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**STANDING COMMITTEE ON FINANCE
(2015-16)**

SIXTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the recommendations contained in Thirteenth Report of the Standing Committee on Finance on 'Demands for Grants (2015-16)']

TWENTY-FIFTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2015 / Agrahayana, 1937 (Saka)

TWENTY-FIFTH REPORT

**STANDING COMMITTEE ON FINANCE
(2015-2016)**

(SIXTEENTH LOK SABHA)

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the recommendations contained in Thirteenth Report of the Standing Committee on Finance on 'Demands for Grants (2015-16)']

Presented to Lok Sabha on 03 December, 2015

Laid in Rajya Sabha on 03 December, 2015



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2015 / Agrahayana, 1937 (Saka)

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* Not appended in the cyclostyled copy

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2015-16

Dr. Veerappa Moily - Chairman

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Sudip Bandyopadhyay
5. Shri Nishikant Dubey
6. Shri P.C. Gaddigoudar
7. Dr. Gopalakrishnan C.
8. Shri Shyama Charan Gupta
9. Shri Chandrakant B. Khaire
10. Shri Rattan Lal Kataria
11. Shri Bhartruhari Mahtab
12. Shri Prem Das Rai
13. Shri Rayapati Sambasiva Rao
14. Prof. Saugata Roy
15. Shri Jyotiraditya M. Scindia
16. Shri Gajendra Singh Sekhawat
17. Shri Gopal Shetty
18. Shri Anil Shirole
19. Shri Shivkumar Udasi
20. Dr. Kiritbhai Solanki
21. Dr. Kirit Somaiya

RAJYA SABHA

22. Shri Naresh Agrawal
23. Shri Naresh Gujral
24. Shri A. Navaneethakrishnan
25. Shri Satish Chandra Misra
26. Dr. Mahendra Prasad
27. Shri K.N. Balagopal
28. Shri C.M. Ramesh
29. Shri Ajay Sancheti
30. Shri Digvijaya Singh
31. Dr. Manmohan Singh

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi, | - | Joint Secretary |
| 2. | Shri P.C. Tripathy | - | Director |
| 3. | Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. | Shri Kulvinder Singh | - | Committee Officer |
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INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorized by the Committee, present this Twenty-fifth Report on action taken by Government on the Observations / Recommendations contained in the Thirteenth Report of the Committee (Sixteenth Lok Sabha) on “Demands for Grants (2015-16)” of the Ministry of Corporate Affairs.

2. The Thirteenth Report was presented to Lok Sabha / laid on the table of Rajya Sabha on 24 April, 2015. The Action Taken Notes on the Recommendations were received from the Government *vide* their communication dated 23 July, 2015.

3. The Committee considered and adopted this Report at their sitting held on 16 October, 2015.

4. An analysis of the action taken by the Government on the recommendations contained in the Thirteenth Report of the Committee is given in the Appendix.

5. For facility of reference, the observations / recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI
01 December, 2015
10 Agrahayana, 1937 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance.

REPORT

CHAPTER – I

This Report of the Standing Committee on Finance deals with action taken by Government on the recommendations/observations contained in their 13th Report (Sixteenth Lok Sabha) on Demands for Grants (2015-16) of the Ministry of Corporate Affairs which was presented to Lok Sabha / Laid in Rajya Sabha on 24 April, 2015.

2. The Action Taken Notes have been received from the Government in respect of all the 12 recommendations contained in the Report. These have been analyzed and categorized as follows:

- (i) Recommendations/Observations that have been accepted by the Government:

Recommendation Nos. 1,2,3,4,6,7,8,9,10,11 and 12

(Total 11)
(Chapter- II)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies:

NIL

(Total NIL)
(Chapter- III)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

Recommendation No. 5

(Total 01)
(Chapter -IV)

- (iv) Recommendations/Observations in respect of which final replies by the Government are still awaited:

NIL

(Total - NIL)
(Chapter- V)

3. The Committee desire that the replies to the observations/recommendations contained in Chapter-I may be furnished to them expeditiously.

