Chapter III

3. Compliance Audit Observations

This Chapter includes important audit findings emerging from test check of transactions of the State Government Companies and Corporations.

Jodhpur Vidyut Vitran Nigam Limited

3.1 *Rectification of electricity bills of the consumers-Implementation of Rajasthan Guaranteed Delivery of Public Service Act 2011*

The Government of Rajasthan (State Government) enacted (September 2011) 'The Rajasthan Guaranteed Delivery of Public Services Act, 2011' (RGDPS Act, 2011) to provide delivery of certain notified services to the people of the State within stipulated time limits. The State Government also notified (October 2011) 'The Rajasthan Guaranteed Delivery of Public Services Rules, 2011 (RGDPS Rules, 2011) which laid down the procedures for implementation of the provisions of RGDPS Act, 2011. The Administrative Reforms and Co-ordination Department (ARCD) of the State Government issues instructions/guidelines/circulars to Departments responsible for implementation of the RGDPS Act/Rules.

Section 4 of the RGDPS Act, 2011 stipulates that the designated officer shall provide the notified service within stipulated time to the person eligible to obtain the service. In case a person is not provided a service within the stipulated time, the person may file an appeal to the first appellate authority within 30 days from the rejection of the application or expiry of the stipulated time limit. A second appeal may also be filed against the decision of the first appellate authority within a period of 60 days from the date of decision of first appeal. Where the second appellate authority is of the opinion that the designated officer has failed to provide service or caused delay without sufficient and reasonable cause, it may impose a lumpsum penalty between ₹ 500 and ₹ 5,000, which shall be recoverable from the salary of the designated officer in accordance with the Section 7 of the Act.

As of March 2016, the State Government had notified 153 services under Section 3 of the Act. Five out of 153 services pertain to Energy Department which include release of new connections, rectification of electricity bills, replacement of meters, refinement of electricity supply and delivery of infrastructure based services. The three[1] electricity distribution companies of the State are required to ensure delivery of these services within the stipulated time period prescribed in the Act.

The present audit was conducted (December 2016 to March 2017) to assess whether 'Jodhpur Vidyut Vitran Nigam Limited' (Company) rectified the electricity bills of the consumers within the time period prescribed in the Act. It was also seen whether the Company had maintained proper records and

1 Ajmer Vidyut Vitran Nigam Limited, Jaipur Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited.

taken adequate measures for publicity and generating awareness among the consumers about delivery of notified services as per the RGDPS Act and Rules thereunder. Audit analysed the performance of the Company in rectification of electricity bills during the period 2014-15 to 2016-17 (up to October 2016). Replies of the Government (July 2017) were taken into consideration.

The Company's distribution network is divided into three zones (Jodhpur, Bikaner and Barmer) which are further divided into 12 Circles and 155 Sub-divisions under the Circles. The consumers are divided into Low Tension (LT) and High Tension (HT) categories. Further, the Company categorised the LT consumers into rural and urban consumers. As on March 2016, the Company had 33.12 lakh consumers including 1,586 HT consumers. We selected five[2] Circles (42 *per cent*) out of 12 Circles to assess the performance of the Company in rectification of billing complaints relating to HT and LT consumers. The primary basis for sample selection was highest number of HT and LT consumers. At least one Circle was selected from each zone to have geographical representation of all the Circles.

The performance in HT category was reviewed in Jodhpur City and Pali Circles. The Circles accounted[3] for 37.64 *per cent* of the total HT consumers of the Company. The performance in LT category was reviewed in remaining three (Churu, Jodhpur District Circle and Barmer) Circles. In view of large number of LT consumers, we selected two sub-divisions from each Circle having highest number of consumers. The six[4] selected sub-divisions covered 1.64 lakh consumers of the Company as on March 2016.

3.1.1 *Time period allowed under the Act for rectification of electricity bills*

The time period allowed under the Act for resolving various types of complaints relating to electricity bills is mentioned below:

Type of complaint	**Time period prescribed under the Act for rectification of complaint**
Wrong bill/incorrect tariff/non-receipt of electricity bill/complaint about inadequate time period	• Within three hours if complaint made by the consumer telephonically or in person. • Within seven days if the complaint is received by post.
Mathematical error or inadequate time period allowed for payment of bill	• On the same day on which complaint is received • The day on which complaint has been received by post
Other complaints regarding electricity bill	• Within seven days
Other complaints (where meter testing is involved)	• Rectification to be made within 60 days after verification within 30 days
Complaint of high tension consumer regarding electricity bill	• Three days

2 Jodhpur City Circle, Pali, Churu, Jodhpur District Circle and Barmer.
3 Jodhpur City Circle (379 HT consumers) and Pali Circle (218 HT consumers).
4 Balesar and Mandore Sub-divisions under Jodhpur District Circle, Siwana and Chohtan Sub-divisions under Barmer Circle and Churu and Taranagar Sub-divisions under Churu Circle.

3.1.2 *Non-maintenance of essential records/Registers*

Rule 17 of RGDPS Rules required the designated officer to maintain a register in Form-3 which shall include the name and address of the applicant, service for which the application has been received, last date of the stipulated time limit, application allowed/disallowed and date and details of the order passed. Rule 17 also requires the first appeal officer, second appellate authority and revising officer to maintain record of the cases in Form-4, Form-5 and Form-6 respectively. Further, Rule 4 stipulates that the designated officer or the person authorised by him shall give acknowledgement to the applicant in Form-1 and mention the last date of the stipulated time limit of providing service on the acknowledgement.

We noticed that none of the designated officers/authorities in any of the six sub-divisional offices and HT billing section maintained the desired records during April 2014 to October 2016. Though the Company provided acknowledgement slips to the sub-division offices and HT billing section but these were not passed on to the complainants.

The Assistant Engineers/Accounts Officer of the sub-divisions and HT billing section replied (March 2017) that records were not maintained due to heavy work load.

The Sub-divisions, therefore, failed to comply with the provisions of the Act and RGDPS Rules regarding maintenance of prescribed records.

The Government stated (July 2017) that required records were generally maintained by the field offices. The field offices have again been directed to maintain the records in Forms 3, 4, 5 and 6 and issue acknowledgement slip. Further, the HT billing section was centralized during the period (2014-17) and grievances received from HT consumers in the sub-divisions were immediately forwarded to the HT billing for resolving them. The reply was not correct as the prescribed records were not maintained at any of the selected sub-divisions and HT billing section. Further, the Assistant Engineers/Accounts Officer of the sub-divisions and HT billing section confirmed that the prescribed records were not maintained.

3.1.3 *Incorrect reporting to the State Government*

The Administrative Reforms and Co-ordination Department (ARCD) of the State Government issued (March 2012) directions to the concerned departments to submit fortnightly information in the prescribed format regarding complaints received, complaints disposed of and appeals filed by the consumers. The ARCD also directed (July 2015) to appoint a nodal officer to monitor delivery of notified services to the people of the State in time by the Company.

The Company nominated (October 2012) the Superintendent Engineer (SE) Project, Planning and Monitoring (PP&M) as nodal officer who was required to monitor delivery of services to the consumers as per the provisions of the Act, compile the information received from each Zone and fortnightly submit the information to the State Government in prescribed format. The information to the Zonal office was to be channelled through Sub-divisions, Division offices and Circle office.

We noticed that the selected Sub-divisions did not compile and send any information about consumers' complaints and their redressal to the Division offices. Further, the Division offices also did not compile and send any information to the Circle office. The Circle offices thus without any input from the Sub-divisions and Divisions compiled the information at their own level and sent fortnightly data to the concerned Zonal office which in turn forwarded it to the SE (PP&M). The SE (PP&M) compiled the information for the Company as a whole and sent it to the State Government.

This indicates that the information sent by the Zonal office was not based on realistic data of complaints received and disposed of by the sub-divisions. This also led to submission of incorrect information by the SE (PP&M) to the State Government.

Our scrutiny of fortnightly information sent by the Zonal offices to the SE (PP&M) and reports submitted by SE (PP&M) to the State Government disclosed that:

- The selected Circle offices under Barmer and Bikaner Zones sent a consolidated figure of all five types of complaints without indicating the nature and type of complaint received and redressed. All the three Zonal offices also reported consolidated figures of all five types of complaints to the SE (PP&M)
- The SE (PP&M) also reported to the State Government a consolidated figure of all five types of complaints received and redressed. Further, it was reported that all the complaints were redressed within the time period prescribed in the Act and there was not even a single case of delay since the Act came into force.

All the authorities from Division level to SE (PP&M), therefore, failed to monitor the delivery of services to the consumers as per the provisions of the Act. The Company reported incorrect information to the State Government. Further, the reported information was not in prescribed format. The State Government also failed to monitor the delivery of services by the Company as per Act as no directions/instructions were issued by the ARCD for non-submission of information in the prescribed format.

The Government stated that there is a system of lodging complaints at centralized customer care centre and 33 kV GSS and, therefore, it was not true that records were not maintained. The SE (PP&M) collects information from customer care centre as well as circle office. Instructions have been issued to consolidate information of all five types of complaints. The field offices and customer care centre have also been issued instructions to compile the information as per requirement of the RGDPS Act.

The reply is not acceptable because the sub-divisions and divisions neither compiled nor sent any information to the Circle offices. The Assistant Engineers also accepted the fact that records were not maintained due to heavy work load. It was also seen that the SE (PP&M) did not report even a single case of delay since the Act came into force but the Company in reply to the subsequent para had accepted the fact of delay in redressal of complaints.

3.1.4 *Delay in redressal of complaints*

In absence of register in Form 3, acknowledgement receipts and other relevant record/data, audit could not comprehensively examine the extent of delay in redressal of complaints relating to rectification of electricity bills. We, therefore, scrutinised the complaint/application file maintained at sub-divisions which contained the individual complaints/applications submitted by the consumers. However, availability of all the applications/complaints in the file could not be ensured due to absence of page numbering or indexing of applications or allotment of running registration number on the applications or maintenance of complaint register correlating the applications in the file.

Out of 10,367 bill related applications/complaints found in the files maintained at the selected six Sub-divisions, date of receipt of the application or the date of submission of application by the consumers and date of disposal of complaint by the Company was not found in 6,680 (64 *per cent*) cases. Out of remaining 3,687 complaints, the date of disposal of 141 complaints mentioned in the 'Consumer Charges and Allowance Register' (CC&AR) was shown prior to the date of receipt of application. The time period involved in rectification of 6,821 (66 *per cent*) out of 10,367 complaints was, therefore, not verifiable due to lack of proper data.

Of the remaining 3,546 complaints where date of receipt of application and date of disposal of complaint were mentioned, we found that there was delay in rectification of 3,184 (90 *per cent*) complaints. The extent of delay ranged between one and 233 days against the stipulated time period of one day allowed in the Act for rectification of these complaints. In 420 cases (13 *per cent*), the delay was of more than 30 days.

The Company did not report to the State Government even a single case of delay in disposal of 16.65 lakh complaints (for the Company as whole upto 31 October 2016 since enactment of the Act). However, in selected SDOs, 90 *per cent* complaints were resolved with delays ranging between one and 233 days.

The Company, therefore, failed to resolve the bill related complaints of the consumers within the prescribed time period. The SE (PP&M) had reported to the State Government about resolution of all the complaints within time period stipulated in the Act. The Company's failure to adhere to the timelines in resolving complaints and lack of monitoring by the State Government had defeated the objective of enactment of the Act which was the people's right to get delivery of services within the prescribed time period.

The Government accepted the facts and stated that delay in redressal of billing complaints was due to shortage of staff in the field offices. Employees are being deputed in the field offices to cope with the shortage of staff. Further, all field officers are being advised to ensure redressal of complaints within the time limit prescribed in the Act and, if, any information regarding delay in redressal of complaints was received then necessary action would be taken against the defaulters.

3.1.5 *Discrepancies in HT billing*

Scrutiny of individual files of HT consumers in two selected Circles disclosed that the Company received 43 bill related complaints during the period from

April 2014 to October 2016. We noticed that 41 (95 *per cent*) out of 43 complaints were resolved with delays ranging between four and 135 days beyond the prescribed time period of three days.

The Government accepted the facts and attributed the delay in redressal of grievances towards acute shortage of staff. It was also stated that each case required prior approval of concerned higher authorities and, therefore, delay occurred in resolving the grievances.

3.1.6 *Non-acceptance of complaints*

Based upon the scrutiny of complaints/applications received from the consumers, we noticed that the Sub-division and Division offices did not accept the applications of the consumers immediately for resolving the complaints. The applicants were asked to get a factual report of the meter reading from the lineman and get it verified from the concerned Junior Engineer.

The complaints relating to mathematical error/wrong billing were required to be resolved on the same day as per the Act. The process adopted by the Sub-divisions had, however, delayed the delivery of service to the consumers as it took around two to six days to get the verified factual meter reading report due to field duty of lineman and Junior Engineers.

The Assistant Engineers of selected Sub-divisions replied (March 2017) that the verified factual meter reading report was needed to save the time of consumers. However, the applications from the consumers would be accepted directly in future and action would be taken as per procedure.

