

DPE/5(1)/2014-Fin.(Part-IX)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan
Block No.14, CGO Complex
Lodhi Road, New Delhi-10003

Date: 29.10.2015.

OFFICE MEMORANDUM

Sub: Guidelines for "Streamlining the mechanism for revival and restructuring of sick/ incipient sick and weak Central Public Sector Enterprises: General principles and mechanism of restructuring"-regarding

The undersigned is directed to say that the Government has approved that Department of Public Enterprises (DPE) will issue guidelines for streamlining the mechanism for revival and restructuring of sick/ incipient sick and weak Central Public Sector Enterprises (CPSEs) and to make any change therein that may be required in future.

2. Accordingly, guidelines for "Streamlining the mechanism for revival and restructuring of sick/ incipient sick and weak Central Public Sector Enterprises: General principles and mechanism of restructuring" have been formulated by DPE. A copy of the guidelines (both in Hindi and English versions) is enclosed.

3. The administrative Ministries /Departments of the CPSEs are requested to take necessary action as per the guidelines in respect of CPSEs under their administrative control.

4. This issues with the approval of the Minister of Heavy Industries & Public Enterprises.

Kalyani Mishra

(Kalyani Mishra)
Director
24362061

1. Secretaries to the Ministries/Departments of Government of India (As per List enclosed)

Copy also to:

1. Principal Secretary to the Prime Minister, Prime Minister's Office, South Block, New Delhi - 110001
2. Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan New Delhi 110004

List of Ministries/Departments

S. No.	Name of the Ministry/ Department
1	Department of Expenditure
2	Department of Disinvestment
3	Niti Aayog
4	Department of Heavy Industry
5	Department of Fertilizers
6	Department of Pharmaceuticals
7	Department of Chemicals & Petrochemicals
8	Ministry of Steel
9	Ministry of Shipping
10	Ministry of Housing & Urban Poverty Alleviation
11	Ministry of Textiles
12	Ministry of Water Resources, River Development and Ganga Rejuvenation
13	Department of Food & Public Distribution
14	Ministry of Petroleum & Natural Gas
15	Ministry of Railways
16	Ministry of Civil Aviation
17	Department of Telecommunications
18	Ministry of Development of North Eastern Region
19	Ministry of Environment, Forests & Climate Change
20	Ministry of Tourism
21	Department of Industrial & Scientific Research
22	Department of Defence Production
23	Department of Commerce
24	Department of Agriculture & Cooperation
25	Department of Space
26	Department of Atomic Energy
27	Ministry of Coal
28	Department of Economic Affairs
29	Department of Financial Services
30	Ministry of Minority Affairs
31	Department of Health and Family welfare
32	Ministry of New and Renewable Energy
33	Ministry of Power
34	Ministry of Road Transport and Highways
35	Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy
36	Department of Biotechnology
37	Ministry of Information & Broadcasting
38	Ministry of Micro. Small & Medium Enterprises
39	Ministry of Mines
40	Department of Electronics & Information Technology
41	Ministry of Home Affairs
42	Ministry of Tribal Affairs
43	Ministry of Urban Development
44	Department of Higher Education
45	Department of Disability Affairs
46	Ministry of Social Justice & Empowerment

Guidelines for “Streamlining the mechanism for revival and restructuring of sick/ incipient sick and weak Central Public Sector Enterprises: General principles and mechanism of restructuring”

These guidelines are laid down for streamlining the mechanism for restructuring / revival or closure of sick or incipient sick CPSEs and replace the multiple process options available for the same purpose.

2. Multiple mechanisms for restructuring / revival of sick and incipient sick CPSEs exist. Sick industrial companies as defined in Sick Industrial Companies Act 1985 are referred to Board for Industrial Financial Reconstruction (BIFR), which suggest a restructuring plan and seek sacrifices & commitments from promoters and stake holders. Board for Reconstruction of Public Sector Enterprises (BRPSE) has been created to advise the government through the resolution No.16(25)2004-Fin. dated 6th December, 2004 to consider the restructuring or revival plan of CPSEs prepared by a CPSE itself under the guidance of its administrative ministry. The administrative ministry may, in the public interest, prepare a revival or restructuring plan for a CPSE which may involve comprehensive restructuring, disinvestment, closure etc of the sick and incipient sick CPSE and take it directly to the competent authority for appropriate decision.

