CHAPTER - III

CHAPTER-III

3. Compliance Audit Observations

The Chapter includes 15 paragraphs based on test check of transactions of the State Government Companies.

Government Companies

Madhya Pradesh State Tourism Development Corporation Limited

3.1 Loss of revenue

The Company did not execute the lease agreements against completed way side amenities due to change in terms and conditions causing revenue loss of ₹ 1.33 crore

The Company acts as nodal agency of Department of Tourism (DoT), Government of Madhya Pradesh (GoMP) for developing the tourism infrastructure in the State. The State has been receiving financial assistance from Government of India, Ministry of Tourism for creation of tourism infrastructure including Budget Hotel/Accommodation, Way Side Amenities (WSA)[1] etc.

For promoting WSAs, the Company followed the model of developing the WSA by itself and then leasing it out to the private entrepreneurs to operate. The selection of parties for operation, maintenance and management of WSA for a period of 10 years was to be done through transparent and competitive bidding process by the Company. The successful parties after signing the management agreement shall pay annual license fee to the Company in one instalment each year till the end of the license period.

Audit observed (February 2016) that, the Company proposed to develop 70 WSAs against this, 13 WSAs were developed during August 2013 to May 2015 by investing ₹ 7.12 crore as detailed in ***Annexure 3.1.*** The Company floated the Request for Proposal (RFP) in January 2015 (for seven WSAs) and in March 2015 (for six WSAs) for selecting the parties to operate these WSAs. The financial bids for these WSAs were opened in March 2015 and May 2015 respectively. However, the management agreement against these 13 WSAs was not entered into with the successful bidders up to the end of June 2016.

Audit further observed that the main reason for not entering the management agreement by the lessees was the changes made in terms and conditions by the Company subsequent to selection of the successful bidders. The Company decided (September 2015) that the successful bidder would not be handed over the entire area of WSAs land, instead a part of it would be taken back and returned to the District collector. However the Committee formed for fixing the upset price for the completed WSA's in November, 2015 decided that no part of the land would be taken back from the successful bidders as it was not

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[1] Facilities such as vehicle parking, restaurant, toilets, changing room, rest room, first aid availability etc.

in the best interest of the Company. During this intervening period from the completion of WSAs and up to July 2016, no lease agreement was executed by the Company though these WSAs were completed between January 2013 and May 2015. This led to idling of 13 completed WSAs by investing ₹ 7.12 crore for a period ranging from 10 months to 38 months since their completion. Also the Company lost the opportunity of generating lease rent of ₹ 1.33 crore[2] against these 13 WSAs. Further the Company invested ₹ 16.99 crore against the balance 57 WSAs which were either completed or at various stages of completion up to June 2016.

The Management stated (August 2016) that, all the WSAs were not completed due to not receiving of the funds from Ministry of Tourism, GoI hence the bids invited for selection of parties to operate the WSAs were canceled. It was further stated that, the online tendering process for the selection of parties to operate the WSA's was commenced in July, 2016 and the lease agreements would be entered on the completion of the selection process.

The reply was not tenable since, the Company itself recorded in its correspondence that, 13 WSAs were completed between January 2013 and May 2015 and against them the bids were invited (January 2015) for the selection of parties to operate the WSAs. However the lease agreements were not finalised due to change in terms and conditions pertaining to handing over the quantum of land. Hence the failure on the part of Company to take appropriate decision in a timely manner caused the revenue loss against already completed WSAs.

The matter was reported to the Government in May 2016; the reply is still awaited (November 2016).

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited

3.2 Unjustified exemption of Electricity Duty

The Company extended undue favour to M/s Trident Limited, Budhni by granting unjustified exemption of Electricity Duty amounting to ₹ 3.12 crore

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Company) entered into High Tension (HT) power supply agreement (December 2008) with M/s Trident Limited, Budhni, who is engaged in the activity of textile and spinning industry with a contract demand of 5000 kVA. The consumer enhanced the contract demand (load) in a phased manner from 5000 kVA to 39000 kVA (December 2015) and to 41000 kVA (March 2016).

The Company levies Electricity Duty (ED) at the rate of nine *per cent of* tariff per unit per month under *Madhya Pradesh Vidhyut Shulk Vidheyak, 2012 (Vidheyak)*. Section 5 of this *Vidheyak* empowers State Government to grant exemption to industrial consumers from payment of ED. Further, the Energy Department, GOMP, in order to encourage new HT consumers to connect with grid of Power Distribution Companies, issued (04 March 2014) a Gazette

[2] As per rates quoted by the prospective bidders for lease rent (Annexure enclosed).

Notification granting exemption to HT consumers from payment of ED. This exemption was available to new HT consumers who take new connection from Power Distribution Companies of the State within five years from the date of issue of this notification. This exemption was not available to HT consumers already connected with the Power Distribution Companies of the State.

Audit observed (April 2016), that contrary to the provision of above Gazette Notification, the Commerce, Industries and Employment Department, GoMP had issued (04 October, 2014) specific order exempting M/s Trident Limited from payment of ED. The exemption was granted on the grounds that the HT consumer would invest around ₹ 1,400 crore in the composite Textile plant which would generate large scale local and women employment and that the cotton farmers would get fair price for their produce. However, M/s. Trident Limited was already availing supply from the Company with a contract demand of 26000 kVA (from September 2014 onwards) prior to this Notification (04 October 2014) and subsequently enhanced the load to 41000 kVA (March 2016). As per the specific order issued, the Energy Department GoMP (21 October 2014) directed the Company to exempt M/S Trident Limited from payment of ED. Accordingly, the Company exempted the consumer from payment of ED (w.e.f. 11 August 2015) which aggregated to ₹ 3.12 crore up to February 2016.

Thus, granting ED exemption to an existing HT consumer by treating the enhancement of load as new connection was not in line with Gazette Notification issued by the Energy Department (March 2014). Further, under section 5(iii) of the *Vidheyak*, GoMP can grant exemption to such person or class of persons and for such purposes as may be specified through issuing a gazette notification. However, no such notification was issued by Commerce, Industries and Employment Department, GoMP while granting exemption to M/s Trident Limited.

The Government while accepting the audit observation stated (September 2016) that the load enhancement in the existing connection of M/s.Trident Limited was treated as a new connection for granting the exemption from payment of ED looking at the employment opportunities to local residents, huge investment, local farmers getting appropriate value for cotton produced by them and the focus given to textile sector in the state. It was also stated that the formal Gazette notification as required was not issued while granting the exemption to M/s.Trident Limited. The fact remains that the Department had extended undue benefit to a single party by deviating with the procedure laid down under the act for granting exemption from payment of ED.

Madhya Pradesh Power Transmission Company Limited

3.3 Short recovery of labour welfare cess

The Company short recovered labour welfare cess by ₹ 5.93 crore and thereby extended undue benefit to the Contractors to the same extent

The Building and Other Construction Workers' Welfare Cess Act, 1996 (Act) provides for levy and collection of a cess on cost of construction incurred by an organisation. As per section 3 (1) of the Act, labour cess should be levied at minimum one *per cent* on the cost of construction incurred by the employer.

As per Rule 3 of Building and Other Construction Rules 1998 (Rules), the cost of construction shall include all expenditure incurred by the employer in connection with building and other construction excluding cost of land and compensation under Workmen Compensation Act, 1923.

Further Rule 8 provides that failure to pay any amount of cess to *Madhya Pradesh Bhavan Evam Anya Nirman Karmkar Mandal* (Board) within specified time, would entail payment of interest on unpaid amount at the rate of two *per cent*, for the delay of every month or part thereof. Rule 9 provides for levy of penalty of an amount not exceeding the amount of cess in case, the cess is not paid within 30 days from the end of every year during which the construction was going on.

Madhya Pradesh Power Transmission Company Ltd (Company) awarded (September 2012 to February 2016) 42 works on turnkey basis (including supply and erection) for construction of various transmission lines and substation. As per the provisions of above Act and Rules, the Company was required to recover the labour welfare cess of ₹ 8.16 crore (at one *per cent* on supply portion ₹ 536 crore and erection portion ₹ 279.88 crore) from the contractors' bills.