The Government stated that complaints from the consumers were directly accepted and diverted to the concerned linemen and Junior Engineers for redressal. It was further stated that feeder incharge has now been given responsibility to resolve all type of grievances.

3.1.7 *Lack of training to designated officers/appellate officers*

Rule 20(4) of RGDPS Rules 2011 directs the State Government to provide training to the designated officer, first appeal officer, second appellate authority and revising officer about their duties under the Act, to the extent of availability of financial and other resources.

We noticed that the Company or the State Government did not organise training programs for the designated officers and other officers/authorities to make them aware about their duties under the Act.

The Government replied that proper training was given by the State Government for resolving complaints under Rajasthan Sampark Portal and hence further training was not required under RGDPS Act. The reply was not convincing in view of the fact that the sub-divisions did not maintain records required under the RGDPS Act and further the bill related complaints were not received from the consumers directly.

3.1.8 *Lack of awareness among consumers*

Rule 7 of RGDPS Rules required the designated officer to display all relevant information relating to services on the notice board in Form-2 for the convenience of the common people. The notice board was required to be

installed at a conspicuous place in the office and all the necessary documents required to be enclosed with the application for obtaining the notified service had to be displayed on the notice board. Form-2 included the details of notified services, documents to be enclosed with the application, stipulated time limits for providing the services, designation and address of the first appeal officer, stipulated time limit for the disposal of first appeal and designation and address of the second appellate authority.

Rule 20 (1) of RGDPS Rules required the State Government to:

- develop and organise campaigns and programmes to advance the understanding of the public, in particular of the disadvantaged communities, as to how to exercise the rights contemplated under the Act
- encourage public authorities to participate in the development and organisation of programmes and to undertake such programmes themselves
- promote timely and effective dissemination of accurate information by public authorities about the notified services and timelines and the processes for applications.

We noticed that the Company did not take adequate steps to generate awareness among the consumers about their right of getting delivery of notified services within the stipulated time. The Company neither organised consumer awareness programmes nor publicised the rights of the consumers through electronic media or by giving advertisements in newspapers. We found that the Head Office and Chohtan, Churu and Taranagar sub-divisions did not even install notice boards for displaying the information as prescribed under the Act.

3.1.9 *Deficiencies in billing system*

We observed that the billing system was fraught with shortcomings like delay in issue of first bill to the consumers, wrong billing due to incorrect meter reading by the meter reader, non-delivery of electricity bill, insufficient time period allowed for payment of electricity bills and levy of inappropriate charges as stated below:

- There was delay in issue of first bill in 11,613 (35.75 *per cent*) cases out of 32,481 newly released LT connections in five[5] selected sub-divisions during the period from April 2014 to October 2016. The extent of delay ranged between one and 50 months beyond the prescribed period of 90 days. Out of 11,613 cases of delay, we found only 26 complaints from the consumers wherein delay ranged between four and 28 months. Some of the consumers repeatedly requested for issue of bill but the sub-divisions did not make any effort to ensure issue of first bill in time. The Churu sub-division did not maintain A-49[6] register and, therefore, delay in issue of first bill was not verifiable.

5 Mandore, Balesar, Siwana, Chohtan and Taranagar.

6 A-49 register shows the service numbers and new electricity connections released to the consumers. This register also shows the date of connection and date of first bill issued to the consumers.

The Government accepted the facts and stated that delay in some places, especially BPL connections which are done by contractors, occurred due to submission of file in lots after giving the connections. Efforts have been initiated to streamline the delay.

- Out of 10,367 complaints scrutinised by us, 7,746 (74.72 *per cent*) were relating to recording of incorrect meter reading by the meter reader. In 550 cases, the meter readers recorded reading without visiting the consumer's premises.

The Government accepted the facts and stated that Company is very strict on reporting of incorrect meter reading and action was being taken against the defaulter meter reader.

- In selected sub-divisions, we found 188 complaints of consumers regarding non-receipt of electricity bills. We noticed that the contractors intimated about non-delivery of 52,201 bills during April 2014 to October 2016. The Sub-divisions, however, did not assess the reason for non-delivery of bills by the contractors. These consumers had to get the bill issued from the sub-divisions for payment of dues.

The Government accepted the facts and stated that provision of taking receipt has been kept in work orders. Further, SMS of bill generation is being sent on registered mobile numbers to inform the consumers about due date, bill amount, *etc*.

- Clause 36 (1) of Terms and Conditions of Supply of Electricity, 2004 allows a time period of 15 days (19 days in case of PHED) for payment of bill from its date of issue. Scrutiny of records disclosed that there were many cases where the date of issue of bills was prior to the date of printing of bills. The consumers, therefore, did not get the prescribed time period for depositing the bills in these cases.

The Government stated that the sub-divisions generally extend the due date on consumer's request on providing genuine grounds when there was delay in distribution of bills.

- The Company transferred 30 consumers from Soor Sagar sub-division to Mandore sub-division which is a rural sub-division, in August 2013. However, the Mandore sub-division did not stop charging urban cess from these consumers. On the request of seven consumers, urban cess was removed in September 2015. In remaining cases, urban cess was still being recovered from the consumers (March 2017).

The Government accepted the fact and stated that corrective action had been taken and no urban cess was levied on remaining consumers.

The above instances indicate that the consumers were not aware of their rights under the Act and, therefore, did not lodge complaints under the Act despite huge shortcomings in the bill system. Further, the consumers who lodged complaints were not aware about the appellate authorities as none of the consumers preferred any appeal for redressal of their grievances.

The Government stated that all relevant information relating to services have now been displayed on notice boards. Further, awareness generation among

consumers was being done by the Energy Department through advertisement on television, newspaper and choupals and camps organised from time to time.

Conclusion and recommendations

The Company failed to adhere to the provisions of the Act and it could not resolve the bill related complaints of the consumers within the stipulated time period prescribed in the Act. The State Government also failed to monitor the delivery of services by the Company as per Act as no directions/instructions were issued by the Administrative Reforms and Coordination Department for non-submission of information by the Company in the prescribed format.

The Company needs to ensure delivery of services to the people within the stipulated time period prescribed in the Act and to ensure close monitoring so that the sub-divisions, Divisions and Circle offices adhere to the provisions of the Act. The Company should also provide adequate training to the officers to make them aware of their duties under the Act as well as take action against the defaulter officers.

Further, the Company should install notice boards at conspicuous places and organise campaigns to generate awareness among the consumers about their rights under the Act.

Rajasthan Rajya Vidyut Prasaran Nigam Limited

3.2 *Loss due to inordinate delay in construction of Grid Sub-station*

The Company incurred loss of ₹ 38.12 crore as of March 2017 due to inordinate delay in construction of 400 kV GSS at Ajmer.

Rajasthan Rajya Vidyut Prasaran Nigam Limited (Company) created (June 2009) a Special Purpose Vehicle (SPV) with the name Maru Transmission Service Company Limited (Transmission Service Provider-TSP) for construction of transmission system under the scheme of 400 kV Grid Sub-station (GSS) Deedwana. The transmission system consisted of 400 kV single circuit Bikaner-Deedwana line, 400 kV single circuit Ajmer-Deedwana line and other[7] associated works. The Company issued (30 September 2010) Letter of Intent (LoI) to the successful bidder for purchase of SPV. A Transmission Service Agreement (TSA) for procurement of transmission services was also executed (February 2011) between the TSP and three[8] electricity distribution companies (DISCOMs) of the State.

The TSA stated that an element of the project shall be declared to have achieved 'Commercially Operative Date' (COD) 72 hours following the connection of the element with the interconnection facilities or seven days after the date on which it was declared by the TSP to be ready for charging but

7 The other associated works included construction/installation of (i) 400/220 kV, 2X315 MVA Grid Sub-station at Deedwana with 1X100 MVA 220/132 kV Transformer and installation of 1X50 MVAR, 400 kV Bus Type Shunt Reactor and (ii) 220 kV double circuit Sujangarh-Deedwana line.

8 Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited.

was not able to be charged for some reasons not attributable to the TSP. The TSA also stated that once any element of the project has been declared to have achieved deemed COD then such element of the project shall be deemed to have availability equal to the target availability till the actual charging of the element and to this extent shall be eligible for payment of the monthly transmission charges applicable for such element.

The TSP claimed to achieve COD of the project on 16 December 2013 and claimed transmission charges from the DISCOMs as per terms and conditions of TSA. The Chairman DISCOMs constituted (December 2013) a Committee to verify commissioning of the project. The Committee reported (January 2014) that the project was not completely commissioned as one of the elements of the project (400 kV Ajmer-Deedwana line) was not commissioned/charged. The TSP clarified (January 2014) that commissioning of 400 kV Ajmer-Deedwana line was not possible because the terminating end of the line *i.e.* Ajmer GSS was not commissioned by the Company and hence delay in commissioning of the line was not attributable to it.

In a meeting (February 2014) held by the Company, DISCOMs and the TSP, it was decided to pay proportionate monthly transmission charges (around 70 *per cent*) to the TSP from 16 December 2013 on the basis of assets commissioned and being utilized to total assets. The proportionate charges were to be paid up to June 2014 or earlier, when the 400 kV GSS Ajmer was commissioned by the Company. It was also decided that in case the Company failed to commission the 400 kV Ajmer GSS by June 2014, the issue would be reviewed and an appropriate decision would be taken in due course.

We noticed that the Company had awarded (February 2011) the work of construction of 400 kV GSS at Ajmer to Jyoti Structures Limited, Mumbai (Contractor) with stipulated date of commissioning within 24 months. The GSS, however, could not be commissioned (January 2017) due to various issues like delay in handing over land to the Contractor by the Company, non-removal of 132 kV transmission line passing over the proposed GSS and slow progress of work by the Contractor. The Company issued several notices to the Contractor from time to time for slow progress of work and also deducted liquidated damages from the bills. Non-commissioning of the Ajmer GSS within stipulated time period had created obligation on the DISCOMs for payment of monthly transmission charges to Maru Transmission without full utilisation of the 400 kV Ajmer-Deedwana line.

As the Company could not commission the 400 kV Ajmer GSS up to June 2014, the TSP filed (July 2014) an appeal with Rajasthan Electricity Regulatory Commission (RERC) on the issue and stated that the DISCOMs were arbitrarily paying 70 *per cent* of the eligible charges contrary to the provisions of the TSA. The RERC in its decision (January 2015) directed the DISCOMs to pay transmission charges to the TSP as per terms of TSA from 16 December 2013 as it had achieved the deemed COD of 400 kV Ajmer-Deedwana line. The RERC in its decision also stated that the Company had not produced any evidence to show that non-construction of 400 kV GSS at Ajmer was beyond its control.

As per RERC directions, the DISCOMs started (August 2015) full payment of monthly transmission charges (including arrears from 16 December 2013) to

the TSP. The DISCOMs, however, recover 30 *per cent* of the amount payable to the TSP from the bills raised by the Company for transmission charges on account of un-utilized portion of 400 kV Ajmer-Deedwana line. As of March 2017, the DISCOMs had recovered ₹ 38.12 crore from the bills raised by the Company for transmission charges.

The Company, therefore, incurred loss of ₹ 38.12 crore due to inordinate delay in construction of 400 kV GSS at Ajmer. The Company would continue to incur this loss till commissioning of the GSS at Ajmer.

The Government stated (June 2017) that non-completion of Ajmer GSS did not cause any hindrance in charging 400 kV GSS Deedwana as the Ajmer GSS was to provide alternative supply only. It was further stated that the Company was continuously pursuing with the DISCOMs to stop deductions and refund the deducted amount. The reply was not convincing because transmission charges were payable to the TSP on achieving COD irrespective of utilisation of the transmission line.

Rajasthan Rajya Vidyut Utpadan Nigam Limited

3.3 *Non-recovery of liquidated damages*

The Company allowed a particular contractor to lift dry fly ash from Suratgarh Thermal Power Station without executing any agreement and depositing the security amount. Further, the Company did not take action against all the four contractors as per the terms and conditions of tender and Letter of Award despite all of them failing to lift the allocated quantity of fly ash and to deposit the liquidated damages.

Rajasthan Rajya Vidyut Utpadan Nigam Limited (Company) invited (August and November 2014) tenders (TN-2252 and 2281) for sale of approximately 12 lakh Metric Tonne (MT) of dry fly ash generated by the units of Suratgarh Super Thermal Power Station (SSTPS). The general terms and conditions of the contract (Section B) provided that the contract would be liable to be terminated if there is default in lifting the material by the buyer, default in payment for the quantity lifted and payment of compensation, if any. No claim or compensation was payable as a result of termination of contract. The successful bidder was required to deposit security amount equivalent to the value of a month's quantity of annual allocated quantity of fly ash. The Company had the right to forfeit the security deposit either in whole or in part if the bidder failed to observe or perform any of the obligations under the contract. The scope of works and special terms and conditions for the contract (Section C) provided that in case the buyer failed to lift the allocated quantity of fly ash monthly and if such shortfall was disposed off through wet system[9] then the buyer was liable to pay liquidated damages calculated at sale price plus ₹ 150 per MT for the shortfall. In case the monthly generated quantity of dry fly ash was less on account of annual shutdown or certain other problem in the generating unit and no wet system was used for dumping the fly ash then no penalty was to be imposed.

