Part-II

Chapter IV

Performance Audit relating to Public Sector Undertakings (Other than Power sector)

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Gujarat Mineral Development Corporation Limited

4 Mining activities of Gujarat Mineral Development Corporation Limited

Executive Summary

Introduction

Gujarat Mineral Development Corporation Limited (the Company) was incorporated in May 1963 as a Private Limited Company to undertake mining of minerals in the State of Gujarat. It was converted into a wholly owned Government Company in July 1971.

The mining of minerals and power generation operations of the Company contributed 77 and 23 *per cent* respectively of its operational revenue during last five years. The mining activities mainly relate to Lignite, Bauxite and Fluorspar.

Audit Findings

Status of mining leases of the Company

The Company had 24 mining leases as on 31 March 2019 out of which nine were non-operational. Of these, in five leases, the Company had neither submitted application for extension nor undertook mining operations.

Absence of review of the business plan

Important goals of the sole business plan of the Company were not achieved. Audit observed that neither the mechanism for monitoring the achievement of business plan was in place nor business plan was prepared for subsequent periods.

Project formulation and estimation

Audit observed instances of non-achievement of the targets of production set in the Mine Plan (MP) which indicated need for revision of MP on more realistic basis as the mining during the remaining period will not be completed as per the approved MP.

In two cases, there was short deposit of ₹ 59.53 crore in escrow accounts for Mine Closure of Lignite projects.

Audit observed that the Company was yet to frame any policy regarding retention or sale of the acquired private freehold land after mineral reserves are exhausted.

In one case, the Company acquired land of ₹ 13.70 crore before completing the preliminary assessment of viability of a project. The project was subsequently closed and the land remained unutilised. Besides overpayment of ₹ 4.81 crore was noticed in eight land compensation cases.

Core mining activities conducted through contractors

The standard terms for rate fixation in turnkey Lignite mining agreements were not finalised even after more than 10 years. Audit also observed deficiencies in the system for tendering and awarding of turnkey Lignite mining agreements that had resulted in avoidable loss of ₹ 17.75 crore.

Deviation from terms of turnkey mining agreements resulted in extra expenditure of ₹ 23.38 crore in one case, undue benefit of ₹ 23.30 crore in one case and additional payment of ₹ 1.48 crore in one case.

System for Monitoring of mining activities at Lignite and Bauxite projects

Deficient monitoring of turnkey mining agreements system resulted in avoidable loss of ₹ 104.64 crore in 10 cases, undue benefit to contractor of ₹ 21.02 crore in two cases and arbitration claim of ₹ 107.01 crore in one case.

Marketing of Minerals

The Company separately collected Mine Closure Fund through invoices for Lignite sale and avoided royalty payment of ₹ 33.11 crore on it.

Discharge of Corporate Social Responsibility and other statutory mandates

Audit noticed violations of the conditions of Environmental Clearances related to Corporate Social Responsibility (CSR) expenditure in two cases which had resulted in incurring ₹ 52.47 crore less for CSR expenditure.

Introduction

4.1 Gujarat Mineral Development Corporation Limited (the Company) was incorporated in May 1963 as a Private Limited Company to undertake mining of minerals in Gujarat. It was converted into a wholly-owned Government Company in July 1971.

The Company is engaged in mining of minerals and power generation, which contributed 77 and 23 *per cent* respectively of its operational revenue. The mining activities mainly relate to Lignite, Bauxite and Fluorspar. The Company is the largest merchant seller of Lignite in the country with an annual production capacity of 90 lakh MT *per annum*. The Company earned a profit before tax of ₹ 307.30 crore from its total revenue of ₹ 2,022.26 crore for the year 2018-19. The Company has also entered into joint ventures (JVs) for development and sale of minerals like Bauxite, Fluorspar, Manganese and Limestone.

As per the data published by Indian Bureau of Mines (IBM)[1], Gujarat had total proven reserves of 1,278.65 million metric tonnes (MMT) of Lignite and 331.27 MMT of Bauxite. As against this, as on March 2019, the Company had economically extractable Lignite reserves of 169.70 MMT at its five Lignite projects and extractable Bauxite reserves of 29.38 MMT at its two Bauxite projects.

During the period of audit, Lignite and Bauxite contributed 98.23 and 1.70 *per cent* respectively of the total mining revenue of the Company. The details of production and revenue of Lignite and Bauxite mining are given in ***Annexure* 10** and **11** respectively.

The Company supplies Lignite to three Thermal Power Stations[2] (TPSs) and 33 different categories of industry in the State. The Company supplied Bauxite to its JV and conducted 11 auctions. Other minerals[3] were supplied to industries on receipt of demand therefrom and the ore from Manganese dump was supplied to its JV for beneficiation.

Organisational Set-up

4.2 The Management of the Company is vested in Board of Directors (BoD) comprising of a Chairman, a Managing Director (MD), two functional Directors, and four Independent Directors. The MD is the Chief Executive of the Company and is assisted by Chief General Manager (CGM) and Chief Financial Officer (CFO), Senior General Manager (SGM), General Managers (GMs), Deputy General Managers (DGMs), Senior Managers (SMs) and Company Secretary (CS) in the day-to-day functioning of the Company.

Audit Objectives

4.3 The Performance Audit (PA) was conducted to obtain a reasonable assurance that:

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1 IBM Year Book released in July 2019. IBM is a regulatory body for promotion of systematic and scientific development of mineral resources of the Country through regulatory inspections of the mines and approval of mining plans of all minerals other than Coal and Lignite.

2 Akrimota Thermal Power Station (ATPS), Kutch Lignite Thermal Power Station (KLTPS) and Gujarat Industries Power Company Limited (GIPCL), Lignite to Bhavnagar Lignite Thermal Power Station (BLTPS) was supplied up to 2018.

3 Limestone, Silica sand, Ball clay, Bentonite, *etc*.

- the planning and execution of mining activities were in accordance with applicable laws, rules and regulations prescribed by the statutory authorities;
- the system for award of contracts was transparent, terms and conditions of the contracts were periodically reviewed and the contracts were efficiently monitored for effective implementation;
- the production and sales activities were carried out economically and efficiently adhering to required rules and approved policies and marketing/ sales activities ensured revenue optimisation;
- the environmental laws, regulations and rules complied within the execution of mining activities; and
- the internal control mechanism and monitoring system were adequate and efficient, and mandate for Corporate Social Responsibility was effectively discharged.

Scope of Audit and sampling

4.4 A Performance Audit (PA) on the mining activities of the Company was conducted for the period 2001-06 and was included in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2006 (Commercial) – Government of Gujarat. The Committee on Public Undertakings (COPU) discussed (28 January 2011) the report and no recommendations were made *vide* COPU's 18th Report of 12th Assembly.

The present PA was conducted between February and November 2019. The PA reviewed the mining activities of the Company for a period of five years from 2014-15 to 2018-19. The Company operated six Lignite projects[4], two[5] Bauxite projects, a Manganese project (Shivrajpur), a Fluorspar project (Kadipani) and a Multimetal project (Ambaji). Audit selected three Lignite projects *viz.,* Mata no Madh, Tadkeshwar and Bhavnagar located in different geographical strata with the highest production for detailed scrutiny. The remaining three Lignite projects including Panandhro (where Lignite reserves exhausted in April 2019) were generally reviewed. Of the two Bauxite projects, Gadhsisa project having major production was selected for detailed scrutiny and records of transactions with, a Joint Venture formed for Bauxite beneficiation and processing were reviewed.

Audit Criteria

4.5 The following audit criteria were adopted for assessing the performance of the Company:

- Mines Act, 1952; Mines Rules, 1955; Mines and Minerals (Development and Regulation) Act, 1957; Mineral Concession Rules,

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[4] Bhavnagar (District-Bhavnagar), Mata no Madh (District-Kutch), Panandhro (District-Kutch), Rajpardi (District-Bharuch), Tadkeshwar (District-Surat) and Umarsar (District-Kutch).

[5] Gadhsisa (District-Kutch) and Mevasa (District-*Devbhoomi* Dwarka).

1960, Mineral Conservation and Development Rules, 1988, Auction by Competitive Bidding of Coal Mines Rules, 2012;

- Gujarat Mineral Policy, 2003 and Gujarat Mineral Concession Rules, 2010;
- Relevant Notifications/ Circulars/ Guidelines issued by the Government of India (GoI)/ Government of Gujarat (GoG)/ office of the Commissioner of Geology and Mining/ Court Orders;
- Forest Conservation Act, 1980, Forest Conservation Rules, 2003; Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment Protection Act and Rules, 1986; standard operating procedures for operating mines issued by office of the Director General of Mines and Safety and their inspection reports;
- Agenda and Minutes of the meetings of the Board of Directors (BoD), annual budgets, annual production plans and production reports, Annual Reports;
- Project reports/ Mine Plan (MP), Mine Closure Plans (MCPs); and
- Purchase and works manuals and procedure of the Company, Notice inviting tenders, agreements, contracts for production and sale of mineral ore.

