INFocus

THE PRIVATIZATION OF CONCOR AND THE INDIAN LOGISTICS MARKET: PRICE, PURPOSE, AND PRIORITIES

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1.Introduction

The Container Corporation of India (CONCOR) was set up in 1988 to promote the export- import trade of the country by transporting containers to and from the gateway seaports both by Rail ways and Roadways. It also set up a number of Internal Container Depots (ICDs) and Container Freight Stations at various locations all over the country for the purpose of cargo consolidation and distribution, warehousing, stuffing and stripping of containers, handling and storage of containers and allied activities It was set up under the Ministry of Railways on land leased by Railways to CONCOR. Over the period the Indian Railways (IR) diluted its holding in CONCOR by selling 46% of its share holdings to domestic and foreign institutional investors.

The government of India has now decided to privatize Container Corporation of India (CONCOR) in order to reduce its fiscal deficit in this financial year. As of now the government holds about 55% of the shareholding. The government has now decided to sell 24% and hand over the management control too of the company.

CONCOR at present has about 80% of the share of the logistics and transportation of containers market. It operates 86 internal container depots (ICDs) and container freight stations (CFSs). It transports about 20% of the containers by railways and the rest by road. It owns about 15000 rail wagons and about 200 container handling equipment. The current market capitalization of CONCOR is about 4 billion USD.

CONCOR currently owns about half the ICDs and CFSs while the rest are leased from Indian Railways. It recently returned 15 ICDs/CFSs back to Indian Railways due to non-viable reasons. owever the land for the rest of the ICDs/CFSs was acquired from the market at concessionary rates for the purpose of greater public good and development of national infrastructure. As such the question arises as to whether such land so acquired can be sold to a buyer (Domestic or Foreign) at a highest available price along with unfettered usage rights including further sale.

Furthermore, CONCOR, being a government enterprise was granted a first mover advantage for almost 20 years. This allowed them to develop a monopolistic dominant share of the market. Their return on capital too is very handsome (300% per annum). It is noted that CONCOR was allowed to charge the Indian consumer such a handsome premium under the passenger traffic subsidization policy of the Indian railways. The risk due to the existent laws of multi-modal transport is minimal. The second question that arises in these circumstances is whether anon-governmental firm can be allowed to own such dominant market position and exploit the Indian consumer. If so at what price?

2. Background

Indian Railways (IR) had begun to transport containers in mid 1980s. CONCOR was incorporated in March 1988 under the Companies Act, and it commenced operations in November 1989 taking over an existing network of seven inland container depots (ICDs) from IR. Railways had a policy of leasing its land to its custmers for facilitating their activities as well as to gain traffic, viz. for stacking of bulk cargo such as coal, and cement, permitting concrete sleeper production for captive use on railway land, providing connectivity to sidings from railway stations etc. In addition, IR also leased land for short term uses like commercial licensing, plantation, Grow More Food Scheme, etc. The land lease charges were a function of the size of the land leased and the local rates, determined by a set of well-established rules.

For providing land for rail transportation of containers, IR adopted new norms. The land lease charges were linked to the number of containers handled, irrespective of the size of the land leased to CONCOR. Such an arrangement was a win-win for both IR and CONCOR as:

1. CONCOR was a fully owned subsidiary of IR, and no allegation of favouring a customer was possible.
2. In most cases, the land was lying surplus to railway's use. By allowing CONCOR to establish Container Terminals, railways could prevent encroachment.
3. The arrangement of calculating the lease rental was simple and transparent.

In 2007, IR appointed 15 private Container Train Operators (CTOs) in addition to CONCOR for transportation of containers by rail. Building a new ICD was an uphill task for new operators as land prices soared. It requires a minimum of 50 acres to set up an ICD. The land has to be accessible by rail and road. Nearly all such land parcels were already in possession of CONCOR.

The concession agreement claimed to provide a level playing field to all the CTOs including CONCOR, which was owned by IR. CONCOR was to be treated at an arm's length basis'. It said that no additional privileges would be granted to CONCOR. owever, the land leased to CONCOR for ICDs continued to remain with CONCOR on the old terms. CTOs grudgingly accepted that status as the lease had been done well before 2007, prior to the agreement.

To appease the CTOs, a new policy guideline was issued on 2008 that allowed setting up of ICDs on surplus railway land

"For providing rail terminal (ICD), the license fee should be based on the circle rate fixed by the Revenue Authority or the industrial rate, whichever is higher."

But IR continued to fix the license fee for CONCOR as per the old agreement. For instance, CONCOR currently pays about Indian Rupees 1,160 per container to Indian Railways as land license fee for the Tughlakabad ICD, its flagship facility in Delhi.

