

FIT AND PROPER PERSON TEST

COAL BLOCK AUCTIONS – 2020



Environics Trust



A BASIC ASSESSMENT OF THE COMPANIES BIDDING FOR COAL BLOCKS

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PREFACE

The government in an effort to boost the economy and accelerate development of coal mining has made certain important legislative and policy changes. Despite the lukewarm response to its earlier ten tranches of auction, the government under the new Act and after allowing for 100 percent Foreign Direct Investments, embarked on the 11th tranche on 18th June 2020.

In January 2020, the Government had come up with a list of 80 coal blocks through a discussion paper and sought suggestions from the potential bidders as to which of the blocks should be prioritised. Ultimately, the call began with 41 blocks but with protests and interventions from State Governments, some blocks were removed and some new included to have 38 blocks.

As the auction process went ahead, only 21 blocks have been able to draw more than one bid. One of the companies has failed even the lax technical conditions.

The world over, recognising the reality of the resource curse, governments have been embarking on conducting a fit-and-proper person test. This evaluates the company's credentials from various angles to ensure that national wealth is not handed over to any entity which has a poor track record.

Unfortunately, our country seems to be heading south when it comes to corporate due diligence and as this preliminary report indicates that none of the bidders are fit-and-proper persons to whom the Government as custodian is trying to hand over the resources.

We seek proper due diligence and also want to record the potential conflict of interest between the PMU at the coal ministry and its involvement with private players. Failure to ensure this is a failure of the constitutional responsibilities of the government and a burden on our society.

We are grateful to Rahul Basu, Research Director, Goa Foundation and Goenchi Mati Campaign for initiating the discussions and providing directions and Sreedhar Ramamurthi and Nishant Alag, Environics Trust for constant support.

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1. WHAT IS A FIT AND PROPER PERSON TEST?

The concept of a fit and proper person test is remarkably simple and all of us relate to the idea. Suppose, we are appointing a person, or we are ourselves being employed or engaged by anyone, there is an interview, some documents of the credentials are checked, some references are sought, tests and interviews are conducted and the antecedents are checked before the actual engagement.

Essentially what is being done is to ensure that the person has the requisite skills, aptitude, integrity, and habits which would make the person deliver for the purpose he is engaged. In order to ensure transparency of the process, considering implications to the larger number of people, formal criteria are established for undertaking such an exercise. This is an exercise we carry out whether the position is of a domestic help or the Director of an MNC.

It is therefore reasonable to expect that as a custodian of the natural resources the Government would evolve an elaborate fit-and-proper person test when handing over national wealth for management to a company.

In the context of natural resources, especially minerals being non-renewable, the fit-and-proper person test must be preceded by a detailed analysis of the need, timing and the general and specific consequences of such a decision to hand-over the asset.

Though there are several laws, policies and judicial orders that govern different stages of the extractive process in India. This paper is to emphasise on the Governments to do the pre-requisite analysis and conduct rigorous assessment and ensure with fair degree of certainty that the company bidding for the asset is fit and proper for the task and it will deliver maximum economic return, operate with integrity, adhere to environmental and social norms.

Further, the fit and proper person provisions must be met on a continuous basis for the duration of a mining lease including the period of closure. We often see that the companies and also the government treats environment and forest clearances as a onetime affair. The dilution of legislation also provides for a great laxity in evaluating the company as fit-and-proper, but also in implementing the law in its true spirit.

In the context of mining laws in the country, apart from the Mineral Concession and Mineral Conservation and Development Rules, which are fundamental to the operation, the fit and proper person test should include the ability of the company and the agency enabling the mining activity, whether of the Central or State Government to ensure that the process can be undertaken within the Sustainable Development Framework (SDF), even if its own conception has certain limitations. The SDF enunciated by the Government is based on the following eight key principles.

1. Incorporating Environmental and Social Sensitivities in decisions on leases
2. Strategic Assessment in Key Mining regions
3. Managing impacts at the Mine level impact through sound management systems
4. Addressing Land, Resettlement and Other Social Impacts.
5. Community engagement, benefit sharing and contribution to socio-economic development.
6. Mine Closure and Post Closure Mining operations
7. Ethical functioning and responsible business
8. Assurance and Reporting.

IF WE STRICTLY WANT TO ENSURE THAT THE WEALTH, WE ARE ASKING SOME TO MANAGE ON BEHALF OF THE COUNTRY, WE NEED TO DEFINITELY UNDERTAKE THIS EXERCISE. WITHOUT PREJUDICE, MOST MINING COMPANIES CURRENTLY OPERATING MAY NOT PASS SUCH A TEST.

2. WHO IS A FIT AND PROPER PERSON?

Currently there is no agency in the government which has a comprehensive system to establish the criteria, conduct the requisite examination and ensure that a company to which mineral resources are given for mining and sale. On the basis of our analysis we present some simple and initial criteria, which need to be further evolved, and urge the Government and alert the communities on the need for such an exercise to ensure the optimal use of our resources.

