

# **Chapter-V**

## **Management-cum-analysis of Non-Performing Assets and recovery of loans**



## Chapter-V

### INDUSTRIES AND COMMERCE DEPARTMENT

#### Punjab State Industrial Development Corporation Limited

#### Management-cum-analysis of Non-Performing Assets and recovery of loans

**Delay in taking over the assets of the defaulting units and initiating action against their promoters/guarantors led to accumulation of Non-Performing Assets of ₹ 17,214.53 crore. Recovery made under various OTS Schemes was meagre and as such the State Government was burdened with payment of guaranteed bonds (₹ 113.38 crore paid and ₹ 366.44 crore pending for payment).**

#### 5.1 Introduction

The Punjab State Industrial Development Corporation Limited (Company) was incorporated (January 1966) with the main objective to promote, aid, assist and finance industries for balanced regional industrial development in the State. To finance industrial activity, the Company raised funds mainly by way of share capital and Government guaranteed bonds.

As on 31 March 2022, the principal amount of loan assets of ₹ 100.19 crore and interest thereon of ₹ 17,114.34 crore was outstanding. All these assets were Non-Performing Assets<sup>1</sup> (NPAs) further classified as Loss Assets<sup>2</sup>. The Company had outstanding liability on account of principal amount of unsecured bonds guaranteed by Government of Punjab (GoP) of ₹ 366.44 crore which became due from 2013-14 to 2021-22 and of ₹ 39.83 crore becoming due in 2022-23. It had accumulated losses of ₹ 661.60 crore<sup>3</sup> which eroded its share capital of ₹ 78.22 crore. The Company stopped its loan disbursement activity in 2006-07. Its liquidity position was strained due to declining trend in recovery of loans and non-rotation of funds.

#### 5.2 Audit scope and criteria

Audit analysed the management of NPAs and recovery of loans during the period 2018-19 to 2021-22. The records of the Company in respect of loanee

<sup>1</sup> As per RBI circular (July 2015), NPA is a loan where interest/installment of principal remain overdue for a period of more than 90 days in respect of term loan.

<sup>2</sup> RBI circular defines a loss asset as “An asset where loss has been identified by the Company but the amount has not been written off fully. Such an asset is considered uncollectable and of such little value that its continuance as a bankable asset is not warranted although there may be some salvage or recovery value”.

<sup>3</sup> As per financial statements for the year 2021-22.

units (units) were examined and 38.65 *per cent*<sup>4</sup> of the total units were selected for detailed study selected on the basis of stratified random sampling technique. The Company has been empowered with legal remedies under provisions of State Financial Corporations (SFC) Act, 1951; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and Insolvency and Bankruptcy Code (IBC), 2016.

### **5.3 Audit Objectives**

The audit objectives were to analyse and evaluate whether:

- recovery of dues and action taken in case of default was as per the provisions of the Loan Agreement, SFC Act, 1951, SARFAESI Act, 2002 and IBC, 2016;
- the Company had made adequate efforts for recovery of amount under NPAs as per the provisions of the *ibid* Acts; and
- settlement of dues was made in accordance with the One Time Settlement (OTS) Schemes operated by the Company.

### **5.4 Audit Findings**

The audit findings are categorised into two broad areas - analysis of NPAs and settlement of cases under OTS Schemes during the period 2019-22. The audit findings are discussed in the succeeding paragraphs.

#### **5.4.1 Non Performing Assets**

The position of NPAs is an indicator of the health of the loan portfolio of a lending institution. The Company could not recover its outstanding loan dues and interest thereon from its loanees despite availability of legal remedies under the provisions of *ibid* Acts. The total dues outstanding as on 31 March 2022 had accumulated to ₹ 17,214.53 crore (principal- ₹ 100.19 crore and interest<sup>5</sup> - ₹ 17,114.34 crore) from 91 NPA cases (100 *per cent*). Out of these 91 unsettled NPA cases, the status of the selected 28 NPA cases is given in **Table 5.1**:

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<sup>4</sup> As on 1 April 2019, the Company had total 119 NPAs, out of which 28 cases were settled under OTS. Out of these 28 cases, 18 cases were selected (including nine cases settled through book adjustment). Out of the balance 91 unsettled NPAs as on 31 March 2022, 28 cases were selected.

<sup>5</sup> Interest as per Memoranda Account of the unit.

