

## CHAPTER-IV

### DEPARTMENT OF ELECTRONICS AND INFORMATION TECHNOLOGY

#### 4.1 Selection of inappropriate agency by Standardization, Testing & Quality Certification Directorate (STQC) for building project

**STQC awarded the building works to Software Technology Parks of India (STPI) without assessing their techno commercial competence. STPI was not having any Civil Engineering Wing and could not handle their contractor and architect properly and abandoned the work without completion. This led to non-completion of the building as of June 2016 even after a lapse of 14 years of allotment of land to STQC. It also resulted in unfruitful expenditure of ₹ 9.33 crore on the project and blockade of ₹ 3.47 crore with STPI.**

Rule 126 (4) of GFR stipulates that all original works estimated to cost above ₹ 10 lakh may be got executed through a Public Works Organizations as defined in Rule 126 (2)<sup>1</sup> of GFR after consultation with the Ministry of Urban Development.

Standardization, Testing & Quality Certification (STQC), an attached office of the Department of Electronics and Information Technology (DeitY), was allotted a plot of land measuring 5,350 square meters free of cost by Noida Authority at Sector-62, Noida in the year 2002 for construction of a permanent building for Centre for Electronics Test Engineering (CETE) a specialized institution of STQC for skill based training.

During audit of STQC, following chronology of events was observed

- STQC engaged CPWD for initiation of the building project and for providing a suitable building plan in November 2003. Further, it was decided not to pursue the project with CPWD as the response received from CPWD was not felt encouraging.
- It was then decided to award the building project to BSNL (February 2005) at a cost of ₹ 3.47 crore, inclusive of three *per cent* departmental charges.
- In March 2005, STQC felt the need for construction of additional area for which the design and construction proposal was to be recasted. At this stage it was decided to entrust the job to Software Technology Parks of India (STPI), an Autonomous Society of DeitY with the justification that STPI had vast

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<sup>1</sup> **Rule 126 (2)** of GFR stipulates that “a Public Works Organization includes State Public Works Divisions, other Central Government organizations authorized to carry out civil or electrical works such as Central Public Works Department (CPWD), Military Engineering Service (MES), Border Roads Organization etc. or Public Sector Undertakings set up by the Central or State Government to carryout civil or electrical works.

experience in infrastructure development of IT related activities. There were no specific reasons on record why was STPI chosen instead of BSNL. The construction work was handed over to STPI on 15 April 2005.

- Again, in August 2005, STQC felt the need for additional space in the proposed building to accommodate certain additional activities. The built up space was revised to 10,310 square meters at an estimated cost of ₹ 14.97 crore including STPI's service charge of one *per cent* of the project cost with duration of completion as two years. STQC formally handed over the task of constructing the STQC building to STPI in December 2005.
- To complete the construction work of the building, STPI hired an architect (M/s D.K. Associates) in August 2005 for preparation of drawings. The tendering process for selection of the contractor for the said project was initiated in February 2006 and the contractor (M/s. Gupta Brothers (India)) was engaged for the project in June 2006 with completion period of 12 months. It was observed that the work could not be completed within the stipulated time i.e. by July 2007. Extensions were granted upto August 2009 and further upto December 2009.
- Meanwhile, the work at site was stopped by the contractor due to payment related issues with STPI. Thereafter in December 2009, STPI expressed their inability to continue the work. There were issues among STPI, contractor and architect with reference to contract and the work in progress. STPI encashed Performance Bank Guarantee of the contractor in November 2010 keeping in view the under performance of the contractor by not executing the work even after several extensions. The contractor invoked the provision of arbitration and requested to Secretary DeitY for nomination of Arbitrator. The Arbitrator was appointed in January 2012 and the arbitration proceedings are still on. Regarding the issues with the Architect, STPI took the issue to the Architecture Council.
- To resolve the issue Secretary DeitY convened a meeting on 13 April 2012, i.e. after a delay of about one year and four months of encashing the Performance Bank Guarantee. STPI handed over the physical possession of the building on 19 March 2014 to STQC on "as is where is basis". Out of the sanctioned amount of ₹ 14.97 crore, an amount of ₹ 13.80 crore was transferred to STPI for the project out of this a sum of ₹ 9.33 crore had been spent.

