

COAL BLOCK ALLOCATIONS

Opportunity lost, chaos gained?



प्रयास

Prayas (Energy Group)

Coal Block Allocations: Opportunity lost, chaos gained?

December 2015

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Executive Summary

The Supreme Court's cancellation of the allocation of 204 coal blocks in 2014 was an opportunity for the government to initiate some much needed reforms in the coal sector. The government reacted quickly after the cancellation, issuing two ordinances and enacting the Coal Mines (Special Provisions) Act, 2015 to enable allocation of the cancelled coal blocks for specified end-uses. Based on this, it conducted three rounds of coal block auctions and one round of block allotments till October 2015. The rapid resolution of the 'crisis' resulting from the Supreme Court judgements has been hailed as a success, and the aggressive bidding in the first two rounds of auctions is seen as a validation of the government's actions.

A detailed analysis of the entire block allocation process – both auctions and allotments – and its results throws up a very mixed picture. In comparison to the earlier set of allocations which was opaque and ad-hoc, the current set of allocations is definitely an improvement. However, the current process also raises many questions, some of which are serious.

The legislation enacted to support the allocations contain ambiguities which need to be looked into and resolved at the earliest, lest they lead to a legal quandary. The ambiguities include the possibility that the government can allocate mines without auctions to private companies even for commercial mining, and the modalities for land acquisition for the allocated blocks. The stated objective of the block allocations to the power sector is to make cheaper power available to consumers through low-cost access to coal. However, various regulatory uncertainties, procedural complexities and some on-going court cases raise serious doubts about whether the objective would be achieved.

The allocations suffered from design and procedural infirmities such as weak provision for competition, vaguely worded clauses for "arrangements" and "diversions", and some seemingly ad-hoc allotments.

There are significant gaps in the publicly available information regarding the allocations, which dent the claims of a transparent and successful allocation process. We suggest that a dedicated website with all the relevant information regarding coal block allocations should be set up.

The government and regulators in the energy sector have thus far not been very good at designing or enforcing contracts. Given the existing weaknesses in the coal sector and the aggressive bidding seen so far, the questions of monitoring and contract enforcement become even more salient. Significant institutional strengthening is required if these aspects are to be addressed effectively.

In light of these findings, it seems that the opportunity provided by the Supreme Court judgement has been lost and the sector may be headed towards a chaotic future, in which the objective of rapidly increasing coal production may not be met. To recapture this opportunity, we recommend that the government should, based on widespread consultations, draft a comprehensive legislation to deal with all the issues facing the coal sector. A few more broad suggestions to improve future rounds of allocations are provided in the report.

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1. INTRODUCTION

In 2014, two Supreme Court judgements cancelled the allocation of 204 coal blocks made between 1993 and 2010, declaring them arbitrary and illegal (Supreme Court, 2014a; Supreme Court, 2014b)¹. With a view to ensure continuity in coal production in the country, Parliament passed the Coal Mines (Special Provisions) Act, 2015 (CMSPA) in March 2015². This enabled the government to allocate 65 coal blocks by October 2015 through auctions and allotments³.

The on-going allocation process is important for many reasons.

- (i) This is the first time that the coal blocks have been allocated through an auction process⁴.
- (ii) This model of coal block allocation is applicable to all the blocks whose allocations were cancelled by the Supreme Court, which together hold about 43 billion tons (BT) of geological coal reserves⁵.
- (iii) There is a possibility of this model being used for block allocations beyond those cancelled by the Supreme Court.
- (iv) These allocations are seen as a way of reinvigorating the power sector, which has been beset by so-called stranded assets due to fuel shortages (Economic Times, 2015a).

- (v) The government has set an ambitious target of 500 million tons per annum (MTPA) coal production from sources other than Coal India Limited (CIL) by 2020. Such allocation processes are likely to play an important role to meet this target (Business Standard, 2015a).

Therefore, there is a need to analyse and understand the allocations in detail, so that future allocation of coal blocks can be informed by any lessons learnt.

This report analyses the legal, contractual and procedural aspects of the allocation process as well as its results based on publicly available information, primarily from government sources. The analysis focuses on the first and second tranches of auctions and the single round of allotments held between December 2014 and March 2015 while briefly touching upon the changes made in the allocation regime for the third tranche of auctions which took place in August 2015. A brief overview of the allocation process is provided in the Annexure.

Figure 1 gives a timeline of events related to captive coal block allocations so far.

1 In this report, we use the terms “block” and “mine” interchangeably. 218 blocks had been allocated between 1993 and 2010 by the Ministry of Coal (MoC) (MoC, 2012a). Of these, allocation of blocks to National Thermal Power Corporation Limited (NTPC), Steel Authority of India Limited, and Ultra Mega Power Plants (UMPPs) was not cancelled since the Court declared these as legal and proper. There may be some small discrepancy in the numbers of blocks or their reserves between this report and other documents as some blocks have been merged, split etc. However, this does not invalidate any of the conclusions of this report.

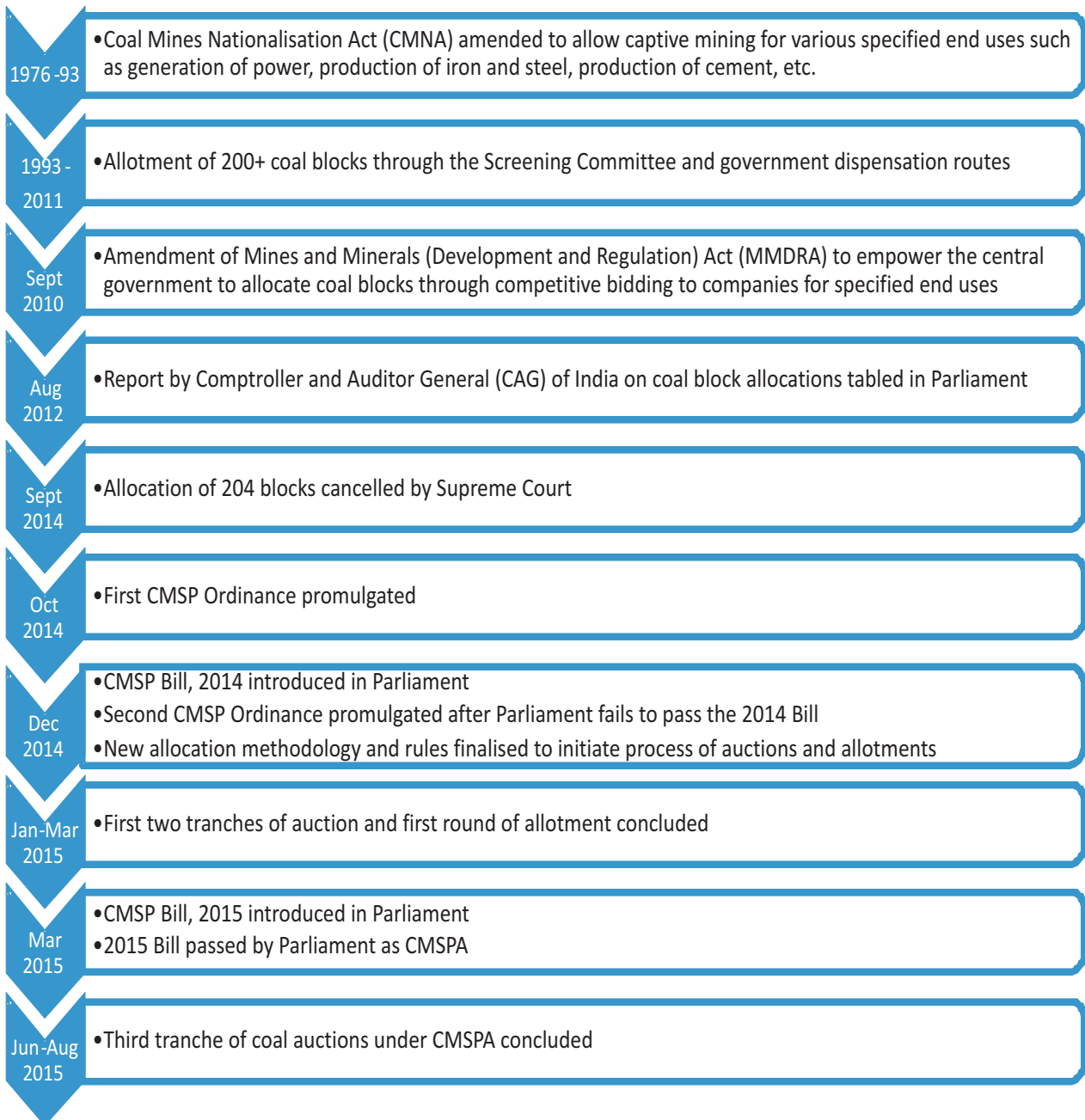
2 This Act was preceded by two ordinances (MoC, 2014a; MoC, 2015a) which were substantially identical to the CMSPA and were the basis for some of the allocations. For simplicity, we refer to the CMSPA as the basis for all allocations.

3 ‘Auctions’ refer to the process of allocating blocks through competitive bidding. ‘Allotments’ refer to the process of allocating blocks to public sector companies by the government based on eligibility and evaluation criteria. ‘Allocations’ refer to ‘auctions’ and ‘allotments’.

4 A previous attempt at auctioning blocks was not successful (PwC & ICC, 2015).

5 In total, blocks with around 50 BT geological reserves of coal were allocated between 1993 & 2010, out of which allocations of 14 blocks with about 7 BT geological reserves were not cancelled by the Supreme Court.

Figure 1: Timeline of events related to captive coal block allocation in India



Source: Authors' compilation from various official and other public sources

2. LEGAL ASPECTS

CMSPA and the preceding ordinances were introduced “to take immediate action so as to ensure the energy security of the country” and “to minimise impact on core sectors such as steel, cement and power utilities” (MoC, 2015b). CMSPA classifies the mines whose allocations were cancelled into three Schedules. Schedule I consists of all 204 blocks whose allocation was cancelled; Schedule II and III are subsets of Schedule I for which end-use is specified, with Schedule II consisting of the 42 blocks which were operational or near-operational at the time of cancellation⁶, and Schedule III consisting of 68 blocks as of October 2015⁷.

The ordinances, Act, associated rules and tender documents provide for the allocation of coal mines by specifying eligibility and evaluation criteria on the basis of which mines are allocated. They also specify the process by which the rights and title of the land and mine infrastructure is transferred and mining lease granted to successful bidders and allottees.

CMSPA removes the constraint of engaging in an end-use for Schedule I blocks; however, Schedule II and III blocks can only be allocated to companies engaged in an end-use. Through amendments to the CMNA and MMDRA, CMSPA also empowers the central government to henceforth allocate coal blocks without end-use restrictions, i.e. also for commercial mining.

In its judgement, the Supreme Court had pointed out some illegalities in the earlier allocation of blocks (Supreme Court, 2014a). CMSPA, along with associated amendments to CMNA and MMDRA, was enacted to address these illegalities and “to ensure continuity in the coal mining operations and production of coal” (MoC, 2015b). However, a close analysis of CMSPA and the associated amendments to CMNA and MMDRA raise some serious questions.

2.1 Method of selection of private companies for coal mining

An important question to consider is whether the amendments made to MMDRA and CMNA via CMSPA prescribe a method for the central government to objectively allocate coal blocks to

private companies, to avoid the kind of discretionary allocation that was the bane of the previous system. While a cursory reading of the Acts would suggest that the government is mandated to allocate blocks to private companies through auctions, a deeper reading raises doubts about this.

