CC No. CBI/315/2019 (Old CC No. 29/17)
RC No. 219 2014 (E) 0014
Branch: CBI, EO-I, New Delhi
CBI Vs. M/s Revati Cement Pvt. Ltd. & Ors.
U/s 120-B, 120-B/420 IPC, Sec. 13(1)(d)/13(2) of PC Act, 1988.

14.08.2020

Matter taken up today in compliance of Office Order No. Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020 and Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020, of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020 and No. 26 /DHC/2020 dated 30.07.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: **Ld. DLA Sh. V.K. Sharma and Ld. Senior PP Sh. A.P. Singh for CBI.**

IO Dy. SP. Vijai Chettiar.

Ld. Counsel Sh. Sushil Bajaj for A-1 M/s Revati Cement Pvt. Ltd and A-4 Chinmay Palekar.

Ld. Counsel Sh. Rahul Tyagi for A-2 Harish Chandra Gupta and A-3 K.S. Kropha.

Ld. Counsel Sh. Samrat Nigam for A-5 Vijay Kumar Jain and A-6 Arvind Pujari.

Vide my separate order it has been concluded that prima facie charge for the offence **u/s 120-B/420 IPC and13 (1) (d)/13 (2) PC Act, 1988** beside charge for the substantive offence **u/s 120-B IPC** is made out against all the six accused persons i.e. *A-1 M/s Revati Cement Pvt. Ltd, A-2 Harish Chandra Gupta, A-3 K.S. Kropha, A-4 Chinmay Palekar, A-5 Vijay Kumar Jain and A-6 Arvind Pujari*. Qua the substantive offences charge for the offence i.e. **u/s 420 IPC** is made out against the four private accused persons i.e. A-1 M/s Revati Cement Pvt Ltd., A-4 Chinmay Palekar, A-5 Vijay Kumar Jain and A-6 Arvind Pujari and charge qua the substantive offence **u/s 13 (1) (d)/13 (2) PC Act, 1988** is made out against the two accused public servants i.e. A-2 H.C. Gupta and A-3 K.S. Kropha.

Case is now adjourned for framing of formal charge on 03.09.2020.

Ld. Counsel for the accused persons are requested to ensure the presence of all the accused persons through video conferencing on the next date of hearing.

A scanned signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Hukam Chand.

BHARAT PARASHAR
Digitally signed by BHARAT PARASHAR
Date: 2020.08.14 13:07:48 +05'30'

(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
14.08.2020

IN THE COURT OF SH. BHARAT PARASHAR, SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE DISTRICT COURT, NEW DELHI.

CC No. CBI/315/2019 (Old CC No. 29/17)
RC No. 219 2014 (E) 0014
Branch: CBI, EO-I, New Delhi
CBI Vs. M/s Revati Cement Pvt. Ltd. & Ors.
U/S 120-B, 420 IPC AND SEC. 13(2) R/W 13(1)(D) OF PC ACT, 1988.

14.08.2020.

ORDER ON CHARGE

1. This order shall decide as to for which offences charges, if any, are made out against the six charge sheeted accused persons i.e. company M/s Revati Cement Pvt Ltd. (A-1) (*hereinafter referred to as "M/s RCPL"*); H.C. Gupta (A-2) the then Secretary, Ministry of Coal; K.S. Kropha (A-3) the then Joint Secretary, Ministry of Coal; Officers/ Directors of M/s RCPL i.e. Chinmay Palekar (A-4), Vijay Kumar Jain (A-5) and Arvind Pujari (A-6), in the matter pertaining to allocation of "*Thesgora-B/Rudrapuri*" Coal Block to M/s RCPL by Ministry of Coal (MOC).

FACTS:

2. In November 2006, the Ministry of Coal (MOC), Government of India issued an advertisement inviting applications for allocation of 38 Coal Blocks for captive coal mining from companies engaged in generation of power, production of iron and steel and production of cement. The advertisement stated that from out of 38 Coal Blocks, 15 Coal Blocks were earmarked for power sector and 23 Coal Blocks were earmarked for

non-power sector i.e. steel and cement. The companies which were registered under Companies Act, 1956 were given liberty to apply for one or more of such Coal Blocks. The detailed guidelines such as the application format, documents to be enclosed, coal blocks on offer and other guidelines were stated to be available on the website of MOC i.e. www.coal.nic.in.

3. The applications were also to be accompanied with a demand draft of Rs. 10,000/- beside other documents as asked for in the detailed guidelines. The application form also required the applicant companies to submit various details about their company and also the end use project where the coal to be produced, was to be captively used. The companies were required to mention their turnover (in crores) of the last three preceding years beside also mentioning the profit earned (in crores) in the last three years and the net worth (in crores) as on 31.03.2006. The existing capacity and the proposed capacity of the end use project where the coal was to be captively used were also required to be mentioned beside the ultimate capacity (total) and “ROM Coal” requirement. Various other details regarding the status of the end use project with respect to land, water, equipments, civil construction, finance etc. and also the clearances which were already obtained or were applied for were also required to be mentioned. The details of the investment already made or proposed to be made were also required to be mentioned in the application form. Five copies of the application were to be submitted.

4. About 674 applications were submitted by 184 companies for allocation of 23 coal blocks earmarked for non-power sector. In all 10 applications were received from different companies including M/s RCPL for allocation of Thesgora-B/Rudrapuri Coal Block. M/s RCPL submitted

their application to MOC on 08.01.2007. The application of M/s RCPL was signed by Chinmay Palekar as Authorised signatory/ Director on each of the four pages.

5. As per the procedure of processing of applications uploaded on the website of MOC, four sets of all the applications were to be sent to various Administrative Ministries, Central Mine Planning & Design Institute Limited (CMPDIL) and to the State Governments where the Coal Block applied for or the end use project was situated or was proposed to be established, for their views and comments. Upon receipt of views and comments from State Governments, CMPDIL and the Administrative Ministries etc., the applications were then put up before 36th Screening Committee for considering allotment of coal blocks reserved for non-power sector companies. 35th Screening Committee had in fact considered the applications of companies which were seeking allotment of coal blocks reserved for power sector.

6. The Screening Committee as was established by Government of India was given the task of screening the claims of various applicant companies and to thereafter make recommendation for allotment of various coal blocks to the selected companies. The recommendations were to be thereafter put up before Prime Minister as Minister of Coal for approval. The 36th Screening Committee conducted its meetings on 07.12.2007, 08.12.2007, 07.02.2008, 08.02.2008 and 03.07.2008 and the Committee gave all the applicant companies an opportunity to present their case before them beside also asking them to submit a feedback form in the prescribed form containing details of the latest status of end use project.

7. Subsequently, 36th Screening Committee recommended allocation of the 23 Coal Blocks earmarked for non-power sector in favour of different companies. Thesgora-B/Rudrapuri Coal Block was recommended to be allotted jointly in favour of two companies i.e. M/s Revati Cements Private Limited (M/s RCPL) and M/s Kamal Sponge Steel Private Limited (M/s KSSPL).

8. However, after some time a lot of hue and cry came to be raised in the public alleging that Coal Blocks have been allotted by Government of India not only illegally but in furtherance of a criminal conspiracy entered into by different applicant companies and the MOC officers including the Screening Committee members. Central Vigilance Commission thus chose to look into the entire allocation process as there were large number of allegations of corruption. After examining various files of allocation of Coal Blocks, the Central Vigilance Commission made a reference to CBI to investigate into the allegations of alleged corruption by the public servants in the matter of allocation of Coal Blocks to private companies during the period 2006-2009.

9. On the basis of said reference a preliminary enquiry was instituted on 01.06.2012 by the CBI with respect to allocation of Thesgora-B/Rudrapuri Coal Block to M/s RCPL. After conclusion of said preliminary enquiry, the CBI prima facie found an element of truth in the allegations of corruption in the allocation of impugned Coal Block to M/s RCPL. Accordingly, a FIR was registered on 13.10.2012 against M/s RCPL and others including unknown public servants for the offence punishable u/s 120-B r/w Section 420 IPC and Section 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act,1988. The investigation of the case was carried out by IO Dy. SP Vijai Chettiar.

10. During the course of investigation, it was found by the CBI that the company M/s RCPL had misrepresented in its application submitted to MOC, not only with respect to figures of its financial strength including its net-worth i.e. financial capability but also with respect to land actually in its possession or acquired by it. It was found that the company M/s RCPL in contravention of the guidelines issued by MOC, had mentioned the figures of financial strength of its group companies, even though the balance sheets annexed with the application were that of the applicant company itself. It was also found during the course of investigation that the accused company M/s RCPL and its officers/directors conspired with officers of MOC so as to obtain allocation of a captive coal block in favour of M/s RCPL. Upon completion of investigation a report u/s 173 Cr. PC was filed charge sheeting the present six accused persons.

11. As regard the facts discovered during the course of investigation and the conclusion drawn by the investigating agency, it will be appropriate for the sake of brevity to reproduce here under para 16.4 to para 16.31 of the final report u/s 173 Cr. PC, wherein the same has been mentioned:

Para 16.4 to 16.31

> *"**16.4** Investigation has further revealed that an advertisement was issued under the signature of Sh. K.S. Kropha, the then Joint Secretary, Ministry of Coal with the approval of Sh. H.C. Gupta, Secretary (Coal) and uploaded on the website of Ministry of Coal and published in the newspapers. The notice, format of application form, how to apply, where to apply, list of coal blocks on offer, guidelines for allocation of coal blocks and conditions of allotment through the screening committee, processing of application and composition of the screening committee were also made part of the advertisement. The short advertisement i.e. notice which was published by Ministry of Coal in the newspaper and the detailed advertisement uploaded on the website of Ministry of Coal are annexed with the charge sheet.*

16.5 *Investigation has further revealed that in response to the advertisement issued by the Ministry of Coal, M/s RCPL, which was incorporated on 22.09.1992 submitted an application form for allocation of Thesgora-B/Rudrapuri coal block located in Madhya Pradesh for its proposed 3 MTPA Cement Plant at Satna, Madhya Pradesh on 08.01.2007 in the Ministry of Coal. M/s RCPL is a company of Ruchi group of companies. As per application M/s. RCPL was not engaged in the production of cement on the date of application as such its existing capacity was "Nil". The application for allocation of Thesgora-B/ Rudrapuri coal block was signed by Sh. Chinmay Palekar, authorised signatory and Director of M/s. RCPL. The application of the company was found to be complete, as per format.*

16.6 *Investigation has further revealed that as per the guidelines, regarding processing of application forms by the Ministry of Coal, it was mentioned that the applications received in the Ministry of Coal in five copies after being checked for eligibility and completeness would be sent to the Administrative Ministry / State Government concerned for their evaluation and recommendations. After receipt of recommendations of the Administrative Ministry / State Government concerned, the individual applicants would be heard by the Screening Committee in its meeting where they would be given an opportunity to present their respective case. Based on the recommendations of the Screening Committee, Ministry of Coal will determine the allocation.*

16.7 *Investigation has further revealed that Ministry of Coal vide their letter No.13016/65/2006-CA-1 dated 19.02/12.03.2007 forwarded applications pertaining to cement sector along with its enclosures to DIPP for examination and recommendation. DIPP in turn had forwarded its recommendation addressed to Shri V. S. Rana, Under Secretary, Ministry of Coal vide letter no. 5(5)/2007-Cem.II dated 16.05.2007 under signature of Sh. R Murlidhar, Under Secretary, DIPP, Ministry of Commerce & Industry. The recommendation of DIPP was based on the guidelines decided by it in the meeting dated 22.08.2006.*

16.8 *Investigation has further revealed that Secretary (DIPP) had convened a meeting on 22.08.2006 which was also attended by Sh. K. S. Kropha, Joint Secretary, Ministry of Coal amongst others, in which following guidelines for allocation of coal block to cement sector was evolved: -*

(a) Cement Companies having capacity of 2 MTP and more would only be considered for allotment of blocks.

(b) Reserves in the block should be matched with the requirement of the Company for about 30 years. It would be possible for cement Companies to enter into consortium for getting allocation of blocks by matching their combined

requirements.

(c) Upon commencement of mining, the linkages of coal would be gradually reduced.

(d) Cement companies would be required to furnish mile stone for development of coals block as well as their capacity creation / addition for cement manufacturing.

(e) Transparent criteria should be evolved in consultation with CMA to ascertain the status for readiness of setting up or increasing manufacturing capacities by cement companies for the purpose of determining inter-se-priority for coal allocation.

(f) With a view to ensure the availability of coal mines for cement industry, power companies may not be allowed to bid for the blocks not earmarked for them.

16.9 *Investigation has further revealed that the guidelines so framed pertaining to allocation of coal blocks and long term coal linkages for recommendation of coal block for cement sector in the meeting dated 22.8.2006 by DIPP, Ministry of Commerce and Industry were sent to the Ministry of Coal in the form of minutes of the said meeting.*

16.10 *Investigation has further revealed that application of M/s RCPL was not forwarded to the DIPP rather it was inadvertently forwarded to the Ministry of Steel. As such DIPP had no occasion to examine the application of M/s RCPL or to make any recommendation in respect of this company. DIPP recommended Thesgora–B/Rudrapuri coal block for allocation to M/s Birla Corporation Ltd.*

16.11 *Investigation has further revealed that as per advertisement of Ministry of Coal out of 38 coal blocks, 07 were situated in the state of Madhya Pradesh. Ministry of Coal vide letter No. 13016/65/2006-CA-I dated 19/28-02-2007 had forwarded the applications to Govt. of Madhya Pradesh for views/ comments/ recommendation. State Govt. of MP after detailed examination decided to recommend name of different companies for allocation of different coal blocks situated in the state in which it recommended name of M/s. BLA Power Ltd., Mumbai for allocation of Thesgora-B / Rudrapuri coal block. Name of M/s. RCPL was not recommended by the State Govt. of MP for allocation of any coal block situated in MP. The recommendation letter No. F/1947/2005/12/2 (Part–II) dated 07.02.2008 under signature of Sh. S. K. Mandal, Addl. Secretary, Mineral Resources Department; Govt. of MP was addressed to Secretary, Ministry of Coal, Govt. of India.*

16.12 *Investigation has further revealed that meetings of 36thScreening Committee was held on 07.12.2007, 08.12.2007, 07.02.2008, 08.02.2008 and 03.07.2008.*

16.13 *Investigation further revealed that notice for the Screening Committee meetings wherein the companies had to make the presentation was issued to M/s RCPL on 16th November 2007 under the signature of Sh. K. C. Samaria, Director, CA-I, Ministry of Coal. During the presentation, the company had to submit the required feedback form titled as "latest status of end use plant, for which application for block has been made."*

16.14 *Investigation has further revealed that as per the attendance sheet dated 07.02.2008 and the Minutes of 36th Screening Committee meeting, Sh. V. K. Jain, Director, M/s RCPL, Sh. Arvind Pujari, Project Coordinator, M/s RCPL and Sh. Chinmay Palekar, Director, M/s RCPL had attended the Screening Committee on 07.02.2008 on behalf of M/s RCPL for making presentation and Sh. Chinmay Palekar had made presentation before the Screening Committee. During the presentation, M/s RCPL submitted updated information in the form of feedback on 07.02.2008 under signature of Sh. Chinmay Palekar, Director, RCPL and authorized signatory. It is also revealed that Sh. V. K. Jain and Sh. Arvind Pujari were falsely presented as Director and Project Coordinator of M/s. RCPL, respectively, in the attendance sheet.*

16.15 *Investigation has further revealed that as per eligibility criteria of Ministry of Coal as mentioned in the advertisement dated 06/13.11.2006 M/s. RCPL was not engaged in production of Cement and as per guidelines of DIPP M/s. RCPL was not having existing production capacity of 2 MTPA, therefore the company M/s. RCPL was an ineligible company for allocation of any coal block for its captive use.*

16.16 *Investigation has further revealed that M/s. RCPL had made following misrepresentations in its application dated 08.01.2007 for allocation of Coal block: -*

i. *Company in its application form had claimed that it was in possession of 41 Hec. Land out of total required 264 Hec. But it was not in possession of any land in its name on the date of application i.e. 08.01.2007.*

ii. Company in its application form had claimed that for equipment, orders have been placed and equipments have been partly procured. But it had neither placed any order in respect of any equipment nor had partly procured the same.

iii. *Company in its application form had claimed that it has already applied for EIA and EMP with MOEF and is in the process of getting approval. However, its claim has been found to be incorrect. M/s. Revati Cement Pvt. Ltd. had applied for EIA and EMP to the Ministry of Environment, Forest and Climate Change on 22.5.2007.*

