CPU. No. 979

33

THIRTY-THIRD REPORT

COMMITTEE ON PUBLIC UNDERTAKINGS

(2013-2014)

(FIFTEENTH LOK SABHA)

EXPORT OF GOLD JEWELLERY BY MSTC LIMITED

MINISTRY OF STEEL

(Action taken by the Government on the Observations/Recommendations contained in the Twenty-third Report of the Committee on Public Undertakings on Export of Gold Jewellery by MSTC Limited based on Audit Para No. 17.2 of C&AG Report No. 3 of 2011-2012).

Presented to Lok Sabha on 18.02.2014

Laid on the Table of Rajya Sabha on 18.02.2014

LOK SABHA SECRETARIAT

NEW Delhi

February 2014 / Magha 1935 (S)

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COMPOSITION OF THE
COMMITTEE ON PUBLIC UNDERTAKINGS
(2013-2014)

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Shri Jagdambika Pal

Members, Lok Sabha

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3. Shri Praveen Singh Aron
4. Shri Sanjay Bhoi
5. Smt. Shruti Choudhary
6. Shri Bansa Gopal Chowdhury
7. Shri Raja Ram Pal
8. Shri Adhalrao Shivaji Patil
9. Shri Rajendrasinh Rana
10. Shri Nama Nageswara Rao
11. Shri Magunta Sreenivasulu Reddy
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13. Smt. Sushila Saroj
14. Shri Uday Singh
15. Shri Bhisma Shankar *alias* Kushal Tiwari

Members, Rajya Sabha

16. Shri Naresh Agrawal
17. Shri Anil Desai
18. Shri Janardan Dwivedi
19. Shri Naresh Gujral
20. Shri Mukhtar Abbas Naqvi
21. Shri Tapan Kumar Sen
22. Dr. Janardhan Waghmare

Secretariat

1.	Shri A. Louis Martin	Joint Secretary
2.	Shri P.C. Koul	Director
3.	Shri Girdhari Lal	Executive Officer

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Thirty-third Report on action taken by the Government on the Observations / Recommendations contained in the Twenty-third Report of the Committee on Public Undertakings (2012-13) on Export of Gold Jewellery by MSTC Ltd based on Audit Para 17.2 of Report No. 3 of 2011-2012 of the Comptroller and Auditor General of India.

2. The Twenty-third Report of the Committee on Public Undertakings (2012-2013) was presented to Lok Sabha and laid on the Table of Rajya Sabha on 30 April 2013. The Action Taken Replies to all the 10 Observations / Recommendations contained in the Report were received from the Government on 15 January 2014. The Committee considered and adopted this Report at their Sitting held on 17 February 2014.

3. An analysis of the action taken by the Government on the Observations/ Recommendations contained in the Twenty-third Report of the Committee is given in Annexure.

New Delhi:
17 February 2014
28 Magha 1935(S)

JAGDAMBIKA PAL
Chairman
Committee on Public Undertakings

CHAPTER - I

REPORT

This Report of the Committee deals with the action taken by the Government on the Observations / Recommendations contained in the Twenty-third Report of the Committee on Public Undertakings on “Export of Gold Jewellery by MSTC Limited” based on Audit para 17.2 of Report No. 3 of 2011-12 of the Comptroller and Auditor General of India, which was presented to Lok Sabha and laid on the Table of Rajya Sabha on 30 April, 2013.

2. Action Taken Notes have been received from the Government in respect of all the ten Observations/ Recommendations contained in the Report. These have been categorized as follows:

(i) Observations/Recommendations that have been accepted by the Government: (Chapter-II)
Sl. Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 (Total 9)

(ii) Observation/Recommendation which the Committee do not desire to pursue in view of the Government’s reply: (Chapter-III)
Sl. No. 10 (Total 1)

(iii) Observation/Recommendation in respect of which reply of the Government has not been accepted by the Committee and which require reiteration: (Chapter-IV)
(NIL)

(iv) Observations/Recommendations in respect of which final reply of the Government is still awaited: (Chapter-V)
(NIL)

3. **The Committee desire that response to their comments in Chapter I of the Report should be furnished to them expeditiously.**

4. The Committee will now deal with the action taken by the Government on some of the recommendations in the succeeding paragraphs.

RECOMMENDATION (Sl. No. 3)

5. In their Twenty-third Report on the subject, the Committee had noted that before accepting the proposals for the export business of gold jewellery, MSTC Ltd. did not carry out due diligence on its part in verifying the credentials of the associates and foreign buyers and relied on the due diligence made by the insurers i.e. Export Credit Guarantee Corporation of India Ltd.(ECGC) and ICICI Lombard regarding the foreign buyers as a result of which huge sums of public money has been locked up in legal battle.

6. In their Action Taken Reply, the Government have, inter alia stated that prior to taking export turnover policy, ECGC officials visited MSTC office to discuss the kind of insurance that MSTC should take as it was a customized policy that ECGC had decided to issue and not their standard policy, since MSTC had no insurance experience of such business transactions. On 16 July, 2007 ECGC gave non-binding indication for credit insurance cover for export receivables for Multi Buyer Exposure (MBEP) (Customer specific).

7. The Government have also stated that the policy was taken after discussion with ECGC insurance broker M/s Willis BA India Private Limited, New Delhi as MSTC had no such previous experience and hence totally depended on ECGC for appropriate insurance policy. While applying for the insurance cover to ECGC in form 144, it was clearly mentioned that suppliers/associates have experience with the proposed Foreign Buyers thus the existence of nexus between supplier & buyers was openly given to ECGC and they gave the policy and approved credit limits of each of the buyers knowing fully well the existence of suppliers through whom MSTC proposed to export the gold jewellery. Thus MSTC relied on due diligence made by the insurers.

