



Unlocking Surplus Lands of Public Sector Undertakings a Neo Economic Reform in India and its New Challenges Ahead

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Abstract. The Indian government after 31 years had stepped into another big economic reform that all the non-strategic sector assets (Plant and Machinery, Land and Buildings) and its surplus lands (which remained un-utilized and underutilized), in the Central Public Sector Enterprises/State PSE's, PSUs, closed and sick undertakings, immovable enemy properties from long years, are going to be unlocked and be monetized. A mega monetization drive in the Indian industrial sector is going to be implemented through a new economic policy named Public Sector Enterprises (PSE) Policy, 2021 for Atmanirbhar Bharat (A self-reliant country) to get a new source of revenue for other governments and for introducing new economic activities and new technologies. Indian government for the first time incorporated a National Land Monetization Corporation (NLMC) whose sole business is to sell, lease and manage national assets (public commons). There is much scope for the removal of Environmental legal protection to these commons. The present paper attempts to discuss India's new neo-liberal policy 2021, and the role of land management agencies in implementing the policy through empirical research conducted through some case studies which supports the author's arguments that, there are certain challenges and high risks associated with this policy implements at full length without filling these gaps.

Keywords: Asset Valuer, Consultancy Firms, "Department of Public Enterprises" (in short DPE), "Department of Investment and Public Asset Management" (in short DIPAM), Land monetization, "National Land Monetization Corporation" (in short NMLC), Privatization, Public Sector Enterprises Policy, 2021, Transaction Advisors.

1 Introduction

Unlocking the surplus lands of the "Central Public Sector Enterprises" (in short CPSEs) is nothing but "converting undeveloped land into cash." (Gorakh Jhunjunwa-

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Closed sick Industries will be undertaken by various department agencies under the Ministry of Industrial sector. It is a very good initiative taken up by the government, where the idle lands of PSUs which have been lying barren for many years without any development will now going to be unlocked. But in the name of Privatisation, these common lands will be destroyed gradually by development works on these common resources. It creates new private interests in the deregulated commons. The supporters of privatization remove environmental legal protection for these commons from the impacts of private extractive industries. These private players alter the natural environment and minimize the public interests in these commons (Ryan, E 2023)

There is much scope for mismanagement of public property if it is not properly dealt with. There are certain gaps in the New Policy, 2021 which are required to be filled by the government before implementing the policy at full length. If these gaps were not been filled, it inversely contributes still more burdens on the judiciary in resolving contractual disputes that arise out of the sale of public assets and industrial lands.

During the 19th Century U.S. Federal Government privatized its public domain by introducing national policies which minimized the public commons at large by giving private interest on public lands and privatising its scarce natural resources (Ryan, E 2023).

This paper discusses the process of monetizing surplus lands of the non-core sector, it explains the object of the "New Public-Sector Enterprises Policy, 2021," and the role of different departments involved in promoting this New Policy. The position of public enterprises in India after they have been enlisted to disinvestment/privatization, especially regarding its assets and those un and under-utilized surplus lands of public sectors, was discussed in detail in part I of this paper.

Whereas in part II some relevant case studies were taken up for supporting the arguments found out of the research conducted and recommends some noticeable gaps to be filled before implementing the policy objectives, the risk involved by private consultancy agencies (Transaction Advisors) and the Asset valuers in disinvestment and monetization of the public assets, are the newly growing-up challenges before the Indian government were discussed in detail and some recommendations were sought out at last. This paper limits its scope only to the unlocking of surplus lands in the Public Sector though it is an integral part of the privatization or disinvestment process, it doesn't discuss the merits and demerits of privatization drive because privatization, asset monetization and unlocking of surplus lands of PSEs/PSUs process has been segregated from each other though they were integral.

2 Part-I

2.1 The new Public Sector Enterprises Policy, 2021: The Role of Different Land Management Agencies:

"Department of Investment and Public Asset Management" (in short DIPAM):

"The Department of Disinvestment" (in short DPE) under its new name "Department of Investment and Public Asset Management" (hereinafter called "DIPAM") under the Finance Ministry, Government of India (Induction Material, 2021) manages the sale transactions of government equity of public-sector undertakings through, "special purpose vehicle" (in short SPV) a land

Company (NLMC) which monetizes all Central Public Sector Undertakings assets (plant and machinery, land and its buildings). (DIPAM Secy., 2021)

In 2012, Indian Economist Dr. Vijay Kelkar's committee report on "Fiscal Consolidation" 2012 recommended Indian government adopt developed countries' public sector asset management model for generating a new source of revenue. In part of its recommendations, India adopted a policy along the lines of the Canadian model of land monetization for unlocking its idle lands lying in the public sector. (LARRDIS, 2021) After identifying, that the monetization drive of Assets and surplus lands of public-sector undertakings was successful in the countries like the USA, Canada, the U.K., and Australia (DIPAM, 2022) on 8th March 2022 DIPAM released an office memorandum which introduced "Asset monetization of central public-sector organizations and immovable enemy properties procedure and mechanism". In furtherance of it, The Ministry of Finance had delegated the powers of disposing of the assets of CPSE/PSU's/other government organizations to DIPAM and laid down a detailed process for asset monetization to be met with. (DIPAM, 2022)

