

## CHAPTER-VII

### 7. Compliance Audit Observations relating to Departments and Entities (other than PSUs) under Economic Sector

Important audit findings emerging from test check of transactions made by the various departments/entities are included in this Chapter.

#### Housing and Urban Planning Department

##### Ghaziabad Development Authority

#### 7.1 Hi-tech Township Policy

Government of Uttar Pradesh (GoUP), in order to mitigate the housing problems in the urban areas, and to promote planned development of cities, formulated (November 2003) the Hi-tech Township Policy, 2003 with the objective of inviting private developers for development of Hi-tech Townships with minimum investment of ₹ 750 crore on land holding of 1,500 acres.

The Compliance audit of Ghaziabad Development Authority (GDA) revealed some irregularities in respect of Hi-Tech Township Policy as discussed in succeeding paragraphs 7.1.1 to 7.1.3:

#### 7.1.1 Undue benefit to Hi-tech township developers

##### **By altering the land use indicated in the Master Plan without levy of land use conversion charges, GoUP allowed undue benefit of ₹ 572.48 crore to the developers at the cost of Ghaziabad Development Authority.**

As per the GoUP order (August 2001), land use conversion charges were to be levied on the net area of the land at the Circle rates fixed by the District Magistrate for the existing use of the land. It was further mentioned in aforesaid order that rates of land use conversion will be 50 *per cent* in case of land use conversion from agricultural to residential.

In May 2005, the GoUP selected two developers<sup>1</sup> for the development of Hi-tech townships in Ghaziabad. At this time, Master Plan-2001 was in force according to which, the land use of the area designated for Hi-tech township was agricultural.

In July 2005, Master Plan-2021 was approved by the GoUP. It was provided in Master Plan 2021 that the use of the land designated for Hi-tech township was indicative, the developers selected by the GoUP shall have to pay the applicable land use conversion charges and the use of balance land remaining after use in Hi-tech township shall be considered as agricultural. Further, GoUP orders (18 May 2006 and 17 September 2007) introducing Hi-tech Township Policies 2006 and 2007 respectively also stipulated that the applicable land use conversion charges shall be payable by the developers in case the land use of the selected site is not earmarked as residential in the Master Plan. However, GoUP order (23 April 2010) regarding Master Plan-2021 stated that there is no provision under the UP Urban Planning and Development Act, 1973 for showing land use as indicative for Hi-tech Township. As the land use had been shown so in the Ghaziabad Master Plan-2021, therefore, the land use for the same will be considered as residential. Hence, land use conversion charges would not be payable on this area.

<sup>1</sup> Uppal Chaddha Hi-tech Developers Private Limited and Suncity Hi-tech Infra Private Limited.

Audit noticed (May 2017) that vide above order (23 April 2010) the Housing and Urban Planning Department (Department), GoUP, on the request of the developers, altered the indicated land use in the Master Plan to residential and consequently no charges for conversion of land use were henceforth payable by the two developers. In this connection, the following was observed by Audit:

- The MOUs executed<sup>2</sup> with the developers stipulated that if the site selected by the developers falls within the Master Plan area and needs conversion of land use for the purpose of developing a Hi-tech township, the same shall be completed by the GoUP through amendments in the Master Plan in accordance with law for which conversion charges as prescribed by the GoUP shall be payable by the developers.
- This aforesaid order was issued ignoring the fact that the proposed land use of Hi-tech city in the Master Plan 2021 was only indicative, and that the Authority had stated upfront its intention to change the land use from agricultural to residential only after recovering land use conversion charges from the developers.
- The opinion of the *Sanyukt Shaskeeya Hastantarak*<sup>3</sup>, Legal Department, GoUP mentioned that non levy of land use conversion charges would amount to 'post bid benefit'. This specific opinion was overruled by the Principal Secretary, Legal Department.

Audit further noticed that the Authority has approved (October 2010 to October 2013) the layout plans of the developers for an area of 4,722.19 acre<sup>4</sup> land which included 3,702.97 acre<sup>5</sup> land indicatively earmarked as Hi-tech township in the Master Plan 2021 wherein land use conversion charges of ₹ 572.48 crore<sup>6</sup> (*Appendix-7.1*) were leviable on the developers. However, due to GoUP order (23 April 2010) the above charges could not be levied. Thus, land use of agricultural land was changed to residential land without levying land use conversion charges.

