



CHAPTER - 3

Chapter-3

3. Compliance Audit Observations

This chapter includes 11 Paragraphs based on test check of transactions of State Government Companies.

Government Companies

3.1 Non-compliance of statutory provisions on corporate social responsibility (CSR) by State Public Sector Undertakings

Public Sector Undertakings of Madhya Pradesh failed to spend ₹ 6.13 crore out of ₹ 9.33 crore as required under the Corporate Social Responsibility commitment.

The Companies Act, 2013 (Act) prescribes the qualifying criteria for companies required to undertake Corporate Social Responsibility (CSR) activities and the activities to be undertaken under CSR. The Act is implemented through the Companies (Corporate Social Responsibility Policy) Rules, 2014 (Rules).

The Act and Rules are effective from the year 2014-15 and are applicable to companies with annual turnover of ₹ 1,000 crore or more or net worth of ₹ 500 crore or more or net profit of ₹ 5 crore or more during any financial year. These companies are required to spend at least two *per cent* of the average net profit made during the three immediately preceding financial years on CSR activities. The Board of Directors of Companies failing to spend such amount, shall specify the reasons for not spending the amount in their Annual Report.

Audit evaluated the applicability of the CSR provisions of the Act and Rules in State Public Sector Undertakings (PSUs) of Madhya Pradesh for the financial years 2014-15 and 2015-16, and it was observed that 16¹ out of 52 working PSUs came under the purview of CSR provisions. While two² PSUs made full compliance of CSR provisions, compliance made by two³ PSUs could not be examined as their accounts were in arrears. The position of the remaining 12 State PSUs are detailed in table nos. 3.1 and 3.2 below: -

¹ Madhya Pradesh State Mining Development Corporation Ltd. (MPSMDC), Madhya Pradesh Road Development Corporation Ltd. (MPRDC), Madhya Pradesh State Electronic Development Corporation Ltd. (MPSEDC), Madhya Pradesh Rajya Van Vikas Nigam Ltd. (MPRVVN), Madhya Pradesh Audhyogik Kendra Vikas Nigam (Bhopal) Ltd. (MPAKVN), Madhya Pradesh State Agro Industries development Corporation Ltd (MPAgro), Madhya Pradesh Power Transmission Company Ltd. (MPPTCL), Madhya Pradesh Poorv Kshetra Vidhyut Vitran Company Ltd (MPPoorvKVVC), Madhya Pradesh Paschim Kshetra Vidhyut Vitran Company Ltd (MPPashchimKVVC), Madhya Pradesh Madhya Kshetra Vidhyut Vitran Company Ltd (MPMadhyaKVVC), Madhya Pradesh Power Generating Company Ltd (MP Genco), Madhya Pradesh State Civil Supplies Corporation Ltd (MPSCSC), Madhya Pradesh Police Housing Corporation Ltd (MPPHC).

² Madhya Pradesh Power Generating Company Ltd and Madhya Pradesh Power Management Company Limited

³ Madhya Pradesh State Industrial Development Ltd (MPSIDC) and Madhya Pradesh Laghu Udyog Nigam Ltd (MPLUN): accounts for the years 2014-15 and 2015-16 were not finalised upto March 2017.

Table No. 3.1						
(₹ in crore)						
Sl. No.	Nature of Deficiency/ non-compliance	Provision of Act/ Rules	Name of PSU	Year during which non-compliance occurred	Year wise amount required to be spent on CSR	Year wise shortfall in expenditure
1.	Shortfall in expenditure on CSR activities - ₹ 6.13 crore	Sec. 135(5) of the Companies Act	1.1	2014-15	0.59	0.59
			MPRDC	2015-16	0.82	0.82
			1.2	2014-15	0.05	0.05
			MPSCSC			
			1.3	2015-16	0.17	0.17
			MPAKVN, Bhopal			
			1.4	2015-16	0.06	0.01
			MPPTCL			
			1.5	2014-15	1.15	0.64
			MPSMDC	2015-16	1.57	1.36
			1.6	2014-15	1.13	0.30
			MPRVVN	2015-16	1.35	Nil
			1.7	2014-15	0.92	0.92
MP Agro	2015-16	0.93	0.68			
1.8	2014-15	0.14	0.14			
MPPHC	2015-16	0.23	0.23			
1.9	2014-15	0.07	0.07			
MPSEDC	2015-16	0.15	0.15			
Total					9.33	6.13

Table No. 3.2				
Sl. No.	Nature of Deficiency/non-compliance	Provision of Act/ Rules	Name of PSU	Year from which violation occurred
1.	Non-formulation of CSR Policy	Sec. 135(3) of the Companies Act	2.1 MPPoorvKVVC	2014-15
			2.2 MPPashchimKVVC	2014-15
			2.3 MPMadhyaKVVC	2014-15
			2.4 MPPHC	2014-15
2.	Failure to specify the monitoring mechanism in CSR Policy	Rule 6(1) (b) of CSR Rules	3.1 MPRDC	2014-15
			3.2 MP Agro	2014-15
3.	Non-obtaining of utilisation certificates and progress reports ⁴ - ₹ 1.53 crore	Rule 4(2) (ii) of CSR Rules	4.1 MPRVVN	2014-15 (₹ 0.09 crore)
				2015-16 (₹ 0.69 crore)
			4.2 MPAgro	2015-16 (₹ 0.25 crore)
			4.3 MPPTCL	2015-16 (₹ 0.05 crore)
			4.4 MPRDC	2014-16 (₹ 0.26 crore)

Regarding shortfall in expenditure under CSR, eight out of the nine companies mentioned under S. No. 1.1 to 1.8, accepted the audit observation and replied that the amount of shortfall has been either spent or will be spent in the subsequent financial years. The reply is not acceptable as the Board of Directors (BoD) of the non-compliant companies failed to specify the reasons for not spending the mandated amount on CSR activities as required under Section 135 (5) of the Act.

