CHAPTER V

Analysis of Memoranda of Understanding between Administrative Ministries and CPSEs

5.1 Introduction

Memorandum of Understanding (MoU) is a mutually negotiated agreement between the Administrative Ministry and the management of the Central Public Sector Enterprise (CPSE) to fix targets before the beginning of a financial year and is intended to evaluate the performance of the CPSE vis-à-vis these targets. It contains intentions, obligations and mutual responsibilities of the CPSE and the Government and is directed towards strengthening CPSE management by results and objectives rather than by controls and procedures. The subsidiary companies of CPSEs are required to sign MoUs with their holding companies.

5.2. Institutional Arrangement

Department of Public Enterprises (DPE) serves as a facilitator between the CPSEs and Administrative Ministries and provide a mechanism to evaluate the performance of the managements of the CPSEs. It provides a system through which MoU targets are set and the commitments of both the parties are evaluated at the end of the year. The institutional arrangement and their inter-linkages are as follows:

(i) High Power Committee - At the apex level, a High Power Committee (HPC) headed by the Cabinet Secretary approves the final evaluation as to how far the commitments made by both the parties have been met.

(ii) Task Force - The Task Force consists of retired civil servants, executives of public sector, management professionals and independent members with experience in the relevant field. The main function of Task Force is to (i) provide technical expertise, discuss and finalize MoU at the beginning of the year through clarifications and negotiation meetings and (ii) evaluate the composite score for each CPSE at the end of the year. An Inter-Ministerial Committee (IMC)[29] was constituted in May 2016 in place of Task Force. Evaluation of MoU for 2015-16 would be carried out by IMC.

[29] *IMC consists of Secretary DPE as its Chairman, Secretary of concerned Administrative Ministry or his representative, Secretary, Ministry of Statistics and Programme Implementation or his representative, Addl. Secretary, NITI Ayog or his representative as its other members. Secretary, DPE may also co-opt any officer who is a finance expert in case the need is felt.*

(iii) MOU Division at DPE - The HPC and Task Force/IMC are assisted by the MoU Division in DPE, which also acts as the permanent secretariat to HPC and Task Force/IMC.

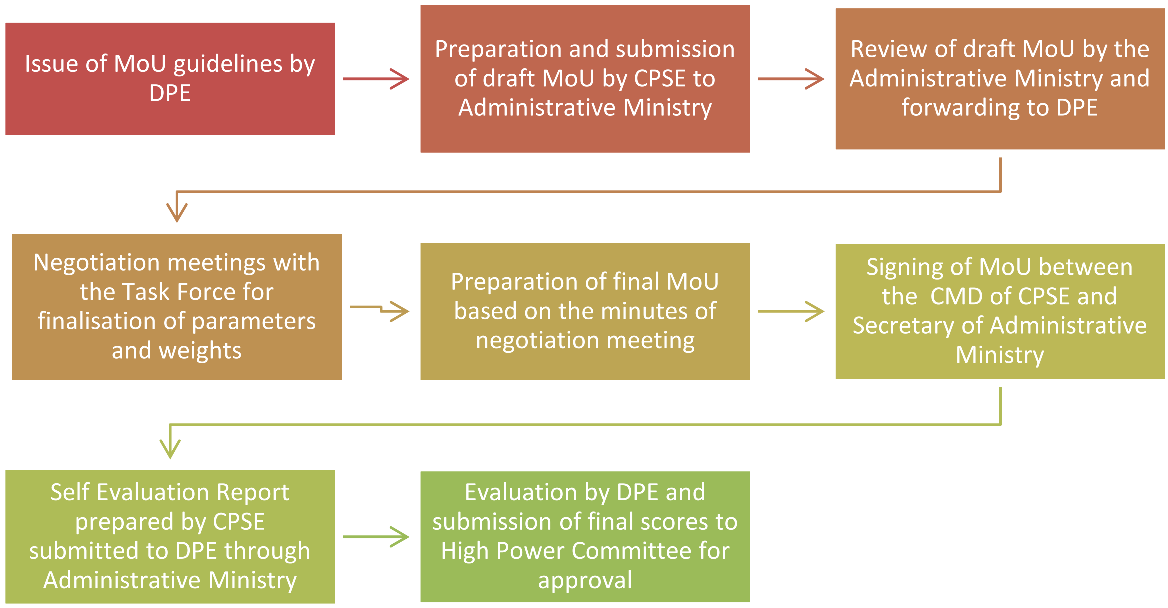
5.3 MoU targets for Performance Assessment and Rating

MoU for the years 2014-15 and 2015-16 consisted of two parts, financial targets or static parameters and non-financial targets or dynamic parameters, having equal weight of 50 *per cent* each. Financial parameters relate to turnover, profitability and various financial ratios whereas non-financial parameters cover project implementation, productivity and internal processes, technology, quality, innovative practices as well as sector specific parameters. The Task Force in consultation with the CPSE and Administrative Ministry fixes the targets and weights for each parameter.

With a view to distinguish between 'Excellent' and 'Poor' performance, each parameter is evaluated on a five point scale, i.e., five for 'Excellent' followed by a reduction of one point each for 'Very Good', 'Good', 'Fair' and 'Poor' (in the year 2014-15, this rating was in reverse order, i.e., one for 'Excellent' and five for 'Poor'). The actual performance of the CPSE is reflected in the raw score for each parameter and a composite score calculated by aggregating the weighted scores of individual parameters.

