

Chapter-III

Corporate Governance

Introduction

3.1 Corporate Governance focusses on building the confidence of its various stakeholders including customers, suppliers, employees, shareholders, bankers and society at large. A company is directed and controlled with the system of rules, practices and process of the Corporate Governance. Further, Corporate Governance framework of any SPSEs depends upon the four pillars namely Transparency, Full disclosures, Independent monitoring and Fairness to all. Adherence to the Corporate Governance brings accountability, transparency in business and enhance confidence of the stakeholders.

Provisions contained in the Companies Act, 2013

3.2 The Companies Act, 2013 (Act) was enacted on 29 August 2013 replacing the Companies Act, 1956. In addition, the Ministry of Corporate Affairs has also notified (31 March 2014) Companies Rules 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its powers and Accounts. The Companies Act, 2013 together with the Companies Rules provide a robust framework for corporate governance. The requirement inter alia provides for:

Qualifications for Independent Directors along with the duties and guidelines for professional conduct {Section 149(6) read with rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014}.

Mandatory appointment of one woman director on the board of prescribed companies {Section 149(1)}.

Mandatory establishment of certain committees like Audit Committee {Section 177(1)}, Nomination and Remuneration Committee {Section 178(1)}, and Stakeholders Relationship Committee {Section 178(5)}.

Holding of a minimum of four meetings of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board {Section 173(1)}.

SEBI/BPE guidelines on Corporate Governance

3.3 Since none of the State Public Sector Enterprises (SPSEs) is listed in the stock exchange, SEBI guidelines on Corporate Governance is not applicable on SPSEs. Further, the Bureau of Public Enterprises (BPE), Government of Rajasthan (GoR) has also not issued any guideline on corporate governance.

Review of compliance of the Corporate Governance provisions

3.4 As on 31 March 2020, there were 42 State Government Companies (hereinafter referred as SPSEs) including four Government Controlled Companies under the audit jurisdiction of the CAG of India. In the context of the policy of the government to grant more autonomy to the Government Companies, Corporate Governance has assumed importance.

For the purpose of the review, an assessment framework was prepared based on the provisions contained in the Act, 2013 on corporate governance. The provisions during the year 2019-20 were reflected in the assessment framework. The review covers all the Government Companies under administrative control of various Ministries except Rajasthan State Agro Industries Corporation Limited which is under liquidation.

Composition of Board of Directors

Independent Directors

3.5 The presence of independent representatives on the Board, capable of taking an independent view on the decisions of the management is widely considered as a means of protecting the interests of shareholders and other stakeholders.

Section 149 (4) of the Act, 2013 provides that every listed public company shall have at least one-third of the total number of directors as independent directors. Further, as per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, (i) Public Companies having paid up share capital of ten crore rupees or more; or (ii) turnover of one hundred crore rupees or more; or (iii) have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees shall have at least two directors as independent directors.

Further, a company covered under this rule is also required to constitute audit committee. Such Audit Committee shall consist of a minimum of three directors, with independent directors forming a majority as per section of 177(2) of the Act, 2013.

Rule further provides that where a company ceases to fulfil any of three conditions for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

Further sub Rule (2) of Rule 4, an unlisted public company *i.e.* a joint venture or a wholly owned subsidiary or a dormant company is not required to appoint an independent director.

Audit noticed that out of 42 SPSEs, 26 SPSEs, as shown in **Annexure-3.1**, were required to appoint Independent Directors (IDs) as per the provisions of the Act, 2013 and Rule 4 mentioned above during FY 2019-20. Based on the review of composition of the Board of Directors (BoD) a summarized status of appointment of independent directors in these SPSEs is given in **Table 3.1**:

Table 3.1 Status of appointment of Independent Director (ID)

Particulars	As on 31 March 2019	As on 31 March 2020
No. of SPSEs required to appoint IDs	26	26
No. of SPSEs having required number of IDs	12	5
No. of SPSEs not having required number of IDs	1	4
Number of SPSEs not having any ID	13	17

Source: Compiled on the basis of information provided by SPSEs

It could be seen from the table above that nine¹ SPSEs, which had required number of IDs as on March 2019, did not appoint new IDs after expiry of the tenure of previous IDs. Besides, there was sharp increase in the number of SPSEs which either did not have the required number of IDs or 'Nil' IDs as on March 2020 as compared to March 2019.

Audit also observed that

- Two SPSEs *i.e.* Udaipur Smart City Limited (USCL) and Rajasthan State Seeds Corporation Limited (RSSCL) having five members in their audit committees as on 31 March 2019 and 31 March 2020, did not have required number of independent directors as there was only one independent director in USCL whereas RSSCL did not have any independent director as on March 2019 and March 2020.
- Though Rajasthan Small Industries Corporation Limited (RSICL) did not meet any condition of the Rule 4 during 2018-19 but considering the turnover of ₹ 136.06 crore during 2017-18 the provision of appointment of independent directors was applicable during 2018-19 itself. Despite this, RSICL did not appoint independent director even in 2019-20.
- Barmer Lignite Mining Company Limited, a joint venture, though not required to have independent director, had three independent directors as on 31 March 2019 whose tenure had expired on 29 March 2020.

