

**Chapter-IV**  
**Corporate Governance**



## Chapter-IV

### 4.1 Corporate Governance

#### 4.1.1 Provisions as contained in the Companies Act, 2013

The Companies Act, 2013 was enacted on 29 August 2013 replacing the Companies Act, 1956. In addition, the Ministry of Corporate Affairs has also notified (31 March 2014) Companies Rules, 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board of Directors and its powers. The Companies Act, 2013 together with the Companies Rules provide the framework for Corporate Governance. The requirements, *inter-alia*, provide for:

- Appointment of Independent Directors in Public Companies and mandatory establishment of certain committees like Audit Committee by the companies having paid-up share capital of ₹ 10 crore or more, turnover of ₹ 100 crore or more, or outstanding loans, debentures and deposits, exceeding ₹ 50 crore. {Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 and Section 177(1) of the Companies Act, 2013}.
- Qualifications for Independent Directors along with the duties and guidelines for professional conduct {Section 149(6) read with Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014}.
- Mandatory appointment of one woman director on the board in Public Companies having paid-up share capital of ₹ 100 crore or more or turnover of ₹ 300 crore or more {Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014}.
- Holding of a minimum of four meetings of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board {Section 173(1)}.

Besides, equity of Haryana Financial Corporation (HFC) and bonds of Haryana Vidyut Prasaran Nigam Limited (HVPNL) were listed on stock exchange. However, applicability of Securities and Exchange Board of India (SEBI) (Listing obligation and disclosure requirements) Regulations, 2015 to HFC was not considered as it stopped fresh business since 2010 and SEBI has also exempted (December 2018) HFC from the compliance of minimum public shareholding.

#### 4.1.2 Review of compliance by selected SPSEs of the Corporate Governance provisions

As on 31 March 2020, there were 36 State Public Sector Enterprises (SPSEs) in Haryana under the audit jurisdiction of the Comptroller and Auditor General of India (CAG). The Bureau of Public Enterprises, established in February 1988, (under the Finance Department, Government of Haryana) has given instructions to SPSEs on various issues, but no instructions have been issued on Corporate Governance.

For the purpose of the review, an assessment was done based on the provisions contained in the Companies Act, 2013. The review covers 22 working SPSEs for the year ended 31 March 2020. List of SPSEs covered as well as SPSEs excluded from this report is given in the *Appendix IV A* and *Appendix IV B* respectively.

### 4.2 Composition and Meetings of Board of Directors

**4.2.1** The Board of Directors (BoDs) is the instrument of Corporate Governance. It is the agency for the implementation of governance policies and practices. It is imperative that the BoDs devote attention to Corporate Governance and must be equipped with the requisite representation and its members should meet regularly. Section 173(1) of Companies Act, 2013 stipulates that the Board shall meet at least four times in a year with a maximum time gap of 120 days between two consecutive meetings. Table 4.1 below shows the Companies where the requirement of number of meetings to be held in a year was not complied with during 2019-20.

**Table 4.1: SPSEs where requirement of four meetings of BoDs was not met**

Sl. No.	Name of SPSE	No. of Meetings held
1.	HARTRON Informatics Limited	3
2.	Haryana Backward Classes and Economically Weaker Section Kalyan Nigam	3
3.	Haryana Medical Services Corporation Limited	2
4.	Haryana Scheduled Castes Finance and Development Corporation Limited	2
5.	Haryana Forest Development Corporation Limited	3
6.	Haryana Women Development Corporation Limited	3
7.	Haryana Police Housing Corporation Limited	3
8.	Haryana Tourism Corporation Limited	3

Haryana Tourism Corporation Limited stated (January 2021) that fourth Board meeting of its BoD in the financial year 2019-20 was postponed due to Covid-19 induced lockdown. Haryana Medical Services Corporation Limited stated (January 2021) that the company could hold only two Board Meetings due to non-availability of Board of Directors and COVID-19 pandemic.

