

WORKMEN OF M/S ROHTAS INDUSTRIES

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v.

ROHTAS INDUSTRIES AND ORS.

OCTOBER 18, 1995

[KULDIP SINGH AND S.C.AGRAWAL, JJ.]

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Company Law—S 396—Winding up proceedings—Efforts of the Court to revive and rehabilitate the industry unsuccessful—Directions for resuming the Winding up proceedings issued.

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Rohtas Industries situated in the State of Bihar, and its associate companies were engaged in producing cement, paper-board, asbestos etc. In 1984 the company closed down thus rendering about 10,000 workmen unemployed. A winding up petition was filed before the Patna High Court whereupon a Provisional Liquidator was appointed.

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The workers filed a writ petition before this Court, during the pendency of the company petition, which was admitted to provide relief to the workmen and to revive the industry and notice given to both the State of Bihar and the Union of India. Since the Sick Industrial Companies (Special Provisions) Act 1985 came into force when the matter was before this Court, an order was made directing the Union Government to refer the matter to the BIFR so that a scheme may be framed. On the report of the BIFR which had opined that three of the units of the company could be revived while one could not be, this Court in the interests of the workmen and the problems that would have to be faced by the company, passed an order on 24-10-89 directing that the company in terms of viable units should be revived. There was also a direction to the State to appoint an I.A.S. officer with the right background as Rehabilitation Commissioner who would take over from the Provisional Liquidator. A moratorium of one year in respect of the assets was granted. The State Government was willing to deposit Rs. 15 lakhs with the Administrator and this Court directed the Union of India to deposit another sum of Rs.15 lakhs for use by the Administrator to meet the wage bill, disbursement of loans etc. The Rehabilitation Commissioner was successful in starting four units providing work for 2900 men. But he needed more funds and approached the Court.

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The State of Bihar and Financial Institutions could not provide the

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A funds. The Court felt that it would be best to dispose off the undertaking and since a going institution would fetch a better price, directed the Union of the India to advance a sum of Rs. 10. crores to the State of Bihar so that the State could give the said sum to the industry. An advertisement was issued inviting offers and 14 offers were received. The maximum offer was Rs. 15 crores. Since the assets of the company were about Rs. 250

B crores and the offers were way below this amount, the Court did not entertain the offers and by another order directed the Union Government to revive the reference to BIFR. Industrial Finance Corporation was appointed by BIFR for preparing a report who in turn appointed SIRCON to prepare the report. On receipt of the report the Court found that there

C was no possibility of revival though there were two proposals under consideration. One of which offer was made by Shri L.N.Dalmia. Since there were reservations expressed by BIFR, Union of India, and the State of Bihar, the offer was found unworkable.

D Disposing the writ petition with certain directions to the State Government, and the Rehabilitation Commissioner, this Court

E HELD : 1. In spite of best efforts the object with which this Court intervened in the matter by entertaining the writ petition, viz, to revive the undertakings, does not appear feasible. The writ petition should be brought to an end and the winding up proceedings pending before the Patna High Court be resumed. [474-B]

2. Now while putting an end to these proceedings and permitting resumption of the winding up proceedings in Company petition No.3 of 1984 pending before the Patna High Court, it is directed as under : [476-H]

F (1) The Winding up proceedings in Company petition pending before the Patna High Court will be resumed by the Company Judge. The parties and the Rehabilitation Commissioner shall appear before the Company Judge for seeking necessary directions on November 20,1995. [477-A]

G (2) The Rehabilitation Commissioner shall-

(a) complete the sale of the raw materials/finished products/wasted/damaged materials including the burnt out transformer and rejected copper cable be November 30, 1995; [477-B]

H (b) subject to availability of funds after incurring the expenses

towards payments under clauses (c), (d), and (e), pay the dues towards the supply of raw materials on credit for the running of the units during the period of the pendency of these proceedings as well as the amount received as advance from purchasers for the products to be supplied to them by December 31, 1995; [477-C-D] A

(c) pay the charges for the actual consumption of electricity for the period upto November 30, 1995; [477-E] B

(d) pay the charges for the security arrangements through the Central Industrial Security Force for the period upto December 31, 1995 by December 1995; C

(e) pay the salary of the staff employed for the period upto December 31, 1995 by December 31, 1995; [477-F]

(f) prepare an inventory of the properties, movable and immovable, belonging to the company in his possession and control by December 10, 1995; D

(g) handover the possession of the said properties to the Official Liquidator as per the inventory by December 31, 1995; [477-G]

(h) have the accounts for the period April 1, 1995 till December 31, 1995 duly audited and submit the same before the Company Judge in the Patna High Court by January 15, 1996; [477-H] E

(i) handover the papers relating to the affairs of the Company while he was in control of the the same to the Official Liquidator by January 15, 1996. [478-A] F

(3) With effect from the date of possession of the properties, as per the inventory, is delivered to him by the Rehabilitation Commisioner, the Official Liquidator will assume charge of the assets of the Company for the purpose of winding up proceedings. [478-B] G

