

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

**CC No. 316/2019 (Old CC NO. 01/14)
RC NO. 219 2012 E 0009, CBI/EOU-IV/New Delhi
CBI Vs. Manoj Kumar Jayaswal & Ors.
(M/s AMR Iron & Steel Pvt. Ltd.)
U/s 120-B/420 IPC/13 (1) (d) & Sec. 9 of PC Act 1988 &
U/s 120-B IPC, 420 IPC, 13 (1) (d) & Sec. 9 of PC Act 1988**

ORDER ON CHARGE

1. Vide this order I propose to decide as to for which of the offences charges, if any are made out against the accused persons in the present case.
2. In order to appreciate the said issue, it will be first appropriate to briefly mention the facts which led to the filing of report u/s 173 Cr.PC against the accused persons.

In response to an advertisement issued by Ministry of Coal (MOC), Government of India, in November 2006, inviting applications from various companies engaged in generation of power and production of iron and steel or cement for allocation of coal blocks for captive use, a number of companies submitted applications. M/s AMR Iron & Steel Pvt. Ltd. (*hereinafter referred to as M/s AMR*) also submitted an application seeking allocation of Bander coal block for its captive use in its proposed sponge iron plant of 1 mtpa capacity to be established in village Tarsi, Nagpur, Maharashtra (*Though the company M/s AMR Iron & Steel Pvt. Ltd. had submitted other applications also for allocation of two other coal blocks but since in the present case we are concerned only with the application submitted for allocation of Bander coal block so the discussion shall remain confined to the said application only*).

3. The application dated 10.01.2007 as is available in D-2 was submitted on behalf of company M/s AMR alongwith a covering letter dated 10.01.2007. For a ready reference the said covering letter has been reproduced over here:

A M R IRON AND STEEL PRIVATE LIMITED
(Formerly AMR Associates)

178 – C, Light Industrial Area,
Bhilai – 490 026
(INDIA)
AMR/DRI/MOC/07/113

Phones : 2381858, 2381859, 2381860 to 62
Fax No. : 0788-2381409
E-mail : inispdbhi@sify.com

January 10, 2007

To
The Director (CA-I),
Ministry of Coal,
Shastri Bhawan,
New Delhi

Sub: - **Application for allocation Bander Coal Block for meeting the coal requirement of the 1 million tonnes per annum Sponge Iron Plant of M/s AMR Iron & Steel Pvt. Limited in Nagpur District of Maharashtra.**

Sir,

AMR Iron & Steel Pvt. Limited (AMR), a company engaged in the business of Iron & Steel is setting up a 1.0 million tonnes per annum (mtpa) Sponge Iron Plant in Village Tarsi in Nagpur District of Maharashtra.

For meeting the 1.20 mtpa coal requirement for its Sponge Iron Plant, AMR is herewith applying for allocation of Bander Coal Block in Maharashtra. The application in the prescribed format along with required annexures and fees is enclosed.

The Project Report for the plant is ready and all the project activities like conducting Environmental Studies, application for grant of Environmental Clearance, application to State Government for permission for withdrawal of water from nearby Vena River etc have been initiated.

In this context, we would like to submit that AMR has already procured and have in possession 75 Acres of land in Village Tarsi for installation of the Sponge Iron Plant.

AMR has also approached Financial Institutions for arrangement of finance and the **Financial Closure is expected by December 2007.**

We request you to kindly allot Bander Coal Block to AMR Iron & Steel Private Limited for its 1 mtpa Sponge Iron Plant.

Thanking you.

Yours faithfully,
For AMR Iron & Steel Pvt. Limited
Harshad Popali
General Manager

Regd. Office : F-8, MIDC, HINGNA ROAD, NAGPUR, Ph. (07104) 236251, 236252, 237276, 237461, 237462 Fax : 237583, 236255
Admn. Office : 32-A, Chitranjan Avenue, 5th Floor, Kolkata – 700 012 Ph. : (033) 22375502, 2237468, Fax : 2225260

(Emphasis supplied)

4. In the enclosed application form, the details of turn-over, profit and net-worth of the applicant company M/s AMR were mentioned as under:

		03-04	04-05	05-06
8	TURNOVER IN THE LAST 3 YEARS	Rs. 36.02	Rs. 62.60	Rs. 55.52
9	PROFIT IN LAST 3 YEARS PBT	Rs. 0.08	Rs. 0.76	Rs. 0.51
10	NETWORTH (as on 31.03.06)	Rs. 1.96 Crores		

(Emphasis Supplied)

5. Further, as regard the details of the proposed end use project, the following particulars were mentioned in the application:

III PROPOSED END USE (PROJECT)				
(Tick the main end use project, associate and use not to be indicated)				
	Capacity of end use plant	LINKAGE Quantity	LINKAGE	LINKAGE
	MW/mtpa	mtpa	Grade	Source
11 EXISTING CAPACITY	Nil	Nil	NA	NA
12 PROPOSED CAPACITY	1.0 mtpa	NA		
13 ULTIMATE CAPACITY (TOTAL)	1.0 mtpa	NA		
14 ROM COAL REQUIREMENT	1.20	NA		
15 LOCATION (District, State)	Village-Tarsi, District-Nagpur, State-Maharashtra			

.. .. .

VI PHASING OF PROJECT				
26	END USE PROJECT	CAPACITY	1.0 mtpa	COMMISSIONING DATE : June 2009

(Emphasis Supplied)

6. Under the heading “*project status*”, the following facts were mentioned in the application qua the availability of land and water:

V PROJECT STATUS					
18	LAND		Yes	No	Remarks if any
	i)	Requirement (Sq. km/Hectare)	1.20 sq. km (120 ha)	--	
	ii)	Identified	Yes	--	
	iii)	Applied for Acquisition	Yes	--	
	iv)	Partly Acquired	Yes	--	
	v)	Likely date of full possession	Dec-08	--	
	vi)	In possession	--	--	
	vii)	Others	--	--	
19	WATER		Yes	No	Remarks if any
	i)	Quantity Required	1195 m ³ /hr	--	
	ii)	Source Identified	Yes	--	
	iii)	Applied	Yes	--	
	iv)	Likely date of finalisation	Dec-07	--	
	v)	Already Tied up	--	--	
	vi)	Others	--	--	

(Emphasis Supplied)

7. It was also mentioned in the application that the DPR for the said end use plant has been prepared and the same is being

appraised by the financial institutions. Towards the end of the application wherein information about earlier allocation of blocks was to be furnished, the following facts were mentioned in column No. 29 and 30:

VII EARLIER ALLOCATIONS OF BLOCKS		
29	TO APPLICANT COMPANY	No
30	TO GROUP OR ASSOCIATED COMPANY	No

8. Thus in accordance with the guidelines issued by MOC governing allocation of captive coal blocks, one copy of the application (*The applications were required to be submitted in five copies*) was sent to Government of Maharashtra as the proposed end use project as well as the Bander coal block whose allocation for captive use was sought was also situated in the state of Maharashtra. Another copy of the application was sent to Ministry of Steel, being the concerned administrative Ministry for sponge iron projects. Yet one more copy was sent to CMPDIL for its technical input regarding the coal block whose allocation was being sought for. Further upon receipt of comments/views of all concerned stake holders as above, the applications were put up before 36th Screening Committee for its

consideration as it was the recommendations of the Screening Committee qua allocation of various coal blocks in favour of different applicant companies which were to be submitted to Minister of Coal for final approval. As large number of applications were received for allocation of various coal blocks so in accordance with the past practice being followed, all the applicant companies were called upon to make a presentation about the latest status of their proposed end use project before the Screening Committee. In this regard presentation of various applicant companies were taken by the Screening Committee in its three meetings held on 07/08.12.2007 and 07.02.2008.

9. However while calling upon the applicant companies to make presentation before it, MOC had also put up a “*Form for Feed-Back*” on its website asking the companies to submit the details of latest status of their proposed end use project in the said form. The need to seek information about the latest status of the end use project arose as from the time the applications were submitted substantial time had elapsed. After the presentations by various applicant companies were over in the three meetings of Screening Committee, the applications were thereafter considered on 08.02.2008 by the Screening Committee but no decision was made in the said meeting as some

further information was sought from CMPDIL about the geological reserves available in the various coal blocks. Finally the 36th Screening Committee met on 03.07.2008 and wherein it chose to make its recommendations in favour of various companies qua allocation of different coal blocks for their captive use.

10. The company M/s AMR made its presentation before the Screening Committee on 07.12.2007 and also submitted its feed-back form in the prescribed proforma. The said feed-back form was submitted under the signatures of Devendra Darda (A-4), who signed it as a director. On behalf of the applicant company, five persons namely Devendra Darda, Rajendra M. Ganatra, Ankur Rajan, Anup Kumar Behera and Alok Kumar Ranjan appeared before the Screening Committee. For a ready reference the said “*Form for Feed-Back*” submitted by M/s AMR has been reproduced hereunder:

Form for Feed Back

<i>Latest Status of End Use Plant for which application for block has been made. Feedback Form to be filled-up separately if more than one enduse plant is proposed.</i>	
1	<p>Name of the applicant company (as in application)</p> <p><i>AMR Iron & Steel Pvt. Limited</i></p> <p><u><i>The socially motivated project is being implemented by Lokmat Group & IL & FS through a SPV viz. AMR Iron & Steel Pvt. Limited.</i></u></p>

		<p>Lokmat Group is one of the prominent media groups in the country. Lokmat is the largest circulated and read newspaper of Maharashtra and the 4th largest read newspaper in India. It is seeking to enhance the development of the backward region viz. Yavatmal by entering Core Sector.</p> <p>IL & FS Infrastructure Development Corporation (IL & FS IDC) is a wholly owned subsidiary of IL & FS and is engaged in advisory and project development activities in infrastructure sector. Through AMR IL & FS IDC is seeking to enter the Core Sector i.e. Steel and thus contribute to the national growth.</p>
2	Location with Capacity of End Use Plant (as in application)	<p><u>Location: - Yavatmal; Project: 2 mtpa ISP</u></p> <p><u>District – Yavatmal, State-Maharashtra</u></p> <p><u>Capacity: First Phase</u></p> <p><u>Sponge Iron Plant – 2 mtpa</u></p> <p>WHRB Power Plant – 156 MW</p> <p>Capacity: Second Phase</p> <p>Iron Ore Pellitization Plant – 4 mtpa</p> <p>SMS & Hot Rolled Coil – 2 mtpa</p>
3	Name of the block applied for	<p>1. Bander</p> <p>2. Khappa & Extension</p> <p>3. Dahegaon / Makardhokra IV</p> <p>4. Gondkhari</p>
4	Net Worth	<p><u>Rs. 887.37 Crores (As on 31-03-06)</u></p> <p><u>Rs. 1821.64 Crores (As on 31-03-07)</u></p>

5	Land	
	a. Total Requirement	<u>2000 Acres</u>
		<u>370 Acres land allotted by MIDC in Yavatmal</u>
	b. Already Acquired	Industrial Area : Acquisition of balance land through MIDC is in progress.
6	Water	
	a. Total Quality Required	23.65 MCM per annum
	b. Quantity tied up	<u>Tied-up from Irrigation Department Maharashtra from Wardha River.</u>
	Equipment	
7	Status of Commissioning of Equipment (In terms of %age)	10% EPC Contract amounting to Rs. 400 Crores for Sponge Iron Kilns has already been issued to Coastal Ferrotech Pvt. Limited, Kolkata.
		Negotiations for WHRB are being finalized with M/s SEPCO, China and Orders worth Rs. 234 Crores for 78 MW shall be placed shortly.
8	DPR for End Use Project	
	a. DPR Prepared	<u>Yes</u>
	b. If yes, whether appraised by FI	<u>Appraisal by IL & FS</u>
9	Civil Construction	
	Status of Civil Construction (In terms of %age)	5% Civil Contractors have been identified and work orders are being placed.
10	Finance	
	a. Total Envisaged Investment	Rs. 5439.95 Crores

	<i>b. Financial Closure</i>	<p><i>IL & FS will have 20% equity. The balance would be held by Lokmat Group and financial strategic investors.</i></p> <p><i>The entire debt is being syndicated by IL & FS.</i></p> <p><i>The letters confirming arrangement of Project Finance by IL & FS has already been submitted to Ministry of Coal and Ministry of Steel.</i></p>
	<i>c. Investment already made</i>	<i>Investment so far: Rs. 38 Crore – On feasibility studies, land, EPC, Environmental Studies, Water Permission & other project development activities.</i>
11	<i>Status of Environmental Clearance for End Use Plant</i>	<i>Application for grant of Environmental Clearance has been submitted to Ministry of Environment & Forests, New Delhi.</i>
12	<i>In case of Regionally Explored Blocks, Schedule of exploration programme including preparation of GR (in terms of number of months)</i>	<i>All the applied blocks are explored blocks.</i>
13	<i>Number of months to achieve End Use Capacity</i>	<i><u>The first phase of 2 mtpa DRI Plant & 156 MW WHRB is expected to be commissioned by 2010.</u></i> <i>The other components of the ISP shall be commissioned by 2012.</i>
	<i>Proposed Mine Development</i>	
14	<i>a. Commencement of Production (in terms of number of months)</i>	<i>36 months: The mine is expected to be commissioned by 2010 i.e. within 36 months timeframe approved by Ministry of Coal.</i>

	<i>b. Reaching Peak Capacity (in terms of number of months)</i>	<i>In 12 months from start of coal production</i>
	<i>Status of Development of earlier allotted block</i>	
15	<i>a. Name(s) of blocks allotted</i>	<i>Nil</i>
	<i>b. Present Status</i>	<i>Not Applicable</i>

*Sd/-
Devendra Darda
Director*

(Emphasis supplied)

11. A presentation (as is available in D-10) was also made before the Screening Committee. *(I shall be referring to the said presentation in some detail at a later stage of the present order.)*

12. In the “*Form for Feed-Back*” it was however stated that the applicant company M/s AMR was a special purpose vehicle (SPV) of Lokmat Group and IL & FS. It was stated that the end use project i.e. 2 MTPA sponge iron project in Yavatmal District, Maharashtra is being implemented by Lokmat group and IL & FS through its SPV i.e. M/s AMR. Accordingly, net-worth of both the entities i.e. Lokmat Group

and IL & FS was mentioned in the feed-back form. In its final meeting held on 03.07.2008, 36th Screening Committee made its recommendations in favour of various companies qua different coal blocks. M/s AMR was however recommended as a joint allocatee for Bander coal block alongwith two other companies i.e. M/s Century Textiles Industries Ltd. and J.K. Cement Ltd.

13. Subsequently when the recommendations of 36th Screening Committee were put up to Prime Minister as Minister of Coal for approval than the same were approved by him inter-alia with the following observations:-

...
...
...

“(c) The allotment to the proposed allocatees shall be subject to Ministry of Coal satisfying itself that in case of allocatees who have been allotted coal blocks earlier, there has been no undue delay in development of those blocks by them. After due enquiry, in case Ministry of Coal is satisfied that any of the proposed allocatees have been responsible for undue delay in development of blocks allotted to them earlier, the matter regarding the proposed present allocation be referred back to the Minister of Coal for orders.”

(Emphasis supplied)

14. The aforesaid conditional approval granted by the PMO was communicated to Secretary Coal vide PMO, ID note dated 21.07.2008 by Sh. Ashish Gupta, Director, PMO. Pursuant to the aforesaid communication received in the MOC, Sh. Sewak Paul who was working as Assistant in CA-I Section, MOC prepared a detailed note dated 18.08.2008. In the said note as regard “Bander Coal Block” which was allotted to M/s AMR he observed that though M/s AMR has not been allocated any coal block but the performance of the Jayaswal Group to which the company belongs has not been satisfactory as regard the coal blocks earlier allotted to it. He thus proposed that since the performance of the Coal Blocks earlier allotted to the Jayaswal Group has not been as per the milestones and can be hardly termed as satisfactory so company may be advised to expedite the progress therein in order to enable this Ministry to decide allocation of the proposed Coal Blocks.

15. The observations made by him in this regard in his note dated 18.08.2008 interalia read as under:

...
...
...

“(iii) Bander: This block has been recommended for allocation jointly to M/s AMR Iron & Steel Pvt. Ltd. (Jayaswal Group), M/s

Century Textile & Industries Ltd. and M/s JK Cement Ltd.

M/s AMR Iron & Steel Pvt. Ltd. (Jayaswal Group): M/s AMR Iron & Steel Pvt. Ltd. has not been allocated any coal block previously, however on looking at the MoA/AoA of the company it is established that the share holders of the company are the same who are also having shares in the other companies of the Jayaswal group. The group has been allocated a number of blocks in the past. Gare Palma IV/4, Gare Palma, Moitra, Brinda, Sisai, Meral, Chitarpur, Fathepur East and Mahuagarhi coal blocks have been allocated to different companies of Jayaswal Group. Gare Palma IV/4 is to achieve Peak Rated Capacity in 2008-09. Except purchase of GR and approval of mining plan other issues are pending in respect of Moitra coal block. A show cause notice has also been issued to the company for delay in implementation of the coal project. In response the company has attributed the delay mainly because of land acquisition. The performance of the company cannot be treated as satisfactory. Regarding Gare Palma IV/8 the company has purchased GR and the mining plan has also been approved however forest clearance, EMP clearance and land acquisition are pending. The performance cannot be treated as satisfactory. As regards Brinda Sisai Meral, the progress is more or less same as in the case of Gare Palma IV/8. In Chitarpur coal block the company has purchased GR and applied for forest clearance and EMP clearance. The progress of the company may be treated as satisfactory. Fatehpur East & Mahuagarhi coal blocks have recently been allocated and the progress is as per the milestone.

No coal block has earlier been allocated to M/s Century Textile & Industries Ltd. and M/s JK Cement Ltd.”

...
...
...

(3)“In view of above facts it is stated that the performance of the coal blocks earlier allocated to M/s Jindal Steel & Power

Ltd., Jayaswal Group and Adhunik Group, who are proposed allocatee of Urtan North, Bander and Moira Madhujore North & South has not been as per the milestones and can hardly be termed as satisfactory. We may, therefore, advise them to expedite the progress therein in order to enable this Ministry to decide allocation of the proposed coal blocks. These companies may be called and advised to indicate in writing for development of the earlier allocated blocks and the proposed blocks in a time bound manner”.

(Emphasis supplied)

16. Upon this note the Joint Secretary Coal, Sh. K.S. Kropha observed that the representations received from some of the other parties may also be examined before the submission of file. Sh. Sewak Paul, accordingly, resubmitted the file vide his note dated 21.08.2008 wherein representations received from some of the other companies were also dealt with. Upon this note the then Secretary Coal Sh. H.C. Gupta proposed that a meeting may be called with the applicant companies who have been recommended for allocation of Coal Blocks at the level of Minister of State (Coal) [MOS (Coal)]. Subsequently, after obtaining consent of the then MOS (Coal), Sh. Santosh Bagrodia a meeting was fixed for 18.09.2008 with the companies who were jointly allocated the “*Bander Coal Block*”.

17. One Sh. Harshad Popli, representative of M/s. AMR participated in the meeting held in the office of MOS (Coal). It was

informed by the company representative of M/s. AMR in the meeting that the company is not a part of Jayaswal Group but its equity is now held by Lokmat Group, M/s. Abhijeet Infrastructure Ltd. and IL & FS. It was also informed that six Coal Blocks namely Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahuagarhi were earlier allotted to the equity holders of M/s. AMR. The company representative also submitted the progress report with respect to the said Coal Blocks. He was however directed to give in writing the ownership pattern of the company (main share holders) as well as commitment made about developing the Coal Blocks along with the specific milestone with the time-line for each milestone within seven days.

18. The relevant portion of the minutes of the said meeting held on 18.09.2008 and as were pertaining to M/s. AMR read as under:-

M/s AMR Iron & Steel Private Limited (Jayaswal Group)

"The Company representative informed that the company is not a part of the Jayaswal Group but its equity is now held by the Lokmat Group, M/s Abhijeet Infrastructure Limited and IL & FS. The previously allocated blocks to these equity holders were Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahuagarhi. The progress in respect of these blocks as stated by the company representative was as follows:

In case of Brinda, Sisai and Meral coal blocks, the company will start production in October 2008 in line with the assurance given in the last review meeting.

Delay in the development of Chitarpur coal block had been

mainly due to transfer of land from CCL which had acquired the land under CBA Act. Now, the land has been transferred to the company and other activities to open the mine will be taken up expeditiously.

The progress in respect of recently allocated coal blocks, Fatehpur East and Mahuagarhi is as per schedule given by the Ministry of Coal.

The company was asked to give in writing the ownership pattern of the company (main shareholders) as well as the commitment made about developing the coal blocks alongwith specific milestones with time-lines for each milestone within next 7 days."

(Emphasis supplied)

19. M/s. AMR accordingly, wrote a letter dated 22.09.2008 to MOS (Coal). In the said letter, it was informed by the company that M/s. AMR is not associated with Jayaswal Group. However, no other information as was asked for in the meeting was furnished viz. the ownership pattern of the company (main share holders) or the performance report about the earlier Coal Blocks allotted to the group companies.

20. The said letter dated 22.09.2008 of company M/s AMR read as under:

A M R IRON AND STEEL PRIVATE LIMITED

Prithvi Vandan, Gandhi Chowk, Yavatmal (Maharashtra) 445001

Phone: +91.7232.245119 Fax: 91.7232.243119

AMR/MoC/CoalBlock/08/255

September, 22, 2008

To

The Hon'ble Minister of State for Coal,
Government of India,
Shastri Bhawan,
New Delhi

प्रेषक

प्राप्ति एवं प्रेषण अनुभाग
कोयला मंत्रालय
शास्त्री भवन, नई दिल्ली - 110001

**Sub: - Allocation of coal block to AMR Iron & Steel Pvt. Limited for its 2 mtpa
Integrated Steel Plant in Maharashtra.**

Ref: - 1. Ministry of Coal Letter No. 38011/2/2007-CA-I dated Sept. 15, 2008.
2. Discussions had during the meeting held on Sept. 18, 2008 at Ministry of Coal, New Delhi.

Respected Sir,

We take this opportunity to express our sincere thanks for providing us an opportunity on 18-09-2008 to discuss the issues related to the joint allocation of Bander Coal Block to AMR Iron & Steel Pvt. Limited (AMR) along with Century Textiles & Industries and J.K. Cement Limited.

In this context, as desired, we would like to confirm that AMR is not associated with Jayaswal Group.

We take this opportunity to again like to bring to your kind notice that Yavatmal is one of the poorest and backward districts of Vidarbha Region. It has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. There is virtually no industry in the district and hence there is no source of alternative employment.

You will kindly appreciate that commissioning of AMR's Mega Steel Project in Yavatmal would not only change the face of this backward region but also would change the future of thousands of youths due to creation of numerous job opportunities.

We, therefore, request you to kindly advise the concerned to issue the letter allocating Bander Coal Block to AMR Iron & Steel Pvt. Limited at the earliest.

Thanking you.

