

## CHAPTER III

# Corporate Governance

### 3.1 Corporate Governance

#### 3.1.1 Provisions as contained in the Companies Act, 2013

The Companies Act, 2013 was enacted on 29 August 2013 replacing the Companies Act, 1956. In addition, the Ministry of Corporate Affairs has also notified (31 March 2014) Companies Rules 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its powers and Accounts. The Companies Act, 2013 together with the Companies Rules provide a robust framework for corporate governance. The requirement inter alia provide for:

- Qualifications for Independent Directors along with the duties and guidelines for professional conduct Section 149(6) read with rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- Mandatory appointment of one woman director on the board of listed companies {Section 149(1)}.
- Mandatory establishment of certain committees like Corporate Social Responsibility Committee {Section (135)}, Audit Committee {Section 177(1)}, Nomination and Remuneration Committee {Section 178(1)}, and Stakeholders Relationship Committee {Section 178(5)}.
- Holding of a minimum of four meetings of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board {Section 173(1)}.

#### 3.1.2 SEBI guidelines on Corporate Governance

With reference to enactment of Companies Act, 2013, Securities and Exchange Board of India (SEBI) amended (April and September 2014), clause 49 of the Listing Agreement to align it with the Corporate Governance provisions specified in the Companies Act, 2013.

Securities and Exchange Board of India notified (2 September 2015) the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which came into effect from 1 December 2015 repealing the earlier provisions

SEBI, further issued (13 October 2015) a uniform listing agreement format for all types of securities which required the listed entity to comply with the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. These regulations

were amended on 22 December 2015, 25 May 2016, 8 July 2016, 4 January 2017 and 15 February 2017.

### **3.1.3 DPE guidelines on Corporate Governance for Central Public Sector Enterprises**

The Department of Public Enterprises (DPE) issued guidelines on Corporate Governance in November 1992 on the inclusion of non-official directors on the Board of Directors. DPE issued further guidelines in November, 2001 providing for inclusion of independent directors on the Board of Directors. To bring in more transparency and accountability in the functioning of Central Public Sector Enterprises (CPSEs), the government in June, 2007 introduced the guidelines on Corporate Governance for CPSEs. These guidelines were voluntary in nature. These guidelines were implemented for an experimental period of one year. On the basis of the experience gained during this period, it was decided to modify and reissue the DPE guidelines in May, 2010. These guidelines have been made mandatory and applicable to all CPSEs. The guidelines issued by DPE covered areas like composition of Board of Directors, composition and functions of Board committees like Audit Committee, Remuneration committee, details on subsidiary companies, disclosures, reports and the schedules for implementation. All references to DPE guidelines in this chapter refer to the DPE guidelines issued in May, 2010 which are mandatory to all CPSEs. DPE has also incorporated Corporate Governance as a performance parameter in the MoUs of all CPSEs. In so far as listed CPSEs are concerned, they are required to comply with the SEBI guidelines/regulations on Corporate Governance in addition to complying with provisions in DPE guidelines.

### **3.1.4 Review of compliance by selected CPSEs of the Corporate Governance provisions**

As on 31 March 2018, there were 644 Central Government Public Sector Enterprises (CPSEs) under the audit jurisdiction of the CAG of India. In the context of the policy of the government to grant more autonomy to the CPSEs, Corporate Governance has assumed importance. Under the Maharatna Scheme, CPSEs are expected to expand international operations and become global giants, for which effective Corporate Governance is imperative.

For the purpose of the review, an assessment framework was prepared based on the provisions contained in the Companies Act, 2013, guidelines/regulations issued by SEBI (April and September 2014) and the DPE guidelines on corporate governance (May 2010) and compliance by CPSEs listed in various stock exchanges. With these provisions during the year 2017-18 was reflected in the assessment framework. The review covers 52 listed CPSEs under administrative control of various Ministries for the year ended 31 March 2018. List of the CPSEs is given in the **Appendix-XVII**.

## 3.2 Composition of Board of Directors

### 3.2.1 Non-Executive Directors on the Board

The Board is the most significant instrument of corporate governance. Clause 49 (II) (A) (1) of Listing Agreement and Regulation 17 (1) (a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulates that the Board of Directors of the company shall have an optimum combination of executive and non-executive directors with not less than 50 *per cent* of the Board of Directors comprising non-executive directors.

