

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

**Case ID No. 02403R0053422014**

**CC No. 05/14  
RC No. 219 2013 E 0002  
Branch: CBI/EO-I/New Delhi  
CBI Vs. M/s Jharkhand Ispat Pvt. Ltd. & Ors.  
U/s. 120-B r/w 420/467/468 & 471 IPC**

**Date of filing of charge sheet : 10.12.2014  
Date of framing of charge : 16.03.2015  
Date of final arguments : 22.02.2016  
Date of judgment : 28.03.2016**

**In re:**

**Central Bureau of Investigation (CBI)**

**Vs.**

- 1. M/s Jharkhand Ispat Pvt. Ltd. (M/s JIPL) (Convicted)  
Ramgarh, Jharkhand**
- 2. R. S. Rungta (Convicted)  
S/o Late Sh. Ram Kumar Rungta  
R/o Vikas Bhawan, Bariatu Road,  
Ranchi, Jharkhand**

3. **R. C. Rungta** (Convicted)  
S/o Late Sh. Ram Kumar Rungta  
R/o House No. 15, Ground Floor,  
Sadhna Enclave, New Delhi.
4. **Ramabatar Kedia** (Since deceased)  
S/o Late Sh. Sawal Ram Kedia  
R/o B-102, Chaitanya Enclave,  
Kanke Road, Ranchi, Jharkhand.
5. **Naresh Mahto** (Since deceased)  
S/o Sh. Dhani Mahto  
R/o Village and Post office  
Karma, P.S. Manduvia Marar,  
District Ramgarh, Jharkhand

#### **APPEARANCES**

**Present :** Sh. R.S. Cheema, Ld. Special PP alongwith  
Sh. A.P. Singh, Ld. Senior P.P., Sh. V K Sharma, Ld.  
Senior P.P. and Sh. Sanjay Kumar, Ld. Senior P.P. for  
CBI.  
Ld. Senior Advocate Sh. Ramesh Gupta with  
Ld. Counsels Sh. Rajiv Mohan and Sh. Abhimanyu  
Kampani for accused company M/s Jharkhand Ispat  
Pvt. Ltd. and accused R.C. Rungta.  
Ld. Senior Advocate Sh. Dinesh Mathur with  
Ld. Counsels Sh. Harsh Sharma and Sh. Sangeet Rai  
for accused R.S. Rungta.

#### **J U D G M E N T**

1. Hon'ble Supreme Court of India while dealing with the issue of allocation of coal blocks as made by Government of India during the period 1993 to 2010 extensively looked into the procedure adopted by the Government and found the same to be grossly arbitrary and in

violation of the guidelines governing such allocation. It was observed that there was no transparency or objective criteria, nay no criteria for evaluation of comparative merits of the applicant companies. Order dated **25.08.2014** of Hon'ble Supreme Court of India passed in the case **Manohar Lal Sharma V. Union of India, (2014) 9 SCC 516** in this regard speak volumes about such arbitrary allocation of important nationalized natural resources of the country i.e. coal to various undeserving applicant companies. However, the emphasis of Hon'ble Supreme Court was as regard the working of Ministry of Coal, Government of India in making allocation of all such coal blocks and instances of various allocatee companies were mentioned as illustrative of such arbitrary allocation.

2. CBI on its part upon receipt of a reference from CVC registered certain preliminary inquiries qua all such coal block allocation matters and wherever it found that matter with respect to allocation of a particular coal block to a company required further investigation, it chose to register a regular case. Upon completion of investigation final reports have been filed in a number of cases and except for few cases the final reports seek to charge-sheet various private companies and other private parties involved, be its Chairman, directors or other officers. However in certain cases public servants were also charge-sheeted. The present case is however one such case where only the private parties i.e. allocatee company in whose favour the coal block was allocated and its other officers have been charge-sheeted.

3. The facts of the case as emanates from the final report filed

by CBI U/S 173 CrPC and as are relevant for the purpose of present judgment are as under:

4. On 23.02.2004 an application for allotment of a captive coal block namely "*Pakri Barwadih Coal Block*" or "*Gondal Para Coal Block*" was submitted to Ministry of Steel (MOS) on behalf of M/s Jharkhand Ispat Pvt. Ltd. (M/s JIPL) (Accused no. 1) by one of its director R C Rungta (Accused No. 3). Alongwith application various documents were annexed viz.

**Annexure (I):** The Group Profile of Rungta Group of Industries;

**Annexure (II):** Company Profile of Rungta Project Limited;

**Annexure (III):** Project Profile of Integrated Mini Steel Plant i.e. the proposed end use project of M/s JIPL as prepared by MECON Limited, Ranchi;

**Annexure (IV):** Certificate of incorporation of M/S Jharkhand Ispat Pvt. Ltd. and that of M/S Reva Retreaders Pvt. Ltd. (*the earlier name of M/S JIPL*) alongwith memorandum of association and article of association of M/s JIPL;

**Annexure (V):** Certificate of registration of M/s JIPL issued by Chief Inspector of Factories in the Department of Labour and Employment;

**Annexure (VI):** Industrial Entrepreneur Memorandum;

**Annexure (VII):** No Objection Certificate from Jharkhand State  
Pollution Control Board;

**Annexure (VIII):** Sanction of credit limit by State Bank of India,  
Commercial Branch, Ranchi and

**Annexure (IX):** Mines Plan.

5. A copy of the application was also sent by R. C. Rungta to various other government departments including Ministry of Coal (MOC). Upon processing of the application in Ministry of Steel, it was found that certain further information was required from the applicant company. Accordingly, Sh. D Kashiva, Joint Industrial Advisor, Ministry of Steel wrote a letter dated 19.05.2004 to M/s JIPL seeking further information i.e. group turnover, annual reports for the last three years, phased requirement of non-coking coal block, details of proposed coal blocks with documentary evidence, suitability of proposed coal blocks viz-a-viz coal block applied duly certified by mining consultant/geologist, proper detailed techno-economic feasibility report and documentary evidence regarding details of effective steps taken for the whole project.

6. In the mean time, accused R. S. Rungta (Accused No. 2), Chairman M/s JIPL submitted a letter dated 12.05.2004 to Ministry of Steel enclosing therewith a copy of MOU entered into between Government of Jharkhand and M/s JIPL regarding establishing of sponge iron plant by the company beside also submitting phase wise schedule, investment and capacity build-up of Phase-I and

Phase-II projects. Subsequently in response to letter dated 19.05.2004 of Sh. D Kashiva Joint Industrial Advisor, Ministry of Steel , accused R S Rungta submitted a fresh letter dated 10.06.2004 enclosing therewith various documents as were asked for, in seven annexures divided into five parts.

7. However, upon receipt of the said documents further information was sought from M/s JIPL by Ministry of Steel regarding financial tie-up for Phase-I alongwith documentary evidence thereof. Two letters dated 26.08.2004 and 07.02.2005 respectively were sent in this regard by Sh. D S Yadav, Section Officer, I.D. Wing, Ministry of Steel to M/s JIPL. In response thereto a letter dated 12.02.2005 was received from M/s JIPL under the signatures of one of its director namely Sh. Vikas Santholia. Alongwith the said letter a copy of financial tie-up entered into by the company with State Bank of India for Phase-I of the project was also sent. Upon processing of all such documents received from M/s JIPL, Ministry of Steel decided to make recommendation to Ministry of Coal in favour of company M/s JIPL for allotment of a suitable non-coking coal block/sub block commensurate with their coal requirement.

8. As allocation of coal blocks both to private sector companies and to Govt. Companies was dealt with by MOC so an inter-Ministerial body called the Screening Committee was constituted in MOC. The Screening Committee was headed by Secretary, Coal with Joint Secretary, Coal as its member convener. Various administrative Ministries such as Ministry of Steel, Power etc. beside Coal India Ltd., Central Mine Planning & Design Institute Limited,

(CMPDIL) and various State Governments where either the coal blocks to be allocated were situated or the proposed end use project was to be established were members of Screening Committee. The Committee was constituted so as to obtain views/comments of all concerned stake holders simultaneously and thereafter the Screening Committee used to make recommendation in favour of various applicant companies qua different coal blocks. After approval of the said recommendation by Minister-in-charge, allotment letters to various successful allocatee companies used to be issued by MOC. Various guidelines governing allotment of coal blocks were thus laid down both to guide the Screening Committee and also the applicant companies. Guidelines for deciding the interse priority amongst various applicant companies by the Screening Committee were also laid down.

9. However, after 22<sup>nd</sup> meeting of the Screening Committee certain additional guidelines were laid down and same were decided to be held applicable to all allotments made after 04.11.2003. The earlier guidelines however also remained applicable in so far as they were not contrary to the said additional guidelines.

10. The present case pertains to recommendations made by 27th Screening Committee in its meeting held on 01.03.2005. While preparing for the said meeting Sh. Santosh Kumar Kakkar, Under Secretary, Ministry of Coal called upon various applicant companies to fill-up their data in an agenda form after downloading it from the website of Ministry of Coal. The purpose was to know the current status of the applicant companies with respect to their proposed end

use project, since from the date of receipt of initial applications sufficient time had elapsed. Separate intimation was also sent to the applicant companies to attend the Screening Committee meeting to be held on 01.03.2005 and to make presentation about their respective claims. Upon receipt of agenda forms of various applicant companies including that of M/s JIPL, the same were compiled in the shape of a booklet by the Ministry of Coal officers for the use of Screening Committee members during the course of meeting.

11. Accordingly in the 27th Screening Committee meeting as was held on 01.03.2005, representatives of various applicant companies appeared. Accused no. 2 R S Rungta appeared on behalf of M/s JIPL and he also signed the attendance sheet in this regard. While video/audio presentation as was available with different applicant companies was made during the course of Screening Committee meeting, a hard copy thereof was also supplied to the members of Screening Committee. Sh. D Kashiva, Joint Industrial Advisor, Ministry of Steel alongwith Sh. Deepak Anurag, Director, Ministry of Steel also participated in the Screening Committee meeting alongwith the file containing approved recommendation of Ministry of Steel in favour of M/s JIPL for allotment of a coal block. After the presentations were made by the applicant companies then 27th Screening Committee on that day itself decided to recommend M/s JIPL as a joint allocatee alongwith three other companies namely M/s Tata Power, M/s Pawanjay Iron & Steel Ltd and M/s Adhnuik Alloys & Power Ltd. for allotment of "North Dhadu Coal Block". The relevant minutes of the 27th Screening Committee were



subsequently finalized in Ministry of Coal. Thereafter in order to discuss and workout the arrangements to be made for captive mining of coal and for sharing the produce between joint-allocatees, a meeting was called of all such joint allocatee companies by Joint Secretary, coal. A notice dated 01.06.2005 was accordingly sent to M/s JIPL in this regard. During the course of said discussions M/s Tata Power however expressed its inability to mine "*North Dhadu coal block*" and thereafter M/s Electro Steel Casting Limited came to be introduced as one of the joint allocatee company alongwith M/s Pawanjay Steel and Power Limited, M/s Adhunik Alloys and Power Limited and M/s JIPL qua "*North Dhadu coal block*". All the four companies also expressed their willingness to jointly mine the "*North Dhadu coal block*" and to share the produce. Thereafter, 30th meeting of the Screening Committee was accordingly convened on 18.10.2005 to consider the said subsequent developments. An agenda for the said meeting was prepared wherein details of the aforesaid arrangement for "*North Dhadu coal block*" as jointly agreed to by the four companies was duly mentioned. Upon consideration the 30th Screening Committee meeting accordingly decided to recommend joint allocation of "*North Dhadu coal block*" in favour of M/s Electro Steel Casting Limited, M/s Adhunik Alloys and Power Limited, M/s Pawanjay Steel and Power Limited and M/s JIPL. Thereafter, minutes of 30th Screening Committee were prepared in Ministry of Coal. After approval of the said recommendation of Screening Committee by the Competent Authority a letter of joint allocation of "*North Dhadu coal block*" was issued to all the four companies including M/s JIPL. All the four companies thereafter

decided to form a joint venture company amongst themselves. A joint venture agreement dated 31.03.2008 followed by another agreement dated 06.05.2008 was entered into by all the four companies. On behalf of M/s JIPL the said agreement was signed by accused R S Rungta. An intimation in this regard was also sent by them to Joint Secretary, Coal, Sh. K S Kropcha vide letter dated 31.03.2008. (*Ex. PW-20/J (colly) in file Ex. PW 28/J (colly) (D-22) and as available at correspondence side pages no. 1 to 3*).

12. Subsequently, when allegations of wrong doing and corruption came to be levelled against the public servants qua the allocation of coal blocks to private companies then all the cases were examined by Central Vigilance Commission (CVC). Upon finding sufficient material liable to be looked into further, the CVC chose to make a reference to CBI. CBI accordingly lodged a preliminary inquiry in the matter. However, when sufficient incriminating material qua allocation of coal block to M/s JIPL came on record during the course of preliminary inquiry warranting further investigation, the CBI chose to register a regular case against M/s JIPL its various directors/officers and other unknown persons for the offences U/S 120 B read with Section 420 IPC.

13. During the course of investigation it was found that M/s JIPL had grossly misrepresented on a number of aspects before the Ministry of Steel (MOS) and also to MOC so as to inflate their claim and thereby to induce the Screening Committee and MOC to allocate a Coal Block to them. It was found that in the initial application dated 23.02.04 signed by accused R.C. Rungta, a claim was made by M/s

JIPL that from out of the projected requirement of 100 acres of land required to establish their proposed end use project, a land measuring 32 acres of land has already been acquired by them and that an agreement for purchase of 65 acres of land has also been already entered into. However later on at the time of submission of feed back form dated 11.02.05 and while making presentation before the Screening Committee on 01.03.05 by accused R.S. Rungta, a claim was made that 79 acres of land already stand acquired by them. During the course of investigation it was however found that beyond 32 acres of land no other piece of land was ever acquired by the company much less till 11.02.05. However during the course of investigation accused R.C. Rungta submitted to PW-9, Insp. Manoj Kumar the initial IO of the case, copy of a deed of agreement to sell dated 18.12.03 entered into by him as director of M/s JIPL with one Naresh Mahto of Village Karma, District Hazaribagh regarding purchase of 37.63 ½ acres of land in Village Karma, Hazaribagh. Upon investigation the said document was however found to be a forged and fabricated document having been created solely with a view to support the false and highly inflated claims made initially in the application form and subsequently in the agenda form.

14. It was also found that the two witnesses who allegedly signed the said deed of agreement to sell namely “*Koleshwar Mahto*” and “*Lalit Kumar Dass*” were non-existent persons. In fact no parentage or address of witness Lalit Kumar Dass was even found mentioned on the said agreement to sell so that he could be traced. Accused R.C. Rungta also failed to produce the original of said agreement to

sell despite repeated reminders/notices issued to him by the subsequent IO. PW 39 Insp. Bodh Raj Hans. Enquiry from the revenue authorities of village Karma Ramgarh revealed that except for about 0.10-0.13 decimal of land at village Karma Ramgarh being in possession with one Naresh Mahto, he was not having any other piece of land. Statement of recorded owners of land were also recorded by the IO and they stated that they never authorised Naresh Mahto to enter into any agreement to sell with anyone qua their land. Thus the question of entering into any agreement to sell by Naresh Mahto with R.C. Rungta with respect to said 37.63 ½ acres of land as owner thereof or as authorised representative of recorded owners did not arise. The claim of Naresh Mahto to this effect was thus found to be false. Beside the aforesaid misrepresentation about the actual land acquired by the company or land qua which agreement was entered into by the company M/s JIPL, it was also found that even qua the already installed capacity of their end use project, facts were misrepresented. While in the initial application form it was stated that One (1) kiln of 100 TPD was in operation and other two kilns were under erection and will be commissioned in April 2004. The documents accompanying the application however stated that 3 kilns of 100 t/d were already installed in phase-I and that in phase-II, 3 kilns of capacity 350 t/d shall be installed. In the detailed TEFRR prepared by R. Kedia (co-accused since deceased) and submitted by accused R.S. Rungta vide his letter dated 10.06.04, it was stated that at location-I i.e. under phase-I, 2 kilns of 100 TPD each have already been commissioned and that the unit is under commercial production. It

was also stated that the construction work of 1 X 100 TPD Rotary has already been started and is in advanced stage of installation and commissioning. It was also stated that the unit is likely to go in for commercial production from August 2004. As regard location-II i.e. under phase-II, it was stated that requisite land is being procured for accommodation of 3 X 350 t/d capacity kilns and 25 MW captive Power Plant.

15. It was however found that in the feed back form subsequently submitted by the company on 11.02.05, it was stated that 3 kilns of 100 TPD were in operation and eight (8) kilns of 100 TPD were under installation. Again at the time of making presentation before the 27th Screening Committee on 01.03.05, it was reiterated by accused R.S. Rungta that while 3 kilns of 100 TPD were in operation, 8 kilns of 100 TPD were under installation. However, during the course of investigation it was found that company had only two (2) kilns in operation and that too after 15.06.04 and the other 2 kilns of 100 t/d were under the process of installation as against the claim of company that 3 kilns of 100 t/d each were in operation and 8 kilns of capacity 100 t/d were under the process of installation. It was also found that not only the company misrepresented about the installed and projected capacity of the project but they also in the garb of said misrepresentation procured extra allocation of coal to the tune of 49 MT.

16. During the course of investigation IO collected reports from various departments where the company had submitted their annual report/returns regarding their output etc. and which confirmed that

during the relevant period 3 kilns were not in operation. It was found that M/s JIPL had obtained first consent to operate 2 kilns of 100 TPD from State Pollution Control Board, Jharkhand at Ranchi during the year 2004. Thereafter consent to establish another 2 kilns of 100 TPD was granted in the year 2006 and thereafter no such consent has been granted to the company. In fact consent to operate the other two kilns of the company was rejected by Jharkhand State Pollution Control Board vide their letter dated 25.09.06.

17. Upon enquiry from the supplier firm of the kilns i.e. M/s Beekay Engineering Corporation, Bhilai it was revealed that M/s JIPL had purchased 3 kilns during the year 2003-04. They also informed that the company had though placed another order for purchase of 8 kilns of 100 TPD each but as no advance payment was made by the company so the order was not processed further. Enquiry from the Central Excise and Customs, Ramgarh, Jharkhand further revealed that sponge iron kilns No. 1, 2, 3 and 4 of M/s JIPL were installed in the year 2003, 2004, 2007 and 2007 respectively. From the documents submitted by M/s JIPL to various Government Departments and as were collected during the course of investigation, it was also found that as per the claim of company M/s JIPL itself production from the 3<sup>rd</sup> kiln and 4th kiln started in the year 2009 only. The company M/s JIPL was found to have submitted a letter to the Excise department stating that kiln No. 3 and 4 started commercial production w.e.f 07.08.2009. It was also stated that in the absence of pollution clearance the kilns were not operative. It was also found that in May 2006 a team of five (5) officers of Central Coal

Fields, Ranchi had inspected the end use plant of the company with respect to grant of coal linkage to the company and it found only two (2) kilns of 100 TPD in place and out of them only one (1) kiln was found to be operational. Thus it was found during the course of investigation that on account of the said misrepresentations the company got allocated 49 million tonnes of coal as was projected to be required for operation of 3 kilns of capacity 100 t/d each and 3 kilns of capacity 350 t/d each against the actual coal requirement of 14.4 million tonnes as was required for operation of 4 kilns of 100 TPD each. Thus the excess allocation of coal, an important nationalized natural resource of the country, was a wrongful gain to M/s JIPL.

18. It was also found during the course of investigation that when M/s JIPL initially applied to Ministry of Steel for allotment of a Coal Block, they filed a detailed project report (DPR) prepared by MECON Ltd. alongwith their application. However, when Ministry of Steel asked for various other information/documents vide its letter dated 19.05.04 then the information as was supplied by accused R.S. Rungta vide his letter dated 10.06.04 was also false and was supported by forged and fabricated documents. Beside TEFR prepared by R. Kedia one other such document was a report about the suitability of proposed blocks/scope for further sub-blocking filed under a certificate issued by Sh. B.B. Lal, Mining Engineer and Sh. T.K. Basu, Geo Scientists. The two witnesses when contacted stated that the report as has been filed by the company with Ministry of Steel was not prepared by them though the certificate annexed with

it was issued by them.

19. As regard the techno - economic feasibility report (TEFR), the same was found to have been prepared by one R. Kedia, General Manager, United Engineering Consultants. It was however found that not only the said report was not carrying any address of the company United Engineering Consultants but no such company/firm existed. It was found that the impugned report was dishonestly and fraudulently prepared by R. Kedia in criminal conspiracy with accused persons, R. S. Rungta and R.C. Rungta. It was also found during the course of investigation that said R. Kedia was an employee of M/s Rungta Projects Ltd. a sister concern of M/s JIPL. Examination from CFSL also confirmed signatures of said R. Kedia on the said TEFR. Even the registered office address of M/s JIPL stated to be at Ghaziabad was found to be a false address.”

20. During the course of investigation searches were also carried out at the residence and office of Directors of M/s JIPL and at the office premises of company M/s JIPL. During the course of search operations various documents were recovered and the same came to be seized by the CBI. Various documents/files were also collected from Ministry of Steel and Ministry of Coal beside from other departments such as CMPDIL, Department of Central Excise, Jharkhand State Pollution Control Board etc. However it was also found that on account of a fire incident having taken place in Ministry of Coal various important documents/pre-allocation files relating to allocation of coal blocks to different applicant companies including that of M/s JIPL were no longer available. IO Insp. Bodh Raj Hans



recorded statements of various witnesses of Ministry of Coal in this regard.

21. During the course of investigation, specimen signatures of various persons who submitted different documents to various Govt. authorities on behalf of M/s JIPL were also obtained beside procuring their admitted signatures as were available in their bank account opening forms in different banks. The same were accordingly sent to CFSL for comparison with the signatures as appearing on various communication undertaken by them with different Govt. authorities.

22. Thus upon completion of necessary further investigation, a final report u/s 173 Cr. PC was filed by CBI against five accused persons namely M/s JIPL, R.S. Rungta, R.C. Rungta, Naresh Mahto and R. Kedia for the offences u/s 120-B read with Section 420, 467, 468 and 471 IPC.

