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Mineral (Auction) Amendment Rules, 2017

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MINISTRY OF MINES

NOTIFICATION

New Delhi, the 30th November, 2017

G.S.R.1469 (E).— In exercise of the powers conferred by section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following rules to amend the Mineral (Auction) Rules, 2015, namely:—

1. (1) These rules may be called the Mineral (Auction) Amendment Rules, 2017.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. Application.— These amendment rules shall be applicable to cases where the preferred bidder has not been declared as on the date of publication of these rules, and shall not be applicable to cases where the preferred bidder has been declared before the date of publication of these rules.
3. In the Mineral (Auction) Rules, 2015 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (m), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) the average price per metric tonne of such mineral as published by Indian Bureau of Mines for the relevant State for a period of twelve months immediately preceding the month of computation of the Value of Estimated Resources:

Provided that if for any mineral or mineral grade, the average sale price in respect of the relevant State for any month is not published by Indian Bureau of Mines, the all India average sale price published by Indian Bureau of Mines for such mineral or mineral grade for that month shall be used.”.
4. In the said rules, for rule 3, the following rule shall be substituted, namely:—

“3. **Application.**— These rules shall apply to all minerals, except—

 - (i) minerals notified as minor minerals specified under clause (e) of section 3;
 - (ii) minerals specified in Part A of the First Schedule to the Act; and
 - (iii) minerals specified in Part B of the First Schedule to the Act having grade equal to or more than the threshold value as specified and notified under the Atomic Minerals Concession Rules, 2016.”.
5. In the said rules, in rule 6, in sub-rule (4), in clause (ii), the following proviso shall be inserted, namely:—

“Provided that quantity of mineral equivalent to twenty five per cent. of total mineral excavated in the previous financial year, for which end use was specified can be sold in the current financial year.”.
6. In the said rules, in rule 9, for sub-rule (4), the following shall be substituted, namely:—

“(4) The auction shall be an ascending forward online electronic auction and shall comprise of attempts of auction with each attempt of auction consisting of a first round of auction and a second round of auction.

(5) In the first round of auction, the bidders shall submit, —

 - (A) a technical bid comprising amongst others, documentary evidence to confirm eligibility as per the provisions of the Act and the rules made thereunder to participate in the auction, bid security and such other documents and payments as may be specified in the tender document; and
 - (B) an initial price offer which shall be a percentage of value of mineral despatched.

(6) Only those bidders who are found to be eligible in accordance with the terms and conditions of eligibility specified in rule 6 and whose initial price offer is equal to or greater than the reserve price, referred to as “technically qualified bidders”, shall be considered for the second round of auction.

(7) The highest initial price offer amongst the technically qualified bidders shall be the floor price for the second round of online electronic auction.

(8) The technically qualified bidders shall be ranked on the basis of the descending initial price offer submitted by them and the technically qualified bidders holding the first fifty per cent. of the ranks (with any fraction rounded off to higher integer) or the top five technically qualified bidders, whichever is higher, shall qualify as qualified bidders for participating in the second round of electronic auction:

Provided that if the number of technically qualified bidders is between three and five, then all the technically qualified bidders shall be considered as qualified bidders:

Provided further that in the event of identical initial price offers being submitted by two or more technically qualified bidders, all such technically qualified bidders shall be assigned the same rank for the purposes of determination of qualified bidders and in such case, the aforementioned fifty per cent. shall stand enhanced to the extent of tie occurring within the first fifty per cent.

Illustration

In the event there are a total of ten technically qualified bidders, and each technically qualified bidder submits different initial price offer, then the technically qualified bidders holding the first fifty per cent. of ranks shall be considered to be qualified bidders.

If three such technically qualified bidders submit the same initial price offer and are ranked in first fifty per cent. of the total number of ranks, then, all the three technically qualified bidders shall be considered to be qualified bidders and the total number of qualified bidders shall stand increased by two.

(9) Where the total number of technically qualified bidders is three or more, the auction process shall proceed to the second round of auction which shall be held in the following manner, namely:-

- (i) the qualified bidders may submit their final price offer which shall be a percentage of value of mineral despatched and greater than the floor price:

Provided that the final price offer may be revised till the conclusion of the auction as per the technical specifications of the auction platform;

- (ii) The auction process shall be annulled if none of the qualified bidders submits a final price offer on the online electronic auction platform;
- (iii) the qualified bidder who submits the highest final price offer shall be declared as the “preferred bidder” immediately on conclusion of the auction.

(10) Where the total number of technically qualified bidders is less than three, then no technically qualified bidder shall be considered to be qualified bidder and the first attempt of auction shall be annulled.

(11) On annulment of the first attempt of auction, the State Government may decide to—

- (a) commence the auction process *de novo* with a separate set of terms and conditions and reserve price as it may deem fit and necessary; or
- (b) conduct the second attempt of auction.

