CHAPTER V

Analysis of Memorandum of Understanding between Administrative Ministries and Maharatna CPSEs

5.1 Introduction

Memorandum of Understanding (MoU) is a mutually negotiated agreement between the Administrative Ministry and the Management of the Centre Public Sector Enterprises (CPSEs) to fix targets on selected parameters, normally before the start of a new financial year and the results are evaluated after the end of the year to measure the performance 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 management by controls and procedures. The subsidiary companies of CPSEs are required to sign MoUs with their holding companies.

5.2 Institutional arrangement for implementation of MoU Policy

Department of Public Enterprises (DPE) serves as a facilitator between the CPSEs and Administrative Ministries and provides a mechanism to evaluate the performance of the CPSEs. It provides a system through which MoU targets are set and commitments of both the parties to MoU can be evaluated at the end of the year besides improving technical inputs required to finalize the MoUs. Details of this institutional arrangement and their inter-linkages are as follows:

- **Pre-negotiation Committee:** The Pre-negotiation Committee (PNC) comprises of Joint Secretary/Adviser looking after MoU in DPE, Joint Secretary/ Adviser of Administrative Ministry dealing with the CPSEs, Adviser (NITI Aayog) concerned with the domain of CPSE, Director (MoU) and representative from Ministry of Statistics and Programme Implementation to examine MoU targets in detail in respect of each CPSE. The role of the PNC (earlier known as Standing Committee on MoU) is to assist Inter-Ministerial Committee (IMC) in determining the most appropriate and relevant parameters for measuring improvement in performance and for fixing targets. Meeting of the PNC is to be held in each case before the meeting of IMC, to look at the trend, discuss, negotiate and recommend MoU parameters and targets.
- **Inter-Ministerial Committee:** An Inter-Ministerial Committee (IMC) is an alternative mechanism to Task Force which till then provided technical expertise for the MoU negotiations, target setting and evaluation of performance of CPSEs. 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, Additional Secretary, NITI Aayog or his senior representative as its other members. Secretary, DPE may also co-opt any officer who is a finance expert in case the need is felt. Any change in the composition of the committee would be done with the approval of Cabinet Secretary. The role of IMC is to assist the High Power Committee (HPC) on MoU and DPE in setting MoU targets of CPSEs before beginning of the year and performance evaluation of MoU after completion of that year.

- **High Power Committee:** At the apex level of the institutional arrangement is the High Power Committee (HPC) headed by the Cabinet Secretary as Chairman of the Committee and Finance Secretary, Secretary (Expenditure), Secretary (NitiAayog), Secretary (Programme Implementation), Chairman (Public Enterprises Selection Board) and Chief Economic Adviser as Members. Secretary (Public Enterprises) acts as Member-Secretary.

HPC approves the final evaluation as to how far the commitments made by both parties of the MoU have been met.

5.3 MoU targets for performance assessment and rating

The basic approach in the fixation of MoU targets is that the targets should be realistic, growth oriented and aspirational.

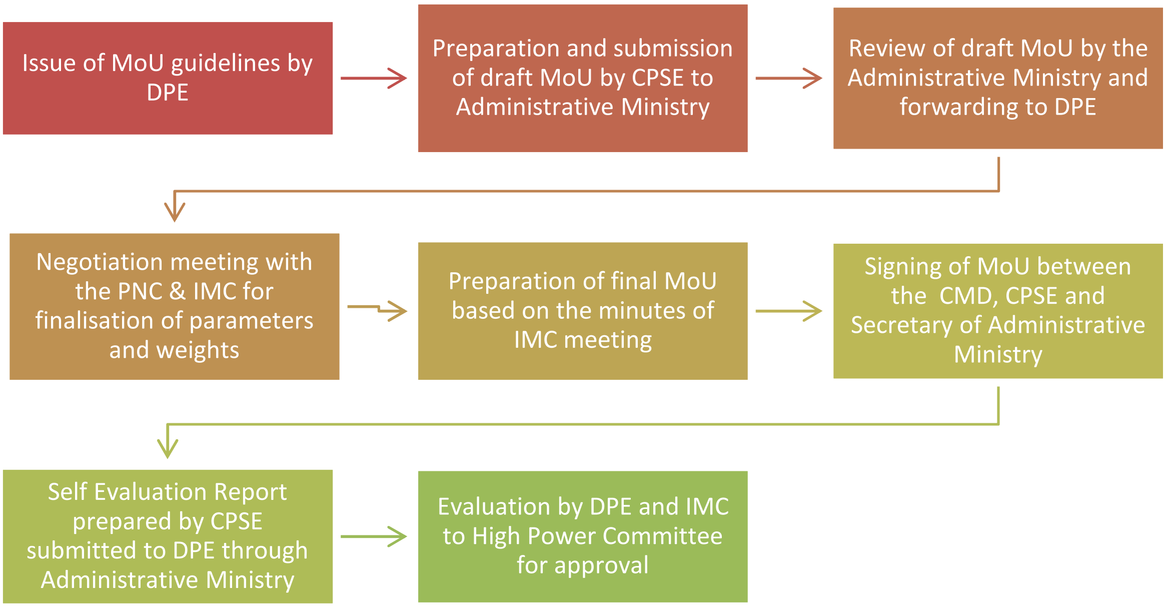
MoU guidelines provided that there would be three uniform financial parameters for measuring performance of all CPSEs viz. revenue from operations, operating profit and return on investment (e.g. Ratio of PAT/ net worth) with total weightage of 50 *per cent*, except for CPSEs which are dependent on government grant or performing functions of distribution of grant etc. Hence, three financial parameters were prescribed as mandatory parameters for all CPSEs.