This resulted in extension of an undue benefit to the developers and loss to the Authority of ₹ 572.48 crore.

The Government in the meeting with Audit accepted (June 2019) the contention of Audit but did not intimate any action plan for recovery of the land use conversion charges.

### **7.1.2 Non-levy of additional land use conversion charges**

#### **Authority failed to levy additional land use conversion charges of ₹ 6.83 crore.**

In May 2005, the GoUP selected M/s Uppal Chaddha Hi-tech Developers Private Limited (Developer) for the development of Hi-tech townships in Ghaziabad. The Ghaziabad Development Authority (Authority) signed (November 2005) a Memorandum of Understanding (MOU) with the

<sup>2</sup> With Uppal Chaddha Hi-tech Developers Private Limited on 30.11.2005 and with Suncity Hi-tech Infra Private Limited on 22.12.2005.

<sup>3</sup> It is a post in Legal Department, Government of Uttar Pradesh

<sup>4</sup> 4,004.25 acres for Uppal Chaddha Hi-tech Developers Private Limited (October 2010 to October 2013) and 717.94 acres for Suncity Hi-tech Infra Private Limited (July 2011).

<sup>5</sup> Uppal Chaddha Hi-tech Developers Private Limited- 2,985.03 acres and Suncity Hi-tech Infra Private Limited- ₹ 717.94 acres.

<sup>6</sup> Uppal Chaddha Hi-tech Developers Private Limited- ₹ 401.30 crore and Suncity Hi-tech Infra Private Limited- ₹ 171.18 crore.

Developer under the Hi-tech Township Policy 2003, for the development of the Hi-tech township in Ghaziabad. As per clause 8 of the MOU entered into between the Authority and the Developer, if the land belonging to the Developer required conversion of land use for the purpose of Hi-tech township, the same would be processed in accordance with the law, and the prescribed land use conversion charges would be payable by the Developer.

As per the GoUP order (August 2001) read with the GoUP order of April 2010, the applicable land use conversion charges were based on the net area of land on which construction of houses was proposed in the approved Detailed Project Report (DPR). Therefore, if the DPR was revised entailing an increase in the availability of the net area of land, the additional land use conversion charges were also to be levied besides increase in other charges such as inspection charges, City Development Charges, etc.

The Authority approved (July 2011) the DPR for 4,494.31 acre which included 1,019.22 acre of agricultural land. On the request of the Developer (December 2011) for land use conversion, the Authority levied (December 2011) land use conversion charges amounting to ₹ 114.26 crore on the basis of 'factor of net area' (0.6262) arrived at after deducting the area earmarked for green belt and roads.

Audit noticed (February 2016) that the Developer thereafter changed the scheme plan and submitted (March 2013) a revised DPR which was approved by the Board of the Authority (September 2013). Based on the revised DPR, the Developer submitted (September 2013) a revised layout plan which was approved by the Authority (October 2013). In the revised layout plan, the 'factor of net area' had increased from 0.6262 to 0.6502 entailing an increase in the availability of net area of land for construction of houses. Hence, additional land use conversion charges amounting to ₹ 6.83 crore was leviable (**Appendix-7.2**) besides other charges. Though the Authority levied other charges, it failed to levy additional land use conversion charges on the increase in net area of land. This resulted in not only an undue favour being extended to the Developer, but also loss to the Authority to the extent of ₹ 6.83 crore.

The Authority/Government accepted (January 2019/June 2019) the contention of Audit. The Authority further stated that a demand letter has been issued to the Developer for the recovery of the due amount. The recovery in the instant case is yet to be intimated despite being requested (August 2019) by Audit.

### **7.1.3 Non-revision and recovery of City Development Charges**

**The Authority failed to revise and recover City Development Charges amounting to ₹ 18.91 crore.**

GoUP decided (September 2007) to levy City Development Charges (CDC) at the rate of ₹ 1.5 lakh per acre on the developers in the area covered under Nagar Nigam. The rate of CDC was further revised (August 2008) to ₹ three lakh per acre.

In November 2014, GoUP notified Uttar Pradesh Urban Planning and Development (Assessment, Levy and Collection of City Development Charges) Rules, 2014 (framed under Uttar Pradesh Urban Planning and Development Act, 1973). As per the Rules, 2014, the CDC was to be revised on 1 April of each calendar year on the basis of cost index of the Central Public Works Department. Thereafter, GoUP instructed (September 2015) all

the Development Authorities to revise CDC on the basis of cost index and recover the same from the Hi-tech township developers whose layouts had been approved before the notification of the Rules, 2014.

