Chapter 2 - The e-Auction: Design and Process

The legal framework for allocation of cancelled coal blocks was provided through the Coal Mines (Special Provisions) Act, 2015 (preceded by the two Ordinances in October 2014 and December 2014), Coal Mines (Special Provisions) Rules, which were followed by issue of Standard Tender Document (STD). Within this framework, the prescribed system of auction of coal mines is as follows:

2.1 Classification and Earmarking of Coal Mines/Blocks

The Act contained three Schedules, each containing a list of coal mines/blocks:

- **Schedule I** was the master schedule, containing list of all the 204 cancelled mines/blocks.
- **Schedule II** had 42 coal mines/blocks, which were producing/ready to produce.
- **Schedule III** had 32 coal mines/blocks, which were at an advanced stage of their statutory clearances.

The Act provided for two methods of allocation of the cancelled coal mines. These were:

- Public auction for specified end uses (SEUs) viz. generation of power/ captive power; production of iron/steel/cement. Those SEUs were grouped under 'power' and 'non-regulated' sector categories.
- Allotment to a Government company or corporation or to a joint venture between two or more Government companies or corporations or to a company which had been awarded a power project (including ultra mega power projects).

Ministry of Coal (MOC) constituted an Inter-Ministerial Technical Committee (IMTC) on 29 October 2014 to formulate criteria for earmarking of mines for (i) auction and allotment; (ii) classification under power and non-regulated sectors; (iii) suggesting transfer of coal mines from Schedule I to Schedule III.

2.2 Valuation of Coal Mines

Valuation of coal mines was necessary before allocation of the cancelled coal blocks. Accordingly, MOC prescribed a methodology for fixing (i) floor price for auction for non-regulated sector coal mines and (ii) reserve price for auction of power sector coal mines. The methodology provided for calculation of the intrinsic value of the coal mines/blocks for the purpose of fixation of the floor and reserve price. A minimum rate of ₹150 per tonne for the floor price and ₹100 per tonne (fixed) for the reserve price was prescribed. The methodology also provided for fixation of a ceiling price for power sector coal mines, which was to be Coal India Limited (CIL) notified price for the equivalent grade of coal. Bidding for the non-regulated sector coal mines/blocks was to start from the floor price. For the power sector coal mines, reserve price was to be paid by the successful bidders for the coal extracted and bidding for these mines was to start below the ceiling price.

The methodology for valuation also provided that the successful allottees of the coal mines would also have to make payment of 10 *per cent* of the intrinsic value as upfront payment.

Central Mine Planning and Design Institute Limited (CMPDIL) carried out detailed exercise for calculation of intrinsic value and corresponding floor and additional reserve price[4] of the coal mines.

2.3 Information Provided by Prior Allottees

The prior allottees provided the approved mining plan and other details related to various clearances and approvals taken and land acquired etc. The exercise of earmarking, classification and valuation was carried out on the basis of data and information relating to individual coal mine (including extractable reserves, grade of coal) as provided by the prior allottees.

2.4 Prioritisation of Coal Mines for Auction

Coal mines were prioritised for auction as detailed below:

- 1st tranche: 20 out of the 42 Schedule II coal mines (earmarked for auction), which were either producing or ready to produce.
- 2nd tranche: 18 out of the 32 Schedule III coal mines (earmarked for auction).

2.5 Payment of Additional Levy

The Hon'ble Supreme Court's order dated 24 September 2014 provided for payment of 'additional levy' by the prior allottees of the cancelled coal blocks @ ₹295 PMT of coal extracted. This was also a pre-condition for any prior allottee to participate in the e-auction process for any of the coal mines.

[4] The reserve price was fixed @ ₹100 per tonne in the methodology and the additional reserve price was the price, based on the intrinsic value of coal mine (minimum ₹150 per tonne), which was required to be paid by the allottee for quantum of coal used for merchant sale of power.

