

WORKERS OF ROHTAS INDUSTRIES LTD.

v.

ROHTAS INDUSTRIES LTD.

OCTOBER 24, 1989

[RANGANATH MISRA, P.B. SAWANT AND
K. RAMASWAMY, JJ.]*Sick Industrial Companies (Special Provisions) Act, 1985: ss.4 & 10—Rohtas Industries Ltd.—Rehabilitation of—Directions for.*

Four large industrial units owned by the respondent-company were closed down with effect from September 9, 1984 resulting in denial of employment to about 10,000 employees. In the writ petition, the workmen sought immediate payment of salary and wages for the period since closure and compensation as per the amendment to the Industrial Disputes Act in 1984 and payment of dues under the provident fund account, gratuity etc. The High Court had in the meantime on May 22, 1986 appointed a provisional liquidator under the Companies Act.

This Court on October 29, 1987 had directed the Central Government to make a reference to the Board constituted in terms of s.4 of the Sick Industrial Companies Act, 1985, which had come into force, to frame a scheme as contemplated under s.10 thereof for revival of the company and submit it for consideration of the Court within four months time. On September 7, 1988, the Court took note of the fact that the State of Bihar was inclined for nationalisation of the company and directed a committee with the Industries Secretary to the Union of India as its Chairman to be immediately constituted to work out the modalities of nationalisation. On December 13, 1988 the Court considered the report of the committee indicating that three units, excepting paper and boards unit, were viable and could be revived, and adjourned the matter to give an opportunity to the parties to explore the possibilities of revival of the viable units. Till August 8, 1989 no substantial progress had been made. Thereafter the State of Bihar and the Union of India filed their statements separately and the memorandum prepared by the Attorney General was also made available to the Court.

In this background the Court,

HELD: 1. Living to about 10000 families has been denied for over five years and apart from national loss, the workmen have been

A put to serious jeopardy. There is a huge amount of wages outstanding to them. Several financial institutions have large dues to recover from the company. The Trustees of the Debenture Trust Deeds have also sought to intervene to maintain their claim. Apart from these, the owners of the company have also pleaded that they are entitled to compensation in the event of the properties of the company being taken away by way
 B of nationalisation. A lot of assets are fast becoming useless and will soon become junk. If the company 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. It is, therefore, of paramount importance that the company in respect of viable units should be revived and allowed to come into
 C production. [620D, A-C]

2.1 The State of Bihar is directed to appoint an authorised officer to be the Rehabilitation Administrator. [620H]

D 2.2 The Provisional Liquidator appointed by the High Court shall hand over to the Administrator all the assets of the company which he had taken over under orders of that Court. The assets of the company not yet taken over shall vest forthwith in the Administrator. [621A]

E 2.3 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, 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 hereafter, and limitation shall remain suspended for the period. [621D-E]

F 2.4 The State Government of Bihar shall deposit within eight weeks an amount of Rs.15 crores with the Administrator against the cost of assets to be taken over. A similar sum of Rs.15 crores shall be advanced by the Union of India to the State from out of plan assistance. The sum paid by the State shall be utilised, in due course for payment of arrears of wages of the workers and for disbursement of
 G secured loans of financial institutions and other parties for which security of the company's assets had been furnished. The Administrator shall open an account with the lead nationalised bank for the State operating at Dalmianagar into which the two sums of money shall be credited. [621F-H]

H 2.5 The Administrator shall set up a Committee with a retired

High Court Judge, a retired District Judge and an Accounts Officer to examine the claims of the owners of the company and other parties including financial institutions within six months and to report the matter to the Court for directions. [622A]

2.6 An inventory of all the articles shall be made within four weeks. Steps shall be taken to form a new company within four weeks. Appointment of technical consultants and other competent officers shall be undertaken within two months. The retrenched employees shall come back to work in phases. Steps shall be taken to explore the viability of the paper unit within three months after the company is recommissioned in respect of the three units. Liberty is given to the parties to apply in the event of necessity. [622C-D & E]

2.7 The case shall remain pending, to be called again on March 1, 1990. [622H]

ORIGINAL JURISDICTION: Writ Petition No. 5222 of 1985.

(Under Article 32 of the Constitution of India)

(With Writ Petition Nos. 443 and 754 of 1988)

R.K. Garg, S.K. Verma, P. Anshu Mishra and R.S. Singh for the Petitioners in Writ Petition No. 5222 of 1985.

G.B. Pai and S.K. Sinha for the Petitioners in Writ Petition No. 754 of 1988.