Sd/- (Som Dutt Bhardwaj)

Yours faithfully,

For AMR Iron & Steel Pvt. Limited

Authorized Signatory

Cc: Secretary (Coal), Ministry of Coal, Shastri Bhawan, New Delhi

178 – C, Light Industrial Area, Bhilai 490026 (INDIA) Phone: +91.788.2381858, 2381859, 2381860 to 62

(Emphasis Supplied)

21. Upon receipt of the said letter Sh. L.S. Janoti, who was working as Section Officer, CA-I Section, Ministry of Coal prepared a note dated 25.11.2008 stating that as the company has informed that M/s. AMR is not associated with Jayaswal Group so it can be taken that no Coal Block has been earlier allotted to M/s. AMR. The file on the basis of said note and after being routed through the desk of Under Secretary, Sh. V.S. Rana, came to be put up to Director (Vigilance) who was working as Link Officer to Director, CA-I who was away on election duty. The file was thereafter forwarded to Additional Secretary (LA) who too was working as a link officer of Joint Secretary (Coal) Sh. K.S. Kropha as he was also away on election duty. The file was finally put up before Secretary (Coal), Sh. H.C. Gupta. He while referring to the note of Section Officer, L.S. Janoti, however observed that in view of the assurance given by the allocatee the letter of allotment of coal block may be issued. The file was thereafter put up before MOS (Coal) who also forwarded the file to Prime Minister as Minister of Coal without making any observations regarding information earlier sought for from the company. The file was thereafter processed in the PMO on the basis of the noting received from MOC. However, the file was returned back to MOC at the level of Principal Secretary to PM only with the observation that

as the allotment is already approved at the level of PM so he need not be bothered. Accordingly the offer/option letter dated 23.12.2008 qua “Bander Coal Block” was issued jointly to M/s. AMR, M/s. Century Textile & Industries Ltd. and M/s. J.K. Cement. The three joint allocatee companies thereafter entered into a joint venture agreement so as to mine the coal block so allotted to them and submitted the agreement to MOC. After further processing of said agreement, the final letter of allotment of Bander coal block in favour of the three joint allocatee companies was issued by MOC.

22. However, after allegations of wrong doings & illegality committed by the public servants involved in the process of allocation of Coal Blocks came to be raised then all the case files were examined by CVC. Upon prima-facie finding some illegality in the allocation process a reference was made to CBI by the CVC. Initially, a preliminary enquiry was instituted by the CBI and when during the course of preliminary enquiry sufficient incriminating evidence warranting further detailed investigation came up on record then it chose to register a regular case.

23. During the course of investigation it was found that M/s. AMR has grossly mis-represented about number of facts in the feedback

form submitted to Screening Committee, MOC and also in the presentation made before the Screening Committee. Crucial information about earlier allocation of coal blocks to group companies was also found to have been withheld in the application form as well as in the "*Form for feed-back*". It was found that M/s. AMR in the feed-back form falsely claimed a highly inflated net-worth of Rs.1821.64 crore as on 31.03.2006 stating M/s. AMR to be a Special Purpose Vehicle (SPV) of Lokmat Group and IL & FS. However, the actual net-worth of M/s. AMR as on 31.03.2006 was Rs.1.96 crores only. The aforesaid false information was also reiterated by Sh. Devendra Darda who appeared before the Screening Committee on 07.12.2007 for making presentation while also submitting the feedback form under his signatures as Director. It was also found during the course of investigation that Lokmat Group was in no way associated with M/s. AMR and Devendra Darda was never a Director of M/s. AMR. It further transpired during the course of investigation that Vijay Darda who was a Member of Parliament and was Chairman of Lokmat Group had exercised his influence over the public servants involved in the allocation of impugned Coal Block to M/s. AMR by writing letters and claiming that impugned end use project was being established jointly by Lokmat Group and IL & FS through their SPV

i.e. M/s. AMR.

24. Thus upon completion of necessary further investigation CBI chose to file a charge-sheet against Manoj Kumar Jayaswal, Director of M/s. AMR, Vijay Darda, Devendra Darda and the company M/s. AMR for the offence u/s 120-B/420 IPC and also for the offence under Section 9 P.C. Act, 1988. It was however stated in the charge-sheet that further investigation qua the role of public servants involved in the entire process was in progress.

25. Upon filing of the said initial charge-sheet the then Ld. Predecessor of this Court vide order dated 07.05.2014 took cognizance of the offences u/s 9 PC Act r/w S. 420 IPC, 120-B IPC against the aforesaid four accused persons. Summons were accordingly ordered to be issued to them. It was during the course of aforesaid proceedings when copies of the charge-sheet were being supplied to the accused persons that CBI filed a supplementary final report. In the said report, it was stated that though some incriminating evidence has come up on record against the public servants but the same was found to be insufficient to warrant their prosecution. The closure of the case qua the public servants was thus prayed for. It was further stated that as no evidence with regard to any pecuniary

advantage taken by the public servants has come on record. So, dishonest intention/*mensrea* on their part could not be established.

26. After filing of closure report qua the public servants by way of supplementary report, detailed arguments were heard as were addressed by Ld. Special P.P. After perusal of the record this Court however came to the prima facie conclusion (*Vide order dated 30.01.2015*) that there was sufficient incriminating evidence against some of the public servants warranting their summoning i.e. as against the then Minister of State for coal Sh. Santosh Bagrodia, the then Secretary Coal Sh. H.C. Gupta and Section Officer, CA-I Section, Sh. L.S. Janoti. However, as Sh. Santosh Bagrodia had by that time already completed the term of Rajya Sabha in which he was so working as Minister of State for Coal and Sh. H.C. Gupta had since retired from Government service so no sanction u/s 19 Prevention of Corruption Act, 1988 (*hereinafter referred to as P.C. Act*) was required for taking cognizance of offences under P.C. Act against them. However as Sh. L.S. Janoti was still in Government service so prior sanction of competent authority was required before taking cognizance of the offences under P.C. Act and accordingly matter was ordered to be sent for further investigation vide the said detailed order dated 30.01.2015 itself. CBI was directed to place

before the Competent Authority all the records of the case so as to consider according of sanction to prosecute accused L.S. Janoti. However in the meantime when the matter was still under consideration before the Competent Authority for considering according of sanction to prosecute L.S. Janoti, he too retired from Government service and thus there was no longer any requirement of obtaining sanction u/s 19 P.C. Act for taking cognizance of the offences under P.C. Act, 1988 against him also.

27. Accordingly vide order dated 21.07.2015 cognizance of the offence of criminal conspiracy i.e. offence u/s 120-B IPC was taken against the three public servants also i.e. H.C. Gupta, the then Secretary (Coal), Santosh Bagrodia, the then Minister of State for coal, and L.S. Janoti, the then Section Officer, CA-I Section, MOC and cognizance of the offences u/s 120-B IPC r/w S. 409/420 IPC and S. 9/13 (1) (c)/13 (1) (d) P.C. Act was also taken against them beside taking cognizance of the substantive offence of criminal misconduct i.e. u/s 13 (1) (d) P.C. Act also against them. However cognizance of the substantive offence u/s 409 IPC and S. 13 (1) (c) P.C. Act was taken only against accused H.C. Gupta.

Since cognizance of the offence u/s 120-B/420 IPC and

of Section 9 P.C. Act was already taken against the four private parties i.e. accused Manoj Kumar Jayaswal, Vijay Darda, Devendra Darda and M/s AMR by the then Ld. Predecessor of this Court vide order dated 07.05.2014 so pursuant to taking of cognizance of various offences against public servants as above, cognizance of the offence u/s 120-B IPC r/w S. 409 IPC and S. 13 (1) (c)/13 (1) (d) P.C. Act was taken against the private parties also i.e. as against accused Manoj Kumar Jayaswal, Vijay Darda, Devendra Darda and company M/s AMR vide order dated 21.07.2015 itself.

28. After due compliance of Section 207 Cr.PC, arguments on the point of charge were heard at length as were addressed by Ld. senior P.P. Sh. A.P. Singh and by Ld. Counsel Sh. Vijay Aggarwal for A-1 Manoj Kumar Jayaswal, A-2 Vijay Darda, A-3 Devendra Darda and A-4 M/s AMR, Ld. Sr. Advocate Sh. N. Hariharan for A-5 Santosh Bagrodia, Sh. Rajat Mathur for A-6 H.C. Gupta and Ld. Counsel Sh. K.K. Patra for A-7 L.S. Janoti.

29. On behalf of A-2 Vijay Darda and A-4 company M/s AMR, separate application u/s 227 r/w Section 239 Cr.PC for discharge were also filed by Ld. Counsel Sh. Vijay Aggarwal beside also filing detailed written submissions. While no separate written submissions

were filed on behalf of A-1 Manoj Kumar Jayaswal and A-3 Devendra Darda but as regard other accused persons written submissions were filed beside addressing oral arguments.

Arguments on behalf of Prosecution

30. It was submitted by Ld. Sr. P.P. Sh. A.P. Singh that there is sufficient incriminating evidence on record against the accused persons which prima facie shows hatching of a criminal conspiracy by them so as to cheat MOC, Government of India with a view to procure allocation of Bander coal block in favour of company M/s AMR. It was submitted that during the course of investigation it has clearly come on record that the company M/s AMR which in fact had initially submitted the application to MOC was never promoted either by Lokmat Group or by IL & FS. It was submitted that accused persons thus falsely represented to the Screening Committee in the feed-back form and also in the presentation that company M/s AMR was a SPV promoted by Lokmat Group and IL & FS. It was further submitted that accordingly the use of net-worth of Lokmat Group and that of IL & FS in the feed-back form was clearly a misrepresentation made on behalf of applicant company M/s AMR so as to project a higher status of financial capability to establish the proposed end use project. It was

submitted that even the claim of 370 acres of land having been already acquired by the company M/s AMR in Yavatmal District, Maharashtra was also found to be false. It was also submitted that accused Devendra Darda was at no point of time associated with M/s AMR in any manner much less being its director and thus signing of the feed-back form by him was clearly a misrepresentation. Ld. Sr. P.P. also pointed out that in fact the initial application was submitted to MOC by company M/s AMR seeking allocation of a captive coal block for establishing 1 MTPA sponge iron plant in village Tarsi, District Nagpur. However subsequently when the feed-back form was submitted not only the idea of establishing the said end use project at Nagpur was dropped but a new project of 2 MTPA capacity at District Yavatmal, Maharashtra was stated as the proposed end use project. It was thus submitted that neither any DPR of the said new 2 MTPA project was ever submitted to MOC nor the balance sheets of Lokmat Group and that of IL & FS were submitted to MOC. It was thus argued by Ld. Sr. P.P. that accused H.C. Gupta being Secretary Coal and Chairman Screening Committee conspired with the accused private parties so as to procure allocation of a coal block for captive use even though no end use plant was infact to be established by the company where coal to be generated from the said coal block could be used. It

was also submitted that even subsequently neither any end use plant was established by the company in village Tarsi, Nagpur nor in District Yavatmal, Maharashtra.

31. It was further submitted by Ld. Sr. P.P. that subsequently when the Prime Minister as Minister of Coal approved the recommendations of 36th Screening Committee with the condition that past performance of the allocatee companies with respect to coal blocks if earlier allocated to them be seen, than also the accused public servants clearly conspired with the private parties and issued allocation letter in favour of applicant company M/s AMR even though past performance of the coal blocks earlier allotted in favour of group/associate companies of M/s AMR was found to be not satisfactory. It was submitted that the noting of Sh. Santosh Paul, Assistant, CA-I Section had clearly pointed out that a number of coal blocks have earlier been allotted to companies in which equity holders of M/s AMR were having stake and the performance of the said companies qua the coal blocks allotted to them was not satisfactory. It was also pointed out that even in the meeting held in the office of Minister of State for coal Santosh Bagrodia this fact came to be highlighted and the representative of M/s AMR was clearly asked to give in writing the names of equity holders of M/s AMR.

However subsequently when the company M/s AMR did not submit the details of the equity holders of M/s AMR then accused L.S. Janoti, CA-I Section, Officer, CA-I Section, MOC did not prefer to mark the said communication of the company to Sh. Santosh Paul and himself initiated a note observing that in view of the reply given by the company, it may be considered as, that no coal block was earlier allocated to the applicant company. It was also submitted that accused H.C. Gupta despite having knowledge of earlier coal blocks having been allotted to other group companies of M/s AMR chose not to highlight the same and he too stated in his note that it may be considered that no coal block has been earlier allocated to the applicant company. It was submitted that when the matter in this regard came to be put up before Santosh Bagrodia, the then Minister of State for Coal, then he also did not highlight this fact and simply forwarded the file to Prime Minister as Minister of Coal. It was thus submitted by Ld. Sr. P.P. that even at this stage the accused public servants clearly conspired with the accused private parties in not highlighting that the performance of the coal blocks earlier allotted to the group companies of M/s AMR was not satisfactory.

32. As regard the role of accused Vijay Darda, it was submitted by Ld. Sr. P.P. that during the course of investigation sufficient

incriminating evidence qua quid-pro-quo has come on record. It was submitted that accused Vijay Darda who was chairman of Lokmat Group and was a sitting Member of Parliament however misrepresented not only to Prime Minister and to Government of Maharashtra but also to Screening Committee, MOC Government of India about the status of M/s AMR being a SPV of Lokmat Group and IL & FS group. It was submitted that as per the family arrangement of Basant Lal Shaw family, 26% stake was transferred in favour of companies controlled by accused Devendra Darda and Vijay Darda as they had facilitated allocation of a captive coal block in favour of applicant company M/s AMR. It was thus submitted by Ld. Sr. P.P. that prima facie a case warranting framing of charge for the offence u/s 120-B/420 IPC and 13 (i) (c) and 13 (i) (d) P.C. Act and for Section 9 P.C. Act, 1988 alongwith substantive offences thereof is clearly made out against the accused persons.

33. In support of his submissions Ld. Sr. P.P. Sh. A.P. Singh relied upon the following case law:

S. No.	Title	Citations
1	<i>Iridium India Telecom Limited vs Motorola Incorporated and others</i>	<i>(2011) 1 Supreme Court Cases 74</i>
2	<i>State of Rajasthan vs Fatehkaran Mehdu</i>	<i>2017 Cri.L.J. 1433</i>

3	<i>State of Tamil Nadu by Ins. of Police, Vigilance and Anti Corruption v N. Suresh Rajan and others</i>	2014 Cri.L.J 1444
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Arguments on behalf of A-4 company M/s AMR Iron & Steel Pvt. Ltd..

34. On behalf of accused company M/s AMR, it was vehemently argued by Ld. Counsel Sh. Vijay Aggarwal that no offence at all was even prima facie made out in the present case which may warrant framing of charge against it. It was submitted by Ld. Counsel that in the presentation made before the Screening Committee, it was clearly stated that Lokmat Group and IL & FS are the proposed promoters of applicant company M/s AMR. It was thus submitted that at no point of time it was ever stated that the company has been promoted by Lokmat Group and IL & FS. It was also submitted that the intention of Lokmat Group and IL & FS in joining the applicant company M/s AMR in establishing the proposed end use project was clearly evident from the fact that representatives of both Lokmat Group and of IL & FS were present at the time of making presentation before the Screening Committee. Similarly, the feed-back form was submitted by accused Devendra Darda under his own signatures and the word “*Director*” mentioned under his own signatures, referred to his status of being

the director of Lokmat Group and it was never represented that he is director of M/s AMR. It was submitted that all these facts clearly show the intention of Lokmat group and IL & FS in joining the applicant company M/s AMR towards establishing the proposed end use project. It was also submitted that IL & FS had already communicated to MOC in writing that they were ready to finance the entire project being established through M/s AMR.

35. It was however submitted that the investigation in the present case has not been fairly conducted in as much as IO for reasons best known to him chose to withhold the agreement entered into between M/s AMR and IL & FS. It was also pointed out that all the pages of the presentation made before the Screening Committee were carrying the logo of M/s AMR beside that of Lokmat Group and IL & FS and which fact again goes to show the intention of Lokmat Group and that of IL and FS in joining the proposed project as promoters.

36. As an alternative argument, it was submitted that even otherwise the mere signing of feed-back form by Devendra Darda as Director in no manner induced the Screening Committee in delivering any property. It was also submitted that the reliance on the use of net-worth of Lokmat Group and that of IL & FS in the feed-back form by

the prosecution is also wrong as the net-worth of the applicant company was at no point of time of any relevance to Screening Committee. It was submitted that the guidelines issued by MOC, governing allocation of captive coal blocks merely referred to the financial strength of the applicant company and not the net-worth thereof. It was also submitted that as both Lokmat Group and IL & FS had agreed to join as promoters of M/s AMR so even otherwise use of their net-worth was not illegal. It was also submitted that the term "*financial strength*" of a company can not be equated with the net-worth of the company as financial strength referred to the capability of an applicant company to establish a given end use project by arranging the necessary finances.

37. As regard the allegation of prosecution that the information about the previous allocation of coal block was not disclosed in the application form or in the feed-back form, it was submitted that in fact no previous allocation of any coal block had taken place in favour of equity holders of M/s AMR. It was submitted that no coal block in favour of any equity holder of M/s AMR had ever taken place and even otherwise prosecution has not brought on record as to who all were the equity holders of M/s AMR. It was further submitted that the term '*Group Company*' as used by the prosecution was at no point of

time defined either by MOC and even otherwise the same is not a legal entity and is used only in common parlance.

38. It was also submitted by Ld. Defence Counsel that even otherwise the said information was immaterial as during the course of investigation Sh. S.K. Shahi of MOC stated that there is nothing on record which could explain as to for what purpose information about earlier allocation of coal blocks was sought for in the application form. It was also submitted that Screening Committee even otherwise has been recommending allocation of captive coal blocks in favour of companies which were earlier also allocated coal blocks. It was further submitted that from the family settlement arrived in the Basant Lal Shaw family, it is clear that M/s AMR was not part of Jayaswal Group of companies.

39. As regard the allegation of prosecution that a false claim of acquisition of 370 acres of land in Yavatmal District, Maharashtra was made in the feed-back form, it was submitted that in fact the investigating officer deliberately concealed information that Maharashtra Industrial Development Corporation (MIDC) had issued a comfort letter for 150 hectares (i.e. approximately 370 acres) against request for allocation towards establishing a power project by

a group company namely JLD Yavatmal Energy Ltd. It was further submitted that M/s JLD Yavatmal Energy Ltd. had intended to establish its proposed power project in Yavatmal District on said 370 acres of land but MOC instead allotted, Fatehpur East coal block in Chattisgarh to the company and thus considering the cost of transportation of coal, the company M/s JLD Yavatmal Energy Ltd. decided to shift its proposed power plant from Maharashtra to Chhatisgarh. It was submitted that in these circumstances M/s AMR, decided to utilize the said 370 acres of land earmarked for the power project of its group company i.e. M/s Yavatmal Energy Pvt. Ltd, for its proposed sponge iron plant. It was submitted that MIDC was primarily concerned with the establishment of an industrial project in Yavatmal District and was not concerned whether it was a power project or a steel project. Accordingly M/s AMR had filed an application dated 17.11.2007 with MIDC in this regard. It was also submitted by Ld. Counsel Sh. Vijay Aggarwal that though in the initial application submitted to MOC, it was stated that the proposed steel plant will be established at Nagpur but subsequently the location was changed to Yavatmal district but still the coal block was allocated by MOC to M/s AMR for its captive use for the plant to be situated in Nagpur and thus it was clear that the information submitted in the feed-back form did

not in any manner induced MOC, Government of India to allocate any coal block. Even as regard the 75 acres of land mentioned in the initial application form submitted to MOC as having been already procured and possession taken, it was submitted that the said land was in the name of Ms. Nisha Jayaswal wife of Arvind Jayaswal, Rita Jayaswal wife of Ramesh Jayaswal and Manisha Jayaswal wife of Manoj Jayaswal and thus there was no falsity in the said claim made in the application.

40. As regard the falsity regarding water arrangement, it was submitted that prior to the Screening Committee meeting held on 7/8.12.2007, the Water Resources Department, Nagpur had already issued a letter dated 03.12.2007 in favour of M/s AMR whereby allocation of water in favour of M/s AMR from Wardha river was agreed to by the department. It was however submitted that IO for reasons best known to him however did not carry out any investigation with respect to the said letter.

41. As regard the letters written by accused Vijay Darda to PMO, it was submitted that a bare perusal of the said letters shows that the ingredients of Section 9 P.C. Act were not made out. It was submitted that as per the case of prosecution itself in the said letters, Vijay

Darda referred to land acquired at Yavatmal with respect to proposed end use project to be established over there but admittedly the coal block was allocated to MOC for the proposed end use project to be established at Nagpur. It was submitted that the Screening Committee at no point of time thus got induced by any information submitted in the feed-back form. The letters of Vijay Darda were thus also stated to be inconsequential. It was also submitted that even in the said letters Vijay Darda clearly stated that the proposed sponge iron plant is being established by Lokmat group and IL & FS and the word “promoter” was never used in the said letters. As regard the allegations of quid-pro-quo, it was submitted that the same has not been established by any legally admissible evidence by the prosecution. It was also submitted that nothing has come on record during the course of investigation which could show that PMO was ever influenced by any such letter written by Vijay Darda. It was also argued by Ld. Counsel Sh. Vijay Aggarwal that Section 9 P.C. Act is not applicable to public servants but is only applicable to brokers. It was also submitted that since Vijay Darda was a Member of Parliament so in order to prosecute him, necessary sanction ought to have been obtained by the prosecution u/s 19 PC Act.

42. It was also submitted by Ld. Counsel Sh. Vijay Aggarwal that

while accused L.S. Janoti and H.C. Gupta, the two officers of MOC are being prosecuted in the present case but two other similarly placed officers i.e. V.S. Rana, the then Under Secretary, MOC, CA-I Section and Sh. Ashish Gupta, Director, PMO have been let off and thus if there had been any conspiracy then those two officers ought to have been also summoned as but for them the alleged criminal conspiracy could not have fructified.

43. In the aforesaid circumstances, it was argued by Ld. Counsel Sh. Vijay Aggarwal that the facts disclosed in the report u/s 173 Cr.PC may at the most give rise to suspicion but not to grave suspicion warranting framing of charges for any offences against the accused persons. It was submitted that when two views are possible at the stage of charge then the one favouring the accused persons ought to be adopted.

The discharge of the accused company M/s AMR was thus prayed for.

