CHAPTER IV: MINISTRY OF COMMERCE AND INDUSTRY

ECGC Limited

4.1 Blocking of funds on account of failure to implement IT Solution System

Failure of the Company to implement its IT Solution System resulted in blocking of funds of ₹42.67 crore on account of advance payment for software licenses and part payment for unutilised hardware with expired warranties and loss of interest of ₹ 3.56 crore, besides the burden of maintaining the existing system and ending up with no upgradation after lapse of more than four years since the scheduled Go-live date.

ECGC (Company), entered (June 2010) into an agreement for implementation of an integrated IT solution 'Online Credit Insurance System (OCIS)' with HCL Technologies Limited (HCL) at a cost of ₹ 124.41 crore, to be paid over a period of eight years. HCL acting as the System Integrator was responsible for providing an Integrated IT Solution for implementing ECGC-OCIS comprising of development and/or integration of application software, co-hosting of Primary Data Centre and Disaster Recovery Centre and Maintenance and operation of the setup for a period of eight years from the Go-live date being July 2011. The mile stones as per the Agreement were not achieved and there was a delay of 4 years and 6 months as of December 2015. Board instructed (February 2016) to legally examine the termination of contract with HCL and the same was under progress (February 2016). Total amount of ₹ 42.67 crore (₹ 25.96 crore + ₹ 16.71 crore) was paid to HCL under this contract.

Audit observed the following in this regard:

- The System Requirement Specifications (SRS) documents that were prepared by HCL in consultation with the Company did not capture the process flow/business rules in totality. Although the Board considered the significance of SRS and emphasized the need to examine the SRS in great detail before it was finalized and frozen in December 2010, during User Acceptance Testing (UAT) stage in 2014, it was realized that the process description in SRS documents were elementary and had to be reworked. This resulted in time overrun.

- HCL as System Integrator entered into (October 2011) tripartite agreement with SFS, a Company in Turkey, for granting software licenses for the core insurance software. Although the project implementation depended heavily on software development and delivery by SFS, there were numerous differences of opinions and disagreements between HCL and SFS. As per the tripartite agreement the supplier of licenses retained the property rights in source code and object code and in the absence of terms for transfer of source code in the agreement, HCL, could not exercise any control over the timely delivery of software and licenses for Company's utilisation. Ultimately, the agreement with SFS was decided to be terminated (February 2015).

- Based on the initial project plan of going live in July 2011, HCL procured the entire data centre hardware which was installed in 2010-11 and as per the terms of contract, 70 *per cent* of the payment being ₹ 16.71 crore was released against the delivery of the hardware. The procurement of hardware was not synchronised with the progress of the project and when the hardware was delivered, the SRS documents were still under preparation. The hardware was not utilised by the Company as the software was not yet ready and now as the agreement with HCL was proposed to be terminated (February 2016), the warranty for the entire data centre hardware had already expired. The Company informed that it would explore the possibility of alternate use of the hardware.

- Though the Agreement with HCL provided for payment after successful completion of installation and commissioning of various components of OCIS and successful completion of UAT and also explicitly prohibited payment of advance, the Company released (August 2013/March 2014) ₹ 25.96 crore against bank guarantees to HCL as advance towards system software licenses. This was despite repeated failure of HCL in meeting the completion schedule of the project. The Board decided (February 2016) to invoke the bank guarantees and recover the advance paid to HCL. Thus, the release of payment as advance without achieving respective mile stones resulted in blocking of ₹ 25.96 crore.

- Company decided (February 2015) to terminate the contract with SFS and Board accepted (February 2015) HCL's proposal to complete the project on the basis of bespoke software[1] developer, within 15 months of the 'new start date' without any additional cost.HCL, however, did not accept the go-ahead given by ECGC (April 2015) and informed (December 2015) that it would be unable to adhere to some clauses of the contract. Board instructed (February 2016) to examine the termination of the contract with HCL and this was under progress (February 2016).

- Despite abnormal delays in the project, the Company did not issue any notice indicating levy of liquidated damages to the extent of ₹ 6.22 crore on HCL as per the terms of contract. The acceptance of a 'new start date' without any amendments/addendum to the Master Service Agreement (MSA) may impact the ability of the Company to protect its financial rights and claim for compensation for the delays from HCL as per the terms of the agreement. The Company also did not invoke the specific clause relating to material breach of the contract with reference to failure in adhering to the time frame and enforce the Performance Guarantee of ₹12.44 crore. Board decided (February 2016) to invoke the Performance Guarantee after legal advice on termination of contract.

The Management stated (November/December 2015) that:

[1] ***Custom software also known as bespoke software or tailor-made software.***

(i) SRS was a technical document to be prepared by HCL, in consultation with ECGC and that it had provided all information including circulars, office orders, functional requirement specification and other documents. Further, it was stated that SRS was prepared after due analysis of the shared documents and interviews with ECGC domain expert and HCL had not shared the inputs provided by ECGC to its developers and Third Party Developers in its entirety.

(ii) The advance payment was released to ensure some fund flow to the developer without which the interest to complete the project would have waned.

The reply of the Company was not tenable as HCL had raised the issue with regard to the quality of the SRS prepared as a counter to the 6000 feedbacks given by ECGC during UAT and the SRS documents were strengthened (2014) jointly by both the parties. Company could not ensure completion of project either through the third party vendor of core insurance software, SFS or directly through HCL by the Bespoke application method. The release of advance payments to HCL in violation of the terms of Master Agreement also failed to ensure successful completion of project. Further, Company also failed to issue notice for liquidated damages or invoke Performance Guarantee while granting 11 extensions to HCL upto April 2015.

Thus, the Company invested substantial resources in terms of money and manpower for the project development but even after a delay of more than four years since the agreed Go-live date, it failed to upgrade its systems and continues to bear the burden of maintaining the existing system. With the cancellation of the project, the Company has ended up with blocked funds amounting to ₹ 42.67 crores (₹ 16.71 crores + ₹ 25.96 crore) with loss of interest to the extent of ₹ 3.56 crore (on the advance of ₹ 25.96 crore paid in violation of terms of contract, for the period upto February 2016).

The matter was reported to the Ministry in January 2016; their reply was awaited (March 2016).