3. Primary responsibility for supervision of a CPSE for its efficient functioning lies in the administrative ministry and final view for restructuring and revival of sick and incipient sick CPSEs or taking appropriate measures for CPSEs showing early indications of weakness has to be taken by them with approval of the competent authority after inter - ministerial consultation and concurrence of the Ministry of Finance through PIB/ EFC mechanism as may be required. It is in the public interest to make this process, time bound, comprehensive, performance driven and efficient so that such decisions are taken and implemented in a time bound manner to minimise further losses. Hence there is a need to lay down broad principles and guidelines to be followed in such cases.

4. Guidelines:

4.1 The Companies Act, 2013 Chapter XIX refers to Revival and Rehabilitation of Sick Companies and Chapter XX to Winding up of the Companies. The decision whether a company has become a sick company would be taken by the Tribunal (National Company Law Tribunal). The Administrative Ministries/ Departments have to keep a track of the debts of CPSEs and take advance action to avoid a situation where the CPSEs may be considered fit to be declared sick entity as per provisions of the Companies Act, 2013.

4.2 The administrative ministry shall, at the end of the each financial year, analyse the performance of its CPSEs to classify them by a specific order in the following categories within 6 months of the closure of the financial year or within one month from finalisation of Annual Accounts, whichever is earlier.

4.2.1 **Sick CPSEs:** A CPSE shall be considered sick if it meets one of the following criteria:

- a. If it is declared sick as per the provisions of the Companies Act, 2013.
- b. If its net worth is negative.

4.2.2 **Incipient sick CPSEs:** A CPSE would be considered incipient sick if it meets one of the following criteria:

- a. If its net worth is less than 50% of its paid-up capital in any financial year.
- b. If it had incurred losses consecutively for three years.

4.2.3 **Weak CPSEs:** A CPSE would be considered weak or sub optimally performing if it meets one of the following criteria:

- a. If its turnover or its operational profit has declined by more than an average of 10% in the last 3 years.
- b. If its profit before tax is less than income from the other sources.
- c. If its trade receivable and inventories are more than 50% of net worth of the CPSE.
- d. If the claims against the company, not acknowledged as debts, are more than its net worth.
- e. Any other criteria as may be prescribed to quantify early signs of weakness in the performance of the CPSEs by the government.

4.3 In all the reference to Net worth, it would have the same meaning as defined under Section 2 (57) of the Companies Act, 2013.

4.4 The administrative ministry will take the following action:

(a) The administrative ministry will put weak CPSEs under “**observation and intensive review**” to arrest the early signs of weakness in such CPSEs. It may include nomination of independent expert members on the board, quarterly intensive review or special reviews for taking corrective business, operational and financial measures at the board level, fixing the responsibility for declining performance or non-performance or any other corrective step as may be appropriate and necessary by the administrative ministry or department.

(b) The administrative ministry shall initiate the process for preparation of restructuring/ revival plan, which may include disinvestment or privatisation or closure options, for sick/ incipient sick CPSEs based on the classification as given above within 6 months from the closure of the financial year or within one month from finalisation of Annual Accounts, whichever is earlier.

(c) Restructuring and revival plan for the sick and incipient sick CPSEs shall be prepared within nine months of the closure of the financial year.

(d) External expert agency which has experience and expertise of the business environment, operational issues, technology option and financial viability of the sector in which such CPSE is functioning may be engaged by the government and shall function under the supervision of the administrative ministry for preparation of the future road map.

4.5 Restructuring and revival plan with the help of the agency and other experts, as may be required, shall be prepared by the administrative ministry/department and shall specifically include:

4.5.1 Perspective of Relevance and Functioning:

- a) Background and purpose of the formation of the CPSE.
- b) Economic and regulatory environment along with their impact on the growth of the company
- c) Liberalisation and its impact on its business operation
- d) Ability of the CPSE in adapting new business strategies, technology to regain and sustain its economic viability.
- e) Efforts and special interventions made for its revival or avert early sickness and its impact on the health of the CPSE.