4. The Committee will now deal with the action taken by the Government on some of their recommendations.

Budget Allocation

Recommendation (Para No. 1)

5. The Committee note that the Budget estimates of the Ministry under the Plan Head and the Non Plan Head were scaled downwards consecutively for the year 2012-13 and 2013-14. Despite the downward revision, the actual expenditure incurred turned out to be even lower than the revised estimates figure. The Budgetary formulation for the year 2014-15 has also followed the trend of previous years. The BE for the year 2014-15 was Rs.255.25 crore, which was revised to Rs.251.92 crore at the RE stage. The actual expenditure incurred till 28.02.2015 was Rs.210.00 crore only. The Committee thus find that the Ministry's failure in regard to appropriate projection of fund requirement has been quite persistent, just as their capacity to absorb the allotted funds. The Committee would, therefore, recommend that it is high time that the Ministry exercise due diligence in their Budget formulation taking into account objectively their needs, past performance as well as their capabilities to deliver the functions assigned to them. The Committee believe that ambitious budgeting without commensurate ability or capacity to deliver the desired outcomes will remain futile exercise, blocking scarce resources deployable elsewhere.

6. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The budget grant of this Ministry provides for the expenditure on the Secretariat of the Ministry of Corporate Affairs and its field and attached/subordinates offices all over India under plan and non-plan heads. It also includes Grants-in-aid-General and Grants-in-aid-Salaries to the Competition Commission of India (CCI) and expenditure of Indian Institute of Corporate Affairs (IICA). The Budget Estimates and Revised Estimates (under Plan and Non-Plan) are projected on the basis of anticipated expenditure proposed by each budgetary unit of the Ministry. Shortfall in utilization of the budgeted funds was on account of non-filling up of posts in the Competition Commission of India, as well as in attached/subordinate offices. Some savings were also occasioned by enforcement of austerity measures and rationalizing expenditure."

A sum of Rs.255.25 crore (i.e. Rs.231.25 crore under Non-Plan and Rs.24.00 crore under Plan) was the Budget Estimate for 2014-15 of the Ministry of Corporate Affairs and it was reduced to Rs.251.92 crore (i.e. Rs.228.92 crore under Non-Plan and Rs.23.00 crore under Plan) at RE stage. Savings of Rs.18.89 crore under Non-Plan, with reference to Budget Estimates, were surrendered, for the following reasons in respect of the main areas of savings:-

- (i) Rs.8.67 crore was surrendered under MCA-21 project due to delay in deliverables by Infosys. Some funds for Official Liquidator-e-Governance plan were not released to Infosys, as that plan continued to be under development,
- (ii) Rs.5.04 crore was surrendered under "Major Works, Lands and Buildings" head (Non-Plan – Capital Head) due to an expected bill not being received from the National Building Construction Corporation (NBCC), for construction of Corporate Bhawan at Hyderabad,
- (iii) Rs.1.18 crore was surrendered in respect of National Company Law Appellate Tribunal (NCLAT) due to the pending legal challenge in the Hon'ble Supreme Court,
- (iv) Rs.1.10 crore of overall Registrar of Companies (RoCs) under "Salaries" and "Rent, Rates and Taxes" heads due to vacant posts in the office of RoCs, and non-finalization of suitable space for setting up of offices of RoC-cum-OL in Uttarakhand and Himachal Pradesh during the year 2014-15.

Major savings under Plan relate to the surrender of Rs.6.07crore under the Grants-in-aid-General/Salaries due to reduced requirement of funds of Indian Institute of Corporate Affairs (IICA) as surplus funds were available with the Institute's Bank account during the year 2014-15."

