CHAPTER - III

Transaction Audit Observations

Important audit findings noticed as a result of test check of transactions made by the State Government companies are included in this Chapter.

Government companies

Electronics Corporation of Tamil Nadu Limited

3.1 Undue benefit to IT companies

While allotting the land on lease basis to two IT companies in October 2007, the Company did not consider the guideline value of the land revised in August 2007, thereby it extended undue benefit of ₹37.80 crore

The Company, engaged in software development, diversified its activities and took up (1992) setting up of electronic cities for IT companies at the instance of the Government. As a part of this activity, the Government handed over (May 2005) 393 acres♦ of land to the Company for setting up a knowledge industry township at Sholinganallur on the outskirts of Chennai.

For allotment of 80 acres parcel from the above land on a 90 years lease basis, the Company invited (November 2006) open tenders from the IT companies. The tender conditions, *inter alia*, stipulated that the successful IT companies should commence construction of IT Complex in the allotted land within six months of allotment and put the land for the intended use within two years of allotment. Three bidders, *viz*., Cognizant Technology Services (CTS), Sutherland Global Services Limited (SGS) and Sify Limited (SIFY) responded (November 2006) to the above tender. The highest rate was quoted by SIFY (₹1.50 crore per acre), which was lower than the market price of ₹3.27 crore per acre (worked out by the Company based on the market rate of ₹2.62 crore per acre prevailing in May 2005). The Board of Directors (BOD), therefore, decided (December 2006) to cancel the tender. The Company in contravention of the BOD's decision, held discussions and offered (January 2007) the price of ₹3.27 crore to the above companies. This rate was accepted (February/March 2007) by all the companies. However, when the Company sought (March 2007) Government's approval for the above price, they directed (May 2007) the Company to finalise the lease only through open tender.

♦ Subsequently, declared as IT specific Special Economic Zone by Ministry of Commerce notification dated 11 April 2007.

The Company floated (May 2007) a tender, this time fixing the upset price at ₹5.00 crore, to which the same three companies responded and they uniformly quoted the price of ₹3.27 crore per acre. The BOD noting (July 2007) that the price bid was lower than the upset price fixed, however, recommended (June 2007) to the Government for allotment of land at the revised rate of ₹3.28 crore[♣] which was approved by the Government (September 2007).

Thereafter, the Company entered into formal agreements (October 2007) with CTS for allotment of 20 acres and SGS for allotment of 15 acres of land. These companies paid (December 2007 to February 2008) the lease amount (₹114.80 crore). The allotment made to SIFY was subsequently cancelled (October 2009) based on its request.

We observed (October 2010) that:

- In contravention of the BOD's decision (December 2006) to cancel the first tender, the Company held discussion with bidders and revealed (January 2007) its acceptable price of ₹3.27 crore per acre. Consequently, the same bidders who participated in the first tender, participated in the second tender and uniformly quoted the same price revealed by the Company to them in January 2007. Thus, the objective of calling fresh tender for obtaining competitive price was negated and the disclosure of reserve price of land enabled the bidders to form a cartel.
- The land value at Sholinganallur village appreciated tremendously since 2006. The Government increased the guideline value[϶] of even the residential land abutting the SEZ area from ₹71.44 lakh to ₹4.36 crore per acre with effect from August 2007. Our independent verification from the Registration Department of the market value of land registered by the commercial undertakings around Sholinganallur during the years 2007 and 2008 indicated that the value was ranging between ₹4.95 to ₹8.62 crore per acre. Under these circumstances, the upset price of ₹5.00 crore per acre fixed for the second tender was reasonable and reflecting the appreciated value of land during that period. However, the Company failed to take note of the appreciation in the market/guideline value of the SEZ area but recorded that its upset price was on higher side compared to the current market price. Thus, if the Company had leased its land at least equivalent to the guideline value of abutting residential area, it could have earned an additional revenue of ₹37.80 crore[♦].
- Even though both the companies, *viz*., CTS and SGS have not fulfilled (November 2011) their obligations regarding construction of IT

♣ ₹2.62 crore fixed by the Revenue Authorities was increased by 25 *per cent* and the rate of ₹3.28 crore was arrived at.

϶ The guideline value represents the market price of land fixed by the Registration Department for registration of sale deeds.

♦ Difference between the guideline value of ₹4.36 crore and the collected lease amount ₹3.28 crore per acre for 35 acres of land

Complex in the allotted land within the stipulated period of two years, the Company allowed such violation without repossession of the land as stipulated in the tender conditions.

Thus, the IT companies were not only allowed undue concession of at least ₹37.80 crore in allotment of land but were also allowed to retain the allotted land without commercial activity, thus defeating the basic objective of allotment of land.

The matter was reported to the Government / Company in May 2011; their replies were awaited (November 2011).

3.2 Unproductive investment

Selection of a mining area for setting up of Information Technology Special Economic Zone resulted in unproductive investment of ₹6.97 crore with consequential loss of interest of ₹0.84 crore

Based on the State Government's decision (August 2006) to establish Information Technology Special Economic Zones (ITSEZ) in Tier-II cities such as Tirunelveli, Madurai, Salem, Trichy, *etc*., the Company identified (August 2006) 164.26 acres of land at Jagirammapalayam, Salem. The entire area of the land (224 acres) covering the identified area was part of a disused quarry with waste material and was uneven with shallow trenches. The Government issued (March 2007) orders for alienation of the said land for which the Company paid (March 2007 and February 2008) ₹4.65 crore being the initial deposit (₹3.44 crore) and ₹0.81 crore being five *per cent* of the total cost (₹16.18 crore).

The Company engaged (July 2007) a consultant at a fee of ₹1.57 crore for formation of the ITSEZ and obtained (July 2007) the approval of GOI for establishment of the SEZ before July 2010. Since the consultant reported (January 2009) that only 40-45 acres of land was fit for formation of SEZ, the Company decided (September 2009) to retain 53.30 acres of land and surrender the balance land to the Government. However, the Government's approval for the Company's proposal was awaited (November 2011).

The Company estimated a cost of ₹10.04 crore for creation of common infrastructure facilities for an area of 65,000 square feet and awarded (November 2009) the work to the lowest bidder for ₹9.44 crore with scheduled completion by July 2010. The Company deferred (November 2010) the construction of common infrastructure facilities citing economic downturn as a reason, but it had released (October 2009 to December 2010) ₹2.32 crore for completion of 8.13 *per cent* of the total work.