(4) The officers, workmen and the staffs who are at present employed in the undertaking of the Company shall continue in employment till December 31, 1995. For their further continuance in employment the Official Liquidator will seek the necessary directions from the Company Judge. [478-C] H

A (5) Present security arrangements through the Central Industrial Security Force will continue till December 31,1995. For further continuance of these arrangements, the Official Liquidator may seek the necessary directions from the Company Judge. [478-D]

B (6) The existing arrangement for the supply of electricity by the Bihar State Electricity Board shall continue subject to the directions that may be given by the Company Judge. No minimum guarantee charge will be payable to the Bihar State Electricity Board and only the actual consumption charges will be paid. The respective claims of the Rehabilitation Commissioner and the Bihar State Electricity Board with regard to the supply of the electricity during the period the Company was under the charge of the Rehabilitation Commissioner shall be considered by the Company Judge. [478-E-F]

C (7) The State of Bihar will grant exemption from sales/ purchases tax in respect of sales/purchases made by the Company during the period the units were revived by the Rehabilitation Commissioner while the matter was pending before this Court. [478-G]

D (8) The report of the Claims Committee on the claims of the Financial Institutions, creditors and the workers will be considered by the Company Judge in the light of the objections that have been submitted against the said report. [478-H]

E (9) The Company Judge may consider whether the industrial undertakings of the Company can be revived in the light of the offers that have been received from Shri L.N. Dalmia, Speedcrafts Pvt. Ltd. and Rohtas Industries Workers Cooperative Society Ltd. along with and other offer that may be received. [479-A]

F (10) In the event of sale of the assets of the Company during the course of winding up proceedings, a sum of Rs.34 crores which was advanced by the State of Bihar as per directions of this Court in these proceedings shall be paid to the State of Bihar out of the sale proceeds before discharging any other liability of the Company. [479-B]

G (11) The Relief Commissioner shall stand discharged on January 15, 1996.

H (12) The moratorium imposed under the order of this Court shall

cease to operate with effect from December 31, 1995.

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(13) It will be open to the Rehabilitation Commissioner and the Official Liquidator to seek further directions from this Court with regard to any matter pertaining to the period this writ petition was pending in this Court. [479-D-E]

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CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 5222 of 1985.

(Under Article 32 of the Constitution of India.)

With

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Writ Petition (C) No. 443 of 1986.

(Under Article 32 of the Constitution of India.)

Dr. Shankar Ghosh, S.K. Verma, S.K. Sinha, K.J. John, G. Joshi, G. Kandpal, A.K. Sil, V.K. Verma, B.B. Singh, A.K. Ghosh, for Fox Mandal & Co. L.R. Singh, K.K. Mani, K.V. Sreekumar, S.V. Deshpande, Pramod Swarup, M.T. George, Sudhir Kumar Gupta, P.R. Seetharaman, Ms. Mridula Ray Bhardwaj, D. Goburdhan, Ranjit Kumar, Navin Prakash, Ms. Binu Tamta, Ms. Abha Jain, C.V.S. Rao, Ajit Kumar Sinha and Ranbir Yadav for the appearing parties.

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The following Order of the Court was delivered :

Rohtas Industries Limited (hereinafter referred to as "the Company") was running a large industrial undertaking comprising of units for manufacturing cement, paper & board, asbestos, vulcanised fibers and vanaspati at Dalmia Nagar in District Rohtas of the State of Bihar. The Company has three associate companies, namely, Ashoka Cement Ltd., Parshava Mining and Trading Company Ltd. and Dehri Rohtas Light Railway Company Ltd. The Company was employing about 10,000 workmen. Troubles started in 1982-83 and ultimately the units of the Company were closed with effect from September 9, 1984 resulting in denial of employment to the workmen. A petition (Company Petition No.3 of 1984) was filed for winding up of the Company before the Patna High Court and in the said petition the Patna High Court on May 22, 1986 appointed the Provisional Liquidator. During the pendency of the said petition, the workmen of the Company

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A moved this Court by filing this writ petition under Article 32 of the Constitution. The petition was entertained by this Court with the object of reviving the industry and rehabilitating the workmen. Notice was issued to the State of Bihar and the Union of India so as to enable the Court to solve the human problem of unemployment of large number of workmen. While the matter was pending consideration, the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the Act') came into force. As per suggestion of the learned Attorney General, the Court on October 28, 1987 passed an order whereby the Central Government was directed to make a reference to the Board of Industrial and Financial Reconstruction (BIFR) to frame a scheme under the Act and submit the same to the Court. The BIFR submitted a report on April 22, 1988 wherein it was stated that three of the units of the Company, namely, Cement, asbestos and vanaspati could be revived but the paper unit could not be revived. Keeping in view the said report of the BIFR as well as the statements filed on behalf of the State of Bihar and Union of India and the memorandum prepared by the Learned Attorney General of India filed before this Court, the Court passed an order dated October 24, 1989 wherein it was observed :

E "If the Company is not revived and gets liquidated the liabilities would turn out to be far in excess of the assets and notwithstanding first or second charge on the assets, the creditors may not appreciably benefit. This Court cannot lose sight of the fact that living to about 10,000 families has been denied for over five years and apart from national loss, the workmen have been put to serious jeopardy. In these circumstances, we are satisfied that it is of paramount importance that the Company in respect of the viable units should be revived and allowed to come into production".

