CHAPTER V

Analysis of Memorandum of Understanding between Administrative Ministries and Miniratna CPSEs

5.1 Introduction

Memorandum of Understanding (MOU) is a mutually negotiated agreement between the Administrative Ministry and the Management of the Centre Public Sector Enterprises (CPSEs) to fix targets on selected parameters, normally before the start of a new financial year and the results are evaluated after the end of the year to measure the performance vis-à-vis these targets. It contains intentions, obligations and mutual responsibilities of the CPSE and the Government and is directed towards strengthening CPSE management by results and objectives rather than management by controls and procedures. The subsidiary companies of CPSEs are required to sign MOUs with their holding companies.

5.2 Institutional arrangement for implementation of MOU Policy

Department of Public Enterprises (DPE) serves as a facilitator between the CPSEs and Administrative Ministries and provides a mechanism to evaluate the performance of the CPSEs. It provides a system through which MOU targets are set and commitments of both the parties to MOU can be evaluated at the end of the year besides improving technical inputs required to finalize the MOUs. Details of this institutional arrangement and their inter-linkages are as follows:

- **Pre-negotiation Committee:** The Pre-Negation Committee (PNC) comprises of Joint Secretary/Adviser looking after MOU in DPE, Joint Secretary/ Adviser of Administrative Ministry dealing with the CPSEs, Adviser (NITI Aayog) concerned with the domain of CPSE, Director (MOU) and representative from Ministry of Statistics and Programme Implementation to examine MOU targets in detail in respect of each CPSE. The role of the Pre-negotiation Committee (earlier known as Standing Committee on MOU) would be to assist Inter-Ministerial Committee (IMC) in determining the most appropriate and relevant parameters for measuring improvement in performance and for fixing targets. Meeting of the Pre-Negotiation Committee (PNC) would be held in each case before the meeting of IMC, to look at the trend, discuss, negotiate and recommend MOU parameters and targets.

- **Inter-Ministerial Committee:** An Inter-Ministerial Committee (IMC) is an alternative mechanism to Task Force which till then provided technical expertise for the MOU negotiations, target setting and evaluation of performance of CPSEs. IMC consists of Secretary DPE as its Chairman, Secretary of concerned Administrative Ministry or his representative, Secretary, Ministry of Statistics and Programme Implementation or his representative, Additional Secretary, NITI Aayog or his senior representative as its other members. Secretary, DPE may also co-opt any officer who is a finance expert in case the need is felt. Any change in the composition of the committee would be done with the approval of Cabinet Secretary. The role of IMC is to assist the High Power Committee (HPC) on MOU and DPE in setting MOU targets of CPSEs before beginning of the year and performance evaluation of MOU after completion of that year.
- **High Power Committee:** At the apex level of the institutional arrangement is the High Power Committee (HPC) headed by the Cabinet Secretary as Chairman of the Committee and Finance Secretary, Secretary (Expenditure), Secretary (Planning Commission), Secretary (Programme Implementation), Chairman (Public Enterprises Selection Board) and Chief Economic Adviser as Members. Secretary (Public Enterprises) acts as Member-Secretary.

HPC approves the final evaluation as to how far the commitments made by both parties of the MOU have been met.