### 4.2.2 Independent Directors

According to Section 149 (6) of the Companies Act, 2013 an independent director means a director other than a managing director or a whole-time director or a nominee director, who is a person of integrity and possesses relevant expertise and experience. The presence of independent directors on the Board, capable of taking an independent view on the decisions of the management is considered as a means of protecting the interests of shareholders and other stakeholders. Rule, 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every public company with paid-up share capital of ₹ 10 crore or more or turnover of ₹ 100 crore or more or with aggregated outstanding loans, debentures and deposits exceeding ₹ 50 crore shall have at least two independent directors on their board. List of 12 SPSEs meeting these criteria is given in *Appendix IV C*. Of these 12 SPSEs, two SPSEs<sup>1</sup> were not required to follow the criteria of having Independent Director. Of the remaining 10 SPSEs, one SPSE (Haryana Scheduled Castes Finance and Development Corporation Limited) did not have any Independent Director while remaining nine SPSEs met the criteria of having at least two independent Directors on their Boards. Review of records in respect of Haryana Scheduled Castes Finance and Development Corporation Limited revealed that the Company had not even requested the State Government for appointment of Independent Directors.

Further, in non-adherence of Regulation 17 (1) (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, stipulating requirement of at least one-third of the board as independent directors where the chairperson of the board was a non-executive director, Haryana Vidyut Prasaran Nigam Limited had two independent directors out of nine directors (22.22 per cent) on its Board.

### 4.2.3 Representation of Woman in the Board of Director

Section 149 (1) of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every public company having paid-up share capital of ₹ 100 crore or more or turnover of ₹ 300 crore or more shall have at least one woman Director in its Board. There were seven such SPSEs meeting this criterion as listed in *Appendix IV D*. All these seven SPSEs had women directors on their Board.

## 4.3 Appointment and functioning of Independent Directors

### 4.3.1 Issuance of formal letter of appointment

As per Schedule IV of the Companies Act, 2013, the appointment of Independent Directors shall be formalised through a letter of appointment which shall set out the terms and conditions of appointment. However, it was

<sup>1</sup> Haryana Rail Infrastructure Development Corporation Limited, being Joint Venture unlisted public company and Haryana Women Development Corporation Limited, being a company registered under Section 8 of the Companies Act, 2013.

observed that out of nine SPSEs having Independent Directors on their board, in seven SPSEs as listed in Table 4.2, no appointment letters detailing the terms and conditions were issued during the period 2019-20.

**Table 4.2: Appointment letters of Independent Directors not issued by SPSEs**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited (HPGCL)
2.	Haryana Vidyut Prasaran Nigam Limited (HVPNL)
3.	Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
4.	Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)
5.	Haryana Mass Rapid Transport Corporation Limited (HMRTC)
6.	Haryana Agro Industries Corporation Limited (HAIC)
7.	Haryana Seeds Development Corporation Limited (HSDC)

Accepting the audit observation, Haryana Agro Industries Corporation Limited stated (January 2021) that terms and conditions of appointment will be sent to independent directors shortly in order to comply with the provisions of Companies Act, 2013. Managements of HPGCL, UHBVNL and DHBVNL stated (January-February 2021) that as per Ministry of Corporate Affairs (MCA) notification no. S.O. 2113(E) dated 5 July 2017, issuance of letter of appointment to Independent Directors was not applicable to Government Companies.

Their reply is not acceptable because inapplicability of the said provision to Government Companies was relevant only if the requirement of terms and conditions of appointment had been specified by the State Government; and in all cases pointed out by Audit, the State Government had not specified such terms and conditions.

#### 4.3.1.1 Manner of appointment

Schedule IV clause IV Manner of appointment sub-clause (2) provides that the appointment of independent director(s) of the company should be approved at the meeting of the shareholders. Audit noticed that Independent Directors had been appointed by the State Government; however, their appointment had not been approved at the meeting of shareholders.

**Table 4.2(A): List of SPSEs where appointment of Independent Directors had not been approved in the Meeting of Shareholders**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited
2.	Haryana Vidyut Prasaran Nigam Limited
3.	Uttar Haryana Bijli Vitran Nigam Limited
4.	Dakshin Haryana Bijli Vitran Nigam Limited
5.	Haryana Mass Rapid Transport Corporation Limited
6.	Haryana Agro Industries Corporation Limited
7.	Haryana Seeds Development Corporation Limited
8.	Haryana State Industrial and Infrastructure Development Corporation
9.	Haryana State Roads and Bridges Development Corporation Limited

Managements of HPGCL, UHBVNL and DHBVNL stated (January-February 2021) that in the first meeting with Independent Directors, relevant provisions

of the Companies Act, 2013 including Code of Conduct and terms & conditions like TA/DA, sitting fee, *etc.*, were shared with Independent Directors. The reply is not acceptable because terms and conditions of appointment including code of conduct expected to be followed by Independent Directors were required to be formalised through issuance of appointment letters.