7. The Committee note that the Ministry of Corporate Affairs has submitted that shortfall in utilisation of the budgeted funds was an account of (i) non-filling up of posts in the Competition Commission of India (CCI) as well as in attached/subordinate offices, (ii) by enforcement of austerity measures/rationalising expenditure and (iii) by surrendering Rs. 18.89 crore under Non-plan with reference to Budget Estimates for various reasons. The Committee thus find that the reasons adduced by the Ministry only corroborate the observation of the Committee regarding the Ministry's inability in projection of funds requirement. The Committee, would, therefore, reiterate that it is high time the Ministry of Corporate Affairs exercises "due diligence" in their Budget

formulation, taking a realistic and objective account of their functional needs so as to ensure that scarce resources are not unduly blocked.

Recommendation (Serial No. 2)

Constitution of the National Company Law Tribunal (NCLT)

8. The Committee note that the implementation of Companies Act 2013 has been marked with uncertainty, particularly with regard to the constitution of the National Company Law Tribunal (NCLT). This has not only created confusion amongst the stakeholders but it is proving to be a detriment to the “ease of doing business” sentiment in the country. The Committee observe that the Supreme Court in its judgment dated 11th May, 2010, had suggested some changes to be made in the design of National Company Law Tribunal (NCLT). The Ministry had not taken into account the above Supreme Court order. For example, the Supreme Court had observed that a person below the rank of Secretary or an Additional Secretary should not be appointed as a technical member of the NCLT, which has not been addressed by the Ministry. Further, as regards the composition of the Selection Committee for appointing members of the tribunal, the Supreme Court had said that it must consist of four Members including the Chief Justice of India or his nominee (as a Chairperson with a casting vote), a senior judge of the Supreme Court or the Chief Justice of a High Court as a Member, Secretary in the Ministry of Finance and Company Affairs/Law and Justice as a Member. However, the Companies Act 2013 provides for five Members including the Chief Justice of India or his nominee (as a Chairperson without a casting vote), a senior judge of the Supreme Court or Chief Justice of a High Court as a Member, Secretary in the Ministry of Corporate Affairs/Law and Justice/Department of Financial Services as a Member. Consequently, the matter is being litigated again in the Supreme Court on similar grounds. The Committee recommend the Ministry to show some pragmatism on this issue and bring out the required amendments in the Companies Act 2013, duly vetted by the Attorney General of India, governing the constitution and composition of NCLT so that the provisions of the Statute are in alignment with the order of Supreme Court dated 11th May, 2010 and the stalemate around this issue is brought to an end.

9. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The Companies Act, 2013, vide Sections 407 to 434, provides for setting up and functioning of (a) National Company Law Tribunal (NCLT) and (b) the National Company Law Appellate Tribunal (NCLAT).

The legal challenge to setting up of these institutions has been decided by the Constitution Bench of the Hon'ble Supreme Court in the judgment dated 14.05.2015.

The Ministry has accordingly initiated the process for setting up of NCLT and NCLAT. "

10. The Committee note that Section 407 to 434 of the Companies Act, 2013 stipulate the setting up of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The Hon'ble Supreme Court of India has since decided the issue of legal challenge in regard to setting up of NCLT and NCLAT and the Ministry has also stated to have initiated consequential action in this regard. The Committee would now hope that the NCLT and NCLAT would be constituted at the earliest without any further delay. They also expect that the Ministry will also bring about required amendments in Companies Act 2013 addressing the stalemate around the composition of NCLT.

Recommendation (Serial No. 5)

Serious Fraud Investigation Office (SFIO)

11. The Committee find to their discomfiture another instance of over-allocation of funds, wherein the budget allocation for the investigating arm of the Ministry, namely, the SFIO, has been enhanced by about 20% vis-a-vis the previous year's BE, even as this organisation struggles with a crippled capacity, with as many as 75 vacancies out of a sanctioned strength of 130 personnel. Surprisingly, even after three years of its existence, no Recruitment Rules have been finalized so far. Even now, the Ministry have only been able to submit to the Committee that "it is not feasible to confirm the date of finalization of Recruitment Rules at this stage." Obviously, such a state of affairs has left its imprint on the functioning and overall performance of SFIO, which has been accorded a statutory status in the