Further, MPSEDC (Sl. No 1.9) replied that it was not required to spend any amount in the year 2014-15 as net profit calculated as per Section 198 was lower

⁴ The Company has to specify the modalities of utilisation of funds on project to be undertaken.

than ₹ 5.00 crore. The reply is not acceptable as net profit of MPSEDC during 2013-14 (₹ 5.91 crore) and 2014-15 (₹ 12.86 crore) was more than ₹ 5.00 crore. Hence, as per Section 135 of the Act, CSR provisions became applicable to MPSEDC from 2014-15 and accordingly it was required to spend two *per cent* of profit (calculated under section 198) in every subsequent financial year.

Hence, non-formulation of CSR policy as well as shortfall in incurring the expenditure for the CSR activities by the Board of Directors of the PSUs led to deprivation of the envisaged benefits of CSR policy.

Madhya Pradesh Road Development Corporation Limited

3.2 Non-recovery of dues from the concessionaire

Viability gap funding grant of ₹ 14.98 crore was released to the concessionaire in violation of Concession Agreement. Besides, the Company did not recover independent engineers fees of ₹ 2.57 crore.

Madhya Pradesh Road Development Corporation Limited (Company) executes Concession Agreements (CA) with concessionaires for development of National Highways and State Highways on Public Private Partnership (PPP) mode based on the guidelines issued (May 2006) by Government of Madhya Pradesh.

Government of India (GoI) notified (January 2006) a scheme for financial support to PPP infrastructure projects proposed by the Central Ministries, State Government and statutory authorities, who own the underlying assets. Under the scheme, viability gap funding (VGF) was to be provided as a Capital Grant⁵ to support PPP infrastructure projects with the objective of making the project commercially viable.

The Company executed (September 2011) a CA with M/s MBL Highway Development Company Limited (Concessionaire) for development of Seoni-Katangi road on Design, Build, Finance, Operate and Transfer (DBFOT) basis, for completion by 20 February 2014. The project cost of ₹ 211.60 crore was to be funded through concessionaire's equity (₹ 51.10 crore), VGF grant (₹ 30.50 crore) and loans from financial institutions (₹ 130 crore). VGF grant was payable to the concessionaire after he infused his total equity, and was to be disbursed proportionately along with the loan funds. Clause 23.3 of the CA provided that half of the fees of Independent Engineer (IE) paid by the Company shall be reimbursed by the concessionaire. As per Clause 25.2.4 of the CA, in the event of occurrence of default by the concessionaire in achievement of project milestones as per CA or payment of dues of the Company, disbursement of VGF shall be suspended till such default has been cured by the concessionaire.

As the concessionaire did not start the work and also failed to pay the dues towards IE fees, the Company issued (March 2013) termination notice to the

⁵ One-time or deferred grant equivalent to the lowest bid for capital subsidy, subject to a maximum of 20 *per cent* of the total project cost.

concessionaire under Clause 37.1.2⁶ of the CA. However, considering the assurance (March 2013) of the concessionaire to start the work, the Company did not terminate the CA. Subsequently, due to continued failure of the concessionaire to achieve project milestones⁷ and non-payment of dues towards IE fees (₹ 2.57 crore) by the concessionaire, the Company issued (August 2016) another termination notice and finally terminated (November 2016) the CA. The Company awarded (February 2017) the balance work to another contractor on Engineering, Procurement and Construction⁸ (EPC) mode at ₹ 92.50 crore, fully funded by Government of Madhya Pradesh (GoMP). The reasons for switching over to EPC mode were not on record.

Audit observed (May 2017) that, upto 31 March 2016, the concessionaire had infused entire amount of equity (₹ 51.10 crore) in the project and had requested (May 2016) the Company to release first instalment of VGF under the VGF scheme. In spite of continued default in achieving project milestones⁹ and non-payment of IE fees dues by the concessionaire, the Managing Director (MD) of the Company recommended (May 2016) to GoI for release of VGF of ₹ 14.98 crore stating that the concessionaire has infused his total equity and 49.11 *per cent*¹⁰ loan amount in the project. Accordingly, VGF of ₹ 14.98 crore was released (June 2016) by GoI directly to the Escrow account of the concessionaire.

The release of VGF was in violation of Clause 25.2.4 of the CA as the concessionaire had defaulted in achieving project milestones and payment of dues of the Company. The dues from the concessionaire towards IE fees (₹ 2.57 crore) had been written off (March 2017) by the Company. Further, as the Company re-arranged the balance work on EPC mode instead of PPP mode, the purpose of VGF scheme to promote private investment through PPP projects was defeated and GoMP funds (₹ 92.50 crore) are being utilised now to complete the balance work under EPC mode.

The Company replied (October 2017) that the VGF was released as per the provisions of the CA. It was further replied that cost of work executed (₹ 67.09 crore) by the concessionaire was more than the amount of VGF and outstanding IE fees.

The reply is not acceptable as GoI released VGF due to the wrong recommendation made by the Company. The reply that the cost of work executed by the concessionaire was more than the amount of VGF and IE fees, is not relevant, as the work was re-arranged on EPC mode at a cost of ₹ 92.50 crore to be borne by GoMP. Besides, the Company suffered loss of ₹ 2.57 crore towards IE fees as the same could not be adjusted from the value of the work.

⁶ As per Clause 37.1.2, the Company was entitled to issue termination notice to the concessionaire for his default after informing him by way of notice and granting him 15 days' time to make a representation.

⁷ As against the 100 *per cent* work scheduled to be completed by 20 February 2014, the concessionaire completed only 55.39 *per cent* work upto 31 August 2016.

