

STATEMENT BY MINISTER

Policy of Disinvestment

THE MINISTER OF DISINVESTMENT, MINISTER ' OF DEVELOPMENT OF NORTH EASTERN REGION AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN SHOURIE): Sir, as you and the hon. Members are aware, the Government has been implementing successfully an intensely considered and well-defined programme of disinvestment of the Central Public Sector Enterprises. As you also know, the Government has been receiving from time to time several significant suggestions from the hon. Members of this House as also from experts and others outside.

[THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM) in the Chair]

With your kind permission and through you, Sir, I would like to inform the House that after detailed deliberations on the various views expressed and suggestions made, the Government has decided in a meeting held on the 6^m December, 2002, to fine-tune the disinvestment policy and programme by adopting the following approach:

The main objective of disinvestment is to put national resources and assets to optimal use and, in particular, to unleash the productive potential inherent in our public sector enterprises. The policy of disinvestment specifically aims at :

- Modernisation and upgradation of public sector enterprises;
- Creation of new assets;
- Generation of employment; and
- Retiring of public debt.

Government would continue to ensure that disinvestment does not result in alienation of national assets, which in spite of the process of disinvestment, will remain where they are. It will also ensure that disinvestment does not result in private monopolies.

In order to provide complete visibility to the Government's continued commitment to utilise the disinvestment proceeds for social and infrastructure sectors, the Government would set up a Disinvestment Proceeds Fund. This Fund will be used for financing, fresh employment opportunities, for investment, and for retiring public debt.

For the disinvestment of natural asset companies, the Ministry of Finance and the Ministry of Disinvestment will work out guidelines.

The Ministry of Finance will also prepare for consideration of the Cabinet Committee on Disinvestment a paper on the feasibility and modalities of setting up an Asset Management Company to hold, manage and dispose the residual holding of the Government in the companies in which Government equity has been disinvested to a strategic partner.

With these objectives as the guiding principle, the Government has taken the following specific decisions:

- To disinvest through sale of shares to the public in Bharat Petroleum Corporation Limited (BPCL). ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Let him complete. ...*(Interruptions)*... Let him complete. ...*(Interruptions)*... You will also have your chance, ...*(Interruptions)*... Please let him complete.

SHRI ARUN SHOURIE:

- To disinvest in the Hindustan Petroleum Corporation Limited (HPCL) through strategic sale. ...*(Interruptions)*...
- To allot, in both cases of BPCL and HPCL, a specific percentage of shares to the employees of the two companies at one-third of the market price. Thank you, Sir. ...*(Interruptions)*...

श्री नीलोत्पल बसु (पश्चिमी बंगाल) : सर, इसमें एक क्लैरीफिकेशन है। स्टेटमेंट में one-third नहीं दिया है। ... *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): No; no. Now, one-by-one, the hon. Members can seek the clarifications. Dr. Manmohan Singh ...*(Interruptions)*...

SHRI NILOTPAL BASU: Here, it is written 'at a concessional price.' ...*(Interruptions)*...

SHRI ARUN SHOURIE: I am sorry, Sir. There is a mistake. ...*(Interruptions)*... It is "one-third of the market price". ...*(Interruptions)*...

SHRI NILOTPAL BASU: Then, why has this been circulated? ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Nilotpal Basu, please sit down. ...*(Interruptions)*.. Dr. Manmohan Singh.

THE LEADER OF THE OPPOSITION (DR. MANMOHAN SINGH): Mr. Vice-Chairman, Sir, the operative part of this statement is about the disinvestment in the two oil companies. As far as I know, both the oil companies - HPCL and BPCL - were created by Acts of Parliament from 1974 to 1976, when these two foreign companies were nationalised. In our view, these Government companies cannot be converted into non-Government companies, without repealing the Nationalisation Act, which vested the ownership of assets of the erstwhile private sector companies in the hands of the Central Government or Government companies. The present action amounts, in effect, to repealing the Act by an Executive Order, and appears to be contrary to law. This action, in our view, is inconsistent with the provisions of the Acquisition Acts. Would the hon. Minister clarify the position?

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Shri Jibon Roy *(Interruptions)* ...