9 In Wet Disposal the ash is mixed with water and the ash slurry is transported to the disposal area.

The Company finalised the bids as per terms and conditions of tender and awarded Letter of Awards (LoA) to the following four firms for sale of dry fly ash.

Name of the firm	Date of LoA	Annual allocated quantity (In MT)	Rate per MT (in ₹)
Siddhi Vinayak Cement Private Limited (TN 2252)	11 November 2014	1,26,000	252
Ambuja Cement Limited (TN 2281)	3 January 2015	2,20,000	160
J.K. Cement Works (TN 2281)	3 January 2015	1,04,000	160
Shree Cement Limited (TN 2281)	3 January 2015	7,50,000	160

Clause 11 of the LoAs provided that the contractors had to execute an agreement for due fulfillment of the contract.

We noticed (November/December 2016) that Shree Cement Limited did not execute agreement with the Company as required under clause 11 of the LoA. Further, it also did not submit security deposit of ₹ one crore[10] as per the terms and conditions of LoA and tender. The Company, however, allowed Shree Cement Limited to lift fly ash from SSTPS without any agreement and security deposit.

Further, the scrutiny of records relating to quantity of fly ash lifted by the contractors disclosed that all the four contractors failed to lift the allocated quantity on monthly basis in various months during January 2015 to November 2016. The maximum shortfall pertained to Shree Cement Limited. Out of 23 months (January 2015 to November 2016), Shree Cement Limited did not lift the entire allocated quantity of fly ash in 21 months.

We noticed that the Company disposed of 1.77 lakh MT fly ash through wet system during August 2015 to October 2016 due to non-lifting of the allocated quantity by the contractors. The Company worked out the liquidated damages for shortfall in lifting the allocated quantity and also intimated the contractors for depositing the same. However, none of the contractors deposited the penalty for any month for which they failed to lift the allocated quantity.

The Company did not take action against the contractors as per the terms and conditions of tender and LoA despite the liquidated damages accumulating to ₹ 5.63 crore upto October 2016. The position of available security deposit vis-à-vis the accumulated liquidated damages as on October 2016 was as follows:

(₹ in crore)

Name of the firm	Available security deposit/earnest money deposit	Liquidated damages to be recovered	Short fall against available security
Siddhi Vinayak Cement Private Limited	0.38	0.47	0.09
Ambuja Cement Limited	0.40	0.10	-
J.K. Cement Works	0.32	0.26	-
Shree Cement Limited	0.39	4.80	4.41
Total	**1.49**	**5.63**	**4.50**

10 Annual allocated quantity/12 X rate per MT *i.e.* 750000/12 X 160.

The Company allowed the liquidated damages to accumulate in excess of the available security deposit thereby jeopardizing its financial interests. The possibilities of recovery of liquidated damages from Shree Cement Limited are poor in absence of agreement and security deposit.

The Government stated (May 2017) that the Company allowed Shree Cement Limited to lift fly ash without agreement because the prime objective was to ensure utilisation of fly ash in a productive manner and to comply with the guidelines issued by Ministry of Environment and Forest (MoEF) which set the target of 100 *per cent* utilisation of fly ash generated. The fact remains that Shree Cement Limited lifted the fly ash without any agreement and security deposit. Further, even after more than two years an agreement has not been entered into. In absence of agreement and security deposit, the Company could not recover liquidated damages.

3.4 *Excess payment due to defective clause in the work order*

Defective clause in the work order resulted in excess payment of ₹ 2.08 crore to the Contractor at Suratgarh and Kota Super Thermal Power Stations for excess transit losses allowed over Railway Receipt weight.

Rajasthan Rajya Vidyut Utpadan Nigam Limited (Company) procures coal from the Korba Coalfields of South Eastern Coalfields Limited (SECL) for its Kota Super Thermal Power Station (KSTPS) and Suratgarh Super Thermal Power Station (SSTPS). The Company awarded (July 2006 and January 2013) work orders to Aryan Coal Beneficiation Private Limited (Contractor) for beneficiation/washing of raw coal at Korba Coalfields and supply of beneficiated coal to KSTPS and SSTPS. The Company allowed transit loss to the Contractor on actual weight received at the power stations. The supplies against the old (July 2006) work order were received up to December 2012. The supplies against new work order commenced from January 2013.

Review (January 2017) of the work orders disclosed that the Company modified the Clause relating to transit loss in the new work order. The old work order awarded in July 2006 provided that "the Company will allow a maximum 1.5 *per cen*t transit loss on monthly basis while computing actual weight of beneficiated coal received on rake to rake basis. For this purpose, weight of the clean coal received at the power stations shall be increased by 1.5 *per cent* but not exceeding the Railway Receipt weight of the respective rakes". The modified clause included in new work order awarded in January 2013 provided that "the Company would allow a 0.80 *per cent* transit loss on actual weight of the beneficiated coal received at power stations on each rake. For this purpose, weight of beneficiated coal received at the power station shall be increased by 0.80 *per cent* on rake to rake basis". There was no reference to limiting the payment to the RR weight.

We noticed that the Company reduced the rate of transit loss in the new work order as per Rajasthan Electricity Regulatory Commission Tariff Regulations, 2009. The modified terms and conditions relating to transit loss were, however, not prudent because the modified Clause invariably allowed benefit of 0.8 *per cent* to the Contractor on the actual weight without considering the fact that benefit of increase in coal weight was not to be allowed beyond Railway Receipt (RR) weight. The RR weight represents the actual quantity

loaded by the contractor at the loading point considering all specified parameters like moisture, *etc*. The terms and conditions in the old work order considered this aspect and, therefore, restricted the transit loss up to the RR weight only.

Scrutiny of records disclosed that the Company invariably increased the actual weight of coal received at SSTPS and KSTPS by 0.8 *per cent* and made payments accordingly. The Company should have provided the benefit of transit loss to the extent of RR weight only.

The Government stated (May 2017) that actual weight of coal received at the thermal stations was worked out after deducting the weight of empty wagon from the gross weight. Hence, the weight as shown in RR may not be considered as maximum weight of coal dispatched. Further, the bidders had quoted rates as per tender conditions and the clauses of allowing transit loss on actual weight received at thermal station was as per tender conditions.

The reply was not convincing because invariable increase in weight for compensating transit losses over and above the RR weight led to payment for coal not loaded by the Contractor. Besides, there were no recorded reasons for change in the clause in the new work order. The Company by incorporating a defective clause in the work order made an excess payment of ₹ 2.08 crore to the Contractor at SSTPS (₹ 1.20 crore) and KSTPS (₹ 87.82 lakh) on account of transit loss over and above RR weight during January 2013 to September 2016.

Rajasthan State Mines and Minerals Limited

3.5 *Non-recovery of contribution from customers for District Mineral Foundation and National Mineral Exploration Trust*

The Company belatedly commenced recoveries from the customers for National Mineral Exploration Trust and District Mineral Foundation Trust and thereby lost opportunity to recover at least ₹ 14.54 crore.

The Government of India (GoI) vide notification dated 27 March 2015 amended 'The Mines and Minerals (Development and Regulation) Act, 1957' (MMDR Act, 1957) and inserted new Sections 9B and 9C. The amendments to the MMDR Act, 1957 were deemed to have come into force from 12 January 2015. Further, the amendment in MMDR Act, 1957 led to establishment of District Mineral Foundation Trust (DMFT) and National Mineral Exploration Trust (NMET).

Section 9B	The State Governments were to establish District Mineral Foundation Trust (DMFT) in any District, affected by the mining related operations. The holder of a mining lease had to contribute to the DMFT, in addition to the royalty, an amount not exceeding one-third of such royalty.
Section 9C	The Central Government was to establish National Mineral Exploration Trust (NMET) and the holder of a mining lease had to contribute to the NMET an amount equivalent to two *per cent* of the royalty.
14 August 2015	The GoI notified (14 August 2015) the National Mineral Exploration Trust Rules, 2015.
16 September 2015	The GoI directed the State Governments that the DMFTs would be deemed to have come into existence with effect from 12 January 2015.
17 September 2015	The GoI notified (17 September 2015) the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 which specified the rates for contribution to the DMFT. As per Rules, the mine holders granted mining leases on or after 12 January 2015 were required to contribute to the DMFT at the rate of 10 *per cent* of the royalty while the mine holders who were granted leases before 12 January 2015 were required to contribute at the rate of 30 *per cent* of the royalty.

The Government of Rajasthan (GoR) notified (31 May 2016) 'The District Mineral Foundation Trust Rules, 2016. These were deemed to have come into force from 12 January 2015. The GoR also established (9 June 2016) District Mineral Foundation Trusts (DMFT) in the mining affected Districts of the State.

Rajasthan State Mines and Minerals Limited (Company) is primarily engaged in mining and marketing of Rock Phosphate, Gypsum, Limestone and Lignite minerals. As on January 2017, the Company had been granted all the mining leases prior to 12 January 2015 and as such it was required to pay to the DMFTs and NMET at the rate of 30 *per cent* and two *per cent* of the royalty respectively with effect from 12 January 2015.

The Company, however, commenced[11] recovery of contribution for DMFT and NMET from the customers for different minerals between 1 April 2016 and 1 June 2016. The contribution towards DMFT in respect of Lignite was not recovered from the customers on the basis of notification issued (20 October 2015) by the Ministry of Coal, GoI which stated that the date of contribution shall be the date of notification issued by the State Government or the date on which the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 came into force, whichever was later. However, there was no such stipulation for payment of NMET. The reasons for delayed levy of DMFT and NMET in the invoices of other minerals were not found on records.

The Company did not act in time on the notifications issued by the Government of India for DMFT and NMET. The notifications were issued on 17 September 2015 and 14 August 2015 respectively but the Company commenced recoveries from the customers for various minerals between 1 April 2016 and 1 June 2016. Had the Company acted in time on the notifications, it could have recovered at least ₹ 14.54 crore from the customers towards DMFT and NMET from October 2015.

11 Rock Phosphate (1 May 2016), Gypsum (1 June 2016), Limestone (1 April 2016) and Lignite (1 April 2016).

We observed that the Company deposited ₹ 1.14 crore towards NMET for the year 2015-16 from its own funds. However, contribution to DMFT for 2015-16 was not made (January 2017).

The Government stated (August 2017) that the issue of imposing NMET and DMFT from retrospective date was under litigation at Delhi High Court. Further, the Company had started contribution to DMFT and NMET from the date of formation of these trusts on the basis of legal opinion. The reply was not acceptable because the paragraph highlights the fact that the Company did not recover contributions to the DMFT and NMET even after issue of notifications by the Government of India.

3.6 *Obligatory payment of compensation and increased cost of production of Rajphos due to unrealistic clauses in the work order*

The Company incorporated unrealistic clauses in the work order regarding payment/recovery of compensation for shortfall in production which made it obligatory for the Company to pay compensation to the Contractor without any possibility of recovery. This led to payment of compensation of ₹ 78.86 lakh to the contractor.

Rajasthan State Mines and Minerals Limited (Company) awarded (September 2013) a work order to R.K. Dhabhai Minerals and Chemical Private Limited (Contractor) for designing, installation, commissioning and operation and maintenance of a Rajphos[12] grinding unit with rated capacity of one lakh metric tonne (MT) per annum at its Jhamarkotra mine. The work order was awarded for a period of 10 years on design, build, operate and own basis.

As per terms and conditions of work order, the Contractor was required to grind the Rock Phosphate and fill the Rajphos in valve type HDPE[13] bags with inside lamination at the rates[14] mentioned in the work order. The Company had to provide sufficient space for installation of the grinding unit and stacking of packed bags of Rajphos and empty valve type HDPE bags with printed maximum retail price. The decision to use valve type HDPE bags was a departure from the prevailing practice of using open mouth HDPE bags with inside lamination.

Further, the work order stipulated payment/recovery of compensation for shortfall in production due to reasons attributable to the Company/Contractor respectively as follows:

- it was obligatory for the Company to pay for 60 *per cent* (60,000 tonne per annum) of the rated capacity considering average production of Rajphos at 5,000 MT per month. The Company was liable to pay compensation for shortfall on **monthly** basis at 50 *per cent* of the applicable rate in case the monthly production fell short of 5,000 MT for reasons attributed to it; and

12 A product containing 18 to 20 *per cent* Rock Phosphate (P2O5). The material is mainly used by the farmers as direct fertilizer in acidic soils.

13 High Density Polyethylene Bags.

14 Rate per MT including weighing, bagging and stitching: 1st year (₹ 470), 2nd to 6th year (₹ 551), 7th and 8th year (₹ 591), and 9th and 10th year (₹ 621).

- the Company was entitled to recover compensation for shortfall on **annual** basis at 50 *per cent* of the applicable rate in case the Contractor failed to achieve the rated capacity of one lakh MT per annum for reasons attributable to him.