⁸ Contracting arrangement for executing a project wherein the contractor is responsible for all the activities from design, procurement, construction to commissioning and handover of the project to the Company.

⁹ As against the 100 *per cent* work scheduled to be completed by 20 February 2014, the concessionaire completed only 51 *per cent* work upto 30 April 2016.

¹⁰ ₹ 63.834 crore out of total loan amount of ₹ 130.00 crore.

The matter was reported to the Public Works Department in August 2017; their reply is still awaited (March 2018).

3.3 Unauthorised retention of government funds and extra payment of income tax

Incorrect accounting of incidental project income as own income resulted in unauthorised retention of government funds of ₹ 14.49 crore and consequent avoidable payment of ₹ 3.09 crore as income tax.

Madhya Pradesh Road Development Corporation (Company) implements National highways, State highways and major District road projects on behalf of Government of Madhya Pradesh (GoMP) and Government of India (GoI) for which the Company receives supervision charges and funds from the concerned governments.

The Company filed (October 2016) income tax return for the Assessment Year 2016-17 (previous year 2015-16) wherein income tax of ₹ 10.96 crore was shown payable on Book profit of ₹ 51.37 crore. Audit noted that the Company's claim of Book profit included ₹ 14.49 crore being the incidental income from license fees, land use, road cutting charges¹¹ (₹ 3.73 crore), income from damages for delay in completion of State highway and major District road projects (₹ 9.69 crore) and interest¹² on deposits (₹ 1.07 crore).

Audit observed that all the expenses related to road projects executed by the Company are funded by Government. Hence, all 'project incidental income' should also have either been deducted from the project cost or returned to the Government. Hence, the incorrect accounting of above incidental income as own income by the Company resulted not only in unauthorised retention of Government funds but also in inflating its profits by ₹ 14.49 crore and consequent extra payment of income tax of ₹ 3.09 crore.

The Public Works Department (PWD) replied (November 2017) that since the process of site verification is expenditure bearing process and damages are exceptional items, charges collected towards license fee, land use, road cutting charges and damages has been recognised as Company's own income. The reply is not acceptable as the Company is charging all expenditure related to road works to Government account. Further, the Company, at the instance of audit, changed its accounting treatment from the financial year 2016-17 and all receipts towards license fee, land use, road cutting charges and damages for delay are now being accounted by the Company as liability payable to Government. This change in accounting treatment confirms that the Company had been following the wrong accounting method in previous years.

¹¹ License fee, land use and road cutting charges are collected by the Company from concerned applicants for laying of optical fibre cables, pipelines, sign boards along the road. Expenditure, if any, in rectifying the road cutting is charged to the road maintenance account, which is funded by the Government.

¹² The interest earned on unutilised GoMP funds is credited by the Company to GoMP funds account. However, the interest earned on project incidental income from license fee, land use, road cutting charges and income from damages (₹ 13.42 crore), which were accounted as own income, was not credited to GoMP funds account.

3.4 Loss due to delay in termination of concession agreement

Company revoked termination notice issued to the concessionaire for slow progress of work and delayed the termination of Concession Agreement resulting in non-recovery of dues of ₹ 1.44 crore.

Madhya Pradesh Road Development Corporation Limited (Company) executed¹³ (May 2012) a Concession Agreement (CA) with M/s Topworth Tollways (Bela) Pvt. Ltd, Mumbai¹⁴ (Concessionaire) for construction, operation and maintenance of Satna-Bela section of National Highway-75 (48.04 Kms) at a total project cost of ₹ 321 crore¹⁵ on Design, Build, Finance, Operate and Transfer (DBFOT) basis. The concessionaire was required to submit Performance Security of ₹ 16.05 crore (Clause 9.1) and achieve Financial Closure¹⁶ upto 05 November 2012 (Clause 24.1.1). The project was to be completed within 730 days from the appointed date¹⁷ (13 August 2013).

As per the CA, the concessionaire was required to reimburse half of the fees of Independent Engineer (IE) to the Company within 15 days of receiving IE Fees Expenditure Statement (Clause 23.3). Further, the CA also provided for payment of damages for delay in submission of Performance Security¹⁸ and for delay in achieving Financial Closure¹⁹ by the concessionaire beyond 05 November 2012 (Clause 4.3 and 24.1.1).

The concessionaire submitted (01 August 2013) the Performance Security with a delay of 269 days and achieved (25 July 2013) Financial Closure after a delay of 262 days. Hence, an amount of ₹ 3.21 crore towards damages for delay in submission of Performance Security and ₹ 6.49 crore being penalty for delay in achieving Financial Closure was recoverable from the concessionaire, which the Company failed to recover.

However, the progress of the work was very slow and the concessionaire stopped the work completely in November 2014 after completing 26 per cent of the work citing financial crisis²⁰. As the concessionaire did not restart the work, the Company issued (May 2015) termination notice after obtaining permission from Ministry of Road Transport and Highways (MoRTH). MoRTH while according permission, instructed (May 2015) the Company to get the road

¹³ Company executes the works on the entrusted authority of Ministry of Road Transport and Highways (MoRTH), Government of India (GoI).

¹⁴ Selected through competitive bidding after technical and financial evaluation.

¹⁵ Estimated Project Cost was revised by the concessionaire to ₹ 483.03 crore, which was to be funded through concessionaire's equity (₹ 135.32 crore), grant and VGF (₹ 31.97 crore) and loans from financial institutions (₹ 315.74 crore).

¹⁶ Financial closure means fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements.

¹⁷ The date on which financial closure is achieved or an earlier date that the parties may by mutual consent determine and shall be deemed to be the date of commencement of the Concession Period. Concessionaire achieved the Financial Closure on 25 July 2013 with delay of 262 days. Accordingly, the Company declared appointed date as 13 August 2013.