5.4 Process of Finalization and Evaluation of MoU

The process involved in MoU target setting and evaluation is given below:



5.5 Coverage of Analysis

This analysis covers MoUs of seven 'Maharatna' CPSEs for the years 2014-15 and 2015-16. While various aspects relating to finalisation and evaluation of MoU for the year 2014-15 was examined in audit, evaluation of MOU for the year 2015-16 was not examined since the same was not completed (September 2016). Details of the seven 'Maharatna' companies selected for analysis and their MOU rating for the period from 2010-11 to 2014-15 are given below:

Name of CPSE	Administrative Ministry	MOU rating				
		2010-11	2011-12	2012-13	2013-14	2014-15
Bharat Heavy Electricals Limited (BHEL)	Heavy Industries and Public Enterprises	Excellent	Excellent	Very Good	Good	Good
NTPC Limited (NTPC)	Power	Excellent	Very Good	Excellent	Excellent	Excellent
Coal India Limited (CIL)	Coal	Very Good	Excellent	Excellent	Excellent	Excellent
GAIL (India) Limited (GAIL)	Petroleum and Natural Gas	Excellent	Excellent	Excellent	Excellent	Very Good
Indian Oil Corporation Limited (IOCL)	Petroleum and Natural Gas	Excellent	Excellent	Excellent	Excellent	Excellent
Oil and Natural Gas Corporation Limited (ONGC)	Petroleum and Natural Gas	Very Good	Excellent	Excellent	Excellent	Very Good
Steel Authority of India Limited (SAIL)	Steel	Excellent	Excellent	Excellent	Excellent	Very Good

5.6 Objectives of Analysis

The objective of analysis was to assess whether:

(i) MoU was finalized in accordance with DPE guidelines and targets were realistic and as per the Annual Plan of the CPSE;

(ii) There was an effective mechanism in DPE/Administrative Ministries for validation of the information/data submitted by CPSEs;

(iii) CPSEs received commitment/assistance from the Government as agreed to in the MoUs;

(iv) Periodical returns/reports were submitted by CPSEs to Administrative Ministries/DPE in time; and

(v) Achievements were in line with MoU targets.

5.7 Audit Findings

Audit examined the MoUs signed by the seven 'Maharatna' CPSEs with their Administrative Ministries and their evaluation reports for the year 2014-15 and 2015-16[30]. Audit findings are discussed in the succeeding paragraphs. The reply of CPSEs, wherever received, have been suitably incorporated.

5.7.1 Preparation and signing of MoUs

5.7.1.1 Approval of draft MoUs by Board of Directors

Guidelines issued by DPE provided that the MoUs and Self Evaluation Reports should be approved by the Board of the CPSEs before their submission to DPE. Audit, however, observed that NTPC management submitted the MoUs and Self Evaluation Reports for 2014-15 and 2015-16 to DPE without obtaining approval of the Board.

NTPC stated (December 2016) that NTPC Board had authorised Chairman and Managing Director, NTPC to finalise and approve the draft of the MoU to be signed with the GoI and its evaluation at the year-end to be submitted to DPE/Administrative Ministry.

The fact remained that draft MoUs and Self Evaluation Reports were not approved by BoD before submission to DPE as required by DPE Guidelines.

DPE stated (January 2017) that it considered the MoU and Self Evaluation as forwarded by the Administrative Ministry of the CPSE.

The reply confirms that DPE had not ensured the compliance of its own guidelines.

5.7.1.2 Alignment of MoU targets with Annual Plan/ Budget/ Corporate Plan

As per MoU guidelines, MoU targets should be consistent with the annual plan, budget and corporate plan of the CPSE. The guidelines also provide that an advance copy of the draft MoU along with a copy of the Annual Plan, Annual Budget, and Corporate Plan should be sent to DPE. Audit observed that:

- NTPC did not submit copies of Annual Plan, Annual Budget and Corporate Plan to DPE at the time of submission of draft MoUs for 2014-15 and 2015-16. Instead, a 'brief' of these documents were submitted.
- IOCL submitted copies of Annual Budget/Annual Plan relating to the previous year (2013-14 and 2014-15) along with draft MoU for the year 2014-15 and 2015-16.

[30] *For 2015-16, the Self Evaluation Reports as submitted by the CPSEs have been considered.*

- In case of SAIL, MoU targets (both financial and non-financial targets) were fixed based on information/ targets furnished by directorates/ departments concerned and the Annual Plan or Budget were not considered.

NTPC stated (December 2016) that 'brief' of the Corporate Plan and Annual Budget were submitted, same being very voluminous documents.

SAIL stated (July 2016) that draft MoU was prepared in the months of October/November and annual plan targets were not available at that time.

IOCL stated (November 2016) that the budget approval was generally obtained in the last quarter of the financial year, by which time the draft MoU was already submitted to DPE.

Reply of CPSEs indicates that there could be inconsistency between the performance targets set in the MoU and the Annual Plans and Budgets for achieving them which is not as per the intent of the MoU guidelines.

DPE stated (January 2017) that the targets of CPSEs were based on relevant documents, plan and budget as per para 3 of MoU Guidelines and the proposed targets were finalized in the negotiation meeting by the Task Force in which Board of CPSE and JS of the Administrative Ministry were present.

The reply is not factually correct as the CPSEs did not provide the Annual Plan/Annual Budget/ Corporate Plan of relevant years as required by MoU Guidelines.

