NAVNIT R. KAMANI & ORS.

v.

R.R. KAMANI

SEPTEMBER 19, 1988

[A.P. SEN, M.P. THAKKAR AND S. NATARAJAN, JJ.]

Constitution of India, 1950: Articles 31C and 142—Sick Industrial Companies (Special Provisions) Act, 1985—Constitutional validity of—Workers' Scheme for revival of Kamani Tubes Limited—Directions by Courts.

Sick Industrial Companies (Special Provisions) Act, 1985: Sections 2 and 18—Kamani Tubes Limited—Workers' Scheme for revival of company.

A dispute between different branches of an industrialist family culminated in the instant special leave petition. This Court, with a view to speedily resolve the dispute between the parties, and keeping in view the interest of the workers employed in the Kamani Tubes Ltd. (KTL). in August 1984 persuaded a retired Judge of the Supreme Court to mediate between the parties. In August 1985, (KTL) stopped production. During the discussions before the Mediator on July 2, 1986 it was decided that the different groups of the family would try to find a willing buyer for 90% shares held by them. At the same time, the Mediator permitted the workers to frame a scheme on their own for restarting the factories.

In July 1987 the Kamani Employees Union (KEU) instituted a petition seeking Court's directions for the sale of KTL shares to KEU and for expeditious consideration of the scheme submitted by the workers for the revival of the factories. In pursuance of the directions of the Court, the scheme was scrutinised by the Board for Industrial and Financial Reconstruction (BIFR) constituted under the Sick Industrial Companies (Special Provisions) Act, 1985. The Board after consultation with various agencies including the Industrial Development Bank of India, sanctioned the Workers' Scheme on 6th September 1988, which was placed before the Court for further orders. At this stage one of the parties (Shri Ashish Kamani) submitted an alternate scheme.

While stamping the Workers' Scheme with the imprimatur of the Court, it was,

HELD: (1) When the two Schemes are viewed in juxtaposition, there is no manner of doubt that the scheme presented by Shri Ashish Kamani appears in a rather poor light. The entire scheme is wrapped in imponderables and is built on a non-existant foundation. [134G; 135B, 135C]

(2) Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 *inter-alia* provides for the reduction of the interest or rights of the shareholders in the sick industrial company to the extent necessary for the reconstruction, revival or rehabilitation of the sick company, and further provides for the transfer of its shares at their face value or intrinsic value to the employees of the sick company. [136F-G]

(3) The provision for transferring the shares to the employees makes manifest the intention of the legislature to encourage the employees to take over the sick units and to clothe the competent authority with power to direct the transfer of the shares to the employees in this behalf. Thus the authority and competence of the BIFR to issue a direction for the transfer of the shares to the employees has the full backing of the benevolent legislation enacted especially in order to restructure or revive the sick undertakings. [137A-B]

(4) The BIFR has rightly reached the conclusion that the intrinsic value of the KTL share is zero and the Board was perfectly right in directing the members of the Kamani family to transfer the shares at the rate of Re.1 per share in order to effectuate the Scheme for revival of KTL. [137E-G]

(5) Since the Scheme is being framed under the statutory authority and directive in order to revive the industry in the larger public interest and inasmuch as there is a necessary declaration contained in Section 2 of the Act which attracts the applicability of Art. 31C of the Constitution, the decision rendered by the BIFR is unassailable and unimpeachable. [138D]

(6) The Scheme has been framed as per the direction and mandate of this Court in exercise of its inherent jurisdiction and its constitutional jurisdiction under Art. 142 of the Constitution and therefore the framing of the Scheme and the enforcement of the sanctioned scheme does not detract from or have any impact on the obligation incurred by the guarantors in regard to the debts incurred by KTL in the past. The concerned Banks were and are bound by the directives and mandates. [138E-F]

(7) Notwithstanding any order that may be secured by any party from any other forum the Scheme shall be implemented in obeisance 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. [139C-D]

CIVIL APPELLATE JURISDICTION: Civil Misc. Petition No. 22428 of 1988.

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 15228 OF 1983.

From the Judgment and Order dated 17.8.1983 of the Bombay High Court in Arbitration Petn. No. 6 of 1983.

(FOR DIRECTIONS WITH CMP Nos. 22429/88 & 3805/87). And in the matter of the scheme for revival sanctioned by the BIFR by its decision dated 6th September, 1988 in pursuance of the directions of this Court.