23. Thereafter, vide orders dated 18.12.2014 cognizance of offences u/s 120-B r/w S. 420/467/468/471 & 477-A IPC was taken by this Court against five accused i.e. M/s JIPL, R.C. Rungta, R S Rungta, Naresh Mahto and R. Kedia. When summons for appearance were issued to the five accused persons then it was reported that two accused namely Naresh Mahto and R.Kedia have since expired. The proceedings against them thus stood abated. Other three accused persons namely company M/s JIPL, R S Rungta and R C Rungta however duly put in their appearance. After due compliance of Section 207 Cr.PC, arguments on charge were heard at length and vide a detailed order on charge dated 09.03.2015

beside framing charges for the offence u/s 120-B IPC and for the offences u/s 120-B/420/467/468 and 471 IPC against all the three accused persons, separate charge for the offences u/s 420/468/471 IPC was framed against accused R S Rungta and charge for the offences U/S 420/467/468 and 471 IPC was framed against accused R C Rungta. Charge for the offence u/s 420 IPC was also framed against company M/s JIPL. All the accused persons however pleaded not guilty to the charges so framed against them and claimed trial.

24. The accused persons were thereafter called upon to admit/deny the genuineness of various documents U/S 294 CrPC as were sought to be relied upon by the prosecution. Upon completion of the exercise U/s 294 CrPC, the recording of prosecution evidence commenced. Prosecution in order to prove its case examined 41 witnesses. The accused persons were thereafter examined U/S 313 Cr.PC and they also filed their respective statements U/S 313 (5) Cr.PC. The accused persons thereafter also examined 6 witnesses in their defence. Final arguments in the matter were thereafter addressed at length by Ld. Senior Advocate Sh. Ramesh Gupta and by Ld. Counsel Sh. Rajiv Mohan on behalf of accused no. 1 company M/s JIPL and accused no. 3 R C Rungta and by Ld. Senior Advocate Sh. Dinesh Mathur being duly assisted by Ld. Counsel Sh. Harsh Sharma for accused no. 2 R S Rungta. On behalf of prosecution final arguments were addressed by Ld. Special PP Sh. R S Cheema and by Ld. Senior PP Sh. A P Singh. The accused persons also chose to file their written submissions.

### **ARGUMENTS OF PROSECUTION.**

25. It was vehemently argued by Ld. Senior P.P. Sh. A.P. Singh that in order to procure allocation of a captive coal block the accused persons hatched a criminal conspiracy amongst themselves with a view to cheat Ministry of Coal, Government of India so as to induce them to allocate a coal block in favour of M/s JIPL. It was submitted that in pursuance of the said criminal conspiracy hatched by the accused persons highly inflated claims were made by the accused persons in their application submitted to Ministry of Steel and Ministry of Coal with respect to the land in their possession or being acquired by them and also qua their already installed projected production capacity with a view to show an advanced stage of preparedness. The documents filed alongwith the application or subsequently also contained false averments so as to support such inflated claims made by them. It was further submitted that accused R C Rungta and accused Naresh Mahto (co-accused since deceased) forged and fabricated a deed of agreement to sell qua 37.63 ½ acres of land to support their such claim. As regard accused R S Rungta it was submitted that a suitability report filed with Ministry of Steel was also manipulated as the actual report prepared by PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu, did not suit their interest. It was also pointed out that the guilty intention of accused persons was also manifest from the fact that even during the course of trial various contradictory and changing stands were taken qua number of documents and circumstances. The statements of accused persons made U/S 294 Cr.PC or U/S 313 CrPC viz-a-viz the stand taken by

them during the course of examination of various prosecution witnesses was thus highlighted to show that various contradictory pleas were taken by the accused persons during the course of trial and which in itself is a strong incriminating circumstance against the accused persons.

It was thus submitted that prosecution has been successful in proving its case against all the three accused persons.

**ARGUMENTS OF LD. COUNSELS FOR ACCUSED PERSONS.**

26. Ld. Counsels for the accused persons however strongly argued that prosecution has miserably failed in proving its case. Some of the arguments which were common to both set of accused i.e. accused R S Rungta on the one hand and accused company M/s JIPL and accused R C Rungta on the other hand were that M/s JIPL had infact never applied either to Ministry of Steel or to Ministry of Coal for allotment of "*North Dhadu Coal Block*". It was pointed out that the application submitted by the company was for allotment of a captive coal block i.e. "*Pakri Barwadih Coal Block*" or "*Gondal Para Coal Block*". It was thus submitted that when the very coal block whose allotment was sought for was not allotted by Ministry of Coal so the very basis of the prosecution case that accused persons induced Ministry of Coal to part with property loses its very ground as the coal block even if it is presumed to be a property which stood allotted to M/s JIPL was never asked for. It was also argued that under the provisions of The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) the mere issuance of letter

of allocation of a coal block by Ministry of Coal in favour of a company cannot amount to delivery of property as the final allocation of mining lease was to be done by the State Government and that too after the allocatee company has fulfilled all necessary procedural requirements. It was also submitted that prosecution has miserably failed to examine any member of the Screening Committee who could have said that he was cheated on account of any deception or inducement offered by accused persons. It was thus submitted that there was no victim or complainant to whom a wrongful loss occurred though at the same time it was also argued that no wrongful gain came in favour of M/s JIPL or other accused persons. While relying upon the definition of "person" as given U/S 11 IPC, it was also argued by Ld. Senior Advocate Sh. Dinesh Mathur for accused no. 2 R S Rungta that word "person" as defined in Section 11 IPC, does not include Government of India much less Ministry of Coal and thus the very basic ingredient of the offence of cheating as defined U/S 415 IPC that some person ought to have been deceived by accused persons does not stand fulfilled. It was also submitted that for the charge of criminal conspiracy there has to be two persons and as accused company M/s JIPL and accused R C Rungta and accused R S Rungta constituted one set of such person so they could not have conspired amongst themselves only, in the absence of any other set of persons arrayed as accused. It was submitted that the present accused persons were acting as and on behalf of one single entity i.e. M/s JIPL. It was thus submitted that conspiracy, if any could have been hatched with Ministry of Coal officers only and in view of the fact that none of the officers of

Ministry of Coal or any member of the Screening Committee have been prosecuted in the present case so the very basic ingredient of the offence of criminal conspiracy that there must be minimum of two persons for hatching a conspiracy, does not stand fulfilled. It was also argued by Ld. Senior Advocate Sh. Dinesh Mathur that the very charges framed in the present matter were defective in as much as for the offence of cheating it was stated that accused R S Rungta dishonestly and fraudulently induced Ministry of Coal so as to procure allocation of "North Dhadu Coal Block" in favour of M/s JIPL. It was pointed out that an act could have been either dishonest or fraudulent as is also mentioned in Section 415 IPC. The use of word "and" between dishonest and fraudulent thus makes the charge illegal as it does not clarify as to for which nature of acts accused was being prosecuted. It was also submitted by him that in the statement U/S 313 CrPC no question was put to the accused persons relating to criminal conspiracy having been hatched by them and thus in the absence of the same charge for any such offence cannot be invoked against the accused persons or in other words charge for the offence U/S 120 B IPC cannot hold ground. It was also submitted that prosecution has not led any evidence which could show complicity of accused R.S. Rungta in any of the offences for which charges have been framed against him. Ld. Senior Advocate further argued that the very framing of charge for the offence u/s 120-B IPC against two deceased accused persons i.e. Naresh Mahto and R. Kedia was also bad in law.

27. Though no other oral arguments were advanced on behalf of

accused R S Rungta but in the written submissions filed on his behalf, it has been stated that TEFER report as was prepared by R Kedia was not a forged or fabricated document. It was submitted that both Ministry of Coal and Ministry of Steel officers who have been examined by the prosecution have stated that there was no requirement that the TEFER report ought to be prepared by any outside agency much less by an incorporated company. All the witnesses rather stated that such a report could have been got prepared by the applicant company on its own also. It was thus submitted that the mere fact that "United Engineering Consultants" was not found registered either with ROC or with Service Tax Department cannot lead to a conclusion that it was a non-existent concern.

28. It was also submitted by Ld. Defence Counsels for accused M/s JIPL and R.C. Rungta that admittedly neither Ministry of Steel nor Ministry of Coal had laid down any minimum eligibility criteria for being successful or eligible for allotment of a coal block and thus irrespective of the fact whether the accused persons claim with respect to actual land in their possession or their actual installed capacity was correct or not, the same was an irrelevant factor. It was also submitted that from the deposition of various witnesses from Ministry of Steel and Ministry of Coal examined by the prosecution, it was clear that none of such claims made by the accused persons formed basis for making allocation of coal block in favour of company M/s JIPL.

29. As regard suitability report stated to have been prepared by

PW 17 Sh. Bipin Bihari Lal and PW 19 Sh. Tarun Kumar Basu, it was submitted that though prosecution has miserably failed to prove as to what was the actual report prepared by the said two witnesses but even otherwise the said suitability report could have been filed by company M/s JIPL only with respect to “*Pakri Barwadih Coal Block*” and “*Gondal Para Coal Block*” and not qua “*North Dhadu Coal Block*” as the same was never applied for. The said document was thus stated to be of no significance when none of the two coal blocks asked for by the accused company was allotted and the Screening Committee chose to recommend a third coal block in favour of the company.

30. As regard the deed of agreement to sell, it was submitted by Ld. Senior Advocate Sh. Ramesh Gupta that from the evidence led by prosecution itself it was clear that the said agreement to sell, photocopy of which was submitted by accused R C Rungta to IO Insp. Manoj Kumar, was a genuine document. The handwriting expert during the course of investigation found the said agreement bearing genuine signatures of accused Naresh Mahto (since deceased) and that of accused R. C. Rungta. PW-38, Mohd Quadir, the Stamp Vendor stated that the stamp papers on which the said deed of agreement to sell was written, was sold by him to M/s JIPL for the purposes of writing an agreement. It was also pointed out that though Koleshwar Mahto, one of the two attesting witnesses of the said agreement to sell was known to Naresh Mahto only but the other attesting witness namely Lalit Kumar Dass was very much available and was examined by accused persons as DW 1. It was



thus submitted that even though there was no requirement of getting the said agreement to sell attested but the accused persons by examining one of the attesting witnesses have discharged their burden of proving that the agreement to sell was not a forged or a fabricated document. As regard the inquiry carried out by IO PW 39 Insp. Bodh Raj Hans during the course of investigation, it was submitted that none of the witnesses examined by prosecution including PW-10 Sh. Sukhdeo Kumar, Revenue Karamchari, Gola Anchal, Jharkhand has stated any fact pertaining to the year 2003 as to whether any person with the name Koleshwar Mahto used to reside in the said village or not at that time. The concerned police officer SI Ashish of PS Gola was however not examined by the prosecution and even otherwise his inquiry report also did not talk of the year 2003 and was completely silent as to whether any person by the name Koleshwar Mahto used to reside in the said village in the year 2003 or not. It was also submitted that none of the witnesses in whose name the land in question which was mentioned in the impugned agreement to sell stood recorded was examined by the prosecution as those persons could have only said as to whether any such land was sold by them to Naresh Mahto or not.

31. It was also submitted that the impugned agreement to sell was never submitted to any government authority and is thus of no relevance at all to the prosecution case. As regard the advance money of Rs. 51,000/- paid by accused R C Rungta to Naresh Mahto as part of sale consideration from out of the total sale consideration of Rs. 97 Lacs it was submitted that simply because a

very small amount was paid as earnest money, it cannot be concluded that the document was a forged or fabricated document. It was also submitted that none of the documents which are stated to have been recovered during the course of search operation carried out at the office premises of company M/s JIPL or at the residence and office premises of its officers/directors bear signatures of either CBI officers who carried out the search or the particulars of present case and which fact clearly goes to show that the said documents were subsequently planted by CBI as the said documents were already available with them. It was pointed out that even the search list so prepared by the search team does not mention the description of documents recovered. It was thus submitted that no such search operation was at all carried out by CBI.

32. As regard the claim of existing installed capacity of company M/s JIPL, it was submitted that though in the project profile report prepared by MECON Ltd. and as submitted alongwith initial application it has been mentioned that 3 kilns were already installed but the same was an inadvertent mistake. It was however submitted that PW 13 Deependra Kashiva has stated that when he did not find the said report to be sufficient for processing the file so a detailed TEFR report was sought for from the company. In the said TEFR report it was stated that only two kilns have been installed and the other two kilns were in the process of installation. It was thus submitted that not only the project profile report prepared by MECON Ltd. was not relied upon by Ministry of Steel but all subsequent claims by the company M/s JIPL stood duly supported

from various other documents relied upon by prosecution itself including that of Jkharkhand State Pollution Control Board and returns filed with the Excise Department.

33. As regard the allegations of prosecution that accused persons took self-contradictory stand or inconsistent pleas qua various documents during the course of trial, it was submitted by Ld. Defence Counsel that in a criminal trial, the burden of proving its case beyond shadows of all reasonable doubts solely rests upon the prosecution and the accused persons enjoys the benefit of presumption of innocence in their favour till the time prosecution discharges its burden completely. It was thus submitted that accused persons were well within their rights to raise as many plea of defence even though contradictory and no adverse inference can be drawn against them on this ground. As regard the denial of various documents by the accused persons u/s 294 Cr.PC, it was submitted that the only purpose of conducting exercise u/s 294 Cr.PC was to shorten the process of trial and nothing else. It was thus stated that no adverse inference can be drawn against the accused persons on the basis of any such denial of the documents by them u/s 294 Cr.PC.

34. The prosecution was thus stated to have filed a false case against the accused persons and they were thus prayed to be acquitted.

35. In support of their submissions reliance was placed on the following case law by Ld. Counsels for the accused company M/s JIPL and accused R C Rungta:-

1. **Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808**
  2. **Sujit Biswas Vs. State of Assam (2013) 12 SCC 406**
  3. **Mohd. Ibrahim & Ors. V. State of Bihar (2009) 3 SCC (Cri.) 929**
  4. **Shakuntla Bhoola V. Sheel Chand Jain, CS (OS) 126/2004 decided on 29.01.2009**
  5. **Bharat Hiralal Sheth and Others Vs. Jaysin Amarsinh Sampat and another, 1997 CriL 2509.**
  6. **Baljit Singh & Anr. V. State of Uttar Pradesh (1976) 4 SCC 590**
  7. **Bir Singh V. State of U.P. (1977) 4 SCC 420**
  8. **Shaikh Farid Hussain Sahab V. State of Maharashtra, MANU/MH/0030/1981 Full Bench**
  9. **Niwas Keshav Raut V. State of Maharashtra, MANU/MH/1766/2015**
  10. **Dashrath Mandal V. State of Bihar, MANU/BH/0399/1992**
  11. **Ganpat Raoji Suryavanshi V. State of Maharashtra, 1980 CriLJ 853**
  12. **Surinder Kaur V. State of Haryana, 2015 (1) JCC 586 (SC)**
36. On behalf of accused no. 2 R S Rungta, reliance was placed on the following case law:-

1. **Kartongen Kemi Och Forvaltning AB, Srichand P. Hinduja, Gopichand P. Hinduja, Prakash P. Hinduja V. State through CBI, LAWS (DLH)-2004-2-18, Cri. Misc. (Main) decided by Hon'ble High Court of Delhi on 04.02.2004.**
2. **Robert John D'Souza & Others Vs. Stephen V. Gomes & Anr. (2015) 9 SCC 96.**
3. **Mr. Naved Yar Khan V. Mr. Haroon Yusuf Cri. M.C. No. 4027/2010 & Cri. M.A. No. 19096/2010 decided by Hon'ble High Court of Delhi on 17.01.2011.**

#### **ARGUMENTS OF PROSECUTION IN REBUTTAL**

37. Ld. Special P.P. Sh. R.S. Cheema, reiterated the earlier claim that the accused persons cheated MOC, Government of India by deceiving it to allot a coal block in favour of M/s JIPL by inducing

Ministry of Steel and Screening Committee, MOC, to believe in the highly inflated claims made by the accused persons even though the accused persons knew fully well that all such claims were false. It was also submitted that the word “includes” as used in section 11 IPC only expands the definition of the word “person” as is usually understood and does not limit its definition as claimed by Ld. Senior Advocate Sh. Dinesh Mathur. It was also submitted that “*an association of person*” stands included in the word “person” and Government is undoubtedly an association of persons. While placing reliance on a number of case law, where the charge of cheating the Government has been upheld by Hon'ble Supreme Court and various High Courts, it was argued that the word “person” as used in S. 415 IPC thus includes “Government”. The prosecution was thus stated to have been successful in proving its case against the accused persons and it was thus prayed that the accused persons be held guilty for the various charges framed against them.

38. Ld. Special P.P. Sh. R.S. Cheema and Ld. Sr. PP Sh. A P Singh further placed reliance upon the following case law in support of their submissions:

1. **K. Satwant Singh V. State of Punjab, (1960) 2 SCR 89**
2. **C.I.T, Andhra Pradesh V. M/s Taj Mahal Hotel, Secundrabad, 1971 (3) SCC 550**
3. **Delhi Judicial Service Association, Tis Hazari Court, Delhi V. State of Gujarat (1991) 4 SCC 406.**
4. **Chief Education Officer V. K.S. Palanichamy, 2012 (2) MWN (Cr.) 354**
5. **REG V. Hanmanta, (1877) ILR 1 BOM 610**
6. **Common Cause, a Registered Society V. Union of India & Ors. (1999) 6 SCC 667**

## **7. Krishnan & Anr. Vs. Krishnaveni & Anr. 1997 (4) SCC 241.**

39. Before I advert on to a detailed analysis of the submissions made by prosecution and defence viz-a-viz the documents relied upon and proved, it will be worthwhile to mention that the present case raises certain important issues for consideration and the foremost of the said issues is whether in a criminal trial the accused persons have an unbridled right of taking self contradictory stands at every stage of trial. In other words, can accused persons by adopting such a conduct i.e. taking self- contradictory pleas and especially in a case which primarily rests on documentary nature of evidence stultify the entire criminal justice administration system. Can the duty of prosecution to prove its case beyond reasonable doubts against the accused be extended to such a limit that even if accused attempts to thwart the course of justice by repeatedly changing its stand stating that being an accused he has an indefeasible/inherent right to take as many plea of defence as he may like even though the said plea of defence are self-contradictory in nature or are even false, no adverse inference ought to be drawn against them.

40. The aforesaid observations are being made consciously as the subsequent discussion will clearly show the changing and contradictory stands taken by the accused persons during the course of entire trial and it is in this light that the facts and circumstances of the present case needs to be appreciated. It is in these kind of circumstances that the principle of proving beyond reasonable doubt

needs to be appreciated as to whether it can be extended or stretched morbidly to embrace every hunch, hesitancy and degree of doubt. It is only a reasonable doubt which may belong to accused, for otherwise the practical system of justice will then break down and loose credibility of the community. Liability under criminal law has always been a tussle between subjective and objective conceptions of liability. The concept of *mens rea* is not a static concept and has to be viewed with an element of subjectivity in the facts and circumstances of a given case. Accordingly the appreciation of evidence in the present case has to be made keeping in view the aforesaid principles.

*“Hon'ble Supreme Court in the case **Chandra Shashi Vs. Anil Kumar Verma**”, (1995) 1 SCC 421, observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.*

*In **Mohan Singh V. State of M.P.**, (1999) 2 SCC 428, the Hon'ble Supreme Court held that effort should be made to find the truth; this is the very object for which Courts are created. To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, could and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could not be concretised. It would*

*depend on the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.*

*In A. Shanmugam V. Ariya Kshatriya, (2012) 6 SCC 430, the Hon'ble Supreme Court held that the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. The Hon'ble Supreme Court laid down the following principles:*

*On the facts of the present case, following principles emerge:*

*It is the bounden duty of the Court to uphold the truth and do justice.*

*Every litigant is expected to state truth before the law Court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law Courts.*

*The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the Court should be truthful.*

*Once the Court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the Court should in addition to full restitution impose appropriate costs. The Court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.*

*It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.”*

41. However before adverting further it will be worthwhile to give a brief reference to various prosecution witnesses and defence witnesses so examined in the present trial.



