

CHAPTER - 5

Financial benefit to Project Developer

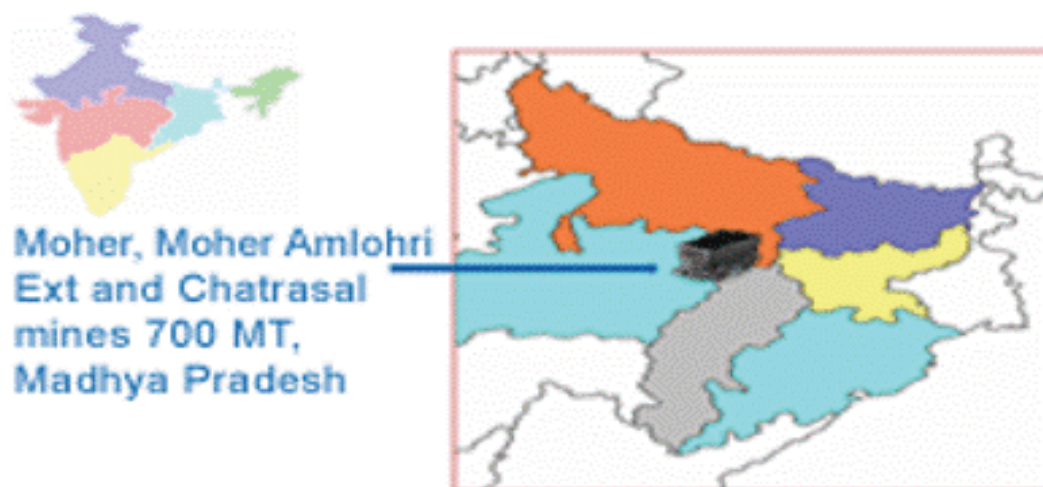
5.1 Financial benefit to Developer in permitting usage of surplus coal

(i) Allocation of coal blocks for Sasan Project

Sasan Power Limited (an SPV created for development of Sasan UMPP) was initially allocated (September 2006) two coal blocks - Moher (Geological reserves of 402 million tonne) and Moher-Amlohri Extension (Geological reserves of 198 million tonne) to meet its coal requirement. In the Request for Proposal document for the Sasan UMPP, the bidders were informed that coal blocks with reserves of about 700-800 million tonne will be allocated and the project would require the development of a coal mine with production of 18-20 million tonne per annum. The allocation was made based on Geological reserves and as the production from the above two blocks was considered insufficient by MOP, Secretary (Power) requested (9th October 2006) Ministry of Coal (MOC) to allocate another block to Sasan UMPP. Accordingly, MOC allocated (26 October 2006) Chhatrasal coal block after de-allocating the same from NTPC Limited prior to opening of financial bids (7 December 2006) for Sasan UMPP. The total Geological reserves of the three coal blocks were estimated at 700-800 million tonne. At the time of allocation of coal blocks, data regarding actual availability of coal for the project was not available in the absence of mining plan.

The Sasan UMPP was awarded to the bidder (i.e. RPL) who quoted the lowest levelised tariff and the contract agreements¹⁵ were signed on 7 August 2007 for transfer of Sasan Power Limited (the SPV) to RPL.

¹⁵ *Share Purchase Agreement between RPL and PFC; Power Purchase Agreement between Procurers and SPV*



(ii) Existence of surplus coal in the coal blocks

The Chief Minister of Madhya Pradesh wrote to the Prime Minister on 2 November 2007 stating that it made economic sense to use the excess coal in the captive blocks of Sasan UMPP for power generation by the power plant being set up by RPL at Chitrangi tehsil in the vicinity of these mines. It is, however, noticed that the mining plan of Moher & Moher-Amlohri Extension and Chhatrasal coal blocks were submitted by RPL in March 2008 (revised in September 2008) and July/August 2008 respectively. The Chief Minister's above letter sent (November 2007) three months after the contract was awarded (August 2007) to RPL referred to excess availability of coal even though the mining plans of these three coal blocks were not available on that date. Prime Minister's Office sought comments on the proposal from Ministry of Coal (MOC) which in turn, sought the comments of MOP.

