ECONOMIC SECTOR
(Public Sector Undertakings)

CHAPTER III
ECONOMIC SECTOR
(PUBLIC SECTOR UNDERTAKINGS)

3.1 Overview of State Public Sector Undertakings

Introduction

3.1.1 The State Public Sector Undertakings (SPSUs) consist of State Government companies and Statutory corporations. The SPSUs are established to carry out activities of commercial nature keeping in view the welfare of the people. In Sikkim, the SPSUs occupy an insignificant place in the State economy. As on 31 March 2016, there were 16 SPSUs (including 13 Government companies and 3 Statutory corporations). Of these, none of the companies were listed on the stock exchange. The details of the SPSUs in Sikkim as on 31 March 2016 are given below.

Table 3.1.1: Total number of SPSUs as on 31 March 2016

Type of SPSUs	Working SPSUs	Non-working SPSUs[1]	Total
Government companies	10	3	13
Statutory corporations	2	1	3
Total	**12**	**4**	**16**

The working SPSUs registered a turnover of ₹ 178.81 crore as per their latest finalised accounts as of September 2016. This turnover was equal to 1.07 *per cent* of State Gross Domestic Product[2] (GDP) of ₹ 16,637 crore for 2015-16. During 2014-15, however, the turnover (₹ 149.28 crore) of working SPSUs was lower at 0.98 *per cent* of State GDP (₹ 15,209 crore). During 2015-16, the working SPSUs had incurred an aggregate loss of ₹ 80.21 crore as per their latest finalised accounts as of September 2016 as compared to the aggregate loss of ₹ 23.66 crore incurred by SPSUs during 2014-15. The increase in the aggregate loss of working SPSUs was mainly on account of heavy losses incurred by one power sector SPSU[3]. The working SPSUs had employed 777 employees as at the end of March 2016.

Accountability framework

3.1.2 The Companies Act 1956 as well as the Companies Act, 2013 have not been extended to the State of Sikkim. Out of 13 Government companies in Sikkim, 11 are registered under the ‘Registration of Companies Act, Sikkim 1961’. The accounts of these 11 State Government companies are audited by Statutory auditors (chartered accountants) who are directly appointed by the Board of Directors (BoDs) of the respective companies.

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1 *Non-working SPSUs are those which have ceased to carry on their operations.*
2 *Source: Department of Economics, Statistics, Monitoring and Evaluation, Government of Sikkim.*
3 *Serial No.A-8 of Appendix 3.1.2. The audit of this company was entrusted to Comptroller and Auditor General of India during the current year (December 2015).*

In addition to the statutory audit conducted by the statutory auditors, supplementary audit of these companies had also been taken up by the Comptroller and Auditor General of India (CAG) on the request of the Governor of the State under section 20(1) of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (CAG's (DPC) Act, 1971).

3.1.3 During the year, one State Government company[4] acquired 51 *per cent* of equity share capital of Teesta Urja Limited (TUL). TUL, a company registered under the Companies Act 1956, is the holding company of Teestavalley Power Transmission Limited (TPTL). Hence, both TUL and TPTL became State Government companies. The accounts of these two State Government companies are audited by statutory auditors (chartered accountants) who are appointed by the CAG. In addition to the statutory audit conducted by the statutory auditors, supplementary audit of these companies had also been taken up by the CAG under section 143(6)(a) of the Companies Act 2013[5].

3.1.4 There are three Statutory corporations in the State, namely, State Bank of Sikkim, State Trading Corporation of Sikkim and Sikkim Mining Corporation established under the proclamation of the erstwhile Chogyal (King) of Sikkim. The accounts of these corporations are audited by the chartered accountants directly appointed by the BoDs of the respective corporations. Supplementary audit of these corporations was taken up by the CAG under section 19(3)[6] of the CAG's (DPC) Act 1971.

Stake of Government of Sikkim

3.1.5 The State Government has huge financial stake in these SPSUs. This stake is of mainly three types:

- **Share Capital and Loans** - In addition to the share capital contribution, State Government also provides financial assistance by way of loans to the SPSUs from time to time.
- **Special Financial Support** - State Government provides budgetary support by way of grants and subsidies to the SPSUs as and when required.
- **Guarantees** - State Government also guarantees the repayment of loans with interest availed by the SPSUs from financial institutions.

Investment in SPSUs

3.1.6 As on 31 March 2016, the investment (capital and long-term loans) in 16 SPSUs was ₹ 14,100.66 crore as per details given below.

[4] *Serial No.A-8 of Appendix 3.1.2.*
[5] *The audit of the accounts of the Government companies from the financial year 2014-15 onwards is governed by the Companies Act 2013.*
[6] *Entrustment of audit of the accounts of corporations by the Governor of a State which has a State Legislature.*

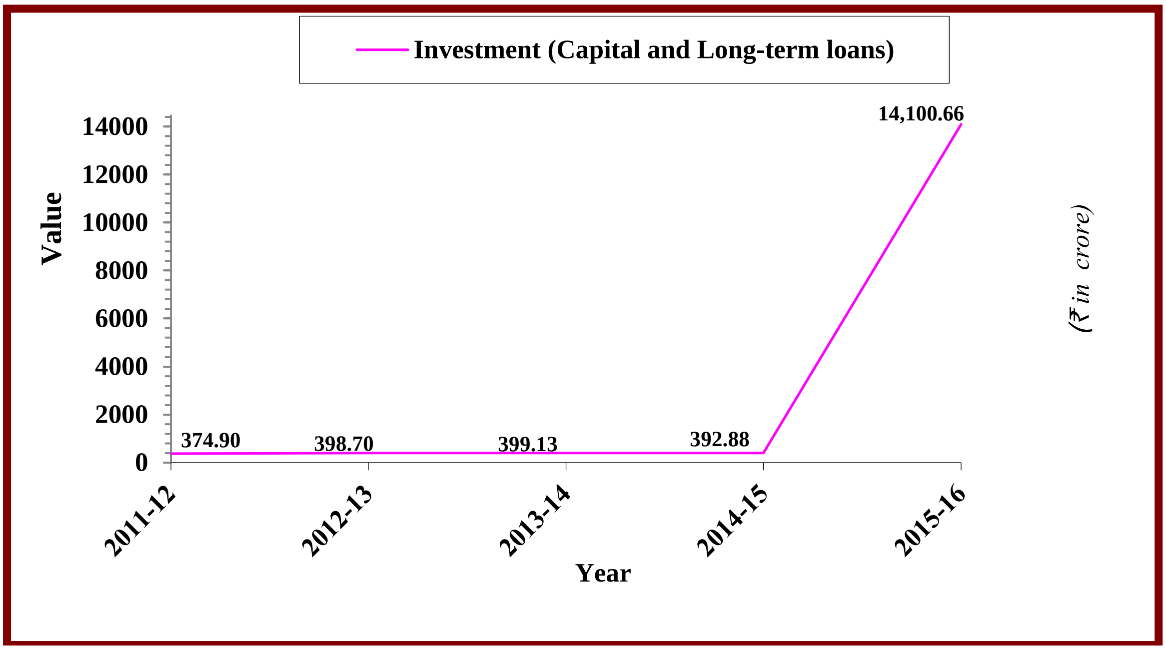
Table 3.1.2: Total investment in SPSUs

(₹ in crore)

Type of SPSUs	Government companies			Statutory corporations			Grand total
	Capital	Long term loans	Total	Capital	Long term loans	Total	
Working SPSUs	2,934.32	11,077.63	14,011.95	2.14	30.94	33.08	14,045.03
Non-working SPSUs	43.13	0	43.13	12.50	0	12.50	55.63
Total	**2,977.45**	**11,077.63**	**14,055.08**	**14.64**	**30.94**	**45.58**	**14,100.66**

Out of the total investment of ₹ 14,100.66 crore in SPSUs as on 31 March 2016, 99.61 *per cent* was in working SPSUs and the remaining 0.39 *per cent* was in non-working SPSUs. This total investment consisted of 21.22 *per cent* in capital and 78.78 *per cent* in long-term loans. The investment had increased significantly by 3,661.18 *per cent* from ₹ 374.90 crore in 2011-12 to ₹ 14,100.66 crore in 2015-16 as shown in **Chart-3.1.1**. The increase (₹ 13,725.76 crore) in the total investment was mainly due to inclusion of investments aggregating ₹ 13,714.13 crore (capital: ₹ 2,869.66 crore; long term loans: ₹ 10,844.47 crore) as on 31 March 2016 in respect of three[7] power sector companies added under the audit purview of CAG during the current year 2015-16.

Chart 3.1.1: Total investment in SPSUs



3.1.7 The sector wise summary of investments in the SPSUs as on 31 March 2016 is given below:

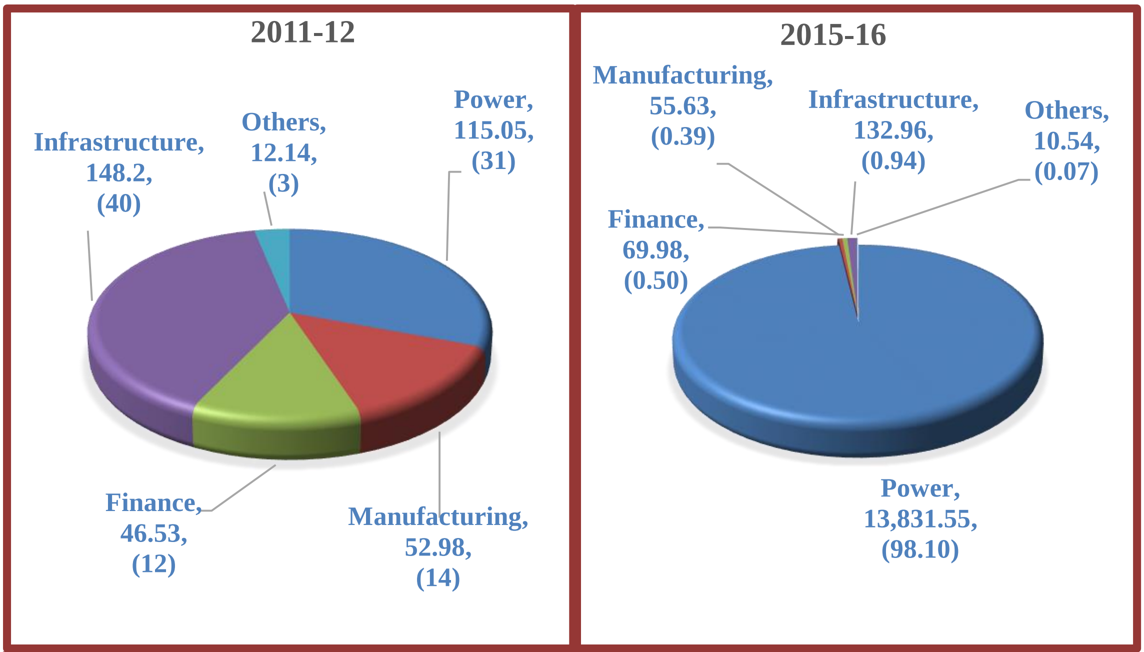
[7] *Sikkim Power Investment Corporation Limited (SPICL); Teesta Urja Limited (TUL), a subsidiary of SPICL; and Teestavalley Power Transmission Limited (TPTL), a subsidiary of TUL.*

Table 3.1.3: Sector-wise investment in SPSUs

Name of sector	Government/*Other*[8] *companies*		Statutory corporations		Total	Investment
	Working	Non-working	Working	Non-working		(₹ *in crore*)
Power	4	0	0	0	4	13,831.55
Manufacturing	0	3	0	1	4	55.63
Finance	1	0	1	0	2	69.98
Infrastructure	1	0	0	0	1	132.96
Service	1	0	1	0	2	8.07
Agriculture & allied	3	0	0	0	3	2.47
Total	**10**	**3**	**2**	**1**	**16**	**14,100.66**

The investment in five significant sectors and percentage thereof at the end of 31 March 2012 and 31 March 2016 are indicated in **Chart-3.1.2**.

