

Chapter I Introduction

1.1 About SASF

Industrial Development Bank of India (IDBI), a statutory corporation established under the Industrial Development Bank of India Act 1964, was an apex institution to provide long term finance to industrial enterprises, both in public and private sectors. IDBI ceased to exist with effect from 1 October 2004 and in its place IDBI Bank came into being as an entity registered under the Companies Act 1956. The undertaking of IDBI was transferred to and vested in IDBI Bank. As of March 2004, IDBI accumulated non-performing assets (NPA) which stood approximately at ₹ 9,000 crore.

In order to acquire by transfer the Stressed Assets of IDBI and for managing these assets with a view to recovering the amounts due, the Government, as settlor¹, decided to set up a special purpose vehicle in the form of a Trust. It created a “Stressed Assets Stabilisation Fund” (SASF) for the Stressed Assets of IDBI and SASF Trust Deed was executed in September 2004.

The Government provided ₹ 9,000 crore in the budget for the financial year 2004-05 for extending loan to the Trust. The provision was for “extending loan to a special purpose vehicle (a Trust) for creation of a SASF for IDBI”. The amount was to be “invested in non interest bearing special securities to be issued by Central Government”. Consequently, the expenditure in Demand No 34 after netting the credit as in Special Deposits and Accounts (Major Head 8012) was exhibited Nil.

The Trust invested the money in zero interest Government special securities redeemable in 20 years. The Trust assigned these special securities amounting to ₹ 9,000 crore to IDBI (or its successor IDBI Bank) and in return, acquired 636 NPA/ stressed loan assets with a net loan outstanding (NLO)² of ₹ 9,004 crore.

In June 2006, SASF exchanged with IDBI Bank eight turnaround cases for three fresh NPA / stressed loan assets and after exchange of these cases, there were 631 NPA / stressed loan assets with NLO of ₹ 9,006 crore (Annexure I).

1.2 Audit of Accounts of SASF

Clause 17(a) of the Trust Deed states that “the accounts of the fund shall be maintained and audited by the CAG of India”. The provision of maintenance of

¹ The person who creates a Trust is the settlor.

² Gross loan outstanding (GLO) is loan before provision and net loan outstanding (NLO) is GLO less provision.

accounts by CAG was mistakenly placed as the responsibility to prepare the accounts rests with the executives and not with the CAG. CAG was not consulted while preparing the Trust Deed.

So far as audit of the Trust is concerned, by quoting the above clause, the Trust had requested (June 2005) CAG to appoint an auditor. CAG informed (July 2005) that since the Trust was an independent legal entity, audit could be undertaken only after such audit was entrusted under section 20(1) of the CAG's (DPC) Act, 1971. The Trust was requested to send their proposal through the Ministry of Finance. The views of the CAG were brought to the notice of the Ministry by the Trust in August 2005. No response was received from the Ministry until Mumbai High Court intervened in February 2013. The Ministry finally entrusted audit of SASF to CAG in May 2013 almost eight years since the inception of the Trust.

In the meanwhile the Trust continued to prepare its accounts for the years 2004-05 to 2011-12 and got them audited by M/s. G. P. Kapadia & Company, a Chartered Accountants' firm in Mumbai.

1.3 Status of Recovery

The Trust has so far recovered ₹ 4,071 crore and remitted ₹ 4,059 crore to GOI as of March 2013. Major recovery of ₹ 2407.79 crore (59 per cent) was effected in the initial period of the Trust, i.e. between 2005-06 and 2007-08. Thereafter, the amount recovered has declined sharply indicating that the cases left now are more complex and difficult.

1.4 Organisational set up

SASF is managed by a Board of Trustees (BOT) appointed by the Government of India. The Board consists of one Chairperson, one Executive Trustee and three members. From 1 January 2013 onwards the posts of Chairperson and Executive Trustee have been merged. The details of Trustees are given in Annexure II. The Board of Trustees is assisted by one Chief General Manager, one General Manager and 22 other officials.

Audit observed that from inception of the Trust till December 2012, the posts of Chairman and Executive Trustee of the Trust were held by Chairman and Managing Director and Executive Trustee respectively of IDBI Bank Limited. In addition, Deputy Managing Director of IDBI Bank Limited was the alternate Chairman and Trustee of the BOT from 9 June 2011 to 31 December 2012. It is, therefore, evident that for all practical purposes, the BOT of SASF in one way or the other was related to IDBI and that reflected a "revolving door" policy. Incidentally, it was also noticed that Shri Shailesh Haribhakti, partner of M/s. Haribhakti & Co., Chartered Accountants, who verified / certified the stressed assets and loan documents of IDBI before transfer to the Trust was also a Trustee of the BOT of SASF from 27 October 2004 to 8 June 2011.

