

Board Opinion Vs Rajprakash Spinning Mills Ltd.

Court: Gujarat High Court

Date of Decision: Sept. 11, 1998

Acts Referred: Companies Act, 1956 â€” Section 20

Sick Industrial Companies (Special Provisions) Act, 1985 â€” Section 20

Citation: (2000) 102 CompCas 276

Hon'ble Judges: M.S. Shah, J

Bench: Single Bench

Advocate: Swati Soparkar, R.M. Desai, J.D. Ajmera, S.K. Jhaveri, D.S. Vasavada and S.R. Shah, for the Respondent

Judgement

M.S. Shah, J.

This petition arises from the opinion-dated April 28, 1995 of the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") in Case No. 290 of 1987 (new Case No. 21 of 1995),

recommending to this court u/s 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA Act") for winding up of M/s. Raj Prakash Spg. Mills Ltd. (hereinafter referred to as "the company")

as confirmed by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as "the AAIFR" or "the appellate authority") on September 16, 1996, in Appeal No. 84 of 1995.

2. First phase of proceedings before the BIFR :

3. At the instance of the management of the company as well as at the instance of the Bank of Baroda, the company's case was referred to the BIFR. The company was declared to be a sick industrial company on September 22, 1988.

The following reasons were noticed by the BIFR for the company's sickness (page 256 of the paper book) :

- (i) Lack of modernisation with no substantial addition to machinery/equipment, in the last ten years;
- (ii) Obsolete machinery resulting in poor efficiency which eroded competitive ability both in quality and price;
- (iii) Recessionary conditions in the textile industry;
- (iv) Liquidity crunch resulting from continuous cash losses and rising input costs; and
- (v) Inadequate/ineffective management provided by the promoters.

4. The BIFR also noted that the working of the company started deteriorating from 1975 onwards and that as on March 31, 1992, the net worth was negative to the extent of Rs. 260 lakhs with accumulated losses of Rs. 237 lakhs

against share capital of Rs. 45 lakhs and reserves of Rs. 21 lakhs and the losses had thus wiped out the share capital by almost seven times. The BIFR also noted that the Bank of Baroda had instituted a suit against the company for recovery of its dues.

5. The BIFR appointed the Industrial Reconstruction Bank of India (IRBI), which is now the Industrial Investment Bank of India (IIBI) as the operating agency which prepared a draft scheme for rehabilitation of the company after

considering the responses of the various parties including the management of the company, the Bank of Baroda, which is the only secured creditor and the workers' union, the State Government, the Regional Provident Fund

Commissioner and the Employees' State Insurance Corporation. With the consent of all the aforesaid parties, the BIFR sanctioned the scheme on October 14, 1993.

6. The main features of the rehabilitation scheme were as under :

7. The scheme envisaged capital expenditure for acquisition of five numbers high production card conversion and two numbers open end machines with 160 rotors at a cost of Rs. 65 lakhs, including contingency and an assumption that no

cash credit facility would be availed of from Bank of Baroda.

----- -----	Cost of project (Rs. in lakhs)
----- -----	Capital expenditure 55.00 Contingency 10.00 Working capital
25.00 Payment of statutory liability (1st year) 24.00 Payment to bank (down payment) 40.00 -----	154.00
-----	-----
----- -----	Means of financing (Rs. in lakhs)
----- -----	Share capital by promoters/associates 50.00 Government of
Gujarat funds/Deferment of BoB dues 80.00 Sale of stock 15.00 Internal accruals 9.00 -----	154.00.
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8. Under the scheme, the bank and the company were to obtain a consent decree on the basis of the consent to be signed by all the defendants including the guarantors except guarantor Mr. R. V. Patel. The company was to repay the

bank dues computed as under :

(i) Interest on suit amount of Rs. 203 lakhs shall be charged at 10 per cent. per annum on simple basis from the date of filing suit till date of consent decree.

(ii) The amount so arrived at (approx. Rs. 304 lakhs) shall carry interest at 12 per cent. per annum with quarterly rests (linked to bank rate and will fluctuate accordingly). Interest shall be paid by end of every quarter beginning from June, 1993.

9. Under the scheme, the company was required to pay the bank dues as under :

(i) Down payment of Rs. 25 lakhs (by induction of fresh capital by promoters) within one week after the BIFR approves the scheme.

(ii) Further Rs. 15 lakhs (by sale of stocks).

