CHAPTER III: MINISTRY OF COAL

Bharat Coking Coal Limited

3.1.1 Loss of revenue due to delayed implementation of revival scheme of Bhojudih Coal Washery

Deshaling Plant commissioned at a cost of Rs.6.54 crore for feeding dirt free coal to the main washers was non-operational. Batac Jig, HM Bath and Process Control System malfunction caused migration of washed coal to middling. This impaired the improvement of quality of middling to qualify the same for sell as Power Clean Coal (PCC). The company sustained a loss of Rs.51.82 crore during 2007-08 to 2008-09. Renovation jobs of these portions of plants of Bhojudih Coal Washery were not completed even after a lapse of four years.

Bhojudih Washery was set up in 1962 for washing of raw coal to produce washed coal (ash content between 18.5 and 20.9 *per cent*) for supply to steel plants and also to produce middling (ash content between 37 and 40 *per cent*) for supply to Power Houses. The washing section of the Washery consisted of mainly one 300 TPH[1] Batac Jig and one 250 TPH HM[2] Shallow Bath (main washers of the plant). Subsequently, one Deshaling Plant was commissioned in March 1997 at a cost of Rs.6.54 crore for elimination of distinct dirt and shale materials from the raw coal before feeding to the main washers. Operation of the Deshaling plant was completely stopped by washery management since October 1999.

Audit observed (March 2000) that the ash content of middling had improved (between 32 and 35 *per cent*) during 1997-1998 when the Deshaling Plant was in regular operation and emphasised on operation of the plant regularly for quality improvement and obtaining better value. The Management agreed (June 2003 and September 2003) that ash content of middling would come down to the level of 33-35 *per cent* from the then existing level of 37-40 *per cent* by operation of the Deshaling Plant. This would qualify the product to sell under product name 'Power Clean Coal (PCC) with average ash content within 34 *per cent*'. Since sale price of PCC was much higher than the sale price of middling, there was scope to earn more revenue. Audit noticed (February 2006) that despite agreement of the Management for operation of the Deshaling Plant, parts were removed from the Deshaling Plant (between June 2001 and November 2005) and utilised in the Main Plant. This cannibalisation left the Deshaling Plant unusable.

The disabled Deshaling Plant could not feed clean raw coal to Batac Jig and HM Bath. The Batac Jig, HM bath, Process Control System were also malfunctioning for years. These weaknesses resulted in migration of washed coal to middling which on an average ranged between 5.8 *per cent* and 8.4 *per cent* during the last four years ending 31 March 2009.

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[1] ***Tonne per hour***
[2] ***Heavy Media***

The Management finally decided (November 2005) to renovate all these portions of plant within a span of 10 to 15 months at a total cost of Rs.1.86 crore[1] to ensure feeding of dirt free coal to washers and to arrest the migration of costlier clean coal to cheaper middling.

The renovation work was not completed even after four years and the loss due to migration of washed coal to middling was Rs.48.26 crore during the period from 2007-08 to 2008-09. Besides, the Company had also sustained a loss of revenue of Rs.3.56 crore for selling middling in place of PCC during the same period.

The Management accepted (July 2009) the observations and stated that the proposal for renovation of Deshaling Plant had been freshly initiated and the renovation of Process Control System was also under active consideration. Loss due to migration could be minimised after successful implementation of the revival scheme. Steps had already been taken for implementation of the renovation schemes of Bhojudih Washery.

The fact remains that the Management failed repeatedly (June 2007 and September 2008) in their assurances to audit to complete renovation. Even after a lapse of four years since the approval of the revival scheme (November 2005), the Deshaling Plant is still idle and no fresh action has been initiated despite misplacing of the concerned files twice (April 2006 and January 2008). Being a loss making company it cannot afford recurring revenue losses year after year due to inaction on approved renovation projects.

Thus, due to non-implementation of the renovation jobs of Bhojudih washery, the Company had to sustain a loss of Rs.51.82 crore during 2007-08 and 2008-09 along with idle investment of Rs.6.54 crore on Deshaling Plant. The Company should immediately implement the renovation job of Bhojudih washery to reduce the recurring losses.

