

Balco case



**ASSIGN
BUSTER**

Disinvestment of a company basically means the action of an organization or government selling or liquidating an asset or subsidiary. It is also known as “divestiture”. It may also be a reduction in capital expenditure, or the decision of a company not to replenish depleted capital goods. Thus Disinvestment refers to the sale or liquidation of an asset or subsidiary of an organization or equity and bond capital by the government to the private sector. It also implies the sale of government’s loan capital in PSUs through securitization.

However, it is the government and not the PSUs who receive money from disinvestment. In the BALCO Disinvestment case, Supreme Court considered the complex questions relating to effect of disinvestment on the employees and workers and whether the questions of policy and administrative matters and decision can be heard by Supreme Court. The Supreme Court delivered a very elaborate, exhaustive and thoughtful opinion on various issues related to the aspects of disinvestment. Through this article I have tried to analyze in brief the concept of disinvestment, discuss the case and relate it with the aspects of company law.

BALCO (M/s. Bharat Aluminium Company Limited) was incorporated in 1965 as a Government of India Undertaking under the Companies Act, 1956. It had a paid-up share capital of Rs. 488. 85 crores. The company was engaged in the manufacture of aluminum and had plants at Korba in the State of Chhatisgarh and Bidhanbag in the State of West Bengal. The Company had integrated aluminium manufacturing plant for the manufacture and sale of aluminium metal including wire rods and semi fabricated products.

In, 1996 the Ministry of Industry (Department of Public Enterprises) constituted a Public Sector Disinvestment Commission initially for a period of three years in pursuance of the Common Minimum Programme of the United Front Government at the Centre. On 12th January, 1998 the earlier Resolution was partly modified by the government as: -The Disinvestment Commission shall be an advisory body to the Government on Disinvestment in those public sector units that are referred to it by the Government.

The Commission shall also advise the Government on any other matter relating to disinvestment as may be specifically referred to it by the Government, and also carry out any other activities relating to disinvestment as may be assigned to it by the Government. -In making its recommendations, the Commission will also take into consideration the interests of workers, employees and others stake holders -The final decision will vest with the Government. The Union of India, then laid down the broad procedures to be followed for processing the recommendations of the Disinvestment Commission.

It decided that: -The Department of Disinvestment would process the recommendations of the Disinvestment Commission, by inviting comments from the concerned administrative machinery. - It would submit the recommendations to the Core Group of Secretaries - The recommendations of the Core Group of Secretaries would then be taken to the Cabinet for decision. - To implement the decisions, an Inter Ministerial Group headed by the Secretary/Joint Secretary of the Administrative Ministry was formed.

In case of BALCO, the IMG consisted of Secretary level officers and was headed by Secretary (Mines). The Disinvestment Commission in its 2nd Report submitted in April, 1997 advised the Government of India that BALCO needed to be privatized. The Commission had categorized BALCO as a non-core group industry. The recommendations it made were: -The Government may immediately disinvest its holding in the Company by offering a significant share of 40% of the equity to a strategic partner.

There should be an agreement with the selected strategic partner specifying that the Government would within two years make a public offer in the domestic market for further sale or shares to institutions, small investors and employees thereby bringing down its holding to 26%. - There should be an on-going review of the situation and the Government may disinvest its balance equity of 26% in full in favour of investors in the domestic market at the appropriate time. - Appointment of a Financial Advisor to undertake a proper valuation of the company and to conduct the sale process.

The Chairman of the Commission then recommended to consider offering 51% or more to the strategic buyer along with transfer of management to enable a smooth transaction with the participation of more bidder and better price for the shares. The Cabinet Committee on Economic Affairs in September 1997 granted approval for appointment of a technical and financial advisor, for managing the strategic sale and restructuring of BALCO. Thus M/s. Jardine Fleming Securities India Ltd. was appointed. The Cabinet Committee on Disinvestment also approved the proposal of strategic sale of 51% equity in respect of BALCO.