

CHAPTER VI

Compliance Audit Observations

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6. Compliance Audit Observations

Important audit findings emerging from test check of transactions of the State Public Sector Enterprises are included in this Chapter.

Odisha Mining Corporation Limited

6.1 Loss of revenue

Inappropriate costing of bauxite floor price resulted in loss of ₹61.07 crore.

Government of Odisha (GoO) allotted mining lease of bauxite block of 428.075 hectares at Kodingamali in the districts of Koraput and Rayagada, Odisha to Odisha Mining Corporation Limited (OMC) for a period of 50 years on execution of lease agreement on January 2017 for raising and sale of bauxite to the aluminium industries. The Indian Bureau of Mines (IBM) approved Mining Plan for the lease area holding approximately 611 lakh tonnes of bauxite reserves. It also approved for mining over a period of 21 years, with 15 lakh tonnes for first year and 30 lakh tonnes per annum for balance period.

For sustained supply of raw-materials through Long-Term Linkage (LTL)⁴⁷, the Steel & Mines Department, GoO laid down (February 2018) the procedure for sale of bauxite ore. As per the procedure, 70 *per cent* of the saleable stock of bauxite would be made available on LTL to the state based end-users and the remaining 30 *per cent* would be sold through national e-auction to be conducted once in every six months for price discovery. Floor price for the national e-auction would be fixed at the cost of production plus margin of profit at 50 *per cent*.

OMC awarded (September 2017) the work for excavation and raising of bauxite to a contractor. The agreement between OMC and the contractor stated that the raising contractor would be paid 61 *per cent* of the escalated/de-escalated rate per cubic metre of backfilling⁴⁸ of mined-out area. Similarly, OMC included 10 *per cent* of capital employed in the cost estimates for raising of iron ore towards interest on capital employed. OMC also included cost of Sustainable Development Framework, which was 10 *per cent* of royalty in third tender. Hence, in such a cost plus scenario, the estimate for cost of production must have included all the elements of cost viz., cost of backfilling of the mined out area, interest on capital employed, SDF among others for raising and sale of bauxite to the aluminium industries.

⁴⁷ Long Term Linkage means that the requirement of a particular buyer would be made from the produce of a definite mine on a long term basis

⁴⁸ Backfilling is defined as filling of the cavities (*i.e.* stopes) created by mining

As per Government notification, OMC determined the floor price of Bauxite for last three e-auctions⁴⁹ at ₹462, ₹547.50 and ₹672.65 per tonne. The price finalised after these three e-auctions were ₹465, ₹553 and ₹673 per tonne respectively. OMC sold 31,86,277⁵⁰ tonnes of bauxite during April 2018 to July 2019 in three e-auctions.

Audit observed that OMC failed to work out its cost properly leading to under-assessment of cost as detailed below:

- Annual amortisation cost is one of the components of cost of production of bauxite. As per the approved Mining Plan, the life of the mine, considering its mineable reserves, was 21 years. For e-auctions during April 2018 to April 2019, OMC however, had taken the life as 50 years leading to under-valuation of the annual amortisation cost. Similarly, only a part of total civil works cost was considered for calculation of depreciation and the life of various civil works for calculation of depreciation was taken ranging from 30 to 60 years instead of 21 years.
- Further, OMC had not considered the cost of backfilling of mined out area and interest on capital employed while finalising production cost of bauxite, which also led to under-valuation of the floor price of bauxite.
- In addition to above, the cost of SDF was not considered while estimating the price during first and second e-auction, whereas this was considered at the time of finalisation of floor price only for third e-auction and for calculation of iron ore sales price.

Considering the above factors, the floor prices for e-auctions should have been calculated at ₹563.13, ₹778.33 and ₹867.67 per tonne for first, second and third e-auctions against the price determined by OMC at ₹462, ₹547.50 and ₹672.65 per tonne respectively. Thus, due to this inappropriate calculation of bauxite cost price, lower sale prices were finalised. This led to loss of ₹61.07 crore⁵¹ by OMC.

