

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-23710-2024

Reserved on: 11.03.2025

Date of Decision : 03.04.2025

M/S BARJORA MINING PRIVATE LIMITED

...Petitioner

V/S

HARYANA POWER GENERAL CORPORATION LIMITED (HPGCL) &  
ORS.

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE VIKAS SURI**

Present : Mr. Rajiv Atma Ram, Senior Advocate with  
Mr. Brijesh Khosla, Advocate  
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with  
Mr. Udit Garg, Advocate,  
Mr. Kunal Mulwani, Advocate  
Ms. Shifali Goyal, Advocate  
for respondents No.1 and 2 – HPGCL.

Mr. Anil Mehta, Advocate  
for respondent No.3.

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**SURESHWAR THAKUR, J.**

1. Through the instant writ petition, the petitioner has prayed for the issuance of a writ in the nature of Certiorari seeking thereby the quashing of the impugned order dated 30.08.2024 (Annexure P-14), besides seeks the issuance of a writ in the nature of mandamus, thus, directing the respondents to open and consider the Technical and Financial Bid of the

petitioner. A further prayer is made for the issuance of a writ in the nature of mandamus, thus directing the respondents to include the petitioner in the negotiations to be carried out in terms of Clause 8.0 and 23.1 of the Notice Inviting Bid (hereinafter referred to as 'NIB').

2. The Haryana Power Generation Corporation Limited (HPGCL) issued NIB (Annexure P-1) on 05.06.2024, with the last date for submission of Online Bids being 14.06.2024 and 18.06.2024 being the last date for the submission of the hard copy(ies)/bids. The NIB was for a 33-year project to develop and mine coal from the Kalyanpur - Badalpara Coal Block in Dumka, Jharkhand.

3. The Petitioner M/s Barjora Mining Private Limited (BMPL), is purportedly a Joint Venture Company comprising i) of M/s Ambey Mining Private Limited, ii) of M/s Godavari Commodities Limited, and iii) of M/s Maheshwari Mining Private Limited (inducted in March 2024 into the Joint Venture Company). The supra participated in the Tender Process as a Joint Venture Company.

4. After an initial evaluation, HPGCL sought further clarifications from the petitioner via E-mails delivered on 01.07.2024 and on 02.07.2024 (Annexure P-4 & Annexure P-4A). The clarifications except as raised in Point 2 of the Email dated 01.02.2024 were only in respect of documents already provided to the respondents, which were directed to be again provided. Accordingly, the petitioner submitted its response on 05.07.2024 (Annexure P-5).

5. On 16.07.2024, vide e-mail, the petitioner's Technical Bid was rejected by the respondents. The same was challenged by the petitioner through its filing CWP No.16923 of 2024, which was disposed of by this Court vide its order dated 22.08.2024. The operative part of the said order dated 22.08.2024 becomes extracted hereinafter.-

*“We had heard learned Senior Counsel for the parties at length, when during the course of hearing, they have reached a consensus that in the wake of the issues that are sought to be raised by the petitioner, it would rather be expedient, if, in the first instance, those are dealt with by the Tender Evaluation Committee (TEC).*

*Accordingly, they submit that let the petition be disposed of, at this stage, to enable the TEC to examine the concerns/grievances of the petitioner and pass necessary orders, in accordance with law. Further, before any such orders are passed, the petitioner as also Respondent No. 2 (AMR India Limited), which has been adjudged L1, would be heard. And, in this regard, they, through their authorized representatives, would appear before the TEC (HPGCL, Urja Bhawan, Sector 6, Panchkula) on August 27, 2024, at 11:00 AM. Hence, the orders dated July 16, 2024 be deemed to have been withdrawn/recalled.*

*In the wake of the position sketched out above, as also the statement made by learned counsel for the parties, the petition is accordingly disposed of. Needless to assert that it is pursuant to the consensus that has been reached between the parties, the Respondent authorities have consented to withdraw/recall the impugned orders, without prejudice to their stand set out in the written statement. And, particularly, as the*

