

Chapter - III

CHAPTER - III

3. Transaction Audit Observations

Important audit findings emerging from test check of transactions made by the State Government Companies have been included in this Chapter.

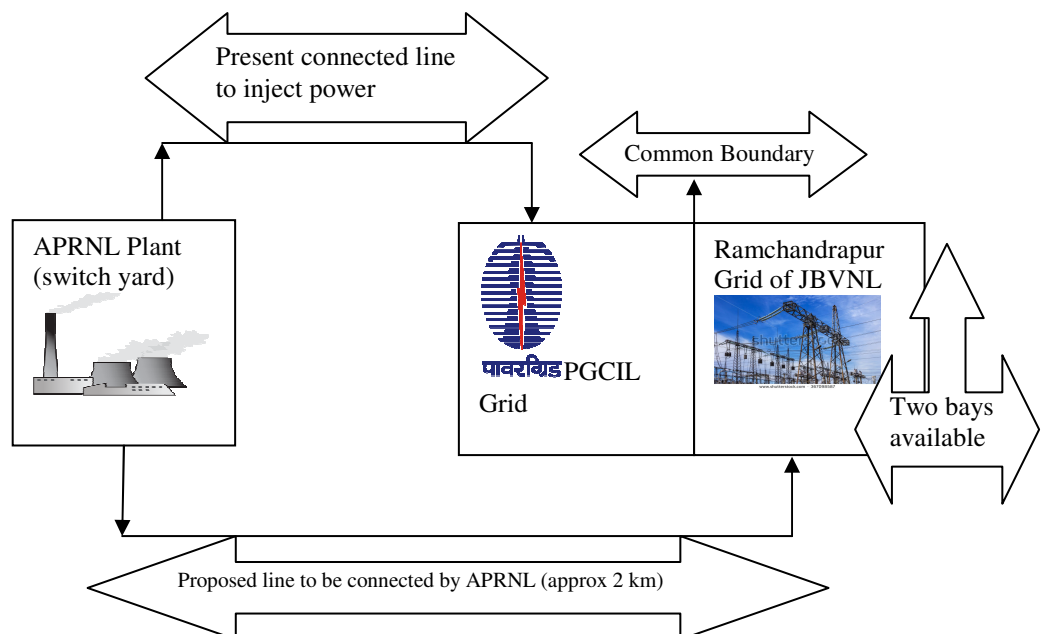
Jharkhand Bijli Vitran Nigam Limited

3.1 Avoidable expenditure on transmission charges

The Company incurred avoidable expenditure of ₹ 31.19 crore towards transmission charges in the absence of dedicated transmission system.

Jharkhand State Electricity Board (JSEB) now Jharkhand Bijli Vitran Nigam Limited (JBVNL) entered into (September 2012) a long term Power Purchase Agreement (PPA) with Adhunik Power and Natural Resources Limited (APNRL) for procurement of power for 25 years. As per terms of the PPA, APNRL was to develop a transmission system which included a 400 KV transmission line from power station bus-bar⁶⁶ to JBVNL's Ramchandrapur 220 KV sub-station within two years from the date of commercial operation (CoD) of its power plant. Meanwhile, APNRL would inject power to Power Grid Corporation of India Limited (PGCIL) Grid, which in turn would inject power to the adjacent Ramchandrapur Grid of JBVNL for which transmission charges⁶⁷ (injection charges and withdrawal charges) from the interconnection point onwards were to be paid by the JBVNL for an initial period of two years or till the dedicated transmission system was developed, whichever was earlier.

Chart 3.1.1: Pictorial representation for evacuation of power from the APNRL Power Plant to Ramchandrapur Grid



⁶⁶ In electrical power distribution, a bus-bar is a metallic strip or bar that conducts electricity within a switchboard.

⁶⁷ The charges to be paid by seller and reimbursed by the procurer as transmission tariff for the transmission of power from the Power Station Bus-Bar up to the Delivery Point.

