

Chapter III

Transaction Audit Observations

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3. Transaction Audit Observations

Important Audit findings emerging from test check of transactions made by the State Government companies and Statutory corporations are included in this Chapter.

Government companies

AGRICULTURE, ANIMAL HUSBANDRY, DAIRY DEVELOPMENT AND FISHERIES DEPARTMENT

Maharashtra Agro Industries Development Corporation Limited

3.1 *Unfruitful expenditure*

Flower Auction House constructed at a cost of ₹ 8.46 crore in 2007 remained idle till date.

Maharashtra Agro Industries Development Corporation Limited (Company) completed the construction of Flower Auction House (FAH) at Goregaon in August 2007 at cost of ₹ 8.46 crore^s with a capacity to handle four lakh stems of cut flowers everyday and it was estimated that about 2.40 lakh of cut flowers would be received initially. However, the Company did not capitalise the same and showed it in 'work-in-progress' in its annual accounts for the year 2010-11.

We observed (May 2011) that though the project was completed in August 2007, the Company operationalised the project on trial basis after a delay of 32 months in April 2010. Small quantities of cut flowers were received and supply of flowers was discontinued by growers for want of transport arrangement. The Company decided (May 2010) to provide transport arrangement for transporting cut flowers from Talegaon to Goregaon FAH. Despite this, there was no satisfactory response from growers and it was decided to discontinue the transport arrangement from July 2010. Incidentally, it was observed that stakeholder analysis was not done before taking up the project. As a result, FAH at a cost of ₹ 8.46 crore was lying idle since its completion.

The Management while accepting the fact (August 2012) stated that efforts are now being taken to utilise FAH in future with the help from Government. The reply was endorsed by the State Government (October 2012). However, the fact remains that the asset created at a cost of ₹ 8.46 crore remained idle till date (September 2012) and the Company also did not exercise the option of

^s Including administrative and other expenses ₹ 0.52 crore up to 31 March 2011.

renting out the same despite demand from Agriculture Produce Marketing Committee to take over the facility on rental basis.

3.2 Avoidable loss

Avoidable loss of ₹ 1.26 crore due to failure of Company to include impact of Excise Duty in selling price of its product.

The Company procures fertilisers and sells under the brand name NPK by mixing various fertilisers in different proportions. Government of India levied Excise Duty (ED) at the rate of 1.03 *per cent* (including two *per cent* education cess and one *per cent* higher education cess on ED) on fertilisers with effect from 01 March 2011. The activity of the Company was covered under the definition of manufacture as defined in Section 2(f) of the Central Excise Act, 1944 and hence ED was payable by the Company.

We observed (June 2012) that Superintendent, Central Excise (CE) Department, Wardha, demanded (8 March 2011) the details of products manufactured and materials used by the Company and advised (29 March 2011) the Company to obtain CE based PAN and pay ED on clearances with effect from 1 March 2011. Ignoring the demand from CE Department, the Company sought legal opinion from a firm, who opined (April 2011) that ED was not applicable for the Company. The Company did not recover the amount of ED from the dealers on clearances from the factories from March 2011 till September 2011. However, CE Department continued their demand for payment of ED along with interest. The Company raised the prices of fertilisers from 23 September 2011 to recover increase in input cost due to levy of ED. The Company had to pay ₹ 1.26 crore towards excise duty (ED ₹ 1.15 crore and interest ₹ 0.11 crore thereon) for the period from March to September 2011.

Thus, the decision of the Company not to levy ED from its customers despite notices from the CE Department was injudicious.

The Management in its reply (August 2012) stated that the rates prior to revision in September 2011 were designed to absorb any adverse changes on account of duties and there was moderate cushion in anticipation of impending budget changes. The reply was endorsed by the State Government (October 2012). The reply is not based on facts as the Company while revising the prices in September 2011 had separately considered ED element over their cost of production.

3.3 Avoidable payment of interest on Income Tax

Failure to pay advance tax based on estimated income resulted in avoidable payment of interest on income tax of ₹ 78.67 lakh.

As per Section 208 and 210 of the Income Tax Act, 1961, companies having taxable income had to pay advance tax every quarter (15th of June, September, December and March) at prescribed rates (15, 45, 75 and 100 *per cent* respectively) on the estimated income failing which interest was payable under

Section 234C on the short paid amount. Further, if the total advance tax paid was less than 90 *per cent* of the assessed tax, interest was payable under Section 234B, on such short paid amount.

We observed (May 2011) that Company estimated its turnover and total income based on information provided by its field offices. In the absence of effective and timely system for collection of information from its field units, the Company was unable to book the sales and expenses accurately to arrive at profitability before calculating its advance tax payments. Further, the Company assessed lower advance tax in anticipation of certain provision such as bad debts, Dearness Allowance arrears, Gratuity *etc.* which were withdrawn during finalisation of accounts. The Company had a total income of ₹ 14.93 crore and ₹ 27.81 crore during the financial year 2008-09 and 2010-11 and the net tax payable thereon worked out to ₹ 5.07 crore and ₹ 9.17 crore respectively. However, as compared to the assessed tax, there were shortfalls in payment of advance tax during 2008-09 and 2010-11 respectively. This led to payment of interest of ₹ 78.67 lakh (₹ 38.50 lakh and ₹ 40.17 lakh during 2008-09 and 2010-11 respectively).

The Management (May 2012) admitted that during calculation of advance tax they were unable to book the sales and expenses appropriately. It was also stated that they were planning to implement ERP system to tighten its operations and Management Information System controls. The reply was also endorsed by the State Government (May 2012). However, the fact remains that the Company failed to estimate its income correctly resulting in payment of interest of ₹ 78.67 lakh.

GENERAL ADMINISTRATION DEPARTMENT

Maharashtra Airport Development Company Limited

3.4 Failure to avail exemption of Excise Duty

The Company failed to avail excise duty exemption of ₹ 3.92 crore on cement and bitumen as construction plants were located outside Special Economic Zone Area.

