Chapter III

Compliance Audit Observations

Chapter III

Compliance Audit Observations

Important audit findings that emerged from the test check of transactions of the Government of Gujarat Companies and Statutory Corporations are included in this Chapter.

Government Companies

Gujarat Agro Industries Corporation Limited

3.1 Idle investment in Banana Pack House

Failure to cross check the reliability of the project report before taking investment decision led to an idle investment of ₹ 6.11 crore.

The Gujarat Agro Industries Corporation Limited (Company) got a feasibility study conducted (July 2004) by M/s. Global Agri Systems Private Limited (Consultant) for setting up of a dedicated Banana Pack House (BPH)[1] in Gujarat. As per the project report submitted by the Consultant and approved (December 2005) by the Company for onward transmission to Agriculture and Processed Food Products Export Development Authority (APEDA[2]), the estimated cost of the project was ₹ 6.24 crore. The project sought to construct a BPH at Jhagadia (Bharuch) and two collection centres at Achalia (Jhagadia) and Vavdi (Mehsana). Based on the project report, APEDA and GoG sanctioned (October 2006 and March 2007/March 2010) grants of ₹ 4.42 crore and ₹ 2.72 crore respectively to the Company.

The project report contained statistical details on banana production, current export scenario and potential export markets besides analysis of profitability based on estimated project cost and capacity utilisation. The report estimated profits from the second year of operation and capacity utilisation at 90 *per cent* from the third year onwards. The sanctioned grants of ₹ 7.14 crore was released by the APEDA and GoG between March 2008 and April 2011.

The Company awarded (February 2009) the work of construction of the BPH including two collection centres to a firm[3] and the same were completed in June 2010 and December 2010 respectively for ₹ 6.11 crore. Further, the Company executed (June 2010) a license agreement with M/s. Cargo Service Center India Private Limited (firm C) for the Operation and Maintenance (O&M) of the BPH and collection centres. The same were handed over to firm C in July 2010 and April 2011 respectively. As per the terms of license agreement, firm C was to operate, maintain and manage BPH and collection centres for a period of five years and to pay license fee (including Service

[1] A pack house is a place where products are brought after harvesting to prepare them as per market requirement in terms of washing, brushing, waxing, grading, cooling, storing and transporting without any injury to the product.

[2] Agency established by Government of India, which provides financial assistance to exporters, growers, trade associations, Governmental Agencies etc for promotion and development of agri-exports.

[3] M/s Rinac India Limited, Ahmedabad

Tax) of ₹ 3.10 crore[4] during the period to the Company. The license fee was payable biannually in advance.

The firm C paid the first biannual instalment of ₹ 20.47 lakh in July 2010. Thereafter, firm C requested (March 2011) for deferment of license fees payable and also expressed (May 2011) its apprehension in running the project viably due to limited availability of bananas in the region. The Company constituted (July 2011) a Committee comprising of its representative, Director of Horticulture, GoG and firm C to analyse the prevailing market and arrive at an appropriate decision.

The Committee's findings (August 2011) revealed that i) banana being a very low value fruit and extremely competitive, it was difficult to absorb the processing cost through pack house; ii) banana's availability in Bharuch and surrounding areas was limited for six to seven months; and iii) the Farm Gate Price[5] in Gujarat was higher in comparison to other States. Therefore, for minimising procurement cost, traders/exporters preferred completion of all process at the farms by using mobile pack houses.

Further, the stake holders[6] in the banana trade in the meeting held in September 2011 also expressed concern that the export of bananas was not viable considering the low price realisation and absence of minimum guaranteed price. The Company terminated (December 2011) the O&M agreement and firm C paid the balance license fees of ₹ 46.44 lakh due up to December 2011. As the Company was exploring the possibility for running the BPH, firm C was engaged to attend the maintenance work of BPH till November 2012 for a fixed remuneration. Thereafter, the Company was maintaining BPH and the centres on its own. The BPH and the centres had remained idle since December 2011, because an alternate agency could not be identified for running it (March 2013). The Company had incurred ₹ 17.26 lakh till March 2013 on electricity, maintenance and miscellaneous items.

Audit observed (November 2012) that the project report of December 2005 did not study and reflect on whether bananas were available throughout the year in Bharuch region. No analysis was made on the pricing of bananas at the farm stage reckoning the cost of processing through BPH and the viability of this cost to the exporter in the light of normally prevailing low selling price of bananas. Further, the projection made by the Consultant regarding utilisation of the BPH at 90 *per cent* capacity from the third year onwards, which would be sufficient to cover the entire export targeted for the year 2010 from India to the Middle East, was not supported by any authenticated and rational study report. Audit also observed that though the Company approved forwarding of the project report to financing agencies, it was not scrutinised/cross checked for reliability resulting in deficiencies going unnoticed and an unfruitful investment decision being taken.

---

4 1st year ₹ 47.51 lakh, 2nd year ₹ 54.08 lakh, 3rd year ₹ 61.57 lakh, 4th year ₹ 69.89 lakh and 5th year ₹ 77.17 lakh.

5 Price for direct sale from farm.

6 Exporters/Co-operatives/Farmers.

The Management in its reply (July 2013) stated that due to the lower cost and competitive market of banana, the additional cost was not viable to the traders. Hence the project did not pick up as envisaged in the project report. The reply was not acceptable as the bottlenecks cited by the Management in its reply should have been factored in before making an investment of ₹ 6.11 crore. Thus, relying on the project report of the third party without verification of the facts contained therein led to an idle investment of ₹ 6.11 crore.

The matter was reported to the Government (May 2013); their reply had not been received (December 2013).

3.2 Idling of assets and non-achievement of objectives

Non adherence to the conditions of license agreement led to idling of assets worth ₹ 5.11 crore.

The Board of Directors (BoD) of Gujarat Agro Industries Corporation Limited (Company) decided (December 2006) to set up a Centre for Perishable Cargo (CPC)[7] with the facilities for handling and transit storage of perishable products at the International Airport, Ahmedabad. The project was to be set up on land to be allotted by Airport Authority of India (AAI) at a token price of ₹ one per annum and using funds sanctioned under Rashtriya Krishi Vikas Yojana (RKVY). It was also decided that after construction, CPC would be handed over to a private party to run on contract basis so that the Company would get regular income and not incur additional staff liability. An allocation of ₹ 8.23 crore (estimated cost) was sanctioned under RKVY for the year 2008-09 to the Company for setting up of CPC.

AAI allotted (May 2009) 3,685 square meters (Sqmtrs) of land for seven years at a license fee of ₹ one per annum for setting up of CPC and a license agreement was entered (May 2009) into with the Company by AAI. The terms and conditions of the license agreement stipulated that the Company should not, create a sub-contract of any description with regard to the license or any part thereof, nor transfer or assign this license or any part thereof except with the written consent of AAI. On the expiry of license period of seven years or if the Company ceases to be a Government Company during the period of seven years, license fees on commercial terms and a percentage of gross turnover as per AAI policy in vogue was to be charged. Further, AAI policy for establishing CPC at airports stipulated that if the State Government enterprise wanted to set up and run CPC on joint venture (JV) basis with private participation on AAI's leased land, then the State enterprise should hold not less than 51 *per cent* of equity shares of the JV Company. The Company awarded (July 2009) the contract for construction of CPC at a tendered cost of ₹ 4.59 crore to be completed within a period of 180 days from 12 June 2009.

---

[7] As per the project feasibility report (December 2006) the handling volume of CPC was 40 Metric Tonne per day and within three to five years the profit from CPC would stabilise with the achievement of 100 *per cent* volume operation

Audit observed (November 2012) that, disregarding the above stipulations made by AAI, the BoD of the Company approved (August 2009) appointment of Cargo Service Center India Private Limited (CSC), Mumbai as the licensee to operate, maintain and manage CPC. Accordingly, a license agreement was entered (June 2010) with CSC. As per the terms of agreement, CSC would pay to the Company license fees of ₹ 3.33 crore[8] over the lease period of five years and would have the freedom to fix charges to be recovered from the users of CPC except Terminal Storage and Process charges, which could not exceed ₹ 0.70 per kilogram. The agreement would come into force from the date of commercial operation of CPC or receipt of approvals from i) Bureau of Civil Aviation of Security, ii) AAI, and iii) Commissioner of Customs, whichever was later. The construction of CPC was completed in September 2010 at a cost of ₹ 5.11 crore.

