CHAPTER – VI
Compliance Audit Observations
State PSUs (Non-Power Sector)

CHAPTER-VI

6. Compliance Audit Observations (Non-Power Sector PSUs)

Important audit findings emerging from test check of transactions of the State non-power sector PSUs/corporations are included in this Chapter.

Odisha Mining Corporation Limited

Odisha Mining Corporation Limited (OMC) was incorporated on 16 May 1956 as a joint venture Company of Government of Odisha and Government of India (GoO and GoI) with the objective of harnessing the mineral wealth of the State of Odisha through exploration, extraction as well as value addition. Four years later, following the withdrawal of the GoI from the Company, OMC became a wholly State owned corporation of GoO on 17 November 1961. As of now, it continues to be a wholly owned corporation of the Odisha Government. The major minerals mined by OMC are chrome, iron and manganese ore which cater to the requirement of mineral based industries such as steel, sponge iron, pig iron, ferro-manganese, ferro-chrome, *etc*.

6.1 Unfruitful expenditure

Delayed surrender of non-mineable land resulted in avoidable payment of ₹65.21crore

Operation of mines are carried out while complying with the rules framed by Ministry of Environment, Forest and Climate Change (MoEF&CC), GoI, guidelines issued by GoI/GoO/Pollution Control Board and stipulations by courts.

OMC obtained a lease for a Chromite mine from GoO covering 1,582.833 hectare of land in January 1986. The above area included 617.520 hectare falling under Hadagarh Wildlife Sanctuary and situated within one Kilometre radius from the sanctuary boundary and comprised 141.111 hectare of forestland and 476.409 hectare of non-forest land. The remaining 965.313 hectare constituted 811.035 hectare of non-forest land and 154.278 hectare of forest land but which was not situated in and within one kilometre radius of the sanctuary. Despite obtaining lease, OMC could not commence (February 2019) mining operation due to want of statutory and environmental clearances and the possession of mine was under deemed renewal.

- Hon'ble Supreme Court in their order dated 16 September 2005 stipulated that areas situated in and within one kilometre radius of National Park/Sanctuary would not be permitted for mining operations. Consequently, 617.520 hectare of land was no longer eligible for mining. In terms of Rule 29(1) of Mineral Concession Rule 1960, any part of lease hold area could be surrendered to the State Government if the land was properly surveyed and contiguous. However, OMC did not surrender the land as per the above rule.

- In terms of Forest Conservation Act, 1980 and decision of Hon'ble Supreme Court (October 2002/August 2003), a lessee had to pay Net Present Value (NPV) in respect of forest land proposed for diversion to non-forest purpose. Despite a ban on mining operations on the land by the Hon'ble Supreme Court**,** OMC requested the concerned Divisional Forest Officer in March 2011 to permit exploration work on that land. Subsequently, in response to the claim of DFO, Keonjhar, OMC had paid NPV of ₹74.78 crore on the forest land in April 2015 including NPV of ₹63.03crore[72] on the forest land situated within Hadagarh sanctuary.
- In terms of clause 9A of MMDR Act,1957 a lease holder is required to pay dead rent over the lease area for the period of non-operation of mines. Accordingly, OMC has been paying dead rent to GoO for the lease since 2005-06.

As mining operation was not possible in the area near sanctuary, OMC decided, only in January 2019, to surrender the entire land of 617.520 hectare on the ground that GoO would not allow mining operation as per Hon'ble Supreme Court's decision dated 16 September 2005. The surrender proposal was submitted to GoO in February, 2019. Presently OMC is surveying the lease area for surrender and once the survey is over, mine closure plan will be prepared. It was stated that the present delay in survey was due to the pandemic situation.

Audit observed that OMC's decision not to surrender the entire land of 617.52 hectare as the mining of chrome ore was not possible (per Hon'ble Supreme Court verdict dated 16 September 2005) resulted in avoidable expenditure of ₹63.03 crore towards NPV. Timely surrender would have saved payment of dead rent of ₹2.18 crore for the period from December 2005 to December 2019. Thus delayed decision to surrender non-mineable area of 617.520 hectare leasehold land resulted in avoidable payment of ₹65.21 crore.

Management stated (July 2019) that there was no clear cut order from the Hon'ble Supreme Court and directions from GoI/GoO regarding prohibition of mining activity in and within one kilometre of wildlife sanctuary. Government while endorsing the contention added that the payment of both NPV and dead rent had been made to the Government exchequer only.