Section 11A inserted via the 2010 amendment to MMDRA mandated the central government to allocate coal blocks to private companies through competitive bidding to mine for an end-use. The proviso to Section 11A listed the exceptions to this selection via competitive bidding, which included government companies/corporations and companies/corporations which have been awarded power projects based on competitively bid tariffs including UMPPs.

CMSPA amended Section 11A of MMDRA to remove end-use restrictions and to make it consistent with amendments to CMNA. The central government can now select any company to mine coal for any purpose via competitive bidding. However, in the process, the proviso to Section 11A of MMDRA was also amended by introducing an ‘or’, which could be interpreted as allowing the central government to allocate a block to any (private) company or corporation without conducting an auction, i.e. at its own discretion (See Table 1).

It is not clear whether the ‘or’ was introduced inadvertently, but if this interpretation is plausible, it would essentially mean that the government could choose private companies for commercial mining of blocks without going through the auction route.

2.2 Land acquisition

As per Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBA), the central government can acquire coal-bearing land and can vest it only in government companies (MoC, 1976, p. 8). Section 21 of CMSPA allows for the use of CBA by the central government to acquire the coal bearing area, where the land is not the subject matter of land acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition,

6 For simplicity, we refer to all 42 mines as operational mines.

7 The government can add blocks to Schedule III from Schedule I through a notification. Schedule III had initially consisted of 32 blocks, and a further 36 were added later through notification.

Table 1: Proviso to Section 11A in MMDRA 2010 and as amended by CMSPA 2015

MMDRA, 2010	As amended by CMSPA 2015
<p>"Provided that the auction by competitive bidding shall not be applicable to an area containing coal or lignite –</p> <p>(a) where such area is considered for allocation to a government company or corporation for mining or such other specified end-use;</p> <p>(b) where such area is considered for allocation to a company or corporation that has been awarded a power project on the basis of competitive bids for tariff (including UMPPs)."</p>	<p>"Provided that the auction by competitive bidding under this section shall not be applicable to an area containing coal or lignite—</p> <p>(a) where such area is considered for allocation to a government company or corporation or a joint venture company formed by such company or corporation or between the central government or the state government, as the case may be;</p> <p>(b) where such area is considered for allocation to a company or corporation ^(or) that has been awarded a power project on the basis of competitive bids for tariff (including UMPPs)."</p>

Rehabilitation and Resettlement Act, 2013.

Since the CBA does not empower the central government to vest this acquired land in private companies, it should follow that it cannot vest such land acquired under CBA in private sector block winners. This appears to be an inconsistency and it is not clear whether clause 29 of CMSPA (which states that the clauses of this Act will have overriding effect over other laws) is sufficient to overcome this inconsistency.

2.3 Procedure and need for CMSPA

Between the Supreme Court judgement of September 2014 and March 2015, the government issued two ordinances, enacted one law, auctioned 28 mines and allotted 34 mines. This shows the urgency with which the government dealt with the aftermath of the judgement and is also reflected in the statement of the Minister of Coal in Parliament, where he said “so that coal mines continue operating post 31st March, there is urgency and hence, both houses should pass this (CMSP Bill)” (Lok Sabha, 2015)⁸. At first glance, this seems reasonable because 31st March 2015 was the date set by the Supreme Court for de-allocation of the 42 operational mines, and the government was eager to ensure that production from these mines does not stop. However, was it really necessary to introduce and pass an Act such as the CMSPA without sufficient public discourse?

One of the main reasons behind the cancellation of mine allocations by the Supreme Court was that the central government was not empowered to allocate coal blocks. This issue had been taken care of by the 2010 amendment to MMDRA (MoM, 2010). In fact, the central government had allocated coal blocks to government companies and had even tried to auction blocks in 2013-14, but had not received an enthusiastic response from the industry (PwC & ICC, 2015; MoC, 2012b; MoC, 2014b). Therefore, no new law was needed for the central government to allocate coal mines, as long as they were given to companies that did not fall foul of the other illegalities pointed out by the Supreme Court, such as allocation to companies not engaged in a specified end-use.

Interestingly, in front of the Supreme Court, the central government had presented the takeover of the 42 operational mines by CIL also as a viable option. In fact, the Supreme Court had delayed the cancellation of the operational blocks till 31st March, 2015 to allow CIL and the central government breathing time to manage its affairs. The Supreme Court noted that “The Central Government is confident, as submitted by the Attorney General, that the CIL can fill the void and take things forward” (Supreme Court, 2014b). Thus, the central government also had the option of allocating the blocks to CIL to ensure the continuity of coal production.

⁸ The minister’s speech in Parliament has been translated from Hindi into English by the authors.

In either of the above mentioned scenarios, namely auctions under MMDRA 2010 or allocation to CIL, legal amendments may have been required, at most, to deal with administrative issues such as transfer of land and infrastructure from the old allottees to the new. Therefore, the urgency of dealing with 42 producing coal mines (about 20% of all the de-allocated mines) which would stop producing by 31st March 2015 could have been dealt with through simpler and targeted legislation.

In parallel, the government could have initiated discussions on a more comprehensive reform of the coal sector keeping in view all the issues faced by it rather than just the fallout of the Supreme Court judgement, and introduced suitable legislations by, say, the monsoon or winter Parliament session of 2015. Such reforms could have not only considered the other issues raised by the Supreme Court (such as eligibility of joint venture companies for captive mining, and commercial mining by state government companies) but also issues such as the coal market structure, pricing, regulation, commercial mining, productivity, environmental practices and any other relevant issues. Recommendations made by expert committees set up by the government in the past could have been used as a starting point in this regard (Planning Commission, 1996; MoC, 2007).

Such a sequence of actions is unlikely to have significantly delayed allocation of mines and augmentation of production, but would have had the advantage of reshaping the coal sector comprehensively. In any case, even under the CMSPA as enacted, as of November 2015, only 29 Schedule II mines have been allocated. Even among these mines, it is understood that very few

are actually producing coal⁹, while the allocated Schedule III mines are perhaps far from being ready for production.

2.4 Validity of environmental clearances

A minimum level of investment (80% and 60% for Schedule II and III respectively) is required to have been made in the EUP (End-Use Plant) bidding for Schedule II or III coal blocks (MoC, 2014c). Therefore, it is expected that such EUPs would have already acquired their environmental clearances (ECs). Such ECs typically mention the source and quality of coal, and have a clause requiring the project developer to issue a fresh reference to the Ministry of Environment, Forests and Climate Change (MoEFCC) for suitable amendments to the EC letter in case of any change in the project, including coal quality (such as ash or sulphur content).

Since allocation of mines is very likely to result in a change in the quality of coal used in these EUPs, the ECs given to block-winning EUPs (which were not prior allottees) are likely to require amendment. The existing framework for coal block allocations does not explicitly require the block winner to approach MoEFCC for this. It is hoped that due care will be taken by respective agencies to ensure that ECs are suitably amended based on the coal quality of the allocated blocks.

To summarise, there are some serious questions and ambiguities in the legal framework introduced for the coal block allocation through CMSPA and corresponding amendments to CMNA and MMDRA, which could result in significant litigations, delays and inefficiencies in the sector. A more deliberative approach could have helped avoid these pitfalls.

9 Monthly production of coal from captive mines fell by 42% (from 5.3 MT to 3.1 MT) between March and April 2015. In fact, the 18.7 MT production from captive mines in the first half of 2015-16 is only 20% of the target from captive mines for 2015-16, and about half (53%) of the production in the corresponding months of 2014 (Coal Insights, 2015a).

3. DESIGN AND PROCESS OF ALLOCATIONS

Based on the CMSPA, MoC started the process of reallocation of the 204 coal blocks whose allocations had been cancelled by the Supreme Court. Under CMSPA, coal blocks can be allocated either through auctions or allotments. The central government decides which blocks are to be auctioned or allotted in each tranche. Since end-use restrictions continue to apply to Schedule II and III blocks, the central government also decides the end-use of these blocks, which is currently classified into two categories – power and non-regulated sector (which includes all other notified end-uses including captive power generation). Figure 2 gives a summary of the blocks proposed to be allocated in tranches one and two.

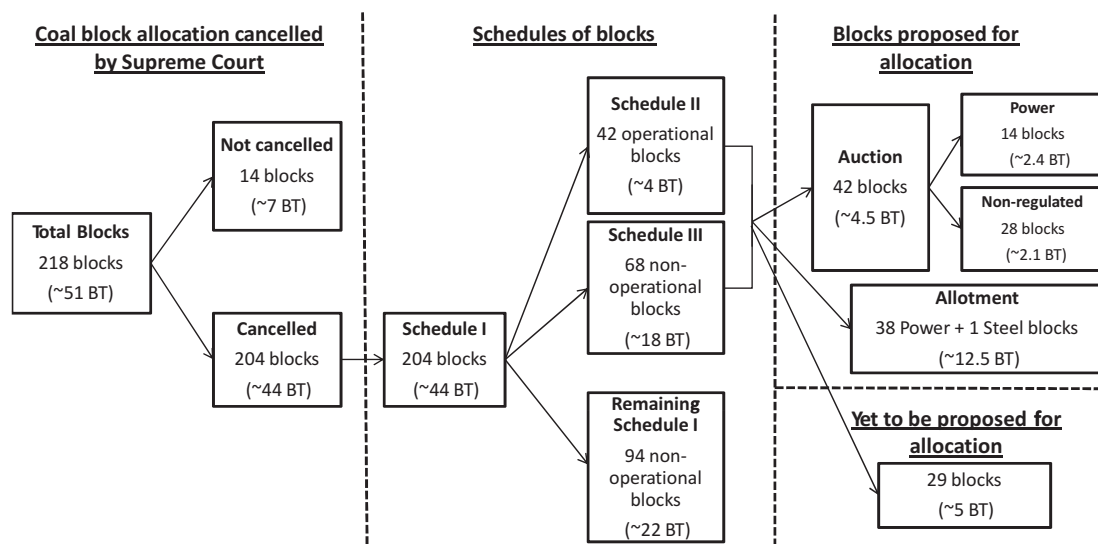
The auction process for a block is governed by the tender document, while the allotment document governs the allotment process. There are separate standard tender and allotment documents for Schedule II and Schedule III mines, and for power (regulated) and non-regulated sectors (MoC, 2015c; MoC, 2015d). After the allocation of a mine, the winner and the central government enter into a contractual agreement which outlines various obligations, including production and use

of coal in the EUP. Winners of auctions are bound by the Coal Mine Development and Production Agreement (CMDPA) and winners of allotments are covered by the Allotment Agreement (MoC, 2015e; MoC, 2015f).

The stated objective of CMSPA is continuity of coal production. If this was the primary objective, the question remains as to whether auctions and allotments as designed were the best way forward or whether other approaches could have worked better¹¹, particularly since the current design seems to suffer from infirmities as explained below and since production from the operational blocks has reduced significantly.

In this section, we present the results of our analysis of the model tender and allotment documents, which deal with the ‘design’ of the allocation process. We also analyse how the process of allocation played out in the first two tranches of auctions and the first round of allotment.

Figure 2: Summary of cancelled coal blocks and proposed allocations¹⁰



Source: Compiled from Supreme Court judgements and the MSTC website

Note: Schedule I blocks are divided into Schedule II and III; blocks not in Schedule II or III have been labelled ‘Remaining Schedule I’ in the above figure.

10 Not all blocks offered for allocation were actually allocated. See Section 6 for details.

11 For example, for the power sector, the government could have resorted to case II like bidding, rather than reverse auction to reduce complexities mentioned in Section 5.

