2024 INSC 623

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1659-1660 OF 2024

M/S. KARNATAKA EMTA COAL MINES LIMITED AND ANOTHER **.....APPELLANTS**

Versus

CENTRAL BUREAU OF INVESTIGATION **.....RESPONDENT**

INDEX

CITATIONS

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1	'CBI vs. S.M. Jaamdar & Others'	
2	M.L. Sharma v. The Principal Secretary and Others	(2014) 9 SCC 614
3	Girish Kumar Suneja v. CBI	(2017) 14 SCC 809
4	KPCL v. Aryan Energy Private Limited[1] and Others	COMAP No. 12, 13, 14 and 15 and 2020 decided on 22nd July, 2021
5	Centre for Public Interest Litigation v. Union of India	(2012) 3 SCC 1
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12	Neeraj Dutta v State (NCT of Delhi)	(2023) 4 SCC 731
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19	The King Emperor v. Khawaja Nazir Ahmand	AIR (1945) PC 18
20	Manohar Lal Sharma vs. Principal Secretary and Another	(2014) 9 SCC 516

GLOSSARY

Abbreviations of Acts

Act of 1973	Coal Mines (Nationalization) Act, 1973
CAG Act	Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971
Cr.P.C	Code Criminal Procedure, 1973
CVC	Central Vigilance Commission
IPC	Indian Penal Code
MMDR Act,	Mines and Minerals (Development & Regulation) Act, 1957
P.C. Act	Prevention of Corruption Act

Abbreviations of Companies

AEPL	M/s Aryan Energy Private Limited
EMTA	M/s Eastern Mineral and Trading Agency
GCWL	M/s Gupta Coalfields and Washeries Limited
KECML	M/s Karnataka Emta Coal Mines Limited
KPCL	M/s Karnataka Power Corporation Limited
SAS	M/s. SAS India Private Limited

Abbreviations of Government Organizations

CAG	Comptroller and Auditor General
CBI	Central Bureau of Investigation
CIMFR	Central Institute of Mining and Fuel Research
CIPCO	M/s. Central India Power Company
DoPT	Department of Personnel and Training
MoC	Ministry of Coal
MoEF&CC	Ministry of Environment, Forest and Climate Change
MoPPP	Ministry of Personnel, Public Grievances and Punishment

Abbreviations of terms

BTPS	Bellary Thermal Power Station
CV	Calorific Value
FBC	Fluidized Bed Combustion
FSA	Fuel Supply Agreement
GCV	Gross Calorific Value
IBOCM	Integrated Baranj Open Cast Mines
JVA	Joint Venture Agreement
JVC	Joint Venture Company
MoU	Memorandum of Understanding
MT	Metric Tones
PE	Preliminary Enquiry
SIR	Source Information Report

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CENTRAL BUREAU OF INVESTIGATION **.....RESPONDENT**

JUDGMENT

HIMA KOHLI, J.

A. PREFACE

1. The present appeals challenge the Order on Charge dated 24th December, 2021 and Order framing Charges dated 03rd March, 2022 passed by the learned Special Judge (Prevention of Corruption Act[1]) Central Bureau of Investigation[2], Coal Block Case No. - 01, Rouse Avenue District Court, Delhi[3] in a case[4] registered under Section 120-B read with Sections 409/420 of the Indian Penal Code[5] and Sections 13(1)(d)/ 13(2) of

[1] In short 'P.C. Act'
[2] In short CBI
[3] Hereinafter referred to as 'learned Special Judge, CBI'
[4] Case No. CBI/317 /2019; CNR No. DLCT11-001312-2019 in RC No. 220-2015- E-0002; Branch: CBI/EOU-IV, EO-II/New Delhi
[5] In short 'IPC'

the P.C. Act, 1988 titled '***CBI vs. S.M. Jaamdar & Others'***. The appellants before this Court are M/s Karnataka Emta Coal Mines Limited[6] arrayed as accused No. 12 in the chargesheet and Shri Ujjal Kumar Upadhaya, Chairman and Managing Director of Emta Coal Limited and former Managing Director of accused No. 12, arrayed as accused No. 6 in the chargesheet.

2. It may be noted at the outset that a challenge has been laid to the impugned orders passed by the learned Special Judge directly before this Court in the light of the directions issued in ***M.L. Sharma v. The Principal Secretary and Others***[7] *vide* order dated 25th July, 2014 and upheld in ***Girish Kumar Suneja v. CBI***[8] *vide* Judgement dated 13th July, 2017 wherein directions have been issued that this Court alone shall have the jurisdiction to entertain cases relating to coal block allocation across the country, in particular, cases where the parties seek a stay of the investigation/trial in a matter relating to coal.

B. FACTUAL BACKDROP

3. The contours of the case being intricately intertwined with several documents including Agreements, Memorandum of Understandings[9], correspondence etc. referred to by both sides, the factual narrative must be delineated chronologically at some length to appreciate the context of the case.

[6] In short "KECML"
[7] (2014) 9 SCC 614
[8] (2017) 14 SCC 809
[9] In short 'MoU'

3.1. **JOINT VENTURE AGREEMENT**

3.1.1 A Joint Venture Agreement[10] was executed between Karnataka Power Corporation Limited[11] and M/s Eastern Mineral and Trading Agency[12] for a period of 25 years for the development of captive coal mines and supply of coal to the Thermal Power Plant operated by KPCL namely, Bellary Thermal Power Station[13] with the tentative date of commissioning scheduled in December, 2005. KPCL was allocated three coal blocks by the Government of India under the Western Coalfield Limited command area situated in the State of Maharashtra for the development/operation of coal mines dedicated to feeding BTPS.

3.1.2 The JVA was executed between KPCL and EMTA on 13th September, 2002 which gave birth to the Joint Venture Company[14] namely, M/s KECML. The shareholding of EMTA in the JVC was to the extent of 76 per cent and that of KPCL was 24 per cent. In the JVA, it was agreed that there would be five directors from each of the two companies and the nominee of KPCL would be the Chairman of KECML who would have the right to cast vote. The relevant clauses of the JVA referred to and relied upon by the parties are extracted hereinbelow:

[10] In short 'JVA'
[11] In short 'KPCL'
[12] In short 'EMTA'
[13] In short 'BTPS'
[14] In short 'JVC'

"AGREEMENET ON CAPTIVE COAL MINING PROJECT THROUGH A JOINT VENTURE

xxxxx

"**COAL**" means washed coal with guaranteed values as per article-6 clause 3 C and satisfies quality parameter laid down in Annexure-1 attached to this agreement.

xxxxx

"**KPCL Coal Mines**" means the coal mine(s) to be allotted to KPCL by Ministry of Coal, Government of India in which mining rights shall be given to the Company and which shall be developed/operated through the Company for captive use of KPCL.

Xxxxx

"**GCV (ADB)"** Gross Calorific value on 'Air dried basis' in kcal/kg determined through a Bomb Calorimeter as measured at BTPS as per IS 1350(part -I)

xxxxx

"**D Grade Coal**" means "Non-long flame coal" having Useful Heat Value(UHV) in the range of 4200 to 4940 Kcal/Kg as per GOI notification.

xxxxx

ARTICLE 2
THE COMPANY AND ITS OBJECTIVES

1. The Parties of this agreement shall form and incorporate the Company as a Public Limited Company under the Companies Act, 1956 having its registered office at Bangalore.
2. The Company shall be named **KARNATAKA EMTA COAL MINES LIMITED**; or in case such name is not available, any other name which may be mutually acceptable to the Parties.
3. **The main object of the Company shall be to develop the captive coal mines of KPCL and produce coal from KPCL coal mines and to supply, transport and deliver such coal wholly and exclusively to KPCL.**
4. For achieving the above main object, EMTA on behalf of the Company shall, inter-alia, take up the following activities with regard to the KPCL Coal Mines:

   (a) survey and preparation of plans for mining;
   (b) drilling and prospecting;
   (c) mining either in open cast process or underground or both ;
   xxxxx
   (e) raising coal and stacking the same on surface;
   xxxxx

   (g) Establishing coal washery of adequate capacity at the pit head and supply of coal of the required specification to the power plant of KPCL by Rail mode;

   xxxxx

(m) preparation of plans, obtention of approval of Site Clearance from Ministry of Environment & Forest Govt. of India;
(n) preparation of Mining Plan and its approval from Ministry of Coal, Govt. of India;
xxxxx
(r) arrangement of approval for coal linkage from KPCL Coal Mines to the power stations of KPCL;
(s) arrangement of railway siding nearest to the KPCL Coal Mines, and
xxxxx
{u) undertake all other allied jobs for coal mining & washery operations.

ARTICLE 5
BUSINESS OF THE COMPANY

To achieve the main objects of the Company as mentioned in clause 3 of Article 2, EMTA shall be responsible for development, operation of KPCL coal mines and delivery of coal to BTPS or any other thermal power station under KPCL, the terms and conditions of which shall be governed by an agreement to be executed by and between Company and EMTA.

EMTA's Scope of work shall comprise as follows:

1. **Development and Operation of KPCL coal mines**

2. **Establishing coal washery at Pit head**

a) EMTA shall ensure establishment of coal washery at the pit head so that the coal to be supplied by the company should meet the required specification of KPCL and KPCL is not liable to pay any additional charges towards washing of coal.
b) EMTA shall take all the clearances required for the setting up the coal washery from the concerned authorities and to properly dispose off the coal rejects to the satisfaction of environmental regulation.
c) EMTA shall keep liaison with the concerned railway authorities and organise railway siding at nearest distance from mines/washery area for movement of coal to BTPS by rail.

3. **Arranging transportation of coal to BTPS**

xxxxx

6. **Quantity**

a. The total quantity of coal required to be supplied to BTPS is approximately 2 Million Tonnes (+)/(-) 10% per annum.

7. **Quality**

a) The quality of coal shall be determined by drawing coal samples from railway wagons on receipt at KPCL power plants before unloading.
b) A third party agency shall be appointed jointly by the parties of the agreement for sampling and analysis of coal received at BTPS end.

The third party agency shall carry out the sampling and analysis of coal in the presence of the representative of the parties.……

xxxxx

d) An independent inspection agency shall supervise and certify the quality of coal received at BTPS and the result of analysis certified by the independent inspection agency as per the procedure stated above shall be binding to all concerned for all commercial purposes.

xxxxx

9. Delivery Period

a. The delivery of coal to BTPS shall commence one month prior to the scheduled date of synchronisation of first unit with coal at BTPS. The tentative date of commissioning maybe taken as Dec. 2005.

xxxxx

13. The company shall provide an undertaking to the Ministry of Coal, Government of India that the coal produced from the KPCL Coal Mines shall be wholly and exclusively supplied, transported and delivered to KPCL.

ARTICLE – 6
COMMERCIAL TERMS

Fuel supply agreement shall be executed between KPCL and Company to record the terms and conditions of coal supply from KPCL coal mines to KPCL which shall be governed by the following commercial terms :

1. **Price**

a) KPCL shall purchase the entire quantity of specified coal supplied to BTPS at a price of Rs. 1650.47 per tonne, the detailed break up of which is as per Annexure - II attached to this agreement

xxxxx

c) **The price shall be firm at the agreed price i.e. Rs.1650.47 per MT for a quantity of one million tonnes in the first year of BTPS - operation subject to price variation** as per clause 3.D(b)-I(a) but limited to 50% increase in base price only. And 100% variation in statuary charges as per clause 3.D(a).

xxxxx

2. **Basis of payment and price adjustment**

KPCL shall pay the price of coal for the quantity and quality of coal on receipt at BTPS on rake to rake basis as detailed herein below:

A) QUANTITY …
B) QUALITY …
C) PRICE ADJUSTMENT

The size of coal, ash content, and GCV of coal would be checked and compared with the guaranteed values as indicated below:

(a)	**GCV (ARB)**	**4500 in Kcal/KG**
(b)	**Permissible variation**	**Max. 4500 Kcal/Kg & Min. 4000 Kcal/Kg.**
(c)	**Ash content (ADB)**	**0 to 25 mm with fines (upto-2 mm) not exceeding 20%**

Suitable price adjustment would be carried out be KPCL for variation in properties compared to the guaranteed value as indicated in the following paragraphs.

i) ASH CONTENT(ADB)…

ii) GCV (ARB)

a) No Pro rata price adjustment is allowed for the GCV over and above 4500 Kcal/Kg.

b) In case the GCV is between 4200 to 4500 Kcal/Kg the price adjustment will be on the Base Price on Pro rata basis.

c) In ease the GCV of the coal supplied falls between 4000- 4200 Kcal/Kg, the price payable is restricted to 50% of the Base Price.

d) In case the· GCV is below 4000 Kcal/Kg KPCL shall not require to pay for such supplies including freight and other incidental charges.

xxxx

D) Price Variation….

4. **Penalty**

a) The delivery period stipulated in Clause No 9 of Article 5 for the supply of coal shall be the essences of the contract. In the event of failure to commence the delivery of coal within the stipulated time specified in Clause 9 of Article 5 KPCL shall impose a penalty at a rate of l/2% of initial contract value of Rs.330.09 Crores i.e. Rs.l.65 crores for every week's delay subject to a maximum of 10% of the contract value of Rs.330.09 crores i.e. Rs.33.00 crores

b) In the event of delay in commencement of mining operation or washery or due to non-availability o(railway siding or for any other reason, Company shall arrange coal supply from any other source with the same specification as indicated under 3 c) of above….

xxxxx

5. **Fuel Supply Agreement shall be executed between KPCL and the company on the terms and conditions stipulated in the L.O.A. dated 8.7.2002 and relevant clauses as agreed upon between the parties under this agreement.**

xxxxx

ARTICLE 9
OBLIGATIONS OF THE PARTIES

The parties shall at their own cost and expense observe, undertake, comply with and perform in addition to and not in derogation of their obligations elsewhere set out in this Agreement, the following:

Obligation of KPCL

1. It shall apply to the Central and the relevant state governments for the allotment of the KPCL coal mines.
2. It shall purchase the Coal supplied to it as per the terms agreed to in the Fuel Supply Agreement.

Obligation of EMTA

1. It shall arrange for the identification of mining block(s) for present and future requirement, the acquisition of private land and allotment of vested lands by the State Government required for mining operation and KPCL will render assistance, if required.
2. **It shall ensure supply of coal from KPCL coal mines to KPCL power plants as per the guaranteed values indicated in 3 c) of Article 6 and specification stated in Annexure - I attached to this agreement.**

xxxx

6. **It shall establish Washery at the pit head and get all clearances required for setting up the washery to effect washing of coal to meet the specification."**

xxxx

[emphasis added]

3.1.3 Annexure–I appended to the aforesaid JVA specifies the desired characteristics of the coal and contains a computed statement relating to the expected coal quality with the range for the maximum and minimum. The calorific value[15] in Gross Calorific Value[16] has been mentioned in the first column under the head 'Description' and in the column of "Expected Product Coal" that states as follows:

'DESIRED CHARACTERISTICS OF WCL COAL

EXPECTED COAL QUALITY WITH THE RANGE FOR MAXIMUM & MINIMUM				
DESCRIPTION	**UNITS**	**EXPECTED PRODUCT COAL**	**RANGE**	
			MINUMUM	**MAXIMUM**
Gross C.V.	Kcal/K.gm	4995		
xxxxxx				
Size of Coal	mm		0-25 mm (0-2 mm fines not>20%	

[15] In short 'C.V.'
[16] In short 'G.C.V.'

3.1.4 Annexure–II that prescribes the price schedule for mining, washing and delivery of washed coal to BTPS, specifies amongst others, the total price of coal at the pit head as follows:

PRICE SCHEDULE
FOR
MINING, WASHING AND DELIVERY OF WASHED COAL TO BTPS

Sl. No.	**Particulars**	**Price Per Metric tonne**
1.	xxxxx	
	f) Total price of coal at pit head (Railway Siding) (a+b+c+d-e)	860.70
	xxxx	
7.	Railway Freight from captive mines to BTPS	608.90
	xxxx	
9.	**Landed cost per MT of washed coal at BTPS including Sales Tax**	**1650.47**

3.2. **CORRESPONDENCE**

3.2.1 *Vide* letter dated 10th November, 2003, the Ministry of Coal[17], Union of India allocated three coal blocks to KPCL for power generation for the proposed Thermal Power Station at Bellary, Karnataka[18]. As much emphasis has been laid on the contents of the said letter by the respondent-CBI, the same is reproduced hereinbelow for ready reference :

[17] In short 'MoC'
[18] at Kiloni, Manoradeep and Beranj I to IV blocks

'No. 47011/1(1)/2002-CPAM/CA
GOVERNMENT OF INDIA
MINISTRY OF COAL

....

New Delhi, dated the 10th November, 2003

'To,

M/s. Karnataka Power Corporation Ltd.,
Shakti Bhavan No. 82,
Race Course Road,
Bangalore - 560 00l,
KARNATAKA.

'Subjet: **Allocation of Kiloni, Manoradeep and Baranj I-IV captive coal blocks for power generation to M/s KPCL for their proposed 1000 MW(2x500 MW) TPS at Bellary, Karnataka.**

……..
The Screening Committee has agreed to identify Baranj I-IV. Manoradeep and Kiloni under the command area of WCL in the State of Maharashtra to meet the requirement of coal for the exclusive use in the proposed TPS at Bellary. Karnataka. The allocation of these blocks are subject to the following conditions :-

(i) The coal mined from the blocks shall exclusively be used by the company to meet the requirement of coal in their proposed TPS.

(ii) Synchronization/commissioning of the end use plant should be December, 2006.

(iii) The setting up of the proposed TPS should be completed by the Company before coal production starts from the captive mine. The bar chart for the coal production should be modified suitably.

(iv) The coal mining will be done in accordance with the provisions of Mines & Minerals (Development & Regulation) Act, 1957 and Mineral Concession Rules, 1960 and subject to the provisions of other relevant statutes.

(v) Allocation of coal block may be cancelled in case of unsatisfactory progress of implementation of their proposed end use plant, development of captive coal mine or any of them.

3. The allotment of the captive blocks will also be subject to the following conditions:

(i) The end use for which coal mined from the captive block should be utilized and all the conditions imposed by the Central Government mentioned in this letter conveying offer by the Screening Committee of captive block to M/s. Karnataka Power Corporation Ltd, may be clearly specified in the mining lease.

(ii) All the conditions imposed by the Central Government while conveying the previous approval to the State Government under Section 5(1) of the Mines and Minerals (Development & Regulation) Act, 1957 for grant of mining lease in favour of captive mining party should clearly form part of the lease deed to be executed between the concerned State Government and the party.

(iii) In case the captive block has been offered for washing-cum-end use, the deed must clearly specify that the beneficiated coal from the washery will exclusively be used for the end use (power generation) as approved by the Central Government and not for commerce or otherwise. Tailings, middlings or rejects, as the case may be, shall be used for captive consumption only by the applicant as approved by the Central Government.