We observed (March 2011) that:

- The preparation of Detailed Project Report (DPR) and prior approval of Project Investment Committee (PIC) of Government, a pre-requisite for venturing into any major project was not complied with.

- The Company unilaterally selected a wrong location *viz*., mining area. The consultant in his report (January 2009) had mentioned that the land was unfit for use and earth filling would be required at a cost of ₹5.43 crore which would take a minimum of 3 to 4 years.

- Given the fact that the approval of the GOI for SEZ would be renewable only for two years from July 2010 *i.e.*, up to July 2012 and as the Company had already deferred the civil works of the IT park without any fresh proposal of construction, establishment of SEZ before July 2012 may not be possible. This situation was a direct off-shoot of erroneous choice of location of SEZ.
- The Company noted as far back as in April 2008 that Salem was not an ideal destination for the ITSEZ as it would not be possible to attract any anchor company, it still went ahead with the SEZ. Thus, *ab initio,* selection of Salem for the ITSEZ was a bad choice.

Thus, wrong choice of the area coupled with improper location of the land for SEZ led to idle investment of ₹6.97[♠] crore without possibility of revival in near future.

The matter was reported to the Company / Government in June 2011; their replies were awaited (November 2011).

3.3 Non-recovery of interest on mobilisation advance

The Company, violated the provisions of Tamil Nadu Transparency in Tenders Act, 1998 and paid interest free mobilisation advance of ₹19.07 crore to 13 contractors. Consequently, it had to forego interest of ₹1.00 crore

The Government of Tamil Nadu enacted (December 1998) Tamil Nadu Transparency in Tenders Act, 1998 (Tender Act) and notified (October 2000), Tamil Nadu Transparency in Tender Rules, 2000 (Tender Rules) outlining the procedure to be followed by the Government Departments and State Public Sector Undertakings for finalisation of tenders. As per Clause 4 (b) of Tender Rules, mobilisation advances may be paid by the executing agencies to the contractors up to ten *per cent* of the value of the contract against bank guarantee and shall be recovered in the subsequent bills along with interest.

We noticed (April 2011) that between July 2007 and July 2010, the Company awarded thirteen contracts for construction of civil works and creation of infrastructural facilities at its Information Technology (IT) complexes and buildings for a total value of ₹217.40 crore. These agreements, in contravention of the Tender Rules, did not provide for recovery of interest on such advances. The interest free mobilisation advance paid in deviation of the Tender Rules between February 2008 and November 2010 in respect of the above contracts worked out to ₹19.07 crore.

[♠] ₹6.97 crore included the land deposit of ₹4.65 crore and the cost of infrastructure of ₹2.32 crore up to November 2010.

Reckoning the interest at the rate of eight[♦] *per cent per annum,* the interest foregone on the mobilisation advances worked out to ₹1.00 crore. This resulted in unintended benefit to the private contractors.

The matter was reported to the Company / Government in May 2011; their replies were awaited (November 2011).

3.4 Loss of interest

The Company's laxity in collecting settled amount of compensation of ₹1.72 crore for the land handed over to the Government in September 2005 led to blocking up of its revenue and consequent loss of interest of ₹0.55 crore

The Company was in possession of 4.779 acres of land at the Electrical and Electronics Industrial Estate, Perungudi, allotted to it by the Government during 1983. The Company paid (July 2004) the cost of the land (₹32.52 lakh) to the Government and got the sale deed registered (February 2007). The Government in order to make a six lane IT corridor expressway at Perungudi acquired (September 2005) 3,853 Sq. mts. of land out of the 4.779 acres of land owned by the Company. The Company handed over (September 2005) the said portion of the land to the Revenue Department and was awarded (February 2006) compensation of ₹1.72 crore. However, the compensation amount has been retained as a Revenue Deposit (not bearing interest) with the Special Tahsildar, Land Acquisition (LAO), due to non-production of the original sale deed by the Company till date (November 2011).

We noticed that the Company never attempted to realise the compensation amount from the LAO after executing the sale deed in February 2007. Even after we pointed out (February 2009) such non-realisation, the Company wrote only by October 2009 to the executing agency of the express way *viz*., Tamil Nadu Road Development Company Limited (TNRDC) for settlement of the amount. However, TNRDC rightly advised (November 2009) the Company to contact the LAO, Kancheepuram for settlement of compensation to whom the Company wrote a letter only in May 2011 for release of the compensation amount.

Thus, the Company's laxity in realisation of compensation not only led to avoidable delay of more than four years from March 2007 for the compensation realisation procedure to start but also resulted in blocking up of its revenues and consequent loss of interest of ₹0.55 crore[*].

The matter was reported to the Company / Government in May 2011; their replies were awaited (November 2011).

♦ Being the average rate of interest prevailing on deposits with scheduled banks.

* ₹1.72 crore X 8 *per cent per annum* for four years.

Tamil Nadu Industrial Development Corporation Limited

3.5 Irregular sanction

The Company extended loans of ₹45 crore to an ineligible Joint Venture Company and its Special Purpose Vehicle (SPV) Company without ensuring source of repayment. Consequently, the loan and the interest of ₹14.02 crore remained unrecovered for the last two years

The Company sanctioned (June 2008) a loan of ₹20 crore to Tamil Nadu Road Development Company (TNRDC), its joint venture company, based on a request (June 2008) to meet urgent financial commitments. A similar request (November 2008) for sanction of loan of ₹20 crore from IT Expressway Limited (ITEL), a Special Purpose Vehicle Company of TNRDC was also acceded to. The Company, released (December 2008 to April 2009) ₹25 crore to ITEL instead of the sought ₹20 crore in three tranches. The above loans carried interest at the rate of 13.5 *per cent per annum*.

These loans were assured to be repaid by both the loanees out of the proceeds of the proposed sub-lease of 4.9 acres of land at Siruseri Information Technology Park taken on lease for 99 years by TNRDC from a State PSU. We observed that the sanction of these loans was not in accordance with the standing rules and orders of the Government but were ratified (July 2008 and February 2009) by Board of Directors (BOD) of the Company. The Company sought (July 2008 and February 2009) ratifications from the Government for these sanctions and was awaited (November 2011).