(iii) Issues before the EGOM

The request made by the Chief Minister, Madhya Pradesh was referred to the EGOM on UMPPs¹⁶. In the agenda note dated 23 May 2008 for the EGOM meeting held on 28 May 2008, MOP stated that the request of the Chief Minister of Madhya Pradesh was examined by MOP with CEA and the latter pointed out that:

- (i) The total Geological reserves of the three blocks are estimated at about 630-700 million tonne and the extractable reserves are generally around 70% of GR, however, actual quantity available would be known only after the mining plans are prepared.

¹⁶ Constituted earlier (June 2007) to expedite the decision making process for UMPPs.

- (ii) Considering the average gross calorific value of 4000 K Cal/kg for coal, the requirement of coal for the Sasan UMPP at 90% plant load factor (PLF) for 25 years works out to be 18 million tonne per annum. According to CEA's assessment, the extractable coal reserves from Moher, Moher-Amlohri Extension and Chattrasal blocks may be just sufficient for the Sasan UMPP taking into account the consumption of Sasan UMPP. As such it may not be feasible to meet the coal requirement for an additional 4000 MW power project (Chitrangi project) from these three coal blocks.
- (iii) If surplus coal is available, it would be used by the Sasan UMPP itself during its extended span beyond 25 years.

MOP added that decision regarding disposal of surplus coal, if any, can be taken only on the basis of the prevailing policy/instruction of the government.

In the Agenda Note dated 23 May 2008 for the EGOM, MOP inter-alia proposed to communicate the following to MOC:

“Coal Ministry’s allocation letters clearly state that the coal produced from these mines would be exclusively used in the Sasan UMPP.

Since mining activity at the site has not commenced as yet, therefore, at the present there is no basis to conclude that surplus coal will be available from these blocks. If surplus coal is available, it would be used by the Sasan project itself during its extended span beyond 25 years.

Furthermore, decision regarding disposal of surplus coal if any, can be taken only on the basis of the prevailing policy/ instruction of the government at the relevant point of time as already stipulated in the allocation letter of the Coal Ministry.”

The EGOM deliberated (28 May 2008) on the issue and recorded,

“While there was clear consensus that coal from any coal mine allocated for development of a tariff based UMPP should be utilised for generation of power, it was generally agreed that in the first instance, any Developer should implement the UMPP project for which coal mines had been allocated. Thereafter it should be ascertained whether surplus coal was available from the allotted mines. It would also be appropriate to sell any additional power generated through a tariff bidding route”. EGOM directed that information about structure in respect of ownership, mode of sale of power and tariff of Chitrangi project be obtained from the State Government of Madhya Pradesh.

(iv) RPL's initial expression of inability to increase production from the mines

RPL submitted a mining plan to MOC in March 2008 for Moher & Moher-Amlohri Extension mines for a targeted production level of 12 million tonne per annum. At the time of presentation of mining plan for 12 million tonne, RPL was asked¹⁷ to examine the possibility of enhancement of production beyond 12 million tonne so that the projected total requirement of 16 million tonne to the downstream Sasan UMPP could be entirely met from Moher & Moher-Amlohri Extension Blocks. However, RPL conveyed that the blocks cannot sustain 16 million tonne production and that they have been allotted another block in the region namely Chhatrasal to meet the balance requirement of coal. This mining plan was approved by the MOC on 4 June 2008.

(v) RPL's letter dated 06 August 2008 seeking permission for using 'incremental' coal

In a surprising turnaround of the position taken by RPL in March 2008 before the Standing Committee, RPL sent letter dated 6 August 2008 to the Minister of Power stating that they have performed detailed studies on the allotted coal blocks and proposed to develop them using latest world class technologies resulting in increased recovery factor and higher annual production. RPL requested that the 'incremental' coal produced can be used for other power projects of the group, supplying power through tariff based competitive bidding with certain undertakings.

RPL, thus, established that there would be surplus coal in deviation with its earlier stand.

RPL's letter dated 6 August 2008 was also received in the MOC on 7 August 2008. Agenda Note for the EGOM meeting held on 14 August 2008 inter-alia had an item titled "Use of surplus coal, if any, from the mines allocated to the UMPPs". This agenda note did not make any reference to the RPL letter of 6 August 2008 and its changed stance. The request of RPL was taken up for consideration by EGOM and agreed to by EGOM.