(iv) The allocattee would furnish to this Ministry detailed plan for disposal of unusable containing carbon materials obtained during the process of mining or any process thereafter including washing etc. so as to avoid any need for disposal of the same through sale etc. at a later stage, within 30 days of receipt of this letter or submission of mining plan whichever is earlier.

(v) No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purpose (power generation) except with the previous approval of the Central Government in writing.

(vi) There should be complete synchronization between the captive coal mining operations and the development of end-use (power generation) plant so that no situation arises where the company is left with coal extracted from the captive block when the end-use plant is yet to be operational.

(vii) Approval of mining plan shall be considered only after financial closure for the end use project is achieved.

(viii) Existing coal linkage from CIL/SCCL, would not be disturbed in any way with the coal mined from the allocated blocks. The coal linkage of 2.5 mtpa provided for the TPS from MCL shall continue.

(ix) Further, detailed exploration of the block, if required, shall be carried out by CMPDIL or under its direct supervision, on payment basis by the applicant.

(x) Violation of any of the conditions will render the allocation of the block/ grant of the lease as the case may be liable for cancellation.

4. The progress in the end use project and the development of the allocated blocks should be reported to this Ministry every 3 months from date of issuance of this letter.

5. The company may approach CIL for more detailed information, geological report etc. and contract the State Government authorities concerned for completing the necessary formalities for attaining mining lease rights and related matters. The company will be required to apply for mining lease within a period of six months. The arrangement of transport of coal, if any, etc. will have to be worked out by the company in consultation with the Ministry of Railways/Ministry of Surface Transport depending on the mode of transport.

Yours faithfully,

(S. Gulati)
Director"
(emphasis added)

3.2.2. On 16th April, 2004, the Ministry of Coal and Mines issued a Gazette Notification under Section 3(3)(a)(III)(4) of the Coal Mines (Nationalization) Act, 1973[19] stating as below:

"MINISTRY OF COAL AND MINES
(Department of Coal)
NOTIFICATION
New Delhi, the 16th July, 2004

S.O. 824(E) - In exercise of the powers conferred by item(4) of subclause (III) of clause (a) of Sub-section (3) of Section 3 of the Coal Mines (Nationalisation) Act, 1973 (26 of 1973) the Central Government hereby specifies as an end use the supply of coal from the coal mines of Kiloni, Manoradeep and Baranj I-IV blocks by the Karnataka EMTA Coal Mines Limited on an exclusive basis to the Karnataka Power Corporation Limited for generation of thermal power in their proposed 1000 MW (2 x 500 MW) TPS at Ballary, Karnataka subject to condition that the Karnataka Power Corporation Limited holds at least 26 per cent of voting equity share capital of the Karnataka EMTA Coal Mines Limited at all times.

[F.No. 13016/33/2003-CA]
APVN Sarma, Jt. Secy."

[19] For short '1973 Coal Act

3.2.3 On 08th December, 2004, the MoC, Government of India issued a letter to KECML approving the Mining Plan submitted by it for the Baranj Open Pit Project under Section 5(2)(b) of the Mines and Mineral (Development & Regulation) Act, 1957[20]. The appellants herein have taken a plea that the Mining Plan did not contain any provision contrary to the JVA with respect to the rejects and what KECML was required to do to dispose off the rejects, was stipulated under Clause 5(2)(b) of the JVA which required it to dispose off the rejects in an environment friendly manner. It was submitted that there was no clause in the Mining Plan that ran contrary to the JVA. The said plea has however been disputed by the respondent-CBI.

3.3 FUEL SUPPLY AGREEMENT

3.3.1 Article 6 of the JVA stipulated execution of an Agreement between KPCL and EMTA for supply of washed coal, described as the 'Fuel Supply Agreement[21]. The FSA was executed on 09th May, 2007 and its relevant clauses are as below:

FUEL SUPPLY AGREEMENT

'THIS AGREEMENT made this ninth day of May two thousand seven between KARNATAKA EMTA COAL MINES LIMITED, …… called the "Supplier"…….of the First Part and

KARNATAKA POWER CORPORATION LIMITED, ….. called the "Purchaser'….of the Second Part.

WITNESSETH AS FOLLOWS

a) WHEREAS Purchaser inter alia is engaged in the business of generating power through its various thermal, hydel, wind power stations and is taking up a new thermal power plant named as Bellary Thermal Power

[20] For short 'MMDR Act'
[21] For short 'FSA'

Station (hereinafter referred to as BTPS), with an initial capacity of 500 MW likely date of commissioning is July, 2007.

b) AND WHEREAS the annual requirement of coal at BTPS will be approximately 2 million tonnes.

c) AND WHEREAS pursuant to the policy of Govt. of India of leasing out coal mines to power generating agencies for use as captive coalmine(s) for their own consumption, the Purchaser has been allocated mining block(s) identified as Baranj I-IV, Manoradeep & Kiloni vide allotment Letter No.47011/1(1)12002-CPAM/CA dated 10.11.2003 . The Purchaser has assigned and entrusted the responsibility to develop and operate the said coal mines to the Supplier. For this purpose, the Purchaser has entered into a Joint Venture Agreement dated 13.9.2002 with, M/s. Eastern Minerals & Trading Agency (in short EMTA hereinafter), to form a joint venture company (hereinafter' called the "Supplier") for development and operation of such coal) mines. **The entire amount of coal produced from such coal mines shall be sold, transported and delivered by the Supplier exclusively to the Purchaser for use at BTPS in accordance with the provisions of this Agreement.**

xxxxx

ARTICLE 1
DEFINITIONS

xxxxx

"Coal" means washed coal with guaranteed values as per Article-6 and satisfies quality parameter laid down in Annexure -I attached to this agreement.

xxxxx

"GCV (ADB)" means Gross Calorific value on air dried basis in Kcal/Kg determined through a Bomb Calorimeter as measured at BTPS as per IS 1350 (Part- II).

xxxxx

"Joint Venture Agreement" means the agreement dated 13.09.2002 entered into between the Purchaser and M/s. Eastern Minerals & Trading Agency to form a joint venture company.

xxxxx

"Specified Coal" means washed coal as defined in the Schedule of Specification (Annexure I) of this Agreement.

xxxxx

ARTICLE 4
CONDITIONS PRECEDENT

4.1 The respective obligations of the Parties under this Agreement shall be subject to the satisfaction in full of each of the following conditions precedent prior to Commencement Date:

i) The Purchaser has assigned the mining rights in favour of the Supplier
ii) The Supplier has obtained all the necessary clearances and approvals required from the concerned authorities regarding operation of the Designated Coal Mines and submitted a copy of same to the Purchaser.
iii) The Supplier has registered this Agreement with the relevant authority at the time and in the manner stipulated in the Monopolies and Restrictive Trade Practices Act, 1969 as amended from time to time, to the extent the provisions are required to be registered.

xxxxx

ARTICLE 5
QUANTITY AND QUALITY

5.1 QUANTITY

The Supplier shall supply and the Purchaser shall take coal in quantities of 2 Million Tonnes (+)/(-) 10% per annum. The quantity may increase depending on requirement of the Purchaser.……

5.2 QUANTITY

5.2.1 The Supplier shall ensure that it shall supply the Washed Coal with guaranteed value as per Article – 6 and satisfies quality parameter laid down in Annexure-I attached to this agreement to the Delivery Points without any interruption and shall maintain quality of supply as required. The following procedure is indicated in respect of Joint Sampling.

a) third party agency shall be appointed jointly by the parties of the agreement for sampling and analysis of coal received at BTPS end…..
b) The third party agency shall be required to undertake sampling and analysis of coal as per the provision of ISI/ BIS or mutually agreed procedure.
c) The payment to the third party agency shall be borne by the supplier.
d) In the absence of certification by the independent Inspection agency for any rake, KPCL is not liable for payment for such rake.

5.2.2 The Supplier shall take all reasonable steps to ensure that shales/stones are removed from the coal and no lumpy and/ or oversized coal is supplied and the quality of coal shall fall within the parameters indicated in the Annexure - I. The methodology for verifying the incidence of stones/shales shall be mutually agreed to between the Purchaser and the Supplier. The size of coal shall be less than 25 mm (0-2 mm fine not >20%).

xxxxx

ARTICLE 6
CONTRACT PRICE OF COAL

6.1 The Purchaser shall purchase the entire quantity of Specified Coal supplied to it at the commercial terms and conditions stated herein below:

6.1.1 Price

a) Purchaser shall purchase the entire quantity of specified coal supplied to BTPS at a price of Rs. I 650.47 per tonne, the detailed break up of which is as per Annexure - II attached to this agreement.

Xxxxx

6.1.3 Basis of payment and price adjustment
xxxxx

C) PRICE ADJUSTMENT

The size of coal, ash content and GCV of coal would be checked and compared with the guaranteed values as indicated below:

(a)	**GCV (ARB)**	**4500 in Kcal/KG**
(b)	**Permissible variation**	**max. 4500 Kcal/Kg.&**
(c)	**Ash content**	**32% maximum**
(d)	**Size of coal**	**0 to 25 mm with fines (upto-2mm) not exceeding 20%**
(e)	**Total moisture**	**6% minimum; 15 maximum**

Suitable price adjustment would be carried out by Purchaser for variation in properties compared to the guaranteed value as indicated in the following paragraphs.

xxxxx

ii) GCV (ARB)

a) No Pro rata price adjustment is allowed for the OCV over and above 4500 Kcal/kg.
b) In case the GCV is between 4200 to 4500 Kcal/Kg the price adjustment will be on the Base Price on Pro rata basis.
c) In case the GCV of the coal supplied falls between 4000-4200 Kcal/Kg, the price payable is restricted to 50% of the Base Price.
d) In case the GCV is below 4000 Kcal/Kg Purchaser shall not be required to pay for such supplies including freight and other incidental charges. The coal supplied having GCV of below 4000 Kcal/Kg will be consumed.

Adjusted rate per Mt. is calculated as per formula defined in Annexure-III

iii) The size of coal shall not exceed 0 to 25 mm with fines (0-2 mm) not exceeding 20%.....

xxxxx

ARTICLE 8
SAMPLING OF COAL AND ANALYSIS OF QUALITY

8.1 The quality of coal shall be determined by drawing coal samples from railway wagons on receipt at KPCL power plants before unloading.

8.2 A third party agency shall be appointed jointly by the parties of the agreement for sampling and analysis of coal received at BTPS end. The third party agency shall carry out the sampling and analysis of coal in the presence of the representative of the parties.

8.3 The third party agency shall be required to undertake sampling and analysis of coal as per the provision of ISI/BIS or mutually agreed procedure.

8.4 The payment to the third party agency shall be borne by the Supplier.

xxxxx

ARTICLE 10
PENALTY

10.1. The Supplier has agreed to commence supply of coal to BTPS on commissioning which has been rescheduled July 2007.

10.2 The delivery period stipulated in 10.1 above for the supply of coal as envisaged in Article 5 shall be the essence of the contract. In the event of failure to commence the delivery of coal within the stipulated time specified above, Purchaser shall impose a penalty at a rate of l/2% of initial contract value of Rs.330.09 crores i.e. Rs 1.65 crores for every week's delay subject to a maximum of 10% of the contract value of Rs.330.09 crores i.e. Rs.33.00 crores.

(emphasis added)

3.3.2 In terms of Articles 2 and 5 of the FSA, a Tripartite Agreement was executed between KECML, KPCL and M/s SGS India Private Limited[22] on 20th June, 2008. M/s SGS was appointed as a third-party agency for purposes of sampling and analysis of the coal to be received at BTPS.

3.3.3 For the sake of completion of narration, it may be noted here that although the MoC had approved the Mining Plan submitted by KECML on 08th December, 2004 and

[22] In short 'SGS'

the FSA referred to above was executed on 09th May, 2007, the actual mining and coal production could be commenced by KECML only in September, 2008 on account of the litigation initiated by M/s Central India Power Company[23] against the MoC in relation to the coal block allocated to KPCL. In July, 2003 CIPCO filed a writ petition[24] before the Nagpur Bench of the Bombay High Court seeking reallocation of coal blocks allocated to KPCL. On 21st May, 2006, a *status quo* order was passed by the High Court in the said petition and KECML and KPCL were also made parties. The said petition was finally dismissed by the High Court on 10th August, 2006 which dismissal order was upheld by this Court on 05th January, 2007. Due to the *status quo* order operating in all this duration, the coal production could commence at site only in September, 2008 and washed coal was supplied by KECML to the BTPS w.e.f. December, 2008. Due to non-supply of washed coal by KPCL as stipulated in Article 6(4) of the JVA and Article 10 of the FSA, KPCL imposed penalties on KECML for the delay.

3.4 MEMORANDUM OF UNDERSTANDING

3.4.1 Since Article 5(2) of the JVA required the appellants to establish a coal washery at the pithead to supply coal of the required specification for the consumption of BTPS and there were several layers of clearances required from the authorities to establish the washery at the pithead, it is the stand of the appellants that KECML entered into a Memorandum of Understanding[25] with M/s Gupta Coalfields and Washeries Limited[26]

[23] Hereinafter referred to as 'CIPCO'
[24] Writ Petition No. 2923 of 2003
[25] For short 'MoU'
[26] Hereinafter referred to as 'GCWL'

for washing of the mined coal, transportation of raw coal, transportation of washed coal from the washery to Majri Railway siding of KECML and loading into the railway wagons for onward despatch to BTPS. For the said purpose, GCWL agreed to dedicate its Majri washery to KECML. Following are the relevant terms of the aforesaid MoU:

"MEMORANDUM OF UNDERSTANDING'

"This **MEMORANDUM OF UNDERSTANDING** is made and executed on this 20th May of December, 2008
BETWEEN
KARNATKA EMTA COAL MNINES LIMITED, ……. through its Director, Shri Bikash Mukherjee herein after referred as 'KECML', …… assigns of the FIRST PART.
AND
GUPTA COALFILEDS & WASHERIES LTD., …… through its Managing Director, Shri Padmesh Gupta ……. assigns of the SECOND PART
xxxxx

NOW BOTH THE PARTIES HAVE AGREED TO SIGN AN MOU TO UNDERTAKE THE ABOVE ACTIVITIES WITHNESSETH AS UNDER –

1. **KECML has entered into a Coal Purchase Agreement with KPCL dated 9th May, 2007, whereby KECML shall require to supply coal from the above designated coal mines with the following parameters**

a) GCV (ARB)	**4500 Kcal/Kg**
b) Permissible variation	**Max 4500 Kcal/Kg & Min 4000 Kcal/Kg**
c) Size	**0-50 mm with fines (upto -2 mm) not exceeding 20%**
d) Total moisture	**6% minimum, 15% maximum**

Suitable price adjustment (CIFD BTPS basis) would be earned out for variation in properties compared to the guaranteed values as follows
xxxxx

It has been agreed by the parties hereto that the above parameters shall be maintained by GCWL for onward supply of coal to BTPS of KPCL by KECML

2. KECML has agreed to provide minimum 2 mtpa (Min 8000 tonnes on daily average basis) raw coal to Majri washery of GCWL from their Raw Coal Dump Yard. **It shall be GCWL's responsibility to arrange/transport Raw Coal from the mines to MAJRI washery process the coal to achieve agreed specifications of the washed coal, transportation of washed coal to Majri railway siding to load minimum two rakes daily, supervise the loading of washed coal, onward delivery at BTPS power plant and co-ordination.**

   xxxxx

4. GCWL has agreed to deliver washed coal of following specifications –

Ash (ABD)	Less than 32 %
GCV (ARB)	4500 Kcal/Kg
Size	0-5 mm

5. Yield Parameters GCWL shall ensure, broadly, of 90% if the ash content of the raw coal is 35% to 36% and in the event ash content of the raw coal is found to be 40%, the yield shall be 80%. However, after analysis of the full seam of coal available from the mine the yield percentage will be settled on suitable terms.

   xxxxx

7. **KECML shall pay Rs. 90/- Per MT (excluding all taxes as applicable) of raw coal towards washing charges including charges for loading washed coal to dumpers for transportation to railway siding.** All taxes and duties are applicable shall be reimbursed by KECML at actual. The above charges will remain firm for 3 years …..
8. **It will be the responsibility of GCWL to transport raw coal from mines to washery and washed coal from washery to KECML siding and supervise the loading onto railway wagons**. The transportation rates shall be decided mutually by both the parties which shall be reimbursed by KECML at actual KECML shall place indents with railways and make rail freight payments etc, as per RR on actual

   xxxxx

12 **That the rejects shall be the joint property of KECML and GCWL and it shall be disposed off/sold jointly at mutually agreed terms, subject to compliance of rules/ regulations/guidelines of Ministry of Coal, Government of India, if applicable.**

   xxxxx"

3.4.2 The appellants have stated that the draft MoU was sent to KPCL for its approval by Mr. Murlidhar Rao, the then Director (Technical) of KPCL and Director of KECML and after deliberations between 18th December, 2008 and 12th January, 2009, the same

was finally approved and ratified by the Board of KECML on 13th January, 2009. In the meeting of the Board of Directors of KECML held on 13th January, 2009, those who had participated included Mr. S.M Jaamdar, the then Managing Director of KPCL and Chairman of KECML, Mr. R. Balasubramanian, the then Executive Director and Company Secretary of KPCL and Director of KECML, Mr. D.C. Sreedhar, the then Director (Finance) of KPCL and Director of KECML, Mr. U.K. Upadhyaya, Chairman and Managing Director of EMTA and former MD of KECML (appellant No. 2 in the appeals). In the Meeting held on 23rd February, 2010, the Board of Directors of KECML subsequently concluded that washing of raw coal was necessary since a specific grade of coal was required by the BTPS for generation of power and therefore, washed coal should continue to be supplied on the same basis. The appellants have also pointed out that GCWL was known to KPCL that had earlier entered into an agreement with GCWL along with two other washery operators for washing of coal mined by Western Coalfields Limited. However, the respondent-CBI has questioned the execution of the MoU between KECML and GCWL, in particular, Clause 12 thereof.

3.5 WASHABILITY REPORT OF THE CENTRAL INSTITUTE OF MINING AND FUEL RESEARCH, NAGPUR

3.5.1 In the year 2009, to check the statistics of the coal mine, the appellants approached a Government Laboratory, namely, Central Institute of Mining and Fuel Research[27] for testing of the Integrated Baranj Open Cast Mines[28]. The team of officers

[27] In short 'CIMFR'
[28] In short 'IBOCM'

from CIMFR visited the site, collected 100 MT of coal for testing and furnished a Detailed Washability Report. The report states that the rejects did not contain any useful c.v. as the GCV of the rejects was 1094 Kcal/Kg and the useful heat value was negative.

