

**IN THE COURT OF SH. ARUN BHARDWAJ
SPECIAL JUDGE (PC ACT) (CBI) (COAL BLOCK CASES-01)
ROUSE AVENUE DISTRICT COURTS: NEW DELHI.**

CNR NO. DLCT-11-000961-2019

CBI Case No. 252/2019 (Old CC Nos. 94/2016 and 07/2015)

RC No. 219 2014 E 0025, Branch: CBI/EO-1/New Delhi

U/s: 120-B r/w Section 420/468/471 IPC.

In the matter of: -

CBI

Versus

- 1. M/s Adhunik Corporation Ltd. (A-1)
Through its AR K.C. Jain
Address: 14, Netaji Subhas Road, 2nd Floor,
Kolkata, West Bengal, 700001**
- 2. Nirmal Kumar Agarwal @ Nirmal Agarwal (A-2)
S/o Late Sh. Mahadeo Prasad Agarwal
R/o BA-209, Salt Lake City Kolkata,
West Bengal**
- 3. Mahesh Kumar Agarwal @ Mahesh Kumar Agarwal (A-3)
S/o Late Sh. Mahadeo Prasad Agarwal
R/o BA-209, Salt Lake City Kolkata,
West Bengal**
- 4. Ghanshyam Das Agarwal (A-4)
S/o Late Sh. Mahadeo Prasad Agarwal
R/o BA-209, Salt Lake City Kolkata,
West Bengal (Not summoned)**

Filed on : 15-12-2015

Arguments concluded on : 06-04-2022

Decided on : 21-04-2022

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JUDGEMENT

1. **Allegations against the accused:** - M/s. Adhunik Corporation Ltd. (M/s. ACL), one of the group companies of Adhunik Group is Accused No. 1 (A-1), Nirmal Kumar Agarwal, one of the Promoters/Directors of M/s. ACL is Accused No. 2 (A-2) and Mahesh Kumar Agarwal also one of the Promoters/Directors of M/s. ACL is Accused No. 3 (A-3).
2. Ghanshyam Das Agarwal Accused No. 4 (A-4) was not summoned as no material was found for summoning him.
3. During this trial, CBI sought to prove that Mahesh Kumar Agarwal (A-3), the Managing Director of M/s Adhunik Corporation Ltd. (A-1) vide application dated 07.04.2003, addressed to Ministry of Steel (MoS) and Ministry of Coal (MoC) requested for allocation of Patrapara Coal Block for their Sponge Iron Plant at Durgapur, West Bengal/Sundargarh, Orissa.
4. In this application, Mahesh Kumar Agarwal (A-3) made two misrepresentations. First, he submitted that their Sponge Iron Plant is producing 72,000 tons per year (TPY) / their existing production capacity of sponge iron plant is 72,000 tons per year (TPY). Second, he enclosed false and forged Techno-Economic Feasibility Report (TEFR) purportedly prepared by Dimension Engineering & Consultants Pvt. Ltd.

5. Allegation against Nirmal Kumar Agarwal (A-2) is that he had written two letters both dated 23.05.2005 to Ministry of Steel and the first letter was also sent to Chairman, Screening Committed and Director, Ministry of Coal (Coal Allocation). Along with the first letter, he had enclosed false letter dated 18.04.2005 signed by him appointing M/s ITC, Raipur as consultant for detail engineering and consultancy of 2 x 350 TPD Sponge Iron Plant. As per this letter, consultancy charges payable by M/s ACL to M/s ITC were Rs.25,00,000/-. He had also enclosed therewith a false purchase order dated 15.02.2005 signed by him purportedly placing order on M/s Beekay Engineering Corporation for manufacture and supply of kiln, cooler and ABC arrangement for Sponge Iron Plant at Raurkela. Price of two kilns mentioned in this Purchase Order was Rs.14 Crores. He had also enclosed a false and forged acknowledgment dated 21.02.2005 from M/s Beekay Engineering Corporation purportedly issued to M/s ACL.
6. In the second letter dated 23.05.2005, Nirmal Kumar Agarwal submitted yet another false letter dated 17.02.2004 purportedly submitted by M/s ACL to the State Pollution Control Board, Orissa seeking consent to establish DRI and Captive Power Plant.
7. The allegations are that the Ministry of Steel was induced to believe that all these false documents are genuine and believing the misrepresentations so made, forwarded the request of the company to MoC (which in fact was in the nature

of recommendation) for consideration of allocation of a suitable non-coking coal block/sub-block commensurate with their washed/prime-coking coal requirement in favour of M/s ACL.

8. The allegation is that in case MoS was not so induced, it would not have forwarded/recommended the request of the company to MoC. The 30th Screening Committee in its meeting held on 18.10.2005 took note of the recommendations received from MoS and vide letter dated 13.01.2006, the Ministry of Coal, Government of India allocated New Patrapara Coal Block to eight companies including M/s Adhunik Corporation Ltd. In case, MoC, Government of India was not misled by forwarding/recommendation of the application of M/s ACL by MoS on the basis of the misrepresentations made by M/s ACL, Mahesh Kumar Agarwal (A-3) and Nirmal Kumar Agarwal (A-2), it would not have allocated any coal block in favour of M/s ACL.
9. **Sequence of events:** - One Manoj Kumar Aggarwal, Managing Director of M/s Neepaz Metaliks Private Limited (hereinafter referred as M/s NMPL) one of the group companies of Adhunik Group had given an application on 14.01.2003 to Ministry of Steel (MoS) for allotment of Patrapara coal block located in Orissa (Talcher Coalfield) **D-19, Correspondence Page-1, PDF-2073.**
10. In this application, it was mentioned that Adhunik Group comprises of eight companies namely M/s. Neepaz Metaliks Private Ltd (M/s NMPL), Sundargarh, Orissa, M/s. Adhunik

Corporation Private Ltd (hereinafter referred as M/s. ACPL), Sundargarh, West Bengal, M/s Adhunik Steel Ltd, Serampore, Hoogly, West Bengal, M/s Adhunik Ferro Alloys Limited, M/s Neepaz Tube Private Ltd, Jamshedpur, Jharkhand, M/s Swarnarekha Steel Industries, Jamshedpur, Jharkhand, M/s Futuristic Steel Private Ltd. and M/s Adhunik Meghalaya Steels Private Ltd. The Promoters of this group are Jugal Kishore Agarwal, Ghanshyam Das Aggarwal, Nirmal Kumar Agarwal, Mohan Lal Aggarwal, Mahesh Kumar Agarwal and Manoj Kumar Aggarwal, all sons of late Shri M.P. Aggarwal. It was also stated in this application that:

“Adhunik Corporation (P) Ltd has an existing sponge iron plant of 60,000 TPY capacity at Angadpur, Durgapur, West Bengal. The capacity of this existing sponge iron plant will be increased from 60,000 TPY to 1,00,000 TPY ... (Emphasis supplied)”

11. Therefore, according to one of the Promoter/Director of Adhunik Group which comprised of M/s Adhunik Corporation as well, the production capacity of M/s ACL was 60,000 TPY and not 72,000 TPY.
12. On behalf of M/s ACPL (later on known as M/s. ACL), a letter was given on 07.04.2003 **D-5, Correspondence Page-1-147, PDF-281** in the Ministry of Steel (hereinafter referred as MoS) as well as Ministry of Coal (MoC) by its Managing Director Mahesh Kumar Agarwal (A-3) requesting for allocation of Patrapara coal block. It was mentioned in this letter that:

“Adhunik Corporation is producing 72,000 tonnes per year (TPY) of Sponge Iron... (Emphasis supplied)”

13. It was also mentioned in this letter that:

“... Adhunik Corporation (P) Ltd. has an existing Sponge Iron Plant of 72,000 capacity”.

14. Along with this application, Techno-Economic Feasibility Report on Integrated Steel and Power Project Through DRI-Electric Furnaces of Adhunik Group of Companies Adhunik Corporation (P) Ltd, West Bengal purportedly prepared by Dimension Engineering & Consultant Private Ltd, Consulting Engineers, New Delhi-19 was also enclosed **D-5, Correspondence Page 25, PDF 306**.

15. In the Ministry of Steel, Ranjit Singh, Under Secretary, while processing the application of M/s. ACL noted on 25.04.2003, **D-5, Note Sheet Page 1, PDF 258** that: -

“The company who apply first and fulfils all the required conditions may be recommended first to Ministry of Coal subject to the available coal block applied for... (Emphasis supplied)”

16. It was also noticed by him in this note sheet that M/s. NMPL vide letter dated 14.01.2003 has also applied for allocation of Patrapara coal block for their combined projects including the projects of M/s. ACPL and Sri M.P. Ispat and Power Ltd. Therefore, vide letter dated 23.05.2003 **D-5, Correspondence Page 148, PDF 435** MoS requested M/s. ACPL to clarify the reason why two group companies i.e., M/s ACPL and M/s NMPL have applied for the same coal block.

17. Vide letter dated 07.06.2003 **D-5, Correspondence Page-149-150, PDF-436** Mahesh Kumar Agarwal (A-3) stated that M/s ACPL (since converted to Public Limited) and M/s NMPL are two different legal entities belonging to M/s Adhunik Group and were managed by Promoters/Directors who are real brothers. Therefore, it was requested that the main advantage of having same coal block would enable them in pooling the common resources such as machinery, equipment and infrastructural facilities which would result in reducing the capital investment and also minimising the cost of maintenance. Therefore, M/s ACPL and M/s NMPL had requested for allocation of Patrapara coal block in their favour.
18. After receiving letter dated 07.06.2003 from M/s ACPL, D. Kashiva, Joint Industrial Adviser of Ministry of Steel further examined the earlier application of M/s. ACPL dated 07.04.2003 and noted in note sheet **D-5, Note Sheet Page 6 PDF 263** that the salient feature of the proposal is as under:-

| | |
|--------------------------------------|------------------|
| Existing sponge iron capacity | 0.72 LTPA |
| Proposed sponge iron capacity | 2.52 LTPA |
| Power Plant | 35 MW |
| Existing steel capacity | 0.585 LTPA |
| Proposed steel capacity | 0.39 LTPA |

19. As per chargesheet, the West Bengal Pollution Control Board, had issued consent to operate for two numbers of rotary kilns

with capacity of 100 metric tons per day (MTPD) and 80 metric tons per day (MTPD), totaling to 180 MTPD, vide Consent to Operate dated 12.05.2003 **D-69 PDF 3622**. Therefore, the sponge iron production capacity of M/s. ACPL at their plant at Durgapur was 180 metric tons per day (54,000 metric tons per year considering 300 working days in a year as per the norms of MoS). Therefore, according to CBI, M/s. ACPL was not having 72,000 TPY existing sponge iron capacity as was falsely mentioned in their letter dated 07.04.2003.

20. It is further stated in the chargesheet that investigation conducted with the Central Excise, Durgapur Commissionerate, Durgapur, West Bengal has shown that ER-1 return is a monthly return which is filed by the producer with the information of monthly production of excisable goods. ER-7 return is an annual return filed by the producer of excisable goods with the information of annual installed capacity of the plant and machinery being used for the production of excisable goods. The information furnished by the company/firm in ER-7 return is verified and cross checked with ER-1 return by the Central Excise. M/s. ACPL filed ER-7 return with the Central Excise, Durgapur, West Bengal from 01.04.2007 to 01.04.2013 giving details of installed sponge iron plant capacity at 60,000 metric tons (MT), **D-71, Page 31-41 PDF 3659-3669**. It also showed that the annual installed sponge iron capacity of M/s. ACPL at their plant at Durgapur was 60,000 metric tons per year, whereas in its application dated 07.04.2003, the company

dishonestly claimed existing sponge iron capacity of 72,000 TPY.

21. Further, while dealing with the application of M/s. ACL dated 07.04.2003, it was also noted in the note sheets in MoS, **D-5 Note Sheet Page 7 PDF 264** that M/s. ACPL had not furnished documentary evidence regarding effective steps taken by them towards their proposed project. The noting of D. Kashiva dated 01.08.2003 is: -

“As regard to the effective steps taken by the company (preparedness) there are no documentary evidences regarding procurement of land, placement of order for the plant and machinery, financial tie up etc.....”.

22. Therefore, vide letter dated 07.08.2003 **D-5, Correspondence Page 151, PDF 438** Ranjit Singh, Under Secretary to the Government of India, MoS, called upon M/s. ACPL to furnish following information:

(i) Details of effective steps taken like procurement of land, placement of order for main plant and machinery, No Objection Certificate from State Pollution Control Board etc. with documentary evidences regarding expansion of sponge iron capacity in Orissa,

(ii) details of financial tie-up, if any and;

(iii) cost of coal mining development and washery have not been included in TEFR (Emphasis supplied).

23. There was no response from M/s ACPL to the letter of MoS dated 07.08.2003 necessitating issuance of a reminder on

04.02.2005 to M/s. ACPL reminding it to expedite the information earlier called for by MoS **D-5, Page 152, PDF 439**.

24. 28th Screening Committee meeting had taken place on 15.04.2005. During this meeting, the applications of M/s. NML and M/s. ACPL were deliberated upon jointly. This meeting was attended by Nirmal Kumar Agarwal, Manoj Kumar Aggarwal and one A.Kala as is evident from Serial No. 3 of the Attendance Sheet of the said meeting **D-7, Page 215, PDF 954**. In the Agenda Form submitted to the Screening Committee, **D-21, Page 4, PDF 2429**, it was mentioned by Rakesh Khare that existing capacity of sponge iron plant of M/s. ACL was 0.072 MTPA.
25. M/s ACPL vide letter dated 03.05.2005 addressed to MoS and under signatures of Nirmal Kumar Agarwal **D-5, Page 154, PDF 441** submitted that their company was invited for presentation on the 28th Screening Committee meeting to present its case for allotment of coal block for captive mining for its expansion project in Orissa but their case was kept pending whereas others were recommended without assigning any reasons. It was requested to MoS to take up the matter with appropriate authorities and allot Patrapara coal block to its sister company M/s NML as M/s NML had taken up integrated expansion plan of M/s ACL at Orissa with their proposed expansion plan at Rourkela, Orissa. In this letter also, the information called for by MoS vide letter dated 07.08.2003 and 04.02.2005 was not provided.

26. Vide OM dated 06.05.2005 MoC called upon MoS for views/recommendations, as the case may be, on the letters of M/s. ACL dated 07.04.2003 and 03.05.2005 and mentioned that: -

“Recommendations of Ministry of Steel on the proposal has not been received in the Ministry of Coal, though the party/company was invited for presentation before the Screening Committee in its 28th meeting held on 15.04.2005. It is, therefore, requested that Ministry of Steel may kindly furnish their views/recommendations, as the case may be, to this Ministry at the earliest” **D-5, Page 156, PDF 443.**

27. On 10.05.2005, while dealing with the letter of M/s. ACL dated 03.05.2005, Deepak Anurag, Director, MoS enquired in the note sheet about the TEFR for the project of M/s. ACL, **D-5 Note Sheet Page 11 PDF 269** and vide note sheet dated 18.05.2005, in the file of MoS, it was noted that the TEFR for this project has been received at Page 25 of the note sheet, **D-5 Note Sheet Page 13 PDF 271.**

28. M/s ACL vide its letter dated 23.05.2005 **D-5, Correspondence Page-161-251, PDF-448**, under the signatures of Nirmal Kumar Agarwal, the Director of M/s ACL and with reference to earlier application dated 07.04.2003 and letter dated 07.04.2005, submitted additional information to MoS for recommending allotment of Patrapara captive coal block to the Screening Committee, Ministry of Coal and enclosed following documents to show the steps taken effectively to establish the plant: -

(i) Documents for purchase of 25.10 acres of private land, Annexure I,

(ii) Project Report from M/s Dimension Engineering Consultant Private Ltd, Annexure II, **(Note:** According to CBI, the company had already enclosed this report along with its application dated 07.04.2003, **D-5, Correspondence Page-25-91, PDF-306,**

(iii) Letter dated 18.04.2005 Ex PW 5/DX1 **D-5, Correspondence Page-166-167, PDF-453** written by Nirmal Kumar Agarwal appointing M/s Industrial Technical Consultant, Raipur, Chhattisgarh as consultant for detailed engineering and consultancy of 2 x 350 TPD sponge iron plant, Annexure II-A (Note: Consultancy charges were Rs. 25,00,000, Payment Terms, Clause (a) provided that 10% advance with purchase order meaning thereby Rs.2,50,000 had to be given as advance) and

(iv) Purchase Order dated 15.02.2005 **D-5, Correspondence Page-168-173, PDF-455** for manufacture and supply of kiln, cooler and ABC arrangement for Sponge Iron Plant at Rourkela, capacity 2x350 TPD placed upon M/s. Beekay Engineering Corporation. (Note: Clause 9.0 dealing with PRICE provided that the price of each kiln shall be Rs. 7.00 crores, meaning thereby the cost of 2 kilns would have been Rs. 14 crores. Clause 11.0 PAYMENT provided that 15% advance along with this purchase order shall be made, meaning thereby Rs 2.10 crores had to be given in advance along with the purchase order). Along with this letter, purported acknowledgement letter dated 21.02.2005 of M/s Beekay Engineering Corporation, Annexure-III **D-5, Correspondence Page-174, PDF-461** was enclosed confirming all terms and conditions given in the purchase order and also confirming that the sequence of delivery schedule will be maintained as agreed by them. There are two serious issues pointed out in letter dated 15.02.2005. First, it refers to "Offer

BKE/ACL/E-9819/2003-2004/A dated 21/02/2005” of M/s. Beekay Engineering Corporation dated 21.02.2005 which is not possible in letter dated 15.02.2005. Purchase Order dated 15.02.2005 could not have mentioned “Offer” dated 21.02.2005. Second serious issue is that the purchase order dated 15.02.2005 mentions that “Our Consultant M/s. Industrial Technical Consultant will supply the detailed manufacturing drawings for manufacturing kiln and cooler free of cost to you. Our consultant will give in advance the part list for major forgings, castings and bought out items like bearings etc” but M/s. Industrial Technical Consultant was purportedly appointed the consultant on 18.04.2005 and could not have provided the detailed manufacturing drawings as on 15.02.2005 (it is to be noted again that even letter dated 18.04.2005, according to CBI, is a false letter).

29. A copy of letter dated 23.05.2005 was also sent to the Chairman, Screening Committee, Ministry of Coal, New Delhi and the Director, Coal Allocation (CA), Ministry of Coal, New Delhi.
30. Vide another letter dated 23.05.2005 given by M/s ACL under signatures of Nirmal Aggarwal, Director, copy of letter dated 17.02.2004 for consent to establish DRI and captive power plant purportedly addressed to State Pollution Control Board, Orissa **D-5, Page 254, PDF 543** was also provided **D-5, Page 253, PDF 542**. In the letter dated 17.02.2004, it was mentioned that one application in the prescribed Form-IV along with requisite fee for consent to establish DRI and captive power plant at Sundargarh District is enclosed with the request to

advise the concerned to process the application at an early date and grant consent to establish for the aforesaid plant.

31. Allegations of CBI are that information on all the five counts referred above was false and forged documents were furnished by Nirmal Kumar Agarwal along with his both the letters dated 23.05.2005 **D-5, Page 161-254, PDF 448 and Page 253, PDF 542.**
32. In the 29th Screening Committee Meeting held on 03.06.2005, **D-12, Page 256, PDF 1755**, it was recorded that: -

“Representative of Ministry of Steel stated that there are a number of cases where views of the Ministry of Steel are yet to be sent and that such cases be decided in consultation with them. After a brief discussion, it was decided that the meeting can be held at the level of Joint Secretary (Coal) and Joint Secretary (Steel) to decide all such cases which may include cases like that of Maa Chinnamastika, Adhunik, E.S.Casting, Akshaya Investments, etc...”.
33. Vide letter dated 10.06.2005, which was signed “For” Nirmal Kumar Agarwal, Director of M/s ACPL, Ministry of Steel was provided additional information for recommending allotment of Patrapara captive coal block to M/s ACPL **D-5, Page 366, PDF 655.**
34. On 23.06.2005, D Kashiva, Joint Industrial Adviser noted in the note sheet, **D-5 Note Sheet Page 17 PDF 277** that vide letter dated 07.04.2003, the company had applied for allotment of part of Patrapara non-coking captive coal block for meeting the

coal requirement of 0.72 LTPA sponge iron plant at Durgapur West Bengal. So far as effective steps taken by the company for proposed 2.4 LTPA sponge iron capacity in Orissa are concerned, it was noted, the company has filed IEM, submitted a letter from Adhunik Minerals and Alloys Ltd stating that they have given 3.3 acres land to them on lease, the company has placed order for 2 x 350 TPD rotary kilns to Beekay Engineering Corporation which has been confirmed by them and has applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP. Further details were also noted in the note sheet, and orders were solicited by him whether the request of the company be forwarded to the MoC for consideration of allotment of a suitable non-coking block/sub block commensurate with their coal requirement.

35. The Secretary, MoS approved the proposal resulting in issuance of letter dated 04.07.2005 **D-5 Correspondence Page 432 PDF 721** by MoS to MoC.
36. In the letter dated 04.07.2005, Ministry of Steel noted similar facts as were recorded in the note sheet by D. Kashiva that M/s ACPL has filed IEM, placed order for 2 x 350 TPD Rotary kilns to Beekay Engineering Corporation which has been confirmed by them. It was also recorded in that letter that as per the norms followed in this Ministry, the capacity of sponge iron of proposed 2 x 350 TPD rotary kilns works out to be 2.1 LTPA. It was also noted that the company has applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP. Therefore,

the request of the company was forwarded to MoC for consideration of allocation of a suitable non-coking coal block/sub block commensurate with their washed/prime coking coal requirement **D-5, Page 432, PDF 721.**

37. As decided in 29th Screening Committee Meeting, a meeting of Joint Secretary (Coal) and Joint Secretary (Steel) took place on 01.09.2005. As per the gist of discussions held in the said meeting regarding M/s ACPL, it was decided that the case of M/s ACPL is recommended for 2.1 LTPA sponge iron capacity **D-13, Page 9-10, PDF 1697.**
38. The Gist of Discussion of meeting dated 01.09.2005 was sent to Ministry of Steel vide letter dated 06.09.2005 **D-13, Page 8, PDF 1696.**
39. It is to be noted that before this meeting took place, the Ministry of Steel had already sent its recommendations vide Office Memorandum dated 04.07.2005 in favour of M/s. ACL for a non-coking coal block for 2.1 LTPA sponge iron capacity.
40. The agenda for the meeting of the 30th Screening Committee meeting to be held on 18.10.2005 was circulated to all concerned vide letter dated 14.10.2005 of MoC **D-17, Page 54, PDF 1896.** It is recorded at Page 66, PDF 1908 that:

“A number of allocatee were identified by the Screening Committee without the final recommendation of the Ministry of Steel who were asked to send the name to the Ministry of Coal. The recommendation for allocation of suitable block and

assessment of coal requirement in case of M/s. Anjani steels, M/s. Akshay investment, M/s. Ocean Ispat, M/s. Adhunik Corporation, M/s. Electro Steel Castings Ltd and M/s. JSPL have been received from the Ministry of Steel subsequent to the Screening Committee meetings in which these companies were decided to be included as allocatees.”

41. The minutes of the 30th Screening Committee meeting were circulated to all concerned by MoC vide its letter dated 29.11.2005 **D-17, Page 122, PDF 1965**. It was also recorded in the minutes that: -

“The Screening Committee took note of the recommendations received subsequently by the MoC from the MoS in the cases already recommended by them”.

42. Vide letter dated 13.01.2006 **D-9, Page 222, PDF 1209**, with reference to the request of M/s ACL, MoC conveyed to M/s ACL and several other companies the decision of the Central Government to allot the New Patrapara coal block jointly to several companies including M/s ACL.
43. Allegations against the accused, therefore, are that they made misrepresentations and filed false and forged documents before MoS, MoC and Screening Committee and by inducing MoS, Screening Committee, MoC, Government of India to believe these misrepresentations to be true and forged documents to be genuine, got allocated the new Patrapara coal block in favour of M/s ACL from MoC, Government of India.

44. **Charge:** - Charge under section 120-B and under Section 120-B read with Section 420 IPC was framed against A-1, A-2 and A-3 as under: -

That during the year 2003-06 at West Bengal, Orissa, Chattisgarh, Delhi and other places, you all i.e. M/s. Adhunik Corporation Ltd., Nirmal Kumar Agarwal and Mahesh Kumar Agarwal entered into a criminal conspiracy to cheat Ministry of Coal, Government of India so as to procure allocation of a captive Coal Block, in favour of M/s. Adhunik Corporation Ltd. by adopting various illegal means viz by making false claims about the existing production capacity of Sponge iron Plant of M/s Adhunik Corporation at Durgapur, West Bengal and also submitted false Project Report allegedly prepared by M/s. Dimensions Engineering & Consultants Pvt. Ltd., made false claim about appointment of M/s. ITC as consultants for detailed engineering and consultancy supporting it with false and forged letter dated 18.04.2005 i.e. purchase order placed to M/s ITC by M/s ACL beside making false claim about placing of purchase order with M/s. Beekay Engineering Corporation for purchase of 2 kilns of 350 TPD each and submitted false and forged acknowledgment issued by M/s Beekay Engineering Corporation in this regard and also submitted a false and forged application claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and Captive Power Plant at Kuarmunda, Sundargarh Distt. i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa, etc. *[All these claims made to Ministry of Steel and Ministry of Coal have been discussed in detail in the order on charge dated 06.02.2017]* and by way of various acts of omission and commission amounting to criminal conspiracy and cheating by the company and its directors and you all thereby committed the offence of criminal conspiracy

being punishable u/s 120-B IPC and within my cognizance.