Table 5.1: Status of selected Loanee units

(₹ in crore)

Status of loanee units					
Amount Recoverable	Under liquidation		Cases where recovery due as arrears of land revenue	Other NPA cases	Total
	Private	Government Companies			
Principal	10.31	4.18	17.62	6.03	38.14
Interest	1,663.69	1,139.86	2,624.70	971.77	6,400.02
Number of cases	5 <sup>6</sup>	2	19	2 <sup>7</sup>	28
<b>Total</b>	<b>1,674.00</b>	<b>1,144.04</b>	<b>2,642.32</b>	<b>977.80</b>	<b>6,438.16</b>

Source: Information provided by the company

Audit observed that:

- in all the selected 28 cases, recovery of outstanding dues of ₹ 6,438.16 crore were pending for periods ranging from 21 years to 45 years;
- in 20 cases out of the selected 28 cases involving principal amount of ₹ 22.21 crore (58.23 per cent of ₹ 38.14 crore), nil recovery was made.

The reasons analysed by Audit for non-recovery of loans were:

**5.4.1.1 Delay in/non-invoking of various legal provisions**

Audit did not find evidence that the Company had evolved any system for obtaining regular feedback about the financial health of its loanee units (analysis of profitability, projects under implementation/in default and periodical inspections of the unit). This systemic deficiency led to delay in receiving timely signals of the poor financial health of the loanee units leading to eventual non-recovery of loans. Further, the Company delayed in initiation of legal remedies for recovery of its outstanding loans:

- The Company decided (July 1994) for implementation of notification (May 1988) of Government of India for applicability of provisions of Section 29 of SFC Act to the Company after a lapse of six years. The Act provides the right to take over the management or possession, or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Company.
- Approval for appointment of Specified Authority<sup>8</sup> for issuing of Recovery Certificate (RC) to Deputy Commissioner-cum-Collector for recovery of dues as an arrear of land revenue from the guarantors of

<sup>6</sup> Includes one sister concern unit along with its selected unit.

<sup>7</sup> Represents units with pending Court cases/BIFR.

<sup>8</sup> Managing Director of the Company.

the loan was taken only in November 2007 though the Company has been disbursing loans since its inception in January 1966.

- Decision to implement the provisions of SARFAESI Act, 2002 was taken (March 2009) after a lapse of nearly seven years since its enactment.

The Management stated (May 2023) that its major role was development of industries and it did not want to take harsh steps which would have led to closure of units. The units were asked for clearance of default amount and some recovery was also made. The reply of the Management was not acceptable as it was not specific to the audit observation that the Company belatedly decided to implement provisions of SFC/SARFAESI Act and appointing Specified Authority.

- The Company never initiated any action for invoking the provisions of the Insolvency and Bankruptcy Code, 2016.

The Management replied (May 2023) that it had not invoked IBC, 2016 as it had already invoked the provisions of SFC/SARFAESI Act. The reply was not convincing as IBC, 2016 was framed to ensure quicker resolution of NPA problems within 180 days, to overcome the overlapping jurisdiction of different forums.

#### ***5.4.1.2 Delay in taking over the assets of unit***

The Company had not taken timely action for taking over the assets of the units mortgaged with it as per provisions of SFC Act. Out of the 28 selected cases, in 14 cases assets were taken over after delays ranging from one year to six years and in one case, assets were yet (May 2023) to be taken over, while in four cases the assets were taken over timely. In four cases, loan was sanctioned as Bridge Loan/Loan against equity without any security. In five cases, assets were not taken over as these were under liquidation/ BIFR cases.

The Management stated (May 2023) that adequate time was given to the units for clearance of default. Since the role of the Company was to develop industries, legal steps were taken only when the units were not in a position to clear the default. The reply of the Management was not acceptable as in 13 out of 14 units the Company had initiated action for taking over the assets of the units after delays of two to six years.