44. In support of his submissions Ld. Counsel Sh. Vijay Aggarwal for A-4 M/s AMR placed reliance upon the following case law:

S. No.	Title	Citations
1	<i>Kartar Singh vs State of Punjab</i>	1994 (3) SCC 569
2	<i>State of Madhya Pradesh and Another vs Baldeo Prasad</i>	AIR 1961 SC 293
3	<i>State of Maharashtra vs Hansrajdepar Parle Oil Centre and others</i>	1977 (2) SCC 216
4	<i>S. Mohan Lal v R. Kondiad</i>	1979 (2) SCC 616
5	<i>Neeraj Verma v State</i>	Cri.M.C. No. 3770/2005
6	<i>Jamuna Chaudhari & Ors v State of Bihar</i>	197 4 AIR 1822
7	<i>State of Bihar v P.P. Sharma</i>	AIR 1991 SC 1260
8	<i>Babubhai v State of Gujarat</i>	(2010) 12 SCC 254
9	<i>Kali Ram v State of Himachal Pradesh</i>	1974 Cri.L.J.1
10	<i>Manohar Lal Sharma v The Principal Secretary & Ors</i>	Writ Petition (Crl) No. 120 of 2012, Hon'ble Supreme Court of India
11	<i>Shashi Lata Khanna v State of Delhi and Ors</i>	2005 (2) JCC 1220
12	<i>Alpana Das v CBI</i>	132 2006 DLT 85
13	<i>State of Haryana v Mahender Singh and Ors</i>	(2007) 123 SCC 606
14	<i>Narender Kumar Maheshwari</i>	1990 Supp SCC 440
15	<i>Poonam Verma and Ors vs DDA</i>	(2007) 13 SCC 154
16	<i>J.R. Raghupathy Etc vs State of A.P. & Ors</i>	1988 AIR 1681
17	<i>R. Sai Bharathi vs Jayalalitha</i>	2004 (2) SCC 9
18	<i>Gulf Goans Hotels Company Ltd v Union of India (UOI)</i>	(2014) 10 SCC 673
19	<i>Vimla Devi vs Delhi Administration</i>	AIR 1963 (SC) 1572

20	<i>Parminder Kaur vs State</i>	2010 [1] SCC 322
21	<i>Dilawar Balu Kurane vs State of Maharashtra</i>	2002 SCC (Cri)
22	<i>Changa Lal & Ors v MCD</i>	2008 DLT [149] 460
23	<i>J. Jayalalitha vs State of Represented y Director of Vigilance and Anti Corruption</i>	C.A. No. 147/2000, order dated 04.12.2001
24	<i>N. Suresh Nathan & Ors vs Union of India</i>	1992 Supp. (1) SCC 584
25	<i>Shailendra Dania & Ors vs S.P. Dubey & Ors.</i>	(2007) 5 SCC 535
26	<i>A.R. Milton vs Mr. & Mrs. Sherman</i>	CrI. Rev. No.460/1918 dated 14.06.1918
27	<i>Shyam Lal Choksi</i>	1965 Cri.L.J 265
28	<i>Krishna v Krishna Mani</i>	1997 [4] SCC 241
29	<i>Sarwan Singh Gajjan Singh vs State</i>	AIR 1958 M.P. 230
30	<i>Basir-ul-hug and Ors vs State of W.B.</i>	AIR 1953 SC 293
31	<i>S. Dutt (DR.) vs State of U.P.</i>	1966 [1] SCR 493
32	<i>J.K.C.S. & W. Mills vs State of U.P.</i>	AIR 1961 (SC) 1170
33	<i>Ram Nath vs King Emperor</i>	1925 Allahabad 230
34	<i>State of U.P. vs Suresh Chandra Srivatava & Ors.</i>	AIR 1984 SC 1108
35	<i>Ashok vs State</i>	1987 Cri.L.J 1750
36	<i>Radhe Shyam v State</i>	AIR 1968 All 342
37	<i>State of Kerala vs Babu and Others</i>	1999 (4) SCC 621
38	<i>P.V. Narasimha Rao vs State</i>	1998 Cr.L.J 2930
39	<i>Bhanukumar Jain v Kumar Gupta</i>	AIR 2004 MP 25
40	<i>Subhra Mukherjee and another vs Bharat coking coal Ltd and Ors</i>	2000 [3] SCC 312
41	<i>Commissioner of Income Tax vs Kamdhenu Steel & alloys Ltd.</i>	351 ITR 220 (Del)

42	<i>K. Narasimhulu Naidu and Co. vs G. Subbarama reddy</i>	2003 [6] ALT 118
43	<i>Smt. Chandrakantaben vs Narendra Jayantilal Modi vs Vadilal Bapalal Modi and Ors</i>	1989 [2] SCC 630
44	<i>State (through) CBI vs Someshwar & Ors</i>	120 (2005) DLT 324
45	<i>Deepchand Jot Ram vs The State</i>	AIR 1966 Punjab 302
46	<i>Hakumat Rai Nigam vs The State</i>	1983 Cri.L.J NOC 5
47	<i>Satish S/o Laxminarayan Nayak vs State of Maharashtra</i>	1999 Cri.L.J. 4407
48	<i>Mahadev Dhanappa Gunaki and another vs The State of Bombay</i>	AIR 1953 SC 179
49	<i>State of U.P. vs Jagdish Singh Malhotra</i>	2001 10 SCC 215
50	<i>State of Andhra Pradesh vs T. Venkateshwara Rao</i>	2004 Cri.L.J 1412
51	<i>Ram Avtar vs State of Bihar</i>	2002 Cri.L.J 3899
52	<i>Khanju Prasad Ladiya vs State of M.P.</i>	2000 CrL.J 4400
53	<i>Subhash Prabhat Sonvane Vs State of Gujarat</i>	(2002) 5 SCC 86
54	<i>J. Jayalalitha vs State</i>	2002-1-LW (Cri) 37
55	<i>M. Naraynan Nambiar vs State of Kerela</i>	AIR 1963 SC 116
56	<i>Major S.K. Kale vs State of Maharashtra</i>	(1977) 2 SCC 394
57	<i>C.K. Jaffer Shareef vs State</i>	2013 1 SCC 205
58	<i>Common Cause, A Registered Society vs Union of India & Ors</i>	(1999) 16 SCC 667
59	<i>P. Satya Narayan Murthy vs Inspector of Police</i>	C.A. No. 31 of 2009 dated 14.09.2015
60	<i>Surinderkaur vs State of Haryana</i>	2015 1 JCC 586
61	<i>G.L. Batra vs State of Haryana</i>	2014 (130 SCC 759

62	<i>A. Sivaprakash vs State of Kerala</i>	<i>C.A. No. 131 of 2007 on 10.05.2016</i>
63	<i>Vimla Dhiman vs State</i>	<i>2013 [4] JCC 2528</i>
64	<i>Ravinder Pal Singh vs Punjab Tractors</i>	<i>1987 (1) RCR 680</i>
65	<i>Jalpa Prashad vs State of Haryana</i>	<i>1987 (2) RCR 427</i>
66	<i>Sohan Singh vs State of Punjab</i>	<i>1983 (2) RCR 544</i>
67	<i>Wofgang Reim & Ors vs State & Anr</i>	<i>2012 (3) JCC 2042</i>
68	<i>Basant Misra and another vs State of Haryana and Otehrs</i>	<i>Cri.Misc. M. No. 43667 of 2003</i>
69	<i>The Mahindra and Mahindra Financial Services Ltd and Anr vs M/s Delta Classic Pvt Ltd</i>	<i>2010 Cri.L.J 4591</i>
70	<i>Jatinder Kumar vs State</i>	<i>1992 Cri.L.J. 1482</i>
71	<i>State of West Bengal and Anr vs Laisal Haque & Ors</i>	<i>(1989) 3 SCC 166</i>
72	<i>Kalpanath Rai vs State</i>	<i>AIR 1998 SC 201</i>
73	<i>Standard Chartered Bank vs Directorate of Enforcement</i>	<i>2005 SCC (Cri) 961</i>
74	<i>Standard Chartered vs Vinay Kumar Sood</i>	<i>2010 Cri.L.J. 1277</i>
75	<i>Raymond Ltd & Ors vs Rameshwar Das Dwarkadas P. Ltd</i>	<i>2013 (2) JCC 1227</i>
76	<i>Jabalpur Bus Operators Association vs State of M.P.</i>	<i>2003 [1] M.P.L.J 513</i>
77	<i>Natural Sugar and Allied Industries & Anr. Vs State</i>	<i>2006 Cri.L.J. 3680</i>
78	<i>South Indian Bank Ltd & Ors vs Paul Vareed Cheruvathoor & Anr.</i>	<i>2014 Cri.L.J 701</i>
79	<i>Navjot Sandhu vs State of NCT</i>	<i>2005 SCC (Cri) 1715</i>
80	<i>Ms. Arunwan Thamvaro vs State</i>	<i>119 (2005) DLT 433</i>
81	<i>State of Madhya Pradesh vs Sheetla Sahai & Ors.</i>	<i>2009 (8) SCC 619</i>

82	<i>Mohd. Khalid vs State of W.B.</i>	(2002) 7 SCC 334
83	<i>State of Gujarat vs Mohammed Atik and Ors</i>	(1998) 4 SCC 351
84	<i>Mirza Akbar vs King Emperor</i>	AIR 1940 PC 176
85	<i>Emperor vs Ganesh Raghunath</i>	55 Bombay 839
86	<i>Emperor vs Abani</i>	38 Cal 169
87	<i>Sardul Singh Caveeshar and Ors vs The State of Bombay</i>	AIR 1957 SC 747
88	<i>Sailendra Nath Mitra vs State</i>	1954 Cri.L.J. 979 (Calcutta)
89	<i>Kodur Thimma Reddi and Ors</i>	1957 Cri.L.J 1091
90	<i>K.R. Purushothaman vs State of Kerala</i>	(2005) 12 SCC 631
91	<i>Satish Mehra vs State of NCT of Delhi and Another</i>	AIR 2013 SC 506
92	<i>Shreya Jha vs CBI</i>	2007 [3] JCC 2318
93	<i>Rajender Singh Sachdev vs State</i>	[2008 (2) JCC 979]
94	<i>Dilawar Balu Kurane vs State of Maharashtra</i>	2002 (2) SCC 135
95	<i>Sunil Bansal vs The State of Delhi [Delhi]</i>	2007 (2) JCC 1415
96	<i>Sarbans Singh vs State of NCT</i>	2005 (116) DLT 698
97	<i>Gurcharan Kumar vs State of Rajasthan</i>	2003 (2) SCC 698
98	<i>Man Singh vs Delhi Admn.,</i>	1979 Cri.L.J. 1455
99	<i>CBI v A. Raja & Ors (2G Spectrum Case)</i>	CC No. 01/11, decided on 21.12.2017
100	<i>M/s MSCO (P) Limited vs Union of India and Others</i>	(1985) 1 SCC 51
101	<i>S. Mohan Lal vs R. Kondiah</i>	(1979) 2 SCC 616
102	<i>State of Maharashtra vs Hansraj Deepar Parle Oil Centre and Others</i>	(1977) 2 SCC 216

103	<i>State of Madhya Pradesh and Anotehr vs Baldeo Prasad</i>	AIR 1961 SC 293
104	<i>Avishek Goenka vs Union of India and another</i>	AIR 2012 SC 226

Arguments on behalf of A-1 Manoj Kumar Jayaswal

45. It was submitted by Ld. Defence Counsel Sh. Vijay Aggarwal for accused Manoj Kumar Jayaswal that no role at all has been ascribed to accused Manoj Kumar Jayaswal in the entire process of allocation of coal block in favour of M/s AMR. It was submitted that neither the application nor the “*Form for feed-back*” was submitted under the signatures of accused Manoj Kumar Jayaswal and nor he was present before the Screening Committee at the time of presentation. Thus in addition to the arguments as were taken by Ld. Counsel while seeking discharge of company M/s AMR, it was submitted by Ld. Counsel Sh. Vijay Aggarwal that no representation of any nature whatsoever was made by accused Manoj Kumar Jayaswal much less any dishonest or fraudulent misrepresentation. The very basic ingredient of the offence of cheating was stated to have been not made out even for a prima facie view. It was also submitted that the prosecution has clearly failed to bring on record any evidence which could suggest that there was any meeting of

mind amongst the accused persons involving accused Manoj Kumar Jayaswal.

He was accordingly prayed to be discharged.

Arguments on behalf of A-2 Vijay Darda

46. As regard accused Vijay Darda it was separately also argued by Ld. Counsel Sh. Vijay Aggarwal that from the allegations levelled by the prosecution ingredients of none of the offences were made out which may warrant framing of charge against the accused. It was submitted that the various letters stated to have been written by accused Vijay Darda to the Prime Minister or other senior officers were merely in the nature of routine letters which are written by members of Parliament with a view to attract investment in their constituency and thus the mere factum of writing such letters cannot make him liable for any criminal offence. It was also submitted that as per the prosecution case itself accused had written letters seeking allocation of a captive coal block in favour of company M/S AMR for its proposed sponge iron plant to be established in Yavatmal district. However the Ministry of coal did not rely upon any such letters as the coal block finally allocated to the applicant company was for its captive use in its proposed plant to be established in Nagpur and not

in Yavatmal. It was thus submitted that an important ingredient of the offence of cheating that the party to whom the misrepresentation was made was induced by the said misrepresentation and was thereby deceived to deliver any property, was not established. It was submitted that as the coal block was not recommended to be allocated to the applicant company for its proposed sponge iron plant to be established in Yavatmal district, Maharashtra so it cannot be stated by any stretch of argument that screening committee or thereby Ministry of coal was induced by the said letters written by accused Vijay Darda.

47. It was also submitted that in none of the said letters accused has used the word promoters anywhere. In fact in the said letters it was stated that the steel plant is being set up by Lokmat group and IL& FS through M/S AMR Iron and steel private limited. It was also submitted that even the coal block in question was not exclusively allotted in favour of M/S AMR as was requested in the letters written by the accused. It was thus submitted that as the said coal block was allotted jointly in favour of M/S AMR along with two other companies so this fact also shows that the letters written by accused Vijay Darda were not at all relied upon by the screening committee or by the Ministry of coal.

48. It was also submitted by Ld. Counsel Sh. Vijay Aggarwal that the prosecution is trying to place reliance upon some unsigned letters as are available in D- 20 and D- 22 without placing on record any legally admissible evidence which could show even for a prima-facie view that the said unsigned letters were written by accused Vijay Darda. Similarly it was submitted that prosecution was trying to place reliance upon certain unsigned typed letters purportedly written by Sh. B.L. Shaw. It was however submitted that as the said letters does not refer to Bander coal block so nothing can be inferred even from the said letters against the accused much less qua any quid pro quo having been given to the accused to the extent of 26% equity in any company.

49. It was also submitted by Ld. counsel Sh. Vijay Aggarwal that no evidence has been brought on record by the prosecution which could show that any personal influence was exercised by the accused upon the PMO. It was submitted that even no witness from the PMO has been examined in this regard by the IO. It was also submitted that as the recommendations of the screening committee itself were accepted by the PMO so unless the PMO is also held to be an abettor of the criminal conspiracy, the letters written by the accused to the PMO cannot be held to be of any consequence. It was also

submitted that prosecution has not placed on record statement of any witness who may claim that he was induced by the letters written by accused Vijay Darda

50. It was also argued by Ld. Counsel Shri Vijay Aggarwal that section 9 P.C. Act, 1988 (Unamended Section 9 P.C. Act, 1988) cannot have any application in the present facts and circumstances of the case as the same is applicable to a broker who agrees to influence a public servant for getting some work done and thus the same cannot be held to be applicable to a public servant himself. It was submitted that even if it is presumed that the allegations levelled are correct then at the most offence under section 11 PC Act, 1988 (Unamended Section 11 P.C. Act, 1988) can be held to be applicable and in which circumstance no cognizance of the said offence could have been taken by the court without prior sanction having been granted by the competent authority under section 19 PC Act, 1988 to prosecute the accused.

51. In support of his submissions Ld. Counsel Sh. Vijay Aggarwal for A-2 Vijay Darda relied upon the following case law:

S. No.	Title	Citations
1	<i>Subramaniam Swamy vs A. Raja</i>	[2012] 11 S.C.R. 873
2	<i>Saju vs State of Kerala</i>	2001 [1] JCC 378
3	<i>State of Karnataka vs Muniswamy and Ors</i>	1977 [2] SCC 699
4	<i>State of Maharashtra vs Fasal Rehman Abdul</i>	2013 [4] Scale 401
5	<i>K.R. Purushothaman vs State of Kerala</i>	(2005) 12 SCC 631
6	<i>P.V. Narasimha Rao vs State</i>	1998 Cr.L.J 2930
7	<i>Bhanukumar Jain vs Kumar Gupta</i>	AIR 2004 MP 25

Accused Vijay Darda was thus prayed to be discharged in the present case.

Arguments on behalf of A-3 Devendra Darda

52. As regard accused Devendra Darda it was submitted that except for his appearance before the Screening Committee on the day of presentation and submitting the “*Form for feed-back*” under his signatures no other overt or covert act has been attributed to the accused by the prosecution. It was submitted that the said “*Form for feed-back*” was signed by the accused as Director of Lokmat Group and not as that of M/s AMR. It was also submitted that even otherwise the mere factum of signing of “*Form for feed-back*” by accused as Director did not in any manner induced the Screening

Committee so as to deliver any property much less the coal block in question. The very ingredients of the offence of cheating or that of criminal conspiracy was thus stated to have been not made out even for a prima facie view warranting framing of charge against the accused.

Accused Devendra Darda was thus prayed to be discharged.

Arguments on behalf of A-5 Santosh Bagrodia

53. It was submitted by Ld. Senior Advocate Sh. N. Hariharan for accused Santosh Bagrodia that the prosecution has miserably failed in bringing on record any incriminating evidence against the accused which could show his complicity in the criminal conspiracy, if any hatched by the other accused persons. It was submitted that as per the case of prosecution itself accused had no role to play in the recommendations made by 36th screening committee in favour of applicant company M/s AMR and subsequent approval of the said recommendations by the Prime Minister as Minister of coal. It was submitted that admittedly Prime Minister approved the said recommendations with the condition that the progress made by the

allocatee companies qua any previous coal block(s) if allotted to them be seen and if satisfied with the progress made then only the allocation letters in favour of the said companies be issued. It was submitted that pursuant to the said directions a meeting was proposed by Secretary Coal H. C. Gupta to be held in the office of Minister of State for coal. It was thus submitted that the said meeting was held on 18.09.2008 not only qua M/s AMR but with respect to all other applicant companies who were stated to have been earlier also allocated coal blocks. It was also submitted that the said meeting was in fact conducted by the officers of Ministry of coal and not by accused Santosh Bagrodia. It was pointed out that as per the statement of Harshad Popli representative of M/s AMR the said meeting took place for about 5 to 7 minutes and that too in the presence of Sh. K.S. Kropha, Joint Secretary Coal, Sh. KC Samria Director, Ministry of coal and one more official of MOC. It was submitted that no evidence has been brought on record by the prosecution which could show that the representative of M/s AMR ever met accused Santosh Bagrodia separately or alone and thereby indicating any meeting of minds between them.

54. It was further submitted by Ld. senior advocate that after the said meeting held on 18.09.2008, the file in question was never put

up before the accused except when subsequent to receipt of communication dated 22.09.2008 received from M/s AMR, the matter was processed in the relevant file by officials/officers of MOC including Secretary, Coal, H.C. Gupta. It was submitted that even at that time accused Santosh Bagrodia while relying upon the notings made by various officers of Ministry of coal including that of Secretary Coal, H.C. Gupta, merely forwarded the file to Prime Minister as Minister of Coal. It was submitted that when the file came before the accused then it was already containing a note prepared by L.S. Janoti, Section Officer, CA-I Section and the said note was approved by four senior officers including secretary coal and who in fact had also appended his own note while also drawing attention of the Minister of state for coal to the note of L S Janoti. It was submitted that the section officer L.S. Janoti in his note had clearly stated that in view of the representation received from M/s AMR it can be taken that no coal block has been earlier allotted in favour of M/s AMR.

55. It was submitted by Ld. Senior Advocate that accused being a Minister was a political appointee and cannot be presumed to be having technical knowledge of the matters. It was also submitted that a Minister while working in any Ministry places reliance upon the inputs given by the officers of the Ministry and thus in the present

case also accused acted while relying upon the notings made by the various officers of Ministry of Coal, including that of Secretary, Coal. It was submitted that even otherwise accused merely forwarded the file to Prime Minister as Minister of coal since it was the Minister of coal only who was empowered to take any decision in the matter since under the allocation of business rules the matter regarding allocation of coal blocks was within the purview of Minister of coal only and not in the purview of Minister of state for coal. It was also submitted that accused Santosh Bagrodia became Minister of state for coal only on 16 April 2008 and relinquished charge on 22 May 2009 it was also submitted that even while approving the recommendations of 36th Screening Committee the Prime Minister as Minister of coal had given directions to secretary coal, Ministry of coal, to satisfy itself about the satisfactory development of previous coal blocks, if any, allocated to the purposed allocatee companies and no directions in this regard were given to the Minister of State for coal. it was thus submitted that the duty in this regard to satisfy about the progress of development of previous coal blocks if any allocated to the allocatee companies was that of Ministry of coal and not of Minister of State for coal.

56. In support of his submission Ld. Sr. Advocate Sh. N. Hariharan for A-5 Santosh Bagrodia relied upon the following case law:

S. No.	Title	Citations
1	<i>State of Bihar vs Ramesh Singh</i>	(1977) 4 SCC 39
2	<i>P. Satyanarayana Murthy vs The Dist. Inspector of Police & Anr</i>	(2015) 10 SCC 152
3	<i>A. Subair vs State of Kerala</i>	(2009) 6 SCC 587
4	<i>Runu Ghosh v CBI</i>	
5	<i>Cabinet Governance by Ivor Jennings</i>	
6	<i>Dipak Babaria & Anr v State of Gujarat & Ors</i>	(2014) 3 SCC 502
7	<i>Government of India (Allocation of Business) Rules 1961</i>	
8	<i>Government of India (Transaction of Business) Rules 1961</i>	
9	<i>Kehar Singh v State of NCT</i>	(1988) 3 SCC 609
10	<i>Yogesh v State of Maharashtra</i>	(2008) 10 SCC 394

Accused Santosh Bagrodia was thus prayed to be discharged.

Arguments on behalf of A-6 H.C. Gupta

57. As regard accused H.C. Gupta, it was argued by Ld. Counsel Sh. Rajat Mathur that from the notings recorded by the accused in the routine course of discharge of its official duties no criminality can be inferred. It was submitted that upon conclusion of investigation, CBI

clearly stated in the final report filed in the Court that no incriminating evidence warranting prosecution of accused H.C. Gupta could come on record. It was thus submitted that even today there is no evidence available on record which could warrant framing of charge for any offence against the accused. It was also submitted that prosecution has failed to bring on record any evidence which could suggest that there was any meeting of mind in between the private parties and accused H.C. Gupta or that there was any demand of any nature whatsoever raised by accused H.C. Gupta. It was also submitted that there is no evidence on record which could suggest that there was any quid-pro-quo as regard the action(s) taken by accused H.C. Gupta. Ld. Defence Counsel Sh. Rajat Mathur further submitted that even the noting of L.S. Janoti dated 10.10.2008 recorded in response to the reply received from M/s AMR had come before the accused in the 5th round of noting. It was submitted that the said noting of L.S. Janoti, Section Officer initially came to be put up before Sh. V.S. Rana, Under Secretary and Sh. K.C. Samria, Director, CA-I and who sent back the file with certain queries. In the second round of noting the file from the desk of Sh. L.S. Janoti again went to the desk of Director, CA-I through the desk of Under Secretary but the file was again sent back by Director, CA-I, with the directions to put a detailed

note for consideration. In the third round of noting it was pointed out that the note dated 21.10.2008 of Sh. L.S. Janoti went till the desk of Joint Secretary, Coal after being routed through the desk of Under Secretary and Director CA-I but the file was again sent back with the direction to put up a detailed note. It was further pointed out that in the fourth round of noting, the note dated 30.10.2008 of Sh. L.S. Janoti again went till the desk of Director, CA-I after being routed through the desk of Under Secretary but the file was again sent back with certain further directions. It was submitted that the file finally came to the desk of Secretary, Coal in the fifth round of noting and that too after the noting dated 25.11.2008 of Sh. L.S. Janoti was routed through the desk of Under Secretary, Sh. V.S. Rana and other senior officers. It was on that occasion that accused H.C. Gupta vide his note dated 28.11.2008 and while referring to the note of Sh. L.S. Janoti sent the file to Minister of State for coal and who further forwarded it to Prime Minister as Minister of Coal.