Audit noticed (September 2015) that CoD of Unit 1 and 2 of the power plant was declared on 21 January 2013 and 19 May 2013 respectively. Though two bays were available at Ramchandrapur Grid of JSEB for direct connectivity with APNRL, JBVNL had not demanded 'No objection certificate' (NoC) required for construction of the dedicated transmission line from Jharkhand Urja Sancharan Nigam Limited (JUSNL) under whose jurisdiction the Ramchandrapur Grid lies, after unbundling of the JSEB (January 2014). As such NoC was not issued to APNRL and construction of the dedicated transmission system from the plant to Ramchandrapur Grid could not be started.

Audit further noticed that Jharkhand State Electricity Regulatory Commission (JSERC) in its provisional tariff order⁶⁸ directed (May 2014) the JBVNL and APNRL to constitute a joint committee to resolve all the issues regarding construction of the dedicated transmission system for transmission of power from the power station and submit a report within two months. The committee so constituted (July 2014) did not finalise the issues relating to construction of the transmission line. Another committee formed thereafter (17 July 2015) had suggested multiple options for construction of transmission line, however, no conclusive report was submitted to JSERC and construction of the transmission line has not been taken up so far (October 2016).

In absence of the dedicated transmission system JBVNL had to pay the injection charges of ₹ 13.36 crore and withdrawal charges of ₹ 17.83 crore to PGCIL during January 2015 to March 2016 which could have been avoided had the dedicated transmission system been developed as stipulated in the PPA.

The Company, while accepting (November 2016) that the dedicated transmission line has not been constructed so far, stated that JBVNL has now proposed the appointment of a consultant for conducting systematic line study, finalisation of bill of quantity and cost benefit analysis for construction of transmission line.

The reply is not acceptable as the Company has failed to take any decision in four years since entering into PPA for establishing the dedicated transmission line.

Thus, due to failure to adhere to the terms of Power Purchase Agreement, JBVNL had to incur an avoidable expenditure of ₹ 31.19 crore⁶⁹ towards injection charges and withdrawal charges.

The matter was referred to the Government (July 2016); their reply is awaited. However, Additional Chief Secretary, Energy Department, during discussion (November 2016) on the audit para, accepted that transmission line had not been constructed.

3.2 Avoidable payment of tax deducted at source and works contract tax

JBVNL failed to deduct income tax and works contract tax from the running bills of the contractors and deposited the same from own funds thereby causing loss of ₹ 15.31 crore.

⁶⁸ For the financial years 2012-13 to 2015-16

⁶⁹ Injection charges - ₹ 13.36 crore *plus* withdrawal charges - ₹ 17.83 crore.

As per Section 194C of the Income Tax Act, 1961 any person responsible for paying any sum to any contractor for carrying out any work in pursuance of a contract shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof, deduct an amount equal to two⁷⁰ *per cent* of such sum as income tax on income comprised therein. Further, as per Section 44 of the Jharkhand Value Added Tax Act, 2005 any person at the time of making payment to contractors for the execution of works under a contract in the State involving transfer of property in goods shall deduct tax in advance therefrom at two *per cent* (four *per cent* with effect from 29 May 2014).

Erstwhile Jharkhand State Electricity Board (JSEB), presently Jharkhand Bijli Vitran Nigam Ltd (JBVNL), awarded (December 2006) the work for rural electrification under Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) scheme on a turnkey contract basis to different contractors covering seven⁷¹ packages in six districts of Jharkhand. As per terms of the contracts, the contractors shall be responsible to pay income tax or any other corporate tax, if any, that is prescribed under law. Further, the Work Contract Tax (WCT) and other similar taxes as applicable shall be borne by the contractors and JSEB shall deduct such taxes at source and issue certificate accordingly.

Scrutiny of records revealed (September 2015) that during 2007-08 to 2008-09 JSEB did not deduct the amount of income tax at source (TDS) and WCT on supply of materials against the scheme while releasing the payment on running account bills of the contractors stating that TDS and WCT were not applicable on supply of materials. This was incorrect as these were applicable in case of composite/turnkey contract.

The Finance Controller, JSEB thus failed to take correct decision regarding applicability of TDS and Works Contract Tax (WCT). The Income Tax Department as well as the Commercial Tax Department demanded the TDS amount and WCT amount respectively against the payment made to the contractors for supply of materials of the scheme during the above period. JSEB deposited (March 2009) the TDS amount of ₹ 14.95 crore to the Income Tax Department and WCT amount of ₹ 4.72 crore to the Commercial Tax Department for the years 2007-08 and 2008-09 from its own fund.

