

PUBLIC ACCOUNTS COMMITTEE

(2002-2003)

FORTY-SIXTH REPORT

(THIRTEENTH LOK SABHA)

**PROCUREMENT OF DEFECTIVE
SLEEPING BAGS**

MINISTRY OF DEFENCE

Presented to Lok Sabha on 13 March, 2003

Laid in Rajya Sabha on 13 March, 2003

LOK SABHA SECRETARIAT

NEW DELHI

March, 2003/Phalguna.1924 (Saka)

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COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

(2002 - 2003)

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* Shri Chhattapal Singh ceased to be Member of the Committee consequent upon his appointment as Minister on 29 January, 2003.

** Elected on 7.8.2002 *vice* Dr. Sahib Singh Verma ceased to be Member of the Committee consequent upon his appointment as Minister on 1.7.2002.

INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee to present this Report on their behalf, do present the Forty-Sixth Report on Paragraph 17 of the Report of C&AG of India for the year ended 31 March 1998, (No.7 of 1999), Union Government (Defence Services – Army & Ordnance Factories) relating to “Procurement of defective sleeping bags”.

2. The Report of the C&AG for the year ended 31 March, 1998 (No. 7 of 1999), Union Government (Defence Services- Army & Ordnance Factories) was laid on the Table of the House on 14 December, 1999.

3. The Committee took the evidence of the representatives of the Ministry of Defence (Departments of Defence and Defence Production & Supplies) on the subject at their sitting held on 20 September, 2001. The Committee considered and finalised this Report at their sitting held on 10 March, 2003. Minutes of the sitting form Part II* of the Report.

4. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix* to the Report.

5. The Committee would like to express their thanks to the Public Accounts Committee (2001-2002) for taking evidence on Paragraph 17 and obtaining information thereon.

6. The Committee would like to express their thanks to the officers of the Ministry of Defence (Departments of Defence and Defence Production & Supplies) for the cooperation extended by them in furnishing information and tendering evidence before the Committee.

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

NEW DELHI;
12 March, 2003
21 Phalgun, 1924(Saka)

SARDAR BUTA SINGH,
Chairman,
Public Accounts Committee

* Not appended to the cyclostyled copy of the Report.

REPORT

This Report is based on paragraph 17 of the Report of Comptroller and Auditor General of India for the year ended 31 March 1998 (No. 7 of 1999), Union Government (Defence Services - Army & Ordnance Factories) relating to procurement of defective sleeping bags, ¹the testimony of the representatives of Ministry of Defence and the material evidence procured from the Ministry

I Introductory

The item sleeping bag with cover is one of the items of special snow and mountaineering equipment for troops deployed at Siachen Glacier and Eastern Sector. Since 1988, sleeping bags were being procured from M/s Richner of Geneva, Switzerland by placing repeat orders on the firm, which was the only approved Vendor for this item and the performance of the firm was satisfactory. The firm sought an increase in prices to cater to the requirement of sleeping bags for the year 1991. The matter was then got reviewed in the Ministry of Defence and it was decided to increase the Vendor base so as to ensure competition with a view to securing the most competitive price. Accordingly, it was decided to float global tenders for procurement of all the items of Special Snow and Mountaineering Equipment including inter-alia sleeping bags with cover.

II. Selection of M/s Moncler of France for Procurement of sleeping bag

2. The Committee have been informed that to meet the requirements for the year 1992-93, global tenders, for procurement of all the items of extreme cold weather clothing system and other equipments including inter-alia sleeping bags with cover, were floated by the Ministry of Defence on 26 December, 1991. According to the Ministry, six firms including the past supplier M/s Richner of Switzerland responded to the global tender. Samples of sleeping bags were, however, submitted by three out of these six firms M/s Richner of Switzerland, being a past supplier, was not required to submit the sample for fresh trial evaluation. All the samples received from the tenderers were subjected to a short user trial for one month, in Siachen Glacier. Trial report of the samples was submitted by Master General of Ordnance's (MGO's) Branch/Army Headquarters (HQrs) on 27 March 1992. As per the trial report, sample of the sleeping

¹ Reproduced at Appendix I

bags submitted by M/s Moncler SA, France was only found suitable for introduction into service. The Ministry in their note further added that M/s Moncler of France had quoted a lower rate of FF 1381 (Rs.6557.45) per piece whereas the past supplier, M/s Richner of Switzerland had quoted a rate of SFR 579.60 (Rs.10571.82) per piece for large size and SFR 479.55 (Rs.8746.92) per piece for medium size. The Price Negotiation Committee (PNC) constituted with the approval of Raksha Mantri, therefore, decided that the orders be placed on the lowest technically valid offer and recommended placement of order on M/s Moncler of France. Accordingly, with the approval of competent financial authority the contract for procurement of 8588 sleeping bags was entered into with M/s Moncler on 11 May 1992 at a cost of FF 11.86 million equivalent to Rs. 7.65 crore. As per the delivery schedule fixed in the contract, the entire quantity i.e 8588 sleeping bags were to be delivered within 90 days from the date of placement of order.

3. The Committee enquired whether the quality of sleeping bags from M/s Richner was compared with that of M/s Moncler before contract was awarded to the latter firm. The Ministry in a note denied having any comparison of sleeping bags done for ascertaining qualitative superiority. According to them, the samples of sleeping bags submitted by both these firms were trial evaluated separately, at different points of time and both were found fit for introduction into service by trial teams. The Ministry further added that evaluation is done on the basis of quality requirements and user requirements and products offered by Vendors are never compared to each other.

4. Asked about the size specification of sleeping bag in the tender document, the Ministry in a note stated that no specific size of sleeping bag had been mentioned in the tender document. To a query as to which size of the sleeping bag was required/used by the Army, the Ministry stated that the Army required/used both sizes viz. large and medium and in the past sleeping bags of both sizes were procured by the Army.

5. On being enquired against what size of sleeping bag, the prices quoted by both M/s Richner of Switzerland and M/s Moncler of France were compared, the Ministry in a note submitted that the price of the sleeping bag offered by M/s Moncler was lesser than the prices of the sleeping bags of both large and medium sizes, offered by M/s Richner. Asked further what was the sample size of the sleeping bag from M/s Moncler

which was trial evaluated by Army, the Ministry stated that sample size of sleeping bag from the French firm was not specified earlier in the trial report. However, the size of the sealed sample held in Army HQrs. which was trial evaluated by them is (a) Length (6'3.5") and (b) width (2'.8").

6. To a query, whether the Ministry had made any effort to trace the track record of the French firm before awarding the contract for procurement of sleeping bags, the Ministry in a note stated that since the Military Attache France had intimated Army HQrs about M/s Moncler as a prospective Vendor for this item, no further efforts were made to trace the track record of the French firm M/s Moncler before awarding the contract.

III. Negligence in quality Inspection

7. The Ministry have furnished complete account of 8588 sleeping bags received from M/s Moncler, in six lots comprising of 15 consignments, which is depicted in the following Table:

Lot No.	Quantity	Date of Receipt	Consignments	Date of Inspection
1.	977	19 Sept.92	One	23 Sept 92
2.	1015	09 Oct. 92	One	19 Oct. 92
3.	1602	23 Oct 92	One	13 Nov.92
4.	3258	22 Feb 93	Five	22 Mar 93
5.	603	23 April, 93	Two	27 April 93
6	1133	21 June, 93	Five	08 July 93

8. It is seen from the audit paragraph that the firm supplied sleeping bags which did not conform to the sample submitted by it and trial evaluated by the Army. According to Audit, the inspection staff of Directorate General of Quality Assurance (DGQA) inspected and cleared first three lots of sleeping bags supplied by M/s Moncler of France without the sample against which the quality was to be certified and also cleared the fourth lot even though the sample was made available to them. The inspectors failed to notice the presence of central stitching on outer bags which was not there in the trial evaluated approved sample. Audit further pointed out that the Senior Quality Assurance

Officer (SQAQO) rejected the fifth and sixth lots of sleeping bags later in May June-1993.

9. To a written question of the Committee whether it was not mandatory on the part of the inspecting authorities in DGQA to inspect the sleeping bags against the approved samples, the Ministry replied that as per the DGQA standing instructions, there are various types of samples to be used during different stages of inspection. According to the Ministry, the contract with M/s Moncler of France provided for the inspection of the sleeping bags against the approved sealed samples. To a query as to how the inspecting team cleared the defective sleeping bags without the sample, the Ministry stated that the approved sealed sample was neither insisted upon nor provided by the users at the time of inspection of stores till receipt of complaint from M/s DEFTECH, Netherlands, in December 1992. The sleeping bags were thus inspected for only visual parameters by the DGQA staff in association with representatives of Det, COD, Delhi Cannt. Commenting on the requirement of certifying the quality of sleeping bags against the approved sealed sample, the Ministry in a note inter-alia stated:

“These bags should have been inspected after cross-checking against approved sealed samples as provided for in the contract and the DGQA instructions.”

10. To a query as to how the inspection team passed the defective sleeping bags of the fourth lot even though the sample was made available to them, the Ministry in a note stated:

“As clarified by Army HQrs, although the approved samples were being kept in Det 2 FOD, yet the system of sealing of samples was not being followed, since till 1990, only repeat orders to approved firms were being placed. Army HQrs have further clarified that though the system of sealing of samples was started from 1991 onwards when it was decided to float global tenders for items of Special Clothing Ski and Mountaineering equipment, yet the requirement of authentication of these samples under the signatures of a designated officer was not felt till the receipt of complaint from M/s Deftech of Netherlands, in December, 1992.

Thus the sample provided by DGOS/Army HQrs at the time of Inspection of 4th lot did not bear the signatures of the approving/competent authority. Observations to this effect were made by the Inspecting Team while inspecting the 4th lot with the request that all the sealed/approved samples may be got signed by the authority who had approved the sample(s). The inspecting staff, however, did not make a specific endorsement clearing the lot for issue to the user unit.”

11. The Ministry in a post-evidence note added that for the fourth lot of 3258 sleeping bags, DGQA asked for the sample and carried out the inspection after comparison but failed to notice any differences. Audit pointed out that Senior Quality Assurance Officer rejected further two lots of sleeping bags in May-June 1993. The Committee enquired the grounds on which the inspection team rejected these two lots. The Ministry in a note stated that the 5th lot containing 603 sleeping bags which were offered on 27th April 1993 was not accepted by the inspecting team on the ground that the approved sample provided for comparison was not an authenticated one. The 6th lot consisting of 1133 sleeping bags was inspected and rejected as it did not conform in design to approved/sealed sample, provided to the inspecting team, The sleeping bags supplied by M/s Moncler differed from the sealed sample as the bag was stitched with a centre parting at the back whereas the sealed sample had no centre parting stitch.

12. Furnishing clarification by Army HQrs, the Ministry in a note stated that though the copy of the contract was made available to DGQA, they did not ask for the sealed sample till the third lot was inspected. The approved sample governing the subject store was demanded by SQAE (GS). New Delhi on 29 January, 1993 from Det, 2, FOD. However, when duly approved authenticated sample was not made available for the 5th lot, inspection of the same was not undertaken by DGQA and this had been reflected accordingly in the inspection report. According to the Ministry, the sealed/duly authenticated approved sample was provided to the inspection team at the time of inspection of 6th lot. The inspection report accordingly reflected that sleeping bags offered did not conform to the approved sample given by Det 2 FOD, in respect of design.

