the CMN Act was carried out in 1993 thereby expanding the said exception to the private companies engaged in power generation to undertake captive coal mining;

(vii) Vide Office Memorandum No.13011/3/92-CA dated 14.07.1992, the Ministry of Coal constituted the multi member inter-department Screening Committee to be chaired by the Additional Secretary, Ministry of Coal to screen the proposals received for captive mining and its composition was changed from time to time depending upon the changed circumstances. Vide Office Memorandum dated 17.04.2003, its chairmanship was transferred to the Secretary (Coal);

(viii) In the 1st meeting held on 14.07.1993, the Screening Committee approved and adopted the broad guidelines for allocation of coal blocks which remained applicable with minor modifications

till the 21st meeting of the Screening Committee held on 19.08.2003. The Committee framed the guidelines with a caveat that they would *"only be used as broad parameters in support of the new policy and not as rigid boundary lines for excluding the entry of private investors."*;

(ix) The identification/Short listing/allocation of a coal block by the Ministry of Coal was only the first step towards signing of a mining lease, which entitles the party to apply for mining lease to State Government under MMDR Act. A number of important clearances such as environmental clearance, approval of the mining plan from the Ministry of Coal and prior approval under MMDR Act from Ministry of Coal were required, following which the applicant could seek mining lease from the concerned State Government. The applicant gets mining rights after signing of the mining lease with the State Government;

(x) The allocation letters were issued by the Ministry of Coal on the recommendation of the Screening Committee. They contained the details of the coal block allotted, purpose for which the coal mined from the allotted coal block will be used, details of the end-use plant/project and the conditions subject to which the allocation has been made. According to the prosecution, a company has to comply with all the conditions and restrictions contained in the allocation letter, letter of prior approval, mining plan and mining lease, read together as the entire process from the application for coal block till execution of lease deed was an integrated process. As per the prosecution, the conditions of the allocation letters has to be

read into all other documents, irrespective of whether such conditions are expressly reiterated in each such subsequent document; and

(xi) The process of Screening Committee was essentially an identification exercise wherein the party after identification of the coal block would approach the concerned State Government for further formalities to pursue statutory approvals and obtain a valid mining lease. However, as per Section 5 of MMDR Act, approval of mining plan and prior approval of mining lease by the Central Government was a condition precedent for execution of mining lease. The mining has to be done by the company based on rights emanating from a valid lease deed.

OUTCOME OF THE INVESTIGATION IN RESPECT TO THE ALLEGATIONS IN THE FIR

13. The relevant and material facts emerging from investigation, as reflected in the charge-sheet are summed up as follows:-

(i) M/s Indian Aluminum Company Ltd. was incorporated on 17.12.1938 under the name M/s Aluminium Production Company of India Ltd.;

(ii) Vide letter dated 16/22.11.1993, the company requested the Ministry of Coal for allocation of Khinda-Talabira Coal bearing area for meeting its captive coal requirement for its existing 67.50 MW power plant at Hirakud as well as for proposed additional 120 MW CPP expansion at Hirakud and for proposed 50 MW CPP at Rayagada, Odisha;

(iii) In the 4th Screening Committee meeting held on 12.01.1994, Talabira-1 Coal Block of Mahanadi Coalfields Ltd. (MCL) was identified for development by the company as a captive source of supply of coal to its proposed 120 MW expansion capacity captive thermal station at Hirakud and the proposed 50 MW coal based captive power plant at Rayagada. Further, in the said meeting, it was decided that the existing linkage of MCL for the company's existing Captive Power Plant (CPP) of 67.50 MW shall undergo no change. Vide letter No.47011/7/93-CPA dated 25.02.1994, the Ministry of Coal communicated the said decision to the company;

(iv) The case of the company was again discussed in the 5th Screening Committee meeting held on 26.05.1994 wherein it was reiterated that Talabira-1 Coal Block stood allocated as a captive mine for the proposed expansion of the thermal power station of the company;

(v) Thereafter, the company submitted an application dated 13.06.1996 under Rule 22(1) of MC Rules before the Collector, Sambalpur seeking grant of mining lease in respect of Talabira-1 Coal Block for captive utilization of coal in its power plants;

(vi) Subsequently, vide letter No.2494 dated 26.03.1998, the Department of Steel & Mines, Government of Odisha sought previous approval of the Central Government under Section 5(1) of MMDR Act for grant of mining lease of Talabira-1 Coal Block to the company for utilization in its proposed Captive Power Plants (CPPs);

(vii) Further, vide letter dated 03.12.1996, it submitted the mining plan for Talabira-1 Coal Block for approval of the Standing Committee, Ministry of Coal, Government of India. The mining plan was approved for expansion of power station by 120 MW at Hirakud and for 80 MW power plant at Rayagada, in the meeting of Standing Committee held on 16.05.1997. Ministry of Coal conveyed the approval of Government of India vide letter dated 28.05.1997 for mining of Talabira-1 coal block under Section 5(2)(b) MMDR Act, 1956. Due to the reduction of the area of coal block, the Ministry of Coal, Government of India vide letter No.13016/11/96/CA dated 12.08.1998 requested the company to submit a fresh mining plan corresponding to the revised area to the Ministry of Coal for seeking approval of Central Government under Section 5(2)(b) of MMDR Act, 1957. The company submitted revised mining plan vide letter dated 14.09.1998 for its Captive Power Plants (CPPs) without distinction between their existing and proposed power plants. The same was considered and approved by the Standing Committee in its meeting held on 20.11.1998. The said approval was communicated to the company vide letter dated 10.12.1998;

(viii) In response to the previous approval of mining lease deed sought by the Government of Odisha vide its letter dated 26.03.1998, the Ministry of Coal vide letter dated 13.01.1999 conveyed the previous approval of Central Government under Section 5(1) of MMDR Act to the Government of Odisha for grant of mining lease for captive consumption for thermal generation by the said company without impugned stipulation;

(ix) Thereafter, the mining lease of Talabari-1 Coal Block was executed between the Government of Odisha and the company on 03.06.2003 wherein it was mentioned that all coal produced from the proposed mining area shall be used exclusively for captive consumption for thermal power generation by the company without the impugned stipulation;

(x) The company commenced mining operations in October 2003 after issuing notice dated 20.10.2003 to the Coal Controller Organization (CCO), Kolkata regarding opening of the mine, though without obtaining prior permission. Subsequently, upon the directions of CCO, the company paid the Stowing Excise Duty (SED) on coal produced from October 2003 onwards and mine opening permission was granted on 20.02.2006 retrospectively with effect from 20.10.2003 after acceptance of SED. In these circumstances, the charge-sheet, does not attribute criminality to the company on this count;

(xi) The company produced coal in excess of the schedule of approved mining plans in the years 2004-05 to 2010-11. The Deputy Director of Mines, Sambalpur, Odisha had issued notice to the company for recovery of Rs.310,43,44,241/- against excess production of coal for the period from 2004-05 to 2010-11 under Section 21(5) of MMDR Act, 1957. The matter is stated to be under examination before the Mining Tribunal which has stayed the demand. Significantly, in the present charge-sheet, no criminality has been attributed to the company in this regard;

(xii) During investigation, it was found that on 31.03.2007, the Government of Odisha changed the name of the lessee in the mining lease from INDAL to M/s Hindalco Industries Ltd. under Rule 62 of MC Rules. On the said date, both the said companies were separate existing entities which got subsequently amalgamated in the year 2008. It is alleged that in these circumstances, it was a case of transfer of mining lease and therefore, it could be done only under Rule 37 or 46 MC Rules and not under Rule 62 MC Rules. It is further alleged that the said change was carried out on the basis of letter dated 06.10.2005 of the company requesting the change of name of the lessee, which was in contradiction with its initial letter dated 14.01.2005 wherein it had sought transfer of lease. The allegations are that the public servants in the Government of Odisha facilitated the said illegal and impermissible change in the name of lessee by unreasonably procuring fresh letter dated 06.10.2005 from the company in the garb of seeking clarifications even though, its first letter of request dated 14.01.2005 was unambiguous and categorical for the purpose of transfer of lease. The prosecution has alleged that the public servants in Government of Odisha committed illegality in the said process and accordingly, sanction was sought from Government of Odisha to prosecute the concerned public servants but the same was declined on 03.08.2023. Consequently, these allegations have not been raised or invoked in the present charge-sheet;

(xiii) The company obtained necessary and requisite NOC from the State Prevention & Control of Pollution Board, Odisha for its

thermal power plant having capacity of 67.50 MW at Hirakud before its commissioning on 11.07.1993. However, it synchronized the expanded 100 MW unit with its existing 67.50 MW at Hirakud on 31.03.2005, prior to grant of NOC by the State Pollution Control Board, Odisha for the expanded unit on 10.03.2006. In that regard, the charge-sheet records possible violations of environmental statutes i.e. Air (Prevention & Control Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974 and states that the matter has been separately referred to the Government of Odisha to take necessary action. No criminality in that regard has been attributed in the present charge-sheet;

(xiv) Vide its letter dated 13.01.2006, the company requested the Ministry of Coal for approval of revised mining plan of Talabira-1 Coal Mine for enhancement of production capacity from 0.40 MTPA to 1.50 MTPA. During the process of approval of revised mining plan, the company through A-3 Sh. P.R.S. Mani, General Manager (Corporate Affairs) vide its letter dated 18.01.2006, misrepresented before Ministry of Coal that mine operation was started on 29.10.2003 after obtaining all necessary statuary clearances. Whereas, mine opening permission from the Coal Controller and NOC from the State Pollution Control Board, Odisha was not obtained till that date. The charge-sheet accordingly, alleges misrepresentation on the part of A-3 on behalf of the company before the Ministry of Coal;

(xv) The Technical Committee of the Standing Committee, Ministry of Coal considered the aforementioned revised mining plan

in the year 2006 and sought clarifications from the company. The company through A-3 Sh. P.R.S. Mani, General Manager (Corporate Affairs) vide its letter dated 14.04.2006 responded to the queries raised by the Technical Committee. In the said letter, in response to the condition imposed *'the existing linkage should not be withdrawn'*, it was responded that status quo is maintained. The prosecution has alleged that since the company had stopped using coal linkage from MCL, the said response was misrepresentation to the Standing Committee, Ministry of Coal based upon which the revised plan of the company was approved on 15.05.2006;

(xvi) The case of Talabira-1 Coal Block was discussed in the 14th meeting of the Screening Committee held on 18/19.06.1999 wherein it was noted that Talabira-1 Coal Block had been allocated to the company for meeting the requirement of its existing 67.50 MW, CPP at Hirakud. Its case was again discussed in the 19th meeting of the Screening Committee held on 26.05.2003 in the presence of A-2 Sh. S.K. Tamotia, President and CEO of the company, wherein it was clarified that the coal produced from Talabira-1 Coal Mine should be used exclusively in additional capacity of 100 MW and not for the existing power plant of 67.50 MW and the linkage should not be disturbed;

(xvii) Vide letter dated 04.12.2003 addressed to Ministry of Coal, MCL complained to the Ministry of Coal that the company has been insisting and using coal from Talabira-1 Coal Block in their existing CPP of 67.50 MW even though, it has been allotted for their proposed expanded CPP only and requested the Ministry of Coal to

intervene in the matter. After processing of the said letter, vide its letter dated 05.01.2004 addressed to A-2 Sh. S.K. Tamotia, the Ministry of Coal requested the company to look into the matter urgently and desist from contravention of conditions of allocation forthwith, failing which the Ministry of Coal would be constrained to take suitable measures against the company; and

(xviii) The company vide its letters dated 19.01.2004, 22.01.2004 and 23.01.2004 requested the Ministry of Coal to allow them to utilize the coal from Talabira-1 Coal Block in its existing 67.50 MW CPP at Hirakud and also not to insist on them for the Fuel Supply Agreement (FSA) with MCL. MCL again, vide letters dated 27.01.2004 and 02.03.2004, requested the Ministry of Coal to look into the issue and advise the company suitably. It is alleged that the matter was processed in the Ministry of Coal and draft letter for cancellation of mining lease and show cause notice to the company was also prepared. It was put up in the file to Sh. P.C. Parakh, the then Secretary (Coal) who raised certain queries on the issue. But final decision could not be taken in this matter in Ministry of Coal. According to the prosecution, despite being aware of the impugned stipulation contained in the allocation letter dated 25.02.1994 regarding prohibition of its use in its existing Captive Power Plant (CPP), as reiterated vide communication dated 05.01.2004 issued by the Ministry of Coal to the company, it continued to utilize coal extracted from Talabira-1 Coal Block in its existing 67.50 MW CPP at Hirakud and thereby committed the offence of criminal breach of trust.