*TEC would examine the concerns/grievances of the petitioner and pass the necessary orders, as indicated above.*

*This Court is sanguine that the TEC would examine the matter in the right earnest, and pass the appropriate orders, assigning reasons in support thereof.”*

6. Thereafter, the petitioner through its representative, was called for hearing (by e-mail dated 23.08.2023) on 27.08.2024, whereons, the petitioner's representative sought time to give written submissions to the Tender Evaluation Committee of the HPGCL and therebys the said meeting was deferred to 29.08.2024, whereons, the petitioner through its representative submitted its Written Submissions dated 29.08.2024.

7. It is averred that at no point in time, did the respondent No.1/HPGCL seek any further clarification/ information (other than Annexure P-4 & Annexure P-4A) from the petitioner in respect of its submitted bid and the petitioner was directed to file whatsoever written submissions they/it may choose to do. No query beyond the E-mails (Annexure P-4 & Annexure P-4A) has ever been raised by the respondent No. 1-HPGCL.

8. On 29.08.2024, the representative of M/s AMR Mining Private Ltd.-respondent No.3 was also present and was heard. From a perusal of impugned order, it purportedly transpired that respondent No. 3 filed written submissions along with case law and certain documents, but these were not supplied to the petitioner nor was the petitioner asked to respond to the same even orally.

9. On 29.08.2024, during the meeting, the petitioner was orally asked to furnish the following documents:-

- (i) Board Resolution of AMPL Authorization of Mr. Jayesh Maitra Majumder,
- (ii) Share Certificate for 26000 shares of BMPL held by Maheshwari Mining Private Limited;
- (iii) Register of Member of BMPL
- (iv) Register of Share Transfer of BMPL
- v) Extract of Board Resolution of Share transfer of BMPL

These documents were furnished by the petitioner via E-mail to the respondent No.1-HPGCL on 31.08.2024 at 11.35 a.m.

10. Petitioner received E-mail dated 31.08.2024 at 01.05 p.m., whereby respondent No.1, conveyed that vide order dated 29.08.2024 the earlier impugned Order dated 16.07.2024, rather stood withdrawn, in compliance with the orders of this Court in the earlier Civil Writ Petition filed by the petitioner. There was no reference to any order dated 30.08.2024 therein.

11. On the very same day i.e. on 31.08.2024, vide E-mail sent at 02.09 p.m., impugned order dated 30.08.2024 (Annexure P-14) was conveyed to the petitioner, thus rejecting the case of the petitioner. It is averred that respondent No.1-HPGCL had itself sought the documents on 29.08.2024, which were provided on 31.08.2024, thus prior to the communication of the impugned order. The relevant part of the impugned order becomes extracted hereinafter.

**Conclusion:**

*In view of the deliberations and considerations referred hereinabove, the Tender Evaluation Committee is of the considered opinion that M/s Barjora Mining Pvt. Ltd. is not a Joint Venture Company because of the fact that the Company does not fulfill the basic statutory requirement of being a Joint Venture Company on the grounds that :-*

- A. *Securities Transfer Form (Form No.SH-4) is not a proper form because this form is no longer valid in view of notification dated May 04, 2022 of the Ministry of Corporate Affairs, Government of India vide which the SH-4 form has been changed. Furthermore, Section 56(1) of the Companies Act, 2013 specifically provides for the proper instrument of transfer as prescribed, is required to be submitted for Transfer and Transmission of Securities.*
- B. *The Securities Transfer Form (Form No. SH-4) specifically provides attachment of enclosures including Certificate of Shares or Letter of Allotment etc. to be submitted along with SH-4 Form. There is no such document Filed by M/s Barjora Mining Pvt. Ltd. along with SH-4 Form, which is complete violation of Section 56(1) of Companies Act, 2013. The said request for transfer was to be submitted to the Company and then it was to be approved or rejected by the Board of Directors and thereafter only in case of approval it has to be entered in the register maintained for the purpose of transfer. There is no material on record to show :-*
- i) *Whether share certificate was signed by the*