R.F. Nariman, D.H. Nanavati, Raian Karanjawala, Mrs. Manik Karanjawala and Hardeep S. Anand for the Petitioners.

Dr. Y.S. Chitale, S. Ganesh, I.R. Joshi, Arun Sinha, P. Parmeshwaran, A.K. Sinha, Mrs. Vijayalakshmi Menon, B.R. Agarwala, Ms. Sushma Manchanda, Ms. Urmila Kapoor, B.V. Desai, A.K. Verma, D.N. Misra, Shri Narain, Atul Sharma, Vineet Kumar, A.S. Bhasme, P.H. Parekh, M.K. S. Menon, K.C. Dua, H.S. Parihar, K.J. John, A.K. Sinha, Girish Chandra, A.K. Sil, G. Joshi, Ms. Nina Gupta, Vineet Kumar, S.K. Dogra, Harish N. Salve, Ms. Nina Kapur and Manoj Swarup, for the Respondents.

N.B. Shetye, Gopal Subramaniam and Mukul Mudgal for the Intervener.

The Order of the Court was delivered by

THAKKAR, J. More than a thousand brimming eyes are waiting to replace the tears of despair by tears of relief. No less than 600 wronged workers of a once prosperous industrial unit[1] induced or reduced to 'sickness' are on their toes to resort to self-help to restore

1. Kamani Tubes Limited (KTL).

A the lost source of their butterless bread. Their pens are quivering to write a new chapter in the sage of workers' struggle for finding their true 'indentity' and 'dignity'. Their dream is coming true with the enlightened and refreshing approach of the Central and State Governments, and the concerned Nationalized Banks[2], coupled with prompt, efficient and swift decision making on the part of the BIFR[3] and the B IDBI[4]. And with the consensus of all the parties (which is the most heartening feature) who have risen above narrow individual interests by not opposing the workers' scheme in order to promote the larger National interest of reviving the industry, augmenting the National product and providing employment to hundreds of starving workers (three of whom became martyrs to the cause by committing suicide).

C Internal discord gave rise to disputes and litigations between different branches of a family headed by a pioneering and successful industrialist[5] in the wake of his demise, which culminated in SLP No. 15228 of 1983 wherein all the concerned members of the family were impleaded. When the said matter came up before this Court it was D impressed upon the parties that the internecine conflict between the warring factions deserved to be speedily resolved, not only in their own interest, and for saving the name and honour of the founder, but also to ensure that neither the industrial units nor the workers employed in the industries which were controlled by one or the other branch of the industrial family, were ruined. A retired Judge of the Supreme Court[6] E was accordingly prevailed upon to accept the assignment of resolving the innumerable problems in the larger interest of the warring factions as also in order to protect the interests of the community and the workers in August 1984. The learned Mediator has invested considerable time, effort and accumen in order to resolve the problems presented in the course of the proceedings and has successfully disen- F tangled the economic mess to a considerable extent. This is evident from the fact that after the learned Mediator came on the scene Income Tax and Capital Gains Tax dues to the tune of over Rs.48 lakhs and over Rs.35 lakhs respectively have been paid.

2. Bank of India, Canara Bank and Dena Bank.

G 3. Board for Industrial and Financial Reconstruction constituted under the Sick Industrial Companies (Special Provisions) Act of 1985, (Act).

4. Industrial Development Bank of India.

5. Shri Ramjibhai Kamani.

H 6. Justice A.C. Gupta.

In the course of the proceedings it came to light that: A

(1) KTL has stopped production and ceased working in August 1985.

(2) KTL has not resorted to closure of the unit or to retrenchment of the workers in accordance with the relevant provisions of law. B

(3) While in the eye of law and in theory the workers continue on the rolls of KTL and in employment of KTL, the workers have not been paid wages for over 8 months since December 1984 till stoppage of work in August 1985 and ever since till now. The arrears till August 1988 work out in the region of Rs.6 1/2 crores. C

(4) The wages due to the workers amounting to approximately Rs.2.5 crores have remained unpaid since December 1984. D

(5) Employees' contribution to Provident Fund actually deducted from the wages of the workers to the tune of approximately 31/2 lakhs had been wrongfully retained by the management and criminal prosecutions are pending in the Criminal Courts. E

(6) The starving workers who have not been paid their wages since December 1984 have been squatting on the factory premises which have been abandoned by the Management. The workers have remained on the premises in order to keep day and night vigil for all these years since August 1985 in order to protect the plant which had provided them work and enabled them to earn their bread with the sweat of their brow. F