#### 4.3.2 Code of Professional Conduct

Schedule IV to the Companies Act, 2013 provides the Code as a guide to professional conduct for Independent Directors. The two SPSEs namely Haryana State Roads and Bridges Development Corporation Limited (HSRDC) and Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) had appointed independent directors that had issued formal letter of appointments to the Independent Directors. While the offer of appointment issued by HSIIDC incorporated Code of Professional Conduct, the same had not been done in the appointment letter of independent director by HSRDC.

#### 4.3.3 Training of Independent Directors

Schedule IV to the Companies Act, 2013 stipulates that the Independent Directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the Company. However, it was observed that in SPSEs, listed in Table 4.3, no such training was conducted for Independent Directors who were on the Board during the year 2019-20.

**Table 4.3: SPSEs where no training was conducted for the Independent Directors**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited
2.	Haryana Vidyut Prasaran Nigam Limited
3.	Uttar Haryana Bijli Vitran Nigam Limited
4.	Dakshin Haryana Bijli Vitran Nigam Limited
5.	Haryana State Industrial and Infrastructure Development Corporation Limited
6.	Haryana Mass Rapid Transport Corporation Limited
7.	Haryana Agro Industries Corporation Limited
8.	Haryana Seeds Development Corporation Limited
9.	Haryana State Roads and Bridges Development Corporation Limited

HPGCL, UHBVNL and HSIIDC stated (January-February 2021) that there was no specific requirement under Schedule IV of the Companies Act, 2013 to provide training to the Independent Directors. The reply is not acceptable because the Independent Directors could not have undertaken induction training without initiative from the inducting organisation (*i.e.* the Company).

#### 4.3.4 Meetings of Board of Directors and Board committees

Para III (3) of Schedule IV of the Companies Act, 2013 states that Independent Directors should strive to attend all the meetings of Board of Directors and Board Committees of which he/she was a member. Some of the

Independent Directors, however, did not attend these meetings during 2019-20. Table 4.4 indicates the number of such independent directors:

**Table 4.4: Independent Directors who did not attend the meetings**

Sl. No.	Name of the SPSE	No. of Independent Directors who did not attend Board meetings (No. of meetings)	No. of Independent Directors who did not attend other Board committee meetings (No. of meetings)
1.	Haryana Power Generation Corporation Limited	2 (2)	2 <sup>2</sup> (2)
2.	Haryana Vidyut Prasaran Nigam Limited	1 (3)	-
3.	Uttar Haryana Bijli Vitran Nigam Limited	2 (2)	-
4.	Dakshin Haryana Bijli Vitran Nigam Limited	4(3)	-
5.	Haryana State Industrial and Infrastructure Development Corporation Limited	4 (8)	1 <sup>3</sup> (1)
6.	Haryana Mass Rapid Transport Corporation Limited	2 (9)	-
7.	Haryana Agro Industries Corporation Limited	2 (1)	-
8.	Haryana Seeds Development Corporation Limited	2 (4)	-
9.	Haryana State Roads and Bridges Development Corporation Limited	2 (2)	2 <sup>4</sup> (3)

Note: Figures in bracket indicate number of meetings in which at least one of the independent directors was absent.

Thus, the above companies could not use the qualifications and experience of independent directors in managing their affairs and the very purpose of their appointment was not achieved.

HPGCL, HSIIDC and Haryana Agro Industries Corporation Limited stated (February 2021) that Independent Directors could not attend the meetings due to their pre-occupation; UHBVNL stated (February 2021) that it was not necessary for independent directors to attend all Board meetings as under Section 167(1) (b) of the Companies Act, it was mandatory for every Director to attend at least one Board Meeting during the period of twelve months. HVPNL and DHBVNL stated (February 2021) that Independent Directors were duly granted leave of absence by Chairman of the Board.