Audit noticed that for development of Hi-tech township in Ghaziabad, M/s Uppal Chaddha Hi-tech Developers Private Limited (Developer) was selected (May 2005) and an MoU was signed (November 2005). Ghaziabad Development Authority (Authority) approved the layout plan for the Hi-tech Township for a total of 4,004.25 acre of land in stages<sup>7</sup> and levied CDC at the rate of ₹ three lakh per acre at every stage. Audit noticed that despite GoUP order (September 2015), the Authority failed to initiate any action for revision of CDC on the basis of prevalent cost index and its recovery. This resulted in loss of ₹ 18.91 crore (*Appendix-7.3*).

The Authority/Government accepted (June 2019) the contention of Audit. The Authority further stated that demand letter has been issued to the Developer. The recovery in the instant case is yet to be intimated despite being requested (August 2019) by Audit.

## **7.2 Short levy of land use conversion charges**

### **Ghaziabad Development Authority short levied land use conversion charges amounting to ₹ 10.91 crore.**

As per Uttar Pradesh Urban Planning and Development (Land Use Conversion Charges-Assessment, Levy and Collection) Rules<sup>8</sup>, 2014 (Rules, 2014), where in any development area, the land use of the particular land is changed as a result of amendment of the Master Plan or the Zonal Development Plan under Section 13 of the Uttar Pradesh Urban Planning and Development Act, 1973 (Act), land use conversion charge is to be levied on the owner of such land. Further, the land use conversion charges were to be levied on the basis of circle rate of the land applicable on the date of the final decision of the Board. Prior to this notification, levy of land use conversion charges was governed by GoUP order of August 2001. The final notification of land use conversion is issued by the Government.

The Police City Sahkari Samiti (Samiti) applied (September 2009) for conversion of land use of 20.79 hectare of agricultural land located at village-Shahpur Bumhehta, District-Ghaziabad into residential. Thereafter, the Authority raised a demand (August 2011) of ₹ 13.72 crore as land use conversion charges. As the proposed area was later reduced to 17.598 hectare, the Authority issued (June 2012) a revised demand of ₹ 12.18 crore to the Samiti based on the then prevalent land rates. No amount was deposited by the Samiti against the demand of ₹ 12.18 crore raised by the Authority.

The Samiti again approached (January 2014) the Authority and requested to allow it to deposit the land use conversion charges within three years in six equal instalments. The Authority referred the matter to the State Government which directed (June 2014) that the matter be resolved as per applicable rules. In view of the GoUP order, the Authority again asked (June 2014) the Samiti to deposit the amount. However, the Samiti did not deposit the same.

<sup>7</sup> In October 2010, September 2011 and October 2013.

<sup>8</sup> Notified in December 2014.

The Samiti once again approached (February 2016) the Authority and requested to issue a fresh demand letter. The Authority issued demand letter for ₹ 29.73 crore in August 2016 (calculated as per Rules, 2014). The Samiti approached (December 2016) the Authority and requested to recalculate the land use conversion charges on the basis of demand raised in June 2012 along with interest at the rate of 12 *per cent* per annum. The Board of Authority accepted (December 2016) the request of the Samiti. The Authority thereafter issued a revised demand of ₹ 18.82 crore (18.741 hectare) based on the land rate applicable in June 2012 along with interest at the rate of 12 *per cent* per annum. The Samiti deposited the entire amount of ₹ 18.82 crore in December 2016.

Audit noticed that the Rules, 2014 only prescribed that the interest at the rate of 12 *per cent* be charged in case the applicant is allowed to deposit the land use conversion charges in instalments. There was no provision to calculate these charges on land rates applicable on a previous date. Besides, the maximum time allowed for depositing the entire amount of land use conversion charges as per the Rules was two years.

As no extension of time was given by the Authority to deposit the charges, the case gets closed after two years (June 2014), the maximum time allowed under the rules to deposit the demanded amount. Hence, the application should have been treated as a new application, and as decided by the Authority in August 2016, the demand should have been raised afresh.

By calculating land use conversion charges based on land rates applicable in June 2012 along with interest instead of upon rates applicable in December 2016 (the date of decision of the board) and not treating the case as a new one though it had automatically got closed after two years of initial demand being raised, the applicable land use conversion charges were short levied to the extent of ₹ 10.91 crore.