## PROSECUTION WITNESSES

S.No	Name and designation of the Witness	Deposition/Role of the witness in the present case.
1.	<b>PW-1 Sh. P. K. Mishra</b>	<i>Manager, PNB, Ranchi, Jharkhand . Public independent witness who accompanied CBI Officers during search operations at the house of accused R.S. Rungta and also at his office, both at Ranchi.</i>
2.	<b>PW-2 Sh. Dewesh Kumar</b>	<i>Officer, Canara Bank, Nehru Place, New Delhi Public independent witness who accompanied CBI officers during search operation at the house of accused R.C. Rungta at Sadhna Enclave, New Delhi.</i>
3.	<b>PW-3 Sh. R P Verma</b>	<i>Accountant, NCCF, Ranchi, Jharkhand Public independent witness who accompanied CBI officers during search operation carried out at the office of accused company M/s Jharkhand Ispat Pvt. Ltd. at Ramgarh, near Ranchi, Jharkhand.</i>
4.	<b>PW-4 Sh. J. P. Bhagoria</b>	<i>Officer, Bank of Baroda, Chandni Chowk Branch, Delhi. Public independent witness who accompanied CBI officers during search operation carried out at the residence of accused R S Rungta at Panchsheel Park, New Delhi.</i>
5.	<b>PW-5 Dy. SP. B.M. Pandit</b>	<i>CBI officer who led the search party which conducted search operation at the residence of accused R C Rungta at Sadhna Enclave, New Delhi.</i>
6.	<b>PW-6 Insp. Sanjay Sehgal</b>	<i>CBI officer who led the search party which conducted search operation at the residence of accused R S Rungta at Panchsheel Park, New Delhi.</i>
7.	<b>PW-7, Insp. Vijai Chettiar</b>	<i>CBI officer who led the search party which conducted search operation at the office premises of accused company M/s Jharkhand Ispat Pvt. Ltd. at Ramgarh near Ranchi, Jharkhand.</i>
8.	<b>PW-8, Addl. S.P., S. N. Khan</b>	<i>CBI officer who led the search party which conducted search operations at the residence of accused R.S. Rungta and also at his office, both at Ranchi, Jharkhand.</i>

9.	<b>PW-9 Insp. Manoj Kumar,</b>	<i>Initial IO of the case. He issued various authorization letters u/s 165 Cr.PC to different CBI officers authorizing them to carry out search operations at the office premises of accused company M/s JIPL and that of its director/officers and also at their residence. He had also assisted S.P. Sh. Vivek Dutt in the preliminary enquiry initially registered by the CBI.</i>
10	<b>PW-10 Sh. Sukhdeo Kumar</b>	<i>Revenue Karamchari, Village Karma, Mandu Anchal, District Hazaribagh, Jharkhand. He proved the revenue record pertaining to various plots of land as were mentioned in the deed of agreement to sell dated 18.12.03 executed between accused R.C. Rungta and accused Naresh Mehto (since deceased). He also proved the status of said plots of land qua possession/ownership as in the year 2013 on the basis of an enquiry carried out at the instance of IO Insp. Bodh Raj Hans.</i>
11	<b>PW-11 Sh. Santosh Kr. Kakkar, Under Secretary, Ministry of Coal.</b>	<i>He was associated with the processing of application of M/s JIPL for allotment of a captive coal block as was received in Ministry of Coal and was also associated with the holding of Screening Committee meetings.</i>
12.	<b>PW-12 Sh. Deepak Kumar, Assistant, Ministry of Steel.</b>	<i>He was associated with the processing of application of M/s JIPL for allotment of a captive coal block as was received in Ministry of Steel.</i>
13.	<b>PW-13 Sh. Deependra Kashiva, Joint Industrial Advisor, Ministry of Steel</b>	<i>Joint Industrial Advisor, Ministry of Steel. He was also associated with the processing of application of M/s JIPL for allotment of a coal block in Ministry of Steel. He also calculated the coal requirement of the company on the basis of information supplied by the company. After finalization of the comments of Ministry of Steel, he had also attended the Screening Committee meeting in Ministry of Coal alongwith Sh. Deepak Anurag, Director Ministry of Steel.</i>
14.	<b>PW-14 Sh. Sujit Gulati, Director, Ministry of Coal.</b>	<i>He was involved in the processing of application of M/s JIPL for allotment of a coal block in Ministry of Coal. He was also associated with the holding of Screening Committee meetings and after finalization of the recommendation of Screening Committee, he prepared the draft minutes of the meeting and after approval from Secretary Coal</i>

		<i>also got the allocation letters issued to successful allocatee companies. He had also drafted/compiled the "Additional guidelines" to govern the working of Screening Committee and to also guide the applicant companies.</i>
15.	<b>PW-15 Sh. Shambu Kumar, Section Officer, Ministry of Coal (from 19.06.09 to 18.06.14)</b>	<i>He had provided to CBI a list of files/items which could be retrieved in a fire incident which had earlier taken place at MOC office at Lok Nayak Bhawan, New Delhi.</i>
16.	<b>PW-16 Sh. A. Sanjay Sahay, Under Secretary, Ministry of Coal (from November 2012 to 01.07.2015)</b>	<i>He conveyed information to CBI that on account of an earlier fire incident, the pre-allocation file of M/s JIPL was not traceable.</i>
17.	<b>PW-17 Sh. Bipin Bihari Lal, Consultant Mining Engineer</b>	<i>He alongwith PW-19 Sh. T.K. Basu had prepared a suitability report regarding certain coal blocks situated in the State of Jharkhand vis-a-vis the sponge iron plant of M/s JIPL. He stated that the report was prepared by them at the instance of accused R.S. Rungta and after preparation, report under their signatures alongwith a certificate signed by them was handed over to accused R.S. Rungta himself. He further stated that though the certificate issued by them is available on record of the case but their report which ran in two pages and was bearing their signatures on both pages is not on record.</i>
18.	<b>PW-18 Sh. Ajeet Kumar, Asstt. Manager, Union Bank of India, Ramgarh Branch, Jharkhand.</b>	<i>He had provided the account opening forms and the specimen signature card of M/s Aloke Steel Industries Ltd" and that of M/s JIPL, both opened by accused R.C. Rungta.</i>
19.	<b>PW-19, Sh. Tarun Kumar Basu, Qualified Geologist and a Senior Vice President of M/s Rungta Projects Ltd. from 2003 to 2005.</b>	<i>He alongwith PW-17 Sh. B.B. Lal had prepared a suitability report regarding certain coal blocks vis-a-vis sponge iron plant of M/s JIPL. He also stated that the report was prepared at the asking of accused R.S. Rungta and after preparation, the same was handed over to him only alongwith a certificate signed by both of them. He also stated that though the certificate issued by them is available on record of the case but their report</i>

		<i>which ran in two pages and was bearing their signatures on both pages is not on record.</i>
20.	<b>PW-20 Sh. A. Ravishankar, Chief Manager Exploration Division, Gondwana Place, CMPDIL, Kanke Road, Ranchi</b>	<i>He made available the duly filled in agenda form of M/s JIPL as was received in their office vide letter dated 11.02.05, under the signatures of one Vikas Santholia, Director M/s JIPL.</i>
21.	<b>PW-21, Sh. A.P. Singh, Director Engineering MECON Ltd., Ranchi</b>	<i>He proved the "Project Profile" report prepared by their office relating to setting up of a sponge iron plant in Ramgarh, Jharkand by M/s JIPL.</i>
22.	<b>PW-22 Sh. Pradeep Kujur, Sr. Branch Manager, Bank of Baroda, Ramgarh Branch, Jharkhand.</b>	<i>He provided to CBI, the original account opening form of Vikas Santholia of account No. "16269" maintained in his bank.</i>
23.	<b>PW-23 Sh. Gaurav, Asstt. Registrar of Companies, Kolkata.</b>	<i>He deposed that as per their office record no company with the name "United Engineering Consultants" stood registered with their office.</i>
24.	<b>PW-24 Sh. Sujit Mallick, Deputy Commissioner, Service Tax Commissionerate, Kolkata.</b>	<i>He deposed that no record relating to M/s United Engineering Consultant was found in their office record.</i>
25.	<b>PW-25 Sh. Bimalend Narayan Mukhopadhyay, the then Dy. General Manager, MECON Ltd.</b>	<i>He proved "Project Profile" report prepared and signed by him as project co-ordinator with respect to an Integrated Mini Steel Plant of M/s JIPL. He stated that qua the complete details and inputs relating to the proposed project they had interacted with accused R.S. Rungta and other officers/officials of M/s JIPL.</i>
26.	<b>PW-26 Sh. Premraj Kuar, the then Section Officer, Ministry of Coal</b>	<i>He was associated with the processing of application of M/s JIPL for allotment of a captive coal block as was received in MOC. He was also associated with the holding of Screening Committee meetings and the subsequent processing of minutes of the meeting beside</i>

		<i>issuance of allocation letters to successful allocatee companies.</i>
27.	<b>PW-27, Insp. Sunit Pal</b>	<i>CBI officer associated with Preliminary Enquiry initially registered by CBI with respect to coal block allocation matters. He collected various files/documents from Ministry of Steel and deposited them in the Malkhana EO-I, CBI.</i>
28.	<b>PW-28 Dy. S.P. Samar Pal Rana</b>	<i>CBI officer who was initially entrusted with the preliminary enquiry No. 219 2012 E 0002 registered by CBI with respect to coal block allocation matters. He collected various files/documents from MOC during the course of PE and deposited them in Malkhana EO-I, CBI.</i>
29.	<b>PW-29 H. Ct. K.P. Singh, Incharge Malkhana EO-I, CBI.</b>	<i>He proved the relevant entries of registers maintained in the malkhana by him vide which various files/documents were deposited with him by various CBI officers initially during the course of PE and subsequently during investigation.</i>
30.	<b>PW-30 Sh. Anil Sharma, Sr. Scientific Officer (Documents) CFSL, CBI.</b>	<i>He examined various documents containing signatures of accused/suspected persons with their admitted/specimen signatures as were made available by the IO of the case. He accordingly proved various reports prepared by him in this regard.</i>
31.	<b>PW-31 Sh. Benjamin Paul, General Manager, CCL,Ranchi (in the year 2013)</b>	<i>He only made available copies of various record pertaining to M/s JIPL as were available in his office records.</i>
32.	<b>PW-32 Sh. Ajit Singh, Dy. Sales Manager (Sales &amp; Marketing) CCL, Ranchi (in the year 2005)</b>	<i>He proved an inspection report dated 14.11.05 prepared pursuant to an inspection of the sponge iron plant of M/s JIPL carried out on 12.11.05 by him alongwith three other officers of CCL, Ranchi in connection with the request of company to provide coal linkage.</i>
33.	<b>PW-33 Sh. Manish Uniyal, Section Officer, CA-1 Section, MOC since 18.10.13</b>	<i>He provided record pertaining to movement of file of M/s JIPL as was available in their file movement register and also in the computerised file tracking system software in their office. He however also stated that the file of M/s JIPL was not traceable in their office.</i>
34.	<b>PW-34 Sh. Rakesh Jaiswal,</b>	<i>He provided to CBI various record i.e. Form ER-1 and ER-7 pertaining to M/s JIPL as was available</i>

	<b>Superintendent, Central Excise Office, Ramgarh (from April 2013 till May 2015).</b>	<i>in his office records.</i>
35.	<b>PW-35 Sh. Krishna Singh</b>	<i>He was an employee of M/s JIPL who was authorised by accused R.C. Rungta as one of the two authorised signatory to submit various documents/information to Central Excise Department on behalf of M/s JIPL.</i>
36.	<b>PW-36 Sh. Yogesh Mittal</b>	<i>He was an owner/resident of House No. 25, Chanderpuri Ghaziabad, UP. He stated that at no point of time the said house was let out by him to M/s JIPL for using it as their office.</i>
37.	<b>PW-37 Sh. Ruvit Kumar, Assistant Registrar of Companies, ROC Kanpur.</b>	<i>He provided certified copies of certificate of incorporation of "M/s Rewa Retreaders Pvt. Ltd." and that of "M/s Jharkhand Ispat Pvt. Ltd." beside that of Form-18 pertaining to change of Registered office of the company and Form-32 regarding names of directors of the company from 2004 till 2013 as was available in his office records.</i>
38.	<b>PW-38 Sh. Mohd. Quadir, Stamp Vendor working in Ranchi District Courts.</b>	<i>He deposed having sold stamp papers to M/s JIPL on which deed of agreement to sell dated 18.12.03 was executed.</i>
39.	<b>PW-39, Insp. Bodh Raj Hans. (The main Investigating Officer of the case).</b>	<i>He deposed extensively about the investigation carried out by him and about collection of various documents from different authorities.</i>
40.	<b>PW-40 Ms. Madhuri Singh, Officer, Bank of India, CGO Complex, New Delh</b>	<i>Public independent witness in whose presence specimen signatures of R.S. Rungta and Vikas Santholia were obtained by IO Insp. Bodh Raj Hans at CBI office, Lodhi Road.</i>
41.	<b>PW-41, Sh. Sanjay Kumar Sinha, Member Secretary, Jharkhand State Pollution Control Board, (from September 2010 till November 2013)</b>	<i>He provided information to CBI alongwith copies of relevant record pertaining to various permissions i.e. "Consent to establish" and "Consent to operate" as were granted to M/s JIPL with respect to various kilns established by them.</i>

## DEFENCE EVIDENCE

S.No	Name and designation of the Witness	Deposition/Role of the witness in the present case.
1	<b>DW-1, Sh, Lalit Kumar Das</b>	<i>One of the two attesting witness to the deed of agreement to sell dated 18.12.2003.</i>
2	<b>DW-2, Sh. Shrikant Tiwari, Scientific Assistant Jharkhand State Pollution Control Board.</b>	<i>He produced record pertaining to grant of "Consent to establish" issued in favour of M/s JIPL with respect to establishing their 100 TPD kiln. Certain inspection reports prepared pursuant to inspection of the plant site carried out by the Board i.e. reports dated 08.12.04 and report dated 20.04.05 were also placed on record.</i>
3	<b>DW-3, Sh. Sunil Dhyani, Ahlmad of the Court of undersigned.</b>	<i>He produced one original file of MOC as was available in another case CC No. 01/2015 titled "CBI Vs. M/s Rathi Steel Power Ltd." pending in this Court only. He also produced photocopy of one other file as was available in CC No. 02/15 titled CBI Vs. M/s Hindalco &amp; Ors.</i>
4	<b>DW-4, Ms. Geeta Paul, Incharge Malkhana, EO-III, CBI</b>	<i>She produced two original files as were deposited in the malkhana during the course of PE.</i>
5	<b>DW-5, Kishore Kumar, Under Secretary Ministry of Coal</b>	<i>He produced photocopy of certain files relating to coal block allocation matters, as the original thereof was already handed over to CBI during the course of preliminary enquiry registered by CBI relating to coal block allocation matters.</i>
6	<b>DW-6, Amit Kumar, Section Officer, PMO</b>	<i>He also produced photocopy of a file relating to Ministry of Coal titled: Allocation of captive coal blocks through auction competitive bidding. The original of the said file was also already collected by CBI during the course of inquiry/investigation of other coal block allocation matters.</i>

42. I have carefully perused the record.

43. There are primarily two issues on which the prosecution has rested its allegations of there being misrepresentation on the part of accused persons i.e. (A) Land and (B) Installed/projected capacity of the end use project.

44. I shall be thus first analyzing as to whether there was indeed misrepresentation qua the said two aspects or qua any one of them, on the part of accused persons or not. If the said allegations are found to be proved by the prosecution then the effect of such misrepresentation shall be analyzed whether such misrepresentation amounted to dishonest or fraudulent misrepresentation and if yes then whether it had the desired effect of playing deception upon the Ministry of Steel or the Screening Committee, Ministry of Coal and consequently upon the Government resulting in allocation of nationalized natural resources of the country, i.e. coal, in favour of M/s JIPL. The other ancillary issues i.e. whether any such misrepresentation, if found to be existing was the result of a criminal conspiracy hatched amongst the accused persons or not shall also be discussed. Various documents which were submitted to support such claims by the accused persons shall also be discussed during the course of discussion on aforesaid issues and especially whether creation of said documents amounts to the offence of forgery or not.

45. However while discussing the aforesaid issues, I shall be also referring to various self-contradictory/inconsistent plea of defence taken by the accused persons during the course of trial.



**(A) LAND**

46. In the application submitted under the signatures of accused R.C. Rungta alongwith his letter dated 23.02.2004, Ex. PW 9/DX-4 (colly) (D-12), it was stated that the plant shall be set up in two phases. As regard the first phase in which production capacity of one lakh tonne was to be reached a total land measuring 32 (14 + 18) acres was stated to have been acquired. As regard the second phase wherein additional capacity of 3 lac tonnes was to be attained, it was stated that another 100 acres of land is being acquired and that agreement for the purchase of 65 acres has already been entered into. Similarly in the main application submitted alongwith the said letter, following facts were mentioned under Clause 6 (d) titled "Advance action taken":

**"6. ADVANCE ACTION TAKEN**

*d) Action to acquire 100 acres of land for the second phase of the plant is in progress. Agreement for the purchase of 65 acres of land from their owners has already been entered into"*

***(It will be worthwhile to mention over here that though the application was addressed to Secretary, Ministry of Steel, Government of India but as per the endorsement at the end, the copies thereof were also marked to various departments of Government such as MOC, Ministry of Power, Railway Board, Coal Controller, Government of India, Department of Mines and Geology, Jharkhand.)***

47. Thereafter, in the agenda form Ex. PW-11/DX-2 (D-70) submitted alongwith letter dated 11.02.2005 (Ex. PW 14/DX-3) of Sh. Vikas Santholia, yet another Director of M/s JIPL, it was stated that a total of 79 acres of land has already been acquired.

48. This fact also find mention in the minutes of 27th Screening Committee meeting as was held on 01.03.05 wherein it has been specifically stated that the company in its presentation has admitted that 79 acres of land has been acquired.

49. Subsequently, when during the course of investigation, PW-9, IO Insp. Manoj Kumar called upon accused R.C. Rungta to produce documents in support of their claim qua actual land acquired by them then copy of an agreement to sell Ex. PW 10/DX-1 (D-11) with respect to 37.63 ½ acres of land entered into by him as Director of M/s JIPL with one Naresh Mahto (*co-accused since deceased*) was submitted. Upon being asked by PW-39 Insp. Bodh Raj Hans to produce the original of the said agreement to sell accused R.C. Rungta submitted in writing that the original of the agreement was not available.

50. At this stage before proceeding to further discuss the aforesaid varying claims made in different documents submitted at different stages, it will be worthwhile to briefly mention as to what has been the stand of accused persons qua the genuineness of the said documents during the course of present trial.

**APPLICATION FORM DATED 23.02.2004 SUBMITTED BY ACCUSED R.C. RUNGTA UNDER HIS OWN SIGNATURES ON BEHALF OF M/S JIPL TO MINISTRY OF STEEL WITH COPY TO MINISTRY OF COAL**

51. Though at the time of addressing arguments on the point of charge, it was stated on behalf of accused R.C. Rungta that in the initial application form submitted by him on behalf of M/s JIPL no wrong or false information was submitted. However after charge for

various offences were framed against the accused persons and they were called upon to either admit or deny the genuineness of various documents U/S 294 Cr.PC then accused R.C. Rungta denied not only the application so submitted but also all the annexures submitted alongwith it even though the letter submitting the application and the application itself were carrying his signatures. Even the signatures were also denied.

52. However subsequently at the stage of recording of statement u/s 313 Cr.PC both accused company M/s JIPL and accused R.S. Rungta admitted it to be correct that the application was submitted under the signatures of accused R.C. Rungta as a director of M/s JIPL to Ministry of Steel. However, accused R.C. Rungta on the other hand in his statement u/s 313 Cr.PC stated, the said fact to be a matter of record.

53. During the course of recording of prosecution evidence the witnesses were however extensively cross examined on behalf of the accused persons qua the application and its annexures stressing that the information furnished was correct. Similarly in the written submissions u/s 313 (5) Cr.PC and at the time of addressing final arguments also the factum of submitting the application alongwith letter dated 23.02.2004 was not disputed.

54. In fact in his statement u/s 313 Cr.PC accused R.C. Rungta, as regard various annexures filed alongwith the application stated that the annexures were enclosed with the application as were supposed to be relevant and that they were prepared by the staff and

technical experts of their respective fields. Accused R.S. Rungta on the other hand claimed ignorance as regard the annexures submitted alongwith the application.

55. Thus while arguing at the stage of charge that no false or incorrect information was submitted in the application or its annexures, the very authenticity of the application and its annexures was denied by accused R.C. Rungta at the stage of admission/denial u/s 294 Cr. PC. Again the prosecution witnesses were cross-examined at length stressing that the contents of the application and its annexures were correct. However, the stand taken at the stage of recording statement u/s 313 Cr. PC was that it was a matter of record that application was submitted on behalf of M/s JIPL and that various documents annexed with the application were prepared by staff and technical experts of their respective field. Thus clearly such answers given by accused R.C. Rungta were feeble attempts made by him to wriggle out of the false and contradictory stands taken by him during the earlier stages of trial.

**AGENDA FORM SUBMITTED VIDE LETTER DATED 11.02.05 OF SH. VIKAS SANTHOLIA YET ANOTHER DIRECTOR OF M/S JIPL**

56. As regard the agenda form (Ex. PW 14/DX-2 (D-70)) submitted alongwith letter dated 11.02.2005 of Sh. Vikas Santholia, yet another director of M/s JIPL, the same was denied by the accused company M/s JIPL in its statement u/s 294 Cr.PC. However in the statement u/s 313 Cr.PC, company M/s JIPL in response to question No. 25, stated the factum of submission of agenda form vide letter dated 11.02.2005 of Vikas Santholia to be correct. On the

other hand accused R.C. Rungta in his statement u/s 313 Cr.PC in response to question No. 25 merely stated that the agenda form as required by Ministry of Coal was submitted on behalf of M/s JIPL.

57. Accused R.S. Rungta on the other hand in his statement u/s 313 Cr. PC in response to question No. 25, stated the said fact to be a matter of record. In fact in the written arguments submitted on behalf of accused R.S. Rungta at the stage of charge, it was stated that he made representation before the Screening Committee on the basis of material made available to him, particularly the agenda form which was prepared by someone else acting for and on behalf of the company and at the instance of person(s) other than the petitioner (R.S. Rungta). Thus the factum of submission of agenda form was not disputed and rather it was specifically admitted.

58. However, despite denial of genuineness of the said agenda form by accused company M/s JIPL, u/s 294 Cr. PC, the prosecution witnesses were extensively cross examined on behalf of the accused persons on the basis of said document emphasizing that the information furnished therein was correct and thereafter in the statement u/s 313 Cr.PC, the fact that said agenda form was submitted by Vikas Santholia, a director of M/s JIPL vide his letter dated 11.02.05 was admitted to be correct.

59. Thus irrespective of the aforesaid self-contradictory stands taken by the accused persons or the effect thereof, it is however crystal clear that the veracity of the application and various other documents annexed thereto and as submitted vide letter dated

23.02.2004 of accused R.C. Rungta and the agenda form submitted vide letter dated 11.02.2005 of Sh. Vikas Santholia does not stand disputed or in other words stands amply proved. A bare perusal of the said documents coupled with the presentation made by accused R.S. Rungta, show that there has been consistently changing stand taken by the accused persons both before Ministry of Steel and Screening Committee, Ministry of Coal about the actual land having been acquired by them or steps taken towards acquiring the remaining land required for establishing the proposed end use project. However the subsequent discussion will show that all such claims were completely false.

60. Though in the final report filed by CBI, the claim of the company as made in its application dated 23.02.04 qua 32 acres of land as already acquired has not been disputed but if for the sake of arguments at this stage of the matter the deed of agreement to sell entered into by accused R.C. Rungta with Naresh Mahto is also presumed to be correct then also the total land which either stood acquired by the company or qua which effective steps were taken as on the date of submission of initial application i.e. 23.02.04 or as on the date of submission of agenda form i.e. 11.02.2004 or even on the date of presentation i.e. 01.03.05, comes to only (32 + 37.63 ½) i.e. 69.63 ½ acres and not 79 acres of land as claimed in the agenda form or at the time of presentation.

