

## CHAPTER III

# Disinvestment Process

### **3.1 Disinvestment Policy of Government of India**

The Department of Disinvestment was set up as a separate Department on 10 December 1999 and was later renamed as Ministry of Disinvestment from 06 September 2001. From 27 May 2004, the Department of Disinvestment became one of the departments under the Ministry of Finance. The Department of Disinvestment was renamed as Department of Investment and Public Asset Management (DIPAM) from 14 April 2016. The salient features of the current Disinvestment Policy are:

- (i) Public Sector Undertakings are the wealth of the nation and to ensure that this wealth rests in the hands of the people, promote public ownership of Central Public Sector Enterprises (CPSEs);
- (ii) While pursuing disinvestment through minority stake sale in listed CPSEs, the Government will retain majority shareholding i.e. at least *51 per cent* of the shareholding and management control of the Public Sector Undertakings; and
- (iii) Strategic disinvestment by way of sale of a substantial portion of Government shareholding in identified CPSEs upto *50 per cent* or more, along with transfer of management control.

On 05 November 2009, the Government approved the following action plan for disinvestment in profit-making government companies:

- (i) Already listed profitable CPSEs (not meeting mandatory public shareholding of *10 per cent*, which stood revised to *25 per cent* in August 2014) are to be made compliant through Offer for Sale by Government or by the CPSEs through the issue of fresh shares or a combination of both;
- (ii) Unlisted CPSEs with no accumulated losses and having earned net profit in three preceding consecutive years are considered for listing;
- (iii) Follow-on public offers would be considered taking into consideration the needs for capital investment of CPSE, on a case by case basis, and Government could simultaneously or independently offer a portion of its equity shareholding;
- (iv) All cases of disinvestment are to be decided on a case by case basis; and
- (v) DIPAM is to identify CPSEs, which are to be divested, in consultation with the respective administrative Ministries and submit proposal to Government in cases requiring listing of CPSEs through Initial Public Offering and Offer for Sale of Government equity.

### 3.2 Mandate for Disinvestment

As per the present Allocation of Business Rules, the mandate of DIPAM, *inter alia*, is to deal with all matters relating to:

- (i) management of Central Government investments in equity including disinvestment of equity in Central Public Sector Undertakings, and
- (ii) sale of Central Government equity through offer for sale or private placement or any other mode in the erstwhile Central Public Sector Undertakings.

### 3.3 Modes of Disinvestment

The Government takes different routes for disinvestment, which are as follows:

(i) **Initial/ Further Public Offer (IPO/ FPO)**

When an unlisted company makes a fresh issue of shares for sale for the first time to the public, it is called an IPO. This paves the way for listing and trading of the issuer's shares on the Stock Exchanges. When an already listed company makes either a fresh issue of shares to the public or an offer for sale to the public, it is called an FPO.

(ii) **Exchange Traded Fund (ETF)**

An ETF is a basket of stocks that reflects the composition of an Index, like Nifty 50. ETFs trading value is based on the net asset value of the underlying stocks that it represents. ETFs can be bought and sold throughout the trading day like any stock.

(iii) **Offer for Sale (OFS)**

OFS is a simpler method of share sale through the exchange platform for listed companies. The mechanism was first introduced by SEBI in 2012, to make it easier for promoters of publicly traded companies to cut their holdings and comply with the minimum public shareholding norms by June 2013.

(iv) **Buyback of shares**

Buyback is the repurchase by a company of its shares from the existing shareholders that reduces the number of its shares in the open market.

(v) **Strategic sale of CPSEs**

Strategic disinvestment implies the sale of a substantial portion of the Government shareholding of a CPSE of up to 50 *per cent* or such a higher percentage, as the competent authority may determine, along with transfer of management control.

Apart from the other modes of disinvestment, during the year 2018-19, for the first time, the Union Cabinet authorized DIPAM to sell enemy shares<sup>46</sup> (in various companies) kept

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<sup>46</sup> As per the *Enemy Property Act, 1968*, ‘enemy property’ means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm. The enemy shares belong to persons who left India and settled in China or Pakistan after the wars in 1962 and 1965. Sale of enemy shares has been discussed in para 3.7.4.

under the custody of the Custodian of Enemy Property for India as per sub-section 1 of Section 8A of the Enemy Property Act, 1968.

### 3.4 Process of Disinvestment

The disinvestment process for Initial Public Offer/ Further Public Offer/ Offer for Sale involves the following steps:

- (i) In principle consent by the Administrative Ministry of the CPSE concerned;
- (ii) Approval of the proposal to disinvest by the Cabinet Committee on Economic Affairs (CCEA);
- (iii) Constitution of Inter-Ministerial Group<sup>47</sup> (IMG), with the approval of the Finance Minister, to guide and oversee the disinvestment process;
- (iv) Appointment of Advisers by the IMG for the transaction, including Merchant Bankers, Book Running Lead Managers (BRLMs), Legal Advisers;
- (v) Presentation by BRLMs before High Level Committee (HLC<sup>48</sup>) on valuation;
- (vi) Recommendation by HLC on price band/ floor price to Empowered Group of Ministers<sup>49</sup> (EGoM), taking into consideration the recommendation of the BRLMs; and
- (vii) Approval by EGoM of recommended price band/ floor price, method of disinvestment, price discount for retail investors and employees, etc.

Following changes have been approved by CCEA in its meeting held on 6 August 2014:

- (i) Alternative Mechanism<sup>50</sup> to perform the functions of the erstwhile EGoM.
- (ii) HLC to recommend the price band/ floor price; discount to retail investors and employees; change in the method/ mode of disinvestment (if required due to market conditions or due to change in SEBI Rules and Regulations etc.,); number of tranches and the number of shares to be allotted in each tranche; whether to accept the offer or cancel it depending on subscription; whether the oversubscribed amount is to be retained in case of oversubscription, deciding on the modalities in case of CPSE ETF, etc.

<sup>47</sup> *IMG comprises of Secretary, Joint Secretary and Financial Advisor of DIPAM; Secretary, Joint Secretary and Financial Advisor of the Administrative Ministry; Secretary or a representative (not below the rank of Joint Secretary) from - Department of Public Enterprises, Department of Legal Affairs, Ministry of Corporate Affairs, Department of Economic Affairs and Department of Expenditure; CMD of CPSE and Director (Finance) of CPSE. IMG may co-opt any other member from any Ministry/ Department/ organisation, on a case to case basis, if needed.*

<sup>48</sup> *HLC comprises of Secretary, Joint Secretary and Financial Advisor of DIPAM, and Secretary, Joint Secretary and Financial Advisor of the concerned Administrative Ministry.*

<sup>49</sup> *EGoM comprises of Minister of Finance, Minister of Commerce and Industry, Minister of Textiles, Minister of Heavy Industries and Public Enterprises, Minister of Administrative Ministry and Deputy Chairman, Planning Commission.*

<sup>50</sup> *Alternative Mechanism comprises of Finance Minister, Minister of Road Transport and Highways and Minister of Administrative Ministry of the concerned CPSE.*

(iii) The recommendation of HLC would be put up for the approval of Finance Minister, Minister of Road Transport and Highways and the Minister of the Administrative Ministry of the concerned CPSE.

(iv) The Alternative Mechanism may be serviced by the DIPAM.

