

Action taken note on Audit Para No. 5.1 from Report no. 13 of 2014 on blocking of funds amounting to Rs. 341.72 crores due to lack of financial prudent while trading on National Spot Exchange (**MMTC & PEC**)

Audit para	Ministry reply	Management reply	Vetting remarks of audit	Comments of Department of Commerce
<p>MMTC Ltd and PEC Ltd (Companies) were trading members on National Spot Exchange Limited (NSEL), Mumbai since May 2011 and December 2010, respectively. Ministry of Consumer Affairs Food and Public Distribution (Department of Consumer Affairs) vide Gazette Notification dated 5 June 2007 exempted the Forward Contracts of one duration for sale and purchase of commodities traded on NSEL from the operation of the provisions under Forwarded Contracts (Regulation) Act, 1952 subject, inter alia, to the</p>	<p>DoC has no further comments in the matter.</p>	<p>MMTC's reply It may be informed that initial approval for an amount of Rs. 10 crore was taken for trading various agro commodities on different spot exchanges based on arbitrage opportunities available. Moreover, the trading of agro commodities on exchanges was never limited/restricted only to pulses. The approval clearly states that any agro commodity available on exchange can be traded for arbitrage benefit.</p>	<p>Factual, no further comments to offer.</p>	<p>No further comments required</p>

<p>condition that no short sale by members of the exchange shall be allowed. NSEL offered spot contracts for purchase and sale of agro commodities with physical delivery of commodities which were settled on T+2 and T+25 days respectively. The MMTc Ltd. And PEC Ltd both initially restricted the financial limits of trade to 10 crore and 50 crore, respectively, and dealt in trading of pulses. However within a period of one year both the Companies diversified into trade in paddy, edible oils, wheat, etc. The overall trade limit was also raised to 250 crore by both the Companies. MMTc Ltd and PEC Ltd continued trading on NSEL up to 26 July 2013 and 25 July 2013 respectively.</p>				
<p>Pursuant to directions issued by the</p>	<p>DoC has no further</p>	<p>As per record</p>	<p>No further comments.</p>	<p>No further comments</p>

<p>Department of Consumer Affairs, GOI, vide letter dated 12 July 2013, the NSEL changed the settlement procedure for the trades with effect from 23 July 2013. As per changed procedure issued by NSEL vide Circular dated 22 July 2013, all contracts being settled so far by delivery and payment beyond 11 days were to be settled with effect from 23 July 2013 on 'T+10' days basis. Subsequently, due to reduction in trade at NSEL there was a mismatch of obligations and as a result it suspended (31 July 2013) trading and postponed the settlement of all one day forward contracts.</p>	<p>comments in the matter.</p>			
<p>An amount of Rs. 218.53 crore was still recoverable (November 2013) by MMTC Ltd. From NSEL for the trading period of 26 June</p>	<p>DoC has no further comments in the matter</p>	<p>In respect of MMTC it is to be stated that an amount of Rs. 14.47 crore has been recovered till 22.09.14. The net due recoverable as per MMTC Books of accounts is Rs. 209.84</p>	<p>After the 65th payout in November 2014, MMTC has received Rs. 14.52</p>	<p>Matter of record.</p>

<p>2013 to 26 July 2013 whereas PEC Ltd. Was to recover Rs. 123.19 crore from NSEL for transactions falling between 25 June 2013 and 25 July 2013. The amount was recoverable due to the time gap between purchase payments and sales realization as per trade practice on the exchange. NSEL defaulted continuously in paying its dues to both the Companies from August , 2013.</p>		<p>crore after taking into account the above receipt from NSEL.</p>	<p>crore from NSEL and net outstanding as on 18.03.15 was Rs. 209.79 crore.</p>	
<p>Audit observed that trade dealings of both the Companies with NSEL suffered from following infirmities and deficiencies:</p> <p>The Companies were trading and dealing on the NSEL which was a spot exchange under investment/financing mode where no effective delivery of goods was intended.</p>	<p>DoC has no further comments in the matter.</p>	<p>NSEL were granted permission in June 2007 by Government to commence spot trading with certain conditions including that there would be no short sale. Contract launched by NSEL were based on compulsory delivery logic whereby the seller of T+2 contracts has to necessarily place the products in NSEL warehouse. The underlying commodities deposited by seller of T+2 contract were to be transferred to MMTC through allocation</p>	<p>The Commodities being traded were not in possession and control of the Management and were kept in NSEL warehouse. The Management itself has recorded that</p>	<p>It was clarified by MMTC Limited that the transactions on the NSEL platform were not financing transactions and this has been confirmed during the meeting of Statutory Auditors in May, 2013. Sale invoices have been raised and statutory levies like VAT, stamp duty etc. have been deposited. Sale Purchase entries have been recorded in the Books of Accounts of MMTC. If the transactions on NSEL platform were pure financial transactions, there would have been no need to book sale purchase or deposit taxes. The exchange had guaranteed to act as a counter party. In one of the</p>

		<p>letters. The entire NSEL contract had delivery of commodity as the basic premise prior to commencement of trading on NSEL platform. This was not a financing g/investment model as sales purchase turnover was booked by MMTC and Statutory taxes like VAT etc were being deposited. The seller of the goods on T+2 basis were also issuing invoices charging VAT. Also, MMTC was issuing invoices, charging VAT toward sale which means that these were delivery based transactions only. It cannot be stated that no effective delivery of goods was intended.</p>	<p>the trade model of NSEL does not provide for any effective physical delivery of the goods, even though the transactions may be backed by physical availability of goods. The transactions with NSEL were more akin to financing transactions rather than sales/purchase transaction..</p>	<p>communications, NSEL have confirmed that once the goods are tendered in the NSEL warehouses, it is the obligation of NSEL to ensure payment is made on the due date to MMTC. MMTC and other members dealing on the exchange platform invariably believed that the underlying assets were available with the exchange. It is also a matter of record that NSEL were granted exemption under the FTRA. Members believe that NSEL was governed by credible management team and were monitored by the Government.</p>
<p>Within one year of commencement of their trading on NSEL the Companies raised their financial exposure limit 5-25 times without any</p>		<p>Since NSEL, trade was a new business all the important procedures to be carried while trading were approved from FMCOD. Moreover during the period when the trade limits</p>	<p>Reply of the management is not tenable because, the trade on NSEL</p>	<p>NSEL was the guarantor for all transactions executed on its platform. NSEL had assured its members of its robust mechanism including settlement guarantee fund in case of default. Till July 2013, there was no default in</p>

<p>functional drill or standard operating procedure. Subsequently, MMTC prepared its Functional Drill on 30.11.2012 for trading of agro products on NSEL.</p>		<p>were enhanced there was not even a single default by NSEL, also MMTC was receiving all the sale proceeds on timely basis. Hence trading limits were enhanced during the period in phases to tap business opportunities. MMTC was trading on an exchange platform wherein the trade specifications are pre-defined. MMTC while trading was following all the laid down procedures of the exchange.</p> <p>In case of MMTC the initial limit of Rs. 10 crores was increased to Rs. 50 crore with SPC approval on 07.06.2011, followed by limit increase to Rs. 100 crore on 02.09.2011 with SPC approval. The limit was enhanced to Rs. 200 crores with approval of SPC on 12.10.2011. The limit was further enhanced to Rs. 250 crores with approval of SPC on 17.01.2012.</p>	<p>platform was being done without any SOP or functional drill till Dec 2012. Since it was a new business venture, management should have pondered on all the risk before increasing the financial limits to 25 times in the short span of nine months. This was against the prudence.</p>	<p>payment by NSEL in respect of their obligations and the new business model on NSEL was considered safe by the management of MMTC.</p>
<p>Instructions for physical verification of stocks in NSEL warehouses were issued by MMTC Ltd. In December 2012 after 18 months of commencement of</p>		<p>MMTC issued instructions for verification of physical stock in NSEL warehouse in December 2012. It may be recalled that trading was suspended w.e.f. 6.12.12 due to delay in receipt of purchase invoices VAT C4</p>	<p>Management has accepted the audit observations that instructions for physical</p>	<p>MMTC has stated that the various irregularities are related to delay in receiving purchase invoices. It may be mentioned that there was no single default in respect of payments from NSEL side till July 2013. The fact that inspections were carried out by MMTC is</p>

<p>trading whereas PEC Ltd. Did not do a physical verification of commodities at all.</p>		<p>forms and allocation letters. Trading was resumed in end January, 2013 after NSEL team gave a detailed presentation at MMTC on 24.1.13. It may be informed that MMTC carried out inspections in Jan 13, Feb 13 and May 13.</p>	<p>verification were issued after 18 months and highlighted the various irregularities in the NSEL trade.</p>	<p>also an indication that risk mitigation measures were considered by MMTC.</p>
<p>No risk insurance review was made while undertaking transactions with NSEL. As a result no insurance cover was taken for the commodities traded on NSEL.</p>		<p>NSEL was promoted by Financial Technologies who also runs other exchanges like MCX and 9 other global exchanges. Bye Laws of NSEL clearly provided that they undertook the counterparty risk and guaranteed performance of contract as like other commodity exchanges of India. Moreover worldwide also exchanges are the intermediary which guarantees counter party risk. NSEL had assured MMTC in writing that once the goods are tendered by seller in the exchanges, it is the obligation of NSEL to ensure payment on the due date. In the case of NSEL the exchange was the guarantor for all transaction executed in its platform. NSEL had assured its members of its robust</p>	<p>The Management itself did not take insurance of the commodities being traded on NSEL platform nor did it ask NSEL for copy of insurance taken by the exchange. Had the management gone for insurance of the goods the trading model of NSEL could have</p>	<p>MMTC has further stated that it is the responsibility of the NSEL to take care of all the formalities as per their bye-laws. Since this was a case of fraud perpetuated by NSEL, insurance, even if taken by MMTC, is of no consequence since claims based on fraud are not accepted by insurance companies. MMTC had insisted for NSEL to take Insurance and it was confirmed by NSEL that the same is available with them. The details about NSEL fraud has emerged in public domain only after default .Hence the point that had Management gone for insurance of goods ,the trading model of NSEL could have been exposed much earlier may not be correct.</p>

		mechanism including settlement guarantee fund in case of default. From the facts emerging post default of 31.7.13, it is to be pointed out that even if insurance cover was taken by MMTC this would not be valid in view of the fraud perpetuated.	been exposed much earlier?	
Neither of the Companies tried to ascertain the counter party details with whom they were entering into trade.		As clarified earlier while trading on any exchange platform the details of counter parties are not available at the time of trading; similar is the case with NSEL. In terms of Bye Laws NSEL stood as a guarantor for the contracts executed. Since commencement of trade on NSEL platform in May 2011, all the payments were received by MMTC on the due dates with no default till 31.7.13.	Management has accepted that the counterparties' details were not ascertained at the time of trading on NSEL. As huge amount was involved; an independent and credible assessment of the counter parties was required.	All the formalities of counter party verification are carried out by NSEL as per their bye-laws. It has been held by FMC in their letter dated 16.08.15 (copy attached) that when a client trades on the anonymous order driven trading system on the Exchange, the buyer does not know the seller and in the same way the seller does not know the buyer and Exchange guarantees the settlement of trade executed in compliance with the Bye Laws. Hence the point of Audit that an independent and credible assessment of the counterparties was required is not valid.
There were no documents of title received either from NSEL or from counter party against the		The allocation letters were the documents transferred by the NSEL to MMTC	Allocation letters are not documents of title.	Generally after the trading T+2 MMTC received allocation letter on 3 rd day and original purchase invoices were received on 8 to 12 days after the trade. MMTC had obtained the opinion of its Law

purchase of commodities.				Division and Sales tax Consultant and no anomalies observed. In fact not only MMTC but all the trading members operated only through Allocation letters.
<p>The comments offered by the Companies (MMTC-November 2013 and PEC January 2014) to the Audit observations were as follows: MMTC Ltd. Replied that the NSEL was counter guarantor for delivery and payment schedule. Similarly PEC Ltd. Replied that for unsettled purchases they were given delivery allocation indicating the warehouse receipt no., weight and location of warehouse which indicated that the trade was backed by physical goods and could be used to set out the PEC's sales obligation.</p> <p>The companies stated that the financial exposure limit for trading at NSEL was enhanced stepwise to tap further</p>	DoC has no further comments in the matter.	Matter of Record	No , further comments	Matter of record.