8. On the question of discussion with ECGC insurance broker M/s Willis BA India Private Limited, the Ministry in their subsequent reply have inter alia stated that MSTC has clarified that the Company being new in the export of plain gold jewellery had detailed discussions with ECGC officials prior to taking the insurance policy. ECGC vide their letter no. KEB/DEV/2007 dated 3 August, 2007 had issued a non-binding indication for multi-buyer exposure policy (customer specific) which did not suit MSTC's proposal. Then there was another round of discussions with ECGC officials. ECGC, all on a sudden issued a non-binding indication for Export Turnover Policy (customer specific) vide ref. no.KEB/DEV/2007 dated 28 August, 2007 addressed to M/s. Willis B A India Pvt. Ltd., Flat No.306, 3rd floor, Mercantile House, 15, Kasturba Gandhi Marg, New Delhi-110 001, A/C MSTC Ltd.. Prior to that MSTC did not have any knowledge about the above company and never had discussion with that company. Therefore, the discussions referred in the reply is actually a discussion between MSTC and ECGC officials.

9. The Ministry of Steel in their Action Taken Reply have, inter alia, stated that the Company being new in the export of plain gold jewellery had detailed discussions with ECGC officials prior to taking the insurance policy and had taken the insurance policy after discussion with ECGC insurance broker M/S Willis BA India Private Limited, New Delhi. However, the Audit pointed out that no such discussion took place between the Company and the broker directly. Reacting to the audit comment, the Ministry clarified quoting MSTC that after issuing a non-binding indication for multi-buyer exposure policy (customer specific) which did not suit MSTC's proposal, ECGC, all of a sudden issued a non- binding indication for Export Turnover Policy addressed to M/s Willis B A India Pvt. and prior to that MSTC did not have any knowledge about the above company. Therefore, the discussion referred in the reply is actually a discussion between MSTC and ECGC officials. Although, the Ministry have clarified the matter, the fact remains that before furnishing the Action Taken Reply to the

Committee, the Ministry have failed to ensure that the information is factually correct and complete in all respects. The Committee, therefore, while deprecating the casual attitude of the Ministry of Steel, expect the Ministry to exercise extreme care in furnishing information to the Parliamentary Committees in future.

RECOMMENDATION (Sl. No. 8)

10. Noting that although the Company had succeeded in securing 13 decrees in its favour in the foreign courts after receiving its first decree on 13 December, 2011 had not ensured their execution, the Committee while expressing their strong displeasure over the undue delay had desired that besides making efforts for speeding up the legal process, the Company should also take necessary action to ensure execution of decrees in a time bound manner.

11. The Ministry in their Action Taken Reply have inter- alia stated that legal cases have been initiated against all the 46 defaulting buyers, 44 in UAE and 1 each in Kuwait and Singapore. Till date, 43 decrees have been received in favour of MSTC valued at Rs.672.30 crore. MSTC's advocates in UAE have been instructed to file execution cases in respect of all the 43 judgments received from UAE. As per their law, execution cases can be filed only after the mandatory period of six months after publication of the judgment. As a result of regular follow up by MSTC, the following execution cases have been filed.

- (i) M/s. Leo Diamond - 1146/2012.
- (ii) M/s. Metric Trading. - 437/2012.
- (iii) M/s. Noor Jahan General Trading - 1235/2012.
- (iv) M/s. Bodra Trading. - 1233/2012.
- (v) M/s. Labdhi International. - 1031/2012.
- (vi) M/s. Sajgyan Diam. - 12890/2012.
- (vii) M/S Star Alloys LLC FZE, Fujairah - 179/2013.
- (viii) M/s. Future Icon Trading (FZE) Dubai. - 109/2013.
- (ix) M/s. Hadar International Trade Agency, Abu Dhabi. - 1031/2012. Cassation case No. 543/2012.
- (x) Matz International 715/2013
- (xi) Mobicon International FZE 2386/2013
- (xii) Morning Rise General Trading 2385/2013

12. The Ministry have also stated that the following six foreign buyers have appealed against the decree passed in Court of 1st instance:-

- (i) M/s. Al Sidra Jewellery.
- (ii) M/s. Mine Gold & Jewellery.
- (iii) M/s. Hadir Projects & Environment Systems L.L.C.
- (iv) M/s. Zeeba Gems LLC.
- (v) M/s. Ghanim Trading.
- (vi) M/s. Hadar International Trade Agency.

13. Foreign buyer at Sl.No.3 has already lost in appeal but MSTC are yet to receive the judgment. The executions of the cases are being vigorously followed up with UAE advocates by mail and personal visits to Dubai by CMD MSTC along with MSTC's advocates.

14. Further, MSTC's Singapore lawyers have filed winding up case against a buyer on receipt of a decree in favour of MSTC by Singapore Court.

15. The Committee note that pursuant to their instant Recommendation, things have been speeded up. Till date, out of 46 cases in all, MSTC has managed to secure decrees valued at Rs. 672.30 crore in 43 cases in UAE and also filed execution cases in respect of 12 defaulting buyers. The Committee further note that as per the law in UAE, execution cases can be filed only after the mandatory period of six months after publication of the judgment. Notwithstanding this legal requirement, the Committee are confident that the Government will carry on with the good work with all promptness and take all these cases to their logical conclusion to ensure the interest of the public exchequer.