Last year, the State Government of Victoria issued a guidance¹ under section 13(g) of their Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 replacing the earlier practice of undertaking a test of “public interest”.

In the context of mining, a fit and proper person is not narrowly construed or confined, nor does it remain constant over time issued as guidance. One of the important aspects among the range of other factors often taken into consideration to assess a person’s overall status as a fit and proper person to undertake an activity, *includes the seriousness of previous unacceptable behaviours (including resultant harms and penalties), singular or repetitive patterns of unacceptable behaviours, reformed behaviours, mitigating circumstances and time elapsed.*

We try to elaborate on few aspects and would urge the Government to establish a working group to establish a clear set of parameters and an agency which will undertake the test before such entities are allowed to register for e-auctions.

FINANCIALLY FIT PERSON

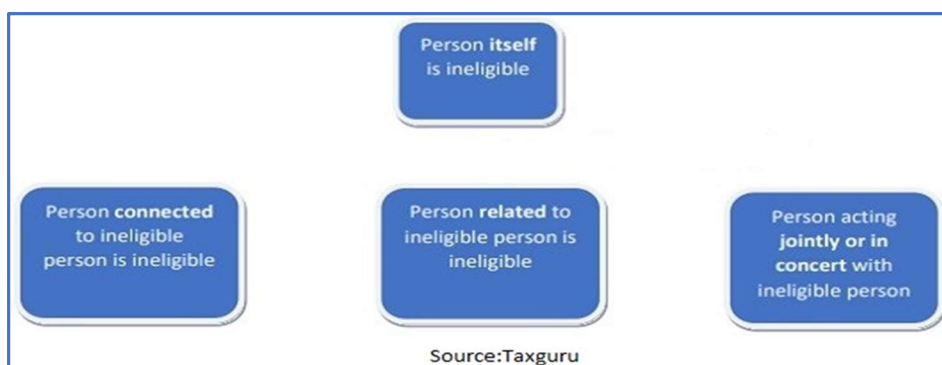
Securities Exchange Board of India (SEBI) brought out a regulation² on the Criteria for determining a ‘fit and proper person’. In the context of the financial processes in the market and for the purpose of determining as to whether an applicant or the intermediary seeking registration under any one or more of the relevant regulations is a ‘fit and proper person’. Similar set of parameters needs to be applied to the bidders in a mining context.

The SEBI criteria includes the following but as the regulation says it is not limited to these alone;

1. financial integrity;
2. absence of convictions or civil liabilities;
3. competence;
4. good reputation and character;
5. efficiency and honesty; and
6. absence of any disqualification to act as an intermediary as stipulated in these regulations.

¹ <https://ref.epa.vic.gov.au/business-and-industry/guidelines/licensing-and-works-approvals/fit-and-proper-person-test>

² <https://www.sebi.gov.in/acts/fitproperregu.html>



The Financial Action Task Force suggests that the supervisor or Statutory Regulatory Body should also (a) take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding or being the beneficial owner of a significant or controlling interest or holding a management function, e.g. through evaluating persons on the basis of a “fit and proper” test; and (b) have effective, proportionate, and dissuasive sanctions in line with Recommendation 35 available to deal with failure to comply with Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) requirements.

ENVIRONMENTALLY FIT PERSON

Environment and Forest Legislations lay out various assessment and processes for various activities, right from information access to the people, participating in the decision-making process and in case of grievance have access to justice. These are also reiterated by our endorsement of several United Nations convention.

In the context of mining leases, the antecedent behaviour of the company in terms of their environmental management records should be an important criterion before allowing them into the ring. The Mineral Conservation and Development Rules has these relevant sections on environmental aspects from the prospecting stage to the closure of mines.

12. Prospecting and mining operations

The prospecting and mining operations shall be carried out in such a manner so as to ensure systematic development of mineral deposits, conservation of minerals and protection of the environment.

32 (5) The holder of a mining lease shall keep the following:

(a) A key plan on a scale of 1: 50,000 incorporating the following:

i. an administrative surface map showing the boundary of the mining lease, and the adjoining area lying preferably within five kilometres thereof; ii. contours at not more than twenty meters intervals; iii. natural drainage system such as rivers, streams, nalahs, water reservoirs, ponds, lakes, irrigation dams and canals; iv. roadways and railways; v. places of historical and archaeological importance, monuments, places of worship, pilgrimage and of tourist interest; vi. forests with tree density, sanctuaries, wastelands, agricultural lands, grazing lands; vii. boundaries of all villages and towns with their population; viii. predominant wind direction; ix. any other relevant features: Provided that where topographical map is classified as restricted, the particulars referred to in items (i) to (ix) shall be incorporated in the key plan to the extent available in the administrative surface maps.

