

CHAPTER VI: MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES

Bharat Heavy Electricals Limited

6.1 Loss due to non-performance under a contract

BHEL suffered a loss of Euro 3.83 million (₹28.35 crore) due to failure to deliver performance as per the contractual provisions and resultant invocation of bank guarantee by the client.

Bharat Heavy Electricals Limited (BHEL) entered into (21 April 2015) a contract with Elektrik Uretim AS Genel Mudurlugu (EUAS), Turkey, for rehabilitation and upgradation of eight units of Keban Hydroelectric Power Plant at a price of Euro 63.86 million (approx. ₹472.56 crore) with completion period of 2,552 days (seven years approximately). The proposed date of commencement of work was to be the same as the date of opening of Letter of Credit (LC).

As per provisions of the above said contract, BHEL issued (21 April 2015) a Performance Bank Guarantee in favour of EUAS for an amount of Euro 3.83 million (₹28.35 crore). After signing the contract in April 2015, BHEL submitted (10 July 2015) the L₂ schedule (i.e. detailed timelines and sequence of project activities) to EUAS with the proposed initial date of commencement of work as 30 August 2015 for approval. However, the work could not be commenced by BHEL as scheduled on account of various technical glitches like, correctness of drawing/ documents collected by BHEL from EUAS, work related to intake gates to be made capable of emergency closure, work related with stator frame, rehabilitation of spare transformer before shutdown etc. While finalising the contract with EUAS, BHEL did not ensure that the responsibilities of EUAS to provide updated drawings and design data of existing equipment were incorporated in the contract. Subsequently, BHEL submitted (23 September 2015) the revised L₂ schedule with proposed date of commencement of work as 01 November 2015 for approval.

The LC was opened by EUAS on 07 March 2016, when the zero date for commencement of work also became effective. However, even thereafter, BHEL was unable to start the work on account of non-availability of necessary drawing/ documents including inspection and physical measurement of units during shutdown period. This was mentioned in the agreed Minutes of Meeting (MoM) between EUAS and BHEL in November 2016. However, EUAS informed BHEL in the same meeting that they had already provided all available drawings/ documents. It was also agreed in this meeting (8 - 10 November 2016) with EUAS that BHEL would submit the documents related to preliminary planning activities.

EUAS issued notices (13 December 2016 and 10 February 2017) to BHEL stating failure of BHEL to submit the requisite design details, detailed technical specifications, quality assurance plan, sub-contracting list, list of manufacturers, etc., even after one year of the opening of LC by them and requested BHEL to submit the requisite documents/ plans within 10 days. Finally citing inability of BHEL to provide requisite documents, EUAS terminated

the contract on 07 March 2017. The performance guarantee of Euro 3.83 million (₹28.35 crore) was finally encashed by EUAS on 04 December 2017.

This order was also of the highest rating R&M works of Hydroelectric Power Project for BHEL and was opportunity to gain experience of new area for future references. This opportunity was lost due to non completion of the preliminary planning activities which resulted in encashment of performance guarantee of Euro 3.83 million (₹28.35 crore).

Management replied (20 September 2019) that

- drawings provided by EUAS during site visit were very old and it was not certain whether the changes made from time to time on the powerhouse had been incorporated in the drawings or not. As such, list of inputs required from EUAS for start of Design & Engineering activities was sent to EUAS. Based on inputs gathered and discussion with EUAS revised schedules were prepared.
- BHEL could have submitted the requisite documents only after checking the correctness of available data which was to be determined by physical measurement of existing equipment for which EUAS had committed to provide shutdown of machines during 12 July 2017 to 25 August 2017 and then again from 11 September 2017 to 20 October 2017. However, without even waiting for shutdown to occur, EUAS went ahead and terminated the contract on 07 March 2017.

Reply of Management is not acceptable because

- Despite lapse of two years from the date of signing the contract, BHEL was unable to complete the preliminary planning activities and submit the requisite documents to EUAS. Even after opening of LC by EUAS in March 2016, no tangible action (barring a meeting in November 2016), was taken by BHEL till March 2017 when EUAS finally terminated the contract due to non-performance of BHEL.
- In response to the notices issued by EUAS, BHEL did not intimate the former, its inability to submit documents due to non-provision of shutdown of the machines by EUAS. Moreover, as opined by the legal counsels, BHEL did not have a valid legal case to prove wrongful encashment of bank guarantee by EUAS.

Thus, BHEL had lost not only Euro 3.83 million (₹28.35 crore) due to unable to complete the preliminary planning activities but also lost the opportunity to gain experience of new area for future references.

The para was issued to the Ministry in November 2019; their response was awaited (June 2020).