IV. Sealing of Samples

13. The Committee asked the Ministry to elaborate the concept of 'sealing of samples' and its significance in the context of inspection carried out at the time of receipt of relevant stores, in the instant case, the sleeping bags. The Ministry in a post evidence note explained as follows:

- (a) The sample of sleeping bag which was trial evaluated and approved by the users was sealed and maintained at Det 2 FOD for future comparisons.
- (b) In all contracts, the Annexure on "Technical Specifications" had the words written "as per sealed sample" and a copy of the same was provided to DGQA before carrying out inspections in all cases.
- (c) The sealed sample did not bear the signatures of Director MGO/EM (GS&C) as no requirement for the same was felt. However, after the complaint from M/s Deftech, Netherlands in December, 1992 the procedure of signing the sealed samples was followed.
- (d) The sealed sample was to be used as a reference sample for guidance in inspection for visual aspects.

14. The Committee enquired as to why the sample of sleeping bag was not authenticated by the designated officer, {Director MGO EM (GS&C) of MGO's Branch/Army HQs} as per the laid down procedure in the Ministry and what action was contemplated against him for the lapse. The Ministry in a note submitted:

"It has been contended by the Army Headquarters that in their perception, there has been no lapse on the part of the Director EM (GS&C) or any other officer in not authenticating the samples of the sleeping bag since the samples had been properly stored and documented for, which was as good as authentication."

V. Complaint/Representation from M/s Richner of Switzerland

15. The Ministry received a complaint against the quality of sleeping bags on 10 September 1992, immediately before supply of bags in the first lot by M/s Moncler. Yet the Ministry did not alert the inspecting staff to be careful in inspection. The Senior Quality Assurance Officer, New Delhi cleared the first four lots of sub-standard sleeping

bags in inspection. The Committee desired to know the nature of allegations made in the letter by M/s Richner and follow-up action taken by the Ministry on that count. The Ministry in a note submitted that the Telex dated 8th September 1992 which was received in the Section (D(O-1) on 10th September 1992, was not in the nature of a complaint but could be termed as a representation from the rival firm – M/s Richner of Switzerland, who had been supplying Down Clothing and sleeping bag to the Indian Army, against the non-award of contract for supply of sleeping bag to them. The firm, in the communication (copy enclosed) had inter-alia stated as follows:

- (i) they were manufacturers and suppliers of Down Clothing and sleeping bags to Indian Army since 1984;
- (ii) in anticipation of the order of Ministry of Defence, they had manufactured the sleeping bags to build up stock position;
- (iii) the financial position of M/s Moncler to whom the contract had been awarded was precarious and they were likely to declare bankruptcy in the near future;
- (iv) M/s Moncler S.A., after securing supply contract from the Ministry of Defence in May' 1992 had not been able to supply single unit and the significant price differential factor would invariably lead to supply of inferior quality;
- (v) There was a possibility that M/s Moncler had used low quotation to secure order and Letter of Credit only as a ploy to seek urgently required capital to neutralise outstanding debt elsewhere.

16. The Ministry stated that the representation from M/s Richner was examined in the Ministry of Defence in consultation with the Finance Division. Keeping in view the fact that M/s Richner had not forwarded any documentary proof in support of its statements about the financial status of M/s Moncler and the likely poor quality of sleeping bags to be supplied by it, and further noting that the main thrust of the representation was to get the contract for supply of sleeping bags, it was felt that it would not be advisable to take any cognizance of the complaint from a competitor unless the contract performance was found unsatisfactory. According to the Ministry, copies of the representation had, however, been endorsed to MGO's Branch/WE Directorate of Army

Headquarters and as such they were expected to keep a watch on the quality of supplies made by M/s Moncler. Asked whether any response was received from Army HQrs on the representation, the Ministry replied negatively.

17. To a query, had it not been wiser on the part of the Ministry to carefully examine the matter with the concerned units particularly when the precarious financial position of the firm was highlighted in the complaint forwarded by M/s Richner, the Ministry in a post evidence note stated :

“Though it is agreed that as a matter of precaution, it would have been wiser to carefully examine the matter in consultation with Army HQrs and DGQA, yet it was felt at that time that it would not be advisable to take any cognizance of the complaint from a competitor, unless the contract performance was found unsatisfactory. Since such complaints are common from business rivals and there was no complaint from the users about the quality of sleeping bags received and inspected by that time, it might have been thought advisable not to take any cognizance of the complaint. A decision had, however, been taken to monitor the performance of the firm very closely.”

18. The Committee enquired in evidence at what level it was decided that the communication received from M/s Richner was not in the nature of a complaint but could be termed as a representation from the rival firm and thus not to be taken cognizance of at that point of time. The Defence Secretary referred to relevant files wherein the complaint was processed. These files were subsequently obtained from the Ministry. It is seen from the file that the Desk Officer in his note dated 22 September 1992 had submitted that there was some truth about precarious financial condition of M/s Moncler on the ground that the firm could not submit performance/warranty bonds and sought amendment in Letter of Credit (LC) for that matter. The Desk Officer in his note further recorded as follows:

“.....The sample of the sleeping bag submitted by M/s Moncler, France was successfully trial evaluated and the store received (981 bags) is also understood to have been inspected by an officer of DGQA based on the sealed sample. It is proposed that we may, at present, keep the complaint pending for

some time and it may be taken up after about two months after seeing the performance of M/s Moncler, France.”

Then file was put up to the Joint Secretary, who in his note dated 22 September, 1992 recorded as follows:

“Additional FA(S) and AS(N) may please see. It would not be advisable to take any cognisance of the complaint from the competitor unless we find the contract performance unsatisfactory.”

Addl. FA(S) in his note dated 29 September 2002 said “We agree”. AS(N) on 29 September, 2002 recorded as follows:

“Please monitor the performance of the firm very closely. All necessary precautions be taken to ensure that there is no loss to Govt.”

19. To a pointed query from the Committee was it not required to submit the file to the Defence Secretary seeking his order in the matter, the Defence Secretary deposed:

“The Joint Secretary level is the decision making authority in Government of India on such matters. In retrospection, I feel that this file should have gone to DG, Quality Assurance.”

20. The Committee have been informed that subsequently M/s Richner vide their letter dated 2 October, 1992 (received in the Ministry on 9 November 1992) forwarded copies of certain documents in support of their allegations against M/s Moncler. Thereafter, a representative of the firm also met the then JS(O) and then Director (O) on 12 November 1992, as stated in the firm’s Telex dated 30 November, 1992 (received in the Ministry on 3 December 1992). According to the Ministry, there is no mention in the relevant file about the meeting with JS(O), though meeting with Director (O) was recorded in the file. Consequent to the meeting, the firm in the Telex dated 30 November, 1992 informed the Ministry about the latest development regarding M/s Moncler of France. An extract of a report regarding M/s Moncler going into voluntary liquidation and having been placed under judicial administration purportedly published in the French Journal of Textile on 16 November 1992 had been reproduced by M/s Richner. Again vide their Telex dated 3 December 1992, M/s Richner had reiterated their allegations against M/s Moncler.

21. On receipt of complaint with documentary evidence from M/s Richner, the matter was referred to Embassy of India, Paris, France on 10 December, 1992 (copy enclosed) for obtaining a report about financial status of M/s Moncler as well as advising the Ministry continuing further business with the Company. It is seen from File No. 21(28)193/D(OI) (Vol. 1A) that the Embassy of India vide its letter (Encl. C) dated 29 December, 1992 inter-alia stated:

“We hereby confirm that M/s MONCLER SA was declared insolvent by the Commercial Court of Grenoble on 3 November 1992 and was placed under judicial administration on 6 November 1992. M/s MONCLER SA showed heavy losses in 1989, 1990 and 1991. We do not feel that it is advisable to continue doing business with this company as it is facing serious financial problems. We therefore recommend cancellation of the remaining orders.”

22. To a query from the Committee why action was not taken by the Ministry to stop further supplies from the firm, which had been bankrupt, the Defence Secretary very candidly deposed: “Yes, we could have stopped it. It is a fact.”. Commenting further to a query from the Committee as to how the Ministry of Defence continued dealing with a firm, which was already declared bankrupt, the Defence Secretary deposed: “It is rather an unusual case.”

23. The firm was also asked by the Ministry on 6 January 1993 to offer their comments on the reports received by it alleging that it was in a state of bankruptcy and it was risky to have any further dealing with them. According to the Ministry, copies of some documents received in support of the allegations were also sent to M/s Moncler. No replies however, were, received from M/s Moncler in response to the communication sent by the Ministry of Defence. The Committee were further informed that the reports received from the competing firm that the quality of sleeping bags supplied by M/s Moncler was not good was conveyed to Army Headquarters and they were alerted vide communication dated 23 December 1992, to ensure that the quality of the sleeping bags was as per the sealed sample at the time of initial inspection. As some quantities of sleeping bags had already been delivered by M/s Moncler against the contract, Army Headquarters were further advised that any deterioration in the quality of sleeping bags, during the warranty period might be immediately brought to the notice of the Ministry of

Defence. On receipt of communication from the Ministry, Army HQrs on 18 January 1993 asked HQ Northern Command to forward their feedback about the sleeping bags by 10 February, 1993 as by that time qty 900 sleeping bags had already been despatched to them. The comments from Northern command were, however, not received in time. It was only on 26 November 1993 that 3 In. Div. (a part of Northern Command) informed Army HQrs. about unsuitability of the sleeping bags as these were different from the approved sample. Finally, a report dated 31 March 1995 on the sleeping bags was received by Army HQrs. in April 1995.

24. Asked to explain the failure of Headquarter, Northern command to timely intimate their comments sought by Army HQrs, the Ministry in a post-evidence note explained:

“Army HQrs have intimated that delay in sending comments by Northern Command to army HQrs can be attributed to the following:-

- (i) Sleeping Bags were despatched to Northern Command by the end of 1992 and were still in transit till 10 February, 1993
- (ii) Thereafter, for the bags to be issued to the troops and move up to the posts of Siachen takes a long time due to terrain and climate conditions. Also, once the troops are inducted to the posts the next lot moves up with next induction only which would have been in March/April 1993”.

25. On being enquired what action was contemplated by Army HQrs. against the irresponsible attitude shown by Headquarter Northern Command on an issue which warranted prompt and timely action, the Ministry in a post-evidence note stated:

“No action has been taken/is contemplated by Army HQrs against Headquarters Northern Command who have contended that a reply had been received in November 1993 from 3 Infantry Division, which is part of Northern Command. It has further been contended by Army Headquarters that they had informed Ministry of Defence in June 1993 that the sleeping bags in its present form were not acceptable”

26. The Committee enquired how many sleeping bags were sent to Siachen and what were the specific grounds on which these were rejected by the users there. The Ministry in a post evidence note intimated that out of first three lots supplied by M/s Moncler 900 sleeping bags were sent to Siachen for use. While intimating Army Hqrs. about the unsuitability of those sleeping bags, the users attributed the following reasons for their rejection:

- (a) Different than the approved sample
- (b) Warmth not adequate
- (c) Degree of comfort not adequate due to smaller size.