The reply was not acceptable as the Supreme Court order was very specific that such mining in and within one kilometre of sanctuary was not allowed. Further, GoO, in its instruction (December 2009), clarified that the use of forest land falling in National Parks/Wildlife Sanctuaries would be permissible only in totally unavoidable circumstances for public interest projects only after obtaining permission from National Board of Wildlife and Supreme Court of India. Since no such permission was obtained, seeking permission from DFO for exploration work in 2011 and consequential payment of NPV were completely unwarranted. While the payment has been made to the State exchequer, OMC as a corporation has its own legal identity and is required to be efficient in its conduct of operations and is responsible for its financial and operational performance.

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72 ₹9.39 lakh per hectare * 134.25 hectare * 5 times.

6.2 Undue favour

Extension of undue favour to the contractor on transportation of ore ₹0.73 crore

The production of iron ore includes removal of overburden[73], raising of Run of Mines (ROM)[74] and sizing/crushing/screening of ROM. ROM is crushed into lump ore which is further crushed into Calibrated Lump Ore (CLO)[75]. This process also generates iron ore fines**.** The work is to be carried out through contractors. The produced ore are transported by contractors to stockyard situated in the Mine. Contractors are deployed through tender process and rates for production and transportation are finalised on per metric ton basis. As the mining operations involved deployment of labour, machineries, vehicles, agreement with contractors envisages escalation on account of wages, diesel and spares over the rates finalised in the tender. In the production of iron ore, explosives are used during drilling and blasting of surface. The cost of explosives used in the production of iron ore is to be reimbursed to the contractor.

In terms of Clause 12 of the agreement, escalation would be given in the prescribed formula which attached different weights to different components of cost as a percentage of their composition in the awarded rate. For example explosive was considered to be constituting five *per cent* of the awarded rate. Escalation was to be computed considering the wholesale price index of the office of the Economic Advisor[76] published every month.

OMC invited tender in May 2017 for production of 20 lakh MT of iron ore in the first year and 30 lakh MT from subsequent years at Gandhamardan Block-B iron ore mines for a period of five years from the date of execution of agreement. The tender also envisaged transportation of produced ore to the stockyard of the mines. The tender invited different price bids for production and for transportation of iron ore. Based on the evaluation of tender, an agreement with a contractor[77] was signed on 31 October 2017.

As per the agreement, rate of production of CLO was awarded at ₹394 per MT and for the fine at ₹315.20 per MT. The rate of transportation was awarded at ₹89 per MT which was subject to revision in case of change in strategic location of the stockyard.

Audit observed that as per Clause 12.5 of the agreement, explosives (used for drilling and blasting during production) constituted five *per cent* of total cost which included cost on production and transportation of ore. Consequently, escalation on explosive was claimed by the contractor and paid by OMC both

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73 Rock or soil overlying in mineral deposit.

74 ROM is the immediate excavated material from earth which is predominately ore with certain amount of impurities.

75 Calibrated Lump Ore (CLO) is saleable ore obtained after crushing and processing of ROM.

76 This is an attached office of the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry. Its main functions include compiling and releasing monthly index of core industries production, wholesale price indices *etc*.

77 M/s. Kalinga Commercial Corporation Limited (KCCL).

on production and transportation bills. As explosives were used in production of iron ore, it was required to be paid for production of ore only instead of both production and transportation.

During the period September 2017 to August 2019, the contractor transported 59.09 lakh MT of ore and was paid ₹0.73 crore towards explosives and escalation on it. As explosives did not form part of transportation activity, payment towards explosives resulted in extension of undue benefit of ₹0.73 crore to the contractor.

Management stated (July 2019) that the cost estimates were made for the entire work as a whole considering the raising as well as transportation activity. Therefore, common heads of expenditure which are subject to escalation have been applied for both the contracts. This method/policy has been incorporated in the tender without any mention of raising and transportation of the ore separately.

The reply was not acceptable as the notice inviting tender for the work envisaged separate rate for raising and processing of iron ore and another for transportation of the ore. Moreover, explosive is not a common head of expenditure and was to be used for raising only. By allowing payment towards explosives and its escalation on transportation instead of restricting it to production only, OMC extended undue benefits of ₹0.73 crore to the contractor and incurred an avoidable expenditure to the same extent.