Government replied (September 2021) that the excavated overburden materials were being concurrently backfilled and as the backfilling activities were under the scope of work of the agency, no separate amount was paid to the agency for backfilling. During the first three years and three months, only 7,92,954 Cum. of overburden had been re-handled for backfilling purpose. Government further stated that expenditure on SDF was not mandatory for first three years and cost of financing was not a part of cost of production.

The reply of government regarding no separate payment admissible to contractor for backfilling was not correct as the agreement condition exclusively stipulated for payment at the rate of 61 *per cent* of the

⁴⁹ First e-auction was on 04 April 2018, second e-auction was on 03 October 2018 and third e-auction was on 03 April 2019 having interval of six months

⁵⁰ 5,48,795 tonnes in first e-auction, 11,41,037 tonnes in second e-auction and 14,96,445 tonnes in third e-auction

⁵¹ ₹5.55 crore in first e-auction, ₹26.34 crore in second e-auction and ₹29.18 crore in third e-auction sale

escalated/de-escalated rate per cubic metre of backfilling. Further, their contention that backfilling during the period from December 2017 to March 2021 would be done with excavated overburden of 7,92,954 Cum. was also not acceptable as the corresponding mined out area for production of 87,52,500 tonnes would be 43,76,250 Cum. during that period. SDF was one of the parameters for achieving at least three star rating for mines without which Indian Bureau of Mines would suspend mining operation. OMC considered SDF for calculation of cost of production at the time of finalisation of floor price for third e-auction. Cost of financing was very much part of cost of production as the fund utilised had an opportunity of getting a fixed income if invested otherwise. As such, OMC should have prepared cost estimates prudently considering all these components which were relevant including the cost of investment, particularly in a scenario where price was to be fixed at cost plus 50 *per cent* margin.

Thus, due to inappropriate costing and downward fixation of floor price of bauxite, OMC failed to safeguard its financial interests and lost ₹61.07 crore and consequently failed to make the supply of bauxite sustainable as envisaged by the Government.

6.2 Extra Expenditure

Improper calculation of gratuity, leave salary and payment of wages for weekly rest led to extra expenditure of ₹5.31 crore

Odisha Mining Corporation Limited (OMC) invited (September 2015) open tender from security agencies for engagement of security personnel at its mines/offices. In response to the tender, 13 private security agencies submitted their bids. Bombay Intelligence Security (BIS) India Ltd became lowest (L1) tenderer. In terms of clause 16 of tender conditions, negotiations were held (16 January 2016) with 12 technically qualified bidders for probable reduction in the price offered by L1 so that work could be distributed to various agencies. Two other agencies i.e., Security Solution Services (SSS) and Kalinga Warriors Security Services (KWSS) agreed to take up the work at the L1 rate. Hence, the OMC distributed (January 2016) the quantum of work among three agencies⁵². However, since SSS failed to deploy the security personnel, BIS India Ltd was asked (11 March 2016) to deploy security personnel at the region entrusted to SSS. OMC initially awarded the service contracts for one year from 1 February 2016, which was extended up to 31 August 2017.

Clause D (24) of the tender document provided that the security agencies had to specifically ensure compliance with various related laws and not limited to the Payment of Gratuity Act 1972, The Payment of Wages Act 1936, Minimum Wages Act 1948 for such payments. On scrutiny, following irregularities were noticed: -

⁵² BIS for Daitary, Koira, J.K. Road, Bangur and Gandhamardan region; M/s KWSS for Rayagada, Paradip, Angul and Bhubaneswar areas and M/s SSS for Barbil region

As per section 23(4) of the Minimum Wages Rule 1950, the minimum daily wages notified by Central Government under minimum wages Act from time to time is worked out by dividing the minimum monthly wages by 26 days considering a day of rest every week. No wages shall be payable for the rest days. But on scrutiny it was noticed that OMC

