

Chapter VIII Miscellaneous

8.1 Rejection of offers to settle for more than or at par with GLO

The recovery policy conferred powers on the COO to consider and approve OTS/NS subject to the OTS/NS amount not less than GLO. Audit observed that in the following two cases, these powers were not exercised by the COO.

₹ in crore			
Sr. No	Name of the borrower	GLO	Offer made by the borrower
1	Dynamic Logistics Pvt. Ltd.	8.00	16.54
2	Super Forging and Steels Ltd.	4.75	4.50+0.25*
	TOTAL	12.75	21.29

(Note * ₹ 25 lakh paid in April 2008 before the offer)

Of these two cases, the first case is *sub judice* and in the second, the borrower has withdrawn his offer. These cases are discussed below:

8.2 Dynamic Logistics Private Limited (NLO ₹ 4 crore)

IDBI had already filed (May 2000) a suit for recovery before Debt Recovery Tribunal (DRT), Mumbai which was transferred to DRT, Pune. The DRT allowed (September 2003) settlement for a sum of ₹ 11.10 crore with interest from the date of application till realization. Subsequently, DRT issued (January 2004) recovery certificate for ₹ 20.49 crore, which included ₹ 11.10 crore towards principal and ₹ 9.39 crore towards interest and fees. The DRT also issued (October 2004) garnishee⁸ order against the lessee (Kirloskar Oil Engines Ltd.) of the borrower. The Trust could collect ₹ 4.57 crore as garnishee amount till January 2008.

In the meantime, the Trust proposed (June 2006) an OTS of ₹ 17.83 crore (₹ 8 crore towards principal, ₹ 5.83 crore towards interest and ₹ 4 crore towards other recovery) which was accepted (November 2006) by the borrower subject to (a) the Trust furnishing details of the OTS amount of ₹ 17.83 crore, (b) garnishee amount of ₹ 3.27 crore collected by the Trust to be adjusted from ₹ 17.83 crore proposed by the Trust, (c) 25 *per cent* upfront and balance in 18 equal monthly instalments with interest at 8 *per cent* per annum. However, the Trust did not take any action on the proposal submitted. The Trust issued (November 2009) notice under Section 13(2) of the SARFAESI Act on the grounds that efforts made to recover the dues were stalled by the borrower/promoter. According to the Trust, the efforts to take possession (April 2010) of the borrower's assets under Section 13(4) of the SARFAESI Act were not successful due to non-cooperation of the borrower. The borrower obtained

⁸ An individual who holds money or property that belongs to a debtor subject to an attachment proceeding by a creditor.

(2010) stay from DRT against taking possession of the assets under Section 17 of the SARFAESI Act.

While the hearing was going on at the DRT in July 2010, the Trust and the borrower agreed for settlement of the dues. Accordingly, the borrower made (July 2010) a fresh OTS proposal of ₹ 17.83 crore⁹ (the same amount proposed by the Trust in June 2006). This was not acceptable to the Trust and it requested (August 2010) the borrower for substantial improvement. The borrower made (April 2013) one more OTS proposal for ₹ 17.72 crore¹⁰ (25 *per cent* down payment and balance 75 *per cent* in 12 equal instalments). This proposal was considered by the Trust and the borrower was requested (April 2013) to furnish details of settlement with other lenders and latest audited results for the last three years, which were awaited.