3.6 REVISED MINING PLAN

3.6.1 After the mining continued for about two years in terms of the original Mining Plan submitted in the year 2004, KPCL decided to increase the capacity of BTPS from 2.5 Mty to 5 Mty. As a result, the appellants were required to prepare a revised Mining Plan for supplying the increased mining demands. On 20th December, 2010, the appellants addressed a letter to the MoC for seeking approval of the revised Mining Plan. At that stage, a new technology for utilization of the rejects for its carbon value was introduced, described as the Fluidised Bed Combustion[29]. The letter issued by the appellants to the MoC mentioned that the rejects generated could be gainfully utilized for its carbon content by generating power through FBC/CFBC power plants of appropriate capacity. It is not in dispute that the new technology of FBC could have been put to use only when a plant in respect of the same was set up for which several approvals would be required from various departments besides the process of acquiring land for setting up the plant spreading over four to five years, as a power plant could not be installed within the mining lease area. The appellants have pleaded that KPCL could not have started using the rejects immediately upon receiving approval of the revised Mining Plan and that the rejects having optimum useful heat value/GCV i.e.

[29] For short FBC.

2500 Kcal/kg, could have been used only by applying the FBC technology after such a facility was set up.

3.6.2 *Vide* letter dated 24th August, 2011, the MoC approved the revised Mining Plan submitted by KECML whereafter the process of obtaining preliminary approvals including environmental clearance from the Ministry of Environment, Forest and Climate Change, Government of India[30] for the enhanced capacity of 5 MTPA coal from 2.5 MTPA was initiated. While the Terms of Reference was granted by the MoEF&CC, the mandatory public hearing required to obtain environment clearance could not be conducted since this Court passed an order in the year 2014 deallocating all captive coal blocks. Before that, due to disputes that had arisen between KECML and GCWL, washing of coal was stopped at the washery of GCWL w.e.f. 22nd May, 2012.

3.7 INFORMATION SUBMITTED BY KECML TO THE COAL CONTROLLER

3.7.1 On 14th December, 2012, the Office of the Coal Controller that falls under the MoC called upon the KECML to furnish details in terms of the prescribed formats in respect of the production, stock, despatch of coal to the washery etc. *Vide* letter dated 16th January, 2013, KECML furnished the detailed data as per the prescribed format. The said letter stated that from December, 2008 to December, 2012, approximately 3,61,000 MT of rejects was generated at the washery; that the ash content of the raw coal varied from 35 per cent to 37 per cent and the content of the washed coal varied from 32 per cent to 34 per cent; that the yield of the washery was about 95 per cent to

[30] In short 'MoEF&CC'

96 per cent and the residual 4 per cent of the raw coal were rejects whose ash content was over 90 per cent and was therefore not marketable. It was further stated that the quality of the rejects was so poor that no records were maintained regarding its utilization. However, the rejects were used to fill up low land area of siding and road between coal blocks to the washery and for pit dumping near the washery.

3.7.2 To substantiate the statement made that the yield of the washery was 95 to 96 per cent, the appellants relied on the Washability Report prepared by CIMFR, Nagpur unit dated 01st August, 2009 which records that IBOCM coal is amenable to wash with yield varying from 90 to 98 per cent at the desired ash level of 32 per cent. The Report has recorded that the GCV of the mined coal fit for transporting to BPTS is 4464 Kcal/kg and that of the rejects is 1094 Kcal/kg. The data prepared in a format and submitted in a tabulated format by KECML to the Coal Controller for the period between the year 2008-09 and 2012-13 is extracted below:

Sl. No.	Year	Production	QTY OF COAL DIRECTYLY DESPTACHED TO SIDING	QTY OF COAL DESPATCHED TO WASHERY	WASHED COAL PRODUCED	REJECTS PRODUCED	REJECTS CONSUMED (APPROX.)
1	2	3	4	5	6	7	8
1	2008 09	990839	7744	90436	860367	40069	30000
2	2009 10	2252358	0	2216334	21177107	98627	70000
3	2010 11	2274995	0	2368455	2263059	105396	70000
4	2011 12	2189869	0	2205395	2108000	97395	50000
5	2012 13	1832770	1606343	225056	205200	19856	20000
Total		9539831	1614087	7915676	7554333	361343	240000

Ash % of Raw coal varies from 35% to 37%
Ash % of wash coal varies from 32% to 34%
% age of yield of washed coal varies from 95-96%

7915676 X (35+37)/2 = 7554333 X (32+34)/2 + 361343 X (A)

where A= Ash% of Rejects,
Hence A = (284964336 - 249292989)/ 361343 = 98.7%
The quality of rejects is as good as stone and not saleable

Pertinently, the data regarding despatch of coal for washing has been furnished only upto May, 2012 since a dispute had arisen between KECML and GCWL thereafter. The second last column mentions the total rejects produced at IBOCM as 3,61,343 MT[31] and the rejects consumed as 2,40,000 MT.

3.8 AUDIT OBJECTIONS RAISED BY THE COMPTROLLER AND AUDITOR GENERAL[32]

3.8.1 On 31st October, 2013, the Office of the Principal Accountant General (E&RSA), Karnataka raised an audit inquiry on KPCL on the subject of non-utilization of the washery rejects and the resultant undue benefit of ₹ 53.37 crores to a private company. The audit inquiry noted that KECML had engaged a third party agency namely, GCWL through a MoU for washing of coal and Clause 12 of the MoU stipulated that rejects should be the joint property of KECML and GCWL which ought to be disposed of/sold jointly at mutually agreed terms subject to compliance of the relevant rules, regulations/guidelines issued by the MoC, if applicable. It was stated that KECML had executed the MoU with GCWL to dispose off the rejects without the concurrence of KPCL and KPCL did not demand the washery rejects from KECML either for its captive consumption or for its disposal. Further, it was stated that no coal could be

[31] Metric Tonnes
[32] For short "CAG"

sold/delivered/disposed of except for captive mining purpose, i.e., power generation and with the previous written approval of the Central Government.

3.8.2 The observations made by the CAG in Audit Inquiry No. 18 are extracted below:

"We observed that

- Depending on the type of coal being washed and the requirement of the captive user, the rejects and middlings are generated from washery. A study report indicates that washing of D-grade coal generates rejects and middling of F and G-grade, and such low quality coal was also being used in power generation.
- The purpose of allocation of coal blocks for captive use under section 3(3) of the Coal Mines (Nationalisation) Act, 1973 is not to enable free trading of coal by private companies. The basic concept of captive mining permitted under the aforesaid Act is that the coal obtained from a captive block shall be used entirely and exclusively for the specified and approved end use by the allocatee Company and, therefore, the production of surplus coal should not result in any undue advantage to the captive block allocatee as the coal block is allotted to them for use in their end-use plant only and any additional production from the block should be made available to the Government for utilization.
- While allocating the coal block in November 2003, the Government directed the Company to use the rejects for its own captive consumption.
- In reply to the clarification sought (October 2003) by the Ministry of Coal regarding detailed plan about the use of middling, tailings and rejects etc, the Company informed (October 2003) that the same was proposed to be used for power generation with fluidized-bed boilers.

  Thus, the inaction on the part of the Company resulted in the KECML/EMTA disposing the coal rejects without transferring the revenue to KPCL. Considering the coal rejects as G-grade based on GCV undue benefit afforded to the KECML/EMTA worked out to Rs. 52.37 crore, as detailed below:

Year	**Coal produced at Baranj OCP (in Tonnes)**	**Minimum quantity of rejects as per MOU (10%)**	**Average CIL rate of G grade coal (Rs.)**	**Loss (₹)**
2008-09	990839.026	99083.903	590	58459502.53
2009-10	2252358.28	225235.83	620	139646213.05
2010-11	2274994.46	227499.45	650	147874639.58
2011-12	2188869	218886.9	650	142276485.00
2012-13 (up to June 2012)	570869.3	57086.93	620	35393896.60
				52,36,50,736.76

Facts and Figures may be confirmed"

3.8.3 *Vide* letter dated 17th December, 2013, KPCL submitted the following reply to Audit Inquiry No. 18:

<table>
<tr><th>"Sl. No.</th><th>Question</th><th>KPCL Reply</th></tr>
<tr><td>1.</td><td>Audit Inquiry No. 18

Sub: Non-utilisation of washery rejects by the company and resultant undue benefit of Rs 52.37crores to private company.
In November 2003, Government of India allocated captive coal blocks in Wardha Valley region to the Company to develop it as source of supply to its thermal power plant al Bellary. In accordance with the requirement of the Company, the JV Company (KECML) engaged (December 2008) a third party agency, M/s Gupta Coalfields and Washeries Limited (GCWL), Nagpur through a Memorandum of Understanding for washing of coal. Clause 12 of the MOU stipulated that the rejects should be the joint property of KECML and GCWL and it should be disposed off/ sold jointly at mutually agreed terms, subject to compliance of rules/regulations/guidelines of Ministry of Coal, Government of India, if applicable. The washing of coal was carried out till the end of June 2012 before it was discontinued due to dispute between the parties to the MOU.

KECML entered into MOU with GCWL to dispose of the rejects without the concurrence of the Company. Despite the fact that the Company holds the right on the captive coal blocks, no provision was made in the FSA made by the Company with KECML for supply of rejects/middling. It did not demand the washery rejects from KECML either for its captive consumption or for its disposal by its own means with the approval of Central Government.

The conditions of allocation inter-alia included that if the coal was being washed, tailings, middling or rejects, as the case may be, from washery should be used for captive consumption only by the Company as approved by the Central Government. Further, no coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purpose (power generation) and with the previous approval of the Central Government in writing.

We observed that:
> Depending on the type of coal being washed and the requirement of the captive</td><td>The Audit objection is raised as if the entire rejects have been appropriated by KECML and that the rejects have a market value of Rs. 52.37 crores. These are factually incorrect in view of the following : -

a) The assessment of washery rejects does not have any direct co-relation with the quantity of coal produced at Integrated Baranj OCP, rather, the quantity sent to washery and the quantity actually dispatched to the thermal power stations of KPCL after the processing in the washery are the two important quantities giving idea of reject generation at the washery. We are furnishing below the year-wise quantity of coal sent to washery from Integrated Baranj OCP, the quantity of rejects generation and the quantity of coal finally dispatched to KPCL.

<table>
<tr><th>Year</th><th>Coal produced at Baranj OCP (in Tonnes)</th><th>Minimum quantity of rejects as per MOU (10%)</th><th>Average CIL rate of G grade coal (Rs.)</th><th>Loss (Rs.)</th></tr>
<tr><td>2008-09</td><td>990839.026</td><td>99083.903</td><td>590</td><td>58459502.53</td></tr>
<tr><td>2009-10</td><td>2252358.28</td><td>225235.83</td><td>620</td><td>139646213.05</td></tr>
<tr><td>2010-11</td><td>2274994.46</td><td>227499.45</td><td>650</td><td>147874639.58</td></tr>
<tr><td>2011-12</td><td>2188869</td><td>218886.9</td><td>650</td><td>142276485.00</td></tr>
<tr><td>2012-13 (up to May 2012)</td><td>570869.3</td><td>57086.93</td><td>620</td><td>35393896.60</td></tr>
<tr><td></td><td></td><td></td><td></td><td>52,36,50,736.76</td></tr>
</table>

b) It may be noted that the said rejects are only Stones / Boulders not consistent with the size of coal :(- 25 mm) for which the boiler is designed,</td></tr>
</table>

user, the rejects and middling are generated from washery. A study report indicates that washing of D-grade coal generates rejects and middling of F and G-grade, and such low quality coal was also being used in power generation.

> The purpose of allocation of coal blocks for captive use under section 3(3) of the Coal Mines' (Nationalization) Act, 1973 is not to enable free trading of coal by private companies. The basic concept of captive mining permitted under the aforesaid Act is that the coal obtained from a captive block shall be used entirely and exclusively for the specified and approved end use by the allocatee Company and, therefore, the production, of surplus coal should not result in any undue advantage to the captive block allocatee as the coal block is allotted to them for use in their end-use plant only and any additional production from the block should be made available to the Government for utilization.

While allocating the coal block in November 2003, the
Government directed the Company to use the rejects for its own captive consumption.

> In reply to the clarification sought (October 2003) by the Ministry of Coal regarding detailed plan about the use of middling, tailings and rejects, etc, the Company informed (October 2003) that the same was proposed to be used for power generation with fluidized-bed boilers.

Thus, the inaction on the part of the Company resulted in the KECML / EMTA disposing the coal rejects without transferring the revenue to KPCL Considering the coal rejects as G-grade base on GCV undue benefit afforded to the KECML / EMTA worked out to Rs.52.37 crore, as detailed below.

Year	Quantity sent to Washery from integrated Baranj OCP	Quantity of rejects generation	Quantity of coal finally dispatched to KPCL
2008-09	9,31,195.026	98,940.003	8,08,871.000
2009-10	22,16,334.815	71,891.838	21,68,827.000
2010-11	23,68,121.815	1,24,137.309	22,12,460.790
2011-12	23,68,121.995	33,081.099	21,63,569.650
2012-13 (up to June 2012)	2,25,035.600	34,978.967	2,11,206.350
	79,46,082.736	3,63,023.216	75,63,934.800

hardly have any calorific value. Therefore the said rejects have been used for leveling, piling etc. towards facilitating Integrated Baranj OCP.

c) The Audit comment is a generalized observation without any factual support and as such cannot be concluded that the washery rejects irrespective of the geological location of the source of coal would have Useful Heat Value (UHV) to cater to the generation requirement. In fact, the rejects generated in the present case are only shale and non- coal matter. Hence the conclusion drawn by Audit that the rejects are G- grade is not only arbitrary but also not based on the ground geological realties.

Thus, the abandonment of rejects at the collieries end has been resorted to based on its utility, as otherwise its transportation would have imposed additional burden on the Company.

The abandonment of rejects is, therefore, in order.

Though KPCL requested the CAG to drop the audit objection in view of its clarification, it is a matter of record that the CAG did not accept the explanation offered by KPCL. Instead, CAG observed in its Audit Report for the year ending March, 2013 that coal rejects worth ₹ 52.37 crore had been misappropriated by KECML and GCWL on account of the inaction on the part of the KPCL.

3.9 PRELIMINARY INQUIRY REGISTRED BY RESPONDENT-CBI

3.9.1 On receiving the Report from the Office of the CAG, KPCL dashed off a letter dated 31st July, 2014 to KECML seeking an account of the rejects generated by washing of coal and demanded reimbursement of the cost of the rejects. KECML responded *vide* letter dated 14th August, 2014 reiterating therein that the percentage of rejects generated at the washery were only 4.39 per cent of the total coal produced at the IBOCM and the said rejects did not possess any c.v. having no carbon and only being stones/boulders. Therefore, the same had been used at the site for levelling, piling etc. for facilitation of smooth mining operations at the IBOCM.

3.9.2 In the meantime, based on a Source Information Report[33] pertaining to some irregularities committed in the allocation of coal blocks under the 'Government Dispensation' category, failure to follow the due procedure resulting in large private companies having connived with public servants and gaining undue benefit a Preliminary Inquiry[34] was registered by the Superintendent of Police, CBI on 28th September, 2012. In all, three Preliminary Inquiries were registered namely, PE 2, PE 4

[33] 'SIR-03/12

[34] PE 5/2012-BS&FC, Delhi Coal Block Cases

and PE 5. The FIR[35] subject matter of the present appeal was registered by the respondent-CBI on 13th March, 2013[36] under Section 120-B read with Sections 409 and 420, IPC and under Section 13(2) read with 13(1)(d) of the PC Act alleging substantive offences against the appellants and other co-accused. Following are the fourteen persons/entities who have been arrayed as accused by the respondent-CBI:

FUNCTIONARIES OF KPCL	
A-1	SM Jaamdar, (Rtd IAS and the then Managing Director Karnataka Power Corporation Limited "(KPCL") and Chairman of Karnataka EMTA Coal Mines Ltd ("KECML")
A-2	Balasubramanium, then Executive Director and Company Secretary, KPCL and Director KECML
A-3	Muralidhar Rao, Director (Technical) KPCL, Director – KECML
A-4	DC Sreedharan, Director (Technical) KPCL and Director KECML
A-5	H.N. Narayana Prasad, the then Director (Technical) KPCL, and Former Director KECML
FUNCTIONIARIES OF KECML	
A-6	Ujjal Kumar Upadhyay, Chairman and MD EMTA Coal Ltd and Managing Director of KECML
A-7	Bikash Mukherjee, Director EMTA and Former Director of KECML
A-8	Bishwanath Dutta, Director EMTA and Director KECML
A-9	Purajit Roy, Executive Director and CFO M/s EMTA Coal Ltd
A-10	Ashok Tooley, Director KECML
FUNCTIONARIES OF GCWL	
A-11	Padmesh Gupta , CMD Gupta Coal Washeries Limited
CORPORATE ENTITIES & FUNCTIONARIES	
A-12	Karnataka EMTA Coal Mines Ltd. (KECML)
A-13	M/s Eastern Minerals and Trading Agency (EMTA)
A-14	Gupta Coal Washeries Limited

[35] FIR No. RC: 220 2015 E 0002

Though the appellants have asserted that the respondent-CBI has registered the complaint on coming across the Report of the CAG, the said submission has been refuted by the respondent-CBI who has pleaded that it had conducted an independent investigation after registering the PE which was followed by registering of the FIR.

3.10 LITIGATION BETWEEN KPCL AND KECML

3.10.1 Aggrieved by the letter dated 31st July, 2014 addressed by KPCL to KECML, KECML filed two writ petitions[37] before the High Court of Karnataka praying *inter alia* for quashing of the letters dated 31st July, 2014 and 24th December, 2014 issued by KPCL. In the writ petitions[38] EMTA and KECML assailed a demand of ₹ 52,37,00,000/- (Rupees Fifty two crore thirty seven lakh only) raised by KPCL towards the value of the coal rejects, as arbitrary. Challenge was also laid to the decision taken by KPCL to deduct ₹ 90 (Rupees Ninety) per MT towards non-washing of coal, in terms of its communications dated 23rd November, 2013 and 29th January, 2014. *Vide* Judgment dated 24th March, 2016 the Division Bench of the High Court allowed both the writ petitions[39] and quashed the communications issued by KPCL to KECML. Further, KPCL was restrained from initiating any demand against KECML on the basis of the report of the CAG and called upon to reimburse the amounts already deducted by KPCL towards non-washing of coal.

[37] Writ Petition 2995 to 2996 of 2016 (GM-MMS) c/w Writ Petition Nos. 2997 to 2998 of 2016 (GM-MMS)
[38] Ibid
[39] ibid

3.10.2 For the sake of completion of the narrative pertaining to the aforesaid litigation, it is pertinent to note that the aforesaid judgement dated 24th March, 2016, was challenged by KPCL before this Court by preferring Petitions for Special Leave to Appeal[40]. *Vide* Judgment dated 20th May, 2022, both the Civil Appeals[41] were dismissed.

