

# **CHAPTER IV**

# **PERFORMANCE AUDIT**



## CHAPTER IV PERFORMANCE AUDIT

### HOUSING AND URBAN DEVELOPMENT DEPARTMENT

#### 4.1 Generation of own revenue and its collection by Bhubaneswar Municipal Corporation

##### Executive Summary

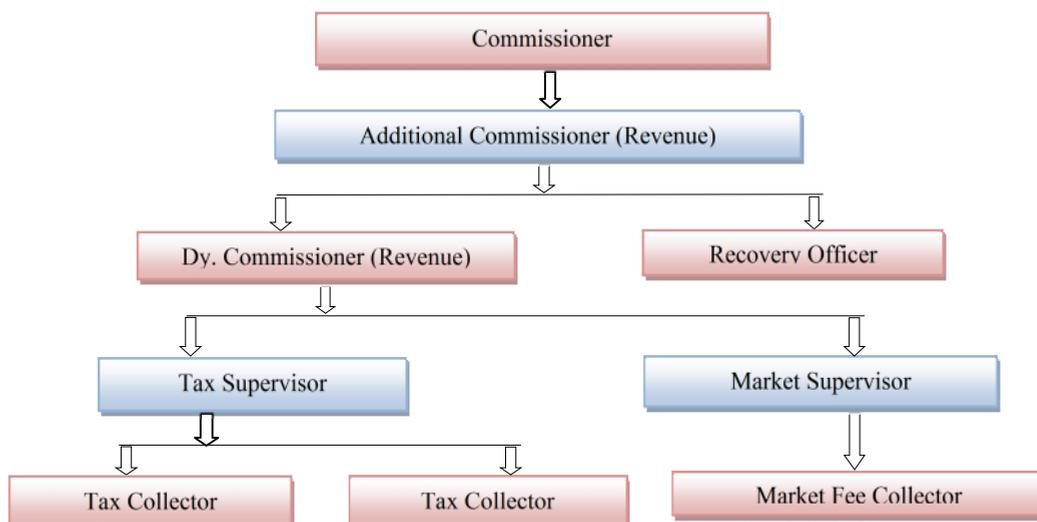
*Performance Audit on Generation of own Revenue and its collection by Bhubaneswar Municipal Corporation (BMC) showed that BMC lacked institutional arrangement for levy of property tax. The annual value of holdings was not revised after 1977 resulting in loss of revenue of ₹ 64.05 crore. Revenue collection was 3 to 34 per cent less than the budgeted revenue in four years during 2011-16. There was a loss of revenue of ₹ 19.94 crore due to under-assessment of advertisement tax and non-enforcement of agreement condition for display of advertisement and renewal of passenger shelters at a lower rate. Failure of BMC to collect licence fee from traders, levy penalty on defaulters and implement recommendation of 3<sup>rd</sup> SFC led to loss of revenue of ₹ 12.40 crore. Non-realisation of Market rent by BMC resulted in loss of revenue of ₹ 0.24 crore. The arrear tax dues (holding tax and market rent) of ₹ 84.96 crore were not realised due to lack of follow up action. User charges were not levied on shops, hospitals/nursing homes, apartments and hotels resulting in loss of revenue of ₹ 6.15 crore. In the sector 'Development charges', BMC suffered loss of ₹ 2.32 crore due to incorrect assessment and demands of ₹ 43.25 crore remained unrealised against owners of 103 multi-storey buildings. The agreed share of assets of two commercial complexes constructed by Joint Venture Partners was not utilised. BMC did not raise demand for authorisation premium of ₹ 55.13 lakh from the agency constructing Foot Over Bridge.*

##### 4.1.1 Introduction

The Municipal Corporations of Odisha are governed by the Orissa Municipal Corporation (OMC) Act, 2003 which empowered the Bhubaneswar Municipal Corporation (BMC) to make rules, regulations and bye-laws for generation of revenue with autonomy to function as an institution of self-Government.

The major sources of revenue generated by BMC are from tax revenue such as holding tax, advertisement tax and non-tax revenue such as trade license fee, user charges, development charges etc. Apart from these, the Corporation also gets compensation from the Government of Odisha in lieu of Octroi duty.

#### **4.1.2 Organisational set up**



#### **4.1.3 Audit Objectives**

The Performance Audit aimed to assess whether:

- proper plan was in place to tap all sources of revenue;
- collection of revenue was adequate; and
- remedial action for realisation of uncollected or enhanced revenue was efficient.

#### **4.1.4 Audit criteria**

The criteria for the Performance Audit were derived from the following:-

- Orissa Municipal Act, 1950 and Orissa Municipal Rules, 1953
- Orissa Municipal Corporation Act, 2003 and Odisha Municipal Corporation Rules, 2004
- Orissa Municipal Accounting Rules, 2012
- Orissa Public Works Department Code
- Regulations and Bye-laws passed by BMC
- Recommendations of State Finance Commissions and
- Executive orders, instruction, notifications issued by the Housing and Urban Development Department

#### **4.1.5 Scope and Methodology of Audit**

Audit test checked records of BMC during April to August 2016, covering the period 2011-16. The Audit objectives, criteria, scope and methodology were shared with the Chief Finance Officer of BMC and the officials of Housing and Urban Development Department (HUDD) in an Entry Conference held on 11 April 2016. Joint Physical Inspection was conducted to ascertain whether

apartments were constructed after getting No Objection Certificate (NOC) from BMC and to assess that traders had obtained trade licence for conducting business. Beneficiary survey was also conducted through questionnaire on collection of Holding Tax and issue of trade licence. The audit findings were discussed in an Exit Conference held on 27 October 2016.

## **Audit findings**

### **4.1.6 Planning**

Audit observed certain deficiencies in planning which led to short collection of revenues in BMC. These are discussed in the succeeding paragraphs.

#### **4.1.6.1 Lack of institutional arrangements for levy of Property Tax**

Section 192 of the OMC Act, 2003 empowers the Corporation to levy property tax. Section 198 defines the property tax as a tax to be levied on the Annual Value of any land and building in the corporation area, including any land or building belonging to the State Government or the Corporation or any undertaking or public sector corporation under the control of the State Government or the Corporation. Section 657 of the Act requires framing of detailed rules and bye-laws for administration of taxes etc., while Section 215 and 218 requires constitution of “Corporation Valuation Committee” and “Assessment Tribunal”, respectively.

Audit observed that BMC did not set up the required institutional arrangements for levy of property tax even after 13 years of enactment of the Act and was only levying and collecting the holding tax<sup>1</sup>. Thus, BMC could not generate significant amount of revenue due to non-imposition of property tax.

#### **4.1.6.2 Absence of database and tracking of holdings**

As per Section 146 of Orissa Municipal (OM) Act, 1950 (which the BMC has been following for collection of holding tax), unless otherwise directed by the State Government, new valuation and assessment list should be prepared once in every five years. Under Section 143-A, the Executive Officer can exercise the power and perform the duties of Valuation Officer (VO) in respect of that Municipality.

Besides, ULB level reforms on property tax under Jawaharlal Nehru National Urban Renewal Mission (JnNURM) emphasised (December 2005) the need for proper mapping of properties using a Geographical Information System (GIS) so that the ULBs would have a full record of properties in the city and can bring them under the tax net. The annual value of holdings was generally assessed on the basis of self-assessment returns furnished by the owners of holdings. Audit observed the following:

- BMC had realised the holding tax only from 81,129 out of 2.60 lakh holdings as of March 2011, which showed that more than 69 per cent of the holdings were out of the tax net. The latest position of holdings in the corporation area was not maintained by BMC.

<sup>1</sup> Taxes levied on built up area only with vacant land excluded from the tax.

- Although the number of holdings was increasing year after year, BMC had not maintained the information on number of actual holdings after 2011 and it collected holding tax only from 94,871 holdings as of March 2016.
- To ascertain actual number of holdings, BMC had not taken any initiative for mapping of properties through use of GIS system even after lapse of 10 years.

