

**IN THE COURT OF SH. ARUN BHARDWAJ,
SPECIAL JUDGE, (PC ACT) (CBI),
COAL BLOCK CASES-01, RADC, NEW DELHI.**

**CNR No. DLCT11-000923-2019
CC No. 238/2019 (Old CC Nos. 8550/2016 & 09/15)
RC No. 221 2014 (E) 0015
Branch: CBI/SPE/EO-III/New Delhi
CBI Vs. M/s DOMCO Pvt. Ltd. & Ors.
U/S. 120-B/420 IPC**

In the matter of:

Central Bureau of Investigation (CBI)

Vs.

- (1) M/s DOMCO Pvt. Ltd.
(Earlier known as M/s DOMCO Smokeless Fuels Pvt. Ltd.)
through its Managing Director Binay Prakash
Address: 403, Commerce House,
Sharda Babu Street,
Ranchi-834001 (Jharkhand) (A-1)**
- (2) Binay Prakash (Managing Director)
S/o Late Sh. Ram Chandra Prasad
Address: Prakash Kunj, Booty Road,
Bariatu, Ranchi – 834009 (Jharkhand) (A-2)**
- (3) Vasant Diwakar Manjrekar (Director)
S/o Late Sh. Diwakar Sankar Manjrekar
Address: Flat No 301, Tower-17,
Amonora Park Town,
Hadapsar Kharadi Bypass Road,
Pune, Maharashtra-411028 (A-3)**

- (4) Paramananda Mondal (Director)
S/o Late Sh. Sahadev Mondal
Address: Ashwani Dham,
Swami Bishnupuri Marg,
Burdwan Compound, Ranchi-834001 (A-4)
- (5) Shukdeo Prasad
S/o Late Sh. Sunder Prasad
Address: Ward No. 27,
behind Alok Bharti School,
Hati Khana Campas, Bettiah,
District. West Champaran,
Bihar-845438

(DISCHARGED VIDE ORDERS DATED 25.01.2017)

- (6) Manoj Kumar Gupta (C.A.)
S/o Late Sh. Lochan Ram Shaw
Address: 336, Canal Street, Block B,
5th floor, Lake Town,
Kolkata-700048 (A-5)
- (7) Sanjay Khandelwal (C.A.)
S/o Late Sh. Bankey Bihari Khandelwal
Address: 118, Sarat Chatterji Road,
Kolkata – 700089 (A-6)

Chargesheet filed on : 22.12.2015
Judgment reserved on : 04.09.2021
Judgment announced on : 14.09.2021

APPEARANCE:

Ld. Senior Advocate/Special PP Sh. R.S. Cheema along
with Ld. DLA Sh. Sanjay Kumar, Ld. ALA Sh. V.K.
Sharma, Ld. Senior PP Sh. A.P. Singh and Ld. Counsel

Ms. Tarannum Cheema for CBI along with IO Inspector Pawan Kumar Kaushik.

Ld. Counsel Sh. Rahul Tyagi for A-1 to A-4.

Sukhdeo Prasad who was A-5 in the chargesheet is already discharged vide orders dated 25.01.2017.

Ld. Counsel Sh. Rajeev Mohan for A-5.

Ld. Counsel Sh. Mayank Tripathi for A-6.

J U D G E M E N T

1. Chargesheet: - A-1 company had given applications dated NIL to Ministry of Coal (hereinafter referred as MoC) and Ministry of Steel (hereinafter referred as MoS) for captive coking block mentioning that the company planned to erect a pig iron plant of two lakh tonnes per annum capacity near Kuliadih Railway Station on Tata Nagar-Badampahar Branch line of South-Eastern Railway – Rairangpur, District Mayurbhanj, Orissa and therefore, the company requires a captive coking coal block of 30 million tonnes (MT) reserves to produce two lakh tonnes of pig iron annually. The company proposed to mine the coal in Lalgah Block of West Bokaro coalfield having reserves of 30-35 MT to meet their need for 30 years by opencast as well as by underground methods either simultaneously or in phases, depending upon detailed geology. Therefore, the company requested to allot the Lalgah Block of West Bokaro Coalfield, District Hazaribagh, Bihar for captive use.

2. The application of the company was put up in MoS on

02.08.2000 and Sh. A.C.R. Das, the then Deputy Industrial Advisor, vide letter dated 23.11.2000 called upon the company to furnish actual status of implementation of project and steps taken towards setting up of plant.

3. This letter of MoS was replied on 12.12.2000 by A-2, MD of A-1 company who dishonestly furnished the following false information: -

“(i) So far, 142 acres of land have been acquired/allotted to the company. However, on the said date, the said land was in the name of another company namely M/s Orissa Oil Industries Limited.

“(ii) With regard to Means of Financing, Debt and Equity and Financial Tie-Up, it was mentioned that arrangements for promoters’ contribution of 26% of 30 crores Equity have been made whereas at that time, as per balance sheets of the company submitted in the office of Registrar of Companies (RoC), the net worth of A-1 company as on 31.03.2000 was Rs. 1,16,58,379/- and the net worth of A-1 company as on 31.03.2001 was Rs. 1,61,59,801/-.”

4. After examining the said letter of A-1 company, MoS, vide its letter dated 15.01.2001 called upon the company to furnish additional information including documentary evidence of allotment of land.

5. A-2, MD of A-1 company, vide letter dated 05.02.2001, dishonestly submitted false information to MoS mentioning that plant will be located on private land near Rairangpur measuring 142 acres and enclosed schedule of land and map with the said letter. However, this land was never acquired/allotted to A-1 company and was in the name of M/s Orissa Oil Industries Ltd.

6. Further, it is alleged that A-2 MD of A-1 company conspired

with Sukhdeo Prasad (originally A-5 in the chargesheet), Manager of M/s Orissa Oil Industries Limited and got purportedly signed MoU dated 11.10.2000 for selling aforesaid 142 acres of land of M/s Orissa Oil Industries Limited situated at Rairangpur, Orissa. As per MoU, Sukhdeo Prasad (originally A-5 in the chargesheet), was the General Power of Attorney (GPA) of M/s Orissa Oil Industries Limited for selling the land in question. Without knowledge of Directors of M/s Orissa Oil Industries Limited, Sukhdeo Prasad (originally A-5 in the chargesheet), provided copies of land documents which were submitted with MoS and MoC for securing coal block.

7. There was no precedence of physical inspection of the information given by the applicant companies and therefore, relying on the false information, dishonestly given by A-2, MD of A-1 company, MoS recommended vide OM dated 18.04.2001, allocation of Lalgahar coking coal block in favour of A-1 company. It was mentioned in the OM that the company has furnished details regarding effective steps taken, financial strength etc.

8. The charge-sheet mentions that, if the company had not provided false information to MoS, no recommendation to MoC would have been possible in its favour.

9. MoC, vide letters dated 11.08.2000 and 16.10.2002 called upon the company to furnish information including mobilization of funds, project's cost, financial tie up, economic viability and project profile.

10. In response to the said letter of MoC, A-2, MD of A-1 company, vide letter dated 07.11.2002 provided certain documents including Auditor's Certificate issued by A-5, Proprietor, Chartered Accountants M/s M. Kumar & Associates and a document signed by A-2, MD of A-1 company showing the net worth of company as on 31.10.2002 as Rs. 19.42 crore. However, as per balance sheets of the company submitted to RoC, the net worth of company as on 31.03.2002 was Rs. 2,46,68,615/- and the net worth of A-1 company as on 31.03.2003 was Rs. 2,39,72,811/-. Therefore, A-2, MD of A-1 company connived with A-5, who was the company's Auditor prior to that period and after allocation of coal block in favour of company and submitted false documents showing inflated net worth of the company.

11. As per charge-sheet, A-3 one of the Directors of the company attended 19th Screening Committee meeting along with A-5, CA and they signed the attendance sheet as Director and "Sr. Engineer" of the company respectively. They dishonestly intimated Screening Committee that the company has already acquired 150 acres of land for their pig iron plant at Rairangpur, whereas the said land was never acquired/purchased or allotted in favour of A-1 company and was in the name of M/s Orissa Oil Industries Limited. The Screening Committee specifically noted in minutes of the meeting that the party has intimated that 150 acres of land for their pig iron plant at Rairangpur is already acquired. During the 19th Screening Committee meeting held on 26.05.2003, Lalgah (North) Block was identified for prospecting in favour of A-1 company for meeting coal requirement for setting up a new pig

iron plant at Rairangpur, District Mayurbhanj, Orissa. It was also decided that if the prospecting results show open cast mining, then the block cannot be allocated for mining as requirement of 0.5 MTPA was less than 1MTPA provided in the guidelines for captive mining block.

12. The decision of the Screening Committee that it has been decided to identify Lalgah (North) Block was informed to A-1 company by MoC vide letter dated 25.07.2003. The company was also called upon to provide certain information, including balance sheets of the last three years along with latest Auditor's report. A-1, A-4 (another Director of company) and A-6, Proprietor CA M/s Sanjay Khandelwal and Company connived with each other and furnished balance sheet of the years ending 31.03.2000, 31.03.2001 and 31.03.2002 with inflated figures, certified by A-4 and audited by A-6 to MoC vide letter dated 16.08.2003 written by A-2.

13. MoC vide letters dated 24.11.2003 and 27.05.2004 called upon A-1 company to furnish write up on the status of the project w.r.t. land, clearance, equipments, financing (Financial Closures) etc and expansion programme of the company, if any. A-2 in response sent letter dated 23.07.2004 and submitted that "We having (sic) 200 acres of land" and submitted documents of land in Oriya language which were in the name of M/s Orissa Oil Industries Limited.

14. After carrying out prospecting, Central Mine Planning and Design Institute Limited (CMPDIL) informed MoC, that it may not be possible to operate open-cast mine of 1MT capacity with these reserves.

15. During the 27th Screening Committee meeting, it was informed to the Committee that guidelines pertaining to minimum production from open cast mine (1MT) and underground mine (0.25 MT) have been done away with and it is the geology and geography of the block, which will determine the mine capacity among the mines including in captive list. These minutes were approved by Sh. P.C. Parekh, the then Secretary (Coal) on 25.03.2005 and were confirmed on 15.04.2005 during 28th meeting of Screening Committee.

16. Vide letter dated 08.07.2005, MoC informed A-1 company that the Central Government has decided to allocate the Lalgah (North) Coal Block to meet the requirements of their proposed pig iron plant at Rairangpur in the District Mayurbhanj, Orissa.

17. After securing coal block for prospecting in 19th Screening Committee meeting, A-2 entered into an agreement dated 27.03.2004 which was executed between A-2, Smt. Rita Prakash wife of A-2, Shri Ram Chander Prakash father of A-1 (Binay Prakash Group) and M/s Electrosteels Casting Limited and A-1 company.

18. As per Clause 1 of Article I of the Agreement, the "Issued and the Paid-up Capital" of A-1 company was to be raised to Rs. 60,00,000/- initially consisting of 60,000 shares of Rs. 100/- each. Since Binay Prakash Group already had Issued and Paid-up Capital of Rs. 28,17,500/-, therefore, they had to subscribe Rs. 1,82,500/- in furtherance of this Clause. A-1 company vide Share Certificate dated 15.04.2004 issued 30,000 shares of Rs. 100/- each, amounting to Rs.

30,00,000/- in the name of M/s Electrosteel Castings Ltd.

19. As per Clause 3 (a) (i) of Article 1 of the Agreement, Binay Prakash Group had to subscribe 40,000 shares of Rs. 100/- each for cash at par of M/s Domco Pvt. Ltd. In furtherance of the same, Binay Prakash Group, vide A-1 company's Board Resolution dated 20.07.2005 was allotted 20,000 equity shares of Rs. 100/- each to A-2 (HUF) and 20,000 equity shares of Rs. 100/- each to Shri Ram Chandra Prasad.

20. In furtherance of Clause 3 (a) (ii) (iii) (iv) of Article 1 of the Agreement, Binay Prakash Group sold its 20,000 shares of Rs. 100/- each to M/s Electrosteel Castings Ltd. @ Rs. 7700/- per share aggregating an amount of Rs. 15,40,00,000/- to hold the 50% equity in A-1 company. Accordingly, M/s Electrosteel Castings Ltd. paid Rs. 7,00,00,000/- to Binay Prakash Group vide six different cheques which were credited in the respective accounts of A-2, Smt. Rita Prakash (wife of A-2), Sh. Ram Chandra Prasad, father of A-2 - [Binay Prakash Group], in consideration of purchase of the shares from these persons. The balance of Rs. 8,40,00,000/- was to be paid by M/s Electrosteel Castings Ltd. to M/s Domco Pvt. Ltd.

21. As per Clause 4 and 5 of Article 1 of the Agreement, Binay Prakash Group had to subscribe 2,00,000 shares of Rs. 100/- each aggregating: Rs. 2,00,00,000 and simultaneously, M/s Electrosteel Casting Ltd., had to subscribe 2,00,000 shares of Rs. 100/- each @ premium of Rs. 2265/- per share aggregating Rs. 47,30,00,000, as and when required by A-1 company, Binay Prakash Group and M/s

Electrosteel Castings Ltd., so that the equality in shareholding is maintained at all times.

22. It is also mentioned in the agreement that A-1 company was granted permission from MoC for prospecting of Lalgah (North) Coal Block and after the exploration done by Central Mine Planning & Design Institute Ltd. (CMPDIL), the allotment was to be made by the MoC. In order to supply coal to the Pig Iron Plant of M/s Electrosteel Casting Ltd. at Khardah, West Bengal and Associate Company of M/s Electrosteel Castings Ltd. i.e., M/s Lanco Industries Ltd. having Pig Iron Plant at Kalahasti, Andhra Pradesh, if permitted under the Govt. of India rules, any modification is required in the Memorandum and Articles of Association of A-1 company, the same shall be done accordingly.

23. It is alleged that from the very beginning, A-2 had a dishonest intention to cheat, therefore, he conspired with A-3, A-4, Sukhdeo Prasad (originally A-5 in the chargesheet), A-5 C.A. and A-6 C.A. and submitted false information/documents to the MoS and MoC. After securing Coal block, through deceit, during the 19th Screening Committee meeting, he entered into an agreement and obtained Rs. 7,00,00,000 through such agreement by selling shares on premium. It is a fact that if he had not secured/ got the allocation of the coal block, he would not have been able to sell its shares at a premium to M/s Electrosteel Castings Ltd. Therefore, by way of cheating, he gained pecuniary undue benefit of Rs 7,00,00,000.

24. It is further mentioned in the charge-sheet that investigation

has revealed that the sixth meeting of the Inter-Ministerial Group (IMG) was held on 12.09.2012 under the Chairmanship of Additional Secretary (Coal) to undertake periodic review of the development of allocated coal/lignite blocks for information and necessary action. The IMG noted that there was no progress for mining the coal block since its allocation on 08.07.2005 and even mining plan has not been approved so far as initially the company presented two different mining plans by two different persons both claiming to be the Managing Directors of the company. The company had yet to submit the clarifications called for by the Ministry. The IMG noted that due to dispute within the allocated company, there has been an inordinate delay in development of the block and there was no progress in development of End Use Plant-EUP. The CA certificate has not been submitted for investment made by allocatee. In view of the above, the IMG recommended that the coal block may be de-allocated with full forfeiture of the Bank Guarantee. Finally, MoC issued a de-allocation letter dated 22.11.2012 to A-1 company.

25. Thus, it was alleged in the chargesheet that the accused persons namely A-2, A-3, A-4, A-5 Sukhdev Prasad (who was later on discharged), A-6 and A-7, have committed offences punishable u/s 120-B r/w 420 IPC and substantive offences thereof. Further, A-1 company M/s DOMCO Pvt. Ltd. erstwhile M/s DOMCO Smokeless Fuels Pvt Ltd, through its Director, A-2 has committed the offence u/s 420 IPC.

26. **ORDER ON CHARGE:** Vide order dated 25.01.2017, detailed order on charge was passed directing framing of charge for the

offence punishable under section 120-B IPC and for the offence under section 120-B/420 IPC against A-1 company, A-2 (Managing Director), A-3 (Director), A-4 (Director), A-5 (CA) and A-6 (CA). Charge under section 420 IPC, the substantive offence, was also framed against A-1 company, A-2, A-3, A-4, A-5 and A-6.

27. So far as Sukhdeo Prasad (originally A-5 in the chargesheet) is concerned, he was discharged as no offence was prima facie found made against him.

28. After passing the detailed order on charge, so far as formal charge under section 120-B IPC against all the six accused is concerned, it was recorded that during the year 2000 to 2005 at Jharkhand, Bihar, Orissa, West Bengal, Delhi and other places, the accused entered into a criminal conspiracy to cheat MoC and MoS, Government of India so as to procure allocation of a captive Coal Block [Lalgarh (North) Coal Block] situated in District, Hazaribagh, Bihar (now Jharkhand) in favour of A-1 company by making false submissions about land and financial preparedness and in order to earn undue benefits by selling the company to M/s. Electrosteel Casting Ltd. subsequent to allocation of coal block. To make charge clearer to the accused, it was also recorded that further particulars of the charge are recorded in detail in order on charge dated 25.01.2017 and also in the charges framed separately.

29. So far as charge under section 120-B read with 420 IPC is concerned, it was recorded that all the accused did various acts of

cheating as described in detail in the substantive charges framed separately and as also discussed in detail in order on charge dated 25.01.2017.

30. Charge under section 420 IPC was framed against each accused individually.

31. Charge under section 420 IPC was framed against A-1 company and A-2 on six counts of cheating which are common/identical to both the said accused.

32. 1st, that during the year 2000, in furtherance of common object of criminal conspiracy, vide letter dated 12.12.2000, false information was given to MoS about acquisitions/allotment of 142 acres of land whereas no such land existed at that time in the name of A-1 company.

33. 2nd, in furtherance of the aforesaid common object of criminal conspiracy, vide letter dated 12.12.2000, false information was given to MoS about financial preparedness.

34. 3rd, vide letter dated 05.02.2001, copies of land ownership documents of M/s Orissa Oils Industries Ltd were submitted to MoS and vide letter dated 23.07.2004, again copies of land ownership documents of M/s Orissa Oils Industries Ltd were submitted to the MoC whereas A-1 company was not the owner of the said land.

35. 4th, in furtherance of aforesaid common object of the criminal

conspiracy, letter dated 07.11.2002 was submitted to MoC, Government of India, about financial status of the company by attaching Auditor's Certificate issued by A-5, C.A. claiming the net worth of the company Rs. 19.42 crores whereas as per the balance sheets of the company, the net worth of the company was Rs. 2,46,68,615 as on 31.03.2002 and Rs. 2,39,72,811 as on 31.03.2003.

36. 5th, in furtherance of aforesaid common object of criminal conspiracy, vide letter dated 16.08.2003, copies of false balance sheets were submitted for the year ended on 31.03.2000, 31.03.2001 and 31.03.2002 showing inflated figures, which were certified by A-4, Director and were audited by A-6, proprietor and CA of M/s Sanjay Khandelwal to MoC, Government of India.

37. The 6th instance of cheating is that in furtherance of aforesaid common object of criminal conspiracy, vide agreement dated 27.03.2004, A-1 company sold the shareholding to M/s. Electrosteel Castings Ltd at a premium of part payment of Rs. 7 crores.

38. The charge against A-3 under section 420 IPC is that on 26.05.2003, he had attended the 19th Screening Committee meeting, MoC, Government of India and made a false claim that A-1 company has acquired 150 acres of land and thereby induced the committee to recommend allotment of a captive coal block in favour of A-1 company and thereby cheated MoC, Government of India.

39. Charge against A-4 under section 420 IPC is that he had

certified copies of false balance sheets of the company for the years ended on 31.03.2000, 31.03.2001 and 31.03.2002 showing inflated figures and vide letter dated 16.08.2003, these false balance sheets were submitted by A-2 to MoC to procure allocation of a captive coal block in favour of A-1 company.

40. Charge against A-5 is that he issued and provided false Auditor's Certificate showing the net worth of A-1 company as Rs. 19.42 crores whereas as per balance sheet of the company, the net-worth of the company was Rs.2,46,68,615 as on 31.03.2002 and Rs.2,39,72,811 as on 31.03.2003 and this false Auditor's certificate was submitted by A-2 vide letter dated 07.11.2002 to the MoC regarding financial status of the company and thereby cheated MoC to allot a coal block in favour of A-1 company.

41. The 2nd count of cheating charged against A-5 is that he had attended the 19th Screening Committee meeting, MoC, Government of India representing himself as a Senior Engineer of A-1 company and made a false claim on behalf of company A-1 company that the company has acquired 150 acres of land and thereby induced the said Screening Committee to recommend allotment of a captive coal block in favour of A-1 company believing the said representation to be true qua advanced status of/stage of preparedness.

42. Charge against A-6 under section 420 IPC is that he had signed and issued false balance sheets for the year ended on 31.03.2000, 31.03.2001 and 31.03.2002 showing inflated figures and

vide letter dated 16.08.2003, these false balance sheets were used and submitted by A-1 company and A-2 to MoC, Government of India in order to procure allocation of a captive Coal Block in favour of A-1 company.

43. A perusal of the detailed order on charge shows that in response to the arguments of the accused, it was made clear to them that so far as their submission that information given to MoS or to MoC about the availability of land with the company was on account of some miscommunication or was without any guilty intention or whether it had the effect of deceiving or inducing MoS or MoC or not, can be better appreciated during the course of trial only.

44. It was also made clear to the accused that it will be open for them during trial to show whether the net worth of the company at the relevant time was Rs. 20 crores.

45. It was also made clear to the accused that it will be open for them during trial to show that the minutes of the Screening Committee were not properly recorded.

46. It was also left to the accused persons to explain during trial the contradiction in the information supplied in the main application and in the bar charts.

47. **Admission/ Denial:** - Several documents were admitted by the accused as per section 294 of CrPC and reference to them shall be made in this judgement wherever relevant.