Audit observed (June 2016) that, the Company had recovered labour welfare cess of ₹ 2.23 crore on erection portion alone and no cess was recovered against the supply portion of the contracts awarded. This resulted in under recovery of labour welfare cess of ₹ 5.36 crore on supply portion and there was also a balance amount of ₹ 0.57 crore cess remain to be recovered from the contractors on erection portion.

The failure to recover labour welfare cess as per the provisions of Act and Rules resulted in short recovery and extension of undue benefit to the contractors to the extent of ₹ 5.93 crore. Further, the Company would become liable to pay interest at two *per cent* on the short recovered labour cess (Rule 8 of Rules 1998).

The Company stated (October 2016) that labour cess was not leviable on the transmission activities as they fall under the purview of Factories Act. It was further stated that in November 2015, GoMP brought an amendment to Labour Welfare Cess Act, 1996 to the effect that the cost of plant and machinery are exempted from the cost of construction for the purpose of levy of labour welfare cess. Hence cess was not deducted from the contractors' bills pertaining to supplies portion.

The reply was not tenable since (i) as per the provisions of the Act *i.e.* The building and other construction workers (Regulation of employment and conditions of service) Act 1996, the transmission activities were covered for the purpose of levy of labour welfare cess and the company does not carry out any manufacturing activity but trades in the power (ii) the Company did not possess the registration certificate under the Factories Act 1948. However, the Company was paying labour cess on the erection portion of the contracts. Further, Rules also specified that, cost of construction include entire cost, except cost of land and compensation paid to workers under Workmen

Compensation Act 1923. Hence, labour being the item listed in the concurrent list of Constitution, if an amendment is brought by State Governments in contrast to the provisions of union act, then union act prevails. Therefore, levy of labour welfare cess must be done as per the provisions of Act and Rules.

The matter was reported to the Government in August 2016; the reply is still awaited (November 2016).

Madhya Pradesh Road Development Corporation Limited

3.4 Loss of Revenue due to ineffective Implementation of Agreements

Ineffective implementation of Concession Agreement and Escrow Account Agreement by the Company led to non-recovery of ₹ 4.56 crore from the Concessionaire

MP Rajya Setu Nigam Ltd (MPRSNN) and M/s. Tapi Prestressed Products Ltd entered (March 2003) into Concession Agreement (CA) for development, construction, strengthening and widening of Jabalpur-Narsinghpur-Piparia Road on Build, Operate and Transfer (BOT) basis. A Special Purpose Vehicle *viz.* JNP Road Infrastructure Project Pvt Ltd was formed for this purpose. Subsequently, Madhya Pradesh Road Development Corporation Limited (Company) was designated as successor/assignee of MPRSNN (July 2004).

As per clause 18.11 of the CA, the concessionaire has to operate and maintain the Project highway failing which he was liable for damages at the rate of ₹ 5000 *per day* in accordance with clause 18.12. As per clause 25 of the CA, an Escrow Account Agreement (EAA) was executed (October 2003) among JNP Road Infrastructure Project Pvt Ltd, Union Bank of India and the Company.

As per clause 4.1 of the EAA all monies received in respect of the project were required to be deposited into the Toll Escrow Account by the Concessionaire. As per clause-19.4 of the CA, the concessionaire was required to furnish monthly fee statement within seven days of completion of each calendar month during the toll period. As per clause 4.2.1 item 2 (e) of EAA any payments and damages due and payable by the concessionaire can also be withdrawn from the Escrow Account. Further as per clause 4.2.2 item 2 (c), any payments and damages due from the concessionaire upon (i) issue of termination notice; (ii) termination of CA or (iii) the expiry of concession period, can be withdrawn from the Escrow Account in the manner as specified under clause-25.5 of the CA.

Audit observed (May 2016) that the road project was not maintained by the concessionaire as per the terms of CA during October 2007 to April 2016 despite various notices issued by MPRDC. Since, the concessionaire failed to honor the terms of the agreement, the concession agreement was terminated (April 2016) by the Company.

Audit further observed that, in spite of provision for recovery of damages levied from time to time, the Company did not invoke clause 4.2.1 item 2 (e) to recover the damages promptly from the Toll Escrow Account/concessionaire, as a result the dues/damages recoverable had accumulated to ₹ 5.38 crore (20 April 2016). The company recovered

(26 May 2015) ₹ 1.37 crore by invoking Bank Guarantee (₹ 0.75 crore) and FDRs of Maintenance Fund (₹ 0.62 crore) from the concessionaire towards damages leaving the balance amount ₹ 4.01 crore outstanding. The concessionaire was allowed to operate the project for 11 months without collecting fresh Operation and Maintenance (O&M) security deposit up to the termination of CA (30 April 2016). The concessionaire had also not deposited one *per cent* toll and project monitoring fee of ₹ 0.55 crore up to April 2016 as per terms of CA and the company did not invoke clause 4.2.1 item 2 (i) of EAA. As a result the amount of ₹ 4.56 crore remained unrecovered from the concessionaire up to June 2016.

Further, there was a short deposit of ₹ 2.92 crore toll by the concessionaire into Escrow account during the year 2014-15. From the statement of account (01 July 2015 to 11 May 2016) it was noticed that, the balance in Escrow Account was ₹ 51,510 as on 04 August 2015 and there was negative balance of ₹ 0.16 crore on 11 May 2016. Thus, though the Company was issuing notices to Concessionaire for his failure to maintain the roads and for not paying the due amounts to the Company, the concessionaire was withdrawing funds from Escrow account towards maintenance works. The Company failed to properly monitor the Escrow Account as to whether proper collection in escrow account was being made by the Concessionaire or not. The management also failed to monitor and control the excess withdrawal by the Concessionaire from Escrow Account by coordinating with the Escrow Agent from time to time.

The Government stated (September 2016) that, the Company had taken all necessary action for recovery of the outstanding dues and various correspondences were made with Escrow Bank regarding compliance of Escrow Agreement and it is the duty of the Concessionaire and Escrow bank to comply with provisions of Concession and Escrow Agreement.

The reply was not tenable since (i) the Company had not initiated timely action against the concessionaire as per the terms of CA and EAA and the party was allowed to operate the project without obtaining the requisite security for 11 months period leading to accumulation of arrears (ii) the Company neither checked as to whether Escrow Agent was following its instructions nor the Company adjusted the funds available in Escrow account in its favour in timely manner as per terms of EAA and (iii) the show cause notice and other correspondence was made by the Company only after audit observed the issue.

3.5 Extension of undue benefit to the contractor

The Company committed irregularities in the execution of road project works and extended undue benefit to the contractor to the tune of ₹ 7.07 crore

The Madhya Pradesh Road Development Corporation (Company) awarded (26 May 2010) the contract for construction of State Highway-09 (Shahdol-Singhpur-Turla-Pandaria road) having total length of 119.10 km to M/s Atlanta ARSS JV. This contract was terminated on 20 May 2013 due to failure of the contractor to fulfill the obligations. The company re-awarded

(August 2013) the balance work of road widening and re-construction to M/s. Dilip Buildcon Ltd for ₹ 109.95 crore at 30.12 *per cent* above the Madhya Pradesh Public Works Department (MP PWD) schedule of rates (SOR) applicable for the year 2009. The works were to be completed within 18 months (*i.e.* 06 February 2015) including rainy season. The contractor had completed the work on 10 March 2015 and the payment of ₹ 139.77 crore was made to the party (June 2015).

On reviewing the execution of the road project works by the Company, Audit observed the following shortcomings:

A) Higher rate for excavation of hard rock was fixed leading to excess payment of ₹ 5.11 crore to the contractor.

Clause 12.3 (b) of general conditions of contract (GCC) specified that if an item of work was instructed for execution under clause 13 (Variation and Adjustments) of the contract, for which no rate / price was specified in the contract, in respect of each such item of work the new rate or price shall be derived from any relevant rates or price in the contract. If no rates or price are relevant for the derivation of new rate or price, it shall be derived from the reasonable cost for executing such item of work together with profit taking into account any other relevant matter.

