CHAPTER - IV

MISCELLANEOUS TOPICS OF INTEREST RELATING TO GOVERNMENT COMPANIES AND STATUTORY CORPORATIONS

4A GOVERNMENT COMPANIES

4A.1 MAHARASHTRA STATE POLICE HOUSING AND WELFARE CORPORATION LIMITED

4A.1.1 Avoidable expenditure on processing and administrative charges for unavailed loan

Payment of processing charges for obtaining loan without ensuring Government guarantee led to avoidable expenditure of Rs.0.20 crore.

The Company approached (October 1993) SBI Home Finance Limited (SBIHF) for a loan of Rs.10 crore for construction of staff quarters for police personnel. The SBIHF agreed (March 1994) in principle to grant a loan of Rs.10 crore subject to furnishing guarantee from Government of Maharashtra (GOM) before disbursement of loan and on payment of non-refundable processing and administrative fee of Rs.20 lakh before 30 March 1994. The Company accepted the offer and paid (22 March 1994) a sum of Rs.20 lakh towards processing and administrative fee even before approaching GOM for guarantee. Subsequently, the Company requested (30 March 1994) GOM for issue of guarantee and pursued through reminders in March 1995, February 1997 and April 1997, which was not accepted by GOM.

The Company paid processing and administrative fee without ensuring required guarantee from State Government

SBIHF sanctioned (November 1994) a loan of Rs.10 crore carrying interest at 15.50 *per cent* to be disbursed between December 1994 and December 1996 subject to furnishing of guarantee from GOM. The loan disbursement was rescheduled number of times (latest in December 1997) with changes in rate of interest *etc.* However, the Company could not avail the loan due to non-receipt of Government guarantee.

The Company filed (1999) a petition before the National Consumer Disputes Redressal Commission for refund of Rs.20 lakh. The Commission advised the Company to explore possibilities for reconciling the matter with SBIHF (March 2001). Further developments were awaited (August 2001).

On being pointed out by Audit, the Company stated (August 2001) that the loan could not be obtained due to National Housing Boards (NHB) order (December 1995) prohibiting housing finance companies from lending funds to projects supported through budgetary allocations and that SBIHF is bound to refund Rs.20 lakh. The reply is not tenable, as SBIHF withheld the disbursement of loan for want of guarantee from GOM. Moreover, orders of NHB were not applicable at the time of contract in March 1994.

The matter was reported to the Government (April 2001); their reply had not been received (November 2001).

4A.2 MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED

4A.2.1 Extra expenditure due to incorrect reimbursement of Works Contract Tax

Reimbursement of Works Contract Tax to the contractors in violation of contractual terms resulted in avoidable expenditure of Rs.3.07 crore.

Though the contract value was inclusive of all taxes, the Company has reimbursed Works Contract Tax to three contractors

The Company invited (November 1997) tenders for the work of construction of Mumbai-Pune Expressway in four sections and awarded (January/February 1998) the works to M/s. IJM-SCL Joint Venture (IJM), M/s. Hindustan Construction Company Limited (HCC), M/s. Larsen and Toubro Limited (L&T) and M/s. V. M. Jog Engineering Limited (VMJ) at a total contract value of Rs.627.85 crore. The terms and conditions of contracts, *inter alia*, stipulated that the rates quoted by the contractors would be deemed to be inclusive of the sales tax and other taxes and any further increase in central/state sales tax and other taxes as might be levied and paid by the contractor would be reimbursed by the Company on proof of payment. The Maharashtra Sales Tax on Works Contract (Re-enacted) Act, 1989 was amended in February 1999 (effective from 1 May 1998). As per amended Section 6A (1A) of the Act, contractors who entered into contracts during April 1992 to April 1998 and whose works were ``ongoing beyond 1 May 1998, had an option to pay Works Contract Tax (WCT) by way of composition at the rate of 1 *per cent* of total contract value or at the existing rate of 5 *per cent* subject to certain permissible deductions.

The Company reimbursed Rs.3.07 crore (HCC: Rs.1.51 crore, IJM: Rs.1.40 crore and VMJ: Rs.15.95 lakh) during January 2000 to November 2000 as additional tax liability in view of amendment in WCT. However, the fourth contractor, L&T, did not claim reimbursement of additional tax. The reimbursement of additional WCT was not correct as the amendment of 1999 was not related to levy of additional tax and allowed option either to pay WCT as per amended rules or to pay such tax as per the rules applicable before amendment. Thus, reimbursement of WCT was not within the scope of the contract as the contractors could have opted for tax,

which was in existence before amendment. This resulted in excess expenditure of Rs.3.07 crore.

In reply, the Company stated (July 2001) that the levy of WCT at 1 *per cent* for ongoing contracts was compulsory and option for continuance of payment of tax at old rate was not available. The reply is not tenable, as the amendment of 1999 did not stipulate additional WCT and allowed option to pay WCT at existing or revised rates. Thus, the incorrect reimbursement of additional WCT resulted in avoidable extra expenditure of Rs.3.07 crore.

The matter was reported to the Government (March 2001); their reply had not been received (November 2001).

4A.2.2 Non-recovery of rebate from contractors

Non-recovery of full rebate from the contractors for items substituted/replaced resulted in extra expenditure of Rs.0.62 crore.

The Company awarded (July 1998/October 1998) the work of construction of Nerul Junction fly over to M/s. Crescent Construction Company Limited (CCCL) at a lump sum value of Rs.16 crore and Goregaon-Mulund Link Road junction fly over to M/s U.P.State Bridge Corporation Limited (UPSBC) at a lump sum value of Rs.15.50 crore.

The tender specification provided that the contractors were to adopt pile foundation. Tender condition stipulated that rebate of 100 *per cent* of cost was to be allowed in case any item/component was substituted or replaced fully or partly by any other item/component. In case of total deletion of any item/component without replacement/substitution, a rebate of 70 *per cent* of its cost was to be allowed.