6.2 Avoidable payment of sewerage cess

The Heavy Power Equipment Plant, Hyderabad of BHEL failed to avail the rebate in sewerage cess extended by Hyderabad Water Supply and Sewerage Board, which resulted in avoidable extra expenditure of ₹21.24 crore during January 2012 to March 2019.

The Heavy Power Equipment Plant (HPEP), Hyderabad, a unit of Bharat Heavy Electricals Limited (BHEL) sources the water required for its Factory and Township from Hyderabad Metropolitan Water Supply and Sewerage Board (HMWSSB) as per tariff determined by HMWSSB from time to time. The HMWSSB revised (November 2011) the Water & Sewerage Tariff effective from 1 December 2011 which included levy of 35 *per cent* sewerage cess on monthly water charges. The tariff order provided a rebate of 50 *per cent* (i.e. 17.5 *per cent*) in sewerage cess for bulk consumers to encourage them to set up their own sewerage treatment plant.

The HPEP, by then, had already established its own Effluent Treatment Plant (ETP) and Sewerage Treatment Plant (STP) for its Factory and Township for treating the industrial and domestic effluents. The HMWSSB reiterated (January 2012) to the Company that the incentive is applicable only when the entire quantity of water consumed including the bore well water is treated and recycled for other usages. Further to this, HMWSSB formulated (31 October 2013) guidelines for certification of the consumers who had established STPs and fulfilled the requirements to avail the rebate. It stipulated, *inter-alia*, that all the consumers who have established STPs were required to furnish the STP information once in a month in the prescribed proforma besides furnishing the certificate from Environmental Protection Training & Research Institute (EPTRI) once in six months for availing the rebate.

Audit observed that HPEP, though stated to have treated all the water used by it and obtaining the EPTRI test reports regularly for both STP and ETP plants, did not furnish the six monthly certificate of EPTRI and the requisite data in the prescribed monthly proforma (relating to STP and ETP) to HMWSSB to establish that the entire quantity of water consumed including the bore well water was treated and recycled for other usages as per the guidelines for availing the rebate. As a result, HPEP paid an amount of ₹42.48 crore (₹13.82 crore for factory and ₹28.66 crore for township) towards sewerage cess charges at 35 *per cent* during the period January 2012 to March 2019. Since the Company failed to furnish the requisite data to HMWSSB, it could not avail the 50 *per cent* rebate in sewerage cess allowed by HMWSSB amounting to ₹21.24 crore from January 2012 to March 2019.

Management replied (November 2019) that:

- The unit had its own STP and Effluent Treatment Plant and was maintaining these plants on its own. HMWSSB started levying 35 *per cent* sewerage cess from March 2009 onwards. The payment of sewerage cess was paid under protest for the period from March 2009 to December 2011. The unit filed a writ petition in August 2012 challenging the levy and demand of sewerage cess on the grounds that the STP and ETP were being operated on its own.

- Since, the writ petition had not come up for hearing, the matter was taken up with HMWSSB for resolving the issue. At the time of entering the new agreement in May 2019, HMWSSB accepted to allow the 50 *per cent* rebate and adjust it in future water bills. Accordingly, in the month of February 2019, the claims for rebate of sewerage cess were submitted for the period from July 2009 to December 2018.

The reply of Management is not acceptable in view of the following:

- As per the tariff order notified by HMWSSB, the rebate in sewerage cess was applicable from January 2012 onwards for the bulk customers who operate their own STP and ETP. Hence, the claim of the company for waiver of 100 *per cent* sewerage cess was not valid. The writ petition filed by the Company in August 2012 has not been admitted by the Hon'ble High Court of Telengana till date.
- The new agreement entered between BHEL and HMWSSB in May 2019 did not state that HMWSSB would adjust the rebate in sewerage cess in future water bills. Further, there was no documentary evidence showing the willingness of HMWSSB for adjustment of rebate in future water bills.
- As per the circular issued (October 2013) by the HMWSSB, the bulk users having their own STP should submit the STP details on monthly basis duly certified by EPTRI once in six months in the prescribed format. However, while submitting the claim in February 2019/ April 2019, the Company submitted the details of STP for a period of six months instead of each month that too without the counter signature of EPTRI, as required.