Audit observed (June 2016) that an item of work *i.e* 'excavation for roadway in hard rock (blasting prohibited)' was not included in the schedule or bill of quantity (BOQ) in the contract awarded to the party. But during execution of road work, the contractor had excavated 3,04,061 cum of hard rock (prohibited blasting) as per the instructions of the Company.

The committee[3] formed to fix the rates for this additional item of work recommended (13 July 2015) for payment of ₹ 512 per cum of hard rock excavated by the contractor. This rate was recommended by the committee duly considering (i) Rate proposed by the contractor of ₹ 512 per cum (ii) Rate analysis carried out by the Company as per standard data book of Ministry of Road Transport and Highways (MoRT&H) ₹ 542 per cum and (iii) Evaluated rates of the item as per MP PWD SOR 2009 ₹ 729 per cum[4]. The Company made payment for this additional item of work pending approval from GoMP.

Audit further observed that MP PWD, for determination of SOR rates adopted the standard data book of MoRT&H. As per SOR 2013 of MP PWD the rate for excavation of roadway in hard rock (blasting prohibited) worked out to ₹ 344 per cum. But the Company had erroneously determined the rate for this additional item of work at ₹ 542 per cum by considering the SOR 2009 of MP PWD despite the fact that SOR 2013 of MP PWD came into effect from February 2013 itself. By doing so, the Company made excess payment of ₹ 5.11 crore[5] to the contractor for the hard rock excavated.

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[3] Consisting of Divisional Manager, Technical advisor, Chief Engineer, Chief Accounts Officer and Deputy General Manager (Member Secretary) was formed by the Company.

[4] (Rate as per MP PWD 2009 SOR ₹ 503 per cum + escalation at the rate of 45 *per cent* during April 2009 to May 2014 is ₹ 226)= ₹ 729 per cum.

[5] Higher rate fixed ₹ 168 per cum (₹ 512 – ₹ 344) * 3,04,061 cum of hard rock excavated = ₹ 5.11 crore.

The Government stated (September 2016) that, the work of excavation for roadway in hard rock (blasting prohibited) was not included in the BOQ, however rate of additional item has been evaluated as per the standard data book of MoRT&H considering the prevailing market rates.

The reply was not tenable since the Company failed to consider the applicable SOR 2013 of MP PWD (became effective from February 2013), while fixing the rate for excavating roadway in hard rock (additional item of work) before the committee had recommended the rate for this item of work in July 2013.

B) Undue benefit of ₹ 1.52 crore was extended to the contractor by not recovering value for full quantity of hard rock excavated.

The Company adopted the SoR of MP PWD while awarding the contract for this road project. SOR of MP PWD under general note 23 specified that, the rubble that became available from excavation of hard rock, shall be used for conversion into coarse aggregates or for other constructions and it shall be issued to the contractor at ₹ 100 per cubic meter of rock excavated. Further as per BOQ item No. 2.06 and 8 (ii) 5 of the contract, the contractor had to arrange the approved soil/selected soil on his own cost for construction of embankment and approaches to bridge. For this item of work the contract provided the rates at the rate ₹ 71 per cum and ₹ 222 per cum respectively inclusive of material.

Audit noticed (May 2016) from the contractor bills that, the Contractor had excavated 3,04,061 cum of hard rock. Against the total excavated quantity of 3,04,061 cum hard rock, the Company issued 1,52,030.5 cum (representing 50 *per cent*) hard rock only to the contractor at the rate of ₹100 per cum. The balance quantity of hard rock 1,52,030.50 cum excavated under this contract work was utilised by the contractor in construction of embankment and approaches to bridges, but recovery of applicable charges from the contractor's bills was not made by the Company. This caused loss to the Government to the extent of ₹ 1.52 crore[6].

The Government stated (September 2016) that the balance 50 *per cent* (152030.50 cum) quantity of excavated hard rock was not found suitable for making aggregate and the same was used by the contractor for construction of embankment and approaches to bridge for which only watering and compaction charges were paid as per item 2.06 and 8 (ii) 5 of BOQ of the contract.

The reply was not tenable as there was no evidence in the records of the Company to show that 50 *per cent* of hard rock excavated was not suitable for making aggregate. Besides hard rock of size more than 0.5 cum and above could be grinded to any utilizable size for coarse aggregate or for other construction that is why there was no usability clause in SOR. Further, the approved material/selected soil was to be used by the contractor for construction of embankment and approaches to bridge at his own rather than using the hard rock. Since the Company in reply confirmed that, rubble obtained was used by the contractor for construction of embankment and approaches to bridge the applicable charges of ₹ 100 per cum should have

[6] 1,52,030.050 cum * ₹ 100 per cum = ₹ 1,52,03,050 say ₹ 1.52 crore.

been recovered from the contractor. By not doing so, the Company caused loss ₹ 1.52 crore to the Government.

C) Excess payment of ₹ 44.05 lakh was made to the contractor due to his failure to use the fly ash in road embankment construction work.

The Government of India (GoI), Ministry of Environment and Forest (MoEF) vide notifications dated 14 September 1999 and 03 November 2009 under section 3(2) and section 5 of the Environment (Protection) Act, 1986 issued direction for restricting the excavation of top soil for promoting the utilisation of fly ash in construction activity within a radius of 100 kilometers from coal based thermal power stations. It was further directed that, no person or organization should, within a radius of 100 kilometers from a thermal power station, undertake the construction or approve design for construction of roads or flyover embankments with top soil. Accordingly requisite guidelines/specifications were issued by Indian Road Congress (IRC) for utilisation of fly ash in road project works. Also as per the instructions of the Delhi, High Court, fly ash was to be used in the road embankments within a distance of 100 Kms from the Thermal Power House.

Audit observed (June 2016) that a thermal power station, Sanjay Gandhi Thermal power Project, Umaria was situated within a radius of 100 km from Shahdol-Singhpur-Turla-Pandaria road Project and accordingly the provision of use of fly ash and selected[7] soil for construction of embankment was made in the DPR and Schedule of quantity. The contractor quoted the rate of ₹ four per cum for 50 kms to 75 kms and ₹ six per cum for 75 kms to 100 kms for construction of embankment with fly ash as against the estimated rate of ₹ 276 per cum from 50 kms to 100 kms. But at the time of construction of embankment, the contractor constructed the full embankment with selected soil of 31,130 cum obtained from excavation from borrow pits[8] at the rate of ₹ 147 per cum amounting to ₹ 45.76 lakh and fly ash was not utilised by the contractor for construction of embankment. Had the contractor used fly ash in embankment construction, the cost would have been ₹ 1.71 lakh[9]. The failure to utilise fly ash led to violation of GoI instructions for using fly ash in road construction work and the specifications of IRC SP: 58-2001. This also resulted in excess payment of ₹ 44.05 lakh to the contractor (₹ 45.76 lakh - ₹ 1.71 lakh).

The Government stated (September 2016) that, as per IRC SP 58-2001 the fly ash embankment requires earth cover of one to three metre thickness on both sides over fly ash embankment. So it was not possible to provide fly ash embankment in widening and low embankment projects.

The reply was not tenable since the Company had itself made a provision in the DPR for usage of fly ash for embankment construction. The utilisation of alternative material compelled the Company to incur additional expenditure of ₹ 44.05 lakh and this was not recovered from the Contractor. Further the

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7 Means the soil having specified CBR value and utilised for construction of subgrade as per IRC specification.

8 Borrow pits means bits brought to working location from other locations.

9 8,030 cum * ₹ 4 per cum + 23,100 cum * ₹ 6 per cum = ₹ 1,70,720.

failure to use fly ash resulted in violation of MoEF directions for using fly ash in road construction works issued from time to time.

Thus by (i) deviating from the applicable SoR 2013 while fixing the rate for excavating road way in hard rock, (ii) not recovering the value for full quantity of hard rock excavated and (iii) not insisting upon the contractor to utilise the fly ash in the road work, the Company had incurred additional expenditure of ₹ 7.07 crore and extended undue benefit to the contractor to the same extent.

