IN THE COURT OF SHRI DHEERAJ MOR
SPECIAL JUDGE, (PC ACT) (CBI), (COAL BLOCK CASES)-01,
ROUSE AVENUE DISTRICT COURT : NEW DELHI

CNR No.	DLCT11-001316-2019
CBI Case No.	CBI/318/2019
RC No.	220 2015 E 0003 dated 26.03.2015
Branch	EOU-IV/EO-II/New Delhi
Date of Institution in the Court	05.06.2018
Under Sections	Sections 120B/420 IPC and Sections 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988

CENTRAL BUREAU OF INVESTIGATION

…. Prosecution

Versus

1. **Dominic Gabriel Philip S/o Sh. Gabriel Philip**
The then Managing Director, Maharashtra State Mining Corporation Limited (MSMCL), Plot No. 7, Ajni Chowk, Wardha Road, Nagpur
R/o 103, Indira Apartment, Rahate Colony, Wardha Road, Nagpur-440022, Maharashtra.

2. **Avinash Manohar Rao Warjukar S/o Sh. Manohar Rajaramji Warjukar**
Then then Member Chairman, Maharashtra State Mining Corporation Limited (MSMCL), Plot No. 7, Ajni Chowk, Wardha Road, Nagpur
R/o 201, 2nd Floor, Keshav Kal Apartment, Rahate Colony, Wardha Road, Nagpur-440022, Maharashtra.

….Accused Persons

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ACCUSED PERSONS DISCHARGED IN ACCORDANCE WITH ORDER DATED 25.05.2023

3. **M/s Sunil Hi-Tech Engineers Limited**
A company incorporated on 29.05.1998 with Registrar of Companies, Maharashtra at Mumbai, Registered Office at 6th Floor, MET Complex, Near Lilawati Hospital, Bandra, Mumbai-400050, Maharashtra.

4. **Sunil Ratnakar Gutte S/o Sh. Ratnakar Manikrao Gutte**
Director, M/s Sunil Hi-Tech Engineers Limited,
R/o 3rd Floor, Residency Building, Union Park Road, Khar (West), Mumbai-400052, Maharashtra.

5. **M/s aXYKno Capital Services Private Limited**
A company incorporated on 09.01.2006 with Registrar of Companies, Maharashtra at Mumbai, Registered Office at Level-3, Leela Vista, Bajaj Nagar, Nagpur, Maharashtra.

6. **R. Ramakrishnan S/o Sh. V. Raman Iyer**
Then Chief Executive Officer/Director of M/s aXYKno Capital Services Pvt. Ltd.
R/o Plot no.3, New Verma Layout, Opposite Ambajari Garden, Nagpur, Maharashtra.

Date of Conclusion of Final Arguments	**26.05.2026**
Date of Judgment	**13.07.2026**

JUDGMENT

1. The preliminary inquiry no. BD-1/2012/E/0005(5/2012) was registered in the Central Bureau of Investigation (CBI), Government of India on 28.09.2012 to inquire into the allegation of irregularities in the allocation of coal blocks by the Ministry of Coal, the award of contract for

development of such coal blocks and selection of Mine Developers-cum-Operators by the allottee companies as well as formation of Joint Ventures (JVs). Sh. R. Parthasarthy, Deputy Superintendent of Police, CBI, EOU-IV conducted preliminary inquiry in respect of Marki-Zari-Jamni-Adkoli *(hereinafter referred to in short as '**Adkoli**')* Coal Block allocated to Maharashtra State Mining Corporation Limited, Nagpur, Maharashtra *(hereinafter referred to in short as '**MSMCL**')*, a Government of Maharashtra Undertaking, on 02.08.2006. Upon conclusion of preliminary inquiry, the Inquiry Officer gave a written complaint based upon which the present FIR/RC dated 03.09.2012 **[Ex.P-1 (Colly), D-2]** was lodged under Section 120B read with Section 420 of Indian Penal Code, 1860 *(hereinafter referred to in short as '**IPC**')* and under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 *(hereinafter referred to in short as '**PC Act**')* against A-3 M/s Sunil Hi-Tech Engineers Limited, Nagpur *(hereinafter referred to in short as '**SHEL**')*; A-6 R. Ramakrishnan S/o Sh. V. Raman Iyer, then CEO/Director of M/s aXYKno Capital Services Private Limited *(hereinafter referred to in short as '**aXYKno**')*; unknown officials of the MSMCL; and other unknown persons for illegalities committed by MSMCL in appointment of aXYKno as its Financial Consultant; selection of Joint Venture partner SHEL through the bidding process; and the execution of Joint Venture Agreement with SHEL on 21.11.2009 leading to incorporation of a Joint Venture company on 18.02.2010 by the name and style of M/s MSMCL Adkoli Natural Resources Limited for undertaking the development and mining operations of Adkoli Coal Block.

I. BRIEF FACTS OF THE CASE

2. The relevant facts of this case, in nutshell and in chronological order, are that the Ministry of Coal, Government of India vide letter dated 02.08.2006, allocated Adkoli Coal Block situated in Wardha Coal Field, Maharashtra to MSMCL, a Government of Maharashtra Undertaking, subject to *inter alia* condition that coal mining shall be carried out by MSMCL or a separate company to be created with participation of MSMCL provided that the separate created company is a Government company eligible to do coal mining as per the provisions of Coal Mines (Nationalization) Act, 1973. Significantly, apart from Adkoli Coal Block, three other coal blocks, namely, Gare Palma Sector-II, Agarzari and Warora were also allocated to the MSMCL with similar conditions. However, the present case is in relation to the alleged illegalities committed qua Adkoli Coal Block only.

3. A-2 Sh. Avinash Warjukar was the Chairman, MSMCL from 11.12.2006 to 28.06.2010, while A-1 Sh. D.G. Philip was the Managing Director, MSMCL from 13.09.2007 to 28.02.2009. In the 160th meeting of Board of Directors, MSMCL comprising of the then Chairman, Managing Director and other officials held on 22.12.2006, it was resolved that as the post of General Manager (Finance) was vacant since 1989 and the company proposed to diversify its activities in the field of Coal Mining, services of a financial consultant were required for carrying out the financial scrutiny and evaluation of various proposals.

4. In 162nd meeting of the Board of Directors, MSMCL held on 25.06.2007, it was resolved to constitute a Management Committee for submitting report in relation to appointment of Financial Consultant.

5. Vide OM dated 01.09.2007, the Government of Maharashtra constituted a High-Power Committee under the Chairmanship of Hon'ble Minister (Mining) to scrutinize the bids received under Expression of Interest, to examine financial matters in context of coal blocks allotted to MSMCL, in order to make MoU and establishing Joint Venture (JV) for mineral development. The procedure in that regard was also indicated in the said OM and its relevant portion is reproduced as under:-

> "(i) Managing Director, MSMCL should scrutinize the bids received with reference to Expression of Interest invited at present and may be invited hereinafter for the coal blocks, from administrative and financial view points and should prepare comparative chart;
>
> (ii) Based on the abovementioned comparative chart, Managing Director, MSMCL, in consultation with CEO, MIDC, Andheri, Mumbai or any other Officer directed by the Government, should prepare draft MoU/JV; and
>
> (iii) The action taken as above may be put up before the Committee. After that the decision may be taken by Committee and based on that, Managing Director, MSMCL, Nagpur should take up further action."

6. Thereafter, an advertisement was published by MSMCL in October, 2007 inviting the interested parties to attend walk-in-interview for selection as financial consultant. Consequent upon the said process, the aXYKno was appointed as a Financial Consultant of MSMCL and in that regard, final appointment letter dated 18.01.2008 was issued by A-1 Sh. D.G. Philip, MD, MSMCL containing the terms, fees and remuneration offered to the said company for rendering its services as a Financial Consultant, which was ultimately accepted by the said company. The responsibility assigned to the Financial Consultant included preparation of tender documents/Expression of Interest, evaluation of the various

proposals/bids and drafting of agreements/MoUs. A-6 Sh. R. Ramakrishnan was the CEO/Director of aXYKno.

7. After taking approval of the Board of Directors, MSMCL in its 165th meeting held on 07.02.2008 for development of all the four allocated coal blocks, including Adkoli Coal Block through Joint Venture, MSMCL invited bids on 13.02.2008 and 14.02.2008 for identification and appointment of the respective Joint Venture partner with last date of submission of bids as 14.03.2008. In the tender/bid document, it was indicated that the bid was being invited for mining and commercial use/sale of coal. The qualifying criteria/conditions for a bidder to be engaged as the Joint Venture partner of MSMCL for the development of Coal Blocks including Adkoli Coal Block were mentioned in the bid document which was prepared by the aXYKno/Financial Consultant. In conformity with the stipulation contained in the allocation letter dated 02.08.2006, the said tender/bid document incorporated a binding condition requiring the formation of a Joint Venture Special Purpose Vehicle (SPV) as a Government company wherein MSMCL was to compulsorily hold controlling stake of 51% equity on cashless basis.

8. The technical qualifications of the prospective Joint Venture partner/bidder, as contained in the bid document, were as under:-

> "(i) The bidder should have been in operation for more than 03 years, and should have minimum 03 years experience in actual mining of open cast or underground mines including survey and exploration and should be making profits in each of the immediately preceding 03 financial years;
> (ii) The bidder shall have adequate latest and advanced mining machinery and technology to execute the project in the minimum possible time limit;
> (iii) The bidder shall have adequate man-power consisting of statutorily competent, qualified & experienced persons; engineers;

geologists to successfully complete the mining activities; and also to engineer, design, supervise, test and commission the coal mining company; and

(iv) The bidder was required to furnish necessary documentary evidence in his technical bid as proof of having met the qualifying requirements mentioned above."

9. The other relevant provisions in the said bid document in relation to the responsibility of Joint Venture partner were as under:-

" **XV1 Responsibility of JV partner**

(1) JV partner shall not sell his shareholding or create any third party rights in the SPV for the term of the JV agreement.

(2) JV partner shall not pledge, mortgage or lien mark the shareholding or any rights in the SPV to any third party, lender or any entity what-so-ever."

Thus, the bid document prohibited sale or pledge of the shareholding of JV partner in SPV in favour of any third party. Significantly, the expression 'SPV' as employed in the bid document, referred to the JV company proposed to be incorporated pursuant to the JV Agreement. This is unequivocally evident from the terminology used in the bid document, wherein the proposed company has been described as the 'Joint Venture Special Purpose Vehicle' which MSMCL was in process of setting up. However, the expression 'SPV' appearing in the subsequent portion of this judgment bears a different connotation and shall be understood in the manner defined under Clause 12.3.3 of the JV Agreement dated 21.11.2009. Under the said clause, the 'SPV' refers to the Special Purpose Vehicle incorporated by JV partner for the specific purpose of carrying on the business contemplated under the JV Agreement, in which the JV partner was contractually required to maintain a minimum shareholding of 51% at all times. It is, therefore, clarified that the expression 'SPV' as used in the bid document and the expression 'SPV' as defined in the JV Agreement referred to two distinct entities and cannot be used interchangeably. Accordingly, wherever the term 'SPV' is employed in the subsequent portions of this judgment, it shall be construed exclusively in the sense assigned to it under the JV Agreement, unless otherwise expressly stated.

10. In response to the said invitation/advertisement, 13 companies including SHEL submitted their bid for Adkoli Coal Block. The SHEL submitted its technical and financial bid on 13.03.2008. All the bids, including bids for other three coal blocks were opened on 14.03.2008 at 04:00 pm in the Office of MSMCL by the Tender Committee consisting of five members, including Chairman A-2 Sh. Avinash Warjukar and A-1 Sh. D.G. Philip, MD, MSMCL. In this meeting, only earnest money deposited by the bidders was checked by Tender Committee in presence of the representatives of the bidders and it was decided that the technical details would be analyzed and examined properly (later). Further, the representatives of the bidders were informed that they have to give their presentations before technical analysis and the parties will be informed for that purpose accordingly. Even as per tender/bid document, bidders were required to make presentations. On 07.04.2008, all bidders were sent fax and given time for making presentations. However, as per the prosecution, no document was found in relation to the alleged presentations made by the bidders in the Office of aXYKno/Financial Consultant on 10.04.2008.

11. The meeting of Management Committee, MSMCL, chaired by A-2 Sh. Avinash Warjukar and attended by its three other members, namely, A-1 Sh. D.G. Philip, Dr. Anil Pophare and Sh. R. Ramakrishnan, Director,

aXYKno was also convened on 10.04.2008. As per minutes of the said meeting, A-1 Sh. D.G. Philip announced the names of the parties in the said meeting who were technically qualified for all the four coal blocks. The said minutes further reflect that out of 13 bidders for Adkoli Coal Block, 12 bidders including SHEL were declared technically qualified whose commercial bids were decided to be opened. In the said meeting, their sealed commercial envelops were opened and the equity and sweat money offered by the technically qualified bidders were recorded. In the said process, SHEL emerged as the highest (H-1) bidder for Adkoli Coal Block as it quoted the highest sweat money over and above the reserve price of Re.1 i.e. Rs.36.06 + Re.1 = Rs.37.06 per ton of the geological reserve. It was further resolved that the Managing Committee would refer the factual position in this regard to the Board of Directors of MSMCL, who after discussion, would refer the same to the High-Power Committee appointed by the Government of Maharashtra for finalization and decision. Similarly, successful bidders for the other three coal blocks were also identified during the said meeting.

12. As per prosecution, in the files received from MSMCL, an unsigned tabulation sheet was found containing the details of all the 13 bidders in respect of Adkoli Coal Block in MSMCL, which appears to have been prepared during the technical evaluation of the bidders. It contains handwritten note of A-1 Sh. D.G. Philip showing that SHEL and 07 other bidders were found to be technically ineligible. The said note indicate that the offer/bid of SHEL was considered along with M/s S.B. Engineering Associates (hereinafter referred to in short as ***'SBEA'***). The said written remark is reproduced as under:-

"Sunil High Tech + SB Engineering

a) Does not have actual mining experience
b) He is only an engineer and sub-contractor
c) He has only experience of civil construction in Mine
d) Does not have lease or sub-lease in his name
e) Does not have experience of survey and exploration – No documentary proof of third party.

"HENCE NOT ELIGIBLE"

13. The commercial bids of the technically eligible bidders that were opened and analyzed on 10.04.2008 in the meeting of Managing Committee was approved by the Board of Directors of MSMCL in its 167th meeting held on 24.04.2008. Accordingly, the Board of Directors, MSMCL approved SHEL to be the Joint Venture partner of MSMCL for development and mining of Adkoli Coal Block. Similarly, in the said meeting, three other JV partners of MSMCL were approved for three other different coal blocks. In the said meeting, the Board of Directors, MSMCL further resolved to seek approval of the High-Power Committee constituted by Government of Maharashtra. Accordingly, communications dated 16.05.2008 and 13.06.2008 were addressed by A-1 Sh. D.G. Philip to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra, Mantralaya, Mumbai requesting consideration and approval of the successful bidders in respect of the four coal blocks, including SHEL for the Adkoli Coal Block. The copies of bid documents and their terms & conditions were also submitted as Annexure-1 along with the said letters/communications.

14. On 22.07.2008, the Government of Maharashtra amended the resolution dated 01.09.2007 and revised the procedure to the extent that the Board's recommendations are to be submitted to the High-Power

Committee along with the detailed description & justification and after its approval by the High-Power Committee, it be submitted before the Infrastructure Committee of Cabinet for final decision. The High-Power Committee meeting was convened on 01.08.2008 under the Chairmanship of Hon'ble Minister (Industries & Mining) to deliberate upon the issue related to the approval of successful bidders for all the four coal blocks, including Adkoli Coal Block. In the said meeting, the High-Power Committee raised certain queries which were communicated to MSMCL vide letter dated 14.08.2008. Vide letter dated 24.08.2008, A-1 Sh. D.G. Philip replied to the said queries.

15. The High-Power Committee meeting was again convened on 20.11.2008 under the Chairmanship of Hon'ble Minister (Industries & Mining) in relation to *inter alia* agenda of the approval of the JVA partner of MSMCL for development of Adkoli Coal Block. As per the minutes of the said meeting, High-Power Committee expressed no objection in principle to the proposal concerning the Adkoli Coal Block, but directed MSMCL to prepare and submit a draft Joint Venture Agreement (JVA) for further consideration. Notably, in the said meeting, the High-Power Committee rejected the recommendation made by the MSMCL with respect to Gare Palma Sector-II Coal Block.

16. Thereafter, vide letter dated 01.12.2008 of MSMCL, SHEL was requested to submit a draft JV Agreement. As per minutes of 171st meeting of the Board of Directors of MSMCL held on 15.12.2008, MSMCL prepared a draft JV Agreement before 15.12.2008, which was enclosed therewith. Further, the minutes reflect that SHEL did not submit the draft JV Agreement till that date and it was again requested to submit the same.

The said minutes further demonstrate that in the said meeting, the Financial Consultant, aXYKno was asked to obtain draft JV Agreements from the JV partners, hear them, prepare final draft of agreement and submit it to MD, MSMCL.

17. In response to the minutes of the 171st Board meeting, the Financial Consultant, aXYKno gave its 1st draft of the Joint Venture Agreement with its email dated 19.12.2008. According to this draft, sale or pledge of shares of JV partner in the JV company to the third party was prohibited. However, share transfer of JV partner in JV company to the affiliate of JV partner was partially permitted subject to certain conditions contained therein, including a condition that the JV company shall remain a Government company and the affiliate shall accept the obligations of the transferring party under this agreement. Significantly, this provision was in consistent with the tender/bid document, which prohibited the transfer of shares of JV partner in JV company in favour of third party only but did not impose any restriction on transfer of shares of JV partner in JV company to its affiliates or SPV formed for the specific purpose of carrying on the business as per the agreement.

18. The Financial Consultant, aXYKno submitted its second draft on 12.01.2009 with similar terms and conditions as contained in its first draft except the following relevant modifications:-

(i) It introduced a Clause 6.4.1 under the heading of 'Reserved Matters' to the effect that the pledge of shares of JV partner in JV company in favour of third party is permissible subject to the approval of at least one Director nominated by the MSMCL and at least one Director nominated by JV partner;

(ii) It introduced another Clause 12.4.3 under the heading of 'Share Transfer to Affiliates' a provision that JV partner may transfer its shares to an SPV formed for the specific purpose of carrying on the business as per this agreement and the said SPV will be required to execute a Deed of Adherence; and

(iii) 'Agreed Proportions' means the ratio which the Share holdings of MSMCL and JV partner (together with that of their respective associates and affiliates) bear in the equity share capital to each other shall be in proportion of 51:49.

19. Subsequently, on 19.01.2009, the Financial Consultant, aXYKno submitted its third and last draft of JV Agreement which is exactly same as its first draft dated 18/19.12.2008. Thus, in the third draft, the Financial Consultant, aXYKno deleted the changes introduced by it in its second draft dated 12.01.2009.

20. The abovementioned third draft of the JV Agreement was considered by the Board of Directors, MSMCL in its 172nd meeting held on 21.01.2009 under the Chairmanship of A-2 Sh. Avinash Warjukar and its other members, including A-1 Sh. D.G. Philip, MD, MSMCL. As the minutes of the said meeting, the aforementioned draft JV Agreement was discussed paragraph wise and necessary amendments were made in it. The draft of the agreement was finalized and unanimously approved. In the meeting, it was decided that copy of the approved draft be sent to the Government for final approval. Accordingly, on 23.01.2009, the draft JV Agreement approved by the Board of Directors, MSMCL was sent to High-Power Committee for its approval. The said draft JV Agreement omitted the prohibition of sale/transfer of the shares of the JV partner in JV

company to the third party and in its Clause 12.4 permitted the same subject to the condition contained under the said clause. The said stipulation was in contradiction with the bid document and the draft of JV Agreement submitted by the Financial Consultant, aXYKno. In consistence with the bid document, Clause 12.2 of the said draft JV Agreement prohibited pledge of the shareholdings of the JV partners in JV company to any third party. However, at the same time, its Clause 6.4.1 with title 'Reserved Matters' permitted pledge of shares by JV partner in JV company in favour of any third party with the approval of one Director nominated by the MSMCL and one Director nominated by SHEL.

21. The said draft adopted, *in toto,* the provisions contained in the second draft of the Financial Consultant, aXYKno dated 13.01.2009, in so far as they related to the transfer of shareholdings of JV partner to its affiliates and the said provisions were incorporated in its Clause 12.3. Further, the said JV Agreement further stipulated that the aggregate shareholdings of MSMCL and SHEL, together with that of their respective associates and affiliates, in the JV company would at all times remain in the ratio of 51:49 i.e. 51% and 49% respectively. Pertinently, at the cost of repetition, it is reiterated that the aforementioned provisions in relation to transfer of shares of SHEL to its affiliates or SPV formed for the specific purpose of carrying on the business as per the JV Agreement, were not in contradiction with the tender/bid document as no such prohibition or restriction was contained in the tender/bid document.

22. The minutes of High-Power Committee meeting held on 30.01.2009 have not been placed on record. However, minutes of High-Power Committee meeting held on 09.04.2009 and the letter dated 31.01.2009

written by A-1 Sh. D.G. Philip to the Principal Secretary, Department of Industries, Energy and Labour, Government of Maharashtra finds mention about the High-Power Committee meeting held on 30.01.2009. As per the said documents, it can be conclusively inferred that in the meeting held on 30.01.2009, the High-Power Committee directed that the proposal regarding the draft JV Agreement should be resubmitted for consideration to the High-Power Committee to resolve the views of the different departments.

23. Further, the said letter of A-1 Sh. D.G. Philip dated 31.01.2009 was written with reference to the High-Power Committee meeting held on 30.01.2009 in respect of draft JV Agreement qua Agarzari Coal Block for M/s Adani Enterprises, proposed JV partner, as it had raised certain issues, including its right to pledge its shareholdings in JV company in the draft JV Agreement. Significantly, the draft JV Agreement that was sent on 23.01.2009 was common for the Adkoli as well as Agarzari Coal Block. In the said letter, A-1 Sh. D.G. Philip made a comment in regard to issue at Srl. No.10 raised by M/s Adani Enterprises and its relevant portion is reproduced as under:-

> "The Board in its joint intellectual capacity has considered all the aspects of the say of the J.V. partners and has incorporated all those that are in conformity with the tender terms and conditions. Those aspects that are not in conformity with the tender documents were not incorporated in the Joint Venture Agreement. However, the High-Power Committee may like to consider the say of the J.V. Partner and take suitable decision as seem fit."

24. The 173rd meeting of Board of Directors, MSMCL was held on 25.02.2009. As per the minutes of the said meeting, in Subject No. 13 with title 'Progress in respect of Joint Venture Project Agreement of Agarzari,

Warora and Marki-Zari-Jamni-Adkoli Coal Blocks', it was recorded that the High-Power Committee meeting held on 13.02.2009 at Mumbai directed Managing Director, MSMCL to obtain comments of financial advisor and to submit them to High-Power Committee. It was further recorded that accordingly, financial advisor prepared its comments and same were placed before the Board for approval. They were discussed in detail and were approved with some amendments. Thereafter, it was resolved that the said approved amended draft of comments be placed before the High-Power Committee. The comments of the Financial Consultant, aXYKno approved in the 173rd meeting of Board of Directors, MSMCL were communicated by A-1 Sh. D.G. Philip, MD, MSMCL to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra vide letter dated 26.02.2009. Significantly, A-1 Sh. D.G. Philip retired as MD, MSMCL on 28.02.2009.

25. On 09.04.2009, the High-Power Committee, in its meeting under the Chairmanship of Chief Secretary, discussed in detail the draft of the JV Agreement. In the said meeting, a presentation was made by the Financial Consultants Sh. Ramakrishna and Sh. Hetal of aXYKno on the entire bidding process for the selection of the JV partner for the development of the coal blocks allotted to the MSMCL. The presentation covered the matters, including background of the tender process.

26. In subsequent meeting of the High-Power Committee under the Chairmanship of the Hon'ble Chief Minister, Government of Maharashtra held on 04.05.2009, the JV Agreement was approved and it was resolved that the proposal be put up before the Infrastructure Committee for final approval. Significantly, in relation to the impugned conditions of sale and

pledge of the shareholdings of JV partner (SHEL) in JV company to the third party, no changes/modifications were made in the said approved JV Agreement, *vis-a-vis* the draft JV Agreement sent by A-1 Sh. D.G. Philip, MD, MSMCL along with his letter dated 23.01.2009.

27. On 16.06.2009, Sh. A.M. Khan, Principal Secretary (Industries) prepared a detailed Cabinet note/proposal to be put up before the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra for approval of the draft JV Agreement with the proposed JV company (partner), in accordance with the recommendations made by High-Power Committee for development of mineral, its usage and sales in the coal blocks allotted to the MSMCL, including Adkoli Coal Block. In Para No.5 of the said detailed note, the main conditions as per the tender/bid document dated 14.02.2008 were delineated and in its Para No.8, the salient features of the proposed JV Agreement were discussed. The same was approved by the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra in its meeting held on 18.06.2009. Thus, the Infrastructure Committee also approved the draft of JV Agreement sent by A-1 Sh. D.G. Philip, MD, MSMCL along with his letter dated 23.01.2009 without any change in the stipulations related to sale and pledge of the shares of JV partners in JV company to the third party and their transfer to its affiliates.

28. The said approval was communicated by the Government of Maharashtra to the MSMCL vide letter dated 01.08.2009. Accordingly, Sh. N.K. Sudhanshu, the then MD, MSMCL issued letter of intent to SHEL.

29. Thereafter, MSMCL proposed certain modifications in the draft JV Agreement approved by Infrastructure Committee, Government of Maharashtra and in that regard, a letter was written by Sh. N.K. Sudhanshu, the then MD, MSMCL to the Government of Maharashtra. The Government of Maharashtra, vide its letter dated 23.10.2009 to MD, MSMCL, communicated that it accepted total 12 proposed modifications as detailed in chart annexed with the said letter.

30. The final JV Agreement incorporated the aforementioned 12 modifications and it was finally executed between MSMCL and SHEL on 21.11.2009. The 02 out of the said 12 modifications are relevant for the adjudication of the present case and the same are reproduced as under:-

(i) 'except as provided in this agreement' was inserted at the end of Para No.12.2 regarding right to pledge the shares of JV partner in JV company; and

(ii) In the end of the Para No.12.3.3, under the heading of 'Share transfer to affiliates', the following sentences were inserted:-

> 'It will however be mandatory for the Party No.2 to maintain atleast 51 percent share in the SPV at all times during the period of the agreement. In case of consortium, the consortium partners should have a minimum cash equity holding of 5% in the SPV'.

31. In accordance with Clause 1 of JV Agreement dated 21.11.2009, a JV company, namely, M/s MSMCL Adkoli Natural Resources Limited was incorporated between MSMCL and SHEL on 18.02.2010.

32. M/s Sunil Hi-Tech Energy Private Limited was incorporated on 07.02.2008 by the promoters of SHEL which was later decided to be used

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as SPV as per the clause 12.3.3 of JV Agreement dated 21.11.2009. Further, M/s SHEL Investment Consultancy Services Limited was incorporated on 20.08.2009 as an affiliate of SHEL, which was later used for transfer of shareholdings of SHEL in JV company in accordance with Clause 12.3 of the JV Agreement dated 21.11.2009.

33. The Jaypee Development Corporation Limited *(hereinafter referred to in short as 'JDCL')* was subsidiary of Jaypee Infra Ventures and it was incorporated on 05.12.2007.

34. On 31.10.2009 i.e. before the execution of JV Agreement dated 21.11.2009, a Term Sheet was signed between SHEL and Jaiprakash Associates Limited. This Term Sheet provided the indicative terms and conditions to form the basis of discussions for the proposed acquisition of shares of Sunil Hi-Tech Energy Private Limited (SPV) by Jaiprakash Associates Limited or its associates or affiliates or nominees (JDCL is associate/affiliate of Jaiparkash Associates Limited). It further provided that M/s Sunil Hi-Tech Energy Private Limited is a private limited company owned/to be owned entirely by SHEL. It further provided that M/s Sunil Hi-Tech Energy Private Limited will be a Special Purpose Vehicle (SPV) formed as holding/investment company to hold 49% stake (of the JV partner) in the JV company to be incorporated in joint venture with MSMCL. The Term Sheet noted that considering the requirement of MSMCL stipulated in the draft JV Agreement in case a Special Purpose Vehicle (SPV) of SHEL is made a JV partner (instead of SHEL itself) in the JV company, SHEL shall continue to hold at least 51% share in the Special Purpose Vehicle (SPV) at all times during the period of the JV Agreement and Jaiprakash Associates Limited intends to acquire 49% of

the equity share capital of SHEL in the JV company having a face value of Rs.10 each (Rupees Ten only) from SHEL. The purchase consideration towards acquiring 49% of the paid-up share capital of the company was fixed as Rs.15 crores. On 05.11.2009, a sum of Rs.5 crores was credited by Jaiprakash Industries Limited in the account of SHEL.

