

Chapter - 4

Compliance Audit Observations

Kaleshwaram Irrigation Project Corporation Limited

4.1 Avoidable interest expenditure of ₹8.51 crore

The Company availed of a higher interest bearing term loan of ₹539.56 crore without assessing the specific immediate requirement of funds resulting in an avoidable interest expenditure of ₹8.51 crore

The Kaleshwaram Irrigation Project Corporation Limited (the Company) was incorporated on 5 August, 2016 under the Companies Act, 2013 by the Government of Telangana State as a special purpose vehicle for raising funds required for the execution of the Kaleshwaram Irrigation Project works (Phase-2, Link-II, III & IVA). The Company entered (September 2017) into a term loan agreement for a loan amount of ₹11,400 crore with a Consortium of Lenders (Consortium Banks) with Punjab National Bank (PNB) as the designated Lead Bank. The loan amount was repayable with interest at 9.20 *per cent* per annum in 48 quarterly installments beginning from the financial year 2020-21. The loan agreement prescribed that the Company should make a request to the Lead bank/ Consortium for arranging disbursement of the loan funds only to the extent of bills passed by the Company.

Trust and Retention Account (TRA) is an arrangement made for disbursement of loans for the project works by the Consortium banks. The Company's cash flows/ repayments to the Consortium are also deposited into this Account and payments are made to the concerned contractors from the TRA. The TRA had a balance of ₹607.84 crore as on 27 December 2017. Subsequently, the Company withdrew loan amount of ₹539.56 crore (₹323.90 crore on 28 December 2017 and ₹215.66 crore on 30 December 2017) into the TRA. On 30 December 2017, the Company transferred an amount of ₹500 crore from the TRA into its PNB savings bank account. An amount of ₹115 crore and the balance amount of ₹385 crore were transferred back into the TRA on 8 March, 2018 and 14 May 2018 respectively.

In this connection, audit observed that an amount of ₹500 crore remained in the PNB savings bank account for 68 days (from 30 December 2017 to 7 March 2018) and ₹385 crore remained for 67 days (from 8 March 2018 to 13 May 2018) at four *per cent* interest rate. However, the Company was required to pay 9.2 *per cent* to the consortium banks on term loans. As a result, the Company incurred an additional interest expenditure of ₹8.51 crore¹. Had the Company assessed the specific fund requirements and requested the bank for disbursement of the funds as per the procedure prescribed in the term loan agreement, it could have avoided withdrawal of loan funds of ₹539.56 crore in a span of two days and depositing such large amounts in savings bank account at a lower interest rate.

Government replied (July 2020) that due to the difficulty in releasing 30 *per cent* margin money from Government and to fully utilise the construction period (Post-Monsoon period) the Consortium banks were requested (December 2017) to release their loan in one tranche for the total requirement of funds for the period up to March 2018. As such, the

¹ ₹4.84 crore [₹500 crore * (9.20% - 4%) / 365 days * 68 days] + ₹3.67 crore [₹385 crore * (9.20% - 4%) / 365 days * 67 days] = ₹8.51 crore

onetime drawl of funds was made not only for the payment of pending bills but also for the estimated bills for which payment was to be made for the work done till March 2018.

The reply is not acceptable. The Company had not followed the due process after consortium banks agreed to release the funds without insisting for margin money by the Government. It could have requisitioned the funds into the TRA only to the extent of finalised bills in order to discharge the outstanding payment commitments. Thus, the drawl of funds in advance resulted in avoidable interest expenditure of ₹8.51 crore.

Telangana State Industrial Infrastructure Corporation Limited

4.2 Revenue loss of ₹4.47 crore

TSIICL sold prime land below the prevailing market rate to a private party without due diligence and adequate justification, in deviation of Allotment Regulations, resulting in a revenue loss of ₹4.47 crore

As per clause 4.8.3 of the Allotment Regulations of Telangana State Industrial Infrastructure Corporation Limited (TSIICL), land in Industrial Parks is required to be allocated at the rate applicable on the date of filing of the valid application. The Price Fixation & Infrastructure Committee (PF&IC) of TSIICL should recommend the rate based on periodical review of market conditions, enhanced land compensation claims, additional infrastructure costs, etc.

A private party² requested (May 2016) TSIICL for allotment of one acre land in Gachibowli Industrial Park (Gachibowli IP) at a subsidised rate for setting up/ relocating its state of art mobile phone design, Research & Development Centre from Beijing (China) to Hyderabad, which would enhance employment generation in the State.