3.6 Excess payment of price adjustment

The Company made excess payment of price adjustment of ₹ 2.63 crore to the contractors in respect of bitumen due to adoption of incorrect price index

Madhya Pradesh Road Development Corporation Limited (Company) awarded contracts for four road projects[10] during 2011 to 2013. Sub clause 13.9 of the agreements deals with the mechanism to be followed for deriving the price adjustment in case of Bitumen. The above clause specified that, price adjustment shall be calculated by applying the difference between the basic and current price of Bitumen which was delivered to the site for use in the works.

As per agreements, the base index price was taken as the price that was prevailing on 28 days prior to the last date of submission of bids. Further while deriving the adjusted price in respect of bitumen/bitumen emulsion the current price as prevailing on the previous month end prior to the month to which a particular interim payment certificate is related was considered. The agreement specified the current price of bitumen as (i) in respect of ADB projects it is the ex-refinery price of nearest refinery inclusive of all applicable taxes, but excluding excise duties and (ii) in respect of other projects it means the ex-refinery price inclusive of all applicable taxes at the nearest refinery prevailing on the relevant date applicable for adjustment to the contract.

Audit observed (June 2016) that the nearest refineries were Koyali refinery for Pachor-Chhapikheda-Jirapur-Machalpur-Soyat and Agar-Barod-Alot-Jaora road projects; and Mathura refinery for Shahdol–Singhpur and Damoh-Hatta-Gaisabadroad projects. Audit further observed that, the Company adopted the bitumen index on the basis of rate list provided by Indian Oil Corporation (IOC), Bhopal Division for deriving the Bitumen price adjustment payable to the contractors. The practise adopted by the Company was not in line with provisions of the agreement as the *ex*-refinery price should have been adopted for deriving the price adjustment amount payable to the contractors. Thus the adoption of incorrect index price in deviation to agreement terms, led to the payment of price adjustment amount of ₹ 23.69 crore as against the actual amount of ₹ 21.06 crore that should have been paid as detailed in

[10] Three contracts (Pachor-Chhapikheda-Jirapur-Machalpur-Soyat, Damoh-Hatta-Gaisabad, Agar-Barod-Alot-Jaora) were awarded under ADB project and one contract (Shahdol – Singhpur) was awarded under general contract.

Annexure 3.2. This resulted in excess payment of ₹ 2.63 crore on account of price escalation of bitumen to the contractors.

The Company stated (October 2016) that, the contract did not specify that, the *ex*-refinery price as made available on IOC website could be taken into consideration for arriving at the price adjustment of Bitumen. It was further stated that, the basic selling price of assessable value was arrived at after adding the state specific cost as certified by IOC in its correspondence.

The reply was not tenable since, the rate adopted by the Company for arriving at the price adjustment was not in line with the terms and conditions of the agreement. Further the base price of Bitumen as shown in the purchase bills as collected by the Company from the contractors were also matching with rates declared by IOC on its official website. Hence, adoption of rates as declared by IOC Bhopal division office led to excess payment of price variation to the contractors.

The matter was reported to the Government in August 2016; the reply is still awaited (November 2016).

3.7 Extra expenditure due to excessive thickness adopted

The Company deviated from the specifications in the designing of road pavement and incurred extra expenditure of ₹ 1.77 crore

Madhya Pradesh Road Development Corporation Limited (Company) awarded (July 2011) the work of re-construction of Agar-Barod-Alot-Jawraroad (SH-41) to M/s Montecarlo Construction Limited (Contractor) for ₹ 133.08 crore. The works were to be completed within 24 months (June 2013) including rainy season. The works were completed (September 2013) and the pre-final bill of ₹ 156.20 crore was paid to the contractor (September 2013).

The pavement of the road was to be designed as per the Indian Road Congress (IRC) specifications mentioned in IRC 37-2001, which provides that thickness of the pavement should be designed based on (i) the projected number of commercial vehicles plying during the designed life of the road and (ii) the California Bearing Ratio (CBR)[11] of the sub grade[12] on which the road formation was aligned. The sub grade should be well compacted to utilise its full strength and to achieve economy in overall thickness of pavement required. Further top 500 mm portion of the road way shall be considered as sub grade. As per Ministry of Road Transport and Highways (MoRTH) specifications (IRC 37-2001), Granular Sub Base (GSB)[13] of only 200 mm thickness was required to be laid if the traffic intensity was up to10 million

[11] California Bearing Ratio is a penetration test for evaluation of the mechanical strength of natural ground, subgrades and base courses beneath new carriageway construction.

[12] Sub grade means the embankment at the formation level which includes sub-grade constructed and compacted with externally borrowed soil.

[13] The material to be used for the work shall be natural sand, moorum, gravel, crushed stone or combination thereof depending upon the grading required.

standard axle *(msa)*[14] and the CBR value of the sub-grade at formation level[15] exceeds seven *per cent*.

Audit observed (June 2016) that, as per detail project report (DPR) the CBR of existing sub grade was varying from 2.5 *per cent* to 15.90 *per cent*. The CBR value of borrow areas[16] was varying from 11.80 *per cent* to 15.58 *per cent*. As per IRC 37-2001 specification if the top 500 mm of the embankment was constructed with material having CBR more than 10 *per cent*, then the pavement should have with thickness suitable to subgrade CBR of 10 *per cent* and above. However, the Company reckoned the CBR value for the construction of road pavement at six *per cent* based on the CBR value of the existing ground soil instead of considering the CBR value of proposed soil to be used in the road pavement construction which was 11.80 *per cent.* Further as per IRC 37-2001 specification, for CBR value of 11.80 *per cent* (CBR above 10 *per cent*) the required thickness of granular sub base (GSB) should be 200 mm.

Further the SOR of MP PWD adopted by the Company for the construction of road emabnkment contained soil having CBR of more than 5 *per cent* and up to CBR value of 12 *per cent* to be obtained from excavation of borrow pits. Since in the instant case, the Company proposed to use borrow soil having minimum CBR of 11.80 *per cent* accordingly the crust should have designed to suit the specification given under IRC 37 for this CBR value of soil.

But the Company while computing the pavement considered the CBR at six *per cent* and executed the GSB of the pavement with an inflated thickness of 260 mm instead of the required thickness of 200 mm. This resulted in excess execution of GSB by 29840.25 cum of GSB causing extra expenditure of ₹ 1.77 crore[17].

The Company stated (October 2016) that the road design should be based on weakest CBR value of soil proposed to be used for sub garde construction or encounter extensivley at sub grade lavel over a given section of the road. Hence the pavement was designed based on CBR of 6 *per cent* and accordingly the crust with 260 mm GSB had been considered.

The reply was not tenable since, the DPRs were prepared after detailed survey and field inpsection and in the DPR the borrowed soil was proposed to be used and the CBR value of this soil was ranging between 11.80 *per cent* and 15.58 per cent. Hence the Company should have considered the CBR value of soil used in this road project as 11.80 *per cent* instead of 6 *per cent*. By not doing so, the Company incurred extra expenditure of ₹ 1.77 crore.

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14 The design traffic is considered in terms of the cumulative number of standard axles to be carried during the design life of the road.

15 The formation level is the final level of the soil surface after completion of earth work and compaction.

16 In construction and civil engineering, a borrow area is an area where material (usually soil, gravel or sand) has been dug for use at another location.

17 (A) As per BOQ, the executed quantity of GSB was 129307.75cum @ ₹ 592.50 per cum = ₹7,66,14,824 (B) The value of excess quantity of GSB executed by considering 260 cum instead of 200 cum as per IRC 37 specification *i.e* (129307.75 X 200/260) = 99467.50 cum * ₹ 592.5 per cum = ₹ 5,89,34,494 Total extra cost incurred by the Company is (A – B) = 29,840.25 cum valued ₹ 1,76,80,348 say ₹ 1.77 crore.

The matter was reported to the Government in August 2016; the reply is still awaited (November 2016).