In case of strategic disinvestment, a three-tier decision-making mechanism was conceptualized with the CCEA at the Apex level, Core Group of Secretaries on Disinvestment (CGD) as the supervisory and recommendatory body and an Evaluation Committee (EC) for advising/ assisting CGD on issues such as valuation, reserve price and for making recommendations on final price and/ or strategic partner(s). NITI Aayog was mandated to identify the CPSEs for strategic disinvestment. The process involves selection of CPSEs for disinvestment by NITI Aayog which is further recommended by CGD and later approved by CCEA. After CCEA clears the proposal, selection and appointment of Transaction Adviser, Legal Adviser and Asset Valuer is done through a competitive bidding process by DIPAM/ Administrative Department/ CPSE. Transaction Adviser examines the eligibility of the prospective bidders based on terms and conditions of Expression of Interest (EoI). Details of all eligible bidders, price quoted, and other documents are presented to CGD. CGD makes appropriate recommendations to CCEA for approval of disinvestment.

### **3.5 Target and achievement for disinvestment of CPSEs for the last five years**

Budget Estimates (BE) for the receipts through disinvestments in a financial year are fixed by the Department of Economic Affairs (DEA). During the course of budget discussions, DIPAM provides inputs on possible transactions that could be implemented in that year. On the basis of the progress made and probable transactions during the year, DIPAM communicates the Revised Estimates (RE) to DEA.

The BE fixed by DEA, RE communicated by DIPAM and actual realization made through disinvestment process for the years 2015-16 to 2019-20 are tabulated in Table 3.1:

**Table 3.1: Target of disinvestment vis-a-vis actual realisation**

*(₹ in crore)*

<b>Financial Year</b>	<b>Budget Estimate</b>	<b>Revised Estimate</b>	<b>Realization</b>	<b>Percentage variation between RE &amp; actual receipts</b>
2015-16	41,000	25,313	23,997	(-5)
2016-17	56,500	40,000	46,247	16
2017-18	72,500	1,00,000	1,00,057	Negligible
2018-19	80,000	80,000	84,972	6
2019-20	1,05,000	65,000	50,299	(-23)

From the above table, it is evident that the actual receipts were less than the RE in two years viz. 2015-16 and 2019-20.

### 3.5.1 Under-achievement of the projected disinvestment during the year 2019-20

The BE for the year 2019-20 as fixed by DEA was ₹1,05,000 crore. On the basis of the progress made during the year and transactions in pipeline, the BE was revised (December 2019) by DIPAM to ₹68,093 crore, however, a consolidated figure of ₹65,000 crore was conveyed to the DEA as RE. The actual receipt was only ₹50,299 crore which was below RE by 23 *per cent*. The details of actual receipt and under-achievement of projected receipts is given in Table 3.2.

**Table 3.2: Actual disinvestment receipts vis-à-vis the projected receipts**

Modes of disinvestment	Projected receipts at RE stage	Actual receipt at RE stage	Total target at RE stage	Actual receipt in 2019-20	Under achievement	(₹ in crore)
ETF	25,000	14,369	39,369	30,869	8,500	
OFS	5,000	729	5,729	1,130	4,599	
Buyback	2,000	Nil	2,000	822	1,178	
Strategic sale	16,000	Nil	16,000	13,883	2,117	
IPO	500	1,114	1,614	1,114	500	
SUUTI (Remittance)	1,500	Nil	1,500	600	900	
Enemy Share sale	Nil	1,881	1,881	1,881	Nil	
<b>Total</b>	<b>50,000</b>	<b>18,093</b>	<b>68,093</b>	<b>50,299</b>	<b>17,794</b>	

It is evident from the Table-3.2, that revised target of the disinvestments was under achieved by ₹17,794 crore. Audit observed that DIPAM could not disinvest all the CPSEs which were identified at the RE stage. The OFS in all four CPSEs (Coal India Limited, General Insurance Corporation of India, NMDC Limited, Rashtriya Chemicals and Fertilizers Limited/ National Fertilizers Limited), IPO in one CPSE (Indian Railway Finance Corporation) and buyback in two CPSEs (SJVN Limited and Antrix Corporation Limited) identified at this stage could not materialise. Further, in case of SUUTI, the actual remittance was lesser than the projected receipt by ₹900 crore.

DIPAM stated (April 2021) that the budget targets are fixed by the DEA and not DIPAM. It further stated that successful completion of disinvestment transaction depends on prevailing market conditions and investor interest. DIPAM further stated that during the period 2015-16 to 2019-20, the actual disinvestment receipts were more than the RE in three years (2016-17, 2017-18 and 2018-19).

The fact, however, remains that there was a shortfall of 23 *per cent* in actual realisation from disinvestments during the year 2019-20 even though the estimates had been revised on the basis of progress made and the transactions in pipeline.

### 3.6 Mode-wise realization from disinvestment during the last five years

Disinvestment proceeds realised through various modes of disinvestment during the last five years are mentioned in Table 3.3.

**Table 3.3: Mode-wise realisation during the last five years**

Mode of Disinvestment	2019-20	2018-19	2017-18	2016-17	2015-16	Total for 5 years (₹ in crore)
IPO	1,113.86	1,914.00	24,039.85	-	-	27,067.71
ETFs	30,869.19	45,079.92	14,500.00	8,499.98	-	98,949.09
OFS	1,129.58	5,235.63	13,710.86	8,004.42	19,513.58	47,594.07
Buy Back	821.80	10,670.83	5,337.55	18,963.47	4,483.22	40,276.87
Strategic disinvestment	13,883.00	15,913.96	41,068.65	10,778.71	-	81,644.32
Remittances from SUUTI	600.00	5,378.66	1,400.00	-	-	7,378.66
Enemy Shares sale	1,881.21	779.02	-	-	-	2,660.23
<b>Total</b>	<b>50,298.64</b>	<b>84,972.02</b>	<b>1,00,056.91</b>	<b>46,246.58</b>	<b>23,996.80</b>	<b>305,570.95</b>

As depicted in the Table-3.3, DIPAM realised proceeds of ₹50,298.64 crore through different modes of disinvestment during the year 2019-20. The major proceeds from disinvestment came from ETFs (61 *per cent*) and strategic disinvestment (28 *per cent*) during the year; a trend also seen in the last five years.

### 3.7 Implementation

DIPAM realised an amount of ₹50,298.64 crore during 2019-20 through 15 transactions, which have been discussed in succeeding paragraphs under four categories viz. (i) Disinvestment done through Minority Stake Sale, (ii) Strategic Disinvestment (iii) Capital Restructuring – Buyback of shares, and (iv) Asset monetisation – Sale of Enemy Shares.

#### 3.7.1 Disinvestment through Minority stake sale

DIPAM finalized 10 transactions<sup>51</sup> of IPO, OFS, ETF-Further Fund Offer (FFO), buyback of shares while disinvesting its minority stakes in CPSEs. While the buyback of shares has been discussed separately under Para 3.7.3, the disinvestments through IPO, OFS and ETF are discussed below:

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<sup>51</sup> IPO (Rail Vikas Nigam Limited and Indian Railway Catering & Tourism Corporation Limited), OFS (2 issues for RITES Limited), ETF (CPSE ETF FFO-5 & FFO-6 and Bharat 22 ETF FFO-2), Buyback (MOIL Limited, Mazagon Dock Shipbuilders Limited, and Security Printing & Minting Corporation of India Limited)

### 3.7.1.1 Initial Public Offering (IPO)

#### (a) Realisation from disinvestment through IPO

In the financial year 2019-20, GoI divested its shareholding in two CPSEs through IPO viz, Indian Railways Catering and Tourism Corporation Limited (IRCTC) and Rail Vikas Nigam Limited (RVNL). Details of the proceeds are shown in Table 3.4.