For the remaining 50 *per cent* weightage, a menu of parameters has been suggested for selection depending on the sector in which the CPSE is operating. The parameters most appropriate and relevant for measuring performance would be suggested by the PNC to the IMC. In all the cases, IMC shall take appropriate decision on the suggestion made by the PNC.

As per the MoU guidelines for the year 2017-18 and 2018-19, generally target for 'Excellent' grading should not be lower than best achieved in last five years and 'Very Good' should not be lower than the expected achievement of the current year (year immediately preceding the year for which targets are being fixed) unless there are specific reasons to fix lower targets with the approval of Chairman, IMC and are duly supported by the administrative ministry/ department. Further, pro-rata adjustment may be made in the targets in case of improvement in actual performance over the estimated performance in the base year informed at the time of target setting.

5.4 MoU Score and ranking

The process of MoU target setting and evaluation is given below:



5.5 Coverage of analysis

There are ten[71] 'Maharatna' CPSEs as on 31 March 2020 including two[72] CPSEs which were declared as Maharatna during 2019-20. Thus, analysis of MoUs of the eight 'Maharatna' CPSEs out of ten CPSEs for the years 2017-18 and 2018-19 was carried out by audit. Various aspects related to finalisation and evaluation of MoU for the year 2017-18 and 2018-19 were carried out for all the except evaluation of MoU for the year 2018-19 in respect of three CPSEs where area of examination was restricted to self-evaluation by these CPSEs since the same is yet to be completed (March 2020) by the DPE. The administrative ministry of the eight 'Maharatna' CPSEs selected for this analysis and their MoU rating for the period 2014-15 to 2018-19 are detailed in Table 5.1.

Table 5.1: Statement showing the MoU rating of selected CPSEs

Name of CPSE	Administrative Ministry	MoU rating				
		2014-15	2015-16	2016-17	2017-18	2018-19
Bharat Heavy Electricals Limited (BHEL)	Heavy Industries and Public Enterprises	Good	Good	Excellent	Excellent	Excellent
NTPC Limited (NTPC)	Power	Excellent	Excellent	Excellent	Excellent	Yet to be decided

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[71] *Bharat Heavy Electricals Limited, 2. Bharat Petroleum Corporation Limited, 3. Coal India Limited, 4. GAIL (India) Limited, 5. Hindustan Petroleum Corporation Limited, 6. Indian Oil Corporation Limited, 7. NTPC Limited, 8. Oil & Natural Gas Corporation Limited, 9. Power Grid Corporation of India Limited and 10. Steel Authority of India Limited*

[72] *Hindustan Petroleum Corporation Limited and Power Grid Corporation of India Limited were declared as Maharatna vide DPE circular dated 23.10.2019*

Name of CPSE	Administrative Ministry	MoU rating				
		2014-15	2015-16	2016-17	2017-18	2018-19
Coal India Limited (CIL)	Coal	Excellent	Very Good	Fair	Very Good	Very Good
GAIL (India) Limited (GAIL)	Petroleum and Natural Gas	Very Good	Very Good	Excellent	Excellent	Excellent
Indian Oil Corporation Limited (IOCL)	Petroleum and Natural Gas	Excellent	Excellent	Very Good	Excellent	Yet to be decided[73]
Oil and Natural Gas Corporation Limited (ONGC)	Petroleum and Natural Gas	Very Good	Very Good	Very Good	Very Good	Very Good
Steel Authority of India Limited (SAIL)	Steel	Very Good	Very Good	Very Good	Very Good	Excellent
Bharat Petroleum Corporation Limited (BPCL)	Petroleum and Natural Gas	Excellent	Excellent	Excellent	Excellent	Yet to be decided

