

COALTM INSIGHTS

FROM MINING TO IGNITING



INTERVIEW

V K Arora, Chairman
Indian Mining Federation

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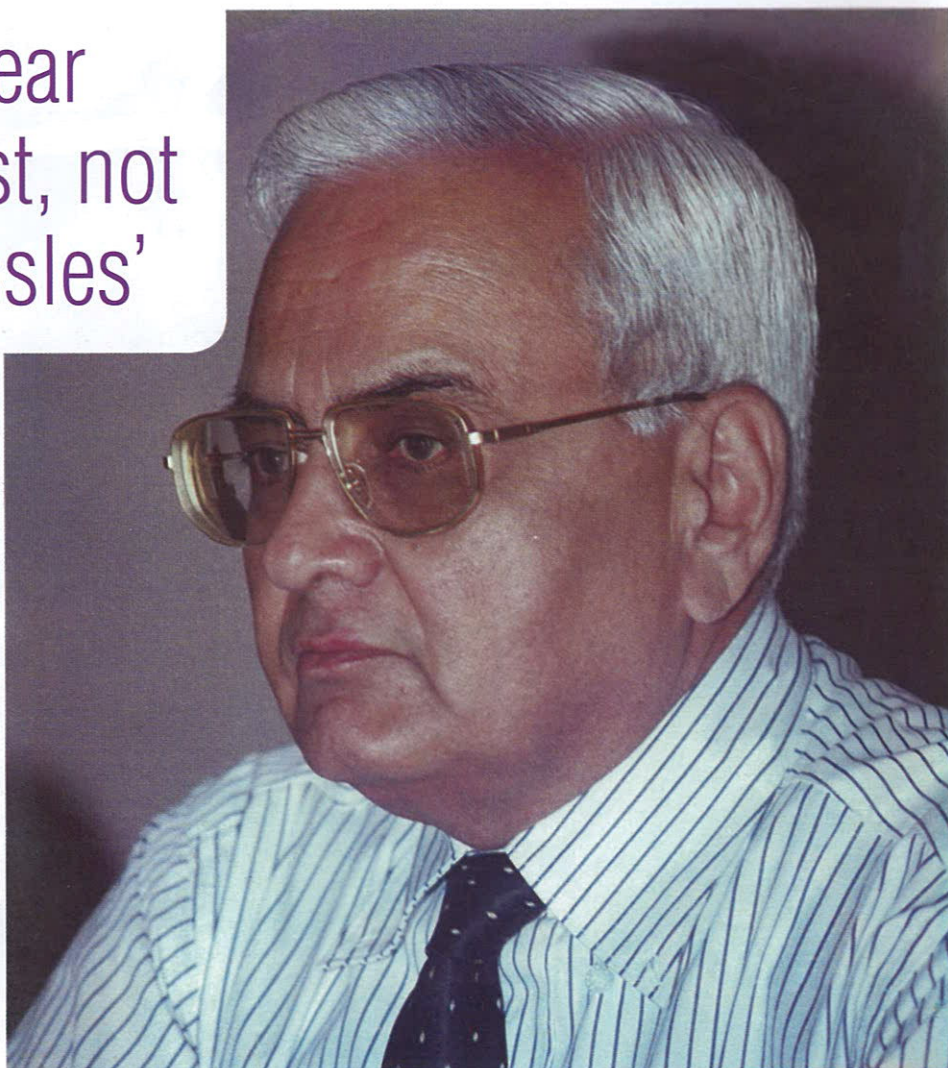


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GROWING TOGETHER

'Industry can bear higher land cost, not acquisition hassles'

Over the last five years, land availability and its acquisition have emerged as one of the biggest roadblocks facing the Indian industry. In a traditionally agricultural economy like India, the issue has large humanitarian ramifications and afflicts almost all sectors cutting across the segments. Although the government has been trying hard to strike a balance, maybe the real beneficiaries are getting a short shrift. Balancing the human issue along with economic development has been difficult, but perhaps a more harmonious approach will help.