5.3 MOU targets for performance assessment and rating

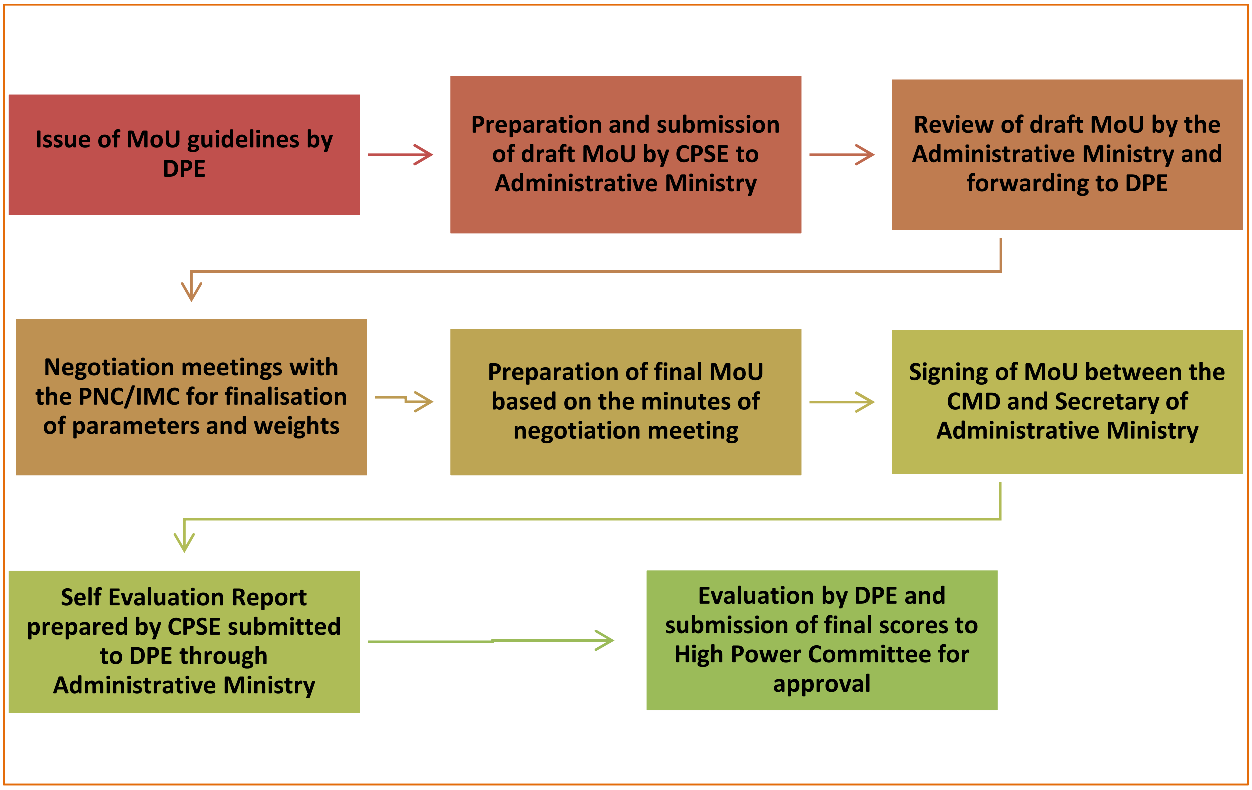
The basic approach in the fixation of MOU targets is that the targets should be realistic, growth oriented and aspirational.

The MOU guidelines for 2016-17 provided a basket of 10 broad evaluation criteria viz. i) Capacity utilisation, ii)Efficiency Parameters (Physical operations) iii) Leveraging Net worth, iv) Monitoring Parameter, v) Turnover for Operations, vi) Operating Profit/Surplus, vii) Early signs of weakness, viii) Marketing efficiency ratios, ix) Return on Investment, and x) Sector/CPSE specific targets with varying weightages. However, recognizing that CPSEs work in various sectors under different conditions, MOU guidelines for the year 2017-18 provided that there would be three uniform parameters for measuring financial performance viz. revenue from operations, operating profit and return on investment, (e.g. Ratio of Profit After Tax/Net worth) with total weightage of 50 *per cent* for measuring financial performance of all CPSEs, except CPSEs which are dependent on government grant or performing functions of distribution of grant etc. For remaining 50 *per cent* weightage, a menu of parameters has been suggested for selection depending on the sector in which the CPSE is operating. Parameters most appropriate and relevant for measuring performance shall be suggested by the Pre-negotiation Committee to the Inter-Ministerial Committee. In all the cases Inter-Ministerial Committee shall take appropriate decision on the suggestion made by Pre-negotiation Committee.

As per the Revised Guidelines for MOU for the year 2017-18 and onwards issued by DPE on 12.01.2018, generally target for 'Excellent' grading should not be lower than best achieved in last five years and 'Very Good' should not be lower than the expected achievement of the current year (year immediately preceding the year for which targets are being fixed) unless there are specific reasons to fix lower targets and are duly supported by the Administrative Ministry/Department.

