CHAPTER VIII: MINISTRY OF TEXTILES

India United Textile Mill Limited

8.1 Loss on account of extending undue benefit in fabric trading business to the group companies of strategic partner

India United Textile Mill Limited made irregular payment of advances to the group companies of strategic partner and did not levy interest for delayed receipt of sale proceeds from them, during the course of fabric trading business, resulting in loss of interest of ₹29.70 crore and blocking of funds of ₹109.34 crore.

India United Textile Mill Limited (IUTML) was incorporated on 13 November 2007 as a subsidiary company of National Textile Corporation (NTC), for revival of India United Mill Number 1, a sick unit, through private participation. 51 *per cent* of shareholding of IUTML was held by NTC and the remaining 49 *per cent* shareholding was held by the strategic partner through two entities viz. Bhaskar Industries Limited (BIL) with 29.40 *per cent* shareholding and Bhaskar Denim Limited (BDL) with 19.60 *per cent* shareholding. Day-to-day functioning, operation and management of IUTML was carried out by the Chief Executive Officer (CEO) nominated by the strategic partner and appointed by the Board of Directors of IUTML (BoD).

BoD decided (September 2008) to commence trading in textile/ textile related goods and authorised the CEO to enter into written contracts with accredited parties, including related parties and at such terms and conditions as the CEO may deem fit in the best interests of the Company i.e., with proper security preferably post-dated cheques and appropriate transaction documents. The trading business of IUTML was mostly confined to the group companies of the Strategic Partner[1].

Audit observed the following inadequacies in the trading business of IUTML with the Group Companies of strategic partner:

i) BoD was not the competent authority to take decision regarding the line of business of IUTML. As per clause 6.4 (b) of the Share Subscription and Shareholders agreement[2] IUTML should only engage in the mill's existing business and approval of NTC was required for carrying out textile related activities such as trading, marketing, R&D, exhibition etc. IUTML, however, did not take approval from NTC for entering into fabric trading activities.

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[1] ***The purchases from related parties/group companies of strategic partner accounted for 94 per cent of total purchases while the sales to related parties/group companies of strategic partner accounted for 84 per cent of total sales, on an average, during April 2016 to March 2020.***

[2] ***Executed (20 November 2007) between NTC, BIL and IUTML***

ii) IUTML purchased fabric worth ₹854.98 crore from M/s Bhaskar Exim Limited, one of the group companies of the strategic partner, during April 2016 to September 2018 and did not issue any purchase orders to Bhaskar Exim Limited thereafter. However, during February to April 2019, IUTML paid advances totalling ₹109.34 crore (30 individual payments) to Bhaskar Exim Limited without written contract, security and terms regarding interest on the advances. IUTML has neither received material from Bhaskar Exim Limited nor recovered the advance and interest thereon, till date (March 2021). Further, as per Shareholders' Agreement, 'Special consent'[3] was required for giving advances to related parties of strategic partner. However, no such special consent was obtained by IUTML for releasing the advances.

iii) Credit period of 90 to 120 days was allowed in the fabric trading business of IUTML and no interest was levied for any delay in payment. During April 2016 to December 2019, there were delays ranging from 3 to 362 days in the receipt of sale proceeds from group companies. The delays in payments by IUTML to one of the suppliers ranged from 1 to 148 days. Nevertheless, the delayed receipts in trading with group companies of strategic partner resulted in net interest loss to the extent of ₹15.30 crore during the period April 2016-December 2019.

Thus, IUTML made irregular payment of advances to the group companies of strategic partner and did not levy interest for delayed receipt of sale proceeds from them, during the course of fabric trading business, resulting in loss of ₹29.70 crore (interest on advance ₹14.40 crore + net interest on delayed receipt of sale proceeds ₹15.30 crore) apart from blocking of advance amount of ₹109.34 crore.

IUTML replied (January 2021) that:

- The advance was made with the intention of buying fabric material and to earn reasonable profit on future supplies. When the supply could not happen, the Company demanded loss of profit on account of non-performance by Bhaskar Exim Limited and Bhaskar Exim Limited agreed to compensate the same by way of interest during 2019-20 and as such there was no loss.