4.5.2 Strategic Plan for Restructuring/Revival:

- (a) The concerned administrative ministry/department should clearly bring out the national and strategic interest served by the CPSEs in the light of the sectoral business environment, domestic as well as global.
- (b) Prevailing market need to be analysed for supply of goods or services through other providers in the private sector, domestic or from other countries, to bring out if there is a specific role of the CPSE in this segment to serve the national strategic or defence interests.
- (c) Keeping the business environment other relevant facts in mind, a CPSE may be categorised as **a high priority** or **priority** CPSE to meet the strategic interest of the country. For this purpose, a report of the 14th Finance Commission may also be referred to.
- (d) All other sick CPSEs which are not required to serve the strategic national/ defence interests should be categorised as **non priority** CPSEs.

4.5.3 Business Plan for Restructuring/ Revival Plan:

A. High Priority or Priority CPSE.

- a) For high priority CPSEs, the business plan has to be made keeping in mind the strategic national interest and economically viable business opportunities.
- b) For strategic business model, requirement for Government policy convergence should be clearly spelt out to meet the economic viability of such enterprises. Also, viability gap funding, if required for such strategic operations have to be brought out.
- c) For high priority sector, the business plan may be drawn seeking specific financial and non financial support from the Government. It may include strategic disinvestments or joint ventures etc.

B. Non-priority CPSE.

- a) For CPSEs in the non-priority category, the business plan is to be made on business and economic viability model to attain self sufficiency in short or medium term.
- b) Business plan should be based on performance efficiency benchmarks, viable scale of economic operation and road map for technology adoption/ upgradation to support business strategy for viability and sustainability over period of time.
- c) Business reorganisation through merger, demerger or closure of various business activities.
- d) It should support desirable market share to be sustainable in the medium and long term.
- e) All the presumptions underlying the business plan with respect to their business environment, economic viability and mechanism of funding should be market validated and credibly established.

4.5.4 Operational Restructuring:

- a) Keeping in mind the business plan, the required human resource needs are to be assessed and rationalised.
- b) It may be seen whether sectoral efficiency benchmarks as are existing globally/ domestically can be achieved by the CPSE in short or medium term through implementation of this plan in shortest period of time.
- c) Options for adopting requisite technology and up-gradation of the same as per requirement through various management options including JV, disinvestment or privatisation to be factored into the operational restructuring plan.
- d) The options of merger or de-merger of various operations in line with the proposed business plan to ensure continuous procurement of new technology and its up-gradation.

4.5.5 Financial Restructuring Plan:

- a) For high priority and priority CPSEs, a comprehensive financial restructuring plan should be drawn comprising various methods of financing with minimum and unavoidable viability gap funding in the strategic national/defence interest. Limited private investment through disinvestment within permissible limits may also be considered under financial plan.
- b) In case of other (non priority) CPSEs financing plan should be based on economic viability of operations. Various options of leveraging private and/or institutional funding may be explored.
- c) Details of projected profitability/cash flow for the next five years. These presumptions should be pragmatic and market validated.

4.6 Mechanism and Methodology to be followed for restructuring/ revival/closing of sick CPSEs

- (a) The concerned administrative ministry/ department would classify the CPSE as sick CPSE, incipient sick or with early indications of weakness as per para 4.2

above. The concerned Administrative Ministry/ Department will also inform DPE about the status of CPSE accordingly.

(b) The concerned administrative ministry/ department will be responsible for formulating revival/ restructuring/ closure road map for sick CPSEs as per the principles outlined above. This would be done within three months from the issue of these guidelines in case of existing sick CPSEs and within nine months from the end of the financial year for a CPSE becoming sick subsequently.

(c) Administrative Ministry/ Department may engage credible expert organisation for drawing of business, operational and financial restructuring plans. Such expert entity, if appointed, should function under the direct control of administrative ministry/ department so as to draw a professionally credible, implementable and realistic restructuring plan. Suitable mechanism for market validation should be incorporated during the Request for Proposal (RFP) stage of engagement of expert(s)/ expert organisation(s) and the market validation should be cross checked and confirmed by the administrative ministry/department as well.

(d) Implementation plan with specified time line for various stages should be objective, quantifiable and supported with the monitoring mechanism.