5.7.1.3 Signing of MoU

As per DPE guidelines, MoUs should be signed by the CPSEs and the Administrative Ministries before 25 March of the ensuing financial year. Audit noticed delay in signing MoU in BHEL and CIL. In the case of BHEL, there was a delay of 43 days and 70 days in signing the MoUs for the years 2014-15 and 2015-16 respectively. In the case of CIL, there was a delay of 83 days in signing MoU for the year 2015-16.

BHEL replied (November 2016) that draft MoUs were submitted within time and MoUs were signed after conclusion of negotiations with Ministry/Task Force and authentication of the draft MoU by DPE. The negotiation meetings were fixed by DPE/Task Force and the final negotiation meetings for the years 2014-15 and 2015-16 were held only on 11 April 2014 and 20 July 2015 respectively. Hence the delay was not attributable to BHEL.

The reply is to be viewed against the fact that the negotiation meetings for both years were postponed at the request of BHEL. Besides, timely finalisation of the MoUs was the responsibility of the CPSE, Administrative Ministry and DPE and there ought to have been better coordination for ensuring it.

DPE stated (January 2017) that signing of MoU depended on conclusion of meeting for finalization of MoU targets.

The reply confirms the delay in signing MoUs.

5.7.2 Setting of MoU targets

5.7.2.1 Benchmarking with national and international peers

The DPE guidelines stipulated that benchmarking with peer companies, both national and global, should, among other indicators, form the basis for determination of financial parameters. Audit, however, observed that no benchmarking was contemplated by NTPC in case of financial parameters for the MoUs of 2014-15 and 2015-16, except for some general information presented before the Task Force during negotiation meetings. Audit also observed that IOCL, while submitting the draft MoU for the year 2014-15, did not consider the report of Solomon Associates[31] to compare the performance of its refineries with peers across the world, despite the report being available at that time.

NTPC stated (December 2016) that targets of 2014-15 have been finalised after detailed discussions and reviews at various levels based on the benchmarks available.

Audit scrutiny and reply of the Company confirms the fact that benchmarking exercise, which would have acted as guidance for setting performance yardsticks in the MoUs, was not done.

IOCL stated (November 2016) that financials were prepared on the physicals and prices wherein the prices were considered uniformly by all oil marketing companies.

The reply confirms that benchmarking was not carried out at the time of preparation of MoU despite availability of an appropriate report.

DPE stated (January 2017) that as per para 3.5 of MoU Guidelines 2015-16, MoU targets were to be proposed based on benchmarking study by the CPSE through the Administrative Ministry taking into consideration the appropriate targets based on benchmark for the industry. Since Administrative Ministry had forwarded MoU targets, these were duly considered by Task Force.

The reply confirms that DPE did not ensure the compliance of its own Guidelines.

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[31] *Benchmarking exercise in refining sector is carried out by the Centre for High Technology (under Ministry of Petroleum and Natural Gas) for entire public sector oil refineries in India through Solomon Associates.*

5.7.2.2 Setting of soft MoU targets

(i) As per DPE guidelines, MoU targets should be realistic yet growth oriented, inspirational and consistent with the Annual Plan, Budget and Corporate Plan of the CPSE, and the targets should be the maximum achievable under the given and anticipated circumstances. An analysis of the annual targets proposed by NTPC and the actual achievement against them indicated that in many cases, the targets (as proposed by NTPC and approved by Task Force) were lower than the achievement in the previous year, the details of which are indicated in the table below:

Year	Profit after tax / Net worth (in %)		Profit after tax / Employee (`/Lakh)		Declared Capacity (Coal) (in %)		Declared Capacity (Gas) (in %)	
	Target for 'Excellent' rating	Actual	Target for 'Excellent' rating	Actual	Target for 'Excellent' rating	Actual	Target for 'Excellent' rating	Actual
2012-13	9.81*	10.84	-	52.88	88.00	87.62	89.50	93.14
2013-14	8.37*	12.79	-	46.87	86.00	91.79	88.00	95.24
2014-15	5.73	13.33	21.49	45.75	84.00	88.70	86.00	92.18
2015-16	6.66	11.23	26.74	47.35	Not a parameter		Not a parameter	

* *Net Profit/Net worth*

The table indicates that the targets were set consistently on the lower side, despite higher achievements registered by NTPC in previous years. The actual achievement in 2014-15 and 2015-16 far exceeded the target set for 'Excellent' rating on account of such low targets. It was noticed that even the Task Force failed to give due consideration to the actual ability of NTPC vis-à-vis the proposed targets in the MoUs. This vitiated the very purpose of setting targets and conducting performance evaluation based on such targets.

NTPC replied (December 2016) that the targets were set after detailed discussions at Ministry of Power/DPE and deliberated during the meetings of Task Force/IMC. Further, factors like current scenario in the power sector and the economy as a whole etc. are also considered while fixing the targets.

The fact remained that the actual achievements were far higher than the targets.

(ii) Fly ash utilisation was introduced as a parameter in the MoU of NTPC for the year 2014-15. The target fixed for 'Very Good' rating against this parameter was 10 *per cent* more than the actual quantity achieved in 2013-14. NTPC could not achieve this target in 2014-15. For the year 2015-16, the parameter was changed to 'percent utilization of total quantity produced' and the target for 'Excellent' rating was fixed 'as four stations with 100 *per cent* fly ash utilisation and three stations with 80 to100 *per cent* utilisation. Audit observed that for reporting on this parameter, NTPC selected such stations which contributed to a small share to fly ash production (the selected stations produced only 11 *per cent* of total fly ash production). These stations utilised the entire fly ash produced and NTPC achieved the target against this parameter. However, other stations which produced considerable quantity of fly ash utilised as low as 8.73 to 42.66 *per cent* of their production.

