

## Chapter 2

### The Disinvestment Process

#### The Policy and Guidelines

**2.1** The GoUP formulated a policy of privatization/ disinvestment of PSUs in June, 1994. The Policy provided for review for privatisation of all enterprises (excluding those engaged in social welfare activities and public utilities) whose annual loss was more than ₹ 10 crore and which had eroded their net worth by 50 per cent or more.

An Empowered Committee (EC) was constituted (December 1995) to review and decide cases of privatization/ disinvestment/ references to BIFR and to recommend other alternatives, such as partial privatisation, management by private entrepreneurs, lease to private entrepreneurs etc. On the recommendation of EC, the State Disinvestment Commission was constituted in November 1998. It was later dissolved and Disinvestment Commission (DC) was constituted in January 2000.

In January 2000, a Central Committee (CC) was also constituted for smooth functioning of process of disinvestments. The CC was entrusted with responsibility to make references to DC on the matters relating to reform in working, merger, reorganization, privatisation or closure of the PSUs. In April 2003, a High Power Disinvestment Committee (HPDC) was constituted for disinvestment of State PSUs.

**2.1.1** In June 2007, Department of Infrastructure Development (DID) of the GoUP, issued Guidelines for selection of Consultant/ Advisors, Developers for Public Private Partnership (PPP) projects and Private Partners for

The Guidelines of DID provide that the disinvestment process will be carried out by DID through the specified Government Nodal Agency with the assistance of Lead Advisor. Administrative Department will be responsible for taking each proposal of disinvestments to the Cabinet or CCD for their consideration, through the CGD. The Guidelines further provide that a CEC will be established to assist the CGD as envisaged in the Guidelines.

Disinvestments in Uttar Pradesh. The extracts of the Guidelines containing formation of various Committees, process to be followed for disinvestment, appointment and functions of Lead

Advisor, Legal Advisor, Accounting Advisors, Asset Valuers, procedure to be followed for bidding and methodologies of valuation of enterprise are placed in *Annexure-3*.

The CGD, CEC and Consultative Monitoring Committee (CMC) were established during 2007-08 to carry out disinvestment of state PSUs. The composition of these committees and their defined roles and responsibilities are given in *Annexure-4*.

#### Important Events

**2.2** The actual process of disinvestment started on 4 June 2007 when the State Government conveyed its decision to privatize/sell sugar mills of UPSSCL. The various steps taken for disinvestment of sugar mills of UPSSCL/UPRCGVNL are summarized below:

<b>Phase - I</b>	<b>Period between 4 June 2007 and 13 May 2008</b>
22/24 June 2007	UPSSCL conveyed in principle consent of the Board of Directors (BOD) for privatization/sale of 33 sugar mills.
29 June 2007	A Consultative Evaluation Committee (CEC) was established on 29 June 2007, under the Chairmanship of Industrial Development Commissioner. PICUP and IL&FS were appointed as the Nodal Agency and co-consultant respectively.
2 August 2007	Ernst and Young were appointed as disinvestment Advisor.
11 August 2007	The UPSSCL appointed six Assets Valuers <sup>7</sup> for valuation of 33 sugar mills grouped in five bundles. Each sugar mill was valued by two valuers independently.
30 August 2007	Dua Associates were appointed as Legal Advisor.
05 May 2008	GoUP nominated UPSSCL as nodal agency to carry out the process of disinvestment of sugar mills.
<b>Phase –II</b>	<b>Period between 14 May 2008 and 18 Dec 2008</b>
14 May 2008	The Government decided to sell/disinvest its entire equity shares in the holding company viz. UPSSCL and started fresh process of valuation of enterprise as a whole for equity sale.
11 June 2008	The UPSSCL appointed two Assets Valuers for valuation of entire equity shares of GoUP in UPSSCL
25 September 2008	The three Request for Proposals (RFP)/Financial bids <sup>8</sup> out of five bidders were received in the sale process of enterprise as whole.
30 September 2008	CGD identified the highest bidder on the basis of financial bid received. Highest bid of M/s Chaddha (sugar) Private Limited (₹ 160.11 crore) was lower than the Reserve Price (₹ 630 crore).
14 November 2008	GoUP decided to cancel the process of disinvestment of entire equity shares of GoUP in UPSSCL as a whole.
<b>Phase- III</b>	<b>Period after 19 December 2008</b>
<b>UPSSCL</b>	
19 December 2008	GoUP decided to start new process for sale/ disinvestment of sugar mills of UPSSCL.
10 February 2009	IFCI was appointed as disinvestment Consultant/ Advisor.
20 February 2009	GoUP made amendments in The Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 vide The Uttar Pradesh Sugar Undertakings (Acquisition) (Amendment) Act, 2009 as notified on 20 February 2009 empowering (i) the Government to divest, sell off, transfer or otherwise part with or any of its share in the Company (UPSSCL) and (ii) the corporation to sell or transfer any of its assets and/ or liabilities or part thereof and (iii) the validation of the Government order of 4 June 2007, subsequent orders and action taken in relation to disinvestment ( <b>Annexure-5</b> ).
12 March 2009	Chitale and Chitale Partners were appointed as a Legal Advisor.
20 May 2009	GoUP decided to sell the 11 operating sugar Mills of UPSSCL on slump sale basis.
29 June 2009	UPSSCL invited Expression of Interest-cum-Request For Qualification for sale of 11 operating mills.
10 July 2009	Pre-bid meeting for sale of sugar mills was held.
15 July 2009	S.R. Botliboi (SRB) and K.R. Bedmutha (KRB) were appointed as Assets Valuers for valuation of 11 operating sugars mills independently.
21 July 2009	Last date of receipt of EOI cum RFQ for 11 operating sugar mills.

