Chapter III

3. Transaction Audit Observations

Important audit findings emerging from test check of transactions made by the State Government Companies are included in this Chapter.

Government Companies

The Odisha Mining Corporation Limited

3.1 Irregular formation of Joint Venture Company

Irregularities in selection of partner/formation of Joint Venture by the Company violating the Coal Mines (Nationalisation) Act, 1973 and coal block allocation orders.

In order to diversify its activities in coal mining, the Company obtained (July 2001) allocation of Utkal-D coal block in Talcher Coalfields from the Ministry of Coal (MoC), Government of India (GoI). The allocation of the block was initially for supply of coal to Odisha Power Generation Corporation Limited (OPGC) only. Since coal mining business was a fairly capital intensive business and required specialised expertise, the Company decided (22 December 2001) to develop the coal block through Joint Venture (JV) by offering 51 *per cent* equity to a Private Promoter and to retain equity of 49 *per cent*, maximum of which is to be obtained as free equity from the Private Promoter.

Accordingly, the Company invited (January 2002) Expression of Interest (EoI) for Joint Venture. Out of 21 bids received, three[59] were shortlisted. Two part tender documents were sent (May 2002) to the shortlisted bidders for submission of technical and financial/commercial bids. On evaluation of the bids, the Company selected Sainik Transporters Private Limited, later changed to Sainik Mining and Allied Services Limited (SMASL) as the preferred bidder for the JV partner.

The BoD subsequently decided (5 September 2002) to restrict its equity to 26 *per cent* only for reasons not on record and issued (25 September 2002) Letter of Intent to SMASL. The Company envisaged a net revenue earning of ₹ 840.52 core inclusive of facilitation fee of ₹ 626 crore upto a period of 20 years with a production of two million tons *per annum.*

[59] Sainik Transporters Private Limited (STPL), Eastern Minerals and Trading Agency (EMTA) and Tata Steel

Subsequently, on the request of GoO/Company (August/September 2003) for reallocation of the coal block under the revised Coal Mining Policy, the MoC conveyed (19 December 2003) its 'in principle' consent for operation of the coal block by GoO through the Company. The conditions of the reallocation by MoC *inter alia* included that the Company would supply coal from the mines to the consumers in the market as against the original stipulation of supply to OPGC only and do coal mining in accordance with the provisions of Coal Mines (Nationalisation) Act, 1973 and other related laws and regulations.

The Company executed (29 December 2003) a JV Agreement with SMASL for a period of 20 years. The agreement *inter alia* provided that the JV Company will incur all capital and revenue expenditure and make payment of facilitation fee at the agreed rate to the Company on the sale of coal. As per the agreement, a JV Company named Kalinga Coal Mining Pvt. Ltd. (KCMPL) was incorporated (30 January 2004) with 26 *per cent* and 74 *per cent* equities held by the Company and SMASL respectively. The Company extended the agreement conditionally from time to time upto 31 July 2013 as the conditions precedent to make the agreement effective could not be complied with by the stipulated period of three years i.e., by 29 December 2006.

In the process of examination of diversion of forest land for the coal block, the Central Empowered Committee (CEC) raised (August 2007) the issue of the legality, validity and public interest related to the JV. Further, two Hon'ble MPs of Lok Sabha also made representations (August 2007) regarding violation of guideline for allocation of coal block and sought termination of the allocation by the MoC. Despite these representations being referred (October 2007) by the MoC through GoO, the Company merely proposed (November 2007) amendments to JV agreement by which the Company would have effective control on the activities of the JV Company by assigning powers to the Managing Director of the Company who would be the Chairman of the JV Company. In response to the representations of the MPs , the MoC instructed (1 April 2009) the Company to suitably modify the Memorandum of Association (MoA) and Articles of Association (AoA) of the JV Company to make the same compliant to the conditions of allocation. The same was not complied with.

In the meanwhile, GoO also sought (July 2008) the views of MoC on whether coal mining by a JV Company of OMC and SMASL would be in violation of the provisions of Coal Mines (Nationalization) Act or not, and whether modification of the JV agreement by raising the OMC share from 26 *per cent* to 51 *per cent* would be a legal cure to avoid violation of the terms of allotment. The MoC issued a Show Cause Notice (3 September 2009) for delay in implementation of the project in response to which the Company cited (17 September 2009) various reasons including non receipt of clarification from MoC regarding shareholding pattern of the JV Company. MoC, however, subsequently intimated (9 July 2010) the Company to suitably modify the MoA and AoA of the JV Company so as to raise the allocatee Company's shareholding in the JV Company to not less than 51 *per cent* in order to make the JV Company, a Government Company.

On the basis of the report of the Board Committee set up to examine the issue of violation, letter of MoC and opinion of the legal counsel, Board recommended (18 September 2010) to:

- carry out the suggestions of the GoI;
- move an application before Hon'ble Supreme Court for an appropriate order to carry out coal mining after compliance of observation of CEC;
- ensure that no undue gain accrued to SMASL; and
- negotiate with SMASL.

After nearly 17 months, the Chairman on perusal of the Board decision, advised (25 February 2012) to analyse the coal project holistically from inception duly indicating lacunae pointed out by various Committees. The CMD of the Company, only as late as on 21 September 2012, in view of other developments on matter of allocation of coal block sought the advice of the State Government. GoO advised (26 September 2012) the Company to terminate the JV agreement in the larger public interest and take up coal mining on its own in terms of allotment order of MoC order dated 19 September 2003. The Company accordingly cancelled (27 September 2012) the JV agreement with SMASL.

In this connection, the following observations are made:

- In the EOI the Company invited offers for development of Utkal-D coal block for supply of coal to OPGC for power generation. However, the tender documents supplied to three short listed parties contained provision for supply of coal to OPGC/any other end users, as may be approved by the Competent Authority under a long term coal supply agreement, which should be drawn between two Companies. There was thus material change in the scope of tender mid-way through the tender process without appropriate approval for reasons not on record. Further, one out of the three Directors who finalised the bid documents, however, was an advisor to a Company, the Directors of which were also the Directors of one of the shortlisted companies.
- The JV partner, SMASL, submitted its price bid in 2002 when the coal of this block was mandated to be sold to OPGC on long-term basis which was later on changed for open market sale. The tender documents also called for a specific price bid and the bidders had submitted such price bids indicating profit margin and return on equity. Due to the changed nature of allotment of coal block in 2003, commercial aspects of the project underwent change leading thereby to extension of undue favour to SMASL in the form of additional financial benefit.