NTPC replied that all the targets of NTPC have been finalised by Task Force/DPE after detailed discussions.

The reply needs to be viewed against the fact that the very purpose of introduction of fly ash utilisation as a criteria for MoU rating was defeated as a result of selecting stations which contributed to a small share to fly ash production.

(iii) Corporate Material Management Group of SAIL proposed (December 2013) MoU target of 35 *per cent* and 33 *per cent* of total procurement respectively for 'Excellent' and 'Very Good' rating in the MoU for 2014-15 against the 'e-procurement' parameter. SAIL, however, indicated a target of 33 and 31 *per cent* respectively in the final MOU. The actual achievement against this parameter in 2014-15 was 36.83 *per cent*. Even then in 2015-16, SAIL fixed a considerably lower target of 35 *per cent*. The target was thus, consistently being fixed on lower levels for achieving better rating, defeating the very objective of MoU mechanism.

SAIL stated (July 2016) that MoU target against 'e-procurement' in 2014-15 and 2015-16 was fixed considering the actual achievement in 2013-14 (31.75 *per cent*) and 2014-15 (36.83 *per cent*).

The reply confirms that the targets were fixed on lower levels compared to the actual achievement in the previous year which would not have the necessary stretch for improving performance.

(iv) The draft MoU of SAIL for 2015-16 had targeted 31 days for 'Excellent' rating, 32 days for 'Very Good' rating and so on to 35 for 'Poor' rating against the parameter, 'average collection period of trade receivables (Debtors Turnover Ratio)'. As per the instruction of Director (Finance), these targets were relaxed to 36 days ('Excellent') to 40 days ('Poor') due to delayed receipt of payment from Railways. The revision of the targets lacked justification since the target against this parameter for 'Excellent' rating in MoU 2014-15 was 31 days and the same had also been achieved. Downscaling of target was not in line with the objective of betterment of performance through MoU.

(v) MoU of NTPC for 2014-15 included 'capacity addition' as a non-financial parameter. Projects under this parameter included Rajgarh Solar PV project with targeted completion by 31 March 2015. Similarly, the MoU of BHEL for 2014-15 included 'group targets with NTPC' as a parameter under non-financial parameter which included

Solar PV Talcher and Unchahar projects to be commissioned by March 2015 for 'Excellent' rating. A review of the Self Evaluation Reports of both companies revealed that all the three projects were completed in March – April 2014 (Rajgarh Solar PV project in NTPC MoU completed on 30 April 2014; the Talcher and Unchahar projects in BHEL MoU were completed on 28 March 2014 and 31 March 2014 respectively). Thus, at the time of fixing targets, these project were either completed or nearing completion and were included in the MoU to obtain 'Excellent' rating. It was also noticed that the Task Force/DPE did not take into account the actual status of projects at the time of finalization of MoU.

NTPC stated (December 2016) that Rajgarh Solar was expected in the early part of 2014-15 and for all the projects tentative completion dates were known to the management which did not mean that the Company should not endeavour to complete any project before the schedule or not include the projects expected to be achieved during any particular year in that year's MoU targets.

BHEL stated (November 2016) that the completion date of the projects were apprised to Task Force/DPE prior to signing of the MoU. Due to no-availability of Solar PV orders and since the parameter had already been finalised by the Task Force, BHEL had no option but to include these projects.

The replies are to be viewed against the fact that at the time of including these projects in the MoUs, CPSEs were aware that the projects were either completed or soon to be completed, which defeats the basic intention of the MoU mechanism.

In respect of (i) to (iv) above, DPE stated (January 2017) that the issue of soft targets in relation to various CPSEs was taken to High Power Committee[32] (HPC) wherein HPC observed that Task Force must have fixed the targets keeping in view the sector specific conditions prevalent at that time and also that the targets might not always be higher than the previous years' achievement due to dynamic conditions of the industry and sector.

The reply is not justifiable since the targets were set consistently on the lower side, despite higher achievements in previous years and the actual achievements against such targets were also exceeded.

5.7.2.3 Inconsistency in MoU targets with DPE guidelines

MoU guidelines issued for 2014-15 and 2015-16 indicated that CPSEs could choose a maximum of two and three sub-parameters under each group for R&D. Scrutiny of the

[32] High Power Committee is headed by the Cabinet Secretary which approves the final evaluation as to how far the commitments made by both the parties have been met.

MoUs for the year 2014-15 and 2015-16 in respect of SAIL revealed that only one project was included under R&D.

SAIL stated (September 2016) that as per guidelines, not more than two parameters under R&D could be proposed in 2014-15 and not more than three in 2015-16, against which, it proposed one project each in 2014-15 and 2015-16.

The reply needs to be viewed against the fact that though MoU guidelines required selection of two and three sub-parameters, SAIL could propose one parameter only in 2014-15 and 2015-16.

DPE stated (January 2017) that R&D template was not mandatory for MoU 2014-15 and 2015-16. R&D projects were proposed by CPSEs based on their requirements and targets were finalized by Task Force in the negotiating meeting.

The reply is not acceptable as MoU guidelines for the year 2014-15 and 2015-16 indicated that the parameters for R&D were to be proposed in accordance with respective DPE guidelines and OM issued. Thus, the respective guidelines were applicable.