After getting the physical possession of the building from STPI, STQC approached CPWD in 2014 for taking over the building and for submitting the revised cost estimates for the remaining work. However, CPWD insisted for structural stability certificate by an independent organization, without which they were hesitant to take over the building project as there were certain CTE observations on the quality of construction. The structural stability certificate test was completed in August 2015.

On the above, Audit observed that despite STPI not having its civil engineering wing, the Ministry as well as the STQC decided to assign the building construction work to STPI without assessing their techno commercial viability. This was in contravention to the provisions of the Rule 126 (4) of the GFR. Moreover, no MoU or agreement was signed between STQC and STPI before handing over the work to STPI. The STQC building project was pending (November 2015) despite a delay of over seven years.

On being pointed out, STQC, while accepting the observations, stated (June 2016) that the project was assigned to STPI after following the due process of appraisal by Standing Finance Committee and approval of Hon'ble Minister of Communications and Information Technology in 2005 keeping in view STPI's vast experience in infrastructure development of IT related activities. It was also stated that adequate project monitoring mechanism was put in place and reasons of delay in construction of building were beyond the scope of STQC.

The reply of STQC is not convincing as STPI had neither expertise nor mandate to undertake construction projects in absence of any Civil Engineering Wing/Unit. Besides having failed to resolve the issues between them and their contractor, STPI had expressed their inability to continue the work in December 2009 which tantamount to abandonment of their responsibility towards the work and reflected their lack of professional approach.

Thus selection of an inappropriate agency (STPI) for execution of STQC building which could neither handle their contractor nor the architect properly and abandoned the work led to inordinate delay in STQC building project, resulting in an unfruitful expenditure of ₹ 9.33 crore and blockade of ₹ 3.47 crore as the project is still incomplete despite lapse of 14 years since the land was allotted in 2002 to STQC.

#### 4.2 Non-recovery of unutilized grant and interest thereon for e-Bharat Project from National Institute of Smart Government, Hyderabad

**DeitY gave an advance of ₹ 10.50 crore to National Institute of Smart Government (NISG) for execution of e-Bharat Project Preparation Facility. As NISG failed to execute the project, DeitY diverted an amount of ₹ 3.36 crore for another World Bank assisted project “India e-Delivery of Public Services” again to be executed by the NISG and ₹ 6.36 crore was refunded by NISG to DeitY leaving behind an amount of ₹ 0.78 crore of unutilized grant with the NISG. Interest on unutilized grant amounting to ₹ 7.77 crore upto 31 January 2016 has also not been recovered by DeitY from NISG.**

Department of Electronics and Information Technology (DeitY), erstwhile Department of Information Technology (DIT) entered into a Memorandum of Understanding (MoU) with the National Institute of Smart Government (NISG) Hyderabad in September 2008 for nationwide speedier implementation of the National e-Governance Programme (NeGP) of Government of India. As per this MoU, administrative approval of ₹ 10.50 crore for execution of the “e-Bharat Project preparation facility” project was accorded in October 2008 and sanction for release of entire amount was issued in December 2008 by DeitY as Grant-in-Aid from the e-Governance Head under the Externally Aided Projects to NISG, Hyderabad. The project was to be completed within a year from the date of signing of the MoU and was extendable for such period as mutually agreed upon by the parties.

As per Article 5 of the MoU, NISG had to prepare and obtain approval from DeitY on the Annual Work Plan and Scope of Work for each initiative on the project to be undertaken whereas as per the provisions of Article 4 of the MoU, DeitY had to monitor the progress of initiatives and evaluate, revise and approve Annual Work Plan (for ongoing initiatives) submitted by the NISG under the MoU. Terms and conditions for sanction of grant provided that any unutilized part of the grant shall be surrendered to the grantor.

In compliance of provisions of Rule 209(6) (ix) of GFR, NISG executed a bond in December 2008 whereby NISG agreed to pay the entire amount to the Government in case of failure to fulfill and comply with the terms and conditions mentioned in the letter of sanction of grant.