The Authority stated (August 2019) that the matter of charging land use conversion charges on the basis of letter (June 2012) along with interest at the rate of 12 *per cent* was a policy issue and the decision was to be taken by the Authority's Board only. Accordingly, the Board had approved the same in its meeting (December 2016) and communicated (January 2017) the decision to the Government.

Audit notes that land use conversion charge is a levy fixed by the Government and it is therefore beyond the remit of the Board to alter/modify it.

The Government, however, in the meeting with Audit accepted (June 2019) the contention of Audit but has not intimated any action plan for recovery of the short levy of land use conversion charges.

### **7.3 Non-compliance of the Government orders in sale of properties**

Compliance audit of Development Authorities revealed non-compliance of Government orders in sale of properties resulting in loss of ₹ 151.98 crore as discussed in succeeding paragraphs 7.3.1 to 7.3.3.

## Ghaziabad Development Authority

### 7.3.1 Undue favour to developers by not fixing reserve price in consonance with the allowed Floor Area Ratio

**Ghaziabad Development Authority suffered a loss of ₹ 70.73 crore due to its failure in fixing the reserve price of Group Housing plots as per the Floor Area Ratio allowed, in violation of the Model Guidelines of the Government.**

The Government of Uttar Pradesh (GoUP) issued (November 1999) Model Guidelines (Guidelines) for bringing uniformity in the costing of properties by the Development Authorities in the State. These Guidelines provide that the costing of saleable residential/commercial properties shall depend upon the demand for property, and the admissible floor area ratio (FAR) on it. The Board of the Ghaziabad Development Authority (Authority) adopted (February 2000) the aforesaid Guidelines. Further, the Building Bye-laws, 2008, also provide for allowing 1.5 basic FAR for Group Housing plots with any excess FAR being purchasable.

The Authority fixes the sector rate of the land in each of its scheme which then serves as the base rate for sale of residential plots. The plots of Group Housing are sold by the Authority through auction after fixing a reserve price. Hence, as per the GoUP Guidelines, the reserve price for the auction of Group Housing plots should be fixed on the basis of sector rate multiplied by the allowed FAR.

Audit noticed (May 2017 and April 2018) that the Authority auctioned (December 2010 and December 2014) six group housing plots and allowed basic FAR ranging from 2.0 to 2.5. However, the reserve price of these plots was fixed on the basis of 1.5 times the sector rates of land fixed by the GDA instead of on the basis of the allowed FAR. This resulted in extending an undue favour to the developers and consequent loss to the Authority amounting to ₹ 70.73 crore (*Appendix-7.4*).

The Authority stated (January 2019) that reserve prices were fixed as per the Board's decision (September 2009) of fixing the reserve price at the rate of 1.5 times and 2.0 times of the sector rate for Group housing and Commercial Properties respectively. It was further stated that GoUP directed (August 2011) that the FAR charges would be recovered for additional FAR from more than 1.5 and up to 2.5 from the builder. Therefore, builder, after payment of required charges, can obtain the additional desired FAR.

While the reply of the Authority confirms the extant Rule position, it is silent on the specific cases of non-consideration of additional FAR in fixation of reserve price.

The Government, however, in the meeting with Audit accepted (June 2019) the contention of Audit but has not intimated any action plan for the recovery of the amount.

### 7.3.2 Non-inclusion of corner charges in the reserve price

**Ghaziabad Development Authority suffered a loss of ₹ 10.74 crore due to non-inclusion of corner charges in reserve price for auction of corner assets.**

The Government of Uttar Pradesh (GoUP), Housing and Urban Planning Department (Department) issued (November 1999) Model Guidelines for the

costing of assets created and developed by Development Authorities to ensure uniformity in the valuation of their assets. The aforesaid Guidelines inter alia provide for levy of additional charges at the rate of 10 *per cent* for costing of assets situated at the corner. The GoUP clarified (18 June 2009) that the additional charges of 10 *per cent* on the corner assets will be levied only on the cost of the land.

Audit noticed (January 2016 and May 2018) that Ghaziabad Development Authority (Authority) failed to include corner charges in fixing of the reserve price of four corner assets out of 36 test checked assets auctioned during July 2006 to December 2014. This has resulted in loss of ₹ 10.74 crore (*Appendix-7.5*).