**Table 3.4: Details of the IPOs completed during 2019-20**

Name of CPSE	Percentage of GoI shares disinvested	Amount realized from disinvestment (₹ in crore)	Issue Price (Price Band) (₹ per share)	Percentage of GoI's shareholding post disinvestment
RVNL	12.12	475.89	19 (17-19)	87.88
IRCTC	12.60	637.97	320 (315-320)	87.40
<b>Total</b>		<b>1,113.86</b>		

As may be seen from the table, an amount of ₹1,113.86 crore was realised from disinvestment through IPOs of RVNL and IRCTC. IPOs of RVNL and IRCTC were oversubscribed to the extent of 1.83 times and 111.95 times respectively.

#### (b) Timeliness in bringing IPOs

Audit observed that the issue of listing of RVNL and IRCTC was approved in CCEA meeting in April 2017. However, the listing was completed in April 2019 and October 2019 respectively. In both the cases, the IPO was delayed by about two years. The reasons for this delay were sought from DIPAM but the response was awaited.

### 3.7.1.2 Further public offerings through Offer for Sale (OFS)

#### (a) Realisation from disinvestment through OFS

In the financial year 2019-20, GoI realized an amount of ₹1,129.58 crore from divesting its shareholding in one CPSE, viz. RITES Limited, through OFS in two offers, first in November 2019 and second in February 2020. Details of the proceeds are as given in Table 3.5.

**Table 3.5: Details of the OFS completed during 2019-20**

Name of CPSE	Percentage of disinvestment of GoI's shareholding	Timing of OFS	Floor price per share (in ₹)	Receipts from disinvestment (₹ in crore)	Percentage of GoI's shareholding post disinvestment
RITES	10.01	November 2019	293.5	730.33	77.39
RITES	5.37	February 2020	298.0	399.25	72.02
<b>Total</b>				<b>1,129.58</b>	

As may be seen from the table, an amount of ₹1,129.58 crore was realised from disinvestment through two OFS of RITES Limited. OFS-1 and OFS-2 were oversubscribed to the extent of 1.07 times and 1.073 times respectively.

#### **(b) Under-achieved retail and employee participation**

In the OFS of RITES Limited, 20 *per cent* of proposed OFS was reserved for retail investors. Audit, however, observed that the participation of retail investors in RITES OFS-1 and RITES OFS-2 was 11.43 *per cent* and 1.63 *per cent*, respectively. Further, the participation of employees was only 2.5 *per cent* of allocated quantity in the first OFS and Nil in the second OFS. DIPAM did not respond to the audit observation.

#### **3.7.1.3 CPSEs Exchange Traded Fund (ETF)**

##### **(a) Realisation from disinvestment through ETFs**

The Government, in 2019-20, realised ₹30,869.19 crore from the following Further Fund Offers (FFOs) of ETFs, as given in Table 3.6.

**Table 3.6: Details of the ETFs launched during the year 2019-20 (FFO mode)**

Name of ETF	Percentage of GoI holding retained in the CPSEs constituting CPSE ETF Index	Base Size (₹ in crore)	Final offer size decided (₹ in crore)	Percentage increase over base size	Procurement of shares from open market by Asset Management Company to maintain Government shareholding (₹ in crore)	Receipts from disinvestment (₹ in crore)
CPSE ETF FFO-5	51.5	8,000	11,500	43.75	1,499.61	10,000.39
CPSE ETF FFO-6	51.01	10,000	20,000	100	-	16,500.00
Bharat 22 ETF FFO-2	51.5	2,000	6,000	200	1,373.2	4,368.80
<b>Total</b>						<b>30,869.19</b>

The details of the above-mentioned ETFs are as follows:

**(i) CPSE ETF FFO-5:** The FFO-5 of CPSE ETF comprising 10 CPSE stocks<sup>52</sup> with a base size of the offer as ₹8,000 crore was launched in July 2019. Oversubscription was anticipated and it was decided that the maximum size of the offer may go upto ₹11,500 crore (43.75 *per cent* over the base size). It was also decided that the GoI holding in

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<sup>52</sup> NBCC (India) Limited, Bharat Electronics Limited, Coal India Limited, NLC India Limited, Oil India Limited, Oil & Natural Gas Corporation Limited, Power Finance Corporation Limited, Indian Oil Corporation Ltd., NTPC Limited and SJVN Limited

constituent CPSEs of the basket should not go below 51.5 *per cent*. Shares of Indian Oil Corporation Limited (IOCL) were purchased from open market by the Asset Management Company as GoI shareholding in IOCL had reached the threshold limit. A discount of three *per cent* on GoI divested shares was also offered to all the investors.

(ii) **CPSE ETF FFO-6:** The FFO-6 of CPSE ETF consisting of 12 CPSE<sup>53</sup> stocks was launched in January 2020 with base size of ₹10,000 crore. As above, the maximum size was decided as ₹20,000 crore (100 *per cent* over the base size). A discount of three *per cent* on GoI divested shares was also offered to all the investors.

(iii) **Bharat-22 ETF FFO-2:** The FFO-2 of the Bharat 22 ETF consisting of 22 stocks (16 CPSE<sup>54</sup> stocks, 3 PSU<sup>55</sup> banks and 3 private sector<sup>56</sup> stocks) was launched in October 2019 with a base size of the offer as ₹2,000 crore. Over-subscription was anticipated and it was decided that the maximum size of the offer may go up to ₹6,000 crore (200 *per cent* over the base size). It was also decided that the GoI holding in the non-financial CPSEs of the basket should not go below 51.5 *per cent* and in public sector banks shall not fall below 52 *per cent*. A discount of three *per cent* on GoI divested shares was also offered to all the investors.

As in the case of CPSE ETF FFO-5, where shares of Indian Oil Corporation Limited were bought from the open market, in case of Bharat-22 ETF FFO-2, shares of ITC Limited, REC Limited, Indian Oil Corporation Limited, National Aluminium Company Limited and Engineers India Limited were also bought from open market. As a result, Government netted 23 *per cent* less as compared to offer size due to buying stocks from the open market.

In case of CPSE ETF FFO-6, Audit had observed that rebalancing of the index<sup>57</sup> had been carried out and a scenario analysis had been provided by the Asset Management Company. Audit further noted that in case of Bharat 22 ETF, annual rebalancing of the index was included in the criteria mentioned for selection of stock for the development of the index in the scheme document. Accordingly, Audit enquired into reasons for not carrying out rebalancing of the index.