3.1 Auction design

Auctioning coal blocks is undoubtedly a better and more objective method of allocation among multiple applicants than using a discretionary or ad-hoc process. However, the design of auctions can be further improved as discussed below.

3.1.1 Competition

The auction design specifies that only the top 50% of technically qualified bidders progress to the electronic financial bidding stage¹². It is not clear why such a cut-off is in place as it is likely to reduce competition and unlikely to adversely affect auction proceeds or price discovery. This is particularly true since each block received only around eight bids on average in the first and second tranches. The competition was even lower in the third tranche of auctions with the average number of bids per block at a little less than four.

The auction design also allows multiple bids per company by enabling bidding per EUP, instead of per company. In the first two tranches of auctions, such bids from the same group companies reduced competition in the financial bidding round. Interestingly, it seems that a few 'front' companies also participated in the auctions (See Box 1).

Moreover, there was no need to allow multiple bids from one company, since 'diversions' are provided for, i.e. under CMSPA, a company can use the coal from the allocated block for any of its

other EUPs or those of its subsidiaries for the specified end-use. Section 6.1.3 provides examples of how the effective competition was reduced in the first two tranches of auctions as a result of such design. The third tranche of auctions partially addressed this issue by increasing the number of technically qualified bidders for the final round by the number of technically qualified bids from the same company or group.

3.1.2 Life of the EUP

Bids for coal blocks are made for specific EUPs, and the auction rules state that the bidders have to ensure that the capacity of their EUP is proportional to the reserves in the coal block being bid for, by ensuring that the coal block's extractable reserves do not exceed 150% of the EUP's normative coal requirement over 30 years (MoC, 2014c).

However, the rules do not mandate that the remaining life of the EUP be factored in. This raises the following questions:

- (i) It is not clear what happens if the life of the EUP ends before the life of the mine. Will the EUP continue to meet the eligibility criterion (of the extractable reserves of the block being less than 150% of the coal requirement over 30 years) as the CMDPA stipulates that the block winner should? Can the

Box 1 : 'Front' companies bidding for coal blocks

The bidders for certain coal blocks included many 'front' companies, i.e. subsidiary companies with limited paid up and authorised capital. These were typically newly formed subsidiaries of other established companies, which also participated in the auctions. While it is not clear how companies with such limited capital could have made the necessary investments in their EUPs to qualify technically, most such companies did qualify technically.

For example, Sheesham Commercial Pvt. Ltd., Water Hyacinth Commosale Pvt. Ltd. and Wigeon Commotrade Pvt. Ltd. are subsidiary companies of CESC (Calcutta Electric Supply Corporation) Ltd., which became its subsidiaries in January-February 2015, just before the auctions began. All these companies qualified technically in the auctions. As per CESC's Annual Report 2014-15, these companies have a share capital of ₹ 1 lakh each, and net assets worth only ₹ 23 lakh, 2 lakh and 8 lakh respectively as on March 31, 2015 (CESC, 2015, pp. 108,136,140). Interestingly, these companies were established in May 2012, shared the same official email address and postal address in Kolkata and have common directors (MoCA).

12 The top 50% refers to the highest 50% bids for the non-regulated sector blocks (which use forward bidding) and the lowest 50% bids for the power sector blocks (which use reverse bidding). There are also a few provisions to deal with equal value bids etc. which are not relevant to the discussion.

coal block winner continue mining coal for its other plants? Or is the winner expected to continue mining and sell all the mined coal to CL as 'excess coal'? Or, does the mine go back to the government when the life of the EUP ends? Ambiguity regarding these issues could lead to confusion and litigation down the line.

- (ii) In the reverse case, if the life of the mine ends before the life of the EUP, the EUP can bid for more blocks (MoC, 2015c). However, if the same bidding framework continues, the bid for a new block will once again not consider the remaining life of the EUP, though presumably the remaining useful life of the EUP would be much shorter at that time.

3.2 Allotment design

The allocation process allows for blocks to be allotted to public sector companies based on some criteria. However, these criteria are very weak and hence effectively allow for discretionary block allotments. The weaknesses in eligibility and evaluation criteria are described below.

3.2.1 Eligibility criteria

The criteria governing eligibility of public sector companies for coal block allotments are very weak compared to the eligibility criteria applicable to bidders for coal block auctions. There is no condition to match the coal reserves of the block to the coal requirement of the EUP. There is not even a condition mandating some minimum expenditure in the EUP for allotment, which could have been used to weed out the non-serious applicants¹³.

3.2.2 Evaluation criteria

In case of auctions, a minimum of three technically qualified bidders are required for the bidding to proceed to the financial bidding stage. In case of allotments, a block may be allotted to a company even if there is only a single technically qualified application.

In case of more than one application, the following evaluation criteria have been specified for deciding the preferred applicant (MoC, 2015d):

- Requirement of coal for power generation capacity coming up in the state till 2017.
- Proximity of the EUP from the coal mine.
- If the applicant is owned by a coal bearing state, the above norms may also be relaxed to encourage setting up of EUPs close to pit-heads.

It is not clear how these criteria are used objectively to decide block winners. For example, what are the relative weights of the different criteria, what relaxations are applicable to applicants owned by a coal bearing state, and what is the basis used to decide the state's power generation capacity up to 2017? Since the criterion of upcoming power generation capacity is not applicable to them, the criteria to select a preferred applicant for non-regulated sector blocks are even less objective.

Interestingly, the Technical Committee set up by the central government (see Section 3.3) had recommended evaluation criteria, such as status of preparedness of the EUP and normative coal requirement, to select government companies for allotment of coal blocks. However, it appears that these suggestions have been ignored.

3.3 Issues with block classification

It is the government's prerogative to determine the end-use of different blocks, the method of allocation (auction or allotment), and which blocks are to be added to Schedule III. These choices determine the order in which blocks are allocated, who may apply for these blocks, how they are allocated and what use the coal is put to. These choices also have significant implications for the revenue stream of host state governments from that block, since blocks to be auctioned will typically fetch greater revenue than blocks to be allotted, and blocks given to the non-regulated sector will typically fetch greater revenues than blocks given to the power sector¹⁴. Therefore, it

13 The initial template of the Allotment Agreement that was published included an eligibility condition requiring a minimum expenditure of 30% of the total project cost of the specified EUP (which itself is much lower than the condition for auctions). However, this condition was later removed.

14 This is because winners of allotted blocks pay only a fixed reserve price of ₹ 100/ton of coal extracted while bids for auctioned blocks are typically higher. Bidding for non-regulated sector blocks is for the amount to be paid to the state government per ton of coal extracted while bidding for power sector blocks results in payments over ₹ 100/ton only if it enters the additional premium bidding stage and such premiums are typically lower than the forward bids for non-regulated sector blocks.

was desirable to have well laid out criteria for such decisions, and documentation explaining the classification. However, as discussed below, this did not happen.

3.3.1 End-use classification

The methodology, if any, used by the government for deciding the end-use of a coal block is not publicly available from MoC. The end-use of eight of the 42 blocks put up for auctions in the first and second tranches was changed from their earlier end-use, and led to a case being filed in the Delhi High Court wherein the petitioner questioned the change in end-use of certain blocks (Delhi HC, 2015a). The analysis below is based on the information available in the corresponding High Court judgement.

According to that, a Technical Committee was constituted on 29th October 2014 by MoC to, among other things, formulate criteria for classifying coal mines for auction and allotment, and to classify the 204 Schedule I coal mines/blocks on this basis¹⁵. The committee proposed and adopted some broad criteria for the determination of end use. For example, blocks with significant reserves (above 100 MT¹⁶) and/or

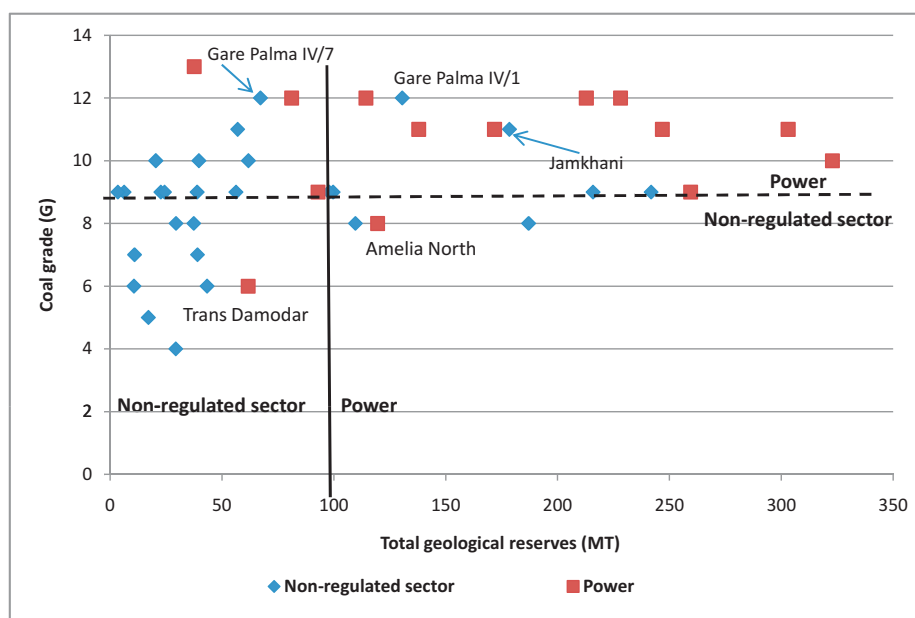
those with inferior coal (grades G9 or worse) were proposed to be given to the power sector.

An analysis of end-use assignment of blocks suggests that while these criteria were followed for many blocks, they were not uniformly followed (see Figure 3). For example, Jamkhani and Gare Palma IV/1 blocks, with reserves above 100 MT and coal grades below G9 were reserved for the non-regulated sector, while Trans Damodar with only 62 MT and coal grade G6 was earmarked for the power sector. Similarly, Gare Palma IV/7 with inferior coal was reserved for the non-regulated sector, while Amelia North with relatively good quality coal was reserved for the power sector.

3.3.2 Auction-allotment classification

There is also no publicly available information on how the government decides whether a block is to be auctioned or allotted. As per the Technical Committee criteria, de-allocated mines which were earlier allotted to government companies may be considered for allotment to the government companies again for the specified end-use. However, six blocks which were previously allotted to government companies were put up for auction¹⁷.

Figure 3: End-use classification of coal blocks by reserves and coal grade



Source: Prepared from block details available on the MSTC website

15 There was no information about the Technical Committee on the MoC website. The information in this report is taken from the Delhi High Court (HC) judgment (Delhi HC, 2015a), which is currently being challenged in the Supreme Court.

16 Note that the Technical committee does not clarify whether these are extractable or geological reserves. We assume that the reference is to geological reserves. The Technical Committee also does not give any rationale for the cut-off of 100 MT.

17 These were Bicharpur, Dongrital II, Mandla South, Amelia North, Tara and Trans Damodar. Of these, Dongrital II and Tara were not auctioned for various reasons.

3.3.3 Adding blocks to Schedule III

While the list of mines in Schedule II is fixed, the central government can add coal blocks to Schedule III from the remaining Schedule I blocks. The rationale for deciding blocks which are to be included in Schedule III from Schedule I is not publicly available. Even the Delhi High Court was baffled as to “what is the object and purpose behind Schedule III”, though it has been suggested that these are mines that may commence operations soon (Delhi HC, 2015a). The choice of which blocks are classified as Schedule III determines the likelihood of their allocation in the near future and ensures that they can only be offered for a specific end-use. It is understood that many blocks classified as Schedule III are unlikely to start production anytime soon, due to issues related to land acquisition, mining lease, etc. Hence, it is not clear on what basis these mines have been classified as Schedule III mines.