ALLEGATIONS IN THE CHARGE-SHEET IN BRIEF

14. In nutshell, the following allegations have been leveled against the accused persons in the charge-sheet:-

(i) The A-1 company utilized the coal extracted from Talabira-1 Coal Block in its existing 67.50 MW Captive Power Plant (CPP) at Hirakud, Odisha during the period from 29.10.2003 till March, 2005 in violation of the impugned stipulation contained in the allocation letter dated 25.02.1994. The same stipulation was reiterated in the proceedings/minutes of the 4th, 5th and 19th Screening Committee meetings held on 12.01.1994, 26.05.1994 and 26.05.2003 respectively in the presence of the company's representative and further reiterated vide communication dated 05.01.2004 of the Ministry of Coal to the company. It is, therefore, alleged that the coal of said block entrusted to the company was dishonestly misappropriated by it in violation of the impugned stipulation contained in the said allocation letter dated 25.02.1994 and thereby, it committed the offence of criminal breach of trust;

(ii) During processing of the revised mining plan in the year 2006 for enhancement of production capacity, A-3 Sh. P.R.S. Mani on behalf of A-1 company misrepresented before the Standing Committee, Ministry of Coal in his letter dated 18.01.2006 that the mine operation was started on 29.10.2003 after obtaining all necessary statutory clearances despite the alleged absence of mine opening permission from the Coal Controller of India and consent/NOC from the State Pollution Control Board, Odisha on the said date;

(iii) A-3 Sh. P.R.S. Mani, in his letter dated 14.04.2006 on behalf of A-1 company submitted in response to clarifications sought by the Standing Committee, Ministry of Coal while considering the approval of aforementioned revised mining plan, misrepresented that status quo had been maintained in respect of the condition that the existing linkage should not be withdrawn, despite the A-1 company allegedly having ceased utilization of linkage from MCL;

(iv) The aforesaid two misrepresentations by A-3 Sh. P.R.S. Mani facilitated the approval of the aforementioned revised mining plan in the meeting of the Standing Committee, Ministry of Coal held on 15.06.2006; and

(v) The charge-sheet further refers to certain irregularities in the operation of Talabira-1 Coal Block by A-1 company, namely:-

(a) The commencement of mining operations prior to obtaining permission of the Coal Controller;

(b) Excess coal extraction from the Talabira-1 Coal Block than its estimated reserve during the period from 2004-05 to 2010-11;

(c) Synchronization of the expanded power plant prior to obtaining consent/NOC from the State Pollution Control Board, Odisha; and

(d) Change of name of the lessee from INDAL to Hindalco Company in violation of MC Rules.

However, the charge-sheet expressly records that, in relation to the aforesaid facts, either no criminality has been attributed to any

of the accused persons or such allegations have not been made subject matter of the present proceedings.

COGNIZANCE

15. Vide order dated 08.04.2025, Ld. Predecessor of this Court took cognizance of the offence punishable under Sections 120B read with Section 409 IPC and substantive offences thereof against all the three accused persons. Significantly, vide said order, no cognizance for the offence of cheating punishable under Section 420 IPC was taken though, it was specifically invoked in the charge-sheet. Thus, in substance, vide said order, cognizance for the said offence was declined.

ARGUMENTS OF THE PROSECUTION/CBI

16. Sh. N.P. Srivastava, Learned DLA for CBI assisted by the IO Sh. Rajbir Singh, the then Inspector, CBI submitted that sufficient material exists on record to frame charges against all the three accused persons for which they have been charge-sheeted. He contended that A-1 company vide application dated 16/22.11.1993 **(D-3, PDF Page No.824, Annexure-8)** requested the Ministry of Coal for allocation of coal block in Khinda-Talabira coal bearing area for its captive use in existing power plant having capacity of 67.50 MW at Hirakud, Odisha as well as for its proposed expansion of 120 MW Captive Power Plant (CPP) at Hirakud, Odisha and proposed Captive Power Plant (CPP) at Rayagada, Odisha. It was contended that the 4th Screening Committee, in its meeting held on 12.01.1994, identified Talabira-1 Coal Block for development by the A-1 company exclusively for its proposed Captive Power Plants (CPPs) only

and expressly declined allocation for its existing power plant, for which continuation of coal linkage from MCL was envisaged. The said decision was communicated to the A-1 company vide allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172, Annexure-10)** and it was reiterated in the 5th Screening Committee meeting held on 26.05.1994 **(D-12, PDF Page Nos.3143 to 3155, Annexure-11)**. It was further argued that, apart from statutory clearances from different Departments of the State Government, the allocatee was also required to secure approval of the mining plan and previous approval of mining lease from the Central Government under Section 5 of MMDR Act as a pre-condition for execution of mining lease deed.

17. It was further contended that the A-1 company, vide its letter dated 03.12.1996 **(D-37, PDF Page No.6885)**, submitted its mining plan for its approval by the Ministry of Coal, Government of India wherein it was mentioned that the said coal block had been allocated for its proposed power plants. The same was approved by the Standing Committee, Ministry of Coal and communicated to the A-1 company vide letter dated 28.05.1997. Thereafter, upon reduction of the mining area, the Ministry of Coal, vide its letter dated 12.08.1998, requested the A-1 company to submit its revised mining plan for the revised area of the coal block for its approval. Consequently, the revised mining plan was submitted by the A-1 company on 14.09.1998 **(D-21, PDF Page No.3904)** wherein material deviation was introduced by altering the earlier description of allocation from 'proposed Captive Power Plants' to 'Captive Power Plants' of A-1 company thereby omitting the restrictions to proposed plants only. The revised mining plan was approved by the Standing Committee, Ministry of

Coal and it was communicated to the A-1 company vide letter dated 10.12.1998 **(D-19, PDF Page No.3547)**. He further contended that vide application dated 13.06.1996 **(D-36, PDF Page Nos.7669 to 7678, Annexure-12)**, the A-1 company submitted the mining lease to the Collector, Sambalpur, Odisha for its previous approval of the Central Government under Section 5 of MMDR Act wherein it wrongly mentioned the coal block has been allocated for the captive use of its power plants, though it was allocated for its proposed Captive Power Plants (CPPs) only. Based thereon, the State Government of Odisha sent a letter dated 26.03.1998 **(D-21, PDF Page No.3868)** to the Ministry of Coal, Government of India for seeking previous approval of the Central Government for execution of mining lease. The Ministry of Coal, Government of India, vide its letter dated 13.01.1999, conveyed the previous approval of the Central Government to the State Government of Odisha for execution of mining lease in favour of the A-1 company. Thereafter, mining lease dated 03.06.2003 **(D-46, PDF Page Nos.9181 to 9184, Annexure-17)** was executed between the State Government of Odisha and the A-1 company wherein it was mentioned that the proposed mining area shall be used exclusively for captive consumption for thermal power generation of the company. Thereafter, on 29.10.2003, A-1 company commenced mining operations at Talabira-1 Coal Block and started utilizing the coal extracted from it for the captive use of its existing power plant of 67.50 MW at Hirakud, Odisha in violation of stipulation contained in the allocation letter dated 25.02.1994.

18. He contended that in the minutes of 14th Screening Committee meeting held on 18/19.06.1999 **(D-30, PDF Page Nos.5860, 5867 & 5868, Annexure-24)**, it was mistakenly noted by the Committee that Talabira-1 Coal Block was allocated to A-1 company for meeting the requirement of its existing 67.50 MW CPP at Hirakud, Odisha. He further contended that the said mistake was rectified and clarified in the 19th Screening Committee meeting held on 19.05.2003 **(D-26, PDF Page Nos.4986 & 4989, Annexure-26)** to the effect that it should be used exclusively in the proposed Captive Power Plants (CPPs) and not for the existing power plant for which the linkage should not be disturbed. The said meeting was attended by A-2 Sh. S.K. Tamotia, President and CEO of A-1 company. He further contended that MCL, vide its letter dated 04.12.2003 **(D-10, PDF Page No.1949)**, requested the Ministry of Coal, Government of India to intervene in the matter and instruct A-1 company not to utilize the coal extracted from the said coal block for its existing power plant and for the said purpose, continue with the coal linkage of MCL. Accordingly, a letter dated 05.01.2004 **(D-10, PDF Page No.2569, Annexure-36)** was written by the Ministry of Coal to A-2 Sh. S.K. Tamotia asking it to desist from contravention of the conditions of allocation forthwith, failing which the Ministry would be constrained to take suitable measures against the A-1 company. However, the A-1 company continued to use coal extracted from the entrusted Talabira-1 Coal Block to it for use in its existing Captive Power Plant (CPP) of 67.50 MW with effect from 29.10.2003 till March, 2005 in violation of the stipulation contained in the allocation letter dated 25.02.1994.

19. He further contended that since the captive mining policy of the Government applies from the stage of allocation of coal block to the stage of mining, setting up of the end-use plant and use of the coal mined from the captive block in the end-use plant, the entire process can be viewed as an integrated process and the conditions of the allocation letters have to be read into all other documents, even if not expressly mentioned in the said other documents. Therefore, the conditions laid down in the allocation letter are to be read as part of the lease deed and the lessee i.e. the A-1 company who was entrusted the said coal block was bound by terms and conditions of the allocation letter even if it was not specifically incorporated in the mining lease. He, accordingly, argued that the A-1 company committed the offence of criminal breach of trust punishable under Section 409 IPC by using the coal extracted from the said coal block in its existing Captive Power Plant (CPP) having capacity of 67.50 MW at Hirakud, Odisha in violation of the terms and conditions of the allocation letter dated 25.02.1994.