2.6 Standard Tender Documents/Tender Documents

An approach paper was prepared by MOC for finalising the process of e-auction and was put in public domain for comments and feedback. The STDs were prepared and finalised after incorporating the views of various stakeholders on the approach paper and the views of CIL/its legal counsel. Thereafter, the tender documents for individual coal mines were uploaded on the website of MSTC Limited (the service provider for conducting e-auction of coal mines).

2.7 Auction Process

2.7.1 Coal Mines Earmarked for Power Sector

Coal mines earmarked for power sector were auctioned with the twin objectives of increasing the generation of power along with providing cheaper coal for the benefit of consumers of power. In this context, the STD for power sector coal mines, issued on 27 December 2014, prescribed a two stage bidding methodology viz. Stage I and Stage II.

2.7.1.1 Stage I Bidding

The Stage I bidding comprised of submitting two envelopes containing:

- Technical bid, in which the bidders were required to provide details regarding compliance with the eligibility conditions; and
- Financial bid, to the extent of specifying the initial price offer (IPO), which was not to be higher than the ceiling price[5];
    - The financial bid was the run of mine (ROM) cost i.e. which the bidders were allowed to charge the power consumers as energy charges under the power purchase agreements (PPA).

Thereafter, on 31 January 2015 MOC issued corrigendum No.3 to the STD, which amended the condition relating to the submission of the financial bid upto the extent of specifying the IPO. The amendment provided that the IPO *should be greater than or equal to INR 0 (Indian Rupees Zero) and lower than the ceiling price*.

[5] The ceiling price for the coal mine was the CIL notified price for the equivalent grade of coal.

After the technical bids were received, they were opened at a pre specified date and venue in the presence of the participating bidders who wished to be present. A committee formed for the purpose, evaluated the technical bids. Those who qualified the technical evaluation were called as ‘Technically Qualified Bidders’ (TQB).

Thereafter, IPOs of TQBs were opened and the TQBs were ranked on the basis of ascending IPOs. The TQBs quoting the lowest rates (holding first 50 *per cent* of the ranks or five TQBs, whichever was higher) were considered to be qualified bidders (QBs), for participating in the e-auction in the Stage II bidding. The lowest IPO was to be treated as the applicable ceiling price i.e. the maximum price below which reverse bidding in the Stage II would start.

2.7.1.2 Stage II Bidding

Stage II bidding was conducted by MSTC on pre declared date and time. The QBs could submit their final price offer (FPO) as many times as they wished against the same coal mine during the scheduled time. The FPO (final reverse bid by a bidder) was the ROM cost i.e. which the bidders were allowed to charge the power consumers as energy charges under the power purchase agreements (PPA).

The initial STD issued in December 2014 provided that the QBs were to submit their bids (FPO) which were to be lower than the displayed lowest bid by at least ₹2. The QB that submitted the lowest price offer during the e-auction process was to be declared as the “Preferred Bidder”.

The corrigendum No. 3 to the STD (January 2015) changed the bidding methodology from ‘reverse’ to ‘reverse then forward’. The amendment provided that in the event the applicable ceiling price was equal to ₹ zero or during the Stage II bidding, a QB quoted ₹ zero, then the bidding would convert into a forward bidding. After that the QBs were to quote an “additional premium” as their bid, which was an additional payment for coal extracted from the coal mine, in addition to all other payments required to be made.

The QB, which submitted the highest additional premium, was declared as the “preferred bidder” under the reverse then forward auction/bidding.

Nominated Authority (NA) recommended name of the preferred bidder to Ministry of Coal (MOC) and on approval, the preferred bidder was declared as the “successful bidder”.

The successful bidder was required to make monthly payments to NA with respect to the coal extracted from the coal mine on the basis of ₹100 per tonne (the "fixed rate" i.e. the reserve price) plus the "additional premium", if applicable, in addition to the applicable statutory levies.

2.7.1.3 Provision for Sale of Power on Merchant Basis

The STD also provided that the successful bidder could sell a maximum of 15 *per cent* of the generation capacity of the specified end use plant (SEUP) as merchant[6] power. It also stipulated that the fixed rate of ₹100 per tonne would stand revised to ₹ XXX[7] for the quantum of coal utilised for generation of power sold on merchant basis. The STD further stipulated that 'additional premium' was not payable on the quantum of coal utilised for generation of such power sold on merchant basis.

