CHAPTER II: DEPARTMENT OF BANKING

Industrial Investment Bank of India Limited

2.1.1 Loss due to non-disposal of shares

The Company lost an opportunity of recovering at least Rs.8.87 crore, the principal amount of a non-performing asset, by not selling the shares in time.

Industrial Investment Bank of India Limited (Company) extended three loans to Kothari Sugars and Chemicals Limited (KSCL) aggregating Rs.18.05 crore in 1990 and 1997. KSCL had been defaulting in repayment of the outstanding amount since June 1998 due to adverse operating conditions. In May 1999, the Company recalled the loans and filed an application with the Debt Recovery Tribunal for recovery of its dues. KSCL had been referred to BIFR[1] in March 1999 and was declared 'sick' in August 1999. In line with the approved (June 2004) Draft Rehabilitation Scheme of AAIFR[2], KSCL proposed a separate rehabilitation-cum-One Time Settlement (OTS) proposal which was approved (July 2004) by the Company. As per the OTS, the Company received Rs.6.51 crore upfront and 38,43,800 equity shares of KSCL at a face value of Rs.10 *per* share as full and final settlement against the outstanding dues of Rs.50.83 crore[3] as on 15 May 2004. KSCL allotted the equity shares in November 2004.

KSCL shares were listed in the stock exchange on 13 December 2004. The share price closed at Rs.117.30 on 14 December 2004 but thereafter it fell and recorded a high/low of Rs.84/67 *per* share on 16 December 2004. Taking cognisance of the sharp downward movement of the share price, the Corporate Management Team (CMT) recommended on 16 December 2004 that the share should be sold within five days at market related price but in no case less than Rs.25 *per* share. It further recommended that the Company should initially sell such number of share so as to recover Rs. nine crore, which was enough to cover Rs.8.87 crore, the unrecovered principal component of the loan.

Audit observed (November 2005) that despite the recommendation of CMT, the Company did not move into the share market for sale of shares and lost the opportunity to sell the share at a high value. The share price steadily fell to Rs.61 *per* share on 31 December 2004 and reached Rs.32.25 by 31 January 2005. The closing share price of KSCL as on 1 October 2007 was Rs.13.80. As the effective cost of acquisition was Rs.23.10[4] *per* share, it was an attractive exit opportunity.

The Management stated (April 2007) that the Company decided to wait and watch the buoyant position of the market before disinvestment of any part of the equity portfolio

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[1] ***Board for Industrial and Financial Reconstruction***
[2] ***Appellate Authority for Industrial and Financial Reconstruction***
[3] ***Principal of Rs.15.38 crore, interest of Rs.27.78 crore and liquidated damage of Rs.7.67 crore***
[4] ***Principal outstanding Rs.8.87 crore (Rs.15.38 crore less Rs.6.51 crore) divided by 38,43,800 shares allotted***

due to its comfortable liquidity position. In the intervening period the share price of KSCL declined below Rs.25 and the Company could not sell the shares at the price fixed by the CMT. It also stated that sugar is a cyclical industry and the situation will improve with the buoyancy and better performance of the sugar industry.

The contention of the Management was not tenable. Despite a clear recommendation of the CMT, the Company failed to avail of the opportunity to recoup a part of its non-performing asset and cut losses. This assumed special importance in the context of the decline in the Company's financial position and its decision to focus on recoveries from non-performing assets and exiting from assets under stress as stated in the Chairman and Managing Director's message in the Annual Report 2003-04.

Thus, by not offloading the share during the opportune period the Company failed to recover at the least the principal dues of Rs.8.87 crore in December 2004.

The matter was reported to the Ministry in May 2007; reply was awaited (November 2007).

UTI Asset Management Company Private Limited

2.2.1 Non-recovery of contractual dues

The Company did not allocate indirect sales administration expenses of Rs.13.37 crore incurred by it during the period from February 2003 to March 2006 to the mutual fund schemes resulting in loss of revenue.

UTI Asset Management Company Private Limited (Company) was engaged (December 2002) as asset manager by UTI Trustee Private Limited to manage the funds under its various mutual fund schemes (schemes). As per clause 8.1(a)(v) of the investment management agreement, the Company was to charge to the schemes all expenses, fees, concessions, remunerations and charges paid by it, as necessary and where possible to identify, before distributing the income from the schemes to the unit holders. Further, as per SEBI's Mutual Fund Regulation 1996 (Chapter VII, Section 52(4)(b), the Company was also permitted to charge the schemes for recurring expenses like marketing and selling expenses, agent's commission and brokerage.

The Company appointed chief representatives (CR) to promote district level sale of units of the schemes and availed the services of brokers for launching the schemes. However, Audit noted (October 2006) that the Company did not allocate the recurring indirect sales administration expenses (expenses) towards payment to CRs and brokers during the period from February 2003 to March 2006 to the schemes despite SEBI's directions and aggregate amount not charged amounted to Rs.13.37 crore.

On being pointed out by Audit, the Company started to allocate the expenses to the schemes with effect from April 2006 and had recovered Rs.5.41 crore from the income of individual schemes prior to distribution of dividend till June 2007. In respect of earlier period (from February 2003 to March 2006), the Management stated (June 2007) that it was not possible to recover the expenses for the period prior to April 2006 from the schemes as accounts of the schemes relating to those years had already been finalised and circulated to unit holders. The Ministry endorsed (October 2007) the reply of the Management.

Thus, the Company by not allocating the indirect sales administration expenses to the schemes it managed, suffered a loss of Rs.13.37 crore.