In the above context audit observed that:

- Though the recovery certificate was issued by DRT in January 2004, the Trust did not act on it. The Trust made an OTS offer in June 2006.
- The OTS proposal of ₹ 17.83 crore made (June 2006) by the Trust was accepted by the borrower subject to clarification on how the proposed amount was arrived at. The Trust could have furnished clarifications in this regard and in the event of borrower failing to comply, it should have promptly invoked the SARFAESI Act. However, the Trust did not effectively act until November 2009 when it issued the notice under the SARFAESI Act.
- It is also seen that despite the decisions at various levels, the borrower delayed the payment / settlement. Though DRT issued recovery certificate for ₹ 20.49 crore and the Trust subsequently proposed OTS for ₹ 17.83 crore, the borrower, instead of complying, raised queries. Four years later, in July 2010, the borrower made an OTS proposal for ₹ 17.83 crore which was for the same amount that was proposed by the Trust. The offer naturally was lower on a time value basis.
- Even though, there was evidence that the borrower was not prompt in settling the debt, the Trust could not act on the personal guarantee of ₹ 8.50 crore of the promoters (Shri K. M. Talera, Shri Praful Talera) as no supporting property details were available with the Trust. This personal guarantee was invoked but no amount could be recovered.
- Both the proposals (July 2010 and April 2013) were disposed of by the Executive Trustee while as per delegation of powers the proposals should have been placed before the COO for a decision.
- As per the records of SASF, the borrower had settled ₹ 34 crore with ICICI Bank at 100 *per cent* of the outstanding dues and in the case of SIDBI it

⁹ Gross proposal ₹ 17.83 crore less garnishee amount of ₹ 5.86 crore received/receivable by the Trust as calculated by the borrower.

¹⁰ ₹ 17.72 crore (₹ 13.15 crore plus ₹ 4.57 crore garnishee amount recovered by the Trust).

was agreed to settle dues worth ₹ 40 crore for ₹ 5.87 crore. The value of the assets (land and buildings) of the borrower was ₹ 83 crore (April 2010). Pro-rata share of the Trust was not worked out by the Trust.

The Trust stated (August 2013) that BOT had approved settlement proposal exactly in line with the settlement entered by the Company with SIDBI / ISARC, which would entail recovery of ₹ 17.12 crore.

8.3 Super Forgings and Steel Limited (NLO ₹ 2.58 crore)

Dues of the party were restructured by SASF (April 2008) and accordingly the borrower was required to pay ₹ 4.75 crore. The dues were to be paid over five years, after an initial moratorium period of 2 years, in 20 quarterly instalments along with interest @ 10.25 per cent per annum on reducing balance. The borrower paid ₹ 25 lakh in April 2008 and then defaulted. The borrower made OTS proposals in May 2011, January 2012 and May 2012. As per the proposal made in May 2012, the party offered ₹ 4.50 crore including ₹ 50 lakh paid in May 2011. After taking into consideration the amount already paid (₹ 75 lakh), total offer made by the borrower was ₹ 4.75 crore, which was equivalent to the GLO. The borrower withdrew the offer in December 2012 due to non-acceptance by the Trust. On all the three occasions, the Trust requested for improvement in the proposal made by the party.

Pro-rata share of the Trust on the realizable value of assets was found to be only ₹ 1.75 crore (November 2009) and it was found to be negligible in December 2011. Assets of the borrower were also not charged to the Trust. According to the Trust, the personal guarantees obtained from the party were invoked but the Trust did not have the details of properties of the guarantor. However, copies of personal guarantees were not made available to audit. No further action in this regard was taken.

The Trust stated (August 2013) that the COO in August 2013 had approved settlement as proposed by the party in May 2012.

8.4 Non-adherence to recovery policy relating to waiver of dues / restoration of original liability

According to the recovery policy, if the default in payment of crystallized amount persists, the Trust shall have the right to reverse the waiver of dues and restore the original liability as per the terms of the loan agreements entered into by the borrower and adjust the payment received, if any, towards the dues (Appendix I of the Recovery Policy).

