EIGHTY NINTH REPORT

PUBLIC ACCOUNTS COMMITTEE
(1994-95)

(TENTH LOK SABHA)

TUBE MAKING PLANT AT JABALPUR

MINISTRY OF COMMUNICATIONS
(DEPARTMENT OF TELECOMMUNICATIONS)

Presented to Lok Sabha on 30 March, 1995
Laid in Rajya Sabha on 28 March, 1995

LOK SABHA SECRETARIAT
NEW DELHI

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CORRIGENDA TO 89TH REPORT OF PUBLIC ACCOUNTS COMMITTEE (TENTH LOK SABHA)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this Eighty-Ninth Report on paragraph 8.1 of the Report of Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 7 of 1994, Union Government (Posts and Telecommunications) relating to Tube Making Plant at Jabalpur.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 7 of 1994, Union Government (Posts and Telecommunications) was laid on the Table of the House on 10 May, 1994.

3. Government sanctioned a project for setting up a modern integrated tapered tube making plant at Richhai, Jabalpur in April, 1983 for Rs. 724.28 lakhs in replacement of the existing plant at Telecom Factory Jabalpur. The modern plant was expected to be commissioned by 1985 and the existing plant phased out by 1988. It was also expected that the modern plant with a better technology would produce 5.25 lakh tubes per annum and may touch maximum of 6.75 lakhs per annum at a lesser cost as against the production of 4.5 lakhs tubes per annum by the existing plant. The Committee have found that the project had suffered due to several irregularities/shortcomings. These included in adequate preparation of project estimates, failure to ensure synchronisation of procurement of machinery and construction of building, failure to invoke contractual provisions, incorrect waiver of contractual clause, inclusion of incorrect clauses in the contract document, failure to take prompt action on the findings of the departmental Committee, delay in arbitration proceedings and above all failure to ensure achievement of objectives beyond the project. The Committee have recommended that the various ommissions and commissions pointed out by them in the Report should be thoroughly enquired into with a view to fixing of responsibility and also ensuring that such lapses do not recur.

4. The Committee have not agreed with the contention of the Ministry that the cumulative production loss of Rs. 74.96 crores pointed out by Audit was "hypothetical and speculative". Since these losses have arisen also due to the failure of the foreign firm to fulfil their contractual obligation to demonstrate the rated output of the plant, the Committee have recommended that the matter should be taken to its logical conclusion by making suitable claims alongwith the other claims proposed to be filed with the arbitrator without any further delay.

5. The Committee have found that the proforma profit and loss accounts of the modern tube making plant from the year 1988—90 onwards are yet to be finalised. However, the provisional accounts for the year 1990-91 to 1993-94 furnished revealed that the operating expenditure had registered an increase from Rs. 9.74 crores in 1990-91 to Rs. 23.78 crores in the year 1993-94. As against this, the sales during the galvanising period increase from Rs. 12.52 crores to Rs. 24.49 crores only. It was also seen that the factory was carrying an inventory of Rs. 13.53 crores and current liabilities on account of galvanising charges were still to be discharged. In view of the above and also the fact that various essential infrastructure facilities amount to Rs. 3.24 crores were yet to be appropriately booked, the Committee are convinced that the costing aspects needed to be looked into again in order to assess the financial viability of the project in a more appropriate manner. In the opinion of the Committee, this was particularly necessary considering the fact that the Government/Department of Telecommunications are themselves the principal customer of the product. The Committee have, therefore, desired that the proforma accounts should be recast accordingly, finalised expeditiously and got duly audited.

6. The Audit Para was examined by the Public Accounts Committee at their sitting held on 7 September, 1994. The Committee considered and finalised the Report at their sitting held on 13 March, 1995. Minutes of the sitting form Part-II* of the Report.

7. For facility of reference and convenience the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix-II of the Report.

8. The Committee express their thanks to the officers of the Ministry of Communications (Department of Telecommunications) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

9. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
16 March, 1995
25 Phalguna, 1916 (Saka)

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

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REPORT

TUBE MAKING PLANT AT JABALPUR

Introductory

A tube making plant, manufacturing Hamilton tubes (for telephone and telegraph poles) established in 1942 at Jabalpur had outlived its life. The technology used was very old, outmoded and had low productivity. The Ministry of Communications felt in February 1983 that there would be a sustained requirement of Hamilton tubes in increasingly larger numbers in years to come for opening new connections/call offices, extending telecommunication facilities in rural areas etc. Accordingly, Government approved a proposal, in March 1983, for setting up a modern integrated tapered tube making plant at Richhai, Jabalpur at an estimated cost of Rs. 723.84 lakhs. The project was sanctioned in April 1983 for Rs. 724.28 lakhs in replacement of the existing plant at Telecom Factory, Jabalpur. The modern plant was expected to be commissioned by 1985 and the existing plant phased out by 1988. It was also expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum and may touch maximum of 6.75 lakhs per annum at a cost of Rs. 149.70 per tube as against the production of 4.5 lakhs tubes per annum at a cost of Rs. 172.45 per tube by the existing plant. The objectives behind the decision for setting up of the project were broadly, (i) product improvement, (ii) improvement in manufacturing process, (iii) better productivity, (iv) less production cost, (v) less consumption of raw material and (vi) less consumption of zinc which was a polluting chemical in specific galvanising process. The project was executed by the Chief General Manager (CGM), Telecom Factory, Jabalpur (TFJ) with the assistance of a Factory Manager and associate staff. The modern plant was commissioned in March 1988. The total expenditure booked against the project, as of March 1993 was Rs. 897.28 lakhs.

2. This report is based on Para 8.1 of the report of the Comptroller and Auditor General of India for the year ended 31 March, 1993, No. 7 of 1994, Union Government (Posts & Telecommunications) wherein Audit had conducted a review of the project, to assess its productivity and cost effectiveness and also to see the extent to which the objective behind the establishment of the modern tube making plant had been achieve. The Audit Paragraph is reproduced as Appendix-I.

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Project Estimates and actual Cost

3. The Committee enquired the reasons for exceeding the estimated project cost by Rs. 173.00 lakhs as of March, 1993 and for the delay in the setting up of the modern plant by the stipulated time. The Ministry of Communications, Department of Telecommunications in a note furnished to the Committee stated that the increase in the project cost was necessitated by the increase in customs duty, the increase in the exchange rate of Deutsche Mark (DM) and the increase in the cost of building. According to the Ministry, the original estimates for the building were made on an *ad-hoc* basis and the actual requirements could be known only after finalising the contract for the plant and machinery. While the original estimated cost of the building was Rs. 48.31 lakhs, the actual expenditure incurred was Rs. 91.14 lakhs. In this connection, it also came to the notice of the Committee that the original estimates had not provided for construction of a temporary shed to store the machinery imported from the foreign supplier.

4. As regards setting up of the modern plant within the stipulated time, the Ministry attributed the time overrun to the delay in construction of the building due to the delayed submission of full foundation details for the plant and machinery by the foreign firm as required by Civil Wing and partly due to the failure on the part of the Government contractor, *viz.*, National Buildings Construction Corporation (NBCC).

5. It is seen from the Audit Para that the Department while computing the estimated project cost of Rs. 724.28 lakhs in April, 1983 had not taken into account a number of essential infrastructure items like construction of railway sidings (Rs. 181.33 lakhs), provision of transformer sub-station (Rs. 73.24 lakhs), construction of compound wall, street and water tower lighting etc. These were sanctioned separately for providing infrastructure facility for the plant. The total expenditure incurred on such works beyond sanctioned project estimate was Rs. 324.54 lakhs. According to Audit, the expenditure neither formed part of the capital investment nor was any part of it taken into account for computing annual recurring expenditure of the plant. The Committee desired to know the reasons for not apportioning it to the project cost. The Department of Telecommunications in a note stated that the expenditure to the extent of Rs. 3.25 crores on infrastructure items mentioned by Audit were not meant exclusively for the tube making plant but were also common to various projects like Modern Galvanising Plant, Microwave Tower Fabrication etc. and therefore, they did not consider it proper to include the same in the project cost of modern tubes making plant. Justifying the non-inclusion of the same in the project cost, the Department in a post-evidence note further state:

> "The Galvanising operating of Telecom Factory, Richhai is common operation for tubes of welded design, tubes of rivetted design, Towers and other line store items like Brackets, Stalks etc. The

capacity of the Modern Galvanising Plant at TF, Richhai is 26,000 tons per annum. Out of this capacity, the capacity required for Modern Tube making plant (5.25 lakhs tubes welded design per annum) work out approximately 8400 tonnes (5.25 lakhs × 16 Kg. Wt. of a tube). The share of infrastructural facilities which can be apportioned to Modern Tube making plant works out approximately to Rs. 100 lakhs (Rs. 325 lakhs × 8400—26000). Even if we apportion the expenditure of Rs. 100 lakhs towards infrastructure of Modern Tube making plant, the cost of ungalvanised B-8 Tube would work out to Rs. 102.10 instead of Rs. 100. The cost of each galvanised B-8 Tube would work out Rs. 152.10 instead of Rs. 150. As such the Ministry is of the view that methodology adopted for execution of projects and development of infrastructural facilities was justified."

6. When asked whether it was done for getting the project cleared as a financially viable one, the Department in a note *inter-alia* stated that the project was sanctioned as a financially viable one and that in any case, a new plant had to be set-up to continue the production of tubes as the existing plant had outlived its full life of 40 years.

Land and Building

7. The Audit paragraph reveals that the Board of Management, Telecom Factories had decided in November, 1978 to acquire land for setting up the new plant. The Government of Madhya Pradesh alloted 80 acres of land which was acquired by the factory authorities in July, 1981 on 99 years lease at a cost of Rs. 1.28 lakhs. The contract was awarded in June, 1983 for purchase of plant and machinery. A provision of Rs. 37.11 lakhs was made in the project estimate sanctioned in April, 1983 for construction of a building. As against this, administrative approval and expenditure sanction (AAES) for the work was accorded by the CGM Telecom Factory, Jabalpur for Rs. 41.26 lakhs in May, 1984. The construction work was awarded by the Civil Wing of the Department to Government contractor NBCC at his tendered amount of Rs. 48.55 lakhs in April, 1985 for completion by April, 1986. The work were delayed and the building was made over for installation purpose in August, 1987 and the plant could be commissioned only in March, 1988. The target date for completion of the work was extended four times by the Department. Meanwhile, by October, 1985 the entire equipment and machinery, worth Rs. 713 lakhs was supplied by the foreign firm in terms of the contract awarded in June, 1983. The equipment and machinery were stored in a departmental building till commencement of installation in November, 1987. The Department had to take out a 'storage-cum-erection' insurance policy for which premium of Rs. 3.52 lakhs was paid.

8. The Committee enquired the reasons for the delay of about three years in acquiring the land. The Department of Telecommunications in a

note stated that the delay had arisen due to several factors like finalisation of the size of the plot, suitability of the land, proximity to Railway station, availability of water supply etc.

9. The Committee further asked why the Department could not sanction the estimate for the building earlier than 1984 since the land had already been acquired for the project and also in view of the fact that global tenders for supply of plant and machinery etc. had been invited during 1981 itself. In reply, the Ministry in a note stated that since it was a modern special purpose plant with new technology on turn-key basis of which global tenders were invited, the basic requirement of the size of the shed including schedule of accommodation etc. could be known only after the global tenders are finalised and contract is awarded, as such type of plants are not existing in India and the accommodation requirements differ from supplier to supplier. The Modern Tube making plant being integrated plant on turn key basis, the drawings for the plant were to be supplied by the foreign firm. Therefore, the Department had to wait till finalisation of contract (June, 1983) and the receipt of drawings from foreign firm. According to the Ministry, the drawings were received from the foreign firm on 2.12.1983 and, therefore, the estimate could not be sanctioned earlier than 1984.

10. On being enquired about the further delay in awarding the work, the Ministry in a note stated that the construction drawings were released by Architect in July, 1984. After estimating various items to be executed in the work, it was possible to invite tenders in September, 1984. According to the Ministry, for the reason that tube making plant was a specialised work where stringent supervision was required to ensure quality, it was considered to give the work to NBCC who were already carrying out at the same premises the work of galvanising shed, treatment tank etc. Accordingly, offers were got from NBCC which was evaluated and the work order issued on 18.4.1985.