48. Prosecution Evidence: - Prosecution examined 23 witnesses to prove its case against the accused. Six witnesses tendered their affidavits under section 296 of CrPC. Testimony of witnesses shall be referred in the judgment wherever relevant. It is noted here that **PW 1** Sunil Kumar Pandey and **PW 2** A.C.R. Das are from **MoS**. Evidence of **PW 2** A.C.R. Das is important as he had dealt with all the correspondence of A-1 Company for allocation of Coal Block. **PW 8** R.S. Negi and **PW 23** Prem Raj Kuar are from **MoC** and are important witnesses as they had dealt with all the correspondence of A-1 company in **MoC** and were present during the 19th Screening Committee Meeting. **PW 3** Abhimanyu Panda, **PW 4** Pijush Kanti Dass, **PW 5** Arun Kumar Mahopatra, **PW 6** Kirtan Behari Ojha and **PW 7** Binod Mishra are official witnesses who have been examined to prove ownership of **land in the name of M/s Orissa Oil Industries Ltd.** **PW 15** Nikhil Chand has provided **English translation** of land documents which were submitted by A-1 company under signatures of A-2 with MoS and MoC. **PW 19** Anil Sharma is from **CFSL**, **handwriting expert**. **PW 14** Pankaj Lath, **PW 16** Gautam Sherbet, **PW 17** Umang Kejriwal, **PW 18** Rakesh Kumar and **PW 20** Arun Garodia have been examined to prove the agreement and transaction of **transfer of shares of A-1 company in favour of M/s Electrosteel Casting Ltd.** **PW 10** Ramakant Choudhury has been examined to prove **signatures and handwriting of A-3**. **PW 11** Sukhendu Sinha has been examined **to prove signatures of A-6**. **PW 13** Nandlal Prasad has been examined **to prove signatures of A-2 and A-5**. **PW 9** Abhishek Kumar Bijeta has been examined to prove signatures of Sukhdeo Prasad (originally A-5 in the chargesheet), who

was discharged vide order dated 25.01.2017. **PW 12** Syed Md. Ather Mikail has produced **balance sheets submitted by A-1 company with ROC**. **PW 21** Dr Raj Singh has examined various balance sheets which were submitted with ROC and MoC and has given his **opinion about net worth of the company on the basis of these balance sheets**. **PW 22** is the **Investigating Officer** Rakesh Ahuja who has deposed about the investigation conducted by him leading to the filing of chargesheet.

49. Statement under section 313 CrPC: - On completion of prosecution evidence, statements of all the accused persons under section 313 of CrPC were recorded and the response given by them shall be referred while discussing the points for determination.

50. Defence Evidence: On behalf of A-1 company, eight witnesses were examined in defence, primarily to show the steps taken by the company to set up End Use Project. However, it was candidly submitted on behalf of A-1 company and its directors that since these investments were made subsequent to the allocation of coal mine in their favour therefore, they are not much relevant.

51. Points for determination: - A perusal of records and arguments addressed shows that in this case there are following points for determination:

- (i) Whether the Administrative Ministry, in this case MoS, while considering “Soundness of Proposal” of an applicant company for allocation of coal block for coal

mining could consider availability of land and financial net-worth of the said company before recommending allocation of coal block in its favour to the MoC?

(ii) Whether A-1 company vide its letter dated 12.12.2000 **Exhibit PW-2/B-4**, D-41, page 48 submitted *false information* to MoS about acquisition/allotment of 142 acres of land whereas no such land existed in the name of A-1 company on that date?

(iii) Whether A-6 had prepared balance sheets of Company which were submitted with MoC vide company's letter dated 16.08.2003, **Exhibit PW-8/N-19**, D-43, page 100-155?

(iv) Whether the balance sheets of the company audited by A-5 and submitted with ROC, **Exhibit PW-12/B**, D-20, page 1-13 (Exhibit P-2), **Exhibit PW-12/C**, D-21, page 1-14 (Exhibit P-3), **Exhibit PW-12/D**, D-22, page 1-15 (Exhibit P-4) or the balance sheets prepared by A-6 and submitted with MoC by the company vide its letter dated 16.08.2003 **Exhibit PW-8/N-19**, D-43, page 100-155 and certified by A-4 for the year ending 31.03.2000, 31.03.2001 and 31.03.2002 show correct state of financial affairs of A-1 company?

(v) Whether A-1 company vide letter dated 12.12.2000 **Exhibit PW-2/B-4**, D-41, page 48 submitted false information to MoS about Debt/Equity Ratio stating that the promoters share is 26% of Rs.30 crores i.e., Rs.7.8 crores?

(vi) Whether the net-worth of A-1 company as on 31.03.2002 was Rs. 19.42 crores or it was Rs. 2,46,68,615 and whether the net worth of the company, as on 31.03.2003, was Rs. 2,39,72,811?

(vii) Whether Auditor's certificate was provided to MoC by the company alongwith its letter dated 07.11.2002, **Exhibit PW-8/N-13**, D- 43, page 57?

(viii) Whether the Auditor's Certificate dated 12.11.2002, **Exhibit PW-8/N-13**, D- 43, page 57 was given by A-5, CA?

(ix) Whether A-1 company vide letter dated 07.11.2002, **Exhibit PW-8/N-13**, D- 43, page 56-89 submitted false information to MoC about it's financial net worth?

(x) Whether A-5 had attended the 19th Screening Committee meeting along with A-3 and represented himself as Senior Engineer of A-1 company and whether

A-3 /A-5 /or both of them made a false claim in the meeting that the company has acquired 150 acres of land?

(xi) Whether charges framed against the accused persons are proved during trial?

52. Discussion of the evidence and arguments addressed for deciding the points for determination: Before discussing the points for determination, the very 1st argument addressed on behalf of A-1 Company, A-2, A-3 and A-4, is required to be dealt which is that proving a document does not prove the facts recorded in the document. The argument is that the contents of a document are different from the truth of what the document states. The truth of its contents can be proved by one who has personal knowledge of the matter recorded. Reliance is placed on **Om Prakash Berlia and others versus Union of India**, AIR1983 Bombay 1 which was followed in **Srichand P.Hinduja versus State through CBI**, 121 (2005) DLT1. Thus, merely proving of note sheets by the prosecution witnesses from MoS and MoC would only prove the *contents of note sheets* i.e., what was written in the note sheets. But it does not prove facts noted in those note sheets. To prove those facts, the person who is witness of the fact has to appear as a witness in the court and depose on oath.

53. On the other hand, submission on behalf of prosecution is that all the documents have been duly exhibited without any objection

from the accused. There was neither any objection to the admissibility of the documents nor objection about mode of proof. Once document is exhibited in evidence without any objection from the other side, then it stands proved. Reference is made to section 74 of the Evidence Act as per which the documents forming the acts, or records of the acts of official bodies are public documents. Reliance is also placed on section 114 (e) of the Evidence Act which provides that the court may presume that judicial and official acts have been regularly performed. Therefore, the submission is that a presumption of correctness is attached to the files of MoC and MoS being public documents. The accused have not proved anything to the contrary and the presumption of correctness of the files of MoC and MoS has not been rebutted by the accused during trial.

54. Reliance is placed by CBI on the judgment of the Hon'ble Supreme Court of India in "**R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Anr.**" AIR 2003 SC 4548 where it is held that: -

"Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: - (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence

and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure are fair to both the parties. Out of the two types of objections, referred to hereinabove in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court”.

55. On behalf of CBI, reliance is also placed in this regard on **P.C. Purushothama Reddiar Versus S. Perumal**, 1972 (1) SCC 57 where it is held that: -

“Once a document is properly admitted, the contents of the document are also admitted in evidence though those contents may not be conclusive evidence”.

56. Reliance is also placed on behalf of CBI on several judgements of different Hon’ble High Courts but the same are not being reproduced to avoid repetition of proposition of law already noted in the

two judgements of the Hon'ble Supreme Court noted above.

57. It is also submitted on behalf of CBI that PW-2 Shri A.C.R. Das who was the Deputy Industrial Adviser in MoS, PW 8 Shri R.S. Negi had worked in various capacities in MoC in Coal Linkage Distribution Section and PW-23 Prem Raj Kuar who was also posted in MoC as Section Officer in Coal Allocation Section in the year 2003 and had attended the 19th Screening Committee Meeting had dealt with the documents at one stage or the other which were exhibited during their examination and therefore they were competent to exhibit these documents and they were not strangers to the documents.

58. The submissions of learned counsel for the accused as well as the learned DLA of CBI have been considered.

59. The learned counsel for the accused has placed reliance on the judgement in the case of Om Prakash Berlia (*supra*) to submit that truth of the contents of a document cannot be proved merely by producing the document for the inspection of the court. Likewise, the proof of signatures of a document does not automatically result in the proof of its contents. Proving the signatures or handwriting in a document proves the genuineness of the document. Where the party propounding the document relies on the truth or accuracy, the witness tendering the document must ordinarily be the author of the document.

60. However, as submitted by Shri Sanjay Kumar learned DLA of CBI, under section 114 (e) of Evidence Act, documents prepared by

public servants in the ordinary course of their public duties have a presumption of correctness of the truth of their contents attached to them, and they do not require the public servant who prepared the document to be called as a witness to have the document read in evidence. Reliance can be placed on **Harpal Singh versus State of HP** (1981) 1 SCC 560. The note sheets have been prepared by public servants in the ordinary course of their public duties and therefore carry a presumption of the correctness of the truth of their contents.

61. Moreover, the prosecution witnesses PW 2, PW 8 and PW 23 had sufficient personal knowledge and familiarity with the note sheets/ documents for deposing the truth of their contents.

62. Furthermore, the note sheets were exhibited during recording of evidence without any demur and therefore cannot be now challenged by any party at the end of trial / during final arguments.

63. Therefore, this court finds no infirmity in referring and relying upon the note sheets and other documents which were duly exhibited at the time of recording of evidence.

64. The 1st point for determination is "Whether the Administrative Ministry, in this case MoS, while considering soundness of proposal of an applicant company for allocation of coal block for coal mining could consider availability of land and financial net-worth of the said company before recommending allocation of coal block in its favour to MoC?

65. Argument of the accused is that in the 14th Screening

Committee meeting held on 18th and 19th June 1999 (**Exhibit PW-8/J-1 colly**, D-10, Page 133-134), it was decided that the Administrative Ministry shall assess the soundness of the proposals in consultation with State Governments before sending their comments/recommendations to the Screening Committee for consideration of allotment of captive mining block. Only in the cases of companies allotted coal blocks, Administrative Ministry in consultation with State Governments as well as using their own agencies had to assess the progress of the implementation of End Use Plants (EUP) and send a report to the Screening Committee for further action. MoS had sent the recommendation (**Ex.PW-2/B-7**, D-43, page 41-42) in favour of A-1 company to MoC on 18.04.2001 when the guidelines decided in 14th Screening Committee meeting were in force and MoS had to see soundness of proposal only. These guidelines were changed in the 18th Screening Committee Meeting held on 05.05.2003 (**Exhibit PW-8/R-7**, D-48, page 161) when it was decided that the Administrative Ministry shall appraise the projects from the point of view of the genuineness of the applicant, techno-economic viability of the project and the state of preparedness/progress in the project while indicating the quantity and quality of coal requirement of the project and recommending allocation of captive block to the applicant company. No criteria regarding minimum financial net-worth of the company or ownership of the land were laid down in these guidelines. So far as processing of the application of the company in MoS is concerned, it is submitted that till the recommendations of MoS dated 18.04.2001, the role of MoS, according to 14th Screening Committee guidelines was to assess soundness of the proposal in consultation with State

Government. Assessing the progress made in the implementation of End Use Project was required only where coal block was already allocated.

66. According to the accused, it is an *important distinction* that needs to be kept in mind while appreciating the processing of application of A-1 company in MoS. In fresh cases like in the case of A-1 company, actual steps taken by the company were not to be considered by MoS. There were no minimum requirements for eligibility for allocation of coal block in terms of preparedness such as acquisition of land or financial strength. Therefore, there was no reason or motive for the accused company to misrepresent to MoS for its recommendation.

67. On behalf of CBI, it is submitted that 'soundness of the proposal' includes financial preparedness, availability of land and all other preparations. It is further submitted that there is no explanation from A-1 to A-4 as to why they submitted false information about land and finance to the Ministry of Steel as well as Ministry of Coal if these were not relevant considerations for recommendation in favour of A-1 company.

68. Rival submissions have been considered.

69. The 14th Screening Committee in its meeting held on 18th and 19th June 1999, **Ex.PW-8/J-1**, D-10, Page 133-134, added the following general guidelines: -

(i) The Administrative Ministries will assess the soundness of the proposals, in consultation with the State Governments, before sending their comments/recommendations to the Screening

*Committee for consideration of allotment of captive mining block.
(ii) the Administrative Ministries should consult a State Government as well as use their own agencies for assessing the progress of the implementation of End Use Plants for which blocks have already been allotted by the Screening Committee and send a report to the Screening Committee for further action.*

70. During the 18th Screening Committee meeting held on 05.05.2003, **Ex. PW-8/R-7**, D-48, page 161-162 following general guidelines/ground rules were decided: -

- (i) ...*
- (ii) The Administrative Ministries were requested to appraise the projects from the point of view of the genuineness of the applicant, techno-economic viability of the project and the state of preparedness/progress in the project while indicating the quantity and quality of coal requirement of the project and recommending allocation of captive block to the applicant...*
- (iii)...*

71. PW2 Shri A.C.R. Das was the Deputy Industrial Advisor in MoS from the year 2000 onwards and had dealt with the file of A-1 company, **Ex. PW 1/B**, D-41. Letter of A-1 company dated 14.10.2000, **Ex.PW-2/B-2**, D-41, page 3-4 was dealt with by this witness at note sheet page 3, D-41 and he had recommended: -

"(1) We have to ask the company to apply to Secretary, Ministry of Coal for mining block.

(2) For our recommendation, if any, we need to know the actual status of implementation or steps taken on specific areas. Please put up a draft. Take the areas from the format for linkage."

72. Thereafter, PW2, as per letter dated 23.11.2000, D-41 page 37, **Ex. PW2/B-3**, called upon A-1 company to furnish actual status of implementation of the project and steps taken towards setting up of the

plant to MoS for taking further necessary action in the matter in the format enclosed therewith.

73. It shows that PW-2 in his wisdom, to assess the soundness of proposal of A-1 company, wanted to know the actual status of implementation of project and steps taken on specific areas as provided for in the format for linkage.

74. What was implicit in the guidelines of 14th Screening Committee meeting was made explicit in the guidelines of 18th Screening Committee meeting. Since, the 18th Screening Committee meeting felt it necessary to make it explicit, which was otherwise implicit, it can be safely concluded that the query of MoS regarding actual status of implementation or steps taken on specific areas was to assess the soundness of proposal.

75. The query regarding availability of land and the query with regard to Means of Financing, Debt, Equity and Financial Tie-up go to the root of soundness of proposal to set up pig iron plant by the company and therefore could have been asked for by any reasonable person, from the applicant company, for assessing the soundness of proposal of the company.

76. Letter dated 23.11.2000 was replied by A-1 company vide letter dated 12.12.2000 along with its annexures, D-41, page 47-53, **Ex. PW2/B-4 colly.**

77. Contrary to the stand now being taken by the company, at

that time, the company *never* responded to MoS that the company is not allotted any coal block so far and the information called for is not applicable to the applicant company. It never referred to the guidelines laid down in the 14th Screening Committee meeting to convey/advice MoS that the information called for is *not required* at this stage.

78. On the contrary, the response of the company with regard to land, in Serial No. 3 of the Format for Application for Coal and Iron Ore Linkages for Proposed Pig Iron/Steel Making Units (EF-BOF)/EOF Route and Coke Oven was:

“Land,

- i) Total How Much Required-Total 200 Acre in final phase.*
- ii) **Acquired/Allotted so far-142 Acres.***
- iii) Present Status of Balance Land Required-Will require after 3 years of expansion, available in adjoining area and*
- iv) Present Status of Development of the site-200m. From Rairangpur station, 10 houses, 5 large Dia. Dug wells and water tank. Partially covered by boundary wall. Large covered spaces for various shops.”*

79. The response of the company with regard to **Means of Financing, Indicate Debt, Equity and Financial Tie-Up**, at Serial No.10 of the format was:

“Phase-1

*Debt to Equity Ratio -2:1 All Rupee component,
Equity-Rs. 30.00 crores,
Debt-Rupees 60.00 crores.*

Arrangements for promoter’s contribution of 26% of equity made. *Other equity finances being arranged through financial institutions. Applications for rating by institutions under way. Since the investment is totally in rupee component in 1st phase, the Indian institutions are being approached.”*

80. Office Memorandum dated 18.04.2001 from MoS to MoC recommending the allocation of mining block for development by A-1 company for captive use, **Ex. PW2/B-7**, D-43, page 41-42 also lays emphasis in para 2 (c) to the fact that "Debt to Equity Ratio is 2:1, in phase 1, equity is Rs. 30 crores and Debt are Rs. 60 crores. Arrangements for promoter's contribution of 26% of equity already made. Other equity finances being arranged through financial institutions".

81. The recommendation letter also mentions in para 2 (f) that out of proposed land requirement of 200 acres, total land of 142 acres has already been acquired.

82. It shows that financial net worth of the company and availability of land were integral parts of the process to assess the soundness of proposal and that is why they were quoted in the recommendation letter referred above.

83. The extracts of the minutes of the 19th meeting of the Screening Committee held on 26.05.2003, **Ex.PW-8/N-17**, D-43, Page 94 also record that "150 acres land for their pig iron plant at Raipur has already been acquired". The fact that the Screening Committee also felt it necessary to record this fact in its minutes shows that the same was relevant for assessing of "Soundness of Project" of the applicant company.

84. During cross-examination of PW-2 Sh. A.C.R. Das on behalf of A-6 recorded on 21.08.2017, page 22 of 25, PW-2 denied a

suggestion that information sought by MoS from the company regarding land and financial tie-up was not pre-requisite condition for making recommendation by MoS to MoC for allocation of a coal block in favour of the company.

85. This also shows that information regarding land and financial tie-up was also part of assessment of soundness of proposal of the company. The witness made it clear when he deposed that the purpose of seeking said information was to examine the seriousness of the applicant company in pursuing with its proposal.

86. A suggestion was given to PW-2 during his cross-examination on behalf of A-1 to A-4 recorded on 05.02.2018, page 8 of 27, that availability of land with the applicant company was not a pre-requisite condition for applying to MoS for its recommendation to MoC for allotment of a coal block. The witness clearly replied: -

"A company is at liberty to submit any application to MoS for its recommendation but it is for MoS to see whether the application of the company can be recommended or not. However, before recommending a company to MoC for allotment of a coal block, it is seen as to whether the company has taken some minimum steps or not and the said steps do include availability of land with the company. As per practice, in the absence of availability of land with the company its application is not recommended by MoS to MoC."

87. PW2 further made it clear by deposing that:

"As far as I know, there were no guidelines which prescribed that availability of land with the applicant company was necessary before its application could be recommended by MoS but it was a regular practice being followed in MoS that application of any

company was recommended to MoC for allotment of a coal block only if the company was already having any land with it."

88. No suggestion was given to this witness that name of some other company was recommended by MoS for allocation of coal block without making any enquiry about availability of land and net worth of the said company.

89. PW2 further deposed (on 05.02.2018, page 9 of 27) that:

"We had written to the company to submit various information to show their seriousness in the project and the said information included land also beside other requirement for the project including money".

90. He also deposed (on 05.02.2018, page 15 of 27) that for recommendation by MoS, what was required was that the company must have taken sufficient steps towards establishing the End Use Project.

91. PW 8 also deposed during cross-examination on behalf of A-1 to A-4 (09.07.2018, page 6 of 8) that soundness of proposal and preparedness of the applicant company included land and financial strength etc.

92. PW-22 IO also deposed during his cross-examination on behalf of A-1 to A-4 (23.08.2018, page 6 of 18) that in the guidelines laid down in 14th Screening Committee meeting, the words "net-worth, turnover or profit" are not mentioned but volunteered that soundness of proposal can be assessed only by considering all the aspects such as capability of the applicant company to establish the said project, financial capacity and other aspects of preparedness.

93. It also came on record in the cross examination of PW-22 IO (23.08.2018, page 11 of 18) that as per Ashwani Kapoor, representative of MoS in the Screening Committee meeting, those facts were incorporated in the record notes/minutes of the Screening Committee which actually happened or were said during the meeting and which were *relevant to the issue of allocation of coal blocks*. It is already noted that it is recorded in the minutes of the 19th Screening Committee meeting that A-1 company has already acquired 150 acres land for their pig iron plant and the committee definitely would not have considered the allocation of Lalgah (North) Block if on behalf of A-1 company it had not been informed to the committee about acquisition of land for its plant.

94. As a result, it is held that it was reasonable and justifiable and rather essential for MoS, while assessing the soundness of proposal of A-1 company before recommendation to MoC for allocation of coal block, to find out availability of land and financial net-worth of the applicant company.

95. Therefore, the first point for determination is answered holding that availability of land and financial net worth of an applicant company were part of process of assessing soundness of company for recommendation by MoS to MoC for allocation of coal block in favour of such a company.

96. The 2nd point for determination is “Whether A-1 company vide its letter dated 12.12.2000, **Ex. PW-2/B-4**, D-41, page 48 submitted *false information* to MoS about acquisitions/allotment of 142 acres of land

whereas no such land existed in the name of the said company on that date?”

97. The case of the prosecution is that A-1 company had given applications dated NIL to MoS and MoC for captive coking coal block, **Ex. PW-2/B-1**, D-41, page 1-2 and **Exhibit PW-8/N-1**, D-43, page 23 respectively.

98. The application of the company was put up in MoS on 02.08.2000 and Sh. A.C.R. Das, the then Deputy Industrial Advisor, vide letter dated 23.11.2000, **Ex. PW2/B-3**, D-41, page 37 called upon the company to furnish actual status of implementation of project and steps taken towards setting up of plant to MoS.

99. The letter was replied on 12.12.2000, **Ex. PW2/B-4** D-41, page 48 by A-2, MD of A-1 company submitting that so far, 142 acres of land has been acquired/allotted to the company whereas the said land was in the name of M/s Orissa Oil Industries Limited on the said date.

