Chapter IV

Compliance Audit Paragraphs

Chapter IV

4. Compliance Audit Paragraphs

Important Audit findings emerging from test check of transactions of the State Government companies are included in this Chapter.

Government companies

Maharashtra Airport Development Company Limited

4.1 *Undue benefits to Developer*

The Company extended various undue benefits to Developer resulting in non recovery of ₹ 149.35 crore in three contracts.

Maharashtra Airport Development Company Limited (Company) was appointed (January 2002) by the Government of Maharashtra as a Nodal Agency and Special Planning Authority for Development of Multi-modal International Passenger and Cargo Hub Airport at Nagpur (MIHAN). The Company awarded (June 2006) the contract for development of Modern Township Project (MTP) on 31 acres of land (value: ₹ 31.64 crore) and another for construction of social infrastructure along with construction of 680 tenements for Project Affected People (PAPs) (July 2008) to Reatox Builders and Developers Private Limited, Bandra, Mumbai (Developer). In second contract, the consideration was in the form of Land (45 acre) to be allotted to the Developer. Besides these two contracts, the Company also allotted (May 2006) six acres of land on lease rent of ₹ 1.49 crore for seven years for ready mix concrete plant of the Developer. Audit reviewed (September 2012) all these three contracts and findings are discussed below:

Modern Township Project

4.1.1 The main objective of the project was to develop MTP on the land to be provided by the Company. On completion of development by private developer and upon registration of Co-operative Housing Societies/ Association of Apartments owners, the Company was to execute a deed of lease for a period of 99 years with respective Housing Societies/Association of Apartment owners.

The Company selected (September 2005) Developer who quoted the highest development fee of ₹ 72 lakh per acre for 31 acres in response to Request for Proposal (RFP) invited in June 2005. The scope of work included design, plan, finance, construction, operation, maintenance and marketing of tenements/ apartments/flats/shops in the project. The agreement was entered into in June 2006 and the development fee of ₹ 22.32 crore was to be paid in five installments during June 2006 to August 2008. The project was to be completed by August 2012. The Company handed over 31 acres of land in

2006 and 11.64 acres[78] of land (value: ₹ 9.32 crore) in March 2010 to the Developer. The Developer had completed construction of 358 flats and 1,470 flats were under different stages of construction and the Developer had leased out 552 constructed/under construction flats by 23 December 2011. Thereafter there was no progress of work.

We observed the following financial irregularities:

- The Board of Directors (BoD) accorded (September 2005) the approval for selection of Developer based on terms and conditions in the document of Expression of Interest *i.e.* RFP. The BoD also authorised the Vice-Chairman and Managing Director (VC&MD) to take all administrative and financial actions to implement the decision of the BoD. During the course of execution of the project, the Developer requested the Company (9 March 2010) to provide Counter Guarantee (CG) to Vijaya Bank for loan of ₹ 105 crore. However, as per terms of agreement, the Developer was responsible for arranging the funds for the project and there was no provision in the agreement for providing such CG. The then VC&MD accepted (March 2010) the request and acceptance was conveyed to the bank on the same day without the approval of the BoD. The Company executed a fresh agreement on 24 July 2010 incorporating provisions for CG to the Financial Institutions/Banks for loans as raised by the Developer. Thus, the decision of then VC&MD to provide CG without approval of BoD and in violation of terms of RFP and thus irregular.

The Developer availed the loan of ₹ 105 crore for the project on the basis of CG provided by the Company. However, the Developer defaulted in payment of the loan. In turn, Vijaya Bank invoked (February 2012) the CG and exercised its general lien on the Company's Term Deposits of ₹ 117 crore lying with the Bank. The Bank also took over possession (April 2012) of both the lands (31 acres *plus* 11.64 acres). The total outstanding liability of the Developer to the Bank as of March 2013 was ₹ 140.04 crore (including interest).

- As per terms of agreement, the Developer was liable to furnish Bank Guarantee (BG) of ₹ 13.39 crore towards due performance of his obligations and BG was to be continued to be effective till full and final payment of development fees. Though, the Developer did not pay the last installment of ₹ 4.46 crore in respect of 31 acres of land and ₹ 2.62 crore in respect of additional land of 11.64 acre, BGs were returned (May 2008) by the Company on the plea that outstanding development fee would be adjusted against the cost of LIG houses payable to the Developer. Thus, decision of the Company to return the BG was in violation of the agreement. As a result, development fee of ₹ 9.92 crore (including interest of ₹ 2.84 crore) remained to be recovered (August 2013) for which no security was available with the Company.

[78]To cover the deficit in construction potential due to reduction in height of buildings by Airport Authority of India.

As seen from the above, the Developer was extended various undue favours by the then VC&MD and the Company was to recover total dues of ₹ 126.92[79] crore from the Developer (May 2013) for which no security was available.

The Company issued (14 May 2012) notice for termination of the agreement and it was terminated on 16 July 2012. The Developer challenged the termination in the High Court (HC) which directed (May 2013) to take recourse to Dispute Resolution Mechanism provided in the agreement. As per the clause 19 of the agreement, the sole arbitrator for dispute resolution was the then VC&MD himself. Considering the objection of present management for his appointment as an arbitrator, the then VC&MD recused himself from the arbitration proceedings. The HC appointed (July 2013) a retired Judge of Supreme Court (SC) as an arbitrator. The arbitrator passed (November 2013) an order rejecting the plea of the Developer for the stay on termination of the agreement which was also upheld (November 2013) by the HC. The Developer has since filed a petition in the SC challenging the order of the HC (December 2013).

The BoD constituted (January 2014) a committee consisting of Additional Chief Secretary, General Administration Department (Civil Aviation), GoM, Managing Director, SICOM Limited and VC&MD of the Company for negotiations with Bank for settling outstanding liabilities and taking possession of the property and suggesting steps for completion of the project.

The Management stated (July 2013) that VC&MD was authorised to take all administrative and financial actions to implement the decision of the BoD of September 2005. It was further stated that the decision of BoD was comprehensive and it was perhaps the opinion of the administration of that time that separate approval of BoD for CG was not necessary. The reply is not correct as the decision of the BoD authorising VC&MD to take all decisions was only within the ambit of RFP and the decision of the then VC&MD to provide CG without approval of BoD was irregular. Further, the appointment of the then VC&MD, who was a signatory to the agreement, as Arbitrator did not appear to be in order as he was also a functionary of the Company.

As a result of the above, the Company could not vacate the lien held by the bank on its term deposits of ₹ 117 crore. Possession of land admeasuring 42.64 acres mortgaged to the bank by the Developer is also to be resumed after clearing the liabilities of ₹ 140.04 crore of the bank. Besides, development fee of ₹ 9.92 crore could not be recovered from the Developer.

Social infrastructure and tenements for PAPs

4.1.2 The contract for construction of social infrastructure and 680 tenements to be allotted to PAPs was awarded (July 2008) to the Developer. The estimated cost of the project was ₹ 73.17 crore and the project was to be implemented on the land provided by the Company. The project was to be

[79] Fixed deposit ₹ 117 crore + Outstanding development fee ₹ 9.92 crore.

completed within 12 months from the effective date (23 February 2009). As per terms of tender, the consideration was in the form of compensatory land (45 acres) to be allotted to the Developer in the area of MIHAN. The compensatory land was to be handed over to the Developer after rehabilitation of 90 *per cent* of total PAPs. In this connection, we observed the following:

- As per tender condition, the Developer was eligible for advance up to ₹ 20 crore with interest at 12 *per cent* per annum against BG equal to 1.12 times the amount of advance. The BoD increased (September 2010) the limit of advance from ₹ 20 crore up to ₹ 35 crore to enable timely completion of the project. The Company, however, did not obtain BG against the advances of ₹ 32.13 crore paid from time to time. Out of total advances, an amount of ₹ 20.86 crore (Advance: ₹ 15.75 crore, Interest: ₹ 3.14 crore and Project Management Consultancy Fee paid on behalf of Developer: ₹ 1.97 crore) was yet to be recovered (May 2013).

- The Company handed over (October 2011) compensatory land of 21.45 acre out of 45 acres (value ₹ 34.88 crore as per tender) before rehabilitation of 90 *per cent* of PAPs as stipulated in the agreement.

- The Developer completed the construction of 72.66 *per cent* of the social infrastructure and 94.37 *per cent* of PAP tenements (total value of completed work: ₹ 61.11 crore[80]) by December 2011 and no work progressed thereafter. The Company terminated (April 2013) the agreement and security deposit of ₹ 3 crore was also forfeited. The Company decided (March 2013) that the pending works would be got completed through other agencies. However, the purpose for which the tender was awarded was defeated as PAPs were not rehabilitated.

The Company issued (23 November 2012) notice for termination of the agreement and it was terminated on 2 April 2013.

The Management stated (July 2013) that the limit of advance was enhanced by the Company with approval of BoD and BG was not obtained as the advance was paid in stages. It was further stated that the Developer had invoked arbitration (July 2013) and the matter was subjudice. However, the fact remains that the Company did not safeguard its financial interest by obtaining BG against advance as per agreement.