<p>risk free arbitrage opportunity available in the market.</p> <p>MMTC Ltd. Admitted that instructions were issued in December 2012 for monthly inspection of warehouse whereas PEC Ltd. Replied that commodity and warehouse management was always within the purview and responsibility of NSEL. The Companies stated that they were assured that the insurance of commodities was already taken up by NSEL and to avoid duplication, they did not go for insurance of the commodities.</p> <p>The Companies replied that NSEL was the counter party/counter guarantor for delivery and payment settlement and it was not known to them as to who their counter parties were.</p>				
The reply of the	DoC has	As explained earlier	The	It has been observed that even in case of

<p>Companies was not acceptable as: Buy and sell were done simultaneously with no supporting documents of title to underlying goods. Actual tendering of documents of title to goods covered by the contracts was absent though each buying and selling transaction was to be settled on trade to trade basis resulting into compulsory delivery as per terms and conditions of NSEL on settlement procedure. Such delivery logic would involve physical verification of stock by the Companies.</p>	<p>no further comments in the matter.</p>	<p>sale/purchase was booked by MMTC and necessary statutory taxes were deposited.</p> <p><i>MMTC was always in receipt of purchase invoices which involved VAT and were also issuing Sale invoices on due dates. Moreover, on purchase of commodity on T+2 basis, MMTC was receiving allocation letters from NSEL describing the quantity, quality & location of commodities procured.</i></p> <p>It may also be mentioned that, the contract was structured by NSEL in such a manner whereby any buyer demanding original warehouse receipt had to deposit additional margins which would make the transaction unviable. In respect of allocation letters, it is to be stated that this is not the document to title but the wordings confirm that original warehouse receipt were in possession of NSEL. It would have been onerous task to handle original Title of documents as these needs to be</p>	<p>Commodities being traded were not in possession and control of the Management and were kept in NSEL warehouse. From the reply of the management it is clearly evident that the Company did not have document of title and for the same of convenience opted for allocation letters.</p> <p>The fact of non existence of settlement guarantee fund is already in public domain.</p>	<p>trading on NCDEX; stock once deposited to NCDEX accredited warehouse remains in it till it is tradeable on exchanges and are finally withdrawn by processor or wholesaler.</p> <p>The fact of settlement guarantee fund came in the public domain only after the default surfaced post July 2013. There were no whisper or news in public domain about NSEL's activities till the default surfaced.</p>
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		returned to NSEL before the value date. Hence the option of Allocation letters was suggested by NSEL for operational ease of flexibility. In any case Settlement Guarantee Fund was supposed to guarantee the sales realization.		
Increasing the financial exposure limit by 5-25 times within a small span of time without any risk analysis was against ordinary financial prudence.		The financial limit for trading was increased step by step by MMTC based on the realization of payment on due dates and the overall satisfactory performance.	Increasing the financial limits in short span without any functional drill or SOP was against prudence.	Position has already been clarified earlier. The transactions of NSEL in paired contracts commenced in May 2011 and accounts audited for 2011 to 2013 without any adverse audit comments/ observations.
The Companies neither took any insurance cover for the commodities traded by them on NSEL nor requested NSEL for a copy of insurance undertaken by it. It was only after the default that the Companies requested the Exchange for the insurance documents of unsettled trade.		As explained, insurance cover was not taken as NSEL informed that they take full insurance cover either directly or through warehouse owners who then endorse such policies in favour of NSEL. The products purchase under T+2 contracts were simultaneously sold under T+25 contracts. From December 2012 to May 2013, MMTC took up the issue relating to insurance with NSEL from time to time who in turn confirmed that they have sufficient cover. Insurance cover note details were also	Management has accepted that the insurance cover was not taken by it as it relied on the confirmation and assurance of NSEL about the availability of the insurance cover.	MMTC was trading on NSEL as per their bye-laws. The counter party guarantee was given by NSEL. Taking separate insurance cover would not have helped MMTC since the underlying transactions were not backed by commodities and insurance companies do not settle cases where fraud is involved.

		forwarded by them in May 2013. Hence the remark that MMTC requested NSEL for insurance documents only after default is not factually correct.		
The Companies never tried to ascertain the counter party details with whom they were entering into trade. An independent and credible assessment of the counter parties was required.		At the time of entering into buy or sell transaction on the exchange platform the details of seller or buyer is not known as this is screen based trading. Exchanges universally act as guarantors to trades exchanges in their platform. NSEL also informed about the robust system they have in place for KYC norms as well as monitoring transaction. MMTC had deliberated at various points of time about the transaction on NSEL. Presentations were also made to IAAD in April 2013 about the trading practices adopted by Agro Division in NSEL. The matter was also discussed in Statutory Auditors meeting about the trade practice adopted held in May 2013 wherein five branch auditors were present. During the meeting the issue of booking of sale and purchase in respect of trade done through NSEL and applicability of AS9 was	Management has accepted that it did not verify the counter party claims and instead relied on presentations and assurances of NSEL.	It was explained to Audit that in an Exchange based trading the counterparty guarantee is given by Exchange. NSEL by its Bye Laws had undertaken the counterparty risks. Forward Markets Commission has clearly noted in its letter dated 16.08.2013 (copy attached) to NSEL that details of counterparties are not known at time of trading. Hence the premise of Audit that counter party details were not verified is not correct.

		discussed in detail and auditors had concurred that trade done through NSEL is not a financing transaction. It is also to be pointed out that till end July 2013 there was no indication about the default of NSEL or the practice adopted by them. About 13000 investors had traded on the exchanges and amount of Rs. 5600 crore was owed by the exchange for the trades untrade as on 01.08.13.		
From the above it can be concluded that MMTC LTD. And PEC Ltd. Continued trading on the NSEL in spite of deficiencies which resulted in blocking of 341.72 crore of the two Companies. From the chain of events, recovery of the same appears remote.	DoC has no further comments in the matter.	MoCA had granted exemption to NSEL for launching spot contract in June 2007. NSEL commenced operations in 2009. The deficiencies and infirmities of NSEL surfaced only after July 2013. MoCA had designated FMC as the agency to collect information in February 2012. NSEL had portrayed itself as being subject to regulators i.e. FMC State Marketing Boards and Warehouse Development Authority. It is to be settled that in all 13000 members have to recover dues from NSEL and many of the members had professional and derivative experts trading on the NSEL terminal. MMTC had filed civil suit in October 2013 against NSEL its promoters, Directors and	Factual and futuristic, hence no further comments to offer	The default of NSEL involves 13000 members who are to receive Rs 5600 crores. MMTC was the first to file civil suit against NSEL in Bombay High Court in October 2013. Final arguments in case are likely to commence from 10.07.15. Concerted action is also being taken by FMC for merger of NSEL with its parent FTIL under the Company's Act. EOW Mumbai is also pursuing for liquidation of properties attached under the Maharashtra Protection of Interest of Depositors Act. CBI, Mumbai has also registered Regular Case and is investigating the matter. Enforcement Directorate is also

		<p>counterparties. Favorable interim orders have been received in December 2013 wherein the Promoters of NSEL had set aside property and have agreed to inform MMTC with three weeks' notice in case they desire to sell the same so that Court could be approached. Bombay High Court has set up a three member Committee headed by a retired Judge to facilitate recovery from attached property of defaulters. Bombay High Court is scheduled to fix dates for final arguments on Notice of Motion moved by MMTC against FTIL and NSEL and its promoters in its next hearing listed on 06.10.14.</p> <p>EOW Mumbai has attached assets of defaulters valuing Rs. 4900 crore against the dues of Rs. 5600 crores. Charge Sheets have been filed in designated Court. Moreover, CBI has also conducted its preliminary investigation against MMTC, PEC, NSEL Mr. Jignesh Shah & various borrowers involved and have registered regular case against NSEL defaulting</p>		investigating the case.
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Action taken note on Audit Para No. 5.1 from Report no. 13 of 2014 on blocking of funds amounting to Rs. 341.72 crores due to lack of financial prudent while trading on National Spot Exchange (MMTC & PEC) – Reply for PEC

Audit Para	Ministry Reply	Management Reply	Vetting Remark's of Audit	Comments of Department of Commerce(Based on the reply from PEC)
<p>'Buy' and 'Sell' were done simultaneously with no supporting documents of title to underlying goods. Actual tendering of documents of title to goods covered by contracts was absent though each buying and selling transaction was to be settled on 'trade to trade' basis resulting in compulsory delivery as per terms and conditions of NSEL on settlement procedure. Such delivery logic would involve physical verification of stock by the companies.</p>	<p>DoC has no further comments in the matter.</p>	<p><u>PEC,s Reply</u> Against all the purchases of commodity, PEC was given a Delivery Allocation Report (DAR) by NSEL providing details of Lot no., Warehouse Receipt no., Weight and Warehouse Location etc. which is a clear evidence that the trade was backed by physical goods which were in the custody of NSEL. The tendering of goods to the buyers of the commodity was also ensured in DAR which contained stipulation that <u>"We confirm that, the warehouse receipts are in our custody. It is clearly understood that the ownership of the commodities against the said warehouse receipts lies with you till the warehouse receipts will be tendered against your commodity pay-In obligation."</u> An e-platform/Exchange does not</p>	<p>Reply of the management is not tenable as delivery allocation report (DAR) is not the document of title. Physical verification of commodities should have been conducted in the light of the fact that FMC in its show cause notice to NSEL highlighted that NSEL does not have a stock checking facility for validating a member's position. However the management choose to rely on the assurance of the NSEL that the physical quantity were made available by the concerned members as per agreed specifications, quantities and quality.</p>	<p>Exchange provides electronic system of Member Interface (EMI) in order to enhance efficiency, speed, accuracy and convenience in submission of report by the exchange to all its members. Accordingly, Delivery Allocation Reports were provided to be downloaded through this web based application i.e. EMI for which the exchange has provided the user ID and password. Further, according to clause 7.2 of the Members agreement, the exchange shall provide to the members trade confirmation, reports and other information through electronic means and that <u>"all information contained therein shall be binding upon the members"</u>. Further as per clause no. 7.7 of the same agreement the exchange own</p>

		<p>provide for physical tendering of document of title. Rather electronic confirmations are provided for the transactions. Similarly, the trades conducted on the electronic platform of NSEL was always settled by the exchange as per trade settlement calendar issued by NSEL for which exchange provided confirmation of each buy/sell trade in the form of Delivery allocation reports, advices for fund settlement through settlement account with NSEL, and by providing particulars/invoices of buyers/sellers. As per membership agreement & bye laws of exchange, these electronic confirmation/records shall constitute valid and binding evidence between and among the exchange and their members.</p> <p>While dealing with the Exchanges, it is fully assured that the physical quantities are made available by the concerned members as per agreed specifications, quantities and quality. In the Exchanges, buying and selling by the members may be done from a far off place, for example a person sitting in Himachal Pradesh can buy red chillis in Guntur on the assurance that Exchange will notify quantities purchased by him before it is sold by</p>		<p>records of the trade/transaction maintained through computer system or otherwise shall be deemed conclusive and binding on the members for all purposes. Furthermore Clause no. 3.5 of bye laws provides that the record of the exchange maintained in electronic form "shall constitute the agreed and authenticated record in relation to any transaction entered into or executed through it."</p> <p>PEC has stated that the said show cause notice of FMC to NSEL was never in the public domain. The said internal communication came out only after suspension of business by NSEL. Further, no external agency ever indicated directly/indirectly any type of irregularities in NSEL trade.</p> <p>The trading mechanism of NSEL was backed by the Govt. of India notification, FMC supervision, Rules & Bye laws and detailed contract specification of exchange which strengthen management confidence on NSEL's credibility and to trade on NSEL platform.</p>
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		<p>him through another trade on the Exchange. This is one of the major advantages of using exchanges as trade platform. In view of the above the trading parties are not required to physically inspect the goods due to full assurances and counter party guarantee provided by the concerned Exchange. Members are, therefore, not required to do any physical verification mainly due to the concrete back up of trade from the exchange on quantity/quality etc.</p>		
<p>Increasing the financial exposure limit by 5-25 times within as small span of time without any risk analysis was against ordinary financial prudence.</p>	<p>DoC has no further comments in the matter.</p>	<p>The exposure limits were enhanced periodically with due clearances of the approving authority i.e. Committee of Management (COM) on the complete & satisfactory utilization of existing limit and with a view to tap further risk free arbitrage opportunities available in the market based on the same strategy . The strategy adopted worked satisfactorily & advantageously at the time of extension & provided better results as compared to normal trade of the organization.</p> <p>PEC started the business with NSEL in year 2010 and traded in various commodities at different locations weighing in thousands of tonnes. The extension of exposure limit to Rs. 250</p>	<p>Had the enhancement done in risk free trade with due diligence and a well throughout scheme when the management would not have been in a position of losing Rs. 123 Crores.</p> <p>Management conveniently overlooked the risk involved in NSEL trade, despite show cause notice issued to NSEL by FMC highlighting the various irregularities and its further ramifications.</p>	<p>Exchanges are considered as a risk mitigation platform which provides their participants to eliminate various risk in terms of quality, quantity and counterparty risk.</p> <p>The enhancement of risk free trade limit was done on the basis of past performance & experience of trading on NSEL platform which were found satisfactory at that point of time.</p> <p>FMC's show cause notice to NSEL were never in public domain and this was revealed through media reports only after the news of scam broke out.</p>