The Company seeing the poor repayment records of the two loanees rescheduled (April 2009) the loan and interest due from TNRDC / ITEL up to January 2011 / June 2011 respectively and also reduced the interest rate to 12 *per cent per annum* with effect from 21 June 2010.

While TNRDC paid interest of ₹79.89 lakh up to September 2008 and stopped paying interest thereafter, ITEL never paid any interest. Consequently, the unrecovered interest from both the loanees mounted to ₹14.02 crore by March 2011. We also observed (November 2011) that:

- The sanction of the loans to TNRDC and ITEL was *ab initio* irregular since they were not eligible for the financial assistance in view of the existing Government orders (February 1998) which prohibited sanction of inter-corporate loan to any entity which was not dividend paying and did not have the required credit rating.

- The Company had been carrying on its operations through borrowed funds (₹278.37 crore in March 2008 and ₹150.13 crore in March 2011) carrying interest rates varying from 10.5 to 12 *per cent per annum*, the decision to extend financial assistance to ineligible companies without any benefit accruing to itself was not a financially prudent decision. While sanctioning the above loans, the Company did not safeguard its financial interests as it neither entered into a formal loan agreement nor obtained any collateral security except for a "demand promissory note".

We are of the opinion that 100 *per cent* realisation of both the loan amounts from the sub-lease income of both the loanees may not be possible in the immediate future as both assured repayment of the loan from the proceeds of sub-lease amount of the same land at Siruseri. The Company did not make any assessment about the viability of the proposal to repay both the loans from the same source of income before sanctioning the second loan. We noticed that the reserve price of ₹10 crore per acre offered (April 2008) by TNRDC for the said sub-lease for 75 years did not attract investors as 99 years lease amount fixed (September 2007) by SIPCOT (another State PSU) in the same complex was only ₹4.10 crore per acre.

Thus, extension of loans violating the Government's standing orders and without ensuring source of repayment had put the recovery of the loans of ₹45 crore and interest up to March 2011 amounting to ₹14.02 crore in jeopardy.

The Government replied (September 2011) that the Company had initiated action to recover the loan and interest. However, the fact remained that the same had not been recovered till date (November 2011).

TIDEL Park Limited

3.6 Non-recovery of compensation

The Company did not recover compensation of ₹3.75 crore for non-supply of committed power as per the terms of agreement from a defaulting power generating Company

With the objective of reducing its cost of operations, the Company decided (October 2005) to purchase power from alternative sources *viz.,* from Captive Power Plant[♦] (CPP) which was cheaper than the power supplied by TNEB. The Company invested (December 2005) ₹90 lakh in the equity capital as it was a pre-requisite to avail power from CPP *viz*., Arkay Energy (Rameswaram) Limited (Arkay). Simultaneously, the Company entered into a power purchase agreement (November 2005) to purchase 26 Million Units (MU) of power annually on "firm basis" and an option to purchase 13 MU *per annum* additionally on "infirm basis" for six years with effect from January 2006.

The terms of power supply provided that:

Arkay should supply the contracted power at TNEB's prevailing tariff less 10 *per cent* discount per unit. In case of failure to supply the contracted power, Arkay should pay compensation equivalent to 10 *per cent* discount on the TNEB's tariff rates for the quantity of power not supplied.

The Company started drawing the captive power from April 2006. We noticed during examination (November 2009) that Arkay never supplied the contracted quantum of power to the Company. The shortfall ranged from

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♦ The captive power generated by the generating company is supplied to its major equity share holders through the transmission grid of Tamil Nadu Electricity Board (TNEB). The selling price of such power is normally lower than the selling price of power supplied by TNEB from its own sources.

21.60 *per cent* to 54 *per cent* upto March 2008 after which Arkay completely stopped supplying the committed power citing shortage of fuel.

We observed that:

- During the three years upto 2008-09, Arkay had achieved Plant Load Factor (PLF) of 70 to 77 *per cent*[€] of its plant capacity of 65 MW. Instead of supplying the committed power to the Company and other captive users, Arkay sold power to TNEB at ₹6.70 per unit[#] and sought (May 2008) permission of TNEB for inter state sale of 20 MW of power and an additional 20 MW of power from August 2008. While withholding its consent for transfer of power outside Tamil Nadu, TNEB recorded (May 2008) that Arkay was not allotting power to its captive users because of its intention of earning profit by selling of energy to the Board at higher price.
- The agreement further provided that in case Arkay consistently defaulted in supply of committed power for more than three months, the Company had a right to serve notice of default and claim compensation. However, the Company never invoked the provision to claim compensation of ₹3.75 crore[•] but merely kept writing to Arkay to increase the quantity of power to the levels of commitment.
- The Company had invested ₹90 lakh in Arkay only to avail of cheaper power. But such investment did not yield the intended benefit as it did not get the contracted power, thereby defeating the very objective of investment.

The Company informed (May 2010) it was contemplating the exit option of selling back shares held by it to promoters and that it would claim compensation after completion of the disinvestment process. The fact remained that the default by Arkay was deliberate throughout the contract period and the Company had not taken action to recover compensation or to exit the investment so far (November 2011), thereby compromising its financial interests.

The matter was reported to the Government in May 2011; their reply was awaited (November 2011).

€ Source: Generation and Export of power gathered from Ramnad Circle of TNEB.

TNEB Meeting Agenda dated 6 July 2010.

• Being 10 *per cent* discount on the value of power short/not supplied amounting to ₹37.50 crore during the period from April 2006 to July 2011.

Tamil Nadu Medical Services Corporation Limited

3.7 Avoidable loss

The Company suffered loss of ₹1.83 crore due to non-issue of valuable life saving drugs before expiry

Tamil Nadu Medical Services Corporation Limited (Company) is the nodal agency for procurement of drugs on behalf of the Government hospitals and medical institutions. The Company procures drugs based on the indents of the respective hospitals and supplies them as per the Budget Allocation of funds to the hospitals by the Government. The budgeted funds of the hospitals are initially transferred to the Company's Personal Deposit (PD) account from where the Company meets the purchase payment by periodically transferring funds from PD account to their own current accounts.

