

CHAPTER-III
COMPLIANCE
AUDIT OBSERVATIONS

Chapter-III Compliance Audit Observations

Important audit findings emerging from test check of transactions of the State Government companies/ Statutory corporations are included in this Chapter.

Government companies

South Bihar Power Distribution Company Limited

3.1 Unauthorised use of electricity

Failure to adhere to the tariff provisions and deficient Internal Control System prevalent in the Company resulted in short billing of consumers under a lower category. Besides, it also resulted in a loss of revenue of ₹ 2.73 crore.

As per the Tariff Orders issued by the Bihar Electricity Regulatory Commission (BERC) from time to time¹, the Domestic Service (DS)-III is applicable to residential colonies and multi storied residential complexes taking load in bulk at a single point, with a minimum load of 2 KW per flat/house subject to a maximum of load upto 60 KW (revised to 70 KW with effect from April 2012). The loads up to 70 KW come under Low Tension Services (LTS) tariff category and loads above 70 KW come under High Tension Services (HTS)-I category. Further, Section 135 (1) (a) of the Electricity Act, 2003 (Act) read with clause 11.1 (b) (i) and 11.2.3 (b) (i) of the Bihar Electricity Supply Code, 2007 (ESC) as amended in 2010, *inter alia*, provides that the assessment of Energy Charges in the case of unauthorised use of electricity shall be worked out on the basis of formulae, $U = L \times F \times D \times H^2$. Further, as per clause 9.15 of the ESC, the meter reader is required to report monthly about all the defective meters to the company officials for its early replacement.

Scrutiny (June 2015 to November 2015) of the records of South Bihar Power Distribution Company Limited (Company) revealed that:

- in Electricity Supply Division (ESD), Dehri-on-Sone, two dedicated transformers of 200 KVA each were installed (prior to 2011) in Bihar Military Police (BMP) campus, Dehri-on-Sone, against which only six electric connections (one DS-II and five NDS-II) of 1 KW each were released in the name of the Commandant, BMP for the campus. A total of 115 residential quarters in the BMP campus were unauthorisedly

¹ Tariff order 2010-11 (effective from December 2010); Tariff order 2011-12 (effective from May 2011); Tariff order 2012-13 (effective from April 2012); Tariff order 2013-14 (effective from April 2013); Tariff order 2014-15 (effective from April 2014) and Tariff order 2015-16 (effective from April 2015).

² $U = L \times F \times D \times H$; where U= Quantum of Energy assessed in Units, L= Connected load in KW found at the time of inspection/raid at site, F= Load factor as per the applicable category of service, D= Number of days during which unauthorised use of Electricity has taken place. If days were not ascertained then such period shall be limited to 12 months, i.e., 365 days and H= Number of average hours of supply made available per day.

availing electric supply since 2011 without taking valid electricity connections. Since the connected load of these 115 residential quarters worked out to be 256 KVA (i.e. $2 \text{ KW} \times 115 \times 1.11$), it was incumbent on the Company to bill as per the HTS-I tariff category. However, the Company failed to do so which resulted in loss of revenue of ₹ 1.98 crore to the Company during the period January 2011 to December 2015.

- in ESD, Bhabhua, Divisional Electrical Engineer, Kudra (Consumer No.: BH 28919) was billed at a load of 6 KW for the period January 2011 to February 2014, and thereafter at a load of 51 KW, in respect of its 50 residential quarters. Since the minimum aggregate load of these residential quarters, as per the aforementioned provisions worked out to be 112 KVA (i.e. $2 \text{ KW} \times 50 \times 1.11$), the said consumer was required to be billed under HTS-I category. Failure of the Company to do so resulted in a revenue loss of ₹ 54.92 lakh during the period January 2011 to June 2015.
- further, in respect of ESD, Bhabhua, Divisional Electrical Engineer, Mohania (Consumer No.: BH 39164) was billed at a load of 75 KW under NDS-II category in respect of its 67 residential quarters and the pump-set of 20 Horse Power (HP). However, the minimum aggregate load of the said consumer, as per the aforementioned provisions worked out to be 166 KVA³. As such, the said consumer was required to be billed under HTS-I category. However, the Company failed to do so and as a result suffered a revenue loss of ₹ 20.57 lakh during the period January 2011 to June 2015.

It can thus be concluded that the Internal Control System prevalent in the Company was deficient as short billing of consumers under a lower category could not be detected through their routine inspection or checks. Besides, it also resulted in a loss of revenue of ₹ 2.73 crore to the Company.

The Company stated (August 2016) that in respect of BMP, Dehri-on-Sone, an amount of ₹ 1.91 crore together with the punitive charges of ₹ 1.84 crore has been charged on the said consumer and the connection in the entire BMP campus has been converted into two HTS-I connections with a load of 122 KVA and 176 KVA.

The reply of the Company was not tenable in view of recovery being remote since Rule 10.18 of the ESC, *inter alia*, states that no recovery shall be made from the consumer after a period of two years, unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied by the licensee, whereas in this case this had not been done.

The matter was reported (February 2016) to the Government, reply is still awaited (November 2016).

³ Actual Load = $(67 \text{ quarters} \times 2 \text{ KW} \times 1.11) + 17 \text{ KVA load for 20 HP Pump-station}$.