Chart 3.1.2: Sector wise investment in PSUs



Amount in ₹ in crore
(Figures in bracket shows the percentage of total investment)

It can be noticed from **Chart-3.1.2**, the thrust of SPSU investment was mainly in power[9], which constituted more than 98 *per cent* of the total investment (₹ 14,100.66 crore) in SPSUs during 2015-16. During the period of five years from 2011-12 to 2015-16, investment in SPSUs increased in all sectors with a significant increase in power sector from ₹ 115.05 crore in 2011-12 to ₹ 13,831.55 crore. As mentioned under paragraph 3.1.6 supra, the significant increase in the power sector investments was mainly on account of investments relating to three power sector companies (SPICL, TUL and TPTL), which were added under the audit purview of CAG during the current year 2015-16.

8 *'Other companies' as referred to under Section 139(5) and 139(7) of the Companies Act, 2013.*
9 *Serial No.A-6, 7, 8 and 9 of Appendix 3.1.2.*

Special support and returns during the year

3.1.8 The State Government provides financial support to SPSUs in various forms through annual budget. The summarised details of budgetary outgo towards equity, loans, grants/subsidies, loans written-off and interest waived along with the position of guarantee in respect of SPSUs are given in **Table 3.1.4** for three years ended 2015-16.

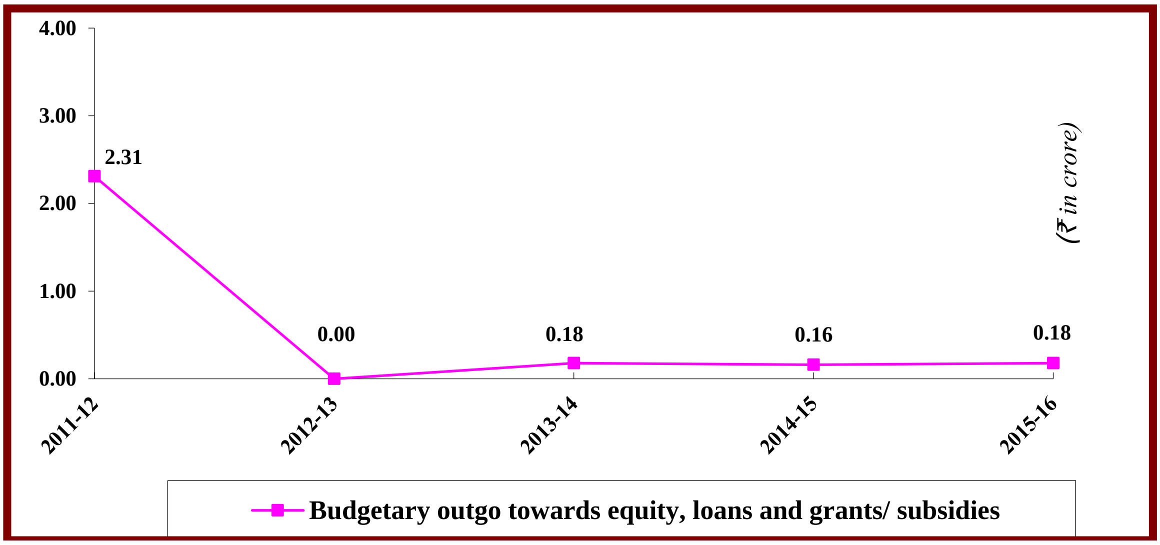
Table 3.1.4: Details regarding budgetary support to SPSUs

(₹ in crore)

Sl. No.	Particulars	2013-14		2014-15		2015-16	
		No. of SPSUs	Amount	No. of SPSUs	Amount	No. of SPSUs	Amount
1.	Equity capital outgo from budget	-	-	-	-	-	-
2.	Loans given from budget	-	-	-	-	-	-
3.	Grants/subsidy from budget	1	0.18	1	0.16	1	0.18
4.	**Total outgo (1+2+3)**	**1**	**0.18**	**1**	**0.16**	**1**	**0.18**
5.	Waiver of loans and interest	-	-	1	0.06	1	0.05
6.	Guarantees issued	2	131.76	1	96.57	2	86.50
7.	Guarantee commitment	2	120.96	2	109.50	3	91.02

The details regarding budgetary outgo towards equity, loans and grants/subsidies for past five years are given in **Chart 3.1.3**.

Chart 3.1.3: Budgetary outgo towards equity, loans and grants/subsidies



It can be seen from **Chart 3.1.3** that during the period of five years from 2011-12 to 2015-16, the budgetary outgo was the highest in 2011-12 (₹ 2.31 crore) while during 2012-13, there was no budgetary outgo to any of the SPSUs. During the remaining three years from 2013-14 to 2015-16, the total budgetary outgo of ₹ 0.18 crore (2013-14), ₹ 0.16 crore (2014-15) and ₹ 0.18 crore (2015-16) was provided by way of grants to only one SPSU, namely, Sikkim Poultry Development Corporation Limited. As can be noticed from **Table 3.1.4**, the guarantee commitment has decreased from ₹ 120.96 crore (2013-14) to ₹ 91.02 crore (2015-16) mainly due to the repayment of loans by Sikkim Industrial Development and Investment Corporation Limited during previous three years. As on 31 March 2016, guarantee commitment of ₹ 91.02 crore was outstanding against three

SPSUs, namely, Sikkim Industrial Development and Investment Corporation Limited, Sikkim Scheduled Castes, Scheduled Tribes and Other Backward Classes Development Corporation Limited and State Trading Corporation of Sikkim.

Reconciliation with Finance Accounts

3.1.9 The figures in respect of equity, loans and guarantees outstanding as per the records of SPSUs should agree with that of the figures appearing in the Finance Accounts of the State. In case the figures do not agree, the SPSUs concerned and the Finance Department should carry out reconciliation of differences. The position in this regard as at 31 March 2016 is given in **Table 3.1.5.**

Table 3.1.5: Equity, loans, guarantees outstanding as per Finance Accounts vis a vis records of SPSUs

(₹ in crore)

Outstanding in respect of	Amount as per Finance Accounts	Amount as per records of SPSUs	Difference
Equity	87.87	88.73	0.86
Loans	37.03	2.03	35.00
Guarantees	109.50	91.02	18.48

Audit observed that the differences in equity investment[10] occurred in respect of nine[11] SPSUs. The un-reconciled differences in respect of equity of SPSUs decreased by ₹ 8.08 crore during the year from ₹ 8.94 crore (2014-15) to ₹ 0.86 crore (2015-16). While the same in respect of loans to SPSUs remained unchanged at ₹ 35.00 crore during 2014-15 and 2015-16. Further, there were unreconciled difference ₹ 18.48 crore in the guarantee outstanding 2015-16, as against 'nil' difference in guarantee figures during 2014-15. The Accountant General had pursued the issue regularly with the Principal Secretary (Finance), Government of Sikkim and the heads of the SPSUs concerned for early reconciliation of long pending differences. The Government and the SPSUs concerned should take concrete steps to reconcile the differences in a time-bound manner.

Arrears in finalisation of accounts

3.1.10 The Companies Act, 1956 and the Companies Act, 2013 have not been extended to the State of Sikkim. The Government companies in Sikkim are registered under the Registration of Companies Act, 1961 while the Statutory corporations are governed under the proclamation of the erstwhile Chogyal (King) of Sikkim. During the year, a Government company (Sikkim Power Investment Corporation Limited) acquired TUL and its subsidiary TPTL. TUL and TPTL are companies registered under the Companies Act, 1956. The **Table 3.1.6** provides the details of progress made by working SPSUs in finalisation of accounts as of 30 September 2016.

[10] *SPSU-wise figures of loans/guarantee not available in the finance accounts of the State.*
[11] *Serial No. A-1, A-4, A-5, A-8 to A-10 and C-13 to C-15 of Appendix 3.1.2.*

Table 3.1.6: Position relating to finalisation of accounts of working SPSUs

Sl. No.	Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
1.	Number of working SPSUs	8	8	8	9	12
2.	Number of accounts finalised during the year	7	10	5	3	12
3.	Number of accounts in arrears	20	18	21	27	31
4.	Number of working PSUs with arrears in accounts	8	7	8	9	10
5.	Extent of arrears (numbers in years)	1 to 4	1 to 4	1 to 5	1 to 6	1 to 7

From the **Table 3.1.6**, it can be noticed that during previous two years (i.e. 2013-14 and 2014-15), the working SPSUs have finalised only eight accounts. As a result, the number of accounts in arrears had increased from 18 accounts (2012-13) to 31 accounts (2015-16). Further, out of total arrears of 31 accounts of SPSUs as on 31 March 2016, 14 accounts (45 *per cent*) pertained to 2 SPSUs[12]. The delay in finalisation of accounts of these 2 SPSUs was mainly due to delay in compilation/adoption of accounts by the BODs of respective SPSUs. The administrative departments have the responsibility to oversee the activities of these entities and to ensure that the accounts are finalised and adopted by these SPSUs within the stipulated period. The departments/ministries concerned were informed regularly (on quarterly basis) of the arrears in finalisation of accounts by these SPSUs. No improvement was, however, noticed in the position of arrears of accounts of the SPSUs.

3.1.11 The State Government had invested ₹ 0.18 crore in one SPSU (Sikkim Poultry Development Corporation Limited) by way of grant during the year (2015-16) for which the accounts had not been finalised as detailed in **Appendix 3.1.1**.

Placement of separate audit reports

3.1.12 The position depicted in **Table 3.1.7** shows the status of placement of Separate Audit Reports (SARs) issued by the CAG (up to 30 September 2016) on the accounts of Statutory corporations in the legislature.

Table 3.1.7: Status of placement of SARs in legislature

Sl. No.	Name of Statutory corporation	Year up to which SARs placed in legislature	Year for which SARs not placed in legislature	
			Year of SAR	Date of issue to the Government
1.	State Bank of Sikkim	2010-11	2011-12 to 2012-13	26 February 2016
2.	State Trading Corporation of Sikkim	2010-11	2011-12 to 2013-14	23 June 2016

The delay in placement of SARs was due to delay in printing of the SARs by the State Government press.

Impact of non-finalisation of accounts

3.1.13 As pointed out above *(***paragraphs 3.1.10 and 3.1.11***)***,** the delay in finalisation of accounts may result in risk of fraud and leakage of public money apart from violation of the provisions of the relevant statutes. In view of the above state of arrears of accounts, the actual contribution of SPSUs to the State GDP for the year 2015-16 could not be

[12] *Sl. No.A-1 and A-2 of Appendix 3.1.2.*

ascertained and their contribution to State exchequer was also not reported to the State Legislature.

It is, therefore, recommended that:

- **The Government may ensure preparation of accounts by SPSUs to clear arrear in accounts and set targets for individual SPSU which could be monitored.**

Performance of SPSUs as per their latest finalised accounts

3.1.14 The financial position and working results of working Government companies and Statutory corporations are detailed in **Appendix 3.1.2**. A ratio of SPSU turnover to State GDP shows the extent of SPSU activities in the State economy. **Table 3.1.8** provides the details of working SPSU turnover and State GDP for a period of five years ending 2015-16.