The Authority stated (January 2019) that in view of the large number of unsold assets, the Board of the Authority decided (October 2014) to request the Department for not levying corner charges on the sale of corner plots measuring above 2,000 sqm and not to demand the same from the bidders till the decision of the Government. But no reply has since been received from the Government.

Non-levy of corner charges by the Board as fixed by the Government, is a clear case of overreach of powers by the Authority and clear violation of the orders of the Government which has caused loss to the Authority.

The Government, however, in the meeting with Audit accepted (June 2019) the contention of Audit but it did not intimate any action plan for recovery of the loss.

### **Ghaziabad Development Authority, Meerut Development Authority and Lucknow Development Authority**

#### **7.3.3 Infrastructure Surcharge on sale of plots not levied**

#### **Development Authorities failed to levy Infrastructure Surcharge amounting to ₹ 70.51 crore on sale of plots.**

The Government of Uttar Pradesh (GoUP) directed (15 January 1998) all the Development Authorities in the State to set aside a specified portion of their income from identified sources<sup>9</sup> to create a separate fund for developing residential infrastructure in urban areas. This fund was to be maintained in a separate bank account, distinct from Authorities' own fund. Amongst the identified sources was a levy of surcharge at the rate of 10 *per cent* on the value of plots sold by the Authorities.

The GoUP issued (26 July 2018) a fresh order, applicable from the date of its issue, which directed that a specified portion of Authorities' income from identified sources would be deposited in two separate accounts i.e. Urban Infrastructure Development Account and Regional Infrastructure Development Account. This order did not mention levying of Infrastructure Surcharge as a source. The applicability of levy of Infrastructure Surcharge, therefore, existed from January 1998 to July 2018.

<sup>9</sup> As per Clause 5 of GO dated 15.01.1998- Conversion charges for conversion of lower level land, development charges for layout approval for the urban area out of Authorities' schemes, development charges for layout approval of unauthorized colonies, compounding charges in respect of unauthorized construction, charges for free-hold of land, Infrastructure Surcharge and income received from registration of sale deed.

The Development Authorities develop and sell the plots for the different purposes *i.e.* residential, commercial, institutional, etc. These plots are being sold by the Authority through auction/lottery system. For this purpose, the Authority fixes minimum reserve price for these plots. However, in contravention of GoUP order (January 1998) three Developments Authorities did not levy Infrastructure Surcharge amounting to ₹ 70.51 crore as detailed below:

**(i) Ghaziabad Development Authority:** The Board of Directors (BoD) of the Ghaziabad Development Authority (GDA), took a decision (October 2014) in view of the large number of its assets remaining unsold to request the GoUP to issue orders for non-levy of Infrastructure Surcharge superseding Government order of January 1998. The BoD, further decided not to levy the Infrastructure Surcharge on the auction of plots exceeding 2,000 sqm. till the Government took a decision based on their request. However, BoD also decided to incorporate the provision of levying of Infrastructure Surcharge in all its sale brochures specifically mentioning that if the Government did not agree with the request of the GDA, Infrastructure Surcharge would be payable by the bidders. Accordingly, the matter was referred to the Government (October 2014).

Audit noticed (April 2017/May 2018) that after the aforesaid decision of the Board (October 2014), the GDA had auctioned six plots each having area of more than 2,000 sqm. for a total value of ₹ 175.45 crore under various schemes.<sup>10</sup> However, it did not levy the applicable Infrastructure Surcharge amounting to ₹ 17.55 crore (**Appendix-7.6**). Although, the GDA had mentioned in the allotment letters for payment of Infrastructure Surcharge by the bidder in future, in the event of the GoUP not agreeing to the proposal of the GDA, it did not put in place any recovery mechanism such as obtaining bank guarantee or any other form of security from the bidders to ensure that they pay up the Surcharge as per brochure conditions. Thus, the action of the GDA lacked enforceability. Moreover, even after the GoUP order of July 2018, for ensuring the recovery of the outstanding Infrastructure Surcharge for the period October 2014 to June 2018, the GDA failed to initiate any steps (October 2018). In the absence of any recovery mechanism, the recovery of the Infrastructure Surcharge is now doubtful.

It was further noticed that the GDA had also failed to levy the Infrastructure Surcharge amounting to ₹ 42.10 crore (**Appendix-7.6**) even on 10 plots auctioned before October 2014 *i.e.* before the aforesaid decision of the Board without recording any reasons in the concerned files.