5.6 Objectives of analysis

The objective of the analysis was to assess whether:

(i) MoU targets were realistic, in line with Annual Plan/ Corporate Plan of the CPSE and DPE Guidelines;

(ii) CPSEs received commitment/assistance from Administrative Ministry; and

(iii) Evaluation of achievements were in line with signed MoU and MoU Guidelines

5.7 Audit Findings

Audit examined the MoUs signed by the eight 'Maharatna' CPSEs with their administrative ministries and their performance evaluation reports for the years 2017-18 and 2018-19.[74] Various aspects relating to finalisation and evaluation of MoU for the year 2017-18 and 2018-19 were examined in audit except the evaluation of MoU for the year 2018-19 in respect of three CPSEs i.e. NTPC Limited, Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited. The evaluation of MoU for the year 2018-19 of these three CPSEs is restricted to self-evaluation by the CPSEs since final score and rating of MoU for the year 2018-19 are yet to be completed (March 2020) by the DPE. The replies of the CPSEs, wherever received, have been suitably incorporated.

5.7.1 Preparation and signing of MoUs

5.7.1.1 Alignment of draft MoU with Annual Plan/ Budget/ Corporate Plan

As per the 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

[73] ***Schedule Meeting for 25.03.2020 to grant MoU evaluation for 2018-19 was postponed***

[74] ***For 2018-19, the Self-Evaluation Reports as submitted by the CPSEs have been considered***

Plan should be sent to DPE. Audit observed that companies mentioned in Table 5.2 had not submitted the complete documents and MoUs were finalised without these documents:

Table 5.2: Statement showing the details of the required documents not submitted by CPSEs

Sl.No.	Name of CPSE	2017-18			2018-19		
		Annual Plan	Annual Budget	Corporate Plan	Annual Plan	Annual Budget	Corporate Plan
1	SAIL	x	x	x			
2	BHEL	x	x	x	x	x	x
3	ONGC	x		x	x	x	
4	IOCL	x	x		x	x	

Audit also noticed that BHEL furnished only brief of Annual Plan and Corporate Plan for the MoU 2017-18 and 2018-19 which did not enable verification of all the parameters covered in MoU. Further, it was noticed that as per the minutes of the PNC meeting held on 22 February 2018 for the MoU (2018-19), "BHEL confirmed that targets proposed were not less than those mentioned in the Annual Plan/ Corporate Plan of the CPSE". However, it was noticed that, BHEL subsequently wrote in April 2018 to DPE that no such statement was specifically made by them during the PNC meeting and requested for deletion of the same.

SAIL replied (November 2019) that it did not prepare a separate Annual Plan and updated Corporate Plan.

Since Annual Plan and updated Corporate Plan are required to be prepared in compliance of DPE guidelines so that long term visions/ targets of the Corporate Plan can be achieved through targets and goals of the Annual Plan, clearly the MoU finalised for SAIL could be said to have lacked direction.

BHEL stated (January 2020) that the annual budget was approved by the Board of Directors wherein Department of Heavy Industry (DHI) nominee were also present. Hence, DHI was having the copy of Annual Budget. DHI in response to audit requisition stated (December 2019) that figures of the MoU were prepared by BHEL professionals and approved by CMD, BHEL. Therefore, when data/ figures mentioned in the MoU have been prepared by professionals and pre-discussed with DPE, the same are taken as verified, as there is no further mechanism for DHI to validate the same.

Reply of the DHI/ BHEL is to be seen in the light of the fact that role and responsibilities of DHI in relation to MoU fixation could not have been assumed by the Board of BHEL, Nominee Director of the DHI being a member of the Board notwithstanding.

In view of above it can be concluded that DHI/DPE failed to ensure and assure themselves that MOU targets were consistent with the Annual Plan, Annual Budget and Corporate Plan of the CPSE.

Reply of ONGC and IOCL were awaited (May 2020).

5.7.1.2 Delay in signing of MoU

As per MoU guidelines, MoU based on the parameters, targets and weightage as recommended by IMC without any deviation shall be signed between CMD/ MD of CPSE and Secretary of Administrative Ministry/ Department in case of holding/ independent

CPSEs, and between MD/ CEO of subsidiary company and CMD/ MD of holding CPSE in case of subsidiary CPSE by 31 March (*i.e.* before start of financial year in respect of which targets are fixed) or within 21 days from issue of IMC meeting minutes, whichever is later. There was delay of 183 days in signing of MoU for the year 2017-18 and delays between 127 and 136 days in signing of MoU for the year 2018-19 between CIL and its subsidiaries as depicted in Table 5.3 and was one of factors for non- achieving excellent rating of MoU.