RECOMMENDATION (Sl. No. 9)

16. In their Twenty-third Report, the Committee had desired that Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) must complete their investigations expeditiously and take the cases to their logical conclusion at the earliest, without compromising the interests of MSTC. They had also desired the Ministry of Steel to make a periodical review of the probe being conducted by the investigating agencies in the matter and ensure its completion with promptitude.

17. In their Action Taken Reply, the Ministry have stated that the CBI has filed chargesheet in the court of Special Judge, Mumbai against Shri Shishir Dharkar, then CMD of Pen Urban Co-operative Bank and M/s Space Mercantile Co. Pvt. Ltd. Shri Vivek Vaidya, Director of M/s Ushma Jewellery Packaging Export Pvt. Ltd., Mrs. Gulraihna Ommer, Share Holder & Director of M/s Space Mercantile Co. Pvt. Ltd., Mr. Radheyshyam Bhomavat Director of M/s. Space Mercantile Co. Pvt. Ltd., Jayesh Desai, Director of M/s. Joshi Bullion and Gems Pvt. Ltd., Shri Vinod Motwani, Director, M/s. Bonito Impex Pvt. Ltd., Shri Malay Sen Gupta, the then CMD of MSTC, Shri Utpal Sarkar, the then DGM (F&A) of MSTC, Shri Tapas Basu, the then GM (F&A) of MSTC, Shri Shailendra Kumar Sihna, director of M/s. Advance Risk Solution Co. Pvt. Ltd., Shri Rahis Ahmed, Partner of M/s. Straregic Consultancy, Shri Rammurthy Mani, Managing director of M/s. Great Aid Projects Pvt. Ltd,. Shri Prem Kumar Sharma, Ex-Director of Pen Urban Co. Operative Bank Ltd. and advisor of Shri Shishir Dharkar and Shri D.K. Jain, Manager of M/s. Space and Partner of M/s. Apollo General Trading LLC, Dubai, M/s. Ushma Jewellery Packaging Export Pvt. Ltd., M/s Space Mercantile Co. Pvt. Ltd. M/s. KA Malle Pharmaceuticals Pvt. Ltd. M/s. Joshi Bullion & Gems Pvt. Ltd.,. M/s. Bond Gems Pvt. Ltd. and Bonito Impex Pvt. Ltd. under various sections of IPC and Prevention of Corruption Act.

18. Regarding the progress of action taken by Enforcement Directorate, the Ministry furnished the following:

1. Investigation under FEMA, 1999

Investigation regarding outstanding export proceeds in respect of exports made by the associates through MSTC has been completed and Complaints have been filed against the associates and its Directors/ officials. The Special Director, Western Region, Mumbai has issued 6 Show Cause Notices (SCNs) against the associates and its Directors/ officials. Investigations, in respect of other issues i.e. receipt of advances from foreign buyers for export by the associates, holdings in foreign companies, etc. are under progress.

2. Investigation under PMLA, 2002

An ECIR bearing No. 05/MZO/2012 dated 06 June, 2012 was registered on the basis of the FIR filed by the ACB, CBI, Mumbai. Enforcement Directorate has seized pay order of 13 crores from M/s Skylark Buidcon Pvt Ltd on 26 July, 2012 under section 17 (1) of PMLA, 2002 which were proceeds of crime received from M/s Space Mercantile Co Pvt. Ltd. The Adjudicating Authority vide Order dated 23 October, 2012 confirmed the retention of the seized amount. The defendants have filed appeals against the order of the Adjudicating Authority before the Appellate Tribunal for PMLA, which are pending.

19. The Ministry have also stated that further investigation on the basis of charge sheet filed by the CBI in this case before the Special Judge for CBI, Mumbai is in progress. The Ministry of Steel are periodically reviewing the progress of action taken by the MSTC, CBI and Enforcement Directorate for recovery of outstanding dues.

20. The Committee are glad to note from the Action Taken Reply of the Government that in pursuance of their instant Recommendation, a lot of headway has been made both by CBI and ED to bring the guilty to book. CBI has since filed charge sheet under various sections of IPC and Prevention of Corruption Act in the Court of Special Judge, Mumbai against various persons including officers of MSTC and ED has also completed substantial action under FEMA, 1999 and PMLA 2002. Furthermore, investigation is in progress both by CBI and ED at their ends. The Committee feel that in order to send the perpetrators of fraud behind the bars, it is necessary that the investigations should be brought to the logical conclusion at the earliest. The Committee, therefore, desire that the Ministry should, through constant monitoring and coordination with all agencies including diplomatic channels, ensure expeditious completion of the probe by the enforcement agencies so that the reality is brought to the fore and the ends of justice are served.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNMENT

RECOMMENDATION (Sl No. 1)

The audit para 17.2 of the C & AG's 2011-12, Report No. 3 (Commercial) relating to MSTC's export of Gold Jewellery brought out that an amount of Rs. 611.79 crore (including financial charges) remained un-recovered after effecting exports during 2008-09. The Committee's examination of the audit para reveals that the entire gamut of the transactions and securities are all presently sub-judice. In the 46 legal cases filed against defaulted foreign buyers in UAE, Singapore and Kuwait, 13 decrees amounting to Rs. 216.11 crore awarded so far by foreign courts in favour of MSTC. Arbitration against all the six associates suppliers started in December, 2009 is still continuing. Legal action to recover insurance claims from Export Credit Guarantee Corporation (ECGC) is in progress. A suit against Pen Urban Co-operative Bank for Rs. 162 crore for enforcing sale of mortgaged collateral securities is being initiated. It is observed that recoveries already made include Rs.52 crore through remittance from foreign buyers, Rs.13 crore from interest in Fixed Deposit (FD), Rs. 39 crore from mortgaged properties and Rs. 69.51 crore from arbitration award in favour of MSTC. In normal course, the Committee would not have selected a sub-judice matter for examination. The Committee, therefore, in conformity with parliamentary practice and in order not to prejudice the course of justice, refrain from making any observation on the substantial issues and bring out in most of the subsequent paragraphs mere facts of the case in the light of audit observations.