Cabinet Sub-Committee, Government of Telangana (CSC)³ had approved (September 2016) the allotment of one acre land to the party while clearly advising the State Industries & Commerce Department (I&C Department) to meet the party and finalise the land cost. The CSC further advised that for fixing the land cost, the rate at which land (in Gachibowli IP) was allotted to Bank of Baroda (BoB) was to be considered and not to go below ₹10 crore.

In the meeting convened (November 2016) for the purpose, the party proposed to pay ₹10.05 crore per acre as consideration for the proposed land, which was accepted (December 2016) by I&C Department. TSIICL allotted (March 2017) one acre of land to the party for a total sale consideration of ₹10.05 crore. According to the allotment order, the construction should begin within six months and be completed within a year thereafter.

Audit observed that TSIICL in its allotment proposal submitted in June 2016 to I&C Department had stated that the prevailing land rates as fixed by the PF&IC in the same/

² M/s. Bhagwathi Products Limited (Micromax)

³ Constituted to examine the requests of mega/ large industrial projects (i.e., units with investment exceeding ₹10 crore)

adjoining Industrial Parks was ₹40,096⁴ per sq. m. up to 22 November 2016 and ₹44,908 per sq. m. with effect from 23 November 2016. Considering the least basic market value of land in these Industrial Parks at ₹30,000 per square yard (₹35,880⁵ per sq. m.) effective from April 2013 as informed by Registration and Stamps Department in July 2016 to TSIICL, land cost would have been ₹14.52 crore⁶ per acre. However, all these factors were ignored by I&C Department, which finalised the land cost at ₹10.05 crore as proposed by the party in the meeting convened (November 2016) for fixation of cost of land. This was despite the fact that I&C Department itself had opined (March 2016) that the State Government should consider going for auction, as it was prime land. Fixation of the cost of land was not in accordance with the Allotment Regulations of TSIICL governing the price fixation. Thus, allotment of one acre land at subsidised rate of ₹10.05 crore without due diligence by I&C Department as well as TSIICL resulted in revenue loss of ₹4.47 crore to TSIICL.

Government replied (January 2020) that TSIICL had informed it about the prevailing land price, the auction price and the price applied to BoB and that allotment was made to the party at ₹10.05 crore per acre by TSIICL as per the instructions of Government. The CSC had decided to allot land to the party at subsidised rate considering the project to be of strategic importance in promoting Research and Development in the newly formed State of Telangana. It was further stated that as per the TSIICL's Board of Directors resolution made in their 12th Meeting held on 9th May 2017, a proposal was submitted to the State Government to reimburse the differential cost/ shortfall of revenue incurred by TSIICL due to concessional allotment.

The reply is not acceptable. The CSC only indicated minimum threshold limit of ₹10 crore leaving the entire responsibility of price fixation to I&C Department, whereas I&C Department during the meeting with the party had agreed to the price offered by party without due consideration of the prevailing market price of the land under the Allotment Regulations of TSIICL. Further, despite the fact that the party was yet to commence work on the land allotted at Gachibowli (October 2020), no action was taken to ensure that objective of the allotment of land to the party at concessional rate was achieved.

4.3 Avoidable payment of penalties and interest charges

Five PSUs failed to pay advance income tax as per the provisions of Income Tax Act, 1961 due to incorrect estimation of taxable income, coupled with delayed filing of tax returns. This resulted in avoidable payment of penalties and interest charges of ₹20.34 crore

As per Section 139 of the Income Tax Act, 1961 (Act), every Company whose total income during the previous year exceeded the maximum amount not chargeable to

⁴ Price fixed by PF&IC in respect of lands at Gachibowli IP and adjacent Nanakramguda IT Park effective from 1 May 2015

⁵ ₹30,000.00 ÷ 0.836127 sq. m. (since 1 sq. yd. equals to 0.836127 sq. m.)

⁶ ₹30,000.00 X 4,840 sq. yd. for 1 acre

income-tax, shall furnish a return of its income on or before the due date⁷. Default in timely furnishing of the return would attract interest under Section 234A of the Act. Further, as per Section 208 of the Act, every Company is required to pay Income Tax in advance (Advance Tax) if the amount of such tax payable during the financial year (FY) is ₹10,000 or more. Section 211 of the Act allows payment of Advance Tax in four quarterly instalments⁸. In case of failure to comply with these provisions, the company shall be liable to pay penal interest charges under Sections 234B and 234C⁹ of the Act on the shortfall amount of tax at the prescribed rates for the prescribed period.