The Contractor successfully completed the performance guarantee test and the commercial production of Rajphos commenced from 16 May 2015.

We observed that the compensation clause did not safeguard the financial interests of the Company. Thus while the contractor could recover compensation on monthly basis for production below 5,000 MT the Company was entitled to recover compensation for shortfall on annual basis in rated capacity for reasons attributable to the Contractor. During 2009-16, the sale[15] of Rajphos ranged between 0.34 lakh MT and 0.80 lakh MT while the production[16] ranged between 0.02 lakh MT and 0.83 lakh MT against the targeted production of one lakh MT per annum. There was no sale of Rajphos during 2012-13. The lack of demand indicated that the Company was not in a position to issue instructions for production of Rajphos up to the rated capacity of one lakh MT per annum. Lack of demand and supply orders created a situation where the Company could not recover compensation in some months even if the Contractor failed to produce the allocated quantity for reasons attributed to it because the efficiency had to be measured on annual basis. On the contrary, the contractor could easily achieve the target of 5,000 MT per month as the average operational capacity of the plant was around 8,333 MT per months. The maximum production (0.83 lakh MT) achieved by the Company during 2009-10 could be produced within 10 months. Thus, it is evident that poor demand for Rajphos was not taken into consideration before framing the clauses loaded in favour of the Contractor.

The Company stated (September 2017) that the provision for compensation to the contractor on monthly basis was to assure the Contractor of regular cash inflow as it had made significant capital investment and also had to make monthly payment for operational expenses. The Company further stated that now the Contractor had been directed (April 2017) to restrict the monthly production to 5000 MT to minimise variation in production and compensation payable to him. The fact remain that the Company jeopardized its financial interests by incorporating an inappropriate clause regarding compensation.

Scrutiny (January and July 2017) of records disclosed that the Contractor could not achieve the targeted production of 5,000 MT per month in 11 out of 22 months during 16 May 2015 to 31 March 2017. The actual production in these 11 months was only 22,425 MT against the targeted production of 55,000 MT. The monthly shortfall ranged between 460 and 5,000 MT.

The Contractor attributed the shortfall in production to non-fulfillment of contractual obligations by the Company which included not providing valve type HDPE bags, delay in stencil of new MRP[17] on bags and non-availability of sufficient space for stacking of packed bags of Rajphos. The Contractor

15 2009-10 (79,600 MT), 2010-11 (74,923 MT), 2011-12 (33,592 MT), 2012-13 (nil), 2013-14 (76,026 MT), 2014-15 (78,402 MT) and 2015-16 (53,139 MT).

16 2009-10 (82,707 MT), 2010-11 (68,955 MT), 2011-12 (30,976 MT), 2012-13 (1,595 MT), 2013-14 (76,201 MT), 2014-15 (78,250 MT) and 2015-16 (62,698 MT).

17 Maximum Retail Price.

raised monthly demand for compensation citing these reasons for shortfall attributable to the Company. The Company accepted (March 2016) the reasons and paid compensation of ₹ 78.86 lakh[18] to the Contractor.

We observed that the valve type HDPE bags could not be provided for automatic filling of Rajphos due to non-receipt of offers for supply of bags as per the requirement of the Company. Further, the space constraints occurred due to lesser allotment of required land and stacking of packed Rajphos on account of poor demand.

We noticed that the Contractor agreed to use the prevailing open mouth HDPE bags with inside lamination on additional terms and conditions which included:

- payment for labour charges at the rate of ₹ 13.11 per MT along with escalation/de-escalation based on the minimum wages declared by the Government of India from time to time from the date of commencement of commercial production,
- cost of thread at a fixed rate of ₹ 12.72 per MT based on consumption pattern for the entire contract period of 10 years and
- lumpsum payment of ₹ 5.27 lakh for modification of the plant to make it suitable for using open mouth HDPE bags.

The Board of the Company also raised concerns for incorporating unrealistic clause in the work order regarding supply of valve type HDPE bags without ensuring their availability in the market. It, however, accorded (March 2017) approval for operation of the plant on additional terms and conditions of the Contractor without fixing responsibility for incorporating the said unrealistic clause. This increased the cost of production of Rajphos by ₹ 25.83 per MT.

The Company stated (September 2017) that the bids for such type of bags did not receive suitable response and the bags were also costlier in comparison to the open type bags. The Company's reply substantiates the audit observation that the Company envisaged the use of new types of bags without proper market survey regarding cost and availability of these bags.

Rajasthan State Road Development and Construction Corporation Limited

3.7 *Processing tenders for collection of toll*

Rajasthan State Road Development and Construction Corporation Limited (Company) constructs Highways, Bridges and Road Over Bridge (ROB), *etc.* on Build-Operate-Transfer (BOT)/Public Private Partnership (PPP) models. The Company recovers the investment during concession period through levy of user fee (toll) as per the provisions of Rajasthan Road Development Act, 2002 and Rules framed there under. The concession period is determined considering the likely costs and expected toll revenue. The project is

18 Including Tax deducted at source: ₹ 20.62 lakh (September 2016), ₹ 23.37 lakh (November 2016), ₹ 21.09 lakh (December 2016), ₹ 13.78 lakh for the month of December 2016-January 2017 (calculated figure).

transferred to the State Government free of charge after recovery of the investment (including return) made on the project.

The deficiencies in processing tenders for toll collection were highlighted in paragraph 3.6 of the Report No. 4 (Commercial) of the Comptroller and Auditor General of India for the year ended 31 March 2011, Government of Rajasthan, hereinafter called as Audit Report 2010-11. The Audit Report 2010-11 highlighted delays in finalization of toll collection tenders and shortcomings in fixation of reserve price of bids invited for collection of toll during the period 2007-08 to 2009-10.

The paragraph was discussed (July 2013) by the Committee on Public Sector Undertakings (COPU). During discussion, the COPU observed that systemic lapses in processing tenders for toll collection caused delay in finalisation of tenders. The COPU recommended (September 2015) review of the existing annual tendering process for increasing the toll collection period upto two to three years, not to collect toll through departmental employees in future and to inform it about implementation of the recommendations after taking decisions at the appropriate level.

The present audit was conducted (December 2016 to March 2017) to assess whether the Company finalised the toll collection tenders in time, developed a proper system for fixing the reserve price of the bids and had implemented the COPU's recommendations. The audit covers the toll collection activity of the Company during the period from 2011-12 to 2016-17.

3.7.1 *Tenders for collection of toll*

As on 31 March 2017, the Company was collecting toll on 25 BOT projects. Out of 25 BOT projects, 23 BOT projects were completed during 2011-16 while the remaining two projects were completed in earlier years (2007-08 and 2009-10).

During 2011-17, the Company had to issue 'Notice Inviting Tenders' (NITs) 138 times for awarding 65 toll collection contracts for different periods on these 25 roads due to non-participation of bidders because of higher reserve price, cancellation of tenders due to inadequate offers in comparison to the reserve price and withdrawal of offers by the successful bidders in some cases.

The number of BOT projects completed, tenders finalised and number of times the NITs were issued during 2011-17 is detailed below:

Year	No. of BOT roads completed during the year	No. of tenders finalised	No. of times tenders invited
2011-12	01	02	09
2012-13	06	07	10
2013-14	04	09	20
2014-15	08	18	37
2015-16	04	15	27
2016-17	00	14	35
Total	**23**	**65**	**138**

3.7.2 *Delay in initiating tender process*

The process of finalising bids for collection of toll begins with the traffic census to be conducted by the Project Director of the Company and involves determination of reserve price based on traffic census, approval of reserve

price by the competent Committee, invitation of tenders, opening of price bids, finalisation of tenders, completion of formalities by the bidders like deposit of security amount, advance installment, submission of post dated cheques and execution of agreement with bidder. The Toll Policy 2012 allows the Company to extend the ongoing contract upto three months after enhancing the rates by 7.50 *per cent* in cases where the new tender is not finalised in exceptional conditions before expiry of the ongoing contract. It is therefore obligatory for the Company to initiate the tender process in time so that the new tender is finalised prior to the closure of ongoing contract.

The COPU also directed (July 2013) the Company to initiate the tendering process at least four months prior to the expiry of ongoing contract so that the tenders could be finalised in time. Further, the toll collection period could be for two to three years to avoid tendering every year.

The Company, however, issued (22 September 2014) instructions on these lines to the Unit Offices after delay of 14 months. Scrutiny of records disclosed that the Company in violation of COPU's directions did not initiate the tender process four months prior to the expiry of ongoing contracts in 21 (38 *per cent*) out of 56 tenders finalised during 2013-17 **(Annexure 6).** The Project Directors in these cases commenced the traffic census between 32 and 94 days prior to the closure of ongoing toll collection contracts. Delay in initiating the tender process resulted in delayed finalisation of 12 tenders which were finalised after expiry of 11 to 75 days of the ongoing contracts. The delay in initiating tender process resulted in:

- allowing inadequate time period to the bidders for submission of bids
- extension to the contractors without enhancing the rates by 7.5 *per cent* in two cases[19] causing revenue loss of ₹ 15.28 lakh
- extension to the existing contractor beyond three months on Pali-Nadol Road (September and December 2013) in violation of the Toll Policy 2012
- awarding short term toll collection contracts at lower rates in three[20] cases by accepting the *suo moto* offers of the contractors causing loss of ₹ 7.13 lakh and
- loss of ₹ 1.35 crore in two[21] cases due to delay in finalising tenders.

Besides, the Company also did not follow the COPUs direction of awarding toll collection contracts for more than one year. In 18 out of 56 cases during 2013-17, it awarded contracts for a period ranging between six and 12 months.

The Government stated (August 2017) that bids/*suo moto* offers for toll collection were approved by the competent authority as per site conditions in the interest of the Company. As regards non-adherence to COPU's directions, it was stated that bids for toll collection in respect of newly constructed roads

19 Merta- Ras Road (October 2014) and Jahajpur-Mandalgarh Road (April 2014).

20 Mangalwar-Nimbahera Road (September 2016), Fatehnagar-Dariba Road (September 2016) and Salumber-keerki Chowki Road (September 2016).

21 (i) Merta-Ras (₹ 0.36 crore) during 28 December 2016 to 24 February 2017 and (ii) Hanumangarh-Suratgarh (₹ 0.99 crore) during 9 May 2014 to 22 July 2014.

were initially invited for one year with the presumption that traffic would increase after one year. The reply did not specify reasons for delay in initiating the tender process. Further, it may be seen that there were only eight newly constructed roads out of 18 cases pointed out in the paragraph.

3.7.3 *Non-compliance with Rajasthan Transparency in Public Procurement, Act 2012*

The Government of Rajasthan (State Government) enacted (May 2012) 'The Rajasthan Transparency in Public Procurement, Act 2012' (RTPP Act 2012) with the objectives of ensuring fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, and achieving highest standards of transparency, accountability and probity to enhance public confidence in public procurement process. The State Government also notified (January 2013) 'The Rajasthan Transparency in Public Procurement Rules, 2013' (RTPP Rules 2013) under the RTPP Act 2012.

Rule 43 of the RTPP Rules 2013 provides a time period of 30 days for submission of bids from the date of publication of 'Notice Inviting Tender' (NIT) in case of tenders with estimated value above ₹ 50 lakh.

We noticed that out of 138 NITs for collection of toll during 2011-17, the Company violated the Rule in 89 NITs (64.49 *per cent*) and allowed the bidders a time period ranging between nine and 26 days for submission of bids instead of 30 days as stipulated in the Rule. The time period allowed to bidders for submission of bids in 89 NITs is given below:

Time period allowed for submission of bids (in days)	**9 to 15**	**16 to 22**	**23 to 26**
No. of NITs	54	31	4

Reasons for not allowing the stipulated period of 30 days for submission of bids in 12 projects were not available on records. Scrutiny of records in other cases, however, disclosed that the reasons for allowing shorter periods were delay in initiating the tender process, delay in fixation of reserve price and non-finalisation of the NIT requiring re-invitation of tenders.

Case study: Kishangarh Bas-Khairthal-Bansur-Kotputli Road

The Company allowed (7 October 2016) a time period of only 15 days for submission of bids for high value tender for the road with reserve price of ₹ 13.83 crore for a period of two years. The Company had sufficient time for finalization of the tender even if it had allowed a time period of 30 days for submission of bids as the ongoing contract was expiring on 26 December 2016. The tender was finalised (7 November 2016) one and half months prior to the expiry of the ongoing contract at ₹ 16.17 crore for two years. The Company, therefore, limited the competition by not allowing the bidders a period of 30 days for submission of bids.

The Company, therefore, acted in violation of RTPP Act 2012 by allowing shorter period for submission of bids.

The Government stated that in emergent conditions the procuring entity, after recording reasons, may reduce the period for submission of bids to half of the period specified in rule 43 (7) of RTPP Rules 2013. The reply was not convincing as there were no recorded reasons for reduction in bid time. The Company curtailed the bid period in majority (64 *per cent*) of the cases without recording any reason.