DIPAM stated (June 2021) that in the case of CPSE ETF which constituted only CPSEs, rebalancing of index is required whenever a predefined threshold limit of GoI holding is reached. Whereas, in the case of Bharat-22 ETF which constitutes CPSEs, Public Sector

<sup>53</sup> Oil & Natural Gas Corporation Limited, Coal India Limited, Oil India Limited, Bharat Electronics Limited, NLC India Limited, NBCC (India) Limited, NTPC Limited, SJVN Limited, Cochin Shipyard Limited, NHPC Limited, NMDC Limited and Power Grid Corporation of India Limited

<sup>54</sup> Power Finance Corporation Limited, REC Limited, NHPC Limited, SJVN Limited, NTPC Limited, Power Grid Corporation of India Limited, Oil & Natural Gas Corporation Limited, Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited, GAIL (India) Limited, Engineers India Limited, Bharat Electronics Limited, NBCC (India) Limited, Coal India Limited, NLC (India) Limited and National Aluminium Company Limited

<sup>55</sup> State Bank of India, Bank of Baroda and Indian Bank

<sup>56</sup> Larsen & Toubro Limited, Axis Bank Limited and ITC Limited

<sup>57</sup> Rebalancing of the index refers to adding or removing constituent securities or changing the weights of the existing index constituents.

Banks and private companies in which GoI has shareholding, the additions and deletions (rebalancing) to the index occur only where the GoI notifies the public of a change under its disinvestment program on their website. There is no parameter of predefined GoI shareholding limit in Bharat 22 ETF methodology as this ETF constitutes private companies also. Hence, at the time of launch of any offer, the Asset Management Company was informed by Government about the maximum limit of GoI holding in CPSEs upto which divestment could be made. In case such limit is crossed, the Asset Management Company was permitted to procure excess share over and above the shares offered by Government for disinvestment from open market. Government receives the proceeds to the extent of its shares divested during the offer.

Audit observed that a threshold limit of GoI holding in CPSEs (*51.5 per cent*) existed in respect of CPSEs in the Bharat 22 ETF basket. GoI shareholding in Engineers India Limited, National Aluminium Company Limited and Indian Oil Corporation Limited was *52 per cent*, *52 per cent* and *51.5 per cent* respectively after the previous issue of ETF was brought out in the market, which was close to threshold shareholding limit. It was also known that GoI did not hold any shares of REC Limited, and could not undertake any more divestment of ITC Limited. In the documents provided to Audit, existence of certain transaction costs and disincentives to investors was mentioned in case rebalancing was required to be done with respect to REC Limited, but there was no comparative analysis or scenario analysis to support whether costs of rebalancing the basket in case of Bharat-22 ETF outweighed the cost of buying stocks from market.

Additionally, on Audit's enquiry on whether further ETFs are planned, it was stated (February 2021) that Government had decided to pause in employing Equity ETFs as a tool for minority stake sale.

#### **(b) Lesser retail participation in the offers of ETF**

As per the Scheme Information Document prepared before the launch of ETF, maximum limit of allocation to retail investors was *25 per cent* in Bharat-22 ETF FFO-2 and in case of CPSE ETF FFO-6, the combined limit of allocation to retail investors and qualified institutional bidders was *70 per cent*. Audit, however, observed that the participation of retail investors in FFO-2 of Bharat 22 ETF, FFO-5 of CPSE ETF and FFO-6 of CPSE ETF was *10.17 per cent*, *3.09 per cent* and *13.09 per cent* respectively. All of these issues were oversubscribed in total but the participation of the retail investors was very low.

Similar issues were pointed out in CAG's Report No 18 of 2019 also, where poor response of retail investors to IPOs of CPSEs had been noticed.

#### **3.7.2 Strategic Disinvestment (Sale of majority stake of GoI in CPSEs)**

The current disinvestment policy includes strategic disinvestment by way of sale of substantial portion of government shareholding in identified CPSEs up to *50 per cent* or more, along with transfer of management control.

The Cabinet Committee on Economic Affairs (CCEA), in its meeting held on 17 February 2016 approved the proposal of DIPAM relating to procedure and mechanism for strategic

disinvestment of CPSEs. The CCEA approved revised procedure and mechanism of strategic disinvestment in October 2019.

The Government has “in principle” approved strategic disinvestment in 31 cases since 2016, out of which strategic disinvestment in eight cases<sup>58</sup> has been completed; in four cases<sup>59</sup>, the CPSEs were recommended to be closed and in two cases<sup>60</sup>, the transaction was deferred. The remaining 17 transactions<sup>61</sup> are at various stages of implementation.

During the year 2019-20, three strategic transactions were completed as detailed below in Table 3.7.

**Table 3.7: Strategic Disinvestments completed during 2019-20**

Name of CPSE disinvested	Percentage holding of GoI prior to disinvestment	Name of the buyer	Amount realised (₹ in crore)
THDC India Limited (THDCIL)	74.50	NTPC Limited	7,500
North Eastern Electric Power Corporation Limited (NEEPCO)	100	NTPC Limited	4,000
Kamarajar Port Limited (KPL)	66.67	Chennai Port Trust	2,383

From the above table, it is evident that the stake of GoI in the aforesaid CPSEs was sold to another CPSE/ Government entity.

In respect of the strategic disinvestment carried out during the year 2019-20, Audit observed the following points:

### **3.7.2.1 Stake of GoI purchased in violation of the guidelines of Department of Public Enterprises (DPE)**

As per the Maharatna scheme notified (February 2010) by the DPE, Maharatna CPSEs can make equity investment to establish financial joint ventures and wholly owned subsidiaries and undertake mergers and acquisitions subject to a ceiling of 15 *per cent* of the net worth

<sup>58</sup> *Hindustan Petroleum Corporation Limited: ₹36,915 crore, HSCC (India) Limited: ₹285 crore, National Projects Construction Corporation Limited: ₹79.80 crore, Dredging Corporation of India Limited: ₹1,049 crore, REC Limited: ₹14,499.99 crore, THDC India Limited: ₹7,500 crore, North Eastern Electric Power Corporation Limited: ₹4,000 crore and Kamarajar Port Limited: ₹2,383 crore*

<sup>59</sup> *Hindustan Prefab Limited, Hindustan Fluorocarbons Limited, Bharat Pumps & Compressors Limited and Scooters India Limited*

<sup>60</sup> *Hindustan Newsprint Limited and Karnataka Antibiotics & Pharmaceuticals Limited*

<sup>61</sup> *Projects & Development India Limited, Engineering Projects India Limited, Pawan Hans Limited, Bridge & Roof Company Limited, Air India Limited, Central Electronics Limited, Cement Corporation of India Limited (Nayagaon unit), Steel Authority of India Limited (Salem Steel Plant, Bhadravati Steel Plant and Alloy Steel Plant, Durgapur), Ferro Scrap Nigam Limited, Nagarnar Steel Plant of NMDC Limited, Bharat Earth Movers Limited, HLL Lifecare Limited, Indian Medicines Pharmaceuticals Corporation Limited, Bharat Petroleum Corporation Limited, Shipping Corporation of India Limited, Container Corporation of India Limited and Neelachal Ispat Nigam Limited*

of the CPSE, limited to ₹5,000 crore in one project. The overall ceiling in such investments in all projects put together will not exceed 30 *per cent* of the net worth of the concerned CPSE. In a communication to its Administrative Ministry i.e., the Ministry of Power, NTPC, a Maharatna CPSE expressed (February 2020) its view that acquisition of THDCIL and NEEPCO would breach the aforesaid overall ceiling of 30 *per cent* of net worth considering already committed equity investment/ participation in other JVs. Audit observed that NTPC Limited invested (March 2020) ₹11,500 crore for purchasing GoI's stake in NEEPCO and THDCIL in violation of the aforesaid prescribed limit. In this regard, no exemption was sought from the DPE.

