

**CHAPTER VI : MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION**

Department of Consumer Affairs

National Test House, Kolkata

6 Blocking of fund

Failure of the National Test House to invoke warranty and payment of agent's commission and release of performance security in violation of contractual provisions resulted in unfruitful investment of Rs. 52.18 lakh.

The National Test House (NTH), Kolkata placed in February 1999, an order on M/s Anter Corporation, USA for supply of a Thermal Conductivity Test Apparatus for testing of thermal insulating and building materials, fiber glass and board, mineral wool, powder and particulate materials etc. for US\$ 1,16,870 (equivalent to Rs. 52.18 lakh). This included commission amounting to US\$ 11,687 payable to M/s Avac System, Mumbai in Indian currency after installation, commissioning and successful performance of the apparatus.

According to the terms of the purchase order accepted by the supplier in March 1999, 90 *per cent* cost of the apparatus was to be paid on proof of despatch and balance 10 *per cent* after successful installation and commissioning. The apparatus also carried a warranty of 12 months from the date of commissioning or 18 months from the date of supply of the apparatus whichever was earlier. The said warranty also stipulated that in case of the apparatus not conforming to the quality, the purchaser would be entitled to reject it and the supplier, if called upon to do so, would replace it free of cost within a period of one month. Besides, the supplier was responsible to impart training to at least two scientists of NTH for routine maintenance and smooth running of the apparatus.

The apparatus was air-shipped in May 2000 and was received at NTH in June 2000. The Indian agent of the foreign supplier checked the ordered material in July 2000. Ninety *per cent* cost was released on 15 May 2000. The apparatus was initially installed in the meteorology building in November 2000. Its installation and commissioning was certified by a scientist of NTH. Consequently, payment for the balance 10 *per cent* of the apparatus was released in March 2001. In June 2001, NTH tried to test samples, but the

apparatus malfunctioned. On being informed, the foreign supplier offered suggestions for setting right the error, which, however, did not work. In August 2001, the apparatus was re-installed at another location. However, the apparatus continued to malfunction.

Audit noted that despite persistent malfunctions, the NTH had not approached the foreign supplier to replace the apparatus during its warranty period, which expired in November 2001. Further, the supplier did not impart training to NTH scientists according to the contractual terms and condition. Ignoring these factors, NTH (March 2002) released the performance security to the supplier on the ground that it was not prudent to hold back foreign supplier's money. In March 2003, NTH also released Agency Commission in violation of the contractual provisions pending successful performance of the apparatus. Meanwhile, the Indian Agent intimated that the service engineer from USA might visit NTH during 2003-04 to rectify the fault. However, the visit never materialised and no tangible action for making the apparatus operational was taken either by the foreign firm or the Indian Agent. The apparatus was lying unproductive and idle (September 2004).

Thus, failure of NTH to invoke the warranty within the validity period resulted in the apparatus remaining unutilised entailing investment of Rs. 52.18 lakh remaining unfruitful. No responsibility was fixed for the irregular payment of the Agent's commission and release of performance security.

The matter was referred to the Ministry in July 2004; its reply was awaited as of December 2004.