VI. Complaint from M/s Deftech, Netherlands

27. The Committee have been informed that another complaint from a rival firm M/s DEFTECH, Defence Technology Rotterdam B.V. Netherlands addressed to DGQA, Army Hqrs. was received in the Office of DGQA on 9th December 1992. It was alleged that the supplies of sleeping bags made by M/s Moncler of France did not confirm to the tendered/laid down specifications and that-

- (i) the quantum of goose was much less as compared to the weight required and old goose down quality was used for filling;
- (ii) the bag was stitched with a center parting at the back and bottom was stitched through with no quilting on the back side;
- (iii) the length of the bag was smaller by 10 to 15 cms;
- (iv) the width of the bag was also smaller by 6 to 8 cms;
- (v) overlap at the close of the zip point was very little;
- (vi) quality of zip and buttons was very poor;
- (vii) colour of the bag was not olive green;
- (viii) outer cover was of shining material which was likely to produce ultra-violet rays;
- (ix) only one size had been supplied which was even smaller than the earlier Medium and Large sizes in use by the troops.

28. According to the Ministry, necessary action in this regard was taken by DGQA who had forwarded copies of this complaint to AHQ/MGO (GS&C) and SQAE (GS) on 10 December 1992. DGQA intimated the Ministry that by the time this complaint was received by them, first three lots had already been inspected by DGQA (Stores) staff, due to urgency of requirement. After receipt of this complaint, the inspecting staff concerned did not clear the 4th and 5th lot.

29. The Committee desired to know whether the defects pointed out by DEFTECH actually existed in the sleeping bags supplied by M/s Moncler. According to the Ministry, Army HQrs. confirmed that most of the defects pointed out by DEFTECH did exist in the sleeping bags. Asked further was it still usable by the troops at any place, the Ministry in the same note added:

“Army HQrs have further clarified that the bag was found usable in other high altitude areas and thus cleared and used under ECC clothing in high altitude areas.”

VII. Deficient specifications in the tender document

30. To a query from the Committee about measure specification of the sleeping bag in the tender document, the Defence Secretary, deposed that it did not have a measurement. In this connection, DGQA deposed:

“I would like to submit that in the tender document, we were not associated. We were also not associated during the trials. Therefore, the items which were supposed to have been specified were not mentioned in the tender documents.”

31. The Committee were informed that Army was using both medium and large sizes of sleeping bags before the contract was awarded to M/s Moncler of France on 11 May 1992. On being asked how come then that no specification on measurement of sleeping bags was incorporated in the tender document, the Ministry in a note inter-alia stated:

“M/s Moncler, France had provided only one size of sleeping bag for trials. The trial team recommended its introduction without specifying the sizes (Medium or large) apparently finding this one size to meet their requirement. It appears that measurement of sleeping bags was therefore not incorporated in the tender documents.”

32. In the absence of measurement specification, the Committee enquired how were the prices of the samples received from both M/s Moncler and M/s Richner compared and a conclusion drawn that offer from M/s Moncler was the lowest one. The Ministry in a note inter-alia stated:

“Since both the samples had been approved after trial evaluation, their prices were compared and it was concluded by the PNC that offer from M/s Moncler was the lowest one.”

33. The Committee enquired at what level in the Ministry of Defence the tender document is finalised. The Ministry in a note stated:

“The tender document is normally finalised in consultation with Service Headquarters and got vetted from Defence Finance. The same is issued after approval by the concerned Joint Secretary.”

34. Asked further whether the tender document regarding procurement of sleeping bags was also approved at the appropriate level, the Ministry in a note stated:

“The tender document in this particular case which was drafted after taking into consideration the inputs provided by the Army Headquarters and the comments/views of DDP&S, LA (Def.) and Def (Fin.) to the extent possible, was approved by Joint Secretary (O) before issue.”

VIII. Association of DGQA

35. The Committee enquired as to why DGQA was not associated in the procurement of sleeping bags either at the stage of preparation of tender document or at the stage of trial evaluation. The Ministry in a note stated:

“It has been clarified by the Army HQrs that at the stage of trials DGQA was not associated as the trials were conducted in Siachen Glacier and operational and environmental conditions did not permit the association of DGQA representative there. As regards association of DGQA at the time of preparation of tender document, it is seen from the relevant files that the broad description of the items for which tenders had been invited, and which had been included in the tender documents had been provided by Army HQrs/MGO’s Branch.”

36. On the general principle of association of DGQA, the Committee further asked whether there is any manual of entries that could be consulted while making purchases, under which advice of DGQA has to be sought. The DGQA stated:

“There is no manual as such. I would like to admit that straightway but there are instructions issued by the Army Headquarters in 1983 and 1987. They have been revised from time to time. They state that the DGQA should be wherever required and wherever necessary, associated during trials and also at the contract stage.” He further added: “All purchases have to be cleared by DGQA”.

37. To a specific query from the Committee whether it was proper to get the sample lots of sleeping bags cleared in trial evaluation without quality certification from the DGQA, the Ministry in a post-evidence note explained that it is the practice that when the items offered by any firm are trial evaluated, the reports by users alongwith the comments of Commanders in chain are forwarded to MGO Branch and after perusal by the MGO, the item is recommended for introduction or rejection. Since DGQA representatives are not involved in the trials due to difficulties associated with Siachen Glacier and also since they do not have lab facilities to carry lab trials under simulated conditions they are not being consulted. According to the Ministry, now it is being proposed by Army HQrs to include DGQA in the user trials.

38. In evidence, the Committee sought to know when the office of DGQA came to know about the complaints on the supply made by M/s Moncler. The DGQA deposed :

“One of the competing firms raised the complaint on 9th of December 1992. This complaint was received and sent to the concerned Directorate under the DGQA, General Stores, Immediately after that, we intimated the MG Branch also and alerted our Senior Quality Assurance Officer (Field Establishment), who actually details the representative to go and inspect the stores. So, when the complaint was brought out, we immediately asked for that the sealed samples should be provided to us because this had not been provided for the first three consignments. The fourth lot was also not provided with authenticated sample. The fifth lot was also offered and sealed sample was not provided. So, we did not take up inspection. We told that these items could not be taken up for inspection. The

sealed sample was provided for the sixth lot, that is, the last lot comprising of 1,133 bags and we rejected that lot.”

IX. Scrutiny of Files/Documents

39. The Committee obtained certain files in connection with examination of the subject. Scrutiny of File No. 21(28)/92 (D(0-1), D(MC) Vol.I revealed the following:

- The Letter of credit opened for the contract with M/s Moncler was extended thrice and on two occasions the concurrence of Finance Division was not obtained. The delivery schedule was also extended and the firm failed to supply within the extended period as well.
- According to the LC conditions, the firm was required to submit the proof of despatch of warranty Bond/Performance Bond Certificates while taking payment from the Bank alongwith other documents. The Warranty Bond as well as the Performance Bond each should carry a value of 10% of the contract.
- M/s Moncler vide their letter dated 14 September 1992 had requested to amend the LC to the effect that Warranty/Bond/Performance Bond certificates of 10% each for the value of each consignment will be accepted and payment made. The request of submitting warranty Bonds in instalments was accepted by the Ministry. The firm still could not submit the Performance/Warranty bonds.
- For claiming payment of 3600 sleeping bags already supplied, the firm requested that the sum towards performance/warranty bond may be withheld from the total payment and the balance amount be released to them. At this stage the matter was referred to Defence Finance. The note recorded by the DFA(O) on 1 February 1993 reads as follows:
 - “It may be seen from the facts of the case available on the file that the firm while requesting the MOD to withhold from the value of the goods supplied, the amount equivalent to the value of the performance Bond and warranty Bond for goods supplied is not willing to obtain and forward Bank Guarantees for the said amount. This would prima facie raise a doubt about the financial status of the

foreign firm. Though in lieu of such warranties, we would be having the actual amount thereof, the extent of our right to forfeit the same in the event of firm becoming Bankrupt, is also doubtful.

In view of the above, the following course of action is suggested before a further action in the matter is taken:-

- (i) M.A. Paris may be requested to intimate the financial status of the firm (M/s Moncler)
- (ii) In the mean-time a comprehensive note alongwith a copy of the letters received from M/s DEFTECH may be sent to Army Hqrs with the advise to have a comprehensive inspection of the stores already received from M/s Moncler, by a high level team done particularly in regard to size, weight, structure, & other relevant points (as mentioned in the letters of DEFTECH) of the Bags received from M/s Moncler vis-à-vis Bags received earlier from other firm in large & Medium Sizes.

Addl. FA(S) has been consulted.”

- In connection with release of payments against stale documents, the matter was again referred to Defence Finance. The note recorded by AFA(02) on 31.3.1993 reads inter-alia as follows:

- (ii) “Normally in all cases of extension of L/Cs, concurrence of Finance Division is being obtained by the MOD. In the present case, however, the MOD have advised the AHQ to take action for extending the L/C.
- (iii) The confirmation of receipt of Performance Bond and warranty Bond from the Bank is also awaited.
- (iv) Regarding acceptance of stale documents by the Bank in order to enable the firm to obtain payment it is necessary for MOD to wait for the

outcome of the reference made by them to AHQ regarding the quality etc.
of the stores supplied by the firm.

Addl. FA(S) has been consulted.”

As per note recorded by Asst. Director(s) on 29.4.93 State Bank of India had not received any performance bond and Warranty Bond from the Supplier.

■ The note recorded by Director (O) on 4 May 1993 reads as follows:

1. “A contract was placed on M/s Moncler SA France on 11.5.92 for supply of 8588 Nos. of Sleeping Bags at a total cost of FF 11860028 with DP as 90 days from the date of placement of order. This Delivery period has been amended to read as 30.10.92. The firm have so far supplied a quantity of 6255 (last despatch made on 11.2.93) leaving a balance of 2333 Nos.
2. The supplier could not claim any payment for the stores already supplied as they could not submit Performance Bond and Warranty Bond. We had been considering supplier’s request to withhold the amount of Performance Bond (10% of the total value of the contract) which comes to FF 118600.288 and Warranty Bond for 10% of the value of the supplies made which comes to FF 8, 63,815.50 and release the balance amount. This proposal was not acceptable to Def.Fin. in view of the observations vide their note 74/ante dated 11.2.93. As observed by Finance reference was made to Dir. MGO(GS&C) as far as back on 23.12.92 to check the quality of the Sleeping Bags supplied by M/s. Moncler in view of a complaint from one of their business rivals. Report on the quality of supplies is still awaited from Director (GS&C) despite several reminders. In his interim reply dated 9.3.93 he has informed that he was awaiting a report from HQrs Northern Command.
3. In terms of the provisions of the contract, the firm, on submission of various documents is entitled to receive payments. A departure requiring prior quality check has been made in this case only on account of a complaint received from a rival Company. The users have till date made no complaints. In the

circumstances, it would be unfair to allow the firm remain unpaid for goods already delivered. Credence to complaints from users alone needs to be given.