Reply of the Government

Being a matter of records, no comments.

Remarks of office of C&AG on the reply of the Government

No comments

Reply of the Government

No comments

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (Sl No. 2)

During the course of the Committee's examination of the subject, an impression was sought to be created that undue haste was shown by MSTC in approving the business of export of jewellery in July, 2007 soon after submission of corporate planning study by the National Productivity Council (NPC) in April, 2007. According to the then

CMD of MSTC (Shri Malay Sengupta), export of jewellery had been recommended by a Professional Market Research Agency (ORG-India) as early as in the year 2005. Looking at the MSTC's foray into new businesses in totality, the Committee find that on the basis of NPC study of April, 2007, export of jewellery was not the only new business started during 2007-08 but there were four other new businesses of coal, steel, iron ore and oil & natural gas all of which commenced in the same year based on NPC report. It is a moot point as to how the allegation of undue haste can be singled out to only one item - 'export of jewellery'. The Committee note that the sale figure during 2007-08 for the four commodities ranged from Rs.1053 crore to Rs.2626 crore whereas in the case of jewellery, the export figure stood much less at Rs.261 crore. It is observed that while business in respect of the four commodities continued in the successive years, export of jewellery was discontinued after 2008-09 due to the problem of non-recovery of dues.

Reply of the Government

Being a matter of records, no comments.

Remarks of office of C&AG on the reply of the Government

No Comments

Reply of the Government

No comments

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (SI No. 3)

During the examination of the subject, it was brought to the notice of the Committee that MSTC Ltd. did not carry out due diligence in verifying the credentials of the associates and foreign buyers before accepting the proposals for the export business of gold jewellery as a result of which huge some of public money has been locked up in legal battle. MSTC has pleaded in this connection that credentials of the associates were verified through a numerous set of documents such as documentary evidence of prior export/dealing in gold jewellery, etc.; Income tax/Sales tax registration, RCMC from Gems and Jewellery Export Promotion Council, documentary evidences regarding prior experience with STC, etc. MSTC reportedly obtained several documents on the overseas buyers including the D & B / TCM report, Chartered Accountants certificate of past experience. According to Audit, three out of six associates were defaulters in paying their dues to State Trading Corporation in the business of export of gold jewellery in the year 2007-08. MSTC has contended that the associate suppliers and overseas buyers performed the contracts flawlessly during 2007-08 and did not think of any other cross verification and the Company relied on the due diligence made by the insurers regarding the foreign buyers.

Reply of the Government

Prior to taking export turnover policy, Export Credit Guarantee Corporation (ECGC) officials visited MSTC office to discuss the kind of insurance that MSTC should take as it was a customized policy that ECGC had decided to issue and not their standard policy, since MSTC had no insurance experience of such business transactions. On 16.07.2007 ECGC gave non-binding indication for Credit Insurance cover for Export receivables for Multi Buyer Exposure (MBEP) (Customer specific). At the time of discussion the proposed Memorandum of Agreement (MoA) with the associate was shown to them. Based on that discussion the multi buyer exposure (MBEP) policy was replaced by non binding indication for an Export Turnover Policy (Customer specific) on 28.08.2007. When the MoA was given in Nov, 2008 officially, ECGC did not bother to cancel the policy on the ground that MSTC did not have any insurable interest in view of MoA. The policy was taken after discussion with ECGC insurance broker M/s Willis BA India Private Limited, New Delhi as MSTC had no such previous experience and hence totally depended on ECGC for appropriate insurance policy. While applying for the insurance cover to ECGC in form 144, it was clearly mentioned that suppliers/associates have experience with the proposed Foreign Buyers thus the existence of nexus between supplier & buyers was openly given to ECGC and they gave the policy and approved Credit Limits of each of the buyers knowing fully well the existence of suppliers through whom MSTC proposed to export the gold jewellery. Thus MSTC relied on due diligence made by the insurers.

Remarks of office of C&AG on the reply of the Government

It is stated in reply that the policy was taken after discussion with ECGC insurance broker M/S Willis BA India Private Limited, New Delhi. However, after verification it was found that no such discussion took place between the company and the broker directly. Hence, this part of reply is not tenable.

In the reply, it was further stated that Form 144 was submitted to ECGC which clearly mentioned that suppliers/ associates have experience with the proposed foreign buyers. Thus, the existence of nexus between suppliers and foreign buyers was openly given. It was observed that the form 144 had given information regarding experience of the associates with foreign buyers. However, it did not mention that the associates were related parties and one of the associates was owner of few foreign buyers also. Thus, due diligence required by the Company was not performed. The MoA with associates was signed in August, 2007 and the policy was entered into in September 2007. As per the principle of insurance (utmost good faith), copy of the MoA should have handed over to ECGC at the time of entering into insurance policy.