(7) Three of the starving workers have committed suicide on account of their inability to survive the burden of misfortune heaped on them. G

The plight of the workers notwithstanding, they exhibited exemplary conduct in their part, and the Kamani Employees Union (KEU) extended its hand of cooperation to the Kanani family group as has been noticed by the learned Mediator in his minutes dated July 2, 1986: H

"The *bona fides* of the applicant workers would be clear from the fact that in spite of the fact that no wages have been paid to them for the last 14 months, yet, in order to demonstrate their spirit of cooperation, the workers, through their union, had offered in writing to cooperate with the management and accept deferred payment of unpaid wages. The applicants repeat and reiterate that offer. The workmen always were, and still are ready and willing to accept the arrears of unpaid wages with increase of production and creation of surplus.

I shall be happy if the authorities who have to take a decision in this matter could find their way to accepting the request of the workers who have not received wages for about 16 months now.

As regards the two proposals given by the workers, neither of them was found acceptable by any of the Kamani family groups present; they thought that the proposals were not feasible."

A proposal was then mooted to sell 90% of the shares of KTL. Meanwhile the workers sought leave to frame a scheme of their own for revival of the 'sick' unit. What exactly transpired 2-1/2 years back has been recorded in the Mediator's minutes dated July 2, 1986:

"At the end of the discussions it was decided that the different groups of the family or any of them would try to find a buyer willing to buy the 90% shares held by the family in Kamani Tubes Limited as it is at present. The buyer will have to sit with the workers of the company to come to an agreement with them with regard to the payment of their dues. If the prospective buyer wishes to inspect the factories, no objection would be raised either by the workers or the present management of the company. Parties will report to me within six weeks any progress made in this matter.

On behalf of the workers it was submitted that as the search for a buyer was likely to take time, they may be permitted in the meantime to try and frame a scheme of their own for restarting the factories after discussing the matter with the Bank and other authorities. They are free to do so."

And after an exasperating waiting period of nearly one year thereafter the workers instituted CMP No. 3805 of 1987 on July 2, 1987 *inter alia* seeking the following prayers:

> "(a) All appropriate orders and directions for the sale of the shares of KTL to KEU on behalf of and representing the proposed society at such price and on such valuation as this Hon'ble Court in its absolute discretion deems proper and subject to such terms and conditions as may be stipulated.
>
> (b) appropriate orders and directions to the said Board respondent No. 59 to take expeditious remedial and other measure for the revival of the factories of the K.T. including directions to the said Board to consider the scheme of the applicants for the revival and rehabilitation of K.T. in terms of Exhibits 10 and 12 hereto.
>
> (c) all appropriate orders and directions for the implementation and consideration of the scheme for the revival of the factory of K.T. as per Ex. 10 and 12 hereto including directions for management of K.T., amendment of Articles of K.T. and all matters connected therewith with such modifications as may be deemed necessary."

By an order of this Court, dated October 13, 1987 in CMP 3805/87, this Court directed the BIFR to file a feasibility report with respect to the scheme presented by the workers for the revival of KTL. This Court also directed the BIFR to hear the workers as well as the different groups of Kamani family before making its recommendations. As per this direction the Board held a number of hearings which were attended *inter alia,* by representatives of KEU, Financial Institutions, Banks, State Government, Central Government and different groups of the Kamani family, IDBI, an apex institution in the field of term lending and one of the operating agencies of BIFR, was entrusted with the examination of KEU's scheme particularly with regard to technical health of the plant and time required to run it, various assumptions made in respect of the parameters of costs/prices, estimates of production pattern vis-a-vis projection of future demand, correctness of cost of production, working capital requirement, projected operating cash surplus etc. IDBI submitted its report which was discussed in the subsequent hearings and the views of the concerned agencies, such as, Banks, State Government, Central Government,

A and the commitments regarding reliefs and concessions that would be available from these agencies, were obtained. On being so required IDBI subsequently revised its projections and viability estimates. Based on the above, BIFR prepared its Feasibility Report and submitted it to this Court. After considering the report of BIFR, and hearing various parties and with the consent of the parties, this Court vide its B order dated 20th April, 1988 directed, *inter-alia,* that the matter be placed before BIFR for consideration whether it should proceed to pass an order in terms of the proposed scheme as revised in consultation with IDBI under Section 18(4) of the Sick Industrial Companies (Special Provisions) Act, 1985. The Board was requested to arrive at a decision after giving notice to all the concerned parties. The relevant C part of the order deserves to be quoted:

> "In compliance with the Court's order dated 13th October, 1987 the Board for Industrial & Financial Reconstruction, New Delhi, established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 in consul- D tation with the Industrial Development Bank of India, constituted under section 3 of the Industrial Development Bank of India Act, 1964 as its operating agency within the meaning of section 3(1) of the Act, considered in depth the scheme submitted by the Kamani Employees Union and has evaluated the same by its 'feasibility report' dated 12th E January, 1988. We have heard learned counsel for the parties and they agree to the order we purpose to make.
>
> We direct that the matter shall now be placed before the Board for Industrial & Financial Reconstruction for consideration as to whether it should proceed to pass an F order in terms of the proposed scheme as revised in consultation with the Industrial Development Bank of India under section 18(4). The Board shall come to a decision after notice to all the parties and it shall act in conformity with the provisions of the Act. The Board may, if necessary, frame its own scheme or adopt the proposed scheme G framed by the Kamani Employees Union, with such modifications as it deems fit. The Board shall also be at liberty to consider any alternative scheme at its discretion but the whole exercise shall be completed within eight weeks from today. If the objections to the Kamani Employees Union's scheme are not sustained the said scheme H shall be dealt with according to law."

Pursuant to the direction of this Court, the Board afforded a hearing to all the concerned parties on 20th May, 1988 and after having examined the submissions made but the various groups of Kamani family, Banks, State Government and Central Government, prepared a Draft Scheme for revival of KTL. The said draft Scheme was circulated to all the parties concerned and short particulars thereof were also published in two news dailies for the information of the shareholders, the creditors and the employees etc. in general. The parties were given due notice for making suggestions/raising objections with respect to the Scheme. On receipt of various suggestions/ objections the Board held its hearing on 28.7.88 for considering the same. After hearing all the parties, and after having examined all the written/oral submissions made, the Board has financed, and sanctioned the scheme as per its decision dated 6th September, 1988 which has now been placed before this Court for further orders in the light of the submissions of the concerned parties

Two questions arise in the context of the Workers' Scheme which has been sanctioned by the BIFR as per its decision dated September 6, 1988:

(1) Whether the Scheme presented by Shri Ashish Puranchand Kamani, applicant in CMP No. 22428 of 1988, at the time of the hearing on 12th September, 1988 (which was not presented before BIFR) deserves to be considered having regard to his claim that his scheme is preferable to the Workers' Scheme already sanctioned by the BIFR on September 6, 1988;

(2) Whether the Workers' Scheme as sanctioned by BIFR deserves to be stamped with the imprimatur of the Court.

The scheme presented by Shri Ashish Kamani who claims to hold 24% of the shares of KLT, could not be presented before the BIFR, which was seized with the matter in regard to the framing of a feasible Scheme in pursuance to the directions of this Court, till the BIFR rendered its decision on September 6, 1988. In the order dated April 20, 1988, this Court had observed that:

> "The Board may, if necessary, frame its own scheme or adopt the revised scheme framed by the Kamani Employees Union, with such modifications as it deems fit. The Board shall also be at liberty to consider any alternative

A scheme at its discretion but the whole exercise shall be completed within eight weeks from today."

Two points must be underscored. First, that the Court had merely accorded *"liberty"* to the Board to consider any alternative scheme, and secondly that the matter was left to the *"discretion"* of the Board. B It is therefore clear that no *'right'* was conferred on any party to present a new scheme. Option was given to the Board to exercise its discretion to consider any alternative Scheme if it was presented within the time-frame. Learned counsel for the applicant Shri Ashish Kamani, could not contend that any *'right'* was conferred on the applicant to present a Scheme. In fact there was no obligation on the part of the Board to consider the Scheme even if it was presented within the C time-frame. As a matter of fact the applicant did not present any scheme before BIFR within the time-bracket specified by this Court. And the Board has, after full and complete deliberation, rendered a well-considered decision sanctioning the Scheme of the workers. On 6th September, 1988, about a week before Shri Ashish Kamani, the D applicant, was able to present his Scheme. It is not necessary to examine the issue as to whether or not there was any justification for not presenting the Scheme before the stipulated deadline. Even though it is too late to examine the applicant's scheme it is not considered appropriate to shut out consideration of the scheme only on the ground that it is being presented so late and the workers' scheme has E already been sanctioned much earlier. In case the applicant is able to persuade the Court that the Scheme presented by him is preferable to the Workers' scheme in the larger interest of all concerned, the decision rendered by the BIFR could possibly be set aside and the Scheme presented by the applicant could possibly be remitted to the BIFR for considering the whole matter afresh. Of course it would cause great F hardship to all concerned more particularly because the Scheme sanctioned by BIFR on 6th September, 1988 comes into force with 'immediate effect'. It has also to be realised that the matter would be delayed by several months at the cost of the suffering workers. These are considerations which are more than adequate to discourage and deter the Court from undertaking any such exercise. All the same we G have heard the learned counsel for the applicant in regard to the Scheme presented by him even at this late stage. As indicated earlier learned counsel for the applicant stated that while the applicant did not oppose the Scheme presented by the workers, the applicant was confident of persuading the Court to hold that the Scheme presented by the applicant was by far in the larger interest of all concerned as H compared to the Scheme presented by the workers and sanctioned by