(b) An environment plan of the area of mining lease inclusive of the adjoining area within five hundred meters of the boundary of a lease area on 1: 5000 scale incorporating the following:

(i) an administrative surface map showing the boundary of the mining lease; (ii) contour lines at five meters intervals; (iii) all features indicated in sub-clauses (iii) to (ix) of clause (a) above; (iv) area occupied by mine workings, area deforested, area covered by dump with the height of the dump, processing plant, surface building, workshop, mining township; (v) area reclaimed and area afforested, location of protective barriers, check dams erected to contain solid and liquid effluents generated by prospecting, mining, beneficiation or metallurgical operations carried out in the mine; (vi) all pumping stations and the courses of discharge of mine water: Provided that the particulars with regard to items (ii), (iv) and (v) shall be applicable only up to sixty meters beyond the boundary of lease area.

21. Abandonment of mines

(1) The holder of a mining lease shall not abandon a mine or a part of mine during the subsistence of the lease except with prior permission in writing of the authorised officer of the Indian Bureau of Mines or the State Government, as the case may be.

(2) The holder of a mining lease shall send to the authorised officer of the Indian Bureau of Mines or the State Government, as the case may be, a notice in Form-D of his intention to abandon a mine or a part of a mine so as to reach them at least ninety days before the intended date of such abandonment. Such a notice shall be accompanied by plans and sections on a scale as specified in rule 31 of these rules setting forth accurately the work done in the mine up to the time of submission of the notice including the measures envisaged for the protection of the abandoned mine or part thereof, the approaches thereto and the environment: Provided that the authorised officer of the Indian Bureau of Mines or the State Government, as the case may be, may require the plans and sections to be prepared on any other suitable scale.

35. Sustainable Mining

(1) Every holder of a mining lease shall take all possible precautions for undertaking sustainable mining while conducting prospecting, mining, beneficiation, or metallurgical operations in the area.

(2) Every holder of a mining lease shall monitor his mining and allied activities as per the notified template of star rating in the format prescribed in this behalf by the Indian Bureau of Mines from time to time, and will submit online its self-assessment report before 1st July of every year for the previous year, to the Regional Controller or the authorised officer of the Indian Bureau of Mines.

(3) The confirmation of the star rating will be done by the authorised officer of the Indian Bureau of Mines through inspection.

(4) The Regional Controller or the authorised officer of the Indian Bureau of Mines may suspend the mining operations in those mines where at least four star rating has not been achieved within a period of three years from the date of notification of these rules after giving a show cause notice of forty five days, to qualify for star rating.

(5) The suspension will be revoked only after verification through inspection of compliance of the star rating requirement specified in sub-rule (4) that the mine qualifies for star rating.

36. Removal and utilisation of topsoil

(1) Every holder of a prospecting licence, prospecting license cum mining lease or a mining lease shall, wherever topsoil exists and is to be excavated for prospecting or mining operations, remove it separately.

(2) The topsoil so removed shall be utilised for restoration or rehabilitation of the land which is no longer required for prospecting or mining operations or for stabilising or landscaping the external dumps.

(3) Whenever the topsoil cannot be utilised concurrently, it shall be stored separately for future use.

37. Storage of overburden, waste rock, etc

(1) Every holder of a prospecting licence, prospecting licence cum mining lease or a mining lease shall take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, sorting and beneficiation or metallurgical operations shall be stored in separate dumps.

(2) The dumps shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment and to prevent causation of floods.

(3) The site for dumps, tailings or slimes shall be selected as far as possible on impervious ground to ensure minimum leaching effects due to precipitations.

(4) Wherever possible, the waste rock, overburden, etc., shall be back-filled into the mine excavations with a view to restoring the land to its original use as far as possible.

(5) Wherever back-filling of waste rock in the area excavated during mining operations is not feasible, the waste dumps shall be suitably terraced and stabilized through vegetation or otherwise. (6) The fines, rejects or tailings from mine, beneficiation or metallurgical plants shall be deposited and disposed in a specially prepared tailings disposal area such that they are not allowed to flow away and cause land degradation or damage to agricultural field, pollution of surface water bodies and ground water or cause floods.

38. Precaution against ground vibrations

Whenever any damage to public buildings or monuments is apprehended due to their proximity to the mining lease area, scientific investigations shall be carried out by the holder of the mining lease so as to keep the ground vibrations caused by blasting operations within safe limit.

39. Control of surface subsidence

Stoping in underground mines shall be so carried out as to keep surface subsidence under control.

40. Precaution against air pollution

Air pollution due to fines, dust, smoke or gaseous emissions during prospecting, mining, beneficiation or metallurgical operations and related activities shall be controlled and kept within 'permissible limits' by the holder of prospecting licence or a mining lease.

41. Discharge of toxic liquid

Every holder of prospecting licence, prospecting licence cum mining lease or a mining lease shall take all possible precautions to prevent or reduce the discharge of toxic and objectionable liquid effluents from mine, workshop, beneficiation or metallurgical plants, tailing ponds, into surface water bodies, ground water aquifer and useable lands, to a minimum. These effluents shall be suitably treated, if required, to conform to the standards laid down in this regard.

