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RATNA AND R-SERIES HYDROCARBON FIELDS

[Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Sixty-second Report (16th Lok Sabha)]

MINISTRY OF PETROLEUM & NATURAL GAS

PUBLIC ACCOUNTS COMMITTEE
(2017-18)

NINETY-EIGHTH REPORT

SIXTEENTH LOK SABHA

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 213

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Presented to Lok Sabha on: 28\03\2018

Laid in Rajya Sabha on: 28\03\2018

LOK SABHA SECRETARIAT
NEW DELHI

March, 2018/ Chaitra, 1940 (Saka)

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APPENDICES

* Not included to the cyclostyled copy of the Report

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE
(2017-18)

Shri Mallikarjun Kharge - Chairperson

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LOK SABHA

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3. Shri Subhash Chandra Baheria
4. Shri Prem Singh Chandumajra
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20. Shri Sukhendu Sekhar Roy‡
21. Shri Ajay Sancheti
22. Shri Bhupender Yadav

SECRETARIAT

1. Shri A.K. Singh - Additional Secretary
2. Shri T.Jayakumar - Director
3. Smt. Bharti S. Tuteja - Deputy Secretary

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* Ceased to be a Member of Committee consequent upon acceptance of his resignation from Lok Sabha w.e.f. 22 February, 2018.

† Elected w.e.f. 29 December, 2017 in lieu of vacancy caused due to retirement of Shri Shantaram Naik.

‡ ceased to be a Member of Committee consequent upon his retirement from Rajya Sabha on 18 August, 2017 and re-elected w.e.f. 29 December, 2017.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2017-18), having been authorised by the Committee, do present this Ninety-eighth Report (Sixteenth Lok Sabha) on Action Taken by the Government on the Observations/Recommendations of the Committee contained in their Sixty-Second Report(Sixteenth Lok Sabha) on **'Ratna and R-Series Hydrocarbon Fields'** relating to the Ministry of Petroleum and Natural Gas.

2. The Sixty-Second Report was presented to Lok Sabha/laid in Rajya Sabha on 16 December, 2016. Replies of the Government to the Observations/ Recommendations contained in the Report were received on 9th November, 2017. The Public Accounts Committee considered and adopted the Ninety-eighth Report (Sixteenth Lok Sabha) at their sitting held on 23 March, 2018. Minutes of the Sitting are given at Appendix-I.

3. 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.

4. The Committee 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.

5. An analysis of the Action Taken by the Government on the Observations/Recommendations contained in the Sixty-Second (Sixteenth Lok Sabha) is given at Appendix-II.

NEW DELHI;
23 March, 2018
2 Chaitra, 1940 (Saka)

Shri Mallikarjun Kharge
Chairperson
Public Accounts Committee

CHAPTER - I

REPORT

This Report of the Public Accounts Committee deals with the Action Taken by the Government on the Observations and Recommendations of the Committee contained in their Sixty-second Report (16th Lok Sabha) on "Ratna and R-Series Hydrocarbon Fields".

2. The Sixty-second Report which was presented to Lok Sabha on 16th December, 2016 contained six Observations/Recommendations. The Action Taken Notes on all the Observations/Recommendations have been received from the Ministry of Petroleum and Natural Gas and are categorized as under:

(i) Observations/Recommendations which have been accepted by the Government:
Para Nos. 3 and 4

Total: 02
Chapter – II

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the replies received from the Government:
NIL

Total: NIL
Chapter – III

(iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:
Para Nos. 1, 2 and 5

Total: 03
Chapter – IV

(iv) Observations/Recommendations in respect of which Government have furnished interim replies/no replies:
Para No. 6

Total: 01
Chapter -V

3. The detailed examination of the subject by the Committee had revealed certain shortcomings/deficiencies on the part of Ministry of Petroleum and Natural Gas which *inter-alia* included detailed examination of award of contract in respect of Ratna and R Series (R&RS) medium sized hydrocarbon fields to a Consortium of Successful Bidders (CoSB), mandate to Negotiating Team of Secretaries (NTS) to finalise and conclude Production Sharing Contract (PSC) for R&RS fields, non-conclusion of PSC resulting in Cabinet Committee on Economic Affairs (CCEA) approving cancellation of award to CoSB and reverting the R&RS fields to the original allottee i.e., ONGC in March, 2016. The Committee while dealing with the issues mentioned above primarily made recommendations/observations on failure of NTS to execute PSC with respect to R&RS fields; delay in decision making leading to repeated assessing financial capability of bidders; deliberations on the Issues – Techno-legal and Royalty & Cess; reimbursement of past-cost and non – maintenance of idle facilities; and fixing of responsibility towards delay in non – execution of mandate.

4. The final Action Taken Notes furnished by the Ministry of Petroleum and Natural Gas (vide OM No. O-32011/2/2016-ONG-I (FTS-41507) dated 9 November, 2017) have been reproduced in the relevant chapters of this Report. The Committee will now deal with action taken by the Government on their Observations/Recommendations which either need reiteration or merit comments.

5. The Committee desire the Ministry of Petroleum and Natural Gas to furnish Action Taken Notes in respect of Observations/Recommendations contained in Chapter I and final action taken replies in respect of Observations/Recommendations contained in Chapter V for which interim reply has been given by the Government within six months of the presentation of the Report to the House.

Recommendation No. 1

6. *Opining that exclusive high-powered body i.e. NTS failed miserably in its mandate and could not conclude PSC for R&RS fields in 17 years which eventually resulted in CCEA (10 March 2016) approving cancellation of the award letter (12 March 1996) issued in favour of the consortium and reverting the R&RS fields to ONGC, the*

Committee on detailed examination of the decision making process found that the non-execution of PSC was due to unfruitful deliberations held by NTS with various stakeholders on the issues that had already been laid down by the CCEA. The Committee noted that frequent deliberations made on the issues of techno-legal, royalty and cess and references to various agencies and consequent delays necessitated repeated re-assessment of financial capability of the successful bidders. The Committee also noted that other issues that held-up the signing of PSC related to reimbursement of past-cost and non-maintenance of idle facilities by the ONGC. The Committee were of the opinion that serious delays in decision making for more than 20 years, after the CCEA approval, deprived the country of the much needed fuel from the R&RS fields.

7. The Ministry of Petroleum and Natural Gas in their Action Taken Notes have stated as under:-

> " In the wake of the policy of economic liberalization introduced in 1991, Government took certain initiatives to attract private investment capital in the upstream oil sector to augment the production of oil and gas in the country. "Small and Medium Sized Discovered Policy" was evolved in 1992 on this basis and to make recommendations for award of fields, a Negotiating Committee of Secretaries (NCS) was constituted by CCEA on 02.07.1992. In the first round of bidding for discovered fields in 1992, 5 medium and 15 small sized fields were awarded and contracts were signed.
>
> GoI invited the Second Round of bids for the development of discovered oil and gas fields in 1993. The consortium of Essar Oil Limited (EOL) and Premier Oil Pacific (UK) Ltd. (POL) were recommended to be awarded the Ratna & R Series fields by NCS in the meeting held on 26.12.1995, subject to certain conditions. On 20.2.1996, CCEA approved the recommendation of NCS. In pursuance to the CCEA approval, Letter of Award dated 12.3.1996 was issued to the successful bidder i.e. consortium of EOL-POL, subject to the following stipulations:
>
> *(i) The use of ONGC's storage facility at Nhava would need to be directly negotiated by the consortium with ONGC.*
>
> *(ii) The gas can be received by ONGC with certain modifications subject to settlement of other commercial issues with ONGC. The oil has to be evacuated through SBM as the ONGC cannot receive oil at Heera complex upto 2001-02 due to capacity constraints.*
>
> *(iii) The creation of appropriate storage facilities for crude at the offshore loading point would be at the cost of the contractor and can be charged as a project cost.*

(iv) *The phrase "any abnormal situation" mentioned at point No.8 in Consortium's letter dated 8th February 1995 under the head "Capital Expenditure (CAPEX)/Operating Expenditure (OPEX) will have to be dropped.*

(v) *Bidders were requested to send their comments on the draft Production Sharing Contract and Joint Operating Agreement (copies enclosed) by 12th April, 1996 so that the PSC and JOA can be finalized at the earliest.*

Thus, the award of Ratna & R Series Fields was conditional subject to fulfilment of the above conditions.

Contract negotiations with the successful bidders for the purpose of signing production sharing contracts did not commence till 1999, as there were concerns expressed in many quarters about tenets of the Discovered Field Policy. An earlier C & AG Report had raised several issues, some of which were specific to Panna & Mukta Fields awarded under the above Policy, whereas others had wide bearing on this policy of the Government. The CAG had submitted its final report in December, 1996. In November, 1997, the Parliamentary Committee on Public Undertakings (COPU) examined ONGC on participation of private parties with ONGC in the production of crude oil and natural gas. Moreover, there were legal implications as a Public Interest Litigation (PIL) was filed by Centre for Public Interest Litigation (CPIL) before the Delhi High Court and, subsequently, a Review Petition in the Supreme Court. All these developments contributed to an initial delay of three years.

Subsequently, CCEA in its meeting held on 9th March, 1999 authorized Negotiating Team of Secretaries (NTS) to conclude the PSCs after due negotiations with the Consortium in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields offered under second round of bidding. CCEA. NTS comprising Secretary (P& NG), Finance Secretary and Law Secretary undertook negotiations with the consortiums, based on a Model Production Sharing Contract (MPSC) approved in November, 1999 as the basis for negotiation and finalization of the PSC with the Consortiums.

NTS held a series of meetings on several complex issues related to negotiations and bringing convergence on the technical, commercial, legal and financial issues. 19 NTS meetings were held from November 1999 to June 2013. Based on outcome of the NTS meetings, PSC for 11 small sized fields were signed (9 in February, 2001 and 2 in February, 2004). However, PSC for Ratna & R-Series Fields could not be finalised by NTS for many reasons, viz the conditions stipulated in the Letter of Award (LoA) above ,financial capability of EOL, departure from Model Production Sharing Contracts (MPSC) as observed by MoL&J, payment of Royalty and Cess at old rates, Cost Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of refinery. NTS in Minutes of the Meeting held on 2.3.2000 even observed that, "Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC."

8. While vetting the above ATNs, the Audit made the following comments:-

> " The Ministry did not explain the reasons as to why the high-powered body (NTS) failed in its mandate to negotiate/ resolve the issues which inter-alia included conditional award dated 12.3.1996, financial capability of EOL, Royalty and Cess rates, Cost Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of Refinery etc for concluding PSC- Ratna R-Series. It kept setting targets for completion of negotiations and signing of PSC and did not adhere to its own targets. It took nearly 17 years. (from the date of mandate given (March, 1999 to date of cancelation of award March, 2016)."

9. In their further comments to the above said Audit observation, the Ministry stated as under:-

> " CCEA mandated NTS vide approval in the meeting held on 9th March, 1999 for concluding the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields, offered under second round of bidding. NTS made prolonged and concerted efforts in accordance with the mandate for 17 long years; commencing from as early as 22.11.1999 when the first NTS meeting was held to adopt a uniform procedure based approach in negotiations with all the successful bidders. Model Production Sharing Contract (MPSC) was approved as a basis for negotiating conditions stipulated under various articles of the individual contracts.
>
> 19 NTS meetings were held from November 1999 to June 2013. Based on outcome of the NTS meetings, PSC for 11 small sized fields were signed (9 in February, 2001 and 2 in February, 2004). However, PSC for Ratna & R-Series Fields could not be finalised by NTS for many reasons due to various deviations in the established procedure set by NTS, including the conditions as brought out in the Letter of Award (LoA) and others viz. financial capability of EOL, departure from MPSC as observed by MoL&J, payment of Royalty and Cess at old rates, Cost Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of refinery. NTS in Minutes of the Meeting held on 2.3.2000 even observed that, "Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC."
>
> Thus, failure for non execution of Ratna PSC cannot be attributed to NTS."