100. During arguments, it is not the case of A-1 to A-4 that A-1 company possessed 142 acres of land as on 12.12.2000.

101. Arguments on behalf of accused so long as Sukhdeo Prasad (earlier A-5 in the chargesheet) was one of the co-accused before his discharge vide order dated 25.01.2017 were that Sukhdeo Prasad was the General Manager of M/s Orissa Oil industries Ltd. and while entering into MoU dated 11.10.2000 with A-2, Managing Director of A-1 company, he had claimed himself to be a GPA of M/s Orissa Oil Industries Ltd. In

the MoU, only willingness of M/s Orissa Oil Industries Ltd to negotiate sale of said land was mentioned and *the said claim did not confer any rights upon A-1 company as even the sale consideration was not yet discussed or decided much less exchanged*. It was their case that the MoU was not submitted before any authority for any purpose whatsoever during the entire process of allocation of coal block (Page 22 of 66 of the detailed order on charge dated 25.01.2017).

102. Now, during final arguments, it is submitted that the company filled up the Format for Coal Linkage as sent by MoS along with its above-mentioned letter dated 23.11.2000 and in reply, the company also informed MoS that in case there was any query after going through the format, they would be more than willing to clarify the same.

103. The accused have referred to MOU dated 11.10.2000, **Exhibit P-25**, D-61, executed between A-1 company and M/s. Orissa Oil Industries Ltd and have submitted that the same was executed even before letter dated 23.11.2000, **Exhibit PW-2/B-3**, D-41, page 37 was issued by MoS seeking information about actual status of implementation and steps taken towards setting up of plant. In this background, A-1 to A-4 have submitted that in the prescribed Format, in Column No. 3 (ii), **Exhibit PW-2/B-4** (Colly), page 48, the company provided the information under the heading Land-Acquired/Allotted, against which the company had written "142 acres". It is submitted that this information was given without any dishonest intention on the basis of MOU entered into between the company and M/s. Orissa Oil Industries Ltd.

104. It is submitted by the accused that there was *no other column* which could have permitted the company to mention about the arrangement made by the company with M/s. Orissa Oil Industries Ltd in relation to the land.

105. To show there was no dishonest intention, accused have referred to Column No. 17 of the same format where at serial No. iv, D-41, page 50 the company has stated that the “Land is being negotiated and Rs. 1.5 crores have been committed towards advance for land”. It is submitted that the very fact that the amount of land was being negotiated and Rs. 1.5 crores was committed towards advance would leave no manner of doubt that the land has not been acquired as A-1 company was still negotiating for land. It is further submitted that had MoS carefully and thoroughly read the document especially column No. 17, they would not have confused the information given in Column No. 2. MoS misread the document without seeking any clarification from DOMCO when it had offered to do so.

106. Therefore, a comparison of the stand taken by the accused at the time of arguments on charge and at the time of final arguments shows that there is vacillation in their stand.

107. At one stage, the accused submitted that the MOU did not confer any rights on A-1 company as even the sale consideration was not yet decided much less exchanged and was not submitted before any authority and at later stage, the argument of the accused is by relying on same MOU for justifying their mentioning in the Performa that the

company has acquired/allotted 142 acres of land.

108. Further, the accused have made two-fold submissions for stating that company has acquired/allotted 142 acres land.

109. The 1st is that there was no other column in the Performa which could have permitted the company to mention about the arrangement made by the company with M/s. Orissa Oil Industries Ltd in relation to the land.

110. This submission is rejected because the company had not merely sent the Performa to MoS but there was a covering letter i.e., letter dated 12.12.2000 enclosing the Performa and no such explanation with regard to MOU was given in the said letter. Had there been any truth in the submissions of the accused, the company would have made it abundantly clear in the letter dated 12.12.2000 that they have only entered into a MOU as per which M/s. Orissa Oil industries Ltd has merely shown its willingness to negotiate sale of the land in favour of A-1 company.

111. The second submission in this regard is that in column No. 17 of the same Form, at serial No. iv, the company has stated that the land is being negotiated and Rs. 1.5 crores have been committed towards advance for land.

112. According to arguments of CBI, reading of the letter dated 12.12.2000 **Ex.PW-2/B-6**, D-41 Page 47-53 clearly reveals that in column No.3 of the format application, it has been mentioned that the

land required is 200 Acres, Acquired/Allotted so far, 142 Acres. In column No 17, the amount mentioned was for the remaining land besides already acquired Land.

113. A perusal of cross examination of PW-2 (page 25 of 27 recorded on 05.02.2018) on behalf of A-1 to A-4 shows that the witness was questioned with reference to letter dated 05.02.2001 **Exhibit PW2/B-6**, D-41, page 57-83 (where also it was stated that "Rs. 1.5 crores, being negotiated for land as advance"), and the response of the witness was that it cannot be inferred from the aforesaid information that the company has not yet purchased the land or has merely paid an advance amount.

114. This response of the witness coupled with the fact that in the letter dated 12.12.2000 nothing was mentioned to show that the company is yet to acquire 142 acres of land, shows that A-1 company vide letter dated 12.12.2000 had submitted false information to MoS about acquisitions/allotment of 142 acres of land whereas no such land existed in the name of A-1 company on that date.

115. Second point for determination is therefore decided accordingly.

116. The 3rd point for determination is "Whether A-6 had prepared balance sheets of Company which were submitted with MoC vide company's letter dated 16.08.2003, **Exhibit PW-8/N-19**, D-43, page 100-155?"

117. The submission of A-6 is that the balance sheets were photocopies and hence denied by him under Section 294 Cr.P.C. and prosecution has not proved beyond reasonable doubt that the photocopies of balance sheets submitted by the company are the exact replica as original.

118. However, A-6 has also submitted in his written submissions, page 10 of 22, that the Director's Report endorses the balance sheet. If the figures mentioned in the Director's Report which is just appended before the "*Balance Sheets of A-6*" are scrutinized, it is in line with photocopy of "*Balance Sheets of A-6*", it can be safely said that Balance Sheet was correct as it was in line with the Director's Report which is based on books of account.

119. Therefore, in the written arguments A-6 himself is owning the Balance Sheets.

120. As per PW-8 Shri Rajinder Singh Negi, MoC vide letter dated 25.07.2003, **Exhibit PW 8/N-17**, D-43, Page 95, had asked the company to furnish further information regarding implementation schedule of their pig iron plant, coal mine development project and proposed washery beside copy of registration certificate, details about the balance sheet for the last three years and other details along with latest Auditor's Report and detailed plans about use of middlings etc. The company, as per its letter dated 16.08.2003, **Exhibit PW 8/N-19**, (D-43), Page 100-155 submitted various information as were asked for i.e., bar chart for the schedule of implementation of pig iron plant, coal mine, coal washery

with the details of use of washery products, registration certificate of the company duly authenticated and the balance sheets for the last three years. He deposed that the balance sheets of the company were issued under the signatures of A-6, Chartered Accountant.

121. When the balance sheets were exhibited, there was no objection raised on behalf of A-6.

122. However, during cross examination on behalf of A-6, PW-8 admitted that he has stated in his examination in chief that the balance sheets received with letter dated 16.08.2003 are signed by A-6 only because his name is mentioned below the signatures otherwise, he was not acquainted with the handwriting and signatures of A-6 and he has never met A-6.

123. PW-11 Shri Sukhendu Sinha was the Accounts Clerk in the Chartered Accountants firm of A-6 at Kolkata since 2013 and therefore was in a position to identify the signatures A-6. He has identified signatures of A-6 and seal of Sanjay Khandelwal and Company on the enclosed Balance Sheets.

124. During his cross-examination on behalf of A-6, no suggestion was given to the witness that the Auditor's report and the enclosed Balance Sheets do not bear the signatures of A-6 or the seal of Sanjay Khandelwal and Company.

125. Moreover, when the incriminating evidence of PW-11 was put to A-6 under section 313 CrPC, A-6 had responded that: -

"It is pertinent to mention though the witness PW-11 Sukhendu Sinha has identified the signatures but the witness did not say that it was this balance sheet which was signed by A-6 as the balance sheet which was shown to the witness was of prior to his joining and the balance sheet was not original but photocopy. The original balance sheet is also not available before the court."

126. Therefore, A-6 has admitted his signatures on the Balance Sheets.

127. The handwriting expert PW-19 Shri Arun Kumar has also given the opinion in his report **Exhibit PW-19/A** (part of D-138, Exhibit P-15) that the handwriting evidence points to the writer of the specimen signatures marked S-81 to S-90 attributed to A-6 being the person responsible for writing the reproduced questioned signatures marked Q-163, Q-167, Q-171, Q-181, Q-182, Q-187, Q-188, Q-191, Q-200, Q-206, Q-207, Q-210 and Q-219. According to the prosecution, these questioned signatures of A-6 are available on Auditor's report and the Balance Sheets signed by A-6.

128. During cross examination of this witness on behalf of A-6, a question was put to PW-19: -

"Will there be any difference in analysing any given specimen signatures (in original obtained with ball pen or ink pen) with photocopy of a questioned signature?"

129. The response of the witness was that: -

"No. Vol. If sufficient individual characteristic features are found similar in the questioned signature even though only photocopy vis-à-vis the specimen signatures even if obtained with an ink pen or ball pen then also opinion can be given after analysing the two with each other."

130. No suggestion was given challenging the report given by this witness during cross-examination.

131. When this incriminating evidence was put to A-6 in question No. 324 under section 313 CrPC, the response of A-6 was that: -

“Yes, opinion of PW-19 Anil Sharma qua specimen signatures/writings was given. It is pertinent to mention that the witness accepted to the fact that the document i.e., the balance sheet was photocopy document and did not depose anything about the figures mentioned in the balance sheet.”

132. Therefore, according to handwriting expert PW-19 also the balance sheets given to MoC by A-1 certified by A-4 are signed by A-6, **Exhibit PW-8/N-19**, D-43, page 100-155.

133. On the basis of evidence of PW-11 and PW-19 and the response to the incriminating evidence of these two prosecution witnesses given by A-6, it is proved that the balance sheets submitted with MoC vide letter dated 16.08.2003 were signed by A-6.

134. On behalf of CBI, reliance is also placed on the judgment of the Hon'ble Supreme Court of India in “**R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Anr.**” AIR 2003 SC 4548 where it is held that where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the

mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. Reliance is also placed in this regard on **P.C. Purushothama Reddiar Versus S. Perumal**, 1972 (1) SCC 57.

135. Therefore, this 3rd point of determination is decided holding that the balance sheets submitted along with letter dated 16.08.2003 to MoC were signed by A-6 (**Exhibit PW-8/N-19**, D-43, page 100-155).

136. The 4th point for determination is “Whether the balance sheets of the company audited by A-5 and submitted with ROC, **Exhibit PW-12/B**, D-20, page 1-13 (Exhibit P-2), **Exhibit PW-12/C**, D-21, page 1-14 (Exhibit P-3), **Exhibit PW-12/D**, D-22, page 1-15 (Exhibit P-4) or the balance sheets prepared by A-6 and submitted with MoC by the company vide its letter dated 16.08.2003 **Exhibit PW-8/N-19**, D-43, page 100-155 and certified by A-4 for the year ending 31.03.2000, 31.03.2001 and 31.03.2002 show correct state of financial affairs of A-1 company?”

137. PW-12 Syed Md. Athar Mikail was Asstt. Registrar of Companies-cum-Asstt. Official Liquidator, High Court of Patna in the year 2015. Letter dated 10.07.2015 addressed by this witness to the IO of this case was exhibited as **Exhibit PW 12/A** (D-19). Along with this letter, he had provided certified copies of documents pertaining to A-1 company. Directors Report for the year ending 31.03.2000 recording that M/s. M. Kumar and Associates, Chartered Accountants, Auditors of the company retire at the conclusion of the ensuing Annual General Meeting and being eligible, offer themselves for reappointment, Auditor’s Report to the

shareholders of A-1 company given by M. Kumar and Associates, Chartered Accountants, through proprietor A-5 certifying that they have audited the balance sheet of A-1 company as at 31.03.2000 and profit and loss account for the year ended on that date and have found that the balance sheet and profit and loss account are in agreement with the books of accounts and the audited balance sheet as at 31.03.2000 are part of D-20, **Exhibit PW-12/B**.

138. Similar Director's report mentioning that the Auditors M/s. M. Kumar and Associates have offered themselves for reappointment, Auditor's Certificate and the balance sheet for the year ended 31st March 2001 are part of D-21, **Exhibit PW-12/C**.

139. The Directors report mentioning that the Auditors M/s. M. Kumar and Associates have offered themselves for reappointment, Auditor's Certificate and the balance sheet for the year ended 31st March 2002 are part of D-22, **Exhibit PW-12/D**.

140. All these documents were filed by A-1 company with ROC in compliance of statutory requirements i.e., provisions of Companies Act, 1956.

141. Under Section 210 of the Act, at every annual general meeting of a company, the Board of directors have to lay before the company a balance sheet and a profit and loss account for that period. Balance sheet is not defined in the Act. But a format of the balance sheet is provided for in Schedule VI of the Companies Act.

142. In the event of failure to comply with the provisions, the same are punishable under Section 210(5) of the Act.

143. Section 220 of the Companies Act, 1956 provides that after the balance sheet and the profit and loss account have been laid before a company at an annual general meeting, these shall be filed with the Registrar within 30 days from the date on which the balance sheet and the profit and loss account were so laid. Default in complying with the provision of this section results in punishment as provided under section 162 of the Act.

144. Section 224 of the Act provides for appointment of Auditors.

145. The auditors of the company are appointed at its annual general meeting. An auditor appointed at one Annual General Meeting holds office from the conclusion of that meeting until the conclusion of the next Annual General Meeting. Unless he is a retiring Auditor, he should be informed of his appointment within 7 days and he should inform the Registrar within 30 days whether he has accepted the appointment or not.

146. The mere fact that Auditor's certificate given by A-5 and balance sheet of the company audited by A-5 were submitted in the office of ROC would show that A-5 was company's Auditor that is why he provided Auditor's certificate and attested balance sheets of A-1 company before their submission to RoC.

147. It also shows that A-6 was nowhere in picture so far as

compliance with provisions of Companies Act is concerned.

148. When PW 12 Syed Md. Athar Mikail Asst Registrar of Companies-cum-Asst Official Liquidator, High Court of Patna was in the witness box, no suggestion was given on behalf of A-6 that A-6 was the Auditor of A-1 company.

149. Therefore, A-1 company while complying with the statutory provisions of the Companies Act 1956 only acknowledged A-5 as it's Auditor. A-6 was nowhere in picture vis-à-vis submissions in the office of ROC in terms of various provisions of Companies Act 1956 noted above.

150. It shows Auditor's certificate given by A-6 certifying balance sheets of A-1 company, **Exhibit PW-8/N-19**, D-43, page 100-155 submitted with MoC is worthless.

151. The submission of A-6 that the Investigating Officer should have seized and examined books of accounts of the company for the relevant years to ascertain whether the balance sheets audited by A-5 were correct or the balance sheets audited by A-6 were correct pales into insignificance when the records of ROC are examined where the name of A-6 is conspicuous by his absence as Auditor of the company.

152. So far as the company and its directors are concerned, considering their predicament, where they are confronted with two balance sheets, one filed by A-1 company in the office of ROC and other filed by A-2 in the MoC, they have chosen to disown none.

153. In response to Question No. 352 under section 313 CrPC, the response of the Accused No.1 and 2 is that *filings in ROC were made by the CA who prepared the balance sheets as per his professional expertise and the accused had no role in the same other than accepting his professional opinion.*

154. In response to question No. 357, the response of the Accused No.1 and 2 is that *the balance sheets submitted with MoC were prepared by professional CA and reflected the correct net-worth as per his professional opinion and accused had no role in the same other than accepting his professional opinion.*

155. The hands wash approach neither helps the company nor it's Directors nor A-6.

156. It is unbelievable that the directors of the company accepted two different sets of balance sheets prepared by two different Chartered Accountants showing huge disparity in the figures of profit and loss only because those balance sheets showed different professional opinions of the CAs in which the directors of the company had no role other than accepting those professionals' opinions meekly.

157. In this regard, following table shows glaring differences in the figures in the balance sheets prepared by A-5 and A-6 which make it unbelievable that the directors of the company accepted different balance sheets just by accepting the professional competence of the two CAs: -

S.No.	YEAR	PROFIT AND LOSS	
		MoC	RoC
1.	31.03.2000	<u>Sources of Funds</u> 1. Shareholders' Funds: a) Capital: Rs.9,80,50,500.00 b) Reserve and Surplus: Rs.4,21,24,442.73 Total: Rs.14,01,74,942.73	<u>Sources of Funds</u> 1.Shareholders funds: a) Capital: Rs.17,17,500.00 b) Reserve and Surplus: Rs.99,44,763.60 Total: Rs.1,16,62,263.60
2.	31.03.2001	<u>Sources of Funds</u> 1. Shareholders' Funds a) Capital: Rs.9,80,50,500.00 b) Reserve and Surplus: Rs.6,62,55,788.38 c) Total: Rs.16,43,06,288.38	<u>Sources of Funds</u> 1. Shareholders' funds a) Capital: Rs.17,17,500.00 b) Reserve and Surplus: Rs.1,44,45,244.72 2. Loan Funds: Unsecured Loan: Rs.3,45,000.00 Total: Rs.1,65,07,744.72
3.	31.03.2002	<u>Sources of funds</u>	<u>Sources of funds</u>

		1. Shareholders' funds a) Capital: Rs.9,80,50,500.00 b) Capital: Rs.9,87,34,415.53 Total: Rs.19,67,84,915.53	1. Shareholders' funds a) Capital: Rs.17,17,500.00 b) Reserve and surplus: Rs.2,32,97,327.55 2. LOAN FUNDS a) Secured Loan: Rs.27,73,841 b) Unsecured Loan: Rs.3,45,000. Total: Rs.2,81,33,668.55
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158. It is important to note that the stand of the company and the stand of the directors of the company is not that A-6 was the Auditor of the company for the year ending 31st March 2000, 31st March 2001 and 31st March 2002. It is not the case of A-6 that he had informed the office of ROC as per section 224 of Companies Act 1956 acceptance of his appointment as Auditor of the company.

159. Therefore, there is no iota of doubt that A-6 was never the Auditor of A-1 company for the years ending 31st March 2000, 31st March 2001 and 31st March 2002 and therefore he had given false Auditor's certificate and falsely audited the balance sheets of the company for the year ending 31st March 2000, 31st March 2001 and

31st March 2002.

160. Moreover, it was also noted in the detailed order of charge that for the year 1998-99, the Auditor of the company was A-5 and he was reappointed as Auditor for the year 1999-2000 and it is not the case of A-6 that he was the Auditor of the company in the year 1998-99. Therefore, he could not have been reappointed as the Auditor for the year 1999-2000.

161. During subsequent years, A-5 was reappointed as the Auditor of the company. This also shows that the Auditor's certificate and balance sheets audited by A-6 for the year ending 31st March 2000, 31st March 2001 and 31st March 2002 are false documents.

162. It was argued on behalf of A-1 company and its directors that the company had purchased the report of prospecting from CMPDIL by making a payment of more than Rs. One crore, so its net worth cannot be just around Rs. 2 crores. It was also submitted that it is common practice for the businessmen to show less income to save tax. Certain orders and documents have been filed on behalf of A-1 to A-4 on 03.09.2021 to show that the net worth of the company was much higher than the net worth evident from balance sheets filed with RoC.

163. However, at the very beginning of the trial, on 25.01.2017, when order on charge was passed, it was made clear to the accused that it will be open for them during trial to show whether the net worth of the company at the relevant time was Rs. 20 crores. Prosecution has to

prove its case on its own but under section 106 of Evidence Act when any fact is especially within the knowledge of any accused, the burden of proving that fact is upon him. Therefore, as A-1 and its directors were cautioned in the very beginning of the trial that it will be open for them to show that the net worth of the company was around Rs. 20 crores and as this fact would have been especially in their knowledge, they had to show that the net worth of the company was around Rs. 20 crores. There is not even any feeble attempt on their part to show that the net worth of the company during the relevant time was Rs. 20 crores. Filing of certain documents by the accused when the prosecution was addressing arguments in rebuttal cannot substitute for defence evidence to show that the net worth of the company was around Rs.20 crores.

164. As a result, this point of determination is answered holding that A-5 was the Auditor of the company for the year ending 31st March 2000, 31st March 2001 and 31st March 2002 and he had filed true balance sheets for this period in the office of ROC as per D-20 to D-22. A-6 was not the Auditor of the company for the year ending 31st March 2000, 31st March 2001 and 31st March 2002 and he had prepared false auditors' certificate and falsely audited the balance sheets of the company for the year ending 31st March 2000, 31st March 2001 and 31st March 2002.

165. The 5th point for determination is "Whether A-1 company vide letter dated 12.12.2000, **Exhibit PW-2/B-4**, D-41, page 48 submitted false information to MoS about Debt/Equity Ratio stating that the

promoters share is 26% of Rs.30 crores i.e., Rs.7.8 crores?”

166. The submission of the accused as per their written arguments in this regard is that: -

“As far as the financial details/strength of A-1 company is concerned, no claim has been made by A-1 company about its net worth or financial strength and no document has been submitted regarding the same to MoS.

167. In the project profile submitted by A-1 company along with its letter dated 14.10.2000, **Exhibit PW-2/B-2**, D-41, page 1 and 2 it mentioned that: -

“7.2 Capital draw down (D-41, page 22)

Debt to Equity Ratio =2:1 All Rupee Component
Rate of Interest= 12%
Equity= Rs. 30.00 crores
Debt= Rs. 60.00 crores
Term of loan= 5 years
Average interest= Rs. 4.32 crores”

168. In response to letter dated 14.10.2000 from the Company, MoS vide letter dated 23.11.2000, **Exhibit PW-2/B-3**, D-41, page 37 requested the Company to furnish actual status of implementation of the project and steps taken towards setting up of the plant.

169. The company responded vide its letter dated 12.12.2000, **Exhibit PW-2/B-4**, D-41, page 47 and submitted in the format for Application for Coal and Iron Ore Linkages for proposed Pig Iron/ Steel Making Units, at Serial No. 10, *Means of Financing, Indicate Debt, Equity and Financial tie up*, that in “Phase-1, Debt to Equity Ratio-2:1 All Rupee

component, Equity-Rs. 30.00 crores, Debt-Rupee 60.00 crores.

Arrangements for promoter's contribution of 26% of equity made.

Other equity finances being arranged through financial institutions. Applications for reading by institutions under way. Since the investment is totally a rupee component in 1st phase, the Indian institutions are being approached."

170. It is to be noted that the company made a submission that "Arrangements for promoters' contribution of 26% of equity made".