In an exclusive interview, **V. K. Arora**, the Chairman of Indian Mining Federation and President of Indian Coal Merchants' Association, speaks to **Coal Insights** on the various facets and developments on this largely contentious issue. A mining engineer from the Indian School of Mines (ISM), Dhanbad, he is working as President - Coal Services in Karam Chand Thapar & Bros (Coal Sales) Ltd., taking care of acquisition of coal mines in Indonesia /Coal Sales/Imported Coal Sales in India. He is presently the Chairman, Mining Construction & Equipment Division of the Confederation of Indian Industry (CII).



Excerpts:

How severe is the land crisis facing the India Inc.?

At the ground level the situation is pretty grim. If you look around, you will find that industrial projects are getting stranded everywhere due to lack of availability of land or acquisition related hassles. The intensity of the problem may vary from state to state, but overall the scenario is more or less the same. Also, this is a common issue across the sectors. Let us not single out only the mega steel projects as suffering inordinate delays. The same crisis is affecting infrastructure, road, cement, power, engineering, logistics, automobiles, even healthcare, education and IT, and of course mining.

While everybody is talking about project

affected people (PAP), it is high time we talked also about the land-affected projects. This is all the more crucial at a time when the economy badly needs an impetus in fresh investments. How can you return to high GDP growth if new projects do not come up and expansions are stalled? Of course, land is not the only hurdle, but is surely a major one, perhaps the most important hurdle as of today.

On one hand there is land shortage for the industry. On the other hand, there is a food crisis building up, resulting in high food inflation. How can these two situations be dealt with?

It is true that land is becoming an issue for both industry and agriculture. India has traditionally been an agricultural economy

and industrialisation has happened only in phases. Post 1990, however, the opening up of the economy resulted in faster growth in industry and services which translated into higher growth in GDP. Also, foreign investments started flowing in and this further increased the pressure on land. At the same time, with the steady increase in population, demand for farm products soared.

One may say that food inflation today is as much a problem as the stagnated growth in the industrial sector. I cannot but agree. To my mind, some changes in the supply chain help ease the situation to some extent. But in the long run, you cannot cope without an increase in total land put under use, both for the agricultural and industrial sectors.

Standing at this juncture, the least we can do is to ensure optimal utilisation of whatever land mass we as an economy have inherited.

Of course then the big question comes of how this can be achieved.

You must understand the economic value of any input of production. Land as an input has its own price. With the increase in demand, this price is bound to go up. One way of ensuring optimal utilisation is to put the land to that use which fetches it maximum returns.

In fact, industry today is ready to pay higher price for land. But the government must ensure that the acquisition is made hassle free. This can be done through formulation of uniform policies and proper implementation. Only with a sound, well-thought out policy and its strict implementation can these complexities be addressed.

Do you think the Land Acquisition and Rehabilitation & Resettlement Bill 2011 qualifies for a sound policy?

CII had studied the Bill in great detail and made certain observations. The new Bill which was first unveiled last year proposed some changes over the earlier law which was framed very long ago. Some of the provisions appear to be progressive and may be suitable for the current situation.

One significant point in the amendment is that land compensation calculated will not be taken as base for circle rate for subsequent acquisitions to ensure there is no speculative price spiral.

The government later on made some amendments to the new Bill in the winter session of Parliament.

However, I think there remain some provisions which need a re-look. These include a number of issues, starting from the consent of project affected people to the compensation package and R&R entitlements. I feel the industry's suggestions, if incorporated, would benefit the economy as a whole and would also help redress the problems facing the project affected people.

Can you elaborate on these suggestions?

Let us start with the consent for land acquisition. The original Bill stated that "provision of land in the public interest for private companies for the production of goods for public or provision of public services" is subject to consent of at least 80 percent of project affected people.

CII proposed that there should be no distinction between private and public sectors as they both are equal partners in creating wealth and employment for the country. However, if at all the provision of consent is to be accommodated, it should be reduced to 60 percent of project affected families and not 80 percent. Also, consent should be obtained only from the land owners and not others dwelling in the same locality.

However, the government in the proposed amendments stated that for private companies defined under public purpose, prior consent of at least 80 percent of affected families is mandatory. For public private partnership (PPP) projects, where ownership of the land continues with the government for 'public purpose', prior consent of at least 70 percent of affected families is mandatory. It further stated that consent should be obtained through a process as may be prescribed by

the appropriate government and shall be carried out along with the Social Impact Assessment (SIA) study.