35. On 25.02.2010, a Deed of Adherence was executed between MSMCL, SHEL and M/s Sunil Hi-Tech Energy Private Limited whereby entire 49% shareholding of SHEL in JV company was transferred in favour of M/s Sunil Hi-Tech Energy Private Limited, the SPV. Simultaneously, M/s Sunil Hi-Tech Energy Private Limited (SPV) agreed to become bound by the JV Agreement in the same manner as it had been an original party to the agreement as the Existing Shareholder (SHEL). Consequently, the SPV became the successor-in-interest to SHEL under the JV Agreement.

36. On 23.03.2010, another Deed of Adherence was executed between SHEL (as existing shareholder), SHEL Investment Consultancy Services Limited (as new shareholder), Sunil Hi-Tech Energy Private Limited (SPV) (as the 'company'), MSMCL and MSMCL Adkoli Natural Resources Limited (Joint Venture company). This deed recorded that the existing share holder (SHEL) has entered into a Joint Venture Agreement with MSMCL relating to development and operation of Adkoli Coal Block through Joint Venture Company, MSMCL Adkoli Natural Resources Limited. It also recorded that the existing shareholder (SHEL) and company (SPV) have entered into a Deed of Adherence with MSMCL on 25.02.2010 wherein all the rights and obligations of the existing shareholder as the JV partner of MSMCL are transferred to the company (being a SPV of the existing shareholder) as permitted under Clause 12.3.3

and Clause 14.5 of the Agreement. This Deed also recorded that the company being SPV promoted by the existing shareholder, the existing shareholder has to maintain at least 51% shareholding in the SPV at all times during the period of the JV Agreement as per Clause 12.3.3. The MSMCL, vide its letter dated 30.03.2010, permitted existing shareholder to hold such 51% shares in the company along with its affiliate companies. The Deed recorded that the new shareholder (SHEL Investment Consultancy Services Limited) proposes to purchase 71,04,240 shares of the M/s Sunil Hi-Tech Energy Private Limited (SPV) (constituting 37.50% of shareholding of SHEL of JV company held in SPV) from existing shareholder (SHEL) for a value of Rs.17 each aggregating to Rs.12,07,72,080/- (Rupees Twelve Crores Seven Lakhs Seventy Two Thousand and Eighty Only). Simultaneously, M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) agreed to become bound by the JV Agreement in the same manner as it had been an original party to the agreement as the Existing Shareholder (SHEL).

37. After the aforementioned two transactions dated 18.02.2010 and 23.03.2010, 37.50% of the shares of M/s Sunil Hi-Tech Energy Private Limited (SPV) were owned by M/s SHEL Investment Consultancy Services Limited and 62.50% of the shares were held by SHEL. It is significant to note that the aforementioned entire issued share capital of SPV represented the 49% of the equity stake in the JV company which had earlier been held by SHEL alone (JV partner).

38. In the 181st meeting of the Board of Directors of MSMCL held on 23.12.2010, it was resolved that the transfer of 49% (including 5% shares of Technical Partner) equity shares in SPV Sunil Hi-Tech Energy Private

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Limited by SHEL to Jaypee Group be approved, subject to the condition that the transfer and transferee company shall execute necessary undertaking, Deed of Adherence and subject to the verification of the technical competency of the transferee company by the Managing Director.

39. Pursuant to the approval of the Board of Directors, MSMCL, 49% shares of SHEL in JV company held by SPV were sold to JDCL on 21.04.2011.

40. Further, on the same date i.e. on 21.04.2011, Share Pledge Agreement was also executed between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL. As per this agreement, M/s SHEL Investment Consultancy Services Limited, which was holding 71,04,240 shares of M/s Sunil Hi-Tech Energy Private Limited (SPV), equal to 37.50% of the total equity were pledged to JDCL along with all rights, including voting rights as a security towards the subscription of 1,200 optionally convertible debentures of Rs.1 lakh each for a total consideration of Rs.12 Crores. It is alleged that on account of Deeds of Adherence dated 25.02.2010 and 23.03.2010, both the pledger [M/s SHEL Investment Consultancy Services Limited (SHEL affiliate)] and pledgee (JDCL) were bound by JV Agreement dated 21.11.2009. However, the said pledge of shares was not in terms of its Clause 6.4.1(e) in as much as it was not with the approval of one Director of MSMCL and one Director of SHEL.

41. The Clause 12.5 of the JV Agreement provides for consequences of sale of shares in contravention of the Agreement and the said clause is as under:-

> "12.5 Consequences of Sale of Shares in contravention of the Agreement.
> If any person purports to acquire any of the Shares, or any interest therein, in a manner not specifically permitted by this Agreement (the "Default Shares"), whether by operation of law or by voluntary act or otherwise, the Remaining Party or any person(s) nominated by the Remaining Party shall have the right, but not the obligation, to purchase any or all of the Default Shares, purported to have been thus acquired, at lower of (i) the Fair Value minus 10% (ten) thereof, or (ii) the apparent consideration paid thereof. However, the failure of the Remaining Party to purchase the Default Shares at lower of the Fair Value minus 10% (ten) thereof or the apparent consideration paid therefore shall not be deemed or construed to validate the purported transfer of the Default Shares in violation of this Agreement, which purported transfer shall be null and void. As used in this Clause 12.7 "Fair Value" shall mean Fair Value of Shares in question determined by an independent advisor selected by the Board. Fair Value so determined shall be final, conclusive, and binding on the JVC, the Parties and the person(s) purporting to have acquired the Default Shares in violation of this Agreement, and their respective successors in interest."

42. A Debenture Subscription Agreement dated 31.03.2010 was executed between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL, whereby JDCL subscribed to 1,200 convertible debentures issued by the SHEL affiliate having a face value of Rs.1 lakh each and accordingly, paid the consideration of Rs.12 crores to M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) on 21.04.2011. Significantly, this transaction is unrelated to the JV Agreement and the prosecution/CBI has failed to disclose what offence, if any, was committed by either of the parties owing to the said transaction.

43. In terms of Clause 3.8A of JV Agreement, following amount was received by MSMCL from SHEL:-

Srl. No.	Date of Payment	Amount in Rupees	Remarks
1	28.04.2008	11,25,00,000/-	15% of Sweat Money Paid
2	18.08.2009	7,40,00,000/-	10% of Sweat Money Paid
3	15.03.2010 to 27.04.2011	42,72,085/-	Amount spent by M/s. MSMCL and later on reimbursed by M/s SHEL.
4	29.07.2010 to 31.03.2014	9,62,14,574/-	Amount received as interest on deferred sweat money.
	Total	28,69,86,659/-	

44. The following amount was received by SHEL and its subsidiary/ associates from JDCL on account of purchase of shares, subscription to the debentures and unsecured loan:-

Srl. No.	Date of Payment	Amount in Rupees	Remarks
1	05.11.2009 to 21.04.2011	15,00,00,000/-	On account of sale of 91, 72,000 shares of SPV i.e. M/s Sunil Hitech Energy Pvt. Ltd. (49% shareholdings)
2	21.04.2011	12,00,00,000/-	Issue of 1200 debentures by M/s SHEL affiliate i.e. M/s SHEL Investment Consultancy (P) Ltd.
3	23.05.2011 to 26.05.2015	12,99,58,000/-	Unsecured loan on account of payment of interest on deferred sweat money able to M/s MSMCL.
	Total	39,99,58,000/-	

45. According to charge-sheet, JDCL had also purchased 35 lakh shares of M/s Gangakhed Sugar and Energy Private Limited (subsidiary of SHEL) at face value of Rs.10/- with premium of Rs.90/- per share (total value Rs.100/-per share) for Rs.35 crores. Notably, this transaction also has no relation or connection to the JV Agreement. Further, the prosecution/CBI has also failed to disclose what offence, if any, was committed by either of the parties on account of the said transaction.

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46. Therefore, in total, Rs.74,99,58,000/- was received by SHEL or its subsidiary company from JDCL on account of purchase of shares, issuance of debentures and unsecured loans.

II. ALLEGATIONS IN THE FIR IN NUTSHELL

47. The allegations in this FIR, bereft of the facts of the case which have already been detailed hereinabove, are as follows:-

(i) SHEL did not fulfill the technical evaluation criteria as per the bid document in as much as it did not have the actual mining experience in the open cast or underground mining operations either on standalone basis or even on the credentials of their consortium partner SBEA. However, the Tender Committee of MSMCL consisting of A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL treated SHEL as technically qualified resulting in opening of its financial bid along with the financial bids of other technically qualified bidders for Adkoli Coal Block. Eventually, on the basis of the highest sweat money quoted by SHEL, their bid was treated as H-1 (successful) and they were issued letter of intent after approval of the High-Power Committee of the Government of Maharashtra. Consequently, a JV Agreement was entered into between MSMCL and SHEL on 21.11.2009 to undertake development and operation of the Adkoli Coal Block by incorporation of JV company, which was later incorporated on 18.02.2010 by the name and style of M/s MSMCL Adkoli Natural Resources Limited; and

(ii) In the process of evaluation of the bids, a tabulation sheet/ comparative chart was prepared wherein A-1 Sh. D.G. Philip, the then MD, MSMCL in his own hand written remark mentioned (in concerned file) that SHEL was ineligible in qualifying the technical criteria as mentioned in bid documents, on account of their not having any experience in mining activities. Despite this the Tender Committee at a later stage, in criminal conspiracy with SHEL, not only qualified them technically, but also by abusing their official position as public servants, caused undue pecuniary advantage to them, by opening their financial bid which eventually resulted in SHEL becoming the H-1 bidder and being awarded with the contract.

48. Thus, the only allegation in the FIR relates to declaring technically unqualified SHEL as a technically qualified bidder by the Tender Committee of MSMCL consisting of A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL, which finally resulted in the award of contract to SHEL for development and operation of the Adkoli Coal Block in partnership with MSMCL, thereby causing undue pecuniary advantage to SHEL.

III. INVESTIGATION

49. During investigation, IO examined the relevant witnesses, including officials of Ministry of Coal; officials of State Government of Maharashtra; officials of Department of Industries, Energy & Labour, Government of Maharashtra; officials of Directorate of Geology and Mining, Government of Maharashtra; officials of Mineral Exploration and

Consultancy Limited (MECL), Nagpur; officials of Directorate General of Mine Safety, Dhanbad; officials of CMPDIL, Jharkhand; officials of Registrar of Companies, Mumbai/Delhi/Uttar Pradesh; officials of Maharashtra Industrial Development Corporation (MIDC), Maharashtra; officials of Coal India Limited (CIL); Directors/officials of MSMCL; officials and bankers of SHEL/aXYKno/Jaypee Group of Companies; concerned CBI officials; and other relevant witnesses. He also seized the relevant documents, including files of the Ministry of Coal, State Government of Maharashtra, MSMCL, SHEL, aXYKno, Jaypee Group of Companies related to the allocation of Adkoli Coal Block to MSMCL; the files concerning the process that led to the execution of JV Agreement between MSMCL & SHEL; and the files, statement of bank accounts and other financial documents in relation to the financial transactions that took place between MSMCL, SHEL and its affiliates, M/s Sunil Hi-Tech Energy Private Limited (SPV) and Jaypee Group of Companies in connection to the JV Agreement.

IV. THE ALLEGATIONS IN THE CHARGE-SHEET AS OUTCOME OF INVESTIGATION

50. In brief, the allegations in the charge-sheet are as follows:-

(i) The aXYKno was not suitable to be appointed as financial expert but it was appointed by MSMCL as its Financial Consultant by adopting an opaque procedure, it was appointed without approval of the State Government of Maharashtra and that too at exorbitant fees;

(ii) A-1 Sh. D.G. Philip, the then MD, MSMCL while evaluating the technical bids of the bidders for Adkoli Coal Block, informally concluded on the tabulated sheet/chart of the bidders that SHEL was not technically eligible. However, despite that in the tender committee meeting of MSMCL held on 10.04.2008, he announced technically ineligible company SHEL as technically eligible thereby paving the way for opening of its commercial bid and ultimately leading to execution of JV agreement dated 21.11.2009 between MSMCL and SHEL for development of Adkoli Coal Block after its approval by the High Power Committee and Infrastructure Committee, Government of Maharashtra. In this regard, it is alleged that A-1 Sh. D.G. Philip, the then MD, MSMCL in criminal conspiracy with A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL, SHEL, its Director Sh. Sunil Ratnakar Gutte, Financial Director aXYKno and its Director Sh. R. Ramakrishnan with a view to cause undue pecuniary advantage to SHEL, qualified it technically though it was not earlier found to be eligible;

(iii) Pursuant to the criminal conspiracy amongst all the 06 charge-sheeted accused persons, in contravention of the terms and conditions in bid document prohibiting sale and pledge of shareholdings of the JV partner in JV company to the third party, the JV Agreement dated 21.11.2009 permitted sale as well as pledge of the shareholdings of SHEL in JV company to the third party with conditions contained therein. It is alleged that the said modification or deviation in the terms of JV Agreement *vis-a-vis* bid document was done with a view to cause undue pecuniary advantage to SHEL;

(iv) SHEL and its affiliate (M/s SHEL Investment Consultancy Services Limited) in SPV (M/s Sunil Hi-Tech Energy Limited) derived undue pecuniary benefit by selling and pledging its shareholdings in JV company (M/s MSMCL Adkoli Natural Resources Limited) to JDCL either pursuant to the impermissible terms and conditions incorporated in JV Agreement in violation of the bid document or in contravention of the other terms and conditions of JV Agreement; and

(v) It is alleged that accused persons entered into a criminal conspiracy with the object of cheating MSMCL by securing appointment of aXYKno as Financial Consultant for MSMCL, at an exorbitant cost, in an opaque manner, despite the fact that the said company was ineligible to be appointed as Financial Consultant; awarding the tender in favour of SHEL as JV partner to carry out, survey, exploration and mining activities in the Adkoli Coal Block despite the fact that SHEL was ineligible to bid; permitting sale/pledge of shares in the JV Agreement contrary to the terms and conditions of the bid document; and sale and pledge of shares of SHEL and M/s SHEL Investment Consultancy Services Limited respectively in favour of JDCL, contrary to the bid document/JV Agreement and thereby making exorbitant profits running into several crores.

V. ORDER ON COGNIZANCE

51. Vide order dated 02.11.2021, Ld. Predecessor of this Court took cognizance for the offences punishable under Section 120B read with

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Section 420 IPC and Section 13(2)(d) of the PC Act and substantive offence under Section 420 IPC against all the six accused persons i.e. four natural accused persons and two juridical entities. Further, cognizance for the offences punishable under Section 13(2) read with Section 13(1)(d) of PC Act was taken against A-1 Sh. D.G. Philp, the then MD, MSMCL and A-2 Sh. Avinash Manohar Rao Warjukar, the then Chairman, MSMCL.

VI. CHARGE

52. In compliance of Section 207 CrPC, copies of charge-sheet and documents annexed therewith were supplied to all the six summoned accused persons. Thereafter, arguments on charge were heard.

53. Vide detailed order on charge dated 25.05.2023, A-1 Sh. D.G. Philip, the then MD, MSMCL was directed to be charged for the offence of criminal misconduct by public servant punishable under Section 13(1)(d) of PC Act on two counts, first, declaring technically ineligible bidders, including SHEL as eligible and second, for proposing clauses in JV Agreement permitting sale, transfer or pledge of shares by JV partner (SHEL) contrary to terms and conditions of bid document enabling SHEL to sell 49% of its shares in SPV (M/s Sunil Hi-Tech Energy Private Limited) in favour of JDCL for Rs.15 crores, resulting in wrongful gain to SHEL and thereby obtaining valuable thing or pecuniary advantage to SHEL without any public interest. A-2 Sh. Avinash Warjukar was also directed to be charged for the offence of criminal misconduct by public servant punishable under Section 13(1)(d) of PC Act only on the second count as detailed hereinabove. Further, A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL were

also directed to be jointly charged for the offences of criminal conspiracy for the above detailed offence of criminal misconduct by public servant.

54. Vide said order, it was also concluded that there is sufficient material to frame charge against SHEL for the offence punishable under Section 120B read with Section 420 IPC read with Section 13(1)(d) PC Act for entering into criminal conspiracy with accused public servants, namely, A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL for proposing the JV Agreement in such a manner which enabled SHEL to sell its shares in SPV (M/s Sunil Hi-Tech Energy Private Limited) and pledge shares of its affiliate (M/s SHEL Investment Consultant Services Limited) in SPV (M/s Sunil Hi-Tech Energy Private Limited) to JDCL. Further, it was concluded that there is sufficient material on record to frame charge for the offence of cheating punishable under Section 420 IPC against SHEL for cheating MSMCL by pledging shares of its affiliate (M/s SHEL Investment Consultant Services Limited) without following the procedure provided in Para No.6.4.1(e) of JV Agreement dated 21.11.2009. However, the said company was directed to be discharged under Section 32A of the Insolvency and Bankruptcy Code, 2016 as it was under liquidation.

55. Furthermore, the remaining three accused persons, namely, Sh. Sunil Ratnakar Gutte, one of the Directors of SHEL; aXYKno; and Sh. R. Ramakrishnan, the then Chief Executive Officer/Director of aXYKno were discharged for all the alleged offences against them.

VII. THE CRUX OF ORDER ON CHARGE DATED 25.05.2023

56. The findings of order on charge dated 25.05.2023 are summarized as under:-

(i) No illegality was found in the appointment of Financial Consultant, aXYKno by MSMCL or in the alleged exorbitant fees paid by MSMCL to the said Financial Consultant towards the services rendered by it. Thus, all the accused persons were discharged in relation to the said allegations;

(ii) In respect of the allegations relating to declaring technically ineligible SHEL to be technically eligible bidder, the grave suspicion arose only against A-1 Sh. D.G. Philip, the then MD, MSMCL to the effect that his said act was criminal misconduct for being without any public interest. Significantly, it was held that there is no grave suspicion to conclude that the said alleged criminal misconduct of the public servant A-1 Sh. D.G. Philip was in connivance with any other person, including SHEL and accordingly, all the remaining accused persons were discharged on the said count;

(iii) In respect of the allegation in relation to incorporation of the clauses related to sale, transfer or pledge of shareholdings of JV partner (SHEL) in JV company in JV Agreement dated 21.11.2009 contrary to the bid document dated 14.02.2008, it is concluded that *prima facie* there is sufficient material on record giving rise to grave suspicion that A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL despite being fully aware of the terms and conditions in the bid document, they approved JV Agreement in contravention therewith, which ultimately resulted in execution of JV Agreement between MSMCL and SHEL on 21.11.2009 with the terms and conditions relating to sale, transfer or pledge in contravention to the bid document. It was held that *prima faice* there is sufficient reason to presume that SHEL was the beneficiary of the said conduct and therefore, SHEL along with the said two public servants are liable to be charged for the offence of criminal conspiracy to commit the offence of criminal misconduct by public servants without public interest. The remaining three accused persons were directed to be discharged for the said allegations;

(iv) There was no illegality in the sale of 49% of the shareholdings of SHEL in SPV (M/s Sunil Hi-Tech Energy Private Limited) to JDCL as it was permissible as per the JV Agreement. However, the said sale became contractually permissible only on account of incorporation of the stipulation in JV Agreement contrary to the bid document for which charge of criminal misconduct by public servants and its criminal conspiracy had been directed to be framed against A-1 Sh. D.G. Philip, the then MD, MSMCL, A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL and SHEL;

(v) The pledge of shares of by the affiliate (M/s SHEL Investment Consultant Services Limited) in the SPV (M/s Sunil Hi-Tech Energy Private Limited) without following recourse to clause 6.4.1(e) of JV Agreement i.e. by the approval of one Director of MSMCL and one Director of SHEL was *prima facie* presumed to by an offence of cheating punishable under Section 420 IPC in as much as the SPV and affiliate both were bound by the terms and conditions of JV Agreement by virtue of Deed of Adherences dated 25.02.2010 and 23.03.2010. It was *prima facie* concluded that MSMCL would not have entered into JV Agreement with SHEL, if it was not induced to believe that SHEL, its SPV or affiliate will not pledge shares without following recourse to clause 6.4.1(e) of JV Agreement;

(vi) It concluded that *prima facie* there is sufficient material available on record to presume that the SHEL had intention to cheat from beginning as it had signed term sheet agreement to sell 49% of its shares in SPV in favour of Jaypee Corporation Limited even before it entered into JV Agreement with MSMCL, which further indicates that it had no intention to carry out the mining of Adkoli Coal Block as it had received Rs.5 crore from Jaypee Associates Limited even before signing of the JV Agreement. Accordingly, it was concluded that *prima facie* there is sufficient material available on record to charge SHEL for the offence of cheating punishable under Section 420 IPC as well as for criminal conspiracy with the two public servants i.e. A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL;

(vii) As SHEL was under liquidation, accordingly, as per Section 32A of Insolvency and Bankruptcy Code, 2016, the said company was directed to be discharged for the aforementioned offences; and

(viii) The allegations of *quid pro quo* or any ulterior consideration including illegal gratification to the accused public servants by any person for commission of the alleged offence did not find favour with the Court as it concluded that *prima facie* there is no credible material available on record in that regard.

57. During admission/denial of documents under Section 294 CrPC, total 505 prosecution documents (D-1 to D-505) were put to both the accused persons and they admitted certain prosecution documents, as per

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their replies to the application of the prosecution under Section 294 CrPC dated on 02.08.2023. The admitted documents are Ex.P-1 to Ex.P-77.

VIII. PROSECUTION EVIDENCE

58. In order to prove its case, the prosecution has examined total 21 witnesses. The gist of all the prosecution witnesses is incorporated in the following chart.

Number of Prosecution Witness	Name	Designation	Substance of the Testimony
PW-1	Ms. Deepali Sayaji Patil	The then Desk Officer (Ind.-9) in the Department of Industries, Energy and Labour, State Government of Maharashtra.	She proved the grant of sanction for prosecution of the accused public servant, namely, A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL.
PW-2	Sh. Satish Gavai	The then Addl. Chief Secretary (Industries) in the Department of Industries, Energy and Labour, State Government of Maharashtra.	He proved the grant of sanction for prosecution of the accused public servant, namely, A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL.
PW-3	Sh. Kumar Laxmikant	The then Deputy Chief Manager in Corporate Legal Department, Bennett Coleman & Company Limited.	He proved the advertisement dated 14.02.2008 published by MSMCL in Times of India, Economics Times for inviting bids of the proposed JV partners for development of Adkoli Coal Block in partnership with MSMCL.
PW-4	Sh. Sanjay Shankarrao Ingle	The then Deputy Secretary in the Department of Industries, Energy	In response to the letters of the IO during the years 2016 to 2018, he handed over five files available in the Department of Industries,

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		and Labour, State Government of Maharashtra.	Energy and Labour, Government of Maharashtra in relation to allocation of coal blocks to MSMCL and formation of Joint Ventures by MSMCL for the development of allocated coal blocks. He also provided the details and documents of relevant communication between the MSMCL and the Department of Industries, Energy and Labour, Government of Maharashtra. He also provided the details and minutes of the relevant High-Power Committee meetings.
PW-5	Sh. Raj Kishan Vats	The then Under Secretary working at the Prosecution Desk, DoPT, Ministry of Home Affairs.	He proved the grant of sanction for prosecution of the accused public servant, namely, A-1 Sh. D.G. Philip, the then MD, MSMCL.
PW-6	Sh. R. Parthasarthy	Preliminary Enquiry Officer, CBI.	He proved the details of Preliminary Enquiry of this case that led to registration of this FIR on the basis of his complaint. He also gave the details of all the documents/files collected by him during the Preliminary Enquiry and which were later handed over by him to the IO of this case.
PW-7	Sh. Premchand Y. Tembhare	General Manager (Operations), MSMCL since April, 2010.	In response to the letters of the IO during the years 2015 to 2018, he handed over the requisite files available in the MSMCL in relation to allocation of coal blocks to MSMCL, appointment of financial consultant, process of bidding for JV partner, process of execution of JV agreement

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			between SHEL and MSMCL, the minutes of the relevant meetings of Board of Directors, MSMCL, the minutes of the Tender Committee meeting, minutes of the Management Committee meeting and other relevant documents related to the present case including documents related to Adkoli Coal Block.
PW-8	Sh. Surya Narayan Jha	The then Under Secretary, dealing with Establishment Matters and Prosecution Desk, DoPT, Ministry of Home Affairs.	He proved the grant of sanction for prosecution of the accused public servant, namely, A-1 Sh. D.G. Philip, the then MD, MSMCL.
PW-9	Sh. U.S. Singh	Senior Manager (Mining) (Retd.), Mineral Exploration Corporation Limited (MECL).	He is an expert in the Mining Department. He compared the requisite technicality eligibility criteria for a bidder contained in the bid document dated 14.02.2008 with the bid documents of SHEL. Based upon the said comparison, he opined that SHEL did not seem to be technically eligible/competent as per the bid documents.
PW-10	Sh. Manish Uniyal	The then Section Officer in CA-I Section, Ministry of Coal.	In response to the letters written by the IO, he provided the files and documents pertaining to Adkoli Coal Block available in the Ministry of Coal, Government of India to the IO.
PW-11	Sh. Suresh Kumar Sharma	Inspector/Malkhana In-Charge (Retd.), EO-II Branch, CBI.	He gave the details of the two files handed over by him to the IO of this case. The said files were earlier received by him from Ministry of Coal and were

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			deposited in the Malkhana of CBI.
PW-12	Sh. Gajanan Chandrabhan Bokde	The then Chief Accounts/Finance Officer, MSMCL, Nagpur.	In response to the letters of the IO during the year 2016, he handed over the requisite files available in the MSMCL in relation to allocation of coal blocks to MSMCL, appointment of financial consultant, process of bidding for JV partner, process of execution of JV agreement between SHEL and MSMCL, the minutes of the relevant meetings of Board of Directors, MSMCL, the minutes of the Tender Committee meeting, minutes of the Management Committee meeting and other relevant documents related to the present case including documents related to Adkoli Coal Block.
PW-13	Sh. Vijay Verma	Senior Scientific Officer, Grade-I, CFSL, CBI, Delhi.	He is an handwriting expert. He compared the admitted specimen handwriting of A-1 Sh. D.G. Philip with his purported handwriting on the tabulation chart found available at MSMCL in the files of the bidding process of JV partner for MSMCL. As per his report, he opined and attributed responsibility of A-1 Sh. D.G. Philip to the said writing on the tabulation chart.
PW-14	Sh. Darshan Bhalekar	The then Officer in Shankar Nagar Branch, Circle Office, Canara Bank, Nagpur.	He participated as a witness in the raid conducted by the IO in the premises of SHEL at Nagpur and witnessed the files related to the present case seized by the IO. He gave details of the files seized during the said raid.
PW-15	Sh. Amit Kumar	Senior Assistant Officer in Jaiprakash	In response to the letters of the IO during the year 2016, Sh. S.K.

		Power Venture Limited, New Delhi.	Thakral, official in Jaypee Group, handed over the requisite files available in the said office in relation to the present case including share purchase agreement dated 21.04.2011, debenture subscription agreement dated 31.03.2010 and share pledge agreement dated 21.04.2011. He identified the signatures of Sh. S.K. Thakral on the seizure memos of the aforementioned documents.
PW-16	Sh. S.K. Thakral	The then Joint President (Finance), Jaypee Group and also worked as Chief Finance Officer in Jaypee Power Grid Limited.	In response to the letters of the IO during the year 2016, he handed over the requisite files available in the said office in relation to the present case including details of the balance sheets, ledgers, bank accounts statements of the payments made by JDCL to SHEL, its affiliate and SPV as well as other relevant financial documents of JDCL including original term sheet dated 31.10.2009 and share pledge agreement dated 21.04.2011.
PW-17	Sh. Kumar Praveen	The then Manager, Vasant Vihar Branch, Axis Bank, New Delhi.	The bank accounts of Jaypee Group Companies, SHEL, SPV (M/s Sunil Hi-Tech Energy Private Limited), SHEL affiliate, namely, M/s Sunil Investments Consultants Private Limited and M/s Gangakhed Sugar and Energy Limited were there in the said branch of Axis Bank. He has proved all the relevant certified copies of bank accounts of the aforementioned companies, which were handed over by Sh. Anil Jain, official of Axis Bank to the IO in the year 2016.