However at a later stage I shall be also discussing various circumstances under which the impugned deed of agreement of sell also can not be considered as a valid document or disclosing

correct facts. Reference shall also be made to yet another letter dated 22.07.2007 addressed to Dy. Secretary, Government of Jharkhand, Department of Mines and Geology, Range Ranchi, and as recovered during the search of the office of accused R.S. Rungta at Ranchi wherein it was stated that land acquired by company M/s JIPL is only 22 acres.

61. Be that as it may, since no other documents in support of aforesaid claim of actual land acquired by the company or land qua which effective steps were taken by the company were produced by the accused persons either before the IO during the course of investigation or even during the course of present trial so it stands clearly proved that there was an apparent misrepresentation made by the accused company through its directors about actual land acquired by the company and even about the effective steps taken towards acquiring remaining land required to establish the proposed end use project.

62. In fact during the course of final arguments also nothing was stated as to in what manner the claim about 79 acres of land having been already acquired by the company as made in the agenda form was correct or under what circumstances the said claim was made. Even the written submissions submitted on behalf of all the three accused persons beside their statements u/s 313 (5) Cr.PC are also silent in this regard. In fact in the written submissions filed by accused R.C. Rungta, it has been stated that accused persons never claimed that copy of the said deed of agreement to sell was provided to the IO as a supporting document towards the claim made in the

application dated 23.02.04 that agreement to acquire 65 acres of land has been entered into.

**DEED OF AGREEMENT TO SELL DATED 18.12.03 ENTERED INTO BY ACCUSED R. C. RUNGTA AND ACCUSED NARESH MEHTO (SINCE DECEASED)**

63. As regard the impugned deed of agreement to sell i.e. Ex. PW 10/DX-1 (D-11) submitted by accused R.C. Rungta to PW-9 IO Insp. Manoj Kumar vide his letter dated 20.11.2012 Ex. P-32, it can be safely stated at the outset itself that the said deed of agreement to sell on a bare perusal does not inspire confidence. My subsequent discussion shall also support the aforesaid conclusion. In the said agreement Naresh Mahto (*co-accused since deceased*) has claimed himself to be the owner of land measuring 37.63 ½ acres at Village Karma, District Hazaribagh. Details of 129 plots has been thereafter mentioned qua which the said agreement to sell was allegedly entered into. In para No. 2 of the agreement it has been stated that the said "Raity land" stands recorded in the name of "Kuli", the first party. It has been further stated that the aforesaid land was acquired by first party by oral partition of the family and is in peaceful possession of the first party.

64. However at the beginning of the said deed of agreement to sell the reference to first party has been made as Naresh Mahto S/o Dhani Mahto. Thus apparently the contents of said "agreement to sell" contradict each other as in para No. 2, the first party is stated to be one "Kuli" and who is also stated to be the recorded owner of the land and is stated to have acquired the said land by way of oral



partition of the family. He was also stated to be in peaceful possession as on the date of agreement to sell i.e 18.12.2003. Strangely enough when PW-10 Sh. Sukhdeo Kumar, a Revenue Karamchari produced the relevant revenue record of village Karma, District Hazaribagh, then it was found that various plots of land as find mention in the impugned agreement to sell stood recorded in Register No. 1 i.e. Khatiyani in the name of "*Kuni Kurmi and others*". As per Register No. 2 which contained the details of various land and that of their present owners beside the rent payable by them, the said plots of land measuring 35.46 ½ acres stood recorded in the name of "*Karu Mahto and others*". He also stated that when CBI sought information about the present possession and the ownership of said 129 plots as were mentioned in the deed of agreement to sell then a spot enquiry was carried out and it was found that except for 0.10-0.13 decimal of land, the entire remaining plots of land were in possession of their owners whose names stood recorded in the revenue records. It was also found that except for 0.10-0.13 decimal of land, which was stated to be with Naresh Mahto, no sale transaction qua any other piece of land had taken place between the recorded owners in possession of land with Naresh Mahto, even though the said small piece of land measuring 0.10-0.13 decimal land was also not recorded in the revenue records in the name of Naresh Mahto.

65. Though in the cross examination of the said witness certain questions were put as to the meaning of various words mentioned in the said Registers and PW-10 Sh. Sukhdeo Kumar was though also

able to explain the meaning of some of the said words but what is important to note is that in the entire cross examination no question or suggestion was put that Naresh Mahto had acquired interest in the land being successor in interest of recorded owners. In fact the cross-examination of the said witness primarily revolved around the issue that sale purchase of any land shall be illegal or not if the same is not got recorded in the revenue records. It has come during the course of cross examination that the persons whose name stand recorded in Register No. 2, i.e. Ex. PW 10/C (colly) were the successors in interest of the persons whose names were found recorded in Register No. 1, i.e. Khatiyani Ex. PW 10/A (colly). In fact no suggestion was even put to the said witness that Naresh Mahto was in any manner related to "*Kuni Kurmi and others*" or to the persons whose names were found recorded in Register No. 2, i.e. "*Karu Mahto & Others*". It was however suggested to the witness that till the time actual mutation of land is carried out pursuant to any sale transaction, the names are not recorded in Register No. 2 and the witness also admitted the said fact to be correct.

66. However in view of the aforesaid nature of deposition of PW-10 coupled with the line of cross examination, it is crystal clear that the facts mentioned in the impugned deed of agreement to sell Ex. PW 10/DX-1 were not correct. There is not even a single whisper of averment in the said deed of agreement to sell that Naresh Mahto acquired the ownership of the said plots of land as mentioned therein by way of sale purchase. As already shown above there is discrepancy even as to the meaning of "first party" referred to in the

agreement but even if it is presumed for the sake of arguments that the first party referred over there was Naresh Mahto then also Naresh Mahto has claimed in the agreement that he acquired land measuring 37.63 ½ acres by way of oral partition. Thus Naresh Mahto could have acquired the said land only when he was a successor in interest of "*Kuni Kurmi & Ors*" i.e. of the recorded owners of the land in Register No. 1 (Khatiyani). Strangely enough in the written submissions filed on behalf of accused company M/s JIPL and accused R.C. Rungta, it has been stated that the land in question was recorded in the name of ancestors of Naresh Mahto. However when no such question or suggestion was put to PW-10 Sukhdeo Kumar that "*Kuni Kurmi & Ors*" or "*Karu Mahto & Ors.*" were the ancestors of Naresh Mahto or were related to him in any manner so the very claim made in the deed of agreement to sell is *per se* false.

67. It is in the light of aforesaid circumstances that the other contentions of Ld. Counsel for accused persons that the enquiry got conducted by CBI qua the attesting witnesses of the said agreement was not proper as it did not refer to the status of the attesting witnesses as in 2003 or that none of the recorded owners of land were examined by the prosecution during the course of trial, becomes completely irrelevant. Similarly the contention that the concerned police officer of Police Station Gola who tried to locate Koleshwar Mahto, was not examined also becomes inconsequential. In fact prosecution has led sufficient evidence to discharge its burden of proving that the facts stated in the said deed of agreement to sell

were false. Though at this stage, it will be pertinent to mention that out of the two witnesses as are shown to have attested the said deed of agreement to sell, namely Koleshwar Mahto and Lalit Kumar Dass the name, parentage and address of Koleshwar Mahto was only mentioned in the agreement to sell but as regard Lalit Kumar Dass neither his parentage nor address was mentioned. The accused persons though in their defence produced said Lalit Kumar Dass stating that Lalit Kumar Dass was their own employee and while Koleshwar Mahto was brought by Naresh Mahto at the time of execution of agreement to sell. However in this regard the stand taken by the accused persons both during the course of investigation as well as during the course of present trial needs to be again looked into.

68. During the course of investigation accused R.C. Rungta produced the copy of said deed of agreement to sell before the IO and also stated that the original was not available. During the course of trial accused R.C. Rungta however denied the genuineness of said deed of agreement to sell u/s 294 Cr.PC. The prosecution witnesses were however thereafter cross examined on the basis of said agreement to sell itself considering it to be a genuine document. Subsequently in the statement u/s 313 Cr. PC accused R.C. Rungta did not dispute the authenticity of the said agreement to sell and rather stated it to be a matter of record. On the other hand accused R.S. Rungta claimed complete ignorance by stating the words, "*I am not aware*". Company M/s JIPL however on the other hand did not dispute the authenticity of said agreement to sell. However, at no

stage it was even suggested to any of the prosecution witnesses that Lalit Kumar Das was an existing person much less that he was an employee working in one of the establishment of accused persons only. Subsequently said Lalit Kumar Das was examined as DW-1 by the accused persons. However, during examination as DW-1, it was found that the identity documents produced by him were all got issued much after the date of execution of said deed of agreement to sell i.e. 18.12.03. His voter's card issued by Election Commission of India was found to have been issued on 30.11.13. His PAN card was issued by Department of Income Tax on 21.10.05. In fact in the voter's card only his year of birth was mentioned but as regard his date or month of birth only "xx/xx" was found written. However in his PAN card his date of birth was mentioned as 12.05.1958.

69. Thus, the nature of such identity documents produced by the witness coupled with the fact that neither during the course of investigation nor during the course of trial till the stage of recording of prosecution evidence, it was even remotely suggested that one of the attesting witness namely Lalit Kumar Das whose parentage or address was though not mentioned in the deed of agreement to sell was very much available or that he was one of their employee only also raises doubts about the veracity of the said deed of agreement to sell. Doubts also arise as to whether said Lalit Kumar Das examined as DW-1 by the accused persons was the same person who signed the deed of agreement to sell as an attesting witness or not. Had it been so than there was no occasion for accused R C Rungta to deny the genuineness of said deed of agreement to sell

u/s 294 Cr.PC.

70. It is in the light of aforesaid circumstances that the claim made by accused R.C. Rungta in his written submissions, needs to be viewed that during investigation IO Insp. Bodh Raj Hans never asked them to produce Lalit Kumar Das, for in those circumstances the said person would have been produced during the course of investigation itself. It was also stated that Lalit Kumar Das was produced by the accused persons at the very first stage i.e. as a defence witness when such a necessity arose. However, I may state that if the deed of agreement to sell was a valid document then there is no explanation put forth by accused as to why the genuineness of the said deed of agreement to sell was denied u/s 294 Cr.PC. In fact accused R.C. Rungta even denied his signatures on the same.

71. However, in the aforesaid facts and circumstances another issue which arises for consideration is as to why the original of the said deed of agreement to sell was not produced and if the same was not available as claimed by accused R.C. Rungta then why he did not explain either during the course of investigation or during the course of entire trial as to where the same was. In fact the other terms and conditions as mentioned in the agreement regarding the sale consideration to be given by accused R.C. Rungta to Naresh Mahto also raises doubts about the authenticity of the said deed of agreement to sell. It has been stated in the agreement that the land was being sold to second party by the first party as the land in question was lying vacant and is not in use of the first party and thus he intends to sell it to a prospective buyer. It has been further stated

in para No. 4 of the agreement that the second party i.e. Vendee is in urgent need of vacant land for the installation of their plant and has thus approached the first party. Thereafter the sale consideration was agreed upon as Rs. 2,60,000/- per acre and thereby a total amount of Rs. 97,85,100/- was payable by the purchaser to the seller for the entire 37.63 ½ acres of land. The agreement further states that after getting the peaceful possession of land the total consideration shall be paid and it is only thereafter that the first party will execute the registered deed (*though it is mentioned that the Registered Deed will be executed by the first party in favour of first party but the same can be taken as a typographical mistake*).

72. It is further mentioned that though an initial advance of Rs. 51,000/- has been paid by the second party and that the second party shall pay a further advance of 20% of the agreed amount as and when demanded by the first party. The second party is also stated to be at liberty to get executed the sale deed within a period of 10 years from the date of execution of the said deed of agreement and it is also mentioned that even the said period of 10 years was also further extendable by a period of another 2 years on mutual agreement of both the parties.

73. It was however argued by Ld. Defence Counsel that no adverse inference can be drawn from such kind of terms and conditions as it was the sole prerogative of the two parties entering into an agreement to decide upon the terms and conditions of sale purchase of land.

74. Undoubtedly, it is the sole prerogative of the two parties entering into an agreement to decide the terms and conditions of the sale purchase of land but the Court can always take a judicial notice of the common practices being followed while entering into such kind of agreements by public at large. The fact that such large chunk of land measuring about 37.63 ½ acres of land was given against a payment of Rs. 51,000/- only does raise a finger of suspicion about the genuineness of the deal. The fact that the purchaser was to make the payment of sale consideration in a period of 10 years and even the said period of 10 years was further extendable by a period of 2 years even though possession of the land was being given to him immediately after the execution of deed of agreement to sell and that the purchaser was at liberty to proceed with the erection of his plant over there certainly raises grave shadows of doubts about the genuineness of the agreement to sell. Even the initial 20% of the sale consideration amount was payable only when a demand in this regard is made by the seller.

75. These facts when coupled with the other facts and circumstances as discussed above thus makes the execution of said deed of agreement to sell to be highly suspicious and doubtful.

76. At this stage it will be also worthwhile to point out that during the course of entire trial of the present case as has been conducted in the year 2015-16, no evidence has been put forth by the accused persons that any further sum be it even 20% of the sale consideration or the entire sale consideration was paid to Naresh Mehto. Admittedly, the deed of agreement to sell was entered into



on 18.12.03. Thus the period of 10 years within which the entire sale consideration amount was paid expired in December, 2013. In fact, no such claim has even been made by the accused persons. In the written submissions it has been rather stated that as after the allocation of coal block the joint venture agreement was though arrived at but could not be worked out and thus extraction of coal could not take place. It has been further stated that by entering into the said deed of agreement to sell the company infact incurred a lost of Rs.51,000/- i.e. the amount given to Naresh Mehto.

However, nothing has been either explained or argued as to under what circumstances or when M/s JIPL back tracked from further acting upon the said deed of agreement to sell. It has also not been explained as to what steps were initiated by the company on the said piece of land towards erection of plant or regarding installation of eight additional kilns of 100 TPD each proposed to be installed by it in phase-II. Admittedly, the joint venture agreement between the four joint allocatee companies was entered into in the year 2008. Thus any further failure in extracting coal under the joint venture agreement must have occurred after the year 2008 only. Thus the company M/s JIPL having obtained possession of the said land measuring 37.63 ½ acres under the said deed of agreement to sell in the year 2003 itself had possession of the land at least for a period of five years, the company than must have undertaken substantial steps towards erection of its plant in the said five years, if it had any intention to do so. However, no such question or suggestion was put either to PW 10 Sukhdeo Kumar or to PW 39

Insp. Bodh Raj Hans who claimed to have actually visited the said land.

These facts again goes to strongly suggest that either the said deed of agreement to sell was a sham document or that there was no intention of the accused persons to act upon the said deed of agreement to sell and the said document was created only in order to support the false claim made by them during the course of processing of their application in Ministry of Steel and Ministry of coal so as to secure allotment of a coal block.

77. In the alternative if the stand taken by accused R.C. Rungta in his written submissions that the said deed of agreement to sell was never furnished towards supporting the claim of the company as made in the application towards steps taken for acquiring additional 65 acres of land is presumed to be true then the accused persons have completely failed to show any other agreement which could justify steps taken by them towards acquiring said 65 acres of land.

78. However as already discussed, irrespective of the said deed of agreement to sell, the other claim made by accused persons either in their initial application submitted for allotment of a coal block or in the agenda form subsequently submitted regarding actual land in possession of the company or steps being taken to acquire remaining land or the claim made during presentation were clearly false. Though right from the stage of addressing arguments on the point of charge till the final arguments, it has been consistently claimed by the accused persons that none of the averments made

either in the application form or in the agenda form were false but it now stands conclusively established that all the averments made qua land already acquired or steps being taken to acquire the same were false.

79. I shall be also demonstrating at a later stage that the said false claims were made with a dishonest intention also.

**(B) INSTALLED CAPACITY/PROPOSED CAPACITY OF THE END USE PROJECT.**

80. In the application submitted by accused R.C. Rungta vide his letter dated 23.02.04 on behalf of M/s JIPL, in clause 6 (C) titled "*Advance Action taken*" it was stated as under:

**"6. ADVANCE ACTION TAKEN**

*c) A kiln producing 100 tonnes of sponge iron per day is already commissioned and the other two kilns, under erection now, will be commissioned in April, 2004."*

81. Alongwith the said application various annexures were also filed. One of the annexures i.e. Annexure III was a project profile report prepared by MECON Ltd.. In the said project profile report, it was stated at page No. 2 that 3 units of 100 t/d (Tonnes per day) D.R. Kilns have been installed at Hesla (Location-1). Thereafter, at page No. 8 of the report while providing details of the "DR plant", it was again reiterated that 3 units of 100 t/d per day, coal based DR kilns have already been installed at Hesla. Again while mentioning information about technological parameters of the DR Kilns, it was stated at page No. 9 of the report that 3 kilns of 100 t/d were existing and 3 kilns of 350 t/d were envisaged. However, subsequently when

Ministry of Steel sought further details of the project then accused R.S. Rungta vide his letter dated 10.06.2004 Ex. P-2 (Admitted and exhibited u/s 294 Cr.PC) submitted various documents including a detailed Techno Economic Feasibility Report (TEFR) and a suitability report regarding proposed coal block qua which allocation was sought.

82. In the said detailed TEFR Ex. P-5 (colly) which was allegedly prepared by one R. Kedia (*co-accused since deceased*), General Manager, United Engineering Consultants, it was stated at page No. 77 of the report that 2 X 100 TPD rotary kilns alongwith associated facilities have already been commissioned and unit is under commercial production. It was also stated that construction work of 1 X 100 TPD rotary kiln has already been started and is in advanced stage of installation and commissioning and is likely to come in commercial production from December 2004. At page No. 40 of the report, the plant lay out and site plan after installation of 3 X 100 TPD kilns was also stated to have been annexed. Again in the bar chart annexed with the report at page No. 80 showing the plant construction schedule of DRI plant 3 X 100 TPD, the month of finishing the plant construction schedule and the month of commissioning were both shown as October 2004. As regard phase-II, the plant construction schedule with respect to DRI plant of 3 X 350 TPD at page No. 83 of the report, "the month of start" was stated to be October 2004 and "month of finish" was stated to be December 2006. However, in the agenda form subsequently submitted by Vikas Santholia, Director M/s JIPL vide his letter dated 11.02.2005, the

existing capacity of sponge iron project was stated to be 0.096 MTPA. It was further stated that 3 kilns of 100 TPD each were in operation and that 8 kilns of 100 TPD each were under installation. Similarly in the presentation made by accused R.S. Rungta, it was reiterated that 3 X 100 TPD kilns have already been installed and another 8 X 100 TPD kilns are under installation.

83. Before I advert on to the aforesaid changing stands taken by the company and its directors in different documents submitted at different points of time, it will be also worthwhile to mention that vide one letter dated 31.01.2008, accused R.C. Rungta while seeking coal linkage for 2 X 100 TPD sponge iron kiln wrote to additional Secretary (Coal) MOC that under Phase-I, of the plant installation of 4 kilns has been taken up and out of which 2 kilns have been installed and are operative and the other 2 kilns are under the final stage of its installation and operation. It has been further mentioned in the said letter that while the linkage for the first kiln was granted in a meeting held on 12.05.06 and the linkage for second kiln was considered and recommended in the last meeting held recently. A similar letter seeking linkage for 3rd and 4th kiln was again written to Additional Secretary Coal by accused R.C. Rungta on 05.01.09 wherein reference to the earlier letter dated 31.01.2008 was also made. There is yet one other letter dated 28.04.08 written by accused R.C. Rungta to Section Officer, Ministry of Steel, Government of India seeking additional coal linkage and wherein also it has been stated that 2 additional kilns have though been installed but are not in operation. As regard the other 2 kilns of 100

TPD, the necessary payment for Central Excise duty as well as tax and electricity bill were stated to have been already made (*All these letters form part of document D-15 Ex. PW-3/A recovered during the course of search operation carried out at the office of M/s JIPL*).

84. Though I shall be discussing the circumstances under which the said letters came to be recovered by the CBI during the course of investigation, at a later stage of the judgment but a reference to the said letters is being made over here simply in order to demonstrate that as per the claim of accused persons themselves, only 2 kilns of 100 TPD each were in operation as on 05.01.09 and that the additional 2 kilns were not yet commissioned. Though I shall be also referring to various other documents such as returns filed by M/s JIPL with Excise Department to support the aforesaid conclusion but at this stage it becomes apparent that the claims made by the accused persons regarding their installed/existing capacity of DRI plant initially in their application dated 23.02.2004 and subsequently in their agenda form submitted on 11.02.2005 and the consequent presentation made on 01.03.2005 respectively were false. In fact from the documents of Jharkhand State Pollution Control Board (JSPCB) as collected by the IO during the course of investigation, it becomes all the more clear that even the second kiln could not have been in operation as on 10.06.04 i.e. as on the date of submission of TEFR by accused R.S. Rungta to Ministry of Steel.

85. However before I proceed further, it will be worthwhile to refer to the contradictory and changing stands taken by the accused persons qua various such documents during the course of trial. As

already mentioned, accused R.C. Rungta had though initially denied u/s 294 Cr. PC, not only the application submitted vide his letter dated 23.02.04 but also various annexures including the project profile report prepared by MECON Ltd. However in the statement u/s 313 Cr.PC company M/s JIPL not only admitted the factum of submission of application to Ministry of Steel under the signatures of co-accused R.C. Rungta i.e. Ex. PW 9/DX-4 (colly) (D-12) to be correct but even as regard the annexures there was no denial. It was only stated that the application was submitted on behalf of M/s JIPL and the documents were annexed as per annexures which were supposed to be relevant. It was also stated that these documents were prepared by staff and technical experts of their respective fields. Accused R.C. Rungta however in his statement u/s 313 Cr.PC in response to question No. 1 stated the factum of submission of application to be a matter of record but as regard the annexures, he reiterated the answer as given by company M/s JIPL that the application was submitted on behalf of the company M/s JIPL and the annexures were annexed as were supposed to be relevant and that the documents were prepared by staff and technical experts of their respective field.

86. On the other hand accused R.S. Rungta though admitted the factum of submission of application to Ministry of Steel under the signatures of accused R.C. Rungta to be correct but as regard various annexures filed alongwith the application he claimed ignorance by stating "I do not know".