16.17 *Investigation has further revealed that M/s. RCPL had also made misrepresentation in its Feed Back Form dated 07.02.2008 in respect of the land. Company in its Feed Back form claimed that it was in possession of 100 Hec. land approx. out of total required 130 Hec. But it was not possession of any land in its name even on the date of presentation before the Screening Committee i.e. 07.02.2008. A lease of 766.220 Hectare of land for lime stone mining was sanctioned on 13.06.2006 by the Govt. of MP in favour of M/s. Revati Cement Pvt. Ltd. and consequently a mining lease agreement was entered into between Govt of MP through Collector, Satna and M/s. Revati Cement Pvt. Ltd. on 01.07.2006. However, out of the 766.220 Hectare land, an entry permission on 31.753 Hectare land was granted by Collector, Satna to M/s Revati Cement Pvt. Ltd in file ref No. 17-A-67 / 2007-2008 on 31.01.2008 and order in this regard was issued on 02.02.2008.*

16.18 *Investigation has further revealed that applicant company was required to submit audited Annual Accounts / Reports for the last three years and in the prescribed format of the application as uploaded on the website of Ministry of Coal, applicant company was required to furnish its (i) Turnover for the last three years i.e. 2003-04, 2004-05 and 2005-06 as mentioned at Sr. No. 8, (ii) Profit for the last three years i.e. 2003-04, 2004-05 and 2005-06 as mentioned at Sr. No. 9 and (iii) networth as on 31.03.2006 only as mentioned at Sr. No. 10.*

16.19 *Investigation has further revealed that in the application form M/s. RCPL had not mentioned its own Turnover, Profit and Networth as was required, but had claimed Turnover, Profit and Networth of Overall Ruchi Group and claimed networth as Rs. 1668.62 Crores as on 31.03.2006.*

16.20 *Investigation has further revealed that contrary to its claim M/s. RCPL annexed only its own audited Annual Reports of the last 03 years i.e. 2003-04, 2004-05 & 2005-06 and not the audited Annual Reports of the last 03 years of the overall Ruchi Group.*

16.21 *Investigation has further revealed that the actual Networth of M/s. RCPL was Rs. 3, 37,727 only as on 31.03.06.*

16.22 *Investigation has further revealed that in the Feed Back form also M/s. RCPL had not mentioned its own Networth as required rather claimed Networth of Overall Ruchi Group as Rs. 1668.62 Cr. as on 31.03.06 and 1942.35 Cr. as on 31.03.07.*

16.23 *Investigation has further revealed that M/s RCPL was incorporated on 22.09.1992 and not being a newly incorporated company, was not eligible to take benefit of the networth of its principal or group concerns as mentioned in Para 9 of the guidelines of Ministry of Coal.*

16.24 *Investigation has further revealed that M/s RCPL had not submitted any document in support of its claim regarding Turnover, Profit and Networth of Overall Ruchi Group and particularly networth as Rs. 1668.62 Crores as on 31.03.2006. But the net worth of Rs. 1668.62 Crores was considered as financial capability of M/s RCPL for allocation of the coal block as mentioned in the minutes of 36th Screening Committee meeting.*

16.25 *Investigation has further revealed that Sh. H.C. Gupta, then Secretary, Ministry of Coal & Ex-officio Chairman of the 36thScreening Committee and Sh. K. S. Kropha, then Joint Secretary (Coal) & Member Secretary of the 36th Screening Committee dominated the proceedings of 36th Screening Committee in its actual functioning and wielded absolute control over the decision making process.*

16.26 *Investigation has further revealed that M/s. RCPL was neither recommended by the Administrative Ministry i.e. DIPP nor by the State Govt of Madhya Pradesh.*

16.27 *Investigation has further revealed that Sh. H. C. Gupta, then Secretary (Coal), Sh. K. S. Kropha, Sh. Chinmay Palekar, Sh. V. K. Jain, Sh. Arvind Pujari and applicant company M/s RCPL entered into a criminal conspiracy and M/s. RCPL was recommended Thesgora-B / Rudrapuri Coal block jointly with M/s Kamal Sponge Iron & Steel Pvt. Ltd despite being opposed by Sh. Shashi Ranjan Kumar, Director, DIPP and Sh. S. K. Mishra, Secretary, Mineral Resources Department, Govt of MP in the Screening Committee meeting dated 03.07.2008.*

16.28 *Investigation has further revealed that before the approval of recommendations of 36th Screening Committee by the Prime Minister as Minister (Coal), Sh. H.C. Gupta, Secretary, Ministry of Coal during discussion with Principal Secretary to Prime Minister in respect of the recommendation made by the 36th Screening Committee confirmed that the recommendations were strictly based on the merit of the applicants including the recommendation of the state governments where the blocks are located, however this was not based on the facts.*

16.29 *Investigation has further revealed that the recommendations of the Screening Committee were sent to then Minister for Coal on 14.07.2008 for approval through note dated 14.07.2008 of Sh. HC Gupta, the then Secretary, Ministry of Coal. Accordingly on 17.07.2008 Minister for Coal and Prime Minister approved the recommendation of Screening Committee subject to certain conditions which included Thesgora-B / Rudrapuri Coal block located at Madhya Pradesh jointly to M/s. Kamal Sponge Iron & Steel Pvt. Ltd and M/s RCPL.*

16.30 *Investigation has further revealed that with the approval of Secretary, Ministry of Coal, option letter No. 38011*

/2/2007/CA-1 dated 5th August, 2008 was issued to M/s. Kamal Sponge Iron & Steel Pvt. Ltd and M/s Revati Cement Pvt. Ltd. In response to the said option letter of the Ministry of Coal, both allocatee companies decided to opt for Option No. 1 and vide letter dated 3rd September, 2008, M/s RCPL informed the Ministry of Coal for opting the Option-I and submitted Joint Venture Agreement dated 3rd September, 2008 duly signed by Sh. Pawan Kumar Ahluwalia on behalf of M/s. KSSPL and Sh. V. K. Jain on behalf of M/s RCPL. The said JV agreement was witnessed by Sh. Vivek Agarwal, CA, on behalf of M/s. KSSPL and Sh. Arvind Pujari, on behalf of M/s RCPL. There with the approval dated 19.11.2008 of Sh. H. C. Gupta, the then Secretary, Ministry of Coal, Joint Allocation letter No. 13016/53/2008-CA-I dated 21st November, 2008 in respect of allocation of Thesgora-B / Rudrapuri Coal block located at Madhya Pradesh was issued to M/s. Kamal Sponge Iron & Steel Pvt. Ltd and M/s RCPL for their Sponge Iron plant and Cement plant both at Satna, Madhya Pradesh.

16.31 *The aforesaid acts of commissions and omissions on the part of applicant company M/s. RCPL, Sh. H. C. Gupta, the then Secretary, Ministry of Coal and Chairman, 36th Screening Committee, Sh. K. S. Kropha, the then Joint Secretary, Ministry of Coal and Member Convener, 36th Screening Committee, New Delhi, Sh. Chinmay Palekar, the then Director, M/s RCPL., Sh. V. K. Jain and Sh. Arvind Pujari constitute commission of offences punishable u/s. 120-B r/w 420 of IPC and Sec 13(2) r/w 13(1)(d) of the PC Act, 1988 and substantive offences thereof."*

12. After filing of final report u/s 173 Cr. PC, cognizance in the matter was taken by this Court vide Order dated 17.08.2017 for the offences u/s 120-B, 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 against all the six accused persons i.e. M/s Revati Cement Pvt Ltd. (A-1), H.C. Gupta (A-2), K.S. Kropha (A-3), Chinmay Palekar (A-4), Vijay Kumar Jain (A-5) and Arvind Pujari (A-6). After the accused persons had put in their appearance in the Court, copy of charge-sheet was supplied to them and after due compliance of Section 207 Cr. PC, matter was adjourned for hearing arguments on the point of charge. In the meantime, further investigation in the matter was also undertaken by CBI in connection with obtaining of handwriting expert's opinion qua certain documents allegedly bearing signatures of private accused persons. Upon

completion of further investigation, a supplementary report u/s 173(8) Cr. PC was filed. Subsequently, when arguments on the point of charge were being heard, then Ld. Counsel Sh. Sushil Bajaj for accused company M/s Revati Cement Pvt Ltd. (A-1) and Chinmay Palekar (A-4) and Ld. Counsel Sh. Samrat Nigam for Vijay Kumar Jain (A-5) and Arvind Pujari (A-6) stated that though the allegations levelled by the prosecution against their clients are false but during the course of trial when the parties will get an opportunity to lead their respective evidence, then they will be able to prove the assertion that the allegations levelled by the prosecution are baseless and no offence is made out against the four accused persons. Ld. Counsels thus stated that they have no objection, if the Court proceeds further with the framing of charges against A-1 M/s Revati Cement Pvt. Ltd., A-4 Chinmay Palekar, A-5 Vijay Kumar Jain and A-6 Arvind Pujari for the offences u/s 120-B/420 IPC and also for the substantive offences thereof. However, Ld. Counsel Sh. Rahul Tyagi for the two accused public servants i.e. H.C. Gupta (A-2) and K.S. Kropha (A-3), strongly opposed the framing of charges against his clients stating that from a bare perusal of the allegations levelled by the prosecution, no offence whatsoever was made out against them.

13. Ld. DLA Sh. V.K. Sharma while addressing arguments on behalf of prosecution, submitted that while prima facie charge for the offence u/s 120-B/420 IPC along with substantive offences thereof was made out against the private accused persons, but at the same time prima facie charge for the offence u/s 13(1)(d)/13(2) PC Act,1988 and for the offence u/s 120-B IPC was also made out against the two accused public servants. Ld. Counsel Sh. Rahul Tyagi for the two accused public servants i.e. H.C. Gupta (A-2) and K.S. Kropha (A-3) thereafter addressed oral arguments on the point of charge submitting that no charge for any offence

whatsoever is made against the two accused public servants. He also sought time to file written submissions in support of his oral arguments. However, the filing of written submissions on behalf of accused H.C. Gupta and accused K.S. Kropha got delayed due to present pandemic situation, as the regular physical functioning of the Courts got suspended. Subsequently, after sometime when the hearing of the case was taken up through video conferencing, then Ld. Counsel Sh. Rahul Tyagi for A-2 H.C. Gupta and A-3 K.S. Kropha submitted lengthy written submissions in support of his oral arguments, on the point of charge.

Arguments of Prosecution:

14. It was submitted by Ld. DLA Sh. V.K. Sharma that from the overall facts and circumstances of the case, it is apparent that a criminal conspiracy was hatched between the MOC officers and the private parties involved with a view to procure allocation of impugned coal block in favour of company M/s RCPL. It was submitted that Hon'ble Supreme Court in the case ***Manohar Lal Sharma Vs. The Principal Secretary & Others, Writ Petition (Crl.) No(s) 120 of 2012 decided on 25.07.2014***, has already observed that the functioning of MOC and that of the Screening Committee has been completely arbitrary in nature. The allocation of all the coal blocks was also opined to be illegal by Hon'ble Supreme Court and were accordingly cancelled. It was submitted that the sketchy nature of the minutes of 36th Screening Committee or otherwise evasive nature of proceedings was clearly an indicator to the existence of a criminal conspiracy between the accused persons.

15. It was submitted that from a bare perusal of the application

form of company M/s RCPL, it was clear that the company had mentioned the figures of financial strength of its group companies and not its own. It was submitted that in terms of the guidelines issued by Ministry of coal governing allocation of captive coal blocks, the figures of financial strength of the applicant company were asked for and it was only in the case of a new Joint Venture Company or a Special Purpose Vehicle that the figures of financial strength of its principles were permitted to be mentioned. It was submitted that admittedly company M/s RCPL was neither a special purpose vehicle nor a joint venture company and thus mentioning the figures of the financial strength of the group companies was clearly an act to cheat Ministry of Coal, Government of India in procuring allocation of a captive coal block. The company clearly intended to present a higher status of financial capability to establish the end use project and to mine the coal block. It was submitted that from a bare perusal of the application of the company, the accused public servants ought to have outrightly rejected the application or in the alternative could have asked for the figures of financial strength of the applicant company. It was submitted that the net-worth of applicant company as on 31 March 2006 was a mere Rs. 3,37,727/- and thus on the basis of such of mere net-worth, it was clearly not a financially viable proposal for establishing the impugned end use project, much less to mine the coal block in question. It was also submitted that even if credit facility was being obtained from any financial institution by the company then also the application of the company was otherwise liable to be dismissed/rejected on the ground that its application was not in accordance with the guidelines issued by Ministry of Coal. It was also pointed out that admittedly applicant company M/s RCPL was not having any mining experience or experience in any field in as much as the Director's Report attached with the balance sheet of the applicant

company clearly stated that since the time of incorporation of the company in the year 1992, it has not yet undertaken any business activity. Thus, it was also clear that the proposal of company M/s RCPL was even not technically sound or viable.

16. It was further submitted by Ld. DLA that the accused public servants being the Chairman and Member Convenor of 36th Screening Committee beside also being senior officers of MOC, deliberately chose to ignore the apparent defects in the application of applicant company M/s RCPL, so as to facilitate allocation of a captive coal block in its favour. It was also submitted that since the application of company M/s RCPL was *per se* liable to be rejected, so the question of comparing it with the other applicant companies for the said coal block with a view to arrive at any *inter se* priority does not arise.

17. As regard the recommendation of the State Government of Madhya Pradesh, it was submitted that till 03.07.08 i.e. till the time last meeting of Screening Committee took place and the Screening Committee proceeded to make recommendation to Minister of Coal, there was no communication available before the Screening Committee that Government of Madhya Pradesh had adopted any point-wise criteria for making recommendations to MOC much less, as to how many points have been assigned either to M/s BLA Power company Ltd. or to M/s Revati Cement Ltd. or to M/s KSSPL. It was thus submitted that there is nothing on record to show as to how the Screening Committee members or the MOC officers came to know about the facts mentioned in the files of Government of Madhya Pradesh. The minutes of the Screening Committee were also stated to be clearly silent as to who gave this information to the Screening Committee before it proceeded to make

recommendation in favour of M/s RCPL. It was also submitted that if 36th Screening Committee was dealing only with the applications of companies engaged in non-power sector projects, then it is beyond comprehension as to why company M/s BLA Power Corporation Ltd, which purported to be engaged in power sector was called for making presentation before 36th Screening Committee. It was thus submitted that if the said company was called for making presentation before 36th Screening Committee then it was least expected of the accused public servants while finalizing and approving the minutes of the meeting at a later point of time, to mention as to in what circumstances a company engaged in power sector was called to make presentation before 36th Screening Committee or why it is not being recommended for allocation of the impugned coal block, even though it has been recommended by State Government of Madhya Pradesh.

18. It was also submitted that while forwarding the file for approval to PMO, accused H.C. Gupta in his note dated 14.07.2008, though preferred to make observations qua various other companies but he deliberately chose to not make any observation qua the case of M/s RCPL, lest to point out as to whether the recommendation in favour of said company was as per the recommendation of Sate Government and Administrative Ministry or not.

19. It was also pointed out that subsequently when a meeting took place between Sh. T.K A. Nair, Principal Secretary to Prime Minister and accused H.C. Gupta, Secretary (Coal), then accused H.C. Gupta stated that all the recommendations have been made in accordance with the recommendations of State Governments and Administrative Ministry and which fact was not factually correct.

20. As regard accused K.S. Kropha, it was submitted that being Joint Secretary, MOC and Member Convener 36th Screening Committee, he deliberately omitted to take all such precautions as were required to be taken by him to ensure compliance with the guidelines issued by MOC governing allocation of captive coal blocks and thereby he along with accused H.C. Gupta facilitated allocation of impugned coal block in favour of M/s RCPL. It was submitted that it is for this reason only that the Competent Sanctioning Authority chose to accord sanction for prosecution of the two accused public servants u/s 19 P.C. Act,1988 and for any other offences under any other law.

21. It was thus submitted that at this stage of the matter prosecution cannot be denied the opportunity of proving that all these acts were not the result of any inadvertent mistake but were deliberate acts, having been done in pursuance to a criminal conspiracy hatched amongst the accused persons.

