

Disinvestment in Indian Central Public Sector Enterprises – Policy, Performance Including Legal Aspects

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Abstract

Soon after independence, the government of India adopted a socialistic approach to speed up and build the low economic profile of the country by adopting Articles of 38 and 39 (b) of Constitution of India, various Industrial Policy Resolutions and Five Year Planning Policy, under Planning Commission, which all put together facilitated establishment and faster growth of Central Public Sector Enterprises (CPSEs), to accelerate the industrialization of the country with a simultaneous objective to fulfil the social responsibilities. Huge investments were made in CPSEs. While there were only five CPSEs with an investment of Rs 29 crores, during the year 1951, there are 331 CPSEs (257 operating CPSEs) with a total investment of Rs. 21,44,924 crores as on 31.03.2017. However, after 40 years of establishing CPSEs the country was facing an alarming situation with very little foreign exchange available during the year 1991-92, to meet the international trade demands. Therefore, the Government of India decided to implement New Economic Policy, widely known as NEP, with host of measures including Disinvestment of CPSEs. While Disinvestment was being implemented, Government of India, based on performance, categorized a few CPSEs as Maharatna, during the year 2010, to become global giants. Under such a paradoxical scenario, where in on one hand the CPSEs are subjected to disinvestment, on the other hand several CPSEs are categorized as Maharatna. Further, disinvestment also faces several legal issues during the implementation process. It is under such a scenario and also the fact that 25 years were over since the disinvestment process has begun, the present study, “Disinvestment in Indian Central Public Sector Enterprises – Policy, Performance including Legal Aspects” assume significance.

Keywords: Performance, Employment, Reservations, Disinvestment, Maharatna.

1.0. Introduction:

Soon after independence, it was found that the country was economically poor with low literacy levels and the country is basically an agrarian economy. Therefore, the then government felt the need for speedy economic growth and therefore, focused on to develop the country's economy through industrial growth. Accordingly, the IPR of 1956, together with the Constitution of India, particularly the Articles 38 and 39 (b) and Five Year Planning under planning commission, emphasized the establishment of the Central Public Sector Enterprises (CPSEs). These CPSEs are owned, invested and managed by the respective ministries of Government of India (GOI). CPSEs required huge investments with long gestation periods which were not meeting the demands of private investors. Most of these CPSEs were in heavy engineering sector and located in backward areas of the country.

The major objectives⁽¹⁾ of CPSEs include promotion of rapid economic development, to generate financial resources, to promote redistribution of income and wealth, to create employment opportunities and to promote balanced regional growth etc. and the GOI started huge investments in CPSEs and accelerated its growth. While there were only five CPSEs during the beginning of first five year plan, 1951, with an investment of Rs. 29 crores, at present as on 31.03.2017, i.e. conclusion of 12th five year plan ⁽²⁾, there are 331 CPSEs (257 operating enterprises) with an investment of Rs. 21, 44, 924 crores. Up to the Fifth Five Year Plan (1974-79) adequate provisions ⁽³⁾ were made for the development of CPSEs. However, from the Sixth Five Year Plan, (1980-85), onwards the GOI focused on evaluating the performance of CPSEs. These enterprises expanded in to medium & light engineering and consumer goods manufacturing activities ⁽⁴⁾. The share of investment in heavy engineering sector has decreased and the share of investment in light & medium engineering and consumer goods increased, between the period 1985 and 1990. Economically, the shift from heavy engineering to medium & light and consumer goods is an indication of a shift to laissez-faire environment. It means the CPSEs, are supposed to have built in them the so called “Competitive Advantage”, that is they need to be more productive and profitable in their functioning. But as per available information⁽⁵⁾, loss from loss making CPSEs is increasing and contribution to central exchequer is reducing which conclude that the CPSEs are not productive and profitable in their respective activities.

The year 1991-92 was threshold year for the beginning of a new era in the Indian economy, with the government promulgating the New Economic Policy (NEP). Among the host of policy changes brought in by NEP, the implementation of “Disinvestment and Privatization of CPSEs” is considered to be very important. While the process of Disinvestment continues unabated, the Government had introduced, in 2010, the Maharatna scheme ⁽⁶⁾ with an objective to empower the eight mega CPSEs to expand their operations and emerge as global giants. This description results in existence of a paradoxical scenario, wherein CPSEs, based on their performance are categorized as Miniratna, and at the same time CPSEs are being subjected to disinvestment. It is in this context, the present study “Disinvestment of Indian Central Public Sector Enterprises Policy, Performance including Legal Aspects” is taken up.