171. The company had filed with RoC balance sheet as on 31.03.2000, D-20, as per which its net-worth, according to PW 21 Dr Raj Singh, was Rs.1,16,58,339. The net worth of the company as on 31.03.2001, D-21, was Rs.1,61,59,801. The net worth of the company as on 31.03.2002, as per D-22, was Rs.2,46,68, 615. These balance sheets are **Exhibit PW-12/B, C and D** respectively.

172. On the other hand, 26% of Rs. 30 crores equity claimed by the company in its letter dated 12.12.2000 would be more than Rs.7.8 crores.

173. The company had filed another set of balance sheets along with its letter dated 16.08.2003, **Exhibit PW-8/N-19**, D-43 page 100-155, with MoC as per which the net-worth of the company as on 31.03.2000, 31.03.2001 and 31.03.2002 was Rs.14,01,74,942 and Rs.16,43,06,288 and Rs.19,67,84,915 respectively.

174. However, while deciding 4th point for determination, it is

already decided that the balance sheets filed with the MoC as per letter dated 16.08.2003 by A-2 were false balance sheets and true and correct balance sheets were filed with ROC which are D-20, D-21 and D-22, **Exhibit PW-12/B, C and D** respectively.

175. Therefore, 5th point for determination is decided holding that the A-1 company and A-2 falsely represented before MoS, as per letter dated 12.12.2000, that arrangements for promoters' contribution of 26% of equity of Rs. 30 crores is already made.

176. The 6th point for determination is "Whether the net-worth of A-1 company as on 31.03.2002 was Rs. 19.42 crores or it was Rs. 2,46,68,615 and whether the net worth of the company, as on 31.03.2003, was Rs. 2,39,72,811?"

177. While dealing with the 4th point for determination, it is already decided that the net-worth of the company as on 31.03.2002 was not Rs. 19.42 crores but it was only Rs.2,46,68,615. Similarly, it is also decided that the net worth of the company as on 31.03.2003 was Rs.2,39,72,811. This point for determination does not need any further discussion and is answered accordingly.

178. The 7th point for determination is "Whether Auditor's certificate was provided to MoC by A-1 company alongwith its letter dated 07.11.2002, **Exhibit PW-8/N-13**, D- 43, page 57?"

179. As per PW-8 Sh. Rajender Singh Negi (statement dated 23.08.2017, page 23 of 28), Sh. Shyam Sunder Under Secretary had

directed that the information submitted by A-1 company to MoS regarding funds, economic viability of the plant, project profile as submitted by it to MoS has not been made available to MoC by MoS so the same may be called for. Accordingly, vide letter dated 16.10.2002, **Ex. PW 8/N-12**, page 55 in D-43, A-1 company was asked to furnish all such information as was earlier asked for vide letter dated 11.08.2000, **Exhibit PW-8/N-2**, D-43, page 36.

180. As per PW-8 Sh. Rajender Singh Negi, in response to the aforesaid letter, A-1 company submitted letter dated 07.11.2002, **Ex. PW 8/N-13 (colly)** page 56-89 in D-43 under the signatures of A-2 Managing Director of A-1 company along with various enclosures. Along with the said letter, project profile was filed by the company. The aforesaid letter dated 07.11.2002 was received in MoC on 21.11.2002. *Along with the letter, an Auditor's Certificate dated 12.11.2002 issued under the signatures of A-5 proprietor M.Kumar and Associates, Chartered Accountants was also annexed. As per the said Auditor's Certificate, the net-worth of A-1 company, as on 31.10.2002 was Rs. 19.42 crores.*

181. PW-8 Sh. Rajender Singh Negi has deposed that the aforesaid letter dated 07.11.2002 was processed by him at note sheet page 12. Vide his note dated 28.11.2002 bearing his initials at point A, he had mentioned about the project profile as was submitted by the company beside other details of mobilizing of funds and financial tie up.

182. A perusal of this note sheet shows that it refers to economic viability of the project at para 7.0 (pages 51-52/c-numbering with pencil). It also refers to details of mobilising funds and financial tie-up (pp-58-

67/c-numbering with pencil).

183. What is there at page 53 to 57?

184. At page 53 and 54 is Annexure-1 “Salient Features of the Proposed Captive Coal Block Envisaged.”

185. At page 55 is Annexure-II “Details of Other Raw Materials, Power and land”.

186. Page number 56 is given to two horizontally long pages (landscape), folded together so that they can fit in/are adjusted in the enclosures enclosed with letter dated 07.11.2002. These are for Mini Blast Furnace Plant by Tata Korf Engg Services Ltd comprising of Plant General Layout and Process Flow Plan. Since the two pages are folded together, it is clear that while numbering them in MoS, they were given one page number rather than two i.e., page number 56. While filing them in court, CBI has also given them one page number i.e., 78 and other page is mentioned as 77A for identification. These documents of Tata Korf are mentioned by the accused at page 73 (pencil paging page 51) of the Project Profile, part of D-43.

187. At page 57 is Auditor's Certificate purportedly given by A-5.

188. At page 58 is “Proposed Pig Iron Plant” containing information- Cost of Project, Means of Finance and Details of Shareholders' Funds which is signed by A-2. As per this document, A-2 has mentioned that the net owned fund of the company as on

31.10.2002 are Rs. 19.42 crores. This figure mentioned by A-2 is matching with the figure mentioned in the Auditor's Certificate at page 57 referred above. This also corroborates filing of Auditor's certificate with letter dated 07.11.2002. From page 59 till 89 are other documents submitted by the company in support of its application for allocation of coal block. The entire file is properly paginated. Letter dated 07.11.2002 is also properly paginated from page 34 till 89. At 57 is Auditor's Certificate.

189. As per illustration (e) to section 114 of the Evidence Act, there is a presumption that official acts have been regularly performed.

190. The argument of the accused in this regard is that letter of A-1 company does not mention Auditor's certificate being enclosed with it. The letter only mentions about details of mobilization of funds and financial tie-up.

191. When the evidence of PW-8 was put to A-2 during his statement under section 313 of CrPC, the response of A-2 to question No. 138 was that the witness did not himself receive the letter dated 07.11.2002 so he cannot be a witness to the fact that the Auditor's Certificate was annexed with the letter. The certificate is also not mentioned in the letter.

192. It is not the case of A-2 that anyone in MoC had animosity towards him or towards the Applicant Company. It is not his case that this document was inserted in the file at behest of some other person.

193. It is the specific say of PW-8 that letter dated 07.11.2002 **Exhibit PW 8/M-13** (Colly) was processed by him at note sheet page 12 vide his note dated 28.11.2002. This witness has stated clearly that along with this letter, Auditor's Certificate dated 12.11.2002 was also received. Although on behalf of A-5 and A-6 a suggestion was given to the witness that this Auditor's Certificate was not given along with letter dated 07.11.2002 which was denied by PW-8 but so far as A-1 and A-2 are concerned, no suggestion was given to the witness that A-2 had not provided this Auditor's Certificate along with his letter dated 07.11.2002.

194. Since letter dated 07.11.2002 was received in MoC on 21.11.2002, so it was possible to enclose Auditor's Certificate dated 12.11.2002 with the said letter.

195. Therefore, this point for determination is answered holding that Auditor's Certificate dated 12.11.2002 purportedly issued by A-5 was enclosed with letter dated 07.11.2002.

196. The 8th point for determination is whether the Auditor's Certificate dated 12.11.2002, **Exhibit PW-8/N-13**, D- 43, page 57 was given by A-5, CA?

197. It was well known in the very beginning of the trial that the handwriting expert PW-19 who had examined the purported signatures of A-5 on the Auditor's Certificate, has not given any opinion with regard to Q-220 and Q-257 as available at page No. 79 in file **Exhibit PW 8/N** (D-43).

198. A-5 had prayed for discharge on this ground but since one of the prosecution witnesses Sh. Nandlal in statement under section 161 Cr.P.C. had identified the signatures of A-5 on the Auditor's Certificate; charge was framed against A-5 for conspiracy as well as cheating.

199. The prosecution witness Sh. Nandlal was examined as PW 13 but he did not identify the signatures of A-5 on the Auditor's Certificate. This was the only person examined to identify the signatures of A-5 on the Auditor's Certificate. Since he has not identified the signatures of A-5 on the Auditor's Certificate, this point for determination is answered holding that it is not proved during trial that A-5 had given the Auditor's Certificate dated 12.12.2002 certifying that the net-worth of applicant company was Rs. 19.42 crores.

200. The 9th point for determination is "Whether A-1 company vide letter dated 07.11.2002, **Exhibit PW-8/N-13**, D- 43, page 56-89 submitted false information to MoC about financial net worth of A-1 company?"

201. Undated application of the company addressed to the Additional Secretary-cum-Chairman, Screening Committee for Allocation of Captive Coal Block, MoC, Government of India, New Delhi is at page 23, D-43, **Exhibit PW-8/N-1**.

202. In this application, the company had requested to allot the Lalgah Block of West Bokaro Coalfield, Hazaribagh, Bihar for its captive use.

203. MoC, vide letter dated 11.08.2000, **Exhibit PW-8/N-2**, D-43, page 36 called upon the company to furnish: -

- (i) *present arrangement regarding coal linkage for the existing plan,*
- (ii) *phased coal requirement,*
- (iii) *details of mobilising the funds, project cost and its financial tie up,*
- (iv) *geological reserves in a mining block calculated on the basis of 30 years requirement,*
- (v) *economic viability of the plant and*
- (vi) *project profile.*

204. This letter was replied by the company vide its letter dated 11.09.2000, **Exhibit PW-8/N-3**, D-43, page 37 but responded only about present arrangement of coal linkage, phased coal requirement and geological reserves of the captive mining block. But the enclosures of the letter, including project profile with the relevant information sent to MoS, were not enclosed with the copy of letter sent to MoC.

205. A perusal of **Exhibit PW-2/B-2**, page 22, D-41 shows that the company had informed MoS about its Capital draw down at point No. 7.2 as under: -

“Capital draw down

Debt to Equity Ratio =2:1 All Rupee Component

Rate of Interest= 12%

Equity= Rs. 30.00 crores

Debt= Rs. 60.00 crores

Term of loan= 5 years

Average interest= Rs. 4.32 crores”

206. However, in MoC it was decided that the recommendation of MoS be awaited before the matter is processed further.

207. The recommendation of MoS was received as per OM dated

18.4.2001, **Exhibit PW-2/B-7**, D-43, page 41-42.

208. MoC decided that the case of the applicant company does not come under the existing guidelines for allocation of coal block in order to ensure economic/scientific mining of Indian coal and this decision was conveyed to MoS vide OM dated 15.05.2001, **Exhibit PW-2/B-9**, D-43, page 44.

209. This letter was responded by MoS as per its OM dated 26.06.2001 informing that the applicant company has requested to reconsider its case as it claimed that it will meet the guidelines, **Exhibit PW-2/B-11**, D-43, page 91.

210. MoC as per letter dated 23.08.2001, **Exhibit PW-8/N-8**, D-43, page 48 asked the MoS to furnish breakup of quantity of coal to be mined through both methods. MoS vide letter dated 19.09.2001, **Exhibit PW-8/N-9**, D-43, page 46-47 enclosed letter dated 05.09.2001 of the company and thereafter letter dated 11.10.2001 was written by MoC to Chief General Manager CIL for comments, **Exhibit PW-8/N-10**, D-43, page 45. CIL vide letter dated 23.08.2002 recommended for allocation of Lalgarh North Sub- Block to A-1 company, **Exhibit PW-8/N-11**, D-43, page 52-54.

211. When this letter was processed in MoC, at that time the Under Secretary in MoC directed that the information submitted by the company regarding funds, economic viability of the plant, project profile as submitted by it to MoS had not been made available to MoC by MoS,

so same may be called for. Accordingly, letter dated 16.10.2002, **Exhibit PW-8/N-12**, D-43, page D-43, page 55 was sent to the company to furnish all such information as was earlier asked vide letter dated 11.08.2000. In this letter, the company was reminded that in response to letter of MoC dated 11.08.2000, the company has not provided (i) details of mobilising the funds, projects cost and its financial tie up, (ii) economic viability of the plant and (iii) a project profile and the company was requested to provide the same.

212. In response to this letter, the company had replied vide its letter dated 07.11.2002, **Exhibit PW-8/N-13**, D-43, page D-43, page 56-89. The company informed in this letter that they are enclosing project profile including financial cost and economic viability and this profile was sent to MoS on the advice of MoC. It was also stated that the details of mobilising funds and financial tie up are also given separately. The company also enclosed Auditor's Certificate of M.Kumar and Associates dated 12.11.2002 stating that the net-worth of the company as on 31.10.2002 stands at Rs. 19.42 crores. It also contained information under signatures of Managing Director A-2 stating that Means of Finance would be: Shareholder's fund Rs.30 crores and Term Loan from Bank /Financial Institutions would be Rs. 6-crores and thus total finance will be Rs. 30 crores. *It was also stated that net owned funds of the company as on 31.10.2002 Rs. 19.42 crores.* It was stated that fresh equity capital to be raised by way of private placement will be ten crores. Internal accruals and others will be Rs. 0.58 crores and thereby shareholders' funds would be Rs. 30 crores.

213. This letter was dealt with in MoC by PW-8 who recorded in the note sheet at page 12, D-44 that the company has sent project profile including financial cost and economic viability. Further, the details of mobilising funds and financial tie up also given separately (pp-58-67/c).

214. It is already seen while deciding 4th point of determination that the balance sheets filed with MoC showing the net worth of the company as on 31.3.2000 as Rs.14,01,74,942 and for period ending 31.03.2001 as Rs. 16,43,06,288 and as on 31.3.2002 as Rs.19,67,84,915 are not correct balance sheets and the correct balance sheets are D-20 to D-23 as per which the net-worth of the company as on 31.03.2000 was Rs.1,16,58,339 and as on 31.03.2001 the net-worth was Rs.1,61,59,801 and as on 31.03.2002, the net-worth was Rs. 2,46,68,615 and as on 31.03.2003, the same was Rs. 2,39,72,811.

215. At the time of order on charge, it was made abundantly clear to the accused that during trial they will be at liberty to show that the net-worth of the company was Rs. 19.42 crores. However, no endeavor was made by the accused by way of cross examination or otherwise to show that the net worth of the company was Rs. 19.42 crores. This point for determination is therefore answered holding that A-1 company vide letter dated 07.11.2002 submitted false information to MoC about it's financial net worth.

216. The 10th point for determination is "Whether A-5 had attended the 19th Screening Committee meeting along with A-3 and represented himself as Senior Engineer of A-1 company and whether A-3/A-5 /or both

of them made a false claim that the company has acquired 150 acres of land?”

217. As pointed out by Sh. Sanjay Kumar, Ld. DLA of CBI, till 19th screening committee meeting, it was mentioned by A-1 company in various letters that it has acquired 142 acres of land (format enclosed with letter dated 12.12.2000, **Exhibit PW-2/B-4**, D-41, page 47-53 and letter dated 05.02.2001, **Exhibit PW-2/B-6**, D-41, page 57-83). For the first time it came to be recorded in the minutes of the 19th screening committee meeting that 150-acre land has been acquired by the applicant company for their plant (**Exhibit PW-2/B-16**, D-41, page 97-99). Therefore, either A-3 or A-5 or both of them would have mentioned in the meeting about acquisition of 150 acres of land by the company. Otherwise, the screening Committee had no reason to mention availability of 150 acres of land with A-1 company.

218. A-5 was the Auditor of the company, at least since 1998. He admits that he had accompanied A-3 for attending 19th Screening Committee meeting. His submission is that the meeting was convened in Bhaba Hall and he was sitting in Tagore Hall.

219. The attendance sheet of the representatives of applicant companies who appeared before the 19th Screening Committee meeting on 26.05.2003, page 174-185, D-49 was exhibited as **Exhibit PW 8/S-2**.

220. PW-8 has deposed that the names of various applicant companies were already typed in the attendance sheet Performa and

signatures of representatives against the names of corresponding companies were obtained at the meeting venue. On behalf of A-1 company, its Director A-3 and Senior Engineer A-5 signed the attendance sheet beside mentioning other particulars at serial No. 37, page 181 and the attendance sheet, **Exhibit PW-8/S-2**.

221. It shows that A-5 had indeed attended the 19th Screening Committee meeting and his submission that he was sitting in some other Hall is not correct. However, the designation "Senior Engineer" and the name of representative of the company attending the meeting, according to handwriting expert's report **Exhibit PW-19/A**, part of D-138, Ex. P-15, have been written by A-3 and not by A-5.

222. At the time of framing of charge, it was left to be decided during trial whether the designation "Senior Engineer" was already written before A-5 signed the same and if "Senior Engineer" was not already written, why A-5 did not mention his designation as Auditor and left the space blank for A-3 to be filled up by writing "Senior Engineer".

223. The response of accused A-5 to question No. 177 under section 313 Cr.P.C. is in the form of denial. No explanation has been given by A-5 why he signed on the attendance sheet where his designation was mentioned as Senior Engineer and in case the designation was blank, why he did not fill up the designation at the time of signing the attendance sheet and why it was left blank enabling A-3 to write the designation of A-5 as "Senior Engineer". Therefore, in the opinion of the court, A-5 had attended the 19th Screening Committee

meeting. A-5 personated as Sr Engg of A-1 company before the Screening Committee but this personation did not result in any cheating.

224. The next question to be decided is whether A-3 /A-5 /or both of them had made a submission before the 19th Screening Committee meeting that the applicant company has acquired 150 acres of land.

225. When a fact is said to be proved?

226. Section 3 of the Evidence Act defines "Proved" as follows:

*"**Proved**". - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*

227. Further, S.114 of the Evidence Act reads as follows:

***"114. Court may presume existence of certain facts.** - The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*

228. Thus, a fact is said to be proved when after considering the matters before it, the Court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. In coming to its belief, the Court may presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business, in relation to the facts of each

case (**K.Ponnuswamy Versus State of Tamil Nadu** 2001(6) SCC 674).

229. Letter of MoC dated 22.07.2003, Page 92-94, D-43 conveying relevant extracts of minutes of 18th and 19th Screening Committee meeting held on 05.05.2003 and 26.05.2003 has been exhibited as **Exhibit PW 8/N-16**.

230. PW8 has deposed that in the minutes of 19th Screening Committee meeting held on 26.05.003, it is mentioned that "The party intimated that Lalgah coal block is opencast as well as underground. *150 acres land for their pig iron plant at the Rairangpur has already been acquired*".

231. Since the meeting was attended by A-3 who was Director (Technical) and A-5 who was Auditor of the company and the minutes do not record that the "representatives of the applicant company " intimated acquisition of land, in present facts and circumstances of this case, the only inference which can be drawn is that this submission is attributable to A-3, Director (Technical) and not to A-5 as A-3 was the Director of A-1 company and the Committee would have put the query regarding land to him rather than putting the same to A-5 who was shown as Sr Engineer of A-1 company and therefore only an employee of the company. Had A-3 mentioned against the name of A-5 that he was also one of the Directors of A-1 company, things would have been different. There is no evidence that A-5 knew that the company has not so far acquired 150 acres of land but still kept silent.

232. Moreover, if there was any recording in the minutes pertaining to finance, same could have been attributed to A-5 as he was the Auditor of the company. But the information with regard to land could have been sought for by the committee only from the Director of applicant company and not from its Sr Engineer.

233. The submission of A-3 is that the minutes were wrongly recorded.

234. Same is not acceptable for the reason that the minutes were sent to the applicant company vide letter dated 22.07.2003 from MoC, page 92, D-43, **Exhibit PW-8/N-16** and therefore it was in the knowledge of A-3 that the minutes have recorded that party has informed the 19th Screening Committee meeting that the company has acquired 150 acres of land. A-2 Managing Director of the company had written letter dated 22.07.2003, **Exhibit PW-8/N-18**, D-43, page 96-99 to the Chairman of Screening Committee where request was made that Lalgah Block should be allocated to them for mining instead of prospecting.

235. No letter was sent by the company or any of the accused to clarify that it has not yet acquired 150 acres of land. Though the minutes record Raipur, the place of land of A-1 company but the same is clerical oversight as it is not the case of the accused that they had any land at Raipur.

236. The response of A-3 to Question No. 142 under section 313 Cr.P.C. pertaining to letter dated 22.07.2003 from MoC, page 92, D-43,

Exhibit PW-8/N-16 sending minutes of the 19th screening committee to A-1 company is “The contents of extracts of 18th and 19th Screening Committee are *matter of record*. The minutes of the 19th Screening Committee have not been correctly recorded and neither duly proved. The said minutes did not come into the knowledge of the accused”. Same is the response of A-2 as well as A-4. It is not possible that such important minutes were not placed before any Director of A-1 company.

237. The said explanation of A-3 is not acceptable as A-3 was the Director of A-1 company and had attended the 19th screening committee meeting. Therefore, rather he would have been keener to see the minutes and find out the decision of the committee. No evidence has been led to show that the letters from MoC were not his concern and were not put up before him and were dealt with by some other Director of the company. This fact, if so, would have been within his personal knowledge and should have been brought on record by him only. Since A-3 being the Director of A-1 company had knowledge of the minutes of the committee, and still he kept silent and did not convey MoC that A-1 company has yet to acquire 150 acres of land shows that A-3 had submitted before the 19th Screening Committee meeting that the company has acquired 150 acres of land otherwise, he would have clarified MoC in this regard after receiving the minutes. Therefore, this point for determination is answered holding that A-3 misrepresented before 19th Screening Committee that A-1 has acquired 150 acres of land.

238. The last point for determination is “Whether charges framed against the accused persons are proved during trial?”

239. Charges framed against A-1 company: - 1st charge of cheating framed against A-1 company is that in furtherance of common object of criminal conspiracy hatched by all the accused persons, A-1 company vide letter dated 12.12.2000, signed by A-2 submitted false information to MoS about acquisition/allotment of 142 acres of land whereas said land existed in the name of M/s. Orissa Oil Industries Private Ltd. By doing so, the accused committed the offence of cheating. As per charge framed under section 120-B IPC and under section 120-B read with section 420 of IPC, the common object of criminal conspiracy was to cheat Ministry of Coal, Ministry of Steel, Government of India so as to procure allocation of a captive coal block Lalgarh (North) Coal Block situated in District Hazaribagh, Bihar (now Jharkhand) in favour of A-1 company by making false submissions about land and financial preparedness.