11. When asked about the reasons for delay for more than the stipulated period of a year in completing the construction of building, the Ministry in a note *inter-alia* stated;

> "As provided in clause 11.2 of the contract the civil work relating to the construction of foundations for Plant and Machinery was to be carried out by the Department according to the drawings of contractor *viz.* The German firm (supplier of P&M). The contractor was also to provide load factors etc. The machine foundation originally furnished by the foreign firm in July, 1984 were not complete. The revised drawings were received in January, 1985 but the same were not according to prevailing soil conditions. Other details like loading, operating, frequency, rated speed, exciting forces, limiting amplitude, weight of drapping parts etc. Foreign firm furnished details on 20.3.1986 but that too without the details of dynamic loads. The German firm

could furnish the additional foundation data on 5.9.1986. After vetting drawings by foreign firm the drawings were released for execution in November, 1986. Accordingly the target data for completion had to be fixed as March, 1987 but the building contractor (NBCC) completed it in August, 1987. For this delay, the building contractor has been penalised."

12. In this connection, the Secretary, Telecommunications stated during evidence:

> "The whole design of the structure part was initially done by the Civil wing and the contract was given to the National Buildings Construction Corporation. The whole problem of delay cropped up because of the equipments arrival according to schedule and the building construction did not go as per schedule. It was a failure."

13. He also stated:

> "The foreign supplier company had defaulted in making available in time the drawings for that plant."

14. The Ministry in a note furnished after evidence attributed the delay in construction of the building to both the foreign supplier and also the Government contractor NBCC. Enquired about the action taken against the foreign firm, the Ministry in a note furnished after evidence stated that the Department had withheld the following payments:

1. Travelling charges for repair of decoiler DM 35000
2. Fee for joint inspection DM 19378

15. They added that these amounts had been withheld in addition to DM 4 lakhs withheld for failure to demonstrate the rated output of the plant.

16. Asked why the contractor was given extension on four occasions, the Ministry in a note stated that as new items were added in the contract extra time ought to have been given. They, however, added that the contractor was penalised for the delay on his part. When asked about the penalty imposed, the Ministry in a post-evidence note stated that a penalty of Rs. 8702 was imposed and recovered from the contractor (NBCC).

17. The Committee asked whether it would not be correct to conclude that there was absolutely no advance planning in the Department about the building. The Secretary, Telecommunications stated in evidence:

> "We accept that there was lack of proper synchronisation between awarding of the contract and the supply of drawings. We accept it... The only defence that I advance is that this was the price which we have to pay in terms of the learning process."

Equipment and Machinery

18. According to the Audit paragraph, global tenders were invited in October, 1981 for design, supply of machinery and equipment, supervision of installation, carrying out the trial run and commissioning of plant and training of staff for the proposed modern tube making plant. Pre-bid concurrence of the World Bank was also stated to have been obtained before floating the global tenders. In fact, international competitive bidding was stated to be one of the conditions attached to the World Bank loan. The contract was awarded to a German firm, M/s. Klockner Industries in June 1983, the effective date being the date of opening of the letter of credit (LC), *i.e.* November, 1983. As per terms of the contract, the delivery of equipment was to commence between tenth and thirteenth month and be completed by the seventeenth month after the effective date *i.e.* April, 1985. The plant was to go into production by the twentieth month after the effective date *i.e.* by July, 1985.

19. The delivery of equipment commenced in December, 1984 and by May, 1985 bulk of the supply was received. The last consignment was shipped by the firm in October, 1985.

20. On completion of the building, the German installation team arrived in October, 1987. During installation, the plant and machinery were jointly inspected and technical deviations and commercial discrepancies were observed. The design defects were pointed out to the firm in February, 1988 and also referred to the Directorate in March, 1988.

21. After several modifications carried out by the installation item, the plant was ultimately commissioned in March, 1988. However, some defects remained.

22. During their subsequent visits in January, 1989 and March, 1990, the German engineers replaced the indigenous band rolling machines (supplied and installed earlier) by machine of Japanese origin and also carried out some modifications of the clamping device on the band welding machine. But, they could not demonstrate the rated output of the plant besides failing to resolve the technical deviations and commercial discrepancies. The contract was rescinded in August, 1990 at the risk and cost of the firm.

23. Clause 16(i) of the contract entered into with M/s. Klockner Industries, Germany for the supply of modern tube making plant at Telecom Factory Richhai, Jabalpur provided as follows:

> "The purchaser would at his option carry out inspection and tests in the factory of the contractor or his suppliers on the equipment as and when these are produced and before their despatch for confirmation of the technical specification/guarantee of the equipments."

24. The Committee desired to know whether the equipment was tested it the premises of the foreign supplier in terms of the above mentioned

provision in the contract. The Department of Telecommunications in a note stated that it was not possible to follow the same and that the firm was liable to demonstrate the rated output of the integrated plant in working condition. Asked whether a detailed time schedule was worked out for testing the equipment, the Department replied that such a schedule was worked out during the stay of the installation team of the supplier in Jan-March, 1988 and that the plant was commissioned on 26.3.1988. The Committee wanted to know as to why the Department did not insist a joint inspection immediately on receipt of the entire plant and machinery in October, 1985. The Department of Telecommunications in their note replied that technical inspection and testing could be undertaken only by observing various technical parameters of the machines in working condition which was possible only after assembling and installation of the machines.

25. The Committee enquired whether any Department officers had been sent for training on the machine. The Department of Telecommunications in a note informed the Committee that five engineers were sent for training in Germany for a period of four weeks. The nature of training was stated to be primarily for understanding the technology adopted for plant operation, general outline of the plant and the processes adopted so as to get the finished product turned out of the plant. The expenditure incurred on the training was stated to be DM 30,000 excluding TA/DA. The Committee asked whether it was not possible to have the machines inspected by the engineering who had been sent to Germany before the machines were transhipped by the supplier. The Department of Telecommunications in a note furnished after evidence stated that it could not be possible as the engineers were sent for training in May, 1986 whereas the machines were already transhipped by the supplier in December, 1994.

26. The Committee desired to know whether it was a fact that the foreign supplier had requested the Department for pre-despatch inspection of the equipments before they were transhipped. The Department of Telecommunications in a note furnished after evidence stated that M/s. Tata klockner (representative in India of M/s. Klockner West Germany) had requested in October, 1984 to depute an Inspector to West Germany for inspection of the equipments on 22 & 23/11/1984. The Department stated that Clause 16(i) of the contract provided for an option to the pruchaser to carry out inspection and tests in the factory when the same were ready for despatch. However, since it was an optional Clause and it was for P & T to take a decision as to whether it was worthwhile to send a team to Germany for preshipment test and inspection of the equipment which has been designed and manufactured by the foreign firm.

27. When asked about the decision taken by the Department to invoke clause 16(i) if the contract, the Secretary stated in evidence:

> "The competent authority waived this particular clause...... This was waived because custom-designed equipment was to be tested in site and also because it was a turn key project."

28. Asked to elaborate further on the decision to waive off the clause 16(i) by the competent authority, the Department of Telecommunications in a note furnished after evidence stated that since enough safeguards were provided under the various clauses of the contract such as clause 17 for replacement of defective equipment, clause 18 for taking over and clause 19 relating to warranty as to quality, it was felt clause 16(i) which was an optional one may be waived off and the firm may be asked to supply the equipment alongwith the manufacturers certificate. According to the Department, in view of the above, a decision to waive off the clause 16(i) was taken on 31.10.1984 at the level of Member (TO).

29. On being asked to explain the precise circumstances which warranted the decision to waive the relevant clause of the contract, the Secretary, Telecommunications deposed in evidence:

> "......the World Bank loan and the IDA credit was expiring on 31.12.1984 and the letter of credit could not be obtained at that stage."

30. The Committee enquired whether such types of waivers were common in similar governmental transactions. The Secretary, Telecommunications stated in evidence that he had not come across any such instances. On being further asked whether it was a right decision, the witness replied:

> "In retrospect I do not justify it but at that time the appropriate authority decided it."

31. The Committee asked whether the ceremony of the commissioning of the plant ought to have been done only after the authorities were satisfied with the supplies of the plant and expected achievement of the rated output from the plant. The Department of Telecommunications in a note furnished after evidence stated:

> "After completion of installation of the plant, it was commissioned for trial run with a small function signifying the completion of the installation and the readiness of the plant for trial run/commissioning. The commissioning had to be done just to fulfil the formality under the contract for conducting performance test and trial run.
>
> As per Clause 16(iii) of the contract, plant and equipments were tested during and after installation and the difficulties/deficiencies were pointed out to the firm. Since the foreign firm could not demonstrate the rated output of the plant successfully, no take over certificate was issued as per Clause 18 of the

contract. Further, the full payment for supervision, installation and commissioning and trial run valuing DM 4 lakhs was withheld.

Had the plant not been commissioned, the entire investment in the plant would have remained blocked without any gainful use.

Even after commissioning of the plant when some snags were noticed, the German firm replaced two Band Rolling Machines and did carry out several modifications."

32. The Committee desired to know how the Department now proposed to recover the cost of modifications etc. carried out in the plant and machinery supplied by the foreign firm. The Department of Telecommunications in a note stated that they had not taken up major modification. However, a sum of DM 4 lakhs of the foreign firm towards supervision, installation and commissioning charges had been withheld. As regards the modifications carried out so far, the Department in a note stated:

> "Only some minor modifications *viz.* clamping arrangement on 3 band welding machines out of 6, providing tower in welding machine, stacking arrangement for tubes after assembly were carried out but the major modifications to the imported tube welded machines has not been carried out for the reasons that the estimated cost for the modifications was Rs. 20 lakhs and the equipment was to be imported by another firm. Moreover, being the tube welding designed by the German firm it was not certain that by carrying out the modification by another firm the desired results could be achieved."

33. The Department in reply to a question also stated that an amount of Rs. 27.25 lakhs was estimated towards the cost of modification, out of which Rs. 1.86 lakhs was spent till 1993-94.

34. The Committee desired to know the extent to which design defects, deviations, discrepancies etc. necessitating modifications had adversely affected the productivity of the plant from what was initially envisaged. In reply, the Department of Telecommunications in a note furnished after evidence stated that it was not possible to precisely quantity the same. However, according to them, the effect of major deviation in Tube Welding Machines on productivity had been avoided by employing an additional operator on each machine.

35. When asked how the Department now contemplated carrying out all necessary modifications with a view to achieving the rated output, the Department in a post-evidence note stated that they hoped to achieve the rated output within next two years or so by taking up suitable actions/ modifications locally.

Losses suffered by the Department

36. It has been pointed out by audit that the losses suffered by the Department, as assessed by the CGM, due to technical deviations in the plant and machinery supplied, commercial discrepancies, shortfall in production and other miscellaneous items ran to over Rs. 40 crores and that these were intimated to the Directorate in March and April 1991 who in turn had constituted a committee in March 1991 which submitted its report in May 1991.

37. On enquiry, the committee were informed that the departmental committee was constituted to work out the damages on account of claim for losses in completion of performance test, losses due to technical deviations/commercial discrepancies, losses due to delay in commissioning, employment of two operators on Welding Machine and miscellaneous recovery to be recovered from M/s. Klockner Industries, Germany for not meeting the contractual obligations for the supply of Modern tube Making Plant.

38. On perusal of the relevant report, it was seen that the departmental committee had in its report *inter alia* observed/recommended:—

(1) The Technical deviations which the Telecom Factory, Jabalpur (TFJ) had pointed out in 1988 and with more details in 1990-91, could have been pointed out much earlier, in 1986 itself, when the officers were trained in Germany and technical documentation of the equipment was made available by the Contractor. This could have helped the Department in getting the replacement much earlier as the installation was completed only in 1988.

(2) TFJ authorities commissioned the plant on 26.3.1988 and as such, the cermony of commissioing of the plant could only have been done when the TFJ authorities were satisfied with the supplies of the plant and expected achievement of the rated output from the plant in spite of some of the deficiencies.

(3) Since the machines were for a special purpose and there were some technical deviations for which recoveries were to be made, the work of assessing the losses scientifically may be entrusted to an expert firm like HMT — Special Machine Tool Division.

(4) The damages to be recovered from the foreign firm were rupees equivalent to DM 1,66,800 on account of commercial discrepancies (Rs. 52.69 lakhs). They comprised of expenditure incurred on modifications to equipment etc. (Rs. 28.76 lakhs), cost of supplies which were not satisfactory (Rs. 3.92 lakhs), excess charges by the firm on some of the items (Rs. 71.61 lakhs) and other miscellaneous items (Rs. 2.40 lakhs).

