CHAPTER XIV: MINISTRY OF POWER

National Hydroelectric Power Corporation Limited

14.1.1 Avoidable payment of Rs.1.06 crore

Due to lack of proper coordination among its various divisions, the Company could not make the contractor liable for bearing the extra cost towards lowering the foundation level and had to make avoidable payment of Rs.1.06 crore to the contractor.

National Hydroelectric Power Corporation Limited (Company) awarded (January 2002) the work of planning, investigation, design, construction and commissioning of a permanent bridge over river Subansiri to M/s. Anil Kumar Gupta (contractor) for a lump sum price of Rs.10.99 crore. The Company executed the agreement after approving the detailed technical specifications, as submitted by the contractor.

During execution of the work, the contractor found (March 2002) that its tendered proposal had certain drawbacks and proposed certain changes in the design of the bridge for, *inter alia*, increasing the length of the cantilever arm and for reducing the length of the suspended span, without seeking any extra cost. The contractor re-modified (September 2002) the drawings and proposed lowering of the foundation level of the right abutment of the bridge by five metres. The design division of the Company agreed to (December 2002) the proposal with the condition that additional financial implication, if any, would be borne by the contractor.

It was observed in Audit (November 2005) that the design division sent the conditional approval to the project office, without referring the matter to the contract division for taking the necessary action as per the contract to avoid any complication at a later date. After six months of completion of foundation work of the abutment, the contractor claimed (March 2004) extra payment for lowering the foundation. The Company accepted the claim on the recommendation of a one-man committee and released (May 2005) Rs.1.06 crore to the contractor. However, as the foundation level was lowered mainly for mobilising enough counterweight due to change in length of cantilever arms and the suspended span, the extra cost should have been borne by the contractor.

The Management stated (June 2006) that the payment was made only for that portion of the work which had been executed due to the requirement at site and that the abutment was lowered to meet the competent foundation at the lower level. This was beyond the control of the contractor. The matter was reported to the Ministry in October 2006. The Ministry endorsed (December 2006) the views of the Management.

The reply was not acceptable as lowering the foundation level was necessitated due to the changes proposed by the contractor and as such the related extra cost should have been borne by him. Further, the one-man committee had recommended, *inter alia*, that there should be proper coordination between design division, contracts division and project.

The Company itself issued (August 2006) internal instructions that before accepting a revised proposal having financial implication for change in design, a written confirmation from the contractor should be obtained to avoid contractual complication at a later date.

Thus, due to lack of proper coordination among its various divisions, the Company could not make the contractor liable for the extra cost towards lowering the foundation level and accordingly, had to make an avoidable payment of Rs.1.06 crore to the contractor.

NTPC Limited

14.2.1 Irregular payment of special incentive of Rs.116.88 crore

The Company made irregular payment of *ex-gratia* in the form of special incentive amounting to Rs.116.88 crore to its employees whose wages/salary exceeded the limit stipulated under the Payment of Bonus Act.

According to the provisions of the Payment of Bonus Act, 1965 (Act) and the DPE's instructions dated 20 November 1997, no *ex-gratia* was to be paid by the Public Sector Enterprises (PSEs) to their employees, who were not entitled to payment of bonus/*ex-gratia* under the provisions of the Act on account of their wage/salary exceeding Rs.3,500 per month, unless the amount was so authorised by the Government under a duly approved incentive scheme, framed in accordance with the prescribed procedure.

The payment of *ex-gratia* by a large number of PSEs to their ineligible employees was pointed out earlier in various Audit Reports (Commercial)[♣]. The matter was referred (February 2005) to DPE for clarification as to whether such payment of *ex-gratia* (in the form of the special incentive or in some other name) was consistent with DPE's instructions. DPE clarified (December 2005) that the payment of *ex-gratia* to the ineligible employees was not allowed as per its instructions of November 1997 and that there was no provision for DPE/Administrative Ministry to approve the payment of *ex-gratia*/bonus to the ineligible employees in PSEs.

It was observed in Audit that NTPC Limited (Company) made payment of *ex-gratia* amounting to Rs.116.88 crore in the form of special incentive during the last nine years ending 2004-05 to its employees whose salary had exceeded the limit prescribed under the Act. On the matter being brought to the notice of DPE by Audit, DPE advised (December 2005) the Ministry of Power to take suitable action.

