

COPU-56

# **COMMITTEE ON PUBLIC UNDERTAKINGS**

## **FIFTY SIXTH REPORT**

### **FIFTEENTH ASSEMBLY**

**REPORT ON THE AUDIT PARAS CONTAINED IN THE REPORT  
OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA  
(COMMERCIAL)**

**FOR**

**THE YEAR 2008-09 AND 2014-2015 RELATING TO ASSAM  
MINERALS DEVELOPMENT CORPORATION LTD.**

**Presented to the House on 12<sup>th</sup> July, 2021**

**ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT**

**DISPUR:: GUWAHATI-6**

## **CONTENTS**

	<b>Pages</b>
1. Introduction	
2. Composition of the Committee	i

### **Chapter -I**

3. Report and Recommendations	1-9
4. Annexure - I	

## **INTRODUCTION**

I, the Chairman, Committee on Public Undertakings, Assam Legislative Assembly having been so authorised by the Committee on their behalf present this 56<sup>th</sup> Report which was approved by the Committee on the Audit paragraphs contained in the Report of the Comptroller and Auditor General of India (Commercial) for the Year 2008-2009 and 2014-2015 relating to Assam Mineral Development Corporation Limited.

2. The Committee had taken up the work of examining the relevant paragraphs contained in the Report of the Comptroller and Auditor General of India (Commercial) for the year ended 31<sup>st</sup> March, 2009 and 31<sup>st</sup> March, 2015 related to the Assam Mineral Development Corporation Limited under the Mines and Minerals Department, Government of Assam and had a threadbare discussion with the officers of the Mines and Minerals Department as well as Assam Mineral Development Corporation Limited on 21<sup>st</sup> August, 2019 and 10<sup>th</sup> February, 2021.

3. The Report was considered and adopted by the Committee in its meeting held on 30<sup>th</sup> June, 2021.

4. The Committee placed on records its thanks to the officers of Assam Mineral Development Corporation Limited for furnishing the records/ relevant materials and giving information as well as for extending fullest co-operation to the Committee.

5. The Committee also extends its high appreciation to the Principal Accountant General (Audit), Assam and the concerned officials for their sincere co-operation extended to the Committee during its examination.

6. The Committee also extends of its appreciation to officers and staff of the Committee for their unstinted co-operation extended to the Committee in conducting of examination as also in the compilation in presentation of this Report.

**Dispur**

**The 30<sup>th</sup> June, 2021**

**Chairman**

**Committee on Public Undertakings**

(i)

## **COMPOSITION OF THE COMMITTEE**

**CHAIRMAN:** Shri Ramendra Narayan Kalita

**MEMBERS:**

1. Smti Suman Haripriya
2. Shri Terash Gowala
3. Shri Krishnendu Paul
4. Shri Ganesh Kumar Limbu
5. Shri Suren Phukan
6. Shri Prodip Hazarika
7. Shri Jitu Goswami
8. Shri Charan Boro
9. Shri Siddeque Ahmed
10. Md. Nurul Huda
11. Smti Nandita Das
12. Shri Rafiqul Islam

**SECRETARIAT:**

1. Shri S.K. Sharma, Secretary.
2. Shri I. Mozumder, Joint Secretary.
3. Smti. D. Baruah, Deputy Secretary.
4. Shri R.K. Sarmah, Superintendent.

## **CHAPTER - I**

### **REPORT AND RECOMMENDATIONS**

During the course of deposition before the Committee in its meeting held on 21<sup>st</sup> August, 2019 and 10th February, 2021 in the presence of Secretary to the Government of Assam, Mines and Minerals Department, Principal Accountant General (Audit) and other Departmental representatives, the Managing Director of Assam Mineral Development Corporation Limited (AMDCL) had submitted the replies to the queries against the Audit paragraphs mentioned as follows:

#### **1. Reference paragraph 4.1 of the Report of the CAG of India (Commercial) for the year 2008-09**

##### **Unjustified enhancement of mining operation cost**

Due to unjustified enhancement of mining operation cost, revenue of ₹ 3.63 crore was foregone.