Table 5.3: Statement showing details of signing of MoU by CIL

Sl. No.	MoU Between	2017-18			2018-19		
		Date of IMC Minutes	Date of signing of MoU	Delay in signing of MoU from scheduled date	Date of IMC Minutes	Date of signing of MoU	Delay in signing of MoU from scheduled date
1	CIL and Ministry of Coal	05.07.2017	26.07.2017		20.06.2018	03.07.2018	
2	CIL and its subsidiaries		25.01.2018 with all 8[75] subsidiaries	183 days		15.11.2018 with 4[76] subsidiaries & 24.11.2018 with 4[77] subsidiaries	127 days 136 days

CIL stated (January 2020) that though there was a time lag between consolidated CIL MoU and signing of subsidiaries MoU but there was no loss of clarity to the subsidiaries regarding the target for the ensuing year.

Reply of the CIL is to be seen in the light of the fact that the delays of 183 days for 2017-18 and 127 days to 136 days for 2018-19 for signing of MoUs with their subsidiaries was not justifiable as targets of MoU was just a mirror image of consolidated MoU.

5.7.2 Setting of MoU targets

5.7.2.1 Capacity Utilisation

As per the MoU guidelines for the year 2017-18 and onwards, one of the parameters for performance of CPSE other than financial parameters was capacity utilisation. The purpose of this target in the MoU was to reflect performance of CPSEs in physical/quantitative terms. Reference to capacity utilization may be with reference to installed capacity or rated capacity, wherever applicable. The target may be given either as percentage of installed capacity or rated capacity or production/generation/transmission in absolute terms.

It was noticed that there were targets for capacity utilisation/ production/ generation of electricity in MoUs of all eight Maharatna companies except BHEL for the year 2017-18 and 2018-19 with weightage between 7 marks and 10 marks.

[75] *ECL, WCL, SECL, MCL, CMPDIL, CCL, BCCL and NCL*

[76] *ECL, WCL, SECL and MCL*

[77] *CMPDIL, CCL, BCCL and NCL*

BHEL did not propose any target for capacity utilisation. Administrative Ministry/ DPE also did not set any target of capacity utilisation stating that it was getting reflected in the revenue from operations. Non-fixation of target for capacity utilisation during 2017-18 and 2018-19 may be seen in the backdrop of the fact that BHEL had itself projected a sharp decline in the capacity utilization for the boilers, turbine, generators and power transformers from 40.01 *per cent*, 40.49 *per cent*, 43.27 *per cent* and 75.01 *per cent* in the year 2016-17 to 17 *per cent*, 13 *per cent*, seven *per cent* and 24 *per cent* in the year 2017-18, respectively.

BHEL in its reply (January 2020) stated that parameters of MoU to be selected for each year are decided in consultation with DHI/DPE.

The reply of the BHEL is not acceptable as the parameters for capacity utilization was not proposed by BHEL/ Administrative Ministry whereas all other CPSEs had proposed this parameter in their draft MoUs with increase in the revenue from operations in financial parameters. The fact remains that inclusion of physical performance being a significant parameter is likely to capture the overall performance of the company in a more comprehensive manner.

5.7.2.2 Commitment from Administrative Ministry

The MoU guidelines for the year 2017-18 and onwards stipulated that MoU score would be an aggregate of scores on all parameters with respect to performance *vis-à-vis* the targets subject to fulfilment of additional eligibility criteria failing which MoU score would be reduced by one mark for each instance of non-compliance subject to maximum of five marks and the rating would be modified accordingly. Additional eligibility criteria *inter alia* included compliance to the provisions of Listing Agreement, DPE Guidelines and Companies Act, 2013.

Further, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 {SEBI(LODR)} and DPE Guidelines on Corporate Governance for CPSEs, 2010 require that the Board of CPSEs should consist of 50 *per cent* Independent Directors where its Chairman is an Executive Chairman. In addition, the Companies Act, 2013 also requires CPSEs to have at-least one-third of the total number of directors as Independent Directors in its Board.

Audit observed that BHEL did not have sufficient number of Independent Directors as required as per SEBI/DPE Guidelines as on 31 March 2018 and 31 March 2019. Audit noticed that both BSE and NSE levied a penalty of ₹5.42 lakhs each on BHEL for non-compliance of SEBI (LODR) regulations for the quarter ending September 2018.