G The Court directed the State of Bihar to appoint an authorised officer from the senior IAS cadre with appropriate commercial background to be the Rehabilitation Commissioner and the Provisional Liquidator appointed by the High Court in the winding up proceedings was directed to hand over to the Administrator all the assets of the Company which he had taken over under order of the Court and the several other assets of the Company which had not been taken over the Provisional Liquidator shall vest in the appropriate officer upon being designated and he was H entrusted with the power to take such steps as are necessary to take over

possession of such assets of the Company. It was also directed that the assets of the company encumbered with financial and other institutions shall not be available to be proceeded against for a period of one year from the date of the order and there shall be a moratorium for a period of one year in regard to proceedings taken and pending or to be taken against the Company here after and limitation shall remain suspended under the said order of the Court. The State Government undertook to deposit an amount of Rs.15 crores with the Administrator and the Court directed the Union of India to advance a similar amount of Rs. 15 crores to the State of Bihar from out of plan assistance for the State and it was directed that the said sum of Rs. 15 crores be paid by the State Government to the Administrator which amount shall be utilized, in due course, for payment of arrear of wages and for disbursement of secured loans of financial institutions and other parties for which security of the Company's assets had been furnished. The Administrator was directed to set up one Committee to examine the claims of the owners of the company and other parties including financial institutions.

In accordance with said directions given by this Court, the State of Bihar designated an officer to work as Administrator (Rehabilitation Commissioner) who took over the assets of the Company and a sum of Rs. 30 crores was paid by the State Government to the Rehabilitation Commissioner. Out of the said sum of Rs. 30 crores a sum of Rs.6 crores was given by the State Government by way of grant and Rs.24 crores was to be repaid by the company. The Rehabilitation Commissioner, by his efforts, was able to start four of the units providing employment to 2900 workmen. But due to financial constraints, the units could not function in a way as to earn profits and had to be closed after some time. The Rehabilitation Commissioner moved the Court seeking more funds but the State of Bihar and the financial institutions expressed their inability to advance the funds. In the circumstances, the Court felt that the best course would be to dispose of the whole undertaking and that in order to ensure that the undertaking fetches an adequate price it should be disposed of as a running concern. The Court, by order dated September 8, 1993, directed the State of Bihar to advance a further sum of Rs. 10 crores as loan to the Company for the resumption of the production of the units of the undertaking and in order to enable the State Government to pay the said amount, the Union of India was directed to advance to the State of Bihar a sum of Rs. 10 crores from out of the plan assistance for the State or any other account. The

A Rehabilitation Commissioner was directed to have the assets of the undertaking valued by an approved valuer and the Commissioner and Secretary, Department of Industries, Government of Bihar, was directed to publish an advertisement in five prominent national newspapers (English Language) and three national newspapers (Hindi Language) inviting offers for the purchase of the entire industrial undertaking of the Company as a running concern. It was also directed that out of the amount received by the disposal of the undertaking of the Company the Rehabilitation Commissioner shall first repay the loan of Rs.10 crores advanced by the State of Bihar in pursuance of the said order before discharging any other liability of the Company. In response to the advertisement which was issued in pursuance of the directions contained in the order dated September 8, 1993, 14 offers were received by the State of Bihar for the purchase of the units as a whole and the maximum offer was for Rs. 15 crores for the entire complex. The said offers were placed before the Court for consideration and on March 3, 1994 this Court observed :

D "Keeping in view the total assets of the company which have been assessed by the Rehabilitation Commissioner at about Rs. 250 crores, it is not possible for us to even consider any of the 14 offers received by the State of Bihar."

E On May 2, 1994 the Court passed an order wherein it was observed that "the best course would be to revive the reference which was made to BIFR by the Central Government in pursuance of the order of this Court dated October 28, 1987." The Court therefore, directed that the reference that had been made by the Central Government to the BIFR in pursuance of the directions given by this Court in the order dated October 28, 1987 be revived and a report be submitted by the BIFR to the Court in relations to the following matters :

G "(a) Whether the Company is capable of being rehabilitated in a manner that it can operate profitably so that its net wealth would ultimately become positive and the units become financially stable and self-supporting.

(b) The short-term measures, if any, which can be taken immediately!

H (c) The long-term measures required to rehabilitate the Company."