Maharashtra Airport Development Company Limited (Company) submitted initial proposal for in-principle approval in June 2003 and revised proposal in June 2005 to Government of India (GoI) for setting up of a multi-product Special Economic Zone (SEZ) in MIHAN area at Nagpur. GoI granted in-principle approval and formal approval in August 2005 and November 2006 respectively. The list of goods required for carrying out the authorised operations such as construction of roads in SEZ was also approved in December 2007 and April 2008.

The SEZ Act, 2005, provided that every developer and the entrepreneur shall be entitled to exemption from any duty of excise, on goods and services brought from Domestic Tariff Area to a SEZ to carry on the authorised operations provided such goods are brought into the demarcated area within

SEZ. The exemption was also available to the contractors appointed by the developer. The Company had earmarked (June 2005) the SEZ area in the Village-wise map of MIHAN area.

The Company invited (February 2006) tenders for construction of boundary walls around SEZ area and roads in MIHAN Project including SEZ area and awarded the contracts in March and April 2006 to J.K. Prestressing Works and PBA-Sadbhav Joint Venture (Contractor) at a value of ₹ 5.31 crore and ₹ 142.36 crore respectively. Cement and bitumen were on the approved list of goods required for carrying out authorised operations which included construction of road within SEZ.

We observed (March 2010) that despite knowing the boundaries of SEZ at the time of award of the contract for construction of boundary wall, the Company did not ensure that the construction plants (like Ready Mix Concrete (RMC) Plant and Hot Mix Plant) were erected within SEZ area and allowed the Contractors to set up the said plants outside SEZ area for the reasons not available on record. As a result, the Company could not avail the duty exemption benefits of ₹ 3.92 crore on cement and bitumen used in the road work executed within SEZ area for the period from May 2008* to December 2010 due to not bringing the approved materials in to the demarcated area within the SEZ as primarily required under the SEZ rules. Thus, the requests made by the Company to the authorities for granting duty exemption on cement and bitumen was rejected (May 2008) citing that the plants were located outside SEZ area and hence were not eligible for any duty exemption.

The Company accepted (December 2011) the fact that had the RMC plant been located in SEZ area the exemption could have been availed.

The matter was reported to the Government/Management (June 2012); their reply had not been received (December 2012).

3.5 Excess payment of escalation charges

The Company made excess payment of ₹ 1.91 crore towards price escalation on construction of roads in MIHAN area.

The Company invited tenders (February 2006) for construction of roads in MIHAN area and awarded the work in April 2006 to PBA-Sadbhav Joint Venture (Contractor) at a value of ₹ 142.36 crore. The terms and conditions of the tender, *inter alia*, provided that for payment of escalation on account of increase in the cost of cement, the base price prevailing on the date preceding 30 days prior to the date of submission of bid was to be reckoned. The work was completed (December 2010) at a cost of ₹ 203.17 crore.

We observed (April 2012) that the last date for submission of bid was extended from 28 February 2006 to 16 March 2006 and hence the bidders

*The quantity of cement and bitumen consumed within SEZ area prior to May 2008 was not made available.

should have considered the indices not earlier than 14 February 2006 in determining their rates. During scrutiny of payments made to the Contractor, it was found that Contractor had submitted their bid on the last day of submission *i.e.* on 16 March 2006. However, the payment on account of escalation for increase in the cost of cement rates was made considering the base price of ₹ 178 per bag^Ω instead of ₹ 190 per bag prevailing as on 14 February 2006. Incorrect reckoning of base price resulted in excess payment of ₹ 1.91 crore to the Contractor.

The Management while accepting the fact (July 2012) stated that they had mistakenly considered the wrong base rates and had decided to recover the differential amount from the Contractor.

The matter was reported to the Government (July 2012); their reply had not been received (December 2012).

3.6 Avoidable expenditure

Despite Government decision to hand over Jalgaon Airport to AAI, the Company incurred avoidable expenditure of ₹ 97.89 lakh on consultancy work.

The Company issued letter of acceptance (13 February 2009) for providing consultancy services for project preparation, planning and designing of Jalgaon Airport to Intercontinental Consultants and Technocrats Private Limited (ICT) at ₹ 1.25 crore being L1. The Government of Maharashtra (GoM) in the meantime informed (27 February 2009) the Company to handover development of Jalgaon Airport to the Airport Authority of India (AAI).

We observed (August 2010) that despite the GoM's decision in February 2009 itself, the Company executed an agreement with ICT for providing consultancy work of Jalgaon Airport on 6 March 2009 and did not place the decision of GoM before the Board of Directors. The time specified for completion of the assignment was 18 weeks. ICT completed work upto final report stage and submitted the detailed drawings/specifications for runway, terminal facilities and bids documents on Public Private Partnership model *etc.* The Company belatedly requested ICT on 17 August 2009 to stop work on this project as the Airport at Jalgaon was transferred by GoM to AAI on 28 July 2009. It was also observed that on being approached by the Company AAI rejected (August 2009) the proposal to take over the consultancy services of ICT and informed that they had already taken in-house action for planning and design work themselves, thus rendering the work wasteful. The Company paid ₹ 97.89 lakh for 71 *per cent* of the contract value for work done during March 2009 to November 2011 after various representations were made by ICT. In the meantime, the Company requested (March 2011) GoM for reimbursement of expenditure, which is pending decision.

^Ω One cement bag weights 50 Kilograms.

Thus, the decision to appoint consultant despite Government decision to hand over Airport to AAI resulted in avoidable expenditure of ₹ 97.89 lakh on consultancy work.

The Management stated (May 2012) that the GoM in February 2009 had only informed about the decision to transfer the Jalgaon Airport and there was no direction to stop any work on the Airport. The reply is factually incorrect as GoM had clearly stated their intention of transferring Jalgaon Airport in February 2009 itself.

The matter was reported to the Government (May 2012); their reply had not been received (December 2012).

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Maharashtra State Electricity Distribution Company Limited

3.7 Avoidable extra expenditure

The Company incurred avoidable extra expenditure of ₹ 86.68 lakh on procurement of poles from private parties instead of utilising of its own production capacity.