the Board. In order to effectively deal with this question the cantours of the two Schemes require to be traced:

Scheme presented by the Workers	*Scheme presented by Shri Ashish Kamani*
1. It contemplates starting operations with the existing machinery after effecting necessary repairs and reconditioning of the plant to the extent necessary. It is envisaged that the production can be commenced within about six months.	1. It envisages the replacement of the existing machinery by imported second-hand press and plant equipment, at an estimated cost of Rs.345 lakhs. It is not known how much time will elapse in replacement and when operations can be commenced. There is not even a vague idea about this factor.
2. The scheme is fully backed by the same Nationalized banks as are secured creditors of KTL. These banks have also made firm commitments for further financial assistance.	2. The Scheme does not show that there is even a tentative commitment much less a firm commitment by any Banks or financial institutions to finance the project. Nor is it shown that the applicant himself is investing any sizeable amounts to lauch the project. The Scheme is altogether silent as to how the resources are to be raised in regard to the modernization programme involving Rs.694 lakhs.
3. The Central Govt. and the State Govt. have agreed to grant tax concessions having regard to the fact that it is the first Scheme of its kind for reviving an industrial unit framed by the very workers rendered jobless on account of the sickness.	3. Neither the Central Govt. nor the State Govt. has shown its willingness to give any concession to the applicant. In fact there appears little likelihood of such concessions having regard to fact that the special factors relating to public interest involved in enabling the workers themselves to revive the sick industrial unit does not exist in the case of the applicant.

4. The workers themselves have agreed (1) to make wage sacrifice of 25% for the first year of operations and 15% for the next two years. In other words the workers have agreed to forego 15% to 25% of the wages which they would be otherwise entitled to having regard to the fact that it is the workers' own Scheme calculated to benefit them atleast in future (2) to deferment of annual increments for two years as also (3) to rationalisation of the staff pattern by persuading the workers to be retrenched on payment of compensation in the larger interest of the workers and to restrict the workers to 600 (4) to forego dues subsequent to 31.12.85 (5) to deferment of pre-stoppage dues till other dues are paid off.	4. The workers would not agree to forego any part of their wages or make a wage sacrifice to enable the applicant to take over the unit. Nor the workers would accept deferment of dues or to rationalization of staff pattern or retrenchment. Learned counsel for KEU has stated that they are not at all prepared to do so.
5. The secured oreditors have agreed to convert 50% of dues into interest free loan repayable within 10 years and a moratorium of one year for 50% of out-standings.	5. There is no such commitment on behalf of the secured creditors. Nor is there any liklihood of such concessions for the benefit of the applicant.
6. The Scheme has been found to be feasible and viable by experts and by the operating agency viz. IDBI, which is fully equipped to form the opinion in this behalf.	6. The fessibility of the applicant's claim has not been examined by any competent or authorised agency acceptable to the BIFR.