Audit observed that upon insistence of audit, JBVNL⁷² started (July 2015) recovery of the amount from the contractors after a delay of more than seven years and it could realise only a sum of ₹ 4.35 crore (TDS - ₹ 1.24 crore + WCT - ₹ 3.11 crore) by October 2016. Balance amount of ₹ 15.31 crore (TDS - ₹ 13.71 crore + WCT - ₹ 1.60 crore) remained unrecovered and was a loss to JBVNL which also incurred additional interest expenses of ₹17.62 crore⁷³ on above unrecovered amount up to March 2016.

The matter was referred to the Company (July 2016) and Government (July 2016); their reply is awaited (December 2016) despite reminder dated 23 September 2016 and 18 November 2016.

⁷⁰ Where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family.

⁷¹ Package A – M/s NECCON, Package B – M/s ATSL, Package C – M/s NCCL, Package D – M/s ATSL, Package E – M/s IVRCL, Package F – M/s IVRCL and Package G – M/s IVRCL.

⁷² The Company was formed in January 2014 after unbundling of Jharkhand State Electricity Board.

⁷³ Calculated at the rate of 13 *per cent* at which JSEB was borrowing funds from Government of Jharkhand.

However, during discussion (November 2016) on the audit para, the Additional Chief Secretary, Energy Department instructed JBVNL to submit report on the irregularities committed by the contractors and its officers who were responsible for the irregularities so that appropriate action could be taken.

Jharkhand Police Housing Corporation Limited

3.3 Failure to recover ₹ 4.95 crore

The Company failed to recover from the contractor the extra cost of ₹ 4.95 crore incurred on execution of left over incomplete works due to failure to verify the genuineness of the bank guarantees submitted by the contractor.

Jharkhand Police Housing Corporation Limited (Company) entered into (4 May 2013) a contract with M/s Gautam Construction and Developers Pvt. Limited (contractor) for construction of ten police towers at different police lines⁷⁴ at a cost of ₹ 48.74 crore. The work was to be completed by August 2014. As per clause 3(C) of the terms and conditions of the contract, in case the work was left incomplete and the residual work was to be executed by engaging another contractor, any expense which may be incurred in excess of the sum which would have been paid to the original contractor shall be borne by the original contractor.

Scrutiny of records revealed (February 2016) that the contractor had submitted (07 February 2013) two Bank Guarantees (BG) – for ₹ 97.58 lakh towards the earnest money valid upto 25 June 2013 and for ₹ 1.46 crore towards security deposit valid upto 10 August 2013. The validity period of the BGs were subsequently extended till 3 September 2014. Both the BGs were issued by ICICI Bank Limited (Bank), Bistupur Branch, Jamshedpur.

It was noticed that the Executive Engineer, Ranchi Division of the Company did not verify the genuineness of the BGs before execution of agreement with the contractor although this was required to be done to safeguard the interests of the Company. As the work was not complete the Company sent (25 August 2014) a copy of the BGs to the Bank for extension. The bank informed (01 September 2014) that the BGs had not been issued by it. Consequently, the Company directed (08 September 2014) the contractor to prove the genuineness of the said BGs and also to provide fresh BGs, but the contractor failed to do so. The Company lodged (21 September 2014) FIR against the contractor for submission of fake BG, and terminated (23 September 2014) the contract. By the time the contract was terminated, the Company had already paid ₹ 12.84 crore to the contractor against the works done by it.

Subsequently, the Company, awarded (January 2015) ten work orders to other contractors for execution of the residual works valuing of ₹ 35.90 crore at a price of ₹ 41.87 crore, thereby incurring additional expenditure of ₹ 5.97 crore for completion of the residual works. The additional expenditure was recoverable from the original contractor as per the terms and conditions of the contract. The Company recovered only ₹ 1.02 crore by forfeiture of security

⁷⁴ Ten G+8 Towers comprising of three Lower Subordinate (L/S) Towers and three Upper Subordinate (U/S) Towers at Ranchi; one L/S Tower and one U/S Tower at Jamshedpur and one L/S Tower and one U/S Tower at Bokaro.

deposit (₹ 61.32 lakh) and by withholding payment (₹ 40.79 lakh) against the final running bill of the contractor, leaving ₹ 4.95 crore unrecovered.