Six* pole factories operated by erstwhile Maharashtra State Electricity Board (MSEB), on its unbundling, were transferred to Maharashtra State Electricity Distribution Company Limited (Company) for production of cement poles required to construct power distribution lines. The annual capacity of these six pole factories was 0.96 lakh poles of 8 meters length. The capacity utilisation of these six pole factories during 2010-11 ranged between 17 and 57 *per cent* which reduced to 8 to 33 *per cent* during 2011-12.

We observed (February 2012) the requirement of eight meters poles during 2010-11 and 2011-12 was 0.89 lakh and 0.52 lakh respectively against which the annual production of pole factories was only 0.32 lakh and 0.19 lakh respectively. To meet the requirement, during 2010-11 and 2011-12 the Company procured 0.90 lakh poles from outside agencies for the areas being served by these six pole factories at the rates ranging from ₹ 1,353 to ₹ 1,781 per pole. However, the production cost of the poles manufactured in these six factories during these two years ranged from ₹ 1,137 to ₹ 1,605 per pole. The Company did not carry out any cost-benefit analysis before outsourcing the work at higher cost, and utilise the in-house facility to a optimum level.

Considering the fact that the pole factories worked optimally at 80 *per cent* of its rated capacity, the Company could have produced 0.52 lakh poles in its factories and avoided extra expenditure of ₹ 86.68 lakh on procuring the same from outside agencies.

* Beed, Jalgaon, Narsi, Perne, Rahuri and Satpur.

The Management stated (October 2012) that main cause of poor performance of pole factories was the financial crunch of the Company leading to non-procurement of raw material in time.

The reply is not acceptable as the financial crunch cannot be a valid reason for non-production of poles at its factories as the Company procured the same from outside agencies by paying higher rates.

The matter was reported to the Government (June 2012); their reply had not been received (December 2012).

MSEB Holding Company Limited

3.8 Avoidable payment of interest

Delay in payment of service tax resulted in avoidable payment of interest of ₹ 42.25 lakh.

MSEB Holding Company Limited (Company) leased out its immovable properties to its three subsidiary Companies* at a lease rent of ₹ 150.68 lakh, ₹ 79.46 lakh and ₹ 89.63 lakh per month respectively. As per Section 67 of Finance Act, 1994, as amended from time to time, Service Tax (ST) is payable by the Company on taxable services such as renting of immovable property. Further, as per section 75, such Company shall be liable to pay interest for delay in payment of ST.

We observed (March 2012) that the Company failed to timely remit its ST dues although the services provided were taxable. As a result, the Service Tax Authorities demanded (August 2010) interest for delay in remittance of ST for the period during June 2008 to June 2010. The Company during October 2010 to January 2011 paid interest[⊕] of ₹ 42.25 lakh*.

Thus, failure in observance of the provisions of Service Tax Rules resulted in avoidable payment of interest amounting to ₹ 42.25 lakh.

The Management while accepting (May 2012) the Audit observation stated that henceforth proper care would be taken by the Company to timely pay the service tax dues.

The matter was reported to the Government (May 2012); their reply had not been received (December 2012).

* Maharashtra State Electricity Distribution Company Limited, Maharashtra State Electricity Transmission Company Limited and Maharashtra State Power Generation Company Limited.

⊕ ST was recovered from three subsidiary Companies.

* Interest for financial year 2008-09, 2009-10 and 2010-11 was ₹ 23.85 lakh, ₹ 12.60 lakh and ₹ 5.80 lakh respectively

Maharashtra State Power Generation Company Limited

3.9 Non-deduction of TDS

Non-deduction of Tax at source resulted in avoidable payment of interest of ₹ 5.97 crore.

Maharashtra State Power Generation Company Limited (Company) awarded the work of design, engineering, manufacture, supply, erection, testing and commissioning of main plant equipment for six^Ψ units at three power stations to Bharat Heavy Electrical Limited (BHEL) and Larsen and Toubro Limited (L&T) in January 2007, July 2008 and September 2009. As per section 194C of Income Tax Act, 1961, payment of any sum for carrying out any work in pursuance of a contract, the Company should at the time of credit or payment of such sum deduct an amount equal to two *per cent* of such sum as Income Tax (IT). In case of default, it shall be liable to pay simple interest at the rate of 18 *per cent* per annum from the date on which the tax was deductible to the date on which such tax was actually paid under Section 201 of the Act.

We observed (January 2012) that the Company failed to comply with the above provisions of the Act and released an amount of ₹ 1,780.81 crore during April 2007 to March 2010 towards advance to BHEL and L&T without deduction of any Income Tax at Source (TDS). The IT department issued various notices (January 2010, March 2010 and February 2011) to the Company for non-deduction of TDS on the payment of advance to BHEL and L&T and raised a demand of ₹ 42.57 crore including interest of ₹ 5.97 crore under section 201(1A) of the Act for the delayed period. Against the demand of IT department, the Company filed (April 2010) an appeal with Commissioner of IT (Appeals), Nagpur which was dismissed (March 2011). The Company finally paid the above sum during April to June 2011 and has filed (June 2011) an appeal with the Income Tax Appellate Tribunal which is still pending (July 2012).

Thus, the failure of Company to comply with the provisions of IT Act, 1961 resulted in avoidable payment of interest of ₹ 5.97* crore.

The Management stated (April 2012) that they have filed appeal with IT department and have made payment including interest to avoid any coercive action from tax department. However, the fact remains that the Company failed to comply with the statutory provisions in time and deduct tax at source.

The matter was reported to the Government (March 2012); their reply had not been received (December 2012).

^Ψ Two nos. of 500 MW units at Chandrapur TPS expansion project, One 500 MW unit at Khaperkheda TPS and Three nos. of 660 MW units at Koradi TPS.

* TPS Khaperkheda-₹ 3.32 crore, TPS Chandrapur-₹ 1.12 crore and TPS Koradi-₹ 1.53 crore.

TOURISM AND CULTURAL AFFAIRS DEPARTMENT

Maharashtra Film, Stage and Cultural Development Corporation Limited

3.10 Loss of revenue

The Company lost opportunity to earn revenue of ₹ 1.54 crore due to its failure to finalise lease agreement for renting out vacant premises.