Allotment of land for Ready Mix Plant

4.1.3 The Company had allotted (May 2006) land admeasuring five acres on lease for 33 years to the Developer for Ready Mix Concrete Plant (RMC). The fly ash generated by Captive Power Plant (CPP) was to be provided free of cost to RMC. However, location of CPP was changed and it was relocated five kilometres away from original location. The Developer then requested (July 2007) to allot six acres of land temporarily for seven years for RMC. The Company allotted (July 2007) six acres of land for seven years on

[80] 83.52 *per cent* of ₹ 73.17 crore.

proportionate upfront payment of lease rent of ₹ 1.49[81] crore. We observed that the Company recovered only ₹ 85.10 lakh.[82] The Company had also not executed an agreement with the Developer for allotment of this land. Thus, failure to recover the lease rent in advance as per the terms of allotment letter resulted in non recovery of ₹ 1.57 crore (including interest of ₹ 93.40 lakh) from the Developer for which no security was available with the Company.

The Management stated (July 2013) that the agreement was not executed as the allotment was temporary. It was further stated that the allotment was cancelled and possession of the land was taken from the developer. However, the fact remained that an amount of ₹ 1.57 crore was yet to be recovered (December 2013).

It could be seen from the above that the Company had extended various undue benefits in above three contracts and total outstanding dues aggregating to ₹ 149.35 crore[83] were recoverable from the Developer.

The matter was reported to the Government (June 2013); their reply had not been received (December 2013).

City and Industrial Development Corporation of Maharashtra Limited

4.2 *Implementation of Navi Mumbai Special Economic Zone*

Introduction

4.2.1 The Government of Maharashtra (GoM) decided (September 2002) to develop Navi Mumbai Special Economic Zone (NMSEZ) on the land (2,140 Hectare (Ha)) acquired by GoM/City and Industrial Development Corporation of Maharashtra Limited (CIDCO) at Dronagiri, Kalamboli and Ulwe in Navi Mumbai. NMSEZ envisaged creation of an exclusive physical enclave specially designed to act as a strong magnet to attract free flow of Foreign Direct Investment, hassle free export, production of goods and services, all culminating into new jobs for a larger number of people. CIDCO was appointed as Nodal Agency for implementation of NMSEZ to be developed through Public Private Participation (PPP). The High Power Committee (HPC) under the Chairmanship of Chief Secretary and Technical Committee under the Chairmanship of Managing Director of the CIDCO was to monitor the progress of NMSEZ.

4.2.2 Audit findings arising out of examination of GoM decisions on NMSEZ, execution of agreements and progress of NMSEZ are discussed below:

---

[81] Quoted rate ₹ 1.17 crore per acre ÷ 33 years x 7 years x 6 acres.

[82] ₹ 42.55 lakh in May 2007 and ₹ 42.55 lakh in October 2010.

[83] ₹ 126.92 crore + ₹ 20.86 crore + ₹ 1.57 crore.

Selection of strategic partner

4.2.3 CIDCO had invited (September 2003) Request for Proposal (RFP) for selection of strategic partner through global competitive bidding for development of NMSEZ on the earmarked area of 2,140 Ha. Out of this area, 50 Ha was to be used for residential purpose. In response, the consortium comprising SKIL Infrastructure Limited (SKIL), Hiranandani Constructions Private Limited (HCPL) and Avinash Bhosale Infrastructure Private Limited (ABIPL) had quoted the highest rate of ₹ 63.75 lakh per Ha for industrial use and ₹ 1 crore per Ha for residential use. SKIL was designated as Lead Consortium Member (LCM). The consortium companies jointly formed Dronagiri Infrastructure Private Limited (DIPL) to deal with NMSEZ. The CIDCO and DIPL in turn formed (2004) a Special Purpose Vehicle (SPV)- Navi Mumbai SEZ Private Limited with a shareholding of 26 and 74 *per cent* respectively. The Development Agreement (DA) and Shareholders Agreement (SA) were entered into in August 2004.

We observed that as per RFP, the prime responsibility of developing the NMSEZ vested with the LCM which was to contribute not less than 26 *per cent* of total equity in SPV. However, this condition was not incorporated in SA. As per the terms of SA, DIPL was allowed to transfer equity shares only after completion of Phase-I development. However, we observed that although development under Phase-I was not completed till date (October 2013), SKIL diluted its shareholding in SPV and its stake had reduced to 25.81 *per cent* as against minimum 26 *per cent* stated in RFP. Presently, the management of SPV was under the control of Reliance Group Investment and Holding Private Limited (RGIHPL).

Under recovery of development cost

4.2.4 As per policy of GoM, Project Affected Persons (PAPs) were eligible to get back developed plots of the area equal to 12.50 *per cent* of the total land acquired from them. The total land acquired by GoM/CIDCO in NMSEZ area was 2,140 Ha approximately out of which 1,842 Ha was handed over to SPV. As per terms of lease deeds (March 2006 to August 2008), SPV was liable to pay development cost to CIDCO at the rate of ₹ 623.46 per square metre of land developed for PAPs.

We observed that the land (1,842 Ha) handed over to SPV was inclusive of Holding Pond Area (HPA) admeasuring 144 Ha. The land under pond was developed by CIDCO as a part of infrastructure. However, while recovering development cost from SPV, the Company assessed PAP area (212 Ha) at the rate of 12.50 *per cent* of 1,698 Ha without considering HPA. PAP area worked out to 230 Ha considering HPA. Failure to consider this resulted in under recovery of ₹ 11.22 crore[84] towards development cost from SPV on short assessment of PAP land.

[84] Land area 18 Ha x 10,000 square metre x ₹ 623.46 per square metre = ₹ 11.22 crore.

Non-sharing of revenue

4.2.5 As per DA, SPV was required to pay proportion of revenue at the rate of 1.50 *per cent* of the Gross Revenue (GR) of NMSEZ to CIDCO for eight years commencing from the date when NMSEZ starts generating revenue; five *per cent* from ninth to 15th year and 7.50 *per cent* from 16th year onwards. GR included total revenue from all sources.

We observed that though project was not yet started (October 2013), the SPV was generating revenue mainly from interest on fixed deposits. The Company had raised (July/October 2008) demand for payment of proportionate revenue generated from interest on fixed deposits. In turn, SPV refused (July/December 2008) to share revenue on the grounds that revenue sharing would start from the date of commercial operation and gross revenue shall include only revenue generated from the commercial activities of the project. The argument of the SPV was not accepted (January 2009) by the Company. However, the Company did not take any action thereafter. The revenue sharing amount payable by SPV for the period from 2005-06 to 2011-12 worked out to ₹ 71.38 crore as detailed in **Annexure-14**.

DA also provided that in case SPV did not pay the revenue share, it shall be liable to pay the dues along with interest at the rate of 1.50 *per cent* per month from the due date of payment. Accordingly, the interest recoverable worked out to ₹ 52.06 crore **(Annexure-14)**. On being pointed out by Audit, the matter was referred to financial consultant in August 2013.

Non-recovery of penalty for delay

4.2.6 As per DA, NMSEZ was to be developed in two phases. Details of land handed over *vis-a-vis* date of achievement of development milestones were as under:

Sl. No.	Node	Area in Ha	Date of lease deed	Effective date	Milestone for development	Revised milestone for development
1.	Dronagiri	450	16 March 2006	27 September 2007	26 September 2010	27 September 2012
2.	Dronagiri	800	30 March 2007	27 September 2007	26 September 2012	27 September 2014
3.	Kalamboli	350	30 March 2007	27 September 2007	26 September 2013	27 September 2015
4.	Ulwe	80	20 August 2007	15 February 2008	14 February 2011	27 September 2013
5.	Ulwe	162	27 August 2008	24 February 2009	23 February 2012	27 September 2014
	Total	**1,842**				

If SPV fails to achieve the development milestones, CIDCO may grant extension to achieve such milestones on payment of damage charges at the rate of 0.25 *per cent* of the Phase-I asset value per week for the first four weeks, 0.50 *per cent* per week for the next four weeks and 0.75 *per cent* for every subsequent week subject to the maximum of seven *per cent*. The SPV stated (January 2010) that the global recession and slow down in economic growth had adversely affected the marketability of the NMSEZ project. The SPV also stated (January 2010) that it was deprived of various fiscal incentives in the absence of Maharashtra SEZ Act, therefore, date for development milestones be linked with date of enactment of the Maharashtra SEZ Act. The proposal for extension of milestones was approved by GoM (July 2010) by accepting the reasons assigned by the SPV. Thus, milestones for developmental activities was revised without recovery of damage charges which worked out to ₹ 103.02 crore. The work related to IT buildings-electrical and plumbing work, sub-station building-painting, slab and beam work for upstream bridge, road work and drain work were in progress (July 2013).