10. The Committee found that the non-execution of Production Sharing Contract (PSC) was due to unfruitful deliberations held by Negotiating Team of Secretaries (NTS) with various stakeholders on the issues that had already been laid down by the Cabinet Committee on Economic Affairs (CCEA) and that the frequent deliberations made on the issues of techno-legal, royalty and cess, references to various agencies and consequent delays necessitated repeated re-assessment of financial capability of the successful bidders. The Committee, therefore, opined that serious delays in decision making for more than 20 years, after the CCEA approval, deprived the country of the much needed fuel from the Ratna & R- Series (R&RS) fields. The Committee note from the reply of the Ministry that 19 meetings were held by NTS from November 1999 to June 2013 , however, PSC for Ratna & R-Series Fields could not be finalised for many reasons like deviations in the established procedure set by NTS, including the conditions as brought out in the Letter of Award (LoA) and others viz. financial capability of EOL, departure from Model Production Sharing Contract (MPSC) as observed by Ministry of Law and Justice (MoL&J), payment of Royalty and Cess at old rates, Cost Recovery Limit (CRL) and creation of charge by Essar Oil Limited (EOL) on its Participating Interest (PI) for construction of refinery. The Ministry has further referred to the Minutes of the meeting of NTS held on 2.3.2000 where it has been stated that, "Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC". The Committee are of the view that a high powered Committee with all the heads of the Departments concerned on board, could not finalize the PSC even in a period as long as fourteen years(1999-2013). The Committee find it incomprehensible that when the NTS was well aware of the fact that the Consortium was not interested, the decision to revert the oil field should have been taken in 2000 itself. The Committee are of the considered opinion that such inaction at that time resulted in unfruitful deliberations for the next thirteen years (i.e 2000-2013). The Committee, therefore, reiterate their observation that serious delays in decision making for more than 20 years (1996-2016), after the CCEA approval, deprived the country of the much needed fuel from the R&RS fields.

11. <u>Failure of Negotiating Team of Secretaries (NTS) to execute Production Sharing Contract (PSC) with respect to R & RS Fields:</u>
(Recommendation Para No. 2)

The Committee in their Original Report noted that due to disagreements on multiple issues and irregularities on the part of the consortium partner there was inordinate delay in concluding the contract and it was finally decided with the approval of CCEA to cancel the contract. The Committee, therefore, were of the view that the purpose of formation of such high-powered body like NTS with as many as six Secretary / CMD level officers of the Ministries / National Oil Company was defeated as these highest level officers could not adhere to their own timelines and reach a decision after several rounds of meetings. The Committee were also of the view that timely intervention by the Government/ CCEA into the issue could have helped in taking decision on the issues. The Committee felt that it was high time that the country has a mechanism to review the efficiency of high-level Government officials associated/ nominated in Inter-Ministerial Groups/High-Level Committees independently of the help of regular bureaucracy. The Committee, therefore, desired that the Government to consider this issue as an eye-opener and establish adequate mechanism to review the performance of all such officers nominated on various Committees. The Committee further observed that the delay was mainly attributable to the anxiety of the officers to avoid 'dispute in future' and no concern was raised at the fact that no production was happening for about two decades. The Committee also felt that NTS unable to resolve the issue on its own should have sought the help of experts or Cabinet Secretary. The Committee, therefore, strongly deprecated the rationale of NTS keeping calculated silence and inaction. The Committee observed that the delays by these officials resulted in a huge loss of ₹ 26200 crore to the exchequer and deprived the country of scarce resources for more than two decades that tantamount to criminal negligence. The Committee had also directed that the responsibility for causing inordinate delays in decision making may be fixed and action be taken against the officials concerned.

12. The Ministry of Petroleum and Natural Gas in their Action Taken Notes have stated as under:-

> " Due to concerns expressed in many quarters about tenets of the Discovered Field Policy, MOP&NG sought necessary policy directions from CCEA vide note dated 28.2.1999. Approval of CCEA was sought for concluding the contracts in respect of 12 discovered fields awarded under the Second Round in 1995 after due negotiations are held with parties by the Negotiating Committee of Secretaries (NCS). (The final paragraph of the proposal mentioned NCS as Negotiating Team of Secretaries (NTS) comprising Petroleum Secretary, Finance Secretary and Law Secretary). The CCEA in its meeting held on 9.3.1999 in Case No.44/CCEA/99 (Item No.4) considered the note dated

18.2.1999 of MOP&NG and approved the proposals contained in paragraph 26, wherein one of the proposal was for "***concluding contracts in respect of 12 discovered fields awarded under the second round in 1996 after due negotiations are held with the parties by the Negotiating Team of Secretaries***". Ratna & R-Series field was one of the 12 discovered fields for which contract was to be negotiated.

NTS undertook negotiations with the Consortiums, based on a Model Production Sharing Contract (MPSC) approved in November, 1999 as the basis for negotiation and finalization of the PSC with the Consortiums.

NTS had several meetings (15) from 1999 to March, 2008 and various issues were deliberated in the meetings like the negative net worth of EOL; creation of charge by EOL with its bankers for its Refinery project before signing the Contract; POLs negotiation with ONGC for assigning its PI and Operatorship; applicable rates of Cess and Royalty; transfer of pipeline asset by ONGC to the Consortium etc. In 2008, a CCEA note was circulated by this Ministry with NTS recommendation of signing PSC with the EOL – POL consortium, maintaining old rates of cess and royalty with old Cost Recovery Limit (CRL). It was suggested by Cabinet Secretariat that NTS may identify alternate courses of action available in the light of conflicting legal opinions and make its recommendation after taking into account all the pros and cons including the feasibility of re-inviting the bids, settlement of the issues by NTS, etc.

Number of options were explored by NTS, including cancellation of the Letter of Award and consequently re-inviting of bids or revert the field back to ONGC. There were four (4) more NTS meetings from 2009 to 2013 to deliberate on these options and a draft CCEA Note on "Issues relating to Finalization of Production Sharing Contract (PSC) for Ratna and R-Series" dated 28.10.2013 was circulated for Inter Ministerial Consultations (IMC) which was sent to the Cabinet Secretariat on 2nd May, 2014. This was returned by the Cabinet Secretariat with comment that this may be put up for new Minister In Charge after formation of new government.

After taking over in May, 2014, present Government considered this issue for award of the Ratna & R-Series Fields earnestly. Various alternatives were evaluated and a draft CCEA Note was circulated for Inter Ministerial Consultations. Based on outcome of various inter-ministerial consultations, CCEA on 10th March, 2016 approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and revert the Ratna & R Series fields to ONGC, subject to payment of cess and royalty at the current rates, as applicable under the nomination regime.

Rs. 26,200 crores was an estimation of value of reserves by CAG considering crude oil prices ranging from US$ 55 to US$ 130. The reserves are still in place and available for production. The present decision of the Government taken vide CCEA meeting held on 10th March-2016 to revert the field to ONGC for further development and production and to realize cess and royalty at current rates applicable under nomination regime, interest of the Government is protected with the present decision. Delay in decision making is not due to lack of exercising due diligence on the part of any official but due to complexity of issues involved including financial incapability of EOL during negotiation stage. "

13. While vetting the above ATNs, the Audit made the following comments:-

" The reply of the Ministry may be viewed in the light that in March, 1999, CCEA approved negotiations and concluding PSC in respect of 12 discovered fields (11 small sized blocks and one medium sized R&RS block) to be held by the NTS for negotiating and finalizing PSC with the consortium within six months. PSC in respect of the 11 small sized fields were signed in February, 2001 and February, 2004. Ratna & R-Series could not be concluded. On 10th March, 2016 CCEA approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and reverted the field back to ONGC,

Further, the reply did not mention the action initiated for fixing responsibility of the officials for delay in decision making which resulted in a huge loss of Rs. 26,200 crore to the exchequer and deprived the country of scarce resources for more than two decades tantamount to criminal negligence. Action taken in this regard may be incorporated in the ATN for better appreciation of the PAC. "

14. In their further comments to the above said audit observation, the Ministry stated as under:-

" NTS made all out efforts to execute the Ratna & R Series PSC. NTS may not be held responsible for deviations to the adhered procedure followed in respect of 11 other PSCs. Non adherence to the agreed and approved procedures set by NTS by one particular private consortium may be viewed as only one off case. Fixing responsibility of the individuals would only discourage those upright officers who protected government commercial interests by eventually realizing royalty and cess at the current rates rather than freezing at the old rates. Even the EOL-POL consortium also agreed to pay royalty and cess at current rates subsequently. However, PSC could not be concluded due to other deviations from the agreed norms and intentions of the Consortium, which has clearly been brought out in the Minutes for the NTS meeting held on 2.3.2000."

15. The Committee observed that the delay in finalizing the PSC was mainly attributable to the anxiety of the NTS to avoid 'dispute in future' and that they maintained calculated silence and inaction. The Committee further observed that the delays resulted in a huge loss of ₹26200 crore to the exchequer which tantamount to criminal negligence and directed that the responsibility for inordinate delays in decision making may be fixed and action be taken against the officials concerned. The Committee note from the reply of the Ministry that CCEA on 10 March, 2016 approved the cancellation of the award letter dated 12 March, 1996 issued in favour of the Consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and reverted the R&RS fields to the original allottee i.e., ONGC and the reserves are still in place and available for production. Further, the Ministry stated that the PSC could not be concluded due to other deviations from the agreed norms and intentions of the Consortium, which has clearly been brought out in the minutes for the NTS meeting held on 2.3.2000. The Committee would like to be apprised of the action taken by the Cabinet Secretariat on the above findings of the NTS which was recorded in the minutes. The Committee are of the strong view that the country was deprived of scarce resources for more than two decades due to inaction of the NTS which did not take a decision regarding finalization of PSC/ cancellation of award when it had gauged the intention of the Consortium in 2000 itself and, therefore, it is a clear case of criminal negligence of the officers responsible for concluding the PSC. The Committee do not agree with the argument of the Ministry that non-adherence to the agreed and approved procedures set by NTS by one particular private Consortium may be viewed as only one off case since the performance of Secretaries of Departments should be exemplary in every task assigned to them. The Committee while noting the reply of the Ministry that fixing responsibility of the individuals would only discourage those upright officers who protected Government commercial interests by eventually realizing royalty and cess at the current rates rather than freezing at the old rates opine that this does not absolve the NTS of the responsibility it was shouldered with. Further it does not provide

sufficient ground to shield the members of NTS responsible for delays in finalization of PSC/ cancellation of award with respect to R&RS fields. The Committee, therefore, while reiterating their recommendation direct the Ministry to fix responsibility of the officials concerned towards loss to the GoI exchequer and depriving the country of if its own resources and the Committee be apprised of the action taken thereof.