Maharashtra Film, Stage and Cultural Development Corporation Limited (Company) hired out an area admeasuring 12,614 square feet of its Departmental Stores building (premises) to B.R. Films from November 2007 to December 2008 at ₹ 4 lakh per month. The Board decided (January 2009) to develop hospital set for shooting purpose in this vacant premises. Since renting out the premises was found to be more attractive than the revenue on letting out as hospital set, the Company decided (August 2009) to invite tenders for leasing out the space.

Accordingly, the Company invited tenders (August 2009) for allotment of premises on lease basis for a period of five years and as per the bid document, the successful bidder was to pay monthly compensation at an agreed rate and it did not contain any clause about revision in monthly rent.

We observed (April 2011) that four offers were received (September 2009) and Reliance Media Works (Party) quoted the highest offer of ₹ 37 per square feet per month. The Draft Agreement (DA) sent (December 2009) to the Party contained a provision of increase in monthly compensation by five *per cent* per annum from the third year during the agreement period. However, the Party did not agree (December 2009) to the same stating that the clauses regarding rent escalation in the DA were never a part of bid document. The Managing Director also opined that the same needs to be inserted in bid document to make it legally enforceable.

Accordingly the Company re-invited the tender (March 2010) but failed to ensure insertion of same clause in the tender documents. Resultantly the DA was not agreed upon by the Party and lease agreement could not be executed. The proposal of renting out the premises was ultimately abandoned by the Company and the premises were not rented out till date (November 2012).

Thus, due to defective formulation of the bid documents on two occasions, the Company's premises could not be let out and the Company lost on opportunity to earn revenue of ₹ 1.54 crore* from January 2010 till date (at ₹ 4.67 lakh[§] per month).

*₹ 4.67 lakh x 33 months (January 2010 to September 2012).

§12,614 square feet x ₹ 37 per square feet.

The Management in its reply (April 2012) accepted the audit contention and stated that the Company has now proposed to develop the place as multipurpose shooting location which is under process. The reply was also endorsed by the Government (May 2012).

HOME DEPARTMENT

Maharashtra State Police Housing and Welfare Corporation Limited

3.11 Loss due to release of Retention money

Refund of Retention Money before completion of works resulted in loss of interest of ₹ 52.72 lakh to the Company.

Maharashtra State Police Housing and Welfare Corporation Limited (Company) undertakes the construction of buildings for use of police force. As per Clause 16 of contract entered into with the contractors, the contractors were to be paid on completion a sum equal to 95 *per cent* of the total value of work done and retention money (RM) was to be released on satisfactory completion of all the work done.

In view of sizable amount of contractor's funds getting blocked, the Company modified (November 2007) Clause 16 provision and five *per cent* RM was allowed to be released in the next alternate Running Account bill. The Company felt that withholding RM was adversely affecting the cash flow of the contractor which in turn led to higher offer of rates. Further, the Company decided (January 2008) to extend the benefit to ongoing contracts and refunded an amount of ₹ 10.42 crore between January 2008 and September 2009 in respect of 19 ongoing contracts.

We observed (October 2009) that the decision to extend the benefit of modification of clause 16 was taken by the Management/Managing Director and was only presented for information/noting to the Board Meeting without bringing out the financial impact on account of release of RM. The decision to refund the RM before completion of all the ongoing works against the terms and conditions of the contract resulted in loss of interest of ₹ 52.72 lakh at the rate of five *per cent* per annum in respect of payments released early by the Company. Further, the decision to relax the terms of the contract after its award was also in contravention of guidelines of CVC.

The Management stated (July 2012) that the RM was released with a view to early completion of project. The reply is not tenable as retention money as a pre-bid condition is factored in the quoted rates. Also after refund of RM, the Company would be left with no safeguard against the contractor. Even after refund of RM, 80 *per cent* of the ongoing projects were delayed. Further, these projects were delayed despite releasing RM due to poor progress of work on account of inadequate deployment of staff/labour by the contractor and other factors such as shortage of material, local unrest, heavy rainfall, change in scope of work, delay in handing over site *etc.* which had no bearing on early

release of RM for timely completion. Thus, refund of retention money on ongoing projects has not benefited the Company as it had not achieved the purpose of completing the ongoing projects within stipulated time.

The matter was reported to the Government (June 2012); their reply had not been received (December 2012).

PUBLIC WORKS DEPARTMENT

Maharashtra State Road Development Corporation Limited

3.12 Loss of revenue

Loss of revenue of ₹ 7.01 crore due to delay in finalisation of tender and award of contract without the approval of Board.

Maharashtra State Road Development Corporation Limited (Company) invited (May 2009) tender for display of advertisement on three hoarding structures (40 metres x 3 metres) of the Mahim interchange flyover for a period of five years with a validity of 90 days from the date of opening the financial offers. Four offers* were received (June 2009) and the financial bids were opened on 29 July 2009 in which H1 party quoted the highest price of ₹ 7.49 crore.

We observed (February 2012) that though the Company opened the financial bid well in time, it delayed the finalisation of award to H1 party. While the bids were opened on 29 July 2009 and approved by Vice Chairman and Managing Director (VC&MD) on 7 August 2009, the decision regarding award of contract was not ensured in the Board Meetings (BM) held on 11, 12 and 17 August 2009. Also, it was not approved by Circular Resolution as suggested by the Commercial section of the Company (15 September 2009) as the VC&MD directed (5 October 2009) to put up the proposal before regular BM. Ultimately, the Board of Directors (BoD) approved the award of contract to H1 party on 27 November 2009 *i.e.* after a delay of four months. Even after approval of the BoD, the Company took another 17 days to issue letter of acceptance (LOA) to H1 party. The H1 party did not accept the award of contract due to expiry of validity period. On being approached (February 2010), the H2 party also declined (March 2010) to accept the contract on similar grounds. The Company instead of re-tendering, awarded the contract (May 2010) to H3 party at ₹ 1.59 crore, though the difference in rate was almost ₹ six crore. The contract period commenced from 5 August 2010. However, BoD was not informed of the decision to award the work to H3 party.

Had the Company taken prompt action to finalise award of work to H1 party, the Company could have earned a potential revenue of ₹ 1.11 crore[⊕] during

* Enkon Private Limited (H1), Global Advertisers (H2), Alakh Advertising & Publicity (H3) and Clear Channel Mumbai Private Limited.