3.8 Avoidable payment of interest on income tax

The Company committed default in remittance of advance income tax resulting in avoidable payment of penal interest of ₹ 35.58 lakh

As per Section 208 of the Income Tax Act, 1961 (Act), advance tax is payable during a financial year, in every case, where the amount of such tax payable by the assessee during the year is rupees ten thousand or more. Section 234B of the Act stipulates that where in any financial year, an assessee who is liable to pay advance tax under Section 208 failed to pay such tax or where the advance tax paid by such assessee is less than 90 *per cent* of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one *per cent* for every month from the first day of April on the amount by which the advance tax paid fell short of the assessed tax.

Further, Section 234C of the Act provides that if an assessee fails to pay advance tax or the advance tax paid is less than 15 *per cent*, 45 *per cent*, 75 *per cent* and 100 *per cent* of the tax due till 15 June, 15 September, 15 December and 15 March respectively, the assessee shall be liable to pay simple interest at the rate of one *per cent* per month on the amount of the shortfall.

Audit observed (February 2016) that, Madhya Pradesh Road Development Corporation Limited (Company), had not paid the advance tax at the stipulated percentages on the due dates. Thus the Company paid ₹ 35.58 lakh towards penal interest[18] for Assessment Year (AY) 2015-16, which could have been avoided had the Company correctly assessed and paid the quarterly instalments of advance tax on the prescribed due dates.

The Government stated (June 2016) that (i) the income of the Corporation has been booked at the year end on accrual basis as per provisions of Companies Act, 2013 (ii) it had filed the income tax return subsequently electronically through website of IT Department which automatically calculates the tax and interest liability without human intervention and (iii) The surplus funds of the Company were deposited in the banks as FDRs and they earned interest of ₹ 35.58 lakh equivalent to the penal interest paid by the Company.

The reply was not tenable since, the Company failed in assessing the liability of advance income tax as per the governing provisions of Income Tax Act, 1961 and its timely remittance to the Government revenue. Further, violation of statutory requirement was no argument for earning interest on FDRs and in any case FDR interest rate (nine *per cent*) was always lower than the penal interest (12 *per cent*) levied by the IT department.

[18] Interest u/s 234B - ₹ 17.70 lakh plus interest u/s 234C - ₹ 17.88 lakh due to delayed remittance/ deferment of advance tax payment.

Madhya Pradesh State Agro Industries Development Corporation Limited

3.9 Extension of undue benefit

The Company extended undue benefit of ₹ 5.68 crore to joint venture partners by not adjusting the realisable value of retained gunny bags while finalising the production cost of RTE products

Madhya Pradesh Agro Industries Development Corporation Limited (Company) was supplying the ready to eat (RTE) products to Women and Child Department (WCD), GoI under the Integrated Child Development Services (ICDS) project. The RTE products are being supplied by the Company at predetermined sale price as fixed by WCD from time to time.

The sale price of RTE products is fixed based on the cost data provided by the Company which *interalia* comprises expenditure towards raw material, specified *percentage* of loss of raw materials during process, direct costs, overheads including transportation costs and profit margin. As the Company does not possess sufficient production capacity to meet the demand, joint ventures (JVs) were formed with the private parties. As part of this arrangement, the major raw material (wheat and rice) are being supplied by GoI, MP Civil Supplies Corporation Limited to the Company (including JVs) at subsidised rates. The Company and the JVs together were allotted 2,19,367 MT of wheat and 1,22,410 MT of rice during the years 2010-11 to 2015-16 for manufacturing RTE products. Out of this 1,78,920 MT of wheat and 1,22,410 MT of rice was lifted in 36,06,117 and 25,27,984 number of gunny bags by the Company and JVs. These gunny bags were retained by the Company and JVs.

Audit observed (July 2015) that the approved tender rates of the Company for the disposal of retained gunny bags of wheat and that of rice were ranging from ₹ 11.05 to ₹ 14.31 *per bag* and from ₹ 8.00 to ₹ 13.51 *per bag* respectively during 2010-11 to 2015-16. Thus the realisable value of gunny bags in which wheat and rice was supplied was ₹ 4.75 crore and ₹ 1.50 crore respectively (as detailed in ***Annexure 3.3***) during the period 2010-11 to 2015-16.

Audit further observed (July 2015) from the scrutiny of cost data submitted by the Company to WCD for fixation of RTE products sale price during 2010-11 to 2015-16 that while ascertaining cost of production of RTE products, the Company had not adjusted the realisable value of gunny bags in which the raw material (wheat and rice) was supplied. This resulted in inflating the cost of production of RTE products by ₹ 6.25 crore (as detailed in ***Annexure 3.3***).

Thus, by not adjusting the realisable value of retained gunny bags of wheat and rice while finalising the production cost of RTE products, the Company and the JVs have made an excess claim of ₹ 6.25 crore from WCD. Out of this, an amount of ₹ 5.68 crore (90.88 *per cent*) was passed on to the private parties of JV companies and balance ₹ 0.57 crore (9.12 *per cent*) was retained by the Company.

The Management in its reply (August 2016) confirmed that the realisable value of retained gunny bags was not adjusted while fixing the cost of production of RTE products. It was also stated that the cost of major ingredients of RTE products had increased enormously over the years since 2009, hence the non-adjustment of realisable value of retained gunny bags did not adversely affect the financial interest of the Company.

The reply was not tenable since, the contention of increase in the cost of major ingredients of RTE products, nullifying the impact of not adjusting the realisable value of retained gunny bags was not justifiable, as the GoI/MP CSC were supplying the major ingredients wheat and rice at government notified rates in the respective cost sheets and they were not directly linked to market rates. Further, not adjusting of realisable value of retained gunny bags led to extension of undue benefit of ₹ 5.68 crore to private JV partners.

The matter was reported to the Government in August 2016; the reply is still awaited (November 2016).

Industrial Infrastructure Development Corporation (IIDC) Limited

3.10 Irregularities in allotment of land

The Company committed irregularities in allotment of land valuing ₹ 3.88 crore resulting in consequential loss of revenue of ₹ 61.59 lakh

As per clause 5 (iv) of Madhya Pradesh Industries (Shed, Plot and Land allotment) Rules 1974, prior permission of State Government (GoMP) is required before allotting land to establish an industry which has a different purpose, from the purpose for which the land in an industrial development area/park was reserved. However, IIDC, Gwalior (Company) without obtaining the prior permission from GoMP, issued Letter of Intent (LoI) for allotting land measuring 5,576.21 SQM (0.5576 Ha) (27 February 2006) and 900 SQM (0.09 Ha) (14 July 2006) to M/s.Emporer Granites, a large scale firm for manufacturing high security registration plates. Advance possession of land was given to the firm on 06 March 2006 without issuing the letter of allotment (LoA).

Subsequently the Company's Board referred the issue to GoMP (23 June 2007) seeking approval for the land allotted at stone park Gwalior as the firm's business activity was different from that of Stone Park. However GoMP, Department of Commerce, Industry & Employment did not give approval but sought clarification from the Company (31 January 2008) as to why the land was not allotted in other nearby industrial estates not reserved for any specific purpose. The Company stated that the party applied for land at Gwalior area however land was also available at other unreserved locations *(Malanpur/Banmore)*.

The firm did not secure the contract for high security registration plates from Transport Department and sought permission for establishing an industry of stone related activity in Stone Park (March 2013). The firm requested (19 June 2014) to register the lease deed in the name of M/s Emperor Associates instead of M/s Emperor Granites. Accordingly, the Chairman of the

Company decided (22 June 2013) that as the party was establishing stone related business activity, GoMP approval was not required and instructed the Company to allot land to the new firm and to collect lease rentals from the date of giving advance possession of land (06 March 2006). The Chairman also directed (22 February 2014) that, lease rentals at old rates should be collected without levying any interest on dues. Accordingly, the LoA for 6,475.15 SQM land was executed with M/s. Emperor Associates on 25 November 2014.

In this regard the following are the audit observations.