(vi) EGOM recommendation

EGOM noted in the meeting held on 14 August 2008 that in terms of allotment letter of MOC dated 26 October 2006, RPL was permitted to utilize the surplus coal with

¹⁷ *As per the minutes of the meeting of Standing Committee (set up under MMDR Act, 1957) held on 9.2.2009*

the previous approval of the Central Government. Accordingly, EGOM recommended to MOC to allow RPL the use of the surplus coal from blocks allotted to Sasan UMPP by other projects of RPL subject to the following undertakings:

“Incremental coal quantity would be determined based on the Mine Plan approved by Ministry of Coal, Gol.

The 3960 MW Sasan UMPP will always have the first right and overriding priority over all coal produced from the allotted blocks and the allottee shall always ensure that the generation from the UMPP for the entire contracted period will not be allowed to be affected by utilization of incremental coal by other projects of the Group. Any loss in generation in the awarded UMPP at Sasan shall only be on account of genuine reasons such as maintenance, repairs etc.

End use of coal from these blocks would be restricted to power generation.

The power generated by utilizing incremental coal from these captive coal blocks would be sold through tariff based competitive bidding.”

The above undertakings were similar to those proposed by RPL in their letter dated 6 August 2008.

On 18 November 2008, MOC conveyed in-principle approval to the above recommendation of EGOM to the Ministry of Power with endorsement to the Developer.

(vii) Mining Plans and Approvals

In March 2009, the Standing Committee of MOC took up the Mining Plan of Chhatrasal Block (Production 5 million tonne per annum) for approval. The minutes of the Standing Committee revealed the following:

“----- EGOM decision of meeting the entire requirement of the Sasan UMPP as also utilisation of surplus coal thus stands fulfilled with the allotment of Moher & Moher-Amlori block itself. The need for the allocation of an additional block thus prima facie had no justification except that the three blocks were mentioned in the bid documents and that the EGOM decision also refers to these three blocks for the Sasan UMPP. ----- there is no justification for allocation of Chhatrasal coal block for supplying coal to the Sasan UMPP. The Committee was therefore, initially inclined to return this Mining Plan as it was originally meant primarily for supplying coal to Sasan UMPP. However, taking a larger view in the context of the overall need for

stepping up coal production and in the light of extant EGOM decision and also since this block does stand allocated for the UMPP, it was felt that the committee should go ahead and consider the mining plan as per the mining feasibility and as provided under the purview of Standing Committee”.

Thus, even the Standing Committee headed by the Secretary (Coal) was aware of the fact that Chhatrasal Coal Block was not really required by the Sasan UMPP but had to relent as this block was part of the bid documents and EGOM had already recommended usage of surplus coal by the Developer in their other Projects.

A gazette notification granting permission to the Developer to utilize up to a maximum of 9 million tonne per annum of coal from the Sasan coal blocks in the Chitrangi Project of the Developer was issued on 17 February 2010.

A chronology of the events leading to grant of permission for use of surplus coal from captive mines of Sasan UMPP for Chitrangi Project is also given in Annexure 4.

(viii) Audit Observations

(a) Allocation of surplus coal

The observations of audit on the sequence of events mentioned above and the decisions emanating from each are the following:

- (i) It is not clear how MOP on 9 October 2006 came to the conclusion that the two initially allocated blocks for the Sasan UMPP would be inadequate.
- (ii) The basis on which MOC was prevailed upon in October 2006 itself to allot an additional block (Chhatrasal) of coal to Sasan UMPP by de-allocating it from the Public Sector NTPC is not clear.
- (iii) Till March 2009, MOC was taking the stand that coal from two blocks (Moher and Moher-Amlohri Extension) was sufficient for the Sasan UMPP and that there is no justification for allocating a third block (Chhatrasal) to the Developer.
- (iv) In March 2008, RPL maintained that there was no possibility to enhance production beyond 12 million tonne from the two blocks of Moher and Moher-Amlohri Extension.