#### ***5.4.1.3 Delay in taking action against the promoters/guarantors***

Audit observed that pending recovery under Section 29 of SFC Act, the Company has not taken any action simultaneously to recover dues from promoter/guarantors as arrears of land revenue though it was legal to recover the dues from the defaulting unit and from its promoters/guarantors

simultaneously<sup>9</sup>. The Company had not evolved any system whereby it could ascertain the whereabouts and properties of the promoters/guarantors for initiating action for recovery of its dues. Audit analysis of selected 26 cases of NPAs (excluding two cases of NPAs of Government Companies) revealed:

- In 22<sup>10</sup> cases, against recoverable amount of ₹ 3,922.22 crore, action was taken (July 2008 to March 2022) against the promoters/guarantors after a lapse of seven to 27 years (in 19 cases after more than 10 years). The Company decided (December 2001) to appoint Investigating Agents (IA) for tracing out the whereabouts of the promoters/guarantors but the IAs were appointed only in July 2014. Meanwhile, in eight of these 22 cases, where RCs were issued after a lapse of periods ranging from 11 to 27 years, the whereabouts of promoters/guarantors were not traceable as they had sold/ transferred their properties, resulting in recovery of dues of ₹ 2,449.73 crore becoming doubtful.
- In four cases, against recoverable amount of ₹ 1,371.90 crore, action was not taken even after a lapse of 21 to 24 years.

The Management stated (May 2023) that it did not invoke the provisions simultaneously hoping that it would recover its dues from the sale of assets of units and promoters/ guarantors would opt for OTS. Further, the Company had appointed IAs from time to time and on the basis of the report received from them, further action was taken. The fact remains that IAs were appointed after considerable delay and the Company could not recover its dues.

<i>Case A</i>
The Company disbursed (April 1997-December 1998) loans of ₹ 1.93 crore and ₹ 0.24 crore to the unit <sup>11</sup> against mortgage of plant and machinery and collateral security of two plots at Ludhiana (256.25 square yards each). The unit defaulted in repayment of dues amounting to ₹ 0.84 crore from April 1998 to October 2000, however, no action was taken by the Company for taking over the assets of the unit under Section 29 of the SFC Act. The unit got itself registered (2001) with BIFR but no action to take over the assets under SARFAESI Act, 2002 was taken by the Company. The unit was ordered (May 2014) to be wound up by BIFR. The collateral security of the unit was taken over (April 2022) by the official liquidator (OL) but the sale was still pending (April 2023).

<sup>9</sup> As per legal advice received by the Company in March 2016.

<sup>10</sup> Includes three units under liquidation.

<sup>11</sup> M/s Shivalikwala Steels Mills Limited (SSM).

Further, the Company belatedly initiated (September 2019) action against the promoters/guarantors of the unit to recover its legitimate dues as arrears of land revenue. The Tehsildar, Ludhiana intimated (June 2022) the Company that the guarantors of the unit were not residing at the given addresses. As such, delayed action by the Company resulted in recovery of ₹ 313.79 crore (principal + interest) becoming doubtful.

The Management stated (May 2023) that the Company tried to take over the assets of the unit but the action was deferred as the unit submitted some postdated cheques for part of the defaulted amount. The fact remains that the Company was yet to recover its dues from the defaulting unit even after a lapse of 25 years due to non enforcing the legal remedies under the provisions of the SFC/ SARFAESI Act.

### ***Case B***

The Company disbursed (May 1997-February 1998) two loans amounting to ₹ 2.80 crore to another unit<sup>12</sup> of the same set of promoters against mortgage of Plant & Machinery and Land & Building at Ludhiana. The unit defaulted in repayment of dues amounting to ₹ one crore from October 1997 to October 2000, however, no action was taken by the Company for taking over the assets of the unit under Section 29 of the SFC Act. Both the units (SSM and SLM) were being operated in the same premises without any separation. The unit got itself registered (2001) with BIFR which ordered (May 2014) the unit to be wound up.

The Company became aware (September 2004) that there was no machinery available at the site, hence it lodged an FIR with the police, but the Company did not pursue it. Finally, when the Official Liquidator (OL) went to take over the assets of the unit (May 2014), the plant and machinery (primary security) was found removed. The Company failed to lodge an FIR against the promoters in this instance. The Company also failed to promptly initiate action against the promoter/guarantor to recover its dues as arrears of land revenue. Belated action was taken in this regard as RCs were issued in June 2016 after a lapse of more than two years.

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<sup>12</sup> M/s. Shivalik Loha Mills Limited (SLM), a sister concern of M/s Shivalikwala Steels Mills Limited.

The Company submitted (July 2022) the details of two primary properties having present value of ₹ 24.19 crore<sup>13</sup> which were mortgaged with it to the OL but these properties were not taken over (May 2023). Audit noticed that the mortgaged properties were industrial plots which were allotted to the unit by another State PSE, the Punjab Small Industries & Export Corporation Limited (PSIEC) and the allotment were already cancelled (August 2003 and March 2004) due to utilisation of plots for commercial purposes instead of industrial purpose. Eviction proceedings by PSIEC against the unit were under process. As such, delayed action by the Company resulted in doubtful recovery of ₹ 293.92 crore.