*transferor and transferee or in its absence the copy of Share Certificate to be appended with SH-4 Form.*

*ii) No request to the Company or approval by the Board of Directors to show complete transfer. There is no document showing trendier off shares in the Register of Company, which is a conclusive proof of transfer of shares. Therefore, the transfer of shares is not complete.*

- C. *There is no statutory record to evidence the shareholding pattern of Joint Venture Company as claimed by the Bidder (BMPL) in its Joint Venture Agreement dated 15.04.2024.***
- D. *There is no document showing actual transfer of capital from M/s Maheshwari Mining Pvt. Ltd, the incoming Promoter, in favour of promoters of M/s Barjora Mining Pvt. Ltd., i.e. M/s AMPL & M/s GCL.***
- E. *As per the record available on dated 15.07.2004 on the website of Registrar of Companies (RoC), M/s Barjora Mining Pvt. Ltd is a Company comprising of only two Promoters i.e. M/s Ambey Mining Pvt. Ltd. & M/s. Godavari Commodities Ltd.***
- F. *The Judgments relied upon by M/s AMR India Pvt Ltd. covers the case in hand. Based upon these judgments, it can be concluded that M/s BMPL is not a Joint Venture Company as the instrument of transfer is not proper, which is mandatory statutory requirement and the transfer of share is not complete on account of the fact that the same has not been registered in the register of the company.***

*Hence, M/s Barjora Mining Pvt. Ltd. is not a Joint Venture Company as stated by them. Thus, bid of M/s Barjora Mining Pvt. Ltd. is declared non-responsive.*

*Accordingly, the Committee deems it appropriate not to delve into the financial aspects of the matter as on the totality of facts and circumstances, the Bidder doesn't fulfill the mandatory requirement of being JVC as per the conditions mentioned in NIB. Consequently, the bidder M/s BMPL does not qualify.”*

**Submissions of the learned counsel for the petitioner**

12. The learned counsel for the petitioner submits, that the impugned order dated 30.08.2024, as communicated on 31.08.2024, rather is unsustainable in law inter alia on the following grounds:

13. (a) The TEC has not decided the issues raised by the writ petitioner in the earlier Writ Petition No.16923 of 2024, rather it has culled out new issues and had adjudicated the same without even providing an opportunity to the writ petitioner to rebut the same. The (supra) is submitted to be totally beyond the order passed by this Court, on 22.08.2024 besides in derogation theretos.

(b) The TEC has wrongly held that the petitioner is not a Joint Venture Company, by incorrectly holding that the shares of the original promoters (M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited) rather remaining not transferred onto the accounts/share holdings of the incoming promoter (M/s Maheshwari Mining Private Limited) nor thereby any valid JVC coming into existence. Moreover, it has been

incorrectly stated that SH4 Form has been changed vide notification 04.05.2022 (Annexure P-16).

14. The TEC has relied upon documents beyond the bid document filed by the petitioner and the pleadings contained in the Writ Petition/ Written Statement/ Replication. The impugned order has been passed in undue haste and violates the Wednesbury's Principles thus encapsulating the norm of reasonableness in executive decision making.

15. The written submissions, Judgments and other documents submitted by respondent No.3, were never supplied to the petitioner nor any opportunity to rebut the same became granted to it. The official respondents did not issue any notice in terms of Clause 8, thus for any deficiency in the petitioner's bid after this Court remanded the matter for a fresh decision by respondent No. 2.

16. The Consultant M/s AXYKNO Capital Services Private Ltd. again participated in the proceedings of the Tender Evaluation Committee. The Consultant does not find mention in the Notice inviting Bids (NIB) as part of the TEC. In the earlier proceedings, only the Consultant had raised objections.