Thus, the SPSEs did not ensure compliance of the provision of the Act, 2013 as well as Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Woman Director in the Board

3.6 Section 149 (2) of the Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides for appointment of at least one women director in - (i) every listed company; (ii) every other public company having - (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more. Further, any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Audit observed that 19 SPSEs, as shown in **Annexure-3.1**, were required to appoint woman director during 2019-20. Of these 19 SPSEs, 13 SPSEs had at

1 As mentioned at Sl. No. 1 to 7, 22 and 23 of Annexure-3.1.

least one woman director throughout FY 2019-20 as given in **Table 3.2:**

Table 3.2: Name of SPSEs having at least one-woman director during FY 2019-20

Sl. No.	Name of SPSE
1.	Ajmer Vidyut Vitran Nigam Limited
2.	Jaipur Vidyut Vitran Nigam Limited
3.	Jodhpur Vidyut Vitran Nigam Limited
4.	Rajasthan Rajya Vidyut Utpadan Nigam Limited
5.	Giral Lignite Power Limited
6.	Rajasthan State Industrial Development and Investment Corporation Limited
7.	Rajasthan State Road Development & Construction Corporation Limited
8.	Rajasthan State Food & Civil Supplies Corporation Limited
9.	Rajasthan State Beverage Corporation Limited
10.	Rajasthan State Ganganagar Sugar Mills Limited
11.	Jaipur Metro Rail Corporation Limited
12.	Kota Smart City Limited
13.	Udaipur Smart City Limited

Source: Compiled based on the information provided by SPSEs

Audit noticed that two² SPSEs did not have woman director throughout FY 2019-20. Further, three³ SPSEs ensured compliance of provision of Rule 3 by filling up the vacancy of woman director within the prescribed time period. Audit observed that one SPSEs *i.e.* Jaipur Smart City Limited, filled up the vacancy of woman director after a delay of seven months.

Appointment and Functioning of Independent Director

Issuance of formal letter of appointment and approval at General Meeting

3.7 As per schedule IV of the CA 2013, appointment of independent director shall be approved at the meeting of shareholders (General Meeting). Further, the appointment of Independent Directors shall be formalised through a letter of appointment which shall set out the terms and conditions of appointment. Further, the terms and conditions of appointment of independent directors are also required to be posted on Company's website.

Audit, however, observed that two SPSEs (Rajasthan State Beverage Corporation Limited and Rajasthan State Ganganagar Sugar Mills Limited) appointed (February 2020) Independent Directors, however, both the SPSEs did not obtain approval of appointment in the General Meeting. Further, formal letters containing terms and conditions of appointment issued to the appointed Independent Directors were not found on record. Besides in case of two SPSEs⁴, wherein Independent Directors were appointed during FY 2019-20, the letter of appointment issued by RUDWS&ICL did not contain the tenure of appointment and the list of actions that a director should not do while functioning in the company whereas RSMML did not include any terms and conditions in the appointment letter issued by it as required in Schedule IV of the Act, 2013.

2 Rajasthan State Gas Limited and Rajasthan Medical Services Corporation Limited

3 Barmer Lignite Mining Company Limited, Rajasthan Rajya Vidyut Prasaran Nigam Limited and Rajasthan State Mines and Minerals Limited (RSMML).

4 Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited (RUDWS&ICL) and RSMML

Training of Independent Directors

3.8 As per Schedule IV (Para III (1)- Duties of Independent Directors) of the Companies Act, Independent Directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company. Audit, however, observed that none of the SPSEs imparted such training for the Independent Directors who were on the Board during FY 2019-20.

Attending meeting of the Board, Board Committees and General meetings of the Company

3.9 Schedule IV (III) (3) of the Act, 2013 provides that Independent Directors should strive to attend all the meetings of Board of Directors and Board Committees of which he/she was a member.

A. Board meetings: - Status of attendance of the independent directors who were on the Board at the time of the meeting are given in **Table 3.3**.

Table 3.3 Presence of Independent Directors in meetings of the Board

Sl. No.	Name of the SPSE	No. of Board meeting	No. of meetings with 100% presence of ID
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	8	7
2.	Ajmer Vidyut Vitran Nigam Limited	6	2
3.	Rajasthan Renewable Energy Corporation Limited	3	2
4.	Jodhpur Vidyut Vitran Nigam Limited	5	2
5.	Jaipur Vidyut Vitran Nigam Limited	6	4
6.	Rajasthan Rajya Vidyut Utpadan Nigam Limited	4	4
7.	Rajasthan Urja Vikas Nigam Limited	8	7
8.	Rajasthan State Mines & Minerals Limited	2	1
9.	RajComp Info Services Limited	4	0
10.	Jaipur Metro Rail Corporation Limited	5	1
11.	Jaipur Smart City Limited	2	0
12.	Udaipur Smart City Limited	3	2
13.	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited	1	1
14.	Barmer Lignite Mining Company Limited	3	1

Source: Compiled based of the information provided by SPSEs

It could be seen from the table above that 100 *per cent* presence of Independent Directors was only in 57 *per cent* of the Board Meetings. Further, the Independent Directors appointed in the board of Jaipur Metro Rail Corporation Limited and RajComp Info Services Limited did not give importance to the role assigned to them on behalf of the stakeholders by not attending the board meetings.