Based on consultations with the specialists of various hospitals and the Director of Medical Services, the Company decided (August 2007) to purchase 230 items of new generation speciality drugs for reduction of child mortality, improvement of maternal health, treatment of major diseases like cancer, *etc*. Between September 2007 and March 2009, the Company procured speciality drugs for a value of ₹14.36 crore out of its own funds as there was no specific Budget Allocation from the Government for this purchase. Out of this, the Company issued drugs worth ₹10.95 crore to various hospitals during October 2007 and August 2009. The balance stock of drugs costing ₹3.41 crore as on March 2010 included time expired drugs costing ₹1.83 crore. The Company wrote off the loss due to time expiry of these drugs during 2009-10 and 2010-11.

Our analysis (June 2010) of the purchase procedure indicated that the speciality drugs were not drawn by the hospitals as they were not allocated separate funds by the Government. Since the Company was required to purchase the drugs only as per Budget Allocation of the respective hospitals, deviation from the established procedure for procurement of drugs without ensuring funds allocation resulted in non-issue of drugs to the hospitals. Life saving drugs worth ₹1.83 crore became time expired while in the stock of the Company before they could be issued for use.

The Company replied (September 2010) that it had taken corrective measures in the subsequent years and started to place orders only on receipt of funds and specific indents for the quantities from the hospitals. The fact, however, remained that though the Company procured speciality drugs out of its own funds for use of the needy patients, ₹1.83 crore worth of drugs could not be issued in time as budget allocation was not available with the hospitals, leading to the time expiry and the loss.

The matter was reported to the Government in June 2011; their replies were awaited (November 2011).

Tamil Nadu Small Industries Corporation Limited

3.8 Avoidable payment of interest on Income Tax

Absence of a system to estimate advance Income Tax payable led to short remittance of Advance Tax, resulting in avoidable payment of interest of ₹1.56 crore

Section 208 of the Income Tax Act, 1961 (Act), provides for advance payment of Tax, where the Tax payable *per annum* by an assessee is ₹5,000 or more. This Advance Tax calculated in accordance with Section 209 of the Act is payable in four quarterly instalments between June and March of every financial year. In the event of failure to pay 90 *per cent* of the Assessed Tax before the end of the financial year, the assessee is liable to pay interest at the rate of one *per cent* for every month or part of the month under Section 234B of the Act. The assessee is liable to pay similar interest for shortfalls in the quarterly payment of Advance Tax under Section 234C of the Act.

The Company had been continuously earning profits during the financial years 2006-07 to 2009-10. The budgeted and the actual profits from 2007-08 to 2009-10 and details of Advance Tax paid during the respective financial years are tabulated below:

(₹ in crore)

Financial year	Budgeted profit	Actual profit	Total Tax due♣	Advance Tax paid	Date of payment	Balance Tax paid	Date of payment
2007-08	2.49	7.25	1.87	NIL	---	1.87	29.09.08
2008-09	11.46	17.37	7.10	2.00	15.03.09	5.10	29.09.09
2009-10	22.86	27.20	7.91	3.40	15.03.10	4.51	05.10.10

We noticed (October 2010) that the Company was not making provision for Advance Tax even for the budgeted quantum of profits.

The non-payment of required quantum of Advance Tax was despite the fact that the Company had periodically reviewed its Performance/Profit and had surplus funds parked in short-term deposits♠. Consequently, the Company paid/became liable to pay penal interest of ₹82.34 lakh under Section 234 B and ₹73.72 lakh under Section 234 C during 2007-10 out of which it had already remitted (September 2008, September 2009 and October 2010) ₹84.27 lakh for the years 2007-08 and 2009-10.

The Government replied (June 2011) that the payment of Advance Tax by the Company was not feasible due to non-preparation of Quarterly Audited Accounts. It added that the Company actually suffered loss of only ₹12.55 lakh being the difference between the interest paid as per IT Act and the interest income earned from deposit of surplus funds. The reply was not relevant as the audit observation was on the failure of the Company to comply with Statutory obligation.

♣ After adjusting Tax Deducted at Source in all the years.

♠ ₹38.91 crore as on March 2008, ₹59.80 crore as on March 2009 and ₹62.48 crore as on March 2010.

Tamil Nadu Adi Dravidar Housing and Development Corporation Limited

3.9 Non-recovery of Fixed Deposit Receipt

Provision of collateral security in the form of Fixed Deposit Receipt (FDR) of ₹1.00 crore to a Cluster Company without ensuring their performance or obtaining approval of Board of Directors and the Government led to non-recovery of FDR

To rehabilitate 43 knitwear and hosiery based industrial units at Mudhalipalayam, Tirupur District, established in 1996-97, a Cluster Company under the name "Tiruppur Apparel Park India (P) Limited" (TAPI) was incorporated in December 2005 under the guidance of Tamil Nadu Adi Dravidar Housing and Development Corporation Limited (Company). The Company requested (March 2006) the Government for sanction of ₹75 lakh as soft loan towards working capital for TAPI. The Government decided (April 2006) to sanction the soft loan only after watching the performance of TAPI for a minimum period of six months. However, pending sanction of the soft loan by the Government, the Managing Director (MD) of the Company provided (July 2007) a collateral security in the form of FDR for ₹1.00 crore to State Bank of Travancore (SBT), Tiruppur for sanction of overdraft facilities to TAPI for ₹60 lakh.

The Cluster Company, TAPI ceased its operations from December 2007, due to non co-operation of members resulting in non-liquidation of the outstanding overdraft, which stood at ₹59.12 lakh in November 2008.

The FDR matured in October 2008 but was not released by SBT stating (November 2008) that it would adjust the FDR against the outstanding overdraft sanctioned to TAPI and interest thereon. The Company disputed the adjustment of the overdraft, which increased to ₹83.21 lakh by December 2010.

We observed that:

- As per the Delegation of Financial Powers, the MD was empowered to provide the collateral security only with the approval of its Board of Directors (BOD). However, the collateral security to TAPI was extended (July 2007) without bringing to the attention of the BOD and its approval. The fact was brought to the notice of BOD in December 2009 only, after lapse was pointed out by Audit in August 2009.
- When the Government had decided to sanction the soft loan only after ensuring the satisfactory performance of the Cluster Company, the hasty provision of collateral security was not prudent.
- The amount of ₹1.00 crore provided as collateral security was diverted out of the funds sanctioned by the Government of India (GOI), relating to a National Scheme for Liberation and Rehabilitation of Scavengers.