240. While deciding 2nd point for determination, it is already decided that A-1 company and A-2 had made false submissions to MoS in letter dated 12.12.2000 that it has acquired/has been allotted 142 acres of land whereas the said land existed in the name of M/s. Orissa Oil Industries Private Ltd.

241. The question is whether the company by submitting false information in letter dated 12.12.2000 about acquisition/allotment of 142 acres of land induced MoS to believe that the applicant company owns

142 acres of land?

242. Pursuant to letter dated 12.12.2000 of the company **Exhibit PW-2/B-4**, D-41, page 47-53, MoS vide letter dated 15.01.2001, **Exhibit PW-2/B-5**, D-41, page 55, D-41 asked the company to furnish more information including documentary evidence in respect of allotment of land.

243. It shows that MoS was not induced to believe that the company has acquired 142 acres of land and that is why it asked for documentary evidence of allotment of land.

244. Moreover, PW 2 A.C.R. Das during his cross-examination recorded on 05.02.2018, page 20 of 27 has made it clear that he never had the idea that any land has been allotted to the applicant company in as much as along with letter dated 12.12.2000, the company had only enclosed filled in format but along with letter dated 05.02.2001, the applicant company had provided filled in format and further information about land allotted whereby the witness assumed that the land papers pertained to the land which is now available with the company.

245. Therefore, so far as letter dated 12.12.2000 is concerned, PW 2 A.C.R. Das (MoS) was not induced to believe that the applicant company has 142 acres of land.

246. However, this will not mean that before making recommendation in favour of A-1 company to MoC for allocation of coal block, MoS was never deceived to believe that the A-1 company has

acquired 142 Acres of land. The subsequent discussion on third charge under Section 420 of IPC will reveal that MoS was deceived to believe that the A-1 company owns 142 acres of land after receiving letter dated 05.02.2001, **Ex. PW-2/B-6**, D-41, page 57-83 and so induced, it made recommendation in favour of A-1 company to MoC for allocation of coal block.

247. Writing in letter dated 12.12.2000 that A-1 company has acquired 142 acres of land can be treated as attempt to cheat MoS but since there is positive finding in succeeding paragraphs that after receiving letter dated 05.02.2001 from A-1 company, MoS was deceived to believe that A-1 company has acquired 142 acres of land and the offence of cheating MoS was completed resulting in issuance of recommendation letter by MoS to MoC in favour of A-1 company, therefore, findings to the present charge are confined to hold that the first charge of cheating framed against A-1 company is not proved. It is not proved that on the basis of letter dated 12.12.2000, MoS believed that the company has acquired 142 acres of land.

248. The 2nd charge is that in furtherance of common object of the criminal conspiracy, A-1 company vide letter dated 12.12.2000, submitted false information to the Ministry of Steel about financial preparedness and by doing so, committed the offence of cheating punishable u/s 420 of IPC.

249. The 5th point for determination “Whether A-1 company vide letter dated 12.12.2000 submitted false information to MoS about

Debt/Equity Ratio stating that the promoters share is 26% of Rs.30 crores i.e., Rs.7.8 crores” is already answered in favour of prosecution and against the accused.

250. In the recommendation letter of the MoS dated 18.04.2001, **Exhibit PW-2/B-7**, D-43, page 41-42, addressed to MoC, there is a specific reference in para 2 (c) about Debt/Equity Ratio and that Promoter's Share, 26% of Rs.30 crores is already made.

251. Definitely, the applicant company falsely represented before MoS that the promoter's share of 26% of Rs. 30 crores are already made which weighed with MoS in making the recommendation vide its letter dated 18.04.2001 to MoC to allot Lalgah North Coal Block in favour of the company. Availability of promoter's share of 26% of Rs.30 crores is specifically mentioned in the recommendation letter.

252. No company could approach MoC directly for allotment of coal block without recommendation of administrative Ministry which in this case is MoS. The recommendation is prerequisite before MoC could entertain application of any applicant company for allocation of coal block.

253. In the case in hand, initially, the company had submitted its application dated nil, **Exhibit PW-8/N**, D-43, page 23 before MoC but MoC as a pre-condition for further processing the application any further directed A-1 company to submit the application with requisite information to MoS and obtain their recommendation for further processing of the

application, **Exhibit PW-8/N-2**, D-43, page 36.

254. The applicant company, therefore, deceived MoS dishonestly to believe that the promoters share of 26% of Rs. 30 crores are already made and thereby induced MoS and under this deception, MoS recommended its case for allocation of coal block to MoC and MoS would not have recommended the case of applicant company, if it was not so deceived.

255. Inducement is evident from the fact that in letter dated 12.12.2000 there were two false representations. One, allotment/acquisition of 142 acres of land. This misrepresentation was not believed because MoS called for documentary evidence in support of the same.

256. The 2nd misrepresentation was that it was stated in that letter that the equity of the applicant company is Rs. 30 crores and arrangement for promoter's contribution of 26% of equity already made.

257. Unlike the misrepresentation qua land, MoS did not call for any documentary evidence like balance sheets, auditor's certificate and accepted the representations made by the applicant company and the inducement is apparent from the fact that MoS in the recommendation letter dated 18.04.2001, **Exhibit PW-2/B-7**, D-43, page 41-42 quoted the Debt-to-Equity Ratio, Equity, Debt and Promoters' Contribution as was communicated to MoS by the applicant company. Recommendation letter speaks for itself that MoS was induced to believe the financial

preparedness of A-1 company whereas submissions made by A-1 company regarding financial preparedness were false.

258. The fact that MoS deemed it necessary to mention this information in the recommendation letter shows that it was an important consideration which weighed with MoS in recommending name of applicant company to MoC.

259. The accused have argued that in the 1st application dated nil addressed by the company to MoS, D-41/page 1 and in letter dated 14.10.2000, D-41/page 3, there is no allegation of false averment regarding land or financial strength. Thus, no dishonest intention at the *initial stage/inception* can be attributed to A-1 company or to A-2. Reliance is placed on V.P. Shrivastava Versus Indian Explosives Ltd and Others 2010 (10) SCC 361.

260. A-1 company and A-2 did not mention in 1st application dated nil and in letter dated 14.10.2000 that they have 142 acres of land or any other misrepresentation about financial strength. The reason for the same is that as per 14th Screening Committee meeting guidelines, the progress of the implementation of the End Use Plants (EUP) was to be given by Administrative Ministry (MoS) for which blocks were already allotted by the Screening Committee. Under this impression, the accused had not made misrepresentations in their 1st undated letter addressed to MoS and in their 2nd letter dated 14.10.2000. But misrepresentations were made by them the moment they received letter dated 23.11.2000 from MoS, **Exhibit PW-2/B-3**, D-41 page 37 whereby the company was

called upon to provide actual status of implementation of the project and steps taken towards setting up of the plant. The accused misrepresented at the 1st opportunity, when they were called upon to disclose true facts to MoS. The occasion to misrepresent arose when MoS called upon the company to provide the information referred above. The accused misrepresented in response to the said clarification called for by MoS. Therefore, in the facts and circumstances of this case, misrepresentation was made by the accused at the initial stage/inception when specific information was called for by MoS. Therefore, neither the judgement relied upon by the accused is applicable to the facts of the case in hand nor it can be argued by the accused that they had not misrepresented at initial stage/inception.

261. In the case of **Krishnamurthy**, AIR 1965 SC 333, the accused who was at the time serving in the Madras Medical Service as a Civil Assistant Surgeon on a temporary basis applied for a permanent post notified by the Madras Public Service Commission and made false representations as to his name, place of birth, father's name and a degree held by him which was a necessary qualification. His name was recommended by the Commission and he was appointed by the Government to the post and drew salary for several years before the fraud was detected. It was held that although the commission was an independent statutory body performing advisory function, the deception of such adviser was deception of the Government and the accused was liable under the section 420 IPC.

262. In the case of **Sushil Kumar Datta**, 1985 Cri J1948 (Cal), a non-scheduled caste candidate set for the Indian Administrative Service Examination falsely declaring himself to be a scheduled caste candidate in his application before the Union Public Service Commission and thus obtained the advantage of the relaxed standard of examination prescribed for scheduled caste candidates and eventually got appointed as an IAS officer by the Government of India, it was held that he had clearly cheated both the Union Public Service Commission and the Government of India and was rightly convicted under section 420 IPC.

263. In **Ishwarlal Girdharilal**, (1968) 71 Bombay Law Reporter 52 (SC) and **N.M Chakraborty and others**, 1977 Criminal Law Journal 961(SC), the Hon'ble Supreme Court has held that the word "property" in section 420 IPC does not necessarily mean that the thing, of which a delivery is dishonestly desired by the person who cheats, must have a money value or a market value, in the hands of the person cheated. Even if the thing has no money value in the hands of the person cheated, but becomes a thing of value in the hands of the person who may get possession of it, as a result of the cheating practised by him, it would fall within the connotation of the term "property" property in the section 420 of IPC; the order of assessment issued by the Income-Tax Officer and received by the assessee had been held to be property within the meaning of section 420 of IPC.

264. In **Abhaynand**, (1961) 2 Criminal Law Journal 822 SC, it was held that an admission card to sit for an Examination of a University is

property within the meaning of section 420 of IPC; though the admission card as such has no pecuniary value but it has immense value to the candidate for the examination.

265. In **Ramchander**, AIR 1966 Rajasthan 182, a driving license or its duplicate had been held to be property within the meaning of section 420 of IPC.

266. In **State through CBI versus Dr Nagendra Pal Singh**, 1994 Cri J 2373 (Del), the registration of society was done on the basis of forged signatures and fictitious documents and playing fraud upon the registrar of societies, the certificate was then used for collecting donations, grants-in-aid from the government organisation. It was held that certificate issued by the registrar was “property” within the meaning of section 420 of IPC.

267. A-1 company fraudulently/dishonestly deceiving and inducing MoS to issue recommendation letter (property) to MoC recommending MoC to allocate coal block to A-1 company, would be cheating practiced for securing delivery of property, punishable under Section 420 I.P.C.

268. Therefore, A-1 company committed the offence of cheating punishable under section 420 IPC by dishonestly inducing MoS to believe about its financial preparedness and thereby securing recommendation letter in its favour. Resultantly, A-1 company is convicted under section 420 of IPC under this charge.

269. The 3rd charge of cheating against A-1 company and A-2 is

that during the year 2000 to 2004, vide letter dated 05.02.2001, **Exhibit PW-2/B-6**, D-41, page 57-83 copies of land ownership documents of M/s. Orissa Oil Industries Ltd (in Oriya language) were submitted with MoS and vide letter dated 23.07.2004, **Exhibit PW-8/N-25**, D-43, page 173-228 these land ownership documents were submitted to MoC whereas applicant company was not the owner of the said land and thereby committed the offence of cheating punishable under section 420 of IPC.

270. Pursuant to letter dated 12.12.2000, **Exhibit PW-2/B-4**, D-41, page 47-53 of A-1 company, MoS vide letter dated 15.01.2001, **Exhibit PW-2/B-5**, D-41, page 55, had asked the company to furnish more information including documentary evidence in respect of land allotment.

271. In response to letter dated 15.01.2001 **Exhibit PW-2/B-5**, D-41, page 55 from MoS to the applicant company, reply dated 05.02.2001, **Exhibit PW-2/B-6**, D-41, page 57-83 was given by the company inter alia stating that: "**Land Allotted**":

"The plant will be located on a private land near Rairangpur. The details of land schedule and the map are enclosed. This land measures 142 acres and encompasses 5 large dug wells, a perennial water tank (talao) and canal of Kharkai River. The railway line is 200 meters away".

272. The enclosures with this letter included details of the land and map of the land. These documents were in Oriya language. As per their English translation **Exhibit PW 15/A**, D-105, the name of the land owner is Orissa Government and name of resident is M/s Orissa Oils

Industries Ltd.

273. The submission of the accused is that the land records in Orissa are maintained in Oriya language as it is the official language of the state and therefore the applicant company had no other option but to submit the copies of the same in Oriya language and no mal-intention on the part of applicant company for submitting the records in Oriya language can be attributed to it. It is also submitted that MoS never called for translated copy of land documents.

274. It is the submission of the accused that it is *clinching evidence* that A-1 company never intended to mislead MoS as it submitted the land ownership documents which showed clearly that the land was owned by M/s Orissa Oil Industries Ltd.

275. The argument that in case MoS had cared to get the land documents translated, it would have come to know that A-1 company is not the owner of the land in question can be suitably met by referring to the judgement of the Hon'ble Supreme Court in the case of **"Iridium India Telecom Limited Vs. Motorola Incorporated and Others (2011) 1 SCC** where in para 73 to Para 74, it is held that: -

"73. It would at this stage be appropriate to notice the observations made by the House of Lords in Central Railway Co. of Venezuela v. Kisch which would be of some relevance to the issue under consideration. In this case, the House of Lords examined the duty of those who issued a prospectus inviting investments from the general public and held that they were required to make a true and full disclosure of all the relevant facts. The House of Lords quoted with approval the observations made in New Brunswick and Canada Railway Co. v. Muggeridge

wherein it has been observed as follows: - (ER p. 425)

"..Those who issue a prospectus holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as facts that which is not so, but to omit no one fact within their knowledge the existence of which might in any degree affect the nature, or extent, or quality of privileges and advantages which the prospectus hold out as inducements to take shares;"

74. The House of Lords went on to observe that it is no answer to a person who has been deceived that he would have known the truth by proper inquiry. It would be apposite to reproduce here the observations made by the House of Lords on this aspect of the matter: (Kisch case, LR pp.120-21)

*"But it appears to me that when once it is established that there has been any fraudulent misrepresentation or willful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, 'You, at least, who have stated what is untrue, or have concealed the truth, for the purpose of drawing me into a contract, cannot accuse me of want of caution because I relied implicitly upon your fairness and honesty.' I quite agree with the opinion of Lord Lyndhurst, in *Small v Attwood*, that:*

'Where representations are made with respect to the nature and character of property which is to become the subject of purchase, affecting the value of that property, and those representations afterwards turn out to be incorrect and false, to the knowledge of the party making them, a foundation is laid for maintaining an action in a court of common law to recover damages for the deceit so practiced; and in a Court of equity a foundation is laid for setting aside the contract which was founded upon that basis.'

*And in *Dobell v Stevens*, to which he refers as an authority in support of the proposition, which was an action for deceit in falsely representing the amount of the business done in a public house, the purchaser was held to be entitled to recover damages, although the books were in the house, and he might have had access to them if he thought proper.*

Upon the whole case I think the decree of Lords Justices ought to be affirmed, and the appeal dismissed with costs."

276. Moreover, when this letter dated 05.02.2001, **Exhibit PW-2/B-6**, D-41, page 57-83, was received in MoS, noting by the dealing assistant dated 22.02.2001, D-41, page 6, was that the plant will be located on a private land measuring 142 acres near Rairangpur, district Mayurbhanj in Orissa.

277. The noting by Section Officer on 26.02.2001 is also that as demanded by MoS, the applicant company has submitted details of the project.

278. On 27.02.2001, Deputy Industrial Adviser directed to process the case for allocation of captive mines.

279. The Section Officer in the noting dated 08.03.2001 proposed physical verification of the infrastructure reported by A-1 company at its site.

280. However, the Deputy Industrial Adviser PW 2 A.C.R. Das recorded in the note sheet on 08.03.2001 that there is no precedence of physical inspection in such cases of coal mining block. In case of coal linkage also inspection report is called from the office of coal controller and MoS is not involved in inspection and thereby noted to recommend the case to MoC.

281. This shows that MoS and / PW-2 Sh.A.C.R. Das was/were induced to believe the information provided for by the applicant company

in its letter dated 05.02. 2001. All the notesheets referred above are **Exhibit PW-2/A**.

282. The response of PW-2 A.C.R. Das pertaining to letter dated 05.02/2001, **Exhibit PW-2/B-6**, D-41, page 57-83 during his cross-examination was as under: -

Question: Whether after reading the information as given by the company in its letter dated 05.02.2001 Exhibit PW 2/B-6 under the heading "Land Allotted" did you gather any information that the said land has been allotted to the company in view of the fact that allotment of land signifies only land allotted by the government?

Answer: After reading the information given by the company in its letter dated 05.02.2001 under the title "Land Allotted" along with the information given by the company in the enclosure of the letter wherein information qua land has been given by the company under the head "Acquired/Allotted so far" as "142 acres", it was understood that company has 142 acres of land with it but it was not understood that said land has been allotted by any Government Department/authority.

283. Perusal of enclosures enclosed with letter dated 05.02.2001 shows that PW 2 Shri ACR Das was referring to "Format for Application for Coal and Iron Ore Linkages for Proposed Pig Iron/Steel Making Units (EF-BOF)/EOF Route and Coke Oven Batteries" which was also submitted to MoS along with letter dated 05.02.2001, where in serial No. 3 pertaining to Land, it was stated that "**Land**, i) Total How Much required-Total 200 Acre in final phase, ii) Acquired/Allotted so far-142 Acres, iii) Present Status of Balance Land Required-Will require after 3 years of expansion, available in adjoining area and iv) Present Status of Development site-200m. From Rairangpur station, penthouses, 5 large Dia. Dug wells and water tank. Partially covered by boundary wall. Large

covered spaces for various shops.”

284. Moreover, PW 2 A.C.R. Das during his cross-examination recorded on 05.02.2018, page 20 of 27 has made it clear that he never had the idea that any land has been allotted to the applicant company in as much as along with letter dated 12.12.2000, the company had only enclosed filled in format but along with letter dated 05.02.2001, the applicant company had provided filled in format and further information about land allotted whereby the witness assumed that the land papers pertained to the land which is now available with the company.

285. PW 2 ACR Das has explained the reason for not getting the documents translated in English or Hindi by answering that: -

“Normally we believed that the letter submitted by the company to be containing correct facts and presumed that the documents submitted are correct”.

286. This witness had reiterated that when the information given in letter dated 05.02.2001 is read with documents enclosed therewith, it appeared to him that company has already acquired 142 acres of land.

287. The arguments on behalf of A-1 to A-4 and Sukhdeo Prasad, so long as Sukhdeo Prasad was one of the co-accused, before his discharge vide order dated 25.01.2017, were that Sukhdeo Prasad was the General Manager of M/s Orissa Oil industries Ltd. and while entering into MoU dated 11.10.2000 with A-2, Managing Director of A-1 company, he had claimed himself to be a GPA of M/s Orissa Oil Industries Ltd. In the MoU, only willingness of M/s Orissa Oil Industries Ltd to negotiate

sale of said land was mentioned and *the said claim did not confer any rights upon A-1 company* as even the sale consideration was not yet discussed or decided much less exchanged. It was their case that the MoU was not submitted before any authority for any purpose whatsoever during the entire process of allocation of coal block (Para 6 of detailed order on charge dated 25.01.2017).

288. Now, during final arguments, the accused have referred and relied on the same MOU dated 11.10.2000, D-61, with M/s. Orissa Oil Industries Ltd and have submitted that the same was executed before letter dated 23.11.2000, **Exhibit PW-2/B-3**, D-41, page 37 was issued by MoS seeking information about actual status of implementation and steps taken towards setting up of plant. In this background, in the prescribed Format, in Column No. 3 (II), the company provided the information under the heading Land-Acquired/Allotted, against which the company had written "142 acres". It is submitted that this information was given without any dishonest intention on the basis of MOU entered into between the company and M/s. Orissa Oil Industries Ltd.

289. The accused are relying on MOU executed by Sukhdeo Prasad (already discharged) to show that when they mentioned about availability of 142 acres of land, they intended to convey their MOU with M/s. Orissa Oils Private Ltd. In case MoS had seen their land documents and sought clarification from applicant company, the same would have been provided

290. The submission of the accused is not at all persuasive.

291. In the letters written by the applicant company to MoS or MoC they have not mentioned even once about MOU with M/s. Orissa Oils Private Ltd.

292. In this situation, the impression PW 2 A.C.R. Das rightly had on reading letter dated 05.02.2001, **Exhibit PW-2/B-6**, D-41, page 57-83 and format submitted with the letter was that the applicant company has already acquired/allotted 142 acres of land.

293. This is how the offence of cheating is committed.

294. In the main letters, there is no indication that the applicant company is relying on MOU with M/s. Orissa Oils Private Ltd. Even a reading of MOU shows that there was no certainty that the applicant company would get the land from M/s. Orissa Oils Private Ltd. In the list of enclosures mentioned in letter dated 05.02.2001, there is no mention of MOU or even mention of name of M/s. Orissa Oils Private Ltd. The schedule of land in question, as per which owner of the land is state of Orissa and the land is in occupation of M/s. Orissa Oils Private Ltd. is camouflaged in between several documents (in Oriya language) submitted by the applicant company to MoS.

295. During cross examination of PW 2 A.C.R. Das recorded on 05.02.2018, page 24 of 27, he was given a suggestion (which was unequivocally denied by him) that he (PW-2) did not get the land documents verified as a representative of the company had informed him (PW-2) that they have entered into an agreement with M/s. Orissa Oils

Corporation regarding land and they will purchase the same if a mine is allotted to them and that they have not yet acquired any land. It is important to note that neither the accused took this plea in statement under section 313 CrPC nor examined the so-called representative of A-1 company who had given this information to PW-2, as defence witness. The accused have been taking different stands which also shows that they have no defence or their defence is false.

296. MoS mentioned in paragraph 2 (c) of the recommendation letter dated 18.04.2001, **Exhibit PW-2/B-7**, D-43, page 41-42 “Out of proposed land requirement of 200 acres, total land 142 acres has already been acquired”, therefore, it can be safely concluded that the applicant company successfully induced MoS by its misrepresentations that it has 142 acres of land and succeeded in securing recommendation letter (property) dated 18.04.2001 and finally allocation of required coal block. Therefore, it is proved that A-1 company deceived MoS and obtained recommendation letter dated 18.04.2001 after MoS was induced to believe that A-1 company has acquired 142 acres of land. The charge under Section 420 IPC in this regard stands proved.

297. 2nd part of the charge under consideration is that the A-1 company vide letter dated 23.07.2004, **Exhibit PW-8/N-25**, D-41, page 173-228 addressed to MoC submitted copies of land ownership documents of M/s. Orissa Oil Industries Ltd (in Oriya language) and the A-1 company was not the owner of the said land and thereby committed the offence of cheating punishable under section 420 of IPC.