⊕ Being the revenue for first year of contract.

September 2009 to July 2010. Further, the Company lost an opportunity to earn ₹ 5.90 crore due to acceptance of lower rate of H3 party.

The Management/Government in its reply (March-April 2012) did not elaborate on the reasons for the delay in taking decision in its BM.

3.13 Avoidable extra expenditure

The Company incurred extra expenditure of ₹ 3.72 crore due to non-insertion of risk and cost clause in the contract.

In view of Guru-Ta-Gaddi programme at Nanded city in October 2008, the Company awarded (July 2007) the work for construction of Easterly Diversion Road (EDR) (including minor bridges and Cross drainage works) outside Nanded city to Bharat Construction (Contractor) at a cost of ₹ 21.26 crore. The work was to be completed within 18 months (*i.e.* up to January 2009). The Contractor had also assured in writing substantial completion of work before October 2008. However, the Company did not incorporate 'risk and cost' clause in the event of Contractor's failure to complete the work as scheduled.

We observed (June 2009) that the Contractor did not deploy adequate manpower, machineries, labour *etc.* at the site and despite frequent warnings, notices, the Contractor failed to achieve satisfactory progress of work. In view of the slow progress and upcoming Guru-Ta-Gaddi programme, the Company (June 2008) considered that it was not possible for the contractor to complete the work substantially by September 2008. The Company, therefore, decided to award the part of balance work to Manoj Sthapatya (June 2008) and More Construction (July 2008) at a cost of ₹ 6.66 crore and ₹ 3.71 crore against the earlier estimated cost of ₹ 3.70 crore and ₹ 2.95 crore respectively.

Thus, in the absence of enabling clause the Company could not claim the extra cost of ₹ 3.72 crore incurred in completion of the balance work by other two bidders. Further, the Company has not fixed any responsibility on the official concerned for failure to safeguard its financial interest.

The Management stated (August 2012) that in order to complete the work before the international event of Guru-Ta-Gaddi programme, the part of work was required to be withdrawn on emergency basis and was completed through other contractors and no loss can be considered to have arisen for such urgent work.

The reply is not tenable as the Company would have been able to award the work to new contractors at the risk and cost of old contractor if the contract contained enabling clause. Further, looking at the urgency of completion of the work before Guru-Ta-Gaddi programme it was very much necessary for the Company to include the risk and cost clause to ensure that the work was timely completed in the event of non-performance of the Contractor.

The matter was reported to the Government (June 2012); their reply had not been received (December 2012).

3.14 Failure to recover labour welfare cess

Non recovery of labour welfare Cess of ₹ 5.45 crore due to non-adherence to the provisions of Building and Other Construction Workers' Welfare Cess Act, 1996, resulted in depriving the labour force of the State of the intended benefits.

With a view to augment the resources for the building and other construction workers welfare, Government of India notified (September 1996) the Building and Other Construction Workers' Welfare Cess Act, 1996. As per the Act, Cess was to be levied and collected at the rate not exceeding two *per cent* but not less than one *per cent* of the cost of construction. The GoM issued (April 2008) a circular stipulating that Public Sector Undertakings carrying out building or other construction works should deduct one *per cent* of cost of construction (excluding land cost) incurred by the employer. The Cess collected as such, was to be remitted by the employer to the Cess-collector. As per Rule 52 of the Maharashtra Building and Other Construction Workers Rules, 2007, the employer should at least 30 days before the commencement of any building or other construction work intimate the Assessing Officer the actual date of commencement and probable date of completion of the work.

We observed (March 2012) that the Company executes works of construction of roads, bridges *etc.* and despite making payments of ₹ 544.87 crore for 42 works executed during April 2009 to December 2011, neither furnished information regarding commencement of work nor paid one *per cent* Cess.

The Maharashtra Building and Other Construction Workers Welfare Board clarified (March 2012) that no exemption was granted to the Company from payment of labour Cess. Thus, the Company failed to recover the statutory Cess of ₹ 5.45 crore and was liable for payment of interest of ₹ 1.16 crore under Section 8 of the Act, besides depriving the labour force of the State of the intended benefits.

The Management accepted (July 2012) the Audit contention and stated that internal procedure for deduction and payment of Cess have been taken up from May 2012 and that all efforts would be made to recover the arrears of Cess from ongoing contracts.

The matter was reported to the Government (May 2012); their reply had not been received (December 2012).

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Maharashtra Vikrikar Rokhe Pradhikaran Limited

3.15 Loss of interest

Improper fund management by the Company resulted in a loss of interest of ₹ 2 crore due to investments with related party at very low rates when compared to market rates.

Government of Maharashtra (GoM) issued (August 2002) guidelines for investment of surplus funds by State Public Sector Enterprises (PSEs) stating that there should be a proper system of automatic internal reporting to the Board at its next meeting in all cases and that investment decisions should follow proper commercial evaluation.

Maharashtra Vikrikar Rokhe Pradhikaran Limited (Company) invested its surplus funds in the form of Certificate of Deposits (CD)⁸⁰ with a private Company SICOM Limited (SICOM), which holds 49 *per cent* equity of the Company. The Management and administration of day-to-day affairs of the Company is also vested with SICOM[⊕] for an annual fee of ₹ 10 lakh. The Company on 1st April 2011 had investment of ₹ 27.18 crore in the form of CDs with SICOM on which SICOM paid interest at one *per cent* per annum.

We observed (December 2011) that in violation of GoM guidelines, the Company invested its surplus funds in CDs with SICOM without actually evaluating the commercial opportunities after studying the current market rates offered by other commercial banks/financial institutions. SICOM, thus, unduly gained by managing the day-to-day affairs of the Company as it enjoyed funds at one *per cent* per annum. Moreover, by virtue of holding 49 *per cent* equity, SICOM and the Company became related parties and transactions between them can not be attributed to be at an arm's length. Further, SICOM unduly gained by managing the affairs of the Company as the funds were deposited with them at rates which were very much lower than prevailing rate and was not comparable on any count.