5.7.3 Commitment from Administrative Ministry

As per MoU guidelines, specific commitment from the Administrative Ministries/ Departments for filling up positions of non-official Directors on the board of CPSE concerned on time should be incorporated in the MoUs. Audit observed that though there has been non-compliance with requirements under Securities and Exchange Board of India (SEBI), Companies Act, 2013 and DPE guidelines[33], NTPC did not incorporate specific commitment from the Ministry of Power for filling up of required number of non-official Directors in the MoU. Audit observed that as against the requirement of nine independent Directors, NTPC had only two independent Directors as on 31 March 2015 and the vacancy position during 2015-16 varied from three to seven.

NTPC replied (December 2016) that draft MoUs have been discussed in detail and approved by DPE. Further, the power to appoint the Directors on the Board of Directors is vested with the Government of India.

The reply is to be viewed against the fact that, though there was adequate provision in the MoU mechanism to obtain commitment from the Administrative Ministry for

[33] *As per (i) clause 49 of erstwhile Listing Agreement as amended by Listing Obligations and Disclosure Requirements Regulations, 2015 and (ii) DPE Guidelines on Corporate Governance for Central Public Sector Enterprises, 2010, NTPC Board should have at least 50 per cent of Independent Directors. Similarly, as per Companies Act, 2013, one-third of the directors of Board of NTPC should be Independent.*

appointment of non-official Directors and its subsequent verification by DPE, the same was not made use of by the Company. It was also observed that in the case of other six Maharatna CPSEs, nomination of non-official Directors was included as a commitment from their concerned Administrative Ministries in the MoUs.

DPE stated (January 2017) that the report on Commitment assistance provided by Administrative Ministry was put up to Chairman, HPC along with MoU evaluation.

The reply confirms the audit observation that had NTPC included the filling up of required number of independent Directors in the MoU, it could have been achieved.

5.7.4 Inconsistency in Group Targets

MoUs of NTPC and BHEL for 2014-15 included 'group targets' under non-financial parameters to be achieved by joint efforts based on mutual agreement by these CPSEs. Evaluation of these parameters would be carried out on the joint efforts and points/penalty would also be shared among the CPSEs. Audit observed that as against nine projects approved by the Task Force, 10 projects were included in the MoUs of BHEL and NTPC. Two projects in the MoU of BHEL, (Solar PV Talcher and PV Unchahar) and one project in MoU of NTPC (Singrauli Small Hydro) were not approved by the Task Force. Besides, Singrauli Small Hydro project included in the MoU of NTPC was not included in the MoU of BHEL. Similarly, though MoU of BHEL indicated two projects (Solar PV Unchahar and Talcher), these were not specifically mentioned in the MoU of NTPC and stated as Solar PV (45MW).

NTPC replied (December 2016) that targets for NTPC have been finalised by Task Force and as the issues of discrepancies were beyond the purview of NTPC, the Company has no comments to offer.

BHEL replied (November 2016) that for Solar PV 45 MW, BHEL was neither having orders nor commitment from NTPC. Instead of the non-existent 45 MW Solar PV, two existing orders from NTPC, i.e., Solar PV Talcher and Unchahar, were taken.

The reply confirms that there was inconsistency in 'group targets' and the Task Force and CPSEs did not specifically indicate individual projects to be covered under this parameters at the time of fixing MoU targets.

DPE stated (January 2017) that the group targets jointly signed by NTPC and BHEL were included in the MoU targets of both CPSEs.

The reply confirms that although DPE was involved in fixing the group targets, the inconsistency between the targets were not identified and fixed at the approval stage of MoU.

5.7.5 Performance under MoU and self-evaluation by CPSEs

5.7.5.1 Inclusion of notional generation

MoU of NTPC for 2014-15 and 2015-16 included a foot note stating that financial parameters had been worked out on the basis of gross generation including deemed generation and hence, the actual would vary to the extent of non-scheduled power demand by customers. Scrutiny in audit revealed that NTPC had been reporting actual generation (excluding deemed generation) for measuring performance against this MoU parameter in its Self Evaluation Report till the year 2014-15.

In the Self Evaluation Report for 2015-16, however, NTPC reported gross generation (including deemed generation) against this parameter. This also led to a mismatch between the MoU Self Evaluation Report and the financial statements of NTPC; while the financial statements for 2015-16 reported a sales turnover of ₹ 70,506.80 crore, the Self Evaluation Report reported sales a turnover of ₹ 89,161.18 crore (including deemed generation). This resulted in inflated operational performance against financial parameters like 'Sales Turnover', 'Sales Turnover/Net Block', 'Gross Operating Margin', 'Profit After Tax/Net worth' etc. The inclusion of deemed generation in sales turnover was also not in line with the definition of 'Sales Turnover'[34] given in the MoU guidelines issued by DPE. Though NTPC claimed 'Excellent' rating (10 points) against this parameter, considering the actual turnover as per certified financial statements, the rating would be 'Poor' (two points). If the actual performance as per certified financial statements were considered, the overall rating of NTPC would change from 'Excellent' (93.65 points) to 'Very Good' (82.45 points) which would also have an effect on the likely payment of Performance Related Pay to the employees for the year 2015-16.

NTPC replied (December 2016) that 'achievement as claimed in Self Evaluation Report' have been done by NTPC as per the provisions of MoU. Impact of deemed generation has been included as provided in an express provision in MoU.