Scrutiny of records revealed that NISG neither commenced any work on the said project nor prepared any work plan/ scope of work as stipulated under MoU. Entire amount of grant thus remained unutilized. DeitY did not insist on this mandatory clause and failed to monitor even the commencement of the project after release of funds.

Out of ₹ 10.50 crore advanced to NISG, DeitY diverted (September 2012) an amount of ₹ 3.36 crore for another World Bank assisted project “India e-Delivery of Public Services”<sup>2</sup> again to be executed by the NISG and ₹ 6.36 crore was refunded by NISG to DeitY in March 2014 after a lapse of more than five years from release of grant leaving behind an amount of ₹ 0.78 crore of unutilized grant with the NISG. Interest on unutilized grant amounting to ₹ 7.77 crore upto 31 January 2016 (**Annexure-VII**) on the unutilized grant has also not been recovered by DeitY from the NISG.

DeitY, in its reply to the audit observation (July 2015), stated that matter on refund of unspent balance and interest thereon was taken up with NISG. It was further stated that consistent efforts/follow ups were being made for recovery of amount of interest.

Thus, the Ministry failed to ensure implementation of the project and irregularly diverted part of the unutilised grant to other project without insisting on refund of previous grant and did not enforce the terms and conditions for sanction of the grant. Since the project did not commence at all, this not only resulted in avoidable blockade of funds but also left the intended purpose of the project unaccomplished. Further, timely action was not taken by the Ministry to get the refund of unutilized grant and interest thereon from NISG. This resulted into non-recovery of ₹ 8.55 crore as on January 2016.

The matter was reported to Ministry in March 2016; their replies are awaited (July 2016).

#### **4.3 Imprudent Bidding and Contracting for Computerization of Post Graduate Institute of Medical Education & Research (PGIMER) Chandigarh**

**Imprudent Bidding and Contracting on the part of C-DAC, Noida led to delay in execution of the project “Computerization of PGIMER Chandigarh” at various stages for which PGIMER withheld payment of ₹ 4.28 crore. Besides, C-DAC quoted “lump sum” cost of ₹ 24.20 lakh in the bid for Electrical Cabling work, without properly assessing the quantum of work. This resulted in acceptance of claim by PGIMER for ₹ 24.20 lakh only against the total work done worth ₹ 3.18 crore, which resulted into blocking of funds by ₹ 2.94 crore.**

Centre for Development of Advanced Computing (C-DAC), a Scientific Society under the Department of Electronics and Information Technology (DeitY) entered into a service level agreement (SLA) with Post Graduate Institute of Medical Education & Research (PGIMER), Chandigarh (March 2007) for undertaking a

<sup>2</sup> It is pertinent to mention here that part of the unutilised part was diverted for the purpose of establishment of a dedicated Project Management Unit for the “India e-Delivery of Public Services” project to be completed by September 2014 also remained uncompleted upto March 2016.

project on “Computerization of PGIMER” on turnkey basis, at the cost of ₹ 21.70 crore to be executed in three phases and completed within 24 months from the date of signing of agreement. The project was started in April 2007 and primarily included implementation of Hospital Information System (HIS) in PGIMER.

Audit scrutiny of records revealed the following:

(I) All the 19 tasks of phase I were completed with a delay ranging from 6 days to 89 months. In the second and third phases, only two tasks out of four in each phase were completed and that too with delays ranging from 19 to 35 months. It was further observed that delay in completion/non-completion of different tasks of the project took place mainly on account of lack of coordination between C-DAC and PGIMER which resulted in the following:

- (a) Non-finalisation of site/designs/layouts before implementation and frequent changes in locations and layouts of various instruments which caused delay in site preparation and in turn delayed the civil, electrical works etc.
- (b) Make/model/version of hardware and software components of the system could not be agreed upon in time which resulted in delayed supply and installation thereof.
- (c) Operational issues related to training of end users and environment etc. could not be resolved during the trial run of various modules of HIS.