DIPAM replied (January 2021) that DPE was also a member of CCEA, therefore, the action did not seem to attract provisions contained in Maharatna Scheme delegating powers to the Boards of the CPSEs.

The reply of DIPAM is not tenable as the aforesaid issue of breach of limit was not addressed in the meeting.

### **3.7.2.2 Sector consolidation instead of disinvestment**

DIPAM planned for listing of NEEPCO (in April 2017) and THDCIL (in April 2012 and December 2018) as approved by CCEA. In November 2019, in order to take power sector consolidation further, CCEA approved the acquisition of THDCIL by NTPC and of NEEPCO by NHPC<sup>62</sup> respectively in modification of the earlier decision of listing. The acquisition of the aforesaid companies was done in March 2020. As a result, the two companies became subsidiaries of NTPC and remained Government companies.

Audit is of the view that the above acquisition is more in the nature of sector consolidation rather than disinvestment in true sense.

### **3.7.2.3 Acquisition of Kamarajar Port Limited by Chennai Port Trust**

The CCEA in its meeting in June 2017 had approved the strategic disinvestment of 100 *per cent* of GOI equity in Kamarajar Port Limited. NITI Aayog had recommended disinvestment of GOI's equity through a two stage auction process. However, in view of certain strategic considerations, the proposal was dropped in 2017. In December 2018, the Ministry of Shipping proposed for sale of 100 *per cent* of GoI's stake in Kamarajar Port Limited to Chennai Port Trust on arm's length basis which was approved by CCEA on 28 February 2019. In March 2020, GOI sold its 66.67 *per cent* equity in Kamarajar Port Limited to Chennai Port Trust, taking the latter's holding in Kamarajar Port Limited to 100 *per cent*.

The reserve price for the transaction was fixed as ₹2,383 crore in the meeting of Inter-Ministerial Group (IMG) held on 16 March 2020, which was later approved by the Core Group of Secretaries on Disinvestment and the Alternative Mechanism.

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<sup>62</sup> NEEPCO was finally acquired by NTPC

The reserve price was calculated on the basis of the valuation of equity of Kamarajar Port Limited as done by the Transaction Adviser appointed for the transaction. As per approval given by CCEA, the methods of valuation included Discounted cash flow, Asset valuation and Relative valuation methods. However, the weightage to be given to the various methods was not prescribed. The assigned weightages approved by the IMG and reserve price arrived at is as given in Table 3.8.

**Table 3.8: Fixation of Reserve Price for Strategic Disinvestment of KPL**

Method used for valuation	Valuation (₹ in crore)	Weightage assigned by IMG (in per cent)	Value (₹ in crore)
Discounted cash flow method	4,069	35	1,424
Market multiple method (Comparable Companies method)	3,438	20	688
Market multiple method (Comparable Transaction method)	3,474	15	521
Asset valuation method	3,140	30	942
Book Value	2,472	NIL	-
Weighted value		100	3,575
Reserve Price (GoI's stake in Kamarajar Port Limited )		<b>66.67</b>	<b>2,383</b>

**a) Stake Purchase from GoI, financed by loan by already financially stressed Chennai Port Trust**

The Transaction Adviser appointed for the disinvestment of Kamarajar Port Limited apprised (November 2019) that the Chennai Port Trust, even after consolidation of Kamarajar Port Limited with Chennai Port Trust post the proposed transaction, may not have sufficient financial capacity to acquire the entire *66.67 per cent* of shareholding of the GoI in Kamarajar Port Limited. Accordingly, the Alternative Mechanism decided (February 2020) that due to insufficient financial capacity of Chennai Port Trust to buy the entire GoI's stake in Kamarajar Port Limited, the disinvestment was to be made in two tranches, i.e. *50 per cent* of the GoI's stake by March 2020 and the remaining stake within 12 months of the first tranche. However, the entire stake of GoI was sold to Chennai Port Trust for ₹2,383 crore. Due to poor financial condition, Chennai Port Trust (also a Government entity) had to raise a loan of ₹1,775 crore at a rate of interest of eight *per cent* per annum for purchasing the GoI's stake in Kamarajar Port Limited. In addition to principal repayment, it put an additional interest burden of approximately ₹142 crore (per annum) on the Chennai Port Trust.

DIPAM replied (June 2021) that in the Inter-Ministerial Group meeting of February 2020, the Ministry of Shipping highlighted that it seemed possible for Chennai Port Trust to bid for full GOI stake in one tranche by March 2020. This was agreed to and brought to the notice of the Alternative Mechanism in its meeting held in March 2020.

Audit observed that approximately 74.5 *per cent* of the proceeds realised by GOI from disinvestment of Kamarajar Port Limited (₹1,775 crore of total ₹2,383 crore), was actually borrowed from the market by Chennai Port Trust, given its constrained financial condition. The transaction defeated the very spirit of disinvestment.

**(b) Impact of the assumptions made by the Transaction Advisor and other issues on reserve price for strategic disinvestment of Kamarajar Port Limited**

The Guidance Note-II on Strategic Disinvestment issued by DIPAM in May 2018 states that the valuation assumptions ought to be validated along with justifications, especially in cases involving difference in opinion as regards projections, production parameters, business plan, etc. In case of valuation of Kamarajar Port Limited, the assumptions made by the Transaction Advisor (including, 20 *per cent* company specific discount and risk premium), in the aggregate, impacted reserve price by approximately ₹576.35 crore. However, adequate justification for applying the specific discounts/ premium, was not found on record. The details are discussed below:

**(i) Company specific discount of 20 *per cent* applied in the valuation of port basin and entrance channel of Kamarajar Port Limited**

The value of the Kamarajar Port Limited arrived at through Asset Valuation Method<sup>63</sup> was ₹3,140 crore. As required under the method, the Asset Valuer calculated the market value of all the assets of Kamarajar Port Limited. Kamarajar Port Limited had port basin and entrance channel measuring 2,82,48,988 cubic feet (having highest carrying value among all the assets). For calculating the market value of this asset, Asset Valuer took a rate of ₹395 per cubic feet of dredging (average of the current rates i.e. ₹370 - ₹420 per cubic feet of dredging). However, a further discount of 20 *per cent* was applied, due to which the rate of dredging per cubic feet reduced to ₹316 per cubic feet. The Asset Valuer applied the discount on an assumption that considering the large quantity of the dredging (aggregate volumes over several years), the Port Authority may expect a discount of 20 *per cent*. However, no supporting justification was given in the valuation report for such a significant discount.

**(ii) Difference in the value of the assets calculated by the Transaction Advisor and the value of the assets used for fixation of reserve price**

The value of total assets of Kamarajar Port Limited as ascertained by the Asset valuer was ₹3,754.72 crore. However, the value of assets used for fixation of reserve price of the transaction was taken as ₹3,751.60 crore. This difference of ₹3.12 crore remained unexplained. After adjustment of notional capital gain tax of ₹612 crore, the asset value to be taken for fixation of reserve price should, therefore, have been ₹3,142.72 crore, instead of ₹3,139.60 crore.

