Ashok Paper Kamgar Union And Ors. vs Dharam Godha And Ors. [Alongwith ... on 5 September, 2003

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Bench: S. Rajendra Babu, Ashok Bhan, G.P. Mathur

JUDGMENT

G.P. Mathur, J.

1. This petition under Article 129 of the Constitution has been filed by M/s Ashok Paper Kamgar Union through its President Shri Umadhar Prasad Singh for initiating contempt proceedings against the respondents for violation of orders passed by this court on 8.7.1996, 1.5.1997 and 31.7.2000 in Writ Petition No. 174 of 1991. Initially the respondents arrayed in the contempt petition were Shri Dharam Godha, Chairman, Nouveau Capital & Finance Ltd., Shri S. Jagadeesan, Joint Secretary, Ministry of Industry, Deptt. of Industrial Policy and Promotion, Government of India; and Shri G.S. Kang, Secretary, Department of Industry, Govt. of Bihar. Subsequently, Shri S.N. Khan, Chairman and Managing Director and Shri R.P. Chhabra, Chief General Manager, Rehabilitation Finance Department, Industrial Development Bank of India, were also impleaded as respondents.

2. Ashok Paper Mills was a joint sector company and its shares were held by Government of Bihar, Government of Assam and Industrial Development Bank of India (for short 'IDBI'). The company had two units; one in Darbhanga, Bihar and the other in Assam. The company became sick in the year 1988 and was referred to BIFR. A decision was taken on 15.11.1989 to bifurcate the two units and give the responsibility of administering/taking over the units to the concerned State Governments. The Assam unit was thus taken over by the Government of Assam in 1990. The Bihar unit was, however, not taken over by the Government of Bihar. The petitioner M/s Ashok Paper Kamgar Union then filed a writ petition under Article 32 of the Constitution in this Court praying that a direction be issued to the Government of Bihar to take over the unit. Initially, it was felt that an appropriate legislation was required to be issued and the State Government also indicated that it

would issue on Ordinance. The writ petition remained pending for several years and different proposals were considered by this Court. Ultimately, in the year 1996, the Government of India moved a proposal under which a private party, namely Nouveau Capital & Finance Ltd. (for short 'NCFL") was to take over the unit and a scheme for the said purpose was formulated on 28.6,1996, which was accepted by this Court on 8.7.1996. Since the main grievance of the petitioner is that the terms of the scheme have not been complied with by the respondents, it is necessary to reproduce the main provisions thereof, which are as under :

> 1.0 Take over of the Unit by M/s. Nonveau Capital and Finance. Ltd. Nouveau Capital & Finance Ltd. will take over Ashok Paper Milk Bihar Unit at following terms and conditions.
>
> 1.1 NCFL will acquire the share holding of Government of Bihar, Government of Assam and Financial Institutions as per following terms:-
>
> (a) Write down of capital by 90%
>
> (b) Payment of written down face value within a period of 12 months from the date of handing over, the possession of the unit.

1.2 NCFL will pay a fixed consideration of Rs. 6 crores and thereupon take over of the unit without any liability. This amount will be paid by NCFL in 16 quarterly installments of Rs. 37.5 Lakh each on interest free basis. The first installment will be paid by NCFL before taking over the unit.

Except for payment of Rs. 6 crores over a period of four years, no other liabilities, be it dues of secured creditors, unsecured creditors, dues to Government and its agencies would be assigned to the unit.

1.3 The fixed consideration of Rs. 6 crores paid by NCFL would be utilized on pro rata basis to settle the dues of the secured creditors viz., Institutions and banks and the workers as per the directions of the Supreme Court, The view of the workers union and the Financial Institutions are given in Annexure-II.

1.4 The entire available work force will be absorbed by NCFL within a period of six months from the date of the take over of the unit. Prior to take over a tripartite agreement between workers' union, government of Bihar and NCFL will be entered into. NCFL will not take over way of the past liabilities in respect of the workers. However, there would be no break in services and wages would be paid as per the prescribed norms of the industry on the date of absorption. Besides from the date of the take over NCFL will also pay to the worker (as are willing to be absorbed) a monthly salary @ 50% of their last earned salary of the month when production was not terminated.

