Disinvestment Strategies In India: A Comment On The Privatization of Air India

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Legal Analysis of Air India Privatization

Disinvestment is the process of converting money claims or securities into cash or funds. It occurs through the sale or liquidation of a company's subsidiary or asset. In most cases, disinvestment refers to the government's partial or entire sale of a governmental company. An entity may divest an asset in a strategic move to raise revenue for general or specific needs (implementation of welfare programs, for example) or to address a sudden cash-flow shortage.

First, the government monitors those projects and industries that are failing to deliver as required and performs regular checks and balances or takes corrective actions to address the shortcomings. Following that, the government investigates methods to revitalize the business. If despite the numerous attempts and corrective measures in place, the business is unable to be revitalized, it is privatized through disinvestment.

The Indian government established the National Investment Fund [NIF] to invest the revenues/proceeds received from the sale of Central Public Sector Enterprises [CPSE]. Under the NIF, the Fund would be managed to create long-term revenues for the government while not depleting the corpus.

When the new economic policy was introduced in 1991, the government pinpointed causes such as the pricing practices of government agencies, under-utilization of capacity in project planning and development, labour, staff, management issues, lack of self-sufficiency, etc. on numerous loss-making public sector undertakings.

As a result, the government has acknowledged the necessity to eliminate these divisions and refocus on the objective of creating such entities that benefit society. Furthermore, the government chose to exit non-core businesses, particularly those in which the private sector had made considerable investments.

Disinvestment occurs in six ways. They are:

1. Initial Public Offering [IPO]: An IPO refers to the first time an unlisted CPSE or the government, or a combination of both shares is offered to the general public. The most typical technique of disinvestment has been a public offering. The public offer is seen as a transparent technique of selling government stock to encourage public participation.

2. Further Public Offering [FPO]: An FPO is a public offering of shares made by a publicly traded CPSE, the government, or a combination of the two.
3. Offer for Sale [OFS]: Under OFS, promoters sell their shares through a stock market mechanism that allows for an auction of shares on the platform of the stock exchange.
4. Strategic Sale: The strategic sales approach is used to sell 50% or a higher amount of the government's shares in a CPSE, as well as to transfer control of management.
5. Institutional Placement Program [IPP]: It refers to an eligible seller's second public offering of eligible securities in which the assets are solely offered, allocated, and allotted to qualified institutional buyers.
6. Central Public Sector Enterprises Exchange Traded Fund: The Exchange Traded Fund [ETF] structure allows the government to sell its ownership in several CPSEs via a single transaction.

Procedure of Disinvestment

To use any of these techniques, a seven-step process must be followed. The protocol is also available on the website of the Department of Investment and Public Asset Management. Due to the technical and intricate nature of transactions, as well as the demand for transparency and fairness, the process of disinvesting in individual CPSEs has evolved and is now based on inter-ministerial discussions and the engagement of professionals and experts. The steps are as follows:

1. The permission for commencing the process of disinvestment is provided post the submission of documents to the administrative ministry of the CPSE.
2. Thereafter, the request for disinvestment is approved by the Cabinet Committee on economic affairs.
3. The finance minister authorizes the formation of an Inter-Ministerial Group [IMG] to manage and oversee the process of disinvestment.
4. IMG hires transaction advisers such as merchant bankers, Book Running Lead Managers [BRLM], and legal counsel.
5. The High-Level Committee [HLC] on valuation seeks recommendations from the BRLMs for the pricing of the disinvestment.
6. The HLC suggests a price band/floor price for an alternative mechanism.
7. The alternative mechanism authorizes the proposed floor price, the disinvestment mechanism, the price reduction for retail investors and employees, and other concerns.

The Air India Case

Political interference, poor management, and labour issues played a vital role in Air India’s decline. In 2007, the airline merged with India Airlines. Air India’s senior executives lacked decision-making authority due to political impingement, resulting in a lack of focused, proactive, and long-term business planning.

With these considerations in mind, the NITI Aayog suggested that Air India should be sold in 2018.

Since then, the following steps have been followed:

1. The proposal was presented to a core committee of disinvestment secretaries chaired by the Cabinet Secretary for consideration.
2. The committee’s recommendations were forwarded to the Cabinet Committee on Economic Affairs, which approved the strategic sale of the national carrier “in principle”.
3. The Union Cabinet approved the strategic disinvestment of Air India’s stakes

in five subsidiaries, including Air India Engineering Services [AIESL], Air India Transport Services, Air India Charters, Airline Allied Services, and Hotel Corporation of India as well as a joint-venture AISATS.

4. The Civil Aviation Secretary officially announced Air India’s disinvestment at a news conference in June 2018.
5. The government published an Expression of Interest [EOI] for the privatization of Air India. The agreement included a 100% stake in Air India Express and a 50% stake in AISATS.
6. The Income Tax Department granted the new owners of Air India the permission to carry forward losses and deduct them from future profits.
7. Tata purchased Air India in October 2021 for a winning bid of INR 18,000 crore and the complete disinvestment/privatization of the Air India was concluded under a strategic sale method.

Implications of the Sale

As of March 31st 2019, the airline’s total debt was approximately a total sum of INR 60,000 crore. This debt was a major reason behind the disinvestment. As the current status stands, the new owners i.e., Tata will bear responsibility for INR 15,300 crore and pay an additional INR 2,700 crore in cash to the government.

Privatizing Air India may aid it in regaining its former grandeur – which is sorely needed given how heavily in debt the corporation is. Even if deemed prudent, the government is not authorized to redirect tax revenues to a loss-making unit. Therefore, a reduction in loss-making entities shall have a directly proportional relationship with reduced tax collection from the general public. Hence, reduced taxation means more money for healthcare, education, and other public services.

Despite the government’s efforts to salvage Air India, the situation has remained unchanged for years. This implies that the system has serious weaknesses and that diverting taxpayers is not indefinitely rewarded. The implication is that it is preferable to privatize the losing unit to make the most use of taxpayers' money, leading to a favourable situation for everyone.

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