298. Vide letter dated 27.05.2004, **Exhibit PW 8/N-24**, D-43, page 164-168 MoC had called upon A-1 company to furnish the information regarding a write up on the status of the project with regard to land, clearance, equipment, financing (financial closure) etc and expansion programme of the company, if any.

299. This letter was replied by A-1 company vide its letter dated 23.07.2004, **Exhibit PW 8/N-25**, page 173-228. In this letter, information with regard to company was given as under: -

“Land: We (sic) having 200 acres of land. The papers related to the land are enclosed herewith.”

300. One of the enclosures mentioned in the letter is “Details of Land”.

301. The company enclosed same schedule of land which it had provided to MoS as per which owner of the land is state of Orissa and possession/residence is of M/s. Orissa Oils Industries Private Ltd.

302. In the noting of MoC dated 24.09.2004, it is recorded that “They are having 200 acres of land”. It shows that MoC was deceived to believe that the company is having 200 acres of land. Finally, vide letter dated 08.07.2005, **Exhibit PW 8/O-2**, D-44, page 13-14, A-1 company was conveyed the decision of Central Government to allocate Lalgah (North) Sub Coal Block in West Bokaro coalfields in favour of A-1 company and thereby completing the offence of cheating viz-a-viz MoC.

303. PW-23 Shri Prem Raj Kuar has stated that before issuing

allocation letter dated 08.07.2005, Exhibit PW 8/O-2, MoC had considered all the applications of the company, all the communications made by the company wherein they had indicated their preparedness, availability of finance, status of acquisition of land, status of various clearances such as power and water etc.

304. It shows that MoC was induced to believe that A-1 company is having 200 acres of land which also weighed with MoC in issuing firm allocation letter dated 08.07.2005.

305. It is also an argument of the accused that the allocation letter was approved on 07.07.2005 and was issued on 08.07.2005, D-44/13-C. The allocation letter had two errors which were rectified by MoC by issuing errata on 13.07.2005, page 17/D-44 and letter dated 13.10.2005, D-44/page 21. In between, A-1 company informed MoC vide letter dated 22.09.2005 that it has decided to allocate the plant instead of Jharkhand in place of Rairangpur, Orissa. It was submitted that even before the 2nd erratum was issued and before the allocation letter assumed its final form, MoC was informed voluntarily by A-1 company of its decision and intention to not set up a plant at Rairangpur. The submission of the accused is that even after coming to know this fact, MoC issue 2nd erratum which shows A-1 company never understood that owning land or owning land at Rairangpur for EUP was in any way connected or pre-condition to allocation of coal block.

306. In this regard, it is to be noted that in response to letter dated 12.12.2000 written by A-1 company to MoS, MoS had called for

documentary evidence in support of availability of 142 acres of land with A-1 company. A-1 company had submitted false information to MoS as well as MoC about availability of land with it. To cheat MoS and MoC, A-1 company had provided the land documents of M/s. Orissa Oils Private Ltd in Oriya language. The accused resorted to subterfuge, tricking MoS and MoC to believe availability of land with A-1 company. A-3 in the 19th screening committee meeting made a submission about 150 acres of land available with A-1 company. This fact was believed by the 19th Screening Committee and is duly reflected in the minutes of the said meeting. False representations were repeated in letter dated 23.07.2004. Therefore, though MoC before issuing firm allocation letter to A-1 company should have taken note of information provided on behalf of A-1 company about change of plant from Orissa to Jharkhand but the lapse/oversight on behalf of MoC is no proof of innocence of A-1 company and it cannot argue that A-1 company never understood that owning land or owning land at Rairangpur for EUP was in any way connected or pre-condition to allocation of coal block.

307. The accused, A-1 company is therefore convicted under section 420 of IPC under this charge.

308. The 4th charge of cheating for which accused has been charged is that vide letter dated 07.11.2002, false information was submitted to MoC about financial status of the company by attaching Auditor's certificate issued by A-5, C.A. claiming that the net-worth of the company was Rs. 19.42 crores whereas as per balance sheet of the

company, the net-worth of the company was Rs. 2,46,68,615 as on 31.03.2002 and Rs.2,39,72,811 as on 31.03.2003 and thereby caused offence under section 420 of IPC.

309. Argument of the accused is that there is no mention in any note sheet about these documents especially the alleged false net worth certificate having been examined or the information given in the said documents considered by anyone for any purpose. After receiving the above-mentioned documents from A-1 company and without considering them, the file was submitted for approval of proposal sent by Under Secretary, CPAM, D-44/page 10/N i.e., for placing the case of A-1 company before the Screening Committee. Therefore, there is no question of any inducement based on any alleged misrepresentation made by A-1 company. MoC till this stage had not formed any view to recommend or propose allocation of coal block in favour of A-1 company. MoC merely included the case of A-1 company to be placed before Screening Committee after receiving recommendation of MoS and CIL and took no view on the suitability of allocation of the block to A-1 company. It did not recommend the name of A-1 company. Therefore, the alleged misrepresentation made to MoC leading to inducement based upon false claims is unsubstantiated and rather it is ruled out.

310. The discussion recorded in 9th point for determination shows that A-1 company vide letter dated 07.11.2002 had submitted false information to MoC about its financial status and had attached false Auditor's certificate purportedly issued by A-5, C.A. claiming that the net

worth of the company was Rs. 19.42 crores whereas as per balance sheet of the company, the net-worth of the company was Rs.2,46,68,615 as on 31.03.2002 and Rs. 2,39,72,811 as on 31.03.2003.

311. It is already noted that MoC, vide letter dated 11.08.2000, **Exhibit PW-8/N-2**, D-43, page 36 called upon the company to furnish (i) present arrangement regarding coal linkage for the existing plan, (ii) phased coal requirement, (iii) details of mobilising the funds, project cost and its financial tie up, (iv) geological reserves in a mining block calculated on the basis of 30 years requirement, (v) economic viability of the plant and (vi) project profile. This letter was replied by the company vide its letter dated 11.09.2000, **Exhibit PW-8/N-3**, D-43, page 38-40 but dealt with only present arrangement of coal linkage, phased coal requirement and geological reserves of the captive mining block. The company also sent copy of letter dated 14.10.2000 addressed by the company to the Industrial Adviser of MoS stating therein that detailed project report is being prepared. But the enclosures of the letter, including project profile with the relevant information sent to MoS, were not enclosed with the copy of letter sent to MoC. A perusal of Project Profile page 22, D-41 shows that the company had informed MoS about its capital drawdown at point No. 7.2 as under: -

Capital draw down

Debt to Equity Ratio =2:1 All Rupee Component

Rate of Interest= 12%

Equity= Rs. 30.00 crores

Debt= Rs. 60.00 crores

Term of loan= 5 years

Average interest= Rs. 4.32 crores

312. While processing the case of applicant company for keeping the same in the agenda notes of the 18th Screening Committee meeting, the Under Secretary in MoC directed that the information submitted by the company regarding funds, economic viability of the plant, project profile as submitted by it to MoS had not been made available to MoC by MoS, so same may be called for.

313. Accordingly, letter dated 16.10.2002, **Exhibit PW-8/N-12**, D-43, page 55 was sent to the company to furnish all such information as was earlier asked vide letter dated 11.08.2000. In this letter, the company was reminded that in response to letter of MoC dated 11.08.2000, the company has not provided (i) details of mobilising the funds, projects cost and its financial tie up, (ii) economic viability of the plant and (iii) project profile and the company was requested to provide the same.

314. In response to this letter, the company had replied vide its letter dated 07.11.2002, **Exhibit PW-8/N-13**, D-43, page 56-89. The company informed in this letter that they are enclosing project profile including financial cost and economic viability and this profile was sent to MoS on the advice of MoC. It was also stated that the details of mobilising funds and financial tie up is also given separately. The company also enclosed Auditor's Certificate of M. Kumar and Associates dated 12.11.2002 stating that the net-worth of the company as on 31.10.2002 stands at Rs. 19.42 crores. It also contained information under signatures of Managing Director A-2 stating that net owned funds

of the company as on 31.10.2002 were Rs. 19.42 crores. It was stated that fresh equity capital to be raised by way of private placement will be ten crores. Internal accruals and others will be 0.58 crores and thereby shareholders' funds would be Rs.30 crores.

315. This letter was dealt with in MoC by PW 8 who recorded in the note sheet at page 12, D-44 that the company has sent project profile including financial cost and economic viability. Further, the details of mobilising funds and financial tie up also given separately (pp-58-67/c). Thereafter, this noting passed through Ms. Neera Sharma, Section Officer, Under Secretary, Director (T), Adviser (Project) and Special Secretary (Coal). Nobody doubted or raised any question with regard to submissions of the company about its net worth being Rs. 19.42 crores. *It shows that the Auditor's certificate certifying that the net-worth of the company as on 31.10.2000 was Rs. 19.42 crores and submission of A-2, Managing Director of A-1 company, page 80, D-43 that the net owned fund of the company as on 31.10.2000 was Rs.19.42 crores was accepted as correct and that is why no objection was raised with regard to the same.* The only query raised by Special Secretary (Coal) after going through letter dated 07.11.2002 and accompanying documents was "What technology is this? Why do they require a block? Please specify." Thereafter, he referred back the matter to the Adviser (P) who directed that as the requirement of the company was prime coking coal so CMPDIL may be asked as to whether Lalgarh coal block contains prime coking coal. Thereafter, vide letter dated 18.12.2002 the Chief General Manager, CAL was requested that the matter be got examined

by CMPDIL as to whether Lalgarh contains prime coking coal, page 19, D-43. Positive response was received from CIL as per letter dated 01.01.2003 and finally at page 14, D-44 the Additional Secretary directed that the matter be included in the agenda of next meeting of Screening Committee.

316. At the time of order on charge, it was made abundantly clear to all the accused that during trial they will be at liberty to show that the net-worth of the company was Rs. 19.42 crores. However, no endeavour was made by the accused by way of cross examination or otherwise to show that the net worth of the company was Rs. 19.42 crores. In the project profile submitted by the company with its letter dated 14.10.2000, it had nowhere mentioned that 26% of shareholders' equity of Rs. 30 crores is already made. This fact was mentioned for the 1st time by the company in its letter dated 12.12.2000 addressed to MoS, D-41 page 47 in the Performa submitted with the said letter. Meaning thereby according to accused, this 26% of shareholders' equity of Rs. 30 crores would have been made between 14.10.2000 to 12.12.2000. But the accused have led no evidence in this regard. Net worth of the applicant company was an important factor for deciding allocation of coal block in its favour is evident from the fact that MoC had first asked for this information as per its letter dated 11.08.2000 and when the information was not sent by the company to MoC, the MoC persisted with this query vide its letter dated 16.10.2002. The information provided for by the applicant company was examined in MoC as is apparent from the note sheets referred above and no query was raised with regard to net worth of the company though

queries were made with regard to other topics which shows that MoC was induced to believe that the net worth of the company was Rs. 19.42 crores.

317. According to PW-23 Shri Prem Raj Kuar, when the matter regarding A-1 company came up for discussion in the 19th of screening committee meeting, then the file of said company containing its applications and other documents was placed before the Chairman of the committee by him. While arriving at its decision in favour of A-1 company, the Chairman screening committee and the members of screening committee had seen all the applications of the company along with other documents and the recommendations of Administrative Ministry or State governments as were received till that time in MoC.

318. There is an objection that evidence of PW 23 is beyond his statement under section 161 CrPC and is therefore not admissible.

319. Shri Sanjay Kumar learned DLA of CBI has submitted that in response to Question No. 1 recorded at page 22 of statement of PW-23 dated 24.02.2015/25.02.2015, **Exhibit PW-23/DX-1**, the witness had replied that he had assisted senior officers during the meetings. It was submitted by learned DLA that it was the duty of the prosecutor to ask the witness what kind of assistance was given by him to the senior officers during screening committee meetings. In this regard learned DLA has relied on **Chandrasekhar Sureshchandra versus State of Maharashtra**, JT 2000 (9) SC 598 where it is recorded in para 6 as under:

“Learned Counsel for the appellants contented that PW 2 cannot be believed for so many reasons, mainly among which is that he made improvements on his version to suit the prosecution case. He stated instances of such improvements. We have applied our mind and noticed that though there are some marginal variations on certain aspects as between his statement recorded under section 161 of CrPC and the testimony given in court, such variations cannot be dubbed as improvements made with any sinister motive. They are elaborations elicited by the public prosecutor during examination in chief. It is the prerogative of the public prosecutor to elicit such points from a witness as he deems necessary for the case. No public prosecutor can be nailed to the statement recorded under section 161 of the code. We scrutinised the so-called improvements from that angle and we are satisfied that PW 2 had basically remained at the same position which he has stated in the FIR.”

320. The learned DLA has also relied on **Alamgir versus State (NCT of Delhi)**, a judgement of the Hon’ble Supreme Court decided on 12.11.2002 where one of the objections was to the statement under section 161 CrPC that a particular piece of evidence was not available in the statement of the witness under section 161 CrPC. The Hon’ble Supreme Court held that it does not take away the nature and character of the evidence in the event there is some omission on the part of the police official. Would that be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence, the answer, in our view, cannot but be in the negative.

321. Therefore, evidence of PW-23 shows that all the applications of A-1 company and its documents including letter dated 07.11.2002, containing false information submitted to MoC by A-1 company about its financial status by attaching false Auditor's certificate purportedly issued by A-6, C.A. claiming that the net-worth of the company was Rs. 19.42

crores were also placed before the Chairman of the committee which induced and deceived the screening committee about financial preparedness of A-1 company resulting in favourable decision in its favour.

322. The accused have argued that the decision of the 19th Screening Committee did not confer any benefit or right upon A-1 company and rather it had to pay more than Rupees One crore for prospecting without any certainty of allocation for mining.

323. This argument of the accused can give no relief to them because after the decision of 19th Screening Committee meeting it was clear that subject to the result of prospecting, Lalgarh North coal block would be allocated to the A-1 company for mining. This decision conferred great benefit on A-1 company which is evident from the fact that the price of its share worth Rs. 100 soared to Rs. 7700 and Binay Prakash group received Rs. 7 crores for transferring equity in favour of M/s. Electrosteel Castings Limited.

324. This is also one of the arguments of the accused that no member of the Screening Committee was examined to prove misrepresentations made by A-1 company inducing the committee to allocate coal block to the said company. On 04.09.2021 when the case was reserved for final orders, learned counsel for A-1 to A-4 filed following judgements to submit that non-examining screening committee members is fatal to the case of prosecution: -

S.NO	PARTICULARS	CITATIONS
1.	BHANDA GARH VS STATE OF ASSAM	MANU/GH/0059/1983
2.	BIR SINGH VS STATE OF UP	MANU/SC/0082/1977
3.	BRUNDABAN CHANDRA DHIR NARENDRA VS THE STATE OF ORISSA	MANU/OR/0047/1953
4.	ISMAIL AMIR SHEIKH VS STATE OF MAHARASHTRA	MANU/MH/0036/1984
5.	JOGENDRAKRISHNA ROY VS KURPAL HARSHI & CO	MANU/WB/0364/1921
6.	KISHAN RATHI VS MONDAL BROS AND CO.	MANU/WB/0033/1967
7.	MADHOLAL SINDHU VS ASIAN ASSURANCE CO LTD.	MANU/MH/0184/1955
8.	MUDDASANI SAROJANA VS MUDDASANI VENKAT NARSINGH.	MANU/AP/0732/2006
9.	MUKHTIAR AHMED ANSARI VS STATE (NCT OF DELHI)	MANU/SC/309/2005
10.	MUNICIPAL BOARD VS KANDHAIYA LAL	MANU/UP/0059/1931
11.	PARAMJIT SINGH VS STATE	MANU/DE/0398/1983
12.	PETLAD TURKEY RED DYE WORKS LTD VS DYES AND CHEMICAL WORKER'S UNION, PETLAD	MANU/SC/0201/1960
13.	PHANKARI VS THE STATE	MANU/JK/0028/1965
14.	PREM CHAND VS OP TRIVEDI, HJS DISTRICT JUDGE, ELECTION TRIBUNAL MUNICIPAL BOARD	MANU/UP/0265/1966
15.	RAM JAWAI AND SHAKUNTALA DEVI	MANU/DE/0050/1993
16.	RAMESHWAR PRASAD TRIVEDI VS STATE OF RAJASTHAN	MANU/RH/0059/1978
17.	SETH MAGANLAL VS DARBARILAL CHOWDHRY	MANU/PR/0127/1927
18.	SHIB SINGH VS SRIDHAR	MANU/UP/0170/1953
19.	THE STATE VS HIRALAL	MANU/UP/0104/1957

325. The response of CBI in this regard is that it is the prerogative of the prosecution to decide as to which witness is to be examined to prove the charges, **Dr. Rajesh Talwar versus CBI**, 2013 (82) ACC 303. Reliance is also placed on **Narpat Singh versus State of Rajasthan**, 1990 Criminal Law Journal 2720 to submit that it is not always necessary for the prosecution to examine all the witnesses in respect of a particular fact. If the prosecution story is fully disclosed by the witnesses already produced, no inference can be drawn against it for not producing some other persons who could also depose to the same facts and unnecessary repetition can always be avoided. Reliance is also placed on **Raghubir Singh versus State of U.P.**, AIR 1971 SC 2156 where it is held that: -

“... Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. The Appellant's counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him. No material on important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for contradicting the prosecution version...”

326. Shri R.S. Cheema learned Senior advocate representing CBI, during rebuttal arguments, submitted that in almost all the coal allocation cases including present case, the prosecution case can be proved by documentary evidence supplemented by the evidence of officials of MoS and MoC who dealt with the correspondence exchanged, note sheets made and who had attended screening committee meetings and had assisted the Chairman of Screening Committee as well as assisted Secretary coal at the time of issuing allocation letter of coal block in

favour of applicant company. Learned Senior Counsel relied on **Harpal Singh versus Davinder Singh**, 1997 (6) SCC 660 to submit that a public prosecutor may give up witnesses during trial to avert proliferation of evidence which could save much time of the court unless examination of such a witness would achieve some material use. This judgement was relied on to submit that if the accused thought that evidence of any witness not examined by prosecution would help the defence, it is always open for such an accused to examine such a witness as a defence witness.

327. Rival submissions have been considered.

328. The minutes of the 19th Screening Committee have been proved and duly exhibited during trial. The contents of the minutes speak for themselves. The minutes record that the party informed that they have 150 acres of land at Raipur (which should be read as Rairangpur). It shows that the screening committee was induced to believe availability of land with the applicant company. These minutes were sent to the applicant company i.e., A-1 company and no letter was written by A-1 company bringing to the notice of screening committee that land is not so far available with the applicant company. The minutes speak for themselves. The principle of res ipsa loquitor is applicable to the case in hand. Therefore, even without examining any member of screening committee, the prosecution has successfully proved that the screening committee was deceived to believe availability of land with the applicant company. Moreover, as submitted by Learned Senior Advocate Shri R.S.

Cheema, the accused had the liberty to summon as defence witness any member of screening committee including its chairman to prove their innocence. The fact that the accused have not examined any member of the screening committee as defence witness shows that the witness if examined would not have deposed in favour of accused. Prosecution has examined PW 2, PW 8 and PW 23 who have duly proved the correspondence exchanged between the ministries and the applicant company, note sheets made in the Ministry, proceedings of screening committee meeting and also passing of final order by Secretary coal allocating the block in favour of applicant company firmly. The evidence of these witnesses is sufficient to prove that the screening committee was induced and deceived to believe false facts stated by applicant company for securing allocation of coal block in its favour.

329. Therefore, the charge framed against A-1 company stands proved and A-1 company is convicted for the offence under section 420 of IPC under this charge.

330. The 5th charge under section 420 of IPC is that the accused had submitted, vide letter dated 16.08.2003 false balance sheets for the year ending on 31.03.2000, 31.03.2001 and 31.03.2002, showing inflated figures, certified by accused A-4, Director and audited by A-6, CA and thereby committed the offence of cheating.

331. While discussing 4th point for determination, it is already decided that the balance sheets prepared by A-6 for A-1 company for year ending 31.03.2000, 31.03.2001 and 31.03.2002 submitted with MoC

vide letter dated 16.08.2003 are false balance sheets.

332. It is already held that A-6 was not the Auditor of the company and the Auditor was A-5. Signatures of A-6 have been identified on the balance sheets by PW 13 Nandlal.

333. The minutes of 19th Screening Committee meeting were sent to the applicant company vide letter dated 22.07.2003. It was recorded in the minutes: -

"The Screening Committee decided to allocate the block to the party for prospecting only. The party was directed to come up with a scheme for use of middlings in specified permitted end uses. Depending upon the prospecting results and provided underground mining of more than 0.25 MTPA is planned only then the block can be further used by the party for mining. If prospecting results reveal OC mining, then the block cannot be allocated for mining as the requirement of 0.5 MTPA is less than the 1 MTPA provided in the guidelines for captive mining blocks".

334. While processing the file of the company in MoC, as per note sheet at page 15 and 16, D-44, MoC had decided to call for further information from the company including "Details about the balance sheet for the last 3 years and other details along with the latest Auditors report".

335. This information was called by MoC from the company vide letter dated 25.07.2003, **Exhibit PW-8/N-17**, page 95, D-43. In response to this letter of MoC, the company had responded vide letter dated 16.08.2003, **Exhibit PW-8/N-19**, D-43, page 100-105 and had enclosed therewith balance sheet for three years along with Auditor's certificate given by A-6.

336. The balance sheets and the auditor's certificate are false documents and show inflated net worth of the company.

337. It is already seen that MoC had given importance to details of mobilising the funds, project cost and its financial tie up, economic viability of the plant and project profile and had therefore called for this information from the company vide letter dated 11.08.2000, page 36, D-43. The company had failed to provide this information and thereby necessitating a *reminder* from MoC to the company, letter dated 16.10.2002, page 55, D-43.

338. Seeing in this background, it becomes clear that for MoC, it was important to be assured of financial health of the applicant company and that is why it was seeking information, from stage to stage, pertaining to balance sheets with Auditor's certificate.

339. The objection of A-6 that the Auditor's certificate is a photocopy is without any merits as PW 13 Nandlal has made it clear that the signatures on the same and seal of the company of A-6 is affixed on the Auditor's certificate, in original.