In the CPSEs listed in Table 3.1, the non-executive directors constituted less than 50 *per cent* of the total Board strength.

**Table 3.1: CPSEs where non-executive directors were less than 50 *per cent* of the Board strength**

Sl. No.	Name of the CPSE	Total Directors	No. of Non-Executive Directors	Percentage
1	Balmer Lawrie & Co Ltd	6	2	33
2	Power Grid Corporation of India Ltd	9	4	44

### 3.2.2 Independent Directors

The presence of independent representatives on the Board, capable of taking an independent view, the decisions of the management are widely considered as a means of protecting the interests of shareholders and other stakeholders. In terms of section 149 (4) of the Companies Act, 2013, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, Clause 49 (II) (A) (2) of Listing Agreement, Regulation 17 (1) (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 and Para 3.1.4 of the DPE guidelines, where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and, in case he is an executive director, at least half of the Board should comprise independent directors. However, as per Clause 49 (II) (B) (1), 'independent director' shall mean a non-executive director, other than a nominee director of the company.

The review of composition of the Board of Directors (BoD) revealed that the CPSEs listed in Table 3.2 did not have the required number of independent directors on their Board:

**Table 3.2: CPSEs not having required number of independent directors**

Sl. No.	Name of the CPSE	No. of Directors in BoD	Status of Chairman	Required No. of Independent Directors in BoD	Actual No. of Independent Directors in BoD
1	KIOCL Ltd	7	Executive	4	2
2	Dredging Corporation of India Ltd	6	Executive	3	2
3	HMT Ltd	5	Executive	3	1
4	NLC India Ltd	14	Executive	7	6
5	Chennai Petroleum Corporation Ltd	10	Non-Executive	4	2
6	The Fertilisers and Chemicals Travencore Ltd	11	Executive	6	5
7	Madras Fertilisers Ltd	11	Executive	6	4
8	BEML Ltd	8	Executive	4	3
9	Container Corporation of India Ltd	11	Executive	6	5
10	ITI Ltd	7	Executive	4	2
11	Oil India Ltd	11	Executive	6	4
12	Hindustan Copper Ltd	10	Executive	5	4
13	Andrew Yule & Co Ltd	7	Executive	4	3
14	Shipping Corporation of India Ltd	12	Executive	6	5
15	Rashtriya Chemicals & Fertilisers Ltd	8	Executive	4	3
16	Hindustan Petroleum Corporation Ltd	13	Executive	7	6
17	India Tourism Development Corporation Ltd	7	Executive	4	2
18	National Fertilisers Ltd	9	Executive	5	4
19	NTPC Ltd	16	Executive	8	7
20	Power Grid Corporation of India Ltd	9	Executive	5	3
21	Bharat Heavy Electricals Ltd	13	Executive	7	6
22	Power Finance Corporation Ltd	7	Executive	4	2
23	SJVN Ltd	10	Executive	5	4
24	MOIL Ltd	9	Executive	5	3

There were no independent directors on the Board in respect of CPSEs given in Table 3.3.

**Table 3.3: CPSEs not having any independent directors**

Sl. No.	Name of the CPSE
1	Balmer Lawrie Investments Ltd
2	Scooters India Ltd
3	IFCI Ltd

### 3.2.3 Woman Director in the Board

Section 149 (1) of the Companies Act, 2013, Rule 3 of Chapter XI of the Companies (Appointment and Qualification of Directors) Rules, 2014 and Clause 49 (II) (A) (1) of Listing Agreement and Regulation 17 (1) (a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulates that the Board of Directors of the company shall have at least one woman Director in its Board. In respect of MMTC Ltd, there was no woman Director on the Board.

## 3.3 Appointment and functioning of Independent Directors

### 3.3.1 Issuance of formal letter of appointment

Clause 49 (II) (B) (4) (a) of the Listing Agreement (April 2014) stipulates that the company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act 2013. As per schedule IV Part IV of the Companies Act 2013, the appointment of Independent Directors shall be formalised through a letter of appointment which shall set out the terms and conditions of appointment. However it was observed that, in the CPSEs, listed in Table 3.4, no appointment letters detailing the terms and conditions were issued by the CPSEs.