Table 3.1.8: Details of working PSUs turnover vis-a vis State GDP

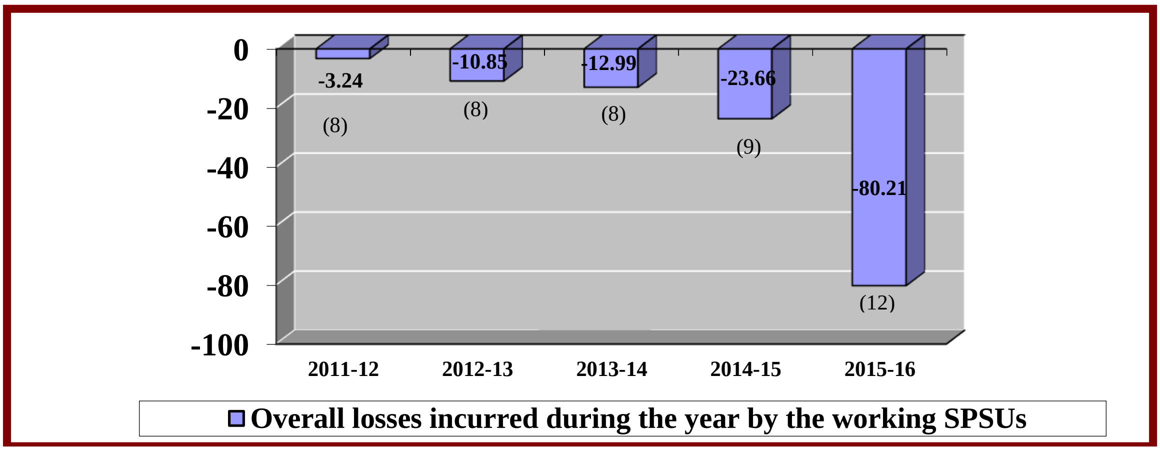
(₹ in crore)

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Turnover	86.43	143.91	147.55	149.28	178.81[13]
State GDP[14]	11,165	12,338	13,862	15,209	16,637
Percentage of turnover to State GDP	0.75	1.17	1.06	0.98	1.07

It may be noticed that during 2011-12 to 2015-16, the State GDP had grown by 49.01 *per cent* while the increase in turnover of SPSUs during the corresponding period was to the extent of 106.88 *per cent*. Thus, there was appreciable growth in SPSUs turnover during the period of five years from 2011-12 to 2015-16 as compared to the growth in the State GDP during the corresponding period. As a result, the *percentage* of SPSUs turnover to State GDP has increased from 0.75 (2011-12) to 1.07 (2015-16) in five years' period.

3.1.15 Overall losses incurred by working SPSUs during 2011-12 to 2015-16 are given in **Chart 3.1.4**.

Chart 3.1.4: Overall losses of working SPSUs



(Figures in brackets show the number of working SPSUs in respective years)

[13] *Turnover as per the latest finalised accounts as of 30 September 2016.*

[14] *Source: Department of Economics, Statistics, Monitoring and Evaluation, Government of Sikkim. For the year 2011-12 to 2013-14, actual GDP figures have been adopted. For the year 2014-15, provisional estimate figures of GDP has been taken and for 2015-16, the quick estimate figure has been adopted.*

As per the latest finalised accounts of 12 working SPSUs as on 30 September 2016, 3 SPSUs[15] earned profit of ₹ 8.47 crore and 9 SPSUs incurred loss of ₹ 88.68 crore. The major contributor to profit was State Bank of Sikkim (₹ 4.82 crore). The heavy losses were incurred by Sikkim Power Investment Corporation Limited (₹ 69.60 crore) and Sikkim Power Development Corporation Limited (₹ 10.46 crore). As can be noticed from **Chart 3.1.4**, the overall losses incurred by working SPSUs showed an increasing trend from 2011-12. During the five years from 2011-12 to 2015-16, the overall losses had increased from ₹ 3.24 crore (2011-12) to ₹ 80.21 crore (2015-16). The significant increase in the overall losses during 2015-16 compared to the previous year was attributable to the loss incurred by one power sector company (i.e. Sikkim Power Investment Corporation Limited), the audit of which was entrusted (December 2015) to CAG during the current year only.

3.1.16 Some other key parameters of SPSUs are given in **Table 3.1.9**.

Table 3.1.9: Key parameters of State PSUs

(₹ in crore)

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Return on capital employed (*per cent*)	5.24	4.30	4.36	3.91	10.34
Debt	260.93	279.07	273.89	273.25	8936.15
Turnover[16]	86.43	143.91	147.55	149.28	178.81
Debt/ turnover ratio	3.02:1	1.94:1	1.86:1	1.83:1	49.98:1
Interest payments	64.90	87.49	90.15	88.16	1235.63
Accumulated losses	83.57	90.29	97.92	117.72	328.72

From the table, it can be noticed that the figures of the debts during 2015-16 had increased significantly due to addition of three power sector companies[17] during the year. Other financial figures of SPSUs depicted in the table for 2015-16 have also correspondingly increased due to inclusion of the figures of these three companies. There was, however, no impact on the turnover figures of SPSUs for 2015-16 as the said three companies were yet to commence commercial operations.

3.1.17 The State Government had not formulated (October 2016) any dividend policy regarding payment of minimum dividend by SPSUs. As per their latest finalised accounts as on 30 September 2016, three[18] SPSUs earned aggregate profit of ₹ 8.47 crore, however, no SPSU declared dividend during the year.

Winding up of non-working SPSUs

3.1.18 There were four[19] non-working SPSUs (three companies and one Statutory corporation) as on 31 March 2016. The audit of accounts of three out of these four SPSUs had been entrusted to CAG for five years upto 2016-17. The audit of the fourth[20] SPSU

15 *Serial No.A-5,10 and B-11 of Appendix 3.1.2.*
16 *Turnover of working SPSUs as per their latest finalised accounts as on 30 September of respective year.*
17 *Serial No.A-6, A-7, and A-8 of Appendix 3.1.2. Audit of one company (Serial No.A-6) was entrusted to CAG during the year while other two companies (A-7, A-8) became subsidiaries (August 2015) of this Government company (Serial No.A-6) during the current year.*
18 *Serial No. A-5, A-10 and B-11 of Appendix 3.1.2.*
19 *Serial No. C-13 to C-15 and D-16 of Appendix 3.1.2.*
20 *C-15 of Appendix 3.1.2.*

was, however, entrusted to CAG for five years upto 2017-18. All these SPSUs mentioned above are closed down (April 2011) under the order of the State Government. The Government companies in Sikkim are registered under the Registration of Companies Act, 1961 while Statutory corporations are governed under the proclamation of the erstwhile Chogyal (King) of Sikkim. There was, however, no prescribed procedure for liquidation of Government companies/Statutory corporations under their respective governing Act/Statute. The numbers of non-working SPSUs at the end of each year during past five years are given in **Table 3.1.10**.

Table 3.1.10: Non-working SPSUs with entrustment

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
No. of non-working companies	6	6	6	5	3
No. of non-working corporations	1	1	1	1	1
Total	**7**	**7**	**7**	**6**	**4**

3.1.19 The stages of closure in respect of non-working SPSUs are given in **Table 3.1.11**.

Table 3.1.11: Closure of non-working SPSUs

Sl. No.	Particulars	Companies	Statutory Corporations	Total
1.	Total No. of non-working SPSUs	3	1	4
2.	Of (1) above, the No. under	-	-	-
(a)	liquidation by Court (liquidator appointed)[21]	-	-	-
(b)	Voluntary winding up (liquidator appointed)	-	-	-
(c)	Closure, i.e. closing orders/instructions issued but liquidation process not yet started.	3	1	4

The assets of the three companies have been disposed of and the proceeds remitted (December 2012) to the Commerce and Industries Department of the State Government. In respect of the closed down Statutory corporation, the Department of Mines, Minerals and Geology, Government of Sikkim has approved (October 2016) liquidation of Sikkim Mining Corporation and waiver of its liabilities of ₹ 6.85 crore.

Accounts comments

3.1.20 Four working companies forwarded their seven audited accounts to Accountant General during the year 2015-16 (October 2015 to September 2016). Of these, six year accounts of four companies were selected for supplementary audit. All six accounts of four companies received qualified certificates. The details of aggregate money value of comments of statutory auditors and CAG are given in **Table 3.1.12.**

Table 3.1.12: Impact of audit comments on working companies

(₹ in crore)

Sl. No.	Particulars	2013-14		2014-15		2015-16	
		No. of accounts	Amount	No. of accounts	Amount	No. of accounts	Amount
1.	Decrease in profit	Nil	Nil	Nil	Nil	1	0.01
2.	Increase in loss	3	1.45	1	0.01	2	6.57
3.	Non-disclosure of material facts	1	1.34	1	0.02	1	1.22
4.	Errors of classification	1	0.84	Nil	Nil	0	0

[21] *No prescribed procedure existed under the respective governing Acts/Statutes for liquidation of SPSUs.*

During 2015-16, two Statutory corporations had submitted their five years audited accounts to the Accountant General for supplementary audit. The audit of all the five accounts was completed and Separate Audit Reports also issued (February/June 2016). All five accounts of two Statutory corporations received qualified certificates.

Response of the Government to audit

Performance audits and paragraphs

3.1.21 For the present chapter of the report of the CAG for the year ended 31 March 2016, Government of Sikkim, one performance audit report and one compliance audit paragraph involving two departments were issued to the Secretaries of the respective departments with request to furnish replies within six weeks. The replies in respect of the compliance audit paragraph was, however, awaited from the State Government (October 2016).

Follow up action on audit reports

Replies outstanding

3.1.22 The report of the CAG represents the culmination of the process of audit scrutiny. It is, therefore, necessary that they elicit appropriate and timely response from the executive. According to instructions issued by the Finance, Revenue and Expenditure Department (FRED), Government of Sikkim, all the administrative departments concerned were required to furnish explanatory notes on the paragraphs/performance audits included in the audit reports of the CAG within a period of three months of their presentation to the legislature, in the prescribed format without waiting for any questionnaires from the Public Accounts Committee.

Table No.3.1.13: Explanatory notes not received (as on 30 September 2016)

Year of the audit report (Commercial/PSU)	Date of placement of audit report in the State Legislature	Total PAs and paragraphs in the audit report		Number of PAs/ paragraphs for which explanatory notes were not received	
		PAs	Paragraphs	PAs	Paragraphs
2011-12	27 April 2013	1	4	1	4
2012-13	28 June 2014	0	2	0	1
2013-14	17 March 2015	1	4	1	3
2014-15	28 March 2016	0	2	0	2
Total	**-**	**2**	**12**	**2**	**10**

From the **Table-3.1.13**, it can be seen that explanatory notes to 10 paragraphs and 2 performance audits pertaining to 7 companies/corporations[22] and 1 Department (Energy and Power Department) were not received (October 2016).

[22] *Serial No.A-1, 4, 5 and 6, B-8 and 9 and D-15 of Appendix 3.1.2.*

Discussion of audit reports by Public Accounts Committee

3.1.23 The status as on 30 September 2016 of PAs and paragraphs relating to SPSUs that appeared in State Audit Reports and discussed by the Public Accounts Committee (PAC) was as detailed in **Table-3.1.14**.

Table 3.1.14: Performance audits/paragraphs relating to SPSUs appeared in audit reports vis-à-vis discussed as on 30 September 2016

Period of Audit Report	Number of PAs/paragraphs			
	Appeared in Audit Report		PAs/paragraphs discussed	
	PAs	Paragraphs	PAs	Paragraphs
2009-10	0	4	Nil	Nil
2010-11	1	3	1	3
2011-12	1	4	Nil	Nil
2012-13	0	2	Nil	Nil
2013-14	1	4	Nil	Nil
2014-15	0	2	Nil	Nil
Total	**3**	**19**	**1**	**3**

During the period 2009-10 to 2014-15 total 3 PAs and 19 paragraphs relating to SPSUs had appeared in the State Audit Reports. Three PAs had been selected for discussion by PAC, out of which, only one PA had been discussed. Moreover, sixteen paragraphs are pending for discussion by the PAC (October 2016).