22. In support of his submissions Ld. DLA placed reliance upon the following case law:

SRL. NO.	CASE TITLE	CITATION
1	STATE OF BIHAR V. RAMESH SINGH	1977 CRI. L. J. 1606.
2	SUPDT. AND REMEMBRANCER, LEGAL AFFAIRS, W. B. V. ANIL KUMAR BHUNJA	1979 CRI. L. J. 1390
3	STATE OF TAMIL NADU VS. J. JAYALALITHA	2000 SCC (CRI) 981
4	STATE OF M.P. V. S.B. JOHARI	2000 CRI. L. J. 944
5	SMT. OM WATI AND ANOTHER VS. STATE, THROUGH DELHI ADMN. AND OTHERS	2001 CRI. L. J. 1723
6	STATE OF TAMIL NADU VS N SURESH RAJAN & OTHERS	2014 (11) SCC 709,

Arguments on behalf of Accused public servants:

23. On the other hand, Ld. Counsel Sh. Rahul Tyagi for accused public servants has submitted detailed written submissions separately for the two accused. However, a perusal of the two set of written submissions show that except for mentioning in the written submissions filed qua accused H.C. Gupta that he was the Chairman of Screening Committee and in the written submissions filed qua accused K.S. Kropha, that he was the Member Convener of Screening Committee, the other submissions are identical. Accordingly, I am mentioning the arguments in common for both the accused persons.

24. It has been submitted by Ld. Counsel Sh. Rahul Tyagi that from a bare perusal of the final report under section 173 Cr. PC or the supplementary report, filed under section 173 (8) Cr.PC, it is clear that ingredients of none of the offences are made out either against accused H.C. Gupta, or as against accused K.S. Kropha even for a prima facie view. It has been submitted that offence under section 13 (1) (d) PC Act, creates 3 different and distinct offences and each of them is independent, alternative and disjunctive. It has accordingly been submitted, that before coming to any conclusion regarding any of the 3 sub-clauses, the Court must specify as to for which of the offence, the essential ingredients are prima facie made out or the charge is proposed to be framed. It has been further submitted that the first and foremost essential ingredient of all the 3 sub-clauses is that the public servant must have obtained either for himself or for any other person a valuable thing or pecuniary advantage. It has been thus submitted that mere making of a recommendation for allotment of Thesgora-B/Rudrapuri Coal Block in favour of company M/s RCPL does not amount to obtaining anything by the public servants either

for themselves or for any other person and more so when the said recommendations were to attain finality only upon the approval of the same by the Minister of Coal. It has been submitted that prosecution itself has admitted that accused himself was not having any power to allocate the coal block and that the said power was exercised by Minister of Coal only. It has been thus submitted that the basic and essential ingredient of the offence of criminal misconduct i.e. obtaining a valuable thing or pecuniary advantage does not stand satisfied, even for a prima facie view.

25. It has been also submitted that even otherwise, the recommendation for allocation of impugned coal block in favour of accused company was not that of any individual public servant but was that of the screening committee as a whole. It has been thus submitted that to pick out the present two accused public servants from out of all the members of the screening committee and attributing the decision of the screening committee to the present two accused only cannot stand the scrutiny of law or can be even justified by any logic. It has been also pointed out that a perusal of the file of Prime Minister's office (PMO) show that when the recommendations of 36th screening committee were sent to PMO by Ministry of Coal for approval, then the Prime Minister as Minister of Coal raised a number of queries. It has been thus submitted that it cannot be presumed even for the sake of arguments that the Prime Minister as Minister of Coal blindly accepted the recommendations of the Screening Committee, including the one pertaining to allocation of Thesgora-B/Rudrapuri coal block in favour of M/s RCPL. While referring to the treatise **"*Shackleton on the law and practice of meetings*"** it has been submitted by Ld. Counsel for accused that the decision/view of the majority becomes binding on the minority and even in the case of working of screening committee no special majority was required. In case of

difference of opinion, if everyone agrees with the decision announced by Chairman as per the summed-up sense of the discussion without any dissent, then it cannot be stated that the decision was not that of the committee as a whole. It has been further submitted that undisputedly no minimum or special majority or unanimity was stipulated for deciding allocations in the screening committee and no such special rules for conduct of the screening committee business have even been put forward by the prosecution. It has been thus submitted that in the absence of any such specific rules, the screening committee meeting was to be governed by universally accepted practices and conventions. It has been further submitted that as the screening committee was an inter-departmental, inter-ministerial and inter-governmental committee, so the rules as provided in ***"Transaction of Business Rules"*** of Govt. of India and the ***"Central Secretariat Manual of office Procedure"*** would have applied. The screening committee was to thus act and take its decision as a body, and no single member or chairman or convener had any special powers or authority to take any decision unilaterally. It has been thus submitted that all the recommendations so arrived at by the screening committee were the decisions/recommendations of the entire committee and cannot be attributed to any single person much less to the present accused public servants. It has been also submitted that the recommendation for allocation of Thesgora-B/Rudrapuri coal block in favour of M/s RCPL as recommended by the screening committee in its meeting held on 03.07.2008 was duly recorded in writing in the meeting itself. All the members present duly signed the said recommendation sheets without expressing any dissent or objection to the decision/recommendations of the screening committee with respect to allocation of various coal blocks to different applicant companies. The said recommendation sheets finally

formed part of the minutes of the meeting. In the minutes, it was also mentioned that the members who had attended the said meeting have affixed their signatures to the recommendations of the committee. It has been further submitted, that the very act of putting signatures on the recommendation sheets clearly show that the person signing the document has done so in token of his knowledge and approval and acceptance of the said document. A presumption thus arises against the said person that he has read and understood the said document. It has been thus submitted by Ld. Counsel that now none of the said members of the screening committee can be permitted to state after so many years that they had not signed the recommendation sheets as a token of their acceptance of the recommendations of the screening committee. It has been also submitted that none of the members of the screening committee have even stated to the CBI during the course of investigation that they signed the recommendation sheets under some duress or fraud. The role of chairman and member convener of such a committee were also highlighted to argue that the decision of the screening committee was a collective decision and that the same cannot be attributed either to the chairman or to the member convener alone. Statements under section 161 Cr. PC of various prosecution witnesses and especially that of PW 2 Sh. R. Muralidhar, PW 3 Sh. Shashi Ranjan Kumar and that of PW 8 Sh. S.K. Mishra were also referred to in this regard.

26. It has been also submitted that the prosecution has been unable to point out, any special effort or initiative taken by either of the two accused persons so as to extend any special favour to M/s RCPL in the screening committee meeting. It has been thus submitted that the prosecution has clearly failed in bringing on record even an iota of evidence to show that the accused public servants resorted to any corrupt

or illegal means, or obtained any valuable thing or pecuniary advantage or that they abused their position as a public servant in any manner. It has been further submitted that prosecution has even failed to prove any benefit of any nature whatsoever, having been obtained by any of the two accused public servants and thus the important ingredient of *mens rea* is clearly missing in the present case. It has been submitted that prosecution has failed to bring on record any evidence which could show that any special favour was given to any of the applicant companies in the screening committee meeting, much less to M/s RCPL. The essential ingredient of dishonest intention was thus stated to be clearly missing.

27. It has been further submitted that the guidelines as were arrived at by DIPP in its internal meeting were never communicated to Ministry of Coal and were in fact never accepted by MOC as the guidelines governing allocation of coal blocks. It has been further submitted that the said guidelines arrived at by DIPP cannot be treated as binding upon the screening committee members, much less upon Ministry of Coal. As regard the allegation that screening committee ought to have recommended M/s Prism Cement Ltd. in place of M/s RCPL, it was submitted that CBI has not brought any evidence to show that any member of the screening committee ever stated in the meeting that M/s Prism Cement Ltd was a better placed company. It was also pointed out that M/s Prism Cement Ltd was in fact already allotted another coal block in the 34th screening committee and allocation letter to M/s Prism Cement Ltd was issued on 29.05.2007 by Ministry of Coal. It has been also submitted that the said block allotted to M/s Prism Cement Ltd was for the same end use project at Satna in Madhya Pradesh as was mentioned in its application form being considered by 36th Screening Committee and thus in both the applications the allocation of coal block was sought for the

existing capacity of 2 MTPA only and there was no claim that any additional capacity was proposed to be established. It has been pointed out that since DIPP sent its recommendations to MOC on 16.05.2007, so, by that time, it was not aware of the issuance of allocation letter in favour of M/s Prism Cement Ltd by Ministry of Coal, pursuant to recommendations of 34th screening committee. It has been however submitted that DIPP was though otherwise aware of the recommendations made by 34th screening committee. It has also been submitted that in these circumstances 36th screening committee could not have considered allocation of yet another coal block in favour of M/s Prism Cement Ltd for the same end use project. It has also been pointed out that M/s Prism Cement Ltd was also already having long-term coal linkage.

28. As regard non-sending of application of M/s RCPL to DIPP for examination, it has been submitted that inadvertently the said application seems to have been sent to Ministry of Steel, but the Ministry of Steel did not prefer to forward the same either to DIPP or to return it back to Ministry of Coal stating that the same does not pertain to their Ministry. However, it was submitted that DIPP cannot claim that it had no occasion to examine the application of M/s RCPL since in the very first meeting of 36th screening committee held on 07.12.2007, the Agenda Notes containing the application forms (excluding enclosures) of all applicant companies were available with all members of the screening committee. The said agenda notes were thus also available with the representative of DIPP in the meeting. Furthermore, on 07.02.2008, when M/s RCPL made a presentation before the screening committee and also submitted the feedback form, then at that time, the representative of DIPP was admittedly present in the said meeting. He thus also received a copy of the feedback form and that of the presentation made by the company

representatives. It has been thus submitted that though PW R. Muralidhar has stated in his statement u/s 161 Cr. PC that he had verbally informed his seniors, that the application of M/s RCPL has not been received by DIPP, but nothing has been stated by him as to why he did not prefer to mention the said fact in his note submitted by him in his department with respect to the meetings of screening committee held on 07/08.12.2007

29. The claim made by PW 3 Shashi Ranjan Kumar, Director, DIPP in his statement, U/S 161 Cr. PC that he signed the recommendation sheets in the meeting held on 03.07.2008 as representative of DIPP only because all the other officers were signing it, and that he was the junior most amongst all the officers present in the said meeting, has been stated to be an afterthought having been made with a view to disown his responsibility in being collectively party to the impugned decision of the screening committee. It has been submitted that as none of the members of the screening committee were administratively subordinate to anyone in the meeting, so the said claim of PW 3 Shashi Ranjan Kumar cannot be believed at all. It has been submitted that as PW 3 Shashi Ranjan Kumar was representing DIPP in the said meeting and no other member of the committee was in a position to exert any pressure or influence upon him, so he was not under any compulsion to agree with the decision of the screening committee or with the views of other members of the screening committee, in case he or his department were having any view different from the decision of the screening committee.

30. As regard the allegation that screening committee ignored the guidelines evolved in a meeting of DIPP, it has been submitted that the said guidelines were in fact evolved with respect to 34th Screening Committee meeting and the same were never approved by the Minister in

charge of DIPP. The said guidelines were thus stated to be neither binding upon the screening committee nor upon Ministry of Coal. It has been submitted that the said guidelines were merely adopted by DIPP as their internal criteria for the limited purpose of carrying out an appraisal/evaluation of the applications received by them from MOC.

31. As regard the allegation that at the time of recommendation M/s RCPL was not engaged in the production of cement, it has been submitted that it has been well established in a number of coal block allocation matters investigated by CBI that the screening committee(s) recommended allocation of various coal blocks in favour of different applicant companies who had only proposed to engage in any of the recognized end use project and were not already having any established end use project. It has been submitted that the understanding of officers of MOC and that of the screening committee at the relevant time was that the applicant companies should be either having an already established recognized end use project or should propose to establish one or the other recognized end use project where the coal to be extracted will be captively used. It has been thus submitted that the subsequent clarification by Hon'ble Supreme Court in its order dated 25.08.2014 in the case ***Manohar Lal Sharma (supra)*** cannot be now so interpreted so as to impute any criminality upon the officers of the relevant period involved in the allocation of captive coal blocks.

32. As regard the allegations that DIPP had recommended M/s Birla Corporation Ltd. and that State of Madhya Pradesh had sent the name of M/s BLA Power Ltd. for allocation of Thesgora-B/Rudrapuri coal block and that they had not recommended M/s RCPL at all, it has been submitted that undisputedly the block in question i.e. Thesgora-

B/Rudrapuri coal block was not reserved for companies engaged in generation of power. Thus, as M/s BLA Power Ltd. was admittedly engaged in generation of power, so it could not have been recommended for allocation of Thesgora-B/Rudrapuri coal block. Similarly, as regard M/s Birla Corporation Ltd. it has been submitted that in the same meeting, the said company which was also engaged in manufacturing of cement was allotted another coal block i.e. Vikram Coal Block and thus the said company could not have been considered for any other coal block much less for Thesgora-B/ Rudrapuri coal block. A comparative analysis of all the 10 applicant companies who had applied for allocation of Thesgora-B/Rudrapuri coal block has thus been highlighted to show that M/s KSSPL and M/s RCPL were the only two suitable companies which could have been recommended by 36th Screening Committee for allocation of the block in question. It has been also submitted that from the file of Government of Madhya Pradesh it is clear that before sending its recommendations, the Government of Madhya Pradesh had undertaken a formal mathematical calculation for shortlisting the applicant companies by assigning marks to them on the basis of various factors. It has been thus pointed out that on the basis of the marks so assigned, M/s RCPL and M/s KSSPL were at Serial number 2 and 3 respectively in the list with M/s BLA Power Ltd at number 1. Accordingly, it has been submitted that as M/s BLA Power Ltd. was not entitled for allocation of the impunged coal block reserved for non-power sector companies, so 36th Screening Committee chose to make recommendation in favour of next two most suitable companies in accordance with the recommendations of Government of Madhya Pradesh i.e. in favour of M/s RCPL and M/s KSSPL. It has been thus submitted that the screening committee in fact, agreed with the findings of State of MP and found M/s RCPL as being the

most deserving applicant from all the remaining applicant companies. The recommendation in favour of M/s RCPL has been thus stated to be having the consent of all the members present.

33. As regard the allegation that accused H.C. Gupta incorrectly informed Principal Secretary to the Prime Minister that the recommendations were strictly based on the recommendations of State Government and on merits and that there after only the Prime Minister as Minister of Coal approved the recommendations, it has been submitted that a perusal of note dated 16.07.2008 put up by Ms. Vinni Mahajan, the then Joint Secretary, PMO clearly show that the impugned statement that the recommendations are based strictly on the merits of the applicant's including recommendations of State Governments where the blocks are located is attributable to Secretary (Steel) and not to accused H.C. Gupta. It has been further submitted that even otherwise the said statement cannot be solely attributed to accused H.C. Gupta and if the circumstances are liable to two interpretations then the one favouring the accused ought to be accepted. It has been further submitted that CBI has also failed to show that the impugned statement was made in connection with the recommendation made in favour of M/s RCPL.

34. It has been also submitted that the investigating agency has completely failed to bring on record any iota of evidence which could show either any meeting of mind in between the accused persons or which may even prima facie establish ingredients of the offence of criminal conspiracy. It has been submitted that as the present case is admittedly based on circumstantial evidence, so if any link in the said circumstantial chain of evidence is found to be not proved then the entire chain stands broken and the theory of criminal conspiracy also stands not proved. It

has been also submitted that if two views are possible from the overall facts and circumstances of the prosecution case, then the view which favours the accused ought to be accepted. It has been also submitted that the acts which can be alleged against the accused public servants must be such as may be shown to have been done strictly in pursuance to the common intention shared by the conspirators. No inference merely based on conjectures and surmises be drawn in this regard.

35. It has been also submitted that admittedly all the acts were undertaken by accused public servants in the discharge of their official duties and thus cognizance of the offence under IPC in the absence of any sanction under section 197 Cr. PC was clearly bad in law. It has been further submitted that pursuant to amendments carried out in the Prevention of Corruption Act,1988, in the year 2018, the very offence of criminal misconduct for which the accused persons have been charge-sheeted ceases to be on the statute book. It has been submitted that a perusal of the 'Amendment Act, 2018' also show that the intention of the Legislature was to do away with the said offence of criminal misconduct. It has been thus submitted that the prosecution cannot be now permitted to invoke the said omitted section 13(1)(d) against the accused persons and especially in the light of section 6 of General Clauses Act.

Both the accused public servants were thus prayed to be discharged.