- The Company committed irregularity by giving advance possession of land to the first firm which was not permitted under prevailing land allotment rules. This led to the idling of land worth ₹ 3.88 crore[19] during 2006 to 2015 without putting to any beneficial use. Further the decision of the Chairman to collect the lease rentals and other charges from the firm while entering into lease deed in 2014 as per old rates was not in the interest of the Company.
- The Company raised demand for the an additional amount of ₹ 19.76 lakh considering the rates applicable to small scale firm despite the fact that, the firm was a large scale one up to June, 2014 till the second firm name came into consideration. Instead the Company should have at least adopted the new rates as applicable to small scale firm *w.e.f.* April, 2013. By not doing so, the Company suffered revenue loss of ₹ 25.36 lakh as detailed in ***Annexure 3.4***.
- As per the demand notice sent by the Company (August 2013), it was to receive ₹ 1,10,980 *per annum* towards lease rent and maintenance fees from 2006-07 to 2014-15. However the Company received them in November, 2014 without levying any interest as required under clause (i) and (iv) of annexure F of MP State Industrial Land Allotment Rules 2008. Hence the Company suffered interest loss of ₹ 12.12 lakh as detailed in ***Annexure 3.4***.
- Since the lease deed was finalised with the second firm based on the LoI signed with the first firm, it should have been treated as a case of transfer and accordingly the applicable transfer charges should have been collected as per land allotment rules 2008 and circular issued by GoMP in April 2011. In the instant case, the Company had not collected the development fees from the first firm and while entering into LoA with the second firm, the development fees of ₹ 6.97 lakh was only collected as against ₹ 31.08 lakh[20] that should have been collected. This led to short collection of development fees by ₹ 24.11 lakh.

The Management stated (June 2016) that (i) the firm requested for land in Gwalior area and expecting approval from GoMP land at Stone Park was allotted to the firm (ii) the interest on the due amounts was not levied as per Company's Head Quarters instructions and (iii) allotment to second firm was not treated as transfer as only LoI was entered with the firm and no LoA was signed with them hence there was no loss to the Company.

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[19] Land value as per 2015 rates i.e. ₹ 6000 per sq.mtr in stone park area as per the information obtained from Collector of Stamps, Gwalior district, M.P.

[20] Transfer fees include 20 *per cent* of prevailing lease premium amount and 100 *per cent* prevailing development fees. i.e (6475.15 sq mtr * ₹ 400 * 20%) = ₹ 5,18,012 (A) + (6475.15 sq mtr *₹ 400) = ₹ 25,90,060 (B); Grand Total (A+B) = ₹ 31,08,072.

The reply was not tenable as (i) the giving of advance possession of land was in violation of rules that led to idling of land for eight years (ii) the Company did not collect the lease rentals and other charges at prevailing rates when the lease deed was actually executed with the second firm which caused revenue loss to the Company and (iii) development charges from second firm at applicable rates was also not collected.

The matter was reported to the Government in May 2016; the reply is still awaited (November 2016).

Madhya Pradesh State Mining Corporation Limited

3.11 Avoidable idling of mines and payment of dead rent

The Company kept the flagstone mines idle for more than three years period and incurred infructuous expenditure on dead rent of ₹ 57.30 lakh

Madhya Pradesh State Mining Corporation Limited (Company) operates quarries, sells and disposes off the minerals namely granite, dolerite, marble, flag-stone, sand etc. from the mines leased to it by the Government of Madhya Pradesh (GoMP) by further entering into the agreement with different Contractors for the excavation and removal of the said minerals.

The Company entered into quarry lease deed (07 September 2010) with GoMP for mining of flagstone from Budhone-Rajapur mines. As per the provisions of lease deed the Company was required to pay GoMP, an annual dead rent or royalty whichever is higher at the applicable rates as specified in schedule IV of the Madhya Pradesh Minor Mineral Rules, 1996.

As per Schedule IV of the lease deed, the dead rent rate for the first year of the quarry lease was Nil, for the second and third year ₹ 25,000 per hectare per year and after that ₹ 30,000 per hectare per year. In September 2014, GoMP revised dead rent payable to ₹ 30,000 per hectare per year for the second and third year and to ₹ 40,000 per hectare per year for the fourth year and onwards of the lease deed.

Audit observed (December 2015) that GoMP allotted the Flagstones mine at Budhone Rajapur (February 2011) to the Company for a period of 10 years. In turn, the Company entered into an agreement (May 2011) with M/s Bundela Red Granite (Contractor) for excavation of flag-stones from these mines for a period of 10 years for excavation of 1,98,395 *cubic meter* flagstone at the rate of ₹ 1,055 per *cubic meter*.

As per the terms of the agreement, the Contractor was required to excavate and remove the agreed minimum quantity of flag stone during the period of contract as per the agreed work plan. Even if the contractor did not excavate and remove the agreed minimum quantity of flag stone, he shall be liable to pay the Company, a minimum monthly instalment in advance as per the agreed work plan. However, it was observed that ever since the starting of work from 09 March 2011 up to 18 July 2013, the Contractor defaulted in remitting the instalments based on the agreed quantity of agreed work plan. Instead the contractor remitted the payments based on the actual quantity of flagstone sold. The reasons quoted by the Contractor for not remitting the payments as per agreed work plan were the irregular mining undertaken in these mines prior to the execution of agreement leading to operational difficulties in excavation.

As the contractor defaulted in remitting the monthly instalments, the Company stopped the contractor's work from July 2013. Subsequently, reminders were issued/correspondence was made with the contractor from July 2013 to January 2014, for reviving the excavation work to which no interest was expressed by the contractor. A show cause notice was issued to the contractor (January 2014) and the contract was terminated in November 2014 after giving due opportunity to the contractor for being heard in person (September 2014).

However the Company had not finalised the new tenders against Budhone-Rajapur mines up to the end of October, 2016 and these mines continue to be idle resulting in loss of revenue by not earning the royalty. Further, the Company paid dead rent of ₹ 57.30 lakh for the years 2014 and 2015 to GoMP against this idle mines.

The Management stated (August 2016) that the Company had terminated the mining contracts citing the reason of not adhering to the terms and conditions of the agreement. It was further stated that fresh tenders would be invited after ascertaining the practical and reasonable quantity of flagstones that can be excavated from the mines and after its approval from the Board of Directors.

The reply was not tenable since the undue delay committed by the Company in taking decision to retender the mines had led to their idling for more than three years period and infructuous payment of dead rent of ₹ 57.30 lakh.

The matter was reported to the Government in June 2016; the reply is still awaited (November 2016).

Madhya Pradesh Power Generating Company Limited

3.12 Loss of Interest

The Company procured bus reactor for ₹ 6.27 crore but it was not installed due to delay in completion of requisite bay works causing loss of interest of ₹ 1.97 crore

Madhya Pradesh Power Generating Company Limited (Company) placed an order (19 June, 2010) on M/s Bharat Heavy Electrical Limited (BHEL), for design, manufacturing, testing & supply of 400 kV, 63 MVAR (mega volt amps reactive)[21] bus reactor[22] for Satpura Thermal Power Station (STPS). Accordingly, the bus reactor and its spares were supplied from March to June 2012 and payment of ₹ 6.27 crore (including equipment cost ₹ 4.56 crore, price variation ₹ 1.57 crore, other elements ₹ 13.29 lakh) was made to BHEL

[21] This is another measurement of power, like Watt, but it measures the component of power that is reactive, which means the component of power that is flowing in the wires to make magnetic fields, but doesn't actually get turned into work

[22] Bus reactor is an equipment meant for stabilising the voltage fluctuations caused due to load change, humidity, weather, generator excitation and temperature. Bus bay is the intermediary system that connects the bus with switchyard meant for evacuating the power generated in a thermal power plant.

during October 2012 to December 2012. As per clause 17 of the supply order, ordered equipment/material shall be guaranteed for satisfactory performance for a period of 12 months from the date of the commissioning or 18 months from the date of supply, whichever is earlier.