The Company applied (September 2010) to AAI seeking their permission for the sub-licensing of CPC to CSC. After a prolonged correspondence, AAI objected (May 2012) to the license agreement executed by the Company with CSC and called it a violation of spirit of AAI license and various guidelines of the Government of India. AAI further stated that the agreement made with CSC transformed the project into commercial (revenue yielding for the Company) and severely limited the core purpose *i.e.*, subsidised service for Agro Product Promotion. Further, AAI directed the Company to restrain from operationalising the CPC without showing reasonable and acceptable cause for the above violation. Further progress was awaited (June 2013).

The Management stated (June 2013) that the Operation & Maintenance (O&M) of CPC was a highly specialised job requiring trained professionals and the Company did not have expertise in it. Therefore, the O&M contract was entered into with CSC incorporating all the conditions set forth in the license agreement between AAI and the Company. It was also stated that this did not amount to sub-letting as it did not create any direct or indirect rights in favour of CSC. As required by the Customs Authorities, even the custodianship of the CPC was retained with the Company and an application was made to AAI to grant the No Objection Certificate for commissioning the CPC. However, AAI has neither denied nor given the consent (June 2013).

The reply was not acceptable as the license agreement entered into with AAI clearly stipulated that licensee shall not create a sub-contract of any description except with prior permission from AAI. The Company was aware of these stipulations when it entered into the O&M contract with CSC. Further, the O&M contract entered by the Company transferred all risks and rewards to CSC, a private party, in return for a fixed remuneration. Thus, non adherence to the stipulation of AAI resulted in blocking of ₹ 5.11 crore for a period of 33 months (from October 2010 to June 2013) and non achievement of the objectives of Government spending.

The matter was reported to the Government (May 2013); their reply had not been received (December 2013).

[8] Year – I - ₹ 37.50 lakh, Year II - ₹ 48.75 lakh, Year III - ₹ 65.00 lakh, Year – IV - ₹ 80.93 lakh and Year - V- ₹ 100.91 lakh = ₹ 333.09 lakh *i.e* ₹ 3.33 crore.

Gujarat State Electricity Corporation Limited

3.3 Undue benefit to Contractor

Passing of undue benefit of ₹ 10.71 crore to the washery contractor by allowing retention of washery rejects at a lower price.

A thermal power station (TPS) runs on coal. The coal delivered from the mine to the coal preparation plant is called run off mines (RoM). This RoM consists of coal, rocks, middlings, minerals and contamination and beneficiation[9] before its use increases its calorific value. The Gujarat State Electricity Corporation Limited (Company) awarded contracts to washery contractors for lifting of RoM from its allocated coal fields, their beneficiation and the transportation of the washed coal to its various TPS at pre-decided rates. The Company also awarded separate contracts for retaining washery rejects[10] or lifting the rejects from other washeries; as these rejects were the property of the Company.

The Company invited (December 2009) tenders for beneficiation of 12 lakh Metric Tonne (MT) RoM coal per month to be lifted from the Korba Coal fields and supplied to the Gandhinagar, Sikka, Ukai and Wanakbori TPS of the Company. The Company placed (May 2010) work orders on four bidders[11] viz., M/s. Aryan Coal Beneficiations (ACB), Spectrum Coal and Power Limited, (SCPL), Maruti Clean Coal and Power Limited (MCCPL) and S V Power Private Limited (SVPL) based on their capacity.

ACB had also set up its own power plant in Chhattisgarh based on a blend of washery rejects and raw coal. For this, it had entered (June 2007) into a long term Fuel Supply Agreement (FSA) with the Company for lifting all the washery rejects generated in the beneficiation contracts entered into by the Company in the Korba region at ₹ 107 per MT. As the above plant was to supply power to Gujarat Urja Vikas Nigam Limited, the holding company of the company, concessional rate was offered in the FSA.

ACB's power plant which was scheduled to be commissioned in October 2009 was delayed and actually commissioned in December 2011. Meanwhile, the Company issued (April 2010) separate work orders to SVPL for lifting the washery rejects of ACB[12] and for retaining its own rejects at ₹ 306 per MT. Similar work order was also issued to MCCPL for lifting the washery rejects of ACB at ₹ 400 per MT and retaining its own rejects at ₹ 500 per MT. SCPL was allowed to retain its own rejects at ₹ 306 per MT. No work order was placed on ACB as they quoted rates as per their FSA.

---

[9] Beneficiation is process of washing raw coal of inferior quality at washery in order to remove coal dust, stones and shells and cutting the coal into proper size.

[10] Around 20 *per cent* of the RoM coal become washery rejects during the beneficiation process.

[11] ACB for 7.5 lakh MT per month at ₹ 120.37 per MT, SCPL for 4.5 lakh MT per month at ₹ 142.83 per MT, MCCPL and SVPL for 2 lakh MT per month each at ₹ 120.37 per MT.

[12] ACB had four washeries *viz.*, Dipka, Gevra, Chakabura and Binghri. SVPL was to lift rejects other than Dipka washery and MCCPL was to lift only from Dipka washery.

ACB did not allow the other washery contractors to lift its washery rejects on the pretext of seeking clarifications regarding issue of royalty paid transit pass[13] to the transporters of washery contractors till August 2010. Meanwhile, the work orders issued for washery and sale of washery rejects to SVPL and MCCPL were terminated (July 2010) as they failed to commence the main work of beneficiation of coal.

In September 2010, ACB requested the Company to allow them to retain the washery rejects at the rate of ₹ 118.38 per MT for the period from 1 April 2010 to 31 August 2010 and at ₹ 306 per MT for the period from 1 September 2010. The Company agreed (November 2010) to the request of ACB.

Audit observed (December 2012) that as per terms of the FSA, the washery rejects were to be made available to ACB at FSA rate for using it as fuel in the power plant for generation of power. The FSA was to come into effect from the commissioning date of ACB's power plant. As the power plant could be commissioned only in December 2011, charging of the reduced rate of ₹ 118.38 per MT instead of the applicable rate of ₹ 306 per MT[14] for the period 1 May 2010 to 31 August 2010 was not justified or warranted. By agreeing to the request of ACB, the Company passed an undue benefit of ₹ 10.71[15] crore to ACB.

The Government stated (August 2013) that the washery rejects of ACB could not be lifted by MCCPL and SVPL as the Authority for issuing the transit pass for the lifting coal rejects could be finalised only by October 2010. ACB agreed to retain the rejects up to August 2010 at the FSA rate of ₹ 118.38 per MT only and agreed to pay the tender rate of ₹ 306 per MT only from September 2010. As creating a dispute in this regard could have hampered the supply of washed coal to the TPS by ACB, the proposal was accepted.

The fact remains that even SCPL for retention of its own rejects paid the tender rate of ₹ 306 per MT. As such, there was no reason to allow ACB to retain its rejects at the rate of ₹ 118.38 per MT when the FSA had not become effective.

3.4 Improper award of contract

Loss of ₹ 4.10 crore due to award of work to an incompetent contractor.

The Kutch Lignite Thermal Power Station (KLTPS) of Gujarat State Electricity Corporation Limited (Company), invited (November 2009) tenders for the work of manual removal of ash from the bottom ash hoppers of the boilers of its three units (Unit 1, 2 and 3) for a period of two years by means of

[13] Transit passes are issued after payment of royalty to every lease holder or permit holder by the competent authority and is countersigned either by the District Mining Officer / Concern SDO / Tehsildar. Such passes show the details of the lease holder / permit holder, date, vehicle number transporting the material, quantity, time *etc*.