4. It is proposed to make payment of the supplies made withholding the amount to the extent of value of Performance Bond and the amount of Warranty Bond for the supplies already made. The withheld amount will, however, be released on receipt of confirmation from the Consignee regarding receipt of stores in full and in good condition.
5. As validity of L/C has expired we may have to obtain fresh U.O. particulars from the Budget Section after obtaining Budgetary support from FP-3. Since the supplies have already been made it is proposed that the amount may be remitted by a Bank Transfer instead of paying through Letter of Credit. This will also solve problem of relaxation/acceptance of Stale documents, This firm will be told to submit the Invoices and the other documents after deducting the amount of Performance Bond and Warranty Bond to this Office when the payment will be authorised through PP-4 and CDA HQrs by a Bank transfer.
6. JS(O) may please approve release of the payment in view of position explained. The case could also be discussed at the level of Addl FA(S) with reference to their observations. “

■ The Note dated 18.5.1993 as recorded by Assistant Director (MC) reads as follows:

The matter was discussed by Director (O) with Addl. FA(S). He was of the opinion that contractually we are bound to make the payments for the supplies already made by the firm. However considering the nature of complaint regarding short sizes supplied, which should not take a long time to ascertain either by the consignee or a representative of DG(QA). He felt that it would be better to hold a meeting associating representative of consignee, DG(QA) and D (Finance) to decide the issue on the basis of latest position.

■ The note dated 24.5.1993 recorded by Assistant Director (MC) reads *inter-alia* as follows:

*FF 1354761
For 981 nos.
A

“A meeting was held at 11 AM on 21.5.93. The Minutes of the meeting are placed opposite.

2. As per the report of Dir.(GS&C) in the meeting, it was noted that the supplies so far effected by the supplier M/s. Moncler, France is acceptable except for the observation of a central stitching in the bags and that user is agreeable for release of payment* with an instruction to the supplier to avoid the central stitching in the future supplies.

3. In view of the above, it was decided to release the payment against the LC by extending the same for three months at the cost of the supplier, instead of release of payment by Bank transfer as suggested earlier.

4. On enquiry with SBI N. Delhi today, it was given to understand that payment has not been made in respect of the first consignment valued at FF 1,354,761.00 on account of stale documents. However, payments have been released for further consignments as follows:

<u>Date</u>	<u>Amount in F.F.</u>
18.02.1993	36,66,555.00
25.02.1993	8,32,743.00
23.04.1993	8,32,743.00
07.05.1993	4,47,444.00

	FF 57,79,485.00

5. The LC as extended earlier is due to expire today i.e. 24.5.93. We may, therefore, extend the LC at the cost of supplier and instruct SBI to accept stale documents to enable the supplier to claim the payment.

■ When the file was submitted to DD(MC), in his note (date not legible) recorded as follows:

“Payment position as given above needs to be clarified by Bank. Bank is also required to confirm receipt of Performance Bond and warranty Bonds each of 10% value as per contract. Subject to receipt of two bonds as per contract, we may release payment mentioned in para 3 above with instructions at “A” above.”

X. Extension of letter of credit

40. It is seen from the Audit Paragraph that the letter of credit opened by the Ministry had expired on 24 May 1993, after the supplier had been paid FF5.78 million against the contract amount of FF 11.86 million. Even though the Ministry and the Army HQrs were aware of the inferior quality of the sleeping bags, the letter of credit was renewed on the basis of decision taken in a meeting taken by Joint Secretary(O) on 21 May 1993, the Minutes of which recorded that the User Directorate was agreeable to renewal of letter of credit, provided the supplier was told to avoid a superfluous central stitching in future supplies. The User Directorate, however, contested the acceptance of the consignment attributed to them in the minutes of the meeting, on 01 June 1993, when they stated that the defective sleeping bags were not acceptable to them. Despite this, the Ministry extended the letter of credit facilitating encashment of the amount towards supply of defective sleeping bags by the firm.

41. The Committee desired to know the circumstances under which the letter of credit was renewed by the Ministry despite the Army HQrs differing from the minutes attributed to them in the meeting held on 21 May 1993. The Ministry in a note elaborated the sequence of events that led to extension of letter of credit and encashment of the amount by the supplier, which are as follows:

“The meeting on 21.05.1993 was specifically held to take a decision regarding release of payment to M/s Moncler, France against the stale documents of LC for the supplies already made by the firm. In the notice for the aforesaid meeting it was stated that against the supplies made by the supplier – M/s Moncler, for Siachen requirements, since September, 1992, payments had not been made for want of acceptance of a quality requirements by the consignee.

In the meeting on 21.05.1993, Joint Secretary(O) while initiating the discussion, had pointed out that supplies were effected long back in September/October 92 but payments had been held up for want of inspection clearance and long time was not permitted.

The then Director (GS&C) had stated in the aforesaid meeting that the store already supplied by the Supplier was acceptable except for a superfluous central stitching which was to be avoided in future supplies. It was also reported by him that the User Directorates had no objection for release of payment for the stores already supplied.

After detailed discussions and taking note of the Contract conditions and payment clauses, it was decided in the meeting to release the payment against the LC, the validity of which was to be extended so that the documents including the Inspection Certificate from the Supplier end would be available. It was also decided that Army HQrs, if they did not want further supplies of sleeping bags from the Vendor, should project a formal proposal to Ministry of Defence for considering termination/short closure of the Contract. It was after this meeting that the MGO's Branch, vide their note dated 24.5.93 (received in the Ministry of Defence on 27.5.93) intimated for the first time, that during visual inspection of sleeping bags supplied by M/s Moncler SA, France, it was revealed that the sleeping bags being supplied by the firm had a stitching at the center parting at the back, which was neither in conformity with the sample trial evaluated and accepted for introduction into service nor desirable. The MGO's Branch had however not specifically stated that the sleeping bags in question were not acceptable or had been rejected. It was simply stated by them that appropriate action may be taken in this regard. It was only vide their note dated 1.6.93 (received in the Ministry of Defence on 3.6.93) that the MGO's Branch intimated that sleeping bags supplied by M/s Moncler, France had stitching at the center parting at the back which was not as per sample trial-evaluated by AHQ and, therefore, not acceptable. However, even at this stage the MGO's Branch did not project any proposal to the Ministry of Defence for considering termination/short closure of the contract as had been decided in the meeting held on 21.5.93

specifically stating that they did not want further supplies of sleeping bags from the supplier. It is thus evident that the decision to release the payment against the LC and to extend the validity of Letter of Credit had been taken in a meeting held on 21.5.93 which was attended by the then Addl. FA(S), Dir EM(GS&C) and Offg DQAS, after detailed discussions and taking note of the contract conditions and payment clauses whereas the MGO's Branch had intimated the Ministry of Defence about their non-acceptance of the sleeping bags much later, vide their Note dated 1.6.93 (received in the Ministry of Defence on 3.6.1993)."

42. The Ministry in a Post-evidence note further added:

"It is, however, seen from the relevant records that the minutes of the meeting of 21 May 1993 had not been signed by the members and had been circulated after being approved by Joint Secretary (O) and Addl. FA(S). On getting a copy of the minutes of the meeting, which were circulated vide MOD ID Note dated 3.6.1993, Director MGO/EM(GS&C) vide Note No.B/82253/2/MGO/EM/GS&C) dated 18 June 1993 had clarified that no commitment regarding acceptability of the bags was made by him during the meeting."

43. The Committee specifically desired to know whether the Ministry had reminded the Army HQrs about their opinion on quality of sleeping bags after the meeting on 21 May 1993 before taking a final decision to renew letter of credit on 24 May 1993. The Ministry in a note explained:

"The Army HQrs/Director(GS&C) had specifically stated in the meeting held on 21st May 1993 that the User directorates had no objection for release of payment for the stores already supplied. After detailed discussions and taking note of the contract conditions and payment clauses a decision had been taken in the meeting (which was attended by Director (GS&C) amongst others, as a representative of Army Headquarters), to release the payment against the LC, the validity of which was to be extended, no need was apparently felt to remind the Army Headquarters about their opinion before going for the renewal of letter of credit on 24 May 1993."

44. On the question of disagreement of the User Directorate to the minutes attributed to them based on which decision was taken to extend letter of credit, the Ministry in a note further clarified the position as follows:

“Army HQ have intimated that it was not clear to them as to how the statement attributed to Director MGO/EM(GS&C) was incorporated in the minutes of the meeting on 21 May 1993, since on 24 May 1993 the same officer wrote to Ministry of Defence that the bag supplied by M/s Moncler had stitching at the center-parting at the back which was not in conformity with the trial evaluated samples held with Army HQ. Further, on 01 June 1993 the same officer had again written to Ministry of Defence that the sleeping bags were not acceptable.”

45. Asked to comment on the contention of the User Directorate to the Minutes attributed to them in the meeting held on 21 May, 1993, the Ministry of Defence in a post-evidence note explained:

“The draft of the minutes of the meeting held on 21 May, 1993 were seen and approved by Joint Secretary (O) as well as Addl FA(S). Had there been any discrepancy in the statements made during deliberations in the meeting and those recorded in the minutes, the same would have been pointed out by them. Director (GS&C) however, subsequently vide their Note No. B/82253/6/MGO/EM/GS&C dated 1.6.1993, without making any reference to deliberations of the meeting held on 21.5.93 had intimated that the sleeping bag supplied by M/s Moncler, France, had stitching at the centre parting at the back and that it was not as per sample trial evaluated by them and hence unacceptable.

It is further seen from the relevant records that on getting a copy of the minutes of the meeting, which were circulated vide MOD ID Note dated 3.6.1993, Director MGO/EM(GS&C) vide Note No. B/82253/2/MGO/EM/GS&C, dated 18 June 1993 had clarified that no commitment regarding acceptability of the bags was made by him during meeting.”

46. The Committee in evidence drew the attention of the Defence Secretary that the then JS(O) did not take note of the crucial fact that the firm M/s Moncler, by then had been bankrupt. The Defence Secretary deposed: “Yes that is a fact.

47. In the circumstances and the manner in which the LC was extended, the Committee queried as to why the act of the then JS(O) should not be inquired into. In response the Defence Secretary deposed:

“I would frankly feel that we should take his explanation. I agree with you that we should take his explanation.”

48. As regards action taken against the then JS(O) in pursuance of deposition made by the Defence Secretary, the Ministry in a post evidence note stated:

“The then Joint Secretary(O) has been asked to explain the position with regard to implementation of contract with M/s Moncler. Further course of action would be decided on receipt of his explanation and its examination in the Ministry with reference to documents available in the office records.”

49. It is seen from the relevant records that after the minutes of the meeting held on 24.5.1993 were circulated to the user Directorate as well as the Directorate of quality Assurance they had forwarded their disagreement on certain points recorded in the minutes. The matter was then processed in the Ministry. The DD(MC) in his note dated 25/28.6.1993 inter-alia recorded as follows:

“ 6. In view of the questions raised by DQA, Dir. (GS&C) on the quality of the supplies already received as the same are being sentenced unacceptable, it is felt that another meeting may be held in the room of JS(O) to take a final view of the situation before releasing the payment against Stale Documents. We may also consider recovering the payments made in case the stores are not acceptable as payments have also been made in respect of some of the supplies made by the firm. A decision regarding supply of the balance quantity or otherwise may also have to be taken during the proposed meeting.”

50. When the file was submitted to JS(O), in his note dated 8th July 1993, he recorded as follows:

“If the stores had been accepted and issued in the past on what grounds can we reject now?”

51. The Committee were informed that the supplier got the final payment against the contract on 29 July 1993. The total amount paid to the supplier was FF11860028.00.