(5) The departmental committee was unable to give its recommendations about the recovery of a major portion of the

loss (due to shortfall in production) suffered by the Department (Rs. 35 crores during 1988-90) in view of inclusion of a clause (20.4) in the contract document which clearly excluded recovery of all types of consequential losses. Therefore, the departmental committee recommended to the Department to investigate the reasons for inclusion of this clause in the contract and whether this had the approval of the integrated finance. That Committee also recommended consulting the Ministry of Law whether the production losses could still be recovered inspite of the particular contract clause.

39. The Committee desired to know the action taken on the recommendations of the department Committee. The Department of Telecommunications in a note stated:—

"The case was referred to Ministry of Law who opined as under:—

'In this view of the matter the claim of the department of Telcom appears to be legally nor-sustainable. It is however, open to the Administrative Ministry to take an administrative decision to file these claims with the other claims before the Arbitrator.'

Accordingly Department appointed a Committee to prepare brief for the Arbitration proceedings. The Committee has submitted its report (on 28.7.1994) which is under consideration."

40. As regards entrusting the work of asessing the losses scientifically to an expert firm like HMT, the Department in their note stated:—

"A reference has been made to M/s. HMT and CGM TF, Jabalpur was advised to assign the work to the firm for assessing the amount of loss due to technical deviations. While this was under consideration, it was realised that the firm was not an approved agency to take up technical inspection for making claim on foreign firm. It was also realised that TM Plant with some modification carried out at factory level has produced over 12 lakhs of Welded Tubes valuing Rs. 52.53 crores up to 31-3-94 and the stores have been inspected by Quality Assurance and already installed in the field. Considering these aspects it was felt that no useful purpose will be served by entrusting the work to M/s HMT Ltd., more so the Committee is not convinced with the suggestion of TF, Jabalpur to recover entire cost of such deficient machines and Ministry of Law has also opined that the claim is legally not sustainable."

41. The Committee wanted to know the basis for proposing the name of HMT for being assigned the task if it was not an approved agency at all competent for undertaking the job. The Department of Telecommunications in a note stated:

"Being the pioneer in the manufacturing and marketing of special purpose machine in India, HMT were considered by the Departmental

Committee to be a competent Government undertaking for technical assessment of the losses on account of technical snags or deficiencies in the supply of imported plant and machinery. However, when the matter was referred to HMT, it was learnt that owing to imported nature of supplies, Indian inspection agency, *i.e.* M/s HMT may not be acceptable to German supplier."

42. In reply to a related query, the Department in a post-evidence note replied that an international agency such as International Chamber of Commerce may perhaps be suitable for the purpose.

43. Regarding recovery from the foreign supplier, the Department of Telecommunications in a note indicated the following position:—

"Recovery of Rs. 52.69 lakhs as recommended by the Committee includes an estimated expenditure of Rs. 28.76 lakhs on modifications to the equipment etc. However, out of the balance of Rs. 23.93 lakhs (52.69 lakhs minus Rs. 28.76 lakhs) (28.76) the following payments to the foreign firm has been withheld by the department:—

(i)	Travelling charges in connection with repair of Decoiler	DM 35,000
(ii)	Fee for joint inspection and technical discussion	DM 19,378
(iii)	Fee for supervisor and installation	DM 400,000
	Total	DM 454,398

44. When equired about the contracted amount and the actual amount paid to the supplier and the details of payment, the Department of Telecommunication in a note furnished after evidence stated:—

"(i) As per clause 'A' of the contract, the lumpsum price of the order is net DM 11335000 split up as under:—

(a)	Indigenous Machines		Rs. 8376783
(b)	Imported machines net	DM 8790700	
(c)	Training of purchasers	DM 30000	DM 400000
(d)	Supervision of installation. Commissioning and trial run	DM 9220700	

(ii) Against the above the payments made are as under:

— For Indigenous Machines		Rs. 8376783
— Imported Machines	DM 8790700	DM 8820700
— Training charges	DM 30000	

(iii) The payments were made as under:—

(a) For imported supply of Plant & Machinery, the last payment (5% of the value DM 8790700 *i.e.* DM 8790700 *i.e.* DM 439535) was made in May' 85.

(b) The training fee was paid in June, 1986—DM 30000.

(c) For indigenous supply all the payments were made by December, 1985 except Rs. 26,533.50 which was paid in February, 1986.

(iv) It is seen from clause 12(vi) of the payment terms enclosed at Annexure '18' that 100% of the value of the charges for supervision of installation and commissioning and trial run (DM 4,00,000) will be paid against the presentation of contractors monthly commercial invoice. This payment of DM 4,00,000 has been withheld."

45. The Committee enquired whether the reasons for inclusion of clause 20.4 in the contract which clearly had excluded recovery of all types of consequential losses had been investigated. The Department of Telecommunications in a note stated:—

"The reasons for inclusion of clause 20.4 in the contract document could not be investigated at this distant date as the information is not available in the file.

46. Asked whether the inclusion of the clause had the approval of the Integrated Finance, the Department in a note stated that as per the records the case had been shown to the finance wing. When asked to state categorically whether the Integrated Finance had approved it, the Department in a post-evidence note stated, "the draft contract was concurred by the Integrated finance". The Ministry also stated that the contract was finally approved at the level of Member (TO).

47. On being equired whether clause 20.4 was inserted in the contract at the instance of World Bank, the Department in a note replied:—

"There is nothing on record to suggest that the clause 20.4 was included in the contract at the insistence of the World Bank."

48. The Committee asked whether such a condition in the contract was provided in any similar government contracts. The Secretary, Telecommunications stated in evidence:—

"To my mind, that clause is not there anywhere else."

49. In this connection, another representative of the Department stated in evidence:—

"The file is available. How did it find a place? Why was this clause put in a negative form will need to be looked into."

50. In response to a pointed question, the Secretary, Telecommunications state in evidence:—

"We will investigate and let you know."

51. The Department of Telecommunications in a subsequent note furnished to the Committee stated:—

> "The matter has been re-examined. It is not possible to investigate the basis for inclusion of clause 20.4 with the information in the file."

52. The Committee pointed out that the report of the department committee was submitted on 10.5.1991 wherein they had *inter alia* recommended that the department might consult the Ministry of Law about the recovery of the production losses from the supplier. However, the Department of Telecommunications had made a reference to the Ministry of Law on 26.12.1991 only. When asked about the reasons for the delay in this regard, the Department of Telecommunications in a note stated that the Report of the Committee was received on 12.6.1991 and the recommendations of the Report were submitted by MM cell on 24.7.1991. According to the Ministry, after taking the approval of the competent authority, the case was referred to the Ministry of Law in December 1991.

53. The Committee drew attention to the delay in initiating arbitration proceedings, as advised by the Ministry of Law. In a note, the Department of Telecommunications stated that a five Member Committee was initially appointed in July 1992. However, due to the change of officers/re-allocation of works, a fresh committee comprising three officers was constituted in July 1993 who submitted their report on 28.7.1994.

54. Commenting on the delay, the Secretary, Telecommunications stated in evidence:—

> "I agree.... This is the common thing in my department that a number of cases are coming up to our Joint Secretaries.

55. Apprising the Committee of the latest position, the Department of Telecommunications in subsequent note stated that the said Committee had recommended that a formal claim may be first lodged with the firm before initiating arbitration proceeding. According to the Department, the report of the Committee was under examination.

56. On perusal of the report of the Committee which prepared the brief for the arbitration proceeding it was observed that the said Committee had in its report *inter alia* observed as follows:—

> "To a reference from the Committee, MM Branch informed that no formal claim of M/s Klockner on the basis of the claim of TF Jabalpur or on the basis of the recommendations of the Committee (of March 1991) has been lodged with M/s Klockner so far..... the reasons for not filing the claim after the recommendations of the Committee are also not clear. however, the Committee feels that before going for arbitration a formal claim can still be lodged on M/s Klockner and after seeking their response and willingness or otherwise action can be taken to refer the matter for arbitration and further action."

57. It was observed that the said Committee had in the brief prepared for arbitration proceedings had also *inter alia* obserbed:—

> "Besides above, the consequential losses of production, extra manpower and excess payment of electricity works out to Rs. 65 crores upto the period 31.3.90. The claim for this, however, is debarred by Clasue 20.4 of the contract and hence is not being pressed."

Other Issues

58. Audit have also highlighted the following two cases in the paragraph under examination:

(i) As per the contract, the cost of two band rolling machines including eight sets of tools had been indicated as DM 314800. These special purpose band rolling machines were designed by German Firm and supplied indigenously by them to Telecom Factory Jabalpur. Payment was made in rupees. On installation of these machines it was found that they were not suitable for rolling bands and the same were rejected. The foreign firm tried to carry out a lot of modifications to these machines but failed. Thereafter, the foreign firm supplied two Japanese made machines. However, at the time of clearing these two machines from Customs, Telecom Factory Engineers came to know the cost of Japanese band rolling machines had been shown as DM 22400 each. The recovery of the difference in cost *viz.* rupee equivalent to DM 270000, sought for by the TFJ authorities from the German firm was not agreed to by the Departmental Committee. The Committee observed that the German firm had replaced the machines to the satisfaction of the TFJ authorities.

(ii) The consignment of an imported decoiling oil machine got damaged in transit. After carrying out all formalities including survey by the Insurance Company the Department filed a marine insurance claim dated 2.5.1987 for Rs. 15.14 lakhs with Oriental Insurance Company.

Another indigenous Godrej Machine also got damaged during transportation. After survey etc. by the Insurance Company a claim dated 17.7.1985 for Rs. 63,961 was lodged with the Oriental Insurance Company.

Both these claims were still pending with the Insurance Company.

59. The Committee desired to know the loss incurred by the Department in first case. The Department of Telecommunications in a note stated that in a turn key project, this cannot be termed as a loss. However, the foreign firm had not been allowed to take back the two indigenous band rolling machines which were replaced by them by the Japanese machines.

Asked why the indigenous machines had initially been contracted for without considering its suitability, cost effectiveness etc. the Department of Telecommunications in a note replied that the entire contract was on turn key basis for design, supply, installation and commissioning of the plant and it was not in their purview to verify it; it was the foreign supplier who designed the band rolling machine and got it manufactured indigenously to supply the same; it was, therefore, not possible to verify the cost particulars also.

60. As regards the second case, the Department of Telecommunications in a note intimated the following position:

> "The main reasons of delay is dilly-dallying tactics adopted by Insurance Company for settlement on varoius pretexts. Now, in respect of claim for Decoiler Machine they have informed that a similar type of case of MTNL is sub-judice in the court of law and therefore, they will proceed as per court order in this case as well.
>
> As regards claim for Godrej Sharing Machine, Insurance Company is not accepting the liability although earlier Insurance Company *vide* letter dated 19.12.86 advised the Department to go ahead with the repair of the machine, and send the bills for processing the claim."

61. The Department of Telecommunication in a note added that they were concerned over the abnormal delay in acceptance of the claims by Oriental Insurance Company Limited. According to them the matter was being pursuaded at the highest level.

Remedial Action proposed to be taken

62. To a question of the Committee whether the firm was of proven track record, the Department of Telecommunication in a note stated that M/s Klockner Industries was a reputed international firm. The Committee pointed out that the Chief General Manager, TFJ in one of the communications to the Ministry in 1990 had recounted several shortcomings in the performance of the project resulting in multiple losses to the Deparment. Asked whether the Ministry maintained in the light of the performance of the contract that the selection of the firm was a correct one, the Department in post evidence note stated that a Tender Evaluation Committee was constituted to evaluate various bids and based on the Committee's recommendation which was accepted by the competent authority, the firm was selected.

63. The Committee desired to know the remedial action taken by the Department to avoid recurrence of such lapses which took place in the execution of this project, in future cases. The Department of

Telecommunication in a note stated:—

> "It is proposed to incorporate the following additional safety Clauses in such cases in future:—
>
> (i) To provide a detail acceptance testing schedule/plan as part of the contract for each machine/equipment as well as for the whole plant.
>
> (ii) To specify the terms of payment in the contract by which adequate money will be witheld by the Department till a satisfactory demonstration of the functioning of the full plant. The percentages of state-wise payment will be determined in the individual contract to safeguard the Department's interests.
>
> (iii) To suitable modify the Clause 20.4 to provide for additional levy of damages on the supplier in case of failure to demonstrate the rated output of the plant for a reasonable period."