- The Company while inviting EoI for developing the coal block through JV invited agencies having substantial experience in eco-friendly coal mining, financial sound credentials and capability to bring the necessary capital for the project with previous experience in setting up and operating a washery. The parameters considered for evaluating the bidders for their shortlisting were too general. The certificate of experience subsequently obtained from MCL indicated that SMASL had more experience as a transporter than a coal mining operator. Further, basic information including the Geological data required for evaluation of the project was not available with the Company. It is pertinent to mention here that on grounds of inadequate information and data on the proposed coal block, Tata Steel, one of the three short listed bidders backed out from submitting the bid.
- The JV agreement signed by the Company with SMASL to undertake coal mining was in violation of the Coal Mines (Nationalisation) Act, 1973 as well as the coal block allocation orders since SMASL had a stake of 74 *per cent* in equity of KCMPL with entitlement to manage and control KCMPL and thereby did not fulfil the conditions that the coal mining was to be undertaken by the Government or a Government Company/Corporation.
- There was no attempt to terminate the contract although two MPs had made representations (August 2007) wherein it was brought to the notice that conditions for allocation of coal blocks were being violated. Only due to the other developments, the Company was forced to terminate the Joint Venture.

Although OMC was allocated with the coal block for mining as a Public Sector Undertaking, it roped in a private JV partner with a majority share and continued negotiating with them and finally entered into an agreement without adhering to the provisions of the Act. This was objected to by the GoI. The Company continued seeking clarification without terminating the agreement at the first instance showing undue favour to the JV partner. Further even after a lapse of ten years, no output could be achieved whereby the purpose of allocating a coal block to a PSU to augment coal supply to another PSU was defeated.

The above irregularities in the formation of Joint Venture Company violating the Coal Mines (Nationalisation) Act, 1973 and coal block allocation orders coupled with irregularities in selection of Joint Venture Partner was reported to the Management/Government (October 2012); their replies are awaited (December 2012).

3.2 Loss due to non-segregation of grades of iron ore fines

Sale of iron ore fines without segregation of the grades resulted in a short realisation of sales price by ₹ 36.25 crore

Iron ore lumps/fines are classified into different grades based on the percentage of Fe content in the lump/fines. The Company produces two grades of iron ore i.e. 60-62 *per cent* Fe (lower grade) and 62-64 *per cent* (higher grade) at its iron ore mines. The Indian Bureau of Mines (IBM) publishes the monthly average sales price for the State for different grades of iron ore fines. For sale of both the grades the Company, however, invites Price Setting Tenders (PSTs) quarterly considering 62 and 64 *per cent* Fe as the basis for billing in respect of the lower and higher grades respectively. In case of Daitary Iron Ore Mine (DIOM), the Company invited PSTs considering both the grades under one category with the basis of billing at 62 *per cent* Fe. As such the sale of higher grade iron ore of DIOM are sold at a prorata price of lower grade with the basis of 62 *per cent* Fe, instead of 64*per cent* Fe.

We observed that the sales price obtained for the other region of the Company for higher grade was ₹ 2,955 to ₹ 2,885 which was at higher side by ₹ 150 to ₹ 774 per MT as compared to the price of ₹ 2,805 to ₹ 2,111 obtained for the lower grade. Even, the price for higher grade with 64 *per cent* Fe basis as published by IBM was higher by ₹ 262 to ₹ 1,344 per MT compared to the lower grade with 62 *per cent* Fe basis. Despite a marked difference between the sale price of higher and lower grades fixation of price on pro-rata basis by considering the Fe content at 62 *per cent* by DIOM for the higher grade was not in order. This resulted in short realisation of ₹ 36.25 crore by DIOM in the sale of 4.93 lakh MT of higher grade fines during 2011-12 as compared with the IBM price.

Thus, sale of iron ore fines without segregation of the grades as well as adoption of price of 62 *per cent* Fe basis, resulted in a short realisation of sales price by ₹ 36.25 crore.

The Management stated (October 2012) that the comparison of sales price with IBM average price is not proper and most of the iron ore fines of higher grade are being supplied to NINL, a Government of India Company. It also added that though tender was called for during August to October 2012 for separate grade of fines, the rates obtained was the same for both the grades. The Government endorsed (November 2012) the views of the Management.

The reply is not acceptable since the Company was required to segregate the grades with different basis of Fe content so as to safeguard its financial interest. Further, though the Company invited tender for both the grades of fines, the basis of both the grades were kept at 62 *per cent* Fe instead of segregating the basis as 62 and 64 *per cent* Fe separately.

Hence, it is recommended that the Company should adopt a suitable mechanism for sale of different grades of iron ore fines to safeguard the interest of the Company.

3.3 Non-adherence to statutory requirements

Inaction of the Company in adhering to the statutory requirements resulted in degradation of environment coupled with a loss of stock of ₹ 34.45 crore.

The Company has been carrying out mining operations at its Kurmitar and Gandhamardan iron ore mines over lease areas of 1,212.470 and 1,590.867 hectares respectively. As per Rule 13 (1) and (2) of Mineral Conservation and Development Rules (MCDR), 1988, mining operation should be carried out in accordance with the approved mining plans. The mining plan, and the stipulations of the Ministry of Environment and Forest and Odisha State Pollution Control Board emphasised construction of retaining wall, garland drains and settling tanks of appropriate size to arrest sliding down of excavated material due to rain water.

Scrutiny of records of the Company revealed that during the period from 2007 to 2011, Indian Bureau of Mines (IBM) authorities issued several violation/ show-cause notices pointing out the violation of the provisions of MCDR, 1988, like non-construction of retaining wall/garland drain etc., and advised the Company to take protective measures. The Company also assured to undertake the same in compliance to the notices from time to time.

During July/ September 2011, due to heavy rain, iron ore of 2.49 lakh MT[60] valued at ₹ 34.45 crore at both the mines were washed out from the yards of both the mines to different inaccessible places like nalas, drains, ponds and were lying inside forest growth, and had slid down the hills etc. The Company officials subsequently observed (December 2011) that due to inadequate/non-existence of protective measures, iron ore/fines were washed off by surface run off.

Washed out ore at Kurmitar

Washed out ore at Gandhamardan

Thus, inaction of the Company to adhere to the statutory requirements and directives of different authorities resulted in degradation of environment with

[60]Fines: 0.79 MT and Sub-grade ore: 1.70 MT

a consequential loss of stock of ₹ 34.45 crore and would also attract penal provisions for violation of MCDR, 1988.

The Management in reply stated (October 2012) that it had initiated action to strengthen the protective measures as well as to recover the washed out materials with a view to minimise the loss. As the fines were washed out to inaccessible areas, the recovery may not be feasible. The Government endorsed (November 2012) the views of the Management.

It is recommended that the Company should comply with the provisions of MCDR, 1988 and directives of statutory authorities to protect the environment and its financial interest as well.

3.4 Loss of revenue

Loss of revenue of ₹ 14.75 crore from the sale of chrome concentrate in the domestic market

The Company produces friable chrome ore and beneficiates the sub-grade/low grade chrome ore at its Chrome Ore Beneficiation Plant at South Kaliapani Mines to produce chrome concentrate. Friable chrome ore was sold in the international as well as in the domestic market. Chrome concentrate was disposed off in the international market only. Export sale of chrome ore/concentrate is through MMTC at the price decided in the chrome ore producers' meeting held periodically. Domestic sale, however, was effected through the Price Setting Tender[61] (PST) called for in each quarter.