The matter was reported to the Ministry in July 2009; their reply was awaited (November 2009).

Central Coalfields Limited

3.2.1 Loss of revenue due to incorrect fixation of washed coal price

Failure of the Company to fix correctly the washed coal price of Piparwar Coal Preparation Plant of Central Coalfields Limited resulted in a loss of revenue to the tune of Rs.67.83 crore on value of washed coal sold to power houses other than NTPC Limited during the period from 2004-05 to 2008-09.

The Coal Preparation Plant (CPP) in Piparwar Area of Central Coalfields Limited (Company) receives raw coal for washing mainly from lower and upper Dakra seam of Piparwar Area. The washed coal of the CPP is supplied to power houses. The price of the washed coal supplied to power houses[2] is unilaterally fixed by the Company, taking into account the various input cost components viz., raw coal price, power tariff, diesel rate, All India Consumer Price Index, Wholesale Price Index and other related factors. The price so fixed was subject to mid term revision, if there was any change in the cost components.

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[1] *Deshaling Plant (Rs.72.40 lakh), Batac Jig (Rs.70.30 lakh), HM Bath (Rs.17.94 lakh) and Process Control System (Rs.25.59 lakh)*

[2] *Power houses other than NTPC Limited*

Audit noticed that from 2001-02 onwards, the coal of upper Dakra seam of the Piparwar Area was declared as E grade and the CPP started using both E grade and F grade[1] coal from upper and lower Dakra seam respectively from 2002-03 onwards. However, while fixing the price of washed coal, the Company considered the raw coal price of cheaper F grade coal only for the total quantity of coal fed to the CPP instead of considering the raw coal prices of both E and F grade in proportion to their quantity fed. It was seen that during 2004-05 to 2008-09, the ratio of E and F grade coal used in the CPP ranged between 27:73 and 49:51 and there was short realisation of revenue varying between Rs.40.50 to Rs.84.50 per tonne during the above period for washed coal supplied to power houses. This resulted in under realisation of revenue to the tune of Rs.67.83 crore for 11.02 million tonne of washed coal sold to power houses.

While confirming the facts regarding use of both E and F grade coal of different coal seams for washing, the Management stated (December 2008 and July 2009) that:

- The Area Management was billing to power houses on the basis of composite feed to the CPP which was coming as F grade coal having ash percentage in the range of 38 to 40.
- The parameters considered for fixation of washed coal notified price were price of F grade coal, capacity utilisation at 85 *per cent* and yield at 74 *per cent*.
- Due to feeding of E and F grade coal in ratio, the actual yield was 83.86 *per cent* and 86.96 *per cent* for 2007-08 and 2008-09 respectively and thereby, the Company had additional gain in terms of yield percentage and earned additional revenue for every tonne of coal fed every year.
- The Company had not incurred any loss considering the rate of F grade coal in determining the washed coal price.

The contention of the Management is not convincing in view of the following:-

- In two other non-coking coal washeries of the Company viz., Kargali and Giddi, where the ash percentage of composite feed was comparable[2], the Company followed the weighted average price of the composite feed in the ratio of blending of E and F grade coal.
- While the improved yield percentage had led to improved revenue, the Company could have earned further revenue of Rs.67.83 crore had the price of E grade coal was also taken into account on weighted average basis in line with the methodology adopted for the same for other washeries of the Company. By not doing so, the Company failed to protect its financial interests.

Thus, due to incorrect fixation of price of washed coal of Piparwar CPP, the Company suffered a loss of revenue of Rs.67.83 crore during 2004-05 to 2008-09. The Company should take immediate steps to remove deficiency in its price fixation.

[1] ***E grade F grade- Different qualities of coal. E grade is superior than F grade***

[2] ***Ash percentage ranged between 36.3 to 42.5 and 42.0 to 46.4 for Kargali and Giddi respectively during 2004-05 to 2007-08***

The matter was reported to the Ministry in August 2009; their reply was awaited (November 2009).