The Company did not recover the full rebate from the contractors provided in the contracts for replaced/ substituted items

After award of the work, the type of foundation to be adopted in both the works was changed from 'pile' to 'open' foundation. In terms of contractual conditions, the Company was entitled for 100 *per cent* rebate since the 'pile' foundation was substituted by ‘open’ foundation in both the works. The quantum of payment due to UPSBC for 'open' foundation worked out to Rs.1.76 crore whereas the quantum of rebate to be availed by the Company worked out to Rs.2.12 crore. The Company however, availed rebate of Rs.1.76 crore resulting in short recovery of Rs.36.00 lakh from UPSBC. Similarly, the quantum of amount payable to CCCL for execution of 'open' foundation was Rs.44.42 lakh and rebate to be availed by the Company was Rs.87.14 lakh. The Company, however, availed rebate of Rs.61 lakh being 70 *per cent* of the cost of 'pile' foundation resulting in short recovery of Rs.26.14 lakh. Thus, failure to avail 100 *per cent* rebate for substitution of 'open' foundation in place of 'pile' foundation as per contractual terms had resulted in extra expenditure of Rs.62.14 lakh.

In reply, the Company stated (July 2001) that there was a High Tension electric line at the site of work and its shifting was impossible or time

consuming and operation of pile rig was not possible. It was further stated that UPSBC agreed (October 1998) for change in foundation but limited rebate to 70 *per cent*. The reply was not acceptable because the condition provided for 100 *per cent* rebate in case of replacement/substitution of any item and the change of foundation falls in the category of replacement/substitution of item. It also shows failure on the part of the Company to properly assess the site conditions before stipulating the type of foundation in the tender.

The matter was reported to the Government (April 2001); their reply had not been received (November 2001).

4A.2.3 Avoidable payment of compensation to the contractor

Delay in withdrawal of termination notice issued to the contractor had resulted in avoidable payment of Rs.0.31 crore towards compensation.

The Company awarded (3/5 October 1998) the work of construction of flyover between Santacruz Chembur Link Road and Vakola junctions to M/s. Nagarjuna Construction Company Limited at a lump sum value of Rs.24.88 crore. The work was scheduled to be completed on 4 February 2000 *i.e.* 16 months from the date of award. In order to carry out the work the contractor sought permission of traffic authorities (29 October 1998) for diversion of traffic.

As the requisite permission was not received till 11 November 1998, the Company served notice of termination of contract to the contractor and sought their comments. The contractor stated (13 November 1998) that he was constantly approaching traffic authorities for the permission for road barricading and traffic diversion and requested for withdrawal of termination notice as it would result in substantial loss besides loss of bonus payable on early completion. Permission from traffic authorities was received on 20 November 1998 but notice for termination was withdrawn by the Company only on 18 December 1998, after delay of 28 days from receipt of permission.

On completion of contract on 25 December 1999 (scheduled completion – 4 February 2000), the contractor claimed (April 2000) compensation of Rs.50.47 lakh towards delay of 77 days (3 October 1998 to 18 December 1998) in getting site. The Company accepted (November 2000) the claim for Rs.30.96 lakh after disallowing the claim of Rs.19.51 lakh towards claim for contractor's office overheads and idling of equipment *etc*.

Compensation was paid for 77 days as against actual delay of 28 days

The acceptance of claim for the total delay of 77 days was not correct as the contractor had completed the preliminary works (value Rs.67.18 lakh) such as soil investigation, ordering of equipments, boring holes and bringing material to site *etc.* in October/November 1998. The actual delay was only for 28 days from the date of permission (20 November 1998) till withdrawal of notice of termination on 18 December 1998. Thus, payment of compensation for 77 days instead of 28 days resulted in over payment of Rs.19.70 lakh. Further,

even the payment for 28 days (Rs.11.26 lakh) could have been avoided if the termination notice had been withdrawn immediately.

In reply, the Company stated (September 2001) that the traffic permission granted (20 November 1998) was with the condition that the width of diversion road should be 12.5 meters, which was not possible on north bound traffic and took further time in appraising the traffic authorities. Reply is not acceptable because the tender condition also provided that the contractor was bound to prepare the traffic diversion plan as per the requirement of traffic authorities and shall carry out modifications in the plan at various stages of work as required.

The matter was reported to the Government (March 2001); their reply had not been received (November 2001).

4A.2.4 Avoidable payment due to incorrect interpretation of contract clause

The Company made avoidable payment of Rs.0.24 crore due to incorrect interpretation of the contract clause.

The Company awarded (September 1998) the work of "Improvements to existing NH-4 and construction of Khandala-Lonavala by pass" to M/s. Larsen & Toubro Limited (L&T) at a total cost of Rs.104.35 crore which included sub-work of construction of 'Kune Viaduct' at a cost of Rs.9.59 crore. The cost of viaduct was based on total area of Viaduct (7986 sq. metres.). As per the tender condition for viaduct, L&T was to quote rate for variation in average height beyond 2 meter, and variation in deck area beyond $\pm$5 *per cent* of planned area. Accordingly, L&T was entitled to receive extra payment at the rate of Rs.12000 per sq. metre for the increase in deck area beyond 5 *per cent* of planned area.

The claim was preferred for total increase without excluding initial 5 *per cent* for which payment was not due

During execution of the work, the total area of deck increased from 7986 sq. metres to 9922 sq. metres due to increase in length of viaduct from 330 to 410 meter. However, L&T preferred (April 1999) claim for the payment of entire excess area of 1936 sq. metres (9922 sq. mtrs. - 7986 sq. mtrs) without excluding the permissible variation of 5 *per cent* (399.3 sq. metres.). The consultant appointed by the Company to check and pass bills of L&T rejected (June 1999) the claim keeping in view the provisions of contract. L&T referred (September 1999) the dispute under clause 67.2 of contract for advice of the Steering Committee.

The Steering Committee decided (October 1999) that the claim of contractor was in order on the ground that (a) the clause for extra rate in respect of variation in average height specifically stipulated that rate would be applicable for entire deck area and (b) the bill of quantities did not clearly mention that the quoted rates were applicable only to deck area exceeding variation beyond 5 *per cent*. Based on the recommendations of Steering Committee, the

Company paid (June 2000) 50 *per cent* of the disputed claim, which was accepted by L&T.

The above decision was incorrect as there was no increase in average height of deck beyond permissible increase (2 meter), which would have affected the rate. There was increase only in the length of deck due to which the area had increased and contractor was only eligible for payment for area excess of 5 *per cent*.

Thus, the decision to accept even 50 *per cent* of extra claim based on incorrect interpretation of tender condition resulted in avoidable payment of Rs.23.96 lakh.

In reply, the Company stated (September 2001) that the decision of the Steering Committee was accepted to avoid further arbitration. The Government endorsed (November 2001) the views expressed by the Company.