Though, NTPC and GAIL had been generally able to comply with these requirements, there were spells from 01 April 2017 to 23 October 2017 and 01 April 2018 to 29 July 2018 in NTPC and 05 June 2018 to 05 August 2018 in GAIL when these requirements could not be fully complied with.

IOCL also had an inadequate number of Independent Directors on its Board during the year 2018-19 i.e. seven Independent Directors against the requirement of nine Independent Directors.

It is thus seen that the non-compliance of SEBI (LODR) Regulations 2015, DPE Guidelines and the Companies Act, 2013 in BHEL, NTPC and IOCL, timely action for filling up the vacancies of Independent Directors could not be ensured the despite there being mechanism of MoU.

NTPC, BHEL, IOCL and GAIL replied (January/February 2020) that the power to appoint the Directors on their Board vested with the Administrative Ministry. NTPC added that it had requested the Ministry of Power (MoP) for appointment of Independent Directors from time to time in 2017-18 and 2018-19. BHEL added that it had requested BSE and NSE with a copy to DHI for waiving the penalty/ fine as the same is not under their control.

5.7.2.3 CAPEX without abnormal payments

CIL achieved its MoU targets for CAPEX only in two years *viz.* 2015-16 and 2017-18 with an excellent rating during the period 2013-14 to 2018-19. Audit noticed that against the CAPEX target of ₹8,500 crore, CIL achieved ₹9,334.55 crore in 2017-18, due to one-time payment of upfront fees amounting to ₹1375 crore by ECL, BCCL and WCL for allocation of 11 coal blocks. Based on this achievement during 2017-18, which was best in the last five years, the CAPEX target for 2018-19 was fixed at ₹9,500 crore against which it could only achieve ₹7,311.46 crore. Therefore, it is apparent that CIL did not align the target for 2018-19 factoring the one-time payment of upfront fees amounting to ₹1,375 crore. Thus, CIL failed to achieve the CAPEX target for 2018-19, as the same was not realistic on account of consideration of one-time payment of upfront fees.

CIL stated (January 2020) that the coal demand has been assessed by M/s KPMG to rise to about 1BT in shorter horizon like 4 to 5 years, so to fulfil the demand assigned to CIL, it needed to incur the increasing CAPEX on year to year basis.

The reply of CIL was silent on the factoring of the one-time payment of upfront fees while considering the CAPEX target for the year 2018-19. Thus, the fact remains that CAPEX target for 2018-19 was not realistic.

5.7.2.4 Defects in HRM targets

In MoU of CIL with Ministry for the 2017-18, it was noticed that the Human Resource Management (HRM) related parameters included the targets of on-line submission of ACR/ APAR in respect of all executives (E0 and above) along with compliance within prescribed timelines with respect to writing of ACR/ APAR and online quarterly updation of vigilance clearance for Senior Executives. Both these targets were assigned two *per cent* each of total marks. However, it was noticed that CIL had implemented the system of on-line submission of ACR/ APAR in respect of all executives (E0 and above) and online updation of vigilance clearance for Senior Executives since 2013-14 and August 2015, respectively. Thus, undue advantage was extended to CIL by setting the targets which were already achieved by CIL and also violated the very purpose of signing of MoU. This also resulted in assigning of four *per cent* of total marks of MoU for better performance.

CIL stated (January 2020) that HRM parameters were set by the Ministry of Coal (MoC) itself in consultation with DPE through PNC and IMC meetings. It further stated that performance management system could not be implemented completely during 2014-15 and 2016-17 as it was a new system and executives at remote locations could not complete the process of performance management system within scheduled timeline.

Reply of CIL is not tenable, as the CIL proposed the HRM parameters which were already implemented and as per the minutes of the meeting, the fact was not discussed during the IMC meeting between MoC and DPE.

5.7.3 Performance under MoU and self-evaluation by CPSE

5.7.3.1 CAPEX without time and cost overrun

MoU guidelines for the year 2017-18 and onwards among other parameters (other than mandatory) prescribed the parameter for the 'percentage of value of capex contracts/ projects running/ completed during the year without time/ cost overrun to total value of Capex contracts running/ completed during the year'. This was a compulsory target for the CPSEs which have taken the target for the Capex.

In the MoU between MoP and NTPC, five marks and three marks for excellent level were assigned for the achievement of this target for the years 2017-18 and 2018-19 respectively.

NTPC submitted a list to PNC for 14 projects, out of which seven projects were anticipated to be commissioned by March 2018. Similarly, there were 13 ongoing projects during 2018-19.