Secondly, during the aforesaid period and in furtherance of the common object of the criminal conspiracy as described above you all did various acts of cheating as described above and also discussed in order on charge dated 06.02.2017 and qua which substantive charges have been framed separately and you all thereby committed offences punishable u/s **120-B r/w 420 IPC** and within my cognizance.

45. Charge under Section 420 of IPC was framed against A-1, A-2 and A-3 as under: -

That you all i.e. M/s. Adhunik Corporation Ltd., Nirmal Kumar Agarwal and Mahesh Kumar Agarwal during the year 2003-06 at West Bengal, Orissa, Chattisgarh, Delhi and other places in furtherance of the common object of the criminal conspiracy (*as described in the charge separately framed*) hatched by you all cheated Ministry of Coal, Government of India by dishonestly or fraudulently making false claims about the existing production capacity of Sponge iron Plant of M/s Adhunik Corporation at Durgapur, West Bengal and also submitted false Project Report allegedly prepared by M/s. Dimensions Engineering & Consultants Pvt. Ltd., made false claim about appointment of M/s. ITC as consultants for detailed engineering and consultancy supporting it with false and forged letter dated 18.04.2005 i.e. purchase order placed to M/s ITC by M/s ACL beside making false claim about placing of purchase order dated 15.02.2005 with M/s. Beekay Engineering Corporation for purchase of 2 kilns of 350 TPD each and submitted false and forged acknowledgment allegedly issued by M/s Beekay Engineering Corporation dated 21.02.2005 in this regard and also submitted a false and forged application claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and

Captive Power Plant at Kuarmunda, Sundargarh Distt. i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa, etc. [All these claims made to Ministry of Steel and Ministry of Coal have been discussed in detail in the order on charge dated 06.02.2017] and thereby induced Ministry of Coal, Govt. of India to allocate "Patrapara" coal block in favour of M/s. Adhunik Corporation Ltd. and you all thereby committed offence u/s **420 IPC** and within my cognizance.

46. Charge under Section 471 of IPC was framed against Nirmal Kumar Agarwal as under: -

That you Nirmal Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used as genuine false and forged purchase order dated 18.04.2005 having been placed to M/s ITC appointing them as consultant for detailed engineering and consultancy for your proposed iron plant at Sundargarh, Orissa and also dishonestly or fraudulently used a purchase order dated 15.05.2005 stated to have been placed to M/s Beekay Engineering Corporation for purchase of 2x350 kilns and an acknowledgement letter dated 21.02.2005 allegedly issued by M/s Beekay Engineering Corporation under the signatures of Sh. K. L. Agrawal, as genuine and also dishonestly and fraudulently used the letter dated 17.02.2004 stated to have been submitted to Member Secretary, State Pollution Control Board, Orissa for obtaining consent to establish DRI and captive power plant at Sundargarh, Orissa, knowing fully well that the aforesaid documents were not genuine and you had reason to believe them to be forged and you thereby committed an offence u/s **471 IPC** and within my cognizance.

47. Charge under Section 471 of IPC was framed against Mahesh Kumar Agarwal as under: -

That you Mahesh Kumar Agarwal, Director M/s. Adhunik Corporation Ltd., during the year 2003-06 dishonestly or fraudulently used a false and forged TEFR stated to have been prepared by M/s Dimension Engineering & Consultants Pvt. Ltd. for your proposed sponge iron plant at Sundargarh, Orissa knowing fully well that the said TEFR was not genuine and you had reason to believe the same to be a false and forged document and you thereby committed an offence u/s **471 IPC** and within my cognizance.

48. **Prosecution Evidence:** - CBI examined 22 witnesses to prove its case. Affidavits of six PWs were filed u/s 296 Cr. P.C.
49. PW-1 Debadutta Pattnaik, Section Officer, State Pollution Control Board, Bhubaneswar and PW-2 Umesh Chandra Pani, Administrative Officer, State Pollution Control Board, Bhubaneswar were examined to prove that neither any application dated 17.02.2004 was given by M/s Adhunik Corporation Limited for consent to establish DRI and Captive Power Plant nor application in the prescribed Form-IV was submitted in the office of State Pollution Control Board, Orissa nor requisite fee was deposited on behalf of M/s Adhunik Corporation Limited for seeking consent to establish DRI and Captive Power Plant. They were also examined to prove that Rubber Stamp of State Pollution Control Board appearing on letter dated 17.02.2004 enclosed with letter dated 23.05.2005 by Nirmal Kumar Aggarwal was not the stamp of State Pollution Control Board, Bhubaneshwar.
50. PW-3 Sukumar Mukhopadhyay, Superintendent, Central Excise and Customs & Service Tax, Calcutta was examined to prove

that as per ER-7 forms submitted by M/s Adhunik Corporation Limited, its annual installed production capacity was 60,000 MT.

51. PW-4 Somnath Narayan, Senior Environment Engineer, West Bengal Pollution Control Board was examined to prove that according to consent to operate certificate dated 12.05.2003, the annual consented production capacity of sponge iron plant of M/s ACL is $180 \text{ MTPD} \times 300 \text{ working days} = 54,000 \text{ MTPA}$. He was also examined to prove that according to first consent to operate at Sr. No. 8 of the application dated 12.06.2002 and application dated 06.01.2005 at Sr. No. 5 seeking renewal of consent to operate given by M/s ACL, the company had itself mentioned that total number of working days per year are 300.
52. PW-5 Sundaram Narayanan, Partner of M/s Industrial Technical Consultant was examined to prove that no Purchase Order dated 18.04.2005 was received by him or his firm from M/s Adhunik Corporation Limited.
53. PW-6 K.L. Agarwal, Vice President of Beekay Engineering Corporation (Partnership Firm) was examined to prove that neither any Purchase Order dated 15.02.2005 was issued by M/s Adhunik Corporation Limited in favour of M/s Beekay Engineering Corporation nor Acceptance letter dated 21.02.2005 was issued on behalf of M/s Beekay Engineering Corporation to M/s Adhunik Corporation Limited.

54. PW-7 Sanjay Pratap was examined to prove the signatures of Nirmal Kumar Agarwal on both the letters dated 23.05.2005 addressed to Ministry of Steel.
55. PW-8 D. Kashiva was Additional Industrial Advisor in Ministry of Steel and was examined to depose about dealing of application of M/s Adhunik Corporation Limited dated 07.04.2003 in Ministry of Steel till issuance of recommendation letter dated 04.07.2005 to Ministry of Coal in favour of M/s Adhunik Corporation Ltd. He also deposed about proceedings before 28th, 29th and 30th Screening Committee.
56. PW-9 B. Akala, Ex-Chairman, Managing Director, CMPDIL of Coal India Ltd. was examined to prove the technical report for Patrapara captive coal block prepared by him for M/s. Adhunik Corporation Ltd.
57. PW-10 Prashant Kumar Singh was examined to prove OM dated 14.10.2005 of MoC enclosing Agenda Note of the 30th Screening Committee Meeting to be held on 18.10.2005.
58. PW 11 Prem Raj Kuar, from Ministry of Coal was examined to prove various documents of Ministry of Coal.
59. PW 12 Sanjeev Kumar Mishra had attended the 28th Screening Committee Meeting as a representative of State of Orissa.
60. PW 13 Rakesh Khare was examined to prove letter dated 03.03.2005 written by him to Director, MoC and agenda form

submitted to the screening committee on behalf of M/s. Adhunik Corporation Ltd.

61. PW 14 Vijay Verma, Senior Scientific Officer, CFSL, New Delhi was examined for proving the report given by him after examining various questioned documents i.e., signatures of Nirmal Kumar Aggarwal and Mahesh Kumar Aggarwal, rubber seal of State Pollution Control Board, Orissa and letterhead of M/s Beekay Engineering Corporation.
62. PW 15 Manish Uniyal from Ministry of Coal was examined to prove the documents provided by him to CBI during investigation.
63. PW 16 Deputy S.P. Samar Pal Rana was examined as he had collected various documents during preliminary enquiry.
64. PW-17 Deputy S.P. Manoj Kumar was examined as he had also conducted part investigation.
65. PW 18, Gaurav from Ministry of Corporate Affairs was examined to prove annual returns of M/s. Adhunik Corporation Ltd.
66. PW-19 Deputy S.P. Shiv Kumar was examined as he had also conducted investigation in this case.
67. PW-20 Dr. R.M. Dey, aged 84 years was also examined to prove the premises of Dimension Engineering Consultants Pvt.

Ltd. However, due to his age, he could not remember anything concerning this case.

68. PW 21 Manabendra Narayan Chakravarty, was examined to prove that no TEFRR was prepared by his company M/s. Dimension Engineering Consultant Private Ltd.
69. PW 22 is J.B. Lakra, the IO of the case who deposed about the investigation conducted by him.
70. **Statement u/s 313 Cr.P.C.:** - Statements of all the accused were recorded u/s 313 of Cr.P.C. which will be referred while dealing with points for determination in this case.
71. **Defence Evidence:** - The accused examined one witness as a defence witness namely DW-1 Sh. Vikas Garg who mainly deposed that Mahesh Kumar Agarwal and Nirmal Kumar Agarwal were not looking after the affairs of M/s. Adhunik Corporation Ltd and the affairs of this company were looked after by Jugal Kishore Aggarwal. He also deposed that he had got letter dated 07.04.2003 signed from Mahesh Kumar Aggarwal and two letters dated 23.05.2005 from Nirmal Kumar Aggarwal. He stated that Mahesh Kumar Aggarwal and Nirmal Kumar Aggarwal were not knowing the contents of these letters and they signed these letters after talking to Alok Jha who was looking after all matters concerning the coal block allocation. He also stated that once he had gone to CBI office along with Nirmal Kumar Aggarwal and while he was waiting in the parking area, one CBI official, in the presence of IO of this case had

asked him whether he knows any facts about this case and he had told aforesaid facts to the said official of CBI in the presence of IO of the case.

72. On behalf of CBI, arguments were addressed by Ld. Senior PP for CBI Sh. A.P. Singh and on behalf of accused, the arguments were addressed by Ld. Counsel Sh. Vijay Kumar Aggarwal. The Ld. Senior PP for CBI and Ld. Counsel for the accused have referred to a large number of judgments. However, only the relevant ones shall be discussed in this judgment.

73. **Points for determination** in this case are:

(i) Whether false claim was made by Mahesh Kumar Agarwal in his letter dated 07.04.2003 addressed to Ministry of Steel about the existing production capacity of sponge iron plant of M/s Adhunik Corporation at Durgapur, West Bengal?

(ii) Whether Techno-Economic Feasibility Report purportedly prepared by Dimension Engineering & Consultant Private Ltd was filed along with letter dated 07.04.2003 by Mahesh Kumar Agarwal and whether the same was forged?

(iii) Whether Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel about appointment of M/s. Industrial Technical Consultant, Raipur as consultants for detailed engineering and consultancy to show effective steps taken by the company towards their proposed project?

(iv) Whether Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel that M/s ACL has placed purchase order dated 15.02.2005 on M/s. Beekay Engineering Corporation and also falsely claimed that M/s Beekay Engineering Corporation has acknowledged their Purchase Order vide acknowledgement dated 21.02.2015 to

show effective steps taken by the company towards their proposed project?

(v) Whether Nirmal Kumar Aggarwal falsely claimed in his letter dated 23.05.2005 that M/s ACL has applied to State Pollution Control Board, Orissa for establishing DRI and CPP vide letter dated 17.02.2004?

(vi) Whether Nirmal Kumar Agarwal and Mahesh Kumar Agarwal have committed the offence of cheating Ministry of Coal, Government of India punishable under section 420 IPC?

(vii) Whether Mahesh Kumar Agarwal has committed the offence under section 471 IPC by knowingly using forged documents as genuine?

(viii) Whether letter dated 18.04.2005 is a false and forged letter?

(ix) Whether letter dated 15.02.2005 is a false and forged letter?

(x) Whether Acknowledgement dated 21.02.2005 is a false and forged acknowledgment?

(xi) Whether letter dated 17.02.2004 is a false and forged letter?

(xii) Whether Nirmal Kumar Agarwal has committed the offence under section 471 IPC by knowingly using forged documents as genuine?

(xiii) Whether all the three accused had entered into a criminal conspiracy to cheat Ministry of Coal, Government of India by using forged documents for procuring allocation of coal block?

1st Point for Determination

Whether false claim was made by Mahesh Kumar Agarwal in his letter dated 07.04.2003 addressed to Ministry of Steel about the existing production capacity of sponge iron plant of M/s Adhunik Corporation at Durgapur, West Bengal?

74. Mahesh Kumar Aggarwal had stated in the application dated 07.04.2003, **Exhibit PW 8/A-2, D-5, Correspondence Pages 1 to 147, PDF 281 to 434** that “Adhunik Corporation is producing 72,000 tons per year (TPY) of sponge iron...” and “... Adhunik Corporation (P) Ltd. has an existing Sponge Iron Plant of 72,000 capacity”.
75. The question is whether Adhunik Corporation was producing 72,000 tons of sponge iron per year and whether the capacity of its two sponge iron kilns was 72,000 tons per year?
76. First of all, Manoj Kumar Aggarwal, Managing Director of M/s Neepaz Metaliks Private Limited (hereinafter referred as M/s NMPL) one of the group companies of Adhunik Group had given an application on 14.01.2003 to Ministry of Steel (MoS) for allotment of Patrapara coal block located in Orissa (Talcher Coalfield) **Exhibit PW 8/DX-1, D-19, Correspondence Page-1, PDF-2073.**
77. In this application, it was mentioned that Adhunik Group comprises of eight companies namely M/s. Neepaz Metaliks Private Ltd (M/s NMPL), Sundargarh, Orissa, M/s. Adhunik Corporation Private Ltd (hereinafter referred as M/s. ACPL), Sundargarh, West Bengal, M/s Adhunik Steel Ltd, Serampore, Hoogly, West Bengal, M/s Adhunik Ferro Alloys Limited, M/s Neepaz Tube Private Ltd, Jamshedpur, Jharkhand, M/s Swarnarekha Steel Industries, Jamshedpur, Jharkhand, M/s Futuristic Steel Private Ltd. and M/s Adhunik Meghalaya Steals

Private Ltd. The Promoters of this group are Jugal Kishore Agarwal, Ghanshyam Das Aggarwal, Nirmal Kumar Agarwal, Mohan Lal Aggarwal, Mahesh Kumar Agarwal and Manoj Kumar Aggarwal, all sons of late Shri M.P. Aggarwal. It was also stated in this application that:

“Adhunik Corporation (P) Ltd has an existing sponge iron plant of 60,000 TPY capacity at Angadpur, Durgapur, West Bengal. The capacity of this existing sponge iron plant will be increased from 60,000 TPY to 1,00,000 TPY ...”

78. It was also mentioned in this application that the coal requirement of Existing/Under Installation-DRI Production in TPY for Adhunik Corporation would be 66,000.
79. Manoj Kumar Agarwal is admittedly one of the promoters of Adhunik Group which comprises of M/s Adhunik Corporation as well. Therefore, he was in a position to write about the capacity of existing sponge iron plant of Adhunik Corporation Limited at Durgapur and he clearly stated that the capacity of the said plant is 60,000 TPY which will be increased to 1,00,000 TPY.
80. When this application dated 14.01.2003 was put to the accused persons under Section 313 Cr.P.C., the response of A-3 Mahesh Kumar Agarwal to Q. No. 135 was that:

“It is matter of record”.

81. Mahesh Kumar Agarwal never stated that this application wrongly mentions that the capacity of the existing sponge iron

plant of Adhunik Corporation at Durgapur, West Bengal is 60,000 TPY.

82. Next, as per the balance sheet of M/s Adhunik Corporation Limited for the year ending on 31.03.2004, the sponge iron production was merely 36,435 **Exhibit P-31, D-128, Page 106**. This is an admitted document of the accused persons under Section 294 of Cr.P.C. There can be no better proof than the balance sheet of the company to show that Mahesh Kumar Agarwal falsely stated in his application dated 07.04.2003 that Adhunik Corporation is producing 72,000 tons per year of sponge iron, whereas the production was just 36,435 TPY.
83. Not only M/s Adhunik Corporation was not producing 72,000 tons per year of sponge iron, it was also not having the capacity to produce 72,000 per year of sponge iron. In letter dated 23.05.2005, **Exhibit PW 8/A-10, D-5, Page 161-251, PDF 448**, Nirmal Kumar Aggarwal had enclosed Auditor's Report by ABR & Co. Chartered Accountants auditing the balance sheet of M/s. Adhunik Corporation Ltd as on 31.03.2004. This report is also signed by Mahesh Kumar Aggarwal as Managing Director of M/s. ACL. At page 249 of D-5, PDF 538, in this report, it is mentioned that the installed capacity (As certified by the Management and relied upon by the Auditors) of sponge iron for current year is 60,000. This also proves that as per own documents of M/s ACL, neither M/s ACL was producing 72,000 MT sponge iron as on 07.04.2003 nor its production capacity was the same on the said date.

84. The West Bengal Pollution Control Board, had issued Consent to Operate for two number of rotary kilns with capacity of 100 metric tons per day (MTPD) and 80 metric tons per day (MTPD), totaling 180 MTPD vide Consent to Operate dated 12.05.2003 **Exhibit PW 4/G, D-69 PDF 3622**. According to PW 4 Somnath Narayan Environmental Engineer, the sponge iron production capacity of M/s. ACPL at their plant at Durgapur was 180 metric tons per day (54,000 metric tons per year considering 300 working days in a year as per the norms of MoS). He has also stated that the Pollution Control Board may not have any objection if any given industry runs beyond a period of 300 days in any given year but the total production undertaken of sponge iron should not exceed the total consented capacity of the industry. Meaning thereby, the total production could have never crossed 54,000 MT as it was the consented capacity of M/s Adhunik Corporation. Therefore, it is also proved that the production capacity of sponge iron of Adhunik Corporation as on 07.04.2003 could never have been 72,000 tons per year.
85. At the time of exhibiting Exhibit PW 4/G, the mode of exhibition was objected to on behalf of accused. That objection is being considered now.
86. PW 4 Somnath Narayan knew about M/s. Adhunik Corporation Ltd as it was running a sponge iron production plant situated in the area of which PW 4 was the Senior Environmental Engineer. He had provided Exhibit PW 4/G to the IO of the case

vide letter dated 10.02.2015, **Exhibit PW 4/A D-64, PDF 3602**. Providing a document of this nature under section 91 Cr.P.C. by a prosecution witness to the IO of the case does not come under the provisions of section 162 of Cr.P.C. PW 4 had supplied photocopies of the various documents to CBI after duly certifying them under his signatures on each page including Exhibit PW 4/G. He had brought the original thereof to the court when his evidence was recorded. He was the in-charge of the produced records. Signatory on Exhibit PW 4/G is Dr Subrat Ghosh, Senior Environmental Engineer, West Bengal Pollution Control Board and PW 4 Somnath Narayan identified his signature on Exhibit PW 4/G. The learned counsel for the accused, during cross examination of PW 4, got another letter dated 24.03.2003 written by same Dr. Subrata Ghosh, Senior Environmental Engineer exhibited as Exhibit PW 4/DX-2. Having got letter of Dr. Subrata Ghosh exhibited from PW 4 shows acceptance on behalf of the accused that PW 4 was in a position to identify the signatures of Dr. Subrata Ghosh. With regard to two documents prepared by one and the same person, there cannot be two different standards of proof.

87. Moreover, under Section 35 and Section 114(e) of the Evidence Act, documents prepared by public servants in the ordinary course of their public duties have a presumption of correctness of their contents attached to them and they do not require the public servant who prepared the document to be called as a witness to have the document exhibited. However, it is to be

shown that the document was actually prepared by public servant in the ordinary course of his duties. This has been proved by PW 4 Somnath Narayan. In this regard, reliance can be placed on **Jayant Gopalroa Pachade vs Moti Lal Kuber Kanoje**, 2008 SCC online Bombay 638, **Harpal Singh vs State of H.P.** (1981) 1 SCC 560 and **Gopi Chand Arya vs Bedamo Kuer**, 1965 SCC online Patna 63. Therefore, the objection to the exhibiting of Exhibit PW 4/G has no merits and is rejected.

88. It also came on record during evidence of PW 4 that in the 1st Consent to Operate application dated 12.06.2002 given by M/s. ACL, **Exhibit PW 4/J** (produced by the witness on the directions of the court on 12.07.2017), the company had mentioned at Serial No. 8 that the total number of working days per year are 300 days. Sr. No. 8 of the application is as under: -

| | | |
|-----|---------------------------------|----------|
| 08. | Number of working days per year | 300 Days |
|-----|---------------------------------|----------|

89. Again, the company in its application dated 06.01.2005 seeking renewal of Consent to Operate for its two kilns are having average production 4900 MT stated the total No. of working days per year to be 300 days and number of working hours per day to be 24 hours, **Exhibit PW 4/S**. Sr. No. 5 of this application is as under: -

| | | |
|-------------|----------------------------------|----------|
| 05 (ii)(a). | Number of working hours per day: | 24 hours |
| 05(ii)(b). | Number of working days per year: | 300 Days |

90. Therefore, according to own documents of Adhunik Corporation, its two kilns were working for 300 days in a year. Later on, having claimed its production capacity to be 72,000 TPY, as an afterthought, it is now being argued that the calculation of 72,000 TPY was taking into consideration 360 working days in a year whereas in its own documents, the working days were mentioned to be 300 per year by M/s ACL.
91. When these consent to operate applications Exhibit PW 4/J and PW 4/S where the company itself had mentioned that the number of working days are 300 were put to the accused persons in Question No. 54 under section 313 Cr.P.C., the response of A-1 M/s. Adhunik Corporation Ltd. was that:-
- “... even if the total number of working days per year was 300 days a kiln at a particular period of time, the same does not affect, change or modify the actual production capacity of the said kiln. Thus, the documents filed by the witness are irrelevant for the present matter”.
92. It is a surprising response on behalf of the company because if a kiln is permitted to be operated only for 300 days a year, its capacity would be dependent upon the consent order and cannot be claimed to be more than the consented capacity.
93. What to speak of the production capacity of Adhunik Corporation as on 07.04.2003, PW 4 also stated that till today (i.e., as on 12.05.2017, the day statement of this witness was

recorded in the court, Page of 8-9 of 16), the company M/s. Adhunik Corporation Ltd was having only two kilns having installed capacity of 100 TPD each with the actual production being undertaken to be 80 TPD per kiln. Therefore, M/s. ACPL was not having 72,000 TPY existing sponge iron capacity as mentioned in their letter dated 07.04.2003.

94. Further, ER-1 return is a monthly return which is filed by the producer with the information of monthly production of excisable goods. ER-7 return is an annual return filed by the producer of excisable goods with the information of annual installed capacity of the plant and machinery being used for the production of excisable goods. The information furnished by the company/firm in ER-7 return is verified and cross checked with ER-1 return by the Central Excise. PW 3 Sukumar Mukhopadhyay, Superintendent, Central Excise and Customs and Service Tax, Kolkata has proved various ER-1 Forms submitted by M/s. ACPL as **Exhibit PW 3/C, D-71, Page 2-27 PDF 3630-3655** [for January 03, March 03, April 03 (Sponge Iron quantity manufactured 2477.740), January 06, February 06 and March 06], ER-6 Forms **Exhibit PW 3/D D-71, Page 28, PDF 3656** (for January 06, February 06 and March 06), ER-7 Forms **Exhibit PW 3/E, D-71 Page 31-41 PDF 3659-3669** (as on April 2007, April 2008, April 2009, April 2010, April 2011, April 2012 and April 2013).

95. PW-3 also deposed that as per the ER-7 Forms referred above, the annual installed production capacity of M/s. ACPL was 60,000 MT.
96. Exhibition of all ER-7 forms was objected by learned counsel for the accused for the reason that the signatures of the witness are not appearing on any of the said forms. However, all these ER-7 forms are already admitted by the accused under section 294 Cr.P.C. as **Exhibit P-33 (Colly) D-130**. Therefore, the objection to the exhibiting the documents is without any merits.
97. When these ER Forms were put to the accused persons under Section 313 Cr.P.C., the response of A-1 company in Q. No. 26 was that:
- “It is a matter of record, though I have no personal knowledge of the same. However, the document has not been proved as per the terms of the Law. The signatures of the witness are not appearing on any of the said forms”.
98. When the AR of the company responds to such a question that “It is a matter of record, though I have no personal knowledge of the same”, it shows that the company had no explanation to offer in this regard.
99. When the statement of PW 3 that “In all the ER-7 forms the annual installed production capacity was mentioned as 60,000 MT” was put to A-1 – M/s Adhunik Corporation Ltd, the response in Question No. 33 was:-

“I have no personal knowledge. However, it is submitted that witness has admitted that the excise duty payable on goods is calculated only when the goods are dispatched from the plant site. It is further stated that the witness had never checked the plant site or inspected the plant site of the accused company”.