K. Parasaran, Attorney General, G. Ramaswamy, Additional Solicitor General, Ms. A. Subhashini, Probir Mitra and K. Swamy for the Respondents.

The following Order of the Court was delivered:

Workmen of Rohtas Industries Limited situated at Dalmianagar in District Rohtas within the State of Bihar sent a letter addressed to Hon'ble the Chief Justice of this Court on 8th of July, 1985, alleging that the Company had four units, namely, paper and boards, cement, asbestos and vegetable ghee plant; the management closed down the industries with effect from 9th of September, 1984, and have denied employment to about 10,000 employees. It was prayed that there should be immediate restoration of electricity to the colony, payment

A of salary and wages for the period since closure should be directed and compensation as per the amendment to the Industrial Disputes Act in 1984 and dues under the provident fund account, gratuity etc. should also be directed to be paid. This letter was registered as a writ petition and notice was issued. In the meantime by order dated 22.5.1986, the Patna High Court appointed a Provisional Liquidator under the Companies Act. In the writ proceedings before this Court the employers, B the Provisional Liquidator, the State of Bihar and the Union of India have, in due course, appeared.

C On 27.4.1987, the Court made an interim order in the matter of payment of arrear-wages by sale of assets. On 22.7.1987, the Court took note of the fact that the proposal for restructuring of the Company was afoot in terms of its suggestion and stated that claims of the financial institutions would be considered later. On October 28, 1987, the Court stated:

D “This Court had issued notice to the Union of India and learned Attorney General to ascertain if it is possible to revive the company which has suddenly gone sick. Learned Attorney General states that in the meantime Sick Industrial Companies (Special Provisions) Act, 1985 which received assent of the President on 8th January, 1986 has come into force and a Board in terms of section 4 thereof has now been constituted. He suggests that a reference may be made to that Board and the Board may be called upon to frame the Scheme as contemplated under section 18 of the Act for revival of the company and instead of allowing the Scheme to be dealt with further under the Act, the Board may be called upon to submit its Report along with the Scheme for consideration of this Court. He also submits that in the special facts of the case there is no necessity to subject the Scheme to a statutory appeal. Counsel for the petitioners agrees that an effort may be made as per the suggestion of the learned Attorney General.”

G The Central Government made a reference to the Board within one week as directed by the Court and the Board was given four months' time to frame the Scheme. On 7.9.1988, this Court took note of the fact that the State of Bihar was inclined for nationalisation of the Company. The Union of India filed an affidavit that if any proposal is mooted for nationalisation, it would be supported. This Court stated H in this order of 7.9.1988:

“On examining the matter in this background we are of the view that it is in the interest of everyone that the industrial establishment should be revived and sooner it is the better. In these circumstances, we direct that a Committee with the Industries Secretary of the Union of India as its Chairman be immediately constituted to work out the modalities of nationalisation. The Committee should consist of the Secretary, Industries, Government of Bihar, senior representatives of the creditor financial institutions, Finance Secretary of Government of India or his representative and representative of Reserve Bank of India. The Committee should examine the matter and submit its report within six weeks”

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On 9.8.1989, the Court took note of the report by saying:

“The report submitted to this Court indicates that three units excepting paper unit are viable and can be revived. On the 13th of December, 1988, this Court considered the report and adjourned the matter to give an opportunity to the parties to explore the modalities of revival of the three viable units. No substantial progress has been made as we find. By the adjourned date the modalities should be discussed and finalised and reported to the Court so that an order can be made to revive the three units.

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The report indicated that in regard to paper unit, the Committee was not of the opinion that it was viable. Learned Attorney General and Mr. Pai had been requested by the Court to explore the possibilities of revival of the paper unit. Ms. Subhashini on behalf of the learned Attorney General states that given two weeks' time further discussions shall be held and a complete decision may be reached as regards the paper unit”

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A joint memorandum was filed by the Union of India and the State of Bihar on 12.9.1989 which the Court rejected on account of the fact that there was no clear and definite indication in the memorandum as to revival. Thereafter, the State of Bihar and the Union of India have filed their statements separately and a copy of the memorandum prepared by the learned Attorney General and circulated has also been filed before us. We have also heard learned counsel for the parties in the matter.

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A It is not disputed that there is a huge amount of wages outstanding to the workmen. Several financial institutions have large dues to recover from the Company. The Trustees of the Debenture Trust Deeds have also sought to intervene in this Court to maintain their claim. Apart from these, the owners of the Company have also pleaded that they are entitled to compensation in the event of the properties of the Company being taken away by way of nationalisation.