The Company stated (July 2016) that a Money suit has been filed for recovery of extra cost from the contractor. The fact, however, remains that the recovery of the amount has not been made so far (December 2016).

Thus, due to negligence in verifying genuineness of Bank Guarantees an additional expenditure of ₹ 4.95 crore was incurred on execution of work which remained unrecovered from the contractor.

The matter was referred to the Government (May 2016); their reply is awaited (December 2016) despite reminders dated 23 September 2016 and 18 November 2016.

Jharkhand Urja Utpadan Nigam Limited

3.4 Infructuous and extra expenditure

JUUNL incurred infructuous expenditure of ₹ 38.24 lakh due to failure to inspect the procured materials before dispatch and to get the defective materials replaced. The Company also incurred extra expenditure of ₹ 17.94 lakh on subsequent procurement of the material on nomination basis.

Erstwhile Jharkhand State Electricity Board (JSEB), presently Jharkhand Urja Utpadan Nigam Limited (JUUNL), placed (10 June 2011) a purchase order on ROTEC Transmission Private Limited (firm) for four sets of worm gear and worm shaft⁷⁵ for Bowl Mills of Unit no. 9 and 10 at Patratu Thermal Power Station (PTPS) at a price of ₹ 48.60 lakh (₹ 12.15 lakh each) plus taxes and duties. The purchase order (clause 13) stipulated that:

- Inspection of the material was to be carried out at supplier's works by the authorized representative of PTPS before its dispatch;
- Pre-dispatch inspection was not to be waived off under any circumstances;
- GM, PTPS would ensure the quality of work and pre-dispatch inspection by an experienced officer of PTPS.

Audit observed (April 2016) that the firm requested (19 June 2012) GM, PTPS for final inspection of the materials before dispatch. However, the GM, PTPS requested (20 June 2012) the Chief Engineer(CE), Generation, JSEB to waive off the inspection clause citing engagement of the site engineers in commissioning activities of Unit 10 of PTPS. However, no effort was made by the GM, PTPS to arrange for the manpower from the office of the Chief Engineer, Generation, JSEB or any other sources. The CE, Generation (26 June 2012) waived off the condition of final inspection before dispatch of the materials subject to final inspection at PTPS stores. Audit also noticed that as per the NIT (March 2009) and the letter of Intent (9 February 2011), the terms of payment was for 100 *per cent* payment after delivery and raising of Stores Receipt Voucher (SRV). However, the firm did not agree for the payment terms due to delay in placing the purchase order (June 2011) to them

⁷⁵ Worm gears are special gears used in automobile steering mechanisms, hoists and rolling mills. Worm gear drives are typically used for transmission of power between not parallel and not intersecting shafts.

and expiry of validity of their offer. As such, the payment terms in the purchase order was modified to 100 *per cent* payment against dispatch of documents of material through Bank. Thus, no safeguard was available to JSEB against supply of defective material by the supplier.

JSEB paid (4 September 2012) ₹ 49.89 lakh⁷⁶ to the firm against dispatch documents of the material. Upon inspection (10 April 2013), the materials were found unsuitable for use due to dimensional mismatch and all the sets of worm gear and worm shaft were rejected. The firm intimated to JSEB (19 November 2013) that the Worm Gear and Worm Shaft to be replaced were under advanced stages of manufacturing which would be supplied by 20 December 2013. The firm replaced (04 January 2014) one set of the material and assured (13 May 2014) to replace two more sets by August 2014 after the rejected materials were received back.

Audit noticed that the Electrical Executive Engineer, Central Stores, PTPS intimated (May 2014) the firm that the rejected materials would be sent to them only after the defective materials were replaced by the firm as payment of the full amount had already been made. However, no effective action was taken to resolve the matter with the firm so as to get the material replaced.