3.2 Undue benefit to the Consumers

Failure to adhere to the provisions of the Electricity Act, 2003 and the Bihar Electricity Supply Code, 2007 by the Company not only resulted in short assessment of punitive charges to the tune of ₹ 46.76 lakh but also led to extension of undue benefit to the consumer to that extent.

Section 126 of the Electricity Act, 2003 (Act), *inter alia*, provides that if on an inspection of any place or premises, the assessing officer is of the conclusion that unauthorised use of electricity (UUE) has taken place, the assessment shall be made for the entire period during which such UUE has taken place. Where the period of UUE is not ascertainable, such period shall be limited to a period of twelve months immediately preceding the date of inspection. Further Clause 11.1 (b) (i) and 11.2.3 (b) (i) of the Bihar Electricity Supply Code, 2007 (Code) as amended in 2010, *inter alia*, provides that the assessment of Energy Charges in the case of UUE shall be worked out on the basis of formulae $U = L \times F \times D \times H^4$. The consumption of units so assessed in accordance with the provisions of the Code shall be charged at twice the applicable tariff rate for the relevant category of services. Further, if the connected load of the consumer is found in excess of load contracted, then the fixed charge or the demand charge, as the case may be, shall also be charged for the excess load at twice the applicable tariff rate.

Scrutiny (May 2015) of the records of the Electric Supply Division (ESD), New Capital, a unit of South Bihar Power Distribution Company Limited (Company) revealed that the premises of a Non-Domestic Service (NDS)-II⁵ consumer (Consumer No. 010201115852) was inspected (November 2013) by the Company wherein as against the sanctioned load of 17 KW, the connected load of the said consumer was found to be 107 KW. The Company, however, in contravention of the provisions of the Act and the Code, as against the imposable punitive charges of ₹ 51.60 lakh, assessed the punitive charges as ₹ 4.84 lakh only which was based on Minimum Monthly Consumption (MMC) for the excess load. This resulted in short assessment of punitive charges by ₹ 46.76 lakh.

The Company stated (August 2016) that LFDH formulae for assessment of punitive charges is applicable only when the meter has been tampered to interfere with the proper/accurate registration of unit to suppress the actual consumption in the meter which comes under the purview of Section 126 [6 b (iii)] of the Act and as such is not applicable for defective/burnt meters. The reply of the Company was not tenable as Clause A (5) of Annexure 7 of the Code, as amended in 2010, *inter alia*, states that if it is found at anytime that energy supplied is used for a purpose on which higher tariff is applicable and the meter too is not working satisfactorily, then the provisions under the

⁴ $U = L \times F \times D \times H$; where U= Quantum of Energy assessed in Units,
L= Connected load in KW found at the time of inspection/raid at site,
F= Load factor as per the applicable category of service,
D= Number of days during which unauthorised use of Electricity has taken place and
H= Number of average hours of supply made available per day.

⁵ NDS-II tariff category is applicable for sanctioned load upto 60 KW/70 KW in Urban and other prescribed areas.

purview of UUE would apply and assessment shall be made accordingly as per the LFDH formulae.

Thus, failure to adhere to the provisions of the Electricity Act, 2003 and the Bihar Electricity Supply Code, 2007, by the Company, not only resulted in short assessment of punitive charges to the tune of ₹ 46.76 lakh but also led to the extension of undue benefit to the consumer to that extent.

The matter was reported (May 2016) to the Government, reply is still awaited (November 2016).

North Bihar Power Distribution Company Limited

3.3 Loss of Revenue due to incorrect categorisation of consumer

Incorrect categorisation of Street Light Services Consumers and billing thereof at a lower rate resulted in revenue loss of ₹ 4.07 crore.

Para 6 of Tariff Orders⁶ approved by the Bihar Electricity Regulatory Commission (BERC), *inter alia*, provides that Street Light Services (SS) is applicable for supply of electricity for street light system including signal system in Municipal Corporations, Municipalities, Notified Area Committees, Panchayats, etc., and also in areas not covered by any Municipality and Notified Area Committee provided the number of lamps from a point of supply is not less than five. Further, the said Tariff Orders also provides that metered consumers and unmetered consumers of Street Light Services shall be categorised into SS-I and SS-II respectively and billed as per the provisions of the aforementioned tariff order, i.e., 700 paise/unit subject to minimum monthly charges of 250 units/KW or part thereof in case of SS-I consumers and ₹ 440 per 100 W/month or part thereof in respect of SS-II consumers.

Scrutiny (June 2015 to August 2015) of the records of North Bihar Power Distribution Company Limited (Company) revealed that at Electricity Supply Division (ESD), Katihar, an unmetered consumer namely Chairman Municipality, Katihar, having a sanctioned load of 1 KW was being assessed in metered category. However, as per the load verification done (December 2013) by the Company, the actual load of the said consumer was found to be 859 KW and the consumer was found to be an unmetered consumer as well. Accordingly, a punitive bill of ₹ 8.06 crore under the unmetered category, was served (December 2013) upon the consumer. However, the said consumer was billed under the metered category for the period January 2014 to April 2015 and thereafter under unmetered category. As a consequence of billing of the said consumer under the SS-I tariff category at a lower rate, the Company suffered a loss of ₹ 4.07 crore for the period January 2014 to April 2015.

The Government replied (September 2016) that the revenue loss of ₹ 4.07 crore has already been charged in the electricity bill of the said consumer for the month of January 2016. However, the fact remained that a sum of ₹ 4.07 crore is still recoverable from the said consumer.