Thus, though the classification of mines has implications for its end-use, allocation methodology, revenue streams for states and order of allocation, it is not clear whether a well-defined and objective methodology was followed to classify blocks.

3.4 Transparency of the allocation process

The overall transparency of the current coal block allocation process has been considerably better than that of allocations under the earlier system, as some information has been provided on the MSTC and MoC websites. However, a lot of important information was still not made publicly available.

3.4.1 Transparency issues common to Auctions and Allotment

- (i) EUP details: No details of the EUPs for which bids were placed were made public. Even the details of the winning EUPs are not available to the public though this information is necessary to understand the electricity tariff impacts of power sector allocations, the financial viability of the bids, the relationship between EUP capacity and mine reserves, and to track the progress of the EUPs.

- (ii) Final version of model documents: While model tender/allotment documents and their corrigenda/addenda were published separately, no final model tender or allotment document incorporating all the corrections and additions was published. Making such a document available would have made the system more transparent and more amenable to analysis.

- (iii) Signed contracts: The final signed contracts for both auctioned and allotted mines have not been published, though these are not commercially sensitive. The practice of publishing signed contracts is followed in the power sector, where final power purchase agreements (PPAs) are put up in the public domain.

3.4.2 Transparency in Auctions

- (i) Information regarding the bidders who qualified for the final electronic bidding round along with their initial price offers (IPOs) was not made publicly available¹⁸. There was also no anonymous compilation of final bids. Publication of such information is considered as good practice to ensure transparency, and has been enshrined into the guidelines for power procurement through competitive bidding in the power sector by the Ministry of Power (MoP) (MoP, 2005).
- (ii) Another important piece of information, namely the intrinsic value of coal blocks, was not made public. The intrinsic value is used to determine the upfront amount and the floor price for bidding for the non-regulated sector. As described in Box 2, though the government published the methodology for intrinsic value calculation, it was not very helpful in arriving at reasonable intrinsic values of blocks.

3.4.3 Transparency in Allotments

The allotment process, which is much more discretionary in nature as discussed earlier, was even less transparent than the auction process.

- (i) Important details of mines, such as mine reserves, coal grades and status of clearances, were not put up in the public domain. This is

18 The Secretary, MoC tweeted a few pictures of the auction screen which showed some values under columns labelled floor price, ceiling price, etc. However, this cannot be considered “public dissemination”. It is also not clear whether these are the floor / ceiling prices for the initial bidding or the financial bidding round.

Box 2: Intrinsic values of coal blocks

Knowing the intrinsic value of coal blocks is important for many reasons. Firstly, the upfront payment that is to be paid by the successful bidder/allottee to the government is 10% of the intrinsic value of the block. Secondly, it is used to determine the floor price of blocks reserved for auction to the non-regulated sector.

The central government published the methodology for determining the intrinsic value of a coal block (MoC, 2014d). The methodology states that the intrinsic value of the coal block will be calculated by computing its Net Present Value (NPV) based on the Discounted Cash Flow method and the extant CIL notified price for the corresponding Gross Calorific Value (GCV) band. But it does not give details of which cash flows would be considered or what discount rate would be applied. Some media articles have speculated that the floor price is simply the CIL notified price less the cost of mining and other costs (Scroll, 2015b; Economic Times, 2015b).

As the government did not publish the intrinsic values of each block, we made an attempt to estimate them using the published methodology. However, these estimates (under different assumptions) differed significantly from the intrinsic value calculated from a Press Information Bureau (PIB) release, which had details about the first instalment of the upfront payment amount (PIB, 2015a).

For example, the first instalment of upfront payment for the Ardhamgram block is stated in the PIB release as ₹ 2.55 crore. Since the first instalment of upfront amount is 5% of the intrinsic value of the block, the intrinsic value of this block should be ₹ 51.11 crores. The floor price of a block is calculated by annuitizing 90% of the intrinsic value into a ₹/ton value based on the extractable reserves of the block. As Ardhamgram has 19 MT of extractable reserves, a simple estimation of the floor price from the intrinsic value comes to an unrealistically low ₹ 24/ton. This is also inconsistent with the minimum floor price of ₹ 150/ton set for the non-regulated sector. For comparison, the CIL notified price for the grade of coal in this block is ₹ 1,690/ton, the “floor price” for Ardhamgram as discernible from the tweets of the Secretary, MoC during the electronic auction was ₹ 1,290/ton, and the eventual winning bid for this block was ₹ 2,278 /ton – all very different from what was estimated from the upfront amount. Similarly, attempts to calculate the intrinsic value assuming different cash flows (e.g. assuming different mining costs and escalation rates for the CIL notified price) and discount rates also resulted in intrinsic values very different from what is inferred from the PIB release unless one assumes unrealistically high values for mining cost or unrealistically low discount rates.

of concern since the geological reserves of blocks offered for allotment were more than the reserves offered for auctions¹⁹.

- (ii) Of the 39 blocks on offer under allotments, five blocks were not allotted even though these blocks received around six applications each (Business Standard, 2015b). These blocks hold geological reserves of 3.7 BT, which is about 30% of the total reserves proposed for allotment so far. There is no information available on why these blocks were not allotted.

- (iii) Some blocks seem to have been allotted without going through the process described in the allotment document. Blocks Utkal D and Utkal E, with combined geological reserves of over 350 MT, are an example of this. These blocks were added to Schedule III through a notification in December 2014 (MoC, 2014e). When the first lot of blocks were offered for allotment, the MSTC website did not list these blocks among those offered for allotment, nor did the MSTC website include them in the list of blocks successfully allotted (MoC, 2015g;

¹⁹ The geological reserves of blocks offered were estimated from information that was published earlier by MoC in the context of the previous regime of allocations. Incidentally, it seems some applicants were also not clear about the reserves, grades and clearance status of these mines (MoC, 2015n, p. 7).

MoC, 2015h). But, surprisingly, the blocks seem to have been the subject of enquiries at a pre-bid meeting, and a PIB release in February 2015 lists these blocks as having received six applications while stating that the list was indicative and the final list would be published on the MSTC website (MoC, 2015i; PIB, 2015b). Though the MSTC website never listed these blocks, the monthly summary submitted by MoC to the cabinet in September 2015 – seven months after the PIB press release – lists these two blocks as having been allotted to National Aluminium Company under the provisions of CMSPA (MoC, 2015j). Similarly, Mandakini-B, a Schedule I block, which never featured in the list put up on the MSTC website or the February PIB release, was allotted to the NTPC (MoC, 2015k). Thus, the central government has been allocating Schedule I blocks without following the process it has established for the purpose.

3.5 Removal of blocks and cancellation of bids

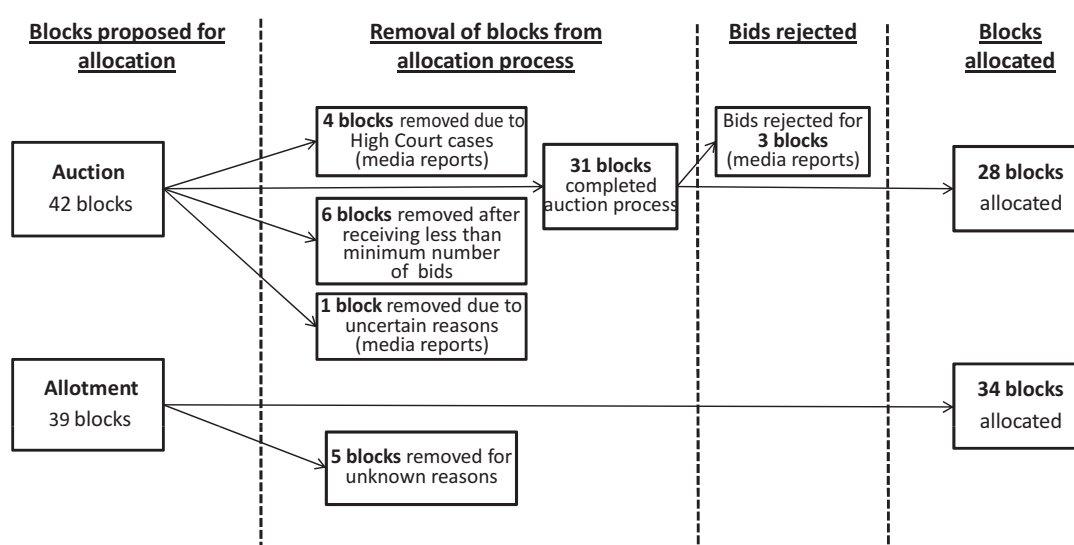
Of the 42 blocks originally put up for auction, the auction process was not completed for as many as 14 blocks – one third of those offered. Information from official sources about the reasons for this lapse is limited (MoC, 2015i; MoC, 2015m). Figure 4 presents a summary of the blocks proposed for

allocation, blocks actually allocated, and blocks not allocated, along with the reasons for the same. As can be seen, information about why the blocks were not allocated was mainly available through media reports (Financial Express, 2015a; Business Standard, 2015c; The Hindu BusinessLine, 2015b; Indian Express, 2015b).

According to these reports, four blocks were removed from auctions due to High Court cases and one block was removed for unclear reasons before the bidding process took place. Bids for eight blocks were withheld after the bidding ended as these closing bids were considered as outliers. Whereas five of these eight bids were later accepted, bids for three blocks were cancelled. The winners of these three blocks approached the Delhi High Court against the cancellation and the Court in its order held that there was no evidence of cartelisation in the bids even though the bids were low (Indian Express, 2015a). No information is available about five blocks whose allotment process was not completed.

Thus, there is a lack of transparency in the allocation process regarding the blocks whose allocation was not completed, and reports suggest that there are questions about the grounds of cancellation of some of these bids.

Figure 4: Blocks proposed for allocation and their actual status as of October 2015



Source: Compiled from information available on the MSTC website and news sources

4. POST-ALLOCATION CONTRACT DESIGN AND MANAGEMENT

The CMDPA or the Allotment Agreement between a block winner and the Government of India governs the rights and responsibilities of the block winner and the various government agencies with respect to the operation of the coal mine. An analysis of this contractual arrangement raises the following questions.

4.1 Arrangements and diversions for optimal utilisation

Section 20 (1) of the CMSPA allows a successful bidder/allottee or coal linkage holder to enter into 'arrangements' with other successful bidders/allottees or coal linkage holder having the same end-use. Rule 19 of the CMSPA rules states that the successful bidder/allottee will have to obtain prior approval from the central government to operationalise such arrangements. The motivation for such a provision is stated as optimum utilisation of the coal mine and achievement of cost efficiencies, possibly by swapping of coal with other linkage/block holders in order to optimize transport, coal quality etc.

However, the clause on arrangements in the CMDPA clarifies neither the nature of arrangements permitted, nor the criteria that the central government will use to approve or disapprove them. This gives arrangements a very wide latitude and leaves several possibilities open. For example:

- It does not mention swapping, nor does it say that arrangements will be limited only to swapping.
- In case of government companies with allotted mines entering into arrangements, it does not say that the other EUP should also be government owned.
- It does not say whether arrangements can (or cannot) involve financial considerations²⁰.
- It does not define any parameters for 'optimum utilisation of the coal mine' such as a reduction in the total distance of coal transported, or a net reduction in the final consumer price of the end-use product.
- It does not say anything about the capacity of the other EUP with whom the arrangement is

being made.