Compliance to Reports of Public Accounts Committee

3.1.24 Action Taken Notes to all seven recommendations pertaining to three Reports of the PAC presented to the State Legislature as of March 2016 had been received (October 2016) as indicated in **Table-3.1.15**.

Table 3.1.15: Compliance to Reports of Public Accounts Committee

Year of the PAC Report	Total Number of PAC Reports	Total No. of recommendation in PAC Report	No. of recommendations where ATNs not received
2008-09 (AR 2005-06)	1	2	Nil
2009-10 (AR 2006-07)	1	3	Nil
2010-11 (AR 2007-08)	1	2	Nil
2013-14 (AR 2008-09)	1	Nil	NA
2015-16 (AR 2009-10)	1	Nil	NA
Total	**5**	**7**	**Nil**

It is recommended that the Government may ensure:

(a) furnishing of replies to explanatory notes to Draft Paragraphs/Performance Audits included in Audit Reports as per the prescribed time schedule;

(b) recovery of loss/outstanding advances/overpayments within the prescribed period and

(c) revamping of the system of responding to audit observations.

Coverage of this report

3.1.25 This Chapter on SPSUs contains one Performance Audit on "Implementation of 1,200 MW Teesta Stage III hydro electric project in Sikkim" and one compliance audit paragraph.

Disinvestment, Restructuring and Privatisation of SPSUs and any reforms in power sector

3.1.26 As part of the power sector reforms, separate companies were to be formed to look after the activities of generation, transmission and distribution of electricity in the State. The activities relating to generation, transmission and distribution of electricity in the State at present are, however, being managed and controlled by the Energy and Power Department, Government of Sikkim.

ENERGY AND POWER DEPARTMENT

3.2 Implementation of 1,200 MW Teesta Stage III hydro electric project in Sikkim

The State Government set (June 2004) a target of producing 3,000 MW of additional power by the end of 11th Five Year Plan (2007-12). In line with the target, State Government took up the implementation of 1,200 MW Teesta Stage III hydro electric project (Teesta III) in February 2005 through private participation under joint sector with the State Government. The present audit conducted during May 2016 to August 2016 covered the aspects relating to planning and implementation of Teesta III. The following are the highlights of the report:

Highlights

Failure of the State Government to have pre-bidding conditions to verify the financial capability and experience of the consortium leader and also to ensure adherence to the agreement conditions by the private consortium had forced the State Government to take over (August 2015) the project through equity infusion in the capital of Teesta Urja Limited (TUL) besides causing time overrun of more than four years in completion of the project.

(Paragraph-3.2.10.3)

Private developers failed to subscribe to their committed portion of TUL's equity capital for the second cost overrun of the project. As a result, TUL faced financial constraints leading to time and cost overrun in implementation of the project. It was noticed that the cost overrun to the extent of ₹ 892.01 crore on account of interest during construction (₹ 758.13 crore) and hard cost (₹ 133.88 crore) was incurred due to financial constraints of TUL.

(Paragraph-3.2.10.5)

The State Government did not constitute multi-disciplinary committee and project level welfare committee for monitoring of the project related activities. As a result, implementation of the project had suffered.

(Paragraph-3.2.10.7 to 3.2.10.10)

3.2.1 Introduction

The State of Sikkim is a power surplus State. The State Government set (June 2004) a target of producing 3,000 MW of additional power by the end of 11th Five Year Plan (2007-12). In line with the target, Energy and Power Department, Government of Sikkim (EPD), took up the implementation of 1,200 MW Teesta Stage III hydro electric project (Teesta III) in February 2005 through private participation under joint sector with State Government.

Demand and supply of electricity in Sikkim

The overall power scenario of the State of Sikkim for the last three years ending 2015-16 is detailed below:

Table 3.2.1

(in million units)

Particulars	2013-14	2014-15	2015-16
Own generation from Hydro Electric Projects (HEP)	17.37	23.83	40.47
Free power received from National Hydro Power Corporation (NHPC[23]) - Teesta V project	314.32	336.66	350.37
Free power received from Independent Power Producers (IPP)	37.68	50.67	64.44
Power purchased from Central generating stations	511.12	496.22	478.16
Total availability (A)	**880.49**	**907.38**	**933.44**
Actual consumption within the State	237.35	248.75	264.71
Transmission and Distribution (T&D) losses	164.85	140.27	121.69
Consumed within the State (B)	**402.20**	**389.02**	**386.40**
T&D losses (in *per cent*)	40.99	36.05	31.49
Surplus power traded (A) – (B)	**478.29**	**518.36**	**547.04**

In Sikkim, there were four mega hydel projects. Out of the four projects, only one project (510 MW Teesta V) was operational (since 2008) and remaining three projects were under construction. Of the three ongoing projects, one project (520 MW Teesta IV) was entrusted to National Hydro Power Corporation, a Central PSU. Two ongoing Hydro Electric Projects, viz. Teesta III and 500 MW Teesta VI, were being implemented by State Government through private developers namely, TUL and Lanco Teesta Hydro Power Limited (LTHPL) respectively.

3.2.2 Background and status of development

The Teesta III project was envisaged by the State Government in the 1980s. However, not much progress could be made on this project.

The State Cabinet decided (May 2004) to speed up the efforts to tap the hydro power potential of the State and instructed the EPD to get into agreements with capable parties

[23] *A Central PSU engaged in development of hydro electric projects and generation of energy through hydro electric generation units.*

for generating 3,000 MW hydro electric power. Accordingly, a target of producing 3,000 MW of additional power by the end of 11th Five Year Plan (2007-12) was fixed (June 2004) by State Government as mentioned under **Paragraph 3.2.1** *supra*. To expedite development of hydro electric projects in Sikkim, the State Government constituted (June 2004) a High Power Committee[24] (HPC). Four[25] proposals were received and after evaluation of the proposals, the HPC recommended (15 October 2004) the proposal of the consortium[26] led by Cosmos Electric Power Supply Limited (CEPSL) for allotment of Teesta III. The recommendation of the HPC was, however, not acceded to by the State Cabinet (18 October 2004). The HPC again recommended (3 November 2004) to award the project to the consortium of CEPSL which was again deferred (23 November 2004) by the State Cabinet for reasons not on record.

Meanwhile, the HPC prepared a draft of the State hydro power policy, which was approved (October 2004) by the State Cabinet. The State Government invited proposals from the interested developers in accordance with the State hydro power policy and in response, five[27] offers were received. Out of the five offers received, only one[28] offer received from the consortium[29] led by Athena Projects Private Limited, India (Athena India) fulfilled all the conditions of the State hydro power policy. Based on the claims made by the Athena India consortium regarding the technical experience of four consortium members[30] in the field and also regarding financial and project management capabilities of the consortium members, the HPC recommended (February 2005) the allotment of the project to Athena India consortium on 'Build, Own, Operate, and Transfer' (BOOT) basis under joint sector with State Government, which was approved (22nd February 2005) by the State Cabinet.

Athena India formed (11th March 2005) a Special Purpose Vehicle (SPV)[31] by the name of Teesta Urja Limited (TUL) for the implementation of the project. The Energy and Power Department (EPD) on behalf of the State Government entered (July 2005) into a Deed of Agreement (DoA) with TUL. As per the terms of DoA, TUL was to achieve the financial closure within 12 months from the date of signing (July 2005) of DoA. The

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24 *The HPC was headed by the Chief Secretary of the State with various Secretaries of State Government as members.*

25 *Cosmos Electric Power Supply Limited, National Hydro Power Corporation, Reliance & Sutlej Jal Nigam Vidyut Limited.*

26 *Colenco Power Engineering Limited, Leighton Holdings, M/s. MCORP Global-Modi Group.*

27 *NHPC, National Thermal Power Corporation Limited (NTPC), Satluj Jal Vidyut Nigam Limited (SJVNL), CEPSL and Athena India.*

28 *Three Central PSUs (NHPC, NTPC and SJVNL) offered to execute the project on BOO basis while CEPSL offered to transfer the project to the State Government after 45 years in case the royalty is enhanced from 12 per cent to 15 per cent after 15 years, which were not in line with State hydro power policy.*

29 *Andhra Pradesh Generating Company (APGENCO), Larsen & Toubro Limited (L&T), Power Trading Corporation of India Limited (PTC) and Infrastructure Leasing & Financial Services group (IL&FS).*

30 *Andhra Pradesh Power Generation Corporation Limited, Larsen & Toubro, Power Trading Corporation of India Limited, Infrastructure Leasing & Financial Services.*

31 *Special Purpose Vehicle is a legal entity created for limited works which isolates risk and creates options for companies to raise capital and structure debt in a more efficient way. Moreover, SPV is a subsidiary company with an asset/liability structure and legal status that makes its obligations secure even if parent company goes bankrupt.*

commercial operation of the project was to be achieved within a period of 60 months from the date of financial closure. Considering the actual date of achieving (September 2007) the financial closure of the project, the project was scheduled for commissioning by September 2012. As against this, however, the project works were still ongoing (November 2016).

3.2.3 Scope of Audit

The present audit conducted during May 2016 to August 2016 covered the aspects relating to planning and implementation of Teesta III. For the purpose of this audit, the records relating to various organisations involved in the process of planning and implementation of the project as detailed under **Paragraph 3.2.4** *infra* were examined.

3.2.4 Organisations involved

During the current audit, the records of seven departments/organisations were reviewed. Brief details of these departments/organisations alongwith their roles in the implementation of the project are as follows:

Table 3.2.2

Sl. No.	Department/ Organisation	Role in the implementation of the project
1	Energy and Power Department (EPD), Government of Sikkim	Allotment and monitoring
2	Forest, Environment and Wildlife Management Department (FEWMD), Government of Sikkim	Implementation of environment management plan (EMP)
3	State Pollution Control Board (SPCB), Government of Sikkim	Monitoring of muck disposal and pollution
4	Directorate of Fisheries (DoF), Government of Sikkim	Implementation of fish management plan
5	Sikkim Power Investment Corporation Limited (SPICL)	The State Government provided its share of project funding in the form of equity contribution in TUL through SPICL.
6	Teesta Urja Limited (TUL), Government of Sikkim (from August 2015)	A Special Purpose Vehicle (SPV) formed by Athena India for the implementation of the project.
7	Teestavalley Power Transmission Limited (TPTL), Government of Sikkim (from August 2015)	Transmission line implementing agency for Teesta III

Besides, information/clarifications received from Rural Electrification Corporation (REC)[32], lead lender of Teesta III, were also appropriately utilised during the conduct of the present Performance Audit.

3.2.5 Audit Objectives

The objectives of the performance audit were to assess:

- the adequacy, correctness and effectiveness of pre-implementation arrangements prior to award and development of Teesta III;

[32] *A Central public sector undertaking involved in financing of public infrastructure projects.*

- the efficiency of the private developer with reference to the agreed terms and conditions of the contract and the benefits of private participation actually derived in execution of the project;
- the adequacy and effectiveness of Government participation in the monitoring and supervision of the project; and
- the environmental and social impact of the project and the adequacy of measures put in place to mitigate negative impacts.

3.2.6 Audit Criteria

The audit criteria adopted for assessing the achievement against the above mentioned audit objectives were derived from the following sources:

- Mega power policy of 1995 and 2008 of Government of India
- Hydro power policy, 2004 of Government of Sikkim
- Report on carrying capacity of Teesta river basin in Sikkim
- Detailed project report
- Deed of Agreement (DoA) between State Government and private developer
- Techno-economic clearance
- Forest and environment clearances
- Environment Impact Assessment (EIA) and Environment Management Plan (EMP).