The scheme provided for rehabilitation and running of the units in two phases. Para 1.7 of the Scheme gave details of the expenditure and tentative cost for Phase I as Rs. 26.15 crores. Paras 1.8 and 1.9 gave details as to how this amount was to be raised and they are as follows :

1.8 The total cost estimated is Rs. 26.15 crores. The above requirement of funds would be financed as under:-

1. Share capital from promoters 11.15

2. Term loans/equipment finance 15.00

26.15

1.9 The implementation of Phase-I would be over a period of 18 months. JDBI would extend term loan (jointly or otherwise by both participating institution) provided collateral security upto Rs. 10 crores is extended by NCFL and or any of their associated corporate or individuals in their private capacity. United Bank of India would extend working capital as per banking norms. It would not be feasible to commence commercial production earlier as the existing boilers would need to be replaced by energy efficient boilers.

3. Para 1.10 gave details of the works which were to be implemented in Phase II and the capital expenditure required to be invested thereunder was Rs. 478 crores which was proposed to be raised through equity contribution of Rs. 188 crores and Rs. 290 crores term loan from Institutions. Some of the other terms of the scheme which are relevant are being reproduced below :-

1.14 Government of Bihar will write off the dues of the unit including arrears of sales-tax, water tax, cess, land revenue etc. 1.15 Government of Bihar will take necessary action for getting past dues of Bihar Electricity Board written off upon taking over the unit by the NCFL. Government of Bihar would immediately connect the power lines to grid power and ensure uninterrupted supply of power subject to technical fault. The power would be made available at commercial rates. NCFL will have to deposit fresh security deposit for electricity supply. The minimum demand charges shall be levied only after commencement of commercial production. Till then only the actual energy units consumed shall be charged at the industrial rate.

1.27 IDBI agrees that the revival package consisting of two phases of investment is viable.

1.28 United Bank of India will consider grant of need based working capital on commercial terms.

1.33 The existing plant and machinery shall not be removed from the site so long as the entire revival package including Phase-II is implemented and operationalized. However, the NCFL will have the option to replace the same.

1.34 A Committee representing Government of India, Government of Bihar, IDBI and Ashok Paper Kamgar Union would be set up for monitoring of the implementation of the above mentioned revival package.

1.35 Status quo will be maintained as on 18.03.1996 till the unit is taken over by NCFL. There shall not be any new postings, transfers, fresh appointment on the roll of Bihar Unit. All physical assets of the company should remain on as it is where it is condition. If there are any pending issues in relation to workers, the same would be kept pending and decided by the new management.

1.36 The implementation of Phase-I would be completed within a period of 18 months from the date of signing of agreement and taking over the possession of assets of M/s. Ashok Paper Mills (Bihar Unit). Implementation of Phase-II should be taken up concurrently alongwith Phase-I and completed within a period of 3 years.

1.37 On failure of NCFL to bring in the required investment as envisaged in Phase-I and Phase-II within the stipulated time, the agreement concluded with NCFL would be liable to be cancelled and transferred assets would revert to M/s. Ashok Paper Mills Ltd.

4. By the order dated 8.7.1996 the writ petition was disposed of in terms of the report submitted by Government of India on 28.6.1996 which contained the aforesaid scheme. Subsequent thereto, the petitioner moved I.A. No. 11 of 1996 on account of certain objections raised by IDBL After hearing counsel for the parties an order was passed on 1.5.1997 directing all persons and institutions concerned to participate in the implementation of the scheme and the Finance Secretary, Ministry of Finance, Government of India was directed to ensure that the legal conditions are fulfilled and the mill is rehabilitated and both Phase I and Phase II of the scheme are given effect to. The petitioner moved applications for issuing some directions which were disposed of on 31.7.2000 and 1.9.2000.