Coal India Limited

3.3.1 Avoidable payment towards provident fund contribution on leave encashment

Coal India Limited and its subsidiaries deposited the employers share of Rs.17.26 crore towards provident fund contribution on leave encashment with Coal Mines Provident Fund Authority, though the same was not permissible as per extant law. Practice was not stopped despite specific Order of Supreme Court of India in this regard in another Civil Case.

As per Coal Mines Provident Fund (CMPF) Scheme framed under Coal Mines Provident Fund Act 1948, provident fund contribution was to be made on total emoluments as covered under the definition of "Basic Wages" under the Scheme. The definition of "Basic Wages and Total Emoluments" under CMPF Scheme was similar to that defined in EPF[1] scheme and did not include leave encashment.

As per compendium of Coal India's Service Rules 1998 (Volume-I), leave encashment benefits are not reckoned as salary for the purpose of Provident Fund (PF), Gratuity and Bonus etc.

Audit noticed (December 2008) that Coal India Limited (Company) and its subsidiaries[2] had paid Rs.17.26 crore towards provident fund contribution (employer's share) on leave encashment for the period from April 2008 to March 2009. This was done to comply with the directives issued by CMPF Commissioner (August 1988) on the ground that leave salary was subject to provident fund deduction. Instruction was also issued by the authority to modify the existing instructions/rules of the Company accordingly.

The Supreme Court of India in a judgement (12 March 2008) concerning contribution to PF on leave encashment in another EPF case held that encashment of leave did not attract PF contribution.

The Management stated (January and July 2009) that CMPF Commissioner was a statutory authority on the subject of CMPF and the Company was under obligation to abide by the instruction of the CMPF authorities. They paid PF contribution on leave encashment on the basis of the opinion of their legal department and under the premise that the term emoluments, basic wages *etc*., carried different meaning under the CMPF Act from the EPF Act.

The Management's view is not acceptable on the ground that the definitions of "Basic Wages" under CMPF Act and EPF Act were the same and did not include leave encashment. The Management had the scope to approach CMPF Commissioner for a

[1] *Employees Provident Fund*

[2] *Eastern Coalfields Limited, Central Coalfields Limited, Bharat Coking Coal Limited, Mahanadi Coalfields Limited, Northern Coalfields Limited, Southeastern Coalfields Limited, Western Coalfields Limited and Central Mine Planning & Design Institute Limited*

review of the order dated 31 August 1988 and also challenge the decision of CMPF authority under the court of law which they did not avail of.

Hence, PF contribution on leave encashment was not in order as per the extant law**.** The Company should immediately challenge the CMPF Commissioner's orders in line with the judgement of the Supreme Court of India.

The matter was reported to the Ministry in July 2009; their reply was awaited (November 2009).

Eastern Coalfields Limited

3.4.1 Loss due to pilferage of coal in transit and slippage in quality of coal supplied

Chitra Projects under Eastern Coalfields Limited failed to sell coal in required size and quality to the thermal power stations of NTPC Limited. The Company had to sustain loss of Rs.65.17 crore in the form of grade slippage (supply of stone/shales etc. along with coal) during last four years ending 31 March 2008 as the contractors engaged in breaking of coal, picking out stone/shales, transportation and loading of coal into wagons at siding failed to conduct proper supervision, control and stop pilferage.

Coal produced at Chitra mines of Eastern Coalfields Limited (Company) was mainly sold to Thermal Power Stations (TPS) of NTPC Limited (NTPC). In order to ensure supply of coal in required sizes and quality, the stones/shales and extraneous material contained in the coal were picked out before crushing the same below 200 mm size. These activities were outsourced. The contractors were also entrusted with allied jobs, i.e., maintenance of weigh-bridge at the siding, closing of door of wagons and guarding of coal at the sidings during 2004-05 to 2007-08. The Company paid Rs.48.55 crore[1] for despatch of 41.14 lakh tonne of coal to the contractors.