16. <u>Reimbursement of Past – Cost and non – maintenance of idle facilities</u> (Recommendation Para 5)

The Committee in their original Report found that MoPNG had not evolved modalities for past cost compensation to ONGC and neither the NTS forum proved productive and useful for addressing the significant and important issue of maintenance of the facilities created at the R&RS fields and observed that even though the consortium would have been operating the field, still ONGC had to hold 40% of its Participating Interest (PI). The Committee noted that ONGC and MoP&NG allowed 'plundering and looting' of platform utilities and equipment in the absence of appropriate security system that clearly showed lack of their seriousness to preserve and conserve facilities that were created by ONGC at a cost of ₹ 472.55 crores and were of the view that ONGC could have applied the reasoning for 'strategic' benefit and foresightedness on maintenance of the created facilities and thus avoided the expenditure amounting to ₹ 1085.7 crore involved in estimated repair cost of the facilities. The Committee, therefore, felt that ONGC could have pursued the matter more vigorously with the Ministry and in-turn NTS to get the matter resolved. The Committee opined that non-maintenance of oil producing fields by ONGC and subsequent plundering and looting from the sites was nothing but sheer failure of a Public Sector Undertaking in looking after the nation's property. The Committee also felt that ONGC should have maintained the fields as being a PSU it would have anyway recovered all its expenses sooner or later and desired that the concerned officials of ONGC be held responsible for this gross negligence and action be initiated against them.

17. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Notes stated as under:-

" ONGC started production from Ratna field from February 1983 and continued up to September 1994. Award of contract had been approved by the Government in 1996 and same was informed to the Consortium of Successful Bidders (CoSB). The issue of repair / maintenance of the facilities remained major concern of ONGC till handing over of these Fields to awardees. ONGC brought it to notice of the Government through various communications and during the meeting of Negotiating Team of Secretaries (NTS). ONGC also brought to notice of the Government regarding decision on re-imbursement of repair / maintenance cost of the facilities in these fields.

ONGC raised the issue of maintenance of facilities with the MoP&NG vide letter from CMD-ONGC dated 13th March 2002 .ONGC also sought permission for carrying out inspection / maintenance of SBM & structure and requested for adjustment of cost undertaken in carrying out the same. The issue was also raised during the meeting of Negotiating Team of Secretaries (NTS) for confirmation regarding decision on re-imbursement of such cost.

Meanwhile, ONGC incurred an expenditure of Rs.6.92 crores plus USD 335,840 and conveyed the same to MoPNG vide letter dated 9th December 2004. Note of such expenditure was made by NTS in its meeting dated 15th April 2005.

NTS in October 2004 decided that ONGC would need to be reimbursed for the maintenance cost incurred between the date of award and effective date of PSCs. However, the issue could not be concluded as various articles of the PSC were still being negotiated by the Government with CoSB. In light of non-reimbursement of already incurred expenditure, ONGC did not find it prudent to incur any further expenditure on Ratna R- series. It may be noted that ONGC is a registered company under the Companies Act and any investment decision by the Company needs approval of the Board. As the issue regarding reimbursement costs could not be concluded, it would not have been possible by ONGC Board to consider the expenditure on Ratna and R-Series Fields. "

18. While vetting the said ATNs, the Audit made the following comments:-

"Ministry's reply is silent on the issues:

- Past cost to be compensated to ONGC, despite the directions of CCEA in 1999 and the audit observations twice in 1996 and 2005.
- Non maintenance of facilities by ONGC.
- Action initiated against the responsible official of ONGC.

Ministry's reply stated that it was not possible by the Board of ONGC to consider the expenditure on Ratna & R-Series Field, since the issue of reimbursement cost was not concluded. The reply may be seen in the light of the fact that in any case ONGC would continue to hold 40 per cent share in the field and proper maintenance of assets was in its own interest."

19. In their further comments to the above said Audit observation, the Ministry stated as under:-

> " NTS in October 2004 had decided that ONGC would need to be reimbursed for the maintenance cost incurred between the date of award and effective date of PSCs. However, the issue could not be concluded as various articles of the PSC were still being negotiated by the Government with CoSB. In light of non-reimbursement of already incurred expenditure, ONGC did not find it prudent to incur any further expenditure on Ratna & R- series. As a Participating Interest (PI) holder of 40 % in to be concluded PSC, ONGC would have been required to incur expenditure only to the extent of 40%, not entire expenditure on maintenance of the assets.
>
> After the Government decision to revert the field to ONGC, repair and refurbishment of various production and evacuation facilities has been undertaken by ONGC in several stages to receive the expected "First Oil" by May, 2019.
>
> Considering hydrocarbon potential of this medium sized field, progress of the project is regularly being monitored by the Government."

20. The Committee opined that non-maintenance of oil producing fields by ONGC and subsequent plundering and looting from the sites was nothing but sheer failure of a Public Sector Undertaking in looking after the nation's property. The Committee also felt that ONGC should have maintained the fields as being a PSU it would have anyway recovered all its expenses sooner or later and desired that the concerned officials of ONGC be held responsible for this gross negligence and action be initiated against them. The Committee note from the reply of Ministry that ONGC incurred an expenditure of ₹ 6.92 crores plus USD 335,840 towards maintenance of field during the years 1993 to 2002, however, the expenditure incurred could not be reimbursed and therefore ONGC did not incur any further expenditure on R&RS fields. The Committee are shocked to note that ONGC did not find it prudent to incur any further expenditure on maintenance and, therefore, chose to remain a mute spectator to the plundering and looting from the site in which it had 40 per cent Participating Interest. The Committee while opining that officials of the Ministry also failed in their duties to ensure protection of nation's property desire that the responsibility of the officials of the Ministry who neither thought of any arrangement for maintenance of the fields

nor directed the ONGC to maintain the site may also be fixed and action be taken against them for allowing the site to be damaged during the course of negotiations. The Committee reiterate that ONGC, a leading Public Sector Undertaking, with 40 *per cent* PI **should have continued to maintain the fields as the restoration of the same will now require incurring huge additional expenditure. The Committee also reiterate that the responsibility of the officials of ONGC be fixed for their sheer negligence and desire that the actual cost incurred on repair, reinstallation, refurbishment of various production and evacuation facilities undertaken by ONGC after reversion of R&RS fields to them may be furnished to the Committee to better understand the actual loss to GoI exchequer due to non-maintenance of R&RS fields. Also, the Committee may be apprised of the punitive action taken against the officials concerned.**

21. Fixing of Responsibility towards delay in non – execution of mandate (Recommendation Para 6)

The Committee in their Original Report observed that the silence of the Ministry for not providing the details of the information sought by the Committee spoke volume about the reasons behind the muddle created over the abnormal and unique delay of over 25 years of the policy decision (1991); 20 years of award (1996) and 17 years of CCEA approval (1999) in awarding the contract to the consortium and finally reverting the R&RS fields to the original allottee i.e. the ONGC again. Also on Audit's observation regarding financial implications due the indecision on R&RS fields, indicated that the country had lost oil and gas production worth more than ₹ 26,200 crores; Government's potential revenue to the tune of ₹ 1105 crore on account of royalty and cess and avoidable expenditure of ₹ 1085.70 crore towards repair and re-development of the R&RS fields and the Ministry terming it as 'notional figures', the Committee desired to examine that the circumstances under which the Cabinet Secretariat returned the note on piecemeal basis and why the Cabinet Secretariat could not pursue the implementation of CCEA. The Committee were dismayed to note the role of Cabinet Secretariat not taking the lead to resolve the issue when it became evident that the MoPNG was unable to make up its mind and upgrading inter-departmental consultation to Empowered Committee of Secretaries or Group of Ministers or Empowered Group of Ministers. The Committee on unfolding and scrutinising the sequence of events that took place since the issue of Letter of Award (March, 1996) and decisions made either by the Ministry or the NTS or CCEA or the Cabinet Secretariat in the R&RS field were of the opinion that the entire sequence clearly portrayed itself as a classic case of system failure. The Committee, therefore, *desired that when decision to form high-powered body like NTS are taken in future by the Government for execution of its decision, adequate monitoring mechanism be put in place and ensure timely intervention and execution of decisions taken in the national interest.*

22. In this regard, the Ministry of Petroleum and Natural Gas in their Action Taken Note have stated as under:-

> " Administration of the upstream Exploration and Production (E & P) Sector by the Government is a complex subject and has evolved over a period of time with progress of the extant policy regime. Signing of the proposed PSC for Ratna and R Series Fields was during the pre-NELP Discovered Fields policy regime, while the Sector was still evolving from the prevalent nomination regime.
>
> During the NELP regime, a mechanism of Empowered Committee of Secretaries (ECS) was put up in place comprising Secretary (P &NG), Finance Secretary and Law Secretary to consider Bid Evaluation Criteria (BEC), conduct negotiations with bidders, wherever necessary and make recommendations to CCEA on award of blocks.
>
> The same mechanism of ECS has been approved in March, 2016 for the new policy initiative, Hydrocarbon Exploration Licensing Policy (HELP) with the following additional functions being vested in ECS:
>
> (i) Approval of Model Revenue Sharing Contract and other bid documents;
>
> (ii) Resolution of all contractual issues raised during the entire period of implementation of future contracts based on the proposed model;
>
> (iii) For Inter-ministerial consultation issues, ECS may co-opt Secretary of the concerned Department / Ministry and NITI Aayog as member.
>
> It has been stipulated that decision of the ECS on the additional functions would be submitted to the Minister (P & NG) and Finance Minister for approval. Thus, as desired by PAC, adequate monitoring mechanism has been put in place to ensure timely intervention and execution of decisions, taken in the national interest.
>
> CCEA mandated NTS in March, 1999 to conclude the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields.
>
> NTS had several meetings (15) from 1999 to March, 2008 and various issues were deliberated in the meetings like the negative net worth of EOL; creation of charge by EOL with its bankers for its Refinery project before signing the Contract; POLs negotiation with ONGC for assigning its PI and Operatorship;

applicable rates of Cess and Royalty; transfer of pipeline asset by ONGC to the consortium etc.

First NTS meeting was held on 22.11.1999 and to adopt a uniform approach in negotiation, a Model Production Sharing Contract (MPSC) was approved as a basis for negotiating the individual contracts. Second NTS meeting was held on 02.03.2000 and it was agreed that the financial strength of all the awardees would be evaluated based on latest available information. Meeting held on 18.07.2000 finalized consequential changes in the PSCs for 10 small sized fields pursuant to finalization of COSA and the work programme submitted by the companies. It was further decided that for Ratna & R Series Fields and Amguri Fields, sixty (60) days time limit would be intimated to finalize the PSCs, failing which the negotiation process would stand concluded. Subsequent meeting was held on 07.09.2000 whereby draft PSC of Ratna & R Series was deliberated on individual articles and put in the minutes. It was further decided that the Ministry of Finance will revert on issue of financial capability of Essar Oil limited (EOL). Another NTS meeting was held on 24.10.2000 for Amguri and Ratna R Series Fields. The issue of financial capability of EOL was deliberated and it was agreed that since Essar has recently been apprised by ICICI in context of their refinery project, they should be consulted on net worth of Essar. Response of ICICI was deliberated in meetings held on 20.02.2001 and the remedies available under the PSC and Joint Operating Agreement (JOA) in case of default by any contracting party. Implication of cancellation of award was also discussed and following provision in the Notice Inviting Offer (NIO) was brought out:

'While GOI has flexible approach to the terms, it reserves to itself the right to accept or reject any bid in its sole discretion.'