58. In the aforesaid circumstances, it was submitted by Ld. Counsel Sh. Rajat Mathur that making of such notings by accused H.C. Gupta or other officers of MOC in the routine discharge of their official duties can not make out any criminal offence. It was submitted that in case of failure to perform his duties properly by accused H.C.

Gupta, the same may at the most entail disciplinary proceedings but not criminal prosecution. It was thus submitted that except the aforesaid allegations at the post recommendation stage there are no other allegations in the report u/s 173 Cr.PC filed by CBI which contain any other allegations against accused H.C. Gupta.

59. While relying upon the following case law, it was submitted that the prosecution has miserably failed in even establishing a prima facie case against accused H.C. Gupta warranting framing of charge against accused H.C. Gupta.

S. No.	Title	Citations
1	<i>Chandrakant Jha vs State (Govt of NCT of Delhi)</i>	<i>CrI.A. No. 656/13</i>
2	<i>State of Bihar vs Ramesh Singh</i>	<i>1977 (4) SCC 39</i>
3	<i>Union of India vs Prafulla Kumar Samal & Anr</i>	<i>1979 (3) SCC 41</i>
4	<i>Sheoraj Singh Ahlawat & Anr vs State of U.P. & Anr</i>	<i>2013 (11) SCC 476</i>
5	<i>Nathiya vs State</i>	<i>2016 (10) SCC 298</i>
6	<i>State of Mysore vs Gundappa</i>	<i>AIR 1964 Kant 78</i>
7	<i>Kehar Singh vs State of NCT</i>	<i>1988 (3) SCC 477</i>
8	<i>C.K. Damodaran Nair vs Govt of India</i>	<i>1997 (9) SCC 477</i>
9	<i>A. Sivaprakash vs State of Kerala</i>	<i>2016 SCC Online SC</i>
10	<i>Subhash Prabhat Sonvane Vs State of Gujarat</i>	<i>(2002) 5 SCC 86</i>
11	<i>A. Subair vs State of Kerala</i>	<i>2009 (6) SCC 587</i>

12	<i>B. Jayaraj vs State of Andhra Pradesh</i>	2014 (13) SCC 55
13	<i>P. Satyanarayana Murthy vs District Inspector of Police State of Andhra Pradesh & Anr</i>	2015 (10) SCC 152
14	<i>N. Sunkanna vs State of Andhra Pradesh</i>	2016 (1) SCC 713
15	<i>Surinder Kaur vs State of Haryana</i>	(2014) 15 SCC 109
16	<i>Runu Ghosh vs CBI</i>	2011 SCC Online Del 5501
17	<i>Common Cause vs UOI</i>	AIR 1999 SC 2979
18	<i>Jiwan Dass vs State of Haryana</i>	1999 (2) SCC 530
19	<i>Velji Raghavi Patel vs State of Maharashtra</i>	AIR 1965 SC 1433
20	<i>Bipat Gope vs State of Bihar</i>	AIR 1962 SC 1195
21	<i>Karnatka vs L. Muniswami</i>	(1977) 2 SCC 699
22	<i>Yogesh Vs State of Maharashtra</i>	2008 (10) SCC 394

Arguments on behalf of A-7 L.S. Janoti

60. It was submitted by Ld. Counsel Sh. K.K. Patra for accused L.S. Janoti that the only allegation of prosecution against accused L.S. Janoti is that while preparing note dated 25.11.2008 he did not mention the true and correct facts and secondly that upon receipt of communication dated 22.09.2008 from M/s AMR, he did not mark the file to his assistant Sh. Sewak Paul who had initially prepared the note in the matter. It was submitted that after the recommendations of 36th Screening Committee were conditionally

approved by the Prime Minister, Ministry of Coal was directed to verify the status of progress made towards development of earlier coal blocks, if any allotted in favour of allocatee companies, a meeting was held in the office of the then Minister of State for Coal Sh. Santosh Bagrodia with all such allocatee companies. In the said meeting, representative of M/s AMR stated that the company M/s AMR is not a part of Jayaswal Group. However, it was further stated by him that the equity of M/s AMR is now held by Lokmat Group, M/s Abhijeet Infrastructure Ltd and IL & FS and also that six coal blocks were earlier allotted to these equity holders. In the said meeting the representative of M/s AMR was directed to give in writing the ownership of the company (*main share holders*) as well as commitment made about developing the coal blocks. It was submitted that the said minutes of the meeting were forwarded to the concerned company by the then Under Secretary Sh. V.S. Rana himself and thus he was well aware of the said directions so given in the meeting. Subsequently, when the communication dated 22.09.2008 from the company was received by Secretary (Coal) then the same came to be marked to him after it was routed through the desk of various senior officers including Sh. V.S. Rana. It was stated in the said communication that the company is not a part of Jayaswal Group.

Accordingly, accused L.S. Janoti prepared a note dated 25.11.2008 mentioning the said fact and also the fact that the company was asked to give in writing the ownership pattern to the company as well as the commitment made about developing the coal blocks earlier allotted to its equity holders. It was submitted that thereafter in his note dated 25.11.2008 accused L.S. Janoti merely stated that in view of the reply received from company it can be taken that no coal block has been earlier allotted to M/s AMR and he thereafter submitted the file to senior officers for consideration and orders. It was further submitted by Ld. Counsel Sh. K.K. Patra that Under Secretary, V.S. Rana thereafter proposed that we may consider the proposal for allocation of Bander Coal Block in view of the reply given by the allocatee company. The file thereafter went through the desk of senior officers and finally H.C. Gupta, Secretary (Coal) vide his note dated 28.11.2008 forwarded it to Minister of State for Coal proposing that allocation letters qua Bander Coal Block may be issued.

61. It was submitted by Ld. Counsel Sh. K.K. Patra that from the aforesaid notings itself it was clear that neither any fact was concealed by accused L.S. Janoti nor any wrong fact was mentioned in his note. It was also submitted that accused L.S. Janoti being the Section Officer had only put up the file for consideration/orders to

senior officers and thus nothing malafide can be read into the said note of accused L.S. Janoti. While referring to Central Secretariat Manual of Office Procedure it was also submitted that the note prepared by accused L.S. Janoti was as per the Rules contained in the said Manual of Office Procedure.

62. As regard the file having been not marked to Sh. Sewak Paul, Assistant, CA-1 Section, it was submitted that the said communication was processed at the level of accused L.S. Janoti for the simple reason that Sh. Sewak Paul was dealing with some time bound work and in order to avoid delay in disposal of coal block allocation matters, the files used to be sent to him only when he was less loaded. While, referring to the statement u/s 161 Cr. PC of Sh. V.S. Rana, it was also submitted that he admitted in his said statement that he recommended for consideration of proposal for allocation of Bander Coal Block only on the basis of the reply given by the proposed allocatee company.

63. Similarly, it was pointed out that Sh. P. Soma Shekhar Reddy, Additional Secretary (Coal) also stated in his statement u/s 161 Cr. PC that he approved the note dated 25.11.2008 on the basis of note of Sh. V.S. Rana.

64. It was submitted by Ld. Counsel Sh. K.K. Patra that even the directions given by Prime Minister as Minister of Coal while approving the recommendations of 36th Screening Committee were to check the development of coal blocks earlier allotted to the allocatee companies and not to the Group or Associate companies. In the aforesaid circumstances, it was thus submitted that no malafide intention of any nature whatsoever can be read into the preparation of said note by accused L.S. Janoti and especially when no earlier coal block was allotted in favour of M/s AMR, the recommended company. It was also submitted by Ld. Defence Counsel that apart from the aforesaid note, no other allegation has been leveled against accused L.S. Janoti by the Prosecution during the entire coal block allocation process.

Accused L.S. Janoti was thus prayed to be discharged.

65. I have carefully perused the record.

66. Before adverting further it would be first appropriate to refer to some well-settled principles which a Court must keep in mind while considering the issue as to whether charge for any offence is made out or not.

67. Hon'ble Supreme Court in the case "**State of Bihar Vs. Ramesh Singh 1977 CRI. L. J. 1606**" with respect to the issue of framing of charge observed as under. In fact the The said observations have been consistently followed in almost all the subsequent decisions by Hon'ble Supreme Court and also by various Hon'ble High Courts.

"4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S.227 or S.228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by S.227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S.228.

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

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

It is not obligatory for the Judge at that stage of the

trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

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

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

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

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

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

We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of

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

(Emphasis supplied)

68. On the issue of framing of charge in a criminal trial, the observations of Hon'ble Supreme Court as made in the case **State of Tamil Nadu vs. N. Suresh Rajan and Ors (2014) 11 SCC 709**, will also be worth referring to:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not Warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that offence has been committed and not whether a ground for

convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

(Emphasis supplied)

69. Since the present matter also talks of a criminal conspiracy allegedly hatched by the accused persons so it would be also appropriate to refer to the observations of Hon'ble Supreme Court on the issue of criminal conspiracy as were made in the case **State through Superintendent of Police, CBI/SIT Vs. Nalini & Ors.(1999) 5 SCC 253**. 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. 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.

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.

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.

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.

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.

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.

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". 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.

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.

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.”

70. In the case, **E.G. Barsay Vs. State of Bombay, AIR, 1961 SC 1762**, the view whereof was affirmed and applied in several later decisions, such as **Ajay Aggarwal Vs Union of India 1993 (3) SCC 609; Yashpal Mittal Vs. State of Punjab 1977 (4) SCC 540; State of Maharashtra Vs. Som Nath Thapa 1996 (4) SCC 659; Firozuddin Basheeruddin Vs. State of Kerala, (2001) 7 SCC 596**, Hon'ble Supreme Court also observed as under:

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

71. Thus while direct evidence qua the offence of criminal conspiracy is hard to come up but the same is to be ascertained from the overall facts and circumstances of a given case.

72. It is with the aforesaid background that I now proceed to deal

with the various contentions of Ld. Counsels for the accused persons so as to see whether prima facie charge for any of the offences is made out or not.

73. However before I proceed to deal with the various contentions of Ld. Counsels for the accused persons which may involve some brief analysis of the facts of the case, I would first like to deal with certain issues involving various points of law. Primarily three objections were raised on the point of law by Ld. Counsel, Sh. Vijay Aggarwal.

74. Firstly it was argued that a company being a juristic personality has no mind of its own and thus can not be prosecuted for an offence involving *mens rea*. Secondly, it was argued that an essential ingredient of the offence of cheating as has been defined u/s 415 IPC is that a person ought to have been cheated. It was further argued that as the definition of person as defined in Section 11 IPC does not include Government, so the very basis of prosecution case that Government has been cheated by the accused persons falls apart.

75. It was also argued by Ld. Counsel Sh. Vijay Aggarwal that as the word "*Group*" or "*Associate Company*" was not defined anywhere

in the guidelines issued by MOC so the claim of prosecution that certain coal blocks were earlier issued to some of the companies wherein the present accused persons had some interest amounted to allocation of coal blocks to group companies, is completely without force. It was further submitted that as in the feed back form the word "*Group*" or "*Associate*" was missing so the information sought in the feed back form only pertained to applicant company.

76. It was also submitted that previous allocation of a coal block to the applicant company or its group or associate company was in fact no bar to subsequent allocation of a coal block as number of coal blocks were allotted to such companies which had earlier been also allocated various coal blocks. As regard unsatisfactory performance qua the earlier coal blocks allocated, it was submitted that no evidence in this regard is available on record. The factum of concealment of information about previous allocation of coal blocks was thus stated to be immaterial much less having induced Screening Committee or MOC in making allotment of a coal block in favour of M/s AMR.

77. I shall be however dealing at a slightly later stage of the present order, the issue of group company or associate company and

also the issue regarding earlier allocation of coal blocks to group/associate companies of M/s AMR for the same may involve a brief analysis of the facts of the prosecution case in the light of arguments raised by Ld. Counsel for accused company M/s AMR. However the first two contentions I propose to deal as under:

Can an incorporated company be prosecuted for an offence involving mens rea.

78. On this issue, it will be suffice to state that law in this regard has since been well settled by Hon'ble Supreme Court in the case ***Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609***. Though Ld. Counsel Sh. Vijay Aggarwal placed reliance on certain earlier decisions of Hon'ble Delhi High Court and Hon'ble Supreme Court but I may state that with the decision of Hon'ble Supreme Court in ***Sunil Bharti Mittal case (Supra)***, the issue is no longer *res-integra*. The said case was decided by three Judge bench of Hon'ble Supreme Court and in the said judgment the entire history of case law relating to prosecution of a company for an offence involving mandatory imprisonment and also for an offence involving *mens rea* has been reiterated. In this regard, it will be worthwhile to reproduce para 33 to 35 of the said judgment.

Para No. 33 to 35 of **Sunil Bharti Mittal case (Supra)** read as under:

33. First case which needs to be discussed is *Iridium India (supra)*. Before we discuss the facts of this case, it would be relevant to point out that the question as to whether a company could be prosecuted for an offence which requires mens rea had been earlier referred to in a Constitution Bench of five Judges in the case of **Standard Chartered Bank v. Directorate of Enforcement**¹¹. The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite mens rea to prove the guilt. Para 8 reads as under:

"8. It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."

In **Iridium India (supra)**, the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59, 60, 61, 62, 63 and 64 herein:

"59. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the "alter ego" of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.

60. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.* 1972 AC 153: (AC p. 156):

"A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention - indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

61. The principle has been reiterated by Lord Denning in *Bolton (H.L.) (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd.* in the following words: (AC p.172):

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control

what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty."

62. *The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Natrass. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law: (AC p. 170 E-G)*

"I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be

a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

63. *From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company.*

64. *So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530 . On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6)*

"6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

35. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company."

79. In light of the aforesaid observations of Hon'ble Supreme Court the contention of Ld. Counsel for accused company M/s AMR that a company being a juristic personality can not be tried for an offence involving mens rea, thus does not hold ground at all.

Whether Government stands included in the definition of "Person" u/s 11 IPC.

80. At the outset, I may state that the said contention of Ld. Counsel Sh. Vijay Aggarwal is also not tenable.

Ld. Senior P.P. Sh. A.P. Singh, referred to various case law wherein Hon'ble Supreme court has upheld the charge of cheating Government. It was also submitted 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. It was submitted that the word "*person*" thus also includes any company or association or

body of persons whether incorporated or not. It was thus submitted that as Government is undoubtedly an association or body of persons so it stands included in the term "*person*" as defined in Section 11 IPC.

81. At the outset, I may state that I am in complete agreement with the submissions of Ld. Senior 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.

82. 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**.

83. 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. Counsel Sh. Vijay Aggarwal for accused company M/s AMR thus does not merit any further discussion for brushing it aside.

84. In this regard 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 legal issue involved in the said case and the present case in hand are almost similar.

85. 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 unbiased 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)

86. It is thus clear that not only "Government" stands included in the definition of "Person" as defined in Section 11 IPC but also that Government can also be cheated by an alleged act if the other necessary ingredients of the offence of cheating are made out.

87. As regard the issue of concealment of information regarding

previous allocation of coal blocks to group companies of M/s AMR, it was strongly argued by Ld. Counsel Sh. Vijay Aggarwal that M/s AMR was not a Jayaswal Group company. It was also argued that even if it is presumed for the sake of arguments that M/s AMR was a Jayaswal Group company then also non-furnishing of information of earlier coal blocks allotted to it did not in any manner have the effect of deceiving MOC. It was submitted that even during the course of investigation when enquiry was made by the IO with MOC officers as regard the purpose for which the said information was being sought then the MOC officers also claimed ignorance in this regard. It was also pointed out that though in the initial application form, information was sought about previous allocation of coal blocks to group or associate companies but there was no such column in the feed back form and the information sought in this regard was only qua the applicant companies. It was thus submitted that in so far as the company M/s AMR is concerned, the information furnished was completely correct as no coal block was previously allotted to it. It was accordingly submitted that as the purpose of seeking the said information was not even clear to the MOC officers so furnishing of any information would not have mattered at all since the same was never considered either by MOC or by the Screening Committee in making its

recommendations.

88. In this regard it would be suffice to state that the aforesaid arguments is completely devoid of any merits. The contention of Ld. Counsel for accused that as the purpose of seeking information on the said aspect was not even clear to MOC officers so furnishing of any information by the applicant company becomes completely inconsequential, is certainly not tenable. No one can even claim that as the information asked for is an inconsequential information so one has the liberty to furnish any information even though the same is false.

89. It was also submitted by Ld. Counsel Sh. Vijay Aggarwal that not only the net-worth was never fixed as a criteria by Screening Committee of MOC in arriving at its recommendations but even otherwise it is the case of prosecution itself that no inter-se priority chart of the applicant companies was prepared by the Screening Committee. It was thus submitted that if no such inter-se priority chart was prepared then admittedly the net-worth was never taken into consideration by the Screening Committee in arriving at its recommendations and consequently the Screening Committee could not have been cheated on account of any claim having been made

regarding its net-worth by the applicant company.

90. As earlier also mentioned the primary fact remains that irrespective of any criteria fixed or not, either by MOC or by Ministry of Steel regarding the net-worth much less it being in public domain or not, the accused persons can not claim that since net-worth was never considered by the Screening Committee in making its recommendations so they were free to make any claim regarding their net-worth even though the same is false. As shall be discussed subsequently, the accused persons had prima facie dishonestly misrepresented about the net-worth of M/s AMR in the feed back form. It thus can not be argued that even though the claim made by them was false but it did not affect the decision of the Screening Committee in any manner. Moreover, at a subsequent stage while discussing the letters written by accused Vijay Darda to various Government authorities, it will become all the more clear that the accused persons were well aware that net-worth is an important criteria being considered by Screening Committee, MOC in making its recommendations.

91. Similarly the issue involved in the present matter prima facie is not of pushing back any other applicant company or preparation of

inter-se priority chart but it is the allocation of a captive coal block in favour of a company which had made false claims as to its net-worth and other factors relating to its status/stage of preparation qua establishment of proposed end use project.

92. It was also argued by Ld. Counsel Sh. Vijay Aggarwal that as the guidelines issued by MOC were not having any statutory force so their violation in any manner can not amount to any degree of criminality. The aforesaid argument is also per se not tenable. MOC was the Nodal Ministry qua allocation of coal blocks. The guidelines which came to be issued alongwith the advertisement were clearly governing the allocation of coal blocks under MMDR Act, 1957 read with CMN Act, 1973. Thus the guidelines were to govern the exercise of discretion by MOC officers. It thus can not be stated that the MOC officers were having unfettered discretion. It was these guidelines which per-se controlled or regulated the exercise of such discretion. The guidelines having been issued by MOC itself were thus clearly binding upon them and it can no be argued even for a prima facie view that MOC officers were not bound by the said guidelines.

93. Coming now to the substantial issues arising in the present matter, I may state at the threshold itself that it being the stage of

charge so this Court is only required to see as to whether a prima face case is made out against the accused persons warranting framing of charge for any offence(s) or not. At this stage neither any detailed analysis of the matter is warranted nor the same is being attempted to. I thus shall be briefly referring to some relevant facts of the prosecution case again over here so that the same may be appreciated in the light of arguments put forth by Ld. Counsels for the accused persons.

94. Admittedly the application in question was submitted to MOC, Government of India, by accused company M/s AMR for seeking allocation of Bander coal block situated in State of Maharashtra for captive use of the coal in their proposed sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. Accordingly the various documents as were annexed with the said application and especially the Detailed Project Report (DPR) was submitted for the said sponge iron plant of 1 MTPA only. In terms of the guidelines issued by MOC governing allocation of captive coal blocks, the balance sheets of the three previous years of applicant company M/s AMR were also annexed with the application. It is also not in dispute that subsequently when on 07.12.2007, the "*Form for feed-back*" was submitted to the Screening Committee on

behalf of accused applicant company M/s AMR alongwith the presentation, then the proposed end use project for whose captive use the coal block in question was requested to be allocated was a sponge iron plant of 2 MTPA capacity to be established in Yavatmal District, Maharashtra. It is also not in dispute that Bander coal block was finally allocated by MOC in favour of M/s AMR, though jointly with two other companies for its proposed sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. [*i.e. the end use plant mentioned in the application.*]

95. From the aforesaid facts, it is thus prima facie clear on the face of record that by virtue of the presentation so made on behalf of the applicant company and the “Form for feed-back” submitted it was clearly conveyed to the Screening Committee, MOC by the representatives of applicant company M/s AMR that the initial proposed sponge iron plant of 1 MTPA capacity to be established in village Tarsi, District Nagpur, Maharashtra was no longer being pursued by the applicant company. It was rather conveyed to the Screening Committee, by the company representatives that what is being proposed to be established by them now is a sponge iron plant of 2 MTPA capacity in District Yavatmal, Maharashtra. The allocation of coal block was being thus sought for captive use in the proposed

sponge iron plant of 2 MTPA capacity to be established in Yavatmal District, Maharashtra. Thus if the said proposal of the applicant company M/s AMR is seen then it is found that no DPR with respect to said sponge iron plant of 2 MTPA capacity as was required to be submitted in terms of the guidelines issued by MOC governing allocation of captive coal blocks was submitted by the company. However Screening Committee headed by Sh. H.C. Gupta (A-5) for reasons best known to it still proceeded ahead to recommend allocation of a coal block in favour of applicant company for its proposed sponge iron project of 1 MTPA capacity to be established in Village Tarsi, Nagpur, Maharashtra.

96. At this stage, it will be appropriate to first reproduce the relevant portion of the guidelines issued by MOC wherein the documents which were to be annexed with the applications were mentioned.

The relevant guidelines *inter alia* read as under:

"GUIDELINES FOR ALLOCATION OF CAPTIVE BLOCKS & CONDITIONS OF ALLOTMENT THROUGH THE SCREENING COMMITTEE

A. GUIDELINES

Applications for allocation of coal blocks for captive mining for the specified end uses shall be made to the

Director (CA-I) 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 Section 3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the Company. (1 copy).

Document showing the person/s who has/have been authorised to sign on behalf of the applicant company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company. (5 copies)

Certified copy of the Memorandum and Articles of Association of the applicant Company. (5 Copies)

Audited Annual Accounts/reports of last 3 years (5 copies).

Project report in respect of the end use plant. If the report is appraised by a lender, the appraised report shall also be submitted. (5 Copies)

Detailed Schedule of implementation (milestones and time-line for each milestone) for the proposed end use project and the proposed coal mining development project in the form of bar charts (5 copies). However, the overall time-frame proposed should not exceed the normative time ceiling prescribed.

Detailed schedule of exploration (milestones and time-line for each milestone) in respect of unexplored blocks. However, the overall time-frame proposed should not exceed the normative time ceiling prescribed.