3.10.3 On 31st July 2017, the respondent-CBI submitted a request to the Ministry of Personnel Public Grievances and Pension[42], Government of India for grant of sanction to prosecute Mr. Yogendra Tripathi (IAS), Managing Director, KPCL and Mr. R. Nagaraja, Director (Finance) of KPCL and nominee Director on the Board of KECML under Section 19 of the PC Act. However, the Board of KPCL, which was the Sanctioning Authority, refused sanction for prosecution of Mr. R. Nagaraja by passing a detailed order.

3.10.4 After examining the order passed by the Board of KPCL refusing to grant sanction to prosecute Mr. R. Nagaraja, the Department of Personnel & Training[43], Government of India addressed a letter dated 16th September, 2018 to the respondent–CBI stating that the Competent Authority i.e., the Central Government had denied sanction for prosecution of Mr. Yogendra Tripathi, the then Managing Director of KPCL. It is a matter of record that the respondent–CBI did not take any steps to challenge the decision taken by the Sanctioning Authority and the Competent Authority refusing

[40] Petition for Special Leave to Appeal (C) No. 26367-26370/2016
[41] Civil Appeal Nos. 5401-5404/2017
[42] For short 'MoPP&P'
[43] For short 'DoPT'

permission to grant sanction for the prosecution of Mr. R. Nagaraja and Mr. Yogendra Tripathi.

3.10.5 The Charge-sheet was finally filed by the respondent–CBI against 14 persons/entities alleging that they had illegally disposed of the coal rejects in IBOCM. A Supplementary Chargesheet was filed on 4th November, 2019. Out of the two charges, one charge relating to allegations of recovery of payment for washing charges was dropped by the respondent-CBI.

3.10.6 On 1st September, 2021, the appellants filed an application before the learned Single Judge under Section 227 read with Section 239 of the Criminal Procedure Code[44] for discharging them in the case. By the common impugned order dated 24th December, 2021, the said application was dismissed and charges were framed against them on 3rd March, 2022, under Section 409 IPC and 120 (B) r/w Section 13(1)(c), 13(1)(d) r/w Section 13(2) PC Act i.e. resulting in filing of the present appeals.

C. SUBMISSIONS

4. ARGUMENTS BY COUNSEL FOR THE APPELLANTS

Following are the arguments advanced by Mr. Ranjit Kumar, learned Senior Advocate appearing for the appellant No.1 and Mr. Abhimanyu Bhandari, learned counsel appearing for the appellant No.2 :-

[44] In short 'Cr.P.C'

4.1 That KPCL did not have any right over the rejects produced from the mine and therefore, cannot claim any entitlement thereto. The terms and conditions stipulated in the JVA dated 13th September, 2002, in particular Articles 5(1)(b), 5(2)(b), 5(13) and 6(3)(c) and Annexure I, when read together, would demonstrate that the obligation cast on the KECML was limited to providing KPCL specified quality of "washing coal" containing a guaranteed value and having a specified heat value and KECML was only required to dispose off the rejects to avoid any environmental hazards.

4.2 That the original Mining Plan which was submitted by KECML and was approved by the MoC in the year 2004, did not contain any specific provision relating to how the rejects were to be disposed off and nor did the allocation letter issued by the MoC to KPCL state anything in this regard. For this, reliance has been placed on the reply furnished by the Minister of State, MoC, in the Lok Sabha in response to an unstarred question seeking an answer from the Government of India as to whether it had framed any National Policy for exploitation of coal rejects. The reply furnished by the Minister was in the negative along with a clarification given that formulation of a policy of disposal of surplus coal, by-products and middling stock rejects from coal blocks was under the consideration of the Government.

4.3 Citing Clauses 5.2 and 5.2.2 of the FSA dated 09th May, 2007 and the definition clauses in respect of the expressions, "Purchaser" and "specified coal", it has been urged that none of the clauses in the FSA have stated that KPCL would purchase or claim rights over the rejects and that KECML was to ensure that "shales/stones" are

removed from the coal and the quality of coal meets the parameters indicated in Annexure I.

4.4. To fortify the submission that KECML was only required to dispose off the coal rejects in an environment friendly manner and that KPCL would have no right over the rejects or claim any entitlement over them, reference has been made to the decision of the Division Bench of the Karnataka High Court in the case of ***KPCL v. Aryan Energy Private Limited***[45] ***and Others***[46] and the clause in the Agreement governing KPCL and AEPL to contend that it was similar to the present case inasmuch as like KECML, AEPL was also required to dispose off the rejects in a manner that would satisfy environmental regulations. In the above case the Karnataka High Court has held that the clauses of the Agreement between the parties appearing before it showed that coal rejects were the property of AEPL and KPCL had no claim over it and that the term regarding disposal of coal rejects was imposed by KPCL only to ensure compliance of the environmental regulations.

4.4.1. Notably, the aforesaid judgement of the High Court was challenged by KPCL before this Court by way of petition for special leave to appeal[47]. The said petition was disposed of by this Court on 26th April, 2024, noting that during the pendency of the petitions, the parties had settled their disputes amongst themselves and part of the decretal amount deposited by KPCL to discharge its liability towards supply of washed

[45] In short 'AEPL'
[46] COMAP No. 12, 13, 14 and 15 and 2020 decided on 22nd July, 2021
[47] Petition for Special Leave to Appeal (Civil) No. 395-398 of 2022

coal by AEPL along with interest etc. was directed to be released in favour of AEPL in terms of the Compromise Deed.

4.5 That the Washability Report of CIMFR, Nagpur for the year 2009 had stated that the rejects had a GCV of 1094 Kcal/kg and less and therefore, the same could not have been utilized in the BTPS. For the said reason, KECML had used the rejects for captive consumption of the mine i.e. for levelling, piling etc. The very same Report was also referred to by KPCL in its reply to the audit objections raised by CAG to state that no loss has been caused to KPCL since the rejects were in the nature of stones and boulders and did not have useful heat value.

4.6. To substantiate their submission that the rejects did not have the requisite GCV for being utilized in the BTPS, learned counsel have quoted a Circular issued by the NITI Aayog in the year 2020 which states that coal rejects having GCV of 1500 Kcal/kg are to be used in back filling of mines and can be used in construction of highways, roads etc. whereas rejects having GCV in the range of 1500 Kcal/kg to 2200 Kcal/Kg, can be used in FPC Boilers.

4.7 That at the time of filing the chargesheet on 04th January, 2018, the respondent-CBI completely ignored the judgement dated 24th March, 2016 passed by the Karnataka High Court in the writ petition filed by the appellants against KPCL wherein it has been clearly held that KPCL does not have any right over the rejects generated during the process of mining and resultantly, the demand letter dated 31th July, 2014, issued by

KPCL was set aside. The said judgement has also been upheld by this Court *vide* judgement dated 20th May, 2022.

4.8 That KPCL has been blowing hot and cold. First, it had filed objections to the quantification of coal rejects as recorded by the CAG in its Report but when its objections were rejected by the CAG, it changed its stand and proceeded to raise an illegal demand on the appellants on the basis of the very same CAG Report, which has been quashed by the High Court.

4.9 That both, the Karnataka High Court and this Court having quashed the demands made by KPCL in respect of the value of rejects to the tune of ₹ 52 Crore, no case has been made out by the respondent-CBI to prosecute the appellants particularly when on the advice of the Central Vigilance Commission[48], the Central Government refused to grant sanction for the prosecution of Mr. Yogendra Tripathi (IAS), Managing Director, KPCL and Mr. R. Nagaraja, Director (Finance) of KPCL and nominee Director on the Board of KECML. A different treatment cannot be meted out to the appellants.

4.10. That the respondent-CBI has solely relied on the Report of the CAG of 2013 to launch its prosecution in the year 2015. However, the Report of the CAG has not been approved by the Parliament in accordance with the procedure prescribed under Section 19(A) and other provisions of the Comptroller and Auditor General's (Duties, Powers

[48] In short 'CVC'

and Conditions of Service) Act, 1971[49] read with Articles 148 to 151 of the Constitution of India.

4.11. That the analysis of the rejects and the manner in which loss was allegedly caused to KPCL, has primarily been arrived at by the respondent – CBI from the Report of the CAG and once this Court has held that the Report of CAG cannot be the basis for launching prosecution against the appellants, the entire basis of launching the prosecution is eroded.

4.12. Stating that contrary to the prescribed procedure that contemplates that the Report of the CAG in relation to the accounts of a Government Company shall be submitted to the Government and the Central Government/State Government, as the case may be, shall place the said Report before each House of the Parliament/State Legislature and the Public Accounts Committee/the Joint Parliamentary Committee is required to scrutinize the said Report. In the instant case, the Report of the CAG has not been accepted either by the Public Accounts Committee or by the Committee of Public Undertakings or by the Joint Parliamentary Committee nor has it been tabled before each House of the Parliament. It is only when the Report is tabled in the Parliament and duly scrutinized and the Government offers its view on the Report, can it form the basis for initiating any action. Decisions in ***Centre for Public Interest Litigation v. Union of India***[50]***, Arun Kumar Aggarwal v. Union of India***[51] and ***Pathan***

[49] In short 'CAG Act'
[50] (2012) 3 SCC 1
[51] (2013) 7 SCC 1

Mohammed Suleman Rehmatkhan v. State of Gujarat[52] have been cited to bring home the argument that when the Report of the CAG is subject to scrutiny by the Public Accounts Committee/Joint Parliamentary Committee, it would not be proper to refer to its findings or the conclusions drawn therein.

4.13. That the learned Special Judge, CBI has blindly accepted the charge levelled by the respondent-CBI quantifying the loss purportedly caused to KPCL on account of illegal sale of rejects at ₹49,03,54,159/- (Rupees Forty nine crore three lakh fifty four thousand one hundred and fifty nine only). The observations made in para 104 of the impugned judgement to the effect that the respondent-CBI has quantified the rejects on the basis of the documents of KECML and has calculated the loss on the basis of the rate of the lowest grade of coal prevailing at the relevant point of time is therefore, devoid of merits. Reliance has been placed on the information in the Coal Directory of India published by the MoC for the year 2010-2011 that has categorized coal and coke and clarified that w.e.f. January, 2011, by virtue of a notification issued by the MoC, there has been a switchover from the existing Useful Heat Value[53] based system of grading and pricing of non-coking coal produced in India to fully variable GCV system.

4.13.1. Under the JVA/FSA, KECML was required to supply Grade 'D' coal to KPCL. As per the Coal Directory of India, 2010-2011, Grade 'D' coal in terms of the old grades of non-coking coal would be equivalent to Grade 'G-7' and 'G-8' under the new grades

[52] (2014) 4 SCC 156
[53] In short UHV

of non-coking coal. The GCV range in respect of Grade 'G-7' coal has been fixed between 5201 Kcal/kg and 5500 Kcal/kg and in respect of Grade 'G-8' coal, between 4901 Kcal/kg and 5200 Kcal/kg. In the instant case, even as per the Report of the CIFMR, Nagpur, the coal rejects were found to be below either of the aforesaid grades of non-coking coal, having been pegged at a GCV of 1094 Kcal/kg. Therefore, it is contended that the chargesheet filed by the respondent-CBI quantifying the loss suffered by KPCL at ₹49,03,54,159/- (Rupees Forty nine crore three lakh fifty four thousand one hundred and fifty nine only), is without any basis and contrary to the records.

4.14. That the Coal Controller did not raise any issue with regard to the disposal of the rejects and the respondent-CBI has neither made the Coal Controller a witness or an accused in the present case.

4.15. The judgements in ***Radheshyam Kejriwal v. State of West Bengal and Another***[54]***; Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI and Another***[55]***; J Sekar alias Sekar Reddy v. Directorate of Enforcement***[56]***;*** and ***Prem Raj v. Poonamma Menon & Another***[57] have been cited to argue that it is settled law that where a party has been exonerated on merits in civil adjudication, criminal

[54] (2011) 3 SCC 581
[55] (2020) 9 SCC 636
[56] (2022) 7 SCC 370
[57] 2024 SCC OnLine SC 483

prosecution cannot be permitted to continue on the same set of facts and circumstances.

4.16. That the respondent – CBI has failed to produce any document to demonstrate that the accused Nos.1 to 5 had made any demand for illegal gratification or there was acceptance of any such demand made. In the absence of proof of demand and acceptance of illegal gratification by the public servant, no offence is made out under Section 13(1)(d) of the PC Act. For this proposition, reliance has been placed on ***B. Jayaraj v State of Andhra Pradesh***[58]***; P. Satyanarayana Murthy v District Inspector of Police, State of Andhra Pradesh and Another***[59]***; State through Central Bureau of Investigation v Dr Anup Kumar Srivastava***[60]; ***K. Shanthamma v State of Telangana***[61]; ***Neeraj Dutta v State (NCT of Delhi)***[62]; ***Soundarajan v State Rep. by the Inspector of Police Vigilance Anticorruption Dindigul***[63]***.***

4.17. Lastly, it has been strenuously argued that sanction to prosecute Mr. Yogendra Tripathi and Mr. R. Nagaraja[64] having been denied by the Sanctioning Authority i.e. the Board of Directors of KPCL and the CVC and the said orders having been upheld by the DoPT and no steps having been taken by the respondent – CBI to challenge the

[58] (2014) 13 SCC 55
[59] (2015) 10 SCC 152
[60] (2017) 15 SCC 560
[61] (2022) 4 SCC 574
[62] (2023) 4 SCC 731
[63] (2023) SCC OnLine SC 424

[64] (both of who were serving officers in KPCL at the relevant point of time)

said decision, a different yardstick cannot be adopted in respect of the appellants. The matter having attained finality, the appellants deserve to be discharged.

5. ARGUMENTS BY COUNSEL FOR THE RESPONDENT-CBI

5.1 Mr. Cheema, learned Senior Advocate appearing for the respondent – CBI has refuted each and every argument advanced by learned counsel for the appellants. He submitted that the appellants have unduly placed heavy reliance on the fact that the original Mining Plan was approved by the MoC on 08th December, 2004 and the said Mining Plan did not contain any specific clause for disposal of rejects. Similarly, unnecessary reference has been made by the appellants to Rule 22(5) of the Mineral Concession Rules, 1960 to demonstrate what information is required to be disclosed in a Mining Plan. It is submitted that the argument advanced by the appellants that in the absence of any stipulation in the Mining Plan regarding disposal of the rejects, there could be no inference of commission of any offence or a shadow cast on the conduct of the appellants, is flawed.

5.2 Learned counsel for the respondent-CBI has canvassed that there was a latent error in the assumption of the appellants that it was for the MoC to incorporate a clause regarding disposal of the rejects in the Mining Plan and in the absence of any such clause, KPCL or KECML could not be held responsible for the disposal of the rejects, which was done in an illegal manner or that when the Mining Plan was silent regarding the manner in which the rejects were to be disposed of, it was for KPCL and KECML to deal with the rejects in an appropriate manner. The aforesaid presumptions are stated

to be without any basis and opposed to the letter dated 10th November, 2003, addressed by the MoC to KPCL that lays down the conditions of allotment of the captive coal blocks in para 3 that specifically states in sub-para (iv) as follows:

> "3 The allotment of the captive blocks will also be subject to the following conditions:·
>
> xxxxx
>
> (iv) The allocattee would furnish to this Ministry detailed plan for disposal of unusable containing carbon material obtained during the process of a mining or any process thereafter including washing etc. so as to avoid any need for disposal of the same through sale etc. at a later stage, within 30 days of receipt of this letter or submission of mining plan whichever is earlier."

5.3 As per the respondent-CBI, it was the duty of KPCL to furnish the detailed plan for the disposal of the rejects to the Ministry within 30 days of the receipt of the letter dated 10th November, 2003 or submission of the Mining Plan, whichever is earlier and this requirement was independent of the Mining Plan. Therefore, absence of any plans mentioned in the Mining Plan to deal with the rejects would not exonerate the appellants who remained under an obligation to furnish a detailed plan for the disposal of the rejects in terms of the Allocation letter dated 10th November, 2003 issued by the MoC.

5.4 Referring to the letter dated 31st January, 2006 addressed by the MoC to the Secretary, Industries, Energy and Labour Department, State of Maharashtra, learned counsel for the respondent-CBI submitted that the appellants were aware of the fact that the rejects could not have been disposed of by KECML since the said letter had

conveyed the approval of the Central Government to grant mining lease for coal in three coal blocks in favour of KECML with certain stipulations, one of which was as follows:

> "ii) No coal mined from the allocated blocs shall be sold, delivered, transferred of disposed of except for the aforestated captive mining purposes except with the previous approval of the Central Government"

5.5 To reinforce the above plea, reliance has also been placed on the statement of Dr. Manmohan Seam, cited as witness No. 12 who had prepared the Mining Plan in question and stated that in case of washing of coal the allocatees are required to obtain an approval from the MoC in terms of the letter of allotment and since the MoC has not allocated any coal block for washing of coal alone, the expression used in para 3 (iii) of the letter dated 10th November, 2003 written by the MoC has to be read and understood to mean 'washing-cum-end use'. Therefore, emphasis on non-incorporation of a detailed plan for the disposal of the rejects in the original Mining Plan has no relevance and cannot offer any defence to the appellants.

5.6 It has next been submitted that the order refusing grant of sanction to prosecute Mr. Yogendra Tripathi (IAS), Managing Director, KPCL and Mr. R. Nagaraja, Director (Finance) of KPCL and nominee Director on the Board of KECML by the Sanctioning Authority and the Competent Authority is not a relevant circumstance at the stage of consideration and framing of charge and no benefit can be given to the appellants on that basis. The orders passed by the Competent Authority refusing to grant sanction are sought to be described as mere administrative orders. Learned counsel argued that

in any event, the two officers mentioned above were public servants and the factum of the Competent Authority having refused to grant sanction to prosecute them cannot enure to the benefit of the appellants herein who are not public servants and cannot seek any parity with public servants.

5.7 Learned counsel for the respondent-CBI points out that the Order on Charge impugned by the appellants herein was also challenged by the accused No. 1 to 5 (functionaries of KPCL who had since retired), by filing a Petition for Special Leave to Appeal[65] in this Court which was dismissed as withdrawn *vide* order dated 09th February, 2024.

5.8 It is submitted that at the stage of framing of charges, the trial Court must confine itself to the material brought on record by way of the chargesheet filed under Section 173 Cr.P.C and merely because some other Authority has taken a different view with regard to the complicity of some co-accused who are public servants and denied the request made by the respondent-CBI for sanctioning their prosecution, is irrelevant.

5.9 As for case law cited by learned counsel for the appellants to substantiate their submission that sanction under Section 197 Cr.P.C is mandatory for prosecuting public servants (A-1 to A-5 in the instant case), the submission made is that for the said purpose, facts and circumstances of each case have to be examined and there cannot be any universal findings in this regard.