IDCOL Kalinga Iron Works Limited

6.3 Loss of revenue

Failure to produce sized Calibrated Lump Ore (CLO) and sale of lump ore resulted in loss of ₹7.56 crore

The IDCOL Kalinga Iron Works Limited (IKIWL) is a unit of the Industrial Development Corporation of Odisha Limited (IDCOL). IKIWL is engaged in the production of iron ore from a captive mine and utilisation in its pig iron[78] plant. The pig iron plant was closed with effect from February 2015 and the entire surplus ores produced from the captive mines were sold in the market.

Production process of iron ore involved excavation of lump ore (5-200 mm size) which was processed in a crusher to reduce it to CLO of 5-18 mm/ 10-30 mm size. CLO of 10-30 mm size were used in the pig iron plant. The process also involved generation of fines (0-5 mm size). IKIWL carried out production work of iron ore through engagement of contractor and sold all types of ore *i.e.*, lump, CLO and fines in the market.

For production of CLO, IDCOL, the holding company of IKIWL, invited tender on 21 August 2014 and issued work order on 29 September 2014 to a contractor[79]. The agreement period was from 01 October 2014 to 07 February

[78] Pig iron is an intermediate product of the iron industry, also known as crude iron, which is obtained by smelting iron ore in a blast furnace.
[79] M/s P K Ores Limited.

2017 with provision for annual extension based on the performance. The tender condition *inter alia* envisaged that:

- The party would extract lump ore and the entire lump ore would be processed to produce CLO. The monthly target for production of CLO (5-18 mm) was fixed at 8,000 MT from December 2014 to March 2015 and 6,350 MT from April 2015 onwards. Similarly, the target for production of CLO (10-30 mm) was fixed at 5,520 MT per month. As there was no demand for 10-30 mm size ore due to closure of plant, the company revised the targets to produce only CLO (5-18 mm) at the rate of 11,870 MT per month from September 2015.

- The contractor has to deploy sufficient and suitable constructional plant, equipment and materials for production (Clause 3.23).

- If the contractor failed to achieve the targeted production, penalty would be imposed on the shortfall quantity at the rate of ₹10 per MT if the failure is attributable to the contractor (Clause 2.8.2).

- In the event of the contractor failing to carry out the work in accordance with contract schedule and failure to deploy sufficient/suitable equipment, IKIWL had the authority to cancel the contract at the risk, responsibility and cost of the contractor (Clause 3.23).

Scrutiny of records revealed that:

- The contractor commenced production from February 2015. Against the targeted quantity of 4,45,330.40 MT of CLO (5-18 mm: 4,17,730.40 MT and 10-30 mm: 27,600.00 MT) during December 2014 to March 2018, the actual production was 2,47,921.30 MT (5-18 mm) only leading to shortfall of 1,97,409.10 MT. This was due to non-processing of 3,08,451.72 MT of lump ore. The Management of IKIWL attributed reasons for non-processing of lump ore to achieve required quantity of CLO, to frequent break down of crusher deployed by the contractor and the time consumed for its repair and maintenance. As a result, required quantity of lump ore could not be fed to crusher for production of CLO.

- As the contractor could not produce CLO, IKIWL in order to generate adequate cash to meet existing pressing liabilities, decided (March 2016) to sell lump ore in the market. During May 2016 to February 2018, IKIWL sold 2,92,704.51 MT of lump ore in the market. As sale from lump ore fetched lower price over CLO, there was under realisation of revenue of ₹7.56 crore. The contractor, however, replaced the old crusher in December 2017 and commenced production of CLO from the crusher from 3 March 2018.

- IKIWL had noticed (September 2015) the poor performance of crusher and non-fulfilment of target for production of CLO by the contractor. A team of officers during their review in January 2016 had recommended for cancelling the contract at the risk and cost of the contractor if targeted production of CLO was not achieved. The contractor, however, could not achieve production target of CLO thereafter. IKIWL, while enforcing the penalty (which had a marginal effect monetarily) did not invoke the contract condition to get the work done at the risk and cost of the contractor or persuade the contractor to replace the crusher at the earliest.

Thus, due to its failure to enforce contract conditions which required the contractor to work at his risk, responsibility and cost, IKIWL could not recoup the loss in production of CLO and instead decided to sell lump ore in the market at a much lower realisation, which resulted in loss of ₹7.56 crore.