The BIFR was also directed that the proposal submitted by the Rohtas Industries Workers', Co-operative Society Ltd. may also be considered. A

The BIFR appointed Industrial Financial Corporation of India (IFCI) for preparing a report and IFCI, in turn, appointed Soni Industrial Revival Consultants (SIRCON) to prepare schemes as per the directions of this Court. SIRCON submitted its report on 'Techno-Economic Viability Status of Rohtas Industries Ltd.' and 'Viability Status of the Associates Companies of Rohtas Industries Ltd.' After considering the said reports submitted by SIRCON and the three proposals which were received by the BIFR from Rohtas Industrial Workers' Cooperative Society Ltd., Shri L.N. Dalmia and Speedcrafts Pvt. Ltd., the BIFR submitted its report dated May 22, 1995. B C

The conclusions of the BIFR, as stated in the report dated May 22, 1995 are as follows : D

"(i) No viable and feasible proposal for revival of the RIL or any of its units has been received from the Rohtas Industries Workers' Cooperative Society Ltd. or any other private party. It follows that the RIL can be revived only if the State Government and the financial institutions/banks can provide the requisite funds. E

(ii) RIL as a whole (excluding their three associated companies) are viable only under variant IV i.e., if the State Government brings in the entire amount of Rs. 225.71 crores required for rehabilitation as equity makes OTS of the dues of financial institutions and banks by paying them Rs.22.24 crores, and provides massive reliefs by way of exemption/deferment/remission of sales tax/royalty. Cement, Asbestos and Paper Units are also independently viable under Variant IV with these reliefs. F

(iii) Cement unit is independently viable under Variant II, i.e., if the entire amount of Rs. 155.50 crores is brought by the State Government as equity. It is also viable under Variant IV, i.e., if there is OTS of the dues of financial institutions and banks and the entire cost of rehabilitation of Rs. 159.79 crores is brought in by the State Government as equity. G H

A (iv) Asbestos unit is independently viable under Variant III, i.e., if 50% of the amount of Rs. 342 lacs required for rehabilitation is brought by the State Government as equity and 50% is arranged as loan and there is OTS of the dues of financial institutions involving a payment of Rs. 106 lacs. It is also viable under Variant
 B IV, i.e., if the entire amount of Rs. 342 lacs is brought in as equity by the State Government and there is OTS of the dues of the financial institutions and banks.

(v) Paper unit is viable only under Variant IV, i.e., if the entire amount of Rs. 57.65 crores required for rehabilitation is infused as State Government's equity, there is OTS of the dues of financial
 C institutions and banks involving a payment of Rs. 15.35 crores, and the State Government provides reliefs by way of deferment of sales tax for eight years (Rs.9.60 crores).

(vi) Vanaspati Unit is non-viable under all the four Variants.

D (vii) Variant IV is the only viable alternative as Cement, Asbestos and Paper Units are independently viable and the RIL as a whole is also viable under this Variant Under Variant III, only Asbestos Unit is viable independently and RIL as a whole is non-viable. Under Variant II, only Cement Unit is viable and the RIL as a
 E whole non-viable. Under Variant I neither any Unit nor the RIL as a whole is viable.

(viii) None of the three associated Companies, viz. Parshava Mining & Trading Co. Ltd., (PMTL), Dehri Rohtas Light Railway Co. Ltd., (DRLR) and Ashoka Cement Ltd., (ACL) is viable.

F (ix) There are three crucial factors for achieving long-term viability, if the RIL is to be revived under Alternative IV.

(a) Adequate supply of raw material is to be ensured. This may
 G involve renewal of existing mining leases exploration of new areas and grant of new leases, in the case of Cement Unit. Similarly, existing forest leases may have to be renewed and/or some other leases granted, and alternative sources of raw material like bagasse, waste paper and pulp also explored for the Paper Unit.

H (b) Adequate power supply is to be ensured.

(c) The management is to be revamped, strengthened and professionalised and made accountable. There has to be a broad based Board of Directors with representatives of the State Government, the concerned financial institutions and banks, workers and professionals. Professionals also need to be inducted in senior managerial positions, particularly in Finance/Accounts, Production and Personnel/Industrial Relations, Internal audit, concurrent audit, proper purchase and sales procedures, costing system and Management Information System have also to be introduced." A B

After considering the said report of the BIFR, this Court passed an order dated July 21,1995 wherein it was observed : C

"The cumulative effect of the report is that there is no possibility of the revival of this industry through the efforts of this Court as at present. The BIFR has also discussed various proposals for the revival of the industries received by it. Two proposals are worth mentioning. Proposal of Shri L.N. Dalmia and his son-in-law Shri L.N. Mittal is still under consideration, Shri Ashok Sen, learned senior counsel representing Shri L.N. Dalmia states that he would consult his client in the light of the matters mentioned before the Court and report back within four weeks from today. The other offers is from Speedcrafts Pvt. Ltd. The learned counsel assisting us on behalf of Speedcrafts Pvt. Ltd. also States that he would also consult his client in similar terms and report back to the Court. We are keeping the options open so far as the suggestions which may come from these two private parties." D E