Keeping in view the piling of stock due to recession in international market of chrome concentrate, the Board of Directors (BoD) decided (June 2009) to sell it in domestic market. As per the decision of BoD, the Company determined the domestic sale price for a particular grade of chrome concentrate by deducting the differential export price of chrome ore and chrome concentrate from the domestic price of same grade of chrome ore.

We observed that the fixation of price for the domestic sale of chrome concentrate was not done in accordance with BoD decision as detailed below:

- The sale price of chrome concentrate during the quarter ending March 2010 was fixed (December 2009) considering the then prevailing MMTC price. Though MMTC revised the export price on 19 January 2010, the same was not considered while selling (March 2010) 28,206 MT of concentrate resulting in loss of revenue to the extent of ₹ 0.21 crore.

- For the quarter ending March 2011 the Company decided (December 2010) to roll over the price of October-December 2010 to the January–March 2011 quarter though the domestic sale price of chrome ore was

[61] PST is the mechanism through which the quarterly rates for domestic sale of iron, chrome and manganese ore are decided.

revised upward. This had resulted in loss of revenue of ₹ 10.91 crore in the sale of 49,361 MT of chrome concentrate.

- The export price of chrome ore and concentrate for the quarters ending December 2010 and June 2011 were fixed by MMTC at par with that of chrome ore. The Company, however, without considering the MMTC price, rolled over the price of the previous quarters which was on the lower side. This has resulted in loss of revenue of ₹ 3.63 crore towards the sale of 50,064 MT of chrome concentrate.

Thus, due to short fixation of domestic sale price of chrome concentrate without adhering to the decision of the BoD, the Company sustained a loss of revenue of ₹ 14.75 crore.

The Management stated (October 2012) that there was no reason to be optimistic or opportunistic and wait for a future price which is uncertain. It also added that there was no reason to wait for the MMTC's price since price once fixed remains unchanged for the entire quarter. The Government endorsed (November 2012) the views of the Management.

The reply is not acceptable as the Company had not strictly adhered to the policy decision of the BoD for determining the domestic sale price of chrome concentrate.

3.5 Loss of interest

Foregoing of revenue of ₹ 4.87 crore due to imprudent fund management

The Company framed (December 2007) an investment policy to invests its surplus fund in short term deposits (STDs) with different banks. The banks are selected by a Committee of the Company considering their exposure limit i.e. ceiling for fund investment considering the net worth as per their latest Accounts.

The Company invested its surplus funds of ₹ 4,000.12 crore during 2010-11 in STDs with different banks for a period of one year each at interest rates ranging from 6 to 10.37 *per cent per annum*. As per the offers of the banks, the Company had an option for premature encashment of the STDs for which either it was liable for penal charges or to obtain a lower rate of interest. It was thus imperative on the part of the Company to keep a track on the changing rate of interest offered by the banks from time to time so as to prematurely encash the lower earning STDs for investing at higher rate of interest offered by other banks.

We observed that the Company did not have a mechanism to closely monitor the market trend to avail the benefits of higher rates of interest. During 2010-11, out of the investment of ₹ 4,000.12 crore in 70 STDs, the Company could have prematurely encashed 20 STDs amounting to ₹ 1,201 crore invested at rates varying from 6.5 to 7.25 *per cent* and reinvested the same at higher rates of 7.00 to 7.85 *per cent* available with other banks, fulfilling the criteria of exposure limit and thereby earned an additional interest of ₹ 4.87 crore[62]. Thus, although a Committee was formed to determine the exposure limits of banks, there was no proper mechanism to monitor the market trend as a result of which the Company had to forego revenue of ₹ 4.87 crore.

The Management stated (September 2012) that the Company had no policy for pre closure of fixed deposit and reinvest the same in some other bank. The Government endorsed (September 2012) the views of the Management.

The reply is not tenable as the Company should have devised a suitable investment policy to safeguard its financial interest.

3.6 Undue favour to Transport Contractor

Injudicious decision of the Management in continuance of transport contract even after resumption of direct sale from Processing Yard resulted in avoidable expenditure of ₹ 1.24 crore.

The Company executed (March 2007) an agreement with a contractor (D.K.Nayak) for raising of 2 lakh MT of iron ore from Putulpani quarry of Gandhamardhan iron ore mines and shifting the ore to the processing yard (PY) from where stocks were lifted by the buyers. The agreement was extended from time to time up to March 2010 with an increase in the target for raising ore to 9 lakh MT *per annum*. Consequent upon increase in the target for raising ore and keeping in view the insufficient space at the PY, the Regional Manager (RM) of the mines proposed (January 2008) for engagement of transport contractor for shifting of iron ore from PY to Jagar Central Stock Yard (JCSY). The contractor also intimated (October 2008) that due to non-lifting of iron ore by buyers from PY, more than 20,000 MT of stock had piled up, resulting in non-availability of adequate space for further processing by the workers. Accordingly, a transport contract was awarded (October 2008) to the same contractor, being the single tenderer, at a negotiated price of ₹ 54 per MT for transporting 9 lakh MT of iron ore during 23 October 2008 to 22 October 2009. The transport contract was extended for a further period upto 19 March 2010 for transportation of 3 lakh MT iron ore. During the entire period of the transport contract, the contractor shifted 6.57 lakh MT of iron ore from PY to JCSY.

We observed that the piling of stock since October 2008 was mainly due to non-lifting of iron ore by the buyers following recessionary market trend, and continued up to April 2009 only. The RM, however, on the request (May 2009) of the contractor for achieving its target quantity of transport, allowed the contractor to transport from PY. This was allowed despite sales being effected directly from the PY from May 2009. Further, as per the terms of the transfer agreement, the Management had an option to curtail the target of

[62] Calculated after considering the penal/lower interest rate of 3 *per cent per annum*

transport quantity. The same was not considered for reasons not on record. During May 2009 to March 2010 the contractor needlessly shifted 2,33,546 MT iron ore to JCSY from where it was sold to buyers and in the process the Company incurred an avoidable expenditure of ₹ 1.24 crore[63].

Thus the decision of the Management for the continuance of transport contract even after resumption of direct sale from PY resulted in avoidable expenditure of ₹ 1.24 crore.

The Management stated (September 2012) that allowing a large number of trucks for sale of ore directly from the mine would have compromised on the safety of the workforce working in the PY. It also added that due to shifting of the ore to JCSY, not only higher production could be achieved but also higher sales due to simultaneous sale from the stockyard and mine head. The Government endorsed (September 2012) the views of the Management.

The contention is not tenable since shifting of ore to stockyard also involved movement of trucks as would have been required for direct sale from PY and thus direct sale from PY would not have hampered the higher sale.

3.7 Loss due to cancellation of tender

Loss of ₹ 1.11 crore due to cancellation of tender and subsequent export at reduced rate.