5.4 MOU Score and ranking

The process of MOU target setting and evaluation is given below:



5.5 Coverage of analysis

There are 75 Miniratna[43] CPSEs under various Ministries, out of which a sample of 17 CPSEs was selected for coverage of MoU analysis. This draft chapter covers analysis of MOUs of these 17 'Miniratna' CPSEs for the years 2016-17 and 2017-18.Various aspects relating to finalisation and evaluation of MOUs for the years 2016-17 and 2017-18 were

[43] *The CPSEs which have made profits in the last three years continuously and have positive net worth are eligible to be considered for grant of Miniratna status*

examined in audit. Details of the 17 'Miniratna' companies selected for analysis and their MOU rating for the period 2016-17 to 2017-18 are given in ***Appendix-XXIV.***

5.6 Objective of analysis

The objective of analysis was to assess whether:

(i) MOU was finalised in accordance with DPE guidelines and targets were realistic and as per the Annual Plan of CPSEs;

(ii) There was effective mechanism in DPE/Administrative Ministries for validation of the information/data submitted by CPSEs;

(iii) The CPSEs received commitment/assistance from the Government as agreed to in the MOUs;

(iv) Periodical returns/reports were submitted by CPSEs to Administrative Ministry/DPE in time; and

(v) Achievements were in line with MOU targets.

5.7 Audit findings

Audit examined the MOU 2016-17 and MOU 2017-18 signed by 17 selected Miniratna CPSEs with their Administrative Ministries and their Performance Evaluation Reports (PER) for the year 2016-17 and 2017-18. Audit findings are discussed in the succeeding paragraphs. The replies of CPSEs, wherever received, have been suitably incorporated.

5.7.1 Submission and Signing of MOU

As per the MOU guidelines for the year 2016-17 and 2017-18, the copy of the MOU after the approval of the Administrative Ministry along with the annexure was to be submitted to DPE, NITI Aayog, Ministry of Statistics and Programme Implementation and Members of Task Force by 21 January 2016 and 31 January 2017, respectively**.** However, the guidelines for the year 2016-17 was issued initially in December 2015 and finally the time lines were revised in phase manner upto 30 June 2016 or within 15 days from the issue of Inter-Ministerial Committee (IMC) minutes, whichever was later.

Timelines for signing of MOUs for the year 2017-18 was 31 March 2017 (i.e. before start of financial year in respect of which targets were fixed) or within 21 days from the issue of IMC minutes, whichever was later.

Audit observed that the timelines for submission and signing of MOUs was changed time and again by DPE. In all the cases, the targets were decided/MOU signed after the lapse of first quarter of the financial year for which the targets of CPSEs were applicable due to delay in finalisation of minutes by IMC. Draft targets submitted by CPSEs were revised while finalizing and signing of MOUs. The extension of timelines provided for finalising the whole process of MOU was against the spirit of MOU Guidelines, which defines MOU as a negotiated agreement and contract between the Administrative Ministry and Management of CPSEs to fix the target before the beginning of the financial year and is intended to evaluate the performance of the CPSEs after the completion of the financial year**.** Besides this, MECON Limited (MECON) signed the MOU with its Administrative Ministry for the year 2017-18 after lapse of 44 days from IMC minutes.

DPE stated (July 2019) that as per MOU guidelines, 1 marks is being deducted from composite score for not signing of MOU.

Reply is to be viewed against the fact that there was provision of deducting the 1 mark for late submission of draft MOU but there is no provision in guidelines regarding deduction of marks on account of delay in signing MOU.

Submission of MOU/ Evaluation Report of MOU to DPE/Administrative Ministry: MOU guidelines 2016-17 required submission of the Draft MOU/MOU evaluation for the year 2016-17 after due approval of the Board. MOU guidelines 2017-18 also required submission of performance evaluation report after approval of the Board of CPSEs. Audit observed that MECON submitted its draft MOU as well as MOU evaluation for 2016- 17 and 2017-18 to the Ministry without approval of the Board.