Besides, joint physical inspection conducted by BMC officials in 220 holdings in different wards in the presence of Audit showed that 98 (45 *per cent*) holdings were out of the tax net. Thus, substantial revenue was lost annually due to absence of mechanism for tracking the households.

The Additional Commissioner, BMC stated (October 2016) that after completion of GIS Survey and mapping, the total eligible households coming under the tax net would be taken into consideration.

#### ***4.1.6.3 Non-adherence to the regulation of tax on advertisement***

As per clause 10 (f) of the Bhubaneswar Municipal Corporation Tax on Advertisement Regulations, 2006, the Commissioner is required to maintain a register showing the licenses issued under the Act and the Regulations. However, no such register was maintained and therefore, the exact number of agencies working in BMC area could not be ascertained.

As per clause 10 (a) of the Regulation, the Commissioner may grant/refuse/renew or cancel the permission, as the case may be, in accordance with the provisions of the Act and the Regulations made thereunder.

Test check of files relating to 15 out of 57 advertising agencies<sup>2</sup> showed that BMC received applications for granting permission in favour of these agencies for display of advertisement. However, without granting permission to these agencies, they were directed to produce the list of hoardings displayed in BMC area every year. Based on the list submitted, the License Inspectors (LIs) were directed to verify the hoardings to raise the demand in all the cases. Thus, without granting permission, demand was being raised by the Municipal Commissioner, which was irregular.

The Additional Commissioner, BMC assured (October 2016) of implementing the provisions of Advertisement Regulations.

#### ***4.1.7 Adequacy of collection of revenue***

##### ***4.1.7.1 Revenue budget of BMC***

The BMC could realise revenue of ₹ 1139.84 crore against budgeted revenue of ₹ 2156.95 crore during 2011-16 as shown in ***Table-4.1***:

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<sup>2</sup> As per the demand issued during 2015-16

Table 4.1: Annual budgeted revenue and its collection by BMC during 2011-16

Budget	2011-12		2012-13		2013-14		2014-15		2015-16	
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
(₹ in crore)										
<b>Tax Revenue</b>										
Holding tax	40.00	18.45	30.00	29.35	35.00	20.28	30.50	23.70	40.00	20.23
Advertisement tax	8.00	8.55	10.00	9.80	10.00	11.20	10.92	12.12	13.52	11.95
Others	0.01	0	0.01	0	0	0	0.01	0.01	0	0
<b>Total</b>	<b>48.01</b>	<b>27.00</b>	<b>40.01</b>	<b>39.15</b>	<b>45.00</b>	<b>31.48</b>	<b>41.43</b>	<b>35.83</b>	<b>53.52</b>	<b>32.18</b>
<b>Non-tax revenue</b>										
Rental income from Municipal properties	2.07	1.47	2.10	1.88	2.40	1.67	1.75	1.65	0.68	1.57
Fees and User charges	39.97	15.74	37.94	16.58	18.63	13.01	12.51	10.05	9.38	22.09
Sale and Hire charges	0.72	0.79	0.84	0.82	0.84	0.78	0.83	0.7	0.86	1.02
Others	36.73	12.03	36.61	12.28	122.39	15.28	111.93	14.97	23.34	1.25
<b>Total</b>	<b>79.49</b>	<b>30.03</b>	<b>77.49</b>	<b>31.56</b>	<b>144.26</b>	<b>30.74</b>	<b>127.02</b>	<b>27.37</b>	<b>34.26</b>	<b>25.93</b>
Assigned Revenue and Compensation	50.01	48.71	55.01	50.19	55.02	80.91	75.05	79.3	78.05	54.56
Revenue Grants Contribution and Subsidy	206.36	55.05	255.76	136.96	200.46	93.34	187.97	72.9	302.78	156.65
<b>Grand Total</b>	<b>383.87</b>	<b>160.79</b>	<b>428.27</b>	<b>257.86</b>	<b>444.74</b>	<b>236.47</b>	<b>431.47</b>	<b>215.4</b>	<b>468.61</b>	<b>269.32</b>

(Source: Records of BMC)

Analysis of budget estimate and actual realisation of major sources of revenue showed that there was no coherence between the estimates and actual receipts during 2011-16. The gap between budget and revenue collected was as high as ₹ 21.01 crore in the year 2010-11 in tax revenue and ₹ 113.52 crore in non-tax revenue during 2013-14. The budgeted revenue in non-tax category was inflated in 2013-14 due to provision of sale of BMC properties.

In the year 2013-14 and 2014-15, the actual receipt was more than the budget in respect of Assigned Revenue and Compensation due to excess release by HUDD. However, in respect of Fees and User charges, the actual receipt was less by 61 per cent (₹ 24.23 crore in 2010-11) and 56 per cent (₹ 21.36 crore in 2014-15).

The inconsistencies in the projected revenue and actual collection both in tax and non-tax revenue showed that the budgeting process was flawed due to preparation of estimate without reliable and comprehensive data on the tax structure. Besides, no efforts were made to collect the revenues based on the actual number of holdings, traders, households, service users etc. as pointed out in the subsequent paragraphs.

#### 4.1.7.2 Short receipt of compensation in lieu of Octroi duty

Octroi duty was the main source of internal income for all the ULBs which was abolished in December 1999. The 1<sup>st</sup> State Finance Commission (SFC) (2000-01) recommended release of compensation to the ULBs in lieu of Octroi (assigned revenue) through budgetary provision in the annual budget of HUDD. As per para 3.2(ii) (a) of Action Taken Report of HUDD on 3<sup>rd</sup> SFC (2010-15), the Government decided to make the annual assignment in favour of the ULBs in lieu of Octroi as long as it would levy and collect Entry Tax. The amount provided in the Revised Estimate (RE) of 2010-11 was taken as the base which was increased by 10 per cent in the subsequent years. Requirement of salary and pension of the employees of the ULBs was to be met out of this provision and supplemented, wherever necessary, by ULBs' own resources.

Scrutiny of data furnished by BMC showed that a sum of ₹ 47.39 crore was released by HUDD during 2010-11 towards Entry Tax. Taking this as the base amount and with annual increase of 10 *per cent*, the amount due from 2011-12 to 2015-16 was ₹ 318.24 crore against which HUDD had released ₹ 309.26 crore resulting in short receipt of ₹ 8.98 crore to BMC as per **Table-4.2** below:

**Table 4.2: Details regarding release of compensation in lieu of Octroi by HUDD**

Year	Due for the year			Amount released	Short released
	Base amount	Hike of 10% over previous year	Total due during the year		
2011-12	47.39	4.74	52.13	48.68	3.45
2012-13	52.13	5.21	57.34	50.14	7.20
2013-14	57.34	5.73	63.07	80.43	(-)17.36
2014-15	63.07	6.31	69.38	75.45	(-)6.07
2015-16	69.38	6.94	76.32	54.56	21.76
<b>Total</b>	<b>289.31</b>	<b>28.93</b>	<b>318.24</b>	<b>309.26</b>	<b>8.98</b>

(Source: Data furnished by BMC and compiled by Audit)

From the information furnished by BMC, it was observed that there was a liability of ₹ 4.25 crore towards pension of 335 employees as of August 2016. The short release of fund was one of the reasons for non-discharging of the above liabilities.

The Additional Commissioner, BMC while accepting (October 2016) the audit observation stated that payment of pension was being met from the Special Fund received from the department. However, the fact remained that delay in taking up the issue with Government eventually delayed the payment of pension to the pensioners.

#### **4.1.7.3 Loss of revenue due to non-revision of annual value**

As per Section 146 of the OM Act, unless otherwise directed by the State Government, new valuation and assessment list should be prepared once in every five years. As per provision of Section 693(3) of OMC Act, all rules, bye-laws, orders, directions, powers made, issued or conferred under the OM Act and in force before the commencement of this Act shall, so far as they are not inconsistent with the provision of this Act, continue to be in force in the cities until they are replaced under this Act. As per Section 694(3) of OMC Act, all taxes, fees, duties, which immediately before the commencement of this Act, were being imposed by the municipal corporation shall be deemed to have been imposed by the respective corporation under the provision of this Act and shall continue to be in force accordingly until such taxes, fees and duties are revised, cancelled or suspended by anything done or any action taken under this Act.

