

CHAPTER XVI: MINISTRY OF TEXTILES

British India Corporation Limited

16.1 Sale of land

16.1.1 Introduction:

British India Corporation Limited (Company), registered in February 1920, owns and manages two woollen mills, one at Kanpur in Uttar Pradesh and another at Dhariwal in Punjab. The Company was declared sick in 1992 and the Board for Industrial and Financial Reconstruction (BIFR) sanctioned a rehabilitation scheme in December 2002 for implementation in two years. As this scheme was not fully implemented, a modified rehabilitation scheme was approved by the Government of India (GOI) in June 2011.

As per the rehabilitation scheme of December 2002, the cost of scheme was ₹ 210.51 crore. The envisaged source and utilization of fund was as follows:

<i>(₹ in crore)</i>			
Source of Fund	Amount	Utilization of fund	Amount
Sale of Surplus Assets	124.51	Payment of dues to Banks/Financial Institution	92.25
Grant from GOI	49.00	Modernization and renovation of plant/machinery	46.58
		Working capital	7.25
Interest free loan from GOI	37.00	Voluntary retirement schemes	7.00
		Cash loss and other dues	57.43
Total	210.51	Total	210.51

Even after nine years, the rehabilitation scheme was not fully implemented as the plant could not be modernized due to non-generation of enough funds from the sale of assets. The financial position and operating results of the Company during the years 2006 to 2010 is given below:

<i>(₹ in crore)</i>				
Particulars	2006-07	2007-08	2008-09	2009-10
Share Capital	31.71	31.71	31.71	31.71
Accumulated loss	(193.26)	(161.98)	(206.01)	(248.64)
Sales (projected in rehabilitation scheme)	98.00	98.00	98.00	98.00
Sales (actual)	11.87	6.03	3.54	3.54
Net profit (projected)	10.37	7.62	6.46	5.21
Net profit (actual)	(13.40)*	31.27**	(44.03)	(42.63)
*includes profit from sale of assets of ₹12.59 crore and GOI grant of ₹18 crore for salary				
** includes profit from sale of assets of ₹40.51 crore, write back of provisions of ₹14.42 crore and GOI grant of ₹18 crore for salary				

It can be seen that the actual sale was negligible during last four years ended 2009-10 compared to the projections of rehabilitation scheme, due to delay in full implementation of the rehabilitation scheme (i.e. non-modernization of the plant) and consequent negligible production. There was substantial operating loss in last several years, against the profit projected in the rehabilitation scheme, mainly due to high fixed cost towards salary of employees and negligible production. The financial statements for the year 2010-11 were yet to be finalized (March 2012).

16.1.2 Audit Objective, Scope and Methodology

Non-generation of enough funds from sale of surplus properties (land including structures thereon) was the main reason for non-completion of the rehabilitation scheme. Audit was, therefore, conducted to examine adequacy of due diligence on surplus assets and the efficiency with which the sales process was carried out.

Audit covered 'sale of Kanpur properties' as the same was expected to generate a major part (₹ 104.78 crore) of the total funds required to finance the rehabilitation scheme.

Audit reviewed the records relating to sale of the Company's Kanpur properties and other related documents i.e. minutes of Board of Directors and Asset Sale Committee, Company's correspondence with Ministry of Textiles, State of Uttar Pradesh and BIFR.

16.1.3 Audit Findings:

16.1.3.1 Non-maintenance of details of the properties

(a) Non-maintenance of Fixed Assets Register

The Company did not maintain proper details to identify all properties it owned and classify each property as leasehold/ expired lease/freehold. Statutory auditors repeatedly pointed out the non-maintenance of statutorily required 'Register of Fixed Assets' in the Company.

Management stated (December 2011) that a register of fixed assets of the Company had been prepared in the year 2010. Audit observed that the absence of proper records of the properties led to bottlenecks in generation of funds from sale of properties, which ultimately impacted full implementation of the rehabilitation scheme of 2002, as pointed out in the succeeding paragraphs.

(b) Company unaware of existence of its three encroached lands

As per the survey conducted (May 2003) by District Magistrate, Kanpur, three properties belonging to the Company were found encroached upon. The Company was unaware of the existence of these lands in its name prior to the survey as per details given below.

Sl. No.	Name of property in Kanpur	Area (sq.mtr.)	Circle rate for year 2011 (₹/sq.m.)	Value of land (₹ in crore)	Current status of land
1	Bhairoghat, Plot no. 3	922.92	14000	1.29	Encroached property near crematorium place
2	Parmat, Plot no. 394,400-402	6845.76	11000	7.53	Land is under possession of Tannery and Footwear Corp. of India, A Central Government Company.