As a result three sets of rejected worm gear and worm shaft valuing ₹ 37.28⁷⁷ lakh were not replaced by the firm as on date (September 2016). Additionally, JUUNL could not initiate any action by way of damage compensation owing to the unjustified decision of the GM, PTPS and its approval by CE, Generation to seek waiver of inspection of the materials before their dispatch, which resulted in expenditure of ₹ 37.28 lakh becoming wasteful.

As the replacement materials were not received, the Company procured (April 2014) six sets of worm gear sets from M/s Ranchi Electricals on nomination basis at a price of ₹ 18.13 lakh each, thereby incurring extra expenditure of ₹ 17.94⁷⁸ lakh.

Thus, due to failure of GM, PTPS and CE, Generation to get the procured materials inspected before despatch as per terms and conditions of the purchase order and consequent receipt of defective material, wasteful expenditure of ₹ 37.28 lakh and extra expenditure of ₹ 17.94 lakh was incurred.

The Company in reply stated (November 2016) that the site engineers who had expertise on Unit 10 of PTPS particularly in bowl mill was engaged in commissioning activities of the unit. They were in the process of getting the defective materials replaced. The defective materials were being returned to the supplier after obtaining Bank guarantee against the value of the defective materials.

The reply is not acceptable as pre-dispatch inspection may have been done by other engineers also as per the approved technical specification of the materials. Also, effective action for replacement of the material was not taken even after 42 months from receipt of the defective materials.

⁷⁶ ₹ 56.26 lakh – {₹ 2.45 lakh (5% penalty for delay in supply) + ₹ 2.81 lakh (5% performance guarantee + ₹ 1.10 lakh (income tax))}.

⁷⁷ (₹49.89 lakh + ₹1.10 lakh) x 3 sets / 4 sets

⁷⁸ (₹ 18.13 lakh - ₹ 12.15 lakh) x 3 sets

The matter was referred to the Government (July 2016); their reply is awaited (December 2016) despite reminders dated 23 September 2016 and 18 November 2016.

Jharkhand Urja Vikas Nigam Limited

3.5 Wasteful expenditure

The Company incurred wasteful expenditure of ₹ 1.27 crore for failure to adhere to the provisions of Employees' provident fund and Miscellaneous provisions Act, 1952.

In respect of establishments employing 20 or more persons and engaged in industry notified under Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act), an employer is required to deposit employees' monthly contributions at the rate of 12 *per cent* of the wages⁷⁹ along with an equal contribution of the employer in the Employees Provident Fund within 15 days of the close of each month. Once the conditions for application of the Act are satisfied, the establishment has to suo-motu approach the Regional Provident Fund Commissioner (RPFC) for registration so as to facilitate allotment of Account numbers to all the eligible employees by the Commissioner. In case of default in payment of contribution to the Fund, the RPFC may recover the dues from the employer along with penalty and damages.

Scrutiny of records revealed (July 2015) that erstwhile Jharkhand State Electricity Board, now Jharkhand Urja Vikas Nigam Limited (Company) was brought within the purview of the Act with effect from 1 July 2007 in relation to temporary employees. However, the Secretary, JSEB, who was in-charge of the Personnel and General Administration of the Company, failed to register the Company with the RPFC until March 2013. The Company did not deduct employees' contribution for the period from July 2007 to February 2013 from the salary of temporary employees and did not make statutory deposits towards the Employees Provident Fund with the RPFC. RPFC issued (September 2013) a notice under Section 7A of the Act to the Company for determination of dues as a defaulter for the above period. It determined (May 2014) a sum of ₹ 1.02 crore as dues to be paid within 15 days, failing which action against the company would commence without any further notice.

Audit observed that the Company defaulted in deposit of dues within the prescribed time and RPFC ordered (August 2014), under Section 8F (3)⁸⁰ of the Act, Allahabad bank to remit ₹ 1.02 crore to RPFC from the account of the Company. Accordingly, the bank remitted the amount from account of the company. RPFC also levied penalty of ₹ 1.27 crore (interest ₹ 44.80 lakh plus damages ₹ 81.73 lakh) on account of default, which was also remitted (November 2014) from the account of the company.

⁷⁹ Wages for the purpose of deducting employees' contribution include basic pay, dearness allowance, cash value of food concession and retaining allowance, if any, subject to a maximum wage ceiling of ₹ 6500 per month. The wage ceiling was increased from ₹ 6500 to ₹ 15000 vide Gazette Notification no. GSR 609 (E) dated 22.08.2014.