B. Meeting of Board Committees

Corporate Social Responsibility (CSR) Committee- Audit also reviewed the presence of the Independent Directors in the Companies where meetings of the constituted CSR Committees were held during 2019-20 and the independent directors were on board at the time of meeting. The attendance of Independent Directors in CSR Committee Meetings is given in **Table 3.4**.

Table 3.4 Attendance of ID in CSR Committee Meetings

S. No.	Name of the SPSE	Date of meeting	No. of ID in board	No. of ID attended
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	28.08.2019	2	2
		11.11.2019	2	2
2.	Ajmer Vidyut Vitran Nigam Limited	08.11.2019	2	1
3.	Jodhpur Vidyut Vitran Nigam Limited	08.11.2019	2	1
4.	Jaipur Vidyut Vitran Nigam Limited	31.10.2019	2	2
5.	Rajasthan State Mines & Minerals Limited	09.01.2020	2	1

Source: Compiled based of the information provided by SPSEs

It could be seen that one Independent Director of three SPSEs (Sl. No. 2, 3 and 5) remained absent in CSR Committee meetings.

Audit Committee- The status of presence of the Independent Directors on board during Audit Committee meetings held in FY 2019-20 is given in **Table 3.5.**

Table 3.5 Attendance of ID in Audit Committee Meetings

Sl. No.	Name of the SPSE	Date of meeting	No. of ID in board	No. of ID attended
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	13.05.2019	2	2
		26.07.2019	2	1
		28.08.2019	2	2
		27.09.2019	2	2
		11.11.2019	2	2
		05.03.2020	1	1
2.	Ajmer Vidyut Vitran Nigam Limited	30.07.2019	2	2
		13.08.2019	2	1
		19.09.2019	2	1
3.	Rajasthan Renewable Energy Corporation Limited	03.06.2019	2	2
		26.08.2019	2	2
		20.09.2019	2	1
4.	Jodhpur Vidyut Vitran Nigam Limited	30.07.2019	2	2
		19.09.2019	2	1
5.	Jaipur Vidyut Vitran Nigam Limited	30.07.2019	2	2
		16.09.2019	2	2
6.	Rajasthan Rajya Vidyut Utpadan Nigam Limited	13.05.2019	2	2
		26.07.2019	2	2
		12.09.2019	2	2
7.	Rajasthan Urja Vikas Nigam Limited	11.07.2019	2	1
		28.08.2019	2	2
		08.11.2019	1	1
8	Rajasthan State Mines & Minerals Limited	09.12.2019	2	2
9	RajComp Info Services Limited	24.10.2019	2	1
10	Jaipur Metro Rail Corporation Limited	13.09.2019	2	1
11	Jaipur Smart City Limited	27.08.2019	2	0
12	Udaipur Smart City Limited	30.07.2019	1	1
13	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited.	19.02.2020	2	2
14	Barmer Lignite Mining Company Limited	19.11.2019	3	3

Source: Compiled based of the information provided by SPSEs

C. General Meetings

Schedule IV (III) (5) of the Act, 2013 states that Independent Directors shall strive to attend all the General Meetings of the Company. Audit noticed that Independent Directors in 13 SPSEs were on board at the time of Annual General Meeting (AGM) during FY 2019-20. The details of the Annual General Meeting (AGM) held in 2019-20, number of independent directors on board of SPSE and number of independent directors that attended the meeting are given in **Table 3.6**.

Table 3.6 Attendance of ID in Annual General Meetings

Sl. No.	Name of the SPSE	Date of AGM	No. of ID on board	No. of ID attended the meeting
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	10.12.2019	1	0
2.	Ajmer Vidyut Vitran Nigam Limited	26.09.2019	2	0
3.	Rajasthan Renewable Energy Corporation Limited.	30.09.2019	2	2
4.	Jodhpur Vidyut Vitran Nigam Limited	26.09.2019	2	0
5.	Jaipur Vidyut Vitran Nigam Limited	23.09.2019	2	0
6.	Rajasthan Urja Vikas Nigam Limited	27.09.2019	2	2
7.	Rajasthan State Mines & Minerals Limited	28.01.2020	2	1
8.	RajComp Info Services Limited	20.01.2020	2	0
9.	Jaipur Metro Rail Corporation Limited	28.11.2019	2	1
10.	Jaipur Smart City Limited	31.10.2019	1	0
11.	Udaipur Smart City Limited	31.12.2020	1	0
12.	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited	17.03.2020	2	2
13.	Barmer Lignite Mining Company Limited	16.12.2019	3	1

Source: Compiled based of the information provided by SPSEs

It could be seen from the table above that none of the independent directors on board of seven SPSEs (Sl. No. 1, 2, 4, 5, 8, 10 and 11) attended the AGM whereas participation of independent directors of three SPSEs (Sl. No. 7, 9 and 13) was less and all the independent directors on board of only three SPSEs (Sl. No. 3, 6 and 12) had attended the AGM held in FY 2019-20.