- (v) However, on 6 August 2008, RPL intimated of their intention to use latest world class technology leading to increased recovery factor and higher annual production leading to the mined coal from these three blocks becoming surplus to the requirement of Sasan UMPP.
- (vi) This indeed was the position which the Chief Minister of Madhya Pradesh was aware of when he wrote to the Prime Minister in November 2007 itself seeking diversion of the surplus coal to Chitrangi.
- (vii) This revelation by RPL, provided to the EGOM in its meeting on 14 August 2008, led to their deciding that indeed surplus coal would be available and this could be diverted to Chitrangi.

(b) Vitiating of the Bidding Process

The permission to use surplus coal in other projects of the Developer vitiated the sanctity of the bidding process since it amounts to post bid concessions to the Developer having significant financial implication as explained below:

- The EGOM in its meeting held on 28 May 2008 had sought information about structure in respect of ownership, mode of sale of power and tariff of Chitrangi Project. However, without getting this information from Madhya Pradesh Government, EGOM recommended (14 August 2008) granting of permission for usage of incremental coal.
- EGOM in its meeting held on 14 August 2008 had recommended that power generated by utilizing incremental coal from captive coal blocks of Sasan UMPP **would be sold through tariff based competitive bidding**. But RPL was granted permission by MOC (February 2010) to use the surplus coal in Chitrangi Project **the tariff of which was already accepted in May 2008 at ₹ 2.45 per unit i.e. prior to the EGOM decision (August 2008) on usage of surplus coal for Chitrangi Project**. For this purpose RPL had bid along with other bidders citing independent fuel arrangement (from Mahanadi Coalfields Limited/112.22 million tonne of coal reserves in the Rampia and dip-side of Rampia non-coking coal blocks in the state of Odisha).

Ministry of Power in its reply (December 2011 and March 2012) stated that since every qualified bidder had information about the clauses of the coal block allocation letter prior to submission of financial bid, there was no vitiating of commercial condition.

The contention of the Ministry is not tenable in view of the following:

- The clauses of the coal allocation letter do not explicitly state that Central Government would indeed grant permission to the Developer to use the surplus coal in their other projects. This fact was not disclosed upfront in the allocation letters and in the absence of clarity on this issue, it was left to the bidders to interpret the implication of the clauses of allocation letter. The relevant clauses in the allocation letter are reproduced below:

‘The coal produced from these mines would be exclusively used in the Sasan UMPP’- Clause (i).

‘The modalities of disposal of surplus coal/middlings/rejects, if any, would be as per the prevailing policy/instructions of the Government at the relevant point in time and could also include handing over such surplus coal/middlings/rejects to the local CIL subsidiary or to any person designated by it at a transfer price to be determined by the Government’.- Clause (vi).

‘No coal shall be sold, delivered or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government.’- Clause (xii).

A normal understanding of reading these three clauses would imply the meaning that they are restrictive and designed to ensure non-diversion of coal.

- This seems to have been the conclusion that even NTPC came to as they did not factor into their bid the possibility of using the surplus coal from the captive mines of Sasan UMPP.
- M/s. Tata Power Company Limited, which was also a bidder for the Sasan UMPP has also contested the post-bid permission of surplus coal diversion facility to RPL as that was not their understanding either, from a reading of the pre-bid conditions. A special leave petition filed (May 2009) by Tata Power Limited against permission to RPL to use surplus coal from captive coal mines of Sasan UMPP is pending in the Hon'ble Supreme Court of India.
- The Inter Ministerial Group (IMG), while deliberating on the safeguards issue against misuse of coal mine, noted in September 2007 that the allocation of coal mine had an explicit condition that its coal should be used solely for the purpose of the Sasan UMPP or else the lease was liable to be cancelled. This

IMG was constituted in August 2007 by the MOP on the recommendation of EGOM to review the Standard Bidding Documents for UMPPs.

- Since fuel cost is an important aspect of commercial consideration in arriving at the tariff, any relaxation of condition subsequent to bidding would vitiate the bidding process. As explicit mention of usage of surplus coal in other projects was not unambiguously transparent in the coal block allocation letters, the bidders who lost out did not have equal opportunity to bid under the relaxed condition.