Thus, failure on the part of BHEL HPEP, Hyderabad in furnishing the data relating to STP and ETP to HMWSSB for availing rebate in sewerage cess resulted in avoidable extra expenditure of ₹21.24 crore during the period January 2012 to March 2019. The opportunity forgone by BHEL to claim the benefit of 50 *per cent* rebate on sewerage cess during the said period also meant that the benefit of a third-party assurance on effectiveness of the functioning of the STP could not be derived and the risk of non-performance of the STP as per standards may not have been adequately mitigated.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

HEC Limited

6.3 Township and Land Management

6.3.1 Introduction

Heavy Engineering Corporation Limited (HEC or Company) is one of the leading suppliers of capital equipment in India for steel, mining, railways, power, defence, space research, nuclear and strategic sectors. Government of Bihar (GoB) allotted 7,199 acres of land to HEC during 1958-59 (2,312 acres free of cost to install a Foundry Forge Plant (FFP), Heavy Machine Building Plant (HMBP) and the Heavy Machine Tool Plant (HMTP) and other ancillary and allied purposes and 4,887 acres at a cost of ₹2.75 crore for township and other

allied purposes). HEC established FFP, HMBP and HMTP and has 11,109 quarters in its township apart from other buildings like hostels, hospital, school buildings, shop etc.

A study on land and township management in HEC was conducted to assess whether land and township services were effectively managed, existence of policy and adherence thereof for leasing of land to other parties, leases were renewed on time, estate dues were recovered and adequate and effective system was in place to identify and remove encroachment of land and buildings. Records relating to land and township management of HEC was examined during April and May 2019 for a period of three years from 2016-17 to 2018-19.

6.3.2 Audit Findings

6.3.2.1 Land Management

i) Utilisation of Land

The status of the Company's land as on 31 March 2019 is as shown below.

Table 6.3.1: Status of land acquired by HEC as on 31 March 2019

Particulars	Land in acre	Per cent of total land
Land used for Factory, Residential area, Other area and Land in pockets inside township (Factory Area 729.27, Residential Area 772.96, Other Area (Drainage Township) 166.92, Land in Pockets inside Township 900)	2569.15	36
Land transferred to GoJ (2691.44 acre) and CISF (158 acre)	2849.44	40
Land to be transferred to GoJ [306.86 acre (land under encroachment) +19.13 acre]	325.99	5
Land leased/ given to various agencies on Lease (SAIL/ RDCIS, NIFFT, Educational Institutions, JSCA, Petrol Pumps, BSNL, Garden Reach Shipbuilders and Engineers Limited)	313.31	4
Land proposed for Transfer (requests received during February 2016-May 2018) to ONGC, SIB, CBI, UIAI-Adhar, TVNL, CWC, EESL (pending till Jan 2020)	126.37	1
Land under encroachment	73.05	1
Remaining vacant land of HEC	942.20	13
Total	7,199.51	100

Audit noted that though land was granted to HEC for the specific purpose of construction and establishment of its plant, township and other ancillary and allied purposes, the company utilised only 36 per cent of land (729.27 acres for factory, 1,839.88 acres for township including land in pockets inside township) for this primary purpose. 44 per cent of land (2,849.44 + 313.31 acres) was transferred to other agencies and it had 20 per cent of vacant land (as on 31 March 2019).

In view of the large amount of unutilised land available with the Company, threat of encroachment of vacant land and to meet its fund requirement, 126.37 acre of land was marked for transfer to government/ other agencies. The Company also did not have any

profitable land use plan for the remaining 942.20 acres valuing ₹1,036.42 crore¹. The Company received various proposals during (February 2016 to May 2018) for allotment of land to the extent of 136.645 acres from CBI, CISF, Oil PSUs and Indian Army etc. Though the matter was raised (December 2016 to April 2018) by the Company with Department of Heavy Industries (DHI), it remained pending finalisation (March 2020). Audit noted that the Board of HEC also noted (June 2014) the tremendous threat of encroachment, if land remained unutilised in the light of limited manpower for security.

Management replied (January 2020) that 84.14 *per cent* of land had been utilised and 1,068.57 acres of land was available for future use of HEC. The reply of Management may be seen in the light of the fact that land was allotted to HEC to set up industry, township and other ancilliary facilities whereas, over the years it had to transfer significant chunk of land to different agencies to meet its working capital requirement and outstanding dues and also as it was unable to secure the land from encroachment. Company does not have any profitable plan to utilise the remaining available land of 942.20 acre.

6.3.2.2 Leasing and Encroachment of Land

i) Non-recovery of ₹75.30 crore from Government of Jharkhand due to encroachment of land

As per revival package approved by the GoI (September 2008), 2,342 acres of encroachment free land was to be transferred by HEC to the Government of Jharkhand (GoJ) and HEC was to get ₹250 crore. HEC transferred 2,035.14 acres of land to GoJ and the remaining 306.86 acres was not transferred because the same was under encroachment. GoJ paid ₹174.70 crore to the company leaving a balance of ₹75.30 crore.