17. The TEC has not considered the Share Holding Certificate of the petitioner attested by the Statutory Auditors, but has permitted the unaudited financial statements of respondent No.3, and, other bidders as per Annexure R-1, appended with the Written Statement, whereby, the impugned order of the TEC is vitiated for want of opportunity being

afforded to the petitioner and is thus violative of the principles of natural justice.

#### **Inferences of this Court**

18. The moot question before this Court is whether M/s MMPL thus is a valid promoter in terms of clause 4 of NIB or whether it became validly inducted into a pre-existing JVC-Barjora Mining Pvt. Ltd. (BMPL) comprising of M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited, besides whether merely for any purported want of valid transfer of shares by the original promoters i.e. M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited, onto the incoming promoter i.e. M/s MMPL, whether thereby the rejection of the JVC, thus is legally sustainable.

19. In this regard, it is relevant to extract the definition of Bidder/Bidding Company, which is embodied in clause 2.1.9 of the NIB. The hereinafter clause embodies the apposite qualifying condition for participation in the tender process. The said clause becomes hereinafter extracted.

*“2.1.9. “Bidder/Bidding Company” shall mean the entity which has submitted a bid against this Tender, which refers to Sole Bidder/Single Corporate Entity, or a Bidding Group of two Corporate entities or a Consortium of up to two Corporate Entities or **Joint Venture Company incorporated under the applicable laws**, who undertake to form a Project Company (SPV) incorporated under the applicable Indian Laws prior to the execution of the Coal Mining Agreement that has submitted a Proposal in response to the RFB/Bid Document.”*

20. Moreover, clause 4.0 of the NIB mandates 26% equity in the JV company. The relevant clause 4.0 becomes extracted hereinafter.

***“4.0 Joint Venture (JV) Company***

*If the Bidder is a Joint Venture Company and the Qualifying Requirement (QR) is met by one of the Promoter or jointly by more than one Promoter, then each Promoter on the basis of whom, the Joint Venture Company gets qualified shall have a minimum of 26% equity in the JV Company and such promoter(s) shall give an undertaking to hold the said equity for a period till the mine achieves 85% of the contracted capacity of the Project ("Contracted Capacity" means 3.00 million Tons of Coal per annum).”*

21. The documentary evidence and other common conditions of the NIB also become extracted hereinafter.

*“6.0 Documentary Evidence required to be furnished by the bidder:*

*6.1 The Documentary Evidences, in support of satisfying the Qualifying Requirements shall be submitted online.*

*6.2 For the Technical Criteria, in case a Bidder is seeking qualification as a mine contractor/ MDO working under a contract, the Bidder shall submit notarized copy of the contract and a certificate from the Mine owner, certifying the details of the overburden and coal/ lignite /any other minerals production achieved during the Qualifying period (consecutive 365 days) as in PQR and the development and exploration activities undertaken by the Bidder for meeting the Technical Criteria. In addition, Work completion certificate(s) from the Mine owner for whom the excavation work has been executed shall be submitted.*

*6.3 In case, a Bidder is claiming mining experience where it is operating/operated as part of a consortium or a joint venture, the bidder shall also submit a copy of the consortium agreement or joint venture agreement (as the case may be), which clearly spells out the extent of its ownership in such consortium or joint venture, as the case may be.*

*6.4 Eat the Financial Criteria, the Bidder/each member of the consortium / joint venture company/ Direct Holding/ Subsidiary Company on whose strength the Bidder is meeting the Financial criteria, shall submit Audited Annual Reports, containing Profit and Loss Statement and Balance Sheets for immediately preceding three financial years. In case the audited result of the last financial year is not available, the unaudited financial statements should be certified by its Statutory Auditor.*

*6.5 Bidder, who meets the financial criteria of Pre-Qualifying Requirements on the strength/ experience of its Direct Holding /Subsidiary Company, shall be required to furnish a legally enforceable registered and/or Notarized Joint Operating Agreement in original as per prescribed format. Further the Bidder is required to furnish Letter of Undertaking from the Direct Holding / Subsidiary Company, supported by Board Resolution, as proof of pledging unconditional and irrevocable financial support for the execution of the Contract by the Bidder in case of award.*