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<sup>63</sup>*This method helps in arriving at the cost of replacing the tangible assets of the business. The replacement cost takes into account the market value of various assets or the expenditure required to create the infrastructure exactly similar to that of a company being valued.*

**(iii) Company specific discount of 20 *per cent* applied on the EBITDA multiple to be used for valuation of Kamarajar Port Limited through Market Multiple Method (Comparable Company Method)**

Under the Market Multiple Method (Comparable Company method), the EBITDA multiples (Enterprise Value of companies divided by their EBITDA) of two comparable port companies namely, Adani Ports and SEZ Limited and Gujarat Pipavav Port Limited were used to arrive at the Enterprise Value of Kamarajar Port Limited. The Enterprise Value so obtained was adjusted for debt, investments, cash and cash equivalents to get the equity value of Kamarajar Port Limited. The value of the Kamarajar Port Limited arrived through this method was ₹3,438 crore.

The EBITDA multiples of the companies were calculated as 13.01x and 7.15x. To arrive at the multiple applicable for Kamarajar Port Limited's valuation under this method, average of the aforesaid two multiples i.e. 10.08x was taken by the Transaction Advisor. In addition, a discount of 20 *per cent* was applied to this multiple (10.08x) due to which the EBITDA multiple got reduced to 8.07x<sup>64</sup>. However, no supporting justification was given in the valuation report for such a significant discount.

**(iv) Company specific discount of 20 *per cent* applied on the EBITDA multiple to be used for valuation of Kamarajar Port Limited through Market Multiple Method (Comparable Transaction Method)**

To arrive at the valuation of Kamarajar Port Limited under this method, the Transaction Advisor considered a transaction involving acquisition of 75 *per cent* equity stake in Krishnapatnam Port (Acquiree) by Adani Ports and SEZ Limited (Acquirer). The Enterprise Value of the acquiree was divided by its EBITDA to arrive at an EBITDA multiple which was 10.17x. Audit observed that the Enterprise Value for the above transaction as intimated by the acquirer was ₹13,572 crore. However, the Enterprise Value considered by the Transaction Advisor for the valuation was ₹13,546 crore. The EBITDA multiple with Enterprise Value as ₹13,572 crore was 10.19x instead of 10.17x which was adopted.

Further, a discount of 20 *per cent* was applied to this multiple (10.17x) due to which the applicable multiple got reduced to 8.13x<sup>65</sup>. However, the rationale for this discount was not found in records.

**(v) Company Specific Risk Premium of three *per cent* in calculation of cost of equity for valuation of Kamarajar Port Limited through Discounted Cash Flow method**

To arrive at the cost of equity of Kamarajar Port Limited, the Transaction Adviser had considered a company specific risk premium of three *per cent* in addition to the equity risk premium of 7.08 *per cent*. However, no justification was given for applying this risk

<sup>64</sup> 80 *per cent* of 10.08.

<sup>65</sup> 80 *per cent* of 10.17

premium. As a result of this company specific risk premium, the WACC (Weighted Average Cost of Capital) increased by 2.4 *per cent* as shown in *Annexure XXIII*.

In view of the points (i) to (v) mentioned above, the reserve price of the transaction of strategic disinvestment of Kamarajar Port Limited got reduced by ₹576.35 crore (*Annexure XXIII*).

DIPAM in its reply (June 2021) confirmed the calculations but did not comment upon the rationale of considering above mentioned discounts in the valuation of Kamarajar Port Limited. DIPAM stated that the Company Specific Risk Premium is unique to any unlisted company. The estimate of the unlisted company's unsystematic risk component captured through Company Specific Risk Premium in the Weighted Average Cost of Capital is a matter of Transaction Advisor's professional judgement based on several factors including financial statements and comparative ratio analysis, and any other qualitative matters during the Transaction Advisor's interaction with the management. The process is designed to benefit from the experience and judgement of the Transaction Advisor determining such discount rate.

Audit is of the view that given the significant discount rates and premium applied, explanations and/ or justification and underlying reasoning for the assumptions and judgement made should have been clearly documented as against references made to discussions in this regard.

#### **3.7.2.4 Significant discount applied in the valuation of private land of THDCIL at Dehradun**

As per DIPAM's Guidance Note-III on Valuation for Strategic Disinvestment, "The realizable market value of real estate assets either owned by the company as freehold properties or on a lease/ rental basis may be determined, assuming a non-distress sale scenario." It further states that "The value may be assessed after taking into account any defects/ restrictions/ encumbrances on the use/ lease/ sublease/ sales etc., of the properties or in the title deeds, etc".

M/s Protocol Insurance Surveyors & Loss Assessors Pvt. Limited was appointed for carrying out asset valuation of THDCIL for strategic disinvestment. In respect of valuation of private land at Dehradun, the assessor stated that in order to determine the market value of land parcels, they had conducted specific enquiries about prevailing market rates in the vicinity of the subject property. However, while calculating the rates for private land at various places, a discount of 40 *per cent* for size was provided by the assessor as given in *Annexure XXIV*.

Audit observed that these land pieces were located in Dehradun and other nearby suburban areas of Uttarakhand and, hence, enquired into reasons regarding application of discount to the extent of 40 *per cent*.

DIPAM replied that to derive the market rate from smaller plots to larger plots, there is a discount on account of size. The reason for this discount is that larger land parcels have limited buyers in the market and since large land parcels are huge in size, the transaction

amount is large. The value of property per unit of rate goes down as the size of the property increases.

Justification for discount, especially large discounts, needs to be in line with the requirements of the guidance note mentioned above. Clear title to these land pieces vested with THDCIL. It would have been prudent to record whether land pieces that were used for comparison (*Annexure XXIV*) were comparable to the land pieces held by THDCIL, in terms of any defects, locational advantages/ disadvantages, topography, probable end use etc., to help validate significant discounts in valuation.

#### ***Recommendation 1***

***In order to validate the assumptions/ judgements made in the valuation process in strategic disinvestments, and to draw requisite assurance that the same were reasonable, the underlying justification and reasoning may be clearly articulated and consistently documented as they have a significant impact on the reserve price and valuation of assets.***

#### **3.7.2.5 Role of Independent External Monitor in the valuation process**

In line with the decision of CCEA (17 February 2016) with regard to the procedure and mechanism for strategic disinvestment of CPSEs, an Independent External Monitor (IEM) was constituted in June 2016 to act as an oversight committee for strategic disinvestment. The terms and reference for the IEM were to (a) vet the process of valuation of CPSEs/ units, (b) oversee the transaction process of strategic disinvestment of CPSEs/ units, (c) examine and address the grievances received, and (d) any other matter that is referred to IEM by the Government.

It was observed that since its constitution, only four meetings of the IEM were held on 21 April 2017, 23 November 2017, 18 April 2018 and 30 May 2019 till the close of financial year 2019-20. The frequency of meetings appears less, keeping in view the number and magnitude of the strategic disinvestments being carried out during these years. It was also observed from the minutes that inputs on valuation of CPSEs with respect to transaction process of strategic disinvestments undertaken were not sought consistently from IEM.

DIPAM stated (January 2021) that CCEA had approved the role of IEM as an oversight mechanism and not as part of decision-making mechanism.

The reply of DIPAM is not tenable as the vetting of process of valuation of CPSEs and overseeing the transaction process of strategic disinvestment of CPSEs/ units was mentioned in the terms and reference of IEM. In the meeting held in May 2019, IEM was informed about the approval of the CCEA, accorded in February 2019, regarding disinvestment of Kamarajar Port Limited. The disinvestment was carried out in March 2020 but after May 2019, until the close of financial year 2019-20, no meeting with the IEM took place.