100. If the AR of the company gives the response to such evidence that “I have no personal knowledge...”, it means the response is evasive and the company had no explanation to offer to this incriminatory evidence against it.
101. PW 8 D. Kashiva, Additional Industrial Adviser, Ministry of Steel has also stated that standard practice followed in Ministry of Steel for calculating number of working days in a year for all type of products being produced by any end use project is 300 working days in a year.
102. Summarizing the case against the accused persons, it is proved that the kilns could operate for 300 days per year and not 360 days per year. In their own documents, the accused had mentioned that the kilns would operate for 300 days per year and not 360 days per year. According to the Consent to Operate the two kilns, the consent was only for 100 TPD for first kiln and 80 TPD for second kiln. Meaning thereby the consent for production was $180 \times 300 = 54,000$ MTY. According to information provided to Excise Department by Adhunik Corporation as per ER-7 forms, the annual installed production capacity was merely 60,000 MT. According to the balance sheet of M/s Adhunik Corporation, the production of sponge iron in the

year ending on 31.03.2004 was just 36,435 and installed capacity was 60,000 TPY. Therefore, it is proved that M/s Adhunik Corporation was not producing 72,000 TPY sponge iron and its production capacity was not 72,000 TPY as on 07.04.2003. Mahesh Kumar Agarwal therefore made a false statement in his letter dated 07.04.2003 that the M/s Adhunik Corporation is producing 72,000 tons per year (TPY) of sponge iron.

103. On behalf of the accused, it is argued that prosecution ought to have taken a stand as to what was the production capacity of M/s. ACL. However, this arguments is devoid of any merits because the charge under section 420 IPC as well as under section 120-B IPC and under section 120-B read with 420 IPC is that of making false claims about the existing production capacity of sponge iron plant of M/s. Adhunik Corporation at Durgapur, West Bengal. The prosecution has successfully proved that the production capacity of the plant of M/s ACL was neither 72,000 MTPA nor more than that. This is what was required of the prosecution in the light of the charge framed against the accused persons.

104. The accused have argued that the different departments have given different interpretation including in PW 22/DX-2 for the same very two kilns of 100 TPD. This submission is also without any merits in as much as the own submissions of M/s. ACL were that the number of working days are 300 in their application for Consent to Operate dated 12.06.2002, Exhibit

PW 4/J and application for renewal of Consent to Operate dated 07.01.2005, Exhibit PW 4/S. M/s. ACL having itself made submissions twice seeking Consent to Operate that the number of working days of the plant will be 300 days could not have assumed that the number of working days for their plant could be 360 days for mentioning in its application dated 07.04.2003 that the production capacity of the plant is 72,000 MTPY.

105. The argument of the accused is also that they had also mentioned in the application that the capacity of the two kilns is 100 TPD. However, it will not absolve them of making a false statement in their letter dated 07.04.2003 that the production capacity was 72,000 because the figure of 72,000 was mentioned four times in letter dated 07.04.2003 and relying on this figure, it was noted in Ministry of Steel that the production capacity of the plant of M/s ACL was 72,000.
106. The accused have argued that there were no guidelines in this regard and the difference is due to number of days taken into consideration for calculating the production capacity.
107. Had the accused company itself not mentioned twice in their applications for Consent to Operate that the number of working days for their kilns would be 300, they could have made this submission but as the case of M/s. ACL itself was that the number of working days of the kilns are 300, it could not have mentioned its capacity to be 72,000 MTPA and the capacity ought to have been mentioned either 60,000 or 54000 MTPA.

108. The argument of the accused is also that application given by Manoj Kumar Aggarwal of M/s. Neepaz Metaliks cannot be used for convicting Mahesh Kumar Agarwal A-3 as the two companies namely M/s. Neepaz Metaliks and M/s. Adhunik Corporation Ltd are two different legal entities run by different professionals and Mahesh Kumar Agarwal A-3 was not even knowing the contents of application given by Manoj Kumar Aggarwal for M/s. Neepaz Metaliks. This argument is also without any merits because according to own case of the accused, Manoj Kumar Aggarwal is also one of the promoters/directors of all the Adhunik group of companies including M/s. Adhunik Corporation Ltd and therefore would have known the production capacity of M/s ACL and it was not necessary to show knowledge of Mahesh Kumar Agarwal to the contents of application given by Manoj Kumar Aggarwal for proving that Mahesh Kumar Agarwal had falsely stated that the production capacity of the plant was 72,000. This court has relied on the application given by Manoj Kumar Aggarwal, Exhibit PW 8/DX-1, D-19, Correspondence Page 1, PDF 2073, to show that even according to one of the promoters/directors of Adhunik group, the production capacity of M/s. ACL was 60,000 MTPA and not 72,000 MTPA.
109. The accused have argued that there are two views possible in this regard. However, the same is also not acceptable. There is just one view and that is that the production capacity of the sponge iron plant was 100 TPD for one kiln and 80 TPD for

second kiln and taking into account 300 working days, the capacity would be 54,000 MTPA. According to balance sheet of Adhunik Corporation for year ending 31.03.2004, the sponge iron production was only 36,435 and the installed capacity was 60,000 TPY. It also rules out the possibility of two views and it clearly rules out that Adhunik Corporation was producing 72,000 tons per year (TPY) of sponge iron.

110. The argument that there is no evidence that the information regarding TPY could have in any manner induced the Ministry of Coal and the argument that in this case there is no person who got cheated and the argument that mentioning the capacity to be 72,000 was only “puffing” would be considered while considering the charge under section 420 of IPC.
111. Resultantly, this point for determination is answered holding that Mahesh Kumar Agarwal made false claims in his letter dated 07.04.2003 about the production capacity of sponge iron plant of M/s Adhunik Corporation Ltd. It was falsely stated by him that Adhunik Corporation (P) Ltd is producing 72,000 MT sponge iron per year and has an existing sponge iron plant of 72,000 TPY capacity.

2nd Point for Determination

Whether Techno-Economic Feasibility Report purportedly prepared by Dimension Engineering & Consultant Private Ltd was filed along with letter dated 07.04.2003 by Mahesh Kumar Agarwal and whether the same is a false document?

112. PW 8 D. Kashiva, Additional Industrial Adviser of Ministry of Steel had dealt with the file of M/s. Adhunik Corporation Ltd, Exhibit PW 8/A, PDF 255. He was the 1st person who had dealt with application dated 07.04.2003, Ex. PW 8/A-2, Page 1-147, PDF 281-434 given by Mahesh Kumar Agarwal as Managing Director of M/s. ACL. He has stated that this application comprised of 1-147 pages (including pages 142-A, 142-B and 142-C). A perusal of this application shows that the TEFR is part of this application at Pages 25 to 91, PDF 306-372. PW 8, vide his signatures at point A on Page 1, had marked this application to Director Deepak Anurag who further marked it to the concerned section at point B.
113. During cross examination, no suggestion was given to PW 8 on behalf of accused persons that no TEFR was enclosed with application dated 07.04.2003 or the said application did not comprise of pages 1 to 147 or in place of TEFR, they had enclosed some other document which was taken out from the file and false and forged TEFR was placed at page 25 to 91 by someone inimical to M/s ACL.
114. When the statement of PW 8 that the application comprised of 1-147 pages was put to Mahesh Kumar Aggarwal under Section 313 of Cr.P.C. in Question No. 90, his response was that:-
- “I have no personal knowledge, however, the same is matter of record”.
115. If Mahesh Kumar Agarwal had not enclosed the TEFR with letter dated 07.04.2003, then the said application could not

have contained pages 1-147 which included TEFR from page 25-91. However, when an opportunity was given to Mahesh Kumar Agarwal (A-3) to explain this evidence against him, he had nothing to say and conceded that the same is matter of record.

116. Vide letter dated 07.08.2003 **Ex. PW-8/A-5, D-5, Correspondence Page 151, PDF 438** Ranjit Singh, Under Secretary to the Government of India, MoS, called upon M/s. ACPL to furnish following information:

(i) ...

(ii) ...

(iii) cost of coal mining development and washery have not been included in TEFR.

117. The response of M/s ACL (A-1) and response of Mahesh Kumar Aggarwal (A-3) to letter dated 07.08.2003 in Question No. 101 under section 313 Cr.P.C. is that:-

“The same is a matter of record. The answer given to Q.99 may kindly be considered as answer to the present Question also.”.

118. The answer to Question No. 99 which pertained to note sheet dated 01.08.2003 which resulted in issuance of letter dated 07.08.2003 is:-

“The same, in fact, shows that the Company had no intention to induce the Ministry for the purposes of getting coal block allocated in its favour. The prosecution has failed to show any such intention on the part of the Company from the very beginning, as

the company, after filing the matter, did not even care to pursue the same and did not reply to the letters from the ministry for over two years, which is clear from the following sequence of events:

- (i) Application was filed on 07.04.2003 **D5 Page 1**
- (ii) Addition information sought vide letter dated 07.08.2003 **D5 Page 151**
- (iii) Reminder for the same vide letter dated 04.02.2005 **D5 Page 152**

In case, the Company had any intention to cheat the Ministry, then they would have promptly participated in the process of getting the coal block, but, to the contrary, it slept over the matter for over two years and did not even reply to the letters sent by the Ministry.”

119. From the response of the accused persons, it is clear that they admitted having received letter dated 07.08.2003 and never protested that as they have not filed any TEFR with letter dated 07.04.2003, so there is no question of not including cost of coal mining development and washery in the said TEFR. It also shows that the TEFR was indeed filed by Mahesh Kumar Agarwal with his letter dated 07.04.2003.
120. On 10.05.2005, while dealing with the letter of M/s. ACL dated 03.05.2005, Deepak Anurag, Director, MoS enquired in the note sheet about the TEFR for the project of M/s. ACL, **Ex. PW 8/A-1, D-5 Note Sheet Page 11 PDF 269** and vide note sheet dated 18.05.2005, in the file of MoS, it was noted that the TEFR for this project has been received at Page 25 of the note sheet, **D-5 Note Sheet Page 13 PDF 271**. The response of the accused

persons to the note sheet Exhibit PW 8/A-1 in Question No. 90 under section 313 Cr.P.C. is already noted above. They never responded that as no TEFR was given with application dated 07.04.2003, therefore, the note sheet dated 18.05.2005 could not have been that the TEFR is received at page 25.

121. In Question No. 305, when TEFR **Ex. PW-21/A1, D-5 page 25-91, PDF 306-372** was put to the M/s ACL (A-1) under Section 313 Cr.P.C., the response was that this TEFR was prepared by Dimension Engineering & Consultant Private Ltd. and delivered to M/s Adhunik Corporation Limited. It shows that the accused persons are owning this TEFR. It is their stand that this TEFR was got prepared by them from the company of PW-21.
122. From the above, it can be safely stated that Mahesh Kumar Agarwal A-3 had filed with his letter dated 07.04.2003 TEFR of Dimension Engineering & Consultant Private Ltd.
123. The submission that the TEFR was introduced at a later stage and without the knowledge of the accused persons defies logic. Ministry of Steel had recommended the case of the company to Ministry of Coal for allocation of Coal Block. Therefore, Ministry of Steel was not inimical at any stage to the interests of M/s ACL. It could not have let introduction of any false report or false document behind the back of accused persons i.e., without their knowledge. Neither there is any note sheet nor any letter from Ministry of Steel after 07.04.2003 calling upon M/s

ACL to provide a TEFR. Therefore, there is no question of introduction of the TEFR at a later stage.

124. The next question is whether this TEFR is a false document.
125. PW 21 Manabendra Narayan Chakravarty had incorporated a company in the year 1990 to i.e., Dimension Engineering Consultant Private Ltd. He deposed that they never worked for sponge iron plant and worked only for power plants. Even if such a power plant was established for captive use for any sponge iron plant, then also they used to work for power plant only and never worked for sponge iron plant. He stated that his company has never prepared the Techno-Economic Feasibility Report (TEFR) for M/s. Adhunik Corporation Ltd. The witness was shown TEFR from file Exhibit PW 8/A, D-5, Page 25-91, PDF 306 **Exhibit PW 21/A-1** and he stated that this report was prepared by “Dimension Engineering & Consultant Private Ltd” whereas the name of his company was “Dimension Engineering Consultant Private Ltd” and his company never used the letter “&” in the name of his company.
126. The application dated 07.04.2003 also included “Offer” dated 15.01.2003 **Ex. PW 21/A-2, D-5, Page 92, PDF 373** from Dimension Engineering Consultants Pvt. Ltd. addressed to Mahesh Kumar Agarwal, Director, Adhunik Corporation P. Ltd. under the purported signatures of M.N. Chakravarty. In this “Offer”, it is mentioned that to consultancy services rendered for preparation of feasibility report for increase of Sponge Iron Plant

etc. the payable is Rs.9,975/-. PW-21 stated that his company has never issued document titled "Offer" Ex. PW 21/A-2, Page 92, part of file Exhibit PW 8/A, D-5, PDF 373. PW 21 has stated that this "Offer" though bears his name as the signatory of the document but he never puts such a kind of initial. He also submitted that as per this document the charges of Rs. 6000 as are mentioned for preparing feasibility report is an impossible figure as even at that time i.e., in 2003, his company was charging around Rs. 2 lakhs for preparation of TEFR.

127. The document titled as "Declaration", **Page 93, D-5, PDF 374, Ex. PW 21/A-3** is also purportedly given by Dimension Engineering Consultants Pvt. Ltd under the signatures of M.N. Charavarty. PW 21 stated that he does not remember having issued any such "Declaration" ever and further stated that though his name is mentioned as signatory of the said document but he never uses the said kind of initials. PW 21 also stated that since they have not been doing any work relating to sponge iron plant or integrated steel plant, so the question of issuance of any such "Declaration" does not arise. Although, in the charge, there is no allegation of using forged "Offer" or forged "Declaration", however, it further corroborates that the TEFR is also a false and forged document.

128. In response to a notice under section 91 of Cr.P.C., PW 21 provided vide letter dated 24.08.2015 **Exhibit PW 21/B-1, D-122** the certificate of incorporation of his company "Dimension Engineering Consultant Private Ltd" dated 22.02.1991 **Exhibit**

PW 21/B-2, D-123, PDF 4526 and two feasibility reports prepared by his company for two different power plants of two other companies for reference purposes, D-124, PDF 4528 and 125, PDF 4599 **Exhibit PW 21/B-3** and **Exhibit PW 21/B-4**. Exhibiting Exhibit PW 21/B-1 to B-4 was objected to by the learned counsel for the accused. The objection is overruled as documents can be provided u/s 91 Cr.P.C. by prosecution witness to the investigating officer during investigation.

129. The evidence of PW 21 proves that the TEFRR enclosed with application dated 07.04.2003 by Mahesh Kumar Agarwal is a false document.

130. During investigation, supporting documents pertaining to payment made to Dimension Engineering Consultants in connection with Techno Economic feasibility report were called by the Investigating Officer from Nirmal Kumar Agarwal vide Ex. P-26, D-105, PDF 4436 dated 17.07.2015. This is an admitted document by the accused u/s 294 Cr.P.C. The accused had responded vide Ex. P-28; D-107 PDF 4438 reply dated 24.07.2015 that:

“We are unable to trace any record of the same. We checked our accounts and find that no payment was made to the company and as stated earlier, there were disputes as regards Coal Block and because of the uncertainties of the coal linkage, the project did not materialize”.

131. This is also an admitted document u/s 294 Cr.P.C. According to PW-21, the cost of making TEFRR even in the year 2005 was

Rs.2,00,000/. As the accused could not show any payment given to Dimension Engineering Consultants Pvt. Ltd. for preparing the TEFR, it took untenable stand in response to notice of CBI u/s 91 Cr.P.C. that no payments were given for preparing this report as the project did not materialize. It is unbelievable that such a report would have been prepared by any company without receiving the payment. It also shows that the TEFR in question was not prepared by Dimension Engineering Consultants Pvt. Ltd. but is a false document enclosed by Mahesh Kumar Agarwal along with his application dated 07.04.2003 given to MoS.

132. The argument of the accused is that a report from the Specialized Coal Consultant was already annexed with the letter dated 07.04.2003 and therefore there was no occasion to annex another TEFR.
133. This argument is neither here nor there.
134. It is already held that the TEFR was indeed part of application dated 07.04.2003. The same was considered by Ministry of Steel and queries were raised upon M/s ACL regarding several aspects of the said TEFR. The accused have admitted that Ex. PW-21/A1 was the TEFR given to M/s ACL by the company of PW-21. It is for the accused to explain that if they were satisfied with providing the report of Specialized Coal Consultant to MoS, then why the TEFR in question was enclosed with letter dated 07.04.2003.

135. The accused have argued that no officer was examined who has dealt with the TEFR in Ministry of Steel. This argument is without any merits as PW-8 D. Kashiva, Additional Industrial Advisor, Ministry of Steel was the first person who had put his pen on letter dated 07.04.2003 including TEFR as one of the annexures and has deposed in detail about application dated 07.04.2003. Once it is proved that TEFR was part of application dated 07.04.2003, the submission that CBI has not ruled out that the same became part of records of MoS after 07.04.2003 becomes redundant.
136. The accused have argued that CBI has not examined Ranjeet Singh, Under Secretary, Ministry of Steel who had issued letter dated 07.08.2003. This submission is also without any merits in as much as CBI has examined, PW-8 Sh. D. Kashiva, who was the Additional Industrial Advisor of MoS and has proved the file of M/s ACL maintained in Ministry of Steel as Ex. PW-8/A (Colly), Notesheet pages from Page 1-19 as Ex. PW-8/A1 and the correspondence side pages from Page 1-433 as Ex. PW-8/A2 (Colly). Ld. Counsel for the accused has not pointed out from the cross-examination of PW-8 whether any suggestion was given to him that the records of the Ministry of Steel, D-5 were not properly maintained. The accused have submitted on more than one occasion that it cannot be ruled out that the alleged TEFR was introduced at a later stage and without the knowledge of the accused persons. However, no such suggestion was given in the cross-examination to PW-8.

137. The accused have also argued that the file of MoS was not properly paginated.
138. To show that the file of MoS, D-5, was properly paginated and maintained, attention of the court was drawn by the Ld. Senior PP for CBI to note sheet of the said file where Serial No. (R) was mentioned with page numbers whenever any correspondence was received in MoS and Serial No. (I) was mentioned with running page numbers whenever any correspondence was issued by MoS. All these pages are in seriatim which shows that the opening of the file with the receipt of letter dated 07.04.2003 till issuance of recommendation letter dated 04.07.2005, the file has 433 pages which have been properly maintained in the MoS.
139. When letter dated 07.04.2003 written by Mahesh Kumar Aggarwal was received in MoS, at that time the file D-5 was opened by the dealing hand mentioning on the 1st page of the note sheet, on the top, S.No. 1 (R).
140. When letter dated 23.05.2003 was issued by MoS to M/s ACL, it was mentioned at page 4 of the note sheet "S.No.2 (I)" Page 148. It shows that up till then, the file had 147 pages comprising of application dated 07.04.2003 with the annexures under the signatures of Mahesh Kumar Aggarwal and one paged letter dated 23.05.2003 was therefore assigned page No. 148.

141. At page 5 of the note sheet, when letter dated 07.06.2003 was received from Mahesh Kumar Aggarwal, it was assigned "S.No. 3 (R)" and Pages 149-150 were assigned to this letter.
142. When letter dated 07.08.2003 was issued by MoS, it was mentioned in the note sheet "S.No. 4 (I)" Page 151 as the said letter was one paged letter.
143. When one paged letter dated 04.02.2005 was issued by MoS, it was noted in the note sheet page 9 in Hindi whose English translation is "S.No.5 (I)" Page 152.
144. At page 10 of the note sheet, when one paged letter dated 07.04.2005 from R.Khare , letter dated 03.05.2005 written by Nirmal Kumar Aggarwal comprising of two pages and letter dated 06.05.2005 (including annexures) comprising of five pages written by MoC to MoS, and therefore all these three letters totaling eight pages were received in MoS, it was noted "Sl. No. 6-8 (R)" Pages 153-160.
145. When letter dated 23.05.2005 from Nirmal Kumar Aggarwal was received in MoS, it was noted at page 14 of the note sheet "Sl. No. 9 (R) pg.161-251 because this letter and annexures enclosed therewith comprised of 91 pages.
146. One paged letter dated 03.06.2005 issued by MoS to M/s. ACPL is noted at page 15 of the note sheet as "S.No. 10 (I) P 252".

147. Another letter dated 23.05.2005 written by M/s. ACL and received in MoS on 03.06.2005 was noted at page 16 of the note sheet as "Sl.No. 11 (R)" pg 253-365.
148. So far as letter dated 10.06.2005 from M/s ACL to MoS is concerned, at page 16 of the note sheet, it is noted on 20.06.2005 that "I have seen some more papers today at a dak stage. Please connect them" and this note sheet is responded on 21.06.2005 on the same page as "Ref noted above. The relevant papers are linked below." That is how letter dated 10.06.2005 and its annexures came on record at page 366 to 431.
149. In the end, the recommendation letter given by MoS to MoC in favour of M/s ACL is noted at Page 19 of the note sheet as "S. No. 12 (I)" P.432-433.
150. This completes the file from Page 1 to page 433 and shows that the file is properly maintained in MoS.
151. Further, this file was handed over by Ravi Chandra, Section Officer, MoS, New Delhi, to Inspector Manoj Kumar vide production cum receipt memo dated 21.01.2013, D-4 Ex. PW-17/B, PDF 254. The affidavits of Sh. Ravi Chandra and Inspector Manoj Kumar were filed u/s 296 Cr. PC, Ex. PW 22/W-2 and Ex. PW-17/A respectively. They were not cross-examined on behalf of accused to give their suggestions that the file of M/s ACL was not properly maintained in MoS. Similarly, the affidavit of Sh. K.P. Singh, Malkhana In-charge of

CBI was also filed u/s 296 Cr. PC Ex. PW22/W-1. However, he was also not cross-examined by the accused to find out whether the records which were deposited in CBI Malkhana by Inspector Manoj Kumar were properly maintained or not. No such question was asked from PW 8 D. Kashiva. No such suggestion was given to Investigation Officer PW 25 during his cross-examination by the accused that the records of MoS including D-5 were not properly maintained. No witness was cross-examined by the accused regarding proper maintenance of records in MoS. Moreover, as recorded above, MoS had made recommendation in favour of M/s ACL to MoC and there is no allegation that MoS was inimical to the interests of M/s ACL and got the false TEFRR introduced in the file of M/s ACL in MoS. The accused have argued that Mahesh Kumar Agarwal had no knowledge or reasons to believe that the TEFRR is a forged document. This argument shall be considered when dealing with the point for determination pertaining to offence u/s 420 & 471 of IPC.

152. The accused have argued that the IO should have brought on record Memorandum & Articles of Association of M/s Dimension Engineering & Consultant Private Limited to rule out that the company worked for power plants only. This argument has no merits. PW-21 has deposed clearly that he had not prepared the TEFRR Ex. PW-21/A1. He has also deposed that the so-called 'Offer' Ex. PW-21/A2 and 'Declaration' Ex. PW-21/A3 have not been issued by him. The cost of preparing TEFRR in the

offer is stated to be Rs. 6,000/- but according to PW 21, its cost would have been Rs. 2,00,000/- even in the year 2003. The accused could not prove any payment to the company for preparing this TEFR and gave the excuse that no payment was made for this report as the project did not materialize. This explanation is unbelievable because no company would leave Rs. 2,00,000/- for preparing the TEFR even if the project of client company does not materialize. In the light of evidence of PW-21, the Memorandum & Article of Association of the company was not necessary to prove that the company was working for power plants only.

153. The accused have argued that the IO should have taken the specimen signatures of PW-21. However, this argument is also without any merits as the report of handwriting expert is only in the aid of decision making by the court and not *sine-qua-non* even in a case where the witness in witness box has categorically denied his signatures. The accused have led absolutely no evidence to show that they had got the TEFR in question prepared from Dimension Engineering & Consultants Pvt. Ltd.
154. The accused have argued that a company is not required to preserve documents after eight years under Sub-Section 4A of Section 209 of the Companies Act, 1956 and that is why they could not produce any document during the investigation to show that the TEFR in question was got prepared by them from Dimension Engineering Consultants Pvt. Ltd. This stand has

been taken belatedly. During investigation, as noted earlier, it was not the case of the accused persons that they have destroyed the record due to passage of eight years. This provision of the Companies Act was not even mentioned in their reply dated 24.07.2015 Ex. P-28; D-107 PDF 4438. Further, the cited provision of Companies Act does not compel a company not to retain documents which are more than eight years old. According to PW-21, the cost of preparing TEFRR during 2003 was Rs.2,00,000/-. M/s ACL is a limited company and would have some records/correspondence with M/s Dimension Engineering Consultants Pvt. Ltd. in case any such report was got prepared from M/s Dimension Engineering & Consultant Pvt. Ltd. It is difficult to believe that the company has no proof of any such transaction due to passage of eight years. Moreover, according to M/s ACL, the cost of preparing TEFRR was a meager sum of Rs.9,975/- as is mentioned in 'Offer' dated 15.01.2003 Ex. PW-21/A2 allegedly given by Dimension Engineering & Consultant Pvt. Ltd. which also belies that the TEFRR was indeed prepared by Dimension Engineering & Consultant Pvt. Ltd. because according to PW-21, the cost of preparing such report was around Rs.2,00,000/- and could not have been prepared for a meager sum of Rs.9,975/-.