20. Learned DLA for CBI further argued that during the process of submission and approval of revised mining plan in the year 2006 for enhancement of production capacity, A-3 Sh. P.R.S. Mani on behalf of A-1 company misrepresented before the Standing Committee, Ministry of Coal in his letter dated 18.01.2006 **(D-19, PDF Page Nos.4207-4208)** that the mine operation was started on 29.10.2003 after obtaining all necessary statutory clearances. Whereas, mine opening permission from the Coal Controller of India and consent/NOC from the State Pollution Control Board, Odisha was not obtained till that date. He further contended that in

response to the clarifications sought by the Standing Committee, Ministry of Coal while considering the approval of aforementioned revised mining plan, A-3 Sh. P.R.S. Mani, in his letter dated 14.04.2006 on behalf of A-1 company **(D-19, PDF Page Nos.4221-4222)**, misrepresented that *status quo* had been maintained in respect of the condition that the existing linkage should not be withdrawn. He contended that in the said letter, the A-1 company concealed the fact that it was not using the linkage coal. It was further contended that the aforesaid two misrepresentations by A-3 Sh. P.R.S. Mani facilitated the approval of the aforementioned revised mining plan in the meeting of the Standing Committee, Ministry of Coal held on 15.06.2006 **(D-19, PDF Page Nos.4245 to 4249)**.

21. In so far as the individual roles of the accused persons, Learned DLA for CBI contended that A-1 company is beneficiary in this matter as it used the coal extracted from Talabira-1 Coal Block in violation of the impugned stipulation contained in the allocation letter dated 25.02.1994 and thereby, committed the offence of criminal breach of trust. In relation to A-2 Sh. S.K. Tamotia, it was contended that he was the President and CEO of the A-1 company. He was given Power of Attorney through Board Resolution passed on 31.10.2000 authorizing him to take appropriate decision and action to manage the A-1 company. He was responsible for its day to day operations. He attended the 19th Screening Committee meeting on behalf of A-1 company and the letter dated 05.01.2004 of Ministry of Coal, Government of India was addressed to him whereby A-1 company was directed to desist from using the coal extracted from Talabira-1 Coal Block in its existing 67.50 MW Captive Power Plant (CPP) at Hirakud, Odisha. He was aware about the allocation conditions and was the main

person in the A-1 company who was responsible for use of coal produced from Talabira-1 Coal Block in the existing CPP at Hirakud, Odisha. In respect of A-3 Sh. P.R.S. Mani, Learned DLA for CBI contended that he was the General Manager (Corporate Affairs) of A-1 company and he authored the letters dated 18.01.2006 and 14.04.2006 to the Ministry of Coal, Government of India during the process of approval of revised mining plan wherein misrepresentations were made. With these submissions, he contented that sufficient material exists on record giving rise to grave suspicion against all the three accused persons for commission of the offences punishable under Section 120B read with Sections 420/409 IPC and has requested for framing of charges accordingly.

22. In support of his submissions, Learned DLA for CBI has placed reliance upon the following judgments:-

(i) Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr. (2019) 16 SCC 547; (ii) Bhawna Bai Vs. Ghanshyam & Ors. AIR 2020 SC 554; (iii) State of Rajasthan Vs. Ashok Kumar Kashyap LL 2021 SC 210; (iv) State of NCT of Delhi Vs. Shiv Charan Bansal & Ors. (2019) 12 JT 454; (v) Central Bureau of Investigation Vs. Prem Bhutani & Anr. in Crl. Rev. P. No.406 of 2019 decided on 04.04.2022; (vi) Jagdish Kumar Arora Vs. CBI in Crl. M.C. No.3505/2017 & Crl. M.A. No.14279/2017, 241/2018 & 242/2018 decided on 25.03.2024; and (vii) State of Tamilnadu by Inspector of Police, Vigilance and Anti Corruption Vs. N. Suresh Rajan & Ors. in Crl. Appeal No.22-23 of 2014 decided on 06.01.2014.

ARGUMENTS ON BEHALF OF ALL THE THREE ACCUSED PERSONS

23. Per contra, Sh. Manu Sharma, Learned Senior Counsel for all the three accused persons contended that the essential ingredients constituted the offence of criminal breach of trust, as defined under Section 405 IPC, are conspicuously absent and therefore, there is no occasion or reason for framing charge against either of the accused persons for the offence punishable under Section 409 or Section 406 IPC. He contended that neither the applicable law, contained in Section 3 of CMN Act nor the mining lease dated 03.06.2003 whereby the Talabira-1 Coal Block was leased to A-1 company imposed any prohibition against utilization of coal extracted from the captive coal block in the existing Captive Power Plants (CPPs) of A-1 company. He contended that no distinction between an existing or proposed Captive Power Plant (CPP) has been carved out in either the governing statutory framework or the mining lease deed. On the contrary, both the statutory scheme and the entrustment document, namely, the mining lease deed, employed generic expression 'Captive Power Plant' without any restriction limiting usage to the proposed Captive Power Plants (CPPs) alone. He further contended that in absence of any such statutory or contractual embargo, the A-1 company cannot be indicted for utilizing the extracted coal from Talabira-1 Coal Block in its existing Captive Power Plant (CPP). Accordingly, A-1 company cannot be held to have violated any direction of law or any legal contract touching the discharge of the said trust created based upon the mining lease deed dated 03.06.2003. He contended that admittedly, the impugned stipulation contained in the coal block allocation letter dated 25.02.1994 has not been

incorporated in the mining lease deed. The said letter is nothing more than an identification process and a preferential right created in favour of A-1 company to seek right in Talabira-1 Coal Block by way of the mining lease deed executed by the Government of Odisha in its favour after obtaining several clearances, including approval of mining plan and previous approval of mining lease from the Central Government. The said letter itself did not create any right, title or interest of A-1 company in the said coal block. Thus, the impugned stipulations contained in the said allocation letter are not binding upon the A-1 company unless they are expressly incorporated in the mining lease deed.

24. He further contended that A-1 company in its revised mining plan dated 14.09.1998, specifically disclosed that the said coal block has been allocated for utilizing the coal extracted in its Captive Power Plants (CPPs) without impugned stipulation and the said plan was approved by the Ministry of Coal, Government of India on 10.12.1998 without restricting it to the proposed Captive Power Plants (CPPs). He further contended that the Department of Steel and Mines, Government of Odisha vide letter dated 26.03.1998 requested the Ministry of Coal, Government of India for the previous approval of the Central Government for grant of mining lease of the said coal block to A-1 company for utilization of the extracted coal in its proposed Captive Power Plants (CPPs) without impugned stipulation. However, after deliberations and proceedings in the Ministry of Coal, vide letter dated 13.01.1999, the Ministry of Coal communicated the previous approval of the Central Government for execution of mining lease of the said coal block for use in its Captive Power Plants (CPPs) without restricting it to its proposed Captive Power Plants (CPPs). The Ministry of

Coal, while granting the previous approval, did not exclude the use of coal from the said coal block in the existing Captive Power Plant (CPP) of A-1 company. Pursuant to the said previous approval of the Central Government, the Government of Odisha, vide its letter dated 08.02.1999 **(D-19, PDF Page No.3672)**, conveyed the proposed terms of mining lease to A-1 company wherein it was specifically mentioned that it was for use in the Captive Power Plants (CPPs) of A-1 company without any distinction between existing and proposed Captive Power Plants (CPPs). He contended that on the foundation of the said draft, mining lease of the said coal block was executed on 03.06.2003 with similar stipulations in regard to the use of coal extracted from the said coal block (without impugned stipulation). The impugned stipulation regarding the use of the coal block as contained in the allocation letter dated 25.02.1994 was consciously not recorded in the mining lease.

25. He further contended that PW Sh. K.S. Kropha, the then Joint Secretary, Ministry of Coal in his statement under Section 161 CrPC has stated that mining lease is a statutory document which governs the entire mining operations of a coal mine. The terms and conditions incorporated in the mining lease have the statutory mandate while the letter of allocation does not have any statutory backing. Admittedly, the mining lease, which has statutory backing, did not restrict the use of coal from Talabira-1 Coal Block in the existing CPP of 67.50 MW. In line with the revised mining plan of August, 1998 which culminated into the execution of the mining lease between the A-1 company and the State Government (with the express approval of the Central Government), no distinction is made between existing and proposed CPP in the mining lease.

26. He further contended that the attempt of the prosecution to construe allocation letter dated 25.02.1994 as binding law or contract is misconceived. Reliance was placed upon the decision of the Hon'ble Supreme Court of India in **Karnataka EMTA Coal Mines Ltd. Vs. CBI 2024 SCC OnLine SC 2250**, to contend that the allocation letters cannot be read in isolation and must be construed in conjunction with subsequent statutory approval and lease arrangements. Particular emphasis was laid upon the observations of the Hon'ble Supreme Court that it is fallacious to contend that the conditions imposed at the stage of allocation necessarily survived independent of the terms embodied in the lease deed.

27. He further contended that after communication of previous approval of mining lease by the Ministry of Coal, Government of India to the Government of Odisha vide its letter dated 13.01.1999, the Screening Committee in its 14th meeting held on 18.06.1999 recorded that Talabira-1 Coal Block had been allocated to A-1 company for meeting the requirement of its existing 67.50 MW CPP at Hirakud, Odisha. However, subsequently, in the 19th Screening Committee, the Ministry of Coal changed its stance to observe that the coal mined from the said coal block should be used exclusively for the proposed CPP and not for the existing CPP. It was contended that the letters between August, 2003 to March, 2004 were issued by the A-1 company as a reaction to the complaints by the MCL that A-1 company cannot be permitted to use coal from the Talabira-1 Coal Block in its existing CPP of 67.50 MW, while insisting on signing of a Fuel Supply Agreement (FSA), which was not envisaged in the mining plan. The aforesaid letters reiterated its consistence stance that it was entitled to use the coal from the said coal block in its said existing

CPP and requested the Ministry of Coal, Government of India not to impose any new condition on them.

28. He further contended that A-1 company made multiple representations to the Ministry of Coal as a reaction to the observations in the 19th Screening Committee meeting and the complaints raised by the MCL. The same were deliberated in the Ministry of Coal which culminated into the note dated 14.04.2004 issued by Sh. P.C. Parakh, the then Secretary (Coal) stating that on the one hand, the country was facing a shortage of coal and the coal industry was not able to meet the entire demand of coal thereby having to import coal at skyrocketing prices and on the other hand, the Ministry of Coal was issuing show cause notices to an enterprise for taking punitive action when they were willing to ease the pressure on supply by using coal from their own mines instead of taking it from the MCL. In the note, it was further stated that there was no reason to stop them from using their own coal as it was not a situation where coal was surplus in the market and MCL could not sell its coal to any other party/consumer. Accordingly, letter dated 22.04.2004 was also drafted by the Ministry of Coal to allow A-1 company to utilize coal from Talabira-1 Coal Block in its existing CPP of 67.50 MW at Hirakud, Odisha, while it remained unsigned. He contended that the said note and drafted letter reflects the understanding and decision of the Ministry of Coal in respect of the use of coal from the said coal block by the company in its existing CPP, which clearly depicts that the Ministry of Coal did not find any illegality or irregularity in the alleged act of the A-1 company in relation to Talabira-1 Coal Block.