MECON stated (October 2018) that only the actual achievements against the MOU parameter are required to be certified by the Board and same is to be enclosed along with MOU evaluation report. Draft MOU is not required to be submitted with the approval of Board as per DPE Guidelines on MOU for the year 2016-17.

The reply is not acceptable as Para 14.3 (vii) of MOU guideline for the year 2016-17 clearly specifies submission of draft MOU/MOU evaluation duly approved by the Board. Also Para 13 of MOU guidelines 2017-18 specified submission of performance evaluation report after approval of the Board.

5.7.2 Alignment of MOU targets with Annual Plan/Budget/Corporate Plan

As per MOU guidelines, MOU targets should be consistent with the Annual Plan, Budget and Corporate Plan of the CPSE. The guidelines also provide that an advance copy of the draft MOU along with a copy of the Annual Plan, Annual Budget, and Corporate Plan should be sent to DPE. Audit observed that companies mentioned in Table 5.1 had not submitted the complete documents:

Table 5.1

Statement showing the details of the required documents not submitted by CPSEs

Sl. No.	Name of CPSEs	2016-17			2017-18		
		Annual Plan	Annual Budget	Corporate Plan	Annual Plan	Annual Budget	Corporate Plan
1	BLC		✓		✓	✓	
2	MRPL	✓		✓	✓		✓
3	HUDCO	✓	✓		✓		
4	FSNL	✓		✓			
5	OVL			✓			✓
6	MMTC						✓
7	KIOCL						✓

BLC stated (September 2018) that the Annual Plan of the Company is finalized in the month of March every year after approval from the Board. Hence, Annual Budget was not available at the time of submission of advance copy of Draft MOU (November/December) for next financial year target.

The reply is not acceptable, as BLC has not provided the Annual Plan/Annual Budget of relevant years as required by the DPE Guidelines even after March of each year which resulted in delay in finalization of MoUs.

MRPL stated (September 2018) that DPE stressed for furnishing these details to those Companies for which these plans were available.

HUDCO stated (October 2018) that MOU targets were based on the financial and operational details/projections made by it on the basis of past five years' performance and annual operations details provided in the Corporate Plan 2019-20.

The fact remains that MRPL and HUDCO had not adhered to the requirements of MOU guidelines.

Reply of FSNL, OVL, MMTC and KIOCL are awaited (June 2019).

5.7.3 Benchmarking with National and International peers

As per MOU guidelines 2016-17, CPSEs were to provide information on National/International benchmarks pertaining to financial/non-financial parameters as applicable for consideration of IMC. The Ministries/Departments were also required to give a background note on the performance of the sector as well as CPSEs along with applicable benchmarks while sending the MOU for 2016-17 to DPE. IMC was to take this information including the benchmarks into consideration while fixing MOU targets. MOU guidelines 2016-17 also required benchmarking of MOU parameter of Miniratna CPSEs atleast with best performing company in private sector at national level. However, this requirement was discontinued in MOU guidelines 2017-18.

Audit observed that 11[44] CPSEs did not carry out the benchmarking exercise with best performing company in private sector at National/ International level during 2016-17.

These CPSEs stated (September 2018 to January 2019) in their reply that information on National and International benchmark is not mandatory for CPSEs. National/International benchmarks are yet to be done by Administrative Ministry / DPE. In absence of bench marking, historical data were taken to economise over the years for improving the efficiencies and remain competitive.

The replies confirm that these CPSEs did not adhere to the MOU guidelines and the purpose for which the benchmarking was stipulated was defeated.

5.7.4 Performance under MOU and Self-evaluation by CPSEs

5.7.4.1 Inconsistency in MOU targets of Mahanadi Coalfields Limited (MCL)

MOU guidelines 2016-17 prescribed a single format (Form-I) for all CPSEs except CPSEs under closure/construction. As per this format, the parameter on 'Early signs of weakness' included reduction in claims against the Company not acknowledged as debt, over the previous years. This included claims raised by Central Government, State Government or Local Bodies, CPSEs and others.

