सत्यमेव जयते

Performance Audit on

Revival of Sick Central Public Sector Enterprises

Report of the

Comptroller and Auditor General of India

Union Government (Commercial)

No. 30 of 2011-12

(Performance Audit)

Performance Audit on

Revival of Sick Central Public Sector Enterprises

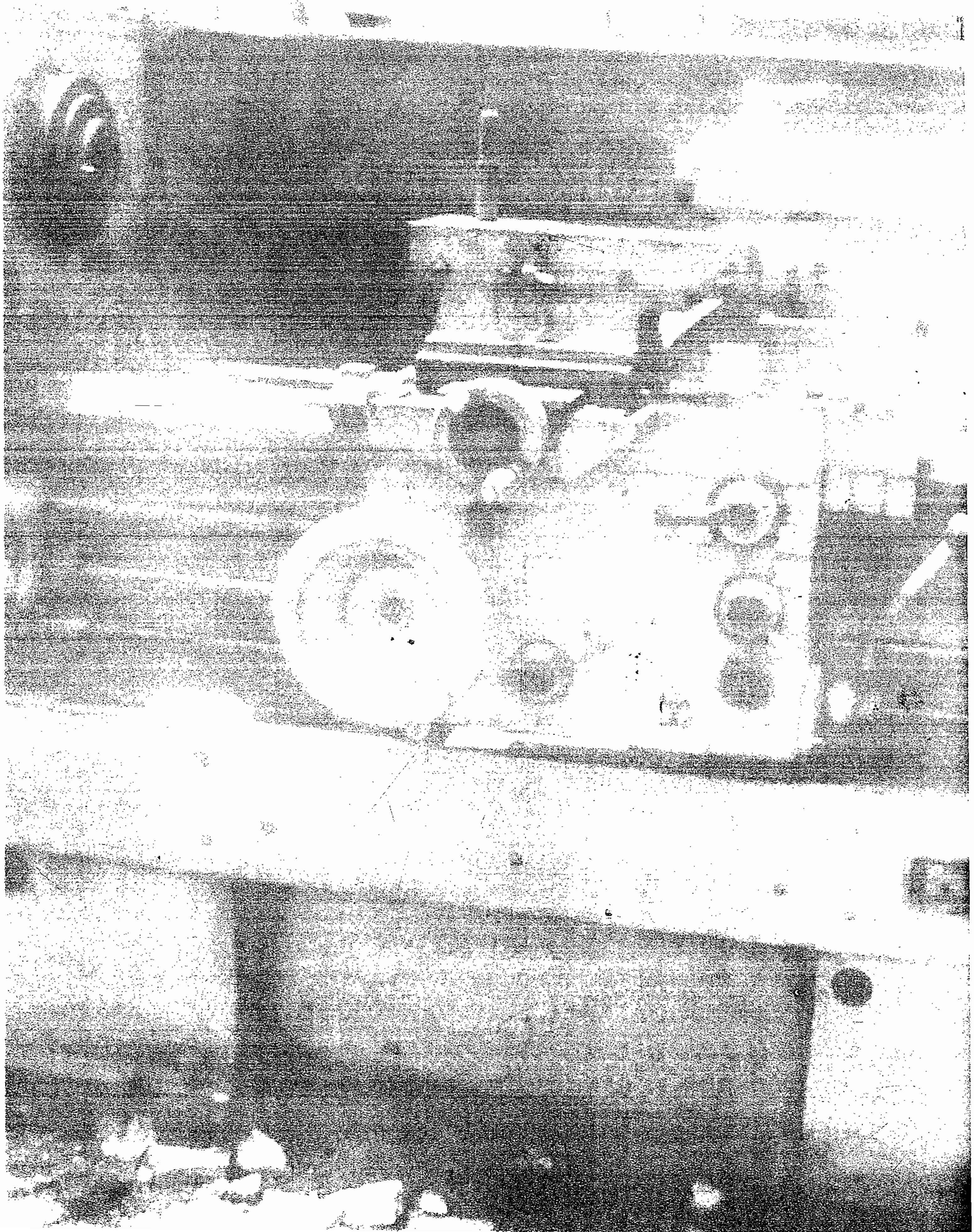
Report of the Comptroller and Auditor General of India

Union Government (Commercial)
Report No. 30 of 2011-12
(Performance Audit)

Contents

Preface

This Report of the Comptroller and Auditor General of India has been prepared to assess the adequacy and effectiveness of the efforts made by the Government of India and the Managements of sick Central Public Sector Enterprises (CPSEs) to address the problems of sickness in these companies. The Report is based on the examination of records of 10 sick CPSEs and their concerned Administrative Ministries.



Executive Summary

Background

Industrial sickness has far-reaching consequences on the economy of the nation which generally results in substantial loss of revenue to the Government, loss of production and productivity, large-scale unemployment and industrial unrest, undermining public confidence in the functioning of organised sector which in turn affects the overall investment climate of the country and increase of the non-performing assets (NPAs) of banks and financial institutions (FIs). Since funds get blocked in sick units, funding may not be available even for other good projects.

Central Public Sector Enterprises (CPSEs) were set up as the instrumentalities of the Government of India (GOI) to serve broad macro-economic objectives of state policy.

As on 31st March 2011[1], out of a total of 406 CPSEs, 378 CPSEs were in operation, of which, 251 CPSEs earned a net profit of ₹ 1,27,141 crore whereas 127 CPSEs registered loss of ₹ 23,264 crore during 2010-11.

As per the Public Enterprises Survey of Department of Public Enterprises (DPE), 45 CPSEs with accumulated losses of ₹ 63,828 crore were sick as of March 2010[2].

Keeping in view the inherent potential of the public sector, Government of India (GOI) has been making persistent attempts to overcome sickness through revival schemes for sick CPSEs. In fact, up to March 2010, GOI had approved revival schemes of 35 CPSEs at a cost of ₹ 39,658.72 crore.

GOI's approach to loss making CPSEs basically focused on:

- Revival of potentially viable enterprises;
- Closing down of those that cannot be revived; and
- Reducing its equity in non-strategic enterprises.

Why we took up this audit ?

Sickness in CPSEs has been a continuing concern. Public Enterprise Survey 2009-10 indicated that though the number of loss making CPSEs had reduced from 63 in 2005-06 to 59 in 2009-10, but the aggregate losses of the loss making CPSEs had been mounting steadily since 2005-06 i.e. from ₹ 6,845 crore to ₹ 15,842 crore.

As on 31.03.2011[1], out of a total of 406 CPSEs, equity capital of 67 CPSEs had been completely eroded by their accumulated losses. The accumulated losses in these 67 companies were ₹ 82,477 crore against equity investment of ₹ 14,660 crore.

---

[1] ***As per data available with Audit.***

[2] ***Data for 2010-11 under preparation by DPE, GOI.***

- Despite providing assistance of ₹ 39,658.72 crore (cash and non-cash) for their revival, the CPSEs could not realize the intended benefits of the schemes as the success rate of revival of sick CPSEs was not satisfactory.

- While many financial sector laws have undergone significant transformation after the liberalisation of the Indian economy, the insolvency law remains outdated. There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs.

- In fact, both the restructuring and the winding up of companies under the existing laws remain a cumbersome and long-drawn process which is a deterrent factor for attracting foreign investors due to locking up of huge national resources.

An effective exit law enhances the confidence of investors including foreign investors for whom the state of exit law is an important criteria for making investment decision.

In the backdrop of the above, it was felt that an in-depth examination of the legislative framework and the procedures followed for revival and rehabilitation of sick CPSEs was needed to be done.

What does our audit cover?

The Audit was undertaken to assess

- Whether the existing legislative, institutional and operational framework for insolvency facilitate efficient, speedy and cohesive interventions for rehabilitation and liquidation of sick enterprises in the backdrop of economic developments and international standards and best practices.
- The adequacy of existing insolvency framework and its impact on the revival of sick CPSEs.
- The process of designing, approval and implementation of revival schemes with a view to analyse their impact on the operations of sick CPSEs and

  To also recommend measures to address the gaps identified in the insolvency system and improve the regime for revival of sick and potentially sick CPSEs.

  A sample of nine[3] revival schemes was selected with a view to cover major schemes under varied sectors. These were sanctioned at a cost of ₹ 27,845.14 crore and constituted 70 per cent of the total cost of all the revival schemes. In

[3] National Textile Corporation Limited (NTC), Cement Corporation of India Limited (CCI), Eastern Coalfields Limited (ECL), Fertilisers and Chemicals (Travancore) Limited (FACT), Hindustan Organic Chemicals Limited (HOCL), Heavy Engineering Corporation Limited (HEC), Braithwaite and Company Limited (BCL), National Projects Construction Corporation Limited (NPCC) and HMT Machine Tools Limited.

addition, one more revival scheme which was yet to be approved by GOI (October 2011) was also selected for audit.

Our Major Audit Findings:

(i) Legislative framework and its impact on revival of sick CPSEs

Insolvency framework in India

There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs. A number of legislations and regulations comprise the insolvency framework for commercial enterprises.

An effective exit law promotes responsible corporate behaviour by encouraging higher standards of corporate governance, including financial discipline and mitigates the consequences of insolvency. This also enhances the confidence of investors including foreign investors for whom the state of exit law is an important criterion for making investment decisions. But both the winding up of companies under the Companies Act and rehabilitation under SICA remain cumbersome and long-drawn resulting in locking of huge national resources in these proceedings.

As per World Bank's Doing Business Report, 2012, India ranks 128 among 183 economies surveyed in the area of Resolving Insolvency and it takes 7 years on an average to resolve insolvency and the recovery rate is a mere 20.1 cents of the dollar. The results of 2012 survey are only a marginal improvement from Doing Business 2007 survey in which India ranked at 133, it took 10 years on an average to close the business and recovery rate[4] was 13 cents to a dollar. This is evident in the cases of CPSEs taken up for assessment.

Sick Industrial Companies (Special Provisions) Act (SICA)

SICA was enacted in 1985 to provide a statutory definition of sickness and expedite revival of potentially viable units and closure of unviable units. Under SICA, Board of Industrial and Financial Reconstruction (BIFR), a quasi-judicial body, was set up in 1987, to take appropriate measures for revival and rehabilitation of potentially sick industrial undertakings and to recommend liquidation of non-viable companies.

However, SICA did not achieve its objectives on account of inherent weaknesses like:

- Legislative deficiencies

---

[4] ***Recovery rate is a function of time, cost and other factors such as lending rates and the likelihood of the company continuing to operate. The ranking on the ease of resolving insolvency is based on the recovery rate.***

- ➢ time consuming approval procedure due to involvement of multiple agencies, lack of engagement of insolvency experts in the process,
- ➢ perfunctory engagement of experts,
- ➢ absence of time-frame for sanction of revival schemes.

The Companies Act, 1956, which contains provisions for liquidation of companies, takes upto 10 years for winding up a company.

In view of the sub-optimal procedures and processes of BIFR, SICA was repealed in December 2003 and the function of revival and rehabilitation was proposed to be entrusted to National Company Law Tribunal (NCLT) established under the Companies (Second Amendment) Act 2002. However, NCLT has not yet been constituted till date (January, 2012).

The provisions and process of detection of sickness, formulation/ sanction and implementation of revival proposals of sick CPSEs under BIFR framework were found to have several inadequacies as discussed below:

- The loss making CPSEs can make a reference to BIFR only after their net worth is completely eroded. This restricts early reference to BIFR for checking their incipient sickness.
- The process of determination, finalisation and sanction of schemes for revival of sick CPSEs was found to be time consuming and slow.
- Mostly a secured creditor, which is an interested party, is appointed as the (Operating Agency) to prepare the revival scheme as against an independent restructuring expert.
- There is no provision for constituting creditors committee for coordinated and timely resolution as is the established best practice in more sophisticated economies,
- Although SICA provides for preparation of the revival scheme within 90 days from the date of orders of the Board, no predictable and certain timeline has been prescribed for sanction of the scheme. This is therefore, fraught with the risk of uncertainty in timely sanction which in turn has an adverse cascading impact on the revival of the companies.

In addition, GOI established the **Board for Reconstruction of Public Sector Enterprises (BRPSE)** in the Department of Public Enterprises, as an advisory body to address the task of strengthening, modernisation, revival and restructuring of sick CPSEs. The recommendations of BRPSE are advisory in nature and are communicated to the concerned Administrative Ministry of the sick CPSE for implementation.

Several deficiencies in formulation and sanction of revival scheme by BRPSE were noticed as detailed below:

- The process involves prolonged deliberations and protracted correspondence, consultations at multiple layers, viz., Administrative Ministries, Department of Public Enterprises, relevant authorities and the BRPSE which examines and recommends the proposals.
- Though two months time is prescribed for the BPRSE to finalise its recommendations from the date of receipt of the proposal, no specific time frame has been prescribed for the sick CPSEs/ Administrative Ministries to submit a revival proposal for the consideration of BRPSE.
- The terms of reference of BRPSE do not specify the timeline for implementation of revival schemes, nor modalities for review and monitoring of the schemes are prescribed.

In essence, the existing legislative and operational framework was found to be inadequate to effectively address the problem of sickness in CPSEs. Although SICA has been repealed since December 2003 due to its inherent weaknesses, the repeal has not been given effect as no alternative framework has yet been constituted in its place. Under NCLT, which is yet to be set-up after SICA Repeal Act of 2003, reference of loss making or sick CPSEs to NCLT is no longer automatic and requires prior approval of the Government.

This would result in accumulation of sick CPSEs falling outside the purview of NCLT. At the same time, many sick companies may not get referred to BRPSE since their reference is not a legal requirement under the existing framework. In the absence of a clear cut policy framework, many loss making and potentially sick CPSEs would fail to receive timely intervention of the Government. Under the circumstances, non-revivable or chronically sick CPSEs will continue to receive non-plan budgetary support which will increase the burden on the national exchequer.

(ii) Design and Approval of Revival Schemes

(a) Inadequate structuring of revival schemes

The schemes were not adequately structured as these primarily involved financial restructuring. Major portion of the funds ₹ 20160.68 crore (about 72 percent) were marked for financial restructuring such as waiver of loans and interests, conversion of loans into equity and settlement of dues. In fact, a very small proportion ₹ 4174.03 crore (15 per cent) of the package was allocated for modernization and diversification for long term sustainability of the operations of these CPSEs.

Further, the report of the consultants in two cases either did not address the core issue of reducing the cost of production to make the products competitive and self-sustaining or were based on obsolete technology which resulted in delay in implementation of schemes with cost escalation.

Thus, the schemes did not address the core issues of sickness which would have yielded sustainable revival of these companies.

(b) Inordinate delays in approval of Revival schemes

The revival schemes analysed in audit revealed that there were inordinate delays in approval of the schemes as no time frame was fixed for approval. The delays ranged from one to 18 years. The revival scheme of NEPA Limited (one of the 10 companies selected under audit) could not be finalised even after a lapse of 14 years from its sickness.

There was lack of synergy amongst various agencies involved and the financial measures and commitments of various parties could not be effectively enforced under the existing operational framework. As a result, the sick CPSEs could not reap the full benefits from the scheme and the delayed finalisation of the revival schemes cost the sick CPSEs heavily as the accumulated losses of these CPSEs increased from ₹ 7342.93 crore (at the time of sickness) to ₹22,503.91 crore (at the time of approval of schemes).

(iii) Gaps in the Implementation of revival schemes

There were delays in implementation of schemes in four CPSEs (NTC, CCI, ECL and HMT Machines Tools). In HOCL and NTC, the rationalization of manpower was yet to be completed. HOCL was facing working capital crunch as it failed to mobilize the required financial resources from sale of idle assets. Similarly, HEC also could not generate resources from sale of surplus land as envisaged in the scheme. The JVCs of NTC failed to generate employment and profit as envisaged in their business plans even after three years of their formation.

(iv) Non-achievement of targets of Revival schemes

Out of the nine CPSEs, targets of sales and net profit as envisaged in the revival schemes could be achieved only by four CPSEs (BCL, CCI, ECL and HEC).

The remaining five CPSEs (HOCL, NTC, FACT, NPCC and HMT Machine Tools), could not achieve the targeted net profit from ordinary course of business indicating only a limited success of revival schemes in these cases. The revival schemes in respect of nine CPSEs reviewed in audit could only achieve ₹ 332.56 crore of profit as against the projected profit of ₹ 889.78 crore.

The GoI has recently introduced Companies Bill, 2011 in the Parliament which provides for rehabilitation and liquidation of Companies under the same roof. The Bill vests the jurisdiction to deal with the rehabilitation and liquidation of companies in a neutral independent forum, NCLT with appeal to NCLAT. Even though significant improvement is expected in the corporate restructuring and liquidation regime after the Companies Bill, 2011 is passed by the Parliament, many policy gaps and legislative deficiencies remain in the restructuring and liquidation framework. It is important to address these gaps and weaknesses to capture the key objectives and provide a comprehensive insolvency framework which can function efficiently and meet needs of sick or potentially sick enterprises including CPSEs and other stakeholders operating in a fast modernizing economy.

Based on the performance audit conducted, the following recommendations are made:

(i) *GOI should consider formulating a new framework to address:*

(a) Early identification of sickness in CPSEs;

(b) Timely formulation of proposals for revival/closure

(c) Better synergy between the various national agencies involved in the revival or closure exercise; and

(d) Effective monitoring mechanism of scheme implementation.

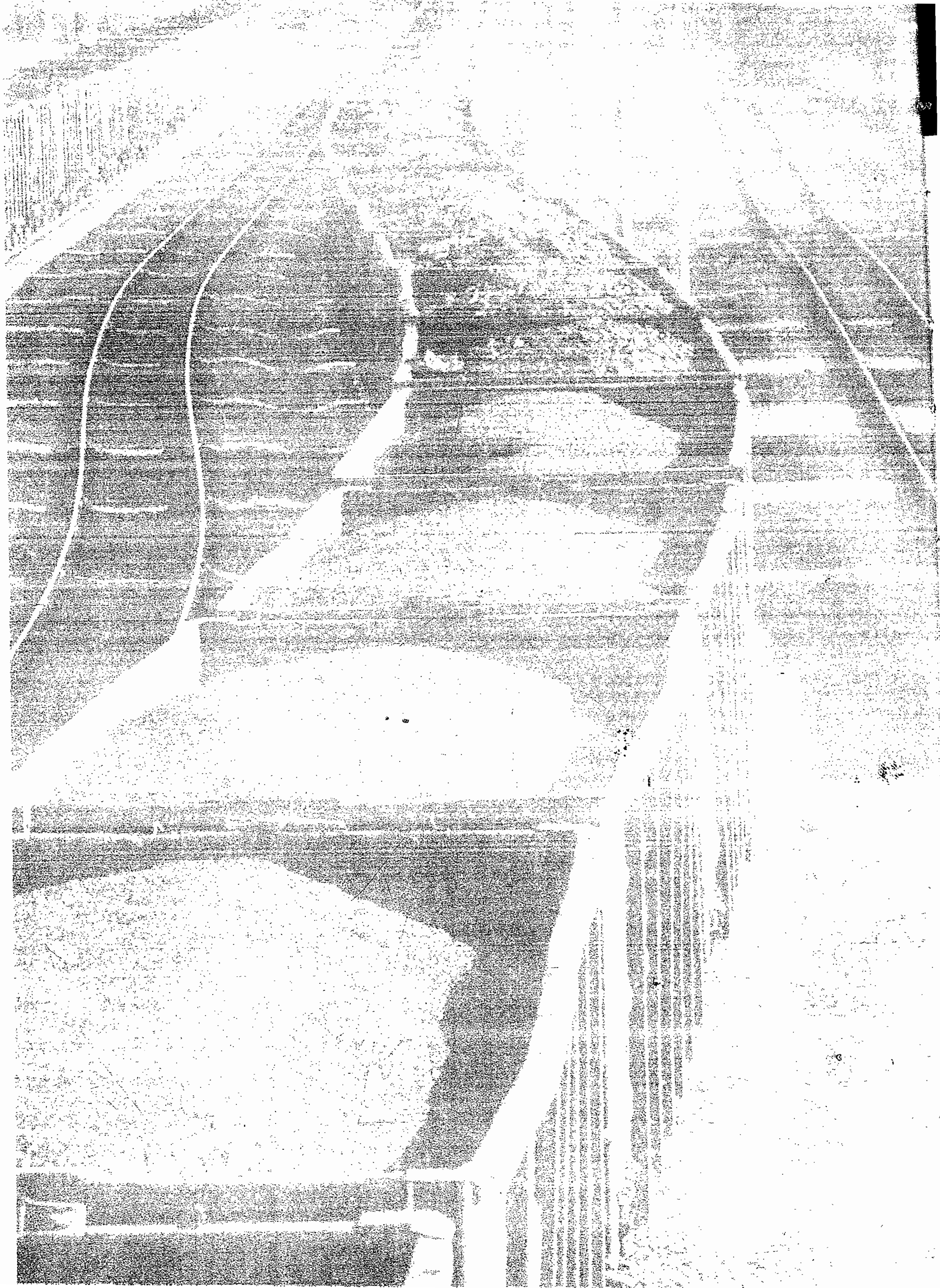
(ii) *GOI may consider formulating operational modalities for reference of sick/ loss making CPSEs to the NCLT for revival/ rehabilitation.*

(iii) *There is an urgent need for an appropriate mechanism with certain, predictable and transparent guidelines, operating in a timely manner, empowered with a single point decision–making authority to effectively deal with the problems of sick/loss-making CPSEs.*

(iv) *The existing framework for revival of sick CPSEs may be reviewed to ensure that formulation, approval and implementation of revival schemes are carried out in a time bound manner.*

(v) *There is a need to develop and institutionalize the discipline of insolvency profession. In most sophisticated economies, the profession of insolvency is highly sophisticated and well-developed.*

(vi) *The deficiencies identified in the Companies Bill may be suitably addressed.*



Chapter 1

Introduction

1.1 Industrial framework in India – Role of Central Public Sector Enterprises

As per World Bank's Doing Business Report, 2012, India ranks 128 among 183 economies surveyed in the area of Resolving Insolvency and it takes 7 years on an average to resolve insolvency and the recovery rate[5] is a mere 20.1 cents of the dollar. The results of 2012 survey are only a marginal improvement from Doing Business 2007 survey in which India ranked at 133, it took 10 years on an average to close the business and recovery rate was 13 cents to a dollar. This is evident in the cases of CPSEs taken up for assessment.

There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs. Both, the winding up of companies under the Companies Act and rehabilitation under Sick Industrial Companies (Special Provisions) Act (SICA)[6] remain cumbersome and long-drawn resulting in locking of huge national resources in these proceedings.

In more developed economies, the discipline of insolvency professionals is highly sophisticated. In countries like United Kingdom, Australia, Canada and United States, and in most European countries, the insolvency professionals play an important role in resolution of insolvency. China introduced the concept of insolvency practitioners under the Enterprise Insolvency Law of China which came into force in 2007. Insolvency practitioners are licensed in UK, Australia, Canada, China and other jurisdictions. However, there is no such discipline in India.

Role of Central Public Sector Enterprises in India

The CPSEs perform an active role in the country's economic system. At the time of independence, India was an agrarian economy with a weak industrial base, low level of savings, inadequate investment and lack of infrastructural facilities. There also existed considerable inequalities in income and levels of employment, and glaring regional imbalances in economic development. In view of the manifold problems faced by the country on the economic, social and strategic fronts, Central Public Sector Enterprises (CPSEs) were set up as the instrumentalities of the Government of India (GOI) to serve as crusader of socio-economic objectives, spearheading planned development in India, promoting rapid industrial development, balancing regional development, generating employment and creating basic infrastructure network. Public sector was made to provide a leading role in moulding and accelerating the process of industrialisation

---

[5] Recovery rate is a function of time, cost and other factors such as lending rates and the likelihood of the company continuing to operate. The ranking on the ease of resolving insolvency is based on the recovery rates.

[6] Sick Industrial Companies (Special Provisions) Act, 1985(SICA) discussed in Chapter 3.