[14] SVPL and MCCPL orders were terminated and hence the highest available rate for washery rejects was ₹ 306 per MT agreed by SCPL.

[15] Quantity of rejects (570,793 MT) X difference in rate (₹187.62).

manual efforts, loaders and dumpers and disposing the same outside the power station site. One of the technical requirements stipulated in the tender was that the bidder should have experience of same/similar type of work at power station of the Company/erstwhile Gujarat Electricity Board/or any Government Organisation and should have executed at least one work order having value of ₹ 35 lakh in the last two years.

The tenders were received (January 2010) from three firms[16] out of which one was declared as technically not acceptable as it had not submitted the required documents. Firm S was regarded as technically acceptable though it had quoted for the first time for the Company. One of the bidders (firm K) had not satisfactorily executed a similar order awarded by the Company to it in January 2006 and thus was not considered for the subsequent tender of the Company in October 2007. Despite this fact, KLTPS regarded firm K as technically acceptable subject to their price being the lowest and their agreeing to placement of order in a phased manner of three months at a time. An undertaking was obtained from firms S and K, who were declared technically qualified (February 2010) that they would agree to placement of orders in a phased manner and then their price bids were opened. Firm K was the lowest bidder at ₹ 90.29 lakh. Firm K was awarded the work (April 2010) for a period of two years up to 31 March 2012, though Corporate office of the Company approved placement of the order in a phased manner. The reasons for placing the work order for two years were not on record. The performance of firm K was not satisfactory from the beginning as it failed to mobilise sufficient manpower and machinery. The KLTPS invited (April 2011) another tender for the same work. The single bidder that qualified was firm S who quoted ₹ 1.38 crore for the biennial contract. The contract was placed with firm S for two years from December 2011 after short closing the contract with firm K.

Audit observed (January 2013) that despite the poor performance of firm K being known to KLTPS, it was declared technically qualified and its price bid was opened. The decision of the Company to open the price bid of firm K and consider award of the contract if its price was the lowest vitiated the sanctity of the tendering process. Though a specific undertaking had been taken from firm K for placement of order in a phased manner and approval from the Corporate office of the Company had also been obtained on those terms, the order was placed by KLTPS for the full period of two years; thereby violating approval conditions.

As the performance of firm K was unsatisfactory, penalty of ₹ 13.44 lakh for the reasons such as non-mobilisation of adequate resources and non removal of ash was levied by KLTPS during the period April 2010 to April 2011. Further, the non-mobilisation of adequate resources by firm K led to excess accumulation of ash and forced shutdown of power plant during March and April 2011. Consequently, there was a loss of generation of 14.93 million

[16] M/s. K.B. Jadeja, Panandhro (Firm K), M/s. Swaminarayan Vijay Carry Trade Pvt. Limited, Bhuj (Firm S) and M/s. Ganji Ramji, Bhuj (Firm G).

units of power leading to loss of ₹ 3.97 crore[17] as worked out by the Company. Audit also observed that KLTPS refunded the recovered penalty of ₹ 8.41 lakh in June 2011 and also firm K's Security Deposit of ₹ 4.51 lakh in August 2012 based on the plea of firm K that it was unable to continue the work with the present rates of the order and financial constraints.

Thus, awarding of the contract to a firm whose performance was known to be poor and also by showing undue favour to the firm by refunding the penalty and Security Deposit led to avoidable loss of ₹ 4.10 crore to the Company.

The Government stated (September 2013) that firm K was considered as technically qualified as there was no other option with the Company as the other technically qualified bidder was new to the Company. Also, KLTPS being at a remote place was having a typical and extreme climate where usually contractors were not ready to work. Hence, in the interest of the TPS, it was difficult to enforce stringent tender conditions. The reply of the Government was not acceptable as the contract was awarded to firm S in December 2011 despite receiving only the bid of firm S which was considered to be new to the Company in January 2010. The injudicious decision of the Company led to loss of ₹ 4.10 crore.

3.5 Avoidable payment

Avoidable payment of ₹ 74.59 lakh towards freight charges to the contractor due to non-insertion of a suitable clause in the work order.

The Gujarat State Electricity Corporation Limited (Company) awarded (January 2010), the work of inland handling and transportation of 14.8 lakh Metric Tonnes (MTs) of imported coal from discharge port at Mundra to Wanakbori and Gandhinagar Thermal Power Stations (TPS) to M/s. Adani Enterprises Limited, Ahmedabad (Contractor).

The scope of work for the contractor included coordination for the safe berthing of the vessel at discharge port, liaising with Port and Customs authorities for clearance of cargo, coordination for the rail/road transportation of the coal from port to TPS and monitoring so as to minimise handling and transit losses from port to TPS. For the above work, the contractor was entitled to Inland Handling Charges of ₹ 296 per MT plus the normative railway freight charges as applicable at the time of supply on the quantity of coal actually received at the TPS. The contract further stipulated that the quantity and quality of coal received at the TPS end was to be as per the quantity and quality of coal received[18] at the discharge port. In case of shortage of quantity and deficiency in quality, recoveries from the contractor as per prescribed formula were to be made. In the execution of the contract (January 2010 to November 2011), the contractor handled 18,94,646 MTs of coal at the

[17] Generation loss of ₹ 3.02 crore calculated at the fixed cost rate of ₹ 2.02 per unit on the 14.93 MUs lost and oil cost for start up of machine from shut down ₹ 0.95 crore.

[18] At discharge port, Independent Inspection Agency (IIA) appointed by the Company was to determine the quantity and quality of coal by draught survey/stack survey and by sampling analysis respectively. At TPS, the quantity of coal was to be determined as per weighbridge readings and the quality was to be determined as per samplings of IIA and joint analysis of both IIA and TPS officials.

discharge port, received through 26 ships, and delivered 18,93,745 MTs of coal at the TPS with a shortage of 901 MTs.

Audit observed (December 2011) that in respect of 18 out of 26 ships, the discharge quantity at port was 13,52,860 MTs, the quantity delivered by the contractor to the Railways as per railways receipt (RR) was 13,35,139 MTs and quantity received at TPS was 13,52,215 MTs. There was a nominal shortage of 645 MTs in the quantity received at the TPS as compared to the quantity discharged from the port. However, there was a transit gain of 17,076 MTs when the quantity received at the TPS was compared to the quantity loaded by the contractor in the wagons at the railway end. The above abnormal gain of 17,076 MTs of coal during its transportation resulted in an undue benefit of ₹ 74.59 lakh to the contractor as freight charges were reimbursed on 13,52,215 MTs received at TPS, whereas the contractor had paid freight charges for 13,35,139 MTs to the Railways.

The Government stated (September 2013) that the contractor had to deliver entire quantity from the discharge port to the TPS without any shortage so the RR quantity should not be compared with the quantity of coal received at TPS. The Government further stated that the contractor was paid normative railway freight on the quantity measured at the TPS end and it was not a reimbursement of the actual freight paid as then the Company would end up paying higher amount in terms of idle freight and penal freight in case of overloading. They also stated that the difference in weight may be due to instrument errors in the measurement at Railway weighbridge.

However, the observation of Audit was not on the shortage of quantity of coal between discharge port and TPS or the payment of freight based on the coal received at TPS, but on the excess payment made to the contractor because the Company had reimbursed the freight charges on the quantity which was higher than what was exhibited in the RRs.

It is recommended that the Company should insert a clause in such future agreements restricting payment of freight charges to the contractor on the quantity for which actual payment is made to the railways.

Gujarat State Petronet Limited

3.6 Loss of revenue due to waiver of ship or pay charges

Loss of revenue of ₹ 73.70 crore due to waiver of ship or pay charges in favour of Essar Steel Limited.