Absence of Independent Directors due to pre-occupation could have been addressed if the Company had given notices for Board Meetings sufficiently in time. UHBVNL citing Section 167 (1) (b) of the Companies Act, 2013 to explain the absence of independent directors is not relevant because it provides conditions under which office of a director shall become vacant.

<sup>2</sup> One Audit Committee Meeting and one Corporate Social Responsibility Committee Meeting.

<sup>3</sup> Audit Committee Meeting.

<sup>4</sup> Both Corporate Social Responsibility Committee Meetings.



### 4.3.5 Attending General meetings of the Company

Para III (5) of Schedule IV of the Companies Act, 2013 states that Independent Directors shall strive to attend all the General meetings of the Company. Table 4.5 indicates SPSEs where Independent Directors did not attend the General meetings of the Company during the year 2019-20.

**Table 4.5: List of Companies where Independent Directors did not attend General meetings**

Sl. No.	Name of the SPSE	No. of Independent Directors who did not attend General Meetings
1.	Haryana Power Generation Corporation Limited	1
2.	Haryana Vidyut Prasaran Nigam Limited	1
3.	Uttar Haryana Bijli Vitran Nigam Limited	2
4.	Dakshin Haryana Bijli Vitran Nigam Limited	4
5.	Haryana State Industrial and Infrastructure Development Corporation Limited	4
6.	Haryana Mass Rapid Transport Corporation Limited	1
7.	Haryana Agro Industries Corporation Limited	3
8.	Haryana Seeds Development Corporation Limited	1
9.	Haryana State Roads and Bridges Development Corporation Limited	2

While Managements of HPGCL and UHBVNL stated (February 2021) that it was not mandatory on the part of Independent Directors to attend such meeting, DHBVNL stated (February 2021) that leave of absence was granted to the Independent Director by the Board. HSIIDC stated (February 2021) that Independent Directors could not attend meeting due to their pre-occupation. Haryana Agro Industries Corporation Limited stated (January 2021) that Independent Directors could not attend the general meeting due to lack of full company secretary.

The replies of HPGCL and UHBVNL are not acceptable as the provision above casts a responsibility on the Independent Directors to strive to attend the general meetings.

### 4.3.6 Meeting of Independent Directors

**4.3.6.1** Para VII (1) of Schedule IV of the Companies Act, 2013, requires that Independent Directors shall meet at least once in a year, without the presence of non-independent directors and members of the Management. Para VII (2) of Schedule IV of the Companies Act, 2013 provides that all the Independent Directors shall strive to attend such meeting. Table 4.6 indicates three SPSEs where no separate meeting was conducted during 2019-20.

**Table 4.6: SPSEs where separate meetings of Independent Directors not conducted**

Sl. No.	Name of the SPSE
1.	Haryana State Industrial and Infrastructure Development Corporation Limited
2.	Haryana Agro Industries Corporation Limited
3.	Haryana Seeds Development Corporation Limited

HSIIDC stated (July 2021) that the Ministry of Corporate Affairs, in view of Covid-19 outbreak, had as a special measure exempted (24 March 2020) the companies from holding Independent Directors meeting for the financial year 2019-20. The reply is not acceptable as no such meeting was scheduled till the issuance of orders by Ministry of Corporate Affairs (MCA) on 24 March 2020 and financial year was ending on 31 March 2020. Further, letter of MCA dated 24 March 2020 states that such non-attendance of independent directors would not be treated as a violation. This is significantly different from exemption HSIIDC is quoting.

In respect of Haryana Mass Rapid Transport Corporation Limited (HMRTC), separate meeting was conducted, but no minutes of meeting were prepared by the Company.

**4.3.6.2** Para VII (3) of Schedule IV of the Companies Act, 2013, requires that the Independent Directors in separate meeting shall review (a) Performance of non-independent directors and the Board as a whole (b) Performance of Chairperson and (c) Assess the flow of information between management and Board of Directors that is necessary for the Board to effectively and reasonably perform their duties. Table 4.7 indicates three SPSEs, where above issues were not reviewed in Independent Directors' meeting, though separate meetings were conducted.

**Table 4.7: SPSEs where Independent Directors did not evaluate the performance**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited
2.	Haryana Vidyut Prasaran Nigam Limited
3.	Dakshin Haryana Bijli Vitran Nigam Limited

HPGCL and DHBVNL stated (February 2021) that in term of MCA notification dated 5 July 2017; this requirement was not applicable to Government companies.