In response to DPE's advice, the Ministry reiterated (October 2006) the Management's stand that the Company had been paying the special incentive and not *ex-gratia*/bonus to the ineligible employees, which was not inconsistent with the DPE's instructions. The Management added (October 2006) that the MOU-signing PSUs were competent to formulate such incentive schemes.

The reply was not acceptable, as the Company had been paying special incentive to such employees who were not entitled to the payment of bonus/*ex-gratia* under the provisions

[♣] ***Reports of the Comptroller and Auditor General of India (Commercial) No. 3 of 1994, 1995, 1999 to 2004 and Report No. 13 of 2006***

of the Act. DPE's instructions of November 1997/ December 2005 also did not permit payment of *ex-gratia*, honorarium, reward *etc.* to such ineligible employees. Though the MOU-signing PSUs could evolve productivity linked incentive scheme, the same had to be within the broad guidelines of DPE and no payments of *ex-gratia* nature could be made to the ineligible employees in addition to the 'generation'♦ incentives being paid under another scheme.

Thus, the payment of *ex-gratia* amounting to Rs.116.88 crore in the form of special incentive to the ineligible employees was irregular and inconsistent with the provisions of the Act as well as the instructions of DPE.

14.2.2 Extra expenditure due to continuing with the loans at higher rates of interest

Due to continuing with two loans at higher rates of interest despite the downward trend in interest rates, the Company incurred extra expenditure of Rs.4.72 crore till September 2006 and incurred future liability of Rs.3.91 crore over the remaining tenure of loans.

NTPC Limited (Company) entered into three loan agreements with Housing Development Finance Corporation Limited (HDFC) on 4 November 1999, 14 December 2000 and 22 December 2003 for availing of loans of Rs.100 crore, Rs.200 crore and Rs.250 crore respectively at interest rates between 9 and 12 *per cent*. All the loan agreements had a prepayment clause. The Company drew the full amount of Rs.300 crore against the first two loans and Rs.50 crore against the third loan till January 2004.

In view of the softening trend in interest rates in the market, the Company wrote (31 December 2003) to 19 banks including HDFC for prepaying the existing loans, if the annual rate of interest was not reduced to 7.35 *per cent*. While 18 banks agreed to bring down the rate of interest to 7.35 *per cent*, HDFC agreed (March 2004) to reduce the rates to 8.35 *per cent* and 8.40 *per cent* on the first two loans respectively. In respect of the third loan, HDFC agreed to reduce the rate to 7.35 *per cent*, subject to availing of the balance of Rs.200 crore by 31 March 2005.

The Company accepted (March 2004) these rates, considering the offer as reasonable based on the weighted average interest rate of 7.90 *per cent* and in view of the long-standing relationship with HDFC. It was observed in Audit (October/November 2005) that the Company's decision to accept higher rate of interest on the ground of long-standing relationship did not prove to be at all sound commercially as HDFC did not even respond to its request (February 2005) for release of the balance of Rs.200 crore of the third loan. Instead of taking any action for prepayment, the Company continued to pay interest to HDFC at a rate higher than 7.35 *per cent* (the rate accepted by other banks) since 1 April 2004.

Thus, the Company paid excess interest of Rs.6.15 crore during the period from April 2004 to September 2006, besides incurring future liability of Rs.3.91 crore for the remaining tenure of the loans from October 2006 to March 2011. Had the Company

♦ ***The Company had also been paying generation incentives to all its employees based on the performance of each generating station under the Generation Incentive Scheme.***

declined the offer of HDFC and insisted on prepayment of the first two loans, it could have saved Rs.8.63 crore after paying prepayment charge of Rs.1.43 crore in terms of the agreement.

The Management replied (April/August 2006) that the Company had taken the right commercial decision as a part of negotiation with HDFC and keeping in view the total financial implication of the third loan. Further, the tariff was governed by the Central Electricity Regulatory Commission (CERC) and as per its guidelines, any refinancing of loan should necessarily be on the same terms and conditions except the rate of interest, *i.e.*, the terms and conditions including the repayment of fresh loans should not be worse than the original loan prepaid. The Company tried to explore the possibility of a lender who could provide loan on matching terms and conditions with soft interest rate, but could not succeed. While endorsing the Management's views, the Ministry added (January 2007) that the loss determined by the Audit was notional since the Company has been borrowing on continuous basis from various banks/financial institutions.