##### **MANAGEMENT REPLY**

AMDCL in their replies stated that based on comments incorporated in paragraph 2.2.12 of the Report of the Comptroller and Auditor General of India for the year 2005-06 (Commercial), Government of Assam, the Board of Directors of AMDCL decided to increase the sale price of coal of Garampani Coal Extraction project (GCEP) and Khota Arda Coal Extraction Project (KACEP) from ₹ 895.44 and ₹817.44 to ₹ 1574.64 per M.T. during the year 2007. The coal extraction in both GCEP and KACEP were carried out through Job Sirders, when the price of coal was increased. Job Sirders demanded for increasing the operational cost of extraction of coal. Several round of discussion took place with the Job Sirders. AMDCL did not agree with their proposal. In protest against the decision Job Sirders closed AMDCL projects for 78 days.

After long persuasion, AMDCL negotiated with their demand and raised the operational cost from ₹ 531.00 and ₹ 486.80 to ₹ 1125.25 and ₹ 1145.25 per M.T. for GCEP and KACEP respectively looking at the genuine reasons of increase in labour cost etc.

It is mentioned in the Audit para for the year 2007-08 that increase in the margin for AMDCL i.e. 23.31% and 29.55% for GCEP and KACEP are much lower than the increase in operational cost i.e. 111.91% and 135.65%. It may be mentioned that these two parameters cannot be compared to each other because one is operational cost and the other is margin (profit).

AMDCL treated the matter with utmost care as the project is its bread earner. The main intention of AMDCL was to restart the project through any means so that it does not suffer with financial crunch. After a threadbare discussion with the job sirders, AMDCL agreed to reduce the margin and the project restarted with effect from 18-08-2007. The decision was made only in the interest of AMDCL as it may face financial crunch if the situation continues.

So, the management has taken the decision for sustaining AMDCL Project looking at financial condition at that time.

## **2. Reference paragraph 4.2 of the Report of the CAG of India (Commercial) for the year 2008-2009**

### **Non-recovery of specified land tax.**

Inaction on the part of the Management to recover the specified land tax led to loss of ₹ 54.47 Lakh.

### **MANAGEMENT REPLY**

AMDCL in their written replies stated that as reflected in the audit para for the year 2007-2008, AMDCL has to release an amount of ₹ 77.35 Lakhs against specified land tax for the period from January, 2004 to July 2007. The superintendent of Taxes, Haflong vide letter No. HFL/SLD/001/2007-08/4 dated 13<sup>th</sup> November, 2007 intimated that AMDCL is liable to pay specified Land Tax w.e.f. 01/01/2005 and asked AMDCL to submit return and make payment of taxes under the Assam Taxation (on specified Land) Act, 1990 to the tune of ₹ 43,92,040 (forty three lakh ninety two thousand forty) for the period from 2005-06 to 2007-08. The amount was only the principle taxable amount AMDCL has paid this amount, through 4(four) no of challans and one assessment order. The rest interest amount, to the tune of ₹ 37,40,123 (Rupees thirty seven lakh forty thousand one hundred twenty three) as assessed by superintendent of taxes, Haflong was settled by paying 10% of entire interest amount as per the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2014

Accordingly, superintendent of Taxes, Haflong issued certificate of waiver dated 27<sup>th</sup> March, 2015 and settled the dispute relating to arrear taxes, penalty or interest for the assessment period 2005, 2006 and 2007.

So, the Management has already recovered and deposited the specified land tax for the above period.

**3. Reference paragraph 3.1 of the Report of the CAG of India (commercial) for the year 2014-2015.**

**Wasteful expenditure**

Failure to design and execute a proper plan before making an investment decision resulted in wasteful expenditure of ₹ 14.35 crore.