Audit Methodology

4.6 An Entry Conference was held on 24 June 2019 with the MD of the Company wherein Audit scope, objectives and Methodology was explained. The methodology included scrutiny of records at Corporate Office and Project Offices, interaction with auditee personnel, collection of information through audit requisitions, analysis of data with reference to audit criteria and issue of audit observations.

The draft performance audit (draft PA) report was issued to GoG/ Company on 15 May 2020. The replies were received from Company on 06 July 2020. An Exit Conference was held on 08 July 2020 with the MD and senior officials of the Company and Deputy Secretary (Industries and Mines Department, GoG) wherein important audit findings were discussed. The responses received to the Draft PA Report and at the time of Exit Conference have been suitably incorporated in relevant paragraphs.

Achievements, Good practices and Corrective actions

4.7 The Company had won the National Mine Safety award for lowest injury frequency rate *per* million cubic meter of output during 2015-16. Further, the Company had a robust and transparent marketing system for allocation of Lignite. Proportionate allocation was made in advance based on registered capacity of the customers, which ensured equitable distribution of Lignite. The allocated quota for the Lignite for each fortnight is also published on Company's website.

The Company also took prompt corrective actions on five audit observations made during the performance audit. The gist of the audit observations and the actions initiated by the Company are discussed in ***Annexure* 12.**

Audit Findings

4.8 Audit reviewed the various activities related to mining operations of the Company and the observations are discussed in the succeeding paragraphs.

Status of mining leases of the Company

4.9 The Company has mining leases for Lignite, Bauxite, Fluorspar and Multi-metal. The mining leases are governed by the Mines and Minerals (Development and Regulation) Act, 1957 (MMDRA). Various stages of grant of mining lease and commencement of mining operations are as under:

- Submission of mining lease application to GoG;
- Forwarding of mining lease application by GoG to GoI for approval;
- Approval for mining lease received from GoI;
- Submission of Mining Plan (MP) to Ministry of Coal[6] (MoC) or Indian Bureau of Mines[7] (IBM) for approval;
- Submission of application for Environmental clearance (EC) to the Ministry of Environment, Forest and Climate Change, GoI (MoEF&CC);
- Grant of EC by MoEF&CC;
- Execution of mining lease between GoG and the Company for periods ranging from 20 to 30 years;
- Land acquisition;
- Commencement of the mining operations after permission from District Collector office;
- Payment of royalty for the minerals extracted and other levies[8] to GoG.

As on March 2019, the Company had 24 mining leases of which nine were non-operational as detailed in **Table 4.1** below:

6 Mining plan is approved by Ministry of Coal in case of coal and Lignite.

7 Indian Bureau of Mines (IBM) is a regulatory body for promotion of systematic and scientific development of mineral resources of the Country through regulatory inspections of the mines and approval of mining plans of all minerals other than Coal and Lignite.

8 Contribution towards District Mineral Foundation and National Mineral Exploration Trust Fund, Central Goods and Service Tax (CGST), State Goods and Service Tax (SGST), *etc.*

Table 4.1: Details of mining leases as on March 2019

Name of Mineral	Number of leases		Revenue for 2018-19 (₹ in crore)	No. of Non-operational leases	Number of years since non-operational			
	Total	Operational			Since inception	1-3	3-6	6-9
Lignite	10	8	1,478.35	2	2	-	-	-
Bauxite	11	7	15.50	4	-	1	1	2
Fluorspar	2	-	-	2	-	-	2	-
Multi-metals	1	-	-	1	1	-	-	-
Total	**24**	**15**	**1,493.85**	**9**	**3**	**1**	**3**	**2**

(**Source:** Information provided by the Company.)

Besides, the Company was awarded work permit for removal of Manganese waste dump at Shivrajpur and sale of minerals extracted during overburden removal (OBR) at its Lignite mining projects.

The status of 9 out of 24 mining leases that are non-operational as on March 2019 is provided in ***Annexure* 13.** These nine non-operational leases shall lapse by an order of GoG as per Section 4A (4) of the MMDRA on expiry of two years from the date of lease deed/ discontinuance of mining operation unless an application is made by the Company for its extension. The Company had neither submitted its application for extension of above nine leases nor initiated any action to undertake mining operation till date (November 2019).

The Management provided (July 2020) the reasons of these leases being non-operational and stated that extension of mining leases of four Bauxite mines has been obtained recently.

The five non-operational leases (except Bauxite) may lapse if application for extension is not made by the Company.

The Company may submit application in time for extension of non-operational leases before their expiry.

New Lignite blocks awarded to the Company

4.10 As per the amendment (January 2015) to the MMDRA by GoI, all the pending mining lease applications were rendered ineligible. Subsequently, the Company did not apply for any mining lease applications for any minerals. The Company was awarded six Lignite blocks by the GoI under allotment/ reservation under the amended MMDRA and Auction by Competitive Bidding of Coal Mines Rules, 2012 (CBCMR). The details of these new blocks are provided in ***Annexure* 14.**

Audit reviewed the process of allotment/ reservation of these blocks and the related activities by the Company for obtaining these Lignite blocks. Audit observation on non-submission of application for reservation of blocks by the Company is given below:

Lignite blocks allotted under Competitive Bidding of Coal Mine Rules

4.10.1 The Company signed the Lignite Block Development and Production Agreement (LBDPA) for Panandhro Extension (2,662 ha), Bharkandam Block (1,088 ha) and Ghala Block (323 ha) under Rule 7 of CBCMR. The Lignite from Panandhro Extension Block is reserved for supply to Akrimota Thermal Power Station (ATPS) of the Company and from remaining two blocks is reserved for small and medium scale enterprises.

The Company applied (14 September 2015) for reservation of Ghala Block (1,600 ha) under Section 17A (2) of the MMDRA which was approved (24 June 2016) by MoC. The Company subsequently surrendered (16 August 2017) Ghala block (323 ha) as its allotted area did not include the entire Lignite basin and the Lignite produced from blocks reserved under Section 17A (2) of the MMDRA was cost-effective and beneficial for small and medium enterprises.

In case of blocks allotted under CBCMR, reserve price and intrinsic value of the block along with royalty is payable on Lignite produced from block. On the other hand, in case of blocks reserved under MMDRA, only royalty is payable on the Lignite produced from the block. Thus, the cost of production for Lignite produced from the block allotted under CBCMR would be higher.

Audit observed (November 2019) that the Company, despite having assessed the benefits of reservation under Section 17A (2) of the MMDRA, applied for the reservation of only one block instead of all the three blocks allotted under CBCMR.

The Management replied (July 2020) that the Lignite reserves of remaining two blocks were very less and the Company had reserves in other leases, which are adequate for next 25 years. Also, the cost of production under reservation and allotment could not be compared at this stage and the MoC may not entertain all proposals for reservation.

The fact remains that the Company has to develop these mines within specified period as per the LBDPA and the cost of production for blocks allotted under CBCMR would be higher. Moreover, the Company did not make any efforts for reservation of these two blocks allotted under CBCMR.

Absence of review of the business plan

4.11 The Company prepared its first comprehensive business plan for a period of five years from 2013-14 to 2017-18. The details of important goals of the above plan and achievements there against as on 31 March 2019 are given in **Table 4.2** below:

Table 4.2: Goals and achievement as per the business plan of the Company for the period 2013-18 as on 31 March 2019

Goals	Achievement
Increase turnover from ₹ 1,800 to ₹ 6,000 crore.	Operational Revenue – ₹ 1,880 crore *plus* Interest and other income – ₹ 142 crore
Double Lignite production from 109 to 218 lakh MT.	Lignite production– 92 lakh MT.
Double power generation capacity from 405 to 815 MW.	Total Power generation capacity – 456 MW (Thermal – 250 MW and Renewable – 206 MW).
Increase Bauxite production capacity from 8 to 28 lakh MT.	Bauxite production achieved – 1.18 lakh MT (Annual capacity of working mines – 7.41 lakh MT).
Increase the number of JVs for value addition in the mineral sector.	A JV for beneficiation of manganese ore was added.

Source: Information provided by the Company

Audit observed (November 2019) that no mechanism for monitoring the achievement against the Goals set in the business plan was in place. The Company did not periodically monitor the achievement of its business plan despite changes in the regulatory environment concerning mining leases and acquisition of land having an impact on the Company's business operations. Lower prices of imported coal in 2015-16 affected Lignite demand and competition in the Bauxite market affected its demand. Further, no business plan was prepared for subsequent periods.

The Management replied (July 2020) that due to various non-controllable operational, regulatory and market constraints, it was difficult to achieve long-term targets and hence the Company was preparing annual budgets. The Management assured that a vision document for the period (2020-30) would be prepared.

Project formulation and estimation

4.12 The project formulation for a mining project is undertaken after receipt of mining lease and signing of lease deed with GoG. The data collected during the detailed exploration of the lease area is utilised to estimate mineral and assess the economically extractable reserves. The Company prepares a Mine Plan[9] (MP) for excavation of minerals from the leased area and includes the Mine Closure Plan (MCP). The possession of Government land is obtained after signing of lease deed and possession of private land on freehold basis is obtained based on the progress of mining activity in the mining lease area. The exploration activity and mineral extraction after Overburden Removal/ Inter-burden Removal (OBR/ IBR) are executed on turnkey basis by the contractors. The Project Offices monitor the mining activities of contractors for ensuring compliance with applicable laws and regulations and achieving the targets for production. The Corporate Office of the Company is marketing the minerals produced that are dispatched from respective mines.