(iii) Further Rs. 25 lakhs by December, 1993 (to guarantee this payment in time, the same shall be additionally secured by way of equitable mortgage of property situated at Tarapur owned by the guarantors). The additional security

offered shall be retained at least up to repayment of 50 per cent. of bank's dues.

(iv) Balance to be paid in monthly instalment of Rs. 3.25 lakhs beginning from April, 1994, and ending March, 2000.

(v) In case of default in payment of three monthly instalments each of Rs. 3.25 lakhs as proposed and/or one instalment of quarterly interest, the bank shall exercise its right to have recourse for execution of consent decree.

10. The scheme also provided that no working capital facility was to be provided by the bank. However, in case of need the company could approach other banks subject to Bank of Baroda issuing "no-objection letter".

11. The Government of Gujarat had also agreed to extend the package of reliefs/concessions as available to sick textile mills in Gujarat aggregating to Rs. 40 lakhs carrying 12 per cent. per annum rate of interest chargeable from 1995-96

and the entire said amount along with earlier dues was to be repaid by the company in six years (para. 6.2 of the scheme). Even the Central Government agreed that 20 per cent. of the PF/ESI dues may be paid initially and the remaining

amount would be repayable in six years, commencing from 1993-94, in quarterly instalments. The said arrangement was to be backed up by a bank guarantee to be furnished by the company (para. 6.3).

12. The company was also to constitute a management committee in a form satisfactory to IRBI/BoB to review on a monthly basis the operation of the company in all aspects and closely monitor the implementation of the revival scheme

and the company was to appoint concurrent auditors with direct reporting relationship to the IRBI/BoB on terms satisfactory to the latter. The company was to satisfy IRBI/BoB that the physical progress as well as expenditure incurred

on the scheme is as per the original schedule (paras. 7.1 to 7.3).

13. Paragraph 6.4 of the scheme provided that apart from other obligations, the promoters were to induct Rs. 50 lakhs by way of equity in 1993-94.

14. The scheme was sanctioned by the BIFR on October 14, 1993, with immediate effect.

15. Failure of the BIFR scheme and BIFR opinion for winding up :

When the case came up before the BIFR on February 22, 1995, for reviewing the progress in regard to implementation of the scheme, the operating agency pointed out that the company despite reminders had not been submitting the

requisite progress reports and, therefore, the operating agency was not in a position to submit its report.

16. The Bank of Baroda also stated that the company had not complied with the stipulations made in the sanctioned scheme and that it had not even got insurance cover in respect of the stocks pledged to the bank and, therefore, the

bank had arranged for insurance of the stocks for which the insurance premium to be paid by the company was not reimbursed.

17. Mr. Prakash Patel, chairman of the company stated that the promoters had already brought Rs. 15 lakhs in the company and had made payment of the wages of the workers to the tune of Rs. 4 lakhs and that the workers/staff of the

company were on strike since June, 1994, and the company's operations could not be carried on. According to Mr. Patel, the dues to the Bank of Baroda stood at Rs. 3.5 crores approximately and the dues of the workers stood at Rs.

25 lakhs. He confirmed that he had not made payment to Bank of Baroda as per the provisions of the sanctioned scheme and also confirmed that at the meeting held with the Bank of Baroda officers on December 5, 1994, the promoters

had expressed helplessness in running the mill and desired sale of the same.

18. The Commissioner for Provident Fund stated that the dues in respect of the company stood at Rs. 44.40 lakhs towards the principal amount and Rs. 35.32 lakhs towards damages. The inspector from ESIC stated that the dues in

respect of the company stood at Rs. 60.47 lakhs besides interest and damages.

19. Mr. N. M. Barot, president of the Majoor Mahajan Sangh stated that the wages of the workers for six months amounting to Rs. 15 lakhs remained to be paid despite the order of the Labour Court, after closure of the mill. The

charge of the management of the company that the workers were on strike was repudiated by the president of the union who stated that it was Mr. Prakash Patel who was on strike and had disappeared from the scene by handing over

possession of the unit to the time keepers.

20. After hearing all the parties, the BIFR reached the conclusion on February 22, 1995, that the rehabilitation scheme sanctioned on October 14, 1993, had failed and that the promoters were given more than ample time to revive the

company, but they were not able to infuse the required funds towards the cost of the rehabilitation scheme. The BIFR, therefore, formed a prima facie opinion that the company is not likely to make its net worth positive within a

reasonable time while meeting its financial obligations and as a result thereof it is not likely to become viable in future and that it was also not feasible to adopt any of the measures specified in section 18 of the Act in relation to the

company. The BIFR, therefore, directed to issue public notices for winding up of the company u/s 20 of the SICA Act, for consideration of objections/suggestions or alternative proposals, if any. The aforesaid advertisement was issued in the first week of March, 1995.