Separate meeting of Independent Director

3.10 As per Schedule IV (VII) (1) of the Act, 2013, the independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. Further, all the independent directors of the company shall strive to be present at such meeting to review the performance of non-independent directors and the Board as a whole. The performance of the Chairperson of the company would also be reviewed taking into account the views of executive directors and non-executive directors.

Ministry of Corporate Affairs directed (24 March 2020) that if the IDs of a company have not been able to hold such a meeting, the same shall not be viewed as a violation for the financial year 2019-20. The IDs, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.

Audit noticed that out of the 16 SPSEs wherein Independent Directors were on board during 2019-20, Independent Directors of only three⁵ SPSEs conducted a separate meeting on 5 March 2020, 11 March 2020 and 6 December 2019 respectively whereas Independent Directors of remaining 13 SPSEs did not conduct separate meetings during 2019-20.

Audit observed that in absence of separate meetings, the very purpose of appointing the Independent Directors on the board of 13 SPSEs *i.e.* to review the performance of non-independent directors, chairperson and the Board as a whole was defeated. Further, assessment of the quality, quantity and timeliness of flow of information between the company management and the Board, necessary for the Board to effectively and reasonably perform their duties, could also not be done as required in Schedule IV (VII) (3) (c).

Besides, a review of the minutes of the meetings of the Independent Directors in three SPSEs disclosed that though the Independent Directors of these SPSEs assessed the quality, quantity and timeliness of flow of information between the management and the Board but they did not review the performance of non-independent directors, chairperson and Board as a whole.

Filling-up the posts of Key Managerial Personnel

3.11 Section 203(1) of the Act, 2013 provides that every company belonging to such class or classes of companies, as may be prescribed, shall have whole time Key Managerial Personnel (KMP) viz; (i) Managing Director, or Chief Executive Officer (CEO) or Manager and in their absence, a Whole-Time Director; (ii) Company Secretary; and (iii) Chief Financial Officer (CFO). Further, Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that every listed company and every other public company having a paid-up share capital of rupees ten crore or more shall have whole-time key managerial personnel. Section 203(4) of the Act, 2013 further provided that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Audit noticed that the paid-up capital of 24 SPSEs, as given in **Annexure-3.1**, was ₹ 10 crore or more in FY 2019-20. Hence, these companies were required to appoint whole time KMPs. Of these 24 SPSEs, whole time KMPs were found appointed in 20 SPSEs except four SPSEs as shown in the **Table 3.7**.

Table 3.7: Status of appointment of KMPs

Sl. No.	Name of SPSE	Status of KMP
1	Rajasthan State Road Development Corporation & Construction Limited	Full time Company
2	Rajasthan Tourism Development Corporation Limited	Secretary (CS) was not appointed in 2019-20
3	Rajasthan State Handloom Development Corporation Limited	
4	Rajasthan State Petroleum Corporation Limited	CFO & CS are to be appointed.

Source: Compiled based of the information provided by SPSEs

5 Rajasthan Rajya Vidyut Prasaran Nigam Limited, Rajasthan Urja Vikas Nigam Limited and Jaipur Metro Rail Corporation Limited.

Further review of records related to filling up of KMPs vacancies disclosed that the KMP's vacancies arose during 2019-20 were filled up within a period of six months from the date of such vacancy.

Meeting of the Board of Directors

3.12 As per section 173 (1) of the Act, 2013, every company shall hold the first meeting of the Board of Directors (BoD) within thirty days of the date of its incorporation and thereafter hold minimum four meetings of BoD every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Ministry of Corporate Affairs provided (24 March 2020) an extension of 60 days in holding the meetings of BoD within the intervals provided in the section 173 till next two quarters i.e. till September 2020 as a one-time measure.

The details of number of BoD meetings conducted by each SPSE during 2019-20 are given in **Annexure-3.1**. It could be seen that out of 41 SPSEs, 16⁶ SPSEs failed to conduct four BoD meetings during FY 2019-20 whereas Four⁷ SPSEs held only one BoD meeting during FY 2019-20. Further, SPSEs wherein the intervening period of two BoD meetings was found more than the prescribed time limit of 120/180 days are given in **Table 3.8**.