[9] Mine Plan is a document submitted by mine owner providing details of Location, Topography and Communication, Exploration, Geology and Reserves, Mining, Manpower, Safety and Supervision, Lignite handling, Mode of dispatch, Infrastructure facilities, Land Requirement, Environmental management plan, Progressive and Final Mine closure plan.

The audit observations related to project formulation are discussed in detail in succeeding paragraphs.

Need for revision in Mine Plans based on actual progress at Lignite projects

4.12.1 The minerals are excavated from the leased area as per the approved MP. The details regarding targets as per MP, targets set by the Company and actual achievement there against are provided in ***Annexure* 15.**

Audit observed that the targets set in the MP were unrealistic as in 72 *per cent* cases, the targets set by the Company were lower than the MP. Also, the actual achievement of the target was lower in 60 *per cent* cases. The main reasons for lower achievement of the targets were lower demand from the consumers, lower production due to geological disturbances in the contract area, delay in land acquisition, *etc*. The lower production of Lignite *vis-à-vis* the targets in MP indicated the need for revision of MPs to be on more realistic basis as the mining during the remaining period will not be completed as per the approved MP.

The Management replied (July 2020) that maximum production capacity for the mine was considered while preparing the Mine Plan as the approval and related clearances was a time consuming process.

The fact remains that the Mine Plans were not revised based on actual production capacity.

The Company may fix a timeframe within which mine plans are reviewed and revised, if required.

Short deposit of funds in the Escrow account for Mine Closure

4.12.2 The Mine closure cost is estimated by the mine owner in the MCP that is annually deposited in an escrow account with a scheduled bank. The Company opened project-wise six escrow accounts. Audit reviewed the MCPs and deposits made in escrow accounts by the Company and observed (June/ November 2019) that ₹ 59.53 crore were short deposited in escrow accounts of Bhavnagar and Panandhro Lignite projects as on March 2019 as discussed below:

- The MP for Bhavnagar Lignite Mines was approved (2006) with production capacity of three MMT *per annum* (MMTPA). The Company submitted (July 2012-March 2013) a draft revised MP including MCP to increase the production capacity from three to five MMTPA with 2011-12 being the first year for the remaining 16 years. The MCP in the revised MP was approved (9 May 2016) with total Mine closure cost of ₹ 200.16 crore[10] with Wholesale Price Index (WPI) of July 2013. The Company considered 2013-14 as the first year and deposited ₹ 85.09 crore until March 2019.

[10] 2,465 ha × ₹ 8.12 lakh *per* ha.

The Coal Controller's Organisation (CCO) informed (13 December 2016) that the 16 years balance life of Mine was considered from 2011-12 and WPI of July 2013 was considered for yearly deposition in the escrow account. It was further advised by CCO to change the balance life of mine and yearly deposition to escrow account. Thus, the revised balance life of the mine should have been 14 years. Audit observed that the Company ignored the above facts for deposition by considering the balance life of mine as 16 years from the year 2013-14 and deposited ₹ 85.09 crore instead of ₹ 97.25 crore as on March 2019. Thus, the Company short deposited ₹ 12.16 crore in escrow account ignoring the advice of CCO as on March 2019. It was further observed that considering balance life of mine as 14 years from 2013-14 would be beneficial to the Company as the total deposit till the end of mine will be less by ₹ 15.75 crore as compared to the current methodology adopted.

The Management replied (July 2020) that the matter was represented to the CCO for review and the reply of CCO is awaited.

- The Panandhro project had a total area of 1,719 ha comprising of two leases of 1,151 ha and 568 ha. The mineral reserves had exhausted in March 2019. The Company deposited (August 2018) a single instalment of total mine closure cost of ₹ 96 crore[11] for the Panandhro project without submission of MCP. The Company while computing the mine closure cost of ₹ 96 crore ignored the mine closure cost for 568 ha of project area amounting to ₹ 47.37 crore[12]. Due to the non-submission of MCP, the withdrawal of the above deposited amount on completion of the mine closure activities is uncertain as Mine closure guidelines allows withdrawal of funds only against activities included in the approved MCP.

The Management replied (July 2020) that Lignite from lease area of 568 ha exhausted in March 2007 before the mine closure guidelines became applicable. It was further stated by the Management that there is no provision in the guidelines to be effective from retrospective date. The Management also stated during Exit Conference (July 2020) that the CCO had all the details of the lease and no objection of CCO had been received towards short deposit of mine closure cost for Panandhro mines.

The fact remains that the Company has never taken specific approval of CCO for not depositing the mine closure cost of ₹ 47.37 crore for 568 ha lease. It is pertinent to mention that in another similar case of Rajpardi mine (G-19), where also the reserves had exhausted prior to applicability of the mine closure guidelines, the Company took specific approval of CCO for not depositing the mine closure cost.

The Company may deposit mine closure cost of ₹47.37 crore for 568 ha lease at Panandhro.

[11] 1,151 ha × ₹ 8.34 lakh *per* ha (based on WPI of March 2018).

[12] Mine closure cost for 568 ha = ₹ 8.34 lakh (per ha cost of mine closure) × 568 ha = ₹ 47.37 crore.

Acquisition of land

4.12.3 The land required by the Company is acquired from the State Government as well as private land owners.

Government Land - The Company receives possession of Government land on leasehold basis and pays surface rent based on leased area.

Private Land - The land from private land owners is acquired on a freehold basis by outright purchase. The payment for outright purchase to private land owners for regular or consent award is declared by the Land Acquisition Officer (LAO) under the Land Acquisition Act, 1894 (Land Act) and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Land Act). The aggrieved private land owners file Land Reference Cases for additional land compensation. The additional land compensation determined under the above-mentioned Acts by the Court is deposited in the Court by the Company.

Audit observations regarding land acquisitions are discussed below:

Status of acquired private freehold land after the expiry of mining lease

4.12.3.1 The Company started acquisition of private land from 1987 onwards for its various projects and has paid compensation of more than ₹ 400 crore (March 2019). The Company acquired 183.87 ha land at Rajpardi mines and 1,719 ha land at Panandhro Mines where mineral reserves were exhausted in 2006 and 2019 respectively. The Government land will lapse to Government on completion of Mine Closure activities to the satisfaction of CCO/ expiry of mining lease.

Audit observed that the Company is yet to frame any policy regarding retention or sale of the acquired private freehold land after mineral reserves are exhausted. Also, there are chances of encroachment if suitable policy regarding utilisation of such land is not framed by the Company. A clear policy will help the Company in taking appropriate action before undertaking final Mine Closure activities.

The Management stated (July 2020) during the Exit Conference that a proper policy shall be framed in consultation with the GoG.

Purchase of land before ascertaining the viability of the proposed JV project

4.12.3.2 The Company planned (June 2012) for setting up an Alumina and Aluminium Smelter Plant of one MMTPA capacity in Kutch District in Joint Venture with National Aluminium Company Limited (NALCO). The Plant was to be set up considering the estimated Bauxite reserves of Kutch District. The Company paid ₹ 13.70 crore and took advance possession (February 2013) of 104.42 ha government land for the proposed Plant. NALCO, in its Detailed Project Report (August 2013/ July 2016), reported the project as unviable, therefore the Company decided (July 2016) not to pursue the project.

Thus, the Company acquired land worth ₹ 13.70 crore for the project before completing the preliminary assessment for its viability that did not reflect financial prudence. Further, even after the lapse of four years from the Company's decision (July 2016) for not pursuing the project, the land has remained unutilised (July 2020).

The Management replied (July 2020) that it has approached the GoG in April 2019 for surrender of the land and refund of the amount paid.

Land acquisition outside the mining lease area

4.12.3.3 GoG granted (March 2000/ December 2005) Lignite mining lease for Mata no Madh Project. The Company acquired (January 2013) Lignite bearing private land measuring 32.3549 ha, which was outside the mining lease boundary for ₹ 2.48 crore. The Company had already completed (2008-09) Lignite excavation in the adjacent land located inside the lease boundary. Audit observed (November 2019) that the Lignite from the land located outside mining lease boundary was not excavated and it remained idle since possession.

The Management replied (July 2020) that the land acquired may be used in future as it is Lignite bearing and cost of acquisition would have increased in future.

The reply is not acceptable as mining in adjoining land is already completed and hence, excavation of Lignite from this land may not be financially feasible.

Overpayment in Land reference case at Lignite projects

4.12.3.4 Audit reviewed the payments for one regular award for land acquired under New Land Act by Land Acquisition Officer for Bhavnagar project and 12 out of 13 additional land compensations awarded under Land Act during the period from 2014-15 to 2018-19 based on various Court judgments.

The amounts for additional land compensation are determined based on *kabja pavti*[13] under Land Act and New Land Act. Audit observed that proper records of the same were not maintained at various projects. Incorrect calculation for additional land compensation had resulted in overpayment of ₹ 4.81 crore in eight cases. The overpayments reflected deficient internal control in checking payments to be made for additional land compensation.