29. He further contended that in the present case, the prosecution/CBI has failed to produce any evidence to show that any loss was caused to MCL on account of non-lifting of coal from linkage by A-1 company for its existing power plant. On the contrary, PW Sh. P.C. Parakh, the then Secretary (Coal) in his statement under Section 161 CrPC has categorically stated that '*Use of Talabira 1 coal in their existing plant in no way affected interest of MCL as there were large number of consumers of coal in MCL area who were standing in queue. MCL was not even in a position to meet the full demand of NTPC power plant located next door'*.

30. In respect to the allegations related to the misrepresentation of facts in letters dated 18.01.2006 and 14.04.2006 written by A-3 Sh. P.R.S. Mani on behalf of A-1 company to the Ministry of Coal during the proceedings related to approval of the revised mining plan, Learned Senior Counsel for the accused persons submitted that there was no misrepresentation in either of the said two letters. He contended that the representation in letter dated 18.01.2006 that the mine operations commenced on 29.10.2003 after obtaining all the statutory clearances was factually correct. He contended that the said representation was made in the context of mine and not in the context of the expanded power plant. The prosecution/CBI has itself admitted that the Coal Controller had given clearance to the mining operations after accepting Stowing Excise Duty (SED) from A-1 company from 29.10.2003 and thus, as per the prosecution/CBI, there was no illegality in commencement of mining operations vis-a-vis obtaining clearance from the Coal Controller. He further contended that PW Sh. Nihar Ranjan Kumar Sahoo, the then Senior Engineer, State Pollution Control Board, Odisha in his statement under Section 161 CrPC has

confirmed that NOC/consent to start mining in Talabira-1 Coal Block was granted by the said Pollution Board on 12.11.1998 and again on 06.10.2003 i.e. prior to commencement of mining operations on 29.10.2003. Thus, the said representation is factually correct.

31. He further contended that the reply of 'status quo maintained' in letter dated 14.04.2006 in response to the query 'existing linkage should not be withdrawn' was not a misrepresentation as the Ministry of Coal was aware that A-1 company was not using coal linkage of MCL after commencement of mining operations in Talabira-1 Coal Block on 29.10.2003. PWs Sh. P.C. Parakh, the then Secretary (Coal), Sh. Sujit Gulati, the then Director, Ministry of Coal and Sh. K.S. Kropha, the then Joint Secretary, Ministry of Coal have confirmed that the Ministry of Coal was aware about non-use of coal linkage by A-1 company. He further contended that even the files and notings of Ministry of Coal corroborate the same. It was further contended that none of the prosecution witnesses, including the then officials of the Ministry of Coal has stated that the revised mining plan of A-1 company would not have been approved had the said alleged misrepresentation was not made in the letter dated 14.04.2006. He argued that even assuming, arguendo, the statements contained in the said letters were inaccurate, there is no material or evidence on record to indicate that the alleged misrepresentations deceived or induced anyone leading into doing something or parting with any property which they would not have otherwise done. Thus, the allegations of cheating also remained unsubstantiated as its essential ingredients have remained unsatisfied. It was additionally contended that even otherwise, this Court has declined to take cognizance of the offence of cheating

punishable under Section 420 IPC despite the same being categorically invoked in the charge-sheet.

32. On the basis of the aforesaid submissions, Learned Senior Counsel argued that the material collected during investigation fails to disclose even a *prima facie* case against any of the accused persons and there is not even an iota of credible material available on record to *prima facie* presume that either of them has committed any of the offences as alleged in the charge-sheet. Accordingly, they are entitled to be discharged.

ARGUMENTS OF THE PROSECUTION/CBI IN REBUTTAL

33. Sh. N.P. Srivastava, Learned DLA for CBI assisted by the IO Sh. Rajbir Singh, the then Inspector, CBI reiterated and reaffirmed his submissions. In addition thereto, he argued that vide application dated 16/22.11.1993 of A-1 company, it requested for allocation of coal block and the Ministry of Coal accepted the said proposal by issuance of allocation letter dated 25.02.1994 for Talabira-1 Coal Block to the said company. Thus, the said allocation letter became an agreement/contract and its terms and conditions are sacrosanct which were required to be adhered to by A-1 company. The violation of its impugned stipulation amounts to criminal breach of trust. He further reiterates that allocation letter was one of the integral part of the entrustment of the said coal block to A-1 company through mining lease and therefore, even if the impugned stipulation was not mentioned in the mining lease, it has to be read as its integral part. He has placed reliance upon the judgment of **Mahohar Lal Sharma Vs. The Principal Secretary Manu/SC/0727/2014** to state that the right to obtain prospective license or mining lease of coal mine is

dependent upon the allocation letter. Therefore, the said letter confers a valuable right in favour of the allottee. He has, therefore, contended that the A-1 company was bound by the terms and conditions mentioned in the allocation letter.

34. He further contended that A-1 company in its letter dated 13.06.1996 for seeking previous approval of the Central Government for execution of mining lease, deliberately and wrongly mentioned that the said coal block was allotted for use of extracted coal in its Captive Power Plants (CPPs) though, it was allotted only for the use in its proposed captive plants and not in its existing CPPs. He further contended that the prosecution witness Sh. R.K. Chechani, the then CMD, MCL in his statement under Section 161 CrPC has categorically stated that due to reduction in linkage quantity by INDAL from MCL, there was loss to MCL as production was piling up and there was reduction in sale of the same. He argued that the said statement indicates that MCL suffered loss on account of violation of the impugned stipulation contained in the allocation letter dated 25.02.1994 by A-1 company. He further contended that PW Sh. H.C. Gupta, the then Secretary, Ministry of Coal in his statement under Section 161 CrPC has stated that if he was apprised of the impugned stipulation in the allocation letter, he would have probably dealt it in a different way, got the previous papers checked and only thereafter, gone ahead. It was contended that the said statement clearly reflects that the misrepresentations in letters dated 18.01.2006 and 14.04.2006 of A-3 Sh. P.R.S. Mani deceived him as he was kept in dark about the aforementioned prohibition/restriction in the allocation letter, thereby facilitating in approval of the revised mining plan by Standing Committee, Ministry of Coal on 15.05.2006.

35. With these submissions, he sought framing of charge against all the three accused persons for all the offences under which they have been charge-sheeted.

APPLICABLE LAW AT THE STAGE OF CHARGE

36. The Hon'ble Apex Court in case titled as **Sajjan Kumar Vs. CBI 2010 (9) SCC 368** has summarized the law applicable at the time of consideration on the charge and it is reproduced as under:-

> *"17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-*
>
> *(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
>
> *ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but* ***has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc.*** *However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
>
> *iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
>
> *v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

*vii) **If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused** and at this stage, he is not to see whether the trial will end in conviction or acquittal." (Emphasis supplied)*

37. The above summarized principles shall serve as guiding lamp post for adjudication on the point of charge in this case.

RELEVANT ADMITTED FACTS

38. The admitted facts of this case that are relevant for adjudication on the point of charge are delineated as under:-

(i) Vide letter dated 16/22.11.1993 **(D-3, PDF Page No.824)**, the A-1 company requested the Ministry of Coal for allocation of Khinda-Talabira Coal bearing area for meeting its captive coal requirement for its existing 67.50 MW power plant at Hirakud, Odisha as well as for proposed additional 120 MW CPP expansion at Hirakud, Odisha and for proposed 50 MW CPP at Rayagada, Odisha;

(ii) In the 4th Screening Committee meeting held on 12.01.1994 **(D-4, PDF Page Nos.405 to 409)**, Talabira-1 Coal Block of Mahanadi Coalfields Ltd. (MCL) was identified for development by A-1 company as a captive source of supply of coal to its proposed

120 MW expansion capacity captive thermal station at Hirakud and the proposed 50 MW coal based captive power plant at Rayagada only and not for its existing CPP of 67.50 MW at Hirakud, Odisha. Further, in the said meeting, it was decided that the existing linkage of MCL for the company's existing Captive Power Plant (CPP) of 67.50 MW shall undergo no change. Vide letter No.47011/7/93-CPA dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)**, the Ministry of Coal communicated the said decision to A-1 company;

(iii) A-1 company submitted an application dated 13.06.1996 **(D-36, PDF Page Nos.7669 to 7678)** under Rule 22(1) of MC Rules before the Collector, Sambalpur seeking grant of mining lease in respect of Talabira-1 Coal Block for captive utilization of coal in its Captive Power Plants (CPPs) without any distinction between existing or proposed CPPs;

(iv) Subsequently, vide letter No.2494 dated 26.03.1998 **(D-21, PDF Page No.3868)**, the Department of Steel & Mines, Government of Odisha sought previous approval of the Central Government under Section 5(1) of MMDR Act for grant of mining lease of Talabira-1 Coal Block to the company for utilization in its proposed Captive Power Plants (CPPs) only;

(v) Vide letter dated 14.09.1998 **(D-21, PDF Page No.3904)**, A-1 company submitted revised mining plan under Section 5(2)(b) of MMDR Act, 1957 for its Captive Power Plants (CPPs) without distinction between its existing and proposed power plants. The same was considered and approved by the Standing Committee in its meeting held on 20.11.1998. The said approval was communicated

to the company vide letter dated 10.12.1998 **(D-19, PDF Page No.3547)**;

(vi) In response to the previous approval of mining lease deed sought by the Government of Odisha vide its letter dated 26.03.1998 **(D-21, PDF Page No.3868)**, the Ministry of Coal vide letter dated 13.01.1999 **(D-21, PDF Page No.3935)** communicated the previous approval of Central Government under Section 5(1) of MMDR Act to the Government of Odisha for grant of mining lease for captive consumption for thermal generation by the said company without impugned stipulation;

(vii) The case of Talabira-1 Coal Block was discussed in the 14th meeting of the Screening Committee held on 18/19.06.1999 wherein it was noted that Talabira-1 Coal Block had been allocated to A-1 company for meeting the requirement of its existing 67.50 MW CPP at Hirakud i.e. without impugned stipulation. Its case was again discussed in the 19th meeting of the Screening Committee held on 26.05.2003 in the presence of A-2 Sh. S.K. Tamotia, President and CEO of the company, wherein it was clarified that the coal produced from Talabira-1 Coal Mine should be used exclusively in additional capacity and not for the existing power plant of 67.50 MW for which linkage should not be disturbed;

(viii) Based upon the previous approval of mining lease received from the Central Government on 13.01.1999 **(D-21, PDF Page No.3935)**, the mining lease dated 03.06.2003 of Talabira-1 Coal Block **(D-46, PDF Page No.8499)** was executed between the Government of Odisha and A-1 company wherein it was mentioned

that all coal produced from the proposed mining area shall be used exclusively for captive consumption for thermal power generation by A-1 company without impugned stipulation (without any distinction between its existing and proposed Captive Power Plants or without excluding its existing CPPs);