PW-18	Sh. Parasmal Bhawarilal Lalwani	Assistant Manager (Audit) (Retd.), MSMCL.	On the basis of the relevant documents related to MSMCL put to him during his testimony, he gave details and significance of the said documents.
PW-19	Sh. Jairaj Katiyar	IO/Inspector (Retd.), CBI.	He is the IO of the case and has deposed on the lines of the case of the prosecution.
PW-20	Sh. Himanshu Bahuguna	Additional Superintendent of Police (Retd.), CBI.	On 31.03.2015, he conducted raid and searched the office premises of Sh. R. Ramakrishnan, CEO/Director, aXYKno at Nagpur. He prepared the search list of the documents seized by him during the said raid.
PW-21	Sh. Anil Pophare	Director, Board of Directors, MSMCL.	He attended 165th to 172nd meetings of the Board of Directors, MSMCL as one of its Directors and gave details of proceedings that took place in those meetings.

59. Thereafter, on 30.07.2025, prosecution evidence was closed and the matter proceeded for recording statements of accused persons under Section 313 CrPC (351 BNSS).

60. Statements of both the accused under Section 313 CrPC (351 BNSS) were separately recorded wherein they were put all the incriminating evidence against them for seeking their respective explanations.

IX. STATEMENT OF A-1 SH. D.G. PHILIP UNDER SECTION 313 CRPC (351 BNSS)

61. In response to the incriminating evidence put to A-1 Sh. D.G. Philip, he stated that he is innocent and has been falsely implicated in this case.

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He denied that the technical bid selection of SHEL was not in accordance with the bid document. He stated that the SHEL did not submit MoU/ document pertaining to existence of consortium between it and SBEA along with its technical bid submitted on 13.03.2008. He stated that MoU in that regard between SHEL and SBEA was submitted before the presentation of SHEL on 10.04.2008 i.e. before evaluation of its technical eligibility. He further stated that in consortium with SBEA and its mining experience, SHEL had mining experience of more than 03 years and thus, it was technically eligible in consortium with SBEA. As SHEL had not submitted the MoU dated 14.03.2008 of its consortium with SBEA along with its technical bid dated 13.03.2008, the documents of SBEA showing 03 years of mining experience, even though filed along with the technical bid were not considered during initial evaluation and therefore, in absence of the said documents, SHEL was ineligible. According to the bid document, the bidders were required to make their presentation to MSMCL, before the opening of their commercial bids. As per G.R. of Government of Maharashtra in Industry Department Numbered, BRVS - (1094)/2679 Ind. 6 dated 30.04.1994, bidders were allowed to submit any document which was not submitted in their technical bid envelope before the opening of the technical bid envelope. As per the guideline stated at Para No.1.4.107 (2) in the said G.R., in case any document of technical nature is not submitted by the bidders while submitting the technical envelope, the bidder should be permitted to clear such defect before opening of the commercial envelope. Accordingly, all the bidders including SHEL were permitted to submit their supporting documents of technical nature, which could not be submitted along with their technical bids, to MSMCL during their presentation on 10.04.2008. Based upon the said permission, SHEL submitted its MoU with SBEA to the MSMCL before their presentations on 10.04.2008 at the office of Financial Consultant, aXYKno. During the scrutiny of the same, SHEL was found fulfilling the required eligibility criteria in consortium with SBEA. Therefore, on the strength of MoU of consortium between SHEL and SBEA, SHEL became eligible and it was accordingly, announced.

62. He further stated that analysis of the scrutiny of bidders in 36 column statement of spread sheet was prepared by him but it was a rough preliminary analysis which was neither signed nor finalized. He stated that the hand written analysis on the said spreadsheet was done prior to submission of MoU of consortium between SHEL and SBEA. Therefore, even though the mining experience documents of SBEA were enclosed with the technical bid of SHEL, the said documents could not be considered in absence of any MoU and accordingly, SHEL was not given benefit of the said documents till the submission of MoU dated 14.03.2008 which was submitted after the aforementioned rough & tentative analysis and before the presentation bidders, including SHEL on 10.04.2008. Accordingly, the remarks made in the aforementioned chart by him were made considering SHEL to be a single unit, which did not fulfill the qualifying criteria of having 03 years of mining experience and accordingly, SHEL was ineligible until submission of MoU dated 14.03.2008. He further stated that his aforementioned hand written remark constituting preliminary observation on the tabular chart before submission of MoU dated 14.03.2008 by SHEL is not an official document. During the presentation on 10.03.2008 at the office of Financial Consultant, aXYKno,

as stated above and the documents submitted, the technical scrutiny of the bidders was done by the members of the Management Committee and those bidders found technically eligible were noted. He further stated that the minutes of the proceedings of the presentation meeting, scrutiny of the technical document, considering the same for deciding the eligibility or otherwise of the bidders, could not be drafted for want of time, as the Management Committee members had to rush to the office of MSMCL for opening of the commercial bids of the bidders on the same day i.e. 10.03.2008, which were to be opened at 4:30 pm, at the office of M/s MSMCL. The decision taken by the Management Committee of the eligibility or ineligibility of the bidders, was announced by him being MD, MSMCL at the beginning of the opening of the commercial bid. The minutes of the opening of commercial bid dated 10.04.2008 were written, finalized and signed by all the members of the Management Committee.

63. In response to the incriminating evidence put to him, A-1 Sh. D.G. Philip gave details of 16 documents enclosed with the technical bid of SHEL in the form of a chart depicting that based on the said documents, the SHEL was technically eligible to be JV partner of MSMCL for development of Adkoli Coal Block in accordance with the conditions laid in the bid document. He further stated that the above mining experience of the consortium partner and Sub-Contractor SBEA, clearly indicates and proves that SBEA, as a consortium partner of SHEL had vast mining experience of more than 03 years, who has done the mining work as a Sub-Contractor of various clients and therefore, it had the mining experience of both of the open cast and in the underground mines.

64. He further stated that as per the Adkoli Coal Block allotment order dated 02.08.2006, one of the mandatory conditions was that the separate JV company constituted by the MSMCL for development of Adkoli Coal Block must be a Government company, wherein MSMCL must hold at least 51% equity shares. In order to protect the interest of the MSMCL & the Government and to maintain the JV company as a Government company, a condition was imposed in the JV Agreement that the equity share of MSMCL in JV company shall not reduce from 51% at any point of time, which was in accordance with the terms and conditions of the bid document. He further stated that the estimated cost for the development of Adkoli Coal Block was Rs.300 crores and as per the JV Agreement, the said cost was to be exclusively borne by SHEL (JV partner). In addition to the said cost, SHEL was required to expend Rs.74 crores towards the payment of sweat money to MSMCL, Rs.20 crores for performance guarantee, insurance, etc. totaling to approximately Rs.420 crores. Thus, the said funds were required by SHEL for the successful commencement and performance of the Adkoli Coal Project. Failure to raise and invest such amount would have led to the failure of the project and losses to MSMCL and SHEL. In the said project, the SHEL would have started receiving funds for refund of the said amount of Rs.420 crores only after extraction and sale of the coal of Adkoli Coal Block commenced. In order to facilitate SHEL in raising the said funds, MSMCL had agreed to provide necessary support to SHEL in accordance with the bid document. Accordingly, as per JV Agreement, SHEL was permitted to sell its 49% shareholdings in the JV company so that it holds 51% of the equity in JV company subject to the restrictions and conditions contained therein,

including execution of Deed of Adherence by the purchasing party and grant of previous permission by the Government of Maharashtra in that regard. He further stated that there are provisions or clauses, in the bid document, which permit and allow the MSMCL to make necessary changes in the terms and conditions of the Agreement and that too in the overall interest of the Corporation and for the success and completion of the business of Adkoli Coal Block by mining of coal from it provided it is not contrary to the conditions laid down in the allocation letter dated 02.08.2006.

65. He further stated that the changes proposed in the JV Agreement were neither contrary to the terms and conditions of the bid document nor contrary to the terms and conditions of the allotment order dated 02.08.2006 of Adkoli Coal Block but supports the same and help in achieving the object of exploitation of Adkoli Coal Block successfully and at the same time protecting the interest of MSMCL and newly formed company and the G.O. Maharashtra and MSMCL and keeping or retaining the J.V. Company always as a Government company, the Corporation being having 51% of its share always as equity. The terms and conditions in the bid document gave MSMCL, the sole discretion of changing the terms and conditions of the Bid Documents, and incorporating the said changes in the JV Agreement wherever essential to facilitate required the work of (1) commencing and exploiting the Adkoli Coal Block by extraction of coal from the Adkoli Coal Block and (2) while doing so, protecting the interest and survival/existence of the Corporation. He further stated that after discussions on all points raised, as mentioned in the bid document and the objects of Adkoli Coal Block to be achieved in the

meetings with SHEL, it was decided to approve insertion of the clause in the JV Agreement of permitting the sale/mortgage and transfer of share of the JV partner (SHEL) in the SPV to a third party for ensuring the commencement of the Adkoli Coal Project.

66. He further stated that there may be difference of opinion amongst the members of the Board of Directors, but while deciding the issue, the differences were resolved and no such differences is recorded by any member in the proceedings of the meeting including Sh. Anil Pophre, when the draft of the proceedings of the minutes were sent to all members of the Board of Director, including Sh. Anil Pophre, they approved them without communicating any of their differences and in the next meeting of the Board of Directors, the minutes of the previous meeting of the Board of Directors is confirmed by all members of Board of Directors including Sh. Anil Phophre.

67. He denied that he misused his official position as a public servant by altering the terms and conditions of the tender bid, which prohibited the JV partner from selling, transferring and mortgaging its share and debentures in the Special Purpose Vehicle (SPV) to any third party. He stated that the change in terms of bid document *vis-a-vis* JV Agreement was not only permissible for MSMCL but the same was also approved by the High-Power Committee and the Infrastructure Committee, Government of Maharashtra. The changes were in the interest of the MSMCL and the Government as well as necessary for smooth development of Adkoli Coal Block.

68. He further stated that SHEL gained no pecuniary advantage as in order to become JV partner of MSMCL, it had to incur total cost of Rs.420

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crores, including cashless equity, sweat money, cost of developing Adkoli Coal Block, cost of performance guarantee and cost of insurance. MSMCL was not required to invest or expend any amount of money till coal extracted from Adkoli Coal Block was sold. As per letter dated 08.09.2014 **(PDF Page No.12242)** addressed to the MD, MSMCL by MD, M/s MSMCL Adkoli Natural Resources Limited, on the subject Hon'ble Supreme Court's Judgment dated 25.08.2014, on allocation of coal blocks, the JV partner (SHEL) had spent Rs.50.19 crores on the Adkoli Coal block initially, including sweat money of Rs.18.05 crores. From the above, it can be clearly seen that the amount received by the SHEL from the sale/transfer of its shares in JV company to JDCL is about Rs.40 crores which is Rs.10.19 crores less than the expenses incurred by the SHEL for Adkoli Coal Block. The remaining amount of about Rs.35 crores received by the subsidiary of SHEL, namely, M/s Gangakhed Sugar and Energy Private Limited from JDCL is for the sale of shares of the subsidiary company and it is unrelated to the present JV Agreement. Therefore, by sale/transfer of shares, debentures and unsecured loan, SHEL has not received any undue gain.

69. He further stated that the decision taken in the meetings of the Management Committee, MSMCL or the meetings of the Board of Directors, MSMCL, including decision to declare SHEL technically eligible were taken collectively by all the members jointly and not by him, in his individual capacity. No individual member of the Management Committee or the Board of Directors was authorized and empowered to take any executive decision pertaining to the MSMCL individually.

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70. He preferred to lead evidence in his defence and accordingly, he was given liberty to lead evidence in his defence.

X. STATEMENT OF A-2 SH. AVINASH WARJUKAR UNDER SECTION 313 CRPC (351 BNSS)

71. In addition to recording of statement under Section 313 CrPC (351 BNSS), A-2 Sh. Avinash Warjukar filed a written statement under Section 313(5) CrPC [351(5) BNSS] as a sufficient compliance of the said Section. The substance of both the statements are same.

72. In response to the admissible incriminating evidence put to A-2 Sh. Avinash Warjukar, he stated that he is innocent and has been falsely implicated in this case. He admitted that he was appointed as the Chairman of MSMCL but it was an ex-officio/political posting. He stated that he had no technical or other knowledge regarding the manner of functioning of MSMCL. He did not participate in the day-to-day affairs of the business of MSMCL, which was handled by the staff under the guidance of the MD, MSMCL. He did not interfere in the policy decisions of MSMCL. He stated that there were total 06 Directors in MSMCL Board and all except him had either technical, financial or other knowledge of different aspects under consideration. He stated that neither he was shown the documents nor he was part of discussions nor he had the knowledge or understanding qua them. He did not even understand English properly. He stated that the Government had duly intimated to him vide letter dated 25.04.2007 that he did not have any power etc. in MSMCL and the same was to be managed/ seen by the Managing Director. He stated that he never saw the final bid document. He stated that no discussion on the sale/pledge of the shares of JV partner in JV company took place in his presence. He further stated that

no terms of any draft were ever discussed or finalized by him at any stage of the process. He further stated that he did not participate in any discussion about the change of terms or conditions of the draft JV Agreement, share sale, creation of third-party interest in SPV, or pledging of shares, and nor did he participate in para-wise discussion or any other discussion on the draft JV Agreement relating to Adkoli Coal Block. He further stated that he was neither aware about any such modification/ alteration nor was involved in the same in its any process. He further stated that the record reflects that the said draft JV Agreement was approved by the Government of Maharashtra after the same was gone through different levels of scrutiny.

73. He also preferred to lead evidence in his defence.

74. Thereafter, the matter proceeded for defence evidence.

XI. DEFENCE EVIDENCE

75. The accused persons examined total 05 witnesses to discredit the prosecution/CBI version and to substantiate their defence. The gist of the said 05 defence witnesses is incorporated in the following chart.

Number of Defence Witness	**Name**	**Designation**	**Substance of the Testimony**
DW-1	Sh. Vivek Kollipara	Chief Accountant Finance Officer and Information Officer, MSMCL, Nagpur.	He proved the reply of MSMCL to the RTI application dated 27.07.2021. He also placed on record originals of the agenda for 165th, 171st and 172nd meeting of Board of Directors, MSMCL along with other summoned documents.
DW-2	Sh. Mahinder Singh Bhasin	One of the partners of SBEA.	He deposed about the execution of Memorandum of Understanding

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			(MoU) dated 14.03.2008 between SHEL and SBEA. He gave details about the technical qualifications and experience of SBEA at the time of execution of the said MoU.
DW-3	Sh. Satish Shyamkant Kulkarni	Ex.Assistant Manager (Geology), Mineral Exploration Corporation Limited (MECL).	He testified that he is a Geologist by profession. He worked with SHEL as General Manager (Geology) with effect from January, 2008 to May, 2008 and he had 20 years of experience in the field of exploration and survey of minerals in the coal blocks before he joined SHEL. He prepared and submitted the technical bid dated 14.03.2008 with MSMCL duly signed by him. He deposed that at that time, SHEL was having experience in survey and exploration of coal through his expertise for being its employee.
DW-4	Sh. Akshay Nagdive	Section Officer, Mining Department, Government of Maharashtra.	He testified that he could not trace the letter dated 25.04.2007 purportedly written by Sh. R.D. Mande, the then Deputy Secretary, Government of Maharashtra, Industries, Energy and Labour Department, Maharashtra, in the records of his department.
DW-5	Sh. R.D. Mande	The then Deputy Secretary in the Department of Industries, Energy and Labour, Government of Maharashtra.	He proved the copy of letter dated 25.04.2007 written by him in his capacity as Deputy Secretary, Government of Maharashtra to MD, MSMCL as well as its copy sent to A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL.

76. Thereafter, defence evidence was closed and the matter was listed for final arguments.

XII. FINAL ARGUMENTS

77. Final arguments on behalf of both the parties are carefully heard at length. The case file and the written submissions filed on behalf of both the sides are meticulously perused.

XII (A). FINAL ARGUMENTS ON BEHALF OF THE CBI/ PROSECUTION

78. Sh. Sanjay Kumar, Learned ALA for CBI assisted by the IO Inspector (Retd.) Sh. Jairaj Katiyar contended that the prosecution/CBI has proved the charges framed against A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL beyond any reasonable doubt by leading cogent and conclusive evidence. He contended that MSMCL was allocated Adkoli Coal Block by the Ministry of Coal, Government of India vide letter dated 02.08.2006 **Ex.P-288/PW-15 (D-270, PDF Page No.10120)**. The said coal block was allocated to the MSMCL in addition to three other coal blocks. After taking approval of Board of Directors, MSMCL for development of various coal blocks, including Adkoli Coal Block through JV company, MSMCL invited bids for JV partners on 13.02.2008 and 14.02.2008 in accordance with the tender/bid document **Ex.P-10 (D-44, PDF Page Nos.5284-5331)**. Before that, MSMCL engaged aXYKno as its Financial Consultant for the said project and its job description included preparation of tender documents, evaluation of the bids, preparation of the draft JV Agreement and MoU. As per tender/bid document, the eligible technical qualification for the bidder for were *inter alia* as follows:- (i) the bidders should have been in operation for more than 03 years and should have minimum 03 years experience in actual mining of Open Cast or Underground mines

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including survey & exploration and should be making profits in each of the immediately preceding three financial years; and (ii) the bidders shall have adequate manpower consisting of statutorily competent & qualified and experienced persons, engineers, geologists to successfully complete the mining activities and also to engineer, design, supervise, test and commission the coal mining company successfully.

79. He contended that in response to the said advertisement for inviting bids, 13 bidders submitted their respective bids for Adkoli Coal Block, including SHEL, which submitted its bid on 13.03.2008. As per the technical eligibility condition contained in the bid document, SHEL was not technically eligible and therefore, it should have been declared ineligible. However, A-1 Sh. D.G. Philip, MD, MSMCL in the meeting of management committee, MSMCL held on 10.04.2008 declared it to be technically eligible, though, he himself in the tabulation sheet/comparative chart remarked in his own handwriting that it did not qualify the technical criteria and so, it was ineligible. He contended that on account of declaring ineligible SHEL company to be technically eligible, its financial bid was opened, after comparison with the other bidders it was declared successful for being H-1 bidder and ultimately a JV Agreement dated 21.11.2009 was executed between MSMCL and SHEL thereby giving undue pecuniary advantage to SHEL in the Adkoli Coal Block against public interest.

80. He further contended that as per Government of Maharashtra letter dated 01.09.2007 **Ex.P-270/PW-7 (D-139, PDF Page Nos.7037-7038)**, MD, MSMCL was directed to scrutinize the bids received with reference to expression of interests for the Coal Blocks from administrative and financial view point and to prepare comparative chart. He contended that

as in the normal procedure, in this case also the bid comprised of technical bids and financial bids. He contended that the technical bids for Adkoli Coal Block, including the bid of SHEL, were opened in the meeting of tender committee held on 14.03.2008 but the bidders were informed that their technical bids will be analyzed and examined later. Therefore, the technical eligibility of the bidders was not examined on 14.03.2008. In the said meeting, it was resolved that the bidders shall make presentation and thereafter, commercial bids will be opened. He further contended that no document or evidence emerged to show that presentations were made by the bidders before evaluation of technical bids. He contended that as per the minutes of management committee meeting held on 10.04.2008, MD, MSMCL announced the names of the parties who were technically qualified and name of SHEL was also included in the said list. It was contended that the said minutes do not record that the technical evaluation of the bids were done by the tender committee or the presentations of bidders preceded the said announcement. He contended that as per material available on record, only A-1 Sh. D.G. Philip, the then MD, MSMCL was responsible to scrutinize the bids, preparation of comparative chart and evaluate the technical eligibility of the bidders. He contended that PW-18 Sh. Parasmal Bhawarilal Lalwani, Assistant Manager (Audit) (Retd.), MSMCL has deposed that the files relating to the process of tender and formation of JV partner always remained in the custody of MD, MSMCL. In these circumstances, it is conclusively established that only A-1 Sh. D.G. Philip, the then MD, MSMCL was responsible for declaring technically ineligible SHEL to be technically eligible.

81. He further contended that the bid of SHEL was submitted with the forwarding letter dated 13.03.2008 in a spiral-bound book. However, MoU dated 14.03.2008 between SHEL and SBEA was attached with the spiral-bound book with a stapler pin. It was further contended that the bid was to be submitted till 14.03.2008 by 01:00 pm, the technical bids were to be opened at 04:00 pm on 14.03.2008. Before that, it was difficult to assume that SHEL entered into an MoU with SBEA, got it documented on the stamp paper which was duly notarized and submitted in the office of MSMCL before 01:00 pm. He has, therefore, contended that interpolation on behalf of SHEL was permitted to include MoU with SBEA after the last date of submitting the bids was over.

82. He further contended that the SHEL failed to qualify the technical eligible criteria even in consortium with SBEA in accordance with MoU dated 14.03.2008 as the documents annexed with the technical bid of SHEL did not establish that SHEL or SBEA had any experience in 'actual mining' any time before execution of MoU, leave aside immediately preceding three financial years. Further, the said documents did not show that the said consortium had experience in survey and exploration. Moreover, the said consortium did not have manpower consisting of statutorily competent and qualified engineers and geologists. Therefore, SHEL did not meet the technical eligibility criteria as per the tender/bid document. He contended that PW-9 Sh. U.S. Singh, Senior Manager (Mining) (Retd.), Mineral Exploration Corporation Limited (MECL), an expert in Mining Department has opined that based upon the documents annexed with the technical bid of SHEL, it did not qualify the technical criteria contained in the tender/bid document.

83. It was further contended that DW-2 Sh. Bhasin, one of the partners of SBEA, admitted in his cross-examination that there is no document/ certificate of the period between 14.03.2005 to 14.03.2008 reflecting that his partnership firm had carried out any mine development work during the said period. He further contended that he admitted that his partnership firm never carried out any coal extraction from any coal mine and Sh. Vinod Kumar and Sh. Pradeep Kumar, whose names are mentioned in the list of key personnel available were not DGMS certified Surveyors. He further contended that the author of technical bid of SHEL DW-3 Sh. Satish Shyamkant Kulkarni admitted in his cross-examination that no certificate of DGMS was annexed with the said bid and he did not verify the qualification and experience of the personnel of SBEA, whose list was annexed with the bid.

84. He further contended that for Adkoli Coal Block, there were 13 bidders. According to the chart prepared by A-1 Sh. D.G. Philip, 08 of them were ineligible and 05 were eligible, technically. It was not that none of the bidders was technically eligible and to make the bid successful, all the ineligible bidders were declared eligible. There was no justification for A-1 Sh. D.G. Philip to open the bids of technically ineligible bidder SHEL. Thus, the action of A-1 Sh. D.G. Philip conclusively establishes that he, as a public servant, obtained for ineligible bidder SHEL valuable thing/ pecuniary advantage without any public interest. The valuable thing in this case is clearing ineligible bidder as technically eligible, thereby enabling it to clear first round of the bid and go to the second round of financial bid. This is without any public interest because for Adkoli Coal Block there were 05 technically eligible bidders and therefore, there is no justification

for declaring technically ineligible SHEL as technically eligible. He further contended that public functionaries, while dealing with money matters, cannot change the terms and conditions proposed in the bid. In case, it was made known to the public that the conditions for mining required in the bid will be relaxed, there is a possibility that some bidders may have offered even more than the offer of SHEL. He has, therefore, contended that the prosecution/CBI has established beyond any reasonable doubt, the criminal misconduct of A-1 Sh. D.G. Philip, the then MD, MSMCL in declaring an ineligible bidder (i.e. SHEL) as eligible for obtaining valuable pecuniary benefit to it against public interest. Accordingly, he deserves to be convicted for the offence punishable under Section 13(1)(d)(iii) PC Act on the proof of the first count of charge of criminal misconduct.

85. In respect of the second count of charge of criminal misconduct punishable under Section 13(1)(d)(iii) PC Act, Learned ALA for CBI contended that A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL attended 165th meeting of the Board of Directors, MSMCL held on 07.02.2008 wherein the terms and conditions of the tender/bid document were finalized. Thus, both of them were fully aware about the terms and conditions of tender/bid document, including absolute prohibition of sale, transfer or pledge of the shares of JV partner in JV company to the third party. The Financial Consultant, aXYKno submitted its final draft of JV Agreement on 19.01.2009 in conformity with the aforementioned condition of sale, transfer or pledge in the tender/bid document. However, in 172nd meeting of the Board of Directors, MSMCL under the Chairmanship of A-2 Sh. Avinash Warjukar attended by A-1 Sh. D.G. Philip, the then MD, MSMCL held on

21.01.2009 omitted the clauses restricting sale/transfer of shares by the JV partner of the JV company to the third party in the draft JV Agreement and included a Clause 7.3 with the title 'Reserved Matters' permitting pledging of shares of JV partner in JV company in favour of any third party subject to approval of one Director, nominated by MSMCL and one Director, nominated by JV partner. He contended that earlier the High-Power Committee in its meeting held on 20.11.2008 had directed MSMCL to prepare a draft JV Agreement in respect of three coal blocks, including Adkoli Coal Block and submit the same to it for its approval. Accordingly, the said draft JV Agreement, approved in the 172nd meeting of Board of Directors, MSMCL in contravention of the terms and conditions contained in the tender/bid document, was forwarded by A-1 Sh. D.G. Philip to the High-Power Committee for its approval.

86. He further contended that A-1 Sh. D.G. Philip was fully conscious that any provision relating to sale, transfer or pledge of the shares of JV partner in JV company, if inconsistent with the terms and conditions of the tender/bid document, could not be incorporated in the JV Agreement. In support of his contention, reliance was placed on the letter dated 31.01.2009 addressed by A-1 Sh. D.G. Philip to the Principal Secretary (Industries), Industries, Energy and Labor Department, Mumbai wherein he himself recorded as follows:

> "…..Those aspects that are not in conformity with the tender documents were not incorporated in the Joint Venture Agreement…"

It was further argued that A-1 Sh. D.G. Philip sent the draft JV Agreement to the High-Power Committee on 23.01.2009, which was approved in the 172nd meeting of the Board of Directors, MSMCL held on 21.01.2009 and which was in violation of terms and conditions contained

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in the tender/bid document. The said draft JV Agreement permitted sale and transfer of shares of JV partner in JV company to the third party and also incorporated Clause 12.5 containing the consequences of sale of shares in contravention of the JV Agreement.

87. He further contended that thereafter, High-Power Committee meeting was held on 09.04.2009 under the Chairmanship of Chief Secretary regarding formation of JVs with MSMCL for development of coal blocks. Subsequently, in the meeting of High-Power Committee held on 04.05.2009, draft JV Agreement was approved and it was directed to be placed before the Infrastructure Committee. The same was approved by the Infrastructure Committee in its meeting held on 18.06.2009 and consequently, JV Agreement was executed between MSMCL and SHEL on 21.11.2009. It was further contended that considering the manner in which the JV Agreement was finalized, permitting sale as well as pledge of shares conclusively shows that A-1 Sh. D.G. Philip and A-2 Sh. Avinash Warjukar knew too well the terms and conditions of the tender/bid document prohibiting sale/pledge of shares, but still approved the draft of JV Agreement in violation of the said stipulations in 172nd meeting of the Board of Directors, MSMCL held on 21.01.2009. Their said act conclusively falls within the purview of the criminal misconduct of the public servants as by execution of JV Agreement dated 21.11.2009, permitting sale, transfer or pledge of shares of SHEL in JV company based upon the draft approved and proposed by them resulted in obtaining valuable thing/pecuniary advantage in favour of SHEL without any public interest.

88. He further contended that sale of shares of SHEL (JV partner) in JV company was permitted by the JV Agreement dated 21.11.2009 in contravention of tender/bid document dated 14.02.2008. As per the JV Agreement, the ratio of shares of MSMCL and SHEL in the JV company was decided to be 51:49 for all times during subsistence of the JV Agreement. However, on 31.10.2009 i.e., even before the execution of JV Agreement, a term sheet was signed between SHEL and it provided the indicative terms and conditions to form the basis of discussions for the proposed acquisition of shares of M/s Sunil Hi-Tech Energy Private Limited (SPV) by Jaiprakash Associates Limited or its associates or affiliates or nominees. As per the term sheet, M/s Sunil Hi-Tech Energy Private Limited was proposed to function as a Special Purpose Vehicle (SPV), to be incorporated as a holding/investment company for holding entire 49% shareholdings of JV partner (SHEL) in the JV company pursuant to the JV Agreement between SHEL and MSMCL. The term sheet noted that in case Special Purpose Vehicle (SPV) of SHEL is made a JV partner (instead of SHEL itself) in the JV company, Jaiprakash Associates Limited intends to acquire its 49% of its equity shares having a face value of Rs.10 each (Rupees Ten only) from the promoters and SHEL shall continue to hold at least 51% share in the Special Purpose Vehicle (SPV) at all times during the period of the JV Agreement. The purchase consideration towards acquiring 49% of the paid-up share capital of the SPV was fixed as Rs.15 crores and on 05.11.2009, a sum of Rs.5 crores was credited by Jaiprakash Industries Limited in the account of SHEL.