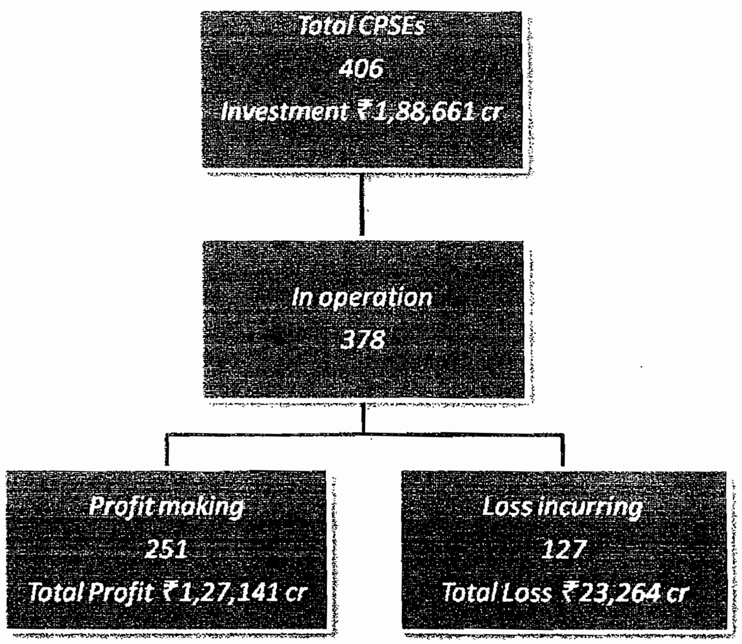
within the framework of a 'mixed economy'. They assumed a strategic role in the economy over years.

While a large number of CPSEs were set up as Greenfield projects, some were taken over from the private sector. Many of these enterprises successfully expanded production, opened up new areas of technology and built up a reserve of technical competence in a number of areas, and emerged as important players in the market. Others turned sick while a few were struggling and some have since been privatized.

1.2 Snapshot of Performance of CPSEs

As on 31st March 2011, there were 406 CPSEs (including 131 deemed Government Companies) out of which 378 CPSEs were in operation with a total Government equity investment of about ₹ 1,88,661 crore[7], of which 251 CPSEs earned net profit of ₹ 1,27,141 crore whereas 127 CPSEs registered loss of ₹ 23,264 crore.

Chart 1.1 -Status of CPSEs



The aggregate turnover[8] of CPSEs has increased to ₹ 15,44,897 crore in 2010-11 from ₹13,56,974 crore in 2009-10. Contributions (Income tax and dividend) of CPSEs to Government exchequer also increased from ₹ 73,126 crore in 2009-10 to ₹ 81,423 crore in 2010-11.

In brief, with a total equity investment of ₹ 181,661 crore in 406 CPSEs by GOI, the total contributions to the Government was ₹ 81,423 crore, which was about 43 per cent of the equity investment.

---

[7] *Figures for 298 CPSEs only. For other CPSEs, data not available as these CPSEs were defunct/ under liquidation/ accounts not submitted/ accounts not due or deemed government Companies*
[8] *Data for 298 CPSEs.*

As on 31.03.2011, equity capital of 67 CPSEs had been completely eroded by their accumulated losses. The accumulated losses in these 67 companies were ₹ 82,477 crore against equity investment of ₹ 14,660 crore.

1.3 Sickness in Central Public Sector Enterprises

> **Sickness as defined under SICA:**
>
> A company is sick if it is registered for not less than five years and has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

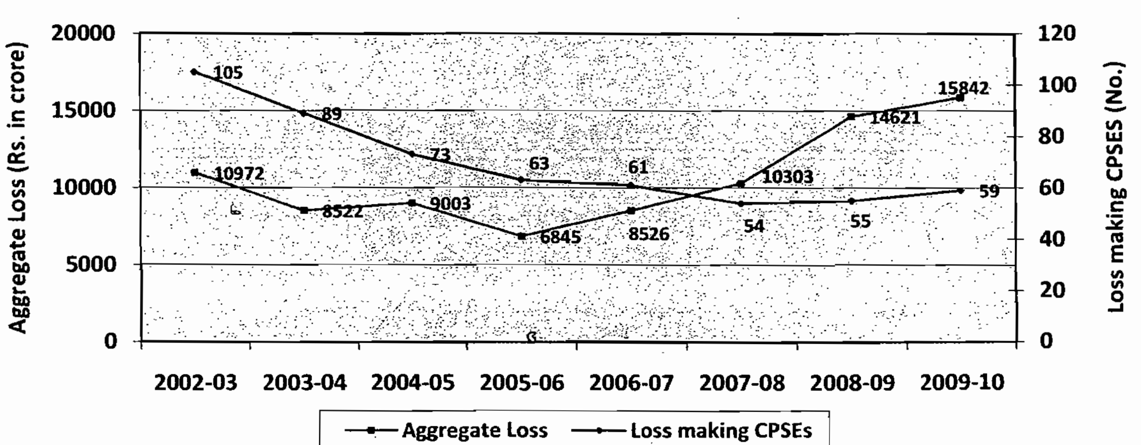
Sickness in CPSEs has been a continuing concern. Public Enterprise Survey 2009-2010[9] indicated that though the number of loss making CPSEs has reduced from 63 in 2005-06 to 59 in 2009-10, the aggregate loss of the loss making CPSEs has been mounting steadily since 2005-06 i.e. from ₹ 6,845 crore to ₹ 15,842 crore.

Table 1.1 – Number of sick CPSEs and accumulated losses

Year	No. of loss making CPSEs during the year	Aggregate loss, during the year (₹ in crore)	No. of sick CPSEs as per BRPSE definition	No. of sick CPSE as per BIFR definition	Accumulated losses of sick CPSEs (₹ in crore)
2002-03	105	10972	-	111	76721
2003-04	89	8522	-	100	73487
2004-05	73	9003	81	90	82352
2005-06	63	6845	75	81	83554
2006-07	61	8526	83	74	89064
2007-08	54	10303	78	46	72820
2008-09	55	14621	73	46	68577
2009-10	59	15842	-	45	63828

(Source: Public Enterprises Survey 2009-10)

Chart 1.2 – Loss making CPSEs and aggregate loss



[9] *Most recent Public Enterprises Survey available.*

Main reasons for sickness

- *High manpower cost;*
- *Technological obsolescence;*
- *Competition from the private sector;*
- *Problem of lopsided debt-equity structure;*
- *Weak marketing strategies; and*
- *Slow decision-making process.*

 # as identified by DPE

The reasons for sickness of CPSEs vary from enterprise to enterprise, ranging from obsolete technology, high input cost, high overhead cost and the administrative price mechanism, adverse market/ administrative prices, stiff competition from private sector, weak marketing strategies, low capacity utilization and high interest rates. The problem of sickness has aggravated on account of reasons identified in the report.

1.4 Impact of Industrial Sickness on the Economy

Industrial sickness has far-reaching consequences on the economy of a nation and results in:

(a) Substantial loss of revenue to the Government and enhances its public expenditure.

(b) Loss of production and productivity in the economy. There is underutilization of capital assets which affects the capital formation process of the economy.

(c) Default in payment of dues including those of workers. As a result of accumulating losses and liquidity constraints, the workers are called upon to make sacrifices in order to improve the viability and financial health of the enterprise. These sacrifices can be in the form of exemption from existing as well as prospective wage awards, non-payment of bonus, reduction in wages, postponement of annual increments, modification of service conditions, retrenchment and lock-out of units. Industrial sickness as a consequence results in large-scale unemployment and industrial unrest.

(d) Undermining public confidence in the functioning of organised sector which in turn affects the overall investment climate of the country.

(e) Increase of the non-performing assets (NPAs) of banks and financial institutions (FIs). Profitability of banks and FIs, thus, gets affected as they do not get back their funds invested in projects that have gone sick. Since funds get blocked in sick units, funding may not be available even for a good project.

Specific impact of sickness on the CPSEs selected for audit is discussed in ***Annexure 1***.

1.5 Need for a robust insolvency system

While financial sector has witnessed transformation and reforms after the liberalisation of the Indian economy, the insolvency system has not undergone the much needed reform. A sound insolvency system assists in efficient resolution of restructuring and liquidation of commercial enterprises and cushions the impact of insolvency. Therefore, a good insolvency system is considered as an essential part of the financial architecture of any country. It is fundamental to economic growth, wealth creation and encouraging both enterprise and investment. It is vital to stability in commercial relationships and financial systems, advance important social objectives of maintaining public confidence in the corporate and financial sectors and investment, enable market participants to more accurately price, manage and control default risks and corporate failure, and encourage sound credit practice.

According to the United Nations Commission on International Trade Law (UNCITRAL)[10] Legislative Guide, the underlying goal of insolvency law is to maximize returns for stakeholders by promoting through a timely and efficient process;

- revival of viable businesses and;
- liquidation of enterprises whose resources can no longer be utilized.

A robust insolvency system seeks to achieve the appropriate balance between the debtor and its creditors, rehabilitation and liquidation, as amongst creditors while preserving their negotiated rights and ensuring that preferential transactions are appropriately addressed and misfeasance is effectively addressed.

Another fundamental objective is to preserve employment through an effective system of rehabilitating. They enhance certainty in the market and promote economic growth and stability. They are critical to enabling countries to avoid the pitfalls of integration of national financial systems with the international financial systems. An effective exit law promotes responsible corporate behaviour by encouraging higher standards of corporate governance, including financial discipline and to avoid consequences of insolvency. This also enhances the confidence of investors including foreign investors for whom state of exit law is an important criterion for making investment decisions.

1.6 Overview of existing insolvency framework in India

There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs. The GOI has been making persistent attempts to overcome sickness of the CPSEs through various policy initiatives. A number of legislations and regulations comprise the insolvency framework for commercial enterprises:

[10] *UNCITRAL is the core legal body of the United Nations System in the field of international trade law with universal membership. Its role is the modernization and harmonization of rules on international business. India is a member of UNCITRAL.*

- **Companies Act 1956** - The winding up of companies is carried under the Companies Act, 1956. The winding up is a time consuming procedure and generally takes between six to ten years.

- **Sick industrial Companies (Special Provisions) Act of 1985 (SICA)** - enacted to determine sickness and expedite revival of potentially viable units or closure of unviable units. Under SICA, **Board for Industrial and Financial Reconstruction (BIFR)**, a quasi-judicial body, was set up in 1987, to take appropriate measures for revival and rehabilitation of potentially sick industrial undertakings and for liquidation of non-viable companies. Both the public and private sector companies owning industrial undertakings can make a reference to BIFR.

- **The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SRFAESI)** - provides the framework for the setting up of asset reconstruction companies (ARCs) which can acquire NPAs from banks, financial institutions and housing finance companies, turn them around and resell them. SRFAESI also enables enforcement of security interest by banks and financial institutions without recourse to courts.

- **The Corporate Debt Restructuring (CDR) mechanism introduced by the Reserve Bank of India (RBI)** - a voluntary out of court workout procedure provides for restructuring of debt in multiple banking consortium accounts.

- **The Companies (Second Amendment) Act, 2002** – this amendment was made to establish National Companies Law Tribunal (NCLT), a single forum to deal with restructuring and liquidation. NCLT is yet to be set up (January 2012).

In addition, in December 2004, GOI established **Board for Reconstruction of Public Sector Enterprises (BRPSE)** in the Department of Public Enterprises (DPE) as an advisory body to address the task of strengthening, modernisation, revival and restructuring of CPSEs including disinvestment/ closure and sale of both industrial and non-industrial units. The recommendations of BRPSE are advisory in nature and are communicated to the concerned Administrative Ministry for implementation.

The insolvency framework and its impact on revival of sick CPSEs is discussed in detail in Chapter 3.

1.7 Status of sick CPSEs referred under BIFR and BRPSE

(a) Status of sick CPSEs referred under BIFR

As many as 94 sick industrial CPSEs were registered with the Board for Industrial and Financial Reconstruction (BIFR) under the the Sick Industrial Companies (Special Provisions) Act, 1987 (SICA) upto 30.6.2011. The status of these cases is briefed in the table below:

Table 1.2 – Status of CPSEs registered with BIFR

S.No.	Particulars	Number
1.	Revival scheme sanctioned	30
2.	Winding up recommended to the concerned High Court	23
3.	Dropped on net worth becoming positive	11
4.	Dismissed as non-maintainable	12
5.	Cases pending	18
	TOTAL	**94**

Both the public and private sector companies owning industrial undertakings can make a reference to BIFR. As on 30 June 2011, BIFR sanctioned revival schemes in 758 cases out of which 497 cases were declared as "no longer sick". Thus, the overall success rate of revival schemes comes out to 65.57 per cent. The position of revival schemes sanctioned by BIFR in private sector companies and public sector enterprises is given in the table below:

Table 1.3 – Success rate of revival schemes

S. No.	Particulars	Private Companies	Central PSEs	State PSEs	Total No. of companies
1.	Revival schemes sanctioned	709	30	19	758
2.	Declared no longer sick	474	10	13	497
3.	Success rate	66.85	33.33	68.42	65.57

As may be seen, in comparison, the success rate in case of private companies was 66.85 per cent which was significantly higher than in CPSEs at 33.33 per cent. However, the success of revival schemes for sick companies depends upon various factors such as diversification of activities, level of implementation of schemes, government policy, effects of globalisation, co-operation of participating agencies, financial and business restructuring, change in management etc. These factors influence different sectors and industries in a different manner. As such, the success rate of revival schemes varies among companies of private sector and public sector as also amongst companies belonging to different industries.

(b) Status of sick CPSEs referred under BRPSE

A total of 67 cases have been referred to BRPSE till September 2010.[11] During December 2004 to March 2010, 64 sick CPSEs were referred to BRPSE by the concerned Administrative Ministries. Out of these, BRPSE made recommendations in 58 cases

[11] BRPSE considers a company as sick if it has accumulated losses in any financial year equal to 50 per cent or more of its average net worth during 4 years immediately preceding such financial year and/or if a company is a sick company within the meaning of SICA. Besides, BRPSE has defined 'incipient sickness' as a situation when a company incurs losses for two consecutive years.

while in 6 cases, the proposals were returned to the concerned Ministries for re-examination. The status of the 58 proposals recommended by BRPSE is detailed below:

Table 1.4 – Status of proposals recommended by BRPSE

S.No.	Particulars	Number
1.	Revival proposals sanctioned by GOI	35
2.	Ordered for closure	2
3.	Under consideration of GOI	21
	TOTAL	**58**

Change of management and capital infusion are considered to be the most important factors contributing to the success of revival schemes.

1.8 Revival strategies adopted by GOI for sick CPSEs

Keeping in view the inherent potential of the public sector and its performance over the years, GOI has been making persistent attempts to overcome industrial sickness through revival schemes for sick CPSEs. GOI's approach to loss making CPSEs basically focused on:

- Revival of potentially viable enterprises;
- Closing down of those that cannot be revived; and
- Reducing its equity in non-strategic units.

Revival of sick CPSEs may be necessitated or justified in view of the underlying socio-economic objectives such as the following:

- The sick CPSE may be in a sector that is vital to the economy.
- Closing of the sick CPSE may lead to other socio-economic ill effects.
- Many ancillary units may be dependent on the CPSE that has gone sick. Unless the sick CPSE is revived, it will have a chain effect on all such ancillary units

GOI adopted a combination of the following strategies for revival of sick CPSEs:

- **Financial restructuring**, which involves investment in CPSEs by the Government in the form of equity participation, providing loans/ grants, waiver of loans/ interest, conversion of loan into equity, conversion of interest into loan, moratorium on payment of loan/interest, offering of guarantee, sale of fixed assets including excess land, one-time settlement with banks/financial institutions, etc. are also taken to improve the financial strength of the CPSEs.

- **Business restructuring,** which involves change of management, closure of unviable units, modernization of viable units, formation of joint ventures by induction of partners capable of providing technical, financial and marketing inputs, change in product mix, improving marketing strategy etc.

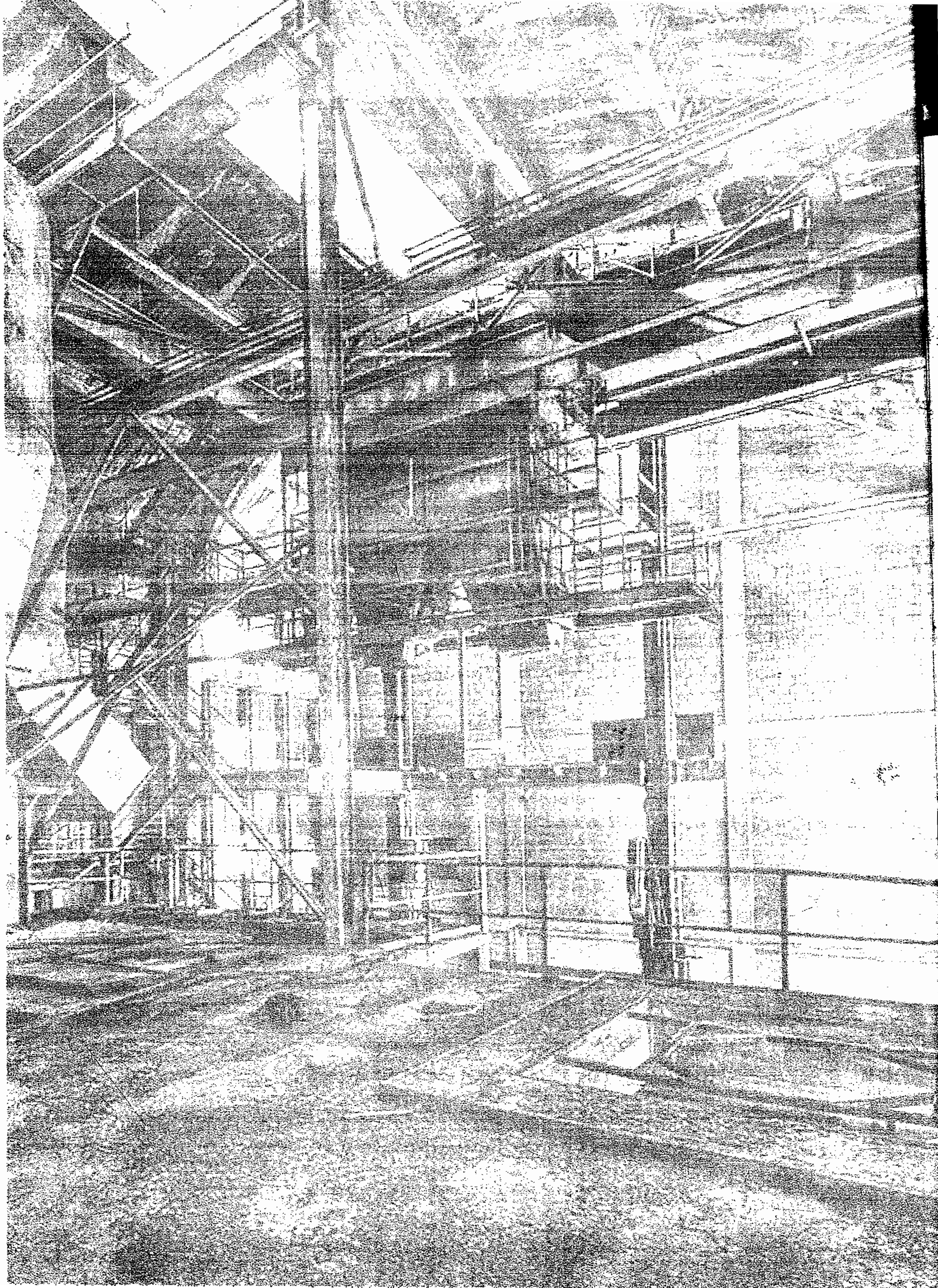
- **Manpower rationalization**, which involves shedding of excess manpower by offering Voluntary Retirement Schemes (VRS) and introduction of Voluntary Separation Schemes (VSS) in cases where decision is taken to close the unviable units.

Decision of the GOI may not always be based purely on commercial considerations. The protection of employee's interest and social and economic consequences to the places where the CPSEs are located may form key influencing factors.

1.9 Recent initiative of GOI – Companies Bill, 2011

The Companies Bill, 2011 (Companies Bill) was introduced recently in the Parliament which seeks to foster an extensive insolvency code based largely on the latest principles recommended by the United Nations Commission on International Trade Law (UNCITRAL) in the UNCITRAL Legislative Guide on Insolvency Law. The Companies Bill contains a composite law for reorganisation and liquidation of companies.

Even though significant improvement is expected in the corporate restructuring and liquidation regime after the Companies Bill, 2011 is passed by the Parliament, some policy gaps and legislative deficiencies remain in the restructuring and liquidation framework as discussed subsequently at Para 3.2 of chapter 3.. It is important to address these gaps and weaknesses to capture the key objectives and provide a comprehensive insolvency framework which can function efficiently and meet the needs of sick or potentially sick enterprises including CPSEs and other stakeholders operating in a fast modernizing economy.



Audit Approach

2.1 Audit Scope and Methodology

Performance Audit of Revival of sick CPSEs was undertaken to assess the adequacy and effectiveness of the measures taken at various levels to address the sickness of the CPSEs. Besides, timeliness in approval of schemes, structuring of design and implementation of the schemes and their impact on the revival of the CPSEs were also examined in audit. In addition, the impact of the existing legal, institutional and regulatory framework for insolvency on the revival of sick enterprises, more specifically CPSEs, was also undertaken.

Up to March 2010, GOI approved revival schemes for 35 sick CPSEs belonging to 12 Ministries at a cost of ₹ 39658.72 crore. Audit selected a sample of the following 9 CPSEs falling under six Ministries belonging to different sectors to study their revival schemes.

Ministry of Heavy Industry and Public Enterprises

(i) Cement Corporation of India Limited (CCI)
(ii) Heavy Engineering Corporation Limited (HEC)
(iii) HMT Machine Tools Limited

Ministry of Chemicals and Fertilisers

(iv) Fertilisers and Chemicals (Travancore) Limited (FACT)
(v) Hindustan Organic Chemicals Limited (HOCL)

Ministry of Coal

(vi) Eastern Coalfields Limited (ECL)

Ministry of Railways

(vii) Braithwaite and Company Limited (BCL)

Ministry of Textiles

(viii) National Textile Corporation Limited (NTC)

Ministry of Water Resources

(ix) National Projects Construction Corporation Limited (NPCC)

In addition, NEPA Limited (NEPA) under the Ministry of Heavy Industry and Public Enterprises, GOI where the revival scheme was pending for approval by GOI was also selected for audit.

The sample covered the major schemes sanctioned at a cost of ₹ 27,845.14 crore which constituted 70 per cent of the total cost of the 35 sanctioned schemes. The Ministry-wise break-up of the approved 35 CPSEs and the 9 CPSEs selected from them for audit is given in **Annexure II.**

In respect of National Textile Corporation Limited (NTC Ltd), the scope of Performance Audit has been restricted to modernisation of mills, as a Performance audit covering sale of surplus land and buildings had already been reported in C&AG's Audit Report No. PA 27 of 2009-10 which was discussed by Committee on Public Undertakings (COPU) during November 2009 to February 2010. COPU Report No.2 (2009-10) on the findings was presented in Parliament in March 2010. Recommendations of COPU are given in **Annexure III**.

Audit commenced with entry conferences with the Managements of the ten CPSEs wherein the scope, objectives and audit methodology were discussed and their views were taken. This was followed by examination of relevant records in these CPSEs and their Administrative Ministries. The Audit was concluded with exit conferences with the respective Managements of all the ten CPSEs wherein the Audit findings were discussed and their views on various issues considered. The draft report was also issued (September 2011) to the respective Administrative Ministries of the CPSEs along with the Department of Public Enterprises, GOI which is the coordinating agency for CPSEs. In addition, our specific concerns were also addressed (November 2011) to Ministry of Corporate Affairs and Department of Economic Affairs, Ministry of Finance, GOI for their comments. Their responses wherever received have been considered and incorporated suitably.

An exit conference was also held in November 2011 with the Department of Public Enterprises where the major audit findings were discussed and responses received from the GOI have been suitably incorporated in this report.