Scrutiny of records relating to holding tax showed that the last revision of annual value of holdings was made in April 1977 by Bhubaneswar Municipality (now BMC) and no further revision has been made till date (August 2016). Though the OMC Act, 2003 was in force since 2003, the annual value of all holdings in BMC area was not revised even after 13 years of implementation of the Act. However, BMC has been levying and collecting holding tax at the maximum rate of 10 *per cent* of the annual value of holdings along with five *per cent* for light tax and 2.5 *per cent* for latrine tax every year. While the Valuation Organisation had revised the assessment of annual value of holdings in 11 other ULBs during 2010-11, no steps were taken for revision of annual

value in BMC. In the revised assessment list of 11 ULBs, the annual value of holdings was enhanced from 1.57 times (Khurda Municipality) to 29.28 times (Banki NAC) of the last valuation.

The Commissioner stated (July 2016) that as per direction of Hon'ble High Court (August 2011), the BMC would continue collection, assessment and revision of tax as per the old rate.

However, the Hon'ble High Court (August 2011) had made it clear that it was open for the Municipal Corporation to impose property tax under Section 694(3) and other relevant provisions of Chapter-XIII of OMC Act. In this regard, HUDD had also clarified (December 2012) that revising the tax as per the direction of the High Court under the OMC Act would not lead to any violation of the order of the Hon'ble High Court. Despite this, BMC did not revise the tax.

Even after lapse of five years from the order of the Hon'ble High Court and direction of HUDD, BMC had not taken any action either to vacate the order or to impose tax under Section 694(3) and Chapter-XIII of OMC Act till March 2016. Rather, BMC resorted to collection of holding tax only at the old rate, resulting in short collection of ₹ 64.05 crore.

The Additional Commissioner, BMC assured (October 2016) that the matter would be taken up with the Government for necessary orders.

#### **4.1.7.4 Non-assessment of holding tax on industrial units**

As per Section 131(1) (a) of OM Act, the municipalities shall impose tax on holdings situated within the municipality on their annual value. Clause 18.6 of the Industrial Policy Resolution (IPR) 2001 and 16.5 of IPR 2007 stipulated that industrial estates would be excluded from the tax regime of municipalities and other local authorities for management by the local industries' associations, provided that the latter undertook to maintain the infrastructure of the industrial estates either directly or through other agencies by taking consent of HUDD to amend the concerned Act. HUDD passed (April 2012) an order wherein payment of holding tax by industries situated in industrial estates were deferred for 10 years from the date of allotment of land to them.

Audit observed from the records of BMC that 926 industrial units operated in two industrial estates (Chandaka Industrial Estate: 382 and Mancheswar Industrial Estate: 544) under the BMC area as of March 2016. In respect of Mancheswar Industrial Estate, 441<sup>3</sup> out of 544 units were to be assessed for payment of holding tax after expiry of the moratorium of 10 years. BMC did not take any steps for assessment of these 441 industrial units, resulting in loss of revenue of ₹ 1.03 crore<sup>4</sup> as of March 2016. However, in case of Chandaka Industrial Estate, date of transfer of land to industrial units by IDCO was not available to calculate the period of moratorium and date from which the holding tax would be levied.

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<sup>3</sup> Industrial Infrastructure Development Corporation (IDCO) had allotted land to them during 1980 to 2005

<sup>4</sup> Calculated on the bench mark value of the land only in absence of cost of the building

The Additional Commissioner, BMC stated (October 2016) that BMC had been following up the matter with IDCO for increasing the revenue. However, the reply is silent regarding the reason for non-levy of holding tax in respect of 441 industrial units, even after lapse of moratorium period of 10 years.

#### **4.1.7.5 Loss of revenue due to under-assessment of holding tax**

As per Section 131(1)(a) of the OM Act, municipalities shall impose tax on holdings situated within the municipality on their annual value. BMC determined the annual value of holdings on the basis of GA Department notification (May 1998) as given in the table below:

**Table 4.3: Statement showing procedure followed for calculation of annual value**

Category of holding	Step-1	Step-2	Step-3
Residential	Plinth area of the holding in sqm. X ₹ 13.65	Deduct 15 per cent towards repair and maintenance	Add 0.5 per cent of the land cost
Commercial	Civil cost of the building + cost of PH & Electrical fitting	Take 7.5 per cent of the value arrived in step-1	Add 0.5 per cent of the land cost
Residential on rent	Monthly rent of the building X12	Deduct 15 per cent towards repair and maintenance	Add 0.5 per cent of the land cost

*(Source: Records of BMC)*

From test check of 182 assessment files of holdings in BMC, Audit observed that while assessing the annual value in respect of 175 holdings, BMC did not adopt the revised benchmark value of land and also failed to include the cost of electrical installation charges and PH fittings. This resulted in under-assessment of annual value and consequential loss of revenue of ₹ 28.36 lakh towards holding tax.

The Additional Commissioner, BMC assured (October 2016) that the holding tax would be assessed as per the new benchmark value.

#### **4.1.8 Advertising Rights**

##### **4.1.8.1 Loss of revenue due to incorrect calculation of advertisement tax**

As per Rule 242(1) and 242(2) of the OMC Act, the Corporation shall levy tax on advertisements at rates specified in the Regulations notified by BMC.

BMC had levied and collected advertisement tax for display of hoardings at private places since 2011-12 from M/s Torrent without having given written permission. For the year 2015-16, BMC issued demand notice of ₹ 69.03 lakh in February 2016, based on the number and size of hoardings displayed during the previous year. In response to the demand, the agency deposited advertisement tax of ₹ 26 lakh in March 2016. Audit observed that as per calculation sheet, the total assessment should have been ₹ 80.54 lakh against which the total was taken as ₹ 69.03 lakh. Thus, BMC committed totalling error of ₹ 11.51 lakh which resulted in short-realisation to that extent.

Further, M/s Team Admark was selected on competitive bidding for display of hoardings in public places within BMC area from October 2010 to September 2016 at the rates ranging from ₹ 600 to ₹ 1068 per sft. per year.

On scrutiny of records, Audit observed that four other advertising agencies had displayed their advertisement boards on public places like traffic signals, traffic

squares, unipoles<sup>5</sup> on roads, railway land, government educational institution etc. even though formal permission was not given by BMC to these agencies. BMC levied and collected the advertisement tax from such agencies at the rate meant for private hoardings which ranged from ₹ 15 to ₹ 140 per sft. per year during 2010 to 2016.

BMC neither allotted aforesaid public places to the agencies by inviting tender nor demanded advertisement tax at par with the tendered rate. Had the BMC levied the advertisement tax at the rate awarded to M/s Team Admark, it could have earned revenue of ₹ 12.13 crore from 2011-12 to 2015-16.

The Additional Commissioner, BMC accepted (October 2016) the audit observation.

#### **4.1.8.2 Undue favour to advertising agencies led to loss of revenue**

As per clause 2.2.3 of the Public Private Partnership (PPP) guidelines for Social Sector, issued (November 2004) by Planning Commission, Government of India (GoI), a provision should be made to effect the reversion of assets created in the PPP back to Government, after the expiry of the contract.

BMC had permitted different advertising agencies to construct and maintain 64 bus sheds with advertising rights on payment of licence fee for a period of five years from 2008-09 to 2013-14. Twenty-two bus sheds were demolished for road expansion work. Out of the remaining 42 bus sheds, the license period of four bus sheds of M/s Team Admark was valid up to March 2014 and for the balance 38 sheds allotted to other advertising agencies, the licence period was valid upto March 2013.

Audit observed that after expiry of the period of permission, BMC without inviting tender, renewed the advertising permission of bus shelters based on the application received from the agencies to display the hoardings at the rate of ₹ 60 per sft. (rate applicable for hoardings erected on private buildings) for the years 2013-14 (38 nos.) and 2014-15 (42 nos.). From the year 2015-16, the rates were revised to ₹ 250 per sft. and the demands were raised accordingly.