**Table 3.4: Appointment letters of Independent Directors not issued by CPSEs**

Sl. No.	Name of the CPSE
1	HMT Ltd
2	NLC India Ltd
3	Madras Fertilisers Ltd
4	Hindustan Aeronautics Ltd
5	Mishra Dhatu Nigam Ltd
6	Andrew Yule & Co Ltd
7	Engineers India Ltd

### 3.3.2 Code of Conduct

Regulation 17 (5) (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that Code of Conduct prescribed by the Board of Directors includes the duties of Independent Directors as laid down in the Companies Act, 2013. However it was observed that, in the CPSEs, listed in Table 3.5, the code of conduct does not incorporate in the duties of Independent Directors.

**Table 3.5: CPSEs where the code of conduct does not incorporate in the duties of Independent Directors**

Sl. No.	Name of the CPSE
1	MMTC Ltd
2	State Trading Corporation of India Ltd

### 3.3.3 Training of Independent Directors

**3.3.3.1** Schedule IV (Para III(1) – Duties of Independent Directors) of Companies Act, 2013 and Clause 49 (II) (B) (7) (a) & (b) and Regulations 25 (7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which company operates, business model of the company etc. However, it was observed that in the CPSEs listed in Table 3.6, no such training was conducted for Independent Directors who were on the Board during the year 2017-18.

**Table 3.6: CPSEs where no training conducted for the Independent Directors**

Sl. No.	Name of the CPSE
1	Mahanagar Telephone Nigam Ltd
2	Bharat Immunological & Biologicals Corporation Ltd

**3.3.3.2** Further, in contravention of Regulation 46 (2) (i) and schedule V (C) (2) (g) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, the details of training were not disclosed on the website and a web link thereto in the Annual Report of the CPSEs listed in Table 3.7.

**Table 3.7: CPSEs where training details were not given on website**

Sl. No.	Name of the CPSE
1	The Fertilisers and Chemicals Travencore Ltd
2	Mishra Dhatu Nigam Ltd

### 3.3.4 Meetings of Board of Directors and Board committees

Schedule IV (III) (3) of the Companies Act, 2013 states that Independent Directors should strive to attend all the meetings of Board of Directors and Board Committees of which he/she was a member. Some of the Independent Directors, however, did not attend some of these meetings. Table 3.8 indicates the number of such independent directors.

**Table 3.8: Independent Directors who did not attend some of the meetings**

Sl. No.	Name of the CPSE	No. of Independent Directors who did not attend some Board meetings	No. of Independent Directors who did not attend some Board Committee meetings
1	NMDC Ltd	5	3
2	NLC India Ltd	3	2
3	Chennai Petroleum Corporation Ltd	1	-
4	The Fertilisers and Chemicals Travancore Ltd	3	-
5	Madras Fertilisers Ltd	1	-
6	Bharat Electronics Ltd	4	2
7	Hindustan Aeronautics Ltd	2	1
8	Bharat Dynamics Ltd	4	3
9	Mishra Dhatu Nigam Ltd	1	1
10	Container Corporation of India Ltd	1	-
11	Mahanagar Telephone Nigam Ltd	5	2
12	Indian Renewable Energy Development Agency	3	1
13	Bharat Immunological & Biologicals Corporation Ltd	5	1
14	Steel Authority of India Ltd	3	2
15	Coal India Ltd	6	3
16	Oil India Ltd	4	-
17	National Aluminium Company Ltd	5	2
18	Hindustan Copper Ltd	2	2
19	Balmer Lawrie & Co Ltd	2	-
20	Andrew Yule & Co Ltd	1	1
21	Shipping Corporation of India Ltd	2	-
22	Rashtriya Chemicals & Fertilisers Ltd	2	2
23	Hindustan Organic Chemicals Ltd	2	1
24	Oil & Natural Gas Corporation Ltd	7	4
25	Bharat Petroleum Corporation Ltd	2	-

26	Hindustan Petroleum Corporation Ltd	5	3
27	MMTC Ltd	3	-
28	India Tourism Development Corporation Ltd	1	1
29	State Trading Corporation of India Ltd	6	2
30	Indian oil Corporation Ltd	3	-
31	GAIL (India) Ltd	5	2
32	Engineers India Ltd	5	5
33	National Fertilisers Ltd	2	2
34	NTPC Ltd	7	3
35	Power Grid Corporation of India Ltd	1	-
36	Bharat Heavy Electricals Ltd	2	1
37	NHPC Ltd	3	2
38	Power Finance Corporation Ltd	1	-
39	Rural Electrification Corporation Ltd	2	2
40	SJVN Ltd	3	2
41	MOIL Ltd	1	-
42	Housing & Urban Development Corporation Ltd	5	2

### 3.3.5 Attending General Meetings of the Company

Schedule IV (III) (5) of the Companies Act, 2013 states that Independent Directors shall strive to attend all the General Meetings of the Company. Table 3.9 indicates the listed CPSEs where Independent directors did not attend the general meetings of the Company.