NTPC claimed excellent achievement and full five marks in 2017-18 for the completion of only one project i.e. Kudgi (3 X 800 MW) whose last unit III was commissioned in March 2018 against the original schedule of completion in January 2017. CERC vide order dated 08 January 2020 allowed delay of 183 days out of total delay of 478 days in commissioning of Unit III of this project. Similarly, NTPC also claimed excellent achievement and full three marks in 2018-19 for completion of two projects namely, Bongaigaon (3 X250 MW) and Solapur (2 X 660 MW) whose last units were commissioned in March 2019 against the original schedule of completion in September 2011 and November 2016, respectively. Therefore, there has been considerable delay in completion of the projects on the part of NTPC.

Board of Directors of NTPC had revised completion cost of Kudgi, Bongaigaon, Solapur projects as ₹16,934.65 crore, ₹8,150 crore and ₹10,154.27 crore as compared to NTPC's original investment plan of₹15,166.19 crore in January 2012, ₹4,375.35 crore in January 2008 and ₹9,395 crore in March 2012 of respective projects. Thus, NTPC's claim of no-cost overrun in these projects in MoU Evaluation was not justified.

NTPC stated (January 2020) that as per the replies to the frequently asked questions for the MoU 2016-17, revised time and cost estimate can be taken provided they are approved by the competent authority not lower than the original authority which approved original cost estimate. Therefore, NTPC has taken Board approval for revised time/ cost estimates, based on which capex monitoring parameters for both 2017-18 and 2018-19 were calculated.

The reply of the NTPC is to be seen in the light of the fact that the time/cost wasto be approved by CERC after taking the views of stakeholders. Thus, the purpose of setting the target date of milestone in the MoU was defeated since the basis of evaluation of achievement was done with respect to the revised/ last schedule approved by the Board instead of the commitment made and accepted by DPE in the MoU.

5.7.3.2 Non-compliance of Guidelines on MSME

The Public Procurement Policy (2012) issued by Ministry of Micro and Small Enterprises mandates that Central Government Ministries, Departments, and Public Sector Undertakings are required to procure 20 *per cent* of their annual procurement from micro, small and medium enterprises including four *per cent* from MSMEs owned by SC/STs. The overall procurement target for CPSEs was further revised (January 2019) to 25 *per cent* from the existing 20 *per cent* to be procured from MSEs without changing the sub-target. As per the MoU guidelines, there will be negative marking upto one mark for non-compliance of the policy.

Audit noticed that five CPSEs had not complied with MSME guidelines for the year 2017-18 and 2018-19 but claimed in self-evaluation report that they had complied with MSME guidelines for the year 2017-18 and 2018-19, which was not factually correct, as detailed in Table 5.4.

Table 5.4

Statement of CPSEs which had not complied the provision of MSME guidelines

Name of CPSE	Procurement from MSMEs in *percentage* of total procurement during the year		Procurement from MSMEs owned by SC/STs in *percentage* of total procurement from MSMEs during the year	
	2017-18	2018-19	2017-18	2018-19
SAIL	20.71	20.21	Data not maintained	
CIL	7.32	8.32	0.00004	0.0005
IOCL (excluding oil and gas)	24.09	29.07	Data not maintained	0.5
GAIL (eligible value of annual procurement)	27.79	29.27	Data not maintained	0.04
BPCL (excluding works contracts)	27.11	25.40	1.24	1.11

SAIL replied (November 2019) that during the years under review, all CPSEs faced difficulty in separately compiling information on procurement from MSEs owned by SC/ST because the database of MSEs did not contain separate information about such MSEs. This position was explained to MSME and DPE, who after understanding the position decided not to enforce the sub-clause related to procurement of four *per cent* from MSEs owned by SC/ ST and no marks were deducted in the MoU Score.

Reply is not acceptable as SAIL in its Self-evaluation Report certified that they had complied with MSME guidelines which was not factually correct.

CIL accepted (January 2020) the audit observation and expressed their inability to comply, due to less participation of MSE vendors in tenders floated. Management further assured to comply with the guidelines by increasing procurement from MSMEs.

IOCL, GAIL and Ministry of Petroleum & Natural Gas (MoPNG) replied (December 2019/ January 2020) that due to lack of participation by the SC/ ST vendors the target could not be achieved.

The fact remains that these CPSEs could not achieve the target of four *per cent* procurement from SC/ST owned entrepreneurs as per MSME guidelines.

