

BCCL/HQ/M&S/Legal/2025-26/ 1651

Dated: 03 .07.2025

Notice

Sub: Compliance of Hon'ble Jharkhand High Court Order dated 29.04.2025 in WP(C) No. 2313 of 2017 and analogous cases.

The Hon'ble Jharkhand High Court in WP(C) NO 2313 of 2017 and analogous cases dated 29.04.2025 has held that:

"The matter is remitted before the General Manager (S&M), Bharat Coking Coal limited, Dhanbad for consideration of the cases of the one or other writ petitioner afresh on merit in the touchstone of order passed by Hon'ble Apex Court in the case of Ashoka Smokeless Coal India (P) Ltd. & Ors. Vrs. Union of India & Ors. and S. J. Coke Industries Private Limited & Others within a period of three months from the date of receipt / production of copy of this order.

It is made clear that if the authority comes to the conclusion that the claims of the writ petitioners are genuine then the consequential amount as per the ration laid down in the case of Ashoka Smokeless Coal India (P) Ltd. & Ors. Vrs Union of India & Ors. and S. J. Coke Industries Private Limited & Others be refunded within a period of two months thereafter."

In view of the aforesaid directions of the Hon'ble Court, the undersigned is duty bound to examine the issues in detail for arriving at a conclusion w.r.t. the claims of all such affected parties. In this regard, the facts of the matter, as per available records, have been revisited which are as under:

1. In terms of MOC letter No. FN23011/30/2004-CPD dtd.01.04.2004 addressed to Chairman, CIL and subsequently Chairman, CIL's letter No. CIL/CH/30/421 dtd.18.10.2004 addressed to CMD, BCCL, Trial e-auction was started in BCCL from November'2004. An overall increase in market price of 13.4% in the CIL notified price was observed.
2. Thereafter, as per the decision of 236th Board Meeting dated 7.9.2004 of BCCL, price notification No. BCCL/S&M/SA/F-Pricing/11 dtd. 04.01.2005 was issued effective from 1st Jan.'2005. As per notice dated 04.01.2004 the prices were applicable to non-core sector consumers who were agreeable to pay the additional

average rate obtained during e-auction i.e. 13.4% over and above the notified price.

3. Further, as per the direction of Coal India Limited, E-auction was conducted at all subsidiaries from April 2005. The notified price for the NRS industrial units which had linkage with Coal India Limited and its subsidiaries for the supply of coal had to pay weighted average e-auction price from April'2005. This led to various undertakings approaching different high courts challenging the e-auction schemes and seeking interim protection of their right to get coal at notified prices on the basis of linkage with Coal India Limited and its subsidiaries. The various High Courts entertained the writ petitions and passed interim orders in regard to supply of coal at the price(s) payable; pending the disposal of writ petitions filed by the petitioners. Some of the High Courts directed the linked consumers to furnish bank guarantees for the difference in prices or to pay cash or to furnish security for the difference while seeking supply of coal, based on linkage.
4. Being aggrieved by the directions to furnish Bank Guarantee or pay the price of coal in cash, petitions for special leave to appeal were filed by the petitioners while taking the stand that they are entitled to get the coal supplies at the notified price instead of the e-Auction weighted average price.
5. Petitions in this regard filed at various Courts were transferred to Supreme Court of India and heard together with the M/s Ashoka Smokeless Coal Industries Private Limited and Others Vrs. Union of India and Others. An interim order dated 12/12/2005 was passed in the matter of M/S Ashoka Smokeless coal Industries. The relevant portion of the Order is as under :

"To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of the Coal India Ltd. and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the concerned petitioner."

"it is appropriate to direct that on the concerned petitioner paying the notified price plus 33 1/3% of the enhanced price as per the E-auction and furnishing security

for the balance 66 2/3% of the enhanced E-auction price, and filing the undertaking in this Court within four weeks from today, the coal as per the linkage will be supplied to the concerned petitioner within a period of 3 weeks from the date of such payment. It is clarified that there will be no obligation on the part of the Coal India Ltd, and its subsidiaries to supply the coal as per this interim order in the case of those who have not complied with the order for payment of 33 1/3% of the difference in price in addition to the notified price and for furnishing of security for the balance 66 2/3% of the enhanced price, and filing the undertaking in this Court to pay the entire amount if they do not succeed in their challenge. It is directed that this interim order will ensure until these writ petitions are finally heard and disposed of by this Court."