¹⁸ At the rate of 0.20 per cent for each day of delay subject to maximum of 20 per cent of Performance Security (Clause 4.3)

¹⁹ At the rate of 0.10 per cent of Performance Security for delay upto 120 days and at 0.20 per cent for delay for a further period upto 200 days (Clause 24.1.1)

²⁰ Out of total project cost of ₹ 321 crore, the concessionaire had infused only ₹ 83.01 crore (25.86 per cent) in the project as against the target of ₹ 112.35 crore (35 per cent).

maintenance work done from another contractor and meet the expenditure by encashing the Performance Security of the concessionaire. In the meantime, the concessionaire resumed the work and assured (May 2015) to infuse equity in the project and complete the work by October 2016. Subsequently, after various meetings with the concessionaire, the MD of the Company approved (May 2016) revocation of the termination notice, ignoring his poor performance and instructions of MoRTH. At this stage also the progress of work was 35 *per cent* only as against the target of 100 *per cent*. However, the concessionaire could not fulfil his commitment and again stopped the work in August 2016 after completing 36 *per cent* work.

Hence, the Company finally terminated (May 2017) the CA after obtaining permission from MoRTH. An amount of ₹ 17.49 crore (₹ 9.70 crore²¹ towards damages for various defaults, ₹ 5.50 crore towards maintenance work done by the Company and ₹ 2.29 crore²² towards outstanding IE fees) was recoverable from the concessionaire at the time of termination. Accordingly, Performance Security of ₹ 16.05 crore was encashed (January 2017) leaving ₹ 1.44 Crore unrecovered.

Audit observed (May 2017) that at the time of issue of first notice of termination in May 2015, the Company was aware of inability of the concessionaire to revive the stopped work. At that time, total dues from the concessionaire were ₹ 15.18 crore²³ only and the Performance Security amount was sufficient to recover these dues. Thus, the delay in final termination of CA resulted in avoidable loss of ₹ 1.44 crore by way of short recovery of dues from the concessionaire.

The Company replied (December 2017) that the termination notice was revoked based on assurance by the lender for completion of the project. However, in the absence of substantial progress by the concessionaire, CA was finally terminated (May 2017) after obtaining permission of MoRTH.

The reply is not acceptable as the Company had itself intimated (March 2015) MoRTH about inability of the concessionaire to revive the stopped work. MoRTH also granted (May 2015) permission to issue termination notice to the concessionaire and encash his performance security. In spite of this, MD approved (May 2016) revocation of termination notice and delayed the termination of the CA for two years though the progress achieved during this period was only ten *per cent*.

The matter was reported to the Public Works Department in July 2017; their reply is still awaited (March 2018).

²¹ ₹ 3.21 crore for damages for delay in submission of Performance Security and ₹ 6.49 crore for damages for delay in achieving Financial Closure.

²² The Company sent (February 2015 to March 2017) statements of expenditure towards IE fees to the concessionaire, however no amount was reimbursed by him.

²³ ₹ 3.21 crore for damages for delay in submission of Performance Security; ₹ 6.49 crore for damages for delay in achieving Financial Closure; non-recovery of ₹ 0.65 crore towards Independent Engineer's fees and ₹ 4.84 Crore incurred for carrying out the maintenance work of project by the Company.

3.5 Non-recovery of independent engineers (IE) fees and interest thereon from the concessionaires

The Company failed to recover Independent Engineers fees of ₹ 8.39 crore and levy interest of ₹ 4.01 crore on delayed payment by the concessionaires.

Madhya Pradesh Road Development Corporation Limited (Company) executes Concession Agreements (CA) with concessionaires for executing development projects of National Highways and State Highways on Public Private Partnership (PPP) basis.

The Company appoints Independent Engineers (IE) for supervision and quality control of these works. As per Clause 23.3 of the CA, the remuneration, cost and expenses of the IE (IE fees) are initially payable fully by the Company including the share of the concessionaire and the same is subsequently reimbursed by the concessionaire as per the due dates²⁴. As per Clause 47.5 of CA, interest²⁵ was to be levied for delayed payments by the concessionaire. General Manager (Finance), being head of Finance wing of the Company, was responsible for ensuring timely realisation of IE fees from the concessionaire.

As at the end of the March 2017, an amount of ₹ 25.27 crore was pending as recoverable towards IE fees from the concessionaires of 26 projects²⁶. Out of these, on a test check of 12 projects (augmentation of nine State Highways, two National Highways and one State Bypass Road) completed during the period 2015-17, Audit observed (August 2017) the following:

- General Manager (Finance) of the Company did not take initiative to claim IE fees of ₹ 23.53 crore from the above 12 concessionaires in time. The delay in claiming IE fees ranged upto 520 days, which ultimately resulted in delay in realisation of claims from the concessionaires and consequent interest loss of ₹ 81.93 lakh.
- In the above cases, IE fees of ₹ 15.15 crore (out of ₹ 23.53 crore) was recovered from the concessionaires with delay ranging from 21 days to 1,865 days from the date of claim. Further, in respect of eight projects where construction has been completed, General Manager (Finance) failed to recover IE fees of ₹ 8.39 crore (**Annexure-3.1**) from the concessionaire. The reasons for delayed/ non recovery of dues were lack of regular pursuance, release of Performance Security of the concessionaires by General Manager (Finance) with the approval of MD without adjusting outstanding IE fees

²⁴ In respect of Build–Operate–Transfer (Toll + Annuity) mode, full IE Fees is to be recovered in four six monthly instalments, starting from appointed date. In respect of Build–Operate–Transfer (Toll) mode, half of IE Fees is to be recovered within 15 days of receiving a statement of expenditure from the Company.

²⁵ At the rate equal to 5 per cent above the Bank Rate.