Besides the Finance Ministry, "The Department of Public Enterprises" has issued some other guidelines for disposing of the assets (lands) of the closed and sick CPSEs. As far as these guidelines are concerned, NBCC (National Building Construction Corporation) of India has been nominated as the Land Management Agency (LMA) (DIPAM, 2022) which is going to assist the Indian Government in disposing of its land assets of the sick/loss incurring CPSEs and ensures their timely closure by the decisions taken by the government. (Operations, 2023)

3 National Land Monetization Corporation (NLMC):

As above mentioned, Indian Prime Minister Narendra Modi who is acting as chairman of the Union Cabinet approved for setting up of a land corporation. which is named "National Land Monetization Corporation" (in short NLMC) as a wholly "Government Company" for monetizing the non-core assets of CPSEs and other Government agencies' national assets. "Incorporated with an authorized share capital of ₹5,000 Crore and with Initial paid-up share capital of ₹150 Crore." "The NLMC (National Land Monetization Corporation) incorporated under The Companies Act, 2013" inspired by "Canada's Land Company (CLC)" which used to monetize public sector assets and lands. It is a self-financing federal Crown corporation which manages and develops surplus federal real estate. Its main role is to maximize the value of surplus lands through sale, lease, and development partnerships. (Canada Land Company). Like CLC, NLMC also deals, manages, leases, and sale of all the lands of the public sector upon the recommendations of DIPAM. (PIB Delhi, 2022). It monetizes Excess lands and buildings of "Central Public Sector Enterprises" (short CPSEs) and other Government agencies.

In 2008, the Government of India introduced a pilot project in selected states to digitalize land records. "The National Land Record Modernization Programme" (in short NLRMP) was renamed as "Digital India Land Records Modernization Programme" (DILRMP) w.e.f. April 1, 2016. (Mohit, Verma and Janvi Satpal, Babbar, 2023) This program is going to become a big facilitator in implementing the monetization of PSE lands expeditiously. Which is going to stand as a helping hand in resolving long pending arbitration cases related to real estate and boundary-related disputes arising between two government departments or agencies, private individuals with public departments. It helped in differentiating private lands from public lands and in simplifying the process of monetization of public lands because it is the biggest challenge for the Indian government to find its assets lying in the public-sector enterprises and of its other government agencies where its lands are diverse, mingled and scattered across the whole country. (PIB Delhi, 2021) Though the government

has a number of public holdings, there were no proper inventories for all those lands which are owned by the government. (gktoday, 2017)

3.1 To simplify the monetization procedure government categorized its assets broadly into the following classes

Land and buildings.

Brownfield operational assets such as mobile towers, electricity transmission lines, pipelines, roads, etc.

Equity shares, security debts, other financial assets and their units etc. and

Other miscellaneous assets. (Corrigendum, 2022).

The impacts of the U.S. government's privatization of its entire public domain, and the Canadian model of asset disposals for revenue generation made the Indian government walk in their lines as such Indian government introduced a neo-economic liberalization policy, in 2021 for monetizing commons.

3.2 “The New Public Sector Enterprises (PSE) Policy, 2021 for CPSEs in Non-Strategic Sector.”:

As above mentioned in Dr Vijay L. Kelkar's Committee Report on "Fiscal Consolidation" 2012, The Union Government framed a new policy called the Public Sector Enterprises Policy, 2021 for monetizing government unutilized and under-utilized public sector land resources. (LARRDIS, 2021) The Indian government introduced this New Policy for Atmanirbhar Bharat on 4th February 2021 (Guidelines on New PSE Policy, 2021) after it got approval from the central cabinet on 27th January 2021 (DIPAM, 2021) to generate substantial revenue by monetizing unutilized and under-utilized assets. Almost all the public-sector undertakings hold surplus undeveloped non-core assets in the form of lands and buildings. (PIB Delhi, 2022) The scope of this neoliberalized policy is limited only to those existing central public-sector enterprises, public-sector banks and public-sector insurance companies initially but later its scope may extend at the discretion of the government. The policy, however, does not apply to certain other public-sector entities like “non-profit companies” to those CPSEs which provide support to “vulnerable groups”, or those companies which play “developmental or promotional roles,” etc. (PSE Policy, 2021)