Audit observed (September 2015) that despite receipt of bus reactor in March 2012 and its spares up to June 2012, the same could not be put to use immediately since the bay required for the installation of bus bar was not made ready by that time. The Company placed the order for construction of Bay no 17 belatedly in December 2014 with a scheduled completion period of six months (June 2015). However the construction work of bay was completed and the bus bar system was shifted to the plinth in September 2015 and it was commissioned on 29 December, 2015.

Since Company was owing huge amount of interest bearing loans to financial institutions and GoMP, it was highly injudicious to keep the bus reactor idle for 42 months due to not constructing the requisite bay. This resulted in blocking of funds of ₹ 6.27 crore with consequential loss of interest ₹ 1.97[23] crore (at the rate of 10.5 *per cent* being the minimum rate of interest at which the Company borrowed funds).

The Government stated (November 2016) that the main reason for the delay in installation of bur reactor was (i) due to re-orientation of 400 kV Sarni Astha feeder 1 & 2 of Satpura Extension (10 & 11) by the MP Power Transmission Company Ltd, the new location for installation of Bus Reactor was proposed at Bay 17 instead of Bay 7 of the old 400 kV switch yard and (ii) the poor response to the tenders invited by the Company for the installation of bus reactor.

The reply was not tenable since, MP Transmission Company had confirmed the change in bay number from 7 to 17 in August 2011 itself (six months before the bus reactor was procured in March 2012). However the Company had taken 18 months (February 2013) in instructing STPS to take up the bay works at new bay number 17 through O&M division. Further the contract for this work was awarded in December 2014 after a delay of 22 months after instructions to take up works through O&M division were issued. The delay was committed by the Company at various stages in tendering process, awarding of contract and approval of drawings etc. Further, STPS was operating without installing the bus reactor and its absence was viewed seriously by MPERC.

3.13 Idling of funds in railway freight account.

Improper management of funds led to idling of funds in dedicated railway freight account over and above requirement causing interest loss of ₹ 1.07 crore

The Madhya Pradesh Power Generating Company Ltd (Company) entered into Fuel Supply Agreement (FSA) (24.01.2013) with Southern East Coal field

[23] {(₹ 41552043) X 10.5 % X 38/12 months)} = ₹ 1,38,16,054 (A) + {(₹ 18693560) X 10.5 % X 36/12 months} = ₹ 58,88,471 (B) = Total ₹ 1,97,04,525. The period considered was from payment date {from October 2012 (38 months) and December 2012 (36 months)} to its final installation in December 2015.

Limited (SECL) for supply of 49,93,900 MT coal *per annum* to Shri Singaji Thermal Power Plant (SSTPP), Khandwa. As per FSA the maximum number of rakes required works out to six rakes *per day*[24]. The Company also entered into tripartite agreement (01 January 2014) with South East Central Railway (SECR) and State Bank of India, to pay the transportation freight to Railways at the originating station through Freight Operation Information System (FOIS)[25] for ensuring the immediate payment of freight. For this purpose, a dedicated bank account was opened by the Company and SSTPP had to recoup into the dedicated freight account on every bank working day, the amount equivalent to the freight paid by the banker on the immediate previous working day/days in case of bank holidays.

The agreement also provided that, modifications shall be made with mutual consent of the parties after three months from the date of the agreement and changes shall be suitably incorporated in the agreement. As per default payment mechanism of tripartite agreement, the Company opened an irrevocable bank guarantee (BG) in favour of Railways for an amount of ₹ four crore (revised to ₹ 1.40 crore *w.e.f.* 11.01.2015).

Audit observed from the analysis of bank statements for the period during January 2014 to March 2016 that, the actual utilisation of funds was much below the funds maintained in the account. A further analysis of the bank statements revealed that, the number of rakes for which Railway Receipt (RR) were raised was much below the rakes that were to be received as per the quantity agreed under the FSA as detailed below.

Sl. No	The range of amount used for raising RRs in a day (₹)	No of rakes for which RR was issued.	No of days on which this quantum of transaction had taken place
1.	34,75,532 to 9818778	01	284
2.	1,01,02,486 to 1,49,74,221	02	178
3.	1,51,41,906 to 1,98,77,787	03	77
4.	2,01,58,157 to 2,45,77,456	04	29
5.	2,60,81,402 to 2,82,02,517	05	11
6.	3,73,62,293	06	4
7.	4,24,57,132	07	2
Total no of days			**585**

It is evident that, SSTPP maintained surplus funds for longer period above its requirement on the plea that as per Head Office instructions (25.05.2015), the funds requirement had to be intimated twice a week (on Monday and Thursday). But the actual funds utilization as per RR requirement was not monitored periodically by the Company leading to idling of funds in the freight account despite the fact that BG was also reduced to ₹ 1.40 crore from 11 January 2015 onwards. Thus the improper monitoring of funds resulted in idling of funds in the freight account with consequential loss of interest of ₹ 1,07,05,797[26] as detailed in ***Annexure 3.5.***

[24] (Annual quantity 49,93,900 MT/12) = 416158 Mt per month/2500 MT per rake = 166.46 rakes in a month/30 days = 5.54 rakes per day. Say 6 rakes *per day.*

[25] FOIS is an electronic system that connects consignee Bank's server to the Center for Railway Information System (CRIS) of Railways.

[26] Considering 12 *per cent* rate of interest being the rate at which the Company obtain its loans from various organisations.

The Government stated (July, 2016) that as per FSA, six rakes were to be received per day. Considering this and as per the Company head quarter's instructions to communicate funds requirement twice in a week (Monday & Thursday), maximum freight required for next three days period was ₹ 11.70 crore. However, the Company maintained funds between ₹ six to ₹ seven crore in the freight account. Further this arrangement was required to avoid payment of penalty in case the RR's were to be issued by Railways on freight to pay basis.

The reply was not tenable as the Company had received less than six rakes on 579 days out of 585 days between January 2014 and March 2016. Further, the Company maintained sufficient BG amount with the Railways to take care of the additional requirement of funds in case there was shortage in the availability of funds in dedicated freight account. However, during January 2014 to March 2016 there was not even a single instance when BG was utilised by the bank and also there was no penalty imposed by Railways. This establishes the fact that surplus funds were maintained in the account.

3.14 Award of contract at higher rate

The Company awarded contract for construction of residential quarters at higher rates by ₹ 26.13 crore due to not following the transparent bidding procedure

Madhya Pradesh Power Generating Company Limited (Company) awarded a contract (20 September 2010) for ₹ 116.83 crore for the construction of 679 staff quarters at Shri Singaji Thermal Power Plant (SSTPP), Khandwa. This contract was terminated (13 July 2012) as the party failed to complete the work. Following this, the Company invited (13 July 2012) bids under International Competitive Bidding (ICB 07)[27] with opening date of bids on 23 August 2012 (42 days) for completing the left over works of the staff quarters at SSTPP.

As per time line prescribed for ICB by GoI and other international agencies, a minimum period of *six weeks* is required to be given to the bidders since the publication of Notice Inviting Tender (NIT) to enable the bidders to prepare bids comprehensively and to offer the most competitive quotes.

Audit observed (September 2014) that the Company received three bids under ICB 07 and the lowest bid received was for ₹ 158 crore. Since it was 92 *per cent* above the left over works value (₹ 82.26 crore), this ICB was cancelled. Subsequently, the Company issued another NIT under ICB 08 on 08 October 2012 with opening date of bids on 30 October 2012 thus giving 23 days time to the bidders to submit the bids. The lowest bid received was ₹ 140.03 crore from M/s Kalyan Toll Infrastructure Limited, Indore. As this quote was 70 *per cent* higher than the left over works value (₹ 82.26 crore) ICB 08 was also cancelled by the Company. Considering this the Company in 65th Board meeting (27 December 2012) resolved that another NIT under ICB 10 would be invited by giving just 15 days time to the bidders to respond.

[27] ICB 07, 08 and 10 were the tenders invited under International Competitive Bidding procedure for completing the left over work of staff quarters at SSTPP, Khandwa.

Accordingly the NIT was issued on 28 December 2012 with last date for sale of application on 15 January 2013 and for submission of bids and opening of bids on 16 January 2013. However, this NIT was published in the World wide edition of Financial Times newspaper on 07 January 2013 thus actually giving *nine days* time to the prospective bidders to respond to this bid.