The reply is not acceptable because as per MCA notification concerned provisions of Companies Act were not applicable on these SPSEs as the State Government had neither specified such requirements separately for adherence by the Independent Directors nor complied with by these SPSEs.

#### **4.4 Notice of the meeting of Board of Directors**

Section 173 (3) of the Companies Act, 2013 states that the notice for Board of Directors meetings shall be circulated at least seven days before such meeting. However, a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director,

if any, shall be present at the meeting. The table 4.8 indicates the SPSEs where notices for holding meetings of the BoDs were not circulated at least seven days before such meeting.

**Table 4.8: Notice not circulated at least seven days before meeting of the Board of Director**

Sl. No.	Name of the SPSE	No. of occasions out of no. of meetings	Requirement of appointment of Independent Directors	Absence of Independent Director on account of shorter period notice
1.	Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC)	1 out of 10	Yes	One occasion in one meeting
2.	Haryana State Electronics Development Corporation Limited	1 out of 5	No	Not applicable
3.	HARTRON Informatics Limited	1 out of 3	No	Not applicable
4.	Haryana Backward Classes and Economically Weaker Sections Kalyan Nigam	1 out of 3	No	Not applicable
5.	Haryana Forest Development Corporation Limited	2 out of 3	No	Not applicable
6.	Haryana Mass Rapid Transport Corporation Limited (HMRTC)	8 out of 9	Yes	Five occasions in eight meetings
7.	Panipat Plastic Park Limited	1 out of 4	No	Not applicable

Two out of above seven SPSEs (*i.e.* HSIIDC and HMRTC), were required to have independent directors on their board. However, the review of records revealed that:

- (i) all four independent directors were absent in the HSIIDC Board meeting held on 7 May 2019; the notice for which was given only three days before date of meeting.
- (ii) both independent directors were absent in five HMRTC board meetings, while one out of two independent directors was absent in remaining four board meetings. Notices for five of these meetings were given only one day in advance. In respect of two meetings notices were given four days in advance and in respect of one meeting it was given six days in advance.

HSIIDC explained (January 2021) that Board in its previous meeting held on 29 March 2019 had decided to hold the next meeting on 1 April 2019.

#### **4.5 Filling-up the posts of Directors-functional, non-functional and independent**

Timely filling up of vacancies in the posts of key managerial personnel's, Directors *etc.* ensures the availability of required skill and expertise in the management of the company. Any delay in filling of vacancies may hamper the effectiveness of the decision making process. Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 stipulates that vacancy arising out of resignation or removal of an Independent Director

should be filled up at the earliest but not later than the immediate next board meeting or three months from the date of such vacancy, whichever is later. However, it was observed that the SPSEs detailed in Table 4.9 did not comply with the above provision during 2019-20 and the posts of Independent Directors remained vacant for a considerable period of time:

**Table 4.9: SPSEs where vacancies of Independent Directors not filled in time**

Sl. No.	Name of the SPSE	Number of Independent Directors required <sup>5</sup>	No. of Posts vacant	Total number of months for which posts remained vacant (During 2019-20)
1.	Haryana Power Generation Corporation Limited	2	1	4 (6.12.2019 to 31.03.2020)
2.	Haryana Vidyut Prasaran Nigam Limited	2	1	4 (28.11.2019 to 31.03.2020)
3.	Dakshin Haryana Bijli Vitran Nigam Limited	2	4	17 Three posts remained vacant for four months (28.11.2019 to 31.03.2020) each and fourth post for five months (25.10.2019 to 31.03.2020)
4.	Haryana Scheduled Castes Finance and Development Corporation Limited	2	2	24 (Two posts remained vacant for 12 months (01.04.2019 to 31.03.2020) each

Managements of HPGCL, HVPNL and DHBVNL stated (January-February 2021) that they initiated the process for appointment of Independent Director on 6 November 2019, 5 November 2019 and 5 November 2019, against the vacancy arising on 6 December 2019, 28 November 2019 and 28 November 2019 respectively. However, the State Government approved the appointment of Independent Directors on 29 May 2020, 4 June 2020 and 10 June 2020 respectively.