Subsequent meetings held on 19.08.2002, 24.04.2003, 08.12.2003 and 31.08.2004 deliberated on the issue of creation of charge by EOL with its bankers for its Refinery project before signing the Contract. It was during the meeting held on 04.10.2004 that NTS agreed upon EOL financial capability based on the considered opinion of Ministry of Finance provided in the meeting. However, confirmation was sought from Premier Oil (POL) on signing the contract and EOL and POL in respect of reimbursement to ONGC of the maintenance costs. In another meeting held on 15.04.2005, it was decided that reimbursement of maintenance costs to ONGC shall be non-recoverable contract cost and to seek confirmation from EOL and POL on this. Moreover, EOL, POL and ONGC should be asked to confirm acceptance of royalty on crude oil @ 10 % of well-head value and cess on crude oil @ Rupees 1800 per metric tonne, which should be frozen for entire PSC period. Subsequent meeting held on 19.04.2006 decided that the contract stands concluded with issue of award letter in March, 1996 and statutory levies should be maintained at the old level. In the meeting held on 20.03.2008, NTS decided to recommend old rates of royalty and cess with old Cost Recovery Limit (CRL) bid by the contractors.

In June 2008, a CCEA note was circulated by this Ministry with NTS recommendation of signing PSC with the EOL – POL consortium, maintaining old rates of cess and royalty with old cost recovery limit (CRL). The Cabinet Secretariat observed on the CCEA note that the process of negotiation in the present case has not been taken to its logical conclusion and it would be appropriate for the Negotiating Team of Secretaries to offer its unambiguous recommendation in the matter. It was also suggested by Cabinet Secretariat that NTS may identify alternate courses of action available in the light of conflicting legal opinions and make its recommendation after taking into account all the pros and cons including the feasibility of re-inviting the bids, settlement of the issues by NTS, etc.

Number of options were explored by NTS, including cancellation of the Letter of Award and consequently re-inviting of bids or revert the field back to ONGC. There were four (4) more NTS meetings from 2009 to 2013 to deliberate on these options and a draft CCEA Note on "Issues relating to Finalization of Production Sharing Contract (PSC) for Ratna and R-Series" dated 28.10.2013 was circulated for Inter Ministerial Consultations (IMC) which was sent to the Cabinet Secretariat on 2nd May, 2014. This was returned by the Cabinet Secretariat with comment that this may be put up for new Minister In Charge after formation of new government.

After taking over in May, 2014, present Government considered this issue for award of the Ratna & R-Series Fields earnestly. Various alternatives were evaluated and a draft CCEA Note was circulated for Inter Ministerial Consultations. Based on outcome of various inter-ministerial consultations, CCEA on 10th March, 2016 approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and revert the Ratna & R Series fields to ONGC, subject to payment of cess and royalty at the current rates, as applicable under the nomination regime.

It can be seen from details of the above NTS meetings that while PSC for all other fields was successfully negotiated and concluded. But the Ratna Contract could not be concluded due to actions and intentions of the Consortium, which has been brought out in the Minutes for the NTS second meeting itself, held on 2.3.2000. NTS was mandated by CCEA to conclude all the contracts and efforts were continuously made by NTS, as is evident by number of NTS meetings to resolve the issues and conclude the contracts. NTS made all the efforts to bring agreement on various issues during negotiations with CoSB. However, when it became evident that the issues with CoSB can no longer be resolved to satisfaction of all the stakeholders, the Government took the decision of cancelling the LOA and reverting the fields to ONGC on 10th March, 2016."

23. While vetting the said ATNs, the Audit made the following comments:-

" Ministry has stated that adequate monitoring mechanism has been put in place to ensure timely intervention and execution of decisions, taken in the national interest under HELP approved in March, 2016.

However, the Ministry is silent on the following issues:

- indecision of the Government till 10 March, 2016 for award of R&RS fields which had seriously deprived the country of its own resources for more than two decades,
- expenditure on repairs due to non-maintenance of fields for more than two decades which resulted in actual losses,
- not asking ONGC to maintain the R&RS fields during the period of negotiations by Ministry
- indecision on all the related issues till 10 March, 2016 which had directly compromised the national interest on energy security,
- fixation of responsibility of all the officials of the Ministry for indecision and their role in this regard."

24. In their further comments to the above said audit observation, the Ministry stated as under:-

" NTS made all the efforts to bring agreement on various issues during negotiations with CoSB in accordance with the contractual norms. However, when it became evident that the issues with CoSB can no longer be resolved to satisfaction of all the stakeholders, the Government took the decision of cancelling the LOA and reverting the fields to ONGC on 10th March, 2016. Further, adequate monitoring mechanism has been put in place under recent policy initiatives to ensure timely intervention and execution of government decisions. "

25. The Committee acknowledge that the Ministry has put in place a monitoring mechanism under Hydrocarbon Exploration Licensing Policy (HELP) with additional functions being vested in Empowered Committee of Secretaries (ECS). However, the Committee find that Ministry has avoided providing replies on other issues raised by the Committee viz., indecision of the Government till March, 2016 for award of R&RS fields seriously depriving the country of its own

resources for more than two decades; expenditure on repairs due to non-maintenance of fields resulting in actual losses; failure of Ministry to provide assurance to ONGC for reimbursement of expenditure on account of maintenance of fields during the negotiation period; indecision on all related issues till March, 2016 directly compromising the national interest on energy security; and fixation of responsibility of officers of the Ministry for indecision and their role as pointed by the Committee during examination of the subject. The Committee express their strong displeasure towards casual attitude adopted by the Ministry in not responding to specific issues and desire to be apprised about the action taken by the Ministry on all the unanswered issues including fixing of responsibility of officials and action taken against them within two months of presentation of the Report.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Observation/ Recommendation No 3

Delay in decision making leading to repeated assessing financial capability of bidders:

The Committee note that Notice Inviting Offer (NIO) did not indicate any criteria for evaluating financial capability. Financial capability of Consortium of Successful Bidders (CoSBs) was evaluated in 1995 before award of contract to it. After assignment (March 1999) of work to NTS by CCEA for negotiation on the terms and conditions and signing of PSC with CoSB, NTS carried out re-assessment of financial capability on three different occasions viz. in the year 2000, 2004 and in 2011. On first occasion, DGH carried out (May 2000) assessment of financial capability and informed (September, 2000) NTS that net worth of CoSB was positive and it had sound financial health. Accordingly, NTS decision was not taken due to techno-legal issues. On second occasion in August, 2004, NTS again asked DGH to carry out assessment of financial capability of CoSB. Based on the inputs provided (October 2004) by DGH and MoF, NTS concluded that CoSB was financially capable to meet its obligations as envisaged in PSC. However, before processing of PSC for finalisation, NTS raised (April 2005) the issue of applicability of rates for cess and royalty and final decision could not be taken. And finally on third occasion, in NTS meeting (October 2011), the issue of negative net worth of the successful bidder partner was again raised and it was decided to freshly ascertain the present net worth of CoSB. The issue was further raised on two occasions by one of the members of the NTS through letters to MoPNG (November, 2011 and February, 2012). Meanwhile, in January, 2012, the CoSB partners submitted the net worth certificates issued by their statutory auditors, indicating a positive and higher net worth than ascertained in earlier assessments. The Ministry submitted that it was not that the financial capacity of CoSB was assessed in respect of only Ratna & R Series Fields. This was done for bids in respect of other fields as well. During the NTS meeting held on 02.03.2000, NTS decided that financial strength of all the awardee companies should be evaluated based on the latest available information. NTS authorized DGH to obtain necessary information from the awarded companies and evaluate their financial strength and submit the position. During the subsequent NTS meeting held on 18.07.2000, NTS noted that according to the assessment carried out by DGH, all the awrardee companies, except for Essar Oil, were financially capable.

According to the Ministry, the bidding of field is an important economic decision and should be taken with due caution after ascertaining all the related aspects and the reassessment of financial capability was necessitated to adjudge the updated financial position and strength of the CoSB to ensure that they are financially capable to meet the obligations as envisaged in PSC in the current date. The Committee are of the view that delays in taking final decision led to the need for fresh assessments of the financial capability of CoSB, which contributed to further avoidable delays. The Committee are of the opinion that PSC for R&RS fields could have been concluded on the basis of the assessment of financial capability of CoSB carried out by the DGH in 2000, as was done in case of 11 other fields. The Committee while observing that the NTS unnecessarily dragged the issue for 17 years, expect a high powered body to be dynamic in their actions. The Committee feel that the whole process of reassessing financial health could have been avoided, had the NTS adhered to its target of 6 months. The Committee also desire to know the exact details of the extension of mandate given to the NTS beyond their stipulated time period of six months.

(Sl. no. 3 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

CCEA meeting was held on 9th March, 1999 and it was decided to conclude the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields. CCEA authorized Negotiating Team of Secretaries (NTS) to conclude contracts after due negotiations. During the initial NTS meetings in the year 2000, it was discussed that in view of the awards being more than 4 years old the financial capability of all the awardee companies for the 12 discovered fields be assessed based on the latest available information. NTS authorized DGH to carry out this exercise and submit the position along with the recommendations.

The issue of Financial Capability of Essar Oil Limited was deliberated in subsequent NTS meetings. While the financial capability of other awardee companies was approved by NTS, certain actions on part of the consortium partners including issues related to financial capability of EOL – POL, creation of charge on the fields against refinery loans contrary to provisions of the draft PSC and differences on other issues with ONGC held back signing of the Ratna and R-Series fields. The matter of financial capability, as pointed by C&AG, was accepted by NTS after obtaining opinion from ICICI and it was desired by NTS that EOL – POL may sort out issues of inventory and Crude Oil Sales Agreement (COSA) with ONGC. On the issue of EOL creating charge on Ratna – R

Series Fields against their refinery loan, Ministry of Law on 28.02.2003 and 05.03.2003 opined that since no agreement / contract had been signed by EOL with the Government in respect of the fields, therefore, EOL had not acquired any right in the said field and PSC did not provide power to the contractor to create charge on PI for securing loan on any other project.

Further, Net Worth of Essar Oil Limited (EOL) was found negative when evaluated based on bidding terms and conditions of Notice Inviting Offer (NIO) for NELP IX round. The issue of re-assessing financial capability of bidder came up again only during NTS meeting of October, 2011 after significant lapse of time, when the issue of net worth of EOL during award of NELP-IX blocks was discussed. This is when Finance Secretary desired to ascertain present net worth of EOL. However, the issue was settled after obtaining net worth certificates issued by the statutory auditors.

Assessment of financial health of companies is necessitated to ensure that they are capable to meet the obligations as envisaged in the PSC and this process could not be avoided.

NTS could not conclude the LOI within period of six months as a process was followed in all the cases where contracts were required to be concluded. While PSC for other fields were signed, Ratna and R Series PSC could not be signed due to actions attributable to the CoSB. It would be apt to quote from the Minutes of the NTS Meeting held on 2.3.2000:

QUOTE

Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC. The Consortium has proposed further discussions on finalization of PSC after they had joint inspection of the facilities with ONGC, which is likely to place some time this month. Hence, it will take time to finalize PSC with the Consortium.