The reply was not acceptable on account of the following:

(i) The offer of HDFC was approved by the Company based on the weighted average interest rate of 7.90 *per cent*, considering the full drawal of Rs.250 crore out of the third loan and in view of the long-standing relationship with HDFC. While this rate was higher than the rate of 7.35 *per cent* agreed to with the other banks, the weighted average interest rate worked out to 8.23 *per cent*, based on the drawal of Rs.50 crore out of the third loan made by the Company till March 2004. Further, accepting HDFC's offer in view of the long-standing relationship also did not prove to be prudent as HDFC did not even respond to its request for release of the balance of Rs.200 crore of the third loan.

(ii) The records did not indicate that the Company had made efforts for refinancing of loans on matching terms.

(iii) The avoidable expenditure is not notional, as the Company continued to pay interest to HDFC at a rate higher than 7.35 *per cent* since 1 April 2004.

Power Finance Corporation Limited

14.3.1 Irregularities in sanction of loan to a private party

The Company sanctioned a loan to a private party without proper appraisal and adequate securities. As a result, an amount of Rs.8.20 crore remained outstanding for more than three years, recovery of which was not assured.

Power Finance Corporation Limited (Company) sanctioned (October 2002) a loan of Rs.19.37 crore to IMP Power Limited (Borrower) under a scheme for financing equipment manufacturers. The Company disbursed (November 2002- November 2003) the loan to the extent of Rs.17.89 crore.

Audit scrutiny (February/March 2006) revealed that the Company did not follow a proper appraisal system and sanctioned the loan without obtaining adequate securities. The following deficiencies were noticed:-

(i) A borrower should have a clear default status for the last one year, as per the Company's guidelines. However, the Company obtained default status reports from only two out of six bankers of the borrower. Subsequently, it came to notice that the borrower was in default with two bankers[♣], from whom the Company had not obtained the default status reports.

(ii) While adjudging the borrower's eligibility for the loan, the Company allowed the borrower credit for timely delivery of material though it had actually not adhered to the delivery schedules originally contracted with various State Electricity Boards (SEBs). The borrower was also given credit for providing additional securities though even primary securities like letter of credit and creation of charge on its assets were not provided by the borrower.

(iii) Though the borrower offered to pledge five lakh shares of its own in favour of the Company, the same was not considered by the Company.

The borrower defaulted in repayment of loan from May 2003 due to poor financial condition. One of the major reasons for the financial crunch was non-delivery of goods to some of SEBs whose contracts were assigned to the Company.

The borrower defaulted in payments to other lenders also, who sought intervention of Corporate Debt Restructuring (CDR) Cell of the Reserve Bank of India for settlement of their dues and approached (November 2004) the Company to participate in the restructuring plan of the borrower. The Company gave (June 2005) its consent for the CDR package, without attempting to realise its dues or approaching the Debt Recovery Tribunal (DRT). As per the package, the borrower was to pay the outstanding dues of Rs.8.77 crore as of 1 December 2004 in 28 quarterly instalments with effect from 1 April 2006. The amount due upto 1 January 2007 was Rs.1.25 crore against which the Company could recover Rs.57.45 lakh only (January 2007).

The Management stated (May 2006) that:

(i) The borrower had not defaulted on payment to any of the bankers as per its balance sheet.

(ii) The marks were awarded to the borrower as per the system in vogue.

(iii) The borrower had furnished additional security of personal guarantee of the promoter directors and corporate guarantee of its sister concern, which had current assets worth Rs.24.58 crore as on 31 March 2002.

[♣] ***SBI Commercial and International Bank Limited and State Bank of Saurashtra***

(iv) The pledging of shares was not considered, as it was not part of the security package and in the absence of availability of other effective remedy, the Company had no option but to accept the CDR package.

The matter was reported to the Ministry in October 2006. The Ministry, while endorsing (December 2006) the views of the Management, added that the borrower has all intentions to fulfil the terms and conditions of the CDR package.

The reply was not acceptable on account of following:

(i) In the absence of the default status reports from all the six bankers of the borrowers, the Company's presumption that the borrower had clear default status was unfounded.

(ii) SEBs had not extended the delivery period at the time of sanctioning of loan and so, no marks should have been awarded therefor. Further, as the borrower could not meet the time schedule, its technical capabilities should also have been assessed at the time of sanction of loan.

(iii) The corporate guarantee of the sister concern was restricted to Rs.12.88 crore only. The legal counsel appointed by the Company had clearly opined that the Company might not be able to realise the full amount of its outstanding loan including interest at the time of enforcement of the corporate guarantee.

(iv) Had the Company considered the offer of the borrower for pledging of its shares, it could have partially recovered its dues by selling the shares.