XI. Encashment of bank guarantee

52. According to the Ministry, the rejection of sleeping bags was finally communicated to M/s Moncler on 6 August 1993. The Committee desired to know the reaction of the firm to the move made by the Ministry. The Ministry in a note furnished the development that occurred till they decided to encash the bank guarantee, which are as follows:

“The representative of the firm in the meetings held in the room of Joint Secretary (O) on 10th, 12th and 13th August, 1993 had contended that the bags with central stitch were of the same quality in all respects particularly in regard to warmth and comfort as the stitch was seepage proof and properly designed. It was further contended that the bags with the central stitch were of the same quality as the bags without any central stitch. Though initially the representative of the firm did not agree to replace the defective sleeping bags or to a reduction in price, subsequently a price reduction of 2% of the value of the defective pieces were offered which was not acceptable to the Ministry of Defence.

With reference to the deliberations in the meetings referred to in preceding para, a letter dated 13.8.93 was handed over to the representative of the firm, in reply to which the firm again contended that they had supplied the best quality sleeping bags at the most reasonable price. The firm, however, offered a compensation of 10% of the cost of the outer bags stating that the outer bags only were affected by the Government. The firm alternatively offered replacement of defective sleeping bags for which a period of at least 6 months was requested to be allowed. Offer of the firm was however not acceptable to the Ministry of Defence as the time of 6 months required by the Supplier was not acceptable to the Army HQrs. The firm was accordingly intimated that as the sleeping bags supplied by them were not according to the trial-evaluated sealed sample mentioned in the contract and since there was a breach of contract, it had been decided by the Ministry of Defence to encash the Bank Guarantees furnished by the firm.”

53. In this context, the relevant File [File No. 21(28)92 D(O-I) D (MC). Vol-I] was scrutinised. The note dated 29th July, 1993 recorded by Dy. Director (MC) reads inter-alia as follows:

“2. JS(O) informed that the representative of the firm has been invited for discussions against their fresh tender on 10th August, 1993 when this case would also be discussed with him.”

54. It is seen from Audit Paragraph that the Ministry advised the Banque Rivaud on 24 September 1993 to encash bank guarantee of FF 2.37 million representing only 20 per cent of the cost of the defective sleeping bags. The supplier, however obtained stay order from Court in Paris. The Committee have been informed that the French Commercial Court gave its judgement on 18 November 1997 in favour of the supplier. Asked under what circumstances the judgement was given against the Government of India, the Ministry in a note inter-alia stated:

“Lower Court was in agreement with the argument made by M/s Moncler. Though the Union of India was summoned by the Lower Court as party, due to certain administrative reasons, the Union of India could not be represented in the debates in the Commercial Court of Paris.”

55. According to the Ministry, the jurisdiction of French Court was challenged by the Union of India/Ministry of Defence in the Court of Appeal in Paris against the judgement given by the Commercial Court of Paris on 18 November 1997. The Appeal was accepted and decision was given in favour of Ministry of Defence. An amount of FF 2,268, 393.20 representing the principal amount of the bank guarantees minus the administrative charges was received by the Ministry of Defence on 3 August 1999. As regards the status of recovery of the balance amount on account of administrative charges including interest component thereon, the Ministry in a post-evidence note stated:

“It has been intimated by Military Attache, Embassy of India, Paris that Cour de Cassation (Supreme Court of France) where an appeal had been filed by M/s Moncler, has confirmed the earlier decision of the Court of Appeal in the case between Union of India and Moncler. The Court has also awarded an amount of FF 14,000 towards cost and charges.

It has further been intimated by the Military Attache that the Court has given a detailed judgement where they have rejected re-opening of the questions of fact that were decided by Appeal Court in favour of Union of India. A copy of the decision of the Court (in French), has been received by Indian Embassy in Paris and the same, after translation in English, would be sent to Ministry of Defence, as intimated by the Military Attache, Embassy of India, Paris.”

56. The Committee enquired about the total fee paid to the Solicitor. In a post-evidence note furnished to the Committee on 27 May, 2002, the Ministry stated that the total fee paid to the Solicitor was FF 10,95,760.00

57. The Committee enquired whether the Ministry came across similar case in the past where the supplier moved for obtaining stay order from the court against encashment of bank guarantee. The Defence Ministry in a note stated that no such case, where a seller would have taken a stay order against encashment of bank guarantee in a foreign country, had come to their knowledge. On being asked how do they propose to deal with such situation in the future, the Ministry stated that they would consult Ministry of Law as and when such a situation arises in future in any of the contracts concluded by the Ministry of Defence.

XII. Appointment of arbitrator

58. Audit pointed out that although clause 17(b) of the “standard conditions of the contract” stipulated that all the rights and liabilities embodied in the contract shall be determined by referring to arbitration of the nominee of the Secretary of the Ministry under the Laws of India, yet the Ministry appointed an arbitrator only in April 1998, i.e. after five years of defective supplies. The Committee enquired as to why it took five years for the Ministry to appoint an arbitrator. The Ministry in a note stated that the matter was not initially referred to arbitration, as the Legal Adviser (Defence), to whom the matter was referred in October 1993 for advice, had opined that taking the procedural aspects of execution of the contract into consideration, the case of the Department was weak. Subsequently, based on the advice of Government counsel, who was appearing on behalf of the Government in the French Court, and Ambassador of India in Paris, it was decided by the Ministry to appoint an arbitrator to strengthen their claim and orders were

issued on 30 April 1998. Asked to elaborate the matter on which the Legal Adviser (Defence) advised the Ministry against arbitration, the Ministry in a post-evidence note explained:

“Legal Adviser (Defence) vide Ministry of Defence Note dated 13 May, 1994 was requested to advise as to which of the following alternatives would be most appropriate:-

- (1) Whether we should file a suit against the Bank in French Court for the purpose of encashment of the Bank Guarantee, keeping in view the advice of the Counsel.
- (2) Whether we should file a suit against the firm in the French Court for the purpose of recovery of loss.
- (3) Whether we should refer the matter to arbitration in accordance with the Clause 17 of the Contract. In the event of referring the matter to arbitration, how the award will be enforced.”

59. According to the Ministry, LA (Defence) vide his Note dated 20th June, 1994 had observed that:-

“There is arbitration clause available and the Department can resort to arbitration in case of dispute. However, when the procedural aspect of execution of the contract is taken into consideration there remains no dispute because the Department has waived its legal right. The case of the Department is weak and not tenable on the grounds that no notice has been given to the seller at proper time and goods have been appropriated by the buyer without intimating the seller of the recovery of compensation/damages for defect in the goods.”

60. According to the Ministry, the matter was again referred to LA (Defence) vide Note dated 2 April, 1998 and the LA(Def) vide his Note dated 18 April, 1998 advised as under:

“In view of the facts and circumstances of the case, we are of the view that the case of the Department is very weak as rightly pointed out by the then LA (Defence). However, the Department may take an administrative decision to refer the matter for arbitration. In case the Department decides to refer the matter for arbitration they are advised to ensure through their advocate at Paris to safe-guard

the Bank Guarantee deposited in an Escrow Account till the final outcome of the arbitration proceedings in India.”

61. Intimating the status of arbitration Proceedings, the Ministry in a note stated:

“A statement of claim for FF 7,984,149.20 ^(*)(Rs. 5,22,96,177.26) was filed before the Sole Arbitrator on 25.8.98. The Advocates for M/s Moncler filed ‘Preliminary Objections to Maintainability of Arbitration’ on 9.11.98. Though the ‘Preliminary Objections to the Maintainability of Arbitration’ as filed by the Respondent (M/s Moncler) were finally rejected by the Sole Arbitrator on 20.6.2000, and the Respondent was directed by the Sole Arbitrator to file their Statement of Defence and Counter-Claim, if any, the same has not so far been filed by the Respondent, despite their request for ‘Reconsideration of the Arbitrator’s Order dated 20.6.2000’ having been rejected by the Sole Arbitrator vide his Order dated 23.2.2001.

The Respondent (M/s Moncler) had filed ‘Additional Objections to Maintainability of Arbitration for Lack of Jurisdiction’ on 8.3.2001 and the same, in so far as those related to proceedings conducted so far, had been rejected by the Sole Arbitrator with the directions to the Respondent to submit its Statement of Defence and Counter-Claim, if any. The same have, however, not so far been submitted by the Respondent.

The Sole Arbitrator had further ordered that both the parties should first consider through mutual consultation the request of the Respondent for change of Arbitrator and if the parties failed to mutually decide upon Respondent’s request to nominate a new Arbitrator, the entire matter should be placed by the parties before the mutually accepted and legally constituted sole nominating authority viz., Secretary, Ministry of Defence for his personal consideration and issue of orders to both the parties.

The parties, however, could not mutually decide upon Respondent’s request to nominate a new Arbitrator. The matter has therefore been placed before the mutually accepted and legally constituted Sole nominating authority viz., Secretary, Ministry of Defence, after obtaining a panel of Arbitrators from

^(*) IFF+ Rs 6.55 (Nov. 2001)

International Centre for Alternative Dispute Resolution and seeking the advice of LA(Def) with regard to desirability of changing the Arbitrator at this stage.”

62. In their communication dated 6th January, 2003, the Ministry furnished the update about arbitration proceedings, which reads as follows:

“Subsequently, after considering the matter in detail, and in consultation with LA(Defence), the Defence Secretary approved change of Arbitrator and Mr. Justice P.K. Bahri (Retd) has since been appointed as Sole Arbitrator in place of Shri T.C. Joshi, vide Ministry of Defence letter dated 28.10.2002.

The new Arbitrator had initially fixed the hearing on 9th December, 2002. However, at the request of Counsel for the Respondent, (M/S Moncler, France) the hearing was postponed to 19.12.2002.

Though hearing was held by the Arbitrator on 19.12.2002 as scheduled, the Counsel for the Respondent, who had earlier filed an application on 17.12.2002 under Section 16 of the Arbitration and Conciliation Act 1996, did not attend the hearing. A reply to the application filed by the Counsel for Respondent was filed by the Claimants (UOI/MOD) within the prescribed period.

Next hearing which was fixed for 10.1.2003, was attended by the Counsel for the Respondent, too. Arguments in regard to the objections raised by the Respondent regarding jurisdiction of the Arbitrator were heard. Orders in this regard are however yet to be made by the Arbitrator.”

63. Since M/s Moncler was declared bankrupt on 6 November 1992, the Committee enquired about the fate of the Ministry’s claim under reference to arbitration. The Ministry in a note stated:

“It has been confirmed by Military Attache, Paris that the firm continues to do business under the supervision of the Court. Therefore, any award given by the Arbitrator in India can be executed in France. Thus, the full claim as awarded by arbitrator can be realized upon execution of award in France.”

64. On being asked what follow-up steps are being contemplated to realize the claim of Government of India, the Ministry in a note stated:

“The Government of India/Ministry of Defence has already succeeded in getting the principal amount of the Bank guarantee which were equivalent to 20% of the contract value less administrative charges. The Supreme Court of France, where an appeal had been filed by M/s Moncler has further awarded an amount of FF 14,000 towards cost and charges. Full amount of claim filed before the Sole Arbitrator can be realized by a quick and successful conduct of the arbitration. All requisite steps would therefore be taken to ensure that the arbitration proceedings are completed at the earliest possible.”

XIII. Enquiry

65. According to the Audit Paragraph, the Ministry of Defence appointed the Deputy Secretary (Q) to enquire into the acceptance of defective bags in September, 1994. On being asked what were the terms of reference of this enquiry, the Ministry in a note stated:

“Ministry of Defence vide its order No. 21(28)/92/D(O-I)/D(MC), dated 13th September, 1994 ordered an inquiry to be carried out by Deputy Secretary(Q) for the lapse associated with acceptance of sub-standard sleeping bags.

