

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

**New CC No. 98/2019 (old CC No. 09/18)
CNR No. DLND01-0033632018
RC NO. 221 2014 E 0009
Branch: CBI/EO-III/New Delhi
CBI Vs. M/s Topworth Urja & Metals Ltd. & Ors.
U/s. 120-B, 120-B r/w 420/468/471 IPC
and Section 468/471 IPC**

ORDER ON CHARGE

1. Vide this order, I shall decide as to for which offences, if any charge is made out, against the seven accused persons i.e. company (A-1) M/s Topworth Urja & Metals Ltd. (*hereinafter referred to as M/s TUML*) [*Formerly known as Shree Virangana Steels Ltd. (hereinafter referred to as M/s SVSL)*], its Director (A-2) Surendra Champalal Lodha @ Surendra C. Lodha, its President (A-3) Anil Kumar Omprakash Nevatia, (A-4) Swapan Kumar Mittra @ S.K. Mitra, (A-5) Anil Kumar Saxena @ A.K. Saxena, (A-6) Manoj Maheshwari and (A-7) Anand Nand Kishore Sarda.

2. For the sake of brevity, it will be appropriate to reproduce the relevant paragraphs of the final report under section 173 Cr. PC containing facts on the basis of which FIR was registered in the present case beside also the facts discovered during the course of investigation against the various accused persons leading to their being charge-sheeted:

Allegations mentioned in the FIR

Paragraph 16.2:

“16.2(i) It was alleged that M/s Shree Virangana Steels Ltd. vide its application dated 15.01.2004 had applied to the Ministry of Coal (MoC) for allocation Captive coal Mining Blocks for its proposed 3 LTPA Sponge Iron Plant, Captive Power Plant and Steel Melt Shop and followed it up with subsequent letters and the said proposal of the company was discussed in 23rd meeting of Screening Committee and finally in its 28th meeting, the Screening Committee decided to allocate Marki Mangli-II, III & IV Coal Blocks to the company.

16.2(ii) It was also alleged that Marki Mangli II, III, IV coal blocks were allocated to the said private company M/s Shree Virangana Steels Ltd by Ministry of Coal vide letter dated 06.09.2005 for their 3 LTPA Sponge Iron Plant at Umred in Maharashtra. As per the allocation letter the middlings/ rejects during beneficiation were to be used captively for power generation in their own plant. However, the original promoters of the company disposed their equity in the company in 2006-08 to the persons/entities belonging to Topworth Group and subsequently the name of the Company was also changed to M/s Topworth Urja & Metals Ltd. on 29.06.2010.

16.2 (iii) It was further alleged that Ministry of Coal vide letter dated 16.12.2009 conveyed previous approval of the Central Govt. to Maharashtra Govt. under section 5(1) of MMDR Act, 1957 for grant of mining lease by the Govt. of Maharashtra in respect of Marki Mangli —I, III and IV coal blocks in favour of M/s Shree Virangana Steels Ltd. The company M/s Topworth Ura & Metals Ltd vide its letter dated 15.10.2010 conveyed to the Ministry of coal about the change of the name of the company from Shree Virangana Steels Ltd to M/s Topworth Urja & Metals Lid w.e-f 29.06.2010 and requested the Ministry to register the changed name of the company in their records. In response to the same the Ministry of Coal initiated correspondence with the company on 1 February, 2011 inter-alia asking the company to furnish copies of Memorandum of Association and Articles of Association, the reasons behind the change of name & details of shareholdings of the company and to furnish an affidavit mentioning that there is only change in

name of the allocate company and there is no change in the shareholding pattern and existing Board of Directors of these companies. Pursuant to the said letter of Ministry of Coal, Sh. Surendra C. Lodha, Director of the company vide his letter dated 15.02.2011 inter-alia furnished his sworn affidavit to the effect that there is no change in the shareholding pattern of the company and Board of Directors. Sh. Surendra C. Lodha suppressed the fact in his affidavit that the shareholding pattern changed the hands in 2006-2008. The correspondence continued with the Ministry of Coal but the Ministry of Coal did not accord any approval in respect of change of name of the company.

16.2(iv) It was further alleged that in the meanwhile, Sh. Surendra C. Lodha, despite knowing fully well that the aforesaid coal blocks have been allocated to M/s Shree Virangana Steels Ltd, the prior approval under MMDR Act, 1957 in respect of the said blocks has also been accorded by the Ministry of Coal in the name of M/s Shree Virangana Steels Ltd, whose name was subsequently changed to M/s Topworth Urja & Metals Ltd, executed three Powers of Attorney dated 02.03.2011 as a Director of M/s Shree Virangana Steels Ltd in favour of Sh. Anil Omprakash Nevatia, President, M/s Shree Virangana Steels Ltd, whereas the company by the name M/s Shree Virangana Steels Ltd no longer existed at that time.

16.2(v) It was further alleged that pursuant to the said Power of Attorney, Sh. Anil Kumar Omprakash Nevatia, despite knowing fully well that the name of the company M/s Shree Virangana Steels Ltd has changed to M/s Topworth Urja & Metals Ltd, executed two mining lease deeds with Govt. of Maharashtra in respect of Marki Mangli-III & Marki Mangli IV coal blocks on 25.03.2011 and one mining lease deed in respect of Marki Mangli -II coal block on 13.06.2011 as President, Shree Virangana Steels Ltd purposefully in the name of M/s Shree Virangana Steels Ltd which no longer existed in that name and despite the fact that the request of the company for change of name was not approved by the Ministry of Coal.

16.2(vi) It was also alleged that the company resorted to excessive mining, without augmenting the capacity of its existing Sponge Iron Plant, consumed the coal in their existing sponge iron unit and in its 30 MW captive power plant. Company sold off the excess power thus generated

from the Captive Power Plant to the Maharashtra State Electricity Distribution Co. Ltd to the extent of about 64%.

16.2 (vii) It was also alleged that the execution of lease deed with a company which was no longer existent at the time of entering mining lease deed facilitated the mining of coal by M/s Topworth Urja & Metals Ltd. Had the company not deceived regarding use of name of company which was nonexistent, such lease deed would not have been executed.

16.2 (A) During investigation, additional allegation of the company misrepresenting on in principle financial tie-up with Power Finance Corporation (PFC), and the Company mentioning that the CPP was under construction, while applying for allocation also cropped up. These were also investigated.

Facts discovered during investigation:
(paragraph 16.10 to paragraph 16.46)

16.10 Investigation has revealed that M/s Shree Virangana Steels Pvt. Ltd. (SVSPL), Nagpur was incorporated on 05.11.1993 vide certificate of incorporation issued from ROC, Mumbai. The name of Company was changed to M/s Shree Virangana Steels Ltd. on 19.11.2001. The company was initially promoted by Shri Shrikrishna Maheshwari, Shri Manoj Maheshwari and Shri Ram Niwas Daga.

16.11 Investigation has revealed that the company applied for a Coal Block vide letter dated 15.01.2004 to Secretary (Coal), Govt. of India. It was mentioned in the application that first phase of 75000 MT per annum capacity Sponge Iron Plant has already been set-up, installed and commissioned recently and they are in the process of setting up of a Captive Power Plant and Steel Melt shop. The existing capacity of Sponge Iron Plant capacity shall be increased to three Lac tonnes Sponge Iron in second phase and the same shall be augmented suitably by addition of further capacity in the captive power plant and the steel melt shop. In its application the company stated the raw coal requirement of 1.2 to 1.5 MTPA for captive use and also mentioned that it would set up a coal washery at mine site to wash the coal for using it in the steel plant. It requested for Bellora Takli Jena North, Kosar Dongargaon and Nerad Malegaon Coal Blocks having extractable reserves of 40 Mt.

The application was signed by Sh. A.K. Saxena, President on behalf of the company (an employee of the company) who was authorized to sign on behalf of the company through a resolution passed by the Board of Directors of the company on 12.01.2004. The company made further representations vide letters dated 02.05.2004, 10.06.2004, 02.07.2004, 23.11.2004, 04.12.2004, 08.01.2005 and 31.01.2005 requesting allocation of captive coal blocks. Vide its letter dated 31.01.2005 the company finally requested for allocation of Nerad Malegaon, Marki Mangli -II, Marki Mangli- III and Marki-Mangli-IV.

16.12 Investigation has also revealed that the company in its applications dated 15.01.04 and dated 02.07.04 for allocation of captive coal blocks and during Screening Committee Meeting till preparation of the Agenda Form of 28" Screening Committee Meeting misrepresented about its existing capacity of 75,000 TPA whereas actual capacity was 60,000 TPA.

16.13 Investigation also revealed that M/s Shree Virangana Steels Ltd. vide its subsequent application dated 02.05.2004, 10.06.2004 and 02.07.2004 submitted letter dated 24.05.2004 of Sh. V.S. Dhumal, Principal Secretary to Govt. of Maharashtra addressed to Secretary, Ministry of Coal , wherein it was mentioned that the Captive Power Plant is under construction which was not true and the company was in the knowledge that actually there was no investment by the company towards the project of captive power plant till that time.

16.14 Investigation has revealed that the letter dated 24.05.2004 was submitted by Govt. of Maharashtra, to the Ministry of Coal inter-alia mentioning therein that the CPP of the company was under construction. This fact has been found to be untrue during investigation. The Annual Financial Statement /balance sheet of the relevant period of the company has not supported the said claim. Though, the concerned file of Govt. of Maharashtra could not be traced during the investigation but the signatory to the said letter claimed that the fact of CPP under construction during the relevant time was mentioned on the basis of information provided by the company.

16.15 Investigation has also revealed that company misrepresented in its application dated 23.11.04 and also before the 28th Screening Committee that they have

obtained in principle clearance from the PFC (Power Finance Corporation). Investigation has revealed that no such in principle clearance was granted to the company by PFC. Investigation in this regard has revealed that though the proposal of the company was examined at PFC for further consideration, but no in principle approval was given. The company did not furnish further requisite information sought by PFC for processing their request. Further it is found that the company submitted application dated 02.08.2004 to PFC for part finance of Captive Power Plant as a long term loan signed by Sh. Shiv Kumar Aggarwal, Director of the company. The company also submitted other documents/information besides certificate dated 02.08.04 issued by Kothari Rathi & Associates CA, signed by Sanjay Kothari. In this certificate total expenditure towards Captive Power Plant was shown as Rs.217.68 lacs. The claims made by the company in this CA certificate dated 02.08.04 does not tally with its financial/balance sheets. During this period M/s Bang Gupta & Co. was the Chartered Accountant at the company. Self contained note is being sent to ICAI (Institute of Chartered Accountants of India) for taking necessary action against Sh. Sanjay Kothari.

16.16 Investigation has revealed that the financial closure thus shown achieved by the company and that the Captive Power Plant is under construction showed the preparedness and seriousness as well as the effective steps taken by the company towards the EUP. Such advanced stage of preparedness and seriousness for the project as per the extant guidelines strengthened the case for allocation of a captive coal block to an applicant company. The aforesaid misrepresentations were purposefully made by the company to impress upon the Screening Committee about its credibility and to reflect its preparedness in order to seek favourable order of allocation of coal block.

16.17 Investigation has revealed that in the letter dated 15.01.2004 issued by Sh. A.K. Saxena, the then President M/s Sree Virangana Steels Ltd he misrepresented that the company was having sponge iron capacity of 75000 MTPA. He attended 23rd Screening Committee meeting held on 29.11.2004 in which the same information regarding company having 75000 MTPA was given to the committee. The actual capacity of Sponge Iron Plant was 60000 MTPA. Sh. A.K. Saxena also attended 28th SC meeting along with CEO Sh. Manoj Maheshwari in which it was presented that

the company has obtained in principle clearance from PFC, which was also not correct.

16.18 Investigation has also revealed that Sh. Manoj Maheshwari issued letter dated 30.10.2004 to MOC through which he forwarded the letter of State Govt. of Maharashtra dated 24.05.2004 in which incorrect information about CPP under construction was mentioned. It was also mentioned in the letter that financial tie up is complete for CPP. He also attended 28th SC committee meeting along with Sh. A.K. Saxena in which it was informed that the company is having in principle clearance from PFC which was not correct. CFSL, New Delhi has confirmed the signature of Sh. Manoj Maheshwari on the letter dated 30.10.2004 as well as on the writing/ signature of Sh. Anil Kumar Saxena in the attendance sheet of the Executives participating in 28th Meeting of Screening Committee dated 15.04.2005 in respect of the entry which pertains to Sh. A.K. Saxena and CEO of Shree Virangana Steels Ltd. Sh. Manoj Maheshwari. Sh. Manoj Maheshwari was then working as CEO of the said company.

16.19 Investigation has also revealed that Sh. Anand Nandkishore Sarda issued letter dated 02.07.2004 to MOC by pretending to be Director of M/s SVSL inter alia mentioning therein that company has capacity of 75000 MTPA and also mentioned about letter dated 24.05.2004 of Govt. of Maharashtra which had incorrect information that the CPP is under construction. He also issued letter dated 23.11.2004 by forging the signature of Vimal Kumar Aggarwal and letter dated 21.10.2004 by forging the signature of Shiv Kumar Aggarwal. Letter dated 23.11.2004 referred the letter dated 24.05.2004 of Govt. of Maharashtra of having incorrect information about CPP and letter dated 21.10.2004 communicated misrepresentation regarding implementation of CPP. Sh. Anand Nandkishore Sarda was not appointed Director yet he issued letter dated 02.07.2004 as Director of the company. CFSL, New Delhi vide opinion dated 31.10.2017 has confirmed that the signatures on letter dated 02.07.2004, letter dated 23.11.2004 and letter dated 21.10.2004 have been made by Sh. Anand Nand Kishore Sarda. Sh. Vimal Kumar Agarwal and Sh. Shiv Kumar Agarwal have denied their respective signatures on the aforesaid letters and to this effect their statements have been recorded U/s 164 Cr.P.C.

16.20 Investigation also revealed that the company did not augment the capacity of its existing Sponge Iron Plant to 3 LTPA as stated by them in their application dated 15.01.04 and consumed the coal in the existing Sponge Iron Plant and its Captive Power Plant of 30 MW.

16.21 Investigation has revealed that Department of Industries, Energy & Labour, Govt. of Maharashtra recommended for allocation of the coal blocks to the company vide its letter dated 24.05.2004 to the MoC. The Ministry of Steel vide letter dated 10.08.2004 and Ministry of Power vide letter dated 24.11.2004 recommended for allocation of the coal blocks to the party for meeting the coal requirement expressed by it.

16.22 Investigation has revealed that the application of the company was considered in 23rd Screening Committee held on 29.11.2004. Though the case of party had been discussed in the meeting but no allocation was made in that meeting. The matter of allocation of the coal blocks was discussed in 28th meeting of the Screening Committee held on 25.04.2005. On the request of the Chairman of the Screening Committee about the priority of the blocks, the representative of the company stated that the priority would be Marki Mangli-II, III and IV followed by Nerad Malegaon. Accordingly, the committee decided to allocate Marki Mangli-II, III and IV coal blocks to M/s Virangana Steels Ltd. Investigation has revealed that the company was issued an allocation letter dated 06.09.2005 by MoC, putting following conditions:

- i) The allocation of the Marki-Mangli-II, Marki-Mangli-III & Marki-Mangli-IV blocks to M/s. Shree Virangana Steels Ltd. has been made to meet the sponge iron grade coal requirement of 0.48 million tonne per annum for their 3 ltpa capacity sponge iron production at Umred in Nagpur of Maharashtra State. The coal produced from the blocks shall not replace any coal linkage given to M/s. Shree Virangana Steels Ltd., by the Coal India Limited/its subsidiary companies and/or by the Singareni Collieries Company Limited, without prior permission of this Ministry.
- ii) The block is meant for captive use in their own specified end use projects i.e. sponge iron and power generation.
- iii) The middling generated in the process of washing shall be used for power generation in their own power plant i.e. the useable middlings/rejects generated during beneficiation

shall be used captively by the allocattee. The modalities of disposal of surplus coal/middlings/rejects if any, would be as per prevailing policy/instruction of the Govt at the relevant point in time and could also include handing over such surplus coal/middlings/rejects to the local CIL subsidiary or to any person designated by it at a transfer price to be determined by the Govt.

iii) The coal production from the captive blocks shall commence within 36 months (42 months in case the area in forest land) of the date of this letter in OC mine and in 18 months (54 months in case the area falls under forest land) from the date of this letter in UG mine. The end use project schedule and the coal mine development schedule should be modified accordingly and submitted to the Ministry within 3 months from the date of this letter.

iv) The company shall buy the Geological report from CMPDIL within 6 weeks of the date of this letter.

v) The company shall submit a bank guarantee for Rs. 4.8 crore (equal to one year's royalty amount based on mine capacity of 0.565 mtpa as per assessed requirement, average D grade coal and the weighted average royalty being @ Rs. 85/- per tonne) within 3 months of the date of this letter. Subsequently, upon approval of the mining plan the Bank Guarantee amount will be modified based on the final peak/rated capacities of the mines.

vi) The company shall submit a plan for approval by the competent authority under the Central Government within six months from the date of this letter.

vii) The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of any lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/peak capacity of the mine, e.g., if rated/peak capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50-35)/100 \times 100 = 15\%$ will lead to deduction of 15% of the original bank guarantee amount for the year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de-allocation/cancellation of mining lease. M/s. Shree Virangana Steels Ltd. Shall ensure that the Bank Guarantee remains valid at all times till the mine reaches its

rated capacity or till the Bank Guarantee is exhausted.

viii) No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purpose except with the previous approval of the Central Government.

ix) Mining of coal from the allocated captive coal block shall be carried out in accordance with the applicable Statutes/Rules/Orders/Directions governing the mining of coal in the country.

x) Those of the above conditions relevant at the time of grant of mining lease shall be included as additional conditions in the mining lease in addition to any further conditions imposed by or agreed to by the Central Govt.

xi) The state Govt. at the time of seeking previous approval for the grant of mining lease shall submit a draft of the mining lease containing the above relevant conditions for vetting by the Central Govt. The final mining lease shall be as vetted/modified by the Central Govt. Any deviation from the vetted/modified draft shall render the mining lease deed ab-inifio null and void and without effect.

2. Allocation/mining lease of the coal block may be cancelled, inter-alia, on the following grounds:

(a) Unsatisfactory progress of implementation of their end use sponge -iron plant/power plant.

(b) Unsatisfactory progress in the development of coal mining project.

(c) For breach of any of the conditions of allocation mentioned at (i) to (xi) above.

The de-allocation/cancellation of mining lease shall be without any liability to the Government or its agencies, whatsoever. Any expense incurred by the allocattee or any right or liability arising on the allocattee out of the measures taken by him shall solely be to his account and in no way be transferred to or borne by the Government or its agencies.

3. The company may approach CMPDIL for the geological report and contact the State Government authorities concerned for the necessary permissions/clearances etc. for attaining mining rights and related matters. The arrangement of transport of coal will have to be worked out by the company.”

16.23 Investigation revealed that after allocation of the coal block, M/s Shree Virangana Steels Ltd. submitted a Mining Plan of Marki-Mangli-II vide letter dated 01.01.2007 and

thereafter Mining Plan of Marki-Mangli-III and Marki- Mangli-IV were submitted by RQP Sh. A.K.F. Haque to MoC by hand, for approval by the Standing Committee of MoC. After a few clarifications sought by the Standing Committee and presentation made by the party. The Mining Plan was approved which was communicated by the MoC to the company vide letter dated 31.1/5.2.2008.

16.24 Investigation revealed that M/s Shree Virangana Steels Ltd. applied for grant of Mining Lease in respect of Marki Mangli-II Block to Collector, Yavatmal vide letter dated 22.10.2007. The previous approval U/s 5(1) of MMDR Act 1957 in respect of Marki Mangli-II Coal Block was received from the Ministry of Coal vide letter No. 13016/9/2004-CA-1(Vol.III) dated 16.12.2009. After receipt of the aforesaid approval Department of Industries, Energy & Labour, Govt. of Maharashtra, issued Mining Lease Grant Order vide letter No. MMN-1008/C.R.2431/IND-9 dated 04.03.2010 in favour of M/s Shree Virangana Steels Ltd.

16.25 Investigation also revealed that in respect of Marki Mangli-III Coal Block, the company applied for grant of Mining Lease to Collector, Yavatmal on 22.10.2007. The previous approval U/s 5(1) of MMDR Act, 1957 was received from the Ministry of Coal vide No. 13016/9/2004-CA-1 (Vol III) dated 16.12.2009. After receipt of the aforesaid approval Department of Industries, Energy & Labour, Govt. of Maharashtra issued Mining Lease Grant Order vide letter No. MMN-1008/C.R. 2390/IND-9 dated 04.03.2010 in favour of M/s Shree Virangana Steels Ltd.

16.26 Investigation revealed that the company applied for grant of Mining Lease in respect of Marki Mangli-IV Coal Block to Collector, Yavatmal vide letter dated 22.10.2007. The previous approval U/s 5(1) of MMDR Act 1957 in respect of Marki Mangli -IV coal block was received from the Ministry of Coal vide letter No. 43046/9/2004-CA-I(Vol. IH) dated 16.12.2009. After receipt of above approval Department of Industries, Energy & Labour, Govt. of Maharashtra issued Mining Lease Grant order vide letter No. MMN-1008/C.R. 23974/IND-9 dated 04.03.2010 in favour of Shree Virangana Steels Ltd.

16.27 Investigation has revealed that after allocation of the coal blocks major change in shareholding took place. Sh. Abhay Lodha & Associates acquired all the shares of the Company by the end of 2008 in phases. Further, all the

shares of the company were transferred from Sh. Abhay Lodha & Associates to M/s Crest Steel and Power Pvt. Ltd. on 30.12.2009. Thereby the company M/s SVSL was fully owned by M/s Crest Steel and Power Pvt. Ltd. as on 31.12.2009. Shri Surendra Lodha became Director on the Board of the company since 14.03.2006. The old promoters resigned from the Directorship by the end of the financial year 2007-08 and new promoters namely Shri Abhay Lodha, Shri Narendra Lodha and Shri Kunal Kasliwal became Directors besides Shri Surendra C. Lodha 2006 onwards. The new management changed the name of the company by making application to the ROC from Shree Virangana Steels Ltd. to Topworth Urja and Metals Ltd. w.e.f 29.06.2010. The ROC issued a fresh certificate of incorporation in the new name on 29.06.2010.

16.28 Investigation has also revealed that from 29.08.2010 onwards the company became M/s Topworth Urja & Metals Ltd. Thus company by name M/s Shree Virangana Steels Ltd. ceased to exist. The allocation and subsequent approvals were in the name of M/s Shree Virangana Steels Ltd. and so the Mining Lease was to be executed with the same company. In case of change of name necessary approval from the Ministry of Coal was required to proceed further.

16.29 Investigation has also revealed that consequent upon change of name of the company, application dated 15.10.2010 was filed by Shri S.K. Mitra, representative of the company on the letterhead of M/s Topworth Urja and Metals Ltd. (formerly known M/s Shree Virangana Steels Ltd.) in the MoC seeking change of name of the company in the records of MoC. The MoC sought reasons behind the change of name, details of shareholding, copies of Memorandum and Articles of Association of the company and also an affidavit mentioning that there is only change in the name of the allocatee company and there is no change in the shareholding pattern and existing Board of Directors of these companies, vide letter dated 1st February, 2011.

16.30 Investigation has revealed Shri S.K. Mitra, Vice President (Mining), M/s Topworth Urja and Metals Ltd. acknowledged the letter dated 01.02.2011 of MoC and intimated to MoC vide letter dated 04.02.2011 that the information sought by the MoC would be provided at the earliest. Simultaneously, Director of M/s Crest Steel Power

Pvt. Ltd. intimated to the MoC vide letter dated 04.02.2011 that an amalgamation of M/s Topworth Steels & Power Pvt. Ltd. and Topworth Urja & Metals Ltd. (formerly known as Shree Virangana Steels Ltd.) with Crest Steel & Power Pvt. Ltd. was being considered by the management and MoC was requested to convey their consent and approval to the said amalgamation and transfer of mining rights and licenses of the coal blocks allocated to Shree Virangana Steels Ltd. (after amalgamation) in favour of Crest Steel & Power Pvt. Ltd. at the earliest. The Ministry of Coal never gave any such consent.

16.31 Investigation revealed that subsequent to the above letter, Sh. Surendra C. Lodha submitted another letter dated 15.02.2011 to Ministry of Coal, submitting notarized copy of Memorandum of Association, Article of Association of M/s Shree Virangana Steels Ltd., notarized copies of Memorandum of Association and Article of Association of M/s Topworth Urja & Metals Ltd., the reasons behind the change of name and affidavit duly sworn by Sh. Surendra C. Lodha, Director M/s Topworth Urja & Metals Ltd. The affidavit states that there was no change in Board of Directors and existing Board of Directors remains same and is still functioning. During investigation, the facts mentioned as per affidavit were found to be in-correct.