89. He further contended that the JV Agreement dated 21.11.2009 permitted formation of Special Purpose Vehicle (SPV) by SHEL (JV

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partner) with the condition that SHEL had to maintain 51% shareholding in the SPV. On 18.02.2010, a Deed of Adherence was executed between MSMCL, SHEL and SPV (M/s Sunil Hi-Tech Energy Private Limited) whereby 49% shareholding of SHEL, in JV company was transferred in favour of SPV (M/s Sunil Hi-Tech Energy Private Limited). Further, on 23.03.2010, another Deed of Adherence was executed between SEHL, SHEL Investment Consultancy Services Limited (SHEL affiliate), Sunil Hi-Tech Energy Private Limited (SPV), MSMCL and M/s MSMCL Adkoli Natural Resources Limited (JV company). It recorded the execution of Deed of Adherence dated 18.02.2010 in accordance with Clause 12.3.3 and Clause 14.4 of the JV Agreement. The deed recorded that SHEL affiliate proposes to purchase 71,04,240 shares of SHEL in the JV company held by SPV for a value of Rs.17 each aggregating to Rs.12,07,72,080/- (Rupees Twelve Crores Seven Lakhs Seventy Two Thousand and Eighty Only). The deed records that the SHEL affiliate undertakes to be bound by the JV Agreement and Deed of Adherence in all respects as if it was a party to the JV Agreement. After the aforementioned two transactions dated 18.02.2010 and 23.03.2010, 37.50% of the shares of the M/s Sunil Hi-Tech Energy Private Limited (SPV) were owned by M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and 62.50% of the shares were held by SHEL.

90. He further contended that the Board of Directors, MSMCL in its 181st meeting held on 23.12.2010 approved the transfer of 49% (including 5% shares of Technical Partner, SBEA) equity shares of SHEL in M/s Sunil Hi-Tech Energy Private Limited (SPV) to Jaypee Group and accordingly, on 21.04.2011, vide share purchase agreement, the said

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transaction was executed. He further contended that on 21.04.2011, share pledge agreement was also executed between SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL whereby the former pledged its total 37.50% of equity shares in SPV company to JDCL along with all rights, including voting rights for a total consideration of Rs.12 crores. The said pledge of shares was not in terms of Clause 6.4.1(e) of the JV Agreement dated 21.11.2009 in as much as it was not with the approval of one Director of MSMCL and one Director of SHEL. He contended that as per the Deeds of Adherence dated 18.02.2010 and 23.03.2010, M/s Sunil Hi-Tech Energy Private Limited (SPV) and SHEL affiliate had undertaken to abide by the JV Agreement and therefore, the pledge could have been permissible only by following recourse to Clause 6.4.1(e) of the JV Agreement, i.e., by the approval of one Director of MSMCL and one Director of SHEL. It was, therefore, argued that such conduct constituted the offence of cheating punishable under Section 420 IPC, inasmuch as SHEL had entered into JV Agreement representing that neither it nor its affiliate would pledge the shares except in accordance with the stipulated procedure. It was further submitted that the said obligation was equally binding upon the SPV and SHEL affiliate by virtue of Deeds of Adherence dated 18.02.2010 and 23.03.2010. He argued that MSMCL would not have entered into JV Agreement with SHEL, had it not been induced to believe that neither SHEL nor its affiliate holding shares in M/s Sunil Hi-Tech Energy Private Limited (SPV) would pledge such shares otherwise than in accordance with Clause 6.4.1(e) of the JV Agreement. He further contended that the pledging of the shares by the affiliate of SHEL resulted in wrongful gain to SHEL. According to the prosecution, the subsequent pledge of shares in breach of the said stipulation establishes that MSMCL was induced to enter into the JV Agreement on the basis of a false representation, thereby attracting the ingredients of the offence of cheating. He further contended that the intention to cheat from the beginning is evident in this case inasmuch as SHEL had signed term sheet agreeing to sell 49% of its shares in SPV in favour of Jaypee Corporation even before it entered into JV Agreement with MSMCL. Further, SHEL had no intention to carry out the mining of the Adkoli Block which is evident from the facts that it received Rs.5 crores even before the signing of JV Agreement from Jaypee Associates and further, its affiliate pledged its shares with voting rights in favour of JDCL in contravention to the terms and conditions of the JV Agreement.

91. It is, therefore, contended that while on merit SHEL would have been liable to be convicted for the offence of cheating punishable under Section 420 IPC in connivance with the two public servants, namely, A-1 Sh. D.G. Philip, the then MD, MSMCL and A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL. However, as SHEL has been discharged under Section 32A of Insolvency and Bankruptcy Code for being under liquidation, it cannot be convicted for the said offence. Nevertheless, there is sufficient credible evidence on record to conclude that the said two public servants are liable to be convicted for the offence of criminal conspiracy to commit the offence of cheating as detailed hereinabove, thereby enabling SHEL to sell its 49% shares of JV company in M/s Sunil Hi-Tech Energy Private Limited (SPV) in favour of JDCL for Rs.15 crores.

92. He, accordingly, contended that based upon the cogent and uncontroverted evidence led by the prosecution, the respective charges

against both the accused public servants have been duly proved beyond any shadow of doubt and therefore, they are liable to be convicted for the same.

XII (B). FINAL ARGUMENTS ON BEHALF OF A-1 SH. D.G. PHILIP, THE THEN MD, MSMCL

93. Sh. Abhinav S. Gonnade, Learned Counsel for A-1 Sh. D.G. Philip, the then MD, MSMCL contented that the prosecution/CBI has miserably failed to prove criminality/charges against him. He admitted that the rough undated sheet/chart bears his handwriting, wherein he *prima facie* remarked that SHEL was technically ineligible. The said remarks were solely based upon the general understanding of A-1 and they were made prior to submission of MoU dated 14.03.2008 between SHEL and SBEA depicting establishment of a consortium between them. He contended that the said remarks were made as the technical bid of SHEL did not contain any MoU between it and SBEA and therefore, it could not have got the benefit of consortium of SHEL and SBEA. He contended that as per G.R. of Government of Maharashtra in Industry Department Numbered, BRVS - (1094)/2679 Ind. 6 dated 30.04.1994, bidders were allowed to submit any document which was not submitted in their technical bid envelope before the opening of the technical bid envelope. As per the guideline stated at Para No.1.4.107 (2) in the said G.R., in case any document of technical nature is not submitted by the bidders while submitting the technical envelope, the bidder should be permitted to clear such defect before opening of the commercial envelope. Accordingly, all the bidders, including SHEL, were permitted to submit their supporting documents of technical nature, which could not be submitted along with their technical

bids, to MSMCL during their presentation on 10.04.2008. Based upon the said permission, SHEL submitted its MoU dated 14.03.2008 with SBEA to the MSMCL before their presentations on 10.04.2008 at the office of Financial Consultant, aXYKno. During the scrutiny of the same, SHEL was found fulfilling the requisite eligibility criteria in consortium with SBEA. Therefore, on the strength of MoU of consortium between SHEL and SBEA, SHEL became eligible and it was accordingly, announced. He contended that even otherwise the said remarks did not culminate into a final decision, have no sanctity in law and hence, cannot be held against A-1 to fasten his criminal liability.

94. It was contended that MSMCL, in its 162nd meeting of Board of Directors held on 25.06.2007 (i.e. prior to joining of A-1 Sh. D.G. Philip in MSMCL), constituted and delegated its powers to the Management Committee, MSMCL. He further contended that A-1 did not have Veto Power in the said Management Committee. The decision to declare SHEL as technically eligible was collectively and unanimously taken by the Management Committee, MSMCL in its meeting held on 10.04.2008, which was merely announced by A-1 to all the bidders in the said meeting. The Board of Directors, MSMCL, in its 167th meeting held on 24.04.2008, discussed in detail the entire process carried out but no objections whatsoever were raised, at any point in time, by any of the board members.

95. He further contended that even otherwise SHEL was technically eligible as per the tender/bid document, which was prepared by the Financial Consultant, aXYKno. He further contended that the term ‘actual mining’ is not defined in any statute. Section 3(d) of the Mines and Minerals (Development & Regulation) Act, 1957 defines ‘mining

operations' as any operation undertaken for the purpose of mining any mineral and the SBEA's work details annexed with the technical bid were squarely covered under the said definition. Further, MSMCL had 50+ years of mining experience and as per Clause (v) of the allocation letter dated 02.08.2006, the exploration of Adkoli Coal Block was to be carried out through CMPDIL. Thus, even assuming that SHEL and SBEA consortium did not have experience in survey and exploration, the said clause ought to be considered ancillary in nature and not mandatory. The statements under Section 161 CrPC of the witnesses, namely, Sh. P. Ranganatheeshwar, Deputy DGMS; Sh. Anil Kumar Rana, GM, CMPDIL; and Sh. D.N. Prasad, Advisor, Ministry of Coal, whom the prosecution/CBI chose not to examine as prosecution witnesses, have falsified the story of the prosecution to state that SHEL was technically eligible. The statement of PW-19 Sh. U.S. Singh is inadmissible as (i) he is not an expert witness under Section 45 of Evidence Act, 1874; and (ii) the meaning of clauses in the tender/bid document is to be construed by its author (i.e. MSMCL and Financial Consultant, aXYKno) and not by a stranger like Sh. U.S. Singh, who neither drafted the tender/bid document nor participated in its evaluation.

96. He further contended that neither any of the officials of MSMCL nor the official of Financial Consultant, aXYKno was examined by the prosecution/CBI to comprehend the meaning and requirement of technical eligibility to ascertain what was the requirement of MSMCL for engaging a JV partner. He contended that it is a settled law that the selection of private entrepreneurs is an administrative decision and the administrative authority has the liberty to select or reject a particular bidder as per its

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requirement. The scope of judicial intervention is mandatory only where there is arbitrariness or *mala fide* intent during the administrative decision, as held in **Tata Cellular Vs. Union of India (1994) 6 SCC 751**. He further contended that in the instant case, the prosecution has miserably failed to show any arbitrariness or *mala fide* intent on the part of A-1 or any of the members of the Management Committee, MSMCL. On the contrary, A-1 has yielded exponential monetary benefits to the Government of Maharashtra and MSMCL.

97. He further contended that the technical evaluation of the bidders, including SHEL, was thoroughly checked and approved by (a) the Board of MSMCL consisting of Government officials and Members of the High-Power Committee, Government of Maharashtra; (b) the High-Power Committee; and (c) the Cabinet Committee on Infrastructure headed by the then Hon'ble Chief Minister, Government of Maharashtra. Not even a single member, at any stage, recorded any dissent or stated that the process was illegal or arbitrary to suit bidder SHEL. He contended that the High-Power Committee or Infrastructure Committee were not bound by the technical evaluation of the bidders and their recommendation by MSMCL. The High-Power Committee rejected MSMCL's recommendation in respect of Gare Palma-II Coal Block on 20.11.2008, which conclusively negates any suggestion that High-Power Committee merely rubber stamps the proposals of MSMCL. He has, therefore, contended that declaration of SHEL technically eligible was not only a collective decision of the Management Committee, MSMCL but it was subsequently approved by two High Level Committees of the Government of Maharashtra, which culminated into the monetary benefit to the MSMCL and Government of

Maharashtra clearly showing that the said decision was not against public interest. Besides, the prosecution itself has not leveled any allegations of dishonest intention or *mala fide* against A-1 or his connivance with SHEL in declaring SHEL as a technically eligible bidder.

98. He contended that even assuming there are some procedural irregularities, the same cannot be elevated to criminality. An erroneous administrative decision taken in good faith should not be construed as unlawful in the absence of clear, clinching and cogent evidence establishing all the essential ingredients of the offence **(Mariam Fasihuddin Vs. State 2024 INSC 49)**.

99. He further contended that tender/bid document dated 14.02.2008 was in law and fact, an expression of interest floated by MSMCL which was an invitation to offer and not a binding contract. The MSMCL had expressly reserved its rights to amend the terms and conditions of the tender/bid document at any date prior to execution of the JV Agreement. He contended that before execution of JV Agreement on 21.11.2009, no binding contract came into existence. He contended that the very fact that the draft JV Agreement was redrafted and finalized over a period of one year after multiple meetings of the Board of Directors, MSMCL, the High-Power Committee, Cabinet Committee on Infrastructure itself shows that the bid clauses were tentative and open to refinement. He contended that the prosecution has failed to examine any witness, including officials of MSMCL, State Government of Maharashtra or Ministry of Coal to show or prove that the conditions stated in the tender/bid document were mandatory and they could not be altered. On the contrary, vide its letter dated 23.10.2009, the State Government of Maharashtra allowed 12

modifications in the draft JV Agreement even after its approval by the Cabinet Committee on Infrastructure. He contended that if the terms and conditions contained in the tender/bid document were indispensable and mandatory, the prosecution would have also leveled allegations against the officials involved in the said 12 modifications in JV Agreement. Thus, as per the prosecution itself, it is evident that alteration in terms and conditions of the JV Agreement was legally permissible.

100. He further contended that the sole substantive restriction in the allocation letter dated 02.08.2006 issued by the Ministry of Coal, Government of India was that the JV company must remain a Government company. The said condition was expressly incorporated in the JV Agreement and it continued to be scrupulously observed as JV company (M/s MSMCL Adkoli Natural Resources Limited) is a Government company till date. The sale or pledge of shares in SPV does not and cannot alter the Government company character of JV company.

101. He further contended that as per the Adkoli Coal Block allotment order dated 02.08.2006, one of the mandatory conditions was that the separate JV company constituted by the MSMCL for development of Adkoli Coal Block must be a Government company, wherein MSMCL must hold at least 51% equity shares. In order to protect the interest of the MSMCL & the Government and to maintain the JV company as a Government company, a condition was imposed in the JV Agreement that the equity share of MSMCL in JV company shall not reduce from 51% at any point of time, which was in accordance with the terms and conditions of the bid document. He further contended that the estimated cost for the development of Adkoli Coal Block was Rs.300 crores and as per the JV

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Agreement, the said cost was to be exclusively borne by SHEL (JV partner). In addition to the said cost, SHEL was required to expend Rs.74 crores towards the payment of sweat money to MSMCL, Rs.20 crores for performance guarantee, insurance, etc. totaling to approximately Rs.420 crores. Thus, the said funds were required by SHEL for the successful commencement and performance of the Adkoli Coal Project. Failure to raise and invest such amount would have led to the failure of the project and losses to MSMCL and SHEL. In the said project, the SHEL would have started receiving funds for refund of the said amount of Rs.420 crores only after extraction and sale of the coal of Adkoli Coal Block commenced. In order to facilitate SHEL in raising the said funds, MSMCL had agreed to provide necessary support to SHEL in accordance with the bid document. Accordingly, as per JV Agreement, SHEL was permitted to sell its 49% shareholdings in the JV company so that it holds 51% of the equity in JV company subject to the restrictions and conditions contained therein, including execution of Deed of Adherence by the purchasing party and grant of previous permission by the Government of Maharashtra in that regard. He further contended that there are provisions or clauses, in the bid document, which permit and allow the MSMCL to make necessary changes in the terms and conditions of the Agreement and that too in the overall interest of the Corporation and for the success and completion of the business of Adkoli Coal Block by mining of coal from it provided it is not contrary to the conditions laid down in the allocation letter dated 02.08.2006. He has, therefore, contended that the change in clause related to sale, transfer or pledge of shares of SHEL in JV company was recommended only for safeguarding the interest of MSMCL and the State of Maharashtra.

102. He further contended that MSMCL received Rs.25.44 crores from SHEL in the said transaction and the said JV Agreement averted substantiate amount of loss which the MSMCL would have suffered in its absence. The said fact is corroborated by the Inquiry Officer PW-6 Sh. R. Parthasarthy, Deputy Superintendent of Police, CBI in his statement under Section 161 CrPC. Furthermore, MSMCL, in its reply dated 06.01.2020 to the Government of Maharashtra, admitted that SHEL was technically eligible and there was no irregularity or illegality in the entire case whatsoever. Further, SHEL did not obtain any valuable thing or pecuniary advantage against public interest due to recommendation made by the MSMCL for treating it as a JV partner and for execution of JV Agreement with it.

103. It was further argued that the essential ingredients of any of the three offences charged against A-1 Sh. D.G. Philip have remained unsubstantiated. In respect of the offence punishable under Section 13(1)(d) PC Act, it was contended that admittedly, there are no allegations of demand, acceptance or recovery of illegal gratification by A-1. Further, there are no allegations of any *quid pro quo* or illegal consideration being instrumental in the alleged conduct of A-1. It was contended that the prosecution has failed to lead any evidence that the alleged act/omission of A-1 was not in public interest. On the contrary, the record establishes that MSMCL received substantial amount of Rs.25.44 crores as part of sweat money inclusive of interest component from SHEL in the present transaction qua Adkoli Coal Block. Besides, as per the records, SHEL did

not derive any pecuniary advantage in the said transaction as the amount expended by it in the said transaction for payment of sweat money and development of the coal block surpassed the amount received by it from JDCL. Further, Sh. R. Parthasarthy, Deputy Superintendent of Police, CBI (Inquiry Officer) has himself admitted that a substantial amount of loss which could have been caused to MSMCL has been averted by execution of JV Agreement with SHEL. Therefore, the alleged act of A-1 cannot be held to be against public interest or to obtain any valuable thing or pecuniary advantage to SHEL.

104. In respect of the allegation of the criminal conspiracy to cheat, it was argued that the essential ingredients of the offence punishable under Sections 120B/420 IPC are not made out. He contended that there is no material on record to establish that MSMCL was deceived by SHEL into entering JV Agreement or acting upon any such alleged deception, MSMCL delivered any valuable security or property to SHEL. It was further argued that the prosecution has failed to produce any evidence demonstrating that MSMCL suffered any wrongful loss or that SHEL derived any corresponding wrongful gain as a consequence of the execution of the JV Agreement. On the contrary, he argued that, as already noticed hereinabove, MSMCL received Rs.25.44 crores under the JV Agreement and was in fact, placed in financially advantageous position pursuant thereto. It was, therefore, submitted that the foundational ingredients necessary to constitute the offence of cheating and criminal conspiracy to commit the said offence, are glaringly absent.

105. With these submissions, Learned Counsel for A-1 has contended that the prosecution has miserably failed to prove its case and therefore, he is entitled to be acquitted for the charges framed against him.

XII (C). FINAL ARGUMENTS ON BEHALF OF A-2 SH. AVINASH WARJUKAR, THE THEN CHAIRMAN, MSMCL

106. Sh. Mudit Jain, Ld. Counsel for A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL contented that the prosecution has miserably failed to establish criminality/charges against him. He submitted that A-2 functioned as an Ex-Officio Non-Executive Chairman of MSMCL with effect from 11.12.2006 to 28.12.2010. His role was confined to attending meetings of the Board of Directors, MSMCL in a non-executive capacity and neither had right nor exercised control over policy decisions nor he was involved in the day to day affairs of MSMCL. He only attended its board meetings in non-executive capacity. His posting as a Chairman was a political appointment and he had no technical knowledge or expertise. He was neither involved in the drafting of the tender/bid documents or draft JV Agreement.

107. He argued that prosecution has failed to prove that A-2 had any knowledge of the terms and conditions contained in tender/bid document, particularly the clauses prohibiting the sale, transfer or pledge of the shareholdings of JV partner in JV company to the third party. It was contended that no evidence has been led to establish that these stipulations were discussed in the 165th meeting of the Board of Directors of MSMCL held on 07.02.2008. On the contrary, PW-21 Sh. Anil Pophare, the only prosecution witness who attended the said meeting, categorically claimed that no such discussion took place in his presence. The minutes of the said

meeting are also silent on the said issue. It was further contended that there is no admissible evidence on record to suggest that the draft of the tender/ bid document was placed before the Board in the said meeting dated 07.02.2008. It was contended that A-2 was not involved, in any manner, in drafting of the tender/bid document and the same was prepared by the Financial Consultant, aXYKno. Thus, there is no material to infer that A-2 was aware of the impugned restrictions contained in the tender/bid document.

108. He submitted that the draft JV Agreement approved in 172nd meeting of the Board of Directors, MSMCL was merely a proposal which was considered, scrutinized and approved at multi stages thereafter. The said proposed draft JV Agreement underwent scrutiny by the High-Power Committee, which sought comments from the Financial Consultant before approving it. Subsequently, it was examined by the Infrastructure Committee, which approved the same. Even thereafter, twelve further modifications were incorporated in the finally approved draft with the consent of the Government of Maharashtra before JV Agreement was finally executed on 21.11.2009. The draft JV Agreement forwarded by A-1 Sh. D.G. Philip, the then MD, MSMCL to the High-Power Committee on 23.01.2008 for its approval was tentative. It was neither final nor binding upon the said Committee. The multiple revisions carried out at different stages clearly demonstrate that the conditions contained in tender/bid document were not immutable. Throughout the elaborated and detailed scrutiny, no objection was raised by the authority regarding the clauses presently under challenge. It was, therefore, argued that the variations between the tender/bid document and the draft JV Agreement were neither

within the knowledge of A-2 nor legally impermissible nor the variations proposed in the draft JV Agreement were binding upon the final approval authorities, which scrutinized the draft JV Agreement in detail having all the relevant documents, including tender/bid document in their knowledge. It was further contended that A-2 cannot be singled out for any alleged illegality committed by the collective body of the Board of Directors of MSMCL which was subsequently approved by the High-Power Committee and Infrastructure Committee consisting of multiple members, particularly when none of the members of those bodies has been prosecuted.

109. He contended that the alleged modification relating to the sale of shareholdings of SHEL in JV company to the third party did not result in undue benefit to SHEL. It was contended that SHEL never transferred its shares in JV company to any third party. Instead, it transferred its 49% shares in SPV to the third party i.e. JDCL in accordance with the terms of the JV Agreement, regarding which there was no restriction in the tender/bid document. It was argued that the restriction or prohibition contained in the tender/bid document related only to sale of shareholdings to the third party and did not extend to transfer its shareholdings in SPV formed for the specific purpose of carrying on the business as per the JV Agreement. The said transfer of shares of SHEL in SPV was carried out with the approval of MSMCL, as contemplated under the JV Agreement and was not prohibited in the tender/bid document. Consequently, the prosecution's allegation that SHEL unlawfully gained Rs.15 crores by transferring its 49% shares in SPV to JDCL is misconceived as there was no restriction in that regard in the tender/bid document. He further pointed out that even in

the order of charge, this Court did not find any illegality in the said transaction.

110. He contended that the prosecution has failed to produce any evidence to demonstrate that clauses incorporated in the draft JV Agreement relating to sale, transfer or pledge of the shares of JV partner were without any public interest. It was contended that the prosecution has admitted that there is no evidence to suggest that the said decision was actuated by any *quid quo pro*, illegal gratification or other corrupt consideration. No allegation of *mala fide* or ill motive has been attributed against any of the accused public servants in relation to the modification of the relavant clauses nor any evidence has been led to that effect.

111. He contended that the judgment of Hon'ble Delhi High Court in **Runu Ghosh Vs. CBI, 2011 SCC Online Delhi 5501** is inapplicable to the facts of the present case. Reliance has been placed upon the subsequent judgment in **Ashok Kumar Gupta Vs. CBI, Crl. M.C. No.194/2019 decided on 14.08.2025**, wherein the Hon'ble Delhi Court distinguished **Runu Ghosh (supra)** and observed misconduct by public servant arises only if it results in pecuniary advantage to a private party by disregarding safeguards intended to public interest and where a demonstrable nexus exists between the conduct of the public servant and such pecuniary gain to the private party. He argued that as per **Runu Ghosh (supra)**, *mens rea* may not always be necessary for indicting the public servant but demonstrable nexus between his conduct and pecuniary gain to the private party must be established to bring him within the ambit of Section 13(1)(d)(iii) PC Act. It was submitted that in the instant case, no such nexus has been established by the prosecution between accused public servants and SHEL.

112. It was also contended that there is no legal prohibition or restriction in altering or modifying a term of a tender/bid document, which is merely an invitation to offer. Further, the prosecution has not alleged any criminality against the other public servants who modified the other terms and conditions in the JV Agreement *vis-a-vis* tender/bid document. Thus, the prosecution has implicitly acknowledged that the terms and conditions of the tender/bid document were capable of being altered. It was further submitted that there is no evidence that the impugned clauses in JV Agreement were unfair, arbitrary or against public interest.

113. It was contended that the prosecution has not examined any official from MSMCL, Government of Maharashtra or Ministry of Coal to establish that the said changes in the JV Agreement in relation to sale or pledge of shares of SHEL in JV company were prejudicial or detrimental to the interest of MSMCL or Government of Maharashtra. On the contrary, it was argued, the same were beneficial to the MSMCL inasmuch as any pledge was permissible only in respect of 'Reserved Matters', while sale of shares was subject to MSMCL's right of first refusal. Thus, in the JV Agreement, MSMCL retained effective control and discretion on both the eventualities and no unfettered right was conferred upon SHEL to deal with its shareholdings in the JV company independently.

114. On the strength of the aforesaid submissions, he contended that the prosecution has utterly failed to establish the charges against A-2 Sh. Avinash Warjukar, the then Chairman, MSMCL beyond reasonable doubt and therefore, he is entitled to be acquitted for the charges framed against him.

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XII (D). ARGUMENTS OF THE CBI/PROSECUTION IN REBUTTAL

115. Sh. Sanjay Kumar, Learned ALA for CBI assisted by the IO Inspector (Retd.) Sh. Jairaj Katiyar has reiterated his arguments and countered the arguments of the defence. In addition to the reiteration, he contended that even if some amount was received by MSMCL from SHEL, it was far outweighed by consequential and continuing financial loss caused by delay and non-performance in development of Adkoli Coal Block. He contended that even if the experience/completion certificates of SBEA (consortium partner) enclosed with the bid of SHEL are considered, SHEL was not technically eligible *vis-a-vis* scope of work and technical requirement mentioned in the tender/bid document. It was, therefore, contended that the act of A-1 Sh. D.G. Philip in declaring SHEL as technically eligible amounts to criminal misconduct as by declaring a technically ineligible company as eligible, he obtained pecuniary advantage to it by paving the way for entering into JV Agreement with MSMCL. He contended that similarly, both the accused public servants committed the offence of criminal misconduct by incorporating provisions relating to sale, transfer and pledge of the shareholdings of SHEL in JV company in the draft JV Agreement which were inconsistent with the tender/bid document. He contended that the said incorporation was without any public interest and resulted in obtaining pecuniary advantage to SHEL. He concluded with the submissions that the prosecution has proved the respective charges against both the accused public servants beyond reasonable doubt by leading cogent, consistent and convincing evidence.

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XIII. ANALYSIS OF LAW AND FACTS

116. It is a settled principle of criminal law that in a criminal trial, the accused is presumed to be innocent till he is proved guilty beyond any reasonable doubt. Further, prosecution has to stand on its own legs and it has to prove its case against the accused beyond any reasonable doubt by leading cogent and conclusive evidence. Burden of proving its case exclusively lies upon the prosecution and in order to succeed, it has to discharge the said burden. It is for the prosecution to travel the entire distance from 'may have' to 'must have'. If the prosecution appears to be improbable or lacks credibility, the benefit of doubt necessarily has to go to the accused.

117. In the succeeding paragraphs, the nature of the admitted facts and the contentious issues shall be discussed, followed by an analysis of the facts deduced from the admissible and credible evidence in relation to the contentious issues. Thereafter, it shall be examined whether the facts so established satisfy the essential ingredients of the charged offences under consideration, culminating in the decision thereon.