It was seen that the tendered rates of licence fee for public places ranged from ₹ 600 to ₹ 1068 per sft. per year during the period from 2013-14 to 2015-16. Thus, due to renewal of bus shelters adopting the rate for private hoardings instead of tendered rate, BMC suffered a loss of revenue to the tune of ₹ 2.23 crore (*Appendix 4.1*) for the period from 2013-14 to 2015-16.

The Additional Commissioner, BMC stated (October 2016) that as per the decision of the Standing Committee on Contracts, the bus shelters were let out on tender basis and the highest quoted bids were approved.

The reply is not acceptable as the advertising permissions were renewed without calling for fresh tender in subsequent years.

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<sup>5</sup> Unipole is a large-format advertisement sign placed atop a very high pole

#### **4.1.8.3 Deviation in procedure leading to short-realisation**

As per clause 10(d) of Regulation of 2006, if any tax on advertisement is not paid within the stipulated time after the demand notice, the same shall be recovered as arrears of tax and the permission granted shall be deemed to have been terminated. As per clause 41 (3) of the Advertisement Regulations 2015 read with Section 242 (3) of the OMC Act, such tax shall be payable in advance on annual basis or in such instalments as may be fixed by the Corporation from time to time.

Scrutiny of records relating to demands raised on displaying advertisements on private places showed that BMC issued (March 2016) demand notice for ₹ 4.45 crore to 57 advertising agencies for the hoardings erected by them. Audit observed that 10 agencies had deposited the full amount, 15 agencies made part payments and 32 agencies did not pay the dues at all. In this regard, Audit observed that out of the demand of ₹ 4.45 crore for 2015-16, only ₹ 1.18 crore was realised by BMC resulting in blockage of revenue of ₹ 3.27 crore (*Appendix 4.2*). Despite this, BMC had not initiated any action for recovery of balance amount till the date of audit (August 2016).

During Exit Conference (November 2016), the Additional Commissioner, BMC accepted the fact of short realisation.

#### **4.1.8.4 Loss of revenue due to short realisation of tax on advertisement**

For display of advertisements within five zones of BMC area, an agreement was signed with M/s Team Admark on 1 October 2014 for three years effective till 30 September 2017 with a contract amount of ₹ 1.09 crore per month. As per clause 28 of Conditions of Contract, if for carrying out repairs, maintenance, widening of roads or for any other purpose, the advertisement zone has to be removed in public interest or for any other reason, alternate nearby site may be allotted to the M/s Team Admark in lieu of the site, with the approval of competent authority within a reasonable time having approximately the same potential. However, Audit observed the following:

- As per the agreement, the total advertisement area in the east zone was 16,320 sft. For widening of the road stretch from Rasulgarh to Samantarapur in east zone, the hoardings in 9056 sft. were dismantled in February 2015. In lieu of the dismantled area, no potential alternative site was allotted to the agency. BMC had directed (April 2015) the agency to pay the license fee on existing hoardings/bulletins/kiosks in the said zone with effect from 21 February 2015. So the agency was liable to pay the licence fee for the remaining area of 7264 sft. However, the agency did not clear its dues of ₹ 1.06 crore from January 2015 to March 2016 and continued to display hoardings. BMC did not take any action to collect the dues from the agency.
- Similarly in south and central zones, BMC had directed (December 2015) the agency to shift the hoardings from the road stretch from Master Canteen to Shishu Bhawan for construction of underpass. The agency shifted the hoardings in January 2016. BMC did not provide alternate site to the agency to shift the hoardings. The agency paid licence fee of ₹ 79.46 lakh after deducting ₹ 37.28 lakh from the dues of December

2015 and January 2016 for the hoardings removed, despite displaying all the hoardings in the said reach upto January 2016, which resulted in short realisation of licence fee to that extent.

The Additional Commissioner, BMC stated (October 2016) that due to non-availability of suitable alternate sites, the advertising agency had paid proportionate amount deducting the area dismantled for road expansion. However, Audit observed from the correspondence made between the agency and BMC that the hoardings were dismantled in January 2016. As such, the hoardings were in place upto January 2016 and therefore, the agency should have paid for the same.

#### ***4.1.8.5 Loss of revenue due to termination of agreement before notice period***

As per clause 43 of the agreement, M/s Admark may surrender the allotment of a zone by giving 90 days' notice in writing, provided that no surrender notice is permissible during the first nine months of the contract period and the surrender notice shall not be valid unless all the dues including the amount for notice period are paid on the date of receipt of such surrender notice.

Scrutiny of records showed that M/s Team Admark had requested (March 2015) BMC to exempt licence fee from January 2015 for west zone and applied for withdrawal due to loss in business. BMC did not accept its withdrawal as the agency had not completed the first nine months. Subsequently, BMC terminated the agreement with effect from 1 June 2015 for the zone instructing the agency to deposit the arrears upto May 2015 amounting to ₹ 81 lakh. The agency deposited ₹ 36.20 lakh in two phases. The balance arrear amount of ₹ 44.80 lakh was neither deposited by the agency nor any action was initiated by BMC for recovery of the same. Further, as per agreement, the allotment could not be surrendered prior to 12 months. However, termination of the agreement by BMC after expiry of eight months was irregular and resulted in loss of ₹ 64.80 lakh<sup>6</sup> towards advertisement tax.

In the Exit Conference (October 2016), the Additional Commissioner, BMC stated that the termination was done on the request of the agency on the ground of loss in business. The reply was not acceptable as the premature termination of agreement was contrary to the conditions of contract.

#### ***4.1.8.6 Loss of revenue due to unauthorised advertisements on BPTSL buses***

As per clause 3 of the Advertisement Regulation of 2006, no vehicle shall display any advertisement without approval of the Commissioner and as per clause 10(a), every person desiring to display advertisement shall apply to him for permission against payment of fees of ₹ 100. As per clause 11, the tax on advertisement on vehicles shall be paid at the rate of ₹ 30 per sft per year which was revised (February 2015) to ₹ 10,000 per bus per month. As per clause 12, such interested person has to be enrolled as licensed advertiser and pay the license fee of ₹ 15,000 per year.

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<sup>6</sup> ₹ 64.80 lakh = ₹ 16.20 per month for four months (June to September 2015)

Bhubaneswar Puri Transport Service Ltd. (BPTSL) is a company incorporated under Companies Act, 1956. The company executed (August 2010) an agreement with M/s Dream Team Services (Operator) for public bus transport in the city of Bhubaneswar and Puri. As per Clause 5.1(xii) of the agreement, BPTSL has the right to advertise on buses as per the applicable advertisement rules and regulations which will be managed by the operator.

From the information furnished by the General Manager, BPTSL, Audit observed that the operator displayed advertisements on 111 buses during the period 2011-12 to 2014-15. However, BPTSL had not obtained any permission or license from BMC to display advertisements on its buses and had not paid the tax on advertisement i.e. ₹ 10.59 lakh for the period 2011-15.

The Additional Commissioner, BMC assured (October 2016) that steps would be taken for post facto approval of the Commissioner and ₹ 10.59 lakh would be recovered from BPTSL.

#### **4.1.9 Trade License**

Section 24 (viii) of OMC Act provides that it is the obligatory duty of Municipal Corporation to make provision for regulation on offensive and dangerous trades. Accordingly, BMC had notified 'The BMC Offensive & Dangerous Trades Regulation, 2006'. Part-IV of the Regulation contained the trades/ processes/ operations connected with trades which were not to be carried on or allowed to be carried on in or upon any premises without a licence.

The following observations are made on trade licenses in BMC.

##### **4.1.9.1 Loss of revenue due to non-renewal/non-imposition of penalty on trade licence**

As per clause 5(1) of the Regulation, after receipt of the application, the Commissioner may, after such inquiry as he may deem fit, issue the licence. As per clause 6, every licence shall cease to be valid on 31 March of the year in which it was issued and may be renewed within one month of its expiry. If the licensee fails to renew his licence within the stipulated period of one month, he would be charged a surcharge of five *per cent* of the licence fee for every subsequent month of delay. For non-compliance to the above conditions, the Commissioner would revoke or suspend the license, after giving the licensee an opportunity to be heard.