⁶ BERC Tariff Order 2013-14, 2014-15 & 2015-16.

Thus, as a result of incorrect categorisation and billing thereof at a lower rate, the Company suffered a loss of revenue to the tune of ₹ 4.07 crore.

3.4 Loss of revenue due to incorrect categorisation of HTS consumer

Wrong categorisation of High Tension Services consumer as Domestic Services (DS)-II/ DS-III consumer and billing thereof at a lower rate resulted in a revenue loss of ₹ 53.44 lakh.

Tariff Orders⁷ issued by the Bihar Electricity Regulatory Commission (BERC) from time to time, *inter alia*, provides that Low Tension Supply (LTS) tariff is applicable, for Domestic Services (DS) consumers which included DS-II and DS-III categories, for supply of electricity for connections with a maximum connected load upto 60 KW/67 KVA⁸ (revised to 70 KW/78 KVA with effect from April 2012). DS-II tariff category is applicable for domestic premises in urban area having a connected load upto 7 KW whereas DS-III tariff category is applicable to residential colonies and multistoried residential complexes taking load in bulk at a single point, with a minimum load of 2 KW per flat/house subject to a maximum load⁹ up to 60 KW/67 KVA. High Tension Services (HTS)-I tariff category is applicable for installation having connected load of 75 KVA and above. In case of DS-II/III category consumers, if total permissible maximum connected load is exceeded, it requires conversion of the consumer category to HTS-I to claim proper higher tariff.

Scrutiny (January 2016) of the records of Electricity Supply Division (ESD), Darbhanga (Urban) a unit of North Bihar Power Distribution Company Limited (Company) revealed that:

- a consumer, M/s Senior Divisional Electrical Engineer, Railway, Bakerganj, Laheriasarai, Darbhanga (consumer No. CRT-316) having 50 residential quarters was billed under DS-III category at a connected load of 19 KW during the period August 2009 to February 2014 and thereafter from March 2014 under DS-II category. Further, in June 2015, as a consequence of physical verification, the load of the said consumer was enhanced to 25 KW under DS-II category on the basis of the combined load of all the residential quarters.
- since the connected load of the aforementioned consumers worked out to be 112 KVA i.e. (50 quarters x 2 KW x 1.1), the said consumer was required to be billed under HTS-I tariff category. However, billing of the said consumer under DS-II/DS-III category in contravention of the provisions of the aforementioned tariff orders, led to a revenue loss of ₹ 53.44 lakh to the Company for the period August 2009 to December 2015.

⁷ Tariff order 2008-19 (effective from August 2008); Tariff order 2010-11 (effective from December 2010); Tariff order 2011-12 (effective from May 2011); Tariff order 2012-13 (effective from April 2012); Tariff order 2013-14 (effective from April 2013); Tariff order 2014-15 (effective from April 2014) and Tariff order 2015-16 (effective from April 2015).

⁸ 1 KW = 1.1111 KVA.

⁹ Revised to 70 KW/78 KVA with effect from April 2012.

Audit further observed that the meter of the aforementioned consumer, as per the billing records, was defective during the period July 2013 to October 2015, during which the said consumer was being billed on the basis of average units/Minimum Monthly Consumption (MMC) units. The Company failed to replace the defective meter of the said consumer within the maximum period of seven days prescribed under Rule 22 of the Standards of Performance of Distribution Licensee Rules, 2006 and took 29 months for its replacement which was indicative of not only laxity on the part of Company officials but also of deficient Internal Control System prevalent in the Company.

The Government replied (September 2016) that the revenue loss pointed out by the Audit has been charged on the consumer in the bill of April 2016. Further, the consumer has been requested to apply for HTS-I connection for execution of an agreement to convert consumer's category from DS-II to HTS-I category. The reply of the Government was not tenable since the chances of recovery is remote in view of Rule 10.18 of the Bihar Electricity Supply Code, 2007, which states that no recovery shall be made from the consumers after a period of two years unless such sum has been shown continuously recoverable as arrears of charges for the electricity supplied. The fact remained that a sum of ₹ 53.44 lakh was still (August 2016) recoverable from the consumer.

Thus, wrong categorisation of a High Tension Services (HTS)-I consumer as Domestic Services (DS)-II and DS-III consumer and billing thereof at a lower rate resulted in a revenue loss of ₹ 53.44 lakh to the Company.

3.5 Loss of Revenue due to incorrect categorisation of PWW consumer

Wrong categorisation of Public Waterworks consumers and billing thereof at a lower rate resulted in revenue loss of ₹ 95 lakh.

Tariff Orders¹⁰ approved by Bihar Electricity Regulatory Commission (BERC), *inter alia*, provided that Low Tension Supply (LT) tariff rates for Non Domestic Service (NDS) category are applicable only for supply of electricity to non-domestic consumers having a sanctioned load of up to 70 KW (60 KW till March 2012.) Further, Para 5 of the aforementioned Tariff Orders also provided that Public Waterworks (PWW), Sewage Treatment Plant and Sewage Pumping Stations having connected load upto 90 HP come under the PWW consumers category and shall be billed as per the PWW tariff rates accordingly.

In the course of scrutiny (May 2015) of records of North Bihar Power Distribution Company Limited (Company), we observed that:

- at Electric Supply Division (ESD), Hajipur, seven Public Health Engineering Department (PHED) consumers were billed under NDS-II/Irrigation and Agricultural Services (IAS)-II¹¹ tariff category instead of

¹⁰ Tariff Order 2010-11 (effective from December 2010); Tariff order 2011-12 (effective from May 2011); Tariff orders 2012-13 (effective from April 2012); Tariff order 2013-14 (effective from April 2013) Tariff order 2014-15 (effective from April 2014).