XIV. ADMITTED FACTS

118. Before adverting to the contentious issues, it is desirable and proper to delineate the relevant admitted facts which stand corroborated during trial of this case. The said facts are as under:-

(i) The Ministry of Coal, Government of India vide letter dated 02.08.2006 **Ex.P-288/PW-15 (D-270, PDF Page No.10120)**, allocated Adkoli Coal Block situated in Wardha Coal Field, Maharashtra to MSMCL, a Government of Maharashtra Undertaking, subject to inter alia condition that coal mining shall be carried out by MSMCL or a separate company to be created with participation of MSMCL provided that the separate created company is a Government company eligible to do coal mining as per the provisions of Coal Mines (Nationalization) Act, 1973. Significantly, apart from Adkoli Coal Block, three other coal blocks, namely, Gare Palma Sector-II, Agarzari and Warora were also allocated to the MSMCL with similar conditions. However, the present case is in relation to the alleged illegalities committed qua Adkoli Coal Block only;

(ii) A-2 was the Chairman, MSMCL from 11.12.2006 to 28.06.2010, while A-1 was the Managing Director, MSMCL from 13.09.2007 to 28.02.2009. In view of MSMCL's proposed entry into coal mining, the Board of Directors, MSMCL in its 160th meeting held on 22.12.2006 resolved to appoint a Financial Consultant and subsequently constituted Management Committee for the said purpose in its 162nd meeting held on 25.06.2007. The minutes of the said two meetings are **Ex.P-220/PW-7 (D-41, PDF Page Nos.5068-5090)** and **Ex.P-118/PW-7 (D-41, PDF Page Nos. 5109-5134)** respectively;

(iii) Thereafter, vide OM dated 01.09.2007, the Government of Maharashtra **Ex.P-270/PW-7 (D-139, PDF Page Nos.7037-7038)** constituted a High-Power Committee under the Chairmanship of Hon'ble Minister (Mining) to scrutinize the bids, examine financial matters in context of coal blocks allotted to MSMCL, in order to make MoU and approve the proposed Joint Venture Agreements for mineral development;

(iv) Pursuant thereto, MSMCL appointed aXYKno as its Financial Consultant vide final appointment letter dated 18.01.2008 **Ex.P-566/PW-20 (D-311, PDF Page Nos.10648-10649)**. The scope of its engagement included preparation of tender/bid documents, evaluation of bids and drafting of the JV Agreement;

(v) After approval of the Board of Directors, MSMCL in its 165th meeting held on 07.02.2008 invited bids on 13.02.2008 and 14.02.2008 for selction of JV partners for development of all the four allocated coal blocks, including Adkoli Coal Block with last date of submission of bids as 14.03.2008. The minutes of the said meeting are **Ex.P-118/PW-7 (D-41, PDF Page Nos.5156-5161)**. The tender/bid document **Ex.P-10 (D-44, PDF Page Nos.5284-5331)** was prepared by Financial Consultant, aXYKno and in conformity with the allocation letter, it contemplated the incorporation of JV company as a Government company in which MSMCL would hold 51% equity on a cashless basis. It also prescribed technical eligibility criteria for bidders and prohibited the JV partners from selling or creating third party rights in, or pledging, its shareholding in the proposed JV company to the third party during the currency of the JV Agreement. In addition to the other technical eligibility criteria, the tender/bid document required the bidder should have minimum 03 years experience in actual mining of open cast or underground mines, including survey and exploration, and must have adequate man-power consisting of statutorily competent, qualified & experienced persons;

(vi) In response to the said invitation/advertisement, 13 companies including SHEL submitted their bid for Adkoli Coal Block. The SHEL submitted its technical and financial bid on 13.03.2008 **Ex.P-217/PW-9 (D-28, PDF Page Nos.2611-2951)**. All the bids, including bids for other three coal blocks were opened on 14.03.2008 at 04:00 pm in the Office of MSMCL by the Tender Committee consisting of five members, including Chairman (A-2) and MD (A-1), MSMCL. However, technical analysis of the bid was not conducted in the said meeting and the representatives of the bidders were informed that they have to give their presentations before technical analysis. The minutes of the said meeting are **Ex.P-225/PW-7 (D-33, PDF Page Nos.4503-4504)**. Even as per tender/bid document, bidders were required to make presentations. On 07.04.2008, all bidders were sent fax and given time for making presentations **Ex.P-258/PW-14 (D-369, PDF Page Nos.11833-11834)**. However, as per the prosecution, no document was found in relation to the alleged presentations made by the bidders in the Office of aXYKno/Financial Consultant on 10.04.2008;

(vii) The meeting of Management Committee, MSMCL, chaired by A-2 and attended by its three other members, namely, A-1 Sh. D.G. Philip, PW-21 Dr. Anil Pophare and Sh. R. Ramakrishnan, Director, aXYKno was also convened on 10.04.2008. As per minutes of the said meeting **Ex.P-5 (D-36, PDF Page Nos.4650-4666)**, A-1 announced the names of the parties in the said meeting who were technically qualified for all the four coal blocks. Out of 13 bidders for Adkoli Coal Block, 12 bidders including SHEL were declared technically qualified whose commercial bids were decided to be opened. Thereafter, SHEL emerged as the highest (H-1) bidder for Adkoli Coal Block as it quoted the highest sweat money over and above the reserve price of Re.1 i.e. Rs.36.06 + Re.1 = Rs.37.06 per ton of the geological reserve. The recommendation was approved by the Board of Directors, MSMCL in its 167th meeting held on 24.04.2008. The minutes of the said meeting are **Ex.P-236/PW-7 (D-42, PDF Page Nos.5258-5279)**. Thereafter, it was forwarded to the High-Power Committee appointed by the Government of Maharashtra for the final approval. In the said meeting, three other JV partners of MSMCL were also approved for three other different coal blocks and their proposals were also forwarded to High-Power Committee for approval;

(viii) During the course of investigation, the prosecution recovered an unsigned tabulation sheet **Ex.P-114/PW-6 (D-33, PDF Page Nos.4337-4339)** containing handwritten remark of A-1 indicating that SHEL was technically ineligible for want of actual mining experience and other qualifying requirements. However, despite the said note, A-1 declared SHEL as technically qualified and its financial bid was considered;

(ix) The communications dated 16.05.2008 **Ex.P-107/PW-4 (D-161, PDF Page Nos.8418-8421)** and 13.06.2008 **Ex.P-570/PW-19 (D-153, PDF Page Nos.7699-7704)** were addressed by A-1 to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra Mantralaya, Mumbai requesting consideration and approval of the successful bidders in respect of the four coal blocks, including SHEL for the Adkoli Coal Block. The copies of bid documents and their terms & conditions were also submitted as Annexure-1 along with the said letters/communications;

(x) On 22.07.2008, the Government of Maharashtra amended the resolution dated 01.09.2007 and revised the procedure to the extent that the Board's recommendations are to be submitted to the High-Power Committee along with the detailed description & justification and after its approval by the High-Power Committee, it be submitted before the Infrastructure Committee of Cabinet for final decision. The said OM dated 22.07.2008 is **Ex.P-166/PW-7 (D-145, PDF Page Nos.7079-7081)**. The High-Power Committee meeting was convened on 01.08.2008 under the Chairmanship of Hon'ble Minister (Industries & Mining) to deliberate upon the issue related to the approval of successful bidders for all the four coal blocks, including Adkoli Coal Block. The minutes of the said meeting are **Ex.P-410/PW-18 (D-140, PDF Page Nos.6907-6909)**. In the said meeting, the High-Power Committee raised certain queries which were communicated to MSMCL vide letter dated 14.08.2008 **Ex.P-410/PW-18 (D-31, PDF Page No.3892)**. Vide letter dated 24.08.2008 **Ex.P-96/PW-4 (D-153, PDF Page Nos.7798-7805)**, A-1 replied to the said queries;

(xi) The High-Power Committee, in its meeting held on 20.11.2008, under the Chairmanship of Hon'ble Minister (Industries & Mining), expressed no objection in principle to the proposal concerning the Adkoli Coal Block, but directed MSMCL to prepare and submit a draft JV Agreement for further consideration. Notably, in the said meeting, the High-Power Committee rejected the recommendation made by the MSMCL with respect to Gare Palma Sector-II Coal Block. The minutes of the said meeting are **Ex.P-186/PW-7 (D-140, PDF Page No.6902)**;

(xii) Thereafter, vide letter dated 01.12.2008 of MSMCL **Ex.P-258/PW-14 (D-369, PDF Page No.11797)**, SHEL was requested to submit a draft JV Agreement. As per minutes of 171st meeting of the Board of Directors of MSMCL held on 15.12.2008 **Ex.P-194/PW-7 (D-148, PDF Page Nos.7269-7280)**, MSMCL prepared a draft JV Agreement **Ex.D-8/DW-1 (PDF Page Nos.25887-25913)** before 15.12.2008, which was enclosed therewith. Further, the minutes reflect that SHEL did not submit the draft JV Agreement till that date and it was again requested to submit the same. The said minutes further demonstrate that in the said meeting, the Financial Consultant, aXYKno was asked to obtain draft JV Agreements from the JV partners, hear them, prepare final draft of agreement and submit it to MD, MSMCL;

(xiii) In response to the minutes of the 171st Board meeting, the Financial Consultant, aXYKno gave its 1st draft of the Joint Venture Agreement with its email dated 19.12.2008 **(D-738, PDF Page No.25560)**. According to this draft, sale or pledge of shares of JV partner in the JV company to the third party was prohibited. However, share transfer of JV partner in JV company to the affiliate of JV partner was partially permitted subject to certain conditions contained therein, including a condition that the JV company shall remain a Government company and the affiliate shall accept the obligations of the transferring party under this agreement. Significantly, this provision was in consistent with the tender/bid document, which prohibited the transfer of shares of JV partner in JV company in favour of third party only but did not impose any restriction on transfer of shares of JV partner in JV company to its affiliates or SPV formed for the specific purpose of carrying on the business as per the agreement;

(xiv) The Financial Consultant, aXYKno submitted its second draft on 12.01.2009 **Ex.P-347/PW-7 (D-32, PDF Page No.4076)** with similar terms and conditions as contained in its first draft except the following relevant modifications:-

(a) It introduced a Clause 6.4.1 under the heading of 'Reserved Matters' to the effect that the pledge of shares of JV partner in JV company in favour of third party is permissible subject to the approval of at least one Director nominated by the MSMCL and at least one Director nominated by JV partner;

(b) It introduced another Clause 12.4.3 under the heading of 'Share Transfer to Affiliates' a provision that JV partner may transfer its shares to an SPV formed for the specific purpose of carrying on the business as per this agreement and the said SPV will be required to execute a Deed of Adherence; and

(c) 'Agreed Proportions' means the ratio which the Share holdings of MSMCL and JV partner (together with that of their respective associates and affiliates) bear in the equity share capital to each other shall be in proportion of 51:49;

(xv) Subsequently, on 19.01.2009, the Financial Consultant, aXYKno submitted its third and last draft of JV Agreement **Ex.P-348/PW-7 (D-742, PDF Page No.25917)** which is exactly same as its first draft dated 18/19.12.2008. Thus, in the third draft, the Financial Consultant, aXYKno deleted the changes introduced by it in its second draft dated 12.01.2009;

(xvi) The abovementioned third draft of the JV Agreement was considered by the Board of Directors, MSMCL in its 172nd meeting held on 21.01.2009 under the Chairmanship of A-2 and its other members, including A-1 Sh. D.G. Philip, MD, MSMCL. Its minutes are **Ex.P-278/PW-7 (D-42, PDF Page No.1529)** and its true English translation is **Ex.P-194/PW-7 (D-148, PDF Page No.7264)**. As per the said minutes, the aforementioned draft JV Agreement was discussed paragraph wise and necessary amendments were made in it. The draft of the agreement was finalized and unanimously approved. In the meeting, it was decided that copy of the approved draft be sent to the Government for final approval. Accordingly, on 23.01.2009, the draft JV Agreement approved by the Board of Directors, MSMCL was sent to High-Power Committee for its approval. The said draft is **Ex.P-102/PW-4 (D-158, PDF Page No.8354)**. The said draft JV Agreement omitted the prohibition of sale/transfer of the shares of the JV partner in JV company to the third party and in its Clause 12.4 permitted the same subject to the condition contained under the said clause. The said stipulation was in contradiction with the bid document and the draft of JV Agreement submitted by the Financial Consultant, aXYKno. In consistence with the bid document, Clause 12.2 of the said draft JV Agreement prohibited pledge of the shareholdings of the JV partners in JV company to any third party. However, at the same time, its Clause 6.4.1 with title 'Reserved Matters' permitted pledge of shares by JV partner in JV company in favour of any third party with the approval of one Director nominated by the MSMCL and one Director nominated by SHEL;

(xvii) The said draft adopted, *in toto,* the provisions contained in the second draft of the Financial Consultant, aXYKno dated 13.01.2009, in so far as they related to the transfer of shareholdings of JV partner to its affiliates and the said provisions were incorporated in its Clause 12.3. The said JV Agreement further stipulated that the aggregate shareholdings of MSMCL and SHEL, together with that of their respective associates and affiliates, in the JV company would at all times remain in the ratio of 51:49 i.e. 51% and 49% respectively. Pertinently, at the cost of repetition, it is reiterated that the aforementioned provisions in relation to transfer of shares of SHEL to its affiliates or SPV formed for the specific purpose of carrying on the business as per the JV Agreement, were not in contradiction with the tender/bid document as no such prohibition or restriction was contained in the tender/bid document;

(xviii) The minutes of High-Power Committee meeting held on 30.01.2009 have not been placed on record. However, minutes of High-Power Committee meeting held on 09.04.2009 **(D-155, PDF**

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Page No.8224) and the letter dated 31.01.2009 written by A-1 to the Principal Secretary, Department of Industries, Energy and Labour, Government of Maharashtra **Ex.P-342/PW-7 (D-31, PDF Page No.3649)** finds mention about the High-Power Committee meeting held on 30.01.2009. As per the said documents, it can be conclusively inferred that in the meeting held on 30.01.2009, the High-Power Committee directed that the proposal regarding the draft JV Agreement should be resubmitted for consideration to the High-Power Committee to resolve the views of the different departments;

(xix) Further, the said letter of A-1 dated 31.01.2009 was written with reference to the High-Power Committee meeting held on 30.01.2009 in respect of draft JV Agreement qua Agarzari Coal Block for M/s Adani Enterprises, proposed JV partner, as it had raised certain issues, including its right to pledge its shareholdings in JV company in the draft JV Agreement. Significantly, the draft JV Agreement that was sent on 23.01.2009 was common for the Adkoli as well as Agarzari Coal Block. In the said letter, A-1 made a comment in regard to issue at Srl. No.10 raised by M/s Adani Enterprises and its relevant portion is reproduced as under:-

> "The Board in its joint intellectual capacity has considered all the aspects of the say of the J.V. partners and has incorporated all those that are in conformity with the tender terms and conditions. Those aspects that are not in conformity with the tender documents were not incorporated in the Joint Venture Agreement. However, the High-Power Committee may like to consider the say of the J.V. Partner and take suitable decision as seem fit."

(xx) The 173rd meeting of Board of Directors, MSMCL was held on 25.02.2009 and its minutes are **Ex.P-9 (D-148, PDF Page No.7518)**. As per the said minutes in Subject No. 13 with title 'Progress in respect of Joint Venture Project Agreement of Agarzari, Warora and Marki-Zari-Jamni-Adkoli Coal Blocks', it was recorded that the High-Power Committee meeting held on 13.02.2009 at Mumbai directed Managing Director, MSMCL to obtain comments of financial advisor and to submit them to High-Power Committee. It was further recorded that accordingly, financial advisor prepared its comments and same were placed before the Board for approval. They were discussed in detail and were approved with some amendments. Thereafter, it was resolved that the said approved amended draft of comments be placed before the High-Power Committee. The comments of the Financial Consultant, aXYKno approved in the 173rd meeting of Board of Directors, MSMCL were communicated by A-1 to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra vide letter dated 26.02.2009 **Ex.P-409/PW-18 (D-153, PDF Page No.7559)**. Significantly, A-1 retired as MD, MSMCL on 28.02.2009;

(xxi) On 09.04.2009, the High-Power Committee, in its meeting under the Chairmanship of Chief Secretary, discussed in detail the draft of the JV Agreement. The minutes of the said meeting are available at **D-155, PDF Page Nos.8224-8228**. In the said meeting, a presentation was made by the Financial Consultants Sh. Ramakrishna and Sh. Hetal of aXYKno on the entire bidding process for the selection of the JV partner for the development of the coal blocks allotted to the MSMCL. The presentation covered the matters, including background of the tender process;

(xxii) In subsequent meeting of the High-Power Committee under the Chairmanship of the Hon'ble Chief Minister, Government of Maharashtra held on 04.05.2009, the JV Agreement **(D-156, PDF Page Nos.8250-8298)** was approved and it was resolved that the proposal be put up before the Infrastructure Committee for final approval. The minutes of the said meeting held on 04.05.2009 are **Ex.P-284/PW-7 (D-134, PDF Page Nos.6802-6803)**. Significantly, in relation to the impugned conditions of sale and pledge of the shareholdings of JV partner (SHEL) in JV company to the third party, no changes/modifications were made in the said approved JV Agreement, *vis-a-vis* the draft JV Agreement sent by A-1 along with his letter dated 23.01.2009;

(xxiii) On 16.06.2009, Sh. A.M. Khan, Principal Secretary (Industries) prepared a detailed Cabinet note/proposal **(D-146, PDF Page Nos.7160-7170)** to be put up before the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra for approval of the draft JV Agreement with the proposed JV company (partner), in accordance with the recommendations made by High-Power Committee for development of mineral, its usage and sales in the coal blocks allotted to the MSMCL, including Adkoli Coal Block. In Para No.5 of the said detailed note, the main conditions as per the tender/bid document dated 14.02.2008 were delineated and in its Para No.8, the salient features of the proposed JV Agreement were discussed. The same was approved by the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra in its meeting held on 18.06.2009 **Ex.P-180/PW-7 (Colly) (D-134, PDF Page No.6808)**. Thus, the Infrastructure Committee also approved the draft of JV Agreement sent by A-1 along with his letter dated 23.01.2009 without any change in the stipulations related to sale and pledge of the shares of JV partners in JV company to the third party and their transfer to its affiliates;

(xxiv) The said approval was communicated by the Government of Maharashtra to the MSMCL vide letter dated 01.08.2009 **Ex.P-119/PW-7 (D-135, PDF Page No.6806)**. Accordingly, Sh. N.K. Sudhanshu, the then MD, MSMCL issued letter of intent to SHEL and the same is **Ex.P-250/PW-12 (D-29, PDF Page No.3312)**;

(xxv) Thereafter, MSMCL proposed certain modifications in the draft JV Agreement approved by Infrastructure Committee, Government of Maharashtra and in that regard, a letter was written by Sh. N.K. Sudhanshu, the then MD, MSMCL to the Government of Maharashtra. The Government of Maharashtra, vide its letter dated 23.10.2009 to MD, MSMCL, communicated that it accepted total 12 proposed modifications as detailed in chart annexed with the said letter. The said letter along with chart of the approved modifications in JV Agreement is **Ex.P-258/PW-14** (**D-369, PDF Page Nos.11732-11735)**;

(xxvi) The final JV Agreement incorporated the aforementioned 12 modifications and it was finally executed between MSMCL and

SHEL on 21.11.2009 **Ex.P-260/PW-14 (D-61, PDF Page Nos.5847-5895)**. The 02 out of the said 12 modifications that are relevant for the adjudication of the present case are reproduced as under:-

(a) 'except as provided in this agreement' was inserted at the end of Para No.12.2 regarding right to pledge the shares of JV partner in JV company; and

(b) In the end of the Para No.12.3.3, under the heading of 'Share transfer to affiliates', the following sentences were inserted:-

> 'It will however be mandatory for the Party No.2 to maintain atleast 51 percent share in the SPV at all times during the period of the agreement. In case of consortium, the consortium partners should have a minimum cash equity holding of 5% in the SPV'.

(xxvii) In accordance with Clause 1 of JV Agreement dated 21.11.2009 **Ex.P-260/PW-14 (D-61, PDF Page Nos.5847-5895)**, a JV company, namely, M/s MSMCL Adkoli Natural Resources Limited was incorporated between MSMCL and SHEL on 18.02.2010;

(xxviii) M/s Sunil Hi-Tech Energy Private Limited was incorporated on 07.02.2008 by the promoters of SHEL which was later decided to be used as SPV as per the clause 12.3.3 of JV Agreement dated 21.11.2009. Further, M/s SHEL Investment Consultancy Services Limited was incorporated on 20.08.2009 as an affiliate of SHEL, which was later used for transfer of shareholdings of SHEL in JV company in accordance with Clause 12.3 of the JV Agreement dated 21.11.2009;

(xxix) JDCL was subsidiary of Jaypee Infra Ventures and it was incorporated on 05.12.2007;

(xxx) On 31.10.2009 i.e. before the execution of JV Agreement dated 21.11.2009, a Term Sheet was signed between SHEL and Jaiprakash Associates Limited **Ex.P-318/PW-16 (D-275, PDF Page Nos.10128-10132)**. This Term Sheet provided the indicative terms and conditions to form the basis of discussions for the proposed acquisition of shares of Sunil Hi-Tech Energy Private Limited (SPV) by Jaiprakash Associates Limited or its associates or affiliates or nominees (JDCL is associate/affiliate of Jaiparkash Associates Limited). It provided that M/s Sunil Hi-Tech Energy Private Limited is a private limited company owned/to be owned entirely by SHEL. It further provided that M/s Sunil Hi-Tech Energy Private Limited will be a Special Purpose Vehicle (SPV) formed as holding/investment company to hold 49% stake (of the JV partner) in the JV company to be incorporated in joint venture with MSMCL. The Term Sheet noted that considering the requirement of MSMCL stipulated in the draft JV Agreement, in case a Special Purpose Vehicle (SPV) of SHEL is made a JV partner (instead of SHEL itself) in the JV company, SHEL shall continue to hold at least 51% share in the Special Purpose Vehicle (SPV) at all times during the period of the JV Agreement and Jaiprakash Associates Limited intends to acquire 49% of the equity share capital of SHEL in the JV company having a face value of Rs.10 each (Rupees Ten only) from

SHEL. The purchase consideration towards acquiring 49% of the paid-up share capital of the company was fixed as Rs.15 crores. On 05.11.2009, a sum of Rs.5 crores was credited by Jaiprakash Industries Limited in the account of SHEL **Ex.P-354/PW-17 (D-172, PDF Page No.8443)**;

(xxxi) On 25.02.2010, a Deed of Adherence was executed between MSMCL, SHEL and M/s Sunil Hi-Tech Energy Private Limited whereby entire 49% shareholding of SHEL in JV company was transferred in favour of M/s Sunil Hi-Tech Energy Private Limited, the SPV **Ex.P-240/PW-12 (D-62, Page Nos.113-116, also at PDF Page No.11728)**. Simultaneously, M/s Sunil Hi-Tech Energy Private Limited (SPV) agreed to become bound by the JV Agreement in the same manner as it had been an original party to the agreement as the Existing Shareholder (SHEL). Consequently, the SPV became the successor-in-interest to SHEL under the JV Agreement.

(xxxii) On 23.03.2010, another Deed of Adherence was executed between SHEL (as existing shareholder), SHEL Investment Consultancy Services Limited (as new shareholder), Sunil Hi-Tech Energy Private Limited (SPV) (as the ‘company’), MSMCL and MSMCL Adkoli Natural Resources Limited (Joint Venture company) **Ex.P-237/PW-12 (Colly) (D-62, PDF No.5918)**. This deed recorded that the existing share holder (SHEL) has entered into a Joint Venture Agreement with MSMCL relating to development and operation of Adkoli Coal Block through Joint Venture Company, MSMCL Adkoli Natural Resources Limited. It also recorded that the existing shareholder (SHEL) and company (SPV) have entered into a Deed of Adherence with MSMCL on 25.02.2010 wherein all the rights and obligations of the existing shareholder as the JV partner of MSMCL are transferred to the company (being a SPV of the existing shareholder) as permitted under Clause 12.3.3 and Clause 14.5 of the Agreement. This Deed also recorded that the company being SPV promoted by the existing shareholder, the existing shareholder has to maintain at least 51% shareholding in the SPV at all times during the period of the JV Agreement as per Clause 12.3.3. The MSMCL, vide its letter dated 30.03.2010 **Ex.P-258/PW-14 (D-369, PDF Page No.11654)**, permitted existing shareholder to hold such 51% shares in the company along with its affiliate companies. The Deed recorded that the new shareholder (SHEL Investment Consultancy Services Limited) proposes to purchase 71,04,240 shares of the M/s Sunil Hi-Tech Energy Private Limited (SPV) (constituting 37.50% of shareholding of SHEL of JV company held in SPV) from existing shareholder (SHEL) for a value of Rs.17 each aggregating to Rs.12,07,72,080/- (Rupees Twelve Crores Seven Lakhs Seventy Two Thousand and Eighty Only). Simultaneously, M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) agreed to become bound by the JV Agreement in the same manner as it had been an original party to the agreement as the Existing Shareholder (SHEL);

(xxxiii) After the aforementioned two transactions dated 18.02.2010 and 23.03.2010, 37.50% of the shares of M/s Sunil Hi-Tech Energy Private Limited (SPV) were owned by M/s SHEL

Investment Consultancy Services Limited and 62.50% of the shares were held by SHEL. It is significant to note that the aforementioned entire issued share capital of SPV represented the 49% of the equity stake in the JV company which had earlier been held by SHEL alone (JV partner);

(xxxiv) In the 181st meeting of the Board of Directors of MSMCL held on 23.12.2010, **Ex.P-140/PW-7 (D-78, PDF Page No.6059)**, it was resolved that the transfer of 49% (including 5% shares of Technical Partner) equity shares in SPV Sunil Hi-Tech Energy Private Limited by SHEL to Jaypee Group be approved, subject to the condition that the transfer and transferee company shall execute necessary undertaking, Deed of Adherence and subject to the verification of the technical competency of the transferee company by the Managing Director;

(xxxv) Pursuant to the approval of the Board of Directors, MSMCL, 49% shares of SHEL in JV company held by SPV were sold to JDCL on 21.04.2011 **Ex.P-263/PW-14 (D-373, PDF Page Nos.12066-12091)**;

(xxxvi) Further, on the same date i.e. on 21.04.2011, Share Pledge Agreement was also executed between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL **Ex.P-263/PW-14 (D-373, PDF Page Nos.11994-12008)**. As per this agreement, M/s SHEL Investment Consultancy Services Limited, which was holding 71,04,240 shares of M/s Sunil Hi-Tech Energy Private Limited (SPV), equal to 37.50% of the total equity were pledged to JDCL along with all rights, including voting rights as a security towards the subscription of 1,200 optionally convertible debentures of Rs.1 lakh each for a total consideration of Rs.12 Crores;

(xxxvii) A Debenture Subscription Agreement dated 31.03.2010 was executed between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL, whereby JDCL subscribed to 1,200 convertible debentures issued by the SHEL affiliate having a face value of Rs.1 lakh each and accordingly, paid the consideration of Rs.12 crores to M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) on 21.04.2011. Significantly, this transaction is unrelated to the JV Agreement and the prosecution/CBI has failed to disclose what offence, if any, was committed by either of the parties owing to the said transaction;

(xxxviii) In terms of Clause 3.8A of JV Agreement, following amount was received by MSMCL from SHEL:-

Srl. No.	Date of Payment	Amount in Rupees	Remarks
1	28.04.2008	11,25,00,000/-	15% of Sweat Money Paid
2	18.08.2009	7,40,00,000/-	10% of Sweat Money Paid
3	15.03.2010 to 27.04.2011	42,72,085/-	Amount spent by M/s. MSMCL and later on reimbursed by M/s SHEL.
4	29.07.2010 to 31.03.2014	9,62,14,574/-	Amount received as interest on deferred sweat money.
	Total	28,69,86,659/-	

(xxxix) The following amount was received by SHEL and its subsidiary/associates from JDCL on account of purchase of shares, subscription to the debentures and unsecured loan:-

Srl. No.	Date of Payment	Amount in Rupees	Remarks
1	05.11.2009 to 21.04.2011	15,00,00,000/-	On account of sale of 91, 72,000 shares of SPV i.e. M/s Sunil Hitech Energy Pvt. Ltd. (49% shareholdings)

2	21.04.2011	12,00,00,000/-	Issue of 1200 debentures by M/s SHEL affiliate i.e. M/s SHEL Investment Consultancy (P) Ltd.
3	23.05.2011 to 26.05.2015	12,99,58,000/-	Unsecured loan on account of payment of interest on deferred sweat money able to M/s MSMCL.
	Total	39,99,58,000/-	

(xl) JDCL also purchased 35 lakh shares of M/s Gangakhed Sugar and Energy Private Limited (subsidiary of SHEL) at face value of Rs.10/- with premium of Rs.90/- per share (total value Rs.100/-per share) for Rs.35 crores. Notably, this transaction also has no relation or connection to the JV Agreement. Further, the prosecution/CBI has also failed to disclose what offence, if any, was committed by either of the parties on account of the said transaction; and

(xli) Therefore, in total, Rs.74,99,58,000/- was received by SHEL or its subsidiary company from JDCL on account of purchase of shares, issuance of debentures and unsecured loans.