Scrutiny of the database on issue of trade licences by BMC showed that out of 21,644 traders existing as of March 2016, 16,719 traders were registered during 2011-16. Audit test checked 502 records selected through Stratified Random Sampling and observed that 58 traders paid licence fee regularly, while 444 renewed their licences during 2011-16 with a delay upto 60 months. Despite this, surcharge for delay in renewal of licence was not levied and BMC could not realise ₹ 2.02 crore towards renewal fee (₹ 0.77 crore) and surcharge (₹ 1.25 crore) as of March 2016.

The Additional Commissioner, BMC noted (October 2016) the audit observation and assured to ensure trade licensing and its renewal vigorously.

#### 4.1.9.2 Loss of revenue due to non-collection of trade licence fee

Scrutiny of the database of trade licence showed that 144 OMFED<sup>7</sup>, OPOLFED<sup>8</sup> and PCO<sup>9</sup> traders, having valid licence, were running their business in BMC area as of March 2016. However, as per data collected by BMC from these agencies, Audit found that 746 traders were doing business in BMC area. This implied that 602 traders did not have trade licences and had been running their business unauthorisedly in BMC area during the last five years. However, BMC had not taken any action to issue trade licence to these traders resulting in non-realisation of revenue of ₹ 20.76 lakh as shown below:

**Table 4.4: Statement showing non-collection of licence fee** (₹ in lakh)

Sl. No.	Particulars of traders	Availability as per BMC	Fee collected as per outsourced database	Difference	Licence fee per year	Licence fee due from 2011-16
1	OMFED	587	86	501	600	15.03
2	OPOLFED	66	6	60	1500	4.50
3	PCO	93	52	41	600	1.23
<b>Total</b>		<b>746</b>	<b>144</b>	<b>602</b>		<b>20.76</b>

(Source: Records of BMC)

The Additional Commissioner, BMC assured (October 2016) that steps would be taken to identify all such PCO, OMFED and OPOLOFED and licences would be issued to them.

#### 4.1.9.3 Loss of revenue due to non-collection of licence fee at enhanced rate

For utilising street light poles for routing cables by cable TV operators, BMC had been charging licence fee at the rate of ₹ 120 per year per pole during 2011-15, which was enhanced to ₹ 250 during 2015-16. There were three cable TV service providers<sup>10</sup> within BMC area who were using 4974 street light poles of BMC.

Audit observed that BMC demanded and collected ₹ 5.97 lakh at the rate ₹ 120 per pole instead of ₹ 12.43 lakh, at the rate of ₹ 250 per pole from the above three service providers for the year 2015-16. Thus, there was short realisation of ₹ 6.46 lakh for the year 2015-16.

Further, one service provider had not paid its licence fee of ₹ 9.86 lakh, demanded by BMC from 2013-14 to 2015-16. The Commissioner, BMC had not taken any action to realise licence fee from the service provider till date (August 2016) and the poles were being used continuously.

The Additional Commissioner, BMC stated (October 2016) that steps would be taken to regularise the matter and collect the licence fee.

#### 4.1.9.4 Non-imposition of penalty on telecom service providers

Pursuant to Gazette Notification of Commerce and Transport Department, Government of Odisha published in August 2007, HUDD had notified (December 2013) a regulation for installation of Telecom Towers (TT) in urban

<sup>7</sup> Orissa State Cooperative Milk Producers' Federation Limited

<sup>8</sup> Orissa State Poultry Products Co-operative Marketing Federation Limited

<sup>9</sup> Public Call Office

<sup>10</sup> (1) M/s Ortel Communications Ltd. (1000 poles), (2) M/s Variety Entertainment ltd. (1234 poles) and (3) M/s Manthan Broadband Services Pvt. Ltd. (2738 poles)

areas of Odisha. As per the said regulation, the telecom service provider (TSP) would install the TT in the urban area after obtaining permission from the ULB. As per para 13 of the resolution, the permission for renewal would be issued on submission of prescribed application before three months of expiry of the permission with all required documents and renewal fee. In case the service provider failed to renew its licence in time, penalty of ₹ 100 per month (upto December 2013) and ₹ 10,000 per month (from January 2014) were to be levied, in addition to the renewal fees.

Test check of records of seven out of 15 TSPs showed that all the TSPs had applied for renewal with delays upto 12 months. Though they deposited renewal fee, BMC did not charge penalty. The loss of penalty was ₹ 3.22 crore for the period from 2011-12 to 2015-16.

Thus, due to non-enforcement of the government regulation, BMC suffered a loss of ₹ 3.22 crore.

The Additional Commissioner, BMC assured (October 2016) to verify the audit observation and take action to collect the revenue in future.

#### ***4.1.9.5 Non-implementation of recommendation of SFC leading to non-collection of trade licence fee***

The 2<sup>nd</sup> SFC had recommended that it would be mandatory for all commercial units operating within the municipal area to obtain licence from the municipal authority. The ULBs were advised to impose and collect annual licence fee of an amount not less than 0.25 *per cent* of the turnover as per Orissa Sales Tax (OST) Registration. The 3<sup>rd</sup> SFC had also recommended that the rate of licence fee would be decided by the concerned local body, keeping in view the volume of transactions.

Audit observed that BMC had been imposing and collecting licence fee as per the Schedule of Licence Fee under 'The BMC Offensive & Dangerous Trades Regulations, 2006'. However, it did not fix the rate of licence fee, on the basis of the turnover of the trades as recommended by 2<sup>nd</sup> and 3<sup>rd</sup> SFC.

Test check of 31 registered traders (cases<sup>11</sup> taken from Joint Commissioner of Commercial Taxes, Bhubaneswar Range) showed that licence fees of ₹ 3.29 lakh were assessed and realised by BMC. However, if calculated on annual turnover of the establishment, BMC would have earned licence fee of ₹ 6.82 crore from these 31 traders. For example, in one commercial unit, the current demand was ₹ 7000 per year but the demand should have been ₹ 51.18 lakh per year, based on the annual turnover of ₹ 204.73 crore. Thus, due to non-implementation of the recommendations of 2<sup>nd</sup> and 3<sup>rd</sup> SFC, BMC lost revenue of ₹ 6.79 crore (*Appendix 4.3*).

The Additional Commissioner, BMC assured (October 2016) to take up the matter with the Government for necessary action.

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<sup>11</sup> The traders who were under BMC jurisdiction

#### **4.1.10 Market Rent**

The Corporation has been operating 13 markets including the four big markets in Unit-I, Unit IV, Siripur and BJB Nagar of the city. These four markets were transferred (October 1984) by General Administration Department, Government of Odisha with the direction that the Municipality would manage the aforesaid markets and collect tolls (fees) and dues etc. The following observations are made on levy and realisation of market rent:

##### **4.1.10.1 Irregular possession of shops and non-realisation of market rent**

The Corporation had constructed (August 2012) a garment market (G+2) comprising 54 shops in Unit-II area with a cost of ₹ 47.01 lakh. Prior to construction of the market, 36 shopkeepers doing business on the said piece of land were evicted (September 2002) to take possession of the land from GA Department. To rehabilitate these 36 shopkeepers, BMC had provisionally allotted (August 2003) 36 shop rooms to them in the new garment market. However, BMC did not take any decision for allotment of the remaining 18 shops.

Scrutiny of records showed that two writ petitions were filed relating to the allotment of shops due to which the process for allotment of 36 shops was delayed till December 2013. BMC got the first one in November 2013 and made the allotment with the condition that formal agreement would be executed with the allottees on disposal of the second writ petition. Then 35 allottees took possession of their shops without execution of any agreement with BMC.