UNQUOTE

Thus, it can be stated that while NTS concluded all other contracts based on various parameters, including assessment of the financial capability. But the Ratna Contract could not be concluded due to actions and intentions of the Consortium, which has been brought out in the Minutes for the NTS meeting held on 2.3.2000. NTS was mandated by CCEA to conclude all the contracts and efforts were continuously made by NTS, as is evident by number of NTS meetings to resolve the issues and conclude the contracts.

Vetted remarks of Audit:

Ministry reply may be seen in the light of the fact that the delays in taking decision on re-assessing financial capability of the CoSB contributed to further delays which were avoidable.

Further, the details of the extension of mandate given to the NTS beyond their stipulated time period of six months may be incorporated in the ATN for better appreciation of the PAC.

Reply on Vetting remarks of Audit:

During the initial NTS meetings whereby it was decided to follow a uniform procedure for execution of the contracts, assessing the financial capability of all awardee companies was one of the key parameters, in view of the awards being more than 4 years old. While the financial capability of other awardee companies was cleared based on DGH examination, the issue of Financial Capability of Essar Oil Limited was required to be deliberated in subsequent NTS meetings due to certain actions on part of the consortium including creation of charge on the fields against refinery loans, contrary to provisions of the draft PSC.

Subsequently, Net Worth of Essar Oil Limited (EOL) was found negative when evaluated based on bidding terms and conditions of Notice Inviting Offer (NIO) for NELP IX round.

Assessment of financial health of companies is necessitated to ensure that they are capable to meet the obligations as envisaged in the PSC and this process could not be avoided, particularly if deviations to the established procedures like creation of charge or negative net worth are observed. Negotiating on the basic agreed norms may lead to non-performance of the executed PSC and subsequent litigation. The winning consortium was given a long rope to adhere to various norms agreed and available under the policy perspectives.

NTS could not conclude the LOI within period of six months as a process was followed in all the cases where contracts were required to be concluded. While PSC for other fields were signed, Ratna and R Series PSC could not be signed due to actions attributable to the CoSB. No specific mandate for timeline extension to NTS was available, as it was mandated to conclude the contracts.

Ministry of Petroleum and Natural Gas, O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

Observation/ Recommendation No 4

Deliberations on the Issues – Techno – Legal and Royalty and Cess:

The Committee note that frequent deliberations were held on certain techno-legal issues from February, 2001 to April, 2005 among the Ministry of Petroleum of Petroleum and Natural Gas (MoP&NG), the Ministry of Law and Justice (MoL&J) and the Ministry of Finance (MoF). Various rounds of clarifications and confirmations were sought through the Secretaries of all these three ministries who were the members of NTS.

Further, CCEA had approved (March 1999) freezing of the rates of levy of royalty and cess prevailing at the time of bidding which had been applied in 11 other fields (excluding R&RS fields) and accordingly PSCs signed between February, 2001 and February, 2004 for the same. The Committee note that during deliberations NTS observed that a long time had elapsed and there had been significant change in the oil price market and advised (April, 2005) that the stakeholders of R&RD fields may be asked to confirm payments of statutory levies at the current level rather than those prevailing in 1995. Despite initial negation, ONGC (May, 2005) and CoSB (August, 2012) also accepted payment of Royalty and cess at current rates with updated Cost Recovery Limits (CRL) based on current costs. The Committee further observe that despite clear opinion on the issue of Royalty and cess by the AGI and MoL&J, the issue was repeatedly raised and referred among various Ministries although the Secretaries were part of NTS.

ONGC in their submission for their acceptance of current rates of royalty and cess has stated that since ONGC intended to get back the R&RS field, it was strategic decision to agree for the then current rates of cess and royalty as ONGC would have to pay the statutory levies at prevailing rates (as applicable under the nomination regime) in case the field was reverted to ONGC. Further, ONGC obtained the opinion of Solicitor General (SG) (20 May, 2005) who advised that applying earlier rates of cess and royalty would cause huge public loss. On the eventual acceptance of CoSB for payment of cess and royalty at current rates with updated cost recovery limit (CRL), the Ministry in their replies has detailed the sequence of events and submitted that number of factors triggered by high ruling prices of crude oil @ 58 dollars per barrel in 2005, as compared to when the field was awarded (@$16 per barrel) and its significant impact on the Government revenues in the form of statutory levies eventually contributed to acceptance by the CoSB for payment of royalty and cess at the current rates with updated Cost Recovery Limits (CRL). The Ministry's reply need to be seen in the light that the matter that seemed to have held up the signing of contract was purely technical and the C&AG report reveals that the delay itself was avoidable. If the technical issues including the frequently deliberated issue of applicability royalty and cess were so insurmountable, nothing prevented the issue being resolved through a panel of technical and legal experts. The disputes between CoSB and the NTS/Government of India could have been resolved through a process, similar to arbitration. The NTS could have concluded the PSC for R&RS fields with the stakeholders along with 11 other fields and complete its mandate rather than referring and complicating the matter further thus providing scope for deliberations and disagreement amongst its own members. The Committee desire to be apprised of the reasons as to why this particular issue was not brought to notice of the Cabinet for appropriate and timely decision.

(Sl. no. 4 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

This particular issue was brought to notice of the Cabinet in the process of approval.

A note to CCEA dated 16.06.2008 was sent for approving signing of the PSC with consortium of EOL, POL and ONGC as per draft PSC. Later, on the advice of Cabinet Secretariat, a revised note, with the approval of Minister (P&NG), was sent to CCEA on 26.06.2008 for approving signing of the PSC with consortium of EOL, POL and ONGC as per draft PSC negotiated by NTS with old rates of cess and royalty with the condition that the consortium accepts it with old cost recovery limit bid by them without any provision for upward revision account of higher prices. Cabinet Secretariat vide OM dated 07.07.2008 offered certain suggestions on the CCEA Note. The matter was re-examined in this Ministry. NTS had re-iterated its earlier recommendations in its meeting held on 20.03.2008 considering the relevance of the points. Under the circumstances, in order to comply with the directions of the Cabinet Secretariat, it was considered necessary to hold meeting of NTS with a view to analyzing in detail the various alternatives available along with their financial implications and accordingly, NTS meeting was held on 21.07.2009. This issue of Royalty and Cess was raised because signing of Contract at old rates of Royalty and Cess would have resulted in lower realization to the Government which was avoided.

Vetted remarks of Audit:

The fact of the matter was that Govt. took decision on 10th March 2016 after a delay of 17 years.

No further comments to offer.

(Ministry of Petroleum and Natural Gas,
O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM THE GOVERNMENT

-NIL-

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Observation/ Recommendation No 1

Introductory:

The Ratna and R Series (R&RS) medium sized hydrocarbon fields are located in the Western Offshore area (at an average water depth of 45 metres) 130 kilometres southwest of Mumbai city. These fields were discovered and partially developed by the Oil and Natural Gas Corporation Limited (ONGC) in November 1979. The Government of India (GoI) in 1991 decided to invite private parties in upstream oil sector. Accordingly, in 1993, GoI issued notice inviting offers for development of R&RS fields. Subsequently, ONGC stopped production of Petroleum from these fields from September, 1994.

Following invitation of bids from private parties by Government of India (GoI), the Cabinet Committee on Economic Affairs (CCEA) approved (February 1996) award of contract in respect of R&RS fields to a Consortium of Successful Bidders (CoSB). The consortium comprised of M/s. Essar Oil Limited (India)(EOL) [50%] and Premier Oil Pacific (UK) (POL) [10%]. As per terms and conditions for development of medium sized fields, the National Oil Company (NOC), i.e., ONGC in this case held 40 percent Participating Interest (PI) in R&RS fields. The Ministry of Petroleum and Natural Gas (MoPNG) issued (March 1996) a Letter of award of R&RS fields to CoSB. Thereafter, CCEA approved (March 1999) negotiation to be held by the Negotiating Team of Secretaries (NTS) for finalising and concluding Production Sharing Contract (PSC) within six months.

The Committee found serious delays in decision making for more than 20 years, after the CCEA approval, depriving the country of the much needed fuel from these oil & gas fields. The Committee on detailed examination of the decision making process found that the non-execution of PSC was due to unfruitful deliberations held by NTS for over 17 years with various stakeholders on the issues that had already been laid down by the CCEA. Frequent deliberations made on the issues of techno-legal, royalty and cess and references to various agencies and consequent delays also necessitated repeated re-assessment of financial capability of the successful bidders. Other issues that held-up the signing of PSC related to reimbursement of past-cost and non-maintenance of idle facilities by the ONGC. The Committee while dealing with the issues highlighted in the Audit Report, observe that the exclusive high-powered body i.e. NTS failed miserably in its mandate and could not conclude PSC for R&RS fields in 17 years which eventually resulted in CCEA (10 March 2016) approving cancellation of the award letter (12 March 1996) issued in favour of the consortium and reverting the R&RS fields to ONGC, subject to payment of cess and royalty at the current rates, as applicable under the nomination regime.

(Sl. no. 1 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

In the wake of the policy of economic liberalization introduced in 1991, Government took certain initiatives to attract private investment capital in the upstream oil sector to augment the production of oil and gas in the country. "Small and Medium Sized Discovered Policy" was evolved in 1992 on this basis and to make recommendations for award of fields, a Negotiating Committee of Secretaries (NCS) was constituted by CCEA on 02.07.1992. In the first round of bidding for discovered fields in 1992, 5 medium and 15 small sized fields were awarded and contracts were signed.

GoI invited the Second Round of bids for the development of discovered oil and gas fields in 1993. The consortium of Essar Oil Limited (EOL) and Premier Oil Pacific (UK) Ltd. (POL) were recommended to be awarded the Ratna & R Series fields by NCS in the meeting held on 26.12.1995, subject to certain conditions. On 20.2.1996, CCEA approved the recommendation of NCS. In pursuance to the CCEA approval, letter of award dated 12.3.1996 was issued to the successful bidder i.e. consortium of EOL-POL, subject to certain stipulations. These stipulations were as below:

(i) The use of ONGC's storage facility at Nhava would need to be directly negotiated by the consortium with ONGC.

(ii) The gas can be received by ONGC with certain modifications subject to settlement of other commercial issues with ONGC. The oil has to be evacuated through SBM as the ONGC cannot receive oil at Heera complex upto 2001-02 due to capacity constraints.

(iii) The creation of appropriate storage facilities for crude at the offshore loading point would be at the cost of the contractor and can be charged as a project cost.

(iv) *The phrase "any abnormal situation" mentioned at point No.8 in your clarificatory letter dated 8th February 1995 under the head "Capital Expenditure (CAPEX)/Operating Expenditure (OPEX) will have to be dropped.*

(v) *Bidders were requested to send their comments on the draft Production Sharing Contract and Joint Operating Agreement (copies enclosed) to us by 12th April, 1996 so that the PSC and JOA can be finalized at the earliest.*

Thus, the award of Ratna & R Series Fields was conditional subject to fulfilment of the above conditions.

Contract negotiations with the successful bidders for the purpose of signing production sharing contracts did not commence till 1999, as there were concerns expressed in many quarters about tenets of the Discovered Field Policy. An earlier C & AG Report had raised several issues, some of which were specific to Panna & Mukta Fields awarded under the above Policy, whereas others had wide bearing on this policy of the Government. The CAG had submitted its final report in December, 1996. In November, 1997, the Parliamentary Committee on Public Undertakings (COPU) examined ONGC on participation of private parties with ONGC in the production of crude oil and natural gas. Moreover, there were legal implications as a Public Interest Litigation (PIL) was filed by Centre for Public Interest Litigation (CPIL) before the Delhi High Court and, subsequently, a Review Petition in the Supreme Court. All these developments contributed to an initial delay of three (3) years.