87. As regard letter dated 10.06.04 submitted by accused R.S.

Rungta filing alongwith it 7 annexures divided into 5 parts, the same was though admitted by accused R S Rungta u/s 294 Cr.PC but in his statement u/s 313 Cr.PC in response to question No. 10 put to him in this regard, he made the following statement:

*"Q.10. It is further in evidence against you that company M/s JIPL thereafter submitted reply to letter dated 19.05.2004 Ex. PW 12/B of Ministry of Steel vide letter dated 10.06.2004 under the signatures of you accused R S Rungta, Chairman, M/s Jharkhand Ispat Pvt. Ltd. enclosing therewith 5 annexures viz. Part-I i.e. Group Turnover of you company and Annual Reports of M/s Rungta Project Ltd. Ex. PW 12/G (colly); Part-II i.e. Phased requirement of non-coking coal Ex. P-3 (D-13); Part-III i.e. report qua proposed coal block with respect to Geological reserve, minable reserve, grade of coal etc. under the signatures of PW-17, B B Lal, Mining Engineer and PW-19 Sh. T K Basu, Geo-scientist i.e. Ex.P-4 containing certificate and Ex. PW 17/A; Part-IV i.e. Techno-economic feasibility report of the proposed end use project and captive power plant of you company and the project report as prepared by "United Engineering Consultants, Kolkatta" Ex.P-5 (colly); Part-V i.e. documentary evidence regarding procurement of land, placement of order for major plant and machinery with specification for the project Ex. PW 12/H (colly). What have you to say?*

*Ans. I had signed the letter dated 10.06.2004. Rest of documents annexed with letter dated 10.06.2004, consist of certificate of Sh. B B Lal and Sh. T K Basu. However, the report made by them is not on judicial record."*

**(Emphasis supplied by me)**

88. He thus did not dispute the factum of submitting various annexures alongwith his letter dated 10.06.2004 but came up with a new stand that the suitability report prepared by PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu was not on judicial record. Accused R.C. Rungta on the other hand claimed complete ignorance about the said letter written by accused R.S. Rungta or the annexures filed alongwith it by stating the words "I do not know". Company M/s JIPL



however made the following statement in response to Q. No. 10 put in this regard u/s 313 Cr.PC:

**"Q.10** *It is further in evidence against you that you accused company M/s JIPL thereafter submitted reply to letter dated 19.05.2004 Ex. PW 12/B of Ministry of Steel vide letter dated 10.06.2004 under the signatures of co-accused R S Rungta, Chairman, M/s Jharkhand Ispat Pvt. Ltd. enclosing therewith 5 annexures viz. Part-I i.e. Group Turnover of you company and Annual Reports of M/s Rungta Project Ltd. Ex. PW 12/G (colly); Part-II i.e. Phased requirement of non-coking coal Ex. P-3 (D-13); Part-III i.e. report qua proposed coal block with respect to Geological reserve, minable reserve, grade of coal etc. under the signatures of PW-17, B B Lal, Mining Engineer and PW-19 Sh. T K Basu, Geo-scientist i.e. Ex.P-4 containing certificate and Ex. PW 17/A; Part-IV i.e. Techno-economic feasibility report of the proposed end use project and captive power plant of you company and the project report as prepared by "United Engineering Consultants, Kolkatta" Ex.P-5 (colly); Part-V i.e. documentary evidence regarding procurement of land, placement of order for major plant and machinery with specification for the project Ex. PW 12/H (colly). What have you to say?*

**Ans.** *It is correct that letter dated 10.06.04 was submitted alongwith 7 annexures which were divided into 5 parts. The report of proposed coal block was not under the signatures of PW-17 B.B. Lal and PW-19 T.K. Basu. Other documents mentioned here were filed."*

**(Emphasis supplied by me)**

89. Thus the company M/s JIPL did not state anything about the suitability report or as regard the certificate of Sh. B.B. Lal and Sh. T.K. Basu as available on record. It only stated that the report of proposed coal block was not under the signatures of PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu.

90. However, the necessity to mention the aforesaid changing stands taken by the accused persons arises as it appears that not

only at the time when various documents making different claims were submitted to Ministry of Steel or to MOC by the accused persons but even subsequently during the course of investigation and also during the course of trial there has not been a consistent stand on the part of accused persons about the authenticity/genuineness of the said documents. It is in the light of these circumstances that an observation was made by me at the initial stage of the judgment that, can the duty of prosecution to prove its case beyond reasonable doubts against the accused persons be extended to such a limit that even if the accused tries to thwart the course of justice by repeatedly changing its stand stating that being an accused he has an indefeasible/inherent right to take as many plea of defence as he may like even though the said plea of defence are self-contradictory in nature or are false. Certainly the said standard of proof required on the part of prosecution can not remain static. It was also observed that it is in these kind of circumstances that the principle of proving beyond reasonable doubt needs to be appreciated as to whether it can be extended or stretched morbidly to embrace every hunch, hesitancy or degree of doubt.

91. However, the initial application as submitted vide letter dated 23.02.2004 by accused R.C. Rungta or the subsequent submission of agenda form vide letter dated 11.02.05 of Vikas Santholia, yet another Director of M/s JIPL or even the letter dated 10.06.04 of accused R.S. Rungta submitting therewith 7 annexures divided in 5 parts and especially the TEFRR prepared by R. Kedia, General Manager, United Engineering Consultants, finally stands admitted

and proved on record. The said documents even otherwise also stands proved by way of the cogent, convincing and reliable evidence led by the prosecution and thus they can be easily referred to in order to assess as to whether a dishonest representation was made qua the installed/projected capacity of end use project or not.

92. During the course of final arguments, it was however submitted by Ld. Defence Counsel Sh. Rajiv Mohan that the claim regarding already installed kilns as made in the project profile report prepared by MECON Ltd. was though an inadvertent mistake but even otherwise the said report was never relied upon by Ministry of Steel as a detailed TEFR was sought for from the company by PW-13 D. Kashiva, Industrial Advisor, Ministry of Steel vide his letter dated 19.05.04 Ex. PW 12/B (D-12).

93. However, I may state that even if for the sake of arguments, it is presumed that the project profile report as prepared by MECON Ltd. was not relied upon by Ministry of Steel then also there is no explanation at all as to why in the agenda form submitted on 11.02.05 or in the presentation subsequently made before the Screening Committee on 01.03.05, a reiteration of the claim that 3 kilns were in operation was made. There has been no explanation to this effect during the course of entire trial. The phase-wise schedule, investment and capacity build up which was submitted as annexure-1 to the said agenda form also shows the completion schedule of 96,000 capacity tonne DRI making facility as on June 2004. Thus as the said schedule was submitted on 11.02.2005 so it is clear that the company M/s JIPL had again claimed before the Screening

Committee, MOC that 3 kilns have already been installed and are in operation. The minutes of 27th Screening Committee meeting also shows that the representative of the company had informed during the course of presentation that beside having acquired 79 acres of land 3 kilns of 100 TPD each were in operation and 8 kilns of 100 TPD each were under installation. Thus the contention of Ld. Defence Counsel that the claim made in the project profile report prepared by MECON Ltd. was an inadvertent mistake, is completely not tenable.

94. Thus as demonstrated above, even if the claim in the project profile report prepared by MECON Ltd., is not considered, then also prosecution has been successful in proving on record that even before the Screening Committee in its meeting held on 01.03.05, the company M/s JIPL had falsely claimed that 3 kilns of 100 TPD each were in operation and that 8 other kilns of 100 TPD each were under installation.

95. At a later stage, I shall be also discussing as to what could have been the purpose of making such a false claim either qua land or the installed capacity. The two aspects were in fact important factors for seeking allocation of a captive coal block and inflated claim of installed capacity or likely installed capacity in the near future also entailed allotment of higher quantity of coal than the company could have been entitled to in case any coal block was to be allocated to it.

96. In fact accused persons in their defence examined one

Shrikant Tiwari, Scientific Assistant, Jharkhand State Pollution Control Board (JSPCB) as DW-2. Certain inspection reports prepared pursuant to an inspection carried out by JSPCB of the plant site on 08.12.04 and 20.04.05 were sought to be placed on record. It was argued that the said inspections were carried out in order to grant consent to operate, to the company. During the course of cross examination of the said witness itself, it however came on record that M/s JIPL vide its letter dated 18.06.04 had sought consent to establish with respect to one 100 TPD kiln in addition to 200 TPD kilns already installed by it. The witness however stated that when the inspection of the plant site was carried out on 20.04.05 then it was found that the company had not taken all the necessary steps as were required to be taken pursuant to grant of consent to establish and thus vide letter dated 25.09.06, the JSPCB informed accused R.C. Rungta, the rejection of their application for grant of consent to operate. Thus from the evidence led by the accused persons themselves, it is clear that the consent to operate the 3rd kiln was rejected by JSPCB vide its letter dated 25.09.06. Accordingly till 25.09.06, the 3rd kiln could not have been put into operation by M/s JIPL. Their claim made in the agenda form submitted on 11.02.05 was thus clearly wrong.

97. In fact prosecution also examined PW-41 Sh. Sanjay Kumar Sinha who was member Secretary, Jharkhand State Pollution Control Board, during September 2010 till November 2013. During the course of investigation he had handed over various documents related to M/s JIPL as were available in his office record pertaining to

grant of various consent to establish or consent to operate with respect to different kilns installed by the company. In his deposition he stated that a company desirous of establishing a sponge iron plant has to install a kiln and for the same the company has to apply to the State Pollution Control Board for seeking "consent to establish". The officers of concerned Regional office of the Pollution Control Board then carry out an inspection of the proposed plant site and it is thereafter that the consent to establish, is granted to the company after necessary approval in this regard is accorded by the Chairman of the board. He further stated that subsequent to the establishment of kiln and after complying with all necessary conditions as are stipulated in the consent to establish order that the company before proceeding to start operation has to again apply to the State Pollution Control Board seeking "consent to operate". Accordingly a fresh inspection of the plant site is carried out by the Pollution Control Board Officers and based on the said inspection report, the consent to operate is granted to the company by the Head office, under the signatures of member Secretary of the board. Thus only after obtaining consent to operate, the company can start its operations.

98. However in the cross-examination of this witness as carried out by Ld. Counsel Sh. Harsh Sharma on behalf of accused R.S. Rungta, it was suggested to him that a company can run a kiln installed by it for test purposes even before applying for grant of "consent to operate" to the Pollution Control Board. The witness however stated that even for running any kiln for test purposes, the

company has to first inform the Pollution Control Board, for otherwise it may not be known as to when the company in the name of test run may start commercial production.

99. Thus from the aforesaid nature of deposition of this witness it becomes clear that a company can not put any kiln installed by it to commercial production without first obtaining "consent to operate" from the Pollution Control Board.

100. It is in the light of aforesaid facts and circumstances that the inspection report dated 20.04.05 Ex. DW 2/C wherein the operational status of sponge iron plant of M/s JIPL was mentioned as full and that all the three kilns were found operative, needs to be seen and understood. Undoubtedly, the inspection report in column 4 states that the operational status was full and that all the three kilns were found operative. However at a later stage against column No. 7, it states that the company has applied for discharge consent and the same is pending with Head office. It further states that the company has applied for the second time and that the unit has not been granted discharge consent order till date. It was further stated at the end of the inspection report that Electro Static Precipitator (ESP) a pollution control device was yet to be installed.

101. However, in his cross-examination as carried out by Ld. Senior P.P. Sh. A. P. Singh, DW-2 Shree Kant Tiwari stated that the application of the company M/s JIPL for consent to operate was rejected by the Board vide its letter dated 25.09.06 as the company had failed to establish ESP. He further stated that letter dated

25.09.06 Ex. DW 2/D issued by the Board was addressed to R.C. Rungta.

102. Accordingly from the inspection report dated 20.04.05 prepared pursuant to an inspection of the plant site carried out by JSPCB wherein it was stated that all the 3 kilns were found operative it can not be understood as implying that 3 kilns were found to be under commercial production. At the most it can suggest that all the three (3) kilns were operative i.e. were ready for commercial production. The subsequent facts mentioned in the inspection report itself that the company has applied for discharge consent order but the same has not yet been granted also supports the aforesaid conclusion. The record of Central Excise Department as produced and proved by PW-34 Rakesh Jaiswal, Superintendent, Central Excise, Ranchi also clearly demonstrate that kiln 3rd and 4th were taken up for commercial production w.e.f 07.08.2009 only. Vide letter dated 17.08.04 Ex. P-33 (Admitted and exhibited u/s 294 Cr.PC) accused R.C. Rungta had communicated to Central Excise Department, Range Ramgarh that two officials of the company namely Ajay Kumar Singh and Krishna Singh have been authorised by the company to issue Central Excise invoices under their signatures and receive papers as required under Central Excise Law. Again vide another letter dated 22.12.03 Ex. P-34 (Admitted and exhibited u/s 294 Cr.PC) accused R.C. Rungta had written to Central Excise Department, Range Ramgarh that the production of their sponge iron plant was expected to commence from 25.12.03 and that they shall maintain the production register and other necessary



record of Central Excise accordingly. Subsequently vide letter dated 07.08.09 Ex. PW 34/B, submitted under the signatures of Krishna Singh to Suptd. Central Excise Range Ramgarh, it was stated on behalf of company M/s JIPL that kilns No. 3 and 4 have been taken up for commercial production w.e.f 07.08.09. It was further stated that these kilns were installed but were not operative in absence of pollution clearance. During the course of his deposition PW-35 Krishna Singh also admitted the said letter dated 07.08.09 Ex. PW 34/B written by him. The accused persons also did not dispute the factum of submitting the said letter by Krishna Singh. Again vide form E.R-7 dated 02.05.2013 Ex. PW 34/C (D-27), submitted to Central Board of Excise and Customs by PW-35 Krishna Singh, the year of installation of 4 kilns was stated as 2003, 2004, 2007 and 2007 respectively. The veracity of the said E.R-7 form was also not disputed by the accused persons. It is thus crystal clear that the 3rd Kiln of 100 TPD came into operation in August 2009 only.

Accordingly from the inspection report dated 20.04.05 Ex. DW 2/C it can not be understood that as on the date of inspection i.e. on 20.04.05 three kilns were under commercial production.

103. A further reference can now be made to the deposition of PW-41 Sh. Sanjay Sinha again. A perusal of the record supplied by him to CBI vide his letter dated 21.10.13 shows that consent to operate the second kiln was in fact issued by JSPCB on 15.06.04 and thus the claim made by accused R.S. Rungta by way of documents submitted alongwith his letter dated 10.06.04 that 2 kilns were in operation was also false. From the aforesaid circumstances, it is thus

clear that any number of kilns though may have been installed by the company M/s JIPL but the same could not have been put into operation without first obtaining consent to operate from JSPCB. Thus if consent to operate 2nd kiln was granted by JSPCB on 15.06.04 so the claim made vide detailed TEFR as submitted by accused R.S. Rungta to Ministry of Steel on 10.06.04 that 2 kilns have already been commissioned and that unit is under commercial production was also false. The averments made in the said TEFR were also thus wrong.

104. However in the written submissions filed on behalf of accused R.S. Rungta, it was submitted that though the consent to operate the 2nd kiln was issued by Jharkhand State Pollution Control Board (JSPCB) on 15.06.04 but the said consent was granted with retrospective effect i.e. from 17.10.03 and was valid till September 2004. It was thus submitted that as such permission was granted on annual basis so from the said letter dated 15.06.04 of JSPCB, it was clear that the information furnished by accused R.S. Rungta vide letter dated 10.06.04 that 2 kilns were in commercial operation was not false.

105. In this regard, it will be worthwhile to again refer to the deposition of PW-41 Sh. Sanjay Kumar Sinha. In his cross-examination as carried out by Ld. Counsel Sh. Harsh Sharma on behalf of accused R.S. Rungta, the witness upon being asked to explain the fact as to how the order granting consent to operate mentions a period which already had expired prior to the issuance of the said letter, stated that the company must not have complied with

all the conditions and so the consent orders were not earlier issued. As regard the time period already expired in a given year for which consent to operate was applied for by the company or was granted by the JSPCB and which period was still mentioned in the "consent to operate" order, he stated that earlier a practice was going on in JSPCB to mention the entire period in the consent orders i.e. from the time when the company applied. He further stated that such a practice was however subsequently discontinued.

106. Thus, as per the deposition of PW-41 Sh. Sanjay Kumar Sinha, it is clear that as the consent to operate a given kiln is issued on yearly basis so company desirous of obtaining such a consent order from JSPCB have to apply on yearly basis to the board. The board thereafter carries out an inspection of the plant site and upon finding that all the conditions as specified in consent to establish earlier issued to the company by the Board stands complied with, the consent to operate for the said year, is issued. It is also clear that if in complying with the conditions as stipulated in the consent to establish some part of a given year expires then the Board issues a consent to operate only thereafter. It was however only on account of a practice being followed by the Board at that time that in the consent to operate order, the entire period i.e. from the date when the company applied for obtaining consent to operate used to be mentioned. Thus it can not be concluded by any stretch of imagination that even if in the order granting consent to operate dated 15.06.04, the period 17.10.03 till September 2004 is mentioned that the 2nd kiln was already under commercial

production from 17.10.03 itself. In fact from a perusal of Form ER-7 dated 02.05.13, Ex. PW-34/C submitted by the company to Central Board of Excise and Customs under the signatures of PW-35 Krishna Singh also, it is clear that the 2nd kiln was installed in the year 2004. Thus if the contention of Ld. Counsel for the accused is presumed to be correct then the 2nd kiln as per consent to operate order dated 15.06.04 would have started commercial production from 17.10.03 itself i.e. in the year 2003 only. In those circumstances, the details mentioned in ER-7 form thus does not stand explained as regard the year when 2nd kiln came into operation. Thus, the only irresistible and logical conclusion which arises from the overall facts and circumstances is that consent to operate 2nd kiln was issued by Jharkhand State Pollution Control Board only on 15.06.04 and it was operative from the said date only. It is also clear that the company M/s JIPL had though applied for consent to operate qua 2nd kiln on 17.10.03 but no consent to operate was granted by the board till 15.06.04 as the company had failed to comply with all necessary conditions as were stipulated in consent to establish the 2nd kiln as granted by Board vide its order dated 31.07.03.

107. The submission of Ld. Counsel for accused R.S. Rungta to the contrary thus does not hold ground. It also stands well concluded that as on 10.06.04 only one kiln of 100 TPD was under commercial production and not 2 kilns of 100 TPD each as mentioned in TEFR submitted by accused R.S. Rungta alongwith his letter dated 10.06.04.

108. At this stage another important issue also needs to be taken

note of regarding the proposed capacity of the end use project. Though in the initial application submitted vide letter dated 23.02.2004 and the documents submitted vide letter dated 10.06.04 of accused R.S. Rungta, it was stated that in phase-II another 3 kilns of 350 t/d shall be installed but in the agenda form it was stated that 8 kilns of 100 t/d are in the process of installation. The purpose of mentioning such inflated claims qua the proposed capacity was also two fold. Firstly the advanced stage of installation of additional kilns would have gone to show yet higher status/stage of preparedness of the end use project by the company M/s JIPL. Secondly, it also ensured allocation of large quantity of coal and which undoubtedly was a very valuable resource.

109. As earlier also mentioned, PW-13, D. Kashiva, Joint Industrial Advisor, Ministry of Steel stated in his deposition that the calculation of requirement of coal was carried out by multiplying the capacity of the kilns per day as were proposed to be established by the company in the phase-I and phase-II of the project. He stated that after taking into account 3 X 100 t/d kilns to be installed in the first phase and the proposed 3 X 350 t/d kilns proposed to be established in the second phase, the ultimate capacity of the project was calculated as 4.05 LTPA. Based on the said production capacity, the total requirement of the coal was calculated as 6.48 LTPA. He proved his detailed note dated 27.07.04 Ex. PW 12/F (colly) in file Ex. PW 27/B (colly) (D-12) prepared in this regard by him. (*The total coal requirement is arrived at by multiplying the total production capacity by a factor of '1.6'. Thus for a total capacity of 4.05 LTPA, the coal*

*requirement shall be  $4.05 \times 1.6 = 6.48$  LTPA).*

110. In fact from the various documents discussed above it has also come on record that even prior to allocation of coal block, the proposed end use project of M/s JIPL was stated to be already commissioned. However it has also come on record that even coal linkage for the first two kilns was not available with the company in the year 2003-04 or in 2004-05. It has thus remained completely unexplained on the part of accused persons as to how in the absence of coal even through coal linkage, the plant was put into operation. Admittedly under MMDR Act, 1957 and the coal block allocation policy of Government of India, Coal from any coal block mined by a company, be it in the private sector or Government Sector, if is not being used for captive use can be given away only to such other company to whom standard linkage Committee constituted by MOC and headed by Additional Secretary Coal would have permitted.

111. However it is in the light of such strict regulations regarding availability of coal the fact that a company i.e. M/s JIPL managed to procure allotment of coal much beyond the capacity required by it to run its plant, becomes important and it does raise eyebrows. Certainly coal is a valuable nationalized natural resource of the country, not freely available in the market. I however do not wish to delve any further on this aspect except to re-emphasise the point that highly inflated claims were made by the accused persons at different stages of processing of their application with a view to present an advanced status or stage of preparedness towards their end use

project while knowing fully well that the said claims were false.

112. From my aforesaid discussion, it is thus crystal clear that accused persons grossly misrepresented at different stages of processing of their application, initially before Ministry of Steel and subsequently before Screening Committee MOC stating different installed capacity or even the proposed capacity of their end use project. Initially claim was made before Ministry of Steel by the company that in phase-I, 3 kilns of 100 t/d capacity have been installed and in phase-II, 3 additional kilns of 350 t/d capacity shall be installed. However, subsequently before MOC in the agenda form, it was stated that while 3 X 100 TPD each kilns are under operation and that in the second phase, 8 kilns of 100 t/d capacity are being installed. This change in the proposed capacity in fact resulted in allocation of higher quantity of coal to the company M/s JIPL as the total requirement of coal of the company was calculated in Ministry of Steel by PW-13 Sh. D. Kashiva on the assumption that the company has installed 3 kilns of 100 TPD each and is in the process of installing another 3 kilns of 350 TPD each and thus the total capacity of the plant shall be 1350 TPD. In fact the company M/s JIPL installed only four (4) kilns of 100 TPD till the year 2009 and thereafter it did not proceed ahead to install any further kiln much less to install 8 kilns of 100 TPD in phase-II of the proposed plant. In fact even with 3 X 100 TPD each kilns already installed and another 8 X 100 TPD kilns under installation, the ultimate proposed capacity of the plant would have been 1100 TPD only i.e. much less than the earlier ultimate projected capacity of 1350 TPD.