Though the legal retainer of BMC had opined (December 2013) that BMC could enter into agreement for allotment of shop, yet no agreements were executed with the allottees and BMC allotted 35 shops. Due to this, BMC could not levy any rent on the shop owners from the date of allotment. It was further observed that the Corporation took a decision in January 2016 to charge each owner a rent of ₹ 35 per sft per month with effect from 5 December 2013 (date of allotment). However, the Commissioner had not issued formal order in this regard due to which rents valuing ₹ 24.31 lakh at the above rate could not be realised from 35 shop owners as of March 2016.

The Additional Commissioner, BMC stated (October 2016) that the matter was being taken up with the legal retainer for vacation of the writ petition.

#### **4.1.11 User charges**

##### **4.1.11.1 Non-imposition of user fees; extra financial burden on BMC**

As per provisions of Section 193 of OMC Act, the Corporation is to levy user charges for provision of water supply, drainage, sewerage, solid waste management (SWM), parking of vehicles, stacking of materials of rubbish on public streets and for other specific services. Government may also direct the Corporation to levy any of the user charges as stated above, if not levied or postponed by the Corporation.

Government had notified (June 2012) the Advisory for the ULB for levy of appropriate user charges towards recovery of operation and maintenance cost

for various services provided by them to the citizens, as required under the Reforms mandate under the Constitution (Seventy-fourth Amendment) Act, recommendation of the 13<sup>th</sup> Finance Commission and JnNURM guidelines which are mandatory for implementation by the ULBs. In this regard, Audit observed the following:

- ***Deficiency in implementing user charges reform***

As per clause 11 of the Advisory, it is mandatory for all ULBs to commit to user charges reform with immediate effect and ensure full recovery of Operation & Management (O&M) costs as well as recurring cost of the service as per inflation. A decision was also taken by the Corporation to collect 100 *per cent* user fees for management of solid waste.

Audit observed that the expenditure incurred by BMC towards solid waste management (SWM) during 2011-15 was ₹ 181.68 crore while the user charges collected were only ₹ 15.40 crore (***Appendix 4.4***). The overall revenue earned constituted only eight *per cent* of the expenditure incurred during 2011-16.

- ***Non-imposition of user charges on shops***

The BMC User Charges Regulations of 2015 also stipulated collection of user charges from shops ranging from ₹ 100 to ₹ 500 per month,<sup>12</sup> depending on the area of the shop. Audit observed that 21,644 business establishments were functioning in BMC area as of March 2016 as per the database, but user charges were not imposed on these shops, which resulted in loss of revenue of ₹ 2.60 crore for 2015-16 (calculated at minimum ₹ 100 per month).

- ***Non-realisation of user charges from hospitals and nursing homes***

The Regulations of 2006 had stipulated collection of user charges at the rate of ₹ 4000 per month from nursing homes while Regulations of 2015 envisaged levy of user charges at the rate of ₹ 1000 per month on health care units without beds and at the rate ₹ 5 per sqm per month on health care units with beds. As per the reports of Directorate of Medical Education and Training (DMET), Odisha (June 2016), 208 clinical establishments were registered in BMC area, out of which 162 were functioning.

Audit found that BMC had enrolled only 57 out of 162 nursing homes as of March 2016 and these were entitled to pay user charges. However, BMC had collected user charges from 19 nursing homes only till September 2012 and the remaining 38 nursing homes refused to pay on the ground that the number of beds was not taken into consideration while fixing rates for all categories of clinical establishments. Even these 19 nursing homes had not paid their dues after September 2012 and as such, ₹ 9.28 lakh was pending for realisation for the period from October 2012 to March 2016 (***Appendix 4.5***). BMC did not take any steps to enrol the remaining 105 units. This resulted in loss of revenue

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<sup>12</sup> For any extra area beyond 100 sft, ₹ 5 per sft will be charged

of ₹ 2.92 crore<sup>13</sup> for the period 2011-16 due to non-collection of user fees from 143 establishments.

- ***Non-realisation of user charges from apartment complexes***

The Regulations of 2006 stipulated the rate for collection of user fees on apartment complexes as shown below:

- Apartment complexes (less than 50 dwelling units) ₹ 500 per month
- Apartment complexes (51 to 100 dwelling units) ₹ 1000 per month
- Apartment complexes (101 to 200 units) ₹ 1500 per month
- Apartment complexes (more than 200 units) ₹ 2000 per month

It was found that BMC had invited (February 2013) tenders for collection and transportation of solid waste from 429 apartments. Against this, BMC had been levying and collecting user charges from 100 apartments. Out of the 100 units, ₹ 12.22 lakh (*Appendix 4.6*) was outstanding from 76 apartments as of March 2015.

BMC had not taken any action to include 329 apartments for collection of user charges by BMC. This showed that services were rendered without collection of user fees from 329 apartments. Due to this, there was a loss of revenue of ₹ 59.22 lakh (calculated at a minimum ₹ 500 per month per apartment for 2012-15).

- ***Non-realisation of user charges from hotels***

As per Regulations of 2006, collection of user charges from hotels for special cleaning<sup>14</sup> was as follows:

- Star Hotel and above ₹ 6000 per month
- B class Hotel ₹ 4000 per month
- C class hotel ₹ 2000 per month
- Ordinary hotel ₹ 200 per month

Further, Regulations of 2015 stipulated the following rates:

- Hotels without accommodation ₹ 10 per sqm. per month
- Hotels with accommodation ₹ 5 per sqm. per month
- Other places of public congregation ₹ 8 per sqm. per month

Audit observed that 67 hotels of different categories were enrolled by BMC for collection of user charges. As per the Regulations of 2006, the user charge realisable from these 67 hotels was ₹ 81 lakh out of which BMC could realise only ₹ 42.70 lakh during 2011-16. No action was taken to realise the balance amount of ₹ 38.30 lakh till the date of audit (August 2016).

<sup>13</sup> Calculated at the rate of ₹ 4000 per month from 2011-12 to 2014-15 and at the rate of ₹ 1000 per month for 2015-16

<sup>14</sup> It is the cleaning facility provided to hotels at their door step to dispose the garbage generated by them.

It was further observed from SWM records that BMC had made contract (March 2013) for collection and transportation of solid waste from 107 hotels in 53 wards. Thus, 40 hotels were excluded from levy of user charges due to which BMC was deprived of revenue of ₹ 3.84 lakh (calculated at a minimum of ₹ 200 per month per hotel for the period 2012-16).

The Additional Commissioner, BMC stated (October 2016) that BMC had taken steps for collection of user charges in compliance with the provisions made under Section 193 of OMC Act. However, even after lapse of 10 years of introduction of the Regulation on User Charges, the shops, hospitals, nursing homes, apartments and hotels were not charged user fees.

#### **4.1.12 Development Charges**

##### **4.1.12.1 Non-issue of NOC prior to approval of building plans from BDA**

Under Section 196 of the OMC Act, the Corporation may levy such development charges as may be determined by regulations from time to time, on any residential building with a height of more than 14 meters or any non-residential building having regard to its location along a particular street, its characteristics and sanctioned built up area.

In a meeting held (October 2009) among different organisations viz. BDA<sup>15</sup>, BMC, PHED<sup>16</sup>, State Pollution Control Board, Fire Prevention Officer, it was decided that the builders would obtain conditional approval from BDA for construction of multi-storey building (S+3 and above) in BMC area. After getting such approval, the builders had to obtain NOC from BMC before commencing construction of building. Further, BMC had decided (June 2011) that in case of builders, who did not obtain NOC from the Corporation, Government should be moved to stop water and electricity connection to the apartments and cancel the registration.

Scrutiny of NOC registers showed that BMC received 348 applications during 2011-12 to 2015-16 for issue of NOC and issued NOCs for 170 cases. In 80 cases, BMC did not raise demand and in 98 cases, BMC's demand for ₹ 43.25 crore was not honoured by the builders.

A joint physical inspection (August 2016) of 12 apartments who had not obtained NOC from BMC, was conducted by BMC officials in presence of Audit and it was observed that construction had not started in one case, was in progress in four cases and completed in remaining seven cases.