4A.2.5 Infructuous expenditure on proposed commercial complex at Nagpur

Expenditure of Rs.0.09 crore on printing and advertisement for sale of shops in commercial complex without acquisition of land became infructuous.

The Board of Directors (BOD) of the Company approved (August 1999) the proposal for a commercial complex (estimated cost: Rs.219.28 crore) on the land of Empress Mills, Nagpur (EMN), a unit of Maharashtra State Textile Corporation Limited (MSTC) and adjacent land belonging to Bachharaj Ginning Factory. However, the State Government decided (December 1998) to sell surplus land of EMN to Maharashtra Industrial Development Corporation for development of garment zone. The Company appointed (October 1999) M/s. Architect Hafeez Contractor as consultant for planning, design and project supervision of this project at a total fee at 4.5 *per cent* of the approved estimated cost.

The Company incurred Rs.0.09 crore on advertisements/ forms for sale of shops on MSTC's land, without approval of the Government/ MSTC

It was observed in audit that the Company did not approach the State Government for acquisition of land on which the proposed commercial complex was to be built before inviting applications from the public for sale of commercial shops. Informative booklet with application for sale of shops in the complex was prepared by the consultant and advertisement to this effect was also published (October 1999) in local newspapers. The Company incurred Rs.9.86 lakh on printing of applications and advertisements and realised Rs.0.80 lakh through sale of applications. Besides, the Company is also liable to pay Rs.43.86 lakh to consultant for design and drawing. MSTC objected (November 1999) to invitation of applications for sale of shops on its land on the ground that neither it had entered into agreement for sale of land nor the Government had received any proposal from the Company to this effect. Thereafter, the proposal for acquisition of land was submitted (November 1999) to the Government for which approval was awaited

(August 2001). Thus, the offer of shops for sale on land not owned by the Company was irregular and the net expenditure of Rs.9.06 lakh already incurred rendered infructuous.

The Company stated (June 2001) that it was felt essential to ascertain the demand for the various shops and commercial space from prospective buyers before acquisition of land. It also stated that the project had been kept in abeyance, as the project was found unviable owing to the price of the land and lack of positive response from the Government to sell the land. The reply is not tenable as the advertisement was not merely on seeking of expression of interest from the public, but a definite offer for sale of commercial space. Further, the Company had not ascertained the availability of land for sale from the Government before incurring expenses.

The Government endorsed (November 2001) the views expressed by the Company.

4A.3 CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED

4A.3.1 Injudicious investment in a second banking complex

Injudicious decision to construct a second banking complex without firm commitment from banks resulted in idle investment of Rs.17.49 crore for four years with consequential loss of interest of Rs.12.37 crore till August 2001.

The Company having constructed and sold (1993) a banking complex at Vashi on the basis of firm commitment from banks decided (December 1993) to construct another banking complex having 10 banking premises at an estimated cost of Rs.4.68 crore (excluding cost of land). The complex was to be constructed on ground *plus* two storeys. The Company decided (June 1994) to construct 14 office premises also at an additional cost of Rs.1.91 crore by increasing the structure to ground *plus* seven storeys.

The complex was completed (December 1996) with increased floors and built up area at a total cost of Rs.17.94 crore including the cost of land. Company's efforts (August 1996) to sell the premises did not prove successful as only three offers of Rs.625 to Rs.1202 per sq.ft. were received against declared price of Rs.2500. Even after reduction of prices in May 1997 and December 1998, only one office premises was sold in December 1998 for Rs.44.93 lakh at the rate of Rs.1800 per sq.ft. The Company's decision (August 2000) to let out the banking premises at Rs.25 per sq.ft also did not fructify and 10 banking premises along with 13 office premises in the second banking complex remained unsold so far (August 2001).

Construction of banking complex without ascertaining the demand resulted in idle investment of Rs.17.49 crore

Thus, decision to go ahead with the second complex based only on enquiries without firm commitment, as was done in the case of the first complex, was not judicious and resulted in idle investment of Rs.17.49 crore for four years with consequential loss of interest of Rs.12.37 crore till August 2001.

The Company/Government having accepted the fact of unsold premises stated (June 2001) that it was due to recession in real estate business, which was not anticipated, and RBI hardened the policies in granting licenses to banks. The reply is not tenable as the Company's decision to construct the complex without firm commitment from banks resulted in idle investment.

4A.3.2 Absence of specific clause in MOU, led to non recovery of fee paid

In the absence of specific clause in MOU to enforce claim for reimbursement, the Company could not claim an amount of Rs.5.54 crore.

The Company entered into (July 1994) Memorandum of Understanding (MOU) with Goshree Islands Development Authority (GIDA), a body set up by Government of Kerala for development of islands in the backwaters of Kochi, to act as consultants for this project. The scope of work of the Company, as consultants, comprised of two stages *viz.*, stage I covering preparation of approach papers, techno-economic feasibility report, programme for development of land, roads and bridges and stage II covering preparation of detailed project report, bid documents, evaluation of bids, supervision of construction work and co-ordination with various agencies.

In terms of MOU, the Company was entitled to a fee of 14.5 *per cent* of the actual cost of the project. The fee was recoverable from the contractor awarded with the development work. For the purpose of recovery, a suitable clause was to be included in the contract agreement between the contractor and GIDA. The expenditure incurred by the Company in carrying out the work under stage I was to be reimbursed with 20 *per cent* overheads thereon by GIDA. But such reimbursement of expenditure was recoverable by GIDA from the Company out of consultancy fee (14.5 *per cent*) to be paid by the contractor. There was no provision for such reimbursement of expenses incurred by the Company for the work covered under stage II. The terms of MOU were, thus, not in favour of the Company, as GIDA did not assume any responsibility for payment of consultancy fee for the project. The MOU did not also specify that GIDA would assume the liability for payment of consultancy fee if the contract for execution of the project was not finalised for any reason.

The Company commenced (December 1994) the work and out of total expenditure of Rs.75.22 lakh (including 20 *per cent* overheads) incurred during stage I, Rs.70 lakh was reimbursed by GIDA during June to September 1995. On the basis of clearance given by GIDA in October 1994 to go ahead with stage II, Company incurred expenditure of Rs.5.49 crore till

March 1996 on stage II work but reimbursement of the same along with earlier balance of Rs.5.22 lakh of stage I was refused (April 1998). GIDA stated that there was no provision in the MOU for such reimbursement of expenditure for stage II. The contract for award of the work for development of Islands in the backwaters of Kochi could also not be finalised as the whole project was cancelled as it was in violation of Environmental Protection Act, 1986 and the Coastal Regulation Zone Notification issued thereunder. The Company neither went in for arbitration nor took other legal action to recover the amount from GIDA (August 2001).