*6.6 The following documents in Physical forms shall be furnished in sealed cover:*

- (i) Documentary evidence towards remittance of cost of Tender Documents.*
- (ii) Proof of submission of Bid Guarantee amount / EMD.*
- (iii) Registered and/or Notarized Power of Attorney as per Annexure-4 or 5, as applicable.*

(iv) *A copy of Joint Venture Agreement/Consortium Agreement, as applicable.*

v) *Registered and/or Notarized Consortium Operating Agreement as per Annexure-8, as applicable.*

(vi) *Registered and/or Notarized Joint Operating Agreement as per Annexure-9 and Letter of undertaking, as applicable.*

(vii) *Registered and/or Notarized Affidavit as per Annexure-10.”*

22. Now *ex facie*, the petitioner has inaptly construed qua “Joint Venture Agreement”, thus tantamounting to “Joint Venture Company” besides *ex facie* also thereby misconstrued, that merely thereby, thus even for want of the company nomenclatured as 'M/s MMPL, rather acquiring the requisite certification of incorporation or certification of amalgamation onto the pre-existing JVC comprising of (M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited), thus purportedly thereby alone, the bid condition appertaining to the bidding group of two corporate entities or joint venture company incorporated under the applicable norm, thus yet becoming satiated.

23. The reason for concluding so becomes garnered, from the factum, that the “Joint Venture Agreement”, *ex facie*, unless the hereafter statutory conditions become accomplished, rather is outside the contours of the mandatory provisions enclosed in Section 56 of the Companies Act, 2013, provisions whereof become extracted hereinafter.

**“56. Transfer and transmission of securities.** (1) *A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company*

*having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:*

*Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.*  
*Xxx*

*(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.”*

24. Furthermore also, the said agreement cannot be termed to be the statutorily contemplated methodology, thus for making the company nomenclatured as the M/s MMPL, to become construed to become incorporated/amalgamated into the pre existing companies, comprised of M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited. Resultantly, irrespective of the said besides irrespective of the form detailing

thereins, the transfer of the requisite equity shares by the original promoters nomenclatured as M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited, thus onto the accounts of the incoming promoter M/s MMPL, thus there was no valid apposite incorporation of M/s Maheshwari Mining Pvt. Ltd. Moreover, nor merely therebys the (supra) purportedly forming part of the joint venture/company comprising of M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited, despite want, of the relevant certificate of incorporation or certificate of amalgamation becoming issued by the Registrar of Companies, besides nor therebys alone, thus occurring the apposite valid transfer of shares, nor therebys the supra underlined bid condition, inasmuch as, “Joint Venture Company incorporated under the applicable laws”, becoming satiated.

25. The supra inference becomes further strengthened, from a bare perusal of Section 108 of the Companies Act, 1956, provisions whereof are pari materia with the provisions borne in Section 56 of the Companies Act, 2013, whereunders, becomes enjoined a mandatory process qua the transfer of shares, wherebys, there would be a valid induction of the apposite company onto the pre existing companies whereintos any amalgamation is made. The said is recognized but only on completion of the hereinafter extracted processes.

- (i) Execution of valid Form SH-4 between transferor and transferee is the first mandatory condition.
- (ii) Such document is a proper instrument of transfer as prescribed under law.

(iii) It should be duly stamped, dated and executed between transferor and transferee with specific date of approval, register no. etc. along with enclosures.

(iv) It has to be delivered to the company within 60 days from the date of its execution.

(v) It should be accompanied with certificate relating to the security or along with the letter of allotment.

(vi) Transfer is to be formally accepted by the company by way of a resolution and then by way of incorporating the same in the register. This fact is also evident from the bye laws of the company, relevant portion whereof becomes extracted hereinafter.