When the two Schemes are viewed in juxtaposition, there is no manner of doubt that the scheme presented by the applicant appears in a rather poor light. In fact the said scheme suffers from some fundamental infirmities. It is not shown that there is any commitment on behalf of any Bank of financial institution to provide the requisite

financial resources to enable the applicant to modernize the plant and to run it. The applicant 'hopes' to purchase a second-hand plant from some foreign country. It is not known whether any such second-hand plant in working condition with reasonable life expectancy is available. It is not known what would be the cost thereof. It is not known whether the Central Govt. would release foreign exchange in order to enable the applicant to purchase the said plant. Thus the entire scheme is wrapped in imponderables and there is no concrete basis to entertain a reasonable belief that the 'hope' entertained by the applicant would materialise at all in the foreseeable future. It is proposed to finance the cost of the additional plant and machinery to the tune of Rs.694 lakhs out of which it is stated that Rs.520 lakhs will be by way of term loan assistance from banks and financial institutions. It is conceded that there have been no negotiations with any Bank or financial institution and there has not been even a tentative, not to speak of a firm commitment in this behalf. With regard to the remaining Rs.174 lakhs it is stated that it will be by way of promoters contribution or through issue of share capital. Whether or not Rs.174 lakhs can be so raised is in the realm of wishful thinking and conjecture. It merely reflects the hope of the applicant which is not rooted in reality. It is built on a non-existant foundation. Nor is it shown whether the applicant himself has any sizeable financial resources of his own. Or whether he is in a position to raise such resources. The Scheme is a manifestation of the 'hope' and 'desire' of the applicant and no more. There is little doubt about the fact that no useful purpose will be served by granting the request of the applicant in these circumstances. Even so we would have considered the matter further if the applicant had satisfied this Court about his *bona fides* and provided an assurance that delay will not be to the detriment or prejudice of the workers or at their cost. An enquiry was accordingly made from the learned counsel for the applicant whether the applicant was prepared to deposit a sum of Rs.1 crore representing about 15% of the arrears of wages which have by now become payable to the workers to enable the Court to examine the matter notwithstanding the aforesaid short-comings. The learned counsel for the applicant frankly stated that the applicant was not in a position to deposit such a sum. In fact he did not even mention that the applicant was prepared to deposit a lesser sum in order to show his good faith and *bona fides* and in order to protect the legitimate interests of the workers. Counsel wanted the Court to consider the Scheme without any such provision being made merely on the assertion that the Scheme presented by the applicant was the only feasible Scheme which appears to be an altogether ill-founded assertion for the foregoing reasons. Under the circumstances we do not have the slightest hesita-

tion in refusing the applicant's prayer in this behalf.

In order to deal with the remaining question as regards stamping the Scheme sanctioned by the BIFR on September 6, 1988 with the imprimatur of the Court is concerned, it will be appropriate to take a glance at the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 under which the Board has been constituted, before the exercise is undertaken.

The statement of objects and reasons reveals the purpose underlying the benevolent legislation as also the anxiety of the legislature to provide for preventive, ameliorative and remedial measures essential for reviving sick or potentially sick companies and for ensuring expeditious enforcement of the measures devised by the competent authority under the Act. The statement of objects and reasons discloses the anxiety of the legislature at the alarming increase in the incidence of sickness of industrial companies and it also reveals that the legislation has been enacted with the end in view to:

1. afford maximum protection of employment;

2. optimise the use of funds of the companies etc.;

3. salvaging the production assets;

4. realising the amounts due to the Banks etc.; and

5. to replace the existing time-consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts.

The scheme envisaged by Section 187 of the Act *inter-alia* provides for the reduction of the interest or rights of the shareholders in the sick industrial companies to the extent necessary for the reconstruction, revival or rehabilitation of the sick company. There is also a very salutory provision which contemplates transfer of the shares in the sick industrial company at face value or intrinsic value (which may be discounted value or such other value as may be specified) *inter-alia*

7. Section 18(2)(*f*): "the reduction of the interest or rights which the shareholders have in the sick industrial company to such an extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;"