While finalizing our performance audit, a need was felt to associate an expert with our report to strengthen our audit findings and add technical views of an expert. Accordingly, Shri Sumant Batra, a corporate and commercial lawyer with extensive experience in policy, high profile global and Indian insolvencies and formal and informal restructurings was associated. Discussions were also held with the officers of BIFR.

2.2 Audit Objectives

The Performance Audit was conducted to:

- Assess the adequacy of legislative/ institutional/ operational framework for addressing the sickness in CPSEs in the backdrop of the international standards and best practices.
- Examine the process for approval of revival schemes and timeliness in their sanction.
- Analyse the designing process of the revival schemes
- Examine the implementation including compliance to the directions/ orders of GOI/BIFR/BRPSE in the revival schemes.
- Evaluate the impact of revival schemes on the operations of the CPSEs,
- Recommend measures to address the gaps identified in the insolvency system and improve the regime for revival of sick and potentially sick CPSEs.

2.3 Audit Criteria

Performance of the Companies was assessed against the following criteria:

- The existing legal and institutional framework of insolvency;
- Provisions of BRPSE;
- Deliberations and decisions taken by BIFR/ BRPSE;
- Cabinet notes for approval of revival packages;
- Approved revival packages of each selected CPSE;
- The reports of consultants/ operating agencies and the proposals finalised by the Administrative Ministries;
- Orders/ directions issued by GOI/ BIFR to the CPSEs; and
- Operational and financial targets set in the schemes.

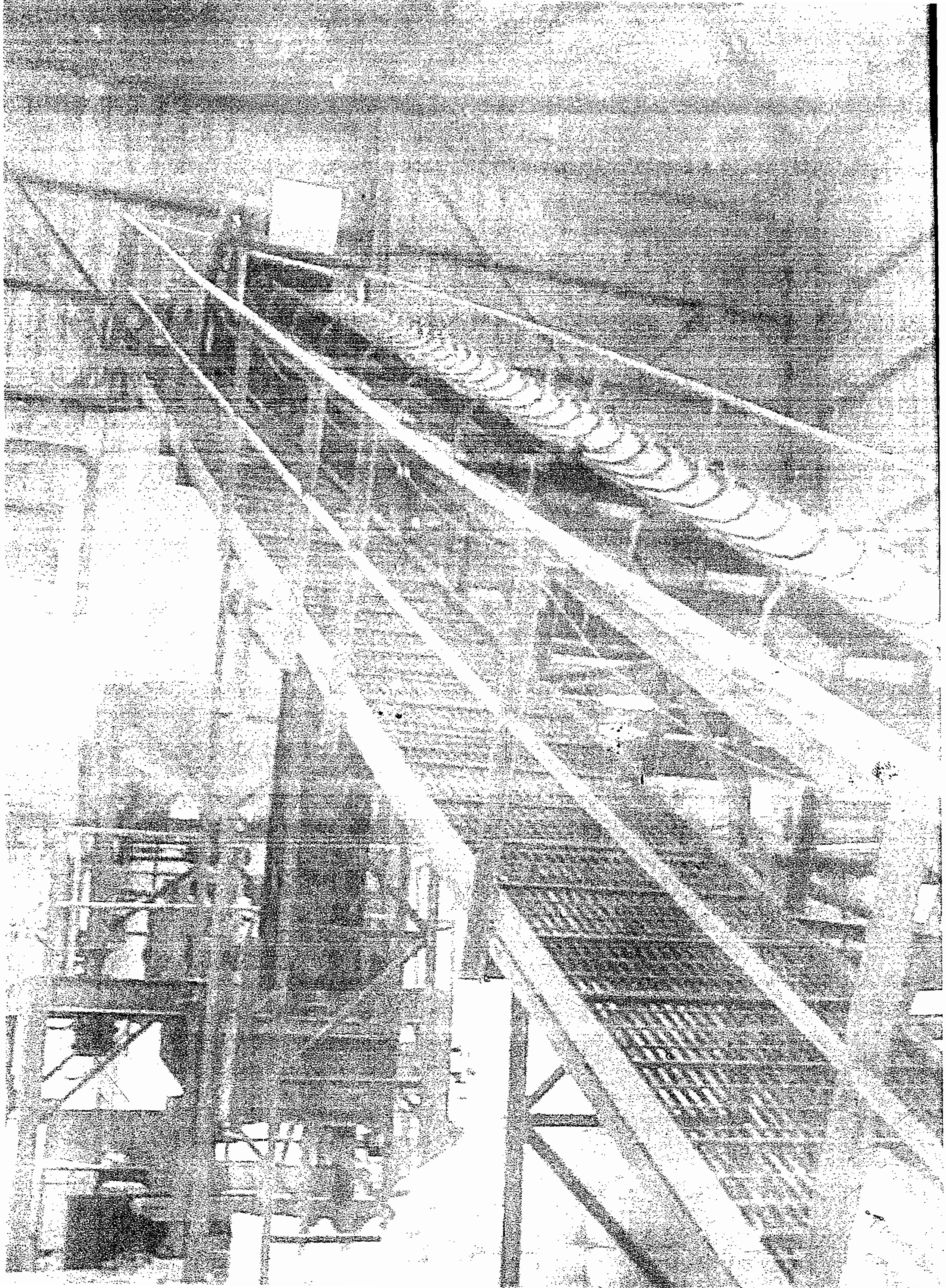
2.4 Audit Findings

The audit findings are organized in the following chapters:

- Chapter 3 provides an overview of the legislative framework and its impact on revival of sick CPSEs.
- Chapter 4 relates to design and approval of the revival schemes
- Chapter 5 deals with issues relating to implementation of the revival schemes
- Chapter 6 discusses impact of revival schemes on the performance of the CPSEs
- Chapter 7 sums up the conclusions and recommendations.

2.5 Acknowledgement

Audit acknowledges the cooperation extended to the Audit teams by the Administrative Ministries/Managements of the CPSEs selected for audit.



Legislative framework and its impact on revival of sick CPSEs

3.1 Insolvency framework in India

There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs. A number of legislations and regulations comprise the insolvency framework for commercial enterprises. While many financial sector laws have witnessed massive transformation after the liberalisation of the Indian economy, the insolvency law has not undergone the much needed reforms. Both, the winding up of companies under the Companies Act and rehabilitation under SICA remain cumbersome and long-drawn resulting in locking of huge national resources in these proceedings.

In most economies, the discipline of insolvency professionals is highly sophisticated and well-developed. In countries like United Kingdom, Australia, Canada and United States, and in most European countries, the insolvency professionals play an important role in resolution of insolvency. China introduced the concept of insolvency practitioners under the Enterprise Insolvency Law of the PRC which came into force in 2007. Insolvency practitioners are licensed in UK, Australia, Canada, China and other jurisdictions. There is no such discipline in India. There is no dedicated insolvency division or directorate in the Ministry of Corporate Affairs, GOI, which is responsible for administrating the corporate insolvency law. There is a department of official liquidators but there is no organized set up to manage insolvency related issues. The regulatory duties are also not clearly defined. Establishment of such dedicated insolvency directorate will enable effective and efficient administration of insolvency policy, regulation and legislative oversight and implementation. This becomes more relevant as after the enactment of Companies Bill, the Ministry of Corporate Affairs would also be responsible for administration of restructuring law which is currently under the Ministry of Finance. This is a standard practice in many countries. UK has a separate Insolvency Services department to deal with insolvency of enterprises. In Canada, there is a separate department of Superintendant of Bankruptcy. Similarly in Australia, Singapore and most developed systems there are dedicated divisions of the government to deal with insolvency matters.

Sick Industrial Companies (Special Provisions) Act of 1985 (SICA)

- enacted to determine sickness and expedite revival of potentially viable units or closure of unviable units.
- under SICA, BIFR, a quasi-judicial body, was set up in 1987, to take appropriate measures for revival and rehabilitation of potentially sick industrial undertakings and for liquidation of non-viable companies.

(i) Sick Industrial Companies Act, 1985

In order to deal with the complex problem of industrial sickness prevailing in the eighties, GOI enacted a special legislation namely, the Sick Industrial Companies (Special Provisions) Act in 1985 commonly known as the SICA to determine sickness and expedite the revival of potentially viable units to allow idle investments in sick units productive or closure of unviable units to release the locked up investments for productive use elsewhere.

SICA applies to companies both in public and private sectors owning industrial undertakings. Under this Act, Board of Industrial and Financial Reconstruction (BIFR), a quasi-judicial body, was set up in 1987, to take appropriate measures for revival and rehabilitation of potentially sick industrial undertakings and for liquidation of non-viable companies. SICA 1985 was amended in 1991 for enabling referral of sick CPSEs to BIFR for their revival/ rehabilitation or closure.

National Company Law Tribunal (NCLT)

- Formed by repealing SICA/ BIFR.
- The proposed NCLT shall deal with revival/ rehabilitation of sick companies and also continue the functions and powers currently discharged by the Company Law Board, BIFR and the High Court in respect of winding up, liquidation etc.
- NCLT was yet to be constituted (January 2012).

With enactment of the Companies (Second Amendment) Bill, 2002 (the Second Amendment), SICA was sought to be repealed by Sick Industrial Companies (Special Provisions) Repeal Act, 2002 (SICA Repealed Act). However, the Second Amendment could not be implemented due to a court challenge. Consequently, the repeal of SICA remains un-notified and the old regime continues in operation. The Second Amendment proposed establishment of National Company Law Tribunal (NCLT) which would have jurisdiction to deal with both, rehabilitation and liquidation of companies. Besides this, NCLT shall also perform the functions and powers currently discharged by the Company Law Board. A reference of the sick CPSEs would no longer be automatic or mandatory and would require pervious approval of the GOI.

The Ministry of Corporate Affairs, GOI stated (November 2011) that NCLT could not be established due to legal challenges to its establishment. However, as per the judgment of Hon'ble Supreme Court (May 2010), the provisions for constitution of NCLT have been revised by the GOI and included in the Companies Bill, 2011.

In the meanwhile, BIFR continues to function as a stop-gap arrangement.

Process of revival under BIFR

Under SICA, the industrial CPSEs whose accumulated losses are equal to or have exceeded their entire net worth are referred to BIFR. SICA was predominantly a remedial and ameliorative mechanism to take appropriate measures for revival and rehabilitation of potentially sick industrial undertakings and for liquidation/ closure of non-viable enterprises.

The process of revival of sick companies under BIFR is detailed below:

Flow chart of processing of revival schemes by BIFR

The Board of Directors of the industrial company refers the Company to BIFR for measures regarding revival/ closure within 60 days from the date of audited accounts. Besides, Government of India /State Government/ Financial institutions may also refer the industrial company to BIFR.

BIFR nominates an operating agency (OA) for preparing and finalisation of rehabilitation scheme.

OA submits draft rehabilitation scheme (DRS) to BIFR

BIFR examines the DRS

After examination of DRS, BIFR circulates scheme with its observations to OA and Company for suggestions/ modifications.

BIFR may make modification in the DRS in light of suggestions/ observations received from the Company and OA.

BIFR sanction the scheme and pass conclusive order binding on the Company, creditors, employees, GOI, Financial institutions, etc.

Inherent Flaws in BIFR Framework

Audit observed that the process of detection of sickness, formulation/ sanction and implementation of revival proposals of sick CPSEs under BIFR framework were found to have several inadequacies as discussed below:

- Under SICA, the industrial CPSEs whose accumulated losses are equal to or have exceeded their net worth are referred to BIFR. Though the objective of SICA was to secure timely detection of sick and potentially sick companies and speedy determination and enforcement of remedial measures, mostly the stage at which the sick industrial units are referred to BIFR does not leave much scope for their revival. In fact, the criteria does not provide for early reference of loss making companies for checking their incipient sickness. The UNCITRAL Legislative Guide recommends liquidity test should be preferred over balance sheet test. Failure to service debt should be the criteria for determining insolvency. Law should impose a duty on debtor to inform the creditors of the likely event of default. There should be ability for creditors to force the debtor to adopt corrective measures to prevent further deterioration of the enterprise or its value.

- Reference of sick CPSEs was linked to finalization of accounts i.e. within 60 days from the date of finalization of duly audited accounts for the financial year at the end of which the company has become sick, which in fact, came in the way of early reference to BIFR.

- Only the industries mentioned in the Industries (Development and Regulation) Act, 1951 are eligible to approach BIFR. All commercial enterprises are not entitled to approach BIFR. As a result many enterprises which are not companies incorporated under the Companies Act, 1956 or do not qualify as an industrial enterprise are disqualified from availing the restructuring opportunities provided by SICA.

- The central or state government, the RBI or a public or state financial institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become sick under SICA, make a reference in respect of such company to the BIFR.

  Rarely do banks file a reference before BIFR. Banks prefer to initiate recovery proceedings before Debt Recovery Tribunals (DRTs) or enforce security under SRFAESI.

- Any financial institution or bank on BIFR panel can act as the Operating Agency (OA). The role and responsibility of the OA is to prepare and propose, if possible, a scheme for the rehabilitation of the sick industrial company in accordance with the guidelines set out by the BIFR. Most of the times, BIFR appoints one of the secured creditors of the sick company as OA. They are interested parties having conflict of interest. This is an unusual practice as in most sophisticated economies the plan is proposed by independent professionals with assistance from experts.

- Every draft scheme is circulated to every person who is required to provide financial assistance or give concessions for its consent within a period of 60 days from the date of such circulation. If no consent is received within this period, it is deemed that consent has been given and the BIFR may sanction the scheme. The scheme is binding on all concerned after its sanction. If the consent is not given by even a single person, BIFR cannot sanction the scheme and may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

- Absence of framework of creditors committee deprives the restructuring system of a platform where creditors could come together to resolve issues in a timely and efficient manner. Formation of creditors committee is an established international best practice.

- In the case of CPSEs, referred to BIFR, it involved repeated inter-ministerial consultations and prolonged deliberations among various stakeholders. The entire enactment of SICA is structured in such a manner that it operates more by consensus rather than on the basis of decision-making by BIFR. Due to lack of powers to decide important issues, BIFR falls back upon the process of mobilizing consensus which is time-consuming. By the time decisions are taken and communicated, the plan has lost its viability resulting in failure of revival schemes even after sanction.

- SICA requires that the chairman and members of BIFR should be persons who have been or are qualified to be High Court judges or are persons of ability and integrity and have special knowledge and professional experience of not less than fifteen years in the field of science, technology, economics, banking industry, industrial reconstruction, investment, law, labour matters, industrial finance, industrial management, accountancy, marketing, administration or any other matter. However, mostly retired government officers or bankers are appointed to the BIFR.

- SICA provided immunity to the sick companies against legal action for recovery of money and suit for enforcement of any security or guarantee in respect of any loans and advances granted to the Company. Under this provision, companies can take undue advantage to avoid legal action after the failure of their projects and at the same time gain access to various benefits and concessions provided under the revival schemes. This immunity may continue for years in the absence of strict time frame.

- Though BIFR is required to complete the inquiry of sick companies within 60 days from the commencement of the inquiry, no timeline has been prescribed for sanction of the revival scheme.

- Recommendation for winding up of sick companies have to be forwarded to High Court by BIFR. The process of winding up takes about one year to 10 years after such recommendation is made.

- It was found that the proceedings before BIFR and High Courts take long. The UNCITRAL Legislative Guide recommends that the role of court should be balanced by the role of other participants such as the insolvency professionals/experts and creditors. Not only does it reduce the burden on courts, it also addresses the issue of lack of resources in the court system or lack of specific knowledge and experience of complex and technical aspects of insolvency law. In most developed systems, such as, UK, Australia, Canada, USA, the insolvency practitioners and creditors play an important part assisting the court and resolving the insolvency.

In brief, although SICA provides for preparation of the revival scheme within 90 days from the date of orders of the Board, no timeline has been prescribed for sanction of the scheme. This is therefore, fraught with the risk of uncertainty in timely sanction which in turn has an adverse cascading impact on the revival of the sick companies.

Further, SICA only provides for 'reasonable time' for the sick companies to make their net worth exceed the accumulated losses. However, again since no specific timeline has been prescribed for implementation of the scheme; this results in further delays. In fact, timely formulation of clear proposals for revival and closure in cases where revival schemes are unlikely to bear fruits is the essence of any revival strategy. Lack of effective monitoring arrangement of sanctioned schemes by the administrative Ministry adds to ineffectiveness in the implementation of the schemes.

With regard to the failure in taking timely action for revival, BIFR stated (December 2011) that as per SICA, potentially sick companies are also required to report their condition to BIFR. However, many such companies do not adhere to this requirement due to which BIFR is not able to take timely action in case of incipient sickness of companies.

(ii) Liquidation of Companies

The winding of companies under the Companies Act is a long and cumbersome process. The process of winding up of sick companies is started in the High Court on the recommendations of BIFR. Many CPSEs face liquidation proceedings in court from creditors. The officers of the Ministry of Corporate Affairs, GOI act as official liquidators. In fact, the Companies Act does not enable appointment of insolvency experts as liquidators. Provisions for appointment of professionals such as advocates, accountants, company secretaries, costs and works accountants and other experts as OL was allowed by Companies (Second Amendment) Act, 2002 which however, was never implemented.

The winding up is a time consuming procedure and generally takes between six to ten years. Such an inordinate delay has twin effects, one the cost of liquidation process comprising of security and administrative charges goes up and secondly and more importantly, the realizable value of the assets drops, that too often to absurd levels.

(iii) Corporate Debt Restructuring

The CDR mechanism introduced by RBI provides the informal out of court corporate restructuring mechanism. This mechanism is available to debtors in case of multi-creditor financing, with debt of ₹ 10 crore and above from banks and institutions. CDR is a non-statutory voluntary system based on Debtor- Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA). All participants including debtors have to accede to the DCA. The DCA provides for a 'stand still' agreement binding for 90 days, or 180 days by both sides. Both the debtor and creditor(s) agree not to take recourse to any other legal action during the 'stand-still' period. This enables the CDR System to undertake the necessary debt restructuring exercise without any outside intervention, judicial or otherwise. There is no requirement of the borrower's account being a NPA or the borrower company being sick company under SICA or being in default for a specified period before reference to the CDR mechanism.

Potentially viable cases of NPAs get priority under CDR. BIFR cases are not eligible for restructuring under the CDR system except where specifically recommended by the CDR Core Group. The creditors are required to seek the approval from BIFR before implementing the CDR sanctioned package. The CDR mechanism has emerged as an effective and fast track tool for work outs, in particular because it can be invoked even before an asset turns non-performing. However, this mechanism is not used by the CPSEs.

(iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

SRFAESI permits the secured creditors (if secured creditors hold 75 percent or more of the amount outstanding) to enforce their security interest in relation to the underlying asset without reference to a court. Secured creditors are required to give a 60 days written notice to the defaulting borrower upon classification of the corresponding loan as a non performing asset. If the borrower, who is under a liability to a secured creditor, makes a default in repayment of the secured debt or any installment thereof, secured creditors can proceed to act under SRFAESI.

SRFAESI provides the framework for establishment, ownership, operations and empowerments of Asset Reconstruction Companies (ARCs)[12] in India. SRFAESI provides

---

[12] *Although the term 'Asset Reconstruction Company' has not been defined in SRFAESI, the term 'asset reconstruction' has been defined in section 2(1)(b), SRFAESI: " 'asset reconstruction' means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance"; and 'reconstruction company' has been defined in section 2(1)(v), SRFAESI: " 'reconstruction company' means a*

for transfer of the financial assets (loans, debentures, etc., but not shares of the borrower, unless the shares are collateralized for the loan) from banks and institutions to ARCs. The RBI has, from time to time, issued various circulars, guidelines and notifications under SRFAESI pertaining to enforcement of security interest and on functioning of Secured Creditors and ARCs. SRFAESI has worked fairly well in spite of initial challenges faced by it.

(v) Board for Reconstruction of Public Sector Enterprises (BRPSE)

BRPSE was formed in December 2004 in DPE as an advisory body for sick CPSEs.

In addition to BIFR/ NCLT, in December 2004, GOI established the Board for Reconstruction of Public Sector Enterprises (BRPSE) in the Department of Public Enterprises (DPE) as an advisory body to address the:

- task of strengthening, modernisation, revival and restructuring of CPSEs including disinvestment/ closure and
- sale of both industrial and non-industrial units.

The recommendations of BRPSE are advisory in nature and are communicated to the concerned Administrative Ministry for implementation.

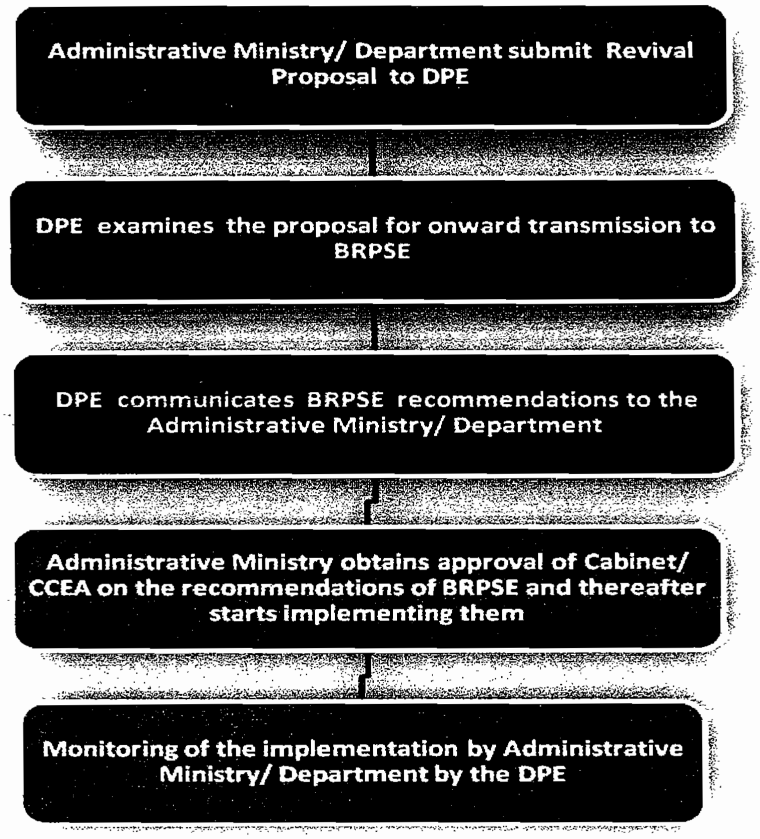
Process of revival under BRPSE

Under BRPSE, a reference can be made to the Board when a company has accumulated losses in any financial year equal to 50 per cent or more of its average net worth during the 4 years immediately preceding such financial year or if a company is sick within the meaning of SICA 1985. Under this arrangement, detection of loss making/sick CPSEs can be made much sooner. However, the recommendations of BRPSE are advisory in nature and lack enforceability.

The process of approval of revival schemes under BRPSE is detailed below:

company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of asset reconstruction".

Flow chart on processing of revival schemes by BRPSE



Inadequacies in BRPSE framework

Audit observed that procedural delays in formulation and sanction of revival schemes still persist under BRPSE due to the following reasons:

- The process involves consultations at multiple layers like Administrative Ministries, Department of Public Enterprises, relevant authorities and the BRPSE which examines and recommends the proposals.
- Approval procedure also involves multiple references to Committee of Secretaries, Group of Ministers and CCEA, etc.
- Some of the proposals took 1 year to 3 years for approval of the schemes due to protracted correspondence and consultations and lack of consensus amongst different agencies.
- Though two months time is prescribed for the BPRSE to finalise its recommendations from the date of receipt of the proposal, but no specific time frame has been prescribed for the CPSE and the Administrative Ministries for planning and formulation of the revival schemes. This resulted in delays in submission of revival proposals by sick CPSEs to the Board. Besides, the timeline of 8 weeks for the Administrative Ministries to seek the approval of the Cabinet/

CCEA on the recommendations of BRPSE is not strictly adhered to resulting in delay in the sanction of revival schemes.