This extension of collateral security for provision of Bank Overdraft without the approval of the BOD and the Government proved harmful to the financial interest of the Company.

The Government replied (July 2011) that the Company was addressing SBT for refund of FD with interest as no lien had been marked in the FDR and also stated that no action was considered necessary against the officials responsible since the deposit had not been given as collateral security. The fact remained that the decision to place FD with the bank, to enable TAPI to avail loans, as a collateral security was unwarranted and resulted in non-encashment of the matured FDR till date (November 2011).

TNEB Limited

3.10 Avoidable loss

By not following the uniform trade practice of fixing own periphery as a delivery point for sale of power and by allowing Southern Region periphery as a delivery point, the Company incurred an avoidable loss of ₹8.36 crore

The Company had sold its surplus power to the power traders during October 2005 to September 2008 through power sale agreement (PSA) with traders.

For any power utility organisation like TNEB engaged in the sale of power, the delivery point of power could either be sellers' own periphery within its own transmission system or the intersection between the seller's periphery and the periphery of other region. The quantum of power transmitted by the seller at its own periphery would be reduced during the course of flow towards inter regional periphery due to transmission loss. Revenue could be realised only for the quantity of power placed at a mutually agreed periphery. The differential quantity between TNEB's export point upto the delivery point would be the transmission loss and was to be borne by TNEB.

Our scrutiny revealed that TNEB, as a buyer of power from Kerala Electricity Board (KSEB) had agreed (January 2005) to bear the transmission loss from ex-Kayangulam Transmission stations (seller's periphery) upto it's grid point. However, during the period from October 2005 to March 2006, TNEB had entered into PSAs with PTC India Limited (PTC) and Adani Enterprises Limited (Adani) and had agreed to fix Southern Region periphery as the delivery point. This was despite the fact that its delivery point in respect of all other PSAs entered into upto 2008 was its own periphery.

The sale of power to PTC commenced on 1 October 2005 and continued upto 31 December 2005. During this period, TNEB delivered 370.50 MUs of energy (evening and off peak hour surplus power) at its periphery against which TNEB realised revenue only for 359.63 MUs of power actually transmitted to PTC from the Southern Region periphery. During the similar sale of power to Adani from 9 November 2005 to 31 December 2005, TNEB supplied 95.40 MUs of 'off peak' and 'midnight power', whereas it realised revenue for 91.02 MUs of power as only this quantity was actually delivered to Adani at Southern Region periphery. While entering into fresh PSAs with

Adani and PTC on 31 December 2005 and 26 February 2006 respectively for sale of power from January to March 2006, TNEB once again failed to fix the delivery point as TNEB periphery and continued to fix the same as Southern Region periphery which resulted in an overall transmission loss of 25.38 MUs valued at ₹8.36 crore.

Thus, by not following the uniform trade practice of fixing own periphery as a delivery point for sale of power and allowing Southern Region periphery as a delivery point, TNEB incurred an avoidable loss of ₹8.36 crore.

The Company replied (November 2011) that the line loss upto Southern Region periphery was to be borne by it as per the agreement. The fact, however, remained that the Company had to bear the extra line loss upto Southern Region periphery while selling power due to the defective agreement which was contrary to position adopted while purchasing power from KSEB.

The matter was reported to the Government in June 2011; their reply was awaited (November 2011).

Tamil Nadu Generation and Distribution Corporation Limited

3.11 Excess payment

The Company allowed reimbursement of fixed capacity charges for plant capacity of 347.712 MW but allowed operation of the plant for 330.50 MW thereby allowing excess fixed capacity charges of ₹95.99 crore

The Company entered (January 1997) into a Power Purchase Agreement (PPA) with PPN Power Generating Company (PPN) for purchase of power from its 330.50 MW power plant at Nagapattinam District. The PPA envisaged payment of monthly fixed capacity charges (FCC) which was a percentage of total project cost (₹1,364.40 crore). The FCC was payable after PPN demonstrated the plant's capability to generate contracted capacity (330.50 MW) at the normal operation frequency range of 47.5 to 51 Hertz (Hz). For this purpose, an "Acceptance Test (AT)" of generation of at least 90 *per cent* of the corrected load[•] continuously for 72 hours to be conducted by PPN was the criteria. If the Tested Capacity (TC) was less than the corrected load, the FCC would be reimbursed in the ratio of TC and corrected load.

On synchronising the plant with the grid (April 2001), PPN conducted the test between 23-26 April 2001 and declared the TC as 333.33 MW. But, as per the Independent Engineer's[⊕] certificate accepted by the Company, the TC demonstrated was only 321.45 MW.

Since the PPA provided for conducting the second AT within 24 months of the commercial operation date, PPN conducted the second AT between 18-21 November 2002 and notified (November 2002), the TC as 336.769 MW. PPN

[•] Corrected load refers to full capacity of 347.712 MW declared by the manufacturer and adjusted to the reference conditions such as ambient temperature, circulating water temperature, barometric pressure, humidity, generator's hydrogen pressure and power factor.

[⊕] NTPC Limited is the independent engineer for this project.

repeatedly sought (December 2005/May 2006) revision of FCC claims in the ratio of 321.45 MW/330.50 MW up to 21 November 2002 and full FCC thereafter as the TC achieved in the second test was more than the contracted capacity of 330.50 MW.

To sort the demands, the Company appointed (May 2006) a Committee comprising its own serving and retired engineers. The Committee opined (May 2006) that the plant was capable of delivering 347.712 MW at 50 Hz and 322.711 MW at 47.50 Hz. The Committee recommended 336.29 MW and 343.969 MW as the capacity for pre and post November 2002 period respectively being the average of maximum and minimum capacity recorded during first and second test. The Company accepted (May 2006) this recommendation and regulated the FCC for pre and post November 2002 periods as demanded by PPN which resulted in excess payment of ₹95.99 crore up to March 2011. We observed that the above changes were not justified because:

- The PPA envisaged continuous output for the contracted capacity of 330.50 MW within a frequency range of 47.50 and 50 Hz and the Company has been giving instructions till date for generation only upto this capacity. Therefore, reckoning the plant capacity as 343.969 MW for reimbursement of FCC was incorrect.
- There was no provision in the PPA for appointment of a Committee to sort out capacity related issues. Also the PPA did not provide for correction of determined plant capacity with reference to frequency and this parameter was not part of mandatory test procedures. NTPC, the Independent Engineer of this project also did not allow frequency correction during test citing absence of an enabling clause in the PPA. However, the Company decided to correct the plant capacity based on the opinion of its own Committee of which the independent engineer was not a member.
- The concept of admission of FCC based on the average of the minimum and maximum capacities was an extraneous consideration not provided for in the PPA.