Audit observed that in case of MCL, the target set in this regard included only the claims raised by *CPSEs* and *others* which was not consistent with the MOU guidelines 2016-17.Out of total claims against the company of ₹ 4,946.95 crore as on 31.03.2016 including claims of Central/ State Governments, claims of CPSEs and others against the company was only ₹ 171.88 crore. As such, there was need to address the major portion of the claims.

MCL stated (December 2018) that the parameters considered in the MOU between Ministry and CIL were also followed in MOUs between CIL and its subsidiaries (including MCL). As such, there was no deviation in respect of parameters finalised by MCL with CIL.

The fact remains that there was major chunk in claims against MCL not acknowledged as debts, which were mainly due to claims of Central/ State Governments, which could have been improved by including this target in compliance of the DPE guidelines on MOU for the year 2016-17.

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[44] *NHPC Limited,(ii) KIOCL Limited,(iii) MECON Limited,(iv) Ferro Scrap Nigam Limited (FSNL),(v) Balmer Lawrie & Co. Limited (BLC),(vi) Housing & Urban Development Corporation Limited(HUDCO), (vii) Numaligarh Refinery Limited (NRL),(viii) SECL,(ix) MMTC,(x) Dredging Corporation of India Limited (DCIL) and (xi) Airports Authority of India(AAL)*

5.7.4.2 Inconsistencies in evaluation of MOU of NHPC

While evaluating the performance of NHPC Limited against the MOU targets, following inconsistencies were observed that while fixing the targets for MOU 2016-17, wherever the targets were fixed on provisional/estimated figures for the year 2015-16, it was provided that in case actual achievement is better than provisional figures, difference was to be added to the targets. However, while evaluating the performance, NHPC had not worked out the revised targets for parameters such as 'Revenue from Operations, Operating Profit and Trade receivable as percentage of Revenue from Operations' based on actuals.

NHPC replied that offsetting of MOU targets for the year under evaluation (i.e. 2016-17) based on the achievements of the previous year (i.e. 2015-16) was in the purview of DPE/IMC/HPC.

The reply is not acceptable as MoU for the year 2016- 17 was signed on 08.07.2016 and actual figures of achievement should have been considered.

5.7.5 Non-compliance of regulatory provisions

The MOU guidelines 2016-17 provides an additional eligibility criterion whereby CPSEs were asked to adhere to the provisions of Listing Agreement and Companies Act, 2013 to the extent the same were within the ambit of CPSEs and compliance of DPE guidelines having financial implications. MOU guidelines 2017-18 also provided above additional eligibility criterion only for 'Excellent' rating.

Independent Directors / Women Director

As per Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and DPE guidelines on Corporate Governance for CPSEs 2010, Board of Directors of CPSEs should consist of 50 *per cent* Independent Directors. In this regard Sections 149(4) and 149(1) of the Companies Act, 2013 also require every listed public company to have at least one-third of the total number of Directors as Independent Directors and at least one-woman Director, respectively.

In this regard, it was observed that:

- The Board of Directors of MECON, FSNL, MCL and AAI were not represented by the required number of Independent Directors during 2016-17 and 2017-18 while OVL did not have required number on its Board during 2016-17.
- There have been no women Director on MECON and FSNL Boards during 2016-17 and 2017-18.MCL, SECL and NRL Board also had no women Director during 2016-17.

- Compliance of above provision by KICOL, RCF, CPCL, NHPC, MMTC, DCIL, HUDCO, BLC and NFL has been commented upon, if any, in Chapter 3 vide Para No. 3.2.2 as these are listed Companies.

Audit also observed that while certifying the compliance of additional eligibility criteria of MOU 2016-17 Guidelines, these CPSEs have not revealed the above violations to the Ministry/DPE leading to incorrect/incomplete certification thereof.

5.7.6 Non-compliance of DPE guidelines having financial implications: CPSEs

5.7.6.1 Compliance of Guidelines on Capital Restructuring of CPSEs

As per DPE guidelines on Capital Restructuring of CPSEs, CPSEs having net worth of at least ₹ 2000 crore and cash and bank balance over ₹ 1000 crore, should look into and deliberate in first board meeting after the closure of the financial year the parameters[45] for the purpose of buyback.

