CHAPTER- IV

JOINT VENTURES OF CENTRAL PUBLIC SECTOR UNDERTAKINGS

4.1 Introduction

Joint venture (JV) is a contractual arrangement whereby two or more parties carry an economic activity under joint control. The JV may be of three forms i.e. jointly controlled entities, jointly controlled assets and jointly controlled operation. The jointly controlled entity may be an entity registered under the Indian Companies Act, 1956 or under the relevant Laws of the other country. These entities are governed by the relevant laws of the country in which the company has been incorporated. As other form of JVs i.e. jointly controlled assets and jointly controlled operation are un-incorporated, these are governed by the agreement signed among the partners.

4.2 Government Policy on JVs

With a view to granting managerial and commercial autonomy to successful profit making Central PSUs operating in a competitive environment, the Department of Public Enterprises (DPE) enhanced the delegated powers of the Board of Directors[•] of Navratna PSUs in August 2005 to enter into technology or strategic alliances, to establish financial JVs and wholly owned subsidiaries in India or abroad. In October 1997 enhanced powers[⊕] were granted to Miniratna PSUs also. All the proposals involving investment over and above the delegated powers are to be submitted for approval of the Cabinet Committee on Economic Affairs (CCEA).

4.3 JVs set up by Central Public Sector Undertakings

4.3.1 Out of 80 Navratna and Miniratna Central Government Companies and Corporations which are under the audit jurisdiction of the C&AG, 29 Government Companies and one statutory corporation which have formed 296 JVs as on 31 March 2009 as detailed in **Appendix-XVI** have been reviewed. These include 129 incorporated JVs with investment of Rs 4371.06 crore and 167 unincorporated JVs with investment of Rs.8959.69 crore. JV companies promoted by Government companies/ corporations with more than 51 *per cent* of paid up capital by one PSU or in combination of PSUs have not been covered in the review.

4.3.2 Apart from Navaratna and Miniratna companies mentioned in para 4.3.1, ONGC Videsh Limited a wholly owned subsidiary of Oil and Natural Gas Corporation Limited (ONGC) (a Navratna Company), has made investment of Rs 22,160.48 crore in 17 JVs outside the country including one incorporated JV with an investment of Rs 135.98 crore. Further, ONGC Videsh Limited has three wholly owned subsidiaries and one partially owned subsidiary in foreign countries where it had invested Rs.5145.26 crore as on 31

[•] ***Rs 1000 crore in any project or 15 per cent of the net worth in one project or 30 per cent of the net worth in all joint ventures /subsidiaries put together.***

[⊕] ***Category I –15 per cent of the net worth or Rs 500 crore whichever is less with overall ceiling of 30 per cent of the net worth. Category II –15 per cent of the net worth or Rs 250 crore whichever is less with overall ceiling of 30 per cent of the net worth.***

March 2009. These four foreign subsidiaries of the ONGC Videsh Limited have further acquired/ incorporated 31 subsidiaries in foreign countries and formed 11 JVs. In all ONGC Videsh deployed funds to the extent of Rs.48,382.33 crore♣ at the end of 31 March 2009.

4.4. Audit arrangement of JVs

4.4.1 In respect of JV incorporated in India under the Companies Act, 1956 in which government/ a government company in combination of other Companies/Corporations hold less than 51 *per cent* of the paid up capital of the concerned JV company or subsidiaries of PSU, incorporated outside India C&AG has no power to appoint the auditors or to conduct supplementary audit of the accounts of such incorporated JVs. Similarly C&AG has also no power to appoint the auditors or to conduct supplementary audit of the accounts of unincorporated JVs.

4.4.2 In the case of unincorporated JVs an agreement is signed among the JV partners which stipulates the duties and obligations of all the co-venturers. While one venturer acts as an 'operator' and others act as 'non-operator'. The operator performs all activities of the JVs as per the provisions of the agreement including getting the accounts of JV audited by an independent auditor and the non-operator pay cash calls to the 'operator' as and when such calls are made.

4.4.3 As substantial funds of PSUs have been deployed in various JVs, a limited review of JVs based on the available records with Audit was conducted. The following points deserve special attention:

4.4.3.1 Incorporated JVs

(i) ONGC Mittal Energy Limited (OMEL), a JV company of ONGC Videsh Limited, incorporated in Cyprus was awarded one block (OPL-279) for exploration by the Government of Nigeria. While OMEL had 40 *per cent* participating interest with over all financial commitment of US$ 140 million,ℜ M/s Emo/NJ Exploration and Production Limited (EMO), a Local Content Vehicle of Nigerian Government had 60 *per cent* participating interest (without making any investment).