XV. THE ADMITTED/CONCLUDED ASPECTS EXCLUDED FROM CONSIDERATION IN THE PRESENT JUDGMENT

119. In the instant case, no charge was framed in respect of certain allegations made in the charge-sheet and the concerned accused persons stood discharged in relation thereto, at the stage of framing of charge. Furthermore, no evidence has emerged during the course of trial to substantiate the said allegations. Consequently, those aspects have attained finality and fall outside the scope of adjudication in the present judgment. They neither required any discussion on merits nor call for any finding in the subsequent part of this judgment. The said aspects are as follows:-

(i) **Appointment of Financial Consultant**: No illegality was found in the appointment of Financial Consultant, aXYKno by MSMCL or in the alleged exorbitant fees paid by MSMCL to the said Financial Consultant towards the services rendered by it. Consequently, none of the accused persons is liable to be proceeded against or indicted on the basis of the said unsubstantiated allegation;

(ii) **Declaration of SHEL as technically eligible bidder**: In respect of the allegations relating to declaration of SHEL technically eligible despite its alleged ineligibility, the alleged criminal misconduct of the public servant A-1 was not found to be in conspiracy or connivance with any other person, including SHEL. Accordingly, the said allegation survives for consideration only in relation to alleged criminal misconduct of A-1;

(iii) **Deviation in JV Agreement**: The allegation regarding incorporation of the clauses related to sale, transfer or pledge of shareholdings of JV partner (SHEL) in JV company in JV Agreement dated 21.11.2009 contrary to the bid document dated 14.02.2008, survives only for consideration in the context of the alleged criminal misconduct of A-1 and A-2 public servants, acting without public interest in connivance with SHEL and not in relation to the remaining charge-sheeted accused persons;

(iv) **Execution of JV Agreement and subsequent shareholding transactions**: The allegations relating to cheating and criminal conspiracy in execution of JV Agreement dated 21.11.2009 and subsequent transactions concerning the shareholdings of SHEL in JV company with its affiliate, SPV and JDCL, survive only for

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consideration in context of the alleged criminal misconduct of A-1 and A-2 public servants without public interest in connivance with SHEL and not in relation to the remaining charge-sheeted accused persons; and

(v) ***Quid Pro Quo*/Illegal Gratification**: The allegations of *quid pro quo* or any ulterior consideration including illegal gratification to the accused public servants by any person in connection with the alleged offences remained wholly unsubstantiated even at a *prima facie* level at the stage of charge. Consequently, the said allegations do not survive for consideration and require no deliberation in the subsequent part of this judgment.

XVI. CONTENTIOUS ISSUES

120. In the backdrop of the preceding paragraphs, the following contentious issues survive for determination in the present case:-

(i) Whether declaration of SHEL as technically eligible to bid for selection as the JV partner of MSMCL, gives rise to any criminality and if yes, against whom;

(ii) Whether the incorporation in the JV Agreement dated 21.11.2009 of clauses relating to the sale, transfer or pledge of shares of SHEL in JV company, which allegedly deviated from the corresponding provisions contained in the tender/bid document, constitutes any criminal offence and if yes, against whom;

(iii) If issue no.(ii) is answered in affirmative, whether any transaction was undertaken by SHEL, its affiliate (M/s SHEL Investment Consultancy Services Limited), the SPV (M/s Sunil Hi-

Tech Energy Private Limited) and JDCL in accordance with the impugned terms and conditions related to sale, transfer or pledge of shares of SHEL in JV company to the third party as incorporated in the JV Agreement dated 21.11.2009 and if so, whether such transactions attract any criminal liability; and

(iv) Whether the transactions undertaken by SHEL, its affiliate (M/s SHEL Investment Consultancy Services Limited), the SPV (M/s Sunil Hi-Tech Energy Private Limited) and JDCL in accordance with the remaining terms and conditions of JV Agreement dated 21.11.2009, particularly those relating to share transfers to affiliates, in respect of which no deviation from the tender/bid document has been alleged, attracts any criminality.

XVII. ALLEGATIONS RELATING TO DECLARATION OF TECHNICALLY INELIGIBLE SHEL AS TECHNICALLY ELIGIBLE BIDDER

121. The charge in respect of the aforesaid allegation has been framed in only against A-1 Sh. D.G. Philip, the then MD, MSMCL. Significantly, despite SHEL being the beneficiary of the impugned decision, it has not be arraigned as an accused in relation to this allegation. The reason for excluding SHEL from the said allegation has been succinctly recorded in the order of charge dated 25.05.2023 in the following terms:-

> *'Although by relaxing the conditions for technical requirements, M/s. SHEL was awarded the tender being H-1, but nothing can be read into this because this relaxation was for all the 7 ineligible bidders and not peculiar to M/s. SHEL alone and to win the contract, the financial bid had to be the highest for which there was no certainty. In the absence of any allegation in the chargesheet, it is only in the domain of surmises and conjectures, that after declaring eligible, the*

technically ineligible bid of M/s SHEL, its financial bid was rigged to make him H-1'.

The aforesaid finding has attained finality as despite a detailed and comprehensive trial, the prosecution has failed to produce any evidence warranting a different conclusion in so far as SHEL is concerned. Accordingly, the aforesaid conclusion recorded at the stage of framing of charge continues to hold good and does not require any consideration in the present judgment.

122. Thus, the present allegation is required to be examined in the backdrop of the findings that have attained finality, namely, that there is no material or evidence of any connivance between A-1 and SHEL in declaring SHEL as technically eligible, despite its alleged ineligibility and that there is no material to establish any *quid pro quo*, illegal gratification or ulterior consideration flowing to A-1 for taking the impugned decision.

123. In order to bring home the charge against A-1 for the present allegation of criminal misconduct punishable under Section 13(1)(d)(iii) PC Act, the prosecution is required to establish beyond reasonable doubt, the following facts :-

(i) SHEL did not fulfill the technical eligibility criteria prescribed under the tender/bid document for selection as the JV partner for development of the Adkoli Coal Block;

(ii) A-1 was solely responsible for and independently took the impugned decision declaring SHEL technically eligible, thereby paving the way for the opening and consideration of its financial bid; and

(iii) By taking the aforesaid decision, A-1, by abusing his official position, obtained for SHEL valuable thing or pecuniary advantage without any public interest.

124. The aforesaid ingredients are required to be examined sequentially in the light of the oral and documentary evidence adduced by the prosecution. Failure to establish anyone of the essential ingredients would be fatal to the prosecution case in relation to the present allegation.

XVII (A). TECHNICAL ELIGIBILITY OF SHEL

125. The first part of this ingredient centers around the allegation of the prosecution that despite having recorded in the unsigned tabulation sheet **Ex.P-114/PW-6 (D-33, PDF Page Nos.4337-4339)** a handwritten remark of A-1 indicating that SHEL was technically ineligible, he subsequently declared it to be technically eligible. The said handwritten remark has been proved by handwriting expert i.e. PW-13 Sh. Vijay Verma, Senior Scientific Officer, Grade-I, CFSL, CBI, Delhi to be in the handwriting of A-1. Further, A-1 has also not disputed that the said handwritten remark was written by him.

126. A-1, however, explained that the aforesaid remark was made before SHEL submitted a Consortium Agreement/MoU dated 14.03.2008 executed between SHEL and SBEA. According to him, as no Consortium Agreement or MoU had accompanied the original bid, the experience and qualification of SBEA could not initially be considered while assessing the technical eligibility of SHEL. It is his defence that the handwritten remark merely reflected the position prevailing at that stage. Subsequently, upon an opportunity being afforded to SHEL and other bidders to remove deficiencies in their technical bids by furnishing supporting documents in

terms of the Government Resolution dated 30.04.1994 issued by the Industry Department, Government of Maharashtra, SHEL submitted the aforesaid MoU. Consequently, the experience and technical qualification of SBEA became available for consideration and SHEL, as a consortium partner with SBEA, was found to satisfy the prescribed technical eligibility. According to A-1, the earlier handwritten remark, therefore, ceased to have any relevance after submission of the MoU. His consistent defence is that the said handwritten remark was a tentative assessment which was neither recorded during any formal decision making process nor intended to constitute a final and binding determination regarding the technical eligibility of SHEL. It is his consistent stand that the said tentative opinion underwent a legitimate change upon alteration of the factual matrix, namely, the subsequent furnishing by SHEL of the deficient supporting document i.e. MoU in a legally permissible manner.

127. The Government Resolution dated 30.04.1994 issued by the Industry Department, Government of Maharashtra prescribes the procedure governing the 'two envelope system'. The said resolution provides that where shortcomings are noticed in a technical bid or supporting documents are found to be deficient, the bidder may be permitted to furnish such documents before opening of the commercial bids so as to ensure receipt of the best competitive offers. Thus, the resolution expressly contemplates curing deficiencies in the technical bid before consideration of the financial bids.

128. It is the specific defence of A-1 that in conformity with the aforesaid Government Resolution, SHEL as well as other bidders, whose technical bids were found deficient were granted an opportunity to remove such

deficiencies by furnishing the requisite supporting documents. Availing the said opportunity, SHEL submitted the MoU dated 14.03.2008 with SBEA, enabling it to rely upon the later's mining experience and technical expertise for satisfying the eligibility criteria in order to gain JV partnership.

129. The aforesaid defence of A-1 is not only forceful and persuasive but it has also been accepted in order on charge dated 25.05.2023. The bid of SHEL was submitted with the forwarding letter dated 13.03.2008 in a spiral-bound compilation. Significantly, the MoU dated 14.03.2008 executed between SHEL and SBEA is not part of spiral-bound compilation but is attached thereto separately by a stapler pin. This circumstance *prima facie* indicates that the MoU was furnished subsequent to submission of the original bid. The prosecution has not led any evidence to establish that A-1 recorded the aforementioned handwritten remark after receipt of the said MoU. On the contrary, the surrounding circumstances probabilise the defence version that the remark was recorded prior to submission of the MoU when SHEL could not legitimately claim the benefit of SBEA's experience. In absence of the MoU, SHEL would not have fulfilled the prescribed technical eligibility criteria and the contemporaneous remark describing it as technically ineligible, is therefore, consistent with the then prevailing factual position. Thus, it is reasonably expected that the aforementioned handwritten remark was made by A-1 before submission of the said MoU.

130. There is no evidence on record to suggest that any interpolation, insertion or manipulation was carried out in the tender/bid document of SHEL by any person, much less by A-1. The allegation that the MoU dated

14.03.2008 was subsequently interpolated into the tender/bid document of SHEL is founded purely on suspicion and conjecture. The prosecution has failed to adduce any substantive or admissible evidence to establish that the said MoU was illegally inserted into the tender/bid document after its submission or that such insertion was carried out at the instance of A-1. In the absence of any such evidence, the allegation of interpolation remains a matter of mere imagination rather than proof.

131. The explanation furnished by A-1 that the aforementioned MoU was submitted subsequently by SHEL pursuant to the opportunity granted to remove deficiencies in technical bid, in terms of the Government Resolution dated 30.04.1994 issued by the Industry Department, Government of Maharashtra, finds support from the surrounding circumstances and appears to be both satisfactory and probable. Consequently, the prosecution has failed to dislodge the said explanation.

132. In view of the foregoing discussion, it stands established that the prosecution has failed to prove any interpolation, insertion or manipulation in the tender/bid document of SHEL. It is further held that no illegality was committed in affording SHEL an opportunity to cure the deficiency in its technical bid by furnishing the requisite supporting document, namely, the MoU dated 14.03.2008 with SBEA, in accordance with the Government Resolution dated 30.04.1994. It also stands established that the handwritten remark made by A-1 describing SHEL as technically ineligible was recorded prior to the submission of the said MoU and merely reflected the position obtaining at that stage.

133. The next question, therefore, that falls for consideration is whether, upon taking into account the MoU dated 14.03.2008 along with the other

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bid documents submitted by SHEL, the consortium of SHEL and SBEA satisfied the technical eligibility criteria prescribed under the tender/bid document. The answer to this issue would determine whether the subsequent decision declaring SHEL technically eligible was in conformity with the tender conditions or was actuated by any illegality or criminal misconduct.

134. In order to establish that SHEL was technically ineligible, the prosecution principally relied upon the testimony of its expert witness i.e. PW-9 Sh. U.S. Singh, Senior Manager (Mining) (Retd.), Mineral Exploration Corporation Limited (MECL). After comparing the tender/bid documents with the documents submitted by SHEL, PW-9 opined that SHEL did not satisfy the prescribed technical eligibility criteria on the following counts: (i) it did not possess experience in 'actual mining'; (ii) it lacked experience in survey and exploration; and (iii) it did not have the requisite statutorily competent and experienced manpower.

135. Admittedly, the term 'actual mining' has not been defined either in the tender/bid document or under any statute. Section 3(d) of the Mines and Minerals (Development & Regulation) Act, 1957 defines 'mining operations' to mean any operation undertaken for the purpose of mining any mineral. PW-9, however, did not explain the basis on which he interpreted the expression 'actual mining' to mean only the activity of winning coal or minerals from mother earth. The statutory definition of 'mining operations' is of wide amplitude and it is capable of encompassing various activities undertaken by SBEA as per its work experience certificates annexed with the bid document of SHEL. Further, whether the work experience reflected in those documents satisfied the expression

‘actual mining’ employed in the tender/bid document is, therefore, a matter capable of more than one interpretation. Significantly, PW-9 was neither associated with the drafting of the tender/bid document nor with the evaluation of the technical bid. Therefore, the subjective understanding of PW-9 regarding the expression ‘actual mining’ cannot be accepted to be the true import of the said expression in the tender/bid document unless the same is corroborated by its author i.e. Financial Consultant, aXYKno. His opinion was rendered only during the course of investigation. Such opinion, however valuable, cannot substitute intention of the author of the tender/bid document or conclusively determine the true import of the eligibility conditions. Therefore, his subjective opinion does not inspire sufficient confidence to conclusively hold that SHEL was technically ineligible on the ground that it lacked experience in ‘actual mining’.

136. The defence examined DW-2 Sh. Mahinder Singh Bhasin, Partner of SBEA to establish that SHEL, in consortium with SBEA, satisfied the prescribed technical eligibility criteria. He testified that SBEA had been engaged in mining development activities since the year 1990 and had been providing machines to Coal India Limited (CIL) for extraction of coal. During his cross-examination, he admitted that no certificate evidencing mine development work undertaken during the period from 14.03.2005 to 14.03.2008 was enclosed with the tender/bid document of SHEL **Ex.P-217/PW-9 (D-28, PDF Page Nos.2611-2951)**. However, Annexure-2 (Bidders Experience Information-Last Five Years) forming part of the said tender/bid document at **PDF Page No.2623** specifically records that SBEA had undertaken mine development work, including open excavation, construction of RCC box and drivage during the relevant

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period of three years preceding submission of the tender/bid. Therefore, it cannot be said that A-1 acted without any material while considering the technical eligibility of SHEL in consortium with SBEA on the aforesaid aspect of its experience immediately preceding three years. Thus, the said part of the testimony of DW-2 cannot be read against A-1 to indict him for culpably ignoring the condition of experience of SHEL in mining immediately preceding three financial years. Likewise, although DW-2 admitted that none of the key personnel mentioned in the tender/bid document of SHEL were DGMS certified surveyors. Such omission, by itself, cannot automatically render SHEL technically ineligible. Whether the said requirements constituted mandatory conditions going to the root of eligibility or were capable of deviation could have been explained by the author of the tender/bid document or by the competent officials of MSMCL. In absence of such evidence, the Court is unable to accept that every deviation from the prescribed requirements necessarily rendered SHEL technically ineligible.

137. Significantly, the prosecution did not examine any witness who was instrumental in drafting or formulating the technical eligibility criteria contained in the tender/bid document. Neither the author of the tender/bid document, namely, Financial Consultant, aXYKno nor any competent official of MSMCL associated with framing the eligibility conditions was examined. Such witnesses would have been the most appropriate persons to explain the true import, object and intended scope of the technical requirements prescribed in the tender/bid document. In the absence of such evidence, the opinion of a third-party expert, howsoever qualified, cannot

by itself be regarded as conclusive of the meaning and application of the eligibility criteria incorporated in the tender/bid document.

138. It has also come on record that during the course of investigation, the prosecution recorded the statement of another expert, namely, Sh. Anil Kumar Rana, GM, CMPDIL under Section 161 CrPC. Although the investigating agency was aware of his opinion, it chose not to examine him as a prosecution witness during trial and he has been cited as an unrelied witness. Undoubtedly, his statement under Section 161 CrPC is not substantive evidence and cannot be relied upon to determine the technical eligibility of SHEL. Nevertheless, the fact that the prosecution itself did not place before the Court the evidence of another expert, whose opinion was apparently at variance with that of the expert examined during trial, assumes significance while appreciating whether the prosecution has discharged its burden of proving its case beyond reasonable doubt.

139. In the aforesaid circumstances, this Court is unable to hold that the prosecution has established, beyond reasonable doubt, that SHEL was technically ineligible under the tender conditions. The evidence on record demonstrates that the issue of technical eligibility admitted of more than one plausible interpretation. Thus, at best, the material on record discloses the existence of divergent views regarding the interpretation and application of the technical eligibility criteria. Such divergence of opinion is wholly inconsistent with the degree of certainty required for recording a finding of criminal misconduct. The benefit of such doubt must necessarily enure to the accused.

140. Another significant circumstance which weakens the prosecution case is that no officer from MSMCL or the Government of Maharashtra,

who was associated with the tender process or was competent to explain the object and significance of the technical eligibility criteria, has been examined to establish that SHEL was, in fact, technically ineligible. More importantly, no such witness has deposed that the declaration of SHEL as technically eligible was contrary to the tender conditions, prejudiced the interests of MSMCL or the Government of Maharashtra, caused any wrongful loss to the Government, or conferred any undue or unwarranted pecuniary advantage upon SHEL. In the absence of such evidence, the prosecution's allegation that the declaration of SHEL as technically eligible constituted an act of criminal misconduct rests merely upon its own interpretation of the tender conditions. Criminal liability under Section 13(1)(d)(iii) PC Act cannot be founded upon assumptions or differing interpretations of contractual or technical stipulations. The prosecution was required to establish, by cogent and reliable evidence, that SHEL was technically ineligible but also that the impugned decision resulted in obtaining for SHEL a valuable thing or pecuniary advantage without public interest. The prosecution has failed to discharge either of these burdens.

XVII (B). RESPONSIBILITY OF A-1 IN DECLARING SHEL TO BE TECHNICALLY ELIGIBLE BIDDER

141. The Government of Maharashtra vide letter dated 01.09.2007 had directed the Managing Director, MSMCL to scrutinize the bids received with reference to Expression of Interest for the coal blocks from administrative and financial viewpoints and should prepare comparative chart, **Ex.P-270/PW-7 (D-139, PDF Page Nos.7037-7038)**. Notably, A-1 was the Managing Director, MSMCL during the relevant period.

142. Vide OM dated 01.09.2007, the Government of Maharashtra **Ex.P-270/PW-7 (D-139, PDF Page Nos.7037-7038)** constituted a High-Power Committee under the Chairmanship of Hon'ble Minister (Mining) to scrutinize the bids, examine financial matters in context of coal blocks allotted to MSMCL, in order to make MoU and approve the proposed Joint Venture Agreements for mineral development.

143. All the bids, including bids for other three coal blocks were opened on 14.03.2008 at 04:00 pm in the Office of MSMCL by the Tender Committee consisting of five members, including Chairman (A-2) and MD (A-1), MSMCL. However, technical analysis of the bid was not conducted in the said meeting and the representatives of the bidders were informed that they have to give their presentations before technical analysis. The minutes of the said meeting are **Ex.P-225/PW-7 (D-33, PDF Page Nos.4503-4504)**. Even as per tender/bid document, bidders were required to make presentations. On 07.04.2008, all bidders were sent fax and given time for making presentations **Ex.P-258/PW-14 (D-369, PDF Page Nos.11833-11834)**.

144. It is the consistent defence of A-1 that the presentations were made by the bidders in the Office of aXYKno/Financial Consultant on 10.04.2008. The prosecution, however, sought to dispute the very occurrence of such presentations on the ground that no contemporaneous record pertaining thereto could be recovered during investigation and therefore, concluded that no such presentations had taken place. In support of this contention, the prosecution relied upon the testimony of PW-21 Sh. Anil Pophare, one of the Directors of MSMCL, who initially denied to have attended any such presentations. However, during his cross-

examination, he was confronted with his statement under Section 161 CrPC dated 29.02.2016 **Ex.P-571/PW-21**, wherein he had categorically stated that he attended the said presentations. Although, the previous statement recorded under Section 161 CrPC is not substantive evidence and cannot be relied upon to prove that the presentations in fact took place, the proved contradiction materially affects the credibility of PW-21 on this aspect and renders his testimony unreliable to sustain the prosecution's assertion that no such presentations were made.

145. Apart from the aforesaid inconsistent testimony of PW-21, the prosecution did not examine any of the alleged attendee of the said presentations, including the Financial Consultant, aXYKno and other bidders to establish that no such presentations took place. Mere non-recovery of records relating to the presentations cannot, by itself, justify the inference that the presentations never took place. Consequently, in these circumstances, the possibility of the presentations being done on the said date and place cannot be conclusively ruled out.

146. The meeting of Management Committee, MSMCL, chaired by A-2 and attended by its three other members, namely, A-1 Sh. D.G. Philip, PW-21 Dr. Anil Pophare and Sh. R. Ramakrishnan, Director, aXYKno was also convened on 10.04.2008. As per minutes of the said meeting **Ex.P-5 (D-36, PDF Page Nos.4650-4666)**, A-1 announced the names of the parties in the said meeting who were technically qualified for all the four coal blocks. The said minutes were signed by all the members of the said committee but none of them objected to the said declaration or gave a dissenting note in the said minutes. Out of 13 bidders for Adkoli Coal Block, 12 bidders, including SHEL, were declared technically qualified

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whose commercial bids were decided to be opened. Thereafter, SHEL emerged as the highest (H-1) bidder for Adkoli Coal Block as it quoted the highest sweat money over and above the reserve price of Re.1 i.e. Rs.36.06 + Re.1 = Rs.37.06 per ton of the geological reserve. The recommendation was approved by the Board of Directors, MSMCL in its 167th meeting held on 24.04.2008. The minutes of the said meeting are **Ex.P-236/PW-7 (D-42, PDF Page Nos.5258-5279)**. In the said minutes also, no objection regarding the technical eligibility of SHEL was raised by any of the attendee, including the Financial Consultant, aXYKno who authored and incorporated the technical eligibility criteria in the tender/bid document. Thereafter, it was forwarded to the High-Power Committee appointed by the Government of Maharashtra for the final approval. In the said meeting, three other JV partners of MSMCL were also approved for three other different coal blocks and their proposals were also forwarded to High-Power Committee for approval.

147. The communications dated 16.05.2008 **Ex.P-107/PW-4 (D-161, PDF Page Nos.8418-8421)** and 13.06.2008 **Ex.P-570/PW-19 (D-153, PDF Page Nos.7699-7704)** were addressed by A-1 to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra Mantralaya, Mumbai requesting consideration and approval of the successful bidders in respect of the four coal blocks, including SHEL for the Adkoli Coal Block. The copies of bid documents and their terms & conditions were also submitted as Annexure-1 along with the said letters/communications.

148. On 22.07.2008, the Government of Maharashtra amended the resolution dated 01.09.2007 and revised the procedure to the extent that the

Board's recommendations are to be submitted to the High-Power Committee along with the detailed description & justification and after its approval by the High-Power Committee, it be submitted before the Infrastructure Committee of Cabinet for final decision. The said OM dated 22.07.2008 is **Ex.P-166/PW-7 (D-145, PDF Page Nos.7079-7081)**. The High-Power Committee meeting was convened on 01.08.2008 under the Chairmanship of Hon'ble Minister (Industries & Mining) to deliberate upon the issue related to the approval of successful bidders for all the four coal blocks, including Adkoli Coal Block. The minutes of the said meeting are **Ex.P-410/PW-18 (D-140, PDF Page Nos.6907-6909)**. In the said meeting, the High-Power Committee raised certain queries which were communicated to MSMCL vide letter dated 14.08.2008 **Ex.P-410/PW-18 (D-31, PDF Page No.3892)**. Vide letter dated 24.08.2008 **Ex.P-96/PW-4 (D-153, PDF Page Nos.7798-7805)**, A-1 replied to the said queries.

149. The High-Power Committee, in its meeting held on 20.11.2008, under the Chairmanship of Hon'ble Minister (Industries & Mining), expressed no objection in principle to the proposal concerning the Adkoli Coal Block, but directed MSMCL to prepare and submit a draft JV Agreement for further consideration. Notably, in the said meeting, the High-Power Committee rejected the recommendation made by the MSMCL with respect to Gare Palma Sector-II Coal Block. The minutes of the said meeting are **Ex.P-186/PW-7 (D-140, PDF Page No.6902)**. Thus, it is evident that the High-Power Committee was not bound by the recommendations or decisions of the Board of Directors, MSMCL. Rather, it exercised an independent and objective scrutiny of the proposal placed before it and was fully empowered either to approve, modify or reject the

recommendations of MSMCL. The rejection of the proposal relating to Gare Palma Sector-II Coal Block in the same meeting conclusively negates any suggestion that High-Power Committee merely acted as a rubber stamp or mechanically endorsed the recommendations of MSMCL.

150. Consequently, the decision taken by A-1 regarding the technical eligibility of SHEL was neither final nor determinative. Under the tender process, the assessment of technical eligibility was required to undergo scrutiny and receive approval from the Board of Directors of MSMCL. The decision of the Board was thereafter placed before the High-Power Committee and subsequently, before the Infrastructure Committee of the Government of Maharashtra for their consideration and approval. The relevant documents pertaining to the technical eligibility of SHEL, including the MoU dated 14.03.2008 and the supporting material as well as the original tender/bid document dated 14.02.2008 **Ex.P-10 (D-44, PDF Page Nos.5284-5331)**, were available before all these collective bodies. Despite such scrutiny, the Board of Directors, the High-Power Committee and the Infrastructure Committee approved the proposal and proceeded on the basis that SHEL satisfied the prescribed technical eligibility criteria. The prosecution has neither challenged the independent application of mind by these collective bodies nor alleged that their approvals were obtained by concealment, fraud or misrepresentation practiced by A-1. This is yet another significant circumstance which militates against the prosecution case.

151. In these circumstances, it would be wholly unsafe to isolate the initial opinion of A-1 and attribute criminal liability exclusively to him for a decision which was ultimately examined, endorsed and approved by

several independent statutory and administrative authorities. In the absence of evidence that A-1 misled or deceived these decision-making bodies or procured their approval by dishonest means, the collective decision cannot be treated as the unilateral act of A-1 so as to attract criminal misconduct under Section 13(1)(d)(iii) of the PC Act solely against him. Criminal liability under the said provision cannot be fastened upon A-1 by isolating his role from the subsequent independent approval accorded by the competent statutory and administrative bodies. Accordingly, the prosecution has failed to establish that A-1 alone was responsible for declaration of SHEL technically eligible.

XVII (C). WHETHER THE DECISION OF DECLARING SHEL TO BE TECHNICALLY ELIGIBLE BY A-1, OBTAINED VALUABLE THING OR PECUNIARY ADVANTAGE TO IT WITHOUT ANY PUBLIC INTEREST

152. The prosecution has proceeded on the premise that once SHEL is held to be technically ineligible, the decision of A-1 declaring it technically eligible automatically constitutes criminal misconduct. The proposition cannot be accepted. Even assuming, for the sake of argument, that the decision of A-1 was erroneous, an erroneous administrative decision, by itself, does not attract Section 13(1)(d)(iii) of the PC Act. The prosecution was further required to establish that A-1 abused his official position and thereby obtained for SHEL a valuable thing or pecuniary advantage without public interest. None of these essential ingredients has been proved. The evidence on record, on the contrary, establishes that the issue of technical eligibility was debatable; the decision was taken after permitting removal of deficiencies in accordance with the Government

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Resolution dated 30.04.1994; the proposal thereafter underwent independent scrutiny and approval by the Board of Directors, MSMCL; the High-Power Committee; and the Infrastructure Committee; and no evidence has been adduced to establish any concealment, fraud, misrepresentation, quid pro quo or other dishonest motive on the part of A-1. In these circumstances, even if another view of the tender conditions were possible, the impugned decision cannot be elevated to the level of criminal misconduct punishable under Section 13(1)(d)(iii) of the PC Act.