Subsequently, CCEA vide its meeting held on 9th March, 1999 approved concluding the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields offered under second round of bidding. CCEA authorized Negotiating Team of Secretaries (NTS) to conclude the contracts after due negotiations. NTS comprising Secretary (P & NG), Finance Secretary and Law Secretary undertook negotiations with the consortiums, based on a Model Production Sharing Contract (MPSC) approved in November, 1999 as the basis for negotiation and finalization of the PSC with the consortiums.

NTS undertook a series of meetings undertaking several complex issues related to negotiations and bringing convergence on the technical, commercial, legal and financial issues. 19 NTS meetings were held from November 1999 to June 2013. Based on outcome of the NTS meetings, PSC for 11 small sized fields were signed (9 in February, 2001 and 2 in February, 2004). However, PSC for Ratna & R-Series Fields could not be finalised by NTS for many reasons, including the conditions as brought out in the Letter of Award (LOA) above and others viz. financial capability of EOL, departure from MPSC as observed by MoL&J, payment of Royalty and Cess at old rates, Cost

Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of refinery. NTS in Minutes of the Meeting held on 2.3.2000 even observed that, "Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC."

Vetted remarks of Audit:

The Ministry did not explain the reasons as to why the high-powered body (NTS) failed in its mandate to negotiate/ resolve the issues which inter-alia included conditional award dated 12.3.1996, financial capability of EOL, Royalty and Cess rates, Cost Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of Refinery etc for concluding PSC- Ratan R-Series. It kept setting targets for completion of negotiations and signing of PSC and did not adhere to its own targets. It took nearly 17 years. (from the date of mandate given (March, 1999 to date of cancelation of award March, 2016).

Reply on Vetting remarks of Audit:

CCEA mandated NTS vide approval in the meeting held on 9th March, 1999 for concluding the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields, offered under second round of bidding. NTS made prolonged and concerted efforts in accordance with the mandate for 17 long years, commencing from as early as 22.11.1999 when the first NTS meeting was held to adopt a uniform procedure based approach in negotiations with all the successful bidders. Model Production Sharing Contract (MPSC) was approved as a basis for negotiating conditions stipulated under various articles of the individual contracts.

19 NTS meetings were held from November 1999 to June 2013. Based on outcome of the NTS meetings, PSC for 11 small sized fields were signed (9 in February, 2001 and 2 in February, 2004). However, PSC for Ratna & R-Series Fields could not be finalised by NTS for many reasons due to various deviations in the established procedure set by NTS, including the conditions as brought out in the Letter of Award (LOA) and others viz. financial capability of EOL, departure from MPSC as observed by MoL&J, payment of Royalty and Cess at old rates, Cost Recovery Limit (CRL) and creation of charge by EOL on its PI for construction of refinery. NTS in Minutes of the Meeting held on 2.3.2000 even observed that, "Despite the best efforts to expedite finalization of PSC, the Consortium appears to be not interested in expediting the PSC."

Thus, failure for non execution of Ratna PSC cannot be attributed to NTS.

(Ministry of Petroleum and Natural Gas, O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

Observation/ Recommendation No 2

Failure of Negotiating Team of Secretaries (NTS) to execute Production Sharing Contract (PSC) with respect to R & RS Fields:

The Committee note that Government of India (GoI) in 1993 issued notice inviting offers for development of R&RS fields. The Ministry of Petroleum and Natural Gas (MoPNG) issued (March 1996) a Letter of Intent (LoI) for award of R&RS fields to CoSB and in March 1999, CCEA approved negotiations and concluding PSC in respect of 12 discovered fields (11 small sized blocks and one medium sized R&RS block) to be held by the Negotiating Team of Secretaries (NTS) for negotiating and finalizing Production Sharing Contract (PSC) with the consortium within six months. PSC in respect of the 11 small sized fields were signed in February 2001 and February 2004. The Committee further note that NTS, a high-powered body consisting of Secretary, Ministry of Petroleum and Natural Gas; Finance Secretary; Secretary, Department of Expenditure; Secretary, Department of Economic Affairs; Secretary, Department of Legal Affairs and CMD, ONGC, did not adhere to its own targets of completion of negotiations within six months and kept setting targets for completion of negotiations and signing of PSC and held 20 meetings between November, 1999 to June, 2013. Further, during the period from May, 2010 to July, 2015, only two meetings were held and, on both the occasions, it was decided to hold another meeting to take a final decision, it was decided to hold another meeting to take a final decision in the matter. The Committee observe that the process of reaching a decision to finalize the PSC was not completed even after 25 years of policy decision, 20 years of award and 17 years of approval of CCEA. The Ministry in their reply has stated that NTS undertook a series of meetings for deliberating on several complex issues and for bringing convergence on the technical, commercial, legal and financial matters and based on these efforts, PSC for 11 small sized fields were signed and the main reasons for non-finalisation of PSC for R&RS fields were financial incapability of EOL during negotiation stage; creation of charge by EOL (Essar Oil Limited) with its bankers for refinery project without the approval of Government and non-finalisation of issue regarding transfer of pipeline asset by ONGC to the consortium. Further, even after holding active negotiations by the NTS, the terms and conditions to execute the formal PSC between the GoI and the Joint Venture of companies and ONGC, as required under Article 299 of the Constitution of India and other statues, could not be concluded due to disagreements between the consortium partners and Government of India. The Committee note that due to disagreements on multiple issues and irregularities on the part of the consortium partner after the issuance of letter of award and the inordinate delay in concluding the contract resulting into delay in the development of the fields, it was decided with the approval of CCEA to cancel the contract. The Committee are of the view that the purpose of formation of such high-powered body like NTS with as many as six Secretary / CMD level officers of the Ministries/NOC was defeated as these highest level officers could not adhere to their own timelines and reach a decision after several rounds of meetings. The Committee find that the Ministry has taken the whole episode casually as is evident from its submission that the R&RS case may be viewed as one unfortunate case where despite several issues the NTS tried the best to resolve them and ultimately the contract could not be concluded. The Committee are of the view that timely intervention by the Government/ CCEA into the issue could have helped in taking a decision on the issues of royalty and cess. The Committee feel that it is high time that the country has a mechanism to review the efficiency of high-level Government officials associated/ nominated in Inter-Ministerial Groups/High-Level Committees independently of the help of regular bureaucracy. The Committee desire the Government to consider this issue as an eye-opener and establish adequate mechanism to review the performance of all such officers nominated on various Committees. The Committee observe that the delay is mainly attributable to the anxiety of the officers to avoid 'dispute in future'. However, it seems that no concern was raised at the fact that no production was happening for about two decades. The CoSB seems to have climbed down in August, 2012 to agree to the current rates, yet the contracts were not signed. The NTS, which itself was a Committee of Secretaries, having been unable to resolve the issue on its own should have sought the help of experts or Cabinet Secretary. The Committee strongly deprecate the rationale of NTS comprising senior Civil Servants keeping such a calculated silence and inaction, if not indifference. The Committee while observing that the delays by these officials that resulted in a huge loss of Rs. 26200 crore to the exchequer and deprived the country of scarce resources for more than two decades tantamount to criminal negligence, direct that the responsibility for causing inordinate delays in decision making may be fixed and action be taken against the officials concerned under intimation to the Committee.

(Sl. no. 2 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

Due to concerns expressed in many quarters about tenets of the Discovered Field Policy, MOP&NG sought necessary policy directions from CCEA vide note dated 28.2.1999. Approval of CCEA was sought for concluding the contracts in respect of 12 discovered fields awarded under the Second Round in 1995 after due negotiations are held with parties by the Negotiating Committee of Secretaries (NCS). (The final paragraph of the proposal mentioned NCS as Negotiating Team of Secretaries (NTS) comprising Petroleum Secretary, Finance Secretary and Law Secretary). The CCEA in its meeting held on 9.3.1999 in Case No.44/CCEA/99 (Item No.4) considered the note dated 18.2.1999 of MOP&NG and approved the proposals contained in paragraph 26, wherein one of the proposal was for "***concluding contracts in respect of 12 discovered fields awarded under the second round in 1996 after due negotiations are held with the parties by the Negotiating Team of Secretaries***". Ratna & R-Series field was one of the 12 discovered fields for which contract was to be negotiated.

NTS undertook negotiations with the consortiums, based on a Model Production Sharing Contract (MPSC) approved in November, 1999 as the basis for negotiation and finalization of the PSC with the consortiums.

NTS had several meetings (15) from 1999 to March, 2008 and various issues were deliberated in the meetings like the negative net worth of EOL; creation of charge by EOL with its bankers for its Refinery project before signing the Contract; POLs negotiation with ONGC for assigning its PI and Operatorship; applicable rates of Cess and Royalty; transfer of pipeline asset by ONGC to the consortium etc. In 2008, a CCEA note was circulated by this Ministry with NTS recommendation of signing PSC with the EOL – POL consortium, maintaining old rates of cess and royalty with old Cost Recovery Limit (CRL). It was suggested by Cabinet Secretariat that NTS may identify alternate courses of action available in the light of conflicting legal opinions and make its recommendation after taking into account all the pros and cons including the feasibility of re-inviting the bids, settlement of the issues by NTS, etc.

Number of options were explored by NTS, including cancellation of the Letter of Award and consequently re-inviting of bids or revert the field back to ONGC. There were four (4) more NTS meetings from 2009 to 2013 to deliberate on these options and a draft CCEA Note on "Issues relating to Finalization of Production Sharing Contract (PSC) for Ratna and R-Series" dated 28.10.2013 was circulated for Inter Ministerial Consultations (IMC) which was sent to the Cabinet Secretariat on 2nd May, 2014. This was returned by the Cabinet Secretariat with comment that this may be put up for new Minister In Charge after formation of new government.

After taking over in May, 2014, present Government considered this issue for award of the Ratna & R-Series Fields earnestly. Various alternatives were evaluated and a draft CCEA Note was circulated for Inter Ministerial Consultations. Based on outcome of various inter-ministerial consultations, CCEA on 10th March, 2016 approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and revert the Ratna & R Series fields to ONGC, subject to payment of cess and royalty at the current rates, as applicable under the nomination regime.

Rs. 26,200 crores was an estimation of value of reserves by CAG considering crude oil prices ranging from US$ 55 to US$ 130. The reserves are still in place and available for production. The present decision of the Government taken vide CCEA meeting held on 10th March-2016 to revert the field to ONGC for further development and production and to realize cess and royalty at current rates applicable under nomination regime, interest of the Government is protected with the present decision. Delay in decision making is not due to lack of exercising due diligence on the part of any official but due to complexity of issues involved including financial incapability of EOL during negotiation stage.

Vetted remarks of Audit:

The reply of the Ministry may be viewed in the light that in March, 1999, CCEA approved negotiations and concluding PSC in respect of 12 discovered fields (11 small sized blocks and one medium sized R&RS block) to be held by the NTS for negotiating and finalizing PSC with the consortium within six months. PSC in respect of the 11 small sized fields were signed in February, 2001 and February, 2004. Ratna & R-Series could not be concluded. On 10th March, 2016 CCEA approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and reverted the field back to ONGC,

Further, the reply did not mention the action initiated for fixing responsibility of the officials for delay in decision making which resulted in a huge loss of Rs. 26,200 crore to the exchequer and deprived the country of scarce resources for more than two decades tantamount to criminal negligence, Action taken in this regard may be incorporated in the ATN for better appreciation of the PAC.