(12) In case the State Government decides to conduct the second attempt of auction as per clause (b) of sub-rule (11), the terms and conditions of the second attempt of auction shall remain the same as in the first annulled attempt of auction:

Provided that the highest initial price offer of the technically qualified bidders if any in the first annulled attempt shall be the reserve price in first round of the second attempt:

Provided further that the bidding shall continue to the second round even in case the number of technically qualified bidders is less than three.’

7. In the said rules, in rule 10, in sub-rule (6), the following provisos shall be inserted, namely:—

“Provided that no Mining Lease Deed shall be executed on expiry of a period of three years from the date of the letter of intent, and the letter of intent shall be invalidated leading to annulment of the entire process of auction:

Provided further that the State Government may allow a further period of two years for execution of the Mining Lease Deed if the reasons for delay were beyond the control of the preferred bidder.”.

8. In the said rules, for the words and figures “Mineral Concession Rules, 1960” wherever they occur, the words, brackets and figures “Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016” shall be substituted.

9. In the said rules, in rule 11, in sub-rule (2), for the words, brackets and figures “adjusted in full against the amount paid under sub-rule (3) of rule 8 within the first five years of”, the words, brackets and figures “adjusted in full at the earliest against the amount to be paid under sub-rule (3) of rule 8 on” shall be substituted.

10. In the said rules, in rule 12, in sub-rule (1),—

- (a) for the word “successful”, the word “preferred” shall be substituted; and
- (b) after the words “reassessed value of estimated resources” occurring at the end, the words “including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery” shall be inserted.

11. In the said rules, in rule 19,—

- (a) in sub-rule (2), after the words “value of estimated resources” occurring at the end, the words “established by the holder of the Composite Licence after completion of prospecting operations in accordance with sub-section (9) of section 11 of the Act resulting in determination of evidence of mineral contents conforming to the Mineral (Evidence of Mineral Contents) Rules, 2015” shall be inserted; and
- (b) for sub-rule (4), the following sub-rule shall be substituted, namely:—

“(4) The performance security shall be provided through bank guarantee in the format as specified in Schedule IV or through security deposit, which may be invoked as per the provisions of –

 - (i) the prospecting licence deed;
 - (ii) the Mine Development and Production Agreement;
 - (iii) the Mining Lease Deed:

Provided that the State Government on being satisfied that the holder of Composite Licence has completed prospecting operations in accordance with sub-section (9) of section 11 of the Act but is unable to establish the existence of mineral contents even after making all possible efforts in accordance with sub-section (10) of section 11 of the Act, and the Minerals (Evidence of Mineral Contents) Rules, 2015, shall return the bank guarantee or the security deposit provided by the holder of the Composite Licence as performance security.”.

12. In the said rules, for Schedule I, the following Schedule shall be substituted, namely:—

“SCHEDULE I

Terms and conditions of eligibility

[See rules 6(1) and 6(2)]

1. The following net worth requirements shall be applicable for an auction of mining lease depending on the Value of Estimated Resources, namely:—
 - (a) If the Value of Estimated Resources is equal to or more than one thousand crore rupees, the applicant, including an individual, shall have a net worth more than 2 per cent. of Value of Estimated Resources.
 - (b) If the Value of Estimated Resources is less than one thousand crore rupees but more than one hundred crore rupees, the applicant, including an individual, shall have a net worth more than 1 per cent. of Value of Estimated Resources.
 - (c) If the Value of Estimated Resources is less than or equal to one hundred crore rupees, the applicant, including an individual, shall have a net worth more than 0.5 per cent. of Value of Estimated Resources.
2. In case of auction of Composite Licence, the applicant shall have a net worth of more than 1 per cent. of the Value of Estimated Resources and where the value of Estimated Resources is equal or less than one hundred crore rupees, the applicant must have a net worth more than 0.5 per cent. of Value of Estimated Resources.

Explanation.—

- (1) In case an applicant is a subsidiary of another company incorporated in India, the net worth of such holding company may also be considered:

Provided that, in such case, the applicant shall continue to be a subsidiary of such holding company until such time the applicant meets the aforementioned net worth threshold.

- (2) In case of a company, the net worth shall be the sum of paid up share capital and the free reserves as per the audited balance sheet of the financial year ended immediately preceding the date of issuance of notice inviting tender.

- (3) In case the notice inviting tender is issued between 1st April to 30th September (both days inclusive) of a year, the audited balance sheet of the financial year before the immediately preceding financial year, from the date of issuance of notice inviting tender, may be submitted by the bidder, if the audited balance sheet of the immediately preceding financial year is not available.
- (4) In case of an individual, the net worth shall be the closing cash balance on the last date for submission of application, and such amount may include amount in savings bank accounts in Scheduled Bank or Post Office, free and un-encumbered fixed deposits in Scheduled Banks, Post Office, Listed Companies or Government organisation or Public Sector Undertakings of a State and the Central Government, Kisan Vikas Patra, National Saving certificate, Bonds, Shares of Listed Companies, Listed Mutual Funds, Unit Linked Insurance Plan, Public Provident Fund, Surrender Value of Life Insurance policies, and un-encumbered immovable property in the name of Applicant.”.