Reply of the Government

MSTC has stated that the company being new in the export of plain gold jewellery had detailed discussions with ECGC officials prior to taking the insurance policy. ECGC vide their letter no.KEB/DEV/2007 dated 3.8.2007 had issued a non-binding indication for multi-buyer exposure policy (customer specific) which did not suit MSTC's proposal. Then there was another round of discussions with ECGC officials. ECGC, all on a sudden issued a non-binding indication for Export Turnover Policy (customer specific) vide ref. no.KEB/DEV/2007 dated 28.8.2007 addressed to M/s. Willis B A India Pvt. Ltd., Flat No.306, 3rd floor, Mercantile House, 15, Kasturba Gandhi Marg, New Delhi-110 001, A/C MSTC Ltd.. Prior to that MSTC did not have any knowledge about the above company and never had discussion with that company. Therefore, the discussions referred in the reply is actually a discussion between MSTC and ECGC officials.

In the case of submission of form no.144 whatever the information were available to MSTC were given to ECGC. Relationships between the Asscocites were neither known at the time of export nor had it been reflected in the Dun & Bradstreet Report. Moreover, MSTC repeatedly declared that the company did not have any experience in the export of gold jewellery and as such, was entirely depending on the ECGC's expertise for such export for finding the credentials of the party. In fact, in the 364th Board Meeting of ECGC dated 27.11.2009 clearly stated that in response to a query from a Board member, the Management of ECGC stated "………before deciding on assuming risks, reports from 2 credit rating agencies were called and were cross checked and risks were underwritten taking into account the capacity and the willingness to pay of the foreign buyers." Thus it is clear that ECGC never placed the burden of vetting the foreign buyers on MSTC. Draft MOA was shown to ECGC prior to the issuance of the policy which ECGC acknowledged in the internal noting dated 29.06.2007 while forwarding the proposal from Kolkata branch to H.O. for formulation of a customer specific policy. Therefore MSTC acted on the principle of Insurance (utmost good faith). ECGC never asked for the signed copy of MOU which is exactly as per draft MOU referred by ECGC in their internal note.

(Ministry of Steel's O.M. No 6(4)/2010-MFdated 15 January 2014)

[Please also see comments of the Committee at Para 9 of Chapter-I of the Report.]

RECOMMENDATION (SI No. 4)

Audit has pointed out that there was meager net worth of the associates selected by the Company as compared to advances paid to them. MSTC has pointed out that it did not pay any advance to the associate suppliers. Part payment towards purchase of gold jewellery was made after completion of performance by the associates – after shipment and on acceptance of foreign buyers. It is observed from the statement of comparison between total volume of trading business of PSUs and their networth, furnished to the Committee that exposure of MSTC is one of the least and is much lower than the financial institution/banks. All PSU trading companies have very thin margins – MMTC 0.11%, STC 0.09% and MSTC 0.47% in 2010-11. The MSTC's Capital Adequacy Ratio (CAR) as on 01-04-2008 was about 9% which is stated to be the same as CAR followed by most of the banks and financial institutions.

Reply of the Government

No comments.

Remarks of office of C&AG on the reply of the Government

No Comments.

Reply of the Government

No comments

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (SI No. 5)

The Audit has observed that as per agreement, the associates were required to bear all the risks and costs in case of non-payment of export proceeds by the foreign buyers. MSTC in September, 2008 reportedly modified original clause of the agreement enabling it to encash Post-Dated Cheques (PDCs) furnished by the associates in the event of non receipt of export proceeds from the foreign buyers. As per modified clause, the PDCs could be encashed only in the event of non-payment by the foreign buyers due to disputes with the associates relating to quantity, quality and price only. This is stated to have facilitated the associates to become risk free in the event of non-payment by the foreign buyers on any ground and the entire such risk was passed on to the Company / Insurers. MSTC has argued in this regard that the relevant clause of the MOA needed suitable amendment to reflect the true spirit / purpose for providing PDCs by the associate. The retention of PDCs for payment failure by the overseas buyers might have made the insurance policies infructuous. Payment risk of foreign buyers was hedged through insurance policy and PDCs of associate suppliers were to hedge the performance risk of associates.

Reply of the Government

As per the MoA executed between MSTC and Associate Suppliers, the Export contract is an integral part of MoA and in the event of foreign buyer failing to honour their contractual obligations, the associate supplier alone were to bear all the risks, costs and consequence for the same.

Remarks of office of C&AG on the reply of the Government

The reply is not tenable as the networth of associates suppliers was insignificant when compared to their credit exposure. Thus, associates were not in a position to honour their contractual obligations in the event of non-payment of export proceeds by foreign buyers.

Reply of the Government

MSTC has reported that while formulating the export policy, it was clearly informed to the Board of MSTC Ltd that:

a) The Associate of MSTC would make the shipment as per export order in their (Associate) own cost. Pre shipment inspection of the consignment would be done by Appropriate Inspection Agency.

b) On receipt of the export document duly accepted by the overseas buyer, MSTC would advance upto 85% of the export value to its Associates.

c) In the event of non-payment by the overseas buyer , the claim would be lodged with the insurance company /risk underwriting agency who would pay 90% of the shipment value to MSTC as per standard procedure.

Accordingly in the insurance policy also the clause “Contract repudiation” had been deleted. Thus once the shipment is done the associate do not have any liability. As such, the credentials of the associates were not checked. The default of foreign buyers to pay on due date is covered by the insurance policy which was amply made clear to ECGC prior to the issuance of the policy. The clause of reimbursement was kept in the MOA as an extra ordinary precaution to put pressure on the associates in case the party defaults since the buyers are nominated by the associates and are known to associates

(Ministry of Steel’s O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (SI No. 6)

The Committee note that in addition to a Multi buyer insurance policy taken out with ECGC to cover the risk of non-payment of export proceeds from overseas buyers, the Company entered in to a factoring mode arrangement with ICICI Lombard General Insurance Company Ltd. in respect of four foreign buyers. The policy with the ICICI Lombard stipulated that the Company should not enter into any export trade insurance policy without the written consent of insurer. Regarding coverage of four foreign buyers under two insurance policies, the Company stated that the insurance policies of ECGC and ICICI Lombard are mutually exclusive and in the opinion of the Solicitor General it is not exactly a case of double insurance. According to Solicitor General, factoring mode arrangements are to be permissible both on the face of the ECGC policy as well as ICICI Lombard Policy.