However, if any CPSE is not able to comply with the above guidelines, specific exemption was to be obtained from Department of Investment and Public Asset Management (DIPAM), through its Administrative Ministry/Department.

Audit observed that NHPC and KIOCL, were having their net worth and cash and bank balance more than amounting to ₹ 2,000 crore and ₹ 1,000 crore, respectively during 2016-17, did not comply with this provision and no exemption was granted to these Companies. DPE while granting the score on MOU to these CPSEs considered that all compliance of has been adhered to .

Reply of both CPSEs was awaited (April 2019).

5.7.6.2 Compliance of DPE' guidelines regarding leased rent recovery

As per DPE guidelines (dated 20 March 2012), CPSEs were required to recover rent from its employees @ 10 *per cent* of basic pay or actual rent whichever is lower in respect of leased accommodation.

Audit observed that NHPC had recovered the rent at the rates fixed by them which were lesser than the rates prescribed in the above guidelines during 2016-17 and 2017-18. DPE granted full marks in score during 2016-17.

Reply of NHPC was awaited (April 2019).

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[45] *(i) Cash and Bank balance, (ii) Capital expenditure and business expansion as committed with reference to the CAPEX incurred in the last 3 years,(iii) Net worth {Free reserves and paid up capital including other reserves (if any)}, (iv) Long term borrowing and further capacity to borrow on the basis of its 'Net Worth'(v) Any other financial commitments in the near future, (vi) Business / other receivables and contingent liabilities, if any; and (vii) Market price / book value of share*

5.7.6.3 Compliance of Pay revision guidelines

As per DPE OM dated 26 November 2008, CPSEs had to follow the grades and corresponding scales of pay for their executives from the levels E0 to E9 as prescribed by DPE. Audit observed that MRPL had allowed two scales of pay higher than those prescribed by DPE for its officers in grades E1 to E6 and one scale higher than the prescribed scale to officers of grade E7. Clarification on non-compliance of grades of executive was issued (24 December 2012) for necessary compliance. Non-compliance of this directive has resulted in non-compliance of DPE guidelines with financial implications.

MRPL stated that they had fixed pay scales and allowances and communicated the same to Ministry of Petroleum and Natural Gas (MoPNG) after approval of the Board. MoPNG vide letter dated 28 April 2009 conveyed the presidential directive to implement the same.

The reply is not acceptable because the presidential directive dated 28.04.2009 specifically directed MRPL to implement the scales strictly as per the guidelines contained in the DPE OM dated 26 November 2008.

5.7.6.4 Compliance of Performance Related Pay guidelines

As per DPE guidelines (September 2013), Performance related pay (PRP) may be distributed based on profit accruing only from core business activities of the CPSEs and interest on idle cash/bank balances may be deducted from Profit Before Tax (PBT). Audit observed that NFL made payment of Performance Related Pay (PRP) considering PBT without adjusting/deducting income from non-core business activities in 2016-17. Further, as per DPE guidelines (26 November 2008), calculation of PRP shall be done by applying Bell Curve Approach[46]i.e. Annual Performance Appraisal Rating (APAR) rating of 10*per cent* executives shall be considered as "Below Par" and no PRP shall be paid to these executives.

Audit observed that:

- NFL had 1,819 executives (excluding Board Level Executive) during the year 2016-17. Based on the final APAR ratings, the company made payment of PRP to 1,637 nos. of executives excluding 182 executives which came under the category of "Below Par" of Bell Curve approach. However, on the request of Federation of Officers Associations of NFL, NFL made lump sum payment of ₹ 10,000 each to 104 executives out of 182 executives falling Below Par category

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[46] *Bell curve system of performance appraisal assumes that employees in a Company can be divided into groups of, High Performers (top 20 per cent), Average Performers (middle 70 per cent) and Non-Performers or Below Average Performers (bottom 10 per cent)*

from the profit of 2016-17. Further, NFL made a lump sum payment of ₹ 12,500 each to 60 ex-employees (executive) who were retired during the year 2015-16 but did not submit their self-appraisal report for the year 2015-16.