SHRI JIBON ROY (West Bengal) : What sort of clarification ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Reply would be given at the time of ...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE (West Bengal) : On this issue, what sort of clarification ...*(Interruptions)*... is a policy, which you cannot discuss here, unless the Act is repealed ...*(Interruptions)*...

SHRI NILOTPAL BASU: The Government does not have any *bona fide* to make this statement here ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Shri Jibon Roy, please ...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE: This cannot be discussed, unless the Act is repealed ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Please sit down ...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE: The Parliament cannot be overruled ...*(Interruptions)*...

SHRI ARUN SHOURIE: The sixth point ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Please let him reply ...*(Interruptions)*... Please sit down ...*(Interruptions)*...

SHRI ARUN SHOURIE : It is a very important point that the Leader of the Opposition has made. I will give an answer, because I did enquire into this matter even at the time of Air India because Air India, as you remember, was also set up by an Act of Parliament. So, if we go wrong, naturally there will be many challenges and many occasions on which.....
...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE: You are going beyond Parliament *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Please sit down ... *(Interruptions)*...

SHRI DIPANKAR MUKHERJEE This is a challenge
...*(Interruptions)*... संसद सर्वोपरि है...*(व्यवधान)*....

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Let him complete ... *(Interruptions)*... Please sit down ...*(Interruptions)*...

SHRI JIBON ROY: You cannot repeal an Act through an Executive Order ...*(Interruptions)*...He has to answer ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Shri Jibon Roy, please sit down ... *(Interruptions)*....Let him complete ...*(Interruptions)*... Please sit down ...*(Interruptions)*... Yes, Mr. Minister... *(Interruptions)*...

SHRI PRANAB MUKHERJEE (West Bengal) : When we had discussion on disinvestment just the other day, the hon. Minister will recollect, while responding to the points raised by Shri Fali S. Nariman and also the policy reiterated by me, that disinvestment in respect of those units which are created by an Act of Parliament, the Government has no option but to come to Parliament, either for repealing the Act or for amending the Act, diluting the Government share from 100 per cent to whatever percentage they want to have it. There are two types of public sector enterprises. One set of public sector enterprises which were created by Executive Order; if the Government disposes of shares, whatever we may say here, that cannot be legally tenable. But, this is a clear fact. Even the year has been stated between 1974 and 1976. By passing these two Acts, assets of these companies were acquired by the Government. If the Government does not have the jurisdiction, and when it is raised in Parliament, what is the point in saying that there may be cases; there may be protest? If what happened in Air India was not analysed or if it was not raised at that point of time in Parliament, it need not be considered as a precedent. So, the hon. Minister would do justice to this House, to his own words, to his own commitment. The hon. Minister would do justice to this House, to his own words, to his own commitment, if he checks up this position and comes to the House with the advice and observation of the Attorney-General of India and the Ministry of Law and categorically says: "Yes, the Government can do it by an executive order, without coming to Parliament." Unless we get the opinion of the Attorney-General in this matter, Minister's interpretation of law is not adequate. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Minister, would you respond to the question raised by Shri Pranab Mukherjee?

SHRI ARUN SHOURIE: I am going to answer the question raised by Dr. Manmohan Singh and Shri Pranab Mukherjee. Both of them raised the same question. Companies have been set up and acquired in different ways. For instance, Dr. Manmohan Singh is absolutely right in saying that the HPCL, the BPCL, the Burmah Shell and ESSO were acquired by Acts, and then set up. There is an important point to remember there that once the company has been acquired, it is then registered under the Companies Act, and from then onwards, the disposition of shares, the change in the composition of the shares, the issuance of new shares, the privatization, the disinvestment of shares, as has been happening since 1991 in these very companies, as I will show..... *{Interruptions}*...

SHRI DIPANKAR MUKHERJEE: No, no. He is misleading **the** House. ...*{Interruptions}*...

SHRI ARUN SHOURIE: It has been happening without change of the original Act, because, it depends upon whether that particular Act prescribes any particular restriction on the disposition of shares later on. I will give you the specific example. ...*{Interruptions}*...

SHRI NILOTPAL BASU: No, no. He is misleading the House. ...*{Interruptions}*...*The*. question here is, there is a clear change in the character... *{Interruptions}*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Nothing will go on record except the statement of the Minister. Mr. Nilotpal Basu, please sit down. ...*{Interruptions}*...