- incorporated the tender conditions (Clause D-2) in violation of the aforesaid Act and had paid monthly wages by multiplying such notified daily wage rate by 30.42 (365/12) instead of 26 during the period from February 2016 to August 2017. This resulted an excess payment of ₹3.39 crore.
- Section 2(s) of the Gratuity Act 1972 states that the wages do not include any bonus, commission, HRA, overtime and includes only dearness allowance. In violation to the aforesaid authority, the OMC incorporated clause D(2) in the tender document which depicted that the security personnel shall be paid leave salary and gratuity at the rate of 17.81 *per cent* of total monthly⁵³ wages. Further, the computation of wages for payment of leave salary and gratuity considered elements like bonus, ESI, EPF Actual payments of gratuity and leave salary were also made, considering such wage as the basis. Thus, due to such consideration of ESI, EPF and Bonus into the total wages while calculating the gratuity and leave salary, the Company made an excess payment of ₹1.92 crore for the period from 01 February 2016 to 31 August 2017.

Thus, improper calculation of gratuity, leave salary and payment of wages for weekly off days had resulted in extra expenditure of ₹5.31 crore towards payment of security charges.

Government stated (August 2021) that security personnel were paid wages as per the rate mentioned in the contract agreement i.e., Clause-D(2) of the contract. Government further stated that a good number of ex-servicemen were engaged by the security agencies and they were also paid as per the above terms of contract which was lower than the wages rate payable under DGR Security Agency. Reply of government was not acceptable because the instant security contracts were not guided the DGR Security Agreement. Further, in respect of excess payment of gratuity/leave salary, government did not furnish reply against specific non-compliance with the related laws as pointed out in the paragraph above.

⁵³ Basic + Variable Dearness Allowance (VDA) + Employees State Insurance (ESI) + Employees Provident Fund (EPF) + Employees Deposit Linked Insurance (EDLI) + Admin charges + Bonus

Odisha Construction Corporation Limited

6.3 Wasteful expenditure

Improper assessment of annual income for advance income tax payment resulted in avoidable payment of penal interest of ₹3.57 crore

As per Section 207 of Income Tax Act, 1961 (Act), every assessee is required to pay advance tax on the estimated current income for a financial year (FY) in accordance with the provisions of Section 208 to 219 of the Act. Such advance tax is payable in four advance instalments⁵⁴ at the prescribed rates (Section 211), in case the amount of income tax payable is ₹10,000 or more (Section 208). Failure to deposit 90 *per cent* of the tax in advance as well as shortfall in depositing tax as per the prescribed slab attract interest at the rate of one *per cent* per month separately as prescribed under Section 234B and 234C of the Act. This calls for proper estimation of taxable income to ensure deposit of advance tax as required to avoid the incidence of interest payment.

Odisha Construction Corporation Limited (OCCL) estimated its current income for the year 2017-18 and 2018-19 through preparation of budgeted estimate/ revised⁵⁵ estimate for assessment of its tax liability based on which advance tax was to be paid by the company.

On scrutiny of budget estimate/ revised estimate and other related documents, it was observed that OCCL had considered interest income from fixed deposit at ₹25 crore against actual income of ₹37 crore in 2017-18 and ₹22 crore against actual income of ₹45 crore in 2018-19. Hence, OCCL had not judiciously estimated the advance income tax payable for both the years by substantially ignoring such known sources of income. Against the 90 *per cent* of total income tax payable as advance tax, amounting to ₹56.97 crore, OCCL had paid (advance tax+TDS) only ₹30.28 crore. An amount of ₹3.57 crore had been paid as penal interest on less payment of advance tax as given in the table below: -

Table 6.1: showing penal interest paid due to less payment of advance income tax
(₹in crore)