In May 2007 OMEL transferred 14.5 *per cent* participating interest to TOTAL♥ for US$ 29.20 million. TOTAL was also authorised by OMEL to carry out Geological & Geographical activities which was carried out by the TOTAL in France. As carrying out of the data analysis in France was violative of the Laws of Nigeria, expenditure of Rs.45.40 crore incurred in France had been disallowed by NAPIMS –the Regulator of Nigeria for cost recovery purpose. On the same ground NAPIMS also disallowed Rs.45.40 crore incurred in France in respect of Geological & Geographical expenditure in another Block (OPL285) allotted to OMEL.

♣ ***Includes indirect investment of ONGC Videsh through subsidiaries/sub-subsidiaries.***

ℜ ***Share of ONGC Videsh was US $ 56 million and share of other co venturer was US $ 84.***

♥ ***A multinational company operating in the deep water terrain in Nigeria.***

(ii) Indian Oil Corporation Limited (IOCL) and Bharat Petroleum Corporation Limited (BPCL) had invested Rs 31.41crore[≈] in the share capital of Petronet VK Limited and Petronet CI Limited, alongwith other venturers to construct and operate pipelines for transportation of petroleum products. As the projects had not been found viable in the business scenarios, both the PSUs made provision of Rs 31.41 crore for diminution of investment in its Books of Account.

(iii) IOCL had an investment of Rs 1.99 crore in the share capital of IndianOil Panipat Power Consortium Limited a JV company with Marubeni Corporation, Japan with equal participation. The JV company was incorporated to build and operate own power generation plant utilising petcoke from Panipat refinery of IOCL. As this project was also not found viable in the business scenarios IOCL had made provision of Rs 1.99 crore for diminution of investment in its Books of Account.

(iv) Besides above, RITES Limited invested Rs 32.84 crore in the capital of a foreign subsidiary company i.e., Tanzania Railways Limited (TRL), Tanzania in May 2007. RITES had pledged its entire shareholding with International Finance Corporation (IFC) in consideration of finance of US $ 440 lakh sanctioned by IFC to TRL. RITES Limited had further created a provision of Rs 63 crore in the annual accounts for the year 2008-09 towards the Company's exposures by way of its outstanding dues on account of lease rentals and services rendered to TRL. Besides, RITES Limited had also not recognised income of Rs 17.05 crore on account of lease rentals and services rendered to TRL since January 2009.

(v) In another case, Hindustan Steelworks Company Limited [⊕] had entered into a JV with SR ICON Infrastructure Private Limited to construct a portion of Road between Nagpur and Hyderabad (section of NH 7) awarded by National Highways Authority of India (NHAI). Besides payment of Rs 8.61 crore as advance, it had also given Bank Guarantee of rupees eight crore to the NHAI. As the contract was terminated, NHAI had since encashed the bank guarantee.

4.4.3.2 Unincorporated JVs

Oil India Limited is an operator of six unincorporated JVs where Suntera Resources Limited is one of the co-venturers. Suntera Resources had not paid cash calls of US $ 50,14,592.30 (Rs.22.02 crore) raised by Oil India Limited as on 31 March 2009.

4.5 Recommendations

It is recommended that:

- ***Thorough due diligence exercise should be undertaken before entering into joint venture by PSUs particularly in foreign countries to safeguard their financial interest. In case there is a gap of one year or more between the original due diligence performed and actual date of investment being made another exercise should be carried out to ensure that there are no material changes in respect of all the relevant factors that were considered for entering in to venture before making actual investment.***

[≈] ***IOCL (Rs 29.83 crore) and BPCL (Rs 1.58 crore) .***
[⊕] ***A non Navratna/Miniratna company.***

- ***Good corporate governance requires the highest level of accountability particularly wherever substantial public funds are invested in highly risky oversees ventures entered into by PSUs. It is, therefore, desirable to devise appropriate regulatory and oversight mechanism by government agencies to safeguard the interest of the PSUs and ensure adequate accountability and transparency.***

New Delhi
Dated:

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Deputy Comptroller and Auditor General
and Chairman, Audit Board

Countersigned

New Delhi
Dated:

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