*"19. (i) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.*

*ii) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.*

*20. The Board may, subject to the right of appeal conferred by section 58 decline to register-*

*(a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or*

*(b) any transfer of shares on which the company has a lien.*

*21. The Board may decline to recognize any instrument of transfer unless-*

*(a) the instrument of transfer is in the form as prescribed in rules made under sub-section (1) of section 56;*

*(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such*

*other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and (c) the instrument of transfer is in respect of only one class of shares.”*

26. Naturally besides reiteratedly, based upon the above provision and the bye laws, it is clear that the petitioner has evidently not submitted any valid document regarding transfer of 26% shares. Initially and subsequently also what was sent to the respondent concerned, was only the SH-4. Moreover, a bare perusal of the stand of the petitioner, reveals that it became asserted that the apposite transfer can be done upto 30th September (i.e. the date of conducting of AGM).

27. Tritely also, none of the hereinabove extracted conditions whereby there would be a valid transfer of shares onto the accounts of the transferee company become revealed to be satiated. Moreover, especially when the rule ordained qua the coming into existence of an instrument of transfer duly stamped, and naturally executed between the transferor and transferee, besides with thereins also becoming spoken that the specific date of approval, registration no. etc. alongwith enclosures, whereafter, it was to be delivered to the company concerned, within 60 days from the date of its execution, besides subsequently the same being also required to become accepted by the apposite company through a resolution, becoming passed and whereafter the same becoming imperatively incorporated in the Register. All the (supra) though required to becoming completely satisfied. However, when all supra evidently remained un-satiated. Therefore, for want of compliance being made to the supra statutory requirements, there was but no

valid transfer of the ordained/requisite shares by the original promoters i.e. M/s Ambey Mining Private Limited, M/s Godavari Commodities Limited onto the accounts of the incoming promoter/company i.e. M/s MMPL.

28. However, while considering the supra grievance of the petitioner, it was specifically pointed out to the petitioner, by the respondent concerned, that Form SH-4 cannot be construed as a valid document of transfer and reference was also made to the dates referred therein i.e. 30.3.2024. The only response theretos given by the petitioner was by way of oral and written submissions.

29. As such, reiteratedly, for all the supra mandatory conditions, thus for the supra stated reasons rather remaining unsatisfied, therebys, M/s MMPL cannot be considered as promoter of BMPL Joint Venture company. Emphatically, in the absence of valid 26% transfer of shares, besides especially in view of the well settled principles of law, as, embodied in judicial pronouncements, to the effect that SH-4, may be construed as binding between the transferor and transferee, but subject to the mandatory statutory provisions supra becoming also fully complied with. Since for the above stated reasons, the mandatory statutory provisions remain uncomplied with, therefore, SH-4 pales into insignificance.

30. Furthermore, in the record submitted by the BMPL, though it is shown that AMPL and GCL respectively, has transferred 03% and 23% of their shares in favour of MMPL, but no record of actual transfer of capital has been provided by the bidder at the time of the making of the bid or at the

time when clarifications were sought before opening the bid nor the requisite ordained (supra) instrument of transfer became ever placed on record.

31. In consequence, the claim of the petitioner, that BMPL is a Joint Venture Company, thus comprising of three promoters namely; (1) Ambey Mining Private Ltd. (AMPL), (2) Godavari Commodities Ltd. (GCL) and (3) Maheshwari Mining Private Ltd. (MMPL), and, is eligible for submitting technical and financial bid as per the provisions of the Notice Inviting Bid (NIB) but was required to be rejected.

32. In aftermath, there is no merit in the instant writ petition, and, the same is dismissed.

33. Since the main case itself has been decided, thus, all pending application(s), if any, are disposed of as such.

**(SURESHWAR THAKUR)**  
**JUDGE**

**03.04.2025**

Ithlesh/kavneet

Whether speaking/reasoned:- Yes/No  
Whether reportable: Yes/No

**(VIKAS SURI)**  
**JUDGE**