Although the investments were made at very low rate of return with SICOM, the Board was not apprised of the most competitive rate of return available to the Company. The Board of Directors at the instance of audit in their meeting (28 December 2011) noted the lower interest rate offered by SICOM and decided to take up the matter for suitable increase in rate of interest. Accordingly, SICOM agreed to increase the interest rate from one to four *per cent* from 1 January 2012 on outstanding CD of ₹ 29.81 crore.

⁸⁰Certificate of Deposits (CD) is a negotiable instrument for funds deposited at a bank/ Financial Institution for a specified time period.

[⊕] SICOM had the entire shareholding of the Company and later by virtue of transfer of 49 and two *per cent* shareholding to MSFC and MSSIDC respectively, the day-to-day affairs of the Company were vested with SICOM.

Had the Company properly evaluated the market rates at the time of investment in SICOM, loss of interest* of ₹ 2 crore could have been avoided.

The Management in its reply (August 2012) while accepting the recommendations of Audit has stated that the Company has since involved systems and procedures to report on the transactions with SICOM and further stated that funds were deposited with SICOM as it accepted deposits and paid interest for upto six days while commercial banks accepted deposits for above seven days only. The reply was endorsed by the State Government (August 2012). However, the fact remains that the Company earned very low interest on invested amount although it could have invested at higher rates after proper commercial evaluation of prevalent market rates as the deposits were kept for longer periods.

Statutory corporations

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Maharashtra Industrial Development Corporation

3.16 Loss of interest

Loss of interest of ₹ 137.07 crore to the Corporation due to investments of surplus funds with banks without proper commercial evaluation.

Government of Maharashtra (GoM) issued (August 2002 and March 2006) guidelines for investment of surplus funds stipulating that investment decisions should follow proper commercial evaluation.

We observed (May 2012) that Maharashtra Industrial Development Corporation (Corporation) invested its entire surplus funds for a term up to one year without making assessment of their requirement over a period of time and extended the deposits or reinvested the funds for a further term up to one year. The total term deposits of the Corporation increased from ₹ 4,411.50 crore in 2008-09 to ₹ 6,436.08 crore in 2010-11 inclusive of term deposits of ₹ 2,578.50 crore and ₹ 4,408 crore that had matured during these two years.

During scrutiny of specific investment decisions for the three years ending 2010-11 we observed that:

- The annual deposit rates ranging between 10.15 and 12.65 *per cent* were the highest rates registered during July to November 2008, during which, the Corporation invested funds aggregating to ₹ 1,556.50 crore in short term deposits with various Banks for a period ranging from 300 days to one year. On maturity, it reinvested these deposits for further periods ranging from one year to 15 months at the annual rates varying between 6 and

*Considering rate of nine *per cent* of commercial banks for one year deposits.

6.55 *per cent*. On maturity of second term, these deposits were again reinvested for a period of one year at the rates ranging from 7.15 to 9.56 *per cent* per annum. Thus, the Corporation was deprived of earning additional interest of ₹ 131.18 crore on these deposits.

- During December 2008 to January 2009, the Corporation invested ₹ 257 crore in various banks at rates ranging from 7.50 to 9.50 *per cent* despite knowing the fact that other banks offered rates between 8.75 and 10.25 *per cent* resulting in loss of interest of ₹ 4.12 crore.
- Similarly during 2009-10 and 2010-11, the Corporation made investments of ₹ 3,060 crore which were renewed at lower rates in the respective banks. However, fresh investments were also made during the same period in other banks at higher rates. Had these investments were also invested in other banks instead of renewal in existing bank, the Company could have earned additional interest of ₹ 1.77 crore.

Thus, the Corporation was deprived of additional revenue of ₹ 137.07 crore as it could not earn interest at the highest market rate available in the absence of proper commercial evaluation and assessment of requirement of funds by the Corporation.

The Management stated (August 2012) that the funds were generally invested with banks for one year as funds are required for developmental purposes at any time to any extent and hence surplus funds were not invested for long term. The reply is not acceptable as the Corporation had huge surplus funds which could have been invested at higher rates for a longer period.

The matter was reported to the Government (July 2012); their reply had not been received (December 2012).

3.17 Undue favour to allottee

Loss of revenue of ₹ 5.74 crore due to undue favour and irregular allotment of plot at lower rate.

The Corporation leased (June 1970) plot No.30 admeasuring 4,163 m² in Trans Thane Creek (TTC) industrial area at ₹ 8 per m² to Amritlal Khetani and Rameshchandra Chitre, Partners of United Engineers (Party) for construction of factory building within two years *i.e.* by June 1972. The terms of agreement stipulated that it was the responsibility of Party to fence and develop the plot by June 1972. The Party could not construct factory building within the stipulated period.

We observed (October 2010) that despite non-fulfillment of above condition, the Corporation neither issued any notice nor took back possession of plot till October 1985 when it belatedly issued a notice to the licensees for termination of the said agreement. However, the notice was subsequently withdrawn (December 1985).

Thereafter no action was initiated by the Corporation till June 2009. Meanwhile, plot was encroached by slum dwellers and the legal heirs of Party requested (July 2009) to lease alternate plot as they were unable to use the said plot. Accordingly, the Corporation agreed (August 2009) for the same instead of terminating the agreement and disposing of the plot at prevailing market rate of ₹ 13,800 per m².

Further, we observed that instead of using the plot, the Party requested (October 2009) to transfer the plot to Newa Reality Infrastructure. This was also agreed by the Corporation and the plot was transferred by charging transfer charges of ₹ 57.41 lakh.

Thus, failure of the Corporation to take prompt action in this regard resulted in undue favour to the Party and loss of revenue of ₹ 5.74 crore[@] to the Corporation.

The Management stated (September 2012) that the Party was allotted alternate plot as the plot was encroached by slum dwellers. The reply is not acceptable as protection/development of the plot was the responsibility of the Party and the Corporation should have terminated the agreement.

The matter was reported to the Government (March 2012); their reply had not been received (December 2012).

3.18 Short recovery of Development charges

Delay in revision of development charges resulted in short recovery of ₹ 6.35 crore.