(ix) A-1 company commenced mining operations in Talabira-1 Coal Block on 29.10.2003 and started utilizing coal extracted from its existing Captive Power Plant (CPP) having capacity of 67.50 MW at Hirakud, Odisha;

(x) Vide letter dated 04.12.2003 **(D-10, PDF Page No.1949)**, addressed to Ministry of Coal, MCL complained to the Ministry of Coal that A-1 company has been insisting and using coal from Talabira-1 Coal Block in its existing CPP of 67.50 MW even though, it has been allotted for its proposed expanded CPP only and requested the Ministry of Coal to intervene in the matter. After processing of the said letter, vide its letter dated 05.01.2004 **(D-10, PDF Page No.2569)** addressed to A-2 Sh. S.K. Tamotia, the Ministry of Coal requested A-1 company to look into the matter urgently and desist from contravention of conditions of allocation forthwith, failing which the Ministry of Coal would be constrained to take suitable measures against the company;

(xi) A-1 company vide its letters dated 19.01.2004, 22.01.2004 and 23.01.2004 requested the Ministry of Coal to allow it to utilize the coal from Talabira-1 Coal Block in its existing 67.50 MW CPP at Hirakud and also not to insist on them for the Fuel Supply Agreement (FSA) with MCL. MCL again, vide letters dated

27.01.2004 and 02.03.2004, requested the Ministry of Coal to look into the issue and advise A-1 company suitably. The said letters were processed in the Ministry of Coal and their file was put up before Sh. P.C. Parakh, the then Secretary (Coal) who disposed off the issue with his detailed note dated 14.04.2004 to the effect that the country is facing shortage of coal and the coal companies in public sector are unable to meet its demand. He declined to issue show cause notice to A-1 company as by captive use of the coal extracted from Talabira-1 Coal Block in its existing Captive Power Plant (CPP), it was easing the pressure on supply of coal whereas on account of high demand of coal, MCL was easily able to sell its coal to the readily available buyers with its ever increasing demand **(D-10, PDF Page Nos.1767-1769)**. Accordingly, a letter dated 22.04.2004 **(D-10, PDF Page No.2225)** was drafted in the Ministry of Coal permitting A-1 company to use coal mined from Talabira-1 Coal Block in its existing Captive Power Plant (CPP) till the proposed expansion capacity power plant is not commissioned. However, the said letter was neither signed nor sent to A-1 company;

(xii) Vide letter dated 13.01.2006, A-1 company requested the Ministry of Coal for approval of revised mining plan of Talabira-1 Coal Mine for enhancement of production capacity from 0.40 MTPA to 1.50 MTPA. During the process of approval of revised mining plan, A-1 company through A-3 Sh. P.R.S. Mani, General Manager (Corporate Affairs) vide letter dated 18.01.2006 to the Ministry of Coal **(D-19, PDF Page Nos.4207-4208)**, represented that mine

operation was started on 29.10.2003 after obtaining all necessary statuary clearances; and

(xiii) The Technical Committee of the Standing Committee, Ministry of Coal considered the aforementioned revised mining plan in the year 2006 and sought clarifications from A-1 company. A-1 company through A-3 Sh. P.R.S. Mani, General Manager (Corporate Affairs) vide letter dated 14.04.2006 **(D-19, PDF Page Nos.4221-4222)** responded to the queries raised by the Technical Committee. In the said letter, in response to the condition imposed, namely, *'the existing linkage should not be withdrawn'*, it was responded that *status quo* is maintained. Thereafter, the revised plan of A-1 company was approved by the Standing Committee on 15.05.2006.

FACTS IRRELEVANT FOR CONSIDERATION ON CHARGE

39. The facts which emerged during investigation of this case but do not attract criminality as per the admitted stand of the prosecution/CBI in the charge-sheet, are reiterated as under, at the cost of repetition:-

(i) A-1 company commenced mining operations in Talabira-1 Coal Block on 29.10.2003 after issuing notice dated 20.10.2003 to the Coal Controller Organization (CCO), Kolkata regarding opening of the mine, though without obtaining its prior permission. Subsequently, upon the directions of CCO, A-1 company paid the Stowing Excise Duty (SED) on coal produced from October 2003 onwards and mine opening permission was granted on 20.02.2006 retrospectively with effect from 20.10.2003 after acceptance of SED;

(ii) A-1 company allegedly produced coal in excess of the schedule of approved mining plans in the years 2004-05 to 2010-11;

(iii) A-1 company synchronized the expanded power plant with its existing Captive Power Plant (CPP) at Hirakud, Odisha prior to obtaining consent/NOC from the State Pollution Control Board, Odisha; and

(iv) The name of the lessee from INDAL to Hindalco Company in the mining lease deed 03.06.2003 was allegedly changed in violation of MC Rules.

The charge-sheet expressly records that, in relation to the aforesaid facts, no criminality has been attributed in the present proceedings. The said conclusion is apparently reasonable and justified. Accordingly, the abovementioned facts are not required to be considered in this order on charge unless, they have any kind of nexus or bearing on the allegations of criminality in the present charge-sheet.

CONTENTIOUS ISSUES

40. The following contentious issues require determination for adjudication on the point on charge:-

(i) Whether the impugned stipulation contained in allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)** is required to be read as an integral part of the mining lease dated 03.06.2003 **(D-46, PDF Page Nos.9181 to 9184)**, notwithstanding the fact that the same was not expressly incorporated therein;

(ii) If reply to the aforementioned issue no.(i) is in affirmative, whether A-1 company dishonestly violated the impugned stipulation contained in allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)** by utilizing the coal extracted from Talabira-1 Coal Block in its existing Captive Power Plant (CPP) having capacity of 67.50 MW at Hirakud, Odisha with effect from 29.10.2003, thereby causing wrongful loss to MCL;

(iii) Whether the letters dated 18.01.2006 **(D-19, PDF Page Nos.4207-4208)** and 14.04.2006 **(D-19, PDF Page Nos.4221-4222)** authored by A-3 Sh. P.R.S. Mani on behalf of A-1 company contained any misrepresentation, suppression or deliberate concealment of material facts; and

(iv) If reply to the aforementioned issue no.(iii) is in affirmative, whether the aforesaid alleged misrepresentations induced the Standing Committee, Ministry of Coal to approve the revised mining plan of Talabira-1 Coal Mine for enhancement of production capacity, which it would not have otherwise approved.

ANALYSIS OF FACTS AND EVIDENCE IN RELATION TO THE ALLEGATION OF CRIMINAL BREACH OF TRUST

41. The prosecution has contended that the allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)**, whereby Talabira-1 Coal Block was allocated in favour of A-1 company pursuant to its application dated 16/22.11.1993 **(D-3, PDF Page No.824)** created a binding contract upon A-1 company in relation to the utilization of coal extracted from the said coal block and therefore, the impugned stipulation contained in it was

binding upon A-1 company. Additionally, it has been contended that the said allocation letter constituted an integral component of the process culminating into execution of mining lease deed dated 03.06.2003 **(D-46, PDF Page Nos.9181 to 9184)** and consequently, the impugned stipulation contained therein is required to be read into the mining lease, notwithstanding the fact that the same was not expressly incorporated therein. It is, however, not the case of the prosecution that any statutory provision, including Section 3 of CMN Act, creates a distinction between the existing and proposed Captive Power Plants (CPPs) for the purpose of allocation or utilization of coal from a captive coal block.

42. The relevant substantive penal provisions are reproduced as under for ready reference:-

Section 405 IPC is as under:-

> **405. Criminal breach of trust.-**Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Section 406 IPC reads as under:-

> **406. Punishment for criminal breach of trust.-**Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 409 IPC is as follows:-

> **409. Criminal breach of trust by public servant, or by banker, merchant or agent.-**Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a

> public servant or in the way of his business as a banker, mer-chant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

43. Before adverting to the mertis of the allegation relating to criminal breach of trust, it is expedient to determine whether, assuming the allegations of the prosecution/CBI regarding criminal breach of trust to be correct and substantiated, the offence punishable under Section 409 IPC would at all be attracted. Admittedly, A-1 company was not entrusted with the Talabira-1 Coal Block in the capacity of a public servant, banker, merchant, factor, broker, attorney or agent. In the absence of the said foundational requirement, the essential ingredients of Section 409 IPC are *ex facie* not attracted in the present case, even if the prosecution were to establish criminal breach of trust by the accused persons. At the highest, the allegations may fall within the ambit of criminal breach of trust punishable under Section 406 IPC, and that too only upon satisfaction of all the essential ingredients of the offence as defined under Section 405 IPC.

44. The entire case of the prosecution, insofar as the allegation of criminal breach of trust is concerned, rests upon the premise that the Talabira-1 Coal Block was entrusted to A-1 company subject to the impugned stipulation prohibiting the use of coal extracted therefrom in its existing Captive Power Plant (CPP). Therefore, the sustainability of the prosecution case in respect of the said allegation is contingent upon a finding that the entrustment of the coal block was governed by the impugned stipulation. Indisputably, A-1 company utilized the coal mined

from the said coal block in its existing CPP of 67.50 MW at Hirakud, Odisha with effect from 29.10.2003. Consequently, such admitted use of coal can constitute a violation touching the discharge of such trust only if the entrustment of the Talabira-1 Coal Block to A-1 company is found to have been subject to the impugned stipulation.

45. The prosecution has placed reliance upon the judgment in **Manohar Lal Sharma (supra)** in support of the aforesaid contention. However, the said judgment does not substantially advance the case of the prosecution on this aspect. The Hon'ble Apex Court, in the said judgment, did not hold that the allocation letter created any proprietory rights in the coal block in favour of the allottee or that the coal block itself became entrusted by virtue of such allocation. Rather, it was held that the allocation letter conferred a 'valuable right' amounting to grant of largesse in favour of the allottee giving it a preferential right to be considered for creation of an interest in the coal block through execution of a mining lease.

46. The relevant extract of the said judgment is reproduced hereinbelow:-

> "70. We are unable to accept the submission of the learned Attorney General that allocation of coal block does not amount to grant of largesse. It is true that allocation letter by itself does not authorize the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments, who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the

> Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.
>
> 71. Learned Attorney General accepted the position that in the absence of allocation letter, even the eligible person under Section 3(3) of the CMN Act cannot apply to the State Government for grant of prospecting licence or mining lease. The right to obtain prospecting licence or mining lease of the coal mine admittedly is dependant upon the allocation letter. The allocation letter, therefore, confers a valuable right in favour of the allottee…….”

47. The allocation of a coal block confers a ‘valuable right’ upon the allottee to obtain a mining lease in accordance with law. It does not amount to transfer or ownership of the coal block or coal *in situ.* The proprietory interest arises only upon grant of mining lease which constitutes property. The allocation of a coal block is merely a statutory and valuable right to acquire a mining lease subject to fulfillment of prescribed conditions. The allocation itself does not create any proprietory interest in the coal block. Such interest arises only upon grant of the mining lease. The ‘valuable right’ associated with the allocation letter is not the right in the coal block itself but the right flowing from allocation to obtain a mining lease, which alone creates the proprietory interest in the coal block.