²⁶ Road projects connecting Deharda–Ishagarh, Ujain–Simhastha, Betul–Sarni–Parasia, Lakhnadone– Ghasore, Jahabua–Jobal – Kukshi, Khandwa– Dehatalai, Rewa– MP– UP Border, Biora–MP–Rajashan Border Road, Damoh–Katni, Ratlam–Sailana, Guna–Aron–Sironj, Gormi–Udotgarh, Bhopal Bypass, Bina–Kurwai–Sironj, Guna–Ashoknagar– Ishagarh, Rau– Mhow– Mandleshwar, Bametha–Panna–Satna, Sidhi–Singrauli, Waraseoni–Lalbarra, Mhow– Ghatabillod, Badnawar– Thandla, Budni– Rehti, Badwah–Dhamnod, Thandla–Limdi, Patan–Tendukeda–Rehli and Hata–Patehur Road.

based on concessionaire's assurance to pay in future and low priority provided in the escrow agreement to recovery of Company's dues by appropriation of funds from Escrow Account.

- Audit further observed that, in respect of delayed recovery/ non-recovery of the IE fees from the concessionaires, General Manager (Finance) did not recover interest amount of ₹ 4.01 crore from the concessionaires (*Annexure-3.1*) due to erroneous interpretation of Clause 47.5 of the CA.

Thus, due to failure of General Manager (Finance) in timely raising IE fees claims, realisation of IE Fees from the concessionaire and recovery of interest on delayed realisation of IE Fees, the Company extended undue benefit to concessionaires and suffered loss of ₹ 12.40 crore²⁷.

The Public Works Department replied (November 2017) that the matter for recovery of IE fees is taken up with the Escrow Bank. In respect of recovery of interest, it was stated that there was no specific provision in the CA to charge interest on IE fee.

The reply is not acceptable as IE fees in respect of above cases has not been recovered by the Company either from the concessionaire or Escrow Account so far (November 2017). Further, Clause 47.5 of CA was very specific about levy of interest on all delayed payments by the concessionaires.

Madhya Pradesh Power Management Company Limited

3.6 Extension of undue benefit to supplier

Procurement of costly power deviating from the approved methodology resulted in extra expenditure of ₹ 27.66 crore and extension of undue benefit to that extent to Torrent Power Limited (TPL).

The Madhya Pradesh Power Management Company Limited (Company) has executed power purchase agreements with various power suppliers²⁸ for purchase of specified minimum quantity of power. In view of the availability of adequate power from various long term/ medium term sources²⁹ as compared to the demand, the Board of Directors (BoD) of the Company decided (April 2014) to procure power as per the merit order despatch (MOD) methodology, which facilitates procurement of power in the most commercially prudent manner. As per the MOD methodology adopted by the Company, the cost of power from all long term and medium term sources in state periphery of Madhya Pradesh is worked out, excluding charges of fixed nature.

²⁷ IE fees of ₹ 8.39 crore + Interest on delayed payment ₹ 4.01 crore.

²⁸ National Thermal Power Corporation, Damodar Valley Corporation, Independent Power Producers (Torrent Power Limited, BLA Power, JP Bina, Lanco-Amarkantak, M.B. Power, Essar Power etc), Sasan Power Project and power plants of Madhya Pradesh Power Generating Company Limited.

²⁹ 'Medium term Power Purchase Agreement' means a Power Purchase Agreement for duration equal to or more than one year and less than seven years and 'Long term Power Purchase Agreement' means a Power Purchase Agreement for a minimum period of seven years.

Accordingly, MOD list is prepared in descending order of price³⁰ every month. Unless there are reasons to the contrary, the Company should not procure power from a source which is higher in the MOD list (i.e., the supplier who is offering costlier power) when power is available from another source lower in the MOD list (i.e., the supplier who is offering cheaper power).

Audit observed that, Chief General Manager- Commercial (CGM-C) decided and accordingly purchased (April 2015 to July 2015) 70.76 Million Units (MUs) electricity valued at ₹ 74.57 crore (including fixed charges of ₹ 30.00 crore) from M/s Torrent Power Limited (TPL) at higher rates³¹ despite the availability of cheaper power³² from National Thermal Power Corporation Limited (NTPC). CGM-C neither obtained approval from BoD nor recorded any justification for deviating from the Board's decision of procuring power in the most commercially prudent manner. This has resulted in extra expenditure of ₹ 27.66 crore³³ after considering fixed charges payable to TPL for not purchasing contracted power from TPL.

The Energy Department stated (November 2017) that power was procured to avoid the financial liability of Take or Pay (TOP)³⁴ charges, over and above the fixed charges, to be paid to TPL. The reply is not acceptable in view of the fact that the Company had not assessed the impact of TOP liability at the time of deciding to procure power from TPL. Moreover, even if the Company has to pay TOP charges, the same would be compensated in subsequent period by way of make-up gas³⁵ and thus TOP charges are not a confirmed liability.

The Energy Department further replied that the excess cost involved in the purchase would eventually be recouped through tariff revision and hence, there is no loss to the Company. This is not justifiable as procuring costlier power is against the declared policy of the Company and passing on the excess purchase cost to consumers is against public interest.

³⁰ Includes variable cost of energy, Central Transmission Utility (CTU) losses, taxes and duties to transport the power from generating station to MP periphery

³¹ April 2015- 21.36 MUs at ₹ 10.51 per unit, May 2015-21.48 MUs at ₹ 9.62 per unit, June 2015-20.16 MUs at ₹ 9.60 per unit and July 2015-7.76 MUs at ₹ 15.60 per unit.

³² April 2015- ₹ 2.54 per unit, May 2015- ₹ 2.38 per unit, June 2015- ₹ 2.25 per unit and July 2015- ₹ 2.37 per unit.