**Table 3.9: Independent Directors who did not attend General meetings**

Sl. No.	Name of the CPSE	No. of Independent Directors who did not attend General Meetings
1	NMDC Ltd	2
2	KIOCL Ltd	1
3	Dredging Corporation of India Ltd	1
4	NLC India Ltd	3
5	The Fertilisers and Chemicals Travencore Ltd	3
6	Bharat Electronics Ltd	6
7	Bharat Dynamics Ltd	5
8	Mahanagar Telephone Nigam Ltd	1
9	ITI Ltd	1

10	Bharat Immunological & Biologicals Corporation Ltd	8
11	Oil India Ltd	3
12	National Aluminium Company Ltd	3
13	Hindustan Copper Ltd	3
14	Andrew Yule & Co Ltd	2
15	Hindustan Organic Chemicals Ltd	2
16	State Trading Corporation of India Ltd	1
17	GAIL (India) Ltd	2
18	Engineers India Ltd	2
19	NHPC Ltd	1

### 3.3.6 Meeting of Independent Directors

**3.3.6.1** Schedule IV (VII) (1) of the Companies Act, 2013, Regulation 49 II B (6) (a) of Listing Agreement and Regulation 25 (3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 require that Independent Directors shall meet at least once in a year, without the presence of non-independent directors. Table 3.10 indicates CPSEs where no separate meeting was conducted.

**Table 3.10: CPSEs where separate meetings of Independent Directors not conducted**

Sl. No.	Name of the CPSE
1	Madras Fertilisers Ltd.
2	Bharat Immunological & Biologicals Corporation Ltd.

**3.3.6.2** Schedule IV (VII) (2) of the Companies Act, 2013 provides that all the independent Directors strive to attend such meeting. However, in respect of CPSEs listed in Table 3.11, some Independent Directors did not attend the separate meeting.

**Table 3.11: CPSEs where separate meeting was not attended by some Independent Directors**

Sl. No.	Name of the CPSE
1	NLC India Ltd
2	The Fertilisers and Chemicals Travencore Ltd
3	Bharat Electronics Ltd
4	Bharat Dynamics Ltd
5	Container Corporation of India Ltd
6	Indian Renewable Energy Development Agency
7	Hindustan Copper Ltd
8	Oil & Natural Gas Corporation Ltd
9	Hindustan Petroleum Corporation Ltd

10	State Trading Corporation of India Ltd
11	GAIL (India) Ltd
12	Engineers India Ltd
13	NTPC Ltd

Though separate meeting was conducted, no minutes of meeting were prepared in respect of CPSEs listed in Table 3.12

**Table 3.12: CPSEs where minutes of separate meeting was not prepared**

Sl. No.	Name of the CPSE
1	KIOCL Ltd
2	Dredging Corporation of India Ltd
3	The Fertilisers and Chemicals Travencore Ltd
4	Mahanagar Telephone Nigam Ltd
5	ITI Ltd
6	Andrew Yule & Co Ltd
7	Engineers India Ltd

### 3.4 Filling-up the posts of directors – functional, non-functional, independent

**3.4.1** Timely filling up of vacancies in the posts of Directors ensures the availability of required skill and expertise in the management of the company. Any delay in filling of vacancies may hamper the effectiveness of the decision making process. Schedule IV (Para VI (2) – Registration or Removal) of Companies Act, 2013, Clause 49 (II) (D) (4) of the listing agreement and Regulation 25 (6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that vacancy arising out of resignation or removal of an Independent Director should be done at the earliest but not later than the immediate next board meeting or three months from the date of such vacancy, whichever is later. However, it was observed that the CPSEs detailed in Table 3.13 did not comply with the above provision and the posts of Independent Directors remained vacant for a considerable period of time.

