

## CHAPTER II: MINISTRY OF COAL

### Coal India Limited and its Subsidiaries

#### **2.1 Irregular payment towards employer's share of provident fund contribution on leave encashment**

**Coal India Limited and its subsidiaries deposited employer's share of ₹371.19 crore towards provident fund contribution on leave encashment with Coal Mines Provident Fund Organisation during the period from 2012-13 to 2017-18 (September 2017), though the same was not permissible as per the extant law. The practice was not stopped despite specific order (March 2008) of Hon'ble Supreme Court of India in this regard in another Civil Case and highlighting of the same in the C&AG's Audit Report of 2009-10.**

Coal India Limited (CIL) a 'Maharatna' Public Sector Undertaking under Ministry of Coal, Government of India produces coking and non-coking coal of various grades for diverse applications through its seven wholly owned coal producing subsidiaries<sup>1</sup>.

The Coal Mines Provident Fund (CMPF) Scheme, framed under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 provides for provident fund benefits to all the employees of coal mines in India. As per paragraph 27 of CMPF Scheme (11 December 1948), contribution to CMPF is to be made by the employee and the employer at specified rates on the total emoluments<sup>2</sup> of the employee as covered under the definition of 'Basic Wages'<sup>3</sup> of the Scheme. The definition of 'Basic Wages and Total Emoluments' under CMPF Scheme is similar to that defined in Employees Provident Fund (EPF) Scheme and does not include leave encashment.

Audit observed (December 2017) that CIL and its subsidiaries deposited an amount of ₹371.19 crore with Coal Mines Provident Fund Organisation (CMPFO) towards employer's share of provident fund contribution on leave encashment during the period from 2012-13 to 2017-18 (September 2017), violating the extant law. The above violation continued inspite of the judgement (Civil Appeal No. 1832 of 2004 dated 12 March 2008) of Hon'ble Supreme Court of India relating to contribution to PF on leave encashment in another EPF case, wherein the Hon'ble Court held that "basic wage was never intended to

<sup>1</sup> *Bharat Coking Coal Limited (BCCL), Central Coalfields Limited (CCL), Eastern Coalfields Limited (ECL), Mahanadi Coalfields Limited (MCL), Northern Coalfields Limited (NCL), South Eastern Coalfields Limited (SECL) and Western Coalfields Limited (WCL). Besides, CIL has one subsidiary for mine planning and consultancy services viz., Central Mine Planning and Design Institute Limited (CMPDIL) and one coal producing unit (North Eastern Coalfields Limited)*

<sup>2</sup> *Total emoluments means the total cash emoluments inclusive of all allowances, overtime, compensation for guaranteed wage, additional payments for difficult and arduous work, remuneration for paid holidays, whether earned while on duty or on any kind of leave with pay.*

<sup>3</sup> *Basic Wages mean the total cash emoluments, whether earned while on duty or while on leave with pay, but excluding all payments for food concession, dearness, house rent and other similar allowances, overtime, bonus, commission, presents, or donations.*

include amounts received for leave encashment” and directed that, “if any payment has already been made, it can be adjusted for future liabilities”.

The above violation was also highlighted in Report of C&AG (Report No. 9 of 2009-10, Paragraph 3.3.1) and the irregular practice was not discontinued. After a lapse of a considerable period, in the Action Taken Note, the Ministry of Coal (MoC) stated (July 2016) that Commissioner of CMPFO intimated (July 2016) that the judgement of the Supreme Court of India in respect of EPFO would be followed strictly in CMPFO also. Subsequently, MoC directed (August 2017) CMPFO that payment already made was to be adjusted against future liabilities and CIL and its subsidiaries be instructed for its strict compliance. However, only from November 2017, CIL instructed its subsidiaries for discontinuance of the practice and MoC in the Action Taken Note (January 2018) stated that the process had been commenced to list out the employees in respect of whom avoidable payment towards PF contribution occurred and it would be completed early for initiating adjustment process.

Notwithstanding existence of the judgement of Hon’ble Supreme Court of India and clear directions of MoC, no action had been taken for adjustment of excess contributions already made by the employer, against its future liabilities (November 2018). Thus, due to inordinate delay in taking remedial action, CIL and its subsidiaries lost the opportunity to adjust the excess amount of employer’s PF contribution in respect of employees already retired.