16.32 Investigation revealed that the information and documents submitted by the company were examined by the Ministry of Coal and in the meanwhile since the share holding pattern and other details of M/s Crest Steel & Power Pvt. Ltd. were not furnished, the Ministry of Coal vide letter dated 23.05.2011 sought the same. On receipt of details from the company vide letter dated 31.05.2011, MoC sought further Clarifications vide letter dated 07.02.2012, thereafter a meeting of the Ministry of Coal officers and the company officials was held on 23.02.2012, Ministry of Coal vide letter dated 14.03.12 asked the company to submit the list of share holders of M/s Shree Virangana Steels Lid. at the time of allocation Marki Mangli-II, III & IV. The company finally vide letter dated 12.04.2012 furnished the list of share holders at time of incorporation, at the time of allocation of coal block on 06.09.2005 and the acquiring of shares by Sh. Abhay Lodha and Associates on 07.03.2006. Upon examination by the Ministry of Coal it was found that there is no one from original share holders and the entire share holding has changed without the approval of the Ministry of

Coal. Ministry of Coal issued a show cause notice dated 31.05.2012 as to why the change of ownership of the company without approval of the Ministry of Coal should not be held as violation of the terms and conditions of the allotment of Coal Blocks and these blocks be de-allocated. The company submitted reply to the show cause notice vide letter dated 14.06.2012 and thereafter company's submissions remained under deliberation in rounds between Ministry of Coal and Ministry of law without any final concrete conclusion. Thus the company was in the knowledge that the name change has not been approved by the Ministry of Coal.

16.33 Investigation further revealed that although the name of the company was changed from M/s Shree Virangana Steels Ltd. to M/s Topworth Urja & Metals Ltd. on 29.06.2010 and there was no approval from the Ministry of Coal. In spite of knowledge of the fact, Sh. Surendra Champalal Lodha issued a Power of Attorney dated 02.03.2011 (Notarial Reg. Entry No. 2559) as Director of Shree Virangana Steels Ltd. in favour of Sh. Anil Kumar Omprakash Nevatia, representing him as President Shree Virangana Steels Ltd. to execute Mining Lease Deed of Marki Mangli II Coal Block. Sh. Surendra Champalal Lodha has signed on each page of the Power of Attorney as Director Shree Virengana Steels Ltd. and Sh. Anil Omprakash Nevatia has signed on each page as President Shree Virangana Steels Ltd. and Power of Attorney holder. CFSL, New Delhi has confirmed about the signature of Sh. Surendra Champalal Lodha and Sh. Anil Kumar Omprakash Nevatia on the above Power of Attorney also.

16.34 Investigation also revealed that in similar manner a Power of Attorney dated 02.03.2011 (Notarial Reg. Entry No. 2558) was issued by Sh. Surendra Champalal Lodha as Director, Shree Virangana Steels Ltd. in favour of Sh. Anil Kumar Omprakash Nevatia, as President Shree Virangana Steels Ltd. to execute the Mining Lease Deed of Marki Mangli-III Coal Block. In this case also Shri Surendra Champalal Lodha has signed on each page of the aforesaid Power of Attorney as Director Shree Virangana Steels Ltd. and Sh. Anil kumar Omprakash Nevatia signed on each page as President of Shree Virangana Steels Ltd and Power of Attorney holder. CFSL, New Delhi has confirmed the signatures of Sh. Surendra Champalal Lodha and Sh. Anil Kumar Omprakash Nevatia on the above Power of Attorney

also.

16.35 Investigation also revealed that in similar manner a Power of Attorney dated 02.03.2011 (Notarial Reg. Entry No. 2557) was issued by Sh. Surendra Champalal Lodha as Director Shree Virangana Steels Ltd. in favour of Sh. Anil Kumar Omprakash Nevatia as President Shree Virangana Steels Ltd. to execute the Mining Lease Deed of Marki Mangli-IV Coal Block. In this case also Shree Surendra Champalal Lodha has signed on each page of the aforesaid Power of Attorney as Director Shree Virangana Steels Ltd. and Sh. Anil Omprakash Nevatia signed on each page as President of Shree Virangana Steels Ltd and Power of Attorney holder. CFSL, New Delhi has confirmed the signature of Sh. Surendra Champa Lal Lodha and Sh. Anil Kumar Omprakash Nevatia on the above Power of Attorney also.

16.36 Investigation also disclosed that on the basis of above Power of Attorney dated 02.03.2011 issued by Sh. Surendra Champalal Lodha, showing himself as Director Shree Virangana Steels Ltd., in favour of Sh. Anil Omprakash Nevatia, showing him as President M/s Shree Virangana Steels Ltd., the Mining Lease Deed between Govt. of Maharashtra and Shree Virangana Steels Ltd. in respect of Marki Mangli-III and Marki Mangli-IV were executed on 25.03.2011 and the Mining Lease Deed in respect of Marki Mangli-II Coal Block was executed on 13.06.2011. In the above Mining Lease Deed Sh. Anil Kumar Omprakash Nevatia signed on behalf of Shree Virangana Steels Ltd. as its President and on behalf of Collector, Yavatmal the then District Mining Officer Sh. Milind Prabhakar Barhanpurkar the then District Mining Office 'signed the above Mining Leases on behalf of Collector, Yavatmal. Sh. Mohan Mukundrao Kusneniwar, Geological Information System Assistant, Mining Section of the said Collectorate has put his initial below the signature of the above District Mining Officer in token of verifying the contents of the Mining Lease Deed.

16.37 Investigation revealed that the Mining Section, Office of the District Collector, the Directorate of Geology & Mining, Govt. of Maharashtra, Nagpur as well as the Department of Industries, Energy & Labour, Govt. of Maharashtra, Mumbai were not aware that the examination of the issue of change of the name of the company was going on in the Ministry of

Coal and that the Ministry of Coal was not agreeing /giving approval to the proposal of the said company for change of name of the company in the records, and they failed to show due diligence and take action to the intimation about change of name as well as the changing pattern of communication by the company, as and when required in the name of M/s Shree Virangana Steels Ltd. and some times in the name of M/s Topworth Urja & Metals Ltd. The officials of the Mining Section of Collectorate, Yavatmal also failed to check excess mining by the company than the schedule in the Mining Plan. For the lapses/omission and commission on the part of officers of the Directorate of Geology & Mining, officials of Mining Section, Collectorate, Yavatmal as well as the officer/officials of the Department of Industries, Energy & Labour Govt. of Maharashtra, Mumbai, the matter is being referred to the concerned Departments for regular departmental action /such action.

16.38 Investigation also revealed that the company sought mine opening permission in the name M/s Shree Virangana Steels Ltd.. Application of permission for opening composite seam of Marki Mangli-III Opencast Mine dated 05.03.2011, application of permission for opening the Composite Seam of Marki Mangli-II Opencast Mine dated 05.03.2011 and application of Permission for opening the Composite Seam in Marki Mangli-II Coal Block of Integrated Marki-Mangli Opencast Mine dated 25.10.2011 were issued by Surendra Champalal Lodha as Director Shree Virangana Steels Ltd. to the Coal Controller, Kolkata all on the letter head of M/s Shree Virangana Steels Ltd. although with this name the company did not exist w.e.f. 29.06.2010. CFSL also confirmed the signatures of Sh. Surendra Champalal Lodha on the above applications.

16.39 Investigation also revealed that letter dated 10.05.2011 on the Sub: Permission of opening the Composite Seam of Marki Mangli-III Opencast Mine of Shree Virangana Steel Ltd. , addressed to the Coal Controller, Kolkata, letter dated 02.05.2011 on the Subject: Application for opening of Marki Mangli-II & III Opencast Mine of Shree Virangana Steels Ltd. addressed to the Dy. General Manager /OSD, Coal Controller Organization, Nagpur, letter dated 15.06.2011 on the Subject: Permission. for Opening of Marki-Mangli-II Opencast Mine of Shree Virangana Steels Ltd., addressed to the Coal Controller, Kolkata, letter dated 20.09.2011 on the Subject: Permission

to open the Composite Seam of Marki-Mangli || Coal Block of Shree Virangana Steels Ltd. addressed to Coal Controller, Kolkata, letter dated 08.08.2011 on the Subject: Permission to open Composite Seam of Top & Bottom Section of Marki Mangli-III Opencast Mine, Shree Virangana Steels Ltd. Addressed to the Coal Controller, Kolkata and letter dated 19.10.2011 on the Subject: Permission to Open the Composite Seam of Marki Mangli-II Coal Block of Shree VVirangna Steel Ltd., addressed to the Coal Controller, Kolkata as well as letter dated 27.10.2011 on the Subject: Application of permission for opening the Composite Seam in Marki Mangli-II Coal Block of Integrated Marki Mangli Opencast Mine of Shree Virangana Steels Ltd. addressed to the Coal Controller, Kolkata were all issued by Sh. S.K. Mitra as Vice President (Mining), Shree Virangana Steels Ltd. On the letter head of M/s Shree Virangana Steels Ltd. although the name of the company had already changed from Shree Virangana Steels Ltd. to M/s Topworth Urja & Metals Ltd. w.e.f. 29.06.2010. CFSL, New Delhi has confirmed the signatures of Sh. S.K. Mitra on letter dated 20.09.2011 and 19.10.2011, which we sent in the name of Shree Virangana Steels Ltd although the name had changed to M/s Topworth Urja & Metals Ltd.

16.40 Investigation revealed that the permission to open composite seam of top and bottom section of Marki Mangli-III Open Cast Mine was issued vide letter dated 26.07.2011 in the name of the Company Shree Virangana Steels Ltd. by the office of the Coal Controller. Similarly permission to open composite seam of Marki Mangli-II open cast mine was issued vide letter dated 28.11.2011 in the name Shree Virangana Steels Ltd.

16.41 Investigation has also revealed that the office of the Coal Controller was also not aware that the examination of the issue of change of the name of the Company was going on in the Ministry of Coal and that the Ministry of Coal was not agreeing /giving approval to the proposal of the said company for change of name of the company. At the end of Office of the Coal Controller also there was lack of clarity about the name of the company due to the changing pattern of communication by the company, as and when required in the name of M/s Shree Virangana Steels Ltd., M/s Topworth Urja & Metals Ltd. (formerly Shree Virangana Steels Ltd.) and some times in the name of M/s Topworth Urja & Metals Ltd.. For the failure on the Part of the officers/officials of the

office of the Coal Controller who were receiving the correspondences with three differently named company on the same issue but they failed to take notice of this discrepancies and to take remedial action, the matter is being referred to the department for taking such action as deemed fit against them on account of administrative lapse on their part.

16.42 Investigation revealed that the company was required to do coal mining as per approved Mining Plan. Investigation has revealed that the production of coal in Miarki-Mangli-III Coal Block started since 18.12.2011. The company produced excess Coal than the approved quantity mentioned in the mining plan as enumerated below:-

Year of Production	Annual Production of coal (in MT)	Approved production quantity as per approved mining plan (in MT)	Remarks/ Variance
1 st Year (2011-2012)	65933	0.03 MT i.e. 30000 Te	Excess production of 35933 Te
2 nd Year (2012-2013)	341173	0.12 MT i.e. 120000 Te	Excess production of 221173 Te
3 rd Year (2013-2014)	216676.23	0.12 MT i.e. 210000 Te	Excess production of 6676.23 Te

The above mentioned acts of the company ie. excess mining than the approved Mining Plan attract Penal Provision of MMDR Act. A report in the regard is being forwarded to the Ministry of Coal, competent to file complaint before the designated court, for further needful action.

16.43 Investigation has also revealed that the company was entitled to export maximum 49% of power generated in its CPP, whereas, it has exported 72.59% during July, 2010 to March 2011, 64.75% during April, 2011 to March 2012, 65.44% during the period April 2012 to March 2013 and 52.4% during the period April 2013 to March 2014 to the grid of the Govt. of Maharashtra/MSEDCL which was a violation of the extant guidelines. The company owed cross subsidy charges payable to the Govt. of Maharashtra on account of supply of excess Power than its defined quota. A report in this regard is being sent to the to the Govt. of Maharashtra for taking necessary action in respect of non-levying cross subsidy charges by MSEDCL.

16.44 Investigation has also revealed that the management of Shree Virangana Steels Ltd. in their Form-I submitted to the Directorate General of Mine Safety, Nagpur Region-II mentioning the name of the company as M/s Shree Virangana Steels Ltd. till 01.10.2011 although the name of the company had changed from Shree Virangana Steels Ltd. to Topworth Urja & Metals Ltd. w.e.f. 29.06.2010. First Schedule Form-I from nominated owner/Director Shree Virangana Steels Ltd., Marki Mangli-III Opencast Mine in respect of appointment of Under Manager of Integrated Marki Mangli Opencast Mine dated 01.10.2011 showing the name of the company M/s Shree Virangana Steels Ltd. was issued by the Director Sh. Surendra Champalal Lodha. CFSL, New Delhi has confirmed the signature of Sh. Surendra Champalal Lodha on the above document submitted to DGMS. The company intimated wrong name of the company as Shree Virangana Steels Ltd till submission of Form-I dated 01.09.2012, wherein the name of the company was correctly intimated as Topworth Urja & Metals Ltd. The above fact amounts to falsification of records U/s 64 of Mines Act 1952. In this regard action is required to be taken by the Directorate General of Mine Safety by filing a complaint in the concerned Court under the provision of Mines Act 1952. Report in this regard is also being sent to Directorate General of Mine Safety for taking necessary action against the concerned Directorate General of Mines Safety officers and filing a complaint against the accused company in the concerned court under the provisions of Mines Act 1952.

16.45 Investigation further revealed that the Ministry of Coal requested Govt. of Maharashtra to furnish a copy of mining leases executed. On receipt of the same, the Ministry of Coal observed that as per documents provided by State Government the lease has been signed in the months of March and June 2011 and there was no such Company existing in the name of M/s Shree Virangana Steels Ltd. at the time of execution of Mining Lease. The Ministry of Coal further observed that the Mining Lease deed was still in the name of M/s Shree Virangana Steels Ltd. whereas the name of the Company has changed and accordingly the Ministry of Coal proposed that the Mining Lease is void. The Ministry of Coal vide letter dated 05.01.2015 directed Govt. of Maharashtra to immediately declare the mining lease of Marki- Mangli-II, III & IV coal blocks as void. Thereafter,

Industries, Energy and Labour Department, Govt. of Maharashtra vide letter dated 15.01.2015 cancelled the mining lease granted to the Company.

16.46 Thus, the Company M/s Topworth Urja & Metals Ltd. (formerly M/s Shree Virangana Steels Ltd.), Sh. Surendra Champalal Lodha and Sh. Anil Kumar Omprakash Nevatia knowing fully well that the Company M/s Shree Virangana Steels Ltd. was not existing anymore conspired with each other and thus got executed the Mining Lease in favour of M/s Shree Virangana Steels Ltd. to circumvent the objection of the Ministry of Coal. Sh. Surendra Champalal Lodha and Sh. Anil Kumar Omprakash Nevatia with the intention to deceive authority also made correspondences on the letter head of M/s Shree Virangana Steels Ltd. Sh. S. K. Mitra also with intention to deceive the authorities made correspondences with various authorities on the letter heads of the M/s Shree Virangana Steels Ltd. despite knowing that the Company M/s Shree Virangana Steels Ltd. was not existing. The aforesaid illegal acts facilitated execution of Mining Lease on the basis of misrepresentation by/on behalf of the company and also the illegal mining of coal, a valuable property. Sh. A.K. Saxena, the then President M/s Shree Virangana Steels Ltd, Sh. Manoj Maheshwari, Director/CEO, M/s Shree Virangana Steels Ltd, misrepresented the fact before the Ministry of Coal and the concerned Screening Committee. Sh. Anand Nandkishore Sarada, Representative of M/s Shree "Virangana Steels Ltd. was also party to the conspiracy and he also misrepresented the fact before the Ministry of Coal. He also forged the signature of Vimal Kumar Agarwal on the letter dated 23.11.2004 as well as the signature of Sh. Shiv Kumar Agarwal on letter dated 21.10.2004, communicating incorrect information to the Ministry of Coal for showing their preparedness to get allocation of aforesaid captive coal blocks ."

3. Upon filing of final report u/s 173 Cr.PC cognizance of the offence u/s 120-B IPC r/w Section 420 IPC and offence u/s 420 IPC was taken against all the seven accused persons alongwith substantive offences thereof. Cognizance for the offence u/s 120-B/465/468/471 IPC was also taken against accused company (A-1)

M/s Topworth Urja & Metals Ltd. (M/s TUML) [*Formerly Shree Virangana Steels Ltd.*], its Director (A-2) Surendra Champalal Lodha @ Surendra C. Lodha, its President (A-3) Anil Kumar Omprakash Nevatia, (A-4) Swapan Kumar Mitra @ S.K. Mitra.

4. After due compliance of Section 207 Cr.PC arguments on the point of charge were heard at length as were addressed by Ld. DLA Sh. Sanjay Kumar on behalf of prosecution and by Ld. Counsel Sh. Pramod Kumar Dubey on behalf of A-2 Surendra Champalal Lodha @ Surendra C. Lodha, Ld. Counsel Sh. Anuj Tiwari on behalf of A-3 Anil Kumar Omprakash Nevatia, Ld. Counsel Sh. Ratnesh Deo on behalf of A-4 Swapan Kumar Mitra @ S.K. Mitra, Ld. Counsel Sh. R.S. Kundu on behalf of A-5 Anil Kumar Saxena @ A.K.Saxena, Ld. Counsel Sh. Ashim Vachher on behalf of A-6 Manoj Maheshwari and Ld. Counsel Sh. Shyam Dewani on behalf of A-7 Anand Nand Kishore Sarda. Ld. Counsel Sh. P.K. Dubey infact also addressed additional arguments on behalf of A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra. No oral arguments on the point of charge were however addressed on behalf of A-1 M/s TUML, though written submissions were filed on behalf of A-1 M/s TUML . Written submissions were also filed on behalf of prosecution as well as all the other accused persons.

Arguments on behalf of prosecution

5. Sh. Sanjay Kumar, Ld. DLA, CBI, submitted on behalf of prosecution that from the facts of the prosecution case, it is clear on

the face of record itself that the company M/s Virangana Steels Ltd. along with its officers/directors conspired to cheat Ministry of Coal (MoC), with a view to procure allocation of captive coal mining blocks for its proposed 3 LTPA sponge iron Plant, Captive Power Plant (CPP) and Steel Melt Shop and even succeeded in obtaining allocation of three captive coal blocks.

6. He further submitted that after allocation of coal blocks major change in shareholding pattern took place and A-2 Champalal Lodha who subsequently became a director of the company, submitted false affidavit to Ministry of Coal alongwith letter dated 15.02.2011 to the effect that there was no change in the Board of Directors and existing Board of Directors has remained the same and is still functioning. Ld. DLA thus submitted that A-2 Champalal Lodha by furnishing false information attempted to induce MoC to approve the change of name of the company. Ld. DLA further submitted that Original Promoters of the Company disposed their equity to the persons/entities belonging to M/s Topworth Group and subsequently name of the company was also changed to M/s Topworth Urja & Metals Ltd. on 29.06.2010 by the new shareholders.

7. It was further submitted that vide application dated 15.01.2004 and also during 23rd screening committee meeting the initial officers/directors and other representative of the company submitted false information to Ministry of Coal and Ministry of Steel claiming that the sponge iron capacity of A-1 company is 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. Ld. DLA

further submitted that along with the letter dated 02.07.2020, A-7 N.K. Sarda furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby accused persons dishonestly induced Ministry of Steel to recommend Shri Virangana Steels Ltd. (*Now Topworth Urja & Metals Ltd.*) for allocation of coal blocks. It was further submitted that accused persons also provided false information before 28th Screening Committee claiming that applicant company Shri Virangana Steels Ltd. has obtained in-principle clearance from Power Finance Corporation, whereas, it was not so.

8. Ld. DLA also submitted that A-7 Anand Sarda forged the signatures of Vimal Kumar Agarwal on letter dated 23.11.2004 as well as signatures of Sh. Shiv Kumar Agarwal on letter dated 21.10.2004, and communicated incorrect information to Ministry of Coal for showing their preparedness so as to obtain allocation of captive coal blocks.

9. It was also submitted that A-4 Swapn Kumar Mittra dishonestly/fraudulently used as genuine the letters dated 20.09.2011, 19.10.2011 and 27.10.2011 signed by him as Vice President (Mines) of Shree Virangana Steels Limited, which were addressed to the Coal Controller, Ministry of Coal, Govt. of India for grant of permission for opening the Composite Seam of Marki Mangli –II coal block, whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010.

10. It was thus submitted that A-1 Company M/s Topworth

Urja & Metals Ltd. (formerly M/s Shree Virangana Steels Ltd.), A-2 Surendra Champalal Lodha, A-3 Anil Kumar Omprakash Nevatia, A-4 S. K. Mitra, A-5 A.K. Saxena, A-6 Manoj Maheswari and A-7 Anand Sarada, conspired with each other by misrepresenting various facts before Government authorities and the two Screening Committees, and thereby procured allocation of three coal blocks, beside also getting the mining lease for all the three coal blocks executed in favour of M/s Shree Virangana Steels Ltd. Ld. DLA further submitted that allocation of three coal blocks and thereafter getting the mining lease(s) executed were itself valuable security.

11. It was also submitted that from the facts and circumstances of the case, it is prima facie clear that the accused persons conspired to cheat Screening Committee and thereby MOC, Government of India so as to procure allocation of captive coal blocks in favour of applicant company. It was thus submitted by Ld. Sr. P.P. that at this stage of the matter there is enough evidence which prima facie warrants framing of charge for the offence u/s 120-B r/w Section 420 IPC alongwith substantive offences thereof i.e. u/s 120-B IPC, u/s 417, 420 IPC, 467 IPC 468 IPC and 471 r/w 468 IPC, against all the accused persons.

12. In support of his submissions Ld. DLA Sh. Sanjay Kumar relied upon the following case law:

S. No	Title	Citations
1	<i>Ishwarlal Girdharlal Parekh vs State of Maharashtra</i>	AIR 1969 SC 40
2	<i>Ram Prakash Singh Vs. State of Bihar</i>	1998 CrL. L. J. 502
3	<i>State of Himachal Pradesh Vs. Krishan Lal Pradhan</i>	1987 CrL.L.J. 709, AIR 1987 SC 773
4	<i>M.S.Reddy Vs. State Inspector of Police</i>	1993 CrL.L.J. 558 AP
5	<i>Firozuddin Basheeruddin and others Vs. State of Kerala</i>	2001 CrL.L.J 4215
6	<i>State to Superintendent of Police, CBI/SIT Vs. Nalini</i>	1999 CrL.L.J. 3124
7	<i>Yashpal Mittal Vs. State of Punjab</i>	1997(4) SCC 540
8	<i>Adnan Bilal Mulla V/s. State of Maharashtra</i>	2006 CrL. L.J.564
9	<i>Yogesh Sachin Jagdish Joshi Vs. State of Maharashtra</i>	2008 CrL .L .J. 3872, SC
10	<i>M.E. Shivalinga Murthy Vs CBI Bangalore</i>	(2020) 2 SCC 768

Arguments on behalf of accused persons

13. On the other hand, Ld. Counsels for the accused persons submitted that from the overall facts and circumstances of the case and the evidence as has been placed on record, charge for none of the offences is made out against any of the accused persons, even for a prima facie view.

14. The arguments as were addressed by Ld. Counsels for various accused persons on the point of charge were as follows.

Arguments on behalf of A-1 M/s Topworth Urja & Metals Ltd. (M/s TUML) [Formerly Shree Virangana Steels Ltd.]

15. Ld. Counsel Sh Kunal Sharma for A-1 M/s TUML submitted that a bare perusal of the charge-sheet shows that the allegations against A-1 M/s TUML qua change in share holding pattern and change in name does not hold ground, since it is a settled legal position that a company is a juristic person, distinct from its directors and shareholders and thus, A-1 M/s TUML could not have played any role at the time when change of shareholding was taking place as the act of transfer of shares was done by the shareholders independently of the Accused Company. It was further submitted that A-1 company in accordance with the provisions of Companies Act, 1956 duly registered the new/transferee shareholders. It was thus submitted that the accused company cannot be made liable for the aforesaid acts, as it was done in furtherance of a statutory obligation conferred upon it.

16. It was also pointed out that a perusal of the extracts of minutes of 28th Screening Committee meeting held on 15.04.2005, annexed with the charge-sheet, shows that the existing plant capacity of A-1 Company has been considered as 60000 MTPA only. It has been further submitted that company's mentioning of its existing capacity as 75000 MTPA in its application can at best be described as an error only and not any misrepresentation on the part of accused company, so as to induce the screening committee in allocation of captive coal blocks. Ld. Counsel further submitted that a report was filed by the

senior officials of Directorate of Geology, Govt. of Maharashtra after inspection and thereby fortifying the claim of the accused company qua capacity and functionality of the sponge iron plant.

17. Ld. Counsel also submitted that a bare perusal of the letter dated 23.11.2004 submitted to MOC by accused company, show that A-1 company has not stated anything regarding obtaining of in-principle clearance from Power Finance Corporation. It has been further submitted that the accused company along with its application dated 15.01.2004 did enclose present status of the project as Annxure-7 and details about the business line of the Company and its track report, wherein it was clearly stated that the company has taken financial assistance from Central bank of India and further proposed to set up Captive power plant and melt shop in the first phase to which company has been granted in-principle clearance and financial tie up from Central Bank of India. Ld. Counsel, however also submitted that as in-principle approval from power Finance Corporation was never a pre-condition for allocation of a coal block so a statement to that effect could have never induced the screening committee in making allocation of any captive coal block.

18. Ld. Counsel also submitted that as per prosecution case itself, letter dated 24.05.2004 was submitted by Govt. of Maharashtra to MOC mentioning therein that the Captive Power Plant was under construction. Ld. Counsel, however submitted that there was no requirement that a captive power plant should already be under construction at the time of applying for a coal block and thus any

statement to that effect could have never induced the screening committee in making allocation of any captive coal block.

19. Ld. Counsel thus submitted that there is no basis for the allegation that the above misrepresentations improved the company's chances of allocation since the eligibility criteria did not mention anything to that effect.

A-1 M/s TUML was thus prayed to be discharged.