Table 3.8: Delay in holding of two consecutive BoD Meetings

Sl. No.	Name of SPSE	Date of meeting	Date of next meeting	Intervening period (in days)
1	Rajasthan State Handloom Development Corporation Limited	31.10.2019	13.10.2020	348
2	Barmer Lignite Mining Company Limited	25.06.2019	06.11.2019	134
3	Rajasthan State Petroleum Corporation Limited	09.12.2019	08.06.2020	182
4	Rajasthan Rajya Vidyut Utpadan Nigam Limited	09.12.2019	10.06.2020	183
5	Rajasthan State Mines & Minerals Limited	05.04.2019	10.12.2019	249
		10.12.2019	16.10.2020	311
6	Jaipur Smart City Limited	29.08.2019	22.01.2020	146
		22.01.2020	10.09.2020	232
7	Ajmer Smart City Limited	11.11.2019	16.03.2020	127
8	Kota Smart City Limited	14.08.2019	02.09.2020	385
9	Udaipur Smart City Limited	21.07.2019	21.11.2019	123
		31.12.2019	29.09.2020	272
10	Rajasthan Civil Aviation Corporation Limited	31.10.2019	05.08.2020	279
11	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited	17.08.2019	29.01.2020	165
		29.01.2020	29.07.2020	182
12	Rajasthan Police Housing and Construction Corporation	19.12.2019	29.07.2020	222

6 Sl. No. 10, 12, 13, 14, 17, 18, 23, 24, 25, 27, 31, 35, 36, 39, 40 & 41.

7 Sl. No. 10, 24, 31 & 39.

	Limited			
13	Rajasthan State Hotels Corporation Limited	27.05.2019	30.09.2019	125
14	Rajasthan State Power Finance and Financial Services Corporation Limited	30.07.2019	13.12.2019	136
15	Rajasthan State Ganganagar Sugar Mills Limited	13.06.2019	14.10.2019	123

Source: Compiled based of the information provided by SPSEs

Further, Section 173(3) of the Act, 2013 provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. A review of the date of the notices and the meetings disclosed that the following 10 SPSEs conducted BoD meetings without serving seven days' notice.

Table 3.9 Detail of Board Meeting called with shorter notice

Sl. No.	Name of the SPSE	Date of Notice	Board Meeting Date
1	Giral Lignite Power Limited	19.12.2019	23.12.2019
2	Dholpur Gas Power Limited	19.12.2019	23.12.2019
3	Chhabra Power Limited	19.12.2019	23.12.2019
4	Rajasthan State Industrial and Investment Corporation Limited	13.03.2020	18.03.2020
5	Ajmer Smart City Limited	11.03.2020	16.03.2020
6	Kota Smart City Limited	09.08.2019	14.08.2019
7	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited	27.01.2020	28.01.2020
8	Rajasthan State Hotels Corporation Limited	27.09.2019	30.09.2019
9	Rajasthan State Beverage Corporation Limited	10.12.2019	13.12.2019
10	Rajasthan State Ganganagar Sugar Mills Limited	12.12.2019	16.12.2019

Source: Compiled based of the information provided by SPSEs

Audit Committee and Other Committees of the Board

Constitution and Composition of Audit Committee

3.13 As per Section 177 (1) of the Act, 2013 and Rule 6 of the Companies (Meetings of Board and its powers) Rules, 2014, the BoD of every listed public company and all public companies with a paid up capital of ₹ 10 crore or more; or having turnover of ₹ 100 crore or more; or having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 crore or more, except Joint Venture Companies and wholly owned subsidiary companies shall constitute an Audit Committee.

Audit noticed that out of total 41 SPSEs, 26 SPSEs, as given in **Annexure-3.1**, having Independent Directors in their board were required to constitute Audit Committee. Audit observed that all SPSEs, except Kota Smart City Limited, have constituted Audit Committee as on 31 March 2020. Further, Rajasthan Ex-Servicemen Corporation Limited constituted (19 August 2019) the audit

committee with delay as the same was required to be constituted in the first quarter of 2018-19 considering its turnover of FY 2017-18.

Composition of the Audit Committee

3.14 Section of 177(2) of the Act, 2013 provides that the Audit Committee shall consist of a minimum of three directors, with independent directors forming a majority. Further, the majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

One SPSE *i.e.* Rajasthan Tourism Development Corporation Limited did not provide the information of composition of the audit committee. Out of remaining 24 SPSEs, wherein Audit Committee was constituted, all SPSEs except one SPSE *i.e.* Rajasthan State Industrial Development and Investment Corporation Limited, fulfilled the criteria of having at least three members in their Audit Committee during FY 2019-20. Further, the majority of Independent Directors was found in three⁸ SPSEs only whereas in remaining 21 SPSEs, the Independent Directors were not found in majority.

Terms of reference for Audit Committee

3.15 Section 177(4) of the Act, 2013 provides that every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board.

Audit noticed that 24 SPSEs (excluding RTDCL) which have constituted Audit Committee, the terms of reference (ToR) of only 13 SPSEs, as shown in **Table 3.10**, was found approved by their respective Board.