2.7.2 Auction Process for Non-Regulated Sector Coal Mines

The STD issued in December 2014 for non-regulated sectors, prescribed a two stage bidding methodology viz. Stage I and Stage II.

2.7.2.1 Stage I Bidding

The Stage I bidding comprised of submitting two envelopes containing:

- Technical bid, in which the bidders were required to provide details regarding compliance with the eligibility conditions; and
- Financial bid to the extent of specifying the IPO, which was to be not less than the floor price.

After the technical bids were received, they were opened at a pre specified date and venue in the presence of the participating bidders who wished to be present. A committee formed for the purpose, evaluated the technical bids. Those who qualified the technical evaluation were called as TQBs.

Thereafter, the IPOs of TQBs were opened and the TQBs were ranked on the basis of descending IPOs. The TQBs quoting the highest rates (holding first 50 *per cent* of the ranks or five TQBs, whichever was higher) were considered to be qualified bidders (QBs), for participating in the e-auction in the Stage II bidding. The highest IPO was to be treated as the

[6] Power sold outside the medium and long term PPAs contracted under Section 62/63 of the Electricity Act, 2003.
[7] Fixed for each coal mine separately on the basis of the intrinsic value of the coal mine.

applicable floor price i.e. the minimum price above which forward bidding in the Stage II would start.

2.7.2.2 Stage II Bidding

Stage II bidding was conducted by MSTC on pre declared date and time. The QBs could submit their final price offer (FPO) as many times as they wished against the same coal mine during the scheduled time.

The STD provided that the QBs were to submit their bids (FPO), which were to be higher than the displayed highest bid by at least ₹2. The QB that submitted the highest price offer during the e-auction process was to be declared as the "preferred bidder".

2.8 Approval of MOC for Declaring the Successful Bidder

After completion of the bidding, NA sent its recommendations in respect of the preferred bidder of each coal mine to MOC for approval, to declare the preferred bidder as successful bidder. After receipt of such recommendation MOC may direct NA to issue a vesting order in favour of the successful bidder or may provide such other binding directions to the NA as may be deemed appropriate.

It was noticed from the records relating to auction of coal mines in the first two tranches, MOC either gave its approval for declaring the preferred bidder as successful bidders or returned the cases to NA for re-examination and giving its recommendations. In the scenario where cases were sent for re-examination, MOC, after taking cognizance of the recommendations of NA after such re-examination, either gave its approval for declaring the preferred bidder as successful bidder or rejected the bids.

2.9 Signing of Coal Mine Development and Production Agreement

After declaration of successful bidder, NA executed the Coal Mine Development and Production Agreement (CMDPA) with the successful bidder.

2.10 Issue of Vesting Order

The successful bidder was to pay a fixed amount for the value of land and mine infrastructure, cost of preparation of geological report, cost of obtaining all statutory licenses, permits, permissions, approvals, clearances or consents relevant to the mining operations, the transaction expense[8] (collectively the 'fixed amount'), performance security and the first installment of upfront amount.

Upon receipt of performance security and other payments, the vesting order was issued, by NA to the successful bidder.

CMDPA for the coal mines auctioned in the 1st and 2nd tranche provided that the performance security would remain valid till the coal mine achieved the annual peak rated capacity. This was amended in the CMDPA of the coal mines auctioned in the 3rd tranche wherein it was stipulated that performance security would remain valid (a) until the expiry of the period for which mining lease (including renewed mining lease) has been granted or will be granted, or (b) until extractable reserves are remaining in the coal mine, whichever is earlier.

2.11 Post Vesting Order Obligation of the Successful Bidder

The Coal Mine Development and Production Agreement (CMDPA) stipulated various 'post vesting obligations' which included:

- Submission of commencement plan within 30 business days of the date of vesting order;
- Undertaking various activities for commencement of production of coal;
- Making monthly payments on the basis of the FPO, in addition to other statutory levies including royalty;
- Provisions for various returns/information that the successful bidder was required to furnish to NA and Coal Controller's Organisation (CCO).