The Company invited (February 2011) an open tender for export of 30,000 MT of iron ore fines on FOB Paradeep Port basis. The terms and conditions of the of the tender *inter-alia* included that the bidders were to quote the price in USD on FOB Paradeep Port basis and export duty would be to the seller's account. The tender committee recommended (22 February 2011) that the tendered quantity be offered to Tradeline LLC, Dubai (TLLC), at the quoted price of 150.25 USD per Dry Metric Ton (DMT) being the highest bid. In anticipation of the rise in export duty, the Company communicated (25 February 2011) a conditional acceptance of the offer of TLCC, that the additional export duty if any, should be borne by TLLC. As the export duty was to the seller's account, TLLC requested (28 February 2011) the Company to deliver the shipment as per tender terms. Consequent upon the introduction of the Finance Bill, 2011 (28 February 2011) export duty was enhanced by 15 *per cent*. The Company cancelled the tender thereof on the grounds of the regret of TLLC not to bear the additional duty and retendered (March 2011) for 40, 000 MT for shipment by 15 April 2011 with the same condition that the export duty would be to the seller's account. By this time the price of iron ore fines has decreased and the tender was awarded to S K Recourses Limited, Hong Kong, the highest bidder at 138.88 USD per DMT.

We observed that since export duty was to the Company's account as per the tender condition, requesting TLLC to bear the enhanced export duty was not

[63] (2,33,546 MT * ₹ 54)- POL de-escalation of ₹ 2,43,111

correct. Further, the volatile market trend of iron ore prices was not considered and merely the differential export duty was insisted upon, although it was not a condition in the bid. The Company should not have cancelled the tender particularly in as much as TLLC was ready to accept the tender (28 February 2011) as per the original tender condition.

Thus, injudicious decision of the Company in cancelling the initial tender had resulted in loss of revenue to the extent of ₹ 1.11[64] crore.

Management stated (October 2012) that the Company was bound to raise the issue for payment of enhanced export duty as the same was made effective after the tender and retendering was done expecting higher price, but unexpectedly received a lower price due to Tsunami in Japan (March 2011). The Government endorsed (November 2012) the views of the Management.

The contention of the Management is not acceptable as the terms of the tender stipulated that the export duty would be to seller's account and there was no reason to anticipate a higher price which was uncertain.

Odisha Power Generation Corporation Limited

3.8 Loss of revenue due to non-generation of additional power

Avoidable delay in procurement and blending of imported coal led to non-generation of additional power of 1,099 MU valued at ₹ 251.82 crore with consequential loss of incentive of ₹ 32.17 crore.

The Company procures coal from Mahanadi Coalfields Limited (MCL) for generation of power. In view of low calorific value of MCL coal causing recurring generation loss and due to low generation of hydel power in the State, GRIDCO Limited (GRIDCO), the power trading Company of the State, requested (August 2008) the Company to procure imported coal for blending with the MCL coal and also agreed to bear the cost of imported coal. Accordingly, the Board of Directors (BoD) of the Company decided (August 2008) to import coal so as to increase generation of power.

BHEL, the Original Equipment Manufacturer (OEM) of the plant, on the request of the Company, advised (September 2008) to start blending with around 15 *per cent* of the imported coal with MCL coal and to increase the blending in steps of 5 *per cent.* The Company also assessed (February 2010) that there would be an increase in generation by 151 MU during the year 2010-11 by blending imported coal at 3.75 *per cent* with MCL coal. As the Company earns revenue in terms of incentive by way of achievement of Plant Load Factor (PLF) beyond 80 *per cent* of the plant capacity, the blending of imported coal could also fetch an additional incentive due to achievement of higher PLF. On GRIDCO agreeing (July 2010) to bear the cost of imported

[64] {30,000-(8% of 30,000 towards moisture content)}*{(150.25-138.88)*61.02/62}*₹ 44.75 less 20 *per cent* Export Duty

coal and thereafter by upgrading (March 2011) the existing railway line, the Company placed (May 2011) a purchase order with MSTC Limited for supply of 50,000 MT of imported coal. MSTC, however, could supply 21,644.08 MT by June 2012 of which the Company could utilise 16,676 MT by July 2012.

We observed that despite the consent (August 2008) of GRIDCO to bear the cost of imported coal and the Company being aware about the increase in generation by blending with MCL coal, it could not procure the same in time. The fact of non blending of imported coal was mentioned in Paragraph 2.1.21 of the the Report of the Comptroller and Auditor General of India (Commercial) for the year ended 2009-10. Further audit analysis for the years 2010-12 revealed that had the Company blended 7.42 lakh MT of imported coal in terms of the advise of the OEM it could have generated 7,165 MU of power as against the actual generation of 6,066 MU and thereby could have generated an additional power of 1,099 MU valued at ₹ 251.82 crore[65]. In addition it could have earned an additional incentive of ₹ 32.17 crore by achievement of higher PLF.

Thus, delayed action in procurement and blending of imported coal despite advice of the BoD and the OEM led to non-generation of additional power of 1,099 MU valued at ₹ 251.82 crore with consequential loss of incentive of ₹ 32.17 crore.

The Management stated (July 2012) that PPA did not provide for use of imported coal and additional investment towards upgradation of the railway line. It further stated that the computation of loss was based on enhancement of PLF, which was beyond technical acceptability. The Government endorsed (August 2012) the views of the Management.

The contention of the Management is not acceptable since PPA had allowed the cost of coal delivered at plant site irrespective of imported/indigenous coal and incentive accrued due to higher PLF was much higher than the cost of upgradation of railway line. Further, the computation of loss was in line with the recommendation of the OEM as well as the assessment made by the Company and as such it was not beyond the technical acceptability.

3.9 Excess payment towards water charges

Payment of water charges without segregating for domestic and industrial consumption resulted in excess expenditure of ₹ 41.27 lakh.

The Company draws water from Hirakud reservoir for its power plant at Ib Thermal Power Station since inception and deposits the monthly water charges with the office of the Executive Engineer, Main Dam Division, Burla (EE, MDD) as per monthly demand notice served by the EE, MDD. Till September 2010 water charges were paid at the rate of ₹ 250 per Lakh Gallon (LG) (₹ 0.55 per KL) for use of water for both industrial and domestic purpose. The

[65] For 2010-11 i.e., (527 MU X ₹ 2.11 per unit) + For 2010-11 i.e., (572 MU X ₹ 2.46 per unit).

Government of Odisha in Revenue and Disaster Management Department amended (October 2010) the Orissa Irrigation Rules, 1961 and revised the rate of water charges as well as notifying separate rates for industrial/commercial and for domestic use at ₹ 5.60 and ₹ 0.05 per kilo liter (KL) respectively. Consequent upon amendment of the said Rules, the EE, MDD also requested (December 2010) the Company to execute fresh agreement for drawal of water.

We noticed that though separate metering arrangement is already in existence for assessing domestic and industrial consumption of water, the water charges were being paid at industrial rate (₹ 5.60) without segregation. Thus, due to non-segregation of water into domestic and industrial use, the Company incurred an excess expenditure of ₹ 41.27[66] lakh on domestic consumption of 7.44 lakh KL of water during the period from October 2010 to September 2012.

Thus, payment of water charges without segregating for domestic and industrial consumption resulted in excess expenditure of ₹ 41.27 lakh by the Company.

While accepting the fact of wide difference in the water charges tariff, the Management stated (August 2012) that they had approached the EE, MDD for separate billing. The Government endorsed (September 2012) the views of the Management.