Taking notice of several factors into consideration, like national and energy security and dreaming for laying of critical infrastructure etc. public-sector undertakings had been divided into two categories one is strategic and the other is non-strategic sector. The strategic sector is exempted from privatized, for example, “atomic energy,” “space,” “defence,” “transport” and “telecommunication,” “power,” “petroleum,” “coal” and other “minerals,” “banking,” “insurance and financial services.” Government control will continuously exist in these different departments and those existing public-sector profit-oriented enterprises at the holding company level. Whereas the rest of the enterprises in noncore sectors will be going to be privatized, merged or supplemented with another PSE. In some inevitable cases, units will be entirely closed. Only a minimal presence of government control in CPSEs will be retained in the strategic sectors. After getting approval from a core group of secretaries on disinvestment, “The Department of Investment and Public Assets and Management” in DIPAM) will be moving towards divestment of the government stake in public-sector enterprises on a case-to-case basis. (PSE Policy, 2021)

3.3 The Procedure of Monetization of Assets under the New Policy, 2021

Under this New liberalized Policy, “The Department of Public Enterprises” identifies those “CPSEs” which are closed or privatized or both in the noncore sectors with the aid and support of the relevant Administrative Ministry/Department. After identification, “CPSEs, and “The Department of Public Enterprises” will prepare an “in-principle approval note” for sending to the “Cabinet Committee on Economic Affairs (CCEA).” The note will then be communicated to DIPAM from CCEA for deciding which unit to close, for an IMC will be constituted. The movable assets of the unit will be estimated by the “chartered accountants or cost accountants.” They calculate the Book value of the movable assets, correspond with the current market value and ultimately realize the true value of the sale. Whereas, all those movable assets which are already given for long-lease will be negotiated with the lessor by “CPSE” to know the intention of the lessor to continue the lease contract at market price or willing for auction. In case, if market value can't be determined, it shall be carried forward to the concerned Ministry of the CPSE. The CPSE will then dispose of its movable national assets (like plant and machinery) in the utmost transparent manner through the public auctioning agency “MSTC/forward auction platform” available on “GeM” under the supervision of the Ministry.

Whereas the process of disposal of Immovable Assets like (surplus lands) is different from the disposal of asset monetization drive (plant and machinery, lands and buildings). The Union Finance Minister of India, while introducing the Union Budget 2021-2022 has said that, “The idle assets (land and building) will not contribute to Atmanirbhar Bharat because non-strategic sectors largely consist of surplus lands held with the government Ministries/Departments and Public-Sector Enterprises. Monetizing of lands can either be by way of direct sale or concession or by similar means. It requires special abilities, and for this purpose, Union Government is going to implement a Special Purpose Vehicle in the form of a company that will monetize the lands”.

...Nirmala Sitharaman, Indian Finance Minister (Union Budget (2021-2022)).

After the approval from “CCEA” for the closure of a company, the Ministry of CPSE will go with a separate alienation procedure for immovable properties. “Central public-sector enterprises” will return the leasehold land to the “state government” without any compensation. If Freehold lands, however, are recognized by the Ministry of Public Enterprises such land will be transferred to a “special purpose vehicle” (in short SPV). The secretary of the Department will then monitor the progress of alienation of immovable assets. Whereas, in case of dealing with “Intangible Assets” like “brand name,” “goodwill,” “trademarks,” “intellectual property” of the “closed CPSE” they shall be transferred to the concerned Department of the “CPSE” for its disposal.

In dealing with the “leasehold movable assets” they may be returned to the lessor or at a later time. The “CPSE” with the approval of the concerned Department may dispose of factory building structures along with disposal of movable assets (like machinery). For the speedy disposal of the sale transaction, the policy stipulated a period for the disposal of assets of CPSEs. Within the stipulated time, the disposal of movable assets shall be completed, if, for any reason unable to complete within the stipulated time, the Department of Industries shall redress the matter within 15 days at any cost.

Once the above process is completed, companies’ names will be removed from the registry of companies. (Guidelines of PSE Policy, 2021) from then onwards, the status

of public company will be removed from the status of “Government Limited” and all its assets and lands will be kept for ready sale.

4 Part-II

Case studies of past, present and future positions of Unlocking Surplus lands of the Nonstrategic Sector:

4.1 Case Studies

Here are some of the case studies which depict the previous and recent privatized public-sector undertakings and their closed sick undertakings, whose lands were monetized, some PSUs though privatized but their assets remained idle for many years, and some are under process:

Bharat Sanchar Nigam Limited (BSNL): Surplus lands monetized by NLMC

“Bharat Sanchar Nigam Limited” (in short BSNL) is a public-sector undertaking established in the year 2000. It facilitates a vast range of “Telecom network Services” and manages the network throughout India except Delhi and Mumbai cities. BSNL is a 100% wholly government-owned Undertaking with an authorized share capital of Rs. 40,000 Crores. (DNA India, 2019)

In 2021, the Central Government declared BSNL privatization and announced all its scattered surplus lands were going to be unlocked and monetized (Bharat Sanchar Nigam Limited, 2023) NLMC had been given the responsibility of monetizing the sale of two land assets of BSNL situated at the cities of Lucknow and Hyderabad with value of ₹1,500 Crores. This is the first asset monetization of the Public sector undertaking from the telecommunication sector undertaken by the NLMC after its incorporation. (Dipak Mondal, 2023) This is the case where surplus lands of BSNL were sold under this new policy guideline.