Arguments on behalf of A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra

20. The arguments advanced on behalf of the three accused persons i.e. A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mitra were almost identical and thus for the sake of brevity, I am mentioning their arguments in common. However, I shall be dealing with all the submissions at length at a later stage of the present order

21. Ld. Counsel Sh. P.K. Dubey for A-2 Champalal Lodha submitted that letter dated 15.02.2011 was submitted in reply to MOC letter dated 01.02.2011 wherein the following specific queries were raised by MOC:

“(i) Copies of the Memorandum of Association and Article of Association in respect of M/s Shree Virangana Steels Limited and M/s Topworth Urja and Metals Limited and the reasons behind the name change may also be intimated.

(ii) An affidavit mentioning that there is only change in the name of the allocatee company from M/s Shree Virangana Steels Limited to M/s Topworth Urja & Metals Limited and that

there is no change in the shareholding pattern and the existing Board of Directors of these companies.

(iii) The details of shareholders along with their shares in M/s Shre Virangana Stels Limited and M/s Topworth & Metals at the time of incorporation and as on date.

(iv) Location of End Use Plant along with actual progress made, as on date, in respect of Marki Mangli-II, Marki Mangli-III and Marki Mangli-IV coal blocks allocated to the company.”

22. Accordingly, vide letter dated 15.02.2011 and the annexures filed alongwith it, including the affidavit dated 10.02.2011, A-2 Surendra Champalal Lodha only submitted the information as was asked for by MOC and thus the affidavit in question cannot be read in isolation, so as to allege suppression of facts.

23. It has been further submitted that in letter dated 01.02.2011, the Ministry of Coal never asked for the shareholding pattern of the company for the period 2006-08 and accordingly by way of affidavit in question, A-2 Surendra Champalal Lodha supplied a “List of Shareholders as on 28.06.2010 (Before change in name i.e. 29.06.2010)” and it is thus clear from the reply so submitted, that there was no insinuation from the side of A-2 Surendra Champalal Lodha that the said information pertains to the list of shareholders at a point of time prior to the said date or at the inception. It has been thus submitted that neither there was any misrepresentation while furnishing the list of shareholders nor anyone was ever deceived.

24. It has been also pointed out that subsequently pursuant to a specific query raised by MOC about the shareholding pattern as on

the date of allocation i.e. 29.06.2005 vide letter dated 14.03.2012 (D-7, pg. 247), M/s TUML through its authorized representative furnished the entire details vide letter dated 12.04.2012 (D7 Pg. 248-252). It has been thus submitted that if the furnishing of impugned affidavit by A-2 Surendra Champalal Lodha, is considered in the overall facts and circumstances of the case, then it is clear on the face of record itself that no false statement was at all made in the affidavit dated 10.02.2011.

25. It has been also submitted that, the impugned issue of change in shareholders was even referred to Ministry of Law for opinion by MOC with the query *“whether the change in ownership and management, without the approval of the Ministry of Coal, of allocatee company by way of sale of shares would amount to violation of terms and conditions of allocation of coal blocks read with provisions of the Coal Mines (Nationalization) Act, 1973, the MMDR Act. 1957 and the rules made thereunder or any other law as applicable.”*. However, the Department of Legal Affairs, Ministry of Law & Justice vide note dated 19.11.2012 replied that *“In the allocation letter, there is no specific condition that for change in the ownership or management of the allocatee company, approval of the Central Government is necessary. As the terms and conditions for allocation were specified by the administrative Ministry, this aspect was also required to be taken care of by the administrative agency at the time of issuance of allocation letter, by putting a specific condition therein in this regard.”*

26. It has been thus submitted that there was no violation of

Rule 37, Mineral Concession Rules, 1960 pursuant to letter dated 15.02.2011. It has been also pointed out that in the noting dated 16.01.2012 (*as available in D-7 at note-sheet page 46*) it is clearly mentioned as under:

“As regards proposal on name change/merger issue, a draft policy on such matters is being prepared. May be dealt in after finalization”

27. As regard the allegation regarding execution of three power of attorneys dated 02.03.11 by A-2 Surendra Champalal Lodha as Director of M/s SVSL in favour of A-3 Anil Omprakash Nevatia as President, M/s SVSL, even though M/s SVSL ceased to exist after 29.06.2010 and that on the basis of said power of attorneys A-3 Anil Omprakash Nevatia executed the three mining lease deeds as President of M/s SVSL, Ld. Counsel Sh. P.K. Dubey submitted that the two officers i.e. District Mining Officer and Director of Geology and Mining were well aware about the change in the name of applicant company. It has been thus submitted that for the said reason the execution of Power of Attorney's or the subsequent execution of mining lease deeds cannot be termed as acts of inducement in any manner, whatsoever. Ld. Counsel thus submitted that as Department of Office of Industries, Energy and Labour, Government of Maharashtra, Office of DGM and office of DMO were already intimated regarding change in the name of applicant company from M/s SVSL to TUML, so even for a prima facie view, it cannot be said that there was any act of deception or

inducement on the part of A-2 Surendra Champalal Lodha.

28. Ld. Counsel further submitted that as change of name of a company does not change the legal status of the company, so no wrongful gain or corresponding wrongful loss can be attributed due to use of old name of the company. Ld. counsel also referred to Section 23(3) of Companies Act, 1956, which provides that the change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

29. Ld. Counsel also pointed out that the change of name of company neither dissolve the old company, nor does it brings into existence, any new Company as simply the name of SVPL (incorporated in 1993) was changed to TUML w.e.f. 29.06.2010 and even the CIN number and PAN number remained the same and the only effect of change in the name of Company is restricted to the change of name in the Memorandum and Articles of Association of the Company.

30. Ld. Counsel thus submitted that when statutory permission was accorded in favor of a company in its former name and document is executed in favour of company in its former name then at the most it can be an irregularity which cannot vitiate the transaction. Ld. Counsel also contended that change of name does not bring into existence a new company. Ld. Counsel thus submitted that all assets of old

company are held under a new label and no change in legal status took place and also there was no succession of one legal person by another.

31. Ld. Counsel thus submitted that in these circumstances the execution of impugned three Power of Attorney by A-2 Surendra Champalal Lodha, can by no stretch of imagination amount to making of a false document. Ld. Counsel also submitted that even if it is presumed for the sake of arguments that M/s SVSL did cease to exist as on 29.06.2010 then also none of the ingredients of Section 464 IPC are made out.

32. Ld. Counsel further submitted that even offence u/s 120-B IPC is also not made out against A-2 Surendra Champalal Lodha as he was not related to the Company in any manner whatsoever at the time of alleged misrepresentation or even at the time of issuance of letter of allocation by Ministry of coal in favour of the company. It has been pointed out that even prosecution has nowhere alleged in the Charge sheet that A-2 Surendra Champalal Lodha was involved in the allocation of Coal Block in any manner whatsoever. Ld. Counsel submitted that admittedly A-2 Surendra Champalal Lodha was neither a shareholder, nor a director of the accused Company(A-1) at the time of allocation of coal blocks by Ministry of coal.

33. It has been also submitted that even from the applications for mine opening permission submitted to coal controller, Kolkata on the letter head of SVSL dated 05.03.2011, 05.03.2011, and 25.10.2011 , it is clear that there was no concealment of fact as the Coal Controller

is an officer of the Ministry of Coal and MOC was duly intimated about change in the name of applicant company on 15.10.2010 itself.

34. It has also been submitted that the correspondence dated 06.01.2011(A-4 S. K. Mitra), (*available in D-83 at pages 8-10*), 08.12.2010 (A-4 S.K. Mitra) (*available in D-83 at pages 11-13*), 05.10.2010 (A-3 Anil Omprakash Nevatia) (*available in D-83 at pages 14-15*) were made on the letter head of Topworth Urja and Metals Limited and which shows that there was no intention to conceal the change in name of the applicant company from the office of Coal Controller and that no inducement whatsoever can be attributed to the acts of either A-2 Surendra Champalal Lodha or that of A-3 Anil Omprakash Nevatia or even that of A-4 Swapan Kumar Mitra, as even number of correspondence by the office of Coal Controller, Kolkata were addressed to M/s TUML i.e. in the new name of the company.

35. Ld. Counsel further submitted that A-2 Surendra Champalal Lodha became director of A-1 Company on 14.03.2006, and the earlier director A-6 Manoj Maheshwari resigned on 27.03.2006 and thus any allegation of there being any meeting of mind for the purpose of conspiracy does not have any logical or legal basis. The mere period of 14 days when the two jointly remained Directors does not, by any stretch of imagination, establishes meeting of mind. Ld. Counsel further submitted that it is a trite principle that a company cannot be without a Director, accordingly, the new entrant is always first appointed by the incumbent director, subsequent to which the

incumbent director may resign from his post.

36. Ld. Counsel Sh. P.K. Dubey thus submitted that the prosecution has failed to establish meeting of mind between A-2 Surendra Champalal Lodha with other accused persons.

A-2 Surendra Champalal Lodha was thus prayed to be discharged.

37. In support of his submissions Ld. Counsel Sh. P.K. Dubey placed reliance upon the following case law:

S. No	Title	Citations
1	<i>Manohar Lal Sharma Vs. Principal Secretary</i>	[(2014) 9 SCC 516]
2	<i>W.H. Targett (India) Limited vs S. Ashraf & Ors</i>	2008 SCC OnLine Cal 384, Hon. Calcutta High Court
3	<i>M/s Frenenius Kabi Oncology Limited v. The State of West Bengal & Ors.,</i>	2015 SCC OnLine Cal 6191, Hon. Calcutta High Court
4	<i>Economic Investment Corporation Ltd vs CLT,</i>	1969 SCC OnLine Cal 57, Hon. Calcutta High Court
5	<i>Pioneer Protective Glass Fibre P Ltd. vs Fibre Glass Pilkington</i>	1984 SCC OnLine Cal 171; CDJ 1985 Cal HC 002, Hon. Calcutta High Court
6	<i>C. L. Muthiah vs Power Soaps (P) Ltd,</i>	2010 (1) MWN (Cr.) DCC 28, Hon. Madras High Court
7	<i>Mohd. Ibrahim v. State of Bihar,</i>	(2009) 8 SCC 751
8	<i>(Reliance placed upon Dr Vimla vs Delhi Administration,</i>	AIR 1963 SC 1572, Para 15-16)
9	<i>Vodafone International Holdings BV v. Union of India,</i>	(2012) 6 SCC 613:
10	<i>Bacha F. Guzdar v. CIT</i>	[AIR 1955 SC 74]
11	<i>State of Rajasthan v. Gotan Lime Stone Khanij Udyog (P) Ltd.,</i>	(2016) 4 SCC 469

Arguments on behalf of A-3 Anil Kumar Omprakash Nevatia

38. Ld. Counsel Sh. Anuj Tiwari for A-3 Anil Kumar Omprakash Nevatia reiterated identical arguments with respect to the factum of execution of the impugned Power of Attorney's or the execution of mining lease deeds, as were addressed by Ld. counsel for A-2 Surendra Champalal Lodha. It was thus submitted that by no stretch of arguments any element of criminality can be attributed to A-3 Anil Omprakash Nevatia. Ld. Counsel submitted that the change of name of a company does not change the legal status of the company and hence no wrongful gain or corresponding wrongful loss can be attributed to anyone due to the use of old name of the company.

39. Ld. Counsel for A-3 Anil Omprakash Nevatia further submitted that even the offence u/s 120-B IPC is not made out against, as accused was not related to the Company in any manner whatsoever at the time of alleged misrepresentations made before the screening committee or even at the time of allocation of coal blocks by Ministry of coal. It was submitted that even in the Charge sheet, it has been nowhere stated that A-3 Anil Omprakash Nevatia was involved in the allocation of Coal Blocks in any manner whatsoever. Ld. Counsel further argued that as A-3 Anil Omprakash Nevatia was neither a shareholder, nor a director of the Accused Company so the allegation that the change of shareholding took place after the allocation of coal blocks also does not hold ground against him.

40. Prosecution was thus stated to have miserably failed in even

prima facie establishing the ingredients of any offence against A-3 Anil Kumar Omprakash Nevatia which may warrant framing of charge against him.

A-3 Anil Omprakash Nivetia was thus prayed to be discharged.

41. In support of his submissions Ld. Counsel Sh. Anuj Tiwari, also placed reliance upon the following case law:

S. No	Title	Citations
1	<i>Manohar Lal Sharma Vs. Principal Secretary</i>	[(2014) 9 SCC 516]
2.	<i>W.H. Targett (India) Limited vs S. Ashraf & Ors.</i>	2008 SCC OnLine Cal 384, Hon. Calcutta High Court
3	<i>M/s Frenenius Kabi Oncology Limited v. The State of West Bengal & Ors.</i>	2015 SCC OnLine Cal 6191, Hon. Calcutta High Court
4	<i>Economic Investment Corporation Ltd vs CLT</i>	1969 SCC OnLine Cal 57, Hon. Calcutta High Court
5	<i>Pioneer Protective Glass Fibre P Ltd. vs Fibre Glass Pilkington</i>	1984 SCC OnLine Cal 171; CDJ 1985 Cal HC 002, Hon. Calcutta High Court
6	<i>C. L. Muthiah vs Power Soaps (P) Ltd</i>	2010 (1) MWN (Cr.) DCC 28, Hon. Madras High Court
7	<i>Mohd. Ibrahim v. State of Bihar</i>	(2009) 8 SCC 751
8	<i>(Reliance placed upon Dr Vimla vs Delhi Administration</i>	AIR 1963 SC 1572, Para 15-16)
9	<i>Vodafone International Holdings BV v. Union of India</i>	(2012) 6 SCC 613:
10	<i>Bacha F. Guzdar v. CIT</i>	[AIR 1955 SC 74]
11	<i>State of Rajasthan v. Gotan Lime Stone Khanij Udyog (P) Ltd.,</i>	(2016) 4 SCC 469

Arguments on behalf of A-4 Swapam Kumar Mitra

42. Ld. Counsel Sh. Ratnesh Deo for A-4 Swapam Kumar Mitra submitted that the accused and other officers/employees of TUML or the Topworth Group had acted as per the sound principles of law, and have accordingly made necessary disclosures and no inducement leave aside dishonest, can be attributed to A-4 Swapam Kumar Mitra on the basis of any communication made either by him or by A-2 Surendra Champalal Lodha and A-3 Anil Omprakash Nevatia. He also reiterated the identical arguments with respect to the factum of execution of the impugned Power of Attorney's or the execution of mining lease deeds, as were addressed by Ld. counsel for A-2 Surendra Champalal Lodha.,

43. Ld. Counsel further submitted that neither the impugned Power of Attorneys, nor any of the mining lease deeds were executed by A-4 Swapam Kumar Mitra and moreover A-4 Swapam Kumar Mitra was neither a shareholder nor a member of board of Accused Company. It was submitted that A-4 Swapam Kumar Mitra had no role in policy making of the Accused Company, and was not even alleged to be a beneficiary of any of the alleged acts of the Accused Company.

44. Ld. Counsel further submitted that the prosecution has clearly failed to establish any meeting of mind between A-4 Swapam Kumar Mitra with other accused persons.

45. Ld. Counsel further pointed out that no inducement of any nature whatsoever took place on account of impugned

communications made by A-4 Swapam Kumar Mitra as subsequently even the office of Coal Controller, Kolkata made number of correspondence addressed to TUML and thus, there was neither any concealment of facts whatsoever either from the office of Coal Controller, or from Ministry of Coal, nor any act of inducement can be attributed to the Accused.

46. Ld. Counsel further contended that ex facie, it cannot be said that there was any act of deception or inducement on the part of A-4 Swapam Kumar Mitra as the Office of DGM and office of DMO were already intimated regarding change of name of the company from M/s SVSL to TUML.

47. Ld. Counsel also submitted that offence u/s 120-B is also not made out against A-4 Swapam Kumar Mitra as he was not related to the Company in any manner whatsoever at the time of alleged misrepresentations and it is nowhere alleged in the Charge sheet that he was involved in the allocation of the Coal Blocks in any manner whatsoever. It was submitted that A-4 Swapam Kumar Mitra joined the company only in the year 2010.

48. Ld. Counsel further argued that the change of shareholding subsequent to allocation cannot be attributed to A-4 Swapam Kumar Mitra as he held no shares at any point of time and was also never a part of the Board of the Accused Company or even was involved in policy making of the Company.

49. Ld. Counsel Sh. Ratnesh Deo, in support of his submissions also placed reliance upon the following case law:

S. No.	Title	Citations
1	<i>Dr. Vimla vs Delhi Administration</i>	<i>AIR 1963 SC 1572</i>
2	<i>Mohd. Ibrahim v. State of Bihar</i>	<i>(2009) 8 SCC 751</i>
3	<i>W.H. Targett (India) Limited vs S. Ashraf & Ors, 2008 SCC OnLine Cal 384</i>	<i>Hon. Calcutta High Court</i>
4	<i>M/s Frenenius Kabi Oncology Limited v. The State of West Bengal & Ors., 2015 SCC OnLine Cal 6191</i>	<i>Hon. Calcutta High Court</i>
5	<i>Economic Investment Corporation Ltd vs CLT, 1969 SCC OnLine Cal 57</i>	<i>Hon. Calcutta High Court</i>
6	<i>Pioneer Protective Glass Fibre P Ltd. vs Fibre Glass Pilkington, 1984 SCC OnLine Cal 171; CDJ 1985 Cal HC 002</i>	<i>Hon. Calcutta High Court</i>
7	<i>C. L. Muthiah vs Power Soaps (P) Ltd, 2010 (1) MWN (Cr.) DCC 28</i>	<i>Hon. Madras High Court</i>

A-4 Swapan Kumar Mittra was thus prayed to be discharged.

Arguments on behalf of A-5 Anil Kumar Saxena @ A.K. Saxena

50. Ld. Counsel Sh. R.S. Kundu for A-5 Anil Kumar Saxena submitted that the law on charge as pronounced till date by the Hon'ble Supreme Court in various judgments has been consistent and can be summarized as follows: -

"1. That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the material placed with chargesheet, which during trial likely to culminate into

evidence and to see whether the material is sufficient to start a trial against the accused.

II. Whether such material creates grave suspicion about involvement of the accused and if such grave suspicion has remained unexplained, then the court shall frame charge and proceed with the trial.

III. That court cannot act as a post-office of prosecution i.e. the court is duty bound to weigh the material for the purpose of framing prima-facie opinion.”

51. Ld. Counsel submitted that it is alleged by the prosecution that letter dated 15.01.2004 was issued by A-5 Anil Kumar Saxena, the then President M/s Shree Virangana Steels Ltd. and that he misrepresented therein that the company was having sponge iron capacity of 75000 MTPA. It has been also alleged that he attended 23rd Screening Committee meeting held on 29.11.2004 in which the same information regarding company having 75000 MTPA existing capacity was given to the committee, even though the actual capacity of Sponge Iron Plant was 60000 MTPA only. It is further alleged that A-5 Anil Kumar Saxena also attended 28th SC meeting along with CEO Sh. Manoj Maheshwari(A-6), in which it was presented that the company has obtained in-principle clearance from PFC, which was also not correct.”

52. Ld. Counsel submitted that except the above two allegations, there is no material / evidence to frame charge against against A-5 Anil Kumar Saxena. Ld. Counsel however submitted that merely attending 23rd and 28th Screening Committee meetings does not make A-5 Anil Kumar Saxena accomplice or a conspirator and no motive can be attached either for the offence of cheating or

conspiracy against him as he merely attended those meetings in the capacity of an employee of the company.

53. Ld. Counsel further submitted that in the letter dated 15.01.2004 though it has been claimed that the plant in first phase has capacity of 75,000 MTPA but the application was submitted for allotment of following coal blocks:

1. *Bellora Tekli Jena-North*
2. *Kosar-Dongargao*
3. *Nerad-Malegaon*

54. Ld. Counsel, however submitted that the allotment of the said blocks was not made by Ministry of coal and instead different coal blocks i.e. MM-II, MM-III and MM-IV were allotted. It has thus been submitted that the screening committee did not act upon letter dated 15.01.2004 but acted on the subsequent letters which were not signed by A-5 Anil Kumar Saxena, as per the case of prosecution itself. The allotment letter dated 06.09.2005 also shows that the only consideration was the proposed 3,00,000 MTPA capacity and 25 MW captive power generation and not the existing capacity of the sponge iron plant.

55. Ld. Counsel further submitted that the claim of capacity of 75,000 MTPA cannot be taken as a misrepresentation because with technical know-how capacity of 60,000 MTPA can be increased to 75,000 MTPA, and even otherwise while making allotment, as

recorded in the minutes of meeting dated 15.04.2005, the criterion for allotment has been 3,00,000 MTPA and the committee made allotment considering the existing production capacity as 60,000 MTPA only.

56. Ld. Counsel Sh. R.S. Kundu further submitted that A-5 Anil Kumar Saxena was merely an employee of M/s Virangana Steels Ltd. and was not having any personal stake in the transactions of the company and he represented company on certain occasion only on the basis of resolutions passed by the Board of Directors in his favour. Ld. Counsel further submitted that A-5 Anil Kumar Saxena cannot be said to have entered into any criminal conspiracy with the directors of the company since they are not arrayed as accused in the present case and rather, they have been cited as prosecution witnesses. Ld. Counsel submitted that there is no material which can show that any wrongful gain was made to A-5 Anil Kumar Saxena or there was any misrepresentation on the part of A-5 Anil Kumar Saxena.

57. Ld. Counsel thus submitted that prima-facie no case is made out against A-5 Anil Kumar Saxena. He was accordingly prayed to be discharged.

58. In support of his submissions Ld. Counsel Sh. R.S. Kundu, placed reliance upon the following case law:

S. No.	Title	Citations
1	<i>Dipakbhai Jagdishchandra Patel Vs. State of Gujarat</i>	(2019) SCC Online SC 588
2	<i>State of Bihar vs Ramesh Singh</i>	(1977 AIR 2018, 1978 SCR (1) 257)
3	<i>Union of India vs Prafulla Kumar Samal & Anr</i>	(1979 AIR 366, 1979 SCR (2) 229)

Arguments on behalf of A-6 Manoj Maheshwari

59. Ld. Counsel Sh. Ashim Vachher on behalf of A-6 Manoj Maheshwari submitted that Mr. P C Parekh, the then Secretary Coal has stated in his statement under section 161 Cr. PC, that mentioning of capacity either of 60,000MTPA or 75000 MTPA was immaterial in as much as the same was not the basis of allocation of the coal blocks, but it was the capacity of the coal blocks which formed the basis of allotment. It has been thus submitted that the said allegations of prosecution that the accused misled by indicating the existing capacity of the unit being 75,000 MTPA instead of 60,000 MTPA is immaterial and the same cannot be the basis of any alleged offence as is claimed to have been committed by A-6 Manoj Maheshwari. Ld. Counsel pointed out that the end use project was to achieve 3,00,000 tons capacity and thus the figure of 60,000 MTPA or 75,000 MTPA capacity had no bearing on the decision making as the decision to allot was made keeping in view the capacity of the coal blocks. Ld. Counsel further submitted that even otherwise in 28th Screening Committee Meeting which was attended by A-6 Manoj Maheshwari, it is clearly mentioned in the minutes that the actual

capacity of the Sponge Iron Plant was 60,000 MTPA and not 75,000 MTPA.

60. It has been thus submitted that there was no misrepresentation by A-6 Manoj Maheshwari to any of the Authorities that the Sponge Iron Plant commissioned by M/s SVSL had a capacity of 75,000 MTPA. It has been also submitted that the Sponge Iron Plant was commissioned by M/s SVSL consisting of two kilns having capacity of 100 MT each and a Sponge Iron Plant runs continuously 24 hours a day for almost 330 days in a year & gives output of 115-120% of its capacity and accordingly if 330 is multiplied with 230 MT (2x115), the annual capacity of the plant would come to about 75900 MTPA which is approximately 75,000 MTPA and on the basis of this calculation SVSL had represented that Sponge Iron Plant has a capacity of 75,000 MTPA. Ld. Counsel thus, submitted that there was no misrepresentation on behalf of M/s SVSL with respect to the capacity of Sponge Iron Plant commissioned by M/s SVSL.

61. Ld. Counsel further submitted that a letter dated 29.01.2004 was issued by the Central Bank of India wherein it was clearly mentioned that the proposal for fresh term loan for proposed Power Plant and enhancement of Working Capital Limit was accorded in-principle by the Bank. The said letter dated 29.01.2004 was duly enclosed, along with the copy of application dated 15.1.2004 submitted on 05.02.2004 and the same thus formed part of the record with the concerned authorities even during the 28th Screening Committee Meeting.

62. Ld. Counsel also submitted that a letter dated 04.11.2004 was issued by Power Finance Corporation which shows that the proposal given by M/s SVSL had been short-listed which means that the proposal given by M/s SVSL would tantamount to 'in-principle' approval since the technical committee of the PFC would only short list a proposal once the same is found to be feasible.

63. It was also submitted that in the 22nd meeting of Screening Committee held on 04.11.2003 a set of additional guidelines were brought into effect wherein a provision was made that an allocatee of a coal mine would have to secure the financial closure before its application could be considered for approval. However, subsequent to the 22nd Screening Committee Meeting, various representations were made by a number of allocatees wherein it was submitted that the financial closure was not possible for three to four years before the commissioning of the plant and the lenders would not be in a position to tie up and commit their funds for a project which would come up after three to four years. Hence, it was represented that the need for financial closure has to be just before the mine opening permission is granted and accordingly this fact was duly recorded in the Minutes of meeting of 23rd Screening Committee Meeting held on 29.11.2004.