The reply is not acceptable as the notional revenue of deemed generation cannot be treated as sale from the course of ordinary activities of the Company as defined in MoU Guidelines. Further, reply confirms the fact that operational performances against financial parameters have been inflated while reporting the figures in 2015-16, which is contrary to the practice followed by NTPC in its Self Evaluation Report for the year 2014 - 15. Further, approved and certified financial results cannot be modified while reporting the same against MoU parameters.

[34] *MoU Guidelines defined 'Sales Turn Over' as the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods and from rendering of services. It is measured by the charges made to customers or clients for goods supplied and services rendered to them.*

DPE stated (January 2017) that the same had been done as decided in MoU negotiation meeting by which financial parameters were to be adjusted for gross generation including the deemed generation.

The reply is not tenable. Deemed generation cannot be treated as sale as defined in MoU Guidelines. By including deemed generation, performances against financial parameters have been inflated for the year 2015-16. Further, for the year 2014-15, though gross generation was included in the MoU, performance of NTPC was reported and evaluated based on the actual financial data.

5.7.5.2 Considering date of trial run as commissioning date for projects

MoU of SAIL for 2014-15 and 2015-16 indicated a sub parameter 'Milestone Performance Index for Projects' with a weightage of five *percent* and four *percent* respectively. Audit observed that 'date of start of production/hot trial run' was reckoned as date of completion of the projects for evaluation of this parameter. This was not consistent with generally accepted practices of reckoning project completion as commissioning and operation as per the contractual provisions of projects. This provided an undue advantage to SAIL to claim full score ('Excellent' rating) against this parameter even though the projects were actually not completed and put to operation.

SAIL stated (August 2016) that the parameter was agreed to by Ministry of Statistical and Programme Implementation, Ministry of Steel, DPE and Task Force. The commissioning of facility as per contract was a milestone meant for release of payments based on the compliance of contractual obligation.

The reply is to be viewed against the fact that the performance parameter accepted by DPE/Task Force for awarding 'Excellent' rating was not in line with the generally accepted practices and provided an undue advantage to SAIL. Any performance evaluation should be linked with the actual performance and working environment of a CPSE for meaningful results through the MoU mechanism.

DPE stated (January 2017) that achievement was evaluated with reference to the target set.

However, fact remains that financial and non-financial parameters have been evaluated on each parameter achieving its finality in terms of performance. As such, commissioning of project also should have been considered in this case instead of date of trial run, which would give a conclusive performance of the CPSE in this regard.

5.7.6 Incorrect Reporting to DPE

5.7.6.1 Incorrect/incomplete certification

As per Public Procurement Policy issued by Ministry of Micro, Small and Medium Enterprises (MMSME), every CPSE shall have to achieve an overall minimum procurement of 20 *per cent* from Micro and Small Enterprises (MSEs). A sub target of 20 *per cent* (i.e., four *per cent* out of 20 *per cent*) shall be earmarked for procurement from MSEs owned by Scheduled Caste or Scheduled Tribe entrepreneurs. MoU guidelines further stipulated that non-compliance with the aforesaid order would attract reduction of one mark at the discretion of Task Force. Audit observed that though BHEL and SAIL certified that they had complied with the MSME guideline for the year 2014-15, these certifications were factually incorrect. During 2014-15, the procurement from MSMEs was 17 *per cent* in case of BHEL and 13 *per cent* for SAIL. The procurement from SC/ST entrepreneurs was Nil in case of both companies (BHEL and SAIL). These certifications were accepted by DPE, Task Force and the Administrative Ministries, even as MSME intimated (November 2015) Department of Heavy Industries that BHEL did not achieve the required percentages as per MSME guidelines. Audit further noticed that GAIL certified that it had achieved MSME procurement of 19 *per cent* and 21.59 *per cent* during the year 2014-15 and 2015-16. The certification was, however, silent on achievement of four *per cent* procurement from SC/ST entrepreneurs in 2014-15, while the same in 2015-16 was 0.02 *per cent*.

BHEL stated (November 2016) that mandatory targets including four *per cent* procurement from MSEs owned by SC/STs were not applicable for the year 2014-15. SAIL stated (July 2016) that certain items (e.g., proprietary items, raw materials, imported items, items sourced from PSUs and Government etc.) were beyond the manufacturing range of MSEs and were excluded for calculating the percentage orders on MSEs and SC/ST. GAIL stated (November 2016) that it was penalized by the Task Force for not achieving the target in 2014-15, though the same was not officially communicated. The evaluation for 2015-16 was yet to commence.

Though achievement of the required percentage became mandatory 2015-16 onwards, it does not take away from the fact that the certifications of CPSEs were factually incorrect or incomplete and that no negative marking was given in the final evaluation by the Task Force. It also indicated that there was a need for proper coordination between DPE and MMSME for cross checking the level of performance by CPSEs and their self-certification. Moreover, there was no consistency in penalising the CPSEs for not complying with MSME guidelines.

DPE stated (January 2017) it relied on certificate from Board level official for 2014-15 since it was not mandatory to procure from MSE for three years from date of notification, i.e. up to 2014-15. As per Companies Act, 2013 Board was responsible for giving incorrect certificate. However, for 2015-16, since it was mandatory, DPE relied on Board certification and list for compliance provided by MSME. It was added that negative marking has been done in respect of 132 CPSEs for 2015-16.

DPE agreed that it had relied on certificate from Board level official for 2014-15 and Board is responsible for incorrect certification. Further, it is not clear from the reply that the CPSEs referred to above were given negative marking during the year 2015-16.