In the following two cases, the above policy was not adhered to:

₹ in crore					
Sr. No.	Name of the borrower	Date of approval of compromise settlement	NLO	OTS/NS	Amount recovered
1	Sri Vasavi Industries Ltd. (Promoters Shri G. Eswara Rao)	December 2011 and December 2012	32.00	50.00 (December 2012)	1.00
2	Ispat Profiles India Ltd. (Promoters – Shri M. L. Mittal, Shri V. K. Mittal and Pramod Mittal)	June 2005, September 2010 and December 2012.	42.13	56.92 (December 2012)	Nil

- Personal guarantees of Shri G. Eswara Rao, Shri G. C. H. Sanyasi Raju and Shri Badarinath for ₹ 14.50 crore in respect of Shri Vasavi Industries Limited and PG of Shri M.L. Mittal for ₹ 130.03 crore in respect of Ispat Profiles India Ltd. were available and invoked. However, in both the cases property details were not available.
- In respect of Sri Vasavi Industries Limited, the Trust stated (August 2013) that it had initiated process of revocation of settlement. However, the Company approached for reschedulement of repayment period within terminal date of settlement, which was under consideration of the Trust. It further stated that the Company had paid ₹ 3.10 crore in June 2013.
- In respect of Ispat Industries India Limited, the Trust stated (August 2013) that it had taken action under Section 138 of the negotiable Instruments Act, criminal case has been filed against concerned officials of the company and default has been reported to CIBIL. It further stated that the Trust was in the process of revoking the settlement and obtaining permission from BIFR for initiating legal action for recovery of dues.

8.5 Transfer of secured assets without fulfilment of sale conditions - Daewoo Motors Limited

In terms of the Trust Deed, IDBI transferred (September 2004) net loan outstanding (NLO) of ₹ 267.98 crore in respect of Daewoo Motors India Limited (DMIL). At the time of transfer of the case to SASF, the lenders (IDBI, ICICI and Exim Bank) had already recalled their loans and filed recovery suits in DRT Mumbai/Chennai in 2002 against DMIL.

The Recovery Officer of DRT had confirmed (October 2007) the purchase offer of Pan India Motors Private Limited nominee of M/s. Crosslinks Finlease Private Limited for ₹ 765 crore of the property belonging to the defaulted borrower. Out of this, ₹ 266.75 crore was to be paid upfront and balance ₹ 497.25 crore was to be satisfied through issue of letters of allotment for debentures (secured non-convertible debentures of ₹ 267.75 crore and optionally convertible debentures ₹ 229.50 crore).

Share of SASF was ₹ 242.08 crore (₹ 41.46 crore by cash, ₹ 92.59 crore by way of secured non-convertible debentures and ₹ 108.02 crore by way of optionally convertible debentures). The Recovery Officer of DRT had inter-alia decided (October 2007) that on receipt of upfront payment, issuance of debentures allotment letters to ARCIL and SASF to their satisfaction, creation of pledge and hypothecation, DRT receiver should forthwith hand over the possession of the suit properties to Pan India Motors Private Limited nominee of M/s. Crosslinks Finlease Private Limited.

Both SASF & ARCIL misinformed (October 2007) the receiver of DRT that allotment letter, pledge and hypothecation has been created to their satisfaction as mentioned in the order. They also intimated the receiver that upon receipt of an amount of ₹ 187.75 crore (after adjusting the interest of ₹ 3.4 crore that had accrued on ₹ 76.50 crore lying in deposit) they had no objection to the DRT Receiver handing over the possession of the suit properties to Pan India Motors Private Limited nominee of M/s. Crosslinks Finlease Private Limited.

Contrary to the intimation by ARCIL/SASF to the recovery officer of DRT, the buyer had defaulted on issue of debentures. Against the above default, ARCIL had filed (March 2009) application before the DRT, Mumbai which ruled (November 2012) in favour of the ARCIL with orders to cancel the sale of assets to the defaulted buyer. DRT also made ARCIL the receiver with instructions to carry out inventory verification in the presence of their representative. Against the above ruling of DRT, the borrower has appealed (February 2013) before the DRAT, Mumbai which had ordered status quo to continue pending disposal of the application with permission to DRT receiver to continue with inventory taking.

ARCIL had informed (June 2013) the Trust that the buyer refused to give inventory as ordered by DRT Mumbai in November 2012.

