



MCL

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No. MCL/SBP/GM (M&S)/Secy/2022-23/ 914

Dt. 04/11/2022

Notice

Subject: Addendum of clause in Model FSA regarding 'Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal'

Ref: Generic Model Fuel Supply Agreement (FSA) for all subsectors of NRS Linkage auction dated 08.09.2021

In reference to the above referred FSA model under NRS Linkage auction policy, the 'Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal' is being introduced, as an additional clause no. 21.20 under 'Miscellaneous'.

In this connection, the notice no. CIL/M&S/Linkage Auction tranche V/434, Dtd.04.11.2022 is enclosed herewith. The clause no.21.20 as notified vide above referred notice of CIL shall be applicable & binding on the purchaser.

Encl: As above


General Manager (M&S)

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COAL INDIA LIMITED
MARKETING DIVISION
KOLKATA

CIL/M&S/Linkage Auction tranche VI/434

Date: 04.11.2022

Notice

Subject: Addendum of clause in Model FSA regarding 'Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal'

Ref: Generic Model Fuel Supply Agreement (FSA) for all subsectors of NRS Linkage auction dated 08.09.2021

In reference to the above referred FSA model under NRS Linkage auction policy, the following 'Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal' is being introduced, as an additional clause no. 21.20 under 'Miscellaneous':

21.20 The 'Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal', as per Annexure XII of this agreement, shall be applicable and binding on the Purchaser.

Annexure XII

Modalities for banning/blacklisting of NRS consumers for misutilization/misdirection of coal:

A. Major circumstances of Banning/Blacklisting for misutilization/misdirection of coal:

- Communication from Statutory authorities like CBI, Police, Court of law etc. containing allegations/finding/ establishing charge(s) of misutilization of coal against any non-power unit and/ or its director/management.
- Finding of the instance of misutilization of coal internally by the coal company.

B. Guiding principle regarding banning/blacklisting of consumers for misutilization/misdirection of coal:

- Prior to suspension or banning for supply/participation, as it may, a notice calling for explanation will be issued by the supplying coal company, pursuant to approval of competent authority, to the alleged customer.
- The period of suspension/banning shall be for a period of 5 years. In case the reason of such suspension is mitigated earlier then the suspension will stand accordingly withdrawn.
- Wherever the reason of suspension is not completely mitigated (because of reasons like pendency of trial or no clearance given by enforcement authority etc.), the period of suspension to be extended till the time of acquittal or a direction/clearance is given by enforcement authority/ Court or maximum period of banning, as imposed, whichever is earlier. However, participation in linkage auction shall not be restricted as long as charge sheet is not filed against the consumer.
- Wherever the allegations stand proved, all running coal supply agreements will be terminated forthwith with corresponding forfeiture of EMD/Security Deposit, as a penalty towards the breach. Moreover, further participation in Linkage auction by the plant shall also be banned till completion of tenure of suspension/banning.

C. Detailed Guideline regarding period of suspension/banning covering the aspects of supply of coal under FSA and participation in linkage auction:

1. Complain regarding misutilization of coal received from statutory authorities/ CBI/ Investigating agencies:

i. Supply of coal under Fuel Supply Agreement:

a. Upon receipt of any adverse report/ order, coal supply and further transaction under Fuel Supply Agreement will be stopped for concerned non-power unit immediately.

b. If charge sheet is not filed before relevant adjudicating forum within 6 months of such suspension, the supply/transaction will be resumed with the condition (rider) that suspension may be re-imposed on filing of chargesheet at any point of time, under intimation to the concerned authority. In case charge sheet is issued subsequently, supply/transaction will again be suspended.

c. If the charge sheet is filed within six months of such suspension, the suspension of supply and transaction will continue.

d. In case charge sheet is filed, suspension will be re-imposed and supply of coal will only be restored as per terms of FSA only on acquittal/clearance or an order to that effect by the investigating agency or Court.

e. In case a unit or its director is found guilty/convicted, suspension will continue for a period of 5 years, effective from the date of commencement of last suspension or the completion of penalty, whichever is later.