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 middlings, tailings, fines, rejects, etc. from the washery are proposed to be put. (5 copies)

Demand draft for Rs. 10,000/- in favour of PAO, Ministry of Coal

payable at New Delhi.

A Soft Copy of details, as filled in the Application Form, is also to be furnished in the specified Database Form (in MS-Excel format) in a CD along with the Application.

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

(Emphasis supplied)

97. It would be also worthwhile at this stage to reproduce the offer/option letter dated 23.12.2008 as was issued by MOC to M/s AMR regarding joint allocation of Bander coal block (available at page 122-123 in D-31). The same read as under:

**No. 38011/2/2007-CA-I
Government of India
Ministry of Coal**

.....

New Delhi, dated the 23rd December, 2008.

To

(1) M/s AMR Iron & Steel Pvt. Ltd.,
178-C, Light Industrial Area,
Bhilai-49026., Madhya Pradesh

(2) M/s Century Textiles & Ind. Ltd.,
Post Gadchandur, Dist. Chandrapur
Maharashtra-442908

(3) M/s J.K. Cement Ltd.,
Kamla Tower, Kanpur-208001 (U.P.)

Subject: *Allocation of **Bander** coal block in the State of Maharashtra for captive mining of coal by M/s AMR Iron & Steel Pvt. Ltd., M/s Century Textiles & Ind. Ltd. and M/s J.K. Cement Ltd. - Calling of Options thereof.*

Sir,

I am directed to inform that Government is contemplating to make joint allocation of **Bander** non-coking coal block in the State of Maharashtra for captive mining of coal by **M/s AMR Iron & Steel Pvt. Ltd.**, **M/s Century Textiles & Ind. Ltd.** and **M/s J.K. Cement Ltd.** for meeting their proportionate share of requirement of coal. Based on the total geological reserves and requirement of coal as assessed by CMPDIL tentative proportionate share of reserves is indicated in the table below:-

S. No.	Name of the Block, Exploration Status and UG/OC	Geological Reserves (MT)	Name of Company	EUP Capacity (in MTPA) and location	Share (In MT)	Requirement of Coal (Per annum MTPA)
1	Bander (E, UG)	126.11	1. AMR Iron & Steel Pvt. Ltd.	0.3 (Vill. Tarsi, Nagpur, Maharashtra)	31.53	0.48
			2. Century Textiles & Ind. Ltd.	12.7 (Chandrapur, Maharashtra)	47.29	0.72
			3. J.K. Cement Ltd.	7.3 (Vill. Mudhapur, Taluka Mudhol, Bagalkot, Karnataka)	47.29	0.72

2. In case of joint allocation, the block can be mined by the joint allocatees under any of the three options as given below:-

Option I:- The mining be carried out in consortium of two or more allocatees in any given block by constituting a joint venture/special purpose vehicle company wherein there would be equity stake and management participation from all the consortium partners. The production from the mine could be distributed among the consortium partners in proportion to their assessed requirement at the time of allocation, net of linkages, if any. The equity shares should be held in proportion to the assessed requirement of all the consortium partners.

Option-II: *In this option, one allocatee company would be designated as the leader for the block and other allocatees would be designated as the associates for that block. The allocation would be made to the leader and the associates but the mining lease will be granted to the leader, all investments will be made by the leader, all mining operations will be carried out by the leader and the production from the mine will be shared between the leader and the associates in the ratio of their respective assessed requirement at the time of allocation. The price at which the coal will be given to the associates would be determined by the Central Government/its agency and would be called the 'transfer price'.*

Option-III: *In this option, for each block one allocatee would be chosen as the leader and other allocatees as associates. The allocation will be made to the group of leader and associates jointly but the mining lease of each block would be given to the designated leader who would make the investment and carry out the mining operations. The production from the mine will be shared between the leader and the associates in proportion to their actual requirement/assessed requirement at the time of allocation, whichever is less. In this option, the local CIL subsidiary company will have a role to play. They would arrange the transfer of coal from the leader to the associates as per the ratio determined at the time of allocation, at a price to be determined by the Central Government/its agency. The CIL subsidiary would be permitted to charge some nominal service charges.*

3. *In accordance with the three options as indicated above, the joint allocatees may discuss the modalities mutually acceptable to them and finalise a legally binding and enforceable agreement, opting for any one of the above mentioned three arrangements. The agreement should be in conformity with the provisions of the Coal Mines (Nationalisation) Act, 1973 and the guidelines issued in this regard. The agreement may cover, inter-alia, issues such as share in equity, production sharing, rights and liabilities, penalties etc. In case Option III is preferred, then a tripartite agreement between the leader, associates and the local Coal India subsidiary such that no liability devolves on the local CIL subsidiary in any case including in case of no or less production by the leaders or no or less offtake by the associates, and CIL subsidiary is fully indemnified against any liability, has to be entered into.*

4. *You are required to exercise the requisite option and to submit an agreement, duly signed by all the parties concerned and legally tenable, to this Ministry within 30 days from the date of issue of this letter. In case no*

response is received within the stipulated time, the Government reserves the right to reconsider allocation of block to the contemplated allocatees.

*Yours faithfully,
Sd/-*

(V.S. Rana)

Under Secretary to the Govt. of India.

(Emphasis supplied)

98. In fact in the recommendation sheets of the Screening Committee the location of the end use project was not at all mentioned and what was mentioned over there was that company M/s AMR is being recommended for joint allocation of Bander coal block for captive use for its project in Maharashtra. The end use project capacity was however only mentioned as 0.3 MTPA in the recommendation sheets, since the same was in accordance with the guidelines proposed by Ministry of Steel and as were earlier conveyed by them to MOC alongwith their recommendations. Subsequently, in the note dated 10.07.08 as was prepared by CA-I Section while processing the minutes of 36th Screening Committee for seeking approval of Prime Minister as Minister of Coal, the capacity of the end use project as per the application dated 10.01.2007, initially submitted by M/s AMR was stated, as 1 MTPA and the capacity in terms of the MOU entered with the State Government as 0.7 MTPA. The capacity in terms of the guidelines of Ministry of Steel was also

stated as 0.03 MTPA. The location of the plant was however clarified over there and was stated as Village Tarsi, Nagpur. The said note after having been routed from the desk of Sh. V.S. Rana, Under Secretary, MOC, Sh. K.C. Samria, Director, and Joint Secretary, Coal Sh. K.S. Kropha went to the desk of Secretary Coal Sh. H.C. Gupta and who vide his note dated 14.07.2008 forwarded it to Minister of State for Coal and who by appending his signatures dated 14/7 further forwarded it to Prime Minister as Minister of Coal. Finally it was the said recommendations of 36th Screening Committee as were processed in MOC vide the aforesaid notings that came to be approved by Prime Minister as Minister of Coal though subject to MOC satisfying itself that in case of allocatees who have been allotted coal block earlier, there has been no undue delay in development of those blocks by them.

(I shall be however dealing with the aforesaid issue of past performance of the allocatee companies qua coal blocks, if earlier allotted to them separately at a later stage of the present order and especially with regard to the role of three accused public servants.)

99. Accordingly, in the offer/option letter dated 23.12.2008 as was

issued by MOC in favour of the three joint allocatee companies, the end use plant of M/s AMR for whose captive use Bander coal block was offered to be allocated was stated as the proposed 1 MTPA sponge iron plant to be situated in Village Tarsi, District Nagpur, Maharashtra. The company M/s AMR alongwith the other two joint allocatee companies i.e. M/s Century Textiles Industries Ltd. and J.K. Cement Ltd thereafter entered into a joint venture agreement while also making the said offer/option letter dated 23.12.2008 a part of the said joint venture agreement and subsequently submitted the same to MOC. After the said communication of the joint allocatee companies was processed in MOC, a final allocation letter was issued by MOC in favour of the three joint allocatee companies including M/s AMR.

100. From the aforesaid factual matrix it thus becomes prima facie clear that while giving its presentation and submitting the feed-back form, the applicant company M/s AMR had conveyed to the Screening Committee and thereby to MOC that they are no longer pursuing the earlier stated end use project i.e. sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. In fact this intention of the applicant company becomes evident even from the other actions of the accused company M/s AMR i.e. post submission of its application to MOC. The company

M/s AMR had been making a number of communications with Government of Maharashtra stating that they intend to establish a sponge iron plant of 2 MTPA capacity in Yavatmal District, Maharashtra. All such communications were completely silent as regard the earlier proposed sponge iron plant of 1 MTPA capacity to be situated in Village Tarsi, District Nagpur, Maharashtra. It was also not disclosed by the company that in their application submitted to MOC, Government of India they have mentioned about the proposed end use project to be a sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. Thus irrespective of the correctness or otherwise of the various claims made in the feed-back form or in the presentation made before the Screening Committee i.e. as regard the availability of land or as regard the status of company M/s AMR being a SPV of Lokmat Group and IL & FS or not, it is prima facie clear that the applicant company M/s AMR had dropped the idea of establishing its initial proposed end use project i.e. sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. The company as per its own case was making all effort to establish its proposed sponge iron plant of 2 MTPA capacity in Yavatmal District, Maharashtra.

(At a later stage of the present order I shall be also dealing with the other issues i.e. as to whether the various claims made in the feed-back form or in the presentation even as regard sponge iron plant of 2 MTPA capacity proposed to be established in Yavatmal district were also correct or not.)

101. In these circumstances accused H.C. Gupta who was not only Chairman, Screening Committee but was also Secretary (Coal), can not prima facie claim that subsequent to making the presentation by the representatives of applicant company M/s AMR and submission of “Form for feed-back”, it did not become clear to him that the applicant company is no longer interested in establishing the proposed end use project i.e. sponge iron plant of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra as was mentioned in their application, or that it was now proposing to establish a sponge iron plant of capacity 2 MTPA in Yavatmal District, Maharashtra. It is however beyond comprehension as to how in such a scenario the company M/s AMR came to be allotted Bander Coal block by MOC for captive use in the proposed sponge iron plant of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra. It is also an undisputed fact that there was no explanation on the part of the applicant company either in the feed-back form or in the presentation regarding the earlier proposed

end use project to be established in Village Tarsi, District Nagpur, Maharashtra.

102. At this stage it would be also pertinent to point out yet another interesting feature of the present case. Though the feed-back form and the presentation submitted to the Screening Committee stated the proposed end use project as a sponge iron plant of 2 MTPA capacity to be established in Yavatmal District, Maharashtra but no DPR of the said proposed end use project was submitted by the company. At the same time if claim of the applicant company M/s AMR that it was a SPV of Lokmat Group and IL & FS is presumed to be correct and more so when the figures of turn-over, profit and net-worth of Lokmat Group and IL & FS were being used then the balance sheets much less audited of the two entities also ought to have been submitted by the applicant company.

Thus apparently the application of M/s AMR ceased to be valid and complete in terms of the guidelines issued by MOC governing allocation of captive coal blocks and accordingly warranted its outright rejection at least in the Screening Committee.

103. It is in the light of aforesaid facts the argument of Ld. Counsel

for applicant/accused company that by not recommending allocation of bander coal block in favour of M/s AMR for its captive use in the proposed end use project i.e. sponge iron plant of 2 MTPA capacity in Yavatmal District, Maharashtra, the Screening Committee did not consider the feed-back form or the presentation and thus did not rely upon any claim(s) made over there, needs to be considered.

104. However, the important question which crops up for consideration in these circumstances is as to how the Screening Committee headed by Secretary Coal, H.C. Gupta preferred to recommend M/s AMR for allocation of Bander coal block for captive use of the coal in its proposed end use project of 1 MTPA capacity to be established in Village Tarsi, Nagpur. The said project was undisputedly not being implemented by the applicant company. The larger issue which thus arises for consideration is where the coal to be produced from the said coal block was going to be used by the applicant company. It is an undisputed case that the coal blocks were being allocated by MOC, Government of India for captive use only and thus we have a scenario where a coal block was allocated in favour of company M/s AMR for its captive use in an end use project which was clearly not being established by the company.

105. At the same time the company M/s AMR also continued to accept the said allocation of coal block for its sponge iron plant of 1 MTPA capacity in Village Tarsi, District Nagpur, Maharashtra knowing fully well that it was no longer pursuing the establishment of the said project and instead it was now proposing to establish another sponge iron plant of 2 MTPA capacity in Yavatmal District, Maharashtra. Upon receipt of offer/option letter dated 23.12.2008 in this regard from MOC, the company M/s AMR continued to proceed ahead by entering into a joint venture agreement with the other two joint allocatee companies and even made the said option/offer letter dated 23.12.2008, a part of said joint venture agreement. The company in fact subsequently on the basis of said joint venture agreement even succeeded in obtaining the final allocation letter qua bander coal block in its favour.

106. Thus, the aforesaid factual matrix irrespective of the fact whether the various claims made in the application form or in the feed-back form or in the presentation were correct or not, prima facie indicate the existence of a criminal conspiracy amongst the accused/applicant company M/s AMR and its accused director and representatives and accused H.C. Gupta who was not only Chairman, 36th Screening Committee but was also Secretary, Coal,

so as to cheat MOC, Government of India with a view to obtain allocation of a coal block, an important nationalised natural resource of the country in favour of company M/s AMR. The coal block though was allotted for captive use in the proposed sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra but prima faice it is clear that H.C. Gupta, Secretary, Coal and Chairman, Screening Committee knew fully well that no such end use project was going to be established by the company M/s AMR. At the same time the coal generated from Bander coal block could not have been used in the sponge iron plant of 2 MTPA capacity to be situated in Yavatmal District, Maharashtra as the coal block was not allotted for captive qua in the said end use project. Moreover, on account of requisite documents having been not submitted by the applicant i.e. DPR and the audited balance sheets of its promoters whose turn-over, profit and net-worth was being used so in accordance with the guidelines issued by MOC, the application of the company M/s AMR ought to have been rejected being incomplete.

Thus, prima facie it is a classic case of criminal conspiracy hatched by the accused persons knowing fully well that there is not going to be any end use project in which the coal

generated from Bander coal block would be utilized.

107. Before proceeding ahead, I would also like to mention that it was vehemently argued by Ld. Counsels for the accused persons that accused H.C. Gupta was though Secretary Coal and Chairman Screening Committee but he alone can not be singled out by the prosecution to face the present trial while leaving the other members of Screening Committee or other officers of MOC involved in the process.

108. In this regard it would be suffice to state that while no accused can claim that he alone ought not to be prosecuted if the other persons involved are not being prosecuted but even otherwise I am of the considered opinion that if during the course of trial sufficient incriminating evidence warranting involvement of other Screening Committee members or other officers of MOC comes on record then the law will certainly take its own course against them also. Moreover, as earlier pointed out in the recommendation sheets prepared in the Screening Committee the location of the end use project for which company M/s AMR is being recommended was even not mentioned.

109. Furthermore the accused company knowing fully well that it is

not going to establish any sponge iron plant of 1 MTPA capacity in village Tarsi, Nagpur still continued to pursue its application seeking allocation of a coal block for captive use of the coal in the said proposed end use project and even subsequently also accepted the allocation of coal block for the said end use project and thereby the dishonest intention on the part of company M/s AMR is prima facie writ large on the face of record.

Thus prima facie charge for the offence u/s 420 IPC is made out against accused company M/s AMR on this score alone.

110. In fact the intention to cheat MOC, Government of India existed on the part of M/s AMR right from the initial stage itself. A bare perusal of "Terms of Reference" (D-180) i.e. a document of IL & FS shows that as early as on 10.01.2007 talks were being held between Abhijeet Group and IL & FS IDC. The said transaction approval memorandum talks of two companies of Abhijeet Group i.e. Inertia Iron and Steel Industries Pvt. Ltd. (IISIPL) and M/s AMR. While it has been mentioned that IL & FS IDC has entered into an MOU with IISIPL on 08.01.2007 for development of 1000 MW captive coal mine based power project in Jharkhand/Orissa/West Bengal but as regard M/s AMR it is mentioned that IL & FS IDC would be appointed as

project development Adviser and Fund Arranger also qua 2 MTPA integrated steel plant to be established by M/s AMR Iron & Steel Pvt. Ltd. in Maharashtra.

A reference to the aforesaid document is being made only for the purpose that as early as on 10.01.2007 itself i.e. at the time of submission of application to MOC by M/s AMR, the proposed sponge iron project which was being contemplated to be established was 2 MTPA sponge iron plant in Maharashtra. It further shows that there has never been an intention on the part of M/s AMR to establish 1 MTPA sponge iron plant anywhere in Maharashtra much less in Village Tarsi, District Nagpur, Maharashtra. Certainly, it would be a matter which can be better understood during the course of trial only as to in what circumstances M/s AMR then chose to mention its proposed end use project in its application dated 10.01.2007 submitted to MOC as sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. I thus do not intend to go into any further analysis or discussion on this issue at this stage of the mater except that the malafide intention on the part of M/s AMR to cheat MOC, Government of India so as to procure allocation of a captive coal block in its favour is prima facie evident right from the date of submission of its application dated 10.01.2007

to MOC.

111. In this regard, it would be also pertinent to refer to certain observations of Hon'ble Supreme Court made as regard the offence of cheating in the case **Iridium India Telecom Limited Vs. Motorola Incorporated and Ors. (2011) 1 Supreme Court Cases 74.**

"67. The next important question which needs to be examined is as to whether the averments made in the complaint if taken on their face value would not prima facie disclose the ingredients for the offence of cheating as defined under Section 415 IPC. The aforesaid section is as under:-

"415. Cheating.— Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to 'cheat'.

Explanation.— A dishonest concealment of facts is a deception within the meaning of the section."

68. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that

person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a mis-representation of facts leading to deception.”

112. I shall be now dealing with the correctness or otherwise of the various claims made by the company to the Screening Committee, MOC, Government of India at least for a prima facie view. I shall be also dealing with the role played by various accused persons in the entire process.

113. As regard the claim made in the “*Form for feed-back*” submitted to Screening Committee and also in the presentation made before the Screening Committee that applicant company M/s AMR was a SPV of Lokmat Group and IL & FS, I may simply state that the very claim of Ld. Counsel Sh. Vijay Aggarwal who is representing four accused persons i.e. Manoj Kumar Jayaswal, Vijay Darda, Devender Darda and M/s AMR, is that there was an oral understanding between

the parties that the end use project in question shall be established jointly by Lokmat Group and IL & FS through M/s AMR. Ld. Defence Counsel has sought to buttress his aforesaid argument by stating that as the director of Lokmat Group Devendra Darda alongwith officers of IL & FS was present at the time of presentation made before the Screening Committee so their intention of joining hands together in establishing the end use project of 2 MTPA in Yavatmal District, Maharashtra is clearly apparent. He also submitted that the "*Form for feed-back*" was though signed by accused Devendra Darda as Director but in fact he signed it as Director of Lokmat Group and not as that of M/s AMR and thereby again implying that Lokmat group was associated with M/s AMR and IL & FS in establishing the proposed end use project.

114. In this regard it would be suffice to state that a bare perusal of the "*Form for feed-back*" (*as has been reproduced in the earlier part of the present order*) clearly show that accused Devendra Darda did not disclose anywhere that he is signing the same as Director of Lokmat Group and not that of M/s AMR. Accordingly, there was no reason before the Screening Committee to even presume for the sake of arguments and especially in the light of claims made in the "*Form for feed-back*" or in the accompanying presentation made, that

accused Devendra Darda was signing the “*Form for feed-back*” as Director of Lokmat Group and not as Director of applicant company, M/s AMR. In fact a bare perusal of the information furnished in Clause 1 of “*Form for feed-back*” shows that it was nowhere stated that Lokmat Group and IL & FS intend to join M/s AMR as promoters and that no such agreement has yet been arrived at between them. Though Ld. Counsel for accused persons has also sought to argue that in the presentation made before the Screening Committee on the page where figures of the turn-over, profit and net-worth of Lokmat Group and IL & FS were mentioned. The following sentence was also mentioned at the top of it:

“The combined financials of proposed promoters for the last four years are as under:”

115. It was thus argued that from the very said fact mentioned in the presentation, it was clear that Lokmat Group and IL & FS were “*proposed promoters*”. In this regard, it would be suffice to state that when the aforesaid sentence is read in the light of information furnished in the “*Form for feed-back*” and the overall presentation given then it can not be even prima facie presumed to be conveying the information that Lokmat Group and IL & FS only intend to join M/s AMR in establishing the said project and that they have not yet

joined together to establish the said project. The very first page of the presentation mentions the name of M/s AMR as being SPV of Lokmat Group and IL & FS. Thereafter, on the fourth page of the presentation where the title "*Projects Proponents*" is mentioned, the following sentence was mentioned at the top.

"The socially motivated project is being implemented by Lokmat Group and IL & FS through AMR Iron & Steel Pvt. Ltd."

116. Further more on the page where the figures of turn-over, profit and net-worth of Lokmat Group and IL & FS is mentioned, it was stated that the "present net-worth is Rs. 1821.64 crores". Thus once again the mentioning of said figure prima facie conveys that M/s AMR is a SPV of Lokmat Group & IL & FS and for the said reason only the figures of turn-over, profit and net-worth of the said two entities was being used.

117. Strangely enough it was also argued by Ld. Counsel for accused that on all the pages of the presentation the name of M/s AMR, Lokmat Group and IL & FS was mentioned. It was thus submitted that if in the light of said facts the presentation is read alongwith the "*Form for feed-back*" then prima facie it is clear that both the documents simply conveyed only one fact that the applicant

company M/s AMR is a SPV of Lokmat Group and IL & FS. It was submitted that the mentioning of names of all the three entities on each page of the presentation in fact conveyed the same belief.

118. In this regard, I may also state that Ld. defence Counsel is trying to blow both hot and cold in as much as he is referring to one page of the presentation to show that the words "*Proposed Promoters*" was mentioned over there so as to argue that no agreement in writing was yet arrived at between the three entities to establish the proposed end use project through their SPV, M/s AMR. On the other hand, Ld. defence Counsel is referring to other pages of the presentation by stating that the logo of all the three entities was there on each page and thereby arguing that in fact they all had joined hands to establish the proposed end use project through their SPV, M/s AMR and therefore figures of turn-over, profit and net-worth of the said entities was used in the "*Form for feed-back*" and the presentation. Undisputedly there was no written agreement entered into between the three entities in this regard. One other agreement stated to have been entered into between M/s AMR and IL & FS even if is presumed for the sake of arguments as one such supporting document then also the absence of any such agreement between Lokmat Group and IL & FS or between M/s AMR and

Lokmat Group much less any agreement jointly executed by the three entities prima faice shows the falsity in the said claim made in the “*Form for feed-back*” and also in the presentation.

119. However, at this stage I do not wish to go into any further length of the said issue as any further detailed analysis in the light of detailed arguments put-forth by Ld. Counsel Sh. Vijay Aggarwal while seeking discharge of the accused persons, will clearly amount to holding of a mini-trial and which course of action is neither warranted nor permissible under law. Such a course without first giving both the sides i.e. prosecution and the accused persons a chance to prove their respective claims will certainly be contrary to the well settled provisions of law.