113. With the aforesaid background I shall be now discussing the effect of such false claims made by the accused persons qua land actually acquired by them or being acquired by them or as regard the installed capacity or the proposed capacity of their end use project.

114. In this regard it first becomes important to examine as to why the accused persons misrepresented qua the issue of land or the installed or proposed capacity of their end use project. At this stage, it will be worthwhile to refer to the guidelines which were applicable to the allocation of such coal blocks by the Screening Committee, MOC. As per PW-14, Sujit Gulati, the then Director, CA-1 Section, MOC fresh guidelines titled "*Additional Guidelines*" governing coal block allocation were approved by the Minister of State for Coal, Sh. Karia Munda. The said guidelines have been proved on record as Ex. PW-14/L (colly) (as available from page No. 18 to 20 in file D-90). He also stated that as per the approval accorded by the then Coal Secretary Dr. P.K. Mishra, the said additional guidelines were decided to be made applicable for allocation after 04.11.2003. Further the interse guidelines were also laid down for the Screening Committee to decide the interse priority amongst different applicant companies for allocation of a given coal block. He also stated that the earlier guidelines Ex. PW 14/M (colly) (as available from page 23 to 33 in D-90) governing coal block allocation also continued to hold ground in so far as they were not contrary to the new guidelines approved.

115. He also stated that the said guidelines were duly uploaded on the website of MOC. The relevant portion of the said guidelines read



as under:

**"Additional Guidelines for allocation of Captive Blocks and guidance to applicants.**

"1.) Applications for allocation/reservation of coal blocks for captive mining for the specified end uses shall be made to the Screening Committee in the Ministry of Coal in five copies. The application shall be accompanied by the following in addition to any other relevant documentation that the applicant may submit.

- Certificate of registration showing that the applicant is a Company registered under S.3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the company.
- Document showing the person/s, who have been authorized to sign on behalf of the applicant Company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company.
- Certified copy of the Memorandum and Articles of Association of the applicant company and the last 3 years audited annual accounts/reports.
- Line of business and track record of the applicant company.
- The status and stage of the proposed end use project for which the coal block is sought in terms of land, finance, equipment, other required inputs, technical know how etc. The applicant may also submit a project report. If such a project report is appraised by a lender the same may also be submitted.
- Detailed schedule of implementation for the proposed end use project and the proposed coal mining development project in the form of bar charts of Harmonographs.
- Details of coal linkages applied for or granted to the applicant company including those for the end use project for which the coal block is sought.
- Scheme for disposal of unusable containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the midlings, tailings, rejects etc from the washery are proposed to be put. This is intended to avoid the applicant

approaching the Government at a latter stage for seeking permission to sell such materials.

Applications without the above accompaniments would be treated as incomplete and would not be processed further.

\*Firm tie up for raw material inputs like Iron ore, limestone etc in case required in the end use project, would be a perquisite for considering the application for allocation of Captive Coal mining block.

- 2.) . . . . .
- 3.) . . . . .
- 4.) . . . . .
- 5.) . . . . .
- 6.) . . . . .
- 7.) . . . . .
- 8.) . . . . .
- 9.) . . . . .
- 10.) . . . . .
- 11.) . . . . .
- 12.) . . . . .

13.) Inter-se-priority for allocation of a block among competing applicants for captive coal blocks may be decided as per the following guidelines.:-

1. Main factors to be considered:-
  - Suitability of coal grade in the block.
  - Techno economic viability/Feasibility of the project.
  - Status/stage/level of progress and state of preparedness of the project.
  - Track record of the applicant.
  - Recommendation of the concerned Administrative Ministry and the views of the concerned State Govt.
  - The views of the concerned State Governments.
  - Matching of requirement of the applicant with the mineable reserves available.
2. All factors above being equal, from the coal mining development and conservations point of view, the larger the per annum extraction planned the higher shall be the priority.
3. All factors above being equal, order of priority based on status of the applicant would be as under:
  - i. Central Govt, PSU for captive use.
  - ii. State Govt. PSU for captive use.

*lii. Private sector captive use.*

4. *Order of priority in case of captive mining, all factors being equal, on the basis of end-use amongst (i), (ii) and (iii) in 3 above may be as follows:*

- a) Power/Independent Power producer.*
- b) Iron & Steel with captive power plant & washery.*
- c) Cement with captive power plant and washery.*
- d) Iron & steel without captive power plant/washing*
- e) Cement without captive power plant."*

***(Emphasis supplied by me)***

116. A bare perusal of the said guidelines clearly shows that documents relating to status or stage of proposed end use project qua which the coal block is sought in terms of land, finance, equipments, other required inputs and technical know how etc were to be filed alongwith the application form. The applicants were also required to submit a project report beside submitting detailed schedule of implementation of the proposed end use project and the proposed coal mining development project. Similarly the interse priority guidelines also stated that the status/stage/level of progress and stage of preparedness of the project were relevant factors to be considered. Various other factors such as suitability of the coal grade in the block, tehcn economic viability/feasibility report of the project and track record of the applicants were some other such relevant factors to be considered by the Screening Committee beside recommendation of the concerned Administrative Ministry and that of the State Government.

It was further stated in Clause (b) of interse guidelines that all factors above being equal from the coal mining development

and conservation point of view, the larger the per annum production, the higher shall be the priority.

117. Thus, it does not require any far-fetched argument to appreciate that all such highly inflated claims cumulatively had the effect of showing a higher level of preparedness qua status and stage of the proposed end use project for which allocation of a coal block was sought for. Thus dishonest intention in making such highly inflated claims is writ large on the face of record. The accused persons wanted to leave no stone unturned in ensuring that their application is given a higher priority by the Screening Committee as compared to the application of any other company. They made both Ministry of Steel and Screening Committee, Ministry of Coal believe in their such inflated and false claims showing higher level of status/stage of preparedness of their end use project knowing fully well that the claims being made are false.

**WHETHER COMPANY M/S JIPL CONSENTED FOR ALLOCATION OF "NORTH DHADU COAL BLOCK" OR NOT AS IT HAD APPLIED ONLY FOR ALLOCATION OF "PAKRI BARWADIH" AND "GONDAL PARA" COAL BLOCKS.**

118. Before I advert on to the question as to whether the said misrepresentation or highly inflated claims had the effect of deceiving MOC so as to induce it to make allocation of a coal block in favour of M/s JIPL, it will be appropriate to refer to some other contentions raised by Ld. Defence Counsels. It was vehemently argued by Ld. Counsel Sh. Rajiv Mohan for accused company M/s JIPL and accused R.C. Rungta that the company had infact applied for allocation of "*Pakri Barwadih Coal Block*" or "*Gondal Para*" coal

block and it had never asked for allocation of "*North Dhadu coal block*". It was thus submitted that even if there was a misrepresentation on the part of accused persons then also the property qua which the said misrepresentation was made was never delivered to them and as regard the property delivered to them i.e. "*North Dhadu coal block*" there was no misrepresentation made by the accused persons.

119. I may however state that though on the face of it the argument appears to be attractive but it does not stand supported by the documents placed on record by the prosecution. The subsequent discussion will show that M/s JIPL had infact expressly consented to MOC towards joint allocation of "*North Dhadu coal block*" to it alongwith three other companies. During the course of investigation of the present case and also that of other coal block allocation matters, it was found that on account of a fire incident having taken place in the MOC office a large number of record got burnt or went missing. PW-15 Sh. Shambhu Kumar and PW-16 Sh. A. Sanjay Sahay who were working in MOC during the period 2013 deposed to that effect. It was also found that the pre-allocation file of M/s JIPL was not there in the retrieved record. Thus, the investigating agency was faced with a situation where original file containing the pre-allocation documents was found to be not available in MOC. However during the course of investigation of the present case various search operations were carried out at the office premises of the accused persons and at the residence of its directors including that of accused R.C. Rungta and accused R.S. Rungta and a

number of files/documents came to be seized. It was however argued by Ld. Defence counsel that all such record was already available with the CBI and no such search operations were carried out and CBI planted all such documents subsequently by compiling them in various files.

120. Prosecution on the other hand has examined four public independent witnesses namely PW-1, Sh. P.K. Mishra, PW-2 Sh. Dewesh Kumar, PW-3 Sh. R.P. Verma and PW-4 Sh. J.P. Bhagoria who were associated with different search operations carried out. Five CBI officers namely PW-5, DSP B.M. Pandit, PW-6 Insp. Sanjay Sehgal, PW-7 Insp. Vijay Chettiar, PW-8 Additional S.P., S.N. Das and PW-9 Insp. Manoj Kumar, were also examined as they led various search teams during the course of said search operations. PW-9 Insp. Manoj Kumar was infact the initial IO of the present case and had issued the necessary authorisation letters in favour of various other CBI officers, authorising them to carry out search operations at different places.

121. However in the cross-examination of none of the aforesaid 9 witnesses anything could be culled out by Ld. Defence Counsels which could show that either they were deposing falsely in any manner or which could raise shadow of any iota of doubt about the veracity of their deposition. In fact some of the files/documents stated to have been recovered during the course of search operation such as D-83, Ex. PW 1/H (colly) which is primarily being relied upon over here also contained papers pertaining to correspondence undertaken between accused persons and Ministry of Steel. However, it has also

come on record during the course of deposition of PW-27 Insp. Sunit Pal that the original of the said documents was collected by him from Ministry of Steel on 02.05.20013 whereas search operations in the present case were carried out on 11.03.13. Thus there is no reason to doubt the deposition of prosecution witnesses be that of CBI officers i.e. PW-5 to PW-9 or that of public independent witnesses i.e. PW-1 to PW-4 or of PW-27 Insp. Sunit Pal and PW-28 Dy. S.P. Samar Pal Rana, that various files/documents were recovered during the course of search operation carried out by the CBI at the residence of accused R.S. Rungta and R.C. Rungta or from their office premises or that of accused company M/s JIPL. It will be also worthwhile to mention that though certain suggestions were put to the witnesses by Ld. Defence Counsel that the documents were already available with the CBI and they were later on compiled in the form of a file and were shown to have been recovered from the house of accused persons, but at no point of time during the deposition of any of the prosecution witnesses the veracity of the said documents or the contents thereof was doubted or disputed. Moreover in consonance with the varying stands taken by the accused persons at different stages of trial qua different documents, the stand taken by the accused persons with respect to the search operations was also equally varying and contradictory in nature. Though u/s 294 Cr.PC accused persons did not dispute the genuineness of various search lists prepared at the time of carrying out the search operations by admitting their signatures upon them but during the course of recording of prosecution evidence they disputed the factum of any search having been carried out. Once

again in their statements u/s 313 Cr.PC the stand changed. Accused R.S. Rungta when put the said circumstance in question No. 79 to 83 stated the factum of search having been conducted at his office in Ranchi to be a matter of record. Similarly, about seizure of documents during the search operation he again stated it to be a matter of record. He however stated that he was not aware of the procedure adopted. He also refused the allegation that he had refused to carry out personal search of the team members at the time of search operation though as regard the search operation he stated it to be a matter of record. Accused R.C. Rungta however in his statement u/s 313 Cr.PC stated it to be incorrect that any search operation was carried out at his residence. However, he claimed ignorance as regard the search operation carried out at the residence of co-accused R.S. Rungta. The company M/s JIPL also claimed ignorance about the search operation carried out at the residence of its directors R.C. Rungta and R.S. Rungta but stated it to be incorrect as regard the search operation carried out at its office premises.

122. In one such file Ex. PW 1/H (colly), (D-83), recovered from the house of accused R.S. Rungta various documents relating to communication undertaken by him or by company M/s JIPL through its other officers/directors with different Government departments such as MOC, Ministry of Steel or office of Coal Controller or replies received from there were recovered. In fact a copy of the application submitted on behalf of M/s JIPL under the signatures of accused R.C. Rungta for allotment of coal block was also recovered from his



house. Copy of the agenda form submitted under the signatures of Vikas Santholia, yet another director of M/s JIPL was also recovered. It is in the said documents that a letter dated 18.12.04 written by Vikas Santholia to Sh. S.K. Kakkar, Under Secretary, MOC was recovered and wherein it was stated in response to letter No. 47011/5/2004-cb-ca dated 18.11.04 received from MOC that as "*Pakri Barwadih Coal Block*" has been allotted to NTPC so they would like to inform that they have applied for allotment of "*Gondal Para Coal Block*" as an alternative. It has been further stated in the said letter that as they have come to know that even "*Gondal Para Coal Block*" contains semi-coking coal which is not suitable for DRI process so they are not interested even in the said coal block as for their DRI plant they require non-coking coal. Accordingly, request was made for allocation of an alternative "*Chakla coal block*". Copy of earlier letter dated 18.11.2004 sent by Sh. S.K. Kakkar to M/s JIPL whereby it was informed to M/s JIPL that "*Pakri Barwadih Coal Block*" has already been allocated to NTPC, so a suitable alternative block as may be desired, be informed was also recovered.

123. The aforesaid circumstances find corroboration from the minutes of 27th Screening Committee also. In the said minutes, it has been specifically stated that the company has requested for allocation of "*Gondal Para Coal Block*" to meet their coal requirement of 1.72 MTPA for their 0.432 MTPA sponge iron project and 35 MW captive power project. It is further mentioned that Ministry of steel has however stated that they would check CMPDIL data and let MOC know their views especially whether "*Gondal Para Coal Block*"

is suitable for sponge iron making or not. Thus from the said minutes, it is clear that the company was not being considered for "*Pakri Barwadih Coal Block*" as the same already stood allotted in favour of NTPC and this fact was duly communicated to the company. It has also come on record that the coal of "*Gondal Para Coal Block*" was not suitable for sponge iron project and for this reason only M/s JIPL had even suggested a suitable alternative coal block namely "*Chakla coal block*". Thus in these circumstances, it is clear that the two coal blocks for which the company had applied for could not have been allotted to the company but the company on account of the said circumstances was willing to go for a change in the coal block which could be allotted to it. It was in these circumstances only that 27th Screening Committee meeting thereafter proceeded ahead to recommend the name of M/s JIPL as a joint allocatee in respect of "*North Dhadu coal block*" and the "*Gondal Para Coal Block*" was recommended for joint allocation to two power sector companies i.e. Damodar Valley Corporation and Tenughat Vidyut Nigam Ltd. The "*Chakla coal block*" was however not at all considered by the 27th Screening Committee meeting for allocation to any company. Moreover accused R.S. Rungta was very much available in the 27th Screening Committee meeting on 01.03.05 when the recommendation in favour of M/s JIPL as a joint allocatee was made with respect to "*North Dhadu coal block*".

124. However after the 27th Screening Committee meeting, Joint Secretary Coal convened a meeting of all successful joint allocatee companies so as to discuss the issues involved. One such meeting

was held on 07.06.05 at 3.30 PM in Shastri Bhawan, MOC office and notice of the same was duly sent to M/s JIPL. The copy of said letter was also found in the file Ex. PW 1/H (colly) (D-83) recovered from the office of accused R.S. Rungta and has been exhibited as Ex. PW 26/DX-1. Though accused persons have been claiming that "*North Dhadu Coal Block*" was allocated to them without their consent but the agenda of 30th Screening Committee meeting further goes to show that though initially "*North Dhadu coal block*" was recommended for joint allocation in the name of four companies i.e. Tata Power Ltd., M/s Adhunik Alloys and Power Limited, M/s Pawanjay Steel and Power Limited and M/s JIPL but during the course of subsequent meeting held in MOC, M/s Tata Power expressed its inability to mine the said coal block jointly and thus withdrew from the said allocation and was replaced by M/s Electro Steel Casting Limited. It has been also mentioned in the agenda of 30th Screening Committee meeting that M/s Electro Steel Casting Limited, M/s Adhunik Alloys and Power Limited, M/s Pawanjay Steel and Power Limited and M/s JIPL have all communicated their willingness to mine the block jointly. The minutes of 30<sup>th</sup> Screening Committee as was held on 18.10.05 clearly mentions that the Screening Committee was informed of the details of North Dhadu's case and the representations received. The Committee thereafter agreed to the course of action taken and as suggested in the agenda. Thus, it is clear that M/s JIPL alongwith three other companies as mentioned above had agreed to jointly mine "*North Dhadu coal block*" and had accordingly represented so to the MOC. The said representation of the four companies conveying their

consent for joint allocation of “*North Dhadu coal block*” was agreed to by the 30<sup>th</sup> Screening Committee. In fact the four companies thereafter upon issuance of final allocation letter even entered into a joint venture agreement with respect to “*North Dhadu coal block*” and a letter dated 31.03.08 in this regard signed by accused R.S. Rungta on behalf of M/s JIPL was also sent to MOC. The said letter was admitted to be correct u/s 294 Cr.PC by accused R.S. Rungta and was exhibited as Ex. P-6, (D-22). Similarly, a joint venture agreement was also entered into by the four companies and the same was also admitted by accused R.S. Rungta u/s 294 Cr.PC and is exhibited as Ex. P-7.

125. In the aforesaid circumstances, the contention of Ld. Counsel for accused persons that as they never applied for allocation of “*North Dhadu coal block*” so an essential ingredient of the offence of cheating i.e. u/s 420 IPC viz. delivery of a property qua which dishonest or fraudulent misrepresentation or inducement was made, does not stand made out is clearly not tenable. As discussed above before the final joint allocation of “*North Dhadu coal block*”, the company M/s JIPL had expressed its consent to MOC regarding joint allocation of “*North Dhadu coal block*” in its favour alongwith three other companies. Moreover the false/inflated claims as were made by the accused persons with respect to land and installed capacity all related to the end use project of the company and not with respect to any specific coal block. Thus, it can not be stated that the said misrepresentations were made only qua “*Pakri Barwadih coal block*” or qua “*Gondal Para coal block*” only and not qua any other coal

block much less qua "North Dhadu coal block".

**SUITABILITY REPORT SUBMITTED UNDER THE CERTIFICATE ISSUED BY PW-17 SH. B.B. LAL AND PW-19 SH. T.K. BASU.**

126. As regard the issue of suitability report submitted under a certificate issued by PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu, it was submitted by Ld. Counsel for accused R.S. Rungta that though accused did not forge or fabricate any such suitability report but even if the same is deemed to have been manipulated then also the said suitability report could have been qua "*Pakri Barwadih Coal Block*" or "*Gondal Para Coal Block*" only. It was thus submitted that as none of the said coal block has been allocated to company M/s JIPL so the said suitability report loses all its significance being a completely irrelevant document. It was also submitted that prosecution has in fact failed to prove that any such suitability report prepared by the said two witnesses was forged or fabricated by the accused persons as the actual/original report prepared by the two experts has not been placed or proved on record. It was also submitted that if no suitability report would have been filed then PW-13 Sh. D. Kashiva would not have proceeded to process the application dated 23.02.04 of company M/s JIPL as was received in Ministry of Steel.

127. Undoubtedly the accused persons have rightly contended that the actual suitability report which was prepared by the said two experts has not been placed on record by the prosecution to show as to in what manner the same was different from the one which is now annexed with the certificate of the said two experts. However, the arguments put forth by Ld. Counsel for accused that the said

suitability report can not be of any use as it pertained to “*Pakri Barwadih Coal Block*” and “*Gondal Para Coal Block*” though appears to be attractive but does not carry any force. Admittedly the said document was submitted by accused R.S. Rungta vide letter dated 10.06.04 to Ministry of Steel i.e. much before the time the recommendation for allocation of a captive coal block was made by Ministry of Steel to MOC. Thus, as on that date or subsequent thereto i.e. till 01.03.05 when the 27th Screening Committee meeting took place it was not known to anyone that the company M/s JIPL will not be recommended for “*Pakri Barwadih Coal Block*” or “*Gondal Para Coal Block*” by the Screening Committee, MOC. Thus, the submission of said suitability report was of immense importance on the part of accused persons as in the absence of the same Ministry of Steel would not have recommended its case for allotment of a captive coal block to MOC. As already pointed out in the interse guidelines the recommendation of the concerned Administrative Ministry (Ministry of Steel herein) was an important consideration. It is in these circumstances the deposition of PW-17 Sh. B.B. Lal can also be referred to when he stated that his report was only in two pages and was bearing his signatures as well as that of PW-19 Sh. T.K. Basu and that they did not find the coal blocks examined by them to be suitable for the sponge iron plant of M/s JIPL.

128. However, at this stage I would also like to point out the contradictory stand taken by the accused persons qua the said suitability report even. While u/s 294 Cr.PC the said suitability report as available in D-13 (Part of Ex. P-4 (colly)) was admitted by

accused R.S. Rungta but in the statement u/s 313 Cr.PC accused R.S. Rungta in reply to question No. 10 made the following statement:

*"Q. 10 It is further in evidence against you that company M/s JIPL thereafter submitted reply to letter dated 19.05.2004 Ex. PW 12/B of Ministry of Steel vide letter dated 10.06.2004 under the signatures of you accused R S Rungta, Chairman, M/s Jharkhand Ispat Pvt. Ltd. enclosing therewith 5 annexures viz. Part-I i.e. Group Turnover of you company and Annual Reports of M/s Rungta Project Ltd. Ex. PW 12/G (colly); Part-II i.e. Phased requirement of non-coking coal Ex. P-3 (D-13); Part-III i.e. report qua proposed coal block with respect to Geological reserve, minable reserve, grade of coal etc. under the signatures of PW-17, B B Lal, Mining Engineer and PW-19 Sh. T K Basu, Geo-scientist i.e. Ex.P-4 containing certificate and Ex. PW 17/A; Part-IV i.e. Techno-economic feasibility report of the proposed end use project and captive power plant of you company and the project report as prepared by "United Engineering Consultants, Kolkatta" Ex.P-5 (colly); Part-V i.e. documentary evidence regarding procurement of land, placement of order for major plant and machinery with specification for the project Ex. PW 12/H (colly). What have you to say?*

*Ans. I had signed the letter dated 10.06.2004. Rest of documents annexed with letter dated 10.06.2004, consist of certificate of Sh. B B Lal and Sh. T K Basu. However, the report made by them is not on judicial record."*

**(Emphasis supplied by me)**

129. Thus while admitting the genuineness of said documents at the time of admission/denial u/s 294 Cr.PC, the contents of the said report were questioned during the cross examination of PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu. However, the final stand taken by accused R.S. Rungta u/s 313 Cr.PC was that the said report is not on judicial record.