Failure to ensure financial interest while signing MOU, resulted in foregoing expenditure of Rs.5.54 crore

Thus, failure of the Company to safeguard its financial interest while signing MOU and by GIDA responsible for reimbursement of all expenditure in case of non-finalisation of contract for the project resulted in foregoing expenditure of Rs.5.54 crore (August 2001).

In reply, the Company admitted (July 2001) that there was no specific clause in the MOU that stipulated that GIDA would assume liability in case the contract did not materialise. It was further stated that through continuous persuasion, Company would be successful in getting the due amount from GIDA. The reply is not tenable, as GIDA has categorically disowned any liability in this matter.

The matter was reported to the Government (June 2001); their reply had not been received (November 2001).

4A.3.3 Loss due to delay in removal of encroachment

Delay in removing encroachment resulted in loss of Rs.3.69 crore.

The Company allotted (July 1994) a plot (2847.39 sq. mtrs.) in Sector 15 at Belapur to M/s Arenja Industries Limited (AIL) at a lease premium of Rs.13.16 crore. The allotment letter, *inter alia*, stipulated that in case the allottee surrenders the plot after payment of lease premium, 25 *per cent* of lease premium (Rs.3.29 crore) and earnest money deposit (Rs.40 lakh) would be forfeited. Lease premium of Rs.12.76 crore after adjusting earnest money deposit of Rs.40 lakh was paid in August 1994/July 1995.

AIL reported (April 1995) to the Company that there were some encroachments on the plot allotted and requested for possession of land free of encroachment. The extent of encroachment was only 10 sq. mtrs. which was less than 1 *per cent* of 2847.39 sq. mtrs. allotted. AIL reminded (May and September 1995) the Marketing Manager of the Company to remove the encroachment. However, the Marketing Manager requested (December 1995) Controller of Unauthorised Constructions (CUC), a department of the Company to take action for removal of encroachment after delay of eight months from original request in April 1995. CUC removed the encroachment in three months and accordingly intimated the Marketing Manager on 15 March 1996.

Meanwhile AIL claimed (January 1996) refund of entire lease premium, as the Company had not removed the encroachment. The request was accepted on 21 March 1996 and the Company refunded (25 March 1996) entire lease premium of Rs.13.16 crore.

The surrender of plot in normal course would have resulted in forfeiture of Rs.3.69 crore. However, due to delay by the Marketing Manager in intimating CUC about encroachment, the Company had to refund the entire lease premium and was put to loss of Rs.3.69 crore.

Delay in removing encroachments resulted in loss of revenue of Rs.3.69 crore

An enquiry conducted (March 1997) by the Company concluded that the delay of eight months by the Marketing Manager in intimating CUC about the encroachment was intended to benefit AIL as there was downward trend in real estate market. This resulted in non-forfeiture of Rs.3.69 crore. Despite loss of Rs.3.69 crore, the Marketing Manager was merely given a warning.

The Company stated (July 2001) that the Marketing Manager was given only a warning; as he was due to retire.

The matter was reported to the Government (April 2001); their reply had not been received (November 2001).

4A.3.4 Avoidable payment of consultancy charges

Voluntary withdrawal of a specific condition was an injudicious decision and was not in conformity with financial prudence and resulted in avoidable payment of Rs.0.99 crore.

The Company appointed (January 1991) M/s. Architect Hafeez Contractor (AHC) as project management consultant for Non-Resident Indians (NRI) Housing Complex at Nerul at a fee of 4.25 *per cent* of the estimated cost or tendered cost of the project whichever was less. Condition 3.22 of the contract stipulated that the contract was intended to be job oriented and not time oriented and the consultant was not entitled to claim any additional fee in the event of delay in completion of project. The total value of works awarded to different agencies for construction of complex was Rs.127.48 crore and all the works were scheduled to be completed by June 1995.

The NRI Complex was completed in December 1996, 18 months after the scheduled completion date of June 1995. The extension in time limit for completion of works was granted from time to time on AHC's recommendations. AHC requested (March 1996) for payment of additional fee of Rs.10.14 lakh per month for the extended period. The Company rejected (June 1996) the request on the ground that AHC was not entitled to any additional fee in terms of conditions as opined (June 1996) by Company Secretary and Law Officer (CS&LO). AHC referred the matter to CS & LO, who was the designated Arbitrator. The Arbitrator directed (July 1996) the Company to submit in writing whether it would rely on condition 3.22 of the agreement or would waive its operation.

Voluntary withdrawal of the condition of the contract resulted in avoidable payment of Rs.0.99 crore

The Managing Director, though not competent, agreed (August 1996) to waive the condition 3.22 as was done earlier in the case of Mass Housing Scheme. The waiver was not brought to the Board for its approval. The Company withdrew condition 3.22 and agreed to pay additional fee. Accordingly, the arbitrator awarded (September 1996) payment of additional fee of Rs.99 lakh out of which an amount of Rs.38.57 lakh was paid up to December 1996 to the contractor and remaining amount of Rs.60.43 lakh was yet to be paid (August 2001).

Thus, injudicious decision to waive the condition merely because of waiver in an earlier case resulted in avoidable payment of Rs.38.57 lakh so far.

The Board sought (May 2000) opinion of the Advocate General about the possibility of challenging arbitration award. The Advocate General opined (August 2000) that the time limit for challenging the award of arbitrator had expired. The Advocate General also commented that the waiver of condition in the instant case can not be justified on the ground that it was done in other cases earlier and the action of arbitrator directing the Company to report on whether they intended to rely on condition 3.22 was also improper.

The Company while admitting the facts stated (July 2001) that the decision was taken to complete project within stipulated time under the supervision of the project management consultant.

The matter was reported to the Government (April 2001); their reply had not been received so far (November 2001).

4A.4 HAFFKINE BIO-PHARMACEUTICALS CORPORATION LIMITED

4A.4.1 Avoidable expenditure

Lacunae in terms of contract resulted in avoidable expenditure of Rs.1.68 crore.