		<p>Cröre was lastly done vide COM meeting on 30th Nov.2011 in pursuance of which PEC achieved remarkable results in terms of turnover and profits.</p> <p>Further, the trade done since 2010 was settled in a timely manner and no instance of non-delivery/non-payment was reported / notified to PEC by the exchange. Even, for the F.Y. 2013-14, the trades were successfully honored till the day of Suspension of trade by NSEL i.e. 31-07-2014, and PEC received all due settlement proceeds on respective pay out date and no uncertainty or irregularity came in the knowledge of PEC through any agency.</p> <p>Also during the MOU negotiation meeting for year 2007-08 high powered task force committee advised PEC to carry out study on "trading in futures" and an initial target of Rs. 11 crore for NSEL trading was given to us. The targets provided under MOU meeting for the year 2010, 2011, 2012 & 2013 has consistently included business through NSEL. Even for the year 2013-14, PEC has been allotted a target of Rs.150 Crore for the</p>		
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		<p>business transaction through NSEL.</p> <p>The enhancement, therefore, was done after due diligence and a well thought out scheme and necessary approvals, due to the risk free nature of the trade and past track record.</p>		
<p>The Companies neither took any insurance cover for the commodities traded by them on NSEL nor requested, NSEL for a copy of insurance undertaken by it. It was only after the default, that the Companies requested the Exchange for the insurance documents of unsettled trade.</p>	<p>DoC has no further comments in the matter.</p>	<p>As per the terms of the contract it is stipulated that the cargo would be stored in the custody of exchange and NSEL would be responsible to get the cargo insured. The commodity & warehouse management was always within the purview and responsibility of the exchange. Exchange had prescribed a detailed procedure, conditions and norms of deposit which covers quality analysis of commodity by the quality certifying agent based at the exchange warehouse. The delivery aspect was always lying on NSEL as exchange took the responsibility for hiring and managing the warehouses and also certified grading, and quality of the commodity.</p> <p>As far as PEC is concerned the entire responsibility/Risk of loss to cargo rested with NSEL hence the exchange was covering themselves with the appropriate insurance cover and guaranteed timely pay-out to</p>	<p>The management neither itself took insurance nor insisted for copy of insurance from NSEL. Had the management gone for insurance of the goods the trading model of NSEL could have been exposed much earlier?</p> <p>As the management paid for the goods purchased the insurable interest was that of the management.</p>	<p>PEC has stated that as per prevailing practices in India, Exchanges take the required insurance cover to secure their warehouse /commodity settlement.</p> <p>The regulator or exchange rules & bye laws do not make it obligatory on its members to take insurance for trade quantity.</p> <p>Since, NSEL was responsible for collecting, weighing, quality inspection, further storage of commodity and to guarantee the settlement for commodity sold on its platform, the NSEL was required to take the relevant insurance/ security for commodity lying in there warehouse.</p>

		<p>PEC.</p> <p>Moreover, as evidenced in a particular warehouse receipt issued against PEC's trade, where insured value being shown as Rs. 138.18 crore for a trade lot of 15 MT, against the risk of fire, and burglary, it is inferred that an open insurance policy has been taken by the exchange.</p> <p>The exchange had the insurable interest as they were the guarantor of commodity movement and warehousing. PEC and other members were, as it is, assured of their payments by the exchange and were automatically covered by the insurance cover taken by the exchange.</p> <p>Therefore PEC was not required to take additional insurance cover for the same lot of commodity separately.</p>		
<p>The companies never tried to ascertain the counter party details with whom they were entering into trade. An independent and credible assessment of the counter parties was required.</p>	<p>DoC has no further comments in the matter.</p>	<p>All commodity exchanges in India provide an online screen based trading platform where Exchanges stand as a <i>guarantor</i> to ensure that the contract is settled by delivery by Seller and payment of price by the Buyer. In this sense there is an implied <i>tripartite</i> contract in which parties traded with invisible</p>	<p>Reply of the management is not tenable and it has accepted that in the trading with NSEL, the counterparties were invisible. Management did not contemplate an independent and credible evaluation and assessment of the parties with whom they</p>	<p>Exchanges admit a new member after satisfying their procedure & norms like net worth requirement, capital adequacy norms, fees, deposits, etc., as defined in accordance with their Rules & Bye laws, The criteria of selection is applicable on all the members / traders.</p>

		<p>counterparties with the intermediation of exchanges who handled payment, delivery and warehousing of goods for a margin of commission and transaction charges. Further, Exchanges also collect margin money from both the Buyers and the sellers before allowing parties to enter into the trade.</p> <p>Exchanges in India admit a new member and introduce them to their trading platform as per their defined and approved due diligence procedures. The existing members are never intimated or consulted before any new member is allowed to take part in the trading. As per the settlement procedures of the exchanges it is only at the conclusion of the contract when the parties actually traded at exchanges platform come to know the details of each other.</p> <p>Hence, the parties are exposed only to exchanges and always deal with them for the trade settlement. The exchange is the counter party for the trader who is responsible to mitigate the credit risk involved and cover for the counter party risk of the trade. An independent assessment of the</p>	<p>were entering into trade. This was a great risk which was overlook by the management.</p>	<p>Moreover, exchange provides an on line trading platform to their members where buyer & seller are not known to each other while executing the trade. Hence PEC or other members do not have any liberty to choose upfront his counter party before executing the trade. It is only at the settlement of buying & selling transaction where the details of contracting parties were shared by NSEL with each party.</p> <p>Above systems eliminate the counter party risk & due diligence check on part of member.</p>
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		counter parties is neither feasible nor needed as all parts of trade execution, trade settlement and related communication is done through/with the exchange itself.		
		<p>It is again reiterated that PEC have done bonafide business transactions on NSEL and is one of the victims of the fraudulent business practices of NSEL management. Following chronological events have taken place in this case;</p> <p>i) NSEL vide their letter dated 12.8.13 have admitted the total outstanding of Rs. 123.39 Crore to PEC and had undertaken to pay it back to PEC in due course.</p> <p>ii) On July 31, 2013, Exchange suspended the trading and postponed the settlement of all one day forward contracts. On 06th Aug, 2013, FMC was appointed to supervise settlement of all unsettled contracts. On 11.10.2013, PEC filed a Criminal Complaint with Economic Offence Wing, Delhi. PEC had also filed a suit against NSEL/FTIL/ Jignesh Shah/other defaulters for recovery of approx. Rs. 126 crores in Mumbai High</p>	Factual & Futuristic, hence no further to comments to offer.	

		<p>Court on 30.10. 2013. The matter is being pursued vigorously and legal process is fully underway against NSEL and defaulters in PEC's case as well as other cases filed by other Investors, MMTC, etc. Justice S.C. Gupte has also appointed a 3 Member Committee headed by a retired Judge V.C.Daga for finalizing methods for liquidation of attached properties.</p> <p>iii) FMC vide its order dated 17-10-2013, has already taken a hard steps against FTIL, the promoter company of NSEL, and 3 of their directors by declaring them not "fit & proper" for their alleged involvement in the NSLE scam. Further, SEBI vide their order dated 19-03-2014, has taken similar action against FTIL.</p> <p>iv) All the investigation agencies like Economic Offence Wing, Mumbai, Enforcement Directorate, Forward Market Commission, CBI & Mumbai High Court, have already established the defaulters and their properties have been attached. Economic Offence Wing, Mumbai</p>		
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		<p>(EOW) has attached more than 200 properties, belonging to defaulters/promoters/directors of NSEL, estimating value of Rs. 5200 Crore. Enforcement Directorate (ED) has also attached properties worth approx. Rs.500 crore in connection with the scam. The modalities of liquidation of attached assets are being worked out at all levels and full relief to all the victims of this large volume fraud is expected.</p> <p>v) Recently, Govt. of India has also proposed to merge NSEL with the FTIL, its parent company, in public interest. A draft order has already been issued in this regard. The merger shall speed up the process of recovery of pending dues of the investors.</p> <p>vi) Since the case is progressing fast and the defaulters have been identified and also as adequate properties of the defaulters have been attached, the outstanding amounts are likely to be realized as soon as the legal process is over.</p> <p>The above is submitted for the kind</p>		
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		perusal of the respected authority and it is requested that above explanation along with the order/reports of various different govt. bodies/court may please be consulted before forming a concluding remarks on the matter.		
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Action Taken Report on observation dated 27.04.2016 of C&AG regarding MMTC's equity investment in SIOTL.

Para No.	Extracts of CAG's observations pertaining to MMTC	Action Taken	Further remarks of Audit	Action Taken	Further remarks of Audit	Fresh comments of MMTC	Views of Department of Commerce
2.5.3	<p>Non-Current investments included an amount of Rs.33.80 crore being 26% equity investment in joint venture Sical Iron Ore Terminal Ltd. (SIOTL). Due to restrictions imposed in view of Supreme Court decision on mining, transportation and export of iron ore, the project completed in November, 2010 could not commence commercial operation. The SIOTL in its books had not capitalized the above project, resultantly, all administrative costs and financing costs after November,</p>	<p>SIOTL has been persistently following up with Kamarajar Port Ltd (KPL) / Ministry of Shipping for granting approval for conversion of the SIOTL Terminal into coal unloading facility and there are some positive developments on this front. Keeping this in view, expenses continue to be booked to CWIP account. Hence, there is no change in the accounting status.</p> <p>It is pertinent to mention here that in order to discuss the proposal of SIOTL for conversion of their facility into coal handling, a meeting was held under the Chairmanship of Shri Nitin Gadkari, Hon'ble Minister of Road transport Highways & Shipping on 24.04.2015. In this regard, a copy of Record Note of Discussions (RND) of the said meeting forwarded by the Ministry of Shipping vide their letter dated 15.05.2015 is</p>	<p>Even after lapse of about five years from completion of the project, no approval has been given by the Ministry for conversion of the facility into coal handling facility.</p>	<p>Ministry of shipping has already given approval for conversion of SIOTL iron ore berth into coal handling facility. KPL is completing the bidding process for conversion of the above facility into handling common user coal.</p> <p>SIOTL vide their letter dated 17.12.2015 (Copy enclosed) has informed that KPL have sought Deed of Undertaking from SIOTL for facilitating finalization of the above process, enable, SIOTL to exercise 'first right of refusal', amendment in the existing license agreement. Complying with terms of KPL etc. SIOTL in turn has requested all its Directors/shareholders to furnish the resolution in the format prescribed by KPL expressing their assent / dissent on the said resolution.</p> <p>MMTC is in the process of seeking guidelines from its Board of Directors on the issue of furnishing the Deed of Undertaking to SIOTL/KPL.</p>	<p>No approval of Min of shipping for conversion of SIOTL iron ore berth into coal handling facility was produced to Audit (11.02.16).</p> <p>Post facto approval of FMCOD of MMTC was given on 20.01.16 to SIOTL for deed of undertaking as sought by KPL. Till date of ATN (18.03.16, no approval of BoD was there.</p> <p>Further as informed by management, SIOTL submitted request for proposal with KPL on 20.01.16. However, operator of another existing coal berth at KPL namely, M/s Chettinad, who was disqualified at RFQ stage, has obtained stay order from High Court and secured permission from the court to file RFP documents. The court granted the stay. Hence, the matter is now sub-judice.</p>	<p>MMTC placed the status of the SIOTL JV before its Committee of Board of Directors on subsidiaries, JVs & Associate Companies in its meeting held on 05.04.2016 wherein among others, the issue of submission of Deed of Undertaking by SIOTL to KPL was also informed and the same was noted by the said Committee of Directors.</p> <p>Recently, Madras High Court has vacated the stay order obtained by M/s. South India Corporation (Chettinad). M/s. Kamarajar Port Ltd. (KPL) and M/s. SIOTL have filed applications for obtaining copy of the judgement order, in this regard.</p> <p>In the meantime, M/s. KPL have issued a letter dated 02.06.2016</p>	<p>MMTC's reply on the subject may be accepted.</p>