155. The other argument is that prosecution has not proved whether any false information was provided in TEFRR or not. The submission being that in case the contents of the TEFRR were correct, in that case neither had the accused got any advantage

by using a forged TEFRR nor anyone has suffered any loss by dealing with the said TEFRR. Reference is made to *Vimla (Dr.) vs State, (Delhi Administration)*, AIR 1963 SC 1572. In the opinion of this Court, the judgment in the case of *G.S. Bansal vs State (Delhi Administration)*, AIR 1963 SC 1577 is more applicable to the case in hand. In that case, the father of the accused held a Ration Depot. He had, as required by rules, purchased National Savings Certificates of the value of Rs. 250/- in the name of the Controller of Rationing. When his father died, the accused filled a transfer form and affixing thereon the signature, purporting to be that of his father, and attesting it in his own name, presented the form and the certificates at the Post Office. After the Post Office had issued fresh certificates in the name of the father of the accused, J, the accused signed the certificates on their back as J in token of their cancellation and placing his own attestation thereon, he got the certificates encashed. The accused was prosecuted on two counts u/s 467 of IPC, 1860, for having forged the signature of his father on the transfer form and on the certificates. Distinguishing the case of *Vimla (Dr.)*, the Hon'ble Supreme Court held that if a person who has given Postal Certificates as security to a Department by taking them in the name of the Department dies, his heir can get the said amount by following two procedures. He can obtain a Succession Certificate and after obtaining a release from Department concerned, can apply to the Postal Department for getting the certificates cashed. If the value of the certificates does not exceeds Rs. 5,000/-, he can, alternatively, satisfy the

Postal Authority that he is the sole heir and recover the money after making the required declaration. In both cases, he has to incur the necessary expenses. But when instead of following these procedures, the accused forged the signature of his deceased father on the transfer form and also on the back of the certificates and placed his own attestation thereon. By making the false documents his intention clearly was to avoid the expense and the trouble involved in adopting the necessary procedure. He had, thus, obtained an advantage by resorting to an unlawful device. His intention clearly was to commit fraud on the Authorities and therefore, his act amounted to forgery within the meaning of Section 463 of IPC.

156. In present case also, even if the contents of the TEFR are correct, the fact is that the same is not issued by Dimension Engineering Consultants Private Ltd and by resorting to an unlawful device, the intention of the accused was to avoid expense for making the TEFR from Dimension Engineering Consultants Private Ltd. According to PW 21, the cost of this Report was Rs. 2,00,000/- even in the year 2003. Therefore, the TEFR in question is a forged document.
157. The argument that the accused would not have remained silent for two year after giving their first application on 07.04.2003 and the argument that the TEFR was neither considered for making recommendation to MoC nor the Joint Secretaries took the same into consideration would be considered while deciding the point for determination regarding cheating.

158. None of the argument addressed by the accused show that the TEFR in question was a genuine document.
159. Therefore, this point for determination is answered holding that TEFR is a false and forged document furnished by Mahesh Kumar Agarwal with his letter dated 07.04.2003.

3rd Point for Determination

Whether Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel about appointment of M/s. Industrial Technical Consultant, Raipur as consultants for detailed engineering and consultancy to show effective steps taken by the company towards their proposed project?

160. PW 5 Sundaram Narayanan who is partner of “Industrial Technical Consultant” has stated that during the year 2004-05, his firm had given consultancy to a company namely M/s Adhunik Alloys Limited for their Sponge Iron Plant. He stated that during the year 2004-05, he had not provided any consultancy services to M/s Adhunik Corporation Limited of any nature whatsoever. He stated that during that period neither he nor his partnership firm had any dealing of any nature whatsoever with M/s Adhunik Corporation Limited. He also stated that on 29.05.2010, Work Order was received from M/s Adhunik Corporation Limited, **Ex. PW-5/B, AD-1, Page 4-10**. However, final work order was never received and thus no such work order came to be accepted by his firm. He stated that usually whenever a work order is received by their firm, they start carrying out work only after accepting the same and in that

regard, his firm duly communicates the acceptance of the work order to the concerned client. The payment schedule for any given work order is also duly mentioned in the said work order and accordingly the payment is received and accepted by them. He stated that no purchase order dated 18.04.2005 **Exhibit PW 5/DX-1, D-5, Page 166-167, PDF 453** was received by him or his firm from M/s. Adhunik Corporation Ltd.

161. The alleged Purchase Order dated 18.04.2005 mentions that the consultancy charges would be Rs.25,00,000/- and 10% advance shall be paid with the Purchase Order. However, in response to Question No. 62 u/s 313 Cr.P.C., Nirmal Kumar Agarwal stated that:-

“... the company had nowhere claimed that the company M/s Industrial Technical Consultant had already prepared the drawings. Even payment is to be paid only after the work was done and the prosecution has failed to bring any contrary evidence”.

162. As noted earlier, according to payment terms mentioned in Purchase Order dated 18.04.2005, 10% advance had to be given with the Purchase Order. The consultancy charges were mentioned as Rs.25,00,000/-. Therefore, had M/s ACL placed any order on M/s ITC, it would have got the records of payment of this advance with the Purchase Order. As the witness stated that no such order had been received by him or his firm, it is proved that Nirmal Kumar Agarwal (A-2) had never sent letter dated 18.04.2005 to M/s Industrial Technical Consultant and a

false document was sent to Ministry of Steel along with his letter dated 23.05.2005.

163. It is also pointed out by Ld. Senior PP for CBI that in the written statement filed by the accused under section 313 (5) CrPC, it is mentioned that letter dated 18.04.2005 is a photocopy, however, the same is original as is evident from **Exhibit PW-5/DX-1, D-5, Page 166-167**. He submitted that the accused had made misleading submissions in this regard.

164. A notice under section 91 Cr.P.C. was served upon Nirmal Kumar Agarwal, Promoter/Director of ACL to provide supporting documents for making payment to M/s. Industrial Technical Consultant, Raipur for its consultancy, **Exhibit P-26, D-104, PDF 4435**. However, no payment details could be provided by M/s ACL who stated in the reply Exhibit P-28, **D-107, PDF 4438** that: -

“Industrial Technical Consultancy was associated with our group companies in providing consultancy services. During the course when they visited over office, we had discussed about the proposed project of ACL. But when we discussed with main vendor regarding the delivery schedule of the equipments, the same did not match with the requirements, and as such we kept this order in abeyance. Later on, the project did not materialise because of uncertainties as regards coal block and coal linkages”.

165. The accused did not provide anything during investigation to show that the Purchase Order was kept in abeyance. Moreover, in any case, according to the terms of the Purchase Order, 10%

i.e., Rs.2.5 Lakhs had to be given as advance. In case M/s ACL would have placed this order, it would have given the advance also. However, as the accused could not produce any document pertaining to advance payment made to Industrial Technical Consultancy, it also shows that they had not placed any such purchase orders on the said firm.

166. During the arguments and in the written submission, the accused have submitted that prosecution should have got corroborated oral evidence of PW-5 Sundaram Narayanan that letter dated 18.04.2005 was not received by M/s ITC. However, this argument is without any merits. The statement of PW-5 is unwavering, clear and inspiring confidence. Therefore, there is no necessity of corroboration.
167. The accused have also argued that prosecution has not shown that MoC was induced as this letter was not considered by MoC. This argument shall be considered while deciding the point of determination pertaining to cheating.
168. So far as inability of the accused persons to produce any record pertaining to order dated 18.04.2005 is concerned, the accused have argued that they could not have been issued notice u/s 91 of Cr.P.C. Reliance is placed on State of Gujarat vs. Shyamlal, AIR 1965 Supreme Court 1251 (paras 37, 40). As per the judgment of Hon'ble Supreme Court in the case of State of Bombay vs. Kathi Kalu, AIR 1961 SC 1808 (1814), an accused person cannot be asked to disclose documents or things which

are incriminatory and contain his statements. It is held that “It is well settled and established that clause 3 of Article 20 is directed against self-incrimination by an accused person” and that “self-incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge”. It has been observed further that only the giving of such “personal testimony” would come within Article 20(3) which must, accordingly, “depend upon his volition” and must not be the result of any compulsion against him.

169. What is more, the stage for challenging notice u/s 91 Cr.P.C. was when the accused had received the said notice. At that time, no such objection was raised and rather the notice was duly complied with by giving the reply dated 24.07.2015 expressing inability to produce the supporting documents pertaining to payment made to Industrial Technical Consultancy for the reason that the order was kept in abeyance as the delivery schedule of equipment by main vendor did not match with the requirement.
170. Further, this reply is admitted u/s 294 of Cr.P.C. as Ex. P-28. Therefore, having admitted u/s 294 Cr.P.C. the reply given to the notice u/s 91 of Cr.P.C., the accused cannot now argue that they could not have been issued a notice u/s 91 Cr.P.C.

Moreover, on behalf of CBI reliance is placed on Umesh Kumar Vs State of Andhra Pradesh, 2013 (10) SCC 591, para 27 to submit that if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained.

171. In the case of Yashwant Sinha and Others vs CBI through its Director and Another, 2019 (6) SCC 1, it is held as under:

45. I may also notice another aspect. Under the common law, both in England and in India, the context for material being considered by the court is relevancy. There can be no dispute that the manner in which evidence is got, namely, that it was procured in an illegal manner would not ordinarily be very significant in itself in regard to the courts decision to act upon the same (see in this context judgment of this Court in Pooran Mal v. Director of Inspection (Investigation) of Income Tax AIR 1974 SC 348). Therein I notice the following statements:

"24. So far as India is concerned its law of evidence is modeled on the rules of evidence, which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In Barindra Kumar Ghose and others v. Emperor (1910) ILR 37 Cal 467 the learned Chief Justice Sir Lawrence Jenkins says at page, 500:

"Mr. Das has attacked the searches and has urged that, even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminal Procedure Code have been completely

disregarded. On this assumption he has contented that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimutavahana with his shrewd common-sense observes- “a fact cannot be altered by 100 texts, “and as his commentator quaintly remarks: “If a Brahmana be slain, the precept 'slay not a Brahmana' does not annul the murder.” But the absence of the precautions designed by the legislature lends support to the arguments that the alleged discovery should be carefully scrutinized.

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It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.”

(Emphasis supplied)

172. In the recent case of Deepti Kapur vs. Kunal Julka, CM(M) 40/2019 dated 30.06.2020, the Hon'ble Delhi High Court has held that the decision in Puttaswamy (Supra) does not allude to any change in the principles of admissibility of evidence by reason of recognition of privacy as a fundamental right; and in fact the principle of Pooranmal has been followed by the Hon'ble Supreme Court as recently as 2019 in Yashwant Sinha

(Supra), which is a post Puttaswamy judgment, though in the context of documents procured illegally from a Ministry and not in breach of any fundamental right.

173. In the case of Matrix Cellular (International) Services Limited vs State NCT of Delhi, 2021 SCC online Del 2566, it is held as under:

“31. Arguments have been raised qua the alleged irregularities in seizure. Even if it is assumed, there were some irregularities in its procedure to seize, it shall not vitiate the seizure. The only requirement is the Court needs to be careful in scrutinizing the seizure memo, as the law is crystalized over the years viz Pooran Mal v. Director of Inspection (Investigation) (1974) 1 SCC 345 and State of Maharashtra v. Natwarlal Damodardas Soni (1980) 4 SCC 669. A bare perusal of above decisions would show even if there was an irregularity at the time of making a seizure, procedural or otherwise, it would not ipso facto vitiate the seizure. The Courts have consistently held the evidence obtained even through an “illegal” search or seizure will not be excluded or discarded only on the ground that it was obtained through illegal or irregular means. It has been consistently held unless prejudice and miscarriage of justice is pleaded and shown, a mere irregularity shall not result in setting aside of proceedings, or in relevant evidence being discarded”.

174. The accused have argued that the company was not liable to preserve the documents after eight years in terms of Sub-Section 4A of Section 209 of the Companies Act. At the time of responding to the notice u/s 91 Cr.P.C., this submission was never made and has been made now as an afterthought. At that time the stand taken was that the delivery schedule of the

equipments by main vendor did not match with the requirements and therefore the order was kept in abeyance.

175. The accused have relied on Mohd. Ibrahim vs State of Bihar, (2009), 8 SCC 751 and Shiela Sebastian vs R. Jawahar Raj, 2018 (7) SCC 581 to submit that no forgery is made out against the accused in this case. These judgments shall be considered at the time of dealing with the point for determination pertaining to the charge u/s 471 of IPC.
176. This point for determination is answered holding that Nirmal Kumar Agarwal (A-2) falsely claimed in his letter dt. 23.05.2005 that M/s ITC has been appointed as consultants for detailed engineering and consultancy.

4th Point for Determination

Whether Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel that M/s ACL has placed purchase order dated 15.02.2005 on M/s. Beekay Engineering Corporation and also falsely claimed that M/s Beekay Engineering Corporation has acknowledged their Purchase Order vide acknowledgement dated 21.02.2015 to show effective steps taken by the company towards their proposed project?

177. PW 6 K.L. Agarwal, Vice President of Beekay Engineering Corporation (Partnership Firm) has explained the working of his firm by stating that upon receipt of enquiry from a prospective client, Estimation/Marketing Department prepares estimation of the likely cost and conveys the same to the client concerned. If the said cost and other conditions are acceptable to the client,

then the said client places a purchase order with the firm which is received in the Estimation/Marketing Department who examines all the conditions of the said order and if the same are acceptable to the firm, then acceptance of the same is conveyed to the client. Thereafter, the Purchase Order is forwarded to the accounts department where entry of the same is made in the Work Order Register. Thereafter, work order file goes to the concerned department for execution. He stated that a copy of communication vide which acceptance of the work order/purchase order is conveyed by the firm to the client is also placed in the work order file. He also stated that during the period 2004-05, he was working as General Manager (Works) at Bhilai. He stated that no purchase order dated 15.02.2005 **Exhibit PW 6/DX-1, D-5, Page 168-173, PDF 455** of M/s. ACL was received by M/s. Beekay Engineering Corporation. He has also stated that accordingly no acceptance letter dated 21.02.2005 **Exhibit PW 6/DX-2, D-5, Page 174, PDF 461** in response thereto was ever issued by their firm. On letter dated 21.02.2005, Exhibit 6/DX-2 although the name of this witness as the signatory of the letter is mentioned but the witness could not identify the signature as the impression on the said letter was faint. Purchase order register was exhibited as **Exhibit PW 6/F D-58, PDF 3557**. He reiterated during his cross-examination that there is no record relating to receipt of any such purchase order of M/s. Adhunik Corporation Ltd so the question of issuing any such letter does not arise.

178. There are two serious issues pointed out in letter dated 15.02.2005. First, it refers to “Offer BKE/ACL/E-9819/2003-2004/A dated 21/02/2005” of M/s. Beekay Engineering Corporation dated 21.02.2005 which is not possible in letter dated 15.02.2005. Purchase Order dated 15.02.2005 could not have mentioned “Offer” dated 21.02.2005 acknowledging receipt of purchase order dated 15.02.2005. Relevant extracts of the letter dt. 15.02.2005 are as under:

“PURCHASE ORDER
ACL/BEEKAY/KJLN&COOLER/02

M/s BEEKAY Engineering Corporation,
45/47, Industrial Estate, Bhilai – 490
026 (Chattisgarh)

February 15, 2005

Dear Sir

Re: Manufacture & supply of Kiln, Coller & ABC
Arrangement for our Sponge Iron Plant at Rourkela, Cap: 2
x 350 TPD

Ref:Your offer BKE/ACL/E-9819/2003-2004/A dated 21/02/2005”

179. Second serious issue is that the purchase order dated 15.02.2005 mentions that “Our Consultant M/s. Industrial Technical Consultant will supply the detailed manufacturing drawings for manufacturing kiln and cooler free of cost to you. Our consultant will give in advance the part list for major forgings, castings and bought out items like bearings etc.” but M/s. Industrial Technical Consultant was purportedly appointed the consultant on 18.04.2005 and could not have provided the

detailed manufacturing drawings as on 15.02.2005 (it is to be noted here that even letter dated 18.04.2005 as held above, is also a false letter).

180. In response to question No. 68 under section 313 of CrPC when letter dated 15.02.2005 was put to the accused persons, they offered no explanation how letter dated 15.02.2005 could mention "Ref: Your Offer BKE/ACL/E9819/2003-2004/A dated 21.02.2005".
181. The Investigating Officer vide Ex. P-12, D-91 PDF 4401 letter dated 22.12.2014 and Ex. P-13, D-92 PDF 4402 dated 20.01.2015 had called upon the accused to produce original letter dated February, 21, 2005 issued by M/s Beekay Engineering Corporation, Bhilai, C.G. for manufacturing and supply of kiln and cooler arrangement for Sponge Iron Plant capacity 2x350 TPD and original Consent letter No. BKE/ACL/E-9819/2004-05/A dated February, 21, 2005 issued by M/s Beekay Engineering Corporation, Bhilai, C.G. in favour of Managing Director, M/s Adhunik Corporation Ltd. for manufacturing and supply of kiln and cooler arrangement for Sponge Iron Plant capacity 2x350 TPD at Rourkela, Sundargarh, Orissa respectively. The response of the accused was "We are unable to locate the file as the same is missing. As such we could not find the document as desired by you" as per Ex. P-15, D-94 PDF 4404 reply dated 22.01.2015.

182. In view of the evidence of PW-6 and attendant circumstances noted above, it is held that M/s ACL had not placed any Purchase Order on M/s Beekay Engineering Corporation. Therefore, Purchase Order dated 15.02.2015 and acknowledgement dated 21.02.2015 are false documents.
183. During arguments, the accused stressed on the importance of Dispatch Register of M/s. Beekay Engineering Corporation and signatures of K.L. Aggarwal for forensic examination but are deafeningly silent to the surprising fact that Purchase Order dated 15.02.2005 is having "Ref: Your Offer BKE/ACL/E9819/2003-2004/A dated 21.02.2005". Admittedly, the Dispatch Register would have further corroborated the allegation of CBI that no Acknowledgement dated 21.02.2005 was ever issued but the totality of facts and circumstances and the evidence gathered by CBI has proved beyond all reasonable doubts that neither any Purchase Order dated 15.02.2005 was issued by M/s. ACL in favour of M/s Beekay Engineering Corporation nor M/s. Beekay Engineering Corporation issued any acknowledgement dated 21.02.2005. A fact is said to be proved when, after considering the matters before it, the court either believes it were to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This court after considering the matters before it believes that neither any Purchase Order dated 15.02.2005 was issued by M/s. ACL in favour of M/s

Beekay Engineering Corporation nor M/s. Beekay Engineering Corporation issued any acknowledgement dated 21.02.2005.

184. The next submission regarding faint signatures on acknowledgement dated 21.02.2005 also has no force in as much as B.K. Aggarwal has deposed that the acceptance of the purchase order is issued by the Estimation/Marketing Department. However, in this case, the acceptance is purportedly issued by B.K. Aggarwal who was General Manager (Works) at the time and therefore could not have issued the acknowledgement on behalf of M/s. Beekay Engineering Corporation. Surprisingly, the accused is submitting that it is not ruled out that letter dated 21.02.2005 may have been signed by another department in M/s. Beekay Engineering Corporation Limited for PW 6 K.L. Aggarwal but has not produced the original acknowledgement dated 21.02.2005 as the original would have only been with M/s. ACL. Moreover, Clause 9.0 of the Purchase Order dated 15.02.2005 dealing with PRICE provided that the price of each kiln shall be Rs. 7.00 crores, meaning thereby the cost of 2 kilns would have been Rs. 14 crores. Clause 11.0 PAYMENT provided that 15% advance along with this purchase order shall be made, meaning thereby Rs 2.10 crores had to be given in advance along with the purchase order. It is difficult to believe that M/s. ACL could not prove payment of Rs. 2.10 crores to M/s. Beekay Engineering Corporation if it had placed the order with the said firm as claimed by it.

185. It is further argued on behalf of the accused that PW 6 has admitted that he had stated in his statement u/s 161 Cr. PC that the letterhead of the company on which said acceptance order dated 21.02.2005 has been prepared seems to be genuine one. It is submitted that the IO during his cross-examination has also stated that Sh. K.L. Agrawal stated in his statement u/s 161 Cr.P.C. dated 13.01.2005 that the letterhead used for preparation of letter Ex. PW-6/DX1 dated 21.02.2005 seems to be genuine. It is their submission that it lends credence to their case that M/s Beekay Engineering Corporation had indeed issued the acknowledgement dated 21.02.2005.
186. The above argument of the accused is also not helpful for them as copy of acknowledgement dated 21.02.2005 was enclosed by Nirmal Kumar Agarwal with his letter dt. 23.05.2005. Obviously, the original thereof would have been with Nirmal Kumar Agarwal only. He was directed by IO to produce the same but he could not produced it stating that the file is missing. The said reply is admitted u/s 294 Cr. PC as Ex. P-15. Therefore, a presumption is to be raised against the accused that if he had produced the original of acknowledgement dated 21.02.2005 containing clear and legible purported signatures of B.K. Agarwal appearing thereon, it would have been unfavourable to him. Moreover, PW 6 has not categorically stated that the letterhead on which acknowledgement dated 21.02.2005 is prepared is a genuine one but has stated that it seems to be genuine.

187. The letterhead on which Exhibit PW 6/DX-1, so-called Acknowledgement of M/s. Beekay Engineering Corporation is printed was also sent to CFSL for examination and its report. The header of the letterhead was marked as Q-14 and the footer was marked as Q-16. These questioned documents were compared by PW 14 with S-38 to S-55. According to the expert, "Video Spectral Comparator, Twin Video Comparator, microscopic and transparency sheet examination of the questioned printed matter marked Q-14 (reproduced copy) disagree with the specimen printed matter marked S-38 to S-46 when they were subjected to exact a superimposed position." Further, opinion of the expert on Q-16 is "Video Spectral Comparator, Twin Video Comparator, microscopic and transparency sheet examination of the questioned printed matter marked Q-16 (reproduced copy) disagree with the specimen printed matter marked S-47 to S-55 when they were subjected to exact superimposed position."
188. It also proves that the so-called Acknowledgement purportedly given by K.L. Aggarwal, General Manager (Works) of Beekay Engineering Corporation is a forged document.
189. Reliance is placed by the accused on *Hasth Shilp vs Sarita Balkrishana Dhoot* 2020, SCC Online Bom 2757, where the question was denial of signatures on the cheques issued by the accused as the accused had not explained as to how the cheques in question came in the custody of the complainant.

190. The judgment in the case of Hasthshilp (supra) is not applicable to the facts of the case in hand in as much as in the present case PW 6 has not emphatically stated that the letterhead is the genuine letterhead of M/s. Beekay Engineering Corporation but has only stated that it “seems” to be genuine. However, in this case the report by PW 14 has categorically stated that the questioned printed matter Q14 and Q16 disagree with the specimen printed matter marked S-38 to S-46 and S-47 to S-55.
191. It is further argued that PW 6 K.L. Aggarwal did not even state that no payment was received from the accused company as he stated during his cross-examination recorded on 25.09.2018, Page 19 that “Only after seeing the account statement of a firm of the year 2005, it can be stated as to whether any payment was received from Adhunik Corporation Ltd in the year 2005 or not”. Even this argument does not prove that M/s. ACL had made payments to M/s Beekay Engineering Corporation during 2005. It is already noted that according to the so-called purchase order placed on M/s. Beekay Engineering Corporation by M/s. ACL mentions in Clause 9 dealing with PRICE that the price of each kiln shall be Rs. 7.00 crores, meaning thereby the cost of 2 kilns would have been Rs. 14 crores. Clause 11.0 PAYMENT provided that 15% advance shall be given along with the purchase order. As such, the advance itself would have been Rs. 2.10 crores which had to be given in advance along with the purchase order. The amount of Rs. 2.10 crores is not a measly amount and under section 106 of Evidence Act the

accused ought to have proved on record payment of this amount as advance to M/s. Beekay Engineering Corporation.

192. The accused have argued that the accused company itself as well as the accused group were having dealings with M/s. Beekay Engineering Corporation and the said firm would not have refused to accept the purchase order in 2005 and there was no occasion to forge the acknowledgement dated 21.02.2005. This argument is also devoid of any substance. This argument rather goes against the case of the accused persons. PW 6 vide Exhibit PW-6/D, D 56, has provided six Purchase Orders issued by Adhunik Corporation Ltd., Adhunik Alloys and Power Ltd., Adhunik Metallics Ltd. between 2004-2014. PW 6 would not have hesitated in placing on record Purchase Order dated 15.02.2005 in case the same had been placed on M/s. Beekay Engineering Corporation. Rather, being a vendor for M/s. ACL it would have gone out of the way to help its patron i.e., M/s. ACL and its directors. There is no justification, reason or explanation given by the accused for refusal by the said firm having received the purchase order dated 15.02.2005. The oral submission by learned counsel for the accused that once CBI steps in and the case is registered everybody starts disowning all the transactions is only noted to be rejected. PW 6 has clearly admitted about six Purchase Orders issued in its favour by M/s. ACL and other companies of Adhunik Group and no adverse consequences would have

visited upon the said firm in case it had owned Purchase Order dated 15.02.2005 as well.

193. Considering all the matters brought on record, this court is of the opinion that it is proved that Nirmal Kumar Agarwal made a false claim in his letter dt. 23.05.2005 that purchase order dated 15.02.2005 has been placed on M/s Beekay Engineering Corporation and the said Corporation had issued acknowledgement dated 21.02.2005.
194. The argument of the accused is also that they be given the benefit as the prosecution has not produced register containing entries of inward/outward correspondence of the firm of the year 2005 or visitors register. However, in the considered opinion of this court, this argument will not help the accused for the reason that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In this case also, after the prosecution has discharged its initial burden to prove that Purchase Order dated 15.02.2005 and Acknowledgement dated 21.02.2005 are false and forged documents, it was incumbent upon the accused to produce the original Purchase Order and the original acknowledgement received by it. The standard of evidence that was expected of the accused was not of beyond all reasonable doubts but merely of preponderance of probabilities. It ought to have proved payment of advance amount of Rs. 2.10 crores or any explanation for not having made that payment to M/s. Beekay Engineering Corporation. In the absence of any such evidence,

the only inference which can be drawn is that Nirmal Kumar Agarwal made false claims regarding Purchase Order dated 15.02.2005 and so-called Acknowledgement dated 21.02.2005.