In reply, CIL stated (November 2018) that:

- The Commissioner, CMPF clarified (July 2016) that the judgement of Hon’ble Supreme Court of India in a case related to EPF, may be considered as guiding principle for suitable interpretation of CMPF scheme in the matter of non-inclusion of leave encashment in total emoluments for PF deduction with prospective effect and no further claim for refund on this account.
- After prolonged deliberation, CIL decided to obtain an opinion from Additional Solicitor General of India (ASG). The ASG opined (December 2017) that the Ministry may apply the decision of Supreme Court from the date of first clarification issued by the Commissioner, CMPF in July 2016 and the excess liability may be adjusted with respect to the employees who are still on the rolls of the Company and no adjustment can be made against those who have superannuated.
- On receipt of instructions from the Commissioner, CMPFO in September 2017, CIL and its subsidiaries stopped employers’ contribution of CMPF on leave encashment from November, 2017.

The contentions of the Management are not acceptable in view of the following:

- In spite of the judgement of Hon’ble Supreme Court in March 2008 and audit observation (2009-10), no action was taken to discontinue the practice of making employers’ contribution of PF on leave encashment till July 2016.

- Even after issue of clarification by the Commissioner, CMPFO in July 2016 that the judgment of Hon'ble Supreme Court in respect of EPFO be followed in CMPFO also, no action was taken by CIL till November 2017 to discontinue the practice.
- Though MoC in the Action Taken Note stated (January 2018) that the adjustment process would be initiated early, the same had not been implemented in respect of employees on roll till date (November 2018).

Thus, due to inordinate delay in taking action to discontinue the irregular practice of PF contribution on leave encashment, CIL and its subsidiaries made an irregular payment of ₹371.19 crore towards employer's share of PF contribution on leave encashment and lost the opportunity to adjust the same towards future liabilities in respect of the employees already retired.

The matter was referred to the Ministry in October 2018; their response was awaited (May 2019).

#### **NLC India Limited**

#### **2.2 Avoidable expenditure in violation of DPE Guidelines**

**NLC India Limited incurred avoidable expenditure of ₹26.83 crore on account of irregular payment of ex-gratia, honorarium, rewards etc. in violation of DPE guidelines.**

As per Department of Public Enterprise (DPE) Guidelines (November 1997), the employees of Public Sector Enterprises under the administrative control of Central Government, would not be paid ex-gratia, honorarium, rewards, special incentive etc, unless the amount was authorised under the duly approved incentive schemes in accordance with the prescribed procedure.

NLC India Limited (NLC) introduced various incentive schemes to its employees as given below:

1. NLC celebrated its Golden Jubilee Year in 2006. NLC granted two special increments as Personal Pay (Golden Jubilee Increments) w.e.f 01 January 2006 to all the Executives, Junior Engineers, Non executives and Workmen.
2. NLC launched (September 2009) another Scheme of distribution of 02 grams Gold Coin (Gold Coin Scheme) for the employees who have completed 30 years of continuous service in NLC.
3. NLC brought (January 2016) another scheme of presenting of Long Service Award in the form of '5 Year National Savings Certificate' (NSC Scheme) for the employees, on completion of 15 years of service in NLC.

Audit observed that none of the above schemes was included in the 'duly approved incentive schemes' of the Government. NLC has been paying above incentives since its

implementation and an amount of Rs. ₹26.83 crore<sup>4</sup> was paid from 2014-15 to 2017-18<sup>5</sup>. All three schemes are operational till date.

The Management replied (September 2018) that the DPE Guidelines (November 1997) deals only with the payment of bonus or ex-gratia in lieu of bonus, in accordance with the provisions of Bonus Act, 1965 and did not restrict CPSEs from introducing other incentive, award and reward schemes.

The reply of the Management is not in consonance with the DPE Guidelines (November 1997) as no ex-gratia, honorarium, reward etc. should be paid unless the amount is authorised under the duly approved incentive scheme in accordance with the prescribed procedure. DPE never authorised a CPSE to introduce a new incentive scheme without the approval of the Government.