**Table 3.13: CPSEs where vacancies of Independent Directors not filled up in time**

Sl. No.	Name of the CPSE	Lying vacant in months
1	KIOCL Ltd	20
2	Dredging Corporation of India Ltd	40
3	HMT Ltd	12
4	Bharat Electronics Ltd	24
5	Hindustan Copper Ltd	24
6	Balmer Lawrie & Co Ltd	58
7	Andrew Yule & Co Ltd	74

8	Hindustan Petroleum Corporation Ltd	5
9	Power Grid Corporation of India Ltd	12
10	Bharat Heavy Electricals Ltd	11
11	Power Finance Corporation Ltd	24
12	SJVN Ltd	12
13	MOIL Ltd	4

**3.4.2** Further, it was also observed that in the CPSEs listed in Table 3.14, vacancies of whole time key managerial personnel were not filled within the period of six months prescribed in section 203 (4) of the Companies Act, 2013.

**Table 3.14: CPSEs where vacancies of whole time key managerial personnel not filled up in time**

Sl. No.	Name of the CPSE	Name of the Post	Delay in months
1	HMT Ltd	Director (Operations)	46
2	The Fertilisers and Chemicals Travancore Ltd	CMD Director (Finance) Director (Tech)	17 21 21
3	BEML Ltd	Director (Finance), Director(HR)	23 21
4	Mahanagar Telephone Nigam Ltd	Director (Finance)	12
5	Coal India Ltd	Chairman	7
6	National Aluminium Company Ltd	Director (Commercial)	13
7	Hindustan Copper Ltd	Director (Finance) Director(operation)	9 7
8	Andrew Yule & Co Ltd	Director (Personnel)	7
9	Balmer Lawrie Investments Ltd	MD/CEO	12
10	Oil & Natural Gas Corporation Ltd	Director (T & FS)	6
11	State Trading Corporation of India Ltd	Director(Marketing)	9
12	Engineers India Ltd	Director(Finance)	11
13	National Fertilisers Ltd	Director (Marketing)	26
14	Scooters India Ltd	Director (Finance)	24
15	IFCI Ltd	Chairman	12

## 3.5 Audit Committee

### 3.5.1 Composition of Audit Committee

Section 177 (1) and (2) of the Companies Act, 2013, Clause 49 (III) (A) of listing agreement and Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that there shall be an Audit Committee with a minimum of three directors as members of which two-thirds shall be Independent Directors. However, in respect of Scooters India Ltd, no Audit Committee was constituted.

Two-thirds of the members of the Audit Committee were not Independent Directors in respect of the CPSEs as detailed in Table 3.15.

**Table 3.15: CPSEs where Audit Committees does not consist of two-third Independent Directors**

Sl. No.	Name of the CPSE
1	HMT Ltd
2	Balmer Lawrie & Co Ltd
3	Balmer Lawrie Investments Ltd
4	IFCI Ltd

### 3.5.2 Chairman of the Audit Committee

Clause 49 (III) (A) (3) (4) of the Listing Agreement and Regulation 18 (1) (d) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the Chairman of the Audit Committee shall be Independent Director and present at Annual General Meeting (AGM) to answer shareholder queries. In respect of Balmer Lawrie Investments Ltd, Indian Renewable Energy Development Agency and IFCI Ltd, the Chairman of the Audit Committee is not Independent Director. In respect of NLC Ltd, The Fertilizers and Chemicals Travencore Ltd and IFCI Ltd the Chairman of the Audit Committee did not attend Annual General Meeting (AGM).

### 3.5.3 Meetings of Audit Committee

Clause 49 (III) (B) and Regulation 18 (2) (a) and (b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the Audit Committee should meet at least four times in a year and not more than 120 days shall elapse between two meetings. The quorum shall be either two members or one-third of members of the Audit Committee whichever is greater, but a minimum of two Independent Directors must be present.

In respect of Mangalore Refinery and Petrochemicals Ltd, Balmer Lawrie & Co Ltd, IFCI Ltd and India Tourism and Development Corporation Ltd instances of insufficient quorum was observed in some Audit Committee meetings. In respect of Hindustan

Aeronautics Ltd there was a gap of more than 120 days between two Audit Committee meetings.

### 3.5.4 Evaluation of Internal Control Systems

Clause 49 (III) (D) (11) Listing Agreement and Part C (A) (11) of schedule II to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the Audit Committee should evaluate internal financial control systems and risk management systems. In respect of CPSEs given in Table 3.16 the Audit Committee has not evaluated the systems.