5. The grievance of the petitioner is that though a series of meetings had been held and attempts had been made by the petitioner, the financial institutions and the Government of Bihar to implement the scheme in letter and spirit, but the promoter NCFL was bent upon ousting the President of the petitioner Union from the Monitoring Committee which was set up and a settlement was ostensibly signed with the said Union. The unit was lying closed and the entire work force was without wages, except for about 200 workers who were being paid some daily wages. Shri Dharam Godha, Chairman of NCFL had sent a letter to the State Government on 10.2.2001 requesting the Government of India to take back possession of the unit and

such conduct of his withdrawing from the scheme was in willful and deliberate defiance of the orders passed by this Court. It is further averred that more than Rs. 15 crores of public money was disbursed with a view to ensure that the unit is revived but the same had not been done and NCFL wanted to get away after taking advantage of the aforesaid amount.

6. In response to the notice, Shri S. Jagadeesan, Joint Secretary, Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India, has filed a counter affidavit. The plea taken therein is that there has been no deliberate infraction of the orders passed by this Court on his part or on the part of Government of India. Ashok Paper Mills was promoted in 1958 by Maharaja of Darbhanga to manufacture 50 MT per day of integrated pulp and wilting and printing paper from bagasse. The company went into liquidation in 1963 as it could not fraction properly. In 1970, the Government of Bihar and the Government of Assam took over the company as a joint venture with the active participation of IDBI and under this venture, units were established in Assam and Bihar. The company did well till 1978 but thereafter its performance slided downhill and ultimately production in both the units was suspended in 1982. The equity participation by the Government of Assam in APM Jogighopa (Assam) is 31% and the equity participation of the Government of Bihar in APM Rameshwarnagar, Darbhanga is 16%. After several efforts to revive the units failed, the company made a reference to the BIFR. The State Governments of Assam and Bihar agreed to bifurcate and nationalise their respective units and in consequence thereto the Assam unit was nationalised in February, 1990. This Court by its order dated 4.1.1995 had directed the Secretary, Industrial Development to explore the possibility of the revival of the mill by privatisation, consistent with the requirement to safeguard the rights and interests of the workmen, through negotiations. It was accordingly decided that IDBI would act as merchant banker for the purpose of privatisation of the unit. In response to an advertisement issued by IDBI, offers were received from two firms. The negotiating committee constituted by the Ministry of Industry considered the proposals and finally recommended that the unit could be handed over to NCFL. Accordingly, the Department of Industrial Policy & Planning submitted a Scheme on 28.6.1996 which was approved by this Court on 8.7.1996.

7. It is further stated in the affidavit that the revival scheme had stipulated that NCFL would pay a consideration of Rs. 6 crores and thereupon take over the unit without any liability and this amount was to be paid in 16 quarterly instalments of Rs. 37.5 lakhs each but it had paid only two instalments towards the consideration money. NCFL claimed to have invested Rs. 18 crores towards promoter's contribution and according to their stand a tripartite agreement between Workers' Union, Government of Bihar and NCFL had been entered into. It was claimed by them that a bipartite agreement had been entered into with Ashok Paper Mill Mazdoor Panchayat which is also a recognized union. As many as 23 meetings of the Monitoring Committee under the Chairmanship of concerned Joint Secretary had taken place between 16.6.1997

and 4.8.2000. IDBI had already disbursed a term loan of Rs. 15 crores towards Phase I of the revival scheme and as per the information furnished by Ashok Paper Mills, there had been a total investment of Rs. 40.90 crores which included the aforesaid loan given by IDBI and Rs. 13.74 crores as share capital. Shri Umanath Prasad Singh did not participate in the meeting of the Monitoring Committee held on 14.7.1999 and a decision was taken in the said meeting that in view of this Court's order dated 26,4.1999 he had no locus standi to participate in the meetings of the Monitoring Committee as he had failed to comply with the directions of this Court. Thereafter, he had not been invited in the subsequent meetings of the Committee. Vide order dated 26.4.1999 passed by this Court, it was held that the agreement signed between Ashok Paper Mills and Ashok Paper Mill Mazdoor Panchayat was a valid agreement for the purpose of implementation of the scheme. It is also stated that the Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India, in coordination with the Department of Banking was responsible for obtaining the sanction of additional term loan of Rs. 11 crores from IDBI and a working capital of Rs. 9.25 crores from United Bank of India. It is further pleaded that the Department of Industrial Policy and Promotion had been making serious efforts for the revival of the unit and as such there has been no disobedience or non-compliance of the orders passed by this Court.