Non-attainment of Objectives

64. The project for setting up of the modern tube making plant was conceived with a view to achieving higher output and improved product at a lesser cost. It was expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum at a cost of Rs. 149.70 per tube as against the production of 4.5 lakhs tubes per annum at a cost of Rs. 172.45 per tube by the existing plant.

65. The annual production of tubes at the existing plant and at the modern plant since its commissioning in March, 1988 was as under:—

Year	Production at the modern plant	Production at the existing plant
1988-89	2626	296208
1989-90	133520	335946
1990-91	148880	322179
1991-92	272780	378964
1992-93	330100	342960
1993-94	358520	374410

66. It will be seen from the above that contrary to the expectations of the Department, the modern plant with better technology was giving a lower output than the outlived plant with obsolete technology. Besides, the loss due to shortfall in production at the modern plant since

commissioning, according to Audit, was as under:

Year	Proposed rated output	Actual production	Value (Rs.in Lakhs)	Average value per tube (Rs.) (4÷3)	Shortfall in production (2−3)	Loss due to shortfall in production (Rs. in lakhs) (6×5)
1	2	3	4	5	6	7
1988-89	525000	2626	9.50	362	522374	1890.99
1989-90	525000	133520	487.00	365	391480	1428.90
1990-91	525000	148880	617.61	415	376120	1560.89
1991-92	525000	272780	1123.00	412	252220	1039.14
1992-93	525000	330100	1389.57	421	194900	820.52
1993-94	525000	358520	1627.16	454	166480	755.57

67. Commenting on the production performance of the new factory, the Secretary, Telecommunications stated in evidence:

> "I would never say that we are satisfied with the performance. We have to improve as the figures would show."

68. Audit has also pointed out that the cumulative effect of the losses due to shortfall in production during the six years ending 1993-94 was Rs. 74.96 crores. Drawing attention to the same, the Committee asked whether the Department was going to sustain the losses. The Department of Telecommunications in a note stated:—

> "The loss of Rs. 74.96 crores due to shortfall in the production is hypothetical. The production value includes cost of raw material and labour cost. Since no material has been consumed and no worker was idle, the loss in production is speculative. It may not be proper to assess the loss at Rs. 74.96 crores when the total investment on the plant is of the order of Rs. 9 crores only. In this particular case, it is regarded as reasonably good performance to have been able to achieve 75% to 80% of the rated capacity of the plant indicated by the foreign company.
>
> Though the major objective was to produce tubes at cheaper cost, the other objectives are:—
>
> (i) Product improvement.
>
> (ii) Improvement in process *viz.*
>
> (a) Arduous manual rivetting process to less fatiguing welding process.
>
> (b) Elimination of noise pollution in rivetting in the old plant.
>
> These objectives have been achieved. Even when we consider economy, the plant has already resulted into savings of Rs. 687.21 lakhs."

69. Asked as to how the Department could treat it as hypothetical and speculative, the Secretary, Telecommunications stated in evidence:

"We will say in our defence that in real terms the loss is not there. The only loss that is there is the loss because of the overheads in which investment has been made... strictly speaking, we are using it as a bargaining concept."

70. In a further note furnished, the Department of Telecommunications stated:—

"The so called production loss of Rs. 74.96 crores comprises of the following elements:—

Meterial	—	Rs. 63.72 crores
Labour	—	Rs. 1.50 crores
on cost	—	Rs. 9.74 crores
		Rs. 74.96 Crores in the ratio of 85:2:17

"Thus the major amount in so called production loss is the cost of raw material actually not consumed and thus not correct to treat it as production loss. Moreover, no workman was idle so the production loss becomes hypothetical. The production loss was not an absolute loss. The very fact that the TF, Jabalpur have recommended recovery of a suitable percentage of loss of production would itself speak that the production loss was not a real and absolute loss as otherwise TF, Jabalpur would, have recommendation for recovery of some suitable percentage of production loss implies that a notional amount is to be recovered. Further, it was intended to put pressure on the firm for carrying out its contractual obligation."

71. The Committee were informed during evidence that more than 80% of the departmental requirements of the tubes were met through purchases from the market. As against the projected requirements of 55.72 lakh tubes for 1994-95, the production from the Government factories was around 7 lakh tubes only. The Committee enquired about the cost of production per tube produced in the new and old plants *vis-a-vis* the market prices. The Secretary, Telecommunications stated during evidence that in the case of A-8 tube, the cost in the new plant was Rs. 370; in the old plant it was Rs. 427; in the case of outside purchases the minimum was Rs. 332.67 and the maximum was Rs. 494.61. Asked about the lesser cost involved in purchases from the market, the witness stated:

"It is for the simple reason that we employ about 500 people and others may be emplolying less number of people."

72. The witness further stated that while 338 people were employed in the old plant, only 156 people were used in the new plant. However, people were gradually being shifted to the new plant.

73. The Committee sought the Ministry's evaluation of the present production performance of the modern plant with reference to what was envisaged while seeking the approval of the project. In a note furnished after evidence, the Ministry of Communications (Department of Telecommunications) stated:—

> "The production performance envisaged was 5.25 lakhs tubes per annum. As against this, the Modern Tube Making Plant has already achieved the production of 3,58,520 tubes in 1993-94 which works out to 68% of the rated capacity. It is hoped that by taking up suitable actions locally it would be possible to achieve the rated output within two years or so.
>
> The cost of tube from the Modern Tube Making Plant is quite less compared to the old plant and the department has already saved Rs. 687.21 lakhs.
>
> For operation & maintenance of the Modern Tube Making Plant, the workers and the staff have been re-deployed from the old factory to the new factory which is at a distance of about 14 kms. This has been achieved inspite of great reluctance from the workers from the old plant. The workers from the old plant had to be trained to operate the modern plant.
>
> The German firm did not demonstrate rated output of the plant. TF Engineers carried out modifications to the plant and have succeeded in reaching the present level of production.
>
> In the proposal for approval to EFC, the economy is one of the objectives of the plant. The other objectives were
>
> — product improvement
> — Improvement in process—Elimination of the manual rivetting by the less fatigue welding process.
> — Elimination of noise pollution in rivetting of the old plant.
>
> These objectives have been fully achieved."

74. The Committee pointed out that while seeking Government approval on February 1983 it was stated that the existing plant had outlived its life. However, even after six years of the commissioning of the new plant, the old plant continued to function though the cost of production per tube was higher. Asked whether approval of Government had been taken for continuing production in the old plant, the Department of Telecommunciations in a note furnished after evidence stated that production in the old plant was continued with the approval of the competent authority. The Department also confirmed that no further capital investment had been made in the old plant after installation of the modern tube making plant.

Financial viability of the Project

75. At the instance of the Committee, the Department of Telecommunications furnished the provisional proforma "Profit & Loss Accounts" of the factory for the years 1990-91 to 1993-94. For the years 1988-90, since there was no separate Accounts office for the new factory, the performance of the factory was stated to have been included in the profit and loss account of the old factory. The operating expenditure of the plant and Sales revealed the following trend:—

Year	Operating Expenses	Sales (excluding scrap)
		(in crores of Rupees)
1990-91	9.74	12.53
1991-92	11.51	17.60
1992-93	20.31	20.49
1993-94	23.78	24.49

76. The proforma accounts also *inter-alia* revealed the following:—

(i) The closing stock (work in progress) increased from Rs. 1.05 crores on 31.3.1990 to Rs. 13.53 crores on 31.3.1994.

(ii) Despite closing stock being very high, raw material around Rs. 18 crores was being procured each year during 1991-92 to 1993-94.

(iii) Factory expenditure had gone up from Rs. 13.75 lakhs in 1990-91 to Rs. 1.21 crores in 1993-94.

(iv) Current liabilities on account of galvanising of welded tubes from 1990-91 have still not be discharged.

(v) The factory seemed to be showing a national profit on account of high closing stock.

77. In the light of the above, the Committee desired to know as to how the project could be considered as a financially viable one. The Department of Telecommunications in a note furnished subsequent to evidence stated that apart from production of welded tubes in modern tube making plant, certain operations like rivetted tubes, stalks, channel bkt., ties and struts, microwave towers etc. and including galvanising on some products of the old factory were carried out in the new factory. According to them, after taking into account the value addition on those items as well

as inclusion of sale of scrap etc. the complete figures of operating expenditure, sales etc. were as follows:—

(Rs. in crores)

Year	Operating Expenses incl. Depreciation (whole Factory)	Sales value		Sale of scrap	Total
		Welded Tubes of TF (W/T)	Value added on products of TF (W/T)		
1990-91	9.74	6.18	6.35	—	12.53
1991-92	11.51	11.22	6.38	0.25	17.85
1992-93	20.31	13.90	6.59	0.05	20.54
1993-94	23.78	16.27	8.22	0.45	24.94

78. The Department stated that the ratio of operating expenses to revenue was expected to improve with the increase in production as per rated capacity of the new plant in the coming years. The actual cost of the welded tubes as well as cost of galvanising operation, the Ministry claimed were in accordance with the proposals placed while obtaining the Government approval of the project and therefore, the project continued to be a financial viable one. As regards higher inventory (W.I.P.) value, the Ministry stated, that it was primarily due to the fact that the tube making factory was a new one. According to the Department, efforts were being made to reduce the W.I.P. within the limit.

79. The Committee enquired the reasons for the delay in preparation and finalisation of the proforma accounts of the new factory. The Department of Telecommunications in a note furnished after evidence stated:—

The proforma accounts have been furnished as per details given below:—

Year	Date of submission of Proforma Accounts			
	ByTFRichhaitoCircle Office		By Circle office to DOT	
	Original	Revised	Original	Revised
1990-91	24.8.91	19.10.91	30.10.91	—
1991-92	23.7.92	—	29.9.92	—
1992-93	21.7.93	3.2.94	24.7.93	23.2.94
1993-94	31.8.94	—	20.9.94	—

Normally the accounts are closed on 30th June every year and the proforma account can be prepared and sent only after this date. Thus, there has been no heavy delay in preparation of the Proforma Accounts inspite of the fact that initially a small contingent of accounts personnel had been posted in the new factory and work was being managed by diverting the staff from the old factory. Some additional staff has been recently sanctioned.

The proforma accounts of new factory Richhai for 1990-91 has been audited by Resident Audit Officer in June, 1994.

80. The Ministry of Communications felt in February, 1983 that there would be a constant requirement of Hamilton tubes (for telephone and telegraph poles) in increasingly larger numbers in the years to come for opening new connections/call offices, extending telecommunication facilities in rural areas etc. A tube making plant manufacturing such tubes established in 1942 at Jabalpur had outlived its life. The technology used was very old, outmoded and had low productivity. Accordingly, Government approved a proposal in March 1983 for setting up a modern integrated tapered tube making plant at Richhai, Jabalpur at an estimated cost of Rs. 723.84 lakhs. The project was sanctioned in April 1983 for Rs. 724.28 lakhs in replacement of the existing plant at Telecom Factory, Jabalpur. The modern plant was expected to be commissioned by 1985 and the existing plant phased out by 1988. It was also expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum and may touch maximum of 6.75 lakhs per annum at a lesser cost as against the production of 4.5 lakh tubes per annum by the existing plant. The Committee's examination of the Audit Paragraph has revealed several disquieting aspects arising out of the execution of the project and its attainment of the objectives.

81. The Committee note that though the project was scheduled to be commissioned in March 1985 it was actually made operational in March 1988 only. The total expenditure booked against the project as of March 1993 was Rs. 8.97 crores as against the estimated cost of Rs. 7.24 crores. Further, the scrutiny by Audit has revealed that a number of essential infrastructure items costing Rs. 3.25 crores were executed separately, which were not taken into account while computing the project cost and annual recurring expenditure. The Ministry of Communications stated that the increase in the project cost was necessitated by the increase in the cost of building whose original estimates were made on an adhoc basis, the increase in customs duty, the increase in the exchange rate etc,. The Ministry attributed the time overrun to the delay in the construction of the building due to the delayed submission of full foundation details for the plant and machinery by the contracted foreign firm and also due to the failure on the part of the contractor in the construction of the building. The Department justified non-inclusion of certain infrastructure items in the project cost since they were not meant exclusively for the tube making plant but were also common to various projects like modern galvanising plant, modern tower fabrication etc. The Committee are not satisfied with these arguments. Since the cost and time overruns in this project has primarily occurred due to the failure of the Department to plan and synchronise the construction of building in time and the procurement of

the plant and machinery, as discussed subsequently, the Committee desire that the Ministry of Communications should take necessary steps in order to ensure that such delays necessitating extra expenditure are avoided in future. The Committee are also convinced that the project cost in this case should be recast after apportioning the cost of those infrastructure items to the project which ought to have been included in order to assess the actual cost of the new tube making plant in a more realistic manner.