During the period between April 2008 and August 2015, C-DAC raised 54 invoices amounting to ₹ 12.16 crore but due to non-completion/delay in completion of various tasks, PGIMER released payment of only ₹ 7.88 crore withholding ₹ 4.28 crore.

Ministry in its reply stated that (May 2016) the following resulted in shift in tasks, modules and ultimately all the phases of the project:

- (i) C-DAC has not delayed the project. Whatever delay has taken place is attributable to the PGIMER.
- (ii) PGIMER made undue delay in opening of letter of credit in favour of various national and international suppliers, which shifted the implementation of the project for about one and half year. Despite that, C-DAC had procured and installed all the required hardware and software in Phase I by the year 2009-10 and the system is fully operational since then. However, the end users had some problem in this change management process and majority of their users were not willing to switch over to the computerized operation due to various legacy reasons.

- (iii) The SLA signed between C-DAC and PGIMER was one sided. While it specified a fixed time schedule for C-DAC for completion, it did not contain any obligation on the part of PGIMER to cooperate with C-DAC to ensure timely completion of the project.

Earlier C-DAC Noida, in its reply (December 2015) had attributed following additional reasons to the delay in completion of the project:

- (a) Site was not got vacated by PGIMER in time and approval of Civil and Electrical design had taken its own time.
- (b) The tender was published in 2006 and finalized in 2007 only. This time gap resulted into technological changes and consequently changes in the specifications and modules of hardware. Approval of the revised technical specification was delayed on the part of PGIMER.
- (c) In spite of all training and trial run, changes were asked for by the end users.

Replies of C-DAC/Ministry are not acceptable due to the following reasons:

- It was the prime responsibility of the C-DAC to comply with terms and conditions of the agreement and to hand over the project as per the scheduled time frame. As per clause 7.13.15 of tender documents (Section III: General Conditions of Contract), C-DAC was supposed to have knowledge of the site and its surroundings and to have satisfied itself with the physical and climatic conditions, the quantities and nature of the works, risks, contingencies and circumstances affecting its obligations and responsibilities under the contract and its ability to perform it. It was also required to take all measures to overcome physical conditions and/or obstructions affecting the work as detected during pre-installation survey / during delivery or installation.
- Clause 26 of tender documents (Section II: Instructions to Main Bidders), specifically provided that in case, any change made by the Purchaser within quantities, specifications, services or scope of the contract caused an increase or decrease in the cost of, or time required for the Main Bidder's performance of any part of the work, an equitable adjustment would be made in the Contract price or delivery schedule or both by mutual consent of both parties. However, any claim by the main bidder for adjustment under this clause must be asserted within 30 days from the date of receipt of the Purchaser's changed order. As per records made available to audit, no request for extension of time for completion of different components of the project was made by C-DAC when PGIMER delayed the performance of the project on the above stated grounds.

- C-DAC should have vetted the terms and conditions of the tender documents before entering into the SLA to avoid such circumstances in the later stages of the project.

In any case, the delay of 89 months is not justified and even after lapse of more than eight years from the start of work, the project is incomplete which reflects the inefficiency and improper management of project for which payment of ₹ 4.28 crore for work done was withheld by the PGIMER, Chandigarh.

(II) Clause 8 and 9 of the tender documents (Section II: Instructions to main Bidders) clearly stipulate that prices quoted must be firm and final and remain constant throughout the period of the contract and shall not be subject to any upward modifications on any account whatsoever. Unit rates were required to be indicated and the prices quoted shall be all inclusive. Also, under Section D of tender documents, specifications of electrical points were mentioned and it was stated that “unit rate of copper wire and PVC baton should be quoted”.

C-DAC Noida, while quoting rate against Task 5 of Phase I (installation of Centralized Uninterrupted Power Supply (UPS) Indigenous component - electrical cabling) without properly assessing the quantities to be executed, quoted ₹ 24.20 lakh (₹ 22 lakh *plus* ₹ 2.20 lakh towards taxes) for lump sum quantity instead of unit wise rate for actual quantity to be used. Further, even at the time of entering into SLA, C-DAC agreed for the lump sum amount for electrical cabling work. C-DAC while quoting lump sum rate had taken into account cabling of 10,000 meter. During actual execution of work, 1.29 lakh meter of cabling was used for which C-DAC had raised a bill of ₹ 3.18 crore for the task. However, PGIMER accepted the claim of ₹ 24.20 lakh only against this task and the balance of ₹ 2.94 crore was disallowed.