3.2.7 Audit Methodology

The performance audit (PA) commenced with the entry conference (9 May 2016) attended by the representatives of Energy and Power Department (EPD), Forest, Environment and Wildlife Management Department (FEWMD), State Pollution Control Board (SPCB) and Teesta Urja Limited (TUL) where audit objectives, scope, criteria and methodology were explained. The methodology adopted for conduct of audit consisted of analysis of data and records at EPD, Sikkim Power Investment Corporation Limited (SPICL), TUL, Teestavalley Power Transmission Limited (TPTL), FEWMD, SPCB, Directorate of Fisheries (DoF). Physical verification of project jointly with the State Government officials was also conducted.

The draft PA report was issued (September 2016) to the State Government. All the organisations except SPICL furnished their replies before the exit conference which was held on 21 November 2016. All the replies and views expressed by the stakeholders have been appropriately taken into consideration while finalising the Report.

3.2.8 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the Energy and Power Department, Forest, Environment and Wildlife Management Department and Directorate of Fisheries of the State Government, Sikkim Power Investment Corporation Limited, Teesta Urja Limited and Centre for Inter-disciplinary Studies of Mountain and Hill Environment, University of Delhi in providing necessary information and records for audit.

3.2.9 Teesta III HEP

3.2.9.1 Main features of Teesta III HEP

The Teesta III is a 'run of the river with pondage[33]' type of project with salient features and cost as detailed below:

Table 3.2.3

Features	Teesta III HEP
Location of dam	Chungthang
Type and height of dam	Concrete face rockfilled dam of 60 m height
Gross storage at full reservoir level	5.08 million cumecs
Length of head race tunnel in KM	13.82
Location of powerhouse	Singhik
Number and type of turbines	6 Pelton turbines[34] of 200 MW capacity each
Capacity in MW	1200
Scheduled commercial operation date	30 September 2012
Revised scheduled commercial operation date	31 March 2017
Estimated cost (₹ in crore)	5,700.00
Revised estimated cost (₹ in crore)	13,865.00
Actual costs incurred till October 2016 (₹ in crore)	12,220.49

3.2.9.2 Conditions of Deed of Agreement

As mentioned under **Paragraph 3.2.2** *supra,* the implementation of Teesta III was awarded to the consortium[35] led by Athena Projects Private Limited, India (Athena India) based on the claims made by Athena India consortium regarding the strength of four experienced consortium members[36]. The project was awarded to the private developers on 'Build, Own, Operate, and Transfer' (BOOT) basis under joint sector with State Government.

The DoA signed between the State Government/EPD and TUL[37] stipulated that the TUL would operate the project for a period of 35 years from the date of commencement of commercial operations. After the 35th year, the project would be transferred back to the

33 *Run-of-the-river power plants may have no water storage at all or a limited amount of storage, in which case the storage reservoir is referred to as pondage.*

34 *Pelton turbines are used when water energy is available at high head and low flow rate. When a high speed water jet is injected through a nozzle hits buckets of pelton wheel; it induces an impulsive force which makes the turbine rotate. The rotating shaft runs a generator and produces electricity.*

35 *Andhra Pradesh Generating Company (APGENCO), Larsen & Toubro Limited (L&T), Power Trading Corporation of India Limited (PTC) and Infrastructure Leasing & Financial Services group (IL&FS).*

36 *Andhra Pradesh Power Generation Corporation Limited, Larsen & Toubro, Power Trading Corporation of India Limited, Infrastructure Leasing & Financial Services.*

37 *The SPV formed (March 2005) by Athena India for implementation of Teesta-III.*

State Government. During the period of 35 years, State Government would receive royalty in the shape of free power at 12 *per cent* of the net generation from the project for the first 15 years of operation and 15 *per cent* of free power during 16^{th} to 35^{th} year of operations. Other important conditions of the DoA included the following:

- As defined under the DoA, Athena India consortium means consortium led by Athena India and included other consortium members {such as Andhra Pradesh Generating Company (APGENCO), Larsen & Toubro Limited (L&T), Power Trading Corporation of India Limited (PTC) and Infrastructure Leasing & Financial Services group (IL&FS)} and other investors including financial institutions and private equity investors;
- TUL shall not change the constitution of the Athena India consortium without prior permission of the State Government. In case of TUL's failure in submitting the shareholding agreement with the members of Athena India consortium at the time of financial closure, State Government reserves the right to terminate the DoA;
- Athena India consortium and the State Government were to contribute towards project funding (including escalations in the project cost) in the form of equity contribution in TUL's capital in the ratio of 74 *per cent* (Athena India consortium) and 26 *per cent* (State Government) respectively.
- TUL shall achieve the financial closure within 12 months from the date of signing (18 July 2005) of DoA. The commercial operation of the project shall be achieved within a period of 60 months from the date of financial closure.
- In case the TUL fails to commission the project within the aforesaid time period for reasons exclusively attributable to TUL, it (TUL) shall be liable to pay a penalty of ₹ 10,000 per MW per month to the State Government for the delayed period.
- The State Government shall constitute a multi-disciplinary committee (MDC) comprising representatives of TUL and various departments of the State Government to monitor the issues arising during the implementation of the project. The MDC shall meet at such intervals, preferably quarterly at such place as may be decided by it.

3.2.10 Audit Findings

3.2.10.1 Allotment of Teesta III

The basic intent of executing the infrastructure development projects through private participation is to encourage the private sector to dedicate its capacity to raise capital and the ability to complete projects on time and to budget for the welfare of the community, without having to compromise the profit motive. At the same time, the public sector would retain its responsibility to provide goods and services to the public at large at affordable rates.

Further, successful execution of hydro electric projects under private participation requires that the projects are awarded only to private developers who are suitably experienced in the type of work/construction technology involved. The private developer also needs to be financially and managerially sound and capable of providing all the key equipment/personnel required for the project in a timely manner for implementation of the project within the scheduled period. To ensure execution of the project at most competitive and realistic price in a transparent manner, it was also desirable that the private developers are selected after following the competitive bidding process.

Contrary to above, however, it was observed that the State Government had neither fixed any pre-qualification criteria nor had adopted the competitive bidding process for selection of project developer.

As mentioned under **Paragraph 3.2.2** *supra,* the State Government had invited proposals from the interested developers in accordance with the State hydro power policy and had allotted (February 2005) the project to private developers (Athena India consortium) under joint sector with State Government. The project was allotted to Athena India consortium based on their claims that the consortium members[38] had the requisite experience and capabilities to implement the project within the scheduled period. As per the terms of the DoA entered between the State Government and TUL for execution of the project, no change in the constitution of the consortium was permitted without prior permission of the State Government.

3.2.10.2 Representation of the State Government on the Board of Directors of TUL

As per the DoA signed (July 2005) between the State Government and TUL, the State Government was to contribute towards its share of 26 *per cent* in the equity capital of TUL. Accordingly, TUL was to execute an equity subscription agreement with the State Government allocating 26 *per cent* of its equity to the State Government latest by January 2006 (viz. within a period of six months from signing of the DoA).

It was observed that the equity subscription agreement was actually executed (March 2008) by the TUL after a delay of more than 2 years. In the meantime, the financial closure for the project was also achieved by TUL in September 2007. It was, however, observed in audit that the State Government had contributed towards its share (26 *per cent*[39]) in TUL's equity capital only during April-December 2012. Moreover, there was no representative of the State Government on the Board of Directors (Board) of TUL till December 2012.

Absence of the State Government's representatives on the Board of TUL had adversely impacted the monitoring of the project related activities taken up by the TUL till December 2012 as discussed under **Paragraph 3.2.10.8 and 3.2.10.9** *infra*.

3.2.10.3 Violation of the terms of Deed of Agreement by the private partners

Audit observed violation of the terms of the Deed of Agreement (DoA) by the private partners as given below:

- The consortium leader, Athena India which was incorporated only in August 2004, had no previous experience in implementation of hydel projects, but its

[38] *Consisting of Athena India, APGENCO, L&T, PTC and IL&FS.*
[39] *29.64 crore equity shares of TUL at ₹ 10 per share.*

partners had this technical expertise. However, three[40] out of these four consortium members (excepting Power Trading Corporation of India Limited) having technical experience in the field had exited from the consortium without the prior permission of the State Government.

It is a noticeable fact that in absence of technical expertise for design and engineering, TUL had to employ (July 2006) consultants i.e. M/s Energy Infratech Private Limited[41] (EIPL) for the project.

- As the said three consortium members (namely, Andhra Pradesh Power Generation Corporation Limited, Larsen & Toubro, Infrastructure Leasing & Financial Services) did not subscribe to the equity capital of TUL, Athena India was holding 100 *per cent* equity stake in TUL. In August 2007[42], a new entity namely, Athena Projects Private Limited, Singapore[43] (Athena Singapore) acquired around 70 *per cent* of equity stake in TUL and by virtue of holding highest equity stake in TUL, replaced the position of 'Athena India' as the leader of the 'consortium', which was a violation of the DoA as TUL could not change the constitution of the Athena India consortium without prior permission of the State Government.
- Athena India consortium also failed in meeting their committed financial obligations towards funding of the project for second cost overrun in violation of the agreed terms of DoA. The financial incapability of Athena India consortium came to light on their refusal to fund the second cost overrun of the project necessitating the State Government/SPICL to take over the project by acquiring 51 *per cent* of the equity shares of TUL as discussed under **Paragraph 3.2.10.6** *infra*.

EPD stated (November 2016) that apart from Athena India consortium, none of the other bidders agreed to all of the conditions of the Hydro policy of the Government of Sikkim. In the exit conference, it was stated that the APGENCO exited the consortium based on the decision taken by the Government of Andhra Pradesh.

The reply was, however, silent about the inexperience of the consortium leader, Athena India in development of hydro projects and exit of three experienced members from consortium on whose strength the contract was awarded.

Thus, failure of the State Government to have pre-bidding conditions to verify the financial capability and experience of the consortium leader and also to ensure adherence to the agreement conditions by the private consortium had affected the implementation of the project adversely, which forced the State Government to take over (August 2015) the project through equity infusion in TUL's capital. The DoA terms were also violated as far

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40 *Andhra Pradesh Power Generation Corporation Limited, Larsen & Toubro, Infrastructure Leasing & Financial Services.*

41 *EIPL (erstwhile Erudite Engineers Pvt. Ltd.) was a subsidiary of Athena Singapore.*

42 *This fact came into notice from the Common Loan Agreement (CLA) entered between Lenders and TUL as discussed under Paragraph 3.2.10.8.*

43 *Now known as 'Asian Genco Private Limited, Singapore'.*

as the change in the shareholding of Athena India consortium in TUL was done without taking the State Government permission.

As a result, the project could not be completed even after more than four years of its scheduled completion (September 2012) defeating the primary objective of executing the project through private participation under joint sector with State Government.

3.2.10.4 Time and Cost Overrun

The Teesta III project was scheduled to be commissioned by September 2012 at estimated project cost of ₹ 5,700 crore. Due to various controllable and uncontrollable[44] reasons, the project was still pending to be commissioned (October 2016) resulting in project cost overrun as detailed below:

Table 3.2.4

(₹ in crore)

Cost component	Original cost	Revised cost after 1st overrun	Revised cost after 2nd overrun	Revised cost after 3rd overrun[45]
Hard Cost[46] (except financing costs)	4,941	5,841	7,150	7,849
Soft Cost[47] (all financing costs)	759	2,740	4,232	6,116
Total	**5,700**	**8,581**	**11,382**	**13,965**

As of November 2016, the total cost overrun was ₹ 8,265 crore (145 *per cent*) with time overrun of over four years. While first and second cost overruns had already been approved, the third cost overrun was pending for approval by the lenders.