64. Ld. Counsel further submitted that A-6 Manoj Maheshwari thus did not make any misrepresentation as financial closure was not a pre-requisite condition before allocation of a coal mine and that a decision was taken and circulated vide note dated 07.12.2014 by

Director Coal which stated that financial closure was mandatory after mining plan approval only. Ld. Counsel further submitted that Sh. Parekh has also stated that financial closure at the time of application of Coal Block was not necessary.

65. Ld. Counsel thus submitted that there is not even a single allegation against A-6 that he ever made any misrepresentation with regard to the investments being made by M/s SVSL for the Captive Power Plant. Ld. Counsel however also pointed out that provisional Balance Sheet as on 15/7/04 was signed by the Directors Sh. Shiv Kumar Aggarwal & Sh Vimal Aggarwal and which clearly show investment in Power Project as Rs. 155 lacs.

66. It was also submitted that A-6 Manoj Maheshwari was not a signatory to the Audited Balance sheets as he became a Director of the Company only from 17.11.2005 till 17.03.2006 i.e. post the allotment of the Coal blocks which in fact were allotted on 06.09.2005. Thus, the alleged misrepresentation cannot be attributed to A-6 Manoj Maheshwari in any manner.

67. Ld. Counsel however pointed out that in the Balance sheets of the Company as on 31.3.2003 and 31.03.2004 the expenses towards construction of Captive Power Plant duly satnds reflected. It was also pointed out that in the appraisal of the PFC dated 26.10.2004, it was clearly mentioned that M/s SVSL had incurred an expenditure of Rs.1.94 crores in the Captive Power Plant.

68. It was further submitted that both letters dated 25.10.2004 and

30.10.2004 mention about letter dated 24.5.2004 but the same was never obtained by A-6 Manoj Maheshwari and hence, there was no mis-representation on behalf of A-6 Manoj Maheshwari.

69. Ld. Counsel further pointed out that M/s SVSL had bonafide intentions to set up the Captive Power Plant and thus for setting up the Captive Power Plant, No Objection Certificate from Maharashtra State Electricity Board, permission for setting of the Power Plant from Maharashtra Pollution Control Board and water tie-up from Irrigation department for production of electricity and setting up of Captive Power Plant was obtained by the Company. It was also pointed out that a Memorandum of Agreement was entered into with M/s. M. N. Dastur & Company which is a leading Consultant for setting up of the Captive Power Plants. It was thus submitted that ultimately the Captive Power Plant was duly set up and commissioned and power was generated from the power plant.

70. Ld. Counsel further submitted that there is no allegation in the entire charge sheet that at the time of making of application, i.e. on 15.01.2004 there was any meeting of mind between A-6 Manoj Maheshwari and A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra or that there was any meeting of mind between them post March, 2006.

71. It was also submitted that M/s SVSL had already approached Power Finance Corporation for grant of credit facilities and its proposal was duly considered by the Technical Committee of Power

Finance Corporation and in fact the proposal of SVSL was short listed by Power Finance Corporation. Thus, even otherwise no wrong statement was ever made in that regard misleading the authorities for grant of mining lease.

A-6 Manoj Maheshwari was thus prayed to be discharged.

72. Ld. Counsel Sh. Ashim Vachher, in support of his submissions placed reliance upon the following case law:

S. No.	Title	Citations
1	<i>Dalip Kaur and Others Vs. Jagnar Singh and Another"</i>	(2009) SCC 696
2	<i>Hridaya Ranjan Prasad Verma Versus State of Bihar</i>	(2000) 4 SCC 168
3	<i>G.V Rao versus L.H.V Prasad</i>	(2000) 3 SCC 693
4	<i>Rajiv Kumar Vs. State of U.P.</i>	(2017) 8 SCC 791
5	<i>State of Maharashtra Yersus Som Nath Thapa</i>	(1996) 4 SCC 659
6	<i>Onkar Nath Mishra Versus State</i>	(2008) 2 SCC 561,
7	<i>State Vs. A. Arun Kumar</i>	(2015) 2 SCC 417
8	<i>Dilawar Balu Kurane Vs. State of Maharashtra</i>	(2002) 2 SCC 135
9	<i>In State of Karnataka v. L. Muniswamy</i>	(1977) 2 SCC 699
10	<i>State Versus A. Arun Kumar</i>	(2015) 2 SCC 417
11	<i>Dilawar Balu Kurane Versus State of Maharashtra</i>	(2002) 2 SCC 13

Arguments on behalf of A-7 Anand Nand Kishore Sarda

73. Ld. Counsel Sh. Pankaj Kapoor for A-7 Anand Nand Kishore

Sarda submitted that the entire case of the prosecution against his client is based on and arising from out of the following letters.

- *Letter dated 02.07.2004 (D-5, Page 165)*
- *Letter dated 21.10.2004 (D- 5, Page 213)*
- *Letter dated 23.11.2004 (D- 3, Page 1-2)*
- *Letter dated 25.10.2004 (D-5, Page 236-238)*

74. Ld. Counsel submitted that it is the case of prosecution that in the recommendation letter dated 24.05.2004, a statement was made that the company's Captive Power Plant is under construction and the financial closure has been achieved and that A-7 Anand Nand Kishore Sarda has used the letter dated 24.05.2004 as it was submitted as enclosure by A-7 Anand Nand Kishore Sarda along with letter dated 02.07.2004.

75. At the outset, it was submitted by Ld. Counsel that the letter dated 24.05.2004, was directly sent to Ministry of Coal and Ministry of Steel By Government of Maharashtra and therefore the purported act of A-7 Anand Nand Kishore Sarda sending it with letter dated 2.07.2004 or any other letter is completely immaterial, since the said letter was already available with the concerned Ministry.

76. Ld. Counsel further submitted that according to prosecution no expenditure was made on CPP in the financial year ending on 31.03.2004 and 31.03.2005 and prosecution in that regard relied upon only one page of balance sheet i.e. page No. 7 of the balance sheet for the year ending on 31.03.2005, which did not contain the

breakup of capital work in progress as on 31.03.2004 amounting to Rs. 57,93,147.90/-. It was submitted that this breakup is available in the balance sheet of previous year i.e. year ending on 31.03.2004 under the heading “NOTES ON ACCOUNTS” point No. 10, wherein an expenditure of 7,16,100/- for power project is shown. Further, expenditure made on this count is also reflected in the balance sheet of the year ending on 31.03.2003 which shows an amount of Rs. 2,62,500/- as expenditure on power project.

77. Ld. Counsel also pointed out that there is no denial of the fact that M/s SVSL was setting up Captive Power Plant during 2002-2004 and directors of M/s SVSL and its senior team were tirelessly working for the same to get all clearances. Ld. Counsel further submitted that, there is ample material already available on record in this regard i.e. the consent given by MPCB, project report prepared by MN Dastur & Company and minutes of meeting with MN Dastur and company, which prove that Captive Power Plant was being setup and substantial amount was spent by the company. Ld. Counsel further submitted that to operate Sponge Iron Unit the height of Chimney required was 34 meters, but as advised by MN Dastur and company to make common chimney for CPP and Sponge Iron unit, keeping in tune with MPCB norms the height of chimney was increased to 73 meters, which is duly reflected in the provisional balance sheet of SVSL as on 15.07.2004. Ld. Counsel further submitted that the company SVSL had made application for financial tie up with Central Bank and Power Finance Corporation.

78. Ld. Counsel also pointed out that in the financial year ending on 31.03.2003, 31.03.2004 and 31.03.2006, the present accused was not the director and the financial treatment given in the said period is not within the knowledge of the present accused. Ld. Counsel also submitted that before giving in-principal approval to SVSL vide letter dated 29.01.04, Central Bank had gone through the proposal and after scrutinizing, it gave in-principal approval.

79. Ld. Counsel further submitted that the documents relating to financial tie up were duly supplied to both, Ministry of coal as well as Ministry of steel and, therefore, the Administrative Ministry was well aware about the position of finance before giving the recommendation. It was also submitted that the representatives of Administrative Ministries were present in the screening committee and all the documents were available with the screening committee for scrutiny to examine the correctness of the claim or otherwise.

80. Ld. Counsel further submitted that before letter dated 04.11.2004 from Power Finance Corporation was received, all the concerned Ministries had already recommended the case of M/s SVSL. Ld. Counsel also submitted that even otherwise construction of Captive Power Plant and achieving financial closure were not the condition precedent for allocation of the coal blocks.

81. Ld. Counsel also submitted that though in the 22nd meeting of screening committee, the condition for financial closure was made mandatory at the allotment stage but, later the MOC took a decision

on 07.12.2004 that there would be no need of financial closure at the time of allocation.

82. Ld. Counsel further submitted that A-5 Anil Kumar Saxena, had in fact already submitted an application dated 15.1.2004 to Ministry of Coal , with copy to Ministry of Steel mentioning that the company is having a Sponge Iron plant having capacity 75000 MTPA and details of the proposal of the company to increase its capacity to 3 lacs MTPA and to also set up 25 MW CPP. Ld. Counsel thus submitted that the matter relating to capacity was the decided line of the company since before and the same was mentioned in the initial Coal Block application dated 15.1.2004, much before the association of A-7 Anand Nand Kishore Sarma with the accused company i.e. on 1.4.2004.

83. Ld. Counsel further submitted that Government of Maharashtra was well aware about the capacity of M/s SVSL, as the Government and its department had granted various approvals and power connection and even the officials of State Government had visited and inspected the plant before recommending the allocation of the coal blocks.

84. Ld. Counsel further submitted that the Administrative Ministry i.e. Ministry of Steel, was also aware about the existing Capacity being 60000 MTPA as was stated in the coal linkage application and they mentioned this fact clearly in their OM dated 10.8.2004 sent to Ministry of Coal. The issue about the capacity was also discussed in

the 28th meeting of Screening Committee, wherein the above stated facts were explained and it was chosen by the committee to record the existing capacity as 60,000 MTPA in the minutes.

85. Without admitting letter dated 2.7.2004 Ld. Counsel further submitted that signing of the said letter by A-7 Anand Nand Kishore Sarda, was mere signing of a Covering Letter, submitting desired documents and the contents of letter dated 2.7.2004 are the same as appearing in letter dated 2.5.2004. Ld. Counsel also submitted that merely on the basis of opinion of the handwriting expert, the accused cannot be roped in, as expert opinion is never a conclusive opinion and is legally considered as a weak evidence. Ld. Counsel further submitted that there is also no evidence that the letters dated 21.10.2004, 23.11.2004 and 25.10.2004, were submitted to the concerned authorities by A-7 Anand Nand Kishore Sarda.

86. In response to the allegations of prosecution that benefit of allocation of coal blocks would have gone to his father A-7 Anand Nand Kishore Sarda, who has been alleged as a key beneficiary, Ld. Counsel submitted that A-7 Anand Nand Kishore Sarda was neither a shareholder in M/s SVSL at any point of time, nor was he a director of the company and A-7 Anand Nand Kishore Sarda was a very minor shareholder holding 9,900 shares i.e. 1.8% from 01.04.2003 to 05.03.2005, whereas, the allotment of coal blocks was made subsequently i.e. on 06.09.2005.

87. Ld. Counsel submitted that in both the Screening Committee

meetings i.e. 23rd Screening Committee meeting held on 29.11.2004 and 28th Screening Committee meeting held on 15.4.2005, where M/s SVSL's Coal Block application was presented and discussed and decision for allotment was taken, A-7 Anand Nand Kishore Sarda was not in the picture as he had already severed his ties with the company effective March - April 2005. Ld. Counsel further submitted that since A-7 Anand Nand Kishore Sarda joined the affairs of the company as a Managerial Executive w.e.f. 1.4.2004 so he was not involved in any conspiracy for procuring allotment of Coal Blocks, nor was he in any way a beneficiary of this allotment.

88. Ld. Counsel Sh. Pankaj Kapoor thus submitted that the prosecution has failed to establish meeting of mind between A-7 Anand Nand Kishore Sarda with other accused persons. Ld. Counsel also submitted that the offence of cheating requires a person must have fraudulently or dishonestly induced a person so as to induce a person to either deliver any property or to omit to do anything which he otherwise would not have done.

89. Ld. Counsel further submitted that the other allegations relating to misuse of allocation of coal blocks and violation of the terms of Mining Lease pertains to the period when A-7 Anand Nand Kishore Sarda had already resigned from the company and therefore it cannot be said that the present accused played any role for fraudulently inducing the Authorities to deliver any property, in as much as, the Company was established/incorporated much prior to the joining of the accused and the decision for establishing the Power Plant and

the process for the said purpose also started much prior in point of time. It was thus submitted that from the overall facts and circumstances, it cannot be said that because of any dishonest inducement made by the present accused, there was facilitation of the commission of alleged crime of allocation of coal blocks and execution of the Lease Deeds.

90. Ld. Counsel submitted that accused has also not committed the offence of forgery by making false declarations in the letter dated 02/07/2004, as PW-40 Shri P.C. Parekh, Chairman of the Screening Committee, has categorically stated that the capacity of 60,000 MTPA or 75000 MTPA would not have made any difference.

91. Ld. Counsel further submitted that the letters dated 21/10/2004 and 23/11/2004 were admittedly written for and on behalf of the Company conveying the consistent stand of the Company and thus will not become a false document nor the execution thereof can be said to be with an intention to cause any damage or injury.

92. Ld. Counsel submitted that Shri Shiv Kumar Agrawal and Shri Vimal Kumar Agrawal were the Promoter/Directors of Accused No.1 Company and are the main beneficiaries of whatever fraud is alleged in the matter and their statements thus cannot be relied upon.

93. Ld. Counsel further submitted that the offence of cheating pertaining to the allocation of coal blocks is alleged against the Accused No.1 Company and cannot be extended against the present

accused, in as much as, the benefits of the said offence of cheating are allegedly taken by the Company and its Directors.

A-7 Anand Nand Kishore Sarda was thus prayed to be discharged.

94. Ld. Counsel Sh. Pankaj Kapoor in support of his submissions placed reliance upon the following case law:

S. No.	Title	Citations
1	<i>S.K. Alagh vs State of UP</i>	<i>AIR 2008 SC 1731</i>
2	<i>Guru Bipin Singh vs Chongtham Manihar Singh</i>	(1996) 11 SCC 622
3	<i>Jibrial Diwan vs State of Maharashtra</i>	(1997) 6 SCC 499
4	<i>Parminder Kaur vs State of U.P. and Anr</i>	(2010) 1 SCC 322
5	<i>Devendra vs State of Uttar Pradesh</i>	(2009) 7 SCC 495
6	<i>Suresh Lulla vs Neela Sudhish Talpande and another</i>	1992 Mh.L.J. 1455

95. I have carefully perused the record.

96. Before advertng to the rival contentions of both sides, it will be worthwhile to quote certain observations of Hon'ble Supreme Court on the point of framing of charge as were made in the case "**State of Bihar Vs. Ramesh Singh 1977 CRI. L. J. 1606**".

"4. Under S.226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider

the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S.227 or S.228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by S.227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S.228.

*Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that **at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.***

It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

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

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

The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is

proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not.

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

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

We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227.”

97. In the case **State of Tamil Nadu vs. N. Suresh Rajan and Ors (2014) 11 SCC 709**, Hon'ble Supreme Court observed that if at the stage of charge the Court thinks that the accused might have committed the offence on the basis of material on record on its probative value, it can frame the charge; though for conviction the court has to come to the conclusion that the accused has committed the offence. Hon'ble Supreme Court observed as under:

“We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an

order of discharge. It is trite that at the stage of consideration of an application for discharge the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not Warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

98. The observations of Hon'ble Supreme Court as made in a latest case titled **M. E. Shivalingamurthy vs. CBI (Supra)** will also be worth referring to:

“LEGAL PRINCIPLES APPLICABLE IN REGARD TO AN APPLICATION SEEKING DISCHARGE

*14. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., **P. Vijayan v. State of Kerala** and another[#] and discern the following principles:*

- i. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.*
- ii. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.*
- iii. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding.*

(2010) 2 SCC 398

Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

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

v. It is open to the accused to explain away the materials giving rise to the grave suspicion.

vi. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

vii. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

viii. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

99. The observations of Hon'ble Supreme Court of India in a number of cases qua the offence of criminal conspiracy will also be worth reproducing over here.

100. *In the case “**State through Superintendent of Police, CBI/SIT Vs. Nalini**”, 1999 (5) SCC 235, the Hon'ble Supreme Court summarized the broad principle governing the law of conspiracy as under:*

“591. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement,

which is the graham of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.”

101. It will be also worthwhile to quote certain observations with regard to the offence of criminal conspiracy made by Hon'ble Supreme Court in the case ***E.G. Barsay Vs. State of Bombay, AIR,***

1961 SC 1762, the view whereof was affirmed and applied in several later decisions, such as **Ajay Aggarwal Vs Union of India 1993 (3) SCC 609**; **Yashpal Mittal Vs. State of Punjab 1977 (4) SCC 540**; **State of Maharashtra Vs. Som Nath Thapa 1996 (4) SCC 659**; **Firozuddin Basheeruddin Vs. State of Kerala, (2001) 7 SCC 596**:

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

102. Thus, it is clear that evidence qua the offence of criminal conspiracy is undoubtedly hard to come up but the same is to be ascertained from the overall facts and circumstances of a given case.

103. Though a number of other case law have also been cited both on behalf of prosecution and defence but in view of the aforesaid well settled position of law, I do not find any necessity to refer them so as to simply burden the record.

104. The case of the prosecution as against the seven accused persons i.e. A-1 M/s Topworth Urja & Metals Ltd. [*Formerly*

known as Shree Virangana Steels Ltd.], A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia, A-4 Swapan Kumar Mittra @ S.K. Mitra, A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarada, can be easily divided into two separate compartments based on the events or the allegations , as have been levelled against them by the prosecution. The first set of events or allegations are primarily against A-1 company M/s TUML, A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarada. The same pertains to submitting an application to MOC for seeking allotment of a captive coal block in favour of A-1 M/s TUML and the subsequent events leading to recommendation in favour of the company for allocation of three captive coal blocks i.e. Marki Mangli-II, III & IV Coal Blocks by 28th screening committee and consequent issuance of allocation letter by MOC on 06/09/2005 in favour of accused company.

105. The second set of events/allegations pertains primarily to A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mittra @ S.K. Mitra i.e. the persons in whose favour the shares of allocattee company came to be transferred subsequent to the issuance of allocation letter by MOC, qua allocation of Marki Mangli-II, III & IV Coal Blocks.

Thus, an endeavor shall be first made to examine the two set of events/allegations individually and thereafter it shall be also

examined as to whether prima facie any meeting of mind is evident from the prosecution case as between the two set of accused persons or not.

106. In order to appreciate the allegations against the various accused persons it will be however appropriate to briefly revisit certain important facts of the prosecution case.

107. It is the case of prosecution that an application dated 15.01.2004 (*available at page 1/c in D-5*) was submitted on behalf of company M/s VSPL to MOC seeking allocation of certain coal blocks i.e. *Bellora Takli Jena North, Kosar Dongargaon and Nerad Malegaon Coal Blocks*. The said application was submitted under the signatures of A-5 Anil Kumar Saxena. The said application came to be considered by 23rd Screening Committee in MOC. A presentation was made on behalf of the company before 23rd Screening Committee by A-5 Anil Kumar Saxena and subsequently he alongwith A-6 Manoj Maheshwari appeared before 28th screening committee. Though no decision was made for allocation of any coal block in favour of the company by 23rd screening committee but 28th screening committee chose to allocate three coal blocks i.e. Marki Mangli-II, III & IV Coal Blocks in favour of the company.

108. In the application and the presentation made before the screening committee, certain claims with regard to the existing installed capacity of the sponge iron plant of the applicant company and the financial arrangements made by the company towards

proposed expansion of the plant and installation of a captive power plant were made. During investigation, the said claims were however found to be false and it is the said misrepresentations on the basis of which prosecution has now claimed that Screening Committee, MOC was misled and was deceived in allocation of the impugned coal blocks in favour of applicant company. It is also the case of prosecution that similar applications were also submitted by the company before Ministry of Steel, Ministry of Power and to Government of Maharashtra containing false claims with a view to procure recommendation in its favour to MOC for allocation of captive coal blocks. It is the case of prosecution that 28th Screening Committee, MOC chose to allocate three coal blocks, namely Marki Mangli-II, III & IV on the basis of said false claims made by the company

109. It is also the case of prosecution that when the application of the company was being processed in MOC, Ministry of steel, Ministry of Power and in Government of Maharashtra, then during that period A-7 Anand Nand Kishore Sarda submitted certain communications on behalf of the company forging signatures of directors of the applicant company. Finally, a letter dated 06.09.2005 (*available at page 14-16 in D-3*) was issued for allocation of Marki Mangli-II, III & IV Coal Blocks by MOC in favour of the company M/s SVSL.

110. However, I shall be referring to the said allegations in detail at a slightly later stage while dealing with the case as against

A-1 company M/s TUML, A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda.

111. Subsequent to the issuance of allocation letter mining plan was submitted by the applicant company and after undertaking due process the same was sent by Government of Maharashtra to MOC, Government of India for approval of the same. Thereafter prior approval of MOC, Government of India was also sought for execution of mining lease by Government of Maharashtra and the same came to be accorded in respect of the three coal blocks on 16.12.2009.

112. Necessary intimation in this regard was also sent to applicant company observing that upon completion of necessary formalities, it may execute the mining lease with State Government of Maharashtra. However, subsequent to issuance of allocation letter dated 06.09.2005, a change in the shareholding of the applicant company took place and A-2 S.C. Lodha became a shareholder and also a director of the company in the year 2006. Though there was a period of 14 days in between, when A-6 Manoj Maheshwari i.e. the earlier director and A-2 Surendra Champalal Lodha were both directors of the company together but after the expiry of a period of 14 days, A-6 Manoj Maheshwari resigned and the shares of the company and consequently the management of the company stood completely transferred in favour of A-2 Surendra Champalal Lodha and his associates. Thus, it is the case of prosecution that it was not a mere change in shareholding of the company, but actually the applicant company was sold and consequently the coal blocks so

allocated were sold away. Subsequent communications with respect to getting the mining plan approved or seeking prior approval for execution of mining lease were thereafter undertaken at the instance of new management led by A-2 Surendra Champalal Lodha. After prior approval of MOC, Government of India for execution of mining lease with Government of Maharashtra was received in the year 2009, then prior to actual execution of mining lease deeds the company M/s SVSL changed its name to M/s TUML on 29.06.2010.

113. The change in the name of company was duly got registered with Registrar of Companies and a fresh certificate of incorporation was issued in the new name. The necessary intimation-cum-request was thereafter made to MOC by the company vide letter dated 15.10.2010 that its name has since been changed from M/s Shree Virangana Steels Ltd to M/s Topworth Urja & Metals Ltd. and that similar change may be affected in the records of MOC. A long-drawn proceeding thereafter continued in MOC and which I shall be referring to in detail at a later stage of the present order, but during the course of proceedings a number of information was sought by MOC and the same was duly supplied by the applicant company. One of the said information sought while processing the request of the company to change its name in the records of MOC, was as to whether there has been a change in the share holding of the company. The said information was duly provided by A-2 Surendra Champalal Lodha by way of a letter dated 15.02.2011, enclosing therewith various documents including an affidavit stating that there

has been no change in the share holding of the company. He also provided the name of the shareholders a day prior to change of name and after change of name of the company. MOC however thereafter also sought details/names of shareholders from the time of allocation of coal blocks and the said information was also admittedly provided by the applicant company. At the same time Government of Maharashtra called upon the allocatee company M/s SVSL to execute the mining lease in the prescribed form 'K'. In response thereto A-1 M/s Topworth Urja & Metals Ltd. [*Formerly known as Shree Virangana Steels Ltd.*], submitted a draft lease deed in the name of M/s TUML(available from page 48-33 in D-311 as annexure to letter dated 08.10.2010, available at page 66 in D-311) . However subsequently after certain proceedings, the lease deed was finally executed in the name of M/s SVSL i.e. in the old name. On behalf of the company A-3 Anil Omprakash Nevatia signed the lease deeds after he was duly authorised in this regard by A-2 Surendra Champalal Lodha as director of M/s SVSL. It is the case of prosecution that while authorising A-3 Anil Omprakash Nevatia to execute mining lease in the year 2011, A-2 S.C. Lodha executed the attorney as Director M/s SVSL and A-3 Anil Omprakash Nevatia also put his signatures as President, M/s SVSL. It is thus the case of prosecution that since M/s SVSL ceased to exist on 29.06.2010, so all the three power of attorney were false documents and the same were executed with a view to cheat Government of Maharashtra and were acts of forgery.

114. It is in the light of aforesaid factual matrix that I initially observed that as per prosecution case itself A-2 S.C. Lodha , A-3 Anil Kumar Nevatia and A-4 S.K. Mitra came into picture only after coal blocks were already allotted by MOC and from that time A-5 Anil Kumar Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda had withdrawn from the scene. Thus except for analysing as to whether there has been any conspiracy in between the two set of accused persons, the prosecution case otherwise can be easily divided in two separate compartments.

115. Thus, the charges now pressed by prosecution against A-1 M/s TUML, A-5 Anil Kumar Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda are for the offences u/s 120-B/420/468/471 IPC alongwith the substantive offences i.e. section 120-B IPC and section 420 IPC against A-1 M/s TUML, A-5 Anil Kumar Saxena, A-6 Manoj Maheshwari. As against A-7 Anand Nand Kishore Sarda charges for the substantive offences u/s 420/468/471 IPC have been pressed on the ground that he submitted various representations to different Government departments on behalf of applicant company by not only signing them as director of the company, even though he was not a director but he also forged signatures of other persons on the said letters.