3.7.4 *Fixation of reserve price*

The Toll Policy, 2012 framed by the Company provides that the reserve price for inviting bids for collection of toll would be finalised by a Committee based on the traffic census conducted by the concerned Project Director.

3.7.5 *Non-conduct of traffic census as per Toll Policy*

The Toll Policy 2012 stipulated fixation of reserve price based upon seven days traffic census conducted by concerned Project Director. The Project Directors in three[22] cases, however, did not conduct traffic census for seven days as per Toll Policy and proposed reserve price based upon traffic census conducted for three to five days.

The Government accepted the facts and stated that initially traffic census was conducted for seven days on these roads but offers were not received as per the reserve price. Subsequently, traffic census for shorter period was conducted due to urgency and to re-assess the reserve price. The reply was not convincing in view of the fact that traffic census for shorter period may result in inaccurate data and inadequate assessment of reserve price.

3.7.6 *Fixation of reserve price for newly constructed roads*

We noticed that the Company did not follow a consistent and rational approach in fixing reserve price for inviting first toll collection tender for 23 newly constructed roads. The Company in 19 cases **(Annexure 7)** did not consider the reserve price proposed by the Project Director based upon traffic census and fixed a higher reserve price based upon the DPRs of the roads. In three[23] cases, the reserve price based upon DPRs was not considered because the traffic census worked out a higher reserve price. In the remaining case (Pali-Nadol road), the reserve price worked out on the basis of traffic census was the same as that prescribed in the DPR.

Our analysis disclosed that all the tenders (six cases) where reserve price was fixed upon traffic census were awarded in the first attempt. However, out of 16 cases where the Company fixed higher reserve price based upon DPR, tender in only one case (Nasirabad-Kekri) could be awarded in the first attempt while in the remaining 15 cases no bidder participated in the tenders due to higher reserve price. In these 15 cases, the Company had to reduce the reserve price and re-invite tenders two to five times for awarding the first toll collection contract. This caused delay in commencement of toll collection activity and the Company was deprived of the opportunity to earn toll revenue of ₹ 33.27 crore.

The Government accepted the facts and stated that there was large difference between reserve price based on DPR and traffic census conducted by the Project Director. It was decided to invite bids for the first time on the basis of higher reserve price of DPR/traffic census looking to the interests of the Company.

22 Gotan-Sojat: three days during 29 June 2012 (6:00 AM) to 02 July 2012 (6:00 AM), Bari-Bayana-Kherli Road: five days during 7 March 2016 to 12 March 2016 and Nasirabad-Kekri-Deoli Road: three days during 25 January 2017 to 28 January 2017.

23 (i) Mahua-Hindaun-Karauli, (ii) Jodhpur-Osiyan and (iii) Kotputli-Sikar-Kuchaman.

Fixation of reserve price based upon DPRs was, however, not a reliable criterion which resulted in cancellation of bids and loss of revenue.

3.7.7 *Fixation of reserve price for ongoing contracts*

We noticed that the Company did not follow a consistent approach in fixing reserve price for inviting subsequent toll collection tenders for the ongoing roads. The Company in seven cases (**Annexure 8**) did not consider the mechanism of traffic census as prescribed in the Toll Policy and instead fixed the reserve price of the roads by either considering 10 *per cent* growth in previous contract value or five *per cent* annual growth in traffic and five *per cent* increase in the previous toll rates or six *per cent* increase in traffic growth. The reserve price fixed by adopting different parameters was always in excess (between 7.52 and 58.14 *per cent*) of the reserve price worked out on the basis of traffic census. The Company had to invite tenders two to three times due to revision of reserve price. The toll collection contracts were awarded after a period ranging between 38 and 187 days from the date of issue of first NIT.

The Government accepted the facts and stated that there was large difference between reserve price based on DPR and traffic census conducted by the Project Director. It was decided to invite bids for the first time on the basis of higher reserve price of DPR/traffic census looking to the interests of the Company. The reply was not convincing as the Company did not follow provisions of the Toll Policy 2012 and in most of cases it had to re-invite tenders due to lack of response from the bidders at higher reserve price.

3.7.8 *Fixation of reserve price as per new Toll Policy 2016*

The Company approved (March 2016) a new Toll Policy (Parameters of Bidding Procedures and Conditions for Collection of Toll Tax) 2016, applicable with effect from 1 April 2016. The new toll policy prescribed that reserve price for ongoing tenders would be higher of the price worked out on the basis of traffic census or the price worked out after enhancing the present toll contract by five *per cent* towards increase in growth of traffic plus actual increase in the toll rate in the corresponding year considering 1 April as base date. The new Toll Policy also provided that if no bidder participates in the tender or quotes a rate less than the reserve price, then the reserve price would be fixed on the basis of highest rate received in the cancelled tender.

We noticed that out of 14 tenders finalised during 2016-17, only five[24] (36 *per cent*) tenders could be awarded in the first instance at the reserve price worked out based on the new Toll policy. The Company had to invite tenders 30 times for awarding toll collection contracts in the remaining nine[25] cases due to non-participation of bidders because of higher reserve price/cancellation of tenders due to lower bids than the reserve price.

24 (i) Dabok-Mavli-Chittorgarh, (ii) Pali-Nadol, (iii) Banswara-Ratlam, (iv) Kishangarh-Bas-Khairtal-Kotputli and (v) Bikaner Bypass.

25 (i) Mahua-Hindaun-Karauli, (ii) Merta-Ras, (iii) Alwar-Behror-Narnaul, (iv) Nasirabad-Kekri, (v) Mangalwar-Nimbahera, Fatehnagar-Dariba, Salumber-Keer ki Chowki, (vi) Jaipur-Jobner-Kuchaman-Nagaur, (vii) Kota-Dharnawada, (viii) Bari-Bayan-Kherli and (ix) Hanumangarh-Suratgarh.

Thus, the mechanism for fixation of reserve price provided in the new Toll Policy resulted in the multiple invitation of tenders in 64 *per cent* of the cases. In view of this the mechanism may have to be revisited.

The Government accepted the facts and stated that efforts were made to invite bids at reserve price worked out on the basis of new toll policy but subsequently reserve price was reduced to attract more bidders.

3.7.9 *Delay in execution of agreement*

Out of 23 new roads completed during 2011-16, the Company could not award the first toll collection tender in seven cases (30.43 *per cent*) promptly even after completion of the roads. We noticed that the Head office of the Company finalised the tenders and issued instructions to the Project Directors for execution of agreement with the bidders. The Project Directors, however, executed agreements with the bidders after delays ranging between 50 and 309 days due to non-completion of toll plazas or electricity works in toll plazas or other minor works. This resulted in belated commencement of toll collection activity by the contractors and the Company losing opportunity to collect toll revenue of ₹ 18.08 crore as detailed in **Annexure 9**.

The Company, therefore, failed to commence timely recovery of toll despite completion of roads due to non-completion of toll plazas. The traffic movement continued for a substantial period without payment of toll in absence of any temporary arrangement.

The Government accepted the facts and stated that the bids for collection of toll were invited in anticipation of completion of work in due time. However, the work could not be completed within scheduled time due to various reasons.

3.7.10 *Loss of toll revenue due to departmental toll collection*

The toll collection contract (from 11 May 2010 for a period of one year) on Hanumangarh-Pilibanga-Suratgarh 24 Km Road (26/0 to 50/0) was due to expire on 11 May 2011. The existing contractor offered (February 2011) to extend the contract by three months increasing the ongoing contract value (₹ seven crore per year) by 7.5 *per cent.* The Company neither accepted the offer nor initiated proceedings for new contract as the remaining 26 Km (0/0 to 26/0) road would be completed by July 2011 and thereafter tenders would be invited for the entire road (0/0 to 50/0). As such, the Company started departmental toll collection on the road from 11 May 2011.

The new tender for the entire road could be awarded only in February 2012 due to delay in completion of 0/0 to 26/0 portion of the road and the contractor commenced toll collection from 9 May 2012. The Company collected toll of ₹ 5.76 crore and incurred expenditure of ₹ 22.06 lakh on manpower during the period from 11 May 2011 to 9 May 2012.

Had the Company accepted the offer of the contractor, it could have earned minimum additional toll revenue of ₹ 1.97 crore (calculated on the price offered by the contractor).

The Government stated that the Company estimated that the work on remaining stretch of 26 Km would be completed by July 2011 and could get bids at higher price for the whole road. The fact remained that the price

offered by the existing contractor was in consonance with toll policy as well as beneficial to the Company.

3.7.11 *Non-recovery from the contractor*

Clause 12 of the agreement entered (June 2015) with the contractor (S.P. Constructions) for collection of toll on Kishangarh Bas-Khairthal-Kotputli road provided that the agreement would be terminated in case the contractor failed to pay any instalment of rent on the due date or breached any condition of the agreement. Further, the contractor was liable to bear all losses incurred by the Company on departmental toll collection or resale.

We noticed that the Company terminated (14 August 2015) the agreement with the contractor for non-payment of instalments and started departmental toll collection on the road. The Company also black listed the contractor and debarred him from participating in future contracts. The new contract for toll collection was awarded (December 2015) for one year at ₹ 5.91 crore. The toll collection under new contract commenced from 26 December 2015.

During the period from 14 August 2015 to 25 December 2015, the toll was collected departmentally from 20 August 2015 to 12 September 2015 and through a contractor from 12 September to 25 December 2015. The Company also invited tenders thrice (August 2015, September 2015 and October 2015) but could not finalise them either due to non-participation of bidders or non-receipt of adequate bids because of high reserve price.

We observed that the Company short recovered toll revenue of ₹ 2.66 crore during the period from 14 August 2015 to 24 June 2016 (date of closure of agreement with S.P. Constructions) as a result of non-performance of contractual obligations by S.P. Constructions. The short recovery of toll revenue was recoverable from the contractor as per Clause 12 of the agreement but the Company did not initiate any action for recovery of this amount. Instead the Company removed (November 2015) the name of the contractor from the black list and allowed him to participate in future contracts.

The Government stated that the contractor abandoned the work in extra ordinary/abnormal circumstances involving law and order situation. The contractor was removed from the black list as per recommendation of empowered standing committee and the case was pending with committee. The reply was not convincing because toll would not have been collected departmentally and by the other contractor during this period had there been abnormal circumstances involving law and order situation.

3.7.12 *Undue relief to the contractor towards loss of profit*

The Company awarded (May 2014) toll collection contract to SPC Infrastructure Private Limited (Contractor) on Kotputli-Sikar-Kuchaman road at ₹ 30.51 crore for a period of one year. The road consists of five toll booths. The toll collection activity on one toll booth (Challa Neem ka Thana) remained suspended during the period from 8 July 2014 to 10 February 2015 (218 days) due to public agitation. The Company based upon the contract value, estimated the loss of toll revenue incurred by the Contractor due to closure of booth at ₹ 4.30 crore. The Company in its calculation also allowed

waiver towards loss of profit to the Contractor amounting to ₹ 44.99 lakh for the period of 218 days.

We observed that the Contractor was not eligible for benefit of loss of profit during the closure period because the tender/contract conditions did not provide for any such relief and the Company was entitled to recover only the contract value from the Contractor. Further, the Contractor would have already included the profit element in the quoted price at the time of submission of bids. The company, therefore, allowed undue relief of ₹ 44.99 lakh to the Contractor which needs to be recovered.

The Government accepted the facts and stated that loss of profit was paid to the contractor on the basis of decision of the empowered standing committee. The fact remained that the tender/contract conditions did not provide for any such benefit.

3.7.13 *Loss due to non-completion of road work*

The toll collection contract on Nasirabad-Kekri-Deoli road was due to expire on 02 November 2014. The Company finalised (22 October 2014) the new tender prior to the expiry of ongoing tender at ₹ 42.33 crore for two years. However, the activity of toll collection under new contract could not be commenced due to non-completion of a new toll plaza on the road. The Company, therefore, extended the ongoing contract for three months after increasing the contract value by 7.5 *per cent.* The toll collection under new contract commenced from 31 January 2015. This resulted in loss of toll revenue of ₹ 2.26 crore to the Company during the extended period (calculated as per rates received in new contract).

The Government accepted the facts and stated that bids for toll collection were invited including stretch of new constructed road in anticipation of completion of work and new toll plaza on time. However, the work could not be completed within scheduled time.

3.7.14 *Delay in termination of contracts of defaulter contractors*

The Company awards toll collection contracts to the successful bidders on submission of security deposit (10 *per cent* of the contract value) in the form of bank guarantee. The contractor is also required to submit an advance instalment of toll fees of 10 *per cent* in the form of demand draft/cheque and post dated advance cheques towards monthly instalments for the remaining 90 *per cent* amount prior to the commencement of toll collection activity. The contract agreement is required to be terminated and security deposit forfeited in case of failure of the contractor to pay any of the instalments.

We noticed that the Company did not terminate the contracts in two[26] cases immediately after default in payment of instalment by the contractors at first instance. This led to accumulation of dues beyond the available security deposit till termination of the contracts. The shortfall after adjusting the available security in these cases worked out to ₹ 1.28 crore.