The Management stated (May 2023) that since the unit got registered with BIFR and was ordered to be wound up in May 2014, the Company could not take over the unit u/s 29 of the SFC Act. The reply was not acceptable as due to not taking over the assets of the unit in time, the promoters/guarantors were able to remove the plant & machinery. Further, non filing of FIR and delay in issuing RCs for recovery as arrears of land revenue led to non- recovery of dues.

#### 5.4.2 Recovery/Settlement under OTS Scheme

With a view to provide relief to defaulters and settle cases of NPAs and facilitate overall development of industries in the State, GoP brought out One Time Settlement (OTS) Schemes from time to time (March 2009<sup>14</sup>, October 2015, October 2017, December 2018<sup>15</sup> and December 2021). The details of recovery made under various OTS Schemes is given in Table 5.2 below:

**Table 5.2: Recovery made under various OTS Schemes**

(₹ in crore)

OTS Schemes	No. of applications for OTS	No. of cases settled	Amount recoverable			OTS amount	Financial sacrifice	Percentage of recovery as OTS to amount recoverable
			Principal	Interest etc.	Total			
1	2	3	4	5	6	7	8=6-7	9=7/6*100
2009	39	35	38.03	267.16	305.19	68.01	237.18	22.28
2015	20	18	17.46	709.54	727.00	30.88	696.12	4.25
2017	-	-	-	-	-	-	-	-
2018	30	26	40.66	3,143.68	3,184.34	31.27	3,153.07	0.98
2021	2	2	0.64	120.07	120.71	0.69 <sup>16</sup>	120.02	0.57
<b>Total</b>	<b>91</b>	<b>81</b>	<b>96.79</b>	<b>4,240.45</b>	<b>4,337.24</b>	<b>130.85</b>	<b>4,206.39</b>	

Source: Information compiled from the ledger accounts maintained in respect of loanee units

<sup>13</sup> Taking reserve price of ₹ 10,000 per square yard.

<sup>14</sup> Extended up to December 2009.

<sup>15</sup> Extended up to December 2020.

<sup>16</sup> Amount was being received in installments.

The percentage of recovery as OTS to amount recoverable went downwards in successive schemes announced, in percentage terms. It was 22.28 *per cent* in OTS Scheme 2009 and only 0.57 *per cent* in OTS Scheme 2021. Audit observed that the successive OTS Schemes were more liberal (in terms of calculation of amount to be paid under OTS and settlement was done even at zero amount - Paragraph No. 5.4.2.1 *infra*) and providing further relief to even willful<sup>17</sup> defaulting units/promoters which in turn became an incentive for these defaulting units/promoters to delay settlement of their accounts. As recovery made under OTS Schemes was meager, GoP was burdened with payment of guaranteed bonds (₹ 113.38 crore paid during the period 2018-19 to 2021-22 and ₹ 366.44 crore pending for discharge as on 31 March 2022).

Audit also observed that:

- At the time of OTS, value of collateral security at the time of disbursement of loan was considered under OTS Scheme 2018 but without ascertaining its present market value (as being ascertained in case of primary security for working out the OTS amount) which not only led to reduction in OTS amount by ₹ 2.04 crore<sup>18</sup> in two cases selected under OTS but also defeated the basic purpose of taking security to safeguard the financial interest of the Company.

The Management stated (May 2023) that the value of collateral security at the time of disbursement of loan was taken as per OTS Scheme. The reply was not acceptable as GoP/Company should have considered the current value of collateral security at the time of settlement and safeguarded its financial interests.

- GoP did not provide for any interest clause in the OTS Schemes of 2018 and 2021 of the Company whereas the OTS Schemes announced by GoP in another PSE (PFC<sup>19</sup>) at the same time provided for simple interest of five *per cent per annum* and three *per cent per annum*, respectively.

The Management stated (May 2023) that the amount of loans extended by PFC was much smaller than the loans given by it and with a view to avoid undue litigation and settlement of loans, the Company did not provide for any interest. The reply was not acceptable as GoP/Company should have considered at least simple interest of five/three *per cent per annum* to keep uniformity with the OTS scheme of PFC (as there are jointly financed cases also) and to cover its administrative expenses to safeguard its financial interest.