- HUDCO also has paid PRP for 2016-17 to employees falling under 'bottom 5 *per cent* or below par segment' in contravention to the Bell Curve Approach as provided by the DPE guidelines (26 November 2008).
- NHPC paid no PRP to 1.22 *per cent* employees for MOU 2016-17 as against the requirement of 10 *per cent* employees to which no PRP shall be paid as per DPE guidelines by considering them 'Below Par'.

While confirming the facts about fixed payment of PRP to non-eligible employees, NFL stated (October 2018) that the other income classified as non-operating income forms part of core activities of a fertilizer plant located at a remote location, NFL also incurred expense in connection with these offer incomes and therefore, these incomes after adjustment of related expense incurred by the company shall further reduce to that extent. Further, other income during 2016-17 has arisen to NFL from core business activities. Therefore, PRP has been correctly paid to executive for 2016-17 as per DPE guidelines.

The reply of NFL is not acceptable, as the non-compliance to the DPE guidelines cannot be relaxed, as it is mandatory in nature.

HUDCO stated (October 2019) that Bell Curve Approach has been dispensed with due to creating demotivating environment. The reply of HUDCO is not acceptable as the change in guidelines is effective only from 01.08.2017.

Reply of NHPC was awaited (October 2019).

5.7.7 Non-compliance of MSME Guidelines

As per the Public Procurement Policy, every CPSE is to achieve an overall minimum procurement of 20 *per cent* from Micro and Small Enterprises (MSEs). Further, there is a sub target of four *per cent* procurement of goods & services, out of the 20 *per cent* from MSEs owned by Scheduled Caste or Scheduled Tribe entrepreneurs.

Audit observed that, DCIL and NHPC did not achieve the above target during 2016-17 and 2017-18.Further, KIOCL, FSNL, MECON, MCL, SECL, NFL, BLC, MRPL during 2016-17 and 2017-18 and NRL, OVL during 2016-17 and CPCL, HUDCO during 2017-18 failed to achieve the sub-target of four *per cent* procurement of goods & services,

FSNL and KIOCL stated (October 2018) that enhancing procurement from MSEs owned by SC/ST entrepreneurs, approaching to the vendors, development programmes, publishing notice in various national and local newspapers were attempted to update the data bank.

HUDCO stated (October 2018) that the actual procurements from MSMEs during the year 2017-18 was ₹ 13.59 crore, against which total procurement from MSEs was ₹ 4.77 crore which included ₹ 0.29 crore from MSEs owned by SC/ST entrepreneurs. Thus, the target of 20 *per cent* procurement was achieved.

The facts remain that these CPSEs had not achieved the target of procurement from MSEs owned by SC/ST entrepreneurs.

DCIL stated (November 2018) that they had submitted request for exemption from public procurement policy for MSMEs through their Administrative Ministries.

The reply is not acceptable as Ministry of Micro, Small and Medium Enterprises has not given any exemption from above guidelines so far and MOU score have not been reduced as per DPE guidelines.

NHPC stated (February 2019) that Public Procurement Policy for MSEs Order 2012 is applicable for the products produced and services rendered by MSEs. Therefore, by excluding the goods purchased from Original Equipment Manufacturers (OEM), Mega Risk & CPM Insurance Policies, etc. from the total annual procurement value, the consolidated value of goods/services procured from MSEs was 25.56 *per cent* of the total annual procurement value of ₹ 532.08 crore during 2017-18 against mandated target of 20 *per cent*.

The reply is not acceptable as per policy, at least 20 *per cent* of gross procurement should have been through MSEs. NHPC has sought exemption from MSME for exclusion of the items/equipment/services which are either OEM proprietary in nature and/or not manufactured/provided by MSEs from total procurement value which was still awaited.

Reply of MECON, MCL, SECL, NFL, BLC, MRPL and OVL were awaited (April 2019).