Exit policy

4.2.7 Some of the SEZs notified by Government of India under the Central SEZ Act, 2005, had either been de-notified or withdrawn on account of unfavourable market conditions as well as reduced incentives for SEZ projects. There was possibility of more SEZ projects opting for de-notification. Accordingly, the GoM appointed (July 2012) a Committee under Chairmanship of the Director of Town Planning, Maharashtra State to look into the matter so that Exit Policy (EP) could be introduced. Accordingly, the EP was approved (February 2013) by the State Government which *inter alia* stated that, upon de-notification, SEZs shall be eligible for development as Integrated Industrial Area (IIA). CIDCO was to frame Special Development Control Regulations (DCR) for such IIA with the approval of GoM. CIDCO approached (May 2013) the GoM for approval of Special DCR and decision of GoM was awaited (October 2013).

Monitoring

4.2.8 As per clause 3.1 of DA, SPV should furnish to CIDCO every six months, the implementation plan setting out, *inter alia*, the steps, procedures and process under taken and to be undertaken by the unit for achieving the milestone. However, SPV has not submitted such plan to the CIDCO till date (June 2013).

The matter was reported to the Government/Management (July 2013); their reply had not been received (December 2013).

Maharashtra State Electricity Distribution Company Limited

4.3 *High tension consumers with Extra High Voltage Load*

4.3.1 The supply of electricity by the Maharashtra State Electricity Distribution Company Limited (Company) to consumers are governed by Electricity Supply Code and other Conditions of Supply Regulations, 2005 (Supply Code) and Standards of Performance (SoP) of Distribution Licensees, period for Giving Supply and Determination of Compensation Regulations, 2005 (SoP Regulations) issued by Maharashtra Electricity Regulatory Commission (MERC). The SoP Regulations, intended to ensure overall system stability, reliability of supply and measures for reduction of losses stipulated that the consumers who had Contract Demand (CD) above 5,000

Kilovolt Ampere (KVA) were required to be supplied electricity at Extra High Voltage (EHV) level of 66 KV and above.

4.3.2 While the distribution network for supply of electricity below 66 KV level was to be executed by the Company, the network for supply at EHV level was to be executed by Maharashtra State Electricity Transmission Company Limited (MSETCL). However, neither did the SoP Regulations prescribe nor did the Company evolve a system to refer all such cases to MSETCL for independently exploring and arranging the network for power supply to the EHV consumers. Instead, the Company had been sanctioning and supplying power to High Tension (HT) consumers with CD exceeding 5,000 KVA at Low Voltage Level (LVL) (11/22/33 KV). Of 202 EHV consumers as on March 2013, in 133 cases the power supply was made at EHV level while the remaining 69 consumers were being supplied power at LVL. Scrutiny of records of 59 out of 69 such HT consumers revealed the following deficiencies.

Release of supply at lower voltage without detailed scrutiny

4.3.3 The Company requested (October 2005) MERC for levy of Voltage Surcharge (VS) at the rate of 15 *per cent* of billed energy in terms of units from the consumers who were supplied power at voltage level lower than that prescribed by MERC. The Company further requested to grant interim relief to continue levy of two *per cent* VS till final approval. MERC clarified (March/September 2010) that the electricity supply was to be released at LVL only under exceptional circumstances[85] and that too only as an interim solution. It was also clarified that cost of EHV Sub-station (SS) and the consumer's inability to afford the EHV SS could not be a ground for releasing supply at LVL. MERC admitted that the distribution losses, including transformation losses, would increase on account of supply at LVL. Accordingly, MERC allowed the Company to levy VS at two *per cent* of energy billed till detailed technical study was undertaken. However, no such technical study was undertaken by the Company till date (November 2013), in the absence of which the adequacy of loss recovered at two *per cent* could not be ensured in Audit.

The cause-wise analysis of supply at LVL to 45 HT consumers indicated that the reasons accepted by the Company in 27 cases related to land constraints and Right of Way (RoW) problems, in 10 cases though technically feasible, the consumers were not willing to construct EHV SS at their premises due to huge cost or time constraint and in the remaining eight cases there was no specific reasons assigned for not considering supply at EHV level.

The Management stated (January 2014) that levy of VS at the rate of two *per cent* was being done as per MERC orders. However, the reply was silent as to why technical study was not conducted till date (November 2013) to assess the adequacy of VS at the rate of two *per cent* as ordered by MERC.

---

[85] Space constraints or time required for construction of EHV SS, RoW/clearance problems and non-availability of prescribed voltage level infrastructure.

In this connection, we also observed that:

- The Company sanctioned (August 2008) additional load of 1,000 KVA (total CD 10,000 KVA) to Jailaxmi Casting and Alloys Private Limited (JCAPL), Paithan, District Aurangabad and supply of power was supplied temporarily from 33 KV and JCAPL was to set up an EHV SS in its premises by February 2010. JCAPL has not set up this SS till date (September 2013) and continues power at 10,000 KVA at 33 KV. It was also noticed that estimated cost for setting up an EHV station at consumer's premises worked out to ₹ 4.24 crore whereas the existing temporary arrangement cost ₹ 4.29 lakh only to it.

The Management stated (January 2014) that supply could not be shifted at EHV level due to RoW problems. It was further stated that the proposal to supply power to consumers having CD up to 10,000 KVA at 33 KV level was under consideration of MERC.

- The Company had not called for the detailed records from consumers to compare with norms, if any, for demonstrating the insufficiency of land as constraint as claimed by the consumers. In two cases[86], it was observed that the open space held by them was 2,33,907 and 22,650 square metres respectively as against 10,000 square meters required for setting up of EHV SS. The Company however released power supply at 22/33 KV level to these two consumers accepting land constraints as a reason.

The Management stated (January 2014) that the land available in the first case was earmarked for expansion of activity in future and in another case supply was sanctioned before SoP made applicable by MERC. The reply is incorrect as in the first case the land was available at the time of sanction and in the second case the additional load at EHV level was sanctioned in May 2006 after the SoP regulations came into effect from January 2005. As such the Company should have insisted setting up of EHV SS by the two consumers.

Loss due to non installation of meters

4.3.4 As per MERC order of March/September 2010, dedicated feeder[87] consumers were to be billed for the highest of the consumption recorded by meter installed at consumer's premises or at the SS. MERC also stated that it was to be ensured by the Company that both the meters were of same rating and class of accuracy. In respect of other HT consumers (non-dedicated feeder), MERC allowed levy of VS at two *per cent* of the total consumption. The supply code Regulations provided that unless a consumer opted to procure his own meter, the Company should provide the meter by recovering deposit from consumers towards cost of meter.

We observed that, the Company in violation of MERC orders, had been levying two *per cent* VS from 'dedicated feeder' consumers on the plea that

---

[86] New Bombay Ispat Udyog Private Limited and Sudarshan Chemical India Limited.
[87] Feeder exclusively for single consumer.

they had not installed the meter of same rating and class of accuracy at the SS. Accordingly, the Company recovered VS of ₹ 18.83 crore **(Annexure-15)** from 25 dedicated consumers in eight Circles during April 2010 to January 2013. Subsequently, eight dedicated consumers from three Circle offices, (Aurangabad, Jalna and Nagpur) installed (October 2010/June 2011) the prescribed meters at the SS and thereafter requested refund of VS recovered earlier on the ground that recovery was not as per order of MERC. It is pertinent to note that in response to petition filed by a dedicated feeder consumer, the MERC had ordered (October 2010) refund of VS levied by the Company because the responsibility of metering arrangements vested with the Company. The Company therefore refunded VS of ₹ 5.95 crore **(Annexure-15)** to eight consumers. Despite MERC order, the Company had not taken any step to ensure installation of meters at SS in respect of remaining dedicated consumers so far (September 2013) and lost the opportunity to bill the highest of the consumption recorded by meters installed at SS end or at consumer's premises.

The Management stated (January 2014) that the refund was made as per MERC's but was silent as to why the metering arrangement was not made at its SS.

Non-levy of voltage surcharge

4.3.5 SRJ Petty Steel Private Limited (SRJ PSPL) (CD-10,000 KVA), Jalna and its associate Dhanlaxmi Sponge Iron (CD-950 KVA) had taken separate HT connections from a single feeder. Similarly, Bhagyalaxmi Steel Alloys Private Limited (BSAPL) (CD-9,000 KVA) and its associate Bhagyalaxmi Rolling Mills Private Limited (CD-2,500 KVA) had also taken separate HT connections from a single feeder. Two consumers, namely SRJ PSPL, Jalna and BSAPL, were supplied power at LVL and were paying VS at the rate of two *per cent*. However, the Company decided (November 2010) not to recover VS as a special case based on the consumers' plea that the feeder was to be treated as dedicated as owner of both the connections was the same and refunded VS of ₹ 1.11 crore recovered during April 2010 to May/June 2011.

The Management stated (January 2014) that the above cases were considered on the basis of ownership. The reply is not correct as the MERC order of November 2010 defined dedicated feeder as "one feeder one connection". In the above cases, though the owners were one, but each owner had two separate HT connections. The refund of VS was incorrect.