153. The prosecution has relied upon the decision of the Hon'ble Delhi High Court in **Runu Ghosh (supra)** to contend that, for an offence under Section 13(1)(d)(iii) of the PC Act, proof of *mens rea* or abuse of official position is not an essential ingredient. There can be no quarrel with the said proposition. However, the said decision does not dispense with the prosecution's obligation to establish the remaining statutory ingredients, namely, that the public servant obtained for another person a valuable thing or pecuniary advantage without any public interest. In the present case, the prosecution has failed to establish these foundational facts as discussed in the preceding paragraph. Consequently, even applying the principles laid down in the judgment **Runu Ghosh (supra)**, the essential ingredients of Section 13(1)(d)(iii) of the PC Act remain unproved.

154. Further, in **Ashok Kumar Gupta (supra)**, the Hon'ble Delhi Court distinguished **Runu Ghosh (supra)** and observed misconduct by public servant arises only if it results in pecuniary advantage to a private party by disregarding safeguards intended to public interest and where a demonstrable nexus exists between the conduct of the public servant and such pecuniary gain to the private party. Thus, *mens rea* may not always be

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necessary for indicting the public servant but demonstrable nexus between his conduct and pecuniary gain to the private party must be established to bring him within the ambit of Section 13(1)(d)(iii) PC Act. In the instant case, no such nexus has been established by the prosecution between accused public servants and SHEL.

155. Thus, even applying the ratio of **Runu Ghosh (supra)**, the prosecution has failed to establish the essential statutory ingredients of Section 13(1)(d)(iii) PC Act. At the highest, the prosecution seeks to criminalise an administrative decision regarding interpretation of the tender conditions. Such an approach is contrary to the principle emphasised by the Hon'ble Supreme Court in **Tata Cellular (supra)** that every erroneous or debatable administrative decision does not *ipso facto* constitute criminal misconduct. It held that the scope of judicial intervention is desirable only where there is arbitrariness or *mala fide* intent during the administrative decision. In the instant case, the prosecution has miserably failed to show any arbitrariness or *mala fide* intent on the part of A-1 or any of the members of the Management Committee, MSMCL.

156. The prosecution has contended that the declaration of SHEL as technically eligible was not in public interest, since five other bidders had already been found technically eligible and there was, therefore, no necessity to permit SHEL to cure the deficiencies in its technical bid. It was further argued that had it been known to other prospective bidders that deficiencies in the technical bid could subsequently be cured by furnishing supporting documents, more entities might have participated in the bidding process and some of them could have offered a higher financial bid than

SHEL. According to the prosecution, the impugned decision thus curtailed competition and conferred an undue advantage upon SHEL.

157. The aforesaid submission does not merit acceptance. Firstly, the opportunity to remove deficiencies in the technical bid was not extended exclusively to SHEL. The evidence on record establishes that the same opportunity was afforded uniformly to all similarly situated bidders in accordance with the Government Resolution dated 30.04.1994. Thus, no preferential or discriminatory treatment was extended to SHEL. Once a uniform procedure was adopted for all bidders, the mere fact that SHEL successfully availed itself of that opportunity cannot, by itself, lead to an inference that it was conferred an undue pecuniary advantage without public interest.

158. Secondly, the very object of the Government Resolution dated 30.04.1994 is to permit bidders to furnish deficient supporting documents before opening of the financial bids so that the best competitive offers are received. Therefore, the policy of the Government itself recognises that permitting removal of curable deficiencies serves, rather than defeats, public interest. The decision of A-1, if otherwise in conformity with the said Government Resolution, cannot be characterised as being against public interest merely because it enabled one additional bidder to participate in the financial bidding process.

159. Thirdly, the prosecution's contention that other entities, had they known of such a procedure, might also have participated and might have submitted bids higher than that of SHEL, is entirely speculative. No evidence has been adduced to establish that any prospective bidder refrained from participating on account of the tender conditions or that any

person was denied an equal opportunity to compete. Equally, there is no evidence to establish that any prospective participant would have fulfilled the prescribed eligibility criteria after curing deficiencies or would have quoted a higher financial bid than SHEL. Criminal liability cannot be founded upon hypothetical possibilities or conjectural assumptions regarding what might have transpired under an altogether different factual scenario.

160. Lastly, the existence of five technically eligible bidders did not render the participation of any additional eligible bidder contrary to public interest. Public interest in a competitive tender process ordinarily lies in maximising fair competition, provided the tender conditions are uniformly applied to all participants. Enlargement of the competitive field by permitting all similarly situated bidders to remove curable deficiencies, in accordance with the prescribed policy, cannot *ipso facto* be regarded as an act detrimental to public interest. In the absence of any evidence of discrimination, favouritism, concealment or manipulation, the prosecution has failed to establish that the declaration of SHEL as technically eligible was an act 'without public interest' within the meaning of Section 13(1)(d)(iii) of the PC Act.

161. Furthermore, it has also emerged from the record that during the course of investigation the statement of the Preliminary Inquiry Officer PW-6 Sh. R. Parthasarthy, Deputy Superintendent of Police, CBI was recorded under Section 161 CrPC, wherein he stated *'There is no corresponding wrongful loss caused to M/s. MSMCL due to the act of omission and commission on the part of the members of the tender committee. On the contrary, by taking a call on M/s. Sunil Hi-Tech*

Engineers Ltd, by default, a substantial amount of loss which would have been caused to MSMCL has been averted. M/s. Sunil Hi-Tech Engineers Ltd has quoted the highest upper front to sweat money of Rs. 36.06 + Rs.1 = Rs. 37.06 per ton of the geological reserves as against Rs. 31/- quoted by H-2 bidder'. However, when the said officer entered the witness box, the prosecution did not elicit from him any evidence to establish that the declaration of SHEL as technically eligible had caused wrongful loss to MSMCL or the Government of Maharashtra or had otherwise operated against public interest. Although the statement recorded under Section 161 CrPC is not substantive evidence and cannot be relied upon as proof of the facts stated therein. Nevertheless, the omission of the prosecution to elicit from its own witness any evidence regarding absence of public loss or the existence of public interest assumes significance while appreciating whether the prosecution has discharged its burden of proof to establish that the impugned decision of A-1 in declaring SHEL technically eligible caused wrongful loss to MSMCL or the Government and was without public interest. In the absence of such evidence, the said ingredient remains unproved.

XVII (D). CONCLUSION IN RESPECT OF ALLEGATIONS OF CRIMINAL MISCONDUCT AGAINST A-1 IN DECLARING SHEL TECHNICALLY ELIGIBLE

162. In view of the foregoing detailed and meticulous discussion, the prosecution has failed to establish beyond reasonable doubt that SHEL was technically ineligible under the tender/bid conditions, that the declaration of SHEL as technically eligible was unilateral decision of A-1 without its supervision or scrutiny by the Higher Committees or that the said decision

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resulted in obtaining pecuniary advantage to SHEL or causing undue loss to MSMCL or to the Government or that the said decision was without any public interest. Therefore, the prosecution has failed to prove the essential ingredients of the offence of criminal misconduct punishable under Section 13(1)(d) of the PC Act against A-1 on account of the aforesaid impugned decision taken by A-1 to declare and recommend SHEL to be technically eligible bidder for development of Adkoli Coal Block. Accordingly, A-1 is entitled to be acquitted of the said charge.

XVIII. THE ALLEGATIONS RELATING TO PERMITTING SALE, TRANSFER OR PLEDGE OF SHAREHOLDINGS OF SHEL IN JV COMPANY TO THE THIRD PARTY IN JV AGREEMENT IN CONTRAVENTION WITH THE TENDER/BID DOCUMENT.

163. The second allegation in the present case is that A-1, A-2 and SHEL is that, in furtherance of their criminal conspiracy, A-1 and A-2 abused their official position by incorporating clauses in the JV Agreement dated 21.11.2009 permitting the sale, transfer or pledge of shareholdings of SHEL in JV company to the third party, allegedly in contravention of the tender/bid document dated 14.02.2008, which prohibited such transactions.

164. In order to indict accused public servants (A-1 and A-2) and SHEL for the offence of criminal misconduct and criminal conspiracy in respect of the present allegation, the prosecution is required to establish the following essential ingredients:-

(i) That the terms and conditions contained in the tender/bid document dated 14.02.2008, including those relating to sale, transfer or pledge of shareholdings of JV partner/SHEL in JV company to the third party were immutable and incapable of modification;

(ii) That the impugned clauses incorporated in the JV Agreement dated 21.11.2009 were introduced solely at the instance of A-1 and A-2;

(iii) That the incorporation of the impugned clauses was prejudicial to the interest of MSMCL or the Government of Maharashtra; and

(iv) That the said impugned clauses were incorporated to obtain undue pecuniary advantage to SHEL without any public interest, resulting in wrongful loss to MSMCL.

165. Before evaluating the present allegations, it is expedient that the relevant facts in relation to this allegation are reiterated in nutshell for quick reference:-

(a) After approval of the Board of Directors, MSMCL in its 165th meeting held on 07.02.2008 invited bids on 13.02.2008 and 14.02.2008 for selection of JV partners for development of all the four allocated coal blocks, including Adkoli Coal Block. The tender/bid document **Ex.P-10 (D-44, PDF Page Nos.5284-5331)** was prepared by Financial Consultant, aXYKno and in conformity with the allocation letter, it contemplated the incorporation of JV company as a Government company in which MSMCL would hold 51% equity on a cashless basis. It also prescribed technical eligibility criteria for bidders and prohibited the JV partners from selling or creating third party rights in, or pledging, its shareholding

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in the proposed JV company to the third party during the currency of the JV Agreement;

(b) In response to the said invitation/advertisement, 13 companies including SHEL submitted their bid for Adkoli Coal Block. The SHEL submitted its technical and financial bid on 13.03.2008 **Ex.P-217/PW-9 (D-28, PDF Page Nos.2611-2951)**;

(c) The recommendation of SHEL as JV partner for Adkoli Coal Block was approved by the Board of Directors, MSMCL in its 167th meeting held on 24.04.2008. Thereafter, it was forwarded to the High-Power Committee appointed by the Government of Maharashtra for the final approval. In the said meeting, three other JV partners of MSMCL were also approved for three other different coal blocks and their proposals were also forwarded to High-Power Committee for approval;

(d) The High-Power Committee, in its meeting held on 20.11.2008, under the Chairmanship of Hon'ble Minister (Industries & Mining), expressed no objection in principle to the proposal concerning the Adkoli Coal Block, but directed MSMCL to prepare and submit a draft JV Agreement for further consideration;

(e) As per minutes of 171st meeting of the Board of Directors of MSMCL held on 15.12.2008 **Ex.P-194/PW-7 (D-148, PDF Page Nos.7269-7280)**, MSMCL prepared a draft JV Agreement **Ex.D-8/DW-1 (PDF Page Nos.25887-25913)** before 15.12.2008, which was enclosed therewith. The said minutes further demonstrate that in the said meeting, the Financial Consultant, aXYKno was asked to obtain draft JV Agreements from the JV partners, hear them, prepare final draft of agreement and submit it to MD, MSMCL;

(f) In response to the minutes of the 171st Board meeting, the Financial Consultant, aXYKno gave total three drafts of the JV Agreement i.e. first draft on 19.12.2008, second draft on 12.01.2009 and third draft on 19.01.2009. In the third draft, the terms and conditions prohibiting sale, transfer or pledge of the shareholdings of JV partner in JV company were incorporated in accordance with the tender/bid document;

(g) The abovementioned third draft of the JV Agreement was considered by the Board of Directors, MSMCL in its 172nd meeting held on 21.01.2009 under the Chairmanship of A-2 and its other members, including A-1. As per the said minutes, the aforementioned draft JV Agreement was discussed paragraph wise and necessary amendments were made in it. The draft of the agreement was finalized and unanimously approved. In the meeting, it was decided that copy of the approved draft be sent to the Government for final approval. Accordingly, on 23.01.2009, the draft JV Agreement approved by the Board of Directors, MSMCL was sent to High-Power Committee for its approval. The said draft is **Ex.P-102/PW-4 (D-158, PDF Page No.8354)**. The said draft JV Agreement omitted the prohibition of sale/transfer of the shares of the JV partner in JV company to the third party and in its Clause 12.4 permitted the same subject to the condition contained under the said clause. The said stipulation was in contradiction with the tender/bid document. In consistence with the tender/bid document, Clause 12.2 of the said draft JV Agreement prohibited pledge of the shareholdings of the JV partners in JV company to any third party. However, at the same time, its Clause 6.4.1 with title 'Reserved Matters' permitted pledge of shares by JV partner in JV company in favour of any third party with the approval of one Director nominated by the MSMCL and one Director nominated by SHEL;

(h) In the said draft, the provision in relation to the transfer of shareholdings of JV partner to its affiliates were incorporated in its Clause 12.3. It further stipulated that the aggregate shareholdings of MSMCL and SHEL, together with that of their respective associates and affiliates, in the JV company would at all times remain in the ratio of 51:49 i.e. 51% and 49% respectively. Significantly, the aforementioned provisions in relation to transfer of shares of SHEL to its affiliates or SPV formed for the specific purpose of carrying on the business as per the JV Agreement, were not in contradiction with the tender/bid document as no such prohibition or restriction was contained in it;

(i) The minutes of High-Power Committee meeting held on 30.01.2009 have not been placed on record. However, minutes of High-Power Committee meeting held on 09.04.2009 **(D-155, PDF Page No.8224)** and the letter dated 31.01.2009 written by A-1 to the Principal Secretary, Department of Industries, Energy and Labour, Government of Maharashtra **Ex.P-342/PW-7 (D-31, PDF Page No.3649)** finds mention about the High-Power Committee meeting held on 30.01.2009. As per the said documents, it can be conclusively inferred that in the meeting held on 30.01.2009, the

High-Power Committee directed that the proposal regarding the draft JV Agreement should be resubmitted for consideration to the High-Power Committee to resolve the views of the different departments;

(j) Further, the said letter of A-1 dated 31.01.2009 was written with reference to the High-Power Committee meeting held on 30.01.2009 in respect of draft JV Agreement qua Agarzari Coal Block for M/s Adani Enterprises, proposed JV partner, as it had raised certain issues, including its right to pledge its shareholdings in JV company in the draft JV Agreement. Significantly, the draft JV Agreement that was sent on 23.01.2009 was common for the Adkoli as well as Agarzari Coal Block. In the said letter, A-1 made a comment in regard to issue at Srl. No.10 raised by M/s Adani Enterprises and its relevant portion is reproduced as under:-

> "The Board in its joint intellectual capacity has considered all the aspects of the say of the J.V. partners and has incorporated all those that are in conformity with the tender terms and conditions. Those aspects that are not in conformity with the tender documents were not incorporated in the Joint Venture Agreement. However, the High-Power Committee may like to consider the say of the J.V. Partner and take suitable decision as seem fit."

(k) The 173rd meeting of Board of Directors, MSMCL was held on 25.02.2009 and its minutes are **Ex.P-9 (D-148, PDF Page No.7518)**. As per the said minutes in Subject No. 13 with title 'Progress in respect of Joint Venture Project Agreement of Agarzari, Warora and Marki-Zari-Jamni-Adkoli Coal Blocks', it was recorded that the High-Power Committee meeting held on 13.02.2009 at Mumbai directed Managing Director, MSMCL to obtain comments of financial advisor and to submit them to High-Power Committee. It was further recorded that accordingly, financial advisor prepared its comments and same were placed before the Board for approval. They were discussed in detail and were approved with some amendments. Thereafter, it was resolved that the said approved amended draft of comments be placed before the High-Power Committee. The comments of the Financial Consultant, aXYKno approved in the 173rd meeting of Board of Directors, MSMCL were communicated by A-1 to the Principal Secretary (Industries), Department of Industries, Energy and Labour, Government of Maharashtra vide letter dated 26.02.2009 **Ex.P-409/PW-18 (D-153, PDF Page No.7559)**. Significantly, A-1 retired as MD, MSMCL on 28.02.2009;

(l) On 09.04.2009, the High-Power Committee, in its meeting under the Chairmanship of Chief Secretary, discussed in detail the draft of the JV Agreement. The minutes of the said meeting are available at **D-155, PDF Page Nos.8224-8228**. In the said meeting, a presentation was made by the Financial Consultants Sh. Ramakrishna and Sh. Hetal of aXYKno on the entire bidding process for the selection of the JV partner for the development of the coal blocks allotted to the MSMCL. The presentation covered the matters, including background of the tender process;

(m) In subsequent meeting of the High-Power Committee under the Chairmanship of the Hon'ble Chief Minister, Government of Maharashtra held on 04.05.2009, the JV Agreement **(D-156, PDF Page Nos.8250-8298)** was approved and it was resolved that the proposal be put up before the Infrastructure Committee for final approval. The minutes of the said meeting held on 04.05.2009 are **Ex.P-284/PW-7 (D-134, PDF Page Nos.6802-6803)**. Significantly, in relation to the impugned conditions of sale and pledge of the shareholdings of JV partner (SHEL) in JV company to the third party, no changes/modifications were made in the said approved JV Agreement, *vis-a-vis* the draft JV Agreement sent by A-1 along with his letter dated 23.01.2009;

(n) On 16.06.2009, Sh. A.M. Khan, Principal Secretary (Industries) prepared a detailed Cabinet note/proposal **(D-146, PDF Page Nos.7160-7170)** to be put up before the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra for approval of the draft JV Agreement with the proposed JV company (partner), in accordance with the recommendations made by High-Power Committee for development of mineral, its usage and sales in the coal blocks allotted to the MSMCL, including Adkoli Coal Block. In Para No.5 of the said detailed note, the main conditions as per the tender/bid document dated 14.02.2008 were delineated and in its Para No.8, the salient features of the proposed JV Agreement were discussed. The same was approved by the Cabinet Committee on Infrastructure under the Chairmanship of Hon'ble Chief Minister, Government of Maharashtra in its meeting held on 18.06.2009 **Ex.P-180/PW-7 (Colly) (D-134, PDF Page No.6808)**. Thus, the Infrastructure Committee also approved the draft of JV Agreement sent by A-1 along with his letter dated 23.01.2009 without any change in the stipulations related to sale and pledge of the shares of JV partners in JV company to the third party and their transfer to its affiliates;

(o) The said approval was communicated by the Government of Maharashtra to the MSMCL vide letter dated 01.08.2009 **Ex.P-119/PW-7 (D-135, PDF Page No.6806)**. Accordingly, Sh. N.K. Sudhanshu, the then MD, MSMCL issued letter of intent to SHEL and the same is **Ex.P-250/PW-12 (D-29, PDF Page No.3312)**;

(p) Thereafter, MSMCL proposed certain modifications in the draft JV Agreement approved by Infrastructure Committee, Government of Maharashtra and in that regard, a letter was written by Sh. N.K. Sudhanshu, the then MD, MSMCL to the Government of Maharashtra. The Government of Maharashtra, vide its letter dated 23.10.2009 to MD, MSMCL, communicated that it accepted total 12 proposed modifications as detailed in chart annexed with the said letter. The said letter along with chart of the approved modifications in JV Agreement is **Ex.P-258/PW-14** (**D-369, PDF Page Nos.11732-11735)**;

(q) The final JV Agreement incorporated the aforementioned 12 modifications and it was finally executed between MSMCL and SHEL on 21.11.2009 **Ex.P-260/PW-14 (D-61, PDF Page Nos.5847-5895)**. The 02 out of the said 12 modifications that are relevant for the adjudication of the present case are reproduced as under:-

> (i) 'except as provided in this agreement' was inserted at the end of Para No.12.2 regarding right to pledge the shares of JV partner in JV company; and

(ii) In the end of the Para No.12.3.3, under the heading of 'Share transfer to affiliates', the following sentences were inserted:-

'It will however be mandatory for the Party No.2 to maintain atleast 51 percent share in the SPV at all times during the period of the agreement. In case of consortium, the consortium partners should have a minimum cash equity holding of 5% in the SPV'; and

(r) In accordance with Clause 1 of JV Agreement dated 21.11.2009 **Ex.P-260/PW-14 (D-61, PDF Page Nos.5847-5895)**, a JV company, namely, M/s MSMCL Adkoli Natural Resources Limited was incorporated between MSMCL and SHEL on 18.02.2010.

XVIII (A). WHETHER THE TERMS AND CONDITIONS CONTAINED IN THE TENDER/BID DOCUMENT WERE IMMUTABLE

166. In law, a tender or bid document is ordinarily only an invitation to offer *(invitatio ad offerendum)* and not, by itself, a concluded or binding contract. The binding rights and obligations of the parties arise only upon execution of the final agreement. Until then, the parties are at liberty to negotiate and settle the terms of their contractual relationship. Therefore, unless the tender conditions themselves expressly prohibit clarification, supplementation or curing of deficiencies, the prosecution cannot proceed on the assumption that every condition contained in the tender/bid document was immutable or incapable of lawful supplementation before the execution of the JV Agreement dated 21.11.2009.

167. The very premise of the prosecution that the bid document was immutable and incapable of any modification is devoid of merit. If the terms and conditions contained in the tender/bid document were intended to be inflexible and incapable of alteration, there would have been no occasion for the Board of Directors, MSMCL; the High-Power Committee; and the Infrastructure Committee to deliberate upon, negotiate and finalize the terms and conditions to be incorporated in the final JV Agreement. The evidence on record unmistakably demonstrates that several clauses of the proposed agreement were discussed, modified and finalized after the bidding process.

168. Significantly, the prosecution itself has not attributed any criminality to the 12 admitted modifications proposed by Sh. N.K. Sudhanshu, the then Managing Director, MSMCL and thereafter, approved by the Government of Maharashtra vide letter dated 23.10.2009 **Ex.P-258/PW-14** (**D-369, PDF Page Nos.11732-11735)**, notwithstanding the fact that such modifications were incorporated after the Infrastructure Committee had approved the draft JV Agreement on 18.06.2009. This admitted position completely undermines the prosecution's contention that the tender/bid conditions were incapable of alteration. If modifications made after the Infrastructure Committee's approval were themselves considered permissible and lawful, there is no rational or legal basis to contend that any other modification or clarification of the tender conditions, undertaken during the process of negotiations and before execution of the final JV Agreement, would *ipso facto* constitute an illegality or criminal misconduct.

169. Furthermore, the prosecution has failed to examine any official from MSMCL, Government of Maharashtra, the High-Power Committee or the Infrastructure Committee to establish that the impugned clauses could not be legally altered/modified. Equally, no witness has deposed that the approving authorities were unaware of, misled about or deceived regarding the alleged deviation or that the approving authority would have withheld approval, had the variation been brought to its notice.

170. In the absence of such evidence, the prosecution's assertion that the tender conditions were incapable of alteration remains a mere assumption unsupported by any legal provision, contractual stipulation or contemporaneous evidence. Accordingly, it is established beyond any reasonable doubt that the tender/bid document's conditions, including prohibition of sale, transfer or pledge of the shareholdings of the JV partner in JV company to the third party were not immutable or incapable of modification. Consequently, modification/alteration of any such clause prior to the execution of the JV Agreement, by itself, be regarded as illegal or constitute criminal misconduct.

XVIII (B). WHETHER THE IMPUGNED CLAUSES INCORPORATED IN THE JV AGREEMENT DATED 21.11.2009 WERE INTRODUCED SOLELY AT THE INSTANCE OF A-1 AND A-2

171. The changes related to permitting sale, transfer or pledge of the shareholdings of the JV partner (SHEL) in JV company to the third party were incorporated in the draft JV Agreement approved in the 172nd meeting of the Board of Directors, MSMCL under the Chairmanship of A-2 and attended by A-1 as the then Managing Director, MSMCL. Although, those clauses were in variance with the tender/bid document, the draft JV

Agreement was neither final nor binding. The entire proposal, together with all the relevant documents, including tender/bid document and the JV Agreement, was forwarded by A-1 to the High-Power Committee on 23.01.2009 for approval. The record, therefore, demonstrates that the High-Power Committee had before it all the relevant documents and was fully aware of the contents of the draft JV Agreement as well as the tender/bid document. Besides, the prosecution has failed to examine any member of the High-Power Committee to establish either their ignorance about the said variation or that approval would have been refused had the variation been highlighted to them.

172. The same position prevailed before the Infrastructure Committee. After approval by the High-Power Committee, the entire proposal was placed before the Infrastructure Committee along with all the relevant documents for its subsequential approval. The detailed Cabinet note/ proposal dated 16.06.2009 **(D-146, PDF Page Nos.7160-7170)** prepared by Sh. A.M. Khan, Principal Secretary (Industries), separately sets out the principal conditions of the tender/bid document and the salient provisions of the proposed JV Agreement. The note itself demonstrates that the Infrastructure Committee was fully conscious of the variations between the two documents. Yet, no member of the Infrastructure Committee has been examined to state either that the variations escaped their notice or that approval would have been declined, had they noticed the variations. Thus, it can be safely inferred that the decision to incorporate the impugned clauses was not unilateral decision of A-1 and A-2. Rather, it was a collective institutional decision.

173. The evidence on record establishes that the impugned clauses were not incorporated into the draft JV Agreement by A-1 and A-2 in secrecy or without institutional scrutiny. Rather, the impugned clauses were subjected to scrutiny at successive levels by independent decision-making authorities before the JV Agreement came to be executed. Furthermore, the prosecution has not proved that the members of the High-Power Committee or the Infrastructure Committee were kept unaware of the impugned clauses or that their approval was obtained by concealment, deception or misrepresentation.

174. Relying upon the letter dated 31.01.2009 written by A-1 to the High-Power Committee **Ex.P-342/PW-7 (D-31, PDF Page No.3649)**, the prosecution has sought to contend that he misrepresented the facts by stating that the terms and conditions of draft JV Agreement were in conformity with the tender/bid document, notwithstanding the existence of a variation in the impugned clauses. The contention does not merit acceptance. The forwarding note has to be read as a whole and in the context in which it was made. In the said letter, A-1 stated that those aspects that are not in conformity with the tender documents were not incorporated in the JV Agreement. Simultaneously, he left the matter to the decision of the High-Power Committee after consideration of all relevant aspects, including version of the JV partner. The High-Power Committee as well as Infrastructure Committee, had all the relevant documents, including draft JV Agreement and tender/bid document before them. Further, the said committees were fully competent to examine every provision, accept or reject any proposed modification and approve the agreement in such form as they considered appropriate.

175. The prosecution contends that A-1 and A-2 were fully aware that the tender/bid document expressly prohibited the sale, transfer or pledge of the shareholding of the JV partner in the JV Company to the third party. Despite such knowledge, they allegedly omitted the said prohibition while forwarding the draft JV Agreement to the High-Power Committee on 23.01.2009 and, instead, incorporated clauses permitting the sale, transfer or pledge of such shareholding in favour of a third party. According to the prosecution, this deliberate deviation from the tender/bid document was intended to confer an undue benefit upon SHEL and constitutes criminal misconduct and criminal conspiracy.

176. The aforesaid contention of the prosecution cannot be accepted in the facts and circumstances of the present case. Once it has been held that the terms and conditions of the tender/bid document were neither immutable nor incapable of modification, the mere fact that A-1 and A-2 were aware of the prohibition contained therein does not, by itself, render the subsequent incorporation of a different provision in the draft JV Agreement illegal or indicative of any criminal intent. Knowledge of an existing tender condition cannot be equated with knowledge that such condition was incapable of lawful modification. In the absence of any contractual stipulation, statutory prohibition or other evidence establishing that the relevant clause could not be altered during negotiations preceding the execution of the final JV Agreement, the omission of the original prohibition and incorporation of the impugned clauses cannot, by itself, constitute criminal misconduct or furnish evidence of criminal conspiracy.

177. It is equally significant that the draft JV Agreement prepared and forwarded by A-1 and approved by the Board of Directors of MSMCL

under the Chairmanship of A-2 was merely recommendatory in nature and did not attain finality by itself. It was thereafter subjected to independent scrutiny and consideration by the High-Power Committee and subsequently by the Infrastructure Committee, both of which were competent either to approve, modify or reject any provision of the draft agreement. The prosecution has neither alleged nor proved that the members of these committees acted in conspiracy with A-1 and A-2 or shared any dishonest intention. In fact, none of them has been charge-sheeted or prosecuted for any offence arising out of their approval of the impugned clauses.