42. Precaution against noise

Noise arising out of prospecting, mining, beneficiation or metallurgical operations shall be abated or controlled by the holder of prospecting licence, prospecting license cum mining lease or a mining lease at the source so as to keep it within the permissible limit.

43. Permissible limits and standards

The standards and permissible limits of all pollutants, toxins and noise referred to in rules 40, 41 and 42 shall be those notified by the concerned authorities under the provisions of the relevant statutes from time to time.

44. Restoration of flora

Every holder of prospecting licence, prospecting license cum mining lease or a mining lease shall carry out prospecting or mining operations, as the case may be, in accordance with applicable laws and in such a manner so as to cause least damage to the flora of the area held under prospecting licence, prospecting license cum mining lease or mining lease and the nearby areas.

FIT IN THE CONTEXT OF GENDER, SOCIAL AND HUMAN RIGHTS

Fair and better management of mining resources demands that community dialogue must be considered as utmost priority. The mining impacted communities, particularly women, need to be recognised as an important stakeholder during the entire mining process as they are the primary custodian of the resources. For sustainable mining, the rights of the communities must be protected, and any violation of their rights must be accounted as a criminal offence with appropriate consequences along with permanent cancellation of mining contract. Integrating women in the mining cycle must include their active participation in the decision making & labour force, childcare provisions, safe and supportive environment.

Every holder must recognise the human rights risks that they may contribute through their activities and thus must provide a Human Rights Impact assessment report that should include Gender and social impacts assessments as a part of the scrutiny process. The holder must have a gender equality policy as well as a zero-tolerance policy for harassment and gender-based violence. Every holder must adopt the Gender Guidance Tool³ produced by the UN Working Group on Business and Human Rights to integrate gender perspective in the mining related work.

3. THRESHOLDS AND DECISION MAKING

In the recent past, including the World Bank's Ease-of-Doing-Business index, there has been a tendency to develop indices which are based on several indicators.

These provide a composite ranking. However, these indices and even GRI reporting does not reflect gross violations and hide more the aspects that are relevant. In the case of a fit-and-proper person test, one violation should be sufficient to eliminate the entity.

Therefore, in the context of the coal block auctions, we consider any one violation, economic, environmental, or social by the entity must be a good enough reason to disqualify them. Some of the entities have proved to be repeat violators.

³ https://www.ohchr.org/Documents/Issues/Business/Gender_Booklet_Final.pdf

4. APPLICATION TO THE COMMERCIAL COAL BLOCK BIDDING

The coal auctions for 38 blocks are in process for commercial mining and 42 companies have submitted their bids.

To ensure the integrity of the bidding process and subsequent allocation of coal blocks, an attempt has been made to scrutinize the bidding companies under the fit and proper person test to help detect possible warning signs. Evidence generation is based on reports from regulatory bodies, reliable internet sources, legal findings, and news sources.

The table below is the list of 6 companies that got incorporated this year out of which 5 got registered in less than 3 months from the bidding submission date.

S.No.	Name of the Company	No. of Bids	Date of Incorporation
1	EMIL Mines and Mineral Resources Limited	4	27th February 2020
2	Fairmine Carbons Private Limited	1	6th July 2020
3	Bhupati Mining Private Limited	1	11 July 2020
4	Agarwal Mining Private Limited	1	21st July 2020
5	Nilkanth Coal Mining Private Limited	1	11th September 2020
6	Mahavir Clean Fuel Mining Pvt. Ltd	1	1st August 2020

Some of the bidding companies have almost no information about their mining experience questioning their eligibility to mine especially in sensitive zones. Following are the list of such companies:

S.No	Name of the Company	No. of Bids	Remarks
1.	Adicorp Enterprises Private Ltd.	1	No information
2.	Bansal Construction Works Pvt Ltd	1	A real estate company with no mining experience
3.	Boulder Stone Mart Private Ltd.	1	No information
4.	Everdeliver Logistics Pvt. Limited	1	A logistics and transport service company with no mining eligibility
5.	India Coke and Power Pvt.Ltd	2	It's a private unlisted company with no information on prior mining experience
6.	ND Pharma Private Ltd.	1	Chemical manufacturer
7.	Net Energy Private Limited	1	No information
8.	Saraf Trading Company Private	1	No information
9.	Shri Jaibaba Casting Pvt Ltd	1	It's a scrap dealer company. No information related to mining experience.
10	Refex Industries Limited	1	Deals with refrigerant gas refiller and has no mining eligibility. The former director was imposed a penalty by SEBI for violation of insider trading norms. https://timesofindia.indiatimes.com/business/india-business/sebi-slaps-rs-15-lakh-fine-on-refex-industries-ex-director/articleshow/63752870.cms