The Gujarat State Petronet Limited (Company) entered (March 2004) into a Gas Transmission Agreement (GTA) with Essar Steel Limited (ESL) for transporting maximum daily quantity (MDQ) of 72,010 MMBTU[19] of gas in two capacity tranche (CT)[20] from Dahej entry point to ESL's plant located at Hazira. The validity of GTA was upto December 2008. As per the requirements of ESL, amendments to GTA were made in January 2009 and March 2010 for extending the validity period and increasing the number of CTs for transmission of gas, respectively. In the amendment of GTA (March 2010), the Company reserved two additional CTs viz., D-6 CT 1 and D-6 CT 2 of 1,06,071 MMBTU each for transporting gas to ESL. The additional reserved capacity was for the period up to March 2014.

As per the terms of GTA, the transmission of gas through D-6 CT 2 would start only after the Company created its pipeline network with an entry point at Damka. The same has not yet been operationalised (September 2013). The transportation of gas through D-6 CT 1 from Atakpardi entry point of the Company's network to ESL plant at Hazira started from April 2010. As per the GTA (March 2010), ESL was to pay transmission charges on the actual MDQ or the contracted capacity whichever was higher (called Ship or Pay charges in common parlance). The applicable transmission charges were ₹ 19.74 per MMBTU.

The Company recovered Ship or Pay charges of ₹ 6.28 crore[21] per month from ESL on MDQ of 1,06,071 (for 30 days) in respect of D-6 CT 1 for the period from April 2010 to March 2012. ESL requested (December 2011/ February 2012) the Company to waive Ship or Pay charges on D-6 CT 1 or defer the payment by one year stating that its business had been adversely affected due to falling prices of steel, high price of spot gas and non-availability of D-6 gas as supplies from D-6 fields were curtailed as per the Government of India decision (September 2011). The Company accepted (March 2012) the request and decided that there would be no Ship or Pay charges on D-6 CT 1 for one year from 1 April 2012 to 31 March 2013 and extended the validity period of CT by one year up to March 2015.

ESL transported 8,42,191 MMBTU of gas on D-6 CT 1 against the monthly contracted quantity of 31,82,130 MMBTU (1,06,071 MMBTU x 30 days) from Atakpardi Entry Point in April 2012. The Company raised invoices of ₹ 1.66 crore for the month of April 2012. Thereafter, ESL did not transmit

[19] Million Metric British Thermal Unit.
[20] Capacity tranche: A quantity of transmission capacity reserved by transporter for a particular purpose of the shipper. The two CTs reserved were: Indian Oil Corporation Limited (IOC) - CT of 58,660 MMBTU and Bharat Petroleum Corporation Limited (BPCL) – CT of 13,350 MMBTU).
[21] ₹ 19.74 x 1,06,071 MMBTU x 30 days = ₹ 6.28 crore.

any gas during the period from May 2012 to March 2013 and hence, the Company did not raise any invoice towards transmission charges.

Audit observed (February 2013) that the Company's decision to forgo Ship or Pay charges for the period from April 2012 to March 2013 based on the request of ESL is not only a violation of the terms of amended GTA of March 2010 but also provided undue benefit to ESL. The terms agreed in the GTA categorically stated that for the purpose of levy of transmission charges, *force majeure* shall not include financial constraints of shipper or any Government action resulting in reduction or cancellation of allocation of gas by the sellers to shipper. Thus, the decision to forgo Ship or Pay charges led to loss of revenue of ₹ 73.70 crore[22] to the Company.

The Management stated (June 2013) that ESL requested waiver or deferment of Ship or Pay charges under D-6 CT 1 due to reduction of gas supplies from D-6 fields of Reliance. The Company did not agree to ESL's request for waiver but deferred the recovery of Ship or Pay charges by extending the GTA by one year up to 31 March 2015 for the same capacity. Further even the Petroleum and Natural Gas Regulatory Board's (PNGRB) 'Guidelines on Development of Model GTA' considers events caused by actions of Central/State Governments as an event of *force majeure* and there is no requirement to amend the existing GTA on account of such directives.

The reply was not acceptable as the Company by extending the GTA for one year will recover Ship or Pay charges for 2014-15 for the capacity reserved during that period and this will not compensate the Company for the non-recovery of Ship or Pay charges for 2012-13 for the capacity made available during that year. Further, the PNGRB Guidelines categorically stated that all contracts/agreements, wherever necessary, shall be suitably modified to ensure compliance with the Guidelines, which has not yet been done in the GTA with ESL (June 2013).

The matter was reported to the Government (May 2013); their reply had not been received (December 2013).

3.7 Loss due to imprudent decision to reduce contracted quantity

Imprudent decision to reduce contracted capacity of Torrent Power Limited resulted in revenue loss of ₹ 18.64 crore.

The Gujarat State Petronet Limited (Company) entered (February 2006) into a Gas Transmission Agreement (GTA) with Torrent Power Limited (TPL) for transporting gas to its SUGEN power plant at Akhakhol, Surat. In the GTA, TPL booked different Capacity Tranches (CTs) as follows:

---

[22] ₹ 4.62 crore (₹ 6.28 crore – ₹ 1.66 crore recovered) for April 2012 *plus* ₹ 69.08 crore (₹ 6.28 crore x 11 months) from May 2012 to March 2013 = ₹ 73.70 crore.

Sl. No.	Name of Capacity Tranche	Volume (in MMBTUD)	Effective period
1	Panna-Mukti-Tapi (PMT CT)	35,003	31 October 2007 to 31 October 2010
2	Indian Oil Corporation Limited (IOCL CT)	64,694	15 January 2010 to 31 December 2024
3	D6 from gas fields of Reliance Industries Limited (D6 CT)	1,18,097	April/December 2009 to 31 March 2014
	Total booking or Maximum Daily Quantity (MDQ) [23]	**2,17,794**	

According to the GTA, capacity charges, commodity charges and unutilised capacity charges were payable by the shipper (*i.e.*, TPL) as per the rates prescribed for each CT. In respect of IOCL CT, capacity charges of ₹ 225 per 1000 SCM[24] on the actual allocated capacity and ₹ 5.10 per MMBTU on the unutilised capacity of the CT up to 90 *per cent* of the MDQ was payable. Before commencement of supply through IOCL CT, TPL requested (January/February 2010) the Company for reduction in MDQ under IOCL CT as under in view of the reduced plant load factor (PLF).

From	To	IOCL CT MDQ (in MMBTU)
21 January 2010	31 March 2010	32,933.04
01 April 2010	30 June 2010	23,523.60
01 July 2010	30 June 2013	14,823.09
01 July 2013	31 December 2013	37,075.23
01 January 2014	31 December 2024	40,763.50

The Company retrospectively reduced (February 2011) the MDQ in the IOCL-CT from 64,694 MMBTUD[25] to 40,982 MMBTUD for the period from January 2010 to October 2010[26] based on PLF of 100 *per cent* of TPL. The TPL not satisfied with this reduction, requested the Company for further reduction in MDQ in view of the uncertain future gas supply and likely operation of its plant at 80 to 90 *per cent* PLF.

The BoD of the Company accepted (July 2012) the above request of TPL for reduction of MDQ under IOCL CT retrospectively from 15 January 2010 and the Company amended (September 2012) the GTA of February 2006 with the reduced MDQ as requested shown in the table below:

From	To	IOCL CT MDQ (in MMBTU)
15 January 2010	31 March 2010	32,933.04
1 April 2010	30 June 2010	23,523.60
1 July 2010	30 June 2013	14,823.09
1 July 2013	31 December 2024	43,110.05[27]

[23] It is the maximum quantity of gas measured in MMBTU which transporter (The word transporter means the company itself viz. GSPL which provides pipelines and other ancillary equipment to enable transportation of gas by the shipper) is obliged to accept from shipper, {The shipper in this case (TPL) is one who uses the facilities of the transporter for transporting gas purchased by him from the entry point to the exit point as his requirements} per day.

[24] Standard Cubic Meter.

[25] Million Metric British Thermal Unit per day.

[26] The PMT CT was to come up for review on that date.

[27] Of the 64,694 MMBTU under IOCL CT, MDQ of 21,584 MMBTU had been transferred to UNOSUGEN GTA with effect from 1 July 2013.