On being pointed out (March 2016), Ministry replied (May 2016) that for quoting rates, specific format was given by the PGIMER and considering the complexities of UPS cabling, C-DAC quoted in lump sum for UPS cabling of 10,000 meters. There was a clear cut understanding that the quantity and rates of cables quoted in the tender documents were as required since PGIMER would place the work order on actual basis. It was not at all apprehended that PGIMER would stick to such minor issues. However, as soon as it was realised, the matter was taken up with PGIMER (September 2009) and the unit rates for UPS cabling were intimated. Now, PGIMER has given assurance to consider payment on actual basis.

Reply does not justify C-DAC's failure in assessment of actual quantity, cost and operational difficulties of the Task while quoting lump sum rate for UPS cabling. As a result ₹ 2.94 crore was disallowed by PGIMER in connection with UPS cabling work.

Thus imprudent bidding and contracting by C-DAC, NOIDA and imprudent offer of lump sum bid for UPS cabling task resulted in blocking of funds to the tune of ₹ 7.22 crore (₹ 4.28 crore for works executed and ₹ 2.94 crore on UPS cabling respectively).

#### 4.4 Irregular continuation of budgetary support to Media Lab Asia

**Department of Electronics and Information Technology (DeitY) released Grants-in-Aid of ₹ 15.74 crore to Media Lab Asia (MLA) during 2013-14 after expiry of period of Cabinet approval for MLA's nine years' business plan ending in April 2012 despite adverse comments from Ministry of Finance as well as Ministry of Planning.**

Media Lab Asia (MLA) was incorporated on 20 September 2001 as a not-for-profit company under Section 25 of the Companies Act, 1956. MLA was a collaboration between Government of India and Massachusetts Institute of Technology (MIT), USA. The goal of this collaboration was to conduct information and communication technology (ICT) research relevant for common man, ensure successful implementation of research projects in villages and make India a leading innovator in bringing emerging technologies in service of the poor.

MLA was conceived with a rollout in two phases: one year initial phase followed by a nine year full-scope programme. An amount of ₹ 124.29 crore<sup>3</sup> was received as Grant-in-Aid by MLA during the period from 2001-02 to 2013-14. A Research & Collaboration Agreement (RCA) was signed between the Media Lab Asia and MIT on 21 September 2001. It was agreed that MLA would pay US \$ 1.7 million (net of taxes) for expenses incurred by MIT outside India, during the one-year exploratory phase. The RCA expired in March 2003.

A Cabinet Note was submitted by the Department of Electronics and Information Technology (DeitY) seeking approval of New Structure and Business Plan of MLA, initiation of full scope program from 1 May 2003 for a period of nine years with the X plan outlay of ₹ 262 crore (out of which Government contribution was to be ₹ 227 crore) and constitution of a Steering Committee to prescribe the organizational structure of MLA in alignment of what it obtains from Government and R&D institutions. Approval of the Cabinet was accorded (July 2003) to the revised Cabinet Note submitted. New Structure and Business Plan of MLA envisaged

<sup>3</sup> This does not include ₹ 0.47 crore released by DeitY during 2014-15 towards Varanasi ICT based Integrated Development Program (₹ 0.39 crore) and Awareness & Communication Campaign about Standards (₹ 0.08 crore).

- Reoriented programme focused on project based IPR generation and consequent individual sponsorship relationships;
- All current in-house projects to be transferred to an appropriate IIT along with researchers working on these projects and funding to be continued by the Company;
- The Business Plan would focus on “early harvest” projects useful for the masses and MLA would actively support research in the newly emerging inter-disciplinary areas such as Biotechnology and Bio-informatics as well as Nano-technology and Nano-informatics.