A BRIEF LISTING OF THE COMPANIES AND REFERENCES TO THEIR VIOLATIONS OR LACK OF PUBLIC INFORMATION

ADANI ENTERPRISES LIMITED

Adani Enterprises Limited, the conglomerate, has the highest number of bids -12 in total through four subsidiaries- Adani Enterprises Ltd, Chendipada Collieries Private Ltd, Stratatech Mineral Resources Private Ltd and Adani Power Resources Ltd. It is a major economic, social, and environmental violator not only in India but international as well. Some of the evidence are as follows:

<https://indianexpress.com/article/india/cbi-books-adani-company-for-fraud-in-coal-supply-contract-6220462/>

<https://indianexpress.com/article/business/companies/court-overturns-clean-chit-to-adanis-in-share-rigging-case-6209072/>

<https://www.livemint.com/companies/news/adani-enterprises-in-the-dock-as-cbi-charges-group-with-criminal-misconduct-11579175347565.html>

<https://www.newsclick.in/CBI-books-adani-power-other-power-generating-companies-coal-supply-scandal-case>

<https://www.envirojustice.org.au/wp-content/uploads/2020/09/Environmental-Justice-Australia-Briefing-Note-Suitable-Scrutiny-25-August-2020.pdf>

ALANKAR TRADELINKS PRIVATE LIMITED

There is no information on the company's mining experience or any activity that is subsidiary to mining operations.

AUROBINDO REALTY AND INFRASTRUCTURE PRIVATE LIMITED

Aurobindo Group has moved from Pharmaceuticals to realty sector and from there on is trying to enter into mining ventures. The group has a history of environmental violations and has also been indicted for insider trading by SEBI.

<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/aurobindo-pharma-planning-to-challenge-spcb-order/articleshow/14865546.cms?from=mdr>

<https://economictimes.indiatimes.com/markets/stocks/news/insider-trading-sebi-imposes-rs-22-cr-fine-on-aurobindo-pharma-promoters-related-entities/articleshow/71262551.cms?from=mdr>

BHARAT ALUMINIUM COMPANY LIMITED

Co-owned by Vedanta group and 49% government stake, BALCO also adds up to the violators list accused of blatant environment and human rights violations.

<https://www.alcircle.com/news/cecb-slaps-closure-notice-on-balco-power-plant-28801>

<https://www.businesstoday.in/current/corporate/rbi-balco-chhattishgarh-vedanta/story/24200.html>

<https://www.newsclick.in/BALCO-Chhattisgarh-Human-Rights-Environmental-Violations>

CHOWGULE AND COMPANY PRIVATE LIMITED

The company was summoned by the Enforcement Directorate in connection with the multi-billion-rupee illegal mining scam in Goa.

https://zeenews.india.com/business/news/companies/ed-issues-notices-to-16-companies-in-go-mining-scam_110252.html

CUPRUM BAGRODIA LIMITED

The company was named in the coal block allocation scam when Santosh Bagrodia (brother of Vinod Bagrodia, the owner of the company) was the coal minister in 2009.

http://nja.gov.in/P-948_Reading_Material/P-948_Audit_of_Fraud_in_economic_crimes/Aerospace%20&%20Defence%20Empty.pdf

<https://www.indiatvnews.com/news/india/former-coal-minister-santosh-bagrodia-brother-got-hefty-minin-17644.html>

D B POWER LIMITED

This company has been continuously violating environmental norms and human rights.

<https://www.ejAtlas.org/conflict/coal-mine-of-baradarha-thermal-power-station-chhattisgarh-india>
<https://www.thehindu.com/news/national/High-Court-stays-clearance-for-DB-power-coal-mine-in-Chhattisgarh/article13422969.ece>
<https://www.thehindu.com/news/national/Stiff-resistance-to-DB-Power-coalmine-in-Chhattisgarh/article14931369.ece>

DILIP BUILDCON LIMITED

The company has allegedly been involved in various illegalities in various states of India.

[https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/dilip-buildcon-fined-rs-33-78-cr-for-excavation-work-in-maharashtra/articleshow/66951621.cms?from=mdr#:~:text=Maharashtra%20authorities%20have%20imposed%20a,rock\)%20illegally%20in%20Beed%20district.](https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/dilip-buildcon-fined-rs-33-78-cr-for-excavation-work-in-maharashtra/articleshow/66951621.cms?from=mdr#:~:text=Maharashtra%20authorities%20have%20imposed%20a,rock)%20illegally%20in%20Beed%20district.)

<https://timesofindia.indiatimes.com/city/indore/Mining-mafia-plotted-inspectors-murder-Bhuria/articleshow/19299790.cms>

<https://timesofindia.indiatimes.com/city/goa/aap-demands-fir-against-dilip-buildcon/articleshow/68399956.cms>

EMIL MINES AND MINERAL RESOURCES LIMITED

Though this company was registered in February 2020, the parent company Essel Mining Industries is a major violator in Odisha. It was one of the miners named in the Justice Shah Commission report accused of illegal mining.