8. Shri G.S. Kang, Secretary, Department of Industries, Government of Bihar has also filed a counter affidavit. It is stated therein that earlier the Bihar unit of Ashok Paper Mills never functioned properly and it remained closed most of the time. Under the rehabilitation scheme, Government of Bihar, Government of Assam, LIC and financial institutions were to transfer their shares to NCFL at 10% of the face value. The cost of the shares was to be paid by NCFL after 12 months of taking over ownership of the factory. Since there was a dispute on the date of take over and some shares of financial institutions and Government of Assam could not be transferred to NCFL, the cost of shares was not paid. NCFL paid the first instalment of Rs. 37.5 lakhs out of Rs. 6 crores before the taking over of the unit. Before the take over, there was a tripartite agreement between the labour organisations, Government of Bihar and NCFL. The main cause of dispute arose because the Monitoring Committee decided to transfer the ownership to NCFL before signing of the tripartite agreement. When the negotiations for tripartite agreement began, there was a dispute as to which union was to represent the labour. The Industries Department and the Monitoring Committee were of the opinion that since Ashok Paper Kamgar Union had espoused the cause and had taken lead in filing the petition before this Court, they should be the one to sign the agreement. Thereafter, the Labour Commissioner called several meetings but the petitioner Ashok Paper Kamgar Union refused to sign an agreement. When no agreement took place, NCFL sought the permission of the Industries Department to run the unit on the basis of the bipartite agreement which was given in view of the order passed by this Court on 10.5.1997. The order passed by this Court on 26.4.1997 upheld the decision of the Industries Department. The NCFL claims that till the tripartite agreement was signed, its ownership was not complete as

the orders passed by this Court envisaged a tripartite agreement and this dispute could not be resolved despite several meetings of the Monitoring Committee. It is further pleaded that the agreement which was entered into by the NCFL with the other union was upheld by this Court and the deponent of the affidavit had not committed any contempt of the orders passed by this Court.

9. A counter affidavit has been filed by Shri Dharam Godha, Chairman of NCFL. It is stated therein that M/s Ashok Paper Mills which was promoted in the year 1958 5y Maharaja of Darbhanga, ran into problems and went into liquidation in the year 1963. The Governments of Bihar and Assam and IDBI and other institutions took over the company as a joint venture in 1973 and the unit started functioning from 1977. Since the unit had no pulping facility, no provision of captive power supply and several other infrastructural deficiencies, the plant became unviable and faced acute financial crisis and closed down in the year 1982. The average production in the aforesaid 5 years period was a meager 12.48 tones per day. Ultimately, the company made a reference to the BIFR in the year 1988. There was only one recognised union of the company till its closure in the year 1982, namely, Ashok Paper Mill Mazdoor Panchayat which was registered in the year 1961. All the certified standing orders and agreements with the erstwhile management were signed by this union alone. The petitioner Ashok Paper Kamgar Union was registered only in the year 1978 and was never a recognised union of the mill. When the physical possession of the unit was taken over by the new promoter (HCFL) on 18.8.1997, the assets were delivered short the value whereof was approx. Rs. 3.90 crores as per the inventory and list prepared at the time of handing over. The President of the petitioner Union, namely, Shri Umadhar Prasad Singh and officials of Government of Bihar were party to the same. The shortfall of Rs. 3.90 crores took place between the time the IDBI prepared its report in January, 1996, the preparation of the inventory list on 25.3.1996 and taking over of physical possession on 18.7.1996 despite the orders of this Court dated 18.3.1996 wherein it was directed that status quo shall be maintained. This shortfall took place as a result of theft, pilferage, damage, etc. which was caused when one Shri H.P. Singh was incharge of the site as Acting Works Manager. The plant and machinery of the unit was very old dating back to the years 1973-74 and even a decade earlier and the same had been left abandoned without any care, upkeep or watch. . It is further stated that by July 1998 NCFI had invested an approximate amount of Rs. 7 crores and thereupon IDBI disbursed the first tranche of Rs. 2 crores out of the sanctioned amount and this amount was not received by the company but was paid directly to the equipment suppliers. Clause 1.8 of the approved scheme envisaged a tentative investment of Rs. 26.15 crores (share capital of Rs. 11.15 crores and term loan/equipment finance of Rs. 15 crores) for Phase I. The NCFL and its associates had already made investment of Rs.20 crores as against Rs. 11.15 crores as per the scheme. The IDBI had granted loan of Rs. 15 crores by January 2001 against which collateral security of Rs. 10 crores of properties other than that of the mill had been furnished by the NCFL. The investment made in the project was many times the value of the old assets handed over to the new promoter who had put their further