	<p>2010 were still being booked in Capital works in Progress (CWIP) and no depreciation was being provided for. Had these costs been transferred to Profit & Loss Account, the net worth of the SIOTL would have completely eroded by 2013-14.</p>	<p>enclosed for ready reference.</p> <p>It may be observed from the RND that the union Govt. may invite fresh bids with 52.52% as the reserve revenue share with First Right of Refusal to SIOTL who have invested in the construction of the Terminal. During the discussions, protecting MMTC's 26% stake in the SIOTL while fixing the up-front payment during bidding process was also emphasized. It was also decided for the purpose of bidding to appoint SBI Caps, Mumbai to assess replacement cost of the existing iron ore terminal.</p> <p>In line with the above decision, KPL has issued an advertisement on 22.06.2015 'Requesting for Qualification' in "Indian Express" and "Business Line", copy enclosed.</p> <p>Further, we have been informed that a tripartite meeting was held in KPL, Chennai between KPL, SBI-Caps and SIOTL on 25.06.2015, wherein the basis for arriving at the replacement cost was discussed. It is also</p>				<p>addressed to SIOTL stating that SIOTL is selected as a preferred bidder for modification of existing iron ore terminal to also handle coal at KPL on DBFOT basis with revenue share of 52.524% (copy enclosed).</p>	
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		understood that SBI Caps is working on the replacement cost, which is expected to be made available shortly.					
2.5.3	Short Terms Loans and advances were overstated by Rs. 19.29 crore (including Rs. 2.74 crores deducted towards interest on excess payment made by GOI) being the claims recoverable on account of import of pulses under 15 percent scheme of GOI, which had been disallowed by the Ministry of Consumer Affairs.	The amount of Rs. 19.29 crores relate to 15% loss on sale of pulses imported under the GOI India Scheme upto 31.3.2011, but sold after 31.3.2011. In this regard, it is clarified that Ministry of Commerce & Industry, vide letter No. 17/10./2009- FT(ST) dated December 31, 2104 had conveyed that in a meeting held under the Chairmanship of Secretary (Coordination) on 16.12.2014, after deliberations, It was decided inter alia to recommend reimbursement of losses on actual basis for all imports undertaken by PSUs under 15% Scheme and that Department of Consumer Affairs will seek approval of CCEA for the same. Further, the claims for import of pulses for which contracts were entered into before 31.3.2011, but disposal took place after closure of the Scheme , will also be considered for reimbursement subject to the approval of the CCEA. In view of the decision of the GOI taken after review of all the facts,	Till August 2015, the note for seeking approval of CCEA regarding reimbursement of losses on actual basis has not been moved by the Ministry,	In this regard it is to be stated that the Ministry of Consumer Affairs vide letter dated 01.10.205 (copy enclosed) has conveyed that Cabinet, in its meeting held on 02.09.15 has approved the proposals for enchaining the reimbursement limit of losses from 15% to 20% of the landed cost and the validity period of scheme to extended to cover up to 30.9.2011 relevant claims have been lodged by MMTC with Department of Consumer Affairs.	MMTC in pursuation to the Ministry letter dated 01/10/15 has lodged claim of Rs. 27.78 crore for difference between the admissible claims @20% and lodged claim @15% from 2008-2011 and claim of Rs. 12.19 crore @20% losses on sale of pulses made during 01.04.2011 to 30.09.2011 though imported upto 31.03.2011.	The Secretary, M/O Consumer Affairs Food and Public Distribution vide D.O. No. 2(2)/2015-PMC/Pulses dated 1.10.2015 and 9.12.2015, has informed that Cabinet has approved raising the reimbursement limit of losses from 15% to 20% of the landed cost for the sale of imported pulses carried out by the PSUs during the period 2006-07 to 2010-11 under the 15% subsidy scheme. Government has also approved 20% subsidy for the pulses sold up to 6 months after the expiry of the scheme (i.e. upto 30.09.2011). Accordingly MMTC lodged both the claims on 14.12.2015 duly signed by MMTC's auditors. The subsidy claim for the period 2008-09 to 2010-11 is based on the audit report of Ministry of Expenditure to the tune of Rs.27.78 crores. Since the accounts for the above period have	MMTC's reply on the subject may be accepted.

		<p>there is no ground to believe that the Short Term Loans and Advance were overstated by Rs. 19.29 crors. Therefore, the comments of C&AG needs to be withdrawn/ dropped (Copy of letter dated 31 Dec.2014 enclosed)</p>			<p>already been audited, there will be no delay in reimbursement balance 5%, subject to availability of funds with government. Till date, MMTC have received an amount of Rs.2.50 crores (on 01.01.2016) and Rs.7.97 crores (on 21.01.2016) totaling to Rs.10.47 crores out of Rs.27.78 crores and balance Rs.17.31 crores is pending and would be received on budgetary provision in the M/o Consumer Affairs.</p> <p>As regards, the subsidy claim for the extended period i.e. upto 30.09.2011, the same has been preferred on the basis of claims submitted by ROs duly signed by their auditors to the tune of Rs.12.19 crores.</p> <p>As regards, subsidy for the extended period from 1.4.2011 to 30.9.2011, Deptt. Of Consumer Affairs has informed that the payment would be made from BE 2016-17 and the audit of the same</p>	
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						is being done by Department of Expenditure.	
2.9	No fraud and Risk (inefficient fraud risk policy/whistle blowing policy)	Fraud and Risk Policy- Draft policy was submitted o the Board. The Board of Directors in its meeting held on 11.3.2015 after deliberation directed that the policy be got vetted by an independent expert to ensure consistency with similar such policies already in force in MMTC and proposal be re-submitted after incorporating necessary changes suggested by the expert. Vetting of the policy by an independent expert is under process.	Factual no further remarks.	In compliance to the directions of Board of Directors in its meeting held on 11.3.2015, enabling the FPC-Fraud Prevention policy got vetted by an Independent expert to ensure consistency with similar such policies already in force, M/s, K.G. Somani & Co. Chartered Accountants, were entrusted with the job for review n suggestions, additions/alternations. The FP Policy duly verified & vetted by the independent expert was submitted for consideration of the Board of Directors in its 420 th meeting held on 13.11.2015. After deliberations Board has approved draft Fraud prevention Policy (FPP) , as vetted by Consultant M/s. K.G. Somani & Co. Chartered Accountants for implementations with immediate effect. The Policy, inter ala provides that respective Regional Heads shall as “Nodal Officer” for Regional Office including Sub-Regional Offices’ under their charge at Corporate Office, concerned Directors have to nominate a “Nodal Officers” in respect of their respective Directorates. The Nodal Officers (s) at Regional Offices(s) shall report to its Nodal Officer of Corporate Office of the concerned Directorate under the Director (in-charge) of the Regional Office. Besides as per the policy, the Competent Authority (Director concerned at CO and RO Head at RO) concerned has to notify the name and	The Fraud prevention Policy (FPP) has been approved in 420 nd meeting of Board of Directors which was held on 13.11.2015 and also placed on intranet. However, the Ministry reply is silent regarding whistle blower policy.	The MMTC fraud prevention policy (FPP) was approved in 420 th meeting of Board of Directors’ which was held on 13.11.2015 and placed on MMTC intranet vide office order dated 11.12.2015. The whistle Blower Policy (WBP) was approved in 393 rd meeting of Board of Directors’ which was held on 10.02.2012 and placed on MMTC intranet vide circular dated 13.03.2012. Copies of policies are enclosed for reference and record.	MMTC’s reply on the subject may be accepted.

				<p>designation of link Nodal Officer who will discharge the duties and responsibilities of Nodal Officer during his/her leave.</p> <p>The FP policy has been placed on intranet for the information of all concerned vide O.O. No. IR/22/2015 dated 11.12.2015.</p> <p>The policy shall be reviewed by the Board after a period of one year along WPF feedback.</p>			
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Reply –C&AG Para 5.1 of Report No. 13 of 2013 regarding –“Non recovery of dues to lapses in bullion transactions and camouflaged accounting

Advice Given by DOC	Action Taken	Further remarks of Audit	MMTC'S Reply	Views of Department of Commerce
1) A Board level sub- committee may be constituted by MMTC to monitor and recover all the dues outstanding to MMTC on monthly basis.	As advised, a Board Level Sub-Committee consisting of Director-Precious Metal, Director, Finance Director (Personnel & Law) & CMD to monitor and recover all the dues outstanding to MMTC on a monthly basis has been constituted and first meeting was held on 4 th January, 2015.	Instead of constituting a separate Board level Sub Committee, the company (MMTC) has been monitoring the position of outstanding dues through a high level Functional Management Committees of Directors (FMCOD) w.e.f. January, 2016 onwards. Subsequent meetings of the Committee were held in the months of February & April 2016. During the second meeting of the FMCOD held on 17 February 2016, the Committee advised precious Metals Division to update the Ministry of Commerce on the case in respect of comments of CAG para 5.1 of Report No. 13 of 2013 whenever there is change of any further development on the previous status communicated to the Ministry.	Factually correct, all the cases are being pursued vigorously, Also opinion has been obtained from ASG (Attorney Solicitor General) and advised actions are being taken.	MMTC's reply on the subject may be accepted.
2) All Civil suits as well as criminal cases (for cheque bouncing under section 138 for the NI Act) must be vigorously monitored by the board level sub-committee.	All cases are being monitored by the Board Level Sub-Committee.	It was further noticed that all the cases mentioned in the Para are Sub-Judice and recovery of the outstanding amount will depend on the decision of the respective Court.		
3) Expeditious conclusion of disciplinary proceedings	Disciplinary committee has been	Factual, hence no further comments	No comments	

against suspended officials to act not only as deterrent, but also a punishment for not protecting the company's interest during bullion high value transactions.	advised to expedite the process of disciplinary proceedings.			
4) Adequate measures to implement rotation policy of sensitive seats to be put up in place in sensitive department so that procedures are not given a go by.	The committee directed personnel Division to reiterate its earlier direction to all Regional Offices regarding transfer of all officials who have completed more than 18 months posted in Bullion Division also instructions has been issued for strict compliance in this regard.	The FMCOD in its 217 th meeting held on 1 st April, 2016, after deliberations directed that: <ul style="list-style-type: none"> • All officers working in PMD at ROs shall be moved to handle other products after 18 months. However, with justification, RO Head may give extension upto maximum 36 months. RO Heads are authorized to inter transfer officials within the Regional Office. • In exceptional circumstances, the tenure can be extended beyond 36 months with the approval of Director(P) and CMD. 	Factually correct	
5) MMTC should report the progress of the above suggestions to the ministry on a monthly basis.	Noted, the report of the progress will be sent to MOC on monthly basis.	The MMTC has to report the progress to the Ministry on the monthly basis but it is noticed that the progress reports for the month of January & February 2016 were sent to the Ministry in the subsequent months but after that the progress report till May 2016 was sent to MOC only in June 2016.	FMCOD held on 17 th February 2016 advised Precious Metals Division to update the Ministry of Commerce on the case in the respect of comments of CAG para 5.1 of Report No. 13 of 2013 whenever there is change of any further development on the	

			<p>previous status communicated to the Ministry.</p> <p>In the view of FMCOD instructions it was seen that there was no major update in the legal status. Further enquiry report from disciplinary committee were in process and regarding rotation policy, personal division was also in process of issuing instructions. As such there was no major update and hence the report was not sent.</p>	
<p>6) It is requested to furnish action taken report in respect of the following :-</p> <p>i. 6 MMTC officials who have been suspended and disciplinary proceedings are conducted against them for act of omission and commission in the said transactions at RO Chennai and R.O. Hyderabad.</p> <p>ii. The CBI has also conducted a detailed enquiry and their final report has been reported</p>	Action taken report enclosed.	Factual, hence no further comments	No comments	

submitted recently.				
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Statement

C & AG Para 5.1 of Report No. 13 of 2013 regarding “Non recovery of dues to lapses in bullion transactions and camouflaged accounting”.

S.No.	Further remarks of Audit (CAG)	Further 2 nd reply of MMTC	Further remarks of Audit	Further fresh reply by MMTC
10	Ministry has confirmed the fact of the case, which vindicate the audit observation. Further, MMTC filed civil suit before the Hon'ble High Court of Madras on 07.03.13 claiming an amount of Rs.173.21 crore (Principal) Rs 98.23 crore and interest Rs 74.98 crore) from M/s SSS. The argument for both side relating to arbitration were completed and Hon'ble High Court of Madurai bench allowed the petition of defendant.	The case came up on 28/10/14 before first bench of Chief Justice of High Court of Madras and after elaborated arguments Court directed both the parties to go for Arbitration. Accordingly, the filing SLP in Supreme Court with the following prayer being filed. (a) Grant an order of interim stay restraining the Respondents(M/s Shiv Sahai & Sons) from prosecuting the arbitration proceedings before the Indian Council for Arbitration against the Petitioner till such further orders ; (b) Pass any further orders this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.	The special Leave Petition (SLP) was filed in Hon'ble Supreme Court on 24.02.15 and the stay on arbitration was granted.	Factual, no comments.
13	The reply is not tenable as the Management is responsible for the design, implementation and maintenance of internal control relevant to the preparation and presentation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error. Due to lack	Company accounts are subject to the audit by Internal Audit, Professional Internal Audit, Statutory Audit appointed by CAG, and supplementary audit by CAG. In their audit reports such gravity was not reported so Management had no reason to doubt audited and certified accounts of R.O Chennai. The observation made in the audit	The reply is not tenable as from time to time, statutory auditors and internal auditors had drawn attention to the facts relating to internal control weakness in reconciliation of party ledger, foreign exchange exposures, rotation of staff, operating	The observations are general in nature. The internal control system is further strengthened by increasing frequency of internal audit from half yearly to quarterly. Now concurrent