130. In these circumstances, since the said documents were

furnished by accused R.S. Rungta alongwith his letter dated 10.06.04 to Ministry of Steel so it was incumbent upon accused R.S. Rungta himself to explain as to what was the actual report if the documents annexed with the certificate of the two witnesses was not the actual report. In the absence of there being any explanation in this regard by accused R.S. Rungta, the only irrebuttable conclusion arising from the overall facts and circumstances is that accused R.S. Rungta did not file the actual report prepared by PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu alongwith his letter dated 10.06.04 to Ministry of Steel. PW-17 Sh. B.B. Lal clearly stated that they had found the coal blocks examined by them to be not suitable for the sponge iron plant of the company.

131. In fact this conclusion drawn by PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu also find support from the subsequent proceedings which took place in MOC. As already mentioned, MOC had informed M/s JIPL that "*Pakri Barwadih coal block*" is no longer available for allocation as the same has already been allotted to NTPC. Even the coal as available in "*Gondal Para coal block*" was also not found suitable for sponge iron plant of the company. In fact "*Gondal Para coal block*" was also allotted to two power companies. Thus, both coal blocks i.e. "*Pakri Barwadih*" and "*Gondal Para*" coal blocks were allotted to companies engaged in production of power. From the files/documents of MOC and CMPDIL as contained in file Ex. PW-26/A (colly) (D-90), it is clear that grade/kind of coal required for production of sponge iron is different from the one required for production of power. Coal of grade D and above are considered



suitable for production of sponge iron plant but for a power plant coal of grade E & F can also suffice. Moreover, documents as submitted by accused R.S. Rungta vide his letter dated 10.06.04, itself states the quality of coal as available in "*Pakri Barwadih coal block*" and "*Gondal Para coal block*" to be E & F category.

132. Thus, from the overall facts and circumstances, it is clear that coal as available in "*Pakri Barwadih*" and "*Gondal Para*" coal blocks was not suitable for the sponge iron plant of M/s JIPL. It was in these circumstances that the actual report prepared by the two experts was not filed by accused R.S. Rungta alongwith his letter dated 10.06.04. Moreover, accused R.S. Rungta has not disputed the fact that report after preparation by the two experts was handed over to him. In fact PW-19 Sh. T.K. Basu also stated that the report was typed in the office of accused R.S. Rungta himself. He thus stated that in these circumstances no copy of the report was retained by them.

133. The aforesaid circumstances thus clearly shows that the actual report prepared by the two experts was available with accused R.S. Rungta only. Thus u/s 106 Indian Evidence Act, 1872, the burden of proving the actual report as was supplied to him by the two experts lie upon accused R.S. Rungta only. His claim u/s 313 Cr.PC that the actual report is not on judicial record further increases the said burden upon him as to what was the actual report. Certainly prosecution in these circumstances could not have known the contents of the actual report except for gaining information about the same from the oral deposition of the two witnesses namely Sh. B.B. Lal and Sh. T.K. Basu. By examining the said two witnesses,

prosecution clearly discharged its burden of proving the fact that the actual report prepared by the two experts was not filed by accused R.S. Rungta alongwith his letter dated 10.06.04 to Ministry of Steel. Accused persons on the other hand failed to discharge their burden in this regard as required of them u/s 106 Evidence Act, since the contents of actual report were to the knowledge of accused persons only and to no one else.

134. Ld. Counsel for accused R.S. Rungta also submitted that if the suitability report would not have been filed alongwith letter dated 10.06.04 of accused R.S. Rungta then Ministry of Steel would not have made any recommendation to MOC for allotment of any coal block in favour of company M/s JIPL.

135. I may however state that in ideal situations the course of action to be adopted by Ministry of Steel should have been this only. Undoubtedly the contention of Ld. Counsel for accused carries force but a perusal of note dated 27.07.04 Ex. PW 12/F (colly) in file Ex. PW 27/B (colly) (D-12) of Sh. D. Kashiva shows that while proposing to recommend the case of M/s JIPL to MOC for allotment of a coal block, it was also stated by him that the recommendation may be made with the condition that coal reserves, grades of coal, washery yield etc. may be assessed by CIL/CMPDIL/CCL. In fact the minutes of 27th Screening Committee also states that Ministry of Steel stated that they would check CMPDIL data and let MOC know their views especially on whether the Gondal Para coal is suitable for sponge iron making.

136. Thus it is clear that alongwith the certificate of PW-17 Sh. B.B. Lal and PW-19 Sh. T.K. Basu, the actual report regarding suitability of two coal blocks was not filed, for otherwise there would not have been any necessity for Ministry of Steel to observe that CIL/CMPDIL/CCL data regarding suitability may be referred to.

137. From the overall facts and circumstances, as discussed above, it is thus crystal clear that the suitability report prepared by the two experts was not filed by accused R.S. Rungta alongwith his letter dated 10.06.04 as the report did not suit the interest of company M/s JIPL.

**TECHNO ECONOMIC FEASIBILITY REPORT (TEFR)**

138. In so far as TEFR prepared by R. Kedia (Co-accused since deceased) is concerned, Ld. Counsel for accused R.S. Rungta may be right that there was no stipulation by Ministry of Steel or MOC that such a report should be got prepared from an incorporated company only or that such a report could not have been prepared in-house by the applicant company. However, what is important to note over here is that even if it is presumed for the sake of arguments that "*United Engineering Consultants*" was an existing concern even though not incorporated with ROC or registered with any Government authority, still R. Kedia admittedly was an employee/associate of accused persons themselves. The profile of Rungta group of companies filed alongwith application Ex. PW 10/DX-1 mentions about him. Thus irrespective of the fact whether such a report was forged or not, it is clear that the contents of the said report were prepared by R. Kedia

in full consultation with the accused persons and the accused persons can not now disown the information so made available in the said report. As already shown above even the information submitted in the said TEFRR qua the existing capacity of project or the proposed capacity of the project was found to be wrong and misleading.

139. Reverting back to the issue of land, it will be worthwhile to mention that in file Ex. PW 1/H (colly) (D-83) recovered and seized during the search of office of accused R.S. Rungta, one letter dated 22.07.07 addressed to Dy. Secretary, Government of Jharkhand, Department of Mines and Geology, Range Ranchi was found. Vide the said letter status report of integrated Mini Steel plant being set up by M/s JIPL was submitted. In the said status report also the land actually acquired was stated to be 22 acres. There is also mention of joint allocation of "*North Dhadu coal block*" in the said status report in favour of M/s JIPL. Thus the said communication also shows that even on 22.07.07 the company was in possession of 22 acres of land only. Thus at least as on the date of submission of feed back form i.e. on 11.02.05 and on the date of presentation as was made on 01.03.05, the company M/s JIPL was not having 79 acres of land in its possession or as having been acquired by it.

140. It was also argued by Ld. Defence Counsels that as there was no minimum criteria specified by MOC with respect to any factor much less qua land, installed capacity or the proposed capacity of the end use project so making of any claim by the accused persons either qua land or the capacity of the proposed end use project were completely irrelevant.

141. I may however state that the aforesaid argument is per-se not tenable. Even if no such minimum criteria was laid down by Ministry of Coal then also it can not be inferred that the accused persons were at liberty to make any false claim with respect to any fact much less qua land acquired by them or the efforts being made to acquire any additional land or the existing capacity or proposed capacity of their end use project. As earlier also mentioned, the status/stage of preparedness of the proposed end use project was a relevant criteria for deciding the inter-se priority amongst different applicant companies. Non-providing of any minimum criteria qua any factor by MOC can at the most construe that a new company who proposes to establish a sponge iron project or an existing company which was already engaged in the production of sponge iron, were both eligible to apply. It however does not mean that either the new company or the existing company can make any false claim about the status/stage of preparedness towards establishing their end use project.

**WHETHER OFFENCE OF CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY U/S 420 IPC IS MADE OUT.**

142. In this regard it will be appropriate to first have a glance of the ingredients of the offence of cheating as defined in Section 415 IPC which are as follows:

- "1. *Deception of any person.*
2. *(a) Fraudulently or dishonestly inducing that person:*
  - (i) to deliver any property to any person, or*
  - (ii) to consent that any person shall retain any property, or*

*(b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

*However when in pursuance of deception so exercised, any property is delivered, the said act of cheating becomes punishable u/s 420 IPC."*

143. It thus now becomes necessary to examine as to what was the effect of all the aforesaid misrepresentations made by the accused persons qua the issue of land, their existing installed capacity or projected capacity of the end use project or non-filing of suitability report. From a bare perusal of the minutes of 27th Screening Committee, it is clear that the Screening Committee also placed strong reliance upon the claims made by accused company M/s JIPL at the time of presentation regarding its advanced status/stage of preparedness with respect to its end use project and pursuant to which the company was recommended for allocation of "North Dhadhu coal block".

144. The relevant portion of the minutes of 27th Screening Committee meeting Ex. PW 14/B (colly) (as available in file Ex. PW-28/E (colly) (D-20)) read as under:

***"11. M/s Jharkhand Ispat Pvt. Ltd.***

*M/s Jharkhand Ispat Pvt. Ltd., a company incorporated on 23.2.2004 is engaged in the business of sponge iron and steel. They have requested for allocation of the Gondulpara block to meet their 1.72 mtpa coal requirement for their 0.432 mtpa sponge iron project and 35 MW captive power project*

*proposed to be located in Hazaribag of Jharkhand. The company has not coal linkage. As per their presentation the turn over of the company is Rs. 2.96 crores, a profit' Rs. 0.11 crore and a net worth' Rs. 16.05 crores. It was informed by the representative of the company that they have 25 years of experience in mining, infrastructure and irrigation projects and their flag ship company is Rungta Project Ltd.. When asked what kind of mining experience they have, it was informed that they are working the mines of DVC, TISCO and CCL as mining contractors. The representative of the company informed that 79 acres of land has been acquired by them and additional lands are under acquisition. Requirement of water would be met from deep boring and Damodar river. Three (3) kilns of 100 TPD each are in operation and 8 kilns of 100 TPD each are under installation. Govt. of Jharkhand recommended the case for allocation. Ministry of Steel stated that they would check CMPDIL data and let Ministry of Coal know their views especially on whether the Gondulpara coal is suitable for sponge iron making."*

145. As already discussed at length, the representations made by the accused persons were *per-se* false and it does not require any far-fetched arguments to conclude that the same were made with a dishonest intention as they wanted to present a better status/stage of their preparedness towards establishing the end use project. The mensrea on the part of accused persons in making the said false representations right from the stage of submitting their application to Ministry of Steel seeking allotment of a captive coal block and till the issuance of final allocation letter with respect to allotment of a coal block in favour of company M/s JIPL is writ large on the face of record and that too while having complete knowledge that all such representations were false. It is also clear that the accused persons as a result induced Screening Committee and thereby Ministry of Coal, Government of India to allocate a coal block to company M/s JIPL by believing the said representations as true even though the

same were false. Another important issue which however needs to be examined at this stage is whether the said representations beside having been made with a dishonest intention were also fraudulently made or not.

146. Section 24 and Section 25 IPC respectively define the words "dishonestly" and "fraudulently" as under:

*"24. **"Dishonestly"**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".*

*25. **"Fraudulently"**.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."*

147. Though the said two concepts i.e. "dishonestly" and "fraudulently" have been extensively dealt with by Hon'ble Supreme Court in a number of cases but it will be appropriate to refer to the observations of Hon'ble Supreme Court in the well known case i.e. **Dr. Vimla Vs. Delhi Administration AIR 1963, SC 1572** wherein the basic ingredients of the two acts have been delineated.

148. Hon'ble Supreme Court after extensively referring to various case law on the issue, observed that while the definition of "dishonestly" involves a pecuniary or economic gain or loss but as regard "fraudulently", it is primarily the intent to defraud which is an important ingredient. The word "defraud" includes an element of deceit. It was also observed that by way of their very definition as provided under IPC, the word "fraudulently" by its construction excludes the element of pecuniary economic gain or loss. It was



observed that if the expression "fraudulently" were to be held, to involve the element of injury to the persons or the persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice-versa, it need not necessarily be so. It should be held that the concept of fraud would include not only deceit but also some injury to the person deceived. It would be thus appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy definition of "fraudulently" it would be sufficient if there was a non-economic advantage to the deceiver or non-economic loss to the deceit. Both need not co-exists. It was also observed by Hon'ble Supreme Court that the Juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicate their close affinity and therefore the definition of one may give colour to the other. The aforesaid observations of Hon'ble Supreme Court culling out the difference between the words "dishonestly" and "fraudulently" have been followed consistently in all subsequent cases involving the issue of cheating.

149. Thus, when in the light of aforesaid observations of Hon'ble Supreme Court, the overall facts and circumstances of the present case are seen then it is crystal clear that the actions of the accused persons in making all such false claims knowing them to be false were actuated with an intention to deceive MOC and thereby Government of India. The intention to defraud on the part of accused persons is writ large on the face of record. It is also thus crystal clear

that all the acts committed by the accused persons have been fraudulently done with a dishonest intention.

150. The next issue to be examined is whether all such fraudulent acts done with a dishonest intention to deceive MOC, Government of India actually had the effect of deceiving Screening Committee, Ministry of Coal and thereby Government of India or not. In other words the accused persons by way of such fraudulent acts done with dishonest intention actually deceived Screening Committee, Ministry of Coal or not and thereby inducing it to deliver a property to them.

151. The question which however now arises for consideration is as to what is the meaning of the phrase “*deceiving any person*” as used in the definition of cheating as provided in Section 415 IPC.

152. In the case **Swami Dharendra Brahamchari Vs. Shailendra Bhushan, 1995 Cr. L.J. 1810 (Delhi)**, Hon'ble Delhi High Court while dealing with the word deceiving as used in S. 415 IPC, observed that generally speaking “deceiving” is to lead into error by causing a person to believe what is false or to disbelieve what is true and such deception may be by words or by conduct. A fraudulent representation can be made directly or indirectly.

Hon'ble Allahabad High Court in the case **P.M. Natrajan Vs. Krishna Chandra Gupta, 1975 Cr. L.J. 899 (All.)** explained the word “deceive” as indicating inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine.

Hon'ble Supreme Court in the case **Ellerman & Bucknall**

**Steamship Co. Ltd. vs Sha Misrimal Bherajee, AIR 1966 SC 1892,** explained “deceit” as a false statement of a fact made by a person knowingly or recklessly with the intent that it shall be acted upon by another who does act upon it and thereby suffers damage.

153. Thus, it is clear that in all such cases of deception, the object of the deceiver is fraudulent. He intends to acquire or retain wrongful possession of that to which some other person has a better claim. Thus where a person parted away with a property while acting on such a representation of an accused believing in the truth thereof, it clearly amounts to deceiving the person. However, it is also important that the person practicing the deceit knows or has reason to believe the said representation to be false. Though in the true nature of things, it is not always possible to prove dishonest intention by direct evidence. It can be however proved by number of circumstances only from which a reasonable inference can be drawn.

Further the explanation to Section 415 IPC i.e. cheating states that a dishonest concealment of facts is a deception within the meaning of this section.

154. Coming to the facts of the case in hand, it is clear that the accused persons not only had a reason to believe but actually knew that the claims made by them qua the actual land acquired by them or steps taken to acquire any further piece of land beside the existing installed capacity of their end use project and the proposed capacity thereof were false. It is also clear that the accused persons knowing fully well that the said facts were false represented them to be true or

as existing facts and thus misled Screening Committee and thereby Ministry of Coal, Government of India to believe in the existence of said facts as true and thereby inducing it to part with the important nationalized natural resources of the country i.e. coal. By way of their said misrepresentations the accused persons also induced Screening Committee and thereby Ministry of Coal, Government of India to part with much higher quantity of coal in their favour than was warranted, if at all allocation of any coal block was to be made.

155. It is at this stage of the matter that certain other issues raised by Ld. Counsel for the accused persons needs to be also dealt with.

156. It was submitted by Ld. Sr. Advocate Sh. Dinesh Mathur that use of the word "and" in between the words "dishonestly" and "fraudulently" as mentioned in the charges framed against the accused persons is completely erroneous and that it does not clarify as to whether the accused persons were being tried for any dishonest act or fraudulent act. The aforesaid contention however does not need any extensive discussion to be brushed aside. From the nature of acts committed by the accused persons as discussed above it is clear that the said fraudulent acts were done with dishonest intention. However even if it is presumed for the sake of arguments that the use of word "and" has been erroneous in the charge framed against the accused persons then section 215 Cr.PC will be worth referring to.

***"215. Effect of errors. – No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be***

*regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice”*

157. It will be also pertinent to mention over here that except for pointing out the alleged erroneous use of "and", there was not even a whisper of arguments by Ld. Counsel for accused as to in what manner accused persons were misled by such error or whether it has occasioned in the failure of justice. As is evident from the over all facts and circumstances of the case as discussed above, the present case primarily relies upon documentary nature of evidence and the accused persons were well aware from the stage of commencing of present trial as to on what allegations they have been called upon to face the present trial. Moreover the detailed order on charge dated 09.03.2015 clearly spelled out the reasons which led to framing of charges for various offences against the accused persons. Thus while on the one hand there has been no averment on the part of accused persons to show that any such error, if any, in the charge framed against them has resulted in failure of justice in any manner but even otherwise the over all facts and circumstances of the case beside the evidence led by prosecution and the cross-examination of the prosecution witnesses coupled with defence evidence led by the accused persons does not show that the accused persons were misled by any such error or that there was any failure of justice.

158. Another important issue raised by Ld. Counsels for accused persons was that mere issuance of allotment letter can not amount to parting away with the property as mentioned in Section 420 IPC. In this regard, the observations of Hon'ble Supreme Court of India as

made in its orders dated 25.08.14, passed in the **Manohar Lal case (Supra)** in para 61, 69, 70 and 71, will be worth referring to.

*"61. There seems to be no doubt to us that allocation letter is not merely an identification exercise as is sought to be made out by the learned Attorney General. From the position explained by the concerned State Governments, it is clear that the allocation letter by the Central Government creates and confers a very valuable right upon the allottee. We are unable to accept the submission of the learned Attorney General that allocation letter is not bankable. As a matter of fact, the allocation letter by the Central Government leaves practically or apparently nothing for the State Government to decide save and except to carry out the formality of processing the application and for execution of the lease deed with the beneficiary selected by the Central Government. Though, the legal regime under the 1957 Act imposes responsibility and statutory obligation upon the State Government to recommend or not to recommend to the Central Government grant of prospecting licence or mining lease for the coal mines, but once the letter allocating a coal block is issued by the Central Government, the statutory role of the State Government is reduced to completion of processual formalities only. As noticed earlier, the declaration under Section 1A of the CMN Act does not take away the power of the State under Section 10(3) of the 1957 Act. It is so because the declaration under Section 1A of the CMN Act is in addition to the declaration made under Section 2 of the 1957 Act and not in its derogation. 1957 Act continues to apply with the same rigour in the matter of grant of prospecting licence or mining lease of coal mines but the eligibility of persons who can carry out coal mining operations is restricted to the persons specified in Section 3(3)(a) of the CMN Act.*

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*69. Assuming that the Central Government has competence to make allocation of coal blocks, the next question is, whether such allocation confers any valuable right amounting to grant of largesse? Learned Attorney General argues that allocation of coal blocks does not amount to grant of largesse since it is only the first statutory step. According to him, the question whether the allocation amounts to grant of largesse must be*

*appreciated not from the perspective whether allocation confers any rights upon the allocatee but whether allocation amounts to conferment of largesse upon the allocatee. An allocatee, learned Attorney General submits, does not get right to win or mine the coal on allocation and, therefore, an allocation letter does not result in windfall gain for the allocatee. He submits that diverse steps, as provided in Rules 22A, 22B, and 22(5) of the 1960 Rules and the other statutory requirements, have to be followed and ultimately the grant of prospecting licence in relation to unexplored coal blocks or grant of mining lease with regard to explored blocks entitles the allocatee/licensee/lessee to win or mine the coal.*

*70. We are unable to accept the submission of the learned Attorney General that allocation of coal block does not amount to grant of largesse. It is true that allocation letter by itself does not authorize the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments, who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.*

*71. Learned Attorney General accepted the position that in the absence of allocation letter, even the eligible person under Section 3(3) of the CMN Act cannot apply to the State Government for grant of prospecting licence or mining lease. The right to obtain prospecting licence or mining lease of the coal mine admittedly is dependant upon the allocation letter. The allocation letter, therefore, confers a valuable right in favour of the allottee. Obviously, therefore, such allocation has to meet the twin constitutional tests, one, the distribution of natural resources that vest in the State is to sub-serve the common good and, two, the allocation is not violative of Article 14."*

159. Thus in view of the aforesaid observations of Hon'ble Supreme Court, the allocation letter issued by MOC in favour of accused company M/s JIPL clearly amounts to delivering of property i.e. a valuable and natural resource of the country. The letter of allocation was thus a valuable security in itself much less a document which was capable of being converted into a valuable security.

160. It was also argued by Ld. Sr. Advocate Sh. Dinesh Mathur for accused R.S. Rungta that for constituting the offence of cheating, it is necessary that the cheating should be with a person. He accordingly referred to the definition of the word "person" as given in Section 11 IPC while arguing that Government can not be termed as a "Person" and thus there can never be an offence of cheating the Government.