⁸⁰ As per Section 8F sub-section (3)(i) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Provident Fund Commissioner may at any time require any person from whom money is due to the employer, to pay to the Central Provident Fund Commissioner to pay the amount due from the employer. Sub-section (3)(iv) provides that every person to whom a notice is issued under this sub-section shall be bound to comply with such notice.

The Company stated (November 2016) that the amount of damages was imposed unilaterally without affording an opportunity of being heard to JSEB ignoring the provision of Section 32-B which provided for waiver of damages in appropriate cases, and that they were in the process of filing of appeal before the tribunal at New Delhi.

The reply is not acceptable as no review petition was filed by the Company before the Appellate Tribunal within 60 days of passing of such order by the RPFC.

Thus, due to failure to comply with the provisions of the Act, the Company incurred wasteful expenditure of ₹ 1.27 crore towards damages and interest.

The matter was referred to the Government (May 2016); their reply is awaited (December 2016) despite reminders dated 23 September 2016 and 18 November 2016.

Jharkhand State Beverages Corporation Limited

3.6 Avoidable payment of interest on Income Tax

Failure to pay advance income tax resulted in avoidable payment of interest of ₹ 1.95 crore.

As per Section 208 of the Income Tax Act, 1961, (Act) advance tax is payable during a financial year if the amount of such tax payable during the year is rupees ten thousand or more. Section 234B of the Act stipulates that where in any financial year, an assessee who is liable to pay advance tax under Section 208 fails to pay such tax or where the advance tax paid by such assessee is less than 90 *per cent* of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one *per cent* for every month from the first day of April on the amount by which the advance tax paid fell short of the assessed tax. Also, Section 234C of the Act provides that if an assessee fails to pay advance tax or the advance tax paid is less than 15 *per cent*, 45 *per cent*, 75 *per cent* and 100 *per cent* of the tax due till 15 June, 15 September, 15 December and 15 March respectively, the assessee shall be liable to pay simple interest at the rate of one *per cent* per month on the amount of the shortfall.

Audit observed (September 2015) that Jharkhand State Beverages Corporation Limited (Company) did not remit the advance tax on the due dates as required under Sections 234B and 234C of the Act during the financial year 2013-14. The Company computed its taxable income of ₹ 42.65 crore for the financial year 2013-14 and filed the income tax return in November 2014. It paid ₹ 15.65 crore to the Income Tax Department between September 2013 and November 2014 towards its tax liability which included interest of ₹ 1.15 crore under Sections 234B and 234C of the Act due to failure to pay advance income tax in time. In 2012-13 also, the company had paid ₹ 1.03 lakh towards interest under section 234B and 234C due to shortfall in payment of advance tax.

Audit further noticed that the Company has filed (30 September 2016) the income tax return for the financial year 2014-15 according to which interest of ₹ 0.79 crore under Section 234 C has been paid by it due to failure to pay advance income tax in time. As such it is evident that the Company has not taken corrective measures to properly assess its income tax liability and to deposit the advance tax in time during the financial year 2014-15 also, despite

having paid penal interest in 2012-13 and 2013-14 on this account. Thus, the Company had paid interest of ₹ 1.95 crore due to failure to pay advance income tax in time.

The Company stated (May 2016) that it could not estimate the advance tax liability in time as the turnover and the profit of the Company had increased significantly during 2013-14. Moreover, Government of India had amended the Act to disallow deduction of royalty, privilege fee etc. paid/payable to the State Government and all income was made liable to be taxed.

The reply is not acceptable as the amendment in the Income-tax Act was made in March 2013 and was effective only from 1 April 2014. Moreover, the company should have assessed and paid the instalments of advance tax payable during 2013-14 on the basis of its turnover in each quarter. It should have paid the advance tax as assessed in the annual budget.

Thus, the failure of the Company to assess the taxable income and comply with provisions of the Income Tax Act resulted in avoidable payment of interest of ₹ 1.95 crore.

The matter was referred to the Government (May 2016); their reply is awaited (December 2016), despite reminders dated 23 September 2016 and 18 November 2016.



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