GRIDCO Limited

3.10 Excess reimbursement of Income Tax

Failure of internal check over the payment towards reimbursement of Income Tax to OPGC resulted in excess payment of ₹ 34.11 crore.

The Company procures the entire power generated by Odisha Power Generation Corporation Limited (OPGC). The Power Purchase Agreement (PPA) between the Company and OPGC provided that the income tax (IT) on supply of power would be passed on to the Company. OPGC, however, was availing tax exemption under section 80 IA of the IT Act, 1961 and was paying Minimum Alternate Tax (MAT) under section 115 JB of the Act during 2005-06 to 2008-09. Further, as per section 115 JAA of the Act, *ibid*, OPGC was entitled to carry forward MAT credit for ten succeeding assessment years for adjustment against actual IT liability.

We observed that the Company had reimbursed ₹ 34.11 crore to OPGC towards MAT for the years 2005-06 to 2008-09. Since the tax exemption was valid upto 2008-09, the Company was entitled for adjustment of the tax paid from 2009-10 onwards against the MAT credit available to OPGC. Since MAT credit of ₹ 35.39 crore and ₹24.49 crore was available to OPGC for set

[66] 7,43,621.5 KL x (₹ 5.60-₹ 0.05)

off against their IT liability during 2009-10 and 2010-11 respectively, the Company, could have availed the corresponding benefit for adjustment of the MAT credit of ₹ 34.11 crore during 2009-10 itself. Instead, the Company reimbursed an amount of ₹ 72.88[67] crore towards IT for the years 2009-11 as demanded by OPGC. This indicated the lack of financial check before reimbursement of IT claim of OPGC.

Thus, failure of internal check over the payments towards reimbursement of IT to OPGC resulted in excess payment of ₹ 34.11 crore with consequential loss of interest.

The Management stated (August 2012) that at the time of reimbursement of IT claim for the financial year 2009-10 it was not having the information about the quantum of MAT credit available to OPGC. It further stated that as OPGC had claimed MAT credit accruals through their IT returns, the same would be passed on to the Company after completion of assessment for relevant year. The Government endorsed (October 2012) the views of the Management.

The reply is not tenable as the Company had sufficient reason and information to insist for adjustment of MAT credit due to it. Further, reimbursement of IT at normal provision for 2009-11 indicated that MAT credit was available to the Company for adjustment.

The Company should put in place an effective internal check on the IT claims of OPGC so as to avoid excess payments.

3.11 Excess payment

Incorrect evaluation of claims of the Captive Generating Plants resulted in excess payment of power bills by ₹ 2.12 crore.

The Company procures power from various sources including the surplus power from Captive Generating Plants (CGPs) at a price as approved by Orissa Electricity Regulatory Commission (OERC) from time to time.

In view of favourable reservoir position of hydro power stations, high frequency profile in the grids and lower Unscheduled Interchange rates, the Company decided (September 2010) to curtail procurement of surplus power from CGPs for a better price mix of power from various sources. It requested (18 September 2010) State Load Despatch Centre (SLDC) to restrict drawal from CGPs upto a maximum schedule of 50 MW on Round The Clock (RTC) basis for supplying low cost hydro power to the consumers and the same was implemented by SLDC. The restriction of power injection by CGPs was to be implemented with effect from 20 September 2010 allowing a day ahead schedule on 19 September 2010. Injection of power beyond the schedule of 50 MW was to be considered as inadvertent power and payment for this power, if any, was to be made at the rate applicable for inadvertent power instead of at

[67] 2009-10: ₹ 37.07 crore and 2010-11: ₹ 35.81 crore

rate for firm power up to October 2010. Thereafter, pricing system for CGP power was changed consequent upon orders (November 2010) of OERC.

We observed that though Jindal Stainless Limited (JSL), a CGP, injected 2.343690 MU of power beyond the scheduled 50 MW per day during 20 to 30 September 2010, the Company paid for inadvertent power at the rate for firm power (₹ 3.7 per unit) instead of payment at rate for inadvertent power (₹ 0.6251 per unit). This resulted in excess payment of ₹ 0.70 crore to JSL. Similarly in the case of another CGP, Vedanta Aluminium Limited (VAL), 5.087780 MU of inadvertent power was also paid at the rate for firm power during 20 September to 31 October 2010, resulting in excess payment of ₹ 1.42 crore to the VAL.

Thus, incorrect evaluation of claims of the CGPs resulted in excess payment of power bills by ₹ 2.12 crore to JSL and VAL.

The Management stated (September 2012) that the reconciliation statement had been sent to JSL for acceptance and ₹ 0.70 crore would be recovered. Further, the Company while stating that VAL had not injected any power beyond the average of 50 MW during the period from 20th September 2010 to 30th September 2010, remained silent about inadvertent power injected by VAL for October 2010. The Government endorsed (October 2012) the views of the Management.

The reply in respect of VAL is not acceptable since computation of actual injection should have been made on daily basis instead of on monthly average basis to determine the deviation from the schedule.

Odisha Hydro Power Corporation Limited

3.12 Loss of revenue towards capacity charges

Failure of the Company in maintaining a spare transformer and commissioning of an underrated transformer coupled with inordinate delay in synchronisation resulted in a loss of ₹ 3.77 crore.

The Company which generates hydro power from Hirakud Hydro Electric Project (HHEP), located at Burla has seven units with a total installed capacity of 275.5 MW. During September 2010 a 42 MVA Generator Transformer (GT) for an installed capacity of 37.5 MW of unit VII went out of order due to technical problems and the Company replaced (October 2010) it with its existing spare 27 MVA transformer which runs at an under rated capacity of 24 MW. In order to restore the unit to full capacity (37.5 MW) the HHEP after obtaining approval from its Head Office undertook the repair and overhauling of one out of the existing two spare 42 MVA transformers at a cost of ₹ 20.62 lakh and synchronised the same on 23 February 2012. In the meantime the 27 MVA GT also went out of order on 31 August 2011.

As *per* Central Electricity Regulatory Commission (CERC) (Terms and Conditions of Tariff) Regulation 2009, the annual fixed cost of a power station shall be recovered through capacity charge (CC) and energy charge to be shared on 50:50 basis. The CC of the generators should be reimbursed by the user (GRIDCO) on the availability of the units for generation irrespective of the quantum of power they draw or are scheduled to draw.

We observed that despite availability of two repairable 42 MVA GTs, the Company did not maintain even one as spare for emergency use so as to avoid outage of the unit and instead commissioned an under rated GT of 27 MVA after the outage. This resulted in short realisation of CC of ₹ 1.46 crore for 281 days during November 2010 to August 2011. Further, failure of the 27 MVA GT due to technical problems, the total generation was blocked and CC for ₹ 2.52 crore for 175 days could not be claimed by the Company during September 2011 to February 2012.

Thus, failure of the Company in maintaining a spare GT of the same capacity (42 MVA) and commissioning of an underrated GT coupled with inordinate delay in synchronisation of the 42 MVA GT resulted in a loss of ₹ 3.77 crore.[68]

The Management stated (September 2012) that it was not economically viable to keep three different types of generator transformers as spare. It also stated that it had realised full capacity charges during 2010-11 and 2011-12 as per the Annual Revenue Requirement approved by OERC by its best effort. The Government merely endorsed (October 2012) the views of the Management.