While accepting the audit observation, the Management stated (July 2020) that as the money was deposited in various courts and had not yet been disbursed to the landowners, it has initiated action by filing recovery applications through its advocates. The Management also informed that Special Land Cell had been created in the Company for land related matters.

[13] A document recording the date of possession of land.

Inconclusive land use of the non-Lignite bearing area at Bhavnagar project

4.12.4 The Company submitted (April 2011 - September 2013) the draft revised MP due to increase in production capacity from three to five MMTPA for Bhavnagar Lignite Project. As the non-Lignite bearing private land of 322 ha (Block D) was of no use, it was proposed to be surrendered in the draft revised MP. Later on, the Company informed (March 2013) the MoC that Block D may be retained for external OB dumping in future. In the revised MP, Block D was included without a conclusive land-use plan.

The Project Office, Bhavnagar requested (February 2016) for the surrender of Block D due to land acquisition issues of the irrigated land and additional mine closure costs[14]. However, the Company did not review the status of Block D till date (July 2020).

The Management stated (July 2020) during the Exit Conference that though the end use of this land was not included in the present MCP, the same would be included in future MP for use as an external dump site.

The reply ignores the fact that there are land acquisition issues as stated by the Project Office and hence the Company may not be able to acquire and use it as an external dump site.

Pyrite removal plant at Bhavnagar project

4.12.5 The Lignite produced at Bhavnagar mines has higher Sulphur content, therefore the Company decided to set up a Pyrite[15] removal plant at Bhavnagar Lignite Project. The Company issued (November 2010) work order to Contractor A for processing 1.5 MMTPA raw Lignite at ₹ 111 *per* MT excluding service tax. The Company estimated annual net revenue of ₹ 18.73 crore from sale of iron and sulphuric acid extracted from the Pyrite generated. The plant commenced operations (March 2015) but was shut down due to fire (March 2017). The crushing activity re-commenced (July 2017) and the plant operations at full capacity were restored (January 2018). The Company supplied a total of 3.59 lakh MT (average monthly quantity of 8,758 MT[16]) of raw Lignite between March 2015 and May 2019 to the Pyrite removal plant.

Due to low demand for processed Lignite from market and Bhavnagar Energy Company Limited[17], the Company was unable to supply the minimum quantity of 35,000 MT *per* month of raw Lignite. Contractor A requested (July 2016) for payment of processing charges for 35,000 MT raw Lignite *per* month payable as per the terms of the work order. As the Company was not

14 Mine closure cost is worked out on *per* hectare basis on total lease. The amounts are deposited in an escrow account to be utilised only for mine closure activities.

15 Pyrite is a sulphide mineral composed of iron and sulphur.

16 3,59,060 MT ÷ 41 months (March 2015 to May 2019 *less* 10 months of fire incident).

17 The major consumer of processed Lignite was supposed to be power plant of Bhavnagar Electricity Company Limited (BECL). However, the arrangement of supplying Lignite to BECL was only a stopgap arrangement till the captive mine of Gujarat Power Corporation Limited was transferred to BECL. As such, the arrangement with BECL never guaranteed continuous future demand.

supplying the minimum quantity, it is liable to pay ₹ 11.94 crore[18] processing charges for the shortfall quantities. The Company also constructed (August 2016) a shed at the cost of ₹ 2.19 crore for storage of 22,000 MT Pyrite nodules but had less than 500 MT Pyrite nodules which remained unsold (July 2020). Due to short supply of raw Lignite for processing in Pyrite removal plant, the envisaged net revenue of ₹ 18.73 crore from sale of iron and sulphuric acid could not be earned.

Thus, the Pyrite removal plant was set up by the Company without assessment of market demand for processed Lignite. Besides, the storage facility created for pyrite nodules remained underutilised. Further, due to the short supply of raw Lignite, it has become liable for the payment of the minimum processing charge of ₹ 11.94 crore.

The Management replied (July 2020) that the contractor had not raised any claim regarding liability for minimum processing charges and the Company was making payment as per the Running Accounts (RA) bills raised by the contractor. It was also stated that demand for processed Lignite was less as the processing increased the cost of the Lignite. It further stated that the storage shed was constructed to comply with EC conditions.

The reply ignores the fact that there is a contractual liability of ₹ 11.94 crore which has also been noted by the Company in its records. Also, the EC conditions did not specify the capacity of storage shed, which should have been decided after proper analysis of production of pyrite nodules.

Core mining activities conducted through contractors

4.13 The Company awards contracts for excavation of Lignite and Bauxite after removal of Overburden/ Inter-burden (OB/ IB)[19]. In this regard, the Company finalises the contract area details, specific gravity and Stripping Ratio (SR)[20] involved, estimation of the quantity of OB/ IB and Lignite/ Bauxite, terms and conditions for the contract, *etc.*, before inviting tenders. The Company awards turnkey contracts for its core mining activities of extraction and loading Lignite and mining, grading and stacking of Bauxite. During 2014-19 the Company had awarded/ under execution 16 contracts for Lignite mining, 14 contracts for Bauxite mining besides other contracts. The Company primarily monitors the work done by the contractors to ensure targeted production after compliance with various statutory rules and regulations.

Audit reviewed the system for tendering and awarding of contracts and monitoring of contract execution. All contracts for Lignite mining, 13 out of

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18 Minimum billing months = 41 months (March 2015 to May 2019 *less* 10 months of fire incident) Additional processing charges = [(41 months × 35,000 MT) – 3,59,060 MT] × ₹ 111 *per* MT.

19 Overburden is the material (soil, clay, limestone, *etc.*) that lies from the surface level to the first layer of Lignite. Inter-burden is the material (soil, clay, limestone, *etc.*) that lies between two layers of Lignite.

20 Stripping Ratio (SR) is the ratio between volume of OB/ IB and quantity of Lignite. It is stated in the form of volume (in m^3) of OB/ IB required to be removed for extraction of one MT of Lignite.

14 contracts for Bauxite mining and one contract for setting up of Effluent Treatment Plant (ETP) at all Lignite projects were selected for review.

System for tendering and awarding of contracts

4.13.1 Audit observed that the standard terms for fixation of rate for payment to the contractors for turnkey contracts awarded for Lignite mining have not been finalised till date (July 2020). Audit also observed deficiencies in the system for tendering and awarding of turnkey mining contracts which resulted in avoidable loss of ₹ 17.75 crore. The audit observations are discussed in succeeding paragraphs.

Failure to adopt uniform pricing terms for turnkey Lignite mining contracts

4.13.1.1 Uniform policy for fixing the rates in the contracts awarded for similar activities removes ambiguity and facilitates timely and correct payment. Uniform policy also reduces financial loss, litigations, *etc.,* due to incorrect interpretations of different contract terms.

The Company had commenced awarding turnkey Lignite mining contracts from 2006-07 onwards. The review of Lignite mining contracts executed during the period from 2014-15 to 2018-19 revealed that the Company failed to finalise standard terms for fixation of rate for payment to the contractors for turnkey Lignite mining contracts even after more than 10 years. The Company adopted three base payment methodologies[21] for fixation of rate. It also used certain other conditions like Constant[22], etc. and the contractors were paid after calculating rate arrived through seven different methods as discussed in the ***Annexure* 16**. This resulted in financial losses to the Company by way of payment based on higher contracted Stripping Ratio (SR) against actual SR which was lower, not using constant in all the contracts, *etc.*

The Management replied (July 2020) that the Company would review the contracts and appropriate steps would be taken accordingly.

Variation in tendered and contracted Stripping Ratio for existing mines

4.13.1.2 The Company estimates the SR based on quantities of OBR in cubic metres (m^3) and quantities of Lignite dispatch in metric tonnes (MT). The bidders quote their rates *inter alia* based on the estimated SR declared in the tender documents. Audit reviewed the contracts awarded for Lignite mining at all six Lignite projects and observed (August/ December 2019) that in three contracts[23], the contracted SR was lower than the tendered SR on account of continued work of OBR/ IBR in the proposed working area till new turnkey contract work was finalised. Lower contracted SR would result in lower quantities of OBR/ IBR *per* MT of Lignite dispatched and would be beneficial to the contractors. However, the Company, without accounting for

[21] Composite Rate; Component-wise rate; Component-wise and item-wise rate.

[22] Constant is the ratio between actual SR and contractual SR. In case the actual SR is lower than contractual SR, using constant will protect the financial interests of the Company as rate will be in proportion to the actual SR achieved. The Company first adopted the concept of Constant in contract awarded in 2010.

[23] Panandhro, Mata no Madh and Tadkeshwar.

lower contracted SR by reducing the quoted rates proportionately, awarded the contracts at the quoted rates that were based on higher tendered SR. Audit observed that by not reducing the quoted rates proportionately to adjust for lower contracted SR resulted in loss of ₹ 17.75 crore to the Company.

The Management replied (July 2020) that there was no provision in tender for pro-rata revision of quoted rates and as such it did not result in loss to the Company.

The reply indicates that the Company did not safeguard its financial interest wherein contracted SR was lower than tendered SR resulting in loss to the Company.