5.7.6.2 Incorrect information in self-evaluation

(i) Quarterly meeting of Enterprise Risk Management Committee (ERMC) was included as a criteria under non-financial targets in the MoU of NTPC for 2014-15 and four and three meetings of ERMC was proposed for 'Excellent' and 'Very Good' rating. The Self Evaluation Report for 2014-15 indicated 100 *per cent* achievement and NTPC got 'Excellent' rating. However, Audit noticed that NTPC could not achieve this parameter since ERMC conducted only three quarterly meetings for which NTPC was eligible for 'Very Good' rating.

NTPC replied that target of four ERMC meetings was kept to cover the four quarters and in one of the ERMC meetings dated 29th January 2015, issues pertaining to Q2 and Q3 of FY 2014-15 i.e. two quarters were covered.

The fact remained that only three meetings of ERMC were conducted during the year 2014-15.

(ii) Availability factor (coal) was included as a criteria under non-financial parameters in the MoU of NTPC for the year 2015-16 with a target of achieving 90 *per cent* for 'Excellent' rating. Though in the Self Evaluation Report, NTPC stated an achievement of 92.53 *per cent* and claimed 'Excellent' rating, Annual Report of NTPC for the year 2015-16 revealed that it had achieved 88.06 *per cent*.

NTPC replied (December 2016) that in 2015-16, total impact of reserve shutdown works out to be 4.47 *per cent.* Thus, actual availability factor was 92.53 *per cent* including reserve shut down and availability factor achieved was 88.06 *per cent* excluding reserve shutdown.

Reply confirms the mismatch in figures.

DPE, in respect of (i) above stated (January 2017) that CPSE provided the minutes of quarterly ERMC meetings for 2014-15. In case of (ii) above, DPE stated that CPSE has not been awarded excellent on this parameter and marks between good and very good has been awarded based on actual as per Annual Report.

However, NTPC submitted incorrect certification that four meetings of ERMC were held in 2014-15, while only three meetings were held. In the case of (ii) above, DPE reply confirms that NTPC submitted incorrect information.

5.7.6.3 Non-compliance of DPE guidelines

As per MoU guidelines, non-compliance with DPE guidelines on various subjects would be evaluated based on self-certification by CPSEs and non-compliance, if any, would attract reduction of one point at the discretion of the Task Force at the time of MoU evaluation. Audit observed the following in this regard:

- NTPC indicated exceptions and reasons for non-compliance in an annexure attached to the certificate submitted to DPE. The annexure stated that though no Performance Related Pay (PRP) was to be paid to the 10 *per cent* employees graded below par as per DPE guidelines, PRP was being paid to them as per the approved guidelines of the Remuneration Committee.
- IOCL has indicated in the MoU for 2014-15 that one para on violation of DPE guidelines was printed in CAG's Report No. 13 of 2014. Two other paras on PRP, allowances, encashment of half pay/earned leave *etc.* relating to IOCL were also included in CAG's Report No. 15 of 2016-Vol.II which were not included in the MoU for 2015-16.
- GAIL did not comply with DPE guidelines relating to payment of PRP, payment of cash reward, Ex-gratia *etc*., and one para on encashment of earned and half pay leave was printed in CAG's Report No. 13 of 2014.

It was however noticed that though there had been violations of DPE guidelines by these CPSEs, the overall score of these CPSEs was not reduced on account of these violations and the self-certificates were accepted.

NTPC stated (December 2016) that awarding mark/any penalty was at the discretion of Task Force at the time of MoU Evaluation.

IOCL stated (November 2016) that it had mentioned in the MoU for 2014-15 that there was a CAG para on encashment of half pay/sick/earned leave and that similar disclosure was not made in the MoU for 2015-16 since the paras were included in CAG report after submission of the MoU.

GAIL stated (November 2016) that DPE guidelines on PRP was being broadly complied with and encashment of half pay leave was being allowed in line with industry practice.

Replies of CPSEs confirm that there had been violations of various DPE guidelines, but DPE did not consider such violations for reducing the overall score even though it had been specifically mentioned in the MoU.

DPE stated (January 2017) that compliance of DPE Guidelines was based on self-certification of CMD and negative marking has been given in respect of 64 CPSEs during 2015-16.

It is not clear from the reply whether negative marking has been assigned to the CPSEs referred to in the para. Further, reply was silent on negative marking in 2014-15.

5.7.6.4 Non authentication of documents by Board level official

MoU guidelines stipulated that documents submitted by CPSEs for evaluation of parameters should be certified by Board level officials of the CPSEs concerned. Further, the minutes of negotiation meeting for MoU in 2015-16 also provided that all documents should be signed at least by a functional Director. However, it was observed that in NTPC, documents pertaining to some of the parameters of MoU, information of which was not available in Annual Reports/third party certification, were not authenticated by a Board level official.

NTPC replied (December 2016) that all necessary supporting documents, as desired by DPE during the process of finalisation of evaluation, were provided from time to time as per its requirements/provisions of the signed MoU. For verification of financial parameters for 2015-16, supporting documents as per the requirements of DPE shall be submitted during the evaluation process.

Non-compliance of MoU guidelines by NTPC is confirmed from the reply.

DPE stated (January 2017) that Board level authentication was essential only in case where adequate/satisfactory supporting documents were not provided. MoU Evaluation is based on Board level certification if the details were not published in Annual Report, third party certification etc.

However, Audit commented on the non-compliance of DPE guidelines since NTPC furnished documents which contained information not available in the Annual Report/third party certification without Board level authentication.

