Chapter 4

Expected Price-its Disclosure

Reserve price is the threshold amount below which a seller generally perceives any offer or bid inadequate and is determined by carrying asset valuation of the entity/unit to be sold.

Fixation of Expected Price

4.1 In the case of sale of sugar mills of UPSSCL and UPRCGVNL, Expected Price were fixed for each mill instead of a Reserve Price.

We noticed that:

❖ Following the request of the Bidders in the pre-bid meeting on 10 July 2009 and after the receipt of Expression of Interest-cum-Request for Qualification (EOI-cum- RFQ) from ten[20] applicants on 21 July 2009, the Bidders were informed[21] of the Expected Price on 26 August 2009, i.e. before submission of Request for Proposal (RFP i.e. financial bid) after approval from GoUP. The reasons assigned were global economic recession, ensuring transparency in bidding process and appropriate price discovery. Thus, on recommendation of the CGD, the Government modified the earlier Guidelines that there should be no chance of the Bidders knowing the Reserve Price fixed by the Government.

The DID (Para No. 3.2.10 of Guidelines issued on 29 June 2007) with a view to maintaining absolute transparency, ensuring a foolproof process and removing all possibilities of tampering, has evolved a bidding procedure. The criteria that need to be satisfied are: -

- **Reserve Price should not be fixed by the Government before the bidders submit their financial bids, so that there is no chance of the bidders knowing the Reserve Price fixed by Government.**
- **The Government, while fixing the Reserve Price, should not have knowledge of the price bids submitted so that the fixing of the Reserve Price is not influenced by such knowledge.**

❖ Similarly, after the receipt of EOI-cum-RFQ from Bidders, the Government introduced Swiss Challenge Method (SCM) in the bidding process on 30 July 2009. The SCM method was to be applied in case the highest financial bid received was below the Reserve/ Expected Price but above 50 *per cent* of the Reserve/Expected Price.

The reasonability of introduction of very low benchmark of 50 *per cent* of the Expected Price for applicability of SCM method was not available on record nor explained in the Government Order of 30 July 2009.

❖ The part 2 (b) of the Government Order which stated that the SCM method will be applicable only when re-tendering was done, was also subsequently removed by a Government Order dated 27 August 2009.

[20] DCM Shriram Industries Limited, Dwarikesh Sugar Industries Limited, Indian Potash Limited, Laxmipati Balaji Sugar and Distilleries Private Limited, Patel Engineering Limited, PBS Foods Private Limited, Triveni Engineering and Industries Limited, SBEC Bio Energy Limited (consortium), Tikaula Sugar Mills Limited(Group), Wave Industries Private Limited (Group).

[21] By email to all Bidders.

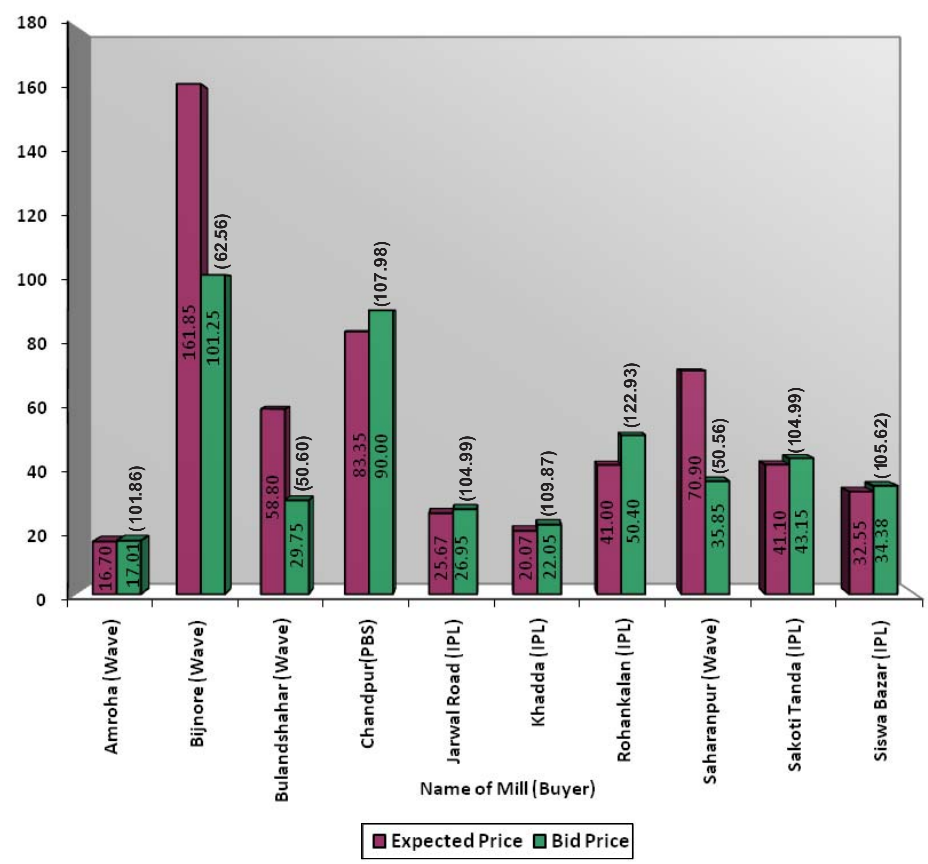
4.1.1 We are of the view that the modifications in the Guidelines regarding Disclosure of Expected Price to the applicants before submission of bids and applicability of SCM, influenced the Bidding process. The Bidders became aware of:

1. the Expected Price,
2. the fact that the SCM method ensured that bids just above 50 *per cent* of Expected Price would remain in contention.
3. there would be no re-tendering.

As a result, Bid Prices were received at about 51 *per cent* of Expected Price in case of Bulandshahar and Saharanpur mills where Wave Industries Private Limited (Wave) and PBS Foods Private Limited (PBS) were the only Bidders. On the other hand, Indian Potash Limited (IPL), administratively controlled by the Government of India, quoted bid prices over and above the Expected Price in case of six mills and subsequently withdrew its bid for Chandpur Sugar Mill resulting forfeiture of bid security amounting to ₹one crore.

The accepted final Bid Price vis-à-vis Expected Price as approved by CGD in respect of sale of ten operating sugar mills of UPSSCL are given in the chart below:

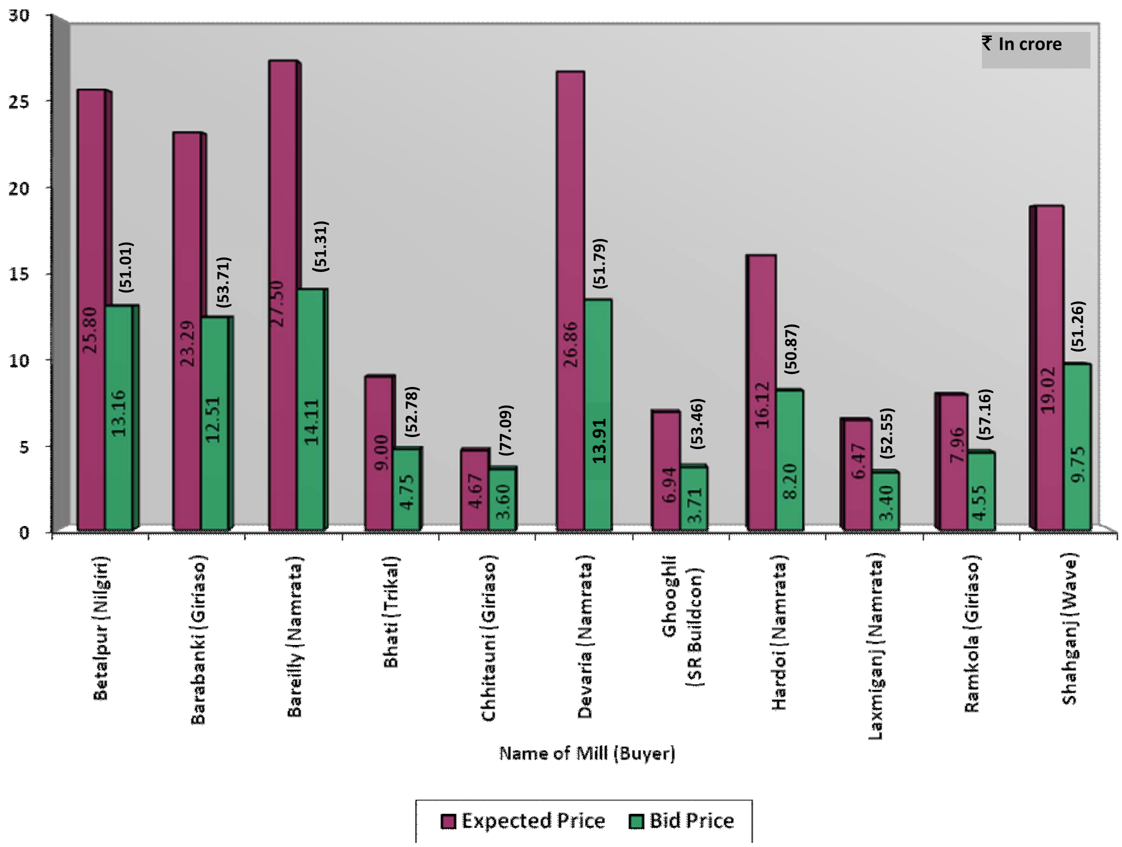
₹ In crore



(Figure in brackets shows percentage of Bid Price over the revised Expected Price)

The Bid price received for the ten mills ranged from 50.56 *per cent* (Saharanpur) to 122.93 *per cent* (Rohankalan) of the Expected Price. The Bids price received totaled to ₹ 450.79 crore against the total Expected Price of ₹ 551.99 crores (about 81.67 *per cent*). Most bids were marginally above the Expected Price and two[22] were in the exact range of the applicability of SCM method, *i.e.* at 50 *per cent* of the Expected Price (***Annexure 18***).