Further, it was also observed that in the SPSEs listed in Table 4.10, vacancies of key managerial personnel were not filled within the period of six months from such vacancy prescribed in Section 203 (4) of the Companies Act, 2013:

**Table 4.10: SPSEs where vacancies of key managerial personnel not filled up in time**

Sl. No.	Name of the SPSE	Name of Post	Delay in months (During 2019-20)
1.	Haryana Power Generation Corporation Limited	Director (Finance)	12 (1.04.2019 to 31.03.2020)
		Director (Technical)	7 (25.09.2019 to 31.03.2020)

<sup>5</sup> Memorandum of Association (MoA) of concerned companies did not provide for minimum number of independent directors to be on the Board. As such, requirement of minimum number of independent directors as per Companies Act, 2013 has been adopted.

Sl. No.	Name of the SPSE	Name of Post	Delay in months (During 2019-20)
2.	Haryana Vidyut Prasaran Nigam Limited	Director (Finance)	12 (1.04.2019 to 31.03.2020)
		Company Secretary	12 (1.04.2019 to 31.03.2020)
3.	Uttar Haryana Bijli Vitran Nigam Limited	Director (Finance)	12 (1.04.2019 to 31.03.2020)
		Director (Technical-I)	10 (30.05.2019 to 31.03.2020)
		Director (Technical-II)	7 (17.09.2019 to 31.03.2020)
4.	Dakshin Haryana Bijli Vitran Nigam Limited	Director (Finance)	12 (1.04.2019 to 31.03.2020)
5.	Haryana Rail Infrastructure Development Corporation Limited	Whole Time Director	12 (1.04.2019 to 31.03.2020)
6.	Haryana State Roads and Bridges Development Corporation Limited	Managing Director	7 (11.09.2019 to 31.03.2020)
7.	Haryana Mass Rapid Transport Corporation Limited	Company Secretary	12 (1.04.2019 to 31.03.2020)
		Chief Financial Officer	12 (1.04.2019 to 31.03.2020)

HPGCL, HVPNL, UHBVNL and DHBVNL stated (February 2021) that the appointment of Director/Finance and Director/Technical was under process at the level of State Government.

During exit conference (July 2021), it was agreed that Haryana Bureau of Public Enterprises should play an active role in compliances of provisions of corporate governance by the SPSEs particularly timely appointment and training of Independent Directors.

## 4.6 Audit Committee

### 4.6.1 Composition of Audit Committee

Section 177 (1) and (2) of the Companies Act, 2013, stipulate that there shall be an Audit Committee with a minimum of three directors with Independent Directors forming majority. Further Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 provides that every public company with a paid-up capital of ₹ 10 crore or more or turnover of ₹ 100 crore or more or outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 crore or more shall constitute an Audit Committee.

In terms of above stipulations, 12 companies listed in *Appendix IV C* were required to constitute Audit Committee. However, one SPSE (Haryana Scheduled Castes Finance and Development Corporation Limited) did not constitute the Audit Committee.

Further, majority of the members of the Audit Committee were not Independent Directors in respect of the SPSEs detailed in Table 4.11.

**Table 4.11: SPSEs where Audit Committees not having majority of Independent Directors**

Sl. No.	Name of the SPSE	Period
1	Haryana Power Generation Corporation Limited	Since 6 December 2019
2	Haryana Vidyut Prasaran Nigam Limited	Since April 2019
3	Dakshin Haryana Bijli Vitran Nigam Limited	Since 25 October 2019

Haryana Mass Rapid Transport Corporation Limited had properly constituted Audit Committee; however, minutes of Audit Committee meeting held during 2019-20 were not prepared by the Company.

HPGCL and DHBVNL admitted (January and February 2021) that due to non-availability or short remaining tenure of other Independent Directors, proper constitution of Audit Committees could not be complied with and their proposals for appointment of Independent Directors were pending with the State Government. HVPNL stated that Audit Committee has been duly constituted (11 June 2020) having majority of independent directors.