	<p>of internal control in the company there was ample of scope of camouflaged /erroneous accounting entries in the books of accounts.</p>	<p>report were general in nature and such observations were received from many other Regional offices. However, such general observation did not draw management attention to any specific instance of actual financial loss to the company.</p>	<p>of suspense accounts (under various account codes). Thus, the management had failed to take timely action. Statutory auditors stated in their audit report for the year 2013-14 that balances under sundry debtors/claims recoverable/loans and advances/sundry creditors/other liabilities</p>	<p>auditors are also required to submit the report on fortnightly basis. Special audit is also conducted of Bullion transactions.</p>
	<p>Further, the Statutory Auditors and internal auditors in their report reported from time to time the following inadequacies and anomalies in the internal control system: 1. In adequate internal control system in obtaining conformation of outstanding balances and its periodic reconciliations (repeated since 1995-96 till date) (CO & Chennai Statutory / Branch Auditors).</p>	<p>The company has a system of seeking confirmation of balances from debtors at the end of the year. However in most of the cases confirmations are not specifically received. This factual position has been disclosed in the notes to accounts.</p>	<p>in many cases have not been confirmed and consequent reconciliation/adjustments, if any, required upon such confirmation are not ascertainable. Further in their audit report for the year 2013-14 (CARO 2003) that the internal audit functions carried out by external internal Auditors and internal audit department needs further improvement in terms of quality and scope so as to make it fully commensurate with the size and the nature of its</p>	<p>Regarding balance confirmation for sundry debtors/claim recoverable etc. confirmation letters sent and no adverse communication has been reported.</p>

			business.	
	<p>2. Internal audit system needs to be strengthened further (reported by CO Statutory Auditors in 2009-10 till date)</p> <p>3. Rotation of Jobs on the operations being carried out where the magnitude of the transactions is very high. However such rotations are not affected in any of the transactions is very high. However such rotation are not affected in any structured manner or under any laid down policy (reported by statutory Auditors in 2009-10)</p>	<p>The company has further strengthened the internal audit system by posting its own officials at the Regional offices in addition to internal audit by external CA firms.</p>	<p>It was further commented that as regards the purchases and sales of goods, inventories and stocks that are dealt with by the company including domestic bullion transactions it needs further strengthening in such a manner so as to avoid delay in updation in ERP system vis-a-vis actual date of transaction and similarly, manual generation of invoices could be avoided.</p>	<p>Recently RMS software was audited by the system auditors. Manual delivery challans are issued only in exceptional cases with the approval of CO.</p>
	<p>4. Risk management particularly at foreign exchange exposure and its subsequent documentation/ record keeping and also time to time monitoring of the risk to the company (reported CO statutory Auditors in 2011-12 & 2012-13).</p> <p>5. Back dated entries before the closing of a particular month can easily be made in the ERP system (reported by CO statutory Auditors in 2012-13).</p> <p>6. Internal Auditors (RO Chennai) reported in its Audit Report for half yearly ended</p>	<p>The Scope of internal audit has been widened with quarterly audit. The company has also brought out Internal audit manual, Accounting Manual, Risk Management Policy, Business drill & internal control manual etc. The management has already taken decision to replace the ERP with a latest & vibrant ERP System.</p> <p>Measures taken by the company were already stated in our reply (1 to 19) to further strengthen the internal control system.</p>	<p>Compliances to Risk Management Policy and Business drill cum internal control manual will be watched in audit.</p>	<p>No Further Comments</p>

	30.9.09/30.09.10 that ERP accepts back date entry.			
	7. RO Chennai Internal Audit Report (Sept 10) stated that unreconciled credit balance lying in HO suspense A/C – Rs. 13.11 crore, Sundry creditor vendor suspense for Rs. 0.14 crore and Customer Suspense A/C for Rs. 0.09 crore as on 24.12.2010.	Officials of precious metals division are rotated every 18 months Wef Dec 2012.	Instruction of CO is not being scrupulously followed by ROs.	Only in a few exceptional cases
	8. Internal Auditor (RO Chennai) reported its Audit Report half yearly ended 31.03.10 that unreconciled debit balance lying in sundry creditor vendor suspense (Rs. 54.48 crore) and HO suspense A/C (Rs. 33.41 crore) as on 31.05.2010. 9. Internal Auditor (RO Chennai) reported in its Audit Report – March 2011 that unreconciled debit balance lying in sundry creditor vendor suspense (Rs. 1.01 lakh), HO suspense A/c (Rs. 39.82 crore) and Customer suspense A/c for receipts (Rs. 1.27 crore) as on 31.03.2011.			
	10. Internal auditor (RO Hyderabad) reported its Audit Report for quarter ended 31.12.11/31.03.12 that the	It was also directed that all bullion transaction (gold & Silver) under OGL/DTA must be routed through BTS Module in ERP System. Under	In RO Chennai, one manual delivery challan was made in August 13 with the approval of	Manual Delivery challan were issued in the event of technical problem

	<p>manpower deployed in finance needs to be strengthened, preferably having BTS knowledge at Manager/Sr. Manager Level.</p> <p>11. After being pointed out by GAP in April 2013, about the inadequacy of manpower in the internal audit department at Hyderabad, management had confirmed that there is only one DGM(IA) available on regular basis. But other officials from F&A side are also assisting him in discharging his duty as internal and concurrent auditor.</p>	<p>No Circumstances bullion transactions shall be carried out outside BTS nodule of ERP systems & implementation of maker checker concept in ERP systems is made with effect from July 2012.</p>	<p>Competent Authority. In RO Hyderabad, nineteen manual delivery challans were made during the years 2013-14 and 2014-15 with the approval of competent authority.</p>	<p>in ERP/System. All the manual deliveries were made with the approval of Competent authority. Each Manual delivery is updated in the system as soon the system/ ERP Problem is resolved.</p>
15	<p>Reply of the Ministry is factual.</p> <p>Further the annexure stated in the reply were not enclosed with ATN. Hence no further comments.</p> <p>From the reply of the Ministry, it is confirmed and accepted that the management was operating suspense accounts in the books of accounts. Further it is confirmed that the fixed deposit were in vendor account instead of fixed deposit account. Financial statements of ROs are submitted to the Central</p>	<p>The annual accounts submitted by RO, Chennai were duly certified by the branch statutory auditors appointed by C&AG. In the certified annual accounts sent to Corporate office , no amount was appearing separately in the suspense account. This factual position has already been stated in our earlier reply. In the main accounts and schedules which were duly certified by the branch statutory auditors and also checked by GAP, suspense account was not separately shown. Further, there was no adverse comments by branch statutory auditors on this issue . At</p>	<p>Internal auditors and Branch Statutory auditors reported in their reports from time to tome about the operating of suspense accounts, unreconciled suspense accounts, lack of confirmation/reconciliation of balances etc.</p>	<p>Factual position in the matter was explained in our earlier reply. Suspense account was not shown in the account of R.O Chennai which was duly audited by the auditor</p>

	<p>Accounts Section at the corporate office level for consolidation.</p> <p>So the management at CO level was aware that the ROs were operating suspense accounts.</p>	<p>Corporate Office the certified accounts by branch auditors were only consolidated.</p>		
16	<p>The reply of the Ministry is not tenable because the responsibility for prescribing the internal control system (which includes Internal Audit and system of internal checks) is of the management. Auditors have to express an opinion on the adequacy of the same. This was suitably expressed by various auditors as brought out in the previous paras. Further, the Ministry has accepted that irregularities were on the part of the management. Financial statements submitted by respective ROs to CO are received and consolidated by the Central Accounts Section.</p>	<p>Audited accounts of RO Chennai & other Regional Offices are consolidated at C.O. There was no adverse comments by branch auditors of RO Chennai during 2007-08 to 2010-11 which could have attracted the attention of Corporate Office. Since there was no adverse reporting by branch auditors of R.O Chennai/ Professional internal auditors, the irregularities remained un noticed mainly mainly on account of commission & omission on the part of the officials.</p>	<p>Same as above.</p>	<p>No Further Comments</p>
18	<p>Executive summary (annex-I) as stated in the ATN was not enclosed. However, in December 2006, the company instructed that each transaction should be settled on transaction to transaction basis and treated as separate and carry forward of</p>	<p>Executive Summary (Annex. I) enclosed. RO official did not properly follow the instructions and action has been taken against the defaulting officials.</p>	<p>Ministry has confirmed the fact of the case, which vindicate the audity observation. As per bullion drill, it was inter-alia prescribed that while carrying out bullion transactions, bullion drill</p>	<p>As mentioned earlier at R.O. Level instructions were not followed and action has been taken against defaulting officials by MMTC.</p>

	balance be avoided. In March 2008, Finance Division instructed that all MMTC locations to keep the foreign exchange position against buyers' credit fully hedged. Hence, the company violated their own instruction issued in March, 2008.		and instructions of CO/F&A/Internal Audit from time to time may be referred. Hence the company violated their own instructions issued by Finance Division at Corporate Office in March, 2008. Moreover, the executive summary of updated procedural dirll of May 2009 incorporated that position of foreign exchange in regard to payment to foreign supplier should not be kept open.	
22	Ministry's reply is factual. However, as stated in the reply, no annexure were found enclosed with ATN. Hence no further comments.	Annexure -2 attached. No further comments.	Responsibility, accountability and authority of Ros were defined in the attached annexure. However, responsibility, accountability and authority relationship of various divisions at CO were not defined in order to fix the responsibility and accountability of divisions at CO level.	Company have its "delegation of power" which defines authority and responsibility.
23	Ministry's reply is factual. Hence no further comments. Ministry in their reply has confirmed that the financial	The branch auditors while certifying accounts of RO Chennai which was sent to Corporate Office for consolidation did not make any	Internal auditors and Branch Statutory auditors reported in their reports from time to tome about	It is again mentioned that R.O Auditors did not make any specific

	statements prepared by ROs are consolidated at the CO levels, which are received by Central Accounts Section at CO level before consolidation. Further, it is incorrect to say that the auditors did not express an opinion on the internal control system at the ROs as elaborated above with specific instances.	specific adverse comments attracting attention of Corporate Office in the matter. The observation was general in nature.	the operating of suspense accounts, unreconciled suspense accounts, lack of confirmation/reconciliation of balances etc.	adverse comments.
26	Facts of the case already incorporated in the audit para. Hence no further comments. However the Ministry has not replied to the audit point of RO repaying the loan by utilizing receipt from cash sales made to various other parties and fresh buyers credit (BC) was taken against those cash sales.	The RO repaid the loan utilising receipts from cash sales made to various other parties and fresh buyers credit(BC) was taken against those cash sales. It is a matter of fact and this happened without the knowledge of Corporate Office due to commission and omission of RO officials. Hence there is no further comments to elaborate.	Ministry has confirmed that fact of the case, which vindicate the audit observation.	No further comments.
29	Monitoring of all high value transactions exceeding Rs. 10 crore (receipt & payment) has been carried out at CO level. CO instructed to update books of account on day to day basis, verification of financial	The accounts are required to be kept updated independently by all RO's. They are also required to reconcile the Customers/Vendor's accounts periodically. IO No. 362 A dated 15.03.2012 (copy enclosed) requires the concerned associate finance at Corporate office to also scrutinise the customer/ vendor account in ERP relating to commodities under their charge on fortnightly basis so as to	Statutory auditors stated in their audit report for the year 2013-14 that balance under sundry debtors/ claims recoverable/loans and advances/sundry creditors/other liabilities in many cases have not been confirmed and consequent reconciliation/adjustments, if any required upon such	To prevent such mishaps in future special audits being conducted in different regions & report put up to SMAC and Board. Some minor variations were observed in the audit report, as precautionary / preventive measure

	<p>securities etc.</p> <p>Vide IO 379, inter-alia prescribed for periodically submission of BRS to CO; However, nowhere is prescribed to submit the fully reconciled all customers and suppliers accounts to CO.</p>	<p>ensure that accounts do not show any debit balance without the backing of 100% financial security. In case of any debit balance, the reasons thereof should be analysed by the associate finance for taking immediately corrective steps by the concerned commodity divn.</p>	<p>confirmation are not ascertainable. Hence, the facts remained the same .IO No. 362A dated 15.03.2012 is inter-alia prescribed that the concerned associate finance at Corporate office shall also scrutinize the customer/vendor account in ERP on fortnightly basis.</p>	<p>the circular was issued for strict compliance to prevent reoccurrence.</p> <p>Customers/ Vendors accounts are also scrutinized at C.O. Level. Such Scrutiny is system based. It will be again shown to the auditors in the next audit.</p>
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CAG Para no. 5.2 of Report No. 13 of 2013 regarding imprudent investment in Joint Ventures with M/s India Bulls Financial Services Limited (IBFSL)

Audit observations	Reply of Deptt. of Commerce	Further remarks of Audit	Further comments of Department of Commerce
<p>M/s India Bulls Financial Services Limited (IBFSL) approached (June 2007) MMTC Limited (the Company) with a proposal to become strategic partner in an International Commodity Exchange proposed to be set up for Spot and Future markets that would target commodities such as agro products, industrial metals & minerals, bullion and precious metals and energy (gas and crude). The proposal envisaged incorporation of a Joint Venture with an equity capital of Rs. 100 crore to which IBFSL and MMTC were to contribute Rs. 74 crore and Rs. 26 crore, respectively.</p> <p>The Company in response requested (June 2007) IBFSL to get the Detailed Project Report (DPR) and Feasibility Study prepared by reputed consultant like Price Waterhouse Coopers (PWC), SBI Capital etc. The IBFSL</p>	<p>Comments on the two issues raised by the Audit are as below:</p> <p>(I.) The Guidelines for recognition of new National Commodity Exchange issued on May 2008, stipulated that the share holders of the Exchange shall not have any trading interest either as trading member or client at the Exchange. Audit observed that the above guidelines of FMC were issued much ahead of incorporation of the JV and had negated the main premise on which the investment by the Company in the JV was considered viable. The Management, however, did not revisit its decision of equity participation in the JV in the changed scenario.</p> <p>In this regard it is contended that the following points are required to be</p>	<p>Facts of the case already incorporated in the audit para. Hence, no comments.</p> <p>Reply of the Ministry is factual. It can be seen that</p>	<p>After the issuance of FMC guidelines dated 14.5.2008, MMTC informed the Board of Directors about the revised guidelines including the clause that the proposed exchange shall have demutualised structure i.e. the share holders will not have trading interest either as a trading member or as client at the exchange. Board of Directors in their 358th meeting held on 23.07.2008 approved the participation in the Joint Venture. MMTC also informed the Department about the revised guidelines of FMC vide letter dated 28.07.2008. Copy of the letter is placed at Annex.'A'. In addition to trading benefits to MMTC, return on equity was also mentioned in the Board Note dated 4.9.07 and a request was also made to Department of Commerce vide MMTC's letter dated 28.9.2007.</p> <p>Since 2008, the global economy was in a phase of recession. Commodity exchanges operate in extremely competitive conditions. The JV made conscious efforts to maximize earnings</p>