Audit observed that GoJ assured (April 2009) to provide administrative support to HEC to ensure time bound eviction of encroachment in the remaining land. The company, however, did not take up the matter with the State Government for eviction of the encroached land at regular intervals. After 2009, the matter was taken up in 2012 i.e. after three years. HEC approached (2015) DHI, but the ministry took no initiative to resolve the issue. Due to inability of HEC management to evict encroachers from 306.86 acres of land and hand over encroachment free land to the GoJ, ₹75.30 crore (₹48.97 crore plus ₹26.33 crore) could not be realised.

Management replied (January 2020) that as per DHI order (21 October 2019), 107.28 acres out of 306.86 acres of land would be utilised under Pradhan Mantri Aawas Yojana and remaining 199.58 acres would be taken by GoJ on 'as is where as basis'. GoJ would pay proportionate amount of ₹48.97 crore to HEC. The revised amount was yet to be received by the company.

6.3.2.3 Leasing of land

The company had not made any policy for leasing of land. Land was allotted to different organisations at different rates and there was no uniformity in lease renewal charges.

¹ Considering rate of ₹1.10 crore per acre for transfer of land to the GoJ

Management replied (January 2020) that new policy for leasing of land was under process. Some issues relating to leasing out of land by the Company are discussed in subsequent paragraphs.

i) Non-realisation of ₹48.92 crore from GRSE

HEC allotted 62 acres of land to Garden Reach Shipbuilders and Engineers Limited (GRSE) to set up a Marine Diesel Engine Plant (MDEP) for an initial period of 30 years from 1966. HEC did not charge license fee or lease rent. HEC approached GRSE (August 1999) for a fresh agreement w.e.f. April 1996 for the aforesaid land assuming that original agreement for 30 years had lapsed. One time lease premium of ₹14.88 crore (@ ₹0.24 crore per acre) and 10 *per cent* plus annual lease rent of ₹1.48 crore was payable as per HEC. GRSE demanded copy of lease agreement from HEC and refused to enter into any lease deed stating that by their long years of possession over the land in question, they had acquired right and title.

HEC obtained legal opinion (2012), who recommended that immediate steps be initiated under the Public Premises (Eviction of un-authorized Occupants) Act, 1971. HEC requested DPE (April 2013), to nominate a sole arbitrator for the case. The matter was referred (June 2015) to the Permanent Machinery of Arbitration which concluded that due to non-availability of signed formal lease agreement, the instant case did not fall under Arbitration and needed to be settled by both the parties. HEC approached (April 2018), the Court of Estate Officer and filed a case for eviction. GRSE obtained (August 2018) stay against the same.

Audit observed that HEC was not in possession of lease agreement or any record to show that the lease was entered into by HEC until the year 1999, when the matter came into notice of the company. Thus, in the absence of legal documents 62 acre of HEC land was under unauthorised occupation of GRSE and the dispute was yet to be mutually settled with GRSE. The company could not receive the lease rent and lease renewal charges amounting to ₹48.92 crore [₹14.88 crore as one time lease premium plus lease rent ₹34.04 crore (₹1.48 crore x 23 years)] as per the rates fixed by the company.

Management replied (January 2020) that agreement between HEC and GRSE could not be signed for want of Deed of Conveyance between HEC and Government of Bihar. A joint committee with members from HEC and GRSE had been made to settle the issue. The reply did not address inaction on part of the Management in view of the fact that deed of conveyance for entire land was registered in February 1996, but lease agreement with GRSE was not signed immediately thereafter.

ii) Non-renewal of lease

As mentioned in para 2.3 above, the Company had not made policy for leasing of land. As per the common terms and conditions of the lease agreements entered into by HEC with the third parties, the lessee was required to pay one time lease premium for the period of lease and 10 *per cent* of the premium as rent every year in advance. The lease would be renewable as per mutual consent of the parties after payment of one time lease premium and lease rent. Cases of non-renewal of lease noticed during the course of audit are given below:

- **National Institute of Foundry & Forge Technology**

HEC leased 57.47 acres of land to National Institute of Foundry & Forge Technology (NIFFT) at Hatia in June 1968 for 30 years at a rate of ₹0.26 lakh per annum. The lease agreement was signed on 31 March 1987. After expiry of the lease period in June 1998, one time lease premium was fixed by HEC at ₹3.45 crore and annual lease rent of ₹0.34 crore. NIFFT refused to pay the revised lease premium on the plea that it was a non-profit organisation and continued to pay at the old rate upto 2012-13. It also stated that the matter was raised (March 2000) with Ministry of HRD, GoI for raising it with Ministry of Industry. Audit noted that HEC did not follow up the matter thereafter with NIFFT till October 2012 followed by letters sent in October 2014 and February 2019. The lease was not renewed even after lapse of 21 years of expiry of lease. NIFFT started paying lease rent of ₹0.51 lakh per annum from 2013-14 onwards. Thus, due to failure of the company to renew the lease, ₹10.69 crore (₹3.45 crore as one time lease premium plus ₹7.24 crore on lease rent) could not be realised from NIFFT.

