



सत्यमेव जयते

**REPORT OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA
on
PUBLIC SECTOR UNDERTAKINGS
for the year ended 31 March 2015**



Government of Kerala
Report No. 3 of the year 2016

such deposits was accounted for as the income of the Company in accordance with the requirement of Schedule VI of the Companies Act, 1956.

The reply of the Company is not acceptable since Schedule VI³⁰ does not specify that interest earned on the unspent balance of grant can be treated as income. Recognition of interest income was rather to be based on GAAP, which was violated in this case resulting in avoidable payment of corporate tax.

Government replied (November 2015) that the Company undertook consultancy works for National Fisheries Development Board, District Tourism Promotion Councils, etc., as an accredited agency and the funds received against these were parked in bank accounts and interest earned from such works treated as income of the Company.

The reply of Government was not acceptable since there was no specific direction in the sanction orders or Memorandum of Understanding (MoU) with the National Fisheries Development Board, etc., to treat interest income on unspent balance of grant funds towards implementation of various schemes as income of the Company. Moreover, according to the MoU between the Company and the National Fisheries Development Board, the Company was to open a separate current account to maintain receipts, grants, etc. As such, the grants received were not to be deposited in fixed deposits. Therefore, treating of interest earned on unspent balance of grants as its own income was erroneous. Besides, the audit objection pertains to grant funds and not money received for consultancy works by the Company.

Malabar Cements Limited

Avoidable extra expenditure

Non-collection of adequate security deposit (SD) to ensure due performance of the contract coupled with non-recovery of damages resulted in avoidable extra expenditure of ₹1.77 crore to the Company.

3.5 As per Rule 8.17 of the Stores Purchase Manual of Government of Kerala, to ensure due performance of the contract, performance security is to be obtained from the successful bidder who is awarded the contract. Performance security is to be obtained from every successful bidder irrespective of its registration status, etc., for a contract value above ₹1 lakh. Performance security may be furnished in the form of an account payee demand draft, fixed deposit receipt from a commercial bank or bank guarantee from a commercial bank. The performance security should be equivalent to five *per cent* of the total value of the contract, rounded off to the nearest rupee.

³⁰ It specifies the form of Balance Sheet, requirements as to Profit and Loss Account, interpretation and Balance Sheet Abstract and Company's General Business Profile.

Malabar Cements Limited (Company) is a fully owned Government company engaged in the manufacture of cement using limestone. The Company invited (December 2011) tenders for collection and transportation of up to 10,000 Metric Ton (MT) of limestone per month from Tamil Nadu Minerals Limited, Ariyalur to the Company. According to the tender conditions, the bidders were to quote rate for one MT of limestone and the maximum quantity that can be transported in a month. The Company reserved the right to place order on one or more firms at the lowest quoted (L1) rate.

NT Lorry Service (NTLS), the L1 bidder, offered to transport 6000 MT of limestone monthly at the rate of ₹433 per MT and accordingly, the Company placed (March 2012) the work order on them for monthly transportation of 6000 MT. For the balance 4000 MT of limestone, work order was placed (March 2012) on Radha Lime Stone (RLS) at the L1 rate of ₹433 per MT. The period of contracts was one year from 27 February 2012 to 26 February 2013.

As per terms and conditions of the contracts, NTLS and RLS remitted ₹5.60 lakh³¹ as SD which would be forfeited in case of their failure to carry out the work. Further, the balance work would be executed through an alternative agency at the risk and cost of NTLS and RLS. They were also liable to pay liquidated damages at the rate of ₹10 per MT on the undelivered quantity.

Against the contracted transportation of 10,000 MT of limestone per month for one year, NTLS and RLS transported an aggregate 17221.30³² MT of limestone only for five months up to May 2012 despite availability of limestone at site. The NTLS and RLS failed to transport the contracted quantity on the ground that the rates quoted were not favourable to them, as also due to delay on the part of the Company in unloading limestone at Company's site. On this, the Company invited (May 2012) fresh tenders and engaged alternative agencies³³ for transportation of the balance quantity at the rate of ₹608 per MT. In the alternative contract, the Company incurred additional expenditure of ₹1.77 crore. Although the additional expenditure was recoverable from NTLS and RLS as per provisions of the contracts, this amount has not, however, been recovered as yet (April 2015).