3	Plot no. 68, Civil Lines	2084.05	30,000	6.25	Land encroached by various people
Total		9,852.73		15.07	

Thus due to negligence in maintenance of Fixed Assets Register, the Company could not declare these lands as surplus land as also the fact that these properties got encroached in absence of any oversight.

16.1.3.2 Absence of due diligence and internal controls

In accordance with the terms of the rehabilitation scheme, the Company was responsible for obtaining all statutory approvals and no objection certificates from concerned authorities/agencies for implementation of the scheme. The Ministry of Textiles (the Ministry), GOI, constituted (January 2003) an Asset Sale Committee (ASC), consisting of representatives from the Ministry, State Government, operating agency, BIFR and the Company, for undertaking sale of properties of the Company. ASC was responsible for effecting sale of assets in a transparent manner, generate maximum resources for the revival plan and monitor the sales progress.

The Company appointed (February 2002) M/s Price Waterhouse Cooper Private Limited (PWC) as property consultant for the sale of surplus land, which was confirmed (January 2003) by ASC. As PWC miserably failed to carry out its duty in respect of the assets' portfolio analysis and identify the possible bottlenecks in the sale process, its contract was terminated in January/April 2004.

Audit observed that the Company and ASC relied solely on consultant's reports regarding classification and valuation of properties as there was no system of vetting of the consultant's report in the Company. The following discrepancies in the classification and valuation of Kanpur properties were noticed in audit.

(a) Wrong classification of land as to lease status

In the advertisement for sale of properties under phases II & III (March/May 2003), six properties were incorrectly shown as current lease properties even though the lease of these properties had already expired.

Management stated (December 2011) that the classification of properties was based on the information available in the records of the Company. In fact, records of District Administration should have been verified instead of relying on its own information as there was no authentic or reliable record of properties in the Company in absence of the 'Fixed Asset Register' for decades.

(b) Wrong classification as to usage of land

Two properties (BIC Club and Wisteria) were industrial land as per records of Kanpur Development Authority (KDA) but advertised (May 2003) as residential properties by the Company.

The Management stated (December 2011) that these properties were possibly advertised as residential properties based on assumption as these were being used for residential purpose and club for a long period. The Ministry stated (January 2012) that there was no financial loss as there was no industrial circle rate for the location and, as per circle rate book, the residential rate was applicable for the area. However, the fact remains that, in

absence of reliable records of the properties in the Company, the records of KDA should have been verified in case of all properties to find out the current status of land.

(c) Short fixation of reserve price by ₹6.30 crore

Reserve prices of land were fixed on the basis of old circle rates (1999) in respect of sales advertised in phases I, II & III (January 2003 to May 2003) which led to fixation of reserve price below the then circle rates (year 2002) by ₹ 4.23 crore in respect of 8 properties (**Annexure-XXI**). As a consequence, in case of seven properties, the highest bid price was below the price as per circle rates of 2002 and the difference between the highest bid price and the advertised reserve price amounted to ₹ 1.39 crore in these cases (**Annexure-XXI**). Further, the value of building/structure was not considered while working out the reserve price resulting in short fixation of reserve price of 26 properties by ₹ 2.07 crore (**Annexure-XXII**), even though the amount of ₹ 104.78 crore expected to be generated from sale of Kanpur assets included this amount of ₹ 2.07 crore based on evaluation report (2001) of an approved/registered Government valuer.

As any sale could not be confirmed if the highest bid falls below the advertised reserve price, the Company lost ₹ 3.46 crore (₹ 1.39 crore+₹ 2.07 crore) due to fixation of lower reserve price. Audit observed that, other than termination of the contract, no punitive action was taken against PWC for their negligence in the assigned due diligence work.

The Management/Ministry's argument (February 2012) that, as no charge against PWC were established, the Company had not proceeded against PWC for recovery of damages, is not convincing because the contract with PWC was terminated (January 2004) for their failure in carrying out the due diligence as per the terms of contract.

16.1.3.3 Flawed process of land sale led to non-modernization of plant and consequent unwarranted pressure on exchequer for salary payment of idle manpower

The Company identified 29 surplus properties in Kanpur under the rehabilitation scheme and the same were put up for sale in three phases (between January 2003 and May 2003). One additional property was advertised for sale in December 2003 and two more properties in February 2007. Out of these 32 properties, only two properties were freehold, 13 properties were under perpetual lease for 999 years and 17 properties were under current lease for 99 years (including 9 properties where the current lease had expired).