36. In support of his submissions, Ld. Counsel Sh. Rahul Tyagi for A-2 H.C. Gupta and A-3 K.S. Kropha placed reliance on the following case law:

SRL.	CASE TITLE	CITATION

NO.		
1	MAIN PAL VS. STATE OF HARYANA.	MANU/SC/0676/2010.
2	NIRANJAN SINGH KARAM SINGH PUNJABI, ADVOCATE VS. JITENDRA BHIMRAJ BIJJAY AND OTHERS.	(1990) 4 SCC 76.
3	ONKAR NATH MISHRA AND ORS. VS. STATE (NCT OF DELHI) AND ORS.	MANU/SC/0134/2008.
4	STATE OF ORISSA VS. DEBENDRA NATH PADHI.	AIR 2005 SC 359.
5	SURESH BUDHARMAL KALANI @ PAPPU KALANI VS. STATE OF MAHARASHTRA.	MANU/SC/0608/1998.
6	DILAWAR BABU KURANE VS. STATE OF MAHARASHTRA.	AIR 2002 SUPREME COURT 564.
7	RAJEEV KUMAR AND OTHERS VS. STATE OF U.P.	MANU/SC/0932/2017.
8	GRASIM INDUSTRIES LTD. AND ANR. VS. AGARWAL STEEL.	MANU/SC/1763/2009.
9	MUNICIPAL CORPORATION OF GREATER BOMBAY VS. P.S. MALVENKAR.	AIR 1978 SC 1380.
10	JOSE MATHEW AND ORS. VS. JAMES AVIRAH & ORS.	MANU/KE/0112/2016.
11	MUSKHAM FINANCE LTD. V. HOWARD	1963(1) ALL ER 81.
12	SAUNDERS V. ANGLIA BUILDING SOCIETY	MANU/UKHL/0004/1970.
13	MATHU VS. CHERCHI.	MANU/KE/0515/1989.
14	R. SAI BHARATHI VS. J. JAYALALITHA AND ORS.	MANU/SC/0956/2003.
15	JETHSUR SURANGBHAI VS. STATE OF GUJARAT.	MANU/SC/0109/1983.
16	RAVI YASHWANT BHOIR VS. DISTRICT COLLECTOR, RAIGAD.	MANU/SC/0186/2012.
17	R. BALAKRISHNA PILLAI VS. STATE OF KERALA.	MANU/SC/0212/2003.
18	NARAYANAN NAMBIAR VS. STATE OF KERALA.	MANU/SC/0164/1962.
19	C.K. JAFFAR SHAREIF VS. STATE THROUGH C.B.I.	MANU/SC/0962/2012.
20	STATE VS. K. RANGACHARI AND ORS.	MANU/DE/2779/2017.
21	MAJOR S.K. KALE V. STATE OF MAHARASHTRA.	MANU/SC/0139/1976.
22	S.P. BHATNAGAR V. STATE OF MAHARASHTRA.	MANU/SC/0230/1979.
23	A. SIVAPRAKASH VS. STATE OF KERALA.	MANU/SC/0541/2016.
24	ABDULLA MOHD. PAGARKAR V. STATE (UNION TERRITORY OF GOA, DAMAN AND DIU),	MANU/SC/0632/1979.
25	MADHU KODA VS. C.B.I.	CRL. M.A. NO.38740/2019.
26	MANOHAR LAL SHARMA VS. THE PRINCIPAL SECRETARY.	(2014) 9 SCC 641.
27	J. JAYALALITHA VS. STATE.	MANU/TN/1423/2001.
28	IN HINDUSTAN STEEL LIMITED V. STATE OF ORISSA.	MANU/SC/0418/1969.

29	RUNU GHOSH V C.B.I.	MANU/DE/6909/2011.
30	STATE VS. K MOHANCHANDRAN & ORS.	MANU/KE/1215/2017.
31	STATE OF MADHYA PRADESH VS. SHEETLA SAHAI AND ORS.	MANU/SC/1425/2009.
32	KEHAR SINGH AND ORS. VS. STATE.	MANU/SC/0241/1988.
33	REGINA V. MURPHY.	173 E R 508.
34	SHARAD BIRDICHAND SARDA VS. STATE OF MAHARASHTRA.	MANU/SC/0111/1984.
35	SHIVAJI SAHEBRAO BOBADE VS. STATE OF MAHARASHTRA.	MANU/SC/0167/1973.
36	HANUMANT VS. STATE OF MADHYA PRADESH.	MANU/SC/0037/1952.
37	REG V. HIDGE	(1838) 2 LEW 227.
38	RAM SINGH VS. SONIA.	MANU/SC/7109/2007.
39	HARENDRA NARIAN SINGH VS. STATE OF BIHAR.	MANU/SC/0416/1991.
40	CENTRAL BUREAU OF INVESTIGATION, HYDERABAD VS. K. NARAYANA RAO.	MANU/SC/0774/2012.
41	P.K. NARAYANAN VS. STATE OF KERALA.	(1995)1 SCC 142.
42	SHERIMON VS. STATE OF KERALA.	AIR 2012 SC 493.
43	STATE OF TAMIL NADU VS. J. JAYALALITHA.	MANU/SC/0354/2000.
44	STATE V. NALINI.	MANU/SC/0945/1999.
45	SARDAR SARDUL SINGH CAVEESHAR V. STATE OF MAHARASHTRA.	MANU/SC/0063/1963.
46	R. BALAKRISHNAN PILLAI VS. STATE OF KERALA.	MANU/SC/0237/1996.
47	HARIHAR PRASAD VS. THE STATE OF BIHAR.	1972 CR1.L.J. 707.
48	B. SAHA & ORS. VS. M.S. KOCHAR.	(1979 (4) SCC 177.
49	SANKARAN MOITRA V. SADHNA DAS AND ANR.	MANU/SC/1484/2006.
50	MATAJOG DOBEY V. H.C. BHARI.	MANU/SC/0071/1955.
51	HORI BARN SINGH V. CROWN SULAIMAN	
52	BAIJNATH V. STATE OF M.P.	
53	RAKESH KUMAR MISHRA V. STATE OF BIHAR AND ORS.	MANU/SC/0200/2006.
54	PARKASH SINGH BADAL V. STATE OF PUNJAB AND ORS.	MANU/SC/5415/2006.
55	STATE OF KARNATAKA V. AMEERJAN.	MANU/SC/7922/2007.
56	STATE OF PUNJAB VS. MOHAR SINGH.	MANU/SC/0043/1954.
57	T. BARAI V. HENRY AH HOE & ANOTHER.	MANU/SC/0123/1982.
58	MICHELL V. BROWN.	[1959] 120 E.R. 909.
59	SMITH V. BENABO.	[1937] 1 ALL. E.R. 523.
60	REGINA V. YOULE.	[1861] 158 E.R. 311.
61	RATTAN LAL V. STATE OF PUNJAB	
62	COMMON CAUSE A REGISTERED SOCIETY VS. UNION OF INDIA (UOI) AND ORS.	MANU/SC/0437/1999.
63	STATE (DELHI ADMINISTRATION) AND ORS. VS. LAXMAN KUMAR AND ORS.	MANU/SC/0109/1985.

64	C. CHENGA REDDY AND ORS. VS. STATE OF ANDHRA PRADESH.	MANU/SC/0928/1996.

Arguments in Rebuttal

37. While reiterating his earlier submissions in rebuttal, it was submitted by Ld. DLA that in the facts and circumstances of the present case, the contention of Ld. Counsel Sh. Rahul Tyagi that sanction u/s 197 Cr. PC was a pre-requisite condition for taking cognizance of the offences under IPC against the two public servants is clearly not tenable. It was submitted that in the overall facts and circumstances of the case and the well settled position of law there is no requirement of sanction u/s 197 Cr. PC for the offence u/s 120-B/409 IPC. Thus, prima facie charge for the offence u/s 120-B IPC and Section 13(1)(d)/13(2) PC At,1988, was stated to be made out against the two accused public servants.

38. I have carefully perused the record, including the case law relied upon by both the sides.

39. Before adverting to the rival contentions of both sides, it will be worthwhile to quote certain observations of Hon'ble Supreme Court on the point of framing of charge as were made in the case *"**State of Bihar Vs. Ramesh Singh 1977 CRI. L. J. 1606**"*.

> *"4. Under S.226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S.227 or S.228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons*

for so doing", as enjoined by S.227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S.228.

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that

at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.

It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.

If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, it cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable.

We may just illustrate the difference of the law by one more example.

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227.

40. In ***2000 SCC (Cri.) 981 State of Tamil Nadu Vs. J. Jayalalitha*****,** it was held by Hon'ble Apex Court that: -

"This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are "groundless" or whether "there is ground for presuming that the accused has committed the offences." Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial."

41. In the case of ***Kanti Bhadra Shaha Vs. State of West Bengal (2000) 1 SCC 722*****,** the Hon'ble's Supreme Court has even gone to the extent of holding that there is no legal requirement that the Trial Court should write an order showing the reasons for framing a charge. It is quite unnecessary to write a detailed order if the proceedings do not culminate. This was considered to be a measure to avert all roadblocks causing avoidable delays.

42. Reference may also be made to the case of ***State Vs. S Bangarappa 2001 CriL.J. Page 111***, where the Apex Court emphasized the need to have the limited exercise during the stage of framing charge. The court held that: -

"Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The

limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. (vide **State of M.P. Vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439***)."*

43. The observations of Hon'ble Supreme Court of India in a number of cases qua the offence of criminal conspiracy will also be worth reproducing over here.

In the case ***"State through Superintendent of Police, CBI/SIT Vs. Nalini", 1999 (5) SCC 235****, the Hon'ble Supreme Court summarized the broad principle governing the law of conspiracy as under:*

> ***"591.*** *Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.*
>
> ***1.*** *Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.*
>
> ***2.*** *Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.*
>
> ***3.*** *Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.*
>
> **4.** *Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a*

single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. *When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.*

6. *It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*

7. *A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".*

> **8.** *As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.*
>
> ***9.*** *It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.*
>
> ***10.*** *A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."*

44. It will be also worthwhile to quote certain observations with regard to the offence of criminal conspiracy made by Hon'ble Supreme Court in the case ***E.G. Barsay Vs. State of Bombay, AIR, 1961 SC 1762***, the view whereof was affirmed and applied in several later decisions, such as ***Ajay Aggarwal Vs Union of India 1993 (3) SCC 609***; ***Yashpal Mittal***

Vs. State of Punjab 1977 (4) SCC 540; ***State of Maharashtra Vs. Som Nath Thapa 1996 (4) SCC 659***; ***Firozuddin Basheeruddin Vs. State of Kerala, (2001) 7 SCC 596***:

> *"—The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."*

45. Thus, it is clear that evidence qua the offence of criminal conspiracy is undoubtedly hard to come up but the same is to be ascertained from the overall facts and circumstances of a given case.

46. Coming to the facts and circumstances of the present case, I may state at the outset itself that, if the entire process of allocation of Thesgora-B/Rudrapuri Coal Block in favour of M/s RCPL is seen and analysed even for a prima facie view then the same on the face of it raises a number of triable issues which needs to be looked into in-depth in a trial, before any final conclusion could be drawn as regard the commission of the offence of criminal misconduct, if committed by the accused public servants and also whether there was any active collusion between the accused public servants involved in the process and the private parties in whose favour the impugned Coal Block stood allotted. I shall be briefly highlighting some of the said triable issues over here, lest any detailed discussion may prejudice the parties during the course of trial.

47. Since, Ld. Counsels for the private accused persons have already submitted their no objection towards framing of charge for the offence u/s 120B/420 IPC and also for the substantive offences thereof, so ordinarily there would not have been any reason to discuss in detail the prosecution case qua them, but in order to appreciate the arguments put forth by Ld. Counsel for the accused public servants, some of the documents as were submitted by accused company M/s RCPL to MOC will be referred to.

48. As regard the private accused persons, I may however also state that from the overall facts and circumstances of the case including the documents relied upon by prosecution, prima facie charge for the offence u/s 120B/420 IPC is made out against them along with charge for the substantive offences thereof.

49. However, before adverting further, I may also mention that nothing being discussed over here in the present order shall tantamount to an expression of opinion on the merits of the case and the entire discussion is only for the purposes of arriving at a conclusion as to whether charges for any offence is made out against the accused public servants, or not.

50. Ld. Counsel for accused public servants has extensively argued that the decision to make recommendation for allocation of Thesgora-B/Rudrapuri coal block in favour of M/s RCPL was that of the Screening Committee and the same cannot be attributed solely to either accused H.C. Gupta or to accused K.S. Kropha. It has been submitted that though the two public servants in their capacity as Secretary and Joint Secretary, Ministry of Coal were Chairman and Member Convener,

respectively of the Screening Committee, but while working in the Screening Committee they were having the same powers as any other member of the Committee and were not exercising any administrative control over other members of the Committee. It has also been vehemently argued that while signing the recommendation sheets none of the Screening Committee members expressed any dissent or submitted any objection to the minutes even at a subsequent point of time when the minutes were sent to them and thus after expiry of about seven years they cannot claim that decision of the Screening Committee was not unanimous or that they didn't agree with it.

51. In order to appreciate the aforesaid arguments of Ld. Counsel for accused public servants, even for a prima facie view, it will be appropriate to refer to the advertisement issued by MOC whereby applications were invited for allocation of captive coal blocks. Along with the advertisement, MOC had also issued guidelines which were to govern allocation of captive coal blocks. Though a brief reference of the said guidelines/procedure has been mentioned earlier also in the present order, but for the purposes of appreciation of arguments put forth by ld. defence counsel, the relevant portion of the guidelines *(available from page 74-93 in D-5)* are being reproduced over here for a ready reference:

"Government of India
Ministry of Coal
.....

The Ministry of Coal, Government of India intend to allocate 38 coal blocks for captive coal mining by companies engaged in generation of power, production of iron and steel and production of cement. Out of these, 15 coal blocks are earmarked for power generation and 23 coal blocks would be available for other specified

end uses.

The companies registered under the Indian Companies Act, 1956 may apply for one or more of the blocks. Applications for the blocks on offer would need to be made afresh. Earlier applications, if any, shall not be considered.

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

The applications, in five (5) copies, is to be addressed to Director (CA-I), Ministry of Coal and to be submitted in the Coal India Limited Office, Scope Minar, 5th Floor, Laxmi Nagar District Centre, Delhi 110092 between 10.30 AM and 04.00 PM on any working day. The application should reach the Ministry of Coal latest by 12th January, 2007.

For further details such as application format, documents to be enclosed, details regarding the coal blocks on offer and other guidelines etc., please log on to www.coal.nic.in and click on "Applications invited for Coal Blocks".

Sd/-
(K.S. Kropha)
Joint Secretary to the Government of India"

How to apply?

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

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

(ii) In case the applicant is a JV Mining company (consortium of end user companies) or an Independent Mining company (with firm back-to-back tie up with permitted end users) list of promoter companies or the list of companies with whom tie up for supply of coal has been finalized, quantities to be shared/supplied, and certified copies of agreement/contract etc.

are to be provided. The details in respect of finances, end use plant and previous allocation of blocks i.e. SI. No. 8 to 25 and 28, 29 of the application for are to be provided in respect of all the companies with whom the supply agreement is executed. Such details may be provided on separate sheets, in the proforma as given in Form A, with suitable explanation. (Refer Form A)

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

- *Certificate of registration showing that the applicant is a company registered under Section-3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy)*
- *Document showing the person/s who has/have been authorized to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies)*
- *Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 copies.)*
- *Audited Annual Accounts/reports of last 3 years. (5 copies)*
- *Project report in respect of the end use plant. If the project report is appraised by a lender, the appraisal report shall also be submitted. (5 copies)*
- *Detailed Schedule of implementation for the proposed end use project and the proposed coal mining development project including Exploration programme (in respect of regionally explored blocks) in the form of Bar Charts. (5 copies)*
- *Scheme of disposal of unusable containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the middlings, tailings, rejects etc from the washery are proposed to be put. (5 copies)*
- *The above details are required to be submitted in respect of all the concerned companies in case of SPV/JV or Mining company.*
- *Demand draft of Rs. 10,000/- in favour of PAO, Ministry of Coal payable at New Delhi.*
- *A soft copy of details, as filled in the Application Form, is also to be furnished in the specified Database Form (in MS-Excel format) in a CD along with the Application.*

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

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……...

Guidelines For Allocation Of Captive Blocks And Conditions Of Allotment Through The Screening Committee

A. Guidelines

……...
……..
……
……..