6. Further, the Hon'ble Supreme Court passed the final order dated 01.12.2006 in the matter of M/s Ashoka Smokeless Coal Industries Limited is appended below :

"The original scheme of E-Auction meant to be applied only to the linked non-core consumers and traders. Thus, thereby the policy that the linked consumers should form a class by themselves was sought to be go-bye. We have, however, noticed hereinbefore that having regard to the intervention of the Central Government, the coal companies deviated then the said scheme and considered even the non-core sector consumers to be a separate class as they not only became entitled to take part in the E-Auction along with traders but also were sought to be assured of supply of coal having regard to their own requirements as regard both quality and quantity subject, of course, to their paying the price at the average weighted price. The stand taken by the coal companies before the Calcutta High Court as also before this Court assumes significance only in that context. However, now it appears that the coal companies have given a complete go bye to the original scheme of E-Auction in as much as not only the traders or the non-core sector consumers but also some sector consumers had also been allowed to participate therein. A consumer of coal falling, in any category is also a person who intends to purchase for his personal use would, therefore, be entitled to take part in E Auction. Whereas the consumers in the core sector would not only be entitled to allotment of coal at a price fixed by the coal companies but also would be entitled to take part in E-auction. The non-core sector consumers although as linked consumers from a separate and distinct class vis-à-vis is the traders, they would not be entitled to the benefit of obtaining coal at a fixed price. The question as regards the

discrimination between two categories of consumer assumes some importance. The effect is that today, while the core sector (92%) on its own and non-core non-linked SSI/Tiny units (through the NCCF/other agencies) (1%) are being supplied coal at a fixed price, on the other hand, the non-core linked 551/Tiny units (4%) are being subjected to differential treatment without any rational classification by supplying the coal to the latter on the price to be ascertained by the trader-controlled process of E-Auction and thereby putting the petitioner-units at par with the trader. The scheme of E-Auction is, therefore, ultra vires Article 14 of the Constitution of India. Judicial Review:

The submission of the learned Additional Solicitor General to the effect that the policy decision of a State cannot be the subject matter of judicial review is stated to be rejected."

7. The Hon'ble Apex Court directed the Registry of the Court to disburse the claimed amount, subject to the following conditions:-

- (i) The claimants are petitioners before this court (i.e Apex Court)
- (ii) Claimants have filed Undertakings before this court in terms of interim order dated 12.12.2005
- (iii) Claimants have furnished original money receipts

8. Hon'ble Apex court in its order dated 30.10.2007 passed in the contempt petition (Somal Pipes Pvt. Ltd. v. Coal India Ltd. & Ors.) arising from TP (C) 100 of 2006 directed respondent to refund the excess amount (collected as 1/3rd of enhanced price) to the petitioners upon verification of the documents which may be submitted on behalf of petitioners.

9. In pursuance to the above, as per available records, BCCL constituted a committee to verify the documents submitted by the petitioners in compliance of the Apex Court's order dated 30.10.2007 and concluded that:

Total number of applications received for claiming refund: 459 nos.

Total number of applications found in order as per court's order: 192 nos.

Total number of applications out of 459 claims which could not be identified as petitioners: 267 nos.

BCCL submitted a list of 192 consumers alongwith their claimed amount to the registry of Hon'ble Supreme Court.

Out of these 192 claimants, 72 claimants were not identified as petitioners before the Apex Court.

BCCL filed affidavit before Hon'ble Apex Court on 05.01.2008 and 13.03.2008 stating the above findings of the committee and prayed for further direction in respect of the 72 claimants not identified as petitioner at Apex Court and 267 non petitioner claimants. The Hon'ble Court in its order dated 14.03.2008 directed the Registry of the Apex Court to make request payments to these 72 claimants on their furnishing undertakings and original money receipts. 14 nos. out of these 72 claimants were disbursed an amount of INR 1,07,37,707.10 through the registry of Apex Court. Further, by order dated 12.05.2009 the Hon'ble Court directed the Registry to disburse the claimed amounts to the 58 claimants subject to certain conditions including furnishing of original money receipt. The Hon'ble Court did not give any direction or order to make payment to the remaining 267 non-petitioner claimants.