5.7.3.3 Incorrect self-evaluation regarding achievement of HRM targets

As per MoU signed between NTPC and MoP for the year 2017-18, one of the performance criteria for other than mandatory parameters was HRM, including 'Preparation of succession plan and its approval by the Board of Directors' as one of the targets. The marks to be awarded for this target were set at 1, and the date by which approval of the Board was to be obtained for excellent rating was 30 September 2017. One more target under HRM was HR Audit & Board decision on findings of HR audit. The marks to be awarded for this parameter was set at two and the date by which HR Audit & Board Decision on finding of HR audit was to be obtained was 30 September 2017 for excellent rating.

As per the self-evaluated score and rating submitted by NTPC to MoP, in respect of preparation of succession plan and its approval by BoD, and HR Audit & Board decision on findings of HR audit, NTPC stated 29 September 2017 as the 'actual achievement' date against these targets and claimed full marks for the same. However, it was observed that the matter was brought to the notice of the Board only in the 450th Board meeting held on 24 October 2017. It merits special mention here that no Board Meeting was held on 29 September 2017 and as such, the achievement against this target should be 24 October 2017 (i.e., the date of 450th Board Meeting). If this date is considered, the achievement of NTPC falls under the fair category against the excellent as claimed by NTPC.

Similarly, MoU for the year 2018-19, one of the performance criteria for other than mandatory parameters was Human Resource Management, including 'Assessment of level in line with People Capability Maturity Model (PCMM) or equivalent in the CPSE and placing the matter before the Board for taking a decision whether to go for up gradation in level as one of the targets. The marks to be awarded for this parameter was set at five and the date by which approval of the Board was to be obtained were set at 15 December 2018 for 'excellent' rating.

As per the self-evaluated score and rating for the year 2018-19 submitted to MoP, NTPC stated 12 December 2018 as the 'actual achievement' date against this target and had claimed full 5 marks for the same. However, it was observed that the matter was brought to the notice of the Board only in the 467th Board meeting held on 19 December 2018. It merits special mention here that no Board Meeting was held on 12 December 2018 and as such, the achievement date against this target was 19 December 2018 (i.e., the date of 467th Board Meeting). If this date is considered, the marks obtained by NTPC against this parameter would work out to 4 (i.e., 'very good' instead of 'excellent').

NPTC stated (January 2020) that HR parameters on preparation of succession plan and its approval by Board of Directors' and HR audit and Board decision on finding of HR audit, the Board Agenda was approved by Directors and CMD on 29 September 2017. Hence, it was considered under excellent category. For the parameter of assessment of level in line with PCMM, the item of agenda was circulated on 12 December 2018 to all the directors. Hence, it has been considered as achieved in excellent category.

The reply of NTPC is not acceptable as no such documents were produced to audit regarding circulation of agenda item and approval of the same by all the directors. The agenda item placed in the Board meeting also did not include any reference of approval obtained from all the directors through circulation.

5.7.3.4 Incorrect self-evaluation regarding achievement of R&D targets

One of the non-mandatory parameters in the BHEL MoU for the year 2017-18 and 2018-19 included the date-wise target for completion of two R&D projects carrying three marks each. In addition to this, the BHEL MoU for 2018-19 included date-wise target for completion of two projects of national importance carrying two marks each. However, there was no parameter by the name of project of national importance in the list of other parameters out of which BHEL was required to select non-mandatory parameters as per the guidelines for MoU 2017-18 and onwards.

As per the information collected by Audit from the intranet of the BHEL, there was no reference of completion of project namely ‘process modelling and simulation of syngas to methanol conversion process for pilot plant for coal to methanol (CTM) project’ and ‘Design, development and manufacture of compact traction alternator for 1600 HP DEMU application and acceptance by customer’ for the year 2018-19 in the engineering highlights for the month of October 2018. However, the same was claimed as having been completed in October 2018.

BHEL in its reply (January 2020) stated that the parameters were taken under the category of national importance as they were promoted by GoI. It stated that completion of above mentioned projects has been declared in the company’s annual report 2018-19.

The reply of BHEL is not acceptable as there was no parameter by the name of national importance in the list of other parameters out of which BHEL was required to select non-mandatory parameters as per the guidelines for MoU 2017-18 and onwards. Further, the reply of BHEL was silent on the information on its intranet regarding completion of projects in the engineering highlights for the month of October 2018. Moreover, the claims of BHEL regarding the completion of the R&D projects of 2018-19 were also not correct as it has taken the date of test results as the completion date whereas the final clearance was subject to proper assembly and integration test followed by field trial.