Reply of the Government

MSTC has declared its total export turnover done through ECGC. The Policy with the other Insurance Company (ICICI Lombard) is relating to the purchase of Turnover by the Standard Chartered Bank (SCB) and in that policy SCB is principal insured and MSTC was only co-insured. Moreover in the policy period 29.08.07 to 31.08.08 there was no other insurance company as business with SCB was not done in that period. Out of total claim of Rs.450.74 cr. in the entire period, Rs.322.79 cr. was for this 1^{st} policy period which has also been wrongfully denied by ECGC.

Remarks of office of C&AG on the reply of the Government

The reply is not tenable. As per the ECGC policy, the policy was a whole turnover policy. Thus all exports should have been done through them. Further, the foreign buyers were given over exposure i.e. more than their financial strength by giving credit under two insurances.

Reply of the Government

MSTC declared its total export turnover done through ECGC. for the exports that were purchased by Standard Chartered Bank (SCB). Under RPA it is the bank who had taken policy from ICICI Lombard, where SCB is a lead Insured and MSTC is the co-insured. In fact for recovery Standard Chartered Bank has filed a case against the insurance company in Bombay High Court all by themselves. Thus, as far as MSTC is concerned, entire export made under the ECGC policy had been declared to ECGC and there is no breach of contract.

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (SI No. 7)

Out of 47 foreign buyers to whom gold jewellery worth Rs.638.20 crore was exported during 2008-09, 46 foreign buyers did not pay their dues of Rs.598.63 crore on their due dates. The Company which paid Rs. 68.78 crore as interest, bank charges and discounting charges to the banks besides incurring crystallization loss of Rs. 53.06 crore could realize only an amount of Rs. 10.48 crore from the associates after encashment of FDR amounting to Rs. 25 crore which the Company received in April 2009. The Committee have been informed that the Company had also received, in November 2008, two Bank Guarantees (BGs) amounting to Rs.62 crore from two associates as security towards exports to be made in future i.e. after December, 2008. However, since no export took place after November 2008, the aforesaid BGs could not be encashed. Further, the Company received 14 FDRs amounting to Rs.100 crore from two associates issued by Pen Co-operative Bank in April 2009 with the condition to encash the same on maturity between October 2010 and June 2011. These also could not be encashed because of RBI directive dated 22 September 2010 precluding the bank from making any payment or discharging any liability or obligation. During audit scrutiny, it was revealed that the bank was having a meagre deposit of Rs. 400 crore only and one of its Directors was an ex-Director of an associate (Space).

Reply of the Government

Being a matter of record, no comments.

Remarks of office of C&AG on the reply of the Government

The reply is silent about why the company has accepted FDRs and Bank Guarantees which were issued as security by a non-Scheduled urban Co-operative bank with a meager deposit instead of a nationalized/ Scheduled bank.

Reply of the Government

MSTC has stated the company accepted the FDRs and BGs from Pen Urban Cooperative Bank as most of the amount was transferred to the Associates account maintained with that bank. The principle of doctrine of indoor management put onus on the respective companies/banks to work within rule and capacity. If the bank has issued the FDRs and BGs it is binding on them to pay on due date and in this particular case the bank might have paid if RBI would not have intervened and close the operation by under Section 35A of the Banking Regulation Act, 1949 since 23.09.2010.

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

RECOMMENDATION (SI No. 8)

The Committee have been informed that the Company has initiated legal action against all defaulters including associates, insurers and foreign buyers, invoking judicial provisions in force in the country and abroad and till November, 2011, have incurred legal expenses of over Rs. 3.17 crore in recovery action for gold jewellery matter. Detailing about the steps taken for recovery of unrealized money through courts and otherwise, the Chairman and Managing Director of the Company during his deposition before the Committee stated that the Company has succeeded in securing 13 decrees in their favour in the foreign courts during last six months at various points of time. Beside, the Company has also put up their case strongly in the hearing of National Consumer Grievance Forum which agreed to treat MSTC as 'consumer' overruling the objection of ECGC in the consumer complaint against ECGC. The Committee however, note with dismay that the Company which received its first decree way back in 13th December, 2011 have not ensured its execution so far. The Committee express their strong displeasure over undue delay in this regard and desire that besides taking efforts for speeding up the legal process, the Company should also take necessary action to ensure execution of decrees in a time bound manner.

Reply of the Government

Legal cases have been initiated against all the 46 defaulting buyers, 44 in UAE and 1 each in Kuwait and Singapore. Till date, 43 decrees have been received in favour of MSTC valued at Rs.672.30 crore.

MSTC's advocates in UAE have been instructed to file execution cases in respect of all the 43 judgments received from UAE. As per their law, execution cases can be filed only after the mandatory period of six months after publication of the judgment. As a result of regular follow up by MSTC, the following execution cases have been filed.

1. M/s. Leo Diamond - 1146/2012.
2. M/s. Metric Trading. - 437/2012.
3. M/s. Noor Jahan General Trading - 1235/2012.
4. M/s. Bodra Trading. - 1233/2012.
5. M/s. Labdhi International. - 1031/2012.