- It does not say whether an arrangement results in the linkage of the other EUP being reduced correspondingly or if the linkage gets swapped in case of a swapping arrangement.

Such a broad and vague definition enables discretionary arrangements and can potentially lead to arrangements that do not necessarily improve the sector's efficiency.

Section 20(2) of the CMSPA and Rule 20 of the CMSPA rules permit 'diversions', i.e. they allow a block winner to divert the extracted coal for use in any other EUP of the winner or its subsidiary company for the same end-use. This requires no prior approval from the central government, but does require prior intimation in writing. Once again, while the intent of permitting diversions may be to optimize coal use by the block winner, its loose definition leads to similar questions as with arrangements.

Arrangements and diversions effectively render the eligibility criteria for applying for a block a mere formality to be satisfied at bidding time. Since the block winner can use the coal from the allocated block in any other plant it owns, or can enter into arrangements for the coal to be used in other EUPs, it is possible that the coal from an allocated block may never get used in the EUP for which it is won.

The effect of arrangements and diversions on eligibility for future bidding by the current block winners or the EUPs with whom arrangements or diversions are made is unclear. Would either party be eligible for future bidding? If so, under what conditions would they be eligible? Would the matching of capacity to block reserves account for the arrangement/diversion? Would the arrangement/diversion stand cancelled or reduced correspondingly if the recipient EUP wins in a future bidding round? Who would be responsible for collating all arrangements and diversions, and ensuring their compliance with future bids?

4.2 Monitoring of production

Monitoring the actual quantity and quality of coal produced from the allocated blocks is important, both because it is a national resource and because

²⁰ In other words, it does not prohibit trading of coal through arrangements.

significant elements of the agreement, such as adherence to the mining plan, usage of coal for end-use, sale of excess coal to CIL²¹, and determination of electricity tariff for power sector blocks depend on it (MoC, 2015e). Some reports state that successful bidders may prefer to import rather than produce coal from allocated blocks since international coal prices are currently low and bidders have bid aggressively, further highlighting the importance of monitoring production from allocated blocks (Coal Insights, 2015b).

However, the provisions in the CMDPA and Allotment Agreement for monitoring of coal production are rather weak. The only requirement appears to be that the successful bidder has to provide monthly information to the Coal Controller's Organisation (CCO) about meeting efficiency parameters, which includes information on whether or not it is following the "schedule of production" as per the CMDPA or Allotment Agreement. Even if one assumes that this includes details of actual production (quantity and quality), it is still probably insufficient for the following reasons.

4.2.1 Monitoring by CCO

The CCO is a subordinate office of the MoC, which monitors the progress of allocated coal blocks and associated end-use projects. CCO has been inadequately staffed and unable to perform its important duties for many years now. For example, when the Parliamentary Standing Committee on Coal and Steel enquired about the strength of CCO in 2013, the CCO informed the Committee that "he is the only technical man and that also is a temporary post and the organisation has one surveyor." Table 2 lists various reports mentioning the shortcomings of CCO and the need to strengthen it.

However, there seems to be very slow, if any, progress in attempts to improve CCO's capacity though it performs such a crucial function, leading one to speculate about the sincerity of the government's intentions.

Considering this background, it is doubtful that CCO would be able to actually monitor production from the allocated mines, unless it is significantly strengthened and empowered. The coal sector needs an empowered and independent regulator, whether or not the coal market structure undergoes a transformation. As and when such an institution is established, the function of monitoring of mining operations performed by CCO can become a part of the regulatory body.

4.2.2 Sale to CIL

The winner is obligated to mine coal according to the mining plan, and any coal in excess of that needed by the specified EUP and its other plants (excluding "arrangements") has to be sold to CIL. Non-regulated sector block winners are expected to sell the excess coal at CIL notified price for the similar coal grade, while the power sector block winners are expected to sell at the CIL notified price or the closing bid price, whichever is lower²².

However, given the aggressive bidding seen so far, block winners may not have the incentive to do so. This issue becomes more acute in cases where the EUPs do not get ready in time, and all the coal mined is 'excess' and has to be sold to CIL. In the absence of robust monitoring as discussed above, it is not clear how the government can ensure that excess coal is indeed sold to CIL.

4.2.3 Washeries and sale of washery rejects

The coal washery sector in India has an interesting history, replete with sudden spikes in private washery capacity, its low utilisation and varying yields, as well as complaints about quality of washed coal (Prayas (Energy Group), 2013). CMDPA allows miners to wash coal and sell the washery rejects within normative limits.

However, some reports suggest that due to the aggressive bidding, some companies may find it profitable to possibly sell some of the coal as washery rejects in the open market (Scroll, 2015a). Given the lack of transparency in coal washing contracts, the chequered history of the washery sector and the weak provisions for monitoring, it is not clear how this possibility would be dealt with.

21 The successful bidder is mandated to mine coal according to the approved mining plan. Any coal extracted in excess of that needed by the Specified EUP and Other Plants (includes diversions, but not arrangements) has to be sold to CIL.

22 For power sector blocks which have moved into forward bidding (since reverse bids hit zero), the excess coal has to be sold to CIL at the fixed rate of ₹ 100/ton.

Table 2 : Extracts from reports about inadequacies of CCO

Sr. No.	Committee / Report	Extracts
1.	CAG Performance Audit (CAG, 2012)	Chapter 5: CCO did not have adequate strength or men-in-position for effective monitoring of coal blocks... The Ministry accepted (February 2012) that there was a need to strengthen the CCO, Kolkata and stated that a proposal for creation of additional posts was under consideration. Executive summary: ... CCO has not conducted any physical inspection of allocated coal blocks to ascertain actual progress/production vis-à-vis progress/production reported by the allottees... CCO should conduct physical inspection of allotted blocks on a regular basis.
2.	Standing Committee on Coal and Steel, 15 th Lok Sabha- 31 st report (Standing Committee on Coal and Steel, 15 th Lok Sabha, 2013)	Para 17: The Committee fails to understand as to how without having adequate manpower; the organisation can carry out inspection for ascertaining quality in selected mines. It will be difficult to undertake regular inspections to ensure compliance with specific orders relating to coal quality and resolving statutory complaints. Para 5.8: In this regard, the Secretary, Ministry of Coal, submitted during evidence as under: "We are going to work on it very seriously. We have to strengthen the organisation. We are working on it. We have initiated the process of strengthening the Coal Controller's Office."
3.	MoC Annual Report 2012-13 (MoC, 2013)	Para 2.5.5: Keeping in view the increased responsibilities of the CCO, to strengthen the CCO, a study by Indian School of Mines (ISM), Dhanbad has been commissioned.
4.	MoC Annual Report, 2013-14 (MoC, 2014f)	Para 2.5.5: Keeping in view the increased responsibilities of the CCO, it is proposed to strengthen the CCO. For this a study by ISM, Dhanbad has been commissioned who have submitted its report which is under examination.
5.	MoC Annual Report, 2014-15 (MoC, 2015o)	Chapter 3: The Indian School of Mines has submitted its report and the same is under examination in the Ministry.

4.3 Transparency in the post-allocation process

While there was some attempt at transparency in the allocation process, there is almost no information publicly available regarding the post-allocation events, though much of it is financially non-sensitive and relevant to public interest.

4.3.1 Mine progress information

There is no systematically published information regarding the progress of mines. For example, no information is publicly available on block vesting status, stage of clearances/development, extraction profile according to the mining plan, details of monthly quantity/quality of coal produced and payments made, details of any arrangements or diversions approved, quantity/quality of coal consumed in its own EUP, excess quantity sold to CIL, quantity of washery rejects and middlings consumed/sold, etc.

Publishing such information would not compromise financial sensitivity and would contribute to enhancing transparency in the coal sector.

4.3.2 Designated Custodian

For mines not allocated by the date set by the Supreme Court for their de-allocation, the central government should have appointed a designated custodian to manage and operate such coal mines (MoC, 2015b). In the auctions and allotments concluded so far, only 29 of the 42 Schedule II (operational) mines have been allocated. There is no published information from MoC regarding the appointment of designated custodians for the remaining mines, though some reports suggest that a designated custodian has been appointed for certain mines (PIB, 2015c).

4.4 Ability to enforce contracts

The energy sector's recent record in terms of enforcing contracts has been poor, and there have been multiple long-drawn litigations. Examples include the difficulty in enforcing Fuel Supply Agreements (FSAs) between CIL and coal consumers, and PPAs between power generators and distribution utilities (CCI, 2013; Economic Times, 2013; MERC, 2014). Given the weaknesses discussed above in the allocation design, the post-allocation contracts, the monitoring of mine operations, and given the aggressive bidding seen

so far, there is serious concern about the ability of the central government to enforce the contracts in a fair and effective manner. In this context, statements by the Coal Minister and Coal Secretary that aggressive bidding is the prerogative of bidders and that they would be bound by the contracts do not inspire much confidence (Coal Insights, 2015c). Instead, better bid design, increased transparency, some checks for rational bids and institutional strengthening are likely to have led to better results.

5. POWER SECTOR SPECIFIC ISSUES

Since the power sector is a major consumer of coal, there is a close inter-linkage between the coal and power sectors. Therefore, the potential implications of the coal block allocations for the power sector are of particular interest.

Block allocations for the power sector are designed with the intent of not only enabling power plants to receive adequate coal, but also passing on the benefits of the 'cheap coal' to electricity consumers. In case of auctions, coal blocks for the power sector were subject to reverse bidding, wherein each bidder bid a ₹/ton amount (over and above the fixed rate of ₹100/ton) which would be used to compute the fuel cost component of the electricity tariff. The lowest bid would win the block.

Aggressive bidding for these blocks in the first and second tranches led to the reverse bids hitting zero, resulting in the blocks moving into forward bidding, i.e. bidders now bid for how much 'additional premium' they will pay the government, even as the fuel cost would be computed based on just ₹100/ton cost of coal²³. However, there are likely to be many challenges in realizing this intention as described below.

5.1 Electricity tariffs

5.1.1 Initiating tariff revision

There is no clarity on whether the appropriate Electricity Regulatory Commission (ERC) is expected to suo motu initiate a tariff revision process in case of power sector EUPs that have been allocated coal blocks or whether the winner is expected to approach the ERC after the allocation. The CMSPA, its rules, the tender document and CMDPA are silent on this aspect. Thus, there is uncertainty regarding how the process of tariff revision will even be initiated. To the best of our knowledge, no such tariff revision process has been initiated as of early October 2015 - eight months since the first tranche of auctions took place²⁴.

5.1.2 Energy charges of existing PPAs

MoP issued a directive to the Central Electricity Regulatory Commission (CERC) under Section 107 of the Electricity Act, 2003 regarding the procedure for downward revision of energy charges of existing PPAs (MoP, 2015a); it also requested state governments to issue similar directives to State Electricity Regulatory Commissions (SERCs) (MoP, 2015b)²⁵. The MoP directive to CERC is only relevant to PPAs falling under the jurisdiction of CERC, such as those of central sector power generators like NTPC and Damodar Valley Corporation, and those involving more than one state. However, most of the power already contracted by coal block winners is under the jurisdiction of SERCs, and there is no publicly available information about any state government issuing a directive to its SERC as of October 2015. As a result, currently there is no legal mandate to SERCs to revise energy charges of existing PPAs involving coal from allocated blocks.