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<sup>7</sup> Protocol Surveyors and Engineers, Tech-Mech Surveyors and Allied Consultant Private Limited, J.N Dubey and Associates, KR Bedmutha and Techno Associates, S.K Ahuja and Associates, S.R Jain and Associates.

<sup>8</sup> Chaddha (Sugar) Private Limited, UFLEX Limited and Gammon India Limited.

22 July 2009	Request for Proposal (financial bid) was invited from shortlisted bidders.
30 July 2009	GoUP introduced Swiss Challenge Method in the Disinvestment of Public Enterprises. ( <b>Annexure- 6</b> )
3 August 2009	Pre-bid meeting with bidders was held.
20 August 2009	CGD finalized the Expected Price in respect of 11 operating mills on the basis of recommendation made by Advisor.
27 August 2009	GoUP sanctioned the disclosure of Expected Price to the shortlisted bidders at the time of issuing Request For Proposal (RFP).
8 May 2010	CGD directed that RFP and Slump Sale Agreements issued to shortlisted bidders.
3 June 2010	Last date of receipt of RFP for 11 operating sugar mills.
5 June 2010	Arson & Company was appointed as Accounting Advisor for sale of mills of UPSSCL.
2 July 2010	Government approved sale of four operating sugar mills (Amroha, Chandpur, Jarwal Road and Siswa Bazar) to the successful bidders.
17 July 2010	Slump sale agreement entered into with purchasers for four operating sugar mills (Amroha, Chandpur, Jarwal Road and Siswa Bazar).
11-30 August 2010	Sale deed executed for Chandpur, Jarwal Road and Siswabazar mills.
17 September 2010	Government approved sale of remaining six operating sugar mills (Bijnore, Khadda, Rohankalan, Sakoti Tanda, Bulandshahr and Saharanpur) to successful bidders.
4 October 2010	Slump sale agreement entered into with purchasers for six operating sugar mills (Bijnore, Khadda, Rohankalan, Sakoti Tanda, Bulandshahr and Saharanpur).
4-23 October 2010	Sale deed executed for Amroha, Bijnore, Bulandsahar and Saharanpur mills.
7-9 December 2010	Sale deed executed for Rohankalan and Sakoti Tanda mills.
6 January 2011	Sale deed executed for Khadda mill.
<b>UPRCGVNL</b>	
21-23 June 2010	EOI cum RFQ for 14 closed mills (13 mills of UPRCGVNL and one mill of Chhata Sugar Company Limited) were invited.
1 July 2010	Pre-bid meeting with bidders was held
5 July 2010	R. B. Shah & Associates (RBS) and Tech Mech International Pvt. Limited were appointed as Assets Valuers for valuation of 14 closed sugar mills of UPRCGVNL and lone mill of Chhata Sugar Company Limited
4 August 2010	EOI cum RFQ for Rampur mill of UPRCGVNL was invited.
13 August 2010	Received EOI cum RFQ for 14 closed sugar mills (13 mills of UPRCGVNL one mill of Chhata Sugar Company Limited).
19 August 2010	Received EOI cum RFQ for Rampur sugar mill of UPRCGVNL.
26 August 2010	CGD decided the Expected Price of closed mills.
30 August 2010	Pre bid meeting with bidders was held.
16 September 2010	Received RFP for nine mills (eight mills of UPRCGVNL and one mill of Chhata Sugar Company Limited) out of 15 closed sugar mills.
27 September 2010	Received RFP for 4 closed mills (Barabanki, Chhitauni, Ramkola and Nawabganj) as extended.
11 October 2010	Received RFP for two closed mills (Hardoi and Laxmiganj)
4 January 2011	Government approved sale of 11 closed sugar mills of UPRCGVNL and cancelled sale process in respect of four mills (Burhwal, Nawabganj, Rampur and Chhata sugar mill).