stake by way of a collateral security of Rs. 10 crores. As per Clause 1.4 of the approved scheme, prior to the take over, a tripartite agreement between the workers' union, Government of Bihar and the new management was required to be entered into. In spite of innumerable meetings and deliberations held by the Labour Commissioner, the petitioner union did not sign the said agreement. Copies of the reports dated 29.1.1998 and 4.5.1998 of the Labour Commissioner have been filed as Annexures R-2 and R-3 to the counter affidavit. In view of the reports of the Labour Commissioner and the order of the Chief Minister dated 16.3.1998, the management entered into an agreement with the sole recognized union, namely Ashok Paper Mill Mazdoor Panchayat which was representing the majority of workers. The State of Bihar gave its no objection to the above agreement by way of its letter dated 14.7.1998 and this Court also passed an order on 26.4.1999 that the said agreement was valid for the purpose of implementation of the approved scheme. In para 35 of the counter affidavit, it is averred that in spite of Clause 1.15 of the scheme stipulating the Government of Bihar to immediately connect the power line to grid power and ensure uninterrupted supply of power to the unit the Government of Bihar expressed its inability to provide requisite grid power supply for running the Unit. Thereafter, this Court passed an order on 26.4.1999 directing the Government of Bihar to stand guarantee to the tune of Rs. 3 crores for procurement of 4 DG sets so that the difficulty of power supply could be obviated. The offer of guarantee of the Government of Bihar for procuring 4 DG sets was not acceptable either to the term loan institutions or to the banks and till date no effective steps had been taken to ensure power supply. In para 37 it is averred that the entire eligible work force as directed by this Court has been in full employment since June 2000 and the cost so far incurred on the payment of salary and wages amounted to approx. Rs. 3 crores. The mill commenced production on 27.8.2000 but it could run only intermittently because of sabotage. Under the scheme, United Bank of India was to provide a working capital but the same was not done and as a stop gap arrangement the promoters managed to obtain external commercial borrowing from USA to the tune of Rs. 2.5 crores to run the mill. Inspection was done by the Deputy Director (Technical) on 27.12.2000 and by a team consisting of Industrial Development Commissioner and Industry Secretary, Director (Technical) and Managing Director, Darbangha Industrial Area Development Authority and some others on 4.1.2001 and they found that the production was going on in the mill. The mill has more than 150 or so motors running at a time which requires constant repair, upkeep and maintenance. Apart from motors, there is other equipment which also requires constant maintenance and repair. The process of repairing parts cannot be carried out at the unit itself and they are required to be sent to specialised workshops outside the mill premises and sometimes to other places. The Government of Bihar passed an order on 22.2.2001 whereby, an embargo was placed and it prevented movement of machineries or any part thereof from the factory premises and this resulted in running of the unit coming to a stand still. On 4.10.2001 one motor connecting the pulp machine to the paper machine got burnt. This could not be repaired at the factory site and was required to be sent to Calcutta for repairs. However, it could not be sent outside on account of the embargo imposed by the Government of Bihar and all the efforts to send the motor for repairs failed and the management had to purchase another motor at the cost of Rs. 2.4 lakhs. In paras 49 to 74 of the counter affidavit details of various orders passed by the authorities of Government of Bihar placing an embargo on removal of any part or machinery from the factory premises, the steps taken by NCFL to got them lifted, their eventually filing a writ petition in Patna High Court being CWJC No. 5201 of 2001, the representation made to the Chief Minister of Bihar, the letter addressed by Shri S. Jagadeesan, Chairman of the Monitoring Committee to the Industry Department, Government of Bihar have been given. In para 98 it is averred that out of Rs. 15 crores (approx.) an amount of Rs. 12 crores (approx.) was paid by IDBI directly to various equipment suppliers. The IDBI had also appointed a leading firm of Chartered Accountant namely, M/s L.B. Jha & Company to report directly to them. The Respondent No. 1 Shri Dharam Godha had given personal guarantees and the promoter company NCFL had also arranged collateral security of Rs. 10 crores of prime properties situated at Napean Sea Road, Malabar Hills and at Nariman Point, Mumbai.