¹¹ Irrigation and Agricultural Services (IAS)-II Tariff is applicable to State Tube Wells/State lift irrigation pumps/State Irrigation pumps upto 100 HP.

the appropriate PWW tariff category during the period December 2011 to February 2015.

- as a consequence of wrong categorisation of the consumers and billing thereof at a lower rate, these consumer were charged a sum of ₹ 58 lakh only as against the chargeable bill of ₹ 1.53 crore for the period December 2011 to February 2016. This resulted in a revenue loss of ₹ 95 lakh to the Company.

The Government replied (September 2016) that the category of seven consumers, as pointed out by the Audit, has been converted from NDS-II/IAS-II category to PWW category and a sum of ₹ 32.34 lakh has been charged on these consumers in the bill of July 2016. However, Audit scrutiny of the reply of the Company revealed that the Company had altogether charged a sum of ₹ 98.84 lakh on these consumers in the bills of January 2016 and July 2016.

The reply of the Government was not tenable since the chances of recovery is remote in view of Rule 10.18 of the Bihar Electricity Supply Code, 2007 which states that no recovery shall be made from the consumers after a period of two years unless such sum has been shown continuously recoverable as arrears of charges for the electricity supplied. The fact remained that a sum of ₹ 95 lakh is still (November 2016) recoverable from the aforementioned consumers.

Thus, wrong categorisation of Public Waterworks (PWW) consumers and billing thereof at a lower rate resulted in revenue loss of ₹ 95 lakh to the Company.

3.6 Undue benefit to the supplier

Deficient procurement planning and failure to observe financial discipline on the part of the Company resulted in avoidable excess expenditure of ₹ 31.10 lakh. Besides, it also led to undue benefit to the suppliers to that extent.

General conditions of the Notice Inviting Tender (NIT) issued by the Bihar State (Power) Holding Company Limited (BSPHCL), *inter alia*, stipulated that in the event of an extension order being placed on the tenderer, the tenderer shall have to supply additional 30 *per cent* of the ordered quantity, on the same terms and conditions, if the extension order was placed by the Company within twelve months from the date of acceptance by the tenderer/placement of the order.

Scrutiny (February 2016) of the records of North Bihar Power Distribution Company Limited (Company) revealed that:

- BSPHCL invited (December 2013) two NITs¹² (old NITs) for procurement of 1786 units of 63 Kilo Volt Ampere (KVA) Distribution Transformers and 770 units of 100 KVA Distribution Transformers. Against these NITs, the Company placed (February 2014) two purchase orders¹³ for supply of 518 units of 63 KVA Distribution Transformers and

¹² NIT No. -473/PR/BSPHCL/2013 and 474/PR/BSPHCL/2013.

¹³ Purchase Order No.: 30 dated 12/02/2014 and Purchase Order No.: 39 dated 19/02/2014.

120 units of 100 KVA Distribution Transformers at a firm "per transformer landed rate" of ₹ 82312.20 and ₹ 108764.10 respectively on two suppliers¹⁴.

- The Company again invited (October 2014) two new NITs¹⁵ for procurement of 3,593 units of 63 KVA Distribution Transformers and 1794 units of 100 KVA Distribution Transformers. The placement of subsequent purchase orders by the Company, under the said new NITs was well within the time limit permissible for placement of Repeat Purchase Order/Extension Order under the old NITs. As against the fresh NITs, the Company placed three purchase orders¹⁶ for procurement of 3593 units of 63 KVA Distribution Transformers and 1794 units of 100 KVA Distribution Transformers at a landed rate of ₹ 98555.05 and ₹ 125218.95 per transformer respectively on two suppliers¹⁷ in December 2014 and March 2015.

We further observed that:

- the Company failed to adhere to the General terms and conditions of the aforementioned NIT in respect of placement of repeat purchase order, issued in December 2013.
- the Company failed to effectively plan its procurement requirements, as was indicated by the significant increase in the procurement quantity of Distribution Transformers within a span of one year.
- the Company failed to observe financial discipline by invoking the Repeat Purchase Order/Extension Order Clause of the old NITs for procurement of at least 30 *per cent* of the quantity of the aforementioned materials and instead ordered under the new NITs three purchase orders (on two suppliers in December 2014 and March 2015) for procurement of the aforementioned Distribution Transformers at a higher landed rate of ₹ 98555.05 and ₹ 125218.95 per transformer respectively.
- failure on the part of the Company to procure 30 *per cent* of the quantity of Distribution Transformers by placing a repeat purchase order/extension order resulted in avoidable excess expenditure of ₹ 31.10 lakh.

The Government replied (September 2016) that the performance of the two suppliers under old NITs in respect of 63 KVA as well as 100 KVA Distribution Transformers was not satisfactory, since they failed to deliver the Distribution Transformers within the scheduled time period. Further, the Delegation of Power (DOP) rules of the Company permits the extension of Repeat Purchase Orders to only those suppliers whose performance was satisfactory. It is because of this reason that Repeat Purchase Orders were not given to the suppliers of old NITs.

¹⁴ M/s L.D. Power Transformer Private Limited and M/s Modern Transformer Private Limited.