<https://ibm.gov.in/writereaddata/files/09172019124404Jilling%20Violation00010001.pdf>
https://www.business-standard.com/article/current-affairs/shah-commission-names-14-miners-for-cbi-inquiry-114080800967_1.html

<https://odishasoochana.blogspot.com/2020/03/compensation-and-penalty-collected-from.html>

GANGARAMCHAK MINING PRIVATE LIMITED

M/s Gangaramchak Mining Pvt Ltd the SPV of Consortium Ambey Mining Pvt Ltd & Godavari Commodities Ltd which was the Mine Development Operator for the Ganagramchak block allotted to the West Bengal Power Development Corporation. It has affiliation to the Essel Group of Birlas which is involved in several violations. The Ganagramchak block was also issued a show cause notice for not being able to develop the mines in time and the MDO must be held responsible.

HINDALCO INDUSTRIES LIMITED

The company was one of the accused in the coal block scam where CBI had registered corruption case under section 120-B (criminal conspiracy) of the IPC and under provisions of the Prevention of Corruption Act. It was also been accused of alleged violation of Air (Prevention and Control of Pollution) Act.

<https://www.financialexpress.com/archive/coal-scam-aditya-birla-groups-hindalco-industries-hit-by-corruption-charge/1182792/>

INSPIRE CONSTRUCTION AND COAL PVT. LTD

Environmental Violation and Human Threats:

In the year 2018, Amnesty International reported that unlawful purchased of land through threats, coercion, intimidation and misinformation by agents acting on behalf of private companies, Mahavir Energy and Coal Benefication Limited, which is connected company of Inspire Construction and Coal Pvt. Ltd.

<https://amnesty.org.in/news-update/raigarh-authorities-protect-ativasis-right-peaceful-protest-1/>

JINDAL POWER LIMITED (JPL)

Amidst numerous violations from time to time, recently, the National Green Tribunal found JPL guilty of causing environmental damage in Raigarh and have been asked to pay a fine of Rs.154 crore.

<https://science.thewire.in/environment/national-green-tribunal-jindal-power-coal-india/>

<https://scroll.in/article/680475/how-the-naveen-jindal-group-may-be-conducting-proxy-mining-in-odisha>

<https://odishasoochana.blogspot.com/2020/03/compensation-and-penalty-collected-from.html>

JMS MINING PRIVATE LTD

The company has "an exclusive business development agreement for India with Joy Mining Machinery Ltd. (UK), one of the three leading global mining equipment manufacturers with an industry experience of over a century (since 1919), which is now part of Komatsu Mining Corporation group" which has a number of violation cases - environmental violations, safety, labour.

<https://violationtracker.goodjobsfirst.org/parent/komatsu>

NATIONAL ALUMINIUM COMPANY LTD

The Comptroller and Auditor General of India (CAG) in its audit report in 2019 found NALCO as a consistent violator of environmental clearances.

<https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/cag-hauls-up-nalco-for-under-performance-expensive-delay/articleshow/70292594.cms?from=mdr>

<https://www.downtoearth.org.in/news/mining/cag-lists-nalco-s-many-environmental-aberrations-65715>

NUVOCO VISTAS CORP. LTD

This company was formerly known as Lafarge India Ltd. and the Supreme Court had banned mining activities in 2015 as it had acquired mining license through fraud and not following the EIA process. It was penalised for having violated the provisions of Competition Act, 2002.

<https://www.downtoearth.org.in/news/sc-upholds-mining-ban-on-lafarge-96>

http://environmentclearance.nic.in/auth/ECReport_New.aspx?pid=12201&status=Found

SARDA ENERGY AND MINERALS LIMITED

This mining company was found guilty of illegal mining, and violating Rule 37 of Mineral Concession Rules, by Justice Shah Commission. It has also failed to comply SC order, 2017, to pay compensatory penalty of **Rs. 1938,85,68,640.00**.

https://www.business-standard.com/article/current-affairs/shah-commission-names-14-miners-for-cbi-inquiry-114080800967_1.html

<https://odishasoochana.blogspot.com/2020/03/compensation-and-penalty-collected-from.html>

SUNFLAG IRON AND STEEL COMPANY LIMITED

Environmental Violations:

The Ministry of Coal, Government of India was allocated Khappa and Extension coal block to the M/s Sunflag Iron and Steel Company Limited and M/s Dalmia Cement (Bharat) Limited on 29th May 2009. It was allocated in the pursuance of the provisions contained in Section 3(3)(a)(iii) of the coal mines (Nationalization) Act, 1973. However, the conditions stipulated in the act had not followed even after 4 and half years from the allocation date. It was noticed that the grant of Mining lease, Forest Clearance (stage-1), Environment Mining Plan, and Land Acquisition were pending. It is clearly shown that the gross violations are done by the companies. Moreover, the Ministry of Coal, Government of

India was sending a show-cause notice⁴ on 06.06.2013. Lastly, the Khappa and Extension coal block de-allocated⁵ on 06.01.2014 due to their unsatisfactory progress or developments even after the show causes notice.

