Chapter-II : Governing Structure

2.1 Issues in Equity Structure and Funding

One of the key principles for formation of NSDC was that it should be "private sector led" and it was stated in the Cabinet note that this principle would imply that the shareholding of Government of India (GoI) in the equity capital of NSDC should be kept at less than 51 *per cent* so as to prevent NSDC from being converted into a Government Company, as defined under Section 617 of the Companies Act, 1956, with the following implications:

- Government over-sight through appointment of auditors by the Comptroller and Auditor General of India would be dispensed with.
- NSDC would also not be subject to procurement guidelines, expenditure guidelines etc. issued by the Department of Public Enterprises.
- In hiring of professionals, consultants etc. the company would not be subject to Government norms and guidelines.

Audit scrutiny of the records relating to formation of NSDC and afterwards revealed that initially, the Cabinet approval was taken in May 2008 for contribution by the Government as upfront equity of ₹ 1,000 crore, while restricting the GoI equity below 50 *per cent*, with a higher contribution from the private sector. However, later on DEA proposed that mobilisation of more than ₹ 1,000 crore from private sources was neither feasible nor practical as adequate passage of time was necessary for the Corporation to implement its programme and generate confidence in its ability to work with viable business models. Hence, the total equity capital was reduced to ₹ 10 crore in the final Cabinet approval (November 2008). Accordingly, the authorised share capital of NSDC was kept at ₹ 10 crore, of which 51 *per cent* was subscribed by private sector (₹ 5.10 crore) and 49 *per cent* (₹ 4.90 crore) by GoI. This converted NSDC as a low capital base entity.

As per the Cabinet approval of May 2008, it was planned that ₹ 15,000 crore would be obtained from Government, public and private sector, bilateral and multilateral sources for the promotion of skill development. Thereafter, though NSDF was created to act as a receptacle for financial contributions by Government/Government entities, multilateral and bilateral and private sector, NSDF received funds from Government of India only. It received ₹ 3,300.74 crore from Government sources between 2008 and 2015. Audit observed that no contribution from private/bilateral or multilateral sources was received by NSDF even after five years since its formation. As per Audit analysis, out of ₹ 2,368 crore funds received by NSDC (₹ 10 crore as equity and ₹ 2,358 crore from NSDF) since inception, ₹ 2,362.90 crore had been provided from Government sources (₹ 4.90 crore as equity and ₹ 2,358 crore from NSDF) which amounted to 99.78 *per cent* of the resources with NSDC as on 31 March 2015.

Though, NSDC had been functioning largely with the taxpayer's money, no efforts were made by the Government for a concomitant increase in the ownership rights and representation on the board of directors of NSDC as discussed later in paragraph 2.2.2.1. In fact, with a small initial equity contribution of ₹ 5.10 crore, the private sector continued to control NSDC, which was largely a Government funded organisation. Further, this ownership structure resulted in absence of any obligation on the part of NSDC to submit Annual Reports etc. to the Parliament for legislative scrutiny, despite the fact that the Consolidated Fund of India remained the majority source of funding for NSDC through the NSDF.

It was noticed that in NSDF meeting (8 June 2012), during discussion on the issue of funding of NSDC, it was stated by one representative from DEA that NSDC had completed three years of operations and should now critically review its functioning pattern to explore alternate means of funding in order to utilise the grant funds more optimally. Audit observed that although the DEA had raised this issue, but DEA and NSDF themselves were required to take action for attracting private/bilateral or multilateral sources, as conceived by the Union Cabinet.

MSDE, in its reply (April 2015) agreed with the audit observation, that there should be contribution from non-government sectors as well towards skill development. It also stated that, since inception it had been vigorously engaged with private sector and Central Public Sector Undertakings (CPSUs) to contribute to the corpus. In January 2015, the Ministry had signed Memorandums of Understanding with Power Grid Corporation of India Limited and NTPC Limited for contribution of ₹ 13 crore to NSDF for their Skill training projects. Ministry was also in consultation with nodal

Ministries for various other measures under Income Tax Act, Corporate Social Responsibility and Foreign Contribution Regulation Act etc.

Scrutiny of MSDE reply revealed that contributions from other sources as stated by the MSDE were limited to two CPSUs for their own skill development project only and contributions from private sector, bilateral and multilateral sources were absent. Reply of the Ministry needs to be viewed in light of the fact that the design of keeping NSDC out of the Parliament's oversight was conceived for a scenario where NSDF would get contributions from all the resources. However, in the prevailing situation where a PPP, whose 49 *per cent* of equity was held by the GoI but which had been operating largely with taxpayer's money for more than five years, created for a public purpose identified as a policy priority of the Government, the need for effective parliamentary oversight over its functioning cannot be overstated.

MSDE further stated (October 2015) that the matter would be referred to NSDC for detailed deliberation and developing plan for active participation of industry in skill development activities particularly those relating to NSDC. It further stated that MSDE has also initiated dialogue with Industry to solicit their active participation in skill development.

2.2 Issues in Management Structure

2.2.1 Management Structure of NSDF

A Board of Trustees consisting of three members viz. Secretary, Department of Economic Affairs (DEA), Secretary, Planning Commission and Chairman, NSDC had been managing NSDF.