However, two specific independent projects viz. National e-Governance Division (NeGD) and IT Research Academy (ITRA) were entrusted to MLA in December 2009 and November 2010 respectively with the approval of the Minister (Communication & IT).

Union Cabinet approved (May 2006) an integrated approach for implementation of e-Governance programme. In order to bring about ‘Simple, Moral, Accountable, Responsive and Transparent’ (SMART) governance with the primary vision to “make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realize the basic needs of the common man” NeGD was set up within MLA to assist DeitY in discharging the key roles/tasks relating to National e-Governance Programme (NeGP) assigned to it. The total outlay for the project was ₹ 41.49 crore to be implemented over a period of three years from the date of first release (2009-10). An amount of ₹ 290.67 crore was released to MLA upto 2014-15 towards this project as seen from the annual accounts of MLA.

IT Research Academy (ITRA) is a National Programme initiated by DeitY aimed at building a national resource for advancing the quality and quantity of R&D in Information and Communications Technologies and Electronics (IT) and its applications at a steadily growing number of academic and research institutions, while strengthening academic culture of IT based problem solving and societal development. The estimated cost of the project was ₹ 148.83 crore to be implemented over a period of five years from the date of first release (2010-11). An amount of ₹ 38.60 crore was released to MLA upto 2014-15 towards this project.

The observations of Audit in this regard are detailed below:

- Since the above projects were not in sync with the objectives for which MLA was created, entrustment of these projects to MLA resulted in diversion of the activities besides ensuring regular fund flow for implementation of these projects;
- Though Expenditure Finance Committee (EFC) recommended for entrusting NeGD to National Institute of Smart Government (NISG), the same was entrusted to MLA.
- No alternatives were discussed before entrusting ITRA to MLA.
- Department of Expenditure, Ministry of Finance had stated (May 2010) on the DeitY's proposal on entrustment of ITRA to MLA that the project would be implemented under the plan for umbrella scheme for MLA and it would not be possible to allocate additional funds on account of this new initiative. Despite this, an amount of ₹ 38.60 crore was released to MLA by DeitY upto 2014-15.
- As on 31 March 2015, an amount of ₹ 196.42 crore of grant was lying unutilized with the Company of which ₹ 172.64 crore was kept in deposits with more than three months' maturity. This indicates that release of grants was not linked to utilisation but grants were disbursed in a routine manner and consequently, huge amounts of grants were blocked with the Company.
- The nine year period for which Cabinet had accorded its approval for Media Lab Asia Programme came to an end on 30 April 2012. For continuation of Government budgetary support to MLA for 10 more years upto 30 April 2022, a draft Cabinet Note was circulated to Planning Commission, Ministry of Health & Family Welfare and Ministry of Finance.

Ministry of Finance observed (December 2012) in its comments that:

- The outcome assessment of projects undertaken by MLA showed that either the projects are very localized or would have limited impact;
- MLA should take on the role of a Consultant or Manager and not be involved with development of products;
- Entrustment of ITRA and NeGD, set up towards the end of the eleventh plan to MLA resulted in life of MLA, created with a mandate of ten years, getting artificially extended. It further recommended that this arrangement should not be prolonged and ITRA and NeGD should be divested from MLA forthwith.

- MLA, despite being in existence for over a decade, seemed to have achieved very limited impact. It has over time become more like an attached office of Department of Information Technology (DIT) providing support for the Ministry's programme(s) and as a source of Consultants and Advisors. It has consistently failed to generate Internal and Extra Budgetary Resources (IEBR) beyond some insignificant percentage and options may be explored for bringing this chapter to a close.

Planning Commission, in its comments, noted that the applications identified by MLA were already being dealt by C-DAC<sup>4</sup>, TDIL<sup>5</sup> and other divisions under DeitY and hence specific project proposals to be undertaken by MLA are needed to be identified. It also noted that even after nine years of its existence, DeitY was too pessimistic with regard to generation of IEBR by MLA as the Company would be in consolidation phase in the next two years. It emphasized the need to review the performance of MLA and assessment of the achievements compared with the targets at the end of second year of the Twelfth Five Year Plan.