System for Monitoring of turnkey mining agreements

4.13.2 The Corporate Office of the Company monitors the contracts on an overall basis and the Project Offices monitors the day-to-day mining activities of the contractors. Audit reviewed reporting of contract details by the Project Office and monitoring mechanism at the Corporate Office. The observations are discussed in succeeding paragraphs.

Deviation from agreement terms of turnkey mining agreements

Reimbursement for hard strata - Tadkeshwar

4.13.2.1 The Company awarded (August 2009) turnkey mining contract to JV-RD at Tadkeshwar Lignite Project for five years with an estimated SR of 1:9 and agreed for payment of ₹ 340 *per* MT of Lignite dispatched. JV-RD encountered (June 2012) hard strata during mining and after its removal, represented (22 July 2014) for reimbursement of expenditure incurred thereon. Audit observed that though there was no provision in the agreement for reimbursement of hard strata removal work cost, the Company reimbursed JV-RD ₹ 23.38 crore incurred towards hard strata removal work. This resulted in extra expenditure for the Company.

The Management replied (July 2020) that the matter of hard strata was approved by the Tender Committee/ BoD after obtaining report of Expert Committee and legal opinion. The Management further informed that BoD took note that payment was linked with Lignite dispatch only and actual SR was 1:7.49 as against contracted SR of 1:9.

The fact remains that payment for hard strata was against the contractual conditions. Further, the BoD was not specifically informed about the financial benefit[24] received by JV-RD due to actual SR being lower than the contracted SR.

[24] Minimum benefit of ₹ 41.06 crore received by the contractor due to lower SR = ₹ 340 *per* MT × (9 - 7.49) ÷ 9 × 71.98 lakh MT of actual Lignite dispatch during the contract.

Higher rate benefit extended to the contractor during the contract period - Umarsar

4.13.2.2 The Company awarded (August 2014) turnkey mining contract for excavation of 50 lakh MT Lignite with 477 lakh m^3 OB/IB for five years to Contractor B at Umarsar Lignite Project. Contractor B was to be paid ₹ 555.55 per MT of Lignite dispatched along with escalation in diesel component. Contractor B could excavate only 43.25 lakh MT Lignite with 370.88 lakh m^3 OB/IB in 44 months from the contract area due to geographical disturbances within its working area. For the balance 16 months, Contractor B requested (June 2018) to allot additional plot for the balance contract quantity. The Company entered (23 July 2018) into a supplementary agreement with Contractor B for an available plot to excavate 5 lakh MT Lignite. Audit observed that in supplementary agreement, Company increased the rate of removal of Overburden/ Interburden, excavation of Lignite and its loading, which worked out to ₹ 853.79 *per* MT of Lignite dispatch. Thus, there was rate difference of ₹ 298.24 *per* MT of Lignite dispatch between the original and supplementary agreement. The rate difference further increased with passage of time due to price variation clause indexed to market rate of diesel. Audit also observed that as per the tender conditions, in case of unforeseen event, the work may be required to be carried out at other locations within the mine lease area without any extra claim. Since, balance period and balance quantities were available to be excavated under the original contract, paying higher price for additional plot was not justified. Contractor B excavated 4.26 lakh MT of Lignite and 80.86 lakh m^3 of OB/IB from the additional plot during the balance period. The total payment made to Contractor B was ₹ 46.91 crore. However, audit worked out that the total payment as per the original contract rate would have been ₹ 23.61 crore. This resulted in undue benefit of ₹ 23.30 crore to Contractor B.

The Management replied (July 2020) that the Lignite within the tendered boundary was exhausted and new tender was floated. In the meantime to maintain continuous supply of Lignite, a stop gap arrangement was made with the existing contractor at the rates received in the new tender.

The reply is not acceptable as the Company agreed for higher rate in violation of the tender conditions. Moreover, the total quantities executed including that from additional plot was within the contract quantities and period.

The Company may recover additional payment of ₹23.30 crore made to Contractor B for Lignite excavated from additional plot.

Non-adherence to clause of reassessment and incorrect rate fixation for additional Lignite – Mata no Madh

4.13.2.3 The Company awarded (February 2014) turnkey mining contract for dispatch of 148 lakh MT Lignite from 19.60 lakh sq.m. area at Mata no Madh Lignite Project to Contractor M. The Lignite was to be excavated from area above specified workable depth (SWD) provided in the tender document. The agreement also stipulated for extracting additional Lignite from area below SWD at the rate to be decided separately with reassessment of the quantities of Lignite and IB to extract Lignite from area below SWD. Contractor M dispatched 133.58 lakh MT Lignite excavated upto SWD from 12.83 lakh sq.m. area and 14.42 lakh MT Lignite excavated from below SWD. Audit observed that though the Contract conditions required reassessment of quantities of Lignite and OB/ IB in case of mining below SWD, the Company considered the quantity below SWD as part of the contracted quantity without reassessment for closing the contract with Contractor M. Also, 6.77 lakh sq.m. area remained unexcavated. Audit further observed that the payment for excavation of additional Lignite from below SWD was to be computed pro-rata as per the terms of the contract based on the composite rate[25] of ₹ 448 per MT of Lignite dispatched, which included loading cost also. However, the Company, while computing the rate for the additional Lignite excavation, paid for the loading cost separately. This resulted in excess payment of ₹ 1.48 crore, indicating weak internal control.

The Management replied (July 2020) that the Company exercised the provision of extracting Lignite from below certain depth and earned substantial revenue. The Company also provided the calculation for arriving at the revised rates.

The reply does not justify separate payment for Lignite loading cost, which was against the agreed contract conditions.

The Company may recover additional payment of ₹1.48 crore made to Contractor M towards loading charges.

Deficient monitoring of turnkey mining agreements

Undue benefit for hard strata and additional lead - Bhavnagar

4.13.2.4 A five-year turnkey contract (March 2008) for Bhavnagar Lignite project with JV-A was extended up to March 2015 without rate revision. Later, it was further extended (March 2015) with revised rates under the supplementary agreement.

(1) Audit observed that the scope of work of original contract (of 2008) did not include work for hard strata. However, the rate agreed in supplementary agreement was inclusive of work for hard strata that may occur in future mining operations for the remaining quantities of Lignite production. Subsequently, on request of JV-A, work for hard strata was removed (December 2015) from scope of supplementary agreement without corresponding reduction in the revised rate. The work for hard strata encountered in the working area of JV-A was done by a separate work order through another contractor for which separate payment was made by the Company. Audit observed (October 2019) that the issue of removal of hard strata work from the scope of the supplementary agreement of JV-A was not discussed by the BoD. The records relating to action taken report on the Agenda item of the BoD stated that the issue was resolved. The exclusion of

[25] Composite rate includes payment for removal of Overburden, Inter burden, excavation and loading of Lignite into consumers' trucks and all other ancillary activities.

hard strata work from the scope of supplementary agreement of JV-A was without corresponding reduction in rate. This resulted in extension of undue benefit of ₹ 10.88 crore[26] to JV-A for dispatch of 31.49 lakh MT Lignite from April 2015 to January 2019.

The Management replied (July 2020) that the contractor requested to exclude the work for hard strata from its scope or to pay higher rate for the same. It was further stated by the Management that in order to maintain uninterrupted supply of Lignite, competent authority approved the exclusion of hard strata work from the scope of JV-A.

The reply is not justified as the rates agreed by JV-A at the time of supplementary agreement was inclusive of work for hard strata. As such, its removal from the scope of agreement attracted corresponding reduction in rates.

(2) The contract with JV-A included standard lead[27] of 1.5 KM for dumping of OB/IB removed at the time of mining. Later on, JV-A was provided an adjoining plot under supplementary contract that was outside the existing contract area. The Project Office proposed payment of additional lead of 1.2 KM beyond the standard lead for 50 *per cent* quantity of the OB removed. The Company paid for the additional lead of 1.5 KM beyond the standard lead for the complete quantity of OB/IB removed ignoring the proposal of the Project Office. However, only 76 *per cent* of the total OB quantities required additional lead. This resulted in avoidable loss of ₹ 10.86 crore.

The Management stated (July 2020) that additional lead distance and quantity of OB/IB proposed by project office was just an estimation. The total quantity of OB/IB removed and dumped beyond standard lead of 1.5 km was 76 *per cent* of the total OB/IB removed from adjoining plot. The Management also replied (July 2020) during the Exit Conference that additional lead of 1.5 km was provided against 1.2 km considering difference of 0.3 km as meagre and based on other technical factors. Further, the Management assured that payment for remaining quantities would be calculated and taken up during arbitration proceedings going on with JV-A.

The Management did not reply on the issue of approval of additional lead for 100 *per cent* OB/IB quantity. Further, the contention of Company that the proposal of project office was not accepted as it was just an estimation was not convincing since the approved additional lead was also based on estimation.

Deficiencies in monitoring the contract terms – Bhavnagar

4.13.2.5 The turnkey contract for Bhavnagar project was awarded (March 2008) to JV-A for five years up to March 2013 for dispatch of 120 lakh MT Lignite. As the contracted quantities could not be completed within the contract period, the contract was extended up to March 2015

[26] Average cost of hard strata removal from March 2008 to January 2019 = ₹ 34.55 *per* MT of Lignite dispatched; Undue benefit to JV-A = ₹ 34.55 × 31.49 lakh MT = ₹ 10.88 crore.