The reply is not acceptable as the Company could have kept the spare transformers in working condition and thereby could have enhanced the earning of CC which was not restricted by OERC. It, however, admitted that steps would be taken to avoid such delay in future and spare transformers would be kept.

Odisha Thermal Power Corporation Limited

3.13 Infructuous expenditure

Hasty decision of the Management for shifting of the project site resulted in infructuous expenditure of ₹ 2.44 crore

The Company was incorporated (January 2007) as a joint venture Company of Orissa Hydro Power Corporation Limited and The Orissa Mining Corporation Limited with an objective to set up a coal based thermal power project of 1000 MW in the State. In order to avail the locational advantages like availability of land, water, etc., the Company decided (August 2009) to set up the plant at Rengali at an estimated cost of ₹ 8,250 crore. For providing technical assistance and to obtain required statutory clearances the Company engaged

[68] Capacity charges-(₹ 1.46 crore plus ₹ 2.52 crore) *less* repair cost ₹ 0.21 crore

(May 2009) a consultant, Visiontech Consultancy Services Private Limited (VCSPL), at a cost of ₹ 4.78 crore.

Subsequently VCSPL informed (19 January 2010) the Company that the Ministry of Environment and Forests (MoEF), Government of India (GoI) had imposed (13 January 2010) a temporary restriction for eight months i.e., up to August 2010 for according environmental clearance for Rengali site. The position, however, was put up to the Board during June 2010 after a lapse of nearly five months. Keeping in view the restriction imposed by MoEF, the BoD decided (June 2010) to shift the project to Kamakhayanagar Tehsil of Dhenkanal district.

In the meantime, the Company (February 2010) deposited ₹ 2.39 crore with the Land Acquisition Officer (LAO), Angul towards the establishment cost for acquisition of private land for Rengali site. Consequent upon the shifting of the project site from Rengali, the agreement with the VCSPL was foreclosed (July 2010) and the Company decided to settle the dues of VCSPL for ₹ 1.49 crore as against their claim of ₹ 4.02 crore. Since the settlement was not acceptable to VCSPL, it moved the Hon'ble High Court for settlement of dues. As per the judgement of Hon'ble High Court it was open to VCSPL to accept the amount as settled by the Company and for balance amount, VCSPL was at liberty to settle the matter through arbitration.

We observed that despite being aware that the restriction towards environmental clearance was upto August 2010 only, the decision (June 2010) of BoD to foreclose the agreement with VCSPL led to unfruitful expenditure of ₹ 1.49 crore. Further, due to hasty decision in shifting of site, the Company also sustained a loss of ₹ 0.95 crore being 40 *per cent* of the deposit (₹ 2.39 crore) with LAO, Angul towards the establishment charges as the same was non-refundable as per the conditions of the order (June 1999) of Government in Revenue Department. The refundable amount of ₹ 1.44 crore (60 *per cent* of ₹ 2.39 crore) is yet to be received by the Company leading to recurring loss of interest thereon. Thus, hasty decision of the Management for shifting of the project site from Rengali to Kamakhayanagar resulted in infructuous expenditure of ₹ 2.44 crore.

The Management stated (July 2012) that it felt that Rengali site may not fall under the area restricted by MoEF and accordingly paid the establishment cost towards land acquisition. It also added that the project site was shifted to Kamakhyanagar apprehending a much longer period for lifting of moratorium which would result in time and cost overrun of the project. The Government endorsed (August 2012) the views of the Management.

The reply of the Management is not acceptable because the Company deposited the land acquisition fees despite being aware of the MoEF restriction. Further, with only three months of the moratorium period being remaining, shifting of the site did not yield the desired results since there was no remarkable progress of the project at the new site so far (September 2012).

Odisha State Beverages Corporation Limited

3.14 Undue favour to retailers

Fixation of price for country spirit led to extension of undue benefit of ₹ 2.09 crore to the retailers

Government of Odisha (GoO) authorised the Company to carry out wholesale trade and distribution of Country Spirit (CS) and fixed the Maximum Retail Price (MRP) of CS from time to time on the basis of the recommendation of the Price Fixation Committee constituted by the State Government. This Committee included a representative of the Company as a member. The Company procures CS in poly pouches and bottles of 200 ml from Aska Co-operative Sugar Industries Limited and distributes those in cases[69] through its depots for retail sale by vendors. The consumers of CS are generally from economically weaker sections of the society.

The Government in Excise Department approved (23 December 2008) the MRP of CS at ₹ 11.25 per pouch of 200 ml. As the tax collection at source (TCS) was not considered as a cost component in the approved MRP, the Company initiated a proposal for inclusion of the same in the MRP after receiving a clarification from Government. The Company revised (29 December 2008) the MRP to ₹ 14.50 per pouch by inclusion of the TCS components for ₹ 3 per pouch as against an amount of ₹ 0.10 per pouch only. The Company after nearly a month revised (27 January 2009) the MRP to ₹ 11.60 per pouch by inclusion of ₹ 0.10 towards TCS component against ₹ 3 considered earlier.

We observed that due to erroneous inclusion of TCS for ₹ 3 per pouch instead of ₹ 0.10 per pouch the Company allowed the retailers to retain the balance of ₹ 2.90 per pouch with them and thereby extended an undue benefit of ₹ 1.16 crore to the retailers on sale of 80,343 cases of CS pouches during 1 to 27 January 2009 at the cost of the consumers.

We further observed that due to revision in Excise Duty (ED) on CS during 2009-10, the MRP of 200 ml pouch and bottle were revised to ₹ 12 and ₹ 15.50 by rounding off the MRP at a higher side by ₹ 0.35 and ₹ 0.24 respectively. Similarly during 2011-12, the MRP of CS was also revised to ₹ 13 per pouch and ₹ 17.50 per bottle of 200 ml by rounding off at a higher side by ₹ 0.18 and ₹ 0.08 respectively. The Company instead of absorbing the benefit of rounding off in its own margin with an extension of percentile benefit to VAT/IT authorities passed on the same to the retailers. This led to extension of undue benefit of ₹ 93.42 lakh to the retailers with consequential loss of Company's margin by ₹ 71.26 lakh, differential collection of VAT by ₹ 14.53 lakh and TCS component of ₹ 7.63 lakh against a sale of 1.40 lakh cases of pouches and 27.65 lakh cases of bottles during 2009-10 and 2011-12.

[69] One case of pouches=50 pouches and one case of bottle = 25 bottles of 200 ml each

Thus, erroneous fixation of MRP and non-absorbing of the rounding off effect within the Company's margin led to extension of undue benefit of ₹ 2.09[70] crore to the retailers with a resultant loss of ₹ 1.87 crore to the Company, ₹ 0.14 crore to the VAT authorities and non-collection of IT for ₹ 0.08 crore.

The Management while accepting the facts and figures stated (July 2012) that it would adopt a suitable method for pricing in future.

