CHAPTER 7

Public Private Partnerships and Joint Ventures

7.1 Legislative oversight mechanism over public money and assets

Accountability of Government to the Parliament is the basis of parliamentary democracy. Through Parliamentary Committees, the scrutiny and oversight functions of Parliament are carried out. There are two financial committees to exercise budgetary oversight. These are the Committee on Public Accounts (PAC) and the Committee on Public Undertakings (COPU).

The PAC examines the Appropriation Accounts and Finance Accounts, the expenditure by various Ministries /Departments and accounts of autonomous bodies. Functions of the Committee extend "beyond the formality of expenditure to its wisdom, faithfulness, and economy". The COPU examines the reports and accounts of the Public Undertakings and whether the affairs of Public Undertakings are being managed in accordance with sound business principles and prudent commercial practices. These two financial committees also scrutinize the working of Ministries as well as the government agencies and corporations based on the audit findings in the reports of CAG.

New arrangements have developed, particularly in infrastructure sector, whereby substantial public fund and/or assets are used to implement public programs or economic activity by the Government through involvement of private parties on medium to long term basis. These new arrangements are largely in the form of Public Private Partnership (PPP) and/or Joint Ventures (JVs), both in the Centre and States. These arrangements are, however, outside the traditional legislative oversight by the Parliament.

7.2 Public Private Partnership

Public Private Partnership (PPP) is an arrangement between a government /statutory entity / government owned entity on one side and a private sector on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector, for a specified period of time.

Public–private partnership (PPP) has following main features:

- A long-term contract between a public sector authority and a private party.
- The private party provides a public service or infrastructure.
- Private party assumes substantial financial, technical and operational risk. There is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are

benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative.

Broadly, PPPs could be categorized into *Institutionalized PPPs* and *Contractual PPPs*.

Institutional PPPs are usually joint ventures (JVs) between public and private sector stakeholders to carry out PPP projects by *sharing the risks* and to provide public services on a long term basis. *Contractual PPPs are* arrangements between government departments or public sector undertakings under them and the private sector entities whereby a facility is given by the public sector to the private sector or to a joint venture (consortium) which then operates the PPP for a certain period of time, known as 'concession period' and either recovers user charges and/or receives annuity payments and/or viability gap funding (VGF) from the government or the public sector, or pay premium or receive share in profit/revenue, as may be. National highway projects implemented by the GoI through National Highway Authority of India (NHAI) are examples of the contractual PPPs being executed by the Government through the statutory corporation.

The details of some important PPPs agreement entered into by Central Government through CPSEs is given in **Appendix-XXII**. It may be seen that the public assets in the form of land etc. owned by the Government/CPSEs were given to the PPPs, the fair value of which for the concession period might be substantial compared to the equity capital invested by the private operator. Further, the public at large pays for the services provided by the operator in some cases, which service otherwise would have been provided by the Government or CPSEs and thus involved the projects of public interest.

7.3 Absence of legislative oversight mechanism over PPP projects

In PPPs, the private partners use substantial public fund/assets held by the government and/or government agencies/corporations. Comprehensive audit of PPP projects is therefore necessary, which would require access to the records of private partners/JV for proper verification of project's performance in delivery of services and adherence to the terms & conditions of contract. The Government has not enacted any legislation so far to ensure that the accounts of PPP projects are routinely subjected to Parliamentary oversight. Most of the PPP agreements signed so far also do not provide for comprehensive audit by CAG. If such kind of public programs/projects are implemented by Government directly or through its agencies /corporations or through grants to institutions/organizations, the same are subjected to legislative oversight by Parliament through CAG Audit.

There are risks in estimation of revenue streams of projects under PPP arrangement which may significantly impact the exchequer or users of the services, which is normally the public at large.

A few PPP projects audited by CAG from records of Government and its Corporations raised issues regarding use of public assets/resources by the private partner (refer CAG's Audit Report No.5 of 2012-13 on Implementation of Public Private Partnership Indira Gandhi International Airport, Delhi and CAG's Audit Report no.19 of 2011-12 on Hydrocarbon Production Sharing Contracts). This reinforces the necessity of Parliamentary oversight over the accounts of PPPs. A private player in PPPs cannot be kept outside the Parliamentary oversight as he delivers public services for which he gets paid from public funds or by users (citizens) through payment of user fee/tariff.

Under section 20(1) of the CAG's (DPC) Act 1971, ''--where the audit of the accounts of any body or authority has not been entrusted to the CAG by or under any law made by Parliament, he shall, if requested so to do by the President, or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or authority''. However, Section 20(1) of the Act has rarely been invoked by Government, which leads to lack of Parliamentary oversight over these programs/projects of public interest. Appropriate clauses in the PPP agreement may be considered by Government to ensure that all PPP agreements with private bodies contain provisions for Parliamentary oversight by subjecting the accounts of PPPs to comprehensive audit by CAG.

Limiting the scope of CAG's audit in public projects implemented by PPP would amount to restricting the scope of oversight by the Parliament over such projects, which is neither desirable nor intended by the Government.

7.4 Joint ventures by CPSEs

Joint venture (JV) is a contractual arrangement whereby two or more parties carry economic activity under joint control. The JV may be of three forms i.e. jointly controlled entities, jointly controlled assets and jointly controlled operation. The jointly controlled entity may be an incorporated entity. As other form of JVs i.e. jointly controlled assets and jointly controlled operations are un-incorporated, these are governed by the agreement signed among the partners.

In the case of unincorporated JVs an agreement is signed among the JV partners which stipulates the duties and obligations of all the co-venturers, with one venturer acting as the 'operator'. The operator performs all activities of the JVs as per the provisions of the agreement including getting the accounts of JV audited by an independent auditor and the other venturers pay cash calls to the operator as and when such calls are made.

A number of government agencies have been entering into joint ventures with private parties in pursuit of their objectives involving substantial investment of public funds/assets.

7.4.1 Audit arrangement of JVs

In respect of JVs incorporated in India under the Companies Act, 1956 in which government companies / a government company in combination of other Companies/Corporations hold less than 51 *per cent* of the paid up capital of the concerned JV company or subsidiaries of CPSEs, incorporated outside India, CAG has no power to appoint the auditors or to conduct supplementary/test audit of the accounts of such incorporated JVs. Similarly, in respect of unincorporated JVs, CAG has also no power to appoint the auditors or to conduct supplementary audit as these JV contracts signed so far by various CPSEs do not expressly provide for audit by CAG.

As substantial funds of CPSEs have been deployed in various JVs/ foreign subsidiaries, a limited review of JVs based on the available records was conducted by CAG and the audit findings were contained in the CAG's Audit Report no.2 of 2009-10. It was reported that 29 government companies and one statutory corporation had formed 296 JVs (129 incorporated and 167 un-incorporated JVs) with the total investment of ₹ 13,331 crore and ONGC Videsh Limited invested ₹ 48,382 crore in JVs/ foreign subsidiaries by end of March 2009. However, the accounts of these JVs/ foreign subsidiaries lacked Parliamentary oversight. Audit recommended devising appropriate regulatory and oversight mechanism by government agencies to safeguard the interest of CPSEs and ensure adequate accountability and transparency. No action has, however, been taken by the Government to address the issue.

The investment by ONGC Videsh Limited in JVs/ foreign subsidiaries stood at ₹ 70,761 crore by end of March 2013. Further, an investment of ₹ 10,300 crore by end of March 2013 by 23 government companies/corporations in 84 JVs (76 JVs incorporated in India and 8 JVs un-incorporated) was noticed as per details given in **Appendix-XXIII**.

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Countersigned

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