5.7.8 Impact of Audit analysis on MOU rating and Performance related Pay

Clause 14.2 and 14.3 of MOU guidelines for 2016-17 provides compliance with eight additional eligibility criteria[47]. Failure to comply with any one of the conditions would result in downgrading the CPSEs from “Excellent” (score more than 90) to “Very Good” (score more than 70 and equal to or less than 90) and in case of rating other than Excellent, the composite score was to be reduced by score of 5. Further, as per clause 14.5 of the MOU guidelines for the year 2016-17, the compliance of each of the additional eligibility criteria was to be confirmed/certified by BOD of the CPSEs.

[47] *Compliance with DPE guidelines having financial implication, and Compliance with Public Procurement Policy for Micro and Small Enterprises issued by M/o Micro and Medium Enterprises, etc.*

Also, MOU guidelines 2017-18 (Para 14.2) provides compliance of eleven additional criteria. Failure to comply with each criterion would result in reduction of score by 1 mark (subject to maximum of 5 marks).

Audit noticed that Board of Directors of 9[48] CPSEs had certified the compliance of DPE guidelines while furnishing the evaluation of MOUs for the year 2016-17 and 2018, whereas there were lapses on the part of these CPSEs in compliance of DPE guidelines as discussed vide paras 5.7.6 and 5.7.7

DPE has deducted the score of NFL, NHPC, MRPL and MECON due to non-compliance of DPE guidelines whereas DPE had not deducted any score of FSNL, OVL, HUDCO, KIOCL, and BLC due to not following DPE guidelines during 2016-17 and awarded full score by erroneously treating these cases as compliant with the guidelines. This resulted in over rating of two CPSEs viz. HUDCO and OVL being rated as Excellent instead of Very Good and consequently impact on higher payment of PRP.

DPE stated (July 2019) that various compliances were accepted on the basis of Board Resolution. Given false information in Board Resolution is a violation of the companies Act, 2013 and punishable under the Act.

Reply is to be viewed against the fact that there was a sub target of four *per cent* procurement of goods & services from MSEs (SC/ST) in compliance of MSEs guidelines, 2012 as discussed in para No. 5.7.7. OVL informed DPE vide its letter dated 27.06.2017 that procurement from MSEs (SC/ST) was 0.46 *per cent* during 2016-17 but DPE/ IMC had not taken cognizance of this information, which resulted in higher rating. Fact remains that due to non-verification of information, there was over rating and consequently having impact of higher payment of PRP.

5.8 Conclusion and recommendations

Analysis of MOU of 17 'Miniratna' companies for 2016-17 and 2017-18 revealed that the process of finalization and signing of MOUs was delayed and as a result the MOUs were signed after first quarter of the financial year for which the targets were applicable. The MOU guidelines mandated benchmarking of parameters with reference to national and international peers. However, eleven CPSEs did not carry out the benchmarking exercise. As regards evaluation against the targets set in MOUs, improper evaluation of performance against parameters was also noticed in respect of seven CPSEs. CPSEs did not incorporate necessary commitment from Administrative Ministry in the MOU for filling up of non-official Directors on their Board and for compliance with the provisions of the Companies Act, 2013 regarding Independent and Woman Directors. Some positions of Independent and Woman Directors in nine CPSEs were lying vacant.

[48] *(i) FSNL, (ii) NFL, (iii) OVL, (iv) NHPC, (v) HUDCO, (vi) MRPL, (vii) KIOCL (viii) MECON, and (ix) BLC*

Further, ten CPSEs did not comply with the MSMEs guidelines. Eleven CPSEs furnished incorrect certification of additional eligibility criteria underclause14.5 of the DPE guidelines for the year 2016-17 and 2017-18 which resulted in higher rating to HUDCO and OVL as 'Excellent' instead of 'Very Good' for the year 2016-17 and 2017-18 consequently higher payment of PRP.

Audit suggests the following recommendations for the consideration and implementation by DPE, CPSEs and their Administrative Ministries:

- It may be ensured that the MOUs are prepared and finalized within stipulated time, in accordance with the DPE guidelines, with due attention on fixing targets that can lead to improved performance of CPSEs.
- The validation process at DPE may be strengthened to ensure that any incomplete or incorrect information and/or certification can be detected before final evaluation of the MOU through proper coordination with other Ministries and stakeholders.