CHAPTER VI : MINISTRY OF FINANCE

Department of Economic Affairs

6.1 Funds of SEBI kept outside Government Accounts

SEBI has been maintaining its funds outside the Government account, which is inconsistent with the constitutional provisions and the orders of the Government. The amount kept outside the Government Account stood at Rs. 707 crore as of March 2007.

Ministry of Finance, Department of Economic Affairs issued instructions in January 2005[1] to implement various fiscal measures with a view to achieve fiscal objectives set out under the Fiscal responsibility and Budget Management (FRBM) Rules, 2004 framed under the provisions of FRBM Act, 2003. These instructions of the Ministry of Finance directed all Ministries and departments of the Government to ensure that funds of Regulatory Bodies are maintained in the Public Account but operated in such a manner as will protect their independent status.

Despite clear orders of the Government of India, Securities and Exchange Board of India (SEBI) continued to maintain its surplus funds generated through fees/charges, turnover fee and penalties etc. aggregating to Rs. 706.82 crore as at the end of March 2007 outside the Government Accounts.

The above practice of regulatory bodies such as SEBI maintaining their accounts outside Government account is not only violative of government instructions but is also inconsistent with the constitutional provisions. SEBI was established by an Act[2] of Parliament in 1992 and is to be treated as 'state' within the meaning of the expression used in Article 12 of the Constitution of India. The moneys collected by SEBI must, therefore, be credited to the Government account under Article 266 of the Constitution of India.

The apprehensions of the regulatory authorities that there could be compromise of their autonomy, if their receipts are credited to the Government account and expenditure met out of the budgetary appropriations, are unfounded in the light of the status obtaining in respect of similarly placed organisations abroad and the practice of maintaining accounts of the constitutional and independent authorities like judiciary, Union Public Service

[1] Government of India, Ministry of Finance, Department of Economic Affairs (Budget Division) OM No. F.1(30)-B(AC)/2004 dated 07 January 2005
[2] Securities and Exchange Board of India Act, 1992

Commission, Comptroller and Auditor General of India, Central Electricity Regulatory Commission, Telecom Regulatory Authority of India and Election Commission as a part of Government accounts.

Ministry has approached the subject in a lackadaisical manner and has failed to get SEBI to comply with its orders. Under Section 16 of SEBI Act, the Government has powers to issue directions to it on questions of policy. SEBI is bound by such directions and the decision of the Central Government is final. Even in face of non-compliance to its orders and despite being convinced of the constitutional impropriety of the action by SEBI, the Ministry did not exercise the powers of issuing direction to SEBI under Section 16 of the SEBI Act.

The Ministry stated in December 2007 that para 2 (v) of Ministry of Finance Office Memorandum of January 2005 specified that all existing funds, whether in the public account or outside, were to be reviewed by the administrative ministry concerned and a specific decision taken in each case to either continue or wind up the fund. It confirmed that no decision in the light of the Office Memorandum of January 2005 of the Government on the funds of SEBI had been taken by the Capital Markets Division of the Ministry.

The reply of the Ministry is factually not correct since the Office Memorandum of January 2005 by another Division of the same Ministry clearly stipulated that the funds of the regulatory bodies may be kept in the Public Account. That the Capital Market Division of the Ministry failed to comply with the orders to review the funds maintained by the regulatory body under its administrative jurisdiction within the stipulated time of three months from January 2005, can not, now be advanced in defence of its inability to secure compliance by SEBI to the orders of the Government. Moreover, the Ministry itself had held the view as early as 2001 that SEBI's funds should be kept in the Government account and its expenditure met out of the budgetary appropriations. In 2001 itself, the Ministry had also overruled the apprehensions of the SEBI on compromise in their autonomy in the light of the position obtaining abroad of similarly placed bodies and the financing arrangement of the constitutional authorities within the country, which did not compromise on their autonomy. Most importantly, in its reply to the audit point, the Ministry did not furnish any reason why it did not exercise the option of issuing binding directions to SEBI in this regard.

In response to a similar issue pointed out in paragraph 5 of Audit Report No. 4 of the Comptroller and Auditor General of India for the year ended March

2003 about unwillingness of the Insurance Regulatory and Development Authority of India (IRDA) to credit their funds in the Government account, the Insurance Division of the Ministry in its draft action taken note to the Public Accounts Committee had stated in November 2004 that IRDA had been asked to deposit its funds in the Public Account. Thus the two divisions (Insurance Division and the Capital Market Division) of the same Ministry cannot take contradictory stands on identical issues.

Hence, due to the failure of the Ministry to enforce its instructions of January 2005, SEBI continues to maintain its accounts and keep its surplus funds outside the Government Accounts, which is inconsistent with the constitutional provisions. This also leads to disparity with other constitutional authorities and independent bodies forming part of the state, in the manner of keeping accounts and incurring expenditure.

It is recommended that the Ministry may take immediate measures to credit receipts of the SEBI to the Government account.

6.2 Defective terms of National Equity Fund Scheme

Defective provisions of the National Equity Fund Scheme led to SIDBI retaining the amount of repayment of equity support loan by small entrepreneurs against the Government share of the loan.

Under the National Equity Fund (NEF) scheme operational during 1987 to 2006-07[3], Ministry of Finance released grants aggregating Rs. 156.94[4] crore to the Small Industries Development Bank of India (SIDBI), which was responsible for administration of the scheme.

Under the scheme, SIDBI granted interest free soft loan for equity support on the prescribed criteria to small entrepreneurs for setting up new projects and for expansion, modernisation and technology upgradation etc. Ministry of Finance and SIDBI shared the expenditure on loan on 50:50 basis. SIDBI recovered the loan from the entrepreneurs over a period of seven years, with a moratorium of three years.