Further, Audit observed that:

- There was no coordination between BDA and BMC due to which the latter failed to take penal action against the owners of buildings, who had not applied for NOC but got their building plan approved by BDA.
- BMC did not intimate the registration numbers of defaulters to HUDD for cancellation of registration.

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<sup>15</sup> Bhubaneswar Development Authority

<sup>16</sup> Public Health Engineering Department

- BMC did not take up the issue with Government for instructing CESU and PHED for disconnection of electricity and water supply, respectively, to the buildings, which did not take NOC from BMC.

Thus, BMC failed to enforce the OMC Act 2003 and implement its decision and a revenue of ₹ 43.25 crore could not be collected from the buildings, constructed without obtaining NOC.

The Additional Commissioner, BMC assured (October 2016) to assess the demand and collect revenue in co-ordination with BDA. However, the reply is silent on construction of buildings without obtaining NOC from BMC.

#### **4.1.12.2 Loss of revenue due to incorrect assessment of development charges**

As per the Corporation Resolution (June 2010) of BMC, development charges at the rate two *per cent* of the total project cost were being levied and realised from the builders before issue of NOC, which was revised (July 2014) to one *per cent* with a ceiling of ₹ one crore. The project cost included the civil cost<sup>17</sup> of the building as well as the value of land.

To determine the Civil Cost of the buildings, these were categorised as 'ordinary', 'premium' and 'high premium'. The rates were fixed on average plinth area from ground floor to third floor for building upto 15 metres height and from ground floor to seventh floor for building with height of above 15 metres based on floor-wise rate fixed by Chief Engineer (Buildings). The land value was assessed, based on Bench Mark Value (BMV) of land issued by GA Department from time to time.

Check of 73 records of BMC on assessment of development charges during the period 2011-16 showed that the project cost of the buildings in 61 cases was under-assessed, as value of land adopted was below the benchmark value issued by GA Department. Similarly, the plinth area rate of stilt and basement were also taken below the rate stipulated by BMC. Due to under-assessment of project cost of buildings, demands for development charges were short levied which resulted in loss of revenue of ₹ 2.32 crore.

The Additional Commissioner, BMC stated (October 2016) that the BMC calculated the development charges on the basis of benchmark value of land determined by GA department. However, the reply was silent on the plinth area rate taken to determine the development charges.

#### **4.1.13 Joint Venture and Public Private Partnership Projects**

##### **4.1.13.1 Idling of shops in BMC-Keshari Mall**

A Joint Venture Agreement (JVA) had been signed (February 1999) between BMC and M/s Keshari Estates (P) Limited (builder) for construction of an office-cum-commercial market complex. As per the second Schedule of the JVA, the owner's (BMC) allocation was to be equal to 35 *per cent* of the saleable built-up area of the total built-up area, equally in all floors in finished conditions as mutually decided between BMC and the builder.

<sup>17</sup> Civil cost means the estimation of construction of civil works

From scrutiny of records, Audit observed that the market complex had started functioning from September 2010. Though the builder had requested BMC several times (September 2009 to April 2015) to take possession of the completed shops, BMC did not take over the shops on the plea that the builder had not obtained occupancy certificate from BDA. As per clause 12 (ii) of the agreement, BMC had to render all assistance to the builder to obtain all necessary permission/approval/sanction from BDA. However, BMC neither helped the builder to obtain occupancy certificate from BDA nor took possession of the shops towards its allocated area as per JVA.

The Auction Committee of BMC had fixed (November 2011) the auction price of shops as ₹ 16.77 crore. Since BMC did not take possession of the shops in the last six years, it could not sell out the shops and as such, lost the opportunity of earning that revenue. Further, the assets valued at ₹ 16.77 crore are also lying idle.

The Additional Commissioner, BMC stated (October 2016) that Housing and Urban Development Corporation Ltd. (HUDCO) had already submitted the benchmark value for Keshari Mall to BMC and the e-Auction of shops would be conducted shortly for sale of shops.

#### **4.1.13.2 Loss of revenue due to non-selling of property**

BMC had signed (November 1996) a JVA<sup>18</sup> with M/s Bhawani Constructions Pvt. Ltd. (builder) for construction of commercial-cum-residential complex at Saheed Nagar. As per the agreement, the share of BMC on account of commercial portion was 1,27,224 sft. out of which 76,796 sft.<sup>19</sup> was saleable area in the commercial complex. The remaining space was meant for pindis (concrete platforms) and stalls.

Audit observed that BMC took possession of the entire complex in April 2012. To sell the available space, BMC contacted HUDCO which assessed the value of super built-up area at ₹ 8550 per sft. and the car parking at ₹ 2.40 lakh per car. Accordingly, the valuation of the property was determined at ₹ 66.86 crore<sup>20</sup>. Thereafter, BMC invited (April 2013 and June 2013) bid twice to put the property to auction; however it could not be sold due to non-response by the bidders. BMC consulted HUDCO which advised reduction of the rate by 10 per cent and, subsequently, the proposal of reduction was conveyed (August 2013) to HUDD, which was not approved till the date of audit. Meanwhile, BMC decided to rent the space to government agencies, Public Sector Undertakings (PSU), industrial houses, banking sectors *etc.* Without the proposal for reducing the rate being finalised, BMC let out 3510 sft. of the commercial complex to Oil and Natural Gas Corporation Limited. The remaining area of 73,286 sft has neither been sold nor rented out as of August 2016.

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<sup>18</sup> The additional agreements were signed on 22 June 2005 and 7 March 2008

<sup>19</sup> Ground floor consisted of open space with a total area of 50,428 sft meant for shops/ pindis to be allotted separately to vendors. Thus, the available space in the commercial area was 12,7224 – 50,428 = 76,796 sft.

<sup>20</sup> (i) Commercial space (76796 sft): ₹ 8550 x 76796 = ₹ 65,66,05,800, (ii) 50 Car parking slots: ₹ 2,40,000 x 50 = ₹ 1,20,00,000, Total: ₹ 65,66,05,800 + ₹ 1,20,00,000 = ₹ 66,86,05,800

Further, Government of Odisha in Handlooms, Textiles & Handicrafts Department requested (August 2013) BMC to allot one shop of 1000-1500 sft area in Bhawani Mall Complex in favour of Sambalpuri Bastralaya Handloom Cooperative Society, Bargarh on payment, which was not considered without assigning any reason.

Thus, the remaining area of 73,286 sft with car parking space was not rented or sold out, resulting in loss of revenue of ₹ 63.86 crore<sup>21</sup>. Had the space been allotted on rent, BMC could have earned revenue of ₹ 7.95 crore<sup>22</sup> for 31 months.

The Additional Commissioner, BMC stated (October 2016) that already some space had been given on lease rent and steps were being taken to rent out the remaining vacant spaces.

#### 4.1.13.3 Loss of revenue due to non-assessment of holding tax

As per clause 18 of JVA with Keshari Estates (builder), BMC was to, as may be required by the builder, execute the deeds of conveyance of the builder's allocation in favour of such persons as may be nominated by the builder from time to time. The builder was to submit the deeds of conveyance in favour of the allottees to the authorised person of BMC in respect of 65 per cent of builder's allocation as well as saleable area as and when required. The authorised person of BMC was to conduct necessary formalities and verification and clear it expeditiously within a period not exceeding 15 days from the date of submission of the proposals. Under Section 131 of OM Act 1950, a tax is levied on holding situated within the Municipality assessed on their annual value.

Audit observed that the builder requested (December 2010) BMC for registration of conveyance in favour of the owners, who had purchased shops from the share of the builder. The builder intimated that 52 shop owners had taken possession of 154 shops in different floors of the market complex. However, BMC did not take any action to execute the deeds of conveyance in favour of the shop owners and eventually, failed to collect holding tax of ₹ 39.84 lakh (*Table 4.5*) during last five and half years.