What are your views on the compensation package proposed in the Bill?

As per the original Bill, the compensation package is the land value determined as per the provisions of the Act X 2 (multiplier) + 100 percent Solatium for rural areas.

CII had proposed that there be no Solatium over and above the multiplier. If at all Solatium is to be retained, it should be reduced to 30 percent and the multiplier be reduced to 1.5 instead of 2. It further proposed that for determining the market value (based on average sale price of land in vicinity) the term "nearest vicinity area" should be made more definitive.

Now, the amendment states that the Collector will adopt some criteria in assessing and determining the market value of the land, namely: the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area where the land is situated, or the average sale price for similar type of land situated in the nearest village or nearest vicinity area, or consented amount of compensation as agreed upon under Sub Section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher.

The market value compensation, as per the amendment, is to be two times the market rate (including Solatium) in urban areas, and two to three times the market rate (including Solatium) in rural areas (based on sliding scale reflecting the distance of the project from urban areas). Sliding scale is to be determined by state government or state land pricing commission/authority.

I think that instead of using the broad term “affected families”, the government should clearly define the category of families according to their losses. The identified families should be able to lead a much better life after getting the package than prior to land acquisition.

In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of 12 percent per annum on such market value for the period commencing on and from the date of publication of the notification of the SIA, in respect of such land, till the date of award of the Collector or taking possession of the land, whichever is earlier.

One significant point in the amendment is that land compensation calculated will not be taken as base for circle rate for subsequent acquisitions to ensure there is no speculative price spiral.

Identification of affected people for rehabilitation and resettlement (R&R) entitlement is often a grey area. What is your suggestion on this?

The Bill has defined them as families owning the land or whose livelihood is affected as a result of land acquisition. Only these people are entitled for R&R packages.

I think that instead of using the broad term “affected families”, the government should clearly define the category of families according to their losses. R&R provisions need to be justifiably different for each category depending on what they lose as a result of land acquisition. The identified families should be able to lead a much better life after getting the package than prior to land acquisition.

One provision in the amendment says that the concerned government may, by notification increase the rate of R&R amount payable to the affected families, taking into account the rise in price index.

There is a separate case for land provisioning for urbanisation. Here, the

amendment proposes that 20 percent of developed land will be reserved and made available to project affected families, in proportion to the area of their land acquired. This should be done at a price equal to the cost of acquisition and cost of development. In case of the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.

Now there could be a debate on which cases the affected people would receive R&R packages. The original Bill said that R&R provisions are to be made applicable for procurement of land more than 100 acres in rural areas and more than 50 acres in urban areas, in cases where private parties directly buy the land from owners.

CII proposed that provision of R&R should not be applicable to land owners in such cases as sellers would have received the premium on land value. However, a suitable R&R entitlement could be laid down for affected families who lose their livelihood as a result of such acquisition.

What is the industry’s stand on acquisition of multi-crop land which has faced strong opposition in some recent projects?

With reference to special provisions to safeguard food security, certain restrictions have been imposed on acquisition of irrigated multi-cropped land. However, the Bill states such restrictions or thresholds will not apply for linear projects including railways, highways, major district roads, power lines and irrigation canals.

We appreciate the concerns of the government and the farm sector. Our only demand is that the government should

include the mineral extraction or mining projects in this list of exempted projects. Mining is just as crucial for the economy as these listed projects are.

What has been the government’s response to your stance?

Under this head, I haven’t seen any mention in the amendment about any consideration for granting exemption to the mining and mineral extraction sector. The amendment only proposes that limits on acquisition of multi-cropped land may be notified by the appropriate government considering the relevant state specific factors and circumstances.

It further says that whenever multi-crop irrigated land is acquired as per the provisions, an equivalent area of cultivable wasteland shall be developed for agricultural purposes, or an amount equivalent to the value of the land acquired shall be deposited with the appropriate government for investment in agriculture for enhancing food security.