As per aforesaid order, Deputy Secretary (Q) was to investigate into the case to ascertain as to who was responsible in DGQA or Army HQrs, MGO's Branch for the lapse pertaining to non-detection of the defect in the sleeping bags supplied by M/s Moncler, France at the first instance, even when the same was visible through the naked eye. He was required to (i) make recommendation as to which individuals/organisations were responsible for the above lapse and also to (ii) suggest steps which may be taken to prevent repetition of such lapses.”

66. According to the Ministry, in his enquiry report which was submitted by the Deputy Secretary (Q) on 7th October, 1994 the following were held responsible for the lapse:

- (i) DGQA staff who carried out inspection of the first three lots without the sample.
- (ii) The DGQA team which inspected the fourth lot and did not reject the item even though a sample was made available to them (though not

authenticated) and the supplies were not in line with the sample, in so far as the central stitches on the back side is concerned.

- (iii) The concerned official in MGO(GS&C) who was required to authenticate the sample but did not do so immediately after receipt from the Northern Command, as considered approved.
- (iv) The Board of Officers in Det 2 FOD who could not notice such a long stitch on the back side during their routine initial checking of all the bags.

67. It is seen from Audit Paragraph that Secretary, Department of Defence Production & Supplies, under whose control the Director General Quality Assurance functions, did not agree to the finding of the enquiry officer that inspecting staff was primarily responsible for accepting the defective stores. Asked to explain the reasons for which the then Secretary (DP&S) disagreed with the findings of the enquiry officer, the Ministry in a note submitted as follows:

“Feeling that the only fault which could be attributed to DQA(S)DGQA inspecting staff was that they inspected the stores in the absence of technical particulars/or an authenticated sealed sample because of the urgency and pressure exerted by the user as the DGQA did not wish to appear to be un-cooperative by refusing to carry out the necessary inspection, the then Secy(DP&S) did not agree with the findings of DS(Q) that the inspecting staff of DQA(S)DGQA were responsible for acceptance of the defective stores.”

68. The Committee were informed during evidence that based on a newspaper report (Pioneer) on 12 November, 1999 which highlighted findings of C&AG in the case of procurement of sleeping bags, a second enquiry was conducted. Giving background of the second enquiry, the Ministry in a post evidence note stated that the news item was perused by the Raksha Mantri, who directed that factual position of the case be put up to him. When the full facts of the case were placed before him, he passed the following order on 1st December, 1999:

“.....However, action should be initiated within one month against those responsible for procuring these sub-standard sleeping bags.”

69. As regards action taken on the earlier enquiry conducted by DS (Q) in the Ministry of Defence, Additional Secretary (DP&S) deposed:

“As the record would state, there was an enquiry conducted by the Deputy Secretary in the Department of Defence of the Ministry of Defence in September 1994. In that enquiry report, he found the primary responsibility for all the dereliction in duty of the officers of the Directorate General of Quality Assurance. Therefore, the Department of Defence requested the Department of Defence production and Supplies, under which the DGQA organisation functions, to take action as per the findings of the enquiry report. This was studied in the Department of Defence Production and Supplies, a decision was taken that there are several extenuating circumstances and because of these considerations no action needs to be taken against the officers of DGQA.” He stated that the decision was taken on 10th March 1995.”

70. He further added:

“The matter therefore rested up to year 2000. It is again when a further enquiry was done in the year 1999 that the matter went directly to the Minister that enquiry was done by the Army Commander. It was processed in the Department of Defence and orders of Raksha Mantri were obtained. Once the Raksha Mantri had ordered on the basis of second enquiry, the procedure which was expected by DGQA to take action against the officers was immediately taken in the year 2001. So, from the period 1995 to 2001, there was no action taken because the decision was not to take action. The Minister’s order came only this year and immediately action was taken.”

71. To a query from the Committee about action taken by Army Hqrs/MGO’s Branch on the enquiry report of DS(Q), the Ministry in a note stated:

“DS(Q) had submitted his report of investigation on 7.10.1994. After consideration in the Ministry of Defence a copy of the same was forwarded to MGO’s Branch/Army Hqrs on 20.1.95 for taking appropriate action/remedial action against the staff found responsible in the preliminary inquiry.

MGO’s Branch/Army Hqrs vide their Note dated 2.3.1995 intimated that report of investigation on the import of sleeping bags from M/s Moncler of France had been perused in detail and necessary steps were being taken by them to prevent recurrence of similar incidents in future. The points relating to sealing of

sample, specifications and role of Det 2 FOD were also clarified by MGO's Branch.

On the advice of the then Defence Secretary the file was referred to Financial Advisor (Defence Services) for comments. FA(DS) made certain observations and requested MOD to furnish their views before the matter was processed further. In the meantime, when the factual position was submitted to RM with reference to an Article published in the Pioneer on 12.11.99 and the RM directed that action should be initiated against those responsible for procuring these sub-standard sleeping bags, AHQrs/MGO's Branch were asked vide Note dated 10.12.99 to furnish additional information/clarification with reference to their comments on the report of investigation carried out by DS(Q) and also intimate the names of persons who were associated with the authentication/making available the sealed samples to the DGQA staff. It was only then that MGO's Branch vide their Note dated 24.12.99 intimated that the issues raised by Ministry of Defence needed detailed investigation and a Court of Inquiry was essential to pin-point responsibility so that suitable action could be initiated as per directions of RM. Army HQrs accordingly directed HQ Western Command to convene a Court of Inquiry which was ordered by HQ Delhi Area (Q) vide convening order No. 37461/1/Q5(Sleeping Bags) dated 10.1.2000, as amended vide HQ Delhi Area letters of even number dated 28.1.2000 and 17 February, 2000."

72. According to the Ministry, as a follow-up to the orders of the RM, Department of Defence Production & Supplies/DGQA intimated that the inspection of sleeping bags supplied by M/s Moncler, France was carried out by SQAEGS, New Delhi and that Col. S.K. Mishra (now Retd.) was the SQAQ at the relevant time. It has further been intimated that following persons were physically associated with the inspection of 1st four lots:-

S.No.	Lot. No.	Name of the inspecting Officer	Name of the Officer who forwarded the report
(a)	1 st Lot	Sh Saroj Sharma A/F(now ret'd.	Sh OP Rawat SSO-I

(b)	2 nd Lot	Sh KR. Tyagi CM-II (since retd)	Sh Ravi Shankar JSO
(c)	3 rd Lot	Sh RL Gupta CM-II (since retd)	Sh Ravi Shankar, JSO
(d)	4 th Lot	Sh RS Shrotriya, CM-II (now CM-I)	Sh Ravi Shankar, JSO

73. The Ministry in the same note intimated that Army Headquarters/MGO's Branch, who were also asked to intimate names of all those responsible for acceptance of the sleeping bags, ordered a Court of Inquiry on 24 December 1999 to investigate as to why during receipt inspection, the sleeping bags were passed which did not conform to the trial evaluated and approved samples. The findings of the COI alongwith directions/recommendations of the GOC-in-C Western Command were submitted to the Army Headquarters.

The Committee were informed that in pursuance of the directions/recommendations of GOC-in-C, Western Command, on the proceedings of the COI, chargesheets for major penalty have been issued against the following officers of DGQA, who were responsible for the inspection of the sleeping bags supplied by M/s Moncler:

- (i) S/Shri O.P. Rawat, then SSO-I (now PSC.O)
- (ii) Ravi Shankar, JSO
- (iii) R.S. Shrotriya, CM-I

74. Further, according to the Ministry though S/Shri Saroj Sharma, the then A/F K.R. Tyagi, then CM-II and R.L. Gupta, then CM-II who have already retired from service were also blameworthy by the COI, disciplinary action against them even under the CCS (Pension) Rules 1972, was not possible, the event being more than four years old. On being enquired the Ministry furnished the dates of retirement of these officials as follows:

- (a) Shri Saroj Sharma - 31 October, 1996
- (b) Shri K. R. Tyagi - 31 December, 2000
- (c) Shri R.L. Gupta - 30 June, 2000

75. On the question of filing criminal case against Col. S.K. Mishra (Retd.), the then SQAQO and other Civilian Officials of SQAQ (GS), as recommended by the GOC-In-C,

Western Command in his directions/recommendations on the proceedings of COI, the Ministry in a note furnished to the Committee on 27th May, 2002 stated:

“Addl. Standing Government Counsel who was entrusted with the case returned the same in September 2001 expressing his inability to handle the case. Thereafter the case was transferred to another Addl Standing Government Counsel who after thorough study of the documents and discussions with the officials of MGO(GS&C)/DGQA (Vig Cell) and LA(Def) has forwarded advice vide Fax letter No. Legal/Opinion/016/2001 dated 9 November, 2001 (copy not enclosed) that no criminal complaint can be filed against erring officials of the DGQA/SQAE(GS) in the Court of Law in absence of the element of dishonesty and/or criminal misappropriation in the conduct of the erring officials in the transaction in question. The matter is being again referred for Legal Opinion..”

76. In their communication dated 23 October, 2002 the Ministry of Defence further inter-alia stated:

“It has now been intimated by the Department of Defence Production and Supplies that the matter was referred to two Government Counsels who opined against the filing of criminal case on the ground of the case lacking evidence to show the element of ‘dishonesty and/or criminal misappropriation’, as well as connivance of the various officials either among themselves or with the suppliers for the alleged act of omission and commission. It has further been intimated that a decision has been taken not to further pursue the issue of filing criminal case against Col. S.K. Mishra (Retd) and other civilian officials of SQAE(GS).”

77. The GOC-in-C, Western Command in his recommendation/direction on the findings of COI also mentioned that suitable administrative action be taken against the following officers of Det 2 FOD who are still in service, for failing to produce the sample of sleeping bag held with the said Det, to the inspecting staff of SQAE (GS):-

- (a) Capt R.K. Lakra
- (b) Capt MB Bohra
- (c) Major Sandeep Yadav

78. Intimating the action taken against the aforementioned officers, the Defence Secretary during evidence informed the Committee that two officers namely Capt. R.K.

Lakra And Capt. M.B. Bohra were awarded severe displeasure which debars them from promotion throughout their lives and service career.

XIV. Utilization of Sleeping Bags

79. The Committee desired to know about the status of the defective sleeping bags. The Ministry in a note inter-alia stated:

“Army Headquarters/MGO Branch convened a Board of Officers under the Chairmanship of ADGOS(CN&A) on 24 August, 1995. The Board recommended for utilization of the sleeping bags in 10 Corps zones in lieu of sleeping bags Indian authorised as part of Extreme Cold Clothing and Equipment (ECC&E). Accordingly, quantity 5765 sleeping bags held with various depots in Northern and Eastern Commands were issued in lieu of indigenous sleeping bags authorised as part of ECC&E. Remaining quantity of 2823 sleeping bags were utilized by Northern and Eastern Commands.”

80. In this context, Defence Secretary deposed in evidence :

“These bags, though they were not utilized in Siachen, yet they were found fit for use in the lower heights of the North-East. That is why it was decided ultimately that 20 per cent compensation should be taken and for the rest, a case in the arbitration should be filed to recover the rest of the amount.”