Companies Act, 2013. The Committee recommend that recruitment rules of SFIO should be finalized within a period of three months. As per the statement furnished to the Committee, the average time taken to complete the investigations is 542 days and, 1028 cases are still pending in various fora at different stages of prosecution; only six investigation reports have been successfully presented resulting in conviction and; the number of cases referred to the SFIO for investigation has declined from 83 in 2013-14 to 52 in 2014-15. Taking into account the afore-mentioned facts about the overall functioning of SFIO, which was conceived as a cutting-edge multi-disciplinary investigative body to unravel corporate frauds, the Committee cannot but conclude that its track-record has been far from satisfactory. It is, therefore, necessary that the Ministry of Corporate Affairs does a comprehensive review of the working of SFIO including their budgetary allocations for the current and their utilization of funds allotted in previous years. In this regard, the Committee recommend the Ministry to give more functional/professional autonomy to SFIO, while upgrading the status of Director, SFIO from a Joint Secretary level post to a Secretary level post.

12. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

Since inception in 2003, 301 cases have been assigned to SFIO for investigation, out of which 209 cases have been assigned during the last three years and the current year as follows:-

Particulars	2012-13	2013-14	2014-15	2015-16	Total
Investigations assigned	45	83	71	10	209
Investigations completed	22	22	39	9	92
No. of prosecutions filed	50	94	86	2	232

Out of the total 1160 prosecutions/complaints filed by SFIO since its inception till 01.07.2015, 137 cases have been disposed of by various courts, resulting in 50 convictions.

There are 1023 prosecution cases pending at different stages of court proceedings.

Efforts to build up capacity within SFIO are as under:-

- Setting up of the Forensic Lab within SFIO, to enhance its capabilities to process digital inputs.
- SFIO has 28 categories of posts. For 7 categories, RRs are required to be framed and 15 categories for which amendments are to be made. These

RRs are under finalization and efforts are being made to notify these in the current financial year.

- It is expected that 12 vacant posts of officers in the organisation, for which applications have been received after issue of public notice in newspapers etc. Orders for appointment on deputation will be issued within August, 2015.
- A new scheme for engagement of individual experts/consultants and empanelment of CA firms in SFIO has already been approved, to enable SFIO to hire the services of highly qualified and experienced and professional experts in the fields of IT, law and accountancy.. The process for engagement of experts/consultants has since been initiated by SFIO.

The Budget Estimate in respect of SFIO for 2015-2016 is Rs.11.56 crore, which is a 19.6% increase over with the previous year's Budget Estimate. The increase in allocation is on account of the following:-

- I. 6% increase under the head "salary" is to provide for expected filling up of vacancies;
- II. 10% increase under the head "OE" is to provide for operational expenses of SFIO and for establishing a new regional office at Kolkata;
- III. 30% increase under the head "Professional services" is to provide for newly recruited experts on contractual basis;
- IV. Provision for Rs.75 lakh under the head "Other charges" is to meet operational expenses and up-gradating the Forensic Lab of SFIO.

During the last 12 years, 162 investigations were completed, which works out to an average of about 14 completed cases per year. During 2014-15, SFIO completed 39 investigations, supported by use of technology in the investigation process. It is to be acknowledged that the average time taken to complete investigation cases were affected by the number of investigations that were taken up simultaneously.

Regarding the decline in the number of investigation cases, it is pertinent to note that the increase in 2013-2014 was largely on account of the chit fund scam cases, resulting in assignment of a large number of cases of the chit fund companies of West Bengal to SFIO.

SFIO enjoys complete functional autonomy after the assignment of investigations to it, which has been codified in the provisions of the Companies Act 2013."