Government stated (September 2019) that there was uncertainty in operation of mine as the handing over of the mine to OMC Limited was under inter departmental consultation. The extension to the contractor was accorded as the possibility of getting a new tender was remote.

The reply was not tenable as the required enforceability of contractual terms in the interest of IKIWL cannot be avoided under the pretext of an uncertain future event *i.e.*, handing over of the mine to OMC.

The Agricultural Promotion and Investment Corporation of Odisha Limited

6.4 Loss of revenue

Loss of interest due to imprudent fund management: ₹5.58 Crore

The Agricultural Promotion and Investment Corporation of Odisha Limited (APICOL) was incorporated (March 1996) with the objective of promoting commercial enterprises in agriculture and allied sector. It also acts as a nodal agency of Government of Odisha (GoO) for providing incentives to agro and food processing industries. The incentives are provided in the form of Capital Investment Subsidy (CIS) to the entrepreneurs in agriculture sector for setting up of agri-enterprises besides other incentives under State Agriculture Policy in the form of assistance to construct private lift irrigation points, installation of pump sets, *etc*.

The Agriculture and Farmer' Empowerment Department (A&FED), GoO through Directorate of Agriculture and Food Production (DA&FP) places funds with APICOL for providing subsidy to farmers' under different schemes. The subsidies are to be released by APICOL to the beneficiaries within 30 days from receipt of the subsidy claim documents from the District Agricultural Officer. APICOL parked the funds placed with it in eight savings bank accounts[80] of private banks during 2016-17 to 2018-19 from where subsidies were subsequently disbursed to the beneficiaries.

In connection with investment of such funds, Finance Department (GoO) instructed (October 2012 and November 2014) to keep unspent scheme funds in *flexi deposit accounts*[81] with the banks instead of savings bank accounts to earn higher rate of interest which can be ploughed back to expand the

[80] Five savings accounts in Axis Bank Limited and three savings accounts in ICICI Bank Limited.

[81] Deposit account where funds above a threshold limit (as per instruction issued to the bank) would automatically be deposited in fixed deposit account to fetch higher rate of interest than normal savings bank account.

coverage of the scheme. The Board of Directors of the Company had also decided (November 2014) to convert all the accounts of the Company to saving accounts with flexi deposit feature. Accordingly, APICOL had instructed (November 2014/May 2015) the banks to keep account balances up to ₹1 crore in the savings bank account and amount over ₹1 crore was to be transferred to the linked fixed deposit account/flexi account. Audit observed the following:

- During the period 2016-19, the utilisation of subsidy was continuously less than receipt of funds resulting in excess balances in these eight bank accounts which ranged between ₹1.66 crore to ₹85.04 crore. Further, there were monthly minimum balances in excess of ₹1 crore in 253 out of 264 months[82]. During 167 months, monthly minimum balance ranged between ₹10 crore and ₹50 crore and it was more than ₹50 crore for 15 months.

- Despite the instructions of APICOL (November 2014/May 2015), funds above ₹1 crore were lying idle in eight savings/current accounts during 2016-19. The reasons for non-compliance to the instructions by banks were not on record. APICOL neither pursued the matter with the banks for transfer of excess funds to flexi/term deposit accounts nor took any action to explore banking operations with other banks.

During the year 2016-19, the flexi deposit rate of interest offered by the banks ranged between 5.25 and 5.75 *per cent* against the saving banks deposit rate of four *per cent* per annum. As the surplus funds of APICOL over ₹1 crore were not converted into *flexi* accounts bearing higher rate of interest, there was under realisation of interest income of ₹5.58 crore.

Government stated (August 2019) that due to frequent changes in appointment of Managing Director of the Corporation, management of funds was affected and steps have been taken to keep minimum balance in saving accounts by transferring amounts above rupees ₹1 crore to fixed/flexi accounts.

Audit observed that under-realisation of interest income continued over a long period of three years. GoO could have intervened to ensure compliance of instructions issued by Finance Department by directly asking the banks for necessary compliance as the financial power of MD, APICOL was also delegated (July 2016) in favour of the FA-cum-Additional Secretary of the Department for some time. Action should have been taken in timely manner to avoid under-realisation of interest income of ₹5.58 crore.