116. On the other hand the charges pressed against A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mittra @ S.K. Mitra, are for the offences U/S 120-B/420/468/471 IPC alongwith substantive offences

thereof.

117. It is in the aforesaid factual matrix that I first intend to discuss the case of prosecution qua A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra together as not only the allegations against them are emanating from the same set of facts but even a discussion qua their role will also be common. The allegations levelled by the prosecution as against A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra as submitted by Ld. DLA in the written submissions are being reproduced over here for the sake of ready reference:

<i>Allegations against A-2 Surendra Champalal Lodha @ Surendra C. Lodha</i>	
1	<i>Vide letter dated 15.02.2011 submitted false affidavit to the Ministry of Coal to the effect that there was no change in the Board of Directors and existing Board of Directors remains same and is still functioning and thereby induced the MoC to approve the change of name of the company. (Section – 420 IPC)</i>
2	<i>On 02.03.2011 he dishonestly/fraudulently executed three Power of Attorneys in favour of his co-accused Anil Kumar Omprakash Nevatia with the intention of causing it to be believed that such Power of Attorneys have been executed by the Director of Shri Virangana Steels Ltd. for the purpose of execution of three Mining Lease Deeds in respect of Marki Mangli –II, III and IV Coal Blocks by his co-accused Anil Kumar Omprakash Nevatia with the Govt. of Maharashtra whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010 and thereby he committed the offence of forgery punishable under section – 467 IPC</i>
3	<i>He signed applications dated 05.03.2011 and 25.10.2011 as Director of Shree Virangana Steels Limited, both addressed to the Coal Controller, Ministry of Coal & Mines, Govt. of India for permission for opening the Composite Seam of Marki Mangli –II Opencast Mine of Shree Virangana Steels Limited & for</i>

	<i>permission for opening the Composite Seam in Marki Mangli –II Coal Block of Integrated Marki Mangli Opencast Mine of Shree Virangana Steels Limited with the intention of causing it to be believed that such Applications have been signed by the Director of Shri Virangana Steels Ltd. whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010. (Section – 468 IPC)</i>
4	<i>He used as genuine the applications dated 05.03.2011 and 25.10.2011 signed by him as Director of Shree Virangana Steels Limited, both addressed to the Coal Controller, Ministry of Coal & Mines, Govt. of India for permission for opening the Composite Seam of Marki Mangli –II Opencast Mine of Shree Virangana Steels Limited & for permission for opening the Composite Seam in Marki Mangli –II Coal Block of Integrated Marki Mangli Opencast Mine of Shree Virangana Steels Limited with the intention of causing it to be believed that such Applications have been signed by the Director of Shri Virangana Steels Ltd. whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010. (Section – 471 r/w 468 IPC)</i>

A-3 Anil Kumar Omprakash Nevatia	
1	<i>He used three forged Power of Attorneys allegedly executed by his co-accused Surender Champalal Lodha on 02.03.2011 in his favour and which were also falsely signed by Anil Kumar Omprakash Nevatia as President of Shri Virangana Steels Ltd., as genuine by providing the same to the District Mining Officer, Collectorate, Yavatmaal, Govt. of Maharashtra for the purpose of execution of Mining Lease deeds. (Section – 471 r/w 468 IPC)</i>
2	<i>He dishonestly/fraudulently used three forged Power of Attorneys allegedly executed by his co-accused Surender Champalal Lodha on 02.03.2011 in his favour and which were also falsely signed by him as President of Shri Virangana Steels Ltd., as genuine by providing the same to the District Mining Officer, Collectorate, Yavatmaal, Govt. of Maharashtra and cheated and thereby dishonestly induced the District Mining Officer to execute three Mining Lease deeds in respect of Marki Mangli –II, Marki Mangli –III and Marki Mangli IV Coal blocks. (Sec.420 IPC)</i>
3	<i>on 25.03.2011 and 13.06.2011 he knowingly personated as President of Shri Virangana Steels Ltd., before the District Mining Officer, Collectorate, Yavatmaal, Govt. of Maharashtra and cheated by personation and thereby dishonestly induced the District Mining Officer to execute three Mining Lease deeds in</i>

	<i>respect of Marki Mangli –II, Marki Mangli –III and Marki Mangli IV Coal blocks. (Sec.417 IPC)</i>
4	<i>On 25.03.2011 he dishonestly/fraudulently signed and executed as President of Shri Virangana Steels Ltd. the Mining lease deeds in respect of Marki Mangli III & IV Coal Blocks with the District Mining Officer, Collectorate, Yavatmaal, Govt. of Maharashtra and on 13.06.2011 signed and executed as President of Shri Virangana Steels Ltd. one Mining lease deed in respect of Marki Mangli – II Coal Block with the District Mining Officer, Collectorate, Yavatmaal, Govt. of Maharashtra with the intention of causing it to be believed that such Mining Lease Deeds have been signed and executed by the President of Shri Virangana Steels Ltd. whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010. (Sec.467 IPC)</i>

<i>Allegations against A-4 Swapan Kumar Mitra @ S.K. Mitra</i>	
1	<i>He dishonestly/fraudulently signed letters dated : 20.09.2011, 19.10.2011 and 27.10.2011 as Vice President (Mines) of Shree Virangana Steels Limited, all addressed to the Coal Controller, Ministry of Coal, Govt. of India for grant of permission for opening the Composite Seam of Marki Mangli –II coal block, whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010, intending that the said forged letters shall be used for the purpose of cheating of the Coal Controller, Ministry of Coal, Govt. of India and thereby committed the offence of forgery punishable under section – 468 IPC.</i>
2	<i>He dishonestly/fraudulently used as genuine the letters dated 20.09.2011, 19.10.2011 and 27.10.2011 signed by him as Vice President (Mines) of Shree Virangana Steels Limited, all addressed to the Coal Controller, Ministry of Coal, Govt. of India for grant of permission for opening the Composite Seam of Marki Mangli –II coal block, whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010, with the intention of causing it to be believed that such letters have been signed by the Vice President (Mines) of Shri Virangana Steels Ltd. and thereby committed the offence of forgery punishable under section – 471 r/w 468 IPC.</i>
3	<i>He dishonestly/fraudulently submitted the forged letters dated 20.09.2011, 19.10.2011 and 27.10.2011 signed by him as Vice President (Mines) of Shree Virangana Steels Limited to the Coal Controller, Ministry of Coal, Govt. of India for the purpose of cheating and thereby induced the office of Coal Controller to</i>

grant permission for opening the Composite Seam of Marki Mangli –II coal block, whereas Shri Virangana Steels Ltd. ceased to exist w.e.f. 29.06.2010 and thereby he committed the offence of cheating punishable under section – 420 IPC.

118. It is on the basis of aforesaid allegations that it has been alleged by the prosecution that the accused persons cheated Government of Maharashtra in getting the three mining lease deeds executed in the name of a non-existent company i.e. M/s Shree Virangana Steels Ltd. It has been also alleged that A-3 Anil Kumar Omprakash Nevatia signed the said three power of attorneys as president of company M/s Shree Virangana Steels Ltd, on the basis of three forged power of Attorneys executed by A-2 Surendra Champalal Lodha @ Surendra C. Lodha as Director, M/s Shree Virangana Steels Ltd. in his favour. It has been thus alleged that the accused persons thereby also committed acts of forgery and cheating.

119. On the other hand, Ld. Counsel for A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra have vehemently opposed the submissions of prosecution stating that from a bare perusal of the case of prosecution, it is clear that ingredients of none of the offence(s) much less that of cheating u/s 420 IPC or that of forgery u/s 468 IPC or of using as genuine a forged document i.e. offence u/s 471 IPC are made out. It has been submitted that from the records relied upon by the prosecution itself, it is clear that

intimation about change of name of the company as took place on 29.06.2010 was duly communicated by the company both to MOC vide letter dated 05.10.2010 and also to, Principal Secretary, Department of Industries, Government of Maharashtra vide letter dated 06.10.2010 (*available at page no. 165 in D-163*). A letter dated 08.10.2010 (*available at page 66 in D-311*), addressed to Collector, Yavatmal District is also stated to have been sent seeking execution of mining lease and that the said letter was sent on the letterhead of M/s Topworth urja & Metals Ltd. with an endorsement that the company was formerly known as Shree Virangana Steels Ltd. (*also available at page 356 in D-51*) It has been submitted that thereafter also a number of communications were made by the company with various Government Departments on the letter head of M/s Topworth Urja & Metals Ltd. with earlier name i.e. M/s Shree Virangana Steels Ltd. also mentioned over there. It has been submitted that the certificate of change of name issued by ROC was also duly submitted to all the Government Departments. It has also been pointed out that subsequent to grant of prior approval of execution of mining lease by MOC, Government of India, the Department of Industries and Mining, Government of Maharashtra asked the company to execute the mining lease and provided a prescribed form 'K' in which format the mining lease was to be executed. The company thereafter submitted the draft mining lease to Government of Maharashtra vide letter dated 08.10.2010 and in the said draft mining lease the name of company was mentioned as M/s Topworth Urja & Metals Ltd. (*available at page 48-33 in D-311*) It has been submitted that however, subsequently at

the instance of officers of District mining Officer, Yavatmal, the three mining lease deeds were executed in the earlier name of the company only and for the said purpose only, the impugned power of attorneys were executed. It was thus submitted that in these circumstances no fraudulent or dishonest intention can be found or read in the actions of the accused persons and at the most the acts of the accused persons can be termed as an irregularity.

My discussion

120. Before I advert on to a discussion of the case of prosecution, it will be worthwhile to refer to the definition of the offence of cheating i.e. u/s 415 IPC; Cheating and dishonestly inducing delivery of property i.e. u/s 420IPC; forgery i.e. u/s 463 IPC; forgery for the purpose of cheating i.e. u/s 468 IPC and use of forged documents as genuine i.e. u/s 471 IPC. The five sections read as under:

***“415. Cheating –** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

***420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is*

capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

463. Forgery— [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the ¹[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged ³[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any ³[document or electronic record] which he knows or has reason to believe to be a forged ³[document or electronic record], shall be punished in the same manner as if he had forged such ³[document or electronic record].”

121. A bare perusal of the aforesaid provisions clearly show that irrespective of any nature of acts having been committed, the existence of dishonest intention is a *sine-qua-non for all the offences*. The act in question must have been done either dishonestly or fraudulently. The two terms ‘dishonestly’ and ‘fraudulently’ have been further defined in sections 24 IPC and 25 IPC respectively as under:

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

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

122. Thus, it is clear that in the absence of any malafide or

dishonest intention, the acts in question cannot attract criminality or culpability. It is in this background, if the case of prosecution against accused A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra is seen then I find myself in complete agreement with the submissions of Ld. Counsels for the accused persons that the prosecution has clearly failed in establishing any malafide or dishonest intention much less any fraudulent intention on the part of accused persons, even for a prima facie view.

123. Admittedly, after change of name of the company from M/s Shree Virangana Steels Ltd. to M/s Topworth Urja & Metals Ltd. on 29.06.2010, the company duly communicated to MOC about the said change vide letter dated 05.10.2010 (*available at page 483 in D-51*) with a request to make necessary change in the records of MOC. Intimation about change of name was also sent to Principal Secretary, Industries Department, Mumbai on 06.10.2010 (*available at page 165/c in D-163*). A letter dated 08.10.2010 was also sent to Collector, Yavatmal incorporating the old certificate of incorporation as well as the new certificate of incorporation. Yet another communication dated 15.01.2011 (*available at page 485/c in D-51*) was also sent to Sh. V S Kulkarni, Under Secretary, Department of industries, Energy and Labour, Government of Maharashtra intimating about change of name of the allottee company. The prosecution witnesses examined during the course of investigation have admitted the said fact. It is also an undisputed case that MOC

thereafter processed the said request for change of name and sought a number of details from the company. It is also not in dispute that in response to one such letter dated 01.02.2011 of Sh. V.S. Rana, Under Secretary, MOC, A-2 Surendra Champalal Lodha @ Surendra C. Lodha, submitted a letter dated 15.02.2011 alongwith an affidavit. It is the said affidavit submitted by A-2 Surendra Champalal Lodha which is now stated to be containing false averments. For the purpose of ready reference, the said letter dated 01.02.2011 of Sh. V.S. Rana, Under Secretary (*available at page 1/c in D-7*), and letter dated 15.02.2011(*available at page 39 in D-7*)_submitted by A-2 Surendra Champalal Lodha have been reproduced hereunder:

Letter dated 01.02.2011

"By Speed Post

No. 13016/09/2004-CA-I
Government of India
Ministry of Coal

New Delhi, dated 1st February, 2011

To
The Managing Director,
M/s. Topworth Urja & Metals Limited
(formerly M/s. Shree Virangana Steels Limited)
126-128 Shriram Tower,
1st Floor, Kingsway, Sadar, Nr. NIT Office,
Nagpur-440001, Maharashtra.

Subject - Change of name from M/s. Shree Virangana Steels Limited to
M/s. Topworth Urja & Metals Limited - regarding.

Sir,

I am directed to refer to your letter dated 15.10.2010 on the subject noted above and to request to furnish the following information / documents for considering the matter further:-

(i) Copies of the Memorandum of Association and Articles of Association in respect of M/s. Shree Virangana Steels Limited and M/s. Topworth Urja & Metals Limited duly notarized/attested by the competent authority on each and every page. The reasons behind the name change may also be intimated.

(ii) An affidavit duly sworn in by the competent authority of the company mentioning that there is only change in name of the allocattee company from M/s. Shree Virangana Steels Limited to M/s. Topworth Urja & Metals Limited and that there is no change in the share holding pattern and the existing Board of Directors of these companies.

(iii) The details of the shareholders along with their shares in M/s. Shree Virangana Steels Limited and M/s. Topworth Urja & Metals Limited at the time of incorporation and as on date.

(iv) Location of End Use Plant along with actual progress made, as on date, in respect of Marki Mangli-II, Marki Mangli-III and Marki Mangli—IV coal blocks allocated to the company.

Yours faithfully,
Sd/-
(V.S. Rana)
Under Secretary to the Government of India
Tel: 23073936”

Letter dated 15.02.2011

“TOPWORTH URJA & METALS LTD.
(Formerly known as Shree Virangana Steels Limited)
Power * Sponge iron * Billets *

Corp. Off.: Office No. 126-128
1st Floor, Shriram Tower,
Kingsway, Sadar, Nr. NIT Office,
Nagpur – 440 001
Telefax : 0712-2527120/ 2527122
E-mail : viranganasteels@yahoo.com
Website : www.topworthgroup.com

Ref.: TUML/NGP/MINE/2010-11/00120

Date: 15th February' 2011

To
Shri V. S. Rana, Under Secretary,
Government of India, Ministry of Coal,
Shashtri Bhawan, New Dehi-110004

Sub: Change of name from M/S Shree Virangana Steels Ltd. to M/S Topwarth
Uria & Metals Ltd.

Dear Sir,

This has reference to your letter No. 13016/09/2004-CA-I dated 1st February 2011.

The required documents are listed below & have been enclosed as annexures to this letter:

(i) a. Notarized copy of Memorandum of Association of Shree Virangana Steels

Ltd.(Annexure - A)

b. Notarized copy of Article of Association of Shree Virangana Steels Ltd. (Annexure - B}

c. Notarized copy of Memorandum of Association of Topworth Urja & Metals Lid, (Annexure - C}

d. Notarized copy of Article of Association of TFopworth Urja & Metals Ltd. (Annexure - D)

e. The reason behind the name change (Annexure – E)

ii) An affidavit duly sworn in by the Director of Topworth Urja & Metals Ltd. maintaining that there is only change in name of the allocattee Company from Shree Virangana Steels Ltd. to Topworth Urja & Metais Ltd. & that there is no change in the share holding pattern.(Annexure-F}

iii) The list of the shareholders along with their share in Shree Virangana Steels Ltd. & Topworth Urja & Metals Ltd. before & after change of name as well as on 07/02/2011, (Annexure — G)

iv) The end use plant ie. 30 MW Captive Power Plant & 60000 MT/Annum Sponge iron plant. Are located at Mouza-Ukkerwahi, Vill— Heti, Post - Udasa, Teh.-Umred, Umred Road, Dist, Nagpur.

The Environment Clearance from MoEF in respect of Marki-Mangii II, III & IV Coal Blocks have been received. (Annexure - H). The Consent to Establish from Maharashtra Pollution Control Board has also been received. The mining activities and actual removal of overburden iS likely to start in March/April 2011,

Thanking You,
Yours Faithfully...
For Topworth Urja & Metals Ltd.
Sd/-
(Surendra C. Lodha)
Director

Regd. Off.:4, Ground Floor, Raheja Centre, 214, Free Press Journal Marg, Nariman Point, Mumbai - 400 024,
Tel. : +91-22-2284 1414 Fax : +91-22-2284 0211 / 2288 0141 « E-mail - maitadmin@topworthgroup.com
Works: Mouza Ukkerwahi, Village : Heti, Umred Road. Naepur - 441 204 Tel - 07116-24907172”

124. The Affidavit dated 10.02.2011 (*available at page 138 in D-7*) submitted by A-2 Surendra Champalal Lodha alongwith letter dated 15.02.2011 and which is now the bone of contention as per the case of prosecution, read as under:

AFFIDAVIT

I, MR. SURENDRA CHAMPALAL LODHA, aged about 45 years, Indian inhabitant, having office address at 126-128, Shriram Tower, 1st floor, Kingsway, Sadar, Nr. NIT Office, Nagpur-440001, Maharashtra do hereby state on solemn affirmation as under:-

1. I say that I am a Director of M/s. Topworth Urja & Metals Limited, which was formerly known as M/s. Shree Virangana Steels Limited,

2. I say that I am the Competent Authority of the Company for making this Affidavit.

3. I say that the name of the Company M/s Shree Viranga Steels Limited is changed to M/s. Top Worth Urja & Steels Ltd. with effect from 29.06.2010.

4. I further say that there is no change in the share holding pattern of the company and there is no change in the Board of Directors of the Company. The existing Board of Directors of the Company remains same and is still functioning.

I further say that whatever stated in the above paras is true and correct to my knowledge, information and I believe the same is to be true and correct.

Solemnly affirmed at Nagpur

On this 10 day of February, 2011

Sd/- (S.C. Lodha)
Deponent
Before me

Advocate
Z.H. Shakir
B.Com. LLB. (Bombay)"

Verification

Verified that the contain of the above para are true and correct as per my personal knowledge belief and the same is verified signed by me at Nagpur on their 10 day of February 2011. I shall be responsible u/s 190&200 IPC.

Sd/-
(S.C. Lodha)
Deponent"

125. Along with the said letter dated 15.02.2011, A-2 Surendra Champalal Lodha also submitted the list of shareholders in the company as on 28.06.2010 and on 29.06.2010 respectively i.e. a day prior to the change of name of the company and a day after the

change of name of the company. The file of MOC however shows that subsequent thereto MOC sought further information about the shareholders of the company as on the date of allocation of coal blocks. A communication dated 14.03.2012 (*available at page 247 in D-7*) was accordingly sent to the Managing Director M/s Topworth Urja and Metals Ltd (*formerly M/s Shree Virangana steels Ltd*) by Shri Sandeep Gupta, the then Under Secretary Ministry of coal in this regard. The said information was also admittedly duly provided by the company M/s Topworth Urja & Metals Ltd. vide communication dated 12.04.2012 (*available from page 248-252 in D-7*). From the notings in the file of MOC i.e. D-7 it is clearly apparent that the request of applicant company to change its name in the records of MOC was being continuously processed and finally it was thought appropriate vide note dated 11.10.2012 of Sh. P. Soma Shekhar Reddy, Director CA-I and as approved by Joint Secretary, Coal, that legal opinion from Ministry of Law and Justice may be sought. The file was accordingly sent to Ministry of Law and Justice with a query as to whether the change in ownership and management of the allocatee company without the approval of Central Government by way of sale of shares would amount to violation of terms and conditions of allocation of coal blocks in the light of CMN Act, MMDR Act and the Rules made there under or any other Law as may be applicable. The said query was responded to by Deputy Legal Advisor, Sh. R.K. Srivastava vide note dated 19.11.2012 (*available at note sheet page 75/n and 76/n in D-7*) and for a ready reference the same read as under:

Note sheet page 75/n and 76/n in D-7:

*“Ministry of Law & Justice
Department of Legal Affairs*

Ministry of Coal has sought our advice on the issue whether the change in ownership and management, without the approval of the Central Government, of allocatee company by way of sale of shares would amount to violation of terms and conditions of allocation of coal blocks read with the provisions of the Coal Mines (Nationalisation) Act, 1973, (Nationalisation Act) the Mines & Minerals (Development & Regulation) Act, 1957 (MMDR Act) and the rules made thereunder or any other law as applicable to the facts of the case.

2. Reference has been explained by the administrative Ministry vide notes at pages 70-74/N. Facts of the case, in brief, are that the Marki Mangli II, III & IV coal blocks in the State of Maharashtra were allocated to M/s Shree Virangana Steels Limited, u/s 3(3)(a) (iii) of the Nationalisation Act, for captive mining of coal for their sponge iron plant, vide allocation letter dated 6/9/2005 (pp.1004-1006/C). The Rajgamar Dipside (South of Phulakdih Nala) coal block was allocated jointly to M/s Topworth Steel Pvt. Ltd. (TSPL) and M/s Monnet Ispat & Energy Ltd. for its sponge iron plant at Durg, Chhatisgarh, vide allocation letter dated 3/6/2009 (pp.1007-1010/C). It is noticed from the file that the name of M/s Shree Virangana Steel Ltd. was changed to M/s Topworth Urga & Metals Ltd. (TUML) w.e.f. 29/6/2010. Later on, the TUML and TSPL were amalgamated with M/s Crest Steel & Power Pvt. Ltd., as per the scheme approved by the High Court of Bombay vide order dated 1/7/2011 (F/A).

3. TUML, vide letter dated 15/10/2010 (p.997/C in the linked file) requested the administrative Ministry to register the changed name of the company in its records. It has been stated by the administrative Ministry that during examination of the request of the allocatee company for change of name, it was found that the shareholding of the company has changed hands after the allocation of the block. The present shareholders are completely different from the shareholders at the time of allocation of the block. The entire management of the original allocatee has been handed over to others who were not the original allocatees of the coal block. The allotment of coal blocks by the Government is for captive purpose and not for profiteering. The commercial use of coal is not allowed. The sale of shareholding for profit defeats the

purpose of allocation of coal block. In view of the above, a show cause notice was issued asking the company as to why the change in ownership of the company without the approval of Ministry of Coal should not be held as violation of terms and conditions of allocation. In response, the allocatee company, in its reply (pp.1257-1264), has basically contended that there is no condition in the allocation letter which prohibits change in shareholding pattern nor such change is prohibited under any statutes / rules. The allocatee company has also relied on certain rulings of the courts.

4. The coal blocks were allocated to M/s Shree Virangana Steels Ltd. u/s 3(3)(a)(iii) of the Nationalisation Act, which only provides that no person other than, a company engaged in the production of iron and steel, generation of power, washing of coal obtained from a mine or such other end use as specified by the Central Government, shall carry on coal mining operation in India. The Nationalisation Act does not contain provisions for allocation of coal blocks to such companies. The coal blocks have been allocated by the administrative Ministry, on certain terms and conditions, as per their administrative policy / decision. In the allocation letter there is no specific condition that for change in the ownership or management of the allocatee company, approval of the Central Government is necessary. As the terms and conditions for allocation were specified by the administrative Ministry, this aspect was also required to be taken care of by the administrative Ministry at the time of issuance of allocation letter, by putting a specific condition therein in this regard.

5. However, it is for the administrative Ministry to first examine that which provision of terms and conditions of the allocation or law has been violated by the allocatee company in not obtaining the approval of the Central Government before change in the ownership or management of the company. After doing the needful, if need be, the matter may be referred for our examination specifying the provisions of terms and conditions of allocation / law which has been violated by the allocatee company. At the same time, we may also be enlightened about the past practice and precedent in such cases.

*(R.K. Srivastava)
Deputy Legal Adviser
19/11/2012*

126. The said opinion received from Ministry of law and justice was thereafter processed in Ministry of coal in file D-7 itself at note sheet page 76/n as under:.

Note sheet page 76/n available in D-7:

Min. of coal

Please put up

Sd/- 22.11.12

Prem Raj Kuar

Sh.Paul

Ref. Above

M/o Coal

CA-I

The opinion/comments of M/o Law & Justice, Dept. of Legal Affairs is submitted for perusal at dak stage.

In this regard it is submitted that CBI is requesting for files related to allocations made during 1993-2004 including these blocks. Submitted for orders whether file be handed over to CBI or put up for Deptt. of Legal Affairs.

Sd/-

22/11/12

For suitable orders please.

Sd/-

Prem Raj Kuar

22.11.12

US (CA-I)

Dir(CA-I)

May kindly see the advice of MoLJ above

JS(C)

Sd/- 23/11"

127. However no further proceedings took place in MOC subsequent thereto as it appears that in the meantime some CBI enquiry started in coal block allocation matters and the issue appears to have been not dealt with any further.

128. However, in another file of MOC there are proceedings of the year 2014 or so, wherein it has been stated that as the company

has executed the mining lease deeds in its earlier name i.e. in the name of a company which no longer existed, so the said mining lease deeds becomes void and be accordingly cancelled. However, I am not delving into the said proceedings any further, for the same seems to have been more of a proactive action by Ministry of Coal officers on account of initiation of CBI enquiry in the coal block allocation matters rather than an action having been taken after due application of mind, for the request of company for change of its name in the records of MOC was pending since the year 2010.

