

**Closure Report No. 03/14**  
**RC No. 220 2013 E 0011**  
**Branch:CBI/EOU-IV/EO-II, NEW DELHI**  
**CBI Vs. P.C. PARAKH & Ors.**  
**U/s.120-B IPC Sec. 13 (1) (c)/ 13 (1) (d) (iii) r/w S. 13 (2) of PC Act**

**11.03.2015**

Present: Ld. Special P.P. Sh. R.S. Cheema alongwith Ld. Senior P.P. Sh. V.K. Sharma, Ld. Senior P.P. Sh. A. P. Singh and Ms. Tarannum Cheema Adv. for CBI.

IO DSP K.L. Moses in person.

Vide my separate detailed order I have taken cognizance of the offence u/s 120-B/409 IPC & 13 (1) (c) 13 (1) (d) (iii) of PC Act 1988 against six accused i.e. M/s. HINDALCO, Subendhu Amitabh, D. Bhattacharya, Kumar Mangalam Birla, P.C. Parakh and Dr. Manmohan Singh and for the substantive offences i.e. u/s 409 IPC & 13 (1) (c) 13 (1) (d) (iii) of PC Act 1988 against accused P.C. Parakh and accused Dr. Manmohan Singh.

Accordingly, summons be issued to all the accused persons and be served through IO DSP K.L. Moses for 08.04.2015.

IO is also directed to submit an amended list of witnesses and to also prepare a set of relevant documents and list of relevant witnesses for supplying to the accused persons and e-challan of the said relevant set of documents and that of statement of relevant witnesses be also prepared. The concerned SP and DIG are directed to provide all necessary help to the IO in this regard.

At this stage, IO has submitted that for preparing the copies for the accused persons he shall be requiring the documents

which are already submitted in the Court.

Heard. Perused.

In view of the submission made for the aforesaid purpose documents filed by the IO may be returned back by the Ahlmad to the IO against receipt. After preparation of copies of the documents IO shall deposit all the documents back with the Ahlmad.

Ahlmad is directed to register the present case as a regular case.

**Case is now adjourned for appearance of all the accused person to 08.04.2015.**

**(Bharat Parashar)  
Special Judge, (PC Act)  
(CBI)-7, NDD/PHC  
11.03.2015**

**IN THE COURT OF SH. BHARAT PARASHAR, SPECIAL JUDGE  
(PC ACT) (CBI)-7, NEW DELHI DISTRICT  
PATIALA HOUSE COURTS, NEW DELHI**

**Closure Report No. 03/14**

**RC No. 220 2013 E 0011**

**Branch:CBI/EOU-IV/EO-II, NEW DELHI**

**CBI Vs. P.C. PARAKH & Ors.**

**U/s.120-B IPC, Section 13 (1) (c)/13 (1) (d) (iii) r/w S. 13 (2) PC  
Act, 1988**

**O R D E R**

1. Vide detailed order dated 16.12.14, the undersigned while dealing with the closure report filed by CBI with respect to joint allocation of Talabira-II coal block in Orissa to Mahanadi Coalfields Ltd. (MCL); Neyveli Lignite Corporation Ltd. (NLC) and to Hindustan Aluminum Corporation Limited (M/s HINDALCO) to be mined by them after forming a joint venture company had directed further investigation including recording of statement of certain witnesses. It was observed in the said order that before the matter is examined further as to what offences, if any, stands committed or by whom the same has been committed, it will be appropriate that the then Minister of Coal beside certain officers who were working in the PMO at the relevant time are examined or re-examined. Pursuant to the said order CBI recorded statement of the then Prime Minister/Minister of Coal, Dr. Manmohan Singh, Sh. B.V.R. Subramanyam, the then PS to Prime Minister beside also re-examining Sh. T.K.A. Nair, the then Principal Secretary to the Prime Minister and Sh. S. Jayaraman,

Chairman-cum-Managing Director NLC. Some other documents were also filed alongwith the statement of the aforesaid witnesses.

2. In the order dated 16.12.14 the history of various legislations vide which the Mines or Minerals came to be regulated by the Government of India and the consequent necessity of setting up of a Screening Committee to scrutinize the claim of various competing companies for allotment of different Coal Blocks was briefly mentioned from **Para No. 2 to 11**.

From **Para No. 13 to 41**, I mentioned in detail the factual matrix of the case under which Talabira-II, coal block came to be allocated to M/s HINDALCO.

Thereafter from **Para No. 42 to 56**, I discussed the circumstances in which the present case came to be registered by the CBI or the nature of investigation carried out by them including a discussion of various documents which were recovered during the course of search operation carried out at the office premises of M/s Aditya Birla Management Corporation Pvt. Ltd. (ABMPCL).

***(It will be worthwhile to mention over here that M/s HINDALCO and ABMPCL are group companies of “Aditya Birla Group of Companies”)***

Finally **Para No. 51 to 61**, contained a brief discussion and analysis of the circumstances leading to allocation of Talabira-II coal block to M/s HINDALCO.

3. The present order is thus being passed in continuation of the said earlier order. However in order to present a comprehensive picture in the present order itself and for the sake of brevity I shall be reproducing relevant portions of the said order dated 16.12.14 at appropriate places in the present order itself.

4. Thus before adverting further it will be appropriate to mention the facts and circumstances leading to allocation of Talabira-II coal block to M/s HINDALCO. Para No. 13 to 41 of my earlier order dated 16.12.14 will be thus worth reproducing over here:

### **FACTUAL MATRIX**

#### **ORDER DATED 16.12.2014 (Para No. 13 to 41)**

13. *Amongst various Coal Blocks which were put on offer for allocation to private parties, Talabira-II Coal Block situated in the State of Orissa was a much sought after Coal Block. While M/s INDAL applied for its allocation for captive use in the year 1996, M/s HINDALCO applied for its allocation to MOC on 26.08.97. On the other hand M/s Neyveli Lignite Corporation Ltd. (NLC) applied for allocation of Talabira-II Coal Block on 08.08.03. Both M/s INDAL and M/s HINDALCO proposed to establish a steel producing plant and thus sought allotment of a Coal Block to establish a power plant for their captive use in their steel plant. NLC however sought allotment of the Coal Block for its captive use as it proposed to establish a 2000 MW power plant in Ib Valley (Orissa).*

14. *In fact on 17.02.03 a meeting was held between Secretary MOC and Secretary Ministry of Power (MOP) in which Chairman NLC and Chairman CIL were also present. Secretary MOP indicated in the said meeting that it is desirable to go for power projects with installed capacity of 4000 MW in Ib Valley (Orissa) through NTPC and NLC, each having a capacity of 2000 MW. It was thus agreed that the aforesaid decision would be expeditiously implemented. NLC accordingly identified Hirma, Jharsuguda District in Orissa for setting up its power plant of*

2000 MW capacity being situated alongside Talabira-II Coal Block. Accordingly NLC applied to MOC for allotment of Talabira-II Coal Block for its captive use in the proposed power plant on 08.08.03.

15. Thus after MOC put up various Coal Blocks for allocation to private parties for their captive use, different companies submitted applications to MOC for allocation of the said Coal Blocks. However, in December 2004 pursuant to the orders of the then Secretary Coal, Sh. P.C. Parakh, the applicant companies were told to submit information on a prescribed format known as "Agenda Form". The said form sought information from the applicant companies regarding various aspects such as Coal Blocks applied for, track record of the applicant company, end use projects, project status, earlier allocation of the Coal Blocks to the applicant company etc. In all 5 Coal Blocks namely Utkal-A, Radhikapur, Bijahan, Utkal-F and Talabira-II Coal Blocks were on offer. The various applications so received by the MOC were thereafter compiled and were put up for consideration before the 25th Screening Committee. As regard Talabira-II Coal Block six (6) companies namely (i) M/s. Indian Aluminium Co. Ltd. & M/s HINDALCO (Aditya Birla Group), (ii) M/s. Shri Mahavir Ferro Alloys Pvt. Ltd., (iii) M/s. Orissa Sponge Iron Ltd., (iv) M/s. Orissa Power Generation Corporation Ltd., (v) M/s. Mundra Special Economic Zone Ltd. and (vi) M/s. Neyveli Lignite Corporation Ltd. had applied for its allocation.

16. Though M/s INDALCO was insisting for the allotment of Talabira-II Coal Block to it since long and their claim was even discussed earlier also in a number of meetings of the Screening Committee but it continued to be deferred as Coal India Limited (CIL) had expressed its desire to withdraw the said Coal Block from being offered to private parties and had rather recommended its allocation to NLC for its 2000 MW power plant proposed to be established in "Ib Valley" Orissa. The Screening Committee accordingly in its 21st meeting directed that a Sub-Committee headed by Special Secretary MOC and comprising of Chairman NLC, INDALCO (INDAL), CIL and MOC as its members be set up to look into the matter regarding allocation of Talabira-II Coal Block. The Sub-Committee after deliberating upon the claims of NLC and INDAL concluded that it would be appropriate that Talabira-II, Coal Block be allocated to NLC for captive use by themselves or MCL and that the case of M/s

*INDAL may be considered sympathetically if it comes up with a proposal for any other suitable block. The report of the sub-Committee was communicated to the Chairman, Screening Committee and Secretary Coal on 25.11.03. In its 25th meeting the Screening Committee deliberated upon the claims of different applicant companies qua the 5 Coal Blocks on offer and concluded that qua Talabira-II Coal Block, NLC was the most deserving company. The cases of Indian Aluminium Company Ltd. (INDAL) and Aditya Aluminium (M/s HINDALCO) were however listed as the companies whose cases were not decided in their favour. It will be worthwhile to mention briefly the observations which were noted in the minutes of the 25th meeting of the Screening Committee qua the claims of M/s INDAL, M/s HINDALCO and NLC.*

***“ 4 & 22) INDAL & M/s HINDALCO (Aditya Aluminium Project)***

*Representative of the companies gave a detailed background of their track record and stated that they require coal block of Talabira II and Bijahan for their proposed 200 MW CPP expansion at their existing facility at Hirakud and the proposed Greenfield Aditya Aluminium Project with 720 MW CPP at Lapanga in Orissa. Out of the 720 MW, 650 MW will be coal based and 70 MW through co-generation. They stated that Talabira-II being very near to their facilities, was central to their growth plan and would bring enormous benefits for the State and the country. The applicant were asked that they have already been given coal block of Talabira I for a 140 MW CPP at Hirakud and a 50 MW CPP at Raigarha a few years back. The two CPPs are yet to be set up and commissioned. Coal was being mined in Talabira-I and used in their existing CPP at Hirakud (67.5 MW) despite it having a linkage from MCL. The representative stated that they have not come prepared for Talabira-I case and would reserve their comments. Secretary (Coal) enquired for their views of doing coal mining jointly with a PSU. The representative of the company stated that they would need time to give their reaction on the same. They informed that the 720 MW project is likely to come up in 2008 and a further P II 480 MW in 2010. Chairman, Screening Committee said that compared to other applicants who have already set up their facilities, it was perhaps too early to ask for a block for a project which planned to be set up in 2010. Representative from Govt. of Orissa supported allocation of Talabira II to the applicant company.*

**“13. Neyveli Lignite Corporation Ltd.**

*Representative from NLC stated that Ministry of Power and Ministry of Coal have identified a 2000 MW power project for NLC at Hirma in Orissa. The project has been granted mega power status by Ministry of Power. An advance action plan has also been submitted to Ministry of Coal, the location has been selected, feasibility report prepared, land and water arrangements have been made. Talabira-III, a block with MCL is adjacent to Talabira-II and the two could be operated by MCL as one mine which would yield up to 50 million tonnes per annum. The proposed power plant being pithead is likely to generate power at Rs. 1.50. The site has been cleared by CEA, the sale of electricity has been tied up for the western region. If this project is given the coal block, cheaper power would be available to the power grid and various States. The location of the project is adjacent to the coal block Talabira-II and, therefore, this project needs to be given top most priority. The representative from Govt. of Orissa supported the request of M/s NLC. Representative from Ministry of Power very strongly supported allocation of Talabira II to NLC. Representative from Govt. of Orissa further stated that while the power plant of NLC is being supported, it is the Aluminium project of M/s HINDALCO that would add maximum value and encourage downstream industries having greater employment generation and beneficial multiplier effect. He stated that the existing NTPC and OPGENCO could add capacity to their existing power plants. With increase in economic growth, the country is likely to have aluminium shortage and, therefore, the M/s HINDALCO project should be considered for allocation of Talabira II in preference to NLC. Moreover, aluminium production is highly energy intensive and very sensitive to cost of power and, therefore, the captive block becomes a must for the CPP. Chairman/Screening Committee observed that energy intensive processes should be taken up where the power tariffs are lower and energy intensive projects should not be encouraged in places like India where power tariffs are high. Energy intensive part of the aluminium project could be outsourced and only the less energy intensive parts of the process should be taken up in India. This would also bring the socio-economic expectation to fruition in the country.”*

**(Emphasis supplied)**



17. At a later stage of the minutes it was further observed as under:

**“4. INDAL and  
22 M/s HINDALCO**

*M/s. INDAL had been allocated Talabira I for their proposed 140 MW power plant at Hirakud and 50 MW power plant at Raigarh. However, they were mining coal from Talabira I and using it for their existing power plant of 67.5 MW at Hirakud which was linked with MCL for coal supply. Now they were asking for Talabira II for a 200 MW expansion from 67.5 MW to 267.5 MW. Since Talabira I had already been given to them for 140 MW + 50 MW, they did not have a case for a fresh block for 200 MW capacity. As regards Aditya Aluminium (M/s HINDALCO), they had asked for supplies from Talabira II and Bijahan blocks for 650 MW coal based CPP to be set up at Lapanga. The Committee felt that coal could be supplied by NLC/MCL from Talabira-II/Talabira-III to this project after adjusting for the linked quantity to the project, if any. (On subsequent enquiry, it is found that the Aditya Aluminium project 720 MW CPP comprising of 650 MW from coal has already been provided long-term linkage of 3.06 million tonnes per annum by MCL. This linkage would meet the full requirement of the 650 MW power plant. No separate coal block, therefore, needs to be given for the Aditya Aluminium project.)”*

**(Emphasis supplied)**

18. Accordingly, the Screening Committee decided that no separate Coal Block was required to be given for the Aditya Aluminum project (M/s HINDALCO).