Thus, NLC incurred an avoidable expenditure of ₹26.83 crore, which is recurring in nature, in violation of DPE guidelines.

The matter was referred to the Ministry in September 2018; their response was awaited (May 2019).

### **2.3 Loss of revenue due to non-observance of CERC Regulations**

**NLC India Limited has incurred loss of revenue of ₹21.70 crore on implementation of NLC rebate scheme in violation of mandatory CERC Regulations as well as its own Power Purchase Agreement with DISCOMs.**

Central Electricity Regulatory Commission (CERC) has been conferred with powers to determine the tariff for supply of electricity by power generating companies (DISCOMs). CERC notified CERC (Terms and Conditions of Tariff) Regulations, 2009 formulating the computation of tariff, rebate etc. for a power generating stations for a period of five years with effect from 1 April 2009. It allowed different rates of rebate for payment of bills by the State Electricity Boards (SEBs) viz. two *per cent* on presentation of bills, one *per cent* within the period of one month, no penalty-no rebate for 31<sup>st</sup> to 60<sup>th</sup> day and surcharge to be made for payment after 60 days.

NLC introduced (July 2012) 'NLC Rebate scheme' to supplement CERC Regulations for timely realization of its dues. The rebate scheme of the company prescribed rebate as two *per cent* if the payment was made on the 1<sup>st</sup> day, 1.97 *per cent* on 2<sup>nd</sup> day and 1.93 *per cent* to 0 *per cent* from 3<sup>rd</sup> to 60<sup>th</sup> day. This was approved by the Board of Company on 23 July 2012.

In February 2014, CERC notified CERC (Terms and Conditions of Tariff) Regulations, 2014 revising the tariff and rebate applicable for the next five years from 01 April 2014 to 31 March 2019. The said Regulations allowed rebate of two *per cent* for making payment within two days and one *per cent* from 3<sup>rd</sup> day to 30<sup>th</sup> day of presentation of bills. It also prescribed rate of surcharge to be payable by SEBs for delayed payment beyond 60 days.

<sup>4</sup> ₹24.59 crore under Golden Jubilee Increment scheme + ₹1.80 crore under Gold Coin Scheme + ₹0.44 crore under NSC Scheme = ₹26.83 crore.

<sup>5</sup> The amount has been calculated based on the available records for the last four years.

Further, Power Purchase Agreement (PPA) between NLC and DISCOMs also stipulated that the rebate shall be regulated according to prevailing CERC Tariff Regulation.

Audit observed that NLC followed its own Rebate Scheme (2012) in violation of CERC Regulations and its own PPA. In the process, NLC allowed additional rebate from the 3<sup>rd</sup> day to 59<sup>th</sup> day at the rate starting from 1.93 *per cent* to 0.03 *per cent* which resulted in loss of revenue of ₹21.70<sup>6</sup> crore for the period from 2014-15 to 2017-18<sup>7</sup>.

The Management/Ministry replied (November 2018) that NLC adopted graded rebate scheme with modification from CERC Tariff Regulations as an improvised mechanism within the regulatory rebate bandwidth, keeping in mind realization efficiency maximization. Moreover, the rebate extended by NLC is nothing but a component upfront loaded in the determination of annual fixed cost and there was no financial loss.

The reply was contrary to the fact that the modification from CERC Regulations has not been accorded approval of CERC which was a violation of mandated CERC Regulations. Also the objective of early realisation of bills could not be achieved as the utilisation of rebate scheme by DISCOMs was reduced from 12 DISCOMs in 2014-15 to 5 DISCOMs in 2017-18. Further, interest on working capital as two months receivable has already been included in the annual fixed cost and considered by CERC while determining tariff/ rebate. As such, allowing additional rebate citing the same reason may not be justifiable.

Thus NLC, by allowing additional rebate to the DISCOMs, in violation of mandated CERC Regulations and its own PPA, incurred a loss of revenue of ₹21.70 crore.

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<sup>6</sup> ₹4,10,19,381 for 2014-15, ₹4,85,99,310 for 2015-16, ₹6,37,86,807 for 2016-17 and ₹6,36,00,407 for 2017-18 = Total ₹21,70,05,905.

<sup>7</sup> The amount has been calculated based on the available records for the last four years.