

## REVIVAL OF SICK INDUSTRIAL COMPANY BY EMPLOYEES

THE DECISION of the Supreme Court in *Navnit R. Kamani v. R.R. Kamani*<sup>1</sup> is a very significant judicial pronouncement with respect to the management of a company in the private sector as this decision for the first time conceded the demand of the workers of Kamani Tubes Ltd. to own and manage it. The Kamani Tubes was one of the fourteen companies belonging to the Kamani family group which was identified by the Monopolies Inquiry Commission as one of the 75 large industrial houses in the country in 1964.<sup>2</sup> It manufactured rods, sections, tubes, pipes of copper and copper alloys. Its assets as on 31 March, 1964 were Rs. 1,18,16,000 out of a total of Rs. 12.06 crore held by all the companies of the Kamani group which had occupied 49th place among the top 75 business houses.<sup>3</sup> By the end of 1966, the assets of Kamani Tubes had risen to Rs. 2,82,05,000.<sup>4</sup> The Kamani Tubes occupied fourth place in the Kamani group of companies.

After the death of the head of the Kamani family, the members started fighting among themselves for the control of the companies. Having failed to resolve their dispute amicably, they approached the court for settlement. The dispute ultimately reached the Supreme Court by way of special leave petition under article 136 of the Constitution. To resolve the dispute amicably, the court appointed a retired judge of the Supreme Court as a mediator but he could not succeed in the mission. The family discord and feud directly affected the working of the companies under the control of the Kamani group. The Kamani Tubes completely stopped working in August, 1985. Significantly, neither the closure of the company was effected by the management nor the workers were retrenched in accordance with legal provisions contained under the Industrial Disputes Act, 1947. But the workers were not paid their wages since December, 1984. The total arrears of the workers' wages till August, 1988 were rupees six and a half crore. This figure represented the liability of the company in addition to other legal and contractual liabilities.

The workers' exemplary patience was depicted in the fact that despite non-payment of their wages for a long time, they did not leave their one-time bread-giver during its adverse days. Their commitment to the cause of revival of the Kamani Tubes was reflected in the fact that though they were starving, they squatted on the factory premises of the company which had been abandoned by the management and kept day and night vigil ever since its closure with a view to protect the company's plant. As a matter of fact, they not only protected the plant, they also showed keen enthusiasm for its

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1. A.I.R. 1989 S.C. 9.

2. *Report of the Monopolies Inquiry Commission*, 391 (1965).

3. *Id.* at 66-69 and 120.

4. *Report of the Industrial Licensing Policy Inquiry Committee*, II-62 (1969).

revival. When all the efforts failed to bring the parties to an amicable settlement, the workers through their union -- Kamani Employees' Union -- expressed willingness to co-operate with the management by offering to accept deferred payment of unpaid wages which they agreed to accept with increase in production and the creation of surplus. They were even willing to come to an agreement with a prospective buyer of 90 per cent shares of the Kamani Tubes which the members of the Kamani family were willing to sell. Unfortunately, no buyer was willing to purchase the shares.

All the efforts of the court and the gesture of goodwill expressed by the workers to revive the company failed to satisfy the management of the Kamani Tubes. Under the circumstances, the employees' union, on behalf of their member-workers, offered before the court to try and frame a scheme of their own for re-starting the work in the company after consultation with the banks and other authorities. The management, however, did not at all appreciate this positive response of the workers for the revival of the company. The union thus intervened before the court which was already seized with the problem of settlement of the Kamani family dispute. The union made an application in 1987 in the special leave petition already pending before the Supreme Court. During all this period, the workers' miserable plight remained unaltered but they faced the challenge boldly which had been thrust on them by the management since December, 1984. One has perhaps yet to find a parallel of such sincerity and dedication of workers in the history of industrial development in this country.

The Kamani employees' union prayed the Supreme Court that a direction be given by it for the sale of shares of Kamani Tubes Ltd. to the employees' union on behalf of the society proposed to be formed by them at such price as the court might think fit; directions to the Board for Industrial and Financial Reconstruction (BIFR) established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, to take remedial steps for the revival of the factories of the Kamani Tubes Ltd. including consideration of the employees' scheme under section 18 of that Act and appropriate directions and orders for the implementation of the scheme presented by the union and amendment of the memorandum and articles of association of the company and other connected matters. On the directions of the court, the BIFR got the employees' scheme examined by the Industrial Development Bank of India, which is an apex institution in the field of term lending and an operating agency for BIFR. This bank was primarily entrusted with the task of examining the employees' scheme from the angle of health of the plant and time required to run the factory of Kamani Tubes, costs/prices, production estimates vis-a-vis future demand, working capital required, etc. After considering the report of the bank and hearing the parties interested in the matter such as the representatives of the employees' union, members of the Kamani family, financial institutions, banks and central and state governments, the BIFR prepared a feasibility report for the court's orders. After hearing the parties, the court directed BIFR to frame its own scheme or

adopt the scheme proposed by the employees' union with such modifications as it deemed fit or consider any other alternative scheme at its discretion within eight weeks time.