However, there has been an inclusion of large infrastructure projects under the definition of ‘public purpose’. Although there was no provision in the original bill, the amendment stated that projects for industrial corridors, national investment and manufacturing zones, as designated in the National Manufacturing Policy, will be included under this definition.

Return of unutilised land, especially in urban areas, has been another controversial issue. What is your take on that?

While the original Bill stipulated return of the acquired land if not utilised for a period of 10 years, my view was that the industry should be asked to submit a ‘land use plan’ before acquisition and the return of unutilised land should be aligned to that plan. I think this issue should be dealt with by a committee under the chairmanship of the chief secretary of the concerned state on a case to case basis.

The government, however, brought down this period of 10 years to five years. The amendment says that the unutilised land should be returned to the original

owner or owners or their legal heirs or may be to the land bank of the concerned state government by reversion.

Along with unutilisation of land comes the issue of delay in award of land despite declaration. In this case, my suggestion is that the government may offer an alternative location identified by the requiring body.

The government, in the amendment, stated that the Collector shall make award within a period of 12 months from the date of public declaration (under Section 19) and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse, provided that appropriate government shall have the power to extend the period of 12 months if in its opinion, circumstances exist justifying the same and such decision shall be recorded and notified/uploaded on the website of concerned authority.

What is your view on the urgency clause in the Bill?

In cases of urgency, the Bill says that whenever the appropriate government so directs, the Collector will take possession of any land needed for a public purpose and such land shall vest absolutely in the government, free from all encumbrances.

But this should also be applicable in the case where after the award has been made, people do not come forward to accept. Adverse possession should be taken over and encumbrance free land to be handed over to the requiring body.

The amendment states that the power of the appropriate government under this shall be restricted to the minimum area required for the defense of India or national security or for any emergencies arising out of natural

calamities or any other emergency with the approval of Parliament.

It further states that an additional compensation of 75 percent of the total compensation as determined under Section 27 shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under this section.

Are there any other Bill provisions on which you differ with the government's stance?

There are some other issues too. For instance, the Bill stipulated public hearings for SIA and environment clearance (EC). My view was that combining the two would help reduce the overall project implementation schedule. On this, the amendment stated that EC, if any, shall be carried out simultaneously along with SIA and shall not be contingent upon the completion of SIA.

As for stamp duty and registration fee, the Bill stated that stamp duty and other fees payable for registration of land or house allotted to the affected families shall be borne by the requiring body. I feel that stamp duty and other fees on registration of land/house allotted to the affected families should be waived off. Similarly, capital gains tax under IT Act should not be applicable for compensation amount received by project affected families. The amendment retained the provision as per the original Bill.

There was another provision on possession of acquired land. The Bill proposed that Collector will take the possession of acquired land only after the entire compensation and R&R entitlements are disbursed. Our view was that the

Collector should be empowered to take the possession of the land after 80 percent of the affected families have accepted and received the compensation (as per the Land Acquisition Act 1984). However, this provision has also been retained as per the original Bill.

Do you think the new legislation would help ease the law and order problems and agitations especially in tribal areas?

I think the local agitation and law and order problem, as it stands now, is more political in nature than otherwise. It is time we understood that industrial growth is not meant to harm the local populace. On the contrary, industry stands for development and a better life. In the process, there may be some changes, but the industry wants minimum dislocation. There are also no two opinions about making adequate compensation to the land oustees. At this point, let me reiterate that industry can bear higher land costs and higher compensation than earlier. But it cannot afford continued hassles relating to acquisition.

What is important is that the benefits (of compensation and R&R packages) must reach the actual land owners. If this much could be ensured, most of the problems will be sorted out. Unfortunately, currently, in many cases, the benefits are filtered out.

Don't you think that separate handling of project clearance land issues by the Centre and state governments are making things complicated?

All I can say is that this is not a harmonious approach. Sometimes, even the public goods projects of the Centre get stuck due to the lack of will or motivation of the concerned implementing agencies. However, it is up to the authorities to decide how they can streamline the process.

I hope to see improvements in coming days. One thing that must be kept in mind is that no matter how good a legislation may be, unless the implementation is good, nothing worthwhile can come out of it. So once the new law is in place, the next task would be to ensure its seamless implementation across the country. ■

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