The research methodology adopted for the study is empirical in nature. Therefore, the basic secondary source of information was from the already published by Department of Public Enterprises its Annual Survey Reports. The other sources of information comprise review of literature from published articles in reputed journals and websites. The information was collected for a period of 25 years between 1992-93 and 2016-17. Simple ratios/percentages were used as statistical tools for the data analysis. The study also includes the analysis of one of the nine CPSEs, which were disinvested and privatized to understand the legal aspects during disinvestment. The case example is Bharat Aluminium Company (BALCO).

2.0 Performance of Disinvestment:

Disinvestment means the sale of shares of public sector enterprises by the government. The shares of government companies held by the government are earning assets at the disposal of the government. If these shares are sold to get cash, then earning assets are converted into cash and referred as disinvestment.

Disinvestment is actually dilution of the stake of the government in a public enterprise. If the dilution is less than 50 percent the government retains management even though disinvestment takes place and it is not privatization. The methods of disinvestment adopted are Public Offer, Sale of Equity, and Offer for Sale etc.

Study on performance of disinvestment was carried over a period of 25 years between 1992-93 and 2016-17 taking in to account the disinvestment receipts received by GOI and the, year wise disinvestment receipts were collected and analyzed. The sum total disinvestment between 1992-93 and 2016-17 stood at Rs. 2, 41,335crores.

Table - 1

Year wise Disinvestment in CPEs between 1992-93 and 2016-17 (crores)

Year	Total Receipt
1992-93	1,912
1993-94	0
1994-95	4,843
1995-96	168
1996-97	379
1997-98	910
1998-99	5,371
1999-00	1,860
2000-01	1,871
2001-02	5,657
2002-03	3,347
2003-04	15,547
2004-05	2,764
2005-06	1,569
2006-07	0
2007-08	4,181
2008-09	0
2009-10	23,552
2010-11	22,144
2011-12	13,894
2012-13	23,956
2013-14	15,819

2014-15	24,348
2015-16	23,996
2016-17	46,247
Total	2,44,335

Table - 2

Year wise Ratio of Disinvestment to capital Employed

Year	Total Receipt	Capital Employed	Disinvestment/CE
1992-93	1,912	140110	0.014
1993-94	0	159836	0
1994-95	4,843	162451	0.030
1995-96	168	173948	0.001
1996-97	379	231178	0.002
1997-98	910	249855	0.004
1998-99	5,371	265093	0.020
1999-00	1,860	302867	0.006
2000-01	1,871	331401	0.006
2001-02	5,657	390162	0.015
2002-03	3,347	418758	0.008
2003-04	15,547	452336	0.034
2004-05	2,764	504407	0.005
2005-06	1,569	585484	0.003
2006-07	0	661734	0
2007-08	4,181	724009	0.006
2008-09	0	792232	0
2009-10	23,552	908007	0.030
2010-11	22,144	1153833	0.019
2011-12	13,894	1337821	0.010
2012-13	23,956	1508177	0.016
2013-14	15,819	1710453	0.009
2014-15	24,348	1833274	0.013
2015-16	23,996	2037372	0.012
2016-17	46,247	2144924	0.022

Table -3

Year Wise Percentage of Disinvestment

Year	Total Receipt	% Disinvestment
1992-93	1,912	0.78
1993-94	0	0
1994-95	4,843	1.98
1995-96	168	0.07
1996-97	379	0.16
1997-98	910	0.36
1998-99	5,371	2.20
1999-00	1,860	0.76
2000-01	1,871	0.76
2001-02	5,657	2.31
2002-03	3,347	1.37
2003-04	15,547	6.34
2004-05	2,764	1.13
2005-06	1,569	0.64
2006-07	0	0
2007-08	4,181	1.71
2008-09	0	0
2009-10	23,552	9.63

2010-11	22,144	9.06
2011-12	13,894	5.69
2012-13	23,956	9.80
2013-14	15,819	6.47
2014-15	24,348	9.96
2015-16	23,996	9.81
2016-17	46,247	18.91
Total	2,44,335	99.93

During this period of 25 years i.e. 1992-93 and 2016-17, the country was ruled by different political parties and therefore, the disinvestment made in CPSEs was also influenced by the respective governments and the same is presented below in Table – 4 as averages achieved by each of these governments, i.e. sum total of disinvestment during that regime divided by number of years ruled by that particular regime.