Management replied (January 2020) that the matter was continuously pursued with NIFFT. The reply points to inaction of Management in finalising and renewing the lease agreement leading to loss of lease charges. The Management also did not reply to reasons called for in Audit for not taking up the matter with the Ministry.

- **Bharat Sanchar Nigam Limited**

HEC allotted 1.38 acre of land to BSNL on 21 April 1985 at the rate of ₹0.03 lakh per annum for 30 years without any lease agreement. Even after expiry of initial period of allotment of 30 years (i.e. in 2015), no action was taken by the parties for revision of rate. Further, recent digital survey conducted (October 2016) by an independent agency² revealed total land under possession of BSNL was 1.43 acres. Thus, BSNL was in possession of company's land without paying the revised charges since four years and also encroached 0.05 acre of land. The company requested (July 2017) BSNL for renewal of lease after lapse of two years after expiry of initial period of allotment of 30 years (i.e. in 2015). The company did not make any correspondences thereafter with BSNL.

Management replied (January 2020) that settlement of the issue was under process.

6.3.2.4 Township Management

HEC has a township to facilitate its employees/ ex-employees to reside near its plant. The company also developed shopping places to fulfil the requirements of its employees. Other organisations like Banks, Education institutions, offices of the State Government, Jharkhand State Electricity Board (JSEB) offices also reside in periphery of HEC township.

² *Samarth Engineers*

i) Unauthorised occupation of quarters

Status of available quarters, vacant quarters and quarters under unauthorised occupation as on 2 May 2019 in HEC Township is summarised as under:

Table 6.3.2

Number of quarters	Quarters allotted	Number of vacant quarters	Damage/ Unfit quarters	Quarters under unauthorised occupation (by ex-employee)	Quarters under unauthorised occupation (by others)
11,109	10,433	395	160	9 ³	112 ⁴

From the above table it is seen that 395 quarters were vacant, 160 were damaged and 121 quarters (112+9) were under unauthorised occupation. Audit observed that the company could not recover ₹2.81 crore (as on March 2019) in respect of 69 quarters under unauthorised occupation by outsiders. It was noted that out of above 69 quarters, 46 quarters are under unauthorised occupation for more than 20 years and data in respect of the remaining 43 quarters (112 - 69) was not available with the management.

Audit observed that the Company filed cases in respect of only six quarters under the Public Premises (Eviction of un-authorised Occupants) Act, 1971 during 2015-19 out of which eviction order was passed in respect of two quarters and remaining four cases were under process. Action was not taken by management to vacate the quarters under unauthorised occupation, which resulted in non-realisation of ₹2.81 crore (69 quarters) which would increase with the passage of time.

Management replied (January 2020) that all such unauthorised occupants had been served vacation notices to vacate the quarters. Reply of Management may be seen in the light of the fact that management had issued notices only to its nine ex-employees who had occupied the quarters unauthorisedly. Moreover, the Company continues to sustain loss on account of unauthorised occupation of quarters.

ii) Non-realisation of estate dues

Audit noted that huge amount was outstanding against various agencies towards house rent, electricity charges and water charges as mentioned below:

Table 6.3.3: Statement showing outstanding estate dues of HEC as on 31 March 2019

Particulars	Outstanding amount (₹ in crore) as on			
	31.03.2016	31.03.2017	31.03.2018	31.03.2019
Quarters given on lease to employees (Leave & License)	0.06	0.11	0.14	0.07
Quarters allotted to the dependent of the deceased employees on Compassionate Ground	0.19	0.23	0.26	0.28
Quarters given on Long Term Lease to the retired employees of the company	1.37	1.62	1.16	1.03
Non Residential Building	0.40	0.61	1.53	2.79

³ since July 2014 onwards

⁴ since more than 20 years

Buildings allotted to outside agencies i.e. other than company employee	4.25	4.85	5.53	6.14
Jharkhand State Electricity Board (JSEB)	1.02	2.25	1.18	1.80
Shops allotted by the company	1.31	1.48	1.68	5.00
Employee unions of HEC (UNI)	0.00	0.01	--	--
Total	8.60	11.16	11.48	17.11

The outstanding dues increased from ₹8.60 crore as on March 2016 to ₹17.11 crore as on March 2019. Out of the above, management had made provision for doubtful recovery for ₹6.62 crore in the accounts.

Management replied that regular allottees were depositing their dues whereas defaulters had been served notices, as such outstanding dues against shops of ₹5 crore was a pre-mature estimate. Audit noted that as per records of revenue department of HEC, total dues against the Shops as on 31 March 2019 was ₹5 crore.