Despite the above observations of various Ministries/Departments, Grant-in-Aid of ₹ 15.74 crore was given to MLA by DeitY during the year 2013-14 also.

MLA replied (July 2015) that the decision for extending financial support for period beyond 30 April 2012 was taken based on the approval of the EFC so that the ongoing project activities do not suffer and the activities should not come to a stop and for tiding over the critical financial stage.

The reply is not acceptable due to following reasons:

- As full scope programme of MLA upto 30 April 2012 was approved by Cabinet, proposal of budgetary support to MLA beyond this period should have been approved by the Union Cabinet only.
- Ministry of Finance and Planning Commission had advised for a relook at the MLA scheme in their remarks on the EFC memorandum for continuation of budgetary support to MLA beyond the approved period.

The matter was reported to Ministry in April 2016; their replies are awaited (July 2016).

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<sup>4</sup> Center for Development of Advanced Computing  
<sup>5</sup> Technology Development for Indian Languages

#### 4.5 Non-carrying out of primary business of hearing and disposal of cases by Cyber Appellate Tribunal

**Non-appointment of the Chairperson of Cyber Appellate Tribunal since July 2011 coupled with lack of provision for vesting the members of Tribunal with powers to constitute benches and disposal of appeals defeated the very purpose of its creation resulting in unfruitful expenditure of ₹ 27.64 crore on salary and other establishment expenditure for the period from April 2011 to March 2016 during which not a single case was heard or disposed off even though 66 cases of appeals were pending as of March 2016.**

The Cyber Appellate Tribunal (CyAT) is a statutory organization under the administrative control of Ministry of Communications & Information Technology, established by the Central Government in accordance with the provisions contained in Section 48(1) of the Information Technology Act, 2000 (the Act). It is an appellate authority against orders of controller or adjudicating officer<sup>6</sup> under the Act. The Tribunal was seen as a specialized forum to redress cyber frauds when it was setup in 2006. The CyAT has, for the purposes of discharging its functions under the I.T. Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908. The Tribunal consists of a Chairperson and such number of other members as the Central Government may by notification in the Official Gazette appoint. The selection of the Chairperson and Members of the Tribunal is made by the Central Government in consultation with the Chief Justice of India.

Audit observed that after retirement of the last Chairperson on 30 June 2011, no Chairperson was appointed as of June 2016 and hence no judicial order was pronounced during this period. However, members<sup>7</sup> and other staff continued to render services in the CyAT since then and expenditure of ₹ 27.64 crore were incurred on its establishment for the period from 2011-12 to 2015-16 without carrying out its primary business of hearing and disposal of appeals.

Ministry stated in its reply that the process of filling up the vacancy in CyAT is under active consideration. Further, Ministry assured that in future, with due amendment in the IT Act, it is likely that in the absence of the Chairman, members of the Tribunal would be vested with the powers to constitute benches and dispose of the appeals.

Reply of the Ministry is not acceptable because the fact remains that the CyAT has been lying defunct for about five years and not carrying out its primary function of forming benches and listing appeals/cases for hearing to pass the judgement. Upto

<sup>6</sup> The IT Act 2000 empowers the Central Government to appoint an officer not below the rank of Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer to hold an enquiry as to whether any person has contravened any provisions of the Act or any rule, regulation or direction or order made there under which renders him liable to pay penalty or compensation.

<sup>7</sup> 1. Justice S. K. Krishnan, Judicial Member : from 21<sup>st</sup> December 2011 to 8<sup>th</sup> November 2012  
2. Dr. S. S. Chahar, Judicial Member : from 1<sup>st</sup> April 2015 onwards  
3. Dr. R. N. Singh, Technical Member : from 2<sup>nd</sup> November 2012 onwards.

March 2016, 66 cases of appeals were pending because of non-appointment of Chairman. Thus, there was no redressal of the grievances of the persons aggrieved by an order, made by Controller or an adjudicating officer.