21-22 January 2011	Slump sale agreement entered into with purchasers for eight closed sugar mills (Barabanki, Laxmiganj, Hardoi, Ramkola, Chhitauni, Shahganj, Ghughli, Bareilly).
25-30 March 2011	Slump sale agreement entered into with purchasers for three closed sugar mills (Deoria, Baitalpur and Bhatni) and sale deed executed for 11 closed sugar mills of UPRCGVNL

### **Status of litigation in the matter of sale of sugar mills**

**2.3** The GoUP decided (June 2007) to sell sugar mills of UPSSCL and started the process of disinvestment. For this purpose, the Government of Uttar Pradesh amended (2009) and inserted Section 3A to 3E (*Annexure-5*) in the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 (Act). Thereafter, sales of ten operating mills of UPSSCL and 11 closed mills of UPRCGVNL were completed in October 2010 and March 2011 respectively.

One Rajiv Kumar Mishra and the Chini Mills Karmchari Sangh filed (2008 and 2009) petitions with the Hon'ble High Court, Uttar Pradesh against the State of Uttar Pradesh and others, against the Amendment in the Act and sale of the sugar mills.

The Hon'ble High Court of Uttar Pradesh ordered (1 April 2010) that:-

“In both the writ petitions, the challenge to Expression of Interest dated 29 June 2009 has also been made and different clauses of the said Expression of Interest have been referred to. We having found that the Amendment Act, 2009 in so far as it inserts Sections 3-C, 3-D to the extent indicated above, is beyond the legislative competence of the State of U.P other consequential actions relating to the aforesaid two sections have also to be held invalid to that extent.

In the result both the writ petitions are partly allowed. Section 3-C and Section 3-D to the extent it provides “closure of the scheduled undertakings or sugar mills of the Corporation and its subsidiaries or in relation to the Corporation itself” is struck down as lacking legislative competence. All consequential actions to the above extent shall automatically fall on the ground. The other provisions of the Amendment Act, 2009 and the actions taken there in are held to be intra-vires.”

The GoUP filed (July 2010) Special Leave Petition (SLP) in the Hon'ble Supreme Court against the part of the decision of the Hon'ble High Court holding the amendment in the Act regarding change of land use/closure of mills to be beyond legislative competence. Rajiv Kumar Mishra and Chini Mills Karmchari Sangh also filed (May 2010 and July 2010) SLPs with Hon'ble Supreme Court against the part of the decision of the Hon'ble High Court holding the process of sale of sugar mills to be valid.

In response to SLP filed by Rajiv Kumar Mishra against the decision of Hon'ble High Court holding the process of sale of sugar mills to be valid, the Hon'ble Supreme Court in its interim orders (28 May 2010/ 14 July 2010) decided that any action taken by the GoUP in furtherance of Amended Act 2009 shall remain subject to final adjudication of the appeal. Hence, any action of the GoUP with regard to sale of sugar mills shall be subject to the final decision of the Hon'ble Supreme Court and shall be binding on the GoUP and the purchaser of sugar mills. Final decision of the Hon'ble Supreme Court in the said matter was pending (November 2011).