- The terms of reference of BRPSE did not specify the timeline for implementation of sanctioned schemes nor were the modalities for review and monitoring of the sanctioned schemes prescribed for the Board. Some revival schemes have taken 4 years to over 10 years in implementing the scheme.
- The operational modalities of BRPSE basically excluded cases related to sale and disinvestment of CPSEs from its purview though these were provided for in its mandate, thus restricting the scope and functions of the Board. The matter was left to the DPE to decide different agency to be responsible for processing the recommendation in consultation with Department of Disinvestment and the Administrative Ministry.

In essence, the existing legislative and operational framework was found to be inadequate to effectively address the problem of sickness in CPSEs. Although SICA has been repealed since December 2003 due to its inherent weaknesses, the repeal has not come into effect as no alternative framework has yet been constituted in its place. Under NCLT, which is yet to be set-up after SICA Repeal Act of 2003, reference of loss making or sick CPSEs to NCLT is no longer automatic and requires prior approval of the Government.

This would result in accumulation of sick CPSEs falling outside the purview of NCLT. At the same time, many sick companies may not get referred to BRPSE since their reference is not a legal requirement under the existing framework. In the absence of clear cut policy framework, many loss making and potentially sick CPSEs would fail to receive timely intervention of the Government. Under the circumstances, non-revivable or chronically sick CPSEs will continue to receive non-plan budgetary support which will increase the burden on the national exchequer.

Recommendations:

Thus, the above situation indicates an urgent need for an appropriate mechanism empowered with a single point decision-making authority to effectively deal with the problems of sick/loss-making CPSEs. Moreover, in order to deal with the complexity of sickness in CPSEs, there is a need for a policy framework laying down detailed guidelines on the procedure/criteria to be followed for:

- determination/ identification of loss-making/sick CPSEs including non-revivable companies;
- revival/restructuring, disinvestment/sale/privatisation, exit/closure, etc. of sick CPSEs;
- planning/formulation, appraisal and approval of proposals; and
- implementation and monitoring of compliance.

The Department of Public Enterprises (DPE) stated (November 2011) that the proposed constitution of NCLT may reduce multiple layers in decision-making process. GOI will have the option to decide whether a sick CPSE is to be referred to NCLT or BRPSE. In either case, the proposed system will be an improvement over the present system. DPE further stated (December 2011) that the single-point appraising and decision making bodies are BRPSE and CCEA respectively.

Audit further observed that the reference of sick CPSEs to NCLT will not be automatic. It will require the approval of GOI and at the same time the reference to BRPSE is not made mandatory. This may result in accumulation of sick CPSEs outside the purview of both NCLT and BRPSE. Further, during exit conference (November 2011), Audit emphasized the need for framing of guidelines for formulation, approval and implementation of revival schemes which can be circulated to all the Administrative Ministries and monitored/ reviewed by a central authority. As regards single-point decision-making authority, the reply of DPE is not acceptable as CCEA is the final sanctioning authority for revival packages. Decision-making process involves multiple agencies resulting in divergent views, lack of consensus and prolonged deliberations making the process very time-consuming before submission for final sanction by CCEA.

On the recommendations made by audit, DPE stated (February 2012) that as per its constitution, BRPSE may either, *suo motu*, or upon reference made by the Administrative Ministry, consider such CPSE, if it is of the opinion that revival/ restructuring is necessary, for checking the incipient sickness. DPE further stated that the implementation of revival schemes is internally monitored by the Board of Directors and overseen by the concerned Administrative Ministry. Besides, BRPSE also reviews the implementation of revival plans and suggests corrective action, if required.

Audit is of the opinion that though BRPSE is empowered to *suo motu* consider such CPSEs for checking the incipient sickness, there is a need for an institutional mechanism for early identification of incipient sick CPSEs and their mandatory reporting by the Management/ Administrative Ministries to BRPSE. Also a well laid down monitoring procedure with periodicity specified for monitoring each stage of implementation of the revival schemes by a centralised authority needs to be put in place so that there is no diffusion of responsibility amongst the different agencies.

(vi) National Renewal Fund

GOI set up (February 1992) a fund called National Renewal Fund (NRF) to protect the interest of workers affected by industrial restructuring. The objectives of this fund were:

(a) To provide assistance to cover the costs of retraining and redeployment of employees arising as a result of modernisation, technology upgradation and industrial restructuring.

(b) To provide funds for compensation of employees affected by restructuring or closure of industrial units, both in the public and private sectors.

(c) To provide funds for employment generation schemes both in the organised and unorganised sectors in order to provide a social safety net for labour needs arising from the consequences of industrial restructuring.

The NRF was envisaged in two parts: (a) the National Renewal Grant Fund (NRGF) and the Employment Generation Fund (EGF). The NRGF was to deal with the immediate requirements of labour in sick units arising from revival or closure of such units. The funds were disbursed in the form of grants for re-training, redeployment, and counseling and placement services and for compensation to employees affected by rationalisation in industrial undertakings. It was also expected to provide resources for interest subsidies to enable financial institutions to provide soft loans for funding labour rationalisation resulting from the industrial restructuring of weak units. The EGF was expected to provide resources for employment generation. It was planned to provide funds in the form of grants for approved employment generation schemes for both the organised and the unorganised sectors.

Upto 1998-99, assistance from the NRF has been provided for implementation of Voluntary Retirement Scheme (VRS) in CPSEs, counseling/ redeployment scheme for workers rationalised from the organised sector. The Government introduced (May 2000) revised VRS and decided that from 2001-02, the administration of funds for VRS and retraining and rehabilitation of public sector workers would be centralised under the Department of Public Enterprises. Thereafter, Government abolished the NRF with effect from 12 July 2000.

The initiatives taken by the Government are elaborated below in a chronological order:

Table 3.1 – Government initiatives to revive sick CPSEs

Act/Law/ Body	Provisions	Current status
Companies Act, 1956 - Liquidation of Companies.	▪ The process of winding up of sick companies is started in the High Court on the recommendations of BIFR. ▪ The officers of the Ministry of Corporate Affairs act as official liquidators (OLs). ▪ The Companies Act does not enable appointment of insolvency experts as liquidators.	Provisions for appointment of professionals as OL were allowed by Companies (Second Amendment) Act, 2002 which however, were never implemented.
Sick Industrial Companies (Special Provisions) Act - SICA 1985	▪ GOI enacted a special legislation namely, the Sick Industrial Companies (Special Provisions) Act in 1985 commonly known as the SICA to determine sickness and expedite the revival of potentially viable units or closure of unviable units. ▪ SICA applies to companies both in public and private sectors owning industrial undertakings. ▪ Under this Act, Board of Industrial and Financial Reconstruction (BIFR), a quasi-judicial body, was set up in 1987, to take appropriate measures for revival and	SICA has been repealed in December 2003 and the work of revival and rehabilitation has been entrusted to National Company Law Tribunal (NCLT) to be created under the Companies (Second Amendment) Act 2002.

	▪ rehabilitation of potentially sick industrial undertakings and for liquidation of non-viable companies. ▪ SICA 1985 was amended in 1991 for enabling referral of sick CPSEs to BIFR for their revival/ rehabilitation or closure.	
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SRFAESI)	• Provides the framework for the setting up of asset reconstruction companies (ARCs) which can acquire NPAs from banks, financial institutions and housing finance companies, turn them around and resell them. • SRFAESI also enables enforcement of security interest by banks and financial institutions without recourse to courts.	The RBI has, from time to time, issued various guidelines and notifications under SRFAESI pertaining to enforcement of security interest and on functioning of secured creditors and Asset Reconstruction Companies.
Corporate Debt Restructuring	▪ The CDR mechanism introduced by RBI provides the informal out of court corporate restructuring mechanism. ▪ This mechanism is available to debtors in case of multi-creditor financing, with debt of ₹ 10 crore and above from banks and institutions.	However, this mechanism is not used by the CPSEs.
Board for Reconstruction of Public Sector Enterprises (BRPSE)	▪ In addition to BIFR/ NCLT, in December 2004, GOI established the BRPSE in the DPE as an advisory body to address the task of strengthening, modernisation, revival and restructuring of CPSEs including disinvestment/ closure and sale of both industrial and non-industrial units. ▪ The recommendations of BRPSE are advisory in nature and are communicated to the concerned Administrative Ministry for implementation.	BRPSE has been discharging its role as advisory body till date for CPSEs.
National Renewal Fund (NRF)	▪ GOI set up (February 1992) NRF to protect workers' interest after industrial restructuring. ▪ Upto 1998-99, assistance from the NRF was provided for implementation of VRS in CPSEs, counselling/ redeployment scheme for workers rationalised from the organised sector. ▪ The Government introduced (May 2000) revised VRS and decided that from 2001-02, the administration of funds for VRS and retraining and rehabilitation of public sector workers would be centralised under the Department of Public Enterprises.	Government abolished the NRF with effect from 12 July 2000.

National Company Law Tribunal (NCLT)	▪ Due to delays inherent in the process of BIFR, GOI decided (December 2003) to set up National Company Law Tribunal (NCLT) to address sickness and bankruptcy under Companies (Second Amendment) Act 2002 by repealing SICA/ BIFR through Sick Industrial Companies (Special Provisions) Repeal Act 2003. ▪ The proposed NCLT shall deal with revival/ rehabilitation of sick companies and also continue the functions and powers currently discharged by the Company Law Board, BIFR and the High Court in respect of winding up, liquidation etc. ▪ A reference of the sick CPSEs would no longer be automatic or mandatory and would require pervious approval of the Government.	The Act has not been made effective and NCLT is yet to be constituted (January 2012). In the meanwhile, BIFR continues to function as a stop-gap arrangement.

3.2 Recent Initiatives by GOI for reform in the insolvency system

In December 2002, the Indian Parliament passed the Second Amendment to introduce improvements in revival and liquidation law. The Second Amendment which was the legislative product of recommendations of Justice Eradi committee provided for the setting up of a National Company Law Tribunal (NCLT) and its appellate tribunal to consider revival and rehabilitation of companies – a mandate presently entrusted to BIFR under SICA; and winding up of companies, the jurisdiction presently vested in the High Court. The Second Amendment sought to provide quick access to restructuring process. It required the board of directors of sick industrial company[13] to submit a draft scheme while making a reference to NCLT. It also provided an improved time frame for various stages of restructuring process and did away with the infamous provision of automatic stay.[14] This taking away of the provision altogether was a knee jerk reaction. It provided for debtor to disclose the relevant information in liquidation proceedings. The Second Amendment further provided for appointment of liquidator to be appointed from a panel of firms of chartered accountants, cost & work accountants, advocates, company secretaries or others, as may be prescribed. However, the role of professionals was restricted to liquidation proceedings. The Second Amendment has not come into effect.

---

[13] *Section 46AA the Companies (Second Amendment) Act, 2002 defines sick industrial company as an industrial company which has at the end of any financial year accumulated losses equal to fifty percent or more of its average net worth during four years immediately preceding such financial year or failed to pay its debts within any three consecutive quarters on demand for its repayment by a creditor or creditors of such company.*

[14] *Section 22 of SICA, 1985*

The GOI has recently introduced the Companies Bill, 2011. Some highlights of the Companies Bill, 2011 as introduced in the Lok Sabha are discussed in some detail hereinafter.

- The Companies Bill provides for rehabilitation and liquidation under the same roof. The Companies Bill vests jurisdiction to deal with rehabilitation and liquidation of the companies in a neutral independent forum, NCLT with appeal to NCLAT. The NCLT will consist of a president and judicial and technical members.
- To avoid any delay, the jurisdiction of civil courts is barred on any matter on which NCLT/NCLAT is empowered to adjudicate. A time frame for rehabilitation and liquidation process has been envisaged under the Companies Bill.
- The Companies Bill prescribes liquidity test to examine the sickness of the company. Default in payment of matured debt on demand would trigger insolvency by debtor. This application shall be accompanied with (i) audited financials statement relating to the immediate preceding financial year, (ii) prescribed particulars and documents along with fee, and (iii) draft scheme of revival and rehabilitation. In case the sick company does not have any draft scheme to offer, the tribunal may direct interim administrator to take over the management of the company. In such an event, the directors and management shall extend their full cooperation to the interim administrator.

There is no mechanism to deal with cross-border insolvency. Ever since liberalization of India's economy, the country has witnessed significant growth in cross-border trade and investment. The country's fast growing economy is attracting global corporations to invest in Indian market. Recently, Indian companies have also grown into multinationals in character and have been making high profile acquisitions abroad. Many CPSEs have set up businesses overseas and acquired valuable assets in other jurisdictions. Foreign banks and creditors have extended finance to Indian assets and Indians companies including CPSEs have exposures overseas. But there is no effective mechanism for cooperation by Indian courts with courts of another country, or for administration of cross-border insolvencies and treatment of stakeholders, in the event insolvency proceedings start in any foreign jurisdiction involving assets or creditors in India. Many developed economies have adopted the Model Law on Cross Border Insolvency. Justice Eradi committee and later, Dr. J.J. Irani committee had categorically recommended adoption of UNCITRAL Model Law on Cross Border Insolvency, to provide an effective mechanism for dealing with cases of cross-border insolvency. However, this area has not been addressed in the Companies Bill.

Although provisions have been introduced in Companies Bill for formation of creditors committee, suitable substantive provisions should be made in law supplemented by rules on the appointment, voting and other substantive matters relating to creditors committee.[15] Ambiguity in this area may result in avoidable litigation.

[15] *Section 257 of the Companies Bill, 2011*

The secured creditors can commence the proceedings for rehabilitation if on a demand made by a secured creditors representing 50 percent or more of its outstanding amount of debt, the company fails to pay the debt within 30 days of demand or to secure or compound it to the satisfaction of creditors. The creditors can approach the tribunal for automatic stay simultaneously with an application for restructuring or rehabilitation, and to seize assets of debtor, for a limited stand still period of 120 days. No such right is available to unsecured creditors

The Companies Bill introduces the provisions for appointment of Company Liquidator (CL) in the winding up proceedings. CL shall be an independent person appointed out of the panel of professionals maintained by the central government. Such professionals must be having at least 10 years of experience in the company matters or such other qualifications. However, there are no provisions for their licensing, education and experience in insolvency or related areas. This poses the risk of easy empanelment of such professionals who may otherwise not be suitably qualified for appointment to provide the highly specialized services of insolvency. As they would be expected to discharge important functions, adequate accountability provisions are required.

Although the Companies Bill seeks to introduce the concept, it falls short of providing a suitable framework for Insolvency Professional (IP). The proposed appointment process of an IP as an administrator or company liquidator by Court is defective. As recommended by the UNCITRAL Legislative Guide such appointment should be made by Court only on recommendation of creditors and not at its own discretion. It should be the prerogative of largest creditors, secured or unsecured, to decide who should be appointed as administrator or liquidator, although such recommendation may be approved formally by court. Similarly, the qualification for appointment of IPs should be made stringent to ensure that people with adequate qualification and experience are appointed.

3.3 Need for convergence of State owned enterprises and private companies under one insolvency framework

The UNCITRAL Legislative Guide recommends that the same law should apply to both private and state-owned enterprises (SOEs), especially those SOEs which compete in the market place as distinct economic or business operations and otherwise have the same commercial and economic interests as privately-owned businesses. Creating a separate forum such as BRPSE amounts to providing a special treatment to select enterprises which may not be perceived well by the market.

A level playing field must be provided for private sector companies and CPSEs. Special treatment for CPSEs is not considered healthy or in conformity with international standards. Neither has it produced better results for CPSEs. Another important challenge is to ensure that there is a level-playing field in markets where private sector companies can compete with state-owned enterprises and that governments do not distort competition in the way they use their regulatory or supervisory powers.

Design and Approval of Revival Schemes

4.1 Features of Revival schemes

The reasons of sickness varied from one CPSE to another. In case of NTC, the cause of sickness was historical as NTC was formed after taking over sick textile units from the private sector on social consideration for protecting employment of workers. Other nine CPSEs selected in audit became sick over the years on account of technological obsolescence, high manpower cost and competition from private sector.

Features of Revival schemes

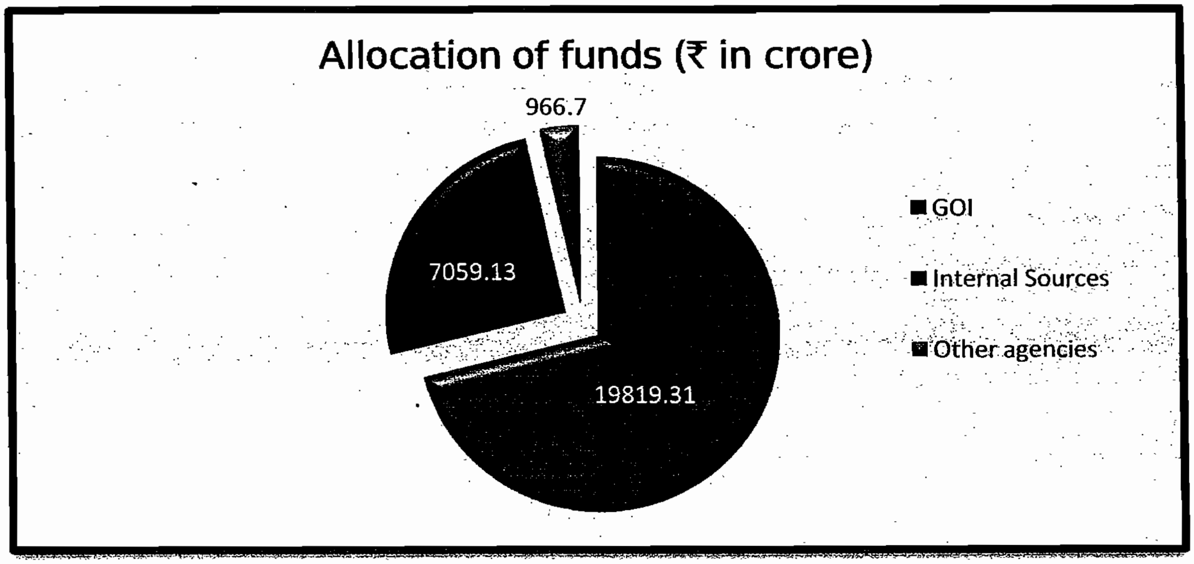
	Company	Revival schemes
1	National Textile Corporation Limited	Scheme was approved at a cost of ₹ 9102.72 crore (excluding waiver/ conversion of GOI loan/ interest). • Out of total 119 mills, 77 mills were to be closed, • 02 mills were to be transferred to the Govt. of Pondicherry. • 40 viable mills, were to be modernized (22 by NTC and 18 through joint venture). • Construction of integrated textile plaza at Ahmedabad, International trade tower at Mumbai. • Write off loan (₹ 3402.62 crore) and interest (₹ 2727.13 crore) upto 31 March 2006. • Funds from sale of surplus assets to be used in revival scheme. VRS to surplus manpower.
2	Hindustan Organic Chemicals Ltd (HOCL)	GOI approved (March 2006), • a revival package by way of financial assistance of ₹ 250 crore. • Subsequently, additional funds of ₹ 20 crore were sanctioned (March 2007) for restarting the Caustic Chlorine Plant at Rasayani (Maharashtra). The total financial assistance (₹ 270 crore) was provided in the form of non-cumulative redeemable preference shares.
3	Cement Corporation of India Ltd (CCI)	The scheme was approved in May 2006 at a cost of ₹ 2043.70 crore. • Of the 10 plants, 03 to be modernized/expanded (Rajban, Bokajan and Tandur) and 07 to be sold. • ₹184.29 crore for modernization/expansion by GoI and the balance requirement to be met from sale proceeds of 07 non-operating plants. • Waiver off of loan and interest. ₹ 1241.65 crore.
4	HMT Machine Tools Ltd	The plan was approved at a cost of ₹ 971.83 crore in June 2008 by the BIFR. • The scheme included ₹ 180 crore towards modernization, technological upgradation and training/ retraining of employees. • ₹ 100 crore was provided for VRS. • ₹ 443 crore were provided for settlement of dues. • Interest Waiver of ₹ 39.11 crore, conversion of loan into equity ₹ 122.64 crore and reliefs and concessions from state agencies ₹ 87.18 crore.

5	Eastern Coalfields Ltd (ECL)	The Plan was approved in November 2004 at a cost of ₹ 3210.65 crore. • Waiver of unsecured loan (₹ 519 crore), interest (₹ 168.65 crore) and conversion of ₹ 1532 crore current account into equity without interest. • Waiver of electricity duties for five years from 2004-05 by the State Governments. • 02 mines (Rajmahal and Chuperbhita) to be modernized and 17 unviable mines to be closed.
6	Fertilisers and Chemicals (Travancore) Ltd (FACT)	GOI sanctioned (March 2006) the financial relief package of ₹ 670.37 crore. • waiver/conversion of outstanding loans and interest of GOI (₹ 610.37 crore). • write off of non-plan loan (₹ 60 crore) for VRS.
7	Braithwaite and Company Ltd (BCL)	A revival package was approved by GOI in January 2006 at a total cost of ₹ 284.21 crore. • Infusion of capital of ₹ 4 crore, waiver of interest of ₹ 43.61 crore on GOI loan, conversion of GOI loans into equity of ₹ 69.30 crore. • Reduction of equity capital by adjustment of accumulated losses by ₹. 167.30 crore.
8	Heavy Engineering Corporation Ltd (HEC)	A revival scheme was approved in December 2005 at a cost of ₹ 2019.30 crore. • Waiver and conversion of loan (₹ 1116.30 crore), settlement of outstanding electricity dues (₹ 500 crore), waiver of CISF dues (₹ 73 crore) and generation of funds (₹ 330 crore) by transfer of buildings by the Company to the State Government. • The scheme outlay was increased to ₹ 2887.74 on various occasions between December 2007 and February 2009 due to grant of additional reliefs and concessions by the GOI and Government of Jharkhand (GOJ) and increase in unsettled electricity dues.
9	National Projects Construction Corporation Ltd (NPCC)	The scheme was approved in December 2008 at a cost of ₹ 646.89 crore. • Conversion of GOI loan of ₹ 219.43 crore and accumulated interest thereon upto 2008-09 amounting to ₹ 427.46 crore into equity share capital. • Equity share capital to be reduced to 10 per cent and the amount reduced to be adjusted against cumulative loss of the company.
10	NEPA Limited	The revival scheme was yet to be approved (October 2011).

4.2 Gaps in Financing of the Revival schemes

Cost of the nine revival schemes was ₹ 27845.14 crore which was to be funded by GOI (₹ 19819.31 crore), internal sources (₹ 7059.13 crore) and relief and concessions from State Governments and its agencies (₹ 966.70 crore) as detailed below:

Chart 4.1 – Sources of funds for revival schemes



Detailed break-up of the funding arrangements as per the approved schemes is indicated in the **table below:**

S. No.	CPSE	Funds provided by GOI			Funds from internal sources		Reliefs and concession from third parties	Grand Total
		Cash[16]	Non-cash[17]	Total	Source	Amount		
1.	HOCL	270	10.46	280.46	Internal accruals	5	-	285.46
2.	ECL	304	2219.65[18]	2523.65	Fixed Deposits and profits	651	36	3210.65
3.	FACT	200.00	670.37	870.37	-	-	-	870.37
4.	BCL	4.00	112.91	116.91	-	-	-	116.91
5.	CCI	184.29	1241.65	1425.94	Sale of non-operating plants	617.76	-	2043.70
6.	HMT	723.00	161.75	884.75	-	-	87.18	971.93
7.	HEC	-	1280.81	1280.81	Transfer of land & buildings	410.00	843.52	2534.33
8.	NTC	1699.31	10090.22	11789.53	Sale of surplus assets	5375.37	-	17164.90
9.	NPCC	-	646.89	646.89	-	-	-	646.89
	Total	**3384.60**	**16434.71**	**19819.31**		**7059.13**	**966.70**	**27845.14**

[16] *Fresh equity, loan and grant.*

[17] *Waiver of outstanding loans/ interest, conversion of loans/ interest into equity, reduction of equity by adjustment of accumulated losses.*

[18] *This includes waiver of outstanding loan of ₹519 crore and conversion of current account balance of ₹1532 crore into equity which was to be provided by Coal India Ltd, i.e. holding company of ECL.*

As may be seen from above, 71 per cent of the funds were provided by GOI in form of cash and non-cash assistance, 25 per cent funds were to be raised by the CPSEs from internal sources such as sale of surplus assets and 4 per cent of the funds were to be provided as relief and concessions from other agencies.