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C As already noted, the Company has been closed down for more than five years now. A lot of assets are fast becoming useless and will soon become junk. Several attempts were made to dispose of some of the stocks held by the Official Liquidator but for one reason or the other it has not been possible to complete the sale and though this Court had directed that the sale proceeds would be utilised for payment of arrears-wages, that has not been feasible. Claims have been laid against the Company and are perhaps awaiting adjudication. 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 had 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. Unless there be a moratorium in regard to the liabilities of the Company for a reasonable time, the attempt to revive the Company in respect of the three units is bound to be frustrated upon the intervention of the creditors, whereas once the company is revived and big commercial activities are carried on, profit is bound to be earned and a conscientious and prudent administration would certainly, in due course, provide adequate funds for satisfaction of the debts. At present the question is one of priorities. It has to be prudently decided as to which ones should be allowed to go ahead and which should be made to wait.

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G In this background and on the basis of the memoranda filed by the State of Bihar and the Union of India and the note prepared by learned Attorney General and made available to us by Mr. Pai for the other side with the Attorney General's consent, we give the following directions:

H 1. The State of Bihar shall appoint an authorised officer from the Senior IAS cadre with appropriate commercial background

to be the Rehabilitation Administrator. A

2. The Provisional Liquidator appointed by the High Court of Patna shall hand over to the Administrator all the assets of the Company which he has taken over under orders of the Court. Such assets of the Company which have not yet been taken over by the Provisional Liquidator shall upon the appropriate officer being designated vest in him forthwith and he is clothed with the necessary power under our present orders to take such steps as are necessary to take over possession of such assets of the Company. In the event of a dispute arising out of the decision of the Administrator that the asset is of the company and is to be taken over by the Administrator, an appeal shall be maintainable before a Division Bench of the Patna High Court and the Judges to constitute such Bench shall be nominated by the learned Chief Justice. For convenience the same Judges shall continue on the nominated Bench for a reasonable period. B C

3. 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 today 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 hereafter and limitation shall remain suspended for the period under our orders of today. It would be open to the Court on being moved to extend the moratorium. D E

4. The costs of the entire assets to be taken over by the State Government of Bihar as per the book value and the dues against the company are estimated to be within the limit of Rs. 15 crores. The State Government of Bihar has undertaken before us to deposit the amount of Rs. 15 crores with the Administrator within eight weeks from today. A similar amount of Rs. 15 crores shall be advanced by the Union of India to the State of Bihar from out of plan assistance for the State. The sum of Rs. 15 crores paid by the State Government shall be utilised, in due course, for payment of arrears of wages to the workers 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 shall open an account with the lead nationalised Bank for the State of Bihar operating at Dalmianagar into which the two sums of money being Rs. 15 crores each shall be credited. F G H

A 5. The Administrator shall set up one Committee with a retired High Court Judge, a retired District Judge and an Accounts Officer with at least five years' experience as Financial Advisor to the State Government to examine the claims of the owners of the Company and other parties including financial institutions. This should be done within six months from now. Once the list of creditors is settled with all reasonable particulars, the matter should be reported to this Court for directions and it shall be open to this Court to finally indicate the figure at which each such claim shall be settled.

C An inventory of all the articles shall be made within four weeks from now. Steps shall be taken to form a new company within four weeks from now.

Appointment of technical consultants and other competent officers shall be undertaken within two months hence.

D The asbestos, cement and vanaspati plants shall be commissioned after effecting such repairs as may be necessary.

E The retrenched employees shall come back to work in phases. The first phase shall admit a thousand workers, the second phase shall admit an equal number and in the third phase, such number of further workers as may be necessary to run the industries in a viable way shall be finalised. All expeditious steps as may be possible shall be taken to provide employment.

F Steps shall be taken to explore the viability of the paper unit within three months after the Company is re-commissioned in respect of the three units. Liberty is given to the parties to apply in the event of necessity but it is made clear that no extension in regard to payment of the fifteen crores of rupees by the State Government and the Union Government shall be granted. Every attempt should be made by all concerned to give effect to the order keeping its true purport and spirit in view. We do not intend to leave doubts in any one's mind that the purpose of our order is to revive the Company and make it work viably. Everyone charged with the responsibility of implementing the order of the Court shall, therefore, be expected to work in such a way as would fulfil that purpose.

We direct that the case shall remain pending in this Court and shall not be taken to have been disposed of by this order. Call the case on 1st of March, 1990.