The Company invited (January 1999) quotations for supply of 100-150 million doses of oral polio myelitis vaccine (OPV) on deferred delivery schedule during April 1999 to March 2000 and awarded (May 1999) the contract for supply of 20 million OPV doses to P. T. Bio-Farma (PTBF), Indonesia at the rate of US $ 0.0315 per dose. The contract provided that additional quantities could be procured at the original price on mutual consent. The Company placed (July to October 1999) three more orders for 50 million doses at the same price and received the entire supply of 70 million doses as per schedule.

The Company entered (February 2000) into another contract with PTBF for supply of 150 million OPV doses to be supplied during April 2000 to March 2001 at a higher rate of US $ 0.044 per dose. The Company

placed (15 February 2000) order for 30 million doses at the higher rate applicable for the new contract as PTBF had expressed (November 1999) inability to supply additional quantities against contract for 1999-2000. The quantity of 30 million doses was received in March 2000.

Lacunae in terms of contract for 1999-2000 resulted in extra expenditure of Rs.1.68 crore

As the original quotation was for supply of 100-150 million doses, the Company should have incorporated a clause in the original contract for a total supply up to 100 million doses at the contract price rather than for supply of additional quantity above 20 million doses on mutual consent. As a result the additional 30 million doses had to be purchased at higher rate of US$ 0.044 per dose. This resulted in extra expenditure of Rs.1.68 crore being the difference between the rate of contract for 1999-2000 and 2000-01 for 30 million doses.

The Company/Government stated (July 2001) that the supplier had informed their inability to supply the additional quantity for the year 1999-2000 and the quantity of 30 million doses delivered in March 2000 was against the contract for 2000-01. The reply is not tenable, as the Company could not place order at old rate due to lacunae in the contract.

4B STATUTORY CORPORATIONS

4B.1 MAHARASHTRA STATE ELETRICITY BOARD

4B.1.1 Equity participation in Dabhol Power Company

Investment in equity of Dabhol Power Company in contravention of the recommendations of Negotiating Group resulted in payment of premium of Rs.257.65 crore.

4B.1.1.1 Introduction

The Board entered (December 1993) into a Power Purchase Agreement (PPA) with Dabhol Power Company (DPC) for purchase of electricity produced by DPC. The power plant was to be set up in two phases. The Government of Maharashtra suspended (August 1995) phase I and cancelled phase II on the grounds of absence of competitive bidding, high capital cost, high tariff *etc.* The suspension/cancellation, re-negotiation and revival of the project has already been commented in the Report of the Comptroller and Auditor General of India (Commercial) - Government of Maharashtra - for the year ended 31 March 1997. At the request of DPC, the State Government set up (November 1995) a Negotiating Group to hold discussions with DPC. Pursuant to recommendations of the Negotiating Group for revival of the project subject to certain amendments in the PPA, the Government issued (January 1996) orders for revival of the project.

4B.1.1.2 Recommendations of Negotiating Group

The Negotiating Group recommended equity investment by the Board in DPC subject to the following conditions:

(a) estimated additional cost of $ 175 million due to suspension of phase I would be borne by DPC;

(b) DPC would arrange for the sponsors* to offer equity ownership in DPC to the Board to the extent of 30 *per cent* of its shares at par on *pari passu* basis; and

(c) the sponsors would forgo an estimated premium of $ 30 million on the shares to be sold to the Board.

* Sponsors denotes Major share holders *i.e.* Enron Mauritius Company (EMC), General Electric Company (GE) and Batchtel Enterprises Inc. (BECHTEL)

These conditions were also accepted by DPC (November 1995). The recommendation to invest in DPC and its acceptance by Government was in order to reduce foreign exchange out flow by way of dividend. The authorised capital of DPC was Rs.3862.65 crore comprising 'A' and 'B' class shares of Rs.10 each. All the 'B' class shares and major part of 'A' class shares of DPC were held by Enron Mauritius Company (EMC). The Articles of Association of DPC enabled the 'B' class shareholder to force all other shareholders to vote in line with its vote and in the event of dissent by any shareholder, to buy out the shares of such dissenting shareholder.

4B.1.1.3 Offer for equity participation

EMC submitted an offer in February 1996 offering 37.5 *per cent* of its shares (equivalent to 30 *per cent* of the total shares of DPC). The following terms of offer were in contravention of the recommendations of the negotiating group:

- ⇨ Only 'A' class shares would be offered;
- ⇨ Value of shares to be paid by the Board would equal the payments made by EMC in US dollars for acquiring the shares;
- ⇨ The Board or its nominees should sign various agreements *viz.* shareholder's agreement, project completion agreement *etc.*; and
- ⇨ The Board should reimburse 375 *per cent* of expenses that EMC and its affiliates have incurred or in the future incur in connection with the project that are not reimbursed by DPC.

Signing of PPA by the Board in July 1996 before finalisation of terms of equity offer led to loss of bargaining lever for the Board

Despite the fact that the offer of EMC was not in line with the terms recommended by the Negotiating Group and agreed upon by DPC, the amended PPA was signed in July 1996 without finalising the terms of equity purchase. Thus, the Board lost a powerful bargaining lever in negotiating the terms of equity purchase. After signing the amended PPA, the Board informed (September 1996) DPC that the terms of offer by EMC were not in line with the recommendations of the Negotiating Group and requested for a revised offer. DPC clarified in September 1996 that the Board could accept the EMC's offer without any binding to purchase the equity, if it so desires after negotiations. DPC also insisted that the EMC's offer letter of February 1996 be signed by the Board in token of acceptance. After approval from Government in November 1996, the Board signed (January 1997) the offer letter of February 1996 to keep alive its claim for equity participation. However, neither the Board nor Government had taken into account that signing of offer of February 1996 would tantamount to acceptance of terms contained therein.

4B.1.1.4 Acceptance of offer for equity participation

Discussions were held between May and November 1997 with the representatives of DPC by the Board, Secretary (Energy) and the consultants to negotiate the terms of equity purchase. DPC refused to change the terms of offer made by EMC in February 1996, irrespective of the terms of Negotiating Group, as the Board had agreed to the terms by giving consent. However, the Board and the Government decided (January/May 1998) to accept the offer of

EMC on its terms in view of anticipated net return of Rs.1576.60 crore over a period of 20 years against estimated investment of Rs.730 crore.