5.7.3.5 Incorrect self-evaluation regarding achievement of CSR targets

As per MoU guidelines, the score and rating of the CPSE would be subject to fulfilling of DPE guidelines on allocation of CSR funds by CPSEs for Swachh Bharat activities failing which aggregate MoU score would be reduced by one mark.

DPE recommended (01 August 2016) spending 33 *per cent* of the CSR funds created by CPSE towards achieving the national goal of Swachh Bharat.

It was observed that against the approved budget of ₹10.40 crore for 2017-18 for CSR activities, ₹3.43 crore (33 *per cent*) was required to be spent on Swachh Bharat Abhiyan by BHEL. However, total amount spent by BHEL on Swachh Bharat activity out of the CSR approved fund was ₹5.37 lakh only which worked out to 0.51 *per cent* of total CSR fund for the year 2017-18. Thus, BHEL did not achieve the target of spending 33 *per cent* on Swachh Bharat which resulted in non-compliance of DPE guidelines on allocation of CSR fund by CPSEs for Swachh Bharat activities in 2017-18. To this extent the self-certification by the BoD of BHEL in respect of compliance of DPE guidelines was not correct.

BHEL stated that (January 2020) DPE guidelines regarding spending 33 *per cent* of CSR funds created by CPSE towards achieving the National goal of Swachh Bharat was advisory in nature.

The reply of the BHEL is not acceptable as the DPE MoU guidelines required deduction of one mark from the overall MoU score and rating for its non-compliance. The wrong self-certification by the Board of BHEL in respect of its compliance corroborates the fact.

5.7.3.6 Incorrect self-evaluation regarding achievement of HRM targets

As per the MoU guidelines, the CPSEs have to essentially comply with the provisions of the DPE guidelines on any policy, issued from time to time, failing which its MoU rating would be reduced by one mark.

DPE issued guidelines (May 2018) for implementation of the Apprenticeship Act in CPSEs which required engagement of apprentices within a band of 2.5 *per cent* to 10 *per cent* of the total strength of employees. However, audit observed that during 2018-19, CIL and its subsidiaries as a whole were able to engage apprentices to the extent of 2.38 *per cent* of total number of its employees.

While accepting the audit observation, the CIL stated (November 2019) that due care would be taken to comply with the DPE guidelines in 2019-20.

5.7.3.7 Non-hosting of MoU in website

Though the hosting of the MoU of CPSEs on their respective web sites is encouraged by DPE, Audit scrutiny of respective websites of CPSEs disclosed that the same had not been done by BPCL and SAIL for 2017-18 and 2018-19 and by ONGC for 2017-18.

BPCL in its reply (December 2019) stated that BPCL held the view that MoU is an agreement between BPCL and GoI. This is an internal institutional mechanism for performance excellence and is linked to reward. Hence, they had not published MoU in the Web site. However, signed MoU document is published in Intralink, making it accessible for the reference of BPCL's internal staff and those responsible for working on MoU.

Reply of BPCL is not acceptable as DPE encourages hosting of MoU on their website and other CPSEs have been complying the same.

5.8 Conclusion and recommendations

Audit of the MoUs of the selected CPSEs for the years 2017-18 and 2018-19 revealed that there were inconsistencies in the setting of the targets as compared to the MoU guidelines. Under–pitching of targets helped the CPSEs to achieve better ratings. CPSEs could not enlist necessary commitment from administrative Ministry in MoU for filling up of non-official Directors on their Board and for compliance with the provisions of the Companies Act, 2013 and SEBI (LODR) 2015 and DPE Guidelines on Corporate Governance for CPSEs, 2010. Some positions of non-official Directors were lying vacant in NTPC, BHEL, IOCL and GAIL. Audit also noticed incorrect information in the self-evaluation by the CPSEs which resulted in achieving higher rating by NTPC as 'Excellent' instead of 'Very Good' for the year 2017-18 and consequently higher payment of PRP. Audit recommended that:

- MoUs targets and their evaluation should be finalized as per the MoU guidelines and due consideration be given in fixing the growth-oriented targets that could lead to improved performance of the CPSEs.
- Validation process at DPE should be strengthened to ensure that any incorrect information and/or certification can be detected before the final rating and score.
- Aspect of the MoU guidelines that are ambiguous should be looked into by DPE and clarified.

DPE in its reply (June 2020) has not refuted the audit findings and recommendations framed by Audit in the Report.

(Shubha Kumar)
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New Delhi
Dated: 29 July 2020

Countersigned

(Rajiv Mehrishi)
Comptroller and Auditor General of India

New Delhi
Dated: 30 July 2020