The Company invited bids for sale of land in three phases (January to May 2003) by undertaking the responsibility of the conversion of land to freehold at its own expense, on the assumption that the land would be converted at nominal rates by the State Government as envisaged in the rehabilitation scheme. Audit observed that the State Government had agreed before BIFR to provide concessions in the conversion of land to freehold. However, the State Government further informed (February 2003) the Company that 'the Economic Affairs Committee of the Cabinet in its meeting held on 2.1.2003 directed it to 'permit the Company to sell the additional surplus land to the extent that no reliefs and concessions are required'. However, the Company went ahead with the sale process, simultaneously pursuing the State Government for approving the conversion at nominal charges but failed.

Meanwhile, as per the terms of notice inviting bids for sale of properties, 25 per cent of the sale price was to be paid by the highest bidder as advance and the balance 75per cent

amount was to be received by the Company on conversion of leasehold land to freehold. However, the sale of properties was not complete so far (March 2012) in case of 22 properties for want of conversion to freehold. The present status of the sale of various properties (March 2012) is stated in **Annexure-XXIII**.

An amount of ₹ 77.54 has been received so far, including ₹ 51.84 crore from sale of freehold properties and those properties sold under phase-IV & V (**Annexure-XXIII**). Out of this, only an amount of ₹ 25.82 crore was received from leasehold properties advertised under phases-I to III. Audit observed that this entire fund was utilized for repayment of dues to banks/financial institution as stipulated in the rehabilitation scheme. An amount of ₹ 54.78 crore, towards 75per cent of sale price of 18 leasehold properties, could not be received so far due to failure of the Company to get the leasehold land converted to freehold.

As the Company failed to get approval of the State Government for conversion of the land at nominal rates, in July 2008, application for the conversion in case of six properties was submitted to the State Government's District Administration along with payment of conversion charges at the then circle rates (paid by the buyers), which was rejected (June/July 2011) by the latter on grounds of non-payment of lease rent by the Company since 1992, non-renewal of the lease period or difference between the area of land for which the conversion was applied for and the actual area as per Administration records. In remaining cases neither the buyers deposited the conversion charges with the Company nor was application submitted to concerned authority for the conversion so far.

Thus, due to absence of due diligence on the properties before advertising the sale and consequent non-conversion of leasehold land into freehold, the modernization/renovation of the plant could not be completed till date. Consequently, the production was negligible and losses were mounting in the Company for last several years.

As a consequence of the losses, the GOI had to pay ₹ 147 crore, beyond the terms of rehabilitation scheme, as grant (₹ 72 crore) and loan (₹ 75 crore) for salary payment for the years 2004-05 to 2010-11. GOI had already released the grant of ₹ 49 crore and interest free loan of ₹ 37 crore during initial period as per the terms of rehabilitation scheme of 2002. These entire funds of ₹233 crore proved to be fruitless as this fund did not increase production in the Company and the manpower/plant remained idle.

In June 2011, the Cabinet, GOI further accorded 'in principle' approval to a revised rehabilitation scheme, at revised cost of ₹ 341.60 crore, subject to the condition that permission is first obtained for sale of the surplus land from the State of Uttar Pradesh. The revised scheme did not appear to have effectively addressed the issue of revival of the Company, as the scheme again depended on the long pending unresolved issue of conversion of lands to freehold.

The Ministry contended (January 2012) that because of non-fulfilment of commitment made by the Government of Uttar Pradesh before the BIFR, in regard to the conversion of land at nominal charges, there was delay in implementation of the rehabilitation scheme and the cost overrun.

The Ministry's contention is not acceptable, because, the Company advertised the sale of properties without proper due diligence for identification and removal of the bottlenecks in the sales process.

Audit did not find any justification/rationale for keeping the manpower idle for non-modernization of the plant, just on the excuse of non-fulfilment of commitment by the State Government. The GOI should have reviewed the developments and provided separate fund for modernization of the plant and working capital to increase production in the Company. This fund for the modernization could be recouped in near future from receipts of sale of surplus land and the excise duty on increased production. Moreover, the aforesaid fruitless expenditure in the Company has been much more than the amount required for completing the modernization of plant.

16.1.3.4 Loss due to unwarranted registration of 'agreement to sale'

The issue of unconcluded sale of surplus land was considered by the Ministry based on the legal opinion obtained (March 2005 from the Senior Government Counsel and a second opinion obtained in consultation with the Ministry of Law. Accordingly, the Ministry decided (June 2005) to cancel all the sales of land in Kanpur since 2002, as it (the sale) was void in the eyes of law, and call for fresh bids after revaluation of the properties. The Ministry issued cancellation orders in June 2005 for the sale of land at Kanpur.