The reasons for the cost overruns were analysed in audit. It was observed that the cost overruns of the project occurred due to time overrun on account of uncontrollable reasons like earthquake, flash flood, collapse of bridge etc. as well as increase in the project costs due to unforeseeable geological surprises. Besides, there were delays on account of failure of private developers to subscribe to their committed portion of TUL's equity leading to financial constraints of TUL in execution of project and corresponding escalation in project cost, which was controllable as discussed under **Paragraph 3.2.9.5**.

3.2.10.5 Avoidable costs due to financial constraints of TUL

As discussed under **Paragraph 3.2.9.2** *supra*, the private developers were required to subscribe 74 *per cent* of the equity shares of TUL towards project funding (including cost escalations).

It was observed that the private developers[48] failed to subscribe to their committed portion of TUL's equity capital for the second cost overrun of the project. As a result,

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[44] *Uncontrollable reasons mainly include force majeure events like earthquake, floods and other natural calamities which are beyond the control of the implementing agency.*

[45] *This revision in project cost was pending for approval by State Government and lenders (November 2016).*

[46] *Hard cost means the actual expenditure on construction works.*

[47] *Soft cost means interest on borrowings and finance cost.*

[48] *At the time of take over (August 2015) of TUL by State Government/ SPICL, the consortium of private developers comprised of Athena India, Athena Singapore, PTC India Ltd. and others.*

TUL faced financial constraints in implementing the project leading to further time and cost overrun. To facilitate the progress of the project works, the State Government/SPICL offered (June 2014) to contribute to the equity of TUL to meet the fund requirement. As the proposal involved dilution of equity stake of Athena Singapore in favour of State Government/SPICL, Athena Singapore did not agree (August 2014) to the proposal. It was noticed that the cost overrun to the extent of ₹ 892.01 crore incurred by TUL till January 2015[49] on account of interest during construction (₹ 758.13 crore) and hard cost (₹ 133.88 crore), were incurred on account of financial constraints of TUL as discussed in the following text:

(i) Interest during construction (IDC) on long term borrowings of TUL

The Teesta III project was scheduled to be commissioned by September 2012. Even after a lapse of more than four years of scheduled commissioning, the project was still pending for completion (November 2016). Scrutiny of records revealed that a significant period of 416 days of the total time overrun had been lost due to controllable factors such as suspension of work due to funds constraints, dispute amongst the equity stakeholders on infusion of additional project funding, slow progress of project works due to delay in release of payments to contractors, etc. as detailed below:

Table 3.2.5

From	To	No of days	Reason
1 April 2012	21 September 2012	174	Financial constraints with TUL resulting in delay in payment of civil contractors leading to suspension of work.
14 August 2013	9 September 2013	27	
1 July 2014	31January 2015	215	Dispute amongst the equity stakeholders of TUL (State Government and Athena Singapore) on infusion of additional project funding against second cost overrun by the State Government through dilution of the equity stake of Athena Singapore; and Disputes between TUL and contractors due to non-payment of their bills.

Considering the above, a total of ₹ 758.13 crore was incurred as interest during construction (IDC) on account of delays caused due to controllable factors as detailed below:

Table 3.2.6

(₹ in crore)

Financial year	Interest amount paid	Per day interest cost	No. of days delay	IDC paid on delays
2012-13	704.19	1.93	174	335.70
2013-14	803.41	2.20	27	59.43
2014-15	616.25	1.69	215	363.00
Total	**2,123.85**	**5.82**	**416**	**758.13**

[49] *Cost overrun has been restricted upto 31 January 2015 (the likely date of equity infusion by State Government).*

Thus, a total of 416 days were lost due to controllable factors leading to incurring ₹ 758.13 crore as IDC.

TUL stated (November 2016) that during the year 2012-13 electromechanical works (supply and installation) could not progress at site due to *force majeure* events (bridge collapse in December 2011) and even if adequate project funding were available with the company, it could not have achieved envisaged progress.

The reply is not tenable in view of the fact that while pointing out the avoidable expenditure towards IDC, audit has restricted the period of loss in respect of civil works till the date (22 September 2012) of occurrence of *force majeure* event (flash flood). Further, the delay in completing the electromechanical works on account of *force majeure* events (collapse of Rangchang Khola bridge in December 2011) was excluded by audit while arriving at the period of delay (416 days) and corresponding avoidable costs. The observation points out avoidable payment of IDC during suspension of civil work due to delay in payment of contractor's bills by TUL on account of inadequate project funding. The contention of audit has also been substantiated by the lender's engineers report and the owner's engineers report.

(ii) Increase in hard cost

An analysis of the records of TUL revealed that the cost over-run of the project upto 31 January 2015 also included the component of hard cost amounting to ₹ 133.88 crore, which was avoidable.

Details of such costs have been summarised in **Table 3.2.7** below:

Table 3.2.7

Particulars of cost	Amount *(in ₹ crore)*
Interest payment due to delay in payment of Arbitration[50] amount	36.23
Interest on delayed payment of bills to Civil Consortium of Contractors due to fund constraints of TUL	32.87
Payment of Idle charges for machinery, manpower and overheads to NEC for the period 1 July 2012 to 30 November 2012 due to fund constraints of TUL	5.69
Payment of Idle charges for machinery, manpower and overheads to contractors SEW and AIPL for the period from 26 April 2012 to 15 December 2012 due to fund constraints of TUL	41.74
Demobilisation and remobilisation for the period 31 January 2012 to 15 December 2012 – contractor AIPL	1.49
Interest on delayed payment of bills - to Electromechanical (E&M) contractor – Andritz Hydro	12.17
Interest on delayed payment of settlement amount – to E&M Contractor	3.69
Total avoidable costs incurred	**133.88**

It was observed that the above costs had to be incurred as TUL delayed discharging its financial obligations mainly on account of failure of private developers to provide their committed project funding for the second cost overrun. This in turn led to occurrence of

[50] *Based on the claims filed by the civil contractors, Arbitration tribunal ordered (July 2012) TUL to pay ₹ 209.92 crore to the civil contractors on account of price escalation in labour and material costs. TUL had to bear interest liability of ₹ 36.23 crore due to delay in payment of the award amount.*

avoidable costs in the form of interest against delayed payment of arbitration award and bills of the contractors, idling charges for machineries, etc.

Thus, due to fund constraints and dispute amongst the equity stakeholders of TUL (State Government and Athena Singapore) on infusion of additional project funding by the State Government through dilution of the equity stake of Athena Singapore as discussed above, the project had to bear an avoidable cost of ₹ 892.01 crore besides the loss of potential revenue to the State against sale of State's share of free power from the project for the delay period.

TUL stated (November 2016) that the above events occurred due to *force majeure* events. All these uncontrollable events coupled with fund scarcity led to delay in payment to the contractors and financial crunch with the contracting agencies.

The reply is not tenable as the contract agreement entered into between TUL and contractors stipulate that any loss incurred by the contractors due to *force majeure* events was not admissible for reimbursement and same needs to be borne by the affected party only. Citing this condition, TUL had not accepted certain claims of contractors. In the instances pointed out by Audit, the contractors had claimed interests and idling charges due to delay in settlement of bills by TUL. This claim was accepted by TUL after verification of the claims by owner's engineer. Thus, admitting of these claims of the contractors contradict the reply regarding occurring of these incidence due to *force majeure* events. Further, TUL delayed payment of arbitration award and settlement agreement. This also led to further payment of avoidable interest.

3.2.10.6 State Government take over of TUL

Due to not infusing further equity funds into TUL by the equity stakeholders, the construction of the project suffered and eventually got stalled (July 2014). At the initiative of Union Power Ministry, a meeting of all stakeholders of the project was then held (November 2014) at Union Power Ministry. Considering the best interests of the project, it was decided in the meeting, to dilute the majority shareholding of Athena Singapore[51] and other equity stakeholders[52] and execute the project as a State Government undertaking. At the time of raising its equity stake to 51 *per cent* in TUL, the State Government, without going for independent valuation of the shares of TUL, had acquired the shareholdings of Athena Singapore and other equity shareholders based on the price as assessed in the valuation report prepared by TUL through M/s Ernst & Young Merchant Banking Services Private Limited (EY) for internal management analysis purpose. While releasing payments against purchase of above mentioned shares, the State Government/SPICL also failed to deduct the proportionate amount towards penalty for delay in commissioning of the project (₹ 2.30 crore) and the additional costs (₹ 131.37 crore) pertaining to the shares diluted by the equity stakeholders[53] of TUL in favour of State Government/SPICL, as discussed in the following text:

[51] *Now known as Asian Genco Private Limited, a company registered and based in Singapore.*
[52] *PTC, Athena India and APPL Power.*
[53] *Athena Singapore, PTC, Athena India and APPL Power.*

(i) Penalty for delay in commissioning

As per the agreement entered (18 July 2005) between State Government and TUL, TUL was to commission Teesta III project latest by September 2012. In case of delay in commissioning the project within the scheduled time, TUL was liable to pay a penalty of ₹ 0.10 lakh per MW per month of delay to State Government. The time frame would be extended by State Government only if the delay was attributable to *force majeure* events.

Due to an earthquake (18 September 2011) and collapse of Rangchang Khola bridge (December 2011), the TUL was granted extension of commercial operation date (COD) from September 2012 to December 2013.

TUL, however, was not able to complete the project by December 2013 and the lender's engineer recommended (February 2014) extension of completion date till 30 June 2015. Though TUL sought waiver of levy of penalty for the above time overrun, State Government did not respond (November 2016).

In this connection, it was observed that SPICL/State Government failed to levy penalty of ₹ 15.60[54] crore as per the terms of the DoA entered between State Government and TUL for the period from 1 January 2014 till 31 January 2015[55]. Out of the above penalty leviable on all shareholders of TUL, a proportionate penalty of ₹ 2.30 crore pertained to the shares acquired by the State Government as detailed in the **Appendix 3.2.1**. Failure of the State Government to recover/adjust the proportionate amount of penalty at the time of acquisition of equity stake in TUL, had benefited the private developer to the extent of ₹ 2.30 crore.

(ii) Additional costs not recovered

During examination of records, it was observed that a total of 416 days had been lost due to controllable factors such as suspension of work due to funds constraints, lack of equity infusion by promoters etc. leading to incurring of additional costs of ₹ 892.01 crore towards IDC (₹ 758.13 crore) and hard costs (₹ 133.88 crore) as discussed under **Paragraph 3.2.10.5** *supra*.

Based on the deliberations arrived at in the meeting (November 2014) of all project stakeholders convened by the Union Power Ministry, the State Government decided (December 2014) to take over 51 *per cent* stake in TUL through Sikkim Power Investment Corporation Limited[56] (SPICL), by way of dilution of the existing equity holdings of Athena Singapore and other equity shareholders.

It was observed that contrary to the principles of prudence, the State Government had not gone for an independent valuation and instead relied on the valuation report prepared by TUL through EY for the purpose of internal management analysis. Accordingly, the State Government acquired (August 2015) 31.24 crore equity shares of TUL (face value:

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[54] *₹0.10 lakh per month X 1,200 MW X 13 months=₹15.60 crore.*

[55] *The period of penalty has been restricted upto the expected date (January 2015) of take over of TUL/ project by the State Government/SPICL, though the actual take over completed in August 2015.*

[56] *A fully owned State Government company registered under Sikkim Registration of Companies Act, 1961.*

₹ 10 per share) for ₹ 266.56 crore at the rate of ₹ 8.53 per share[57]. It was further observed that while releasing the payments towards purchase of the said equity stake in TUL, the State Government/SPICL failed to adjust/recover the proportionate liability of ₹ 131.37 crore on account of IDC (₹ 111.66 crore) and hard costs (₹ 19.71 crore) from the private developers of TUL (Athena Singapore and other equity shareholders) as detailed in **Appendix 3.2.2** and **Appendix 3.2.3** respectively.