48. A letter of allocation of a coal block does not create any interest, right or title in the coal block itself. It merely creates a conditional right to pursue a mining lease which may or may not fructify. It is a valuable but limited right in favour of the company to be considered with preference for grant of a mining lease subject to fulfillment of statutory conditions. No title, lease hold or possessory interest in the coal block arises based upon the letter of allocation of a coal block. It merely confers upon the company

a valuable but inchoate right, namely, a preferential entitlement to be considered for grant of a mining lease subject to fulfillment of statutory requirements and approvals. The allocation is merely a preliminary step, conferring at best a valuable right i.e. a preferential entitlement to be considered for grant of a mining lease subject to compliance with statutory requirements and the discretion of the competent authorities. It does not, even to the slightest extent, create any present right, title or interest in the coal block itself. The letter of allocation grants a valuable opportunity to pursue execution of an interest in the coal block. It does not create even an iota of right, title or interest in the coal block.

49. Had allocation of a coal block conferred any vested or indefeasible right, every allocation letter would have necessarily and inevitably culminated in the grant of mining lease. The factual position, however, belies such contention. Several allocation letters never fructified into mining leases and on the contrary, were withdrawn or revoked. This circumstance unmistakeably demonstrates that the transition from allocation to mining lease was neither automatic nor a mere ministerial act depending upon the fulfillment of written formalities but remained contingent upon substantive considerations and the continued subsistence of governmental discretion.

50. Grant of largesse is conceptually different from vesting of property. While 'largesse' represents a concession, privilege of benefit conferred by the State, property denotes a vested legal interest protected in law. 'Largesse' means a benefit granted by the State and it may ripen into property only when all statutory conditions are fulfilled and a final grant, in the form of lease, is made unless then it remains a concession not a right

in rem. An allocation letter may generate, at best, a privilege or legitimate expectation or preferential entitlement capable of maturing into a legal interest upon fulfillment of statutory conditions and execution of a mining lease. Until such culmination, the allottee acquires no proprietory interest in the coal block.

51. Therefore, the allottee company does not get any vested right to extract and utilize coal from the coal block before execution of the mining lease, even if an allocation letter has been issued in its favour. Accordingly, when the allottee had not acquired any vested right to extract or utilize coal prior to execution of the mining lease, it would be difficult to hold that a mere pre-lease allocation letter constituted 'entrustment of property' or 'dominion over the property' so as to attract the ingredients of criminal breach of trust.

52. It is evident that A-1 company derived rights in the Talibara-1 Coal Block and it was entrusted therewith through the mining lease deed dated 03.06.2003 **(D-46, PDF Page Nos.9181 to 9184)** and not by virtue of the allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)**. Consequently, the stipulations contained in the mining lease deed alone acquired binding force that governed the entrustment, and not the stipulations contained in the allocation letter. Significantly, there is no allegation against A-1 company that it defied, violated or breached or acted in derogation of any stipulation contained in the mining lease deed dated 03.06.2003. The allegations, in fact, pertain solely to the impugned stipulation contained in the allocation letter dated 25.02.1994, which admittedly remained conspicuously absent in the mining lease deed.

53. The contention of the prosecution/CBI that the allocation letter dated 25.02.1994 **(D-4, PDF Page Nos.1171 & 1172)** constituted a concluded contract of entrustment of Talabira-1 Coal Block for carrying out mining operations is wholly misconceived. As discussed above, the said allocation letter did not confer any vested right upon the A-1 company in the said coal block and was, at the best, an expression of Government intent subject to fulfillment of statutory formalities and continued Government discretion. The legal relationship giving rise to entrustment crystallized only upon execution of the mining lease dated 03.06.2003 **(D-46, PDF Page Nos.9181 to 9184)**, pursuant to the offer/request dated 13.06.1996 **(D-36, PDF Page Nos.7669 to 7678)** sent by the A-1 company for execution of mining lease, its acceptance in the form of previous approval by the Central Government vide letter dated 13.01.1999 **(D-21, PDF Page No.3935)** and consequential order dated 23.04.2003 **(D-19, PDF Page No.3553)** issued by the Government of Odisha. Significantly, the impugned stipulation did not find place either in the previous approval by the Central Government dated 13.01.1999, in consequential order dated 23.04.2003 or in the mining lease dated 03.06.2003. Thus, the aforesaid contention of the prosecution/CBI that the allocation letter dated 25.02.1994 is a concluded contract of entrustment deserves to be rejected.

54. The other contention of the prosecution/CBI, namely, that the impugned stipulation contained in the allocation letter dated 25.02.1994 is required to be read as forming part of the stipulations contained in the mining lease deed dated 03.06.2003 is equally fallacious and misconceived. As discussed hereinabove, the said allocation letter did not create any vested right in Talabira-1 Coal Block in favour of A-1 company

and therefore, could not by itself constitute the source of any concluded right of entrustment. If the Ministry of Coal intended that the right of entrustment ultimately created in favour of A-1 company be made subject to the impugned stipulation, the same ought to have been expressly incorporated either in the previous approval granted by the Central Government or in the mining lease deed itself. Significantly, the impugned stipulation not only remained conspicuously absent from the mining lease deed but also found no mention in the previous approval accorded by the Central Government for execution of the said lease under Section 5(1) of the MMRD Act.

55. The support for the aforesaid conclusion may be drawn from the judgment of the Hon'ble Supreme Court of India in **M/s Karnataka EMTA Coal Mines Ltd. & Anr. Vs. Central Bureau of Investigation 2024 INSC 623** wherein it was held that the conditions contained in the allocation letter cannot automatically be treated as enforceable stipulations governing the mining lease in the absence of incorporation therein. Its relevant extract reads as under:-

> "14.2 When the Central Government did not formulate any National Policy for exploitation of coal rejects, **it is fallacious on the part of the respondent-CBI to argue that the conditions imposed by the Central Government while conveying its approval to the State Government for grant of mining lease in favour of KPCL ought to have formed a part of the lease deed to be executed**. Fact of the matter is that there was no such condition imposed in the Notification dated 16th July, 2004, issued by the MoC. The said notification simply specified the end use of the coal from the allocated coal blocks for supply to KPCL to generate thermal power in the proposed BPCL. The original Mining Plan of September, 2004 submitted by KECML to the MoC for its approval also did not elucidate the manner in which the coal rejects were to be disposed of. The said Mining Plan had the approval of the MoC which did not raise any

> objection relating to the absence of any condition for dealing with the coal rejects. The inevitable conclusion is that disposal of the coal rejects was to be undertaken by KECML strictly in terms of Article 5(2)(b) of the JVA and no more." (emphasis supplied)

56. In view of the foregoing discussion, it stands safely concluded that the stipulations contained in the allocation letter cannot be read as a part of the mining lease deed unless the same is expressly incorporated therein. Consequently, the alleged violation of the impugned stipulation, which admittedly did not find incorporation in the mining lease deed dated 03.06.2003, cannot attract the provisions relating to criminal breach of trust against the accused persons, as the same did not constitute a condition governing the entrustment created in favour of A-1 company.

57. The concerned public servants of the Ministry of Coal, Government of India have been cited as prosecution witnesses (PWs) as the prosecution/CBI did not attribute any criminality in their conduct or proceedings in relation to issuance of allocation letter, previous approval of mining lease, execution of mining lease and operation of the Talabira-1 Coal Block by A-1 company. Their statements materially undermine the prosecution case. The prosecution witness Sh. K.S. Kropha, the then Joint Secretary, Ministry of Coal, Government of India in his statement under Section 161 CrPC, categorically stated that the mining lease is a statutory document which governs the entire mining operations of a coal mine. He further stated that the terms and conditions incorporated in the mining lease have the statutory mandate and the letter of allocation does not have any statutory backing. He furher clarified that the mining lease will take precedence over the letter of allocation. Likewise, the prosecution witness Sh. P.K. Mishra, the then Secretary, Ministry of Coal, Government of India

with effect from October, 2002 to February, 2004 clarified in his statement under Section 161 CrPC that the CMN Act neither distinguished between the use of coal in an existing eligible project and a new project for permitted end use nor prohibited utilization of coal from the captive mine in an existing plant. He further stated that the conditions of allocation letter dated 25.02.1994 should have been incorporated in the previous approval of the Ministry of Coal and consequently, in the mining lease executed between the State Government of Odisha and the A-1 company. According to him, any action against A-1 company could arise only upon violation of the terms and conditions of the mining lease.

58. Similarly, the prosecution witness Sh. Sujit Gulati, the then Director, Ministry of Coal, Government of India between the year 2002 and January, 2006 in his statement under Section 161 CrPC stated that neither the law nor the extant guidelines prohibited utilization of coal extracted from the allocated coal block in an existing end use project. He further stated that any action in relation to supply of coal block to its existing power plant or discontinuance of coal linkage, could have arisen only if the impugned stipulation formed part of the mining lease deed and if a Fuel Supply Agreement (FSA) existed between the A-1 company and MCL. Admittedly, neither circumstance existed in the present case. The relevant extract of his statement under Section 161 CrPC is reproduced as follows:-

> *"……As far as the provision of applicable Law i.e. the CMN Act, 1973 relating to coal mining for specified end uses by an Indian company viz. S. 3(3) (a) (iii) are concerned, they do not distinguish between end use of coal in an existing permitted en use project and a proposed permitted en use project of a company concerned and as such do not appear to prohibit such en use. There were no Rules under the CMN Act for the purpose.*

The prevalent guidelines for the purposes, at the time of Identification (allocation) of the block, in 1994, as also at the time in 2003, when the issue of coal being used in existing power project arose thereby replacing the linkage partially, do not appear to prohibit such end use (in an existing and linked end use project). This distinction and restriction on usage of coal in a linked end use project came in the additional guidelines later in 2003, albeit providing for exception even to this restriction. This was done primarily for safeguarding commercial interests of Coal India Ltd. in a presumed background of surplus coal being available with CIL. However, with increasing demand for coal in the economy, this situation of availability of coal with CIL moved towards a deficit situation.

……If exclusive supply of coal to the expansion capacity was specified as a condition in the mining lease executed, action could be initiated under the mining lease, by the State Government or the Central Government, for end use of coal in their own existing project not being in line with the letter of Identification/allocation. There being no FSA (Fuel Supply Agreement), perhaps there was also little that could be done for breach of linkage agreement/contract either, for non off take of the full quantity of linkage."

59. The cumulative effect of the aforesaid evidence is that the impugned stipulation contained in the allocation letter never acquired binding force qua the entrustment created in favour of the A-1 company, having not been incorporated either in the previous approval of mining lease dated 13.01.1999 by the Central Government or in the mining lease dated 03.06.2003. While dealing with the proceedings related to operation of Talabira-1 Coal Block by A-1 company, the Ministry of Coal, Government of India also acted based upon the same sound and legal understanding of the law relating to the allocation letter as well as law concerning mining lease and consequent, entrustment. Therefore, it can be conclusively inferred that the Talabira-1 Coal Block was not entrusted to A-1 company subject to the impugned stipulation and consequently, its alleged breach or violation does not attract any criminal liability.