4B.1.1.5 Investment in equity shares of DPC

The investment in DPC by acquisition of shares from EMC was done through Maharashtra Power Development Corporation Limited (MPDCL), a limited Company set up (December 1997) under the Companies Act, 1956 as a deemed Government Company with all the shares held by the Board. MPDCL acquired 40.81 crore shares of Rs.10 each at a total cost of Rs.665.73 crore ($ 157.201 million) against the face value of only Rs.408.08 crore. Thus, EMC charged premium of Rs.257.65 crore which was against the recommendations of the Negotiating Group to sell shares at par.

Thus, investment in DPC on DPC's terms was not only in contravention of the recommendations of Negotiating Group as accepted by DPC in November 1995, but also resulted in payment of premium of Rs.257.65 crore.

Above matters were reported to the Board in June 2001. The Board replied (September 2001) that obligation to bear all project risk costs by the Board arose out of realities of commercial world where a later arrival in the field could not expect to enjoy only the fruit of risk weathered by the original promoters without paying premium. The Board added that approval of Government for acquiring equity of DPC on the basis of EMC's offer letter of February 1996 was received in November 1996 after signing the PPA in July 1996. The Board followed the directives of Government from time to time. The reply is not acceptable as Government instructed the Board in January 1996 itself to acquire 30 *per cent* equity of DPC duly furnishing copies of recommendations of Negotiating Group of November 1995 and acceptance letter of DPC of November 1995. Further, 30 *per cent* equity was to be acquired without payment of premium as accepted by DPC in November 1995 the Board, therefore, should have finalised the terms of purchase of equity with DPC before signing the PPA in July 1996.

The above matters were reported to the Government in June 2001; their reply had not been received (November 2001).

4B.1.2 Avoidable extra payment of interest of Rs.0.51 crore to Dabhol Power Company

Board incurred extra expenditure of Rs.0.51 crore due to adoption of rate of interest higher than that prescribed in PPA.

Power Purchase Agreement (PPA) signed between the Board and Dabhol Power Company (DPC) in July 1996 assumed that custom duty for imported equipments would be exempted. The PPA further stipulated that in the event

of non-exemption of custom duty, custom duty would be assumed at the rate of 20 *per cent*, which would be reimbursed to DPC. In case the custom duty was paid at a different rate, the differential amount would be reimbursed to DPC over a period of PPA.

The exemption of custom duty was not available to DPC and the rate of custom duty paid by DPC up to May 1999 was 22 *per cent* against 20 *per cent* assumed in the PPA. DPC claimed (June 1999) lump sum payment of Rs.41.53 crore towards differential custom duty paid till May 1999. Against claim of Rs.41.53 crore, the Board accepted (June 1999) claim of Rs.21.56 crore. The claim for balance amount of Rs.19.97 crore was still under dispute (August 2001). The Board agreed and paid Rs.23.06 crore in 12 equated monthly instalment of Rs.192.15 lakh from June 1999, which included Rs.21.56 crore towards differential custom duty claims and Rs.150.30 lakh towards interest at 15 *per cent* per annum, compounded on monthly rest.

Audit analysis revealed that as per clause 11.8 of the PPA, interest was payable only at 10 *per cent* per annum compounded on monthly rest. Payment of interest at higher rate resulted in extra expenditure of Rs.50.56 lakh.

In reply the Board stated (September 2001) that the interest burden at 10 *per cent* compounded at a monthly rest works out to Rs.206.03 lakh and hence, there was a saving of Rs.55.73 lakh in interest payments.

The Board's argument of saving Rs.55.73 lakh is not correct, as the Board made the calculation without deducting monthly repayment of the instalment towards claim.

The matter was reported to the Government (June 2001); their reply had not been received (November 2001).

4B.1.3 Avoidable loss of generation

Failure to provide a standby motor at TPS, Paras resulted in loss of generation valued at Rs.11.38 crore.

The TPS did not have any standby motor to ensure continued operation of cooling water pump in case of failure of motor

Thermal Power Station (TPS) of the Board at Paras was commissioned (1967) with installed capacity of 62.5 Mega Watts (MW). The auxiliary equipment commissioned in 1967, *inter alia*, included two motors for operating cooling water pump to maintain the vaccum level within the prescribed limit. The TPS did not have any standby motor to ensure continued operation of cooling water pump in case of failure of motor.

One of the two motors failed (3 April 1998) and was put back in operation (3 October 1998) after repairs at a cost of Rs.4.32 lakh. As only one pump was in operation during the period April 1998 to September 1998, the load had to be restricted to 40 MW with consequent loss of generation of 52.726 million units valuing Rs.11.38 crore. Thus, failure to keep standby motor at TPS,

Paras despite knowing the impact of non-availability of motor on generation and considering the age of motors resulted in avoidable loss of generation valuing Rs.11.38 crore.

The Government stated (June 2001) that the motor was designed for a long life and hence investment in a standby motor was not justified. It was further stated that even with both pumps in operation, the load would have been restricted to 40 MW due to less grid demand.

The reply is not tenable, as the Board had carried out load shedding of 105.82 MU during April 1998 to September 1998 on 102 days. Further, this motor was of a special winding type and not readily available in home market and the Board should have taken a cautious decision to have a spare motor. Moreover, the Board had purchased (April 2000) a spare motor at a cost of Rs.36.58 lakh on the ground that non-availability of spare motor led to loss of generation.

4B.1.4 Rejection of lowest acceptable offers

Rejection of lowest acceptable tenders in procurement of 11 KV Outdoor Switchgears resulted in avoidable expenditure of Rs.0.54 crore.

The Board invited (June 1998) tenders for procurement of 150 sets of 11 KV Outdoor Switchgears to be used at 33 KV sub-stations. Out of 16 offers received, offers (Rs15.33 lakh per set) of M/s. Alstom Limited (ALS) and M/s. Siemens Limited (SL) were only found to be in conformity with the technical and commercial specifications given in the tender.

With a view to achieve optimum economy in purchases the Board of Members (BOM) had decided (February 1999) to permit post tender negotiations for 33 KV items for obtaining clarification/confirmation/withdrawal of deviation from tender specifications without any change in price and ranking of tenderers.