It was noticed by Audit (May 2006 and May 2009) that the Company adopted derived method[2] to check enroute shortage. This method involves human error as it gives approximate figures. Despite the fact that the local staff regularly reported pilferage of coal en-route between dump yard and railway siding to the local police, cost of negligible shortage of 542.19 tonne, i.e., Rs.0.11 crore was recovered from contractors' bills. The TPSs deducted Rs.65.17 crore for grade slippage of coal (supply of stones/shales etc.). The contractors were not made responsible for the amount deducted by the customers for grade slippage as well as for supply of oversized stone as per terms and conditions of the work orders.

The Management stated (June 2006, March 2009 and May 2009) that:

- As per terms of work orders, any shortage beyond permissible limit had to be borne by the contractors. The payment to the contractors was done after

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[1] Picking charges (Rs.1.20 crore), crushing charges (Rs.1.85 crore), allied jobs (Rs.5.68 crore) and transportation and loading charges (Rs.39.82 crore)

[2] The method adopted by the Management to calculate the enroute shortage by deducting the opening stock of coal as per volumetric measurement at the siding from the sum of closing stock of coal at siding and weight as recorded in the railway receipt for dispatch of coal.

considering the quantity of coal transported, despatched (R/R weighment) and the stock available which was the most dependable and scientific procedure to assess the quantity shortage.

- Installation of another weighbridge was under process to cross check any shortage beyond permissible limit for which recovery at double the notified value of coal would be possible.
- The Management admitted that security arrangement was bare minimum.

The Ministry stated (October 2009) that:

- In open cast mine (like Chitra) some extraneous material along with coal was inevitable and as such there was no provision in the Coal Supply Agreement for quality deduction. During peak hours due to accumulation of stocks, to avoid demurrage and to ensure steady supply, oversized coal was supplied which resulted in grade slippages.
- However, quality deduction had been reduced from 15.87 *per cent* in 2004-05 to 6.95 *per cent* in 2007-08. The Company was also in touch with the District Administration for stoppage of pilferage of coal.

Replies of the Management/ Ministry are not convincing since:

- The Ministry had itself agreed that oversized coal was supplied leading to grade slippage.
- Inadequate security arrangements resulted in pilferage of coal, the present system of weighment, despatch by the contractors lacked control, as the shortage of supply of clean coal enroute was compensated with stones/soils etc.
- The improvement in quality in 2007-08 was due to supply of better quality coal and not stopping of pilferage.
- A loss making Company should have ensured better management control and security in the despatch of coal to maximize its revenue.

Thus, the Company had sustained a loss of Rs.65.17 crore in the form of grade slippage between 2004-05 and 2007-08. The Company should take immediate steps to strengthen the system of security, weighment and despatch of coal to curtail its mounting losses.

Mahanadi Coalfields Limited

3.5.1 Improper finalisation of purchase orders

A purchase order for procurement of conveyor belts at a value of Rs.5.15 crore was finalised and issued to a firm but the contract could not be finalised. The Company had to purchase the same material from alternate source at an additional cost of Rs.3.50 crore but it could not enforce the risk purchase clause in the absence of a valid contract.

Mahanadi Coalfields Limited (Company) issued a purchase order to Firm A[1] on 30 December 2003 for Rs.5.15 crore for procurement of 26 sets of Conveyor Belts for reorganisation of underground transport and loading system for its Orient Area mine. This was to ensure reduction of cost of production of coal by Rs.404 per tonne. The supplier was to submit a performance bank guarantee (Rs.51.36 lakh).

Audit noticed in October 2004 and April 2008 that:

- Firm A requested the Company at repetitive intervals on 12 January 2004, 27 January 2004 and 19 February 2004 to accept in lieu of performance guarantee, its Omnibus Bank Guarantee for Rs.50.00 lakh submitted to the holding company Coal India Limited for work in its subsidiaries.
- Firm A withdrew their offer on 10 March 2004.
- Despite requests of Firm A, the Company issued an amended purchase order only on 29 March 2004.
- The Company ultimately cancelled the Order on 25 October 2004 and resorted to alternate procurement at the risk and cost of Firm A and finalised the order (January 2006) through Firm B[2] and Firm C[3] for procurement of the same at the total value of Rs.12.22 crore. Firm B and C had offered similar type of items to SECL[4] in June 2006 at a price which was Rs.3.57 crore less. Hence price fall clause within Coal India Limited subsidiaries was applicable.