Thus, by pegging the plant capacity only for payment of FCC, PPN has been allowed undue benefit detrimental to the financial interests of the Company which has implication over the period of the PPA.

The Company replied (February 2011) that the plant was capable of generating 347.712 MW, if the grid frequency was maintained at 50 Hz. The reply was not convincing and our contention stays since (i) the PPA did not provide for tested capacity to be corrected for frequency and (ii) the CEA's approved and demanded capacity of the plant was only 330.50 MW. Therefore, allowing FCC for 347.712 MW, when the Company cannot order for more power than 330.50 MW was not justified.

The matter was reported to the Government in June 2011; their reply was awaited (November 2011).

3.12 Avoidable expenditure

Failure of the Company to adhere to the decision to treat the power voluntarily fed into the grid as infirm power resulted in an avoidable expenditure of ₹6.14 crore

Arkay Energy (Rameswaram) Limited (Arkay), committed (February 2006) to supply the entire power generated from its 65 MW captive generating plant to its group captive users (GCUs) using the transmission lines of the Company at a price of ₹3.11 per unit. However, Arkay started (June 2008) selling 20 MW of power to the power traders outside Tamil Nadu at the rate of ₹6.80 (approx.) per unit by not supplying GCUs of their quota of power. When Arkay tried (July 2008) to sell another 20 MW of power outside Tamil Nadu, the Company objected (September 2008) to it and approached (September 2008) the TNERC about such sales citing the critical power shortage situation in the State, TNERC overruled Company's objection (November 2008). The Company then approached (November 2008) the Honourable Madras High Court which directed (January 2009) the Company to draw the entire 40 MW of power from Arkay and to decide the rate of purchase of power. The Honourable Madras High Court allowed the Company time to file a fresh affidavit with reference to finalisation of rates for purchase of power.

In the meantime, Arkay supplied (November 2008 to February 2009) 30.794 MUs of power to the Company. Of this supply, only 13.71 MUs of power were supplied with the prior concurrence of the Company, the balance units were pumped without prior concurrence. The Company, accordingly decided to pay for 13.71 MUs of power at the rate of ₹6.70 per unit (being the purchase rate of power from private sources) and to treat the balance 17.084 MUs of power as 'infirm power'[∂] (as per the policy of TNERC) as the supply was effected by Arkay without its prior concurrence and pay at ₹3.10 per unit. We observed that the Company, before obtaining concurrence of Arkay to these decisions, submitted (March 2009) to the Court that the issue with Arkay was settled and withdrew its appeal whereas the negotiations were held only by May 2009. But Arkay demanded (May 2009) the rate of ₹6.70 per unit for the entire 30.79 MUs of power supplied which was accepted (July 2010) by the Company. The Company released (July 2010 and September 2010) ₹20.83 crore to Arkay for 31.094 MU at ₹6.70 per unit.

The Company's conveyance (February 2009) to the Court that the dispute with Arkay regarding rates was settled was factually incorrect, as it held negotiations with Arkay only in May 2009 and its withdrawal of appeal cost it dear. We are of the opinion that had the Company finalised the rates with the intervention of the Court, it could have obtained the rates as applicable for infirm power for power supplied voluntarily. It is pertinent to note that the power to GCUs which should have been supplied by Arkay at ₹3.10 per unit, was supplied by the Company at ₹3.45 per unit after procuring it at ₹6.70 per unit from the same firm.

∂ Firm power means the power committed and contracted by captive generators of power and infirm power means the energy supplied over and above the firm power and is interruptible at short notice.

This resulted in an avoidable expenditure of ₹6.14 crore {(₹6.70-₹3.105)X17.084 MUs}. The Company, which was only a wheeler of electricity ended up purchasing electricity at high rates and selling at low rates to the same GCUs of Arkay.

The matter was reported to the Company / Government in June 2011; their replies were awaited (November 2011).

3.13 Loss of revenue

Improper planning in sale of midnight surplus power resulted in revenue loss of ₹1.47 crore

The Company had been selling surplus power since October 2005 to other State Electricity Boards/Power Utilities based on availability, through power traders approved by Central Electricity Regulatory Commission.

For March 2008, the Company forecast availability of midnight surplus power (00.00 to 05.00 hours), which it proposed to sell on 'as and when available basis' and invited bids (February 2008). Out of the eight traders who responded, sale order was issued (February 2008) on Adani Enterprises Limited (Adani), who quoted the highest rate (H-1) of ₹7.31 per unit. There was no surplus power available with the Company between 1 March and 15 March 2008, but for the period from 16 March to 31 March 2008, the Company could schedule 3,700 MW of power as available for sale via Adani. Against this, Adani drew only 2,800 MW of power for which the Company earned revenue of ₹10.23 crore.

We observed that as against 3,700 MW of surplus power offered by the Company for sale, Adani drew only 2,800 MW, thereby leaving the balance of 900 MW. The Company could not sell the balance surplus power as there were no standing contracts for selling the surplus power to multiple traders, as was available in the earlier contract in February 2008. The Company's failure to sell available surplus power to other traders, thus resulted in non-realisation of revenue to the extent of ₹1.47 crore (900 MW *i.e.*, 4.5 million units at ₹3.27 per unit[∂]) in respect of the power not drawn by Adani.

The improper planning in the sale of midnight surplus power resulted in reduction of saleable power and consequent loss of revenue of ₹1.47 crore to the Company.

The matter was reported to the Company / Government in May 2011; their replies were awaited (November 2011).

∂ Rate of realisation of ₹7.31 per unit less variable cost of ₹4.04 per unit of generation.

3.14 Short recovery of electricity charges

Absence of an enabling clause in the MOU with the cement companies for recovery of energy charges on the basis of actual consumption of energy for operation of their fly ash collection systems resulted in short recovery of ₹2.15 crore.