Audit observed (February 2013) that the Company, in February 2011 had taken into account the excess capacities entered into by TPL considering PLF at 100 *per cent* and reduced the IOCL MDQ up to October 2010 accordingly. When the PMT CT expired and was renewed from November 2010, the capacity was reduced to 25,000 MMBTUD, against original capacity of 35,003 MMBTUD. With this action, the total capacity reduced to 1,84,079 MMBTUD, which did not allow TPL to function at 100 *per cent* and in total deviation of the Company's decision of February 2011. The IOCL CT could have increased from 40,982 (as agreed by the Company up to October 2010) to 50,982 MMBTUD from November 2010 to June 2013 thereby meeting the total capacity of 1,94,082 MMBTUD as on 30 October 2010. The decision of the Company in February 2011 did not constitute an event of force majeure but resulted in undue benefit to TPL due to the Company not being able to recover unutilised capacity charges of ₹ 18.64 crore[28].

The Management stated (July 2013) that TPL, is bankable customer and by considering TPL's request for reduction in MDQ, the Company secured the future business opportunities with TPL. The reply of Management is not acceptable as the Company reserved the capacity in its pipeline separately for each shipper for which the shipper has to pay charges as per the provision of GTA. The inconsistent decision by the Company to reduce MDQ from retrospective date without any event of force majeure led to loss of revenue of ₹ 18.64 crore to the Company and an undue benefit to TPL.

The matter was reported to the Government (June 2013); their reply had not been received (December 2013).

GSPC Gas Company Limited

3.8 Loss of revenue due to non revision of gas price

Loss of revenue of ₹ 25.37 crore due to non-revision of selling price of gas as per the terms of the agreement entered with industrial customers.

The GSPC Gas Company Limited (Company) distributes natural gas to industrial, commercial, transportation and residential customers in three regions of Gujarat *i.e.*, South Gujarat, Central Gujarat and Saurashtra. For distribution of the natural gas, the Company entered into (June 2007/April 2011) three gas supply agreements of which two were with Gujarat State Petroleum Corporation Limited[29] (GSPC) and one with GSPC-NIKO[30] (a joint venture of GSPC and Niko Resources Limited, Canada).

[28] Calculated based on the MDQ of 40,982 MMBTUD up to October 2010 and thereafter at 50,982 MMBTUD from November 2010 to 30 June 2013 as against the actual reduction given and applying the unutilised capacity rate of ₹ 5.10 per MMBTU on 90 *per cent* of the difference.

[29] Holding Company I) Gas Sales Contract with GSPC (April 2011) for Daily Contract Quantity (DCQ) of 2.4 MMSCMD based on weighted average price (II) Supply Framework Agreement with GSPC (April 2011) for DCQ of 1.1 MMSCMD based on settlement price of monthly futures contract for natural gas found in international exchange.

[30] Gas Supply Contract with GSPC Niko (June 2007/July 2011) for a DCQ of 2000 SCMD.

The Company's revenue from sale of piped natural gas (PNG) to industrial customers constituted 97 *per cent* of the total revenue earned during 2011-12. The Company had entered into Gas Sales Agreements (GSAs) with various industrial customers for supply of PNG. The terms of GSAs stipulate that any change (increase or decrease) in the purchase price of the gas to the Company shall be passed on to the industrial customers who would be liable to pay the revised price so passed on.

Audit observed (March 2013) that the monthly weighted average price and applicable transmission cost in respect of the gas purchased from GSPC and GSPC NIKO by the Company ranged from ₹ 15.86 per SCM[31] to ₹ 26.52 per SCM during April 2011 to March 2013. The increase in the purchase and transmission cost was, however, not passed on to the industrial customers on monthly basis as provided in the GSAs. Though the weighted average price of gas procured and transported by the Company had increased 17 times[32] and decreased seven times[33], the Company increased its selling price only four times[34] and reduced it two times[35]. By not passing the increase in monthly weighted average procurement price of gas on month to month basis to the industrial customers, the Company delayed its revenue recovery by three to seven months on different occasions and consequently, suffered the loss of ₹ 25.37 crore during the period even after considering the impact of price reductions.

The Government stated (July 2013) that the cost of gas procurement includes cost of gas purchase and cost of gas transmission[36] and the reduction in transmission tariff which was announced in February 2013 came into effect from July 2012. Further, it was stated that in September 2012 and May 2013 certain credits for gas prices were also received from the gas suppliers which if considered by Audit would wipe out the loss pointed out.

The loss of revenue has been worked out in Audit after taking into consideration the reduction in gas transmission price. As far as the credit and debit notes are concerned, the Company has considered the same only for seven out of 24 months and not made any mention of the adjustments, if any, received during the remaining period. Further, the impact of debit and credit notes received in September 2012 and May 2013 can be passed on to consumers only in subsequent months by suitable adjustment to selling price. Till such time the amount of ₹ 25.37 crore is recovered, the Company will sustain loss.

31 Standard Cubic Metre.
32 April 2011 to January 2012 (excluding August 2011) and April 2012 to June 2012, October 2012 to March 2013.
33 August 2011, February 2012 to March 2012 and July 2012 to September 2012.
34 In July 2011, November 2011, June 2012, January 2013.
35 In September 2012 and October 2012.
36 Gas Transmission cost is an element in the cost of gas procurement which has been considered by Audit as per reply of the Management.

Statutory Corporations

Gujarat State Road Transport Corporation

3.9 Loss of revenue

Rejection of an eligible bidder in award of contract without proper justification and authority led to loss of ₹ 1.34 crore.

The Gujarat State Road Transport Corporation (Corporation) invited (June 2010) tenders to award the contract for transportation of parcel, courier and allied services through its buses to eligible bidders in return for agreed revenue in monthly installments. The upset (reserve) price for the tender was fixed at ₹ 20.10 crore[37] which was to be received for a three year period. Of the two firms who responded to the tender, only one firm satisfied the turnover eligibility criteria of ₹ three crore per annum. Hence, the tender was cancelled without opening of financial bids.

The Corporation reduced the turnover criterion to ₹ two crore per annum and invited tender (July 2010) for the second time. The same two firms, who had responded to the earlier tender, submitted their bids. Though, both the firms were now technically eligible, the tender was cancelled as the firms had quoted below the upset price of ₹ 20.10 crore.

While inviting (September 2010) the tender for third time, the tender condition was further relaxed by fixing the upset price at ₹ 20.14 crore for five years instead of three years without altering the turnover criteria. Five firms quoted, from which, one firm viz. M/s. Ashapura Trade and Transport Company Limited, Ahmedabad (firm AA) was found ineligible and out of the remaining four eligible firms, one firm viz. M/s. Ashapura Transport Company Limited, Amreli (firm A) quoted ₹ 20.42 crore, which was above the upset price fixed. The tender was again cancelled without approval of the Board of Directors (BoD) of the Corporation on the plea that the price quoted was marginally higher than the upset price and that a non-participating party had shown interest in the matter with the possibility of higher fees to the Corporation.

The turnover criterion was further lowered to ₹ five crore in three years and tender was invited (November 2010) for the fourth time. This time again, five firms (Four of whom were the same as in the previous tenders) quoted their price. Of this, four firms were declared eligible. Only firm AA quoted ₹ 20.51 crore while all others quoted below the upset price. The Chairman, however, did not approve the proposal for award of contract and directed that retendering should be done by prominently showing in the advertisement that the purpose of the contract was for parcel service so that it would attract offers with substantially high value.

In the tender invited (March 2011) for the fifth time with same terms and conditions of fourth tender, only three firms responded. After obtaining the

---

[37] Calculated taking the previous year's upset price as basis and escalating it by 30 *per cent* and adding the upset value of office and godown and depot charges.

approval of the Board of Directors (April 2011), the work was awarded (May 2011) to the highest bidder, firm AA at the price of ₹ 22.57 crore and the execution of the contract commenced from July 2011.