82. The Committee note that the construction work for a building under the project was awarded by the civil wing of the department to Government contractor National Buildings Construction Corporation (NBCC) at the tendered amount of Rs. 48.55 lakhs in April 1985 for completion in 12 months *i.e.* by April 1986. However, the works were delayed and the building was made over for installation purpose in August 1987 and ultimately the plant could be commissioned only in March 1988. Meanwhile, by October 1985, the entire equipment and machinery, worth Rs. 7.13 crores had been supplied by the foreign firm. The equipment and machinery were stored in a departmental building till commencement of installation in November 1987. Consequently, the department had to take out a 'storage cum erection' insurance policy for which premium of Rs. 3.52 lakhs was paid. By then, the warranty on the equipment had already expired in February, 1987. The Committee are surprised at the complete absence of planning in synchronising the civil works and procurment of equipment which resulted not only in incurring of extra expenditure but also in delaying the commissioning of the project considerably. The Department of Telecommunications attributed the delay in construction of the building to the foreign firm who had defaulted in making available in time the drawings of the plant and also to the Government contractor, NBCC. While intimating the action taken for these lapses, the Committee were informed that whereas a part of the sum payable to the foreign firm had been withheld, a penalty was imposed on the contractor for the delay. The Secretary, Telecommunications while admitting lack of synchronisation stated in evidence, "the only defence that I advance is that this was the price which we had to pay in terms of the learning process." The Committee deplore the laxity on the part of the authorities concerned on this score and desire that the Ministry of Communications should ensure that such lapses are not allowed to recur in future projects.

83. The Committee note that global tenders were invited in October, 1981 for design, supply of machinery and equipment, supervision of installation, carrying out the trial run, commissioning of plant and training of staff for the proposed modern tube making plant. Pre-bid concurrence of the World Bank was also stated to have been obtained before floating the global tenders. The contract was awarded to a German Firm, M/s Klockner Industries in June, 1983. As per the terms of the contract, the delivery of equipment was to be completed by April, 1985. The complete equipments

were supplied by the foreign firm between December, 1984 and October, 1985. On completion of the building, the installation team from the foreign firm arrived in October, 1987. During installation, the Plant the Machinery were jointly inspected and various technical deviations, commercial discrepancies and design defects were observed. After several modifications carried out by the installation team, the plant was ultimately commissioned in March, 1988. However, some of the defects remained. Although the foreign firm subsequently in January, 1988 and March, 1990 replaced the indigenous band rolling machines (supplied and installed earlier) by machines of Japanese origin, and also carried out some modifications, they could not demonstrate the rated output of the plant besides failing to resolve the technical deviations and commercial discrepancies. The contract was eventually rescinded in August, 1990 at the risk and cost of the firm. The Committee's examination has, revealed certain vital omissions and commissions on the part of the Department in enforcing the contractual obligation of the firm.

84. Clause 16(i) of the contract entered into with the foreign firm provided that the purchaser would at his option carry out inspection and tests in the factory of the contractor or his suppliers on the equipment as and when these are produced and before their despatch for confirmation of the technical specification/guarantee of the equipments. Surprisingly, no action was taken by the department to exercise this option inspite of a communication having been received from the foreign firm in October, 1984 to depute people for pre-despatch inspection of the equipment. Equally surprisingly, the Department did not insist for a joint inspection immediately on receipt of the entire plant and machinery in 1985. No planning was also done to have the machines inspected by the departmental engineers who were sent abroad as the machines had already been transhipped in December, 1984 whereas trainees were sent much later in May, 1986. The Committee are dismayed to note that rather than taking recourse to any of the options mentioned above, the departmental authorities took an unusual decision on 31.10.1984 waiving clause 16(i) of the contract on the ground that enough safeguards were provided under other clauses of the contract for replacement of defective equipments, warranty for quality etc. The Ministry of communications while justifying their decision not to undertake any pre-despatch inspection of the equipment stated that clause 16(i) was an optional Clause and that the requisite inspection could have been carried out after assembling and installation of the machines at site. The Secretary, Telecommunications during evidence however, stated that the decision for waiver of Clause 16(i) was guided by the fact that the World Bank Loan and IDA credit was to expire on 31.12.1984. The Committee are not convinced with the arguments adduced by the Ministry seeking to explain the departmental failure for not invoking the available contractual provision for ensuring before commissioning of the plant that the equipments supplied by the foreign firm conformed to the technical specifications and the rated output. Since the

date of expiry of the World Bank Credit was known to the Department very well in advance, they ought to have planned the commissioning of the project after ensuring the quality and specifications of the equipments by taking recourse to the available options stipulated in the contract well in time. The Committee consider it unfortunate that instead of doing so the Department resorted to an extraordinary course of action by waiving the relevant Clause of the contract itself which eventually resulted in innumerable losses. The Secretary, Telecommunications was canded in his deposition before the Committee that he had not come across any such waivers and that in retrospect I do not justify it. The Committee deprecate the departmental failures in this regard and desire that responsibility should be fixed for the lapses.

85. The design defects, deviations, discrepancies etc. in the equipments necessitating modifications, obviously have adversely affected the productivity of the plant from what was initially enviaged. The Ministry of Communications stated that they had withheld part of the payments due to the firm towards provision of the installation and commissioning charges. The Committee have been informed that major modifications have not been taken up so far. However, modifications involving expenditure of Rs. 27.25 lakhs were proposed. The Ministry further stated that they propose to achieve the rated output within a couple of years by taking up suitable modifications. The Committee would like to be apprised of the extent of modifications carried out, the cost incurred for the same and the results achieved.

86. The Committee note that in March-April 1991 the Chief General Manager, Telecom Factory intimated the Directorate that the factory had suffered losses amounting to over Rs. 40 crores due to technical deviations in the plant and machinery supplied, commercial discrepancies, shortfall in production and other miscellaneous items. Thereafter, the Ministry appointed a departmental committee in March 1991 to look into the matter. The departmental committee in its report submitted in May 1991 inter alia recommended:—

(i) Since the machines procured were for a special purpose and there were some technical deviations for which recoveries were to be made, the work of assessing the losses scientifically may be entrusted to an expert firm like Hindustan Machine Tools Ltd. — special machines tools division.

(ii) Damages may be recovered from the foreign firm on account of commercial discrepancies (DM 1,66,800 equivalent to Rs. 52.69 lakhs), cost of modifications (Rs. 28.76 lakhs) and miscellaneous recovery (Rs. 3.9 lakhs).

(iii) It was unable to give its recommendations about the recovery of a major portion of the loss due to shortfall in production suffered by the department (Rs. 35 crores during 1988-90) in view of inclusion of a Clause (20.4) in the contract document, which clearly excluded recovery of all types of consequential losses. Therefore, it recommended investigation of the reasons for inclusion of this clause in the contract and whether this had the approval of the Integrated Finance. It also recommended consulting the Ministry of Law whether the production losses could still be recovered inspite of the particular contract clause.

The Committee deeply regret to note that no action taken by the Ministry to act upon promptly on the recommendations of the departmental committee constituted by the Ministry themselves.

87. The Committee find that the Ministry took no action to entrust the work of assessing the losses scientifically to HMT. The Ministry of Communications inter alia stated that this was not done as it was realised that HMT was not an aproved agency to take up technical inspection for making claim on a foreign firm and that no useful purpose will be served by entrusting the work to them. However, the Ministry subsequently informed the Committee that when the matter was referred to HMT it was learnt that owing to limited nature of supplies, Indian inspection agency *i.e.* HMT may not be acceptable to the foreign supplier. The Committee wonder as to how the acceptability of the foreign supplier was relevant in this case and they strongly disapprove the Ministry's action in sustaining the said argument.

88. The Committee are astonished that the Department of Telecommunications have not chosen to lodge a formal claim with the foreign supplier towards the damages as assessed by the departmental committee so far. The Ministry of Communications have not offered any convincing explanation for this delay excepting that certain payments due to the firm has been withheld and hence no claim has been lodged. The Committee cannot but express their displeasure over the inordinate delay in filing the claim particularly since the departmental committee had recommended to do it as far back as in May 1991. The Committee trust that the necessary claims on this account will now be lodged alongwith the other claims. The Committee would like to be informed of the action taken in the matter.

89. Clause 20.4 in the contract document had excluded recovery of all types of consequential losses. Although the departmental committee had recommended that the Ministry might consult the Ministry of Law whether the department could still recover the production losses from the foreign supplier in spite of the said clause in the contract, the Department of Telecommunications had made a reference to the Ministry of Law on 26.12.1991 only. The Committee are unhappy over this delay and desire that the Ministry should take suitable action to ensure that such references are promptly made by the department in future.

90. The Committee further find that the Ministry of Law in their advice tendered on 5.2.1992 had opined that the claim of the Department of Telecommunications did not appear to be legally sustainable. They had, however, pointed out that it was open to the Ministry to take an administrative decision to file those claims alongwith the other claims before an arbitrator. The Committee are surprised to note that the Department of Telecommunications constituted another committee to prepare brief for the arbitration proceedings on 23.7.1993 only i.e. after a lapse of about one and a half years. The Ministry of Communications while explaining the delay stated that a committee initially appointed in

July 1992 had to be changed due to reallocation of works and another fresh committee had to be constituted in July 1993. The newly constituted committee submitted the report on 28.7.1994 i.e. after one complete year. The Committee are constrained to observe that this is indicative of the lack of seriousness on the part of the Ministry in pursuing the matter to its logical conclusions.

91. The Committee were informed that the departmental committee in its report submitted alongwith the brief for arbitration has recommended that a formal claim may be first lodged with the firm before initiating arbitration proceedings. The Department of Telecommunications informed the Committee that the said report was under their examination. On perusal of the relevant report obtained by the Committee subsequently it was however seen that the departmental committee has proposed to claim the losses incurred by the department on account of technical deviation in supply, commercial discrepancies and the miscellaneous recoveries only. As regards recovery of part of the consequential losses of production, the said committee has observed that in view of clause 20.4 of the contract this was not being pressed. The Committee are astonished over this recommendation since the Ministry of Law had clearly recommended that it was open to the administrative Ministry to take decision to claim the losses suffered on this account also alongwith the other claims. Pertinently, the cumulative effect of the losses due to shortfall in production during the six years period from 1988-89 to 1993-94 according to Audit amounted to Rs. 74.96 crores. The Committee, therefore, desire that the Ministry should look into the matter again and take appropriate steps for ensuring that all legitimate claims of the department are duly lodged.

92. The Committee regret to note that the Ministry of Communications have not adequately investigated the circumstances in which Clause 20.4 was included in the contract document which eventually sought to deprive the department of the consequential losses. The Ministry pleaded that there was nothing on record to suggest as to how the Clause was included in the contract. The Secretary, Telecommunications admitted during evidence that "to my mind, that Clause is not there anywhere else." Strangely enough, the Ministry of Communications were also unable to produce any documentary evidence to the Committee suggesting that the draft contract was approved by the Integrated Finance wing of the Ministry. The Committee are satisfied that the manner in which such an admittedly unusual clause was allowed to creep into the contract document requires to be deeply looked into. They, therefore, desire that the matter should be thoroughly investigated and responsibility fixed.