161. Section 11 IPC defines "Person" as under:

*"11. "Person" – The word "person" includes any Company or Association or body of persons, whether incorporated or not."*

162. Ld. Special P.P. Sh. R.S. Cheema however on the other hand argued that the word "includes" as has been used in Section 11 IPC, in fact expands the meaning of the word "person" as is commonly understood. He thus submitted that the word person thus also includes any company or association or body of persons whether incorporated or not. He accordingly submitted that as Government is undoubtedly an association or body of persons and so it stands included in the term "person" as defined in Section 11 IPC. He also referred to various case law wherein Hon'ble Supreme Court has



upheld the charge of cheating Government.

163. At the outset, I may state that I am in complete agreement with the submissions of Ld. Spl. P.P. The various case laws referred to by him i.e. **Chief Education Officer Vs. K.S. Palani Chamy, 2012 (2) MWN (Cr.) 35** and the case **Reg Vs. Hanmanta (1877) ILR-1, Bombay 610** are clearly illustrative of the said issue.

164. In fact in the case **Reg Vs. Hanmanta (Supra)**, it was specifically observed by Hon'ble Bombay High Court that the definition in Section 11 IPC of the word "Person" is sufficiently wide to include the Government as representative of the whole community. Certain other cases can also be referred to in this regard i.e. **K. Satwant Singh Vs. State of Punjab (1960) 2 SCR 89, Kanumukkala Krishna Murthy Vs. State of Andhra Pradesh, AIR 1965 SC 333, CIT Andhra Pradesh Vs. M/s Tajmahal Hotel, Secundrabad, 1971 (3) SCC 550 and Common Cause Registered Society Vs. Union of India and Others (1999) 6 SCC, 667.**

165. Thus in view of the plethora of cases where charge of cheating "Government" has been upheld by Hon'ble Supreme Court and Hon'ble High Courts of the country, the contention of Ld. Sr. Advocate for accused R.S. Rungta does not merit any further discussion for brushing it aside.

166. At this stage it will be also worthwhile to refer to certain observations of Hon'ble Supreme Court in the case **Kanumukkala Krishnamurthy @ Kaza Krishnamurthy Vs. State of Andhara**

**Pradesh, AIR 1965 SC 333.** The issue involved in the said case and the present case in hand are almost similar.

167. In the said case accused Kanumukkala Krishnamurthy had applied for appointment of Assistant Surgeon in Madras Medical Services in pursuant to notification published by Madras Public Service Commission inviting applications. However, later on, it was found that the accused had misrepresented himself by impersonating as some other person and also misrepresented about his parentage and place of birth. It was also found that accused was not even holding minimum educational qualification i.e. degree of MBBS and thus he misled the Public Service Commission Authorities to believe the said misrepresentation to be true. Upon final conviction of the accused for the offence U/S 419 IPC i.e. cheating by impersonation by Hon'ble High Court of Madras, the accused challenged his conviction before Hon'ble Supreme Court by way of Special Leave Petition. The issue as to whether by way of said case of misrepresentation/impersonation, the accused deceived Government of Madras or not came up for consideration. While discussing various aspects of the offence of cheating and thereby that of cheating by impersonation, the observations made by Hon'ble Supreme Court will be worth referring to:

*“11. The only other question to determine now is whether the appellant deceived the Government of Madras and dishonestly induced it to deliver something in the form of salary to the appellant. It is urged that the appointment to the post lay with the Government and not with the Service Commission and that 'the Government would not have appointed him to the post in the Medical Service if it had not believed that the appellant possessed the necessary qualifications which, in his case, would be a degree of M.B., B.S., and that such a belief was*

entertained by the Government on account of the deception practised by the appellant in misrepresenting in his application that he held such a degree. On the other hand, it is contended for the appellant that the delivery of 'property' is to be by the person deceived, in view of the language of Section 415 I.P.C., and that the person deceived, if any, was the Service Commission and not the Government, the application containing the misrepresentation having been made to the Service Commission and not to the Government.

12. We accept the contention for the respondent. The appointments to the Medical Services are made by Government. The Service Commission simply selected the candidates and recommends their names to Government for appointment. This is clear from letter Exhibit P. 47 from the Secretary to the Service Commission to the Surgeon-General with the Government of Madras. The letter refers to the enclosing of a list containing the names and other particulars of the candidates who were successful at the examination, their names being arranged in order of merit. It refers to the relaxing of a certain rule in view of the paucity of candidates and states that they may be appointed, if necessary, pending receipt of the certificate of physical fitness and a further communication from the commission.

13. This is also clear from the provisions of the Government of India Act, 1935. [Section 241](#) provided that appointments in connection with the affairs of a Province will be made by the Governor of the Province. Sub-Section (1) of [Section 266](#) makes it a duty of the Provincial Public Service Commission to conduct examinations for appointments to the Services of a Province. Clause (a) of sub-s. (3) provides that the Provincial Public Service Commission shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts and cl. (b) provides that it shall be consulted on the principles to be followed in making appointments to civil services and posts and on the suitability of candidates for such appointments. The Public Service Commission is constituted in pursuance of the provisions of Section 264. It is thus a statutory body and independent of the Government. This aspect of a Public Service Commission was emphasized in [State of U.P. v. Manbodhan Lal Srivastava](#) when considering the corresponding provisions of Article 320 of the Constitution. This Court said:

"Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary

*matters affecting a public servant has been specifically provided for in order, first, to give an assurance to the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and, secondly, to afford the Government unbiassed advice and opinion on matters vitally affecting the morale of public services".*

*It is in view of these provisions that the Public Service Commission invites applications for appointment to the various posts under the Government and subsequently makes a selection out of the candidates for appointment to those posts. The selection may be after holding a written examination or after interviewing candidates or after doing both. Names of the candidates selected are arranged in order of merit and forwarded to the Government. The Government is expected, as a rule, to make appointments to the posts from out of the list, in the same order. It has, however, discretion not to appoint any part of the persons so selected and securing a place in the order of merit which would have ordinarily led to his appointment.*

14. Any representation made in an application for appointments is really a representation made to the Government, the appointing authority, and not only to the Public Service Commission to which the application is presented and which has to deal with that application in the first instance. up to the stage of selection. The object of the applicant was to secure an appointment and not merely to deceive the Public Service Commission and sit at the examination or to appear at the interview. The deception was practised for that purpose and therefore there seems to be no good reason for holding that the deception came to an end once the Service Commission was deceived and had taken action on it as a result of the deception. A false representation in an application to the Service Commission continues and persists to be so till the application is considered by the final authority responsible for making the appointments and must therefore be deemed to be made to that final authority as well. In the instant case, when the recommendation of the Service Commission was sent to the Government, the qualifications of the recommended candidates, including the fact that the appellant had passed the M.B.B.S. examination were mentioned. The Government therefore believed that the appellant possessed the degree of M.B.B.S., that as the Service Commission had scrutinized the application in that

regard and had satisfied itself that the appellant possessed that degree. The consequence of that is that the Government were led to believe that fact, which thus became a false representation.

We are therefore of opinion that the appellant's misrepresentation to the Service Commission continued and persisted till the final stage of the Government passing an order of appointment and that therefore the Government itself was deceived by the misrepresentation he had made in his application presented to the Service Commission.”

**(emphasis supplied by me)**

168. Coming now to the case in hand, it is crystal clear that the accused persons fraudulently with dishonest intention deceived, Screening Committee, MOC and thereby Government of India on the basis of false representation qua the issue of land and as regard the installed/projected capacity of their end use project so as to procure allotment of a coal block in favour of M/s JIPL. The false representations continued to hold ground even when the file containing recommendation of Screening Committee went to Minister in Charge, Coal, Government of India for final approval and thus it was primarily the Government which was deceived into making allotment of a coal block in favour of M/s JIPL while believing all such representations to be true, which in fact they were not. All the necessary ingredients of the offence of cheating i.e. u/s 415 IPC are clearly made out against all the accused persons. Further as the said act of cheating resulted in delivery of a valuable security i.e. issuance of allocation letter for allotment of coal block so clearly offence u/s 420 IPC is made out against all the three accused persons i.e. company M/s JIPL, R.S. Rungta and R.C. Rungta.

169. At this stage, I may also mention that the accused persons have even been misrepresenting to various Government authorities during the course of their routine business transactions also. PW-36, Sh. Yogesh Mittal, owner of H.No. 25, Chanderpuri, Ghaziabad, Uttar Pradesh was examined by the prosecution and he stated that at no point of time, company M/s Jharkhand Ispat Pvt. Ltd. had its registered office at the said address. The necessity to examine the said witness arose as during the course of investigation, it was found that company M/s JIPL had intimated to the office of Registrar of Companies, Kanpur, U.P. about change of situation of their registered office. Form-18 was submitted by the company in this regard. Certified copy of the same was collected from the office of Registrar of Companies, Kanpur, U.P. by the IO and PW-37 Sh. Ruvit Kumar, Assistant Registrar of Companies, Kanpur, U.P. was also examined by the prosecution in this regard. As per said Form-18 (*Part of Ex. PW 37/A (colly) (D-68)*) submitted by company M/s JIPL, the address of the registered office of the company was stated to be H.No. 25, Chanderpuri, Ghaziabad, U.P. Though in the cross-examination of PW-36 Sh. Yogesh Mittal, it was suggested to him by Ld. Counsel for accused R.C. Rungta and M/s JIPL that there was verbal agreement between him and company M/s JIPL with respect to the said house or that any correspondence of M/s JIPL used to be received at the said address but the witness vehemently refuted the said suggestion stating it to be wrong.

**CHARGE FOR THE OFFENCES U/S 467/468/471 IPC.**

170. Accused R.S. Rungta however has also been charged for the

offences u/s 468 IPC and 471 IPC on the ground that he prepared/got prepared false and forged documents viz. TEFR purportedly prepared by R. Kedia (co-accused since deceased), General Manager, United Engineering Consultants beside also submitting a false and forged suitability report under the certificate issued by PW 17 Sh. Bipin Bihari Lal and PW 19 Sh. Tarun Kumar Basu. However for the offence u/s 468 IPC, it is necessary that the documents qua which forgery is stated to have been committed should amount to a false document. However making of false document has been defined in S. 464 IPC as under:

**"464. Making a false document.** — <sup>2</sup>[A person is said to make a false document or false electronic record—  
First —Who dishonestly or fraudulently—  
(a) makes, signs, seals or executes a document or part of a document;  
(b) makes or transmits any electronic record or part of any electronic record;  
(c) affixes any <sup>3</sup> [electronic signature] on any electronic record;  
(d) makes any mark denoting the execution of a document or the authenticity of the <sup>3</sup> [electronic signature],  
with the intention of causing it to be believed that such document or part of document, electronic record or <sup>3</sup>[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or  
Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with <sup>3</sup>[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or  
Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his <sup>3</sup>[electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

171. I may however state at the outset itself that Ld. Counsel for the accused persons are completely right in stating that neither the said TEFR nor the suitability report can be termed as false documents as defined u/s 464 IPC. Since the basic ingredient of the offence of forgery that the document in question should amount to making a false document is not made out so the charge for the offence u/s 468 IPC and consequently for the offence u/s 471 IPC as against accused R.S. Rungta can not hold ground.

172. Similarly accused R.C. Rungta has been charged for the offences u/s 467/468/471 IPC on the allegations that he prepared a forged deed of agreement to sell alongwith Naresh Mahto (co-accused since deceased) and that the said document purported to be a valuable security. It was also alleged against him that he had also forged a project profile report prepared by MECON Ltd. and knowing the said documents to be forged used them. However as regard the said two documents also i.e. deed of agreement to sell and project profile report prepared by MECON Ltd., I may state that in the overall facts and circumstances of the case, the said two documents also does not amount to making of false document u/s 464 IPC and thus the charge for the offences u/s 467/468/471 IPC does not hold ground against accused R.C. Rungta also.

173. However all the aforesaid documents i.e. project profile report prepared by MECON Ltd, TEFR prepared by R. Kedia, General Manager, United Engineering Consultants, deed of agreement to sell executed between accused R.C. Rungta and accused Naresh Mahto



(co-accused since deceased) beside circumstances showing non-filing of suitability report, undisputedly show the dishonest intention of the accused persons in deceiving MOC to deliver an important nationalised natural resource of the country i.e. coal in favour of M/s JIPL by inducing them to believe all such misrepresentations to be true or as existing.

**CRIMINAL CONSPIRACY i.e. OFFENCE U/S 120-B IPC.**

174. Coming now to the charge of conspiracy as framed against all the accused persons, it will be worthwhile to first refer to the arguments put-forth by Ld. Sr. Advocate Sh. Dinesh Mathur that as the specific charge of conspiracy was not put to any of the three accused persons so the said charge of conspiracy i.e. S. 120-B IPC can not be invoked against the accused persons.

175. Before proceeding further, it will be appropriate to have a glance on Section 313 Cr.PC.

**313. Power to examine the accused** – (1) *In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-*

*(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;*

*(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:*

*Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).*

*(2) No oath shall be administered to the accused when he is examined under sub- section (1).*

*(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.*

*(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.*

*<sup>1</sup>[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]"*

176. Thus from a bare perusal of section 313 Cr.PC, it is clear that objective of examining an accused u/s 313 Cr.PC is to enable him to explain any circumstance appearing in the evidence against him. Section 313 (1) (b) Cr.PC further states that after the witnesses for the prosecution have been examined and before he is called on for his defence, the Court shall question the accused generally on the case. Thus it is crystal clear that u/s 313 Cr.PC, the Court is only require to question the accused generally on the case and it is only the circumstances appearing in the evidence against him which are to be put to him to furnish any explanation. The law does not require that the specific heads of charge framed against the accused persons ought to be put to the accused persons in their statements u/s 313 Cr.PC. Apart from the aforesaid circumstances the accused persons in the present matter also chose to file their written statements u/s 313 (5) Cr.PC after their statements u/s 313 Cr.PC was recorded.

177. A bare perusal of Section 313 (5) Cr.PC shows that filing of written statement by the accused shall amount to compliance of the said section i.e. Section 313 Cr.PC. Thus the contention of Ld. Sr. Advocate for accused R.S. Rungta that the charge of criminal conspiracy i.e. u/s 120-B can not be invoked against the accused persons does not hold ground at all.

178. However before proceeding further to discuss the case of prosecution as regard the charge of criminal conspiracy i.e. u/s 120-B IPC framed against all the three accused persons, it will be appropriate to refer to the often quoted observations of Hon'ble Supreme Court in the case **“State through Superintendent of Police, CBI/SIT Vs. Nalini”, 1999 (5) SCC 235.**

179. In the said case, 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.”*

180. Thus the offence of criminal conspiracy certainly requires a prior agreement between two or more persons to do or cause to be done an illegal act, or an act which is legal by illegal means. However, when it is legal act by illegal means overt act is necessary. It is also equally true that direct evidence of existence of a criminal conspiracy is seldom available and has to be inferred from the overall facts and circumstances of the case. Clearly from the overall facts and circumstances of the present case as already discussed above, it is evident that the accused persons consciously made false representation at different stages of processing of their application for allotment of a coal block both in Ministry of Steel and Ministry of Coal. Different roles were played by the accused persons in order to support the claim made by each other before different Government authorities. The existence of a common agreement amongst the accused persons is thus writ large on the face of record.

181. However the contention of Ld. Counsel that the accused persons R.S. Rungta, R.C. Rungta and company M/s JIPL were acting as one unit i.e. as and on behalf of M/s JIPL only, so they themselves could not have conspired amongst themselves, is

completely a fallacious argument. Similarly the argument that the charge of criminal conspiracy has been framed against dead persons is also factually wrong.

182. A bare perusal of the charge so framed against the present three accused persons i.e. M/s JIPL, R.S. Rungta and R.C. Rungta clearly shows that the names of two deceased accused persons namely R. Kedia and Naresh Mahto have been mentioned in the body of charge only to explain the nature of allegations for which actual charge for the offence of criminal conspiracy i.e. u/s 120-B IPC was framed against the present three accused persons. It was specifically stated in the body of charge that the alleged criminal conspiracy was hatched by them (*i.e. the present three accused persons*) alongwith the other two accused persons namely Naresh Mahto (since deceased) and R. kedia (since deceased).

183. Thus by no stretch of imagination, can it be stated that the charge for the offence of criminal conspiracy i.e. u/s 120-B IPC has been framed against the two deceased accused persons.

184. As regard the other contention that as the accused persons were acting as and on behalf of M/s JIPL as a single unit, so for the offence of criminal conspiracy there ought to have been another person also, it will be suffice to state that undoubtedly the object of the criminal conspiracy so hatched was to procure allotment of a coal block in favour of M/s JIPL only but towards achieving the said common object, the accused persons performed separate acts i.e. overt acts and it can not be stated that they form only one unit or that

for the charge of criminal conspiracy to hold ground there ought to be another person also arrayed as accused.

185. The existence of a common agreement amongst the accused persons reflecting meeting of their minds clearly stands reflected from the overall facts and circumstances of the case. The accused persons undoubtedly performed various acts at different points of time but it is clearly evident that all such acts performed by them were towards achieving the common objective of securing allotment of a coal block in favour of their company M/s JIPL of which they individually were also beneficiaries being director/chairman of the company. While performing all such acts each of the accused persons supported the stand/claim made by the other accused persons towards achieving the common object of the criminal conspiracy.

186. The offence of criminal conspiracy i.e. u/s 120-B IPC is thus clearly made out against all the three accused persons i.e. company M/s JIPL, R.S. Rungta and R.C. Rungta and is in fact the only inevitable conclusion arising from the overall facts and circumstances of the present case. The said facts and circumstances are also not explainable on any other hypothesis much less any explanation consistent with the innocence of accused persons.

187. As demonstrated above the various documents such as project profile report got prepared from MECON Ltd. or the TEFR got prepared from R. Kedia or the deed of agreement to sell entered into by accused R.C. Rungta and Naresh Mahto and the suitability report



as submitted under the certificate of PW 17 Sh. Bipin Bihari Lal and PW 19 Sh. Tarun Kumar Basu though can not be termed as false documents u/s 464 IPC but are clearly strong evidence of existence of not only criminal intention of the accused persons in committing the offence of cheating but also regarding the existence of a criminal conspiracy amongst them.

188. It was also submitted by Ld. Counsel for accused persons that the prosecution has failed to examine any member of the Screening Committee who could have said that on account of the misrepresentations made by the accused persons they were deceived in parting away with the allocation of coal block in favour of accused company M/s JIPL. In this regard, it will be suffice to state that prosecution did examine PW-13 Sh. D. Kashiva who attended the Screening Committee meeting alongwith Sh. Deepak Anurag, Director Ministry of Steel, as a representative of Ministry of Steel. Prosecution also examined certain other officers of MOC i.e. PW-11, Sh. Santosh Kumar Kakkar, Under Secretary, MOC, PW-14 Sh. Sujit Gulati, Director, MOC and PW-26 Sh. Premraj Kuar, the then Section Officer, MOC. All the said MOC officers stated that they were associated with the processing of application of accused company in MOC and with the holding of the Screening Committee meetings. PW-14 Sh. Sujit Gulati, even stated that he was present in the meeting and that the minutes of the meeting were drafted by him and were put up for approval to Secretary (Coal) and after necessary corrections were made by Secretary (Coal) then final minutes were prepared and were got approved from Secretary (Coal). A perusal of

the minutes of 27th Screening Committee meeting clearly shows that strong reliance was also made on the submissions made by the accused persons by way of their feed back form and the presentation made before the Screening Committee as regard the advanced status/stage of preparedness of the proposed end use project. Moreover as already mentioned the person deceived in the present matter was primarily MOC, Government of India through the Screening Committee route. Certainly false representations were initially made before Ministry of Steel which coaxed it to make a recommendation in favour M/s JIPL to MOC. Again on the basis of said false representations Screening Committee believing them to be true chose to make a recommendation in favour of M/s JIPL. Thereafter, it was on the basis of said recommendation of the Screening Committee that Minister of Coal approved the allocation of "*North Dhadu coal block*" in favour of M/s JIPL. Thus by non-examination of any other member of the Screening Committee, no prejudice can be said to have been caused to the accused persons as minutes of the Screening Committee followed by approval from Minister of Coal and consequent issuance of letter of allocation speak for themselves.

189. It was also submitted by Ld. Counsel for accused persons that if at all there was a conspiracy hatched by the accused persons in inducing MOC, Government of India to allocate a coal block in favour of the company on the basis of said false representations, then MOC officers who were members of the Screening Committee ought to have been also arrayed as accused. In this regard, it will be

worthwhile to state that undoubtedly the arguments of Ld. Counsel for the accused persons does not appear to be completely without force in as much as MOC officers ought to have taken all necessary precautions as could have been taken by them so that the important nationalized natural resources of the country i.e. coal, are not usurped by any unscrupulous person. However the mere non arraying of MOC officers as accused in the present case does not in any manner lessen the act of criminality committed by the accused persons. The accused persons can not claim that since no officer from MOC has been arrayed as an accused so they too should not be prosecuted.

**190. Thus in view of my aforesaid discussion, it is crystal clear that the overall facts and circumstances of the case unerringly point out to one and only one hypothesis consistent with the guilt of the accused persons and are not explainable on any other hypothesis, much less one consistent with the innocence of the accused persons. The prosecution in my considered opinion has clearly been successful in proving its case against all the three accused persons i.e. M/s Jharkhand Ispat Pvt. Ltd., R. C. Rungta and R.S. Rungta for the offence of criminal conspiracy i.e. Section 120-B IPC and for the offence of cheating i.e. Section 420 IPC and for the offence u/s 120-B/420 IPC beyond shadows of all reasonable doubts.**

**191. However as the offences u/s 467 IPC, 468 IPC and 471 IPC as against accused R.C. Rungta does not stand proved so he accordingly stands acquitted for the said offences.**

192. Similarly as offences u/s 468/471 IPC does not stand proved against accused R.S. Rungta so he also stands acquitted for the same.

193. However all the three accused i.e. M/s Jharkhand Ispat Pvt. Ltd., R. S. Rungta and R.C. Rungta are hereby held guilty of the offences u/s 120-B IPC, 420 IPC and also for the offences u/s 120-B r/w Section 420 IPC and are accordingly convicted thereunder.

**ANNOUNCED IN THE OPEN COURT (BHARAT PARASHAR)  
TODAY ON 28.03.2016 SPECIAL JUDGE, (PC ACT)  
(CBI)-7, NEW DELHI DISCTRICT  
PATIALA HOUSE COURTS  
NEW DELHI**