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<sup>17</sup> Pointed out in paragraph No. 3.10 of Audit Report (Social, General and Economic Sector) for the year 2012-13 of the C&AG of India of GoP.

<sup>18</sup> Present value of collateral securities: ₹ 3.00 crore estimated (based on collector rates) less ₹ 0.96 crore (value of collateral security at the time of disbursement of loans).

<sup>19</sup> Punjab Financial Corporation.

- The cases of unsettled NPAs were not intimated to the Reserve Bank of India (RBI) for notifying them as defaulter as per OTS Scheme.

The Management stated (May 2023) that the cases were not intimated to RBI since it had notified the list of defaulters on the portal of Credit Information Bureau (India) Limited (CIBIL). The reply was not acceptable as the Company had not acted as per the conditions of the OTS Scheme.

Major cases noticed during detailed scrutiny of selected OTS cases are discussed as under:

#### **5.4.2.1 Settlement by book adjustment (amount written off) at zero amount**

OTS Scheme, 2018, provided that in cases where securities have been sold, OTS amount was to be calculated at outstanding principal amount *plus* expenses in Current Account (CCA expenses) *minus* amount realised from sale of securities. In nine NPA cases (the disbursement period in these cases ranged from 20 years to 41 years) ₹ 1,343.93 crore (Principal: ₹ 16.82 crore, Interest: ₹ 1,326.80 crore and CCA: ₹ 0.31 crore) was recoverable. Audit observed that:

- In three out of nine units, action under SARFAESI Act to take over their assets was taken after a lapse of nine to 10 years.
- Out of nine units, in case of five units, no action was taken against the guarantors to recover the outstanding loans as arrears of land revenue even after a lapse of one to 23 years involving recoverable amount of ₹ 844.59 crore.
- In case of four units, action for recovery of loan as arrears of land revenue was taken after a lapse of five to 11 years involving recoverable amount of ₹ 499.34 crore. Of these, in case of one unit<sup>20</sup>, the Company requested (June 2011 to April 2019) the DC concerned for recovery of dues but the details/whereabouts of the properties (at Amritsar and Delhi) of the guarantor were not brought to the notice of the DC concerned for effecting recoveries. The loan was settled (July 2020) at zero amount under OTS against recoverable amount of ₹ 74.35 crore. In another unit<sup>21</sup> the Company intimated (August 2017) the DC, Amritsar about residential property and land of guarantor at Amritsar for recovery of outstanding dues as arrears of land revenue but no response was received. The loan was settled (February 2019) at zero amount under OTS against recoverable amount of ₹ 148.57 crore.

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<sup>20</sup> M/s Ashwin Fabrics (P) Ltd.

<sup>21</sup> M/s Pahwa Processors Ltd.

Audit further observed that the amount of ₹ 31.88 crore realised (January 1997 to June 2018) from the sale proceeds of primary and collateral securities of the NPAs was adjusted (February 2019 to November 2020) with the outstanding principal and CCA expenses (₹ 17.13 crore) under the OTS Scheme which was already accounted for as interest income on actual receipt basis against recoverable amount of interest in the respective year of accounts of the Company as per the guidelines of RBI/Accounting Policy/Loan agreement. Accordingly, the loan accounts were settled through book adjustment at zero amount of OTS and recovery proceedings to recover the dues as arrears of land revenue were withdrawn and consequentially promoters/ guarantors escaped from payment of legitimate dues.

The Management stated (May 2023) that the settlement through book adjustments was made as per the policy floated by GoP and it is sacrosanct. The reply was not acceptable as failure of the Company for non/ inordinate delay in initiation of action under SARFAESI Act and against the promoters/ guarantors led to non-recovery of dues which were ultimately settled at zero amount by violating the guidelines of the RBI/Accounting Policy/Loan Agreement. As such, settlement by book adjustment was against its financial interest as interest is the main revenue for any financial institution accounted for on actual receipt basis.