It is significant to note that BIFR neither prepared any scheme of its own nor any alternative scheme was presented before it for its consideration by any one else. It, therefore, considered the scheme proposed by the employees' union. After hearing all the parties, it sanctioned the employees' scheme by its decision dated 6 September, 1988, which came into force immediately by virtue of section 18(4) of the above Act. Despite the fact that the scheme came into force with immediate effect by virtue of statutory provision, it still required formal directions of the court which was seized with that matter. It is to be noted that till the decision of BIFR, no member of the Kamani group raised any objection to the sanctioning of the employees' scheme by BIFR. None submitted any alternative scheme either. None was aggrieved by the action of BIFR. None alleged that he was prevented by BIFR from submitting any alternative scheme for consideration by BIFR. It was only when the decision of BIFR approving the scheme of the employees' union came up for further directions of the Supreme Court that one Ashish Kamani holding 24 per cent shares of Kamani Tubes Ltd. came with his own scheme before the court for its approval. In fact, the court could have easily brushed aside that scheme since the same was not presented before BIFR which was the only appropriate authority under the Act, but the court did not do so. On the contrary, the court took upon itself the responsibility of judging the merits and demerits of the two schemes. The court thus sat over the decision of BIFR, assessed the two alternative schemes and assumed itself a jurisdiction not vested in it but which vested in an expert body like BIFR. If at all, the court wanted that the scheme presented by Kamani was worth consideration, it should have referred the matter back to BIFR instead of deciding the question itself. After all the consideration of the scheme required expert knowledge which the court did not possess. The court was perhaps clear in its mind that a bare perusal of the scheme showed glaring pitfalls, not warranting any closer examination of that scheme by BIFR from technical angle. Moreover, the court even doubted the bona fides of Kamani in coming with an alternative scheme at a belated stage of the court proceedings after the approval of the scheme of employees' union by BIFR.

The court compared both the schemes and arrived at the following broad conclusions:

(a) The scheme prepared by the employees' union envisaged the commencement of production within about six months with the help of existing machinery after effecting necessary repairs and reconditioning of the plant, while the scheme of Kamani envisaged imported second-hand press and plant equipment costing huge amount of money but there was not even a vague idea about the date or time of commencement of production. Whether a second-hand plant in a working condition from any foreign country was available, and if so, at what cost, was not at all indicated in the Kamani scheme.

(b) The scheme prepared by the employees' union was fully backed by the nationalised banks which were the secured creditors of the Kamani Tubes Ltd. These banks had also made firm commitments for further financial assistance. In his scheme, Kamani did not indicate any such commitment nor did he indicate any source for getting the resources for modernisation. He was not in a position to finance the scheme himself and had not even negotiated any deal with any bank or financial institution for getting loan.

(c) Both the central and state governments had agreed to grant tax concessions to the scheme of employees' union as the same was first scheme of its kind ever tried in this country. No such tax concessions were indicated for the scheme of Kamani.

(d) The workers had agreed to make a sacrifice of their wages to the extent of 25 per cent for the first year and 15 per cent for the next two years; to the deferment of increments for two years; to forego dues subsequent to the period of December, 1985; to the deferment of their dues till other dues were paid off and to the rationalisation of the staff by retrenchment restricting the total workers to 600 if their scheme was sanctioned. They were, however, not willing to make any such concessions if the scheme of Kamani was sanctioned.

(e) In case of the scheme of employees' union, the secured creditors had agreed to convert 50 per cent of their dues into interest-free loan repayable in ten years and to a moratorium of one year for 50 per cent outstandings. No such commitment or concession was available for the scheme of Kamani.

(f) The scheme of the employees' union had been examined by the experts and the same was found feasible and viable while the scheme of Kamani had not even been examined by any expert body entrusted with that job under the legislation.

The limitations in the scheme of Kamani were apparent but the court still thought it fit to ascertain the bona fides of Kamani in coming to the court with his scheme. It, therefore, asked him to deposit one crore of rupees representing 15 per cent of the arrears of wages of workers but Kamani was not willing to deposit even a lesser amount. In view of this attitude of Kamani, the court was in no doubt that the scheme presented by him was not at all feasible and it rejected the same.

The rejection of the scheme of Kamani did not bring the entire issue to an end. The basic question before the court was still open: whether the scheme prepared by the employees' union and as sanctioned by BIFR should be stamped with the imprimatur of the court. Even in this respect, the court tried to perform the role assigned to other bodies under the Sick Industrial Companies (Special Provisions) Act, 1985 by evaluating the employees' scheme as already sanctioned by BIFR.