6. M/s. Sajgyan Diam. - 12890/2012.
7. M/S Star Alloys LLC FZE, Fujairah - 179/2013.
8. M/s. Future Icon Trading (FZE) Dubai. - 109/2013.
9. M/s. Hadar International Trade Agency, Abu Dhabi. - 1031/2012. Cassation case No. 543/2012.
10. Matz International 715/2013
11. Mobicon International FZE 2386/2013
12. Morning Rise General Trading 2385/2013

Six foreign buyers have appealed against the decree passed in Court of 1st instance:-

1. M/s. Al Sidra Jewellery.
2. M/s. Mine Gold & Jewellery.
3. M/s. Hadir Projects & Environment Systems L.L.C.
4. M/s. Zeeba Gems LLC.
5. M/s. Ghanim Trading.
6. M/s. Hadar International Trade Agency.

Foreign buyers at Sl.No.3 has already lost in appeal but MSTC are yet to receive the judgment. The executions of the cases are being vigorously followed up with UAE advocates by mail and personal visits to Dubai by CMD MSTC along with MSTC's advocates.

MSTC's Singapore lawyers have filed winding up case against a buyer on receipt of a decree in favour of MSTC by Singapore Court.

Remarks of office of C&AG on the reply of the Government

No Comments

Reply of the Government

No Comments

(Ministry of Steel's O.M. No 6(4)/2010-MFdated 15 January 2014)

[Please also see comments of the Committee at Para 15 of Chapter-I of the Report.]

RECOMMENDATION (SI No. 9)

The Committee noted that besides initiating legal action, MSTC referred the case of defaulters to the CBI for a probe after repeated extensions sought by overseas buyers on flimsy grounds raising a suspicion of criminal conspiracy. Based on the information gathered during investigation, CBI has stated that the extant case is indicative of foul play involving associates, insurers and foreign buyers. The agency further pointed out that as new links are also being unearthed, its domain of probe continues to widen procrastinating completion of the investigation process and task of sending the perpetrators of fraud to jail. The Enforcement Directorate also is investigating the case under the Foreign Exchange Management Act (FEMA) and Prevention of Money Laundering Act (PMLA). The Committee desire that CBI and ED must complete their investigations expeditiously and take the cases to their logical conclusion at the earliest, without compromising the interests of MSTC. The Committee also desire the Ministry of Steel to make a periodical review of the probe being conducted by the investigating agencies in the matter and ensure its completion with promptitude.

Reply of the Government

The Central Bureau of Investigation (CBI) has filed chargesheet in the court of Special Judge, Mumbai against Shri Shishir Dharkar, then CMD of Pen Urban Co-operative Bank and M/s Space Mercantile Co. Pvt. Ltd. Shri Vivek Vaidya, Director of M/s Ushma Jewellery Packaging Export Pvt. Ltd., Mrs. Gulraihna Ommer, Share Holder & Director of M/s Space Mercantile Co. Pvt. Ltd., Mr. Radheyshyam Bhomavat Director of M/s. Space Mercantile Co. Pvt. Ltd., Jayesh Desai, Director of M/s. Joshi Bullion and Gems Pvt. Ltd., Shri Vinod Motwani, Director, M/s. Bonito Impex Pvt. Ltd., Shri Malay Sen Gupta, the then CMD of MSTC, Shri Utpal Sarkar, the then DGM (F&A) of MSTC, Shri Tapas Basu, the then GM (F&A) of MSTC, Shri Shailendra Kumar Sihna, director of M/s. Advance Risk Solution Co. Pvt. Ltd., Shri Rahis Ahmed, Partner of M/s. Straregic Consultancy, Shri Rammurthy Mani, Managing director of M/s. Great Aid Projects Pvt. Ltd,. Shri Prem Kumar Sharma, Ex-Director of Pen Urban Co. Operative Bank Ltd. and advisor of Shri Shishir Dharkar and Shri D.K. Jain, Manager of M/s. Space and Partner of M/s. Apollo General Trading LLC, Dubai, M/s. Ushma Jewellery Packaging Export Pvt. Ltd., M/s Space Mercantile Co. Pvt. Ltd. M/s. KA Malle Pharmaceuticals Pvt. Ltd. M/s. Joshi Bullion & Gems Pvt. Ltd.,. M/s. Bond Gems Pvt. Ltd. and Bonito Impex Pvt. Ltd. under various sections of IPC and Prevention of Corruption Act.

Progress of Action taken by Enforcement Directorate.

1. Investigation under FEMA, 1999

Investigation regarding outstanding export proceeds in respect of exports made by the associates through MSTC has been completed and Complaints have been filed against the associates and its Directors/ officials. The Special Director, Western Region, Mumbai has issued 6 Show Cause Notices (SCNs) against the associates and its Directors/ officials. Investigations, in respect of other issues i.e. receipt of advances from foreign buyers for export by the associates, holdings in foreign companies, etc. are under progress.

2. Investigation under PMLA, 2002

An ECIR bearing No. 05/MZO/2012 dated 06.06.2012 was registered on the basis of the FIR filed by the ACB, CBI, Mumbai. Enforcement Directorate has seized pay order of 13 crores from M/s Skylark Buidcon Pvt Ltd on 26.07.2012 under section 17 (1) of PMLA, 2002 which were proceeds of crime received from M/s Space Mercantile Co Pvt. Ltd. The Adjudicating Authority vide Order dated

23.10.2012 confirmed the retention of the seized amount. The defendants have filed appeals against the order of the Adjudicating Authority before the Appellate Tribunal for PMLA, which are pending.