#### **5.4.2.2 Settlement at reduced value by adjusting state subsidy**

The unit<sup>22</sup> availed (June 1998) a bridge loan of ₹ 0.40 crore which was repayable within a period of two years or when the state subsidy<sup>23</sup> was disbursed by GoP, whichever was earlier. The unit did not pay any amount and became (January 1999) NPA. But no action was taken after the due date of repayment of loan to take over the collateral security valued (April/May 1998) at ₹ 0.86 crore under section 29 of the SFC Act, 1951 for recovery of dues of ₹ 0.61 crore (Principal: ₹ 0.40 crore and Interest: ₹ 0.21 crore) in June 2000. The unit paid (December 2009 and February 2011) ₹ 0.17 crore which was adjusted against interest recoverable but no payment was received thereafter except for ₹ 0.12 crore received (December 2016) under no lien account. The Company issued (January 2019) notice after a lapse of 20 years for recoverable amount of ₹ 29.62 crore under SARFAESI Act, 2002. Finally, against recoverable amount of ₹ 32.44 crore, the Company settled (March 2019) the loan at ₹ 0.50 crore (state subsidy) instead of at least ₹ 0.86 crore (value of collateral security)<sup>24</sup> required as per OTS Scheme, 2018. Non-taking over the assets resulted into avoidable loss of

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<sup>22</sup> M/s. A.G. Foods Limited.

<sup>23</sup> State subsidy is to be provided by the Industries Department on commencement of production.

<sup>24</sup> As per clause II (i) of OTS Scheme, 2018, in loan cases where security has not yet been sold, calculation of OTS amount will be outstanding amount of principal *plus* CCA expenses OR value of collateral security at the time of disbursement of loan whichever is higher.

interest of ₹ 31.94 crore. Moreover, while settling the loan under OTS Scheme, 2018 at reduced value of collateral security, ₹ 0.36 crore<sup>25</sup> was short recovered.

Further, as per the terms of the bridge loan agreement, the state subsidy was to be adjusted with the interest and principal recoverable from the unit. However, state subsidy was adjusted against OTS amount. Similarly, in another unit<sup>26</sup>, state subsidy of ₹ 0.50 crore was adjusted (November 2021) against OTS amount of ₹ 1.11 crore.

The Management stated (May 2023) that as per the request of the Punjab Agro Industries Corporation Limited (PAIC), time was given to the unit<sup>27</sup> for repayment of dues to the Company for rehabilitation. Further, the Company issued notice under SARFAESI Act to pressurise the unit to opt for OTS and recovery of bridge loan of ₹ 0.50 crore against state subsidy was made under OTS Scheme. The reply was not acceptable as the Company should have initiated recovery proceedings under the SFCs Act in June 2000 as the collateral security has no relation with the equity investment of PAIC. Further, notice under SARFAESI Act issued just for pressurising the unit for opting for OTS was also against the financial prudence of the Company.

#### **5.4.2.3 Allowing frequent opportunities to the unit**

In a case of a jointly financed unit<sup>28</sup>, the unit did not repay the loans of ₹ 1.65 crore<sup>29</sup> and became (October 1995) NPA. But the Company did not initiate any action for recovery of loans against the unit. The unit had opted for settlement under the OTS Scheme, 2009 but it was cancelled (August 2012) due to default in making payment. The Company decided (May 2014) to initiate recovery proceedings against the unit under SARFAESI Act, 2002. The unit did not opt under subsequent OTS Schemes of 2015/2017 and action under SARFAESI Act was kept in abeyance (May 2015, May 2016 and November 2017) as per the request of the unit.

The promoter of the unit requested (March 2017) for OTS under lapsed OTS Scheme 2015 as arrangement of ₹ 5.50 crore was made by disposing of personal assets for payment of loans against the OTS amount of ₹ 5.49 crore (Company: ₹ 3.24 crore and PFC: ₹ 2.25 crore), however, the same was not accepted. Finally, the Company issued (January 2018 and April 2018) notice under SARFAESI Act to the unit for recovery of ₹ 85.14 crore. But the action was again kept (June 2018) in abeyance as the unit deposited (June 2018)

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<sup>25</sup> Value of collateral security: ₹ 0.86 crore less state subsidy: ₹ 0.50 crore.

<sup>26</sup> M/s Persian Carpets and Textile Limited.

<sup>27</sup> M/s. A.G. Foods Limited.

<sup>28</sup> M/s. Punjab Tissues Limited (PFC: ₹0.90 crore and Company: ₹ 1.65 crore).

<sup>29</sup> Disbursed in April 1990 to March 1995.