Records made available to audit indicated that the Trust had acted through ARCIL in all proceedings before DRT. The debenture allotment letters were not issued by the buyer. However, both ARCIL and SASF made wrong submission to the DRT receiver that Pan India Motors Private Limited nominee of M/s. Crosslinks Finlease Private Limited has complied with condition of issuance of allotment letters in respect of debentures in their favour and to their satisfaction. Had they made correct submissions then DRT would not have parted with the assets of the borrower to the defaulted buyer.

During October 2007 to March 2009, there was no action to appeal before DRT against the default committed by the buyers.

Even after filing (March 2009) recovery petition before DRT, Mumbai, ARCIL accepted (November 2009) consent terms from the defaulted buyers for issue of the debentures. As per this the buyers were to issue letters of allotment of debentures along with details of pledge of equity of the buyers and appointment of debenture trustees. But the above details were not mentioned in the debenture allotment letters. The allotment letters were not exchanged with the debenture certificate. Further, there was no compliance in respect of execution and registration of debenture trust deed, execution of unattested memorandum of hypothecation and submission of business plans. But the buyers defaulted again by not mentioning the details of debenture trustees, details of the pledge of equity shares of the buyers, etc.

Though the sale of fixed assets had been cancelled (November 2012) in response to the petition filed before DRT, Mumbai and the applicant (ARCIL) was authorized to take inventory, the same could not be carried out (June 2013) due to non-cooperation of the buyer.

The Trust stated (August 2013) that it is trying to sell the property in co-ordination with ARCIL and ILFS (equity investor in Pan India Motors Private Limited) and also fighting the case along with ARCIL for handing over the assets to the lenders in DRAT.

The reply is not acceptable as the property was handed over to Pan India Motors Private Limited nominee of M/s. Crosslinks Finlease Private Limited without getting the purchase consideration. This is an instance where the Trust failed to safeguard its financial interests.

8.6 Inordinate delay in auctioning property of a defaulted borrower - M/s. Oriental Industries Ltd.

Against a borrowing outstanding of ₹ 19.47 crore relating to M/s. Oriental Industries Ltd., the DRT, Chandigarh passed (March 2003) order for payment of the defaulted amount. Since no concerted efforts were made by the Trust for disposal of the assets even after ten years, DRT in one of their hearings observed (2013) that:

- Recovery proposal was not submitted by the Trust even after obtaining 22 adjournments.
- The GM of the Trust did not appear in person for filing the proposal as per the condition set by the DRT.
- The Trust failed to submit details of the mortgaged properties supported with the affidavit of the authorized official of the Trust as well as valuation report even after three years.

- The Trust was not pursuing the recovery proceedings with the required seriousness and was entailing a notional loss of ₹ 30 lakh every month on account of interest.

In view of the above lapses, the DRT imposed a penalty of ₹ 20,000 on the Trust to be deposited with the DRT Bar Association, Chandigarh.

- It further transpired from an additional affidavit filed (April 2013) by the Trust with the DRT that the front side of the borrower's premises has been given either on lease or sold by the borrower to M/s. Kohinoor Broadcasting Corporation.

Audit observed that there was delay on the part of the Trust in taking timely action for valuing the property and its disposal resulting in non-recovery of ₹ 19.47 crore besides un-authorized sale/lease of part of the property by the borrower. The Trust took 22 adjournments between December 2003 and May 2013 on various grounds but still the case could not be resolved.

- The Trust stated (August 2013) that the case has been assigned to recovery agents for recovery of its dues and making all efforts to expedite and maximize the recovery through the recovery agent.
- The reply has to be seen in the context that the Trust had taken more than two years to file application before DRT for impleadment and after getting impleaded in January 2009, the Trust took further two and a half years for filing the valuation report and the delay invited the criticism of the DRT.