340. Furnishing of false balance sheets and false Auditor's certificate was one of the steps taken by the company to induce MoC to believe that the financial condition of the company is sound and thereby induced MoC to finally allocate Lalgarh (North) coal block in its favour. According to PW 23, the Secretary coal had seen the entire records of the applicant company before issuing firm allocation letter which shows

that inflated balance sheets were also seen and believed as correct by the Secretary coal which also proves the fraudulent inducement by A-1 company.

341. Further, the learned DLA Shri Sanjay Kumar has referred to letter dated 08.07.2005 whereby firm allocation was made in favour of A-1 company. This letter refers to earlier letter of MoC dated 24.11.2003 which was sent to A-1 company in response to its letter dated 16.08.2003 to show that the false balance sheets audited by A-6 were considered in MoC by Secretary, Coal before issuing firm allocation letter dated 08.07.2005.

342. Reliance is also placed on D-44, page 17 which are the note sheets of MoC to show that the balance sheets audited by A-6 and furnished by A-1 and A-2 were also considered and reflected in the note sheets.

343. Reliance is also placed on **Exhibit PW-23/DX-1**, page 1 where the witness had stated that “In the capacity of Assistant/Section Officer, I used to put up/process the papers/records/documents etc received in the section on the files to my seniors for perusal and necessary action”.

344. Therefore, the 5th charge of cheating under section 420 IPC is also proved.

345. The 6th charge under section 420 of IPC is that A-1 company, in furtherance of common object of criminal conspiracy, entered into

agreement dated 27.03.2004 with M/s. Electrosteel Castings Limited and sold shareholding to M/s. Electrosteel Castings Limited at a premium of Rs. 7 crores.

346. Shri Umang Kejriwal, PW-13 Managing Director of M/s. Electrosteel Castings Ltd deposed that M/s. Electrosteel Castings Ltd had acquired 50% equity holding in A-1 company by purchasing 20,000 shares at the rate of Rs. 7,700 per share aggregating to Rs. 15,40,00,000 from Binay Prakash group. The par value of shares at which A-1 group had subscribed 40,000 shares of A-1 company was Rs. 100 per share. He deposed that till the time of signing of the agreement, a total sum of Rs. 7 crores was paid to A-1 group by way of six cheques. He deposed that the balance amount of Rs. 8,40,00,000 as was to be made under the agreement was not paid by his company to A-1 group as subsequent to the agreement, no further progress in terms of compliance of various conditions of the agreement could be made.

347. The submission of the accused in this regard is that there is no allegation that any misrepresentation was made to M/s. Electrosteel Casting Private Ltd or the agreement was illegal in any way. The transaction being perfectly legal, selling a part of shareholding cannot be termed unlawful gain to A-1 company or to A-2. At the time of this transaction, A-1 company was not even allotted the coal block for mining.

348. After considering the submissions of the accused, this court is of the view that sale of 50% of equity of A-1 company reinforces that allocation of coal block (*even for prospecting*) was highly valuable and

profitable for the successful company. The prospects of A-1 company had brightened up when the 19th Screening Committee decided for prospecting of the coal block. It was decided in the 19th Screening Committee meeting that depending upon the prospecting results and provided underground mining of more than 0.25 MTPA is planned, only then the block can be further used by the party for mining.

349. The submissions of the accused are also that before taking the final decision, the Secretary, MoC had raised a query whether the case should not go through Screening Committee but in MoC categorical view was taken in the note sheet dated 17.01.2005 that Screening Committee had decided the allocation of Lalgah North coal block to A-1 Company. The only aspect that made the allocation provisional was the determination of reserves so that the mining method conforming to guidelines could be determined. Since the guidelines were re-examined in the case of M/s Prakash Industries and M/s Usha Martin and the said condition was no longer relevant, so the case was not required to be put before the Screening Committee again and firm allocation was recommended to be made to A-1 Company. Finally, allocation letter was approved on 07.07.2005 and issued on 08.07.2005, D-44/13-C.

350. This also shows that the 19th Screening Committee meeting had decided for allocation of coal block to A-1 company subject to report of prospecting by CMPDIL.

351. As the prospects of the company brightened up, its shares were willingly purchased by M/s Elecrosteel Casting Pvt Ltd at a huge

premium.

352. In the absence of any restriction imposed by MoS or MoC on transfer of shareholding, merely entering into agreement with M/s. Electrosteel Castings Ltd. for selling the shareholding at a premium vide agreement dated 27.03.2004, would not be cheating in itself.

353. However, it proves the offence of cheating by the company on other earlier counts as it shows that even by securing Lalgarh (North) coal block for prospecting, the prospects of A-1 company had considerably brightened up and third parties were willing to purchase its shares at a premium, therefore, recommendation of Screening Committee for prospecting would also be property and false representations made by A-1 Company to MoS and MoC would tantamount to cheating, as discussed in earlier paragraphs, for securing favourable recommendation from MoS, Screening Committee and favourable decision from MoC.

354. The Accused No.1 company is, therefore, acquitted of the charge regarding 6th count of cheating under section 420 of IPC. Shri Sanjay Kumar learned DLA of CBI has also not seriously pressed this charge.

355. Principle of Alter Ego: - As noted in **Sunil Bharti Mittal Versus CBI**, 2015 (4) SCC 609, a Constitution Bench of five Hon'ble Judges of the Supreme Court in the case of **Standard Chartered Bank v. Directorate of Enforcement**, (2005) 4 SCC 530 has held that a

company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment.

356. In the case of **Iridium India Telecom Ltd Versus Motorola Inc**, (2011) 1 SCC 74, the question before the Hon'ble Supreme Court was "Whether a company could be prosecuted for an offence which requires mens rea?" In following paras, it was held: -

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

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

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

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

"A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So, you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713, 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty."

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

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

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

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in *Standard Chartered Bank v. Directorate of Enforcement* (2005) 4 SCC 530. On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6) "6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

357. In para 35 of the case of *Sunil Bharti Mittal* (Supra), it was held that:

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

358. In the case in hand, A-2 was the Managing Director of A-1

company. He had made false representations in letter dated 12.12.2000, 05.02.2001 to Mos and had made false representations in letter dated 16.08.2003 and 23.07.2004 before MoC. A-2 had furnished false Auditor's certificate purportedly issued by A-5 dated 12.11.2002 along with his letter dated 07.11.2002 which was received in MoC on 21.11.2002 (thereby making it possible to enclose certificate dated 12.11.2002 with the said letter). A-2 had provided false balance sheets with MoC vide his letter dated 16.08.2003.

359. A-3 was the Director (Technical) of A-1 company. He had made false statement before the 19th screening committee that A-1 company has already acquired 150 acres of land.

360. A-4 was also one of the Directors of A-1 company and had certified false balance sheets of A-1 company.

361. State of mind of A-2, A-3 and A-4 is the state of mind of A-1 company as they are the brain and nerve center of A-1 company. They are alter ego of A-1 company and their criminal intention is the criminal intention of A-1 company. Hence, A-1 company can be convicted under section 420 of IPC as well as under section 120-B and under section 120-B read with Section 420 of IPC once such criminal intent is proved against A-2, A-3 and A-4.

362. **Charge framed against Accused No. 2:** - The 1st charge against A-2 is that he, vide letter dated 12.12.2000, submitted false information to MoS about acquisition/allotment of 142 acres of land

whereas no such land existed in the name of A-1 company on that date and therefore in furtherance of common object of criminal conspiracy to cheat MoS/ MoC/ Screening Committee, committed offence under section 420 IPC.

363. Similar charge is also framed against A-1 company. As per discussions recorded above, the said charge is not proved against the said company as MoS had not believed false statement of A-1 company and had called for documentary evidence of allotment of land.

364. However, this will not mean that MoS was never deceived to believe that A-1 company has acquired 142 Acres of land before making recommendation in favour of A-1 company to MoC for allocation of coal block. The subsequent discussion on third charge under Section 420 of IPC will reveal that MoS was deceived to believe that the A-1 company owns 142 acres of land after receiving letter dated 05.02.2001, **Ex. PW-2/B-6**, D-41, page 57-83 and so induced, it made recommendation in favour of A-1 company to MoC for allocation of coal block.

365. Writing in letter dated 12.12.2000 that the A-1 company has acquired 142 acres of land could have been treated as attempt to cheat MoS but since there is positive finding that after receiving letter dated 05.02.2001 from A-1 company, MoS was deceived to believe that A-1 company has acquired 142 acres of land and the offence of cheating MoS was completed resulting in issuance of recommendation letter by MoS to MoC in favour of A-1 company, therefore, findings to the present charge are confined to hold that the first charge of cheating framed

against A-2 is not proved. It is not proved that only on the basis of letter dated 12.12.2000, MoS believed that the company has acquired 142 acres of land.

366. The 2nd count of cheating under section 420 of IPC is that vide letter dated 12.12.2000, this accused had submitted false information to MoS about financial preparedness. This charge is also identical to the charge framed against A-1 company. As per discussions recorded above, the said charge is proved against the said company. Letter dated 12.12.2000 has been written by A-2. On the same analogy, the charge against A-2 under section 420 of IPC for cheating is also proved.

367. As held in the case of **Sunil Bharti Mittal** (supra), an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. A-2 is the alter ego of A-1 company and criminal intent of A-2 has been imputed to A-1 company and therefore as A-1 company has been convicted for the offence under section 420 of IPC due to criminal intent of its alter ego i.e., criminal intent of A-2, it is but natural that A-2 would also be convicted for the offence under section 420 of IPC.

368. There is specific act attributed to A-2 who was Managing Director of A-1 company and directly in control and management of the company i.e., he has written letter dated 12.12.2000 giving false information about availability of land and financial net worth resulting in

deception in MoS with regard to financial net worth of A-1 company and therefore, A-2 is guilty under section 420 of IPC under 2nd count of charge of cheating framed against him.

369. The 3rd count of cheating under section 420 of IPC is that A-2 vide letter dated 05.02.2001 submitted to MoS copies of land ownership documents of M/s. Orissa Oil Industries Ltd (in Oriya language) and vide letter dated 23.07.2004 submitted to MoC copies of land ownership documents of M/s. Orissa Oil Industries Ltd (in Oriya language) whereas M/s. DOMCO Smokeless Fuels Private Ltd was not the owner of the said land and thereby committed the offence of cheating.

370. Letter dated 05.02.2001, **Exhibit PW-2/B-6 (Page 57-83, D-41)** is written by A-2 as Managing Director of the A-1 company.

371. Similarly, letter dated 23.07.2004 Exhibit **PW-8/N-25**, page 173-228 is also written by A-2 as Managing Director of A-1 Company. These two letters are specific evidence of cheating committed by A-2.

372. Similar charge was also framed against the A-1 company. As per discussions noted above, the said company is convicted of the charge framed against it.

373. Therefore, on the same analogy and considering that A-2 is the author of letter dated 05.02.2001 and 23.07.2004 whereby it was falsely reiterated that the company has land available with it to set up the plant, A-2 is also convicted under 3rd count of charge under section 420 of IPC.

374. The 4th count of cheating under section 420 of IPC is that A-2 vide letter dated 07.11.2002 submitted false information to MoC about financial status of the company and attached false Auditor's certificate purportedly issued by A-5, C.A. claiming that the net worth of the company was Rs.19.42 crores whereas as per balance sheet of the company, the net worth of the company was Rs.2,46,68,615 as on 31.03.2002 and Rs.2,39,72,811 as on 31.03.2003 and thereby committed the offence of cheating under section 420 of IPC.

375. Identical charge is also framed against the A-1 company and as per discussions recorded above, the said charge against the company stands proved. Rather, A-1 company has been convicted due to criminal intent of A-2 who is the alter ego of A-1 company and therefore there is no difficulty in convicting A-2 for the offence of cheating under this charge.

376. Letter dated 07.11.2002, Page 56-89, D-43, **Exhibit PW 8/N-13** is written by A-2. Therefore, for the same reasoning for which the company has been convicted, A-2 is also convicted for the offence under section 420 of IPC as there is specific evidence against him in the form of letter dated 07.11.2002.

377. The 5th count of cheating under section 420 of IPC is that A-2 vide letter dated 16.08.2003 submitted copies of false balance sheets for the year ending on 31.03.2000, 31.03.2001 and 31.03.2002 to show inflated figures, which were certified by co-accused A-4 and were audited by another co-accused A-6, proprietor of M/s. Sanjay Khandelwal and

company to MoC.

378. Similar charge was also framed against the A-1 company. The said company is convicted for the said offence.

379. Letter dated 16.08.2003 is written by A-2 himself.

380. For the same reasons for which A-1 company has been convicted under this charge, A-2 is also convicted for the offence of cheating under section 420 of IPC as there is specific evidence against him in the form of letter dated 16.08.2003 whereby he deceived MoC to believe that A-1 company enjoys good financial net worth.

381. The 6th and last count of the charge under section 420 of IPC is that this accused vide agreement dated 27.03.2004 entered with M/s. Electrosteel Castings Ltd and sold shareholding to M/s. Electrosteel Castings Ltd at a premium of part payment of Rs. 7 Crores.

382. Identical charge was also framed against A-1 company. The said company has been acquitted of the said charge. A-2 had signed the agreement dated 27.03.2004.

383. Therefore, for the similar reasons for which A-1 company is acquitted, this accused is also acquitted of the charge of cheating under section 420 of IPC framed under 6th count.

384. Clarification on the Issue of Charge/s under the Head of Cheating: - Before dealing with the other charges framed against the accused persons, a submission made on behalf of CBI in response to

query of the court during rebuttal arguments on 04.09.2021, requires to be dealt with.

385. As per the said “Clarification on the Issue of Charge/s under the Head of Cheating”, the various acts pointed out in the order of formal charge would form a chain of incriminating circumstances culminating in the offence of cheating. It is further submitted that the abovementioned acts committed by the accused in furtherance of the conspiracy form links in a complete chain as integral part of a single conspiracy to commit the acts of cheating.

386. When the charge under Section 420 IPC was framed, the same was not challenged by any party.

387. The “Clarification on the Issue of Charge/s under the Head of Cheating” has been considered carefully by this court.

388. The clarification suggests how the formal charge framed against A-1 and A-2 under section 420 IPC should be read.

389. There is no submission for alteration of formal charge framed against A-1 and A-2 under section 420 of IPC on 13.02.2017.

390. At this stage, when the trial is over and final arguments have been addressed, this court has the benefit of all the evidence recorded and all the arguments addressed which shows clearly that this is not a case of one single offence of cheating but there are several offences of cheating committed by A-1 and A-2 having unity of purpose i.e.,

recommendation of MoS for allocation of Coal Block and procuring allocation of Lalgah (North) Coal Block from Screening Committee/MoC.

391. It is already seen that the application of A-1 company to MoC was not entertained and A-1 company was directed to approach the Administrative Ministry i.e., MoS for its recommendation before A-1 company could approach MoC for allocation of coal block.

392. MoS was deceived and induced to believe fraudulently/dishonestly by A-1 company, vide letter dated 12.12.2000 **Exhibit PW 2/B-4** (D-41, Page 47-53) and vide letter dated 05.02.2001 **Exhibit PW 2/B-6** (D-41, Page 57-83) that it has already acquired 142 acres of land / A-1 company is financially well prepared in as much as out of equity of Rs. 30 crores, arrangement for promoter's contribution of 26% is already made. So deceived and induced, MoS recommended the case of A-1 company to MoC vide its OM dated 18.04.2001 for allocation of mining block, **Exhibit PW 2/B-7** (D-43, page 41-42). Recommendation letter of Administrative Ministry, in this case MoS, is property within the meaning of section 420 of IPC. Without this recommendation letter, no applicant company could even approach MoC for allocation of coal block. These are offences of cheating against MoS.

393. Other offence of cheating committed by A-1 company and A-2 is inducing MoC officials to place the matter of applicant company before screening committee for its decision after the officials of MoC felt satisfied with the preparedness of A-1 company for allocation of coal block. But for such inducement, the officials of MoC would not have

processed the case of A-1 company for placing before the screening committee and such act caused damage/ harm to reputation of MoC.

394. The other offence of cheating under section 420 of IPC by A-1 company is of inducing screening committee to believe that the applicant company has 150 acres of land and by inducing the screening committee to believe financial preparedness of A-1 company. Although the decision of screening committee was to allow allocation of block for prospecting purposes but the subsequent events have shown that even this decision of allocating for prospecting would be treated as a property within the meaning of section 420 of IPC in as much as after the decision of screening committee, the worth of the shares of A-1 company skyrocketed and share worth Rs. 100 was sold by Binay Prakash group for Rs. 7700 and by selling 20000 shares, Bipay Prakash Group would have made a profit of Rs.15,40,00,000 and actually received more than Rs. 7 crores and the balance of Rs.8,40,00,000 was to be paid by M/s Electrosteel Castings Pvt. Ltd. to Binay Prakash Group but for their internal disputes. That leaves no doubt that the recommendation of screening committee is also property within the meaning of section 420 of IPC.

395. Even after the decision of screening committee, the accused continued to deceive and induce MoC by submitting false balance sheets as per their letter dated 16.08.2003 resulting in firm allocation of coal block by Secretary, MoC.

396. The prosecution and the accused had understood that the

case involves allegations of cheating for more than one count which is clear by reading chargesheet and detailed order on charge passed on 25.01.2017 by this court.

397. In para 16.21 of the chargesheet, it was mentioned that:

"...Investigation has revealed that Ministry of Steel would not have recommended their case for allocation of coal block, if the company had not provided the above said information".

398. It is recorded at page 9 of 65 of detailed order on charge dated 25.01.2017 that:

"It was also found that a criminal conspiracy was hatched by the company M/s Domco Pvt. Ltd and its directors with various other persons so as to induce Ministry of Steel to make recommendation in favour of the company for allotment of a coal block to MOC and thereafter to induce MOC to allot a captive coal block in favour of the company."

399. The submission on behalf of CBI as recorded at page 16 of 65 of detailed order on charge is that:

"It was thus submitted by Ld. Sr. PP Sh. Sanjay Kumar that on account of said misrepresentation made by the accused persons not only Ministry of Steel was induced to make a recommendation in favour of company M/s DOMCO to MOC for allotment of a captive coal block but MOC was also dishonestly and fraudulently induced to allot Lalgah (North) coal block situated in the State of Chhattisgarh in favour of M/s DOMCO".

400. Therefore, the submissions of prosecution are cheating of MoS as well as MoC.

401. The submissions of learned counsel for the accused as are recorded at page 43 of 65 of the order on charge were also that:

“It was also argued by Ld. Counsel for the accused persons that as the guidelines issued by 18th Screening Committee Meeting did not specify availability of any minimum quantity of land as one of the criteria so the said information about the availability of land if at all submitted by the company was inconsequential. It was submitted that the said information in no way either deceived or induced MOS in making a recommendation to MOC in favour of M/s Domco Pvt. Ltd. or deceived or induced MOC in making allotment of a coal block in favour of the company”.

402. It shows that the accused have also understood that the allegations against them are for cheating MoS as well as MoC.

403. It was observed in the detailed order on charge dated 25.01.2017, Page 44 of 65 that: -

“Moreover the fact that both Ministry of Steel and Ministry of Coal sought specific information from the accused company about land acquired and arrangement of finance made so it cannot be prima facie stated that the said two issues relating to land and finance were not relevant criteria in either making recommendation to MoC in favour of accused company by MoS or in making recommendation for allotment of a coal block in favour of accused company by the screening committee, Ministry of coal. In the circumstances prosecution certainly cannot be denied a chance to prove during the course of trial by leading evidence that the aforesaid actions were undertaken by the accused persons in furtherance of a criminal conspiracy so as to cheat both MoS and MoC.”

404. Therefore, in the very beginning, it was made clear that the case pertains to cheating MoS as well as MoC. MoS was cheated for securing recommendation to MoC, MoC was cheated when the screening committee made recommendation for allotment of coal block in favour of accused company and again MoC was cheated when firm allotment was made by Secretary coal.

405. So far as net worth of the company is concerned, it was also noted at page 57 of 66 of order of charge that the accused made a false claim before MOS as well as MoC about the net worth or that promoter's contribution of 26% of equity for the project has been arranged for, which was prima facie false claim. Therefore, it was made clear to the accused at the time of order on charge that the cheating is of MOS as well as MoC.

406. Thereafter, on consideration of the submissions of prosecution as well as the learned counsels for the accused, formal charge of cheating under section 420 of IPC was framed against A-1 company and A-2 on six different counts.

407. As a result of this discussion, various instances of cheating pointed out in the order of formal charge framed against A-1 and A-2 would be considered as distinct offences of cheating and not as a chain of incriminating circumstances culminating in the single offence of cheating.

408. Charge against Accused No. 3 :- The charge against this accused is that he had attended the 19th Screening Committee meeting, MoC, Government of India on 26.05.2003 and had made a false statement that A-1 company has acquired 150 acres of land whereas it was not so and by doing so, he induced 19th Screening Committee to make recommendation for allotment of a captive coal Block in favour of A-1 company by believing the said statement to be true qua advanced status/stage of preparedness and thereby cheated MoC.

409. The main argument on behalf of the A-3 is that the minutes of the 19th Screening Committee meeting were not correctly recorded.

410. This argument of the accused is not acceptable for the reason that the minutes were sent to A-1 company also but none of the accused who were the MD/Directors (A-3 was also one of the Directors) of A-1 company responded to the committee that the minutes have been wrongly recorded. The accused never replied back to the committee that A-3 had never told the Screening Committee that the A-1 company has acquired 150 acres of land.

411. While deciding the 10th point for determination, it is already recorded that A-3 had made a statement before the 19th Screening Committee meeting that the company has acquired 150 acres of land. On the basis of entirety of the facts and circumstances including the statement of A-3 made before the screening committee, the Screening Committee took the decision of allocating the Lalgarh (North) coal block for prospecting in favour of A-1 company. The submission that the company has acquired 150 acres of land is specifically recorded in the minutes which shows the importance given by the committee to this fact. After allocation of coal block for prospecting, the shares of the company were much sought after and a share worth Rs.100 was sold for Rs.7700 and Binay Prakash group profited Rs.7 crores which shows that the decision of screening committee can be safely treated as Property. After change in guidelines for allocation of coal blocks in the 27th screening committee meeting, the matter of A-1 company was not again placed

before the Screening Committee and Lalgarh (North) coal block was allocated to the company. It is not even the case of the accused that the company had already acquired 150 acres of land on the date of 19th Screening Committee meeting. Therefore, A-3 had made a false statement before the Screening Committee to induce it to believe that the company has already acquired 150 acres of land and so induced, the Committee decided favourably in favour of A-1 company allotting coal block for prospecting (property) and therefore the accused is convicted for the charge under section 420 of IPC.