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

- *Status (stage) level of progress and state of preparedness of the projects;*
- *Networth of the applicant company (or in the case of a new SP/JV, the net-worth of their principals);*
- *Production capacity as proposed in the application;*
- *Maximum recoverable reserve as proposed in the application;*
- *Date of commissioning of captive mine as proposed in the application;*
- *Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;*
- *Technical experience (in terms of existing capacities in coal/lignite mining and specified end use);*
- *Recommendation of the Administrative Ministry concerned;*
- *Recommendation of the State Government concerned (i.e. where the captive block is located);*
- *Track record and financial strength of the company."*

(Emphasis supplied by me)

52. The applications were thus required to be submitted in five copies. After the receipt of applications, the applications were to be

checked for their completeness and eligibility and thereafter one copy of the application was to be sent to the concerned Administrative Ministry i.e. the Ministry having jurisdiction over the proposed End Use Project (EUP) where coal was to be captively used. Another copy of the application was to be sent to the concerned State Government where the coal block whose allocation was sought for was situated and also to the State Government where the proposed EUP was existing or was to be established. Yet another copy of the application was to be sent to CMPDIL, which was to provide its views/comments qua the technical aspects of all the coal blocks under consideration before the screening committee. One copy of the application(s) was however retained with MOC. The advertisement also provided the prescribed format of the application in which the applicant companies were to submit their application. It also provided the list of documents which were to be submitted along with the application beside also providing as to on what basis the *inter-se* priority of the applicant companies shall be decided.

53. However, during the course of investigation it was found that the application of M/s RCPL was never sent to DIPP, which was the concerned Administrative Ministry for cement plants and instead it was sent to Ministry of Steel. However, it has been argued that the same was an inadvertent mistake on the part of lower officers/officials of MOC and the present two accused persons i.e. H.C. Gupta and K.S. Kropha cannot be held liable for the said mistake. Certainly, there cannot be any dispute with the said proposition, that for the said act, the present two accused persons cannot be held liable or in other words the said mistake cannot be attributed to the present two accused public servants. However, what is important to note is that subsequently when DIPP sent its recommendations to MOC vide letter dated 16.05.2007 then the name of

M/s RCPL was not mentioned over there. The reason is obvious, since the application of accused company was never received by the said department, so its name did not find mention in the recommendations sent by it to Ministry of Coal. PW 2 Sh. R. Murlidhar, the then Dy. Secretary, DIPP and PW 3 Sh. Shashi Ranjan Kumar, the then Director, DIPP, who had participated in the 36th Screening Committee meetings have categorically stated that in the Screening Committee meetings attended by them, they had disclosed that the application of M/s RCPL was never received in DIPP and thus has not been examined by them. However, Ld. Counsel for accused public servants have countered the said claim by stating that the Agenda Notes of 36th Screening Committee admittedly contained copy of application forms of all the applicant companies including that of M/s RCPL and the said agenda notes were undisputedly supplied to the representative of DIPP in the very first meeting of screening committee held on 07.12.2007. It has thus been claimed that the representatives of DIPP cannot now state that as the application of M/s RCPL was not received by them in DIPP so they had no chance to examine the same. It was submitted that even at the time of presentation made by applicant/ accused company i.e. M/s RCPL on 07.02.2008 the said Agenda Note containing the application forms (without enclosures) of all the applicant companies was very much available with Sh. R. Murlidhar, who represented DIPP in the said meeting. It has been also submitted that in the last meeting of 36th screening committee held on 03.07.2008, the representative of DIPP, namely PW 3 Sh. Shashi Ranjan Kumar, the then Director, DIPP, was shown the application (without enclosures) of M/s RCPL from the Agenda Notes available in the meeting itself. It has been further submitted that nothing otherwise prevented the DIPP officers to even subsequently ask for the application form of applicant company M/s

RCPL, more so, when in the very first meeting held 07.12.2007, it had come to their knowledge that the application of said company has not been received by them.

54. I am however not harping upon the said issue any longer except to highlight that it has not been disputed by the accused public servants, firstly, that the application of M/s RCPL was never sent to DIPP by MOC and secondly, when the said company came to make presentation on 07.02.2008, PW 2 Sh. R. Murlidhar, the representative of DIPP did point out this fact to the officers of MOC. In fact, Sh. R. Murlidhar also stated that probably on 07.02.2008 M/s RCPL was the only cement company to make presentation and thus he told the MOC officers that the application of said company has not been received by them. It has also not been disputed that in the last meeting held on 03.07.2008, PW 3 Sh. Shashi Ranjan Kumar, the representative of DIPP also pointed out that the application of applicant company M/s RCPL has not been received by them. In fact it has been stated on behalf of accused persons that upon so pointing out by him, the main application form of the company as was available in the agenda notes (without enclosures) was shown to him in the meeting itself by MOC officers.

55. Be that as it may, coming now to the application submitted by M/s RCPL, I may state that a bare perusal of the same shows that on the very first page of the application where the figures of financial strength of the applicant company i.e. turnover and profit in the last three years beside net-worth as on 31.03.2006 were to be mentioned, the applicant company chose to mention the figures of overall Ruchi Group of Companies of which the applicant company claimed to be a part of. For a ready reference the relevant columns of the application of M/s RCPL have been reproduced

hereunder:

			03-04	04-05	05-06
8	Turnover in the last 3 years (Rs. in Crores)	**(Over all Ruchi Group's performance figures)**	10640.00	11841.37	12401.29
9	Profit in last 3 years (Rs. in Crores)		91.64	110.2	175.5
10	Networth (as on 31.03.06 (Rs. in Crores)		978.24	1162.78	1668.62

56. It was also mentioned in column (5) of the application on the first page itself that the applicant company got incorporated on 22.09.1992. It is thus clear that the applicant company was neither a newly incorporated company nor a joint venture company much less any newly incorporated joint venture company. Thus, a bare perusal of the very first page of the application form reflected that the applicant company instead of mentioning the figures of financial strength of its own, has mentioned the figures of overall Ruchi Group of Companies. The reason for so mentioning the figures of financial strength of group companies, are not far-fetched. Along with the application, the company had enclosed its own annual accounts for the past three years and which clearly reflected not only very low figures of financial strength of the company, but net-worth of the applicant company as on 31.03.2006 as only Rs. 3,37,727/-. The Auditor's Report and the Director's Report for the year 2005-06, attached with the application also stated that the company has not carried out business in the year under consideration. In fact from the Annual Reports of the applicant company enclosed with the application, it is also clear that even though the applicant company M/s RCPL was incorporated in the year 1992, but had not commenced any business till the year 2006. It was for the said reason that the applicant company chose to mention high

figures of the overall Ruchi Group of Companies. Since the guidelines issued by Ministry of Coal along with the advertisement were available on the website of Ministry of Coal, so the applicant company M/s RCPL knew that for deciding the *inter se* priority of applicant companies for any given coal block the financial strength/capability of the applicant company to establish the EUP or to mine the coal block will be considered beside various other factors mentioned over there. Apparently as per the guidelines issued by MOC the applicant company was required to submit audited annual accounts/reports of its last three years and to mention its own figures of financial strength in the application form. Only in the case of the applicant company being a new Special Purpose Vehicle/Joint Venture company, that the net-worth of its principals could have been mentioned. Admittedly the applicant company M/s RCPL was neither a special purpose vehicle nor a joint venture company, much less a new company in as much as it was incorporated on 28.09.1992.

57. Thus, a bare perusal of the application would have shown that the figures of the group companies as were mentioned in the application form were neither asked for by MOC nor were a relevant consideration while considering allocation of various coal blocks to different applicant companies, especially when the applicant company was even not a newly incorporated company. Moreover, the very fact that the applicant company had also mentioned in the application form in bold letters that the figures of financial strength are that of overall group companies and not that of its own, ought to have prima facie raised a red flag as to in what circumstances the figures of financial strength of group companies have been mentioned and not that of the applicant company itself. Though MOC ought to have raised such an objection or query itself, but still when the application form of the applicant company was admittedly seen in the

screening committee meeting and it was apparent on the face of record that the applicant company was using the figures of financial strength of its group companies, not only in its application, but also in the feedback form and the presentation made before the screening committee, so it was quite natural for the screening committee members and all the more, it was the responsibility of Chairman of the Committee to have enquired about the said fact. Moreover, if any such question was raised or enquiry was made than the minutes of 36th Screening Committee ought to have made a mention about the same. The minutes are, however completely silent in this regard. In fact, in the chart annexed to the minutes of 36th screening committee as '*Annexure V*' also, the net worth of the applicant company M/s RCPL has been mentioned as Rs. 1668.62 crores.

58. At the same time, if no such query was raised in the screening committee meeting, then prima facie, it does give birth to a triable issue as to under what circumstances while considering the application of applicant company M/s RCPL, the figures of financial strength of the overall group companies were permitted to be considered or in fact were considered. Moreover, as Chairman of the Screening Committee it was least expected of accused H.C. Gupta to enquire from the representatives of applicant company about the actual figures of financial strength of the applicant company. Even if, the annexures to the applications were not part of the agenda notes still, one copy of all the applications was admittedly available with Ministry of Coal. In fact, while appreciating the overall facts and circumstances of the coal block allocation matters, it needs to be kept in mind that Ministry of coal was the nodal Ministry for allocation of coal blocks. Certainly, views and comments of all other stakeholders such as the concerned State Government(s) or the Administrative Ministries or that of CIL and its subsidiary companies were being sought, but the sole

purpose was to ensure that the coal blocks are allotted in a transparent and objective manner. In these circumstances, it was all the more responsibility of Ministry of Coal officers who were not only senior officers in Ministry of Coal i.e. Secretary and Joint Secretary, but were also Chairman and Member Convener respectively, of the screening committee, to ensure that the guidelines issued by MOC are strictly followed.

59. Nothing in fact has even been mentioned in this regard in the detailed written submissions filed on behalf of accused public servants, now on the point of charge. In these circumstances, I am of the considered opinion that this is not an issue where the theory of two views can be applied, much less to accept any view favouring the accused persons. In my considered opinion drawing of any conclusion at this stage of the matter will be purely based on conjectures and surmises, and which course of action is not permitted under law. The present issue thus can be more appropriately decided during the course of trial only i.e. after both the sides are given an opportunity to lead their evidence and especially after the accused persons are given a chance to cross examine the prosecution witnesses, lest, any further discussion may prejudice either of the two parties during the course of trial.

60. In fact, at a slightly later stage, I shall be also discussing that even though the two accused public servants are now claiming that in the Screening Committee meeting they were having the same powers and responsibilities as other members were having, but actually the situation was not so.

61. Be that as it may, from the aforesaid facts and circumstances

itself, it is clear that the Screening Committee proceedings needs to be analysed in detail, as grave doubts have arisen as to the manner in which the screening committee proceedings were conducted or the considerations for which or the circumstances in which recommendation in favour of applicant company M/s RCPL was made. Thus, if in these circumstances, the claim of PW 3 Shashi Ranjan Kumar, DIPP representative in the screening committee meeting held on 03.07.2008, that he objected to allocation of any coal block in favour of applicant company M/s RCPL, is considered even for a prima facie view, then the same *per se* appears to be justified. There is prima facie no reason as to why the Screening Committee headed by accused H.C. Gupta as Chairman and accused K.S. Kropha as Member Convener chose to go ahead considering the figures of financial strength of the overall group company in the case of M/s RCPL.

62. At this stage, it will be also pertinent to mention that from the Director's Report/Annual Accounts of applicant company as were annexed with the application form, it was clearly evident that the applicant company has not undertaken any business activity at all since the year of its incorporation i.e. since 1992 and was thus apparently not having any technical expertise in any field, much less in manufacturing of cement or any mining experience much less in mining of coal. This was yet another reason that the applicant company chose to mention the details of its group companies, for it was well aware that the technical experience will also be considered by the screening committee in arriving at the *inter se* priority of various applicant companies, for any given coal block. Thus, it is prima facie clear that the application of applicant company M/s RCPL did not qualify on the parameters laid down by Ministry of Coal itself, either from the point of view of technical experience or from the point of financial

capacity/viability. Moreover, even if it is presumed for the sake of arguments that the Screening Committee did find the applicant company to be qualified for allocation of impugned coal block in terms of its guidelines i.e. both on technical aspects as well as financial aspects and that in the present proceedings this Court cannot substitute its opinion in place of the discretion exercised by the Screening Committee, then also, I am of the considered opinion that at this stage of the matter when the record prepared by the screening committee or that of Ministry of Coal is completely silent as to in what manner such a satisfaction was arrived at in the case of applicant company, so the issue as to whether the recommendation in favour of company M/s RCPL was made on *bona fide* considerations or not can more appropriately be decided only during the course of trial when both parties will get a chance to lead their evidence and especially when the accused persons will get a chance to cross examine the prosecution witnesses.

63. It is in the light of aforesaid facts and circumstances when the other claim of Ld. Counsel for accused public servants, is considered that on the parameters of *inter se* priority M/s RCPL was clearly the most suitable applicant company as compared to other applicant companies who had also applied for allocation of Thesgora-B/Rudrapuri coal block, I may state that irrespective of the fact as to whether any other applicant company seeking allocation of impugned coal block was eligible or not, the application of M/s RCPL, could not have been considered at all by the Screening Committee, as it was clearly not in accordance with the guidelines issued by Ministry of Coal and its proposal was also prima facie not a techno-economically viable proposition.

64. As regard the arguments of accused public servants that they

were not having any administrative control over other members of the Screening Committee and their powers were also equivalent to that of other members of the Screening Committee, it would be suffice to state that the accused public servants being the senior most officers belonging to the Nodal Ministry i.e. MOC and as Chairman and Member Convener were at least responsible for ensuring that the business of the meeting is conducted as per the applicable Rules and Regulations. Prima facie, it was their duty to ensure that the guidelines issued by their Ministry and in whose approval also they were involved are duly complied with by the Screening Committee. Thus, even if it is prima facie presumed for the sake of arguments, that the Chairman i.e. accused H.C. Gupta merely summed up the discussion after hearing the views of all the members of the Screening Committee i.e. he only reconciled their views, then also it was all the more his duty and especially that of officers of MOC present in the meeting to point out and highlight that the application of M/s RCPL was not in accordance with the guidelines issued by MOC.

65. At this stage, I may also briefly mention that though the Screening Committee was comprising of representatives from different Ministries and State Governments beside that of CIL, CMPDIL and other subsidiary companies of CIL but it is the undisputed case that the application of all the applicant companies were not supplied to all the members of Screening Committee, they were supplied only such applications by MOC, as pertained to them except in the case of CMPDIL, which was to provide technical inputs regarding all the coal blocks in question. Thus, it is clear from the aforesaid circumstances, that the screening committee primarily comprised of smaller Committees, since for any applicant company applying for any given coal block only such Members could have participated in the discussion, who were supplied

with the application of the said particular applicant company. Accordingly, the representative of Ministry of Power or that of Ministry of Steel could not have expressed any opinion in the screening committee meeting qua any applicant company, who either was already engaged or proposed to be engaged in any cement project. Similarly, DIPP could not have furnished any comment or participated in the discussion qua the claim of any applicant company who was either already engaged or proposed to be engaged in establishing any EUP relating to sponge iron or steel. Similar was the position with respect to the State Government representatives who were only concerned with such applicant companies who were either seeking allocation of a coal block situated in their respective States or were having an EUP in their State or proposed to establish an EUP in their State. Thus, from the aforesaid constitution/working of Screening Committee, it is prima facie clear that mere signing of recommendation sheets by all the members qua all the coal blocks cannot prima facie signify their concurrence with the decision of the Screening Committee or that the decisions of the screening committee were unanimous decisions. At the most the same may signify that such a decision was indeed taken in the Screening Committee meeting and nothing more. In fact, there is another interesting aspect to be noted regarding the proceedings of screening committee, including the signing of recommendation sheets and the attendance sheets by the members participating in the meeting. A bare perusal of the attendance sheets of the officers participating from different departments in the five meetings of 36th screening committee and the recommendation sheets signed in the last meeting held on 03.07.2008, shows that the present two accused public servants, despite being the Chairman and Member Convener of the Committee respectively did not sign either the attendance

sheets in any of the five meetings of 36th screening committee or even the recommendation sheets prepared in the last meeting held on 03.07.2008. Thus, if the claim put forth by Ld. Counsel for accused public servants, that the two accused were not having any special power in the screening committee meeting, or that they were enjoying the same status as that of other members, is considered, then it has not been explained at all in the written submissions filed, as to in what circumstances they chose not to sign the attendance sheets or the recommendation sheets. In fact, Sh. P.R. Mondal, (Advisor) Projects, MOC did sign the attendance sheets as well as the recommendation sheets and thus it is not a case, that the officers of MOC did not sign the said attendance sheets or recommendation sheets at all. Thus, prima facie it cannot be stated that the signing of recommendation sheets by all the members present in the Screening Committee signify that the decision of the Screening Committee was unanimous. At this stage, it will be also interesting to mention that the entire minutes of Screening Committee which were subsequently drawn up in MOC and were approved by the present two accused public servants also, nowhere mentions the words “unanimous” or “unanimity”.