#### **4.6.2 Review of Supplementary Audit findings of the CAG**

All the SPSEs are subject to the audit of the CAG as per the statutory mandate. Section 143 (6) of the Companies Act, 2013, authorises the CAG to carry out supplementary audit of accounts of Government Companies. Further, section 177 (4) (iii) of the Companies Act, 2013 provides that Audit Committee shall examine the financial statements and Auditors' Report thereon. Thus, in case of SPSEs, it is the mandate of the Audit Committee to review the findings of the CAG. The comments of the CAG on annual accounts had been reviewed by the Audit Committee.

#### **4.6.3 Non-compliance of SEBI Regulations by HVPNL**

The bonds of Haryana Vidyut Prasaran Nigam Limited (HVPNL) were listed on Bombay Stock Exchange and as per listing agreement of 20 March 2017; following compliances of SEBI (LODR)<sup>6</sup> Regulations, 2015 have not been made by the Audit Committee of HVPNL:

- Audit Committee has not evaluated the internal control system in the Company, required as per Part C (A) (11) of Schedule II to SEBI (LODR) Regulations, 2015.
- Performance of Statutory Auditors and Internal Auditors has not been reviewed, required as per Part C (A) (12) of Schedule II to SEBI (LODR) Regulations, 2015.
- The Audit Committee has not reviewed the adequacy of internal audit function, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting

<sup>6</sup> Security and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

structure, coverage and frequency of internal audit, required as per Part C (A) (13) of Schedule II to SEBI (LODR) Regulations, 2015.

- Regulation 18 (3) and Part C (B) of the Schedule II of SEBI (LODR) Regulations, 2015 stipulated that the audit committee shall mandatorily review the information relating to: Statement of significant related party transactions, Management letters/letters of internal control weaknesses issued by statutory auditors, Internal audit reports relating to internal control weaknesses, Appointment, removal and terms of remuneration of the chief internal auditor and Statement of deviations, which have not been reviewed by the Audit Committee.
- Audit Committee have not held any discussion with statutory auditors before commencement of audit on the nature and scope of audit as well as post-audit discussion to ascertain any area of concern required as per Part C (A) (16) of SEBI (LODR) Regulations, 2015.

During exit conference (July 2021), the Management of HVPNL stated that compliance of SEBI requirements would be made prior to the next report.

## 4.7 Other Committees

### 4.7.1 Nomination and Remuneration Committee

Section 178 (1) of the Companies Act, 2013 and Rule 6 of the Companies (Meeting of Boards and its Powers), Rules 2014, stipulate that each SPSE shall constitute a Nomination and Remuneration Committee (NRC) comprising of at least three Directors, all of whom should be non-executive Directors and at least half shall be independent and Chairman of the Committee shall be an Independent Director. However, there was no NRC in the SPSEs as detailed in Table 4.12.

**Table 4.12: SPSEs not having Nomination and Remuneration Committee**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited
2.	Haryana Vidyut Prasaran Nigam Limited
3.	Haryana Scheduled Castes Finance and Development Corporation Limited

Though in Dakshin Haryana Bijli Vitran Nigam Limited committee was formed, the requirement of three directors and half of them being Independent Directors was not fulfilled during 2019-20.

HPGCL stated (February 2021) that NRC could not be formed due to two vacancies of Independent Directors, the proposals for which were pending with State Government.

In case of any contravention of the provisions of section 177 (Audit Committee) and section 178 (Nomination and Remuneration Committee), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term

which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees, or with both. However, it was noted that no such penalty had been imposed by the Registrar of the Companies during 2019-20.

#### **4.8 Whistle Blower Mechanism**

**4.8.1** Section 177 (9) of the Companies Act, 2013 read with Rule 7 of the Companies (Meeting of Boards and its Powers), Rules 2014 provides that the Company shall establish a vigil mechanism for directors and employees to report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy. It was observed that, out of 12 SPSEs, in five SPSEs as listed in Table 4.13, there was no whistle blower mechanism.

**Table 4.13: SPSEs not having Whistle Blower Mechanism**

Sl. No.	Name of the SPSE
1.	Haryana Mass Rapid Transport Corporation Limited
2.	Haryana Scheduled Castes Finance and Development Corporation Limited
3.	Haryana Agro Industries Corporation Limited
4.	Haryana Seeds Development Corporation Limited
5.	Haryana State Roads and Bridges Development Corporation Limited

**4.8.2** Para III (10) of Schedule IV of Companies Act, 2013 read with Rule 7 (2) of the Companies (Meeting of Boards and its Powers), Rules 2014 stipulates review of functioning of the 'Whistle Blower Mechanism' by the Audit Committee, in case the same exists in the Company. In the SPSEs detailed in Table 4.14 below, though whistle blower mechanism existed, the Audit committee did not review it.