10. A counter affidavit on behalf of IDBI has been filed by Nivedita Shetty, Deputy General Manager of the Bank. It is averred therein that the NCFL has paid only two instalments of Rs. 37.5 lakhs each (totalling Rs. 75 lakhs) out of Rs. 6 crores which was decided as consideration for taking over the company's assets and an account of said default pro rata settlement of dues of secured creditors and workers did not take place. In Phase I of the scheme, major repairs and rectification work was carried out and certain capital equipment, additional waste paper pulping facility, coal handling plant, one boiler of 18 tph and part of the drinking equipment were acquired. On disbursement of the entire loan of Rs. 15 crores by IDBI by March 2001 and release of working capital by Union Bank of India in August 2001, the company had started the plant. It produced 2303 tonnes of paper upto January 2002 with the average daily production being around 25 tonnes as against the capacity of 60 tpd. Out of envisaged installation of 4 MW captive power plant 1 MW captive power plant had become operational and a 3 MW turbine had reached the site in July, 2001. To meet a part of the cost over run which had occurred on account of procurement of additional machinery, delay in implementation of the scheme and higher pre-operative expenses, the company had approached IDBI for sanction of a loan of Rs. 11 crores. The above request of the company was considered and IDBI and Industrial Investment Bank of India Ltd. sanctioned Rs. 5.5 crores each in March and April 2002 respectively. The trial run was taken on 27.8.2000 but stopped after two days due to break down. There was intermittent working of the plant and the stoppages were reported to be attributable to shortage of fuel for running the captive power plant. The unit had started regular production in October, 2000 after release of working capital by United Bank of India, Work of Phase II of the plant which was estimated to cost Rs. 478 crores has not commenced. A Techno-Economic Viability Study was to be conducted for Phase II and for this purpose quotations were called by IDBI from some reputed consultants. The company/NCFL, however, was not willing

to bear even the lowest fees approximating Rs. 30 lakhs for this study and, therefore, it could not be done. The IDBI had disbursed the entire loan of Rs. 15 crores by 313.2001 and the delay on the part of the NCFL in acceptance of the terms and conditions of the loan, in creation of the collateral security as per the Scheme and other non-compliances with condition alities of the loan resulted in late disbursement of the same. The arrangement regarding giving of guarantee by Government of Bihar did not work out as no bank/financial institution came forward to finance acquisition of the DG sets on payment of monthly rentals of Rs. 7.50 lakhs. In para 3 of the affidavit it is stated that the company as on 31.8.2002 had incurred an amount of Rs. 3644.10 lakhs for implementation of the project and the same had been made by promoter's contribution of Rs. 1782.99 lakhs, ECBs of Rs. 243.51 lakhs, secured creditors'/dealers' deposit of Rs. 117.60 lakhs and IDBI term loan of Rs. 1500 lakhs. In para 8 it is averred that the operations in the plant came to a stand still from 2.4.2002 as it was hit by a devastating hailstorm in which the building and the plant and machinery had been substantially damaged. The company has filed an insurance claim of Rs. 8.73 crores with the New India Assurance Company Ltd. and the said claim is yet to be settled.

11. The three respondents, namely, Shri Dharam Godha, Chairman, NCFL, Shri S. Jagadeesan, Joint Secretary, Ministry of Industry, Government of India and Shri G.S. Kang, Secretary, Department of Industry, Government of Bihar have stated in their respective affidavits that they tender their unconditional apology in case the Court came to the conclusion that they had committed contempt of the orders passed by this Court.