<p>engaged M/s PWC accordingly. The Board of Directors of the Company considered the feasibility report prepared by PWC in its 350th meeting held on 07 September 2007. The Board approved the proposal to invest Rs. 26 crore, subject to approval by the Government of India, for acquiring equity shares of Special Purpose Vehicle being created by IBFSL.</p>	<p>taken into consideration: a) Though most of the “Advantages” enumerated in MMTC’s proposal dated <u>28.9.2007</u> sent to this Department for approval of participation in the proposed joint venture revolves around trading interest of MMTC in the Commodity Exchange either as a trading member or client, the advantage of “return on equity”, or in other word advantage of entering into the business of Commodity Exchange, was elucidated in other paras of the proposal of MMTC. In the proposal, MMTC informed this Department that main features of M/s. Price Waterhouse Coopers(PWC)’s feasibility report in this case are as below:</p>	<p>there was divergence between the objectives brought before the Ministry of Commerce, which primarily revolved around trading interest of MMTC in the Commodity Exchange either as a trading member or client. Whereas in the BoD meeting, the main reason enumerated was return on equity. The Company was not able to reap either of the objectives.</p>	<p>but due to the competitive environment and the global market conditions, the objectives of generating revenue as per projections could not be achieved.</p>
<p>The advantages enumerated by the Company while seeking (September 2007) approval of the Ministry of Commerce and Industry *MoCI), to the above proposal, interalia, included: (i) MMTC would be able to trade in existing products such as gold, silver and agricultural commodities in the exchange and a turnover of minimum of Rs.500 crore per year was expected. The company could also trade in commodities of its interest such as iron ore and coal. (ii)The Company would be given</p>	<p>i. There is a rationale for having third Commodity Exchange in the country. ii. There is synergy for MMTC in joining as equity partner in the JV iii. JV is economically viable unit.</p>		