**MANAGEMENT REPLY**

AMDCL in their written replies stated that as per clause-VIII of the MoU of AMDC with KVK, it was valid only in respect of the coal blocks allotted individually of AMDCL. However, as the Government of India (GoI), allotted Mandakini-B coal block jointly to AMDCL along with three other parties, the MOU with KVK automatically stand cancelled as per clause-VIII. Further, there was enough time to decide about utilization of coal to be produced from the coal block. The Government of Assam (GoA) had taken the matter of utilization of coal to be produced from this coal block by setting-up of a power plant through ASEB. ASEB had also discussed with AMDC about the possibility of forming a JVC for setting up of power plant. A group of higher delegation from the Department of Power, GoA, visited Orissa and Jharkhand for inspection of few proposed sites for setting up of the power plant.

As such, it may not be correct to state that nothing has been done to ensure targeted end utilization of coal from this block. GoA took action from its end much early. After receipt of the GoI D.O. letter No.130166/66/2006-CAL dated 07.11.2006 issued by the Ministry of Coal, it floated NIT for selection of interested parties for setting up of a thermal power plant and selected KVK for the purpose. GoA finalized the MoU and instructed AMDCL to execute the same. Under those circumstances, there may not have any further scope for analysis of the project by AMDCL. Further AMDCL applied for allotment of any coal block as per instruction of the GoA. As such, there was no scope/choice for AMDCL's diligence regarding location of the block etc.

GoI allocated the coal block for extraction of 1200 million M.T coal per year where AMDCL's share was 300 million M.T. Once the coal block was allotted, the working of the coal block was so important for all the four allocates that there were two number of sittings of the Chief Secretaries of the allocator's States to sort out the difficulties arising for convergence into a single point due to a number of issues. In such a

situation, it may not be advisable for opting out by any of the allottees from the opportunity. Since the working of the coal block allotted to AMDCL and other three partners require high-level decision in the Chief Secretaries level of the four different states, several sittings of the Chief Secretaries were held to finalize the modalities in executing the coal block. So it was in progress. As such, AMDCL did not think of opting out at that time.

**4. Reference paragraph 3.2 of the Report of the CAG of India (Commercial) for the year 2014-2015.**

**Loss of Revenue**

AMDCL suffered loss of revenue of ₹ 49.07 crore due to sale of coal at prices lower than those fixed by Coal India Limited. Further, failure of AMDCL to collect clean energy cess from the buyers of coal resulted in loss of ₹ 1.51 crore to the state exchequer.

**MANAGEMENT REPLY**

AMDCL in their written replies stated that the GoA granted Mining lease to AMDCL for extraction of coal from the Garampani Coal deposit during 1984. However, the location of the deposit was not at all favourable for opening up a project. The area located inside Khandong water reservoir belongs to NEEPCO and the entire area will be submerged as soon as the proposed height of the water reservoir up to 3 mtrs is completed by NEEPCO. AMDCL opened up the Garampani Project without detailed investigation about the quality and quantum of the deposit and without investment of any amount for infrastructure development like grading, sizing or testing of coal sample etc. facilities at the project due to paucity of fund as well as uncertainty of the life of the project.

AMDCL started extraction of coal by engaging some local people as approved customers with their investment. The approved customers extract coal from their allotted area under the supervision of AMDCL's officials and purchase their produce after advance payment of the sale price fixed by AMDCL. AMDCL fixed the sale price of coal from time to time depending on local market trend as entire AMDCL's coal are consumed by the local consumers only. The Colliery Control Order, 2000 issued by the GoI allows the coal companies to fix coal price based on input costs, inflation index, market trend etc. so, it was properly fixed.



AMDCL selected 13 approved customers from local inhabitants, recommended by the N.C. Hills Autonomous Council and approved by the GoA, who are at present extracting coal in the project. Their term of appointment is for one year and extendable for further period depending on their performance, conduct etc. At present formal agreement has been executed every year at the time of renewal of their terms of appointment as approved customer.