The Company has four* thermal generation stations, which generate around 56 lakh MTs of fly ash annually. The Company entered (between February 2002 and December 2004) into Memoranda of Understanding (MOUs) with cement manufacturing companies for collection of fly ash through the Dense Fly Ash Collection System (Pressurised system) installed and maintained by the cement companies within the thermal stations.

Eighty *per cent* of the fly ash collected by the systems was to be removed by the cement companies for their own use and the balance 20 *per cent* fly ash to be retained by the Company for allotment to other small scale industrial units. Correspondingly, as per the MOUs, the cement companies had to pay for 80 *per cent* of the electricity (at Low Tension Industrial Tariff rates) consumed during the operation of the Pressurised systems.

The annual quantum of fly ash generated by the Pressurised system *vis-a-vis* the quantity lifted by the cement/cement products manufacturing companies during the five years ending 2005-11 in two thermal stations at North Chennai (NCTPS) and Tuticorin (TTPS) indicated that the quantity of fly ash lifted by the cement/cement products manufacturing companies was invariably more than the allocation of 80 *per cent* as per MOU. The excess varied between 0.01 to 14.42 *per cent*. In such circumstances, the electricity consumption recorded at the thermal stations for operating the Pressurised systems should have been better apportioned on the basis of ratio of actual quantity lifted by the cement/cement products manufacturing companies and the quantity left over for allocation to other small scale industrial units instead of constant 80 *per cent*.

We are of the opinion that the energy charges corresponding to the excess fly ash lifted by the cement/cement products manufacturing companies was borne by the Company, due to absence of an enabling clause in the MOU for *pro rata* recovery of charges and suggest that the MOU be revisited.

The possible revenue foregone on this account is ₹2.15 crore for 4.58 million units during the period 2005-11.

The matter was reported to the Company / Government (May 2011); their replies were awaited (November 2011).

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* North Chennai, Ennore, Tuticorin and Mettur.

3.15 Extra expenditure

Lack of co-ordination between regions resulted in extra expenditure in procurement of grills of ₹90.70 lakh. Besides, non-inclusion/invoking of protective clause also resulted in excess payment of ₹22.50 lakh

To meet the requirement of Ribbed Tor Steel (RTS)/Thermo Mechanically Treated (TMT)[€] grills for casting Reinforced Cement Concrete (RCC) poles for use in Transmission and Distribution lines, the Company procures grills of various sizes, *viz*., 7.5 metres, 8.0 metres, and 9.14 metres through its Regional Chief Engineers (RCEs) under open tender system.

Our review of the purchase orders (POs) placed by the various RCEs during the year 2009-10 revealed:

- Orders were placed for 7.5 metre grills at rates ranging from ₹935 to ₹1,408 and for 9.14 metre grills at rates ranging from ₹2,308 to ₹3,356 indicating wide variations in the rates finalised by various RCEs. This exhibited lack of proper co-ordination between the regions. Consequently, the Company had to incur an avoidable excess expenditure of ₹90.70 lakh in the procurement of grills (computed with reference to the lowest rates of procurement of items amongst the RCEs in the same period).

- We further observed from the receipt details of the grills procured and the payments made that the Company did not restrict the payments where the supplies were made belatedly beyond the delivery period despite the fact that the rates were declining during the intervening period. This was due to either non-inclusion of an enabling clause in the POs (two regions) or due to non-invoking the clause despite inclusion in the POs (four regions). Notwithstanding the levy of liquidated damages as per the terms of POs, the excess payment released amounted to ₹22.50 lakh.

We recommend that the Company implement a pooled requirements purchase procedure in respect of common items of materials required for all the regions to avail competitive rates or a system for comparison of rates should be set in place and also incorporate protective clauses in the POs to safeguard its financial interests.

The matter was reported to the Company/Government (May 2011); their replies were awaited (November 2011).

€ These two types of grills are manually inter changeable in the manufacture of poles.

3.16 Undue favour

The time barred claims of price variation in respect of purchase of distribution transformers were admitted after correction of the dates of claims to indicate that they were within the validity period, resulting in extension of undue favour of ₹41.05 lakh

The Company places periodical Purchase Orders (POs) for procurement of Distribution Transformers (DTs). These POs include price variation clause for compensation towards variation in price of raw materials from the date of placement of POs to the date of delivery of the transformers.

The time limit for entertaining price variation claims, if any, by the suppliers was six months from the date of completion of supplies of that particular quarter. During our test check (April/May 2011) of procurement of DTs along with related payments of price variations for the years 2004-06, we noticed that the supplies in respect of the test checked POs were completed in 2007 itself and the POs were closed by the Company in December 2009. However, the Company dispensed with (December 2009) the procedure for individual approvals for the price variation claims and materials management wing of the Company would give approval for the price variation admissible for each quarter and the suppliers had to submit their price variation claim within six months from the date of approval.

We further noticed that in respect of POs placed (September 2005) on two concerns *viz*., Tamil Nadu Transformers Limited and Suntech Transformers Limited, the dates mentioned in the invoices for price variation claims were altered in such a way as to appear that the claims were made within the time frame of six months prescribed. This is further borne out by the fact that the Taxes were stated to have been paid at much later dates. As the dates of invoices could not precede the actual date of remittances of Duties / Taxes, by reckoning the claims of price variation based on the Tax paid dates, the price variation claims were time barred even with reference to the amended (December 2009) procedure of submission of these claims. However, the Company admitted these claims without taking into cognizance the alteration made by the suppliers in the price variation claims invoices. This resulted in undue payments amounting to ₹41.05 lakh to the suppliers.

The matter was reported to the Company / Government in June 2011; their replies were awaited (November 2011).

Tamil Nadu Transmission Corporation Limited

3.17 Undue benefit

The Company extended undue benefit of ₹7.25 crore to a supplier due to its failure to incorporate clauses to safeguard its financial interest in the placement of orders for imported cables and accessories

Following a Global tender (July 2007), the Company placed (May 2008) orders on Easun Products of India (P) Limited (supplier) for purchase of Aluminium cables (151.05 Kms) and copper XLPE cables (3 Kms) with accessories. The contract was for a value of ₹116.70 crore on 'firm' price basis inclusive of Freight, Insurance, Sales Tax, Excise and Customs Duty for the entire duration of the contract. The price was inclusive of Customs Duty component of 31.011• *per cent* of the Assessable Value (AV) of the imported material. The delivery was to be completed by April 2009. Against this, the supplier commenced supplies from March 2009 and completed the same by October 2009 for a length of 148 Kms with the required accessories.