13. The Committee note that the Ministry in their action taken note has submitted that increase of 20% in the budget allocation of SFIO over its previous year's BE has been due to various reasons such as 6%,10% and 30% increase under the heads 'Salary', 'Operational Expenses', 'Professional Services' respectively and provision of Rs. 75 lakh under the head 'other charges'. Further, as regards the

building up of capacity within SFIO the Ministry has stated that SFIO has 28 categories of posts out of which Recruitment Rules(RRs) for seven categories of posts are yet to be framed. Addressing the concern of the Committee, the Ministry has inter-alia stated that SFIO enjoys complete functional autonomy after the assignment of investigations to it, which has been codified in the provisions of the Companies Act, 2013.

14. Though the increase of 20% in the budget allocation of SFIO has been due to increase under various heads, the Committee are constrained to observe that despite enhanced allocation of funds, the capacity-building within the SFIO does not seem to have materialised, as RRs are still pending finalisation even after a lapse of so many years and without any timeline commitment to do so. The Committee, would, therefore, strongly recommend that the RRs should be finalised without further loss of time and in any case, not later than one month of presentation of this Report. As regards the decline in disposal of cases by SFIO, the Committee desire that SFIO should initiate proactive steps to follow-up and expedite pending cases under intimation to the Committee.

15. The Committee had also recommended for upgradation of the status of Director, SFIO from a Joint Secretary level post to a Secretary level post. Surprisingly, the reply of the Government is silent on this issue. The Committee would like to know the reasons for the same as also the steps taken/contemplated in this regard.

NEW DELHI
01 December, 2015
10 Agrahayana, 1937 (Saka)

DR. M. VEERAPPA MOILY,
Chairperson,
Standing Committee on Finance.

Minutes of the Fourth sitting of the Committee on Finance

The Committee sat on Friday, the 16 October, 2015 from 1100 hrs. to 1300 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. M. Veerappa Moily - Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Venkatesh Babu T.G.
4. Shri Nishikant Dubey
5. Shri P.C. Gaddigoudar
6. Shri Shyama Charan Gupta
7. Shri Chandrakant B. Khaire
8. Shri Rattan Lal Kataria
9. Shri Prem Das Rai
10. Prof. Saugata Roy
11. Shri Gopal Shetty
12. Dr. Kiritbhai Solanki
13. Dr. Kirit Somaiya
14. Shri Shivkumar Udasi

RAJYA SABHA

15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Dr. Mahendra Prasad
18. Shri C.M. Ramesh
19. Shri Ajay Sancheti
20. Shri Digvijay Singh
21. Dr. Manmohan Singh

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Smt. Abha Singh | - | Joint Secretary |
| 2. Shri P.C. Tripathy | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Additional Director |
| 4. Shri Kulmohan Singh Arora | - | Deputy Secretary |

PART I

(1100 hrs. to 1200 hrs.)

2.	XX	XX	XX	XX
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PART II

(1220 hrs. to 1300 hrs.)

3.	XX	XX	XX	XX
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Thereafter, the Committee took up the following draft reports for consideration and adoption:

- i. Draft Report on Action taken by the Government on the recommendations contained in the 13th Report on Demands for Grants (2015-16) of the Ministry of Corporate Affairs.
- ii. Draft Report on Action taken by the Government on the recommendations contained in the 14th Report on Demands for Grants (2015-16) of the Ministry of Statistics and Programme Implementation.

4. After some deliberations, the Committee adopted the above draft Reports without any modification and authorised the Chairperson to finalise them and present these Reports to Parliament.

The Committee then adjourned.

APPENDIX

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE THIRTEENTH REPORT OF THE STANDING COMMITTEE ON FINANCE (SIXTEENTH LOK SABHA) ON DEMANDS FOR GRANTS (2015-16) OF THE MINISTRY OF CORPORATE AFFAIRS

	Total	% of total
(i) Total number of Recommendations	12	
(ii) Recommendations/Observations which have been accepted by the Government (vide Recommendation at Sl. Nos. 1,2,3,4,6,7,8,9,10,11&12)	11	91.66%
(iii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies	Nil	0.00
(iv) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee (vide Recommendation at Sl. Nos. 5)	01	8.33%
(v) Recommendations/Observations in respect of which final reply of the Government are still awaited	Nil	0.00%