Table – 4

Disinvestment - Averages Achieved by respective governments (crores)

Period	92 -98	99-04	05-14	15-17	Total
Govt.	UPA	NDA	UPA	NDA	-
No. of Years	7	5	10	3	25
Amount of Disinvestment	13583	28,282	107879	94, 591	2,44,335
Average Disinvestment Per Year	1940.4	5656.4	10787.9	31530.3	9773.4
% Disinvestment Government wise	5.5	11.57	44.15	38.71	

Further, government wise the ratio of disinvestment to total disinvestment was also calculated and presented at Table –5:

Table – 5

Government wise Ratios of disinvestment to Total Disinvestment 1992-93 and 2016-17 (25 Years)

Govt.	UPA	NDA	Total
Disinvestment	121462	122873	244335
%	49.71	50.28	

3.0. Legal Aspects:

To understand the legal Aspects, a study of one of nine CPSEs which was disinvested was taken up.

The BALCO disinvestment had legal Problems as the workers went on a 67-days strike. Further, three writ petitions⁽⁷⁾, two in Delhi High Court and one in Chhattisgarh High Court- were filed against disinvestment in BALCO in February 2001. The Supreme Court in its unanimous judgment delivered on 10th December 2001 validated disinvestment of BALCO by the Government of India. The landmark judgment also defined, amongst others, the parameters of judicial review in the Government's economic policy matters. The Hon'ble Supreme Court judgment, while validating BALCO-disinvestment, and dismissing the petitions, gave a statement as below:

“Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment.”

4.0. Conclusions:

- The sum total disinvestment between 1992-93 and 2016-17 is 2, 44,335 crores i.e. over a period of 25 years. While 38.71% disinvestment took place during the last three years i.e. between 2014-15 and 2016-17, remaining 61.29% disinvestment took place during the period of 22 years i.e. between 1992-93 and 2013-14. Or the disinvestment has been 12.90 per year on an average

during the last three years whereas it has been at the rate of 2.79 per year on an average during the earlier 22 years.

- Further, disinvestment per Capital Employed if considered, it is observed that it started with a figure of 0.014 during the year 1992-93 and touching a nadir of zero thrice in different years and finally touching a figure of 0.022 during the year 2016-17 after hitting the highest value of 0.03 during the year 2009-10.
- Disinvestment as percentage, if considered, it is observed that it began with a figure of 0.78% during the year 1992-93 went through several hiccups and finally standing at the highest value of 18.91 during the year 2016-17.
- While 38.71% disinvestment took place during the last three years i.e. between 2014-15 and 2016-17, remaining 61.29% disinvestment took place during the period of 22 years i.e. between 1992-93 and 2013-14. Or the disinvestment has been 12.90 per year on an average during the last three years whereas it has been at the rate of 2.79 per year on an average during the earlier 22 years.
- Several legal issues are cropping up during the disinvestment process. As mentioned above in the case of BALCO several Writ Petitions were filed by Employees and Trade Unions. However, justice prevailed validating the disinvestment process.

Bibliography

1. Public Enterprises Survey Report, Department of Public Enterprises, Min. of. Industry, NewDelhi, 1996-97, Vol.1, Pp3.
2. ThanniruSrinivas, K. Rajanath& MS Bhat article titled “Performance of Central Public Enterprises and Status of Disinvestment– A Holistic Perspective”, IJLERA, Vol.3, Issue, 10 October 2018, Pp. 01-21.
3. K. Rajanath and K. Suvedya, Article titled “Study on performance of public enterprises in a phase of economic liberalization - a holistic perspective” - Management Today - (International Journal of Management Studies), Volume 3, No.2, April-June 2013 Pp. 1-20.
4. ThanniruSrinivas, K. Rajanath& MS Bhat article titled “Performance of Central Public Enterprises and Status of Disinvestment– A Holistic Perspective”, IJLERA, Vol.3, Issue, 10 October 2018, Pp. 01-21.
5. Ibid.
6. Public enterprises survey report 2015-16 Vol. 1 Pp 148-152.
7. Brief Notes on Privatised Central Public Sector Enterprises...
<https://dipam.gov.in/brief-notes-privatised-central-public-sec...>