[65] SLP (Crl.) Dy No. 20094/2023 titled ***S.M. Jaamdar & Others v. CBI***

5.10 Learned counsel for the respondent – CBI has strenuously disputed as incorrect, the argument advanced on behalf of the appellants that the respondent – CBI has filed the Chargesheet solely on the basis of the CAG Report and submitted that a reading of the FIR dated 31st March, 2015 would demonstrate that this case was not triggered by the Report of the CAG. In fact, PE 5/2012 was registered on 28th September, 2012 in connection with the irregularities noticed in the allocation of coal blocks under the Government Dispensation route for the period between 1993 and 2006.Asserting that PE 5 did not emanate from the CAG Report and originated independently thereof, learned counsel submitted that during the course of the preliminary enquiry, several documents including the CAG Report were examined by the respondent – CBI. In fact, the respondent – CBI had conducted its own independent enquiry into the allegations for arriving at a conclusion relating to the commission of the offence or quantification of the extent of misappropriation. In view of the aforesaid submission, the contentions of the appellants based on a reading of the provisions of the CAG Act and the Constitution of India are stated to be extraneous to the controversy raised before this Court just as the case law cited by them regarding the nature of the CAG Report. Learned counsel has cited the judgment of the Gauhati High Court *in* ***M.S Associates and others v. Union of India***[66] to urge that even if the CAG Report has not been placed before the Parliament/State Legislature, contents thereof can serve as information for starting an investigation into a criminal offence.

[66] (2005) SCC Online Gau 308; (2005) 275 ITR 502

5.11 Coming next to the judgement passed by the Karnataka High Court in the case of ***Aryan Energy (supra)*** and cited by the other side***,*** it is submitted on behalf of the respondent-CBI that the said judgment was passed on 22nd July, 2021, much after institution of the chargesheet by the respondent–CBI in the present case. Learned counsel submits that the said judgement addresses a situation where no criminal case has been registered against any of the parties appearing before the High Court. The main dispute in that matter was relating to the entitlement of KPCL to the value of the coal rejects. The Commercial Court had decreed the suits in favour of AEPL by holding that as per the contractual stipulations between the parties, AEPL was only required to dispose off the coal rejects in a manner that would satisfy environmental regulations and KPCL was not entitled to the value of the coal rejects. Learned counsel submits that the terminology used in the contract governing the parties was different and therefore the said judgement does not have any relevance to the facts of the instant case.

5.12 Learned counsel for the respondent-CBI goes on to argue that even the judgement dated 24th March, 2016, passed by the Karnataka High Court in a writ petition filed by KECML against KPCL cannot be of any assistance to the appellants for the reason that the respondent – CBI had not been impleaded as a party in the said proceedings and the said judgement has confined itself to the demands made by KPCL for recovery of amounts from KECML towards the value of the coal rejects. Further, the FIR in the present case was registered on 13th March, 2015 whereas the judgement

was delivered by the Karnataka High Court one year later, on 24th March, 2016. By the time the appeal preferred by KPCL against the judgment of the High Court was dismissed by this Court on 20th May, 2022, Charges had already been framed by the learned Special Judge, CBI against the appellants on 24th December, 2021.

5.13 Learned counsel for the respondent–CBI has emphatically argued that Clause 12 of the MoU dated 20th December, 2008 executed between KECML and GCWL states that the rejects shall be the joint property of KECML and GCWL and it shall be disposed of/sold jointly at mutually agreed terms. It is contended that the above clause clearly demonstrates the underlying intent of the appellants to conspire with GCWL to sell the rejects in the market and cause monetary loss to KPCL by depriving it of the value of the rejects.

5.14 The attention of this Court has also been drawn to the letter dated 10th September, 2009, issued by KECML to GCWL enclosing therewith a Debit Note of even date for a sum of ₹ 4,30,38,500/- (Rupees Four crore thirty lakh thirty eight thousand five hundred only) towards "disposal of foreign material during washing" and it has been argued that the said Debit Note was raised on the instructions of Mr. Purujit Roy (accused No. 9), as stated by Mr. N.K. Ganorkar (PW 26) who was one of the two signatories of the said Debit Note and Mr. S.K. Gupta, an employee of GCWL (PW 16).

5.15 Learned counsel for the respondent–CBI also referred to a Certificate dated 12th July, 2010 issued by Mr. Avijit Sarkar who was working in the Finance and Accounts Department of KECML. The said Certificate refers to the MoU dated 20th December,

2008 and states that the rejects generated in the process of washing of coal undertaken by GCWL at their washery at Majiri during 2009-10, is owned by GCWL.

5.16. Lastly, learned counsel for the respondent-CBI has canvassed that the findings returned in a civil proceeding are not binding in a prosecution founded on similar allegations and it is for the criminal Court to arrive at any decision on its own and not to reach any conclusion by reference to any previous decisions relating to the parties which cannot be treated as binding upon it. In support of the said submission, he has cited ***The King Emperor v. Khawaja Nazir Ahmed***[67]***.*** It has thus been argued by the respondent-CBI that the present appeals are devoid of merits and deserve to be dismissed.

5.17. On the scope of Section 227, Cr.P.C. and the power of the Special Judge to pass an order of discharge, learned counsel for the respondent-CBI has cited the decisions in ***Union of India v. Prafulla Kumar Samal and Another***[68] *and* ***Niranjan Singh Karam Singh v. Jitendra Bhimraj Bijjaya And Others***[69]***.*** The decisions in ***State of Maharashtra v. Som Nath Thapa***[70]***, State of Tamil Nadu v. N. Suresh Rajan and Others***[71] have been relied on to make a point that at the stage of framing of charges, the Court cannot appraise the evidence as is done at the time of trial and the Court must proceed on an assumption that the materials brought on record by the

[67] AIR (1945) PC 18
[68] (1979) 3 SCC 4
[69] (1990) 4 SCC 76
[70] (1996) 4 SCC 659
[71] (2014) 11 SCC 709

prosecution are true. Alluding to the judgment in ***State of Bihar v. Ramesh Singh***[72], learned counsel submitted that at the initial stage of the trial, if there is a strong suspicion that gives an impression to the Court for drawing a presumption that the accused has committed an offence, it is not open for the Court to state that there is insufficient ground for proceeding against the accused.

5.18 Both sides have also relied on ***K.G. Premshanker v. Inspector of Police and Another***[73] which discusses the effect of a decision of a civil Court on criminal proceedings against the same person pertaining to the same cause in the context of Sections 40 to 43 of the Indian Evidence Act, 1872 as to which judgments of the courts are relevant and the extent of the relevance.

6. REJOINDER ARGUMENTS BY COUNSEL FOR THE APPELLANTS

In their rejoinder arguments, learned counsel for the appellants have disputed the submissions made on behalf of the respondent-CBI and reiterated the pleas taken by them. We do not propose to repeat the said submissions except for touching on the aspects which were not addressed earlier.

6.1 It has been stated that the MoU dated 20th December, 2008 was executed to meet the urgent requirement of coal for BTPS. The purpose of incorporating Clause 12 was to keep a check on the rejects generated by GCWL during the washing of coal. The said clause specifically mentions that any disposal/sale of the rejects would be subject

[72] (1977) 4 SCC 39
[73] (2002) 8 SCC 87

to compliances of the relevant rules and regulations. Learned counsel submitted that it is the case of the respondent-CBI itself that GCWL sold the rejects by mixing it with good coal at their washery. There is no document produced by the respondent-CBI to connect the rejects sold by GCWL to the appellants. The appellants cannot be roped in on the bald statements made by the functionaries of GCWL connecting them with the coal purchased in e-auction from WCL and sold off.

6.2 As for the Debit Note dated 21st March, 2009, it is submitted that the same was recovered from GCWL and not KECML. The said Debit Note was neither acted upon nor approved by the Board of Directors of KECML and there is no supporting correspondence relating to the Debit Note to demonstrate any complicity on the part of the appellants.

6.3 The appellants have disputed the Certificate dated 12th July, 2010, purportedly issued by Mr. Avijit Sarkar to GCWL stating that the email was despatched by the said employee from his personal email id and not from the official email id of KECML and he was not authorized by the Board of Directors of KECML to issue any such email. Even otherwise, the Certificate runs contrary to Clause 12 of the MoU, as it purports to give 100% entitlement of the rejects to GCWL.

6.4 During the course of rejoining, arguments have also been advanced on the quantum of the rejects which as per the appellants, has been wrongly quantified by the respondent–CBI at 8,03,859.277 MT. Learned counsel contended that the said figure has been pulled out by the respondent-CBI from the CAG Report though it claims it has

not relied on it to register the PE, followed by registration of the FIR. The attention of this Court has been drawn to the mismatch between the quantity of rejects for a period of two months (April and May of the year, 2012-13) claimed to be 207,837.117 MT by referring to a Certificate dated 07th June, 2016 issued by Mr. S.N. Roy, Statutory Auditor of KECML *vis-à-vis* the quantity of rejects generated for a period of twelve months for the previous year (2011-2012) that came to only 74,511.709 MT. Learned counsel submitted that in reply to the Audit query raised by the CAG, KECML had specifically stated that the total production of coal upto May, 2012 was 79,46,082.736 MT which included coal and rejects. This figure has not been disputed by the respondent – CBI. The quantity of the rejects upto May, 2012 was 75,63,934.800 MT of the washed coal which figure has also not been disputed by the respondent-CBI. An inference would therefore have to be drawn that, at best, the difference between both the aforesaid figures would be the extent of the rejects of coal. It has been urged that once the extent of production and the quantum of coal sent to KPCL has not been disputed, there is no question of inflating the quantum of rejects, as alleged. The respondent–CBI has therefore blindly accepted the version put forth by GCWL that it had supplied good coal to KPCL from its own pocket, which suits its purpose because when the washing activity was stopped at Majri on 22nd May, 2012, disputes had arisen between KECML and GCWL, that are pending adjudication before the Arbitration Tribunal and GCWL has inflated its claims to raise exorbitant demands on KECML.

D. DISCUSSION AND ANALYSIS

7.1 We have given our anxious consideration to the arguments advanced by learned counsel for the parties, gone through the records and perused the impugned orders. The grievance of the appellants arises from the decision taken by the learned Special Judge, CBI to reject the application moved by them for seeking discharge in the matter and proceeding to frame charges against them alongwith the other co-accused for having entered into a criminal conspiracy with an object to facilitate illegal sale of coal rejects by GCWL that were generated during washing of coal and to have gained undue pecuniary advantage therefrom.

7.2 The genesis of the investigation conducted by the respondent–CBI in respect of the coal block allocation lies in the judgement of this Court dated 25th August 2014 rendered in ***Manohar Lal Sharma vs. Principal Secretary and Another***[74]. The petitioner therein filed a petition under Article 32 of the Constitution of India and challenged the allocation of coal blocks to Private Companies for the period between 1993 and 2011 on the ground that they violated the principles of trusteeship of natural resources by giving away precious resources as largesse without complying with the mandatory provisions of the MMDR Act and 1973 Coal Act. After a detailed scrutiny, this Court declared that the entire allocation of coal blocks as per the recommendations made by the Screening Committee from the year 1993 onwards through the Government dispensation route suffered from arbitrariness, and that no fair and transparent procedure had been adopted.

[74] (2014) 9 SCC 516

7.3 In the course of the proceedings in the aforesaid matter, the respondent–CBI registered a Preliminary inquiry to investigate the irregularities in allocation of coal blocks under the Government Dispensation Route and to State PSUs, who were allowed to form JVA by joining hands with Private Companies for purposes of development and operation of coal mines. PE 5 was registered on 28th September, 2012. It related to all the coal block allocations made during the year 1993 to 2006. It is not in dispute that the coal allocation in favour of KPCL was also a subject matter of investigation, but nothing untoward was noticed in that. The JVA between KPCL and KECML also withstood the test of scrutiny. As a result, allocation of coal blocks made in favour of KPCL were not interfered with.

8. DID CBI PRIMARILY RELY ON THE AUDIT REPORT OF THE CAG ?

8.1 We shall first examine the submission made by the appellants that the respondent–CBI solely relied on the Audit report of the CAG of 2013 to launch its prosecution in the year 2015. This contention has been strongly refuted by the respondent–CBI that has asserted that the Department had on its own initiative, come across several documents including the CAG Report which exposed commission of the offence and the extent of misappropriation of money by the appellants and the other co-accused and it had not solely relied on the CAG Report to commence the investigation.

8.2 In the course of hearing, this Court had directed learned counsel for the respondent–CBI to produce the files of the Department on the basis whereof, three Preliminary Inquiries were registered – PE-2/2012/EO-I[75], PE-4/2012/EO-I[76] and PE-5/2012/EO-I[77]. It transpires from the said records that PE-2 was registered on 02nd June, 2012 on the directions issued by the CVC that had forwarded a complaint received by it alleging irregularities in the allotment of coal blocks to Private Companies during the period 2006 to 2009 and in awarding a contract by State owned PSUs for the development of coal blocks allocated to them under the Government dispensation. Subsequently, two more references were received by the respondent–CBI from the CVC and *vide* OM dated 19th September, 2012, the CVC forwarded a third complaint received from seven Members of Parliament (Lok Sabha) and directed the respondent – CBI to conduct a preliminary inquiry.

8.3 The file produced by the respondent–CBI reveals that premised on the Source Information Report[78] submitted by an Inspector from the Department pertaining to some irregularities in the allocation of coal blocks under the Government Dispensation Category allegedly in connivance with public servants, the matter was taken up by CBI for verification. The notings in the file states that it was not possible to verify the allegations discretely. Therefore, the SIR was directed to be registered as a PE. These records falsifies the suggestion made by the respondent–CBI that there was a SIR that

[75] In short PE-2
[76] In short PE-3
[77] In short PE-4
[78] For short 'SIR'

disclosed irregularities in the JVA executed between KPCL and KECML. The stand of the respondent – CBI that PE-5 was registered well before the Audit Report of the CAG and originated independently thereof, is also factually misleading because CBI's own record shows that the scope of enquiry in respect of PE-5 registered on 28th September, 2012, was entirely different and had no relationship with the JVA and other agreements executed by KPCL and KECML. No other documents have been filed by the respondent – CBI to demonstrate that it had initiated an independent inquiry into the mining operations of KPCL or that it was during the course of its inquiry into the affairs of KPCL and KECML that it had stumbled upon some irregularities in the MoU executed between KECML with GCWL. Quite clearly, the respondent–CBI made the Audit Report of the CAG submitted in 2013, a launching pad for initiating the prosecution of the appellants in respect of the allegations levelled in the present case and subsequently sought to substantiate them by delving into the records maintained by KPCL, KECML and GCWL. In other words, there was no move within the Department to investigate KPCL or KECML before 2015. The PE's registered in the year 2012 did not inculpate the appellants in any manner. The entire focus of the said PE's was on the larger issue of irregularities in the allocation of coal blocks through the Government dispensation route. In this background, the respondent–CBI cannot be heard to state that CBI was independently investigating the matter at hand well before 2015 or the Audit Report of the CAG of 2013 was not the trigger point for commencing the investigation.

9. COULD THE AUDIT REPORT OF THE CAG FASTEN ANY LIABILITY ON KECML?

9.1 Coming next to the CAG Report, as much hinges on the said Report, we may note that the same was considered by the Division Bench of the High Court of Karnataka in its judgement dated 24th March, 2016, wherein, it was noticed that there was no dispute between KPCL and KECML regarding the obligations cast on them under the contracts for the development of captive coal blocks and for supply of coal for consumption at the Thermal Power Station (BPCL) located in the State of Karnataka until the CAG submitted an Audit Report for the year ending March, 2013. The High Court took note of the Report of the CAG which stated that the total production of coal from one of the open cast mines between 2008-09 and June 2012 was 80.78 lacs MT and a minimum quantity of coal rejects ought to be 10% of the total production which would come to 8.28 lacs MT which financially translated into ₹52,37,00,000/- (Rupees Fifty Two Crores Thirty Seven Lacs only). Based on the above analysis, the CAG raised an audit objection and called upon KPCL to explain the loss of ₹52,37,00,000/- (Rupees Fifty Two Crores Thirty Seven Lacs only) allegedly caused to the public exchequer, on account of the rejects being disposed of in terms of a MoU executed between KECML and GCWL. The stand taken by KPCL was also noted by the court. KPCL submitted its Audit Objections to the said Report stating *inter alia* that the valuation of the rejects was erroneous; that assessment of washery rejects did not have any co-relation with the quantity of coal produced at the open coal mines; that the rejects generated in the

mining operation were only stones and boulders and could not be used for generation of electricity at BPCL and lastly, that all the rejects were used for levelling and piling work within the mines for better mining operations. However, all the said objections were rejected by the CAG that maintained its stand in the final Report.

9.2 The High Court observed that at that stage, KPCL did a sudden summersault. Faced with the Audit Report of the CAG, KPCL proceeded to raise a demand on the appellants seeking reimbursement to the tune of ₹52,37,00,000/- (Rupees Fifty two crores thirty seven lacs only) as cost of the rejects and threatened KECML that in case of default of payment, recovery would commence from their running bills. This made KECML file two writ petitions, which were allowed by the High Court with the following observations:

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> "36. We find that the report of CAG cannot be the sole basis for any liability being caused or for that matter the sole basis for the prosecution to be launched. However, mere drawing up of FIR by the CBI against unknown officials of KPCL, EMTA and KEMTA cannot provide legal basis or impetus for unilateral demand by KPCL for recovery of ₹52,37,00,000/- (Rupees Fifty Two Crores Thirty Seven Lakh) only. We hold that such action is arbitrary and unsustainable in law."

9.3. The aforesaid judgement was assailed by KPCL by approaching this Court. The said appeals were dismissed by a three Judges Bench of this Court of which one of us (Hon'ble Ms. Hima Kohli, J) was a member with the observations that the Audit Report of the CAG appeared to have been the starting point for the entire dispute between the parties. When the CAG Report was first submitted, KPCL had itself raised objections to the quantification of the coal rejects by the CAG but on its objections being turned down,

KPCL raised a demand on KECML seeking reimbursement on the basis of very same CAG Report to which it had not so long ago, filed objections.