21. When the case again came up for consideration before the BIFR on April 28, 1995, Mr. Dhir, consultant representing the company stated that the promoters were very much keen to rehabilitate the company and had been negotiating

with the various parties viz., M/s. G.S.L. (India) Ltd., P. Rajarathnam and Associates and Mr. Veerana of Shree Ganeshar Textile Mills Ltd. However, the negotiations with these parties had not been completed and as such some more

time was required to enable the company to formulate a fresh proposal along with a co-promoter for rehabilitation of the company on a long term basis. However, the company had submitted an alternative proposal based on disposal of

the long ring frame spinning section while retaining the open end spinning section, as also disposal of surplus assets, to enable it to be rehabilitated on its own. The consultant further submitted that the replacement cost for 22000 spindles

at Rs. 20,000 per spindle, would come to nearly Rs. 40 crores. The dues in respect of Bank of Baroda stood at Rs. 8.47 crores (Rs. 2.03 crores principal and Rs. 6.44 crores interest) and the company owed Rs. 60 lakhs to ESIC.

Upon negotiation with the workers, the latter had agreed to settle their dues at Rs. 75 lakhs and the company prayed for six weeks" time for submission of a credible revival proposal, as also six months" time for disposal of the

company"s assets for payment of the dues to the creditors/workers. All the other parties, i.e., Bank of Baroda, Labour Union, Employees" State Insurance Corporation, Provident Fund Commissioner suggested that the company

deserved to be wound up.

22. The BIFR considered the facts on record and the submissions made and came to the conclusion on April 28, 1995, that despite ample opportunity given to the company, the scheme sanctioned on October 14, 1993, had failed and

no credible revival proposal was received from the company. In the meantime, the dues of the bank/institutions had gone up substantially and there was no valid objection from any one against the public notice issued for the winding up of

the company. The alternative suggestion of the company to settle the dues of the creditors and labour was not acceptable as it envisaged huge sacrifices and involved uncertainties in the disposal of assets. The BIFR, therefore, confirmed

its prima facie opinion that the company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and the company as a result thereof is not likely to become viable

in future and that it was just and equitable that the company be wound up.

23. Appeal before the AAIFR :

The aforesaid opinion of the BIFR was challenged by the company before the appellate authority u/s 25 of the SICA Act.

24. When the appeal reached hearing before the AAIFR on September 12, 1996, the Bank of Baroda and the workers" union reiterated that the company deserved to be wound up. It was submitted by the operating agency that

although it had received two enquiries from Sunflag Filaments Ltd. and Ranjan Textiles (Machinery Division), no subsequent information with regard to any scheme was received from them so far. The operating agency submitted that the

scheme submitted by the existing promoter was very sketchy and hence no detailed rehabilitation scheme can be prepared out of the said proposal.

25. Still, however, the appellate authority considered the proposed scheme under which the company had suggested partial sale of machinery to the extent of Rs. 70 lakhs and also sale of 17 acres of surplus land to fetch Rs. 150 lakhs.

The appellate authority considered the said proposal and found that even assuming that the existing promoters would be in a position to bring in Rs. 220 lakhs, it would not be possible with this amount to revive the company. The

appellate authority, therefore, dismissed the appeal and confirmed the opinion dated April 28, 1995 of the BIFR.

26. Company petition pursuant to the BIFR opinion :

This court has received the aforesaid opinion of the BIFR as confirmed by the appellate authority. After issuing notice to the parties, learned counsel for the company was heard and, thereafter this court admitted this petition on January

28, 1998, and notice of the petition was ordered to be published in two daily newspapers. Mr. Prakash Patel, chairman of the company has filed an affidavit in reply dated April 27, 1998, for contesting the opinion of the BIFR and

AAIFR. The matter has been finally heard at length on four days.

27. Contentions on behalf of company :

Mr. Soparkar, learned counsel appearing for the company - M/s. Raj Prakash Spinning Mills Ltd. has raised the following contentions for challenging the opinion of the BIFR and for dismissing the petition :

(i) The company court is not bound to accept the opinion of the BIFR and the AAIFR, and the company court has to independently form the view as regards the viability of the company.