195. The accused have argued that the prosecution should have examined a witness from Estimation/Marketing Department and from Finance/Accounts Department and the evidence of PW 6 from Works Department was not sufficient is also without any merits in as much as had any Purchase Order been placed on M/s. Beekay Engineering Corporation, it would have reached Works Department who had to actually provide the ordered product to the buyer. Moreover, the accused have not led any evidence regarding progress of the Purchase Order and acknowledgement, even if the same were accepted to be true for the sake of arguments. The accused have brought nothing on record to show whether the ordered kilns were produced and if not, why? It has not produced any evidence to show payment for the purchase of 2 kilns the cost of which was Rs. 14 crores, according to the own document of the accused. No doubt, the burden of proof under section 101 of Evidence Act is on the one who desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts. In the opinion of this court, the prosecution has discharged the said burden. Prosecution is never expected to disprove any fact which is especially within the knowledge of the accused and the burden of proving that fact is always upon the accused. In this case, the accused have failed to discharge burden which was

on them to the extent that they ought to have produced the original of Acknowledgement dated 21.02.2005 if received by them. Even after passing of eight years, it was expected of a limited company to have records of payment of Rs. 2.1 crores as advance or payment of Rs. 14 crores as cost of two kilns.

196. So far as the submission that witnesses from Estimation/Marketing Department and Finance/Accounts Department and one of the partners of the firm Vijay Gupta ought to have been examined by CBI is concerned, in the considered opinion of this court the prosecution has not suffered any prejudice by not examining these witnesses and evidence of PW 6 has proved that no purchase order dated 15.02.2005 or Acknowledgement dated 21.02.2005 ever came into existence. Moreover, nothing stopped the accused from examining them in defence as it would have been in the personal knowledge of the accused with whom they had dealings in M/s Beekay Engineering Corporation in this regard.
197. Therefore, this point for determination is answered holding that prosecution has proved that Nirmal Kumar Agarwal made false claims regarding Purchase Order dated 15.02.2005 and acknowledgement dated 21.02.2005.

5th Point for Determination

Whether Nirmal Kumar Aggarwal falsely claimed in his letter dated 23.05.2005 that M/s ACL has applied to State Pollution Control Board, Orissa for establishing DRI and CPP vide letter dated 17.02.2004?

198. PW 1 is Debadutta Pattnaik, Section Officer, State Pollution Control Board, Bhubneswar. He was posted in this office in June 2005. One S.V.S.N. Murthy was the diarist who expired in 2006. PW 1 was well acquainted with the handwriting of S.V.S.N. Murthy as PW-1 was receiving almost on daily basis various correspondences marked/forwarded to him by the endorsements of S.V.S.N. Murthy.
199. For explaining the procedure followed in the Department when any industrial establishment wanted to obtain consent to establish from the Pollution Control Board, he stated that initially the concerned industrial establishment applies in the central registry and after a stamp with the date is put over it by the Central Registry qua receiving of the said application, then the same is sent to the officer to whom the application is addressed. The said concerned officer thereafter marks it to one or the other sections of the office and before being sent to the said section the application is again received in Central Registry where a central diary number is put on the application with the date of the day when the application is again received in the central registry from the said officer and after the said central diary number and date is mentioned on the application then the same is sent to the concerned section. He proved register maintained in Central Registry for making entry of all the correspondence received in the office as **Exhibit PW 1/A** (D-39, PDF 3118). In this register, there is no entry of letter dated 17.02.2004, **Exhibit PW 1/B (D-5, Correspondence**

Page 254 PDF 543 and Correspondence Page 365 PDF 655), purportedly written by “for” Sanjay Pratap, General Manager, M/s. ACPL for processing of application in the prescribed Form-IV for consent to establish DRI and captive power plant by M/s. ACPL. PW-1 had provided various letters, **Exhibit PW 1/D to Exhibit PW 1-J (D-41 to D-46 PDF 3125 to 3132)** to the IO of the case along with the Production cum Seizure Memo dated 19.06.2015, **Exhibit PW 1/C D-40 PDF 3123**. After comparing the stamp impression on these six letters with the stamp appearing on letter dated 17.02.2004, he stated that the stamp appearing on letter dated 17.02.2004 does not appear to be of their office. He pointed out that in Exhibit PW 1/D to Exhibit PW 1/J, the word “Bhubaneswar” is not in upper case whereas in the stamp impression as appearing on letter Exhibit PW 1/B, all the letters are in upper case i.e., BHUBANESWAR”. PW-1 identified signatures of Rajeev Kumar, Member Secretary, State Pollution Control Board on letter dated 05.01.2015, D-35, Page 1-3 and this letter along with its annexures was exhibited as **Exhibit PW 1/K D-35 Page 1-3 PDF 3110**. In this letter Rajeev Kumar Member Secretary mentioned that (i) the Board has not yet received any application for consent to establish any industry including DRI and Captive Power Plant in the name of M/s. Adhunik Corporation (P) Ltd since 17th February, 2004 (ii) the Board maintains a diary register for letter received from industries as well as for other official letters. It was verified from the diary register of the Board and found that there is no such entry in the register in the name of M/s. Adhunik Corporation (P)

Ltd since 17th February 2004 to till date (iii) no payment has been received towards fees for consent to establish in the name of M/s. Adhunik Corporation (P) Ltd since 17th February 2004 as verified from the cash register of the both (iv) the seal of the Board which has been put in the body of the forwarded letter is not the seal of the Board as font size of the letter indicated in that seal is not same in comparison with the seal used by the board at the time. Photocopy of letter in which the seal of the Board has been used at the time was enclosed as Annexure-I for reference (photo copy of letter dated 17th March 2004 written by Section Officer (IA) of Ministry of Environment and Forests, Government of India addressed to the Member Secretary, Orissa State pollution control Board, Bhubaneswar) (v) the copy of letter of M/s. Adhunik Corporation (P) Ltd forwarded by the CBI headquarters, New Delhi does not appear to be genuine. Letter dated 28.01.2015 along with its annexures Page 4-5 was exhibited as **Exhibit PW 1/L**. Vide this letter, the original of letter dated 17th March 2004 written by Section Officer (IA) Ministry of Environment and Forests, Government of India, to the Member Secretary, Orissa State Pollution Control Board was enclosed. Letter dated 09.02.2015 with its enclosures was exhibited as **Exhibit PW 1/N, D-36, Page 2-5 PDF 3114**. With this letter, two letters received by the Board on 17.02.2004 containing original rubber seal impression of State Pollution Control Board, Bhubaneswar were enclosed. The 1st letter is from State Pollution Control Board, Orissa Regional Office, Rourkela and the 2nd letter is from Visa Industries Ltd. These

three exhibited documents were objected to by the learned counsel for the accused on the ground that they are hit by section 162 Cr.P.C. The said objection is decided now holding that letter dated 05.01.2015, D-35, Page 1-3 Exhibit PW 1/K PDF 3110 is hit by section 162 Cr PC but other two letters Exhibit PW 1/L and Exhibit PW 1/N alongwith which only certain documents were provided are not hit by section 162 CrPC as in those letters nothing from personal knowledge of the witnesses was stated.

200. PW 2 Umesh Chandra Pani, Administrative Officer, State Pollution Control Board, Bhubaneswar was posted as Section Officer in the Accounts Section at the Bhubaneswar office and had produced before the IO of the case, vide Production cum Seizure Memo **Exhibit PW 2/A (D-47, PDF 3133)**. Book No. 211 w.e.f. 09.02.2004 to 20.02.2004, Book No. 212 w.e.f. 21.02.2004 to 01.03.2004, Cash Registers of State Pollution Control Board from 14.01.2004 to 31.03.2004 and Dak Receipt Register from 31.03.2004 to 12.04.2004, **Exhibit PW 2/B, Exhibit PW 2/C and Exhibit PW 2/D (D-48 to D-50, PDF 3134-3386)**. He stated that he had checked the Diary Register from the diary section and had found that there was no entry of letter dated 17.02.2004 in the said register. In the cash book and money receipt book, there is no receipt or entry regarding any fee if deposited by M/s. ACPL. He also stated that he could not find any Form-IV submitted by M/s. ACPL with the State Pollution Control Board, Bhubaneswar. He also stated that in

the stamp impression of his office stamp, the word Bhubaneswar is written in lower case and only 1st letter is written in upper case and there were two round symbols both before and after the word Bhubaneswar whereas in letter dated 17.02.2004, the word Bhubaneswar is written in upper case i.e., "BHUBANESWAR". He identified handwriting and signatures of Junior Assistant and Accountant in the Money Receipt Books containing Money Receipts. He also identified entries in cash register made by the accountant. Another copy of letter dated 17.02.2004, **D-5, Page 365 PDF 654** which was sent to CFSL for the opinion of handwriting expert, Q-9 was exhibited as **Exhibit PW 2/F**. The Production cum Seizure Memo dated 13.02.2015 bearing the signatures of Nihar Ranjan Sahoo was exhibited as **Exhibit PW 2/G (D-38 PDF 3116)**.

201. According to the report of PW 14, the questioned rubber seal impressions-Q-8 and Q-9, D-5, Page 254, PDF 543 and D-5, Page 365, PDF 654 disagree with the supplied specimen rubber seal impression S-31 to S-37. Q-8 and Q-9 are the rubber seal of "The State Pollution Control Board, Bhubaneswar" as appearing on copy of letter dated 17.02.2004 purportedly sent by M/s Adhunik Corporation (P) Ltd. under signature of "for" Sanjay Pratap, General Manager on Ex. PW-1/B, D-5, Page 254. The reason for disagreement is clear to even a layman in as much as the word "Bhubaneswar" is not in upper case in the specimen stamps whereas in the stamp impression as

appearing on letter dated 17.02.2004, Ex. PW-1/B, this expression is written as “BHUBANESWAR”.

202. From the evidence of PW 1, PW 2 and PW 14, it is clear that in letter dt. 17.02.2004, the word Bhubaneswar has been written in upper case whereas this word has been written in lower case in the specimen documents provided by the office of State Pollution Control Board. It shows that letter dated 17.02.2004 was never submitted in the office of State Pollution Control Board, Orissa and the rubber stamp on the letter is also not of the said Board.
203. Letter dated 17.02.2004 mentions that one application in the prescribed Form IV along with requisite fee on the above subject was enclosed. Further, in that letter the request was made for advice to the concerned to process the application at an early date and grant consent to establish DRI and Captive Power Plant in Sundargarh District.
204. Evidence of PW 2 proves that no such Form IV was found available in the office of State Pollution Control Board, Bhubaneswar.
205. Evidence of PW 2 proves that no “Requisite Fee” was ever deposited on behalf of M/s. ACL in the said office. Even if it is assumed for the sake of arguments that any such letter was given in the office of State Pollution Control Board, it would still show that false averment was made in that letter that requisite fee which is required to be deposited with the application

seeking consent to operate has been deposited whereas no such fee was ever deposited in that office on behalf of M/s. ACL.

206. During investigation, vide Ex. P-15, D-94, reply dated 22.01.2015, the accused Nirmal Kumar Agarwal responded that “We are unable to locate the file as the same is missing. As such we could not find the document as desired by you”. It also shows that no letter dated 17.02.2004 was ever submitted in the office of State Pollution Control Board by M/s ACL.
207. On behalf of the accused, it is argued that prosecution was required to show that Board had issued only one type of rubber stamp.
208. Perusal of records shows that CBI has placed on record letter dated 05.01.2004, 31.01.2004, 05/06.02.2004 07.02.2004, 10.02.2004, 17.02.2004 (two letters), 01.03.2004 and 17.03.2004. In all these letters, the rubber stamp of the State Pollution Control Board shows that the word Bhubaneswar has been written in lower case and not in uppercase. It is proved on record that from January 2004 till March 2004 the rubber seal of the office of State Pollution Control Board had used lowercase while mentioning the word Bhubaneswar. It shows that there was only one rubber stamp being used during that time in the office of State Pollution Control Board and there was no rubber stamp where the word Bhubaneswar was written in uppercase.

209. The argument that prosecution should have shown that Nirmal Aggarwal knew about the forgery and he used the said document knowing it to be forged shall be dealt with when dealing with the charge under section 420 and 471 of IPC.
210. The argument of the accused that CBI ought to have produced original letter dated 17.02.2004 is also without any merits as no such letter was ever submitted in the office of State Pollution Control Board and therefore there was no question for producing original thereof.
211. The submission that the original rubber stamp of Pollution Control Board ought to have been produced is also meritless because PW-2 has stated that the rubber seal which was used in the State Pollution Control Board, Orissa, Bhubaneswar in the year 2003-04 is no longer available in our office. The said seal after getting damaged was deposited in the store and was replaced with a new rubber seal of the office. He has also stated that when the IO came for making enquiry from him, then at that time he had also asked from the store about the availability of the said office seal which was used in the month of February-March but the same was not found to be available. PW 2 stated that he had made enquiry about the office seal from storekeeper. Therefore, it has come on record that the seal in question after being damaged was stored in storeroom. The seal impression appearing on several letters including two letters of same date i.e., 17.02.2004 is admittedly different than

the seal appearing on letter dated 17.02.2004 filed by Nirmal Kumar Aggarwal along with his application dated 23.05.2005.

212. The argument that PW 1 was not posted in the office of State pollution control Board during the relevant year also makes no difference to the case of the prosecution because this witness was examined to prove that he had provided several documents from his office from January 2004 to March 2004 which had different rubber seal where the word Bhubaneswar was shown in lower case whereas the word Bhubaneswar in the letter dated 17.02.2004 provided by Nirmal Kumar Agarwal with his letter dated 23.05.2005 mentions this word in uppercase.
213. The report of CFSL is sought to be challenged alleging that the same is under administrative control of Joint Director of CBI and hence the report of CFSL cannot be treated as a report from an independent expert and the same is influenced by the investigating officer. However, no case law has been cited to make good this argument. No instance has been cited where the report of CFSL was discredited on this ground. Therefore, this submission is without any merits.
214. It is also argued that in case a letter has been received at State Pollution Control Board but misplaced before being marked by the Member Secretary, then the same cannot be traced at all. However, when PW 1 and PW 2 were in the witness box they were not asked any question whether there was any instance of loss of letter submitted in the office of State Pollution Control

Board having been misplaced. Therefore, the submission is hypothetical and presumptive in nature and does not prove that letter dated 17.02.2004 of M/s. ACL was misplaced in the office of State Pollution Control Board. The office copy of the letter dated 17.02.2004 bearing the original rubber seal of the office of State Pollution Control Board should have been given by the accused persons during investigation to the Investigating Officer or should have been placed on record at the time of defence evidence by the accused persons because only the accused had personal knowledge of that letter, if any.

215. Neither during investigation nor during defence evidence the accused produced before the Investigating Officer or before this court the proof of deposit of fee along with their application seeking Consent to Establish DRI and Captive Power Plant at Sundergarh District. This would have been in the exclusive personal knowledge of the accused and they could only have provided the document in that regard.
216. Similarly, at no stage office copy of the application in the prescribed Form IV was provided by the accused to prove their innocence.
217. The argument of the accused is also that even if it is presumed that no fee was deposited, it does not prove that the stamp on the letter is not genuine. Even if this argument is accepted, even then there still would be false averment in letter dated 17.02.2004 that "... one application in the prescribed Form IV

along with requisite fee on the above subject...” in as much as there is no deposit of the fee alongwith the application.

218. The submission of the accused that there are only two aspects to allege that letter dated 17.02.2004 is a false letter namely, there is no diary number mentioned on the stamp and there is no entry of the letter in the register.
219. The submission is not correct because this letter is false is also being sought to be proved by establishing that neither any Form IV on behalf of M/s. ACL was found in the office of State Pollution Control Board nor any fee was found to be deposited in the name of M/s ACL which is prerequisite for submitting any such application.
220. The prosecution has dropped several prosecution witnesses. The submission of the accused is that adverse inference has to be drawn against them under section 114 (g) of the Evidence Act.
221. The law is well settled that it is not the number of witnesses examined but the quality of the evidence which should be the determining factor for the prosecutor for examining PW's. In the opinion of this court, by dropping certain prosecution witnesses the case of prosecution has not suffered in any manner. In any case the accused were at liberty to examine any of those witnesses which were dropped by the prosecution to prove their innocence. Ld. Senior PP for CBI has relied on Rajesh Yadav and Anr etc vs State of UP, CrI. Appeal No. 339-340 of 2014

dated 04.02.2022, where the Hon'ble Supreme Court has held that "if the Court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it." In this case, this Court is of the view that no evidence was screened by the prosecution. The dropped PWs could have been produced by the accused in support of its case. The accused have not proved that a particular witness has not been produced deliberately.

222. The last submission of the accused is that the accused could not have been given a notice under section 91 of CrPC for producing the application dated 17.02.2004, application in the prescribed Form IV and the details of deposit of fee in the office of State Pollution Control Board. Reliance is placed on State of Gujarat versus Shyamal (supra).
223. In the opinion of this court, the stage for objecting to the notice under section 91 of Cr.P.C. was at the time of investigation when the accused had received this notice. The accused have relied on V.S. Kuttan Pillai vs. Ramakrishnan, 1980 CrLJ 196, where the accused had challenged the search warrant issued by the court on the application of complainant in the complaint case. Reliance is also placed on Vinayak Purushottam Kalantre vs. Vikram Balwantrao Deshmukh, 1978 SCC Online Bombay 219 where also the challenge was to the rejection of application of complainant seeking directions to the accused to produce

documents mentioned in the application. In the case of Mahendra Kumar Kanahiyalal Jain vs. Mahavir Urban Co-operative Credit Society Limited, Jalgaon, 2013 (6) Mh. LJ. 161, the question was whether summons can be issued against the accused calling upon him to produce documents in his custody or possession in the criminal trial, wherein complainant wants to rebut defence of the accused. In the case of Aadit Palicha vs. State Government of NCT Delhi, CrI. MC 2464/2021 dated 11.10.2021, the interim order by the Hon'ble Delhi High Court was on the question "Can a Notice u/s 91 Cr.P.C. be issued to an accused person". Therefore, in all the four judgments relied on by the accused, the challenge was made to the issuance of Notice u/s 91 of Cr.P.C. during investigation and not during final arguments. When notice u/s 91 Cr.P.C was issued to the accused in this case, without any demur, the accused responded to that notice and gave the reply that due to passage of time no such document is available. During trial, notice u/s 91 Cr.P.C. and the reply given by the accused were admitted u/s 294 of Cr.P.C. and were exhibited as Ex. P-14 and P-15 respectively. Therefore, the defence that under section 91 Cr.P.C., the accused cannot be directed to produce documents is only an afterthought.

224. Resultantly, this point for determination is answered holding that it was falsely stated by Nirmal Kumar Agarwal in letter dt. 23.05.2005 that letter has been submitted to State Pollution

Control Board on 17.02.2004 for consent to establish, DRI and captive power plant to State Pollution Control Board, Orissa.

6th Point for Determination

Whether M/s Adhunik Corporation Ltd. (A-1), Nirmal Kumar Agarwal (A-2) and Mahesh Kumar Agarwal (A-3) have committed the offence of cheating, Ministry of Coal, Government of India, punishable under section 420 IPC?

225. The charge against accused persons u/s 420 of IPC is that they dishonestly or fraudulently made false claims to Ministry of Steel and Ministry of Coal about the (i) existing production capacity of sponge iron plant of M/s Adhunik Corporation at Durgapur, West Bengal; (ii) they submitted false project report allegedly prepared by M/s Dimensions Engineering and Consultants Pvt. Ltd., (iii) they made false claim about appointment of M/s ITC as consultants for Detailed Engineering and Consultancy supporting it with false and forged letter dated 18.04.2005 i.e., Purchase Order placed on M/s ITC by M/s ACL besides making (iv) false claim about placing of Purchase Order dated 15.02.2005 with M/s. Beekay Engineering Corporation for purchase of two kilns of 350 TPD each and submitted false and forged acknowledgement allegedly issued by M/s. Beekay Engineering Corporation dated 21.02.2005 , (v) they submitted false and forged application claiming to have applied to State Pollution Control Board, Orissa seeking to establish DRI and Captive Power Plant at Sundargarh District i.e., letter dated 17.02.2004 addressed to the Member Secretary, State Pollution Control Board, Orissa and thereby induced Ministry of Coal,

Government of India to allocate "Patrapara" coal block in favour of M/s Adhunik Corporation Ltd. and as such committed the offence under section 420 of IPC.

226. In 1st point for determination, it is held that Mahesh Kumar Aggarwal falsely stated in his application dated 07.04.2003 that M/s. Adhunik Corporation Ltd. is producing 72,000 TPY sponge iron every year and the production capacity of the plant is 72,000 TPY. In 2nd point for determination, it is decided that Mahesh Kumar Aggarwal enclosed with application dated 07.04.2003 false Techno-Economic Feasibility Report purportedly prepared by Dimension Engineering & Consultant Private Ltd. In 3rd point for determination, it is decided that Nirmal Kumar Agarwal falsely stated in letter dated 23.05.2005 that they have placed purchase order dated 18.04.2005 upon M/s. ITC appointing M/s ITC as consultant for detailed engineering and consultancy of 2 x 350 TPD sponge iron plant. In 4th point for determination, it is decided that Nirmal Kumar Aggarwal has falsely stated enclosed in his letter dated 23.05.2005 that purchase order dated 15.02.2005 has been placed upon M/s. Beekay Engineering Corporation and also stated falsely that acknowledgement dated 21.02.2005 purportedly issued by M/s. Beekay Engineering Corporation has been received. In 5th point for determination, it is decided that Nirmal Kumar Aggarwal in his letter dated 23.05.2005 has falsely stated that vide letter dated 17.02.2004 they have applied to State Pollution Control Board, Orissa in the

prescribed Form-IV along with requisite fee for consent to establish DRI and captive power plant at Sundargarh District.

227. In this point for determination, it is to be decided whether by making these false statements, the Ministry of Coal, Government of India was cheated and whether it was induced to believe the statements to be true resulting in allocation of Patrapara coal block in favour of M/s Adhunik Engineering Corporation?
228. First, the charge u/s 420 IPC against Nirmal Kumar Agarwal shall be considered.
229. Since it is already decided while determining earlier points for determination that Nirmal Kumar Agarwal had made false averment in his letter dt. 23.05.2005 that he had addressed letter dated 18.04.2005 to M/s ITC, letter dated 15.02.2005 to M/s. Beekay Engineering Corporation and has falsely stated that acknowledgement dated 21.02.2005 was received from M/s. Beekay Engineering Corporation and he had also falsely stated that vide letter dated 17.02.2004 addressed to State Pollution Control Board, Orissa, M/s ACL had requested for consent to establish DRI and CPP, now the question is whether these false statements made fraudulently or dishonestly by Nirmal Kumar Agarwal had induced Ministry of Coal, Government of India to believe that these statements are correct resulting in allocation of Patrapara coal block in favour of M/s Adhunik Corporation Ltd.?

230. It is already seen that on behalf of M/s Adhunik Corporation Ltd, application dated 07.04.2003 was given by Mahesh Kumar Aggarwal seeking allocation of coal block in favour of M/s Adhunik Corporation Ltd. This application was processed in Ministry of Steel. On 23.05.2003, a query was raised on behalf of Ministry of Steel upon M/s. Adhunik Corporation Ltd to explain why two group companies have applied for the same block. This query was responded by M/s. ACL vide its reply dated 07.06.2003. The Ministry of Steel thereafter vide letter dated 07.08.2003 called upon M/s. ACL to furnish information regarding details of effective steps taken like procurement of land, placement of order for main plant and machinery, No Objection Certificate from State Pollution Control Board etc with documentary evidence regarding expansion of sponge iron capacity in Orissa. No response was received from M/s ACL by MoS. This information was important for Ministry of Steel for processing the application of M/s ACL for allocation of coal block. Therefore, another reminder was issued on 04.02.2005 to M/s. ACL to expedite the information earlier called for by MoS. The case of Adhunik Corporation was considered by the 28th screening committee meeting which took place on 15.04.2005. However, no directions were passed regarding Adhunik Corporation. M/s. ACL vide letter dated 03.05.2005 protested that although their company was invited for presentation on the 28th screening committee meeting but their case was kept pending whereas others were recommended without assigning any reasons. At this stage, Ministry of Coal

called upon Ministry of Steel vide OM dated 06.05.2005 for views/recommendations of MoS as the case may be with regard to application of M/s ACL for allocation of coal block. At this stage Nirmal Kumar Aggarwal addressed two letters both dated 23.05.2005 to Ministry of Steel. It is already noted that along with the 1st letter, he had enclosed purchase order dated 18.04.2005 purportedly placed upon M/s. ITC, purchase order dated 15.02.2005 placed on M/s. Beekay Engineering Corporation and acknowledgement dated 21.02.2005 purportedly received from M/s Beekay Engineering Corporation. Along with 2nd letter, Nirmal Kumar Aggarwal had enclosed letter dated 17.02.2004 purportedly addressed to State Pollution Control Board, Orissa seeking consent to establish DRI and captive power plant. He mentioned in that letter that application has been given in the prescribed Form-IV and requisite fee has also been deposited. It is already decided in the earlier points for determination that these are all false submissions. The 29th screening committee meeting was held on 03.06.2005 and it was recorded that: -

“Representative of Ministry of Steel stated that there are a number of cases where views of the Ministry of Steel are yet to be sent and that such cases be decided in consultation with them. After a brief discussion, it was decided that the meeting can be held at the level of Joint Secretary (Coal) and Joint Secretary (Steel) to decide all such cases which may include cases like that of Maa Chinnamastika, Adhunik, E.S. Casting, Akshaya Investments, etc...”.