The Corporation is empowered to levy Development Charges (DCs) under the Maharashtra Regional and Town Planning Act, 1966. GOM revised (December 2010) the rates of DC w.e.f. 01 March 2011. The revised DCs to be charged were higher of two *per cent* of land rates or two *per cent* of the Stamp duty Ready-Reckoner rates for residential plots, two *per cent* of the 1.5 times Stamp duty Ready-Reckoner rates for industrial plots and two *per cent* of twice the Stamp duty Ready-Reckoner rates for commercial plots. The Board of Directors of the Corporation decided (May 2011) to revise the DCs for construction works after a delay of four months with retrospective effect.

We observed (March 2012) that despite the Board Resolution to recover the revised DCs from 01 March 2011, the Corporation failed to recover the said charges at revised rates in respect of 345 building plans approved for residential, commercial and industrial purpose in five divisions* which were approved by the Corporation between March 2011 and November 2011. This resulted in short recovery of DCs of ₹ 6.35 crore.

[@] Existing rate of ₹ 13,800 per m² (-) original rate of ₹ 8 per m² X 4,163 m².

* Chinchwad, Ambad, Sangli-Miraj, Waluj and IT division (Pune).

The Management while accepting the short recovery of DCs stated (July 2012) that the concerned parties have been informed to make payment of differential amount of DCs and efforts were being taken to effect recovery.

The matter was reported to the Government (May 2012); their reply had not been received (December 2012).

3.19 Loss of revenue

Loss of revenue of ₹ 2.99 crore due to undue favour to private party in allotment of land.

The Corporation had stopped accepting applications for allotment of land in Chakan Industrial Area (CIA) since December 2006 due to non-availability of vacant plots in this area. However, the Corporation received (May 2007) a request from Shri V.V. Lande (Party) for allotment of land for industrial purpose in CIA. The then Minister of Industries (MoI) and Chairman of the Corporation directed (June 2007) to take action on the request of the Party.

We observed (March 2012) that the Corporation, despite non-availability of vacant plots, issued (June 2008) offer letter for allotment of land in CIA at the rate of ₹ 1,200 per m² and accepted Earnest Money Deposit (EMD) of ₹ 1.20 crore from the Party. The offer letter contained a provision for rejection of application without assigning any reason. The Corporation did not invoke this clause. Due to non-availability of vacant plot in CIA, the Corporation could not issue allotment order.

Later, in February 2010 the Corporation decided to allot plots at prevailing rate of ₹ 2,500 per m² plus applicable road width charges in the newly carved out CIA Phase-II to the Party along with other two parties^ψ whose applications were pending. In response, while other two parties paid lease premium at the prevailing rates Shri V.V. Lande, took up the matter (March 2011) with MoI requesting his co-operation for allotment of land at old rate. The MoI directed (March 2011) the Corporation to verify the case. The Board of Directors instead of insisting on payment at prevailing rate^Δ decided (April 2011) to allot plot admeasuring 20,000 m² available in new CIA Phase-II at old rate *i.e.* ₹ 1,200 per m².

Thus, accepting the application of the Party at the first instance and subsequently allotting the plot in new location at old rates lacked transparency. This led to undue favour to the party resulting in loss of revenue of ₹ 2.99 crore* .

The Management stated (September 2012) that the Corporation had demanded new rates from the Party but allotted plot at old rates after the Party approached the MoI and the Board decided to allot the same at old rates.

^ψ Shri Pradeep Sinnarkar and Shri Deepak Darak.

^Δ ₹ 2,500 per m² + 15 per cent Road width charges.

* 20,000 m² × [(₹ 2,500 per m² + 15 per cent Road width charges) minus (₹ 1,200 per m² + 15 per cent Road width charges)].

However, the decision of the Board was not in the financial interest of the Corporation.

The matter was reported to the Government (May 2012); their reply had not been received (December 2012).

3.20 Avoidable expenditure

The Corporation incurred an avoidable expenditure of ₹ 1.21 crore due to rejection of lowest offers.

The Corporation invited tenders on four occasions (November 2005, May 2006, August 2006 and March 2007) for the work of “providing thick premix seal surfacing in internal roads in Sinner Industrial Area” at an estimated cost of ₹ 51.39 lakh and work was to be completed in four months including monsoon. The offer from B.P. Sangle Nashik (Party) at 28 *per cent* above estimated cost in the 1st call was rejected being a single offer. The lowest offer of the same party ranging between 39 *per cent* and 61 *per cent* above the estimate in 2nd, 3rd and 4th call was rejected by the Corporation citing various reasons such as lack of competition, higher rates and onset of monsoon.

Finally in fifth call (July 2007) two agencies (Party and B.T. Kadlag) submitted their offers of which L1 offer of B.T. Kadlag, Nashik was accepted by the Corporation (December 2007) at 72.50 *per cent* above estimates. The work was completed (April 2008) at the cost of ₹ 99.51 lakh.

We observed (December 2008) that the offers had been rejected by the Corporation on four occasions despite being the lowest rates. Award of work at 72.50 *per cent* above estimated cost in fifth call shows that the Corporation was determined not to award work to Party despite quoting lowest rates on four occasions. This resulted in an extra expenditure of ₹ 27.82 lakh.

In another instance, we observed (February 2009) that the Corporation rejected (November 2006) the lowest offer of Dhanchandra Construction at 11.01 *per cent* below the estimated cost of ₹ 1.56 crore* for the work of ‘strengthening, asphaltting of balance internal roads’ in Latur Industrial Area after a delay of seven months on the grounds of unworkable rates. The work was later awarded (June 2007) after re-inviting tender (December 2006) to the same Party at 33.75 *per cent* above the estimate. The work was completed in March 2008 at a cost of ₹ 2.63* crore. We observed that delay in cancellation in first call and subsequent award in second call to the same Party resulted in an extra expenditure of ₹ 0.93 crore* which was avoidable.

* As per District Schedule of Rates (DSR) 2004-05.

* Including additional work ₹ 35 lakh.

*Estimated cost ₹ 1.91 crore (including additional works ₹ 35 lakh) less 11.01 *per cent* offered in first call ₹ 0.21 crore = ₹ 1.70 crore less total cost incurred ₹ 2.63 crore.