(ii) The BIFR as well as the appellate authority proceeded on a factually wrong premise that the dues of the Bank of Baroda were Rs. 8.47 crores as on December 31, 1994, whereas the dues were much less. The amount claimed by the

Bank of Baroda in the suit filed in the year 1987 was only Rs. 2.03 crores. Once the suit is filed, interest pendente lite would be covered by the provisions of the CPC and, therefore, even with interest the bank's claims would never go

up to Rs. 8.47 crores as on December 31, 1994, or even till the date of passing of the order of the AAIFR in September, 1996. Once the matter becomes sub judice even before the Debt Recovery Tribunal, the interest is not awarded

at a compound rate but only on simple interest basis and, therefore, the whole basis of the findings given by the BIFR and the AAIFR that the company would not be able to pay the dues of the bank, which was the only secured creditor,

was factually untenable.

(iii) The bank has no locus standi to make any submission for winding up of the company when the bank, which is the secured creditor, has already filed a suit for recovery of its dues and there is no injunction against the bank proceeding

with the suit before the Debt Recovery Tribunal and the company is not going to sell its assets without permission of the bank.

(iv) The sanctioned BIFR scheme had failed because of the workers strike after the scheme of rehabilitation.

(v) The opinion given by the AAIFR was vitiated by violation of the principles of natural justice as the hearing of the appeal was fixed on September 12, 1996 whereas the company received the intimation from the appellate authority only

on September 10, 1996, and, therefore, the sufficiently detailed revised scheme could not be presented before the appellate authority. Even the scheme submitted by the company as per the letter dated September 11, 1996 (page 321 of

the paper book) is not considered by the appellate authority and, therefore, the judgment of the appellate authority must be set aside and the matter may be remanded to the BIFR.

(vi) In any view of the matter, no useful purpose will be served by passing an order of winding up of the company because the official liquidator will not be able to effectively manage or dispose of the properties of the company which are

at Khambhat.

28. Submissions on behalf of other parties :

On the other hand Mr. R. M. Desai, learned counsel for the Bank of Baroda has submitted that -

(i) the bank has the locus standi to appear in these proceedings and to make submissions for winding up.

(ii) The BIFR had given ample opportunity to the management of the company to bring fresh funds or a co-promoter for reviving the company. In fact, the scheme sanctioned by the BIFR as far back as on October 14, 1993, failed only

on account of the defaults committed by the management of the company in not carrying out the obligations imposed upon them under the said sanctioned scheme.

(iii) The company's representative Mr. Dhir had admitted the dues of the company in the following words :

Shri Dhir submitted that the dues in respect of Bank of Baroda stood at Rs. 8.47 crores (Rs. 2.03 crores principal and Rs. 6.44 crores interest).

The Bank of Baroda is entitled to calculate its dues as per the provisions of the agreement between the parties including the provisions for interest and penal interest.

(iv) The management of the company has not made any bona fide offer to revive the company in spite of the fact that the factory had closed since 1988 and the operating agency had also submitted before the AAIFR on June 14, 1996,

that no concrete proposal or scheme had come from any person from amongst those who had only made some inquiries. All other parties had supported the opinion for winding up of the company.

(v) The BIFR as well as the AAIFR had considered even the so-called scheme submitted by the company as per its letter dated September 11, 1996, and found on the merits that it was not a credible and viable scheme.

(vi) As held by a Division Bench of this court in Gujarat Trade Union Manch Vs. Gujarat State Textile Corporation, Special Civil Application No. 6912 of 1996, decided on November 8, 1996, the BIFR and the appellate authority are

expert bodies and this court would not sit in appeal over the opinion formed by such expert bodies.

29. Mr. Vasavada, learned counsel appearing for the workers' union also supported the arguments of Mr. Desai and requested that the company may be ordered to be wound up as the management was no longer interested in reviving

the company and that in spite of the scheme sanctioned by the BIFR on October 14, 1993, the persons in the management of the company had deserted the scene and had even left the company to the time keepers as was pointed out by

the representative of the workers' union before the BIFR on February 22, 1995.

30. Mr. S. K. Jhaveri, learned counsel for the Khambhat Municipality, learned counsel for the Employees' State Insurance Corporation, learned counsel for the Regional Provident Fund Commissioner also supported the arguments of

Mr. Desai.