Audit noticed (October 2014) that purchase policy of the Company, approved by the Board of Directors in April 2010, diluted and limited SD to five per cent of three months' value of the contract despite Stores Purchase Manual warranting collection of five per cent of the total value of contract as SD. Consequently, against ₹25.98 lakh³⁴ to be kept as SD as per the Stores Purchase Manual, the Company actually held SD of ₹5.60 lakh only. Thus, failure on the part of Company to collect adequate SD, led to non-performance of the contract by NTLS and RLS and the Company had to incur additional expenditure in the alternative contract. The Company has not recovered the risk and cost amount of ₹1.77 crore involved in the alternative contract from NTLS and RLS.

³¹ ₹3 lakh held as EMD from NTLS and ₹2.60 lakh remitted as SD by RLS.

³² NTLS-1240.30 MT and RLS-15981 MT.

³³ Raja Warehouse and Logistics (8000 MT) and Vijayalakshmi Transport (2000 MT).

³⁴ 120000 MT*₹433*5 per cent.

Thus, non-collection of adequate SD to ensure due performance of the contract coupled with non-recovery of damages resulted in avoidable extra expenditure of ₹1.77 crore to the Company.

The Company stated (April 2015) that they had filed (April 2015) a suit for recovery of damages against the defaulted firms. The reply of the Company was not acceptable since the Company had failed to ensure due performance of the contract through collection of SD as per the provisions of Stores Purchase Manual. Further, Company's legal action to recover damages was late by three years due to delay by Company's Legal Department and was initiated only after this being pointed out (October 2014) by Audit. The delay may compromise the Company's position in the Court of Law.

The matter was reported (June 2015) to Government; their reply was awaited (December 2015).

Though the Administrative Department was invited (October 2015) for discussing the matter, they did not respond.

Kerala State Civil Supplies Corporation Limited

Avoidable committed liability

The Company incurred avoidable additional liability of ₹0.40 crore due to inordinate delay in complying with provisions of the Companies Act, 1956.

3.6 Section 94 of the Companies Act, 1956³⁵ (1956 Act) permitted a company to alter its share capital by passing a resolution in general meeting if so authorised by its Articles of Association (AoA). Section 97(1) of the 1956 Act further provided that if increase of share capital is beyond authorised share capital of the company, notice of such increase shall be filed with the Registrar of Companies (RoC) within 30 days after passing resolution in the general meeting. Application fee at the prescribed rate³⁶ for increase in share capital was also payable.

Kerala State Civil Supplies Corporation Limited (Company) is a wholly owned Government company with an authorised capital of ₹15 crore. AoA of the Company empowered its Board of Directors (BoD) to increase the share capital by passing an ordinary resolution³⁷ in the general meeting.

An increase in the authorised capital of the Company became necessary when Government of Kerala (GoK) converted (November 2009) the loan of ₹133.46 crore advanced to the Company into equity and the Company accounted the same as share capital advance. The BoD of the Company, thereafter, resolved

³⁵ Repealed by Companies Act 2013.

³⁶ ₹4000 upto ₹1 lakh, ₹300 for every ₹10,000 increase after ₹1 lakh up to ₹5 lakh, ₹200 for every ₹10,000 increase after ₹5 lakh upto ₹50 lakh, ₹100 for every ₹10,000 increase after ₹50 lakh up to ₹1 crore and ₹50 for every ₹10,000 increase after ₹1 crore.

³⁷ An ordinary resolution is a resolution passed by the shareholders of a company by a simple or bare majority (for example more than 50 per cent of the vote) either at a convened meeting of shareholders or by circulating a resolution for signature.