We noticed (October 2010) that:

- The Purchase Order (PO) was for a firm price of ₹116.70 crore with the Duty component of 31.011 *per cent* of the AV irrespective of variations in the Duty structure. This was in contravention of the tender conditions that statutory variations in Customs Duty and other levies within the delivery schedule would be to the account of the Company against documentary proof. In respect of the materials supplied with delays, the least of actual duties and levies on the date of supply or those applicable for the accepted delivery schedule, was to be paid by the Company. It is relevant to mention here that 16 *per cent* Countervailing Duty (CVD) included in the component of 31.011 *per cent* progressively decreased to 14 *per cent* with effect from 1 March 2008, 10 *per cent* with effect from 7 December 2008 and to 8 *per cent* with effect from 24 February 2009.
- Even after noticing reduction in the CVD from March 2008, the Company failed in securing the benefit of reduction in CVD.
- Consequent on the progressive decrease of CVD rates from 16 *per cent* to 8 *per cent,* the duty element decreased from 31.011 *per cent* to 21.523 *per cent* of the AV. Consequently, due to non-incorporation of the exact tender conditions in the PO, the Company could not avail the benefit of Duty reduction of ₹7.25 crore (as worked out by Audit) resulting in undue benefit being passed to the supplier.

In the Report of the Comptroller and Auditor General of India for the year ended 31 March 2008 (Commercial) – Government of Tamil Nadu, Paragraph 4.15, we mentioned that the same supplier was given undue benefits

• This comprised Basic Customs duty (at 7.5 *per cent* of AV), CVD (at 16 *per cent* of AV), Education cess (at 2 *per cent* of CVD), higher education cess (at 1 *per cent* of CVD) *etc*.

of ₹2.57 crore due to variations between the tender and purchase order for regulation of Customs Duty with reference to the actuals.

In its reply (July 2011), the Company stated that while the supplier had the option to quote in foreign currency for the imported cables, orders were placed on domestic sale basis, based on their quotation which had benefited the Company to the extent of ₹12.98 crore on exchange rate variation.

The Audit contention is about non-implementation of exact tender conditions for all payments of Statutory levies at prevailing rates on the Company's account in the POs which resulted in passing of undue benefit of ₹7.25 crore to the supplier and not about the presumptive savings to the Company on account of exchange rate variations.

The matter was reported to the Government in May 2011; their reply was awaited (November 2011).

General

3.18 Follow-up action on Audit Reports

Explanatory notes outstanding

3.18.1 The Audit Reports of the CAG represent the culmination of the process of scrutiny starting with initial inspection of Accounts and records maintained in the various Government companies and Statutory corporations. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Finance Department, Government of Tamil Nadu had issued instructions (January 1991) to all Administrative Departments to submit explanatory notes indicating a corrective/remedial action taken or proposed to be taken on the paragraphs and performance audit reports included in the Audit Reports within two months of their presentation to the Legislature, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

The Audit Reports for the years 2000-01, 2007-08, 2008-09 and 2009-10 were presented to the State Legislature in May 2002, July 2009, May 2010 and September 2011, respectively. Nine out of 21 Departments, which were commented upon, had not submitted explanatory notes on 23 out of 73 paragraphs/performance audit reports, as of 31 October 2011, as indicated below:

Year of Audit Report (Commercial)	Total number of paragraphs/performance audit report in the Audit Report	Number of paragraphs/performance audit reports for which explanatory notes were not received♥
2000-01	25	1
2007-08	24	2
2008-09	24	20
TOTAL	**73**	**23**

♥ Paragraphs/ performance audit reports for which no explanatory notes were received but discussed by COPU are excluded.

Department-wise analysis is given in the **Annexure-19**. The Energy Department is responsible for non-submission of large number of explanatory notes.

Compliance with the Reports of Committee on Public Undertakings (COPU)

3.18.2 The Action Taken Notes (ATNs) to the paragraphs included in the Report of the COPU are to be furnished by the concerned Departments within six months from the date of presentation of these reports to the State Legislature. Replies to 114 paragraphs pertaining to 24 Reports of COPU presented to the State Legislature between January 2003 and February 2011 had not been received as of 31 October 2011 as indicated below:

Year of COPU Report	Total number of Reports involved	Number of paragraphs in respect of which replies were not received
2002-03	5	5
2003-04	3	5
2004-05	2	3
2006-07	2	5
2009-10	7	49
2010-11	5	47
TOTAL	**24**	**114**

Response to inspection reports, draft paragraphs and performance audit reports

3.18.3 Audit observations noticed during audit and not settled on the spot are communicated to the heads of the Public Sector Undertakings (PSUs) and departments of the State Government through inspection reports. The heads of PSUs are required to furnish replies to the inspection reports through the respective heads of Departments within a period of six weeks. Inspection reports issued up to March 2011 pertaining to 52 PSUs disclosed that 2,703 paragraphs relating to 688 inspection reports remained outstanding at the end of October 2011; of these, 190 inspection reports containing 478 paragraphs had not been replied to for more than two years. Department-wise break-up of inspection reports and audit observations outstanding as on 31 October 2011 are given in **Annexure-20.**

Similarly, draft paragraphs and performance audit reports on the working of PSUs are forwarded to the Principal Secretary/Secretary of the Administrative Department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was, however, observed that 14 draft paragraphs and two performance audit reports forwarded to the various Departments during the period from May to August 2011, as detailed in **Annexure-21**, had not been replied so far (November 2011).

It is recommended that the Government should ensure that (a) procedure exists for action against the officials who fail to send replies to inspection reports/draft paragraphs/performance audit reports/ATNs on the recommendations of COPU as per the prescribed time schedule, (b) action to recover loss/outstanding advances/overpayments is taken within prescribed time and (c) the system of responding to audit observations is revamped.

Chennai **(SUBHASHINI SRINIVASAN)**
The **Principal Accountant General**
(Commercial and Receipt Audit),
Tamil Nadu

Countersigned

New Delhi **(VINOD RAI)**
The **Comptroller and Auditor General of India**