31. Discussion :

Having perused the record of the BIFR and the AAIFR and having carefully considered the contentions raised by learned counsel for the company and the submissions made on behalf of the other parties, this court is of the view that the

opinion dated April 28, 1995 of the BIFR as confirmed by the appellate authority in its order dated September 16, 1996, deserves to be accepted and the company deserves to be wound up for the reasons stated hereafter.

32. Before proceeding to state the reasons, the preliminary contention of Mr. Soparkar that the bank has no locus standi to make any submission in the proceedings may be considered at the outset.

33. Apart from the fact that one of the submissions raised by Mr. Soparkar pertains to quantification of the dues of the company, the very basis of the opinion of the BIFR and AAIFR for recommending the winding up of the company is

the inability of the company to pay the dues of the bank and the workers within a reasonable time. It must, therefore, be held that the bank and the workers have a right to make submissions when this court is considering the question

whether the opinion of the BIFR and AAIFR for winding up of the company should be accepted or not. As held by the apex court in the case of *Madhusudan Gordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd.* [1972] 42

Comp Cas 125 in a winding up petition the creditors of the company have a right to make submissions for opposing or supporting the request of a creditor for the making of the winding up order. The same principle would apply when the

court is considering the opinion of the BIFR u/s 20(1) of the SICA Act. Hence, the contention raised on behalf of the company about the locus standi of the bank deserves to be rejected.

34. The company was declared as a sick industrial company as far back as in 1988. As stated earlier, the BIFR had found that the management of the company (i.e., the promoters) were substantially responsible for the sickness of the

company as they had not gone for modernisation and the mill was being run on obsolete machinery and the promoters had provided inadequate/ineffective management, besides all other outside factors like recessionary condition in the textile industry.

35. After taking considerable pains, the operating agency had prepared a draft scheme after considering the responses, amongst others, of the promoters in charge of management of the company and the BIFR had sanctioned the scheme

on October 14, 1993, with the consent of the promoters. As per the said scheme, the company was required to agree to a consent decree to pay the suit amount of Rs. 2.03 crores with interest at the rate of 10 per cent. per annum on

simple basis from the date of filing suit till the date of consent decree for which obviously the company was required to give consent. The amount so computed (approx. Rs. 304 lakhs, page 258 of the paper book) was to carry interest at

the rate of 12 per cent. per annum with quarterly rests (linked to bank rate and will fluctuate accordingly). However, the company did not give the consent for such a decree nor did the company make payment of the bank dues under

which the payments were required to be made as under :

(i) Rs. 25 lakhs - down payment within one week from the date of sanction of the scheme (the scheme was sanctioned on October 14, 1993) (by induction of fresh capital by promoters).

(ii) Rs. 15 lakhs - interest by sale of stocks.

(iii) Rs. 25 lakhs - by December, 1993.

(iv) The balance amount to be paid in monthly instalments of Rs. 3.25 lakhs each beginning from April, 1994, and ending March, 2000.

36. From the point of view of the company and its promoters, the scheme sanctioned by the BIFR thus contained liberal terms both as regards the quantification of the decretal dues and also regarding the payment of instalments. Even

then the company neither agreed to the consent decree being passed nor carried out the other obligations imposed upon it under the scheme. Hence, even if it were to be held that there is some substance in the contention raised by Mr.

Soparkar on behalf of the company in the affidavit in reply or at the hearing of this petition about the quantification of the dues of the bank at Rs. 8.47 crores, it would not make any difference in so far as the answer to the relevant

question is concerned viz., whether the company is in a position to suggest a credible viable scheme which can reasonably be expected to be accepted by the bank as the secured creditor and the workers who had even agreed to accept

the dues of about 500 workers to the extent of only Rs. 75 lakhs.

37. The scheme proposed by the company before the BIFR as an alternative proposal on April 16, 1995 was to the following effect :

----- -----	Source of funds (Rs. in lakhs)
----- -----	Sale of surplus land 100 Sale of machinery except O.E. Plant and related machineries 175 Sale of current assets 15 Balance of promoters' contribution 35 ----- Total 315
----- -----	Disposition of funds (Rs. in lakhs)
----- -----	Retirement of banks dues in one time settlement 145 Payment of dues to workers (wages, bonus and gratuity) 75 Provident Fund 42 Gujarat Electricity Board 20 ESI 18 Restarting expenses 15 ----- Total 315. ----- -----

38. The above proposed scheme indicated that the company wanted to pay the bank only Rs. 145 lakhs as a one time settlement which could not reasonably be expected to be agreed to by the bank when its dues on the date of filing the

suit in 1987 were Rs. 203 lakhs and when the proposed amount of Rs. 145 lakhs suggested by the company was also much below the amount quantified by the BIFR at about Rs. 304 lakhs on the date of the consent decree which was

to be obtained by the parties and the company even backed out from the said obligation.

