



Ministry of Mines invites suggestions on draft Mineral (Auction) (Amendment) Rules, 2017 seeking to amend the Mineral (Auction) Rules, 2015

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The Ministry of Mines has prepared the draft Mineral (Auction) (Amendment) Rules, 2017 seeking to amend the Mineral (Auction) Rules, 2015.

As part of the Pre-Legislative Consultation Policy, the draft Amendment Rules along with an Explanatory Note explaining the provisions of the proposed draft Amendment Rules are available on the website of the Ministry at www.mines.gov.in and are made available below as well. **Comments/ suggestions are invited from the general public, Governments of States and Union Territories, Mining Industry, Stake Holders, Industry Associations, and other persons and entities concerned, on the draft Amendment Rules.** The last date for receipt of the comments/ suggestions is **30 September 2017**.

The comments/suggestions may be sent by e-mail in MS-Office Word to the following ID:
pv.kumar70@nic.in

The subject of the e-mail should be **"Comments/suggestions on Mineral (Auction) (Amendment) Rules, 2017"**.

Alternatively, comments/suggestions may also be sent by post to the following address:

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Veena Kumari Dermal, Director
Ministry of Mines
Room No 308, D-Wing
Shastri Bhawan
Dr Rajendra Prasad Road
New Delhi -110 001

The envelope may kindly be super scribed on the top with: **"Comments/suggestions on Mineral (Auction) (Amendment) Rules, 2017"**.

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

GOVERNMENT OF INDIA MINISTRY OF MINES NOTIFICATION

New Delhi, the (date), 2017.

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

1. (1) These rules may be called **the Mineral (Auction) (Amendment) Rules, 2017**.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Mineral (Auction) Rules, 2015 (hereinafter referred to as the principal rules), in rule 2, in sub-rule (1), in clause (m), after sub-clause (ii), the following proviso shall be inserted, namely:-
"Provided that if for any mineral and/or mineral grade, the average sale price in respect of any State for any month is not published by Indian Bureau of Mines, the all India average sale price published by Indian Bureau of Mines for such mineral and/or mineral grade for that month shall be used."
3. In the principal rules, for rule 3, the following shall be substituted, namely:-
"**3. Application.**— These rules shall apply to all minerals, except (i) minerals notified as minor minerals specified in clause (e) of section 3; (ii) minerals specified in Part A of the First Schedule to the Act; and (iii) minerals specified in Part B of the First Schedule to the Act having grade equal to or more than the threshold value as prescribed under the Atomic Minerals Concession Rules, 2016."
4. In the principal rules, in rule 6, in sub-rule (4), after clause (ii), the following proviso shall be inserted, namely:-
"Provided that on or after DATE (date of commencement of the Amendment), quantity of mineral equivalent to ten per cent. of the total value of the mineral excavated in the previous five years, can be sold in the current year."

5. In the principal rules, in rule 9, in sub-rule (4), in clause (a),-
- (i) In second proviso to sub-clause (iv), for the words "third and subsequent", the word "second" shall be substituted and after the words "the bidding process", the words "on the same terms and conditions as in the first attempt of auction as mentioned in the notice inviting tender" shall be inserted; and
 - (ii) In fourth proviso to sub-clause (iv), for the words "to the fifty per cent. plus the number of technically qualified bidders, whose initial price offers are identical less the number of such identical initial price offers", the words "beyond fifty per cent. to the extent of tie" shall be substituted.
6. In the principal rules, in rule 10,-
- (i) after sub-rule (6), the following proviso shall be inserted, namely:-

"Provided that no Mining Lease Deed shall be executed on expiry of a period of three years from the date of the letter of intent, and the letter of intent will be invalidated leading to annulment of the entire process of auction and the state government may grant the mineral block only through a fresh auction process:

Provided further that the State Government may allow a further period of two years for execution of the Mining Lease Deed if the preferred bidder or the successful bidder, as the case may be, has obtained either Stage-I approval of the Forest Clearance as required under the provisions of the Forest (Conservation) Act, 1980, or the Environmental Clearance as required under the Environmental Impact Assessment Notification, 2006 as amended from time to time, issued under the provisions of the Environment (Protection) Act, 1986."
7. In the principal rules, wherever the words "Mineral Concession Rules, 1960" occur, the words "Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016" shall be substituted.
8. In the principal rules, in rule 11, in sub-rule (2), after the words "adjusted in full", the words "at the earliest" shall be inserted and for the words "within the first five years of ", the words "on" shall be substituted.
9. In the principal rules, in rule 12, in sub-rule (1), for the word "successful", the word "preferred" shall be substituted and after the words "reassessed value of estimated resources", the words ", including the value of any newly discovered mineral that may be included in the mining lease deed on its discovery" shall be inserted.
10. In the principal rules, in rule 18, in sub-rule (6), in clause (a), after the words "shall be terminated", the words ", and the performance security provided by the holder of the Composite Licence shall be returned" shall be inserted.
11. In the principal rules, in rule 19, in sub-rule (2), after the words "value of estimated resources", the words "established by the holder of the Composite Licence after completion of prospecting operations in accordance with sub-section (9) of section 11 resulting in determination of evidence of mineral contents conforming to the Mineral (Evidence of Mineral Contents) Rules, 2015".
12. In the principal rules, for Schedule I, the following Schedule shall be substituted, namely:-

"SCHEDULE I

Terms and conditions of eligibility

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

1. The following net worth requirements shall be applicable for an auction of mining lease depending on the Value of Estimated Resources,-
 - (a) If the Value of Estimated Resources is more than Rupees 500 Crores, the applicant, including an individual, shall have a net worth more than 2% of Value of Estimated Resources.
 - (b) If the Value of Estimated Resources is less than or equal to Rupees 500 Crores, the applicant, including an individual, shall have a net worth more than 1% of Value of Estimated Resources.
2. In case of auction of Composite Licence, the applicant must have a net worth of more than 1% of the Value of Estimated Resources.
Explanation:
 - (1) In case an applicant is a subsidiary of another company incorporated in India, the net worth of such holding company may also be considered:

Provided that, in such case, the applicant must continue to be a subsidiary of such holding company until such time the applicant meets the aforementioned net worth threshold.
 - (2) In case of a Company, the Net worth shall be the sum of paid up share capital and the free Reserves as per the audited Balance Sheet of the financial year ended immediately preceding the date of issuance of notice inviting tender.

- (3) In case the notice inviting tender is issued between 1st April to 30th September (both days inclusive), the audited Balance Sheet of the financial year before the immediately preceding financial year, from the date of issuance of notice inviting tender, may be submitted by the bidder.
- (4) In case of an individual, the Net worth shall be the closing cash balance on the last date for submission of application, and such amount may include amount in Savings Bank accounts in Scheduled Bank/ Post Office, free and un-encumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies/Government Organisation/Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, National Saving certificate, Bonds, Shares of Listed Companies, Listed Mutual Funds, Unit Linked Insurance Plan, Public Provident Fund, Surrender Value of Life Insurance policies in the name of Applicant."

13. In the principal rules, for Schedule III, the following Schedule shall be substituted, namely:-

"SCHEDULE III

Format of Performance Security for Mining Lease

[See rule 12(2)]

[Reference number of the bank]

[date]

To

The Governor of [Name of State]

[address]

WHEREAS

- A. [Name of the Preferred Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Preferred Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] OR [Name of individual] who is citizen of India, having income tax permanent account number [number], residing at [address] OR [partnership firm/association of individuals], all members of whom are Indian citizens and residents of India whose principal place of business is at [address of principal place of business] (the " Preferred Bidder ") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid until [date of expiry of performance bank guarantee] ("Expiry Date").
- B. The Performance Security is required to be provided to The Governor of [Name of State], (the "State") for discharge of certain obligations under the Tender Document dated, [date] with respect to auction of [particulars of auction] and the Mine Development and Production Agreement to be executed between the State and the Successful Bidder (collectively the "Agreement").
- C. We, [name of the bank] (the "Bank") at the request of the Preferred Bidder do hereby undertake to pay to the State an amount not exceeding INR [figures] (Indian Rupees [words]) ("Guarantee Amount") to secure the obligations of the Preferred Bidder under the Agreement on demand from the State on the terms and conditions herein contained herein.

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

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

- (i) vary and/or modify and of the terms and conditions of the Agreement;
- (ii) extend and / or postpone the time for performance of the obligations of the Preferred Bidder under the Agreement, or
- (iii) for bear or enforce any of the rights exercisable by the State against the Preferred Bidder under the terms and conditions of the Agreement.