120. There is yet another aspect of the matter. The alleged joining of hands by Lokmat Group and IL & FS for establishing the end use project through their SPV, M/s AMR was towards establishing the sponge iron plant of 2 MTPA capacity in Yavatmal District, Maharashtra. However as already discussed at length no such application for allotment of a coal block for captive use of coal in the said proposed sponge iron project of 2 MTPA capacity was at all submitted by M/s AMR to MOC. Admittedly the three entities did not

join hands to establish the sponge iron plant of 1 MTPA capacity in Village Tarsi, Nagpur, Maharashtra.

121. As regard the other submission of Ld. Counsel Sh. Vijay Aggarwal that accused Devendra Darda signed the “*Form for feed-back*” as Director of Lokmat Group and not that of M/s AMR, I have already discussed above that there is nothing in the “*Form for feed-back*” or in the presentation which could even prima facie show that the Screening Committee could have even presumed much less believed that accused Devendra Darda has signed the “*Form for feed-back*” as Director of Lokmat Group and not that of applicant entity i.e. M/s AMR. In fact in accordance with the guidelines issued by MOC, Government of India every applicant company was required to appoint some authorised representative. The purpose of getting the authorised representative appointed by every applicant company was that all the documents should be submitted through the authorised representative and also that MOC or other Government entities could communicate with the said authorised representative in case of need. However one may argue that in the absence of authorised representative, any director of the applicant company could have also submitted documents to MOC or to other government entities under his signatures or could interact with them.

122. However taken either way it is an undisputed fact that accused Devendra Darda was neither an authorised representative of M/s AMR as no such board resolution was passed in his favour and also he was not even a director of M/s AMR. In these circumstances, it is thus prima facie clear that accused Devendra Darda by signing the “*Form for feed-back*” as director sought to misrepresent before the Screening Committee claiming himself to be a director of applicant company M/s AMR and thereby also misrepresented various facts as have been discussed above both in the “*Form for feed-back*” and in the presentation.

123. Ld. Counsel Sh. Vijay Aggarwal however also argued that the factum of signing of “*Form for feed-back*” by accused Devendra Darda did not in any manner induced Screening Committee in arriving at its recommendations and thus even if the said claims were false the same were of no consequence.

124. In this regard, it would be suffice to state without going into any length of the issue that from the overall facts and circumstances, it is prima facie clear that when any such “*Form for feed-back*” alongwith presentation was submitted to Screening Committee then the Screening Committee was bound to consider the information

mentioned in the two documents as true and correct under the belief that the same is being submitted by the Director of the company. Thus prima faice it would be entirely wrong to state that this wrongful concealment of true fact or in other words mis-representation was not deception under Section 415 IPC.

125. As regard the allegation that M/s AMR represented to the Screening Committee in the “*Form for feed-back*” that 370 acres of land has been allotted to it by MIDC in Yavatmal Industrial area and acquisition of balance land in MIDC is in progress, I may state at the outset that the said claim was also found to be false during the course of investigation. Ld. Counsel Sh. Vijay Aggarwal however argued that the said land was earlier allotted by MIDC in favour of another group company of M/s AMR i.e. M/s JLD Yavatmal Energy Ltd. as the said company intended to establish a power project in Yavatmal District, Maharashtra. He further submitted that the said power project had to be shifted to Chhatisgarh state since the coal block allotted by 35th Screening Committee, MOC to the said company was situated in Chhatisgarh state and not in Maharashtra. It was thus submitted that the said land was clearly available to M/s AMR for establishing the proposed sponge iron project. It was submitted that MIDC was primarily interested in ensuring

establishment of some industrial project in the backward district of Yavatmal, Maharashtra and thus it was immaterial whether a power project or a steel project was being established over there.

126. In this regard it would be pertinent to mention that once again Ld. Counsel for the accused has tried to play both hot and cold in his written submissions. While arguing that 370 acres of land as was claimed to be in possession of company M/s AMR was one which was earlier allotted by Maharashtra Industrial Development Corporation (MIDC) in favour of its group company i.e. M/s JLD Yavatmal Energy Pvt. Ltd., it was however also argued by Ld. Counsel at a different place in the same written submissions, that the meaning of "*Group Company*" has not been defined anywhere much less by MOC in the guidelines issued by it. He thus argued that in the absence of there being no proper definition of word "*Group Company*" the prosecution can not allege that the information about previous allocation of coal blocks as was sought in the initial application form was false.

127. Ld. Counsel for accused has however not put-forth any submission as to in what circumstances or on what basis M/s JLD Yavatmal Energy Pvt. Ltd. was considered by M/s AMR as its "*Group*

Company". The said issue will crop up at a later stage of the present order also when the issue of acquisition of 26% equity in a company of Abhijeet Group by a company controlled by accused Vijay Darda and Devendra Darda shall be discussed. It has been prima facie evident from the records that they acquired 26% stake in one other "*Group Company*" of M/s AMR i.e. in M/s Jas Infrastructure Ltd. as on account of some dispute in the Jayaswal family headed by Basant Lal Shaw i.e. father of Manoj Kumar Jayaswal, no such equity could be granted to Vijay Darda and Devendra Darda in M/s AMR. The sole purpose of referring to the aforesaid submissions of Ld. Counsel for accused is simply to highlight that not only the concept of Group/Associate company was well understood by the accused persons but they themselves are now trying to justify their claim of 370 acres of land being in their possession by relying on a land earlier allotted by MIDC to M/s JLD Yavatmal Energy Ltd. stating it to be their group company.

128. Coming back to the said claim of 370 acres of land as mentioned in the "*Form for feed-back*", it would be suffice to state at this stage that as per the arguments put-forth by Ld. Counsel for accused himself, the said land of 370 acres was allotted to another company M/s JLD Yavatmal Energy Ltd. Certainly the said company

was a separate legal entity and the land in question was allotted to it by MIDC for establishing a power plant. It is however the case of the accused persons themselves that on account of allotment of a coal block in favour of M/s JLD Yavatmal Energy Ltd. by 35th Screening Committee, MOC, in Chhatisgarh state, the company had to shift the proposed power plant from Yavatmal, district, Maharashtra to Chhatisgarh state. Though it has been argued that M/s AMR had written to MIDC stating that it now intends to establish a steel plant on the said land but from the overall facts and circumstances, it is clear that as on the date of submission of "*Form for feed-back*" and the presentation made before the Screening Committee or even subsequently when the allocation of Bander coal block was made in favour of M/s AMR no such land measuring 370 acres in Yavatmal District, Maharashtra was either in possession of applicant company M/s AMR or was even allotted by MIDC in favour of M/s AMR. The said claim was thus prima facie false. At the same time from these very facts and circumstances, it also becomes clear that as on the date of submission of the "*Form for feed-back*", the company M/s AMR was well aware that a coal block has since been allocated to one of its group company and thus again in the "*Form for feed-back*", it was reiterated that no previous coal block has been allocated.

Though Ld. Counsel for accused company M/s AMR has sought to argue that in the “*Form for feed-back*”, no information about the group company was sought but prima facie the information to be furnished in the “*Form for feed-back*” was to be provided in continuation of the initial application form. Thus it is prima facie clear that the information furnished in the “*Form for feed-back*” in this regard was also not correct.

129. Prosecution has however argued that other group companies of M/s AMR were also earlier allocated coal blocks. They also sought to rely upon such a claim made by Harshad Popali, representative of M/s AMR who attended the meeting held on 18.09.2008 in the office of Minister of state for coal subsequent to conditional approval of recommendations of 36th Screening Committee by Prime Minister as Minister of Coal. Certainly as regard the said other coal blocks there has been no explanation by the accused persons.

130. Thus in the light of claims made by the accused persons in their written submissions itself, the contention of prosecution that company M/s AMR misrepresented about 370 acres of land being in its possession or about earlier allocation of coal blocks to group companies is not without force. It would be thus suffice to state at this

stage that a triable issue in this regard has cropped up which certainly warrants that both the sides be given an opportunity to lead their respective evidence during the course of trial.

131. As regard the claim made in the “*Form for feed-back*” and the presentation made before the Screening Committee that arrangement for water has been made from Irrigation Department, Maharashtra from Wardha river, Ld. Counsel has sought to rely upon a letter dated 03.12.2007, issued by Assistant Chief Engineer, Water Resources Department, Nagpur addressed to M/s AMR. In the said letter it has been stated that water requirement of the company for its 2 MTPA integrated steel plant proposed in Yavatmal District, Maharashtra, may be made from Wardha river. However, a bare perusal of the said communication shows that the company was asked to submit the proposal for obtaining water availability certificate of the competent authority in this regard. Thus, the claim made in the “*Form for feed-back*” regarding water that the same has been tied up from Irrigation Department, Maharashtra from Wardha river prima facie appears to be wrong as the company M/s AMR was yet to submit a proposal to the concerned department in Maharashtra and thereafter the department would have considered issuance of necessary certificate. Thereafter only, it could have been stated by the company M/s AMR

that the water has been tied up from Irrigation Department Maharashtra from Wardha river.

In this regard it would be also worthwhile to mention that the said communication was also qua the proposed 2 MTPA sponge iron plant to be established in Yavatmal District, Maharashtra. Moreover, in the application dated 10.01.2007 submitted to MOC as regard water, it was stated that permission from Maharashtra Government for withdrawal of water from Vena river is being obtained.

132. As regard the submission of Ld. Counsel Sh. Vijay Aggarwal that net-worth was not a criteria either relevant or considered by the Screening Committee, it would be suffice to state that the letters written by accused Vijay Darda on behalf of M/s AMR clearly contradicts the said claim. The same shall be further discussed hereinafter while discussing the role played by accused Vijay Darda.

133. There are on record a number of communications made by accused Vijay Darda on behalf of M/s AMR with Government of Maharashtra or to the Prime Minister. In the said communications which though have been written by him on his letter head of Member

of Parliament, the aforesaid claims regarding availability of 370 acres of land with the company in Yavatmal District, Maharashtra or water having been tied up have been reiterated. He also stated that the proposed project is being established in Yavatmal district, Maharashtra by Lokmat group, IL & FS and M/s AMR Iron & Steel Pvt. Ltd. He thus reiterated the said misrepresentations in his communications also. He in fact also mentioned the following facts in his communication dated 04.02.2008 addressed to Government of Maharashtra:

*“ In this context, I would again like to bring your kind notice that the allocation of coal block is made on the basis of Net Worth and Project Preparedness of the company. **With Net Worth of Rs. 1822 Crores and profit of Rs. 645 Crores, we are eligible for allocation of Bander Coal Block on merit basis.**”*

(Emphasis supplied)

134. Thus from the aforesaid facts it is clear that not only Vijay Darda was writing the said letter as a representative of M/s AMR, as he himself was chairman of Lokmat Group but he was also using his position as Member of Parliament so as to influence the concerned public servants.

135. For the purpose of ready reference some of such communications have been reproduced hereunder:

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member

Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

AMR/ISP/08/58

February 04, 2008

Sub:- Development of Yavatmal District in Maharashtra through industrialization:

Joint implementation of a socially motivated 2 mtpa Integrated Steel Plant by Lokmat Group, IL&FS Group and AMR Iron & Steel Pvt. Limited.

Respected Sir,

I request you to kindly recall the discussion we had on 26-10-2007 and 6.12.2007 about my larger vision for the development of Yavatmal regionn by setting up an Integrated Steel Complex and Cement Plant apart from the proposed 1215 MW Power Project.

You are kindly aware that due to allocation of coal block in Chhattisgarh in place of Maharashtra for our ambitious powr project, we have left with no other option but to shift thte power plant from Yavatmal.

However, my commitment towards Yavatmal and the poor farmers and unemployed youths of the Region still stands and I expect your whole hearted support for another socially motivated 2 mtpa Integrated Steel Plant of Lokmat Group, IL & FS Group and AMR Iron & Steel Pvt Limited to be set up in Yavatmal.

I take this opportunity to bring your kind notice that the proposed Steel Plant is being set-up with an investment outlay of Rs. 5400 Crores and would be half the size of the Bhilai Steel Plant. You will kindly agree that as the entire landscape o Bhilai Region had transformed after the steel plant came up there, our socially motivated project too would transform the Yavatmal District.

You will appreciate the feasibility of the proposed Steel Plant shall depend on availability of coal from the nearest captive source. For meeting the coal requirement, therefore, we have applied to Ministry of Coal for allocation of Bander Coal block located near to the project site in adjacent Chandrapur District.

In this context, I would again like to bring your kind notice tht the allocation of coal block is made on the basis of Net Worth and Project Preparedness of the company. **With Net Worth of Rs. 1822 Crores and profit of Rs. 645 Crores, we are eligible for allocation of Bander Coal Block on merit basis.**

However, I would like to bring to your kind notice that Ministry of Coal had advertised 23 coal blocks for allocation to Iron & Steel Sector. **But allocation of the coal block other than Bander**

shall again result in shifting of our Steel Plant from Yavatmal as has happened to our Power Project and thus the social motive behind the Steel Plant shall again be jeopardized.

“Yavatmal House”, 49, Lodhi Estate, New Delhi (India)-110003, Phone: +91-11-24601726-27
“Lokmat Bhavan”, Post Box No. :216, Nagpur, Maharashtra (India)-440012, Phone: +91-712-2435145 Fax: +91-712-2435666

E-mail: vijaydarda@lokmat.com/vijaydarda@sansad.nic.in

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member
Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

You will appreciate the Project Preparedness as under:-

1. **The project Report** for the 2 mtpa Integrated Steel Plant is ready and **has been appraised by IL &FS IDC.**
2. **370 Acres have been arranged** in Yavatmal Industrial Area through Maharashtra Industrial Development Corporation; Procurement of balance land through private negotiation in progress.
3. **Permission for drawal of 23.65 MCM water per annum from Wardha River has been obtained** from Water Resources Department, Government of Maharashtra (**Annexure-I**).
4. EPC Contract amounting to Rs. 400 Crores for Sponge Iron Kilns has already been issued to M/s Coastal Ferrotech Pvt. Limited , Kolkata. Negotiations from WHRB are being finalized with M/s SEPCO, China and orders worth Rs. 234 Crores for 78 MW shall be placed shortly.
5. **IL & FS has issued letter for arrangement of Project Finance and has already informed Ministry of Coal, Ministry of Steel and Government of Maharashtra about their participation in the project (Annexure-II, III, IV and V).**
6. Environment Clearance Application for grant of Environment Clearance is under consideration of Ministry of Environment & Forests, Government of India.

You will kindly appreciate that a lot of work has already been done for installation of the 2 mtpa Steel Plant in Yavatmal. Further, **the Government of Maharashtra has strongly recommended the allocation of Bander Block to AMR for its Steel Plant (Annexure-VI).**

I reiterate that the proposed 2 mtpa Steel Plant shall come up in Yavatmal only if Bander Coal Block located near to the Project Site is allotted to AMR Iron and Steel Pvt. Limited.

Bander Block has been categorized as Underground Block & contains coal reserves of 126.105 million tonnes. Considering extraction percentage of 40%, **Bander Block can provide 52.50 % satisfaction level for AMR.**

Considering the importance of this Steel Plant for Yavatmal and to bring the your dream, to see Vidarbha Region prosper, to ground realities, I personally request you to kindly advice Ministry of Steel to recommend and Ministry of Coal to allot Bander Coal Block EXCLUSIVELY to AMR Iron & Steel Pvt. Limited for meeting the coal requirement of its 2 mtpa Steel Plant in Yavatmal.

With warm regards

**Yours sincerely,
Sd/-
(VIJAY DARDA)
05/02/08**

**Dr. Manmohan Singh
Hon'ble Prime Minister
Government of India.**

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E-mail: vijaydarda@lokmat.com/vijaydarda@sansad.nic.in

(Emphasis supplied)

Yet one other letter dated 13.12.2007 written by him to
Hon'ble Prime Minister read as under:

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member

Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PS)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

13th December 2007

Respected Prime Minister

I am thankful to you for your kind letter of 6th December, 2007, acknowledging my letter of 28th of November, 2007, regarding allocation of Bander Coal Block to AMR Iron and Steel Private Limited.

I would sincerely request that this matter may kindly be got expedited and recommendations sent to the Ministry of Coal to allot of Bander Coal Block to AMR Iron and Steel Limited.

With kind Regards,

Yours Sincerely,

Sd/-
(VIJAY DARDA)

Dr. Manmohan Singh,
Hon. Prime Minister of India,
New Delhi.

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E-mail: vijaydarda@lokmat.com/vijaydarda@sansad.nic.in

There is yet one other letter which read as under:

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member

Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

**AMR Iron & Steel Pvt. Limited
(Promoter Lokmat Group)**

The Project

Capacity : 2 mtpa Integrated Steel Plant
Location : Yavatmal, Maharashtra.
Project Cost : Rs. 5439.95 Crores

Co-promoter for the project:

a. *Infrastructure Leasing & Financial Services Limited (IL & FS)*

The 2 mtpa Integrated Steel Plant of AMR is being developed in Yavatmal is one of the poorest and backward districts of Vidarbha Region. It has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. **There is virtually no industry in the district and hence there is no source of alternative employment.**

The various industrial projects proposed in Yavatmal could not come up due to apathy of State Government as well as Central Government towards providing necessary support in terms of availability of required raw material and infrastructure.

Captive Coal Blocks

Ministry of Coal advertised a list of 38 coal blocks, out of which 15 blocks were earmarked for Power Sector, allocation of which has been finalized.

Out of balance 23 blocks earmarked for Steel Sector, following 4 blocks are located in Maharashtra:

- i) Bander (Yavatmal Near)
- ii) Khappa & Extension
- iii) Dahegoan / Makardhokra IV
- iv) Gondkhari
- v)

AMR has applied for allocation of Bander Coal Block located about 60 kms in adjacent Chandrapur District for meeting the requirement of coal for its 2 mtpa Sponge Iron Plant which is part of its Integrated Steel Plant.

Request:

Bander Coal Block may be allocated to AMR for fast track implementation of the Steel Project which is expected to bring the era of industrialization in the most backward Yavatmal District of Vidarbha Region.

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136. The letter dated 24.04.2008, which was written by accused Vijay Darda to Chief Minister, Government of Maharashtra, read as under:

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member
Standing Committee on Finance
Consultative Committee for Ministry of Information & Broadcasting
Consultative Committee for Ministry of Civil Aviation
Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
Railway Convention Committee
Central Consumer Protection Council for Ministry of Consumer Affairs
Organizing Committee of the Commonwealth Games-2010

April 24, 2008.

Sub: Grant of Mega Project Status for 2 mtpa capacity integrated Steel Plant of AMR Iron and Steel Private Limited (AMR) in Maharashtra.
Ref: Our discussions of April 14, 2008 at Nagpur.

Dear Shri Vilasraoji,

I request you to kindly recall the discussions we had on April 14, 2008 at Nagpur regarding the 2 mtpa capacity Integrated Steel Plant of AMR Iron and Steel Private Limited (AMR) being set-up in Yavatmal, Maharashtra.

While expressing my gratitude to the State Government for grant of Mega Status, I brought to your kind notice the following highly **unjust and unfair stipulations in the Grant Letter** regarding the proposed Project:

- For determining investments for payment of Industrial Promotion Subsidy (IPS), the pro rata investment in Power Plant only to the extent of power used for captive purpose and the investment in land used for setting-up plant, will be considered.
- If the Mineral Resources of the State are used, the Project shall not be eligible for payment of IPS.
- The total investment of the project is Rs. 5440 Crores. However the Grant Letter indicates that only investment of first phase of Rs. 1546.84 Crores will be considered for subsidy.

In the past, the State Government has not put such stipulations while signing the Memorandum of Understanding (MOU) with other companies and also the MOUs were signed for the entire proposed investment.

You were kind enough to agree that such stipulations are unjust and unfair and assured me that

same shall be looked into and remedied.

Also, I had discussed this issue with the Hon'ble Industries Minister. I was assured that injustice shall not be done for the 2 mtpa Steel Plant of AMR as it is not merely a Commercial Venture but is being established in **Yavatmal** with social motive.

I reiterate that **Yavatmal District is categorized as a Low HDI District under PSI 2007** and requires immediate industrial development for the economic prosperity of the region.

Lokmat

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E-mail: vijaydarda@lokmat.com/vijaydarda@sansad.nic.in

Vijay Darda
Member of Parliament (Rajya Sabha)
Chairman, Lokmat Group of Newspapers



Member
Standing Committee on Finance
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Consultative Committee for Ministry of Petroleum & Natural Gas (PSI)
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Organizing Committee of the Commonwealth Games-2010

The 2 mtpa Integrated Steel project of AMR shall open the gates of growth and prosperity for the poor farmers and unemployed youths of the region and therefore the State Government should encourage the project by granting enhanced incentives.

It is, therefore, requested to kindly advise the concerned to amend the letter granting approval of Mega Status for 2 mtpa ISP of AMR indicating the total investment of Rs. 5440 Crores and grant of all incentives including IPS.

Also, I personally request you to kindly extend further support of the State Government for the Steel Plant of AMR in Yavatmal by entering into a Memorandum of Understanding at the earliest.
With best regards,

Yours Sincerely,
Sd/-
(VIJAY DARDA)

Shri Vilasraoji Deshmukh
Hon'ble Chief Minister,
Government of Maharashtra,
Mantralaya, Mumbai

CC:

20. Hon'ble Minister, Industry, Energy & Labour Dept., Govt. of Maharashtra.

Lokmat

"Yavatmal House", 49, Lodhi Estate, New Delhi (India)-110003, Phone: +91-11-24601726-27
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E-mail: vijaydarda@lokmat.com/vijaydarda@sansad.nic.in

137. Thus as already discussed, a bare perusal of the aforesaid communications prima faice contradicts the claim of Ld. Counsel for accused Vijay Darda that such kind of communications are routinely made by Members of Parliament for seeking development in their Constituency. In fact in all such communications, the various misrepresentations as have been discussed above have been reiterated in as much as M/s AMR was stated to be a SPV of Lokmat Group and IL & FS. Admittedly accused Vijay Darda himself was Chairman of Lokmat Group and his son Devendra Darda was a Director in the same. In these circumstances by no stretch of imagination can it be presumed even for the sake of a prima facie view that the said letters were routine communications written by Members of Parliament seeking development for their Constituency. In fact it was pursuant to various such communications made by him to Chief Minister of Maharashtra that recommendation in favour of company M/s AMR came to be made by Government of Maharashtra to MOC, Government of India recommending M/s AMR for allocation of Bander coal block for captive use for its proposed capacity of 2 MTPA, sponge iron plant to be established in Yavatmal District, Maharashtra. Thus prima facie it is clear that the status of accused Vijay Darda in the present case, in the light of role played by him can

not be termed to be that of a public servant. It is however all-together a different matter that accused Vijay Darda misused his position being a Member of Parliament so as to influence various Government functionaries with a view to obtain allotment of a coal block in favour of M/s AMR. However, before adverting further, it would be also pertinent to mention that all such communications as were made with different authorities be it in Government of Maharashtra or in other Government departments, were with respect to establishing the proposed 2 MTPA sponge iron plant in Yavatmal District, Maharashtra and not 1 MTPA plant to be established in Village Tarsi, District Nagpur, Maharashtra. It was nowhere disclosed by him that in the application submitted to MOC, the end use project was stated to be a sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra.