EPD stated (November 2016) that the State Government/SPICL was always a part of TUL Board with 26 *per cent* equity holding. As such a need for independent valuation was not felt necessary. In the exit conference it was stated that SPICL being a small company did not have the financial resources to take up an independent valuation.

The reply was, however, silent on not adjusting/recovering the proportionate liability from the private developers for delay in execution of project due to controllable reasons.

Monitoring mechanism

Role of Energy and power department

EPD, on behalf of the State Government, had been assigned the responsibility of ensuring the timely completion and achievement of socio-economic objectives of the project. The audit findings with respect to the role of EPD in monitoring the project are detailed in the subsequent paragraphs:

3.2.10.7 Multi-disciplinary monitoring committee

Clause 3.15 of the DoA for Teesta III stipulated that the State Government should constitute a multi-disciplinary committee (MDC) comprising representatives of TUL and various departments of the State Government to monitor the issues arising during the implementation of the project. It also stipulated that the MDC should draw up the methodology to regulate the payments to be made by TUL to the various departments of the State Government in connection with the implementation of Teesta III. The MDC should preferably meet quarterly so as to have effective monitoring and timely decision making on important issues.

During the examination of the records of EPD, however, it was observed that no such MDC had been constituted by the State Government (November 2016). In response to an audit query (June 2015) as to constitution of the MDC as envisaged in DoA, the EPD furnished (23 July 2015) copies of constitution (18 July 2012) and reconstitution (30 November 2013) of a High Powered Committee (HPC). As per the notifications, the HPC comprised of one Chairman (Chief Secretary, Government of Sikkim), three members (from Forest, Planning & Development and Finance Departments) and Member Secretary (PCE cum Secretary, EPD). The HPC was formed with a view to expedite the implementation of various HEP projects under construction in Sikkim and to resolve the various issues arising during the course of implementation of the projects.

The reply of EPD was not tenable on the following grounds:

[57] *Rounded off to two decimal points.*

- the MDC referred in the DoA stipulated that representatives of TUL should be part of the MDC. The HPC did not have any representatives of TUL;
- the HPC was constituted only in July 2012 whereas the physical work on the project commenced from January 2008 and 73 *per cent* of the physical works had been completed before the formation of the HPC;
- the HPC which was constituted was for all the HEP projects under construction in Sikkim and was not specific for the Teesta III project and
- the frequency of meetings of the HPC was not stipulated whereas the MDC, as envisaged in the DoA, was required to meet once every quarter preferably.

In the absence of a MDC as envisaged under the DoA, the implementation of project was not effectively monitored and execution of the project works had suffered.

EPD stated (November 2016) that as of now one departmental multi-disciplinary committee does exist district wise and the project proponents had been advised to nominate their representative in the committee during inspection.

The reply was not relevant as the project was on the verge of completion. Further, failure of the State Government to effectively monitor the project related activities had resulted in unauthorised change in the shareholding pattern of TUL in favour of Athena Singapore as discussed under **Paragraph 3.2.10.3** *supra.*

Monitoring of long term borrowings for the project

To implement Teesta III, the TUL had availed long term borrowings from a consortium of Lenders led by Rural Electrification Corporation (REC). The other members of the Lenders' consortium mainly included nationalised banks and Life Insurance Corporation of India.

The audit findings relating to the long term borrowings availed by TUL for the project and role of the State Government in monitoring the said borrowings have been discussed in the subsequent paragraphs:

3.2.10.8 Common Loan Agreement

TUL had entered (August 2007) into a Common Loan Agreement (CLA) with Rural Electrification Corporation (REC) (lead lender, lenders agent and security agent) and other lenders in order to borrow a loan aggregating ₹ 4,560 crore for implementation of Teesta III project. As per clause 1.1 of CLA, "Athena" shall jointly mean (i) Athena Projects Private Limited (Athena India) and (ii) Athena Projects Pte Limited (Athena Singapore). It was, however, observed that as per the DoA entered between the State Government and TUL, Athena India consortium means consortium led by Athena India and included other consortium members[58] but did not include Athena Singapore (currently known as Asian Genco Pvt. Ltd.) as member of the consortium.

[58] *Andhra Pradesh Generating Company (APGENCO), Larsen & Toubro Limited (L&T), Power Trading Corporation of India Limited (PTC) and Infrastructure Leasing & Financial Services group (IL&FS) as discussed under Paragraph 3.2.9.2 supra.*

It was noticed that the lenders consortium led by REC while entering into the CLA with TUL, had considered Athena Singapore as part of the Athena India consortium, which was in contravention to the DoA. This had facilitated the back door entry of Athena Singapore into the project without verification of the credentials of this Singapore based firm by the project allotting authority (i.e. State Government).

As discussed under **Paragraph 3.2.10.2** *supra,* there was no representative of the State Government on the Board of Directors (Board) of TUL till December 2012, which had adversely affected the monitoring of the project related activities taken up by the TUL. The State Government also failed to constitute the multi-disciplinary committee (MDC) for monitoring the implementation of the project in contravention of the terms of the DoA as discussed under **Paragraph 3.2.10.7** *supra*.

In absence of State Government's representation on the Board of TUL coupled with its failure to constitute the MDC, the State Government failed to take cognizance of the entry of Athena Singapore in Athena India consortium in violation of DoA for the purpose of executing the CLA between TUL and the Lenders.

REC stated (September 2016) that the entry of Athena Singapore was covered under the definition of Athena as Athena Singapore comprises of private equity investors. TUL also reiterated (November 2016) the same.

The fact, however, remained that the DoA entered between the State Government and TUL should have been the basis for executing CLA. Due to its failure to effectively monitor the project related activities, the State Government remained unaware of the unauthorised change in the shareholding pattern of TUL in favour of Athena Singapore as discussed under **Paragraph 3.2.10.3** *supra*.

3.2.10.9 Lack of effective monitoring led to appointment of ineligible engineer by the Lenders

REC being the lead lender in Teesta III had appointed (July 2007) M/s. Lahmeyer International (India) Private Limited as the lenders independent engineer for the project. The scope of work included techno-economic appraisal, construction monitoring and operational review. As per clause 5.1(v) of the CLA, the lenders engineer appointed should be eminent engineers of global reputation, who would review and monitor the progress of the project at least till the COD.

REC had engaged M/s. Lahmeyer International (India) Private Limited (Lahmeyer), a subsidiary of the German company M/s. Lahmeyer International, as lenders' independent engineer for the project. During scrutiny of records, it was observed that the parent company, M/s. Lahmeyer International was declared (November 2006) ineligible by World Bank for award of bank-financed contracts for a period of seven years because of corrupt activities in the Lesotho Highlands Water Project.

Since there was no representative of the State Government on TUL's Board and no MDC was constituted to monitor implementation of project by TUL, the State Government failed to take note of the above facts for taking corrective action.

3.2.10.10 Project level welfare committee

The clause 4.15.1, 4.15.2 and 4.16 of DoA stipulated that TUL as well as its contractors should ensure that all the unskilled/skilled manpower other than executives required for implementation of the project should be recruited only through the employment cell at Gangtok, Sikkim. Further, employment should be given to one member of each of the displaced or adversely affected families as a result of the acquisition of land for the project. In order to ensure the compliance of the above three clauses, the DoA, in clause 3.18, envisaged constitution of a project level welfare committee, by the State Government, comprising of local politicians, Gram Pradhans, villagers, local administration and TUL representatives. It was, however, observed that the committee as envisaged in the DoA was not formed by the State Government (November 2016).

As per available records, the following table details the position of employment of local people by TUL and its Contractors as of April 2016:

Table 3.2.8

Sl. No.	Particulars	Total employees	Local employees	% of local employees
1	Teesta Urja Limited	100	30	30
2	Andritz	254	0	0
3	Navayuva Engineering Company Limited	446	59	13.23
4	Southern Engineering Works Constructions Limited	330	38	11.52
5	ABIR Constructions Private Limited	821	213	25.94
6	PES Engineers	420	0	0
7	GMW Private Limited	46	0	0
Total		**2,426**	**340**	**14.01**

In the absence of project level welfare committee, audit was not in a position to ascertain whether employment for members of project affected families was generated to acceptable level during the project implementation.

EPD accepted (November 2016) the audit observation and assured that it would direct TUL for early constitution of such a committee.

Environmental issues

3.2.10.11 Environment impact assessment and environment management plan

Environment impact assessment (EIA) can be defined as a study to identify and assess the likely effects of a proposed project on the environment. The EIA is a decision making tool as it compares various available alternatives for a project and seeks to identify the one which represents best combination of economic and environmental costs and benefits. It systematically examines both beneficial and adverse consequences of the project and ensures that these effects are appropriately taken into account during project design and adverse effects are mitigated, if possible.

On the basis of EIA, Environment Management Plan (EMP) is prepared for implementation of necessary measures to mitigate the adverse impacts of the project on the environment.

3.2.10.12 Environment Clearance for Teesta III

The Ministry of Environment & Forest, (MoEF) Government of India (GoI) issued (May 1999) environmental clearance (EC) to Teesta V executed (2008) by NHPC with a stipulation that no other project in Sikkim would be considered for EC till carrying capacity study of Teesta river basin in Sikkim was complete. The study funded by NHPC was entrusted (September 2001) to the Centre for Inter-Disciplinary Studies of Mountain & Hill Environment (CISMHE), University of Delhi. The final report (October 2007) of CISHME categorised Sikkim into four different zones[59] in terms of flora and fauna availability. The Teesta III at Chungthang, North Sikkim which falls within zone III was stated to be very rich in bio-diversity. A number of schedule I species[60] under Indian Wildlife Protection Act (WPA) 1972 were found in this zone. The density of bird abundance including protected ones under WPA was said to be the highest in zone III. The report also emphasized that zone-III was very sensitive and if any development project was executed, it would have an irreversible ecological damage with respect to biological environments. The report recommended creation of additional protected areas as most of the forests in these zones were not within any protected area except some areas in Chungthang, which fall under the buffer zone of Khangchendzonga biosphere reserve.

It was, however, noticed that the Environment Impact Assessment (EIA) and Environment Management Plan (EMP) prepared (2007) by TUL, through WAPCOS, for the project contradicted the findings and suggestions made in the above report of CISMHE. As per EIA and EMP of the project, no wildlife was generally reported in the project area and hence no adverse impact on terrestrial fauna was anticipated as a result of execution of the project in the area. The Forest, Environment and Wildlife Management Department (FEWMD), Government of Sikkim also concurred to the EIA & EMP prepared by TUL subject to regular monitoring and surveillance by the State wildlife division. Based on the EIA, EMP and report of FEWMD, Government of Sikkim, the EC for the Teesta III was issued (August 2006) by MoEF, GoI much before the completion of carrying capacity study of Teesta river basin in Sikkim (October 2007).

On 4 June 2008, one serow (*Caprinornis Sumantraensis*) classified under schedule I species as per the Wildlife Protection Act, 1972 was found dead at the project site of Teesta III where a contractor (SEW Construction Ltd) was executing the work. The death of the animal was reported by the wildlife division of the FEWMD, Government of Sikkim. The nature and cause of death of the animal, however, could not be ascertained by the police authorities and veterinary department. However, the contractor of Teesta III was penalised by the department as the animal was found dead at the project site.