<p>‘most favoured customer’ rates and treatment in the exchange and would be made a member without payment, which in turn would bring down its costs of hedging/commodity trading considerably.</p> <p>(iii) Selected warehouses of the Company would be declared designated warehouses.</p> <p>(iv) Tie up with quality assurance services would help the company to procure commodities of the requisite standards/specifications.</p> <p>MoCI approved (October 2007) the proposal for equity participation by the Company.</p> <p>Accordingly, on 18th August, 2008 a JV in the name of International Multi Commodity Exchange Limited (IMCEL) was incorporated. A ‘Shareholders Agreement’ (SHA) was entered into on 12 February, 2009 amongst the Company, IBFSL and IMCEL. The Company invested Rs. 26 crore (in March and May 2009).</p>	<p>This was a decision taken by MMTC’s Board of Directors and was considered as in Agenda item in the 350th meeting of the BOD held on 7.9.2007.</p> <p>As per MMTC, the major reason for investing in JV was the “return on equity” which was clearly spelt out in the feasibility report submitted by PWC.</p> <p>b) It is observed that while the feasibility report projected flow of profits from second year onwards, the Commodity Exchange has not shown a profit in any year since its creation. As on 31 March 2012, ICEX had accumulated losses of Rs. 63.50 crore. In this regard it can only be stated that loss or profit in any business cannot be predicted but it can only be projected and there is always a risk of incurring losses.</p>	<p>Facts of the case already incorporated in the audit para. Hence, no comments.</p> <p>Reply of the management is not tenable because the feasibility study was approved by BoD of MMTC in September 2007 and on the basis of which the approval was taken from Ministry. However due to change in guidelines (May 2008) the Company did not revisit their earlier financial decision. Further, fundamental premise on which investment was made by the Company was</p>	<p>As mentioned above, MMTC has stated that it was their conscious decision with the approval of the Board to participate in the JV even after the new guidelines of FMC dated 14.5.2008 came into effect.</p> <p>It may also be pointed out that FMC in their recent guidelines issued in May, 2014 have withdrawn the restrictions on promoter shareholders taking part in the trading in the exchange. This is reflective of the competitive environment under which commodity exchanges operate.</p>
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<p>IBFSL had 40 per cent stake in the JV while KRIBHCO, IDFC and Indian Potash and others held the balance 34 per cent of equity capital. The name of the JV was subsequently changed in July 2009 to Indian Commodity Exchange Limited (ICEX). The Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution (MoCA F&PD) granted recognition to ICEX on 9 October 2009 and ICEX started its operations on 27 November 2009. The ICEX did not show profit since its creation and it had accumulated losses of Rs. 63.50 crore as of 31 March 2012.</p> <p>In the meantime, the regulatory authority viz. Forward Markets Commission (FMC) issued (May 2008) 'Guidelines for recognition of new National Commodity Exchange'. Para 5.2 of the said guidelines stipulated that "the proposed exchange shall have a demutualised structure i.e. the share holders of the</p>	<p>c) As replied by MMTC, the diversification in terms of joint ventures was to take advantage of the new opportunities in the free market environment. Mckinsey & Co., in their report dated 19.1.2007 submitted to MOC&I, have recommended the minority joint approach for gaining operational flexibility and tie ups with strategic partners to allow access to market, resources and skill building. One such joint venture was the setting of commodity exchange in association with India Bulls Financial Services Limited (IBFSL).</p> <p>d) It is also noteworthy that Indian Potash Ltd. and Krishak Bharati Cooperative Limited (KRIBHCO) under Deptt. of Fertilizers, have also invested in the same Joint Venture.</p> <p>(II.) Induction of R-Next despite before completion of lock in</p>	<p>negated due to change in guidelines.</p> <p>Reply of the management is not tenable because despite being fully informed about the change in guidelines (May 2008), the company went ahead with the investment in March 2009.</p> <p>Reply of the management is factual. Hence no comments.</p>	<p>MMTC proceeded with the investment in JV in 2009 based on the approval of Board of Directors in their meeting held on 23.7.2008 and also in expectation that diversification in new areas of business like commodity exchange would bring more revenue to the Company.</p>
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<p>Exchange shall not have any trading interest either as a trading member or client at the Exchange.”</p> <p>Audit observed that the above guidelines of FMC were issued much ahead of incorporation of the JV and had negated the main premise on which the investment by the Company in the JV was considered viable. The Management, however, did not revisit its decision of equity participation in the JV in the changed scenario.</p> <p>It was further observed that as per the SHA and the revised guidelines issued by FMC on 17 June 2010, equity investment in the commodity exchange was subject to a lock in period of three years, which could be relaxed by one year by the FMC in exceptional circumstances. As such the minimum lock in period for an equity investor was two years.</p> <p>Disregarding the provisions of lock in period, IBFSL on 2 August 2010 proposed to the Company to induct</p>	<p>period as stipulated in the SHA and the revised guidelines issued by FMC.</p> <p>As regards the matter of induction of R-NEXT into ICEX by transfer of equity of 26% of IBFSL the following may be noted :</p> <p>(i) As per Share-holding Agreement (SHA) the MMTC has Right of First Refusal(RoFR). Article 16.1.1 states – No shareholder shall transfer any Shares, except as expressly permitted under this SHA and the Memorandum and Articles of Association and in the manner set out herein, subject to the guidelines issued by FMC from time to time(including the mandatory 3 year lock in requirement from the date of recognition of the Exchange). Any attempt to transfer any Shares in violation of the preceding sentenced shall be null and void <i>ab initio</i>, and the Company shall not register any such</p>	<p>Facts of the case already incorporated in the audit para. Hence no comments.</p>	
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<p>M/s Reliance Exchange next (R-NEXT) with 26 per cent stake in ICEX as Anchor Investor with MMTC Limited and IBFSL each divesting 15 per cent and 11 per cent of their equity for a total consideration of Rs. 47.35 crore (Rs. 9.10 for each share of Rs. 5). On 19 August 2010, IBFSL gave Right of First Refusal to the Company whereby IBFSL offered its 26 per cent holding in ICEX to MMTC limited on the same terms and conditions as offered to R-Next. The Company was to reply within 30 days. After receiving the offer from IBFSL, MMTC Limited engaged M/s IDBI Capital Market Services Limited to value the shares of the exchange and asked IBFSL to grant time till 05 October 2010 for taking a decision. In any case as per the SHA, MMTC had time till 2 November 2010 to respond to the first offer and till 19 November 2010 to the ROFR offer.</p>	<p>Transfer. Further, Article 16.1.3 states that if at any time either of MMTC or IBFSL desires to transfer any shares to a third party, it (offeror) shall first offer all such shares to the other (offeree). As per article 16.1.4, in the event an offeree does not wish to purchase the offered shares, such refusal must be communicated within 30 days from the date on which the Offer Notice is delivered.</p> <p>(ii) On 19.08.2010, IBFSL offered upto 26% of their holding (out of 40 %) in ICEX to MMTC on the same terms and conditions as offered to R.NEXT</p> <p>(iii) The Board of Directors of MMTC, on 19.8.2010 (same day), directed that an independent valuer preferably by PSU be appointed for doing the valuation of the shares of the JV to MMTC.</p> <p>(iv) In the meantime, Deptt. of Consumer Affairs accorded</p>	<p>Reply of the management is factual. Hence no comments.</p> <p>Ministry of Commerce &</p>	<p>MMTC was informed that it had requested Ministry of Consumer Affairs to recall its order</p>
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<p>Again, in blatant violation of the SHA and FMC guidelines, 15 months before the completion of mandatory lock in period, an application was made by ICEX on 27/31 August 2010 to the FMC to transfer the stake of IBFSL to R-NEXT. The FMC, within 4 working days vide letter dated 6 September 2010, forwarded the application to the Department of Consumer Affairs, MoCA F&PD, for its approval.</p>	<p>approval to induct R-NEXT into ICEX by transfer of equity of 26% of IBFSL and informed Forward Market Commission(FMC) of its approval vide letter dated 23.09.2010, and FMC conveyed the same to ICEX on 4.10.2010.</p> <p>(v) On 4.10.2010, the BoD, MMTC noted that the offer of IBFSL was not valid since FMC had not waived off the lock-in period for IBFSL and the time-limit (of 30 days specified in the SHA) for MMTC to exercise the option has to commence from the date of receipt of offer from IBFSL subsequent to the notification of the waiver of the lock-in period by FMC. The BOD also directed to examine legal position.</p> <p>(vi) Legal opinion of a leading advisory Firm was obtained by MMTC, as per which the offer was valid. Since MMTC had sought extension of RoFR upto 5.10.2010, ROFR has expired thereafter.</p>	<p>Industry should have been obtained the reply of the FMC and its parent Ministry, which is necessary to obtain a complete understanding of the issue.</p>	<p>permitting transfer of shares of IBFSL to R Next. MoCA did not respond to MMTC's request.</p> <p>It is understood that when audit queries relate to different departments, views are sought by CAG from the departments directly. In this case, it is understood that CAG has not sought the comments of FMC or its parent Ministry (Ministry of Consumer Affairs) pertaining to the points made in the CAG report on the granting of permission to IBFSL to transfer 26% of their share to R Next.</p> <p>Now based on the information furnished by the D/o Economic Affairs, to whom the administrative control of Forward Market Commission (FMC) has been transferred. It is stated that the Forward Markets Commission has pointed out that it is factually incorrect to state that the FMC within four working days forwarded the application vide its letter dated 06.09.2010 to the Department of Consumer Affairs (DCA) for the approval of the latter.</p> <p>In fact, IBSFL had sent a proposal to the Commission for the sale of its stake in ICEX to R-Next vide its letter dated 13th August, 2010, which was examined and processed in the Commission. Finally, after considering the request from ICEX, which was subsequently</p>
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<p>The Department of Consumer Affairs, MoCA F&PD, showing unusual alacrity, within a period of 12 working days (including time taken for delivery of correspondence), in turn accorded approval to induct R-next into ICEX and informed FMC of its approval vide letter dated 23 September 2010. This enabled IBFSL to transfer 26 per cent equity to R-NEXT on 13 December 2010, i.e. within just 13 months of recognition of the Commodity Exchange.</p>	<p>(vii)The Agenda of the Meeting of the Board of Directors dated 11.11.2010 include deliberation and issuance of guidelines on the proposal of IBFSL regarding their offer to offload 26% of equity shares out of 40% of the equity shares held by it in ICEX and induction of Reliance Exchange Next(R-NEXT) as Anchor Investor in the Commodity Exchange. The then AS&FA attended the meeting. Board decided that a deliberate self contained reference may be made to the Attorney General or Solicitor General to seek his advice on the legal validity of the Right of First Refusal dated 19.08.2010.</p> <p>(viii) When requested by MMTC, Ld. Sol. General opined (dated 7.12.2010) that there has been a breach by the IBFSL of lock-in period and Deptt. of Consumer Affairs must reconsider its communication immediately.</p> <p>(ix) Accordingly, Deptt.of Consumer Affairs was requested by</p>		<p>received vide their letter dated 27th August, 2010, the Commission forwarded the application to the Ministry for examination and final decision vide its letter date 6th September,2010.</p>
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<p>As the Company could have accepted the offer of IBFSL and partly divested its equity till 2 November 2010, the hasty decision of the Department of Consumer Affairs, MoCA F&PD to relax the lock in period denied the Company the opportunity of taking a decision to partly divest its holding in ICEX.</p> <p>The Management in its reply (March 2013) reiterated the facts of the case</p>	<p>MMTC to recall its order dated 23.9.2010. But Deptt. of Consumer Affairs/FMC did not respond.</p> <p>(x) BOD on 31.1.2011, directed MMTC to request DOC to seek legal opinion.</p> <p>(xi) Deptt.of Commerce sought legal opinion of Deptt. of Legal Affairs, which (vide note dated 17.3.2011)opined that since there is material breach of the terms of conditions of SHA, it is open for MMTC to repudiate the Contract since Article 16.1.1 was not amended by the mutual consent of parties concerned. This legal opinion was conveyed to the MMTC vide letter dated 9.5.2011. It was further conveyed to MMTC that as per para 16.1.1 of the SHA, the transfer of shares not accordance with its provisions is simply null and void <i>ab initio</i>.</p> <p>(xii)Based on the above opinion, MMTC filed a petition on 31.10.2011 before the Company</p>	<p>The Board of Directors of MMTC approved in its 405th Board Meeting held on 14.2.2014 the winding up of the JV-ICEX after which the petition before the CLB would become infructuous.</p>	<p>It is also to be pointed out that commodity exchange market place is facing tough times. Two national exchanges (Universal Commodity Exchange & Ace Commodity Exchange) are facing serious liquidity problems. One other national commodity exchange (NMCX) is also reported to be in financial distress. Hence the problems faced by ICEX is common to other national commodity exchanges.</p> <p>The mandate of commodity derivatives market policy administration of the Forward Contracts (Regulation) Act,1952 and the Forward Markets Commission (FMC) was transferred to the Ministry of Finance, from the Ministry of Consumer Affairs, Food and Public Distribution with effect from the 5th of September,2013.</p>
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<p>and stated that the revised guidelines of FMC were informed to the Board of Directors in its 358th meeting held on 23 July 2008.</p> <p>The above reply was not acceptable because despite being aware of the revised guidelines of FMC, before incorporation of the JV, the Management did not revisit its decision which resulted in blocking of Rs. 26 crore in an unfruitful venture. The hasty decision of the Department of Consumer Affairs, MoCA F&PD also denied the Company an opportunity to dilute its investment in the venture.</p>	<p>Law Board seeking relief from oppression and mismanagement in ICEX under Section 397 and 398 of the Companies Act, 1956.</p> <p>(xiii) Most of all, Applicants cannot be held accountable if authorities violate their own guidelines and approves application which is not consistent with existing guidelines. In this case, if FMC and Deptt.of Consumer Affairs have not followed their own guidelines dated 17 June 2010, they are required to clarify and not the applicants MMTC/ICEX.</p> <p>In view of the above, it is requested that Audit Para relating to issue at (I) above, may be dropped and Audit para relating to issue at (II) above, may be transferred to Deptt.of Consumer Affairs/FMC.</p>	<p>Reply of the Ministry is not tenable because MMTC was aware of the revised guidelines and management did not revisited their decision resulted in imprudent investment. Ministry of Commerce has blamed Forward Market Commission (FMC) and Department of Consumer Affairs (DoCA) instead it should have obtained the reply of the FMC and its parent Ministry, which is necessary to obtain a complete understanding of the issue.</p> <p>Further reply of the Ministry is not tenable as there was a delay of more than five months in filing</p>	<p>In the records made available by the Deptt. of Consumer Affairs to the Deptt. of Economic Affairs, MoF, it has been found that proposal of M/s IBFSL was forwarded by the FMC on 06.09.2010 to Department of Consumer Affairs and the same was received on 08.09.2010. After examination, the proposal was put-up by the Desk Officer and Director(IT) on 09.09.2010 & 17.09.2010 respectively . A copy of the relevent note sheets at P. no. 17-21/n is enclosed at Annexure-II.</p> <p>With regard to ‘unusual alacrity’, it is observed that the basis of the CAG considering the period of disposing of the case as ‘unusual alacrity’ has not been made clear. The supporting norms for pointing out as such have not been indicated in the Audit Para. In absence of any reference time period for disposing of cases of the like nature, there does not appear to be any ground to subscribe to the views about the speed at which the case was disposed off, as referred to in the Audit Para. However we have not received response from MOCA/FMC on the request of recalling the orders.</p>
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		<p>petition by MMTC to CLB. The delay mentioned is due to the process involved in preparing a detailed petition to be filed before Company Law Board after examining it from legal perspective.</p> <p>Management in its financial statement for the year ended 31st March 2014 has created a provision of Rs. 24.11 crore due to permanent diminution in the value of investment.</p> <p>In view of the above, the para may be pursued further.</p>	<p>Department of Economic Affairs or Forward Markets Commission does not have any comment in this regard. However, on perusal of the relevant record, as referred to in the notes of the DCA in their notes on pages 20-21/N (copy enclosed) of File No. 12/1/2009-IT, the opinion of Solicitor General of India obtained later in this regard finds mentioned which states that the approval in question (granted by the DCA) is in violation of law.</p> <p>Matter of record.</p>
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<p>M/s India Bulls Financial Services Limited (IBFSL) approached (June 2007) MMTC Limited (the Company) with a proposal to become strategic partner in an International Commodity Exchange proposed to be set up for Spot and Future markets that would target commodities such as agro products, industrial metals & minerals, bullion and precious metals and energy (gas and crude). The proposal envisaged incorporation of a Joint Venture with an equity capital of Rs. 100 crore to which IBFSL and MMTC were to contribute Rs. 74 crore and Rs. 26 crore, respectively.</p>	<p>Comments on the two issues raised by the Audit are as below: (I) The Guidelines for recognition of new National Commodity Exchange issued on May 2008, stipulated that the share holders of the Exchange shall not have any trading interest either as trading member or client at the Exchange. Audit observed that the above guidelines of FMC were issued much ahead of incorporation of the JV and had negated the main premise on which the investment by the Company in the JV was considered viable. The Management, however, did not revisit its decision of equity participation in the JV in the changed scenario.</p> <p>In this regard it is contended that the following points are required to be taken into consideration: a) Though most of the “Advantages” enumerated in MMTC’s proposal dated <u>28.9.2007</u> sent to this Department for</p>	<p>Facts of the case already incorporated in the audit para. Hence, no comments.</p> <p>Reply of the Ministry is factual. It can be seen that there was divergence between the objectives brought before the Ministry of Commerce, which primarily revolved around trading interest of MMTC in the</p>	<p>After the issual of FMC guidelines dated 14.5.2008, MMTC informed the Board of Directors about the revised guidelines including the clause that the proposed exchange shall have demutualised structure i.e. the share holders will not have trading interest either as a trading member or as client at the exchange. Board of Directors in their 358th meeting held on 23.07.2008 approved the participation in the Joint Venture. MMTC also informed about the revised guidelines of FMC vide letter dated 28.07.2008. Copy of the letter is placed at Annex.’A’. In addition to trading benefits to MMTC, return on equity was also mentioned in the Board Note dated 4.9.07 and a request eas also made to Department of Commerce vide MMTC’s letter dated 28.9.2007.</p> <p>Since 2008, the global economy was in a phase of recession. Commodity exchanges operate in extremely competitive conditions. The JV made conscious efforts to maximize earnings but due to the competitive environment and the global market conditions, the objectives of generating revenue as per projections could not be achieved.</p>
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<p>The Company in response requested (June 2007) IBFSL to get the Detailed Project Report (DPR) and Feasibility Study prepared by reputed consultant like Price Waterhouse Coopers (PWC), SBI Capital etc. The IBFSL engaged M/s PWC accordingly. The Board of Directors of the Company considered the feasibility report prepared by PWC in its 350th meeting held on 07 September 2007. The Board approved the proposal to invest Rs. 26 crore, subject to approval by the Government of India, for acquiring equity shares of Special Purpose Vehicle being created by IBFSL</p>	<p>approval of participation in the proposed joint venture revolves around trading interest of MMTC in the Commodity Exchange either as a trading member or client, the advantage of “return on equity”, or in other word advantage of entering into the business of Commodity Exchange, was elucidated in other paras of the proposal of MMTC. In the proposal, MMTC informed this Department that main features of M/s. Price Waterhouse Coopers(PWC)’s feasibility report in this case are as below:</p> <ul style="list-style-type: none"> i. There is a rationale for having third Commodity Exchange in the country. ii. There is synergy for MMTC in joining as equity partner in the 	<p>Commodity Exchange either as a trading member or client. Whereas in the BoD meeting, the main reason enumerated was return on equity. The Company was not able to reap either of the objectives.</p>	
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<p>The advantages enumerated by the Company while seeking (September 2007) approval of the Ministry of Commerce and Industry (MoCI), to the above proposal, <i>interalia</i>, included:</p> <p>(i) MMTC would be able to trade in existing products such as gold, silver and agricultural commodities in the exchange and a turnover of minimum of Rs. 500 crore per year was expected. The Company could also trade in commodities of its interest such as iron ore and coal.</p> <p>(ii) The Company would be given 'most favoured customer' rates and treatment in the exchange and would be made a member without payment, which in turn would bring down its costs of hedging/commodity trading considerably.</p> <p>(iii) Selected warehouses of</p>	<p>JV</p> <p>iii. JV is economically viable unit.</p> <p>This was a decision taken by MMTC's Board of Directors and was considered as in Agenda item in the 350th meeting of the BOD held on 7.9.2007.</p> <p>As per MMTC, the major reason for investing in JV was the "return on equity" which was clearly spelt out in the feasibility report submitted by PWC.</p> <p>b) It is observed that while the feasibility report projected flow of profits from second year onwards, the Commodity Exchange has not shown a profit in any year since its creation. As on 31 March 2012, ICEX had accumulated losses of Rs. 63.50 crore. In this regard it can only be stated that loss or profit in any business cannot be predicted but it can only be projected and there is always a risk of incurring losses.</p>	<p>Facts of the case already incorporated in the audit para. Hence, no comments.</p> <p>Reply of the management is not tenable because the feasibility study was approved by BoD of MMTC in September 2007 and on the basis of which the approval was taken from Ministry. However due to change in guidelines (May 2008) the Company did not revisit their earlier financial decision. Further, fundamental premise on which investment was made by the Company was</p>	<p>As mentioned above, it was the conscious decision of MMTC with the approval of its Board to participate in the JV after the new guidelines of FMC dated 14.5.2008 came into effect.</p> <p>It may also be pointed out that FMC in their recent guidelines issued in May, 2014 have withdrawn the restrictions on promoter shareholders taking part in the trading in the exchange. This is reflective of the competitive environment under which commodity exchanges operate.</p> <p>MMTC proceeded with the investment in JV in 2009 based on the approval of Board of Directors in their meeting held on 23.7.2008 and also in expectation that diversification in new areas of business like commodity exchange would bring more revenue to the Company.</p>
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<p>the Company would be declared designated warehouses.</p> <p>(iv) Tie up with quality assurance services would help the Company to procure commodities of the requisite standards/specifications MoCI approved (October 2007) the proposal for equity participation by the Company.</p>	<p>c) As replied by MMTC, the diversification in terms of joint ventures was to take advantage of the new opportunities in the free market environment. Mckinsey & Co., in their report dated 19.1.2007 submitted to MOC&I, have recommended the minority joint approach for gaining operational flexibility and tie ups with strategic partners to allow access to market, resources and skill building. One such joint venture was the setting of commodity exchange in association with India Bulls Financial Services Limited (IBFSL).</p> <p>d) It is also noteworthy that Indian</p>	<p>negated due to change in guidelines.</p> <p>Reply of the management is not tenable because despite being fully informed about the change in guidelines (May 2008), the company went ahead with the investment in March 2009.</p> <p>Reply of the management is factual. Hence no comments.</p>	
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<p>Accordingly, on 18th August, 2008 a JV in the name of International Multi Commodity Exchange Limited (IMCEL) was incorporated. A 'Shareholders Agreement' (SHA) was entered into on 12 February, 2009 amongst the Company, IBFSL and IMCEL. The Company invested Rs. 26 crore (in March and May 2009). IBFSL had 40 per cent stake in the JV while KRIBHCO, IDFC and Indian Potash and others held the balance 34 per cent of equity capital. The name of the JV was subsequently changed in July 2009 to Indian Commodity Exchange Limited (ICEX). The Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution (MoCA F&PD) granted recognition to ICEX on 9 October 2009 and ICEX started its operations on 27 November 2009. The ICEX did not show profit since its</p>	<p>Potash Ltd. and Krishak Bharati Cooperative Limited (KRIBHCO) under Deptt. of Fertilizers, have also invested in the same Joint Venture.</p> <p>(II.) Induction of R-Next despite before completion of lock in period as stipulated in the SHA and the revised guidelines issued by FMC.</p> <p>As regards the matter of induction of R-NEXT into ICEX by transfer of equity of 26% of IBFSL the following may be noted :</p> <p>(i) As per Share-holding Agreement (SHA) the MMTC has Right of First Refusal(RoFR). Article 16.1.1 states – No shareholder shall transfer any Shares, except as expressly permitted under this SHA and the Memorandum and Articles of Association and in the manner set out herein, subject to the guidelines issued by FMC from time to</p>	<p>Facts of the case already incorporated in the audit para. Hence no comments.</p>	
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<p>creation and it had accumulated losses of Rs. 63.50 crore as of 31 March 2012.</p>	<p>time(including the mandatory 3 year lock in requirement from the date of recognition of the Exchange). Any attempt to transfer any Shares in violation of the preceding sentenced shall be null and void <i>ab initio</i>, and the Company shall not register any such Transfer. Further, Article 16.1.3 states that if at any time either of MMTC or IBFSL desires to transfer any shares to a third party, it (offeror) shall first offer all such shares to the other(offeree). As per article 16.1.4, in the event an offeree does not wish to purchase the offered shares, such refusal must be communicated within 30 days from the date on which the Offer Notice is delivered.</p>		
<p>In the meantime, the regulatory authority viz. Forward Markets Commission (FMC) issued (May 2008) ‘Guidelines for recognition of new National Commodity Exchange’. Para 5.2 of the said guidelines stipulated that “the proposed exchange shall have a demutualised structure i.e. the share holders of the Exchange shall not have any trading interest either as a trading member or client at the Exchange.”</p>	<p>(ii) On 19.08.2010, IBFSL offered upto 26% of their holding (out of 40 %) in ICEX to MMTC on the same terms and conditions as offered to R.NEXT</p>	<p>Reply of the management is factual. Hence no comments.</p>	<p>MMTC had requested Ministry of Consumer Affairs to recall its order permitting transfer of shares of IBFSL to R Next. MoCA did not respond to MMTC’s request. It is understood that when audit queries relate to different departments, views are sought by CAG from the departments directly. In this case, it is understood that CAG has not sought the comments of FMC or its parent Ministry (Ministry of Consumer Affairs) pertaining to the points made in the CAG report on the granting of permission to IBFSL to transfer 26% of their share to R Next. It is stated that The Forward Markets Commission has pointed out that it is factually incorrect to state that the FMC within four working days forwarded the application vide its letter dated 06.09.2010 to the Department of Consumer Affairs (DCA) for the approval of the latter.</p>
<p>Audit observed that the above guidelines of FMC were issued much ahead of incorporation of the JV and had negated the main premise on which the investment by the Company in the JV was considered viable. The Management, however, did</p>		<p>Ministry of Commerce & Industry should have</p>	<p>In fact, IBSFL had sent a proposal to the Commission for the sale of its stake in ICEX to R-Next vide its</p>