Deviation in computation of LFI

4.3.6 The tariff for HT consumers determined from time to time mainly comprised of 'Demand Charges (DC)' and 'Energy Charges (EC)'. Consumer were entitled to a rebate of 0.75 *per cent* on the EC for every percentage point increase in load factor from 75 to 85 *per cent* and rebate of one *per cent* for load factor over 85 *per cent* subject to overall ceiling of 15 *per cent*. The total Load Factor Incentive (LFI) shall be limited to 15 *per cent* of EC. The Company recovers DC and pays LFI *vis-a-vis* recovery of penalty for low load factor based on the highest of the demand recorded by either of the meters; at consumers' premises or at SS of the Company. However, in eight[88] cases, the consumers approached (May 2011) the Company with a request to consider the demand recorded by the meters fixed at their premises for LFI on the plea that the demand registered in the meters installed at SS got distorted due to various reasons such as timing differences in recording of demand of two meters and errors due to telephone lines, EHV tower lines, line capacitors *etc*. The Company acceded (July 2011) to their request without prior approval from MERC for such deviation and without checking whether the claim of the consumers were correct or not. As per the information made available in two cases (Bhagwati Ferro Metal Limited and Vaishnav Casting Private Limited), the Company paid LFI of ₹ 3.16[89] crore for the period from July 2012 to February 2013 based on reading of meters installed at consumers' end. Thus, admissibility of LFI could not be ensured due to lack of proper metering arrangement at both the sides.

The Management stated (January 2014) that recorded KVA demand was not required for computation of LFI. The reply is not correct as LFI was not payable in case recorded demand during peak hours exceeded the CD. In the above cases, the recorded demand at the substation end was higher and exceeded the CD during peak hours. The consumers were thus not eligible for LFI.

Deficiency in monitoring the recorded demand

4.3.7 The tariff orders issued from time to time stipulated that the consumers were not entitled to LFI if (i) the actual demand recorded exceeded the CD or (ii) the load factor was less than 75 *per cent* during the billing period. It was further provided that in case any consumer exceeded the CD on more than three occasions in a calendar year, the Company may take action to enhance the CD.

In this connection we observed the following:

- In two cases[90], the Company on request by consumers reduced (November 2010 and October 2011) their existing CD of 9,900 and 9,750 KVA to 9,500 and 9,250 KVA respectively. In the former case, we observed that the maximum demand recorded during the three months prior to the date of reduction ranged from 9,632 to 9,843 KVA, whereas after reduction the demand ranged between 10,653 and 11,556 KVA up to January 2013. In another case, the maximum demand was more than CD of 9,250 KVA during 14 months prior to reduction and ranged between 9,450

---

[88] Jalna Circle: SRJ Pitty Steel Private Limited, Bhagyalaxmi Steel Alloys Private Limited, Om Sairam Steels Alloys Private Limited, Kalika Steel Alloys Private Limited and Meta Rolls Commodities Private Limited; Nasik Circle: Vaishnav Casting Private Limited and Bhagawati Ferro Metal Limited; and Pune Circle: Indrayani Ferrocast Limited.

[89] Bhagwati Ferro Metal Limited: LFI ₹ 2.98 crore + Unbilled demand charges ₹ 0.07 crore = ₹ 3.05 crore & Vaishnav Casting Private Limited: LFI ₹ 0.05 crore + Unbilled demand charges ₹ 0.06 crore = ₹ 0.11 crore.

[90] Shree Vaishnava Casting Private Limited and Meta Rolls & Commodities Private Limited.

and 9,817 KVA after reduction. The reduction was thus not in line with actual demand and had an impact on LFI determined on the basis of the CD irrespective of the actual recorded demand. Thus, the Company extended undue advantage of LFI to the extent of ₹ 6.62 crore by allowing reduction in CD of these two consumers during November 2010 to January 2013.

The Management while accepting the fact stated (January 2014) that the matter will be taken up in the Multi Year Tariff (MYT) petition with MERC. The reply was not convincing as the Company was silent as to why the reduction in load was allowed to consumers.

- In another two cases[91], the actual demand of the consumers connected through a common feeder had exceeded their CD on 20 and 33 occasions during the period from September 2010 to December 2012. The average demand registered by them ranged between 5,237 and 5,330 KVA as against their CD of 4,940 and 4,995 KVA respectively. However, the Company did not taken any action to enhance their CD to meet the actual requirement. Since 5,000 KVA demand was the threshold limit for supply of power at EHV level, the inaction of the Company also led to non-recovery of ₹ 1.07 crore towards VS at the rate of two *per cent*.

The Management stated (January 2014) that the notices were issued to consumers who exceeded the contract demand. However, consumers do not turn up and the Company has a limitation of physical disconnection due to lack of clear provisions in MERC orders. However, fact remained that threshold cases if remained un-regularised had adverse impact on the revenue of the Company.

Thus, by not monitoring the actual demand against the CD, the four consumers were benefited by ₹ 7.69 crore till date (September 2013).

The replies were endorsed by the State Government (January 2014).

4.4 *Avoidable payment of interest on Income Tax*

The Company wrongly computed depreciation while assessing its Income Tax liability resulting in avoidable payment of interest of ₹ 33.58 crore.

Section 43 of the Income Tax Act, 1961 (Act) provides that for Income Tax (IT) purpose the actual cost of an asset acquired shall not include any element of subsidy or grant or reimbursement from the Central Government or a State Government or any authority. Therefore, depreciation on asset net of subsidy/ grant was to be considered for assessing the IT liability.

We observed (February 2013) that the Company while computing income for assessing the IT liability claimed depreciation on the gross value of assets such as Buildings, Plant and Machinery, Furniture *etc.* without deduction of related subsidy/grants received. The IT Department while assessing

[91] Nilesh Steel & Alloys Private Limited and Gajalaxmi Steel Private Limited.

(28 December 2010) the income of the Company for the Assessment Year (AY) 2008-09 objected claiming of depreciation on gross value of assets and disallowed depreciation of ₹ 247.12 crore on the portion of subsidy/grants. The disallowance of excess depreciation had thus resulted in short payment of IT to the extent of ₹ 83.99 crore for AY 2008-09. Thus, the Company accordingly paid (March 2011) IT of ₹ 83.99 crore along with interest of ₹ 33.58 crore at the rate of 12 *per cent* per annum as per Section 234 of the Act.

The Management in its reply accepted (June 2013) that the Company had wrongly claimed higher depreciation which was an unintentional mistake and as a result IT of ₹ 83.99 crore along with interest of ₹ 33.58 crore was paid. The reply was endorsed by the State Government (January 2014).

4.5 *Undue benefits to HT consumers due to change of category*

The Company permitted change of category from continuous to non-continuous supply though applications for change were not submitted within the time prescribed by MERC thereby benefiting HT consumers by ₹ 10.57 crore.

MERC in its tariff order (20 June 2008) stipulated that only High Tension (HT) industries connected on express feeder and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry. HT consumers connected on express feeder were given option to select continuous or non-continuous type of supply. It was further clarified (September 2008) that such consumers may exercise the option, within the first month of issue of the tariff order. In case such choice is not exercised within the specified period, the existing categorisation was to be continued. The tariff for continuous supply was comparatively higher than the tariff for non-continuous supply.

On test check of two Operation and Maintenance Circles,[92] we observed (February 2013) that the Company had permitted (2011-12 and 2012-13) 21 HT consumers, (Jalna: 19 and Nasik Rural: 2) change in the tariff from continuous to non-continuous even though their applications for change were received after expiry of one month from the date of issue of relevant tariff orders by MERC. The delay in submission of application was between 19 and 271 days. Thus, due to non-adherence to orders issued by MERC, these 21 HT consumers were benefited by ₹ 10.57 crore due to change of category (September 2011 to August 2012) till next tariff (31 October 2011/ 16 August 2012) as per **Annexure-16** enclosed. The Recovery Committee[93] while approving the change stated that the effect of tariff for the category applied was to be given immediately after one month from the date of receipt of application. The decision of the Committee was, however, not as per the

[92] Jalna and Nasik Rural Circle.

[93] Comprising of Managing Director, Director (Finance), Director (Operations), Executive Director (Commercial) and Chief Legal Advisor.

order of MERC which clearly stated that option for desired category was to be exercised within one month from the date of tariff order and not within one month from the date of application.

The Management in its reply (October 2013) which was endorsed by the Government stated (October 2013) that due to withdrawal of load shedding many HT consumers requested for change of category from continuous to non-continuous and the same was accepted in order to retain these consumers and seeking option from individual consumers within first month of the tariff order would be impracticable. The reply is not tenable as the Company permitted change of category of the consumers who had not submitted their applications within the time prescribed by MERC thereby benefiting HT consumers who requested for change belatedly.

4.6 *Loss of revenue*

Non-metering for external consumption by malls/multiplexes resulted in loss of potential revenue of ₹ 3.29 crore to the Company during June 2008 to February 2013.

The Company classified its consumers conducting business activity as malls, multiplexes, theatres *etc.* under HT-II Commercial tariff category. However, MERC had prescribed a separate category (*viz:* Low Tension (LT)-VIII) in May 2008 for use of electricity for the purpose of advertisements, hoardings and other conspicuous consumption such as external flood lights, displays, neon signs at departmental stores, malls, multiplexes, theatres, clubs and other such entertainment/leisure establishments. The tariff orders issued by MERC from time to time (May 2008 to August 2012) had prescribed significantly higher rates for LT-VIII category as compared to tariff for HT-II Commercial.