Thereafter, when the matter was taken up on August 25, 1995 Shri Ashok Sen representing Shri L.N. Dalmia, gave a positive offer to the effect that he is prepared to pay Rs. 60 crores in the manner to be indicated by him in his written offer. The said written offer of Shri L.N. Dalmia was filed in this Court on August 31,1995. This State of Bihar as well as Union of India were directed to give their response in writing to the said offer. A copy of the offer was also sent to the BIFR with the directions that it shall consider the offer and give its comments. The matter was thereafter taken up on September 19, 1995 on which date the Court considered the comments of BIFR and response of the State of Bihar and the Union of India to the offer of Shri L.N. Dalmia. The BIFR in its comments on the said F G H

- A offer has expressed the view that the total liabilities of the Company (excluding the liabilities of the associated companies) as on March 3, 1995 are reported to be Rs. 171.14 crores. The sacrifice involved in settling the above liabilities of Rs.171.14 crores for Rs.60 crores could be Rs. 111.1 crores and the liabilities of the three associated companies also need to be assessed and quantified and added to this amount to arrive at the total amount of sacrifices involved. BIFR has further observed that besides the sacrifice mentioned above, monetary value of the reliefs and concessions to be provided by the State Government and the financial institutions and Banks also need to be quantified and added to the cost and the cost involved in connecting all railway sidings of the Rohtas industries with Dehri-on-son too would need to be added to the cost of the scheme and the reliefs and concessions are of substantial value. BIFR has further stated that even after such massive sacrifices by the banks, financial institutions and the State Government, the employment of the entire work force of the Company is not likely to be ensured and their past dues would not be paid and that Shri Mittal also has not indicated precisely the sources from which funds of the order of Rs. 560 crores would be mobilised and the resourcefulness of Shri L.N. Dalmia and his associate Shri L.N. Dalmia and their credibility needs to be assessed by some independent agency.

- E On behalf of the State of Bihar reply in the form of affidavit of Shri S.P. Singh, Deputy Director, Industries Government of Bihar, has been filed wherein it has been stated that the offeror has sought several concessions from the State Government and that until and unless full financial implications of these concessions are indicated, it may not be in the interest of the State Government to agree to the proposal and this proposal can be considered by the State Government if the offerer agrees to pay Rs.34 crores in one installment to the State Government without any precondition and without any concessions and the offeror should also clear all the legal dues on account of commercial taxes, royalty, cess electricity, registration, etc. The State Government has also pointed out the difficulties in the matter of allotment of forest land and the waste land sought by the offeror and grant of mining lease for limestone and the restoration of 2807 acres of land which has been declared surplus under the ceiling law. As regards concessions/reliefs sought by Shri Dalmia, it is stated that the State Industrial Policy, 1995 provides concessions/reliefs such as sales tax exemption/deferment and facility of either set-off or exemption on purchase of raw materials within the State if considered necessary for revival of the unit

by the State Government and that the Industrial Policy does not provide facilities for exemption from royalty on bamboo, wood limestone and electricity duty on captive generations beyond 25 M.W.

The response of the Union of India is contained in the affidavit of Shri Sohan Lal, Deputy Secretary working in the Department of Industrial Development (Industrial Renewal Section), Ministry of Industry, Government of India. In the said affidavit it is stated that the offer of Shri L.N. Dalmia has come from an individual and not from any corporate entity. Hence it is not possible to assess the soundness of the financial status of the offerer and that the offer is not accompanied by any realistic projections of profitability, cash flow, DSCR, etc, and the long term viability of the units therefore, need to be looked into more closely. According to Union of India, the paramount interest in this case has been the protection of workers interest and their employment and that the offerer has proposed for employment of workers on need basis only without incurring any liability towards their past wages, etc. It has also been stated that the liabilities of the Company are approximately Rs. 171.10 crores, some of which are required to be updated and the transfer of the assets free from the liabilities for only Rs.60 crores would violate the pre-emptive rights of the original owners and hence, their concurrence would be necessary. As regards the concessions sought for in the offer towards dues on account of railways, excise, import duty exemption, cement regulation account, etc., it has been submitted that all the statutory dues are required to be settled as per the existing rules, guidelines and statutory provisions only.

An additional affidavit of Shri Sidhnath Singh, Chairman of Rohtas Industries Workers Cooperative Society Ltd., has also been filed before this Court wherein it is stated that Shri L.N. Dalmia has already closed down his M/s Punalur Paper Mills Ltd. in Kerala State and has not paid salaries and wages of five months of about 1000 workers of that unit, Shri Sidhnath Singh has also made an offer on behalf of the Rohtas Industries Workers cooperative Society to purchase whole of movable and immovable properties of the Company and its associated companies on payment of Rs.65 crores and has express readiness to absorb the workers of all the units. The Society has offered to make cash payment of Rs. 16 crores after reopening of Ashoka Steel Unit, Vanaspati Unit, Cement Unit within a month and to pay the balance amount of Rs. 49 crores in three equal instalment.

