Chapter V : Liquidation and leasing of co-operative sugar factories

Under Section 102 of MCS Act, a CSF can be liquidated when it ceases to work. Banks cannot levy interest on the outstanding loans of the CSFs under liquidation and the erring Managements can also be changed. The Government decided (November 2005) to liquidate CSFs which were unable to mobilise funds for commencement of the crushing season and were not eligible for restructuring of outstanding loans under the NABARD package. During 1995-2006, 31 liquidation orders had been issued.

After issue of liquidation orders, the Commissioner appoints liquidators who take over the property and books of accounts of the CSFs and liquidate all their liabilities in the order of preference specified in the MCS Act. The liquidators have to recover the outstanding dues of the CSFs. They also have to prepare and submit accounts to the Commissioner for audit every year. Reports on the progress in liquidation have to be submitted by the liquidator to the Commissioner every quarter.

5.1 Delay in liquidation of CSFs

As per the MCS Act, the liquidation proceedings are to be terminated by the Commissioner within 10 years from the date of the liquidator's taking over of the properties of a CSF. Scrutiny of liquidation proceedings of nine CSFs out of 31 CSFs under liquidation disclosed the following:

- In respect of four[63] CSFs, liquidation proceedings had not been completed even after 10 years.
- Machinery worth Rs 42.83 crore in respect of five CSFs was lying idle for various periods from 1980-81 to 2005-06 as detailed in **Appendix IX.**
- As the liquidation proceedings were unduly prolonged, property worth Rs 3.50 crore was stolen from Sanjay CSF, Dhule for want of watch and ward staff.
- Government dues of Rs 81.61 crore were outstanding from eight[64] CSFs under liquidation, as detailed in **Appendix IX.**

Audit of the accounts of the liquidators had not been completed (June 2007) in any of the CSFs except Saswad Mali CSF, as the liquidators had not prepared and submitted any accounts to the Commissioner. The Commissioner did not

[63] Girna, Nashik; Parshuram, Ratnagiri; Sanjay, Dhule and Saswad, Solapur
[64] Girna, Nashik; Jijamata, Buldhana; Kondeshwar, Amravati; Parshuram, Ratnagiri; Sanjay, Dhule; Shankar, Nanded; Vinayak, Amravati and Yashwant, Sangli

obtain any quarterly reports on the progress of liquidation of the CSFs from the liquidators.

The Commissioner stated (January 2008) that the liquidators could not dispose off the assets of three[65] CSFs because their properties were attached by Industrial Finance Corporation of India and Industrial Development Bank of India and the Debt Recovery Tribunal had appointed a Court Receiver. The case of Parashuram CSF was pending with the High Court and the claims of Saswad Mali CSF, Solapur were pending with the Central Government. The Government stated (January 2008) that the plant and machinery of Sanjay CSF, Dhule had been disposed off. During the exit conference, the Principal Secretary stated that with the promulgation of the Securitisation Act, banks were not allowing the disposal of the properties of the CSFs through liquidation under the MCS Act. The High Court had also granted (15 October 2004) a stay on the liquidation process based on a writ petition filed by MSC bank, which had not been vacated as of January 2008. The fact, however, remains that the properties of the CSFs except the machinery of the Sanjay CSF, Dhule had not been disposed off as of January 2008.

5.1.1 Sick CSFs not brought under liquidation

Three CSFs were not liquidated though they were not in operation

Three[66] CSFs in Nagpur division were not in operation during the period 2002-03 to 2006-07. These CSFs had registered a negative net worth, totalling Rs 107.78 crore as of March 2005. The CSFs were also not eligible for assistance under the NABARD package. The Commissioner, however, did not consider bringing them under liquidation. The Commissioner accepted (January 2008) that there was a need to take action in respect of the Shriram and Vainganga CSFs under the MCS Act. However, as the RG Gadkari CSF was a multi-State CSF, action had to be initiated by GOI.

5.2 Leasing of CSFs

The CSFs under liquidation are to be leased out. Government decided (November 2005) to liquidate those CSFs which were unable to mobilise funds for commencement of the crushing season and were also ineligible for the NABARD package for restructuring of outstanding loans. The objectives of leasing out the liquidated CSFs are to ensure that they earn lease rent for payment of outstanding dues, the sugar cane in the area gets crushed and the infrastructure is utilised. In cases of leasing of CSFs before liquidation, it is compulsory to initiate action for liquidation to avoid the burden of interest. Considering the availability of sugar cane and the possibility of future increase, the period of lease and lease rent have been decided separately for the four geographical regions in Maharashtra as shown in **Appendix X.** Competitive tenders are to be invited to get the highest prices for the CSFs.

[65] Girna, Nashik; Parashuram, Ratnagiri and Saswad Mali, Solapur
[66] RG Gadkari, Nagpur; Sriram, Nagpur and Vainganga, Bhandara

The processes of liquidation and lease are to be monitored by a Committee of Ministers set up under the Chairmanship of the Minister for Co-operation.

5.2.1 Compliance of lease policy/lease agreements

Old erring managements continued in nine leased CSFs defeating the purpose of the lease policy

The Commissioner did not ensure compliance of the liquidation and lease policy effectively, which led to the following irregularities:

- Out of 18 CSFs which had been leased out during 2005-07, nine[67] CSFs had been placed under liquidation. In the remaining CSFs, the old erring Managements were continued and the interest liabilities of the CSFs continued to mount.
- A lease contract in the case of the Shivshakti CSF, Buldhana was concluded with the Buldhana Credit Co-operative Society without inviting tenders. The Government stated (January 2008) that the lease rent was fixed at a meeting chaired by the Chief Minister. However, tenders should have been invited as per the standard procedure.
- Kalamber CSF, Nanded was initially leased out to Indo Distillery Company Pvt. Limited[68] in 2006 with the approval of the Ministers' Committee. This was later cancelled after being challenged in the Supreme Court by another bidder. In the exit conference, the Commissioner stated that the lease had been cancelled for other reasons which were not specified. Due to the delay, the factory remained closed and Government had to incur avoidable expenditure on payment of compensation of Rs 2.65 crore during 2006-07 for 1,060 hectares of uncrushed sugar cane.