As per General Standing Orders (GSO) 1030 of 1995 issued by the Corporation, all powers of tender finalisation in respect of revenue contracts are vested with the BoD. However, in the present case while inviting/re-inviting tenders (June 2010 to March 2011), the conditions regarding turnover and upset price were changed on the pretext of encouraging competition which was irregular as it was without the approval of the BoD. As per the third tender, though firm A was eligible in all respects, it was not awarded the contract and also the BoD was not informed of this action.

Audit observed (December 2012) that, had the offer of firm A been accepted in September 2010 at ₹ 20.42 crore for five years and the contract commenced from December 2010, the Corporation could have avoided carrying out the work departmentally during December 2010 to June 2011 at a meagre revenue of ₹ 27.30 lakh. Notwithstanding the higher price of ₹ 22.57 crore offered in the fifth tender by firm AA, the total earnings to the Corporation for the period December 2010 to June 2016 will be higher by ₹ 1.34 crore[38] had the contract been awarded to firm A in December 2010 as given in ***Annexure* 11**.

Thus, the Corporation exceeded its delegated authority in changing tender conditions and rejecting the eligible offer of firm A in the third tender and thereby lost revenue of ₹ 1.34 crore.

The Government (August 2013) reiterated the reasons for retendering and justified its action by stating that by re-inviting the tenders for the fifth time, it earned more revenue to the tune of ₹ 24.05 lakh instead of incurring loss of ₹ 1.34 crore as pointed out by Audit.

The reply was not acceptable. The Corporation while calculating the interest that will be earned under the two different scenarios pointed out by Audit had considered the revenue period wrongly resulting in the loss of revenue of ₹ 1.34 crore. Further, the constant change of the terms and conditions of the tender without the approval of the competent authority showed that there was no fair play, unfair and opaque conditions in the tendering process thus leading to a non –level playing field.

---

[38] Loss of revenue= Anticipated earnings (considering interest at the Corporation's borrowing rate of 12 *per cent* per annum on the annual cash inflow under the contract) from December 2010 to June 2016 if contract awarded to Firm A (₹ 33.00 crore) *less* actual earnings from December 2010 to June 2011 and contractual earnings from Firm AA from July 2011 to June 2016 (₹ 31.66 crore) = ₹ 1.34 crore**.**

3.10 Loss of interest

Non insertion of a suitable clause in the lease deed for charging interest on increased valuation of land led to loss of interest of ₹ 89.98 lakh.

The Gujarat State Road Transport Corporation (Corporation) had leased land at 10 different locations to five Gas Distribution Companies[39] for lease period ranging from 25 to 90 years for setting up CNG stations. According to the terms of the lease agreement, the CNG stations were either dedicated for the buses of the Corporation or were common for all vehicles. If CNG stations were dedicated for the Corporation, no premium was recovered for the said land but a discount of ₹ one per Kilogram for gas filled by the Corporation was availed from the Gas Companies. If the CNG stations were common for use of all vehicles, a premium based on the market value/City Town Planning (CTP) value of land was recovered by the Corporation from the Gas Companies at the time of handing over possession of the land.

Audit observed (April 2013) that in case of two CNG stations; one set up by Adani Energy Limited (AEL) at Chandola, Ahmedabad and the other set up by Gujarat Gas Company Limited (GGCL) at Lambe Hanuman, Surat; adhoc premium was recovered at the time of handing over possession to the allottees and the differential amount was recovered after valuation by CTP but without interest for the intervening period as tabulated and discussed below:

Name of the Company	Location of the station and area	Month of Board approval	Date of land allotment	Adhoc value (in ₹)	Date of adhoc payment	Final price (in ₹)	Date of final payment
Adani Energy Limited	Chandola, Ahmedabad 1,500 Sqmtrs	January/ May 2006	26 April 2006	5,800 per Sqmtr	13 March 2006	11,445 per Sqmtr	17 July 2009
Gujarat Gas Company Limited	Lambe Hanuman, Surat 1,000 Sqmtrs	January 2007	13 March 2007	15,000 per Sqmtr	28 February 2007	36,450 per Sqmtr	14 April 2010

In case of both AEL and GGCL, the Corporation handed over the possession of land based on an adhoc premium of ₹ 87 lakh (₹ 5,800 per Sqmtr x 1,500 Sqmtrs) and ₹ 1.50 crore (₹ 15,000 per Sqmtr x 1,000 Sqmtrs) in April 2006 and March 2007 respectively. It was observed that though the Board resolution approving the lease and the lease agreement mentioned about the recovery of differential premium upon receipt of CTP valuation, no provision existed for recovery of interest on the differential amount from the date of handing over the possession till the date of final payment.

The differential amount of ₹ 84.68 lakh[40] in respect of AEL was recovered in July 2009 and ₹ 2.15 crore[41] in respect of GGCL was recovered in March 2010. The Corporation recovered interest of only ₹ 32.37 lakh[42] for the delay in payment from the date of intimation of differential premium instead of

[39] Sabarmati Gas Company Limited, GSPC Gas Company Limited, Adani Energy Limited, GAIL India Limited and Gujarat Gas Company Limited.

[40] ₹ 5645/Sq.mtr. x 1500 Sq,mtr = ₹ 84.68 lakh.

[41] (₹ 36,450-₹ 15,000) x 1,000 Sq. mtr = ₹ 2.15 crore.

[42] GGCL ₹ 26.32 lakh and AEL ₹ 6.05 lakh at the rate of 9 *per cent.*

interest of ₹ 1.22 crore[43] from the date of handing over possession. This result in short recovery of interest of ₹ 89.98 lakh[44].

Further, Section 28 of the Land Acquisition Act, 1894 stipulates for the payment of interest on enhanced compensation of land at the rate of nine *per cent* per annum for a period of one year from the date of handing over of possession of land and thereafter at the rate of 15 *per cent* per annum till the increased amount is deposited by the allottee. The State Government has an established practice of recovering the interest from the allottees[45] of Government land for the period from the date of handing over possession to the date of depositing the allotment price by them. By not following this practice the Corporation had lost ₹ 89.98 lakh.

The Government accepted (August 2013) the observation and the Management issued (July 2013) notice to both the Gas Companies for recovery of differential amount of interest from the date of handing over of possession of land till the date of final payment.

It is recommended that in future the Corporation should insert a suitable clause in the lease agreement clearly stating that the interest on the differential amount would be charged from the date of handing over possession of the land till the date of final payment by the allottee to protect the financial interest of the Corporation.

3.11 Loss of discount due to delay in commissioning of CNG stations

Loss of ₹ 51.02 lakh due to the delay in commissioning of CNG stations at Vapi and Halol.

The Gujarat State Road Transport Corporation (Corporation) had leased land at 10 different locations to five Gas Distribution Companies[46] for lease period ranging from 25 to 90 years for setting up CNG stations. Of the above, the Corporation allotted (August 2008) on lease 1,740 square metres (Sqmtrs) of land at Halol and 1,200 Sqmtrs of land at Vapi bus depots to GSPC Gas Company Limited (lessee) for setting up CNG stations for a 35 years lease period. In both the sites an area of 400 Sqmtrs was to be used for setting up a dedicated CNG station for the Corporation’s buses where ₹ one per Kilogram discount on the CNG prices was to be given to the Corporation. The remaining land of 1,340 Sqmtrs in Halol and 800 Sqmtrs in Vapi could be utilised by lessee for setting up CNG stations for use of private vehicles. The Corporation’s Board of Directors while approving (August 2008) the allotment considered the fact that the discount of ₹ one per Kilogram in the

[43] GGCL ₹ 86.47 lakh and AEL ₹ 35.88 lakh

[44] Calculated @ 9 *per cent* for the first 365 days and thereafter @15 *per cent* from the date of handing over possession till date of payment of differential amount) *less* amount recovered.

[45] To facilitate the State Power Sector Companies to start their project activities advance possession of government lands are given to them before the completion of due process in the determination of valuation of land by the competent authority.

[46] Sabarmati Gas Company Limited, GSPC Gas Company Limited, Adani Energy Limited, GAIL India Limited and Gujarat Gas Company Limited.

two dedicated filling stations would result in a benefit to the Corporation of ₹ 12.78 lakh per station per annum.