A Speedcrafts Pvt. Ltd. has also submitted a revised offer on August 21, 1995 for Rs. 71.51 crores out of which Rs. 40 crores will be paid to the State of Bihar by issuing zero interest debentures redeemable at par after 10 years and out of the balance amount of Rs.31.51 crores an initial payment of Rs. 5.51 crores will be made at the time of-transfer of the entire assets free from each and all encumbrances, liabilities, claims etc, and handing over of peaceful vacant possession and other Rs.26 crores will be paid over a span of 12 years (with an initial moratorium of two years) in equal yearly instalment.

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C After taking into consideration the report of the BIFR dated May 22, 1995 and its comments to the offer made on behalf of Shri L.N. Dalmia and the response made by the State of Bihar and the Union of India to the said offer as well as the additional affidavit of Shri S.P. Singh and the revised offer of Speedcrafts Pvt. Ltd., this Court on September 19, 1995 fixed the matter for September 29, 1995. But before that date the State of
D Bihar appears to have had second thoughts. An affidavit of Shri S.P. Singh, Deputy Director, Industries Government of Bihar dated September 26, 1995 was filed by way of reply to the offer made by Shri L.N. Dalmia where in it was stated that in response to the offer made by Shri L.N. Dalmia the
E sate Government had reconsidered the matter and after review the State Government had decided that in the interest of restarting the industry as also for safeguarding the interests of labourers and employees in the said industry and having reconsidered the whole matter the State Government was agreeable to deferment of payment of the dues of the State Government over a period considered appropriate by the Court and were also willing to extend all help and facilities to any intending purchaser of the
F industries. In view of the said affidavit of Shri S.P. Singh, the Court, on September 29, 1995 passed the following order :

G "Mr. S.P. Singh, Deputy Director (Industries), Government of Bihar, Patna has filed an affidavit dated September 26, 1995. It has been averred in the affidavit that the State of Bihar in the interest of restarting the various units of the Rohtas Industries as also for safeguarding the interests of labourers and employees in the said industries has reconsidered the whole matter and is now agreeable to extend all help and facilities to any intending purchaser of the industries. The learned counsel for Shri L.N. Dalmia and Mr. B.B.
H Singh learned counsel for the State of Bihar, State that it would

be necessary for the parties to meet to sort out various issues arising in this matter. We adjourn the matter to 13th October, 1995 at 2.00 p.m. In the meanwhile the learned counsel for Shri L.N. Dalmia, whose offer we have already noticed in our earlier order, states that the representatives of Shri Dalmia would meet and have discussion with the concerned officers of the Bihar Government in the light of the affidavit filed by Mr. S.P. Singh. After discussion the State of Bihar and Shri L.N. Dalmia may file a joint memorandum of understanding before this Court before October 11, 1995. In the event of Shri L.N. Dalmia being satisfied in the discussion with the State of Bihar he should deposit a sum of rupees two crores by way of a demand draft in the name of the Registrar General of this Court along with the memorandum of understanding. The workers be paid salary for the month of September, 1995."

When the matter was taken up on October 13, 1995 a statement in the form of submissions was filed on behalf of Shri L.N. Dalmia in the light of the discussions which Shri Dalmia had with the officials of the State of Bihar and the Chief Minister of Bihar from September 30, 1995 to October 3, 1995. The said submissions filed on behalf of Shri Dalmia indicate that there is wide divergence between the offer made by Shri L.N. Dalmia and the stand of the State Government on many matters which are crucial for the revival of the industry and Shri Dalmia has expressed his inability to proceed further with his offer in view of the stand taken by the State Government. A supplementary affidavit of Shri S.P. Singh dated October 9, 1995 has been filed and along with the said affidavit the draft memorandum of understanding as proposed on behalf of the Government of Bihar as well as the draft memorandum of understanding circulated by Shri L.N. Dalmia and the minutes of the discussions that were held between the Committee of the Government of Bihar and Shri L.N. Dalmia on October 1, 2 and 3, 1995 have been filed.

We have considered the submissions that have been submitted on behalf of Shri L.N. Dalmia as well as the Supplementary affidavit of Shri S.P. Singh dated October 9, 1995 and the documents filed therewith. Having regard to the report of BIFR dated May 22, 1995, the comments of BIFR on the offer of Shri L.N. Dalmia as well as the response of the

A State of Bihar and the Union of India to the said offer and the discussions
which Shri L.N. Dalmia had with the officers of the State of Bihar on
October 1, 2 and 3, 1995. We have to conclude regretfully that inspite of
best efforts the object with which this Court had intervened in the matter
by entertaining the writ petition, viz, to revive the undertakings, does not
B appear feasible. In these circumstances, the future course of action which
commends us is that the proceedings in this writ petition should be brought
to an end and the winding up proceedings pending before the Patna High
Court be resumed.