19. Further, as regard the case of M/s. Neyveli Lignite Corporation Ltd. (NLC), the 25<sup>th</sup> Screening Committee further observed as follows:-

**“13. M/s. Neyveli Lignite Corpn. Ltd.**

*The Screening Committee, looking to the track record of the company and the status of the project, decided that Talabira II be allocated to NLC for being mined alongwith Talabira III in conjunction with MCL, so that a single large mine can be developed out of these two blocks in the interest of conservation of coal. NLC/MCL combined could supply coal to a few companies at market price after meeting the full requirement in the proposed 2000 MW power plant. It was felt that Aditya Aluminium could be supplied the required quantity from this mine. (However,*

*subsequently it is revealed that Aditya Aluminium already has a long-term linkage of 3.06 million tonnes per annum from MCL and would require no supplies from Talabira II and III). Therefore, some other companies could be supplied coal from Talabira II and III at market price.”*

20. *In its 25th meeting the Screening Committee however also proposed amendments in the existing guidelines observing that the claim of a large number of meritorious applicants who were either establishing, existing and were performing companies looking for expansion or the companies who were sincere but were suffering on account of shortage of coal also needs to be considered and accommodated. Thus not only in order to accommodate all the meritorious and deserving cases but also in the interest of conservation of coal which otherwise be trapped in the barriers, if the blocks were to be sub-divided various alternatives were considered. It was discussed with the representatives of applicant companies that they may form a joint venture company but the said suggestion was not found agreeable by all and so it was proposed to allocate the Coal Blocks jointly under a scheme of leader and associate company. It was proposed that the company with the highest stake and which was likely to take up appropriate mining operations at the earliest may be designated as a leader company and other meritorious companies as associated companies for supply of coal by the leader company at administratively determined price. However despite the aforesaid scheme having been conceptualized the case of number of companies including that of M/s INDAL and M/s HINDALCO was not considered favourable qua the said five Coal Blocks on offer.*

21. *The observations of the Screening Committee in this regard were recorded interalia in the minutes as follows:*

*“In order to accommodate all the meritorious and deserving cases, these blocks would need to be sub-divided which would result in enormous loss of coal between barriers because of statutory and practical mining conditions. Therefore, to sub-block the larger blocks as an alternative for accommodating all the deserving cases had to be ruled out. The second alternative available was of grouping the deserving cases, so that they can form a joint venture company, an SPV for mining of coal and carry out the coal mining jointly in the allocated block. This alternative was also presented to the applicant companies, but most of them had expressed reservations on grounds*

*like cultural and administrative differences among the constituents of the joint venture company, inherently because they were competitors, the joint venture company would be off balance-sheet and may not attract sufficient lending, there could be interse slippages in development of the end-use projects and injection of equity by the constituents which could jeopardize the mining project and would not lead to production at an early stage. A number of other similar objections to the formation of joint venture company or mining through SPV were put forward by a number of applicants. This alternative also, therefore, had to be left alone. It was then discussed that for each natural block, one applicant company who had the highest stake and which was likely to take up proper mining at the earliest, could be designated the Leader company and allocated a captive block and a group of other meritorious companies could be nominated as associated companies for supply of coal by the leader company to these designated associates. The amount of coal to be supplied by the leader company to the associate company would have a ceiling determined by the assessed requirement of the associate company, after deducting the linked quantum of coal given by CIL/its subsidiaries.”*

22. *The draft minutes of the 25th Screening Committee which was held on 10.01.05 finally came to be confirmed in the 27th meeting of the Screening Committee held on 01.03.05. Sh. P.C. Parakh put up the minutes for approval to Minister of State (Coal and Mines) Sh. Dasari Narayan Rao and through him to the Prime Minister/Minister (Coal). It was also proposed that the existing guidelines be also amended so that the present coal requirement of eligible companies could be met for a period of 15 years at a satisfaction level of 50% and that the balance requirement be made through CIL linkages or imports. He thus requested to approve the minutes of the 25th Screening Committee in the light of the aforesaid changes in the policy of captive coal block allocation. Sh. Dasari Narayan Rao, the then Minister of State for coal vide his noting dated 25.04.05 forwarded the recommendation of Secretary Coal, Sh. P.C. Parakh alongwith the minutes of 25th Screening Committee to the then Prime Minister, Sh. Manmohan Singh who was holding charge of Minister of Coal (MOC) also. After certain clarifications were sought by the Prime Minister's Office (PMO) through Sh. Javed Usmani, the then Joint Secretary to Prime Minister from Secretary Ministry of Coal, the proposed changes in the*

*guidelines for allocation of captive coal blocks were approved by Prime Minister/Minister of Coal on 09.06.05. The approval so accorded by the Prime Minister/Minister Coal was thus conveyed to Secretary Coal by Sh. K.V. Pratap, the then Dy. Secretary PMO vide PMOUO No. 200/31/C/14/2004-ES.I Dt. 10/06/2005 stating as under:*

*“Prime Minister has approved the proposed changes in guidelines for allocation of captive coal blocks as stated in the Annexure of the Ministry of Coal O.M. No. 47011/7/2005-CA-I dated 16.05.2005. The Minutes of the 25<sup>th</sup> Meeting of the Screening Committee may be considered in the light of the amended guidelines and approved at the level of Secretary (Coal).”*

23. *Thus the Prime Minister/Minister Coal finally approved the proposed changes in the Coal Block allocation guidelines while directing that the minutes of the 25th meeting of the Screening Committee be considered accordingly. Thus no change was either effected or suggested in the minutes of the 25th Screening Committee as were there on the file alongwith the proposed changes in the guidelines. However the amended guidelines were to be applicable from 25th Screening Committee onwards only and not prior thereto i.e. till 24th meeting of the Screening Committee.*

24. *Upon receipt of aforesaid communication Sh. P.C. Parakh vide his note dated 16.06.05 made the following observation in the file:*

*“we must now start issuing orders of allocation and complete this work by 15.07.05 in respect of all the Screening Committee meetings held so far”*

25. *The minutes of 25th meeting of the Screening Committee thus stood approved and the file was thereafter marked to the Joint Secretary Coal and from his office to Sh. Sujit Gulati, the then Director (CA) and who vide his noting dated 20.06.05 further marked the file to Section Officer (CA) for compliance. However in the meantime Sh. Kumar Mangalam Birla who was the Chairman of Aditya Birla Group submitted a letter dated 07.05.05 to the then Prime Minister requesting for allocation of Talabira-II Coal Block. The Prime Minister accordingly made a note on the letter seeking report from the Coal Ministry. The letter was accordingly sent to Secretary MOC on 25.05.05. However when no report was received from the Secretary MOC*

so a reminder was sent by PMO to Secretary MOC on 16.06.05 to expedite the report to be submitted to the Prime Minister. In the meantime Sh. Kumar Mangalam Birla submitted to the Prime Minister yet another letter dated 17.06.05 which was identical to his earlier letter dated 07.05.05. On the said letter Sh. B.V.R. Subramanyam, PS to Prime Minister made the following note dated 22.06.05.

*“ A letter handed over to the Prime Minister by Shri Kumar Mangalam Birla on the issue of allocating an additional coal block for captive mining in Orissa is placed below. The Prime Minister desires that this matter be pursued on priority so that a decision is arrived at on this long pending matter at the earliest so that the employment and revenue potential of the project is fully achieved.”*

26. Thus the second letter dated 17.06.05 of Sh. Kumar Mangalam Birla was also forwarded to Secretary MOC on 24.06.05. Report was called on the letter from Secretary MOC by 28.06.05. However when the aforesaid letters of Sh. Kumar Mangalam Birla received from PMO were processed in the MOC, Sh. Premraj Kuar, the then Section Officer (CA), made his observations in the file expressing difficulty in acceding to the request of M/s HINDALCO Industries for allocation of Talabira-II Coal Block. He also put up a draft office memorandum in this regard for approval.

27. However the said office memorandum put up by Sh. Premraj Kuar was not approved by Secretary Coal, Sh. P.C. Parakh. Sh. Premraj Kuar primarily stated the following reasons in his note for which the request of Sh. Kumar Mangalam Birla for allocation of Talabira-II Coal Block to M/s HINDALCO could not be acceded to:

- I. Aditya Aluminium project of M/s HINDALCO was already given a coal linkage of 3.06 MTPA in October, 2001 and that the said project was yet to materialize.
- II. That the Sub-Committee appointed by the MoC under the Chairmanship of the then Addl. Secretary after going into the competing claims of Talabira-II block had recommended its allocation to NLC.
- III. The Screening Committee in its 25th meeting had identified Talabira-II for allocation to NLC and a couple of other meritorious applicants who had sought for coal from this block at transfer price under the leader-associate dispensation.

28. *In the meantime Sh. P.C. Parakh held meetings with the Joint Secretary Coal Sh. K.S. Kropcha and Sh. Sujit Gulati, the then Director MOC. Pursuant to the said meetings Sh. Sujit Gulati made the following note in the file:*

*“The matter of Talabira-II has now acquired a new hue in view of the discussions with Secy (C) on 18<sup>th</sup> & 21<sup>st</sup> July 05. The proposed reply at DFA is no more a true representation of current views/status of the case. We may respond to the PMO ref by stating that the issue has been reviewed and the current view would be submitted to the PMO for decision vide file No. \_\_\_\_\_ which is at present u/submission before \_\_\_\_\_. Accordingly, DFA Pl.”*

29. *In the meantime various reminders were issued to MOC by the PMO i.e. on 16.06.05, 24.06.05, 29.06.05 and 06.07.05 seeking early response to the letters of Sh. Kumar Mangalam Birla. Sh. Javed Usmani, Joint Secretary, PMO and Sh. K.V. Pratap, Dy. Secretary PMO also pursued the matter with the MOC telephonically at least 6 times asking the Ministry to expedite the reply. Thereafter Sh. P.C. Parakh prepared a note dated 08/11.08.05 wherein it was interalia mentioned that Sh. Kumar Mangalam Birla met him in the middle of last month i.e. July 2005 in connection with claims of M/s HINDALCO for allocation of Talabira II Coal Block. Sh. P.C. Parakh while mentioning the following reasons as submitted to him by Sh. Kumar Mangalam Birla proposed two new options in his note wherein the name of M/s NLC however did not figure at all. The reasons so mentioned were as under:*

- “1. M/s HINDALCO was the first applicant for the block and had applied for it on 16.8.1996.*
- 2. Coal linkage earlier granted by MCL for the project could not be utilized as lease of connected Bauxite mines could not be obtained for setting up their Aluminium Plant.*
- 3. Govt. of Orissa has favoured allocation of Talabira II block to M/s HINDALCO in preference to M/s Neyveli Lignite Corpn.*
- 4. In view of the current shortage of coal in MCL area, MCL will not be in a position to honour earlier linkages given for their aluminium plant.”*

30. *The two options however proposed by Sh. P.C. Parakh in the note were as follows:*

- “(i) Joint venture company between MCL, M/s*

*HINDALCO and M/s Orissa Sponge Iron Ltd. to develop Talabira-II & III as a single mine and each will take Coal in proportion to its entitlement.*

*(ii) Talabira II could be allotted to MCL to be developed as a single mine along with Talabira-III through outsourcing. M/s HINDALCO and M/s Orissa Sponge Iron Ltd. could also participate in the bid as mine operators. Each of the three parties will take coal in proportion to their share.”*

31. *Though the aforesaid note was put up to Sh. Dasari Narayan Rao, the then Minister of State (Coal & Mines) but it was found that a copy of the note dated 08/11.08.05 was also received directly in the PMO and wherein the note was processed by Sh. K.V. Pratap vide his noting dated 12.08.05. However, Sh. K.V. Pratap while mentioning various reasons recommended that Talabira-II Coal Block may be allocated to M/s NLC Ltd. only and not to M/s HINDALCO. The reasons mentioned by him were as follows:*

*“(i) A decision has already been taken to allocate Talabira II to M/s Neyveli Lignite Corporation Ltd.*

*(ii) Allocation of Talabira-II to M/s Neyveli Lignite Corporation Ltd. will enable Mahanadi coalfields Ltd. (which already has Talabira-II coal block) to enter into joint venture with NLC (both PSUs under the Ministry of Coal) and develop Talabira II as a single mine without loss of coal mines barriers.*

*(iii) This will enable MCL to honour its earlier linkage to M/s HINDALCO as the availability of coal to MCL will increase and*

*(iv) Just because Talabira-II is a fully explored block may not be reason enough for reversing an earlier Screening committee decision.”*

32. *Sh. Javed Usmani, Joint Secretary in the PMO however observed vide his note dated 12.08.05 that “It will be appropriate for Prime Minister to dispose off the issue after considering the views of Minister of State (Coal)”. In the meantime Sh. Dasari Narayan Rao, the then Minister of State (Coal and Mines) made following note dated 16.08.05, on the proposal submitted by Sh. P.C. Parakh.*

*“M/s. HINDALCO made a representation regarding allocation of Talabira-II captive coal block in their favour vide their letter dated 18<sup>th</sup> May, 2005 (Annexure-I) which*

was endorsed to Secretary (Coal) for consideration. Subsequently, Shri Kumaramangalam Birla also discussed the issue with me following which I have discussed the matter with Secretary (Coal). My suggestion was that since the Screening Committee which considers the applications for allocation of captive coal blocks has already recommended allocation of this block in favour of NLC, the possibility of making coal available from the said block to M/s. HINDALCO at transfer price may be considered.

In this context the report of the Sub-Committee of the Screening Committee to consider allocation of Talabira-II coal block (p.7-11/c. in the linked file No. 13018/15/2003-CA) may be perused. The Sub-Committee in their report of November 2003 has brought out that the Advance Action Plan in respect of the proposed 2,000 Megawatt power plant of NLC was approved by Ministry of Coal, development of Talabira-II and Talabira-III blocks in conjunction would result in saving of substantial reserves of coal and Ministry of Power had recommended the case of NLC and the newly approved guidelines for allocation of captive coal blocks accord first priority to the power sector. After considering various aspects, the Sub-Committee recommended that it would be proper that Talabira-II block is given to NLC for captive use by themselves or through Mahanadi Coalfields Ltd. In pursuance of this report the Screening Committee recently recommended allocation of Talabira-II block in favour of NLC. The minutes of the concerned meeting of the Screening Committee were also approved by the undersigned. These decisions and developments are now in the public domain.