We observed (January 2013) that, there was no mechanism in the Company to install separate meters to measure electricity used by malls and multiplexes for external flood lights, hoardings, neon signs *etc*. The consumption for this purpose was billed as HT-II Commercial instead of LT-VIII category. Test check of records of three Circle[94] offices of the Company covering 40 malls/multiplexes revealed that entire consumption of malls and multiplexes was billed under HT-II Commercial category. The malls and multiplexes of these Circles consumed 41.82 crore units during the period from June 2008 to February 2013. In the absence of separate metering arrangement the consumption for external flood lights, neon signs and displays could not be assessed. However, even on a very conservative basis and considering one *per cent* of the total electricity consumed by malls/multiplexes for external flood lights, displays, neon signs, *etc*., the revenue foregone worked out in audit amounted to ₹ 3.29[95] crore during June 2008 to February 2013.

[94] Pune, Thane and Vashi.

[95] Calculated at differential rate for LT-VIII and HT-II consumers.

The Management in its reply stated (June 2013) that malls/multiplexes were categorised under HT-II Commercial based on pre-dominant use of power supply. However, the reply is not correct as a separate category (LT-VIII) was prescribed by MERC for use of electricity for external flood lights, displays, neon signs *etc.* at malls and multiplexes. The action of the Company violated the provisions of tariff orders of MERC.

The matter was reported to the Government (May 2013); their reply had not been received (December 2013).

4.7 *Undue benefit to HT consumer*

The Company extended undue benefit of ₹ 1.91 crore to a consumer by applying concessional tariff from the date of connection instead of date of registration as IT Park.

As per Information Technology (IT) Policy 2009, the IT Park and Information Technology Enabled Services (ITES) units as defined in the policy were entitled to power supply at industrial rate and exempt from payment of electricity duty. The Company released (July 2010) power supply connection to Flagship Infrastructure Private Limited, Pune (FIPL) for development of private IT Park at Hinjewadi, Pune. The power supply was categorised as HT-II Commercial. The construction of IT Park was completed by FIPL in August 2011 and IT Park was registered with Directorate of Industries, Government of Maharashtra on 26 December 2011.

We observed (January 2013) that Ganeshkhind Urban Circle, Pune granted (March 2012) the benefit of the lower tariff (HT-I Industrial) to FIPL from the date of connection released (July 2010) and refunded ₹ 1.91 crore being the difference between HT-II Commercial and HT-I Industrial tariff during July 2010 to December 2011. Further, it was also seen that the decision for application of revision in bills for a period exceeding six months taken by Superintending Engineer (SE) was not within his delegated power. We also observed that in a similar case of Devi Construction Company Limited, Pune (Consumer No.170149072480) which developed IT Park in Pimpri, Pune, the Company clarified to the consumer that industrial tariff would be applicable from the date of permanent registration as IT Park and not earlier. Thus, the refund of ₹ 1.91 crore by SE, Pune was clearly an undue benefit to FIPL.

The Management in its reply accepted (August 2013) that the consumer (FIPL) was wrongly given refund of ₹ 1.91 crore and the amount was being recovered from the consumer in 10 equal installments from June 2013 to March 2014. The reply was endorsed by the State Government (January 2014). However, the reply did not elaborate about the action taken, if any, against erring official.

4.8 *Non-recovery of arrears of revenue*

The Company did not conduct periodical inspection of HT consumers and had to forego arrears of revenue of ₹ 69.01 lakh for the period beyond two years being time barred.

The Company recovers charges for supply of electricity as per the tariff fixed by MERC. The tariff order stipulates different rates for various categories of consumers. Timely and correct classification of consumers is vital and delay in classification of consumers in appropriate category may adversely affect the revenues of the Company as Section 56(2) of Electricity Act, 2003, restricts recovery of arrears up to maximum period of two years. The Company instructed its field offices from time to time to check all aspects of HT consumers *viz.* sanction of load and accuracy in billing, so as to cover all HT consumers once in a year.

We observed (January and February 2013) that despite laid down instructions, periodical inspection was not conducted by the field offices affecting the revenue of the Company as seen in the following two cases.

Case-1

The Company (Nagpur Rural Circle) had released (June 2008) additional load of 100 KVA to Sunder Industries, Nagpur. The Current Transformer (CTs) of 10/5 *ratio* was replaced by CTs of 15/5 *ratio* and the Multiplying Factor (MF) for assessing consumption of units was required to be changed from two to three. However, during replacement of new meter for facilitating Automatic Meter Reading, the Testing Division, Nagpur noticed (June 2012) after a period of four years that the energy bills were issued considering MF of two instead of three resulting in under billing to the extent of ₹ 53.18 lakh (June 2008 to May 2012). The Company could recover electricity charges of ₹ 32.83 lakh for two years prior to date of detection and remaining amount of ₹ 20.35 lakh pertaining to earlier period (June 2008 to May 2010) could not be recovered as Section 56(2) of Electricity Act, 2003, was applicable.

The Management while accepting the fact stated (October 2013) that the amount of ₹ 32.83 lakh was recovered based on the order of Electricity Ombudsman and the Company had filed the case in the High Court for recovery of remaining amount by challenging assessment made by Electricity Ombudsman**.** The reply of Management is not correct as arrears of revenue beyond two years cannot be recovered under Section 56(2) of Electricity Act, 2003, which restricts recovery of arrears up to maximum period of two years. The Management also stated that departmental enquiry has been initiated against the concerned officials. The reply was endorsed by the State Government (January 2014).

Case-2

Syntel International Private Limited (SIPL), Pune had taken two HT connections at Plot No.B1 and B2 in Talawade Technology Park, Pune with a contract demand of 900 and 2,750 KVA from 16 July 2008 and 15 May 2006 respectively. The consumer was supplied electricity through express feeder and it was to be categorised as HT continuous consumer and higher tariff was applicable. Site verification report (March 2012) by the officials of Ganeshkhind Circle, Pune indicated that the consumer was billed as per tariff for HT-I non-continuous from the date of release of supply instead of tariff for continuous supply. In this case also, the Company could not recover ₹ 48.66 lakh being differential energy charges for the period June 2008 to March 2010 being time barred.

Thus, despite instructions, the field offices failed to conduct periodical inspection of HT consumers and review bills resulting in non-recovery of ₹ 69.01 lakh (₹ 20.35 lakh *plus* ₹ 48.66 lakh).

The matter was reported to the Government/Management (June 2013); their reply had not been received (December 2013).

4.9 *Under billing due to delay in change in category*

The Company belatedly changed the category of consumers resulting in under billing of ₹ 0.27 crore to high tension consumers.

MERC tariff order dated 20 June 2008 introduced a new category (HT-II Commercial) from 01 June 2008 to cater to all Commercial consumers availing supply at HT voltages previously classified under HT-I Industrial category. The tariff for HT Commercial was higher than tariff for HT Industrial. It was therefore essential for Company to identify HT Commercial consumers immediately so that new tariff could be applied from June 2008. Accordingly, the Company issued circular (July 2008) instructing its field offices to review and carefully change the category of its existing HT Industrial consumers and bring those consumers under HT-II Commercial category.

We observed (February 2013) that out of eighteen All India Radio (AIR) Stations which the Company caters to, 11 circles classified AIR Stations under HT-II Commercial category with effect from June 2008 and July 2008 respectively. However, in seven circles,[96] AIR Stations were billed as per HT-I Industrial tariff until their category was changed as HT-II Commercial between April 2009 to September 2009. Thus, there was no uniformity in application of tariff by various circles and period of revenue forgone ranged between 10 to 15 months.

As a result there was under billing of ₹ 1.74 crore[97] in respect of seven HT-II Commercial consumers in seven circles.

[96] Akola, Dhule, Nagpur, Nasik, Osmanabad, Parbhani and Ratnagiri.

[97] Akola ₹ 0.06 crore, Dhule ₹ 0.04 crore, Nagpur ₹ 1.43 crore, Nasik ₹ 0.06 crore, Osmanabad ₹ 0.04 crore, Parbhani ₹ 0.03 crore and Ratnagiri ₹ 0.08 crore.

The Management in its reply accepted (August 2013) the audit contention and recovered ₹ 1.47 crore from AIR Stations at Osmanabad and Nagpur Circles. The reply was endorsed by the State Government (January 2014). However, an amount of ₹ 0.27 crore was yet to be recovered (August 2013).

Haffkine Bio-Pharmaceutical Corporation Limited

4.10 *Loss of revenue due to delay in Certification of Accounts*

The Company lost an opportunity to earn revenue of ₹ 6.43 crore as the tender of the Company for supply of Polio Vaccine was not accepted for want of certification of Annual Accounts.

Haffkine Bio-Pharmaceutical Corporation Limited (Company) participated (August 2010) in the tender floated by Rail India Technical and Economical Services Limited (RITES) for supply of Oral Polio Bivalent Vaccine (bOPV) in vials of 20 doses for 15 lakh vials each in two batches/schedules. The Company had quoted Ex-works basic price of ₹ 119.34 per vial against which actual cost worked out to ₹ 76.45 per vial with a margin (contribution) of ₹ 42.89 per vial.