**(ii) Meerut Development Authority:** Audit noticed (December 2017) that Meerut Development Authority (MDA) sold (during June 2015 to January 2017) 17 plots (nine commercial plots and eight residential plots) through auction/lottery system for a total value of ₹ 14.28 crore under various schemes<sup>11</sup>. However, the MDA did not levy the applicable Infrastructure Surcharge at the rate of 10 *per cent* on the value of aforesaid plots amounting to ₹ 1.43 crore (**Appendix-7.7**).

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<sup>10</sup> Pratap Vihar, Indirapuram, Vaishali, Koyal Enclave and Karpuripuram.

<sup>11</sup> Shradha Puri Phase-II, Pocket-D; Rakshapuram Yojna Sec-1; Sports Goods Complex (Major Dhyanchand Nagar) Scheme Pocket-A; Dr. Ram Manohar Lohiya Nagar Scheme, Pocket-D & E; Pallavpuram scheme Pocket-J.



**(iii) Lucknow Development Authority:** Similarly, audit noticed (February 2019) that Lucknow Development Authority (LDA) sold (May 2016 to April 2018) 13 commercial plots through auction system for a total value of ₹ 94.28 crore under various schemes<sup>12</sup>. However, the Authority did not levy the applicable Infrastructure Surcharge at the rate of 10 *per cent* on the value of aforesaid plots amounting to ₹ 9.43 crore (**Appendix-7.8**).

Thus, additional revenue amounting to ₹ 70.51 crore intended for development of infrastructure facilities has still not been realised by the Authorities.

The management of GDA and LDA stated (January 2019 and July 2019) that the GoUP has discontinued/suspended (July 2018) the levy of Infrastructure Surcharge. The management of MDA accepted (July 2018) the contention of Audit.

The Government, in the meeting with Audit, accepted (June 2019) the contention of Audit and stated that levy of infrastructure surcharge at the rate of 10 *per cent* was effective during the period January 1998 to July 2018 on the sale of properties by Development Authorities. However, it has not intimated any action plan for recovery of Infrastructure Surcharge.

#### **7.4 Undue benefit of incentive scheme**

##### **Ghaziabad Development Authority suffered a loss of ₹ 22.14 crore by extending undue benefit of incentive scheme to a medical college.**

Government of Uttar Pradesh (GoUP) issued (August 2011) instructions providing for land use conversion for establishment of Engineering/Medical/Dental Colleges in private sector. As per the instructions (August 2011), the applicants were to deposit the land use conversion charges at the time of approval of maps after notification of land use conversion. Further, the Department of Medical Education, GoUP introduced (June 2013) an incentive scheme for private investment in the higher medical education. Accordingly, the Housing and Urban Planning Department (HUPD) allowed (December 2013) exemptions in land use conversion charges and development fees with the condition that exemption for the private medical college would be applicable from date of introduction of the incentive scheme (i.e. from 20 June 2013).

The building of a medical institute was being constructed on agriculture land situated at Modinagar, Ghaziabad without approval of the map. After the Ghaziabad Development Authority (Authority) initiated action against the builder/promoter under the Uttar Pradesh Urban Planning and Development Act, 1973 for unauthorised construction, the Institute submitted (September 2011) a proposal for change of land use from agriculture to Knowledge Park for land area of 24 acre (97,120.00 sqm) and for compounding (March 2013) of unauthorised construction of building. The Authority sent (March 2012) the proposal of land use conversion to the GoUP for approval. Final notification of the land use conversion was issued in May 2013.

Audit noticed (May 2017) that the Institute requested (July 2013) the Authority to allow it the benefits of the incentive scheme of GoUP of 2013 in respect of the land use conversion charges and other charges for map approval. The Authority asked (September 2013) the HUPD for allowing benefit under

<sup>12</sup> Gomti Nagar Scheme, Gomti Nagar Extension Scheme, Sitapur Road Scheme and Kanpur Road Scheme.

the said incentive scheme to the Institute. HUPD clarified (October 2013) that the benefit of the incentive scheme envisaged in the GoUP order (June 2013) could not be extended to this Institute and further directed the Authority for recovery of land use conversion charges as per the relevant Government orders. The Authority did not issue any demand notice and again asked (March 2014) the HUPD for allowing benefit to the Institute under the incentive scheme effective from June 2013 as per HUPD's order of December 2013. The HUPD again clarified (August 2014) that the benefit of the incentive scheme could not be extended to the Institute. Despite clear instructions from the HUPD declining extending any benefit under the incentive scheme, the Authority approved (July 2016) the compounding map of the Institute after allowing the benefit of incentive scheme to the Institute. It also did not issue demand notice of ₹ 22.14 crore<sup>13</sup> for land use conversion charges and development fee as ordered by the HUPD. Thus, the Authority suffered a loss of ₹ 22.14 crore by extending an undue benefit of incentive scheme to the Institute.