5.1.3 Fixed charges for new PPAs

MoP issued an amendment to the guidelines for case-I bidding under Section 63 of the Electricity Act, 2003, according to which power procurers will determine a ceiling for fixed charge in advance, in consultation with the appropriate ERC (MoP, 2015c). This amendment was presumably motivated by a need to cap fixed charges so that block winners do not increase them to compensate for any loss on account of low fuel charges resulting from the aggressive bidding for blocks (Financial Express, 2015b).

However, it is not clear that this will achieve the intended objective. Firstly, these guidelines are not binding on SERCs and they may choose not to cap fixed charges, though in such cases, they are expected to put in writing why they deviated from the guidelines. Secondly, the amendment to the guidelines itself is in question as it has resulted in litigation. Since it was issued after two tranches of coal block bidding were completed, the petitioners

23 This is the case for auctioned blocks. Please note that in the case of allotments, the EUP using the coal can charge the fixed rate plus the run-of-mine cost of mining coal.

24 We understand that at least some of the EUPs that have won power sector blocks have already been commissioned. In spite of this, no tariff revision process has been initiated so far.

25 The directive from MoP to CERC is for downward revision of energy charges for all existing PPAs, i.e. cost-plus PPAs under Section 62 as well as tariff-bid based PPAs under Section 63.

in the case claim that this is equivalent to changing the coal block bidding rules after the bidding process is completed (The Hindu BusinessLine, 2015a; Delhi HC, 2015b). In addition, reports claim that this is also causing reluctance amongst developers to mine coal from these blocks (Livemint, 2015; PwC & ICC, 2015). In fact, MoC has decided not to auction any more coal blocks to the power sector till the legal issues regarding capping of tariff have been decided (Business Standard, 2015d). Thirdly, these guidelines do not specify any uniform methodology or process to arrive at such a cap and hence, the methods and caps arrived at by different procurers may be very different. As a result, the objective may not be achieved, or may be achieved in a skewed manner depending on the ability and discretion of the concerned regulatory commissions.

Since the allocations to the power sector were made with the objective of not increasing tariffs, issues such as capping of fixed charges should have ideally been thought through before the commencement of bidding, to avoid the kind of problems being witnessed.

5.2 Regulatory complexity

5.2.1 Electricity tariff determination

The MoP directive to CERC regarding existing PPAs is applicable to power plants using coal from allocated blocks in accordance with CMSPA (MoP, 2015a, p. 3). However, coal from an allocated block may not be sufficient for a EUP, and it could obtain coal from multiple sources. In addition, arrangements and diversions may increase the number of plants where coal from an allocated block is used and hence, the number of plants that get coal from multiple sources. In such cases, the complexity of determining applicable tariff – even in case of competitively procured power – increases significantly²⁶. The complexity would increase further if there are variations between actual and expected quality of coal. This is of significant concern, especially if one were to consider the unlikelihood of effective monitoring of coal production mentioned earlier (Section 4.2) and the inability of the electricity regulator to monitor or control parameters such as the cost of mining and quantity/quality of coal mined.

5.2.2 Determining ROM price for allotments

The MoP directive to CERC specifies that the energy charge for all PPAs should be based on the Run of Mine (ROM) price of coal (MoP, 2015a). Determination of ROM price will be needed for future power procurement and for the downward revision of already concluded PPAs. For auctions, this is simply the bid price. For allotments, it is unclear who will determine the ROM price for allotted coal blocks and on what basis. But it is probably fair to say that ERCs will not have the ability to validate such costs.

5.3 Change-in-law provision

5.3.1 Change in Law for PPAs

As the coal block allocations to the power sector are intended to benefit consumers, the MoP directive states that the coal block allocations should be treated as ‘change in law’ in order to enable signed PPAs to be reopened for downward tariff revision (MoP, 2015a). However, the Change in Law clause in PPAs reads as follows (MSEDCL, 2010):

“Application and Principles for computing impact of Change in Law: While determining the consequence of Change in Law under this Article 10 (definition of Change in Law), the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.”

It is not clear whether the change-in-law clause as framed above is consistent with the stated objective of downward revision of tariffs, since it requires restoring “the affected party to the same economic position as if such change in law has not occurred”. Therefore, this too can be potentially litigious.

5.3.2 Reducing coal linkages of coal block winners

Rule 10(4)(d)(iv) of the CMSPA rules states that the linkage of a bid winner would stand reduced corresponding to the coal minable from the block won. However, it is unclear how this would be operationalised, since CIL is unlikely to be aware of

²⁶ Note that such tariff determination would need to be done even for competitively procured power every time there is a change in any coal source, including through block allocation and/or arrangements and diversions.

details of captive block allocations and mine plans.

- Is the allottee expected to approach CIL/MoC and ask for a reduction in linkage? Will MoC issue a letter to this effect after block allocations instructing CIL to revise the linkage based on expected mining profile? Since when will the linkage stand reduced?
- Similar issues may also arise with arrangements and diversions if linkages/FSAs need to be reduced for recipient EUPs.

5.4 Implications of proposed amendments to the Electricity Act

Block winners from the power sector are mandated to have PPAs under section 62 or 63 of the Electricity Act for at least 85% of their capacity as per the CMDPA (MoC, 2015e). Since having an

existing PPA is not an eligibility condition for coal blocks reserved for the power sector and many block winning power companies are currently without PPAs, they would have to sign PPAs under Sections 62 or 63²⁷.

The Electricity (Amendment) Bill, 2014, currently pending in Parliament, seeks to promote open access and market based transactions (MoP, 2014). If the Bill gets passed, the need to sign new long term PPAs under Sections 62 and 63 of the Electricity Act by existing utilities is likely to reduce significantly. Effectively, the options available to the power block winners currently without PPAs will be reduced if the proposed amendments to the Electricity Act get passed.

27 According to our estimates, about half of the total EUP capacity that has won power sector blocks so far does not have PPAs.

6. ANALYSIS OF ALLOCATION RESULTS

6.1 Auction results

6.1.1 Overview of auction results

Table 3 provides the details of the first two tranches of auctions that took place in early 2015.

Table 3: Summary of coal block auction results (first and second tranches)

Details	Schedule II	Schedule III	Total
No. of blocks offered for auction	21	21	42
Power	6	8	14
Non-regulated sector	15	13	28
No. of blocks for which closing bids announced	18	13	31
Power	6	5	11
Non-regulated sector	12	8	20
No. of block finally vested	16	12	28
Power	5	4	9
Non-regulated sector	11	8	19

Source: Compiled from the MSTC website

While the first two tranches saw very aggressive bidding, the third tranche (consisting of blocks earmarked only for the non-regulated sector) saw relatively more conservative bidding. The following is an analysis of the bids in tranches one and two.

- In the non-regulated sector, of the 28 blocks put up for auction, 19 were finally vested in the winners. Of the 19 blocks, 14 blocks received winning bids higher than the corresponding CIL notified price, with nine blocks receiving winning bids that were 50% or more than the CIL notified price. Five blocks received winning bids lesser than the CIL price, with the winning bid for the Meral block being just 26% of the CIL notified price²⁸.
- In the power sector, all the 14 coal blocks went from reverse bidding to forward bidding based on additional premium, and finally nine blocks were vested in the winners. The winning additional premiums were in the range of ₹ 202 and ₹ 1001 /ton. Additional premiums for three blocks exceeded the corresponding CIL notified price.

The following are the observations about the auction results for tranches one and two.

6.1.2 Co-relation of bid prices with mines

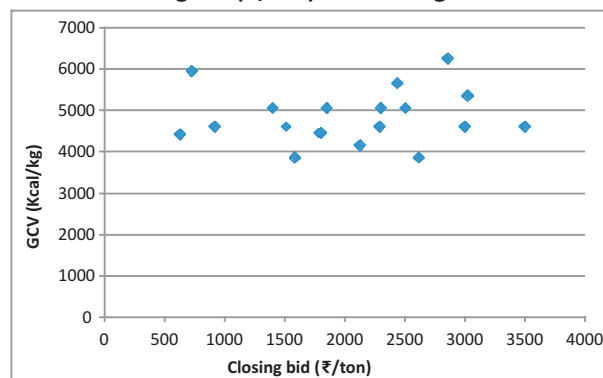
The rationale for the aggressive bidding in the first two tranches is unclear, and attempts to correlate

the bids to parameters such as coal quality, mine type (open-cast or underground) and stripping ratio did not reveal any obvious relationship. As can be seen from Figure 5, the closing bids (₹/ton) for blocks auctioned to the non-regulated sector show no correlation with the GCV of coal of the blocks. For example, Meral block with a GCV of 5951 kcal/kg received a closing bid of ₹ 727/ton, while Lohari block with a GCV of 5651 kcal/kg received a closing bid of ₹ 2438/ton. This difference seems excessive even accounting for the stripping ratios for the two blocks.

6.1.3 Effective competition

As discussed in Section 3.1.1, multiple bids from different EUPs of the same company or group, or by subsidiaries formed by a company or group, are

Figure 5: Plot of coal quality (GCV in kcal/kg) versus closing bid (₹/ton) for non-regulated sector



Source: Compiled from data available on the MSTC website

²⁸ It is interesting that though the bid for Meral was also examined by the government as being an outlier, it concluded that the bid was good enough to not warrant cancellation.

permitted in the auctions. As a result, effective competition for many blocks in the first two tranches was significantly reduced.

Table 4 shows the effective competition for three blocks – Gare Palma IV/7, Mandla North and Sarshatalli. In all three cases, as can be seen, the effective competition was only around half of the perceived competition. In the case of Gare Palma IV/7, the number of actual bidders was only nine as against an apparent list of 16 bidders, while the

number of different technically qualified bidders was only six as against the apparent number of 12 bidders. All bidders qualified technically in case of Mandla North. For this block, the apparent number of bidders was seven though the number of bidders representing different groups was only four. In case of Sarshatalli, the number of bidders and technically qualified bidders appears to be six and five respectively, while the number of bidders and qualified bidders from different groups is only four and three respectively. For this block, it is

Table 4: Effective competition in bidding for Gare Palma IV/7, Mandla North and Sarshatalli blocks

List of Bidders (Gare Palma IV/7)	Parent / Group	List of technically qualified bidders	Parent / Group
1. Bharat Aluminium Company Ltd/65340	Vedanta	1. Bharat Aluminium Company Ltd /65340	Vedanta
2. Bharat Aluminium Company Ltd/64845	Vedanta	2. Bharat Aluminium Company Ltd/64845	Vedanta
3. Hindalco Industries Ltd/64856	Aditya Birla	3. Hindalco Industries Ltd /64856	Aditya Birla
4. Hindalco Industries Ltd /65279	Aditya Birla	4. Hindalco Industries Ltd /65279	Aditya Birla
5. Indian Metals And Ferro Alloys Ltd/64838	IMFA	5. Jaiprakash Associates Ltd /64704	JP
6. Jaiprakash Associates Ltd /64704	JP	6. Jindal Steel And Power Ltd /65464	O.P Jindal
7. Jindal Steel And Power Ltd /65464	O.P Jindal	7. Jindal Steel And Power Ltd /64898	O.P Jindal
8. Jindal Steel And Power Ltd /64898	O.P Jindal	8. Jindal Steel And Power Ltd /65579	O.P Jindal
9. Jindal Steel And Power Ltd /65579	O.P Jindal	9. Jindal Steel And Power Ltd /65581	O.P Jindal
10. Jindal Steel And Power Ltd /65581	O.P Jindal	10. Monnet Ispat And Energy Ltd /64842	Monnet
11. Monnet Ispat And Energy Ltd /64842	Monnet	11. Rungta Mines Ltd /64689	S R Rungta
12. OCL Iron And Steel Ltd/64980	OCL	12. Ultratech Cement Ltd /64851	Aditya Birla
13. Rungta Mines Ltd /64689	S R Rungta		
14. Sarda Energy And Minerals Ltd /64896	Sarda		
15. Sesa Sterlite Ltd/64848	Vedanta		
16. Ultratech Cement Ltd /64851	Aditya Birla		
Total = 16	Total = 9	Total = 12	Total = 6