Audit findings on allocation of funds for revival schemes are discussed in succeeding paragraphs:

4.2.1 Curtailment of Funds by GOI

Audit observed that, in two CPSEs (BCL and NPCC), the funds sought for by the Administrative Ministries in the revival proposals were either curtailed by BRPSE or GOI did not infuse without any valid recorded reasons as discussed below:

- The proposal of BCL submitted by the Administrative Ministry to BRPSE (March 2005) included fund requirement of ₹ 22.26 crore to meet the liabilities of pressing creditors, lease rentals payable, replacement and renewal of fixed assets, coupler project etc.

  However, GOI agreed to release only ₹ 4 crore as margin money in the form of grant. Consequently, capacity expansion of bogies and couplers could not be done by BCL which resulted in extra expenditure of ₹ 7.96 crore during 2006-07 to 2009-10 due to purchase from private parties at higher rates to meet the supply orders.
- In NPCC, the recommendations (February 2006) of BRPSE for release of cash assistance of ₹ 60 crore for discharging PF dues and arrears of salaries of employees and GOI guarantee of ₹ 20 crore to facilitate the company for bidding in new projects were not accepted by GOI. Consequently, the company could not participate in bidding for new projects and was forced to work as a sub-contractor.

4.2.2 Non Infusion of Funds by the GOI

Audit observed that there was a deficit funding of ₹ 1243.02 crore (4.45 per cent) as indicated below:

- Out of the total cost of ₹ 27845.14 crore, GOI was to provide cash assistance of ₹ 3384.60 crore (12.16 per cent). However, GOI did not agree to release ₹ 304 crore (for payment of Interim Relief wages by ECL). Hence, actual cash assistance was ₹ 3080.60 crore (11.06 per cent).
- Out of nine CPSEs, five CPSEs (CCI, HEC, HOCL, ECL and NTC) were required to raise ₹ 7059.13 crore from internal sources (sale of surplus assets and internal accruals). However, ₹ 617.76 crore could not be generated by CCI and HEC could generate ₹ 228.70 crore short of the requirements from the transfer of land and buildings. This resulted in deficit of ₹ 846.46 crore.

- In three CPSEs, reliefs and concessions were to be given by third parties like State Governments, banks, etc. as per sanctioned schemes. However, the sanctioned relief and concessions were not received by two CPSEs (HMT Machine Tools & ECL) which resulted in deficit funding by ₹ 92.56 crore.

4.2.3 Lack of alternative strategy for financing Revival schemes

Audit observed that in NTC, CCI and HEC, the cost of the revival schemes was to be met primarily from sale of surplus land, which generally required the consent of respective State Governments. The schemes did not provide alternative strategies to fund the schemes in case of denial of permission. Notable cases are discussed below:

- In NTC, the implementation process could not proceed further (2002 to 2006) due to delay in grant of permission by the State Governments which led to increase in the cost of scheme by ₹ 1330 crore. GOI had to provide funds of ₹ 1643.84 crore for discharging the liability of salary and wages even during such delays.

- The revival scheme of HEC approved by BIFR initially in August 1996 could not succeed due to non-achievement of projections. The revised proposal submitted by the Ministry of Heavy Industries which envisaged generation of funds from disposal of surplus land could not fructify due to denial of permission by the Government of Jharkhand State for sale of land. The scheme did not provide any alternative source of funding for such eventuality. Consequently, BIFR passed winding up orders in July 2003 after which alternative strategy had to be explored for revival of the Company by GOI.

- Manufacturing capacity of Bokajan and Tandur plants of CCI could not be expanded as envisaged in the scheme as the non-operating plants could not be disposed off till July 2011. Consequently, against the targeted production of 1286.78 MT and 1480.30 MT for 2008-09 and 2009-10, the actual production (956.21 MT and 968.22 MT) was far less than as expected.

The Department of Public Enterprises stated (November 2011) that GOI provides alternative strategies based on the facts of each case. GOI may approve to provide bridge loan/ preference share capital pending sale of land to fund the revival package as envisaged.

The fact, however, remains that no alternative strategies were provided to fund the revival packages of the above mentioned cases due to which there were avoidable delays in implementation of scheme in NTC and CCI and revision of scheme in HEC after 1 year.

4.3 Core issues not addressed adequately

Analysis of reasons for sickness in the nine approved CPSEs covered in audit has revealed that main reasons for sickness were:

- lack of modernisation and diversification/ integration,
- excessive manpower and operational inefficiencies such as failure to meet delivery schedule,
- disqualification from lucrative orders,
- poor debt management, inadequate working capital,
- high interest burden, high rate of cess charged by State Governments, high cost of production/ services and
- increase in competition due to liberalisation, etc.

Audit observed that in the revival schemes, the above issues were not addressed adequately as discussed below:

4.3.1 Inadequate financing provision for modernization

The Table below indicates the various components of the financial packages *viz.* modernisation, rationalisation of manpower, and financial relief approved by the Government of India for revival of the nine selected sick CPSEs:

Table 4.2 – Allocation of funds in the revival schemes

(₹ in crore)

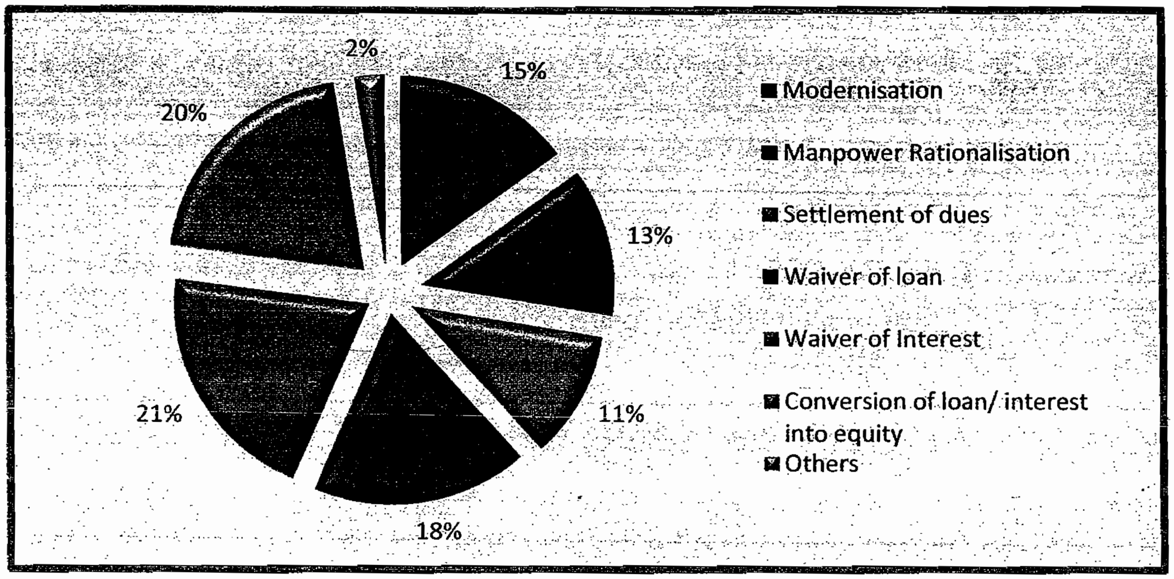
	NTC	CCI	HOCL	FACT	BCL	HEC	HMT	ECL	NPCC	Total
1. Cost of Modernisation	2878.92	141.11	25		4.00		170.00	955		4174.03
2. Manpower Rationalisation (VRS/ MVRS)	3349.43	25.00	36				100.00			3510.43
3. Settlement of outstanding dues	846.33	635.94	214	200.00		673.51	443.00			3012.78
4. Waiver of loan	3402.62	-	-	292.30		786.40	-	555		5036.32
5. Waiver of interest	4172.81	886.22	10.46	85.77	43.61	314.63	39.11	168.65		5721.26
6. Conversion of loan/ interest into equity	2514.79	355.43	-	292.30	69.30	179.79	122.64	1532	646.89	5713.14
7. Others						580.00	97.18			677.18
Total	17164.9	2043.70	285.46	870.37	116.91	2534.33	971.93	3210.65	646.89	27845.14

Despite the fact that, non-modernisation and technological obsolescence were the main reasons for the sickness of these CPSEs, in the revival packages approved by the GOI a major proportion i.e. ₹ 20160.68 crore (72 per cent) out of the total cost of ₹ 27845.14 crore of the resources were allocated to the financial restructuring and only

₹ 4174.03 crore (15 per cent) were provided for modernization of the CPSEs. In three CPSEs (HEC, FACT and NPCC), the schemes did not include any provision for modernisation.

The allocation of funds amongst the various components of the revival schemes is summarized in the chart shown below:

Chart 4.2 – Allocation of funds in the revival schemes



> The Parliamentary Standing Committee on Industry also pointed out (November 2006) that there was limited chance of long-term viability of CCI even after rehabilitation as there was limited addition to the capacity. The Administrative Ministry, however, had not taken cognisance of the recommendations of the Parliamentary Standing Committee.

In case of CCI, although the problem was addressed by providing ₹ 141.11 crore for modernisation/ expansion of three viable plants (Rajban, Tandur and Bokajan), the measures taken were not adequate as the funds provided for modernisation constituted only 7 percent of the total cost of the revival scheme due to which the capacity increased from 13.96 lakh MT per annum (2005-06) to only 16.43 lakh MT per annum (2009-10).

The schemes as approved by the GOI, thus, lacked long term vision in the backdrop of liberalised economy and stiff competition from the private players.

The Department of Public Enterprises stated (November 2011) that financial restructuring is a pre-requisite for revival of any sick CPSE. However, revival packages also provide funds for modernization and organizational restructuring. GOI has approved revival of 42 CPSEs upto September 2011 at a total cost of ₹ 24306 crore including funds of ₹ 802 crore for capital expenditure.

The reply of the Department only supports the fact pointed out by Audit that the funds provided for modernization of sick CPSEs to ensure their long-term sustainability were largely inadequate.

4.3.2 Deficiencies in consultants' reports

Audit observed that there existed no guidelines for appointment of consultants and for defining their scope of work and as such out of nine CPSEs, in two cases (HOCL and CCI), the reports of the Consultants were found inadequate to address the problem of sickness:

- In case of CCI, the report submitted by the consultant (M/s Holtec Consultancy Private Limited) for expansion/ modernisation of three operating units was based on obsolete technology. The defect was subsequently noticed at the time of implementation of the project. This resulted not only in delay in implementation of the scheme from May 2006 to September 2010 but also caused increase in the original estimates for expansion of Rajban and Bokajan plants by ₹ 81.65 crore.
- In case of HOCL, as its Rasayani plant was purchasing power from State Electricity Board at higher tariff, it became unviable to operate. However, the report of consultant did not address this core issue for reducing the cost of production to make the products competitive and self-sustaining. Consequently, the unit continued to incur losses in the years 2007-08 to 2010-11 and the accumulated losses further increased by ₹ 306.66 crore.

The Management stated (December 2010) that the scope of work was comprehensive in view of the then prevailing conditions. The reply is incorrect as the issue of heavy accumulated losses in the unit existed even at the time of initial planning.

The DPE confirmed (November 2011) that it has not issued any guidelines for appointment of consultants and for defining their scope of work.

4.3.3 Non diversification of business activities

In case of NTC, though it required diversifying of its activities to cope with the problem of low margin in existing activities of spinning and weaving, the Company decided to continue with the existing activities in the revival schemes without exploring the possibility of entering into more profitable activities such as garmenting. Consequently, 18 mills modernized by the Company upto October 2011 continued to incur operating losses of ₹ 63.98 crore during 2010-11.

Management argued (May 2011) that the strategy was to consolidate the existing activities rather than diversifying into garmenting and the operating losses were due to heavy depreciation.

Audit found the reply not convincing as 8 out of 18 modernized mills revived by NTC itself had suffered cash losses during 2010-11. It was also observed that, 5 mills revived through Joint Venture routes which diversified into garmenting activities were earning profits after implementation of revival scheme. The continuance with the low-margin activities was thus not a prudent strategy.

4.3.4 Competitiveness of products of restructured Companies

After liberalization of the economy, two CPSEs (FACT and HOCL) faced the problem of operational inefficiencies due to high cost of production and absence of level playing field as discussed below:

- The revival package of FACT aimed mainly at restructuring of balance sheet and did not address the core issue of cost effectiveness of the products which had become uncompetitive due to withdrawal of subsidy by the Government.

  While agreeing with the audit, the Management admitted that the package did not address the core issue of under recovery due to the subsidy policy that existed at that point of time.

- The pricing of HOCL products became uncompetitive in view of influx of imported products. This resulted in decrease in customer base and increase in inventory from ₹ 1.84 crore (March 2008) to ₹ 12.08 crore (March 2011). This issue was not foreseen in the revival plan.

  Management stated that price of the product became uncompetitive due to global meltdown during 2008-09 and 2009-10. As this was unprecedented, it was not foreseen in the revival scheme.

  Audit, however, observed that the uncompetitiveness of the product was not unprecedented as the threat from imported products existed even at the time of finalisation of the revival scheme (2006).

In essence, the schemes were not adequately structured as these basically involved financial restructuring only. Major portion of the funds (about 72 percent) were marked for financial restructuring such as waiver of loans and interests, conversion of loans into equity and settlement of dues. In fact, a very small proportion of the package was allocated for modernization and, diversification for long term sustainability of the operations of these CPSEs. Thus, the schemes did not address the core issues of sickness which would have yielded the sustainable revival of these companies.

Also, the fact remains that these companies have substantial tangible assets in the form of land holdings which have hidden values. Hence, fair values of the land holdings should have been factored into the design of the revival schemes.

Department of Public Enterprises stated (December 2011) that BRPSE has prescribed a comprehensive format for submission of revival proposal by the Administrative Ministry/ Department of a sick CPSE. However, Audit observed that prescribing a format does not ensure addressing of all the core issues of sickness in the sanctioned revival packages. Detailed guidelines need to be framed to ensure that suitable remedies are provided to cover all aspects of sickness.

4.4 Inordinate delays in approval of schemes

Due to the weaknesses in the processes and procedures for approval of revival schemes as discussed in Chapter 3, Audit observed that there were inordinate delays in approval of schemes, lack of consensus among various agencies, non-compliance by various agencies to the directions of BIFR etc.

SICA did not specify any time frame for approval of revival schemes. In the absence of specific time limit, there were inordinate delays in approval of the schemes. Besides, the procedure followed for approval of schemes was time consuming due to involvement of multiple agencies like consultants, companies, Administrative Ministries, BRPSE/BIFR, Committee of Secretaries, other Ministries/ Departments and Cabinet Committee on Economic Affairs. The process involved prolonged deliberations at every stage and was thus, flawed.

Table 4.3 – Time taken in approval of revival schemes

PSE	Identification of Sickness	Approval of Scheme	Time taken in approval of Scheme
NEPA	1996-97	Not yet approved	
NPCC	1990-91	2008-09	18 years
HEC	1991-92	2005-06	14 years
CCI	1994-95	2005-06	11 years
NTC	1993-94	2002-03	10 years
HMT	2000-01	2006-07	6 years
ECL	1998-99	2003-04	5 years
BCL	2002-03	2005-06	3 years
FACT	2004-05	2005-06	1 year
HOCL	2004-05	2005-06	1 year

The delayed finalisation of the revival schemes not only resulted in inadequate utilisation of their resources and incurring of unproductive expenditure but also cost the sick CPSEs heavily as their financial health was allowed to deteriorate further with the passage of time and as such the accumulated losses of these CPSEs increased from ₹ 7,342.93 crore to ₹ 22,503.91 crore as may be seen from the table below:

Table 4.4 – Increase in accumulated losses of the CPSEs

(₹ in crore)

CPSE	Accumulated loss at the time of sickness		Accumulated loss at the time of approval of Scheme		Increase in Accumulated Loss	Percentage increase in Accumulated loss (%)
	Year	Loss	Year	Loss		
NPCC	1990-91	37.53	2008-09	826.78	789.25	2102.98
NEPA*	1996-97	94.15	2009-10	528.25	434.10	461.07
CCI	1994-95	527.16	2005-06	2152.86	1625.70	308.39
HEC	1991-92	482.16	2004-05	2106.98	1624.82	336.99
HMT	2000-01	96.17	2006-07	618.09	521.92	542.71
NTC	1993-94	3003.76	2002-03	10714.25	7710.49	256.69
BCL	2002-03	179.97	2005-06	225.48	45.51	25.28
ECL	1998-99	2201.07	2003-04	4789.30	2588.23	117.59
FACT	2004-05	506.28	2005-06	270.62	(235.66)	(46.55)
HOCL	2004-05	214.68	2005-06	271.30	56.62	26.37
Total		7342.93		22503.91	15160.98	206.47

* The scheme is yet to be approved by GOI.

Further, during the period of delay, Government had to provide budgetary support to these CPSEs to sustain their operations.

Notable cases for inordinate delays in approval of schemes are discussed below:

(i) NEPA became sick in March 1997 and was referred to BIFR. Meanwhile, GOI decided (March 1997) to sell the Company through operating agency (OA). However, no action was taken on this decision. Consequently, BIFR directed (March 2004) GOI to revive the Company through Joint Venture. In 2005, the Company was referred to BRPSE which also recommended the revival of the Company through JV. On failure to form a JV, a bill for disinvestment was introduced in November 2007. However, the Parliamentary Standing Committee did not recommend the bill and instead recommended (November 2007) revival of the Company as a CPSE.

> ***Reasons for sickness (NEPA)***
> Newsprint import and allocation policy liberalised, technological obsolescence, high cost of production, low efficiency, poor paper quality and low margins.

Consequently, the Company appointed (August 2009) a consultant for preparing a detailed report on the reasons of sickness and suggesting remedial measures for removing the sickness. The report of the consultant was submitted (May 2010) by the Company to Administrative Ministry which included fund requirement for capital expenditure, conversion of GOI loan into equity, waiver of interest on GOI loan and waiver of statutory dues. The proposal was revised subsequently in December 2010 at a total cost of ₹ 827.80 crore.

While discussing the revised proposal in March 2011, BRPSE also observed that inconsistencies in the Government policy and lack of timely and appropriate intervention by the Government have affected the Company and de-controlling the newsprint industry as per the liberalisation policy without providing a level playing field to the Indian players has impacted the performance of the Company adversely. BRPSE, therefore, advised (March 2011) the Administrative Ministry/ Company to submit a revival plan taking into account gainful utilisation of surplus assets, rationalisation of manpower, measures to reduce expenditure especially on water, electricity and other township maintenances etc. The revised revival plan was yet to be approved by GOI (October 2011).

Thus, the process of approval of the revival scheme was not completed even after elapse of 14 years from the sickness of the Company.

(ii) The revival scheme of NPCC was approved after 18 years from its sickness. Although it became sick in 1991, it could not be referred to BIFR as it was not an industrial concern. GOI adopted inconsistent approach for its revival. In September 1997 it was proposed to revive the Company which could not be implemented due to

> ***Reasons for sickness (NPCC)***
> Erosion of work orders, excessive manpower, absence of diversification, lossess due to low profit margin on contracts, high financial costs, high operating costs and lack of administrative control.

change in Government. Efforts to disinvest were initiated in July 1998. However, the proposal could not be implemented due to closing down of Disinvestment Commission in 2003. After the formation of BRPSE in December 2004, the case of revival of this company was referred to BRPSE in August 2005, which was approved in December 2008 at the cost of ₹ 646.89 crore. The delay was attributed to repeated references to the Administrative Ministry, Committee of Secretaries and other Ministries and Departments.

Thus, the scheme was approved after 18 years from its sickness due to prolonged deliberations at every stage and frequent changes in GOI strategies to revive the CPSE.

(iii) HEC became sick in February 1992 and referred to BIFR which approved a rehabilitation/ revival scheme for the Company in August 1996. The scheme was approved by the GOI in February 1997 at a cost of ₹ 663.04 crore. However, due to late receipt of reliefs and concessions, the Company could not achieve the projections given in the revival package. BIFR ordered (May 2003) for change of management of the Company in response to which the Ministry submitted another revival proposal in 2004. As per the revised proposal, the major part of the finance was to be generated from the sale of Company's surplus land at Ranchi which could not materialise as the Government of Jharkhand did not give its consent for sale of land. Consequently, BIFR ordered (July 2004) for winding up of the Company. The Company and the Administrative Ministry filed (August 2004) appeals before Appellate Authority/ Hon'ble High Court of Jharkhand for staying the order of BIFR which was finally quashed in November 2009 by the latter.

> ***Reasons for sickness (HEC)***
>
> Old technology, huge manpower, poor debtor management and high inventory level, lack of management continuity, poor work culture, high interest burden, excessive overheads, high employee costs, working capital crunch, etc.

Meanwhile, the Company prepared and submitted (August 2004) a new revival scheme which after being recommended by BRPSE was approved by the GOI in December 2005 at the cost of ₹ 2019.30 crore. In September 2008, GOI granted additional relief and concessions, thus, raising the total cost of the scheme to ₹ 2534.33 crore.

Thus, the revival package of the Company was finalised after 13 years from the date of sickness due to failure of the earlier scheme. This resulted in infructuous expenditure of ₹ 663.04 crore on the revival scheme approved by BIFR.

(iv) CCI became sick and referred to BIFR in 1994-95. BIFR appointed Industrial Finance Corporation of India (IFCI) as Operating Agency (OA) in August 1996. The OA submitted the draft rehabilitation scheme (DRS) in November 1999. During November 1999

> ***Reasons for sickness (CCI)***
>
> Obsolete technology, non modernization of plants, deficient infrastructural facilities, shortage of working capital, short term borrowings, and recessionary conditions in the cement industry.

to May 2006, the DRS was repeatedly deliberated by GOI, BIFR and creditors on the issues of infusion of funds by GOI and one-time settlement for creditors. The scheme was ultimately approved only in May 2006 at a cost of ₹ 2043.70 crore.

Thus, the process of approval was completed after more than nine years from its sickness.

(v) The subsidiaries of NTC were declared sick by BIFR during 1992-94. Till January 2002, the revival schemes of these subsidiaries were under deliberation amongst GOI, BIFR, State Governments and creditors on the issues of:

> *Reasons for sickness (NTC)*
>
> Obsolete technology, excessive manpower, poor layout of plants, low value product mix, low level of man-machine productivity, management constraints, general recession in textile industry and acute competition from unorganized power loom sector.

- Permission of the State Governments for sale of surplus land and concessions in stamp duties and
- Provision of bridge finance by GOI.

Ultimately, revival schemes of these subsidiaries were finally sanctioned by BIFR during February-July 2002 at a total cost of ₹ 3937.49 crore.

One of the features of the schemes was to generate funds from the sale of surplus assets (mainly land and buildings) to be utilised for modernisation of viable mills. However, modernisation of the mills could not take place due to delay in sale of land, which resulted in increased cost of modernisation with the passage of time. While reviewing the status of implementation of these schemes, Administrative Ministry directed (January 2005) the Company to submit a modified scheme which was approved by BIFR in March 2006.

Based on the discussions held and decisions taken in the Group of Ministers (GOM) meetings (December 2006/ April 2008), the Company submitted another modified scheme after taking into account cost escalation. The same was again approved by BIFR in September 2008 at a cost of ₹ 9102.72 crore (excluding cost of waiver/ conversion of GOI loan and interest).

Thus, prolonged deliberations and failure to formulate a viable scheme for 16 years resulted in cost escalation of ₹ 5165.23 crore which included budget support of ₹ 1643.84 crore provided to sustain the operations during this period.

(vi) The losses incurred by HMT Machine Tools exceeded its net worth in the first year (2000-01) of its operation. The Company was referred for disinvestment in the year 2002 for which an inter-ministerial group (IMG) was formed. Expression of interest was sought with Joint venture offer of equity holding up to 74 per cent, which received no response. Subsequently,

> *Reasons for sickness (HMT Machine Tools)*
>
> Inadequate working capital, high interest burden, obsolete technology, competition from imports, surplus manpower in non-core areas and non-induction of fresh technical talent.