[27] Standard lead is the average distance from working plot area to OB/ IB dumps.

without rate revision. Later, it was further extended (March 2015) with revised rates[28] under the supplementary agreement. At the time of commencement of the supplementary agreement (March 2015), the actual SR was 8.82 against the contracted SR of 9.62. Audit observed that the actual SR for the contract (including SR of additional adjoining plot) was only 8.75 as on February 2019. As JV-A was getting the benefit of lower actual SR, the Company should have continuously monitored the actual SR and allotted JV-A with additional plot having higher SR in the supplementary agreement. Moreover, it was also observed in Audit that no Lignite Mining was conducted by JV-A in the original contracted area with higher SR since June 2018. Thus, failure of the Company to monitor the actual SR and not providing JV-A with plot area having higher SR, benefitted the contractor.

The Management replied (July 2020) that to provide plot area having higher SR was not practical in view of requirement for sequential mining and the contractor was not benefitted by not allotting the plot having higher SR. The reply is not correct as JV-A was working in two different areas and the Company provided more work in area with lower SR.

In the same contract, the contract terms provided free of cost diesel supply of 3.95 litre per MT of Lignite dispatch with any excess to be adjusted at end of contract period. Audit observed that the Company did not obtain additional Security Deposit (SD) for the free diesel supply to JV-A at the time of commencement of the contract to safeguard its financial interest. However, it subsequently recovered the cost of diesel from RA bills of JV-A. As on March 2019, the Company had recovered the SD of ₹ 7.81 crore only from the RA bills against the cost of ₹ 9.66 crore for the free diesel supplied. The Company needs to demand additional SD to safeguard its interests.

The Management also (July 2020) replied that the SD for free diesel supply was not obtained as there was no provision in the tender and the Company is now recovering the same from RA bills. The fact remains that ₹ 1.85 crore is still not safeguarded by SD.

Audit further observed that all these benefits of lower SR, lower SD and supplementary agreement without tendering were extended without obtaining assurance from JV-A for not filing a legal or contractual claim against the Company for past events related to the execution of the contract. JV-A subsequently filed (August 2017/ June 2018) a claim for ₹ 107.01 crore against the Company for idling of manpower and machinery during the period from April 2008 to April 2011, penalties and interest on outstanding loans, depreciation on machineries, loss of profit, *etc*.

The Management replied (July 2020) that the Company could not provide for any clause restraining the JV from seeking arbitration remedy. Audit did not object to the inclusion of arbitration clause in the contract but mutual business interest demanded obtaining assurance from JV-A for not invoking arbitration clause at the time of extending benefits.

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28 Based on rates received under another tender at Bhavnagar

Deficient presentation of facts resulted in the foreclosure of contract - Rajpardi

4.13.2.6 The Company awarded (23 July 2012) turnkey mining contract for five years with SR of 19.78 for dispatch of 45 lakh MT Lignite at ₹ 765 *per* MT for Rajpardi Lignite project to Contractor D. The contract provided for price variation for 30 *per cent* rate in diesel rate. Contractor D commenced (September 2012) work and later requested (September/ October 2013) to consider the post-monsoon period of 2013 as *Force Majeure* citing abnormally high rainfall which resulted in submersion of Lignite seam exposed up to Inter-burden with SR of 5.45. The contractor also requested the Company to revise the terms and targets of the contract. Based on the request of the Contractor D, the Company allotted two[29] substitute plots to meet the shortfall in Lignite dispatch and also approved *Force Majeure* period till 31 May 2014. Later on, Contractor D declined (13 July 2014) to continue the work citing financial unviability due to introduction (18 January 2013) of dual pricing policy for diesel by GoI claiming that it increased the landed cost of diesel procured though bulk purchase. Contractor D reiterated its demand for amendment in the diesel escalation formula, but later requested (15 July 2014) to foreclose the contract. Contractor D (July 2014) as well as an outside expert appointed (August 2014) by the Company, both suggested an alternative mining method for safe working *i.e.,* Dip to Rise. However, based on the opinion of the Legal expert, the Company entered (August 2014) into foreclosure agreement with Contractor D on account of the devastation of mining conditions within the contract boundary subject to dispatch of additional 4 lakh MT Lignite till finalisation of a new contract. Contractor D dispatched a total of 13.97 lakh MT Lignite including additional 3.54 lakh MT Lignite till May 2015.

The Company issued (19 August 2015) fresh tender and awarded (23 October 2015) new contract for dispatch of 79 lakh MT Lignite with SR of 15.51 to a JV, in which Contractor D is one of the partners. The new contract was awarded at the rate of ₹ 554.67 *per* MT of Lignite dispatched with five *per cent* yearly escalation and the Diesel Component at 9.53 Litre *per* MT of Lignite dispatch.

Audit observed (November 2019) that:

- the Company did not adequately negotiate with Contractor D on the financial implication of dual pricing formula of diesel in view of the fact that the Company was already paying price variation due to increase/ decrease in diesel rate.
- The *Force Majeure* clause of the agreement with Contractor D stated that GMDC may at its discretion terminate the contract if any unforeseen event has substantially affected the performance of contract and delay due to such event lasted for over two months. However, the Company invoked the *Force Majeure* clause even though Contractor D never remained idle

[29] Allotted first plot on 12 November 2013 with 1.83 lakh MT Lignite with approximate SR of 5.45 and allotted (22 January 2014) second plot outside contract boundary with 1.69 lakh MT Lignite and SR of 8.87.

for more than two months as it had been allotted two substitute plots with lower SR during *Force Majeure* period.

- Substitute plots with SR of 5.45 were allotted to Contractor D with the condition that Contractor D will not excavate the submerged seam with SR of 5.45. However, the Company allowed Contractor D to excavate 86 *per cent* of the submerged seam resulting in the benefit of ₹ 10.14 crore[30] from the substitute plot by making payment at the rate applicable to SR of 19.78. This aspect was not considered by the Company while foreclosing the contract.
- The Company incorrectly took basis of the report of outside expert for foreclosing of the contract ignoring the suggested alternative mining method *i.e.* Dip to Rise method. This alternative method was also suggested by Contractor D.
- The Company claimed that Contractor D suffered losses due to heavy rainfall but the fact is Contractor D was also benefitted due to lower SR than the contracted SR.

The above facts were not specifically considered by the Company at the time of foreclosing of existing contract and award of a new contract. The award of new contract has resulted in avoidable loss of ₹ 83.60 crore[31] due to higher rates received that also included remaining quantities of the old contract.

The Management replied (July 2020) that the representation of the contractor regarding unviability due to dual pricing policy of diesel was considered. The Management further stated that as it was not possible for the Contractor to work in the contracted area due to heavy rainfall, substitute plots were given for which payments were as per agreed terms. It was also stated that based on the opinions of experts, the Company adopted alternative mining method *viz.* Dip to Rise for future tender and as the JV comprising of the current contractor was L-1, new contract was awarded to it. The Management also emphasised that the rates agreed under the new contract cannot be compared with the previous contract.

The reply is not justified as the Company was already paying for price variation in diesel. Also, Contractor D excavated Lignite from submerged seam in violation of supplementary agreement resulting in undue benefit on payment of higher rates for the substitute plots. The Company foreclosed the contract even though work outside contract area using alternative method suggested by the Contractor D was possible as per the contract conditions.

Incorrect adoption of diesel rate for payment of price variation - Panandhro

4.13.2.7 The Company invited (January 2010) tender for a turnkey mining contract at Panandhro project. The rates quoted by the bidders (RQB)

30 (₹ 765×1,83,000) – ((₹ 765×5.45×1,83,000) ÷ 19.78).

31 Quantity remain unexecuted = (45,00,000-13,97,484) = 31,02,516 MT.
Difference of new and old rates = {₹ 554.67-(0.70×₹ 765)} + {(9.53×₹ 56.4)-₹ 287.19} = ₹ 269.472
Amount that could have been saved (considering rate of diesel ₹ 56.405 *per* litre) = 31,02,516 × ₹ 269.472 = ₹ 83,60,41,191.552 say ₹ 83.60 crore.

for the tender included fixed rate for work component and variable rate for diesel component. RQB was computed based on different rates for diesel. For the purpose of comparability, the Company computed the rates for the bidders (RFB) at the diesel rate prevailing on the technical bid opening date. This rate was adopted as Frozen Diesel Rate (FDR) for payment of price variation for diesel component. Audit observed that while making payment of price variation for diesel component, the Company incorrectly adopted RQB (based on quoted rate of diesel) instead of RFB (based on FDR). This resulted in excess payment of ₹ 1.81 crore towards price variation during the period of contract up to July 2016.

The Management replied (July 2020) that FDR cannot be taken as the quoted rate of diesel as it was not in line with provision of the tender.

The reply is not justifiable because the Company had adopted RFB for tender comparability and therefore should have used it for calculating price variation.