2.12 Role of Various Stake Holders

Details of the entities involved in the process of auctioning of the coal mines are given below.

2.12.1 Ministry of Coal

Role of Ministry of Coal (MOC) included:

- Earmarking and classifying coal mines for auction/allotment for power/non-regulated sector;
- Issuing orders for the manner of allocation of the Schedule I coal mines;
- Modifying Schedule III by adding any other Schedule I coal mine;
- Giving approval for declaring preferred bidder as successful bidder.

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[8] A fixed amount of ₹1685400 towards cost and expenses incurred by the NA for conduct of auction process.

2.12.2 Nominated Authority (NA)

Government of India (GoI) appointed NA to act for and on behalf of GoI for the purposes relating to the e-auction process, whose role included:

- Notifying the prior allottees to enable them to furnish information required for notifying the particulars of coal mines to be auctioned;
- Determining the floor price or reserve price in consultation with the Ministry;
- Conducting the auction process with assistance of experts;
- Executing the CMDPA;
- Issuing vesting orders for transfer and vesting of coal mines pursuant to the auction.

2.12.3 MSTC Limited (MSTC)

NA engaged (11 December 2014) MSTC as the e-auction service provider for conducting e-auction of the coal mines and entered into a Memorandum of Understanding (MoU) which was to remain valid for the period till the 204 coal mines were allocated through e-auction and allotment.

2.12.4 Central Mine Planning and Design Institute Limited (CMPDIL)

MOC entrusted (October 2014) CMPDIL the work relating to preparation of the mine dossier for each mine identified by MOC. The mine dossier consisted of geological report, mine plan, mine closure plan and environmental and forest clearance. CMPDIL also determined intrinsic value/NPV and floor price of each mine as per guidelines/methodology issued by MOC.

2.12.5 Coal Controller's Organisation (CCO)

The Coal Controller's Organisation (CCO) is a subordinate office under the administrative control of MOC. The functions of CCO, *inter alia*, included laying down procedure and standard for sampling of coal, inspection of collieries so as to ensure correctness of the class, grade or size of coal, granting opening/re-opening permission of coal mine. In addition to the statutory functions, work relating to monitoring the progress of captive coal mines and their associated end use projects were to be done by CCO.

As per the Act and the Rules, MOC authorised (December 2014) CCO to collect the additional levy from the prior allottees of Schedule II coal mines and deposit the same in the Government account.

2.12.6 Transaction Advisor to NA

Nominated Authority appointed (January 2015) SBI Capital Markets Limited as the Transaction Advisor (TA) to assist it on matters relating to e-auction of coal mines which included computing the reserve/floor price; designing the auction process and arrange for submission of draft of notice inviting tender; allotment and auctioning of coal mines in the time frame prescribed; drawing up CMDPA and vesting order.

2.13 Results of e-Auction

Summary of the coal mines put up for e-auction and successfully auctioned during 1st and 2nd tranche is given in table 2 below. The details are given in **Annexure I.**

Table 2 : Summary of Coal Mines Auctioned during the 1st and 2nd Tranche

Tranche	No. of Coal mines put up for auction			No. of Coal mines successfully auctioned		
	Power	**Non-regulated**	**Total**	**Power**	**Non-regulated**	**Total**
1st Tranche (All Schedule II)	06	14	20	05	11	16
2nd Tranche (All Schedule III)	05	13	18	04	09	13
Total	**11**	**27**	**38**	**9**	**20**	**29**

Analysis of the above table revealed that of the 38 coal mines put up for auction, 29 coal mines were successfully auctioned. Remaining mines were not successfully auctioned due to the reasons mentioned below:

- Less than three technical bids were received in respect of two coal mines each (non-regulated sector) of Schedule II and Schedule III;
- Three coal mines (one of non-regulated sector and two of power sector) were cancelled by MOC due to non-receipt of fair value of coal; and
- Two Schedule III coal mines (non-regulated sector) were withdrawn from the auction process by MOC.