During the review of five major profit making PSUs, namely (1) Singareni Collieries Company Limited (SCCL), (2) Telangana State Power Generation Corporation Limited (TSGENCO), (3) Telangana State Mineral Development Corporation Limited (TSMDCCL), (4) Telangana State Industrial Infrastructure Corporation Limited (TSIICL) and (5) Telangana Drinking Water Supply Corporation Limited (TDWSCL), with regard to the compliance with above mentioned provisions of the Act for the Assessment Years (AY) 2015-16 to AY 2018-19 (Previous Years/ FY 2014-15 to 2017-18), it was observed that:

- (a) Three PSUs viz., TSMDCCL (for AYs 2015-16 to 2018-19), TSIICL (AY 2018-19) and TDWSCL (AY 2015-16) had filed their income tax returns belatedly. Consequently, these three PSUs paid penal interest under Section 234A to the extent of ₹2.99 crore.
- (b) Advance Tax paid by all the five PSUs was less than the prescribed limit of minimum 90 per cent of the assessed tax liability for the four financial years (2014-15 to 2017-18) since the annual taxable income was not estimated properly, as detailed below:
 - Four PSUs (TSMDCCL, TSIICL, TDWSCL and TSGENCO) estimated their annual taxable income on the basis of a certain expected percentage increase over the previous year and the quarter-wise information of business volume, in the absence of reliable and updated information due to delay in finalisation of accounts.
 - SCCL did not consider the carry forward loss (as per IT Act) for FY 2016-17 until payment of Advance Tax instalment for the third quarter and did not estimate its tax liability for the FY 2017-18 under Minimum Alternate Tax (MAT) provisions¹⁰. Further, contribution made to the Group Gratuity Trust Fund in the third quarter was also not considered for calculating Advance Tax for the first and second quarters.

⁷ Due date is 30 September (or such other date as the Central Board of Direct Taxes may extend. Section 234A prescribed penal interest charges for default in furnishing the return at the rate of one per cent for every month or part of a month for the period immediately following the due date

⁸ Up to 15 per cent of advance tax by 15 June, up to 45 per cent of advance tax by 15 September, up to 75 per cent of advance tax by 15 December and up to 100 per cent by 15 March

⁹ Section 234 (B) prescribed penal interest charges for default in payment of Advance Tax upto 90 per cent of assessed tax liability and Section 234 (C) prescribed penal interest charges for deferment of individual instalments of Advance Tax

¹⁰ As per Section 115JB (1) of the IT Act, in the case of a company, if the income-tax, payable on the total income as computed under IT Act in respect of any previous year relevant to the assessment year is less than 18.50 per cent of its book profit, then such book profit will be deemed to be the income of the company and tax payable by the company during that financial year will be 18.50 per cent of such book profit

The unrealistic estimates of annual taxable income and tax liability was also evident from the gaps (ranging from minus 100 *per cent* to plus 52.56 *per cent*) between the taxable income as filed in the IT Return and the taxable income considered for making payment of Advance Tax. As a result, the PSUs paid penal interest charges under Section 234B to the extent of ₹10.86 crore.

- (c) All the five PSUs made delayed payments of Advance Tax necessitating payment of huge amount of self-assessment tax at the end of the year/ at the time of filing of IT Return. The delay in payment of Advance Tax ranged from three to 30 months. As a result, the PSUs paid penal interest charges to the extent of ₹6.49 crore under Section 234C.

The PSUs should have adopted a well-defined system which estimates the total taxable income for the relevant financial year based on reliable accounting data, past trends and realistic projections of annual business volume adjusted with the impact of current year's updated actuals found on periodic review. This would have avoided payment of penalty/ interest under Sections 234B and 234C. Further, the PSUs could have avoided payment of interest under Section 234A by filing IT Return within the stipulated time. This resulted in avoidable payment of penal interest charges of ₹20.34 crore (Details are given in *Appendix 9*).

Government replied (February 2020) that in respect of TSGENCO delay in finalisation of accounts for the year, difference of ₹343.00 crore pertaining to 2014-15 between provisional Retail Tariff Order (RTO) and final RTO, lower income of ₹60.12 crore due to suspension of operations of a Power Station, impact (loss of ₹52.40 crore) due to transition of accounts from Indian Generally Accepted Accounting Principles to Indian Accounting Standards were the reasons for difference between estimates and actual tax liability.

In respect of TSMDCL, the Government replied (February 2020) that disallowance of one-time refundable grant recognised as capital grant as well as the provisions for statutory liabilities not paid during the relevant financial year and delayed finalisation of accounts were the reasons for increase in actual tax liability.