231. On 23.06.2005, D. Kashiva, Joint Industrial Adviser noted in the note sheet, **D-5 Note Sheet Page 17 PDF 277** that vide letter dated 07.04.2003, the company had applied for allotment of part of Patrapara non-coking captive coal block for meeting the coal requirement of 0.72 LTPA sponge iron plant at Durgapur West Bengal. So far as effective steps taken by the company for proposed 2.4 LTPA sponge iron capacity in Orissa are concerned, it was noted, the company has filed IEM, submitted a letter from Adhunik Minerals and Alloys Ltd stating that they have given 3.3 acres land to them on lease, the company has placed order for 2 x 350 TPD rotary kilns to Beekay Engineering Corporation which has been confirmed by them and has applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP. Further details were also noted in the note sheet, and orders were solicited by him as to whether the request of the company may be forwarded to the MoC for consideration of allotment of a suitable non-coking block/sub block commensurate with their coal requirement.
232. The Secretary, MoS approved the proposal resulting in issuance of letter dated 04.07.2005 **D-5 Correspondence Page 432 PDF 721** by MoS to MoC.
233. In the letter dated 04.07.2005, Ministry of Steel noted similar facts as were recorded in the note sheet by D. Kashiva that M/s ACPL has filed IEM, placed order for 2 x 350 TPD Rotary kilns to Beekay Engineering Corporation which has been confirmed by them. It was also recorded in that letter that as per the norms

followed in this Ministry, the capacity of sponge iron of proposed 2 x 350 TPD rotary kilns works out to be 2.1 LTPA. It was also noted that the company has applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP. Therefore, the request of the company was forwarded to MoC for consideration of allocation of a suitable non-coking coal block/sub block commensurate with their washed/prime coking coal requirement **(D-5, Page 432, PDF 721)**.

234. Therefore, it is apparent that two things weighed with MoS for forwarding the application of M/s. ACL. The 1st was that M/s. ACPL has placed order for 2 x 350 TPD rotary kilns to M/s Beekay Engineering Corporation and the purchase order has been confirmed by M/s Beekay Engineering Corporation. Believing these to be true, the capacity of sponge iron of proposed 2 x 350 TPD rotary kilns was worked out to be 2.1 LTPA. The 2nd thing which weighed with Ministry of Steel was that the company has applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP. In these circumstances, the request of the company was forwarded to MoC for consideration of allocation of a suitable non-coking coal block/sub block commensurate with their washed/prime coking coal requirement.

235. In the meantime, meeting of Joint Secretaries of MoC and MoS also took place on 01.09.2005 and it also recommended the case of Adhunik Corporation for allocation of coal block. However, since in the meanwhile the MoS had already

forwarded the case of M/s. ACL to MoC, in the agenda note for 30th screening committee meeting, it was recorded that “The recommendation for allocation of suitable block and assessment of coal requirement in case of... M/s. Adhunik Corporation... have been received from the Ministry of Steel subsequent to the screening committee meetings in which these companies were decided to be included as allocatees.” Therefore, it is clear that rather than the recommendations of Joint Secretaries of the two Ministries i.e., MoC and MoS, in the agenda note prepared by MoC, weightage was given only to the recommendation received from Ministry of Steel vide its letter dated 04.07.2005. That is why the minutes of the 30th screening committee meeting which were circulated to all concerned by MoC recorded that: -

“The screening committee took a note of the recommendations received subsequently by the MoC from the MoS in the cases already recommended by them”.

236. It is clear that the 30th screening committee took note of recommendations of MoS in favour of M/s ACL and not the recommendations from the joint meeting of Joint Secretaries of MoC and MoS. Finally, vide letter dated 13.01.2006, MoC conveyed to M/s. ACL and other companies the decision of the Central Government to allot Patrapara coal block jointly to them. And in any case, the inputs of JS Steel in the meeting could not have been different from the recommendation letter of MoS already sent on 04.07.2005 to MoC.

237. The narration of incidents recorded above shows that Ministry of Coal was not ready to move even an inch without the recommendations of the Ministry of Steel, the Administrative Ministry in question. That is why, vide OM dated 06.05.2005, MoC had called for recommendations of Ministry of Steel to furnish their views/recommendations as the case may be. Weightage to the views of MoS is also apparent from minutes of 29th screening committee meeting, agenda as well as minutes of the 30th screening committee meeting, where only recommendations of MoS were taken note of. It is also clear that Ministry of Steel was also not agreeable to send the application of M/s. ACL to MoC without being satisfied about steps taken by the applicant company for setting up of plant for expansion of production of sponge iron. It waited for the documentary evidence in this regard before forwarding the application of M/s. ACL to MoC. Letter dated 07.08.2003 and reminder dated 04.02.2005 show the importance given by MoS to documentary evidence regarding preparedness to establish end use plant. Though, several misrepresentations were made to MoS regarding preparedness for end use Project but the two factors which primarily weighed with Ministry of Steel were purchase order dated 15.02.2005 placed on M/s Beekay Engineering Corporation, acknowledgement dated 21.02.2005 by M/s. Beekay Engineering Corporation and consent to establish application dated 17.02.2004 given to State Pollution Control Board, Orissa. These two facts were duly reflected in the note sheet of MoS as well as in the recommendation letter

dated 07.08.2005 addressed by MoS to MoC. In the 30th screening committee meeting, it was specifically noted that recommendation of Ministry of Steel has been received. MoC too had received letter dt. 07.04.2003 addressed by Mahesh Kumar Agarwal (A-3) but MoC did not proceed to consider it without recommendations of MoS. MoS too did not send application to MoC till the time it was deceived to believe preparedness of M/s ACL vis-a-viz purchase order dt. 15.02.2005 worth Rs. 14 Crore, acknowledgment dt. 21.02.2005 from M/s Beekay Engineering Corporation and letter dt. 17.02.2004 addressed to State Pollution Control Board, Orissa seeking permission to establish DRI and CPP. If MoS had to simply forward the application of M/s Adhunik Corporation Limited to MOC, it would have been sent in the year 2003 itself without satisfying about preparedness of M/s ACL to set up the end use project. It makes it amply clear that but for recommendation of Ministry of Steel, Screening Committee would not have recommended the allocation of coal block and Ministry of Coal, Government of India would not have allocated new Patrapara coal block in favour of M/s ACL.

238. At this stage, it is appropriate to cite the judgment Kanumukkala Krishnamurthy vs State of Andhra Pradesh, (1964) 7 SCR 410: AIR 1965 SC 333 referred by Sh. A.P. Singh, Ld. Senior PP for CBI, where it has been held that: -

“14. Any representation made in an application for appointments is really a representation made to the

Government, the appointing authority, and not only to the Public Service Commission to which the application is presented and which has to deal with that application in the first instance up to the stage, of selection. The object of the applicant was to secure an appointment and not merely to deceive the Public Service Commission and sit at the examination or to appear at the interview. The deception was practised for that purpose and therefore there seems to be no good reason for holding that the deception came to an end once the Service Commission was deceived and had taken action on it as a result of the deception. A false representation in an application to the Service Commission continues and persists to be so till the application is considered by the final authority responsible for making the appointments and must therefore be deemed to be made to that final authority as well. In the instant case, when the recommendation of the Service Commission was sent to the Government, the qualifications of the recommended candidates, including the fact that the appellant had passed the M.B.B.S. examination were mentioned. The Government therefore believed that the appellant possessed the degree of M.B.B.S., that as the Service Commission had scrutinized the application in that regard and had satisfied itself that the appellant possessed that degree. The consequence of that is that the Government were led to believe that fact, which thus became a false representation.

15. We are therefore of opinion that the appellant's misrepresentation to the Service Commission continued and persisted till the final stage of the Government passing an order of appointment and that therefore the Government itself was deceived by the misrepresentation he had made in his application presented to the Service Commission.

16. The fact that the Service Commission is an independent statutory authority has no relevant

bearing on this question. It is a statutory body as it is constituted under the provisions of a statute. It is independent of the Government in the sense that in its selection of candidates or in its tendering advice to the Government it does not take any hint or instructions or clue from the Government. It brings to bear its own independent mind to judge the comparative merits of the candidates and their suitability to the posts they apply for. Its function is to advise the Government on the suitability of the candidates. It is therefore a statutory adviser to Government in the matter of appointment to the Services. Deception of such an adviser is deception of the Government which is expected to pay heed to its advice and act accordingly.

17. There have been cases in which servants or agents of an authority have been deceived while the loss has been suffered by the authority concerned. In such cases, the person deceiving the servants or agents has been held to have deceived the authority concerned, though no direct question was raised about the deception being made not to the authority but to its servant. The principle of the cases, to our mind, fully applies to the case of candidates deceiving the Public Service Commission and thereby deceiving the Government in believing that they satisfied the various conditions prescribed for candidates for those appointments. We may refer to some such cases.

18. In the *Crown v. Gunput*, 2 (1868) Punj Rec CrL. Case No. 6 the accused who had produced a railway pass with an altered number before the ticket collector when traveling by a train, was held to have thereby dishonestly induced the railway company to do or omit to do what they otherwise would not have done or omitted by the production of the altered pass. The deception of the ticket collector was considered to be deception of the railway company.

19. In *P. E. Billingham v. H. P. Blackburn*, 3 (27) CWN 821 certain bills were presented by a company

for payment. They were checked by Government officials who were deceived by certain representations made by subordinate officials through whom the bills had passed, and consequently payments were made in satisfaction of the demands under the bills. The persons concerned in causing the deception were convicted of cheating the Government.

20. In *Legal Remembrancer v. Manmatha Bhusan Chatterjee and Legal Remembrancer v. Hridoy Narain*, 4 ILR 51 CAL 250 it was held that if the evidence showed that responsible officers of the East Indian Railway Company and its Asansol Office were deceived and induced either to allot wagons to a certain colliery which would not otherwise have been allotted or to make out wagon chalans for the colliery which would not otherwise have been made, it was sufficient to support the allegations in the charges that the railway company was, by reason of deceit, induced to act in a certain way. The deception of the responsible officers was thus taken to be the deception of the railway company, the possible damage to whose reputation was remote.

21. In *Emperor v. Fazal Din*, 5 (1906) 4 CrL LJ 355 it was held that the deception practised was likely to cause damage or harm to the person on whom it was practised or to the railway authorities whose agent he was in the matter of appointments.

22. In *Queen-Empress v. Appasaimi*, 6 ILR 12 MAD 151 the act of the accused in obtaining, by personation, a hall ticket from the Superintendent at a University Examination and in signing the name of another person on the examination papers was held to indicate an intention on his part to lead the University authorities to believe that the examination papers were answered by the other person. This again is on the principle that the deception of the Superintendent who was working for the University was a deception of the University itself.

23. Similarly, in *Ashwini Kumar Gupta v. Emperor*, 7 ILR 1937 (1) CAL 71 the accused personated another person at a university examination cheating the Registrar. It was held that this not only damaged the reputation of the Registrar, but also that of the University. Reference may also be made to the case reported as in *re: Hampshire Land Company*, 8 (1896) (2) Ch 743 in which a Society had lent money to a company on the borrowing of the directors of that company who were not competent to borrow, the resolution conferring on them the power of borrowing being invalid for certain reasons. It was held that the Society had a right to assume, in a case like that, that all the essentials of internal management had been carried out by the borrowing company. On the same principle it can be said that the Government of the State had a right to assume that the Service Commission had verified that the candidates selected by it for appointment by the Government possessed the necessary qualifications and in that view the scrutiny by the Service Commission can be said to be on behalf of the Government.”

239. On the similar analogy, false misrepresentation made to MoS is really a misrepresentation made to the MoC, Government of India, the final authority for allocating the coal block and not only to MoS to which the application for allocation was presented or Screening Committee which believed the facts mentioned in recommendation letter of MoS to be true. Here, the misrepresentations are direct, whereas misrepresentations can also be made indirectly, *Swami Dhirender Brahamchari v. Shailender Bhushan* 1994 (53) DLT 696. The object of M/s ACL was to secure allocation of a coal block and not merely to deceive MoS and procure recommendation letter in its favour. The deception was practiced for that purpose and therefore,

there would be no good reason for holding that the deception came to an end once MoS/Screening Committee were deceived and had taken action on false documents submitted by Nirmal Kumar Agarwal. The false misrepresentation continued and persisted till the application was considered by MoC, Government of India responsible for making the allocation and must therefore be deemed to be made to Government of India as well. In the instant case, when the recommendation of MoS was sent to Ministry of Coal, both the false misrepresentations namely having placed purchase order on M/s. Beekay Engineering Corporation and having received acknowledgment from M/s Beekay Engineering Corporation and having applied to State Pollution Control Board, Orissa for setting up DRI and CPP for obtaining consent to establish were mentioned. The screening committee therefore believed that the applicant company has taken adequate steps for expansion of sponge iron production believing that Ministry of Steel/Administrative Ministry had scrutinised the application in that regard and had satisfied itself that the applicant company has taken steps for expansion of sponge iron production. The consequences of that are that the MoC, Government of India was led to believe that fact, which does become a false representation resulting in allocation of New Patrapara Coal Block in favour of M/s ACL vide letter dt. 13.01.2006. Even in the absence of any PW from MoC deposing about cheating, the evidence on record leaves no doubt that MoC, Government of India was cheated. A fact is said to be proved when, after considering the matters before it,

the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Taking into account statement of various PWs who have proved the various documents of Ministry of Steel and Ministry of Coal and taking into account the circumstantial evidence noted in detail above, this point for determination is decided holding that Nirmal Kumar Agarwal committed the offence under section 420 of IPC. Nirmal Kumar Agarwal being the alter ego of M/s ACL and relying on *Bharti Mittal vs. CBI*, (2015) 4 SCC 609, it is also held that M/s ACL is also guilty of having committed the offence u/s 420 of IPC.

240. Now, the charge under section 420 IPC against Mahesh Kumar Aggarwal shall be considered.

241. Admittedly, Mahesh Kumar Aggarwal is one of the promoters/directors of the group companies of Adhunik Group. He became Director of M/s. Adhunik Corporation Ltd. on 05.03.2001. This is evident from Ex. P-11, which is annual return of the said company. He is the one who initiated the all-important procedure of applying for allocation of coal block to Ministry of Steel as well as to Ministry of Coal. The very first letter on behalf of M/s. ACL is written by him namely letter dated 07.04.2003. This letter was given to Ministry of Steel and to Ministry of Coal. In this letter, he falsely stated that the existing production capacity of their sponge iron plant was 72,000 MTPA. While dealing with the first point for determination in this

case, it has been answered that the production capacity of the sponge iron plant was neither 72,000 MTPA nor more than that. The submission of the accused that if the number of working days for the kilns are considered to be 360 per annum, there is no falsity in the averment that the production capacity was 72,000 MTPA has been negated by own conduct of the accused persons where in their application seeking consent to operate dated 12.06.2002 and in renewal of consent to operate dt. 07.01.2005 they themselves have taken the number of working days to be 300 per annum and not 360 days per annum. In the Ministry of Steel, when the application of M/s. ACL was dealt with, on more than one occasion, it was noted in the note sheets that the existing production capacity of the applicant company was 72,000 MTPA for their sponge iron plant. Reference can be made to the note sheet of Ministry of Steel dated 01.08.2003, D-5, notesheet Page 6, PDF 263, notesheet dated 18.05.2005, D-5, notesheet page 13, PDF 271 and notesheet dated 23.06.2005, D-5, notesheet Page 18, PDF 278. However, in the recommendation letter of Ministry of Steel sent to Ministry of Coal dated 04.07.2005 it was not mentioned that the production capacity of the sponge iron plant of M/s. ACL was 72,000 MTPA. The recommendation letter is totally silent in that regard. Thereafter, the matter of M/s ACL was taken up in 28th screening committee meeting, 29th screening committee meeting and finally in 30th screening committee meeting. Neither in the agenda notes of these screening committee meetings nor in the minutes of these meetings it is recorded

that the existing capacity of sponge iron plant of M/s. ACL was 72,000 per annum. Finally, vide letter dated 13.01.2006 (D-9, Page 222, PDF 1209) MoC conveyed to M/s. ACL and several other companies, the decision of the Central Government to allot the New Patrapara coal block jointly in favour of several companies including M/s. ACL. Therefore, though Mahesh Kumar Aggarwal in his letter dated 07.04.2003 had made a false averment that the production capacity of their sponge iron plant was 72,000 MTPA but that factor did not weigh with Ministry of Steel in conveying the recommendation letter to Ministry of Coal. Further, this false averment was also not taken into consideration by MoC while allocating the New Patrapara coal block in favour of M/s. ACL. Therefore, the offence of cheating qua Mahesh Kumar Aggarwal is not proved so far as submission in letter dated 07.04.2003 is concerned where he stated that the production capacity of their sponge iron plant was 72,000 MTPA.

242. The 2nd allegation made in the chargesheet by CBI to prove the offence of cheating against Mahesh Kumar Aggarwal is that he furnished a false and forged TEFR of Dimension Engineering along with his application dated 07.04.2003.
243. While deciding the 2nd point for determination, this court has decided that the TEFR is a forged and a false document and was indeed submitted by Mahesh Kumar Aggarwal along with his application dated 07.04.2003. This TEFR was referred to in the note sheets of Ministry of Steel. Reference can be made to

the note sheet dated 10.05.2005 and 18.05.2005, D-5, Notesheet page 11 and 13, PDF 269 and 271. This TEFr is also noted in letter dated 07.08.2003, D-5, Correspondence Page 151, PDF 438. However, as in the case of production capacity of the sponge iron plant, in the case of TEFr also, Ministry of Steel made no mention of the same in its letter dated 04.07.2005 addressed to MoC while recommending the allocation of coal block in favour of M/s ACL. Therefore, in the considered opinion of this court, Mahesh Kumar Aggarwal cannot be convicted for the offence of section 420 of IPC in as much as neither the annual production capacity nor the TEFr were taken into consideration by Ministry of Steel or Ministry of Coal for allocating the New Patrapara coal block in favour of M/s ACL.

244. However, Mahesh Kumar Agarwal made an attempt to cheat Ministry of Steel, Ministry of Coal, Government of India by making false submissions that sponge iron production of M/s Adhunik Corporation Limited is 72,000 TPY and by filing false and forged TEFr with letter dated 07.04.2003. At this stage, it is appropriate to cite the judgment referred by Sh. A.P. Singh, Ld. Senior PP for CBI in the case of Abhayanand Mishra versus the State of Bihar decided on 24.04.1961, 1961 AIR SC 1968 where it is held that under section 511 of IPC a person commits the offence of attempting to commit a particular offence when he intends to commit that particular offence and having made preparations and with the intention to commit that offence does

an act towards its commission such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing such an offence. It is not necessary for the offence under section 511 that the transaction commenced must end in the crime or offence, if not interrupted. Therefore, this point of determination is decided holding that Mahesh Kumar Agarwal committed the offence of attempt to cheat i.e. u/s 420 IPC r/w section 511 of IPC.

245. The accused had argued that the charge of inducing MoC, Government of India cannot be proved as the file of M/s Adhunik Corporation Ltd was found missing from the records of MoC.
246. This submission has no merits.
247. The file of MoS has amply shown that recommendation letter dt. 04.07.2005 of MoS was obtained by misrepresentations. The Agenda Note and the Minutes of the 30th Screening committee are available on record. It is clearly proved on record that but for successfully making misrepresentations before MoS, M/s ACL would not have got any recommendation letter in its favour. The recommendation was sent by MoS to MoC and was taken into consideration by the Screening Committee meeting resulting in final allocation letter dt. 13.01.2006 by MoC, Government of India. Therefore, even with the available

records, the offence of cheating is proved against Nirmal Kumar Agarwal and M/s ACL.

248. It is further argued that Prosecution has not examined any witness from MoC who was induced by the false submissions/documents of the accused and letter dated 04.07.2005 of MoS to MoC was not even considered by MoC.

249. This submission has no merits.

250. It is already seen that application dated 07.04.2003 was given by M/s ACL to MoC and MoS both. The 29th Screening Committee took no note of the said application as there was no recommendation of MoS. MoC had called upon MoS to provide its views/recommendations on the application of M/s ACL vide OM dated 03.06.2005. The case of M/s ACL was recommended by MoS only after being deceived by false statements made by Nirmal Kumar Agarwal in application dated 23.05.2005 regarding preparedness for establishing end use project. This recommendation was taken into consideration by the 30th Screening Committee Meeting. All the documents have been proved in accordance with law and clearly show that MoC, Government of India was cheated by Nirmal Kumar Agarwal as well as M/s ACL by its false statements resulting in allocation of coal block.

251. It is further argued that MoC or the Screening Committee has not even considered letter dated 17.02.2004. This is a wrong submission in as much as in letter dated 04.07.2005 addressed

by MoS to MoC it is clearly noted "Applied to State Pollution Control Board, Orissa for consent to establish DRI and CPP". This information was referred by MoS only on the basis of letter dated 17.02.2004 furnished by Nirmal Kumar Aggarwal with his letter dated 23.05.2005. Therefore, it cannot be said that letter dated 17.02.2004 was not considered by MoC or the Screening Committee.

252. It is also argued that the case of M/s ACL was recommended in a meeting held by Joint Secretary, Coal and Joint Secretary, Steel where no documents (allegedly forged) were considered by them. Moreover, the Joint Secretaries of the Ministry of Steel and the Ministry of Coal have not been examined to show any cheating.
253. It is already noted that before the meeting of Joint Secretary of Ministry of Coal and Ministry of Steel took place on 01.09.2005, Ministry of Steel had already sent the recommendations on 04.07.2005 to MoC and these are the recommendations which have been taken into consideration in the agenda note of the 30th Screening Committee meeting and by the 30th Screening Committee meeting and not the recommendations of the joint meeting of Joint Secretaries of MoC and MoS. Therefore, in the opinion of this court, prosecution case has suffered no prejudice by not examining the aforesaid two Joint Secretaries.

254. It is also submitted that M/s ACL had applied for coal block in the year 2003 but did not follow up the same till 2005 which shows that they had no intention to cheat.
255. This submission is without any merit.
256. The fact is that from the very inception i.e., when letter dated 07.04.2003 was written by Mahesh Kumar Agarwal, Director of M/s ACL, false information/forged documents were provided. In the agenda form submitted to Screening Committee on behalf of M/s Adhunik Corporation Ltd. by PW 13 Sh. Rakesh Khare, Ex. PW 13/C (D-21) Page 4-6 PDF 2429 it was mentioned that the existing capacity of production of sponge iron of M/s ACL was 0.072 MTPA. Vide letter dt. 03.05.2005, Nirmal Kumar Agarwal had protested non consideration of the case of M/s ACL during the 28th Screening Committee meeting. It resulted in issuance of OM dated 06.05.2005 by MoC to MoS calling for views/recommendations of MoS, as the case may be. At this stage, the accused realised that MoS has been insisting on documentary evidence in proof of preparedness for end use project. MoS had called for this information vide letter dt. 07.08.2003 as well as reminder dated 04.02.2005. In case even now MoS was not satisfied by M/s ACL about its preparedness to set up end use project, the views of MoS would have been unfavourable to M/s ACL. Therefore, Nirmal Kumar Agarwal submitted two letters dt. 23.05.2005 mentioning false facts qua purchase order dt. 15.02.2005 worth Rs. 14 Crore placed upon M/s Beekay Engineering Corporation and acknowledgement dt.

21.02.2005 and also application seeking consent to establish DRI and CPP given to State Pollution Control Board, Orissa. This sequence of events belies the argument of the accused that since there was a gap of two years, there was no cheating.

257. Though in the written submissions, it is mentioned that the alleged forged letter dated 17.02.2004 is a photocopy document and hence inadmissible in the eyes of law, however, the learned counsel for the accused did not press this argument in view of the judgment of the Hon'ble Delhi High Court in the case of Nakul Kohli versus State, Crl. M.C. No. 2029/2010 decided by the Hon'ble Delhi High Court on 09.07.2010 [2010 (173) DLT 197] and as SLP filed against the said judgment was also dismissed by the Hon'ble Supreme Court being SLP Crl. No. 10416/2010 vide order dated 27.11.2010. The earlier judgment in the case of Nakul Kohli was reaffirmed and reiterated in another case also titled as Nakul Kohli vs State, Crl. M.C. 1917/2010 by the Hon'ble High Court vide judgment dt. 17.09.2010.

258. The accused has argued that the allegations that it was falsely claimed that the capacity of the company was 72,000 TPY and the accused company had provided forged TEFRR do not reflect any dishonest intention. Reliance is placed on Dr Sharma's Nursing Home vs Delhi Administration, (1998) 8 SCC 745 to submit that for conviction u/s 420 IPC the findings cannot rest merely on deception but the complainant has to disclose other essential ingredients of the offence u/s 420 of IPC namely

dishonest inducement. The submission is not acceptable in as much as the dishonest intention is clear from the fact that more production was claimed and false TEFR was enclosed to show that the company was better prepared for expansion of Sponge Iron Plant.