Suo-moto clarifications offered by all the other 14 tenderers without change in the quoted price were evaluated (August 1999/October 1999) by the Distribution Wing of the Board and offers of seven firms including M/s. Biecco Lawrie Limited (BLL) and M/s. Bharat Heavy Electricals Limited (BHEL) were found acceptable. Despite its earlier decision (February 1999) to permit post tender negotiations, the Board decided (October 1999) not to accept the offer (Rs.14.58 lakh per set) of BLL and BHEL on the ground that the withdrawal of deviations from tender specification through *suo-moto* clarification after opening of tender was unacceptable. The BOM placed (November 1999) orders on ALS for 50 sets and on SL for 100 sets at the rate of Rs.15.33 lakh per set.

Rejection of economical offers from firms led to extra expenditure of Rs.0.54 crore

The rejection of the offers of BLL and BHEL was not correct, as the BOM had taken (February 1999) a policy decision that post-tender negotiations without affecting price could be considered in case of tenders for 33 KV items to

achieve economy in purchases. Had the Board placed orders for 32 sets on BLL and 40 sets on BHEL based on their capacity, the Board could have avoided extra expenditure of Rs.53.67 lakh.

The Government stated (May 2001) that the tender conditions specifically prohibited post-tender negotiations and Board's decision (February 1999) to permit post-tender negotiation was after invitation of this tender in June 1998. It was further stated that accepting post-tender negotiations would vitiate the sanctity of tender and cause injustice to the tenderers whose offers were acceptable. The reply was not tenable as the tender was finalised in October 1999 *i.e.* after BOM's decision in February 1999. Further, in the case of another tender for supply of meter (RE/ND material) finalised in February 2000 post-tender negotiation were accepted even though there was specific clause in the tender prohibiting such post-tender negotiation.

4B.1.5 Loss of interest due to delayed adjustment of rebate

Failure to ensure prompt settlement of rebate resulted in advance payments aggregating to Rs.69.03 crore for 15 days with consequential loss of interest Rs.0.45 crore.

The Board entered (February 1998) into a contract with M/s. Gas Authority of India Limited (GAIL) for supply of natural gas to its Gas Turbine Power Station (GTPS) at Uran. The contract effective from October 1997, stipulated that the prices were linked to calorific value of 10,000 kilo calories/cu. mtr of gas and rebate would be granted in case the calorific value was less than 10,000 kilo calories/cu. mtr. of gas. The contract, further, stipulated payment of bills on fortnightly basis.

The Board did not insist timely payment of rebate by GAIL

Though the calorific value of gas received was known for each fortnight, rebate for calorific value less than 10,000 kilo calories/cu. mtr. of gas was not allowed in each fortnightly bill submitted by GAIL and paid by the Board. Instead, GAIL allowed the entire rebate for the month only in its invoice for the second fortnight and the total amount of rebate on less calorific value not considered in the first fortnightly invoices was to the extent of Rs.69.03 crore during the period October 1997 to December 2000. The Board did not take up the issue with GAIL for adjusting the rebate in each fortnightly bill.

Thus, failure to insist on adjustment of rebate in each fortnightly bill resulted in advance payments aggregating Rs.69.03 crore for 15 days with consequential loss of interest of Rs.44.65 lakh calculated at the prevailing cash credit rate in each year.

The matter was reported to the Government/Board (April 2001); their replies had not been received (November 2001).

4B.1.6 Avoidable extra expenditure in procurement of higher capacity breakers

Ordering 40 KA breakers instead of 31.5 KA breakers based on a general recommendation of Transmission Planning Section resulted in avoidable extra expenditure of Rs.0.26 crore.

Pursuant to indents received from Transmission Planning Section (TPS) and Distribution Section (DS), the Board invited (August 1999) tenders for supply of different capacities of SF-6 Circuit breakers. The lowest acceptable rate received (October 1999) against the tender was Rs.675520 per breaker for 31.5 KA rating and Rs.709712 per breaker for 40 KA rating. Siemens, had quoted the lowest rate of Rs.709712 only for 40 KA breakers and offered to supply these breakers against 31.5 KA breakers.

Based on the final indents received on 8 February 2000 from DS and on 30 March 2000 from TPS, 61 circuit breakers of 31.5 KA were to be ordered (DS-47 and TPS-14). TPS had also indented 32 breakers of 40 KA rating for certain schemes while the DS had not given any requirement for this class of circuit breakers. Subsequently, TPS recommended (April 2000) circuit breakers of 40 KA rating instead of 31.5 KA rating on the ground that there was increasing fault level due to capacity addition in generation and the breaker with 40 KA rating had 50 *per cent* more life than 31.5 KA rating. Based on the above recommendation, the Board of Members (BOM) while finalising the tender in July 2000, decided to order 76 (including 15 breakers of 31.5 KA not supplied by a firm against earlier order) breakers of 40 KA rating instead of breakers of 31.5 KA rating. Orders were actually placed for 108 breakers of 40 KA rating at the rate ofRs.709712 on Siemens (48 numbers) on Asea Brown Boveri Limited (ABB) (40 numbers) and Crompton Greaves Limited (20 numbers).

The decision to order breakers of 40 KA rating instead of 31.5 KA rating was not proper as the TPS had changed the requirement within one month of its final indent though the breaker of 31.5 KA rating were intended for specific schemes. Thus, ordering 40 KA breakers instead of 31.5 KA breakers resulted in avoidable extra expenditure of Rs.25.98 lakh.

The Board/Government stated (June/July 2001) that breakers of 40 KA rating was ordered as fault levels had been increasing every year and the increase in cost for 40 KA breakers was only five *per cent*. The reply is not tenable, as the increasing fault levels were known to TPS while submitting final indent.

4B.1.7 Application of incorrect tariff

The Board suffered revenue loss of Rs.2.76 crore by application of incorrect tariff.

M/s. Jain Irrigation System Limited (JISL), Jalgaon had three high tension connections for its three units and was being charged at industrial rate (HTP-II tariff). As per the agreement (October/November 1995) Unit-I at Mohali (Consumer No.11001-900414-4) was engaged in growing of vegetable plants, tissue culture and manufacturing of liquid and solid fertilizer. Unit-II at Shirsoli (Consumer No.11001-900416-3) was engaged in production of dehydrated vegetables, juice and puree and Unit-III at Bambhori (Consumer No.11001-900237-6) was manufacturing micro irrigation system and components.