³³ Amount paid to TPL for purchase of 70.76 million units electricity during April to July 2015: ₹ 74.57 crore -(amount to be paid if purchased from NTPC: ₹ 16.91 crore + fixed cost payable to TPL: ₹ 30 crore)

³⁴ As per Clause 14.1 of Gas Supply Agreement of TPL, TOP liability is the amount to be paid by TPL to the gas supplier for the quantity of fuel not used/ lifted by TPL as per agreement (at least 90 *per cent* of the Annual Average Contracted Quantity), which shall be passed on to the Company by TPL as per the terms of power purchase agreement.

³⁵ As per Clause 6.3 of the Gas Supply Agreement of TPL, the fuel already paid for (purchased) by the consumer but not consumed is credited and can be adjusted in subsequent purchases during tenure of the Contract (upto 31 March 2028), which is known as make-up gas.

Madhya Pradesh Power Generating Company Limited**3.7 Avoidable payment of penal water charges****Delay in execution of agreement with Water Resources Department, Government of Madhya Pradesh resulted in avoidable payment of penal water charges of ₹ 6.70 crore.**

As per Madhya Pradesh Irrigation Rules, 1974, water may be supplied with prior permission of the State Government for any industrial purpose to private/ Government organisations at specified rates and an agreement shall be executed for use of water. Further, water charges would be payable at the rate of 1.5 times of the normal rate in case of drawing of water in excess of agreed quantities and for any other unauthorised drawing of water.

Two newly constructed plants³⁶ of Shree Singaji Thermal Power Station (SSTPS) of the Madhya Pradesh Power Generating Company Limited (MPPGCL), had achieved the Commercial Operation Date (COD) in February 2014 and December 2014, respectively. Prior to COD, SSTPS consumed³⁷ 3.89 lakh cum of water from Indira Sagar Reservoir³⁸ during its trial run stage (April 2013 to February 2014).

Water Resource Department (WRD) as well as Energy Department had directed (July 2013) MPPGCL to execute separate water supply agreements for each power station by August 2013. In compliance to the direction, MPPGCL executed (December 2013) agreements for all power stations except SSTPS. Reason for not signing agreement for SSTPS in December 2013 was delay in depositing water allocation fees and security deposit³⁹ by Project Generation wing of MPPGCL.

Audit observed (January 2017) that though SSTPS had started water consumption from April 2013, WRD agreed (January 2015) to consider the COD of Unit-I (February 2014) as actual water drawing date for computing water charges and charged only the normal rate of ₹ 5.50 per cum for the actual consumption of water during April 2013 to February 2014. However, the agreement for allocated quantity of water was executed (February 2015) by SSTPS after a delay of 12 months from the date of COD of Unit-I. The delay was due to lack of initiative on the part of officials of Operation and Maintenance (Hydel) wing in making timely payment of outstanding water charges for the period from April 2013 and in filling up CODs of upcoming units⁴⁰ in agreement proforma as the WRD insisted for single agreement for all the units of SSTPS.

³⁶ Unit-1 and Unit-2 with capacity of 600 Mega Watt each.

³⁷ Based on water allocation by WRD (May 2012), MPPGCL used 3.89 lakh cum of water during trial run i.e. from April 2013 to January 2014.

³⁸ Under the control of Water Resources Department (WRD), Government of Madhya Pradesh (GoMP).

³⁹ The Company was required to deposit water allocation fees and security deposit of ₹ 10.40 crore on account of revised water allocation by WRD.

⁴⁰ Unit-3 and Unit-4 with capacity of 660 Mega Watt each were under construction with scheduled COD as March 2018 and July 2018, respectively.

In the absence of the agreement, WRD treated the drawing of water⁴¹ during February 2014 to January 2015 as unauthorised and raised (December 2015) demand of ₹ 31.45 crore, which included ₹ 6.70 crore towards penal charges (at the rate of ₹ 8.25 per cum as against normal rate of ₹ 5.50 per cum) and MPPGCL paid the same in August 2016.

Thus, delay on the part of MPPGCL in executing the Water Drawing Agreement has led to avoidable payment of penal charges amounting to ₹ 6.70 crore.

Energy Department stated (February 2018) that delay in execution of agreement was due to procedural constraints such as collection of commissioning dates for Unit-3 and 4 which were required to be filled up in agreement proforma, vetting of draft agreement and authorisation of officer for signing of the agreement and other formalities involved in execution of agreement. MPPGCL also claimed that matter relating to waiver of penal charges was still under correspondence with WRD.

The reply is not acceptable as delay in executing agreement was due to delay on the part of MPPGCL in depositing water allocation fees and security deposit, paying of outstanding water charges and failure to initiate action for executing agreement before using water. Further, the scheduled commissioning dates of Unit-3 and 4 were readily available with the Company, hence delay on this account was not justified. Moreover, the request of MPPGCL for waiver of levy of penal charges had been turned down by WRD in May 2016 and MPPGCL had already made entire payment.

3.8 Avoidable expenditure on water charges

Failure of the Company to get the contracted quantity of water reduced consequent to decommissioning of two power plant units resulted in avoidable expenditure of ₹ 1.66 crore.

The Amarkantak Thermal Power Station, Chachai (ATPS) with capacity of 450 Megawatt (MW)⁴² was owned and operated by Madhya Pradesh Power Generating Company Limited, Jabalpur (MPPGCL).

Central Electricity Authority (CEA)⁴³ had recommended (January 2012) norm of 43,200 cubic metre (cum) of water per day for a thermal power station of 450 MW. However, MD, without considering the recommendations of CEA, executed (December 2013) a water supply agreement with Madhya Pradesh Water Resource Department (MPWRD) for supply of 61,167 cum of water per day (Contracted Quantity) for ATPS. The reasons for executing water supply agreement of higher quantity by 17,967 cum per day was not on record.