26 (i) **Suket-Pipaliya-Bhawanimandi road**: shortfall of ₹ 0.78 crore against M/S Chaudhary Builders during April 2016 to February 2017 and (ii) **Chechat-Morak-Ramganjmandi road**: shortfall of ₹ 0.50 crore against M/S Jat Traders during March 2016 to November 2016.

We further noticed that the Company awarded (May 2016) toll collection contract for Bari-Bayana-Kherli road to the contractor which had defaulted (April 2016) in case of Suket-Pipaliya-Bhawanimandi road.

The Government accepted the facts and stated that toll contracts were not terminated on verbal assurance of the contractors.

Conclusion and recommendations

The toll collection activity continued to suffer due to delay in processing tenders and improper fixation of reserve price despite audit pointing out similar shortcomings in the Audit Report 2010-11. The Company failed to commence toll collection activity on newly constructed roads due to delay in construction of toll plazas and fixing higher reserve price based on Detailed Project Reports instead of traffic census in violation of the Toll Policy 2012. Improper fixation of reserve price led to non-participation of bidders and the Company had to re-invite tenders several times by reducing the reserve price. The Company violated the provisions of Rajasthan Transparency in Public Procurement, Act 2012 (RTPP Act, 2012) by allowing shorter time period for submission of bids.

We recommend the Company to initiate the tender process in time and devise a proper mechanism for fixing the reserve price of newly constructed roads and ongoing projects. The Company may consider conducting the traffic census scientifically and adopting uniform criteria for fixing reserve price instead of adopting different criteria. The Company should also adhere to the provisions of RTPP Act, 2012 by allowing sufficient time period to the bidders for submission of bids.

Rajasthan Renewable Energy Corporation Limited

3.8 *Avoidable payment of interest penalty due to under assessment of tax liability*

The Company under assessed the tax liability for the financial year 2014-15 due to consideration of profits and gains from projects beyond the eligible period allowed under Section 80 IA of the Income Tax Act, 1961. This resulted in an avoidable interest penalty of ₹ 83.32 lakh under Section 234 B and 234 C of the Act.

Section 80 IA of the Income Tax Act, 1961 (Act) provides 100 *per cent* deduction of profits or gains to an assessee (undertaking or an enterprise) derived from any business referred to in Sub-section (4) for a period of 10 consecutive years, in accordance with and subject to the provisions of this section. Section 80 IA of the Act is reproduced below:

80-IA (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred *per cent* of the profits and gains derived from such business for ten consecutive assessment years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or develops a special economic zone referred to in clause (*iii*) of sub-section (4) or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernisation of the existing transmission or distribution lines.

Further, as per Section 208 of the Act read with Section 211 of the Act, it is obligatory for an assessee to pay advance tax in four quarterly installments[27] where the advance tax payable is ₹ 10,000 or more. The assessee is liable to pay interest for default in payment of advance tax under Section 234 B and interest for deferment of advance tax under Section 234 C of the Act. Interest under Section 234 B is applicable where the assessee does not remit the advance tax or where the advance tax paid is less than 90 *per cent* of assessed tax. Interest under Section 234 C is applicable where the assessee has underestimated the installments of advance tax.

Rajasthan Renewable Energy Corporation Limited (Company) executed eight wind/solar power projects between April 2000 and April 2012. The profits and gains derived from these projects were eligible for 100 *per cent* deduction as per the provisions of Section 80 IA of the Act. Out of eight[28] projects, the Company started availing deduction under Section 80 IA on five projects from the financial year 2004-05. As such, these five projects were eligible for deduction up to the financial year 2013-14.

We noticed (November 2016) that the Company while assessing advance tax for the financial year 2014-15 also considered deduction of profits and gains on these five projects under Section 80 IA of the Act. The Company, therefore, under assessed the tax liability for the financial year and failed to pay accurate installments of advance tax. The original income tax return for the financial year 2014-15 was filed[29] (28 September 2015) with under assessed tax liability. The mistake came to the notice of the Company in September 2016 and a revised return for the financial year 2014-15 was filed (16 September 2016) with an interest penalty of ₹ 83.32 lakh[30] under Section 234 B and 234 C.

27 1st instalment on or before 15 June (Not less than 15 *per cent* of advance tax liability), 2nd instalment on or before 15 September (Not less than 45 *per cent* of the advance tax liability after reducing earlier instalment), 3rd instalment on or before 15 December (Not less than 75 *per cent* of the advance tax liability after reducing earlier instalments) and 4th instalment on or before 15 March (The whole amount of advance tax liability after reducing earlier instalments).

28 The deduction on remaining three projects was commenced from financial year 2006-07, 2009-10 and 2012-13.

29 The due date of filing was 30 September 2015.

30 The interest penalty under Section 234 B and 234 C was deposited on 14 September 2016.

The Company, therefore, under assessed the tax liability for the financial year 2014-15 due to consideration of profits and gains from projects beyond the eligible period allowed under Section 80 IA of the Act. This resulted in an avoidable interest penalty of ₹ 83.32 lakh under Section 234 B and 234 C of the Act.

The Government accepted (June 2017) the fact of claiming inadmissible deduction under Section 80 IA of the Act. It, however, maintained that the Company had to pay interest penalty of ₹ 67.68 lakh even if deduction was not claimed because of extraordinary increase in indirect income at the time of finalization of accounts which created difference between actual tax payable and advance tax deposited. The Government further stated that the amount of interest penalty paid at the time of revised return remained invested in fixed deposits which earned interest of ₹ 27.34 lakh.

The reply was not correct because the Company had calculated interest penalty of ₹ 67.68 lakh upto March 2015 considering increase in indirect income during last quarter of the year. It had ignored the fact that delay in payment of tax liability because of belated realisation of inadmissible deduction had considerably increased the interest penalty upto the date (16 September 2016) of filing of revised return. The total penalty under Section 234 B and 234 C upto the date of filing of revised return was ₹ 1.13 crore out of which ₹ 83.32 lakh was only due to claiming inadmissible deduction under Section 80 IA of the Act. Further, the Company was under legal obligation to pay statutory dues under the Act and, therefore, the argument that delayed payment helped it in earning interest through fixed deposit is not tenable.

Rajasthan State Road Transport Corporation

3.9 *Operation of buses in rural areas on Public Private Partnership mode under Viability Gap Funding*

Introduction

The Chief Minister, Rajasthan in the budget speech for the year 2011-12 announced (March 2011) '*Mukhyamantri Rural Bus Scheme*' (Scheme). The Scheme envisaged expansion of bus services in rural areas through 'Public Private Partnership' (PPP) model. The main objective of the Scheme was to provide bus connectivity in rural areas of the State in next three years, connecting all *panchayat* headquarters with *tehsil* headquarters, district headquarters, *krishi upaj mandis*, educational institutions, hospitals, industrial areas, bus terminals and railway stations to the extent possible. The State Government nominated (March 2011) 'Rajasthan State Road Transport Corporation' (Corporation) as nodal agency for implementation of the Scheme.

The Corporation appointed (July 2011) PDCOR Limited as Project Management Consultant (Consultant) for preparing a concept report for rural transport services in the State including broad scheme of the project and feasibility report for implementation of rural transport services in Alwar, Dholpur, Bharatpur, Dausa, and Karauli Districts and Kotputli Tehsil. The feasibility report included detailed report about cluster formation, preparation

of bus operation plan, cost estimates and financial analysis, project implementation strategy and bid process management.

The Consultant submitted the concept paper (July 2011) and feasibility report (February 2012) to the Corporation. The feasibility report suggested that the bus operator would buy, own, operate and maintain the midi buses for each cluster for a pre-determined period of six years, collect and retain the fare and advertisement revenues and pay to the Corporation or ask to be paid fixed viability gap for each cluster. The viability gap represented the excess of expenditure incurred over revenue earned by the bus operator in operation of buses. The viability gap payable to the bus operators was to be funded by the State Government.

The State Government citing various irregularities in implementation of the Scheme did not give (December 2016) permission for inviting fresh tenders and finally discontinued the Scheme from 1 April 2017. The viability gap payable to the bus operators upto 31 March 2017 was, however, allowed.

The present audit was conducted to assess whether the Corporation implemented the Scheme as per the budget announcement and achieved the desired results. As on March 2017, the Scheme was being implemented by the Corporation in 23 out of 49 operational[31] depots located in 19 Districts of the State. We reviewed the implementation of Scheme in four (Jaipur, Dausa, Karauli and Hanumangarh) out of 23 depots. The depots were selected on the basis of highest viability gap amount paid by the Corporation upto 2015-16.

Audit scrutiny (February to April 2017) involved review of records at the Head office and selected depots. The paragraph also includes financial impact in respect of other depots where the Corporation provided adequate information.

The Paragraph has been finalised considering replies (August 2017) of the Corporation. The Government endorsed (September 2017) the reply of the Corporation.

3.9.1 *Achievement of objectives of the scheme*

The Consultant envisaged that the State of Rajasthan had 9,192 *gram panchayats* in 33 Districts of the State as of January 2009. The Corporation was providing bus services in 3,615 *gram panchayats* while four *gram panchayats* were not connected with roads. The Corporation was, therefore, required to implement the Scheme in 5,573 *gram panchayats*. The Consultant envisaged requirement of approximately 2,000 midi buses (with 20 *per cent* variation subject to field survey) for providing bus connectivity to 9,188 *gram panchayats.*

The Corporation initially implemented the Scheme in 30 depots of 23 Districts. However, as on March 2017, the Scheme was being implemented in 23 depots of 19 Districts only. This indicates that the Corporation failed to achieve the objective of providing bus connectivity in all the rural areas of the State.

31 Excluding workshops, deluxe depot and depots located outside the State.

3.9.2 *Audit limitations in analysis of implementation of the Scheme*

The Transport Department had major role in implementation of the Scheme as it was authorised to notify the routes, issue registration certificate and route permits. The Corporation and Transport Department, however, did not provide district wise information/records relating to *gram panchayats* and clusters where bus connectivity under the Scheme was planned, records relating to tenders invited at first instance during February 2012, number of routes notified for enhancing rural connectivity, operation of buses on the notified routes/clusters, *gram panchayats* covered under the Scheme, *etc*. despite various requests and reminders issued between February 2017 and April 2017.

The reply of the Corporation did not address this issue.

The shortcomings noticed in implementation of the Scheme in selected depots based upon the information provided to Audit are discussed below:

3.9.3 *Improper fixation of the rate of viability gap*

The Corporation invited (February 2012) tenders for operation of buses in identified clusters of 11[32] Districts of the State based upon Request for Proposal (RFP) document and feasibility report prepared by the Consultant. Clause 1.7 (bidding process) of the RFP provided that the bidders shall submit financial proposal in either of the following forms:

- premium per kilometer that the bidder would pay to the Corporation for the cluster or
- the viability gap per kilometer that the bidder proposed to demand from the Corporation for the cluster.

The Form F1 (Price Proposal Format) enclosed with the RFP document also directed the bidders to submit bids quoting premium or viability gap.

The Corporation received bids from two (Star Rural Bus Links, New Delhi and Karauli Parivahan Sahakari Samiti Limited) firms for three Districts (Alwar, Dausa and Karauli) only. Star Rural Bus Links (Star Links) offered to operate buses in the clusters of Alwar and Dausa Districts on payment of viability gap at the rate of ₹ 9.50 per Kilometer (Km) while Karauli Parivahan Sahakari Samiti Limited (Karauli Parivahan) demanded viability gap at the rate of ₹ 25 per Km for clusters of Karauli District.

The Corporation negotiated (May and June 2012) with the bidders considering the wide gap between the rate (₹ 4.48 per Km) of VGF worked out by the Consultant and rates offered by the bidders. During negotiation, Star Links reduced its rate to ₹ 9.35 per Km but Karauli Parivahan refused to reduce its quoted rate. The Corporation asked the Consultant to analyse (June 2012) the revised financial plan submitted by Star Links. The Consultant recommended (June 2012) that the Corporation may award the contract to Star Links at reduced rate for the clusters of Alwar and Dausa Districts. It was also recommended that the rate could be further reduced by ₹ 0.05 per Km after considering revenue from advertisement. However, Star Links finally agreed (June 2012) to the rate of ₹ 9.32 per Km. The cost of operation of buses,

32 Alwar, Dausa, Karauli, Bharatpur, Dholpur, Udaipur, Dungarpur, Banswara, Chittorgarh, Rajasmand and Pratapgarh.

earnings and passenger load factor considered in deciding the rate of viability gap for a period of six years was as follows:

Passenger load factor considered (In *per cent*)					
1st year	**2nd year**	**3rd year**	**4th year**	**5th year**	**6th year**
42	**45**	**50**	**53**	**58**	**65**
Average estimated cost of operation (In ₹ per Km)					**19.79**
Average estimated revenue (In ₹ per Km)					**10.47**
Viability gap (In ₹ per Km)					**9.32**

The Finance Department (Government of Rajasthan) approved the rate of viability gap funding of ₹ 9.32 per Km. Subsequently, Karauli Parivahan also agreed (July 2012) to operate buses at the rate accepted by Star Links. Accordingly, the Corporation executed (October and November 2012) agreements with the bidders for operation of buses in the selected clusters of Alwar, Dausa and Karauli Districts.