Generally, though there is no such restriction, only fully explored coal blocks are offered for allocation for captive mining for which public sector companies can also lay their claim. The proposed policy decision to give preference to private sector companies in the allocation of fully explored captive coal blocks is fraught with avoidable implications. There already exists a mechanism for allocation of un-explored blocks to government companies under a separate government company dispensation. There were also several instances of un-explored blocks being allotted to private companies and subsequent exploration by them. In essence, there are already adequate provisions to enable large number of companies to take up coal mining.

The representatives of M/s. HINDALCO have given me to understand that they are generally not in favour of



joint venture with other companies. Talabira-II block is reported to have 130 MT of extractable reserves. In the allocation of captive blocks, the Screening Committee in their recent series of meetings was guided by the new principle of ensuring only 50% to 60% coal satisfaction of the applicant so as to make coal available to a larger number of applicants in the prevailing shortage scenario.

In view of the above one appropriate option seems to be to consider supply of coal to M/s. HINDALCO from Talabira-II block at a transfer price as already discussed with Secretary (Coal). Provision for supplying coal to associate allocatees at transfer price has already been made.”

**(Emphasis supplied)**

33. Thus Sh. Dasari Narayan Rao, the then MoS (Coal & Mines) proposed to consider supply of Coal to M/s HINDALCO from Talabira-II at a transfer price.

34. In the meantime a letter dated 17.08.05 from Sh. Naveen Patnaik, Chief Minister Orissa was received in the PMO addressed to the Prime Minister on the subject of allotment of Talabira-II Coal Block to M/s HINDALCO Industries Ltd. In the concluding lines of the letter it was mentioned “I would strongly urge you to have the matter examined expeditiously so that this vitally important project is provided with the required coal linkage at an early date”. The said letter was also forwarded by the PMO to Secretary MOC directing it to take the letter on record, re-examine the matter in light thereof and re-submit the file.

35. Thereafter on 08.09.05, Sh. P.C. Parakh had a meeting with Joint Secretary Coal, Sh. K.S. Kropha which was also attended by Sh. Sujit Gulati, Director (CA). After the meeting Sh. Sujit Gulati put up a note dated 09.09.05 interalia mentioning that the matter was discussed by him with Secretary (Coal) in the presence of Joint Secretary (Coal) on 08.09.05 and it was proposed that in view of the capacity of the proposed power projects and coal reserves in Talabira-II and Talabira-III they be mined by a joint venture company to be formed between MCL on one side and NLC and M/s HINDALCO on the other. MCL was proposed an equity share holding of 70% in the joint venture company with NLC and M/s HINDALCO both having 15% each equity share holding. It was also mentioned that with the aforesaid arrangement the satisfaction level of NLC would be 29% and that of M/s HINDALCO would be 81.5%. It was further

stated that the satisfaction level in MCL area for other blocks is about 85%. Sh. K.S. Kropha, Joint Secretary MOC however mentioned in his note dated 09.09.05 that to maintain parity in satisfaction level within the command area (MCL area), coal from the barrier (i.e. between Talabira-II and Talabira-III Coal Blocks) be given to NLC and M/s HINDALCO. The note dated 09.09.05 prepared by Sh. Sujit Gulati and as endorsed by Sh. K.S. Kropha read as under:

*“This matter was discussed with Secretary (Coal) in the presence of JS (Coal) on 08.09.05.*

*2. Talabira II, a captive block, has an estimated extractable reserves of 130 million tonnes. Talabira-III, an MCL block, has an estimated extractable reserves of about 390 million tonnes. Talabira-II and III are contiguous coal blocks and can be mined as one mine. It will have economy of scale and will also save the statutory barrier of 33 million tonnes in between the two mines that will need to be left in case they are mined separately. Therefore, in the interest of conservation and deployment of optimum technology for better results Talabira-II and III should be mined as one mine. The total extractable reserves in Talabira-II and III and the barrier add up to 553 million tonnes.*

*2. The three main contenders for Talabira-II as a captive coal block are:*

*I. M/s NLC, seeking 280 million tonnes for their 2000 MW proposed power plant.*

*II. M/s HINDALCO seeking about 100 million tonnes for their 650-720 MW captive power plant.*

*III. M/s Orissa Sponge Iron Limited seeking about 123 million tonnes of coal for their proposed sponge iron expansion by 1.07 million tonnes per annum.*

*3. The total coal requirement of these three companies for their proposed projects sums up to about 503 million tonnes. Allocation to all the three would leave only 50 million tonnes with MCL. As NLC is a Central PSU and has already been recommended Talabira II by the Screening Committee, NLC may not be dropped. M/s HINDALCO's case for allocation has been strongly recommend by the State Government and also it has been an early applicant M/s HINDALCO too may be retained for allocation. OSIL therefore would need to be accommodated elsewhere. OSIL could be put in new Patrapra as the reserves there is adequate to accommodate OSIL's requirement.*

*4. It is proposed that Talabira II and Talabira III be*

*mined as one mine. The mining would be done by a joint venture company to be formed between MCL on one part and NLC and M/s HINDALCO on the other. The coal saved in the barrier (33 million tonnes) would be kept in the share of NLC-M/s HINDALCO in order to accord them reasonable satisfaction level. In the joint venture MCL would have an equity shareholding of 70% which is approximately equal to Talabira III's extractable reserves in the total extractable reserves in Talabira II and Talabira III combined. M/s HINDALCO and NLC would own the remaining 30% equity equally between them i.e. 15% each. 30% of the annual production will be shared equally between M/s HINDALCO and NLC. The joint venture will operate the mine by outsourcing for which it would invite global tenders for competitive bidding. M/s HINDALCO and NLC will be permitted to participate in this competitive bidding for mining. 70% of the annual production will be handed over to MCL for them to dispose as they choose. Satisfaction level of NLC would be 29% and that of M/s HINDALCO would be 81.5%. The average satisfaction level in MCL area for other blocks is about 85%.*

5. Submitted for consideration please.

Sd/-  
(Sujit Gulati)  
Director (CA)  
9.9.05

*Coal from the barrier  
be given to NLC. M/s HINDALCO in  
order to maintain parity in the  
satisfaction level within the command area.*

JS (Coal)

Sd/-  
K.S. Kropcha  
9/9/05"

36. *Sh. P.C. Parakh, Secretary Coal thereafter vide his note dated 12.09.05 observed that the arrangement proposed by Sh. Sujit Gulati appeared to be reasonable and that in the aforesaid scheme, 80% requirement of M/s HINDALCO will be met. Qua the case of NLC it was stated that both NLC and MCL are proposing to set up joint venture for power plant out of coal derived from Talabira-II and Talabira-III and the full requirement of NLC would be made available from the coal reserves of MCL for Talabira-III. He further noted that the aforesaid proposal (i.e. of forming joint venture company between MCL, NLC and M/s HINDALCO) has been discussed by him with the representatives*

of M/s HINDALCO and that they were in agreement with the proposed suggestions. The file was thereafter marked to the Minister of State (Coal and Mine) Sh. Dasari Narayan Rao for approval who however merely signed it on 16.09.05 without making any observation of his and the file was sent to the PMO.

The note dated 12.09.05 made by Sh. P.C. Parakh however read as under:

*“Note from page N/7 may kindly be recalled. In the light of the latest communication from the Chief Minister of Orissa recommending allotment of Talabira II block in favour of M/s HINDALCO, the matter has been re-examined. Govt. of Orissa have indicated their clear preference for allotment of this block to M/s HINDALCO in the interest of creating more employment and growth of manufacturing sector in the State.*

*In order to give a reasonable level of satisfaction for M/s HINDALCO Aluminium plant while keeping interest of NLC also in mind proposals made at para 4 of pages 13-14/N appear reasonable. With 50:50 distribution of reserves of Talabira II block along with 33 million tonnes of reserves of coal from the barrier it will be possible to meet about 80% requirement of M/s HINDALCO. While in absolute terms NLC will get the same quantity of Coal as M/s HINDALCO its percentage satisfaction will be much lower. However, since MCL and NLC are proposing to set up a joint venture for power plant out of Coal derived from Talabira II and Talabira III full requirement of NLC would be made available from the Coal reserves of MCL in Talabira III.*

*Proposals at para 4 of pages 13-14/N have been discussed with the representatives of M/s HINDALCO and they are in agreement with the proposed arrangements.*

*Proposal at para 4 of pages 13-14/N is submitted for favour of approval.*

*(P.C. PARAKH)  
Secretary (Coal)  
12.09.05*

MOS (C&M)

PM and M (Coal)”

37. However in the PMO Sh. K. V. Pratap, the then Dy. Secretary vide his note dated 21.09.05 observed that the aforesaid proposed arrangement of a joint venture company

*between MCL, NLC and M/s HINDALCO with equity share holding of 70%, 15% and 15% respectively was not in congruence with the guidelines for allocation of captive coal blocks as were approved by the Prime Minister on 09.06.05. The said approved guidelines interalia stated as under:*

*“...The constituent applicant companies would hold equity in the joint venture company in proportion to their assessed requirement of coal ... Distribution of coal would be in proportion to their respective assessed requirements.”*

38. *He thus stated that as per the guidelines the equity holding of NLC and M/s HINDALCO should be 22.5% and 7.5% respectively and not 15% each. Sh. Javed Usmani, the then Joint Secretary PMO also suggested acceptance of the said new proposal submitted by MOC regarding formation of a joint venture company between the NLC, MCL and M/s HINDALCO but he also observed that it would entail relaxation in the conditions prescribed by the guidelines as approved by the Prime Minister on 09.06.05. He made the following note on the file:*

*“The State Government has strongly recommended the allocation of Talabira-II coal block to M/s HINDALCO for captive mining. In the 25<sup>th</sup> meeting of the Screening Committee of the Ministry of Coal held on 10.01.2005, the State Government representative had supported this proposal. Subsequently, vide his letter dated 17.08.2005 addressed to Prime Minister, Chief Minister, Orissa has reiterated the position of the State Government assigning topmost priority to the allocation of Talabira-II coal block in favour of M/s HINDALCO.” He further noted that “Under the MMDR Act, 1957, the mining lease to an allottee of a coal block is granted by the State Government concerned. However, coal being a Scheduled I mineral, previous approval of the Central Government is mandatory before a State Government can grant mining lease. Thus under the federal framework for sharing of mining rights provided under the Act, both the Central and State Governments need to concur before an allottee can be granted mining lease. Accordingly, the strong recommendation of the Government of Orissa to allocate Talabira-II coal block to M/s HINDALCO is important and has to be given due consideration while taking a decision in the matter. However, as the Screening Committee in its meeting held on 10.01.2005, had recommended that Talabira-II be allocated to Neyveli Lignite Corporation (NLC), a PSU, it*

would not be appropriate to preclude NLC from consideration altogether, particularly because this recommendation and its approval by PM is in the public domain.”

**(Emphasis Supplied)**

39. Thereafter Sh. T.K.A. Nair, the then Principal Secretary to the Prime Minister and the Prime Minister, approved the recommendation of MOC on 27.09.05 and 01.10.05 respectively. Subsequently Sh. K.V. Pratap communicated the approval of the Prime Minister to the aforesaid note to Secretary MOC on 04.10.05. Thus in accordance with the approval granted by the Minister of Coal allotment letter of Talabira-II and Talabira-III Coal Blocks was issued on 10.11.05 jointly to (i) Mahanadi Coalfields Ltd. (MCL), (ii) M/s HINDALCO Industries Ltd. and (iii) Neyveli Lignite Corporation Ltd. with the condition that the joint venture company be formed with the approval/clearance of the Cabinet. It was also mentioned that the MCL would have an equity of 70% whereas the balance equity shall be equally held by NLC and M/s HINDALCO i.e. 15% each. However Sh. S. Jayaraman, CMD of NLC sent letters to Secretary, MOC informing that this share of 15% coal from Talabira-II and Talabira-III would be inadequate for meeting the coal requirement for their proposed 2000 MW power plant in Orissa. He thus requested MOC/Coal Linkage Committee to review and issue necessary linkage allocation order for supply of required quantity of coal for the said power project of NLC. Pursuant to this communication, MOC vide order dated 28.07.06 allotted yet another coal linkage of 2.31 MPTA to NLC for its proposed power project. However Sh. S. Jayaraman, CMD of NLC again wrote a letter dated 19.08.06 requesting Additional Secretary, MOC who was also the Chairman of the Standing Linkage Committee (Long Term) to grant additional allocation of coal linkage to NLC in order to operate the plant at 90% PLF (Plant Load Factor) i.e. optimal capacity of the power plant at HIRMA as the coal linkage so provided was still not sufficient.

40. In the meantime a meeting was held on 26.06.06 in the MOC under the chairmanship of Sh. K.S. Kropha, Joint Secretary Coal. The meeting was however attended only by the representatives of M/s HINDALCO even though representative from MCL and NCL were invited but they chose not to attend the meeting. The agenda of the said meeting was titled “Nature of disputes standing in the way of an Agreement”. The minutes of

*the said meeting held on 26.06.06 interalia mentions as under:*

*“The Talabira-II coal block combined with Talabira-III coal block has been allocated in November, 2006 jointly to the Mahanadi Coalfields Ltd. (MCL), Neyveli Lignite Corporation (NLC) and M/s HINDALCO Industries Ltd. (HIL) for working through a joint venture company with equity holding in the ratio of 70:15:15 by MCL, NCL and HIL respectively. .... The representatives of MCL and NLC had not attended the meeting. The representatives of HIL were present. .... After allotment of the block a lot of time is being taken for signing an agreement. If the same is not feasible Govt. will be appraised of the same and Govt. is likely to review the allocation. Talabira-II is in the focus of the public as it has been given to HIL or else it will be controversial.”*

**(Emphasis supplied)**

41. *However subsequently a joint venture company by the name of M/s MNH Shakti Ltd. was formed amongst the three allottees (MCL, NLC and M/s HINDALCO) on 16.07.2008 to jointly operate Talabira-II and III Coal Block as a single mine.”*

5. Thus in the aforesaid factual matrix of the case as mentioned above it will be more appropriate to state that the case in hand presents a proposition as to how M/s HINDALCO came to be accommodated in Talabira-II coal block and not as to how Talabira-II coal block came to be allocated to M/s HINDALCO. In fact I am consciously using the phraseology as to how M/s HINDALCO came to be accommodated in Talabira-II coal block as there apparently was a concerted effort by all concerned to somehow accommodate M/s HINDALCO in Talabira-II coal block irrespective of the rules, regulations, guidelines or procedure permitting the same much less the rule of law. I may also state that I am fully conscious of the importance of the present matter and the proposition as above has been stated at the threshold itself after having given serious consideration to all the evidence on record be it in the form of

statement of witnesses or documentary as produced by CBI.