₹ 0.10 crore with the Company and intimated that the new OTS Scheme 2018 was under active consideration of GoP. Despite availability of funds/assets with the promoter, action was not initiated for taking over the assets under SARFAESI Act nor against the promoters/guarantors of the loan, rather the loan was settled (March 2019-January 2020) at OTS amount of ₹ 1.65 crore<sup>30</sup>. This resulted in favour to the unit and consequential loss of ₹ 1.06 crore<sup>31</sup> to the Company involving financial sacrifice of ₹ 111.88 crore. Besides, PFC also suffered loss of ₹ 1.70 crore involving financial sacrifice of ₹ 115.44 crore.

The Management, while admitting the facts, stated (May 2023) that action under SARFAESI Act was kept in abeyance as per the request of the promoter of the unit in view of forthcoming OTS scheme. The reply was not acceptable as the Company should have initiated timely action against the unit and the promoters/guarantors for recovery of its dues to safeguard its financial interest without waiting for suitable OTS Scheme in favour of the unit.

#### **5.4.2.4 *Non evolution of system for ensuring simultaneous settlement of cases***

As per OTS Scheme, multiple loans granted by the Government/Company/PFC were to be settled simultaneously. But the Company has not evolved any system for enquiring about the status of loans recoverable by the Government from the loanee unit/Government Department concerned for simultaneous settlement of loans under the OTS Scheme. However, Audit noticed that the Company settled (September 2021) its loan with the unit<sup>32</sup> under OTS Scheme 2018 at ₹ 0.23 crore (against recoverable amount of ₹ 82.27 crore) without simultaneously settling of loan of ₹ 2.33 crore<sup>33</sup> of The Director of Industries and Commerce (DIC), Punjab.

The Management stated (May 2023) that the unit cleared the outstanding dues of the Company under OTS Scheme and in view of outstanding dues towards Government, no due certificate (NDC) has not been given to the unit/guarantor and the Government is free to take action for recovery of its dues as per the terms of the covenants. The reply was not acceptable as the Company should have safeguarded financial interest of the Government while settling loans as per the OTS Scheme. Withholding of NDC after receipt of ₹ 0.23 crore only does not serve the purpose of simultaneous settlement.

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<sup>30</sup> Principal amount of loan *plus* expenses.

<sup>31</sup> On account of differential amount (₹ 2.71 crore (49.35 *per cent* of ₹ 5.50 crore) – ₹ 1.65 crore = ₹ 1.06 crore) of OTS between OTS Scheme 2015 and OTS Scheme 2018.

<sup>32</sup> M/s. Organic Chem Oils Limited.

<sup>33</sup> Principal: ₹ 0.54 crore and Interest: ₹ 1.79 crore.

#### 5.4.2.5 Application of incorrect OTS Scheme

A joint financed unit<sup>34</sup>, became defaulter and the assets of the unit were taken over (March 1998) and valued (March 1998) at ₹ 0.86 crore<sup>35</sup>. But no action was taken against the promoters/ guarantors by the Company to recover the dues. The Company could not dispose of the assets of the unit despite several advertisements. The value of land & building was got reassessed (August 2016) at ₹ 2.18 crore and plant and machinery at ₹ 0.24 crore. The machinery was disposed of (April 2018) at ₹ 0.18 crore but no action was taken for sale of land.

As per the OTS Scheme 2018, in jointly financed cases, the OTS Scheme of the lead institution (having original title deed of mortgaged property) was applicable and where PFC was in the lead, the OTS amount was to be the total amount outstanding i.e. principal *plus* interest *plus* expenses on the first date of default and simple interest at the rate of 5 *per cent per annum*. The unit requested (July 2020) for settlement under OTS and the loan account was settled (April 2021) at ₹ 1.47 crore (on the basis of the valuation of prime security)<sup>36</sup> instead of ₹ 3.02 crore as per amount arrived at under OTS Scheme of PFC, being the lead financial institution. Settlement of account by applying incorrect scheme resulted in favour to the unit and consequential short recovery of ₹ 1.26 crore involving foregoing of outstanding dues of ₹ 188.15 crore. Similarly, PFC also short recovered ₹ 0.57 crore involving financial sacrifice of ₹ 20.88 crore.

The Management stated (May 2023) that the original title deeds of mortgaged property was lying with the Company as the same were mortgaged (equitable) to the Company prior to PFC and accordingly, the OTS Scheme of Company was applicable and not of PFC. The reply was not acceptable as the records of the Company show that PFC was the lead institution in this case and hence OTS Scheme of PFC was to be applied.