66. Thus, at this stage of the matter, I do not intend to go into any further length of the issue, except stating that this is a major circumstance which also can be more appropriately dealt with only during the course of trial when the parties will get a chance to lead their evidence and any expression of opinion or further discussion, at this stage may prejudice the parties during the course of trial.

67. Ld. Counsel for accused public servants, has also extensively referred to the Provisions of Central Secretariat Manual of Office Procedure or Business Transaction Rules. However, I am of the

considered opinion that in the overall facts and circumstances of the case as have been briefly discussed in the present order, it may not be appropriate to deal with all such issues at this stage of the matter. Any discussion on the present issue will require in-depth examination of the proceedings of MOC or that of the screening committee and the same may prejudice the parties during the course of trial.

68. I am also refraining from entering into the other allegations against the accused private parties levelled by the Prosecution with respect to their claim regarding land being false or not, since they have already stated that they will be proving their *bona fide* during the course of trial i.e. when they will get a chance to cross-examine the prosecution witnesses and to lead their own evidence. I have only chosen to highlight some of the apparent discrepancies in the application submitted by M/s RCPL, so as to form a prima facie view that the present case, even as regard the two accused public servants, involves triable issues which can better be decided only after both the parties get a chance to lead their respective evidence and especially after the accused persons get a chance to cross-examine prosecution witnesses.

69. I may also state that as is evident from the minutes, the representative of Government of Madhya Pradesh had stated in the beginning of the meeting held on 03.07.2008 itself that the recommendations of the State Government should be given priority but accused H.C. Gupta, who was Chairing the meeting stated that the Screening Committee has to take various factors into consideration and though recommendations of State Government shall be considered but that cannot be the sole criteria for making the decision. Certainly, these facts stand recorded in the minutes of 36th Screening Committee. It has

thus been argued by Ld. Counsel for accused public servants that the recommendations of Administrative Ministry or that of State Government were not binding upon the Screening Committee and the members representing various departments in the meeting were competent to take a decision in the meeting itself even different from the one taken by their respective organization/department. Though, the said claim has been denied by the witnesses in their statements u/s 161 Cr. PC but I do not wish to enter into any length of the issue at this stage of the matter as it may prejudice the parties during the course of trial. Suffice it would be however to state that admittedly the Administrative Ministry i.e. DIPP had not made any recommendation in favour of M/s RCPL, as it had not received its application and even concerned State Government i.e. Government of Madhya Pradesh where the proposed EUP was to be established and also the impugned coal block whose allocation was sought, was situated, had not recommended M/s RCPL. It has been argued by Ld. Counsel for accused public servants, that the State Government of Madhya Pradesh had recommended M/s BLA Power Limited and since 36th Screening Committee was only considering coal blocks reserved for non-power sector companies, so M/s BLA Power Limited could not have been considered for allocation of the coal block in question. In this regard also various issues do arise for consideration and which again can be better delved into only after a full-fledged trial is undertaken. However for the purpose of highlighting, I may mention that the circumstances in which M/s BLA Power Limited was permitted to make presentation before 36th Screening Committee by MOC or still when the recommendations of Government of Madhya Pradesh were received in favour of M/s BLA Power Limited, then under what circumstances none from the MOC objected to the same, needs to be looked into in detail.

Interestingly '*Annexure IV*" to the minutes of 36th Screening Committee give details of all the applicant companies which were considered by 36th Screening Committee and as regard M/s BLA Power Ltd., it has been mentioned that the company subsequently requested for cement plant. Thus, nothing is ascertainable from the minutes of screening committee meeting is to in what circumstances company M/s BLA Power Ltd made a request for allocation of coal block for a cement plant and for what reasons the said request was not acceded to. Strangely enough the minutes of 36th Screening Committee are also silent in this regard. In fact, the minutes are completely silent as to on what basis the *inter se* priority of various applicant companies was considered.

70. Thus, we have a case where neither State Government nor concerned Administrative Ministry had recommended M/s RCPL for allocation of coal block and also from the application of M/s RCPL it was *per se* evident that it was not in accordance with the prescribed proforma issued by MOC and that the figures of financial strength mentioned in the application form are also not that of the applicant company, but still accused public servants who were the Chairman and Member Convener of 36th Screening Committee and were senior officers of MOC i.e. the Nodal Ministry, permitted such a decision to be taken by the Screening Committee.

71. I am consciously using the word "Permitted" at this stage of the matter, since it has been the claim of accused public servants that it was the decision of the Screening Committee and not of any particular individual. Thus, without expressing any opinion about the said claim of the accused persons, I may again reiterate that as Chairman and Member Convener it was prima facie their responsibility to ensure that the

Screening Committee takes decision in accordance with the Rules and Regulations or guidelines, governing allocation of captive coal blocks.

72. The other submission of Ld. Counsel for accused public servants that the screening committee had merely recommended allocation of various coal blocks in favour of different applicant companies, and that the actual allocation was subject to approval of the screening committee recommendations by the Prime Minister as Minister of Coal, also does not help them. In this regard, it would be suffice to state at this stage of the matter, that it was a well-established procedure in Ministry of Coal and well known to the accused public servants that the Prime Minister as Minister of Coal shall primarily take a decision on the basis of the screening committee recommendations, considering that the screening committee headed by a senior officer of Ministry of Coal and with another senior officer as Member Convener, will carry out their duties diligently, transparently and objectively. No doubt, certain issues with respect to the recommendations were raised in the Prime Minister's Office, but a bare perusal of note dated 16.07.2008 of Ms. Vinni Mahajan, the then Joint Secretary in the PMO would show that the said queries or issues cropped up only pursuant to discussion held by the officers of PMO with Secretary (Coal) and Secretary (Steel). Thus, at this stage of the matter it cannot be concluded even for a prima facie view, that as the allocation of coal blocks was to take place pursuant to approval of recommendations of screening committee by the Prime Minister as Minister of Coal, so the acts undertaken by the present two accused public servants does not make out a case of framing of charge for the offence of criminal misconduct against them.

73. In view of my aforesaid discussion, it is thus prima facie clear

that a number of triable issues have arisen in the present matter which can more appropriately be dealt with only after both the sides i.e. Prosecution as well as accused persons get a chance to lead their evidence or a chance to cross examine the witnesses to be examined during the course of trial.

74. It has been also submitted by Ld. Counsel for accused public servants that in case, this Court decides to frame charges against his clients, then it may be specified as to for which of the three sub-clauses of the offence u/s 13 PC Act, 1988, the ingredients stands satisfied at least for a prima facie.

75. Undisputedly, a bare perusal of section 13(1)(d) PC Act, show that the three sub-clauses thereof are independent, alternative and disjunctive but the factum of obtaining a valuable thing or pecuniary advantage is a common essential ingredient of all the three sub-clauses. Thus, clause (i) shall be applicable if while obtaining for himself or for any other person any valuable thing or pecuniary advantage the public servant uses corrupt or illegal means. Similarly, under clause (ii) a public servant shall be liable if for obtaining for himself or for any other person any valuable thing or pecuniary advantage he abuses his position as a public servant. As regard clause (iii) a public servant shall be however liable if he obtains for any person any valuable thing or pecuniary advantage without any public interest. However, in this regard, it would be suffice to state that the facts which prosecution intends to prove or in other words, the facts qua which it intends to lead evidence during the course of trial are neither uncertain nor in doubt. Thus, the fact as to whether at the conclusion of trial the prosecution is able to prove facts constituting the ingredients of sub-clause (i) or (ii) or (iii) of 13(1)(d) PC Act or the facts so proved

constitute an offence described in more than one sub-clause, can be seen and appreciated at the time of final judgment only.

76. The answer to the aforesaid issue will thus depend on the nature of facts which prosecution finally succeeds in proving. In these circumstances it will be worthwhile to refer to section 221 Cr.PC which read as under:

> *221. Where it is doubtful what offence has been committed. -*
>
> *(1) If a single act or serious of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.*
>
> *(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1) he may be convicted of the offence which he is shown to have committed although he was not charged with it.*

77. Thus Section 221 Cr. PC clearly states that if a single act or series of acts is of such a nature that it is doubtful which of several offffences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offence. Thus, at the cost of repetition, I may state that in the present matter there is no uncertainty or doubt as regard the facts qua which prosecution intends to lead evidence or the facts which can be proved by the prosecution. Thus, the issue as to ingredients of which of the offences as described under section 13(1)(d)(i) or 13(1)(d)(ii) or 13(1(d)(iii) of PC Act or more of them shall finally stand proved or established on the basis of evidence led by the prosecution can more appropriately be decided at the time of final judgment only.

78. It is primarily for this reason that I am consciously not venturing into

any detailed analysis of the facts at this stage of the matter so as to finally conclude as to which of the offences u/s 13(1)(d)(i), (ii) or (iii) is prima facie made out. In my considered opinion, any attempt to do so at this stage of the matter might prejudice either the prosecution or the accused persons during the course of trial. Thus, it will be just and appropriate that charge for the offence of criminal misconduct by a public servant as defined under section 13(1)(d) of PC Act is only framed against the accused persons without specifying any sub-clause thereof.

79. However, it has to be ensured by the Court that the charge framed against the accused should be clear enough so as to explain to the accused the accusation for which he is being put to trial or as to what allegations he has to meet.

80. As regard the charge for the offence of criminal conspiracy, I may state that the overall facts and circumstances as discussed above clearly indicate at least for a prima facie view that the accused public servants undertook various acts, so as to favour or facilitate applicant company M/s RCPL in obtaining allotment of the impugned coal block. The facts thus prima facie indicate that the accused public servants, were knowingly facilitating the accused private parties in achieving the common object i.e. to procure allocation of a captive coal block. In my considered opinion the charge for the offence of criminal conspiracy is thus prima facie made out against all the accused persons.

81. Lastly, as regard the submission of Ld. defence Counsel that in the absence of sanction u/s 197 Cr. PC, no cognizance of the offences under IPC can be taken against the accused public servants, for all the acts were done by them in the discharge of their official duties, I may state that at

this stage of the matter it will not be appropriate to enter into any detailed discussion on the said issue, for the same will entail a detailed and complete analysis of the prosecution case. Moreover, Hon'ble Apex Court in a number of decisions has observed that the issue of sanction being required or not need not be decided at the initial stage itself and can be more appropriately decided at the time of final judgement. ***(Ref.:Station House Officer, CBI/ACB/Bangalore Vs. B.A. Srinivasan and Another, (2020) 2 SCC 153; S. K. Miglani Vs. State (NCT of Delhi), (2019) 6 SCC 111)***.

82. Ld. Counsel for accused public servants has also raised an issue relating to amendments introduced in the year 2018 in Prevention of Corruption Act, 1988 stating that pursuant to the Amendment Act of 2018, the offence of criminal misconduct ceases to be on the statue book. It has been submitted that when the Legislature has clearly expressed its intention of no longer retaining the said offence on the statute book, so no prosecution can now continue against any public servant for the said repealed offence of criminal misconduct. Though ordinarily I would have gone in detail to deal with the said issue, but I am refraining from doing so for the specific reason that after the passing of impugned Amendment Act, 2018, Ld. Counsel Sh. Rahul Tyagi himself for these very two accused public servants, raised the same issue at the stage of final arguments in another coal block allocation matter i.e. in case titled ***CBI Vs. M/s Vikash Metal & Power Ltd. & Ors., RC No. 219 2012 E 0014*** and identical submissions were made at that time also. All the submissions were thereafter dealt at length in the detailed judgement dated 30.11.2018 passed by the undersigned in the said case. Since the issue being raised is purely a legal issue and has no connection with the facts either of the said case or that of the present case, so for the sake of brevity, I am

reproducing the observations/discussion made by me in the said case. In fact, the said view got further reinforced from the observations of Hon'ble Supreme Court, Hon'ble Delhi High Court and that of Hon'ble High Court of Andhra Pradesh, subsequently in different matters involving similar issue. Thus, I do not find any reason to differ with my said earlier view in any manner.

"Judgement in the case CBI Vs. M/s Vikash Metal & Power Ltd. & Ors., RC No. 219 2012 E 0014; decided on 30.11.2018, (Para 523 to 548)

523. *The arguments put-forth by Ld. Counsel Sh. Rahul Tyagi for accused MOC officers are two-fold. Firstly that the impugned provision i.e. old section 13 (1) (d) P.C. Act, 1988 has since been omitted by virtue of Amendment Act, 2018 from 26.07.2018 i.e. the date when the same was published in the Gazette of India. It has been thus submitted that since omission of a provision in an enactment does not amount to repeal thereof so in such a situation Section 6 General Clauses Act, 1897 has no application which specifically applies to repeal of an enactment only. It has also been argued that since no similar provision as was earlier provided in the old Section u/s 13 (1) (d) has been re-enacted by virtue of Amendment Act, 2018 so it is clear that the intention of the Legislature was that no such offence under the old section 13 (1) (d) in the absence of any element of quid-pro-quo or unde advantage to the public servant concerned be made punishable.*

524. *In so far as the first argument of Ld. defence Counsel regarding non-applicability of Section 6 General Clauses Act, 1897, is concerned, I may state that the same does not hold ground at all in view of the categorical pronouncement of Hon'ble Supreme Court of India in the two cases* ***Fibre Boards Private Limited, Bangalore Vs. Commissioner of Income Tax, Bangalore (2015) 376 ITR 596*** *and* ***Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise and Another (2016) 3 Supreme Court Cases 643.*** *Though Ld. Counsel Sh. Rahul Tyagi has placed reliance upon the decisions of Hon'ble Supreme Court in the two cases i.e.* ***Rayala Corporation (P) Ltd. and Ors. Vs. The Director of Enforcement, New Delhi, (Supra) and Kolhapur Canesugar Works Ltd. & Ors. Vs. Union of India & Ors., (Supra),*** *but unfortunately Ld. Defence Counsel has chosen to not present the latest position of law before this Court as has been laid down by Hon'ble Supreme Court in the two cases i.e.* ***Fibre Boards Private Limited (Supra)*** *and* ***Shree Bhagwati Steel Rolling Mills (Supra)****.*

525. *While discussing the Rayala Corporation (P) Ltd. case (Supra), Hon'ble Supreme Court in the Fibre Board case (Supra)*

made the following observations:

> ***"25.*** *In* ***Rayala Corporation (P) Ltd.****, what fell for decision was whether proceedings could be validly continued on a complaint in respect of a charge made Under Rule 132A of the Defence of India Rules, which ceased to be in existence before the accused were convicted in respect of the charge made under the said rule. The said Rule 132A was omitted by a notification dated 30-3-1966. What was decided in that case is set out by para 17 of the said judgment, which is as follows: (SCC p. 424)*
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> > ***"****17. Reference was next made to a decision of the Madhya Pradesh High Court in State of M.P. v. Hiralal Sutwala but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132-A of the DIRs for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a rule. If Section 6 of the General Clauses Act had been applied, no doubt this complaint against the two accused for the offence punishable Under Rule 132-A of the DIRs could have been instituted even after the repeal of that rule."*
>
> ***26.*** *It will be clear from a reading of this paragraph that a Madhya Pradesh High Court judgment was distinguished by the Constitution Bench on two grounds. One being that Section 6 of the General Clauses Act does not apply to a rule but only applies to a Central Act or Regulation, and secondly, that Section 6 itself would apply only to a "repeal" not to "an omission". This statement of law was followed by another Constitution Bench in Kolhapur Canesugar Works Ltd. (2000) 2 SCC 536 case. After setting out paragraph 17 of the earlier judgment, the second constitution bench judgment states as follows: (SCC p. 550, para 33)*
>
> > ***"33.*** *In para 21 of the judgment the Full Bench has noted the decision of a Constitution Bench of this Court in Chief Inspector of Mines v. Karam Chand Thapar and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case Under Section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or Regulation under an Act after its repeal and re-enactment. In that case Section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in Rayala Corporation Case (1969) 2 SCC 412. In our considered view the ratio of the said decision squarely applies to the case on*

hand."