129. Be that as it may, the fact remains that the Deputy Legal Advisor rightly pointed out that there was no condition put in the allocation letter that there cannot be a change in the name or management of the company without prior approval of Central Government. He rightly posed a question to MOC that, it is for the administrative Ministry to first examine as to which provision or terms and conditions of the allocation or law has been violated by the allocatee company in not obtaining the approval of the Central Government before change in the ownership or management of the company. In order to appreciate the aforesaid legal opinion expressed by Sh. R.K. Srivastava in proper perspective, it will be also appropriate to reproduce the allocation letter dated 06.05.2009 issued by MOC in favour of M/s Shree Virangana Steels Ltd.:

**“No. 13016/9/2004-CA-I
GOVERNMENT OF INDIA
MINISTRY OF COAL**

New Delhi, dated the 6th September, 2005

To -

Shree Virangana Steels Ltd.,
SS-3, Golden Palace,
Nagpur-440010

Subject: - Allocation of Marki-Mangli-I, Marki- Mangli-III and Marki-Mangli-IV blocks in the, State of Maharashtra for captive mining of coal. by M/s Shree Virangana Steels Limited for their Sponge Iron capacity of 7 ltpa.

Sir,

I am directed to refer to your letter Nos. Letter No. Ref: SVS/03/121 dated 15.1.2004, Ref No.- SVSL/Coal/0.4/390 dated 10.6.2004, Ref. No. SVSL/04/385, dated 2.7.2004, Ref No. SVSL/MOC/918 - dated 30.10.2004 Ref No. SVSL/MOC/04/978 dated 23.11.2004, Ref No. SVSL/ MOC/04/108 dated 4.12.2004, Ref. No. SVSL/05/790 dated 31.1.2005 and Ref No. SVSL/MOC/2005/612 date 30.5.2005 requesting for allocation of Marki-Mangli-II, Marki-Mangli-III and Marki-Mangli-IV blocks in the State of Maharashtra to meet the coal requirement of your 3 lakh tonne per annum capacity sponge iron project and 25 MW captive power generation at Umred in the Nagpur district of Maharashtra, and to state that the Central Government, after considering your request, has decided to allocate Marki-Mangli-II, Marki-Mangli-III and Marki-Mangli-IV blocks to you. This allocation is in pursuance of the provisions contained in Section 3(3)(a)(iii) of the Coal Mines (Nationalisation) Act, 1973 and is subject to the following conditions: -

i) The allocation of the Marki-Mangli-II, Marki-Mangli-III and Marki-Mangli-IV blocks to M/s. Shree Virangana Steels Ltd., has been made to meet the sponge iron grade coal requirement of 0.48 million tonne per annum for their 3 ltpa capacity sponge iron production at Umred in Nagpur of Maharashtra State. The coal produced from the block shall not replace any coal linkage given to M/s Shree Virangana Steels Ltd., by the Coal India Limited/its subsidiary companies and/or by the Singareni Collieries Company limited, without prior permission of this Ministry.

ii) The block is meant for captive use in their own specified end, use projects i.e. sponge iron project and power generation.

iii) The middling generated in the process of washing shall be used for power generation in their own power plant i.e. the useable middlings/rejects generated during beneficiation shall - be used captively by the allocattee. The modalities of

disposal of surplus coal/middlings/ rejects if any, would be as per the prevailing policy/ instructions of the Government at the relevant point in time and could also include handing over such surplus coal/ middlings/rejects to the local CIL subsidiary or to any person designated by it at a transfer price to be determined by the Government.

iv) The coal production from the captive blocks shall commence within 36 months (42 months in case the area is in forest land) of the date of this letter in OC - mine and in 48 months (54 months in case -the area falls under forest land) from the date of this letter in UG mine. The end use project schedule and the coal mine development schedule should be modified accordingly and submitted to this Ministry within 3 months from the date of this letter.

v) The Company shall buy the Geological report from CMPDIL within six weeks of the date of this letter.

vii) The company shall submit a bank guarantee for Rs.4.8 crore (equal to one year's royalty amount based on mine capacity of 0.565 mtpa as per assessed requirement, average D grade coal and the weighted average royalty being @ Rs. 85/- per tonne) within 3 months of the date of this letter. Subsequently, upon approval of the mining plan the Bank Guarantee amount will be modified based on the final peak/rated capacities of the mines.

vii) The company shall submit a mining plan for approval by the competent authority under the Central Government within six months from the date of this letter.

viii) The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of any lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/peak capacity of the mine, e.g., if rated/peak capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50 - 35)/100 \times 100 = 15\%$ will lead to deduction of 15% of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de-allocation/cancellation of mining lease. M/s. Shree Virangana Steels Ltd. shall ensure that the Bank Guarantee remains valid at all times till the mine reaches its rated capacity or till the Bank Guarantee is exhausted.

ix) No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government.

x) Mining of Coal from the allocated captive coal block shall be carried out in accordance with the applicable Statutes/Rules/Orders/Directions governing the mining of coal in the country.

xi) Those of the above conditions relevant at the time of grant of mining lease shall be included as additional conditions in the mining lease in addition to any further conditions imposed by or agreed to by the Central Govt.

xii) The State Government at the time of seeking previous approval for the grant of mining lease shall submit a draft of the mining lease containing the above relevant conditions for vetting by the Central Govt. The final mining lease shall be

as vetted/modified by the Central Govt. Any deviation from the vetted/modified draft shall render the mining lease deed ab-initio null and void and without effect.

2. Allocation/mining lease of the coal block may be cancelled, inter-alia, on the following grounds :

(a) Unsatisfactory progress of implementation of their end use sponge iron plant/ power plant.

(b) Unsatisfactory progress in the development of coal mining project.

(c) For breach of any of the conditions of allocation mentioned at (i) to (xi) above.

The de-allocation/cancellation of mining lease shall be without any liability to the Government or its agencies, whatsoever. Any expenses incurred by the allocatee or any right or liability arising on the allocatee out of the measures taken by him shall solely be to his account and in no way be transferred to or borne by the Government its agencies.

3. The company may approach CMPDIL for the geological report: and contact the State Government authorities concerned for the necessary permissions/clearances etc. for attaining mining rights and related matters. The arrangement of transport of coal will-have to be worked out by the company.

Yours faithfully,

S/d-
(Premraj Kuar)
Section Officer

To

- 1, The Chairman, Coal India Ltd., 10 Netaji Subash Marg, Kolkatta- 700001
2. CMD, Central Mine Planning and Design Institute Ltd., Kanke Road, Ranchi, Jharkhand.
3. CMD, Central Coalfields Limited, Darbhanga House, Ranchi (Jharkhand).
- 4.. Ministry of Steel (Shri D. Kashiva, Jt. Industrial "Adviser), Udyog Bhawan, New Delhi.
5. The Chief Secretary, Government of Jharkhand, Secretariat, Ranchi.
6. The Coal Controller, Office of the Coal Controller, 1 Council Street, Kolkatta- 700001.
7. CPAM Section."

S/d-
(Premraj Kuar)
Section Officer"

130. Thus, a bare perusal of allocation letter dated 06.09.2005 shows that no condition at all was put in it that the allocatee company cannot change its shareholding or name without prior approval of the

Central Government. At this stage, it will be also worthwhile to mention that the shareholding of the company changed hands in the year 2006 i.e. much before the change of name of the company, which took place in the year 2010. It is also an undisputed case that after change of shareholding in the year 2006, the new management of the allocatee company continued to make various correspondence with different Government departments in the name M/s Shree Virangana Steels Ltd. itself. It is in that name only that the company continued to make efforts to obtain various clearances or to get the mining plan approved or even to apply for execution of mining lease. It is in that name itself that the company was even accorded prior approval by Central Government under MMDR Act, 1957 for execution of mining lease. Thus, for a period of about 4 years after change in the share holding the allocatee company continued to function in its initial (*old*) name itself. Accordingly, if in the light of these undisputed facts the letter dated 15.02.2011 of A-2 Surendra Champalal Lodha is seen wherein he informed by way of an affidavit to MOC that there has been no change in the share holding pattern and he duly provided the names of shareholders of the company on a day prior to change of name of the company and immediately after change of name of the company, then it is beyond comprehension as to how the said submissions can in any manner be construed as false submissions much less even misleading or dishonest submissions. The bonafide intentions further gets exemplified when MOC subsequent to receipt of letter dated 15.02.2011 sought information about the list of shareholders at the time of allocation of coal blocks

and the company duly provided the same. There has been thus no concealment of any nature whatsoever on the part of A-2 Surendra Champalal Lodha much less on the part of company with respect to the information sought by Ministry of coal while processing the request of the company to change its name in the records of MOC.

131. At the cost of repetition, I may state that as there was no condition laid down in the letter of allocation dated 06.09.2005 issued by MOC, that there cannot be any change in the name of shareholders without prior approval of Central Government so nothing wrong can be attributed either to the initial shareholders of the company or to the subsequent shareholders in this regard much less attributing any criminality or culpability upon them for any such act. It will be pertinent to mention that the said change in the name of company took place prior to the actual execution of three mining lease deeds. The bonafides of A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra also stands proved in as much as immediately after change in the name of company, they duly informed MOC as well as other concerned Government Departments and even undertook a number of correspondence with them on the letterhead of new company while mentioning the earlier name of the company also over there.

132. In these circumstances, I am of the considered opinion that no criminality or culpability can be attributed to A-2 Surendra Champalal Lodha in furnishing the impugned affidavit along with his communication dated 15.02.2011. Similarly the question of any

inducement having been made by A-2 Surendra Champalal Lodha on the basis of said affidavit also does not arise at all.

133. Coming now to the second set of allegations that A-2 Surendra Champalal Lodha executed three Power of Attorneys in the name of A-3 Anil Omprakash Nevatia as Director M/s Shree Virangana Steels Ltd. in the year 2011 knowing fully well that the said company did not exist at that time, I may state that this allegation of the prosecution also does not warrants framing of charge against any of the three accused persons.

134. Admittedly, authorised signatory of M/s Topworth Urja & Metals Ltd. communicated with District Collector, Yavatmal Maharashtra vide letter dated 08.10.2010, with respect to execution of mining lease deed of Marki Mangli Block-II, on the letterhead of M/s Topworth Urja & Metals Ltd. and wherein the former name of the company i.e. M/s Shree Virangana Steels Ltd. was duly mentioned (*available at page 356 in D-51*). In fact a draft mining lease deed in the name of M/s Topworth Urja & Metals Ltd was also submitted to the department by the company(*available from page 88-104 in D-152 and also from page 48-33 in D-311*). Similarly, one other communication dated 24.1.2010 was made by A-4 S. K. Mitra Vice President (Mining) with Director Geology and Mining Government of Maharashtra, Nagpur on the letterhead of M/s Topworth Urja & Metals Ltd. and wherein also the former name of company i.e. M/s Shree Virangana Steels Ltd. was duly mentioned (*available at page 355 in D-51*). Interestingly, the Office of Director, Directorate of Geology and

Mining, Government of Maharashtra responded to two letters of the company i.e. letter dated 25.08.2010, written on the letterhead of Shree Virangana Steels Ltd and another letter dated 24.11.2010, written on the letterhead of M/s Topworth Urja & Metals Ltd together vide letter dated 28.12.2010 (*available at page 357 in D-51*). Though the said communication of the Office of Directorate of Geology and Mining, Government of Maharashtra, was addressed to M/s Shree Virangana Steels Ltd but except for permitting extension of time for executing the mining lease deed and further directing the company to obtain the necessary clearances and to execute the mining lease deed within the extended period, it did not make any mention about change in the name of the company, or as to why communication is being made on the letterhead of some other company. In fact, at page 368 in D-51, there is yet another letter dated 24.02.2011, written by District Mining Officer, Yavatmal addressed to Director, Department of Geology and Mining, Nagpur, wherein there is a reference of the new name of the company and in brackets the earlier name of the company is also mentioned. By virtue of the said letter approval was sought of the draft mining lease submitted by the company in Form K. Similarly, at page 379 in D-51, there exists another letter dated 04.02.2011 issued under the signatures of A-4 S. K. Mitra, Vice President (Mining) and addressed to Director, Geology and Mining, Nagpur, on the letterhead of M/s Topworth Urja & Metals Ltd seeking another extension for execution of mining lease deeds for the three coal blocks for a period of three months. At page 504 in D-51, there exists yet another letter dated 15.01.2011, written on the

letterhead of M/s Topworth Urja & Metals Ltd under the signatures of A-4 S. K. Mittra Vice President, mining, whereby Under Secretary, Government of Maharashtra, Department of Industries, Energy and Labour, was informed about the change of name of the company as effected from 29.06.2010. Thus, it is clear that soon after change of name of the allocatee company from M/s Shree Virangana Steels Ltd. to M/s Topworth Urja & Metals Ltd the concerned departments were informed and number of communications were made on the letter head of M/s Topworth Urja & Metals Ltd. No doubt, even after the change of name of the company there are certain communications made by the company with Government of Maharashtra in its old name but as mentioned above a number of communications were also made on the letter head of M/s Topworth Urja & Metals Ltd. in the year 2010 and in the year 2011 i.e. prior to execution of mining lease deeds. As earlier mentioned, upon receipt of prior approval of Central Government for execution of mining lease, Government of Maharashtra, Department of Industries sent a communication to the company along with a proforma "Form K" in which necessary mining lease was to be executed. Undisputedly, in response thereto the company submitted the draft mining lease vide letter dated 08.10.2010 and the said draft mining lease was submitted in the name of M/s Topworth Urja & Metals Ltd. No doubt, the final mining lease was subsequently executed in the old name i.e. M/s Shree Virangana Steels Ltd. but nothing is ascertainable from the files of Government of Maharashtra (*Some files of Government of Maharashtra are also stated to be missing as mentioned in the*

charge sheet itself by CBI) as to what happened to the draft mining lease submitted by the company in the name of M/s Topworth Urja & Metals Ltd. or whether any fresh draft mining lease was asked for from the company in its old name.

135. The fact however remains that subsequent to submission of draft mining lease in the name of M/s Topworth Urja & Metals Ltd., A-2 Surendra Champalal Lodha executed three Power of Attorneys on 02.03.2011 in the name of A-3 Anil Omprakash Nevatia and both of them signed the said Power of Attorney(s) as Director and President respectively of M/s Shree Virangana Steels Ltd. Undoubtedly, the documents after change in the name of company ought to have been signed in the new name, but in my considered opinion when necessary intimation in this regard was already given by the company, A-2 Surendra Champalal Lodha and other officers to various Government Departments, then execution of mining lease deeds in the old name of the company, as rightly pointed out by Ld. Counsel for the accused persons, can at the most be termed as an irregularity. In fact, the company has already suffered for the said irregularity as MOC in the year 2013-14 termed the said mining lease deeds void and directed Government of Maharashtra to cancel the same. The record however also shows that after the execution of mining lease deeds in the old name, further correspondence between the company and the Government of Maharashtra and Ministry of Coal continued in the new name of the company. By way of illustration, there is a letter dated 11.05.2012 (*available at page 180*

in D-84) written by Dy. General Manager, Officer on Special Duty in the office of Coal Controller Organisation, Ministry of coal, Government of India directing company M/s Topworth Urja & Metals Ltd to draw two bore holes for sample..There is one other letter dated 18.01.2012 (*available at page 42 in D-84*) written to the District Mining Officer, Office of the District Collector on the letterhead of M/s Topworth Urja & Metals Ltd. with respect to payment of royalty of ROM coal of integrated Marki Mangli Opencast Mine-III. Subsequent details or monthly progress reports were also being submitted by the company in its new name and which were duly accepted without any objection by the office of Coal Controller and other concerned departments. There exists on record another communication dated 22.04.2011 addressed to Coal Controller, Kolkata (*available at page 142 in D-84*) issued under the signatures of A 4 S. K. Mitra Vice President, Mining on the letterhead of M/s Topworth Urja & Metals Ltd submitting a bank guarantee dated 18.04.2011 issued by Oriental Bank of Commerce for a sum of ₹ 4.80 crores with respect to the three coal blocks allotted to Shree Virangana Steels Ltd. Similarly, yet another communication dated 23.04.2012 (*available at page 139 in D-84*) is available addressed to coal controller, Kolkata and again issued under the signatures of A 4 S K Mitra Vice President, mining on the letterhead of M/s Topworth Urja & Metals Ltd. Once again by way of the said communication a renewed Bank Guarranty issued by Oriental Bank of commerce valid up to 17.04.2013 was submitted. A perusal of the said bank guarantee (*available at page 140-141 in D-84*) shows that the said bank guarantee for a sum of Rs. 4.80 crores

was issued by Oriental Bank of Commerce on account of M/s Topworth Urja & Metals Ltd (*formerly known as M/s Shree Virangana Steels Ltd.*). All the aforesaid communications including the bank guarantee were duly accepted by the office of Coal Controller, Ministry of coal, Government of India. The record further shows that in the year 2012 certain proceedings were started by the office of Coal Controller, Ministry of Coal, Government of India regarding delay in the development of coal mines allotted. There exists on record a communication dated 26.05.2012 addressed to coal controller, Kolkata, again issued under the signatures of A-4 S K Mitra Vice President (Mining), M/s Topworth Urja & Metals Ltd on the letterhead of M/s Topworth Urja & Metals Ltd itself seeking condonation of delay in commissioning the production of allocated coal blocks and in establishing the end use project of M/s Topworth Urja & Metals Ltd (*formerly known as M/s Shree Virangana Steels Ltd.*). The record, however, shows that after analysing the reply submitted by the company and discussing the matter regarding delay in commissioning of production from the allocated coal blocks, Ministry of Coal, Government of India decided to deduct bank guarantee submitted by the allocated company in respect of the three coal blocks. In this regard, there exists on record a letter dated 15/16.11.2012 addressed to the Chairman and Managing Director M/s Shree Virangana Steels Ltd issued under the signatures of Sh. V S Ranam, the then under Secretary, Ministry of coal informing that the Ministry has decided to deduct bank guarantee in respect of the three coal blocks so allotted.

136. The purpose of mentioning all these communications is only to highlight that not only the office of Coal Controller but also, Ministry of Coal had been communicating with the allocatee company in its new name in as much as the bank guarantee submitted by the allocatee company in its new name was duly accepted by Ministry of Coal. Thus, if all these proceedings are considered as legal and regular then the execution of three mining lease deeds in the old name of the company also cannot be termed as an illegal act. From the overall facts and circumstances of the case and various documents as referred above, it is clear that the impugned acts were clearly undertaken by the company and its officers/directors with a view to proceed further in the matter as their request earlier submitted to Ministry of coal for change of name of the allocatee company in the records was getting delayed. It is also clear that the officers of various Government Departments who were involved in the process of executing the mining lease deeds or other ancillary proceedings also facilitated the company and its officers/directors despite knowing fully well that the name of the company has since been changed. It is thus clear on the face of record that in order to meet the peculiar circumstance, that the prior approval for execution of mining lease was received from MOC in the old name of the company all such acts were undertaken. Thus if despite having knowledge about the change of name of the company the officers of Government of Maharashtra did not object or in other words permitted execution of mining lease deeds in the old name of the company and also as per the investigation carried out by CBI no culpability/criminality was found on

the part of Government of Maharashtra officers/officials for undertaking all such acts, then it is beyond comprehension as to how any culpability or criminality can be attributed for the same acts to the private accused persons. In fact, a perusal of the record shows that the accused persons had acted very bonafidely by duly intimating all the concerned Government Departments about change of name of the company. At this stage, it will be also pertinent to mention that in the final report u/s 173 Cr.PC. It has been stated that on account of certain violations by the officers of Government of Maharashtra and other Government departments, necessary departmental action has been recommended against them. In this regard, It will be worthwhile to reproduce the relevant paragraphs of the final report under section 173 Cr.PC over here:

Para 16.37; and 16.41 to 16.45 of charge sheet u/s 173 Cr.PC:

16.37 Investigation revealed that the Mining Section, Office of the District Collector, the Directorate of Geology & Mining, Govt. of Maharashtra, Nagpur as well as the Department of Industries, Energy & Labour, Govt. of Maharashtra, Mumbai were not aware that the examination of the issue of change of the name of the company was going on in the Ministry of Coal and that the Ministry of Coal was not agreeing /giving approval to the proposal of the said company for change of name of the company in the records, and they failed to show due diligence and take action to the intimation about change of name as well as the changing pattern of communication by the company, as and when required in the name of M/s Shree Virangana Steels Ltd. and some times in the name of M/s Topworth Urja & Metals Ltd. The officials of the Mining Section of Collectorate, Yavatmal also failed to check excess mining by the company than the schedule in the Mining Plan. For the lapses/omission and commission on the part of officers of the Directorate of Geology & Mining, officials of Mining Section, Collectorate, Yavatmal as well as the officer/officials of the Department of Industries, Energy & Labour Govt. of Maharashtra.

Mumbai, the matter is being referred to the concerned Departments for regular departmental action /such action.

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16.41 Investigation has also revealed that the office of the Coal Controller was also not aware that the examination of the issue of change of the name of the Company was going on in the Ministry of Coal and that the Ministry of Coal was not agreeing /giving approval to the proposal of the said company for change of name of the company. At the end of Office of the Coal Controller also there was lack of clarity about the name of the company due to the changing pattern of communication by the company, as and when required in the name of M/s Shree Virangana Steels Ltd., M/s Topworth Urja & Metals Ltd. (formerly Shree Virangana Steels Ltd.) and some times in the name of M/s Topworth Urja & Metals Ltd.. For the failure on the Part of the officers/officials of the office of the Coal Controller who were receiving the correspondences with three differently named company on the same issue but they failed to take notice of this discrepancies and to take remedial action, the matter is being referred to the department for taking such action as deemed fit against them on account of administrative lapse on their part.

16.42 Investigation revealed that the company was required to do coal mining as per approved Mining Plan. Investigation has revealed that the production of coal in Marki-Mangli-III Coal Block started since 18.12.2011. The company produced excess Coal than the approved quantity mentioned in the mining plan as enumerated below:-

<i>Year of Production</i>	<i>Annual Production of coal (in MT)</i>	<i>Approved production quantity as per approved mining plan (in MT)</i>	<i>Remarks/ Variance</i>
<i>1st Year (2011-2012)</i>	65933	<i>0.03 MT i.e. 30000 Te</i>	<i>Excess production of 35933 Te</i>
<i>2nd Year (2012-2013)</i>	341173	<i>0.12 MT i.e. 120000 Te</i>	<i>Excess production of 221173 Te</i>
<i>3rd Year (2013-2014)</i>	216676.23	<i>0.12 MT i.e. 210000 Te</i>	<i>Excess production of 6676.23 Te</i>

The above mentioned acts of the company ie. excess mining than the approved Mining Plan attract Penal Provision of MMDR Act. A report in the regard is being forwarded to the Ministry of Coal, competent to file complaint before the designated court, for further needful action.

16.43 Investigation has also revealed that the company was entitled to export maximum 49% of power generated in its CPP, whereas, it has exported 72.59% during July, 2010 to March 2011, 64.75% during April, 2011 to March 2012, 65.44% during the period April 2012 to March 2013 and 52.4% during the period April 2013 to March 2014 to the grid of the Govt. of Maharashtra/MSEDCL which was a violation of the extant guidelines. The company owed cross subsidy charges payable to the Govt. of Maharashtra on account of supply of excess Power than its defined quota. A report in this regard is being sent to the to the Govt. of Maharashtra for taking necessary action in respect of non-levying cross subsidy charges by MSEDCL.

16.44 Investigation has also revealed that the management of Shree Virangana Steels Ltd. in their Form-I submitted to the Directorate General of Mine Safety, Nagpur Region-II mentioning the name of the company as M/s Shree Virangana Steels Ltd. till 01.10.2011 although the name of the company had changed from Shree Virangana Steels Ltd. to Topworth Urja & Metals Ltd. w.e.f. 29.06.2010. First Schedule Form-I from nominated owner/Director Shree Virangana Steels Ltd., Marki Mangli-Ilt Opencast Mine in respect of appointment of Under Manager of Integrated Marki Mangli Opencast Mine dated 01.10.2011 showing the name of the company M/s Shree Virangana Steels Ltd. was issued by the Director Sh. Surendra Champalal Lodha. CFSL, New Delhi has confirmed the signature of Sh. Surendra Champalal Lodha on the above document submitted to DGMS. The company intimated wrong name of the company as Shree Virangana Steels Ltd till submission of Form-I dated 01.09.2012, wherein the name of the company was correctly intimated as Topworth Urja & Metals Ltd. The above fact amounts to falsification of records U/s 64 of Mines Act 1952. In this regard action is required to be taken by the Directorate General of Mine Safety by filing a complaint in the concerned Court under the provision of Mines Act 1952. Report in this regard is also being sent to Directorate General of Mine Safety for taking necessary action against the concerned Directorate General of Mines Safety officers and filing a complaint against the accused company in the concerned court under the provisions of Mines Act 1952.

16.45 Investigation further revealed that the Ministry of Coal requested Govt. of Maharashtra to furnish a copy of mining leases executed. On receipt of the same, the Ministry of Coal observed that as per documents provided by State Government the lease has been signed in the months of March and June 2011 and there was no such Company existing in the name of M/s Shree Virangana Steels Ltd. at the time of execution of Mining Lease. The Ministry of Coal further observed that the Mining Lease deed was still in the name of M/s Shree Virangana Steels Ltd. whereas the name of the Company has changed and accordingly the Ministry of Coal proposed that the Mining Lease is void. The Ministry of Coal vide letter dated 05.01.2015 directed Govt. of Maharashtra to immediately declare the mining lease of Marki- Mangli-II, III & IV coal blocks as void. Thereafter, Industries, Energy and Labour Department, Govt. of Maharashtra vide letter dated 15.01.2015 cancelled the mining lease granted to the Company.