Audit scrutiny of the records pertaining to formation of NSDF and NSDC revealed that initially it was proposed (September 2008) to not to associate outside representatives, including the Chairperson of the NSDC, with the Trust. Nevertheless, the Chairman, NSDC was made (December 2008) a member of the board of trustees of NSDF.

NSDF being the monitor, supervisor and regulator of NSDC, inclusion of its Chairman in the board of trustees of NSDF resulted in absence of arm's length relationship between the entity supervised i.e. NSDC and the supervisor i.e. NSDF. Also, since Government funds were routed through NSDF to NSDC, the inter-linkage of keeping Chairman, NSDC on the NSDF Board was avoidable.

MSDE while accepting the audit observation, stated (October 2015) that the arm's length relationship between NSDF and NSDC is under examination in the Ministry and composition of NSDF, if deemed necessary, would be reviewed with the approval of the Cabinet.

2.2.2 Management Structure of NSDC

2.2.2.1 Structure and Composition of Board of Directors

NSDC was managed by a Board of Directors. As per Articles of Association (AoA) of NSDC, the GoI could appoint upto six out of upto 15 directors on the Board. The shareholders from the private sector had to appoint not more than nine Directors. The Government appointed directors were to be, as far as possible, as under:

- Secretary, Ministry of Small and Medium Enterprise (MSME), Secretary, Ministry of Labour (MoL) and Additional Secretary (EA), Department of Economic Affairs (DEA),
- One representative of the State Government (on rotation basis),
- One representative representing acknowledged and recognised skill training institutions, and,
- One person from amongst private persons who has long experience as chairperson or chief executive of a large business organisation and is widely recognised as distinguished business leader.

Further, since inception, one Government nominee was a member of the Project Approval Committee (PAC) of NSDC comprising of independent members from various disciplines, which carried out due diligence process for the project proposals.

Analysis of the management structure and composition at NSDC revealed that:

- Though GoI was the single largest shareholder in NSDC, its role in decision-making had been limited due to minority representation on the board of directors.

- Though the private sector was already well represented as it could have upto nine directors out of fifteen directors, two of the Government nominees were also planned to be individuals from Non-Government sectors.
- Chairman, NSDC was always appointed from among the Government nominees from the private sector.
- One slot of Government Director representing the State Government was kept vacant till March 2015.
- GoI's role was further diluted in NSDC by withdrawing the only Government representative in the Project Approval Committee (PAC) in July 2013.

Thus, Government continued to have limited say in the decision-making process of the affairs of NSDC which was largely financed through its own budgetary support. Further, there were instances when important issues raised by the Government nominees on NSDC board, who were already in minority, were not given required attention **(Annexure-III)**. It was also recorded in the DEA file noting (16 February 2012) that *"A perusal of the minutes indicated that Government nominees on the board are the ones who appear to be raising objections, however, these were generally overruled."*

MSDE, in its reply, stated (October 2015) that the issue would be examined by the Government and appropriate action would be initiated after taking all points into account and the desirability of Government nominee in PAC would also be decided.

2.2.2.2 Appointment of Directors in NSDC Board by the Government

Government appointed two directors from non-Government sector on NSDC board. Audit observed that no transparent procedure was prescribed for selection/nomination of the directors from the non-Government sector on the NSDC board. Further, the terms and conditions of appointment for Chairman NSDC were issued by the DEA only in April 2013 i.e. more than four years after the appointment of the first Chairman of NSDC.

MSDE in its reply (October 2015) stated that the Government would formulate the terms and conditions including procedure for selection/nominations of Government Directors/Chairman of NSDC Board.

2.2.2.3 Change of NSDC from Public to Private Limited Company

In pursuance of Cabinet decision, NSDC was established (July 2008) as a public limited company under the Companies Act, 1956. In 2010, NSDC requested that the categorisation of NSDC may be changed from a public limited company to a private limited company. It was deliberated in DEA and was brought out in a note that there were additional flexibilities available to a private limited company as compared to a public limited company:

a) There was no restriction on payment of remuneration to managerial personnel and an increase in the said remuneration did not require any approval from Central Government and/or its agencies,
b) Restrictions as regards inter-corporate loans and interest thereupon did not apply,
c) Managing Directors could be appointed for tenures exceeding five years,
d) Private company was not obliged to constitute audit committee,
e) Private Company can issue shares to persons other than the existing shareholders without needing approval of the existing shareholders.

Audit could neither find any recorded justification for the need of these flexibilities, nor could it find any deliberations on constraints, if any, being faced by NSDC due to non-availability of these flexibilities. In addition, such conversion provided additional privileges to NSDC such as:

- no restrictions on the powers of the board of directors;
- non-applicability of prohibition against participation in board meetings by interested directors;
- no need for appointment of independent directors;
- no need for constitution of nomination and remunerations committees of the board etc.;

In Audit opinion, this change further weakened the overall governance framework at NSDC.

NSDC was converted into a private limited company in June 2011. From the records made available to Audit, it could not find any approval from the Cabinet for this change from public limited company to private company. This was considered necessary, as the original Cabinet approval was taken to form NSDC as a public limited company.

MSDE stated (October 2015) that the whole sequence of events leading to changing the nature of NSDC from a public limited company to private limited company without approval of the Cabinet is being examined. If deemed necessary, the status of NSDC will be reverted back. MSDE also replied that it is contemplating to initiate corrective steps to strengthen the corporate governance structure of NSDC.