XV. Liquidated damages

81. According to clause 10 of the purchase order, for non-delivery of the bags by the date specified in the contract, the purchaser could levy, liquidated damages of 5 per cent of the contract price of the undelivered goods for each month of delay or part of a month. Although the delays in delivering the bags ranged from one to nine months and liquidated damages of FF 2790311 equivalent to Rs 1.80 crore could be levied on the supplier, no claim was, however, preferred by the Ministry.

82. The Committee enquired the reasons under which the liquidated damages were not claimed from the supplier. The Ministry in a note stated:

“It was made clear to the Supplier (M/s Moncler) vide Ministry of Defence letter dated 13.8.93 that Liquidated Damages would be levied for all delayed supplies.

Liquidated Damages for delays in supplies as well as other Damages for Breach of Contract such as delay in opening of Bank Guarantee etc., have been claimed through the Statement of Claim filed before the Sole Arbitrator.

A claim for FF 7,984,149.20, as damages has been filed by the Ministry of Defence before the Sole Arbitrator appointed under the provisions of Clause 17 of the 'Standard Conditions of Contract'. The Arbitration proceedings are under progress.”

Observations/Recommendations

83. A sleeping bag is one of the items of special snow and mountaineering equipment for troops deployed at Siachen Glacier and Eastern Sector. The Committee note that till the year 1991, the Ministry of Defence had been procuring sleeping bags from M/s Richner of Geneva, Switzerland by placing repeat orders on the firm, the only approved vendor for this item at that time. When the firm sought an increase in prices of sleeping bags in 1991, the Ministry decided to float global tender to increase the vendor base with a view to securing the most competitive price. Global tenders for procurement of sleeping bags were floated on 26 December 1991. Six firms including M/s Richner of Switzerland responded. All the samples received from the tenderers except from M/s Richner, whose samples had been successfully trial evaluated in the past, were subjected to a short user trial in Siachen Glacier. As per the trial report, the sample of the sleeping bag submitted by M/s Moncler of France only was found suitable for introduction into service. According to the Ministry, M/s Moncler of France had quoted a lower price compared to the prices quoted by the past supplier M/s Richner of Switzerland and therefore, Price Negotiation Committee (PNC) recommended placement of order on M/s Moncler of France whose offer was lowest and technically valid. Accordingly, on 11 May 1992, a contract for procurement of 8588 sleeping bags costing FF 11.86 million (Rs.7.65 crore) for use by Army in Siachen Glacier was entered into with M/s Moncler of France. The Committee's examination has revealed several disturbing aspects in the execution of the contract.

84. The Committee observe that while sleeping bags offered by both M/s Richner of Switzerland and M/s Moncler of France were found suitable for introduction into service, price differential factor clinched the selection in favour of the latter firm. As a matter of fact, M/s Richner had quoted prices for both large (Rs.10571.82 per piece) and medium (Rs.8746.92 per piece) sizes of the sleeping bags, which were required/used by the Army, whereas M/s Moncler quoted price for only one type of sleeping bag (Rs.6557.45 per piece), whose size was not even specified in the trial report. Undoubtedly, the comparative cost analysis made without reference to the relative size specifications of the sleeping bags offered by both the firms, was a hollow exercise without any tangible basis. On the contrary, significant price differential factor should have cautioned the Ministry to undertake indepth verification of the track record of the supplier so as to ensure quality of the stores to be procured. The Committee find that the verification was at best perfunctory and despite the crucial information supplied subsequently by our Embassy at Paris that the Firm M/s Moncler had been suffering heavy losses during the preceding three years was simply disregarded by the Ministry.

85. The Committee are amazed that a vital element like size specification of the sleeping bags was not drafted into the tender document. This was despite the fact that Army had been using both medium and large sizes of sleeping bags prior to the contract with the French supplier, M/s Moncler. The Ministry failed to adduce any reason for non-incorporation of the size specification in the tender documents. Surprisingly, the DGQA, deposed before the Committee that since they were not associated with the procurement deal, items which were required to be specified in the tender documents were not so specified. Such a conscious omission, in the opinion of the Committee, amounted to showing undue favour to M/s Moncler and the resultant supply of substandard sleeping bags to the Army.

86. The Committee note that 8588 sleeping bags were received from M/s Moncler of France in six lots between September 1992 and June 1993. The sleeping bags were required to be inspected on arrival as per DGQA standing instructions and the contract entered into with the firm. It is beyond comprehension as to why the inspecting officials of DGQA inspected and cleared the first three lots of

defective sleeping bags (3594 nos.) without cross-checking them with the approved sealed samples. It is perplexing that the approved sealed samples were neither sought by DGQA nor provided by the users at the time of inspection of stores till receipt of a complaint from a firm namely M/s Deftech, Netherlands in December 1992, which brought out several deficiencies in the sleeping bags supplied by M/s Moncler. What is worse is that even though the fourth lot of sleeping bags was compared with an approved sample, the inspectors even failed to notice a superfluous central stitching on outer bags, visible to naked eye and cleared the bags. The Ministry admitted that there was gross dereliction of duty on the part of the officials of DGQA and Army HQrs in carrying out the inspection of stores and the matter was inquired into with a view to fixing responsibility. The action taken on this count has been reviewed by the Committee elsewhere in the Report. The Committee are, however, constrained to observe that it is really a sad commentary on the functioning of an organisation like DGQA, which is independent of Users and is vested with the onerous responsibility of inspecting and certifying the quality of stores procured. Viewing the kind of negligence in quality inspection in this case as a major failure of internal control, the Committee strongly feel that the functioning of DGQA calls for a thorough review and revamping in order to guarantee that the quality assurance parameters are not compromised and the services are supplied with defect free quality stores/equipment.

87. The Committee note that the samples of the trial evaluated and approved sleeping bag were sealed and maintained at a specified place for future comparisons by the Users. However, the sealed samples were not authenticated by the signature of the designated authority as per the procedural requirement. The Army Headquarters contended that since the samples had been properly stored and documented for, these were as good as authenticated and the concept of sealing with signatures on the samples is another measure of security only. The contention of the Army Headquarters is not maintainable in view of the fact that during inspection of the fourth and the fifth lots of sleeping bags, the inspecting staff of DGQA did not take cognisance of the sealed samples provided to them because those were not duly authenticated. The Committee find no reason as to why the

lapse on the part of the designated officer not to authenticate the sealed samples of sleeping bags was not inquired into by the Army Headquarters while probing the acceptance of defective supplies. It is remarkable that the requirement of authentication of the samples under the signature of a designated officer was not felt till the receipt of a complaint from M/s Deftech, Netherlands, in December 1992 pointing out various defects in the quality of sleeping bags supplied by M/s Moncler. The Committee expect the Ministry to draw suitable lesson from such a procedural fiasco so as to safeguard the interest of the Users and the public exchequer atleast in future procurements.

88. The Committee find that even before the first lot of the bags was received, a specific complaint was received by the Ministry of Defence on 10th September 1992 from the past supplier, M/s Richner of Switzerland regarding the alleged bankruptcy of M/s Moncler of France and the possibility of inferior quality of bags to be supplied by the firm. A scrutiny of relevant records unravelled that the manner in which this complaint was dealt with by the Ministry renders the very transparency of the deal questionable. The allegation of financial bankruptcy of the firm and the quality of stores likely to be supplied should have rung the alarm bells in the Ministry. The very fact that the complaint was not forwarded to the DGQA reinforces the inference of certain collusion. The Defence Secretary admitted in evidence that DGQA should have been consulted before deciding the fate of the complaint which later proved to be well founded. The Committee note that the Ministry absolved their responsibility by merely endorsing the complaint to the User Directorate with the contention that they were expected to keep a watch on the quality of supplies made by M/s Moncler. Had the Ministry forewarned the inspecting officials of DGQA about the alleged quality of supplies, acceptance of defective sleeping bags and resultant loss of public money could have been avoided.

89. On 3 December, 1992, the Ministry further received a communication from M/s Richner with documentary evidence indicating M/s Moncler going into voluntary liquidation and having been placed under judicial administration on 6 November 1992. In the meantime, the Ministry also received a complaint from another firm namely M/s Deftech, Netherlands highlighting several shortcomings in

the sleeping bags supplied by M/s Moncler. The Committee note that on 10 December 1992, the Ministry wrote to Embassy of India at Paris seeking confirmation of the financial status of M/s Moncler as well as their advice on continuing further business with the firm. The Embassy of India, Paris, in their communication dated 29 December 1992 while confirming the insolvency of the firm, recommended cancellation of the remaining orders. It is intriguing that even at this stage, the Ministry did not seek cancellation of the contract, which could have at least prevented supply of remainder 4,994 sleeping bags (out of 8588) received subsequently. The Defence Secretary also conceded in evidence that this was an unusual case where the Ministry continued dealing with a bankrupt firm. The Committee therefore recommend that stringent and decisive action should be taken against the colluding officials responsible for causing avoidable loss to the Government and showing undue and rank favour to the firm.

90. The Committee were informed that the reports of inferior quality of sleeping bags supplied by M/s Moncler were conveyed to Army Headquarters and they were alerted on 23 December 1992 to ensure that the quality of the sleeping bags was as per the sealed sample at the time of initial inspection and any deterioration in the quality of sleeping bags delivered during warranty period be immediately brought to their notice. It was only on 18 January 1993 that the Army Headquarters sought feedback from Headquarters, Northern Command as by that time 900 sleeping bags had been despatched to them. Though the Headquarters, Northern Command were asked to forward their feedback by 10 February 1993, it was only on 26 November 1993 that the field formation informed the Army Headquarters about the unsuitability of the sleeping bags. As a matter of fact, the DGQA rejected the sleeping bags received in the sixth lot (1133 nos.) in July 1993 as these were not as per the sealed sample. The Committee regret to note the deplorable lack of coordination between the Department of Defence, Army Headquarters and DGQA which ultimately resulted not only in pecuniary loss to Government but also denial of essential life saving kit to the jawans posted in forward glacial areas.

91. The scrutiny of relevant file also revealed that the firm not only failed to deliver the sleeping bags in time but also failed to furnish the requisite

performance/warranty Bonds as per the terms of the contract. The Committee note that the Ministry extended the Letter of credit several times at the request of the firm and diluted the conditions of warranty Bond without consulting its finance wing. The performance/warranty Bonds were not received from the supplier as of 29 April 1993. However, by that time payment to the tune of FF 53,32,041.00 had already been made by the State Bank of India, New Delhi to the Supplier. While, as per the LC conditions, the firm was required to submit proof of despatch of performance Bond and warranty Bond, it is not clear as to how the payment was released to the supplier without these documents. What the Committee could glean from the documents made available to them is that while the issue of payment to the firm was under active consideration of the Ministry, reports obtained from SBI, New Delhi (24.5.1993) revealed that payments to the tune of FF 5.78 million had already been released to the supplier and this information apparently came as a surprise to the Ministry. Apparently, the Ministry were not sure whether Performance/Warranty Bonds had since been received by the State Bank of India. The sequence of events establish conclusively the active connivance of those entrusted with executing the deal. The Committee hope that the Ministry would fix individual responsibility and take exemplary action against the guilty officials. The Committee also want the role of SBI and the circumstances under which payment was released by the SBI to the firm, to be inquired into.