List of bidders (Mandla North)	Parent / Group	List of technically qualified bidders	Parent / Group
1. Bharat Aluminium Company Ltd/64845	Vedanta	1. Bharat Aluminium Company Ltd/64845	Vedanta
2. Hindalco Industries Ltd /65279	Aditya Birla	2. Hindalco Industries Ltd /65279	Aditya Birla
3. Hindustan Zinc Ltd/64964	Vedanta	3. Hindustan Zinc Ltd/64964	Vedanta
4. Jaiprakash Associates Ltd /64704	JP	4. Jaiprakash Associates Ltd /64704	JP
5. Shree Cement Ltd /65382	Shree	5. Shree Cement Ltd /65382	Shree
6. Ultratech Cement Ltd /64851	Aditya Birla	6. Ultratech Cement Ltd /64851	Aditya Birla
7. Ultratech Cement Ltd /65502	Aditya Birla	7. Ultratech Cement Ltd /65502	Aditya Birla
Total = 7	Total = 4	Total = 7	Total = 4

List of bidders (Sarshatalli)	Parent / Group	List of technically qualified bidders	Parent / Group
1. Adani Power Ltd. / 64808	Adani	1. Adani Power Ltd. / 64808	Adani
2. CESC Ltd / 64691	CESC	2. CESC Ltd / 64691	CESC
3. GMR Chhattisgarh Energy Ltd /64752	GMR	3. GMR Chhattisgarh Energy Ltd /64752	GMR
4. Haldia Energy Ltd /64726	CESC	4. Haldia Energy Ltd /64726	CESC
5. Sheesham Commercial Pvt Ltd/65459	CESC	5. Sheesham Commercial Pvt Ltd/65459	CESC
6. WBPDC Ltd /64834	Govt of WB		
Total = 6	Total = 4	Total = 5	Total = 3

Source: Compiled from the MSTC website and various company websites.

Note: Bidder names are given as “company name/ID number for EUP”.

interesting to note that 60% of technically qualified bidders (three out of five) were all from one group. Since there were only five technically qualified bidders, all of them would have qualified for the financial bidding stage, implying that 60% of the bidders in the financial bidding round were from one company.

This was clearly not healthy for competition, and the third tranche of auctions addressed this concern partially by increasing the number of bidders who qualify for the final financial bidding stage in the case multiple bids from the same company qualify. However, given the provision of diversions, it may be simpler and better to allow only a single EUP from among a company and its subsidiaries to bid for a block.

6.2 Allotments

6.2.1 Overview of allotment results

Allotment results are interesting considering that significant coal reserves were allotted. The summary of results is given in Table 5.

6.2.2 Competition for allotment

It is interesting to note that, in spite of the lucrative terms on offer (weak eligibility criteria, only a fixed rate of ₹ 100 /ton to be paid, and the ability to recover ROM price and fixed rate through energy charges for power sector blocks), there did not seem to be great enthusiasm among government companies to apply for blocks. The average number of applications per block was only four (as against eight for block auctions), and seven out of 39 blocks offered received only one application.

Of the 39 blocks offered, 24 went back to the prior allottees. However, nine prior allottees did not reapply for the blocks they had been previously

allotted, though one would assume that they would have liked to leverage their investment, knowledge about the block, etc.

6.2.3 Power sector allotments

One of the evaluation criteria to choose among multiple applicants for coal block allotment is the “requirement of coal for power generation capacity coming up in the state till the year 2017”. It is not clear how the power generation capacity coming up in the state until 2017 is decided. If one assumes that the basis for deciding this is the planned capacity addition in the 12th Five Year Plan (Planning Commission, 2012, p. 1.59), then there are some discrepancies in power sector block allotments, as can be seen from Table 6.

For example, states such as Gujarat, Jharkhand, Odisha and Punjab seem to have been allotted more coal reserves than required for their planned capacity addition – to the tune of supporting more than 500 extra Mega Watts (MW). In contrast, though states such as Maharashtra, (undivided) Andhra Pradesh and Madhya Pradesh have capacity addition plans for the 12th Five Year Plan and applied for many blocks, they have been allotted fewer resources than required for their capacity requirement until 2017²⁹.

These results reinforce the earlier point about the vagueness of the evaluation criteria for block allotments and potentially discretionary allotments.

6.3 State government revenues

The governments of coal bearing states are to benefit greatly from the allocation process. In addition to the royalty payments which they would have received in any case, state governments also receive the upfront payment from blocks in their state, and the auction

Table 5: Summary of allotment results

Details	Schedule II	Schedule III	Total
No. of blocks proposed for allotment	13	26	39
<i>Power</i>	13	25	38
<i>Non-regulated sector</i>	0	1	1
No. of blocks finally allotted	13	21	34
<i>Power</i>	13	20	33
<i>Non-regulated sector</i>	0	1	1

Source: Compiled from the MSTC website

29 Maharashtra and Telangana were allotted one block each, while Andhra Pradesh and Madhya Pradesh were not allotted any block.

Table 6: Coal block allocation versus planned capacity addition in the 12th Five Year Plan

State	Allotted reserves (MT)	Supported capacity* (MW)	Thermal power capacity addition target in 12 th FYP (MW)	Excess/deficient coal allotment (MW)
(A)	(B)	(C)	(D)	(E) = (C)-(D)
Chhattisgarh	560	882	1500	-618
Gujarat	900	1418	500	918
Jharkhand	385	607	0	607
Maharashtra	768	1210	3230	-2020
NTPC	2051	3232	7210	-3978
Odisha	532	838	0	838
Punjab	562	886	0	886
Uttar Pradesh	600	946	1000	-54
West Bengal	126	198	250	-52
Andhra Pradesh**	61	97	2200	-2103
Madhya Pradesh	0	0	1700	-1700

* Supported capacity is calculated from extractable reserves, which are assumed to be 21% of geological reserves (MoC, 2005, p. 13).

** Undivided Andhra Pradesh includes Telangana

Source: Compiled from the MSTC and MoC websites, and the 12th Five Year Plan's working group report on coal

proceeds/reserve price for auctioned/allotted blocks respectively³⁰. According to the central government, the total revenue to state governments from auction proceeds is expected to be around ₹ two lakh crore (Rajya Sabha Select Committee, 2015)³¹. Following are some observations about this figure claimed by the central government:

1. About 12% of this amount (₹ 25,000 crore) comes from royalty, which the state governments would have received in any case, irrespective of the method of allocation of mines.
2. About ₹ 1,000 crore of this amount accrues to state governments as upfront payment.
3. The balance 88% (nearly ₹ 1,84,000 crore) of the amount will accrue to state governments over the lifetime of the mines. The figure of ₹ 1,84,000 crore represents a simple addition of the amounts they would receive over this period. If one discounts these cash flows appropriately over the approximate lifetime of

the blocks, the amount reduces to ₹ 1,14,000 crore, or about 62% of the value claimed by the government³².

Detailed year-wise cash-flow based calculations for two coal blocks, Kathautia (Schedule II, non-regulated) and Ganeshpur (Schedule III, power) based on their remaining reserves and bid prices yielded similar results, with the NPVs at 60% and 64% respectively of the simple sum of proceeds.

Therefore, real revenues to states from block allocation proceeds are likely to be only 60% - 65% of the figures claimed by the government.

6.4 Financial viability of power sector blocks

Many financial analysts believe that the bids for power sector blocks were very aggressive and unviable, and that the block winners will make losses on their variable cost even after considering the possibility of 15% merchant sales (ICRA, 2015; HDFC, 2015; CRISIL, 2015). Our analysis reaches similar conclusions and suggests that power sector

30 Auction proceeds refer to the fixed rate (₹ 100 /ton) plus additional premium for the power sector, and the Final Price Offer (FPO) for the non-regulated sector. In allotments, winning government companies have to pay the upfront amount and a reserve price of ₹ 100 /ton.

31 It is unclear whether this includes the payments from blocks cancelled post March 9, 2015.

32 These calculations are based on the following assumptions: The discount rate is 7.5% - a conservative estimate since 30-year Government of India securities currently carry a rate of 8.13% and state borrowing rates would typically be higher than Government of India rates. Annual auction proceeds are expected to increase at 4% a year corresponding to CERC escalation rates. For each state, the average mine life of blocks in the state is taken to be the ratio of the total proceeds and annual proceeds claimed by the government in its statement to the Rajya Sabha Select Committee on the Coal Mines (Special Provisions) Bill, 2015 (Rajya Sabha Select Committee, 2015).

block winners with existing PPAs may make a loss on fuel cost ranging from ₹ 0.4 to 0.7 /kWh sold as per their PPAs, assuming the tariffs of such PPAs are revised downwards in accordance with MoP's directive to CERC.

For example, the Tokisud North block was won by Essar Power based on a forward bid of ₹ 1110 /ton (including the fixed rate of ₹ 100 /ton). Assuming a

mining cost of ₹ 500 /ton, this translates to a coal cost of ₹ 0.88 /kWh at a PLF of 80% and specific fuel consumption as given by MSTC. In lieu of this, the generator is only eligible to earn ₹ 0.18 /kWh because the coal cost per kWh is to be computed from only the fixed rate, leading to a loss of ₹ 0.7 /kWh on fuel cost.

7. OTHER ISSUES

There are a few other issues in the coal block allocation process that may be of concern. These are discussed below.

7.1 Dispute resolution

Section 27(1) of the CMSPA states that “any dispute arising out of any action of the central government, nominated authority or commissioner of payment or designated custodian, or any dispute between the successful bidder or allottee and prior allottee arising out of any issue connected with the Act shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957.”

Under CBA, the tribunal for dispute resolution is a one-man tribunal which is constituted under Section 14 for the purpose of determining the compensation to be paid by the central government to the person whose land has been acquired under the Act (MoC, 1976). It is not clear whether such a tribunal intended to resolve disputes related to land acquisition issues is appropriate for contractual disputes arising from coal block allocations.

7.2 Monitoring of labour and environmental practices

The CMDPA and Allotment Agreement state that the block winner has to adhere to “good industry practice” and “follow the law of the land”. It is not clear whether this would be sufficient to ensure good mining practices given the weak record of the coal sector in this regard (Prayas (Energy Group), 2014), especially considering that the aggressive bidding seen in tranches one and two will make miners keen to cut costs. It would have been desirable if the agreements had more specific requirements for monitoring and publication of environmental management plans (EMPs), and details of penalties to be levied if the EMP was not followed.

7.3 Efficiency parameters and performance security

Efficiency parameters are an important element to monitor production from mines in CMDPA. However, the model Allotment Agreement that has been published does not provide any efficiency parameters. This makes it very hard to know whether an allotted mine is performing as expected or not.

The performance security is a bank guarantee to be given to the government by the block winner, which can be appropriated in case of non-adherence to efficiency parameters (clause 6.3.1 of CMDPA). However, for the first two tranches of auctions, the performance security itself is valid only for 2 years from the vesting order or until the block reaches peak rated production capacity (clause 6.1.6). Therefore, the performance security is unlikely to be valid if an appropriation event occurs after two years or after reaching peak production capacity, as is likely³³. Thus, the government would not have any financial lever in the case of blocks allocated in tranches one and two.