Adoption of incorrect specific gravity/ conversion factor for payment - Gadhsisa

4.13.2.8 The Company invited bids for Bauxite mining at the rates to be quoted on *per* cubic metre basis for Bauxite dispatched. Since Bauxite dispatch was computed in Metric Tonne (MT *i.e.* weight) basis, the Company included specific gravity/ bulk density/ tonnage factor[32] of 1.2 in the contract to convert the rate from Rupees *per* cubic metre into Rupees *per* MT. Audit observed (November 2019) that the specific gravity/ conversion factor of 1.2 adopted by the Company for payment in all the seven ongoing Bauxite mining contracts was in variation from the approved MP, in which it was considered as 1.75. This incorrect adoption of specific gravity for conversion of rate during the period from February 2016 to August 2019 resulted in avoidable loss of ₹ 8.37 crore to the Company that will increase with the progress of the contracts.

The Management replied (July 2020) that 1.75 was *in situ* specific gravity of Bauxite considered in MP. The Company considered specific gravity of 1.2 after removal of waste/ clay and stacking the Bauxite that also had voids. The Management also replied that 1.2 was a well established conversion factor for more than two decades which is different from assessment reports and MP.

The reply is not justified as the specific gravity of 1.75 was reported in the MP based on lab test. Also, the question of void does not arise once the Bauxite is loaded in trucks and weighed at weigh bridge. Hence, use of specific gravity of 1.2 was not prudent.

Marketing of Minerals

4.14 The price fixation and marketing of the minerals produced by the Company is managed at the Corporate office of the Company. The sale of minerals is a major contributor to the revenue of the Company with Lignite

32 All the terms used mean Weight (in MT)/Volume (in M^3).

and Bauxite contributing 98.23 and 1.70 *per cent* respectively of the total mining revenue of the Company during 2014-19. The Company primarily sells Bauxite under a Bauxite Sale Agreement (BSA) with its JV. A negligible quantity of Bauxite is sold by auction. The Bauxite sale in the auction and sale of other minerals (0.07 *per cent* of total sale) was not significant hence it was not reviewed by Audit.

The Company has classified its consumers into four categories *viz.,* captive, non-captive, Special Economic Zone and Power plants. The Company followed the GoG guidelines for pricing of Lignite for power plant consumers, whereas other consumers are charged market driven price fixed by the Company. The royalty for the minerals extracted and other levies[33] payable to GoG was included in the invoices issued for the sale of minerals.

As the Company is the sole merchant seller of Lignite in Gujarat, it has no competitor. During the two years from 2015-16 to 2016-17, the lower prices of imported coal affected the sale of Lignite which resulted in decline[34] in overall profit of the Company. The above monopolistic position of the Company in the fuel market of the Gujarat State concealed the inefficiencies of the Company in core operations and deficient monitoring of Lignite mining projects as discussed in ***Paragraphs*** **4.13.1 and 4.13.2**.

Mine Closure Fund

4.14.1 The Mine Closure Plan (MCP) guidelines issued by the MoC (August 2009) for all Coal mining operations (including Lignite) required depositing the mine closure cost in an escrow account opened with any scheduled bank. Accordingly, the Company decided (May 2010) to recover the Mine Closure Cost by an increase in the basic price of Lignite.

Audit observed that the Company started recovering the Mine Closure Cost separately and did not include it in the Basic price of Lignite from June 2010. The Company recovered ₹ 612.99 crore towards Mine Closure Fund until 31 March 2019 for its Lignite Projects excluding Panandhro Lignite project. Audit observed that the practice followed in the Coal/ Lignite mining industry PSUs[35] is to include Mine Closure Cost in the basic price and paying royalty on it. The Company is invoicing Mine Closure Fund separately on sale of Lignite and has avoided royalty payment of ₹ 33.11 crore till March 2019.

The Management replied (July 2020) that Mine Closure charges was a kind of levy and hence the same were included as other charges in the invoice and not in the basic price.

The reply is not justifiable as this is against the industry practice and resulted in loss of revenue for the State Government.

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33 Contribution towards District Mineral Foundation and National Mineral Exploration Trust Fund, Central Goods and Service Tax (CGST), State Goods and Service Tax (SGST), *etc.*

34 Profit Before Tax–2014-15–₹ 635.87 crore; 2015-16–₹ 318.45 crore; 2016-17–₹ 445.98 crore.

35 Rajasthan State Mines and Minerals Limited, Coal India Limited and NLC India Limited.

The Company may follow industry practice of including mine closure cost in basic price of Lignite and make royalty payment of ₹ 33.11 crore on mine closure cost recovered from customers till March 2019 separately.

Compliance to Environmental Laws/ Mine Plan

4.15 Audit reviewed the mining and allied activities of the Company with reference to compliance to applicable environmental laws/ Mine Plan (MP). Audit observed instances of non-compliance as discussed in succeeding paragraphs.

Violation of conditions of Environmental Clearance (EC)/ approved mine plan

Lignite mines

4.15.1 The EC issued by MoEF&CC for the Lignite projects of the Company specified the quantity for extraction of Lignite reserves and any expansion, modernisation with the addition of capacity beyond the originally specified limits required revised EC. Audit observed (July 2019) that:

- In Mata no Madh project, the Company extracted 3.21, 3.92 and 3.09 MMT Lignite during 2014-15, 2017-18 and 2018-19 respectively in violation of EC for extraction of 2.4 MMTPA.
- In Bhavnagar project, despite approval (May 2016) of the MoC for enhanced capacity of 5 MMTPA in revised MP, the application for revised EC with enhanced capacity was belatedly (June 2019) submitted and its approval was awaited (November 2019).
- In Rajpardi project (G-19 Extension mines), despite existing EC for maximum mining for 100 metre depth, the maximum mining depth between 2016-17 and 2018-19 was 125.17 metre in violation of EC.
- In Umarsar project, the Company extracted 1.47, 1.60 and 1.58 MMT during 2016-17, 2017-18 and 2018-19 respectively in violation of EC for extraction of 1 MMTPA that led to over-extraction of 1.65 MMT Lignite during three years.

The above instances resulted in violations of statutory requirements related to environment.

The Management replied (July 2020) that at Mata no Madh and Umarsar, the production in excess of EC was carried out in bona fide interest of public. It was also stated by the Management that in Rajpardi, the Company took approval of office of the Director General of Mines and Safety (DGMS) for mining up to 150 meter. The reply is not justified because violation of EC cannot be in bona fide public interest.

Bauxite mines

4.15.2 Bauxite mining is regulated under Mineral Conservation and Development Rules (MCDR), 1988. Under MCDR, mining is conducted as per the approved MP that is reviewed every five years. Further, a notice under Rule 24 of the Mineral Conservation and Development (Amendment) Rules, 2003 is submitted to the Indian Bureau of Mines (IBM) for discontinuance of mine for more than 90 days. Maximum permissible area for mining under the lease area and the production capacity of a Bauxite mine is specified in its EC.

The Company is mining Bauxite from Gadhsisa group of mines that comprise of ten[36] Bauxite mines in Kutch district. Audit observed (September 2019) that during the period from 2014-15 to 2018-19, Bauxite production was done without approved MP in violation of Rule 9 and 12 of the MCDR as detailed below:

- 1,76,705.67 MT of Bauxite was produced from three Bauxite mines, *viz.,* Daban Wamoti, Roha Kotda and Naredi Nandra respectively during 2014-15.
- 95,359.23 MT of Bauxite was produced from three Bauxite mines, *viz.,* Nana Goniyasar, Ratadia-Nagrecha and Wandh-I respectively during 2017-18.

At Wandh-I and II mines, Audit observed that:

- Against the EC for mining area of 12.67 ha, the Company mined in 15.617 ha up to 2017-18 exceeding 2.947 ha, which was in violation of EC.
- The Company excavated 85,168 MT Bauxite from Wandh-I mines during 2018-19 without obtaining the revised EC.
- Gujarat Pollution Control Board (GPCB) renewed (July 2014) Consolidated Consent and Authorisation (CC&A) of Wandh-I mine for Bauxite production mentioning the quantity that was lower than the quantity specified in the EC and approved under MP. The Company without initiating action for rectification of renewed CC&A continued to produce higher quantity of Bauxite than mentioned in renewed CC&A.

The above instances resulted in violations of statutory requirements related to environment.

The Management accepted (July 2020) the gaps in approval of Bauxite MPs and stated that the same was intimated to IBM at the time of approval of subsequent MPs. The Management also accepted the audit observation in respect of Wandh I and II and stated that rectification of EC and GPCB consent was in process.

The reply acknowledges that the production was carried out in absence of approved MPs and in violation of EC/ GPCB CC&A.

[36] **(i)** Daban Wamoti, **(ii)** Mothala Balachod, **(iii)** Roha Kotda, **(iv)** Naredi Nandra, **(v)** Nana Goniasar, **(vi)** Ratadia Nagrecha, **(vii)** Wandh-I, **(viii)** Wandh-II, **(ix)** Naredi-I and **(x)** Naredi-II.