4.2 Air India: Surplus Lands Transferred to SPV

Air India is another recent case study which was privatized, and its lands were transferred to Special Purpose Vehicle immediately and facing allegations in Indian courts.

In the year, 1932 Jahangir Ratanji Dadabhoi Tata the chairman of Tata Groups founded Tata Airlines, is the first Indian who introduce Air transport in the Indian Territory. After the Second World War, on 29th July 1946 Indian Government nationalized “Tata Airlines” to “Air India” and then onwards it became a public limited company. In the year 2020 Indian government decided to privatize Air India. It invited bids but very few purchasers have shown their interest. The successor of J.R.D, J.R.D Rattan Tata, the chairman of Tata Groups came forward to purchase their nationalized Air Lines @ Air India back. The Indian government of 18,000 lakh crore had sold its sick unit to the private purchaser (Tata Groups) and agreed with Tata Groups to clear all of its debts in addition to the sale. (The Federal, 2021)

This is the first privatization case in India after introducing The New Public Sector Enterprises (PSE) Policy, 2021. After the privatization of Air India, the surplus lands are

going to be monetized by “DIPAM”. The “subsidiaries of Air India’s” i.e. “Air India Air Transport Services Ltd” (in short AIATSL), “Airline Allied Services Ltd” (in short AASL), and “Air India Engineering Services Ltd” (in short HCI) and all its “noncore assets,” “painting and artefacts” and other “non-operational assets” were transferred to the special purpose vehicle. (Live mint, 2021)

Meanwhile, AIR India's disinvestment process was challenged in the Delhi High Court of India contending that the process went on arbitrarily, unconstitutionally and unfairly rigged in favour of the Tata's. (Dr. Subramanian Swamy v Union of India & Ors, 2021)

In Bombay, The Air India Employees Union also filed a petition before the Bombay High Court alleging that, "they had right to occupy allotted accommodations even after privatization", but the Bombay High Court dismissed the plea filed by the Employees Union of AIR India and delivered a remark that:

“Monetization of lands and properties of AIL is one of the essential terms of the disinvestment process. If a small number of employees continue to hold on to the accommodations, the AIAHCL will not be able to monetize the lands to reduce the burden of debt AIL put on it.” (Air India Services Engineers Association v Union of India, 2023) These lands are yet to be monetized by the NLMC. This is a case which depicts that monetization of lands is an integral part of the disinvestment/privatization process (assets include land and buildings) though monetization of surplus lands is severed from the policy.

4.3 Rashtriya Ispat Nigam Limited (RINL) @ Visakhapatnam Steel Plant (VSP): Its Surplus Lands were kept for Sale and the Process is Ongoing

“RINL @ Visakhapatnam Steel Plant (VSP)” is a shore-based company established in the year 1970. It is a unit of “Steel Authority of India Limited” (in short SAIL). Having a capacity to produce 6.3 Mt with a turnover of 10,000 crores. It Produces steel products such as “wire rods,” “rebars,” “angles,” “channels,” “blooms and billets” etc. (Vizag Steel,2023) It also supplies various grades of steel for the construction of projects of National importance. RINL has a very huge land bank of approximately 20-22,000 acres. (Brochure- Vizag Steel) While introducing the Union Budget in the financial year 2021-2022, the Central Government announced that RINL Visakhapatnam was in line with 100% strategic disinvestment due to a lack of captive iron ore mine of its own, and incurring losses for more than ₹ 10,000 continuously from the past four years. Earlier Central government sold RINL’s surplus land to an extent of 2,000 acres to a private port and derived less profit. (P. Pavan, 2021) Recently NBCC announced that it was going to sign a MoU with RINL for redeveloping and monetizing RINL Lands to meet debt of ₹19,592 crores for the financial year 2018-2019 and expected to maximize ₹1,000 Crore from selling out its 22.19 acres of land located in the Visakhapatnam city, AP, India. (Live mint, 2021) In March 2022 DIPAM made a “request for proposal” (in short RFP) to “The Insolvency and Bankruptcy Board of India” (in short IBBI) to appoint a registered asset valuer to carry out valuation proceedings of the company’s assets and to assist the central government in the process of “strategic disinvestment of RINL.” (Aparna Banerjee, 2021)

Meanwhile, Townships and employee quarters of RINL @ Visakhapatnam Steel Plant which were scattered in various places in Visakhapatnam city have been kept for monetization. RINL called both public and private bidders to show their Expression of Interest (EOI) in the purchase of RINL lands. It is under process. (K.M.P. Patnaik, 2023)

In this case study, the authors trying to make an urge to observe that before privatizing the RINL process complete government started monetizing valuable lands of RINL under the New policy, 2021 against the public interest. (The New Indian Express, 2022).