**CIRCUMSTANCES LEADING TO REGISTRATION OF THE PRESENT CASE, INVESTIGATION CARRIED OUT AND THE DOCUMENTS RECOVERED DURING SEARCH AT THE OFFICE PREMISES OF ABMPCL.**

**ORDER DATED 16.12.2014 (para No. 42 to 56)**

*“42. I have first chosen to give the aforesaid factual matrix of the entire development which took place in the allotment of Talabira-II Coal Block to M/s HINDALCO as in the light of the aforesaid facts the various circumstances in which M/s HINDALCO came to be allotted the impugned Coal Block and the various documents which later on came to be seized during the course of investigation can be better understood. At this stage it will be also worthwhile to mention that after allegations of wrong doing and illegality came to be levelled with regard to the Coal Block allocation process adopted by MOC the various files were examined by Central Vigilance Commission (CVC) and pursuant to it a reference was made by CVC to CBI for investigating the role of public servants involved. CBI accordingly chose to initially register a preliminary enquiry in the matter.*

*43. However, after sufficient evidence cropped up during the course of preliminary enquiry warranting a detailed investigation that a regular case bearing No. 11/2013 was registered against Sh. Kumar Mangalam Birla, Sh. P.C. Parakh, M/s. HINDALCO Industries Ltd. and other unknown persons/officials for the offence u/s 120-B IPC and Section 13 (2) r/w Section 13 (1) (d) PC Act, 1988. During the course of inquiry searches were conducted at different office premises of Aditya Birla Group in Delhi as well as Mumbai besides conducting searches at the house of Sh. P.C. Parakh. Various files of MOC were also seized during the course of investigation.*

*44. IO DSP K.L. Moses recorded statements of a number of officers of MOC beside that of PMO. Various officers of Aditya Birla Group including Sh. Kumar Mangalam Birla himself were also examined during the course of investigation.*

*45. However upon completion of investigation the investigating agency was of the opinion that no criminal offence was*



*committed by any of the persons involved in the entire process of allocation of impugned Talabira-II Coal Block to M/s HINDALCO. A closure report dated 27.08.2014 was accordingly filed in the Court. Subsequently, CBI chose to file a revised final report dated 21.10.2014 stating it to be detailed and comprehensive in nature but the final conclusion remained the same that no offence was committed by any of the persons involved. The case was thus prayed to be closed.*

*46. It was in these circumstances that arguments on the closure report were heard as addressed by Ld. Special P.P. Sh. R.S. Cheema being duly assisted by Sr. P.P. Sh. V.K. Sharma. IO DSP K.L. Moses was also heard at length.*

*47. During the course of arguments crime file and the case diary file being maintained by the investigating agency during the course of investigation were also called for by this Court. The same were produced in a sealed pulanda by the IO.*

*48. I have carefully perused the record as well as the crime file and the case diary file.*

*49. At the outset it will be worthwhile to mention that during the course of arguments Ld. Special P.P. Sh. R.S. Cheema stated at the bar that he does not agree with the conclusion drawn in the final report that no criminal offence has been committed in the entire process of allocation of Talabira-II Coal Block to M/s HINDALCO. Infact the submission of Ld. Special P.P. Sh. R.S. Cheema appears to be a logical conclusion flowing out not only from the various documents which were seized during the course of investigation but also from the manner in which the entire process was undertaken by the MOC and the PMO. Ordinarily in view of the said submissions made by Ld. Special P.P. Sh. R.S. Cheema. I would have gone straight away to analyze the matter to ascertain as to what offences were made out qua which cognizance ought to be taken by this Court or as against which persons the cognizance is to be taken.*

*50. However upon perusal of the record I find that certain loose ends needs to be first tied up so that a clear and comprehensive picture may come up on record. There are certain circumstances which needs to be elaborated/explained especially as regard the manner and the circumstances under which the matter was taken up in the PMO or under what circumstances the recommendations of 25th Screening Committee were set aside*

even though it already stood approved. It also needs to be clarified as to under what circumstances the settled procedure of making the allocation of various Coal Blocks through the Screening Committee route was not adhered to in the present matter. It also need to be noted that in his letter dated 17.08.05 Sh. Naveen Patnaik had only requested the Prime Minister to provide required coal linkage to the important project of M/s HINDALCO. Reference to Talibara-II Coal Block in the letter was merely with reference to the proceedings of 25th meeting of the Screening Committee.

51. However before proceeding further I would now like to briefly refer to the various documents which were recovered during the course of investigation as they assume immense significance in understanding the matter. However as a mark of caution I may mention that in so far as the discretion which vested either with the Screening Committee or with the MOC or with the Prime Minister as Minister of Coal the same is not being questioned or reviewed but it is primarily the manner in which this discretion has been exercised which is subject to judicial review. The moot question to be examined is as to whether the procedure laid down as per law or the guidelines earlier framed were duly followed in the entire process of allocation of Coal Block to M/s. HINDALCO or not. It also needs to be seen as to under what circumstances a deviance from the settled rules/regulations or the guidelines laid down was effected. Whether the entire matter was dealt with at all levels in an objective manner or the subjectivity prevailed so much that the objectivity or the rule of law lost its relevance in the entire process completely.

52. In the search conducted at the office of M/s Aditya Birla Management Corporation P. Ltd. (ABMCPL) at their office in New Delhi, not only a huge sum of Rs. 25,01,41,100/- was recovered but certain letters written by Sh. Shubhendu Amitabh, Group Executive President to M.D M/s HINDALCO were recovered. It would be worthwhile to have a glance at the contents of two such letters written by Sh. Shubhendu Amitabh to M.D. M/s HINDALCO. The first letter dated 20.01.05 read as under:

**“Aditya Birla Management Corporation Limited  
Corporate Affairs & Development Cell  
New Delhi**

January 20, 2005

**MD**

M/s HINDALCO

**Sub.: Coal Linkage and allotment of  
Captive Coal Blocks.**

*As directed by you, we have been on the job and further understand that we have not been invited for today's meeting purely because of the Government's stand that those companies already having coal linkages are not to be invited'.*

*In this connection, our team has also met the Joint Secretary in the presence of Mr. Surjit Gulati, Director. Our meeting took place just before the start of the official meeting. The duo were briefed in detail about the compulsions for taking up the linkage. As desired, we have also indicated clearly that this linkage is only a time gap arrangement on our part while the plant production and mining of coal activity achieves the desired synergy. Meanwhile, the various statutory clearances have also to be kept mind. Thereafter, our representation as of today was handed over to the Joint Secretary in-person, who opined that the Government cannot ignore investors like us and that due weightage will be given to you request and submission.*

*As precautionary measure, our team members continued to be present in the Ministry (at the time of this dispatch) where the deliberations were being held so as to take care of any likely eventuality.*

*This is for your information please.*

*Regards,*

*Sd/-*

**Shubhendu Amitabh**

*cc to: Mr. S. Talukdar, Mumbai*

**Mr. J C Laddha, Bhubaneshwar”**

**(Emphasis not supplied by me)**

53. *In another letter dated 20.01.05 itself Sh. Shubhendu Amitabh while mentioning the crux of the proceedings of the Screening Committee meeting held on 20.01.05 wherein claim of M/s HINDALCO was not approved stated as under:*

**“Aditya Birla Management Corporation  
Limited  
Corporate Affairs & Development Cell  
New Delhi**

---

January 20, 2005

**MD**

M/s HINDALCO

**Sub.: Coal Linkage and allotment of  
Captive Coal Blocks.**

*Further to our fax of date our team present at the coal meeting has reverted after having been a witness to some of the deliberations towards the fag end. The following feedback has come from Mr. Rabindra Mishra, Mr. S. Borker and the team:*

- Joint venture between MCL & NLC
- Five parties have shown interest namely  
a) Mahavir b) Orissa Sponge c) SMC d) Nalba e) OCL
- Out of these two have confirmed (OCL & SMC)
- The other three will respond later (“because of the short notice and the pricing structure”.)

**Way forward:**

*We are of the opinion that we need to now focus on both, polity and bureaucracy. Request you to indicate a time-frame at the earliest when a meeting with Secretary, Coal Mr. Parakh can be organised here at Delhi. As regards polity, shall look forward to discussing with you over the phone.*

*Regards,*

*Sd/-*

**Shubhendu Amitabh**

cc to: **Mr. S. Talukdar, Mumbai**

**Mr. J C Laddha, Bhubaneshwar”**

*(It will be worthwhile to mention that in the order dated 16.12.2014, it was stated that on 20.01.05 a meeting of Screening Committee had taken place. However to set the record correct, it will be pertinent to mention that the meeting held on 20.01.05 was a follow-up meeting chaired by Joint Secretary (Coal) Sh. K.S. Kropha in pursuant to the 25<sup>th</sup> Screening Committee meeting which took place on 10.01.05.)*

54. In yet one other document recovered the following facts were found inter alia recorded under the heading "Genesis of the Problem";

**"GENESIS OF THE PROBLEM**

*Until the Supreme Court's verdict in the 2G case, things were going smoothly.*

*However, in the Order passed by the SC in the 2G case, some scathing remarks were made about the procedure followed in the allocation of natural resources through the mechanism of mining leases.*

*The bureaucracy in MoM were taken off the guard and wanted to be careful in dealing with the cases even at the cost of delays. A strategy was adopted for justifying the delay by making a reference to the Supreme Court about the appropriateness of the present procedure adopted for grant of Mining Leases.*

*The Supreme Court's guidelines for disposal of the pending applications for Mining Leases on the basis of first come first served were also not very clear. This gave a handle to the officials to make a reference to the Attorney General for a clear cut directive.*

*Substantial time was lost in cross references and a decision was at last taken to process the cases.*

*The observations made by the CAG about grant of mining leases to parties beyond their requirements much to the disadvantage of some others came as a bolt from the blue. Once again a sudden break had to be applied in so far as processing of the cases is concerned.*

*Added to the above is the on-going CBI investigations into the coal block allocations.*

*During the earlier times, the Minister was able to exert his powers in getting things done right from the ground level. However, the situation has now undergone a change where the officials are asserting their authority and are not willing to budge from the stated positions. The present mindset is to find out fallacies contained in the proposals in order to find an escape route and delay matters. A need has thus arisen to knock at each of the connected desks where the files get stuck. A situation has thus emerged where the processing of the cases is being done selectively.*

**(Emphasis Supplied)**

***Taking advantage of the leniency of approach, we have managed to get two files moved. Out of this, the file relating to grant of Prospecting Licence for 453.42 ha***

**has reached the Minister for his assent. The other file relating to 150.906ha is on way to the Minister through channels. We are pursuing the matter to see that all the cases including Dhar get processed asap.”**

55. In yet another document recovered a need of networking with Polity, networking with Bureaucracy etc. was emphasized. The following facts were interalia found mentioned over there:

- get jobs done in difficult times,
- build effective & long lasting relationships with key players in the Ministries,
- Keeping an eye on competition movement through Political/ Bureaucracy particularly in high stake areas like Coal & Mines, Textiles, Industry & Commerce, Power etc.
- targeting young bureaucrats from future perspective,
- ensure that Government policy and political efforts are aligned with overall business goals.

56. In yet another file recovered during the course of search, the deliberations of the meeting which Sh. K.S. Kropha, Joint Secretary, MOC held with representatives of M/s HINDALCO regarding formation of a joint venture Company between MCL, NLC and M/s HINDALCO were mentioned.

The following comments stated to have been made by Sh. K.S. Kropha, the then Joint Secretary, MOC were interalia mentioned:

Mr. Kropha, Joint Secretary responded that:

“It should be appreciated that the Government had gone out of the way to accommodate M/s HINDALCO in Tabira-II”.

. . . . .  
. . . . .  
. . . . .

“Considering the special circumstances under which M/s HINDALCO was made a partner in the JV, the company should take the lead in ironing differences and conclude the JV. This matter has already drawn public attention and it will be in interest of M/s HINDALCO to conclude the JV without further delay.”

**(Emphasis supplied)”**

**A BRIEF DISCUSSION AND ANALYSIS OF THE CIRCUMSTANCES LEADING TO ALLOCATION OF TALABIRA-II COAL BLOCK TO M/s HINDALCO AS MADE IN ORDER DATED 16.12.2014.**

**ORDER DATED 16.12.2014 (Para No. 57 to 61)**

*“57. Thus if in the light of the aforesaid documents recovered the subsequent meetings which Sh. Kumar Mangalam Birla had initially with the Prime Minister and thereafter with Sh. P.C. Parakh or with Sh. Dasari Narayan Rao are seen coupled with the two letters dated 07.05.05 and 17.06.05 written by him to the Prime Minister requesting for allocation of Talabira-II Coal Block then it is found that a concerted effort was being made to manipulate the entire Government machinery so as to protect the interest of M/s HINDALCO. There certainly cannot be any objection to the meeting of head of a leading industrial house of the country with the Prime Minister or the Secretary of a Ministry or a Minister but when such meetings are seen in the over all facts and circumstances as mentioned above coupled with the follow up action which resulted at the administrative level in the Government then it certainly raises eye brows. As already mentioned when after the initial letter dated 07.05.05 written by Sh. Kumar Mangalam Birla to the Prime Minister, report from MOC was sought for and no report was forth coming than repeatedly reminders were sent to MOC beside requesting them on telephone by the officers in the PMO to expedite their reply. In the meantime Sh. Kumar Mangalam Birla wrote another identical letter dated 17.06.05 and it was also followed up in right earnest by the officers of PMO. I may also again mention that there may not be anything abnormal or wrong if any such letter is forwarded by the PMO to the concerned Ministry for necessary action or a report is called for but if in the overall facts and circumstances as discussed above the number of reminders which were sent by the PMO as well as repeated telephonic requests seeking an early response from the MOC are seen then entire process raises grave shadows of suspicion. The note dated 22.06.05 made by Sh. B.V.R. Subramanyam, PS to Prime Minister while forwarding the second letter dated 17.06.05 of Sh. Kumar Mangalam Birla to MOC needs reiteration over here. The note*

read as under:

*“ A letter handed over to the Prime Minister by Shri Kumar Mangalam Birla on the issue of allocating an additional coal block for captive mining in Orissa is placed below. The Prime Minister desires that this matter be pursued on priority so that a decision is arrived at on this long pending matter at the earliest so that the employment and revenue potential of the project is fully achieved.”*

**(Emphasis supplied)**

58. It will be pertinent to mention over here that prior to the aforesaid noting dated 22.06.05 the proposed changes in the Coal Block allocation guidelines which were sent to the Prime Minister/Minister Coal alongwith minutes of 25th Screening Committee were already approved on 09.06.05 by the Prime Minister himself. Thus the decision qua the project of M/s HINDALCO was already taken and the matter was no longer pending. The said noting dated 22.06.05 thus had the effect of opening up of the entire issue again and thereby nullifying the Screening Committee recommendations completely.

