



TWELFTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2008-2011)**

EIGHTIETH REPORT

(Presented on 16th March 2010)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2010

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On

**Foam Mattings (India) Limited based
on the Report of the Comptroller and Auditor General of
India for the year ended 31st March 2003(Commercial)**

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COMMITTEE ON PUBLIC UNDERTAKINGS (2008-2011)

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Smt. L. Sailaja, Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2008-2011), having been authorised by the Committee to present Report on their behalf, present this Eightieth Report on Foam Mattings (India) Limited based on the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2003 (Commercial) relating to the Government of Kerala.

The Report of the Comptroller and Auditor General of India for the year ended 31-3-2003 was laid on the Table of the House on 28-6-2004. The consideration of the audit paragraphs included in this Report and the examination of the departmental witness in connection thereto was made by the Committee on Public Undertakings constituted for the period 2008-2011.

This Report was considered and approved by the Committee at the meeting held on 13-1-2010.

The Committee place on record their appreciation of the assistance rendered to them by the Accountant General (Audit), Kerala in the examination of the Audit Paragraphs included in this Report.

The Committee wish to express their thanks to the officials of the Industries Department of the Secretariat and Foam Mattings (India) Limited for placing before them the materials and information they wanted in connection with the examination of the subject. They also wish to thank in particular the Secretaries to Government, Industries Department and Finance Department and the officials of the Foam Mattings (India) Limited who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

MANKODE RADHAKRISHNAN,

Thiruvananthapuram,
16-3-2010.

*Chairman,
Committee on Public Undertakings.*

REPORT

FOAM MATTINGS (INDIA) LIMITED

AUDIT PARAGRAPH

Commercial risks involve in the export of the Company's products for the two years up to 31 May 2002 had been covered under insurance with Export Credit Guarantee Corporation of India (ECGC). As per clause 3(i) of the policy, whenever shipments were made on terms of acceptance of documents, the Company had to get suitable credit limit approved from ECGC on each of the buyers, in the absence of which the claims arising from commercial risks will not be admitted even if premium was paid for covering comprehensive risk on such shipments.

In March 2000 the ECGC informed the Company that the credit limit approval issued on Far Pavilion (FP), the agent and distributor of the Company in USA, under the previous policy, stood cancelled and no further shipments should be made to them till the outstandings were cleared and without the prior approval of the Corporation.

However, the Company shipped (August and October 2000) two consignments of its products worth Rs. 28.92 lakh to FP without obtaining the approval for fresh credit limit from ECGC in respect of this buyer. FP defaulted the payment against the export and the claim filed by the Company for the settlement of debt with ECGC was rejected. Subsequently, the Company's collecting agent in United States, American Bureau of Collections—West also intimated (September 2002) their inability to collect dues from FP due to delay on the part of the Company to respond promptly to the agents earlier warning (April 2002) about the buyer's possible insolvency.

Thus, the negligence on the part of the Company in ensuring valid credit limit as per the provisions of the insurance policy, before extending credit facility to the importer and the failure to act promptly for collection of dues through the foreign agent resulted in loss of Rs. 28.92 lakh due to non-realisation of export sale proceeds.

The Government endorsed (July 2003) the reply of the management that the Board of Directors of the Company had decided to file a civil suit against the former Managing Director and General Manager (Under suspension) to recover the amount. However, no action had been initiated so far (August 2003).

(Audit Paragraph 4.6 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March 2003.)

The notes furnished by Government on the audit paragraph is given in Appendix II.

1. The Committee found clear negligence on the part of the Company in ensuring valid credit limit as per the provisions of the Insurance policy before extending credit limit facility to the importer in the shipment of two consignments of products amounting to Rs. 28.92 lakh to Far Pavilion, the agent and distributor of the company in USA. The failure on the part of the company to act promptly for the collection of dues through the foreign collection agents also led to the loss. The Committee wanted an explanation from the witness present.

2. The Additional Secretary, Coir stated that the issue was related to a shipment made by Foam Mattings (India) Ltd. to a U.S. agency. The cost of the shipment amounting to Rs. 28.92 lakh could not be recovered from them. The witness added that though the Company had filed a civil suit against the former MD Shri Somanathan Pillai and GM of the Company, Shri Chandran for its recovery, the court verdict was in their favour.

3. When the Committee enquired whether the Company had filed appeal against the verdict the witness informed that an appeal has been filed and that the case is being dealt by Menon & Pai. The witness stated that as per the verdict there was no evidence for dereliction of duties by the defendants. The Company had neither taken proper steps to recover the amount from the Export Credit Guarantee Corporation nor took legal steps to recover the amount from the US firm. The witness stated that the verdict was in favour of the defendants as the letter from Export Credit Guarantee Corporation of India, informing that the credit limit issued on the US firm stood cancelled and that no further shipment should be done till outstandings were cleared and without prior approval of the Corporation was shown to be received by the Company only in 2001. But actually the letter was seen to be received in 2000, as per records produced at the time of audit examination. The Committee directed that appeal should be filed against the verdict and enquired whether any lapse had occurred on the part of the advocate who presented in the court for the company. The Committee suspected unholy nexus between the officials responsible for the loss and the officers of the company and stated that none other than the officials of the company would be able to forge a document like this.

4. The Committee wanted, the documents submitted by the company to the court, including the letter from Credit Guarantee Corporation, to be produced before it. The Committee suspects that the officials of Foam Mattings (India) Limited might have forged the document in order to protect the officers

responsible. The committee wanted to know the situation which led to production of such a forged document in the court.