The above legislation was enacted by Parliament with a view to prevent and cure sickness in the industrial undertakings which is becoming a rampant phenomenon in the industrial sector in this country since last few years. It seeks to afford protection to workers in respect of their employment, opti-

mise the use of funds of the undertakings, salvaging the production assets, realising the pending dues and replace the existing machinery. To achieve these objectives, special machinery has been envisaged to sanction appropriate schemes for the revival of sick units. The Act contemplates the transfer of shares of sick industrial companies at the face or intrinsic value *inter alia* to the employees of the concerned companies.<sup>5</sup> This provision aims at encouraging the takeover of sick companies by their own employees if the competent authorities thought that to be a feasible and viable proposition. It also aims at reducing the interest or rights of the existing shareholders for the purpose of reconstruction, revival or rehabilitation of sick companies. In the present case, as noted above, the members of the Kamani family as major shareholders of the Kamani Tubes Ltd. at one time were willing to sell their 90 per cent shares but no buyer had come forward to purchase them. The liabilities of Kamani Tubes far exceeded its assets. It remained closed for a long time. On the basis of these factors, the BIFR closely and carefully evaluated the intrinsic value of the shares. It reached the conclusion that the intrinsic value of each share was zero as compared to face value of Rs. 10 each share. The BIFR, therefore, directed the Kamani family members to transfer their shares at the rate of one rupee per share to the employees' union. The court found that the conclusion of BIFR about the intrinsic value of shares was fully justified under the facts and circumstances of the case.

The court noted that the scheme proposed by the employees' union had been found feasible and viable by the experts. It had the full backing of the nationalised banks and encouraged by the central and state governments who were willing to grant tax concessions merely because the scheme was prepared on behalf of the employees. It had envisaged the management of Kamani Tubes by a board of directors consisting of qualified experts and the representatives of the banks, government and the employees. Moreover, the sanctioning of the scheme was not to result in the detraction of the obligations incurred by the guarantors towards the banks which had earlier advanced loan to the company. Thus after a close consideration of all the aspects of the scheme, the Supreme Court stamped the same with its imprimatur.

As a result of this decision, the workers and other employees of the Kamani Tubes will not only be working in it as workers and employees for its progress and prosperity, but they would also be simultaneously owning and managing the same as their own company. This three in one role of shareholder, employee and manager performed by the employees will not only ensure their job security and participation in the management of a company but would also promote greater social and economic justice and participative democracy in the industrial sector very much desired at this juncture of time. This is also expected to promote the growth of joint sector undertakings with more accountability of the employees as shareholders and managers.

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5. Section 18(2)(1) of the Sick Industrial Companies (Special Provisions) Act. 1985.

One can be more optimistic about the expected gain of the decision. If the employees are allowed to take over their companies to prevent sickness or revive sick companies, the industrial sickness might be contained in a big way. One, however, wishes that such cases of industrial sickness are dealt with more expeditiously than what had been done in the present case. It took more than five years for the Supreme Court to give its verdict. During most of this time, the company remained closed. Its plants and machinery must have been ruined by dust and rust. The employees remained unpaid for years, hungry and waiting for the revival of their company. The central government remained a silent spectator during all these years despite the fact that it is armed with vast powers under the above legislation to revive or reconstruct sick industrial companies. But for the employees' own initiative, even the court might have never thought of considering the takeover of the company by its employees. All this indicates the casualness of those entrusted with the task of enforcement of such a significant piece of legislation.

The analysis of this case would not be complete without taking note of that part of the court's order which was aimed at silencing those who might try to frustrate the expeditious implementation of the employees' scheme. In this respect, the court observed:

[N]otwithstanding any order that may be secured by any party from any other forum the Scheme shall be implemented in obedience to the judicial command embodied in this order and that in case there is any problem, it may be brought to this Court for seeking appropriate directions instead of resorting to other forums to impede the implementation of this socially and economically wholesome Scheme.<sup>6</sup>

The above part of the court's order raises a significant question: can the court including the highest court take away the legal right or remedy available to a person under any law? Suppose the right of a person involves the determination of disputed questions of fact, will the Supreme Court decide such questions in pursuance of the above order? Likewise, suppose the workers who are proposed to be retrenched under the scheme raise an industrial dispute about their service conditions, will the Supreme Court decide that question by assuming the adjudicatory functions vested in the industrial tribunals under the Industrial Disputes Act, 1947? If the employees themselves find any difficulty in arranging loans or machinery for the revival of the company, can they approach the Supreme Court which will arrange the same for their benefit? Can the employees approach the Supreme Court for any directions in any matter which is coming in the way of implementation of the scheme even though the members of the Kamani family are in no way responsible for them? It seems the court made too sweeping an order in this respect which was un-called for and the same could have been avoided. Even

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6. *Supra* note 1 at 18.

otherwise, the court had enough power to haul up any person who came in the way of implementation of the scheme by exercising its power of punishing him for contempt. But the order cannot take away the right of a person which he otherwise has.

In any case, this decision is a trendsetter in the field of industrial law which will go a long way in ensuring joint ownership and participative management of companies.

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