The Authority stated (August 2018 and January 2019) that the Government has allowed (June 2018) exemption to the Institute for obtaining MCI permission and from payment of land use conversion charges and development fee till March 2019. The Authority further, stated (June 2019) that as the Institute did not furnish the approval of MCI hence, a demand notice for deposit of development fee and land use conversion charges has been issued. The fact remains that undue benefit was extended as notification of land use conversion in this case was issued in May 2013 i.e. before the introduction of the Incentive Scheme from June 2013 and the Government had categorically stated (October 2013 and August 2014) that the benefit of Incentive Scheme could not be extended in this case.

The Government, however, in the meeting with Audit accepted (June 2019) the contention of Audit. But it did not direct the authority to fix the responsibility for violation of the Government orders (October 2013 and August 2014). Further, recovery in the instant case is yet to be intimated despite being requested (August 2019) by Audit.

## **Infrastructure and Industrial Development Department**

### **Lucknow Industrial Development Authority**

#### **7.5 Failure to assess and collect Labour Cess at the time of sanction of maps**

**Disregarding the extant Government orders, Lucknow Industrial Development Authority failed to assess and collect Labour cess amounting to ₹ 5.86 crore at the time of sanction of 145 maps.**

The Government of India (GoI) enacted the Building and Other Construction Workers' Welfare Cess Act, 1996 (Cess Act) which provided for levy and collection of a cess<sup>14</sup> on the cost of construction incurred by the employers. The GoI also framed the Building and Other Construction Workers' Welfare Cess Rules, 1998 (Cess Rules) in exercise of the powers conferred by sub-section (1) of Section 14 of the Cess Act.

<sup>13</sup> Development fee ₹ 16.02 crore and land use conversion ₹ 6.12 crore.

<sup>14</sup> At such rate not exceeding two *per cent*, but not less than one *per cent*.

The aforesaid Cess Acts and Cess Rules were made applicable in the State of Uttar Pradesh with the notification<sup>15</sup> (February 2009) of the ‘Uttar Pradesh Building and Other Construction Workers (Regulation of Employment and Condition of Service) Rules, 2009 (Rules)<sup>16</sup> by the State Government. The State Government also constituted the ‘Uttar Pradesh Building and Other Construction Workers’ Welfare Board’ (Board) under Section 18 of the Act.

The GoUP orders (September 2010/August 2011) designated the Secretary of every Development Authority as the Assessment and Collection Officer of the labour cess on the maps sanctioned in the authority at the rate of one *per cent* of the construction cost of residential buildings if the cost exceeded ₹ 10 lakh and deposit the same with the account of the Labour Welfare Board (LWB).

The GoUP also directed (December 2010) all the Divisional Commissioners/ District Magistrates to review cess collection by various Development Authorities under their jurisdiction and ensure the compliance of the said orders.

The Lucknow Industrial Development Authority (LIDA) approves map/layouts of the construction works to be carried out under its jurisdiction. However, audit noticed (October 2017) that in disregard of the GoUP orders, LIDA did not develop any mechanism to assess and collect the due amount of labour cess on the estimated cost of construction while sanctioning maps/layouts. It was also noticed that LIDA had sanctioned (February 2010 to March 2018) 145 maps related to construction of different categories of residential buildings.<sup>17</sup> However, it did not assess and collect the due labour cess from the applicants amounting to ₹ 5.86 crore<sup>18</sup>.

On being pointed out by Audit, the matter was put up to the Board of the Authority which approved (April 2018) assessing and collecting of labour cess while sanctioning the maps/layouts. However, no responsibility was fixed for delayed implementation (eight years) of GoUP orders as a result of which Labour Cess amounting to ₹ 5.86 crore could not be assessed and collected.

The LIDA stated (February 2019) that Board of Directors had authorised (April 2018) the Chief Executive Officer for onward assessment and collection of labour cess while sanctioning the maps/layouts.

