

CHAPTER XVII : MINISTRY OF TEXTILE

Apparel Export Promotion Council

17.1 Undue benefit to a private party

Tendering process adopted by AEPC for leasing of furnished office accommodation was flawed. Though, M/s Teesta Urja Limited (TUL) did not participate in the tendering process, their bid was considered one week after opening of the bids. A number of post contractual benefits were extended to M/s TUL, which were highly unfavourable to AEPC resulting in undue financial benefits to M/s TUL and loss of revenue of ₹ 17.42 crore to AEPC.

Apparel Export Promotion Council (AEPC) published advertisements (August/September 2007) in newspapers for leasing of furnished office premises measuring 23,382 sq. ft. at Bhikaji Cama Place, New Delhi. In response, AEPC received eight quotations by the due date i.e. 15 September, 2007. Three bidders, viz. M/s E-Square International, New Delhi (amount quoted ₹ 200-250 per sq. ft.), M/s The Institute of Planning and Management - IPM (amount quoted ₹ 235 per sq. ft.) and M/s Japan International Cooperation Agency – JICA (amount not mentioned in the bid) were shortlisted and called for negotiation on 26 September 2007. In the meantime, bid of ₹ 265/ sq. ft. was received from M/s Teesta Urja Limited (TUL)¹ on 24 September 2007 i.e. after opening of bids of other bidders on 19 September 2007. Though, M/s TUL did not participate in the tendering process, AEPC invited them, along with the short listed bidders, for further negotiations. M/s E-Square International did not turn up for negotiations and M/s IPM sought one day's time to give their best offer on 27 September 2007, but finally they also did not turn up. Representatives of M/s JICA intimated ₹ 175/ sq. ft. as their maximum price.

AEPC considered M/s TUL as highest bidder who agreed for taking the building at a rent of ₹ 270/ sq. ft. AEPC entered (1 December 2007) into a lease agreement with TUL for leasing of office premises for a period of six years with effect from 1st December 2007 to 30 November 2013. As stipulated in the agreement, the lease rent was to be enhanced by 15 *per cent* of the basic rent

¹ M/s TUL was incorporated on 11 March, 2005 under the Companies Act, 1956 as a Special Purpose Vehicle (SPV), for implementation of 1200 MW Teesta Stage-III Hydroelectric Project, in Joint Venture with the Government of Sikkim (GoS) having 26 per cent stake in its equity through its 100 *per cent* owned company viz. Sikkim Power Investment Corporation Limited (SPIC). The GoS has increased its equity holding through SPIC, from 26 to 51 *per cent*, w.e.f. 06 August, 2015. Thus M/s TUL became a Government Company w.e.f. 06 August, 2015, as per the provisions [Section 2(45)] of Companies Act, 2013

after lapse of three years from the date of commencement of the lease. Further, as per clause 4 of the agreement the “lessee shall also pay annual property tax of the hired premises”.

However, in November 2008, TUL informed AEPC the prevailing rental rates (based on real estate websites) for office complexes in South Delhi and requested for reduction in office lease rent from ₹ 270/sq. ft. to ₹ 150/sq. ft. Considering the request of M/s TUL, AEPC decided to reduce the rent from ₹ 270 per sq. ft. to ₹ 190 per sq. ft., with effect from 01-04-2009, without escalation in the rent for three years. An addendum to the agreement was signed (08-05-2009) between AEPC and TUL stating that, except the aforesaid amendment all other terms and conditions of original lease agreement shall remain unchanged.

TUL again, requested (February 2012) AEPC for considering reduction in monthly lease rent, reiterating prevailing rates for similar accommodation in Bhikaji Cama Place ranging between ₹ 80/sq. ft. and ₹ 130/sq. ft. AEPC agreed (21 March 2012) to reduce the lease rent from ₹ 190 per sq. ft. to ₹ 165 per sq. ft. for a period of two years with effect from 1st April 2012 to 31 March 2014 and signed another addendum (03 March 2012) with TUL, accordingly. After expiry of the lease period on 31 March 2014, the AEPC has enhanced the lease rent from ₹ 165 per sq ft to ₹ 225 per sq. ft. with effect from 1 April, 2014 and the lease period has been extended for another three years.