**Table 3.16: CPSEs where Audit Committee did not evaluate internal financial control and risk management system**

Sl. No.	Name of the CPSE
1	Mishra Dhatu Nigam Ltd
2	Hindustan Organics Chemicals Ltd

### 3.5.5 Review of performance of Statutory and Internal Auditors

Further Clause 49 (III) (D) (12) Listing Agreement and Part C (A) (12) of schedule II to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the Audit Committee should review with the management, the performance of Statutory Auditors and Internal Auditors. In respect of CPSEs given in Table 3.17, such performance evaluation was not done.

**Table 3.17: CPSEs where performance of Statutory Auditors and Internal auditors not reviewed by the Audit Committee**

Sl. No.	Name of the CPSE
1	Mishra Dhatu Nigam Ltd
2	Indian oil Corporation Ltd

### 3.5.6 Adequacy of internal audit function

**3.5.6.1** Clause 49 (III) (D) (13) Listing Agreement and Part C (A) (13) of schedule II to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the Audit Committee should review the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure, coverage and frequency of internal audit. In respect of Mishra Dhatu Nigam Ltd, the Audit Committee did not review the internal audit function.

**3.5.6.2** As per clause 49 (III) (D) (14) of the listing agreement and Part C (14) of Schedule II to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, It is also the responsibility of the Audit Committee to hold discussion with internal auditors of any significant findings and follow up there on. In respect of Mishra Dhatu Nigam Ltd, the Audit Committee did not conduct any discussion with internal auditors.

### 3.5.7 Review of Information/Documents by Audit Committee

**3.5.7.1** All the CPSEs are subject to the audit of CAG as per the statutory mandate. Section 143 (6) of the Companies Act, 2013, authorizes CAG to carry out supplementary audit of accounts of Government Companies. Further section 177 (4) (iii) of the Companies Act, 2013 provides that Audit Committee shall examine the financial statements and Auditors' Report thereon. Thus, in case of CPSEs, it is the responsibility of the Audit Committee to review the findings of CAG.

In respect of Mishra Dhatu Nigam Ltd and GAIL (India) Ltd, Audit Committee did not review the findings of CAG.

**3.5.7.2** Regulation 18 (3) and Part C (B) of the Schedule II of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the audit committee shall mandatorily review the information, (i) management discussion and analysis of financial condition and results of operations, (ii) statement of significant related party transactions (as defined by the audit committee), submitted by management, (iii) management letters / letters of internal control weaknesses issued by the statutory auditors, (iv) internal audit reports relating to internal control weaknesses, (v) the appointment, removal and terms of remuneration of the chief internal auditor and (vi) statement of deviations shall be subject to review by the audit committee.

In respect of Mishra Dhatu Nigam Ltd, Audit Committee did not review the above items.

### 3.5.8.3 Discussion with Statutory Auditors

Clause 49 (III) (D) (16) of Listing Agreement and Part C (A) (16) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 provide that the Audit Committee should hold discussion with statutory auditors before the audit commences on the nature and scope of audit as well as post-audit discussion to ascertain any area of concern. In respect of Mishra Dhatu Nigam Ltd, the Audit Committee did not hold any such discussion.

## 3.6 Other Committees

### 3.6.1 Nomination and Remuneration Committee

Section 178 (1) of the Companies Act, 2013, Rule 6 of the Companies (Meeting of Boards and its Powers) Rules, 2014, Clause 49 (IV) of the Listing Agreement and Regulation 19 (1) and (2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that each CPSE shall constitute a Nomination and Remuneration Committee comprising of at least three Directors, all of whom should be non-executive Directors and at least half shall be independent. Chairman of the Committee shall be an Independent Director. However, there was no Nomination and Remuneration Committee in the CPSEs as detailed in Table 3.18. In some CPSEs though committee was

formed the requirement of three directors and half of them as Independent Directors was not fulfilled.

**Table 3.18: CPSEs not having Nomination and Remuneration Committee**

Sl. No.	Name of the CPSE
1	Bharat Immunological & Biologicals Corporation Ltd
2	Balmer Lawrie & Co Ltd
3	Scooters India Ltd

Balmer Lawrie Investments Ltd and Rashtriya Chemicals & Fertilisers Ltd not having required Independent Directors in the Nomination and Remuneration Committee.

### **3.6.2 Stakeholders Relationship Committee**

Section 178 (5) of the Companies Act, 2013 and Regulation 20(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 requires that every listed company shall constitute a Stakeholders Relationship Committee. It is observed that in respect of Scooters India Ltd, no such Committee was formed.