SHRI NILOTPAL BASU:^f

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Nilotpal Basu, you are an hon. Member of this House, very much experienced. The

^f Not recorded.

[9 December, 2002]

RAJYA SABHA

6.00 p.m.

practice is that whenever any Minister makes a statement, only clarifications are sought. This is the practice. ...(*Interruptions*)...

SHRI JIBON ROY :^f

SHRI S.S. AHLUWALIA (Jharkhand) :^T

SHRI DIPANKAR MUKHERJEE :*

SHRI ARUN SHOURIE: Sir, when these companies were acquired, 100 per cent of their shares were with the Government. This Government has not done anything. Today, 49 per cent of the shares have already been sold, not by us.... (*Interruptions*)

SHRI DIPANKAR MUKHERJEE :^f

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM) : Nothing is going on record...(*interruptions*)...Your chance will come. Your name is here...(*Interruptions*)..Mr. Minister after you complete, I will allow the Leader of the Opposition to speak.

SHRI ARUN SHOURIE : I will state an example of strategic sale...(/ntemvpf/b/7s)...Maruti was acquired under the Maruti (Acquisition and Transfer) Act of 1980. Then, the Government had 100 per cent of the equity. In 1982, 26 per cent was given to Suzuki. There was no Act of Parliament. In 1984, it was increased to 40 per cent, through no act of Parliament. In 1992, the management was transferred to Suzuki and it became a non-Government company. Then the Government equity was reduced to 49.7

* Not recorded.

per cent and Suzuki's equity was 50 per cent. That was a strategic sale of 1992, no act of Parliament.

DR. MANMOHAN SINGH : Mr. Vice-Chairman, Sir, I have with me copies of both the Acts of Parliament, which were passed when these two companies, which were then in the private sector, were nationalised. These Acts clearly state that the assets of these companies can be vested either with the Central Government, or with the Government companies to be notified by the Central Government. There is no provision for vesting these assets with a non-Government company...*(Interruptions)*...

SHRI PRANAB MUKHERJEE : This is the Act by which Government holds the shares and assets of the company. The Government holds the shares and assets of the erstwhile private company by this Act of Parliament. Therefore, unless this Act of Parliament is amended, whose property, whose assets, under what authority, the Government is disposing off? Number two, there is a big difference between 49 per cent and 51 per cent. Up to 49 per cent, the controlling shares remain with the Government. The moment you bring it down below 51 per cent, the total character of the company changes. Therefore, these are not the debating points. These are the issues on which the whole country is agitated...*(Interruptions)*... I am sorry to say that the interpretation made by the Executive...*(Interruptions)*... Many a time, our interpretation has been turned down by the court. The best course of action would be that the Government should come out with the considered opinion of the Attorney-General, who is the highest legal officer of this country, convince this House that there is a legality behind the action of the Government, and we will be quite happy.

SHRI S. RAMACHANDRAN PILLAI (Kerala) : Sir, let the Government explain the legal position. ...*(Interruptions)*... Let the Government explain the legal position. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Go back to your seats, please. Mr. Bhattacharya, go back to your seat, please. ...*(Interruptions)*... Mr. Bhattacharya, go back to your seat, please. ...*(Interruptions)*..... *(Interruptions)*... Please listen to me. ...*(Interruptions)*... Listen to me first. ...*(Interruptions)*... Listen to me first. ...*(Interruptions)*... I am giving my ruling, please. ...*(Interruptions)*... I am giving my ruling. ...*(Interruptions)*... Please listen to me. ...*(Interruptions)*... This House is not

going to decide the legality. The legality or illegality is decided by the court. This is my ruling. ...*(Interruptions)*... Please go back to your seats. ...*(Interruptions)*... Go back to your seats. ...*(interruptbns)*... Please go back to your seats. ...*(interruptbns)*... I have given my ruling. ...*(interruptbns)*... Please go back to your, seats. ...*(interruptbns)*... Please go back to your seats. ...*(interruptbns)*... Are you not willing to listen to me? ...*(interruptbns)*... Are you not interested in seeking clarifications? ...*(Interruptions)*...The House stands adjourned till 11 o'clock tomorrow.

The House then adjourned at three minutes past six of the clock, till eleven of the clock on Tuesday, the 10th December, 2002.