Audit observed (March 2015) that:

- Entire tendering process was flawed starting from the advertisement given in the newspapers for inviting bids, to the final decision taken for giving the office premises on lease rent to M/s TUL. The advertisements for inviting bids contained incomplete information such as, advertisement dated 18 August, 2007 did not indicate closing date of bidding and advertisement dated 02 September, 2007 gave the last date of bids up to 15 September 2007 without indicating date and time of opening of bids. Despite M/s TUL not participating in the tendering process, their bid received on 24 September 2007 was considered, even after opening of bids on 19 September 2007 and finally they were considered as the highest bidder. This puts doubts on the sanctity of the tendering process.
- AEPC extended a number of post contractual benefits to M/s TUL, such as (a) instead of enhancing the lease rent by 15 *per cent* of the basic lease rent in terms of the agreement after the stipulated period, the AEPC

considered the request of M/s TUL for reduction in lease rent and reduced the rent twice: initially to September 190 per sq. ft. (w.e.f. 1st April 2009), and thereafter to September 165 per sq. ft. (w.e.f. from 1st April 2012) without carrying out any market survey. This tantamount to an undue benefit of ₹ 16.79 crore to TUL. (b) M/s TUL was paying property tax till 2009-10 in terms of clause 4 of the original agreement. Subsequently, considering the request of M/s TUL, AEPC agreed to undertake the liability of payment of property tax from year 2010-11 and onwards (c) One month's moratorium from 1st November, 2007 to 30 November, 2007 was allowed to the party without any provision for the same in the agreement. This resulted in loss of one month rent of ₹ 0.63 crore.

The Secretary General, AEPC while accepting (September 2015) the audit observations stated that undue extension of lease period on highly favourable terms was granted to M/s TUL despite the absence of any such provisions in the principal lease agreement.

Ministry in their reply (February 2016) did not give specific comments on the issue raised in the audit para and forwarded the reply furnished by the Chairman, AEPC (12 January 2016) and final comments given by Secretary General (SG), AEPC (12 January 2016). Ministry also stated that the two replies show that the view of Chairman, AEPC are at variance with those of Secretary General, AEPC. Ministry further stated that while SG, AEPC is the Executive Officer of AEPC, the functioning of the Council is overseen by the Committee headed by Chairman, AEPC.

It was seen from examination of the final comments of SG, AEPC, received with Ministry's reply, that SG, AEPC reiterated his reply given earlier (September 2015) only. Whereas Chairman, AEPC replied as under:

- As per terms and conditions of the Lease Agreement "Any dispute on difference arising between the Lessor and the Lessee in regard to the terms and conditions thereof or their interpretations save and except those which are covered by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shall be amicably settled by both the parties to the extent possible."
- Since the highest quoted rate was ₹ 200/sq. ft. per month and agencies were not coming forward for negotiation, quotation of M/s TUL was obtained and negotiated to maximise the rent.

- M/s TUL had requested to grant a grace period of 45 days for refurbishing. Accordingly, the then Chairman, AEPC had conveyed his approval for 30 days grace period, telephonically through the PS to Chairman, AEPC.
- There is no loss to AEPC and all decisions (including fixation/re-fixation of) rent were approved within the powers and functions enshrined under Articles of Association and powers of Executive Committee, AEPC/Finance & Budget, Sub- committee, AEPC.

The reply of Chairman, AEPC was not acceptable in view of the following:

- Request for reduction of rent was made by M/s TUL and while making such request there was no difference or dispute.
- Reply is not correct as M/s IPM quoted ₹ 235 per sq. ft. and bid of M/s TUL were not obtained till the date of opening of bids on 19 September 2007.
- There was no provision in the lease agreement for such moratorium period.
- Fact remained that although, M/s Teesta Urja Limited (TUL) did not participate in the tendering process, their bid was considered even after opening of bids, which indicated that AEPC failed to maintain the sanctity of the tendering process. AEPC also did not explore possibility of getting higher amount of lease rent by calling competitive bids, instead of accepting request for reduction in lease rent of existing party viz. M/s TUL. Further, as brought out in the para, the terms of lease agreement were negotiated post contractually, which tantamount to extending undue financial benefit to M/s TUL. Thus, while taking such decisions AEPC did not apply due diligence to safeguard its financial interests.

It is clear from the above, that the tendering process for leasing of furnished office accommodation was flawed as AEPC failed to maintain the sanctity of the tendering process. A number of post contractual benefits were also extended to M/s TUL, which were highly unfavourable to AEPC resulting in undue financial benefits being extended to M/s TUL and loss of revenue of ₹ 17.42 crore² to AEPC.

² Undue benefit on account of post contractual reduction in lease rent ₹ 16.79 crore + ₹ 0.63 crore one month's moratorium from 1 November, 2007 to 30 November, 2007 allowed to the party without any provision in the agreement.