(Emphasis supplied by me)

137. Thus, from the aforesaid facts and circumstances, it is clear on the face of record that though the acts of accused persons can not be termed as regular but at the same time no criminality or culpability can accrue to them or can be foisted upon them on account of said acts as even nothing criminal or culpable was found in all such similar acts on the part of public servants involved in the process. The prosecution has thus clearly failed to even prima facie establish that the impugned acts were undertaken by the accused persons with any dishonest or fraudulent intention.

138. In this regard, it will be worthwhile to refer to the observations of Hon'ble Supreme Court in the case **Dr. Vimla Vs. Delhi Administration, AIR 1963 SC 1572**, wherein Hon'ble Court dealt at length with the meaning of the term "*fraudulently*".

139. In the said case the petitioner/accused Dr. Vimla had obtained insurance of her motor Car in the name of her minor daughter. Incidentally the said Car met with two accidents and for which necessary claims were raised with the insurance company. It was found that on both the occasions the petitioner/accused Dr. Vimla signed the necessary documents as “*Nalini*” which was the name of her minor daughter. However during the course of trial the genuineness of the accidents having taken place or the truthfulness of the consequent claims raised with the insurance company stood proved but the issue remained as to whether petitioner/accused Dr. Vimla committed acts of forgery and cheating with the insurance company or not. It was in the aforesaid background that the Hon'ble Supreme Court while extensively discussing the meaning of the word “*fraudulently*” and other related aspects observed in para No. 3, 5, 15 and 16 as under:

“3. The facts found may be briefly summarised thus : Dr. Vimla purchased a motor car with her own money in the name of her minor daughter, had the insurance policy transferred in the name of her minor daughter by signing her name and she also received compensation for the claims made by her in regard to the two accidents to the car. The claims were true claims and she received the moneys by signing in the claim forms and also in the receipts as Nalini. That is to say, Dr. Vimla in fact and in substance put through her transactions in connection with the said motor car in the name of her minor daughter. Nalini was in fact either a benamidar for Dr. Vimla or her name was used for luck or other sentimental considerations. On the facts found, neither Dr. Vimla got any advantage either pecuniary or otherwise by signing the name of Nalini in any of the said documents nor the Insurance Company incurred any loss, pecuniary or otherwise, by dealing with Dr. Vimla in the name of Nalini.”

The Insurance Company would not have acted differently even if the car stood in the name of Dr. Vimla and she made the claims and received the amounts from the insurance company in her name. On the said facts, the question that arises in this case is whether Dr. Vimla was guilty of offences under Sections 463 and 464 of the Indian Penal Code.

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5. Before we consider the decisions cited at the Bar it would be convenient to look at the relevant provisions of the Indian Penal Code.

“463 : Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464 : A person is said to make a false document- First--Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

“ * * * **

The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows: (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority ; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in Section 464 i. e., "fradulently" and the intention

to commit fraud in Section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in Section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions, bearing on the subject. The second thing to be noticed is that in Section 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus :

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly". "Fraudulently" is defined in Section 25 thus:

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

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of "fraud" would include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss

to the deceived. Both need not co-exist.

Para No. 6 to 14

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15. To summarize : the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non economic or non- pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

16. Now let us apply the said principles to the facts of the present case. Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said , deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for any reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in the name of her minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term."

140. In view of my aforesaid discussion, it is thus clear that the acts of the accused persons in executing the three power of attorney's in the old name of the company or subsequently signing the three mining lease deeds in the old name of the company can not be termed as dishonest in as much as soon after the change of name of the company they disclosed the same to the concerned authorities and had even various correspondence on the letter head containing the new name of the company i.e. M/s Topworth Urja & Metals Ltd. beside also mentioning that the company was formely known as Shree Virangana Steels Ltd.. As observed by Hon'ble Supreme Court in **Dr. Vimla Vs. Delhi Administration (Supra)**, the said acts also can not be termed as "*fraudulent*" since the grant of prior approval by MOC in the old name of the company for execution of mining lease was perfectly legal and the same is not in dispute. It is on this premise only the acts of the accused persons in making certain correspondence on the letter head containing only the old name of the company needs to be looked into. Thus as the essential ingredients that the acts were done dishonestly or fraudulently does not stand satisfied so I am of the considered oipinion that the impugned acts can at the most be termed as an irregularity and can not be interpreted so as to impute any criminality or culpability upon the accused persons.

141. In fact it will be also pertinent to mention that vide letter dated 20.09.2013 (*available at page 487 in D-51*) Government of Maharashtra, Department of Industries, Energy and Labour, Mumbai

even acknowledged to A-2 Surendra Champalal Lodha, Director, M/s Topworth Urja & Limited that they have considered and noted the change in the name of company and products.

142. The matter however, can also be viewed from another angle i.e. whether change of name of the company resulted in the birth of a new company or the company which was earlier known by another name ceased to exist or in other words change in name of the company resulted in legal death of the company with its earlier name.

143. In this regard, it will be appropriate to refer to the observations of Hon'ble High Court of Calcutta in the case **W.H. Targett (India) Limited vs S. Ashraf & Ors, 2008 SCC OnLine Cal 384** and **M/s Frenenius Kabi Oncology Limited v. The State of West Bengal & Ors., 2015 SCC OnLine Cal 6191**, as have been relied upon by Ld. Counsels for the accused persons. In both the cases almost similar issue was involved.

144. **In the case M/s Frenenius Kabi Oncology Limited v. The State of West Bengal & Ors. (Supra), Hon'ble High Court of Calcutta observed as under:**

*“10. In the case of **Bacha F. Guzdar (supra)**[#], it has been held by the Hon'ble Supreme Court:-*

“That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any

Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, AIR 1955 SC 74

interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the case of *Chiranjitlal Chowdhuri v. The Union of India and Others* [1950] S.C.R. 869, 904.). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in *Buckley's Companies Act*, 12th Ed., page 894, where the etymological meaning of dividend is given as *dividendum*, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company”

11. The same principle was followed in the case of **Din Chemicals & Coatings Pvt. Ltd. (supra)**[#], and it has been held in this decisions:-

“Let me now consider as to how far the principle laid down in the said decision of the Hon’ble Supreme Court is applicable to the facts of the instant case. I have already indicated above that the case which was before the Hon’ble Supreme Court was a case of amalgamation of the two companies which is not the case

[M/s Din Chemicals & Coatings Pvt. Ltd. & Anr. Vs. The State of West Bengal and Ors.; Decided by Hon'ble High Court of Calcutta on 05.10.2012 in W.P. No. 18668 (W) of 2012]

before this Court. In case of amalgamation of two companies the transferor company loses its existence and all the property, rights, powers of every description including all leases and tenancy right, industrial, import and all other licences, of the transferor company without any further act or deed are transferred and vested or deemed to be transferred or vested in favour of the transferee company. Thus, in case of amalgamation no doubt the lease-hold interest of the transferor company stands transferred in favour of transferee company but the such transfer is not contemplated in case of transfer of share by the shareholder of the company to the stranger purchasers of such shares, as it was held in Mrs. Bacha F. Guzdar, Bombay vs. Commissioner of Income Tax, Bombay (supra) by the Hon'ble Supreme Court that a shareholder who buys share does not buy any interest in the property of the company which is a juristic person entirely distinct from shareholders. It was further held therein that the true position of a shareholder in a company is that on buying shares he becomes entitled to participate in the profit of the company as and when the company declares, subject to articles of association, that the profits or any portion thereof would be distributed by way of dividends amongst the shareholders. It was further held therein that he has further a right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole. In the present case, it is nobody's case that the company was wound up and the assets of the wound up company which were left over after winding up of the said company was transferred by the promoter shareholder in favour of the stranger purchaser. As such, by following the aforesaid decision of the Hon'ble Supreme Court as well as of this Hon'ble Court, this Court has no hesitation to hold that with the transfer of the share by the promoter shareholder to the present shareholder, namely the transferees of such share, the lease hold interest of the company was not transferred from the promoter shareholder to the present shareholder of the said company. The petitioner-company which obtained the said lease from the Government, still remains the lessee of the said plot of land and its leasehold interest in the said plot of land remains unaffected by transfer of share by the promoter shareholders to the present holders. As such, this Court holds that the restrictive clause regarding transfer of the lease hold interest of the lessee in favour of a stranger, sub-lessee or assignee, does not attract in the present case and as a result, the demand for transfer fees for recognizing the alleged transfer of leasehold interest from the erstwhile shareholders of the said company to the present shareholder, is absolutely illegal

and unlawful and as such, that part of such demand, which was made by the concerned authority in the impugned order and/or letter as aforesaid, stands quashed.”

12. *The legal impact of change of the name a company has also been discussed in the case of **Kalipada Sinha (supra)**[#], and it was held in that judgment:-*

“It will be convenient to dispose of the point which was already taken in the Court below, viz., that no such amendment could be made by the Executing Court. What has been argued is that the Executing Court can only grant the amendment that is provided under Order 21, Rule 16 or Rule 17. Obviously, the amendment asked for does not come within those provisions. In my opinion, the whole approach is defective. The argument proceeds on the footing that an application for execution was pending and in course thereof there had been a transfer of the interest of the decree-holder to another new body altogether and that it was a case of substitution in execution proceedings. This is belied by the provisions of Sections 21 and 23 of the Companies Act 1956. Section 21 enables a company to change its name by a given method, viz., by a special resolution and with the approval of the Central Government signified in writing. It does not provide for altering the entity but only the name. This is also, made quite clear by the provisions of Section 23. Subsection (1) or Section 23 states that where a company changes its name in pursuance of Section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate. It would be observed that the emphasis is on the expression, "change of name". Sub-section (3) lays down that the change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name. This makes it abundantly clear that as the alteration is only in the name and not in the identity and that the statute itself grants the right to continue an existing proceeding by the old company in its new name.”

[Kalipada Sinha Vs. Mahalaxmi Bank Ltd., AIR 1966 Cal 585]

13. In the case of **W.H. Targett (India) Ltd. (supra)**[#], a Division Bench of this Court also considered the scope of Section 23 of the Companies Act, 1956 and in this case, it has been observed:-

“SECTION 23 of the Companies Act, 1956, enumerates the effect of the change of name by a company. Sub-section (3) of Section 23 of the said act contemplates that the change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings, which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”

145. Thus if in the light of aforesaid legal position the facts and circumstances of the present case are seen, then it is found that in so far as the change of share holding of applicant allocattee company is concerned, the same took place in the year 2006. Admittedly there was no bar in the letter of allocation issued by MOC in this regard and similar was the opinion of Ministry of Law and Justice. Since the change of share-holding took place prior to execution of mining lease where such a condition stood incorporated by MOC so the change in share-holding or transfer of entire share-holding from the initial promoter/directors of applicant company to a new set of directors does not impute any criminality or culpability. Since this act took place prior to execution of mining lease deeds so the facts and circumstances also does not require lifting of corporate veil to see the actual nature of transaction or to see any intention behind the impugned acts. Thus in view of the well settled position of law there was no illegality in the same.

[#] [W.H. Targett (India) Limited Vs. Mr. S. Ashraf & Ors, 2008 SCC Online Cal 384]

146. As already mentioned, the company after change of shareholding applied for various clearances including for obtaining permission for executing mining lease deeds. All such requests were made by the company in its old name. It is also not in dispute that prior approval of mining lease deeds was accorded by Ministry of Coal, Government of India in the old name of the company. It was only thereafter that the management of the company thought it appropriate to change its name. In these circumstances the subsequent change of name of the company can not bring into existence any new corporate entity or that the corporate entity known by its earlier name ceased to exist or the same resulted in legal death of the company known by its former name. It is thus crystal clear that the change of name does not affect the rights and obligations of the company or render defective any legal proceedings by or against it.

In fact, a perusal of report u/s 173 Cr.PC also shows that accused company is being prosecuted in its new name while also mentioning that the company was earlier known by another name and the said earlier name is also mentioned over there. Thus, if the company known by its earlier name ceased to exist then it will be even difficult to hold any corporate entity liable, if required, for any acts committed on its behalf during the process of allocation of coal blocks.

147. In view of my aforesaid discussion, I am thus of the considered opinion that the prosecution has clearly failed to establish even for a prima facie view ingredients of the offences u/s 420, 467,

468 and 471 IPC against either of the three accused persons i.e. A-2 Surendra Champalal Lodha A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mitra and they are accordingly discharged for the said offences.

148. I now propose to deal with the prosecution case qua the other set of accused persons i.e. A-1 M/s Topworth Urja & Metals Ltd., A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarada.

149. As regard company A-1 M/s Topworth Urja & Metals Ltd., A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarada, the allegations as mentioned in the written submissions filed on behalf of prosecution are as under:

<i>Allegations against A-1 M/s Topworth Urja & Metals Ltd.</i>	
1	<i>Vide application dated 15.01.2004 submitted false information to the Ministry of Coal claiming the sponge iron capacity of the company to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. The same false information was also provided to the 23rd Screening Committee held on 29.11.2004. (Sec.420 IPC)</i>
2	<i>Vide application dated 15.01.2004 submitted false information to the Ministry of Steel claiming the sponge iron capacity of the company to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA and thereby you dishonestly induced Ministry of Steel to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. (Sec.420 IPC)</i>
3	<i>Vide letter dated 25.10.2004 to the Ministry of Power submitted the letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was no so and thereby dishonestly induced Ministry of Power to give no objection to the allotment of coal block to Shri Virangana Steels</i>

	<i>Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. (Sec. 420 IPC)</i>
4	<i>Company alongwith its co-accused persons namely Sh. Anil Kumar Saxena @ A. K. Saxena and Sh. Manoj Maheshwari provided false information to the 28th Screening Committee claiming that company (A-1) has obtained in principle clearance from Power Finance Corporation whereas it was not so. (Sec. 420 IPC)</i>
5	<i>You vide letter dated 30.10.2004 addressed to the Ministry of Coal placed reliance on Recommendation Letter dated : 24.05.2004 issued by Govt. of Maharashtra wherein it was mentioned that CPP is under construction whereas it was no so and thereby you dishonestly induced Ministry of Coal/Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. (Sec. 420 IPC)</i>

Allegations against A-5 Anil Kumar Saxena @ A.K. Saxena

1	<i>Vide application dated 15.01.2004 submitted false information to the Ministry of Coal claiming the sponge iron capacity of the company to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. The same false information was also provided to the 23rd Screening Committee held on 29.11.2004 and thereby dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd. (Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. (Section – 420 IPC)</i>
2	<i>Vide application dated 15.01.2004 submitted false information to the Ministry of Steel claiming the sponge iron capacity of the company to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA and thereby he dishonestly induced Ministry of Steel to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. (Section – 420 IPC)</i>
3	<i>He alongwith his co-accused namely Sh. Manoj Maheshwari provided false information to the 28th Screening Committee claiming that you (A-1) has obtained in principle clearance from Power Finance Corporation whereas it was not so. (Section – 420 IPC)</i>

Allegations against A-6 Manoj Maheshwari	
1	<i>Vide letter dated 30.10.2004 addressed to the Ministry of Coal placed reliance on Recommendation Letter dated : 24.05.2004 issued by Govt. of Maharashtra wherein it was mentioned that CPP is under construction whereas it was not so and thereby dishonestly induced Ministry of Coal/Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby committed the offence of cheating punishable u/s 420 of IPC</i>
2	<i>He alongwith his co-accused Sh. Anil Kumar Saxena @ A. K. Saxena provided false information to the 28th Screening Committee claiming that company has obtained in principle clearance from Power Finance Corporation whereas it was not so and thereby dishonestly induced Ministry of Coal/Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby committed the offence of cheating punishable u/s 420 of IPC.</i>

Allegations against A-7	
1	<i>He dishonestly/fraudulently signed the letter dated 02.07.2004 with the intention of causing it to be believed that such letter has been signed and issued by the Director of M/s Shree Virangana Steels Ltd. and with the intention that the said forged letter shall be used for the purpose of cheating. In the said letter he submitted false information to the Ministry of Steel claiming the sponge iron capacity of the company(A-1) to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. Alongwith the said letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP under construction whereas it was not so, and thereby he dishonestly induced Ministry of Steel to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. By doing so, he committed the offence of forgery punishable u/s 468 of IPC</i>
2	<i>He dishonestly/fraudulently used as genuine the forged letter dated 02.07.2004 by submitted the same to the Ministry of Steel.</i>

	<i>By doing so, he committed the offence of forgery punishable u/s 471 r/w 468 of IPC.</i>
3	<i>He vide letter dated 02.07.2004 falsely pretending to be the Director of M/s Shree Virangana Steels Ltd. submitted false information to the Ministry of Steel claiming the sponge iron capacity of the company(A-1) to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. Alongwith the said letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP under construction whereas it was not so, and thereby he dishonestly induced Ministry of Steel to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. By doing so, he committed the offence of cheating punishable u/s 420 of IPC</i>
4	<i>He dishonestly/fraudulently signed the letter dated 02.07.2004 with the intention of causing it to be believed that such letter has been signed and issued by the Director of M/s Shree Virangana Steels Ltd. and with the intention that the said forged letter shall be used for the purpose of cheating. In the said letter he submitted false information to the Ministry of Coal claiming the sponge iron capacity of the company(A-1) to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. Alongwith the said letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks. By doing so, he committed the offence of forgery punishable u/s 468 of IPC</i>
5	<i>He dishonestly/fraudulently used as genuine the forged letter dated 02.07.2004 by submitted the same to the Ministry of Coal. By doing so, he committed the offence of forgery punishable u/s 471 r/w 468 of IPC.</i>
6	<i>He vide letter dated 02.07.2004 falsely pretending to be a Director of M/s Shree Virangana Steels Ltd. submitted false information to the Ministry of Coal claiming the sponge iron capacity of the company(A-1) to be 75,000 MTPA whereas the actual capacity of the Company was 60,000 MTPA. He also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd. (Now Topworth Urja & Metals Ltd.) for allocation of coal blocks.</i>

	<i>By doing so, he committed the offence of cheating punishable u/s 420 of IPC.</i>
7	<i>He forged the signatures of Sh. Shiv Kumar Aggarwal, Director of M/s SVSL upon letter dated 21.10.2004 for the purpose cheating Ministry of Coal/Screening Committee while mentioning false information therein regarding implementation of CPP. Alongwith the above letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so and thereby he committed the offence of forgery punishable under section – 468 IPC.</i>
8	<i>He used forged letter dated 21.10.2004 as genuine for the purpose cheating Ministry of Coal/Screening Committee while mentioning false information therein regarding implementation of CPP. Alongwith the above letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so and thereby he committed the offence of forgery punishable under section – 471 r/w 468 IPC.</i>
9	<i>He dishonestly/fraudulently submitted the forged letter dated 21.10.2004 to the Ministry of Coal for the purpose cheating Ministry of Coal/Screening Committee while mentioning false information therein regarding implementation of CPP. Alongwith the above letter he also furnished copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby he committed the offence of cheating punishable under section – 420 IPC.</i>
10	<i>He forged the signatures of Sh. Vimal Kumar Aggarwal, Director of M/s SVSL upon letter dated 23.11.2004 for the purpose cheating Ministry of Coal/Screening Committee falsely mentioning therein that site work for Captive Power Plant has commenced and that there is financial tie-up with Power Finance Corporation. He also relied upon the copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby he committed the offence of forgery punishable under section – 468 IPC</i>

11	<i>He used forged letter dated 23.11.2004 as genuine for the purpose cheating Ministry of Coal/Screening Committee falsely mentioning therein that site work for Captive Power Plant has commenced and that there is financial tie-up with Power Finance Corporation. He also relied upon the copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby he committed the offence of forgery punishable under section – 471 r/w 468 IPC</i>
12	<i>He dishonestly/fraudulently submitted the forged letter dated 23.11.2004 to the Ministry of coal for the purpose cheating Ministry of Coal/Screening Committee falsely mentioning therein that site work for Captive Power Plant has commenced and that there is financial tie-up with Power Finance Corporation. He also relied upon the copy of letter dated 24.05.2004 issued by Govt. of Maharashtra mentioning that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Coal/ Screening Committee to recommend Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) for allocation of coal blocks and thereby he committed the offence of cheating punishable under section – 420 IPC</i>
13	<i>He dishonestly/fraudulently forged the signatures of his co-accused Manoj Maheshwari on the letter dated 25.10.2004 with the intention of causing it to be believed that such letter has been signed and issued by Sh. Manoj Maheshwari, Director of M/s Shree Virangana Steels Ltd. and with the intention that the said forged letter shall be used for the purpose of cheating. Alongwith the said letter he submitted the letter dated 24.05.2004 issued by the Govt. of Maharashtra to the Ministry of Power wherein it was mentioned that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Power to give no objection to the allotment of coal blocks to Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) By doing so, he committed the offence of forgery punishable u/s 468 of IPC</i>
14	<i>He dishonestly/fraudulently used as genuine the forged letter dated 25.10.2004 by submitting the same to the Ministry of Power. By doing so, he committed the offence of forgery punishable u/s 471 r/w 468 of IPC.</i>
15	<i>He dishonestly/fraudulently submitted the forged letter dated 25.10.2004 to the Ministry of Power for the purpose of cheating</i>

the Ministry of Power while enclosing letter dated 24.05.2004 issued by the Govt. of Maharashtra wherein it was mentioned that CPP is under construction whereas it was not so, and thereby he dishonestly induced Ministry of Power to give no objection to the allotment of coal blocks to Shri Virangana Steels Ltd.(Now Topworth Urja & Metals Ltd.) By doing so, he committed the offence of cheating punishable u/s 420 of IPC.

150. On the other hand, Ld. Counsels for the accused persons have vehemently opposed the said allegations stating that no offence whatsoever is made out against any of the four accused persons. On behalf of A-1 company it has been submitted that mere change in the share holding or change of name of the allocatee company cannot constitute any offence as the same was not prohibited under any law or rules/regulations issued by MOC in relation to allocation of captive coal blocks. It was further submitted that the change of name or even the change of share holding was undertaken in accordance with the provisions of Companies Act, 1956. As regard the allegation that the company misrepresented its existing capacity to be 75000 MTPA, it was submitted that while the same was immaterial for the purposes of allocation of a captive coal block by Ministry of coal but even otherwise from the minutes of 28th Screening Committee, it is clear that the existing capacity was mentioned as 60000 MTPA. It was thus submitted that the earlier figure of 75000 MTPA can at best be described as an error and cannot be used so as to impute any criminality on the company. As regard the allegations regarding financial closure, it has been submitted that in none of the communications submitted by the company to MOC anything was

mentioned regarding financial arrangements with Power Finance Corporation (PFC) and in the initial application dated 15.01.2004, it was clearly mentioned by the company that it has taken financial assistance from Central Bank of India and the said fact was found to be correct during the course of investigation. It has also been submitted that even otherwise in-principle approval from PFC was not a pre-condition for allocation of coal blocks.

151. As regard any representation made to Government of Maharashtra that the captive power plant was under construction, it has been submitted that while the same was not a wrong statement, but even otherwise the previous construction of captive power plant was not a pre-condition either for Government of Maharashtra to make recommendation to MOC or for allocation of any coal block by Ministry of coal.

152. As regard A-5 Anil Kumar Saxena, it has been submitted that he was a salaried employee of the company and had submitted the application to Ministry of Coal or to other Government Departments only in his capacity as the authorized representative of the company. It has been further submitted that it is common knowledge that with technical know-how capacity of a 60000 MTPA, sponge iron plant could have been increased to 75000 MTPA and in fact 28th Screening Committee before making allotment of coal block considered the existing capacity only as 60000 MTPA. It has been further submitted that though a presentation on behalf of the company was made before 23rd Screening Committee but the

Screening Committee chose to allocate some other coal blocks than the one for which company had made presentation and had requested for allotment in its application dated 15.01.2004. It has been further submitted that it was the proposed capacity of 3 lacs MTPA of sponge iron plant and 25 MW capacity of captive power generation plant which was of consideration to MOC and the existing capacity of the sponge iron plant was of no consequence.

153. As regard A-6 Manoj Maheshwari similar arguments as were made on behalf of company were made and it was further stated that none of the representations made at any point of time can be attributed to him as except for appearing before the 28th Screening Committee, he played no other role in the entire process.

154. On behalf of A-7 Anand Nand Kishore Sarda, it was again stated that neither the existing capacity of the sponge iron plant nor any financial arrangement with PFC was of any consequence or of relevance to MOC in making allocation of any coal block in favour of the company. It has been also submitted that A-7 Anand Nand Kishore Sarda in fact left the company prior to 28th Screening Committee meeting and thus at the time of allocation of impugned coal block he was not associated with the same in any manner. It has been further submitted that in none of the three letters which as per the case of prosecution were submitted by A-7 Anand Nand Kishore Sarda by forging the signatures of other persons, any false fact has been pointed out and even the prosecution has been unable to put forth any motive to A-7 Anand Nand Kishore Sarda, for forging

the signatures upon the said letters. The report of handwriting expert was also stated to be not reliable in fixing any responsibility upon the accused.

155. I have carefully perused the record.

156. At the outset, I may state that the facts and circumstances of the case when seen in the light of the submissions made, clearly raises a number of triable issues which can more appropriately be decided during the course of trial only when both the parties will get a chance to lead their evidence and especially when the accused persons will get a chance to cross-examine the prosecution witnesses. Certainly, at this stage of the matter a prima facie view is to be only taken and the matter need not be dealt with in detail, lest it may prejudice the parties during the course of trial.