The Management stated (August/September 2012) that in both cases, the work was awarded as the parties had quoted rates which were lower than the prevailing District Schedule of Rates (DSR). However, the facts remains that parties were willing to execute the work at their quoted cost in first call itself and the Corporation took substantially long time in finalising the tender and in the meantime new DSR came into force.

The Corporation should have ensured finalisation of tenders at the earliest to safeguard its financial interest. Failure to do so resulted in an avoidable extra expenditure of ₹ 1.21 crore.

The matters were reported to the Government (February 2012); their reply had not been received (December 2012).

Maharashtra State Financial Corporation

3.21 Delay in finalisation of lease

Delay in finalising the lease led to loss of ₹ 74.14 lakh to the Corporation.

Maharashtra State Financial Corporation (Corporation) leased (December 2004) an area admeasuring 3,700 square feet at New Excelsior Building, Mumbai to Omega Shipping Agencies Private Limited (OSAPL) for a period of 66 months up till June 2010 at monthly rent of ₹ 52.02 per square feet. The Corporation enquired (April 2010) the willingness of OSAPL for extension of lease agreement at market rate of ₹ 200 per square feet. However, they expressed (May 2010) their inability to pay more than ₹ 100 per square feet and intimated that they would vacate the premises by August 2010.

We observed (September 2011) that despite the unwillingness of OSAPL to pay market rates the Corporation allowed OSAPL to occupy the premises after expiry of agreement period. Meanwhile, the Corporation invited offers (July 2010) for renting out the premises and received (July 2010) six offers of which the highest offer was from M/s Contractor, Nayak and Kishnadwala-Chartered Accountants at the rate of ₹ 135 per square feet. Despite getting competitive rates/response in the first call, the Corporation decided (August 2010) to go for second call and accordingly the board decided (September 2010) to accept offer of Benchmark Assets Management Company Private Limited (BAMCPL) at the rate of ₹ 152 per square feet being the highest one who insisted on immediate possession of the premises which the Corporation could not hand over. In the meantime, OSAPL continued to occupy the premises for four months after expiry of agreement period (till October 2010) at old rates. On the other hand, BAMCPL withdrew (October 2010) the offer stating that they were no longer interested. The Corporation could finally rent out the premises to Krishna and Saurastri Associates at ₹ 140 per square feet from July 2011 and granted three months

rent free period. Thus, non-finalisation of party in time resulted in a loss of ₹ 74.14 lakh[⊗] to the Corporation.

The Management (April 2012) stated that it made all efforts to lease out the premises but could not find new lessee in time. The reply was also endorsed by the State Government (May 2012). The reply is not acceptable as the Corporation did not finalise the lease on two occasions and allowed OSAPL to occupy premises for four months at old rates.

General

Follow-up action on Audit Reports

3.22 Explanatory Notes outstanding

3.22.1 Audit Reports of the Comptroller and Auditor General of India represent culmination of the process of scrutiny, starting with initial inspection of accounts and records maintained in the various offices and departments of Government. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Finance Department of the State Government issues instructions every year to all administrative departments to submit explanatory notes to paragraphs and performance audits included in the Audit Reports within a period of three months of their presentation to the Legislature, in the prescribed format, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

Details of Audit Report (Commercial) wise paragraphs/performance audits for which replies are awaited as on 30 September 2012 were as under:

Audit Report	Date of placement of Audit Report to the State Legislature	Number of			Replies awaited		
		Performance audits	Paras	Total	Performance audits	Paras	Total
2005-06	17 April 2007	3	19	22	1	--	1
2006-07	30 December 2008	6	28	34	--	1	1
2007-08	23 December 2009	3	21	24	--	--	--
2008-09	23 April 2010	2	21	23	1	2	3
2009-10	21 April 2011	2	21	23	1	10	11
2010-11	17 April 2012	2	20	22	1	20	21
Total		18	130	148	4	33	37

[⊗] Calculated at differential rent ₹ 82.98 (135-52.02) per square feet from July to October 2010 and ₹ 152 per square feet from November 2010 to September 2011.

Audit Report No.02 of PSUs for the year ended 31 March 2012

From the above it could be seen that out of 148 paragraphs/performance audits, replies to 37 paragraphs/performance audits pertaining to the Audit Report (Commercial) for the year 2005-06 to 2010-11 were awaited (September 2012).

Compliance to Reports of the Committee on Public Undertakings outstanding

3.22.2 Action Taken Notes (ATNs) to 107 recommendations contained in 18 Reports of the COPU presented to the State Legislature between April 1996 and September 2012 had not been received as on September 2012 as indicated below:

Year of COPU Report	Total no. of Reports involved	No. of recommendations where ATNs were not received
1996-97	2	19
2005-06	3	13
2007-08	3	27
2008-09	3	8
2010-11	7	40
Total	18	107

Response to inspection reports, draft paragraphs and performance audits

3.22.3 Audit observations not settled on the spot are communicated to the heads of PSUs and the concerned administrative departments of the State Government through Inspection Reports. The heads of PSUs are required to furnish replies to the Inspection Reports through the respective heads of departments within a period of six weeks. Inspection Reports issued up to 31 March 2012 pertaining to 84 PSUs disclosed that 2,801 paragraphs relating to 589 Inspection Reports remained outstanding at the end of September 2012. The department-wise break-up of Inspection Reports and Audit observations outstanding as on 30 September 2012 is given in **Annexure-8**.

Similarly, draft paragraphs and performance audits on the working of PSUs are forwarded to the Additional Chief Secretary/Principal Secretary/Secretary of the administrative department concerned seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was, however, observed that out of 21 draft paragraphs and two draft performance audits forwarded to various departments between February to August 2012 and included in the Audit Report, 15 draft paragraphs and one draft performance audits as detailed in **Annexure-9**, were not replied to by the State Government (December 2012).

It is recommended that the Government should ensure that the system of responding to Audit observations is revamped and action to recover loss/excess payment is taken in a time bound schedule.



MUMBAI
The 8 MAR 2013 **(PUNAM PANDEY)**
Principal Accountant General (Audit)-III, Maharashtra

Countersigned



NEW DELHI
The 12 MAR 2013 **(VINOD RAI)**
Comptroller and Auditor General of India