SIGNIFICANCE OF IMPUGNED STIPULATION

60. The allocation letter was issued in the year 1994, whereas the mining lease deed was executed nearly a decade thereafter on 03.06.2003. During the interregnum, the stance of the Ministry of Coal underwent notable shifts or changes. In the year 1994, at the stage of identification of Talabira-1 Coal Block for A-1 company, in the 4th Screening Committee meeting and subsequently, through the allocation letter dated 25.02.1994 as well as the 5th Screening Committee meeting, the allocation of Talabira-1 Coal Block to A-1 company was expressly made subject to the impugned condition that the coal extracted therefrom could not be utilized for the existing Captive Power Plant (CPP) of A-1 company, for which they shall continue to meet their coal requirement through coal linkage from MCL.

61. However, the material on record indicates that, by the year 1998-99, the Ministry of Coal appears to have adopted a substantially different position by approving the revised mining plan of A-1 company on 20.11.1998 for its Captive Power Plants (CPPs) without drawing any distinction between its existing and proposed Captive Power Plants (CPPs). Further, in terms of Section 5 MMDR Act, the State Government vide letter dated 26.03.1998 **(D-21, PDF Page No.3868)** sought previous approval of the Ministry of Coal, Government of India for execution of the mining lease in favour of A-1 company for utilizing of coal mined from the said block in its proposed Captive Power Plants (CPPs) i.e. with impugned stipulation. However, after due processing and deliberation, the Ministry of Coal, vide letter dated 13.01.1999 **(D-21, PDF Page No.3935)** communicated the previous approval of Central Government under Section 5(1) of MMDR Act to the Government of Odisha for grant of mining lease for captive consumption for thermal generation by the said company

without maintaining any distinction between its existing and proposed Captive Power Plants (CPPs) i.e. without impugned stipulation. This assumes significance, particularly when the Ministry of Coal was fully conscious of the impugned stipulation contained in the allocation letter dated 25.02.1994 and notiwithstanding the fact that the State Government had sought previous approval of mining lease in consonance with the impugned stipulation, the Central Government consciously refrained from incorporating such stipulation in its approval. Further, in the 14th Screening Committee meeting held on 18/19.06.1999, it recorded that the said coal block was allocated to A-1 company for meeting the requirement of coal in its existing Captive Power Plant (CPP) having capacity of 67.50 MW at Hirakud, Odisha. Thus, it *prima faice* appears that during the period 1998-99, the Ministry of Coal approved the mining plan and granted previous approval of mining lease to A-1 company under Section 5 of MMDR Act without insisting upon incorporation of the impugned stipulation contained in the allocation letter dated 25.02.1994. Moreover, the absence of the said impugned stipulation also stood reflected in the minutes of the 14th Screening Committee meeting. Notably, the prosecution has not leveled any allegation against any of the public servants of the Ministry of Coal for consciously omitting, diluting or disregarding the impugned stipulation while approving the mining plan, granting previous approval of the mining lease or recording the minutes of the 14th Screening Committee.

62. Nearly three years thereafter, the 19th Screening Committee in its meeting held on 26.05.2003, reiterated that the impugned stipulation of allocation letter dated 25.02.1994 is imperative and binding upon A-1 company. Yet, despite such reiteration, no consequential steps were

undertaken by the Ministry of Coal either to recall the previous approval of mining lease accorded to the State Government under Section 5 MMDR Act vide letter dated 13.01.1999 or to communicate to the State Government of Odisha that the mining lease ought not to be executed without incorporating the impugned stipulation therein. Ultimately, the mining lease was executed on 03.06.2003 without incorporating the impugned stipulation. In these circumstances, it *prima facie* emerges that the Ministry of Coal not only adopted shifting positions with respect to the impugned stipulation but the stipulation itself was not treated as immutable or indispensable.

63. Further, the guidelines **(D-272, PDF Page Nos.39254-55)** adopted and applicable with minor modifications from 1st Screening Committee till 21st Screening Committee did not render the impugned stipulation mandatory. Rather, the same permitted replacement of linkage with coal to be produced from the allotted Captive Coal Block (CPP) subject to safeguarding the interest of Coal India Ltd. (CIL) and its subsidiaries. Even the amended guidelines adopted on 04.11.2003 **(D-272, PDF Page Nos.39234-35)** in the 22nd Screening Committee meeting after execution of mining lease deed on 03.06.2003, permitted the replacement of coal linkage from CIL/SCCL with the coal mined from the allocated captive coal mine under the special circumstances. Thus, the guidelines prevailing at the time of execution of mining lease dated 03.06.2003 did not impose an absolute prohibition against replacement of coal linkage from MCL with coal extracted from captive coal mine to be used for existing Captive Power Plant (CPP). However, the only caveat was that in allowing the same, the interest of MCL be safeguarded. Moreover, the internal

proceedings undertaken within the Ministry of Coal in the year 2004, which shall be adverted to in detail in succeeding paragraphs, further indicate that the Ministry itself did not regard the impugned stipulation as inflexible and considered it capable of being modified in view of prevailing circumstances reltaing to coal availability, its shortage and national demand.

64. Between August, 2003 and March, 2004, MCL addressed several communications to the Ministry of Coal, Government of India requesting intervention and issance of directions restraining A-1 company from utilizing coal extracted from Talabira-1 Coal Block in its existing Captive Power Plant (CPP) and requiring it to continue procurement through linkage from MCL. Upon processing such communications, the Ministry of Coal, vide letter dated 05.01.2004, initially directed A-1 company to desist from using coal extracted from Talabira-1 Coal Block in its existing Captive Power Plant (CPP) and to execute a Fuel Supply Agreement (FSA) with MCL for supply of coal to its said CPP. However, later, the Ministry of Coal changed its position on account of acute coal shortage prevailing in the country at that point of time. The prevailing circumstances indicated that the discontinuance of coal linkage to A-1 company would not adversely affect MCL, as abundant consumers were available for the sale of its coal. On the contrary, permitting A-1 company to utilize coal from its captive mine would ease pressure on public sector coal supplies and contribute towards mitigation of the emergent situation arising from acute coal shortage. The noting dated 14.04.2004 of the prosecution witness Sh. P.C. Parakh, the then Secretary, Ministry of Coal, Government of India in the relevant department file **(D-10, PDF Page Nos.1767-1769)** clearly

reflects this change in policy approach and reasoning. The relevant noting stands reproduced as under:-

> *"We seem to be suffering from some kind of claustrophobia. On the one hand our coal companies in public sector are not able to meet the entire demand of coal. Day in and day out there are complaints of non-supply of coal to non core sector. Industry is not able to import coal because of sky rocketing prices in the international market. And yet on the other side we are issuing a show cause to an enterprise for taking punitive action, when he is willing to ease pressure on supply by using coal from his own mine instead of taking if from MCL.*
>
> *I can understand such a situation if there was excess supply of coal and it was not possible for MCL to sell its coal.*
>
> *If our policy imposed such restrictions on production, it is high time for revising our policy. The regulation should be on coal conservation and safety and not on productivity and efficiency.*
>
> *I also see no reason for coal blocks once released for coal mining for captive generation being withdrawn from the list. PS Coal companies are sitting over enough coal reserves to meet their investment needs in foreseeable future. There is no need to withdraw any blocks that have been released for captive mining.*
>
> *If there are two equally good proposals for captive mining, perhaps we should release the block in favour of a party that achieves financial closure earlier.*
>
> *We may take suitable changes in the policy as suggested above and process this case on above lines.*
>
> *Our business in coal development is not to protect interest of our PSU at any cost, but to ensure adequate availability of coal to the consumers are lower price.*
>
> *I feel sad to note that we have been able to take a decision on allotment of Talabira II block for over three years. Three years is a good enough time for a company to get into production. This is no way of promoting growth of coal sector."*

65. The aforesaid self-speaking note clearly reflects that the Ministry of Coal, Government of India, in its considered wisdom, decided not to take any action against the A-1 company for alleged violation of impugned

stipulation due to the changed circumstances of acute shortage of coal. The prosecution witness Sh. P.C. Parakh, the then Secretary, Ministry of Coal between March 2004 to December 2005, in his statement under Section 161 CrPC has categorically stated that the condition imposed in the letter of allocation became counter productive and against the national interest which did not call for any punitive action against A-1 company or for withdrawal of Talabira-1 Coal Block from it. He further stated that in the situation of serious shortage of coal, the alleged violation of impugned stipulation in allocation letter did not affect interest of MCL as there were a large number of consumers of coal in MCL area who were standing in a queue to buy coal from MCL.

66. The investigating agency cannot seek to attribute criminality to policy decisions or to changes introduced in policy from time to time, particularly in respect of a specific policy aspect, when such decisions were admittedly taken at the level of the competent public authorities in discharge of their official functions. Policy formulation and subsequent modifications are matters of executive wisdom, administrative exigency, and evolving governance priorities, which, by themselves, do not attract criminal consequences unless accompanied by demonstrable *malafide* intent, abuse of office, or dishonest design. Significantly, where the prosecution itself does not allege any criminal intention, conspiracy, *malafide* conduct, or corrupt motive against the public servants who conceived, approved, or implemented such policy decisions, it is wholly incongruous and legally untenable to selectively characterize the very policy outcome as criminal merely because a consequential benefit is alleged to have accrued to a private entity. In the absence of any allegation

that the decision-making process itself stood vitiated by criminal intent or extraneous consideration, an investigating agency cannot retrospectively convert matters of policy into allegations of criminal misconduct through inferential reasoning or hindsight scrutiny.

67. In view of the aforesaid material, it is evident that the impugned stipulation was neither mandated by the statute nor compulsarily required to be incorporated into the mining lease deed. The applicable guidelines in relation to such stipulation were neither rigid nor immutable and evolved in accordance with the prevailing circumstances concerning the supply and availability of coal in the country. Be that as it may, once the impugned stipulation was not incorporated in the mining lease deed dated 03.06.2003, the same did not govern the entrustment created thereunder. Consequently, any alleged breach or violation thereof does not attract any criminality against either of the accused persons.

EFFECT OF VIOLATION OF IMPUGNED STIPULATION UPON MCL

68. At the cost of repetition, it may be reiterated that, in the absence of incorporation of the impugned stipulation in the mining lease deed dated 03.06.2003, its alleged violation would not, by itself, attract criminal liability even assuming that some loss was caused to MCL. Even otherwise, the prosecution/CBI has failed to adduce any documentary evidence on record establishing any actual loss suffered by the MCL on account of discontinuance of coal linkage by A-1 company pursuant to commencement of mining operation in Talabira-1 Coal Block after execution of mining lease dated 03.06.2003. The prosecution relies upon the statement of Sh. R.K. Chechani, the then CMD, MCL from May, 2001 to 31.03.2004, to the effect that due to reduction in linkage quantity by the

company from MCL, there was loss to MCL as production was piling up and there was reduction of sale of the same. However, such assertion remains unsupported by the contemporaneous documentary material, including books of accounts, sale registers, production records or other financial documents capable of substantiating the alleged loss.