Company submitted (September 2004) a draft revival plan to the Administrative Ministry which was forwarded to BRPSE in August 2005. However, GOI approved the plan only in February 2007 at a cost of ₹ 880.80 crore mainly due to delayed decision of merger of Praga Tools Ltd with the Company and delayed receipt of the views on the scheme from Ministry of Finance. The Company was also referred to BIFR in December 2005 and the cost of revival scheme approved (February 2007) by the GOI was enhanced to ₹ 971.83 crore in June 2008 by the BIFR.

Thus, revival scheme was approved after a delay of six years of the Company becoming sick in its very first year of operation.

(vii) ECL, which is a subsidiary company of Coal India Limited (CIL), was referred to BIFR in March 1997 when its accumulated losses exceeded its net worth. In the meanwhile, CIL carried out (1997-98) financial restructuring of the Company by converting its loan into equity (₹ 1179.45 crore) and as such the Company came out of the purview of BIFR as on 31 March 1998. However, due to its inherent operational problems, the Company continued to suffer losses and was thus again declared sick by BIFR in February 2001.

> ***Reasons for sickness (ECL)***
>
> Low productivity of underground mines, high rate of cess, extensive manual loading of coal requiring higher manpower, resistance by trade unions for transfer of surplus manpower from one mine to another etc.

The draft rehabilitation scheme (DRS) of ECL was circulated by BIFR in March 2004 to the stakeholders. However, against the prescribed time limit of 60 days for giving views on the DRS, the Administrative Ministry (Ministry of Coal) did not respond till November 2004 and thus BIFR sanctioned (November 2004) the revival plan on deemed consent basis[19].

But the Administrative Ministry did not agree (October 2006) to provide the grant of ₹ 304 crore for payment of Interim Relief (IR) wages as envisaged in the scheme taking a plea that Company had sufficient internal sources to this liability. Besides, the Ministry also did not implement the directions (November 2004) of BIFR regarding unconditional waiver of loan (₹ 519 crore) and conversion of current account balance[20] into equity (₹ 1532 crore) stating that the same would be granted after the Company achieves the scheme projections. BIFR pointed out (September 2006) and that the condition for grant of relief after achievement of the projected parameters was not in line with the approved scheme and would hamper the revival of the Company and thus directed the Ministry to submit a fresh revival plan which was submitted in August 2007. The same was still under deliberation in BIFR (March 2011).

[19] As per Section 19 (2) of SICA, every revival scheme shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of 60 days from the date of such circulation or within such further period, not exceeding 60 days, as may be allowed by BIFR, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

[20] Current Liabilities towards CIL (holding company)

Thus, due to divergent views of BIFR and the Administrative Ministry on the revival of the Company and inconclusive deliberations in BIFR, the revival scheme of the company has not reached its finality despite the elapse of more than 10 years from its sickness (February 2001).

(viii) BCL became sick in 1992 and was referred to BIFR which approved the scheme at a cost of ₹ 26.68 crore in October 1995. However, the scheme was declared unsuccessful by BIFR in January 2003 due to failure of timely technological upgradation and inadequate working capital, etc. Consequently, it was referred to BRPSE in February 2005 and a revival scheme was approved by GOI in January 2006. Hence, expenditure of ₹ 26.68 crore on BIFR scheme approved in October 1995 became infructuous due to unsuccessful implementation.

> ***Reasons for sickness (BCL)***
>
> Old technology, dependence on Railway, stiff competition, shortage of working capital, depletion of skilled manpower, non-diversification.

Thus, GOI approved a fresh scheme only after three years of declared failure of the revival scheme sanctioned by BIFR in 1995.

The Department of Public Enterprises (DPE) stated during the exit conference (November 2011) that timely approval of revival schemes can be achieved as it involved approval at the level of the Cabinet only. As far as JVs/ merger/ closure are concerned, it would not be possible to prescribe any time frame as the matters are decided by the High Courts/Parliament.

Audit emphasized that there is a need for treating the activities of revival schemes of sick CPSEs as project with specific start date and end date for a meaningful revival. BRPSE may have to play a more active role in monitoring the status of approval and implementation of revival schemes through web-based MIS.

DPE further added (November 2011) that guidelines have been issued (September 2011) to all the Administrative Ministries specifying that the timeline of 8 weeks for obtaining the approval of Cabinet on the recommendations of BRPSE should be adhered to. In case, the Administrative Ministry/ Department fails to do so within the upper time of 4 months, the concerned Ministry/ Department would have to bring a note citing the reasons for delay for the information of the Cabinet.

Audit further observed that the above guidelines were silent on the required timeline within which the sick CPSE or the Administrative Ministry should submit a revival proposal for consideration of BRPSE. In the absence of such a specific time frame prescribed for submission of revival or closure of the sick CPSEs, delay in referring the proposal to BRPSE would continue which would have consequential adverse impact on the financial health of the sick CPSEs.

4.5 Overlapping jurisdiction and lack of synergy amongst multiple agencies

In four[21] out of 10 cases examined in Audit, it was observed that there was no consensus among various agencies involved in approval of schemes as discussed below:

- As discussed in Para 4.4 (vii), the draft rehabilitation scheme (DRS) of ECL was circulated by BIFR in March 2004 to the stakeholders. However, due to no response from the Administrative Ministry (Ministry of Coal) till November 2004 BIFR sanctioned (November 2004) the revival plan on deemed consent basis. The Ministry did not implement the directions (November 2004) of BIFR regarding unconditional waiver of loan (₹ 519 crore), grant of ₹ 304 crore for payment of Interim Relief (IR) wages and conversion of current account balance into equity (₹ 1532 crore). BIFR pointed out (September 2006) that this would hamper the revival of the Company and also directed the Ministry to submit a fresh revival plan which was submitted in August 2007. The scheme was still under deliberation in BIFR (March 2011).

  Thus, due to divergent views of BIFR and the Administrative Ministry on the revival of the Company and inconclusive deliberations in BIFR, the revival scheme of the company has not reached its finality despite elapse of more than 10 years from its sickness (February 2001).

- As discussed in Para 4.4 (i) in March 1997, NEPA Ltd became sick and was referred to BIFR. On the directions of BIFR, GOI decided (March 1997) to sell the Company. However, the Parliamentary Standing Committee did not agree and instead recommended (November 2007) revival of the Company. Subsequently, the Company was referred to BRPSE for revival. The scheme has not yet been approved.

- Similarly, in NPCC, the scheme was approved in December 2008 on the recommendations of BRPSE. However, BRPSE recommendation for release of cash assistance of ₹ 60 crore for discharging dues and salaries of employees and GOI guarantee of ₹ 20 crore to facilitate the Company for bidding in new projects were not accepted by GOI. Consequently, net worth of the Company remained negative due to which it could not participate in bidding for new projects and was forced to work as a sub-contractor.

- As discussed in Para 4.4 (iii), BIFR approved a revival scheme for HEC in August 1996. However, due to late receipt of reliefs and concessions, the Company could not achieve the projections given in the revival package. BIFR ordered (May 2003) for change of management of the Company in response to which the Ministry submitted another revival proposal. As per the proposal, the major part of the finance was to be generated from the sale of Company's surplus land at Ranchi which could not materialise as the Government of Jharkhand did not give its consent for sale of land. Consequently, BIFR ordered (July 2004) for winding up of the Company. The Company and the Administrative Ministry filed (August

---

[21] *ECL, NEPA, NPCC and HEC*

2004) appeals before Appellate Authority/ Hon'ble High Court of Jharkhand for staying the order of BIFR which was finally quashed in November 2009 by the latter. Even before the High Court orders, a revival package was approved (December 2005) by GOI on the recommendations of BRPSE and the same was also implemented. Thus, there was lack of synergy amongst BIFR, State Government and GOI on the revival of HEC.

In brief, lack of synergy amongst various agencies led to delayed/non-implementation of the recommendations of the BIFR/BRPSE which ultimately had an adverse cascading impact on the revival of the sick CPSEs.

The Department of Public Enterprises stated (November 2011) that the composition of BRPSE is wide enough to cover all the agencies concerned with the revival proposals of sick CPSEs. All the proposals are discussed in details and decisions are arrived at by consensus. BRPSE has been constituted with a view to ensure transparency, independent decision-making and a broad consensus on the strategy for revival of sick CPSEs. Besides, there is a single layer i.e. the concerned Administrative Ministry/ Department which is responsible for preparing proposals for revival of its sick CPSEs, obtaining approval of the competent authority and its implementation and monitoring.

Audit however, noticed that there have been delays in approval of schemes as discussed above due to lack of synergy and divergent views amongst various agencies including BRPSE, State Governments, BIFR and GOI indicating the need for an authority empowered to finalise the proposals within definite timeframe. Further, despite its wide composition, the role of BRPSE is only recommendatory and passes through several layers from the respective Administrative Ministries to the Committee of Secretaries (COS), Planning Commission, Ministry of Finance and other Ministries. This makes the whole process open-ended due to which the revival decisions do not reach to their finality in a time-bound manner.

DPE stated that this issue can be addressed by a review of the existing policy framework.

In essence, the procedure followed for approval of schemes was time consuming due to involvement of multiple agencies like consultant, Company, Administrative Ministry, BRPSE/BIFR, Committee of Secretaries, other Ministries and Departments and Cabinet Committee on Economic Affairs.

The process involved prolonged deliberations at each stage, as a result, there were inordinate delays (upto 18 years) in the approval of schemes due to which the accumulated losses of these CPSEs increased by ₹ 15160.98 crore.

Gaps in Implementation of Revival Schemes

5.1 Delay in implementation and consequences

Audit observed that implementation of schemes in respect of four CPSEs was not completed as per the prescribed time schedule. The Table below indicates the delay in implementation of the schemes.

Table 5.1 – Status of implementation of schemes

CPSE	Scheduled completion date	Delay in implementation/ Present status
NTC	31 March 2011	Implementation yet to be completed
CCI	Phase I - March 2006 Phase II – March 2008	2 years (in case of Rajban unit) Implementation yet to be completed in respect of Tandur and Bokajan units.
ECL	2009-10	Implementation yet to be completed
HMT	Capex – 2008 VRS – 2009 Technology upgradation – 2010	Implementation yet to be completed Implementation yet to be completed Implementation yet to be completed

An analysis of the schemes in respect of the above CPSEs revealed the following deficiencies:

- In case of NTC, while examining the C&AG's Audit Report No. 27 of 2009-10, COPU observed that the Company could not achieve the precise objectives of modernization/ revival of mills and desired that effective and concrete steps should be taken by Ministry of Textiles to ensure proper implementation and realization of objectives of revival schemes within the proposed extended period (31 March 2011). However, the following items of work were still to be completed:

Table 5.2 – Status of implementation of scheme in NTC

Items of work	As per scheme	Actual completion
Modernization of mills	22	18
Construction of integrated textile/ handicrafts plaza at Ahmedabad and International trade tower at Mumbai	31 March 2011	Yet to start
Formation of Joint Ventures	18	5
Production of yarn (2009-10)	903 lakh kgs	298.75 lakh kgs
Production of clothes (2009-10	565.15 lakh meters	127.32 lakh meters

- As per the revival scheme of CCI, funds generated from sale of seven plants were to be utilised for expansion and up gradation of two plants (Tandur and Bokajan) and repayment of Government loans of ₹ 128.62 crore.

  The funds, however, could not be generated due to lack of consensus in valuation of assets between management and the valuer coupled with poor response from the bidders. Consequently, interest burden was increased by ₹ 112.80 crore upto March 2011.

- The revival scheme of ECL envisaged expansion of Rajmahal and Chuperbhita open cast projects by the end of 2009-10 for increasing the production. However, both these projects were not expanded so far (August 2011). As a result, the Company could produce only 78.15 MT of coal against the targeted production of 104.52 MT during the period 2005-06 to 2009-10.

  Management attributed the delay to cancellation of globally floated tender twice because of high rates quoted by the bidders and for want of project forestry clearance.

  Besides, the Revival Plan (November 2004) also envisaged that efforts would be made to make 17 unviable mines viable. The Company, however, was yet to take a decision though a period of six years had elapsed. The indecision of the management to close down the unviable mines has resulted in avoidable loss of ₹ 661.47 crore during 2008-09 and 2009-10.

  Management stated (May 2011) that each mine was being examined for its viability in consultation with the stakeholders and would be phased out if found uneconomical.

  The Company should have taken a prompt decision to avoid the recurring losses on unviable mines.

- The technology development programme for HMT Machine Tools was sanctioned at ₹ 80 crore to be released during a period of 4 years. The Company did not identify the JV partner/ overseas supplier for transfer of technology before seeking funds for acquisition of technology. Though the Company attempted to acquire technology only after approval of revival plan, it could not succeed and consequently no expenditure was incurred despite drawal of funds (March 2007) to the extent of ₹ 20 crore. This actually impacted on the operational strategy to modernize the plant and increase the productivity.

  While agreeing with audit, Management stated that efforts were being made to acquire the technology.

  Further, the implementation of Capex programme was also very slow as only ₹ 68.50 crore (76.11 per cent) had been utilized (upto June 2011) against the allotment of ₹ 90 crore for the purpose.

  Management attributed the delays to re-tendering of purchase orders, delay in compliance to the procedures for finalisation of procurement coupled with the long lead time.

  The reply is not convincing as the Company was required to take prompt action to make the revival successful in time bound manner.

5.2 Non Enforcement of Directives of BIFR

- In the revival package of HMT Machine Tools, BIFR directed the State Governments of Karnataka, Kerala, Andhra Pradesh, Rajasthan and Haryana and other departments/ PSUs to grant relief and concessions of ₹ 87.18 crore. The directives of BIFR were not complied with by banks and various State Government agencies against which an appeal was filed before Appellate Authority for Industrial and Financial Reconstruction (AAIFR) by the stakeholders. Only a sum of ₹ 4.62 crore has been recovered from various PSUs and the Company could not avail of the remaining benefit of ₹ 82.56 crore as envisaged in the plan.
- In case of ECL, as per the orders of BIFR, both the Governments of West Bengal and Jharkhand were required to waive off electricity duties of the Company for past five years. However, the Government of Jharkhand was yet to waive off these dues amounting to ₹ 10 crore till March 2011.

In order to address the issue of non-enforcement of the directives of BIFR, Audit sought for specific reply as to 'whether any steps have been taken by the GOI to ensure that the directives of BIFR are complied with by the State Governments' from the Department of Economic Affairs, GOI as advised by the Department of Public Enterprises. However, the response of the Department of Economic Affairs, GOI was awaited.

5.3 Non-rationalization of manpower

Five CPSEs (NTC, CCI, HOCL, ECL and HMT Machine Tools) were facing the problem of excessive manpower for which remedial actions were provided in the revival schemes. Out of these, two CPSEs (HOCL and NTC) could not implement these provisions effectively as discussed below:

a) The revival scheme of HOCL envisaged reduction in wage expenditure of ₹ 17 crore per annum by implementing VRS. Against the targeted reduction of 590 surplus employees, the Company could reduce only 83 employees and could save only ₹ 2.91 crore per annum.

   The Management stated (November 2010 & April 2011) that the VRS failed to attract the unskilled category of employees and another lucrative and attractive scheme was being introduced.

   In order to make the VRS successful, the scheme should be framed in consultation with the beneficiaries.

b) Though NTC had laid off 62575 employees upto 30.06.2011 incurring ₹ 2374.44 crore on Voluntary Retirement Scheme and Modified Voluntary Retirement Scheme (MVRS), the Company was still having 1018 surplus/ idle employees (March 2011). The revival schemes provided that the employees would have to opt for MVRS within three months failing which they would be eligible only for retrenchment compensation under the Industrial Disputes Act. However, the said clause was not invoked on these employees. The Company was thus incurring idle wages on such employees to the extent of ₹ 32.04 crore during 2009-10.

Management, while stating (January 2011) that retrenchment of manpower was difficult, informed that efforts were being made to reduce the idle manpower.

The Company should address the problem of idle manpower urgently in a time bound manner for long-term financial viability of the Company.

5.4 Inadequate working capital

5.4.1 Non-disposal of surplus/ idle assets by HOCL

In respect of HOCL, in order to generate funds for meeting working capital requirements, the consultant had recommended (February 2005) disposal of non-operating plants of book value of ₹ 29.79 crore at Rasayani lying idle for 9 to 18 years and another closed/ unviable project namely Polyurethane System worth ₹18 crore. These plants/projects are yet to be disposed off though a period of more than 6 years has elapsed.

The Management stated (April 2011) that though efforts were made for disposal of some of the idle plants during 2004-05, due to poor response, the company could not succeed and a separate committee had been constituted for disposal of idle plants.

The fact remains that six years is a considerable period of time for disposal of idle plants/ unviable project.

5.4.2 Non-provision of working capital in FACT

Against the requirement of interest free working capital of ₹ 450 crore, Department of Fertilisers issued letter of comfort for ₹ 400 crore to India Potash Limited to help the Company to source raw materials on credit during 2008-09. Similar letter of comfort was also issued to Minerals and Metals Trading Corporation for ₹ 100 crore for the year 2009-10. In these circumstances the working capital requirements were met through borrowings from the banks. As such the quantum of borrowings from banks increased from ₹ 238.47 crore in March 2006 to ₹ 652.82 in March 2010 with consequential increase in the interest burden on these borrowings which significantly contributed to the total operating loss of ₹ 719.02 crore.

Management admitted that all the measures envisaged for reviving the Company would have to be implemented to achieve the desired results; otherwise even the part measures taken would not be of any use.

5.4.3 Under mobilization of funds from transfer of land

As per the revival scheme, HEC was to mobilise fund of ₹ 1128.93 crore by transfer of land to Government of Jharkhand (GOJ). However, it could mobilize ₹ 1017.63 crore as only 1987.64 acres of land was transferred by the Company to GOJ against the proposed transfer of 2342 acres of land due to which the GOJ withheld an amount of ₹ 111.30 crore. Besides, the land was transferred at the rate of ₹ 36.44 lakh per acre as against ₹ 50 lakh per acre suggested by Hon'ble High Court of Jharkhand resulting in under valuation of land by ₹ 269.52 crore.

5.5 Non adherence to the selection criteria

Audit observed that for Revival of mills by NTC, initially 52 viable mills were to be modernized from its own sources as per revival schemes approved in 2002. However, the number of viable mills to be modernized was reduced to 22 mills while modifying the revival scheme in 2006. Out of the remaining 30 mills, 12 mills were to be closed and 18 mills were to be modernized through Joint Venture.

With regard to closing of 12 viable mills in NTC, **Parliamentary Standing Committee** recommended (May 2010), inclusion of these mills in the list of mills to be modernised without any further delay. However, Ministry stated that due to shortage of funds, revival of these mills was very difficult.

The 52 viable mills were situated in 15 states as detailed below:

Table 5.3 – Selection of mills for modernization by NTC

S.No.	Name of the State	No. of Viable Mills	No. of Mills selected for modernisation	Percentage
1	Tamil Nadu	8	6	75
2	Maharashtra	17	5	29
3	Kerala	5	4	80
4	Karnataka	2	1	50
5	Andhra Pradesh	2	0	0
6	Madhya Pradesh	2	2	100
7	West Bengal	3	1	33
8	Gujarat	2	1	50
9	Rajasthan	3	1	33
10	Punjab	2	0	0
11	Uttar Pradesh	2	0	0
12	Orissa	1	0	0
13	Bihar	1	0	0
14	Assam	1	0	0
15	Puducherry	1	1	100
	Total	52	22	

Out of these 52 viable mills, the Company was to select 22 mills based on the criteria such as (a) 15 best performing mills should be revived; and (b) 7 mills should be revived on the basis of spatial coverage. Examination of implementation revealed the following:

- The criteria of selecting best performing Mills (net contribution to wages ratio) were not adhered to as Sri Sarada Mills, Coimbatore Spinning and Weaving Mills and RBBA Mills were not selected for modernisation as best performing mills, though their performance in terms of net contribution to wages ratio was better than that of Podar Mills, Mumbai which was selected for modernisation as one of the best performing mills.
- The criteria of spatial coverage was not complied with as two mills of Mumbai (Tata Mills and India United Mill No.5) were selected although two other mills of Mumbai (Finlay mills and Podar Mills) were already included in the list of 15 best

performing mills and none of the viable mills of six States[22] were selected for modernisation.

Management stated that all the 22 mills were selected as per the directions of Ministry of Textiles (MOT).

- Though the land of Podar Mill, Mumbai was under dispute as the lease of the land had expired in September 1990 and the lessor had issued a notice of termination of tenancy rights in September 2000, the mill was selected for modernisation which was not a prudent decision.

  The Management stated that the status of the land was never a criterion for selection of units for revival.

  The status of land being an important factor should have been considered because any expenditure spent on disputed land would be wasteful in the event of eviction from the disputed land.

- Despite the fact that Punjab was one of the major cotton growing state and two viable mills (Kharar Textile Mills and Suraj Textile Mills) were available for modernisation and performance of these mills was better than Tata Mills and India United Mill No.5 of Mumbai as per list prepared (January 2005) by MOT, none of the mills from Punjab was selected for modernisation.

  The Management argued that these mills were left out as these were not performing well despite proximity to the cotton belts.

  The reply is not based on facts as the performance of both the mills of Punjab was better than Tata Mills and India United Mills No.5, Mumbai, Burhanpur Tapti Mills and New Bhopal Textile Mills, Bhopal and Arati Cotton Mills, Kolkata, which were selected for modernisation.

5.6 Ambiguity in the Agreement entered by the restructured Company with the new entities

Lease agreements with JVCs of NTC envisaged that use of mill land was restricted for operating, functioning and running the textile mill engaged in the business of manufacturing activities in textile sector. However, the surplus land was permitted to be utilised for any activity permitted under local laws including the right to sub-let the leasehold rights with the approval of BOD. The lease agreement also provided that the lessee should not under any circumstances whatsoever sub-let, assign or transfer part or whole of the mill land.

Audit observed that above clauses of the lease agreement was entered into with the JVCs without demarcating the mill land and the surplus land. Thus, in the absence of demarcation of land between mill land and surplus land, these clauses became inoperative. Ministry while accepting (October 2010) the ambiguities in the lease agreement, directed NTC to remove the same in consultation with JVs.

[22] Punjab, Uttar Pradesh, Orissa, Andhra Pradesh, Bihar and Assam

5.7 Non-achievement of objectives by Joint Ventures of restructured Company

The analysis of targets and achievements projected in the Business plans to be achieved during 2009-10 of the JVs of NTC indicates that five JVCs[23] were to generate employment for 6067 persons against which they could generate it only for 448 persons. Further, these five JVs were expected to earn a profit of ₹ 131.78 crore against which the actual profit earned was only ₹ 28.87 crore (deficit of 78.09 per cent) during 2009-10. Thus both, the social objective of employment generation and commercial objective of earning profit as envisaged remained largely unachieved.

Management stated that due to recession coupled with heritage issue the business plan as envisaged could not be implemented. It was further stated that JVCs have started implementing the business plan and new machinery has now been erected and commissioned in all the five JVCs and the commercial production has started within the non-heritage area.