DIPAM's Guidance Note-II of May 2018 on 'Steps involved in the process of Strategic Disinvestment', also states that 'IEM Members are apprised of the process and procedure

followed in strategic disinvestment transactions by DIPAM from time to time. The advice and guidance of IEM is duly considered and adopted on an on-going basis’.

**Recommendation 2**

***The mechanism of IEM needs to function as per its terms of reference so that it can serve its intended purpose of overseeing the transaction process of strategic disinvestments as they are being undertaken, and vet the valuation of the CPSEs/ units, on a concurrent basis.***

### 3.7.3 Capital Restructuring - Buyback of Shares

DIPAM issued (May 2016) guidelines on Capital Restructuring of CPSEs which describes the measures of capital restructuring in the CPSEs. Buyback of shares by CPSEs has also been mentioned as one of the measures to be adopted by CPSEs for their capital restructuring which helps the company to improve investors’ confidence in the company and is likely to help the company to raise capital in future when it requires funds for expansion/ diversification for growth. According to the provisions relating to buyback of shares as mentioned in the aforesaid guidelines, every CPSE with a net worth of at least ₹2,000 crore and cash balance of more than ₹1,000 crore shall exercise the option to buy back their shares.

As per the DPE Public Enterprises Survey Report for the year 2018-19, there were 26 CPSEs which fulfilled the aforesaid criteria for buyback of shares in the year 2019-20. Out of the eligible 26 CPSEs<sup>66</sup>, three CPSEs undertook buyback of shares realising an amount of ₹821.80 crore for the GoI, the details of which are given in Table 3.9.

**Table 3.9: Realisation from buyback of shares**

CPSE	Listed/ Unlisted at the time of buyback	Receipt (₹ in crore)	Percentage shareholding of GoI before buyback	Percentage shareholding of GoI after buyback
MOIL Limited	Listed	250.47	56.01	53.84
Security Printing & Minting Corporation of India Limited	Unlisted	296.45	100	100
Mazagon Dock Shipbuilders Limited	Unlisted	277.88	100	100

<sup>66</sup> NTPC Limited, Power Grid Corporation of India Limited, ONGC Videsh Limited, GAIL (India) Limited, Airports Authority of India, Oil India Limited NMDC Limited, South Eastern Coalfields Limited, SJVN Limited, National Aluminium Company Limited, Mahanadi Coalfields Limited, Northern Coalfields Limited, Central Coalfields Limited, Bharat Heavy Electricals Limited, NHDC Limited, Security Printing & Minting Corporation of India Limited, MOIL Limited, Mazagon Dock Shipbuilders Limited, Cochin Shipyard Limited, RITES Limited, REC Limited, Engineers India Limited, Indian Renewable Energy Development Agency Limited, India Infrastructure Finance Company Limited, IRCON International Limited and Power Finance Corporation Limited

From the above table, it is evident that out of three CPSEs which undertook buyback during 2019-20, two CPSEs were unlisted and wholly owned by GoI. These wholly owned unlisted CPSEs bought back shares from their sole shareholder i.e. GoI. Therefore, even though the capital of these CPSEs got restructured, the shareholding of GoI in these two CPSEs did not reduce and remained at 100 *per cent*.

### **3.7.4 Asset Monetisation – Sale of Enemy Shares**

After the war with China and Pakistan in 1962 and 1965, respectively, the Government took over the properties, under the Defence of India Act, from persons who migrated to these countries. Enemy Property Act, 1968 was enacted to regulate such properties and these were entrusted with the Custodian of Enemy Property for India (CEPI), which is a statutory authority and a subordinate office under the Ministry of Home Affairs (MHA). The confiscated property included both movable and immovable properties. GoI made (March 2017) an enabling provision in the Enemy Property Act, allowing the Government to sell these properties.

The Cabinet approved (08 November 2018) the mechanism and procedure for sale of the enemy shares, and DIPAM was authorized under the provisions of sub-section 7 of Section 8A of the Enemy Property Act, 1968, to sell the same. CCEA delegated powers to the Alternative Mechanism to decide the quantum and price band for sale of enemy shares and also to decide the principle/ mechanism for quantum and price for sale of shares and the method of their selling in each case. Further, sale proceeds of such enemy shares were to be deposited as disinvestment proceeds in the Government account maintained by Ministry of Finance. Expenditure to be incurred for sale of shares was to be borne by DIPAM.

The procedure laid down in the Cabinet Note (dated 05 November 2018) for disposal of Enemy shares was as under:

- (i) Shares under the custody of CEPI, are to be disposed off following Stock Exchange/ SEBI Rules and Regulations for listed shares and any other mechanism for unlisted shares, suitably adapting the process being followed in disinvestment of GoI shares of CPSEs.
- (ii) The custody and upkeep of the Enemy Shares shall continue to be under the purview of MHA as per Allocation of Business Rules. The physical maintenance of the files and documents, dealing with court cases/ claims etc., relating to Enemy Shares shall be handled by MHA/ CEPI.
- (iii) Similar to the process adopted for disinvestment of the shares of the CPSEs, the Enemy Shares shall be kept in the Demat account of the CEPI/ MHA. At the time of disposal of these shares, authorized signatory of CEPI/ MHA will transfer the shares to be transacted to the broker for transfer to the buyers.
- (iv) High Level Committee (HLC) of officers co-chaired by the Secretary, DIPAM and Secretary, MHA shall deliberate and recommend to Alternative Mechanism the quantum and price/ price band for sale of shares and also the principles/ mechanism

for quantum and price for sale of shares and the method of selling the Enemy Shares in each case.

- (v) An alternative mechanism under the Chairmanship of Finance Minister and comprising Minister of Road Transport and Highways and Home Minister may be constituted to decide the quantum and price band for sale of Enemy Shares and also decide the principles/ mechanism for quantum and price for sale of such shares and the method of sale in each case, based on the recommendations of HLC.
- (vi) In respect of sale of Enemy Shares, the required advisors/ intermediaries like Merchant Bankers, Legal Advisers, Selling Brokers etc., will be appointed by DIPAM through open tender/ limited tender process. An Inter-Ministerial Group (IMG) will guide the process of sale of Enemy Shares as per SEBI Rules and Regulations for listed shares and any other mechanism for unlisted shares as per defined process.

As per the Cabinet Note (05 November 2018), 6,50,75,877 shares in 996 companies of 20,323 shareholders were under the custody of Custodian of Enemy Property for India (CEPI). Out of 996 companies, 588 companies were functional, 394 companies were in dormant stage and details of remaining 14 companies were stated to be shared by MHA in due course. Further, out of 588 functional companies, 139 were listed companies whose market value was around ₹2,291 crore. As per the approved time-frame for implementation, disposal of the Enemy Shares was likely to be done within one year from the CCEA approval (8 November 2018) depending on the market condition.

SBI Cap Securities Limited was appointed as adviser-cum-broker for sale of enemy shares through limited tender. The status as on 06 August 2020 of the enemy shares received from CEPI and sold by SBI Cap and reconciled during meeting with MHA is as given in Table 3.10.