1.5 Availability of Staff

As per Clause 18(a) of the Trust Deed, IDBI at the request of SASF would make available adequate number of staff with requisite skill for administering the

Trust towards the fulfilment of the purpose for which it was created. The salary and other perquisites were borne by IDBI.

Audit observed that:

- The Trust (2004) had not made any need based assessment of the employee requirements.
- Number of officials deployed was 50 in 2005 which came down to 24 in 2013.
- The Trust made proposals (July 2012, October 2012, March 2013 and April 2013) for additional manpower on *ad-hoc* basis. The specific number of staff requirement was not mentioned in the proposals sent. There was no written proposal prior to July 2012.
- During 2005 to 2013, 121 employees of the parent body IDBI were deputed at some point of time or the other to serve the Trust.
- 62 out of the 121 (51 *per cent*) employees had worked for less than two years with SASF and out of the 62 employees, 25 had worked for less than one year.
- Only 16 out of 121 employees possessed recovery experience.
- Staff deputed to SASF included four officials against whom there were disciplinary cases.

As the recovery process of SASF also involves negotiations and settlement of stressed assets, there is scope for discretion. Further, these being stressed and difficult loans, staff with recovery experience needs to be deployed by IDBI to the Trust. However, only 16 out of 121 employees possessed the recovery experience.

It was noticed in audit that even though the Trust was expected to perform the onerous task of recovering doubtful debts of ₹ 9000 crore, there was never any formal manpower planning and deployment. Apart from absence of stability of tenure of personnel, manpower management was mostly done on an informal basis, drawing personnel from IDBI in an *ad hoc* manner. It could be said judging from the management structure that the Trust acted almost as an extension of IDBI.

The Trust stated (August 2013) that they had taken up the matter with Ministry of Finance, Government of India as well as with IDBI Bank Limited and IDBI Bank Limited had already posted seven officers.

1.6 Establishing procedure for recovery of stressed assets

As per the Trust Deed, the Board of Trustees were given powers to 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. The BOT brought out (December 2004) a brief policy and procedure for settlement of dues including delegation of powers to Committee of Officers (COO) and Executive Committee (EC) and a detailed recovery policy including delegation of powers to COO and EC was approved by BOT in April 2005. The policy was reviewed and modified in July 2006.

The main thrust of the policy was to recover the amounts locked up in the assets within the shortest possible time preferably by resorting to one time settlement (OTS) or negotiated settlement (NS). Restructuring could be considered in potentially viable cases and minimum dues to be restructured might include entire principal and interest. Interest rate on restructured core principal shall not normally be less than a rate equivalent to 200 basis points less than benchmark prime lending rate (BPLR) of IDBI on average yield basis. The basic objective of the recovery policy was to bring about a pragmatic and flexible approach to optimise resolution of the stressed assets and recovery of amounts locked up in these assets in the shortest time possible.

The salient principles of the Recovery Policy were:

- Since the accounts have been transferred by IDBI to SASF after making all possible efforts to restructure/recover within its guidelines, the basic approach should be practical and realistic (Chapter I).
- While taking any decision in a case, the prime criterion would be how fast the amounts could be recovered (Chapter I).
- The approach to be adopted should depend on circumstances, nature and characteristics of each case (Chapter I).
- In arriving at the OTS/NS, efforts should be made to recover maximum amount within the shortest possible time. Where the value of securities is sufficient to cover the dues, the endeavor should be to recover the maximum amount (Chapter III).
- Valuation should be carried out by a valuer engaged by SASF / other secured lender/Court. Value of security including collaterals available (on pro-rata basis) as also amount of statutory liabilities and workers' dues shall form the basis for settlement amount. Fresh valuation may be sought if circumstances such as vintage of existing valuation, volatility of asset value, etc. so warrant (Chapter III).
- The settlement amount by way of OTS shall preferably be paid in lump sum or in maximum period of 12 months. The settlement amount by way of NS shall preferably be paid in maximum period of 36 months. In deserving cases, it can be extended up to 60 months. The NS amount shall generally carry interest, rate to be decided depending on the cash flow, normally not less than a rate equivalent to 200 basis points less than BPLR of IDBI on average yield basis. Suitable stipulation for interest reset at the end of every 24 months may be incorporated in cases where NS period exceeds 24 months (Chapter III).