- With regard to lack of security for the advance, IUTML replied that the transactions with the group companies were done after taking the permission of BoD and under the guidance of strategic partners and any loss would be met by the strategic partners only.

- Regarding interest on delayed receipt of sale proceeds, IUTML replied that the Company was doing trading business with group companies on benchmark profit of 12.50 *per cent* per annum, as mandated by BoD and hence interest was not levied for delayed receipts/ payments.

[3] ***Approval (i) in the Company's Shareholders meeting by the affirmative vote of NTC and Strategic Partner and (ii) in the meeting of the Board by the affirmative vote of at least one nominee Director of NTC and one nominee Director of Strategic Partner.***

The above reply is to be viewed against the following:

- Though Bhaskar Exim Limited intimated (March 2020) that it would compensate IUTML for loss of profit and the matter was deliberated by BoD, the payment has not been received (March 2021). IUTML clarified (while replying to an audit query) that they have verbally demanded the advance back, which indicates that formal claim for return of advance has not yet been lodged.

- As per BoD approval (September 2008), trading business including those with related parties, should be backed by proper security and appropriate transaction documents. However, these were not complied with in this case. In the absence of written contract and security, IUTML did not have legal recourse to recover the amount from Bhaskar Exim Limited. Also, there was no provision in the Shareholders' agreement that loss would be entirely borne by the strategic partner.

- Benchmark profit on business and interest on delayed receipts were two different aspects. Further the rationale for stipulating a credit period would be defeated if interest was not charged for over stepping the credit period.

Thus, the Company extended undue advantage to the group companies of strategic partner against its own best interests, leading to loss of interest of ₹29.70 crore and blocking of funds of ₹109.34 crore.

The Audit paragraph was issued to the Ministry in April 2021; their response was awaited (July 2021).

National Textile Corporation Limited

8.2 Non-realisation of Transferable Development Rights

National Textile Corporation Limited got Transferable Development Rights from Government of Maharashtra as consideration for handing over 12 acres of land belonging to a closed textile mill but failed to take affirmative action to sell the Transferable Development Rights and realise the amount, leading to blockade of funds of ₹1,413 crore and consequent interest loss.

India United Mill No. 6 was a closed textile mill of National Textile Corporation Limited (NTC) situated in Mumbai having approximately 12 acres of land. Government of Maharashtra (GoM) made requests to Government of India (GoI) for transfer of the land for construction of a memorial for Dr. B.R Ambedkar. Terms and conditions for the transfer of land including due compensation to NTC were deliberated and GoM's stand was that it would be difficult to compensate in terms of money. GoM offered (March 2016) to compensate NTC in the form of transferable development right[4] for value of land which

[4] *Transferable Development Right (TDR) is a compensatory developmental right given by GoM to owner of land for construction of built-up area in lieu of land handed over to GoM. In the instant case, NTC surrendered their land and TDR was received as consideration. The TDR can be sold by NTC in the open market to any prospective builder/buyer who in turn can use this for constructing built up area in Mumbai City area (island city) and Mumbai Suburban/Extended Suburban Area.*

was worked out as ₹1,413 crore. GoM also offered to facilitate sale of transferable development right in the open market and added that the money received beyond the assessed value of land i.e., ₹1,413 crore shall be given to GoM and if the money received was below the value, the difference shall be paid to NTC by GoM. GoI accepted (August 2016) the offer and the land was handed over (March 2017) to Mumbai Metropolitan Region Development Authority (MMRDA) by NTC after receiving the transferable development right [5]. The transferable development right granted NTC the development rights for a built-up area of 1,30,720.04 sq. meter[6] for handing over 48,414.83 sq.m (around 12 acres) land to GoM.