Table 3.10: SPSEs where ToR of Audit Committee approved

Sl. No.	Name of SPSE
1.	Ajmer Vidyut Vitran Nigam Limited
2.	Jodhpur Vidyut Vitran Nigam Limited
3.	Jaipur Metro Rail Corporation Limited
4.	Jaipur Vidyut Vitran Nigam Limited
5.	Rajasthan State Industrial Development and Investment Corporation Limited
6.	Rajasthan Medical Services Corporation Limited
7.	Rajasthan Rajya Vidyut Utpadan Nigam Limited
8.	Rajasthan Small Industries Corporation Limited
9.	Rajasthan State Power Finance & Financial Services Corporation Limited
10.	Rajasthan State Seeds Corporation Limited
11.	Rajasthan Urja Vikas Nigam Limited
12.	RajComp Info Services Limited
13.	Rajasthan Renewable Energy Corporation Limited

Source: Compiled on the basis of information provided by SPSE

A review of ToR disclosed that all these SPSEs (except SPSEs at Sl. No. 1, 8 and 10) included all points as specified in Section 177(4). Ajmer Vidyut Vitran Nigam Limited did not include 'review and monitor the auditor's independence, performance and effectiveness of audit process and approval of transactions with related parties' in ToR. Further, ToR of Audit Committee approved by the

⁸ Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited, RajComp Info Services Limited and Rajasthan State Mines & Minerals Limited

board of Rajasthan Small Industries Corporation Limited and Rajasthan State Seeds Corporation Limited did not include ‘auditor's independence & performance’.

SPSEs wherein ToR of Audit Committee was not approved by their respective boards are given in **Table 3.11**.

Table 3.11: SPSEs where ToR of Audit Committee not approved

Sl. No.	Name of SPSE
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited
2.	Rajasthan State Beverage Corporation Limited
3.	Rajasthan State Ganganagar Sugar Mills Limited
4.	Rajasthan State Handloom Development Corporation Limited
5.	Rajasthan State Food and Civil Supplies Corporation Limited
6.	Rajasthan Ex-Servicemen Corporation Limited
7.	Rajasthan State Mines & Minerals Limited
8.	Rajasthan State Road Development Corporation & Construction Limited
9.	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited
10.	Jaipur Smart City Limited
11.	Udaipur Smart City Limited

Source: Compiled on the basis of information provided by SPSE

Review of functioning of Audit Committee-

3.16 The terms of reference under Section 177(4) of the Act, 2013 *inter alia* includes (i) review and monitor the auditor’s independence and performance and effectiveness of audit process; (ii) examination of the financial statement and the auditors’ report thereon; (iii) evaluation of internal financial controls and risk management systems. Further, Section of 177(5) of the Act, 2013 provides that the Audit Committee may call for the comments of the auditors about internal control systems, scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

The details of Audit Committee meetings held by SPSEs are given in **Annexure-3.1**. One SPSE *i.e.* Rajasthan State Handloom Development Corporation Limited did not hold any Audit Committee meeting in FY 2019-20 whereas Rajasthan Tourism Development Corporation Limited did not provide the details of the Audit Committee meetings held by it. To assess whether the constituted Audit Committees acted in accordance with the approved ToR, an analysis of minutes of the meetings of the Audit Committees held during 2019-20 was done. Audit analysis disclosed that the Audit Committees of only four⁹ SPSEs evaluated the internal controls mechanism existing in the SPSE whereas Audit Committees of none of the SPSEs reviewed and monitored the auditor’s independence and performance. Further, the financial statements and auditor’s report of Rajasthan State Handloom Development Corporation Limited for the

9 Rajasthan Renewable Energy Corporation Limited, Jaipur Metro Rail Corporation Limited, Jaipur Smart City Limited, Rajasthan State Power Finance and Financial Services Corporation Limited

year ended 31 March 2019 was not examined by its Audit Committee as no meeting was held during FY 2019-20.

Nomination and Remuneration Committee

3.17 As per Section 178(1) of the Act, 2013 and Rule 6 of the Companies (Meetings of Board and its powers) Rules, 2014, the BoD of every listed public company and all public companies with a paid up capital of ₹ 10 crore or more; or having turnover of ₹ 100 crore or more; or having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 crore or more, shall constitute a Nomination and Remuneration Committee (NRC).

Audit noticed that 26 SPSEs, as shown in **Annexure-3.1**, were required to constitute the NRC. However, the following eight SPSEs did not constitute the NRC as on 31 March 2020:

Table 3.12: SPSEs which did not constitute NRC

Sl. No.	Name of the SPSE
1.	Rajasthan State Handloom Development Corporation Limited
2.	Rajasthan Tourism Development Corporation Limited
3.	Rajasthan Small Industries Corporation Limited
4.	Rajasthan State Mines & Minerals Limited
5.	RajComp Info Services Limited
6.	Kota Smart City Limited
7.	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited
8.	Rajasthan State Ganganagar Sugar Mills Limited (RSGSML)

Source: Compiled on the basis of information provided by SPSE

RSGSML stated that Executive committee having four members (one executive & three non-executive) is working as NRC, however no disclosure in this regard was made in Annual Report and no documents were provided in support of this fact.

The Act, 2013 further provides that the NRC should consist of three or more non-executive directors out of which not less than one-half shall be independent directors. The chairperson of the Company (whether executive or non-executive) may be appointed as a member of the NRC but shall not chair such Committee.

An analysis of the NRC constituted in 18 SPSEs disclosed that the composition of the NRC (except RRECL) was not as per the provisions of the Act, 2013 as summarized in the **Table 3.13**.