5. The witness stated that it has to be verified whether the remark made by the court was based on mere contention made by the defendants in the court or evidence produced by them. The Committee opined that if the defendants had submitted a letter of Credit Guarantee Corporation related to 2001 for contention, the document dated 2000 which was produced to AG earlier should have been submitted by the company to the Court. Then the question of 2001 document would not have come up and therefore it seems to be a naked cheating of a Constitutional body. The Committee observed that if the document relating to 2000 is submitted before the Court the contention of a 2001 document might not have sustained. The Committee assume that either the document relating to 2000 has not been submitted to the court or a forged document showing 2001 must have been produced to the court. The Committee suspect that the officials of the Company might have indulged in fraudulent methods to rescue the officials who are responsible for the loss.

6. The Committee finds that the officials who were indulged in the case had gone to High Court for seeking amendment in the case file. Though the High Court dismissed the same initially, when they went for appeal they were allowed to make amendment in the filed case. The Committee opined that it is very clear that all this would not have been possible without help of the officials of the company. When enquired whether the persons responsible for the loss are still in service the witness informed that the GM had gone on superannuation while the Managing Director has got transferred. The Committee sought the details on the reasons that led to the unfavourable verdict and a copy of the file which the Company submitted to the Court and directed that the company should proceed for appeal.

Conclusions/Recommendations

7. **The Committee finds that the failure of the Company to get required credit limit approved from ECGC in order to cover the commercial risk involved in the shipment of two consignments of product to Far pavalion led to the non-recovery of Rs. 28.92 lakhs. The Committee understands that the court verdict in the civil suit filed against the former MD, Shri Somanathan Pillai and G.M., Shri Chandran for recovery of the amount was in favour of the accused owing to the Company's failure in submitting the required documents, to the court. The Committee suspects an unholy nexus between the accused and the officials of the Company. The document produced to the court relating to the letter from the Export**

Credit Guarantee Corporation of India informing that the credit limit issued on the US firm stood cancelled and that no further shipment should be effected till outstandings, were cleared and without prior approval of the Corporation was shown to be received in 2001. However it was actually received in 2000. The Committee suspects that the document produced to the court might have been a forged one. The Committee views this as a naked cheating of a constitutional body. The Committee observes that if the letter, dated 2000, produced on audit examination, was produced before the court, the document submitted defending the accused might not have sustained.

8. The Committee suspects that the officials of the Company might have indulged in fraudulent methods to rescue the officials responsible for the loss. The Committee wants to have a copy of the file which the Company submitted to the court and directs the Company to proceed for appeal. The Committee recommends that a detailed enquiry should be conducted on the matter by an external investigation agency and that strong action should be taken against the persons responsible.

MANKODE RADHAKRISHNAN,

Thiruvananthapuram,
16-3-2010.

*Chairman,
Committee on Public Undertakings.*

APPENDIX I

Summary of main Conclusions/Recommendations

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department Concerned</i>	<i>Conclusions/Recommendations</i>
(1)	(2)	(3)	(4)
1.	7	Industries	<p>The Committee finds that the failure of the Company to get required credit limit approved from ECGC in order to cover the commercial risk involved in the shipment of two consignments of product to Far pavalion led to the non-recovery of Rs.28.92 lakhs. The Committee understands that the court verdict in the civil suit filed against the former MD, Shri Somanathan Pillai and G.M., Shri Chandran for recovery of the amount was in favour of the accused owing to the Company's failure in submitting the required documents to the court. The Committee suspects an unholy nexus between the accused and the officials of the Company. The document produced to the court relating to the letter from the Export Credit Guarantee Corporation of India informing that the credit limit issued on the US firm stood cancelled and that no further shipment should be effected till outstandings, were cleared and without prior approval of the Corporation was shown to be received in 2001. However it was actually received in 2000. The Committee suspects that the document produced to the court might have been a forged one. The Committee views this as a naked cheating of a constitutional body. The Committee observes that if the letter, dated 2000, produced on audit examination, was produced before the court, the document submitted defending the accused might not have sustained.</p>

(1)	(2)	(3)	(4)
2	8	Industries	<p>The Committee suspects that the officials of the Company might have indulged in fraudulent methods to rescue the officials responsible for the loss. The Committee wants to have a copy of the file which the Company submitted to the court and directs the Company to proceed for appeal. The Committee recommends that a detailed enquiry should be conducted on the matter by an external investigation agency and that strong action should be taken against the persons responsible.</p>

APPENDIX II

Action taken statement—pending audit para

<i>Sl. No.</i>	<i>Year</i>	<i>Para No.</i>	<i>Action taken</i>
1	2003	4—6	<p>The Company had filed a civil suit against the reponsible officers as OS No. 98/2003 with Sub-court Alappuzha for realizing the dues and the court appointed a commission of advocates for taking detailed evidence. The commission had taken evidence, which was submitted to the court. In the mentime the defendants had requested to the sub-court to amend some matters on the findings of commission. The Hon'ble court, in its judgement on 23rd July 2004 rejected the request of the defendants. The defendants then filed WP(C) 39405/04 before the Hon'ble High Court and the court stayed the proceedings of the Sub-court of Alappuzha in OS No. 98/2003. Company had filed counter affidavit for getting the stay vacated. When the writ petition came up for hearing on 31-10-2006, the Hon'ble High Court allowed the writ petition and the defedants are allowed to amend the written statement as prayed for. The case will now have to be decided by the sub-court on the basis of the amended pleadings.</p>