259. It is submitted that accused company had no reason to give any false information w.r.t. alleged TEFR as there were no guidelines laid down nor any criteria communicated to the accused company. This argument is also without any merits. It is for the accused to explain that if they were to derive no benefit by filing false TEFR report then why the same was filed by him with MoS.
260. It is argued that the charge in this case is for cheating MoC and even otherwise also MoS is not covered under the term "Person" under Section 415 IPC or Section 420 IPC as MoS was not to deliver any property, MoS was not to consent the accused company to retain any property and MoS was not to suffer any damage or harm to body, mind, reputation or property. It is submitted that by providing alleged forged documents to MoS does not fulfill the requirement under Section 415 IPC in absence of which there cannot be Section 420 IPC also.
261. In the earlier paragraphs, it is already noted that cheating of MoS was cheating of Government of India. Reliance is placed on Kanumukkala Krishna Murthy (Supra) in this regard. Had

accused not induced MoS to believe false presentations, it would not have forwarded the application of M/s ACL to MoC for allocation of coal block. The forwarding of application had the effect of recommending the case of M/s ACL to MoC for allocation of coal block. Had it been the case of merely forwarding the application, then MoS would not have called for documentary evidence in support of preparedness of M/s ACL for expansion of its Sponge Iron Plant and would have forwarded the application of M/s ACL dated 07.04.2003 in the year 2003 itself. However, MoS was not working merely as a post office. It called for documentary evidence from M/s ACL. It sent reminders to ACL to provide the documentary evidence for showing its entitlement of allocation of coal block. Only after receiving letter dated 23.05.2005, MoS was deceived about the preparedness of M/s ACL as is evident from the notesheet of MoS as well as letter dated 04.07.2005 which specifically took note of two aspects, (i) that the company has applied for consent to operate DRI and CPP vide letter dated 17.02.2004 and (ii) it has placed purchase order dated 15.02.2005 for purchasing two kilns (worth Rs.14 Crore) on M/s Beekay Engineering Corporation and the said corporation has acknowledged the receipt of purchase order vide acknowledgement dated 21.02.2005 and all these three statements have been found to be false. Had MoS not been so deceived, it would not have recommended the case of M/s ACL for allocation of coal block. So far as MoC is concerned, it was also not ready to move without recommendation of MoS which

is the Administrative Ministry. The initial letter dated 07.04.2003 by M/s ACL was written to MoS as well as MoC. If recommendations of MoS were not *sine qua non*, the Ministry of Coal would have processed the application dated 07.04.2003. But it was not so. The case of Adhunik Corporation was included in 28th Screening Committee meeting held on 15.04.2005 but not taken further in the absence of recommendations of MoS. When it was protested by M/s ACL vide its letter dated 03.05.2005, MoC vide OM dated 06.05.2005 called upon MoS for its views/recommendations on the letters of M/s ACL dated 07.04.2003 and 06.05.2005. In the 29th Screening Committee Meeting held on 03.06.2005, it was noted that there are a number of cases including the case of Adhunik Corporation where views of the MoS were yet to be sent and the case of Adhunik Corporation was deferred in the absence of recommendations of Ministry of Steel. In the meantime, M/s ACL had provided documentary evidence to show its preparedness for expansion of Sponge Iron Plant vide its letter dated 23.05.2005. However, the documents enclosed therewith were containing false facts. Induced by false contents of documents of M/s ACL, MoS gave its recommendation vide letter dated 07.08.2003. This recommendation was noted in the Agenda Note for the 30th Screening Committee Meeting circulated to all concerned vide letter dated 14.10.2005 and was also noted in the minutes of 30th Screening Committee Meeting held on 18.10.2005. Thereafter, vide letter dated 13.01.2006, new Patrapara Coal Block was allocated to Adhunik Corporation

and some other companies. As per decision of the Hon'ble Supreme Court in the case of Manohar Lal Sharma versus Union of India, dated 25.08.2014 in Writ Petition (Criminal) No. 120 of 2012, the allocation letter by the Central Government creates and confers a very valuable right upon the allottee. The allocation letter by the Central Government leaves practically or apparently nothing for the State Government to decide save and except to carry out the formality of processing the application and for execution of the lease deed with the beneficiary selected by the Central Government. Once the letter allocating a coal block is issued by the Central Government, the statutory role of the State Government is reduced to completion of processual formalities only. The allocation of coal block is not simply identification of a coal block or the allocatee the but it is in fact selection of beneficiary. It confers private rights to the allocatee for obtaining the coal mining leases for their end use plants. In the light of these observations of the Hon'ble Supreme Court, the allocation letter is a property within the meaning of the said letter used in section 420 of IPC. This sequence of events shows that the coal block was got allocated by cheating MoS and by cheating MoC which believed the recommendation letter of MoS believing that the same has been issued on the basis of true facts. Therefore, it proves that M/s ACL successfully cheated MoC, Government of India by making false submissions before MoS.

262. The accused have also argued that the letters dated 23.05.2005 were not to be taken into consideration because the cutoff date was 28.06.2004 and thereafter coal blocks allocation had to be by auction. This fact has already been dealt with by this court in the order on charge where in paragraph 81, 82 and 83, it is held as under:-

“81. It was also submitted by Ld. Counsels for the accused persons that MOC had decided 28.06.2004 as the cut-off date to consider the matter for allocation of coal blocks through Screening Committee route as after that the concept of competitive bidding was evolved. It was thus submitted that after the said date on 28.06.2004 any documents submitted should not be considered. In this regard it would be suffice to state that the said issue has been dealt with by Hon'ble Supreme Court in its judgment dated 25.08.2014 as delivered in the case Manohar Lal Sharma (Supra).

82. While dealing with the said issue of introduction of competitive bidding for allocation of coal block, it was noted by Hon'ble Supreme Court that an Amendment Bill in this regard introduced in the year 2008 was passed by both the Houses of Parliament in the year 2010 and ultimately Section 11A was inserted in the Mines Minerals (Development and Regulations) Act, 1957.

83. Moreover the application of M/s ACL was admittedly received in the month of April 2003 and thus any further information or documents submitted by the accused persons was in response to information sought by Ministry of Steel or MOC during the processing of said application. Thus while on the one hand no such cut-off date of 28.06.2004 had come into operation but even otherwise all such documents were submitted by the accused persons during the

course of processing of their application submitted to Ministry of Steel and MOC in the year 2003.”

263. Therefore, none of the arguments addressed by the accused are capable of securing acquittal in their favour w.r.t. charge of cheating under Section 420 IPC. This point for determination is answered holding that M/s ACL (A-1) and Nirmal Kumar Agarwal (A-2) committed the offence u/s 420 of IPC and Mahesh Kumar Agarwal (A-3) committed the offence u/s 420 read with Section 511 of IPC i.e., attempt to cheat.

7th Point for Determination

Whether Mahesh Kumar Agarwal has committed the offence under section 471 IPC by knowingly using forged documents as genuine?

264. Mahesh Kumar Agarwal had enclosed with his letter dated 07.04.2003 TEFRR which has been found to be a false and forged document. Therefore, it is proved that a false document was used by Mahesh Kumar Agarwal as genuine.
265. An important question for decision of this point for determination is whether Mahesh Kumar Agarwal knew that the said document is a forged document?
266. Mahesh Kumar Agarwal was the Managing Director of M/s ACL. He is named as a key management personnel for M/s ACL. It is evident from D-5, Page 248, PDF 537, Exhibit PW 8/A. He is the one who has signed on the balance sheets of the company for various years including the year ending 31.03.2004. It is evident from D-5, Page 239, PDF 528, Ex.PW-8/A-10.

According to PW-21, the cost of preparing TEFR during 2003 was not less than Rs. 2 Lakhs. A director signing the balance sheet would have known that no such payment of Rs.2,00,000/- has been made to M/s Dimension Engineering & Consultant Pvt. Ltd., for preparing the TEFR. Mahesh Kumar Agarwal would have known that since no payment has been made to this company for making TEFR, the TEFR could not be a genuine one. The accused have sought to show that the cost of TEFR was just Rs.6,000/-. This has been proved wrong by PW-21 who stated that during 2003, charges for preparing TEFR were not less than Rs.2,00,000/-. Accused have also filed forged Offer and forged Acknowledgement from Dimension Engineering Consultant Pvt. Ltd. This is also corroborative of the fact that Mahesh Kumar Agarwal knew that the document in question i.e. TEFR Report is a forged document.

267. The accused have sought to rely on evidence of DW-1 to show that Mahesh Kumar Agarwal as well as Nirmal Kumar Agarwal had no knowledge about the genuineness or forgery of the documents enclosed along with their letters dated 07.04.2003 and 23.05.2005 respectively. They have relied on the statement of DW-1 to show that on the instructions of one Alok Jha, DW-1 got signed these three letters from Mahesh Kumar Agarwal and Nirmal Kumar Agarwal and enclosures with these letters were enclosed later on by Alok Jha before sending the same to Ministry of Steel. DW-1 has also stated that he had told this fact to an official of CBI when he had accompanied Nirmal Kumar

Agarwal to CBI office and while he was sitting in the parking area, in the presence of IO of the case, one official of CBI had asked him if he knows facts of the case and he told afore-stated facts to him in the presence of the IO.

268. The question is whether the evidence of this witness inspires confidence?

269. The accused have examined DW-1 Vikas Garg to prove their innocence. This 10th passed office boy had joined M/s. Adhunik people in 1998 for looking after transit and meeting arrangements of the directors of Adhunik people. He was not employed by M/s. Adhunik Corporation Ltd during 2003-05. He claims to have got letter dated 07.04.2003 Exhibit PW 8/A-2 (D-5) signed from Mahesh Aggarwal and letter dated 23.05.2005 Exhibit PW 8/N-10 (Colly) (D-5) (Page 161-164) and another letter dated 23.05.2005 Exhibit PW 8/A-7 (D-5) (Page 253) from Nirmal Kumar Agarwal upon asking of one Alok Jha. Mahesh Kumar Agarwal and Nirmal Kumar Agarwal, before signing these letters had telephonically spoken to Alok Jha. According to him, Alok Jha was employed at Delhi office. If the version of this witness is to be accepted, then there was no need for Mahesh Kumar Agarwal and Nirmal Kumar Agarwal to make a telephone call while sitting in Delhi office to Alok Jha who was also employed at Delhi office before signing the letters in question. He has also stated when these three letters were signed by Mahesh Kumar Agarwal and Nirmal Kumar Agarwal, there were no annexures and annexures were subsequently put by Alok

Jha. He also stated that Alok Jha is no more alive. The date of death of Alok Jha has been conveniently not informed to the court. No special reason has been given by this defence witness how he remembered after passage of 18 years that these three letters were got signed by him on the asking of Alok Jha from Mahesh Kumar Agarwal and Nirmal Kumar Agarwal? How he remembered that annexures were not annexed with these letters at the time and were annexed later on by Alok Jha? This is more surprising because according to him he used to get the signatures on various correspondences signed from all the directors of Adhunik group i.e., Jugal Kishore Aggarwal, Ghanshyam Das Aggarwal, Manoj Aggarwal besides getting the same signed from Mahesh Kumar Agarwal as well as Nirmal Kumar Agarwal. He claims to be only a matriculate and nothing came on record how he particularly remembered/identified about these three letters after so many years. He also stated that Jugal Kishore Aggarwal was managing the affairs of M/s. Adhunik Corporation Ltd and all decisions were taken by him. If any document was required to be signed pertaining to M/s. Adhunik Corporation Ltd, directions and consent of Jugal Kishore Aggarwal was to be taken. However, according to his statement, before signing the aforesaid three letters by Mahesh Kumar Agarwal and Nirmal Kumar Agarwal, they did not consult Jugal Kishore Aggarwal and signed merely on the asking of merely an employee of the company, Alok Jha. So far as letter dated 07.04.2003 is concerned, it is to be noted that Jugal Kishore Aggarwal was not even the Director of M/s. ACL as on

07.04.2003 as he became a director in this company only on 03.05.2003, D-88, Page 8, PDF 3959, Exhibit P-11. Therefore, it cannot be said that Jugal Kishore Aggarwal was managing the affairs of M/s. ACL as on 07.04.2003. Further, as per D-5, Page 248, PDF 537, Exhibit PW 8/A, Jugal Kishore Aggarwal was shown as one of the Key Management Personnel for Adhunik Corporation Ltd-Financial Year 2003-2004 but so were Nirmal Kumar Aggarwal and Mahesh Kumar Aggarwal, they too were shown as Key Management Personal of M/s ACL during 2003-04. The reason given by DW-1 for not getting the documents signed from Jugal Kishore Aggarwal is that because of his advanced age, he was not travelling much to Delhi. However, inspite of his advanced age in the year 2003, the witness stated that the said Jugal Kishore Aggarwal was still alive in the year 2021 i.e., even after passage of 18 years since then. A person stated to be of advanced age and hence debilitated from travelling could not have survived for 18 long years since then. The explanation given by the witness why Jugal Kishore Aggarwal did not attend the Screening Committee meeting if he was looking after affairs of M/s. Adhunik Corporation Ltd was again the same that because of his advanced age he could not visit Delhi. The witness has not disclosed the age of Jugal Kishore Aggarwal in the year 2003 to show that he was of such an advanced age that he was not able to attend the Screening Committee meeting in Delhi. As per Exhibit P-11, D-88, page 211D date of birth of Jugal Kishore Aggarwal is 05.10.1951. Therefore, in the year 2003 and 2005 he would have been aged

52 and 54 years respectively. This age is not such at which a person is not able to travel. Though the witness claims that Alok Jha had experience in coal mining and was looking after the work of coal block allocations, in spite of having such an expertise, the said Alok Jha did not attend any of the Screening Committee meetings. Nothing has been brought on record to show that Alok Jha was mining expert. Had he been a mining expert, M/s. ACL would not have required the help of PW 9 B.Akela, Ex-Chairman, Managing Director, CMPDIL of Coal India Ltd for providing coal mining consultancy for M/s. ACL and he would not have been approached by Nirmal Kumar Aggarwal for this purpose. PW 21 had prepared technical report of Patrapara captive coal block for M/s. Adhunik Corporation Ltd, Exhibit PW 9/A in Exhibit PW 9/B, D-5, Correspondence Page 175-181, PDF 462-468. Whereas B.Akela had attended a screening committee meeting with Nirmal Kumar Aggarwal but so-called mining expert Alok Jha has not attended any meeting of the screening committee for representing either M/s. ACL or any other company of Adhunik Group. The reason given for Alok Jha not attending the meeting of the screening committee is stated to be his personal reasons which does not inspire confidence. Besides B.Akela, the other mining engineer who had worked for M/s. Adhunik Corporation Ltd is PW 13 Rakesh Khare. This witness had addressed letter dated 07.04.2005, Exhibit PW 8/A-7, (D-5, Page 153, PDF 440) requesting Ministry of steel for recommendation of proposal of M/s. ACL for allotment of Patrapara coal block to the screening committee. He had also

submitted agenda form on behalf of M/s ACL to the screening committee, Exhibit PW 13/C, D-21, Page 4-6, PDF 2429. It shows that the mining experts for M/s. ACL were PW 9 B.Akela and PW 13 Rakesh Khare and this so-called Alok Jha would not have been a mining expert. DW-1 went on to claim that once he had gone to CBI office with Nirmal Aggarwal and while he was waiting in the parking area somebody from CBI had asked him whether he knew the facts of the case and he had told him the aforesaid facts which were deposed by him in the court as a defence witness. He did not tell the date of the said visit. He could not tell the name of the person from CBI to whom he had told these facts. During re-examination (which was not recorded soon after conclusion of his cross-examination but after a gap with the excuse that the main Counsel who was otherwise present during recording of entire cross examination had to rush to some other court the moment cross-examination of this witness by the Ld. Sr. PP for CBI ended and was unavailable immediately to record re-examination of the witness), he improved his statement and stated that the person from CBI to whom he had told the facts was accompanied by IO of this case. This witness was the Authorised Representative of M/s. Adhunik Corporation Ltd before this court from 20.02.2019 till 25.02.2021. When the IO was in the witness box as PW 22 from 19.09.2019 till 23.12.2019, he was not asked during his cross-examination whether this AR of the company had told any official of CBI in presence of the IO that Mahesh Kumar Agarwal and Nirmal Kumar Agarwal had merely signed letters dated 07.04.2003 and

23.05.2005 simply on the asking of an employee of the company. Jugal Kishore Aggarwal, though alive, did not enter the witness box to depose that all the affairs of M/s. Adhunik group were being looked after by him. Whereas, DW 1 stated that Mahesh Kumar Agarwal and Nirmal Kumar Agarwal were looking after affairs of M/s. Futuristic Steel Private Ltd and M/s. Northern Industrial Corporation respectively. However, there is no documentary evidence in this regard. Letter dated 07.06.2003, Exhibit PW 8/A-4, Page 149, PDF 436 was written by Mahesh Kumar Agarwal as a director of M/s Adhunik Corporation Ltd to Ministry of Steel. The two letters dated 03.05.2005, Exhibit PW 8/A-8, D-5, Page 154, PDF 441 and Exhibit PW 8/A-9, D-5, Page 157, PDF 444 were also written by Nirmal Kumar Agarwal to the Ministry of Steel and Ministry of Coal respectively as a director of M/s Adhunik Corporation Ltd. Nirmal Kumar Agarwal had also written letter dated 10.06.2005, Exhibit PW 8/A-13, D-5, Page 366, PDF 655 as a director of M/s Adhunik Corporation Ltd. If Mahesh Kumar Agarwal and Nirmal Kumar Agarwal were not attending to the affairs of M/s. ACL, why these letters were written by them on behalf of M/s Adhunik Corporation Ltd. So much so, the very 1st letter to MoS requesting for allocation of a coal block in favour of M/s Adhunik Corporation Ltd which was an important application was also written by Mahesh Kumar Agarwal and not Jugal Kishore Aggarwal. If Jugal Kishore Aggarwal was attending the affairs of M/s. ACL, then why there is not even a single letter addressed by him to either Ministry of Steel or Ministry of Coal on behalf of M/s Adhunik Corporation

Ltd. His presence is not recorded in any of the Screening Committee meetings. Jugal Kishore Aggarwal enjoyed a good health during 2003 and 2005 is evident from the fact that he is still alive in the year 2022. PW 3 Sukumar Mukhopadhyay, Superintendent, Central Excise and Customs and Service Tax, Kolkata also stated that he knew Mahesh Kumar Agarwal, Director Adhunik Corporation Ltd as he used to often meet him during the course of official discharge of his duties and correctly identified Mahesh Kumar Agarwal present in the court. PW 7 Sanjay Pratap has also stated that Nirmal Kumar Aggarwal was the Head of Mandi Govindgarh office of M/s Adhunik Corporation Ltd. PW 9 B.Akala, Ex-Chairman, Managing Director, CMPDIL of Coal India Ltd has deposed that he was approached by Nirmal Aggarwal in 2004-05 for providing coal mining consultancy for their company called Adhunik. He deposed that he had prepared technical report for Patrapara captive coal block for M/s. Adhunik Corporation Ltd and proved Annexure-IV and Annexure V, D-5, Page 175-181 as Exhibit PW 9/A and Exhibit PW 9/B. He has also deposed that probably he had attended one screening committee meeting of MoC in the year 2005 along with Nirmal Aggarwal of M/s. Adhunik Corporation Ltd. PW 11 Prem Raj Kumar has also stated that on behalf of Adhunik Corporation Ltd, Nirmal Kumar Aggarwal used to visit MoC in connection with their application seeking allocation of a captive coal block as one of the directors of the company. PW 13 Rakesh Khare, a mining engineer has also stated that he had met Mahesh Kumar Aggarwal in connection with the affairs of Adhunik Corporation

Ltd. The agenda form submitted to the screening committee on behalf of Adhunik Corporation Ltd by this witness was proved as Exhibit PW 13/C. He deposed that he had signed letter dated 07.04.2005, Exhibit PW 8/N-7 addressed to Ministry of Steel requesting for recommendation of proposal of Adhunik Corporation Ltd for allotment of Patrapara coal block to the screening committee. He stated that he had signed this letter at the instance of Manoj Aggarwal or Nirmal Kumar Aggarwal. He deposed that he had filled up this agenda form at the instance of Manoj Agarwal or Nirmal Kumar Aggarwal. He never took the name of Jugal Kishor Agarwal. It shows active involvement of Mahesh Kumar Aggarwal and Nirmal Kumar Aggarwal in the affairs of M/s. Adhunik Corporation Ltd and also shows that the defence of the accused that the affairs of M/s. Adhunik Corporation Ltd were looked after by Jugal Kishore Aggarwal is incorrect. Therefore, the defence of the accused is illusory, sham and practically moonshine. To say the least, the overall line of defence of the accused during trial is not compatible with the cock and bull story now told by this sole defence witness. Considering the entirety of the matter, this court does not believe that the version given by this witness has any iota of truth in it. Moreover, it is also to be noted here that no efforts were made to show that Nirmal Kumar Aggarwal was ignorant of the fact that the contents of letter dated 18.04.2005 addressed to M/s. ITC under his signatures were false (D-5, Page 166, PDF 453) or that the contents of letter dated 15.02.2005, Exhibit PW 6/DX-2,

D-5, Page 168-173, PDF 455, written under his signatures to M/s. Beekay Engineering Corporation were false.

270. Therefore, this point for determination is answered holding that Mahesh Kumar Agarwal knowingly used forged TEFR as genuine along with his letter dated 07.04.2003 and is therefore guilty of offence u/s 471 IPC.
271. The accused have relied on Sukhdev Jha Utpal vs. State of Bihar, AIR 1957 SC 466. In that case, it was held that General Manager of a company cannot be expected to know whether the particulars of vehicle mentioned for issuance of petrol coupons were correct or not. The case is distinguishable on facts. Petrol coupons are not comparable with TEFR report worth Rs.2 Lacs in the year 2003. Therefore, this point for determination is answered holding that Mahesh Kumar Agarwal knowingly used forged document as genuine with his letter dated 07.04.2003.

8th Point for Determination

Whether letter dated 18.04.2005 is a false and forged letter?

272. While deciding the earlier points for determination, it is held that Nirmal Kumar Agarwal falsely stated in letter dated 23.05.2005 that letter dated 18.04.2005 has been written to M/s ITC, Raipur, Chhatisgarh, appointing them consultant for Detailed Engineering and Consultancy of 2 x 350 TPD Sponge Iron Plant.

273. This letter addressed to M/s ITC is written under signatures of Nirmal Kumar Agarwal (A-2).
274. The submission of the accused is that this letter cannot be treated as a forged letter as the same is under the signature of accused Nirmal Kumar Agarwal himself. Reliance is placed on Mohd. Ibrahim vs. State of Bihar, (2009) 8 SCC 751 and on Sheila Sebastian vs. R. Jawahar Raj, 2018 (7) SCC 581.
275. In the case of Mohd. Ibrahim (Supra), there was a dispute between cousin brothers over title of a piece of land. The accused had sold the land claiming himself to be the owner thereof. Prosecution was launched by the complainant/cousin brother that the land sold by the accused was inherited by him. It was held by the Hon'ble Supreme Court in this case that:

“There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafied believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed, or by the authority of a person, by whom or

by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined u/s 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.”

276. In the case of Sheila Sebastian (Supra), an impostor impersonating as complainant had created a power of attorney in the name of accused no. 1 as if he was agent of the complainant. The accused no. 1 using the aforesaid power of attorney in his favour attempted to transfer the property of complainant by executing a mortgage deed in favour of accused no. 2. On receiving information of the aforesaid transaction, complainant filed a complaint resulting in filing of charge-sheet u/s 420, 423 and 424 of IPC. Charge was framed against accused persons including section 465 of IPC and accused no. 1 was convicted u/s 465 IPC and accused no. 2 was convicted u/s 465 r/w section 109 IPC. The order was upheld in appeal. However, the Hon'ble High Court acquitted the revisionist petitioners holding that requirement of section 464 IPC is not satisfied. The order of acquittal was challenged by the complainant before the Hon'ble Supreme Court. It was held by the Hon'ble Supreme Court that a charge of forgery cannot be imposed on a person, who is not the maker of the same. There is no finding by the Trial Court that the respondents had made

any false document to execute mortgage deed under the guise of that false document. Therefore, they cannot be held as makers of forged documents. It is the impostor who can be said to have made the false document by committing forgery. The impostor was not found or investigated into by the investigating officer. There is nothing regarding relationship between impostor and respondent no. 1. Strong suspicion cannot take the place of proof. It was further held that only the one who makes a false document can be held liable u/s 464 of IPC. Thereafter, the appeal was dismissed.

277. The submissions of the Ld. Counsel for the accused have been considered.
278. It is well settled that incorporation or inclusion of a false statement in a document would not *ipso facto* make the document false for a document to be false it has to tell a lie about itself, J. Th. Zwart and Ors. vs. Indrani Mukherjee, (1990) 1 Cal. LT 99 HC.
279. The facts of case in hand are different and clearly distinguishable from the facts in the case of Mohd. Ibrahim (Supra) and Sheila Sebastian (Supra).
280. While deciding the earlier point for determination, it is already decided that as on 18.04.2005, this letter dated 18.04.2005 addressed to M/s ITC had not come into existence. This letter was never received by M/s ITC and M/s ACL had never appointed M/s ITC as consultant for detailed engineering and

consultancy of 2 x 350 TPD Sponge Iron Plant. This letter dated 18.04.2005 tells a lie about itself. Obviously, it is ante dated after 18.04.2005.

281. In the case of Bharat Hiralal Sheth & Ors. vs. Jaysin Amarsinh Sampat, 1997 Cri. LJ 2509, the submission of the accused was that the documents at Annexure 'C' were admittedly prepared by the accused i.e. in their office in the name of the accused and consequently the matter did not come in the definition of the word 'Forgery'. Annexure 'C' was a bill giving details of certain transactions between complainant and the accused in which it was shown that the complainant had suffered losses. The allegation of the complainant was that this bill was fabricated by the accused in the complainant's name in order to avoid making the payment of dues to the complainant.

282. The Hon'ble High Court observed as under:-

“8. It is true that on the face of it documents Exhibit "C-7" is not made by the petitioner with the intention of causing it to be believed that the petitioner made the document with or by the authority of some other person and as such it appears that petitioners have a strong case in their favour. However, there is another angle to this argument and according to the learned Counsel for the respondents and the learned APP Illustration (h) of Section 464 and Explanation 1 of Illustration (e) thereof squarely and directly bring the case within the ambit of Sections 463 and 464.