In fact there is yet another interesting aspect of the matter which probably might get clarified during the course of trial. Admittedly one copy of the application dated 10.01.2007 of M/s AMR submitted to MOC seeking allocation of Bander coal block was sent by MOC to Government of Maharashtra for its comments/views as not only Bander coal block was situated in Maharashtra but also the proposed end use project of 1 MTPA capacity was to be established

in Village Tarsi, District Nagpur, Maharashtra. Thus the comments/views or recommendations of Government of Maharashtra ought to have come qua the said application and consequently qua the said end use project i.e. sponge iron plant of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra. It is however beyond comprehension as to in what circumstances Government of Maharashtra made recommendations to MOC in favour of M/s AMR with respect to their proposed sponge iron plant of 2 MTPA capacity to be established in Yavatmal District, Maharashtra.

138. The aforesaid issue thus also warrants that the parties deserves to be given a chance to lead their evidence in this regard also.

139. As regard allegations of there being quid-pro-quo to the tune of Rs. 24.6 crores in favour of accused Vijay Darda by accused Manoj Kumar Jayaswal, Ld. Counsel Sh. Vijay Aggarwal has submitted detailed arguments stating that if the alleged money trail is seen alongwith the reverse money trail then it is found that accused Vijay Darda did not benefit in any manner from the said transaction. It was submitted that if the prosecution case in this regard is considered bereft of similar nature of business transactions which are usually

undertaken by business houses to infuse capital in their companies, then it will present a picture whereby accused Vijay Darda is found to have suffered a loss to the extent of 15% interest on the said amount and accused Manoj Kumar Jayaswal is found to have rather benefited in as much as he not only got back the original money but also received interest upon it @ 15%. It was submitted that in a case of quid-pro-quo, the public servants ought to have become richer and the private party extending the said quid-pro-quo ought to have become poorer but the facts and circumstances of the present case presents a reverse picture. It was also submitted that the money which was finally received by M/s Asara Banka Pvt. Ltd. i.e. a company owned and controlled by accused Vijay Darda and Devendra Darda was in fact put in M/s Jas Infrastructure Capital Pvt. Ltd. (M/s JICPL), a Abhijeet Group company, and thereby the money had gone back in the reverse money trail to the same person from where it originated. It was also submitted that the entire transaction was in fact a business transaction and while the amount of money which was received by M/s Asara Banka Pvt. Ltd. from the alleged Abhijeet Group of companies was the liability of the company and was to be returned but at the same time the amount of shares of M/s JICPL with M/s Asara Banka Pvt. Ltd. were the assets of the

company. It was thus submitted that both the liability and assets when considered together make it clear that the same was nothing but was a squared off transaction with M/s Asara Banka Pvt. Ltd. not benefiting in any manner. It was also argued by Ld. Counsel Sh. Vijay Aggarwal that the prosecution has not collected the balance sheets of the intermediatory companies through whom the said money trail moved and so in the absence of the same the said transaction can not be proved by the prosecution. It was further submitted that prosecution has even not collected any documents such as vouchers, ledgers etc or examined Chartered Accountants, Auditors etc of the concerned companies involved in the said transaction and thus the same can not be proved by the prosecution during the course of trial.

140. As regard the aforesaid argument I may state that a bare perusal of the written submissions filed in this regard on behalf of accused clearly shows that there has been no express denial of the flow of money *interse* various companies as has been alleged by the prosecution.

Thus in these circumstances to enter into an analysis of the said transaction vis-a-vis the evidence collected during the course of investigation will be clearly an exercise not required to be

undertaken at this stage of the matter. Such an analysis if carried out at this stage may prejudice both the sides during the course of trial. Both prosecution and the accused persons deserve a chance to prove their respective claims during the course of trial. The fact however remains that there has been money transaction between the companies controlled by accused Manoj Kumar Jayaswal on the one hand and the company controlled by accused Vijay Darda and Devendra Darda on the other hand. Certainly during the course of trial it will be seen as to whether it was a simple business transaction or quid-pro-quo to Vijay Darda for having facilitated M/s AMR in procuring allocation of a coal block from MOC, Government of India. This fact becomes all the more important when it is found that in the agreement entered amongst the family members of Jayaswal family, it was mentioned that anyone who will facilitate in getting the coal block allocated will be given 26% stake in the company. Thus in the overall facts and circumstances of the case as have been discussed above I do not find any necessity at this stage of the matter to deal with the aforesaid issue of quid-pro-quo at any further length. However prima facie from the records, it is clear that on account of facilitating allocation of a coal block in favour of M/s AMR from MOC there has been transfer of money to the extent of Rs. 24.6 crores

from the companies controlled by accused Manoj Kumar Jayaswal to the company controlled by accused Vijay Darda and Devendra Darda. Thus there is sufficient evidence on record which prima facie establishes the involvement of accused Vijay Darda and Devendra Darda in the impugned criminal conspiracy as was hatched by all the accused persons so as to cheat MOC, Government of India in order to obtain allocation of a captive coal block in favour of M/s AMR.

141. In these circumstances other contention of Ld. Counsel for accused that Section 9 P.C. Act 1988 (*unamended Section 9*) has no application to the facts of present case or that proper section ought to have been invoked by CBI or that CBI should have invoked Section 11 P.C. Act (*unamended Section 11*) is also devoid of any merits.

142. Thus at the cost of repetition, I may mention that from the various communications made by Vijay Darda with different Government authorities, it is prima facie clear that though he used his position as Member of Parliament in as much as all the communications were made on his letter head but while so writing the various communications he did not act as such public servant. He in fact agreed to obtain a reward for inducing Government of Maharashtra in making recommendation to MOC for allocation of a

captive coal block in favour of company M/s AMR and that he also persuaded MOC, Government of India to allocate a coal block in favour of M/s AMR by exercise of his personal influence and thus prima facie charge for the offence under Section 9 P.C. Act, 1988 (unamended Section 9 P.C. Act) is made out against him.

143. Coming now to the role of accused Manoj Kumar Jayaswal, it will be worthwhile to mention that Harshad Popali under whose signatures the application in question was submitted to MOC clearly stated that all the information in the application was furnished as per the directions of accused Manoj Kumar Jayaswal. He also stated that the meeting held in the office of Minister of State for Coal Sh. Santosh Bagrodia was also attended by him as a representative of M/s AMR on the directions of Manoj Kumar Jayaswal and the information furnished over there was also as per his directions only. He also stated that after attending meeting in the office of Minister of State for Coal, he went to Nagpur and briefed Manoj Kumar Jayaswal about the proceedings held in the meeting and thereafter the letter dated 22.09.2008 was submitted on behalf of M/s AMR under the signatures of Sh. Somdatt Bhardwaj, yet another employee of Manoj Kumar Jayaswal. Moreover, Harshad Popali was an employee of Corporate Ispat Alloys Ltd. which was a company belonging to

Abhijeet Group of Companies i.e. group of companies owned and controlled by Manoj Kumar Jayaswal. Thus Harsad Popali who was not an employee of M/s AMR, was however roped in to submit the application on behalf of M/s AMR to MOC and to also subsequently attend the meeting in the office of Minister of State for Coal, only because he was an employee of another company controlled and owned by Manoj Kumar Jayaswal. It is also in fact the case of accused persons themselves that 370 acres of land in Yavatmal District, Maharashtra was available with M/s JICPL which again was a group company of Abhijeet Group. However in the statements of various witnesses recorded by the IO u/s 161 Cr.PC, it has been clearly stated that Abhijeet Group was primarily controlled by Manoj Kumar Jayaswal. Further more when the transfer of equity of M/s Jas Infrastructure Capital Pvt. Ltd. to a company controlled by Vijay Darda and Devendra Darda in the light of indenture of family settlement of Jayaswal family, as discussed above took place then also it prima facie shows involvement of accused Manoj Kumar Jayaswal in the entire transaction.

144. In fact Sh. Sanjay Dey, yet another employee of Abhijeet Group of Companies and who signed the joint venture agreement entered into between M/s AMR and IL & FS IDC also stated that the

said agreement was signed by him as per the directions of Manoj Kumar Jayaswal and that too after the contents of the agreement were approved by him. He also stated that the day to day affairs of M/s AMR were being looked after by Manoj Kumar Jayaswal.

145. Thus from the statements of various prosecution witnesses, it is prima facie clear that all the claims as were made on behalf of M/s AMR to the Screening Committee, MOC were made at the instance of Manoj Kumar Jayaswal and that he was very much involved in the impugned criminal conspiracy. It is also prima facie clear that he is not being held liable to face trial on the basis of any vicarious liability.

146. Coming back to the role played by accused H.C. Gupta who was not only Chairman Screening Committee but was also Secretary, Coal, I may state that by recommending allocation of Bander coal block in favour of M/s AMR for its captive use in its proposed sponge iron project of 1 MTPA capacity to be established in Village Tarsi, District Nagpur, Maharashtra, while at the same time being aware that the company has since dropped the idea of establishing the said end use project, is prima facie indicative of the fact that accused H.C. Gupta also joined hands with the other private accused persons in the impugned criminal conspiracy so as to procure allocation of a

captive coal block in favour of M/s AMR. Furthermore, he also misrepresented to PMO that all the recommendations have been made strictly on the merits of the applicants, including the recommendations of the State Governments where the blocks are located. He did not disclose to PMO that the recommendation of Government of Maharashtra was qua the proposed sponge iron project of 2 MTPA capacity to be established in Yavatmal District, Maharashtra but qua the said project no application has been submitted by the company M/s AMR to MOC, Government of India. Thus prima facie offence of criminal misconduct i.e. u/s 13 (i) (d) P.C. Act, 1988 (unamended Section 13 (i) (d) P.C. Act) is also made out against him in as much as he abused his position as a public servant so as to obtain allocation of a coal block and that too without any public interest, in favour of M/s AMR purportedly for its captive use but knowing fully well that no such end use project is being established by the company. As earlier mentioned charge for the offence of criminal conspiracy i.e. u/s 120-B IPC is also made out against him.

147. At this stage of the matter I thus do not wish to enter into any further length of his role, lest it may prejudice him or the prosecution during the course of trial.

148. As regard Section 409 IPC and Section 13 (1) (c) P.C. Act, 1988 against A-4 H.C. Gupta, who was Secretary Coal as well as Chairman Screening Committee, I may state that though in his dual capacity as above he was controlling the affairs of both MOC as well as Screening Committee but Ld. Counsel for accused is right that he can not be presumed to be exercising any dominion over the coal blocks to be allocated by MOC in terms of Section 409 IPC or Section 13 (i) (c) P.C. Act, 1988. Undoubtedly in terms of the guidelines issued by MOC governing allocation of coal blocks A-4 H.C. Gupta was well aware that based on the recommendations of the Screening Committee, the MOC will allocate coal blocks and as discussed above while forwarding the recommendations of Screening Committee to Prime Minister as Minister of Coal, it was no where disclosed by him that the applicant company is not interested in establishing the end use project mentioned in the application. He thus prima facie exploited the situation by abusing his office in the manner discussed above in order to procure allocation of Bander coal block in favour of company M/s AMR. However as mentioned above there is no prima facie evidence on record which could suggest that accused H.C. Gupta was exercising any dominion/control over the said coal blocks or that the said nationalised natural resources of the country

were entrusted to him in any manner.

149. Thus as the basic essential ingredient of the offence of criminal breach of trust by a public servant i.e. of section 409 IPC or that of the offence of criminal misconduct by a public servant u/s 13 (1) (c) P.C. Act, 1988, that the public servant concerned must have been either entrusted with the property in question or he must be having dominion/control over the property in question does not stand even prima facie established as regard accused H.C. Gupta vis-a-vis the coal blocks to be allocated by MOC, Government of India. Accordingly, no charge for the offence u/s 409 IPC or for the offence u/s 13 (1) (c) P.C. Act, 1988 is even prima face made out against him.

Accused H.C. Gupta is accordingly discharged for the offence u/s 409 IPC and Section 13 (i) (c) P.C. Act, 1988.

150. Having now discussed the role played by accused Manoj Kumar Jayaswal, accused Devendra Darda, accused Vijay Darda, and that of company M/s AMR beside that of accused H.C. Gupta, I now intend to deal with second limb of the prosecution case.

151. From the discussion made above qua the role of accused H.C. Gupta in his capacity as Secretary Coal and Chairman, Screening

Committee till the stage of recommendation by the Screening Committee, it is prima facie clear that accused H.C. Gupta also joined the impugned criminal conspiracy with the private parties involved so as to procure allotment of a coal block in favour of applicant company M/s AMR while knowing fully well that no end use project is going to be established by the company wherein the coal which may be generated from the allotted coal block could be utilized.

152. As also earlier mentioned, the subsequent approval of the recommendations of 36th Screening Committee given by Prime Minister as Minister of Coal was conditional in as much as the MOC was asked to satisfy itself that there has been no undue delay in development of any coal block if earlier allotted to the allocatees. It was pursuant to the said conditional approval received from PMO that a note dated 18.08.2008 was prepared by Sh. Santosh Paul, Assistant, CA-I Section in MOC wherein it was observed that looking at the MOA/AOA of the company, it is established that the share holders of the company are the same who are also having shares in the other companies of Jayaswal Group. The names of various coal blocks qua which the progress made by the group was found to be not satisfactory, were also mentioned in the note. Pursuant to the said note Sh. H.C. Gupta, Secretary Coal proposed a meeting in this

regard to be held in the office of Minister of State for coal with the representatives of the allocatee companies. In the said meeting held on 18.09.2008 in the office of accused Santosh Bagrodia, the representative of M/s AMR namely Harshad Popali stated that the company is not a part of Jayaswal group but its equity is now held by Lokmat Group, Abhijeet Group and IL & FS. He also mentioned names of certain coal blocks held by the equity holders. The company representative was accordingly asked to submit in writing the ownership pattern of the company as well as the commitment about developing the coal blocks along with specific milestones with time lines for each milestone within next 7 days.

153. As earlier also mentioned the company M/s AMR thereafter submitted a communication dated 22.09.2008 to Minister of State for Coal wherein it reiterated that the company M/s AMR is not associated with Jayaswal Group. The communication was however silent about the details of the equity holders or any other coal blocks allocated to the said equity holders. The said communication after being marked downward was processed by accused L.S. Janoti, Section Officer, CA-I Section, MOC and who on the basis of the said communication prepared a detailed note stating that in view of the assurance given by the allocatee company M/s AMR, it can be taken

that no coal block has been allotted to M/s AMR earlier. It was the said note which after being processed in MOC through the desk of various senior officers reached the desk of Secretary, Coal. Accused H.C. Gupta thereafter also forwarded the file to Minister of State for coal while drawing attention to the note of Section Officer L.S. Janoti and observing that in view of the assurance given by the allocatee, the letter of allotment of coal block may be issued. The file was thereafter simply forwarded by Minister of State for Coal to Prime Minister as Minister of Coal and where considering the said notings of MOC that no coal block has earlier been allocated to M/s AMR, the file was returned back on the ground that Prime Minister has already approved the recommendations and thus the same need not be put up before him again. Finally the joint offer/option letter dated 23.12.2008 was issued to M/s AMR and the other two joint allocatee companies by MOC. The three companies thereafter entered into a joint venture agreement and submitted the same to MOC. After processing of the said communication received from the joint allocatee companies MOC finally issued the joint allocation letter in their favour.

154. As regard the aforesaid proceedings, it has been vehemently argued by Ld. Counsel for accused L.S. Janoti that the accused had

simply reproduced all the facts in his note as to what information was asked from the company or what information has been provided by the company and thereafter he simply forwarded the same for consideration/orders to senior officers. It was argued by him that the said facts were reiterated by him in his notes recorded on four successive occasions but on one ground or the other the file was returned back by the senior officers seeking information qua various aspects about other companies while also asking him to put up a detailed note. It was submitted that subsequently also on the fifth occasion his note dated 25.11.2008 containing same facts qua M/s AMR traveled through the desk of various senior officers before it came to be put up before Secretary Coal and from there to the desk of Minister of State for Coal before being sent to PMO. It was thus submitted that no malafide intention can be read against accused L.S. Janoti in simply preparing the said note.

155. At the same time Ld. Counsel for accused Santosh Bagrodia also argued that accused being a political appointee was having no technical experience and thus being a Minister he merely relied upon the consistent notings made by the various officers of MOC including Secretary, Coal. It was further stated that in view of the said notings and believing them to be correct the accused simply forwarded the

file to Prime Minister without making any observations. It was also submitted that the competent authority regarding allocation of coal blocks was Prime Minister as Minister of Coal and the Minister of State for Coal had no role to play in the matter. It was also submitted that even the earlier directions given by Prime Minister as Minister of Coal to assess the development of coal blocks earlier allotted to the allocatee companies were given to MOC and not to Minister of State for Coal. In these circumstances, it was argued that no malafide intention of any nature whatsoever can be read in the impugned actions of accused Santosh Bagrodia.

156. On behalf of accused H.C. Gupta, it was argued by Ld. Counsel Sh. Rajat Mathur that accused H.C. Gupta being Secretary Coal merely relied upon the consistent notings made in the file and that too when the note dated 25.11.2008 of L.S. Janoti came up before him in the fifth round of similar noting and thus no malafide intention can be found in the noting made by accused H.C. Gupta that no coal block can be held to be allotted in favour of allocatee company and that if approved, the allocation letter may be issued.

157. It was also argued by Ld. Counsels for all the three public servants that even otherwise the Prime Minister as Minister of Coal

while according conditional approval to the recommendations of 36th Screening Committee had directed that progress made qua coal blocks earlier allotted to the allocatee companies be assessed and there were no directions that progress made qua coal blocks earlier allotted to any group or associate company of allocatee companies be assessed. It was thus submitted that as per the prosecution case itself no coal block was earlier allotted in favour of M/s AMR and thus no violation of the directions given by Prime Minister as Minister of coal took place in making the said notings in the file by them.

158. In order to appreciate the aforesaid submissions, it would be worthwhile to first have a brief glance over the notings made by various officers and the minutes of the meeting held in the office of accused Santosh Bagrodia, Minister of State for Coal beside also the communication received from M/s AMR. *(All these documents have been referred to earlier also in the present order but are being reproduced again for a ready reference.)*

159. After the recommendations of 36th Screening Committee were approved conditionally by Prime Minister as Minister of Coal then the same were communicated to MOC vide ID note dated 21.07.2008 of Sh. Ashish Gupta, Director, PMO (Page 73, D-19). The said note as is

relevant for the purposes of present order interalia read as under:

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...
...

“(c) The allotment to the proposed allocatees shall be subject to Ministry of Coal satisfying itself that in case of allocatees who have been allotted coal blocks earlier, there has been no undue delay in development of those blocks by them. After due enquiry, in case Ministry of Coal is satisfied that any of the proposed allocatees have been responsible for undue delay in development of blocks allotted to them earlier, the matter regarding the proposed present allocation be referred back to the Minister of Coal for orders.”

(Emphasis supplied)

160. Pursuant to the receipt of the said note, Sh. Santosh Paul, Assistant, CA-I Section, MOC, recorded a note dated 18.08.2008 wherein with respect to Bander coal block the following facts were mentioned:

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...

“(iii) Bander: This block has been recommended for allocation jointly to M/s AMR Iron & Steel Pvt. Ltd. (Jayaswal Group), M/s Century Textile & Industries Ltd. and M/s JK Cement Ltd.

M/s AMR Iron & Steel Pvt. Ltd. (Jayaswal Group): M/s AMR Iron & Steel Pvt. Ltd. has not been allocated any coal block previously, however on looking at the MoA/AoA of the company it is established that the share holders of the company are the

same who are also having shares in the other companies of the Jayaswal group. The group has been allocated a number of blocks in the past. Gare Palma IV/4, Gare Palma, Moitra, Brinda, Sisai, Meral, Chitarpur, Fathepur East and Mahuagarhi coal blocks have been allocated to different companies of Jayaswal Group. Gare Palma IV/4 is to achieve Peak Rated Capacity in 2008-09. Except purchase of GR and approval of mining plan other issues are pending in respect of Moitra coal block. A show cause notice has also been issued to the company for delay in implementation of the coal project. In response the company has attributed the delay mainly because of land acquisition. The performance of the company cannot be treated as satisfactory. Regarding Gare Palma IV/8 the company has purchased GR and the mining plan has also been approved however forest clearance, EMP clearance and land acquisition are pending. The performance cannot be treated as satisfactory. As regards Brinda Sisai Meral, the progress is more or less same as in the case of Gare Palma IV/8. In Chitarpur coal block the company has purchased GR and applied for forest clearance and EMP clearance. The progress of the company may be treated as satisfactory. Fatehpur East & Mahuagarhi coal blocks have recently been allocated and the progress is as per the milestone.

No coal block has earlier been allocated to M/s Century Textile & Industries Ltd. and M/s JK Cement Ltd.”

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...

(3)“In view of above facts it is stated that the performance of the coal blocks earlier allocated to M/s Jindal Steel & Power Ltd., Jayaswal Group and Adhunik Group, who are proposed allocatee of Urtan North, Bander and Moira Madhujore North & South has not been as per the milestones and can hardly be termed as satisfactory. We may, therefore, advise them to expedite the progress therein in order to enable this Ministry to

decide allocation of the proposed coal blocks. These companies may be called and advised to indicate in writing for development of the earlier allocated blocks and the proposed blocks in a time bound manner”.

(Emphasis supplied)

161. As earlier mentioned pursuant to the said note a meeting was decided to be held in the office of Minister of State for Coal with the representatives of all recommendee companies including M/s AMR. In the said meeting one Harshad Popali represented M/s AMR and informed that the company is not a part of Jayaswal Group. He however also stated that its equity is now held by Lokmat Group, M/s Abhijeet Infrastructure Ltd. and IL & FS. It was also informed by him that six Coal Blocks namely Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahuagarhi were earlier allotted to the equity holders of M/s. AMR. He also submitted the progress report with respect to the said Coal Blocks. The company representative was however directed to give in writing the ownership pattern of the company (main share holders) as well as commitment made about developing the Coal Blocks along with the specific milestone with the time-line for each milestone within seven days.

162. The relevant portion of the minutes of the said meeting held on 18.09.2008 and as were pertaining to M/s. AMR read as under:-

M/s AMR Iron & Steel Private Limited (Jayaswal Group)

"The Company representative informed that the company is not a part of the Jayaswal Group but its equity is now held by the Lokmat Group, M/s Abhijeet Infrastructure Limited and IL & FS. The previously allocated blocks to these equity holders were Brinda, Sisai, Meral, Chitarpur, Fatehpur East and Mahuagarhi. The progress in respect of these blocks as stated by the company representative was as follows:

In case of Brinda, Sisai and Meral coal blocks, the company will start production in October 2008 in line with the assurance given in the last review meeting.

Delay in the development of Chitarpur coal block had been mainly due to transfer of land from CCL which had acquired the land under CBA Act. Now, the land has been transferred to the company and other activities to open the mine will be taken up expeditiously.

The progress in respect of recently allocated coal blocks, Fatehpur East and Mahuagarhi is as per schedule given by the Ministry of Coal.

The company was asked to give in writing the ownership pattern of the company (main shareholders) as well as the commitment made about developing the coal blocks alongwith specific milestones with time-lines for each milestone within next 7 days."