39. In the light of the aforesaid discussion, it must be held that the dispute raised by the company about quantification of the dues of the bank, even if genuine, will not make any difference while answering the question whether the

company should be ordered to be wound up or not. As held by the apex court in the case of Madhusudan Gordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd. [1972] 42 Comp Cas 125, where there is no doubt that the

company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely.

40. This court is conscious of the fact that the present petition is not being heard as a winding up petition at the instance of a creditor, but the court is considering the opinion of the BIFR u/s 20(1) of the SICA Act that the company is not

likely to become viable in future and it is just and equitable that the company should be wound up, but the aforesaid principle laid down by the apex court cannot be said to be irrelevant when section 20(1) of the SICA Act itself requires

the court to consider the question whether to accept the opinion of the BIFR that the company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations. Section 20

of the SICA Act, in so far as the same is relevant reads as under :

20. Winding up of sick industrial company. - (1) Where the Board, after making inquiry u/s 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of

opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become

viable in future and that it is just and equitable that the company should be wound up, it may record and forwards its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the

provisions of the Companies Act, 1956 (1 of 1956).

41. Hence, if the company could not meet its financial obligations even as quantified by the BIFR on very liberal terms (at Rs. 3.04 crores) in the sanctioned scheme dated October 14, 1993, the dispute raised by the petitioner to the effect that the dues of the bank from the company would not be Rs. 8.47 crores does not advance the petitioner's case.

42. Even if the interest on Rs. 203 lakhs is calculated on simple basis from 1987, the bank's dues in the year 1998 on the basis of the bank rate of interest (without penal interest) is not likely to be less than Rs. 6 crores and admittedly the company is not in a position to pay even Rs. 3 crores to the bank within a reasonable period, as the promoters do not intend to induct any fresh capital or to infuse any funds from any other source.

43. The reason advanced by the company for failure of the sanctioned scheme dated October 14, 1993, that it was the immediate strike of the workers after sanction of the scheme is not at all convincing. Even the case of the company before the BIFR at the hearing on February 22, 1995, was that the workers/staff of the company were on strike since June, 1994, and the company's operations could not be carried on. As will be clear from the relevant provisions of the scheme quoted hereinabove, the promoters of the company were to induct funds to the tune of Rs. 50 lakhs by way of equity capital in 1993-94. The company was also to pay Rs. 65 lakhs to the bank by December, 1993. Neither of the obligations were carried out by the company by March, 1994.

44. In response to a query from the court as to why the workers would go on strike from June, 1994, when they were to get employment pursuant to the scheme sanctioned by the BIFR in October, 1993, learned counsel for the company submitted that the workers were bent upon closure of the company since they would get a higher amount of compensation under the scheme framed by the Central Government than under the scheme sanctioned by the BIFR. It was pointed out by Mr. Vasavada appearing on behalf of the workers that the maximum amount payable under the scheme of the Central Government was between Rs. 20,000 and Rs. 25,000 per worker and that no worker would put his job at stake for a sum of Rs. 25,000. The case of the workers that it was the promoters who fled the scene appears to be more credible than the excuse held out by the company for blaming the workers. In any view of the matter, the court is not required to decide this question for the simple reason that the failure on the part of the company in not carrying out the obligations imposed upon them under the scheme sanctioned by the BIFR on October 14, 1993, had taken place much prior to the commencement of the alleged strike by the workers in June, 1994. This aspect has been examined only to consider whether the management had made bona fide attempts to revive the company after sanction of the scheme by the BIFR and the painful answer is in the negative.