Significant cases of non-realisation of outstanding dues are elaborated below-

- HEC receives drinking water in bulk from the GoJ and delivers it to the doorstep of consumers in township. Audit noted that GoJ revised water charges with effect from 31 May 2006 and started billing HEC with effect from 1 August 2009 at the rate of ₹5 per KL (₹22.75 per Kilo Gallon). GoJ asked HEC to pay ₹13.23 crore for water charges for the period between August 2009 and May 2013. The amount recovered by HEC from beneficiaries was however only ₹4.25 crore for this period.

Audit observed that though the GoJ charged HEC at a certain rate for consumption of water but the company recovered water charges at a flat rate. The company did not even charge for the maintenance, distribution and transmission cost that it incurred towards supply of water to households although the Company was charged at retail rates by the GoJ. This resulted in wide gap between procurement price and realisation of water charges and HEC could not recover ₹2.68 crore from various agencies/ residential building occupiers (as on 31 March 2019). Further, HEC was required to pay ₹25.17 crore on water charges as per demand (August 2009 to March 2019) from GoJ.

Management replied that shortfall in collection of water charges was mainly due to defaulting allottees and inflated figure of intake claimed by GoJ, ignoring loss that occurred during supply because of reasons like leakages etc. The reply is to be viewed against loss sustained on account of shortfall in collection of water charges from the allottees. Further, flow meters required to measure the water supply were not installed and quantity of water supplied by GoJ could not be reconciled even after lapse of around 15 years.

- 29 quarters were allotted to various clubs, samitees and HEC consumer co-operative society for which the company charged House rent, electricity and water charges from these organisations. Audit observed that ₹1.38 crore against co-operative society and ₹0.34 crore against clubs and samitees was outstanding (31 March 2019). Due to lack of adequate monitoring and effective management, HEC could not realise outstanding amount from these clubs, samitees and HEC co-operative society.

Management replied (January 2020) that authenticity of allotment of premises under the possession of various clubs, samitees and consumer cooperative societies would be verified followed by realisation of dues or eviction of unauthorized occupants as per the Public Premises (Eviction of Unauthorised Occupants) Act 1971.

- Six buildings were allotted to Postal Department, to run post offices, by the company. The rent was revised in May 2009 by HEC and revised rent was claimed (December 2013) for above premises. Postal Department disputed the revised bills and requested HEC to examine the issue afresh which was not accepted by the Management. Since the Postal Department was not willing to pay the revised bills, the outstanding dues accumulated to ₹1.40 crore (31 March 2019). HEC cancelled (February 2015) the allotment of buildings. However, Postal Department had neither vacated the premises nor paid the enhanced bills. Management replied (January 2020) that Postal Authorities have been reminded regularly.

- Four office buildings and five residential quarters were allotted to BSNL (as discussed in above para). The Company could not realise ₹0.32 crore from BSNL. The dues were outstanding for a period ranging from March 2008 to July 2017. Audit observed that HEC management had not made any correspondences with BSNL after July 2017.

Management replied (January 2020) that after serving final notice for making payment of dues, if amount remained unpaid, notice of demand of damages as per Public Premises (Eviction of Unauthorized occupants) Act 1971 would be served.

Thus, lack of suitable action by Management, ₹17.11 crore could not be realised and was outstanding as on 31 March 2019.

6.3.2.5 Delay in handing over drinking water distribution system to RMC

Municipal services like supply of drinking water, sewage disposal system, sewage treatment is maintained by HEC within its township. Audit noted that storage tanks were not serviceable and many of the pipelines were leaking which could contaminate drinking water. In view of its inability to maintain water supply and sewage disposal system, and to recover cost of services provided from the users, and also since 85 *per cent* users were not employees of the company, HEC Board decided (December 2013) to hand over the entire water supply network to Ranchi Municipal Corporation (RMC). The Board directed to put up a proposal along with terms and conditions of such transfer to the Ministry (DHI) for its consideration and approval. However, Audit noted that, even after lapse of six years since the direction of the Board, no such proposal was submitted (January 2020) by the company to DHI.

Management replied that the matter was pursued with the GoJ. Audit noted that management took up the matter (September 2017) with GoJ i.e. after four years from the decision of the Board to hand over the entire water supply network to RMC. The Urban Development and Housing Department of GoJ was approached only in January 2019. Management reply was silent on the compliance of Board directives to submit proposal for transfer of water supply network to the Ministry (DHI) for approval. Thus, due to delayed action of Management, it continued to incur losses being unable to recover cost of services provided. Further there is risk of supply of contaminated water to the residents in view of old and unserviceable

pipelines. HEC Board also failed to monitor compliance of the decision taken by them six years back.