93. The Committee note that as per the contract, two indigenous band rolling machines including eight sets of tools had been indicated as DM 314800. These special purpose machines were designed by the German firm and supplied indigenously by them to the Telecom Factory, Jabalpur. On installation of these machines, it was found that they were not suitable for

rolling bands and the same were rejected. The foreign firm tried to carry out a lot of modifications to these machines but failed. Thereafter, the firm supplied two Japanese made machines. However, at the time of clearing these two machines from Customs, Telecom Factory authorities came to know that the cost of Japanese band rolling machines had been shown as DM 22400 each. The recovery of the difference in cost namely rupee equivalent to DM 2,70,000 sought for by the TFJ authorities from the foreign firm was not agreed to by the departmental committee on the ground that the firm had replaced the machines to the satisfaction of TFJ authorities. In the opinion of the Committee, this clearly shows that while scrutinising the tender offers adequate care had not been given by the Department to verify the cost effectiveness of the items included and other relevant considerations. The Department of Telecommunications stated that the entire contract was on turn key basis for design, supply, installation and commissioning of the plant and it was not in their purview to verify its suitability, cost effectiveness etc. The Committee do not agree with this contention and desire that the Ministry of Communications should further look into the facts of this case and take necessary measures in order to ensure that similar losses are not incurred in the future contracts.

94. The Committee further note that one packing case containing imported machines and spares was damaged during transit. Also, another indigenous machine was damaged during unloading. Claims for Rs. 15.78 lakhs lodged by the Department on both the cases with the insurance company in July 1985 and May 1987 were, however, still pending. The Department of Telecommunications stated that the main reasons for the delay in the case is due to dilly-dallying tactics adopted by the insurance company for settlement on various pretexts. The Committee desire that the cases should be vigorously pursued so as to realise the legitimate claims of the department.

95. The project for setting up of the modern tube making plant was conceived mainly with a view to achieving higher output and improved product at a lesser cost. It was expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum at a lesser cost as against the production of 4.5 lakhs tubes per annum by the existing plant. The Committee were informed that the cost of production at the new factory was lesser than the old one. However, as against the expected production of 5.25 lakhs, the production registered by the modern plant during the years 1989-90 and 1993-94 varied between were 1.34 lakhs and 3.59 lakh tubes. Ironically, the production registered by the existing old plant during the corresponding period varied between 3.35 lakhs and 3.74 lakh tubes. Thus, contrary to the expectations the modern plant with better technology is giving a lower output than the purportedly outlived plant with obsolete technology. Evidently, the underlying objectives behind the setting up of this plant still remains to be fully achieved. Significantly, the Department as of now are meeting more than 80% of their requirements of

the tube from the open market where the price per tube is stated to be lesser than the cost of production by the government factory. The Committee cannot but express their serious concern over the failure of the plant to achieve the rated production even after a period of six years. During evidence the Secretary, Telecommunications admitted that the Department were not satisfied with the production performance and that it has to be improved. The Committee recommend that all out measures should be taken to increase the production of the new tube making plant so as to achieve the desired output. The Committee would like to be apprised of the latest position in respect of the production of the new and old factories, the cost of tubes produced and also the quantity obtained from the open market and the rates at which they are so procured. They would also like to be informed of the Government proposals on the fate of the old plant.

96. The Committee find that the proforma profit and loss accounts of the modern tube making plant from the years 1988-90 onwards are yet to be finalised. However, at their instance provisional accounts for the years 1990-91 to 1993-94 were furnished. The accounts revealed that the operating expenditure had registered an increase from Rs. 9.74 Crores in 1990-91 to Rs. 23.78 crores in the year 1993-94. However, sales during the corresponding period increased from Rs. 12.52 crores to Rs. 24.49 crores only. It was also seen that the factory was carrying an inventory of Rs. 13.53 crores and current liabilities on account of galvanising charges were still to be discharged. In view of the above and also the fact that various essential infrastructure facilities amounting to Rs. 3.24 crores were yet to be appropriately booked, the Committee are convinced that the costing aspects need to be looked into again in order to assess the financial viability of the project in a more appropriate manner. This is particularly necessary considering the fact that Government/Department of Telecommunications are themselves the principal customer of the product. The Committee, therefore, desire that the proforma accounts should be recast accordingly, finalised expeditiously and got duly audited. The Committee would like to be informed of the action taken in the matter.

97. From the facts stated in the preceding paragraphs the Committee are inclined to conclude that the project of the modern tube making plant Jabalpur had suffered due to several Irregularities/shortcomings. These included inadequate preparation of project estimates, failure to ensure synchronisation of procurement of machinery and construction of building, failure to invoke contractual provisions, incorrect waiver of contractual clause, inclusion of incorrect clauses in the contract document, failure to take prompt action on the findings of the departmental committee, delay in arbitration proceedings and above all failure to ensure achievement of objectives behind the project. The Ministry of Communications (Department of Telecommunication) assured the Committee that they proposed to take suitable remedial measures for improving the terms and condition in the future contracts by providing for detailed testing schedule plan, the terms of

payment, incorporation of adequate clauses in case of failure to administer the rated output of the plant etc. The Committee cannot remain satisfied with this. They desire that the various ommissions and comissions pointed out by them in this report should be thoroughly inquired into with a view to fixing of responsibility and also ensuring that such lapses do not recur. The Committee also do not agree with the contention of the Ministry that the cumulative production loss of Rs. 74.96 crores pointed out by Audit was "hypothetical and speculative". Since these losses have arisen also due to the failure of the foreign firm to fulfil their contractual obligation to demonstrate the rated output of the plant, the Committee are of the view that the matter should be taken to its logical conclusions by making suitable claims alongwith the other claims proposed to be filed with the arbitrator without any further delay. The Committee would like to be apprised of action taken within a period of six months.

NEW DELHI;
16 March, 1995

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25 Phalguna, 1916(S)

BHAGWAN SHANKAR RAWAT
Chairman,
Public Accounts Committee.

APPENDIX I

8.1 Tube Making Plant at Jabalpur

8.1.1 Introduction

A tube making plant, manufacturing Hamilton tubes (for telephone and telegraph poles), established in 1942 had outlived its life. The technology used was very old, outmoded and had low productivity.

Government approved a proposal, in March 1983, for setting up a modern integrated tapered tube making plant at Richhai, Jabalpur at an estimated cost of Rs. 723.84 lakhs. The project was sanctioned in April 1983 for Rs. 724.28 lakhs in replacement of the existing plant at Telecom Factory, Jabalpur. The modern plant was expected to be commissioned by 1985 and the existing plant phased out by 1988. The modern plant was commissioned in March 1988. The total expenditure booked against the project, as of March 1993 was Rs. 897.28 lakhs.

8.1.2 Scope of Audit

A review of the project was conducted by Audit to assess its productivity and cost effectiveness and also to see how far the objectives of the establishement of the modern tube making plant, envisaged in the memorandum for the Expenditure Finance Committee were achieved.

8.1.3 Organisational set-up

The project was executed by the Chief General Manager (CGM), Telecom Factory, Jabalpur (TFJ) with the assistance of a Factory Mananger and associate staff.

8.1.4 Highlights

The review brings out:

— Besides, the project cost of Rs. 897.28 lakhs, a number of essential infrastructure items costing Rs. 324.54 lakhs were executed separately, which were not taken into account while computing the project cost and annual recurring expenditure.

— Due to inordinate delay in completion of the building, imported equipment and machinery, worth Rs. 713 lakhs remained idle for over two years. The modern plant, which was expected to be commissioned by 1985 could only be commissioned after a delay of over two years in March 1988.

— There were many technical deviation, discrepancies and design defects in the plant and machinery supplied by the foreign firms. Despite a number of modifications by the firm the rated output has not been achieved.

— Inclusion of a clause in the contract document barring recovery of all types of consequential losses had deprived the Department of recovery on account of production losses. Due to non-completion of contractual obligations by the foreign firm, the Department was put to loss of over Rs. 40 crores (including Rs. 35 crores due to shortfall in production) as pointed out by a Committee constituted in March 1991.

Contrary to the expectations of the Department the modern high technology plant had been giving a lower output than the outlived plant with obsolete technology.

8.1.5 Sanction of Estimate

The Department, while computing the estimated project cost of Rs. 724.28 lakhs in April 1983, had not taken into account a number of essential infrastructure items like construction of railway siding (Rs. 181.33 lakhs), provision of transformer sub-station (Rs. 73.24 lakhs), construction of compound wall, street and watch tower lighting etc. These were sanctioned separately for providing infrastructure facility for the plant. The total expenditure incurred on such works beyond sanctioned project estimate was Rs. 324.54 lakhs. The expenditure neither formed part of the capital investment nor was any part of it taken into account for computing annual recurring expenditure of the plant.

8.1.6 Land and Building

The Board and Management, Telecom Factories had decided in November 1978 to acquire land for setting up the new plant. The Government of Madhya Pradesh allotted 80 acres of land which was acquired by the factory authorities in July 1981 on 99 years' lease at a cost of Rs. 1.28 lakhs.

A provision of Rs. 37.11 lakhs was made in the project estimate sanctioned in April 1983 for contruction of a building. As against this, administrative approval and expenditure sanction (AAES) for the work was accorded by the CGM Telecom Factory, Jabalpur for Rs. 41.26 lakhs in May 1984. The construction work was awarded by the Civil Wing of the Department to Government contractor 'C' at his tendered amount of Rs. 48.55 lakhs in April 1985 for completion in 12 months *i.e.* by April 1986. the works were delayed and the building was made over for installation purpose in August 1987 and the plant could be commissioned only in March 1988. The target date for completion of the work was extended four times by the Department.

Meanwhile, by October 1985, the entire equipment and machinery, worth Rs. 713 lakhs was supplied by the foreign firm. The equipment and machinery were stored in a departmental building till commencement of installation in November 1987. The Department had to take out a 'storage-cum-erection' insurance policy for which premium of Rs. 3.52 lakhs was paid.

8.1.7 Equipment and Machinery

Global tenders were invited in October 1981 for design, supply of machinery and equipment, supervision of installation, carrying out the trial run and commissioning of plant and training of staff for the proposed modern tube making plant at Jabalpur with a capacity of 5.25 lakh tubes per annum. The contract was awarded to German firm 'D' in June 1983, the effective date being the date of opening of the letter of credit (LC), *i.e.* November 1983. As per terms of the contract, the delivery of equipment was to commence between tenth and thirteenth month and be completed by the seventeenth month after the effective date *i.e.* April 1985. The plant was to go into production by the twentieth month after the effective date *i.e.* by July 1985.

The delivery of equipment commenced in December 1984 and by May 1985 bulk of the supply was received. The last consignment was shipped by the firm in October 1985.

On completion of the building, the German installation team arrived in October 1987. During installation, the plant and machinery were jointly inspected and technical deviations and commerical discrepancies were observed. The design defects were pointed out to the firm in February 1988 and also referred to the Directorate in March 1988.

After several modifications carried out by the installation team, the plant was ultimately commissioned in March 1988. However, some defects remained.

During their subsequent visits in January 1989 and March 1990, the German engineers replaced the indigenous band rolling machines (supplied and installed earlier) by machines of Japanese origin and also carried out some modifications of the clamping device on the band welding machine. But, they could not demonstrate the rated output of the plant besides failing to resolve the technical deviations and commerical discrepancies. The contract was rescinded in August 1990 at the risk and cost of the firm. The modifications are still being carried out departmentally as of March 1992.

8.1.8 Losses suffered by the Department

The losses suffered by the Department, as assessed by the CGM, due to technical deviations in the plant and machinery supplied, commercial discrepancies, shortfall in production and other miscellaneous items ran to over Rs. 40 crores and these were intimated to the Directorate in March and April 1991.

The Directorate constituted a Committee, in March 1991, to work out the damages to be recovered from the German firm for not meeting the contractual obligations. The Committee, in its report of May 1991, had observed as under:

(i) The technical deviations which the Telecom Factory, Jabalpur (TFJ) had pointed out in 1988 and with more details in 1990-91, could have been pointed out much earlier, in 1986 itself, so that the Department could get the replacement much earlier.

(ii) Since the machines were for a special purpose and there were some technical divisions for which recoveries were to be made, the work of assessing the losses scientifically may be entrusted to an expert firm like HMT-Special Machines Tools Division.

(iii) Rs. 52.69 lakhs be recovered from the firm. This comprised of expenditure incurred on modifications to equipment etc., (Rs. 28.76 lakhs), cost of supplies which were not satisfactory (Rs. 3.92 lakhs), excess charges by the firm on some of the items (Rs. 17.61 lakhs) and other miscellaneous items (Rs. 2.40 lakhs).