¹⁵ NIT No.: 206/NBPDCL/2014 and 207/NBPDCL/2014.

¹⁶ Purchase Order No.: 124 dated 01/12/2014; Purchase Order No.: 122 dated 01/12/2014 and Purchase Order No. 31 dated 25/03/2015.

¹⁷ M/s Rajasthan Transformers and Switchgears and M/s East India Udyog Limited.

The reply of the Government was not tenable since this was not new to the Company policy, in an earlier case audit had witnessed that the Company had accorded Repeat Purchase Orders for 63 KVA Distribution Transformers to a supplier whose delivery performance in respect of 100 KVA Distribution Transformers was deemed as unsatisfactory. As such, the contention of the Government that Repeat Purchase Order option was not resorted to on account of unsatisfactory performance of the supplier is not proper, and the Company failed to avail the benefit of lower rate by invoking the Repeat Purchase Order clause.

Thus, deficient procurement planning and failure to observe financial discipline on the part of the Company resulted in avoidable excess expenditure of ₹ 31.10 lakh. Besides, it also led to undue benefit to the supplier to that extent.

South Bihar Power Distribution Company Limited and North Bihar Power Distribution Company Limited

3.7 Undue benefit to the supplier

Failure on the part of the Companies to safeguard its financial interest by invocation of Clause 14 of the Notice Inviting Tender in procurement of Single Phase Meters resulted in avoidable excess expenditure of ₹ 56.62 lakh.

Repeat Purchase Order/Extension Order, as per Clause 39 of the General conditions of the Notice Inviting Tender (NIT) means that in the event of an order being placed on a tenderer, the said tenderer shall supply additional 30 *per cent* of the ordered quantity on the same terms/conditions of the Notice Inviting Tender (NIT), if such an order is placed by the Company within a period of twelve months from the date of acceptance/placement of the order.

North Bihar Power Distribution Company Limited (NBPDCCL) and South Bihar Power Distribution Company Limited (SBPDCL), placed seven Repeat Purchase Orders against NIT 445/ PR/ BSPHCL/ 2013 on four private suppliers in October 2014 for supply of 137550 Single Phase Meters (NBPDCCL-75000 meters, SBPDCL-62550 meters) at a landed cost of ₹ 913.68 per meter. Clause 3 of the said Repeat Purchase Orders provided for supply of the entire quantity of meters within one month, i.e., up to 15 November 2014 in case of NBPDCCL and within two months, i.e., up to 30 November 2014 in case of SBPDCL. Clause 4 of the said Repeat Purchase Orders also stipulated for levy of penalty at the rate of 0.5 *per cent* of ex-works undelivered supply per week of delay or part thereof subject to a maximum of 10 *per cent*. Besides, Clause 14 of the NIT vested the purchaser with a right to cancel the order/contract in part or full on default of delayed supply or if sub-standard materials were applied.

Scrutiny (February 2016) of the records of the Company revealed that:

- as against the schedule of supplying entire 75,000 meters to NBPDCCL by 15 November 2014, the suppliers did not deliver any meter till 15 November 2014 and as against the schedule of supplying entire 62,550 meters to SBPDCL by 30 November 2014, the suppliers did not deliver

any meter till 30 November 2014. Both the Companies had deducted a sum aggregating to ₹ 25.10 lakh from the bills of suppliers on account of penalty for delay in supply of meters.

- in November 2014, for both the Companies, NBPDCCL invited tender for procurement of another 13,60,000 Single Phase Meters for which the price bids were opened on 11 December 2014. The rate per meter quoted by the lowest tenderer was ₹ 849, which was lower by ₹ 64.68 than the rate of ₹ 913.68 at which procurement of 137550 meters were under process. By the date of opening of the price bids on 11 December 2014, the earlier suppliers had made a delivery of only 11200 meters as against the Repeat Purchase orders for 137550 meters.

Since it came to the notice of NBPDCCL and SBPDCL that the price quoted against the tender of November 2014 was lower than that of Purchase Orders of October 2014 and the suppliers in respect of Repeat Purchase Orders defaulted in timely supply of meters, it would have been prudent on the Companies to safeguard their financial interests by cancelling the Repeat Purchase Orders vide invocation of Clause 14 of the NIT. Further, the Companies could have attempted to purchase the balance undelivered quantity at a lower rate of ₹ 849 per Single Phase Meter. However, both the Companies failed to do so and instead continued to accept the belated supply of 137549 meters at a higher rate. This resulted in excess expenditure of ₹ 56.62 lakh¹⁸ which was avoidable.

The Government, while accepting the facts and figures, stated (September 2016) that cancellation of Repeat Purchase Order was not resorted to in view of the excessive demand for meters as well the potential revenue loss. Further, the meters lying in inventory in September/October 2014 together with the meters purchased vide Repeat Purchase Order has been utilised in February 2015 by the time of which the supply of meters under the new tender had hardly begun. The reply of the Government was not verifiable as the Company failed to provide the utilisation certificate as well as the revenue earned in respect of the meters purchased vide Repeat Purchase Orders to audit. The fact remained that the Procurement Planning was deficient and there was no system of determination of re-ordering quantity of stocks. Besides, the Company failed to exercise financial prudence by cancelling the Repeat Purchase Orders and placing Purchase Orders afresh to avail the benefit of lower rate of the new tender. Failure on the part of the Company to do so, resulted in excess expenditure of ₹ 56.62 lakh which was avoidable.