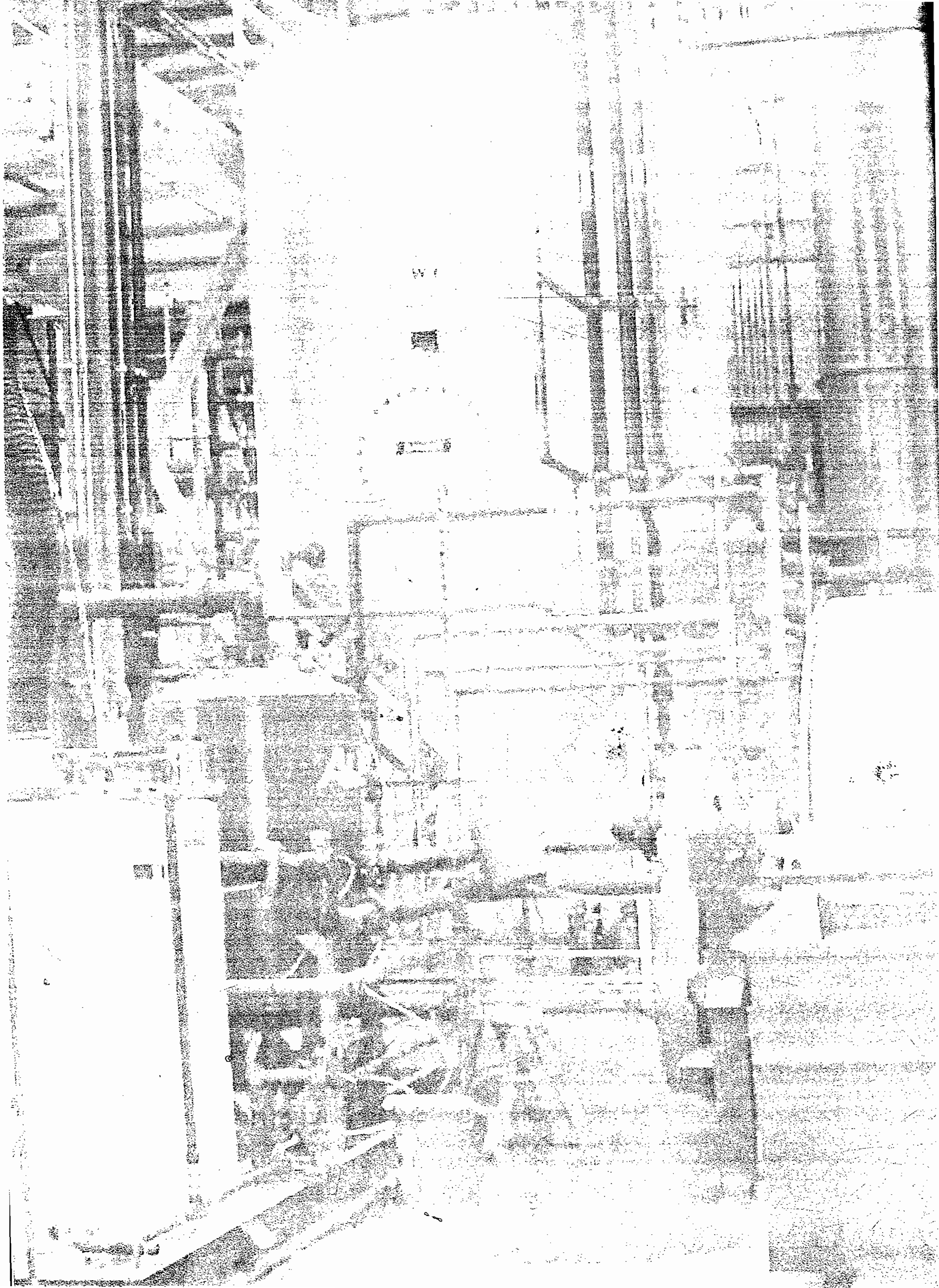
However, the fact remains that the JVCs could not achieve the social and commercial objectives even after more than three years after the formation of JVCs.

In essence, there were delays in implementation of schemes in four CPSEs (NTC, CCI, ECL and HMT) which had an adverse cascading impact on revival of companies. In HOCL and NTC, the rationalization of manpower was yet to be completed. HOCL was facing working capital crunch as it failed to mobilize the required financial resources from sale of idle assets. Similarly, HEC also could not generate resources from sale of surplus land. The JVCs of NTC failed to generate employment and profit as envisaged in their business plans even after three years of their formation.

Thus, CPSEs could not turnaround because of gaps in the implementation of revival schemes.

---

[23] *India United Textile Mills Limited, Apollo Design Apparel Parks Limited, Goldmohur Design and Apparel Park Limited, New City of Bombay Mfg. Mills Limited and Aurangabad Textiles and Apparel Parks Limited*



Impact Assessment

6.1 Non-achievement of targets

The revival schemes were sanctioned with the basic objective of making the sick CPESs turnaround in a time bound manner. Achievement of targets set out in the revival schemes is, therefore, a pre requisite for success of the revival schemes. Audit, therefore, analysed as to how far the targets set in the revival schemes were achieved by these nine CPSEs selected for Audit.

The table below indicates the targets of turnover and profitability set in the schemes and the actual achievements by these selected CPSEs:

Table 6.1 – Targets vs. Achievements

(₹ in crore)

PSU	Year	Sales			Net Profit (Loss)		
		Target	Actual	Deviation (%)	Target	Actual	Deviation(%)
NTC	2007-08	616.69	483.99	(21.52)	(182.36)	(510.19)	(179.77)
	2008-09	1126.29	416.67	(63.00)	42.33	4179.43	977.34
	2009-10	1454.69	486.53	(66.55)	176.41	103.13	(41.54)
	2010-11	1454.69	636.92	(56.22)	209.20	1429.45	583.29
NPCC	2007-08	912.60	729.43	(20.07)	31.87	(36.62)	(214.90)
	2008-09	1186.38	841.04	(29.11)	53.11	(28.69)	(154.02)
	2009-10	1542.29	1005.62	(34.80)	85.83	31.29	(63.54)
	2010-11	-*	1077.69	-	-*	28.53	-
HOCL	2007-08	699.79	571.43	(18.34)	28.48	15.29	(46.31)
	2008-09	719.08	546.54	(23.99)	20.13	(26.13)	(229.81)
	2009-10	719.08	478.63	(33.44)	30.72	(84.32)	(374.48)
	2010-11	738.07	667.35	(9.58)	(15.88)	25.71	261.90
BCL	2007-08	103.72	51.20	(50.64)	18.41	0.61	(96.69)
	2008-09	106.37	67.88	(36.19)	19.10	1.71	(91.05)
	2009-10	109.02	127.61	17.05	19.88	2.07	(89.59)
	2010-11	-*	169.71	-	-*	7.65	-
CCI	2007-08	223.57	342.63	34.75	314.25	40.89	(86.99)
	2008-09	312.01	363.89	16.63	61.19	52.55	(14.12)
	2009-10	351.92	361.73	2.79	71.39	52.75	(26.11)
	2010-11	351.92	302.03	(14.18)	71.02	27.13	(61.80)
ECL	2007-08	3116.73	3188	2.29	239.08	(1030)	(530.82)
	2008-09	3285.64	3837	16.78	329.17	(2109)	(740.70)
	2009-10	3550.76	5228	47.24	435.27	333	(23.50)
	2010-11	3693.93	5883	59.26	366.39	106.57	(70.91)
HMT	2007-08	320	232.67	(27.29)	(10.25)	(40.49)	(295.02)
	2008-09	375	180.82	(51.78)	10.53	(37.16)	(452.90)
	2009-10	450	193.86	(56.92)	34.38	(45.80)	(233.22)
	2010-11	475	190.90	(59.81)	33.39	(93.06)	(378.71)
HEC	2007-08	360	412.92	14.7	1.26	4.17	230.95
	2008-09	465	453.87	(2.39)	6.16	18.37	198.21
	2009-10	550	528.53	(3.9)	21.55	44.27	105.43
	2010-11	700	681.21	(2.68)	36.80	38.14	3.64
FACT	2007-08	1617.55	898.51	(44.45)	14.27	8.97	(37.14)
	2008-09	1617.55	2174.02	34.40	13.94	(42.95)	(408.11)
	2009-10	1617.55	2159.53	33.51	14.35	(103.83)	(823.55)
	2010-11	1617.55	2521.13	55.86	16.18	(49.32)	(404.82)

*** No targets were provided for the year 2010-11**

Brackets indicate negative figures

As is evident from the table above that:

(a) Achievement of sales and net profit targets in respect of four CPSEs (BCL, CCI, ECL and HEC) has improved over the years. The shortfall in net profit was seen only in ECL and CCI. The profitability in BCL and HEC has substantially improved.

(b) In the remaining 5 CPSEs, the targets could not be achieved as discussed below:

- HMT Machine Tools failed to achieve the target of sales and net profit set for the years 2007-08 to 2010-11. The shortfall in sales ranged between 27.29 to 59.81 per cent and in Net Profit the shortfall ranged between 233.22 to 452.90 per cent.

- Similarly, NPCC whose revival scheme was implemented in 2008-09 also failed to achieve the targets fixed for 2008-09 and 2009-10. The shortfall in sales and net profit varied from 29.11 to 34.80 per cent and 63.54 to 154.02 per cent respectively.

- NTC could not achieve sales targets in any of the years from 2007-08 to 2010-11 and the shortfall ranged between 21.52 per cent to 66.55 per cent. The increase in the profit of the company in the years 2008-09 and 2010-11 was not due to improvements in operational efficiencies but was due to sale of land and other assets and waiver of outstanding interest, etc.

- HOCL could not achieve the sales and net profit targets in any of the years from 2007-08 to 2009-10. The company, however, achieved net profit target during 2010-11 which was mainly due to imposition of anti-dumping duty by GOI on Phenol and Acetone (products being manufactured by HOCL) in April 2010.

- Despite achieving the target of sales during 2008-09 to 2010-11, FACT had incurred losses against targeted net profit which varied between 37.14 per cent and 823.55 per cent.

In brief, out of the nine CPSEs, targets of sales and net profit as envisaged in the revival schemes could be achieved only by four CPSEs (BCL, CCI, ECL and HEC). The remaining five CPSEs (HOCL, NTC, FACT, NPCC and HMT Machine Tools), could not achieve the targeted net profit from ordinary course of business indicating only a limited success of revival schemes in these cases. The revival schemes for nine CPSEs reviewed in audit could only achieve ₹ 332.56 crore of profit as against the projected profit of ₹ 889.78 crore.

6.2 Sustainability of the Operations

An exercise was made in Audit to evaluate the sustainability of the 9 CPSEs on three parameters namely net worth[24], operating profit and turnover. The degree of revival for the nine CPSEs and the extent to which these companies have behaved in their financials is detailed below.

Table 6.2 – Financial performance of the CPSEs

(₹ in crore)

PSU	Parameter	2006-07	2007-08	2008-09	2009-10	2010-11	Remarks
NTC	Net worth	(6916.36)	(7426.54)	155.50	258.74	1855.43	Implementation was started in 2006-07.
	Turnover	502.04	483.99	416.67	486.53	636.92	
	Operating Profit	(117.51)	(50.15)	(70.46)	(108.35)	(75.71)	
NPCC	Net worth	(731.61)	(768.23)	(796.94)	(118.74)	(90.23)	Scheme was implemented in 2008-09.
	Turnover	721.94	711.53	825.56	991.11	1077.69	
	Operating Profit	(29.46)	14.12	9.03	34.96	29.71	
HOCL	Net worth	158.65	172.25	146.77	63.56	90.27	Implementation was started in 2006-07
	Turnover	591.25	666.59	620.90	520.71	738.03	
	Operating Profit	70.59	60.66	23.16	(34.57)	72.35	
BCL	Net worth	6.16	6.72	10.10	10.66	16.79	Scheme was implemented in 2006-07
	Turnover	54.71	51.20	67.88	127.61	169.71	
	Operating Profit	6.37	9.28	8.68	7.80	12.39	
CCI	Net worth	(363.43)	(319.04)	(266.93)	(213.61)	(185.36)	Implementation was started in 2006-07
	Turnover	325.72	342.63	363.89	361.73	302.03	
	Operating Profit	214.36	86.37	100.83	99.15	71.61	
ECL	Net worth	(2926)	(4240)	(6349)	(6016)	(5908.97)	Implementation was started in 2004-05
	Turnover	3518	3188	3837	5228	5882.60	
	Operating Profit	20	(1088)	(2182)	125	107.58	
HMT	Net worth	80.56	57.73	26.91	(18.87)	(111.91)	Implementation was started in 2007-08
	Turnover	225.01	232.67	180.82	193.86	190.90	
	Operating Profit	(31.22)	(1.17)	(19.40)	(38.40)	(85.37)	
HEC	Net worth	(636.76)	(636.33)	(463.18)	(339.18)	(300.17)	Implementation was started in 2005-06
	Turnover	303.90	412.92	453.87	528.53	681.21	
	Operating Profit	(11.48)	(0.17)	19.58	30.10	39.06	
FACT	Net worth	251.57	251.80	294.85	191.89	141.69	Scheme was implemented in 2006-07
	Turnover	1469.39	873.96	2128.66	2105.92	2521.13	
	Operating Profit	(127.74)	(190.81)	(178.04)	(103.70)	(41.12)	

Analysis of the post-implementation performance in audit revealed that:

(a) In three CPSEs (NPCC, BCL and HEC), all the three parameters of net worth, turnover and operating profit were showing improvement over the years. As such, it can be concluded that the revival schemes had positive impact on the operations of these CPSEs.

---

[24] *Net worth = Paid-up share capital + Reserves and Surplus – Accumulated Losses. The total accumulated losses of the nine CPSEs stood at ₹18914.57 crore upto 2009-10.*

(b) The ECL, the net worth and turnover showed improvement during 2008-09 to 2010-11. The Company also earned operating profit in 2009-10 and 2010-11.

(c) Net worth and turnover of NTC improved during 2008-09 to 2010-11 mainly due to waiver of outstanding GOI loans of ₹ 3402.62 crore, the outstanding interest of ₹ 2727.13 crore and generation of extraordinary income from sale of land. The company has been consistently incurring operating losses which is detrimental for the long term survival of the Company. Hence, the revival scheme has contributed towards improving of net worth and not the operational efficiency of the Company.

(d) HOCL has improved its net worth and the operating profits have also been improved though it was mainly because of imposition of anti-dumping duty by GOI as stated earlier.

(e) CCI has improved its net worth over the years due to waiver of loans/ interest but the operational efficiency i.e. turnover and operating profit were declining during the period 2008-09 and 2010-11. Despite the fact that cement industry witnessed growth during this period due to boom in infrastructure sector, the Company's growth was still showing a declining trend.

(f) In FACT, though the turnover was increasing during 2008-09 to 2010-11, the Company was still suffering operating losses and consequential decrease of the net worth. Hence, the revival package had little impact on the operational efficiency of the Company.

In addition, **Standing Committee of Parliament on Labour** in its 13th report of August 2010 observed that though HMT (machine tools) was given a revival package of ₹ 880.80 crore in February 2007, the company could not turnaround towards the path of profit making. The committee recommended that in order to make the company viable, it would be essential to integrate the various units of the organisation with the other establishments of the GOI like BHEL, NTPC, HAL, IAF, Railways etc. In reply Ministry stated that a proposal for merger of Company with Heavy Engineering Corporation Ranchi is being explored. However, no progress in this regard is noted by the Audit.

In conclusion, the revival schemes have positive impact on the operations of four CPSEs (NPCC, BCL, HEC, ECL) and these were on the path of revival. In case of two CPSEs (CCI, and HOCL), though revival schemes have some positive impact on their operations, their performance was not at the satisfactory level and their revival in long-term remains to be seen. In the remaining three CPSEs (NTC, HMT Machine Tools and FACT) the revival package had little impact on their operations, as these companies could not generate operating profits. Their operating profits remained negative even after implementation of revival schemes. The net worth of NTC Ltd turned positive due to substantial inflow of funds from sale of land. The net worth of HMT Machine Tools Ltd., which was positive, eroded considerably after implementation of revival scheme mainly due to delay in implementation of capex and technological upgradation programmes. The net worth of FACT was decreasing due to operating losses and it may turn negative if this trend continues.

Chapter 7

Conclusion and Recommendations

Conclusion

7.1 There is no single legislation in India providing for a systematic and cohesive system for rehabilitation and liquidation of enterprises including CPSEs. A number of legislations and regulations comprise the insolvency framework for commercial enterprises. While many financial sector laws have undergone massive transformation after the liberalisation of the Indian economy, the insolvency law remains outdated. Both, the winding up of companies under the Companies Act and rehabilitation under SICA remain cumbersome and long-drawn resulting in locking of huge national resources in these proceedings.

7.2 Absence of an efficient, speedy, predictable and transparent legislative framework for restructuring and revival has deprived the CPSEs from turn around and reallocation of their productive resources. BIFR was established for speedy determination of sickness and expeditious revival of potentially sick units or closure of unviable units. However, BIFR failed in achieving its objectives due to its inherent weaknesses and other reasons discussed in the report. Similarly, BRPSE was also established in December 2004 with the objective of strengthening and reviving sick CPSEs. Under BRPSE, procedural delays still persist due to consultation at multiple layers, protracted correspondence, prolonged deliberations, lack of consensus amongst different parties and lack of enforceability of the decisions. In essence, the existing legislative and operational framework was found to be inadequate to effectively address the problems of sickness in CPSEs.

7.3 The managements of CPSEs are heavily dependent on the GOI for taking number of key decisions. A number of approvals are required. There is a direct inter-action by DPE and ownership entity with management in a number of areas. In fact, such mechanism should also provide an efficient and timely manner of responding to assistance in preparation of revival schemes, their approval and implementation. Where revival is considered not feasible an early decision will help in realizing maximum value of assets by its reallocation in economy by speedy liquidation. In order to deal with the complexity of sickness in CPSEs, there is a need for a policy framework laying down detailed guidelines on the procedure/criteria to be followed for:

- determination/ identification of loss-making/sick CPSEs including non-revivable companies;
- revival/restructuring, disinvestment/sale/privatisation, exit/closure, etc. of sick CPSEs;
- planning/formulation, appraisal and approval of proposals; and
- implementation and monitoring of compliance.

7.4 There is an urgent need for strategic readjustment and restructuring of distressed and potentially sick CPSEs. Many CPSEs have failed to adapt to the new dynamics of doing business. CPSEs are prevalent in key utilities and infrastructure industries, such as railways, posts, ports, transport, defence, telecommunication, whose performance is of great importance to broad segments of population and to other parts of the business sector. Their governance is thus, critical to ensure their positive contribution to a country's overall economic efficiency and competitiveness. CPSEs can be a major contributant to the Indian economy and beneficiary to the government. In recent times there has been significant increase in the dividends and contributions made by CPSEs to state exchequer. This can multiply manifold if the CPSEs were to be governed on established corporate governance principles. This money can contribute immensely into building of infrastructure of the country easing tax pressure on citizens. It is in the governments and the public's interest that all these categories of CPSEs are professionally run and apply good governance practices. CPSEs that are potentially sick should be identified. An urgent in-depth review of the governance of CPSEs may be undertaken to prevent insolvency in potentially sick CPSEs and provide an efficient resolution of sick CPSEs. A holistic and fast-track approach should be adopted for the resolution of the problems that are causing sickness. Similarly a careful review of the sick CPSEs should also be undertaken.

7.5 As against BRPSE, the CDR framework has emerged as an effective out of court workout mechanism. CDR mechanism has worked well since inception. Its provisions were relaxed recently to enable enhanced access to the scheme. Since inception, CDR has approved 215 corporate cases for restructuring with a cumulative debt of ₹ 104299 crore. As per the statistics available on 30th June, 2010, the CDR has witnessed an increased inflow of cases seeking debt restructuring after the global and domestic economic slump.

The system has the following strengths:-

- CDR system is a voluntary mechanism which is outside intervention, judicial or otherwise but operates on the guidelines issued by Reserve Bank of India.
- There's no requirement of the borrower's account being a NPA or the borrower company being sick company under SICA or being in default for a specified period before reference to the CDR system.
- Another positive aspect of CDR mechanism for the borrowers is that the debts with high rate of interest can be transferred to lenders with a lower rate and potentially over prolonged payment terms.
- The interest of creditors under the 'doubtful' category is protected because it is not binding on such creditors to take up additional financing.
- Providers of additional finance, whether by existing creditors or new, have a preferential claim, over the providers of existing finance with respect to the cash flows out of recoveries, in respect of the additional exposure.
- CPSEs should be encouraged to participate in the CDR mechanism.

7.6 The revival scheme of ten CPSEs analysed in audit revealed that there were inordinate delays in approval of the schemes as no timeline was fixed for approval by BIFR. The delays ranged from one to 18 years. Interestingly, the revival scheme of NEPA Ltd could not be finalized even after a lapse of 14 years from its sickness. There was lack of synergy amongst various agencies involved and the financial measures and commitments of various parties could not be effectively enforced under the existing operational framework. As a result, the sick CPSEs could not reap the full benefits from the schemes. In respect of BRPSE, although there was a timeline of 8 weeks for the Administrative Ministries to obtain approval of the Cabinet on the recommendations of BRPSE, there was no timeline within which the sick CPSEs or the Administrative Ministries should submit the revival proposals for the consideration of BRPSE.

7.7 The designs of the schemes were not adequately structured as these basically involved financial restructuring only. Major portion of the funds ₹ 20,160.68 crore (about 72 percent) were marked for financial restructuring such as waiver of loans and interests, conversion of loans into equity and settlement of dues. In fact, a very small proportion ₹ 4174.03 crore (15 per cent) of the package was allocated for modernization and, diversification for long term sustainability of the operations of these CPSEs. Thus, the schemes did not address the core issues of sickness which would have yielded the sustainable revival of these companies. Further, in three CPSEs (NTC, CCI and HEC) where the revival schemes were to be financed primarily from sale of surplus land, no alternative strategies, in any eventuality, to fund the schemes were proposed.

In addition to financial restructuring more operational restructuring should be encouraged. Financial restructuring involves the evaluation of the business cash flow capabilities and determination of the optimum capital structure required to balance cash flow availability with debt service requirements. But the speed with which non performing loans (NPLs) are getting resolved has been rapidly decreasing in individual countries. Once they are resolved through out-of-court workouts or other restructuring measures, a substantial proportion of NPLs have reverted to their non-performing status, and that new non-performing loans have been generated. Operational restructuring involves increase in economic viability through methods such as merger integration, sale of divisions, rationalization of product lines and cost-cutting measures. It includes sale of non core business and assets to reduce debt levels, reduction of large employment and production capacity and changing the lines of business. Therefore, operational restructuring would lead to a better working of the debt restructuring mechanism.

7.8 Audit observed several gaps in the implementation of the schemes. Four CPSEs (NTC, CCI, ECL and HMT) suffered from time overrun up to three years. Further, though the schemes of two CPSEs (HOCL and HEC) proposed for sufficient financial arrangements and working capital, there was substantial shortfall in generating funds due to non disposal of surplus assets. In NTC and HOCL, manpower rationalisation was not carried out effectively. As a result, NTC had to bear idle wages of ₹ 32.04 crore annually and HOCL could not achieve the saving target of ₹ 14.09 crore annually due to failure to introduce attractive VRS scheme.

7.9 Out of the nine CPSEs, targets of sales and net profit as envisaged in the revival schemes could be achieved only by four CPSEs (BCL, CCI, ECL and HEC). The remaining five CPSEs (HOCL, NTC, FACT, NPCC and HMT Machine Tools), could not achieve the targeted net profit from ordinary course of business indicating only a limited success of revival schemes in these cases. The revival schemes in respect of nine CPSEs reviewed in audit could achieve ₹ 332.56 crore of profit as against the projected profit of ₹ 889.78 crore.

7.10 However, Audit noticed that the revival schemes also did have a positive impact on the operations of four CPSEs (NPCC, BCL, HEC, ECL) which were on the path of revival. In case of two CPSEs (CCI and HOCL), though revival schemes have indicated positive impact on their operations, their performance was not at the satisfactory level and their long-term revival remains to be seen. In the remaining three CPSEs (NTC, HMT Machine Tools and FACT) the revival package had little impact on their operations, as these CPSEs could not generate operating profits. Their operating profits remained negative even after implementation of revival schemes. The net worth of NTC Ltd turned positive due to substantial inflow of funds from sale of land. The net worth of HMT Machine Tools Ltd., which was positive, eroded considerably after implementation of revival scheme mainly due to delay in implementation of capex and technological upgradation programme. The net worth of FACT was decreasing due to operating losses and it may turn negative if this trend continues.