We noticed that the Corporation adopted the rate of ₹ 9.32 per Km as model rate of viability gap based upon the financial plan submitted by Star Links. This rate was offered as the maximum rate for each cluster for a period of six years in the subsequent tenders invited during 2012-13 and 2013-14. Even clause 1.1 of Article-1 (Authorisation) of these tenders categorically mentioned that the bus operator would receive a maximum viability gap of ₹ 9.32 per Km from the Corporation as per terms and conditions of the RFP.

We further noticed that the bus operators quoted their rate in form F1 without any supporting financial plan considering the maximum rate (₹ 9.32 per Km) offered by the Corporation. The Corporation decided the tenders in favour of lowest bidders for a period of six years ignoring the element of premium that would accrue to the bus operators after achieving the envisaged passenger load factor considered in fixing the maximum rate of viability gap.

We observed that:

- the Corporation did not prepare financial plans indicating likely revenue and expenditure for each cluster to work out the most feasible rate for each cluster
- Clause 1.7 of the RFP required the bidders to submit financial plan but none of the bidders submitted plan indicating likely revenue, expenditure, load factor and premium/viability gap for each cluster for a period of six years. The Corporation also did not obtain the financial plans at the time of evaluation of bids justifying the rate quoted by the bidders and
- the Corporation ignored the recommendation of the Consultant that payment of viability gap was directly linked with the passenger load factor.

The maximum rate of viability gap fixed by the Corporation was, therefore, not based on any reliable data of revenue and expenditure of the clusters for which the tenders were invited, location of the cluster and other vital factors like passenger load factor on the cluster and availability of other means of transport to the people.

The Corporation also provided an opportunity to the bus operators to receive viability gap in all conditions for every cluster of each District of the State. This gets established from the fact that none of the bus operators quoted premium for any cluster and the Corporation had to pay viability gap in respect of all the tenders finalised during 2012-13 and 2013-14. In selected Districts, the Corporation awarded tenders for 19 out of 27 clusters at rates ranging between ₹ 6.88 and ₹ 9.21 per Km.

We further observed that the Corporation did not incorporate adequate clauses in the RFP/Notice Inviting Tender to safeguard its financial interests in the event of the bus operators earning more revenue because of higher load factor as compared to the factor estimated by the Corporation. The payments for viability gap were released to the bus operators as per Clause 7.2.1 of the RFP which allowed payment on the basis of daily vehicle utilisation (in kilometers) multiplied by the rate of viability gap accepted by the Corporation.

The Finance Department directed (January 2014) the Corporation to prepare a work plan for elimination of viability gap by gradual reduction in the amount payable to bus operators. The Corporation replied (February 2014) that there was no possibility of reduction in viability gap as the calculation had been made considering revenue and expenditure during the period of six years.

Scrutiny of records disclosed that the actual average load factor achieved by the bus operators in various depots was much higher (more than double in Shrimadhopur depot) compared to the load factor envisaged in deciding the rate of viability gap. The actual average load factor achieved by the bus operators in selected[33] depots was as follows:

Name of depot	**Name of bus operator**	**Actual average passenger load factor in per cent**			
		1st year	**2nd year**	**3rd year**	**4th year**
Load factor considered by the Corporation for deciding the rate of viability gap (per cent)		**42**	**45**	**50**	**53**
Jaipur	Know Well India Tours Private Limited	69.00	71.25	70.17	-
Dausa	Prashant Electronics	42.83	-	50.86	-
	Star Links	57.00	61.50	57.10	55.00
Hanumangarh	Gurjeet Singh	64.75	66.83	67.26	-
	Bhagirath Doodhwal	64.42	64.25	80.17	-
	Sitaram Pratap Singh	46.08	52.18	-	-

The Corporation made excess payment of viability gap of ₹ 13.26 crore during 2013-14 to 2015-16 in 12[34] depots by ignoring higher load factor achieved by the bus operators. This needs to be recovered as the bus operators were compensated for all the expenditure incurred by them at the break-even point considered for deciding the rate of viability gap. Besides, it had put extra

33 The Corporation did not provide the information regarding Karauli depot.

34 Jaipur (₹ 5.17 crore), Dausa (₹ 2.79 crore), Hanumangarh (₹ 0.53 crore), Srimadhopur (₹ 1.00 crore), Nagaur (₹ 0.15 crore), Khetri (₹ 1.46 crore), Matsya Nagar (₹ 0.28 crore), Ganganagar (₹ 0.30 crore), Beawar (₹ 0.44 crore), Anoopgarh (₹ 0.79 crore), Alwar (₹ 0.32 crore) and Abu Road (₹ 0.03 crore). The load factor of remaining depots was not provided to Audit.

burden on the exchequer as the Scheme was financed by the State Government.

The Corporation stated that the detailed financial report submitted by Star Links was analysed by the Consultant and after detailed analysis it recommended the average rate of VGF. The Corporation further stated that the rate of VGF was decided after detailed examination and negotiation for the contract period. The fact remained that the maximum rate of viability gap fixed by the Corporation was not based on any data of revenue and expenditure of the clusters for which the tenders were invited, location of the cluster and other vital factors like passenger load factor, available means of transport, *etc*.

3.9.4 *Collection of Human Resource Surcharge and Accidental Compensation Surcharge by the bus operators*

Clause 3.1 of the RFP stipulated that the bus operators would collect fare from the passengers as per the fare notified by the Corporation/Transport Department from time to time for rural routes. We noticed that the Corporation/Transport Department did not notify route wise fare list and instead the Corporation annexed Schedule C[35] with RFP which provided tariff structure for different types of buses (ordinary, express, deluxe, *etc*.) operated by it.

Review of Schedule C disclosed that it allowed the bus operators to collect Human Resource Surcharge (HRS) and Accidental Compensation Surcharge (ACS) from the passengers along with base fare of ₹ 0.58 per Km.

The bus operators should not have been allowed to collect ACS and HRS from the passengers because the State Government notified these schemes in the year 2000 and 2001 respectively to meet specific objectives of the Corporation like pension, gratuity and other post retirement benefits for the employees of the Corporation, employee health and medical check-up, long term skill development of operational staff, compensation to the passengers in case of accident of Corporation's buses, *etc*. The State Government did not authorise the Corporation to allow private bus operators to recover HRS and ACS from the passengers. Further, the rate of viability gap decided by the Corporation also considered only recovery of base fare from the passengers. The HRS and ACS were not part of the revenue considered in deciding the rate of viability gap payable to the bus operators.

The Corporation should recover the amount of HRS and ACS from the bus operators as they were not authorised to charge the same from the passengers. We noticed that the bus operators collected an amount of ₹ 7.68 crore towards HRS and ACS from the passengers in 14 depots (including 2 clusters of Karauli depot) during 2012-13 to 2015-16. The collection by the bus operators in remaining depots towards HRS and ACS could not be ascertained due to lack of information from the Corporation.

35 Schedule C provided directions to the depots for calculation of total fare for different type of buses. The total fare included base fare per Km plus several other charges like HRS, ACS, toll, *etc*.

The Corporation's failure in notifying separate fare for rural areas led to unauthorised collection of HRS and ACS by the bus operators from the passengers.

The Corporation stated that the issue was being examined and appropriate action would be taken in the event of unauthorised collection by the bus operators.

3.9.5 *Irregular payment towards traffic challan, fine and penalties*

The Corporation adopted the financial plan submitted by Star Links as model plan for whole of the State. Review of the financial plan disclosed that the cost of operation included the element of traffic challan, fine and penalties which was not excluded by the Corporation in deciding the rate of viability gap payable to bus operators.

We observed that consideration of traffic challan, fine and penalties as part of cost of operation was not in consonance with Clause 8 of Article VII of the RFP which stipulated that any fines levied by traffic police or any competent authority would be borne by the operator directly and Corporation claims no liability for such incidences.

As of March 2016, the Corporation had made irregular payment of ₹ 1.41 crore[36] to the bus operators towards traffic challan, fine and penalties in respect of 20 depots which needs to be recovered as per Clause 8 of Article-VII of the RFP. The irregular payment towards traffic challan, fine and penalties in respect of remaining depots could not be ascertained due to lack of information from the Corporation.

The Corporation stated that reports were sought from the concerned depots in which they had mentioned that no direct payment was made under these heads. The reply was not convincing because the calculation of the rate of VGF included element of traffic challan, fine and penalties.

3.9.6 *Non-recovery of penalty for non-furnishing of ETIMs data*

Article IV (ix) of the RFP stipulated that the bus operators would provide data of Electronic Ticketing Issuing Machines (ETIMs) to the Corporation on daily basis, failing which penalty at the rate of ₹ 100 per day would be levied.

We noticed that the bus operators neither provided data of ETIMs on daily basis nor the Corporation asked for the same. The Corporation, therefore, could not monitor the fare charged by the bus operator from the passengers on different routes. Besides, the Corporation also did not recover penalty of ₹ 1.53 crore[37] from the bus operators in selected depots for not providing data of ETIMs on daily basis.

The Corporation stated that the issue was being examined and appropriate action would be initiated for non furnishing of ETIMs data.

36 6.13 crore Km X ₹ 0.23 per Km.

37 Dausa (₹ 0.59 crore), Jaipur (₹ 0.42 crore), Karauli (₹ 0.44 crore) and Hanumangarh (₹ 0.08 crore).

3.9.7 *Incorrect reporting to the State Government*

The Finance Department directed (September 2013) the Corporation to submit claims for payment of viability gap along with a certificate from Financial Advisor. The Financial Advisor had to certify that claims for viability gap were calculated on the basis of actual operational figures and as per the operational agreement executed with the bus operator.

The Corporation lodged claims under the certificate of Financial Advisor. In selected depots, we noticed that there was wide variation between the operated kilometers reported to the State Government and the kilometers based on which payment of viability gap was made to the bus operators. The operated kilometers intimated to the State Government did not even tally with the scheduled kilometers of the clusters. This resulted into excess claim of ₹ 6.80 crore from the State Government compared to the actual viability gap paid to the bus operators during 2013-16 as shown in **Annexure 10**.

We observed that non-availability of accurate information with the Corporation at the time of lodging claims was not a reason for variation between actual and reported figures because the claims were lodged with the State Government one to three months after the actual operation of the buses. By this time the Corporation had the data of operated kilometers claimed by the bus operators as the bills were raised on fortnightly basis. Further, the payment of viability gap was based on lowest of the scheduled kilometers mentioned in the operational agreement or operated kilometers recorded by Vehicle Tracking System (VTS) or operated kilometers claimed by the bus operators in the bills.

The Corporation stated that excess amount of VGF, if any, received from the State Government would be utilised as per norms.

3.9.8 *Non-invoking of bank guarantees*

The Alwar depot of the Corporation entered (November 2012) into operational agreements with Star Links (Operator) for operation of 100 buses in nine clusters of the District. As per operational agreement, the operator submitted nine bank guarantees (BGs) amounting to ₹ 15 lakh with validity up to 23 November 2015. The Corporation terminated (July 2015 to January 2016) all the agreements due to non-adherence to terms and conditions of RFP/operational agreements. The Corporation also levied (14 September 2016) penalty of ₹ 2.82 crore after adjusting the viability gap payable to the Operator. The Operator did not deposit (April 2017) the penalty and the matter was pending (April 2017) with the High Court (Jaipur).

We observed that the Corporation neither worked out the penalty after termination (July 2015) of the first agreement (cluster number 5 and 6 of Alwar depot) nor invoked the BGs during their period of validity. The Corporation had written a letter to the Bank for invoking BGs on the last date (23 November 2015) of validity of BGs. The Bank neither replied to the Corporation nor revoked the BGs. Further, the Operator had submitted (9 September 2013) one more BG of ₹ 45,000 for cluster number 4 with validity up to 8 September 2016 but the same was also not invoked by the Corporation despite availability of sufficient time and huge penalty recoverable from the Operator. Besides, the Alwar depot deducted ₹ 0.39 lakh

less TDS (Tax Deducted at Source) from the payments released to the Operator during May 2013 to February 2014.

The Corporation did not submit any specific reply about non-invoking of bank guarantees.

3.9.9 *Non-reconciliation of the viability gap fund account*

We observed that the Corporation never reconciled the funds received from the State Government and payments made to bus operators towards viability gap. The Corporation received funds of ₹ 56.33 crore[38] from the State Government during 2013-16 out of which ₹ 42.37 crore were disbursed to the bus operators as of March 2016. The Corporation, therefore, should have unutilised funds of ₹ 13.96 crore. However, as per budget section, the available funds were ₹ 7.20 crore while the financial statements depicted balance of ₹ 1.99 crore as on 31 March 2016. Further, the consolidated statement of viability gap fund maintained at the Head Office of the Corporation depicted net payment of ₹ 48.47 crore[39] during 2014-16. No payment was reported to be made during 2013-14 despite the traffic section issuing sanctions for payment of ₹ 6.67 crore.