The matter was reported to the Government (July 2012); their reply had not been received (December 2012).

Industrial Development Corporation of Odisha Limited

3.15 Undue favour on sale of lump iron ore

Failure of the Company to take appropriate action as per the terms and condition of sale resulted in loss of ₹ 1.48 crore towards sale of Iron ore

The Company floated (September 2008) a tender for sale of Iron Ore lump of 65 *per cent* Fe content from its Roida-C mines. The terms and conditions of the tender document *inter-alia* provided that (a) in the event of failure of the bidder to lift the allotted quantity within the stipulated period, the contract would be terminated and the buyer will not be eligible to participate in future tender for a period of six months and; (b) the Management reserved the right to recover the loss suffered by them in selling the iron ore subsequently at lower rate, if any, from any amount payable to such purchaser apart from forfeiture of EMD.

The Company issued a (September 2008) sale order for 20,000 MT of lump iron ore @ ₹ 3,313 per MT in favour of Bhusan Power & Steel Limited (BPSL) being the highest bidder for which BPSL deposited ₹ 7.12 crore. The entire stock was to be lifted by 31 October 2008 against which BPSL could lift only 9,644.19 MT leaving a balance of 10,355.81 MT of ore on the ground of fall in the market price. As a result balance amount of ₹ 3.68 crore deposited by BPSL remained with the Company.

We observed that despite non-lifting of the full quantity, the Company allowed BPSL to participate in the subsequent tender (November 2008) and sold 9,996.720 MT @ ₹ 1,592 per MT during December 2008/January 2009 and also did not recover the loss of ₹ 1.78 crore[71] suffered by it in selling the iron ore at a lower rate to the defaulting bidder (BPSL) in violation of the terms and conditions of the sale order. The Company however, after a lapse of more than one and half years, on the request of BPSL permitted (April 2010) for adjustment of their balance amount of ₹ 3.68 crore by lifting of equivalent quantity of lump iron ore at the earlier price of ₹ 3,313 per MT as against the prevailing market price of ₹ 2,734 to ₹ 3,105 per MT during May to July 2010.

[70] ₹ 1.16 crore + ₹ 0.93 crore
[71] (@ ₹1721 per MT (₹ 3,313-₹ 1,592) on 10,355.81 MT)

Thereby the Company, however, earned additional revenue of ₹ 0.30 crore compared to the prevailing market price.

Thus, failure of the Company to take appropriate action as per the terms and condition of sale resulted in loss of ₹ 1.48 crore in the form of undue benefit to the vendor towards sale of iron ore.

The Management noted (August 2012) the observation of audit for future guidance and stated that action would be taken against the officers responsible. The Government endorsed (September 2012) the views of the Management.

3.16 Loss on export sale

Deficient planning for export sale of chrome concentrate resulted in loss of ₹ 0.94 crore

The Company exports chrome concentrate produced at its Tailangi Chromite Mines from Paradeep Port through MMTC Limited (MMTC). The price and the quantity for export are decided by MMTC through meetings with chrome ore producers. Thereafter the confirmation from the Company is obtained and MMTC enters into sales contract with the overseas buyer and purchase contract with the Company on back to back basis and arranges for export of the chrome concentrate.

The Company confirmed (6 January 2009) its willingness to export 20,000 MT of chrome concentrate during January-March 2009 at 275 USD per Dry Metric Ton (DMT). This export sale, however, could not be materialised due to non-availability of buyers. Subsequently, MMTC revised (19 February 2009) the selling price to 255 USD per DMT against which the Company also confirmed for export of 20,000 MT. For immediate shipment the Company, however, confirmed (24 February 2009) MMTC for export of 12,000 MT and could export 12,500 MT on 1 and 8 March 2009. Thereafter against the reduced (22 April 2009) selling price of 195 USD per DMT, the Company exported 10,000 DMT in May 2009 through MMTC.

We observed that despite being aware of the downward market trend and ready availability of stock of 16,116 MT[72] as on 23 February 2009, the Company confirmed for shipment of 12,000 MT only and could export 12,500 MT. Thus, due to deficient planning, the Company lost the opportunity to export an additional quantity of 3,500 MT (by rounding off) and sustained a loss of ₹ 0.94 crore.[73]

The Management stated (August 2012) that export commitment is normally made based on stock at Paradeep port, stock at mines and trend of

[72] 12,638 MT at Paradeep Port and 3,478 MT at Tailangi Chromite Mines

[73] at the rate of 60USD(255-195) at an exchange of ₹ 51.3726 on 3500 MT less 10 *per cent* for moisture margin and 3 *per cent* for MMTC Commission {(3500MT -10% of 3500MT) *51.3726*60*97%}

transportation from mines to port. It further stated that due to dispute between different truck owners association for loading and allotment of trucks, the despatch from the mines could not be anticipated at that time with certainty. The Government endorsed (September 2012) the views of the Management.

The reply is not acceptable as the Company had not considered the stock at mines on the date of commitment to MMTC. As regards the trend of transportation it could have planned suitably so as to make available adequate quantity at Paradeep Port for export since production was intended for export only.

Orissa State Seeds Corporation Limited

3.17 Loss due to fixation of higher procurement price

Incorrect fixation of procurement price of certified groundnut seeds resulted in loss of ₹ 49.24 lakh to the Company and ₹ 31.24 lakh to the Government

The Company purchases certified groundnut seeds from the seed growers for sale to Government of Odisha (GoO) who in turn sells them to the farmers. The procurement price of the seeds was fixed by the Company from time to time and is considered for fixation the sale price of seeds by the Company which is finally approved by GoO. The elements of procurement cost *inter alia* included the cost of unprocessed seeds, processing loss (10 *per cent*) and marketing charge (one *per cent*). Besides production incentive as allowed to the farmers by Government of India under Integrated Scheme of Oilseeds, Pulses and Maize (ISOPOM) also forms a part of the procurement cost separately alongwith recovery towards undersize and chaffs.

We noticed that while revising the per quintal procurement cost for the Khariff 2009 season, the Company included the production incentive of ₹ 750 to the coost of unprocessed seeds and calculated the processing loss and marketing charges thereon. In addition, it also reduced the component of recovery towards undersize/chaffs from ₹ 65 to ₹ 18.50 per quintal. Although the revision was necessitated for a change in cost of unprocessed seeds, the inclusion of production incentive to the cost of unprocessed seeds and reduction in the component of recovery towards undersize/chaffs was not justified. Since the above revision was not approved by the GoO, the Company could not realise the extra expenditure of ₹ 49.24 lakh [74] towards procurement of 38,167 quintals of certified seeds.

We further observed that in the procurement price for Khariff 2010, the Company also allowed excess processing loss/marketing charge of ₹ 82.50 per quintal, as production incentive of ₹ 750 was included in the cost of

[74] ₹17.75 lakh{ 38166.9 quintal * ₹46.50 (₹65-₹18.50)} and ₹ 31.49 lakh {38166.9 quintal * (₹ 75+₹ 7.50)}

unprocessed seeds. This resulted in an extra burden of ₹ 31.24 lakh[75] on GoO towards procurement of 37,869 quintals of certified seeds, since the cost structure was approved (September 2010) by GoO and the Company could recover the same through sale price.

