Guidelines for bank finance for PSU Disinvestments :
Stipulation of lock-in period for shares

DBOD. BP. BC. 83 / 21.04.137/ 2002- 2003

March 21, 2003

All Scheduled Commercial Banks
(excluding RRBs & LABs)

Dear Sir,

Guidelines for bank finance for PSU Disinvestments :
Stipulation of lock-in period for shares

Please refer to paragraph 3 of Circular No. DBOD. BP. BC. 17/ 21.04.137/ 2002- 2003 dated 16 August 2002 advising banks that, if the PSU disinvestment shares against which bank finance is proposed to be extended are illiquid due to lock-in period / restrictive clauses, the successful bidder, to whom the bank proposes to extend finance, should obtain necessary approval from Government of India and other regulatory agencies exempting such equity holdings from these restrictions before bank finance can be extended.

2. The matter has since been reviewed, in consultation with the Government of India, and it has been decided that :

i) Banks should, while deciding to extend finance to the borrowers who participate in the PSU disinvestment programme, advise such borrowers to execute an agreement whereby they undertake to:

(a) Produce the letter of waiver by the Government for disposal of shares acquired under PSU disinvestment programme during the lock-in period, **or**

(b) Include a specific provision in the documentation with the Government permitting the pledgee to liquidate the shares during the lock-in period, in case of shortfall in margin requirement or default by the borrower.

ii) Banks may extend finance to the successful bidders even though the shares of the disinvested company acquired/ to be acquired by the successful bidder are subjected to a lock-in period/ other such restrictions which affect their liquidity, subject to fulfillment of following conditions:

a) The documentation between the Government of India and the successful bidder should contain a specific provision permitting the pledgee to liquidate the shares even during lock-in period that may be prescribed in respect of such disinvestments, in case of shortfall in margin requirements or default by the borrower.

b) If the documentation does not contain such a specific provision, the borrower (successful bidder) should obtain waiver from the Government for disposal of shares acquired under PSU disinvestment programme during the lock-in period.

3. As per the terms and conditions of the PSU disinvestments by the Government of India, the pledgee bank will not be allowed to invoke the pledge during the first year of the lock-in period. During the second and third year of the lock-in period, in case of inability of the borrower to restore the margin prescribed for the purpose by way of additional security or non performance of the payment obligations as per the repayment schedule agreed upon between the bank and the borrower, bank would have the right to invoke the pledge. The pledgee bank's right to invoke the pledge during the second and third years of the lock-in period, would be subject to the terms and conditions of the documentation between Government and the successful bidder, which might also cast certain responsibilities on the pledgee banks.

4. It is clarified that the concerned bank must make a proper appraisal and exercise due caution about credit worthiness of the borrower and the financial viability of the proposal. The bank must also satisfy itself that the proposed documentation, relating to the disposal of shares pledged with the bank, are fully acceptable to the bank and do not involve unacceptable risks on the part of the bank.

5. In terms of IECD Circular No. 10/ 08.12.01/ 2000- 2001 dated 8 January 2001, banks are precluded from financing investments of NBFCs in other companies and inter-corporate loans / deposits to/ in other companies. The position has been reviewed and banks are advised that SPVs which comply with the following conditions would not be treated as investment companies and therefore would not be considered as NBFCs :

(a) They function as holding companies, special purpose vehicles, etc. with not less than 90 per cent of their total assets as investment in securities held for the purpose of holding ownership stake,
(b) They do not trade in these securities except for block sale; and
(c) They do not undertake any other financial activities.

SPVs which satisfy the above conditions would be eligible for bank finance for PSU disinvestments of Government of India.

6. Please acknowledge receipt.

Yours faithfully,

(M. R. Srinivasan)
Chief General Manager-in-Charge