<p>not revisit its decision of equity participation in the JV in the changed scenario.</p>	<p>(iii) The Board of Directors of MMTC, on 19.8.2010(same day), directed that an independent valuer preferably by PSU be appointed for doing the valuation of the shares of the JV to MMTC.</p>	<p>been obtained the reply of the FMC and its parent Ministry, which is necessary to obtain a complete understanding of the issue.</p>	<p>letter dated 13th August, 2010, which was examined and processed in the Commission. Finally, after considering the request from ICEX, which was subsequently received vide their letter dated 27th August, 2010, the Commission forwarded the application to the Ministry for examination and final decision vide its letter date 6th September,2010.</p>
<p>It was further observed that as per the SHA and the revised guidelines issued by FMC on 17 June 2010, equity investment in the commodity exchange was subject to a lock in period of three years, which could be relaxed by one year by the FMC in exceptional circumstances. As such the minimum lock in period for an equity investor was two years.</p>	<p>(iv) In the meantime, Deptt. of Consumer Affairs accorded approval to induct R-NEXT into ICEX by transfer of equity of 26% of IBFSL and informed Forward Market Commission(FMC) of its approval vide letter dated 23.09.2010, and FMC conveyed the same to ICEX on 4.10.2010.</p>		
<p>Disregarding the provisions of lock in period, IBFSL on 2 August 2010 proposed to the Company to induct M/s Reliance Exchange next (R-NEXT)with 26 per cent stake in ICEX as Anchor Investor with MMTC Limited and IBFSL each divesting 15 per cent and 11 per cent of their equity for a total consideration of Rs. 47.35 crore (Rs. 9.10 for each share of Rs. 5). On 19</p>	<p>(v) On 4.10.2010, the BoD, MMTC noted that the offer of IBFSL was not valid since FMC had not waived off the lock-in period for IBFSL and the time-limit (of 30 days specified in the SHA) for MMTC to exercise the option has to commence from the date of receipt of offer from IBFSL subsequent to the notification of the waiver of the</p>		

<p>August 2010, IBFSL gave Right of First Refusal to the Company whereby IBFSL offered its 26 per cent holding in ICEX to MMTC limited on the same terms and conditions as offered to R-Next. The Company was to reply within 30 days. After receiving the offer from IBFSL, MMTC Limited engaged M/s IDBI Capital Market Services Limited to value the shares of the exchange and asked IBFSL to grant time till 05 October 2010 for taking a decision. In any case as per the SHA, MMTC had time till 2 November 2010 to respond to the first offer and till 19 November 2010 to the ROFR offer.</p>	<p>lock-in period by FMC. The BOD also directed to examine legal position.</p> <p>(vi) Legal opinion of a leading advisory Firm was obtained by MMTC, as per which the offer was valid. Since MMTC had sought extension of RoFR upto 5.10.2010, ROFR has expired thereafter.</p> <p>(vii)The Agenda of the Meeting of the Board of Directors dated 11.11.2010 include deliberation and issuance of guidelines on the proposal of IBFSL regarding their offer to offload 26% of equity shares out of 40% of the equity shares held by it in ICEX and induction of Reliance Exchange Next(R-NEXT) as Anchor Investor in the Commodity Exchange. The then AS&FA attended the meeting. Board decided that a deliberate self contained reference may be made to the Attorney General or Solicitor General to seek his advice on the legal validity of the Right of First Refusal dated 19.08.2010.</p>		
<p>Again, in blatant violation of the SHA and FMC guidelines, 15 months before the completion of mandatory lock in period, an application was made by ICEX on 27/31</p>			<p>It is also to be pointed out that commodity exchange market place is facing tough times. Two national exchanges (Universal Commodity Exchange & Ace Commodity Exchange) are facing serious liquidity problems. One other national commodity exchange (NMCC) is also reported to be in financial distress. Hence the problems faced by ICEX is common to all</p>

<p>August 2010 to the FMC to transfer the stake of IBFSL to R-NEXT. The FMC, within 4 working days vide letter dated 6 September 2010, forwarded the application to the Department of Consumer Affairs, MoCA F&PD, for its approval.</p>	<p>(viii) When requested by MMTC, Ld. Sol. General opined (dated 7.12.2010) that there has been a breach by the IBFSL of lock-in period and Deptt. of Consumer Affairs must reconsider its communication immediately.</p>	<p>The Board of Directors of MMTC approved in its 405th Board Meeting held on 14.2.2014 the winding up of the JV-ICEX after which the petition before the CLB would become infructuous.</p>	<p>other national commodity exchanges. The mandate of commodity derivatives market policy administration of the Forward Contracts (Regulation) Act,1952 and the Forward Markets Commission (FMC) was transferred to the Ministry of Finance, from the Ministry of Consumer Affairs, Food and Public Distribution with effect from the 5th of September,2013.</p>
<p>The Department of Consumer Affairs, MoCA F&PD, showing unusual alacrity, within a period of 12 working days (including time taken for delivery of correspondence), in turn accorded approval to induct R-next into ICEX and informed FMC of its approval vide letter dated 23 September 2010. This enabled IBFSL to transfer 26 per cent equity to R-NEXT on 13 December 2010, i.e. within just 13 months of recognition of the Commodity Exchange.</p>	<p>(ix) Accordingly, Deptt.of Consumer Affairs was requested by MMTC to recall its order dated 23.9.2010. But Deptt. of Consumer Affairs/FMC did not respond.</p>	<p>(x) BOD on 31.1.2011, directed MMTC to request DOC to seek legal opinion.</p> <p>(xi) Deptt.of Commerce sought legal opinion of Deptt. of Legal Affairs, which (vide note dated 17.3.2011)opined that since there is material breach of the terms of conditions of SHA, it is open for</p> <p>Reply of the Ministry is not tenable because</p>	<p>In the records made available by the DCA, it has been found that proposal of M/s IBFSL was forwarded by the FMC on 06.09.2010 to Department of Consumer Affairs and the same was received on 08.09.2010. After examination, the proposal was put-up by the Desk Officer and Director(IT) on 09.09.2010 & 17.09.2010 respectively . A copy of the relevent note sheets at P. no. 17-21/n is enclosed.</p> <p>With regard to ‘unusual alacrity’, it is observed that the basis of the CAG considering the period of disposing of the case as ‘unusual alacrity’ has not been made clear. The supprting norms for pointing out as such have not been indicated in the Audit Para. In absence of any reference time period for disposing of cases of the like nature, there does not appear to be any ground to subscribe to the views about the speed</p>

<p>As the Company could have accepted the offer of IBFSL and partly divested its equity till 2 November 2010, the hasty decision of the Department of Consumer Affairs, MoCA F&PD to relax the lock in period denied the Company the opportunity of taking a decision to partly divest its holding in ICEX.</p>	<p>MMTC to repudiate the Contract since Article 16.1.1 was not amended by the mutual consent of parties concerned. This legal opinion was conveyed to the MMTC vide letter dated 9.5.2011. It was further conveyed to MMTC that as per para 16.1.1 of the SHA, the transfer of shares not accordance with its provisions is simply null and void <i>ab initio</i>. (xii)Based on the above opinion, MMTC filed a petition on 31.10.2011 before the Company Law Board seeking relief from oppression and mismanagement in ICEX under Section 397 and 398 of the Companies Act, 1956.</p>	<p>MMTC was aware of the revised guidelines and management did not revisited their decision resulted in imprudent investment. Ministry of Commerce has blamed Forward Market Commission (FMC) and Department of Consumer Affairs (DoCA) instead it should have obtained the reply of the FMC and its parent Ministry, which is necessary to obtain a complete understanding of the issue.</p>	<p>at which the case was disposed off, as referred to in the Audit Para. However we have not received response from MOCA/FMC on the request of <u>recalling the rule.</u></p>
<p>The Management in its reply (March 2013) reiterated the facts of the case and stated that the revised guidelines of FMC were informed to the Board of Directors in its 358th meeting held on 23 July 2008.</p>	<p>(xiii) Most of all, Applicants cannot be held accountable if authorities violate their own guidelines and approves application which is not consistent with existing guidelines. In this case, if FMC and Deptt.of Consumer Affairs have not followed their own guidelines dated 17 June 2010, they are required to clarify and not the</p>	<p>Further reply of the Ministry is not tenable as there was a delay of more than five months in filing petition by MMTC to CLB. Management in its financial statement for the year ended 31st March 2014 has created a</p>	<p>Department of Economic Affairs or Forward Markets Commission does not have any comment in this regard. However, on perusal of the relevant record, as referred to in the notes of the DCA in their notes on pages 20-21/N (copy enclosed) of File No. 12/1/2009-IT, the opinion of Solicitor General of India obtained later in this regard finds mentioned which states that the approval in question (granted by the DCA) is in violation of law.</p>

	<p>applicants MMTC/ICEX.</p> <p>In view of the above, it is requested that Audit Para relating to issue at (I) above, may be dropped and Audit para relating to issue at (II) above, may be transferred to Deptt.of Consumer Affairs/FMC.</p>	<p>provision of Rs. 24.11 crore due to permanent diminution in the valud of investment.</p> <p>In view of the above, the para may be pursued further.</p>	<p>The delay mentioned is due to the process involved in preparing a detailed petition to be filed before Company Law Board after examining it form legal perspective.</p> <p>Matter of record.</p>
<p>The above reply was not acceptable because despite being aware of the revised guidelines of FMC, before incorporation of the JV, the Management did not revisit its decision which resulted in blocking of Rs. 26 crore in an unfruitful venture. The hasty decision of the Department of Consumer Affairs, MoCA F&PD also denied the</p>			

Company an opportunity to dilute its investment in the venture.