Year	Total tax liability	90 <i>per cent</i> advance tax payable	Advance tax paid		TDS	Total tax paid	Balance tax paid after wards	Shortfall <i>per cent</i>	Penal interest paid
			Amount	<i>Per cent</i>					
2017-18	36.17	32.55	5.00	13.82	15.02	20.02	16.15	44.65	1.68
2018-19	27.13	24.42	0.71	2.62	9.55	10.26	16.87	62.18	1.89
Total	63.3	56.97	5.71		24.57	30.28	33.02	52.16	3.57

⁵⁴ On or before 15 June (not less than 15 *per cent* of such advance tax), 15 September (not less than 45 *per cent* of such advance tax as reduced by the amount paid in the earlier instalment), 15 December (not less than 75 *per cent* of such advance tax as reduced by the amounts paid in the earlier instalments) and 15 March of the financial year (the whole amount of such advance tax as reduced by the amounts paid in the earlier instalments)

⁵⁵ Revised estimate was prepared generally in February/ March of the Financial Year

From the above table, it was noticed that OCCL deposited only ₹30.28 crore as TDS and advance income tax for the FY 2017-18 and 2018-19 against ₹56.97 crore advance tax payable. Since, the total tax amount deposited by OCCL fell short by 52.16 *per cent* in 2017-18 and 2018-19 and advance tax instalments were less than prescribed rate, OCCL had to pay ₹3.57 crore towards penal interest on shortfall of payment of advance tax during August 2018 to October 2018 and September 2019 to October 2019 respectively.

The improper assessment of advance tax which led to avoidable payment of penal interest occurred since OCCL had not properly estimated the interest income of ₹82.24 crore (₹37.55 crore and ₹44.69 crore) from fixed deposits during the FY 2017-18 and FY 2018-19 which were 50 and 103 *per cent* higher than the revised estimates respectively. The estimates for surplus were also prepared considering the revenue on account of price escalations.

Thus, due to improper estimation of total income and income tax liability by the Finance wing of the Management, OCCL had to pay avoidable interest of ₹3.57 crore.

Government stated (August 2021) that the unascertainable/ unexpected increase in actual income was detected at the time of finalisation of accounts. The unascertainable/ unexpected increase was due to receipt of price escalation on civil works, mechanical works and other income including interest on deposits. As per significant accounting policies of the Corporation, price escalations on works were accounted for on the basis of acceptance by the clients, actual receipt and certainty of realisation. Price escalation received at the fag end of the financial year led to increase in profit. The reply also stated that the interest was estimated downside due to decreasing trend of bank interest rate. But actual interest realisation was more due to increase in deposits and continuation of deposits at older rates. OCCL had not considered the enhanced profit for which proportionate quarterly advance tax had not been deposited.

The contention of the management describing receipts on account of price escalation and interest on fixed deposits as unascertainable was not acceptable as both could be well estimated as per specific terms and conditions of relevant contracts/agreements. The interest amount could have been estimated accurately by consulting banks concerned. Further, the profit enhanced mainly due to interest on fixed deposits which was under estimated during both the years. Hence, the management was negligent in learning from its mistakes in the first year and continued to ignore the income from fixed deposits and contractual claims while depositing advance income tax.

6.4 Undue favour

Undue favour to the Contractor by reimbursement of ₹2.45 crore towards fictitious supply of cement

Odisha Construction Corporation Ltd (OCCL) awarded (May 2015) the work for construction of Spillway, Left Head Regulator and Earth Dam portion of Deo Irrigation Project, Karanjia to M/s DD Builders (contractor) at a cost of ₹27.94 crore. As per the terms⁵⁶ of the contract, OCCL had to supply cement and steel required for the work. However, at the request (March 2017) of the contractor, OCCL allowed (August 2017) the contractor to supply cement on reimbursement basis. As per the supply invoices, the contractor purchased 88,700 bags of cement from four different suppliers⁵⁷ during the period from November 2017 to July 2018 for the said work and was reimbursed ₹3.14 crore, which included ₹0.69 crore GST.