The agreement was subject to the provisions of Madhya Pradesh Irrigation Act, 1931 and Madhya Pradesh Irrigation Rules, 1974⁴⁴ and was valid for a period

⁴¹ 54,22,817 cum

⁴² Unit-1 (120 MW), Unit-2 (120 MW) and Unit-3 (210 MW).

⁴³ CEA is the apex body (under section 73 of The Electricity Act 2003) to advice Central Government, State Governments and regulatory commissions on all technical matters relating to generation, transmission and distribution of electricity.

⁴⁴ GoMP made Madhya Pradesh Irrigation Rules, 1974 in exercise of the powers conferred by Madhya Pradesh Irrigation Act, 1931.

of 30 years from the date of agreement. Water charge bills are raised by MPWRD on monthly basis as per the actual consumption, subject to a minimum of 90 *per cent* of the contracted quantity. As per Section 85 of the Madhya Pradesh Irrigation Rules, 1974, an agreement may be modified or cancelled with the mutual consent of MPWRD and MPPGCL.

Audit observed (March 2017) that out of three units of ATPS, two units (Unit-2 and Unit-1) retired in May 2014 and January 2015, respectively and the same was approved⁴⁵ by CEA in March 2016. As a result of decommissioning, total capacity of ATPS was reduced by 53 *per cent*⁴⁶ and one unit (210 MW) alone was in operation. Accordingly, water requirement was also reduced. However, citing water requirement for upcoming unit (of 660 MW, scheduled to be commissioned in 2024-25), the contracted quantity as per the water supply agreement was not reduced correspondingly (December 2017).

Thus, MD, MPPGCL executed agreement for higher quantity of water than the norms prescribed by CEA without recording any reason. Further, MPPGCL failed to reduce the contracted quantity of water proportionately even after approval of CEA for decommissioning of two power plant units in March 2016. As a result, MPPGCL incurred an avoidable expenditure of ₹ 1.66 crore⁴⁷ for the period April 2016 to March 2017.

The Energy Department stated (November 2017) that it has initiated the process of installation of new unit in place of the decommissioned units and hence it is not prudent to surrender water allocation at this stage.

The reply is not acceptable as DPR for construction of new unit at ATPS is under preparation (February 2018) and the Company has itself estimated its commissioning date in 2024-25 only. In view of the substantial time left for the new unit to start commercial operations and consume water, it is not prudent to continue to pay for the unused quantity of water.

⁴⁵ As per Section 73 (m) of Electricity Act, 2003, MPPGCL was required to approach CEA for retirement of ATPS.

⁴⁶ Capacity of ATPS was reduced by 240 MW i.e. from 450 MW to 210 MW.

⁴⁷ 90 *per cent* of excess Contracted Quantity i.e., 1,07,16,474 cum X rate of water as per agreement i.e., ₹ 1.55 per cum

Madhya Pradesh Trade and Investment Facilitation Corporation Limited

3.9 Avoidable payment of income tax

Drawal of maintenance grant of ₹ 5.00 crore from Government in excess of requirement, led to avoidable payment of additional income tax of ₹ 1.63 crore.

The Madhya Pradesh Trade and Investment Facilitation Corporation Limited (Company) is engaged in promotion of investment and industrial activities in the state of Madhya Pradesh. As the Company was not having any significant operating income of its own, the Expenditure Finance Committee (EFC)⁴⁸, Government of Madhya Pradesh (GoMP) approved (February 2014) allotment of ₹ 10.00 crore as maintenance grant for meeting administrative expenses during the 12th Five Year Plan period (2012-17), based on the proposal submitted (April 2012) by the Company. Accordingly, the Company had received grant of ₹ 2.50 crore each during all the years from 2013-14 to 2016-17, for meeting its administrative expenses.

Audit observed (December 2016) that the proposal for grant submitted (April 2012) by the Company was based on the revenue from operations only and income from other sources was ignored. In response to query (May 2012) by EFC regarding justification for demanding grant, the Company had clarified (July 2012) that in the absence of regular income, it is dependent on retained funds of earlier years and interest income thereon, which are getting reduced year after year due to increase in expenditure as a result of expansion of its activities. The clarification of the Company was not correct as retained funds of the Company were actually increasing⁴⁹ and the income from interest and other sources during 2011-12 to 2014-15 was sufficient to meet its administrative expenses. Hence, the budgetary support from GoMP towards maintenance grant was not required during 2013-14 and 2014-15, as detailed in table no. 3.3.

⁴⁸ EFC evaluates the proposals for expenditure under a new scheme/ project for the Five Year Plan period. EFC is headed by Principal Secretary (Finance) and includes Principal Secretary of the Administrative Department, Secretary (Finance) and Member Secretary (State Planning Commission) as members.

⁴⁹ Retained funds (Reserves and Surplus) of the Company increased from ₹ 8.14 crore at the end of 2011-2012 to ₹ 12.15 crore at the end of 2013-2014.

Table No. 3.3			
(₹ in crore)			
Financial Year	2013-14	2014-15	Total
(a) Revenue from operations	0.12	0.11	0.23
(b) Income from interest	3.12	2.17	5.29
(c) Income from other sources (excluding administrative grant)	0.79	0.84	1.63
(d) = (a + b+ c)	4.03	3.12	7.15
(e) Grant for administrative expenses	2.50	2.50	5.00
(f) Total Revenue (d +e)	6.53	5.62	12.15
(g) Administration Expenses	2.21	2.90	5.11
(h) Profit (f-g)	4.32	2.72	7.04
(i) Income as per Income Tax Return	4.37 ⁵⁰	2.72	7.09
(j) Income as per Income Tax Return after deducting administrative grant = (i) – ₹ 2.50 crore	1.87	0.22	2.09

On account of drawal of Government grants in excess of its requirement, the Company generated additional profits of ₹ 5.00 crore during the year 2013-14 and 2014-15 and thereby it had to pay additional income tax of ₹ 1.63 crore⁵¹.