412. Charge against Accused No. 4: - The charge against this accused under section 420 of IPC is that A-2 had submitted to MoC vide letter dated 16.08.2003 false balance sheets for the year ending on 31.03.2000, 31.03.2001 and 31.03.2002 which were prepared by co-accused A-6, C.A. and this accused had certified those false balance sheets.

413. The 4th point for determination decided in this judgement is “Whether the balance sheets of the company audited by A-5 and submitted with ROC, **Exhibit PW-12/B**, D-20, page 1-13 (Exhibit P-2), **Exhibit PW-12/C**, D-21, page 1-14 (Exhibit P-3), **Exhibit PW-12/D**, D-22, page 1-15 (Exhibit P-4) or the balance sheets prepared by A-6 and submitted with MoC by the company vide its letter dated 16.08.2003 **Exhibit PW-8/N-19**, D-43, page 100-155 and certified by A-4 for the year ending 31.03.2000, 31.03.2001 and 31.03.2002 show correct state of financial affairs of A-1 company?

414. It is already held while deciding the said point of determination that the balance sheets audited by A-6 and submitted to MoC by company vide their letter dated 16.08.2003 which were certified by A-4 for the year ending 31.03.2000, 31.03.2001 and 31.03.2002 were false balance sheets and the balance sheets submitted with ROC which were prepared by A-5, C.A. were the correct balance sheets. Therefore, false balance sheets were certified by A-4. The charge under section 420 of IPC on 5th count against A-1 company is already proved. It is proved that letter dated 16.08.2003 was submitted by A-2 Managing Director of A-1 company enclosing therewith false balance sheets for the year ending 31.03.2000, 31.03.2001 and 31.03.2002 to induce MoC to believe that financial condition of the applicant company was strong.

415. The ingredients of Section 415 IPC are: -

- "1. Deception of any person.*
- 2 (a) Fraudulently or dishonestly inducing that person:*
 - (i) to deliver any property to any person; or*
 - (ii) to consent that any person shall retain any property: or*
 - (b) intentionally inducing that person to do or omit to do anything which he would not do or omit, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

416. Deception is the quintessence of the offence. Deception must be caused by the accused to generate inducement in the mind of the complainant. The prosecution has to show that there was some inducement on the part of the accused person with a view to deceive the complainant.

417. The evidence has shown that A-4 neither addressed any

letter to MoS nor to MoC nor ever participated in any meeting of Screening Committee nor made any false statement before the said committee. He certified false balance sheets prepared by A-6 which were submitted by A-1 company under the signatures of A-2, its Managing Director. Therefore, he agreed to do or cause to be done an illegal act i.e., certifying false balance sheets so that A-1 company through A-2 could induce MoC to believe that A-1 company enjoys good financial network. But in the facts and circumstances of this case, it cannot be said that he himself deceived MoC or fraudulently or dishonestly induced the officials of MoC so deceived to deliver any property i.e., allocation letter to A-1 company. That deception was caused by A-1 and A-2. Though role of A-4 is there in criminal conspiracy as aforesaid but it cannot be said that he cheated MoC officials by deceiving them and procured allocation letter of coal block fraudulently or dishonestly. Therefore, A-4 is acquitted of the charge under Section 420 of IPC/ substantive offence, framed against him.

418. Charge against A-5: - The charge against this accused is under section 420 of IPC on two counts. 1st, that he issued false Auditor's certificate showing the net worth of A-1 company to be Rs 19.42 crores whereas as per balance sheet of the company, the net worth was Rs. 2,46,68,615 as on 31.03.2002 and Rs.2,39,72,811/- as on 31.03.2003. Further allegation is that this Auditor's certificate was enclosed with letter dated 07.11.2002 written by A-2 to MoC informing its financial status for cheating MoC, Government of India to allot the coal block in favour of A-1 company.

419. As per the report of PW 19 Anil Kumar Sharma, Forensic Expert, for want of more comparable material, he could not give any opinion with regard to the signatures of A-5 on the Auditor's certificate. Since the hand writing expert had not given his opinion on the signatures of A-5 on the Auditor's Certificate, A-5 had prayed for discharge, in the beginning of the trial. However, at that time it was noted that one of the proposed prosecution witnesses namely Nandlal has identified signatures of A-5 on the Auditor's certificate, and therefore charge was framed under section 420 of IPC against A-5 for having provided false Auditor's certificate showing high net worth of the company. During trial, the said prosecution witness, PW-13 Nandlal could not identify the signatures of A-5 on the alleged Auditor's certificate. So much so, he went on to state that he had never stated before the Investigating Officer during investigation that the signatures on the said Auditor's certificate were the signatures of A-5. Nothing more requires to be discussed with regard to charge under section 420 of IPC framed against A-5 for the allegation that he had given a false Auditor's certificate showing high net worth of M/s. DOMCO Private Ltd. The accused is therefore acquitted of this charge.

420. The 2nd count for charge under section 420 of IPC against A-5 is that on 26.05.2003 he had attended the 19th Screening Committee meeting with A-3 and represented himself as "Senior Engineer" of A-1 company and made a false claim that the company has acquired 150 acres of land and thereby induced the committee to make a recommendation for allotment of a captive coal block in favour of A-1

company believing the said representation to be true qua advanced status/preparedness and thereby cheated MoC and thereby committed offence of cheating under section 420 of IPC.

421. This charge requires some correction in as much as the recommendation of 19th Screening Committee was not for allotment of a captive coal block in favour of M/s DOMCO Private Ltd. The recommendation was for prospecting of the coal block to find out nature and extent of mineral i.e., iron ore and manganese available. It was decided at that time by the Screening Committee that depending upon the prospecting results and provided underground mining of more than 0.25 MTPA is planned, only then the block can be further used by the party for mining. Therefore, the recommendation was not for allotment but only for prospecting but it was decided that in case underground mining of more than 0.25 MTPA is planned, then the block can be further used by the party for mining.

422. While discussing 10th point for determination, it is already decided that it was A-3 who had stated before the Screening Committee in the 19th screening meeting that the company has acquired 150 acres of land. This statement cannot be attributed to A-5 for the reasons recorded while deciding the said point for determination. It is also recorded that A-5 had attended the 19th Screening Committee meeting where he gave his designation as "Senior Engineer". In the letter of MoC where applicant companies were requested to attend the meeting of the Screening Committee by deputing their representative, there was no

requirement that their "Senior Engineers" should attend the meeting. In the column requiring email ID of the representative of the company, email ID of A-3 was only mentioned and email ID of A-5 was not mentioned. It shows that for all practical purposes, the representative of the company was A-3, who was Director (Technical) of the company. A-5 pretended to be "Senior Engineer" of A-1 company whereas he was the Auditor of the said company. However, he did not cheat the Screening Committee by such personation. Once it is held that A-3 had not made any statement before the 19th Screening Committee that the company has already acquired 150 acres of land and had not cheated the Screening Committee, merely mentioning his designation as "Senior Engineer" and that too in the handwriting of A-3 is not sufficient to convict him for the offence of cheating under this head. Therefore, A-5 is acquitted of the offence of cheating under section 420 IPC/substantive offence under second count of cheating also.

423. Charge against A-6: - Charge against this accused under section 420 of IPC is for auditing false balance sheets for the year ending on 31.03.2000, 31.03.2001 31.03.2002 showing inflated figures. These balance sheets, after their certification by A-4, were submitted by co-accused A-2 vide letter dated 16.08.2003 to MoC and therefore the allegation against this accused is that he cheated MoC to procure allocation of a captive coal block in favour of A-1 company. While deciding the 4th point for determination, it is already decided that the balance sheets submitted with MoC vide letter dated 16.08.2003 and prepared by A-6 were false balance sheets. While deciding the charge

framed against A-1 company as well as A-2 under section 420 of IPC under 5th count, it is already decided that balance sheets were important documents for taking a final decision by MoC and MoC had been persistently asking for the balance sheets from stage to stage to find out financial preparedness of the applicant company. Both the accused i.e., A-1 and A-2 have been convicted under section 420 of IPC for submitting false balance sheets as per letter dated 16.08.2003. A-4 has been acquitted as he had certified the balance sheets but had not himself delivered the same to MoC to deceive MoC to believe high financial networth of A-1 company. So far as A-6 is concerned, though it is clear that he entered into an agreement with the other co-accused to do or cause to be done an illegal act i.e., of auditing false balance sheets of A-1 company which were submitted with MoC by A-2 as a result of which MoC was deceived to believe financial preparedness of A-1 company but it cannot be said that he himself cheated MoC by auditing false balance sheets of A-1 company. Therefore, he is acquitted of the charge of cheating under Section 420 IPC/substantive offence.

424. Charge under section 120-B of IPC and under section 120-B read with section 420 IPC against all the six accused:- The charge under section 120-B of IPC against all the six accused is that during the year 2000 to 2005 at Jharkhand, Bihar, Orissa, West Bengal, Delhi and other places, they entered into a criminal conspiracy with the object to cheat MoS and MoC, Government of India so as to procure allocation of a captive coal block, Lalgah (North) Coal Block, in favour of A-1 company, by making false submissions about availability of land and

financial preparedness, and in order to earn undue benefits by selling the company to M/s. Electrosteel Casting Ltd subsequent to allocation of coal block (as discussed in detail in Order on Charge dated 25.01.2017 and also in the charges separately framed) and thereby committed the offence of criminal conspiracy punishable u/s 120-B IPC. The charge u/s 120 B r/w 420 IPC is that during the aforesaid period and in furtherance of common object of the criminal conspiracy as described above, all the accused did various acts of cheating (as described in detail in the substantive charges framed separately and as also discussed in detail in Order on Charge dt. 25.01.2017) and thereby committed the offence u/s 120-B r/w 420 IPC.

425. A-1, A-2 and A-3 have been convicted for the offence under section 420 IPC (A-1 company and A-2 have been convicted for more than one count for the offence of cheating).

426. It is already noted that A-2, the Managing Director of the company had written letter dated 12.12.2000 where he had made two false submissions to MoS, 1st, that the company has acquired/allotted 142 acres of land and 2nd, that equity would be Rs. 30 crores and debt would be Rs. 60 crores and 26% of shareholders contribution is already made. The 1st submission was not believed by MoS which is evident from the fact that it called upon the company to provide documentary evidence regarding allotment/acquisition of land. However, MoS believed the submissions regarding financial preparedness. MoS believed false submissions regarding land also after receiving letter dated 05.02.2001

and therefore A-1 company and A-2, its Managing Director have been convicted under section 420 of IPC. A-1 company and A-2 have also been convicted under section 420 of IPC as they had provided copies of land ownership documents of M/s Orissa Oil Industries Ltd to MoS alongwith their letter dated 05.02.2001 and to MoC alongwith their letter dated 23.07.2004 to induce MoS and MoC to believe that A-1 company has acquired that land whereas the said land was not acquired by A-1 company at that time. A-2, vide letter dated 07.11.2002 filed false Auditor's Certificate purportedly signed by A-5, C.A. claiming that the net worth of the company was Rs. 19.42 crores. Thereby, A-1 company and A-2 cheated MoS and A-1 company and A-2 have been convicted under section 420 of IPC. Further, A-2 submitted letter dated 16.08.2003 to MoC and enclosed with that letter false balance sheets for the year ending 31.03.2000, 31.03.2001 31.03.2002 showing inflated figures certified by A-4 and audited by A-6. A-1 company and A-2 have been convicted under section 420 of IPC on this count. A-3 who was the Director (Technical) is also convicted under section 420 of IPC as he misrepresented before 19th Screening Committee meeting that the applicant company has acquired 150 acres of land and thereby induced the Screening Committee to pass favourable order in favour of applicant company for prospecting of the coal block and with the understanding that in case the prospecting report is according to the guidelines, the coal block would be allocated to the company.

427. It is well-known that conspiracies are hatched in complete darkness. Direct evidence of the same is seldom available. Conspiracy

can however be proved like any other offence on the basis of circumstantial evidence. It is also well settled that the circumstantial evidence should be unerringly pointing towards the guilt of the accused and there should be no other hypothesis. A-2, A-3 and A-4 were the Managing Director, Director (Technical) and Director respectively of A-1 company and stood to gain materially by allocation of Lalgarh (North) Coal Block in favour of A-1. They have acted in tandem to achieve their objective of securing allocation of Lalgarh (North) Coal Block in favour of A-1 by cheating MoS, screening committee and MoC. Each one of them played his role. Lead role has been played by A-2 being the Managing Director of the company who was corresponding with MoS and MoC making false submissions regarding availability of land with the company and financial preparedness to set up the plant. A-4, another Director of the company too conspired and certified false balance sheets. A-3, Director (Technical) too contributed in deceiving 19th Screening Committee believe that the applicant company owns 150 acres of land. This would not have been possible but for a conspiracy amongst A-1 company, A-2, A-3 and A-4. A-6 has helped these accused persons by auditing false balance sheets though he was not even the Auditor of the company. Whereas it is apparent that A-2, A-4 and A-3 being the Managing Director, Director and Director (Technical) respectively had a clear motive of making profits by securing allocation of Lalgarh (North) Coal Block in favour of A-1 company (which is also evident from the fact that merely by securing directions for prospecting of the coal block from the Screening Committee with the assurance that in case the prospecting report is favourable, the company would be allotted the coal

block, they could sell the shares of A-1 company to M/s. Electrosteel Casting Private Ltd at a huge premium) but there is no evidence of financial gain by A-6 in conspiracy to deceive MoC. However, in the facts and circumstances of the case, such evidence is seldom possible. The synchronized manner in which A-1, A-2, A-3, A-4 and A-6 acted shows that they had definitely conspired with each other to cheat MoS, MoC and the Screening Committee by inducing them to believe about availability of land with the applicant company and financial preparedness of the said company so that they are able to secure allocation of Lalgah (North) Coal Block in favour of A-1 company. Therefore, A-1 company, A-2, A-3, A-4 and A-6 are convicted for the offence of criminal conspiracy punishable under section 120-B of IPC as well as for the offence under section 120-B of IPC read with section 420 of IPC.

428. So far as A-5 is concerned, he was the Auditor of the company. Prosecution has relied on the balance sheets of A-1 company audited by A-5 and filed before ROC which are the basis for proving that the company had filed false balance sheets with MoC which were submitted by A-2, certified by A-3 and audited by A-6, another C.A. Signatures of A-5 could not be proved on false Auditor's Certificate dated 12.11.2002 which was submitted to MoC by A-2 as per letter dated 07.11.2002 to show that the net worth of the company was Rs. 19.42 crores. A-5 had attended the 18th Screening Committee meeting held on 05.05.2003 and his designation was mentioned as A/R, page 92-95, D-48, Serial No. 47, Exhibit PW-8/R-6. He had also attended the 19th

Screening Committee meeting held on 26.05.2003. In the attendance sheet of that meeting, D-49, page 174-185, Serial No. 37, Exhibit PW 8/S-2, designation of A-5 has been mentioned as "Senior Engineer". The said designation "Senior Engineer" has been written in the handwriting of A-3, Director (Technical). However, that personation did not result in any cheating of the screening committee. It is held in the earlier paragraphs that in the facts and circumstances, the statement recorded in the minutes of the 19th Screening Committee meeting attributed to the party i.e., representative of A-1 company that the company has 150 acres of land was made by A-3, Director (Technical) and not by the A-5. A-5 neither gave false net worth certificate, nor gave false balance sheets nor made any false statement before the 19th Screening Committee. From the role played by A-5, it cannot be inferred that he was party to any criminal conspiracy. It is to be noted here that PW-11 Sukhendu Sinha was the Accounts Clerk in the office of A-6 since 2013 and he has deposed in response to a leading question on behalf of CBI that A-5 had once visited their office to collect the balance sheets.

429. Whereas the response of A-5 to this evidence is of denial in his statement under section 313 CrPC, the response of A-6 under 313 CrPC is:

"Q.215. It is in evidence of PW11 Sukhendu Sinha that accused Manoj Kumar Gupta had once come to their office to collect the balance sheet. What you have to say?"

Ans: - It (is) pertinent to mention that PW11 Sukhendu Sinha joined my office in 2013. Manoj Kumar Gupta is also a C.A (Chartered Accountant) hence being a colleague and for some professional work he might have come to my office. Considering

the said situation, PW11 Sukhendu Sinha might be correct in saying that in official capacity Manoj Kumar Gupta might have come to my office”.

430. The evidence of PW-11 shows that A-5 and A-6 had professional relationships in the year 2013 but by then the conspiracy was already over as the coal block was allotted in 2003 by the screening committee and the allotment was made firm in 2005 by the Secretary, MoC. This instance cannot be suggestive of any role of A-5 in the criminal conspiracy.

431. Therefore, A-5 is acquitted of the charge of criminal conspiracy framed against him under section 120-B as well as under section 120-B read with section 420 of IPC.

432. Conclusion: -

A-1 M/s Domco Pvt. Ltd.

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC;
- (iii) Convicted under the second charge u/s 420 of IPC;
- (iv) Convicted under the third charge u/s 420 of IPC;
- (v) Convicted under the fourth charge u/s 420 of IPC;
- (vi) Convicted under the fifth charge u/s 420 of IPC;
- (vii) Acquitted of the sixth charge u/s 420 of IPC.

A-2 Binay Prakash

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC;
- (iii) Convicted under the second charge u/s 420 of IPC;
- (iv) Convicted under the third charge u/s 420 of IPC;
- (v) Convicted under the fourth charge u/s 420 of IPC
- (vi) Convicted under the fifth charge u/s 420 of IPC
- (vii) Acquitted of the sixth charge u/s 420 of IPC.

A-3 Vasant Diwakar Manjrekar

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Convicted under the charge u/s 420 of IPC.

A-4 Parmananda Mandal

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the charge u/s 420 of IPC.

A-5 Manoj Kumar Gupta

- (i) Acquitted of the charge u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC.
- (iii) Acquitted of the second charge u/s 420 of IPC.

A-6 Sanjay Khandelwal

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the charge u/s 420 of IPC.

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Announced in the open Court
On **14th September 2021.**

(Arun Bhardwaj)
Special Judge, (PC Act) (CBI),
Coal Block cases-01, RADC
New Delhi

CC NO. 238/19 (OLD CC No. 8550/2016)
CNR No. DLCT11-000923-2019
RC No. 221 2014 E 0015
Branch: CBI/EO-III/New Delhi
CBI Vs. M/s Domco Pvt. Ltd. & Ors.
U/s. 120-B/420 IPC

Vide office order No. Power Gaz/RADC/2021/75147-7530-D dated 13.09.2021 by Ld. Principal District & Sessions Judge-cum-Special Judge (PC Act) CBI, Rouse Avenue Court Complex, New Delhi, the undersigned is directed to hold court physically today.

14.09.2021

Present: Ld. DLA Sh. Sanjay Kumar, Ld. ALA Sh. V.K. Sharma, Ld. Senior PP Sh. A.P. Singh along with IO Inspector Pawan Kaushik.

Sh. Akash Singh, Advocate from the office of Sh. R.S. Cheema, Ld. Special PP/Senior Advocate for CBI.

A-2 Binay Prakash (also AR of A-1 Company M/s DOMCO Pvt. Ltd.), A-3 Vasant Diwakar Manjrekar and A-4 Paramananda Mondal are present.

Sh. Rahul Tyagi, Ld. Counsel for A-2 Binay Prakash (also AR of A-1 Company M/s DOMCO Pvt. Ltd.), A-3 Sh. Vasant Diwakar Manjrekar and A-4 Paramananda Mondal.

A-5 Manoj Kumar Gupta is present.

Sh. Rehan Khan, Ld. Proxy Counsel for A-5 Manoj Kumar Gupta.

A-6 Sanjay Khandelwal is present.

Sh. Prasanjit Singh, Ld. Proxy Counsel for A-6.

Today, judgment in the instant case has been pronounced. The accused persons have been convicted/acquitted as under:

A-1 M/s Domco Pvt. Ltd.

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC;
- (iii) Convicted under the second charge u/s 420 of IPC;
- (iv) Convicted under the third charge u/s 420 of IPC;
- (v) Convicted under the fourth charge u/s 420 of IPC;
- (vi) Convicted under the fifth charge u/s 420 of IPC;
- (vii) Acquitted of the sixth charge u/s 420 of IPC.

A-2 Binay Prakash

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC;
- (iii) Convicted under the second charge u/s 420 of IPC;
- (iv) Convicted under the third charge u/s 420 of IPC;
- (v) Convicted under the fourth charge u/s 420 of IPC
- (vi) Convicted under the fifth charge u/s 420 of IPC
- (vii) Acquitted of the sixth charge u/s 420 of IPC.

A-3 Vasant Diwakar Manjrekar

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Convicted under the charge u/s 420 of IPC.

A-4 Parmananda Mandal

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the charge u/s 420 of IPC.

A-5 Manoj Kumar Gupta

- (i) Acquitted of the charge u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the first charge u/s 420 of IPC.
- (iii) Acquitted of the second charge u/s 420 of IPC.

A-6 Sanjay Khandelwal

- (i) Convicted u/s 120-B of IPC as well as 120-B read with Section 420 of IPC;
- (ii) Acquitted of the charge u/s 420 of IPC.

Copy of the judgment be supplied free of cost to all the convict persons. Copy of judgment be also provided electronically through Email to the convicts/their Ld. Counsels.

Matter be now put up for arguments on the point of sentence on **15.09.2021 at 3:00 PM.**

(Arun Bhardwaj)
Special Judge, (PC Act) (CBI),
Coal Block cases-01, RADC
New Delhi/14.09.2021

At 11:48 AM

At this stage, Sh. Mayank Tripathi, Ld. Counsel for convict Sh. Sanjay Khandelwal has appeared and he has been apprised of today's judgment.

(Arun Bhardwaj)
Special Judge, (PC Act) (CBI),
Coal Block cases-01, RADC
New Delhi/14.09.2021