157. In **2000 SCC (Cri.) 981 State of Tamil Nadu Vs. J. Jayalalitha**, it was held by Hon'ble Apex Court that: -

“This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are “groundless” or whether “there is ground for presuming that the accused has committed the offences.” Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial.”

158. In the case of **Kanti Bhadra Shaha Vs. State of West Bengal (2000) 1 SCC 722**, the Hon'ble's Supreme Court has even

gone to the extent of holding that there is no legal requirement that the Trial Court should write an order showing the reasons for framing a charge. It is quite unnecessary to write a detailed order if the proceedings do not culminate. This was considered to be a measure to avert all roadblocks causing avoidable delays.

159. Reference may also be made to the case of **State Vs. S Bangarappa 2001 CriL.J. Page 111**, where the Apex Court emphasized the need to have the limited exercise during the stage of framing charge. The court held that: -

“Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. (vide State of M.P. Vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439).”

160. Accordingly, in view of the well settled position of law, I shall be briefly highlighting only some such triable issues which in my considered opinion goes to show that there indeed exists a prima facie case warranting framing of charges against these four accused persons.

161. Admittedly, there has been a consistent stand taken by the company that its existing capacity is 75000 MTPA. No doubt in the minutes of 28th Screening Committee meeting the said existing capacity is mentioned as 60,000 MTPA. Though nothing is ascertainable from the record as to in what circumstances the

existing capacity came to be mentioned in the minutes of the Screening Committee as 60,000 MTPA when in the application the same was mentioned as 75,000 MTPA. The statement of Chairman Screening Committee Sh. P.C. Parekh also does not throw any light on this aspect.

162. Be that as it may, in so far as the representation made before the Screening Committee, qua existing capacity of the sponge iron plant is concerned, it is clear that the correct figures of the existing capacity of the plant was mentioned in the minutes of 28th Screening Committee. In these circumstances I am of the considered opinion that, benefit ought to be extended to the accused persons, in accordance with the well settled principle, that when the facts are explainable on two views, then the view favouring the accused ought to be accepted. It has to be thus presumed that before the screening committee correct figures of existing capacity of the plant was disclosed and the same was accordingly considered. Thus, in so far as the case of prosecution regarding making of representation to MOC with respect to the existing capacity of the sponge iron plant is concerned, no prima facie case is made out warranting framing of charges against any of the accused persons.

163. However, at the same time a similar representation regarding 75000 MTPA existing capacity was also made to Ministry of Steel as well as to Government of Maharashtra. The said fact was repeated a number of times on behalf of the company in a number of communications and the explanation now being furnished on behalf

accused persons is also of no help at least at this stage. While on the one hand the company has stated the same to be an error but at the same time, it has also been stated on behalf of other accused persons that with technical knowledge the existing capacity which was though 60000 MTPA could have been increased to 75000 MTPA. It has also been argued that the existing capacity was of no use in making allocation of captive coal blocks and it was rather the capacity of the coal block in question which was relevant. However at this stage, it can not be accepted that the existing capacity was of no consequence either to Ministry of Steel or to Government of Maharashtra or even to MOC in allocating a coal block in favour of an applicant company and thus mentioning of any figure is inconsequential. In fact prima facie it is clear that there was a misrepresentation made on behalf of the applicant company and it is also a fact that on the basis of applications and other correspondence submitted by the company recommendation in favour of the company was made both by Ministry of Steel and Government of Maharashtra to MOC.

164. Thus, in my considered opinion the overall facts and circumstances warrants that prosecution deserves a chance to lead its evidence to prove that there was a misrepresentation on the part of applicant company which induced both Ministry of Steel and Government of Maharashtra in making a recommendation in favour of the applicant company to MOC. In my considered opinion, any conclusion, if drawn to the contrary, at this stage of the matter will be

purely a conclusion based on conjectures and surmises. It also cannot be concluded at this stage that the figures of existing capacity of sponge iron plant was inconsequential to all such entities, i.e. to Ministry of steel and to Government of Maharashtra.

165. Before adverting further, I will be worthwhile to mention that 22nd screening committee had prescribed guidelines for allocation of captive coal blocks titled "Additional Guidelines for allocation of Captive Blocks and guidance to applicants." (Available in D-38).

The relevant portion of the said guidelines read as under:

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

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

- *Certificate of registration showing that the applicant is a Company registered under S.3 of the Indian Companies Act. This document should be duly signed and stamped by the Company Secretary of the company.*
- *Document showing the person/s, who have been authorized to sign on behalf of the applicant Company while dealing with any or all matters connected with allocation of the sought coal block/s for captive mining with the Government/its agencies. This document should be duly signed and stamped by the Company Secretary of the Company.*
- *Certified copy of the Memorandum and Articles of Association of the applicant company and the last 3 years audited annual accounts/reports.*
- *Line of business and track record of the applicant company.*

- The status and stage of the proposed end use project for which the coal block is sought in terms of land, finance, equipment, other required inputs, technical know how etc. The applicant may also submit a project report. If such a project report is appraised by a lender the same may also be submitted.
- Detailed schedule of implementation for the proposed end use project and the proposed coal mining development project in the form of bar charts of Harmonographs.
- Details of coal linkages applied for or granted to the applicant company including those for the end use project for which the coal block is sought.
- Scheme for disposal of unusable containing carbon obtained during mining of coal or at any stage thereafter including washing. This scheme must include the disposal/use to which the midlings, tailings, rejects etc from the washery are proposed to be put. This is intended to avoid the applicant approaching the Government at a latter stage for seeking permission to sell such materials.

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

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

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

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

1. *Main factors to be considered:-*

- *Suitability of coal grade in the block.*
- *Techno economic viability/Feasibility of the project.*
- *Status/stage/level of progress and state of preparedness of the project.*
- *Track record of the applicant.*
- *Recommendation of the concerned Administrative Ministry and the views of the concerned State Govt.*
- *The views of the concerned State Governments.*
- *Matching of requirement of the applicant with the mineable reserves available.*

2. *All factors above being equal, from the coal mining development and conservations point of view, the larger the per annum extraction planned the higher shall be the priority.*

3. *All factors above being equal, order of priority based on status of the applicant would be as under:*

- i. *Central Govt, PSU for captive use.*
- ii. *State Govt. PSU for captive use.*
- iii. *Private sector captive use.*

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

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

(Emphasis supplied by me)

166. A bare perusal of the said guidelines clearly show that documents relating to status or stage of proposed end use project qua which the allocation of coal block is sought in terms of land, finance, equipments, other required inputs and technical know how etc were to be filed alongwith the application form. The applicants were also required to submit a project report beside submitting detailed schedule of implementation of the proposed end use project

and the proposed coal mining development project. Similarly the interse priority guidelines also stated that the status/stage/level of progress and stage of preparedness of the project were relevant factors to be considered. Various other factors such as suitability of the coal grade in the block, techno-economic viability/feasibility report of the project and track record of the applicants were some other relevant factors to be considered by the Screening Committee, beside recommendation of the concerned Administrative Ministry and that of the State Government.

It was further stated in Clause (b) of interse guidelines that all factors above being equal from the coal mining development and conservation point of view, the larger the per annum production, the higher shall be the priority.

167. The other allegation against the accused persons is that before the 28th Screening Committee, the company representatives stated that in-principle approval from PFC has been obtained and accordingly the said fact was duly mentioned in the minutes of the committee. In response to the said allegation, it has been averred by the accused persons that their application for financial assistance was short-listed by PFC and the same should be treated as in-principle approval. It has been also averred that obtaining of any such in-principle approval from PFC was never a pre-condition. While referring to minutes of 22nd and 23rd Screening Committee it has been alleged that the condition of having prior financial closure before allocation of a captive coal block was done away by MOC and thus

such a representation was of no consequence. In this regard, it will be however pertinent to refer to the statements of two prosecution witnesses, who were the officers of PFC namely PW-35 Rajiv Ranjan Jha and PW-37 Chinmoy Gangopadhyay. In their statements U/S 161 Cr.PC recorded during the course of investigation, they both stated that no in-principle approval was ever granted to the company by PFC. In fact from the documents collected in this regard during the course of investigation, it is evident that the company was only short-listed by PFC for further enquiry. Thus, it is prima facie clear that the claim made by the company that they have obtained in-principle approval from PFC was wrong. In these circumstances the other claim of the accused persons that they had obtained in-principle approval from Central Bank of India and that necessary documents in this regard were also submitted to MOC, can also be of no help at this stage of the matter, as even the letter of Central Bank of India mentions as a pre-condition that one or more banks as may be deemed necessary be inducted as a consortium to take up the balance requirement both for project & working capital finance. It is thus clear that Central Bank of India was only partly financing the project and for financing the remaining project the company was required to approach other banks or financial institutions. In fact the letter dated 24.05.2004 sent by Government of Maharashtra to MOC recommending M/s SVSL for allocation of coal blocks not only states that CPP is under construction but also states that the company has since achieved financial closure. Thus prima facie it is clear that the company represented before Government of Maharashtra also that

financial closure has been achieved and which fact, as already discussed above, was not correct.

168. Thus, it is prima facie clear that all such claims cumulatively had the effect of showing a higher level of preparedness qua status and stage of the proposed end use project for which allocation of a coal block was sought for. Thus prima facie dishonest intention in making such wrong claims is writ large on the face of record. The intention prima facie was to ensure that the application of the applicant company is given a higher priority by the Screening Committee as compared to the applications of other companies applying for the allocation of said coal blocks. The Screening Committee, Ministry of Coal was prima facie made to believe in such false claims and thereby showing higher level of status/stage of preparedness towards establishing the end use project.

169. Moreover, at this stage of the matter what we are primary concerned is whether such a representation was made, and if yes, whether the same was correct or not. In this regard I may also mention that the accused persons cannot be permitted to blow both hot and cold with respect to minutes of 28th Screening Committee meeting. On the one hand they are relying on the said minutes by stating that the Screening Committee recorded the actual existing capacity as 60000 MTPA and benefit thereof is being extended to them but at the same time they cannot now move away from the other facts recorded in the minutes that the company represented before the screening committee that they have obtained in-principle

approval from PFC. In these circumstances the effect of such a misrepresentation in the light of arguments of Ld. Counsel for the accused persons that achieving financial closure was no longer a pre-condition for allocation of coal block, in my considered opinion can be better looked into during the course of trial only. Irrespective of the fact that achieving financial closure was a pre-condition for allocation of coal block, or not, the fact remains that the applicant company prima facie presented a better stage of preparedness qua its existing capacity as well as financial capacity/preparedness and the screening committee did consider the same. Any further discussion on the said issue at this stage may, however prejudice the parties during the course of trial. The very mentioning of the said fact in the minutes itself prima facie show that the Screening Committee while making recommendation for allocation of coal block in favour of the applicant company chose to rely on the said claims of the company.

170. As regard the claim of A-5 Anil Kumar Saxena that since Screening committee did not allot the coal blocks as were mentioned in the initial application dated 15.01.2004 submitted by him, so allotment of other coal blocks clearly show that screening committee did not rely on the application dated 15.01.2004, it will be suffice to state that the said claim is *per-se* not tenable. Firstly, all the accused persons representing M/s SVSL were not only acting in tendem but in fact the entire matter be it before MOC or Ministry of Steel or Government of Maharashtra proceeded on the basis of application dated 15.01.2004 submitted to them on behalf of Company M/s SVSL

only. Moreover the company subsequently submitted another application dated 04.12.2004 (*available at page 3 in D-3*) followed by another application dated 31.01.2005 (*available at page 5 in D-3*) requesting for allotment of Marki Mangli-II, Marki Mangli-III and Marki Mangli-IV coal blocks also, and in the said applications reference was made to the earlier application dated 15.01.2004 and another application dated 08.01.2005 submitted by the company.

171. As regard the submissions of A-7 Anand Nand Kishore Sarda that he was not associated with the company at the time of 28th Screening Committee meeting or at the time of allocation of coal blocks, it will be suffice to state that during the period when he was associated with the affairs of the company, he chose to submit various communications on behalf of the company to different Government Departments i.e. Ministry of Steel, Ministry of Power, MOC and Government of Maharashtra. It was found that he had forged the signatures of different officers of the company on the said letter beside also representing himself to be a director of the company even though he was not so. The handwriting expert's report obtained by the CBI during the course of investigation concluded the said fact. Thus, how reliable the said handwriting expert's report is, cannot be and need not be delved into at this stage of the matter. The prosecution clearly deserves a chance to lead their evidence. It is in these circumstances only the other arguments of Ld. Counsel for accused that there was no motive on the part of A-7 Anand Nand Kishore Sarda to forge the said signatures or to misrepresent himself

as director in the said communications also need not be gone into at this stage of the matter, for the same can be better appreciated and answered after both the sides gets an opportunity to lead their evidence and especially when the accused persons get a chance to cross examine the prosecution witnesses. Similarly, the claim of A-7 Anand Nand Kishore Sarda that the facts as were stated in the said representations or letters were already the stand of the company as communicated to different Government departments also cannot prima facie be of any help to him at this stage of the matter, for the correctness of the said facts is also yet to be established during the course of trial. Similarly, the argument that the claim of company that its proposed captive power plant (CPP) was under construction was not a false claim, since from the balance sheets of the company the expenditure incurred towards establishing the captive power plant (CPP) is ascertainable, can also be in my considered opinion, better looked into during the course of trial only. The said issue will certainly involve an in-depth reading and analysis of the balance sheets vis-a-vis the claim of the company that the CPP is under construction.

The aforesaid facts however prima facie shows that A-7 Anand Nand Kishore Sharda forged various letters as mentioned above and used them as genuine for the purpose of cheating.

172. Thus in view of my aforesaid discussion, it is clear that misrepresentations were indeed made on behalf of the applicant/accused company M/s Topworth Urja & Metals Ltd. [Formerly known as Shree Virangana Steels Ltd.] by A-5 Anil Kumar

Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarada, and which acts prima facie induced the screening committee and finally MOC to allocate the three coal blocks in favour of A-1 company M/s TUML. From the very nature of acts, it is also prima facie clear that they all were acting in tandem with the sole object of procuring allocation of captive coal blocks in favour of applicant/accused company. Similarly the existence of a criminal conspiracy in between the various accused persons is prima facie evident from the overall facts and circumstances of the case including the acts undertaken by various accused persons. The law does not require that each and every accused person participating in the criminal conspiracy should have actively participated in all the acts constituting the criminal conspiracy. What is required is whether all the accused persons were acting in furtherance of the common intention shared by them towards achieving the common objective of the criminal conspiracy. Prima facie the said fact is clearly evident from the acts undertaken by the accused persons. Thus the claims of various accused persons that they were not involved in one or the other acts leading to allocation of captive coal blocks or the claim of A-7 Anand Nand Kishore Sarada that he had dis-associated himself from the company prior to allocation of coal blocks by MOC is of no consequence.

173. Thus without going into any further merits and demerits of the case, lest the same may prejudice the parties during the course of trial, I am of the considered opinion that prima facie offence u/s 120-B IPC and offence u/s 120-B/420 IPC

alongwith substantive offences thereof are made out against A-1 M/s Topworth Urja & Metals Ltd., A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda, warranting framing of charges for the said offences against them. As regard A-7 Anand Nand Kishore Sarda, charge for the offence u/s 468/471 IPC is also made out against him and consequently charge for the offence u/s 120-B/468/471 IPC is also prima facie made out against A-1 M/s Topworth Urja & Metals Ltd., A-5 Anil Kumar Saxena @ A.K. Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda.

174. However from the overall facts and circumstances of the case, it is clear that there was no meeting of mind between the two sets of accused persons. The only piece of evidence put forth by the prosecution in this regard is that A-2 Surendra Champalal Lodha and A-6 Manoj Maheshwari, both remained directors of accused company together for a period of 14 days when during the period the shareholding of the company got transferred from the existing shareholders to the new share-holders. However in the absence of any evidence or allegation relating to any particular act having been undertaken by A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra during the time when the common intention leading to hatching of criminal conspiracy amongst the other accused persons subsisted much less any act having been undertaken by them towards achieving the common object of the criminal conspiracy, no presumption can be drawn that there was any

meeting of mind in between the two set of accused persons. In fact a perusal of the prosecution case show that the common object of the criminal conspiracy alleged to have been entered into by A-1 M/s TUML, A-5 Anil Kumar Saxena, A-6 Manoj Maheshwari and A-7 Anand Nand Kishore Sarda was to procure allocation of captive coal blocks in favour of accused company. Thus as A-2 Surendra Champalal Lodha and his associates entered into the scene after the allocation of captive coal blocks was already made in favour of accused company by MOC so the said conspiracy had already come to an end. Thus it also can not be argued much less to presume that A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra joined the bandwagon of criminal conspiracy at a later stage when the other accused persons had de-boarded.

175. Thus in my considered opinion, prosecution has also failed to prove even for a prima facie view the offence of criminal conspiracy i.e. under Section 120-B IPC against A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra and accordingly they are discharged for the said offence also.

176. The three accused persons i.e. A-2 Surendra Champalal Lodha, A-3 Anil Omprakash Nevatia and A-4 Swapan Kumar Mittra are accordingly discharged in the present case for all the offences.

177. In so far as the allegations regarding excess mining of

coal from the impugned coal blocks by the company or exporting more than the permissible quantity of the power generated in the captive power plant or violation of the provisions of the Mines Act, 1952, are concerned, the final report u/s 173 Cr.PC itself states that necessary action under the relevant provisions of law has been recommended to the concerned authorities.

178. In these circumstances, I do not wish to go into the details of the said issues as the same will be dealt with in accordance with law in the appropriate proceedings, whenever the same will be initiated against the accused persons.

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

**BHARAT
PARASHAR** Digitally signed by
BHARAT PARASHAR
Date: 2020.09.04
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**ANNOUNCED IN THE OPEN COURT
TODAY ON 04.09.2020**

**(BHARAT PARASHAR)
SPECIAL JUDGE, CBI (PC ACT)
RADC/ NEW DELHI**

CC No. 290/2019 (Old CC No. 04/18)
RC No. 219 2015 (E) 0006
Branch: CBI/EO-I, New Delhi.
CBI vs M/s Rungta Projects Ltd. & Ors.,
U/s 120-B r/w Section 420/468/471 IPC and substantive offences thereof.

04.09.2020.

Matter taken up today in compliance of Office Order No. E-10559-10644/Power Gaz/RADC/2020 dated 28.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020, Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 and Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020, No. 26 /DHC/2020 dated 30.07.2020, No. 322/RG/DHC/2020 Dated: 15.08.2020 and 417/RG/DHC/2020 dated 27.08.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: Ld. Senior PP Sh. A.P. Singh, Ld. DLA Sh. V.K. Sharma and Ld. DLA Sh. Sanjay Kumar for CBI along with Holding IO Dy. SP. Bodh Raj Hans.
Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Ld. Counsel Sh. Rajesh Khanna for A-1 to A-5.

Ld. Counsel Sh. Rajesh Khanna for accused persons submits that in compliance of orders dated 22.07.2020 and 18.08.2020 of this Court, now he has received response from IO/CBI, through e-mail, about the purpose for which some of the witnesses have been cited in the list of prosecution witnesses, even though their statements were not recorded during investigation.

Arguments on the point of Charge have been heard as advanced by Ld. Counsel Sh. Rajesh Khanna.

Arguments in rebuttal have also been heard as addressed by Ld. Senior PP Sh. A.P. Singh on behalf of Prosecution.

Ld. Senior PP Sh. A.P. Singh submits that he intends to file written submissions in support of his arguments.

Heard. Considered. Allowed.

Matter be now put up on 23.10.2020 for filing of written submissions, if any and for consideration.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADDC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhania.

BHARAT PARASHAR Digitally signed by BHARAT PARASHAR
Date: 2020.09.04 14:26:28 +05'30'

**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
04.09.2020.**

**New CC No. 98/2019 (old CC No. 09/18)
RC NO. 221 2014 E 0009
Branch: CBI EO-III New Delhi
CBI Vs. M/s Topworth Urja & Metals Ltd. & Ors.
U/s. 120-B r/w 420, 465, 468 & 471 IPC**

04.09.2020.

Matter taken up today in compliance of Office Order No. E-10559-10644/Power Gaz/RADC/2020 dated 28.08.2020 and also in continuation to orders No.819-903/DJ/RADC/2020 dated 16.05.2020, No. E1792-1876/DJ/RADC/2020 dated 22.05.2020, No. E-2574-2639/DJ/RADC/2020 dated 29.05.2020, No. E-3943-4029/DJ/RADC/2020 dated 13.06.2020, No. E-4121-4205/DJ/RADC/2020 dated 15.06.2020 and No. Power/Gaz./RADC/2020/E-5577-5661 Dated 29.06.2020, Power/Gaz./RADC/2020/E-6836-6919 Dated 14.07.2020, Power/Gaz./RADC/2020/E-7784-7871 dated 30.07.2020 and Power/Gaz./RADC/2020/E-8959-9029 dated 16.08.2020 of Ld. District & Sessions Judge-Cum-Spl. Judge (PC ACT) (CBI) Rouse Avenue District Court, New Delhi.

The present matter is being taken up today through video conferencing as regular functioning of the Courts at District Courts has been suspended since 23.03.2020 vide office orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020, No.R-77/RG/DHC/2020 dated 15.04.2020, No. R-159/RG/DHC/2020 dated 02.05.2020, No. R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.17/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020, No. 24/DHC/2020 dated 13.07.2020, No. 26 /DHC/2020 dated 30.07.2020, No. 322/RG/DHC/2020 Dated: 15.08.2020 and 417/RG/DHC/2020 dated 27.08.2020.

The hearing of the present matter is being taken up via Cisco WebEx Platform in the presence (onscreen) of:

Present: Ld. DLA Sh. Sanjay Kumar, Ld. DLA Sh. V.K. Sharma and Ld. Senior PP Sh. A.P. Singh for CBI along with IO SP S.N. Khan. Advocate Sh. Akshay Nagarajan on behalf of Ld. Special PP Sh. R.S. Cheema.

Advocate Sh. Kunal Sharma for A-1 M/s Topworth Urja & Metals Ltd.

Ld. Counsels Sh. Pramod Kumar Dubey and Sh. Anurag Andley for A-2 Surendra Champalal Lodha @ Surendra C. Lodha.

Ld. Counsels Sh. Hemant Shah and Sh. Anuj Tiwari for A-3 Anil Kumar Omprakash Nevatia.

Ld. Counsels Sh. Ratnesh Deo and Sh. Anuj Tiwari for A-4 Swapan Kumar Mittra @ S.K. Mitra.

Ld. Counsel Sh. R.S. Kundu for A-5 Anil Kumar Saxena @ A.K.Saxena.

Ld. Counsel Sh. Ashim Vachher for A-6 Manoj Maheshwari.

Ld. Counsels Sh. Shyam Dewani and Sh. Pankaj Kapoor for A-7 Anand Nanad Kishore Sarda.

Vide my separate Order on Charge of today's date, accused persons i.e. A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mittra @ S.K. Mitra have been discharged and formal charges are ordered to be framed as against other accused persons i.e. A-1 M/s Topworth Urja & Metals Ltd (through its authorized representative), A-5 Anil Kumar Saxena @ A.K.Saxena, A-6 Manoj Maheshwari and A-7 Anand Nanad Kishore Sarda, for the offences as detailed in today's Order on Charge.

In terms of Section 437-A Cr. PC, the accused persons i.e. A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mittra @ S.K. Mitra are directed to execute bail bonds in the sum of Rs. 50,000/- each with one surety in the like amount, to appear before the Appellate Court as and when Appellate Court issues notice in respect of any Appeal or Petition filed against today's Order on Charge and the said bail bonds shall be in force for six months.

Ld. Counsels for accused persons seek some time to furnish bail bonds stating that due to prevailing Pandemic it is not feasible for accused persons to arrange sureties and tender bonds physically before this Court.

Heard. Considered.

In terms of Hon'ble High Court Order bearing No. 417/RG/DHC/2020 dated 27.08.2020 and Order No. E-10559-10644/Power Gaz/RADC/2020 dated 28.08.2020 of Ld. District and Sessions Judge-cum-Spl. Judge (PC Act) (CBI), Rouse Avenue District Court, New Delhi, the undersigned

is to hold physical hearing on 05.09.2020, 10.09.2020, 18.09.2020, 24.09.2020 and 29.09.2020 at Rouse Avenue District Court, New Delhi.

Accordingly, Ld. Counsels for A-2 Surendra Champalal Lodha @ Surendra C. Lodha, A-3 Anil Kumar Omprakash Nevatia and A-4 Swapan Kumar Mitra @ S.K. Mitra are directed to appear on 10/09/2020 for tendering the bonds u/s 437-A Cr.PC.

Matter be now put up on 28.09.2020 for framing of formal charges against accused persons i.e. A-1 M/s Topworth Urja & Metals Ltd, A-5 Anil Kumar Saxena @ A.K.Saxena, A-6 Manoj Maheshwari and A-7 Anand Nanad Kishore Sarda.

A digitally signed copy of this order is being sent to Sh. Mukesh JJA, Computer Branch, RADC via WhatsApp for uploading it on the official website of Delhi District Courts.

A copy of order is being retained, to be placed in the judicial file as and when normal functioning of the courts is resumed.

The present order has been dictated on phone to Steno Pawan Singhania.

BHARAT
PARASHAR

Digitally signed by BHARAT
PARASHAR
Date: 2020.09.04 14:25:53
+05'30'

**(Bharat Parashar)
Special Judge, (PC Act)
(CBI), Court No. 608
Rouse Avenue Court
New Delhi
04.09.2020.**