¹⁸ Avoidable Excess Expenditure = ₹ 64.68 × 126349 meters [i.e. Total meters supplied (1,37,549) – meters supplied up to 11 December 2014 (11200)] – Penalty deducted (₹ 25.10 lakh) = ₹ 56.62 lakh.

Bihar State Power Generation Company Limited**3.8 Irregular payment and undue favour to the Consultant**

Failure to safeguard financial interests on the part of the Company not only led to irregular payment of ₹ 27.15 lakh to the Consultant but also resulted in undue favour to that extent.

Canara Bank is the main banker of Bihar State Power Generation Company Limited (Company), one of the five unbundled companies of the erstwhile Bihar State Electricity Board. Board of Directors of the Bihar State Power (Holding) Company Limited in its sixth Board meeting held on 25 February 2013 appointed M/s Nexgen Financial Solution Private Limited, New Delhi as financial Consultant for arranging a long term loan of ₹ 1248 crore for Barauni Thermal Power Station-2 x 500 MW Extension Project (BTPS-EP) at a rate cheaper than the rate¹⁹ of Power Finance Corporation (PFC), Housing Urban Development Corporation Limited (HUDCO) and Central Bank of India (CBI). Accordingly, a work order was issued to the Consultant in March 2013. The clauses of the said work order, *inter alia*, provided that the Consultant was to deposit ₹ 25 lakh as performance security which would be forfeited/encashed in case of unsatisfactory performance. Further, the credit facility was to be obtained within four months from the date of issue of work order for which a commission charge, at the rate of 0.14 *per cent* of the credit obtained, was payable to the Consultant for their services.

Scrutiny of records of the Company (December 2014) revealed that a term loan of ₹ 300 crore was sanctioned by Canara Bank in June 2014 at a rate of 11.25 *per cent* per annum for which a sum of ₹ 27.15 lakh was paid to the Consultant. Audit analysis revealed that:

- The Consultant failed to provide the mandated credit facility within the stipulated time period of four months from any financial institution till July 2013. Notwithstanding the unsatisfactory performance of the said Consultant, no action was initiated against him for forfeiture/encashment of performance security amounting to ₹ 25 lakh in accordance with Clause 4 of the work order.
- Since Canara Bank was the main banker of the Company, it was therefore incumbent upon the Company to *suo moto* arrange the said term loan from the Canara Bank, as had been done by the Company on earlier occasions. As such, no special assistance of the Consultant was required for the arrangement of the said term loan. Further, no documentary evidences in relation to the deliberations made/ efforts exercised or liaisons made by the Consultant vis a vis Canara Bank for securing the said term loan on behalf of the Company was available on record. Thus, the efficacy/utility of this payment of ₹ 27.15 lakh to the Company could not be ascertained/verified by audit.

¹⁹ Rate of Interest chargeable on Loan: PFC – 12.25 *per cent*; HUDCO – 12.50 *per cent* and CBI – 11.25 *per cent*.

We further observed that the Company had arranged loans amounting to ₹ 850 crore and ₹ 200 crore from HUDCO and CBI respectively during the period August 2013 and June 2013 without seeking assistance of the Consultant.

The Company stated (August 2016) that Canara Bank's sanction, documentation and disbursement of loan of ₹ 300 crore to the Company at a cheapest interest rate of 10.7 *per cent* resulted only due to Consultant's efforts in waiver of various unfavourable conditions, etc. The reply of the Company was not tenable since the said loan was accorded by Canara Bank to the Company at an interest rate of 11.25 *per cent* which was not lower than the minimum mandated interest rate of 11.25 *per cent*. Further, the Company failed to substantiate its reply by providing any record to audit, of the efforts, if any, made by the Consultant in arranging the said term loan.

The matter was reported (March 2016) to the Government, reply is still awaited (November 2016).

Bihar State Power Transmission Company Limited

3.9 Avoidable payment of interest

Failure on the part of the Company to devise a suitable system for ensuring proper assessment of tax liability led to non-payment of advance tax resulting in avoidable payment of interest of ₹ 35.87 lakh.

Section 208 of the Income Tax Act 1961 (Act), *inter alia*, provides that every assessee having a tax liability of ₹ 10000 or more shall pay advance tax in the manner and at the rate prescribed under the Act. Failure to deposit minimum 90 *per cent* of the tax in advance as well as shortfall in depositing tax as per the prescribed slab attracts interest at the rate of one *per cent* per month or part of a month separately as prescribed under Section 234B and 234C of the Act. The Company is, thus, required to make proper estimation of taxable income to ensure timely deposit of advance tax as required under the Act to avoid the incidence of interest payment.

We observed (December 2015) that Bihar State Power Transmission Company Limited (Company) failed to deposit advance tax with the Income Tax authorities for the financial year 2014-15. The amount of tax deducted at source on the income of the Company for the financial year 2014-15 stood at ₹ 13.12 crore which was duly deposited with the Income Tax authorities. The total tax liability of the Company for the financial year 2014-15, however, amounted to ₹ 16.36 crore. Since the total tax paid fell short of 90 *per cent* of tax payable, Company had to pay penal interest of ₹ 35.87 lakh for the financial year 2014-15 under Section 234B and 234C of the Act.