Delayed action by the Company to finalise the contract led to placing of order at an additional cost of Rs.3.50 crore[5].

In response, the Management stated (July 2009) that:

- Firm A had accepted the NIT clauses and never indicated non acceptance of the order before unilateral withdrawal of the offer.
- The Orissa High Court opined that there was no completed contract with Firm A.
- Comparison of the value of the orders placed on alternate sources with that placed on the Firm A and conclusion drawn by audit on extra expenditure was incorrect.

The Ministry while reiterating the views of the Management (July 2009) stated that:

- Firm A had not indicated any deadline to the effect that amendment for coverage of Omnibus Bank Guarantee was to be issued.
- There was a completed contract between the Company and Firm A.

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[1] ***Vishwa Industrial Company Private Limited***
[2] ***Bengal Tools Limited***
[3] ***Hindustan Udyog Limited***
[4] ***South Eastern Coalfields Limited***
[5] ***Rs.12.22 crore- Rs.5.15 crore-Rs.3.57 crore***

- The performance Bank Guarantee was required after placement of the order and not necessarily before the finalisation of the order.

Replies of the Management/Ministry are not convincing in view of the following:

- There is a contradiction in the stand of the Ministry and Company regarding existence of a completed contract.
- As per Supreme Court of India there was no valid contract.
- The Company failed to finalise the contract with Firm A in proper time. Since the difference between the Bank Guarantees was only Rs.1.36 lakh, the Company could have taken a quick decision.
- Absence of a valid contract led to non enforcement of the risk purchase clause.

The particular Area produced 6.54 MT of coal during the period from 2004-05 to 2007-08. It could not reap the benefit of cost saving of Rs.404 per tonne of coal since four of the belts were still to be installed (November 2009) after a delay of over 54 months.

Thus, the Company had to bear additional expenditure of Rs.3.50 crore for improper finalisation of purchase orders and also could not reduce the cost of production.

Neyveli Lignite Corporation Limited

3.6.1 Loss of revenue and non-recovery of tax on income

Neyveli Lignite Corporation Limited was deprived of additional revenue of Rs.8.14 crore due to non-adherence to price clause in sale of lignite. It also extended undue benefit to a private party to the extent of Rs.141.46 crore due to non-recovery of taxes on income from supply of lignite.

Neyveli Lignite Corporation Limited (Company) entered (April 1998) into a fuel supply agreement (FSA) with ST-CMS Electric Company Limited (buyer), engaged in generation and supply of electricity to Tamil Nadu State Electricity Board, for supply of lignite up to a maximum of 1.90 million metric tonne *per annum* (MMTPA). The FSA was valid for a period of 30 years from the date of commencement of supply and lignite was to be charged at the pooled price[*] subject to a minimum amount as prescribed in Schedule IX of FSA. Such minimum price worked out to Rs.1050.47 per metric tonne (excluding royalty) from 1 April 2002.

The tariff for supply of electricity to State Electricity Boards (SEBs) consists of two elements viz., fixed and variable charges. Variable charges i.e., pooled price include Fuel Price Adjustment (FPA) charges calculated on monthly basis for the variation in either the gross calorific value of the primary/secondary fuel actually received and burnt or the actual landed cost incurred for procurement of primary/secondary fuel and could be claimed/paid directly by the generating companies from/to the Electricity Boards. The

[*] ***The annual weighted average price of lignite with respect to stages I and II of Mines II, Mine IA and expansion and any other mine that may be developed in future at Neyveli and should be the same as applicable to the Electricity Boards of Southern Indian States.***

Company commenced the lignite supplies to the buyer from Mine I from June 2002. After the Company developed Mine IA with three MMTPA capacity, supplies were made from this mine from September 2003.