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

- 5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.
- 6. The Bank agrees that State at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Preferred Bidder.
- 7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Agreement and that it shall continue to be enforceable till all the obligations of the Preferred Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the State certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Preferred Bidder and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this guarantee thereafter.
- 8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the State shall have no claim against the Bank for making such payment.
- 9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at the State of [respective State].
- 10. The Bank has the power to issue this Guarantee in favour of the State. This guarantee will not be discharged due to the change in the constitution of the Bank
- 11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the State in writing.
- 12. The State may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the Governor. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
- 13. Notwithstanding anything contained herein,
 - a. the liability of the bank under this bank guarantee shall not exceed the Guarantee Amount.
 - b. This bank guarantee shall be valid up to the Expiry Date.
- 14. The Bank is liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if the State serves upon the Bank a written claim or demand on or before the Expiry Date.

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

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

(Signature)

(Name and Designation)

(Bank Stamp)".

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

SCHEDULE IV

Format of Performance Security for Composite Licence

[See rule 18(1)]

To
The Governor of [Name of State]
[address]

WHEREAS

- A. [Name of the Preferred Bidder] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Preferred Bidder], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office] OR [Name of individual] who is citizen of India, having income tax permanent account number [number], residing at [address] OR [partnership firm/association of individuals], all members of whom are Indian citizens and residents of India whose principal place of business is at [address of principal place of business] (the "Preferred Bidder") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid for an initial period of ● years from the date hereof ("Expiry Date").
- B. The Performance Security is required to be provided to The Governor of [Name of State], (the "State") for discharge of certain obligations under the Tender Document dated, [date] with respect to auction of [particulars of auction] and the [letter of intent to be issued by the State to the Preferred Bidder for grant of composite licence, the deed for grant of a prospecting licence to be executed between the State and the Successful Bidder and the letter of intent issued by the State to the Successful Bidder for grant of the mining lease/ letter of intent issued by the State to the Successful Bidder for grant of the mining lease, the Mine Development and Production Agreement to be executed between the State and the Successful Bidder and the mining lease deed to be executed between the Successful Bidder and the State] (collectively with the Tender Document, the "**Agreement**").
- C. We, [name of the bank] (the "**Bank**") at the request of the Preferred Bidder or Successful Bidder do hereby undertake to pay to the State an amount not exceeding INR [figures] (Indian Rupees [words]) ("**Guarantee Amount**") to secure the obligations of the Preferred Bidder or Successful Bidder under the Agreement on demand from the State on the terms and conditions herein contained herein.

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

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

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

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.
6. The Bank agrees that State at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Preferred Bidder or Successful Bidder.
7. The Bank further agrees that this bank guarantee and the guarantee obligations herein contained shall remain in full force and effect and shall continue to be enforceable till (i) all the obligations of the Preferred Bidder or Successful Bidder under or by virtue of the said Agreement with respect to the Performance Security have been fully paid and its claims satisfied or discharged; or (ii) till the State certifies that the terms and conditions of the Agreement with respect to the Performance Security have been fully and properly carried out by the Preferred Bidder or Successful Bidder and accordingly discharges this guarantee; [or (iii) on provision of a revised performance security under Rule 19(2) of the Mineral (Auction) Rules, 2015] whichever is later. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this guarantee thereafter.
8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the State shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at the State of [respective State].
10. The Bank has the power to issue this Guarantee in favour of the State. This guarantee will not be discharged due to the change in the constitution of the Bank
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the State in writing.
12. The State may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the Governor. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
13. Notwithstanding anything contained herein,
 - a. the liability of the bank under this bank guarantee shall not exceed the Guarantee Amount; and
 - b. this bank guarantee shall be valid up to the Expiry Date.
14. The Bank is liable to pay the Guaranteed Amount or any part thereof under this bank guarantee only and only if the State serves upon the Bank a written claim or demand on or before the Expiry Date.

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

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

(Signature)

(Name and Designation)

(Bank Stamp)".

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

(Bipul Pathak)
Joint Secretary to the Govt. of India

Note:- The Mineral (Auction) Rules, 2015 were published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i) vide notification number G.S.R. 406(E), dated the 20th May, 2015.

For AMENDMENT PROVISIONS TO THE MINERAL (AUCTION) RULES, 2015 WITH EXPLANATORY NOTES, Click here (Annexure).

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