Further investigation on the basis of Charge sheet filed by the CBI in this case before the Hon'ble Special Judge for CBI, Mumbai is in progress.

The Ministry of Steel is periodically reviewing the progress of action taken by the MSTC, CBI and Enforcement Directorate for recovery of outstanding dues.

Remarks of office of C&AG on the reply of the Government

No Comments

Reply of the Government

No Comments

(Ministry of Steel's O.M. No 6(4)/2010-MFdated 15 January 2014)

[Please also see comments of the Committee at Para 20 of Chapter-I of the Report.]

CHAPTER - III

OBSERVATION/RECOMMENDATION WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLY

RECOMMENDATION (Sl. No. 10)

Emphasizing the need for Government representatives in the Board of PSUs to report to the Ministry about important developments in Board Meetings, the Steel Secretary deposed before the Committee that "all the Directors (Government nominees) on the Board of Company have to report any major decision taken by the Company to the Government. In the period when this happened, unfortunately, that did not happen and there was no reporting to the Government." Further, the Committee were informed that Central Vigilance Commission in addition to CBI and ED are currently looking in to the suspected criminal conspiracy involving the officials of Ministry and MSTC and a CVO report has also been sought to fix the responsibility against the wrong doers. According to the report, collusion of some officials of the MSTC / Ministry with the suspected persons has been discovered and suspension order was issued. However, the culprit remained scot-free for unknown reason for a longer duration. Taking a strong exception to the non-implementation of the decision to issue a suspension order to a staffer in the Ministry, the Secretary, Steel, candidly admitted that this was a 'serious lapse' and assured the Committee that immediate action would be taken against the guilty in the matter. He added that since CVO report suggests that CBI inquiry is still underway, the responsibility against the erring officials will be fixed as soon as the inquiry report is made public.

Reply of the Government

The Ministry of Steel referred the matter to Central Bureau of Investigation (CBI) on 18.8.2009 for investigation and taking necessary action on urgent basis and a copy of the same was also endorsed to Central Vigilance Commission(CVC). The CBI filed a charge sheet against various persons including the officers of MSTC in Februrary,2013. Neither the CBI nor the CVC have recommended any action against any official of the Ministry of Steel.

Remarks of office of C&AG on the reply of the Government

No Comment

Reply of the Government

No comment

(Ministry of Steel's O.M. No. 6(4)/2010-MFdated 15 January 2014)

CHAPTER - IV

OBSERVATION/RECOMMENDATION IN RESPECT OF WHICH REPLY OF THE GOVERNMENT HAS NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

-Nil-

CHAPTER - V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLY OF THE GOVERNMENT IS STILL AWAITED

-Nil-

New Delhi	**JAGDAMBIKA PAL**
17 February 2014	**Chairman**
28 Magha 1935(S)	**Committee on Public Undertakings**

APPENDIX

COMMITTEE ON PUBLIC UNDERTAKINGS
(2013-2014)

MINUTES OF THE TWENTY-THIRD SITTING OF THE COMMITTEE

The Committee sat on Monday, the 17th February 2014 from 1500 hrs to 1530 hrs in Room No. 147 (Chairman's Chamber), Parliament House (Third Floor), New Delhi.

PRESENT

Shri Jagdambika Pal - Chairman

MEMBERS

Lok Sabha

2. Shri Hansraj Gangaram Ahir
3. Smt. Shruti Choudhary
4. Shri Nama Nageswara Rao
5. Prof. Saugata Roy
6. Smt. Sushila Saroj
7. Shri Uday Singh

Rajya Sabha

8. Shri Anil Desai
9. Shri Naresh Gujral

SECRETARIAT

1. Sh. P. C. Koul, Director
2. Sh. M. K. Madhusudhan, Additional Director
3. Sh. G. C. Prasad, Dy. Secretary

OFFICE OF C&AG

1. Sh. P Sesh Kumar, Director General (Commercial)-II
2. Sh. B. C. Mandal, Dy. Director

2. At the outset, the Chairman welcomed the Members and the Officers of C&AG to the Sitting of the Committee.

3. The Committee then took up for consideration the draft Reports on the following subjects and adopted the same without any modifications:

(i) XXXX XXXX XXXX

(ii) Report on action taken by the Government on the Observations / Recommendations contained in the Twenty-third Report on Export of Gold Jewellery by MSTC Limited based on Audit Para 17.2 of Report No. 3 of 2011-12 of the Comptroller and Auditor General of India.

4. The Committee then authorized the Chairman to finalize the Reports on the basis of factual verification and present the same to Parliament.

The Committee then adjourned.

XXXX Matter not related to this Report.

ANNEXURE

(Vide Para 3 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THE TWENTY-THIRD REPORT OF COMMITTEE ON PUBLIC UNDERTAKINGS (2012-13) ON 'EXPORT OF GOLD JEWELLERY BY MSTC LIMITED'

I.	Total number of recommendations	10
II.	Observations/Recommendations that have been accepted by the Government (*vide* recommendations at Sl. Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9)	9
	Percentage of total	90
III.	Observation/Recommendation which the Committee do not desire to pursue in view of the Government's reply (*vide* recommendation at Sl. No. 10)	1
	Percentage of total	10
IV.	Observation/Recommendation in respect of which reply of the Government has not been accepted by the Committee and which require reiteration	Nil
	Percentage of total	0
V.	Observations/Recommendations in respect of which final reply of the Government is still awaited	Nil
	Percentage of total	0