The fact remains that no responsibility was fixed for delayed implementation (eight years) of GoUP orders as a result of which, statutory liability of labour cess amounting to ₹ 5.86 crore could not be assessed and collected. Thus, additional revenue amounting to ₹ 5.86 crore intended for welfare of the workers has still not been realised by the LIDA.

The matter was reported (November 2018) to the Government. The reply is still awaited (September 2019).

<sup>15</sup> Notification No. 143/36-2-2009-251 (एसएम)/95 dated 04 February 2009.

<sup>16</sup> Framed in exercise of powers conferred by Section 40 read with Section 62 of the Cess Act.

<sup>17</sup> 140 maps of own residential buildings and 5 group housing buildings maps.

<sup>18</sup> Calculated at the UPPWD’s plinth area rate of building construction which was also used by the LIDA after its Board of Directors decision to assess and collect labour cess on the maps sanctioned.

**Department of Additional Sources of Energy**

**Uttar Pradesh New and Renewable Energy Development Agency**

**7.6 Non-levy of liquidated damages**

**The Agency extended undue favour to the contractors by not levying liquidated damages amounting to ₹ 1.73 crore for their failure to perform services.**

The Uttar Pradesh New and Renewable Energy Development Agency (UPNEDA), after inviting tenders, placed work orders (12 February 2016) with eight firms for supply, installation, commissioning along with five years comprehensive warranty maintenance of 99,353 Solar Power Packs<sup>19</sup> (SPPs), at the rate of ₹ 26,200 per SPP inclusive of all taxes, in the dwellings constructed under Dr Ram Manohar Lohiya Awas housing projects in 75 districts of Uttar Pradesh. The agreement entered into with each of the firms stipulated that:

- The work shall be completed within four months from the placement of work order which can be extended by UPNEDA upto a maximum of two months. In case the contractor failed to execute the work within stipulated time, the UPNEDA will be at liberty to get the work executed from open market at the risk and cost of the contractor (Clause No. 1.3); and
- If the contractor fails to perform the services within the time period, UPNEDA shall, without prejudice to its other remedies under the contract, deduct from the contract price as liquidated damages, a sum equivalent to one *per cent* of the price of the unperformed services for each week of delay subject to a maximum of 10 *per cent* of price of the delayed services. Once the maximum is reached, the UPNEDA may consider termination of the contract (Clause No. 2.1).

Audit noticed (February 2018) that out of eight firms, three firms with whom 57 *per cent* of the total supply orders (56,268 SPPs in 32 districts) were placed, could not complete the assigned work within the scheduled period<sup>20</sup>. These firms together failed to supply 13,108 (23 *per cent* of the ordered quantity to these firms) SPPs in 13 districts. UPNEDA cancelled (August 2016 to November 2016) the orders with the defaulting firms for the remaining SPPs and diverted the same to two of the existing suppliers at the same cost. However, in contravention to the agreement, UPNEDA did not levy the liquidated damages on all the three defaulting firms which resulted in extending an undue favour to them amounting to ₹ 1.73 crore (**Appendix-7.9**).

The Government and the UPNEDA stated (April 2019 and February 2019) that Clause 2.1 of the agreement relating to levy of liquidated damages was not applicable in these cases as the unexecuted supplies by the defaulting firms were diverted to other contractor firms at the same rate. Further, there was no condition of delayed executed supply by the three defaulting firms in the agreements executed with them.

<sup>19</sup> Solar Power Pack to operate 3 LED indoor lights (2 LED lights of 3 Watt each & 1 LED light of 5 Watt), a 25 Watt D.C. ceiling fan & a mobile charger.

<sup>20</sup> Scheduled period of four months (12 June 2016) which was further extended by UPNEDA upto 20 August 2016 *i.e.* for nine weeks against eight weeks as stipulated in the agreement.

The reply is not acceptable because the three firms could not supply/execute the agreed quantities of SPPs as per the work order even upto the extended period of completion of work. Further, the balance quantities of SPPs pertaining to these firms were diverted to two other firms causing further delay in execution of work. As the defaulting firms had failed to perform the services within the specified period of the contract, levy of liquidated damages and confiscation of performance security/bank guarantee from these firms as per clause 2.1 of the agreement was applicable.

Lucknow

The 8 JULY 2020

  
(JAYANT SINHA)

Principal Accountant General (Audit-II),  
Uttar Pradesh

Countersigned

New Delhi

The 13<sup>th</sup> July, 2020

  
(RAJIV MEHRISHI)

Comptroller and Auditor General of India