Some of the successful bidders represented to the Ministry for delay in executing registered 'agreements to sale' by the Company. Despite a favorable legal opinion for a fresh sale, the Ministry, at the level of Minister, decided to revoke the cancellation order and directed (August 2006) the Company to execute registered 'agreements to sale' with successful bidders with the precondition that conversion charges beyond the circle rates of 1998 would be borne by the respective buyers.

Audit noticed that the State Government had agreed in February 2005 to give permission for the conversion of land to freehold on payment of charges at circle rates of 1998. Therefore, the agreement with the buyers in August 2006, that they would bear the charges beyond circle rates of 1998, had no value in taking the decision to have the 'agreement to sale' registered.

The Company executed (September 2006) the registered 'agreement to sale', binding itself to sell leasehold lands at 2003 bid rates. Audit observed that above decision of the Ministry deprived the Company of the benefit of ₹ 109.03 crore i.e. increase in prices of the lands based on circle rates of 2011 less liability of conversion charges at the circle rates of 1998 (**Annexure-XXIV**).

The Ministry stated (January 2012) that, in order to avoid legal complication and in view of the decision of Hon'ble Allahabad High Court in the case of Value Shopee Limited vs. British India Company (BIC), the agreement for sales was registered in the larger interest of the revival as otherwise the successful bidders might have gone to the Court and whole process of the revival of the Company could have jeopardized.

However, Audit is of the opinion that:

- (i) The legal opinion categorically stated that "agreement in question is not a contract for sale in the eyes of law and is a void document. It does not create any obligation to BICL for its enforcement as it is not registered deed --." The fact that the buyers had agreed (August 2006) to pay the conversion charges beyond circle rates of 1998 validated the legal opinion that they had a very weak case in absence of a registered 'agreement to sales'.

- (ii) The Court decision referred to in the Ministry reply was issued in May 2010/February 2011 directing GOI that "the case be decided by the Collector in accordance with the latest Government order governing Nazul land". Hence, the Company had no powers to sell the land without the permission of the State Administration. The State Government had already informed the Company from time to time not to sell the property without its prior approval. In September 2003, the District Magistrate, Kanpur had asked the Ministry to stop the sales process till its further directions.
- (iii) The net sales value of 19 leasehold properties at the bid rates of 2003, after taking into the conversion charges (₹ 47.35 crore) payable by the Company at 1998 circle rates, comes to only ₹ 27.86 crore (**Annexure-XXIV**) which was not a big amount and its non-receipt should not have stalled the rehabilitation scheme as GOI was already paying substantial grant/loan to the Company since 2004-05 beyond the terms of the rehabilitation scheme.
- (iv) The Minister's order to have the 'agreement to sale' registered in fact led to a situation where the Company neither succeeded in revival strategy nor did it receive maximum value from the sale of land. In fact, under present situation, the buyers may reap the benefit of entire appreciation in prices of properties since 2003 by paying only 25 *per cent* of the bid rates of 2003.
- (v) The 'agreement to sale' was registered in September 2006 on the condition that the buyers would bear the conversion charges beyond circle rate of 1998. However, instead of applying for the conversion based on the then current circle rates, the Ministry continued to pursue the State Government to give permission for the conversion at circle rates of 1998. This indicated that the urgency in revival scheme was compromised for seeking the benefit on conversion charges for the buyers.

Conclusion

- **The Company/ASC failed to have proper due diligence on the valuation of the properties as well as identify the bottlenecks in sale of land. The reserve price was fixed on lower side on account of circle rate and value of structures and the advertisement for sale was initiated in January 2003 without obtaining necessary approvals from the State of Uttar Pradesh.**
- **There was unnecessary hurry in concluding the sales of land by getting the 'agreement to sale' registered with the buyers ignoring the legal advice and the warnings of the State Government, which led to loss of ₹ 109.03 crore to the Company on account of increase in value of the properties at the circle rates of 2011.**
- **The Company suffered huge losses and GOI had to provide grant/loan of ₹ 147 crore to the Company beyond the terms of the rehabilitation scheme, mainly for want of funds for modernization of plant and the working capital. Considering the problems in generation of funds from sale of properties, the GOI could have provided separate fund for modernization of plant to avoid/reduce the grant/loan.**

In brief, due to flawed sale process, lack of internal controls and weak governance, the revival scheme has not succeeded (March 2012) and, as a consequence, there was unwarranted pressure on exchequer.

Recommendation

The Company should review and remove the bottlenecks which are coming in the way to conversion of leasehold land to freehold and streamline the sale process so as to derive maximum fund from the sale of surplus land.