4.4 Hindustan Zinc Smelter Limited (HZL Visakhapatnam): where its lands remain idle from its closure.

The Hindustan Zinc Smelter Limited, Visakhapatnam, India, is a subsidiary public sector undertaking of Hindustan Zinc Limited (HZL), which produces Zinc metal ingots, cadmium, lead, etc. with 56,000 tonnes production capacity per year which was closed in the year 2012 by the Vedanta Limited. After the Government of India had made partial disinvestment of its stake in HZL, Vedanta Company stopped its operations in HZL Visakhapatnam due to increased input and freight costs and also due to the environmental issues Hindustan Zinc Smelter Visakhapatnam was closed. (The Hindu Business Line, 2012) To date, the HZL lands have remained idle. Its surplus lands were kept unutilized for more than 10 years from the date of its complete closure. Where huge income was lost due to its closure and its lands remained barren without utilizing them for any other public purpose. The surplus lands are most suitable for redevelopment instead of being as idle. Several newspapers published that HZL Visakhapatnam surplus lands were kept for real-estate purposes instead of utilizing them for any other public purpose (Santhosh Patnaik, 2018)

5 Part III

5.1 Challenges Before the Indian Government in Implementing the New Reform

Results and Discussions:

Till 2021, the beginning of unlocking the surplus lands of sick and closed PSEs, the drive was not initiated in India. And these lands remained idle for many years without being them for any other public purpose. By incorporating NLMC, the idle lands will be unlocked make the land monetization process speed up and smoother and contribute to new economic development in India. But before stepping forward, due diligence has to be taken into consideration. Where one such incident is in light before choosing a financial bidder whether in the privatization process or in picking up a right bidder in land monetization drive. Union government kept hold of sale proceedings of public sector helicopter services Pawan Hans after it had come to know that the winning bidder Almas Global Opportunity Fund, had been questioned in “Kolkata National Company Law Tribunal (in short NCLT)” regarding its credentials. Alma’s Global had not been registered with the SEBI regulator, any private/foreign company must get registered in SEBI before it wants to invest in an Indian company secondly, the buyer company must have a minimum net worth of ₹300 Crore when it comes forward to participate in bidding. (Anuradha Shukla, 2022) The private company Almas quoted the highest bid for acquiring Pawan Hans which is the last stage to go, till than the government failed to check the credentials of the bidder and later came to know that a case was pending against the winning bidder in Kolkata National Company Law Tribunal for failing to pay ₹568 crore to the creditors and undergoing insolvency resolution process.

“The PSE policy, 2021 intends to minimize the presence of Government’s business” in all “strategic” and “non-strategic sectors” and to facilitate new investment opportunities for the private sector, Union Government restricted the participation of other existing PSEs throughout India in the disinvestment process as bidders. All those public sector enterprises whether central or state or joint, collaborative units of state governments or cooperative societies holding 51% or more shares are excluded as bonafide bidders from participation in disinvestment of other PSUs enlisted for strategic sale unless otherwise specifically approved by the Central Government in the public interest. (DIPAM, 2022) According to this new policy, the procedure of Land monetization of public-sector undertakings was separated from the procedure of asset monetization and disinvestment/privatization process which aimed at maximizing revenue alone. (DIPAM, 2021) The New Policy, 2021 and the report of the Union Budget speech 2021-2022 mentioned “the privatized companies’ excess lands will be put for direct sale or concession or by similar means” but nowhere it has been mentioned to whom lands are kept for sale (whether to other public players or private bidders. (Union Budget, 2021-2022) There is no separate policy or guidelines framed for land monetization. Land monetization was brought impliedly under this new public policy because assets include land and buildings. It is profitable from the economic point of view where losing little and gaining more, but when dealing with public property selling for a lower price is against public policy, no public assets (all PSE runs by taxpayers’ funds) could be allowed to sell away for loss.(Puhazh Gandhi P, 2022)

“A municipality may convey to a private developer without the state legislature’s approval. Where, if the land will be, continue to be dedicated only to public use or for public benefit.” (Municipality is a low stage in administrative ruling when compared to state and federal government) (Johna M. Peachin et al., Appellants v City of Oneonta, 2021) A government though not framed separate guidelines for unlocking of surplus lands of public-sector undertakings; it would be permissible only if it is utilized for some other public purpose in the public interest. The bidding process of monetization of land should be done under public auction for the benefit of the public fairly and transparently. (Eenadu, 2023) “The object of holding the public auction is to raise the highest revenue.” (Johna M. Peachin et al., Appellants v City of Oneonta, 1985) “Government cannot act in a manner which would benefit a private party at the cost of the state by permitting him to take away the public property with less bidding price. The government is entitled to reject the highest bid if it feels that the price so offered is inadequate (does not meet with market price).” (Kasturi Lal Lakshmi Reddy v State of Jammu & Kashmir and Anr, 1980.)