Table 3.13 Composition of NRC in SPSEs as on 31 March 2020

Sl. No.	Name of the SPSE	Composition and remarks
1.	Jodhpur Vidyut Vitran Nigam Limited	Three non-executive members but no Independent Director
2.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	Two non-executive members and one Independent Director. Independent Director did not have majority.
3.	Ajmer Vidyut Vitran Nigam Limited	Two Directors excluding Chairman DISCOMs. No Independent Director.

4.	Rajasthan State Industrial Development and Investment Corporation Limited	One non-executive member only.
5.	Rajasthan State Road Development and Construction Corporation Limited	Two non-executive members and one executive member. No Independent Director.
6.	Jaipur Metro Rail Corporation Limited	Three non-executive members. No Independent Director.
7.	Udaipur Smart City Limited	Three executive and one Independent Director, instead of prescribed number of non-executive members. Independent Director did not have majority.
8.	Rajasthan Medical Services Corporation Limited	Three non-executive members. No Independent Director.
9.	Rajasthan State Beverage Corporation Limited	Two executive director and one non-executive director instead of prescribed number of non-executive members. Independent Director did not have majority.
10.	Rajasthan State Power Finance & Financial Services Corporation Limited	Three non-executive members. No Independent Director.
11.	Rajasthan Ex-Servicemen Corporation Limited	Four non-executive members. No Independent Director.
12.	Rajasthan State Seeds Corporation Limited	Two non-executive director and one executive director instead of prescribed number of non-executive members. No Independent Director.
13.	Rajasthan State Food & Civil Supplies Corporation Limited	Three non-executive members and one executive member instead of prescribed number of non-executive members. No Independent Director.
14.	Jaipur Smart City Limited	Three non-executive members. No Independent Director.
15.	Rajasthan Urja Vikas Nigam Limited	Two non-executive and one Independent Director. Independent Director did not have majority.
16.	Rajasthan Rajya Vidyut Utpadan Nigam Limited	Only one non-executive director. No Independent Director.
17.	Jaipur Vidyut Vitran Nigam Limited	Only one member (Chairman). No Independent Director.
18.	Rajasthan Renewable Energy Corporation Limited	Three non-executive members including two Independent Director.

Source: Compiled on the basis of information provided by SPSE

Audit observed that the SPSEs did not comply with the provisions of the Act while constituting the NRC during FY 2019-20.

Stakeholders Relationship Committee

3.18 Section 178 (5) of the Act, 2013 provides that the Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee (SRC)

consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. Further, Section 178(6) of the Act, 2013 provides that the SRC shall consider and resolve the grievances of security holders of the company.

Audit observed that only one SPSE *i.e.* Rajasthan State Seeds Corporation Limited, having 4330 members, constituted (September 2015) the SRC, however, no meeting of SRC was held in 2019-20 as no grievance was received during the period.

Whistle Blower Mechanism (WBM)

3.19 Section 177(9) of the Act, 2013 read with Rule 7 of the Companies (Meetings of Board and its power) rules provides that every listed company; the Companies which accept deposits from the public; the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees shall establish a Vigil Mechanism for their directors and employees to report genuine concerns and grievances.

Audit noticed that 12¹⁰ SPSEs, which have borrowed ₹ 50 crore or more, were required to establish Whistle Blower Mechanism (WBM) during FY 2019-20. The WBM established in eight¹¹ SPSEs was overseen by their Audit Committees. However, four SPSEs, as given in the **Table 3.14**, did not have whistle blower mechanism.

Table 3.14: Implementation of Whistle Blower Mechanism

Sl. No.	Name of SPSE
1.	Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited
2.	Rajasthan State Seeds Corporation Limited
3.	Giral Lignite Power Limited
4.	Kota Smart City Limited

Source: Compiled on the basis of information provided by SPSE

Audit also observed that no whistle was blown in any SPSE during FY 2019-20 which indicates that adequate publicity of the WBM established in SPSEs was not made.

Internal Audit Framework

Role of Internal audit

3.20 The Institute of Internal Auditors (IIA) defines Internal Auditing as: “An independent, objective assurance and consulting activity designed to add value and improve an organization’s operations. The internal audit activity helps an organization to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.” Accordingly, the role of internal audit is to provide independent assurance that an organisation’s risk management, governance and internal control processes are operating effectively.

10 As mentioned at Sl. No. 1 to 5, 14 to 17, 22, 24, 37 and 40 of Annexure 3.1

11 As mentioned at Sl. No. 1 to 5, 16, 22 and 40 of Annexure 3.1

The framework governing internal audits issued by ICAI defines internal audit as an independent assurance on the effectiveness of internal controls and risk management processes to enhance governance and achieve organisational objectives.

Legal Framework

3.21 The section 138(1) of the Act, 2013 read with Rule 13 of Companies (Accounts) Rules, 2014, provides that (a) every listed company; (b) every unlisted public company having paid up share capital of fifty crore rupees or more; or turnover of two hundred crore rupees or more during the preceding financial year; or outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more; or outstanding deposits of twenty-five crore rupees or more at any point of time during the preceding financial year shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Audit noticed that 25 SPSEs, as given in **Annexure-3.2**, were required to appoint internal auditor. Of these 25 SPSEs, two¹² SPSEs did not appoint internal auditor for FY 2019-20. Further, internal audit of Rajasthan State Food and Civil Supplies Corporation Limited for FY 2019-20 could not be conducted due to non-availability of accounts whereas Rajasthan State Handloom Development Corporation Limited has not provided the details of appointment of internal auditor. In remaining 21 SPSEs, wherein Internal Auditors were appointed, internal audit in 14 SPSEs and seven SPSEs was conducted by the Chartered Accountant firms and other internal auditors respectively. The internal audit conducted by other than Chartered Accountant firms is given in **Table 3.15**.