9.4. The observations made by this Court in the captioned decision are germane and are extracted below:

> "13. The present matter pertains to a tender that was awarded by the appellant to EMTA nearly twenty years ago, in the year 2002. The CAG report that appears to have been the starting point for the entire dispute between the parties is dated March, 2013, close to a decade back. In such circumstances, to even advert to arguments on the maintainability of the writ petitions would be unjust to the parties involved.
> 14 Coming to the merits of the appeal, from the facts, it appears that in the first instance, when the CAG report was first submitted, the appellant itself had raised objections to the quantification of coal rejects arrived at by the CAG. However, when the audit objections were rejected by the CAG, and the final report was made available, the appellant demanded reimbursement from KEMTA based on the same CAG report to which it had filed objections. Such a change of stand by the appellant has not been sufficiently explained.
> 15 Additionally, a bare perusal of the clauses contained in the various agreements entered into between the parties does not indicate that such deductions could be made for the purposes of washing charges. There does not appear to be any specification laid down as to the method required to be adopted for washing of coal.
> 16 No material has been placed on record by the appellant to suggest that there was ever any problem with respect to the quality of coal being supplied by KEMTA to the appellant. Rather, the impugned order suggests that coal supplied by KEMTA was utilized by the appellant in its thermal power plants in order to generate electricity.
> 17 Taking into consideration the above facts and circumstances, we are of the opinion that no material has been brought to the notice of this Court that would compel us to interfere with the impugned common judgment passed by the High Court in exercise of our jurisdiction under Article 136 of the Constitution.
> 18 Accordingly, the Civil Appeals filed by the appellant are dismissed."

9.5. We are therefore of the opinion that this Court having already dismissed the appeal filed by KPCL against the judgment of the Karnataka High Court, having held in clear terms that the CAG Report could not form the basis for launching proceedings

against the appellants and further, having upheld the findings returned by the Karnataka High Court that the CAG Report appears to have been the starting point for the entire disputes between the parties who till then, were smoothly discharging their obligations under various agreements, there is no reason to take a different view only on the ground that the respondent–CBI was not a party in the aforesaid proceedings. The chronology of the events speak for themselves and need no further elaboration.

10 IMPORT OF THE JUDGMENT DATED 24TH MARCH, 2016 OF THE KARNATAKA HIGH COURT

10.1. Coming next to the submission made by learned counsel for the respondent that the judgement dated 24th March, 2016 passed by the Karnataka High Court in a writ petition filed by KECML against KPCL is of no consequence, as the said judgment was confined to examining the demands made by KPCL on KECML for reimbursement towards the value of the coal rejects, the same is found to be erroneous. It is well-settled that in a case of exoneration on merits in relation to adjudication proceedings in a civil matter where the allegations are found to be unsustainable and the party is held as innocent, criminal prosecution on the same set of facts and circumstances cannot be permitted to continue. In ***Radheshyam Kejriwal(supra)***, a three judges Bench of this Court reconciled the conflict between the view taken in ***Standard Chartered Bank(1) v. Directorate of Enforcement***[79] and ***Collector of Customs v. L.R. Melwani***[80] on the one hand where it was held that adjudication proceedings and

[79] (2006) 4 SCC 278
[80] AIR 1970 SC 962

criminal proceedings are two independent proceedings and both can go on simultaneously and findings in the adjudication proceedings is not binding on the criminal proceedings and the judgments in ***Uttam Chand v. ITO***[81], ***G.L. Didwania v. ITO***[82]***, K.C. Builders v. CIT***[83] where the view taken was that when there is a categorical finding in the adjudication proceedings exonerating a person which is binding and conclusive, the prosecution cannot be allowed to stand, this Court summarized the ratio of the decisions in the following words:

> "38. The ratio which can be culled out from these decisions can broadly be stated as follows:
> (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
> (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
> (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
> (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
> (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
> (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
> (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.
>
> **39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."**

[81] (1982) 2 SCC 543
[82] (1995) Supp(2) 724
[83] (2004) 2 SCC 731

[emphasis added]

The aforesaid view also finds resonance in ***Ashoo Surendranath Tewari (supra)*** and ***J Sekar alias Sekar Reddy(supra).***

10.2. We are of the view that if there was any breach of contract or default on the part of KECML, KPCL was well empowered to determine the lease. However, KPCL did not do so. Instead, on being confronted with the Audit Objections taken by CAG, it raised a demand on KECML for the value of the coal rejects. This demand was quashed and set aside by the Karnataka High Court and this Court.

10.3. On applying the decisions cited above to the facts of the instant case, this Court cannot turn a blind eye to the view taken in the judgement dated 24th March, 2016 passed by the Division Bench of the High Court of Karnataka in a dispute directly arising between KPCL and KECML pertaining to the very same cause of action based on the obligations cast on both the parties under various agreements executed for the development of captive coal blocks and for supply of coal, which was finally upheld by this Court *vide* judgement dated 20th May, 2022. The said judgments have cleared KECML of any blame. On the same set of facts and logic, we are of the opinion that no criminality can be attributed to the appellants.

11. SANCTITY OF AN AUDIT REPORT IN LAW

11.1. As the sanctity of the Audit Report of the CAG of 2013 has been questioned by the appellants, we propose to examine this aspect. Before the year 1971, the CAG used to function under the Government of India (Audit and Accounts Order), 1936 as

adopted by the Government of India (Provisional Constitution) Order, 1947. This was followed by the promulgation of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971[84]. By virtue of Section 26 of the CAG Act, the earlier Order of 1936 was repealed. Section 10 of the CAG Act requires the CAG to compile the accounts of the Union and the States and on the basis of the said accounts, to prepare an annual account for being submitted to the President of India or the Governor of the State/Administrator of the Union Territory, as the case may be. The scope of the audit of the Union and the States has been stated in Section 13 of the CAG Act.

11.2. Article 149 of the Constitution of India defines the duties and powers of the CAG and provides thus:

> "149. **Duties and powers of the Comptroller and Auditor-General**
> The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the "accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively."

11.3 The duties of the CAG have been described and discussed at some length in the ***Arun Kumar Aggarwal(supra)*** in the following words:

> "60. The audit of the Union and the States is under Section 13 of the Act. The scope of the audit extends to the audit of all expenditure so as to ascertain whether the monies shown in the accounts as having been

[84] For short 'the CAG Act'

> disbursed were legally available for such disbursement and whether the expenditure conforms to the authority which governs it. The CAG has to satisfy himself that the rules and procedures designed to secure an effective check on the assessment, collection and proper allocation of revenue are being duly observed under Section 16. The CAG also has to examine decisions which have financial implications including the propriety of the decision making.
>
> 61. The reports of the CAG are required to be submitted to the President, who shall cause them to be laid before each House of Parliament, as provided under Article 151(1). In relation to the States, reports are submitted to the Governor, who shall cause them to be laid before the legislature of the State, as per Article 151(2) of the Constitution. When reports are received in Parliament, they are scrutinised by the Public Accounts Committee (PAC).
>
> 62. The PAC is established in accordance with Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha. The function of the PAC is to examine the accounts of the Union and the report of the CAG. The PAC shall be principally concerned whether the policy is carried out efficiently, effectively and economically, rather than with the merits of government policy. Its main functions are to see that public monies are applied for the purposes prescribed by Parliament, that extravagance and waste are minimised and that sound financial practices are encouraged in estimating and contracting, and in administration generally. The PAC also has the power to receive evidence, the power to send for persons, papers and record and can receive oral evidence on solemn affirmation. Once the report is prepared, the report of the PAC is presented to the House.
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> xxxxx
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> 68**. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective Ministries have to offer on the CAG's Report. The Ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instant case**."
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> [emphasis added]

A similar view has been expressed in ***Pathan Mohammed Suleman Rehmatkhan(supra)*** and ***Centre for Public Interest Litigation(supra).***

11.4. It is, therefore, evident that the recommendations of the PAC are premised on the response that is received from the concerned Ministries and the Action Taken Reports which includes the replies furnished by the Government and the comments of

the PAC to the said replies. Finally, it is for the Parliament to comment on the CAG's Report after it receives the report of the PAC.

11.5. In the instant case, admittedly the aforesaid procedure has not been followed. As noticed above, the CAG Report is subject to scrutiny by the Parliament and the Government can always offer its views on the said report. Merely because the CAG is an independent constitutional functionary does not mean that after receiving a report from it and on the PAC scrutinizing the same and submitting its report, the Parliament will automatically accept the said report. The Parliament may agree or disagree with the Report. It may accept it as it is or in part. It is not in dispute that the Audit Report of the CAG has not been tabled before the Parliament for soliciting any comments from the PAC or the respective Ministries. Therefore, the views taken by the CAG to the effect that tremendous loss had been caused to the public exchequer on account of the coal rejects being disposed of by the KPCL and KECML remains a view point but cannot be accepted as decisive. The respondent–CBI has largely relied on the findings and the conclusions drawn in the Audit Report of the CAG to launch the prosecution against the appellants on an assumption that the said Report has the seal of approval of the Parliament and has attained finality, which is not the case.

12. DENIAL OF SANCTIONS BY THE SANCTIONING AUTHORITIES AND THE EFFECT ON THE APPELLANTS

12.1. It is relevant to note that the very same Audit objections taken by the CAG and relied upon by the respondent–CBI to allege conspiracy and loss to the public exchequer were thoroughly examined and found to be meritless by two separate set of

Sanctioning Authorities. When it came to Mr. R. Nagaraja, the then Director (Finance) of KPCL and the nominee Director on the Board of KECML, the Sanctioning Authority, i.e., the Board of KPCL went through several documents during its deliberations including the MoU between the KECML and GCWL forwarded by the respondent–CBI for seeking sanction to prosecute him. The reasons for holding that the CAG Report was without any factual basis, were elaborately dealt with as below :

> **"DETAILED REPORT OF THE BOARD OF KPCL IN RELATION TO THE CBI REPORT DATED 28.07.2017 AS REGARDS SHRI R. NAGARAJA**
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> 1.8 There is an Memorandum of Understanding dated 20.12.2008 between Gupta Coal Fields and Washeries Ltd ('GCWL') and KECML under which GCWL was required to wash and supply the coal of required specification to the Power Plant of KPCL in respect of coal mined by KECML. Clause 12 of the said MoU stipulates that "the rejects generated shall be the joint property of KECML and GCWL and can be disposed off / sold at mutually agreed terms subject to compliance of rules / regulations / guidelines of Ministry of Coal, Government of India, if applicable". KPCL allowed KECML to sign an MoU with Gupta under which rejects belonging to KPCL was put under the joint ownership of Gupta and KECML by virtue of Clause 12. Gupta has sold those rejects resulting in an illegal gain of Rs.52.37 crores to Gupta (as per CAG) and loss to KPCL. The Board of KECML which conspired to insert Clause 12 of the MoU did not take any protective / mitigative measures to prevent the loss despite it being raised at a lower level. The facts in relation to the above offence are elaborated in detail herein below.
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> **B. Consideration of the report of CBI dated 27.07.2017 (along with annexures) by the Board of KPCL and their Report thereon**
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> 2. The entire matter including the 344 documents produced along with the Report and the witness statements of 67 witnesses have been perused by the members of the Board. The Board has also considered the applicable law on the point.
>
> 3. The offence is complained of by Shri R. Nagaraja in his capacity as a nominee of KPCL in the Board of KECML. It is the matter of fact that the nominees of KPCL who have been appointed to the Board of

KECML are not persons well versed in mining matters. As KPCL was not capable of handling mining operations, a joint Venture Company was formed. The Board of KECML and the nominees of KPCL on the Board entirely depended on the inputs provided by the Managing Director, Statutory Auditor and other personnel for making their decisions.

4. **The Mining Plan for the operationalization of the mine was prepared by Dr. Seam who was a Ministry of Coal official and not an employee of KECML or KPCL. The Mining Plan was approved by the Ministry of Coal when it did not contain any provisions for disposal of the rejects. In such a situation, the Board of Directors of KECML and especially the KPCL nominees (A-1 to A-7) could not be blamed for the non-compliance of the Allotment Letter and there is no act of omission or commission on the part of KPCL's employees including Shri R. Nagaraja**.

5. A perusal of the KPCL Office Notes (Document No.199 to 202) for the period indicates that by way of letter dated 12.01.2009, the Managing Director of KPCL had specifically raised the issue of whether washing of coal is required or not. If washing was not necessary, then the question of generation of rejects would not arise at all. Therefore, after taking into account the office note generated by Shri Purushottam, Shri R. Nagaraja had sought to examine whether washing is required at all. Hence, Shri R. Nagaraja has acted with great prudence to ensure that no loss is caused to KPCL under the directions of Dr. S.M. Jaamdar, MD, KPCL.

6. If washing of coal was not required, then the MoU with Gupta was not required to be approved inasmuch as the main purpose of the agreement was to start the washing process. Although the MoU was ratified, it could not be operationalized specifically Clause 12 of the MoU was not ratified by the Board of KECML. Conditional ratification of MoU does not mean that the Board has dishonestly refrained from protecting the interest of KPCL. (See Board minutes of KECML at Document No.232)

7. **From the reading of the Clause 12, it appears that the fact that there was no concluded contract vis-à-vis of rejects inasmuch it was understood that it was to be sold on 'mutually agreed terms' and 'subject to legal clearances'. This implies that GCWL and KECML had to mutually agree for the terms of the sale and same had to be approved by Ministry of Coal.** Given the fact that the MoU was only conditionally ratified, it was incumbent upon the officials of KECML that before they agree to any terms for the sale of the rejects that they had to bring the matter up to the Board of KECML. The subsequent events indicate that even the officials of KECML were of the same understanding.

8. **Even assuming that the Clause 12 of the MoU was approved, another aspect of the matter which has to be noted is that Clause 12 of the MoU does not violate the terms of the Allotment Letter inasmuch as it specifically required that the approval of the**

Ministry of Coal be obtained before such a disposal. A bare reading of the Clause 12 does not indicate any illegality a sought to be alleged by the CBI. Therefore, the approval of the MoU in the Board Meeting on 13.01.2009 cannot be said to be an act of negligence or error in judgment and no imputation of any wrongdoing can be imposed any KPCL nominee present in the Board Meeting on 13.01.2009.

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10. **Additionally, KECML wrote a letter wherein it sought for a waiver from meeting the specification if raw coal was supplied. The difficulty for the Management of KPCL was that if the raw coal did not match the specification, it would not be utilization for the generation of power. This would result in stoppage of generation resulting in power crisis in the State of Karnataka**. The better alternative would have been to wait for the certificate of the Coal Controller regarding whether the raw coal met the requirements of KPCL of not. Hence, no confirmation was given. This was a managerial decision taken in the best interest of the State of Karnataka as the power generation could not be compromised to save washing cost. **The cost of procurement of power would be tremendous and outweighed any temporary disadvantage caused by not abiding by the Board Minutes of 13.06.2009. This decision was vindicated by the letter issued by the Coal Controller's Office on 09.12.2009 wherein it concluded that to obtain the agreed parameter of coal quality, washing would be required. Therefore, it cannot be said that there was an act of omission or negligence or error in judgment on part of the KPCL nominees on the Board of KECML. The decision was taken keeping the best interests of KPCL in mind and cannot be faulted**.

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16. The contention of CBI that there is a violation of the allotment order that tailings and rejects are the property of KPCL and should be utilized only for its end use of power generation appears to be based on a strict interpretation of the allotment conditions. Technically, Bellary Thermal Plant of 500 MW capacity is designed to use pulverized coal for firing and coal of reasonable quality. **As such the condition that middlings, tailings & rejects should be used for power generation by KPCL is neither feasible nor appropriate. On the other hand, since disposal of rejects is an environmental issue, KPCL has insisted that the same should be subject to compliance of environmental norms. When KPCL was not in a position to use the reject for power generation, the onus is on the mining operator to dispose of the same as permitted under law**. Given the facts as stated above, there cannot be any act of negligence on part of the nominees of KPCL in this regard as well.

17. **The CAG report is without factual basis for the following reasons:**

i) **The quantum of rejects is assumed as 10% of the coal based on MoU whereas as per actuals it was 4.39% as evident from the Coal Controller's certificate, Statements of inward and outward movements of Coal as submitted by GCWL.**

ii) **Without even knowing the calorific value of the rejects, it has been assumed to be G Grade coal. Even going by the statement of Shri Padmesh Gupta of GCWL, the rejects were of such a low calorific value that it could not be sold without blending. Hence, it could not have been of G grade. Hence, the basis of the calculation is wrong**.

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20. **The assumption of the CBI that the exact quantity of rejects that have been sold off cannot be ascertained is a self-serving statement inasmuch as for the purpose of blending of coal, Gupta has to purchase the raw coal / washed coal and pay royalty / sales tax on the same whereas there is no sales tax / royalty paid on the rejects**. With this number, it is easily possible to arrive at the exact quantity of reject coal. **As the quantity of reject coal generated / available at Majri Washery as per the Stock statement far exceeds the reject coal quantity claimed to be generated by the washing of KECML's coal, in order to divert other rejects as KECML's rejects, the absurdly high amount has been claimed**. Hence, there is absolutely no evidence to show that any reject has been sold and if so, what is the quantity of rejects sold. **In such a situation, there is no basis for assuming that KPCL has suffered any unlawful loss or that GCWL has gained unlawfully during this process**.

21. CBI has produced a Debit Note No.KECML/DN/08-09/09 dated 31.03.2009 for Rs.4,30,38,500/- which was recovered at GCWL (and not at KECML) and there is a statement from GCWL that this Debit Note was not honoured. **An examination of the Debit Note, Annual Accounts of KECML for 2008-09 and other documents produced along with the Report would indicate that this Debit Note is a fabricated document** for the following reasons:

a. The Note is generated as on the last date of the financial year 2008-2009 but is forwarded only in the next financial year in September 2009 indicating that it is an afterthought.

b. This Debit Note does not find a mention in the Annual Accounts of 2008-2009 i.e. it should have created an income stream for KECML.

c. If the Debit Note was a genuine document, then KECML had to classify the sales of washer rejects of 86,077 MT as "other income" in the Annual Accounts. However, it is shown as washing loss.

d. There are no corresponding Debit Notes of this nature (viz. For foreign material) amongst the several admitted Debit Notes and no mention of this Debit Note or such an arrangement for subsequent years.

e. KECML officials have written emails asking for accounts of the stock and Gupta has stated that the rejects are still lying with them.

> 22. **There are two types of rejects as reflected in the Annual accounts. One is the rejects lost due to stones, boulders etc. for which no royalty was paid. These rejects were not even transported to Gupta and are not classified as 'washery loss'. The washery loss is evident from the Coal Controller's certificates**.
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> 38. To say the least, there is no evidence whatsoever that is collected by the investigator that would indicate that there was either any request or a demand by the public servant concerned for a valuable thing or a pecuniary advantage at any point of time upon the beneficiary for any reason whatsoever. A mere omission on the part of the public servant or a negligent act on his part which has enured to the beneficiary cannot be said to act of misconduct on the part of the public servant to bring him within the ambit of Section 13(1) (d) of the Prevention of Corruption Act, 1988.
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> 48. **Shri R. Nagaraja has an impeccable and unblemished service record in his 27 years of service as an officer and he has held many important and sensitive posts during his service span in KPCL. Any action against him on the basis of a charge devoid of any merit and substance would not only tarnish his otherwise impeccable reputation but will also have a bearing on the morale of the public services**.
>
> 49. **For the reasons enumerated in para 3 to 48 above, we, the Board of KPCL, hereby exercising our powers under Section 19 of the Prevention of Corruption Act, 1988 refuse to grant sanction to prosecute Shri R. Nagaraja for the offences alleged to have been committed under Sections 120B r/w 409 and 420 of the Indian Penal Code, 1860 and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988**."