Company stated (September 2016) that Minimum Alternate Tax (MAT) is payable on the book profit, the computation of which was very difficult and beyond estimation prior to finalisation of Profit & Loss Accounts of the Company. However, the Company has developed mechanism for avoidance of such kind of tax liabilities in future. The reply of the Company is not tenable

since the Book Profit can be estimated with a reasonable degree of accuracy once the Company is in receipt of business orders ensuring the inflow of income. Besides, the Act too permits the variation in the self-assessed income of an assessee to the extent of 10 *per cent* only. Thus, the Company failed to devise a suitable system for assessment of its income which is reaffirmed by its reply.

Thus, failure on the part of the Company to devise a suitable system for ensuring proper assessment of tax liability resulted in avoidable payment of interest valued at ₹ 35.87 lakh.

The matter was reported (May 2016) to the Government, reply is still awaited (November 2016).

Bihar State Beverages Corporation Limited

3.10 Failure to safeguard financial interest

The Company failed to protect its financial interest by conceding payment of ₹ 1.65 crore to suppliers.

Bihar State Beverages Corporation Limited (Company) operates its wholesale business of supply of liquor (Country Spirit/ Spiced Country Spirit as well as Indian Made Foreign Liquor) through depots situated at different districts' headquarters. There are two types of depots, namely, composite depots and non-composite depots. Composite depots are owned by the Company from where supply is made. Non-composite depots are owned by suppliers themselves from where supply of liquor is directly made. In case of supplies to composite depots, suppliers incur transportation cost and other overhead charges to bring liquor from their depots to composite depots, whereas in case of non-composite depots, such transportation cost and other overhead charges are not incurred by the suppliers. All prices for sale of liquor are fixed and revised by the Registration, Excise and Prohibition Department, Government of Bihar (Department).

To nullify the effect of differential amount of transportation cost and other overhead charges between two categories of depots, the Department, vide its order dated July 2009 had reduced the prices of Country Spirit sold from the non-composite depots to the extent of ₹ 0.17 and ₹ 0.09 in case of 400 ml sachet and 200 ml sachet respectively for the period July 2009 to March 2012. The payments to the suppliers in the case of non-composite depots during this period were also accordingly made.

Audit, however, found that the Department, while revising (March 2013) the prices of Country Spirits with effect from April 2013, did not provide for reduction of transportation cost and other overhead charges from the bills of the suppliers which had non-composite depots. Since the suppliers owning non-composite depots do not have to incur any expenditure on account of transportation of liquor from the place of their depots to the Company, the aforementioned Departmental order not providing for reduction of transport and other overhead charges from the bills of the said suppliers was detrimental to the financial interests of the Company as additional transportation costs were not being bifurcated and being borne by the Company.

Audit is of the view that it was incumbent upon the Company to pursue the matter with the Department to safeguard its financial interests. Failure on the part of the Company to do so resulted in payment of ₹ 1.65 crore²⁰ to three²¹ suppliers having non-composite depots on account of transportation and other overhead charges, which was not being paid by the Company for the implementation of the order dated July 2009.

The Company stated (May 2016) that fixation of price of Country Spirits was made at the level of the Department and the wholesale business was being done at the prescribed rate at the depot level of the Company. Payment on account of transportation was not indicated in the subsequent orders of the Department and therefore no payment in respect of transportation had been made to the suppliers.

The reply of the Company is not tenable since to protect its financial interest, it should have pursued the matter with the Department to exclude transportation costs as was the case before the issuance of the said order in July 2009. In absence of such pursuance, the Company failed to protect its financial interest by conceding a payment of ₹ 1.65 crore to the suppliers.

The matter was reported (March 2016) to the Government, reply is still awaited (November 2016).

Bihar State Text Book Publishing Corporation Limited

3.11 Failure to safeguard financial interests

Failure of the Company to safeguard its financial interests resulted in blocking up of working capital of the Company to the tune of ₹ 4.19 crore.

The canons of Financial Propriety, *inter alia*, stipulates that a person shall exercise the same vigilance in respect of expenditure to be incurred out of public money which a person of ordinary prudence would exercise in respect of expenditure of his own money. Bihar State Text Book Publishing Corporation Limited (Company) is engaged in publishing and printing of text books in the State of Bihar in accordance with the Education Policy of the Government of Bihar. The Company had filed its Income Tax Return (ITR) for the assessment years 2009-10 and 2010-11 on 30 September 2009 and 14 October 2010 respectively.

Audit scrutiny of the records of the Company revealed (September 2014 and October 2015) that:

- the Company was held (April 2011) to be an educational institution eligible for exemption from payment of Income Tax by the Hon'ble High Court, Patna under Section 10 (23C) (iiiab) of the Income Tax Act, 1961 (Act), in response to an appeal made by the Company against an order (October 2009) of Income Tax Appellate Tribunal (ITAT).

²⁰ The amount of excess payment has been worked out on the basis of the price reduction specified in Government's order dated 2009 on a conservative basis.

²¹ Jehanabad, Nawada and Siwan.

- however, in respect of the assessment year 2010-11, the income of the Company was erroneously assessed at ₹ 7.26 crore and after making certain adjustment, the tax liability of the Company was worked out to be ₹ 2.47 crore in respect of which the Company had already paid a sum of ₹ 4.19 crore by way of advance tax and Tax Deducted at Source (TDS). As per the ITR filed (October 2010) by the Company, it was entitled to the refund of a sum of ₹ 1.72²² crore. The said refund is still (July 2016) a receivable by the Company.