In respect of SCCL, the Government replied (July 2020) that (a) the carry forward loss of FY 2016-17 could not be considered for 1st instalment of Advance Tax due to delayed finalisation of accounts of FY 2016-17 and consequent delay in filing of IT return, (b) the tax liability as per MAT provisions was not considered for payment of 1st and 2nd instalment of Advance Tax since the normal tax liability was higher than the MAT liability computed for 1st and 2nd instalment of Advance Tax and (d) due to various factors impacting coal production, the revenues and profits thereon could not be estimated accurately.

In respect of TSIICL, the Government replied (September 2020) that the accounts could not be finalised as per due dates prescribed in Companies Act, 2013¹¹ due to delay in approval of final demerger scheme and non-resolution of certain contentious issues in the demerger scheme. This had impacted the realistic estimation of the taxable income. It was further replied that uniformity in quarter-wise income recognition could not be done since

¹¹ As per Section 129 read with Section 96, the annual accounts of the Company should be prepared within six months from the close of the financial year (i.e, by September of next financial year).

most of the receipts/ incomes would accrue to/ realised by the Company only in the third and fourth quarters and these are accounted only at the end of the financial year. As these annual receipts were not considered for payment of Advance Tax on quarterly basis, there is bound to be gap between actual taxable income and estimated taxable income. The Company however, would follow the audit suggestions from the FY 2018-19 onwards.

The above replies are not acceptable because (a) finalisation of Accounts within the time stipulated under the Companies Act, 2013 was the responsibility of the Management and the administrative department was required to ensure the same, (b) the various items of income and expenses which TSGENCO and TSMDCCL failed to assess properly for payment of Advance Tax could have been anticipated through appropriate tax planning to minimise the tax burden and (c) SCCL and TSIICL could have followed best practices to estimate the total annual taxable income and then calculated the quarterly instalments of Advance Tax payable as required under the IT Act.

The audit observation was issued to the Government in November 2019. Reply in respect of TDWSCL was, however still awaited (October 2020).

Transmission Corporation of Telangana Limited

4.4 Avoidable additional expenditure of ₹44.67 crore

TSTRANSCO's non-compliance with the 'merit order' despatch procedure during the period December 2016 to March 2019 resulted in avoidable extra expenditure of ₹44.67 crore to the State DISCOMs

Telangana State Load Despatch Centre (TSSLDC)¹² is required to prepare a monthly 'merit order' indicating the availability of energy above the technical minimum¹³ from each of the generating stations in a descending order of variable cost, as determined by Telangana State Electricity Regulatory Commission (TSERC). This is required as per the Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015 and is meant to minimise the procurement cost of power of the DISCOMs to the extent possible, having regard to the monthly availability and demand for power.

Audit scrutiny of records of TSTRANSCO relating to monthly merit orders for the 28 month-period from December 2016 to March 2019 showed that, in respect of Singareni Thermal Power Plant (STPP, two units of 600 Mega Watt (MW) capacity each), the variable cost ranged between ₹1.71 per unit to ₹2.37 per unit, while in respect of Kakatiya Thermal Power Plant (KTPP-I) and Kothagudem Thermal Power Station (KTPS-VI) (500 MW capacity each) of Telangana State Power Generation Corporation Limited (TSGENCO), the variable cost ranged between ₹2.59 per unit to ₹3.88 per unit.

¹² Functions under the Transmission Corporation of Telangana Limited

¹³ Technical parameters like ramp up or ramp down rate, response time, transmission congestion, dispatch of must run stations, etc.

However, TSSLDC instructed STPP to back down¹⁴ its monthly generation by one million units (MUs) to 99 MUs during this period and allowed KTPP-I & KTPS-VI to supply power to this extent. Considering the difference in the variable cost of generating power between STPP and TSGENCO, an additional expenditure of ₹44.67 crore was incurred by TSDISCOMs towards the cost of 491.887 MUs of energy during the relevant period.

Government of Telangana accepted the audit contention and stated (July 2020) that TSSLDC carried out backing down operations with ‘consensus’ and not in disregard of merit order. As regards the additional expenditure pointed out in audit, Government clarified that the backing down quantity above the technical minimum of STPP was 323 MW against 132 MW of KTPS-VI and the additional expenditure in this regard works out to ₹23.45 crore. The Government has not, however, provided details in support of its calculations.

Hyderabad
The 5 FEB 2021


(SUDHA RAJAN)
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Countersigned

New Delhi
The 10 FEB 2021


(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India

¹⁴ Denotes reducing the power supply