**3.6.3** In case of any contravention of the provisions of section 177 (Audit Committee) and section 178 (Nomination and Remuneration Committee and Stakeholders Relationship Committee), the company shall be punishable under section 178 (8), with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees or both. However, it was noted that no such penal action had been initiated by concerned Registrar of Companies during 2017-18.

### **3.7 Whistle Blower Mechanism**

Section 177 (9) of the Companies Act, 2013, Rule 7 of the Companies (Meeting of Boards and its Powers) Rules, 2014 and Revised Clause 49 (II) (F) of the Listing Agreement and Regulation 22 (1) and (2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that the company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. It was observed that, in the CPSEs listed in Table 3.19, there was no whistle blower mechanism.

**Table 3.19: CPSEs not having whistle blower mechanism**

Sl. No.	Name of the CPSE
1	Bharat Immunological & Biologicals Corporation Ltd
2	Balmer Lawrie Investments Ltd

**3.8 Policy relating to Related Parties**

Regulation 23 (1) & (4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that every company shall formulate a policy on materiality of related party transactions. Further, such material related party transactions required to be approved by Shareholders through resolution. In respect of CPSEs listed in Table 3.20, no such policy was formulated.

**Table 3.20: CPSEs not having policy relating to related parties.**

Sl. No.	Name of the CPSE
1	HMT Ltd
2	Bharat Immunological & Biologicals Corporation Ltd
3	Scooters India Ltd

**3.9 Disclosure of information on website**

**3.9.1** Regulation 46 (2) (a), (f) and (g) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that every company shall disclose the information on (i) details of its business (ii) policy dealing with related party transactions and (iii) criteria for making payment to non-executive directors on its website provide the same was not disclosed in Annual Report. In respect of Scooters India Ltd no such disclosure was made on website.

**3.9.2** Regulation 46 (2) (c) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that every listed company shall disclose in its website the composition of various committees of Board of Directors. In respect of Scooters India Ltd and Hindustan Organic Chemicals Ltd there is no such disclosure was made on website.

**3.10 Compliance Reports**

Regulation 27 (2) (a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 stipulate that every company has to submit a quarterly compliance report to the stock exchanges within 15 days from the end of every quarter. Further para 8.3 of DPE guidelines requires that every company shall submit quarterly progress report in the prescribed format to the respective administrative ministries within 15 days from the close of each quarter. In respect of Mahanagar Telephone Nigam Ltd

and Coal India Ltd quarterly progress report was not submitted to administrative ministry.

### **3.11 Conclusion**

Out of 52 selected CPSEs, non-executive directors were less than 50 *percent* in two CPSEs no Independent Directors had been appointed in three CPSEs and required number of Independent Directors were not appointed in 24 CPSEs; no Woman Director was appointed in one CPSE; appointment letters were not issued in seven CPSEs; code of conduct was not incorporated in two CPSEs; no training was conducted for Independent directors in two CPSEs; Independent directors either not attended the Board Meetings or not attended some board committee meetings in 42 CPSEs; Independent directors did not attend general meetings in 19 CPSEs; separate meeting of Independent Director was not conducted in two CPSEs and in respect of 13 CPSEs Independent Directors did not attend such meetings; posts of Independent directors were lying vacant ranging between 4 to 74 months in 13 CPSEs; Audit Committee does not consist of two-third independent directors in four CPSEs; Audit Committee did not evaluate internal financial control and risk management system in two CPSEs; performance of statutory auditors and internal auditor were not evaluated in two CPSEs; no nomination and remuneration committee in three CPSEs; no whistle blower mechanism in two CPSEs and did not have policy relating to related parties in three CPSEs.

Department of Public Enterprises (DPE) stated (July, 2019) that the oversight/monitoring of implementation of relevant laws, regulations, Guidelines, etc. by CPSEs lies with the concerned administrative Ministries/Departments who are also responsible for timely appointment of requisite number of independent Directors on the Boards of CPSEs under their respective administrative control. DPE has further stated that Board of Directors of the concerned listed CPSE should also ensure compliance with DPE/SEBI guidelines and relevant provisions of Companies Act, 2013.

### **3.12 Recommendation**

Government of India may impress upon the respective Administrative Ministries/Departments to ensure compliance of guidelines so as to achieve the objectives of corporate governance in listed CPSEs.