“Public policy forbids any sought of arbitrary actions by the government in diverting even a part of public property to a private by showing favouritism or taking wrong decisions. This would destroy the fundamental purpose of the public use.”(People ex Rel. Swan v Doxsee, 1910)

Another noticeable finding to be addressed is both the asset valuers and consultancy firms of land monetization drive are from the private sector, the NLMC has been given full-time staff with a minimal role to play, and there will be a chance of mismanagement of public property. NLMC under DIPAM is a “lean organization” that hires staff from other departments’ specialists or experts in the valuation of assets of PSEs. The primary information memorandum (herein after PIM) of any sick company which is kept for privatization does not permit its data for “independent verification” by Transaction Advisors, or by any other Company this restraint extends to the Government of India its affiliates and even to its advisors. Further, PIM does not contain complete information about the Companies, including details of the land, other assets, intellectual properties (Trademarks, trade secrets etc.), and legal proceedings which the Company faced and faced. (DIPAM-PIM for EoI for Strategic Disinvestment of AIR India Ltd, 2020) as such there is a requirement to engage one

“transaction advisor” from amongst any expertise “consultancy firms” approved by IBBI, “investment bankers” or “merchant bankers” “financial institutions” for facilitating, assisting, and rendering their advisory services to DIPAM during the disinvestment process of a national company along with its Subsidiaries and Joint Ventures. (RFP for engagement of Transaction Advisor for 100% Strategic Disinvestment of RINL-DIPAM, 2021).

The Transaction Advisors undertake all aspects of the “strategic disinvestment” process till its end. They act as Intermediaries and assist in “identifying”, “selecting”, “and preparing documents” which include “Preliminary Information Memorandum” (short PIM), “Confidential Information Memorandum” (short CIM), “Request for Proposal” (in short RFP), “Confidentiality Agreement” etc. They frame the whole structure of the divestment, suggest various measures to obtain the best sale value, put the firm for “strategic sale,” invite the bidders and evaluate the bids, assist in designating the sale, prepare other agreements and provide any instance residuals even after post divestment of national assets, they facilitate in the execution of “non-disclosure agreements” (in short NDA). (RFP for engagement of Transaction Advisor for 100 % Strategic Disinvestment of RINL-DIPAM, 2021)

All the information regarding the company will be provided to the bidders by transaction advisors only. “They set up the e-data, they allow the bidders into “physical data room” and assist in the smooth conduct of the due diligence process,” they prepare and organize the meetings, issue advertisements, reply to the questions raised from bidders/investors, even short lists the bidders, Conducts roadshows in India and abroad, negotiates with them, fix reserve price of the company and companies equity value. Both the transaction advisors and asset valuers jointly work in valuing the company. Prepares and executes “Share Purchase Agreement,” and “Shareholders' Agreement,” and sets all legal documentation required to be met for execution of the transaction on behalf of the Government of India with foreign companies (a successful bidder), on mutually acceptable terms, assists the company in obtaining any statutory approvals and clearances if any required by them as well as guide them on statutory regulations relating to this transaction. Once the government enlists a company to be privatized, the role of the transaction advisors @ consultancy agencies will be started. (RFP for engagement of Transaction Advisor for 100 % Strategic Disinvestment of RINL-DIPAM, 2021)

The report of the Asset Valuation of a company is crucial in evaluating the national Assets, based upon which equity value will be determined. In other words, a report prepared under the Asset Valuation method. For this purpose, Transaction Advisors will share the estimated liabilities of a company which includes the cost involved in the closure and liquidation of a company, the estimated cost of VRS (Voluntary Retirement Scheme), estimating cost of breach of contracts etc. The legal advisor also plays a keen role in carrying out legal due diligence of all contracts and covenants and provides inputs to the Transaction Advisors. These Advisors send a Comprehensive single report to the government in a sealed cover which has to be examined for fixation of reserve price (RFP for engagement of Transaction Advisor for 100 % Strategic Disinvestment of RINL-DIPAM, 2021).

This itself depicts government puts the entire public property wholly in the hands of intermediaries (transaction advisors or private consultants and asset valuers) is very risky and high chance of mismanagement of the public property.

After the Pawan Hans case, another noticeable case is where the prime land of a public company is undervalued. In the matter of M/s. Jeypore Sugar Company Limited, the liquidator has adopted irregular procedures in the valuation of the assets of the sugar company and excluded certain assets of the company from the liquidation of the company's estate which resulted in non-maximization of its real value of the public assets. The liquidator

without taking into consideration one of the prime lands of the corporate debtor (Government Company) completed the liquidation process of the company. When the matter moved to the National Company Law Tribunal, it held that the liquidation process had to be reconducted and the fresh valuation report had to be made again. When we go into the facts of the case, the registered valuers who were appointed by the Liquidator for the government company assets valuation purpose did not complete the valuation process by the procedure established under “the regulation 35(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which mandates that the valuation of the corporate debtor shall be conducted by the Two Registered Valuers, who shall conduct their valuation process independently on the entire assets of the corporate debtor business. The average of the two estimated reports which are received shall be considered finally as the value of the assets of the corporate debtor.” In this case, knowingly, the liquidator excluded a prime land, that belongs to the public company, in its liquidation process against the regulations otherwise, the real value of the national asset could be determined.