12.2. It is apparent from the above that after Sanctioning Authority had scrutinized all the relevant documents and the depositions as many as of 67 witnesses submitted by the respondent-CBI, it observed that there was no evidence to show that any rejects generated by washing of coal had been sold or that KPCL had suffered an unlawful loss during the process. As a result, the Board of KPCL refused to grant sanction to the respondent-CBI to prosecute Mr. R. Nagaraja for offences alleged to have been

committed by him. It is noteworthy that no appeal has been filed by the respondent – CBI against denial of sanction.

12.3. Similarly, the request made by the respondent-CBI for seeking sanction to prosecute Mr. Yogendra Tripathi, the then Managing Director, KPCL was denied by the Competent Authority in the Central Government in terms of the letter dated 16th April, 2018, issued by the DoPT. The order passed by the DoPT shows that it took note of the Report of the respondent-CBI, the records submitted by it along with the Report, the advice received from the CVC and then summarized the allegations levelled by the respondent-CBI that formed the basis of its proposal to seek sanction for prosecution of the aforesaid officer. The said request was finally rejected by the Competent Authority in the Central Government with the following observations:

> "xxxxx
>
> 12. AND WHEREAS the debit note recovered at GCWL and the certificate are contradictory to each other in as much as debit note imposes a realizable value on the rejects and the certificate claims that it has been written off. Neither document is supported by the annual accounts. Hence, they are extraneous and fabricated as an afterthought.
>
> 13. AND WHEREAS washery loss and loss due to stone bounders etc. are different. The certificate combines the two losses and claims them as washing loss. The rejects quantified as 8.03. MT only reproduces what is disclosed in the accounts as processed wastage.
>
> 14. AND WHEREAS on examination of records, statement of witnesses etc, it was seen that there is no evidence of any purported conspiracy between the accused officer and GCWL or any *quid pro quo* in this regard. The reason for deferring the agenda in 41st Board Meeting have been explained in the detailed note of M/s KPCL and appear to be reasonable. It has been mentioned that the revised mining plan was approved in the Board Meeting of the Joint Venture KECML by which a new technology was to be implemented which could have been issued of rejection irrelevant.

> 15. **AND WHEREAS the comments of the Govt. of Karnataka have been obtained. They have stated that there is no material to support the allegation that he conspired to illegally dispose off the rejects and therefore deferred the agenda. Hence, no criminal intent can be attributed to Shri Yogendra Tripathi and have recommended declining of sanction for prosecution U/s 120B r/w 409 and 420 of IPC and Section 13 of the Prevention of Corruption Act, 1988**.
>
> 16. **AND WHEREAS the proposal was sent to the CVC for their advice. The CVC advised declining of sanction for prosecution against Shri Yogendra Tripathi**, IAS(KN:1985), the then Managing Director Karnataka Power Corporation Ltd. (KPCL), Bangalore, in case RC:2202015 E0002 dated 13.03.2015.
>
> 17. **AND WHEREAS all case records sent by the investigating agency were sent to the Hon'ble Prime Minister, who is the Competent Authority in the Central Government, to decide sanction for prosecution in respect of the IAS officers**.
>
> 18. **AND THEREFORE The Competent Authority, in view of the above position and after carefully considering the facts and circumstances of the case and considering all other relevant material/documents, including evidence submitted by the Investigating Agency with the proposal, has approved the proposal to decline sanction for prosecution against Shri Yogendra Tripathi, IAS (KN:85) in the instant case, under Section 19 of the Prevention of Corruption Act, 1988**."

12.4. The aforesaid order reveals that before applying its mind, the Competent Authority in the Central Government had sought comments from the Government of Karnataka who had stated that there was no material produced by the respondent-CBI in support of the allegation that Mr. Yogendra Tripathi had conspired to illegally dispose off the coal rejects or with *malafide* intention deferred the agenda in the 41st Board Meeting of the KPCL. The Competent Authority separately sent the said proposal submitted by the respondent-CBI to the CVC for seeking advice. After examining all the records sent by the investigation agency including the evidence submitted by it, the Office of the Prime Minister who is the Competent Authority in the Central Government,

approved the proposal to decline the sanction for prosecuting Mr. Yogendra Tripathi. Yet again, no appeal has been filed by the respondent – CBI before the court questioning the said decision.

12.5. The respondent-CBI having accepted the decision taken by the Sanctioning Authority in respect of Mr. R. Nagaraja and the decision of the Competent Authority in the Central Government in respect of Mr. Yogendra Tripathi, both senior most serving officers of KPCL and were also on the Board of KECML, cannot be permitted to argue that these were merely administrative decisions and even if permission to prosecute the aforesaid officers has been denied, the Department can still proceed against the appellants based on the very same set of material/documents/evidence etc. that have been minutely scrutinized by different authorities at the highest level and they have independently arrived at an identical conclusion of refusing to grant sanction to prosecute senior functionaries of KPCL. Simply because the said senior functionaries of KPCL were public servants, does not detract from the fact that the respondent-CBI has described them as co-accused in a criminal conspiracy and attributed similar motives to them as the appellants herein. If they have been let off the hook and the respondent-CBI has not challenged the said decisions, there is no reason to proceed against the appellants herein on the basis of the very same set of facts and material gathered during the course of investigation.

13. EFFECT OF THE ABSENCE OF ANY STRATEGY IN THE MINING PLAN TO DISPOSE OFF THE COAL REJECTS

13.1. Coming next to the stand taken by the respondent-CBI that absence of any plan mentioned in the Mining Plan to deal with the rejects could not exonerate the appellants who were bound by the terms and conditions of the letter dated 10th November, 2003 issued by the MoC, we may note the assertion of the respondent-CBI that the Mining Plan of the coal blocks in question did not contain any plan for disposal of rejects, usable, tailings, middlings, etc., that would be generated on account of mining/ washing of coal, is contrary to the records. Article 5(2)(b) of the JVA required EMTA to take all clearances for setting up the coal washery from the concerned authorities and properly dispose off the coal rejects to the satisfaction of environmental regulations.

13.2. The explanation offered by the appellants that at that point in time, the Central Government had not come out with any specific plan to dispose off the coal rejects is validated by the reply furnished by the Minister of State, MoC, in the Lok Sabha in response to an unstarred question seeking an answer from the Government of India as to whether it had framed any National Policy for exploitation of the coal rejects. The reply given was that the Government had not framed any National Policy for exploitation of coal rejects and the same was still under consideration. That being the position, it was left to KPCL and KECML to devise a satisfactory and safe method to dispose off the coal rejects. This was done in terms of Article 5(2)(b) of the JVA that required KECML to dispose off the rejects in a manner that would ensure that there was no threat to the environment. We do not find any irregularity in the route adopted to dispose off the coal rejects.

14. WAS KECML REQUIRED TO ACCOUNT FOR THE COAL REJECTS ?

14.1. Much emphasis has been laid by the respondent-CBI on the contents of the allocation letter dated 10th November, 2003 issued by the MoC, Government of India to KPCL to canvass that the coal mined from the allocated blocks was to be exclusively used to meet the requirements of coal in the proposed thermal power station namely, BTPS and on the condition that no coal was to be sold /delivered/transferred/disposed of except for the purpose of power generation and with the previous approval of the Central Government. We are afraid, the said letter cannot be read in isolation and out of context for the very same reasons as have been noted above.

14.2 When the Central Government did not formulate any National Policy for exploitation of coal rejects, it is fallacious on the part of the respondent-CBI to argue that the conditions imposed by the Central Government while conveying its approval to the State Government for grant of mining lease in favour of KPCL ought to have formed a part of the lease deed to be executed. Fact of the matter is that there was no such condition imposed in the Notification dated 16th July, 2004, issued by the MoC. The said notification simply specified the end use of the coal from the allocated coal blocks for supply to KPCL to generate thermal power in the proposed BPCL. The original Mining Plan of September, 2004 submitted by KECML to the MoC for its approval also did not elucidate the manner in which the coal rejects were to be disposed of. The said Mining Plan had the approval of the MoC which did not raise any objection relating to the absence of any condition for dealing with the coal rejects. The inevitable conclusion is

that disposal of the coal rejects was to be undertaken by KECML strictly in terms of Article 5(2)(b) of the JVA and no more.

14.3 Moreover, a closer look at the clauses of the JVA and FSA clearly indicate that KECML was only obliged to provide a specified grade of washed coal (Grade – D) having a specific GCV in the range of 4200-4940 Kcal/kg[85]. When coal has been defined in the JVA and FSA as *"washed coal with guaranteed value"* and one that satisfied the parameters laid down in Annex-1 attached to the JVA and FSA[86] and further, KECML was required to ensure that all *"shales/stones"* are removed from the coal before making the supply[87], there was no occasion for KECML to account for the rejects. All that KPCL was required to do was to buy from KECML, the washed coal with a particular guaranteed value and one that would satisfy the specified quality parameters, at a predetermined price[88]. The agreement governing the parties required KECML to dispose off the rejects safely. KECML was not required to account for the coal rejects to KPCL. KPCL itself understood the clauses in the JVA and the FSA to mean the same and it was satisfied with the manner in which KECML was discharging its obligations under the agreements till Audit Objections were raised by the CAG in October, 2013. That's when KPCL did a complete flip flop and for the first time, raised a demand on KECML seeking reimbursement towards the value of the coal rejects, a

[85] 'Grade D Coal' as defined under 'Definition and Interpretation' clause of the JVA dt 13th September, 2002.
[86] 'Coal' as defined under 'Definition and Interpretation' clause of the JVA dt. 13th September, 2002 and Article 1 of FSA dt. 09th May, 2007
[87] Article 5.2.2 of the FSA
[88] Annexure-II of the JVA and Article 6.1.1 of the FSA

decision that was successfully assailed by the appellants in the High Court and the challenge laid by KPCL to the said judgement was repelled by this Court.

15. CAN KECML BE BLAMED FOR NOT SETTING UP THE COAL WASHERY AT THE PITHEAD ?

15.1. As for the allegation levelled by the respondent–CBI that KECML violated the terms of Articles 2(4)(g) and 5(2)(b) of the JVA having failed to setup the coal washery at the pithead, the sequence of events narrated above, shows that the fault does not lie at the door of the appellants. It was on account of some litigation between CIPCO and MoC in relation to the coal blocks allocated to KPCL wherein interim orders were granted by the High Court in favour of CIPCO, that the project got delayed. Production of coal could commence only in September, 2008 after the aforesaid litigation came to an end. By then, much time was lost. The conditions stipulated in the agreements governing KPCL and KECML placed an obligation on KECML to supply washed coal with a definite GCV and specified parameters for the consumption of the Thermal Power Station at Bellary and failure to deliver coal within the stipulated time, attracted penalties.

15.2. It was in this background that KECML executed the MoU with GCWL for washing of the mined coal at its washery at Majri, transportation of the raw coal from the mines and washed coal to the Railway Siding for delivery to BTPS. Records reveal that the draft of MoU was duly deliberated upon by the Board of Directors of KECML and finally approved and ratified on 13th January, 2009. Subsequently, in the meeting held on 23rd

February, 2010, the Board of Directors of KECML concluded that washing of raw coal was a prerequisite to meet the specified grade of coal with a defined GCV for generation of power at BTPS. The necessity of supplying washed coal to obtain the agreed parameter of coal quality was also recognized by the office of the Coal Controller in its letter dated 9th December, 2009. This fact finds mention in the detailed Report of the Board of KPCL that refused permission to the respondent-CBI to prosecute Mr. R. Nagaraja.

15.3 It is clear from the above that the decision of KECML to enter into a MoU with GCWL for washing of coal was actuated by compelling circumstance faced by it and KPCL had taken a calibrated decision in its commercial wisdom to duly concur with the said decision knowing very well that non-supply of a specified grade of washed coal by KECML would have serious consequences of stoppage of generation of power at BTPS and a cascading effect of resulting in a power crisis in the State of Karnataka.

15.4. We do not propose to Labour much on the contention of the respondent-CBI that allocation of the coal block was in favour of KPCL and not in favour of KECML as stands adequately explained on a perusal of the Notification dated 16th July, 2024 which shows that the Central Government did recognize the fact that it was KECML who was required to supply coal from the coal mines allocated to KPCL and end use of the said coal was specified for generation of Thermal Power Station at Bellary, Karnataka. In our view, having regard to the aforesaid notification, nothing much turns on the submission made by the respondent-CBI that the coal block allocation was only in

favour of KPCL and it ought to have a right over the rejects to the exclusion of KECML and others.

16. DID THE COAL REJECTS HAVE ANY USEFLUL CALORIFIC VALUE MAKING IT A SALEABLE COMMODITY ?

16.1. We find that the Detailed Washability Report of the Government Laboratory namely, CIMFR, Nagpur has been ignored by the respondent-CBI. It was the said Report that formed the basis of the information furnished by KECML with respect to production, stock, despatch of coal to the washery etc., as was demanded by the office of the Coal Controller, a department that falls under the MoC. The said Report stated in so many words that the rejects did not contain any useful c.v. Reliance placed by the respondent-CBI on the revised Mining Plan submitted by the appellants to the MoC in 2010, that mentions a new technology for utilization of rejects for its carbon value, namely FBC is of no consequence as the said technology had not even been introduced when MoC approved the original Mining Plan, submitted by KECML in the year 2004. Even otherwise, it is not in dispute that for applying the said technology, a plant was required to be established after obtaining necessary approvals from several agencies. The plant could not be established by KECML for the reason that the revised Mining Plan submitted by it was approved by the MoC only on 24th August, 2011. Consequent steps that were required to be taken by KECML for obtaining necessary approvals from the MoEF&CC and other govt. agencies came to a grinding halt when an order was passed by this Court in the year 2014, deallocating all captive coal blocks, including

those allocated to KPCL. Therefore, any reference by the respondent-CBI to the revised Mining Plan is of no consequence.

17. PERSUASIVE VALUE OF THE ARYAN ENERGY CASE

17.1 KPCL's entitlement over the coal rejects has been separately tested by the High Court of Karnataka in the case of ***Aryan Energy(supra)***. Pertinently, in that case the clauses forming a part of the Agreement between KPCL and Aryan Energy particularly with respect to the disposal of the coal rejects is the same as in the instant case. Aryan Energy was also required to dispose off the coal rejects by making compliance of the environmental regulations. In the said case, the High Court of Karnataka returned a finding that KPCL did not have any claim over the coal rejects generated during washing of coal. The view taken was that as long as disposal of the coal rejects was in line with the environmental regulations, KPCL did not have any role to play in the disposal of the coal rejects. It was specifically observed by the High Court that the agreement between KPCL and Aryan Energy included a condition that KPCL would only buy washed coal at a predetermined price and that it was not entitled to lay a claim on the coal rejects generated during the processing of raw coal. In view of the terms and conditions of the agreement between the parties, the High Court concluded that KPCL could not have raised any demand on Aryan Energy claiming reimbursement for the value of the coal rejects. It is a matter of record that although KPCL had challenged the judgement and order dated 22nd July, 2021 passed by the High Court of Karnataka[44] before this court, the said petitions were disposed of on 26th April, 2014 noting that the parties had settled

their *inter se* disputes amongst themselves in terms of a Compromise Deed and as a result, part of the decretal amount deposited by KPCL before the Commercial Court was agreed to be released in favour of Aryan Energy.

17.2 We do not see why the aforesaid decision would not have any persuasive value when the clauses in the agreement between KPCL and KECML for disposing off the coal rejects are identical. On going through the agreements executed between KPCL and Aryan Energy, the High Court had shot down the plea of KPCL that it was entitled to the coal rejects. Though KPCL assailed the said decision before this Court, it settled its dispute with Aryan Energy and the appeals preferred by it were disposed of as compromised. The contention of the respondent-CBI that the order of the High Court of Karnataka is not relevant for the present case since there was no criminal case registered therein, cannot be a distinguishing feature when the terms and conditions of the contract between KPCL and Aryan Energy on the aspect of disposal of the coal rejects is *pari materia.* We are of the opinion that the judgment in the case of Aryan Energy does have persuasive value.

18. INHERENT JURISDICTION OF THE HIGH COURT UNDER SECTION 482, Cr.P.C

18.1. For seeking quashing of the chargesheet and the order framing charges, learned counsel for the appellants has cited decisions of this court that lay down the proposition of law relating to quashing of criminal proceedings by a High Court under

Section 482, Cr.P.C. In ***Rajiv Thapar and Others v. Madan Lal Kapoor***[89], this court held as under:

> "29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. **To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence.** For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. **The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."**
>
> [emphasis added]

18.2 In the captioned case, this court had further observed that the discretion vested in the High Court under Section 482 Cr.P.C can be exercised *suo moto* to prevent abuse of the process of a Court, and/or to secure the ends of justice. After listing the factors

[89] (2013) 3 SCC 330

that ought to weigh with the High Court to make a just and rightful choice, it was observed thus:

> "30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:
> 30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?
> 30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
> 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?
> 30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
> **30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."**
>
> [emphasis added]

18.3 In ***State of Orissa v. Debendra Nath Padhi[90],*** the powers of the High Court under Section 482, Cr.P.C and Article 226 of the Constitution of India were highlighted and the court observed that:

> "29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, **the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to**

[90] (2005) 1 SCC 568

> **secure the ends of justice within the parameters laid down in Bhajan Lal case[91] [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] ."**
>
> [emphasis added]

18.4 In ***Rukmini Narvekar v. Vijaya Satardekar and Others[92],*** this Court has observed that the width of the powers of the High Court under Section 482, Cr.P.C and under Article 226 of the Constitution of India are unlimited, that the High Court could make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In a concurring order passed in the very same case, it was observed in addition that in exercising jurisdiction under Section 482, Cr.P.C, the High Court is free to consider even material that may be produced on behalf of the accused to arrive at a decision whether charge as framed could be maintained.

18.5 In ***Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another[93]***, referring to the provisions of Section 482, Cr.P.C, this Court held as follows:

> 16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court **[G. Sagar Suri v. State of U.P.**, (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. **Umesh Kumar v. State of A.P.**, (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237] . **Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.**

[91] (1992) Supp (1) SCC 335
[92] (2008) 14 SCC 1
[93] (2019) 11 SCC 706

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28. **In State of Haryana v. Bhajan Lal** [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , this Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised. Para 102 of the judgment reads as follows : (SCC pp. 378-79)

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18.6. In **State of Karnataka vs. L. Munniswamy**[94], Y.V. Chandrachud, J. as he then was (speaking for a three Judge Bench) observed thus:

> "7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. **The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."**
>
> [emphasis added]

18.7 As can be gathered from the above, Section 482 Cr.P.C recognizes the inherent powers of the High Court to quash initiation of prosecution against the accused to pass such orders as may be considered necessary to give effect to any order under the Cr.P.C or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is a statutory power vested in the High Court to quash such criminal proceedings that would dislodge the charges levelled against the accused and based on the material produced, lead to a firm opinion that the assertions contained in the charges levelled by the prosecution deserve to be overruled.