#### 5.4.2.6 Undue favour and inordinate delay in taking over the assets of the unit

The Company disbursed (March 1991, October 1993 and October 1994) three term loans of ₹ 0.70 crore, ₹ 1.05 crore and ₹ 1.05 crore respectively to a loanee unit<sup>37</sup> against exclusive charge of land and building and plant and machinery of its Bhatinda unit. At the request of the unit, the Company further disbursed (January 1995) short term loan (STL) of ₹ five crore.

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<sup>34</sup> M/s. Phyto Chemicals Limited (PFC: ₹ 0.49 crore and Company: ₹ 1.20 crore).

<sup>35</sup> Land and Building: ₹ 0.38 crore and machinery: ₹ 0.48 crore.

<sup>36</sup> As per clause II (i) of OTS Scheme, 2018, in loan cases where security has not yet been sold, calculation of OTS amount will be outstanding amount of principal *plus* CCA expenses OR average of the market value of the prime security or realisable value as assessed by the two valuers on the panel of the financial institutions whichever is higher of the two.

<sup>37</sup> M/s. ROM Industries Limited.

Audit observed that the loan was disbursed without formulating any policy for STLs, obtaining any additional security and without prior approval of the Board of Directors (BoD). BoD, while granting *ex post facto* sanction, decided in principle that exposure to all Fund Based Activities<sup>38</sup> would not be more than ₹ 50 lakh in future. The unit defaulted in repayment and became NPA but no action for taking over the assets was initiated under section 29 of SFC Act despite it being decided (October 1996) in the Inter-Institutional Meeting<sup>39</sup> to recover the dues as fast as possible as the unit was likely to be referred to BIFR. Though the turnover of the unit was ₹ 303.40 crore (1995-96), yet in view of losses (₹ 35.54 crore) suffered on account of damage to uninsured export stock awaiting shipment (₹ 32.83 crore) during cyclone (June 1996), the unit approached (1997) BIFR which opined (April 2004) to wind up the unit. The recoverable dues were ₹ 30.57 crore including principal amount of ₹ 6.43 crore as in March 2004.

However, the Company took over (January 2013) the assets of the unit under SARFAESI Act, 2002 after a lapse of 10 years. The Company sold (June 2017) the plant & machinery at ₹ 2.80 crore. The unit offered (February 2019) for settlement of loan under OTS and the Company accepted (March 2019) the OTS at ₹ 12.44 crore. Moreover, the security of the unit was released partially (one-third of the land) to facilitate the unit to make payment under OTS, which was not provided in the OTS Scheme. Finally, the loan was settled (September 2020) under OTS Scheme, 2018 at ₹ 12.44 crore.

Extending STL and delay in initiation of action to take over the assets under SFC Act/ SARFAESI Act resulted in undue favour to the unit and settlement under OTS resulted in relieving the promoters/ guarantors from liability of ₹ 573.96 crore (including avoidable loss of ₹ 444.79 crore on STL of ₹ five crore).

The Management did not furnish specific reply (May 2023) but admitted that partial release of security was made to help the promoters to honour its commitment under OTS Scheme. The fact, however, remains that the Company has acted against the provisions of the OTS Scheme.

## **5.5 Conclusion**

There were inordinate delays in invoking provisions of SFC Act/SARFAESI Act and in initiating action to take over the assets of the defaulting units. There was no system to trace the whereabouts of the promoters/guarantors and their properties for taking timely action to recover the outstanding dues. Lack of action/delay on the part of the Company led to accumulation of Non-Performing Assets of ₹ 17,214.53 crore. Recovery made under various

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<sup>38</sup> Subscription to equity shares, bonds, debentures, underwriting of shares, grant of bridge loans and short term loan.

<sup>39</sup> Involving other lending institutions.

OTS Schemes was meagre and as such the State Government was burdened with payment of guaranteed bonds (₹ 113.38 crore paid and ₹ 366.44 crore pending for payment as on March 2022).

## **5.6 Recommendations**

The Company may:

- *strengthen the recovery mechanism by taking timely action to take over the assets/sale of assets of the defaulting units;*
- *take steps to evolve a system to ascertain the whereabouts of the promoters/ guarantors and trace their properties for taking timely action to recover the outstanding dues; and*
- *ensure settlement of cases of NPAs as per OTS Schemes and also to safeguard financial interest of the Company while providing relief to the defaulters.*

The matter was referred (November 2022) to the Government; their reply was awaited (February 2024).