The quality of CIL Coal is much superior to that of Garampani Coal due to its nature of formation. The calorific value of G4 grade of CIL coal, which is the lowest grade of coal with CIL, has calorific value between 6100 Kcal/Kg to 6400 Kcal/kg whereas AMDCL Coal has an average value of 5500 kcal/kg. The present CIL price of G4 Grade coal is ₹ 3000 per M.T and AMDCL's sale price is ₹ 2800 MT. CIL invests huge amount for production and marketing of their coal and AMDCL's investment on this account is almost nil. The approved customers engaged by AMDCL produced coal at their expenditure and purchase their produced at the sale price fixed by AMDCL. Under the circumstances, it may not be proper to take the CIL's price as benchmark for fixing the sale price of Garampani coal and the loss calculated thereon may not be justified. It may be mentioned here that this project has been running since its inception and also contributing a substantial revenue to the exchequer. Also, AMDCL has been paying dividend since 2014-15. AMDCL has already collected and deposited entire clean energy cess.

After going through a threadbare discussion held on 21<sup>st</sup> August, 2019 on the replies submitted by AMDCL, the Committee was not satisfied on their replies. Therefore, the Committee decided and directed the department to furnish a detailed report on Audit paras.

### **DISCUSSION ON THE DETAILED REPORT**

As per direction of the Committee on Public Undertakings, Assam Legislative Assembly, AMDCL has submitted a detailed report dated 24.09.2019 on the said Audit paragraphs.

During the course of deposition before the Committee in its meeting held on 10<sup>th</sup> February, 2021 in presence of Secretary to the Government of Assam, Mines & Minerals Department, Principal Accountant General (Audit), Assam and other departmental representatives, AMDCL had submitted the detailed report.

At first, the Committee pointed out on the Audit Paragraph 4.1 (unjustified enhancement of mining operation cost) for the year 2008-09 that whether there is any system in AMDCL for fixation of rates and at present whether the price related issues are finalized at Board level or by same committee appointed by the Board of Directors.

### **MANAGEMENT REPLY**

AMDCL expressed their replies through the detailed report that there is a system in AMDCL for fixation of rates of coal. As per section 291(1) of the Companies Act, 1956, subject to the provisions of this Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things as the company is authorized to exercise and do.

Provided that the Board shall not exercise any power or do any act or thing which is directed or required whether by this or any other act or by the memorandum or articles of the company or otherwise to be exercised or done by the company in general meeting.

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act. Or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made there under including regulations by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board, which would have been valid if that regulation had not been made.

Articles 73 of AMDCL's Articles of Association contains similar provisions.

## POWERS AND DUTIES OF BOARD OF DIRECTORS

### General powers of company vested in Directors.

The Business of the company shall be managed by the Board who may pay expenses incurred in setting up and registering the company and may exercise all such powers of the company as are not by the Act. Or any statutory modification thereof for the time being in force or by these Articles required to be exercised by the company in general meetings, subject never the less to the provision of the said Act and such regulations being not inconsistent with the aforesaid provisions as may be prescribed by the Company in general meeting but no regulations made by Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulations had not been made.

Accordingly, the Board of Directors fixed the price of coal or authorised the Managing Director to fix the price from time to time during that period. The Managing Director has fixed the price based on the input cost, inflation index market trend, etc. as the price of coal was fully deregulated w.e.f. 01.01.2000 as per Colliery Control Order, 2000 and same was approved by the Board vide resolutions.

At present, one sub-Committee is constituted with the following members to recommend the price of coal to the Board based on the gross calorific value of the coal and as per notification of CIL:

- 1) Dr. P.K. Choudhury, Director, AMDCL
- 2) Shri G.S. Panesar, ACS, Director of Geology and Mining, Assam
- 3) Md. Ohed Uz Zaman ACS, MD, AMDCL

Regarding fixing of the cost of extraction of coal AMDCL has communicated with the National Productivity Council (NPC) to evaluate the cost of extraction on the basis of proper analysis of mining operation. After evaluation of the rate by NPC the same will be placed before the subcommittee for recommendation to the Board and on final approval of the Board the rate will be fixed and the same will be sent to the Government for information. Hence, it may be mentioned that the rate of coal is basically fixed on the basis of gross calorific value of coal and as per the notification of CIL.

Secondly, regarding Audit Paragraph 4.2 for the year 2008-09 (non-recovery of specified Land Tax) the Committee asked AMDCL that whether it has developed a mechanism to obtain views from the finance/tax expert before finalizing the prices of coal and limestone, so that the changes in taxes and levies is taken in to consideration while raising invoice etc. and the questions remains on whether AMDCL took any steps on the personnel involved in this lapse.