C Before we give the necessary directions in that regard, we would
briefly set out the present state of affairs with regard to the Company :

(i) The Rehabilitation Commissioner appointed as per directions
contained in the order date October 24, 1989 is in possession and
control of the property of the company. To assist him there are
D officers, staff and workmen. Since the units which had resumed
production while the matter was pending in this Court have been
closed the Court has been giving directions from time to time to
reduce the strength of the employees in order to cut down the
recurring expenditure on that account. By the last order passed on
E July 21, 1995 the Rehabilitation Commissioner was directed to
reduce the number of workmen from 200 to 75, the staff from 75
to 40 and the officers from 25 to 10. As per the directions contained
in the order dated September 29, 1995 the salary of the officers,
workmen and the staff has been paid by the Rehabilitation Com-
missioner for the period upto the month of September, 1995.

(ii) Earlier staff was being employed by the Rehabilitation Com-
missioner for the purpose of ensuring security of properties in the
complex. This involved heavy expenditure by way of salary of such
staff. It was therefore, decided to entrust the security to the Central
G Industrial Security Force. When the Rehabilitation Commissioner
pointed out that a sum of Rs. 10 lacs was being spent every month
on the Central Industrial Security Force deployed in the industrial
complex for the purpose of security, the Court, by order July 21,
1995, directed the Director-General, Central Industrial Security
H Force to deploy the force in such a manner from August 1, 1995

that the expenditure on that force is reduced by 40%. A

(iii) The Rehabilitation Commissioner brought to the notice of the Court that the electricity charges were coming to Rs. 5.5 lacs per month which amount included the monthly minimum guarantee. By order dated July 21, 1995 it was directed that keeping in view the present status of the industry specially the fact that it is lying closed since May 1994, the Bihar State Electricity Board shall charge only the actual consumption charges till further orders with effect from August 1, 1995. It was also pointed out that electricity was being supplied free of charge to workers staying in the quarters and that many of them are no longer on the rolls of the industry. By order dated July 21, 1995 the Rehabilitation Commissioner was directed not to spend any more money on supplying electricity etc. or any other amenities to all those workers, staff and officers who are no longer on the rolls of the industry and this must be done with effect from August 1, 1995. It was also made clear that the workers shall pay the normal electricity and water charges to the Electricity Department directly or through the Rehabilitation Commissioner and if any worker does not pay the charges his electric supply would be disconnected. The Bihar State Electricity Board has made a claim with regard to its dues which according to the Board runs into few crores. The Rehabilitation Commissioner has disputed the said claim of the Board and has, on the other hand, submitted that the company has suffered a loss of approximately Rs. 752 lacs on account of burning of the transformer due to the fault of the Board and further that the meters recording the consumption were also found to be defective by the Board itself and that the Board is claiming the charges on the basis of the reading in those defective meters. B
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(iv) As a result of resumption of production in some of the units by the Rehabilitation Commissioner there is raw material/finished products lying in stock. By order dated July 21, 1995 the Rehabilitation Commissioner has been directed to sell the said raw material/finished products in stock preferably within the period of one month. In his affidavit dated September 20, 1995, the G
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A Rehabilitation Commissioner has stated that in pursuance of the said directions offers have already been invited for sale of approximately Rs.70 lacs worth of raw materials/finished products wasted/damaged material out of which the sale has already been made of Rs. 7 lacs and that offers have been invited in respect of the burnt out transformer and rejected copper cable approximately

B of the value of Rs. 20 lacs for which confirmed offers for purchase have already been received.

(v) In his affidavit dated September 20, 1995 the Relief Commissioner has also stated that in respect of the period during which the units had resumed production an amount of Rs. 234.84 lacs is payable towards raw materials purchased on credit and a sum of Rs. 184.56 lacs was advanced by purchasers for supply of products by the company. There is a total liability of Rs.419.40 lacs under both these heads. It is stated that there is a further liability for sales tax on these transaction to the tune of Rs.400.23 lacs as on

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D March 31,1995.

(vi) Out of a total amount of Rs.40 crores paid by the State of Bihar the sum of Rs.6 crores was by way of grant and Rs.34 crores is as loan. This amount was advanced by the State of Bihar as per

E directions of this Court.

(vii) The Claims Committee constituted by the Rehabilitation Commissioner under the directions given by this Court on October 24, 1989 has submitted its report after assessing the various claims of the creditors, the financial institutions and the workers. Objections have been submitted against the said report of the Claims Committee which are pending consideration.

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(viii) The moratorium of one year which was imposed in respect of proceedings taken and pending or to be taken against the company by order dated October 24, 1989 have been extended from time to time and the last such extension was given till

G December 31, 1995 by order dated July 21, 1995.