18.8 While exercising the powers vested in the High Court under Section 482, Cr.P.C, whether at the stage of issuing process or at the stage of committal or even at the stage of framing of charges, which are all stages that are prior to commencement of the actual

[94] (1977) 2 SCC 699

trial, the test to be applied is that the Court must be fully satisfied that the material produced by the accused would lead to a conclusion that their defence is based on sound, reasonable and indubitable facts. The material relied on by the accused should also be such that would persuade a reasonable person to dismiss the accusations levelled against them as false.

19. EXTRAORDINARY POWERS OF THIS COURT UNDER ARTICLE 13 OF THE CONSTITUTION OF INDIA

19.1. When it comes to invocation of the powers vested in this Court under Article 136 of the Constitution of India, unlike Section 438 Cr.P.C that has a statutory flavour, Article 136 confers plenary powers on this Court to interfere in suitable cases. In ***Arunachalam v. P.S.R. Sadhanantham and Another***[95]***,*** this court has expounded on the amplitude of its powers under Article 136 in the following words:

> "4. ……**Article 136 of the Constitution of India invests the Supreme Court with a plentitude of plenary, appellate power over all Courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power.** It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court**. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly".** (See **State of Madras v. A. Vaidyanatha Iyer** [AIR 1958 SC 61 : 1958 SCR 580 : 1958 Cri LJ 232] and **Himachal Pradesh Administration v. Om Prakash** [(1972) 1 SCC 249 : (1972) 2 SCR 765])……."
>
> **5.** A doubt has been raised about the competence of a private party, as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High Court. We do

[95] (1979) 2 SCC 297

> not see any substance in the doubt**. Appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and Appellate Tribunals under specific statutes. As we said earlier, it is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (vide Durga Shankar Mehta v. Thakur Raghuraj Singh [AIR 1954 SC 520 : (1955) 1 SCR 267 : 1954 SCJ 723]). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one**. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it. …….. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, special leave is not granted as a matter of course but only for good and sufficient reasons, as well established by the practice of this Court."
>
> [emphasis added]

19.2. In ***P.S.R. Sadhanantham v. Arunachalam***[96], a Constitution Bench of five judges elaborated the content and character of Article 136 *vis-à-vis* Article 21 and made the following observations:

> "7. Specificity being essential to legality, let us see if the broad spectrum spread out of Article 136 fills the bill from the point of view of "procedure established by law". **In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases.** The discretionary dimension is considerable but that relates to the power of the court. The question is whether it spells by implication, fair a procedure as contemplated by Article 21. In our view, it does. **Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136**. Is if merely a power in the court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? **We have hardly any doubt that here is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to judicial principles well established by precedents in our jurisprudence. Judicial discretion is canalised authority, not arbitrary eccentricity**…..
>
> xxxxx

[96] (1980) 3 SCC 141

> 10. **Once we hold that Article 136 is a composite provision which vests a wide jurisdiction and, by the very fact of entrusting this unique jurisdiction in the Supreme Court, postulates, inarticulately though, the methodology of exercising that power, nothing more remains in the objection of the petitioner.** It is open to the court to grant special leave and the subsequent process of hearing are (*sic* is) well-established. Thus, there is an integral provision of power-cum-procedure which answers with the desideratum of Article 21 justifying deprivation of life and liberty.
>
> [emphasis added]

In a concurring judgement in the captioned case, it was further observed that:

> 21. **Plainly, the jurisdiction conferred by Article 136 seeks to confer on this Court the widest conceivable range of judicial power, making it perhaps among the most powerful courts in the world. The judicial power reaches out to every judgment, decree, determination, sentence or order affecting the rights and obligations of persons in civil matters, of life and liberty in criminal matters as well as matters touching the Revenues of the State.** It is an attempt to ensure that the foundations of the Indian Republic, which have been laid on the bedrock of justice, are not undermined by injustice anywhere in the land, **Bharat Bank Ltd.v. Employees of these Bharat Bank Ltd** [1950 SCC 470 : AIR 1950 SC 188 : (1950) SCR 459, 474 : 1950 LLJ 21 : (1950-51) 2 FJR 1] . As the court observed **in Durga Shankar Mehta v. Thakur Raghuraj Singh** [AIR 1954 SC 520 : (1955) 1 SCR 267, 272 : 9 ELR 494] Article 136 "vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by grant of special leave".
>
> 22. Nonetheless, there is a limitation which, in our opinion, is of immediate relevance. It is a limitation in-built in to the jurisdiction of the court and flows from the nature and character of the case intended to be brought before the court. It is a limitation which requires compliance despite the apparent plenitude of power vested in the court. When a petition is presented to the court under Article 136, the court will have due regard to the nature and character of the case sought to be brought before it when entertaining and disposing of the petition.
>
> [emphasis added]

19.3 In ***Khoday Distilleries Limited and Others v. Mahadeshwara S.S.K. Limited***[97]***,*** this Court observed that Article 136 commences with a *non-obstante* clause, the words are of overriding effect and clearly indicate the intention of the framers of the Constitution that it is a special jurisdiction and a repository of residuary powers unfettered by any Statute or any provisions of Chapter IV of Part V of the Constitution

[97] (2012) 12 SCC 291

of India. It was also observed that the jurisdiction under Article 136 of the Constitution cannot be barred by the Statute since it is an extraordinary power.

19.4 In ***State of Punjab and others v. Rafiq Masih (White Washer) others***[98]**,** in the same strain, this Court has held that Article 136 is a special jurisdiction and can be described as a *'residuary power, extraordinary in its amplitude, its limits when it chases injustice, is the sky itself'*. It is a corrective jurisdiction that vests a discretion in this Court to settle the law clearly and makes the law operational thereby making it a binding precedent for the future instead of keeping it vague.

19.5 In ***Mekala Sivaiah v. State of Andhra Pradesh***[99]**,** this Court commented on the circumstances in which the power under Article 136 is exercised and held thus:

> "14. Before adverting to the merits of the contention raised, it is important to reiterate that **Article 136 of the Constitution of India is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice.**
> 15. It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. **Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice."**
>
> [emphasis added]

19.6 From the aforesaid discussion, it is apparent that Article 136 can be invoked by a party in a petition for special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by a Court or

[98] AIR (2015) 1267
[99] (2022) 8 SCC 253

Tribunal within the territory of India. The reach of the extraordinary powers vested in this Court under Article 136 of the Constitution of India is boundless. Such unbridled powers have been vested in Court, not just to prevent the abuse of the process of any court or to secure the ends of justice as contemplated in Section 482, Cr.P.C, but to ensure dispensation of justice, correct errors of law, safeguard fundamental rights, exercise judicial review, resolve conflicting decisions, inject consistency in the legal system by settling precedents and for myriad other to undo injustice, wherever noticed and promote the cause of justice at every level. The fetters on this power are self imposed and carefully tampered with sound judicial discretion.

19.7 Coming back to the case in hand, ordinarily, a party aggrieved by the filing of a chargesheet or framing of charges ought to first approach the High Court in a petition under Section 482, Cr.P.C. Though such a route would have been available to the appellants herein as well, but in view of the categorical directions issued by this court in ***M.L. Sharma (supra)*** that this Court alone shall have the jurisdiction to entertain cases relating to allocation of coal blocks including cases for staying the investigation or trial in a matter relating to coal, one rung of an appeal before the High Court for quashing the chargesheet or interfering in the order on charge by invoking the inherent jurisdiction under Section 482 Cr.P.C. stands fore closed. The appellants were left with only one chance of directly invoking Article 136 of the Constitution of India and filing a petition for special leave before this court to challenge the impugned orders passed by

the learned Special Judge, CBI framing charges against them and dismissing their application for seeking discharge.

19.9 Given the broad amplitude of the extraordinary powers of this Court under Article 136 of the Constitution of India, the respondent-CBI cannot be heard to urge that since a Chargesheet has already been filed against the appellants and charges framed, the appellants should be left to take all the pleas available to them before the learned Special Judge, CBI during the course of the trial and that no interference is called for by this Court at this stage. Such an approach does not commend itself to this Court in the facts and circumstances of this case.

20. APPLICATION OF MIND AT THE STAGE OF SECTION 227, Cr.P.C

20.1 We may note that there is no quarrel with the broad proposition canvassed by learned counsel for the respondent- CBI that at the stage of Section 227, Cr.P.C., the Special Judge, CBI had to sift the evidence to find out whether there was sufficient ground for proceedings against the appellants. That exercise would include taking a *prima facie* view on the nature of the evidence recorded by the CBI and the documents placed before the court so as to frame any charge. At the same time, one must be mindful of the language used in Section 227 of the Cr.P.C, which is extracted below:

> "227. **Discharge.**—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

20.2. As observed in **Prafulla Kumar Samal (supra)** the expression "*not sufficient ground for proceeding against the accused*" clearly shows that the Judge is not a mere post office to frame the charge at the behest of the prosecution. The Judge must exercise the judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The principles governing the scope of Section 227, Cr.P.C. have been succinctly summarized in the caption case as below:

> **"10.** Thus, on a consideration of the authorities mentioned above, the following principles emerge:
>
> (*1*) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (*2*) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (*3*) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> **(*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."**
>
> [emphasis added]

20.3. To the same effect is the view expressed in **Niranjan Singh KS Punjabi (supra)** where this court has observed as follows:

> **"5.** Section 227, introduced for the first time in the new Code, confers a special power on the Judge to discharge an accused at the threshold if 'upon consideration' of the record and documents he considers 'that there is not sufficient ground' for proceeding against the accused. In other words his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there

> exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not he will discharge the accused. **It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.**
>
> 6. **The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage.** …….. **It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution."**
>
> [emphasis Added]

20.4. In **N. Suresh Rajan(supra),** the following view was expressed as to the role of the trial Court at the time of considering an application for discharge.

> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. **True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge**. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has not to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. **In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."**
>
> [emphasis added]

20.5 The aforesaid parameters had to be kept in mind by the learned Special Judge, CBI at the time of considering the records/documents submitted by the respondent-CBI

and the material produced by the appellants. In our view, the said consideration is lacking in the impugned orders for the reasons noticed above.

21. CONCLUSION

21.1 Though multiple arguments have been advanced by learned counsel for the appellants to assail the impugned orders passed by the learned Special Judge, CBI, including a plea that no offence is made out under Section 13(1)(d) of the P.C. Act for various reasons, this Court has consciously elected to confine itself only to those aspects that in our opinion, would be sufficient to arrive at a *prima facie* view that the allegations levelled against the appellants have pre-dominant contours of a dispute of a civil nature, does not have the makings of a criminal offence and on an overall conspectus of the case, would persuade any reasonable person to dismiss the accusations levelled. Therefore, this court declines to go into the nitty gritties of the documents/evidence, or the contrasting data produced by the parties to test their probative value.

21.2 The *prima facie* findings of this Court, based on the documents and material placed before us are as follows:

(a) The plea of the respondent-CBI that it conducted an investigation in the present case during the course of the inquiry in respect of PE-5 registered by it in the year 2012 is belied as the SIR was on a completely different aspect. CBI only got activated only on stumbling upon the Audit Report of the CAG submitted in 2013. There is nothing brought on record to show to the contrary.

(b) The CAG Report had not attained finality inasmuch as its recommendations have not been tabled before the Parliament or accepted so far. The said report at best, has a persuasive value but no more.

(c) The Sanctioning Authority namely, the Board of Directors of KPCL in respect of Mr. R Nagarajan, the then Finance Director of KPCL and nominee Director of the Board of KECML had the occasion to thoroughly scrutinize all the relevant documents including the MoU dated 20th December, 2008 executed between KECML and GCWL as also the depositions of 67 witnesses submitted by the respondent-CBI. Only thereafter, did it arrive at a conclusion that there was nothing to demonstrate that any rejects generated by washing of the coal had been sold by the appellants or that KPCL had suffered an unlawful loss due to the same.

(d) The Competent Authority in the Central Government who was approached by the respondent-CBI for sanction to prosecute Mr. Yogendra Tripathi, the then Managing Director of KPCL sought comments from two separate sources. The Government of Karnataka opined that no criminal intent could be attributed to the said officer. A proposal was also sent to the CVC for their advice. The CVC too recommended that the sanction for prosecuting the officer ought to be declined. The Competent Authority in the Central Government after going through the entire documents and material including the evidence submitted by the respondent-CBI and the opinions solicited, declined sanction for the prosecution of the aforesaid officer.

(e) The respondent-CBI did not approach the Court to challenge the aforesaid decisions. Having accepted the decision taken by the Sanctioning Authority/Competent Authority in the Central Government and dropping the charges against the seniormost functionaries in KPCL, who were also holding positions in the Board of KECML, there is no justification to press charges against the appellants herein whose role is similar to them.

(f) The decision dated 24th March, 2016 of the Karnataka High Court in a writ petition filed by KECML against KPCL has been wrongly overlooked. The High Court had an occasion to scrutinize the very same agreements and the CAG report that formed the basis of the investigation conducted by the respondent–CBI to return positive findings in favour of the appellants. The view taken by the Karnataka High Court has been upheld by this Court in a judgment rendered on 20th May, 2022 which was just a few days after Charges were framed by the learned Special Judge, CBI on 3rd March, 2022.

(g) Yet again, an interpretation of the very same clauses in the agreement relating to the manner of disposal off the coal rejects came up for consideration before the Karnataka High Court in a writ petition filed by Aryan Energy against KPCL. Having scrutinized the clauses forming a part of the agreement executed between the parties *vide* judgment dated 22nd July, 2021, the Karnataka High Court clearly observed that KPCL did not have any claim over the coal rejects generated during washing of the coal. The submissions made by the respondent – CBI that the aforesaid judgment

came much after institution of the chargesheet by the, respondent-CBI is of no consequence. Even if that was so, nothing prevented the learned Special Judge, CBI from taking into consideration the view expressed in the said judgement at the time of framing charges, particularly, when the clause relating to disposal of the coal rejects in an environment friendly manner incorporated in the agreement between KPCL and Aryan Energy was identical to the one contained in the agreement between KPCL and KECML.

(h) Perusal of the relevant clauses of the JVA read in conjunction with the terms and conditions stipulated in the FSA leave no manner of doubt that all that KPCL required KECML to do was to provide it a specified grade of washed coal having a specific GCV to be purchased at a predetermined price for being supplied to BPCL for generation of power. The agreement between the parties did not contemplate that KPCL would be entitled to claim the 'shales/stones' that were required to be removed from the coal before supplies were made by KECML. Under the agreements governing the parties KECML was required to dispose off the coal rejects properly, to the satisfaction of environmental regulation, as prescribed in Article 5(2)(b) of the JVA.

(i) The MoC did not impose any condition in the Notification dated 16th July, 2004 which required KECML to hand over the coal rejects to KPCL; nor did the MoC issue any Guidelines as to the manner in which the coal rejects were to be disposed of. Once the Mining Plan of September, 2004 submitted by KECML was approved by the MoC,

nothing further was required to be done by KECML except for following the conditions imposed on it.

(j) The Central Government had not come up with any specific plan to dispose off the coal rejects, as is apparent from a perusal of the reply submitted by the Minister of State, MoC in the Lok Sabha, stating that the Government had not framed any National Policy for exploitation of coal rejects and the same was still under consideration. In the absence of a policy to dispose off the coal rejects, the appellants cannot be blamed for complying with the terms and conditions stipulated in the JVA.

(k) KECML could not be faulted for failing to set up the coal washery at the pithead, in terms of the JVA as that was for reasons beyond its control which included a prolonged litigation between the MoC and CIPCO in relation to the very same coal blocks allocated to KPCL which in turn delayed the project considerably. Production of coal could only commence in September, 2008 when the curtains were drawn on the aforesaid litigation. The Board of KPCL consciously acceded to the proposal made by KECML that a MoU be executed with GCWL for washing of mined coal at its washery. Pertinently, GCWL was not an unknown entity to KPCL as the latter had prior dealings with the said Company for washing of mined coal in another project. This decision taken by the parties in their commercial wisdom has been sought to be selectively tainted with criminal intention attributed to the appellants, without any basis.

(l) There was no getting around the process of washing of raw coal which was the predominant prerequisite to meet the specified grade of coal with the defined GCV for

generation of power at BTPS. Failure to supply washed coal to KPCL not only invited heavy penalties on KECML in terms of the JVA, it would have had serious consequences of stoppage of generation of power at BTPS, resulting in power outages in the State of Karnataka.

(m) The Washability Report submitted by CIMFR, Nagpur, a Government Laboratory stated in so many words that the coal rejects did not contain any useful c.v. Therefore, the entire edifice of criminality and conspiracy built by the respondent-CBI on the premise that the coal rejects had a commercial c.v. with an assertion that the appellants had profited from the sale thereof in the open market and pocketed the sale proceeds, flies in the face of the Washability Report.

(n) The Revised Mining Plan submitted by the appellants to the MoC in the year 2010 and approved in 2011, could not have been relied on by the respondent-CBI for pressing charges against the appellants on a plea that had the new technology for utilizing the coal rejects been put to use, the losses could have been mitigated. It is not in dispute that the new technology namely, FBC was not even in vogue when the MoC had approved the original Mining Plan submitted by KECML in the year 2004. Besides that, before putting the new technology to use, there were several steps required to be undertaken, which included obtaining approvals from different government agencies and establishment of a plant. None of that could take place as an order was passed by this court in the year 2014, deallocating all captive coal mines.

21.3 In the light of the aforesaid discussion, we are of the opinion that the respondent–CBI embarked on a roving and fishing inquiry on the strength of the Audit Report of the CAG and then started working backwards to sniff out criminal intent against the appellants. The underpinnings of what was a civil dispute premised on a contract between the parties, breach whereof could at best lead to determination of the contract or even the underlying lease deed, has been painted with the brush of criminality without any justification. This criminal intent has been threaded into the dispute by the respondent-CBI by misinterpreting the clauses of the agreements governing the parties and by heavily banking on the observations made in the Audit Report of the CAG that has not attained finality till date. In view of the glaring infirmities mentioned hereinabove, the impugned orders deserve interference in exercise of the powers vested in this court under Article 136 of the Constitution of India.

21.4 For all the reasons enumerated above, the present appeals succeed. The order on charge dated 24th December, 2021 and the order framing charges dated 3rd March, 2022 passed by the learned Special Judge, CBI *qua* the appellants before this Court are unsustainable and accordingly quashed and set aside.

……..J.
[HIMA KOHLI]

……..J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
AUGUST 23 , 2024