(v) Against the principal amount of Rs.1.25 crore due upto 1 January 2007 under the CDR package, the Company could recover Rs.57.45 lakh only.

Thus, the Company committed irregularities in sanctioning of loan to a private party by not following a proper appraisal system and not obtaining adequate securities. As a result, an amount of Rs.8.20 crore remained outstanding for more than three years (August 2006), the recovery of which was not assured.

14.3.2 Avoidable expenditure of Rs.7.39 crore on payment of upfront fee and commitment charges to the Asian Development Bank

The Company signed a loan agreement with the Asian Development Bank for taking a loan of US$ 150 million. In view of the reluctance of the State Electricity Boards to utilise the loan, the Company foreclosed the loan to the extent of US$ 100 million. Consequently, it had to incur an expenditure of Rs.7.39 crore on payment of upfront fee and commitment charges.

Asian Development Bank (ADB) sanctioned (December 2002) a loan of US$ 150 million to Power Finance Corporation Limited (Company) for augmenting Power Sector reforms in India. After identifying a few schemes to be financed and entering (October/November 2003) into MOUs with the State Electricity Boards (SEBs) of Maharashtra, West Bengal and Assam and a power utility, *viz.* Karnataka Power Transmission Corporation Limited (KPTCL) for execution of various projects, the Company entered (December 2003) into a

loan agreement with ADB for the loan of US$ 150 million (Rs.683.10 crore♣). The agreement, *inter alia*, provided for drawing the entire amount by February 2007 and for payment of upfront fee at the rate of one *per cent* of the loan amount as well as commitment charges at the rate of 0.75 *per cent per annum* on the amount of the loan not drawn by the Company.

It was observed in Audit (February/March 2006) that before signing the loan agreement with the ADB, the Company received schemes for Rs.295.28 crore only from the SEBs, against the sanctioned loan of Rs.683.10 crore, indicating that the Company was, *ab initio,* short of eligible schemes to be financed under ADB funds. Besides, the liability of the SEBs for payment of upfront fee and commitment charges in case of non-fulfilment of loan conditions or non-availment of loans were not suitably reflected in the MOUs with them.

Subsequently, in view of the reluctance of the SEBs to utilise the ADB loan due to issues relating to procurement procedures, environmental and social safeguards as well as insufficient availability of eligible sub-borrowers, the Company foreclosed (December 2005) the loan to the extent of US$ 100 million. As a result, it incurred an avoidable expenditure of Rs.7.39 crore on payment of upfront fee (Rs.4.50 crore) and commitment charges (Rs.2.89 crore) on the foreclosed loan of US$ 100 million. The expenditure could also not be recovered from the SEBs in the absence of any back-to-back arrangement with the SEBs for reimbursement of upfront fee and commitment charges.

The Management stated (September 2006) that the Company had adequate projects costing Rs.1,534.04 crore at the time of signing the agreement with the ADB, but could not avail of the entire amount as the SEBs were sluggish in implementation of their schemes. Further, the SEB of Assam became ineligible as it was directly negotiating loans from ADB. The KPTCL opted out of the loan due to ADB not accepting their e-procurement procedure. They further stated that the existing policy of the Company did not have provision for levying upfront fee for loans sanctioned to state power utilities and payment of commitment charges by the borrowers was insisted upon only in case of loans of more than Rs.100 crore. The matter was reported to the Ministry in November 2006. The Ministry, while endorsing (December 2006) the views of the Management, added that it was the Company's practice to merge the upfront fee and commitment charges as part of the interest rate instead of charging the same from the borrower under back-to-back arrangement.

The reply is not acceptable as at the time of signing the agreement with the ADB, the Company had approved schemes valuing Rs.32.65 crore only and the schemes valuing Rs.262.63 crore were under appraisal. The Company was also 'expecting' projects worth Rs.1,279.38 crore, as per its own records. It was, thus, not correct to say that projects costing Rs.1,534.04 crore were available for implementation. Further, the Ministry stated that based on the experience with the ADB loan, the Company was contemplating to on lend such multi lateral credits on back-to-back basis with fixed margins.

♣ ***At the exchange rate of Rs.45.54 per US$ as on the date of the loan agreement with ADB (11 December 2003)***

Thus, signing of the loan agreement by the Company without properly considering the prospect of utilisation of the loan resulted in avoidable expenditure of Rs.7.39 crore on payment of upfront fee and commitment charges.