

AS INTRODUCED IN THE RAJYA SABHA
ON 22ND JULY, 2022

Bill No. XXXI of 2022

CENTRAL PUBLIC SECTOR ENTERPRISES (PROTECTION OF
INTERESTS OF STATES) BILL, 2022

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BILL

to provide for safeguarding the interests and entitlement of States in the eventuality of disinvestment of Central Public Sector Enterprises and to ensure fairness and transparency in the process and for matters connected therewith or incidental thereto.

BE it enacted the by the Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Central Public Sector Enterprises (Protection of Interests of States) Act, 2022. Short title and commencement.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Central Public Sector Enterprise” means a company incorporated under the Companies Act, 2013 or under any previous company law, or institutions formed in pursuance of any Act of Parliament, in which not less than fifty-one per cent of the share capital is held by the Central Government or by any other CPSE or CPSEs, or partly by the Central Government and partly by one or more CPSEs, or partly by the Central Government and partly by one or more States with majority share capital with the Central Government, and includes a company which is a subsidiary company of such as institution; 18 of 2013. 5

(b) “CPSE” means Central Public Sector Enterprise; 10

(c) “disinvest” or “disinvestment” means disinvestment by transfer, by way of sale or allotment in any manner whatsoever, in whole or in part of the share capital in a CPSE to any person or private entity, whether incorporated or not, by the Central Government or any other CPSEs, with or without transfer of management control;

(d) “management control” means and includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner; 15

(e) “notification” means notification published in the Official Gazette and the expression “notified” with its cognate meanings and grammatical variations shall be construed accordingly; 20

(f) “prescribed” means prescribed by rules made by the Central Government under this Act;

(g) “State” means a State or States which contributed land free of cost or at subsidized rates or assisted by cash or in kind or resources for the incorporation or functioning of a CPSE, whether or not holding shares in that CPSE. 25

(2) Words and expressions used but not defined in this Act shall have the meanings respectively assigned to them in the Companies Act, 2013. 18 of 2013.

Procedure for disinvestment and protection of interests of States.

3. (1) In the eventuality of the Central Government or its instrumentalities resolving to disinvest a CPSE, the valuation of the CPSE shall be done beforehand, which shall, under no circumstances whatsoever, be done through, or by availing the assistance of, a private entity. 30

(2) The valuation of a CPSE shall be in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. 35

(3) The valuation report of the CPSE shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the CPSE to the Comptroller and Auditor-General of India.

(4) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the valuation report of a CPSE shall have the same rights, privileges and authority in connection with such audit as the comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices and assets of the CPSE. 40 45

(5) The valuation report, as audited by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded to the Central Government, which shall cause the same to be laid before each House of Parliament and shall also make the valuation report available to the State.

5 (6) The State, referred to in clause (g) of section 2, shall be preferred to in the disinvestment by being given the right of first refusal of the purchase of the CPSE for the valuation amount so arrived at:

10 Provided that in the case of more than one State involved in the contribution of land free of cost or at subsidized rates, or assistance by cash or in kind or resources, for the incorporation or functioning of a CPSE, the right of first refusal shall be given to all such States in descending order in direct proportion to the total value of contribution and/or assistance, as the case may be, rendered by each of such States.

15 (7) The Central Government or its instrumentalities may proceed with disinvestment, if and only if the State referred to in clause (g) of section 2 refuses to purchase the CPSE for the amount arrived at the valuation, subject to the condition that any sort of disinvestment in such an eventuality shall be by resorting to competitive bidding in such manner as may be prescribed.

20 (8) In addition to, and not in derogation of, the rights conferred by the provisions in the preceding sub-sections, all States including, but not limited to, the States referred to in clause (g) of section 2 as well as its instrumentalities including State PSUs, both jointly or severally, be entitled to participate in the competitive bidding for disinvestment:

Provided that no qualification or disability criteria shall be insisted for states or its instrumentalities for participation in the bidding for disinvestment.

25 (9) The competitive bidding shall, under no circumstances whatsoever, be done through, or by availing the assistance of a private entity.

30 **4.** Without prejudice to a State or States, referred to in clause (g) of section 2, failing to purchase a CPSE during the disinvestment process, it shall be entitled for rateable distribution by way of apportionment, from the proceeds of disinvestment, the value, present value or pro rata share of the total bid amount, whichever is higher, for the land, cash or services provided by it for the incorporation or functioning of the CPSE. Distribution of the proceeds of disinvestment.