The allotment was made on the basis of market value of the land adjusted[47] for the land to be set aside for the dedicated CNG station. Accordingly, the Corporation received (October 2008) ₹ 1.34 crore for Halol (₹ 7,701 x 1,740 Sqmtrs) and ₹ 1.20 crore for Vapi (₹ 10,000 x 1,200 Sqmtrs). The land in Vapi and Halol was handed over to the lessee on 24 March 2009 and 26 March 2009 respectively.

Audit observed (February 2013) that the CNG station (including the dedicated station) in Vapi started from October 2010 after a period of 18 months from the date of handing over of possession of land. Similarly, in Halol, the CNG station started from January 2011 after a period of 21 months from the date of handing over of possession of land. Though the lease deed did not fix any time limit for completion of the construction of the CNG station, the task force meeting held (May 2006) under the Chairmanship of the Chief Secretary, Government of Gujarat, had laid down a period of 90 days for completion of CNG stations. A period of three months for construction of CNG station was stipulated in other orders placed by the lessor (the Corporation) for similar work. Considering an allowable period of three months for the commissioning of the CNG stations from the date of handing over possession of land, there was a delay of 15 months in case of Vapi and 18 months in case of Halol during which the Corporation lost the benefit of earning a discount of ₹ one per kilogram. As per the records of Godhra division of the Corporation, 45.60 lakh kilogram of CNG was filled in Halol depot during July 2009 to January 2011 and 5.42 lakh kilogram of CNG was filled in Vapi depot during July 2009 to October 2010 from private CNG stations without discount.

The Government attributed (August 2013) the delay to the time taken by the lessee in obtaining permission for construction from concerned authorities and the time taken in getting its name registered in the revenue records. The justification given by the Corporation was not acceptable as it was the responsibility of the lessee to obtain the requisite permission and registration. Further, the possession of land was handed over to the lessee in March 2009 and hence, there was sufficient time of three months for the lessee to invite tenders before placement of orders for construction of CNG stations. In similar instances, two lessees *viz*., Gujarat Gas Company Limited and Adani Gas Company Limited could set up the CNG stations on the land allotted by the Corporation within three months and five months of handing over of possession of land respectively. Had the Corporation stipulated the time limit for completion of construction of the CNG stations in the lease agreement, the delay could have been avoided and the decision of the task force meeting would also have been adhered to.

Thus, non-stipulation of any time limit for setting up the CNG stations by the lessee and the absence of any clause for the recovery of penalty in the event of

[47] The market value of land at Halol was ₹ 10,000 per Sqmtr and at Vapi was ₹ 15,000 per Sqmtr. These were adjusted to ₹ 7,701 per Sqmtr and ₹ 10,000 per Sqmtr considering the dedicated CNG station to be set up in 400 Sqmtrs of land in both the places for which no cost was to be recovered.

non-adherence to the time limit in the lease deed resulted in loss of ₹ 51.02 lakh (51,02,153 kilograms x ₹ one per kilogram).

Gujarat Industrial Development Corporation

3.12 Undue benefit to a firm

Allowing a firm to use a plot transferred for industrial activity for commercial purpose led to an undue benefit of ₹ 5.87 crore.

The Gujarat Industrial Development Corporation (Corporation) allots plots/sheds on lease basis for 99 years to allottees for taking up industrial/commercial activities in the Industrial Estates and recovers Allotment Price (AP) from them. The rate of allotment per square meter (Sqmtr) applicable on the plots allotted for commercial activity was always higher than the AP of the plots allotted for industrial activity. The Corporation had declared (February 1995) a list of 56 activities as ‘Commercial activities’ wherein the higher rates would be applicable. The policy of the Corporation also provided for transfer of industrial plots under utilisation to another person/firm upon payment of prescribed transfer fees and also conversion of industrial plots to commercial plots subject to fulfillment of conditions and payment of higher rate. However, there was no policy of verification of actual activity being carried out by the allottee.

The Corporation allotted (July 1981) six sheds totaling 10,875 Sqmtrs to firm N for manufacture of chemicals in Vapi Industrial Estate. The firm N applied (April 2010) for transfer of the above sheds in favour of firm V for undertaking industrial activity *i.e.* Machinery Engineering Works. The firm N paid (April 2010) transfer fees of ₹ 13.05 lakh at the time of application based on the rates applicable at that time. The Corporation approved (June 2010) the transfer of sheds with effect from 02 June 2010. The Corporation also took an undertaking from firm V that the transferred sheds would not be utilised for any commercial activity.

Audit observed (October 2012) that firm V was engaged in the business of transportation of goods, provider of logistics services such as freight transportation needs, cargo services, warehousing and inventory management solutions. On being enquired during the course of Audit, the Executive Engineer of Vapi Industrial Estate verified and certified (September 2012) that the present occupant (firm V) of the above sheds was engaged in transport business.

It was further observed that as per Corporation’s circular dated 20 April 2005, any allottee who wishes to change the object of his allotment from industrial to commercial can do so only by taking prior approval of the Corporation and paying three times the allotment price applicable for industrial sheds in that estate. The circular was kept in abeyance from 24 June 2010 to 21 August 2012 after which it was again made effective (*vide* circular dated 21 August 2012) for applications under process. The firm V without taking any such approval or paying the increased allotment price was utilising the above sheds for commercial purpose. At the time of transfer of the sheds in June 2010, the policy of the Corporation for conversion of industrial sheds to commercial sheds by paying three times the allotment price was in effect. Thus, by not verifying the activities undertaken by the firm V and thereby not insisting on payment of conversion charges applicable from industrial to commercial use, the Corporation passed an undue benefit of ₹ 5.87 crore[48] to firm V and lost interest of ₹ 1.36 crore[49].

The Management in its reply stated (August 2013) that the sheds were transferred for industrial activity to firm V and the rate was charged accordingly and firm V had violated the purpose of allotment without the permission of the Corporation. As on 3 August 2013, the Corporation had taken a "*Site Panchnamu*[50]" and issued a show cause notice to the firm V for cancellation of the license agreement. Also, the Corporation's Circular of August 2012 regarding conversion of an industrial plot to a commercial plot by charging three times the allotment price, was applicable only to those cases which were under process when the circular of 20 April 2005 was kept in abeyance from 24 June 2010 and the Corporation, thus, did not incur any financial loss.

However, the Corporation issued (August 2013) notice in this case only after the case was reported by the Audit. At the time of transfer, the industrial sheds could have been converted into commercial sheds by paying three times the allotment price, which was not done. The corporation's contention that the Corporation's circular of August 2012 was applicable only to applications in pipeline when the conversion circular was kept in abeyance from 24 June 2010 was not acceptable as in this case the transfer was made prior to 24 June 2010.

It is recommended that the Corporation should provide for periodic field/ physical inspection of the allottees. The matter was reported to the Government (July 2013); their reply had not been received (December 2013).

3.13 Unfruitful investment

Acquisition of encumbered land for development of industrial estate in Dahej led to unfruitful investment of ₹ 4.50 crore.

The Gujarat Industrial Development Corporation (Corporation) obtained the approval (April 2007) of the State Government for acquisition of Government and private land aggregating to 4,220 hectares (ha) in six villages of Vagra taluka under Bharuch District for the expansion of industrial estate in Dahej Phase II (the estate). The State Government issued (July 2009) the declaration under Section 6 of the Land Acquisition Act, 1894 that the land was required for public purpose.