92. The Committee find that the Letter of Credit (LC) for balance amount of FF 6.08 million was renewed on the basis of a decision taken in a meeting held by Joint Secretary (O) on 21 May 1993. The minutes of meeting show that the User Directorate was agreeable to the release of payment against LC for the Stores already supplied except for a superfluous central stitching which was to be avoided in future supplies. The MGO's Branch, however, on 24th May 1993 intimated the Ministry that the sleeping bags supplied by the firm were not in conformity with the trial evaluated sample due to presence of a central stitching in the outer bag and therefore proposed taking of appropriate action by the Ministry. It was again on 1 June, 1993 the MGO's Branch pointed out the defect in the sleeping bags and

intimated to the Ministry that those were not acceptable to them. Eventually, after getting a copy of the minutes of the meeting held by JS(O) on 21 May, 1993, which were circulated by the Ministry on 3 June 1993, without authentication by officers present in the Ministry, the Director (MGO) on 18 June, 1993 had clarified that no commitment regarding acceptability of the bags was made by him during the meeting. Despite this, the Ministry extended the Letter Of Credit in May 1993 without obtaining an unconditional quality assurance from the supplier, facilitating encashment of the amount towards supply of defective sleeping bags by the firm. The Army HQrs were at a loss to understand as to how the statement attributed to Director MGO/EM (GS&C) was incorporated in the minutes of 21 May 1993, since according to them, the same officer wrote to the Ministry about the defect found in the sleeping bags and their unacceptability immediately after the meeting, i.e. on 24 May 1993 and also on 1 June 1993. Surprisingly, no reference was made to the bankruptcy of the firm in the meeting where a crucial decision was to be taken with regard to releasing payments to the firm. Apparently, the decision to release payment to the supplier was taken under dubious circumstances and such a decision is amply suggestive of a nexus between certain authorities in the Ministry of Defence and the supplier. The Committee would therefore like answer to some of these questions as to why the Ministry released payment to the firm when the User Directorate had found the sleeping bags defective and unacceptable, why the minutes were not countersigned by all the Members present and why the material fact of bankruptcy of the firm was not mentioned in the meeting held by JS(O). The Committee would also like to be apprised of the action taken against officials responsible for the contract management.

93. The Committee have been informed that following the rejection of sleeping bags which was communicated to M/s Moncler on 6 August 1993, a series of meetings were held by the Ministry with the representative of the firm to arrive at an agreement regarding claim of compensation for defective supplies. The proposal given for rectification of bags and the quantum of compensation offered by the firm were not acceptable to the Ministry. Ultimately, the Ministry decided to encash the Bank guarantee and on 24 September, 1993, advised the Banque Rivaud to encash

bank guarantee of FF 2.37 million representing only 20 per cent of the cost of the defective sleeping bags. The firm, however, moved the court in Paris and obtained a stay order in October 1993 against payment of the amount. The French Commercial Court gave its judgement on 18 November 1997 in favour of the supplier. It is surprising that the Union of India could not be represented in the debates in the Commercial Court of Paris despite being summoned by the Court. It was only after the judgement was announced in favour of the supplier, the Ministry of Defence appealed against the judgement. The Court of Appeal annulled the decision of Commercial Court and decided in favour of the Ministry of Defence. The Committee were informed that an amount of FF 2.27 million representing the principal amount of the bank guarantees minus the administrative charges was received by the Ministry on 3 August 1999. As regards the recovery of balance amount towards cost and charges, an amount of FF 14,000/- awarded by the Supreme Court, where the firm had also appealed against the claim of Government of India, is yet to be realised. Considering that an amount of FF 1.09 million has already been paid to the solicitor on account of fees out of FF 2.27 and the net accrual to the exchequer is very minimal, the Committee hardly need to comment on the financial prudence of the Ministry.

94. The Committee note that although Clause 17(b) of the contract stipulated that all the rights and liabilities embodied in the contract shall be determined by referring to the Arbitrator – a nominee of the Secretary of the Ministry under the Laws of India - yet the Ministry of Defence appointed the Arbitrator only in April 1998 i.e. after five years of defective supplies. According to the Ministry, the Legal Adviser (Defence) had opined on a reference made to him in May 1994, that the case of the Department was weak and not tenable on the grounds that no notice had been given to the seller at proper time and goods were appropriated by the buyer without intimating the seller of the recovery of compensation/damages for defect in the goods. When the matter was again referred to LA (Defence) in April 1998, he reiterated the advice given by his predecessor in May 1994. Subsequently, based on the advice of Government Counsel, who was appearing on behalf of the Government in the French Court and Ambassador of India in Paris, it was decided by the

Ministry to appoint an Arbitrator to strengthen their claim. The Committee find that though a statement of claim for Rs. 5.23 crore was filed before the sole Arbitrator on 25 August 1998, the pace of arbitration proceedings has been tardy. Viewed in the light of the opinion rendered by the LA (Defence), the outcome of the arbitration appears a foregone conclusion. Further, there is little hope whether the claim, if awarded by the Arbitrator in India, can be executed in France against a bankrupt firm.

95. The Committee find that the Ministry of Defence appointed Deputy Secretary (Q) in September 1994 to enquire into the lapse associated with acceptance of sub-standard sleeping bags. The terms of reference of the enquiry was to (i) make recommendation as to which individuals/organisations were responsible for the above lapse and also to (ii) suggest steps which may be taken to prevent repetition of such lapses. The enquiry report submitted by the DS(Q) in October 1994 pin pointed lapses on the part of officials in DGQA and Army Headquarters for acceptance of defective sleeping bags. The Department of Defence asked the Department of Defence Production & Supplies, under whose control the DGQA functions, to take action as per the findings of the enquiry report. The Committee are constrained to observe that the then Secretary, Department of Defence Production & Supplies did not agree with the findings that the inspecting staff was primarily responsible for accepting the defective stores. It was argued that the only fault which could be attributed to inspecting staff in DGQA was that they inspected the stores in the absence of an authenticated sealed sample because of the urgency and pressure exerted by the Users as the DGQA did not wish to appear to be un-cooperative by refusing to carry out the necessary inspection. The Committee observe that the reasons adduced by the Department of Defence Production & Supplies do not hold good considering that it was mandatory on the part of DGQA to follow the laid down procedure to test and certify the quality of stores on receipt. What is further disquieting to note is the fact that MGO's Branch/Army Headquarters also did not take any action against officials found responsible for the lapses in the enquiry report. To top it, the Department of Defence also failed to pursue the matter to its logical end. The Committee are quite

alarmed by the atmosphere of non-accountability which seems to be prevailing in the Ministry of Defence, considering the magnitude of defence purchases.

96. The Committee's examination revealed that subsequently, on perusal of a news item in November, 1999* highlighting the findings in the Report of C&AG about procurement of defective sleeping bags, Raksha Mantri (RM) directed the Ministry that the factual position of the case be put up to him. When full facts of the case were placed before him, the RM passed an order on 1st December, 1999 that action should be initiated within one month against those responsible for procuring the sub-standard sleeping bags. Pursuant to orders of Raksha Mantri, a Court of Inquiry (COI) was instituted on 24 December 1999 to investigate as to why during receipt inspection, the sleeping bags were passed which did not conform to the trial evaluated and approved samples. The Committee note that six officers in DGQA, Senior Quality Assurance Officer (SQAQO) including some civilian officials of SQAQ(GS) and three officers of Det 2 FOD (Army Headquarters) were found responsible in the report of COI. Pursuant to the findings of COI, two officers in Army Headquarters who failed to produce the sample of sleeping bags to the inspecting staff of SQAQ (GS) were awarded severe displeasure which debarred them from promotion throughout their service career. The Committee find that chargesheets for major penalty had been issued against 3 out of six officers in DGQA and it was recommended for filing criminal cases against the then SQAQ(Retd.) and other civilian officials of SQAQ(GS). The Committee have been informed that the matter was referred to two Government counsels, who opined against the filing of criminal case on the ground that the case lacks evidence to show the element of 'dishonesty and/or criminal misappropriation', as well as connivance of the various officials either among themselves or with the suppliers for the alleged acts of omission and commission. It is further distressing to note that the Government took a decision not to further pursue the issue of filing criminal case against the then SQAQ (Retd.) and other civilian officials of SQAQ(GS). Action against three other officials of DGQA was not found possible since they had retired from service between October 1996 and June 2000. Had the Department of Defence

* Pioneer November 12, 1999

Production & Supplies initiated action against erring officials, which they did after a lapse of five years on the intervention of RM, the outcome of the case could have been different. The Committee find that the Department of Defence is no less blameworthy for their failure to pinpoint the then JS(O), who failed to take due cognizance of the complaint received in September 1992, circulated the minutes of the meeting held on 21 May, 1993 without counter signatures of all officers present, which were later contested by the Director MGO(EM CG&C), did not bring on record the material fact of bankruptcy of the firm and also defied the orders of his superiors to take all precautions to prevent loss to the Government and various other acts of omission and commission relating to the contract management. The Committee is not satisfied with the mere seeking of his explanation as assured by the Defence Secretary. The Committee therefore reiterate that the orders of RM to initiate action against all those responsible for procurement of substandard sleeping bags must be implemented without any discrimination.

97. The Committee observe that as per the decision taken by Army Headquarters in August 1995, sleeping bags were cleared and used in the regions of lower heights of Northern and Eastern Commands. According to the Ministry, though these bags could not be utilized in Siachen, yet they were found fit for use in other high altitude areas. Significantly, Army Headquarters themselves had confirmed presence of most of the defects ^(*) pointed out by the firm M/s Deftech, Netherlands in the sleeping bags supplied by M/s Moncler. Having regard to the nature of the defects found, the Committee observe that the decision to issue these sleeping bags to our Jawans operating in extremely difficult weather conditions would have exposed them to great risk to their lives.

98. The Ministry also failed to claim liquidated damages amounting to Rs 1.80 crore despite contractual provision of levying 5 percent liquidated damages on delayed deliveries. The Committee are unable to accept the explanation of the Ministry that liquidated damages for delays have been claimed through the statement of claim filed before the Sole Arbitrator as in terms of the contract,

^(*) Detailed in Para 27 of the Report ibid

liquidated damages were recoverable from the payments due and by not doing so the Ministry failed to secure the pecuniary interest of the Government.

99. To sum up, various acts of omission and commission by the Ministry, DGQA and Army Headquarters led to procurement of 8,588 sub-standard sleeping bags valuing Rs 7.65 crore, which could not be used by the troops at Siachen due to their inferior quality. The manner in which the contract was executed by the Ministry gives an unmistakable impression that the intention was always to accommodate the foreign supplier under any circumstances regardless of the quality of sleeping bags procured and financial loss to the Government. While it was clearly established that the firm had gone bankrupt and supplied inferior quality of sleeping bags, the Committee are shocked to find from records that despite seeking cancellation/short-closure of the contract, the Ministry were negotiating another deal with the firm. Evidently, the role of the Ministry in the entire deal is questionable. The Committee therefore, recommend that the questionable role of the Ministry of Defence particularly the officers responsible for execution of the contract with M/s. Moncler of France be entrusted to an Independent Agency for thorough investigation. The Committee would like to be apprised of the action taken thereon within a period of six months.

NEW DELHI;

12 March, 2003

21 Phalgun, 1924 (Saka)

SARDAR BUTA SINGH,

Chairman,

Public Accounts Committee