59. It will be worthwhile to reiterate that when the matter was again sought to be re-opened pursuant to the two letters written by Sh. Kumar Mangalam Birla to the Prime Minister as were received in the Ministry of Coal through PMO, the then Section Officer Sh. Premraj Kuar had observed that it will not be possible to accede to the request of allocation of Talabira-II Coal Block to M/s HINDALCO. However the said note was conveniently overlooked/not approved at the higher levels. It was stated in the noting made by Sh. Sujit Gulati that pursuant to the meetings held by Secretary Coal with Joint Secretary Coal in which he too was present, the view expressed by Sh. Premraj Kuar was no more a true representation of current view/status of the case. As already mentioned fresh proposals were thereafter made by Secretary Coal primarily with a view to accommodate M/s HINDALCO in the allocation of Talabira-II Coal Block. However, Sh. Dasari Narayan Rao, the then Minister of State (Coal) cautioned vide his note dated 16.08.05 that any deviation from the Screening Committee recommendations which were already in public domain will not be appropriate.

60. In fact in the final report submitted by the IO it has been stated that even the reasons mentioned by Sh. Kumar



*Mangalam Birla to Sh. P.C. Parakh for accommodating M/s HINDALCO in the allotment of Talabira-II Coal Block and which reasons were reproduced by Sh. P.C. Parakh in his note dated 08/11.08.05, were also found to be not correct. It has been rather mentioned in the final report that had Talabira-II and Talabira-III been allotted to NCL to be mined jointly by MCL, then MCL would have easily met with the coal linkage requirement of 3.06 MPTA requirement of M/s HINDALCO as was earlier granted to the said company. A perusal of the Ministry of Coal files seized during the course of investigation also shows that while the 'pros and cons' of allocation of coal blocks through competitive bidding route were being discussed in the MOC and PMO then Sh. Sujit Gulati, Director MOC vide office memorandum dated 18.08.04 interalia mentioned that there exists substantial difference in the cost of production incurred by the company engaged in captive mining of coal and the market price of coal which is largely supplied by the Coal India Limited (CIL) resulting in windfall profits to the company which has been allocated the Coal Block.*

*61. I am however not entering into the detailed observations or deliberations which took place in the MOC or the PMO while considering the aforesaid option of allocation of coal blocks through competitive bidding route as they are not warranted for the purposes of present order. However before I part with the present order I would also like to briefly refer to some letters written by Sh. S. Jayaraman, CMD, NLC to Secretary MOC informing that 15% share of coal allotted to NLC by way of joint venture agreement will be highly inadequate for meeting its 2000 MW power plant to be established in Orissa. In fact pursuant to the said letter written by Sh. S. Jayaraman, CMD, NLC, additional coal linkage of about 2.31 MPTA was assured to NLC from MCL. However Sh. S. Jayaraman vide his letter dated 19.08.06 again requested the Additional Secretary, MOC who was the Chairman Standing Linkage Committee to grant additional allocation of coal linkage to NLC in order to operate the plant at 90% PLF (Plant Load Factor). The final report filed by the IO however says that upon inquiry the NLC officers stated that NLC board decided on 27.05.11 to drop its proposed 2000 MW project on account of the delay in getting the MOU signed with the Government of Orissa which could have facilitated NLC in acquisition of land, allocation of water etc for its proposed project. However I am again not going into any further length of the said aspect at this stage of the matter as to under what*

*circumstances no such MOU could be signed between Government of Orissa and NLC, a Central Government Undertaking or as to the circumstances which compelled NLC board to drop its proposed power project of 2000 MW capacity as the same is not required over here at this stage of the matter. It will be however also worthwhile to reproduce a portion of the additional set of guidelines which were put into force by the Screening Committee in its 22nd meeting and as have been also reproduced by me at the initial stage of the present order. Para 4 of the additional set of guidelines read as under:*

*“4. No Coal block for captive mining of coal would be allocated which would result in replacement of coal linkage from CIL/SCCL except under the following special circumstances:*

*i) If no other suitable block having extractable reserves to match with the requirements of the proposed end use project (expansion) is available and sub-blocking of the block sought, against the interest of mineral conservation and sound mining principles, is thereby rendered necessary then in such cases the entire block can be considered for allocation with part or full replacement of the linkages.*

*ii) If the subsidiaries of CIL or SCCL are not in a position to meet with the requirement of the already linked part of the end use project then the shortfall, based on empirical historical data and the future firm projections, could be met with production from the captive blocks and to that extent replace the paper linkage.”*

***(Emphasis supplied)***

6. In the present order, I now proceed to analyze as to whether during the entire exercise of accommodating M/s HINDALCO in Talabira-II coal block, any offence stood committed or not and if yes, then by whom.

### **OFFENCES, IF ANY COMMITTED**

7. Thus in the aforesaid factual matrix coupled with the nature of documents recovered from the office premises of M/s ABMPCL and the search conducted at Mumbai in the office premises of M/s

HINDALCO, the important question which comes up for consideration is whether the entire exercise as discussed above to accommodate M/s HINDALCO in Talabira-II coal block prima facie amounts to a criminal conspiracy entered into by various players who were involved in the impugned coal block allocation process. If it is prima facie found that a criminal conspiracy was indeed hatched so as to accommodate M/s HINDALCO in Talabira-II coal block while bypassing all rules/regulations and guidelines much less, rule of law, then the next question to be considered will be as to who all were prima facie involved in the said criminal conspiracy.

8. However before adverting on to further discuss the evidence so brought on record, it will be 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.”*

9. *In yet another case i.e. “State of Tamil Nadu Vs. Nalini & Ors.”, 1999 CrI. L.J. 3124, the Hon'ble Supreme Court summarized the broad principles 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.*

**(Emphasis supplied)**

10. Thus if the overall facts and circumstances in which M/s HINDALCO came to be accommodated in Talabira-II coal block are seen and especially in view of the nature of communication which was undertaken between various officers of Aditya Birla group regarding rejection of the claim of M/s HINDALCO qua allocation of Talabira-II coal block then it is found that a concerted effort was made at all levels in the Aditya Birla group to somehow tap all their resources be it in the bureaucratic circle or political circle so as to procure allotment of impugned Talabira-II coal block in favour of M/s HINDALCO. As already mentioned the letter dated 20.01.05 written by Sh. Shubhendu Amitabh, Group Executive President M/s ABMPCL to Sh. D. Bhattacharya, M.D M/s HINDALCO clearly states that we need to now focus on both polity and bureaucracy. It was also

requested that a meeting with Secretary Coal Sh. P.C. Parakh may be arranged in Delhi and as regard polity it was stated that the same shall be discussed on phone. Another document titled “*Genesis of the Problem*” which also has been reproduced above further shows as to how the files are getting stuck in the Government bureaucratic channels and what efforts are being made to get those files cleared from the desk of different officers. In yet another document also discussed above, the future course of action for the company has been mentioned. A need of networking with polity, networking with bureaucracy etc. was emphasized. A special mention of high stake areas such as coal & mines, power etc. was also made with a view to target young bureaucrats from future perspective and to also ensure that government policy or political efforts are aligned with overall business goals.

11. Though one may say that if an industrial house makes efforts to further its business interests then nothing wrong can be read into it. However such an argument can not be taken on its face value. The business interests either that of any big industrial group or even that of a small businessman can not be allowed to be pursued in the manner it has been done in the present case.

12. If the impugned correspondence undertaken by various officers of Aditya Birla group is seen vis-a-vis the subsequent action taken by them in pursuing their case than it is clear that they left no stone unturned in their efforts to secure allotment of Talabira-II coal block in favour of M/s HINDALCO. Upon coming to know that M/s HINDALCO has been left out in the entire coal block allocation



process much less qua Talabira-II than prima facie it appears, a plan was chalked out to tap the bureaucratic and political channels. Sh. Kumar Mangalam Birla, Chairman Aditya Birla Group accordingly made a written request to Prime Minister/Minister of Coal vide letter dated 07.05.05. Sh. D. Bhattacharya, M.D. M/s HINDALCO and Sh. Shubhendu Amitabh, Group Executive President M/s ABMPCL also assisted him in this regard. Sh. Kumar Mangalam Birla thus submitted a written request to the Prime Minister seeking allocation of Talabira-II coal block in favour of M/s HINDALCO and thereby providing a ground to re-open the matter. However when things still did not move to their satisfaction then Sh. Birla alongwith his officers as above also met Sh. P.C. Parakh, Secretary (Coal) and Sh. Dasari Narayan Rao, Minister of State (Coal & Mines). Letters written by Sh. D. Bhattacharya and Sh. Shubhendu Amitabh to Secretary (Coal) and Minister of State (Coal & Mines) Sh. Dasari Narayan Rao clearly supports this fact. However Sh. Birla again met Prime Minister Dr. Manmohan Singh and submitted to him yet another identical letter dated 17.06.05, once again seeking allocation of Talabira-II coal block in favour of M/s HINDALCO. The necessity to submit a second letter arose as by that time the recommendation of 25<sup>th</sup> Screening Committee alongwith proposed amended guidelines were approved by the Prime Minister/Minister of Coal on 09.06.05. In the meantime they also made efforts to tap their resources in State of Orissa and their efforts proved fruitful. A letter was also submitted to Government of Orissa seeking a fresh recommendation from them in their favour qua Talibira-II coal block. Finally Sh. Naveen Patnaik, Chief Minister of Orissa wrote a letter dated 17.08.05 to Prime Minister purporting to

support the claim of M/s HINDALCO for allocation of Talabira-II coal block in its favour.

13. The receipt of letter from Sh. Naveen Patnaik, acted like a fresh lease of life to M/s HINDALCO and to the MOC and PMO officers as till then notes being prepared either by Section Officer, Sh. Prem Raj Kuar in MOC or by Sh. K.V. Pratap, Deputy Secretary, PMO were negating the claim of M/s HINDALCO. The two officers were in fact proving to be a spoke in the wheel being grinded by different officers either in the MOC or in the PMO in order to favour M/s HINDALCO. Soon after the letter dated 17.08.05 from Sh. Naveen Patnaik, Chief Minister Orissa, was received then Sh. T.K.A. Nair, Principal Secretary to Prime Minister directed to re-examine the matter in light thereof. The note dated 29.08.05 prepared by Sh. K.V. Pratap, Deputy Secretary, PMO clearly shows the turn-around sought to be made in the processing of the proposal of M/s HINDALCO soon after the receipt of letter from Chief Minister, Orissa. While marking the letter dated 17.08.05 of Chief Minister, Orissa to Secretary Coal Sh. K.V. Pratap stated that as directed he is requesting MOC to take the letter of Chief Minister, Orissa on record and to re-examine the matter in light thereof and to re-submit the file. I shall be discussing at a slightly later stage as to how the file came to be re-examined in MOC.

14. Moreover if the over all facts and circumstances of the case are seen then the issuance of the said letter by Sh. Naveen Patnaik also can not be termed to be a mere co-incidence. Admittedly the 25<sup>th</sup> Screening Committee had decided on 10.01.05 to allocate Talabira-II,

coal block to NLC. The representative of Government of Orissa was very much present in the said meeting and even though he supported the case of M/s HINDALCO qua allocation of Talabira-II coal block but as is evident from the minutes of 25<sup>th</sup> Screening Committee the representative of Government of Orissa also supported the case of NLC. The aforesaid facts have been duly recorded in the minutes of 25<sup>th</sup> Screening Committee.

15. Thereafter the minutes of 25<sup>th</sup> Screening Committee came to be finally approved in the 27<sup>th</sup> Screening Committee meeting held on 01.03.05. As per the files seized by the IO from the Department of Steel and Mines, Govt. of Orissa, copy of the minutes of 25<sup>th</sup> Screening Committee were received by them on 07.04.05. Thus not only the Government of Orissa was well aware from 10.01.05 onwards but also upon receipt of copy of minutes of 25<sup>th</sup> Screening Committee in the first week of April 2004 that Talabira-II coal block has been allocated to NLC and not to M/s HINDALCO. They were also well aware that NLC intends to establish a power project in their State whereas M/s HINDALCO wanted to establish an aluminium plant. Thus if Government of Orissa was so much interested in allocation of Talabira-II coal block to M/s HINDALCO as an aluminium plant was stated to be central to the growth of the State instead of a power plant then they could have represented to the Prime Minister/Minister of Coal soon after the deliberations of 25<sup>th</sup> Screening Committee were over or at least after 27<sup>th</sup> Screening Committee meeting approving the minutes of 25<sup>th</sup> Screening Committee was over. Silence on their part in this regard clearly goes to show that

irrespective of their support to M/s HINDALCO regarding allocation of Talabira-II coal block they had no effective opposition even qua allocation of Talabira-II coal block to NLC. The Government of Orissa continued to remain silent even till the month of June 2005 when the minutes of 25<sup>th</sup> Screening Committee recommending allocation of Talabira-II coal block to NLC were approved by Prime Minister/Minister of Coal. In fact the file of Department of Steel and Mines, Govt. of Orissa clearly shows that after the receipt of copy of minutes of 25<sup>th</sup> Screening Committee in the first week of April 2005, no further proceeding/noting was made in the file. It was only in the month of July 2005 that when two letters both dated 12.07.05 from Sh. S. Bontha, CEO M/s Aditya Aluminium as addressed to Chief Secretary, Orissa and Principal Secretary, Department of Steel and Mines Orissa were received that fresh notings began to be made in the file so as to process the case in favour of M/s HINDALCO. Finally on 17.08.05 a letter was sent by Sh. Naveen Patnaik, Chief Minister Orissa to Prime Minister in support of M/s HINDALCO. Apparently till 12.07.05 no such efforts for obtaining recommendation from government of Orissa were made as prima facie it appears that till that time the representatives of M/s HINDALCO and the officers in MOC and PMO were confident that on account of the two letters written by Sh. Kumar Mangalam Birla to the Prime Minister and the meetings held with Prime Minister, Secretary Coal or with Minister of State (Coal), Sh. Dasari Narayan Rao, things will be settled in their favour. It is thus also prima facie clear that the letter from Chief Minister Orissa had to be procured primarily in order to scuttle the adverse notes being made by the junior officers in the MOC and PMO

as discussed above.