As of March 2007 lease rent of Rs 25.76 crore was outstanding from lessees of 13 CSFs

The CSFs have to execute lease agreements with the lessees in order to safeguard their interest and to ensure compliance of the conditions by the lessees. The liquidator has also to keep a watch on the same. However, neither the CSFs nor the liquidator ensured the fulfillment of these conditions by the lessees as indicated below:-

- Fifty *per cent* of the lease rent is to be paid before commencement of the crushing season, 25 *per cent* after three months and the balance 25 *per cent* 10 days before conclusion of the crushing season. It was seen that lease rent of Rs 25.76 crore was outstanding at the end of March 2007 from the lessees of 13[69] CSFs. The liquidators and CSF Managements failed to recover the rent from the lessees.

[67]Bageshwari, Jalna; Balaghat, Latur; Jagadamba, Ahmednagar; Jaikishan, Yavatmal; K.K.Wagh, Nashik; Parner, Ahmednagar; Shiv Shakti, Buldhana; Tasgaon, Sangli and Yeshwant, Sangli.

[68] promoted by Shri Amit Vilasrao Deshmukh and Shri Dhiraj Vilasrao Deshmukh

[69] Ajra, Kolhapur; Bageshwari, Jalna; Balaghat, Latur; Godavari Manar, Nanded; Indira Gandhi Mahila, Kolhapur; Jagdamba, Ahmednagar; K.K.Wagh, Nashik; Mohanrao Shinde, Miraj, Sangli; Pratapgad, Satara; Narsinha, Parbhani; Parner, Ahmednagar; Shivshakti, Buldhana and Tasgaon, Sangli

- Security deposit equal to the annual lease rent plus 25 *per cent* in the form of bank guarantees was to be obtained from the lessees. However, bank guarantees were not submitted by the lessees of three[70] CSFs.
- As per an agreement (July 2005), the lessee was to increase the crushing capacity of the Mohanrao Shinde CSF[71], Miraj from 2500 TCD to 4000 TCD, establish a 12 MW co-generation unit and a distillery unit of 60 KPLD and execute a power purchase agreement in the name of the CSF. However, the Management failed to mention a time schedule in the lease agreement. As of June 2007, no progress had been made. The Commissioner stated (January 2008) that the activities were not completed as various permissions were not obtained by the CSF. The permissions should have been obtained for the benefit of the CSF expeditiously.

The Commissioner, thus, failed to monitor recovery of rents and obtaining of bank guarantees by the CSFs. The Government stated (January 2008) that there was excess cane during the crushing season of 2006-07 and low market prices of sugar cane affected the lease payment. Considering these facts, the Ministers' Committee had decided to defer the lease payments. The reply was not acceptable as lease rents were to be recovered in advance and bank guarantees were to be obtained and encashed in case of non-payment of lease rent. Thus, the liquidators had failed to enforce the lease conditions.

5.2.2 Non-disposal of property of leased out CSF

Godavari Dudhana[72] CSF, Parbhani was leased out to Vaidyanath CSF, Beed for five years from December 2002 at an annual rent calculated on the basis of the quantity of cane crushed during the year, subject to a minimum of Rs 1.50 crore. Lease rent of Rs 3 crore was received in the first two years. The lease agreement was cancelled following invitation of tenders by the Government to dispose off the property of the CSF. The highest offer (Rs 22.75 crore) accepted by the Ministers' Committee in February 2004 was cancelled in June 2006 as MSCB, its main creditor, obtained (July 2004) a stay from the High Court to maintain status quo. The case was sub-judice as of January 2008. Government should have filed application to the Court for vacating the stay or sort out the issue with the MSCB which is also a wing of the same Department. This was not done. As a result, property of the leased out CSF was not disposed.

5.3 Conclusion

The Commissioner's efforts to liquidate the closed, sick and leased CSFs were not successful. Liquidation proceedings remained incomplete even after the

[70] Jarandeshwar, Satara; K.K.Wagh, Nashik and Mohanrao Shinde, Miraj, Sangli
[71] founder chairman: Shri Mohan Rao Shinde
[72] founder chairman: Shri Shyam Rao Kadam

statutory period of 10 years. Lease rent was outstanding from the lessees and the lease conditions were not being met completely by some of the lessees. Old erring Managements continued in leased CSFs. Interest burden increased in respect of the CSFs leased but not liquidated, defeating the purpose of the liquidation policy.

5.4 Recommendations

- Properties of liquidated CSFs should be disposed of expeditiously and recovery of Government dues during disposal of the assets of CSFs' should be ensured.
- Sick CSFs and the CSFs leased out should be brought under liquidation, to avoid increase in interest burden.
- Operation of the leased CSFs by efficient Managements should be ensured for gainful utilisation of the infrastructure created.
- After the passing of the Securitisation Act, the relevant provisions of the Act should be examined and discussed with the MSCB, NABARD and other financial institutions in order to safeguard Government investment with the CSFs at the time of disposal of the assets of the CSF by the liquidator.