THE ANDHRA PRADESH MINERAL DEVELOPMENT CORPORATION LTD

It has a history of unscrupulous activities such as irregularities in lease allocation, mining in encroached land.

<https://www.outlookindia.com/newswire/story/omc-mining-scam-cbi-arrests-ex-md-of-ap-mineral-corp/741286>

VEDANTA LIMITED

Vedanta and its subsidiaries have a huge line of cases citing numerous serious violations- environment, health, tribal and human rights, both in India as well as internationally where it has received massive opposition.

<https://www.downtoearth.org.in/news/vedanta-violated-laws-tribal-rights-50>

<https://www.thequint.com/news/india/sterlite-protests-vedanta-environment-law-violations-orissa-tuticorin->

<zambia#:~:text=Vedanta%20had%20committed%20significant%20violations,concealing%20information%20about%20the%20project.>

WELSPUN STEEL LIMITED

Environmental Violations:

Enforcement Director⁶ accused Pradeep Sharma of illegal gratification money from the Welspun group for allegedly allotting land to the company in Kutch at a much lower rate that was causing public exchequer. In return, his wife Shyamal got a 30% partnership in a company's subsidiary unit. Therefore, the ED filed a charge sheet in a special court against Pradeep Sharma, who was a suspended IAS officer. They charged money laundering case under the prevention of money laundering act.

A petitioner⁷, Kandla Juth Machimar Sahkari Mandali Limited, a fishermen organization filed a case at the Pune bench of NGT. A lying pipeline has discharged wastewater into the sea from the plant, which is a part of a Welspun India Limited company located at Anjar taluka, Kutch district. Therefore, the Western zone bench of National Green Tribunal (NGT) has imposed Rs 50,000 each on Welspun India Limited (WIL), Central Government, Gujarat Government, and it's 4 other departments for failing to respond to this petition that alleging green norms violation by Welspun India Limited (WIL).

⁴ https://coal.nic.in/sites/upload_files/coal/files/curentnotices/070613h_0.pdf

⁵ https://coal.gov.in/sites/upload_files/coal/files/curentnotices/070114_0.pdf

⁶ <https://timesofindia.indiatimes.com/city/ahmedabad/ED-files-chargesheet-against-Sharma/articleshow/54557302.cms>

⁷ <https://indianexpress.com/article/india/green-norms-violation-ngt-imposes-fine-of-rs-50k-each-on-gujarat-govt-centre-welspun-4425805/>

Besides, Welspun Tubular, LLC located in the USA, which is a part of the Welspun group⁸. The Environmental Protection Agency imposed \$9,625 dated 11th February 2011 for the alleging of Environment related offenses⁹.

Health Violations:

Apart from, the Welspun Tubular, LLC has alleged safety-related offenses. The agency, occupational safety, and Health administration imposed \$33,250 for the health violation. It has been noticed that the company has continuously alleged safety-related offices in the workplace. The agency, occupational safety, and Health administration¹⁰ imposed penalty on the company are as follows in date wise:

Sl. No.	Name of Company	Offenses type	Date	Agency	Penalty Amount
1	Welspun Tubular, LLC	Health Violation at workplace	3rd August 2010	OSHA	\$33,250
2	Welspun Tubular, LLC	Health Violation at workplace	3rd August 2010	OSHA	\$14,600
3	Welspun Tubular, LLC	Health Violation at workplace	22nd December 2010	OSHA	\$49,000
4	Welspun Tubular, LLC	Health Violation at workplace	30th May 2013	OSHA	\$7,000
	Welspun Tubular, LLC	Health Violation at workplace	4th February 2016	OSHA	\$6,600

YAZDANI INTERNATIONAL PRIVATE LIMITED

Environmental Violations:

A Petitioner¹¹, Odisha Renewable Energy Development Agency filed a case against 56 departments and Companies. Yazdani Steel and Power Limited Company is one of them. They filed case under Sec.2 of the Electricity Act, 2003 for the non-compliance of Odisha Electricity Regulatory Commission (Renewable and Co-generation Purchase obligation and its compliance), 2010 framed under Section 61, 66, 86(1) (e) and 181 of the Electricity act, 2003. Other companies such as Bhushan Power and Steel, National Aluminium Company, Vedanta Aluminium Limited, etc are alleging for the same.