Subsequent to publication of NIT in Financial Times, three more parties who had not participated in the previous tenders (ICB 07 and 08) requested for extension of time to enable them to submit the most competitive quotes, as the estimation work involved a detailed study against each item of the work. The time extension sought by these three parties was ranging between 20 days and 42 days which was within the time limit prescribed for ICB by GoI. But the Company did not accept the request of these parties as a result these three parties could not submit the bids.

Hence, the Company received only one bid against ICB 10, and the same was opened on 16 January 2013. The contract was awarded (14 February 2013) to this single party (M/s Kalyan Toll Infrastructure Limited, Indore) for ₹ 134.54 crore which was 63.55 *per cent* higher than the left over works value of ₹ 82.26 crore. The price quoted by this party under ICB 10 (₹ 134.54 crore) was 3.92 *per cent* lower than the price quoted by them (₹ 140.03 crore) under ICB 08 which was also the L1 price under ICB 08.

Audit further observed that the Company escalated (08 February 2013) the left over works value to ₹ 115 crore (revised value of left over works ₹ 108.41 crore + cost of financing at 18 *per cent* for six months period ₹ 0.98 crore + inflation cost at 8 *per cent* during contract period ₹ 5.42 crore) and thereby justified the price quoted by the party stating that the price quoted was above by 16.99 *per cent* over the value of left over works. Following this, contract was awarded to this party on 14 February 2013 for ₹ 134.54 crore and works were completed on 13 May 2014.

In this connection the following are the audit observations:

- The Company under ICB 8 and 10 had deviated from set guidelines for ICB tenders by GoI and other international agencies. It had given just 23 days and 15 days time to the bidders to respond as against the minimum required period of six weeks.
- Had the Company given the requisite time of six weeks to the bidders to respond, it could have got more competitive bids as there were other interested parties available to participate in the tender. This was evident from the lower quotes received under ICB 08 and ICB10. However, the Company did not give the six weeks time to the interested parties.
- The earlier value of left over works ₹ 82.26 crore (benchmark price) considered to justify the rejection of lowest quotes received in previous two tenders (ICB 07 and 08) was relaxed (₹ 108.41 crore) during the third tender (ICB 10) and contract was eventually awarded at the rate 24.10 *per cent* higher than the revised benchmark price *i.e.* at ₹ 134.54 crore even though it was a resultant single tender situation.

- The Company had unduly justified the higher price (₹ 134.54 crore) quoted by the party who had already participated in the earlier ICB 08 and had knowledge about the lowest quote (₹ 140.03 crore) received by the Company under ICB 08.
- This resulted in awarding the contract not in a transparent manner and compelled the Company to incur additional expenditure of ₹ 26.13[28] crore.

The Government stated (November 2016) that all the possible efforts were made to give wide publicity to the NITs issued under ICB 08 and 10. However considering the fast approaching synchronisation schedule of unit I and II, the required publicity period of six weeks was not given under these two ICBs. It was further stated that, the contract was awarded at the risk and cost of the previous contractor and all the extra cost incurred in completion of works was recoverable from him. It was also replied that the minimum required number of quarters required were completed by the Company by awarding separate contracts to carry out the leftover finishing works.

The reply was not tenable since, the requisite time of six weeks for wide publicity of ICB 10 was not given as per the guidelines issued by GoI and other international agencies for ICB tenders. Further the actual synchronisation of unit I was achieved on 30 September 2013 (nine months after the NIT for ICB 10 was issued on 28 December 2012) and of unit II was achieved on 11October 2014 (five months after the completion of left over works on 13 May 2014) by the Company. It was also confirmed by the Company that minimum number of quarters required were already completed. Hence, the grant of requisite six weeks time for publicity would not have affected the synchronisation of the units. Further the Company's stand that additional cost was incurred at the risk and cost of the previous contractor was not acceptable. The Company had not followed the transparent bidding procedure as required under ICB tenders despite the fact that it was receiving the lower quotes in the consecutive ICB tenders (ICB 07 to ICB 10).

3.15 Avoidable expenditure

The Company incurred extra expenditure of ₹ 16.53 crore in procuring the imported coal due to modifications in the tender specifications.

Madhya Pradesh Power Generating Company Limited (Company) placed supply order (November 2012) on Adani Enterprises Limited, Ahmedabad (AEL) for supply of 8 lakh metric ton (LMT) of imported coal for ₹ 540.24 crore. As per the terms of the supply order the indented quantity was scheduled to be delivered within six to eight months period from December 2012 to July 2013 against which the actual delivery of coal was completed in May 2015. As per Tender Specification (TS) no 44/12 and clause 3 of the Supply Order, the Company reserves right to extend the contracted quantity within the contract period up to 25 *per cent* on mutual agreement with supplier on the ordered rates, terms and conditions.

[28] The value of contract awarded under ICB 10 (₹ 134.54 crore) – The reassessed value of left over works as determined by the company (₹ 108.41 crore).

Audit observed (May 2016) that, the company communicated (March 2015) its intention to place an extension order for supply of up to 25 *per cent* of the original ordered quantity (*i.e.* 8 LMT) 20 months after the completion of contract period in July 2013. However the supplier declined (March 2015) to honour the intention of the Company to place order for additional quantities on the grounds that the completion of order was delayed by the Company due to delayed delivery schedules given by them. It was also stated by the contractor that the order was based on fixed price basis and there had been changes in other aspects affecting the supply such as changes in taxes, duties and railway freight etc.

This was mainly because of failure to incorporate a binding clause in the tender document binding the Contractor to supply the additional quantity of imported coal as and when the order for additional quantity is placed by the Company. The Company while issuing the latest tender (TS 44/12), had amended the clause to the effect that, "*it would be at the discretion of order issuing authority to regulate/ reschedule the deliveries as per requirement and also reserves the right to extend the contracted quantity within the contract period up to 25 per cent on mutual agreement with the supplier on the ordered rate, terms and conditions as per the requirement of respective Power House"*.

Whereas the Company in the previous instance had a clause in the tender specifications (TS 41/11) (supply order dated September 2011) to the effect that "*the Company at its discretion could reschedule the deliveries as per requirement and also reserves the right to extend/reschedule the contracted quantity up to 25 percent as well as contract period on the ordered rate, terms and conditions as per the requirement, which the supplier shall be bound to accept"*. As per this clause the Company placed order for supply of additional quantity of 2 LMT of imported coal under TS 41/11 during September 2013 after a delay of 14 months from the scheduled completion period (June 2012) and the Contractor had honoured this order and effected the supplies to the Company at the terms and rates agreed in the original supply order dated September 2011.

Thus the modification in the tender specifications in the latest tender (TS 44/12) gave scope to the contractor to deny the order placed by the Company for additional quantities subsequent to the completion of contract period. This compelled the company to incur extra expenditure of ₹ 16.53 crore (on 2 LMT of coal procured at higher cost subsequently under a separate tender TS 54/15) apart from passing undue benefit to the supplier to that extent. Further the amendment in the tender specifications was made without obtaining the approval from the BoD of the Company.

The Government stated (November 2016) that coal delivery schedules in the previous contract was revised time and again to match the actual requirement of coal at the power houses. Hence it was felt imprudent to keep the order extension clause open and binding on the supplier for longer period as the suppliers would quote inflated rates to match the risk of unforeseen factors. Considering this, the clause was modified as "on mutual agreement" basis to prevent the bidders from quoting inflated rates on account of uncertainty factors of longer periods.

The reply was not tenable since, keeping in view the previous trend of delayed receipt of imported coal, the Company should have retained the binding clause in the contract which was in its favour. Further the clause was exercisable at the discretion of the Company. Hence by removing such favourable clause in tender (TS 44/12), the Company had lost the benefit of placing the orders for additional quantities at its discretion at economical rates.

Bhopal
The 09 February 2017

(DEEPAK KAPOOR)
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Madhya Pradesh

Countersigned

New Delhi
The 10 February 2017

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India