

CHAPTER VI

Joint Venture Operations of CPSEs

6.1 Introduction

Joint Venture (JV) is a contractual arrangement whereby two or more parties undertake an economic activity, which is subject to joint control⁵⁷. A venturer is a party to a joint venture and has joint control over that joint venture. The JV may be of three forms i.e. jointly controlled entities, jointly controlled assets and jointly controlled operations. The jointly controlled entity is an entity registered under the Indian Companies Act or under the relevant Laws of the other country. These entities are governed by the relevant laws of the country in which the company has been incorporated. As the other forms of JVs i.e. jointly controlled assets and jointly controlled operations are un-incorporated, these are governed by the agreement signed among the partners.

6.2 Government Policy on JVs

The Common Minimum Programme of the Government stated that it would identify public sector companies that have comparative advantages and support them in their drive to become global giants. With a view to granting managerial and commercial autonomy to successful profit making Public Sector Enterprises (PSEs) operating in a competitive environment, the Department of Public Enterprises (DPE) enhanced the delegated powers of the Board of Directors of Navratna PSEs in August 2005 to enter into technology or strategic alliances, to establish financial JVs and wholly owned subsidiaries in India or abroad. DPE introduced (February 2010), Maharatna Scheme for Central Public Sector Enterprises (CPSEs) to delegate enhanced powers⁵⁸ to the Board of identified large sized Navratna CPSEs so as to facilitate expansion of their operations, both in domestic as well as in global markets. The exercise of powers by Maharatna companies was subject to the same conditions and guidelines laid down by the

⁵⁷ *Joint control is the contractually agreed sharing of control over an economic activity. Control is the power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.*

⁵⁸ *Enhanced powers to incur capital expenditure on purchase of new items or for replacement without any monetary ceiling, enter into technology joint ventures or strategic alliances, obtain by purchase or other arrangements, technology and knowhow, make equity investment to establish financial joint venture in India or abroad, create below Board level posts, raise debt from the domestic capital markets and from international markets etc.*

Government in respect of Navratna CPSEs from time to time. All the proposals involving investment over and above the delegated powers were to be submitted for approval of the Cabinet Committee on Economic Affairs (CCEA).

Miniratna Category-I⁵⁹ were also empowered to establish Joint Ventures/Subsidiaries in India subject to the Equity Investment of ₹100 crore in one project and 5 *per cent* of net worth. In respect of Miniratna Category II⁶⁰, Equity Investment was limited to 50 crore in one project subject to 5 *per cent* of the net worth. The aggregate investment should not exceed 15 *per cent* of net worth in respect of PSEs under both the categories.

6.3 Audit Objectives

The audit objectives were to ascertain whether:

- Due diligence had been exercised at the time of the formulation, implementation and exit of JVs; and
- The guidelines of Department of Public Enterprises had been followed at every stage.

6.4 Audit arrangement of JVs

The C&AG of India conducts compliance audit and financial audit of JVs where share of government company in equity either separately or in combination with other Government Companies/Corporations is more than 51 *per cent* of the paid up capital and which are registered under the Indian Companies Act, 1956 or Companies Act, 2013. The C&AG of India has no power to conduct compliance audit or financial audit on the accounts of JV companies incorporated outside India. Similarly, in respect of JVs incorporated in India under the Companies Act, 1956 or Companies Act, 2013 where government company's share either separately or in combination with other Companies/Corporations is less than 51 *per cent* of the paid up capital and in case of unincorporated JVs, the C&AG of India has no power either to conduct compliance audit or financial audit on accounts of such JVs.

6.5 Audit Scope

This audit covered CPSEs categorised as Maharatna, Navratna and Miniratna. There were 98 CPSEs categorised as Maharatna, Navratna and Miniratna by the Department of Public Enterprises (May 2017). Out of this, 46 CPSEs did not have any JV and accordingly, 52 CPSEs (7 Maharatna, 17 Navratna and 28 Miniratna) were covered under

⁵⁹ PSEs should have made profit in the last three years continuously, the pre-tax profit should have been ₹30 crore or more in at least one of the three years and should have a positive networth

⁶⁰ PSEs should have made profit for the last three years continuously and should have a positive networth.

this review (**Appendix-XV**). Information from Airports Authority of India was not received till finalisation of the report. Hence, this chapter contains details of JVs of 51 CPSEs.