13. In the said rules, in Schedule III,

- (a) for paragraph A, the following paragraph shall be substituted, namely:—

“A. [Name of the Preferred Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Preferred Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] OR [Name of individual] who is citizen of India, having income tax permanent account number [number], residing at [address] OR [partnership firm/association of individuals], all members of whom are Indian citizens and residents of India whose principal place of business is at [address of principal place of business] (the "Preferred Bidder") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid until [date of expiry of performance bank guarantee] ("Expiry Date").” ;

- (b) in paragraph C, for the word “Successful” occurring after words “at the request of the”, the word “Preferred” shall be substituted.

14. In the principal rules, after Schedule III, the following Schedule shall be inserted, namely:—

‘SCHEDULE IV

Format of Performance Security for Composite Licence

[See rule 19(4)]

[Reference number of the bank]

[date]

To

The Governor of [Name of State]

[address]

WHEREAS

- A. [Name of the Preferred Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Preferred Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] OR [Name of individual] who is citizen of India, having income tax permanent account number [number], residing at [address] OR [partnership firm/association of individuals], all members of whom are Indian citizens and residents of India whose principal place of business is at [address of principal place of business] (the “Preferred Bidder”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid for an initial period of [●]([●]) years from the date hereof (“Expiry Date”).
- B. The Performance Security is required to be provided to the Governor of [Name of State], (the “State”) for discharge of certain obligations under the Tender Document dated, [date] with respect

to auction of [particulars of auction] AND the deed for grant of a prospecting licence to be executed between the State and the Successful Bidder AND the Mine Development and Production Agreement to be executed between the State and the Successful Bidder (collectively the “**Agreement**”).

- C. We, [name of the bank] (the “**Bank**”) at the request of the Preferred Bidder or Successful Bidder do hereby undertake to pay to the State an amount not exceeding INR [figures] (Indian Rupees [words]) (“**Guarantee Amount**”) to secure the obligations of the Preferred Bidder or Successful Bidder under the Agreement on demand from the State on the terms and conditions herein contained herein.

NOW, THEREFORE, the Bank hereby issues in favour of the State this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Preferred Bidder or Successful Bidder in the Guarantee Amount:

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the State without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the State, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the State needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the State and Preferred Bidder or Successful Bidder on any matter whatsoever. The Bank undertakes to pay to the State any money so demanded notwithstanding any dispute or disputes raised by the Preferred Bidder or Successful Bidder in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.
2. The Bank acknowledges that any such demand by the State of the amounts payable by the Bank to the State shall be final, binding and conclusive evidence in respect of the amounts payable by Preferred Bidder or Successful Bidder to the State under the Agreement.
3. The Bank hereby waives the necessity for the State from demanding the aforesaid amount or any part thereof from the Preferred Bidder or Successful Bidder and also waives any right that the Bank may have of first requiring the State to pursue its legal remedies against the Preferred Bidder or Successful Bidder, before presenting any written demand to the Bank for payment under this Guarantee.
4. The Bank further unconditionally agrees with the State that the State shall be at liberty, without the Bank’s consent and without affecting in any manner the Bank’s obligation under this Guarantee, from time to time to:
 - i) vary and/or modify any of the terms and conditions of the Agreement;
 - ii) extend and / or postpone the time for performance of the obligations of the Preferred Bidder or Successful Bidder under the Agreement, or
 - iii) forbear or enforce any of the rights exercisable by the State against the Preferred Bidder or Successful Bidder under the terms and conditions of the Agreement,

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the State or any indulgence by the State to the Preferred Bidder or Successful Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.
6. The Bank agrees that State at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Preferred Bidder or Successful Bidder.
7. The Bank further agrees that this bank guarantee and the guarantee obligations herein contained shall remain in full force and effect and shall continue to be enforceable till: (i) all the obligations of the Preferred Bidder or Successful Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged; or (ii) till the State certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Preferred Bidder or Successful Bidder and accordingly discharges this guarantee; or (iii) on provision of a revised performance security under sub-rule (2) of rule 19 of the Mineral (Auction) Rules, 2015 whichever is later. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in

writing on or before the Expiry Date the Bank shall be discharged from all liability under this guarantee thereafter.

8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the State shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at the State of [respective State].
10. The Bank has the power to issue this Guarantee in favour of the State. This guarantee will not be discharged due to the change in the constitution of the Bank
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the State in writing.
12. The State may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the Governor. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
13. Notwithstanding anything contained herein,
 - a. the liability of the bank under this bank guarantee shall not exceed the Guarantee Amount; and
 - b. this bank guarantee shall be valid up to the Expiry Date.
14. The Bank is liable to pay the Guaranteed Amount or any part thereof under this bank guarantee only and only if the State serves upon the Bank a written claim or demand on or before the Expiry Date.

Dated the [day] day of [month] [year] for the Bank.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

(Signature)

(Name and Designation)

(Bank Stamp).'

[F. No. 1/1/2017-M.VI]

BIPUL PATHAK, Jt. Secy.

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide notification number G.S.R. 406(E), dated the 20th May, 2015.