6.3.2.6 Non-furnishing of information to State authorities for calculation of Holding Tax

As per the agreement with RMC in July 1991, HEC was paying a lump sum amount of ₹0.08 crore/ annum as Holding Tax (HT). It was also agreed that the RMC would not levy any tax on constructions authorised or unauthorised directly or indirectly without a representation and specific agreement with the HEC. RMC communicated (November 2016) that, after enactment of the Jharkhand Property Tax (Assessment, Collection and Recovery) Rules 2013, assessment of HT payable with effect from April 2016 at revised rates was to be completed within three months. HEC was requested to provide details of buildings in whose respect the company was required to pay HT by 14 Dec 2016.

Audit noted that the company intimated (February 2017) RMC, only about the number of buildings and quarters. RMC served notice (8 March 2018) to HEC and asked to provide detailed information with regard to buildings located in HEC township in order to calculate HT. HEC did not provide the complete information and, therefore, RMC calculated HT for the entire area under HEC factory and office. The revised HT was fixed at ₹1.77 crore per annum for the office buildings in HEC area. Interest and penalty were also applicable on the balance amount. Total demand by RMC for 2016-17 to 2019-20 was ₹10.09 crore comprising of HT of ₹7.06 crore and ₹3.03 crore as interest and penalty.

Audit observed that instead of providing details of buildings and segregating the buildings for which the company was liable to pay HT, the company filed a writ petition in the Jharkhand High Court contesting the revised demand. This was quashed by the High Court on 8 July 2019. The court opined that since HEC had entered into an agreement with RMC, it was duty bound to provide details sought for by the respondent.

Thus, failure of HEC management to submit requisite details to RMC led to imposition of penalty and interest amounting to ₹3.03 crore which could increase further. The company was yet to identify (January 2020) and communicate the buildings for which they were liable to pay the HT. Further, such demand may arise in respect of residential buildings in the HEC area where HEC employees occupied only 15 *per cent* of the quarters.

Management replied that the agreement made between RMC and HEC in July 1991 was still in motion and an appeal had been filed in September 2019 before Appellate Authority under the Jharkhand Property Tax (Assessment, Collection and Recovery) Rules, 2013 against the demand notices. Audit noted that management did not provide the requisite information with regard to buildings located in HEC township to RMC despite reminders.

The para was issued to the Ministry in January 2020; their response was awaited (June 2020).

Tungabhadra Steel Products Limited

6.4 Avoidable payment of income tax

Incorrect treatment of waiver of Government of India loan and other liabilities in the books of accounts by Tungabhadra Steel Products Limited resulted in avoidable payment of income tax of ₹55.38 crore and further tax liability of ₹41.18 crore.

The Income Tax Act, 1961 recognised sick industrial companies covered under Section 17(3) read with Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and provided certain reliefs/ concessions such as exemption from capital gains tax and permission to set-off capital gains, if any, against the accumulated losses on fulfilment of certain conditions, etc. These reliefs/ concessions are allowed only after approval and issue of appropriate orders by the Central Board of Direct Taxes (CBDT).

Tungabhadra Steel Products Limited (Company) was referred to the Board of Industrial and Financial Reconstruction (BIFR) in 2004 under SICA⁵ as it had been incurring losses for a long period. The Administrative Department, i.e., Department of Heavy Industries (DHI) conveyed (January 2016) the decision of the Government of India (GoI) for closure of the Company. Ministry of Labour and Employment also accorded permission (February 2017) to close the Company with effect from 9 February 2017.

Meanwhile, CCEA approved (December 2015) infusion of funds of ₹35.55 crore towards discharge of liabilities and permitted to write off the GoI loan of ₹115.84 crore and interest accrued thereon amounting to ₹315.92 crore in lieu of transfer of right over immovable assets of the Company. Later, DHI conveyed (January 2018) the GoI approval for sale of entire Company's land of 82 acres 37 cents at the rate of ₹66 lakh per acre to Karnataka Housing Board (KHB)/ Government of Karnataka (GoK). Further, it was decided that the transfer of land to KHB was to be done after receipt of funds and then the Company was required to be handed over to the liquidator for its winding up.

Later, GoK issued a notification (September 2018) for the purchase of land belonging to the Company for its KHB operations measuring 82 acres 12 cents⁶ at a total value of ₹54.20 crore. It was also decided that 57 acres 8 cents of land (factory area) would be registered in Phase-I and balance land of 25 acres 4 cents (residential) would be registered after evicting the residents.