10. In the meantime, one another petition was also filed before the Hon'ble Kolkata High Court by M/s Tetulia Coke Plant (P) Ltd. vide W.P. no. 1279 of 2005. In the said writ petition the unit challenged the legality of the e-auction scheme introduced by the Union of India and adopted by ECL. In the said petition, an interim order was also passed with regard to the liability for payment of price for purchasing coal under e-auction scheme and for furnishing bank guarantee in connection thereof. The referred matter was further transferred to Supreme Court. Vide Orders dated 10.08.2011 in the matter Eastern Coalfields Limited Vs M/s Tetulia Coke Plant (P) Ltd, the Judgement of the Hon'ble Supreme Court is noted as under :

"We find no reason to take a different view than what is taken by the learned Single Judge of the High Court of Calcutta as also by the Divisional Bench of the same Court. Pursuant to the orders passed by this court, the accounts in terms of the order of the learned Single Judge has been verified and the said accounts have been settled. Therefore, appropriate steps shall be taken now to give effect to the Judgment and order passed by the Learned Single Judge. The amount in terms of the settled accounts shall be paid by the respondent in accordance with law within

a period of two months, failing which the amount will carry an interest @9% per annum."

11. The Hon'ble Apex Court while hearing the matter deliberated upon the order of Single Judge of the Patna High Court dated 01.07.2009 passed in Bhagwati Coke Industries Pvt. Ltd. & Ors. vs. Central Coalfields Ltd. & Ors. (CWJC 7753/2008) which had allowed the writ petition and directed the Central Coalfields Ltd. to refund the entire amount which they had collected from the writ petitioners in excess of the notified price of the coal pursuant to the Scheme along with 12% interest per annum. Being aggrieved by this order, the CCL filed L.P.A. No. 1094 of 2009. By order dated 17.02.2010, the Division Bench of the Hon'ble High Court dismissed the appeal but slashed the rate of interest payable on excess refund amount from 12% to 6% per annum and waived the cost imposed earlier. Dissatisfied with the said order, the Central Coalfields Ltd. filed Special Leave Petition (C) No. 17406/2010 before the Apex Court. By order dated 19.07.2010, the Apex Court dismissed the special leave petition in limine and confirmed the order passed by the Division Bench.
12. On 19.07.2010 the Apex Court settled the matter of refund of excess amount recovered by the Coal Companies from the writ petitioners with interests at the rate of 6% which had become payable to writ petitioners consequent upon the scheme being declared bad in law in Ashoka Smokeless Coal India (Supra) and lastly again on 10.08.2011 in Eastern Coalfields Ltd. Vs. Tetulia Coke Plant Private Ltd. & Ors. (supra) when this Apex Court dismissed the appeal filed by the Eastern Coalfields Ltd. which arose out of the order passed by the Calcutta High Court on the similar issue of refund of excess amount.
13. The issue was ultimately settled in M/S S.J. Coke and Others Vrs. Central Coalfields Limited by the Hon'ble Supreme Court of India in Civil Appeal No. 3399-3400 of 2015 (Arising out of SLP (C) Nos. 12925-12926/2013). The Hon'ble Supreme Court vide orders dated 08-04-2015 directed for refund of the excess amount to the writ petitioners with interests at the rate of 6%.
14. Various writ petitions were also filed before the Hon'ble High Court of Jharkhand in WPC no. 4562 of 2012, 4543 of 2012, 4588 of 2012 and 422 of 2016 (total 43 numbers of consumers) claiming refund @ 12% interest of the excess amount collected by BCCL during the prevalence of e-auction scheme of the Coal India

Limited, which was held to be illegal and constitutionally invalid in view of the judgement rendered by the Apex Court in the case of Ashoka Smokeless Coal Industries (P) Ltd Vrs Union of India. Hon'ble Jharkhand Court vide their Order dated 24.02.2016 in the above mentioned WPCs, stated that *"if claim of the individual petitioners are found admissible, the amount in question be refunded along with interest @6% as per the ration laid down by the Apex Court in the case of S.J. Coke Industries Private Limited and Others."*

15. In view of the Court order dated 24.02.2016, the petitioners represented for refund of excess amount deposited to BCCL, over and above the notified price of coal realised by BCCL during the e-auction period. BCCL vide it's letter dated 14/15.07.2016 replied that *"Hence, it cannot be misinterpreted that anyone who were neither a party in Ashoka Smokeless Case nor a party at different High Courts at the same stage has been said as eligible claimant in terms of judgement rendered by Apex Court in the case of S.J. Industries."* As such the application/representation for refund of claimed amount were rejected by BCCL.