45. As regards the grievance made on behalf of the company about inadequate opportunity given to the company by the appellate authority, it is not possible to accept the said contention. The company was well aware of the fact that as per the sanctioned scheme it was required to submit periodical reports for reporting compliance with the scheme. It had failed to do so for a period of more than a year after sanction of the scheme in October, 1993. Even on February 22, 1995, the BIFR had formed its prima facie opinion that the company deserved to be wound up. The alternative scheme proposed by the company for meeting a part of the liability by sale of the assets had also not appealed to the BIFR at the hearing on April 28, 1998. The matter was thereafter before the appellate authority and the hearing was fixed on September 12, 1996. Hence, the company very much knew that the 1993 Scheme was a non-starter and the company had more than two years time to formulate a detailed viable scheme in case it was inclined to do so. The contention urged by Mr. Soparkar alleging lack of adequate opportunity must also, therefore, fail.

46. Coming to the contention about the merits of the scheme proposed by the company before the BIFR and reiterated before the appellate authority, a perusal of the opinion of the BIFR as well as the order of the AAIFR clearly shows

that the respective expert bodies had considered the scheme suggested by the company on the merits and found that the same was not viable. A Division Bench of this court in Gujarat Trade Union Manch Vs. Gujarat State Textile

Corporation, Special Civil Application No. 6912 of 1996 decided on November 8, 1996, has held that when the factory of a company is closed and when proceedings under the BIFR Act are initiated and ""the Board has taken the view

that there is no alternative but to wind up the unit, the decision of the Board is that of an expert body. Ordinarily, a decision of such a body is not interfered with unless it is palpably wrong or is such that no reasonable man of ordinary

prudence would reach such a decision. On the facts and circumstances of this case, we are satisfied that the expert body could not have reached any decision other than the one reached by them. Seen in this light, the action taken does not seem to be unlawful or otherwise arbitrary and/or unreasonable.

47. Applying the aforesaid test, it is not possible to hold that the opinion of the BIFR is palpably wrong or is such that no reasonable man of ordinary prudence would reach such a decision. Both the aforesaid expert bodies took into

account the fact which is not disputed by learned counsel for the company even at the hearing of this petition that the promoters of the company do not intend to invest any fresh capital or bring funds for revival of the company, sale of

surplus land to the extent of 17 acres is not likely to fetch more than Rs. 1.5 crores, the partial sale of the machinery is expected to generate funds to the tune of Rs. 70 lakhs which amount would be a doubtful proposition with the

passage of time as to whether the machinery which is lying idle since 1988 would fetch such an amount. Even then the aforesaid expert bodies have accepted the assumption made by the company and found that the amount of Rs. 220

lakhs which may be generated by the sale of the assets as aforesaid would not be sufficient to revive the company as the aggregate of the dues of the bank and the dues of the workers would exceed the aforesaid amount by three to four

times. For revival the company would also need huge funds for capital expenditure as well as for working capital. Even the case of the company's consultant Mr. Dhir, before the BIFR was that the replacement of the old 22,000 spindles

would require investment of Rs. 40 crores at the rate of Rs. 20,000 per spindle. On the aforesaid basis, even assuming that the company wants to trim down its operations to the tune of 25 per cent. of its present capacity, it would still

need at least Rs. 10 crores for restarting the factory even without paying any dues to the bank or to the workers. Even though a few inquiries were made during pendency of the proceedings before the BIFR and the AAIFR, no concrete

proposal had come from any sponsor as is clear from para. 5 of the opinion of the BIFR (April 28, 1995) and para. 5 of the order of the AAIFR (September 16, 1996) nor is any such proposal brought before this court during the

pendency of this petition for about a year. This court is, therefore, more than satisfied that even on an independent assessment of the material on record, the inescapable conclusion is that it is just and equitable that the company should be

wound up as the company is unable to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and as a result thereof the company is not likely to become viable in future.

48. In view of the above discussion, the following order is passed :

ORDER

49. The opinion of the BIFR u/s 20 of the SICA Act as confirmed by the AAIFR u/s 25 of the SICA Act is accepted and M/s. Raj Prakash Spg. Mills Ltd. is ordered to be wound up.

50. The official liquidator attached to this court is appointed as the liquidator. The official liquidator shall take possession of all the assets of the company after making an inventory.

51. The public notice of winding up of the company shall be published in the daily newspapers Indian Express, Ahmedabad and Baroda editions and in the Jansatta, Ahmedabad and Baroda editions. The costs shall be borne by the Bank

of Baroda.

52. At this stage, Mr. Soparkar, learned counsel for the company prays that the operation of this order may be stayed in order to enable the company to move the appellate court and also to explore the possibility of finding out a co-promoter or a sponsor for reviving the company.

53. In the facts and circumstances of the case, the request is granted. The operation of this order is stayed for a period of one month from today.