The release of its share of the soft loan disbursed to the entrepreneurs by the Ministry to SIDBI in the form of grant was flawed on account of the following:

[3] The scheme was discontinued from 2007-08

[4] Excluding Rs. 5 crore as initial contribution

(i) The Ministry did not take into account the repayments of the loan to SIDBI by the entrepreneurs, while releasing its share in the form of grants.

(ii) The Ministry ignored the fact that after a period of time, the repayments of the loan by the entrepreneurs itself could be utilised as revolving fund for grant of further loans.

The entrepreneurs had repaid Rs. 134.06 crore against the equity support loans provided to them by the end of March 2007, 50 *per cent* of which constituted the repayment against Government share of the loans.

Ministry may take appropriate measures for refund of the amounts received by SIDBI towards repayments of the loan.

The matter was referred to the Ministry in August 2007; their reply was awaited as of January 2008.

6.3 Loss of revenue

Debt Recovery Tribunals Delhi, Chandigarh and Kolkata did not credit poundage fees realised in the execution of recovery certificates to the Government account in accordance with the codal provisions resulting in loss of revenue of Rs. 2.47 crore during January 2001 to March 2007.

Debts Recovery Tribunals (Tribunals) were set up by the Government in June 1993 under the "Recovery of Debts due to Banks and Financial Institutions Act, 1993" for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. The Tribunal, on an application made by a bank or financial institution for recovery of debts, adjudicates the case, passes an order and issues a certificate to the Recovery Officer for recovery of the amount of debt specified in the certificate. Rule 57 of the Income Tax (Certificate proceedings) Rules, 1962, is applicable *mutatis mutandis* in execution of recovery certificate by Tribunals. As per this rule, a fee by way of poundage[5] on the gross amount realised by the sale calculated at the rate of 2 *per cent* of such gross amount up to Rs. 1000 and at the rate of 1 *per cent* on the excess of such gross amount over Rs. 1000 is levied on all sales of properties. The amount collected as poundage is to be credited to the government account as revenue.

[5] Poundage is the commission or fee collected by Tribunals upon the money realised by an execution and is payable on the amount of sale by the purchaser of property.

Scrutiny of the records of 16 Debt Recovery Tribunals in nine States/Union Territories[6] for the period from January 2001 to March 2007 conducted in October 2006 and March-April 2007 disclosed that six Tribunals at Delhi, Chandigarh and West Bengal while executing the recovery certificates realised a total of Rs. 247.45 crore (Delhi: Rs. 114.80 crore, Chandigarh: Rs. 123.36 crore and West Bengal: Rs. 9.29 crore) by way of auction/sale proceeds of the properties on which they recovered Rs. 2.47 crore as poundage fees from the purchasers of properties. The Tribunals, instead of crediting the poundage fees to the government account, paid the entire amount of poundage fees to the certificate holder banks/financial institutions along with the sale proceeds of the property, resulting in loss of revenue of Rs. 2.47 crore.

The Debt Recovery Tribunals should recover the amount from the concerned banks/financial institutions along with interest thereon for credit to the government account. The Ministry may strengthen their internal control to ensure that cases of such non-compliance are detected in time.

The matter was referred to the Ministry in June 2007; their reply was awaited as of January 2008.

Department of Revenue (Customs)

Customs Department (Exports)

6.4 Non-utilisation of residential quarters and avoidable expenditure

Residential quarters constructed after incurring an expenditure of Rs. 2.65 crore were kept unallotted while house rent allowance of Rs. 1.51 crore was paid to employees eligible for allotment of the quarters.

The Customs Department got constructed 177 residential quarters at a cost of Rs. 2.65 crore on the land taken on lease from the Jawaharlal Nehru Port for allotment to its staff posted in Jawaharlal Nehru Customs House (JNCH). The selection of site for constructing these quarters was made in anticipation of infrastructural development, growth of other civic amenities in the area and connectivity/access to the facility of JNCH.

It was noticed in audit (December 2005/July 2007) that though the administrative approval and expenditure sanction was accorded in February 1992, the actual construction by the Central Public Works Department (CPWD) commenced in March 1996 which was completed between February

[6] Andhra Pradesh (1), Chandigarh (2), Delhi (3), Karnataka (1), Maharashtra (1), Orissa (1), Tamil Nadu (3), West Bengal (3), Kerala (1)

2002 and May 2003. The Customs Department pointed out (January 2004) certain defects/deficiencies including those in the electric panel but pending action on these by CPWD, it took possession of the quarters between February and September 2004. However, all the 177 quarters could not be allotted to the employees as there were no aspirants among JNCH employees to stay in the newly constructed quarters on account of the locality being remote and isolated without basic civic facilities like transport connectivity, market, school and hospital.

The non-utilisation of the quarters resulted in the investment of Rs. 2.65 crore on construction of these quarters being rendered idle. Further avoidable expenditure on house rent allowance of Rs. 1.51 crore (February 2004 to March 2007) was paid to the employees entitled to the quarters; besides, it deprived earning of licence fee of Rs. 13.10 lakh.

The Ministry stated (November 2007) that the site chosen for the purpose, though about 500 metres away from the self-sufficient JNPT township, was still isolated since no other housing complex or other development activity had taken place around it. It further added that defects in electricity connections had been got repaired in July 2007 and fresh options were invited from the staff for allotment of the quarters, and meanwhile 37 quarters were being used for storing office records.

Thus, construction of residential quarters even before provision of basic civic amenities/infrastructure facilities resulted in non-occupation of 177 quarters for more than three years and blocking of capital of Rs. 2.65 crore.