7.4 Enabling of CMDPA clauses

Clause 24.1 of the model CMDPA enables some clauses to become effective on the agreement date and some clauses to become effective on the date on which the vesting order is issued. However, it does not list which clauses become effective on the agreement date and which on the vesting order date.

This can lead to two potentially problematic situations: a) The same clauses may become effective on different dates (i.e. agreement or vesting order date) in different CMDPAs, and b) a clause may be left out of both lists of clauses and thus never become effective. Instead, it would have been better if the model CMDPA had listed the specific clauses that would become effective on the agreement date and the specific clauses that would become effective on the vesting order date.

³³ Some improvement has been made in the CMDPA of tranche three in this regard. Now, the performance security is valid “until expiry of the period for which mining lease has been granted or until extractable reserves are remaining in the coal mine, whichever is earlier”. It is not clear whether a similar amendment can or would be made to the CMDPAs already signed.

8. CONCLUSIONS

Our analysis of the coal block allocations conducted under the CMSPA shows that, while this allocation process is an improvement over the ad-hoc and opaque process followed earlier, it still raises many concerns, some of which are quite serious. It appears that, in its hurry to get legislation passed and the allocation process rolling by 31st March 2015, the government did not think through the legal, procedural and regulatory complexities of the process carefully. In retrospect, the hurry to get a sweeping legislation passed and allocation conducted by 31st March was perhaps unnecessary in the first place, since hardly any of the allocated mines have begun coal production even by October 2015. A more measured and well-thought out approach may have worked better.

Some of the major concerns identified by our analysis are listed below:

1. There are some potentially serious legal ambiguities in the allocation process. These pertain to the possibility of discretionary allocation of mines (including for commercial mining) and the proposed means of land acquisition.
2. While the intention of block allocations to the power sector is to pass on the benefits of cheaper coal to consumers, it is not at all clear that this objective would be achieved due to regulatory and procedural complexities involved in the process.
3. The allocations suffered from some design and procedural infirmities. They restricted the scope for competition, introduced vaguely worded provisions for arrangements and diversions, and did not follow a uniform process for allotment of some mines.
4. While this allocation process was more transparent than the previous process, many important pieces of information are still not published. These include information related to the allocation process (such as details of applicant EUPs and blocks to be allotted) and most of the information regarding post-allocation processes (such as finalised contracts, status of vesting, production and, for power sector blocks, tariff revision process).
5. The bidding for the first two tranches of auctioned blocks was extremely aggressive and there are strong indications that these bids may be unviable.
6. Past experience and existing institutional capacities do not inspire confidence in the government's ability to monitor coal production from allocated blocks and/or to enforce contracts it signs with the block winners.
7. No objective criteria seems to have been used for block classification and allotments.

These findings suggest that the block allocations may not achieve the objectives of increasing coal production, lowering costs and promoting competition. It is also possible that the sector would see many regulatory and legal disputes in the future as the mines begin production.

In the interest of enhancing coal production in a fair manner, it would be desirable if the government earnestly explores ways of addressing the concerns highlighted above. Some measures are suggested below to avoid these complications in the future.

1. The central government should ensure that production from all the mines that were operational at the time of cancellation resumes at the earliest. In this regard, the allocation of these mines (via allocations under CMSPA or through allotment to CIL) should be undertaken on a priority basis.
2. The government should cease any other coal block allocations for the time being, and should initiate discussions and bring out a comprehensive legislation dealing with all the relevant issues before the coal sector. Such legislation should consider the coal market structure, pricing, regulation, commercial mining, productivity, environmental practices and any other relevant issues.
3. A dedicated website should be set up where all the pre-allocation and post-allocation details of coal blocks are regularly published.
4. The government should actively follow up with state governments and regulatory commissions to ensure that the objective of electricity consumers benefiting from access to 'cheap coal' is realised.

5. The CCO should be actively and urgently strengthened, given the critical functions it performs. The need for an independent and empowered regulator for the coal sector has been emphasised by multiple expert committees. Setting up such a regulator should be accelerated and CCO, or at least its monitoring function, can become a part of such a regulatory body.
6. The eligibility and evaluation criteria for allotments should be made tighter and more objective.
7. In future rounds of auctions, only one bid should be allowed per EUP from among a company and its subsidiaries for a particular block, and all technically qualified bidders should be allowed to participate in financial bidding to promote competition.
8. The government should consultatively develop a set of criteria for classification of blocks and publish them.

Annexure : Process of allocation of coal blocks

Schedule I coal mines can be allocated in two ways – auction and allotment. Figure 6 gives a broad overview of the allocation process.

Selection of successful bidder in auctions

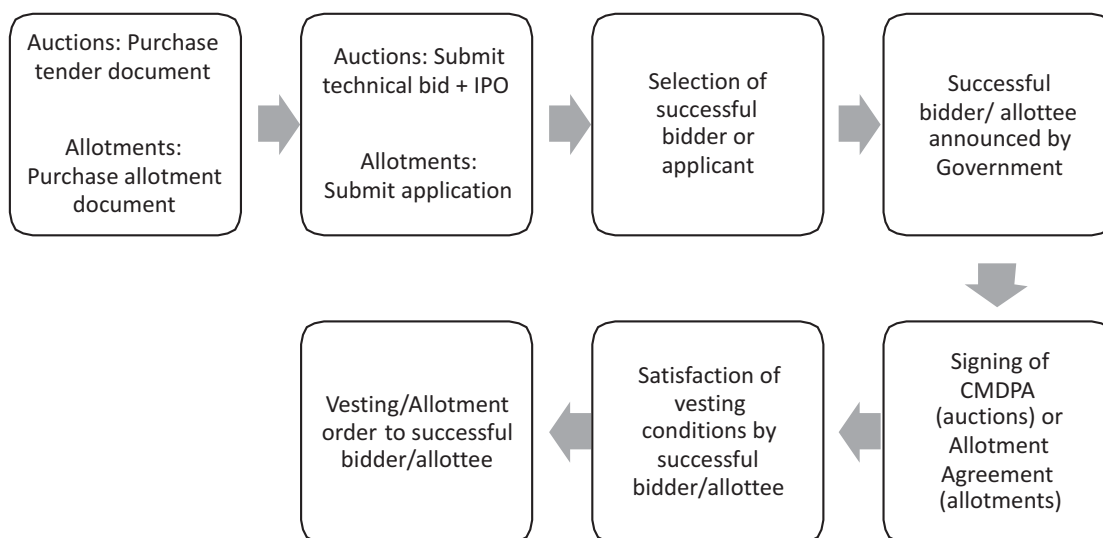
The selection is a two stage process, consisting of a technical bidding round and a financial bidding round as explained in Figure 7. Initial technical bids are checked for adherence to eligibility criteria (a few important ones are given in the figure). The top 50% of the technically eligible bids qualify for the financial bidding round on the basis of the Initial Price Offer. Financial bidding,

conducted on an electronic platform, begins with the best initial price offer from the previous round as the new floor price and continues until the best bid is received.

Selection of successful allottee in allotments

The process for allotments also goes through two stages as explained in Figure 8. If only a single technically qualified application is received for a block, the block is allotted to that government company. However, in case more than one application is received, the selection is based on the criteria listed in stage II of the figure.

Figure 6: Overview of allocation process



Source: Standard tender and allotment documents

Figure 7: Process for selection of successful bidder for auctions

Stage I: Technical Bid-Eligibility	Stage II: Financial Bid-Selection of the successful bidder
<ol style="list-style-type: none"> 1) Engaged in specified end use (EUP) 2) Extractable reserves \leq 150% of 30 years coal requirement of Specified EUP 3) Expenditure on EUP for: <ul style="list-style-type: none"> • Schedule II mines \geq 80% • Schedule III mines \geq 60% 4) Prior allottees to make additional payment 5) Cancellation of bidding process if less than 3 technically qualified bidders 6) Power- No Captive Power Plant & case 2 bidding projects allowed 	<ol style="list-style-type: none"> 1) Submission of Initial Price Offer (IPO) <ul style="list-style-type: none"> • Power: $0 \leq$ IPO $<$ Ceiling price (CIL notified price) • Non-regulated sector: Floor price $<$ IPO $<$ ∞ 2) Sort IPOs by eligible bidders in ascending (power) /descending (non-regulated sector) order 3) Top 50% qualify for electronic auction (if 3-5 eligible bidders, all qualify for electronic auction) <p style="text-align: center;">Electronic Auction</p> <ol style="list-style-type: none"> 1) Begin from lowest/highest IPO from step I 2) Increasing/ decreasing electronic bids by qualified bidders (Power-reverse bidding; Non-power- Forward bidding) 3) Lowest/ highest Final Price Offer (FPO) wins (if power sector bids reach Rs. 0/ton, they go into forward bidding for additional premium with highest bid winning)

Source: Standard tender document

Figure 8: Process of selection of successful applicant for allotments

Stage I: Eligibility	Stage II: Selection of Allottee
<ol style="list-style-type: none"> 1) Government company or their JV (private holding \leq 26%) 2) Prior allottees to make payment of additional levy 3) No other eligibility condition 	<ol style="list-style-type: none"> 1) If only one eligible applicant, allot mine to applicant; else select applicant based on following criteria. <ul style="list-style-type: none"> • Requirement for coal for power generation capacity coming up in the state till 2017 • Proximity to EUP from coal mine • If applicant is owned by a coal bearing state government, the above conditions may be relaxed to encourage pithead EUPs

Source: Standard allotment document

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List of Abbreviations

BT	Billion tons
CAG	Comptroller and Auditor General
CBA	Coal Bearing Areas (Acquisition and Development) Act, 1973
CCI	Competition Commission of India
CCO	Coal Controller's Organisation
CERC	Central Electricity Regulatory Commission
CESC	Calcutta Electric Supply Corporation
CIL	Coal India Limited
CMDPA	Coal Mine Development and Production Agreement
CMNA	Coal Mines Nationalization Act, 1973
CMSPA	Coal Mines (Special Provisions) Act, 2015
EC	Environmental Clearance
ERC	Electricity Regulatory Commission
EUP	End-Use Plant
FPO	Final Price Offer
FSA	Fuel Supply Agreement
GCV	Gross Calorific Value
HC	High Court
IPO	Initial Price Offer
ISM	Indian School of Mines
kWh	kilo-watt hour
MMDRA	Mines and Minerals (Development and Regulation) Act, 1957
MoC	Ministry of Coal
MoEFCC	Ministry of Environment, Forest and Climate Change
MoP	Ministry of Power
MSEDCL	Maharashtra State Electricity Distribution Company Limited
MT(PA)	Million tons (per annum)
NPV	Net Present Value
NTPC	National Thermal Power Corporation Limited
PIB	Press Information Bureau
PPA	Power Purchase Agreement
ROM	Run of Mine
SERC	State Electricity Regulatory Commission
UMPP	Ultra Mega Power Plant

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Following the Supreme Court judgement of 2014 cancelling the allocation of more than 200 captive coal blocks, the government quickly brought in legislation and began the process of their reallocation. While the new allocation framework is an improvement over the previous regime, it suffers from many potentially serious shortcomings. These include legal ambiguities regarding the method of allocation of mines; regulatory and legal challenges in achieving the expected goals of enhancing coal production and reducing electricity tariffs; and governance challenges in enforcing contracts and monitoring production. In addition, there is significant room for improvement in the provision for competition in auctions, the criteria for allotment, and the transparency of the entire allocation process. These issues need to be dealt with effectively to prevent the sector from heading towards legal, regulatory and economic chaos.