6.6 JVs set up by Central Public Sector Undertakings

There are 361 JVs in which 51 CPSEs invested ₹172747 crore in the form of share capital and ₹ 73968.54 crore in the form of loans, debentures etc. The JVs consisted of both those incorporated⁶¹ under the Companies Act and the Indian partnership Act as well as those not incorporated⁶². There were 234 incorporated JVs and 127 unincorporated JVs. There were 58 incorporated JVs in which more than one CPSE had invested share capital. The details are at Annexure XVI.

The above investments in JVs include investment of ₹121965.45 crore as on 31 March 2017 by ONGC Videsh Limited (OVL), a Miniratna Company and wholly owned subsidiary of Oil and Natural Gas Corporation Limited (ONGC) in 11 incorporated JVs and 25 unincorporated JVs. The investment in 11 incorporated JVs was ₹22305.74 crore and in 25 unincorporated JVs the investment was ₹99659.71 crore. Against the investment of ₹22305.74 crore in 11 incorporated JVs, the share of OVL in their accumulated reserves and surplus as on 31 March 2017 was ₹4719.09 crore and amounted to 21.16 per cent return on this investment.

6.7 Audit Findings

Our findings have been presented in the succeeding paragraphs:

6.7.1 Planning / Formation of Joint Venture

Selection of JV partners

DPE vide OM no 11(32)/96-Fin dated January 2000 inter alia stipulated that

- (i) Selection of the partner and its process should be transparent and all such proposals should be presented to the Board.
- (ii) At least two non-official part time directors should be present in the meeting of the Board of Directors wherein the proposal for JV formation was appraised.
- (iii) Board should ensure adequate representation in the Management and operation of its JVs in proportion to its contribution.

⁶¹ *Incorporated JVs are such entities which are registered either under Companies Act or under Indian Partnership Act.*

⁶² *Unincorporated JVs are such entities which consists of more than 2 persons carrying on business but not registered under any Act.*

The CPSEs selected their JV partners (i) as per directives of Government (ii) through open tender, (iii) through choice out of few prospective partners identified by CPSE itself and (iv) on nomination basis to a single party. Further, in some cases, CPSEs made investment in already existing JVs. Out of 292 incorporated JVs (including JVs formed by more than one CPSE,) information in this regard was available for 251 JVs. Out of these 251 JVs, selection of JV partner in 84 JVs was as per directives of Government, in 19 JVs through Open tender, in 75 JVs through choice out of few prospective partners identified by CPSE, in 49 JVs on nomination basis and in 24 cases investment was made by CPSEs in already existing JVs .

Details of these JVs are given in **Appendix XVII**.

i) Attendance of less number of Non-Official Directors

DPE guidelines require attendance of at least two non-official directors in the Board meeting where appraisal of formation of JV was deliberated upon. In case of following four CPSEs, the guideline was not followed:

Sl. No.	Name of CPSE	Name of JV Company	No. of non-official directors who attended the meeting formed for formation of JV
1.	State Trading Corporation of India Limited	NSS Satpura Agro Development Co. Ltd.	0
2.	SJVN Limited	Bengal Birbhum Coalfields Limited	0**
3.	NTPC Limited	NTPC SAIL Power Company Limited	0**
		NTPC Tamil Nadu Energy Company Limited	1
		Ratnagiri Gas and Power Private Limited	1**
		NTPC BHEL Power Projects Private Limited	1
		National Power Exchange Limited	1
4.	Bharat Earth Movers Limited	BEML Midwest Limited	1

** Due to non-appointment of non-official directors by Government of India

ii) Representation in the Management and operation of JVs

As per DPE guidelines, Board should ensure adequate representation in the Management and operation of its JVs in proportion to its contribution. Audit observed that in respect of three CPSEs, the representation of CPSEs in the Management and operation of JVs was not as per JV agreement as detailed below:

Sl. No.	Name of CPSE	Name of JV Company	% of contribution	Total No. of Directors required as per agreement/ MoU	Required representation as per JV agreement/ MoU	Actual representation
1	Mazagon Dock Ship builders Limited	Mazagon Dock Pipavav Defence Pvt. Ltd.	50	7	3	2
2	Container Corporation of India Limited	Albatross inland port Pvt. Ltd.	49	7	3	2
3	Rail Vikas Nigam Limited	Kutch Railway Company Limited	50	15	6	4
		Haridaspur Paradeep Railway Company Limited	35.23	12	5	3
		Angul Sukinda Railway Limited	31.50	12	3	2

6.7.2 Implementation of JV operations

Non-submission of status of JVs to DPE on a half-yearly basis

DPE had stipulated (January 2000) that the Navratna CPSEs would submit comprehensive list of JVs formed and status thereof to DPE on a half-yearly basis.