**Table 3.10: Status of sale of enemy shares**

Description	Status
Shares transferred to SBI Cap	7,50,99,134 shares
Shares received by SBI Cap	7,50,99,134 shares
Shares sold by SBI Cap	7,48,02,340 shares
Total gross sale proceeds from disposal of shares (₹)	₹2665,78,52,481

Audit observed that:

- As per DIPAM's Note dated 11 September 2019, Alternative Mechanism in its meetings held on 07 February 2019, 08 March 2019 and 27 March 2019, approved the methodology to be followed for sale of listed shares. Accordingly, the shares of 182 companies were transferred to SBI Cap Securities Limited for sale as per the methodology approved by Alternative Mechanism. Shares of 130 companies were sold and an amount of ₹2,653 crore was realised. Shares in respect of the remaining

52 companies could, however, not be sold. The reasons for the same were sought from DIPAM and their reply was awaited.

- MHA had informed (June 2020) the Ministry of Corporate Affairs that the share certificates of enemy shares in 45 listed companies<sup>67</sup> and 145 unlisted companies<sup>68</sup> were not available with CEPI and duplicate share certificates were to be issued. Further, the unlisted shares in the physical form were to be dematerialised for their transfer for disposal. However, the process of issue of duplicate shares and dematerialisation of shares was yet to be finalised even though the procedure and mechanism for sale of enemy shares had been approved by the Cabinet in November 2018.

Thus, share certificates of 45 listed and 145 unlisted companies were not available with the Custodian for which duplicate shares had not been issued till March 2021.

### **Recommendation 3**

*Steps may be taken expeditiously to finalise the process of issue of duplicate shares and dematerialisation of shares, towards monetisation of enemy shares within a specified timeframe.*

## **3.8 Other Issues**

### **3.8.1 Progress in listing of CPSEs**

The Cabinet Committee on Economic Affairs (CCEA) approved (5 November 2009) the disinvestment policy which, *inter alia*, envisaged listing on the stock exchanges all the unlisted CPSEs having a positive net worth, no accumulated losses, and having earned net profits in three preceding years. Later, on 27 December 2018, CCEA modified criteria to ‘net profit in any one of the immediately three preceding financial years’ in place of ‘net profit for three preceding consecutive financial years’.

As per the revised criteria, the number of eligible CPSEs for listing was 133 (*Annexure XXV*). Out of these, 101 CPSEs had net worth of more than ₹100 crore as on 31 March 2019. In the financial year 2019-20, however, only two CPSEs were brought to market for listing after getting ‘in-principle’ approval from CCEA. The reason for slow progress was asked and response was awaited from DIPAM.

### **3.8.2 Monitoring on guidelines on Capital Restructuring**

The guidelines issued (May 2016) by DIPAM on Capital Restructuring of CPSEs were in line with the focus of the Government on adopting a comprehensive approach for efficient management of its investment in CPSEs. As per the guidelines:

<sup>67</sup> *In respect of 45 listed companies, share certificates for 1,25,081 equity shares and 759 preference shares having aggregate face value of ₹19.51 lakh were not available with CEPI.*

<sup>68</sup> *In respect of 145 unlisted companies, share certificates of 2,01,804 equity shares and 3,498 preference shares having aggregate face value of ₹34.99 lakh were not available with CEPI*

- (i) Declaration of dividend at reasonable rate on a regular interval boosts investor's confidence and is a desirable parameter for increasing the investor's confidence in the Company. Every CPSE would pay a minimum annual dividend of 30 *per cent* of Profit after tax or five *per cent* of the net-worth, whichever is higher subject to the maximum dividend permitted under the extant legal provisions. The report for exemption, if any, in this regard would be submitted by the CPSEs through their Administrative Ministry to the Department of Economic Affairs and DIPAM before the end of second quarter of the financial year.
- (ii) Buy back supports CPSEs' market capitalization, which is in the overall long-term interest of the company. Every CPSE having net-worth of at least ₹2,000 crore and cash and bank balance of over ₹1,000 crore shall exercise the option to buy-back their shares.
- (iii) Every CPSE shall issue bonus shares if their defined reserves and surplus is equal to or more than 10 times of its paid up equity share capital.
- (iv) It has been endeavour of the government to encourage participation of small investors in the capital market so as to increase the depth of the market, liquidity and trading volume of the shares. High price of the shares sometimes acts as a deterrent for the investors to invest in the company. Therefore, a CPSE where market price or book value of its share exceeds 50 times of its face value will split off its shares appropriately provided its existing face value of the share is equal to or more than ₹1.
- (v) In case, any CPSE is not able to comply with any of the above guidelines, specific exemption has to be obtained from DIPAM through their Administrative Ministry.

DIPAM was asked if it had laid down any mechanism to ascertain (i) the CPSEs which did not give dividend to the investors despite being eligible to give dividend in a financial year, (ii) the CPSEs which were eligible to buy back their shares in a financial year but did not exercise the option, (iii) the CPSEs which were eligible to issue bonus shares in a financial year but did not exercise the option (iv) the CPSEs which were eligible for splitting of shares in a financial year but did not exercise the option.

DIPAM was also asked if any exemption had been requested by any CPSE/ Ministry in respect of these guidelines during 2019-20. Reply of DIPAM was awaited.

### **3.8.3 Participation of LIC and other Government entities in disinvestment proceeds**

It is gathered from the records provided by DIPAM that LIC participated substantially in the disinvestments during previous three financial years as shown in Table 3.11.

**Table 3.11: Participation of LIC in disinvestments**

Financial year	Total Disinvestment through primary market (IPO/FPO/OFS/ETF of the CPSEs) (₹ in crore)	LIC's Primary Market participation (₹ in crore)	LIC's share in the disinvestment proceeds (in per cent)
2017-18	51,935.50	20,504.69	39.48
2018-19	52,212.37	2,584.21	4.95
2019-20	33,112.63	266.22 <sup>69</sup> (till September 2019)	-----

It was further noted that LIC crossed the IRDAI's prescribed limit of 15 *per cent* stake in a single investee company on several occasions, by participating in the disinvestment of strategic holdings of SUUTI (in Axis Bank, ITC Limited and L&T Limited).

The entity-wise break-up of disinvested shares picked up by different entities for each case of disinvestment during 2019-20 was sought from DIPAM which was awaited.

### 3.9 Conclusion

The Department of Investment and Public Asset Management (DIPAM) realised an amount of ₹50,299 crore through 15 transactions of disinvestment during the year 2019-20. Against the Revised Estimates of ₹65,000 crore for disinvestment proceeds during the year 2019-20, the actual achievement was ₹50,299 crore, thus registering a shortfall of 23 *per cent*.

Government of India sold (March 2020) its entire stake in Kamarajar Port Limited to Chennai Port Trust for ₹2,383 crore. Due to poor financial condition, Chennai Port Trust had to raise a loan of ₹1,775 crore at a rate of interest of eight *per cent* per annum for purchasing the stake in Kamarajar Port Limited. Thus, a substantial part of the disinvestment proceeds had to be financed through borrowings, which defeated the spirit of disinvestment. Further, while carrying out the valuation of Kamarajar Port Limited for strategic disinvestment, the Transaction Advisor considered 20 *per cent* company specific discount/ additional risk premium under different valuation methods. Given the significant impact of such assumptions on the reserve price for the strategic disinvestment, justification and underlying reasoning thereof should have been clearly documented.

There was slow progress in listing of CPSEs as only two CPSEs were listed during 2019-20, even though 133 CPSEs were eligible for listing as per the prescribed criteria.

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<sup>69</sup> Figures of participation of LIC are available till September 2019. However, the primary market disinvestment during the year 2019-20 was carried out till March 2020.