Reply on Vetting remarks of Audit:

NTS made all out efforts to execute the Ratna & R Series PSC. NTS may not be held responsible for deviations to the adhered procedure followed in respect of 11 other PSCs. Non adherence to the agreed and approved procedures set by NTS by one particular private consortium may be viewed as only one off case. Fixing responsibility of the individuals would only discourage those upright officers who protected government commercial interests by eventually realizing royalty and cess at the current rates rather than freezing at the old rates. Even the EOL-POL consortium also agreed to pay royalty and cess at current rates subsequently. However, PSC could not be concluded due to other deviations from the agreed norms and intentions of the Consortium, which has clearly been brought out in the Minutes for the NTS meeting held on 2.3.2000.

(Ministry of Petroleum and Natural Gas, O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

Observation/ Recommendation No 5

<u>Reimbursement of Past – Cost and non – maintenance of idle facilities:</u>

The Committee note that Audit in their report, has referred to the issue of reimbursement of past-cost and non-maintenance of idle facilities. The Committee understand that ONGC had created facilities in Ratna R-12 field at a cost of Rs. 472.55 crores. These facilities were used by the Company for production since 1983. It obtained a mining lease for the field in 1986 with a validity upto February, 2001. When the field was offered for private parties, ONGC stopped production with effect from September, 1994. After adjusting the tax benefits and revenue enjoyed by ONGC from the field, the net past cost that remained to be compensated to ONGC was Rs. 270.46 crores. It is seen that CCEA directed the Ministry in March, 1999 for the past cost compensation in consultation with Ministry of Finance and Planning Commission. The need for settlement of the above compensation amount was also highlighted in the Report No. 5 of 1996 and follow-up Audit Report No. 6 of 2005 of Union Government (Commercial). Despite the direction of CCEA in 1999 and the audit observations twice in 1996 and 2005, the issue remained unresolved. ONGC in its submission stated that it had been highlighting the issue of repair / maintenance of the facilities through its various communications and during the meeting of Negotiating Team of Secretaries (NTS) and requested for confirmation regarding decision on re-imbursement of such cost. Though NTS has deliberated on the need to facility maintenance, but cost re-imbursement issue was always kept pending and no firm decision in this regard was ever conveyed to ONGC. Further, the Ministry (August, 2015) has acknowledged that the issue of reimbursement of past cost to ONGC was another significant issue in making the field operational and monetizing the field reserves. Also the cost incurred by ONGC o maintenance and security of R&RS fields over the years would require consideration based on number of possible alternatives. The Committee are dismayed to find that despite CCEA directions (March, 1999) and clear clause (Article 15.1) mentioned in draft PSC, MoPNG did not evolve modalities for past cost compensation to ONGC and neither the NTS forum proved productive and useful for addressing the significant and important issue of maintenance of the facilities created at the fields. The Committee observed that even though the consortium would have been operating the field, still ONGC had to hold 40% of its PI. The Committee further note from the observation of the Audit that the ONGC and MoP&NG allowed 'plundering and looting' of platform utilities and equipment in the absence of appropriate security system showing lack of their seriousness to preserve and conserve facilities that were created by ONGC (Rs. 472.55 crore). Further, the stand taken by ONGC (May, 2005) while agreeing to current rates of royalty and cess on the grounds that since ONGC intended to get back the field, the same 'strategic' benefit and foresightedness could have been applied by ONGC on maintenance of the created facilities and thus avoided the expenditure amounting to Rs. 1085.7 crore involved in estimated repair cost of the facilities. Now, with the decision of the Government to cancel the award to the consortium and reverting the fields to ONGC, the Committee feel that the ONGC could have pursued the matter more vigorously with the Ministry and in-turn NTS to get the matter resolved. The Committee further opine that non-maintenance of oil producing fields by ONGC and subsequent plundering and looting from the sites is a sheer failure of a Public Sector Undertaking in looking after the nation's property. The Committee feel that ONGC should have maintained the fields as being a PSU it would have anyway recovered all its expenses sooner or later. The Committee, therefore, desire that the concerned officials of ONGC be held responsible for this gross negligence and action be initiated against them.

(Sl. no. 5 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

ONGC started production from Ratna field from February 1983 and continued up to September 1994. Award of contract had been approved by the Government in 1996 and same was informed to the Consortium of Successful Bidders (CoSB). The issue of repair / maintenance of the facilities remained major concern of ONGC till handing over of these Fields to awardees. ONGC brought it to notice of the Government through various communications and during the meeting of Negotiating team of Secretaries (NTS). ONGC also brought to notice of the Government regarding decision on re-imbursement of repair / maintenance cost of the facilities in these Fields.

ONGC raised the issue of maintenance of facilities with the MoP&NG vide letter from CMD-ONGC dated 13th March 2002 .ONGC also sought permission for carrying out inspection / maintenance of SBM & structure and requested for adjustment of cost undertaken in carrying out the same. The issue was also raised during the meeting of Negotiating Team of Secretaries (NTS) for confirmation regarding decision on re-imbursement of such cost.

Meanwhile, ONGC incurred an expenditure of Rs.6.92 crores plus USD 335,840 and conveyed the same to MoPNG vide letter dated 9th December 2004 .Note of such expenditure was made by NTS in its meeting dated 15th April 2005.

NTS in October 2004 decided that ONGC would need to be reimbursed for the maintenance cost incurred between the date of award and effective date of PSCs.

However, the issue could not be concluded as various articles of the PSC were still being negotiated by the Government with CoSB. In light of non-reimbursement of already incurred expenditure, ONGC did not find it prudent to incur any further expenditure on Ratna R- series. It may be noted that ONGC is a registered company under the Companies Act and any investment decision by the Company needs approval of the Board. As the issue regarding reimbursement costs could not be concluded, it would not have been possible by ONGC Board to consider the expenditure on Ratna and R-Series Fields.

Vetted remarks of Audit:

Ministry reply is silent on the issues:

- Past cost to be compensated to ONGC, despite the directions of CCEA in 1999 and the audit observations twice in 1996 and 2005.
- Non maintenance of facilities by ONGC.
- Action initiated against the responsible official of ONGC.

Ministry reply stated that it was not possible by the Board of ONGC to consider the expenditure on Ratna & R-Series Field, since the issue of reimbursement cost was not concluded. The reply may be seen in the light of the fact that in any case ONGC would continue to hold 40 per cent share in the field and proper maintenance of assets was in its own interest.

Reply on Vetting remarks of Audit:

NTS in October 2004 had decided that ONGC would need to be reimbursed for the maintenance cost incurred between the date of award and effective date of PSCs. However, the issue could not be concluded as various articles of the PSC were still being negotiated by the Government with CoSB. In light of non-reimbursement of already incurred expenditure, ONGC did not find it prudent to incur any further expenditure on Ratna & R- series. As a Participating Interest (PI) holder of 40 % in to be concluded PSC, ONGC would have been required to incur expenditure only to the extent of 40%, not entire expenditure on maintenance of the assets.

After the Government decision to revert the field to ONGC, repair and refurbishment of various production and evacuation facilities has been undertaken by ONGC in several stages to receive the expected "First Oil" by May, 2019.

Considering hydrocarbon potential of this medium sized field, progress of the project is regularly being monitored by the Government.

(Ministry of Petroleum and Natural Gas, O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES/NO REPLES

Observation/ Recommendation No 6

Fixing of Responsibility towards delay in non – execution of mandate:

The Committee note that the CCEA (March, 1999) approved conclusion of contract keeping the cess and royalty at the level prevailing at the time of inviting bids and also asked NTS to finalise the PSC within six months. Despite the above decision of CCEA and the fact that PSCs for rest of 11 fields from the bundle of 12 fields offered simultaneously under similar terms and conditions had been finalised and signed till the end of 2004 and opinion of AGI to go for finalisation of PSC, the Ministry (January, 2008) sent a fresh note to CCEA for an appropriate decision. CCEA Note was returned by the Cabinet Secretariat to obtain unambiguous recommendations of NTS on certain issues. NTS forwarded its unambiguous recommendations in March, 2008. MoPNG submitted (June, 2008) the Note to make certain modifications/corrections relating to some deficiencies. A proposal for modification in the Note to CCEA was approved on 09 July, 2008. However, when the new Secretary, MoPNG joined on 01 August, 2008, the matter was again re-examined in MoPNG and it was decided that NTS should consider the matter once again, with a view to analysing in detail the various alternatives available along with their financial implications. The Ministry's changed stance led to series of deliberations and clarifications which had ultimately contributed to the delay in decision.

Further, Audit while working on financial implications due the indecision on R&RS fields, have indicated that the country had lost oil and gas production worth more than Rs. 26,200 crores; Government's potential revenue to the tune of Rs. 1105 crore on account of royalty and cess and avoidable expenditure of Rs. 1085.70 crore towards repair and re-development of the R&RS fields.

The Ministry in their submission has stated that the matter was re-examined (August, 2015) by it and it was observed that NTS had earlier not analysed in detail the alternatives available and had just reiterated the earlier recommendations. Thus, in order to fully comply with the directions of Cabinet Secretariat, NTS should consider the matter once again with a view to analyse in detail the various alternatives available along with the financial implications. MoPNG further informed that a CCEA Note dated 02 May, 2014 was sent to the Cabinet Secretariat regarding issues relating to the finalisation of PSC for R&RS fields. However, due to change of Government in May, 2014 the circulated Note was not considered by CCEA at that time. Similarly the Ministry in their written submission to the issues posed before them in the matter has stated that time taken in the process of approval, being dependent on may relevant factors to be considered while taking a call on the issue, may not necessarily be seen as a delay because the decision makers in the process of final settlement and resolution of matters of disagreement have to be sure in all aspects and get satisfactory reply of their all queries. Also while reasoning with the question posed to the Ministry for fixing of responsibility and accountability on taking final decision on the PSC, the Ministry has submitted that the R&RS fields have been reverted to ONGC and in view of the reasons explained it may not be a fruitful exercise towards fixing of accountability. Further, during the oral evidence tendered before the Committee, on reference drawn to the alleged role of particular Joint Secretary (Exploration) during the negotiation stage of the contract, the Committee sought explanation from the Ministry. However, the silence of the Ministry and not providing the details of the information sought by the Committee speaks volume about the reasons behind the muddle created over the abnormal and unique delay of over 25 years of the policy decision (1991), 20 years of award (1996) and 17 years of CCEA approval (1999) in awarding the contract to the consortium and finally reverting the R&RS fields to the original allottee i.e. the ONGC again. Further, while coming to the Audit's calculation of financial implication, the Ministry has termed it as 'notional figures' since no crude oil/natural gas has been produced from these fields and hydrocarbon reserved from these fields would still be in place. The Committee are of the opinion that the circumstances under which the Cabinet Secretariat returned the note on piecemeal basis and why the Cabinet Secretariat could not pursue the implementation of CCEA are required to be examined. Further, the coming of new Secretary, MoPNG on 1 August, 2008 should have facilitated and expedited the process of concluding and finalizing the terms of PSC rather than delaying and complicating the matter further. The Cabinet Secretariat, being the nodal agency for all matters relating to Cabinet, including implementation of the decisions by the Cabinet and its committees, as expected should have taken the lead to resolve the issue when it became evident that the MoPNG was unable to make up its mind. When there were differences of opinion between the NTS and the Ministry and between the Ministry and the Cabinet Secretariat, the inter-departmental consultation should have been upgraded to Empowered Committee of Secretaries or Group of Ministers or Empowered Group of Ministers. The Committee are further dismayed to note as to why Cabinet Secretariat had not taken this initiative. The Committee on unfolding and carefully scrutinizing the sequence of events that took place since the issue of letter of award (March, 1996) and decisions made either by the Ministry or the NTS or CCEA or the Cabinet Secretariat in the R&RS field clearly portrays itself as a classic case of system failure. The Governments and officials may come and go but the responsibility for execution of the policy decisions of the Government lies with the efficiency and zeal of executors to implement and pass on the benefits of sustainable development to future generations of the county. The Committee, therefore, desire that when decision to form high-powered body like NTS are taken in future by the Government for execution of its decision, adequate monitoring mechanism be put in place and ensure timely intervention and execution of decisions taken in the national interest.