3.Issues Concerning the Privatization of CONCOR

In 2019, IR decided to privatize CONCOR by selling the majority stake to private parties. As per terms of land lease agreement between IR and CONCOR, the lease would lapse as and when CONCOR's majority stake is not with the government. IR is in a fix. Legally it cannot transfer the lease agreement to the new private owner of CONCOR on the following grounds:

1. As per terms of land lease agreement between IR and CONCOR, the lease would lapse as and when government becomes a minority shareholder in CONCOR.
2. As per the Concession Agreement 2007 between IR and CTOs, IR has to create a level playing field'. Allowing a single CTO the exclusive right to ICDs on railway land would be in violation of the agreement.
3. In 2008, Audit has already flagged the issue of loss suffered by IR on land leased to CONCOR:

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The policy of charging of license fee for the land given to CONCOR on the basis of TEUs handled instead of linking it with the market value
of land resulted in loss of revenue to the extent of Rs.551.26 crore
during the period 2004-07. (Para 2.12.3 of Report No. PA 8 of 2008 (Railways) Chapter 2 on Land Management in IR)

4. Can IR sell its land to CONCOR (or anyone else)?

A simple answer is no, certainly not without violating the existing provisions under which the land was acquired by IR from the state governments. As IR is prohibited from selling its land to public, it has limited options:

1. It can return the land to the state governments who had acquired it for IR's bona fide use only.
2. It can allow Rail Land Development Authority (RLDA), a special agency created for this purpose, to commercially utilize the surplus land under its possession.

In 2018, IR has identified nearly 12,066 acres of surplus land which it wants the state governments to either buy or exchange these for developmental projects (The Economic Times, 2018). The complexities in attempting to develop/commercially utilize surplus land are best illustrated by the incident where IR attempted to develop an ultramodern mall/shopping complex on a 3-acre land in Bandra, Mumbai in the 1990s (the site was acquired by erstwhile BB & CI Railway under the provisions of the land acquisition act, 1894 which was published in the Bombay Government Gazette on 27.05.1909). The commercial value of that parcel was estimated to be several thousand crores of rupees. An international design contest was held, but the state government insisted that the land could be used only for bonafide railway purpose and if that was surplus, it had to be returned to the state government.
After taking into consideration the present market capitalization, the sale of 24% of the shareholding will not fetch more than one billion dollars. For a country like India with more than 500 billion dollars in reserves, this amount is utterly negligible. Also, the question arises whether government monopolies created in the interest of public good can be disposed of to private interests. India being a constitutionally declared socialist welfare state is supposed to accord public good its highest priority. As such, it is doubtful whether the sale of such a public enterprise will meet its stated purpose of public good. Or is it land speculation by another name?

Another issue which complicates the privatization process is the government insisting on CONCOR raising debt from the market to buy the land owned by the Railways (albeit at concessionary rate) and then sell it to a highest bidder. The problem is there are other bidders for the same railway land who are willing to pay a higher, if not equivalent, price to the Railways for the same parcel of lands. In any case, CONCOR is not capable of raising huge debts in the market to buy the Railway's land at market price. This indicates that CONCOR owns very few assets and its market capitalization is very optimistic to say the least. Given this scenario, there should be no doubt in anybody's mind that the sale would be challenged in higher courts right at the outset if the government decides to go ahead with it.

There is another factor which needs to be considered. Being a government organization, CONCOR was allowed to issue guarantee bonds to the Customs against the possible liability for loss of revenue. The value of these bonds far exceeded the net worth of the company and was accepted by Customs purely on the grounds that CONCOR was a government company. This extraordinary privilege is unlikely to be extended to a private organization without paying a huge cost. This additional cost will render the new owner price uncompetitive.

In addition to the issues listed above, another factor also needs consideration. CONCOR by the virtue of its market dominance acts as a price maker in respect of warehousing rent and container transportation tariff. Since the introduction of the Direct Port Delivery (DPD) Scheme by the government of India in March 2019, CONCOR has increased the free time granted to the warehouse users from seven to 55 days. As such, it hardly collects any revenue on containers or cargo stored at their warehouses (Gujar et al., 2019). owever, this business model has severely affected the revenues of private warehouse operators.

The issue is similar to the case of container transport by rail or road. Due to its dominant market share CONCOR is able to charge a tariff which cannot be be exceeded by any other transporter due to fear of losing business. Thus, its pricing strategy acts as a floor and a ceiling for other road/rail transporters. Anybody charges less than CONCOR runs the risk of eroded profit margins and anybody charging more than CONCOR runs the risk of losing traffic.These factors have made other dry port operators wary of the government proposal to privatize CONCOR.

The market expects one of the major port operators such as APM terminals, DPW, PSA or Adani Ports could manage to win the bid and create a dominant niche in the Indian logistics market. The question that arises is whether such dominance would be in the interest of the Indian consumer? The answer is likely to be negative. In such circumstances, would the government consider splitting the company and selling it in bits and pieces? Would that serve the government objective of garnering a handsome amount? Most importantly would any buyer be interested?

Finally, it is ironical to note that CONCOR was established to promote foreign trade of India. After three decades, it is being rendered irrelevant by introducing the DPD law and is now being privatized to unlock the value of the land on which the ICDs/ CFSs were built. This too is being done when the foreign trade of India has fallen considerably and needs to be redeveloped. The government of the day has concluded that CONCOR or other such entities do not have a positive role to play in the development of the foreign trade of the country. This brings us back to the question as to whether CONCOR ever had any role to play in development of the foreign trade or was it a land speculation exercise always?

References

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