f. Since any conviction amounts to material breach of the agreement, the EMD/Security deposit, as it may, in such cases shall stand forfeited.

ii. Participation under NRS Linkage auction:

a. On receipt of communication from statutory authority, the consumer put under suspension will be eligible to participate in the NRS Linkage auction till charge sheet is filed. However, in case the charge sheet is filed, the unit will not be eligible to participate in any auction and/ or to sign the FSA till his acquittal/clearance.

b. In case charge sheet is not issued within 6 months of completion of auction of the relevant subsector (where the unit has participated) FSA shall be signed and supply shall be commenced. However, such supply shall be guided by the procedure mentioned at 1(i) above.

c. In case charge sheet is issued within 6 months of completion of auction of the relevant subsector (where the unit has participated), the bid shall not be converted to FSA and relevant bid security shall be forfeited.

d. If found guilty/convicted, banning for participation will continue for a period of 5 years effective from date of commencement of last suspension/ date of conviction, whichever is earlier.

2. Misutilization of coal as per findings of coal company:

i. Supply of coal under Fuel Supply Agreement:

a. On finding the evidence/proof of diversion of coal or discrepancy in the coal stock (5% or more) against coal procured under any of present FSA, will be sufficient reason to put concerned NRS linkage holding unit under suspension.

b. On scrutiny within 3 months from the date of primary suspension, if misutilization is not proved, the coal supply shall be resumed.

c. In case misutilization of coal under any present or past FSA is proved at any point of time, supplies to the unit will be suspended for 5 years. In such case, all running FSA/LOI will be terminated as per provision of Scheme/FSA/guideline by treating it as gross material breach of the intent for which agreement(s) was/ were entered into with consequent forfeiture of EMD/ SD, as it be.

ii. Participation under NRS Linkage auction:

a. On finding the evidence/proof of diversion of coal or discrepancy in the coal stock (5% or more) against coal procured under any of present FSA, participation in linkage auction of the unit shall not be restricted. However, signing of FSA shall be put on hold for the time being.

b. In case misutilization is not proved within 3 months from the date of primary finding by Coal Company, FSA shall be signed. Supply shall be guided by the above mentioned methodology as at 1(i) above.

c. In case misutilization of coal under any present or past FSA is proved at any point of time, participation under NRS Linkage auction shall be suspended for maximum period of 5 years from the date of communication of such order to this effect.

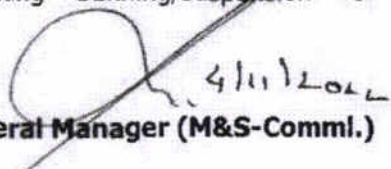
D. Show Cause Notice: All the above cases where coal supplies are to be suspended & signing of FSA withheld or FSA is contemplated to be terminated, a prior Show-Cause notice shall be issued to the concerned party.

E. Change of Plant ownership: In the event of transfer of end use plant/takeover of a company/change of management/change of name etc. (including but not limited to NCLT and other Governmental proceedings) during the period of debarment, the new owner shall remain debarred for the remaining period of suspension of 5 years.

F. Undertaking by Unit: All the bidders/ FSA holders shall submit an undertaking in the form of an affidavit sworn before appropriate authority about factual status of investigations, if any and its current status against them by investigating agency or Court of law, regularly once a year.

G. Treatment of cases against which misutilization of coal was reported earlier and action already taken by coal companies-

The above provisions will also apply to all the units uniformly, including those suspended earlier, and based on certain reference/ findings of Coal Company / statutory authority. In case the stipulated period of suspension/ banning, as it may, has already exceeded five years, the status of such units shall stand restored automatically, in line with aforesaid recommendations. Coal company shall make necessary intimation/communication to all concerned including Linkage Auction service provider regarding invoking and revoking banning/suspension for supply/participation on any unit/consumer, as deemed required.


General Manager (M&S-Comm.)

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