As per the conditions of the bid documents, the bidders should have an annual turnover of at least ₹ 65.25 crore for supply against one schedule and for supply against two schedules the cumulative turnover should be ₹ 130.50 crore, for the past three fiscal years ended 2009-10. The turnover was required to be supported by audited financial statement of the bidder.

We observed (April 2013) that the audit of annual accounts of the Company was completed up to 2007-08. The Company, therefore, submitted audited annual accounts for 2007-08 and a single page annual turnover statement certified by Chartered Accountants for 2008-09 and 2009-10 showing turnover of ₹ 88.98 crore, ₹ 26.27 crore and ₹ 168.81 crore respectively. The Company was the L1 and RITES, considering the turnover of ₹ 88.98 crore for 2007-08, placed order of ₹ 18.28 crore for only one batch/schedule. However, the order for second batch/schedule was not placed on the plea that turnover was not supported by Audited Financial Accounts (2008-09 and 2009-10) as stipulated in tender condition.

Thus, owing to failure in preparation of annual accounts for 2008-09 and 2009-10 and getting them audited, the Company lost the order for second schedule thereby foregoing anticipated revenue of ₹ 6.43 crore.[98]

The Management stated (November 2013) that the accounts could not be finalised in time due to shortage of professional staff. The reply was not tenable as the accounts of the Companies for every financial year were required to be finalised within six months from the end of the relevant financial year under Section 166 and 210 of the Companies Act, 1956.

[98] Contribution of ₹ 42.89 per vial for 15 lakh vials = ₹ 6.43 crore.

The matter was reported to the Government (July 2013); their reply had not been received (December 2013).

Maharashtra State Power Generation Company Limited

4.11 *Undue benefits to supplier*

The Company incurred infructuous expenditure of ₹ 4.01 crore on procurement of fly ash pumps.

Maharashtra State Power Generation Company Limited (Company) decided (June 2010) to replace 30 year old fly ash pumps and motors in Ash Handling Plant/Booster Pump House at Thermal Power Station (TPS), Bhusawal to avoid frequent repairs and consequent loss of generation. Accordingly, the Company placed order (December 2010) for supply and commissioning of three pumps/motors and other allied electrical/civil works on Lakhavi and Eskay Engineers Private Limited (LEEPL), Navi Mumbai (L1) at a cost of ₹ 4.49 crore.

As per terms of contract, the equipment were guaranteed for 18 months from the date of commissioning or 24 months from the date of supply whichever was earlier. One pump (B1) was commissioned on 7 June 2011 and remaining two pumps (B2 and B3) were commissioned on 27 June 2011. However, the first defect was noticed in pumps B2 and B3 on 2 July 2011 and in pump B1 on 19 July 2011. Due to frequent failures, all pumps were completely removed from service from 13 March 2012 (B2 and B3) and 19 October 2012 (B1) as their total availability since commissioning was between 7.69 and 8.21 *per cent*.

We observed (February 2013) that the Company had collected Security Deposit (SD) of ₹ 3 lakh only from LEEPL instead of ₹ 44.95 lakh, being 10 *per cent* of contract value. As per tender condition, the Supplier who had Permanent Deposit (PD) of ₹ 3 lakh with each TPS of the Company was only eligible for exemption from payment of SD at 10 *per cent* of contract value. LEEPL had no experience of supply to any TPS and had no previous arrangement of PD. Hence, the exemption granted to LEEPL from payment of SD at 10 *per cent* of contract value was irregular. Further, the Company released balance payment of ₹ 21 lakh on 29 July 2011 to LEEPL though the pumps had fully stopped functioning from 19 July 2011 to 8 August 2011 (B1) and from 3 July 2011 to 22 August 2011 (B2 and B3). The Company thus extended undue benefits of ₹ 62.95 lakh[99] to the Supplier. The equipment were still lying unattended (April 2013) and old pumps were brought back into service on withdrawal of new pumps. The entire expenditure of ₹ 4.01 crore (total cost: ₹ 4.49 crore *less* bank guarantee/SD encashment of ₹ 0.48 crore) was thus rendered infructuous.

[99] Amount released after noticing defects ₹ 21 lakh + differential SD ₹ 41.95 lakh.

The Management in its reply (January 2014) which was also endorsed by the State Government (February 2014) stated that the Company has discontinued the practice of accepting PD and matter regarding supply of required material for re-commissioning of pumps is being taken up with the dealer. However, the reply did not elaborate the reasons for releasing balance payment in spite of observing defects. The purpose of procurement of pumps was defeated due to the defects and the Company also did not safeguard its financial interest.

4.12 *Avoidable payment of water charges*

The Company did not assess the requirement of water correctly and paid water charges of ₹ 2.06 crore for undrawn quantity.

The Company entered (March 2007) into an agreement with Water Resources Department (WRD), Government of Maharashtra for supply of 30 Million Cubic Metres (MCM) of water to Thermal Power Stations (TPS) at Koradi for a period of six years. As per the terms of agreement, the Company was to communicate yearly demand (1st November to 31st October) to WRD along with bifurcation of requirement for Industrial and Domestic use.

We observed (March 2013) that total consumption of water at Koradi TPS was 32.62 MCM and 25.48 MCM during 2009-10 (1st November 2009-31st October 2010) and 2010-11 (1st November 2010-31st October 2011) respectively as against sanctioned quota of 30 MCM each for these two years. The reduction in consumption during 2010-11 was on account of closure of four overaged power generating units (4 x 105 MW) on 06 January 2011. However, the Company communicated its requirement to WRD as 30 MCM for 2011-12 but had not reduced the requirement by taking into account the closure of the four units. As such, the actual consumption during 2011-12 was only 18.39 MCM (14.95 MCM for industrial use and 3.44 MCM for domestic use) and the Company had to pay ₹ 2.06 crore towards the cost of water (11.61 MCM) which was not drawn. Had the Company properly assessed the requirement of water, the payment of ₹ 2.06 crore towards water charges could have been avoided.

The Management stated (January 2014) that there were representations by local people/organisations against sudden closure of units thereby making it imperative to maintain status-quo of water consumption. The reply was endorsed by the State Government (January 2014). The reply was not acceptable as the Company bound by the terms of the agreement could increase/decrease its water requirement based on its need. The requirement of water for 2011-12 was wrongly estimated leading to a payment of ₹ 2.06 crore for water not drawn from WRD.

4.13 *Non-recovery of penalty*

The Company extended undue benefit to purchaser by foregoing its right to recover penalty of ₹ 1.57 crore.

The Company invited (February 2012) tender for disposal of discarded power generating Unit No.2 at Thermal Power Station, Paras through e-auction held on 21 March 2012. Siddhi Multi Trade Private Limited, Jaipur (Purchaser), had quoted the highest rate of ₹ 21.52 crore (excluding taxes and duties). The bidder was required to pay 100 *per cent* of purchase value within 30 calendar days from the date of e-auction. In case of delay, penalty at the rate of 0.1 *per cent* of the balance purchase value per day of default was payable. The sale proposal was approved by the Board of Directors (BoD) on 18 April 2012.

We observed (September 2013) that the Company issued sales intimation letter to the Purchaser on 9 May 2012 after 21 days from the date of approval by BoD and sale order was issued on 4 June 2012 after 25 days from sales intimation. The Company allowed 30 days for payment from the date of sale order instead of date of e-auction as stipulated in the terms of auction. The Purchaser paid entire purchase consideration of ₹ 21.52 crore on 7 July 2012 after a lapse of 77 days from the due date for payment (20 April 2012). Thus, due to non-adherence to the time schedule prescribed in the tender the Company had foregone its right to recover penalty which worked out to ₹ 1.57 crore[100] till 6 July 2012.

The Management in its reply (July 2013) which was also endorsed by the State Government (January 2014) stated that the sale amount was to be deposited by the Purchaser within 30 days from the date of sale order and accordingly recovery of ₹ 8.61 lakh would be made. It was further stated that sales order could not be issued in time due to dispute over taxes as the party was from outside State. The reply was not tenable as the tender condition clearly stipulated that 100 *per cent* payment of purchase consideration was to be made within 30 calendar days from e-auction and not from the date of sale order. Hence, allowing 30 days for payment from the date of sale order was not justified and it was also not as per conditions of e-auction.

[100] Penalty at the rate of 0.1 *per cent* per day for 77 days on ₹ 21.52 crore = ₹ 1.66 crore *less* recovery being proposed by the Company ₹ 0.09 crore.

Maharashtra State Road Development Corporation Limited

4.14 *Loss of revenue due to delay in finalisation of tender*

The Company granted extension to existing party at lower rates resulting in loss of revenue of ₹ 46.14 lakh during March 2009 to July 2010.

Maharashtra State Road Development Corporation Limited (Company) awarded (February 2006) a contract to Geet Publicity (Party) for display of advertisements on the kiosk on Electric Poles of four flyovers and on railing of J.J. Flyover for a lease rent of ₹ 1.01 crore per annum. The period of contract of three years expired in February 2009. In order to maximise its revenue, it was expected that the Company would take steps well in advance to invite tenders so that new rates could be effective immediately after expiry of the existing contract. The Company invited tenders in February 2009 for the above work for a period of three years. However, the contract did not materialise as the highest bidder did not respond to his offer. The Company, therefore, re-invited the tender in August 2009 with a validity period of 90 days.