(iv) The Committee was unable to give its recommendations about the recovery of a major portion of the loss (due to shortfall in production) suffered by the Department (Rs. 35 crores during 1988-90) in view of inclusion of a clause (20.4) in the contract document which clearly excluded recovery of all types of consequential losses. Therefore, the committee recommended to the Department to investigate the reasons for inclusion of this clause in the contract and whether this had the approval of the integrated finance. The committee also recommended consulting the Ministry of Law whether the production losses could still be recovered inspite of the particular contract clause.

In reply to an Audit query the Telecom Directorate stated in August 1993 that on consulting the Ministry of Law, it was opined that the claim of the Department of Telecommunications did not appear to be legally sustainable. It was, however, open to the Administrative Ministry to take an administrative decision to file these claims alongwith the other claims before the arbitrator.

It was, however, observed by Audit that as of December 1993 no claim had been filed as the brief for the arbitration was still awaited from the Committee constituted for the purpose.

8.1.9 Non-attainment of Objectives

The project for setting up of the modern tube making plant was conceived with a view to achieving higher output and improved product at a lesser cost. It was expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum at a cost of Rs. 149.70 per tube as against the production of 4.5 lakhs tubes per annum at a cost of Rs. 172.45 per tube by the existing plant.

Although more than 10 years have passed and a huge sum of Rs. 897.28 lakhs invested, the Department is yet to achieve its objective.

The annual production of tubes at the existing plant and at the modern plant since its commissioning in March 1988 was as under:

Table 8.1.9 (i) Production of tubes

Year	Production at the modern plant	Production at the existing plant
	(Tubes in numbers)	
1988-89	2626	296208
1989-90	133520	335946
1990-91	148880	322179
1991-92	272780	378964
1992-93	330100	342960

Thus, contrary to the expectations of the Department, the modern plant with better technology was giving a lower output than the outlived plant with obsolete technology.

Besides, the loss due to shortfall in production at the modern plant since commissioning was as under:

Table 8.1.9 (ii) Loss due to Shortfall in Production

Year	Proposed rated output	Actual production	Value (Rs. in lakhs)	Average value per tube (Rs.) (4—3)	Shortfall in production (2—3)	Loss due to shortfall in production (Rs. in lakhs) (6-5)
	2	3	4	5	6	7
1988-89	525000	2626	9.50	362	522374	1890.99
1989-90	525000	133520	487.00	365	391480	1428.90
1990-91	525000	148880	617.61	415	376120	1560.89
1991-92	525000	272780	1123.00	412	252220	1039.14
1992-93	525000	330100	1389.57	421	194900	820.52

The cumulative effect of the losses due to shortfall in production during the last five years was Rs. 67.40 crores. This loss, as per the opinion of the Ministry of Law would have to be sustained by the Department, as no claim against the foreign supplier was legally sustainable in view of inclusion of a limiting clause (No. 20.4) in the contract document.

In regard to a specific query by Audit as to whether the reasons for the inclusion of clause 20.4 in the contract document was investigated by the

Department and whether this had the concurrence of integrated finance, no clear reply was given by the Department of Telecommunications. It was simply stated in July 1993 that from the records it appeared that the case was shown to the Finance wing.

8.1.10 Other Issues

(i) Two indigenous band rolling machines supplied earlier as per the contract and installed by the German firm, being totally unsuitable, were replaced by machines of Japanese origin in January 1989. The indigenous machines for which the Department had paid rupee equivalent of DM 314800 were lying without any use with the TFJ authorities. The cost of the Japanese make machines was DM 44800 only. The recovery of the difference in cost *viz.* rupee equivalent to DM 270000, sought for by the TFJ authorities from the German firm was not agreed to by the Departmental Committee. The committee observed that the German firm had replaced the machines to the satisfaction of the TFJ authorities.

(ii) One packing case containing imported machines and spares was damaged during transit. Also, one indigenous machine was damaged during unloading. Claims for Rs. 16.89 lakhs were lodged with the insurance company in 1985-86. The Manager, Telecom Factory stated in May 1993 that the claims were still pending with the insurance company and were being pursued vigorously for early settlement.

These observations were referred to the Ministry in August 1993; their reply was awaited as on December 1993.

APPENDIX II

Statement of Observations and Recommendations

Sl. No.	Para No.	Min./Deptt. concerned	Recommendations/Observations
1	2	3	4
1.	80	Ministry of Communications (Deptt. of Telecommunications)	The Ministry of Communications felt in February 1983 that there would be a constant requirement of Hamilton tubes (for telephone and telegraph poles) in increasingly larger numbers in the years to come for opening new connections/call offices, extending telecommunication facilities in rural areas etc. A tube making plant manufacturing such tubes established in 1942 at Jabalpur had outlived its life. The technology used was very old, outmoded and had low productivity. Accordingly, Government approved a proposal in March 1983 for setting up a modern integrated tapered tube making plant at Richhai, Jabalpur at an estimated cost of Rs. 723.84 lakhs. The project was sanctioned in April 1983 for Rs. 724.28 lakhs in replacement of existing plant at Telecom Factory, Jabalpur. The modern plant was expected to be commissioned by 1985 and the existing plant phased out by 1988. It was also expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum and may touch maximum of 6.75 lakhs per annum at a lesser cost as against the production of 4.5 lakh tubes per annum by the existing plant. The Committee's examination of the Audit Paragraph has revealed several disquieting aspects arising out of the execution of the project and its attainment of the objectives.

1	2	3	4
2.	81	Ministry of Communications (Deptt. of Telecommunications	The Committee note that though the project was scheduled to be commissioned in March 1985 it was actually made operational in March 1988 only. The total expenditure booked against the project as on March 1993 was Rs. 8.97 crores as against the estimated cost of Rs. 7.24 crores. Further, the scrutiny by Audit has revealed that a number of essential infrastructure items costing Rs. 3.25 crores were executed separately, which were not taken into account while computing the project cost and annual recurring expenditure. The Ministry of Communications stated that the increase in the project cost was necessitated by the increase in the cost of building whole original estimates were made on an adhoc basis, the increase in customs duty, the increase in the exchange rate etc. The Ministry attributed the time overrun to the delay in the construction of the building due to the delayed submission of full foundation details for the plant and machinery by the contracted foreign firm and also due to the failure on the part of the. contractor in the construction of the building. The Department justified non-inclusion of certain infrastructure items in the project cost since they were not meant exclusively for the tube making plant but were also common to various projects like modern galvanising plant, modern tower fabrication etc. The Committee are not satisfied with these arguments. Since the cost and time overruns *in this project has primarily occurred due to* the failure of Department to plan and *synchronise the construction* of building in time and the procurement of the plant and machinery, as discussed subsequently, the Committee desire *that the Ministry of* Communications should take necessary steps *in order to ensure that such delays*

1	2	3	4
			necessitating extra expenditure are avoided in future. The Committee are also convinced that the project cost in this case should be recast after apportioning the cost of those infrastructure items to the project which ought to have been included in order to assess the actual cost of the new tube making plant in a more realistic manner.
3.	82	Ministry of Communications (Deptt. of Telecommunications)	The Committee note that the construction work for a building under the project was awarded by the civil wing of the department to Government contractor National Building Construction Corporation (NBCC) at the tenderred amount of Rs. 48.55 lakhs in April 1985 for completion in 12 months *i.e.* by April 1986. However, the works were delayed and the building was made over for installation purpose in August 1987 and ultimately the plant could be commissioned only in March 1988. Meanwhile, by October 1985, the entire equipment and machinery, worth Rs. 7.13 crores had been supplied by the foreign firm. The equipment and machinery were stored in a departmental building till commencement of installation in November 1987. Consequently, the department had to take out a 'storage cum erection' insurance policy for which premium of Rs. 3.52 lakhs was paid. By then, the warranty on the equipment had already expired in February, 1987. The Committee are surprised at the complete absence of planning in synchronising the civil works and procurement of equipment which resulted not only in incurring of extra expenditure but also in delaying the commissioning of the project considerably. The Department of Telecommunications attributed the delay in construction of building to the foreign firm who had defaulted in making available in time the drawings of the plant and also to the Government contractor, NBCC. While

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			intimating the action taken for these lapses, the Committee were informed that whereas a part of the sum payble to the foreign firm had been withheld, a penalty was imposed on the contractor for the delay. The Secretary, Telecommunications while admitting lack of synchronisation stated in evidence, "the only defence that I advance is that this was the price which we had to pay in terms of the learning process." The Committee deplore the laxity on the part of the authorities concerned on this score and desire that the Ministry of Communications should ensure that such lapses are not allowed to recur in future projects.
4.	83	Ministry of Communications (Deptt. of Telecommunications)	The Committee note that global tenders were invited in October, 1981 for design, supply of machinery and equipment, supervision of installation, carrying out the trial run, commissioning of plant and training of staff for the proposed modern tube making plant. Pre-bid concurrence of the World Bank was also stated to have been obtained before floating the global tenders. The contract was awarded to German Firm, M/s. Klockner Industries in June, 1983. As per the terms of the contract, the delivery of equipment was to be completed by April, 1985. The complete equipments were supplied by the foreign firm between December, 1984 and October, 1985. On completion of the building, the installation team from the foreign firm arrived in October, 1987. During installation, the Plant and Machinery were jointly inspected and various technical deviations, commercial discrepancies and design defects were observed. After several modifications carried out by the installation team, the plant was ultimately commissioned in March, 1988. However, some of the defects remained. Although the foreign firm

1	2	3	4
			subsequently in January, 1988 and March, 1990 replaced the indigenous band rolling machines *(supplied and installed earlier) by* machines of Japanese origin, and also carried out some modifications, they could not demonstrate the rated output of the plant besides failing to resolve the technical deviations and commercial discrepancies. The contract was eventually rescinded in August, 1990 at the risk and cost of the firm. The Committee's examination has revealed certain vital omissions and commissions on the part of the Department in enforcing the contractual obligation of the firm.
5.	84	Ministry of Communications (Deptt. of Telecommunications)	Clause 16(i) of the contract entered into with the foreign firm provided that the purchaser would at his option carry out inspection and tests in the factory of the contractor or his suppliers on the equipment as and when these are produced and before their despatch for confirmation of the technical specification/guarantee of the equipments. Surprisingly, no action was taken by the department to exercise this option inspite of a communication having been received from the foreign firm in October, 1984 to depute people for pre-despatch inspection of the equipment. Equally surprisingly, the Department did not insist for a joint inspection immediately on receipt of the entire plant and machinery in 1985. No planning was also done to have the machines inspected by the departmental engineers who were sent abroad as the machines had already been transhipped in December, 1984 whereas trainees were sent much later in May, 1986. The Committee are dismayed to note that rather than taking recourse to any of the options mentioned above, the departmental authorities took an unusual decision on 31.10.1984 waiving Clause 16(i) of the

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			contract on the ground that enough safeguards were provided under other clauses of the contract for replacement of defective equipments, warranty for quality etc. The Ministry of Communications while justifying their decision not to undertake any pre-despatch inspection of the equipment stated that Clause 16(i) was an optional Clause and that the requisite inspection could have been carried out after assembling and installation of the machines at site. The Secretary, Telecommunications during evidence however, stated that the decision for waiver of Clause 16(i) was guided by the fact that the World Bank Loan and IDA credit was to expire on 31.12.84. The Committee are not convinced with the arguments adduced by the Ministry seeking to explain the departmental failure for not invoking the available contractual provision for ensuring before commissioning of the plant that the equipments supplied by the foreign firm conformed to the technical specifications and the rated output. Since the date of expiry of the World Credit was known to the Department very well in advance, they ought to have planned the commissioning of the project after ensuring the quality and specifications of the equipments by taking recourse to the available options stipulated in the contract well in time. The Committee consider it unfortunate that instead of doing so the Department resorted to an extraordinary course of action by waiving the relevant Clause of the contract itself which eventually resulted in innumberable losses. The Secretary, Telecommunications was candid in his deposition before the Committee that he had not come across any such waivers and that in retrospect I do not justify it.' The Committee deprecate the departmental failures in this regard and desire that responsibility should be fixed for the lapses.