Further, coming to the financial implications calculated by the Audit and the Ministry terming it as 'notional loss' needs to be seen in the perspective that country like India, being a net importer of hydrocarbon resources for fulfilling its energy requirements, the Committee are of the firm view that the indecision of the Government till 10 March, 2016 for award of R&RS fields has seriously deprived the country of its own resources for more than two decades (since ONGC stopped its production in 1994). Further, expenditure on repairs due to non-maintenance of fields for more than two decades will result in actual losses. Further, the Committee are of the strong opinion that Ministry should have atleast asked ONGC to maintain the R&RS fields during the period of negotiations. The Committee seriously deprecate the Ministry's indecision on all the related issues till 10 March, 2016 which has directly compromised the national interest on energy security and desire that stringent action may be taken in this matter. The Committee also desire that responsibility of all the officials of the Ministry for indecision and their role in this regard be fixed and action taken against them under intimation to the Committee.

(Sl. no. 6 Part - II of 62nd report of Public Accounts Committee Sixteenth Lok Sabha)

Action Taken by the Government:

Administration of the upstream Exploration and Production (E & P) Sector by the Government is a complex subject and has evolved over a period of time with progress of the extant policy regime. Signing of the proposed PSC for Ratna and R Series Fields was during the pre-NELP Discovered Fields policy regime, while the Sector was still evolving from the prevalent nomination regime.

During the NELP regime, a mechanism of Empowered Committee of Secretaries (ECS) was put up in place comprising Secretary (P &NG), Finance Secretary and Law Secretary to consider Bid Evaluation Criteria (BEC), conduct negotiations with bidders, wherever necessary and make recommendations to CCEA on award of blocks.

The same mechanism of ECS has been approved in March, 2016 for the new policy initiative, Hydrocarbon Exploration Licensing Policy (HELP) with the following additional functions being vested in ECS:

(i) Approval of Model Revenue Sharing Contract and other bid documents;

(ii) Resolution of all contractual issues raised during the entire period of implementation of future contracts based on the proposed model

(iii) For Inter-ministerial consultation issues, ECS may co-opt Secretary of the concerned Department / Ministry and NITI Aayog as member.

It has been stipulated that decision of the ECS on the additional functions would be submitted to the Minister (P & NG) and Finance Minister for approval. Thus, as desired by PAC, adequate monitoring mechanism has been put in place to ensure timely intervention and execution of decisions, taken in the national interest.

CCEA mandated NTS in March, 1999 to conclude the PSCs in respect of 11 small sized fields and one medium sized field i.e. Ratna and R-Series Fields.

NTS had several meetings (15) from 1999 to March, 2008 and various issues were deliberated in the meetings like the negative net worth of EOL; creation of charge by EOL with its bankers for its Refinery project before signing the Contract; POLs negotiation with ONGC for assigning its PI and Operatorship; applicable rates of Cess and Royalty; transfer of pipeline asset by ONGC to the consortium etc.

First NTS meeting was held on 22.11.1999 and to adopt a uniform approach in negotiation, a Model Production Sharing Contract (MPSC) was approved as a basis for negotiating the individual contracts. Second NTS meeting was held on 02.03.2000 and it was agreed that the financial strength of all the awardees would be evaluated based on latest available information. Meeting held on 18.07.2000 finalized consequential changes in the PSCs for 10 small sized fields pursuant to finalization of COSA and the work programme submitted by the companies. It was further decided that for Ratna & R Series Fields and Amguri Fields, sixty (60) days time limit would be intimated to finalize the PSCs, failing which the negotiation process would stand concluded. Subsequent meeting was held on 07.09.2000 whereby draft PSC of Ratna & R Series was deliberated on individual articles and put in the minutes. It was further decided that the Ministry of Finance will revert on issue of financial capability of Essar Oil limited (EOL). Another NTS meeting was held on 24.10.2000 for Amguri and Ratna R Series Fields. The issue of financial capability of EOL was deliberated and it was agreed that since Essar has recently been apprised by ICICI in context of their refinery project, they should be consulted on net worth of Essar. Response of ICICI was deliberated in meetings held on 20.02.2001 and the remedies available under the PSC and Joint

Operating Agreement (JOA) in case of default by any contracting party. Implication of cancellation of award was also discussed and following provision in the Notice Inviting Offer (NIO) was brought out:

> 'While GOI has flexible approach to the terms, it reserves to itself the right to accept or reject any bid in its sole discretion.'

Subsequent meetings held on 19.08.2002, 24.04.2003, 08.12.2003 and 31.08.2004 deliberated on the issue of creation of charge by EOL with its bankers for its Refinery project before signing the Contract. It was during the meeting held on 04.10.2004 that NTS agreed upon EOL financial capability based on the considered opinion of Ministry of Finance provided in the meeting. However, confirmation was sought from Premier Oil (POL) on signing the contract and EOL and POL in respect of reimbursement to ONGC of the maintenance costs. In another meeting held on 15.04.2005, it was decided that reimbursement of maintenance costs to ONGC shall be non-recoverable contract cost and to seek confirmation from EOL and POL on this. Moreover, EOL, POL and ONGC should be asked to confirm acceptance of royalty on crude oil @ 10 % of well-head value and cess on crude oil @ Rupees 1800 per metric tonne, which should be frozen for entire PSC period. Subsequent meeting held on 19.04.2006 decided that the contract stands concluded with issue of award letter in March, 1996 and statutory levies should be maintained at the old level. In the meeting held on 20.03.2008, NTS decided to recommend old rates of royalty and cess with old Cost Recovery Limit (CRL) bid by the contractors.

In June 2008, a CCEA note was circulated by this Ministry with NTS recommendation of signing PSC with the EOL – POL consortium, maintaining old rates of cess and royalty with old cost recovery limit (CRL). The Cabinet Secretariat observed on the CCEA note that the process of negotiation in the present case has not been taken to its logical conclusion and it would be appropriate for the Negotiating Team of Secretaries to offer its unambiguous recommendation in the matter. It was also suggested by Cabinet Secretariat that NTS may identify alternate courses of action available in the light of conflicting legal opinions and make its recommendation after taking into account all the pros and cons including the feasibility of re-inviting the bids, settlement of the issues by NTS, etc.

Number of options were explored by NTS, including cancellation of the Letter of Award and consequently re-inviting of bids or revert the field back to ONGC. There were four (4) more NTS meetings from 2009 to 2013 to deliberate on these options and a draft CCEA Note on "Issues relating to Finalization of Production Sharing Contract (PSC) for Ratna and R-Series" dated 28.10.2013 was circulated for Inter Ministerial Consultations (IMC) which was sent to the Cabinet Secretariat on 2nd May, 2014. This was returned by the Cabinet Secretariat with comment that this may be put up for new Minister In Charge after formation of new government.

After taking over in May, 2014, present Government considered this issue for award of the Ratna & R-Series Fields earnestly. Various alternatives were evaluated and a draft CCEA Note was circulated for Inter Ministerial Consultations. Based on outcome of various inter-ministerial consultations, CCEA on 10th March, 2016 approved the cancellation of the award letter dated 12.3.1996 issued in favour of the consortium of M/s. Essar Oil Limited and M/s. Premier Oil Pacific UK Ltd. and revert the Ratna & R Series fields to ONGC, subject to payment of cess and royalty at the current rates, as applicable under the nomination regime.

It can be seen from details of the above NTS meetings that while PSC for all other fields was successfully negotiated and concluded. But the Ratna Contract could not be concluded due to actions and intentions of the Consortium, which has been brought out in the Minutes for the NTS second meeting itself, held on 2.3.2000. NTS was mandated by CCEA to conclude all the contracts and efforts were continuously made by NTS, as is evident by number of NTS meetings to resolve the issues and conclude the contracts. NTS made all the efforts to bring agreement on various issues during negotiations with CoSB. However, when it became evident that the issues with CoSB can no longer be resolved to satisfaction of all the stakeholders, the Government took the decision of cancelling the LOA and reverting the fields to ONGC on 10th March, 2016.

Vetted remarks of Audit:

Ministry has stated that adequate monitoring mechanism has been put in place to ensure timely intervention and execution of decisions, taken in the national interest under HELP approved in March, 2016.

However, the Ministry is silent on the following issues:

- indecision of the Government till 10 March, 2016 for award of R&RS fields which had seriously deprived the country of its own resources for more than two decades,
- expenditure on repairs due to non-maintenance of fields for more than two decades which resulted in actual losses,
- not asking ONGC to maintain the R&RS fields during the period of negotiations by Ministry
- indecision on all the related issues till 10 March, 2016 which had directly compromised the national interest on energy security,

- fixation of responsibility of all the officials of the Ministry for indecision and their role in this regard.

Reply on Vetting remarks of Audit:

NTS made all the efforts to bring agreement on various issues during negotiations with CoSB in accordance with the contractual norms. However, when it became evident that the issues with CoSB can no longer be resolved to satisfaction of all the stakeholders, the Government took the decision of cancelling the LOA and reverting the fields to ONGC on 10th March, 2016. Further, adequate monitoring mechanism has been put in place under recent policy initiatives to ensure timely intervention and execution of government decisions.

(Ministry of Petroleum and Natural Gas,
O.M. No. O-32011/2/2016-ONG-I, dated 13.09.2017)

NEW DELHI;
23 March, 2018
2 Chaitra, 1940 (Saka)

Shri Mallikarjun Kharge
Chairperson
Public Accounts Committee

APPENDIX-II

(Vide Paragraph 5 of Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE OBSERVATIONS/RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE CONTAINED IN THEIR SIXTY-SECOND REPORT (SIXTEENTH LOK SABHA)

(i)	Total number of Observations/Recommendations	-	6
(ii)	Observations/Recommendations of the Committee which have been accepted by the Government: Para Nos. 3 and 4	-	Total : 02 Percentage: 33%
(iii)	Observations/Recommendations which the Committee do not desire to pursue in view of the reply of the Government: -Nil-	-	Total : 0 Percentage:0%
(iv)	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration: Para Nos. 1,2 and 5	-	Total : 03 Percentage:50%
(v)	Observations/Recommendations in respect of which the Government have furnished interim replies/no replies: Para Nos. 6	-	Total : 01 Percentage: 17%