8.7 Acceptance of shares / as part of settlement

As per Clause 5(b) of the Trust Deed (24 September 2004), the Trustees shall recover the stressed assets by restructuring, arriving at settlement with the borrowers, taking legal measures or adopting such measures as they may deem fit including but not limited to their recovery as arrears of land revenue. Accordingly, SASF had accepted equity / preference shares as part of the settlement and the face value of such shares was ₹ 204.81 crore as on 31 March 2013.

Following observations are made in audit:

- In a period of nine years, SASF could recover only ₹ 22.66 crore by disposal / buy back of shares.
- An analysis of the quoted/unquoted share of ₹ 204.81 crore indicated that SASF was holding unquoted shares of ₹ 129.52 crore. Accepting unquoted shares was meaningless as there was no way the Trust could dispose of those shares. Further, the market value of quoted investment of ₹ 75.29 crore was ₹ 18.39 crore as on 31 March 2013. Details of quoted and unquoted shares and market value as on 31 March 2013 are given below:

₹ in crore

Serial Number	Category	No. of cases	Cost of acquisition	Market Value
1	Quoted but market value not available as on 31 March 2013	6	6.29	Not available
2	Quoted and market value less than cost of acquisition	27	64.34	11.31
3	Quoted and market value more than cost of acquisition	9	4.66	7.08
4	Total of quoted investments (1+2+3)	42	75.29	18.39
5	Total of unquoted investments	43	129.52	Not available
6	Total (4+5)	85	204.81	

- Out of the 88 cases selected by audit for detailed examination, in 19 cases the Trust accepted shares as part of settlement. An analysis of the 19 cases indicated that in ten cases (₹ 51.18 crore) there was no provision for buy back and in nine cases (₹ 64.88 crore) there was a provision for buy back. Examination of the nine cases revealed that except in one case the buyback provisions were not fully complied with (five cases), in one case due to non-compliance by the party, shares of ₹ 3.54 crore were sold for ₹ 64 lakh in the market, in one case the buyback period approved was beyond the life period of the Trust and in the remaining one case the buyback date is October 2015. Details are given below:

Sr. No.	Name of the Company	Amount (₹ in crore)	Date of buy back	Remarks
1.	SJK Steels Plant Limited	2.77	January to March 2013	₹ 5.38 crore recovered.
2.	E.R. Textiles Ltd.	7.71	31.03.2011	The company has defaulted in the condition for buy back of shares due to which settlement was revoked in May 2011.
3.	Ganesh Benzoplast Ltd.	2.08	NA	The Company was advised (June 2012) to buy back the shares for an aggregate consideration of ₹ 2.75 crore.
4.	Triveni Glass Ltd.	3.54	April 2007	SASF had advised the promoters to buy back the shares, which was not done by them. Due to default made by the

				company, the shares were sold in the market for ₹ 64 lakh resulting in a sacrifice of ₹ 2.90 crore.
5.	LML Ltd.	22.95	Redemption of preference shares of ₹ 21.19 crore during FY 2024 and 2025 as per modification to NS approved in September 2012.	Redemption approved is beyond the life span of SASF.
6.	Sri Vasavi Industries Limited	5.61	By October 2015	Not yet due.
7.	Datre Corporation Ltd.	17.22	In 4 instalments from April 2012 to April 2015	Revised in June 2013 to two equal instalments on 1.4.2014 and 1.4.2015.
8.	Assambrook Ltd.	1.50	April 2012	The company offered to pay an amount much below acquisition cost hence the offer was not accepted. Further increase in price realization is being explored.
9.	AG Foods Limited	1.50	December 2013	Only ₹ 80 lakh received.

The Trust stated (August 2013) that it would be avoiding acquiring equity in all future settlements in view of lack of potential recovery from equity. It further stated that it is making efforts to encash the already acquired equity at least by stipulating buy back conditions when the company is coming for reschedulement / restoration of their OTS.

The Ministry, in its reply stated that SASF had submitted that remedial action was being taken wherever possible.