178. In these circumstances, the prosecution cannot, without any cogent evidence, isolate A-1 and A-2 for criminal prosecution merely because they participated in the initial decision-making process. Once the proposal was independently examined, deliberated upon and consciously approved by the competent authorities, the ultimate decision became an institutional decision and not the unilateral act of A-1 and A-2. In the absence of evidence establishing that A-1 and A-2 dishonestly concealed the impugned modification, misled the approving authorities or procured the approvals by fraud or deception, they cannot be held individually and solely criminally liable for a decision that was consciously endorsed at every subsequent level. The prosecution has also not alleged or established that the subsequent approving authorities acted in concert with A-1 and A-2 pursuant to any criminal conspiracy or shared any dishonest intention. In the absence of such evidence, the selective prosecution of A-1 and A-2 alone, while treating the subsequent approvals by independent statutory and governmental authorities as legally inconsequential, is wholly

inconsistent with the prosecution's own case and does not satisfy the standard of proof required in criminal law.

XVIII (C). WHETHER IMPUGNED CLAUSES WERE PREJUDICIAL TO THE INTEREST OF MSMCL OR THE GOVERNMENT

179. The prosecution has failed to examine any official of MSMCL or the Government of Maharashtra to establish that the impugned clauses were prejudicial or detrimental to the interest of MSMCL or Government of Maharashtra. Likewise, no member of the High-Power Committee or the Infrastructure Committee has been examined to state that the impugned clauses escaped their notice or that approval would have been withheld, had it been noticed as the impugned clauses were prejudicial to the interest of MSMCL. In the absence of any such evidence, the prosecution cannot unilaterally assume or invite the Court to infer that the incorporation of the impugned clauses was impermissible, detrimental to the interests of MSMCL or devoid of public interest.

180. The record establishes that MSMCL received substantial amount of Rs.25.44 crores as part of sweat money inclusive of interest component from SHEL in the present transaction qua Adkoli Coal Block. Further, PW-6 Sh. R. Parthasarthy, Deputy Superintendent of Police, CBI (Preliminary Inquiry Officer) has himself admitted that a substantial amount of loss which could have been caused to MSMCL has been averted by execution of JV Agreement with SHEL.

181. Admittedly, SHEL did not sell or transfer its shareholdings in JV company to any third party. The subsequent transaction of sale or transfer related only to sale of its shareholdings in JV company held in the SPV to the third party i.e. JDCL, which is in conformity with the terms and

conditions of JV Agreement regarding which no allegations are made in the present case as it was not prohibited in the tender/bid document.

182. Thus, the prosecution has failed to establish that the incorporation of impugned clauses in the JV Agreement dated 21.11.2009 caused any wrongful loss to MSMCL or the Government of Maharashtra or that it was prejudicial to their interests.

XVIII (D). WHETHER THE INCORPORATION OF IMPUGNED CLAUSES OBTAINED PECUNIARY ADVANTAGE OR VALUABLE SECURITY TO SHEL WITHOUT ANY PUBLIC INTEREST

183. As per records, the estimated cost for the development of Adkoli Coal Block was Rs.300 crores and as per the JV Agreement, the said cost was to be borne exclusively by SHEL (JV partner). Besides, SHEL was required to incur Rs.74 crores towards sweat money payable to MSMCL and approximately Rs.20 crores towards performance guarantee, insurance and other project related obligations, taking its financial commitments to nearly Rs.420 crores. The incorporation of the impugned clauses was, therefore, consistent with the commercial necessity of enabling SHEL to mobilize funds for implementation of the project, the success of which was equally in the interest of MSMCL.

184. As per letter dated 08.09.2014 **(PDF Page No.12242)** addressed to the MD, MSMCL by MD, M/s MSMCL Adkoli Natural Resources Limited, on the subject Hon'ble Supreme Court's Judgment dated 25.08.2014, on allocation of coal blocks, the JV partner (SHEL) had spent Rs.50.19 crores on the Adkoli Coal block initially, including sweat money of Rs.18.05 crores. Even assuming the prosecution case regarding the

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subsequent transaction with JDCL, the amount of about Rs.40 crores received by SHEL from transfer of its interest was less than the expenditure already incurred by it for the project. The remaining amount of approximately Rs.35 crores admittedly related to a separate transaction involving the shares of SHEL's subsidiary company, namely, M/s Gangakhed Sugar and Energy Private Limited and has no nexus with the JV Agreement or the present allegation. Although, the aforesaid explanation of A-1 has not been formally proved in accordance with law, it appears plausible and finds substantial corroboration from the prosecution records themselves. Most importantly, the prosecution has led no evidence to rebut the said explanation or to establish that the incorporation of impugned clauses was without any public interest or intended to solely to confer an undue benefit upon SHEL. In these circumstances, the prosecution has failed to establish either that SHEL obtained any undue pecuniary advantage or valuable security or that the impugned clauses were incorporated without any public interest.

185. In respect of the instant allegation also, the prosecution has failed to establish any nexus between accused public servants and SHEL or with the undue pecuniary advantage obtained by SHEL. In **Ashok Kumar Gupta (supra)**, while distinguishing **Runu Ghosh (supra)**, the Hon'ble Delhi High Court held that misconduct by public servant arises only if it results in pecuniary advantage to a private party by disregarding safeguards intended to public interest and where a demonstrable nexus exists between the conduct of the public servant and such pecuniary gain to the private party. Although, proof of *mens rea* may not invariably be necessary, the prosecution must establish a clear causal connection between the official

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act complained of and the pecuniary advantage secured by the private party.

XVIII (E). CONCLUSION IN RESPECT OF ALLEGATIONS OF CRIMINAL MISCONDUCT AGAINST A-1 AND A-2 IN INCORPORATING THE IMPUGNED CLAUSES IN THE DRAFT JV AGREEMENT

186. In view of the foregoing discussion, the prosecution has failed to establish any of the essential ingredients of the present allegation. It has failed to prove that the relevant terms of the tender/bid document were immutable or incapable of modification; that the impugned clauses were incorporated solely at the instance of A-1 and A-2; that the approving authorities were kept unaware of the modifications or that their approval was obtained by concealment or misrepresentation; that the incorporation of the impugned clauses was prejudicial to the interests of MSMCL or the Government of Maharashtra; or that the said clauses were incorporated to confer any undue pecuniary advantage or valuable security upon SHEL without any public interest. On the contrary, the evidence establishes that the impugned clauses formed part of the draft JV Agreement which was consciously scrutinised and approved by the competent authorities, MSMCL suffered no wrongful loss and, in fact, derived substantial financial benefit under the JV Agreement. The prosecution has, therefore, failed to prove this allegation beyond reasonable doubt.

XIX. TRANSACTIONS UNDERTAKEN BY SHEL OR ITS AFFILIATES UNDER THE JV AGREEMENT AND THEIR LEGAL RAMIFICATIONS

187. In order to appreciate the present discussion in its proper perspective, it is necessary to reiterate and clarify that the impugned clauses of the JV Agreement dated 21.11.2009 confined only to sale, transfer or pledge of the shareholdings of SHEL in JV company to the third party, which are incorporated in its clauses, namely, 6.4.1 and 12.4. The tender/bid document neither prohibited sale, transfer or pledge of such shareholdings to the affiliates of SHEL nor restricted sale, transfer or pledge of such shareholdings held in SPV, contemplated to be formed for the specific purpose of carrying on the business as per the JV Agreement in favour of the third party. Therefore, the scope of the impugned clauses does not extend to these transactions. Accordingly, the provisions permitting the said transactions and the provisions other than impugned clauses in the JV Agreement dated 21.11.2009 are hereinafter referred in short for clarity as '**indubitable clauses**'. The said clauses are all the clauses of JV Agreement except impugned clauses i.e. Clause 6.4.1 (Reserved Matters, in relation to pledge) and Clause 12.4 (Share Transfers to the Third Party).

188. As already held in the preceding part of this judgment, even the impugned clauses of the JV Agreement dated 21.11.2009 do not suffer from illegality or criminality. It necessarily follows that any transaction undertaken by SHEL, its affiliates or the SPV in conformity with those clauses of the JV Agreement cannot be regarded as illegal. *A fortiori*, the transactions undertaken in accordance with indubitable clauses of the JV Agreement are wholly beyond the pale of criminality.

XIX (A). TRANSACTIONS UNDERTAKEN BY SHEL OR ITS AFFILIATES UNDER THE INDUBITABLE CLAUSES OF THE JV AGREEMENT AND THEIR LEGAL RAMIFICATIONS

189. M/s Sunil Hi-Tech Energy Private Limited was incorporated on 07.02.2008 by the promoters of SHEL which was later decided to be used as SPV in terms of indubitable clause 12.3.3 of JV Agreement dated 21.11.2009 **Ex.P-260/PW-14 (D-61, PDF Page Nos.5847-5895)**. Further, M/s SHEL Investment Consultancy Services Limited was incorporated on 20.08.2009 as an affiliate of SHEL and was later utilized for transfer of shareholdings of SHEL in JV company in accordance with indubitable clause 12.3 of the JV Agreement dated 21.11.2009.

190. The first transaction in the series of transactions under the present caption was the execution of the Term Sheet dated 31.10.2009 **Ex.P-318/PW-16 (D-275, PDF Page Nos.10128-10132)** between SHEL and Jaiprkash Associates Limited before the execution of JV Agreement dated 21.11.2009. It contemplated that M/s Sunil Hi-Tech Energy Private Limited would be a Special Purpose Vehicle (SPV) formed as holding/ investment company to hold 49% stake of SHEL in the JV company to be incorporated in joint venture with MSMCL. It further stipulated that SHEL would retain at least 51% shareholding in the SPV throughout the subsistence of the JV Agreement. It further envisaged acquisition by Jaiprakash Associates Limited (or its associates) of 49% equity share capital of SHEL in the JV company held in the SPV for a consideration of Rs.15 crores, out of which Rs.5 crores was paid on 05.11.2009.

191. Significantly, there is no allegation that the said consideration was undervalued or that the source of funds was illegal. The execution of the Term Sheet (terms containing prospective transactions) was entirely

consistent with indubitable clause 12.3.3 of JV Agreement. Therefore, no illegality can be attributed in the said agreement. The prosecution contends that non-disclosure of the said Term Sheet amounted to cheating because MSMCL would not have entered into JV Agreement had it known of the proposed transaction. The said contention shall be examined separately while dealing the charge of cheating in the subsequent part of this judgment. For the present purpose, it would be suffice to state that the execution of the Term Sheet, viewed independently, does not disclose any illegality or criminality as it is in conformity with the indubitable clause 12.3.3 of the JV Agreement.

192. The second transaction in the series under the present heading was the execution of a Deed of Adherence dated 25.02.2010 **Ex.P-240/PW-12 (D-62, Page Nos.113-116, also at PDF Page No.11728)** between MSMCL, SHEL and M/s Sunil Hi-Tech Energy Private Limited whereby SHEL transferred its entire 49% shareholding in the JV company in favour of M/s Sunil Hi-Tech Energy Private Limited (SPV). Simultaneously, the SPV agreed to be bound by the JV Agreement as if it were the original shareholder, thereby becoming the successor-in-interest of SHEL. The said transaction was expressly contemplated by the indubitable clause 12.3.3 of the JV Agreement. Further, MSMCL itself was party to the Deed of Adherence, and no witness from MSMCL has been examined to establish that the said transaction violated any provision of the JV Agreement or caused any prejudice to MSMCL. Consequently, no illegality or criminality can be attributed to this transaction.

193. The third transaction in the series under the present caption was execution of the Deed of Adherence dated 23.03.2010 **Ex.P-237/PW-12**

(Colly) (D-62, PDF No.5918) executed between SHEL, SHEL Investment Consultancy Services Limited (affiliate of SHEL), Sunil Hi-Tech Energy Private Limited (SPV), MSMCL and MSMCL Adkoli Natural Resources Limited (JV company), whereby SHEL affiliate acquired 37.50% shareholding in the SPV from SHEL for a consideration of Rs.12,07,72,080/- (Rupees Twelve Crores Seven Lakhs Seventy Two Thousand and Eighty Only). MSMCL by its letter dated 30.03.2010, expressly permitted SHEL to hold such 51% shares in the SPV along with its affiliate companies. The Deed recorded that SHEL together with its affiliate would continue to maintain the minimum 51% shareholding in the SPV, consistent with Clause 12.3.3 of the JV Agreement. Simultaneously, M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) agreed to become bound by the JV Agreement in the same manner as it had been an original party to the agreement as SHEL. Notably, there is no allegation regarding undervaluation of shares or illegality in the source of the consideration. The said transaction was in complete conformity with the indubitable clauses 12.3.2 and 12.3.3 of JV Agreement and also in accordance with the aforementioned letter dated 30.03.2010 of MSMCL. Hence, no illegality or criminality can be attached to the said transaction.

194. After the aforesaid transactions, SHEL held 62.50% of the equity in the SPV, while its affiliate, M/s SHEL Investment Consultancy Services Limited, held the remaining 37.50%. Collectively, the SPV continued to represent the same 49% equity stake in the JV company originally held by SHEL. The restructuring merely altered the internal shareholding pattern within entities expressly recognised under the JV Agreement and did not affect MSMCL's rights or the equity structure of the JV company.

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Accordingly, the arrangement was entirely consistent with the indubitable clauses of the JV Agreement.

195. In continuation of the first transaction/agreement in relation to signing of the Term Sheet dated 31.10.2009, the Board of Directors of MSMCL, in its 181st meeting held on 23.12.2010, approved transfer of 49% equity in the SPV to the Jaypee Group, subject to execution of the necessary Deed of Adherence and verification of the technical competence of the transferee. Pursuant to the approval of the Board of Directors, MSMCL, 49% shares of SHEL in JV company held by SPV were sold to JDCL on 21.04.2011 after receipt of balance sale consideration of Rs.10 crores in accordance with Term Sheet dated 31.10.2009. Thus, JDCL paid total amount of Rs.15 crores to SHEL for purchase of the said shares.

196. Once again, the prosecution has not leveled any allegation in respect of the pricing of the shares or illegality in the source of the said consideration. More importantly, the transfer itself was undertaken pursuant to the prior approval of the Board of Directors of MSMCL and remained consistent with Clause 12.3.3 of the JV Agreement, which required SHEL to retain not less than 51% shareholding in the SPV. In these circumstances, the transaction cannot, by any stretch of reasoning, be characterised as illegal or criminal.

197. Thus, none of the above detailed transactions attract any illegality, irregularity or criminality.

XIX (B). TRANSACTIONS UNDERTAKEN BY SHEL OR ITS AFFILIATES UNRELATED TO JV AGREEMENT AND THEIR LEGAL RAMIFICATIONS

198. Out of the total transactions cited by the prosecution in the present case/charge-sheet, two transactions come under the present caption.

199. The first transaction under the present heading was execution of a Debenture Subscription Agreement dated 31.03.2010 between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL, whereby JDCL subscribed to 1,200 convertible debentures issued by the SHEL affiliate having a face value of Rs.1 lakh each and accordingly, paid the consideration of Rs.12 crores to M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) on 21.04.2011. Pertinently, this transaction is unrelated to the JV Agreement and the prosecution/CBI has failed to disclose what offence, if any, was committed by either of the parties owing to the said transaction.

200. The second transaction under the present heading was purchase of 35 lakh shares of M/s Gangakhed Sugar and Energy Private Limited (subsidiary of SHEL) by JDCL at face value of Rs.10/- with premium of Rs.90/- per share (total value Rs.100/-per share) for Rs.35 crores. Notably, this transaction also has no relation or connection to the JV Agreement. Further, the prosecution/CBI has also failed to disclose what offence, if any, was committed by either of the parties on account of the said transaction.

201. The aforesaid two transactions are entirely independent of and unconnected with the JV Agreement dated 21.11.2009. Neither transaction involved transfer, pledge or dealing with the shareholding of SHEL in the JV company, nor were they governed by any provision of the JV Agreement. They were purely commercial transactions between private entities concerning securities of companies other than the JV company.

The prosecution has neither alleged nor proved that these transactions were sham, fictitious or colourable, or that the consideration paid thereunder was undervalued, excessive or otherwise unlawful. No evidence has been adduced to establish that the source of the funds was illegal or that any part of the consideration represented proceeds of any unlawful activity. Equally, no evidence has been led to show that MSMCL suffered any loss or that either party obtained any wrongful gain on account of these transactions. In fact, the charge-sheet itself fails to disclose the offence, if any, constituted by these transactions or the statutory provision allegedly violated. In the absence of proof that these transactions were themselves illegal or were the result of any criminal act connected with the JV Agreement, they are wholly irrelevant for determining the criminal liability of the accused in the present case.

XIX (C). TRANSACTIONS UNDERTAKEN BY SHEL OR ITS AFFILIATES UNDER OR IN ALLEGED VIOLATION OF THE IMPUGNED CLAUSES OF JV AGREEMENT AND THEIR LEGAL RAMIFICATIONS

202. The only transaction relied upon by the prosecution as being in alleged violation of any impugned clause of the JV Agreement dated 21.11.2009 was the Share Pledge Agreement dated 21.04.2011 executed between M/s SHEL Investment Consultancy Services Limited (SHEL affiliate) and JDCL, whereby M/s SHEL Investment Consultancy Services Limited pledged all its 37.50% equity shares in SPV to JDCL along with all rights, including voting rights as a security towards the subscription of 1,200 optionally convertible debentures for a total consideration of Rs.12 Crores. On account of Deeds of Adherence dated 25.02.2010 and

23.03.2010, both the pledger [M/s SHEL Investment Consultancy Services Limited (SHEL affiliate)] and pledgee (JDCL) were bound by JV Agreement dated 21.11.2009. However, the said pledge of shares was not in terms of its Clause 6.4.1(e) in as much as it was not with the approval of one Director of MSMCL and one Director of SHEL.

203. There is no allegation whatsoever that SHEL, its affiliates or the SPV ever violated Clause 12.4 relating to sale or transfer of the shareholding of SHEL in the JV Company to a third party. Thus, even according to the prosecution, the entire edifice of the alleged criminality, insofar as post-execution transactions are concerned, rests solely on the alleged breach of Clause 6.4.1(e).

204. Even assuming, for the sake of argument, that the pledge was effected without obtaining the approval contemplated under Clause 6.4.1(e), such an act, by itself, cannot be elevated to the level of a criminal offence. The JV Agreement itself contemplates the eventuality of a transfer or dealing with shares in breach of its provisions and expressly prescribes the consequences thereof under Clause 12.5. The Agreement confers upon the remaining party a contractual right to purchase the default shares at a stipulated price and further declares that the unauthorised transfer would be null and void. Thus, the parties themselves consciously treated any breach of the transfer restrictions as a matter governed by contractual and civil consequences rather than one attracting penal consequences. Where the contract itself provides a complete mechanism to deal with its breach, it would be wholly impermissible to infer criminality merely because one of its terms is alleged to have been violated.

205. More importantly, the prosecution has failed to establish any of the essential ingredients of the offences of cheating or criminal conspiracy. There is no evidence whatsoever that, at the time of entering into the JV Agreement, SHEL or its affiliates had any dishonest or fraudulent intention not to abide by Clause 6.4.1(e) or to deceive MSMCL. Such an inference is wholly speculative, particularly when the JV Agreement itself provides remedies for breach, thereby indicating that the parties contemplated the possibility of contractual defaults and consciously agreed upon their consequences.

206. It is equally significant that neither MSMCL nor the Government delivered any property or valuable security to SHEL or its affiliates on account of the alleged pledge transaction. Likewise, no witness from MSMCL or any concerned Government department has entered the witness box to depose that MSMCL suffered any wrongful loss or that SHEL or its affiliates obtained any wrongful gain as a consequence of the alleged breach. There is also no evidence that the pledge transaction was a sham, was supported by unlawful consideration, or was intended to defeat any right of MSMCL. In the absence of proof of deception, fraudulent inducement, delivery of property pursuant to such inducement, or any meeting of minds to commit an illegal act, the foundational ingredients of Sections relating to cheating and criminal conspiracy remain wholly unsubstantiated.

207. Accordingly, even if the prosecution case is accepted at its highest and it is assumed that the Share Pledge Agreement dated 21.04.2011 was executed without the approval contemplated under Clause 6.4.1(e), the same would, at best, constitute an alleged breach of a contractual

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stipulation for which the JV Agreement itself provides civil consequences. Such an alleged breach cannot, in the facts and circumstances of the present case, be converted into an offence of cheating, criminal conspiracy or any other criminal misconduct. Consequently, the said transaction does not furnish any incriminating circumstance against any of the accused, including SHEL, nor does it advance the prosecution case in any manner.

XIX (D). CONCLUSION IN RELATION TO ALL THE AFOREMENTIONED TRANSACTIONS OF SHEL AND ITS AFFILIATES

208. The cumulative effect of the foregoing discussion is that none of the transactions undertaken by SHEL, its affiliates or the SPV, whether individually or collectively, disclose the commission of any criminal offence. Broadly, the transactions fall into three distinct categories, namely: (i) transactions expressly contemplated and permitted under the indubitable clauses of the JV Agreement; (ii) transactions wholly independent of and unconnected with the JV Agreement; and (iii) the Share Pledge Agreement dated 21.04.2011, which, according to the prosecution itself, is the only transaction allegedly carried out in violation of Clause 6.4.1(e) of the JV Agreement. As already discussed, the first category is completely authorised by the contractual framework; the second has no nexus whatsoever with the JV Agreement or the subject matter of the prosecution; and the third, even if assumed to be in breach of a contractual stipulation, attracts at best the civil consequences expressly provided under the JV Agreement itself and cannot, without more, be transformed into a criminal offence.

209. Significantly, the prosecution has not alleged, much less proved, that any of the aforesaid transactions were sham, fictitious or colourable, that the consideration paid thereunder was undervalued or otherwise unlawful, that the source of funds was illegal, or that any transaction was undertaken for an unlawful purpose. Equally absent is any evidence that MSMCL suffered any wrongful loss or that SHEL, its affiliates or any other accused derived any wrongful gain by reason of the execution of those transactions. No witness from MSMCL or any concerned Government department has entered the witness box to state that any of the transactions was unauthorised, prejudicial to the interests of MSMCL, or resulted in any pecuniary loss to it. The prosecution has also failed to identify any statutory provision, apart from the alleged contractual breach, which stood violated by any of these transactions.

XX. THE ALLEGATIONS OF CHEATING AND CONSPIRACY AGAINST A-1, A-2 AND SHEL

210. The prosecution has sought to rely upon the execution of the aforesaid Term Sheet to contend that SHEL never intended to honour the JV Agreement and that its execution itself demonstrates a pre-existing dishonest intention to cheat MSMCL. The contention, however, is devoid of merit. As already held in the preceding part of this judgment, the execution of the Term Sheet was fully consistent with Clause 12.3.3 of the JV Agreement and did not violate either the impugned clauses or any of the indubitable clauses of the JV Agreement. The Term Sheet merely contemplated a future corporate restructuring through an SPV, a course of action expressly recognised and permitted under the JV Agreement itself. A transaction expressly authorised by the contract cannot, by any

reasonable standard, be relied upon to infer that one of the contracting parties had, from the very inception, no intention of honouring the contract.

211. The prosecution's argument proceeds on the erroneous premise that the mere existence of a prior commercial arrangement necessarily establishes a dishonest intention existing at the time of execution of the JV Agreement. Such an inference is neither supported by the evidence nor permissible in law. A dishonest intention, which is the *sine qua non* of the offence of cheating, cannot be presumed merely because a party entered into another commercial arrangement, particularly when such arrangement was itself lawful and in conformity with the contractual framework governing the parties. If the very transaction relied upon by the prosecution was permissible under the JV Agreement, it cannot simultaneously be treated as evidence of a fraudulent design to violate that very agreement.

212. Even otherwise, the essential ingredients of the offence of cheating are conspicuously absent. There is no evidence that MSMCL was dishonestly induced by any false representation to execute the JV Agreement or that, acting upon such inducement, it delivered any property or valuable security to SHEL or its affiliates. The execution of the JV Agreement did not result in any transfer of property or valuable security by MSMCL in consequence of the alleged deception. Equally, there is no evidence of any meeting of minds between the accused to commit an illegal act so as to attract the offence of criminal conspiracy. In the absence of proof of fraudulent intention at the inception of the transaction, dishonest inducement, delivery of property pursuant thereto, or any agreement to commit an unlawful act, the execution of the Term Sheet

cannot be construed as furnishing evidence either of cheating or of criminal conspiracy.

213. Accordingly, the execution of the Term Sheet dated 31.10.2009, viewed independently or in conjunction with the subsequent transactions, does not disclose any criminality. On the contrary, being a transaction expressly contemplated by and consistent with the JV Agreement, it negates rather than supports the prosecution's allegation that SHEL entered into the JV Agreement with a preconceived intention not to honour its obligations thereunder.

XXI. FINAL CONCLUSION

214. Insofar as the allegation relating to the declaration of SHEL as technically eligible is concerned, the evidence on record unmistakably demonstrates that there is no conclusive evidence to show that SHEL was technically ineligible. Further, the said decision was taken after due consideration by the competent authorities on the basis of the material placed before them and thereafter received approval at every successive level. The prosecution has failed to prove that A-1 abused his official position, acted dishonestly, or intentionally acted contrary to law with a view to obtaining for SHEL any pecuniary advantage or to cause any wrongful loss to MSMCL or the Government. The essential ingredients of the offence of criminal misconduct are, therefore, wholly absent.

215. Equally, the prosecution has failed to establish that the incorporation of the impugned Clauses 6.4.1 and 12.4 in the JV Agreement dated 21.11.2009 constituted any illegal or dishonest act. As discussed in detail in the preceding paragraphs, the tender conditions were capable of modification; the draft JV Agreement underwent scrutiny at multiple

administrative levels; the changes were consciously approved by the High-Power Committee as well as the Infrastructure Committee; and the impugned clauses themselves neither violated any statutory provision nor defeated the object of the tender process. The prosecution has failed to prove that A-1 and A-2, in concert with SHEL or any other accused, incorporated those clauses pursuant to any prior agreement to commit an illegal act or to obtain any unlawful pecuniary advantage. Consequently, neither the offence of criminal misconduct nor that of criminal conspiracy is made out in relation to the incorporation of the impugned clauses.

216. The prosecution has further relied upon various commercial transactions undertaken by SHEL, its affiliates and the SPV after execution of the JV Agreement to contend that they constituted the fruits of the alleged conspiracy and demonstrated a dishonest intention from the very inception. However, as held hereinbefore, the overwhelming majority of those transactions were expressly contemplated and permitted under the JV Agreement, while the remaining transactions were wholly independent of and unconnected with it. Even the solitary transaction alleged to be contrary to Clause 6.4.1 of the JV Agreement, namely the Share Pledge Agreement dated 21.04.2011, at its highest, gives rise only to contractual consequences expressly provided under the agreement itself and cannot, in the absence of the essential ingredients of the penal offences alleged, be elevated to the status of a criminal act.

217. The prosecution has failed to prove that any of the aforesaid transactions involved deception, fraudulent inducement, dishonest intention at the inception, wrongful gain, wrongful loss, unlawful consideration, or any clandestine agreement amongst the accused persons.

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There is no evidence that MSMCL was induced to part with any property or valuable security on account of any alleged deception, nor is there any evidence that any accused public servant entered into an agreement with SHEL to commit an illegal act or to accomplish a lawful act by illegal means. The foundational ingredients of the offences of cheating and criminal conspiracy thus remain wholly unestablished.

218. Accordingly, the prosecution has failed to prove beyond reasonable doubt that: (i) the declaration of SHEL as technically eligible constituted criminal misconduct on the part of A-1; (ii) the incorporation of Clauses 6.4.1 and 12.4 in the JV Agreement dated 21.11.2009 constituted criminal misconduct by A-1 and A-2 or was the result of any criminal conspiracy between them and SHEL; or (iii) any of the subsequent transactions undertaken by SHEL, its affiliates or the SPV constituted, either individually or collectively, the offences of cheating, criminal conspiracy or any other offence alleged in the charge-sheet.

219. Considering the above detailed discussion, both the accused persons, namely, **A-1 Sh. Dominic Gabriel Philip S/o Sh. Gabriel Philip and A-2 Sh. Avinash Manohar Rao Warjukar S/o Sh. Manohar Rajaramji Warjukar** are entitled to be acquitted for the respective offences under which they were charged. Accordingly, both of them are ordered to be acquitted.

Announced in the open Court on 13.07.2026.

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Special Judge, (PC Act) (CBI)
(Coal Block Cases)-01, RADC
New Delhi: 13.07.2026