A concessional tariff was introduced in September 1998 under category of SP - I applicable for power supply to the consumer engaged in activities of Agriculture (High Tech) *i.e.* tissue culture, green house, mushroom *etc.* Pursuant to request (September 1998) from JISL, the Board allowed (September 1998) to switch over from HTP-II to SP-I tariff for Unit-I as it was engaged in activity of tissue culture.

The Board allowed inadmissible tariff concession of Rs.2.76 crore

Subsequently, the Board also allowed SP-I tariff in respect of Units-II and III as requested by JSIL in November 1998/August 2000. SP-I tariff for Unit-II was made applicable from September 1998 and for Unit-III from March 2001. The SP-I tariff for these two Units was allowed by the Board on the ground that the activities fell under High Tech and SP-I could be made applicable. However, it was observed in audit that SP-I tariff was not applicable to activities of Unit-II and Unit-III.

Thus, incorrect application of SP-I tariff to Units-II and III resulted in loss of revenue of Rs.2.76 crore being the difference between Industrial (HTP-II) and concessional tariff (SP-I) during the period September 1998 to July 2001.

The matter was reported to the Government/Board (June 2001); their replies were awaited (November 2001).

4B.1.8 Loss of interest due to delay in raising of demand for Additional Security Deposit

Failure to raise the demand for Additional Security Deposit in time resulted in loss of interest Rs.0.69 crore to the Board.

In case of increase in electrical energy bills of existing consumers due to enhancement in tariff, provision 22 of Conditions and Miscellaneous Charges for Supply of Electrical Energy empowers the Board to demand Additional Security Deposit from the consumers for supply of electrical energy. Such

demand was to be raised within three months from the date of revision of tariff. The Board increased the tariff in July 1996 and September 1998 and therefore, was required to collect Additional Security Deposit (ASD) from the existing consumers.

Delay of 8 and 15 months in raising the demand for ASD resulted in loss of interest

It was observed that the Kalyan Circle of the Board raised demand for ASD of Rs.1.81 crore and Rs.3.91 crore in July 1997 and April 2000 respectively, against the above revision in tariff which resulted in delays of 8 and 15 months respectively (after allowing three months for raising the demand). It was observed that the delay in raising the above ASD demand of Rs.5.72 crore delayed its recovery and therefore, resulted in loss of interest of Rs.68.82 lakh (Rs.12.67 lakh for July 1996 tariff revision and Rs.56.15 lakh for September 1998 tariff revision) after considering interest payable to consumers on their security deposits.

The Board replied (May 2000/January 2001) that the billing system which was switched over to Oracle was generating incorrect figures of security deposits on bills of high tension consumers. Hence, the demand could not be raised since the average consumption over a period of 12 months was to be computed in terms of the Board's circular. The reply is not tenable since the particulars of the past consumption of 12 months was already available with the circle office. Further, while the tariff was revised in July 1996 and September 1998, the billing system was switched over to Oracle programme in October 1999 only.

The matter was reported to the Government (March 2001); their reply was awaited (November 2001).

4B.2 MAHARASHTRA STATE ROAD TRANSPORT CORPORATION

4B.2.1 Idle investment in construction of bus station

Decision to construct bus station at a far away location despite permission received for constructing bus station within town resulted in idle investment of Rs.1.25 crore.

Despite public resentment to shifting of the existing bus station to new site outside the town, the Corporation constructed the bus station at Rs.1.25 crore which is lying idle

The issue of acquisition of land admeasuring 1.90 hectares in August 1984 at a cost of Rs.8.85 lakh for depot/bus station at Shahada town (Dhule District) was included in the Comptroller and Auditor General's Report (Commercial) - Government of Maharashtra for the year 1992-93. The Municipal Council granted (June 1990) permission for construction of bus station on intervention of the Revenue authorities and the public. However, due to the persistent demand of the local MLA for shifting of bus station outside the town, the Corporation approached (June 1992) the Collector, Dhule for allotment of another plot of land admeasuring 4.68 hectares, 3 kms away from the town for

construction of bus station. Ignoring the public objection to shift bus station away from the town, the Corporation acquired (October 1993) the land at a cost of Rs.34.35 lakh and constructed (December 1997) the bus station at a cost of Rs.90.62 lakh.

The operation of buses from new bus station was started on experiment basis in phases during the period May 1998 to December 1998. As the passengers continued to board the buses from old bus station in the town, the Corporation stopped (January 1999) the operation of buses from new bus station.

Thus, decision to construct bus station at a site located 3 km away from the town despite availability of permission to construct bus station in the town itself and public objection to the shifting of bus station resulted in non-utilisation of new bus station and idle investment of Rs.1.25 crore.

The Corporation stated (March 2001) that the land adjacent to the existing bus station could not be utilised as permission was refused by the Municipal Council. The reply is not tenable as the Municipal Council had granted permission in June 1990 and there was no justification for construction of bus station away from the town knowing fully that there was no public demand and was in fact objected to by them.

The matter was reported to Government (April 2001); their reply had not been received (November 2001).

4B.2.2 Idle investment in construction of bus depot

Construction of unviable bus depot at a cost of Rs.0.79 crore and non-availability of required manpower resulted in idle investment.

The Corporation approached Government for permission to recruit staff after starting construction work on bus depot

The Corporation acquired (September 1986) land admeasuring 2.77 hectares at a cost of Rs.7.47 lakh for construction of depot at Erandol in Jalgaon Division. Knowing that the proposed depot would be financially unviable and that there was a ban on fresh recruitment of additional employees required to man the depot, the Corporation started construction work in April 1996. Thereafter, the Corporation approached (1997) the Government of Maharashtra (GOM) for permission to recruit additional staff, which was still awaited (August 2001). The depot was finally constructed in June 2000 at a cost of Rs.71.19 lakh. As it could not recruit staff for wants of Government's approval, the depot had not been put to use so far (August 2001). Consequently, the investment of Rs.78.66 lakh remained idle and resulted in loss of annual interest of Rs.9.44 lakh thereon (calculated at 12 *per cent*).

The Corporation stated (March 2001) that the depot could not be made operational due to non-availability of additional staff required for manning the depot and that the division would have also sustained more losses if the depot was made operational. The reply is not tenable, since the Corporation was already aware of the need for requirement of additional personnel and the existing ban on fresh recruitment imposed by the GOM and unviability of the

depot's operations. The Corporation further intimated (June 2001) that the sanction for recruitment of staff was still awaited.

The matter was reported to Government (May 2001); their reply had not been received (November 2001).

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