12. According to the petitioner, the respondents have not complied with the orders passed by this Court on 8.7.1996, 1.5.1997 and 31.7.2000 and, therefore, they are liable to be proceeded with. By the order dated 8.7.1996, the writ petition was disposed of in terms of the report dated 28,6,1996 submitted by Government of India in consultation with various agencies. The report contained the Scheme for revival of Ashok Paper Mills Ltd. and the relevant terms thereof have already been set out earlier. By the order dated 1.5.1997, I.A. No. 11 of 1996 was disposed of and a direction was issued to all persons and institutions concerned to participate in the implementation of the Scheme and the Finance Secretary, Government of India was directed to ensure that the legal conditions are fulfilled and the mill is rehabilitated and both Phase I and Phase II of the scheme are given effect to. It was further directed that the arrears of the workers would be taken care of by the Committee during the process of implementation. By the order dated 31.7.2000 several I.A.s were disposed of on the statements made by the counsel appearing for Union of India and the Monitoring Committee and also the petitioner to ensure that the factory is inaugurated and the production commences. The time given to those workmen who were willing to join after giving an undertaking was extended upto 16.8.2000. It may now be examined whether there has been a compliance of the aforesaid orders or the respondents have committed wilful disobedience thereof which may require drawing

up appropriate proceedings against them for having committed contempt of the orders passed by this Court.

13. The affidavits filed by the parties show that Ashok Paper Mills was promoted by Maharaja of Darbhanga in the year 1958 but as the company could not function properly, it went into liquidation in 1963. Thereafter, the Government of Bihar and the Government of Assam took over the company as a joint venture in the year 1970. The company did well till 1978 but thereafter its performance deteriorated and ultimately the production was suspended in 1982 and it was referred to BIFR in 1986, The machinery and the plant were obviously very old. Since the unit remained closed for a long period, its condition further deteriorated on account of lack of maintenance. Any industrial undertaking having an old machinery and plant can never give optimum result even though substantial investment is made. It appears that this problem was not highlighted when this Court entertained the writ petition and directed the Government of India, Government of Bihar and the financial institutions to come out with the proposal to revive the industry. Various orders were issued keeping in view the welfare of the workmen who had been thrown out of employment. But the fact remained that the machinery being very old and having been kept out of use for long number of years, it was very difficult to run the unit in an efficient manner so that it could be financially viable. The Government of Bihar had passed an order on 22.2.2001 directing the District Magistrate, Darbhanga to take necessary action and to ensure that nothing went out of the factory premises. Some machines in the factory required repairs and according to the affidavit of Shri Dharam Godha one motor got burnt on 4.10.2001. The machines and the motor were required to be sent to Calcutta for repairs. However, on account of the embargo imposed by the Government of Bihar, the same could not be taken out of the factory. According to the management it wanted to take out scrap worth about Rs. 30-40 lakhs for the purpose of sale to raise money to pay wages to the workmen. It even filed a writ petition being CWJC No. 5201 of 2001 before the Patna High Court praying that direction be issued to permit it to take out the iron scrap for the purpose of sale. The writ petition was disposed of on 28.6.2001 with the direction to the Monitoring Committee to decide the issue regarding removal of scrap for the purposes of payment of wages to the workers. The Government of India also sent a letter dated 25.7.2001 to the Government of Bihar requesting it to revoke the direction given by it to the District Magistrate on 22.2.2001. The machines installed in a big factory may break down or may need repairs and it is not always possible to repair the same within the factory premises. In such circumstances, it is quite natural to send the machines outside the factory premises or even outside the town to a big place for the purpose of repairs. However, on account of the orders issued by the Government of Bihar, the management was restrained from taking out the machines and this at times resulted in closure or non-functioning of the factory.

14. Another reason given by respondent No. 1 for improper functioning of the Unit is the non-supply of power. Clause 1.15 of the Scheme specifically provided that the

Government of Bihar would immediately connect the power lines to grid power and ensure uninterrupted supply of power, subject to technical fault. According to the affidavit tiled by Shri Dharam Godha, the Government of Bihar expressed its inability to provide requisite grid power supply for running of the unit. Thereafter, an order was passed by this Court on 26.4.1999 directing the Government of Bihar to stand guarantee to the tune of Rs. 3 crores for procurement of 4 DG sets so that the unit may get uninterrupted power supply and may not be dependent upon the power supplied from the Bihar State Electricity Board. The offer for guarantee made by the Government of Bihar was, however, not acceptable either to the banks or to the financial institutions and as such DG sets could not be obtained. Lack of adequate power also contributed in creating serious problem in the running of the unit.