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6.	85	Ministry of Communications (Deptt. of Telecommunications)	The design defects, deviations, discrepancies etc. in the equipments necessitating modifications, obviously have adversely affected the productivity of the plant from what was initially envisaged. The Ministry of Communications stated that they had withheld part of the payments due to the firm towards provision of the installation and commissioning charges. The Committee have been informed that major modifications have not been taken up so far. However, modifications involving expenditure of Rs. 27.25 lakhs were proposed. The Ministry further stated that they propose to achieve the rated output within a couple of years by taking up suitable modifications. The Committee would like to be apprised of the extent of modifications carried out, the cost incurred for the same and the results achieved.
7.	86	-do-	The Committee note that in March-April 1991 the Chief General Manager, Telecom Factory intimated the Directorate that the factory had suffered losses amounting to over Rs. 40 crores due to technical deviations in the plant and machinery supplied, commercial discrepancies, shortfall in production and other miscellaneous items. Thereafter, the Ministry appointed a departmental committee in March 1991 to look into the matter. The departmental committee in its report submitted in May 1991 inter alia recommended:— (i) Since the machines procured were for a special purpose and there were some technical deviations for which recoveries were to be made, the work of assessing the losses scientifically may be entrusted to an expert firm like Hindustan

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			Machine Tools Ltd.—special machines tools division.
			(ii) Damages may be recovered from the foreign firm on account of commercial discrepancies (DM 1,66,800 equivalent to Rs. 52.69 lakhs), cost of modifications (Rs. 28.76 lakhs) and miscellaneous recovery (Rs. 3.9 lakhs).
			(iii) It was unable to give its recommendations about the recovery of a major portion of the loss due to shortfall in production suffered by the department (Rs. 35 crores during 1988—90) in view of inclusion of a Clause (20.4) in the contract document which clearly excluded recovery of all types of consequential losses. Therefore, it recommended investigation of the reasons for inclusion of this clause in the contract and whether this had the approval of the Integrated Finance. It also recommended consulting the Ministry of Law whether the production losses could still be recovered inspite of the particular contract clause.
			The Committee deeply regret to note that no action was taken by the Ministry to act upon promptly on the recommendations of the departmental committee constituted by the Ministry themselves.
8.	87	Ministry of Communications (Deptt. of Telecommunications)	The Committee find that the Ministry took no action to entrust the work of assessing the losses scientifically to HMT. The Ministry of Communications inter alia stated that this was not done as it was realised that HMT was not an approved agency to take up technical inspection for making claim on a foreign firm and that no useful purpose will be served by entrusting the work to them. however, the Ministry subsequently informed

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			the Committee that when the matter was referred to HMT it was learnt that owing to limited nature of supplies, Indian inspection agency *i.e.* HMT may not be acceptable to the foreign supplier. The Committee wonder as to how the acceptability of the foreign supplier was relevant in this case and they strongly disapprove the Ministry's action in sustaining the said argument.
9.	88	Ministry of Communications (Deptt. of Telecommunications)	The Committee are astonished that the Department of Telecommunications have not chosen to lodge a formal claim with the foreign supplier towards the damages as assessed by the departmental committee so far. The Ministry of Communications have not offered any convincing explanation for this delay excepting that certain payments due to the firm has been withheld and hence no claim has been lodged. The Committee cannot but express their displeasure over the inordinate delay in filing the claim particularly since the departmental committee had recommended to do it as far back as in May 1991. The Committee trust that the necessary claims on this account will now be lodged alongwith the other claims. The Committee would like to be informed of the action taken in the matter.
10.	89	-do-	Clause 20.4 in the contract document had excluded recovery of all types of consequential losses. Although the departmental committee had recommended that the Ministry might consult the Ministry of Law whether the department could still recover the production losses from the foreign supplier in spite of the said clause in the contract, the Department of Telecommunications had made a reference to the Ministry of Law on 26.12.1991 only. The Committee are unhappy over this delay and desire that the Ministry

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			should take suitable action to ensure that such references are promptly made by the department in future.
11.	90	Ministry of Communications (Deptt. of Telecommunications)	The Committee further find that the Ministry of Law in their advice tendered on 5.2.1992 had opined that the claim of Department of Telecommunications did not appear to be legally sustainable. They had, however, pointed out that it was open to the Ministry to take an administrative decision to file those claims alongwith the other claims before an arbitrator. The Committee are surprised to note that the Department of Telecommunications constituted another committee to prepare brief for the arbitration proceedings on 23.7.1993 only *i.e.* after a lapse of about one and a half years. The Ministry of Communications while explaining the delay stated that a committee initially appointed in July 1992 had to be changed due to reallocation of works and another fresh committee had to be constituted in July 1993. The newly constituted committee submitted the report on 28.7.1994 *i.e.* after one complete year. The Committee are constrained to observe that this is indicative of the lack of seriousness on the part of the Ministry in pursuing the matter to its logical conclusions.
12.	91	-do-	The Committee were informed that the departmental committee in its report submitted alongwith the brief for arbitration has recommended that a formal claim may be first lodged with the firm before initiating arbitration proceedings. The Department of Telecommunications informed the Committee that the said report was under their examination. On perusal of the relevant report obtained by the Committee subsequently it was however seen that the departmental committee has proposed to

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			claim the losses incurred by the department on account of technical deviation in supply, commercial discrepancies and the miscellaneous recoveries only. As regards recovery of part of the consequential losses of production, the said committee has observed that in view of clause 20.4 of the contract this was not being pressed. The Committee are astonished over this recommendation since the Ministry of Law had clearly recommended that it was open to the administrative Ministry to take decision to claim the losses suffered on this account also alongwith the other claims. Pertinently, the cumulative effect of the losses due to shortfall in production during the six years period from 1988-89 to 1993-94 according to Audit amounted to Rs. 74.96 crores. The Committee, therefore, desire that the Ministry should look into the matter again and take appropriate steps for ensuring that all legitimate claims of the department are duly lodged.
13.	92	Ministry of Communications (Deptt. of Telecommunications)	The Committee regret to note that the Ministry of Communications have not adequately investigated the circumstances in which Clause 20.4 was included in the contract document which eventually sought to deprive the department of the consequential losses. The Ministry pleaded that there was nothing on record to suggest as to how the Clause was included in the contract. The Secretary, Telecommunications admitted during evidence that "to my mind, that Clause is not there anywherelse." Strangely enough, the Ministry of Communications were also unable to produce any documentary evidence to the Committee suggesting that the draft contract was approved by the Integrated Finance wing of the Ministry. The Committee are satisfied that the manner in which such an admittedly

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			unusual clause was allowed to creep into the contract document requires to be deeply looked into. They, therefore, desire that the matter should be thoroughly investigated and responsibility fixed.
14.	93	Ministry of Communications (Deptt. of Telecommunications)	The Committee note that as per the contract, two indigenous band rolling machines including eight sets of tools had been indicated as DM 314800. These special purpose machines were designed by the German firm and supplied indigenously by them to the Telecom Factory, Jabalpur. On installation of these machines, it was found that they were not suitable for rolling bands and the same were rejected. The foreign firm tried to carry out a lot of modifications to these machines but failed. Thereafter, the firm supplied two Japanese made machines. However, at the time of clearing these two machines from Customs, Telecom Factory authorities came to know that the cost of Japanese band rolling machines had been shown as DM 22400 each. The recovery of the difference in cost namely rupee equivalent to DM 2,70,000 sought for by the TFJ authorities from the foreign firm was not agreed to by the departmental committee on the ground that the firm had replaced the machines to the satisfaction of TFJ authorities. In the opinion of the Committee, this clearly shows that while scrutinising the tender offers adequate care had not been given by the Department to verify the cost effectiveness of the items included and other relevant considerations. The Department of Telecommunications stated that the entire contract was on turn key basis for design, supply, installation and commissioning of the plant and it was not in their purview to verify its suitability, cost effectiveness etc. The Committee do not agree with this contention and desire that the

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			Ministry of Communications should further look into the facts of this case and take necessary measures in order to ensure that similar losses are not incurred in the future contracts.
15.	94	Ministry of Communications (Deptt. of Telecommunications)	The Committee further note that one packing case containing imported machines and spares was damaged during transit. Also, another indigenous machine was damaged during unloading. Claims for Rs. 15.78 lakhs lodged by the Department on both the cases with the insurance company in July 1985 and May 1987 were, however, still pending. The Department of Telecommunications stated that the main reasons for the delay in the case is due to dilly-dallying tactics adopted by the insurance company for settlement on various pretexts. The Committee desire that the cases should be vigorously pursued so as to realise the legitimate claims of the Department.
16.	95	-do-	The Project for setting up of the modern tube making plant was conceived mainly with a view to achieving higher output and improved product at a lesser cost. It was expected that the modern plant with a better technology would produce 5.25 lakhs tubes per annum at a lesser cost as against the production of 4.5 lakhs tubes per annum by the existing plant. The Committee were informed that the cost of production at the new factory was lesser than the old one. However, as against the expected production of 5.25 lakhs, the production registered by the modern plant during the years 1989-90 and 1993-94 varied between were 1.34 lakhs and 3.59 lakhs tubes. Ironically, the production registered by the existing old plant during the corresponding period varied between 3.35 lakhs and 3.74 lakh tubes. Thus, contrary to the expectations the modern plant with better technology is giving

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			a lower output than the purportedly outlived plant with obsolete technology. Evidently, the underlying objectives behind the setting up of this plant still remains to be fully achieved. Significantly, the Department as of now are meeting more than 80% of their requirements of the tube from the open market where the price per tube is stated to be lesser than the cost of production by the Government factory. The Committee cannot but express their serious concern over the failure of the plant to achieve the rated production evenafter a period of six years. During evidence, the Secretary, Telecommunications admitted that the Department were not satisfied with the production performance and that it has to be improved. The Committee recommend that all out measures should be taken to increase the production of the new tube making plant so as to achieve the desired output. The Committee would like to be apprised of the latest position in respect of the production of the new and old factories, the cost of tubes produced and also the quantity obtained from the open market and the rates at which they are so procured. They would also like to be informed of the Government proposals on the fate of the old plant.
17.	96	Ministry of Communications (Deptt. of Telecommunications)	The Committee find that the proforma profit and loss account of the modern tube making plant from the years 1988-90 onwards are yet to be finalised. However, at their instance provisional accounts for the years 1990-91 to 1993-94 were furnished. The accounts revealed that the operating expenditure had registered an increase from Rs. 9.74 crores in 1990-91 to Rs. 23.78 crores in the year 1993-94. However, sales during the corresponding period increased from Rs. 12.52 crores to Rs. 24.49 crores only. It was also seen that the factory was carrying an

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			inventory of Rs. 13.53 crores and current liabilities on account of galvanising charges were still to be discharged. In view of the above and also the fact that various essential infrastructure facilities amounting to Rs. 3.24 crores were yet to be appropriately booked, the Committee are convinced that the costing aspects need to be looked into again in order to assess the financial viability of the project in a more appropriate manner. This is particularly necessary considering the fact that Government/Department of Telecommunications are themselves the principal customer of the product. The Committee, therefore, desire that the proforma accounts should be recast accordingly, finalised expeditiously and got duly audited. The Committee would like to be informed of the action taken in the matter.
18.	97	Ministry of Communications (Deptt. of Telecommunications)	From the facts stated in the preceding paragraphs the Committee are inclined to conclude that the project of the modern tube making plant Jabalpur had suffered due to several irregularities/shortcomings. These included inadequate preparation of project estimates, failure to ensure synchronisation of procurement of machinery and construction of building, failure to invoke contractual provisions, incorrect waiver of contractual clause, inclusion of incorrect clauses in the contract document, failure to take prompt action on the findings of the departmental Committee, delay in arbitration proceedings and above all failure to ensure achievement of objectives behind the project. The Ministry of Communications (Department of Telecommunications) assured the Committee that they proposed to take suitable remedial measures for improving the terms and conditions in the future contracts by providing

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			for detailed testing schedule plan, the terms of payment, incorporation of adequate clauses in case of failure to administer the rated output of the plant etc. The Committee cannot remain satisfied with this. They desire that the various omissions and commissions pointed out by them in this report should be thoroughly inquired into with a view to fixing of responsibility and also ensuring that such lapses do not recur. The Committee also do not agree with the contention of the Ministry that the cumulative production loss of Rs. 74.96 crores pointed out by Audit was "hypothetical and speculative". Since these losses have arisen also due to the failure of the foreign firm to fulfill their contractual obligation to demonstrate the rated output of the plant, the Committee are of the view that the matter should be taken to its logical conclusions by making suitable claims alongwith the other claims proposed to be filed with the arbitrator without any further delay. The Committee would like to be apprised of action taken within a period of six months.