***27**. Kolhapur Canesugar Works Ltd. (2000) 2 SCC 536 judgment also concerned itself with the applicability of Section 6 of the General Clauses Act to the deletion of Rule 10 and 10A of the Central Excise Rules on 6-8-1977.*

***28**. An attempt was made in General Finance Co. v. CIT (2002) 7 SCC 1 to refer these two judgments to a larger bench on the point that an omission would not amount to a repeal for the purpose of Section 6 of the General Clauses Act. Though the Court found substance in the argument favouring the reference to a larger bench, ultimately it decided that the prosecution in cases of non-compliance with the provision therein contained was only transitional and cases covered by it were few and far between, and hence found on facts that it was not an appropriate case for reference to a larger bench.*

***29.** We may also point out that in G.P. Singh's Principles of Statutory Interpretation, 12th Edition, the learned author has criticized the aforesaid judgments in the following terms:*

> *"Section 6 of the General Clauses Act applies to all types of repeals. The section applies whether the repeal be express or implied, entire or partial or whether it be repeal simpliciter or repeal accompanied by fresh legislation. The section also applies when a temporary statute is repealed before its expiry, but it has no application when such a statute is not repealed but comes to an end by expiry. The section on its own terms is limited to a repeal brought about by a Central Act or Regulation. A rule made under an Act is not a Central Act or Regulation and if a rule be repealed by another rule, Section 6 of the General Clauses Act will not be attracted. It has been so held in two Constitution Bench decisions. The passing observation in these cases that 'Section 6 only applies to repeals and not to omissions' needs reconsideration for omission of a provision results in abrogation or obliteration of that provision in the same way as it happens in repeal. The stress in these cases was on the question that a 'rule' not being a Central Act or Regulation, as defined in the General Clauses Act, omission or repeal of a 'rule' by another 'rule' does not attract Section 6 of the Act and proceedings initiated under the omitted rule cannot continue unless the new rule contains a saving clause to that effect." (At pp 697-698)*

***30.** In view of what has been stated hereinabove, perhaps the appropriate course in the present case would have been to refer the aforesaid judgment to a larger Bench. But we do not find the need to do so in view of what is stated by us hereinbelow.*

***31.** First and foremost, it will be noticed that two reasons were*

given in Rayala Corpn. (P) Ltd. (1969) 2 SCC 412 for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in Rayala Corporation (P) Ltd. (1969) 2 SCC 412 cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta."

(Emphasis supplied by me)

526. *Hon'ble Supreme Court thereafter dealt with yet another issue of implied repeal vis-a-vis applicability of Section 6 General Clauses Act, 1897. However the said observations will also be worth referring to over here.*

"32. *Secondly, we find no reference to Section 6-A of the General Clauses Act in either of these Constitution Bench judgments. Section 6-A reads as follows:*

> ***"6A. Repeal of Act making textual amendment in Act or Regulation*** *- Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."*

33. *A reading of this Section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word "repeal" in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6A, therefore, again undoes the binding effect of these two judgments on an application of the 'per incuriam' principle.*

34. *Thirdly, an earlier Constitution Bench judgment referred to earlier in this judgment, namely,* ***State of Orissa v. M.A. Tulloch & Co.*** *AIR 1964 SC 1284 has also been missed. The Court there stated: (SCR pp. 483-84 : AIR pp. 1294-95, para 21)*

> ***"...****Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted."*
>
> *(emphasis supplied)*

35. *The two later Constitution Bench judgments also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression "repeal" in Section 6 of the General Clauses Act. This is for the reason given by the Constitution Bench in M.A. Tulloch & Company that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression "repeal", it is clear that repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act.*

36. *In fact in Halsbury's Laws of England, Fourth Edn., it is stated that:*

> *"So far as express repeal is concerned, it is not necessary that any particular form of words should be used. (R v. Longmead*

(1795) 2 Leach 694 : 168 ER 448, Leach at 696). All that is required is that an intention to abrogate the enactment or portion in question should be clearly shown. [Thus, whilst the formula "is hereby repealed" is frequently used, it is equally common for it to be provided that an enactment "shall cease to have effect" (or, If not yet in operation, "shall not have effect") or that a particular portion of an enactment "shall be omitted]."

37. *At this stage, it is important to note that a temporary statute does not attract the provision of Section 6 of the General Clauses Act only for the reason that the said statute expires by itself after the period for which it has been promulgated ends. In such cases, there is no repeal for the reason that the legislature has not applied its mind to a live statute and obliterated it. In all cases where a temporary statute expires, the statute expires of its own force without being obliterated by a subsequent legislative enactment. But even in this area, if a temporary statute is in fact repealed at a point of time earlier than its expiry, it has been held that Section 6 of the General Clauses Act would apply. (See:* ***State of Punjab v. Mohar Singh*** *AIR 1955 SC 84 SCR at p. 898.)*

38. *In CIT v. Venkateswara Hatcheries (P) Ltd. (1999 3 SCC 632), this Court was faced with an omission and re-enactment of two Sections of the Income Tax Act. This Court found that Section 24 of the General Clauses Act would apply to such omission and re-enactment. The Court has stated as follows: (SCC p. 638, para 12)*

"12. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80-JJ was done simultaneously. It is a very well-recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision."

(Emphasis supplied by me)

527. *Subsequently the decision of Hon'ble Supreme Court in the Fibre Board case (Supra) again come up for consideration in the case* ***Shree Bhagwati Steel Rolling Mills (Supra)****. It would be thus appropriate to reproduce the observations of Hon'ble Supreme Court as were made in the said case also:*

"10. Since Shri Aggarwal has made detailed submissions on why according to him the judgment in Fibre Board's case is not correctly decided, we propose to deal with each of those

submissions in some detail.

11. First and foremost, it is important to refer to the definition of "enactment" contained in Section 3(19) of the General Clauses Act. The said definition clause states that "enactment" shall mean the following:

> *"3.* ***(19) 'enactment'*** *shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid.*

12. From this it is clear that when Section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in the Fibre Board's judgment, that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Deluxe Edition) by William C Burton, 1979 Edition. The expression "delete" is defined by the Thesaurus as follows:

> *"Delete: Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, efface, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave out, modify by excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike off, take out, weed wipe out."*
>
> *Likewise the expression "omit" is also defined by this Thesaurus as follows:*
>
> *"Omit:- Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop exclude, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss, neglect, omittere, pass over, praetermittere, skip, slight, transire."*
>
> *And the expression "repeal" is defined as follows:*
>
> *"Repeal: Abolish, abrogare, abrogate, annul, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, rescindere, retract, reverse, revoke, set aside, vacate, void, withdraw."*

13. On a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to

"delete" it would necessarily take within its ken an omission as well. This being the case, we do not find any substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro. If the expression "delete" would amount to a "repeal", which the Appellant's counsel does not deny, it is clear that a conjoint reading of Halsbury's Laws of England and the Legal Thesaurus cited hereinabove both lead to the same result, namely that an "omission" being tantamount to a "deletion" is a form of repeal.

14. Learned Counsel's second argument that Section 6A of the General Clauses Act when it speaks of an "omission" only speaks of an "amendment" which omits and, therefore does not refer to a repeal is equally fallacious. In Bhagat Ram Sharma v. Union of India, this Court held that there is no real distinction between a repeal and an amendment and that "amendment" is in fact a wider term which includes deletion of a provision in an existing statute. In the said judgment, this Court held:

> *"17. It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. In Sutherland's Statutory Construction, 3rd Edn., Vol. 1 at p. 477, the learned author makes the following statement of law:*
>
> *The distinction between repeal and amendment as these terms are used by the Courts is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislature have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitled the Act as an amendment....When a provision is withdrawn from a section, the Legislatures call the Act an amendment particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the*

same qualitative effect as a repeal-the abrogation of an existing statutory provision-and have therefore applied the term "implied repeal' and the rules of construction applicable to repeals to such amendments.

18. Amendment is in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary' implication inferred.

(emphasis supplied)

15. It is clear, therefore, that when this Court referred to Section 6A of the Generals Clauses Act in Fibre Board's case and held that Section 6A shows that a repeal can be by way of an express omission, obviously what was meant was that an amendment which repealed a provision could do so by way of an express omission. This being the case, it is clear that Section 6A undisputedly leads to the conclusion that a repeal would include a repeal by way of an express omission.

16. The Learned Counsel then argued that while distinguishing the Madhya Pradesh High Court's judgment in Rayala Corporation, a Constitution Bench of this Court expressly held as the first reason that Section 6 applies only to repeals and not to omissions. The Fibre Board's judgment has clearly held as follows:

"31. First and foremost, it will be noticed that two reasons were given in Rayala Corporation (P) Ltd. for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in Rayala Corporation (P) Ltd. cannot be said to be a ratio decidendi at all and is really

in the nature of obiter dicta."

17. Merely because the Constitution Bench referred to a repeal not amounting to an omission as the first reason given for distinguishing the Madhya Pradesh High Court's judgment would not undo the effect of ITR para 27 SCC para 31 of Fibre Board's case which, as has already been stated, clearly makes the distinction between Section 6 not applying at all and Section 6 being construed in a particular manner. Obviously, if the Section were not to apply at all, any construction of the Section would necessarily be in the nature of obiter dicta.

18. We also find that Section 6 of the General Clauses Act could not possibly apply to the facts in Rayala Corporation's case for yet another reason. Clause 2 of Rule 132-A of the Defence of India (amendment) Rules, 1965 which was referred to in para 14 of the judgment in Rayala Corporation reads as follows:

> *"14. ….**'132-A. (2)** In the Defence of India Rules, 1962, Rule 132A (relating to prohibition of dealings in foreign exchange) shall be omitted except as respects things done or omitted to be done under that rule.' "*

19. A cursory reading of Clause 2 shows that after omitting Rule 132A of the Defence of India Rules, 1962, the provision contains its own saving clause. This being the case, Section 6 can in any case have no application as Section 6 only applies to a Central Act or Regulation "unless a different intention appears". A different intention clearly appears on a reading of Clause 2 as only a very limited savings clause is incorporated therein. In fact, this aspect is noticed by the Constitution Bench in para 18 of its judgment, in which the Constitution Bench states:

> *"18. …. As we have indicated earlier, the notification of the Ministry of Home Affairs omitting Rule 132-A of the DIRs did not make any such provision similar to that contained in Section 6 of the General Clauses Act."*

20. It was then urged before us that Section 31 of the Prevention of Corruption Act, 1988 would also lead to the conclusion that Parliament itself is cognizant of the fact that an omission cannot amount to a repeal. Section 31 of the Prevention of Corruption Act, 1988, states as follows:

> *"**31. Omission of certain sections of Act 45 of 1860.** - Sections 161 to 165A (both inclusive) of the Indian Penal Code, 1860 (45 of 1860) shall be omitted, and Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act."*

21. It is settled law that Parliament is presumed to know the law

when it enacts a particular piece of legislation. The Prevention of Corruption Act was passed in the year 1988, that is long after 1969 when the Constitution Bench decision in Rayala Corporation had been delivered. It is, therefore, presumed that Parliament enacted Section 31 knowing that the decision in Rayala Corporation had stated that an omission would not amount to a repeal and it is for this reason that Section 31 was enacted. This again does not take us further as this statement of the law in Rayala Corporation is no longer the law declared by the Supreme Court after the decision in the Fibre Board's case. This reason therefore again cannot avail the Appellant.

22. The reference to the savings provision in Section 1 of the Contract Act again does not take us very much further as the expression "repeal" as has been pointed out above can be of part of an enactment also. This being the case, when the legislature uses the word "omit" it usually does so when it wishes to delete a particular section as opposed to deleting an entire Act. As has been noticed both in Fibre Board's case and hereinabove, these are all expressions which only go to form and not to substance."

(Emphasis supplied by me)

528. *The Hon'ble Court further went on to observe in Para 23 as under:*

"23. Fibre Board's case is a recent judgment which, as has correctly been argued by Shri Radhakrishnan, learned senior Counsel on behalf of the revenue, clarifies the law in holding that an omission would amount to a repeal. The converse view of the law has led to an omitted provision being treated as if it never existed, as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. In the vast majority of cases, this would cause great public mischief, and the decision of Fibre Board's case is therefore clearly delivered by this Court for the public good, being, at the very least a reasonably possible view. Also, no aspect of the question at hand has remained unnoticed. For this reason also we decline to accept Shri Aggarwal's persuasive plea to reconsider the judgment in Fibre Board's case."

529. *Thus it has been specifically held by Hon'ble Supreme court that omission of an enactment would amount to repeal of the enactment. The Court while dealing with the meaning of various terms such as "repeal", "amendment" and "omission" also observed that mere use of certain terminologies by the Legislature be it "repeal", "amendment" or "omission" is of no consequence*

as the effect of the three terms is primarily the same.

Thus from the aforesaid discussion, it is clear that the contention of Ld. defence Counsel that Section 6 of General Clauses Act, 1897 would not have any application to the omission of old section 13 (1) (d) by the Amendment Act, 2018 is clearly not tenable.,

530. *Coming now to the second limb of argument that the Legislature by way of Amendment Act, 2018 has expressed its categorical intention that only such offences relating to public servants will be punishable where there is element of quid-pro-quo or undue advantage to the public servant concerned or any attempt has been made by him in this regard. Thus as regard the offence of criminal misconduct, it was submitted that while deleting the old provision of Section 13 (1) (d) P.C. Act, 1988 and by not re-enacting any such similar provision, the Legislature has clearly expressed its intention that the earlier defined offences u/s 13 (1) (d) P.C. Act 1988 shall no longer be an offence.*

531. *Before I advert on to deal with the aforesaid contention, it would be appropriate to refer to certain observations of Hon'ble Supreme Court in the case* ***State of Punjab Vs Mohar Singh, (Supra)****. In fact Ld. Defence Counsel has also relied upon the said case in support of his arguments. In case of repeal of a provision by a new Act, Hon'ble Supreme Court while discussing as to whether the rights and liabilities under the repealed law remain alive or not laid down, the line of enquiry as under:*

> *"The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."*

532. *The aforesaid observations were also referred to by Hon'ble supreme Court in a recent case titled* ***Gunwantlal Godawat Vs. Union of India and Another (2018) 12 Supreme Court Cases 309.*** *While referring to the observations made in Mohar Singh case (Supra) Hon'ble Supreme Court observed as under:*

"In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question – see State of Punjab Vs. Mohar Singh AIR 1955 SC 84 and T.S. Baliah V. CIT AIR 1969 SC 701."