⁸ <http://www.welspunsteel.com/content.asp?Submenu=Y&MenuID=1&SubmenuID=1>

⁹ <https://violationtracker.goodjobsfirst.org/violation-tracker/ar-welspun-tubular>

¹⁰ <https://violationtracker.goodjobsfirst.org/parent/welspun>

¹¹ <http://oredaodisha.com/Petition/PETITION.pdf>

Annexure 1

Fit and Proper Person Test – Stage I – Precedence					
SNo	Bids	Company	Economic	Environmental	Social
1.	12	Adani Enterprises Limited			
2.	1	Adicorp Enterprises Private Limited			
3.	1	Agarwal Mining Private Limited			
4.	1	Alankar Tradelinks Private Limited			
5.	4	Aurobindo Realty and Infrastructure Private Limited			
6.	1	Bansal Construction Works Private Limited			
7.	1	Bharat Aluminium Company Limited			
8.	1	Bhupati Mining Private Limited			
9.	1	Boulder Stone Mart Private Limited			
10.	2	Chowgule and Company Private Limited			
11.	1	Cuprum Bagrodia Limited			
12.	1	D B Power Limited			
13.	1	Dilip Buildcon Limited			
14.	4	EMIL Mines and Mineral Resources Limited			
15.	1	Everdeliver Logistics Private Limited	Has been technically disqualified		
16.	1	Fairmine Carbons Private Limited			
17.	1	Gangaramchak Mining Private Limited			
18.	5	Hindalco Industries Limited			
19.	2	India Coke and Power Private Limited			
20.	1	Inspire Construction and Coal Pvt. Ltd			
21.	5	Jindal Power Limited			
22.	5	JMS Mining Private Limited			
23.	1	Mahavir Clean Fuel Mining Pvt. Ltd			
24.	1	National Aluminium Company Ltd			
25.	1	ND Pharma Private Limited			
26.	1	Net Energy Private Limited			
27.	1	Nilkanth Coal Mining Private Limited			
28.	1	Nuvoco Vistas Corp. Ltd			
29.	1	Refex Industries Limited			
30.	1	Saraf Trading Company Private Limited			
31.	3	Sarda Energy and Minerals Limited			
32.	1	Shri Jaibaba Casting Pvt Ltd			
33.	2	Sunflag Iron and Steel Company Limited			
34.	4	The Andhra Pradesh Mineral Development Corporation Ltd			
35.	3	Vedanta Limited			
36.	1	Welspun Steel Limited			
37.	1	Yazdani International Private Limited			
	76				

5. CONCLUSIONS

The auction regime was brought in the country after the huge scam on allocations. The court felt that auction was the best process of price discovery. However, the 10 tranches of auction and consistent sweetening of the offers and the limited number of participants, especially those who have a bad track record, shows the need to conduct an elaborate fit-and-proper person test before allowing any entity to participate in the auctions.

Further, the auctions which do not have consent from the communities in the area are compromising the Constitution by creating vested interests in third party lands through administrative feats.

This preliminary assessment clearly points out that all the bidders would not qualify if a serious analysis is undertaken by the Government, which is duty-bound to do this as a custodian of citizens wealth.

Therefore, the current auctions need to be kept in abeyance until a procedure is established and the entities are transparently screened.

Environics Trust is a not for profit research and community development organisation and an enabling institution. Environics conducts participatory research on issues of environmental and human behavior and uses these outcomes for innovative community development programmes. Environics anchors several networks and partnerships. It is currently the Secretariat for the Indian Ban Asbestos Network and the emerging Publish What You Pay Coalition. Environics is a co-founder and promoter of the mines minerals and PEOPLE alliance (mm&P), the Indian Network on Ethics and Climate Change (INECC), the EIA Resource and Response Centre (eRc), Occupational and Environmental Health Network of India (OEHNI). Environics provides research and evaluatory services to International, National, State and Local Institutions and directly works with marginalised communities such as those in the mountain regions, tribals and communities adversely affected by mining and industrialisation. Environics is a member of the International Coal Network, Asian Peoples Movement for Debt and Development, Tax and Fiscal Justice Asia (TAFJA), NGO Forum on ADB and the Indo-Nepal Joint Action Forum.

www.environicsindia.in



Environics Trust

Mineral Inheritors Rights Association (MIRA), formally established in March 2020, is an emerging coalition of diverse civil society groups and networks in India working to ensure democracy, social justice, equity, transparency, and accountability in the extractive sector. MIRA is affiliated to the global Publish What You Pay (PWYP) coalition. The coalition brings together 27 members and 9 Steering Committee members who are passionate in reimagining a future where everyone has an equitable access to mineral resources while preserving the integrity of the entire ecosystem.

Our collective vision is to create and ensure “A country with fair and effective governance over natural resources, including minerals, which are a shared inheritance with the State as trustee for the people and especially future generations.”

The key priorities of the coalition are:

1. To advocate for a fair mineral resource governance mechanism in place based on the principle of intergenerational, intragenerational and interspecies equity.
2. To guarantee total transparency on the part of both the government and the extractive industries including the disclosure of payments & policy affairs and effective implementation of Free Prior Informed Consent (FPIC).
3. To call for rationalisation and regularization of mining activities with strict limits to the quantum of production of mines and minerals.
4. To advance gender responsive approach at all extractive stages and welfare activities and women, as the key stakeholders in the mining process.
5. To advocate for India to be a member of the Extractive Industry Transparency Initiative and the Open Government Partnership to commit to and comply with international standards of disclosure and transparency.