We further observed that the Company failed to file an appeal against the erroneous Notice of Demand issued (January 2013) under Section 156 of the Act within the prescribed period of 30 days for refund of additional sum of ₹ 2.47 crore which was lying blocked with the Income Tax Department. However, the Company, at the instance of Audit, belatedly filed an appeal on 19 November 2015, i.e., after a delay of 34 months.

The Company stated (August 2016) that since the Assessing Officer had erroneously assessed the income of the Company at ₹ 7.26 crore instead of ₹ NIL, the Income Tax Authority may amend any such order passed by it under Section 154 of the Act, provided the application for correction is made within a period of four years. Accordingly, the Company has filed an application before the Assessing Officer on 14 November 2015 that is well within the prescribed time.

The reply of the Company was not tenable, as the claim should have been filed by the Company within 30 days under Section 156 of the Income Tax Act, so that refund could have been received earlier. Moreover, the Company filed the appeal only after the issue was brought to its notice by audit.

Thus, failure of the Company to safeguard its financial interests resulted in blocking up of working capital of ₹ 4.19 crore from February 2013 to till date.

The matter was reported (February 2016) to the Government, reply is still awaited (November 2016).

Bihar State Road Development Corporation Limited

3.12 Undue benefit to the Contractor

The Company in violation of the provisions of the agreement failed to deduct Liquidated Damages of ₹ 1.66 crore from the bills of the Contractor. This resulted in extension of undue benefit to the Contractor by the Company.

Bihar State Road Development Corporation Limited (Company) entered (September 2011) into an agreement with M/s Sadbhav GKC Joint Venture (Contractor) for construction of Mohammadpur-Rajapatti-Mashrakh-Khaira-Chhapra Road (SH-90) (work) for a total value of ₹ 201.82 crore. The work was divided into three sections, namely, Section 1, 2 and 3, their schedule date

²² Amount of refund = Total advance tax and TDS (₹ 4.19 crore) – erroneous tax liability of ₹ 2.47 crore = ₹ 1.72 crore.

of completion being 800 days, 850 days and 912 days respectively from the date of commencement (October 2011) of work. In effect, the schedule date of completion of the entire work was April 2014, with the schedule date of completion of Section 1, Section 2 and Section 3 being 19 December 2013, 7 February 2014 and 10 April 2014 respectively. Further, Clause 8.7 of the agreement, *inter alia*, provided for the deduction of Liquidated Damages (LD) at a rate of one-twentieth of the Final Contract Price of the Section per day, subject to a maximum of 10 *per cent* of the same.

Scrutiny (December 2015) of records of the Company revealed that the Company failed to ensure expeditious execution of Section 1 of the work as the percentage of work executed under Section 1 on its scheduled date of completion (December 2013) was only 48.24 *per cent*.

The slow execution of the work was mainly attributable to the Contractor's failure to mobilise and deploy resources on the work-site namely materials, equipment, manpower, etc. The Contractor applied (November 2013) for extension of time (EOT) which was granted by the Company on 20 March 2014 with an instruction to complete the entire work by 30 April 2014. However, the Company failed to get the work executed and the contractor unilaterally abandoned the work on 09 April 2014 and thereafter, the Company terminated the Contract on 23 April 2014.

We further observed that:

- the Project Implementation Unit, Hajipur of the Company failed to deduct a sum of ₹ 1.66 crore as LD for slow execution of work from the bills of the Contractor (January 2014), as was provided in Clause 8.7 of the Agreement.
- the EOT accorded by the Company to the Contractor on 20 March 2014 for completion of entire work by April 2014 was unrealistic and unwarranted in view of the fact that 51.76 *per cent* of Section 1 of the work still remained to be executed by the said contractor within a span of one month and 10 days. The said EOT was accorded by the Company notwithstanding the Contractor's failure to execute Section 1 of the work over a period of two years and being aware of the slow execution of the work by the Contractor during the period January 2014 to March 2014.

Thus, the Company not only failed in safeguarding its financial interests but also ensuring the timely execution of the Contract. This also resulted in extension of undue benefit to the contractor.

The Company stated (September 2016) that as the proposal of the contractor for EOT was under consideration, the LD of ₹ 1.66 crore was not deducted from the bills of January 2014 and finally EOT was accorded to the contractor in March 2014. Further, the Company also stated that the EOT for Section-1 was accorded to the Contractor mainly because of the delayed Environment and Forest Clearance by the Company.

The reply was not based on facts and was contrary to the notice issued (03 April 2014) under Clause 15.1 of the Agreement to the Contractor, which specifically stated that environment clearance in respect of Section 1 of the

work was accorded to the Contractor even before the commencement of work and the forest clearance for 40th KM to 58th KM was provided to the contractor in July 2013 itself and that all other encumbrances in the execution of work had been removed. The Company, therefore, should have deducted the LD to protect its financial interests.

Thus, failure on the part of the Company to deduct Liquidated Damages from the bills of the contractor in accordance with the provisions of the agreement as well as grant of unrealistic and unwarranted EOT to the contractor resulted in extension of undue benefit to the contractor to the tune of ₹ 1.66 crore.

The matter was reported (August 2016) to the Government, reply is still awaited (November 2016).

Patna
The 02 March 2017



(DHARMENDRA KUMAR)

Accountant General (Audit), Bihar

Countersigned

New Delhi
The 03 March 2017



(SHASHI KANT SHARMA)

Comptroller and Auditor General of India