IDCOL Ferro Chrome and Alloys Limited

6.5 Undue favour

Loss of ₹0.99 crore due to sale of chrome ore at lower price

IDCOL Ferro Chrome and Alloys Limited (IFCAL), a subsidiary of IDCOL, is engaged in mining Low Grade Chrome Ore (LGCO) and production of High Carbon Ferro Chrome (HCFC). It has been operating Tailangi-A Chrome ore

[82] Eight bank accounts *12 months*3 years (during 2015-16 there was six bank accounts).

mine of IDCOL on agency basis[83] from 27 March 2002 with objective to meet the raw material requirement of its Ferro Chrome plant. Due to downward trend of HCFC, the management felt a liquidity crunch. In order to meet the working capital and other liabilities, it decided (March 2015) to dispose the LGCO in the market through open tender without processing it as HCFC.

IFCAL invited (October 2016) tender for sale of 35,000 MT of LGCO in first phase. The terms and conditions of tender *inter alia* envisaged that:

- The selected buyer had to deposit in advance 100 *per cent* sale value of the allotted quantity and the same to be lifted by the buyer within the time period as stipulated in the release order. The management reserved the right to cancel the sale order if the buyer failed to deposit the sale value in advance.
- EMD or any amount refundable under any previous transaction could not be adjusted with the transaction in this tender.
- The buyer had to quote the basic price only in the price bid excluding the royalty, cess, taxes, levies, etc. The price obtained in the tender was valid for a period of 60 days from the last date (17 October 2016) of submission of the bid *i.e.*, up to 16 December 2016.
- The royalty and other dues applicable during the time of dispatch shall be charged on the approved sale price of Chrome ore. The excess amount collected as advance would be refunded to the purchaser.

On evaluation of the tender, the highest basic price (H1) of LGCO was ₹900 per MT. Accordingly, the sale order was issued (27 October 2016) to the H1 buyer[84] (the buyer) requesting to deposit ₹4.53 crore[85] towards 100 *per cent* sale value of 35,000 MT of LGCO within 7 days of issue of sale order. The H1 buyer deposited only ₹3 crore on 31 October 2016. However, IFCAL issued (November 2016) release order to lift 26,336 MT (proportionate quantity) with sale value of ₹3.49 crore by adjusting an amount of ₹0.49 crore refundable to the buyer in an earlier transaction. Out of 26,336 MT, the buyer lifted 24,439.530 MT of LGCO up to January 2017 and short lifted 1,896.470 MT.

In the meantime, another tender was invited (November 2016) for sale of 50,000 MT of LGCO where the highest basic price was ₹1,840 per MT. While the lifting of LGCO under the new tender was in progress, IFCAL on its own, issued release order (January 2017) to the buyer of the previous tender for lifting the residual quantity of 8,664 MT (35,000 MT - 26,366 MT) of LGCO at the basic price of ₹900 per MT and asked to deposit the advance of ₹1.15 crore. The buyer deposited (January 2017) ₹1.11 crore in advance towards sale value and completed lifting 10,560.470 MT, which included previously short lifted quantity of 1,896.470 MT.

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83 IDCOL was the lessee of the Talangi chromite mine and IFCAL was operating the mine as their agent. Hence, it was operated on agency basis.

84 M/s Anand Exports.

85 Basic price-₹900x35000 MT=₹3.15 crore and tax, royalties, etc.: ₹1.38 crore.

Audit observed that since the buyer failed to deposit the amount of sale value for full quantity including tax within due time, the sale order was liable to be cancelled. Further, the permission to lift partial quantity after adjusting ₹0.49 crore refundable to the buyer in an earlier transaction, in violation to terms of the tender, was irregular and unjustified. The validity of price at ₹900 per metric ton expired in December 2016. Hence, allowing the buyer of the previous tender to lift balance quantity of 10,560.470 MT after lapse of validity period resulted in undue favour to the buyer with consequential loss of revenue worth ₹0.99 crore [(₹1840-₹900)x10560.47 MT].

Government replied (September 2019) that the buyer had paid the basic price *i.e.*,₹900 per MT for the entire quantity and intimated to pay the royalty part as and when dispatch was made.

The reply was not acceptable as the buyer had failed to fully pay even the basic price. Further, the tender condition to deposit 100 *per cent* of sale value in advance was violated by allowing payment of royalty to be made during dispatch. IFCAL, by allowing the contractor to lift the balance quantity of LGCO at the lower price beyond the expiry of the contract and by adjusting ₹0.49 crore in violation of tender conditions, extended undue favour to the buyer in a situation when IFCAL itself was struggling to come out of the cash crunch.

Bhubaneswar
The 18 February 2021

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