The Company replied (June 2017) that the income from investments created out of retained funds should not be viewed as a source of funding for its day to day business operations and hence, maintenance grant was sought from GoMP.

The reply is not acceptable because income from interest on retained funds was also part of income of the Company which was sufficient to meet its administrative expenses.

The matter was reported to the Department of Commerce, Industry and Employment in May 2017; their reply is still awaited (March 2018).

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited

3.10 Short recovery of labour welfare cess

The Company short recovered ₹ 1.44 crore labour welfare cess from the contractors and incurred liability for payment of interest and penalty to Madhya Pradesh Building and Other Construction Workers' Welfare Board.

In accordance with Section 3 (1) of the Building and Other Construction Workers' Welfare Cess Act, 1996 (Act), the Company, as an employer, was required to deduct labour welfare cess equivalent to one *per cent* of the cost of the construction from the bills of contractors carrying out construction works of the Company. As per Rule 5(3) of the Building and Other Construction Workers' Cess Rules, 1998 (Cess Rules), the cess was to be paid to the Madhya Pradesh Building and Other Construction Workers' Welfare Board (Board)

⁵⁰ Taxable Income as per Income Tax Return is more than profit of the Company due to disallowance of expenditure of ₹ 0.05 crore under Income Tax Act, 1961.

⁵¹ ₹ 5.00 crore x 30 *per cent* Income Tax + 5.00 *per cent* surcharge on tax + 3.00 *per cent* cess.

within 30 days of collection. Further, Rule 8 of the Cess Rules provided that failure to pay any amount of cess to the Board within thirty days would entail payment of interest at the rate of two *per cent* of unpaid amount, for the delay of every month or part thereof. Rule 9 provided for a levy of penalty of an amount not exceeding the amount of unpaid cess.

Rural Projects wing of the Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Company) had awarded (December 2010 and November 2012) 21 construction works under the Feeder Separation Programme to various contractors. Of these, 14 contracts were terminated between April 2012 and June 2015 due to poor performance of the contractors. As per agreement between the Company and the Contractor, the Contractor shall bear all taxes, duties, levies and charges assessed by all municipal, state or national government authorities. Accordingly, the Finance wing of the Company headed by the Chief Financial Officer was required to recover labour welfare cess of ₹ 1.72 crore⁵² from contractors of terminated works⁵³. However, Audit observed that the Finance wing of the Company had recovered only ₹ 0.28 crore⁵⁴ leaving a balance of ₹ 1.44 crore. Further, as the Company has not remitted the dues (₹ 1.44 crore) to the Board, liability towards interest (₹ 0.94 crore) under Rule 8 as well as penalty (₹ 1.44 crore) under Rule 9 has also accrued.

The Energy Department replied (August 2017) that the Company has taken initiative to recover the balance cess amount from the terminated contractors and the amount will be remitted to the Board immediately on receipt. The reply is not acceptable as Company has not been able to recover the dues from contractors despite lapse of two to five years.

It is pertinent to note that Audit has reported the cases of short recovery of labour welfare cess in earlier years in respect of two power sector PSUs⁵⁵. Though, one⁵⁶ PSU has subsequently effected recovery of full amount from the contractors, the repeated cases of short/ non-recovery of labour welfare cess indicate that the Government has failed to ensure implementation of the Act.

3.11 Loss of interest income due to lack of proactive financial management

The Company did not avail Corporate liquid term deposit (CLTD) facility leading to loss of ₹ 9.79 crore by way of interest.

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Company) is engaged in the business of distribution of electricity to consumers in the state of Madhya Pradesh.

⁵² ₹ 1.47 crore on supply portion valued ₹ 146.55 crore and ₹ 0.25 crore on erection portion valued ₹ 25.44 crore

⁵³ Out of seven ongoing contracts, in case of four contracts labour welfare cess was recovered and in remaining three contracts, outstanding labour welfare cess was not material (₹ 0.04 crore).

⁵⁴ ₹ 0.03 crore on supply portion and ₹ 0.25 crore on erection portion

⁵⁵ Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (Under recovery of ₹ 49.39 lakh) included in Audit Report (MP PSUs) for the year 2014-15 and Madhya Pradesh Power Transmission Company Limited (Under recovery of ₹ 5.93 crore) included in Audit Report (MP PSUs) for the year 2015-16.

⁵⁶ Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited.

The Company was operating 12 current accounts with State Bank of India (SBI), Bhopal as on 31 March 2016. Public Sector Banks had been offering value added service facilitating its customers to invest their surplus funds in current account in a profitable manner through Corporate liquid term deposit (CLTD) scheme. Under this scheme, amounts exceeding a threshold limit of ₹ 50,000 in the current account shall automatically be transferred to CLTD on which interest is paid at prevailing rate applicable on term deposits.

Audit observed (January 2016) that the Company failed to avail the CLTD facility for all these 12 current accounts. During the period 2014-16, in each fortnight, the Company had retained minimum funds ranging upto ₹ 194.35 crore in these accounts, forgoing interest income of ₹ 9.79 crore. The Company however, had failed to opt for the CLTD and did so only in April 2016, after the lapses were pointed out by Audit.

The Energy Department admitted (October 2017) the facts.



(BHAWANI SHANKAR)

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Madhya Pradesh

Bhopal

The : 18 August 2018

Countersigned



(RAJIV MEHRISHI)

Comptroller and Auditor General of India

New Delhi

The : 23 August 2018