We observed (November 2011) that the Company took 11 months to finalise the tender. The technical and financial bids were opened in September 2009 and October 2009 respectively and the highest offer of ₹ 1.61 crore for the first year with 15 *per cent* increase in subsequent years was received from Pioneer Publicity Corporation Private Limited (PPCPL). As the rates received were comparatively higher than existing one, it was necessary to finalise the contract at the earliest. However, the process for approval of offers by Board of Directors (BoD) itself took six months as the matter was deferred by the BoD in the meeting held on 24 November 2009 and was not included in the agenda of the subsequent Board meeting held on 10 February 2010. The offer was finally approved in April 2010. The Letter of Acceptance was issued to PPCPL on 28 May 2010 and the contract of a total value of ₹ 5.59 crore for a period of three years was made effective from 1 August 2010.

We further observed that the existing Party was given extension at the old rate of ₹ 1.01 crore per annum for the first two months (March-April 2009) and thereafter at ₹ 1.16 crore per annum from May 2009 and ₹ 1.33 crore per annum from March 2010 up to July 2010 though the existing Party had quoted higher rates of ₹ 1.35 crore and ₹ 1.61 crore per annum in February and August 2009. Thus, due to delay in finalisation of tender and granting of extension to Geet Publicity at lower rates, the Company suffered revenue loss of ₹ 46.14 lakh based on lease rent quoted by the same Party and actual rent received during March 2009 to July 2010.

The Management while accepting the delay in finalisation of tender stated (September 2013) that the delay caused in awarding contract was procedural and care would be taken to minimise such delay in future.

The matter was reported to the Government (May 2013); their reply had not been received (December 2013).

General

4.15 Corporate Governance in State Public Sector Companies

Introduction

4.15.1 Corporate Governance (CG) is a system of structuring, operating and controlling an organisation with a view to achieving long term strategic goals to satisfy the stakeholders (shareholders, employees, customers, Government and community) and comply with the legal and regulatory requirements. CG is a way of directing and controlling Companies. It is concerned with the morals, ethics, values, parameters, conduct and behavior of the Company and Management. It is the system by which companies are directed and controlled by the management in the best interest of the shareholders and other stakeholders ensuring greater transparency and better and timely financial reporting. The absence of good governance structures and lack of adherence to the governance principles increases the risk of corruption and misuse of entrusted power by the management in public sector.

The direction of CG initiatives has been dictated mainly by the Companies Act, 1956 and its subsequent amendments as far as Government companies in the State are concerned.

Provisions of Companies Act, 1956 with regard to Corporate Governance

4.15.2 The Companies Act, 1956 does not have any direct provisions regarding CG but different provisions prescribe certain practices that go in building a robust CG structure. Important amendments introduced in the year 2000 to Sections 217 and 292 of the Companies Act, 1956 set the tone for CG in the country. Some such provisions are indicated below:

- Section 217 (2AA) provides for Director's Responsibility Statement as part of the Board's Report indicating that the applicable Accounting Standards have been followed in the preparation of the accounts and reporting material departures there from, that the companies follow their accounting policies consistently and that all the accounting records are maintained as per the requirements of the Act.

- Section 292A provides for the constitution of Audit Committee as a Committee of the Board in every Public Limited company having a paid up capital of not less than ₹ 5 crore. The terms of reference of the Audit Committee include all matters related to financial reporting process, internal control and risk management system of the company, overseeing the audit process and performing other duties and responsibilities as assigned by the Board.

Scope and Methodology of Audit

4.15.3 As on March 2013, there were 87 State Government Public Sector Undertakings (SPSUs) in the State under the audit jurisdiction of the Comptroller and Auditor General of India. These included 61 Working Government companies, 22 Non-working Companies and four Statutory Corporations. There were no listed companies in the State as of March 2013. Audit has selected all 19[101] working Companies (listed in **Annexure-17)** having paid up capital not less than ₹ 10 crore for scrutiny for a period of five years ended March 2013.

The audit findings are detailed below:

Holding of Board meetings

4.15.4 Section 285 of the Companies Act, 1956, provides that the Board of Director (BoD) of a Company shall meet at least once in every three months and at least four such meetings shall be held in a year. The shortfalls in holding Board Meetings (BM) by the following Companies during five years up to 2012-13 was as under:

Sl. No.	Name of the Company	2008-09	2009-10	2010-11	2011-12	2012-13
		(Shortfall in number of BoD meetings)				
1.	Sant Rohidas Leather Industries and Charmakar Development Corporation Limited (SRLICDCL)	-	1	-	-	1
2.	Shivshashi Punarvasan Prakalp Limited (SPPL)	4	4	3	4	3
3.	Maharashtra Film, Stage and Cultural Developmental Corporation Limited (MFSCDCL)	1	-	1	-	-
4.	Maharashtra Small Scale Industries Development Corporation Limited (MSSIDCL)	1	-	1	-	-
5.	Shabari Adivasi Vitta Va Vikas Mahamandal Limited (SAVVVML)	2	-	2	2	1
6.	Maharashtra Tourism Development Corporation Limited (MTDCL)	-	1	1	1	1
7.	Maharashtra Airport Development Company Limited (MADCL)	1	-	-	-	-
8.	Annasaheb Patil Arthik Magas Vikas Mahamandal Limited (APAMVML)	-	-	-	-	3
9.	Maharashtra State Electric Power Trading Company Private Limited (MSEPTCPL)	-	-	-	1	-

Further, we observed that there was a time gap exceeding three to 36 months between BoD meetings. While SPPL conducted a BM after 36 months,[102] SAVVVML and APAMVML conducted a BM after 7 and 11 months respectively.

---

[101] SRLICDCL, MRIMVVVML, MPBCDCL, MSEDCL, MSPGCL, MAAAVML, FDCML, SPPL, MSRDCL, MFSCDCL, MSSIDCL, SAVVVML, MTDCL, MADCL, APAMVML, MSHCL, MIL, MSPCL and MSEPTCPL.

[102] SPPL - BM No.31 and 32 held on 10 September 2007 and 4 October 2010 respectively.

Arrears in finalisation of accounts

4.15.5 The accounts of companies for every financial year are required to be finalised within six months from the end of the relevant financial year as per Sections 166, 210, 230, 619 and 619-B of the Companies Act, 1956.

The position of arrears of accounts as of 30 September 2013 was as under:

Sl. No.	Name of the Company	Year of latest accounts finalised	Extent of arrears (in years)
1.	SRLICDCL	2005-06	7
2.	MPBCDCL	2008-09	4
3.	MAAAVM	2006-07	6
4.	SPPL	2007-08	5
5.	MSRDCL	2010-11	2
6.	MSSIDCL	2009-10	3
7.	SAVVVML	2008-09	4
8.	MTDCL	2009-10	3
9.	APAMVML	2010-11	2

It could be seen from the table above that in the nine working Companies, the annual accounts were in arrears for periods which ranged between two to seven years. It was stated that finalisation of annual accounts was delayed due to lack of staff, absence of computerised accounting *etc*. In the absence of finalisation of accounts, it could not be ensured as to whether the investments and expenditure incurred were properly accounted for and the purpose for which the amount was invested was achieved or not. Further, the financial health of these Companies could not be correlated.

Annual General Meeting (AGM)

4.15.6 Section 166 read with Section 210 of the Companies Act, 1956 provides that the AGM is to be held at the earliest of the following:

- 15 months from the date of last AGM;
- The last day of the calendar year; and
- Six months from the closing of the financial year.

The earliest of the above happens to be six months from the closing of the financial year. Audit observed that 10 Companies[103] held the AGMs belatedly, *i.e.*, beyond six months from the date of closure of financial years during 2008-13 and the delay ranged between two[104] to 42 months[105] as under:

Sl.No.	Period of delay	Name of Companies
1.	Delay up to one year	SRLICDCL, MPBCDCL, MSSIDCL, MSHCL, MIL and MSEPTCPL
2.	Delay from one to three years	SPPL, MTDCL and APAMVML
3.	Delay above three years	SAVVVMML

[103] SRLICDCL, MPBCDCL, SPPL, MSSIDCL, SAVVVML, MTDCL, APAMVML, MSHCL, MIL and MSEPTCPL.

[104] MIL.

[105] SAVVVML.

Delay in finalisation of accounts results in delay in holding of AGM and adoption of financial accounts.

Directors' responsibility statement [Section 217 (2AA)]

4.15.7 With a view to increase the accountability of Directors, a Company is required to include a Directors' Responsibility Statement (DRS) in the Report of the BoDs which should affirm that:

- Annual accounts have been prepared in accordance with applicable Accounting Standards (AS);
- Annual accounts are prepared on a "going concern basis;"
- Selection and application of Accounting Policies is consistent and prudent so as to exhibit a true and fair view of the state of affairs of the Company; and
- Proper and sufficient care has been taken for maintenance of adequate accounting records, safeguarding the assets and for preventing and detecting frauds and irregularities.