Thus the inaction of the Ministry defeated the very purpose for which CyAT was formed and also resulted into an expenditure amounting to ₹ 27.64 crore for the period 2011-12 to 2015-16 on its establishment. Further, the Cyber fraud victims of the country have no option but to approach the High Courts for redressal of the grievances, which are already overburdened because of large number of pending cases.

#### **4.6 Unfruitful expenditure on the Enterprise Resource Planning (ERP) project by Software Technology Parks of India (STPI)**

**In violation of mandatory provisions of GFR, STPI exempted the levy of liquidated damages for default on the part of the contractors which diluted their obligation of timely completion of the project. Due to non-completion of the project, entire expenditure of ₹ 1.80 crore on the project remained unfruitful.**

Software Technology Parks of India (STPI), an Autonomous Society under the Department of Electronics & Information Technology, awarded the work of implementation of Enterprise Resource Planning (ERP) in STPI to implement e-governance system both for internal and external interface to M/s Oracle India Pvt. Ltd. (OIPL) ( August 2005). OIPL nominated M/s Pricewaterhouse Coopers Pvt. Ltd. (PwC) as their sole representative for executing the work and requested to place the Purchase Order for Oracle Licenses and services through PwC. Accordingly, STPI placed Purchase Order for Oracle Applications 11i/Technology Licenses Delivery & Implementation on PwC on 17 August 2005 for ₹ 2.85 crore that included ₹ 1.15 crore for the license and ₹ 1.70 crore towards cost of implementation along with three years post implementation support by PwC.

Subsequently, an agreement was entered between STPI and OIPL (1 September 2005) and between STPI and PwC (19 September 2005) to this effect with stipulated date of completion of the work within three months of entering into the agreement.

However, even after lapse of more than four years, only two modules out of eight main modules were partially completed by PwC. Moreover, the modules configured by PwC did not function as per requirement of the STPI. During this period, an expenditure of ₹ 1.80 crore was incurred on the project which included payment of ₹ 1.34 crore to PwC and expenditure of ₹ 0.46 crore on procurement of hardware by the end of March 2009.

Since, there was no further progress in the implementation of the project, it was decided in August 2010 to call off the project and to take action for recovery of

losses/damage suffered by the STPI in the project. Arbitration proceedings were initiated against PwC in April 2012 which was under progress (January 2016). Further, on the advice of the Legal Counsel, STPI filed a writ petition against OIPL in the High Court of Delhi in September/October 2014.

Audit observed that as per general principles of contract as provided under Rule 204(xvi) of General Financial Rules, all contracts should contain a provision for recovery of liquidated damages for defaults on the part of the contractor. However, in contravention of the above provisions, clauses for specifically exempting the levy of liquidated damages were inserted in the agreement with OIPL as well as with PwC which relieved them from the liability of timely completion of the contract and follow its terms and conditions.

On being pointed out (December 2015/April 2016), it was replied by STPI/Ministry (January 2016/June 2016) that

- Since this project was first of its kind in India, it was decided not to include any penalty clause for delay in completion of the project. The contract and agreement were devised in such a manner that it facilitated its completion without any fear. Considering that the success rate of implementation of such projects was very less worldwide, prediction of successful implementation of such projects in India could not have been made at that time.
- Certain amount of expenditure like making available the basic infrastructure required was necessary at initial stage to commence the project.
- Action has been taken against the said parties, legal notice claiming the losses/damage were served to the parties. STPI has initiated arbitration proceedings against PwC in which it has filed statement of claim of about ₹ 30 crore. STPI has also filed a writ petition in Hon'ble High Court at Delhi against OIPL in absence of arbitration clause and quantum of compensation would, however, be decided by the Court of law.

The reply is not acceptable as the project had clearly defined deliverables and exemption from levy of any Liquidated Damages for defaults on the part of the contractors was in gross violation of the general principles of the contract as provided under GFR. This exemption completely absolved the contractor of its contractual obligations.

Thus, in gross violation of mandatory provisions of GFR, STPI exempted the levy of liquidated damage for defaults on the part of the contractors which diluted their obligation of timely completion of the project. As a result STPI failed to invoke penal provisions on the contractors rendering entire expenditure of ₹ 1.80 crore on the project unfruitful.