Violation of EC and Supreme Court directives for wildlife preservation

4.15.3 In Panandhro project, the Company conducted mining till exhaustion (March 2019) of the mine. Audit observed that this was in violation of Supreme Court orders (2010) which prohibited any mining activity within the radius of three kilometres from 'Narayan Sarovar Chinkara Sanctuary'. It was also observed that the mining was conducted without obtaining renewed mining lease and approval of MP required under the MMDRA. Further, mining was done without obtaining EC in accordance with EIA Notifications (1994/ 2006) and without preparing of MCP as required in the Guidelines issued by MoC.

The Management replied (July 2020) that there was no requirement of obtaining EC as the mines were operational prior to EIA notification 1994. The Management further added that the mine has already exhausted and therefore not in operation.

The reply is not correct as the Company had enhanced production capacity after 1994 that required EC as per EIA notification. No specific reply was provided against violation of Supreme Court orders.

Non-installation of RO Plant at Mata no Madh Lignite project

4.15.4 The EC issued (31 August 2010) for Mata no Madh Lignite project *inter alia* included the condition for installation of a Reverse Osmosis (RO) plant for desalination of water using solar energy technology. The desalinated water was to be supplied as potable water to nearby villages/ schools adopted under CSR and even for discharge into natural fields. The aforesaid condition of EC assumes significance for the local population due to semi-arid climate and low average rainfall ranging between 250 to 300 mm.

Audit observed (September 2019) that the Company procured mobile RO plant on an experimental basis with a monthly flow range of 580 to 2,900 m^3. It was further observed that the Company failed to install RO plant using solar energy technology as required under EC and continued its mining activity in violation of EC condition. Though the Company procured potable water from outside for supply to villagers, the huge quantum of acidic water available in the mine remained unutilised that may cause damage to fragile flora and fauna of the area.

The Management replied (July 2020) that efforts were made to procure RO plant which were not successful. It was further stated that a budget allocation of ₹ 15 crore has been made for the year 2020-21 for the same.

The fact remains that the Company failed to install RO plant even after more than nine years of receipt of EC.

Discharge of Corporate Social Responsibility and other statutory mandates

4.16 Audit reviewed the statutory commitments for social expenditure and assessment made under relevant rules/ clearances at all projects as well as the Rehabilitation and Resettlement (R&R) package provided by the Company at Rajpardi project. Audit observation is discussed below:

Violation of Corporate Social Responsibility (CSR) expenditure conditions of revised environment clearance

4.16.1 The Company revised its production capacity at Mata no Madh (February 2010) and Tadkeshwar (November 2009) Lignite mines and obtained requisite ECs. Audit observed (August 2019) that the revised EC stipulated that the Company was to incur CSR expenditure for socio-economic development of nearby villages. The CSR expenditure for Mata no Madh was to be higher of the two *viz.,* ₹ 6 crore *per* year or ₹ 5 *per* MT of Lignite dispatched. On the other hand, for Tadkeshwar the CSR expenditure was ₹ 5 *per* MT of Lignite dispatched. Further, a triennial socio-economic development impact assessment report of CSR activity was to be conducted and the monitoring report was to be regularly uploaded on the website of the Company.

Audit reviewed the expenditure incurred on CSR for Mata no Madh and Tadkeshwar projects from 2010-11 onwards and observed (August 2019) shortfall in expenditure incurred on CSR as given in **Table 4.3** below:

Table 4.3: CSR Expenditure incurred in compliance with EC till March 2019

Name of Lignite project	Period of expenditure (after revised EC)	Envisaged expenditure in revised EC (₹ in crore)	Actual CSR expenditure (₹ in crore)	Shortfall (₹ in crore)	Shortfall (in *per cent*)
Mata no Madh	2010-19	54.00	5.77	48.23	89
Tadkeshwar	2010-19	6.78	2.54	4.24	63
Total	**-**	**60.78**	**8.31**	**52.47**	**-**

Source: Information provided by the Company.

It can be observed from **Table 4.3** that the Company violated one of the conditions on which EC was granted by incurring ₹ 52.47 crore less for CSR expenditure at both Mata no Madh and Tadkeshwar Lignite projects. Further, the Company neither conducted triennial socio-economic development impact assessment nor placed any such information on the Company's website. Thus, the impact of CSR activities on socio-economic development was not monitored.

The Management replied (July 2020) that the Company was carrying out various CSR activities under its CSR Policy and was fulfilling the statutory requirement for CSR under the Companies Act.

The reply is not specific to the audit observation as the requirement of the CSR expenditure under EC is different from the requirement under the Companies Act.

Internal control

4.17 Internal control is an important management tool and comprises methods and procedures adopted by the Management to assist in achieving its objective of ensuring orderly and efficient conduct of its business, including adherence to policies, safeguarding of assets, prevention and detection of fraud and error. It monitors and evaluates the effectiveness of operational processes and risk management of the Company.

Audit reviewed the various activities involved at Corporate Office and Project Offices and inter-departmental coordination for various mining issues. Audit observations relating to absence of uniform methodology for assessment and payment of various rates and taxes and the corrective action taken by the Company based on audit observations are discussed in ***Paragraph* 4.7**. Audit also observed absence of methodology for the assessment of the reasonable level of advance royalty deposit and non-safeguarding of mining lease area. These are discussed below:

Excess deposit of advance royalty

4.17.1 Every mine owner has to deposit in advance the royalty payable for one month with the office of the Commissioner of Geology and Mining (CGM). The amount for advance deposit of royalty is based on its Lignite/ other minerals production. No interest is payable on advance royalty deposited; however, non-deposit of advance royalty attracts a penalty. Further, advance royalty can be paid any number of times during the month.

Audit reviewed the mechanism for assessment, payment and advance deposit of royalty at the six Lignite projects of the Company for the period of 60 months during 2014-19. Audit observed (June/ September/ October 2019) that the advance royalty deposited for Lignite was not always based on an assessment of next month's production. Audit observed that on an average, in 41 *per cent* of the months under review, there was no deposit of advance royalty due to huge excess deposit lying idle with the Office of the CGM. The incorrect assessment of advance royalty deposit resulted in blocking up of funds and consequent interest loss of ₹ 2.68 crore. This excess deposit of advance royalty reflected lack of internal control to exercise financial prudence.

The Management replied (July 2020) that advance royalty was paid as per the oral and written demands from authorities. Further, the Management replied that all efforts would be made by the management to minimise interest loss on advance royalty.

This indicated that the Company does not have a system for reasonably assessing the amount of advance royalty to be deposited.

Non-safeguarding of mining lease area at Tadkeshwar Lignite Project

4.17.2 The Company acquires mining lease (ML) from GoG after allocation of the block by GoI and before preparation and approval of MP and obtaining of various statutory clearances. Hence, the Company must take necessary steps to safeguard the ML area and ensure that no activity detrimental to its interests is undertaken in the block area.

GoG granted (18 March 2002) ML for Tadkeshwar Lignite Block and the mining operations commenced from December 2005. Audit observed (September 2019) that:

- Two industrial units were constructed (June 2015 and May 2018 respectively) inside the ML area on private land which is yet to be acquired by the Company.
- The Company was to complete excavation of Lignite from the area where these companies are located within four years of revised MP approval (November 2009). The acquisition was pending as on date (July 2020) even after lapse of more than 10 years from the approval of revised MP.
- The compensation for private land depends on the condition of the land and the prevailing market rate. Since the construction of above two industrial units had considerable capital investment, therefore their compensation may be high.
- The action plan to acquire the land north of the diverted State Highway - 65 and for recovery of Lignite deposit thereunder was not available on record.

Thus, lack of internal control and supervision for safeguarding the ML area has resulted in the commencement of activities detrimental to the interest of the Company that will affect the acquisition cost of land and consequent cost for extraction of reserves.

The Management replied (July 2020) that there was strong agitation and protest by local people against the acquisition of private land under lease area. Further, private landowners or district authorities did not ask the Company for No Objection Certificate.

The fact remains that the Company failed to safeguard the mine lease area allotted to it due to the lack of coordination with local district authorities.

Conclusion and Recommendations

4.18 The Company was incorporated to undertake mining of minerals in the State of Gujarat. The Company has mining leases for Lignite, Bauxite, Fluorspar and Multi-metal of which, the mining of Lignite and Bauxite was the major contributor to total sales. The business plan and mine plans were not revised and no decision was taken for ownership and usage of private land after extraction of minerals therefrom. Excess payment in Land reference cases for land acquisition was noticed. Deficiencies in the system for turnkey mining agreements related to the absence of a uniform policy for rate fixation, variation in stripping ratio, inadequate monitoring of contract conditions, incorrect payments, *etc.,* were observed. Deficiencies in management of mine closure fund were also observed. Violations of environmental clearances, approved mine plans and directives for wildlife preservation, non-installation of RO plant at Lignite projects and short expenditure towards CSR activities were also observed.

Recommendations:

Apart from the specific recommendations given under the relevant paragraphs, the Company may;

- ***prepare a vision document;***
- ***may comply with all the conditions of Environmental Clearances;***
- ***incur Corporate Social Responsibility expenditure as per the requirements of Environmental Clearances; and***
- ***enhance its internal control mechanism.***

The matter was reported to Government/ Management (May 2020). The reply of Government is awaited (June 2020).