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Ispat coal project trips over Mauritius route

Coal Ministry against investment through Mauritius; onus on Cabinet to clarify mining policy

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THE ISPAT group has withdrawn its controversial proposal to route through Mauritius its holding company investment of at least 26 per cent in a captive coal mining project.

This follows a communication from Coal Ministry to Prime Minister's Office (PMO) that it would cancel its mining licence if the company persisted in pushing its controversial proposal. PMO has been monitoring this project as a part of exercise to review the progress in implementation of mega projects, according of official source.

The objections raised by Coal Ministry over the foreign investment application from Central India Coal Company Limited (Cicco) involve major policy issues. These may have to resolved at the Cabinet level, to facilitate private sector participation in coal exploration for captive consumption and merchant sale of coal.

Ispat group has floated a holding company, Ispat Urja Limited (IUL). The group had earlier agreed with the Coal Ministry's stipulation that IUL would hold at least 26 per cent voting equity each in the power generating company, Central India Power company Limited (Cipco) and captive coal mining company, Cicco, at all times.Coal Ministry sources say that his equity arrangement was evolved in the form of guidelines in March 1996 after taking into view requests from certain investors that power generation and coal mining should be undertaken separately by two companies and not as an integrated operation by one company.

The legal advice furnished by Ispat group in 1994 from senior Supreme Court advocates such as P Chidambaram, now Finance Minister, Kapil Sibal, K K Venugopal and R F Nariman, led to this equity arrangement.

Cipco holds the approval to set up a 1082-MW project at Bhadravati in Maharashtra at cost of Rs 5,235 crore. It is one of the eight fast track projects.

In January 1997, the Cabinet Committee on Foreign Investment approved the revised financing pattern of this project including the entire equity capital of $444 million as foreign investment.

Under the latest equity pattern, 53 per cent equity is being chipped in by the Ispat group and its associates, 31.8 per cent by GEC of the UK and 15.2 per cent by EDF of France and its associates.

Cicco holds approval to undertake captive coal mining for Cipco in three blocks in Wardha coalfield of Maharashtra. Ispat group and its assocates secured Government approval in July 1996 for 71.77 per cent equity investment as foreign equity parciaption by Ispat's overseas associates. The approval stipulated that any point of time, the domestic promoter's share of equity will remain above 26 per cent.

In November 1996, Cicco wrote to the Foreign Investment Promotion Board (FIPB) stating that as stipulated by Coal Ministry an Ispat group company is required to hold 26 per cent equity in Cicco and 26 per cent in Cipco."Since the 100 per cent equity Cipco is proposed to be foreign equity, the 26 per cent equity in Cicco which was earlier supposed to be held by an Indian company is now required to be held by a foreign company. In view of this, we have registered Ispat Urja Limited (IUL) in Mauritius which would be holding 26 per cent equity each in Cicco and Cipco."

The Coal Ministry promptly rejected Cicco's request to route this holding company investment as foreign euqity. The company was reminded that it has already registered IUL in India in accordance with the Coal Minisry's stipulations. CICCO should thus stick to this arrangement.

In December 1996, Cicco wrote another letter to FIPB stating that "whatever undrtakings are required from IUL Mauritius, to satisfy the Ministry of Coal, would be provided." Reacting to this lettter, Coal Ministry informed FIPB that CICCO's proposal is against the law and against the express directions and specifications of the Ministry of Coal.

The Coal Ministry says that in case the Government recognises IUL as a foreign company or the holding company of Cicco and Cipco, none of the conditions and undertaking these companies have already complied with, will be valid, as the Mauritius based company can always take a plea that it is not guided by Indian laws.

Official sources say that in such a situation, the risk will be high-in case the ownership of the foreign company goes to a non-Ispat foreign company after takeover.

Another major objection raised by Coal Ministry is that "the set of triangular arangement. i.e. M/s IUL, the holding company, ii) the Cipco the subsidiary power copany and iii) Cicco, the subsidiary coal company is required to be treated as one group all registered under the companies Act. If one member of this group. that too the holding company, goes out to Mauritius, the group concept forming the basis of former AGI's (Attorney General of India) opinion fall flat."

The Coal Ministry has also pointed out that though the Coal Mines (Nationalisation) Act, 1973 defines a foreign company, this definition may have to be construed in the context of taking over of the private coal mines.

In January 1997, Coal Secretary N P Bagchee wrote a letter to Principal Secretary to PM, T R Satish Chandran, explaining its stern reservations on Ispat's revised proposal on Cicco and said "Ministry of Coal is therefore taking steps to issue a show cause notice to IUL as to why the permission granted to the company for capitve minig shall not be cancelled". The Coal Ministry feels that "Ispat group does not adequate resoures or wherewithals to collect even 16 per cent of the equity in Cipco and Cicco from within the country. If that be so, it is a case of defective financial planning on the part of the Ispat group."

The Ministry's considered view is that the 1993 National Mineral Policy and the revised, liberalised guidedelines are not applicable to coal sector. It feels specific approval of the Cabinet is needed to extend these to the coal sector.

Sources say that even the recent policy guidelines announcing the opening up of coal exploration and mining to private sector through competitive bidding for merchant sale of coal does not entitle captive coal mining to have 100 per cent foreign equity nor resort to merchant sale of fuel. Captive coal ming blocks have been handed over on a platter to promoters of thermal power projects The Ministry says that "no foreign company will be invited for the exploration. However, only Indian copanies/undertakings in public and private sector be allowed to take up such exploration actitivites. Such companies could have appropriate levels of foreign equity."

Ispat cannot easily make IUL a foreign registered company and Cicco a 100-percent foreign owned company without changes in policy,. requiring Cabinet approval.