

CHAPTER VI : RESEARCH AND DEVELOPMENT ORGANISATION

6.1 Failure to recover advance of Rs 12.93 crore from a foreign firm

While importing modification kits for air defence system, DRDL obtained a Bank Guarantee for advance paid in a format given by vendor. When the vendor did not supply the equipment due to arms embargo, DRDL failed to recover the advance of Rs 12.93 crore from the supplier.

In April 1998, Defence Research and Development Laboratory (DRDL) Hyderabad entered into a contract with a foreign firm for procurement and licenced production of modification kits for air defence system of Trisul Combat Vehicle. The modification kits were to be delivered by May 2000 at a cost of Netherland Guilders (NLG) 9.80 million.

As per the terms of agreement DRDL made an advance payment of NLG 2.94 million (Rs 6.32 crore) to the firm in August 1998. The bank guarantee against this payment accepted by DRDL was according to the supplier's format. To invoke the guarantee, the consent of the seller or an authentic copy of a legal award of a final judgment was needed. This was at variance with the format prescribed by the Ministry in which the bank guarantee could be invoked as soon as the contractor failed to comply with the conditions of the contract without any reference to the seller/contractor. The conditions were thus clearly loaded against the interests of the Government. The contract was to be governed by Swiss law. The disputes arising out of the contract were to be settled in Geneva.

In May 1998, the foreign country imposed sanctions in the aftermath of India's Nuclear tests and despite the likelihood of the supplies being affected by this, DRDL released a progress payment of NLG 2.94 million (Rs 6.61 crore) in December 1998 and accepted a second bank guarantee in the same format. Field acceptance test of the item was carried out in June 2001. Since the supplier did not deliver the item due to embargo, DRDL approached them for encashment of the guarantee in October 2002.

DRDL made attempts to get the stores till February 2003 and set 31 March 2003 as the cut off delivery date. The firm failed to supply the item by that time due to export restrictions. DRDL approached the Bank to encash the bank guarantees in April 2003. The Foreign Bank did not invoke the bank guarantee on the ground that the claim did not fulfill one of the conditions of payment included in the bank guarantee as quoted above. In February 2004, DRDL stated that after consultation with the Government Counsel the matter was under correspondence with the Ambassadors of Netherlands and Switzerland. Embassy of India at Netherlands stated in June 2004 that foreign Government was giving export licence in certain pending cases and the firm should be approached in this regard.

Ministry of Defence stated in October 2004 that the foreign firm had assured that they would find a way to solve the matter with mutual consent immediately. The Ministry further stated that at the time of payments, there was no information to DRDL about sanctions. Moreover, the item being a defensive and tactical system, it was expected that this would not attract sanctions. The Ministry also explained that the foreign firms with monopolistic background do not agree to format prescribed by Defence Research and Development Organisation.

The contention is not tenable as the question of format of the bank guarantee prescribed by the purchaser was not raised during negotiations and the bank guarantees remained unencashed even after over four years of delivery schedule.

Thus, failure of DRDL to obtain an appropriate bank guarantee safeguarding the interest of Government led to blocking of Rs 12.93 crore of public fund for about six years.