9. Illustration (h) is as under :-

"(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a

conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery."

Explanation 1. - A man's signature of his own name may amount to forgery.

Illustration (e) is as under :-

"(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had security of B, and thereby to discount the bill, A is guilty of forgery."

10. It will be seen from the Illustration (h) that A in order to defraud Z executed a conveyance of the same estate to B which was anti-dated by six months than the conveyance of Z and this was done by A intending it to be believed that he had conveyed the estate to B before he conveyed it to Z and this has been held to be forgery. From this illustration it will be clear that a man can be said to have committed a forgery of document even if he himself is the author and signatory of the document. This illustration does not require that he should sign a document making it to be believed that somebody else has signed the same or that he was authorised to sign the same on somebody else's behalf.

11. Explanation 1 makes it further clear that the man's signature in his own name may amount to forgery and from Illustration (e) it is clear that writing a promissory note by A in the circumstances given in the illustration is considered as an act of forgery under the first head of the definition.

12. From these two Illustrations (h) and (e) and Explanation 1 it will be clear that legislature intended

to cover cases under the offence of forgery whenever the person was the creator of a document even though the document was made by himself in his own name and signed in his own name. These two illustrations with Explanation 1, therefore, make the scope of the definition "Making a false document" very wide and it cannot be said that part 1st of 464 is the only provision defining words "Making the false document".

13. In view of this legal provision, it can be prima facie held that preparing Exh. "C-7" by the petitioners showing the certain transaction dated 23-8-1974 when, in fact, according to the complainant those transactions did not take place on 23-8-1974 and that they did not find place in the bill Ex. "C-8" dated 30-8-74 served upon the complainants, was forgery by the petitioner. The contention of the petitioners' Advocate, therefore, has to be rejected and that of the respondents' Advocate and his placing of reliance on Illustration (h), Explanation 1 and Illustration (e) has to be accepted."

283. In the case of Rekha Sharma vs CBI, Crl. A. 124/2013, which is a judgment of Hon'ble Delhi High Court, the submission of the accused was:

" 250. It is argued that if a person signs in his or her own name and admits to the same, it does not amount to forgery as an essential element of impersonation is missing in completing the offence of forgery. Reliance is placed on Explanation 1 to Section 464- Making a false document and the illustration (a) thereof. Elaborating this argument it is submitted that Explanation 1 has to be understood in terms of illustration (a). A person's own signature may amount to forgery only when it is done intending that it may be believed that the signature was scribed by another person of the same name."

284. The Hon'ble Delhi High Court dealt with the submission pertaining to forgery as under:

“Forgery

450. Factually, there are two sets of lists, both containing the signatures of relevant committee members. I have already observed in the preceding paragraphs that the Directorate lists, on the basis of which the results were declared and appointments were made, are the fake lists. The trial Court has returned a finding of guilt under Sections 467 and 471 IPC with regard to the committee members.

451. It is argued on behalf of CBI that the act of fraudulent substitution of the original selection lists by a new set of ante-dated lists actually prepared later in time and having different contents amounts to making a 'false document' in terms of section 464 IPC. The Sections are reproduced as under:

Section 463 – Forgery

[Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 464 - Making a false document

[A person is said to make a false document or electronic record--

First.--Who dishonestly or fraudulently--

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

452. The present case is not of mere innocuous ante-dating of a document by its authorized maker

but of fraudulent creation of a document giving an impression that it was created much earlier in time than it was actually created and having drastically different contents than the documents for which it was substituted. The fact that such document created later in time had drastically different contents than the original document signifies the fraudulent purpose for its creation.

453. Learned Counsel Mr. Khanna cites the decision in the case reported as **Rao Shiv Bahadur Singh and Anr. v. The State of Vindhya Pradesh**; AIR 1954 SC 322 to support the argument on antedating of document. It was observed as under:

“21. All these circumstances go to show that far from these documents coming into existence on the respective dates which they bore they were in fact brought into existence on the afternoon of 11th April, 1949 at the Constitution House as alleged by the prosecution and were ante-dated to 1st April, 1949 and 2nd April, 1949 respectively with a view to show that the resumption order had already been granted by Appellant 1 to the Syndicate at Rewa on 2nd April, 1949. The evidence of Nagindas and Pannalal thus in respect of the forgery of these documents bears the stamp of truth and deserves to be accepted.”

454. My attention is also invited to the observations in the case reported as **Dharmendra Nath Shastri vs. Rex through Sheoraj Singh**; AIR 1949 ALL. Relevant paras are reproduced as under:

“15. ...

16. ...

17. ...

18. The next point argued was that the charge levelled by the prosecution being one only of a substitution of a fresh writing in place of the writing originally existing it did not come within the offence charged, such a case not being one of an alteration of a document within cl. (2) of S. 464, Penal Code. While this may be true, it is also true that the case set up by the complainant would be clearly covered by cl. (1) of S. 464, which, along with the opening words of the section, reads as follows:

“A person is said to make a false document who dishonestly or fraudulently makes ... a document... with the intention of causing it to be believed that such document... was made ... at a time at which he knows that it was not made ...”

19. If, therefore, the writing, Ex. A was not in existence on 31st January 1946, on which date the accused filed his written statement, but had come into existence later and was shoved into the file of the House Controller, as if it had been there since 31st January 1946 and was really the written statement originally filed by him it would be obviously covered by the said clause of S. 464. We, therefore, reject this contention also.

455. On behalf of the appellants the challenge to applicability of this Section is centered on the contention that a man's own signature may amount to forgery only when he intends that it may be believed that the document on which he has signed was drawn by another person of the same name. In effect, it is basically urged that a person's signature cannot be said to be forged unless there is an

element of impersonation involved. This is quite an absurd explanation of Explanation 1 to the section. Explanation 1 says that a man's own signature may amount to forgery. Illustration (a) describes a situation where a person's signature may amount to forgery even when he signs in his own name. Illustration (h) to the Section describes another situation where a person's own signature will amount to forgery. Under illustration (h), creating a false conveyance deed by ante dating the same, A intended to defraud Z and, therefore, signing on such conveyance deed in his own name, he is not impersonating a third person rather the intention is to defraud through creation of an ante dated document. The underlying purpose of both illustrations is the intent to deceive, whether it is by signing an antedated document or by signing one's own name on a document knowing fully well that the authorized person having the same name the document is likely to cause deception of having been signed by the authorized signatory. The position of law emerging on a conjoint reading of the decisions in **Rao Shiv Bahadur** (supra) and **Dharmender Nath Shastri** (supra) further clarifies that it is the intent to defraud through creation of an antedated document that is of the essence. This can also be done by signing a document in one's own name, as has been done in the present case. The contention is, therefore, rejected."

285. While deciding the 3rd point for determination, it is already held that Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel about appointment of M/s. Industrial Technical Consultant, Raipur as consultants for detailed engineering and consultancy to show effective steps taken by the company towards their proposed project.

286. Nirmal Kumar Agarwal used letter dt. 18.04.2005 with the intention of causing it to be believed that such purchase order was placed on 18.04.2005 by M/s ACL upon M/s ITC knowing fully that no such purchase order was placed on M/s ITC or existed on 18.04.2005. This is a case of ante dating the same. Therefore, purchase order dt. 18.04.2005 would be false document and hence, forged one.
287. In the case of Mohd. Ibrahim, the sale deed contained a false averment that the seller was the owner of the property but the sale deed was not non-existent or ante dated as in present case where there was no letter dated 18.04.2005 in existence on the said date. Therefore, the facts of Mohd. Ibrahim (Supra) are entirely different from the facts of this case.
288. In the case of Sheila Sebastian (Supra), the forged document was Power of Attorney and the mortgaged deed was executed on the basis of the said Power of Attorney. The impostor who had impersonated as the complainant for executing the Power of Attorney was not before the court. He was the one who had created a false document. However, he was not being prosecuted and in these circumstances, execution of mortgaged deed by the accused on the basis of forged Power of Attorney was not found to be a false document and therefore a forged one.
289. This is not so in the case in hand. It is not the case of making a false submission in a document. In this case, the document did

not exist on 18.04.2005 and was ante dated later on for enclosing the same with letter dated 23.05.2005 by Nirmal Kumar Agarwal, and hence a forged document. While dealing with 7th point for determination, it is already held that the evidence of DW-1 that Nirmal Kumar Agarwal was not knowing the contents of letters dated 23.05.2005 when he signed them is without any iota of truth in it. Moreover, DW-1 has not spoken a word about letter dated 18.04.2005 which is signed by Nirmal Kumar Agarwal. This point for determination is answered holding that letter dated 18.04.2005 is forged one.

9th Point for Determination

Whether letter dated 15.02.2005 is a false and forged letter?

290. While deciding 4th point for determination, it is already decided that Nirmal Kumar Agarwal made false claim in his letter dated 23.05.2005 addressed to Ministry of Steel that M/s ACL has placed purchase order dated 15.02.2005 on M/s. Beekay Engineering Corporation and also falsely claimed that M/s Beekay Engineering Corporation has acknowledged their Purchase Order vide acknowledgement dated 21.02.2015 to show effective steps taken by the company towards their proposed project.
291. The argument addressed on behalf of the accused relying on Mohd. Ibrahim (Supra) and Sheila Sebastian (Supra) that a man cannot be guilty of forgery by his own signatures is already rejected while deciding the 8th point for determination dealing

with forged letter dated 18.04.2005. On the same analogy, once this court has held that M/s ACL had not placed any Purchase Order dated 15.02.2005 upon M/s Beekay Engineering Corporation, Purchase Order dated 15.02.2005 would also be a false and forged letter being ante dated even though the same is signed by Nirmal Kumar Agarwal, the accused in this case. Therefore, this point for determination is answered holding that Purchase Order dated 15.02.2005 is also a false and forged document.

10th Point for Determination

Whether Acknowledgement dated 21.02.2005 is a false and forged letter?

292. While deciding 4th point for determination, it is held that Nirmal Kumar Agarwal had falsely stated that M/s ACL had received acknowledgement dated 21.02.2005 from M/s Beekay Engineering Corporation.
293. The evidence of PW-6 K.L. Agarwal has shown that he had not issued this acknowledgement.
294. This is also decided earlier that no Purchase Order dated 15.02.2005 was issued by M/s ACL upon M/s Beekay Engineering Corporation, therefore, question does not arise for issuance of any acknowledgement dated 21.02.2005 by M/s Beekay Engineering Corporation. There is nothing to show that any payment was made by M/s ACL for the price of 2 kilns to be

provided by M/s Beekay Engineering Corporation, neither there is any proof of advance payment i.e., 15% nor there is evidence of payment of entire sale consideration of Rs.14 Crore. Cornered, the accused as an afterthought stated that no payments were made due to uncertainty of allocation of coal block. This is unbelievable because atleast 15% advance i.e., Rs.2.1 Crore had to be given along with Purchase Order dated 15.02.2005 itself. Since there is no proof of payment of any advance, M/s Beekay Engineering Corporation has denied having received Purchase Order dated 15.02.2005 and PW-6 K.L. Agarwal has denied issuance of acknowledgement dated 21.02.2005. While dealing with 7th point for determination, it is already held that the evidence of DW-1 that Nirmal Kumar Agarwal was not knowing the contents of letters dated 23.05.2005 when he signed them is without any iota of truth in it. Therefore, this point for determination is answered holding that the acknowledgment dated 21.02.2005 is false and forged.

11th Point for Determination

Whether letter dated 17.02.2004 is a false and forged letter?

295. While deciding 5th point for determination, it is held that Nirmal Kumar Aggarwal falsely claimed in his letter dated 23.05.2005 that M/s ACL has applied to State Pollution Control Board, Orissa for establishing DRI and CPP vide letter dated 17.02.2004.

296. It is already held that no letter dated 17.02.2004 was ever submitted in the office of State Pollution Control Board, Orissa on behalf of M/s ACL.
297. It is also held that no application in the prescribed Form-IV was submitted in the office of State Pollution Control Board, Orissa by M/s ACL.
298. It is also held that no "Requisite Fee" which was required to be deposited along with application seeking consent to establish DRI and Captive Power Plant was deposited by M/s ACL with State Pollution Control Board, Orissa.
299. So far as this letter dated 17.02.2004 is concerned, the accused rightly have not placed reliance on Mohd. Ibrahim (Supra) or Sheila Sebastian (Supra) as those judgments are not applicable to the facts and circumstances of the case and this letter dated 17.02.2004 is not even signed by Nirmal Kumar Agarwal, though it would have made no difference to the outcome of the case if the same was signed by Nirmal Kumar Agarwal. The said application dated 17.02.2004 is given in the name of Sanjay Pratap. However, the same is prefixed by 'For' before the name of Sanjay Pratap meaning thereby that according to the accused themselves, this application was not signed by Sanjay Pratap. PW-6 Sanjay Pratap has also stated that this application is not signed by him.
300. In the totality of circumstances, it is therefore proved that letter dated 17.02.2004 is a false and forged letter being ante dated.

This letter never existed on 17.02.2004 and has seen the light of the day only on 23.05.2005 when it was used by Nirmal Kumar Agarwal with his letter dated 23.05.2005. However, it is not proved who has forged that letter.

301. While dealing with 7th point for determination, it is already held that the evidence of DW-1 that Nirmal Kumar Agarwal was not knowing the contents of letters dated 23.05.2005 when he signed them is without any iota of truth in it. Therefore, this point for determination is answered holding that letter dated 17.02.2004 enclosed with letter dated 23.05.2005 by Nirmal Kumar Agarwal is a forged letter.

12th Point for Determination

Whether Nirmal Kumar Agarwal has committed the offence under section 471 IPC by knowingly using forged documents as genuine?

302. For answering this point for determination, finding has to be returned whether Nirmal Kumar Agarwal had used any forged document as genuine and whether he knew the same to be forged one.
303. Nirmal Kumar Agarwal (A-2) had written two letters dated 23.05.2005, Ex. PW-8/A-10, D-5, Page 161, PDF 448 to Ministry of Steel. As per discussions on previous points for determination, he had enclosed with his first letter dated 23.05.2005 original of letter dated 18.04.2005 purportedly

written to M/s ITC, copy of Purchase Order dated 15.02.2005 purportedly written to M/s Beekay Engineering Corporation and original of Acknowledgement dated 21.02.2005 purportedly written by M/s Beekay Engineering Corporation to M/s ACL. Along with his second letter also dated 23.05.2005, he had enclosed photocopy of letter dated 17.02.2004 purportedly written to State Pollution Control Board, Orissa. As per the decision on earlier points for determination, all these four letters are false and forged letters. Fraudulently or dishonestly, they were used by Nirmal Kumar Agarwal as genuine knowing fully well that the same are forged.

304. The signatory on letter dt. 18.04.2005 and 15.02.2005 is none else but Nirmal Kumar Agarwal. These documents are false and forged documents. The accused have examined DW 1 to prove that Alok Jha used to get letters signed from Nirmal Kumar Agarwal without Nirmal Kumar Agarwal knowing the truthfulness or otherwise of those documents. This DW 1 has been disbelieved by this Court while deciding earlier point for determination. However, so far as Nirmal Kumar Agarwal is concerned, even if every word of DW 1 is treated as gospel truth, even then this point for determination would be answered against Nirmal Kumar Agarwal for the reason that DW 1 has stated that he got letters dt. 23.05.2003 signed from Nirmal Kumar Agarwal when the annexures were not enclosed with that letter. Even if it is believed, the accused have offered no

explanation whatsoever how Nirmal Kumar Agarwal signed on letter dt. 18.04.2005 as well as 15.02.2005.

305. These two letters have not even been touched by DW-1 in his deposition.
306. This accused is one of the Directors of M/s ACL and key management personnel.
307. The cost of purchase order placed on M/s ITC is stated to be Rs. 25 Lakhs. 10 per cent thereof had to be given in advance. Meaning thereby, a sum of Rs. 2.5 Lakh had to be given to M/s ITC at the time of placing of orders.
308. Similarly, the price of two kilns ordered vide purchase order dt. 15.02.2005 is Rs. 14 Crores. According to the purchase order, 15 per cent advance was to be given along with the purchase order. Meaning thereby M/s ACL had to pay Rs. 2.1 Crore along with the purchase order itself.
309. The director of a company, who is also one of the named key management personnel, would have known whether this huge amount of Rs. 2.1 Crore was given or not to the vendor i.e., M/s Beekay Engineering Corporation.
310. The accused could give no proof of any such payment taking the plea that as per Companies Act, they are not required to maintain documents which are more than 8 years old. This explanation is least acceptable for the reason that no company can argue that it had made a payment of Rs. 2.1 Crore 8 years

ago but is having nothing to show the said payment due passage of 8 years.

311. The other submission of the accused that no payments were given to M/s ITC or M/s Beekay Engineering Corporation are false because even in the documents relied on by the accused i.e., letter dated 18.04.2005 and Purchase Order dated 15.02.2005, it is mentioned that 15% and 10% advance respectively had to be given. Therefore, the plea that no advance was given while placing these orders is contradictory to terms and conditions of order itself. Therefore, the circumstantial evidence proves that Nirmal Kumar Agarwal knew that neither any payment has been made to M/s ITC nor to M/s Beekay Engineering Corporation and he knew that the purchase order dt. 18.04.2005, 15.02.2005 and acknowledgment dt. 21.02.2005 are false documents and still he used them as genuine and therefore he committed the offence u/s 471 IPC.
312. So far as letter dt. 17.02.2004 is concerned, nothing came on record to show that M/s ACL had applied for consent to establish DRI and CPP to State Pollution Control Board, Orissa.
313. It was also proved that neither any such letter dated 17.02.2004 was given nor any application in prescribed format of Form-IV was given nor any requisite fee was deposited in this regard by M/s ACL with State Pollution Control Board, Orissa.

314. Consent to establish is an important step for a company producing sponge iron. It can only be applied when infrastructure of the plant is in position. But it is seen that the expert M/s ITC denied having been appointed as consultant to set up the plant, the supplier M/s Beekay Engineering Corporation has denied having received the Purchase Order dated 15.02.2005 for supply of kilns and supplier has also denied having sent acknowledgement dated 21.02.2005. Therefore, in the absence of plant and machinery and in the absence of any consultant, Nirmal Kumar Agarwal would have known that it was impossible to apply for consent to establish. Thus, the circumstantial evidence shows that Nirmal Kumar Aggarwal had the knowledge being Director and being one of the named key management personnel that M/s ACL has not applied for consent to establish with State Pollution Control Board and still enclosed copy of letter dt. 17.02.2004 with his letter dt. 23.05.2005, which shows that he used forged document knowing fully well that same is not genuine.
315. When an accused produces a copy of forged document, his intention is that the original which was a forged document, should be used as genuine. When he sends copy of original which was forged, he clearly uses the original forged document, for by the production of the copy he was giving secondary evidence of the contents of a document which he knew or had reason to believe to be forged. What Section 471 requires is the use as genuine of any document which is known or believed to

be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original. Reliance can be placed on *Buddhu Ram vs. State of Rajasthan*, (1963) 3 SCR 376. It is to be noted again that out of four forged letters, only two were copies i.e., acknowledgement dated 21.02.2005 and letter dated 17.02.2004 and other two letters i.e., letter dated 18.04.2005 and 15.02.2005 are original, under signature of Nirmal Kumar Agarwal (A-3). Therefore, this point for determination is answered holding that Nirmal Kumar Agarwal for cheating MoS, Screening Committee, Ministry of Coal, Government of India for allocation of coal block, used four forged documents i.e., letter dated 18.04.2005, Purchase Order dated 15.02.2005, Acknowledgement dated 21.02.2005 and letter dated 17.02.2004 along with his letters dated 23.05.2005 knowing that they are not genuine and therefore committed the offence u/s 471 IPC.

13th Point for Determination

Whether all the three accused had entered into a criminal conspiracy to cheat Ministry of Coal, Government of India by using forged documents for procuring allocation of coal block?

316. The decision on 1st point for determination is that Mahesh kumar Agarwal (A-3) had made a false statement in letter dt. 07.04.2003, Ex. PW-8/A-2, D-5, Page 1-147, PDF 281-434 that M/s ACL is producing 72,000 MT of sponge iron every year. It is also decided in 2nd point for determination that he had enclosed

therewith a false and forged TEFR, Ex.PW-8/A-2, D-5, Page 25-91, PDF 306-372. The purpose of this false statement about production of sponge iron and the purpose of using forged document/TEFR was to impress upon MoS as well as MoC about the capability and readiness of M/s ACL for expansion of sponge iron plant for seeking allocation of coal block in its favour. First, MoS sought clarification from M/s ACL why two group companies of same group have applied for same coal block vide Ex. PW-A-3, D-5, PDF 435. M/s ACL, vide letter dated 07.06.2003, Ex. PW-8/A-4, D-5, Page 149-150, PDF 436 gave its reply. However, as MoS was not satisfied with the application and enclosures of letter dt. 07.04.2003 and vide letter dated 07.08.2003, Ex. PW-8/A-5, D-5, Page 151, PDF 438 had called for documentary evidence in support of preparedness for end use project. The applicant company M/s ACL gave no reply resulting in reminder dated 04.02.2005 by MoS to M/s ACL, Ex. PW-8/A-6, D-5, Page 152, PDF 441.

317. During 28th Screening Committee Meeting, although M/s ACL was invited but its application was not considered which was protested by Nirmal Kumar Agarwal by writing letter dated 03.05.2005, Ex. PW-8/A-8, D-5, Page 154, PDF 441. Therefore, vide OM dated 06.05.2005, Ex. PW-8/A-9, D-5, Page 156, PDF 443, MoC called for views/recommendations of MoS on the applications of M/s ACL dated 07.04.2003 and 03.05.2005.

318. In the absence of documentary evidence which was repeatedly called by MoS from M/s ACL for showing its preparedness for

development of end use project, the response of MoS would have been unfavourable and in negative.

319. At this stage, Nirmal Kumar Agarwal addressed letter dt. 23.05.2005 to MoS, Ex. PW-8/A-10, D-5, Page 161, PDF 448. This was not a standalone letter. It was specifically in reference to earlier letter dated 07.04.2003 addressed by Mahesh Kumar Agarwal to Ministry of Steel and Ministry of Coal where he had falsely stated about production capacity of sponge iron plant and had enclosed with that letter a forged TEFRR. Along with first letter dated 23.05.2005, he had enclosed forged letter dt. 18.04.2005, Ex. PW-5/DX-1, D-5, Page 166, PDF 453, forged Purchase Order dated 15.02.2005, Ex. PW-6/DX-2, D-5, Page 168-173, PDF 455 and forged acknowledgment dated 21.02.2005, Ex. PW-6/DX-1, D-5, Page 174, PDF 461. Mahesh Kumar Agarwal and Nirmal Kumar Agarwal being the managing director and director respectively of M/s ACL and both being key management personnel of M/S ACL were acting in tandem with each other with the objective of securing allocation of a coal block in favour of M/s ACL. The deficiencies/shortcomings in letter dated 07.04.2003 as pointed out by MoS in their letter dated 07.08.2005 were made good by Nirmal Kumar Agarwal by enclosing with his letters as many as four forged letters. He was using forged letters with gay abandon oblivious of consequences of the same. All the accused i.e., M/s ACL and its two directors who were specifically named as key management personal for the said company were making false

representations supported by forged letters actuated with one aim i.e., to procure coal block by cheating MoC, Government of India by using forged letters. All the attending circumstances unerringly point towards criminal conspiracy hatched amongst the accused to cheat MoS, Screening Committee and MoC, Government of India and procure allocation of a coal block in which they successfully succeeded when they got New Patrapara coal block allocated in their favour by MoC, Government of India.

320. It is extremely difficult to have direct evidence of conspiracy as the conspiracies are planned in utmost secrecy and darkness.

321. However, the circumstantial evidence in this case unerringly points to the conspiracy amongst the accused and there is no other inference except the inference of criminal conspiracy to secure allocation of a coal block by cheating MoS, Screening Committee and MoC, Government of India in the process.

322. Resultantly, this point for determination is answered holding that all the three accused entered into criminal conspiracy to cheat MoC, Government of India for allocation of coal block in their favour.

323. **Conclusion: -**

(i) All the charges framed against M/s Adhunik Corporation Limited (A-1) are proved. Therefore, M/s Adhunik Corporation Limited (A-1) is convicted for the offence (i) u/s 120B IPC, (ii)

u/s 120B IPC read with Section 420 IPC, (iii) u/s 420 IPC and (iv) u/s 471 IPC.

(ii) All the charges framed against Nirmal Kumar Agarwal (A-2) are proved. Therefore, Nirmal Kumar Agarwal (A-2) is convicted for the offence (i) u/s 120B IPC, (ii) u/s 120B IPC read with Section 420 IPC, (iii) u/s 420 IPC and (iv) u/s 471 IPC.

(iii) Mahesh Kumar Agarwal (A-3) is convicted for the offence (i) u/s 120B IPC, (ii) u/s 120B IPC read with Section 420 IPC, (iii) u/s 420 IPC read with Section 511 IPC and (iv) u/s 471 IPC.

324. Let a copy of this judgment be provided immediately to all the convicts forthwith.

ARUN
BHARDWAJ

Digitally signed
by ARUN
BHARDWAJ
Date: 2022.04.21
15:36:21 +0530

Announced in the Open Court
on **21st April, 2022**

(Arun Bhardwaj)
Special Judge (PC Act) CBI
Coal Block Cases-01
Rouse Avenue District Court
New Delhi.