As per GST invoices furnished by the contractor, OCCL filed GST return to avail Input Tax Credit (ITC) of ₹0.69 crore. In the meantime, Commissioner of GST & Central Excise (CE), Rourkela issued (Oct/Nov 2018) three 'Alert Notices' indicating names of fraudulent entities which were physically non-existent and they were registered under GST with sole intention of passing on ITC in fraudulent manner by issuing fake invoices without actual supply of goods. The above notices included the names of four entities from which the Contractor had obtained the invoices and submitted to OCCL. Subsequently, GST Authorities cancelled GST registrations of those suppliers.

The Joint Commissioner of GST & CE, Bhubaneswar rejected (November 2019) the ITC availed by OCCL on the strength of the fake invoices and asked OCCL to reverse/pay the inadmissible ITC availed along with penalty⁵⁸. After this fact came to the knowledge of the contractor, he requested (December 2019) OCCL to deduct the amount from its RA bill for regularization of the GST deposit. Subsequently, the contractor made (February 2020) the reversal deposit of ITC to the GST Authorities on behalf of OCCL.

Audit observed that:

- Based on the investigations by the GST and Central Excise department, the above entities fraudulently passed ITC by supplying fake invoices without actual supply of goods. Even though the fact was known to the management (Nov 2019), no detailed enquiry was made to find out the veracity of supply of cement by the contractor. OCCL management ordered internal vigilance enquiry only in April 2020 after the issue was pointed out by Audit. However, the result of investigation has not been communicated to audit so far.

⁵⁶ Clause no. 5 of the agreement

⁵⁷ Pamesh Traders, Ankit Enterprisers, Ganapati ores & Ispat, Kshipra consumer mkt

⁵⁸ Penalty as per section 50 and section 74 of the of CGST Act, 2017

- Refund of ITC amount by the company to GST Authorities substantiated the fact that the supplies were fictitious for which OCCL could not prove anything to the contrary.
- Moreover, to corroborate the issue, vehicle numbers used for transportation of cement, as mentioned in the invoices, were cross checked in the 'VAHAN' database of Government of Odisha and it was found that in respect of 10 invoices, 3920 bags of cement amounting ₹11.03 lakh were transported through two wheelers/auto rickshaws, which were not feasible.

Hence, the cost of cement reimbursed to the contractor i.e., ₹2.45 crore (₹3.14 – ₹0.69) should have been recovered from the contractor. Non-recovery of ₹2.45 crore thus resulted in extension of undue benefit to the contractor for payment made against fake/fictitious supply of cement.

Government stated (August 2021) that due to short supply of cement by manufacturers, the contractor was allowed to supply cement for the work and claim reimbursement. Reply of government was not acceptable because, during the period 2016-17 and 2017-18, 96 *per cent* of the order quantity⁵⁹ was supplied by the manufacturers to OCCL. Hence there was no short supply of cement by manufactures as claimed by OCCL. It was further stated by government that GST authorities have dropped the show cause notice in November 2020. The reply was not relevant as the GST authorities had dropped the charge only because OCCL refunded the ITC amount.

⁵⁹ Out of 2,66,000 bags of cement ordered by OCCL, 2,54,347 bags were supplied by manufacturers

Government further stated that authenticity of vehicle could not be verified at the time of procurement as VAHAN data base was not available at that time and the above four agencies had valid GSTN at the time of payment (1 November 2017 to 31 July 2018). Hence there was no scope for OCCL to know that the entities were not paying GST. The reply was not tenable as the vehicle details were available on public domain and with Transport Department. Hence, they should have recovered the amount of ₹2.45 crore fraudulently claimed by the contractor at least after audit brought the matter to their notice. Since, the contractor could not defend the case and refunded the amount, continuing business as usual with a fraudulent party led to extension of undue favour by the company. It is also a matter of investigation whether the quality of work suffered on account of non-utilisation of 88,700 bags of cement.



Bhubaneswar
The 08 APRIL 2022

(ANANTA KISHORE BEHERA)
Pr. Accountant General (Audit-II), Odisha

Countersigned



New Delhi
The 11 APRIL 2022

(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India