**Table 4.14: SPSEs having Whistle Blower Mechanism but not reviewed by Audit Committee**

Sl. No.	Name of the SPSE
1.	Haryana Power Generation Corporation Limited
2.	Haryana Vidyut Prasaran Nigam Limited
3.	Uttar Haryana Bijli Vitran Nigam Limited
4.	Dakshin Haryana Bijli Vitran Nigam Limited
5.	Haryana State Industrial and Infrastructure Development Corporation Limited

HPGCL, UHBVNL, DHBVNL and HSIIDC stated (February 2021) that Audit Committee reviewed the Whistle Blower Mechanism as and when there was any complaint. HPGCL, UHBVNL and DHBVNL added that the requirement was not applicable to unlisted Public Companies.

The reply of HPGCL, UHBVNL and DHBVNL is not acceptable because as per Companies (Meeting of Boards and its Powers), Rules 2014, the Companies which were required to constitute an audit committee were required to oversee the vigil mechanism through such committee.



#### 4.9 Notice of Annual General Meeting

Section 101 of the Companies Act, 2013 provides that a general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such a manner as may be prescribed. Further, a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95 *per cent* of the members entitled to vote at such meeting. List of SPSEs where shorter notice period had not been consented and where notice of Annual General Meeting (AGM) was not circulated before 21 days is given in Table 4.15.

**Table 4.15: Notice not circulated at least twenty one days before Annual General Meeting**

Sl. No.	Name of SPSE
1.	Dakshin Haryana Bijli Vitran Nigam Limited
2.	Haryana Mass Rapid Transport Corporation Limited
3.	Haryana Backward Classes & Economically Weaker Section Kalyan Nigam Limited
4.	Haryana Forest Development Corporation Limited
5.	Haryana Police Housing Corporation Limited

DHBVNL stated (February 2021) that AGM for financial year 2019-20 was conducted with consent of all shareholders for shorter notice obtained well in advance before AGM. However, the fact remains that AGM held during the period covered by Audit (2019-20), in respect of financial year 2018-19, was held with less than required 21 days' notice and without obtaining consent of shareholders for shorter notice.

#### 4.10 Policy relating to Related Parties

Regulation 23 (1) & (4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulated that every company shall formulate a policy on materiality of related party transactions. Further, such material related party transactions required to be approved by Shareholders through resolution. However, Haryana Vidyut Prasaran Nigam Limited has not formulated such policy.

#### 4.11 Disclosure of information on website

Regulation 46 (2) (a), (f) and (g) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulated that every company shall disclose information on (i) policy dealing with related party transactions and (ii) criteria for making payment to non-executive directors on its website provided the same was not disclosed in Annual Report. However, in case of Haryana Vidyut Prasaran Nigam Limited no such disclosures were made on company's website.

### Conclusion

Out of 22 selected SPSEs, no Independent Directors were appointed in one SPSE; delays of more than three months were observed in filling vacancies of Independent Directors in four SPSEs; delays of more than six months were observed in filling up vacancies of key managerial personnel in the Board in seven SPSEs; no Audit Committee was there in one SPSE; no Nomination and Remuneration Committee was constituted in three SPSEs; no whistle blower mechanism was put in place in five SPSEs, policy dealing with related party transactions was not disclosed on website of one listed company.

### Recommendations

*Haryana Bureau of Public Enterprises should prepare a policy for appointment to Independent Directors stating the standard terms and conditions including timeline for initiation of proposal for their appointment, sitting fees etc. Government of Haryana may impress upon the respective Administrative Ministries/Departments to ensure compliance of provisions as contained in the Companies Act, 2013 read with Companies Rules, 2014 and SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 so as to achieve the objectives of Corporate Governance in SPSEs.*

The matter was referred to the Government and the Companies in December 2020. However, replies of six companies and the Government (except in case of Haryana Vidyut Prasaran Nigam Limited) had not been received (June 2021). Issues of Corporate Governance were highlighted in the exit conference held in July 2021.