The registered valuers and the legal council are all appointed by the liquidator himself. But none of them followed the regulations in this case. Relying upon their report liquidator excluded a prime land of corporate debtor without taking into consideration section 36(3) (c) of IBC, 2016 “assets subject to the determination of ownership by the court or authority” could even be included in the liquidation process. Even the liquidator shared the valuation report which has to be kept as a confidential document. Liquidator based on one set of valuer reports had fixed the value of the business of the corporate debtor. (M/s Jeypore Sugar Company Limited-NCLT, 2021). This case straight away shows us though asset valuers are appointed by IBBI there is much scope for mismanagement of national assets if they are entirely put into the hands of the private consultants. If the government fails to notice the fact of mismanagement going place at any stage, the government incurs a heavy loss.

Though risky Indian government in 2022 made an initiative to sell its lands and immovable assets of existing CPSEs/PSUs/Other Government Organizations through DIPAM and empanelled consultancy firms like RITES Ltd, CBRE South Asia Pvt Ltd, The Boston Consulting Group (BCG) and 8 other Private Limited Firms to monetize surplus lands of public undertakings. (DIPAM, 2021)

On March 11, 2023, DIPAM sent a "request for proposal" (in short RFP) to IBBI requesting it to appoint an asset valuer firm which is already registered with The Insolvency and “Bankruptcy Board of India” (IBBI) for carrying the valuation of the companies assets and to give its assistance in strategic disinvestment of “Rastriya Ispat Nigam Limited (in short RINL) @ Visakhapatnam Steel Plant).” “The asset valuer would be required to carry out the valuation of all the assets of RINL, subsidiaries and joint ventures, including their plant and machinery, land and buildings, furniture, civil infrastructure and associated intangibles on an is where is basis.” (Aparna Banerjea, 2023). Whether by direct empanelling of private consultants or through IBBI the risk of engaging private consultancy agencies to deal with national assets is highly risky. Stringent guidelines are utmost necessary otherwise government properties will be divested to the private sector for less money.

As NLMC is a very newly incorporated firm for monetizing surplus lands, as mentioned above, NLMC is in dire need of procuring real estate experts for asset valuation from foreign countries who are successful in dealing in the sale of public assets in their countries, if India to be successful in its policy it needs to procure them from outsourcing only instead of native private valuers who are half-baked. Hiring experts from foreign states to monetize assets

buildings and lands of public sectors for a higher value became a necessity that upon a permanent basis, is an immediate requirement though risky. Hiring experts on a case-to-case basis by outsourcing method is a very crucial step and it takes much time and incurs heavy costs. Training must be given to native asset and land valuers to get expertise in the field as quickly as possible to avoid risk. Land monetization is not an immediate source of revenue for the government, it is future revenue. Meanwhile, the lands though transferred to SPV will remain idle for some time till they are going to be developed by the purchaser.

According to this new policy, from the date of acquiring in-principal approval, for the closure of a company from CCEA to the date of filling a request for removal of a company's name in the register has to be completed within 10 months 15 days by the registrar. (in other words period is specified to complete the privatization/disinvestment process), this period covers the bidding process to the stage of removing the name of the company, and to the stage of transferring freehold and leasehold lands to SPV) (see the "Guiding Principles for closure of Subsidiaries/Units by their Holding/Parent Public Sector Enterprises, 2022") but unfortunately, There is no time bound period is specified in PSEs policy, 2021 for completion of land monetization process. The policy stated, "Excess lands of public-sector undertakings will be monetized by direct sale, concession etc." There exist no separate guidelines under this new policy for selling surplus lands of public-sector enterprises except the word 'assets' including lands and buildings, plant and machinery (i.e. Townships/quarters of staff). (Impliedly surplus lands were included in this new economic policy) Here, a question arises without guidelines and proper mechanisms can the government sell public lands like that of private lands? The excess lands which have been unutilized and underutilized for many years are much more suitable for development and useful for any other public purpose. A government could alienate public lands if they are in no way suitable (wastelands) for any other public purpose in a transparent manner. Are there surplus lands are waste lands? All land couldn't be considered for sale. (Bhavya Singh, 2023)

The core difference between the use and Disposal of private property to socialist property is explained in (Ram and Shyam Company v State of Haryana and Ors, 1985 case)

"Where an owner of private property may deal with his land in any manner.....but whereas, the socialist state has to be dealing with the public property for public purpose and in the public interest only. The owner of private property may have several considerations which may permit him to dispose of his property at his will. Whereas, disposing of public property must be done at the best price so that large revenue coming into the state administration would serve wider public purposes because the more the revenue price the higher the welfare activities provided, the welfare state may dispose of public property at a lesser price than the market price or over for a token price to achieve some defined constitutionally recognized public purpose,..... but whereas disposal is for maximizing of revenue alone and for no other purpose, then the state is under an obligation to secure the best market price available in a market economy and be done at public auction."