However, audit observed that none of the Maharatna / Navratna CPSEs⁶³ had complied with these guidelines (details as per **Appendix-XVIII**).

6.7.3 Performance of JVs

Out of 234 incorporated JVs (i) 76 JVs were earning profit (ii) 64 JVs were continuously incurring losses and (iii) 18 JVs earned profit only in the year 2016-17 but have accumulated losses. In respect of remaining 76 JVs, information was yet to be received from CPSEs. The financial performance of JVs is discussed in the following paragraphs.

a. Profit earning JVs

76 JVs mentioned at para 6.7.3 above earned profit of ₹11762.76 crore and the retained earnings as on 31 March 2017 was ₹49138.60 crore. Breakup of JVs according to the quantum of retained earnings is detailed below:

⁶³ PFC and MTNL did not furnish information in this regard.

(₹ in Crore)

Range	No. of JVs	Retained Earnings
More than ₹1000 crore	9	39687.26
₹100 crore to ₹1000 crore	22	8360.74
Less than ₹100 crore	45	1090.60
Total	76	49138.60

Details of all the profit making JVs are tabulated in **Appendix XIX**.

b. Loss incurring JVs

The accumulated losses as on 31 March 2017 in respect of 64 JVs mentioned at Para 6.7.3 above were ₹16106.65 crore. The breakup of JVs, according to the quantum of losses incurred is detailed below:

(₹ in Crore)

Range	No. of JVs	Accumulated Losses
More than ₹1000 crore	4	11709.97
₹100 crore to ₹1000 crore	10	3980.90
Less than ₹100 crore	50	415.78
Total	64	16106.65

Details of these loss making JVs are tabulated in **Appendix XX**.

The accumulated losses in respect of 18 JVs mentioned at 6.7.3 above that earned profit only in the year 2016-17 were ₹2319.97 crore as detailed below:

(₹ in Crore)

Sl. No.	JV Company	Profit during 2016-17	Accumulated losses as on 31st March 2017	Percentage Share of Maharatna/ Navratna/ Miniratna CPSEs in JV
1	IOT Infrastructure & Energy Services Limited	56.84	677.04	IOCL 49.25%
2	Indian Synthetic Rubber Private Limited	78.04	318.14	IOCL 50%,
3	Petronet VK Limited	0.88	264.20	IOCL 50%
4	Allcargo Logistics Park Pvt. Ltd.	0.73	0.88	CONCOR 49%
5	India LNG Transport Company 3	8.24	91.45	SCI 26%
6	SAIL SCI Shipping Pvt. Ltd.	0.0015	0.06	SCI 50%
7	Krishnapatnam Railway Company Limited	0.08	21.28	NMDC 14.82% RVNL 30%
8	Life Spring Hospitals (P) Ltd.	0.05	16.78	HLL Life care 50%
9	IRCON SOMA Tollway Pvt. Ltd.	0.12	82.30	IRCON 50%

10	NTPC Tamilnadu Energy Company Limited	197.94	233.57	NTPC 50%
11	Transformers and Electricals Kerala Limited	3.07	20.65	NTPC 44.60%
12	HALBIT Avionics Limited	0.02	10.02	HAL 50%
13	Infotech HAL Limited	1.02	0.67	HAL 50%
14	HATSOFF Helicopter Training Limited	10.46	110.64	HAL 50%
15	Prime Gold SAIL JVC Ltd.	4.12	1.75	SAIL 26%
16	National Centre for Trade Information	2.92	9.92	ITPO 50%
17	Haridaspur Paradeep Railway Company Limited	0.01	0.02	RVNL-35.23%
18	HPCL Mittal Energy Limited	3090.60	460.60	HPCL
			2319.97	

6.7.4 Formation of JV without prior approval of Board and without conducting a pilot study

As per DPE guideline, the proposal for formation of JV / subsidiary must be presented to the Board of Directors reasonably well in advance along with analysis of risk factors and anticipated results and benefits.

Audit observed that Indian Oil Corporation Limited (IOCL) while forming (8 October 2008) JV viz. Indian Oil CREDA Bio-fuels Limited (IOCBL) with Chhattisgarh Renewable Energy Development Authority (CREDA) with initial investment of ₹5.27 Crore (subsequently increased to ₹18.45 crore) for extraction and production of bio-diesel from Jatropha plant, did not obtain prior approval of the Board of Directors. However, post facto approval was obtained on 31 October 2008. Further, no pilot study was conducted to ensure the commercial viability of the project before submitting the proposal to the Board.