**Table 4.5: Statement showing loss of holding tax on shops** (₹ in lakh)

Sl. No.	Particulars	No. of shops	Holding Tax due per year	Holding tax due for 5.5 years
1	Basement	47	1.66	9.14
2	Ground Floor	42	1.68	9.21
3	First Floor	50	1.68	9.27
4	Second Floor	15	2.22	12.22
<b>Total</b>		<b>154</b>	<b>7.24</b>	<b>39.84</b>

(Source: Statement of allotment of shops made by M/s Keshari Estates (P) Limited)

The Additional Commissioner, BMC assured (October 2016) that immediate steps would be taken for recovery of holding tax.

<sup>21</sup> 73286 X ₹ 8550 = ₹ 62,65,95,300 plus ₹ 1.20 crore for car parking

<sup>22</sup> At fair rent, for the area of 73,286 sft at the rate ₹ 35 per sft per month, for the period September 2013 to March 2016 (31 months)

**4.1.13.4 Loss of revenue of ₹55.13 lakh in construction of FOB**

As per para 4.1.3 of Request for Proposal (RFP) (July 1998), Pre-bid/proposal meetings and/or site visits may be required to ensure fairness in the process through receipt of the same information at one time. The meetings may be voluntary or mandatory. If addenda to the RFP are needed after the meeting, the addenda are developed and posted on the Procurement Bulletin in a separate document which becomes part of the final RFP response.

BMC had decided to construct three foot over bridges (FOBs) and, accordingly, invited (November 2011) RFP comprising technical and financial proposals from Advertising Agencies, Media Houses and Developers for developing modern FOBs at three different locations<sup>23</sup> in Public Private Partnership (PPP) mode. On the basis of decision taken in Pre-bid meeting held (December 2011) with nine bidders, Addendum-II was issued. In Addendum-II, the authorisation period was extended from 15 to 20 years from the date of signing the agreement and the Authorisee was required to make payments/ fees/ premiums as per the RFP document.

BMC further issued (6 January 2012) Addendum-III to comply with the query of the vendor. As per the Addendum, the period of concession (20 years) excluded the period of construction and the authorisation period was revised to commence from the compliance date<sup>24</sup>, instead of commencing from the date of agreement. Though, nine bidders had participated in the pre-bid meeting, only one bidder had submitted the bid documents. BMC, with the approval of HUDD, accepted the single bid with “Authorisation Premium” of ₹ 5,00,031 for the base year and annual increment of five *per cent*. BMC had issued (April 2012) Letters of Intent (LOI) to the vendor who executed three separate agreements for three FOBs on 20 October 2012. As per the agreement, Authorisation Premium is the fee (₹ 5,00,031) quoted by the Authorisee in the commercial proposal, which was to be paid by the authorisee to BMC every year during the period of authorisation.

Further, Audit observed that BMC did not demand authorisation premium from the date of agreement *i.e.* 20 October 2012 to 31 March 2016 and the agency also did not pay anything which attributed to loss of revenue of ₹ 55.13 lakh as given in **Table-4.6** below.

**Table 4.6: Statement showing loss of authorisation premium on three FOBs**

Period	Authorisation premium			
	Period	Rate per FOB per annum	Amount per FOB	Amount for three FOBs
20 October 2012 to 19 October 2013	One year	500031	500031	1500093
20 October 2013 to 19 October 2014	One year	525033	525033	1575099
20 October 2014 to 19 October 2015	One year	551285	551285	1653855
19 October 2015 to 31 March 2016	5 months and 13 days	578849	261413	784239
<b>Total</b>			<b>1837762</b>	<b>5513286</b>

*Source: Records of BMC*

The Additional Commissioner, BMC assured (October 2016) that the matter would be taken up with the agency.

<sup>23</sup> (1) Master Canteen, (2) In front of Ramedevi Women’s College and (3) near Jaydev Vihar

<sup>24</sup> Within a period three months from the date of agreement

#### 4.1.14 Collection of tax

##### 4.1.14.1 Inadequate measures for collection of tax

As per Section 123 of OMC Act, the Recovery Officer shall be responsible for recovery of all the Corporation dues on account of taxation, penalty and other dues from persons/ institutions. Section 261 and 262 of the Act authorises ULB to issue notice or warrant for distress sale of any movable property belonging to the defaulter, if the tax dues are not paid within the stipulated period. Under Section 169 and 170 of OM Act, the ULB may also move the District Collector for recovery or may sue the person liable to pay the same in any court of competent jurisdiction.

Scrutiny of records of Demand Collection and Balance (DCB) position of BMC as of March 2016 in respect of two tax components showed that out of total demand of ₹ 163.55 crore, ₹ 78.59 crore was collected, leaving a balance of ₹ 84.96 crore as given in **Table 4.7**:

**Table 4.7: Details of Demand, Collection and Balance as on 31 March 2016**

(₹ in crore)

Sl. No.	Particulars of Tax	Demand during 2015-16	Collection during 2015-16	Balance as of March 2016	%age of deficit in collection
1	Holding Tax	47.69	23.90	23.79	50
2	Market rent	115.86	54.69	61.17	53
<b>Total</b>		<b>163.55</b>	<b>78.59</b>	<b>84.96</b>	<b>52</b>

(Source: DCB position as of March 2016 of BMC)

However, for realisation of arrears, though BMC issued demand notices to the defaulters on routine basis, it neither issued any distress warrant to the defaulters nor instituted any civil suits against them for recovery of arrear taxes/ dues during the period 2011-16. Thus, the arrears of tax revenue to the tune of ₹ 84.96 crore were not realised as no follow up action under the Act was taken by BMC.

The Additional Commissioner, BMC stated (October 2016) that BMC was taking steps for appointment of a Special Certificate Officer for effecting the collection of arrear dues.

##### 4.1.14.2 Non-collection of dues in lieu of bounced cheques

As per Rule 23 of Odisha Municipal (Accounts) Rule, 2012, in the event of a cheque being dishonoured by the bank, the Municipality should cancel the office copy of the receipt and intimate the tenderer the fact of cancellation urging him to make payment of such amount in cash or demand draft only. The dishonoured cheque is to be retained by the Accountant and it should not be handed over to anyone till the amount is remitted by the party. The municipality should proceed under relevant laws in case of dishonoured cheques (such as under Section 138 of the Negotiable Instruments Act, 1881).

Scrutiny of Bounced Cheque Return Register of BMC showed that the Accountant had returned 520 bounced cheques (dishonoured by the Bank) to concerned Tax/ Miscellaneous Collectors during the period 2011-16. Out of the above, BMC received cash and fresh cheques in lieu of 244 bounced cheques from the concerned parties, whereas 276 bounced cheques worth ₹ 2.27 crore were not realised as of August 2016. It was further observed that the

Accountant had not retained the dishonoured cheques and BMC had not proceeded under relevant laws in contravention of the Act. Thus, due to absence of follow up action for collection of cash in lieu of dishonoured cheques, BMC failed to realise revenue of ₹ 2.27 crore.

The Additional Commissioner, BMC requested (October 2016) to give extra time for further verification of all the bounced cheques.

#### **4.1.15 Conclusion**

Bhubaneswar Municipal Corporation did not have any institutional arrangement for implementation of property tax. No general revision of annual value of holdings was made after 1977, resulting in loss of revenue. There was no mechanism in place for tracking all the holdings. There was a loss of revenue due to under-assessment of advertisement tax, non-enforcement of agreement condition for display of advertisement and renewal of passenger shelters at a lower rate. Failure of BMC to levy penalty on trade licences, collect licence fees from traders and implement recommendation of 3<sup>rd</sup> SFC led to loss of revenue. The arrear tax dues (holding tax and market rent) were not realised due to inadequate follow up action. Demands of development charges remained unrealised against owners of 103 multi-storey buildings.

#### **4.1.16 Recommendations**

To augment revenue resources, Bhubaneswar Municipal Corporation may consider the following recommendations:

- levy property tax and strengthen monitoring mechanism to introduce GIS mapping system for effective tracking of the holdings;
- collect advertisement tax at a fair rate;
- ensure issue of trade licence to all the traders and revise market rent from time to time;
- collect user charges for Solid Waste Management; and
- take effective measures for realisation of outstanding revenues.