The Corporation accepted the facts and stated that actual position of payment and balance amount was being compiled.

3.9.10 *Operation of buses inconsistent with the RFP and route permits*

Clause 4.1 of Article IV of the RFP provided that the operator would operate specified number of buses under the control and supervision of the Corporation only on the allotted routes and as per timings and frequency specified from time to time. Further, as per Clause 6.3, the issues relating to modification/alteration of routes were to be addressed by a Committee[40] formed for each cluster. The Committee was authorised to increase or modify any route in the cluster upto 10 *per cent* of the original length in single stage and upto maximum of four times in a year. The approval of the Managing Director was required for modification/alteration of routes beyond the stipulated limits. The financial implication due to modification of routes had to be worked out on mutual consent of both the parties and the amount of viability gap was to be adjusted accordingly.

Review of records in the selected depots disclosed that the route, route length and number of trips per day as envisaged in the RFP were changed by the Corporation in most of the cases prior to the operation of buses. Besides, the depots also made changes in the approved routes and number of trips per day on the requests of bus operators.

The details of Committees authorised to make changes in the specified routes were not available in any of the selected depot. Further, the Corporation did not make any adjustment in the viability gap due to modification/alteration of the specified routes.

38 2013-14 (₹ 5.63 crore), 2014-15 (₹ 29.85 crore) and 2015-16 (₹ 20.85 crore).

39 ₹ 30.68 crore during 2014-15 and ₹ 18.70 crore during 2015-16 less penalties of ₹ 0.91 crore during 2015-16.

40 Chief Manager of the concerned depot, District Transport Officer and representative of the operator.

The officials of the Corporation during discussion with audit stated that the routes were changed after joint survey conducted by the Corporation, Transport Department and representative of the operator. The routes were also changed due to non-issue of permits by the Transport Department for the routes specified in the RFP. The refusal from Transport Department for issue of permits and the joint survey reports, even for a single case was, however, not available with the Corporation. Further, the Transport Department also did not provide any such record to the Audit. The requirement for change in the routes specified in RFP on the requests of bus operators, therefore, could not be ascertained.

A test check of 48 buses operated (15 November 2015 to 30 November 2015) in Jaipur depot disclosed that 45 buses deviated from their approved routes. The actual trip kilometers recorded by VTS in respect of these buses on daily basis were less than the allotted kilometers. We noticed 1,330 deviations by these buses during the period of 15 days with maximum deviation of 98 times by one bus.

The bus operators were liable to pay penalty of ₹ 200 for each deviation but the Corporation did not impose any penalty despite large number of deviations in the approved route length and number of trips.

The Corporation, without specifying the details, stated that penalties were imposed and deductions were made for deviations in routes. The Corporation further stated that action would be taken as per norms if any further deviations would come to the notice of Corporation.

3.9.11 *Lack of internal control, monitoring and shortcomings in contract management*

The review of RFP, operational agreements executed with the bus operators and other records at selected depots disclosed following shortcomings in contract management and lack of internal control and monitoring on the part of Corporation.

- The earnest money deposit for each cluster for the contract period of six years was kept at ₹ 5,000 only without ascertaining the estimated value of contract. This violated Rule 42 of the Rajasthan Transparency in Public Procurement Rules (RTPP) 2013 and Rule 57 of General Financial and Accounts Rules (GF&AR) which stipulates that EMD be obtained at the rate of two *per cent* of the estimated value of subject matter. The Corporation could have estimated the contract value by multiplying the rate of viability gap offered to the bidders with scheduled kilometers during the contract period.
- The performance security was kept on lower side (₹ 15,000/₹ 25,000 per bus) in violation of Rule 75 of the RTPP Rules 2013 and Rule 57 of the GF&AR which provides that performance security should be at least five *per cent* of the value of order.

The Corporation stated that earnest money and performance security was demanded as per the RFP/tender documents. The fact remained that the Corporation did not fix and obtain the earnest money and performance security deposit as per RTPP Rules.

- The operational agreement and other documents in case of Karauli Parivahan Sahkari Samiti Limited (Karauli Parivahan) were signed by the manager. However, the Corporation did not obtain documents relating to registration of Karauli Parivahan under Co-operative Societies Act, list of the members of Society and authorisation from office bearers of society for signature. Further, in case of private limited companies, the Corporation did not obtain power of attorney or board resolution for authorising signature on behalf of the company to ensure that the person executing agreement was authorised to do so.

The Corporation accepted the facts stated that the depots were being instructed to collect the relevant documents from the operators.

- The bus operators were required to procure global positioning system (GPS) and hand-held machines for issue of tickets from the specified agencies as per Article-II of the operational agreements. No records were, however, available at the selected depots and the Head office specifying the vendors and procurement of GPS and hand-held machines by the bus operators from the specified vendors.

The Corporation stated that it did not issue any direction for use of any specific ETIMs and GPS system. The reply was not correct in the light of the fact that Article-II of the operational agreement required the bus operators to procure ETIMs and GPS machines from specified agencies. The Corporation being the nodal agency was required to specify agencies for procurement of these machines.

- Each party was required to issue 'Certificate of Compliance' to other party on satisfaction of conditions applicable for the party as per Article-II of the operational agreement. No such certificates were, however, found issued by the Corporation and bus operators at the selected depots.

The Corporation stated that the concerned depots were being instructed to collect relevant documents from the operators.

- The bus operators were required to provide bus service without any curtailment and shortfall in service as per Clause 4.1 (b) (vi) of Article IV of the operational agreements. Otherwise, the operators were liable for penalty as well as re-adjustment of viability gap as determined by the Corporation. We noticed that the Corporation changed the scheduled kilometers and there was also variation between operated kilometers on the same route in different time periods. The Corporation, however, neither levied penalty nor adjusted the viability gap as per Clause of the operational agreements.

The Corporation, without specifying the details and documentary proof, stated that penalties were imposed on the operators for curtailment in routes.

- The depots did not obtain copy of Registration Certificate (RC), Insurance, Permit and tax deposit receipts from the operators on regular basis. We obtained copies of few RCs from the Transport Department in order to test check the legitimacy of the vehicle ownership and pendency of Government levies. It was observed that the RCs were in the name of persons other than the bus operators which had executed operational

agreements with the Corporation. The ownership of vehicles deployed by all the bus operators, therefore, could not be verified.

The Corporation stated that the concerned depots were being instructed to collect relevant documents from the operators.

- As per Article VI of the operational agreement, a Monitoring Committee (Committee) was required to review the performance of bus operators on 13 parameters like sharing of data of ETIMs, satisfactory working of GPS, use of specified ticket vending machines, *etc*. The bus operators were liable to pay penalty of approximately ₹ 2,000 per bus per day for non-adherence to the parameters (Clause 6.2). The depots, however, did not form Committees to review the performance of bus operators despite complaints from people against the bus operators. The Corporation also could not levy penalty against the bus operators in absence of performance review.

The Corporation, without submitting any documentary proof, stated that specified penalties were imposed on the operators for non-adherence to the performance parameters. The Corporation also stated that the concerned depots were being instructed to further examine this matter.

- Article IX of the operational agreements required the bus operators to submit returns on capital and revenue expenditure, receipts and passenger volume in the form and at intervals prescribed by Corporation, audited annual accounts within 90 days of the end of financial year, operation and maintenance plan on quarterly basis and any other information desired by the Corporation to monitor the performance of the project. The Corporation neither sought the stipulated information nor did the bus operators submit the information to the corporation.

The Corporation accepted the facts but stated that absence of this information did not affect the calculation of VGF amount.

- The passenger load factor (PLF) provided by the Corporation in respect of cluster number 1 and 2 of Karauli depot disclosed that the PLF ranged between 13 and 31 *per cent* during December 2012 to May 2016 (except 45 *per cent* in January 2014). The PLF was much below the PLF (42 to 53 *per cent*) considered in deciding the model rate of viability gap. The bus operator was continuing operation of buses at such low PLF since last four years which does not seem feasible. The Corporation, however, never reviewed the case despite complaints against the bus operator. Audit also could not assess the actual load factor in absence of the data of ETIMs. The Corporation did not provide PLF of other clusters of Karauli depot for comparison and assessment of the accuracy of cluster 1 and 2.

The Corporation stated that information was being collected from the concerned depot.

- The Finance Department directed (January 2014) the Corporation to intimate load factor of each route and the reasons for decrease in load factor. We noticed that the load factor (for the quarter ending December 2013) intimated (February 2014) to the State Government did not match with the record of depots. The maximum difference was noticed in

Karauli depot where the Corporation intimated load factor of 66, 74 and 63 *per cent* as against load factor of 30, 31 and 31 *per cent* in the months of October, November and December 2013 respectively.

The Corporation stated that information was being collected from the concerned depot.

Conclusion and recommendations

The Corporation failed to provide bus connectivity in all the rural areas of the State as the Scheme was only implemented in 23 depots of 19 Districts. The rate of viability gap was fixed without preparation or obtaining financial plan from the bus operators for each cluster. The Corporation made excess payment of viability gap to the bus operators by ignoring higher load factor achieved by them. The Corporation's failure in notifying separate fare for rural areas led to unauthorised collection of surcharges by the bus operators. Further, irregular payment was also made towards traffic challan, fine and penalties. The Corporation also did not recover penalty from the bus operators for not providing data of ETIMs. In absence of ETIMs data the Corporation could not monitor the fare charged by the bus operator. Further, the Corporation did not reconcile the funds received from the State Government and payments made to bus operators. There was lack of internal control and monitoring of the Scheme as documents required from bus operators as per agreement were not received by the Corporation.

We recommend that the Corporation recover excess payment made to the bus operators against viability gap funding. The Corporation should also assess and recover penalties from the bus operators for violation of conditions of RFP and agreement. Further, the Corporation should reconcile funds received from the State Government and payments made to bus operators.

Rajasthan Tourism Development Corporation Limited

3.10 *Default in deposit of provident fund dues*

The Company defaulted in depositing provident fund dues of ₹ 12.35 crore during the period from July 2015 to August 2017 and therefore runs the risk of penalty damages of ₹ 4.05 crore as per Clause 32 A of the Employees' Provident Fund Scheme, 1952 besides payment of interest under Section 7(Q) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Section 6 of 'the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act) makes it obligatory for an employer[41] to contribute employer's contribution at the rate of 12 *per cent* of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable, towards provident fund in respect of each of the employees whether employed by him directly or through a contractor. Further, the employee's contribution shall be equal to employer's contribution or an amount, if any employee so desires, exceeding 12 *per cent* of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

The employer is required to deposit the employer's contribution along with employee's contribution within 15 days of the close of every month as per Clause 38 of the Employees' Provident Fund Scheme, 1952 (EPF Scheme). The Act and EPF Scheme has treated non-deposit of provident fund dues as a punishable offence under Section 14 and Clause 76 respectively. The employer could be imprisoned for a term which may extend to one year or with fine of five thousand rupees or with both. Further, the employer may also be liable to pay penalties in the form of interest and damages for default in payment of any contribution as stated below:

- simple interest at the rate of 12 *per cent* per annum or at such higher rate as may be specified in the scheme on any amount due under this Act from the date on which the amount has become due till the date of its actual payment (Section 7 (Q) of the Act) and
- penalty damages at the rate of 37 *per cent* per annum of the arrears in case the period of default is six months or more (by issuing notification in the Official Gazette as per Clause 32 A of the EPF Scheme).

We noticed that Rajasthan Tourism Development Corporation Limited (Company) deducted employees' contribution at the time of payment of wages/salary but did not deposit it regularly in the provident fund along with employer's share since July 2015. The amount of employees' contribution was utilised for other operating activities. As a result, the provident fund dues accumulated to ₹ 9.31 crore up to January 2017. The Company cited paucity of funds due to huge losses as the reason for not depositing the provident fund dues. The Company belatedly deposited ₹ 4.36 crore towards provident fund dues pertaining to the period from July 2015 to March 2016. As on September

41 As defined under Section 2 (e) of the Act.

2017, an amount of ₹ 7.99 crore was still pending towards provident fund dues.

The Company by defaulting in the payment of provident fund dues runs the risk of penalty damages of ₹ 4.05 crore upto August 2017 as per Clause 32 A of the EPF Scheme besides payment of interest under Section 7 (Q) of the Act.

The Company accepted the facts and stated (August 2017) that provident fund dues could not be deposited due to critical financial position of the Company. Further, the Company had not received any notice for penalty and interest regarding delay in payment of provident fund dues.

We observed that the Company was legally bound to deposit the provident fund dues in time to avoid penalties under the provisions of the Act and EPF Scheme. The Government of India has incorporated stringent provisions in the Act and EPF Scheme to safeguard the social security needs of the employees which cannot be forfeited by any organization citing shortage of funds. The Company is required to manage the funds giving due priority to the payment of statutory dues.

Anadi Misra

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