During the financial year (FY) 2016-17, the Company brought the waiver of GoI loan together with interest thereon (₹467.07 crore⁷) and others (₹5.22 crore) totalling ₹472.29 crore into the books of accounts and treated as Profit on Sale of Assets (extraordinary income) in Profit and Loss account for the FY 2016-17. It e-filed Income Tax (IT) Return for the Assessment Year (AY) 2017-18 (FY 2016-17) by declaring a capital gain

⁵ *Sick Industrial Companies (Special Provisions) Act, 1985 was repealed by Sick Industrial Companies (Special Provisions) Repeal Act, 2003 with effect from 1 December 2016. As a result, Government dissolved BIFR and referred all pending proceedings to the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) as per the provisions of Insolvency and Bankruptcy Code, 2016*

⁶ *Excluding 25 cents said to be encroached out of 82 acres 37 cents*

⁷ *₹467.07 crore consists of GoI loan of ₹151.15 crore together with interest of ₹315.92 crore*

of ₹471.35 crore and total income of ₹321.23 crore after adjusting allowable current year loss of ₹145.79 crore.

Central Processing Centre of Income Tax Department processed the above return under Section 143(1) of the Income Tax Act (IT Act), 1961 and raised (September 2018) a net tax demand of ₹93.38 crore (Income Tax: ₹75.16 crore + Penalty for delayed return: ₹3.76 crore + Default in payment of Advance Tax: ₹15.98 crore - Adjustment of taxes paid: ₹1.52 crore). Subsequently, the Income Tax Department froze the Company's bank account and collected (January 2019) a sum of ₹55.38 crore towards income tax. Later, the Income Tax Department served (February 2019) a notice for balance outstanding amount of ₹41.18 crore (Outstanding balance: ₹38 crore and interest under section 220(2) of the IT Act, 1961: ₹3.18 crore).

In this regard, Audit observed that:

- The GoK had notified the transfer of land to KHB on 19 September 2018 and the Company completed the sale formalities and received cash on account of sale of land on 5 January 2019. Therefore, the Company should have recognised the same as Capital Gain in the Financial Year 2018-19, for which the Company would be required to pay Capital Gain Tax of ₹11.04 crore at the rate of 20 per cent of Capital Gain on sale consideration of ₹55.23 crore⁸ together with penalties/ interest, if any. The capital gains tax of ₹11.04 crore would also have further reduced to ₹7.60 crore⁹ after taking into account the net loss of ₹17.21 crore declared by the Company during the year 2018-19. However, the Company wrongly recognised capital gains of ₹471.35 crore during the FY 2016-17 itself without completion of the sale transaction of land. As a result, in view of the irregular adjustments in the books for FY 2016-17 itself, the Company was forced to pay income tax amounting to ₹55.38 crore and to incur an additional liability of tax amounting to ₹41.18 crore (as per Assessment Order).
- Had the Company not recognised the capital gains of ₹471.35 crore during the FY 2016-17, it was supposed to pay a corporate tax of ₹2.13 crore only on the net profit of ₹7.13 crore (subject to the deductions, if any, allowable under Income Tax Act) against the total tax liability of ₹96.56 crore assessed by the Income Tax authorities.
- Incorrect accounting by the Company in the FY 2016-17 was pointed out by Audit in June 2018. However, the Company did not rectify its accounts.

Management replied (January 2020) that the allowed time to revise the Income Tax Return had already expired and whatever rectification possible, had been attempted including an appeal with the Principal Commissioner.

⁸ Sale of 82 acres 37 cents as disclosed to CCEA plus 1 acre 31 cents at Survey No. 427 inadvertently missed. Thus, total land sold to KHB is 83 acres 68 cents and amount realised is ₹55.23 crore. After deduction of TDS of 1 per cent on ₹55.23 crore, net amount credited to the Company on 5 January 2019 was ₹54.68 crore

⁹ Total capital gain of ₹55.23 crore – net loss of ₹17.21 crore = ₹38.02 crore, on which net capital gain payable works out to ₹7.60 crore being 20 per cent of ₹38.02 crore

Audit, however, observed that the Company had lost the opportunity to file appeal before the Commissioner (Appeals) of IT Department as the stipulated time of 30 days under Section 249(2) of the Income Tax, 1961 had already lapsed by 24 October 2018. Further, even though the Company was already referred to BIFR, it had not filed any application with the BIFR/ NCLT or CBDT for grant of reliefs and concessions available under Insolvency and Bankruptcy Code, 2016. Hence, the chances of recovery of tax amount of ₹55.38 crore already paid are extremely remote.

Thus, due to incorrect treatment of GoI loan and interest thereon in the books as Capital Gain without transfer of immovable property, the Company had to pay avoidable Income Tax of ₹55.38 crore besides incurring further tax liability of ₹41.18 crore.

The para was issued to the Ministry in January 2020; their response was awaited (June 2020).