To sum up, the conclusion that can be drawn is:

- (i) The advice of MOP in October 2006 that Sasan UMPP would require an additional coal block was based on insufficient data as mining plan of Moher and Moher-Amlohri Extension was not available.
- (ii) The condition purportedly permitting diversion of surplus coal was not explicitly stated in the bid document.
- (iii) The EGOM evidently was not provided accurate information about adequacy or otherwise of coal availability in the two blocks initially allocated to Sasan UMPP leading to their decision permitting usage of surplus coal.
- (iv) Permission to utilize surplus coal for projects with tariff based competitive bidding has been violated since tariff for Chitrangi Project, for which such permission was granted, was already fixed before the permission was granted.

Government need to generate confidence among bidders of future UMPPs of its equity and fairness. Audit would recommend that to ensure fair play, a level playground and transparency of the bidding process for future Developers to derive comfort in Government action, the allocation of the third coal block (Chhatrasal) be appropriately reviewed. Since the Developer had committed that he would be able to source 20 million tonne from the two blocks (Moher and Moher-Amlohri Extension) there would be adequate coal to feed the Sasan UMPP.

5.2 Financial Impact

Audit has attempted to quantify the post-bid concession extended to RPL in Sasan UMPP on an estimated basis and these figures are only indicative in nature.

The Sasan UMPP was awarded three coal blocks namely Moher, Moher-Amlohri Extension and Chhatrasal. As per the mining plan submitted by RPL, Moher and Moher-Amlohri Extension would produce 20 million tonne of coal per annum while Chhatrasal would produce 5 million tonne of coal per annum against a requirement of 16 million tonne of coal per annum for Sasan UMPP. As a result, surplus coal amounting to 9 million tonne per annum would be available to RPL for utilizing in its other power project, i.e. Chitrangi. The surplus coal would create additional electricity generation capacity¹⁸ of 461 MW in the 1st year, 2075 MW every year from 2nd to 16th year and 1383 MW, 1153 MW, 1153 MW and 922 MW in the 17th, 18th, 19th and 20th year respectively as per RPL's own stated plan to MOC.

Audit noted that the tariff for Sasan is based on coal being sourced from a captive mine while the tariff of Chitrangi is based on independent fuel arrangements i.e. coal being sourced from Coal India Limited or its subsidiaries, e-auction or imports etc. However, if the coal from the Sasan UMPP coal blocks is used for Chitrangi project, the tariff originally quoted by RPL for the Chitrangi project would no longer be based on assumptions of the costlier coal¹⁹. The tariffs quoted by RPL for different projects are given below:

S.N.	PROJECT	TARIFF (in Rupees per unit)
1.	Sasan UMPP	1.196
2.	Chitrangi Project (for Madhya Pradesh - MP)	2.450
3.	Chitrangi Project (for Uttar Pradesh)	3.702

Comparing the higher tariffs for Chitrangi project to the tariff of the Sasan UMPP, it is seen that the benefit of using surplus coal would not pass on to the consumers in the next 20 years as the tariff for Chitrangi Project had already been fixed as per the bid of RPL. There would, thus, be unintended benefit accruing to RPL based on their projected capacity. The overall financial benefit to RPL due to impact of the

¹⁸ As per the proposal given by RPL to the Ministry of Coal

¹⁹ Coal from any other source would be significantly more expensive [for example e-auction price ₹ 1782 per tonne (based on CIL data for 2010-11) and landed cost of imported coal ₹ 2874 per tonne (based on NTPC data for November 2009 adjusted for calorific value of 4675 GCV)]

difference in tariff comes to ₹ 29,033 crore with a net present value of ₹ 11,852 crore. The detailed calculations are made in **Annexure 5A and Annexure 5B**.

Ministry replied (March 2012) that costs and tariff for two projects cannot be compared. Similar views were expressed by RPL citing variations in project structure such as point of delivery of electricity, comfort of clearances for Sasan UMPPs and the lack of it for Chitrangi project etc.

Audit is of the opinion that the comparison between Sasan and Chitrangi projects is not out of place since both the projects (Sasan and Chitrangi) are

- ✓ of 3960 MW capacity;
- ✓ located in the same vicinity; and
- ✓ sourcing coal from the same coal mines.

To conclude, the post-bid concessions extended to RPL in Sasan UMPP resulted in financial benefit to RPL to the tune of ₹ 29,033 crore with a net present value of ₹ 11,852 crore.