Audit scrutiny revealed that:

- The monthly-pooled price of lignite including FPA element up to the year 2007-08 was less than the minimum price of Rs.1050.47 per MT.
- The pooled price ranged between Rs.1086.21 (August 2008) and Rs.1130.36 (December 2008) per MT during the year 2008-09 i.e., more than the minimum price.
- However, the Company claimed its dues for supply of lignite only at Rs.1050.47 per MT instead of at pooled price, leading to short claim of Rs.8.14 crore during April 2008 to March 2009.
- Besides, the Company did not recover tax on income on the quantity of lignite supplied while such recovery was done from the SEBs as reimbursement of expenses. Income Tax recovery, thus, foregone amounted to Rs.141.46 crore during 2005-06 to 2008-09.

The Management stated (June 2009) as below:

- There was no provision in the FSA for claiming FPA as it was a new development after introduction of Electricity Act, 2003 and the Central Electricity Regulatory Commission (CERC) Regulations and hence embedding new concepts to the old agreement was not possible.
- The Management further added that as per the legal opinion obtained, there was no provision in the agreement to prefer the claim for reimbursement of taxes on income and efforts were being made to alter the FSA for claiming both.

The Ministry endorsed (September 2009) views of the Management.

The contentions that there was no provision for claiming FPA is not acceptable as Article 5.4 (a) of FSA provided for recovery for the lignite supplied to the buyer at the pooled price which is similar to the rate recovered from the SEBs of southern States from whom recoveries were made after FPA adjustments. Further, the Company and the buyer were aware of FPA adjustments as FSA (Schedule VII) included March 1992 Gazette notification, which provided for such adjustment in prices. After being pointed out in Audit, the Company has raised the demand for Rs.56.47 crore only for the period 2005-06 to 2007-08.

Thus, non-compliance to FSA provisions in computation of recovery price for lignite at par with the SEBs deprived the Company additional revenue of Rs.8.14 crore and also resulted in extension of undue benefit of Rs.141.46 crore to the buyer.

3.6.2 Irregular investment of surplus funds

Neyveli Lignite Corporation Limited did not comply with the provisions of Companies Act, 1956 in investment of funds.

Section 292 of the Companies Act 1956 (Act) empowers the Board of Directors of a company to invest its funds by means of resolutions passed at Board meetings. This power can be delegated to any committee of Directors, the Managing Director, the Manager or any other Principal Officer subject to the provisions in Section 292 (3) of the Act, which stipulates that such delegation should specify the total amount up to which the funds may be invested and the nature of the investments which may be made by the delegate. Investment policy guidelines of Department of Public Enterprises, Government of India, *inter alia*, stipulated that a Public Sector Undertaking could, depending upon its fund requirements and with Board's approval, invest surplus funds in term deposits up to three years in any scheduled commercial bank having paid up capital of at least Rs.100 crore.

Neyveli Lignite Corporation Limited (Company) delegated (December 2000) powers to the Committee of General Managers (Committee) to recommend investment of funds in commercial bank(s) up to one-year without specifying the total amount up to which the Committee could invest.

Audit scrutiny revealed that:

- Tamil Nadu and Karnataka State Electricity Boards prematurely redeemed power bonds amounting to Rs.1480.87 crore that were actually repayable in half yearly installments up to 2016. The Committee invested (31 March 2007), the unexpected receipt of Rs.1480.87 crore together with other surplus funds of Rs.19.13 crore, Rs.1500 crore in short term deposits (STDs) with four banks for 334 days at interest ranging from 10.77 to 11.68 *per cent* per annum.
- The Company re-invested (February 2008) the principal amount on maturity together with additional surplus funds of Rs.100 crore (total Rs.1600 crore) for one year with three banks at interest rates ranging from 10.12 to 10.78 *per cent* per annum.
- The Company again invested Rs.1600 crore in February 2009 in STDs with various banks at interest rates ranging from 5.5 to 7.5 *per cent* per annum.
- The unexpected receipt of a large sum was kept rolling in short term deposits for three years without carrying out any commercial appreciation of the opportunities available for long term investments.