5.2 In one case, the Karnataka High Court observed

"the state largesse should not be marred by any arbitrariness. All State governments, local bodies or instrumentalities of the state should indulge fairness while leasing out or disposing of any public property is a sine qua non. The state and its instrumentalities are required to follow a transparent procedure in disposing of largesse." (Adinarayan Shetty v Principal Secretary, 2021)

One more noticeable gap is, that no dispute redressal agency had been established for real estate contractual disputes except Corporate Insolvency Resolution Process (CIRP), NCLT. The

Governments have to establish separate real estate dispute resolution mechanisms which deal with monetization of public sector lands. (Indian Budget, 2021-2022)

6 Conclusion

For many years whether a plant is running or closed or become sick, its surplus lands used to be remained idle without any development. These surplus lands are not wastelands they could be utilized for another public purpose in the public interest. With this new policy surplus lands of PSUs will be unlocked in India and introduce new types of economic activities for maximizing revenue. But creates private interests in those largesse's where there is much scope for land use change and deregulation of protective laws which previously protected common resource by altering its pristine natural environment and restraint the public with the insertion of new private rights. This economic reform in India is an impact of the U.S United Nations Federal Government for maximizing the revenue it privatized its entire public domain and amended its environmentally protected laws such as the Homestead Act, of 1862, the General Mining Law, of 1872, The Desert Lands Act, 1877, Timber and Stone Act, 1878 which minimizes the public common lands. (Ryan, E, 2023)

Such lands when privatizing utmost care have to be taken. Though the object of the new policy which aims at unlocking the surplus/excess lands from PSE/U's was a good initiative Public lands cannot be monetized like private lands. Un-utilizing natural resources is also against depletion of the resource's utility. Whatever policy has been introduced by the government, it must be useful to both present and future generations. There should be a smooth flow of economic development (Intergenerational equity should be maintained). When private parties are given property rights on public commons for extraction of wealth from natural resources under production-sharing agreements the private players insist the government to de-regularize the existing environmental regulations. This disrupts existing environmental laws and relaxations of public property rights on commons. In the United States, during the year 2018, 77 million acres of federal land were offered for private oil and gas leasing. It has generated only 10% revenue when compared to its earlier sale of federal lands in the year, 2013 later subsequent governments limited its federal lands sales and immobilized it, one should not forget that those lands are already been sold to the private sector. The interest has been passed to private players though not possession in entirety. (Ryan E, 2023) Under eminent domain, if the government wants to take back those leased or sold lands it has to pay a huge amount of compensation for its repudiation of contract. Contractual disputes arise between the Government and foreign investors which in turn enhances much more burden on Judiciary. Until the legal disputes are cleared these lands will remain locked for a long period. Then there will be no use in unlocking idle surplus lands of Public Sector Undertakings and making them still more locked. One should not forget that to protect the environment and its resources, environmental-related protective laws should not be amended for the sake of the expansion of economic activities. Sustainable development should be maintained. Out of the detailed discussion of the above findings the authors recommend the following suggestions:

6.1 Recommendations

In light of the above-cited findings, it is recommended that:

The unlocked surplus lands of sick and closed non-strategic CPSEs should be utilized for any other public purpose in the public interest.

If the government intends to sell surplus lands of PSUs for maximizing revenue alone, it should be sold at full market price without the scope of favouritism. Utmost transparency and accountability should be met in the land monetization process.

Due Diligence has to be undertaken strictly before choosing the private bidders and this is equitably applicable in choosing consultancy firms or asset valuers in monetizing public assets.

NLMC requires specialized real-estate experts permanently until the purpose of the policy is fulfilled (as it is a lean organization) for understanding the market value and for value maximization. At present DIPAM is hiring asset valuers and market experts for outsourcing. It takes a lot of time. The process will be delayed for getting approvals. Training must be given to native asset valuers and transaction advisors in the monetization of national assets instead of procuring outsourcing staff from the private sector.

Guidelines have to be enacted for the land monetization process in strict lines. Time-bound periods have to be fixed for the completion of the land monetization process. For land acquisition, there exists a fixed period for their utilization. In the same sense, the unlocking process of surplus lands is to be completed within a fixed time.

The existing environmental protection laws should not be relaxed or deregulated for the monetization of national assets. And simultaneously, should not enact new laws for supporting the expansion of economic activities at the cost of public commons.

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