16. Aggrieved by the decision of BCCL, communicated vide letter dated 14/15.07.2016 to all above mentioned units, various writ petitions viz. W.P. (C) No. 2313 of 2017, WP (C) 2304 of 2017 and 23 other writ petitions, were filed before the Hon'ble Jharkhand High Court. By common Judgement and Order dated 29.04.2025 passed by Hon'ble High Court of Jharkhand in these matters the Hon'be High Court of Jharkhand was pleased to hold:

"Hon'ble Apex Court in the case of State of Karnataka vrs C. Lalita {(2006) 2 SCC 747} has been pleased to hold as under:

"... 29. ...only because one person has approached the court that would not mean that the persons similarly situated should be treated differently..."

This Court, based upon the aforesaid discussion, is of the view that the impugned orders since is not in consonance with the order passed by the writ Court in earlier round of litigation, the impugned order requires to be quashed and set aside."

Accordingly, the impugned order dtd. 14/15.07.2016 of BCCL was quashed and set aside.

The matter has, thus, been remitted back to the undersigned by the Hon'ble High Court for consideration of the cases of the one or other writ petitioners afresh on merit.

17. In view of the above, and being duty bound for compliance of the orders of the Hon'ble Jharkhand High Court, dated 29.04.2025, and for compliance of the orders dated 24-02-2016 in WPC nos. no. 4562 of 2012, 4543 of 2012, 4588 of 2012 and 422 of 2016 (... *if the claim of the individual petitioner are found admissible, the amount in question be refunded along-with interest @6% as per the ratio laid down by the Apex Court in the case of SJ Coke Industries Pvt. Ltd & others.*), this is to inform that the representations received till date from the consumers in the matter have been seen and found to be incomplete with regards to supporting documents essentially required for examination, verification & refunds.

18. In the light of the above, by this NOTICE all the concerned consumers/petitioners are requested to submit a detailed representation latest by **10-07-2025** in the office of the undersigned with duly certified and filled up details and particulars in the enclosed proforma, **Annexure A** (part of this notice) along-with the supporting documents, being listed below, to substantiate the claims of refund pertaining to the quantity of the coal booked/lifted during the period 1st Jan'2005 to 11th December'2005, as follows-

- Self attested copies of Sale orders issued during the above period.
- Proof of payment of coal value during the above period.
- Original Money receipt of BCCL (in terms of modalities set by the Apex Court).
- Duly authenticated - Annexure A (part of this notice).
- Any other document(s) which may be required to substantiate the refund claims.

19. After submission of updated representation(s), as above, the claimants may come for personal hearing and/or reconciliation of records/accounts in the office of the undersigned between 11-07-2025 to 20-07-2025 during office hours with prior appointment.

A committee comprising of following officers shall interact with the petitioner/consumers for reconciliation during office hours between 11.07.2025 to 20.07.2025; for which prior appointment(s) may be registered by contacting Ms. Nishi Kusum Minz, Senior Manager (M&S), Koyla Bhawan, BCCL, Dhanbad.

Committee Members:

1. Sri Chandra Bhushan Tyagi, Sr. Manager (M&S), Koyla Bhawan.
2. Sri Md. Sharafat Ansari, Sr. Manager (M&S), Koyla Bhawan.
3. Sri RS Shivakrishna, Manager (HOD, M&S Sales Accounts/Oprn.), Koyla Bhawan.
4. Ms Akanksha Kumari, Dy. Manager (F/M&S), Koyla Bhawan.
5. Ms Kanchan Prasad, Dy. Manager (F/M&S), Koyla Bhawan.
6. Ms Reema Bhoi, Dy. Manager (F/M&S), Koyla Bhawan.

The claims shall accordingly be processed on merit after due verification as per rules of the company and in compliance of the Judgement and Order dated 24-02-2016 read with orders dated 29-04-2025 (Supra) of the Hon'ble High Court of Jharkhand. It is however clarified that in the event of failure to submit the filled up proforma in Annexure 'A' with supporting documents as mentioned in the NOTICE, it would not be possible to consider and settle the claim for refund.


03/07/2025
General Manager (M&S)

Copy to: (through E mail)

1. Concerned Petitioners / Coal Consumers.

Distribution:

1. Director (P&P) / Director (Finance), BCCL.
2. TS to CMD, BCCL.
3. GM (M&S), CIL.
4. HoD (Legal Dept.), BCCL.
5. HoD (M&S/Comm. & Legal) / HoD (M&S/Road Opern.) / HoD (M&S Sales Accounts/Real. & Reco.) / HoD (M&S/Linkage/Auction), BCCL.
6. All Committee members.
7. BCCL Website.