The Management stated (June 2009) that:

- The Board's direction for regulating the maximum deposit with a particular bank was the ceiling up to which the investment decisions could be taken by the Committee.

- They further added that if the surplus funds were placed for a three year period and the deposits were closed prematurely, in case of need for ongoing/up coming projects, the banks would charge penal interest at one *per cent* resulting in financial loss.

The Ministry endorsed (September 2009) the views of the Management and added that as bank deposits are not classified as investments, contravention of the provisions of Companies Act does not arise.

These contentions were not convincing for the following reasons: -

- The Board was not apprised of unexpected receipt of Rs.1480.87 crore from two electricity boards on account of premature redemption of power bonds for seeking appropriate directions**.**
- The Company projected surplus of more than Rs.2000 crore during the past four annual cash budgets.
- The Company neither had a policy differentiating between short and long term investments nor did it institute adequate internal control mechanism in this regard.
- Further, placement of surplus funds by the Company in fixed deposits with banks constitutes investment for the purposes of Sec. 292 (1) (d) of the Act as per ICAI's[1] opinion.
- The fact that out of STDs of Rs.21,580 crore cumulatively matured between April 2006 and March 2009, Rs.17,397 crore were re-invested for further periods varying up to 365 days proved that these funds were available for long term investment. The Company's decision to invest in STDs deprived it of higher returns.

Thus, non-compliance with the Act regarding prescribing aggregate amount up to which the Committee could invest led to irregular investment of surplus funds in STDs and deprived the Company an opportunity of generating higher revenues by exploring the avenues for long term investment. Thus, the Company lost an opportunity to earn additional revenue of Rs.89.17[2] crore (approximately) on the funds received from the State Electricity Boards alone.

Northern Coalfields Limited

3.7.1 Avoidable payment of service tax

Northern Coalfields Limited issued contracts for removal of overburden and paid service tax of Rs.16.95 crore on the cost of explosives though no service in the form of blasting was provided by the contractor.

[1] Expert Advisory Committee of The Institute of Chartered Accountants of India
[2] Interest that could have been earned on Rs.1500 crore had it been invested for three years in March 2007 less actual interest earned on this amount for the same perio.

As per Section 67 of Service Tax Act as amended in Finance Act 2006, the cost of the service provided by the service provider would be taken into consideration for the purpose of computation of service tax.

Audit noticed (December 2007 and May 2009) that Northern Coalfields Limited (Company) entered into contracts with different parties for hiring of equipment for removal of overburden at different open cast projects during the period from December 2006 to March 2008. The Company took decision in April 2006 that explosives would be supplied by the Company on chargeable basis. But the contract was issued including cost of explosives required for blasting though they would be supplied by the Company free of cost. Blasting job would also be done by the shot firer/blaster of the Company, being a statutory requirement. The Company had to pay service tax of Rs.16.95 crore till March 2009 on cost of explosives recovered from the contractor.

The Management stated (February 2008) that service tax would have to be paid as per Service Tax Act even if explosives be supplied free of cost by the department because of amendment to Section 67 of the Service Tax Act w.e.f., 19 April 2006.

The contention of the Company is not convincing in view of the fact that service tax was payable on the cost of service provided by the service provider only. In this case, the Company arranged explosives for itself and also performed the job of blasting to fulfill the statutory requirement. Hence, no service tax was payable to the contractors as per Rule 2 (p) of CENVAT[♣] Credit Rule 2004.

The Company, ultimately admitting the audit observation, decided (May 2009) to exclude blasting from contract price to avoid payment of service tax on explosives.

Thus, the Company had to bear the burden of service tax of Rs.16.95 crore till March 2009 for erroneous inclusion of cost of explosives in the contract price.

The matter was reported to the Ministry in July 2009; their reply was awaited (November 2009).

[♣] ***Central Value Added Tax***