1.7 Delegation of Powers

Delegation of powers in respect of restructuring of dues and compromise settlement, i.e., OTS / NS was as under (Chapter VI of Recovery Policy of July 2006):

| Sr. No. | Authority | Powers |
|---------|---|--|
| 1 | Committee of Officers (COO) - Consisting of Executive Trustee and three officials of the Trust upto 31 December 2012. From 1 January 2013 onwards it consists of Chairperson and Executive Trustee, Chief General Manager, General Manager, a senior most Deputy General Manager and Deputy General Manager (Legal). | <p>Restructuring of dues:</p> <p>Restructuring of outstanding liabilities shall be approved by the Committee of Officers, irrespective of loan amount involved, provided (a) no waiver of outstanding principal and simple interest and (b) interest rate on restructured principal amount is not less than a rate equivalent to 200 bps less than the BPLR of IDBI (average yield).</p> <p>Compromise settlement of dues</p> <p>(a) The sacrifices would be in relation to the principal debt outstanding (gross).</p> <p>(b) COO may consider and approve all cases with GLO upto and including ₹ 10 crore except those cases declared as wilful default by any creditor and approve OTS / NS, if OTS/ NS amount is not less than the GLO in SASF book. All such approvals shall be reported to EC.</p> <p>(c) COO shall consider and approve release of guarantees on payment of suitable consideration pending settlement of the borrower's account.</p> |
| 2 | Executive Committee (EC) – consisting of Chairperson, Executive Trustee and two members of the Board of Trustees. | <p>EC shall consider and approve all OTS / NS cases with GLO upto and including ₹ 50 crore.</p> <p>In the BOT Meeting held on 21 December 2011 it was decided that there was no need for a separate sub-committee of the Board viz. Executive Committee and the powers delegated to the Executive</p> |

| | | |
|----------|--|--|
| | | Committee henceforth be exercised by the Board. |
| 3 | Board of Trustees (BOT) consisting of Chairperson and Executive Trustee and three Members. | <p>(i) OTS/NS in respect of all cases with GLO more than ₹ 50 crore shall be considered and approved by the Board of Trustees.</p> <p>(ii) Exceptional cases not cleared by the SC, for any reason whatsoever, may also be referred to the Board of Trustees if considered necessary and desirable by the Executive Committee.</p> <p>(iii) Cases which have been declared as wilful defaulter by any bank / institutions irrespective of the amount involved shall be considered and approved by the BOT.</p> |
| 4 | Screening Committee (SC) consisting of Chairman and two Members. | All compromise proposals involving settlement at less than the book value of principal loan outstanding in SASF books (as per delegation of powers of December 2004, it was gross principal loan outstanding) shall be placed before this Committee. The SC is expected to examine the justification for settlement and if found acceptable, SC may clear the case for approval by the competent authority. |

It was observed in audit that SASF did not have specific guidelines on treatment of personal guarantees given by the borrowers / promoters. The Trust did not collect the details of assets of the guarantors or the copies of their income tax returns.

1.8 Scope and Objectives of Audit

Audit of SASF was carried out with the following audit objectives and covered period from inception of the Trust to 31 March 2013. The audit objectives, broadly were to assess whether:

- The Trust remitted the amount recovered to the Government as per the Trust Deed and special securities equal to amount so transferred have been liquidated and the loan amount reduced accordingly;
- The SASF Board had established fair and transparent procedure for recovery of stressed assets;

- The Board took steps to recover stressed assets as per the established procedures;
- In case of liquidation of stressed assets, proper valuation was done to ensure optimum realization of the assets;
- The personal guarantees from promoters were available in records with the details of personal assets; the Trust had been collecting copies of the income tax return from them and in the event of failure of other measures, the final measure of invoking the personal guarantees/ attaching and liquidating the stressed assets has been promptly taken; and
- The Trust was on track to achieve the stated objective of realizing stressed assets.

1.9 Audit Sampling

A sample of 88 cases out of 631 was selected for audit examination in a stratified manner as shown below. The sample covered 62.77 *per cent* of total value of stressed assets. All 52 cases with NLO above ₹ 25 crore were selected.

| Category | No of cases | NLO | ₹ in crore | |
|---|-------------|---------------------|----------------------|-----------------|
| | | | No of cases selected | NLO |
| Decree cases | 55 | 468.65 | 8 | 214.30 |
| Suit filed cases | 254 | 3078.62 | 28 | 1836.82 |
| Other than decree/suit filed cases | 322 | 5269.83 | 52 | 3602.46 |
| Recovery and adjustment of NLO in respect of eight cases transferred back to IDBI | -- | 189.17 ³ | -- | -- |
| Total | 631 | 9,006.27 | 88 | 5,653.58 |

[Note: At the time of transfer of the stressed cases, IDBI had filed suits for recovery in suit filed cases and obtained decree (recovery orders) in decree cases].

1.10 Acknowledgement

The draft report was issued to the Ministry of Finance, Department of Financial Services on 6 November 2013. Replies were received on 30 January 2014. Replies of the SASF and the Ministry have been incorporated, where appropriate.

³ Out of ₹ 189.17 crore, ₹ 93.60 crore was on account of amount recovered by SASF and balance ₹ 95.57 crore was on account of reduction in NLO of the eight cases transferred back to IDBI.

Audit acknowledges the co-operation and assistance extended by the Management of SASF and Ministry of Finance at various stages of the audit.