16. At this stage I may however put a mark of caution that I am not at all suggesting that Sh. Naveen Patnaik, Chief Minister, Orissa acted in pursuance to any criminal conspiracy with M/s HINDALCO in writing the impugned letter dated 17.08.05 to the Prime Minister since such a conclusion from the aforesaid single fact will be completely a conclusion based on conjectures and surmises which is neither proper nor permissible under law. The fact however remains that on account of the planning devised by the representatives of M/s HINDALCO to tap their bureaucratic and political channels they managed to convince Chief Minister, Orissa to write such a letter to the Prime Minister recommending their case for allocation of Talabira-II coal block. Infact it may be also worthwhile to mention that even in the said letter Sh. Naveen Patnaik while emphasizing the proposal of M/s HINDALCO to set up an integrated Aluminum Complex in the State however in the end mentioned only that the vital important project i.e. of M/s HINDALCO be provided with required coal linkage at an early date. The reference to Talabira-II coal block in favour of M/s HINDALCO was primarily made in connection with the proceedings which took place till 25<sup>th</sup> Screening Committee.

17. However after the direction of Sh. T.K.A. Nair, Principal Secretary, PMO to re-examine the matter in the light of letter received from Sh. Naveen Patnaik, things suddenly turned around. As already mentioned after the letter of Chief Minister, Orissa was received in MOC through note dated 29.08.05 of Sh. K.V. Pratap, a meeting took place on 08.09.05 between Secretary Coal, Sh. P.C. Parakh, Joint

Secretary (Coal) Sh. K.S. Kropcha and Director C.A. Sh. Sujit Gulati. Thereafter Sh. Sujit Gulati initiated a note dated 09.09.05 proposing *inter alia* a joint venture company between MCL, NLC and M/s HINDALCO. (*The note dated 09.09.05 of Sh. Sujit Gulati and its further processing in MOC vide note dated 09.09.05 of Sh. K.S. Kropcha and note dated 12.09.05 of Sh. P.C. Parakh has already been reproduced above by me in para No. 35 to 39 of my order dated 16.12.14.*)

18. However, if the note dated 12.09.05 of Sh. P.C. Parakh is read then it prima facie gives an impression that all efforts were being made to accommodate the claim of M/s HINDALCO. It clearly mentions that the scheme being now proposed has also been discussed with the representatives of M/s HINDALCO and they are in agreement with the proposed arrangements. However not only wrong facts were mentioned in the note regarding formation of a joint venture company between NLC and MCL for setting up the power plant but the note was also silent as to whether any consent of either NLC or of MCL qua the proposals being now propounded by him was obtained or not. Even though both NLC and MCL were Public Sector Undertakings (PSU) but admittedly they were having their independent existence. It is beyond comprehension as to how Secretary Coal can take any action on their behalf even if MOC was having some administrative control over them. In fact after the approval of the recommendations of 25<sup>th</sup> Screening Committee by Prime Minister/Minister of Coal and consequent orders of Secretary Coal to issue allotment letters to the allottees, a right stood vested in

NLC qua Talabira-II coal block. Thus the least that MOC or PMO could have done before accommodating M/s HINDALCO in Talabira-II coal block and in Talabira-III coal block which already vested in MCL, was to at least discuss the proposal with them also.

19. Moreover the note states that the proposal put forward by Sh. Sujit Gulati appears to be reasonable. Once again such a noting gives an impression that the said noting got initiated with a new idea put forth by Director MOC. However the note dated 09.09.05 of Sh. Sujit Gulati clearly states at the beginning itself that the matter was discussed with Secretary (Coal) on 08.09.05. Thus apparently the note containing the impugned proposals was initiated by Sh. Sujit Gulati as per the discussion he had with Secretary (Coal). It is altogether another matter that the note dated 09.09.05 of Sh. Sujit Gulati was completely silent that the proposals being put forth by him were in contravention of the already approved guidelines.

20. It will be also worthwhile to point out that after the letter of Chief Minister, Orissa was received in the MOC then the file was not sent to Sh. Prem Raj Kuar, the Section Officer who till then was processing all the documents in the file. The initial noting itself started from the desk of Sh. Sujit Gulati, Director, C.A. This fact again supports the prima facie view as already mentioned that till then the notes being made by Sh. Prem Raj Kuar were scuttling all the efforts being made by the representatives of M/s HINDALCO and the other MOC officers or that of PMO.

21. However Sh. K.V. Pratap in the PMO vide his note dated

21.09.05 though stated his agreement with the proposal being now put up by Sh. P.C. Parakh vide note dated 12.09.05 of forming a joint venture between MCL, NLC and M/s HINDALCO but still observed that giving a share of 70%, 15% and 15% respectively to the three companies will entail relaxation in the guidelines approved by the Prime Minister on 09.06.05. He pointed out that as per existing approved guidelines the equity holding of NLC and M/s HINDALCO in the joint venture company should be 22.5% and 7.5 % and not 15% each. He also stated that consequently NLC and M/s HINDALCO would be eligible for 22.5% and 7.5% only of the total combined production of coal and not 15% each. Sh. Javed Usmani also while acting on the said note of Sh. K.V. Pratap made a note there-under on 26.09.05. He also though supported the new proposal of MOC of forming a joint venture company between MCL, NLC and M/s HINDALCO but stated that acceptance of the proposal would entail relaxation in the guidelines as stood approved on 09.06.05 and as has been highlighted by Sh. K.V. Pratap. The said note as already mentioned was put up before Principal Secretary Sh. T.K.A. Nair on 27.09.05 and who forwarded it to the Prime Minister by simply putting his signatures and without making any observation regarding the proposal put up by MOC or as regard the comments made by Sh. K.V. Pratap and Sh Javed Usmani. Finally Dr. Manmohan Singh as Minister of Coal approved the note on 01.10.05 again by simply putting his signatures and did not make any other observation either regarding approval of the proposal or regarding relaxation in the already approved guidelines. Though one may argue that merely putting up signatures on a note by a Senior Officer has the effect of



approving whatever has been mentioned above but the said conclusion has a consequential effect of also drawing a prima facie presumption that the said Senior Officer or the final authority must have gone through the matter being put up before him vide the said detailed note. In fact Sh. B.V.R. Subramanyam who was working as Private Secretary to the Prime Minister clearly stated in his statement to the IO that as the notes of Sh. K.V. Pratap and of Sh. Javed Usmani have been highlighted and underlined so the same must have been perused by the Principal Secretary, Sh. T.K.A. Nair and the Prime Minister, Dr. Manmohan Singh before approving them.

22. At this stage, I am also not delving into the issue as to whether the status of Sh. T.K.A. Nair in the entire process when the file was to be put up before Prime Minister through him will also fall in the category of those Senior Officers who merely signs a note being put up to them without making any comment/observation of their own. In the present matter Sh. T.K.A. Nair was though a very senior officer but certainly was not the competent authority himself to approve the proposal being put up in the file. The file through him was to be put to the Prime Minister/Minister of Coal. In fact as is evident from the entire processing of the files in the PMO Sh. T.K.A. Nair was the person who was consistently involved in the entire processing and prima facie it appears that he ought to have put his own observations/comments regarding the proposal being put up before him before submitting it to the Prime Minister/Minister of Coal. It will be however purely a guess work to presume that Sh. T.K.A. Nair consciously chose to not make any observation while forwarding the

file to the Prime Minister/Minister of Coal and in which area I am not attempting to venture out.

23. At this stage, I may also mention as a mark of caution that I am not at all suggesting as to how the files ought to be administratively processed. However what I am simply trying to highlight is the conduct of various public servants involved in the entire coal block allocation process which is prima facie evident from the facts and circumstances of the case.

24. It is also beyond comprehension as to how Sh. P.C. Parakh who had dealt at length the issue of allocation of Talabira-II coal block vis-a-vis the claims of NLC and M/s HINDALCO in the Screening Committee headed by him only came to over-turn the said decision on his own without referring the matter to the Screening Committee and that too without any plausible logic either in favour of M/s HINDALCO or by way of any logic which could negative the earlier reasons mentioned in the minutes of 25<sup>th</sup> Screening Committee in favour of NLC and as against M/s HINDALCO.

25. Certainly at this stage of the matter when the Court is only confronted with the issue as to whether any offence is prima facie found to have been committed or not so a detailed deliberation or analysis of the documents produced or that of the statement of witnesses is not required. The Court is only required to form a prima facie opinion as to whether some offence has indeed been committed or not and if yes then who all are the persons involved in the commission of the said offences. I may once again mention that I am

fully conscious of the seriousness of the matter as it involves officers not only of MOC but also that of PMO including the Prime Minister/Minister of Coal beside Chairman of a leading industrial house of the country.

26. Before advertizing further, I would also like to mention by way of abundant caution that I am dealing with the present matter keeping in view the observations of Hon'ble Supreme Court qua the role of Prime Minister as was observed in the case **Subramanian Swamy Vs. Manmohan Singh and Anr. (2012) 3 SCC 64**. In para No. 55 Hon'ble Supreme Court while discussing the role and position of the Prime Minister of the country observed as under:

*“55. By the very nature of the office held by him, Respondent 1 is not expected to personally look into the minute details of each and every case placed before him and has to depend on his advisers and other officers. Unfortunately, those who were expected to give proper advice to Respondent 1 and place full facts and legal position before him failed to do so. We have no doubt that if Respondent 1 had been apprised of the true factual and legal position regarding the representation made by the appellant, he would have surely taken appropriate decision and would not have allowed the matter to linger for a period of more than one year.”*

27. As regard the Chairman of a large industrial house also the Hon'ble Supreme Court recently in the case **Sunil Bharti Mittal Vs. CBI, in Cri. Appeal No. 34/2015 decided on 09.01.15**, while dealing with the role and responsibility of Chairman of a leading industrial house being vicariously involved, observed that a person ought to be not dragged in the Court merely because a complaint has been filed.

If prima facie a case has been made, the Magistrate ought to issue process and it can not be refused merely because he thinks that it is unlikely to result in a conviction. The Hon'ble Court however cautioned that before forming even a prima facie opinion to proceed against an accused there must be due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. It was further observed that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex-facie incorrect. It was further observed that a proper satisfaction in this behalf should be duly recorded by the Special Judge on the basis of material on record.

28. Coming to the case in hand I may however state that from the over all facts and circumstances of the case including the manner in which the entire exercise to accommodate M/s HINDALCO in Talabira-II coal block was undertaken, it is prima facie clear that the same was the result of a well-planned and well-designed exercise initiated by the representatives of M/s HINDALCO and thereafter involving various public servants at different level i.e. in MOC and PMO. Such a well-planned exercise and which I may also say was so meticulously carried out can be prima facie termed only as a criminal conspiracy and the object of the same was only to do an illegal act i.e. to secure allotment of Talabira-II coal block in their favour and in the process nullifying the recommendation of the 25<sup>th</sup> Screening

Committee by adopting a procedure contrary to the approved guidelines and rule of law.

29. At this stage of the matter I also need not to deal with the aspect as to whether all the participants who took part in the impugned criminal conspiracy were aware of the role of each of the other participant or not since what is important to be taken note of is that in a well planned manner persons at different level and positions were roped in and each of them was aware of the ultimate objective sought to be achieved i.e. to accommodate M/s HINDALCO in Talabira-II coal block.

30. It also does not require any detailed discussion or analysis as to what benefit M/s HINDALCO ultimately got by virtue of allocation of Talabira-II coal block. It has clearly come on record that the cost of production of aluminium after having a captive coal block is much less as compared to when coal is procured otherwise i.e. by way of import or procuring at transfer price under a coal linkage. Admittedly M/s HINDALCO was already having a coal linkage and thus they were eager to have a captive coal block in order to reduce their cost of production of aluminium. The brief note dated 18.08.04 prepared by Sh. Sujit Gulati, Director MOC regarding "*coal blocks allocation for captive mining-existing arrangements and proposed changes*" clearly mention this fact.

31. Prima facie at this stage, it also need not be gone into any further detail that the effect of accommodating M/s HINDALCO in Talabira-II coal block had the consequential effect of negating the

project of NLC to establish a 2000 MW power plant. This fact is evident from a number of communications which were undertaken by Sh. S. Jayaraman, Chairman and M.D. NLC to MOC after the decision to accommodate M/s HINDALCO also in Talabira-II coal block was taken. He clearly stated in the said communications to MOC that in the absence of sufficient coal linkage the power plant will not be able to achieve 90% PLF (Plant Load Factor) and thus it will not be possible to sustain the project. Infact during the course of further investigation when Sh. S. Jayaraman was again examined then it was also highlighted by him that even the observation made by Sh. P.C. Parakh vide his note dated 12.09.05 that the impugned power plant is being jointly established by NLC and MCL was wrong. It was pointed out that there had never been such a proposal by NLC or MCL to set up a joint venture for power plant out of coal derived from Talabira-II and Talabira-III coal blocks.

32. It will be also worthwhile to mention over here that initially before the 25<sup>th</sup> meeting of Screening Committee when Sh. S. Jayaraman visited Orissa then the Chief Secretary, Orissa strongly supported their project and he even directed his officers to render all help to NLC in establishing their power plant. Thereafter Sh. S. Jayaraman alongwith officers of government of Orissa even identified suitable land for establishing the said power project and discussed all other aspects such as arrangement of water linkage etc. for establishing the power plant. He was thus assured of all necessary help in establishing the power plant. Sh. Jayaraman accordingly wrote a letter to Secretary Coal on 08.08.03 intimating about all these

developments. Thus the claim of NLC officers later on that their project had to be shelved on account of there being no support from Government of Orissa regarding execution of MOU qua land or water etc. has to be also seen in the overall facts and circumstances when the Government of Orissa suddenly started supporting M/s HINDALCO afresh even after the 25<sup>th</sup> Screening Committee made recommendation qua Talabira-II coal block in favour of NLC. Clearly the said change in stand of government of Orissa of not rendering any support to NLC in establishing their power plant took place after representatives of M/s HINDALCO started their well planned exercise of tapping their bureaucratic and political channels.