(Emphasis supplied)

163. Though the said minutes of the meeting were communicated to the company by Under Secretary Sh. V.S. Rana vide communication dated 26.09.2008 (Page 100, D-31) but prior to it the company M/s AMR submitted a communication dated 22.09.2008 to MOC. The said letter dated 22.09.2008 of company M/s AMR read as under:

A M R IRON AND STEEL PRIVATE LIMITED

Prithvi Vandan, Gandhi Chowk, Yavatmal (Maharashtra) 445001

Phone: +91.7232.245119 Fax: 91.7232.243119

AMR/MoC/CoalBlock/08/255

September, 22, 2008

To

The Hon'ble Minister of State for Coal,
Government of India,
Shastri Bhawan,
New Delhi

प्रेषक

प्राप्ति एवं प्रेषण अनुभाग
कोयला मंत्रालय
शास्त्री भवन, नई दिल्ली - 110001

Sub: - Allocation of coal block to AMR Iron & Steel Pvt. Limited for its 2 mtpa Integrated Steel Plant in Maharashtra.

Ref: - 1. Ministry of Coal Letter No. 38011/2/2007-CA-I dated Sept. 15, 2008.
2. Discussions had during the meeting held on Sept. 18, 2008 at Ministry of Coal, New Delhi.

Respected Sir,

We take this opportunity to express our sincere thanks for providing us an opportunity on 18-09-2008 to discuss the issues related to the joint allocation of Bander Coal Block to AMR Iron & Steel Pvt. Limited (AMR) along with Century Textiles & Industries and J.K. Cement Limited.

In this context, as desired, we would like to confirm that AMR is not associated with Jayaswal Group.

We take this opportunity to again like to bring to your kind notice that Yavatmal is one of the poorest and backward districts of Vidarbha Region. It has witnessed suicides of hundreds of debt ridden farmers. There is hardly any irrigation facility in the area and therefore the farmers are dependent on monsoon. There is virtually no industry in the district and hence there is no source of alternative employment.

You will kindly appreciate that commissioning of AMR's Mega Steel Project in Yavatmal would not only change the face of this backward region but also would change the future of thousands. of youths due to creation of numerous job opportunities.

We, therefore, request you to kindly advice the concerned to issue the letter allocating Bander Coal Block to AMR Iron & Steel Pvt. Limited at the earliest.

Thanking you.

Sd/- Somdutt Bhardwaj

Yours faithfully,

**For AMR Iron & Steel Pvt. Limited
Authorized Signatory**

Cc: Secretary (Coal), Ministry of Coal, Shastri Bhawan, New Delhi

178 – C, Light Industrial Area, Bhilai 490026 (INDIA) Phone: +91.788.2381858, 2381859, 2381860 to 62

(Emphasis supplied)

164. It was upon receipt of the aforesaid communication that accused L.S. Janoti, Section Officer, MOC, initially prepared note dated 10.10.2008 in which as regard M/s AMR, the following facts were interalia mentioned by him:

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3. *The representative of M/s AMR has informed that the company is not a part of the Jayaswal Group. He was asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22.09.2009 has confirmed that AMR is not associated with Jayaswal group and requested to allocate Bander coal block to their company in order to develop the backward district of Vidarbha Region.*

.....
.....

5. *In this connection, it is stated that M/s Jindal Steel & Power Ltd has assured early production of coal from Gare Palma IV/6 and Jitpur coal blocks. As regards M/s AMR, the company has confirmed that M/s AMR is not associated with Jayaswal group. Therefore, it can be taken that no coal block has been allocated to them earlier. We may, if approved, issue option letters in respect of Urtan North and Bander coal blocks as recommended by Screening Committee. Two draft option letters are placed below for approval.*

165. The said note after having travelled through the desk of Under Secretary, Sh. V.S. Rana reached the desk of Director, CA-1, Sh. K.C. Samria who however returned back the file with the query as to whether M/s Adhunik has submitted any reply or not.

166. Accused L.S. Janoti thereafter prepared a fresh note dated 14.10.2008 and wherein the following facts were again reiterated as regard M/s AMR.

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3. *The representative of M/s AMR has informed that the company is not a part of the Jayaswal Group. He was asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22.09.2009 has confirmed that AMR is not associated with Jayaswal group and requested to allocate Bander coal block to their company in order to develop the backward district of Vidarbha Region.*

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

8. *M/s Jindal Steel & Power Ltd has assured early production of coal from Gare Palma IV/6 and Jitpur coal blocks. As regards M/s AMR, the company has confirmed that M/s AMR is not associated with Jayaswal group. Therefore, it can be taken that no coal block has been allocated to them earlier. We may, if approved, issue option letters in respect of Urtan North and Bander coal blocks as recommended by Screening Committee. Two draft option letters are placed below for approval."*

167. The said note after having reached the desk of Director, CA-1, Sh. K.C. Samria through the desk of Under Secretary, Sh. V.S. Rana was however also returned back for putting up a detailed note for consideration. Accordingly Sh. L.S. Janoti prepared a fresh note dated 21.10.2008 wherein as regard M/s AMR, the same facts were

again reiterated in para No. 4 and para 7 as under:

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4. The representative of M/s AMR has informed that the company is not a part of the Jayaswal Group. He was asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22.09.2009 has confirmed that AMR is not associated with Jayaswal group and requested to allocate Bander coal block to their company in order to develop the backward district of Vidarbha Region.

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7. M/s Jindal Steel & Power Ltd has assured early production of coal from Gare Palma IV/6 and Jitpur coal blocks. As regards M/s AMR, the company has confirmed that M/s AMR is not associated with Jayaswal group. Therefore, it can be taken that no coal block has been allocated to them earlier.”

168. The said note however after travelling through the desk of various officers was returned back from the desk of Joint Secretary (Coal) with the directions to put up a self contained note. Pursuant to the said directions Section Officer, L.S. Janoti again put up a detailed note dated 30.10.2008 wherein as regard M/s AMR the following facts were recorded in para No. 6 of the note:

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6. *The representative of M/s AMR has informed that the company is not a part of the Jayaswal Group. He was asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22.09.2009 has confirmed that AMR is not associated with Jayaswal group and requested to allocate Bander coal block to their company in order to develop the backward district of Vidarbha Region. Therefore, it can be taken that no coal block has been allocated to M/s AMR earlier.”*

169. The said note also travelled to the desk of senior officers including Secretary (Coal) but was returned back with the directions to put up a block-wise detailed note. The file thus again came back to the desk of Section Officer, L.S. Janoti and who on this occasion again put up a detailed note dated 25.11.08 and in which as regard M/s AMR, the following facts were mentioned:

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6. *The representative of M/s AMR has informed that the company is not a part of the Jayaswal Group. He was asked to give in writing the ownership pattern of the company as well as the commitment made about developing the coal blocks. The company vide letter dated 22.09.2009 has confirmed that AMR is not associated with Jayaswal group and requested to allocate Bander coal block to their company in order to develop the backward district of Vidarbha Region. Therefore, it can be*

taken that no coal block has been allocated to M/s AMR earlier.”

“In view of the above facts, the file is submitted for further consideration/orders.

***sd/- L.S. Janoti
25/11/08***

170. On this occasion, the Under Secretary, Sh. V.S. Rana, CA-I Section made the following observations vide his endorsement dated 25.11.2008 before forwarding it to Director:

“US (CA-I)

In view of the above note we may consider the proposal for allocation of Urtan North and Bander coal blocks based on their assurance and reply given by the proposed allocatees mentioned at 5 & 6 note of prepage. As reply of M/s Adhunik Corporation Ltd. is not satisfactory, it will examine separately.

***Sd/- V.S.Rana
25.11.2008”***

171. The file was however put up before the Link Director as the concerned Director was away on election duty. He forwarded the file to Joint Secretary (Coal) with the following endorsement:

*“Please refer to the notes at pre-pages
2. With the status as given above. Submitted for consideration & direction in the matter.*

***Sd/
25.11.08***

*JS (C) On Election duty
AS (LA)*

***Sd/-
27/11
Secretary (c)”***

172. However as Joint Secretary (Coal) was also not available being away on election duty so the file was put up before Additional Secretary and who without making any observations on it merely forwarded the file to Secretary (Coal) vide his signatures dated 27/11. Thereafter, Secretary Coal H.C. Gupta forwarded the file to Minister of State for Coal vide the following endorsement dated 28.11.2008.

“Notes from page 14/N may kindly be seen. In view of the assurance given we may issue allotment letters in respect of Bander and Urtan North. However, since progress of Adhunik is not satisfactory, their case will be examined subsequently and put up later.

*Sd/- H.C. Gupta
28.11.2008”*

173. Minister of State for Coal Sh. Santosh Bagrodia however simply forwarded the file to Prime Minister as Minister of Coal vide his signatures dated 5/12 and without making any observations of his. It was pursuant to the said note that the file was thereafter returned back from PMO to Secretary Coal by Sh. Ashish Gupta, Director, PMO with the following endorsement:

“Mos (c)
Sd/- 5/12
(Santosh Bagrodia)
PHM (as Minister for Coal) has approved the above note of Secretary
Coal dt. 28.11.08.

Sd/-

(Ashish Gupta)
Dr. PMO 10/12

Secretary Coal
PMO ID No. 200/31 le/83/06-ES.7 dt. 10.12.08”

174. It was pursuant to the aforesaid approval by the PMO that the further process was undertaken in MOC as regard the issuance of offer/option letter or after submission of joint venture agreement by the three joint allocatee companies that the joint allocation letter was issued by MOC in their favour.

175. Thus if the various notings made by MOC officers are considered in the light of directions of Prime Minister as Minister of Coal as were communicated by Sh. Ashish Gupta vide PMO ID note dated 21.07.2008, then it is clear that Prime Minister had only directed that the allotment to the proposed allocatees would be subject to MOC satisfying itself that in case of allocatees who have been allotted coal blocks earlier, there has been no undue delay in development of those coal blocks by them. However it was pursuant

to a note dated 18.08.08 made by Santosh Paul, Assistant, CA-I Section, MOC that an enquiry as regard the coal blocks earlier allotted to the group/associate companies of allocatee companies started in MOC.

176. Accordingly in the meeting held on 18.09.2008 in the office of Minister of State for coal enquiries were made as regard the coal blocks earlier allocated to group or associate companies of M/s AMR. In the said meeting Harshad Popali the representative of M/s AMR had though stated that M/s AMR is not a part of Jayaswal Group but at the same time certain further facts were stated by him regarding other equity holders of M/s AMR or coal blocks earlier allocated to the said equity holders. The minutes of the meeting thus recorded the said facts and also the directions given to the representative of the company to disclose about the equity holders of M/s AMR. It is also an undisputed fact that in the subsequent communication dated 22.09.2008 received from M/s AMR it was only stated that the company M/s AMR is not associated with Jayaswal Group but no further information about equity holders of M/s AMR was provided. It was pursuant to the said communication that accused L.S. Janoti, Section Officer, MOC observed in his various notes that the company in its representation has confirmed that M/s AMR is not associated

with Jayaswal Group and thus it can be taken that no coal block has been allotted to it earlier. He however also mentioned in his note that the company was asked to give in writing the ownership pattern of the company as well as the commitment made about development of the coal blocks.

177. Thus if the aforesaid proceedings are seen in the light of directions given by PMO while approving the recommendations of 36th Screening Committee, then it is noticed that in fact the enquiry which was to be made by MOC was only as regard the development of coal blocks, if earlier allotted to the allocatee companies and not as regard the coal blocks, if earlier allotted to the group/associate companies.

At this stage it would be also pertinent to mention that it is not the case of prosecution that M/s AMR was allotted any coal block earlier. *(I am however not referring to any coal block if earlier allotted to the group or the associate companies of M/s AMR.)*

178. Thus in the aforesaid facts and circumstances, I may though state that once the MOC had started enquiring about the past performance of the group or associates of the allocatee companies

qua the development of coal blocks, if earlier allotted to them then it ought to have pursued it to its logical conclusion but since the same was not part of the mandate given by Prime Minister as Minister of Coal so the issuance of offer/option letter or the final allocation letter can not be held to be violative of the said directions in any manner. I thus find force in the submissions of Ld. Counsel for accused persons in this regard.

179. At this stage, I may also mention that the omission on the part of officers/officials of Ministry of Coal in not pursuing with the information as was sought for in the meeting held in the office of Minister of State for coal on 18.09.2008 i.e. information as regard equity holders of M/s AMR or coal blocks earlier allocated to equity holders, though raises some shadows of doubts about their conduct and especially in the light of my aforesaid discussion where M/s AMR is prima facie found to have misrepresented before the Screening Committee, MOC that M/s AMR was a SPV of Lokmat group and IL&FS but since the said doubts remain in the arena of suspicion only and does not give rise to grave suspicion and especially when the said enquiry was not mandated or directed by Prime Minister as Minister of Coal so I am of the considered opinion that qua the said aspect of MOC satisfying itself about the development of coal blocks,

if allotted earlier to the allocatee companies, it would not be appropriate to frame charges for the offence of criminal misconduct i.e. 13 (i) (d) P.C. Act 1988 or for the offence of criminal conspiracy i.e. u/s 120-B IPC against any of the three accused public servants. In this regard it would be worthwhile to reproduce certain observations of Hon'ble Supreme Court as were made in the case **N. Suresh Rajan (Supra)**:

“19. Yet another decision on which reliance has been placed is the decision of this Court in the case of Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : (AIR 2002 SC 564 : 2002 AIR SCW 146), reference has been made to the following paragraph of the said judgment:

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused. and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the

prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(Emphasis supplied)

180. Thus as no other role apart from the aforesaid proceedings has been assigned either to accused L.S. Janoti, Section Officer, MOC or to accused Santosh Bagrodia, Minister of State for Coal so I hereby discharge them for the offence of criminal misconduct i.e. u/s 13 (i) (d) P.C. Act 1988 and also for the offence of criminal conspiracy i.e. u/s 120-B IPC as no such charge is made out against them.

They both thus stands discharged in the present case.

181. As regard accused H.C. Gupta, his role qua the earlier part of the proceedings/circumstances in which M/s AMR came to be recommended for allocation of Bander coal block has been already discussed at length by me and it has been held that prima facie charge for the offence of criminal conspiracy i.e. u/s 120-B IPC and for the offence of criminal misconduct i.e. under Section 13 (i) (d) P.C. Act, 1988 is prima facie made out against him. Thus while not framing any charge against him qua the later part of the proceedings i.e. the proceedings in which accused L.S. Janoti and Santosh Bagrodia

were involved but charge for the offence u/s 120-B IPC and 13 (i) (d) P.C. Act shall be framed against him as regard the other role played by him.

182. Before parting away with the present order I would also like to deal with certain other issues raised by Ld. Counsel Sh. Vijay Aggarwal.

It was argued by Ld. Counsel Sh. Vijay Aggarwal that at the most, the facts and circumstances of the present case amount to an act of furnishing wrong information to Government authorities which could have attracted offences u/s 177, 181 and 182 IPC only and not offence u/s 420 IPC. It was further argued that for taking cognizance of the offences u/s 177, 181 and 182 IPC, a complaint u/s 195 Cr.PC is mandatory and in the absence of the same the cognizance taken in the present case was bad in law.

183. At the outset I may state that it is not a simplicitor case of furnishing false information to a public authority but it is a matter where both private parties and the public servants involved were prima facie acting in furtherance of a criminal conspiracy so as to cheat MOC, Government of India. As already discussed the word

"Government" stands included in the word "Person" as defined u/s 11 IPC and that the acts committed by the private parties involved in procuring allocation of a captive coal block in favour of M/s AMR from MOC, Government of India, prima facie amounted to an act of cheating. In fact the act of dishonest submission of false information or concealment of information had the effect of inducing MOC, Government of India to allocate a coal block in favour of M/s AMR and thus the said act prima facie amounts to an act of cheating which led to the delivery of property i.e. allocation of a coal block. Thus for the said offence of cheating i.e. Section 420 IPC no complaint u/s 195 Cr.PC is required.

184. It was however also argued by Ld. Counsel Sh. Vijay Aggarwal that in case this Court choose to frame charge for the offence u/s 13 (i) (d) P.C. Act against the accused persons then it may be clarified that whether the accused persons are to be tried for the offence u/s 13 (1) (d) (i) or u/s 13 (1) (d) (ii) or u/s 13 (1) (d) (iii) of P.C. Act, 1988.

185. However Ld. Sr. P.P. Sh. A.P. Singh submitted that as the facts which prosecution intends to prove or in other words qua which it intends to lead evidence during the course of trial are neither uncertain nor in doubt so at the conclusion of trial only it can be seen

and appreciated as to ingredients of which of the three sub clauses i.e. sub clause (i), (ii), or (iii) of S. 13 (1) (d) P.C. Act have been proved by the prosecution.

186. I may state that I find myself in complete agreement with the submissions of Ld. Sr. P.P. Sh. A. P. Singh in this regard. Before advertizing further, it will be appropriate to refer to the language of S. 13 (1) (d) P.C. Act, 1988 [*unamended section 13 (i) (d), P.C. Act, 1988*], which read as under:

*"13.Criminal misconduct by public servant.--
(1) A public servant is said to commit the offence of criminal misconduct,-
(a)
(b)
(c)
(d) if he,--
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage;
(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
(e)"*

187. Thus as is evident from a bare perusal of section 13 (1)(d) PC Act, the three clauses thereof are though independent and alternative and disjunctive but the factum of obtaining a valuable thing or

pecuniary advantage is a common essential ingredient of all the three sub-clauses. Thus, clause (i) shall be applicable if while obtaining for himself or for any other person any valuable thing or pecuniary advantage the public servant uses corrupt or illegal means. Similarly under clause (ii) a public servant shall be liable if for obtaining for himself or for any other person any valuable thing or pecuniary advantage he abuses his position as a public servant. As regard clause (iii) a public servant shall be however liable if he obtains for any person any valuable thing or pecuniary advantage without any public interest.

188. Thus the fact as to whether at the conclusion of trial the prosecution is able to prove facts constituting the ingredients of sub clause (i) or (ii) or (iii) of 13(1) (d) PC Act or the facts so proved constitute an offence described in more than one sub-clause, can be seen and appreciated at the time of final judgment only.

189. The answer to the aforesaid issue will thus depend on the nature of facts which prosecution finally succeeds in proving. In this regard, it will be also worthwhile to refer to section 221 Cr.PC which squarely covers the aforesaid preposition:

"Section 221. Where it is doubtful what offence has been committed.-(1) If a single act or serious of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1) he may be convicted of the offence which he is shown to have committed although he was not charged with it."

190. Thus in view of my aforesaid discussion any analysis of the facts at this stage of the matter so as to finally conclude as to which of the offences u/s 13 (1) (d), (i) (ii) or (iii) is prima faice made out will not be appropriate as it might prejudice the parties during the course of trial. Thus it will be just and appropriate that charge for the offence of criminal misconduct by a public servant as defined under section 13(1) (d) of PC Act, 1988 is only framed against the accused persons without specifying any sub clause thereof.

191. Ld. Counsel Sh. Rajat Mathur for accused H.C. Gupta also argued that in the absence of sanction u/s 197 Cr.PC, the very cognizance of the offence under IPC taken against the accused was bad in law.

192. As regard the issue of requirement of sanction u/s 197 Cr.PC for taking cognizance of offences under IPC against accused H.C. Gupta, I may state that prima facie the alleged acts as were committed by him cannot be stated to have been done by him in the discharge of his official duties or in the purported discharge of his official duties. His office merely provided him an opportunity to commit such acts of mis-demeanour.

193. Ld. Counsels for accused H.C. Gupta while relying upon the case **N. K. Ganguly Vs. CBI (2016) 2 SCC 143** strongly argued that for the acts allegedly committed by accused H.C. Gupta no cognizance of the offences under IPC can be taken without a prior sanction u/s 197 Cr.PC. However, I may observe that in the **N. K. Ganguly case (Supra)**, Hon'ble Supreme Court has primarily reiterated the basic principle of law that for an act which is alleged to have been committed in discharge of official duty by accused the previous sanction U/S 197 Cr PC is a pre-requisite condition. However with utmost respect I may state that the said principle is not applicable to the facts and circumstances of the present case in as much as the alleged acts of omission and commission committed by accused H.C. Gupta as discussed above can not be said to have been committed by him in the discharge of his official duties. As

already discussed above the facts of the present case prima facie show that accused H C Gupta entered into a criminal conspiracy with company M/s AMR and other accused persons so as to procure allotment of a coal block in favour of M/s AMR. Thus the said acts of entering into a criminal conspiracy cannot be deemed to have been done in discharge of his official duty by him. It is altogether a different matter that the position of the accused as Secretary (Coal) and as Chairman, Screening Committee provided him an opportunity to so enter into a criminal conspiracy with the private persons. However, I may again reiterate that the acts alleged against accused H. C. Gupta are such that if questioned he cannot claim that he was acting in the discharge of his official duties.

194. It will be also pertinent to mention that Hon'ble Supreme Court in a catena of decisions such as in the cases **Rajib Ranjan and Ors. Vs. R Vijay Kumar, (2015) 1 SCC 513** and **Inspector of Police & Anr. Vs. Battenapatla Venkata Ratnam & Anr., judgment in Criminal Appeal No. 129 of 2013 (SC)** has held that when a public servant enters into criminal conspiracy or indulges in criminal misconduct then such mis-demeanour on his part cannot be treated as an act in discharge of his official duty and, therefore, provisions of Section 197 Cr.PC will not be attracted.

195. In view of my aforesaid discussion and the conclusions drawn for a prima facie view, charge for the offence u/s 120-B IPC is thus made out against accused Manoj Kumar Jayaswal, Vijay Darda, Devendra Darda, company M/s AMR and accused H.C. Gupta. Charge for the substantive offence i.e. u/s 420 IPC is also made out against private parties i.e. Manoj Kumar Jayaswal, Vijay Darda, Devendra Darda and company M/s AMR. Charge for the substantive offence u/s 9 P.C. Act, 1988 is made out against accused Vijay Darda. Charge for the substantive offence i.e. u/s Section 13 (1) (d) P.C. Act, 1988 is prima faice made out against accused H.C. Gupta.

Charge for the substantive offence i.e. u/s 120-B IPC r/w Section 420 IPC/13 (1) (d) P.C. Act, 1988 and Section 9 P.C. Act 1988 is also prima facie made out against accused Manoj Kumar Jayaswal, Vijay Darda, Devendra Darda, company M/s AMR and accused H.C. Gupta.

196. As already mentioned accused Santosh Bagrodia and accused L.S. Janoti stand discharged in the present case.

197. The applications u/s 227 r/w Section 239 Cr.PC for discharge moved on behalf of A-2 Vijay Darda and A-4 company M/s AMR by Ld. Counsel Sh. Vijay Aggarwal accordingly stand disposed of.

198. However before parting away with the present order, I may state that nothing opined over here shall tantamount to expressing of any final opinion either on the merits of the case or on any issue.

ANNOUNCED IN THE OPEN COURT (BHARAT PARASHAR)
TODAY ON 23.07.2019 SPECIAL JUDGE, (PC ACT) (CBI)
ROUSE AVENUE COURT COMPLEX
NEW DELHI