It was observed that three (MPBCDCL, MRIMVVVML and MAAAVM) out of 19 working Companies test checked did not include a DRS in the Report of the BoDs. Though, 16 Companies have given DRS stating that annual accounts have been prepared in accordance with applicable AS, however eight[106] companies have not followed the AS on various aspects.

Formation of Audit Committee

4.15.8 Section 292A of the Companies Act, 1956 requires every Public Limited Company having paid up capital of not less than ₹ 5 crore to constitute an Audit Committee at the Board level which should have discussions with the auditors periodically about internal control systems, review the half-yearly and annual financial statements before its submission to the Board and ensure compliance of internal control systems.

It was observed that only nine[107] out of 19 working Companies had formed Audit Committee as good governance practice. Further, SPPL conducted only two, while MSRDCL, SAVVVML and MADCL conducted four Audit Committee meetings each during the period of five years ending March 2013.

Non-filing of notice with RoC for increase in ASC

4.15.9 As per Section 97 of the Companies Act, 1956, the Company shall file notice (Form 5) of increase of Share Capital (SC) with Registrar of Companies (RoC) within 30 days of increase in Authorised Share Capital (ASC). ASC of

[106] SRLICDCL, MSRDCL, MFSCDCL, MTDCL, MADCL, APAMVML, MSHCL and MIL.
[107] MSEDCL, MSPGCL, SPPL, MSRDCL, MSSIDCL, SAVVVML, MADCL, MSHCL and MIL.

the following Companies was increased at different times. However delays were observed in filling notice (Form 5) with RoC as under.

Sl. No.	Name of the Company	Date of increase in ASC	Increased ASC (₹ in crore)	New ASC (₹ in crore)	Date of filing of notice with RoC	Delay in filing of notice with RoC up to March 2013 (In months)
1.	SRLICDCL	08.05.2009	23.21	73.21	Not filed so far (March 2013)	46
2.	MPBCDCL	01.09.2012	300.00	500.00	Not filed so far (March 2013)	07
3.	MRIMVVVML	21.11.2012	200.00	250.00	08 April 2013	04
4.	MSEDCL	31.12.2008	5,000.00	7,500.00	12 July 2009	06
5.	MAAAVML	01.01.2009	50.00	100.00	Not filed so far (March 2013)	51
		17.11.2009	70.00	170.00	Not filed so far (March 2013)	40
		21.06.2011	80.00	250.00	Not filed so far (March 2013)	21

Thus, it could be seen that there were delays ranging from four to 51 months in filing notice with RoC despite Companies raising their ASC.

Vacancy position of Managing Directors

4.15.10 Out of 19 working Companies, seven[108] Companies did not have whole time Managing Directors (MD) to look after the day to day affairs. During this period, the MD's charge was held by other Officials of the Company or officials from administrative department of State Government as an additional charge. It is observed that five[109] out of seven Companies which did not have whole time MD had arrears in accounts.

Sl. No.	Name of Company	Vacancy position of full time MD
1.	Sant Rohidas Leather Industries and Charmakar Development Corporation Limited (SRLICDCL)	June 2008 to June 2012
2.	Shivshashi Punarvasan Prakalp Limited (SPPL)	April 2008 to March 2013
3.	Shabari Adivasi Vitta Va Vikas Mahamandal Limited (SAVVVML)	April 2008 to March 2013
4.	Maharashtra Tourism Development Corporation Limited (MTDCL)	April 2008 to August 2010
5.	Annasaheb Patil Arthik Magas Vikas Mahamandal Limited (APAMVML)	October 2010 to March 2013
6.	Maharashtra State Powerlooms Corporation Limited (MSPCL)	April 2008 to March 2013
7.	Maharashtra State Electric Power Trading Company Private Limited (MSEPTCPL)	April 2008 to March 2013

As of March 2013, five Companies at Sl. No.2, 3, 5, 6 and 7 above did not have whole time MD.

[108] SRLICDCL, SPPL, SAVVVML, MTDCL, APAMVML, MSPCL and MSEPTCPL.
[109] SRLICDCL, SPPL, SAVVVML, MTDCL and APAMVML.

Appointment of Company Secretary

4.15.11 According to Section 383A of the Companies Act, 1956, the Companies having paid up capital of ₹ 5 crore and above shall have a whole time Company Secretary (CS). We observed that there were 13[110] out of 19 working Companies, which did not have whole time CS during 2008-09 to 2012-13.

Internal Audit

4.15.12 Internal Audit (IA) has been recognised as an aid to the top management for monitoring the financial performance and effectiveness of various programs, schemes and activities. IA also provides reasonable assurance that the operations are carried out effectively, efficiently, economically and the applicable laws and regulations are complied with to achieve organisational objectives.

However, we observed that four[111] working Companies did not have a separate IA wing to ensure reasonable assurance that the operations were carried out effectively, efficiently, economically and applicable laws and regulations are complied with to achieve organisational objectives.

- In view of the foregoing, the Companies should strengthen their CG mechanism by complying various provisions of the Companies Act.
- Administrative Ministries of the Companies may also monitor the compliance of provisions of the Companies Act, 1956.

The matter was reported to the Management (July 2013); and replies of twelve[112] Companies have been received (December 2013). The Finance Department of the GoM stated (January 2014) that they have instructed the all the concerned Departments to look into the matter regarding compliance of Companies Act, 1956.

Follow-up action on Audit Reports

4.16 *Explanatory Notes outstanding*

4.16.1 Audit Reports of the Comptroller and Auditor General of India represent culmination of the process of scrutiny, starting with initial inspection of accounts and records maintained in the various offices and departments of Government. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Finance Department of the State Government issues instructions every year to all administrative departments to submit explanatory notes to paragraphs and performance audits included in the Audit

[110] SRLICDCL, MRIMVVVML, MPBCDCL, MSEDCL, MAAAVML, SPPL, MFSCDCL, SAVVVML, MTDCL, APAMVML, MSHCL, MSPCL and MSEPTCPL.

[111] MRIMVVVML, SAVVVMML, MSPCL and MSEPTCPL.

[112] MPBCDCL, MSEDCL, MSPGCL, FDCM, SPPL, MSRDCL, MFSCDCL, MSSIDCL, SAVVVML, MSHCL, MSPCL and MSEPTCPL.

Reports within a period of three months of their presentation to the Legislature, in the prescribed format, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

Details of Audit Report wise paragraphs/performance audits for which replies were awaited as on 30 September 2013 were as under:

Audit Report	Date of placement of Audit Report to the State Legislature	Number of			Replies awaited		
		Performance audits	Paras	Total	Performance audits	Paras	Total
2005-06	17 April 2007	3	19	**22**	1	--	**1**
2006-07	30 December 2008	6	28	**34**	--	--	**--**
2007-08	23 December 2009	3	21	**24**	--	--	**--**
2008-09	23 April 2010	2	21	**23**	--	2	**2**
2009-10	21 April 2011	2	21	**23**	1	6	**7**
2010-11	17 April 2012	2	20	**22**	--	14	**14**
2011-12	18 April 2013	2	21	**23**	1	13	**14**
Total		**20**	**151**	**171**	**3**	**35**	**38**

From the above it could be seen that out of 171 paragraphs/performance audits, replies to 38 paragraphs/performance audits pertaining to the Audit Report for the year 2005-06 to 2011-12 were awaited (September 2013).

Compliance to Reports of the Committee on Public Undertakings outstanding

4.16.2 Action Taken Notes (ATNs) to 126 recommendations contained in 16 Reports of the COPU presented to the State Legislature between April 1996 and September 2013 had not been received up to September 2013 as indicated below:

Year of COPU Report	Total no. of Reports involved	No. of recommendations where ATNs were not received
1996-97	1	6
1997-98	1	13
2005-06	1	5
2007-08	2	16
2008-09	1	7
2010-11	7	34
2012-13	3	45
Total	**16**	**126**

Response to inspection reports, draft paragraphs and performance audits

4.16.3 Audit observations not settled on the spot are communicated to the heads of PSUs and the concerned administrative 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 four weeks. Inspection Reports issued up to 31 March 2013 pertaining to 69 PSUs disclosed that 1,690 paragraphs relating to 392 Inspection Reports remained outstanding at the end of September 2013. The department-wise break-up of Inspection Reports and Audit observations outstanding as on 30 September 2013 is given in **Annexure-18**.

Similarly, draft paragraphs and performance audits on the working of PSUs are forwarded to the Additional Chief Secretary/Principal Secretary/Secretary of the administrative department concerned seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was, however, observed that out of 15 draft paragraphs and three draft performance audit reports forwarded to various departments between January to September 2013 and included in the Audit Report (PSUs), six draft paragraphs and two draft performance audit reports as detailed in **Annexure-19**, were not replied to by the State Government (February 2014).

It is recommended that Government take early action to respond to all Audit observations and to recover losses/excess payments.

MUMBAI **(PUNAM PANDEY)**
The 4 APR 2014 **Principal Accountant General (Audit)-III, Maharashtra**

Countersigned

NEW DELHI **(SHASHI KANT SHARMA)**
The 7 APR 2014 **Comptroller and Auditor General of India**