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[59] *Zone I (upto 900 m), Zone II (900-1,800m), Zone III (1,800-2,800m) and Zone IV (2,800-3,800m).*

[60] *Red panda (endangered), serow, leopard cats and marbled cat (reported to occur only in Chungthang area i.e. project site).*

From the carrying capacity study report and the above incident, it could be construed that wild animal of endangered species were found near or within the vicinity of the project area. Hence, the recommendation of the FEWMD, Government of Sikkim for issue of EC for implementation of Teesta III was not based on any scientific study and development of the project could have adverse impact on the ecological environment of the State.

FEWMD stated (November 2016) that a death of the serow was a first incidence reported from the area and after following the legal procedures the contractor was penalised. In the exit conference it was stated that scientific studies had been conducted before issue of recommendation to MoEF, GoI.

The reply is not acceptable as it details only about the accidental death of the serow. The incident of death of serow was, however, cited by Audit to indicate the presence of animals in the project area. Further, no documentary evidence was made available to Audit in support of the reply indicating that a scientific study had been conducted by FEWMD before issue of recommendation.

3.2.10.13 Implementation of Environment Management Plan

The EIA and EMP for the project were prepared by Water and Power Consultancy Services (I) Ltd (WAPCOS). As part of the mitigation works envisaged in EIA, TUL had deposited a sum of ₹ 21.39 crore with FEWMD, Government of Sikkim for implementation of various conservation measures as detailed below:

Table 3.2.9

(₹ in crore)

Sl. No.	Particulars	Deposited by TUL
1	Wildlife conservation measures	1.15
2	Catchment area treatment works	10.03
3	Bio-diversity conservation measures	0.50
4	Compensatory afforestation	2.15
5	Forest protection plan	0.51
6	Crop compensation	1.33
7	Net present value of trees	5.66
8	Penal compensatory afforestation	0.06
	Total	**21.39**

Scrutiny of records of FEWMD/DoF revealed deficiencies in implementation of EMP as discussed in succeeding paragraphs.

3.2.10.14 Non-provision of fish ladder[61] for Teesta III

The EIA for Teesta III had assessed that the project dam on the river would act as a barrier to the free movement of migratory fish species especially *schizothorax* (snow trout) and could lead to adverse impact on the survival and free movement of migratory fish species. Hence, the EIA recommended for provision of a fish ladder, which was also incorporated in the EMP for the project. Further, specific condition IX of the environmental clearance (EC) also stipulated that the implementation of fish management plan including provision of fish ladder should be carried out in consultation with

[61] *A fish ladder is a structure on or around artificial and natural barriers (such as dams, locks and waterfalls) to facilitate natural migration of migratory fishes.*

Directorate of Fisheries, Government of Sikkim and submitted to MOEF within three months from the date of issue (August 2006) of EC. In a public hearing held on 8 June 2006, TUL had also assured that all the conditions laid down in the EC would be strictly followed.

For construction of the project, TUL sought (May 2007) approval from DoF. DoF conveyed (November 2007) its approval subject to TUL consulting the Director of Central Inland Fisheries Research Institute, Kolkata for design and construction of fish ladder. In turn, however, TUL requested (August 2009) DoF to initially approach the institute concerned and provide an introduction of TUL so as to facilitate taking further action in the matter by TUL. It was observed that in February 2011, DoF had concluded that the construction of fish ladder in such high dam would not be possible from technical and operational point of view. No correspondence or documentary evidence was, however, seen on records of DoF regarding obtaining of any technical advice from the institute on the issue before arriving at the above conclusion.

DoF stated (November 2016) that the construction of fish ladder was not found to be suitable option due to the height of the dam and presence of steep mountain on both side of the dam. Under the EMP, a trout farm with a hatchery capacity of 5 lakh green ova was established at Rabum, North Sikkim and currently the seed of brown Trout reared at the hatchery is released at various locations upstream of the dam to stabilise the population.

The reply is not tenable in view of the fact that the EC issued by MoEF had clearly stipulated that fish ladder should be provided. DoF/TUL, however, had not made available any document on the technical advice obtained on the issue in support of their decision regarding the non-feasibility of fish ladder in the project.

The absence of fish ladder could hamper the migratory pattern of endangered snow trout and may lead to extinction of snow trout.

3.2.10.15 Fish Management Plan

The EMP envisaged sustenance of endemic fisheries by implementing supplementary stocking programs[62] for the project area in addition to reservoir area. Accordingly, it was proposed to stock river Teesta for a length of 10 KM each on the upstream and the downstream of the dam site. This was proposed to be achieved through a fish hatchery for *Schizothorax richardsonii* (Snow trout). The carrying capacity report (October 2007) of Teesta river basin pointed out that the river stretch flowing through the project was dominated with fishes like *Schizothorax richardsonii* (Snow trout) and *Schizothoraicthys progastus* (Dinnawa Snow trout). However, the exotic trout *Salmo truttafario* (Brown trout) was restricted to upstream of proposed dam site while *Acrossocheilus hexagonolepis* (Catli) was found up to the proposed power house site.

The DoF had observed (November 2007) that the project is bound to have more impact on the existing trout population. The DoF had, therefore, recommended (November 2007) the construction of a new trout farm instead of construction of *Schizothorax* breeding

[62] *Fish stocking is the practice of raising fish in a hatchery and releasing them into a river, lake, or the ocean to supplement existing populations, or to create a population where none exists.*

farm as envisaged in the EMP. Also, the State Cabinet approved (October 2011) the construction of trout rearing farm at Rabum as a sustainable livelihood option for human population. It was noticed that the trout rearing farm constructed (July 2013) under the project mainly facilitated breeding of other species of trout[63] in limited numbers and not the endangered species i.e. snow trout.

DoF stated (November 2016) that the breeding protocol of *Schizothorax sp* (Snow Trout) has not been standardised in India till date and it was not possible to river ranch the seed of this fish. However, the conservation measures are undertaken through regular patrolling both above and below the dam site.

The fact, however, remained that the measures taken by TUL/DoF do not provide for breeding and growth in the population of the snow trout, which may lead to extinction of the endangered species (snow trout).

3.2.11 Conclusion

The State Government allotted (February 2005) the project to a consortium of private developers without verifying the experience of the consortium leader. The project was to be implemented by a Special Purpose Vehicle namely, Teesta Urja Limited (TUL) with committed equity contribution of 74 per cent (private consortium) and 26 per cent (State Government) in TUL's capital. The State Government failed to ensure adherence to the agreement conditions by the private consortium with regard to change in composition of consortium and committed contribution towards project funding. The financial constraints faced by TUL on this account contributed towards delay in completion of project for more than 4 years (November 2016) with reference to the scheduled completion (September 2012) defeating the primary objective of executing the project through private participation under joint sector with the State Government. The delay of 416 days was attributable to failure of private developers to subscribe towards the committed equity portion of TUL for the second cost overrun of the project. Ultimately, the State Government had to take over the project through equity infusion in TUL. For the purpose, the State Government acquired 31.24 crore equity shares of TUL (face value: ₹ 10 per share) held by the private consortium at ₹ 8.53 per share, which was calculated based on the valuation report prepared by TUL for internal management analysis. While releasing payments against take over of project, the State Government failed to recover the penalty for delay in commissioning of the project (₹ 2.30 crore) and the additional costs incurred (₹ 131.37 crore) due to inefficiency of the private developers.

The State Government did not constitute multi-disciplinary committee and project level welfare committee for monitoring of the project. As a result, implementation of the project had suffered.

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[63] *Oncorhynchus mykiss (Rainbow trout) and Salmo truttafario (Brown trout).*

3.2.12 Recommendations

The State Government may:

- ensure strict compliance by the private project developers to the conditions of agreement.
- adopt appropriate measures for putting in place an effective mechanism for monitoring and control of the project implementation by private project developers.
- verify correctness of the scientific study carried out by project implementation agency before recommending projects for environmental clearance.

STATE BANK OF SIKKIM
AND
SIKKIM INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATION LIMITED

3.3 Avoidable expenditure

3.3.1 Avoidable payment of interest and income tax aggregating ₹ 9.62 crore

The State Bank of Sikkim (SBS) and Sikkim Industrial Development & Investment Corporation Limited (SIDICO) are two State owned financial institutions. Audit observed that both, SBS as well as SIDICO, failed to comply with the provisions of Income Tax Act 1961 as detailed below:

• Section 139(1) of the Income Tax Act 1961 stipulates that all corporate assessees should file their income tax returns (IT returns) on or before the prescribed due date viz. 30 September of the assessment year concerned. Section 234A of the Income Tax Act, 1961 stipulates that in the event of any delay in filing return of income for any assessment year after the prescribed due date, an assessee would be liable to pay interest at the rate of one *per cent* on the amount of tax payable for every month of delay.

In spite of clear instructions received (August 2008) from the Government of Sikkim to comply with the provisions of the Act, SBS and SIDICO did not file their IT returns for the financial years from 2008-09 to 2014-15 on time leading to avoidable payment of interest amounting to ₹ 2.99 crore by SBS (₹ 2.61 crore) and SIDICO (₹ 0.38 crore) as detailed in **Appendix 3.3.1**.

• As per section 208 of the Income Tax Act 1961, every assessee was required to pay advance tax if the tax payable during a financial year was ten thousand rupees or more. If the assessee failed to pay such tax or the advance tax paid was less than ninety *per cent* of the assessed tax, then assessee would be liable to pay simple interest at the rate of one *per cent* per month for the period from the 1st day of April of the assessment year to the date of determination of total income on the amount of shortfall (section 234B). Further, as per section 234C, assessee was required to pay 15, 45, 75 and 100 *per cent* of the tax due on or before 15th day of June, September, December and March respectively of the financial year concerned. Failure to deposit the advance tax as per the prescribed schedule would attract interest at the rate of one *per cent* per month on the amount of shortfall.

On account of violation of the above sections during the financial years from 2008-09 to 2014-15, an avoidable interest aggregating ₹ 4.16 crore was paid by SBS (₹ 3.40 crore) and SIDICO (₹ 0.76 crore) under section 234B and C as detailed in **Appendix 3.3.1**.

- Section 72 of the Income Tax Act, 1961 provides for carry forward and set off of business losses with business profits for adjustment against future business profits for a period of eight years. Section 80, however, prevents carry forward and set off of business losses against future income if the assessee had not filed the IT return for the financial year of the loss concerned within the stipulated due date.

During the financial year 2010-11, SBS and SIDICO incurred a loss of ₹ 7.16 crore and ₹ 0.47 crore respectively. In 2011-12, SBS and SIDICO declared a profit of ₹ 8.75 crore and ₹ 2.98 crore respectively and paid income tax amounting to ₹ 2.84 crore and ₹ 0.97 crore.

SBS and SIDICO, however, failed to file the loss return for the financial year 2010-11 within the stipulated due date and consequently was not able to carry forward and set off the business loss for 2010-11 against the taxable income for the financial year 2011-12 leading to avoidable payment of ₹ 2.47 crore as income tax by SBS (₹ 2.32 crore) and SIDICO (₹ 0.15 crore) as detailed in **Appendix 3.3.1**.

Thus, failure of SBS and SIDICO to file their respective income tax returns in due time resulted in an avoidable loss of ₹ 9.62 crore (₹ 7.15 crore as interest and ₹ 2.47 crore as income tax) to SBS (₹ 8.33 crore) and SIDICO (₹ 1.29 crore).

SBS stated (July 2016) that the payment of interest on delayed income tax was due to the circumstances which were beyond the control of the bank as they were confused regarding applicability of Income Tax Act 1961 in the State of Sikkim.

SIDICO stated (July 2016) that it was solely dependent on the income tax auditors as the corporation was new to the income tax laws. Hence, it acted based on the advice of the income tax auditors. The reply of SBS and SIDICO was not tenable as the State Government had instructed (August 2008) all the financial institutes concerned to submit their tax returns in compliance to Income Tax Act, 1961.