As reported to the Board by the Management (June 2016), this bio-diesel project became commercially un-viable due to high plantation and maintenance cost, poor yield, longer gestation period and high plant mortality. In view of non-performance, Board of Directors approved (July 2016) the closure of JVs rendering the entire investment of ₹18.45 crore infructuous.

Management accepted that IOCBL was formed without carrying out the pilot study, prior approval of Board and technical experience to avoid loss of bio-fuel business opportunity.

6.7.5 Non-obtaining of CCEA approval for overseas E&P projects

- A. In pursuance of Cabinet directives dated 8 July 1997, allowing ONGC Videsh Limited (OVL) to enter into overseas technology JV / strategic alliances for E&P Projects, DPE empowered (2005) OVL Board to approve E&P projects with an investment ceiling of

₹300 crore or US\$ 75 million, whichever is less. For project investments exceeding ₹300 crore, Cabinet Committee on Economic Affairs (CCEA) approval was to be obtained through Empowered Committee of Secretaries.

Audit observed that after extension of Maharatna status to its parent Company viz. ONGC Ltd, OVL in respect of its seven⁶⁴ overseas E&P projects in Columbia, Brazil, Cuba and Vietnam had obtained investment approvals of ₹7537.07 crore from ONGC instead of CCEA even though investment was beyond ₹300 crore for each project.

The Management replied (December 2017) that as per DPE guidelines, ONGC after being empowered as a Maharatna Company was entitled to invest through its subsidiary into Joint Ventures and therefore the approval was taken from ONGC Board. Further, OVL had sought MOPNG's guidance on the competent authority for investment approval in projects of OVL where investment was originally approved by the CCEA. As no reservation has been received from MOPNG against the approval process adopted by OVL, it can be inferred that approvals taken for the stated projects were in order.

The reply of the management is not tenable in view of the following:

1. Investment in the above projects were the decision of OVL and therefore ONGC was not empowered to sanction the investment in the aforesaid projects. Further, as per the specific guidelines applicable to OVL, it could invest in JVs upto ₹300 crore only beyond which approval of CCEA was needed.
 2. The approval process adopted by OVL to obtain approval from ONGC Board instead of approval of CCEA has not been approved by the Ministry.
- B. In another project viz. Block BC-10 in Brazil, there were three partners i.e M/s Exxon (30 per cent), M/s Shell (35 per cent), and M/s Petrobras (35 per cent). OVL with the approval of CCEA acquired 15 per cent Participating Interest of M/s Exxon at US\$ 410 million⁶⁵. Further on enhancement of project cost to USD 478 million, again OVL obtained CCEA's approval. Subsequently, OVL acquired (2013) additional PI of 12 per cent from M/s Petrobras at US\$ 561 million (₹3702.76crore⁶⁶) in the same block and obtained approval from ONGC (its holding company) only and did not obtain CCEA's approval.

The Management replied that acquisition of 12 per cent PI of M/s Petrobras was treated as a new investment project as compared to acquisition of 15 per cent PI in the block in the year 2006 as the methods of acquisition of the PIs were different and the PIs were

⁶⁴ RC 9, 10 and CPO-5 (Columbia), BM BAR-1 & BM-SEAL-4, (Brazil), 25 to 29 & 36 (Cuba), Block 06.1 Vietnam

⁶⁵ US\$ 165 million as acquisition cost and US\$ 245 million as project cost

⁶⁶ USD 561 Million @ INR 66.0028 (30.12.2013)

acquired from different sellers and therefore same was considered as a separate deal for which ONGC had the investment empowerment up to ₹5000 crore, hence there was no need to seek CCEA approval.

Reply is not tenable because CCEA's approval is required whenever the investment exceeds ₹300 Crore. Further, ONGC is neither empowered to accord approval for upward revision of project cost nor for additional acquisition cost of PI.

6.8 Conclusion

Instances of non-compliance with DPE Guidelines were noticed with regard to formation of JVs, attendance of non-official directors in Board Meeting where appraisal of formation of JV was deliberated, adequate representation in the Management and Operation of JVs and submission of status of JVs to DPE on half yearly basis. Out of 158 incorporated JVs for which information was received, 76 JVs were earning profit, 64 JVs were continuously incurring losses and 18 JVs earned profit only in the year 2016-17 but have accumulated losses.

6.9 Recommendations

Government of India may impress upon the respective Administrative Ministry/ Department to ensure compliance with the DPE Guidelines in respect of formation of JVs, representation in the management and operation of JVs etc. Board of Directors of concerned CPSE should also ensure compliance with DPE guidelines.

Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises accepted (March 2018) the above recommendations of audit.