33. In view of the aforesaid facts and circumstances, I may once again reiterate that it is writ large on the face of record that a concerted and joint effort was made by the representatives of M/s HINDALCO and the public servants as mentioned above both in MOC and PMO to scuttle the initial allotment of Talabira-II, coal block made in favour of NLC. In other words, it is prima facie clear that a well planned conspiracy was hatched to accommodate M/s HINDALCO in Talabira-II, coal block so as to extend undue benefit/wrongful gain to M/s HINDALCO while at the same time causing wrongful loss not only to the Government of India who was the custodian of the nationalized natural resources of the country but also to NLC. In fact it is also prima facie clear that M/s HINDALCO was deliberately not picking up coal from MCL as per the coal linkage already provided to them since it was not beneficial to them and secondly their purpose in the existing end use plant was being served

by illegally diverting coal from Talabira-I, coal block, which was allotted to them for expansion of their existing plant. However I am not entering into any further discussion on the said aspect as it has been informed that a separate FIR in this regard has already been registered against M/s HINDALCO by CBI. However a reference to the aforesaid issue is being made only to highlight the fact that the earlier linkage provided to M/s HINDALCO from MCL was not being taken use of as it was not cost effective to M/s HINDALCO. It was in these circumstances imperative for M/s HINDALCO to obtain yet another captive coal block for their use. Thus the claim of M/s HINDALCO as noted by Sh. P.C. Parakh in his note dated 08/11.08.05 that in view of the current shortage of coal in MCL area, MCL will not be in a position to honour earlier linkages given for their aluminium plant was also wrong. In this regard a letter dated 23.03.99 written by Sh. D.K. Biswas, CGM (CP), Coal India Ltd. to Sh. B.L. Dass, the then Under Secretary MOC is worth mentioning. In the said letter it was stated that MCL will be in a position to supply required quantity of coal to M/s Aditya Aluminium Project provided the party enters into a 'Long-Term Fuel Supply Agreement' with MCL/CIL for finalizing coal linkages. Admittedly M/s Aditya Aluminium Project did not enter into any such agreement and thus the coal linkage facility with MCL did not materialize. In fact PW-20 Shashi Shekhar, G.M. MCL also stated in his statement to the IO that there was sufficient coal production to meet the said linkage.

34. Thus in view of my aforesaid discussion, I am of the considered opinion that offence u/s 120-B IPC is prima facie made



out as having been committed by the representatives of M/s HINDALCO and the public servants involved in the impugned coal block allocation process. Moreover the MOC officers not only in their capacity as officers of MOC but also as members of Screening Committee were responsible for recommending allocation of different coal blocks to various applicant companies after assessing their eligibility and suitability. They were thus acting as trustees of the nationalized natural resources i.e coal of the country having dominion over its allocation. Similarly Minister of Coal being the competent authority and also having dominion over the said resources was also the person responsible for the proper allocation of said natural resources of the country in an objective manner and with due process of law.

35. In this regard reference can be had to the observations of Hon'ble Supreme Court in the case **Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd. 2010 (7) SCC 1**. In the said case while dealing with another natural resource of the country i.e. 'gas', the Hon'ble Court observed as under:

*“Gas is an essential natural resource and is not owned by either RIL or RNRL. The Government holds this natural resource as a trust for the people of the country. The constitutional mandate is that the natural resource belong to the people of the country. The nature of the word “vest” in Article 297 must be seen in the context of the public trust doctrine (PTD). Even though that doctrine has been applied in cases dealing with environmental jurisprudence, it has its broader application. The public trust doctrine is part of Indian law and finds application in the present case as well. It is thus the duty of the Government to provide complete protection to the natural resources as a*

*trustee of the people at large.*

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*The Constitution envisages exploration, extraction and supply of gas to be within the domain of governmental functions. It is the duty of the Union to make sure that these resources are used for the benefit of the citizens of this country. Due to shortage of funds and technical know-how, the Government has privatised such activities through the mechanism provided under PSC.”*

Reference can also be made in this regard to the case **V.S. Achuthanandan Vs. R. Balakrishna Pillai and Others, (2011) 3 Supreme Court Cases 317.**

36. It will be also worthwhile to mention over here that initially it was recommended by the PMO that PM should not be involved in the actual allocation process and that the matter should end at the level of Secretary only. The note dated 10.06.05 by Sh. K.V. Pratap, as earlier reproduced, conveying the approval of Prime Minister/Minister of Coal clearly stated that the minutes of the 25<sup>th</sup> Screening Committee may be considered in the light of the amended guidelines and approved at the level of Secretary (Coal). However for reasons best known to the PMO and MOC the files for final allocation were being again sent to PMO and were being approved over there only and as was done in the present case also.

37. There are certain other aspects of the matter also which needs a brief mention over here. Admittedly, the Prime Minister/Minister of Coal had approved the proposed amended guidelines on 09.06.2005 itself. However, both Sh. K.V. Partap and Sh. Javed Usmani, the two

officers of PMO had pointed out in their notes dated 21.09.05 and 26.09.05 respectively that accepting the proposal of Secretary Coal regarding joint allocation of the impugned Coal Block to MCL, NLC and M/s. HINDALCO in the share of 70%, 15% and 15% will entail a relaxation in the guidelines. However it is not ascertainable from the record as to whether the proposal to accommodate M/s. HINDALCO in Talabira-II Coal Block was accepted after amending or relaxing the said already approved guidelines or not.

38. It is in this context also the mere putting up of their signatures by Sh. T.K.A. Nair and Dr. Manmohan Singh without making any observation about the need for amending or relaxing the guidelines raises an eyebrow. In fact the final letter of allotment as was sent by MOC to MCL, NLC and M/s. HINDALCO clearly states that they have been allotted share in the joint venture company in the ratio of 70%, 15% and 15%. The MOC officers were also well aware of the various guidelines as they were initially proposed by them only but they also chose to turn a blind eye qua the said guidelines for reasons best known to them only. The letter of allotment thus clearly shows that the proposal to accommodate M/s. HINDALCO in Talabira-II Coal Block with a share of 15% was approved without amending or relaxing the approved guidelines and thus in other words in violation of the said guidelines. Thus it was imperative for both MOC and PMO that the guidelines were either suitably amended or relaxed before the proposal to accommodate M/s. HINDALCO in Talabira-II Coal Block is accepted. It will be worth mentioning that both Sh. K.V. Pratap and Sh. Javed Usmani in their notes dated 21.09.05 and

26.09.05 respectively had merely mentioned that approval of the proposal put forth by MOC will entail relaxation in the already approved guidelines. It was nowhere proposed by them as to how and in what manner or to what extent the guidelines may be relaxed or amended. Thus it is nowhere ascertainable from the record as to whether the already approved guidelines were finally decided to be relaxed or amended at all and if yes then in what manner or to what extent or whether it was as a one time measure qua the case of M/s HINDALCO only or for all times to come.

39. I may also point out that even the proposal as put forth by the MOC and as approved by the Prime Minister/Minister of Coal was done in such a manner that a joint venture company was proposed to be formed between MCL, NLC and M/s HINDALCO for Talabira-II as well as Talabira-III Coal Block. What is important to note is that Talabira-III Coal Block was exclusively reserved for PSU and was already allotted to MCL. Thus by virtue of the proposal to accommodate M/s. HINDALCO in a joint coal block comprising of both Talabira-II and Talabira-III, the condition that Talabira-III Coal Block was exclusively reserved for PSU was also compromised. A perusal of the letter of allotment dated 10.11.05 issued to MCL, NLC and M/s HINDALCO by MOC clearly states that Talabira-II and Talabira-III coal blocks have been jointly allocated to the three companies. Moreover by allocating excess coal i.e. by assigning a share of 15% instead of 7.5% which ought to have been there in accordance with the guidelines, M/s HINDALCO was allowed to dishonestly misappropriate excess amount of coal and the MOC and

PMO did so in complete disregard to the public interest involved. In the name of saving coal lying beneath the barrier between Talabira-II and Talabira-III coal block, a private company i.e. M/s HINDALCO was even allotted a coal block which was not even kept open for allocation to private companies. Admittedly Talabira-III coal block was with MCL and was exclusively reserved for PSU.

40. Thus at the cost of repetition I may state that beside the dishonest inclusion of M/s HINDALCO in Talabira-II & Talabira-III coal blocks, excess amount of coal was also allotted to the company. Once again all these acts were done in violation of the well established procedure and guidelines much less against rule of law and in complete disregard to the public interest involved.

41. The overall facts and circumstances thus clearly proves the initial proposition propounded by me that the factual matrix of the present case shows as to how M/s HINDALCO was accommodated in Talabira-II Coal Block (and even in Talabira-III coal block). There is also nothing on record to show as to why the matter was not referred back to the Screening Committee if at all the request of M/s HINDALCO was to be considered. Moreover this Court has come across a number of Coal Block allocation matters where various Coal Blocks have been allotted to different companies by different Screening Committees of MOC even though there was no recommendation in favour of those companies either by the concerned State Governments where the Coal Blocks were situated or the proposed end use projects were to be established or even when the concerned Administrative Ministry did not make any

recommendation in favour of the company. Thus the claim of MOC officers or that of PMO that in view of the strong recommendation by the Chief Minister of Orissa, the case qua M/s HINDALCO was revisited is also clearly an eye-wash and a lame excuse.

42. In fact I may also state that a perusal of the MOC files seized during the course of investigation also shows that adverse observations were being made qua M/s INDAL (later on acquired by M/s HINDALCO) even qua Talabira-I coal block earlier allotted to them. Certain documents recovered from the office of M/s HINDALCO also shows that the officers of M/s HINDALCO were also conscious of this adverse position of their qua Talabira-I coal block and they had stated it to be a negative factor working against them qua allocation of Talabira-II coal block.

43. Thus the public servants involved in the process who were having dominion over the nationalised natural resources of the country i.e. coal acted in complete disregard to the direction of law, rules/regulations and guidelines as per which the property entrusted to them was to be disposed of by them. By virtue of their acts of omission and commission as discussed above they dishonestly allowed M/s HINDALCO to misappropriate the nationalised natural resources of the country and the public servants so acted in complete disregard to the public interest involved.

44. The public servants involved in the process thus manifestly failed to observe those reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was

their duty to have adopted. The aforesaid conclusion being drawn by me also find support from the statement made by Sh. K.S. Kropha in the meeting he held with the representatives of M/s HINDALCO to discuss the problems being faced in formation of the joint venture company between MCL, NLC and M/s HINDALCO. He stated that keeping in view the special circumstances under which M/s HINDALCO was made a partner in the JV, the company should take the lead in ironing differences and conclude the JV. He also observed that it should be appreciated that the government had gone out of the way to accommodate M/s HINDALCO in Talabira-II. He also advised M/s HINDALCO representatives that as the matter has already drawn public attention so it will be in the interest of M/s HINDALCO to conclude the JV without any further delay.

*(The aforesaid deliberations of the meeting were mentioned by me earlier also in para No. 56 of my order dated 16.12.2014)*

45. Thus from the overall facts and circumstances of the case as discussed by me herein above, I am of the considered opinion that beside the offence of criminal conspiracy i.e. offence u/s 120-B IPC which is prima facie made out as earlier mentioned, offences u/s 409 IPC and u/s 13 (1) (c) and 13 (1) (d) (iii) P.C. Act, 1988 are also prima facie made out.

46. It will be also pertinent to mention that for the offence of criminal misconduct by a public servant u/s 13 (1) (d) (iii) PC Act the existence of dishonest intention/*mensrea* is also not even required.

The observations of Hon'ble High Court of Delhi as made in the case **Runu Ghosh Vs. CBI, CrI. A. 482/2002** are worth reproducing in this regard. It has been observed in the said case that if the other requirements of the provisions of section 13 (1) (d) (iii) PC Act are fulfilled then there is no requirement of *mens rea* or guilty intention to prove the said offence. The Hon'ble Court while discussing the provisions of Prevention of Corruption Act in detail *inter alia* observed as under:

*“79. What then is the behaviour or act which attracts such opprobrium as to result in criminal responsibility? It is not every act which results in loss of public interest, or that is contrary to public interest, that is a prosecutable offence. There can be no doubt that all acts prejudicial to public interest, can be the subject matter of judicial review. In those cases, courts consider whether the decision maker transgressed the zone of reasonableness, or breached the law, in his action. However, it is only those acts done with complete and manifest disregard to the norms, and manifestly injurious to public interest, which were avoidable, but for the public servant's overlooking or disregarding precautions and not heeding the safeguards he or she was expected to, and which result in pecuniary advantage to another that are prosecutable under Section 13(1) (d) (iii). In other words, if the public servant is able to show that he followed all the safeguards, and exercised all reasonable precautions having regard to the circumstances, despite which there was loss of public interest, he would not be guilty of the offence. The provision aims at ensuring efficiency, and responsible behaviour, as much as it seeks to outlaw irresponsibility in public servant's functioning which would otherwise go unpunished. The blameworthiness for a completely indefensible act of a public servant, is to be of such degree that it is something that no reasonable man would have done, if he were placed in that position, having regard to all the circumstances. It is not merely a case of making a wrong choice; the decision should be one such as no*



one would have taken.

