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Analysing developments impacting business

MINERAL LAWS (AMENDMENT) ORDINANCE 2020 – GOVERNMENT LIBERALISES INVESTMENT IN MINING SECTOR

17 January 2020

Introduction

The Government of India, in September 2019, began the process of liberalising the long-standing restrictions imposed on mining activities in India with permitting 100% foreign direct investment (FDI) in entities engaged in coal mining activities for sale of coal. However, the Coal Mine (Special Provisions) Act, 2015 (Coal Mines Act) and the Mines and Minerals (Development and Regulation) Act, 1957 (MMDRA) continued to contain end-use restrictions on minerals extracted from a significant number of coal mines, which did not augur well for attracting investments.

Additionally, (i) the reduced demand for power from conventional sources, (ii) decreased growth in cement, iron and steel sectors; and (iii) approval processes resulted in a scenario, in certain cases, where, even if mines were allotted, the extraction of minerals would be limited thereby resulting in stagnation of development of mines.

In order to remedy the same and to provide operational flexibility to persons engaged in mining, amendments have been introduced to the Coal Mines Act and the MMDRA by way of the Mineral Laws (Amendment) Ordinance, 2020 (Ordinance) dated 10 January 2020.

Amendments Introduced

The key changes brought about by the Ordinance are discussed below.

- Eligibility to participate in coal auctions: The Coal Mines Act and MMDRA specified that reconnaissance permit, prospecting license/mining lease (collectively, Mining Concessions) in respect of coal mining could be granted to companies that 'carry on coal mining operations in India'. This eligibility requirement of carrying on coal mining operations in India has been done away with, enabling other players to also participate in competitive bidding for Mining Concessions, subject to meeting the bidding criteria specified therein.
- Removal of end-use restrictions on minerals: The Coal Mines Act prescribed certain mines as Schedule II and Schedule III coal mines, in respect of which, only companies engaged in a 'specified end-use' were considered eligible to bid in the auction of Mining Concessions. This eligibility restriction has now been removed. However, the Central Government, under the Coal Mines Act, still retains the right to prescribe end-use restrictions for coal mines.

- Use of coal in holding/subsidiary company: The Coal Mines Act permitted use of coal in the allottee's plants engaged in common specified end-use. This has been expanded to include use of coal in the plants of the subsidiary/holding company of the allottees as well.
- Removal of approval redundancies: The MMDRA required the State Governments to obtain approval of Central Government to grant Mining Concessions in respect of coal and lignite mines even if the allocation or reservation of land for such Mining Concessions was made by the Central Government. This redundancy has been done away with.
- Reallocation of coal mines: The Coal Mines Act was silent on the manner of reallocation of coal mines in case of a termination of allocation under the Coal Mines Act. This has been clarified with a right in favour of such erstwhile allottees to receive compensation for the land and mine infrastructure.
- Transfer of approvals: In respect of minerals other than those specified in Part A and Part B of first schedule of the MMDRA (that is, other than coal, lignite and atomic minerals), a successful bidder is now deemed to acquire all rights, approvals, clearances and licenses vested with the previous lessee for a period of two years within which, the allottee is required to obtain the same.
- Right accorded to the holder of an NERP: The MMDRA did not permit the holder of a non-exclusive reconnaissance permit (NERP) to make a claim for grant of mining lease (ML) or a prospecting license-cum-mining lease (PLML). This has been diluted in respect of 'deep seated minerals' or other specified minerals whereby, the holder of an NERP may make an application for grant of ML/PLML through the auction process as per procedure to be prescribed, after undertaking specified levels of exploration.

Comment

The amendments are a welcome step towards liberalization of the mining sector and attracting the much needed foreign investment. While the Ordinance is a positive step to provide operational efficiency, the corresponding rules and bidding guidelines must be assessed in detail to ensure that progressive steps pursuant to the Ordinance are preserved and given full effect. The liberalised policy will allow global players to look for investment opportunities which in turn will allow the country to leverage their technical capabilities for effective utilisation of natural resources for the benefit of people at large.

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