15. In accordance with the orders passed by this Court in the writ petition, a tripartite agreement had to be entered into between the petitioner, namely Ashok Paper Kamgar Union, Government of Bihar and NCFL. The material on record shows that though several meetings were held, but for some reason or the other, the agreement could not fructify and could not be signed, Shri H.C. Sirohi, Labour Commissioner, Bihar, wrote a letter to the Secretary, Industrial Development Department, Government of Bihar on 29.1.1998 complaining that the behavior of the President of the Petitioner Union had been non-cooperative on many occasions. He frequently tried to create hindrances and showed no interest to reach a settlement for tri-partite agreement. He sent another letter in this connection on 4.5.1998 reiterating that Shri Umadhar Prasad Singh, President of Ashok Paper Kamgar Union was creating hurdles in arriving at a tri-partite agreement. The Labour Commissioner also sent a report that his department had been receiving representations from Ashok Paper Mill Mazdoor Panchayat, which was the only recognised Union, about their claim. After considering the report of the Labour Commissioner, the Government of Bihar gave its no objection by its letter dated 14.7.1998 and thereafter the management entered into an agreement with the aforesaid recognized Union, namely, Ashok Paper Mill Mazdoor Panchayat. In paras 13 and 17 of the Contempt Petition, it is alleged that on account of keeping out of the Petitioner and its President (Shri Umadhar Prasad Singh) in the meetings of the Monitoring Committee and on account of their non-involvement in the opening and running of the unit, there has been a disobedience of the orders passed by this Court. The material on record shows that as Shri Umadhar Prasad Singh was not cooperating and was creating hindrance in arriving at a tri-partite agreement, the Labour Commissioner wrote to the Government of Bihar for signing of the agreement with Ashok Paper Mill Mazdoor Panchayat, which was a recognised Union. The Government of Bihar also gave its consent for the same. In these circumstances, the fact that the agreement was signed only with Ashok Paper Mill Mazdoor Panchayat cannot amount to wilful disobedience of the orders passed by this Court.

16. Under the Scheme which was formulated on 28.6.1996 and had been approved by this Court by the order dated 8.7.1996, NCFL had to pay a fixed Consideration of Rs.

6 crores over a period of four years in 16 quarterly instalments of Rs. 37.5 lakhs each. The NCFL has no doubt defaulted in payment of the aforesaid amount as it has paid only two instalments of Rs. 37.5 lakhs each. The IDBI has disbursed a term loan of Rs. 15 crores towards Phase I of the revival scheme. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India in cooperation with Department of Banking was instrumental in obtaining the sanction for additional term loan of Rs. 11 crores from IDBI and a working capital of Rs. 9.25 crores from United Bank of India. Therefore, so far as the IDBI and the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India are concerned, they have complied with the directions issued by this Court and have also taken all other steps which they were required to take for the revival of the unit. According to the affidavit filed by Shri Dharam Godha, NCFL has invested Rs. 18 crores towards promoter's contribution which was much more than the amount contemplated in Phase I of the Scheme. It is also averred therein that for the loan of Rs. 15 crores given by IDBI, security of properties situate in Mumbai worth Rs. 10 crores, other than that of the mill, had been furnished by NCFL. Though the entire amount of consideration has not been paid by the NCFL but they claim to have made substantial investment for running of the unit.

17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by Government of India on 28.6.1996 and had been approved by this Court by the order dated 8.7.1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs. 6 crores. However it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of Court on account of alleged non-compliance of the orders passed by this Court on 8.7.1996, 1.5.1997 and 31.7.2000 has been

established against any one of the respondents.

18. The petition is accordingly dismissed and the notices issued to the respondents are discharged. It is made clear that any observation made in this order is only for the limited purpose of deciding the present contempt petition and shall not be construed as an expression of opinion on the rights and claims of the parties. The order will also not come in the way of any party in seeking to recover its dues or to establish any kind of right or taking any other action.

G.P. Mathur, J.

19. For the reasons given in Contempt Petition No. 210 of 2001 in Writ Petition (Civil) No. 174 of 1991, the present petition is dismissed.