5.7.7 Delayed submission of details for target offset

MoU of BHEL for the year 2014-15 envisaged sales turnover of ₹ 45,600 crore for 'Excellent' rating and 5 *per cent* less each for each lower rating even though BHEL had projected ₹ 34,000 crore as likely turnover for 2014-15. The Task Force/DPE had agreed that in case the projection regarding cancellation of some of the projects comes true, due consideration would be given at the time of evaluation.

BHEL evaluated its financial performance in the Self Evaluation Report of 2014-15 against reduced sales turnover. DPE intimated (19 November 2015) BHEL that request for offset was to be submitted parameter-wise with detailed reason, and the same was to be quantified parameter-wise. DPE further intimated (24 November 2015) that offset claimed in Self Evaluation has not been quantified project-wise for on hold projects along with reasons and impact on self-evaluation as required by MoU guidelines. Such information was to be submitted to DPE with recommendation of the Administrative Ministry by 16:00 Hrs of 26 November 2015. Audit observed that since BHEL/DHI could not submit the required information within the prescribed time, DPE/Task Force completed the evaluation of MoU without considering offset against reduction in sales turnover.

BHEL stated (November 2016) that very short time was given by DPE for furnishing the clarification and BHEL could send the response on 26 November 2015 itself to DHI with an advance copy to DPE. Department of Public Enterprises did not consider the representation submitted by it. It was also stated that DPE had commented that offset were not applicable for other financial parameters as per minutes.

The reply is to be viewed against the fact that BHEL did not furnish all relevant information relating to on hold projects and how it had impacted the financial parameters (project-wise and parameter-wise) as required by DPE/Task Force and the information furnished did not reach DPE/Task Force with recommendation of the Administrative Ministry within the prescribed time. The specific requirement in this regard was known to BHEL from the time of finalization of MoU and pro-active steps should have been taken to claim the offset on account of on hold projects.

DPE stated (January 2017) that as per MoU Guidelines, the offsets claimed by CPSE on the recommendation of the Administrative Ministry were approved by Chairman, HPC on the recommendation based on deliberations in the Task Force evaluation meetings.

DPE reply confirms that BHEL lost an opportunity to obtain offset against on-hold projects, since it did not furnish relevant information within stipulated time.

5.7.8 General

(i) DPE encourages publishing the MoUs by hosting it in the website of the CPSEs concerned. It was observed that BHEL has not placed the MoUs on its website.

BHEL replied (November 2016) that as an Engineering and Manufacturing company operating in the capital goods sector, it faces a competitive environment compared with many other CPSEs. Further, being a listed company, it does not provide future guidance on financial parameters that could potentially impact its share price.

The reply is be viewed against the fact that two other listed CPSEs (NTPC and ONGC) publish their MoUs on their websites as a good practice, as recommended by DPE.

DPE stated (January 2017) that after authentication, DPE advises the Administrative Ministry/CPSE to lay signed MoU in Parliament and to upload the names on website.

(ii) A review of MoUs for 2015-16 of ONGC and IOCL revealed that the MoUs of these CPSEs stipulated that if there was any inconsistency between the compliance certificates submitted by them and the observations in the CAG Reports (Commercial and Compliance Audit), they would be penalised by reduction of one mark from the overall rating by DPE. In this regard, Audit notes that other CPSEs including those selected for this study were also subjected to CAG audit. As such, it would be a good practice to incorporate a similar stipulation in the MoUs of the CPSEs as it would extend an assurance regarding compliance certificate submitted by the CPSEs.

5.7.9 Conclusion and Recommendations

Audit covering the MoUs of 'Maharatna' companies for the years 2014-15 and 2015-16 revealed inconsistencies in approving draft MoU by the Board of CPSEs, non-submission of annual plan/annual budget/corporate plan along with draft MoU, non-alignment of MoU targets with plans and delay in signing final MoU. As against stipulation in guidelines issued by DPE, benchmarking with national and internal peers were not carried out by CPSEs and the targets indicated in MoUs did not meet the SMART (specific, measurable, attainable, results-oriented and tangible) criteria. Most often, targets were set lower than capacity with the intention of achieving 'Excellent' rating. One of the seven CPSEs covered in this study even resorted to inclusion of notional turnover for achieving a higher rating. Audit also noticed incorrect and/or incomplete certification by CPSEs in complying with MSME guidelines/DPE guidelines and incorrect information in the Self Evaluation Reports. The information was not properly validated by DPE/Task Force at the time of final evaluation of MoUs. Non-authentication of documents submitted to DPE/Task Force by Board level officials and delayed furnishing of information leading to lower rating were also noticed.

In order to overcome the above deficiencies, Audit suggests the following recommendations for the consideration and implementation by DPE, CPSEs and their Administrative Ministries:

- **It may be ensured that the MoUs are prepared and finalized within stipulated time, in accordance with the DPE guidelines with due attention on fixing targets that can lead to improved performance of CPSEs.**

- **The validation process at DPE may be strengthened to ensure that any incomplete or incorrect information and/or certification can be detected before final evaluation of the MoUs through proper coordination with other Ministries and stakeholders.**

DPE stated (January 2017) that MoU Guidelines for 2016-17 and 2017-18 were already approved and that most of the concerns expressed by Audit have been adequately addressed in these guidelines.

New Delhi	**(H. PRADEEP RAO)**
Dated: 31 January 2017	**Deputy Comptroller and Auditor General and Chairman, Audit Board**

Countersigned

New Delhi	**(SHASHI KANT SHARMA)**
Dated: 01 February 2017	**Comptroller and Auditor General of India**