69. On the contrary, the prosecution witness Sh. P.C. Parakh, the then Secretary, Ministry of Coal categorically stated that the interests of MCL were not adversely affected in any manner. He stated that due to shortage of coal, MCL had a substantial number of coal consumers and they were not in position to fulfill the demands of all of them including nearby NTPC Power Plant. Significantly, the MCL ceased addressing further complaints or representations to the Ministry of Coal after March, 2004, lending support to the above version of the prosecution witness Sh. P.C. Parakh. If MCL suffered loss on account of violation of any statute, contract or impugned stipulation by the A-1 company, it would have certainly taken some legal action against the said company for redressal of its grievance, in addition to addressing communications to the Ministry of Coal. Further, as clarified by the prosecution witness Sh. Sujit Gulati, the then Director, Ministry of Coal, no Fuel Supply Agreement (FSA) had ever been executed between the A-1 company and MCL in respect of coal linkage for its existing Captive Power Plant (CPP). Consequently, no question arises of breach of contractual obligations under FSA. In these circumstances, no loss to MCL stands proved. Even assuming arguendo that some commercial loss has been occasioned to the MCL, the same would not advanced the prosecution case inasmuch as A-1 company did not violate or

breach any stipulation forming part of the mining lease deed dated 03.06.2003 governing entrustment.

70. Accordingly, in view of the above detailed discussion, no material is available on record to presume that either of the accused persons committed the offence of criminal breach of trust punishable under Section 406 IPC or to give rise to grave suspicion regading commission of the said offence.

ALLEGED MISREPRESENTATION IN LETTER DATED 18.01.2006

71. The prosecution/CBI has alleged that during the consideration of the approval of revised mining plan for enhancement of production capacity of Talabira-1 Coal Block, A-3 Sh. P.R.S. Mani, acting on behalf of A-1 company addressed a communication dated 18.01.2006 **(D-19, PDF Page Nos.4207-4208)** to the Ministry of Coal falsely representing that mining operations of Talabira-1 Coal Block were commenced on 29.10.2003 after obtaining all other necessary statutory clearances. According to the prosecution, the requisite statutory clearances from the Coal Controller and the State Pollution Control Board, Odisha had not been obtained till the said date and therefore, the said statement amounted to misrepresentation.

72. However, the prosecution/CBI itself, in its charge-sheet, has not attributed criminality to the commencement of mining operations without obtaining prior permission of the Coal Controller, inasmuch as, on the instructions of the Coal Controller, Stowing Excise Duty (SED) was paid by A-1 company with effect from 29.10.2003, which according to the prosecution's own case, amounted to the deemed retrospective approval or clearance by the Coal Controller to A-1 company for mining operations in the said coal block. Thus, the representation in the letter dated 18.01.2006

qua commencement of mining operations after obtaining permission or clearance of Coal Controller cannot be said to be factually incorrect and is, in substance, factually borne out from the record.

73. So far as, the State Pollution Control Board, Odisha is concerned, the prosecution appears to have proceeded upon a misconceived premise by treating the alleged representation as relating to expended Captive Power Plant (CPP). On a plain reading, the representation pertains to statutory clearances concerning commencement of mining operations in Talabira-1 Coal Block and not approvals for expended power generation facilities. The prosecution witness Sh. Nihar Ranjan Kumar Sahoo, the then Senior Engineer, State Pollution Control Board, Odisha, stated under Section 161 CrPC that on the basis of the records available in the said Department the consent to establish Talabira-1 Coal Block was granted by the State Pollution Control Board on 12.11.1998 and again on 06.10.2003 for the capacity of 0.45 MTPA.

74. Undeniably, the NOC from the State Pollution Control Board in respect of the expanded power plant was taken after 29.10.2003 in the year 2006 but the representation of obtaining all the necessary statutory clearances in letter dated 18.01.2006 **(D-19, PDF Page Nos.4207-4208)** are in relation to the mining operations and not in respect of the expanded power plant. No material has been placed on record to indicate that prior consent in relation to the expanded CPP constituted a pre-condition for commencement of mining operations in Talabira-1 Coal Block. Therefore, non-obtaining of NOC from the State Pollution Control Board for the expanded power plant before mining operations in the said coal block cannot attract any adverse inference against A-1 company in relation to the

said representation. The prosecution has wrongly construed that the said representation was given in respect of the expanded power plant. Thus, no fault can be attributed to A-1 company in respect of the alleged misrepresentation in the said letter.

75. Furthermore, there is no evidence on record to demonstrate that the alleged misrepresentation induced anyone, including officials of Ministry of Coal, Government of India or any other public authority to part with the property or undertake any act which it would otherwise not have undertaken. Consequently, no criminality whatsoever can be attached thereto. Hence, the allegation that any criminality accrued on account of the alleged misrepresentation contained in the said letter dated 18.01.2006 is unfounded and deserves to be discarded.

ALLEGED MISREPRESENTATION IN LETTER DATED 14.04.2006

76. The prosecution/CBI has further alleged that in response to the query raised by the Technical Committee of the Standing Committee dealing with the approval of the revised mining plan of Talabira-1 Coal Block for enhancement of production capacity, A-3 Sh. P.R.S. Mani submitted a communication dated 14.04.2006 **(D-19, PDF Page Nos.4221-4222)** to the Ministry of Coal. In the said letter, in response to the query of 'the existing linkage should not be withdrawn', false response was written to the effect that 'status quo maintained', thereby allegedly misleading the Ministry of Coal and procuring approval of the revised mining plan on 15.05.2006.

77. This contention also does not merit acceptance. As discussed hereinabove, the Ministry of Coal was already fully aware that A-1 company had discontinued procurement under coal linkage from MCL

after commencement of mining operations of Talabira-1 Coal Block on 29.10.2003. Further, in the absence of incorporation of the impugned stipulation in the mining lease deed dated 03.06.2003, there existed no legal prohibition retraining A-1 company from utilizing coal extracted from the said coal block in its existing Captive Power Plant (CPP) or compelling it to continue purchasing coal through MCL linkage. In such circumstances, the impugned statement in the said letter assumes no material significance and cannot reasonably be construed as having induced approval of the revised mining plan. The record does not suggest that the approval of the revised mining plan would have been refused solely on account of discontinuance of coal linkage, particularly when the Ministry itself was conscious of the prevailing factual position and had, by then, altered its approach in light of acute shortage of coal.

78. Consequently, by no stretch of reasonable imagination, the approval of revised mining plan in the year 2006 can be held to have been procured through deception or inducement based upon the alleged misrepresentation contained in the communications dated 18.01.2006 and 14.04.2006. The allegations in this regard are also devoid of merit and deserves rejection.

OFFENCE OF CHEATING PUNISHABLE UNDER SECTION 420 IPC

79. The offence of cheating punishable under Section 420 IPC is reproduced as under for the ready reference:-

> "**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."

80. This Section deals with certain specified classes of cheating. It deals with the cases of cheating whereby the deceived person is dishonesty induced:

(1) to deliver any property to any person; or

(2) to make, alter or destroy

(a) the whole or any part of a valuable security; or

(b) anything which is signed or sealed and which is capable of being converted into a valuable security.

81. The offence of cheating is made up of two ingredients, deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property and he was dishonestly induced to do so in consequence of having been deceived by the accused.

82. In **Dr. Sharma's Nursing Home Vs. Delhi Admn. & Ors. (1998) 8 SCC 745**, the Hon'ble Supreme Court held mere deception by itself would not constitute cheating unless the other essential ingredient, i.e., dishonest inducement is established. It held as follows:-

> "…both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. "Dishonesty" has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed…".

83. The Hon'ble Supreme Court in case titled as **Jupally Lakshmikantha Reddy Vs. State of Andhra Pradesh & Anr. 2025 INSC 1096** concluded that dishonest use of fake NOC from the Fire Department to obtain recognition/renewal of affiliation to run the Education Institution is not sufficient to attract the offence of cheating unless the said document was necessary for grant of such recognition/renewal as in its absence, the said NOC cannot be held to have induced the Education Department to grant recognition/renewal. The relevant portion in the said judgment is reproduced as under:-

> "16. It is strenuously argued the appellant had used a fake NOC from the Fire Department and thereby held out a false representation that he possessed a valid NOC to obtain recognition/renewal of affiliation for his institution. Uncontroverted allegations in the charge sheet including the order in the writ proceedings, unequivocally show NOC from the Fire Department was not necessary for grant of such recognition/renewal of affiliation as the height of the appellant's building was below 15 metres. Given this situation, the representation of the appellant that he possessed a valid NOC cannot be said to have induced the Education Department to grant recognition or renew the affiliation. **To attract penal consequences, it must be shown that the false representation was of a material fact which had induced the victim to either part with property or act in a manner which they would not otherwise do but for such false representation. In the absence of such vital link between the alleged false representation and the issuance of recognition/renewal of affiliation, the essential ingredient of offence is not satisfied**." (emphasis supplied)

84. Thus, it is apparent that dishonest misrepresentation is not sufficient to attract the offence of cheating punishable under Section 420 IPC unless the said representation is material and induced the deceived person to part away with the property.

85. In the present case, as discussed above, it is established that A-1 company did not make any false representation in its letters dated 18.01.2006 **(D-19, PDF Page Nos.4207-4208)** and 14.04.2006 **(D-19, PDF Page Nos.4221-4222)**. Thus, one of the essential ingredients for the offence of cheating punishable under Section 420 IPC is glaringly missing. For the sake of arguments, if it is presumed that allegation of the prosecution is established that any of the alleged misrepresentations were made in the said letters, there is no evidence on record to suggest that any of the said alleged misrepresented facts was material and led to the inducement of the Standing Committee in approval of the revised mining plan of Talabira-1 Coal Block of A-1 company. In these circumstances, even the second ingredient of dishonest inducement for the offence of cheating is not satisfied in this case.

86. Accordingly, there is no material available on record to presume that either of the accused persons committed the offence of cheating punishable under Section 420 IPC in this case.

OFFENCE OF CRIMINAL CONSPIRACY PUNISHABLE UNDER SECTION 120B IPC

87. The office of criminal conspiracy is defined under Section 120-A IPC and it reads as under :

> "**120-A - Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,—
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

88. In the instant case, the prosecution/CBI has failed to establish that any of the act of accused persons in relation to the present case is illegal. In absence thereof, there is neither any evidence on record nor any justifiable reason to infer that they entered into criminal conspiracy to commit any illegal act including the offence of criminal breach of trust or cheating. Therefore, they are entitled to be discharged for the said offence.

CONCLUSION

89. Considering the above foregoing detailed discussion, all the three accused persons namely **(i) M/s Hindalco Industries Limited; (ii) Sh. S.K. Tamotia S/o Late Sh. S.L. Tamotia; and (iii) Sh. P.R.S. Mani S/o Late Sh. S. Raman (accused nos.1 to 3 respectively)** are entitled to be discharged for all the offences for which they have been charge-sheeted. Accordingly, they all are ordered to be discharged.

Announced in the open Court on 30.05.2026.

(Dheeraj Mor)
Special Judge, (PC Act) (CBI)
(Coal Block Cases)-01, RADC
New Delhi: 30.05.2026