4.1.2 The accepted final Bid Price *vis-à-vis* Expected Price as approved by CGD in respect of sale of 11 closed sugar mills of UPRCGVNL are given in the chart below:



(Figure in brackets shows percentage of Bid Price over Expected Price)

Bids price received ranged from 50.87 *per cent* to 57.16 *per cent* and one bid was 77.09 *per cent* (for Chhitauni Mill) of the Expected Price (***Annexure 19***). The final bid price received totaled to ₹ 91.65 crore as against Expected Price of ₹173.63 crore (about 53 *per cent*). All the bids were in the exact range of the applicability of SCM method.

Thus, Disclosure of Expected Price and change in terms and conditions governing SCM resulted in receiving consideration far below than the Expected Price of 14 mills (including three operation mills) out of 21 mills sold. In the remaining mills, in six cases, the bid prices received were marginally above (1.86 *per cent* to 9.87 *per cent*) the Expected Price and only in one case the bid price was 22.93 *per cent* higher than the Expected Price. In the case of UPRCGVNL mills none of the bid prices received was even close to the Expected Price.

22 Bulandsahar and Saharanpur.

Adjustment in Expected Price

4.2 When arriving at the Expected Price of mills of UPSSCL and UPRCGVNL, the Advisor deducted ₹ 125.07 crore from the value of the mills under the heading 'Other Adjustments'. This amount included Voluntary Retirement Scheme (VRS) liability, Transaction Development Cost (TDC) and Contingent Liabilities on legal cases as detailed below:

Expected Price was unreasonably reduced on account of Transaction Development Cost (₹ 5.25 crore) and Contingent Liabilities (₹ 24.10 crore).

(₹ in crore)

Name of the Company	VRS Liability	Transaction Development Cost (TDC)	Contingent Liabilities for legal cases pending in the court	Total other adjustment
1	2	3	4	5=(2+3+4)
UPSSCL	94.80	2.50	18.65	**115.95**
UPRCGVNL	0.92	2.75	5.45	**9.12**
Total	**95.72**	**5.25**	**24.10**	**125.07**

When we pointed out to the UPSSCL that concessions on Expected Prices due to TDC and contingent expenditure on legal cases were not appropriate, the Management of UPSSCL stated (August 2011) that payment on VRS of employees, contingent liabilities and TDC were to be made by the purchaser, hence the said adjustment in determination of Expected Price was justified. We do not agree with this reply and are of the view that:

- Element of TDC is an incidental expenditure and does not affect the realistic value of the sugar mills. Normally, a purchaser considers these expenses over and above the value of the assets to be purchased. As such, deducting this element ₹ 2.50 crore in case of UPSSCL and ₹ 2.75 crore in case of UPRCGVNL, while working out the Expected Price amounted to giving a benefit to the Bidders.
- Reduction of Expected Price by the amount of ₹ 18.65 crore at the rate of ₹ two lakh per case in case of UPSSCL and ₹ 5.45 crore at the rate of ₹ one lakh per case in case of UPRCGVNL on account of Contingent Liabilities was arbitrary as it was not based on any scientific method or case to case basis. This was also against the suggestion of the earlier Advisor (M/s Ernst & Young) who suggested UPSSCL should maintain an Escrow account of this amount to meet future Contingent Liabilities on legal cases.
- By merely giving a rebate to the purchasers on the price as a liability on legal expenses, UPSSCL, being a party, would not escape any future legal cases and their possible liabilities in future. Thus, discount of 24.10 crore should not have been allowed in fixation of Expected Price. Besides, UPSSCL could have also earned interest of approximately ₹ one crore per year on ₹ 24.10 crore (at the rate of six *per cent* per annum) if kept in Escrow account.

Conclusion

Modifications in the Guidelines of Disinvestment regarding Disclosure of Expected Price to the Bidders before submission of Request for Proposal (financial bids) and applicability of Swiss Challenge Method on receipt of financial bid just above 50 *per cent* of Expected Price influenced the Bidding Process as evident from the fact that Bid Prices were just above the 50 *per cent* of Expected Price in most of the sugar mills or marginally above the Expected Price in a few sugar mills. Besides this, Expected Price was unjustifiably reduced on account of Transaction Development Cost and Contingent Liabilities which adversely affected Bids Price.