80. In this context, it would be useful to notice the following passage from the work *Errors, Medicine and the Law* by Alan Merry and Alexander McCall Smith:

*“Criminal punishment carries substantial moral overtones. The doctrine of strict liability allows for criminal conviction in the absence of moral blameworthiness only in very limited circumstances. Conviction of any substantial criminal offence requires that the accused person should have acted with a morally blameworthy state of mind. Recklessness and deliberate wrongdoing, levels four and five are classification of blame, are normally blameworthy but any conduct falling short of that should not be the subject of criminal liability. Common-law systems have traditionally only made negligence the subject of criminal sanction when the level of negligence has been high -- a standard traditionally described as gross negligence.*

\* \* \*

*Blame is a powerful weapon. When used appropriately and according to morally defensible criteria, it has an indispensable role in human affairs. Its inappropriate use, however, distorts tolerant and constructive relations between people. Some of life's misfortunes are accidents for which nobody is morally responsible. Others are wrongs for which responsibility is diffuse. Yet others are instances of culpable conduct, and constitute grounds for compensation and at times, for punishment. Distinguishing between these various categories requires careful, morally sensitive and scientifically informed analysis.”*

81. As noticed previously, the silence in the statute, about the state of mind, rules out applicability of the mens rea or intent standard, (i.e. the prosecution does not have to prove that the accused intended the consequence, which occurred or was likely to occur). Having regard to the existing law Section 13 (1) (e) (which does not require proof of criminal intent) as well as the strict liability standards prevailing our system of law, therefore, a decision is said to be without public interest, ( if the other requirements of the provision, i.e. Section 13 (1) (d) (iii) are fulfilled) if that action of the public servant is the consequence of his or her manifest failure to observe those

*reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was his or her duty to have adopted.*

*82. It would be useful in this context, take recourse to certain examples. For instance, in not adopting any discernible criteria, in awarding supply contracts, based on advertisements calling for responses, published in newspapers having very little circulation, two days before the last date of submission of tenders, which result in a majority of suppliers being left out of the process, and the resultant award of permits to an unknown and untested supplier, would result in advantage to that individual, and also be without public interest, as the potential benefit from competitive bids would be eliminated. Likewise, tweaking tender criteria, to ensure that only a few applicants are eligible, and ensure that competition (to them) is severely curtailed, or eliminated altogether, thus stifling other lines of equipment supply, or banking on only one life saving drug supplier, who with known inefficient record, and who has a history of supplying sub-standard drugs, would be acts contrary to public interest. In all cases, it can be said that the public servant who took the decision, did so by manifestly failing to exercise reasonable proper care and precaution to guard against injury to public interest, which he was bound, at all times to do. The intention or desire to cause the consequence may or may not be present; indeed it is irrelevant; as long as the decision was taken, which could not be termed by any yardstick, a reasonable one, but based on a complete or disregard of the consequence, the act would be culpable.*

*83. "The test this Court has indicated is neither doctrinaire, nor vague; it is rooted in the Indian legal system. A public servant acts without public interest, when his decision or action is so unreasonable that no reasonable man, having regard to the entirety of circumstances, would have so acted; it may also be that while deciding or acting as he does, he may not intend the consequence, which ensues, or is likely to ensue, but would surely have reasonable foresight that it is a likely one, and should be avoided. To put it differently, the public servant acts without public interest, if his action or decision, is by manifestly failing to exercise reasonable precautions to guard against injury to public interest, which he was bound,*

*at all times to do, resulting in injury to public interest. The application of this test has to necessarily be based on the facts of each case; the standard however, is objective. Here, one recollects the following passage of Justice Holmes in United States v. Wurzbach 1930 (280) US 396:*

*“Wherever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk.”*

**(Emphasis supplied)**

47. The most important question which now crops up for consideration is as to who all are the persons who prima facie committed the impugned offences.

48. As discussed above from the nature of correspondence which was exchanged between Sh. Shubhendu Amitabh, Group Executive President (ABMPCL) and Sh. D. Bhattacharya, M.D. M/s HINDALCO, it is clear that the initial acts of criminal conspiracy off-shooted from them. Thereafter in order to tap the bureaucratic and political channels, Sh. Kumar Mangalam Birla who was the Chairman, of Aditya Birla Group of which M/s HINDALCO was a group company also joined. Sh. Kumar Mangalam Birla being the Chairman of a leading industrial house of the country thus alongwith Sh. D. Bhattacharya and Sh. Shubhendu Amitabh started exercising his influence over the political and bureaucratic channels in order to secure allocation of Talabira-II coal block in favour of M/s HINDALCO. Since the role played by them has been extensively dealt with in the earlier part of the present order and this being the stage of

cognizance only so I do not deem it appropriate to deal with their role in any further detail at this stage of the matter. However prima facie it is clear that the impugned criminal conspiracy which was initially conceived by Sh. Shubhendu Amitabh and Sh. D. Bhattacharya and Sh. Kumar Mangalam Birla and M/s HINDALCO was carried out further by roping in Sh. P.C. Parakh who was Secretary (Coal) and thereafter the then Minister of Coal, Dr. Manmohan Singh. Though the role of Sh. P.C. Parakh and that of Dr. Manmohan Singh has already been discussed at length by me in the present order but it will be still worthwhile to reiterate some acts of their omission and commission, though not all, in order to prima facie show their complicity in the impugned conspiracy.

49. Sh. P.C. Parakh who was not only Secretary (Coal) but also Chairman of 25<sup>th</sup> Screening Committee while proposing the new options of accommodating M/s HINDALCO in Talabira-II & III Coal Block did not mention anything about the already approved guidelines. He chose to remain silent as regard the excess coal allocation to M/s HINDALCO even after the new proposal to accommodate M/s HINDALCO in Talabira-II & III Coal Block was approved by the Minister of Coal. This act of silence on his part prima-facie appears to be a conscious decision. He even made a wrong noting in the file by stating that both NLC and MCL intends to establish the Power Plant jointly by forming a joint venture company. He mentioned the reasons put forward by M/s HINDALCO in their support without stating anything in the note about the veracity or otherwise of the said claims and which reasons as discussed above

were in fact contrary to record. This again prima-facie appears to be a conscious decision on his part. There is nothing on record as to why letter of allotment to NLC was not issued by his Ministry till 15.07.2005 as was directed by him vide his noting dated 16.06.2005. Admittedly, Sh. P.C. Parakh responded to the reminders of PMO on the two letters of Sh. Kumar Mangalam Birla for the first time on 08/11-08-05 and thus till that time there was no reason to not to issue the allocation letter to NLC in accordance with the already approved minutes of 25<sup>th</sup> Screening Committee. His apparent arbitrary action to accommodate M/s HINDALCO in Talabira-II and III coal block resulted in negating the proposal of NLC to establish a 2000 M.W. Power Plant in Orissa and thereby causing loss to a PSU and windfall profit to a private company. He also did not point out in his noting that Talabira-III coal block was a reserved coal block for PSU and already stood allotted to MCL. He thus compromised the interest of MCL even qua Talabira-III by jointly allocating the said coal block also to M/s HINDALCO. In fact Talabira-III coal block was not even on offer to private parties. He also did not refer the matter qua M/s HINDALCO to the Screening Committee and chose to over-turn the recommendation of the Screening Committee on his own without any legally sustainable reason or logic. He was only the chairman of Screening Committee and not the Screening Committee itself which in fact was an inter-Ministerial body. Thus these acts of omission and commission prima-facie raises grave shadows of doubts about his conduct in the entire process.

50. Similarly, Dr. Manmohan Singh who was holding the charge of

Minister of coal allowed the matter pertaining to allocation of Talabira-II, coal block reopened even though he himself had permitted the approval of the minutes of 25<sup>th</sup> Screening Committee recommending allocation of allocating the said coal block to NLC. The repeated reminders from PMO, written as well as telephonic, to MOC to expeditiously process the matter in view of the letters received from Sh. Kumar Mangalam Birla also prima facie indicate the extra undue interest shown by the PMO in the matter. Again his approval of the proposal put-forth by Sh. P.C. Parakh vide his note dated 12.09.05 to accommodate M/s HINDALCO in Talabira-II and III coal block while ignoring the words of caution put-forth by Sh. K.V. Pratap and Sh. Javed Usmani, the two officers of PMO in their notes dated 21.09.05 and 26.09.05 respectively regarding relaxation of the already approved guidelines, again prima facie shows that there was a conscious effort on his part to somehow accommodate M/s HINDALCO in Talabira-II coal block. Further compromising the status of Talabira-III coal block also (*Talabira-III coal block was reserved for PSU and was already with MCL*) beside allocating excess amount of coal to M/s HINDALCO again prima facie crops up as an incriminating circumstance against him. Also the omission to not to refer the request of M/s HINDALCO to the Screening Committee in accordance with the established procedure being followed till that time again prima facie shows that it was a conscious decision to accommodate M/s HINDALCO in a joint coal block comprising of Talabira-II and Talabira-III coal block while at the same time negating the right of NLC which already stood vested in it pursuant to the recommendation of 25<sup>th</sup> Screening Committee. His approval in

violation of the established procedure and already approved guidelines clearly resulted in defeating the efforts of NLC to establish a 2000 MW Power Plant in Orissa. His action thus prima facie resulted in loss to NLC which was a PSU and facilitated windfall profits to a private company i.e. M/s HINDALCO.

51. I may once again reiterate that for the offence of criminal conspiracy it is not required that each of the persons involved in the conspiracy need to know the other persons involved in the said conspiracy. The present conspiracy in question was of the nature of “*umbrella-spoke enrollment*” with M/s HINDALCO at the center and making enrollment in the conspiracy at different stages, of all those relevant persons who were crucial to attain their desired objective of securing allotment of impugned Talabira-II, coal block. However from the nature of action of the aforesaid persons, it is also prima facie clear that though Secretary Coal and Minister of Coal were playing different roles but there was a concerted joint effort to some-how accommodate M/s HINDALCO in Talabira-II, coal block. It was the central common objective of the impugned criminal conspiracy known to all concerned.

The broad principles governing the law of conspiracy as enunciated by Hon'ble Supreme Court in the “**Nalini case**” (**Supra**) squarely covers the acts of the accused persons in the present case.

52. At this stage I may once again state that I am fully conscious of the observations made by me herein-above as the then Minister of Coal was none else but the then Prime Minister of India i.e. Dr.

Manmohan Singh. It will be also not wrong if I say that while coming to such a conclusion about prima facie involvement of the then Prime Minister in the present matter this Court had to act with a heavy conscience and with full realization, the present order or the observations/conclusions being made here will have over the morale of the country as a whole.

53. As already mentioned, I am also fully conscious of the observations made by Hon'ble Supreme Court in the case ***Subramanian Swamy Vs. Manmohan Singh and Anr. (Supra)*** about the role of Prime Minister of the country. I may however state that the present case stands on a different footing as here Dr. Manmohan Singh did not act in the capacity of a Prime Minister but as a Minister of Coal. Undoubtedly from the very nature of office held by him, the Prime Minister of a country can not personally look into the minute details of each and every case placed before him and has to depend upon his advisors and other officers. However in the present case, Dr. Manmohan Singh chose to keep the coal portfolio with him and thus prima facie he can not claim that being Prime Minister he could not be expected to personally look into the minute details of each and every case. Moreover as regard the officers and advisors working in the PMO to assist him, I may mention that their role has also been discussed in detail by me and I may also state that the role of various officers in the PMO or even in MOC has also not been prima facie completely above board. However I may once again mention that in the present matter, I am not concerned as to how the files ought to have been administratively processed but only with the



fact as to how the files were actually processed and what could be the intention of doing so. Since all the officers who were working in the PMO and MOC were highly experienced and senior bureaucrats so it can not be even prima facie presumed that they were lacking in any manner in their administrative experiences. This Court also does not intend to draw any such inference qua their ability or capability. However at this stage of the matter, the evidence as available is clearly not sufficient to put other officers of PMO or MOC on trial. Moreover as regard the role of Prime Minister/Minister of Coal, the statement of Sh. B.V.R. Subramanyam, the then PS to Prime Minister Dr. Manmohan Singh would be again relevant to refer. In his statement u/s 161 Cr.PC, he stated that Dr. Manmohan Singh as the Departmental Minister would go through what the Secretary, the Minister of State and the officers below in the PMO has written in the file. He further stated that he was a thorough and diligent person. He further stated that he is so stating on the basis of his experience of Department of Personal and Training (DOPT) of which also Dr. Manmohan Singh was the Minister In-Charge. He also pointed out that on the letter dated 07.05.05 of Sh. Kumar Mangalam Birla received by the Prime Minister he had made an endorsement "action as desired by the Prime Minister" while marking it to the Principal Secretary, PMO. As earlier also mentioned he pointed out that since certain portions of the notes prepared by Sh. K.V. Pratap, Dy. Secretary, PMO and Sh. Javed Usmani, Joint Secretary PMO have been highlighted so it shows that the said portions were perused by the Principal Secretary, Sh. T.K.A. Nair and Prime Minister Dr. Manmohan Singh before the matter was approved. Clearly the

exercise of any discretion even if any such discretion vested in Minister of Coal can not be arbitrary in nature. In view of the already laid down procedure for allocation of coal blocks and the consequent guidelines which also already stood approved I may even state that no such discretion contrary to the established procedure and guidelines at all vested in the Minister of Coal and thus exercising any such power in contravention of well laid down procedure or guidelines was clearly bad in law. In fact such arbitrary and subjective exercise of power in disregard to the settled procedure or guidelines prima facie makes out a case of transgressing that fine line of distinction which makes such an act to be criminal in nature.

54. As regard Sh. Kumar Mangalam Birla also, I may once again reiterate that even as regard him being the Chairman of Aditya Birla Group I am fully conscious of the observations made by Hon'ble Supreme court in the case **Sunil Bharti Mittal (Supra)**. I am however of the considered opinion that the facts of the present case can not be put on par with the said case as in the present case Sh. Kumar Mangalam Birla played an active role by tapping his bureaucratic and political channels in order to secure allocation of Talabira-II, coal block in favour of M/s HINDALCO. The active role played by him has already been discussed by me at length and thus at this stage I am not reiterating it.

55. Thus in view of my aforesaid discussion, I hereby take cognizance of the offence u/s 120-B/409 IPC / 13(1)(c) and 13(1)(d) (iii) P.C. Act 1988 against **(1)** M/s HINDALCO, **(2)** Sh. Shubhendu Amitabh, Group Executive President ABMPCL, **(3)** Sh. D.

Bhattacharya, M.D. M/s HINDALCO, (4) Sh. Kumar Mangalam Birla, Chairman Aditya Birla Group, (5) Sh. P.C. Parakh, the then Secretary (Coal) and (6) Dr. Manmohan Singh, the then Minister of Coal. I also take cognizance of the substantive offences i.e. S. 409 IPC and S. 13(1)(c) and 13(1)(d)(iii) PC Act, 1988 against Sh. P.C. Parakh and Dr. Manmohan Singh.

56. It will be also worthwhile to mention that as per the status report filed by the IO, Dr. Manmohan Singh is though still a Member of Rajya Sabha but his term of the Rajya Sabha during which he was holding the charge of Minister of Coal has since expired. Sh. P.C. Parakh, the then Secretary Coal is also stated to have since retired. In these circumstances, there is no requirement of obtaining any prior sanction to take cognizance of the offences under P.C. Act qua them.

57. However before parting away with the present order, I may state that if during the course of trial, the role of any other person/s be it the private parties or the public servants involved in the process, crops up then necessary action shall be initiated against them also as per law.

**ANNOUNCED IN THE OPEN COURT  
TODAY ON 11.03.2015**

**(BHARAT PARASHAR)  
SPECIAL JUDGE, (PC ACT)  
(CBI)-7, NEW DELHI DISTRICT  
PATIALA HOUSE COURTS  
NEW DELHI**