Thus, incorrect fixation of procurement price of certified groundnut seeds during Khariff 2009 and 2010 resulted in loss of ₹ 49.24 lakh to the Company and ₹ 31.24 lakh to the Government.

The Management stated (July 2012) that although ₹ 750 included in the unprocessed groundnut seeds in cost structure as production incentive, but actually it had paid for tagged seeds only. Regarding recovery for undersize and chaffs it added that since the farmers were given a higher procurement price they were advised for proper grading for which the processing loss was fixed at ₹ 18.50 per quintal instead of ₹ 65 per quintal. The Government endorsed (August 2012) the views of the Management.

The reply is not tenable as inclusion of production incentive in the cost of unprocessed seeds resulted in allowing of excess processing loss and marketing charges. The contention of the Management on recovery for undersize and chaffs is not acceptable since the prevailing processing loss of 10 *per* cent was not reduced accordingly, consequent upon reduction in recovery from undersize and chaffs.

Orissa Bridge and Construction Corporation Limited

3.18 Avoidable payment of Income Tax

Avoidable payment of income tax of ₹ 44.30 lakh due to deficiency in filing of returns and non-deposit of statutory dues in time

The Company filed (November 2007) its Income Tax return for the assessment year (AY) 2007-08 during which it earned a net profit of ₹ 86.84 lakh. The Assessing Officer (AO) assessed (December 2009) the taxable income as ₹ 1.29 crore under section 143 (3) of the Income Tax (IT) Act, 1961 and levied tax thereon amounting to ₹ 43.43 lakh. While assessing the taxable income the AO disallowed the delayed payments of employee's share of Provident Fund (PF) of ₹ 23.16 lakh, the Statutory liabilities (VAT, Professional Tax, Gratuity, Bonus and GIS) amounting to ₹ 18.83 lakh under section 43 (B) and the differential depreciation of ₹ 6.80 lakh as per the Companies Act and IT Act and treated the same as income. The AO, however, adjusted the loss of ₹ 6.61 lakh for AY 2006-07 only against the taxable income. In addition, IT authority charged interest of ₹ 7.20 lakh under Section 234 (B) of the IT Act.

We observed that due to delay in deposit of employee's share of PF, statutory liabilities etc. the AO disallowed the same and treated them as taxable income.

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[75] 37869 qtl. * (₹ 75+₹ 7.50)

Further, due to deficiency in submission of relevant documents, the AO, treating the past years IT returns invalid, did not allow the carry forward losses of ₹ 6.32 crore upto AY 2006-07, as was available to the Company under Section 72 of IT Act, 1961.

Thus, failure of the Management in submission of documentary evidences while filing the IT returns to set off carry forward losses coupled with belated deposit of PF dues led to avoidable payment of IT for ₹ 44.30[76] lakh.

The Management stated (October 2012) that the lapses in deposit of PF dues had been rectified in subsequent years and the submission of invalid IT return was due to delay in finalisation of accounts and audit. The Government endorsed (December 2012) the views of the Management.

The reply, so far as finalisation of accounts and audit is concerned, is not acceptable since timely finalisation of accounts and audit is also the responsibility of the Company under Section 210 (3) of the Companies Act, 1956.

General

3.19 Follow-up action on Audit Reports

Explanatory Notes outstanding

3.19.1 The Audit Reports of the Comptroller and Auditor General of India represent the 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, Government of Odisha issued instructions (December 1993) to all Administrative Departments to submit explanatory notes indicating corrective/remedial action taken or proposed to be taken on paragraphs and PA included in the Audit Reports within three months of their presentation to the Legislature, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

Though the Audit Reports for the years 1999-2000 to 2010-11 were presented to the State Legislature, 14 out of 17 departments featuring in this report did not submit explanatory notes on 62 out of 214 paragraphs/performance audits as on 30 September 2012, as indicated in the following table:

Year of the Audit Report (Commercial)	Date of presentation	Total Paragraphs/ Performance audits in Audit Reports	No. of paragraphs/ Performance audits for which explanatory notes were not received
1999-00	1 August 2001	29	1
2001-02	24 March 2003	17	1
2003-04	14 March 2005	27	2

[76] Total tax liability- ₹ 43.43 lakh + Interest U/s 234B ₹ 7.20 lakh -₹ 6.33 lakh (tax on statutory dues of ₹ 18.83 lakh, the benefit of which could be obtained during the subsequent years)

Year of the Audit Report (Commercial)	Date of presentation	Total Paragraphs/ Performance audits in Audit Reports	No. of paragraphs/ Performance audits for which explanatory notes were not received
2004-05	20 February 2006	17	2
2005-06	29 March 2007	21	2
2006-07	17 March 2008	25	6
2007-08	18 June 2009	25	14
2008-09	16 March 2010	19	10
2009-10	28 March 2011	17	9
2010-11	29 March 2012	17	15
Total		**214**	**62**

Department-wise analysis is given in **Annexure 9** PSUs under the Industries, Energy and Public Enterprises Department were largely responsible for non-submission of explanatory notes. The Government did not respond to even performance audits highlighting important issues like system failures, mismanagement and non-adherence to extant provisions.

Compliance to Reports of Committee on Public Undertakings (COPU) outstanding

3.19.2 Action Taken Notes (ATNs) to 39 recommendations pertaining to six Reports of the COPU presented to the State Legislature between August 2001 and August 2008 had not been received as on 30 September 2012 as indicated below:

Year of the COPU Report	Total number of Reports involved	No. of recommendations where ATNs not received
2001-02	1	8
2007-08	5	31
Total	**6**	**39**

The replies to the recommendations were required to be furnished within six months from the date of presentation of the Reports.

Response to Inspection Reports, Draft Paragraphs and Performance Audits

3.19.3 Audit observations noticed during audit and not settled on the spot are communicated to the heads of PSUs and the concerned administrative departments of 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 March 2012 pertaining to 37 PSUs disclosed that 1,525 paragraphs relating to 438 Inspection Reports remained outstanding at the end of 30 September 2012. Even the initial replies were not received in respect of 56 Inspection Reports containing 336 paragraphs. Department-wise break-up of Inspection Reports and Audit observations outstanding at the end of 30 September 2012 is given in **Annexure 10.** Similarly, draft paragraphs and performance audits 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 out of 18 draft paragraphs and two draft Performance Audits forwarded to various departments between July and October 2012, as detailed in **Annexure 11**, replies to two draft paragraphs and one draft Performance Audit were awaited (December 2012). 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 Audits and ATNs on recommendations of COPU as per the prescribed time schedule, (b) action is taken to recover loss/outstanding advances/ overpayments in a time-bound schedule and (c) the system of responding to audit observations is revamped.

Bhubaneswar
The

(S R Dhall)
Accountant General
(Economic and Revenue Sector Audit), Odisha

Countersigned

New Delhi
The

(Vinod Rai)
Comptroller and Auditor General of India