Now while putting an end to these proceedings and permitting resumption of the winding up proceedings in Company Petition No.3 of

H 1984 pending before the Patna High Court, it is directed as under :

1. The winding up proceedings in Company Petition pending before the Patna High Court will be resumed by the Company Judge. The parties and the Rehabilitation Commissioner shall appear before the Company Judge for seeking necessary directions on November 20, 1995. A

2. The Rehabilitation Commissioner shall - B
 - (a) complete the sale of the raw materials/finished products/wasted/damaged materials including the burnt out transformer and rejected copper cable by November 30, 1995 ;

 - (b) subject to availability of funds after incurring the expenses towards payments under clauses (c), (d) and (e) pay the dues towards the supply of raw materials on credit for the running of the units during the period of the pendency of these proceedings as well as the amount received as advance from purchasers for the products to be supplied to them by December 31, 1995; C

 - (c) pay the charges for the actual consumption of electricity for the period upto November 30, 1995 by December 31, 1995; D

 - (d) pay the charges for the security arrangements through the Central Industrial Security Force for the period upto December 31, 1995 by December 31, 1995; E

 - (e) pay the salary of the staff employed for the period upto December 31, 1995 by December 31, 1995; F

 - (f) prepare an inventory of the properties, movable and immovable, belonging to the company in his possession and control by December 10, 1995;

 - (g) handover the possession of the said properties to the Official Liquidator as per the inventory by December 31, 1995; G

 - (h) have the accounts for the period April 1, 1995 till December 31, 1995 duly audited and submit the same before H

- A the Company Judge in the Patna High Court by January 15, 1996;
- (i) handover the papers relating to the affairs of the Company while he was in control of the same to the Official Liquidator by January 15, 1996.
- B 3. With effect from date the possession of the properties, as per the inventory, is delivered to him by the Rehabilitation Commissioner, the Official Liquidator will assume charge of the assets of the company for the purpose of winding up proceedings.
- C 4. The officers, workmen and the staff who are at present employed in the undertaking of the Company shall continue in employment till December 31, 1995. For their further continuance in employment the Official Liquidator will seek the necessary directions from the Company Judge.
- D 5. The present security arrangements through the Central Industrial Security Force will continue till December 31, 1995. For further continuance of these arrangements, the Official Liquidator may seek the necessary directions from the Company Judge.
- E 6. The existing arrangement for supply of electricity by the Bihar State Electricity Board shall continue subject to the direction that may be given by the Company Judge. No minimum guarantee charge will be payable to the Bihar State Electricity Board and only the actual consumption charges will be paid. The respective claims of the Rehabilitation Commissioner and the Bihar State Electricity Board with regard to the supply of electricity during the period the company was under the charge of the Rehabilitation Commissioner shall be considered by the Company Judge.
- F 7. The State of Bihar will grant exemption from sales/purchases tax in respect of sales/purchases made by the company during the period the units were revived by the Rehabilitation Commissioner while the matter was pending before this Court.
- G 8. The Report of the Claims Committee on the claims of the financial institutions, creditors and the workers will be considered
- H by the Company Judge in the light of the objections that have been

submitted against the said report.

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9. The Company Judge may consider whether the industrial undertaking of the Company can be revived in the light of the offers that have been received from Shri L.N. Dalmia, Speedcrafts Pvt. Ltd., and Rohtas Industries Workers, Cooperative Society Ltd., along with any other offer that may be received.

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10. In the event of sale of the assets of the Company during the course of winding up proceedings a sum of Rs. 34 crores which was advanced by the State of Bihar as per directions of this Court in these proceedings shall be paid to the State of Bihar out of the sale proceeds before discharging any other liability of the Company.

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11. The Relief Commissioner shall stand discharged on January 15, 1996.

12. The moratorium imposed under the order of this Court shall cease to operate with effect from December 31, 1995.

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13. It will be open to the Rehabilitation Commissioner and the Official Liquidator to seek further directions from this Court with regard to any matter pertaining to the period this writ petition was pending in this Court.

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Shri Beck Julius, I.A.S. has been functioning as the Rehabilitation Commissioner since April 4, 1994. During that period this Court found his work to be satisfactory and good. This may be treated as assessment of his performance as an officer of the Bihar cadre of I.A.S. during that period and it may form part of his Performance Appraisal Report.

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Before we part with this case, we must say that this is a sad finale to the episode. In order to secure the revival and rehabilitation of a large industrial undertaking, the closure of which was not only a notional loss but had also rendered about 10,000 workmen jobless, this Court adopted the unprecedented course of assuming direct control over the functioning of the undertaking.

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The writ petitions are disposed of accordingly with no order as to costs.

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A A copy of this order shall be sent to the Registrar Patna High Court for being placed before the Company Judge dealing with Company Petition No.3 of 1984. In addition, the following papers be sent with the order :

(a) copies of the orders passed by the Court in the writ petition.

B (b) copy of the reports of the BIFR dated April 22, 1988 and May 22, 1995 and the Annexure thereto.

(c) copy of the report of the Claims Committee and the objections filed against the said report.

I.M.A.

Petition disposed of.