5. Notwithstanding anything inconsistent therewith contained in any other law or rules or regulations for the time being in force, and any instrument having force of law, the provisions of this Act shall have overriding effect. Act to have overriding effect.

35 **6. (1)** The Central Government may, by notification, make rules to carry out the provisions of this Act. Power to make rules.

40 (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

According to the founding fathers of our Nation, Central Public Sector Enterprises (CPSEs) are the 'temples of modern India'. CPSEs have played a significant role in the growth of economy of the Nation during post-independence era. The CPSEs can be broadly classified into three types, *viz.* Departmental Undertakings—directly managed by concerned Ministry or Department (e.g. Railways, Posts, etc.), Non-Departmental Undertakings - Public Sector Undertakings (e.g. Hindustan Petroleum Corporation Limited, Indian Oil Corporation Limited, etc.) and Financial Institutions (e.g. State Bank of India, Life Insurance Corporation, etc.). CPSEs represent a significant portion of the Indian economy. It comprises public services and enterprises and provides services for the benefit of the nation. The rationale behind the establishment of CPSEs was industrialisation and the establishment of capital goods industries and basic industries. CPSEs played a colossal role in the country in the creation of industrial base, employment opportunities, infrastructure, resources to the Government, reduction of inequalities, accelerating the economic growth and development of the country, ensuring social justice, etc. This sector was vital for the generation of capital in the Indian economy for several decades. CPSEs function for the welfare of the public and the overall development of the country at large. Public sector also enables the Government to administer social control on trade and industry for ensuring equitable distribution of goods and services.

Nevertheless, the disinvestment of these CPSEs, once called as crown jewels of the Nation, began in 1991. Any disinvestment of CPSE needs to be viewed in the context of the contributions rendered by States by way of providing land free of cost or at subsidized rates or assistance by cash or in kind or resources for the incorporation or functioning of that CPSE. The present policy of disinvestment doesn't consider this cardinal point. The intent of the Bill is to provide an opportunity to such States to take over the control of such CPSEs or to entitle such States the right to have rateable distribution by way of apportionment, from the proceeds of disinvestment, the value, present value or pro rata share of the total bid amount, whichever is higher, for the land, cash or services provided by it for the incorporation or functioning of the CPSE.

Further there are instances of glaring aberrations in the disinvestment modality also. The proceeds from the disinvestment of the PSUs will be generally meagre when compared to the real value of the CPSEs. There are several factors attributing to this stark contrast. The modality developed by DIPAM to appoint private entities and to delegate them the task of valuation of CPSEs, collection and evaluation of bids, etc. is flawed. A private entity is outside the ambit of 'the Right to Information Act, 2005' or auditing by the Comptroller & Auditor General of India. Delegation of the responsibilities of the Government to external private entities to do the valuation of CPSEs, technical evaluation, collection of bids, etc. attract public criticism, while the responsibility of the Executive to ensure a fair and transparent process will get largely thinned.

Also, the Central Government is at present denying permission to the State Governments or State PSUs in participating in the strategic disinvestment of CPSEs. It will be against the basic values of co-operative federalism enshrined in our Constitution if the Union Government comes forward to infringe the rights of a State or its PSUs in participating in an open bid for the sale of a CPSE. There are no cogent and convincing reasons in preventing States from purchasing CPSEs or participating in the disinvestment process.

In addition, those States which contributed land free of cost or at subsidized rates or assisted by cash or in kind or resources for the incorporation or functioning of a CPSE, whether or not holding shares in that CPSE, are entitled to have preference in the disinvestment process by being given the right of first refusal of purchase of the CPSE directly.

This Bill, therefore, seeks to introduce provisions to safeguard the interests and entitlement of States in the eventuality of disinvestment of Central Public Sector Enterprises as well as to ensure fairness and transparency in the process.

Hence, this Bill.

JOHN BRITTAS

MEMORANDUM REGARDING DELAGATED LEGISLATION

Sub-clause 2 of clause 3 of the Bill empowers the Central Government to provide by rules the form of valuation of a CPSE. Sub-clause 7 of clause 3 of the Bill empowers the Central Government to provide by rules the manner in which the competitive bidding for the disinvestment of a CPSE shall be done. Similarly Clause 6(1) empowers the Central Government to make and notify rules to carry out the provisions of this Act.

The matters in respect of which rules may be made under the aforesaid provisions are matters of procedure or administrative details only, and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

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(Shri John Brittas, M.P.)