7.11 The GoI has recently introduced Companies Bill, 2011 in the Parliament which provides for rehabilitation and liquidation of Companies under the same roof. The Bill vests the jurisdiction to deal with the rehabilitation and liquidation of companies in a neutral independent forum, NCLT with appeal to NCLAT. Even though significant improvement is expected in the corporate restructuring and liquidation regime after the Companies Bill, 2011 is passed by the Parliament, many policy gaps and legislative deficiencies remain in the restructuring and liquidation framework. It is important to address these gaps and weaknesses to capture the key objectives and provide a comprehensive insolvency framework which can function efficiently and meet needs of sick or potentially sick enterprises including CPSEs and other stakeholders operating in a fast modernizing economy. Some gaps and deficiencies are discussed in the report.

7.12 In fact, absence of a well-developed institutionalized discipline of insolvency profession has deprived the stakeholders from engagement of insolvency experts in the process. According to UNCITRAL Legislative Guide, where a jurisdiction has a well-developed cadre of insolvency professionals, who ascribe to the highest standards, together with the appropriate oversight, the insolvency system should function effectively, efficiently and in a timely manner. A competent and recognized insolvency profession can overcome gaps in the legislative framework and make the system work for the benefit of all.

Recommendations

Based on the performance audit conducted, the following recommendations are made:

(i) GOI should consider formulating a new policy framework to address:

- *(a) Early identification of sickness in CPSEs;*
- *(b) Timely formulation of proposals for revival/closure;*
- *(c) Better synergy between the various national agencies involved in the revival or closure exercise; and*
- *(d) Effective monitoring mechanism of scheme implementation.*

(ii) GOI may consider formulating operational modalities for reference of sick/ loss making CPSEs to the NCLT for revival/ rehabilitation.

(iii) There is an urgent need for an appropriate mechanism with certain, predictable and transparent guidelines, operating in a timely manner, empowered with a single point decision–making authority to effectively deal with the problems of sick/loss-making CPSEs.

(iv) There is a need to develop and institutionalize the discipline of insolvency profession. In most sophisticated economies the profession of insolvency is highly sophisticated and well-developed.

(v) The existing framework for revival of sick CPSEs may be reviewed to ensure that formulation, approval and implementation of revival schemes are carried out in a time bound manner.

(vi) The deficiencies identified in the Companies Bill may be suitably addressed.

New Delhi
Dated : 30th March, 2012

(ARVIND K. AWASTHI)
Deputy Comptroller and Auditor General
and Chairman, Audit Board

Countersigned

New Delhi
Dated : 30th March, 2012

(VINOD RAI)
Comptroller and Auditor General of India

ANNEXURES

Annexure I

Impact of sickness on the CPSEs selected for audit

Impact of sickness of the CPSEs on debt management and employment:

S.No.	Name of the CPSE	Impact of sickness
1.	**NTC**	Due to sickness, 77 mills (out of 119 mills) had to be closed down. Upto 30.06.2011, 62575 employees were relieved under VRS after incurring an expenditure of ₹ 2374.44 crore. The negative net worth and continuous cash losses had adversely affected the Company's ability to repay debts and service loans. The total borrowings (including interest) at the time of first approval of its revival scheme in 2002 had accumulated to ₹ 8174.43 crore.
2.	**HOCL**	Due to sickness, it was envisaged that 590 surplus employees would be relieved under VRS. However, only 83 employees opted for VRS and compensation paid on this account was ₹ 10.49 crore. The company had outstanding bonds and public deposits and overdue interest thereon, seriously affecting the liquidity position. Further, the borrowings of the Company for implementing VRS carrying interest rate of 12.25 per cent were offsetting the savings in salary of the VRS employees. Since the company was incurring cash losses, it was not in a position to repay the debts which had accumulated to ₹ 455.36 crore at the time of sickness. This had serious repercussions like complaints from the investors, and threat for filing winding up petitions. Due to non payment to suppliers, the supply of the raw materials and services was also seriously affected.
3.	**CCI**	Due to sickness, all the 7 non-operating units have been closed and 3374 employees separated under VRS/ VSS. The surplus employees could not be relieved in one unit (Adilabad) where a status quo order was passed by High Court. Due to paucity of funds, CCI was not able to generate sufficient funds for working capital, its net worth became negative and it was not able to service the then existing loans. The total borrowings (including interest) at the time of

		sickness were ₹ 590.65 crore which had increased to ` 882.88 crore at the time of approval of scheme. Besides, consequent to sickness, banks and financial institutions had to waive off interest payable by CCI amounting to ₹ 112.16 crore.
4.	**HMT Machine Tools**	Non-revision of wages has resulted in de-motivation/ low morale of employees. As superannuation age has been retained at 58 years instead of 60 years, skilled and qualified personnel are retiring early and the Company has lost their services. 4320 employees were relieved under VRS and compensation of ₹ 329.55 crore has been paid. The Company is utilising cash credit facility from banks and also availing loans from GOI. The Company has not been able to repay debts/ service loans obtained from GOI. The total borrowings (including interest) at the time of sickness had accumulated to ₹ 324.46 crore.
5.	**ECL**	Since declaration of sickness, 23299 employees have been relived under VRS after incurring an expenditure of ₹ 678.76 crore. The total borrowings of the company at the time of sickness had accumulated to ₹ 1014.30 crore.
6.	**FACT**	There was no impact upon employment in FACT Ltd as a result of sickness since no employee retrenchment scheme was formulated by the Company consequent to its sickness. Sickness adversely affected the debt service ability of the company. At the time of sickness, the borrowings stood at ₹ 867.37 crore including bank loans of ₹ 176.57 crore.
7.	**BCL**	Number of employees came down from 2671 in 1999-2000 to 546 in 2005-06 and to 412 in 2010-11. The same was possible based on implementation of roll back of retiring age from 60 years to 58 years through which 809 employees retired in 2000-01. Secondly, VRS was implemented on eight occasions during 2001-02 to 2004-05 through which 815 employees were relieved. The roll back and VRS were financed through Non-plan loans provided by the GOI amounting to ₹ 41.79 crore. The total borrowings (including interest) at the time of sickness had accumulated to ₹ 7155.32 crore.
8.	**HEC**	Due to sickness, 9007 employees had to be relieved under VRS after incurring an expenditure of ₹ 193 crore.

		Sickness adversely affected the borrowing position of the Company, its ability to service loans and pay debts. Total borrowings (including interest) at the time of sickness were ₹ 294.99 crore which further increased to ₹ 627.79 crore in 1996 when a scheme was sanctioned by BIFR. The borrowings further increased to 1116.29 crore in 2005 when a fresh revival scheme was approved by GOI.
9.	**NPCC**	Due to sickness, wage revision to workmen due from 1997 could not be done. Provident fund dues and other dues of the employees could not be deposited timely with concerned authorities. Employees numbering 115, 109 and 29 were retrenched/ relieved under VRS in the year 2005-06, 2006-07 and 2007-08 respectively after incurring expenditure of ₹ 10.04 crore. After the approval of scheme in December 2008, wage revision with effect from July 2007 was implemented in 2010-11. Besides, sickness in NPCC resulted in accumulation of GOI loan of ₹ 235.23 crore with interest of ₹ 434.65 crore. Further, due to sickness, banks and financial institutions had to waive off loans of ₹ 13.55 crore and interest of ₹ 33.98 crore.
10.	**NEPA***	After the company was referred to BIFR in September 1998, the recruitment has been stopped at all levels except at statutory posts. This has created vacancy on most of the hierarchy and has adversely affected the administration and performance of the company. After the company became sick, 1511 employees were relieved under VRS. The company has taken loan from GOI to pay the salary, VRS and for civil works of the Company. The Company is facing scarcity of funds from 1998 due to which it is unable to repay the interest as well as principal amount of loan raised from GOI. For meeting salary and VRS expenditure, the Company from time to time has been receiving non-plan loan from GOI. The GOI loans outstanding at the time of sickness were ₹ 5.00 crore which increased to ₹ 224.22 crore as on 30.11.2011 with an outstanding interest of ₹ 303.81 crore.

* Revival scheme is pending for approval from GOI.

Annexure II

Ministry-wise break-up of the CPSEs selected for Performance Audit

S.No.	Ministry/ Department	No. of sick CPSEs whose revival schemes were approved by GOI	No. of sick CPSEs selected	Names of sick CPSEs selected
1.	Agriculture	1	0	-
2.	Chemicals & Fertilisers	5	2	HOCL, FACT
3.	Coal	1	1	ECL
4.	Heavy Industries	15	3	CCI, HEC, HMT(MT)
5.	Housing & Urban Poverty Alleviation	1	0	-
6.	Mines	2	0	-
7.	Railways	3	1	BCL
8.	Science & Technology	1	0	-
9.	Shipping	1	0	-
10.	Steel	2	0	-
11.	Textiles	2	1	NTC
12.	Water Resources	1	1	NPCC
	TOTAL	**35**	**9**	

Annexure-III

RECOMMENDATIONS OF COMMITTEE ON PUBLIC UNDERTAKINGS (COPU) ON PERFORMANCE AUDIT REPORT ON "SALE OF SURPLUS LAND AND BUILDINGS BY NTC LTD"

1. National Textile Corporation Limited (Company) incorporated with the main objective of managing the affairs of sick textile undertakings taken over by the Government of India (GOI), was managing 119 textile mills through its nine subsidiaries. Of these, eight subsidiaries were declared sick between 1992 and 1994 under the Sick Industrial Companies (Special Provisions) Act, 1985. In the year 2002, the Board for Industrial Finance and Reconstruction (BIFR)/GOI approved revival scheme for these sick subsidiaries envisaging modernization of 53 viable mills and closure of 66 unviable mills at an estimated cost of ₹3937 crore. The scheme was self-financing and the funds realized from sale of surplus assets of NTC mills were to be utilized for revival/ modernization. However, this scheme could not be implemented, as envisaged, due to non-availability of funds through sale of surplus assets mainly on account of delay in getting the permission for sale of land of the mills from the State Governments concerned and implementation period of the scheme was extended from 31st March, 2004 to 31st March, 2006. Meanwhile, the remaining one subsidiary of the Company was also declared sick in December, 2005 and a modified rehabilitation scheme (MS-2006) costing ₹5267.56 crore was submitted to BIFR in January, 2006 which was approved in March, 2006. The implementation period of MS-2006 was upto 31st March, 2008. The Committee's examination has revealed that the Company could not achieve the precise objectives of modernization/ revival of mills, reduced mannpower strength and sale of surplus assets as envisaged in the modified scheme even after extension of implementation period for a further period of one year under another modified scheme of 2008 approved by BIFR. Although the Company is stated to have generated ₹4034.60 crore by sale of assets of the closed mills and surplus assets of the viable mills upto 30th September, 2009, the fact remains that the process of revival/modernization and the sale of almost half of surplus land of NTC mills is yet to be completed. Obviously, the Company and the administrative Ministry have failed to identify the weak spots in the implementation of the scheme from every possible angle despite grant of extension of implementation period from time to time under modified schemes. Now that a proposal for extension of revival scheme upto 31st March, 2011 is stated to be under consideration for approval of the Union Cabinet, the Committee desire that effective and concrete steps should be taken by the Ministry of Textiles to ensure proper implementation and realization of objectives of the revival scheme within the proposed extended period.

2. The Committee note that the revival scheme for NTC envisaged compliance of BIFR/GOI guidelines and instructions issued by the Company for sale of surplus land and buildings. The process of sale was to be operated in such a manner as

to generate maximum resources for the revival plan and to ensure that the sale was conducted in a transparent and fair manner. The findings contained in the Audit review covering the sale of surplus land and buildings between 1st April, 2002 and 31st March, 2008 in six of the nine sub-offices of the Company and further examination of the subject matter by the Committee have brought out several inadequacies in the systems and procedures adopted by the Company during sale process of its surplus land and buildings. Some such important aspects have been dealt with in the succeeding paragraphs of this Report.

3. Committee desire that the Ministry of Textiles should lay down precise guidelines in this regard so as to obviate recurrence of instances of sale of land and buildings beyond the purview of revival scheme approved by BIFR/GOI. The Committee would also like the Ministry to make it mandatory that land measurements are carried out by the Company before offering any property for sale.

4. (a). Non-observance of procedure for valuation of properties

The Committee note that the procedure devised by the Company in November, 2002 for sale of fixed assets envisaged that the ASC should determine reserve price of land on the basis of average of three valuations, namely, valuation in Draft Rehabilitation Scheme(DRS) approved by BIFR, Valuation given by Property Consultants and the Valuation by the Central Board of Direct Taxes (CBDT). In November, 2004, the GOI further directed that the reserve price should not be less than Minimum Assured Return (MAR) in case of properties in Mumbai, where Marketing Consultants had quoted MAR. It was, however, observed in Audit that all the three valuation factors were considered in only 27 cases out of 79 cases of sale of land. Strangely enough, while only one or two valuations factors were considered in 37 cases, none of the prescribed valuation factors are reported to be considered at the time of fixing the reserve price in as many as 15 cases. In the opinion of the Committee, these cases of blatant procedural violations clearly reveal the scant regard shown by the ASC towards Company's precise guidelines for fixation of reserve price. The Committee, therefore, recommend that the Ministry of Textiles should identify the level at which these lapses had occurred and contemplate establishing an effective monitoring system to ensure that the guidelines/directions issued for sale of remaining surplus land of NTC mills are scrupulously followed in future.

5. (b). CBDT Valuations

The audit review reveals that out of 66 cases of sale of land through tender, CBDT valuation of 1994-95 and 1998-99 was considered for fixation of reserve price in 29 cases during April, 2002 to March, 2008. However, the CBDT valuation was not indexed to the year of fixation of reserve price for arriving at realistic value. During his evidence before the Committee, the CMD, NTC deposed "I have gone through the records of the Company and I have found that CBDT was involved in the valuation of land once in 1995-96 period. After that when the Company approached them, they have not agreed." The Company, however, could not produce any documentary evidence portraying unwillingness by CBDT for undertaking valuation of NTC properties leading the Committee to believe that NTC did not invariably involve CBDT in the process of fixation of reserve price in accordance with their own specific guidelines issued in November, 2002. At this stage, the Committee express their strong displeasure over the manner in which the valuation of CBDT was not given due consideration for fixation of reserve price in all cases as stipulated in the guidelines issued by the Company in November, 2002. The Committee, therefore, desire that the Ministry of Textiles should involve expert agencies of the Government like CPWD and CBDT in the process of valuation of NTC properties to be offered for sale in the coming years.

6. (c). MAR Valuation

The Committee note that the GOI's direction stipulated that the reserve price in case of properties in Mumbai should not be less than MAR, where marketing consultants had quoted the same. They, however, find that the Company had no system of vetting valuation reports and MAR given by the consultants with the result that there were wide variations between sale value realized and MAR quoted by the consultants. According to the Audit, such variations ranged between 94.3% and 279.28% in the case of 5 land parcels for which MAR was obtained. The Committee are not convinced with the reply of the Company that MAR was arrived at by best international real estate consultant and there was no reason for NTC to question their wisdom. On the other hand, the Committee are of firm view that MAR reports obtained by the Company did not give the realistic market value of the land parcels offered for sale as is evident from the substantially high sale value realized by the Company in all these cases. At this stage, the Committee can only conclude that the purpose of obtaining MAR for the purposes of fixation of best price/reserve price could not be achieved.

7. (d). Fair Market Value

The Committee note that the GOI directed in April, 2005 that the ASC should take a decision on the reserve price keeping it as close to the market value as possible. The Committee's examination, has, however, brought out that there were wide variations between the reserve price fixed and the actual sale value realized in a number of cases on the basis of valuation done by the ASC. The self-admission of the Company that it had realized 180% to 350% higher than the reserve price fixed for the sale of properties in Mumbai is a clear indicator that no system had been put in place to assess the fair market value of the properties in accordance with the GOI directives. Whatever may be the claims of the Company for sale value realizations for NTC's properties in Mumbai, the fact remains that the reserve prices fixed by the ASC in the instant cases were nowhere near the market prices realized by the Company. The Committee expressed their strong displeasure over the failure of the Company to devise an effective system to assess the fair market value of NTC properties before offering them for sale so as to ensure realization of maximum possible revenue. The

Committee, therefore, recommend that the Ministry of Textiles should now devise suitable procedures for assessing fair market value of NTC properties being offered for sale and ensure strict compliance of such procedures within the laid down policies.

8. Defects in Tender Documents

The Committee are constrained to observe that the information disclosed in the tender documents issued for sale of assets in a number of cases was either incorrect or ambiguous and that the Company had not established any system for verification of the contents of the tender documents. Prominent among these cases related to Mumbai Textile Mill, Apollo Textile Mill and Chalisgaon Textile Mill where Audit has estimated a loss of ₹185.10 crore to the Company. The audit observations and the replies of the Ministry in these cases have been briefly enumerated in the following paragraphs:

(i) Mumbai Textile Mill, Mumbai

The Audit has pointed out that the tender document for sale of land of the Mill stated that the mill area consisting of 67,293.17 square metre bearing CSNo.464 (admeasuring 65,993.17 square metre) and CS No.4/464 (Marwari Chowka Chawl admeasuring 1300 Square metre) was offered for sale. While the Company had no intention for sale of land of Marwari Chowka Chawl, it was wrongly included in the tender document. Further, the sale deed and the possession letter specifying the boundaries of the land sold did not include area of Marwari Chowka Chawl. Subsequently, the purchaser asked for possession of Marwari Chowka Chawl also since it was included in the tender document. The ASC accepted the fact that the parcel of land of 1300 square metre was wrongly included in the tender document and the possession and ownership of this land worth ₹ 13.56 crore was given to the private party without any consideration besides the liability of about ₹5.23 crore to rehabilitate 24 occupants of Chawl was owned by the Company resulting in loss of ₹ 18.79 crore. NTC admitted the fact that land of 1300 square metre was occupied by Chawl and had not appeared in the lay out plan due to mistake. While contending that the mistake of non-disclosure of Marwari Chowka Chawl had not been liable for any loss to the Company, the reply of NTC is strangely and conspicuously silent on the audit observations on handing over the possession of 1300 square metre plot without any consideration and the liability owned by the Company for rehabilitation of occupants of Marwari Chowka Chawl.

(ii) Apollo Textile Mill, Mumbai

The Audit has brought out that the Company had received lesser amount in tendered bids by not disclosing the vital information about the feasibility of access to the Main Road which was allowed later on. This enhanced the value of the land resulting in loss of ₹165.80 crore to the Company after deducting consideration received for right to access to main road.

NTC has informed the Committee that originally, the property was tendered in 2005 giving all the particulars known to the Company. Later on, in 2006, a provision for road was made as per the town planning and thus it cannot be presumed as deficiency in tender document.

(iii) Chalisgaon Textile Mill, Chalisgaon

According to the Audit, six plots of land of the Mills were sold to the highest bidder and the purchaser did not pay second and final installment due on the plea that in the tender document the Company had wrongly mentioned the land to be in residential zone though it was in industrial zone. This incorrect information in tender document resulted in delay in receipt of sale proceeds for which no interest was recovered and the Company lost interest of ₹51 lakh calculated on the basis of 18 per cent per annum.

Responding to the Audit observation, NTC stated that the State Government/local municipal authorities were reluctant to grant approvals for change of zone. Since NTC was in financial crunch during that period, it was decided to sell the land on `as is where is' basis for survival of the Company and the tenders were floated before obtaining change of zone.

Explaining its failure to establish a proper system for verification of all the facts included in tender documents, the Company put forth the plea that NTC had no expertise of sale of land and it had resorted to execute sale of assets only to implement the revival scheme approved by the BIFR. Going by the self admission of the Company that the defects in the tender documents had occurred due to inadequacy of the system, the Committee are of the firm opinion that the casual approach on the part of the Company and the failure of the Ministry to devise a foolproof system in this regard ultimately proved detrimental to the financial interests of the Company. The Committee, therefore, recommend that all the cases of loss due to defective tender documents as pointed out by Audit should be thoroughly enquired into at the highest level in the Ministry of Textiles and responsibility fixed for such costly lapses. The Committee would like to be informed of the action taken in each such case.

9. Sale below the Registration Rates and Reserve Prices

During the course of their examination, the Committee's attention has also been drawn to certain cases of sale of NTC properties below the prevailing registration rates and the reserve price in contravention of the GOI directives issued in November, 2004. NTC has pleaded that the Company cannot indefinitely keep on retendering if a property after repeated attempts is not taken for the reserve price fixed by the Company. At the same time, NTC has assured the Committee that the "GOI is reviewing the guidelines for fixation of the reserve price with a view to refining and improving the system and achieving optimum realization from sale of assets." The Committee hope that earnest efforts would be made by the Ministry of Textiles to ensure compliance of their new guidelines in the best financial interest of the Company.

10. Sale without Following Tender Process

The Committee's scrutiny of the information made available to them brings out that the procedure and guidelines to be followed by ASC, issued in March, 2002 as per BIFR Order-2002 clearly stipulated that the "Sale of assets should be effected by way of public sale through sealed tenders, after adequate notice is given to the public through advertisements.....". Further, one of the specific functions assigned to the ASC constituted from time to time was to ensure that the sale was conducted in a fair and transparent manner and through open notification. The audit review has, however, brought out that the sale was made without following tender process in a number of cases. While furnishing the reasons for not following guidelines in these cases, NTC pleaded that the Company could not resort to the public tender system in some cases which were of exceptional nature due to reasons such as accessibility of the plot, size of the plot, consistent litigations, defects in title and orders issued by the local authorities for earmarking the land for road network, etc. While giving due credence to exceptional nature of some of these cases, the Committee cannot accept the accessibility, size and location of some of the properties as valid reasons for not resorting to its sale without following tender process. While taking a serious view of these instances of deviation from stipulated guidelines, the Committee recommend that the Government should now incorporate an effective system of review of the decisions taken by the Company in all such cases where any departure is made from the directions/guidelines issued for the implementation of the revival schemes.

11. Inconsistencies among guidelines and the procedures

During their examination of the subject, the Committee's attention has also been drawn to the fact that there were inconsistencies among the guidelines issued by the BIFR/GOI and the procedures laid down by the Company resulting in revenue loss to the Company. These included: fixation of earnest money deposit (EMD) by the Company at a lower rate; non receipt of EMD in Demand Draft; and grant of extension ranging from 96 days to 1371 days for payment beyond 60 days from the due date of payment without charging interest leviable on delayed payments. According to the Audit, the Company stated during September, 2008 that ASC was an empowered body to decide the issues relating to the sale of surplus assets and to decide the guidelines depending upon the situation and circumstances. The Company also maintained that the ASC was fully empowered to extend the period beyond 60 days. During the examination of the subject, the Company, however, informed the Committee that the ASC constituted by the Government has no authority to evolve procedures going beyond the guidelines of the BIFR and the deviations pointed out have to be examined on a case to case basis so as to take a final view in the matter. The Committee strongly recommend that the

Company/ Ministry should fix responsibility for these blatant acts of procedural irregularities.

12. Need for Improving Systems

During the examination of the subject matter, NTC has repeatedly pleaded before the Committee that the Company has never been in the business of selling assets and this has been a new area of activity on account of implementation of the revival scheme. The Committee are constrained to observe that most of the issues/shortcomings pointed out by the Audit could have been avoided had the Company devised systems and procedures strictly in accordance with the BIFR guidelines and acted accordingly thereon. Having taken note of the assurance given by the Company that it will review the existing policy on the basis of suggestions of Audit and make modifications required for implementation in all future cases of sale, the Committee firmly desire that the Company should amend its system of valuation and sale of assets without further delay.

13. To sum up, the examination of the subject matter relating to sale of surplus properties by NTC has revealed several shortcomings/irregularities. According to the Audit findings, Company either suffered losses or lost opportunities to earn in the following cases:-

(a) Defects in tender documents (loss of ₹185.10 crore);

(b) Sale below registration rates (loss of potential revenue of ₹10.43 crore);

(c) Sale below reserve price (loss of potential revenue of ₹84.35 lakh);

(d) Inconsistencies in the guidelines (loss of potential revenue of ₹49.60 crore).

The Committee are of the considered view that the Ministry and the Company have not made any sincere efforts to realize optimum value of the properties sold. The Committee, therefore, strongly desire that the Ministry of Textiles and the Company should take concrete measures to fully exploit the market conditions for optimal gains to the advantage of the Company in respect of the sale of remaining surplus assets.