[48] 10,875 Sqmtrs x ₹ 5,400 per Sqmtr (three times of industrial rate of ₹ 1,800 per Sqmtr).
[49] Interest @ 7.75 per annum (as per Inter Corporate Deposit Rate of Gujarat State Financial Services Limited) from June 2010 to June 2013 *i.e.* 3 years ₹ 5.87 crore *7.75 *per cent* *3 = ₹1.36 crore.
[50] Site verification report

ONGC[51] had been engaged in the exploration activities in the area since the grant of Petroleum Exploration License (PEL) by Government of India (GoI) in April 1994. Further, ONGC had Petroleum Mining Lease (PML) on the stretch of land beneath which it also had laid pipelines for flow of gas/ oil. Prior to the declaration made under Section 6, ONGC brought to the notice of the Corporation (March/June 2009) that in some pockets of the land identified for setting up of the estate, ONGC had 46 producing wells[52]. Further, ONGC informed (October 2009) the Corporation that an area of 1.7 ha surrounding each well[53] which were scattered throughout the land were required to be kept open (*i.e.* cumulative area of 83 ha as per the Corporation's own estimate). The Corporation was aware of the complications involved in the acquisition for which a joint meeting was held (November 2009) with ONGC to sort it out amicably.

However, the Corporation, went ahead with the acquisition of 3,107 ha land from private land owners at the rate of ₹ 17.50 lakh per ha and also made the payments to the land owners between September 2008 and January 2011. Further, ONGC did not agree (March 2010) to the Corporation's suggestion for realigning of underground pipelines to facilitate development of the estate on the plea that such realignment of pipelines would not be possible due to technical reasons and also expressed its opinion that allowing major industries in the mining lease area might hamper their future exploration activities. The Corporation, however, allotted 1,710.56 ha of land to various industrial allottees up to February 2012.

Audit observed (August 2011) that without sorting out this issue with ONGC of its right on the land, the Corporation acquired 102.50 ha of land which included 25.71 ha of land where it had PEL/PML for exploration activities. Out of 25.71 ha of land, ONGC had permanently acquired 6.94 ha of land on which the Corporation again paid ₹ 1.21 crore (October 2008 to January 2011) to farmers which led to double payment. For the remaining 18.77 ha of land which was encumbered by Right of Use (ROU) of ONGC and on which ONGC was regularly paying annual rent, the Corporation paid ₹ 3.29 crore. Thus, the Corporation paid ₹ 4.50 crore for 25.71 ha of land already in the possession of ONGC through ownership or ROU.

Further, the ONGC's requirement of leaving 1.7 ha land surrounding each well will adversely affect the development of the estate in the area. An instance was noticed in which the Corporation allotted (December 2009) plots of 223.32 ha to an allottee[54] for ₹ 129.65 crore. But the allottee deducted (July 2010) ₹ 13.93 crore for the area of 24 ha on the plea that the underground gas pipelines of ONGC was passing through the plot area. However, the overall implication of the acquisition of above encumbered land will be known only when the allottees start making payments by excluding land having wells and pipelines. Thus, the Corporation's decision to purchase

[51] Oil and Natural Gas Corporation Limited.

[52] Wells used to retrieve petroleum or gas from underground reservoirs.

[53] Towards the provisions for approach road to well/collection station and passage on the land along the route of underground gas/oil pipeline.

[54] M/s. Adani Power Dahej Limited, Ahmedabad (plots no D II/2 and D II/5).

land in an area where ONGC had mining and exploration license, resulted in unfruitful investment of ₹ 4.50 crore.

The Government stated (August 2013) that the Corporation was aware of the PEL and PML granted to ONGC when the acquisition was planned and the No Objection Certificate for acquisition of land had been applied to ONGC in March 2006 itself. However, the same was not granted by ONGC in spite of series of correspondence. Meanwhile, as the Government of India policy for Petroleum Chemical and Petrochemical Investment region (PCPIR) created immediate need for land, the acquisition was done in July 2009. Further, the Corporation did not acquire the land which was already acquired by ONGC for its wells. In respect of pipelines, as the mode of acquisition by ONGC was not clear from revenue records, the same was acquired by the Corporation. Notwithstanding the above, 70 *per cent* of the total acquired land would be allocable which is reasonable for development of the estate.

The reply was not acceptable since the Corporation could have avoided the acquisition of encumbered land. Further, the above observation of Audit is restricted only to those survey numbers of ONGC's wells which are overlapping as per Corporation's acquisition records. The total area that cannot be developed will be much higher if the area occupied by the pipelines of ONGC is considered and the impact of the same will be known only when the allottees will demand the refund.

General

3.14 Follow-up action on Audit Reports

Outstanding action taken notes

3.14.1 Reports of the Comptroller and Auditor General of India represent the culmination of the process of scrutiny starting with initial inspection of accounts and records maintained by various public sector undertakings (PSUs). It is, therefore, necessary that they elicit appropriate and timely response from the Executive.

As per Rule 7 of the Rules of Procedure (Internal Working) of Committee on Public Undertakings (COPU), Gujarat Legislative Assembly, all the administrative departments of PSUs should submit, within three months of their presentation to the Legislature, explanatory notes indicating the corrective/ remedial action taken or proposed to be taken on paragraphs and performance audits included in the Audit Reports.

Though, the Audit Reports for the year 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 were presented to the State Legislature on 28 July 2009, 30 March 2010, 30 March 2011, 30 March 2012 and 02 April 2013 respectively, eight departments, which were commented upon, did not submit explanatory notes on 18 out of 93 paragraphs/ performance audits as on 30 September 2013 as indicated below:

Year of the Audit Report (Commercial/PSUs)	Total Paragraphs/ Performance audits in the Audit Report	Number of Paragraphs/Performance audits for which explanatory notes were not received
2007-08	21	3
2008-09	25	3
2009-10	18	2
2010-11	17	2
2011-12	12	8
Total	**93**	**18**

Department-wise analysis is given in ***Annexure* 12.**

Compliance to Reports of Committee on Public Undertakings outstanding

3.14.2 The COPU of 12th Assembly had presented its First, Fourteenth Seventeenth and Eighteenth Reports to the State Legislature on 19 February 2009, 29 March 2011, 29 March 2012 and 19 July 2012 respectively. The Reports in all contained 55 recommendations on 43 paragraphs and eight performance audits related to 12 PSUs falling under eight administrative departments included in the Audit Report for the years 1993-94 to 2006-07 (Commercial), Government of Gujarat.

As per Rule 32 of the Rules of Procedure (Internal Working) of COPU, Gujarat Legislative Assembly, the administrative departments of PSUs should submit the Action Taken Notes (ATNs) on the recommendations within a period of three months from the date of its presentation. ATNs on eleven recommendations pertaining to four PSUs[55] falling under two[56] Administrative Departments had not been received for vetting by Accountant General as on 30 September 2013.

Response to Inspection Reports, Draft Paragraphs and Performance Audits

3.14.3 The observations noticed during audit and not settled on the spot are communicated to the heads of the respective PSUs and the concerned departments of the Government of Gujarat 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 four weeks.

Review of Inspection Reports issued up to March 2013 pertaining to 54 PSUs revealed that 1,499 paragraphs relating to 410 Inspection Reports remained outstanding as on 30 September 2013. Department-wise break-up of Inspection Reports and audit observations outstanding as on 30 September 2013 is given in ***Annexure* 13.** Similarly, draft paragraphs and performance audits on the working of PSUs are forwarded to the Principal Secretary/ Secretary of the Administrative Department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of six weeks.

[55] Gujarat State Financial Corporation, Tourism Corporation of Gujarat Limited, Gujarat Industrial Investment Corporation Limited and Gujarat Women Economic Development Corporation Limited.
[56] Industries and Mines Department and Women and Child Development Department.

Audit noticed that five draft paragraphs forwarded to the various departments during May to July 2013 as detailed in ***Annexure* 14** had not been replied to so far (December 2013).

It is recommended that the Government should ensure that (a) procedure exists for action against the officials who fail to send replies to inspection reports/draft paragraphs/ performance audits and ATNs to the recommendations of COPU as per the prescribed time schedule; (b) action to recover loss/ outstanding advances/ overpayment is taken within the prescribed time; and (c) the system of responding to audit observations is strengthened.

AHMEDABAD **(H.K. DHARMADARSHI)**
The Accountant General
(Economic and Revenue Sector Audit), Gujarat

Countersigned

NEW DELHI **(SHASHI KANT SHARMA)**
The Comptroller and Auditor General of India