Board of Directors of NTC (BoD) constituted (January 2018) a committee for the efficient, effective, and transparent sale of transferable development right with a mandate to complete the sale process within 29 weeks i.e., by August 2018. After issuing the tender (May 2018) for appointment of Marketing Consultant, BoD decided (August 2018) that since the amount of consideration to be received i.e., ₹1,413 crore by NTC was fixed and GoM had agreed to facilitate sale of transferable development right, it was prudent to request GoM, through the Administrative Ministry (Ministry of Textiles) to sell the transferable development right and remit the fixed consideration to NTC. Ministry agreed with the proposal of NTC and wrote a letter to GoM (July 2019) stating that since NTC was not having any expertise in the sale of transferable development rights and would get only a fixed amount, GoM may facilitate sale of transferable development rights held by NTC and expeditiously transfer the agreed amount to NTC. While the sale of transferable development rights was yet to materialise (June 2021), MMRDA started construction activities in the transferred land.

In this regard, Audit observed that:

i) Though GoM offered to facilitate sale of transferable development right in the open market, what is meant by 'facilitate' was not elaborated and agreed upon between the parties concerned i.e., GoI, GoM and NTC. Specific agreements were required to be executed between GoM and NTC as per the recommendation of the Committee of officials which finalised the terms and conditions of transfer of land and also as per the MoU signed between GOI, GoM and NTC for the transfer of land. But no such specific agreements were executed.

ii) The basis for the change in BoD decision i.e., to scrap the tender and entrust the sale of transferable development right to GoM, was cited as 'in-house discussions', which brought out that the amount of consideration to be received by NTC was a fixed amount and hence it was not worthwhile to undertake the sale. This was not tenable since NTC would get only a fixed amount was already known when the Transferable Development Rights Sale Committee was appointed by BoD in January 2018. Also, from the beginning GoM did not agree for payment of compensation in cash and offered only facilitation of sale of

[5] ***The TDR was given in the form of a "Development Right Certificate" (DRC) which was a transferrable negotiable instrument and legally enforceable within the validity period of five years (extendable by another five years on payment of revalidation fees).***

[6] ***(48414.83 x 2.5) + (20 per cent incentive of 48414.83) = 130720.04***

transferable development rights. Hence the revised stand of BoD in the meeting held in August 2018 to entrust the sale of transferable development rights to GoM was not backed by consent from GoM's side.

iii) Holding of transferable development rights for four years was of no benefit to NTC which was cash strapped and was in urgent need of funds to carry out day-to-day activities as well as to revive its other sick mills.

Thus, non-realisation of transferable development rights resulted in huge blockage of funds and consequent interest loss of ₹268 crore[7] to NTC and also defeated the objective of utilisation of sale proceeds for speedy and efficient implementation of modernization and revival of sick units.

Management in its reply (February 2021) stated that these were decisions of the Board. Management added that they were following up with GoM for sale of transferable development rights and realisation of ₹1,413 crore at the earliest.

Ministry in its reply (June 2021) stated that NTC Board in August 2018 decided to stall the transferable development rights sale process and instead request GoM to take up the entire exercise. Ministry added that NTC was facing dire working capital shortage and was therefore making sincere efforts to realise the transferable development rights amount.

The reply is to be viewed against the fact that there was no prior agreement or consent from GoM's side that they would sell the transferable development rights on NTC's behalf and hand over the agreed amount to NTC.

Audit also examined GoM records and sought (April 2021) clarifications regarding GoM's role in the process of sale of transferable development rights. GoM (Urban Development Department) replied (May 2021) that as requested by NTC in June 2017, MMRDA nominated two officials to the Committee formed by NTC for sale of transferable development rights. GoM further clarified that there were no precedents where GoM sold transferable development rights in open market and paid the proceeds to the beneficiary.

Hence it is clear that NTC failed to obtain concurrence from GoM before assigning the task of sale of transferable development rights to them. The lack of affirmative action to sell the transferable development rights by NTC for four years resulted in non-realisation of ₹1,413 crore and consequent loss of interest of ₹268 crore. Delay in realisation of transferable development rights amount also defeated the objective of intended utilisation of sale proceeds by NTC for speedy and efficient implementation of modernization and revival of sick units.

[7] ***Interest on ₹1,413 crore for 38 months (April 2018 to May 2021) considering RoI @ 6 per cent and after giving an allowance of one year (April 2017 to March 2018) for completing the process for the sale, on conservative basis.***