533. *Thus from the aforesaid observations it is clear that the mere absence of a saving clause in the new enactment preserving the rights and liabilities under the repealed enactment is neither material nor decisive of the question as to whether the rights and liabilities under the repealed law have been put to an end to by the new enactment or not. What is required to be seen is whether the new enactment has taken away those rights and liabilities which were in existence under the repealed law. Thus in order to answer the question as to whether the Amendment Act, 2018 takes away the rights and liabilities which were in existence under the old section 13 (1) (d) or not, it would be appropriate to refer to the objects and reasons which warranted bringing in of the Amendment Act, 2018. The same are clearly instructive of ascertaining the intention of Legislature in bringing in Amendment Act, 2018.*

The statement of objects and reasons read as under:

"The Prevention of Corruption (Amendment) Act, 2018

***Statement of Objects and Reasons**. - The Prevention of Corruption Act, 1988 provides for prevention of corruption and for matters connected therewith. The ratification by India of the United Nations Convention Against Corruption, the international practice on treatment of the offence of bribery and corruption and judicial pronouncements have necessitated a review of the existing provisions of the Act and the need to amend it so as to fill in gaps in description and coverage of the offence of bribery so as to bring it in line with the current international practice and also to meet more effectively, the country's obligations under the aforesaid Convention. Hence, the present Bill.*

2. The salient features of the Bill, inter alia, are as follows: -

(a) section 7 of the Act at present covers the offence of public servant taking gratification other than legal remuneration in respect of an official act. The definition of offence is proposed to be substituted by a new comprehensive definition which covers all aspects of passive bribery, including the solicitation and acceptance of bribe through intermediaries

and also acts of public servants acting outside their competence;

(b) the Act at present does not contain any provisions directly dealing with active domestic bribery, that is, the offence of giving bribe. Section 12 of the Act which provides for punishment for abetment of offences defined in section 7 or section 11, covers the offence indirectly. Section 24 provides that a statement made by a bribe giver in any proceedings against a public servant for an offence under sections 7 to 11, 13 and 15 of the Act shall not subject him to prosecution under section 12. Experience has shown that in a vast majority of cases, the bribe-giver goes scot free by taking resort to the provisions of section 24 and it becomes increasingly difficult to tackle consensual bribery. The aforesaid Convention enjoins that the promise, offering or giving, to a public official directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, be made a criminal offence. Accordingly, it is proposed to substitute a new section 8 to meet the said obligation;

(c) as the proposed new definitions of bribery, both as regards the solicitation and acceptance of undue advantage and as regards the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, are found to be comprehensive enough to cover all offences presently provided in section 8 which covers taking gratification, in order, by corrupt or illegal means, to influence public servant; section 9 which covers taking gratification, for exercise of personal influence with public servant; section 10 which provides for punishment for abetment by public servant of offences defined in section 8 or section 9; and section 11 which provides for public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant; and also the offences presently defined in clauses (a), (b) and (d) of sub-section (1) of section 13 of the Act which covers criminal misconduct by a public servant, it is proposed to omit the said sections;

(d) it is proposed to substitute section 9 to provide punishment for the offence relating to bribing a public servant by a commercial organisation. A commercial organisation will be guilty of this offence if any person associated with it offers, promises or gives a financial or other advantage to a public servant intending to obtain or retain business or some advantage in the conduct of business for the commercial organisation. The proposed section 10 provides for

punishment of persons in charge of a commercial organisation which has been guilty of the offence under the proposed section 9;

(e) section 12 at present provides for punishment for abetment of offences defined in section 7 or section 11. It is proposed to substitute section 12 of the Act to provide punishment for abetment of all offences under the Act;

(f) it is proposed to substitute sub-section (1) of section 13 with a new subsection so as to omit the existing clauses (a), (b) and (d) of sub-section (1) as mentioned above; to incorporate the element of intentional enrichment in the existing clause (e) relating to possession of disproportionate assets by a public servant; and to modify the definition of "known sources of income" as contained in Explanation, to mean income received from any lawful source, that is, by doing away with the requirement of intimation in accordance with any law, rules or orders applicable to a public servant;

(g) section 14 at present provides for habitual commission of offences under section 8, 9 and 12. It is proposed to substitute section 14 of the Act to provide punishment for habitual commission of all offences under the Act;

(h) the Prevention of Corruption Act, at present, does not specifically provide for the confiscation of bribe and the proceeds of bribery. A Bill, namely, the Prevention of Corruption (Amendment) Bill, 2008, to amend the Prevention of Corruption Act, 1988, providing, inter alia, for insertion of a new Chapter IV-A in the Prevention of Corruption Act for the attachment and forfeiture of property of corrupt public servants on the lines of the Criminal Law (Amendment) Ordinance, 1944, was introduced in the Lok Sabha on 19th December, 2008 and was passed by the Lok Sabha on 23rd December, 2008. However, the said Bill lapsed due to dissolution of the Fourteenth Lok Sabha. It is proposed to insert similar provisions on the lines of the 2008 Bill in the Prevention of Corruption Act;

(i) the Prevention of Corruption (Amendment) Bill, 2008 had proposed an amendment to section 19 of the Act on the lines of section 197 of the Code of Criminal Procedure, 1973 for extending protection of prior sanction of the Government or competent authority after retirement or deminance of office by a public servant so as to provide a safeguard to a public servant from vexatious prosecution for any bona fide omission or commission in the discharge of his official duties. The said Bill having lapsed, this protection is, at present, not available for a person who has ceased to be a

public servant. Section 19 is, therefore, proposed to be amended to provide the said protection to the persons who ceased to be public servants on the lines of the said Bill. Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act;

(j) section 6-A of the Delhi Special Police Establishment Act, 1946 contains a protection of prior approval of the Central Government in respect of officers working at policy making levels in the Central Government before any inquiry or investigation is conducted against them by the Delhi Special Police Establishment. The basic principle behind the protection under section 19 of the Prevention of Corruption Act, 1988 and section 6-A of the Delhi Special Police Establishment Act, 1946, being the same, namely, protection of honest civil servants from harassment by way of investigation or prosecution for things done in bonda fide performance of pubic duty, it is felt that the protection under both these provisions should be available to public servants even after they cease to be public servants or after they cease to hold sensitive policy level position, as the case may be. Accordingly, it is proposed to amend section 6-A of the Delhi Special Police Establishment Act, 1946 for extending the protection of prior approval of the Central Government before conducting any inquiry or investigation in respect of offences under the Prevention of Corruption Act, 1988, to civil servants holding such senior policy level positions even after they cease to hold such positions due to reversion or retirement or other reasons.

3. The Bill seeks to achieve the above objectives.

(Emphasis supplied by me)

534. *Thus from a bare perusal of the aforesaid objects and reasons of the Amendment Act, 2018 coupled with the various provisions so incorporated in the Principal Act, it is clear that the prime reason for introducing various amendments in the existing Prevention of Corruption Act, 1988 was that no offence in the absence of existence of malafide intention on the part of public servant concerned in committing a given act or omission be made punishable. The objects and reasons further states that the amendment in the Principal Act have been necessitated on account of ratification by India of the United Nations Convention against Corruption, the international practice on treatment of the offence of bribery and corruption and judicial pronouncements. These all*

factors thus necessitated a review of the existing provisions of the Act. While describing the salient features of the Bill, it has been further provided in Clause 2 (c) of the statement of objects and reasons that as the proposed new definition of bribery is comprehensive enough to cover all offences presently provided in Section 8, 9, 10, 11 and also the offences presently defined in clauses (a), (b) and (d) of sub-section (1) of Section 13 of the Act which covers criminal misconduct by a public servant so it is proposed to omit the said section. Thus it is clear that the Legislature never intended to do away with the earlier provisions in the Principal Act but chose to omit the same as it was of the opinion that the new provisions being brought in by the Amendment Act of 2018 comprehensively covered the earlier provisions including that of criminal misconduct as defined in Clauses (a), (b) and (d) of sub-section (1) of Section 13 of the Act. However the only difference which has been introduced in the Principal Act by way of the Amendment Act of 2018 is the element of intention i.e. mens rea for every offence under the P.C. Act. In this regard I have no hesitation in saying that the necessity to specifically introduce the element of guilty intention i.e. mens rea for all the offences under P.C. Act primarily arose on account of certain judicial pronouncements of the higher Courts of land. By way of some such judicial pronouncements it has been held that the offence u/s 13 (1) (d) (iii) P.C. Act which read as under, does not require existence of element of mens rea on the part of public servant concerned.

> *"13 (1) (d) (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"*

535. *Further a perusal of the 69th report of Parliamentary Standing Committee titled "The Prevention of Corruption (Amendment) Bill, 2013" as has also been relied upon by Ld. Defence Counsel in support of his arguments also shows that the intention of the Legislature was primarily to make only such offences punishable under the Prevention of Corruption Act which are coupled with malafide intention on the part of public servant concerned. The said report also states that the said concern arose on account of certain judicial decisions given by the higher Courts of the land. Certainly the element of quid-pro-quo has also been introduced in the new offences which have been brought on the statute book by way of Amendment Act of 2018. However as is observed in the cases Mohar Singh (Supra) and Gunwantlal Godawat (Supra), what is required to be seen is whether in the new enactment any intention contrary to that of earlier provisions (repealed provisions) appears or not. It is not to be seen as to whether the new enactment by its new provisions has kept alive the rights and liabilities under the repealed law or not but whether the new enactment has taken*

away the rights and liabilities which arose under the repealed law.

536. *At this stage, it would be now worthwhile to have a brief glance over Section 6 General Clauses Act, 1897 which read as under :*

Section 6 General Clauses Act, 1897 read as under:

"6. Effect of repeal. *- Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -*

(a) receive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

537. *Thus in view of my aforesaid discussion, it is crystal clear that the Amendment Act of 2018 in no way affect the continuation of the present proceedings or passing of final judgment in any manner. It also does not in any manner affect the conviction of any accused under the old Section 13 (1) (d) P.C. Act, if the prosecution is successful in proving the same. However it is once again reiterated that on account of amendment so brought in, the only requirement which is required to be fulfilled by the prosecution is that the element of guilty intention i.e. mens rea ought to be proved for all the offences under the P.C. Act, 1988 including qua old section 13 (1) (d) (iii) P.C. Act, 1988.*

538. *For the aforesaid reasons the other argument of Ld. Defence Counsel that as old Section 13 (1) (d) P.C. Act no longer*

exists on statute book so no punishment can be imposed by this Court also does not hold ground. Section 6 General Clauses Act, 1897 as has been discussed and reproduced above clearly takes away the very ground beneath the said argument of Ld. Defence Counsel.

539. *Thus it stands conclusively established that the Prevention of Corruption (Amendment) Act, 2018 does not in any manner affect the continuation of present proceedings under the old section 13 (1) (d) and more so when I have already discussed and concluded that various acts and omissions were committed by the accused public servants with malafide intention.*

However for academic purposes the matter can be viewed from yet another angle also.

540. *As has been repeatedly asserted by the Legislature while enacting the original law of P.C. Act right from the year 1947 onwards or while introducing various Amendment Acts that the whole emphasis has been towards preventing and curtailing acts of corruption on the part of public servants. No one can argue that this has not been the intention of the Legislature at any point of time. Thus if in the light of the aforesaid undisputed objective of introducing such a law, the argument of Ld. Defence Counsel that no legal proceedings under the repealed provisions can be continued is accepted as correct then a situation will arise where a public servant, if required to be prosecuted for any act or omission committed by him prior to 26.07.2018 i.e. the date when Amendment Act of 2018 was notified then he can be prosecuted only under the new Section 7 or Section 13 of P.C. Act as have been introduced by the Amendment Act of 2018 but not under the old section 13 (1) (d) P.C. Act. Of course initiation of such a prosecution would be only when all the ingredients of the offence is prima facie attracted and all other safeguards protecting an honest public servant are taken care of. However such a situation will clearly violate the fundamental right of the person concerned as has been provided to him under Article 20 (1) of the Constitution of India which read as under:*

> ***20. Protection in respect of conviction for offences.****-- (1) No person shall be convicted of any offfence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

541. *Thus we will have a situation where a public servant will have to be prosecuted for an act or omission committed by him for an offence which in fact was not in existence on the day when the*

alleged act or omission was committed. Certainly such a course of action is neither warranted under law nor can be the intention of the Legislature while introducing Amendment Act of 2018.

542. *Alternatively if a public servant can not be prosecuted for the offences as have been provided under new sections 7 and 13 P.C. Act as have been introduced by way of Amendment Act of 2018 then as per the contention of Ld. Defence Counsel we will have a situation where on account of repealing of old Section 13 (1) (a), (b) and (d) P.C. Act, 1988 there exists no law to prosecute and punish a public servant for any act of misdemeanor committed by him. Certainly to keep the field free or to absolve all the public servants of all wrong doings which may attract criminal prosecution could not have been the intention of Legislature. More over such an interpretation of law would certainly have an impact on the general administration of law and public good. As was observed in case Shree Bhagwati Steel Rolling Mills (Supra) that such an interpretation would cause great public mischief.*

543. *More over the new offence of criminal misconduct as has been defined u/s 13 P.C. Act provides an enhanced punishment by stating that such a public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.*

544. *However under the old Section 13 the minimum punishment provided was only one year and maximum punishment was upto 7 years only. Thus if a public servant is prosecuted and punished under a new provision for an act or omission committed by him prior to coming into force of the Amendment Act of 2018 then he will be again subjected to a higher degree of punishment and thereby violating his fundamental right under Article 20 (1) Constitution of India. Such an interpretation will also thus lead to an absurd situation and which also could not be the intention of Legislature.*

545. *It was also submitted that the Legislature while bringing in the Amendment Act of 2018 did not choose to mention anything either under section 30 or under section 31 P.C. Act about applicability of Section 6 General Clauses Act, 1897 or that any action purported to have been done under the repealed provisions shall not be affected or that the same shall be deemed to have been done under new P.C. Act. It was thus submitted that the intention of the Legislature was clear that any action taken or purported to have been taken under the repealed provisions will not hold ground any longer.*

546. *In this regard the observations made by Hon'ble*

*Supreme Court in the case **Gunwantlal Godawat (Supra)** are reproduced as under:*

> *"In order to see whether the rights and liabilities under the repealed law have been put an end to by the new enactment, the proper approach is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question – see State of Punjab Vs. Mohar Singh AIR 1955 SC 84 and T.S. Baliah V. CIT AIR 1969 SC 701."*

547. *Thus mere absence of a saving clause qua any action taken or purported to have been taken under the old section 13 (1) (d) P.C. Act is completely immaterial in ascertaining as to whether the rights and liabilities under the repealed law or the legal proceedings instituted and continued under the repealed provision have come to an end or not.*

548. *For all the aforesaid reasons, I am thus of the considered opinion that Prevention of Corruption (Amendment) Act 2018 does not in any manner affects the continuation of the present legal proceedings against the accused public servants or imposition of any punishment upon them in case of their conviction as was provided under the old section 13 (1) (d) P.C. Act, 1988."*

83. I further find support in my aforesaid view from the observations of Hon'ble Supreme Court in the case ***State of Telangana Vs.Sri Managipet, 2019 SCC OnLine SC 1559***; that of Hon'ble Delhi High Court in the case ***Gopal Singh Bisht Vs. CBI, 2019 SCC OnLine Del. 6735*** and that of Hon'ble High Court of Andhra Pradesh in the case ***Katti Nagaseshanna Vs. The State of Andhra Pradesh***.

84. The submission of Ld. Counsel Shri Rahul Tyagi that in the light of Amendment Act 2018, the present proceedings for the trial of accused public servants for the offence of criminal misconduct i.e. u/s 13 (1) (d)/13 (2) PC Act, 1988 cannot continue, thus does not hold ground.

85. In view of my aforesaid discussion, it is thus prima facie clear

that charge for the offence of criminal conspiracy u/s 120 B IPC and for the offence of criminal misconduct u/s 13 (1) (d)/13 (2) PC Act, 1988 is made out against the 2 accused public servants beside also for the offence u/s 120 B/420 IPC and13 (1) (d)/13 (2) PC Act, 1988.

86. Accordingly, as against all the six accused persons charge for the offence u/s 120 B/420 IPC and13 (1) (d)/13 (2) PC Act, 1988 is prima facie made out beside also charge for the substantive offence u/s 120 B IPC. Separate charges for the substantive offences i.e. charge for the offence u/s 420 IPC is made out against the four private parties i.e. M/s Revati Cement Pvt Ltd. (A-1), Chinmay Palekar (A-4), Vijay Kumar Jain (A-5) and Arvind Pujari (A-6) and charge for the offence u/s 13 (1) (d)/13 (2) PC Act, 1988 is made out against the two accused public servants i.e. H.C. Gupta (A-2) and K.S. Kropha (A-3).

BHARAT PARASHAR

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Date: 2020.08.14 13:06:09 +05'30'

ANNOUNCED IN VIRTUAL COURT
via Cisco WebEx Platform
on 14.08.2020

(BHARAT PARASHAR)
Special Judge, (PC Act)
(CBI), Rouse Avenue District Courts
New Delhi.

FIR NO. 11/2019
PS ACB
State Vs. Rajni Verma

14.08.2020

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: **Ld. APP Sh. Jagdamba Pandey for ACB from the Court of Ms. Kiran Bansal Ld. Special Judge, ACB, RACC.**
Ld. Counsels Sh. Tarun Goomber and Sh. Saurabh Singh for applicant/accused Rajni Verma.

Ld. APP Sh. Jagdamba Pandey for ACB submitted that the present matter pertains to a case registered and investigated by Anti-Corruption Branch of Government of NCT of Delhi. He further submitted that the matter is already being dealt by the Court of Ms. Kiran Bansal Ld. Special Judge, ACB and thus the present application ought to have been moved before the said Court.

Upon this Ld. Counsel Sh. Tarun Goomber submitted that he has no objection if the present application is taken up by the Court of Ld. Special Judge Ms. Kiran Bansal. He accordingly stated that he may be permitted to withdraw the present application with a liberty to move afresh before the concerned Court.

Ld. APP Sh. Jagdamba Pandey also agreed to the same.

Heard. Allowed.

Accordingly, the present application is dismissed as withdrawn with liberty to move afresh before the concerned Court.

A digitally signed copy of this order be given dasti to Ld. Counsel for the accused/applicant and prosecution via email.

The present order has been dictated on phone to Steno Hukam Chand.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained and the same be placed in Court record as and when normal functioning of the courts is resumed.

BHARAT PARASHAR
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Date: 2020.08.14 13:07:12 +05'30'

(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
14.08.2020