Table 3.15: SPSEs wherein internal audit conducted by other Internal Auditors

S. No.	Name of the SPSE	Internal auditor
1.	Rajasthan Rajya Vidyut Prasaran Nigam Limited	Out of 58 units, expenditure audit of 17 units was conducted by the Company's employees.
2.	Ajmer Vidyut Vitran Nigam Limited	Through IA wing and CA Firms
3.	Giral Lignite Power Limited	Internal Audit Party of other Power Plant
4.	Jodhpur Vidyut Vitran Nigam Limited	Through IA wing and CA Firms
5.	Jaipur Vidyut Vitran Nigam Limited	SPSE's employees under CAO (Internal Audit)
6.	Rajasthan Rajya Vidyut Utpadan Nigam Limited	Internal Audit Wing of the SPSE
7.	Jaipur Smart City Limited	Institute of Public Auditors of India

Source: Compiled on the basis of information provided by SPSE

Frequency and Reporting of Internal Audit

3.22 Section 138 (2) of the Act, 2013 provides that the Central Government may, by rules, prescribe the manner and the intervals in which the internal audit

12 Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited and Kota Smart City Limited

shall be conducted and reported to the Board.

Audit, however, noticed that the rules have not been prescribed so far (March 2020) and hence the internal audit in SPSEs was conducted on quarterly, half-yearly and annual basis. Further, only seven SPSEs reported the internal audit findings to the Board whereas remaining SPSEs reported the internal audit reports up to Audit Committee, Director Finance *etc.* as given in **Annexure-3.2**.

Other issues

Irregular contribution to the Chief Minister's Relief Fund (CMRF)

3.23 As per Section 181 of the Companies Act 2013, the Board of Directors of the company may contribute to *bona-fide* charitable and other funds, provided that prior permission of the company in general meeting is required for such contribution in case the aggregate contribution, in any financial year, exceed five *per cent* of its average net profits for the three immediately preceding financial years.

Audit noticed that two companies contributed significant funds to the CMRF during 2018-19 and 2019-20 as detailed below:

(` in crore)

Particulars	RSGSML		RSBCL	
	2018-19	2019-20	2018-19	2019-20
Company's average net profit for the three immediately preceding financial years	51.20	55.88	23.69	29.75
Amount for which BoD was competent to contribute in the CMRF <i>i.e.</i> 5% of average net profit	2.56	2.79	1.18	1.49
Amount contributed to CMRF during the year	30.00	35.00	30.00	35.00

Audit observed that the Board of Directors of both the SPSEs approved the contributions to the CMRF and accordingly, the contributions were deposited in the CMRF without obtaining prior permission in the General Meetings of the companies. Thus, the contributions made by both the companies to CMRF were irregular.

Management of both the SPSEs replied that the decisions of BoDs for contributing funds in CMRF were got ratified in the General Meetings of the companies.

The fact remains that prior permission to contribute funds in the CMRF in excess of the eligible amount was not obtained in the General Meetings which was in violation of the provisions of the Companies Act 2013.

Conclusion

Out of 26 SPSEs, wherein Independent Directors were to be appointed, 17 SPSEs did not appoint Independent Directors whereas in four SPSEs, required number of Independent Directors were not appointed. Further, two SPSEs did not have Woman Director throughout FY 2019-20. Two SPSEs appointed

Independent Directors without obtaining approval in general meeting and appointment letters were not issued by both the SPSEs. Tenure, list of actions and terms and conditions were not incorporated by two SPSEs. None of the SPSEs imparted training for Independent directors. Independent directors either had not attended the Board Meetings or had not attended some board committee meetings in 14 SPSEs and Independent directors of seven SPSEs did not attend general meetings. Separate meeting of Independent Director was not conducted in 13 SPSEs. Four SPSEs did not have whole time Key Managerial Personnel. There was significant delay ranging between 123 days and 348 days in two consecutive meetings of the Board in 16 SPSEs. Audit Committee did not consist of two-third independent directors in 21 SPSE and it did not evaluate internal financial control and risk management system in 20 SPSEs. Moreover, the performance of statutory auditors and internal auditor were not evaluated in any SPSEs. Nomination and Remuneration Committee was not constituted in eight SPSEs; whereas in 17 SPSEs composition of NRC was not as per provision of the Act. No whistle blower mechanism existed in five SPSEs. And also, two SPSEs did not appoint Internal Auditors.

Recommendation

Government of Rajasthan may impress upon the respective Administrative Departments to ensure compliance with guidelines so as to achieve the objectives of corporate governance by SPSEs.