AMDCL in their replies to Audit Paragraph 3.1 for the year 2008-09 stated that the system adopted by it while selection of new project is as per Section 292 of the Companies Act, 1956/Section 179 of the Companies Act, 2013. The relevant portion of Section 292 relating to certain powers to be exercised by Board only at meeting states that:

- (1) The Board of directors of a company shall exercise the following powers on behalf of the company and also shall do so only by means of resolution passed at meeting of the Board.
  - a) The power to make calls on shareholders in respect of money unpaid on their shares.
  - b) The power to issue debentures
  - c) The power to borrow moneys otherwise than on debentures,
  - d) The power to invest the funds of the company and
  - e) The power to make loans,

Provided that the Board may, by a resolution passed at a meeting delegate to any Committee of directors. The Managing Director, the Manager or any other principle officer of the Company or in the case of a branch office of the company, a principle officer of the branch office., the power specified in clauses (c) (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe.

As per the above mentioned provisions of the Companies Act, Managing Director of AMDCL places the proposal for selection of new project in details to the Board of Directors and once it is approved in the Board of AMDCL, the same is sent to Government for approval.

Regarding the joint venture in case of Mandakini-B coal block which is mentioned in Audit observation the decision was taken from GoA side and as per instruction of the GoA, AMDCL entered in to the new project to be established in Odisha, since the matter was totally between the Government of different States and GoI, so AMDCL has very less scope to decide in this matter.

IN REPLY TO GOVERNMENT ORDER NO. 149- 13 2007/2008

In regard to new joint ventures with M/s Jaiprakash Associates Limited and M/s Birla Corporation Limited, the GoA vide Notification No. PEM-33/2007/14 dated 12<sup>th</sup> June, 2007 directly invited expression of interest from investors for setting up mineral based industries as a joint venture with AMDCL. The parties were also selected at Government level after proper procedure. The cabinet approved signing of MoU with M/s Jaiprakash Associates Limited and M/s Birla Corporation Limited, so, AMDCL was not involved in the process of selection.

Lastly, on the Audit Paragraph 3.2 (Loss of Revenue) for the year 2014-15 the Committee asked AMDCL that whether it has developed any scientific mythology for price fixation and opted other means i.e. self-extraction of coals etc. and whether there is any system in the company for fixation of rates.

AMDCL in their replies stated that there is a system in AMDCL for fixation of rates of coal. As per Section 291(1) of the Companies Act, 1956, subject to the provisions of the Act, the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do and remaining procedures are same as indicated in the last observation.

### **OBSERVATION AND RECOMMENDATIONS**

- 1) The Committee suggested to appoint a permanent Managing Director for Assam Mineral Development Corporation Limited at an early date.
- 2) The Committee recommends to constitute a high level committee for the development of joint venture companies under the Chairmanship of Additional Chief Secretary of Mines and Minerals Department, while engaging higher officials of Finance and Public Enterprise Department of the Government of Assam as members.
- 3) After threadbare discussion with the officers of the Mines and Minerals Department and AMDCL, the Committee decided to drop the Audit paragraph 4.1 and 4.2, for the year ended 2008-09 and Audit paragraph 3.1 and 3.2 for the year ended 2014-2015.

**ANNEXURE -I**

**COMPOSITION OF THE OUTGOING COMMITTEE**

**CHAIRMAN:** Shri Atul Bora

**MEMBERS:**

1. Shri Terash Gowala
  2. Shri Ritu Parna Baruah
  3. Shri Krishnendu Paul
  4. Smti Suman Haripriya
  5. Shri Suren Phukan
  6. Shri Prodip Hazarika
  7. Shri Satyabrat Kalita
  8. Shri Majendra Narzary
  9. Shri Illias Ali
  10. Shri Sherman Ali Ahmed
  11. Shri Abul Kalam Rasheed Alam
  12. Shri Abdur Rahim Ajmal
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