to the employees of the sick industrial companies.[8] The provision for transferring the shares to the employees which makes manifest the intention of the legislature to encourage the employees to take over the sick units and to clothe the competent authority with power to direct the transfer of the shares to the employees in this behalf. Thus the authority and competence of the Board to issue a direction for the transfer of the shares to the employees has the full backing of the benevolent legislation enacted especially in order to restructure or revive the sick undertakings. In the course of the discussion in the earlier part of this order we have referred to the abortive efforts made by the learned Mediator and the members of the different family groups of Kamanis for selling 90% of the shares of KTL. It however appears that no purchaser was coming forth. The aforesaid exercise however shows the willingness and preparedness of the concerned members of the Kamani group to transfer their shares on their own even without a directive. Their willingness is however irrelevant since the BIFR is clothed with the authority and competence to reduce the value of the shares from Rs.10 per share to Re.1 per share and direct the transfer of the shares to the employees. A point was made before the BIFR for the transfer of the shares as regards the order reducing the value of the share and the direction to transfer the shares at the reduced value of Re.1 per share. BIFR has closely, carefully and dispassionately considered this dimension of the matter and has rightly reached the conclusion that the intrinsic value of the share is zero. The liabilities far exceed the assets and even by applying the break-up or back-up method suggested by the members of the Kamani family the value of the shares could be determined only at the intrinsic value of the shares and the Board reached the firm conclusion that each share had zero value. And even so the Board directed that the value of the share be reduced to Re. 1 per share and directed them to transfer the shares at Re.1 per share. Having given our anxious consideration to this factor even on our own, we are fully convinced and fully satisfied that the Board was perfectly right in directing the members of the Kamani family to transfer the shares at the rate of Re.1 per share in order to effectuate the Scheme for revival of KTL. We may also mention that the BIFR was wholly right that the provisions of the Act were immune from challenge by virtue of the declaration contained in Section 2 of the Act attracting the application of Art. 31C of the Constitution. Turning to the merits of the Scheme sanctioned by

8. Section 18(2)(1): "transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be a discounted value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;"

A BIFR, it does not suffer from any infirmity. It has been considered to be feasible and economically viable by experts. It envisages the management by a Board of Directors consisting of fully qualified experts and representatives of Banks, Government and of the employees. The Scheme has the full backing of the nationalized Banks and the encouragement from the Central Government and the State
B Government which have made commitments for granting tax concessions. The backing and the concessions are forthcoming essentially because it is a Scheme framed by the employees who themselves are making tremendous wage-sacrifice and are trying to stand erect on their feet in order to salvage the ship which has been almost wrecked by others. It is appropriate to refer to one more important aspect. The
C Scheme envisages that the liability of the guarantors under the contract of guarantee executed in favour of the concerned Banks should remain unaffected by the framing of the Scheme. BIFR has rightly made a provision in this behalf and sanctioned the Scheme subject to the direction that the sanctioning of the Scheme will not result in the detraction from the obligations incurred by the guarantors towards the
D Banks. Since the Scheme is being framed under the statutory authority and directive in order to revive the same in the larger public interest and inasmuch as there is a necessary declaration contained in Section 2 of the Act which attracts the applicability of Art. 31C of the Constitution, the decision rendered by the BIFR is unassailable and unimpeachable. Besides, the Scheme has been framed as per the direc-
E tion and mandate of this Court in exercise of its inherent jurisdiction and its constitutional jurisdiction under Art. 142 of the Constitution and therefore the framing of the Scheme and the enforcement of the sanctioned Scheme does not detract from or have any impact on the obligation incurred by the guarantors in regard to the debts incurred by KTL in the past.

F

The concerned Banks were and are bound by the directives and mandates. Having given our anxious consideration to the decision rendered by BIFR sanctioning the Scheme taking into account all the factors we fully agree with the reasoning and conclusion of BIFR and hereby stamp the Scheme with the imprimatur of this Court.

G

An apprehension has been expressed that same attempts might be made by those who are not happy with the sanctioning of the Workers' Scheme to throw a spanner in the wheel and to impede the implementation of the Scheme. We do not think any such effort would be made having regard to the fact that the Scheme has been devised as
H per the directions of this Court and that it has now been stamped with

the imprimatur of this Court pursuant to this order. It is of course true that if the legal forum is utilised with an eye on impeding the implementation of the Scheme, it could throw everything out of gear. This cannot be countenanced as implementation of the Scheme with expedition is of the essence of the present exercise. The Act itself has been enacted in order to evolve a speedy and efficient machinery so that a sick industry could be revived with utmost expedition, production could be started, locked up funds could be utilised for furthering socio-economic development. And so that the unemployment of starving workers could be ended before they are starved to death and they are provided with employment to enable them to 'live' with dignity instead of 'existing' in humiliating conditions. We, therefore, make it clear that notwithstanding any order that may be secured by any party from any other forum the Scheme shall be implemented in obeisance 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.

A note of caution is required to be sounded before we conclude this order. While the Act enacted in 1985 does envisage the revival of sick units by the workers who had been rendered unemployed, it is (as far as is known) for the first time that the legislative intent reflected in the relevant provisions of the Act to encourage workers' schemes is being given a concrete shape in this manner. It is perhaps for the first time that such a Scheme sponsored by the suffering employees themselves has come to be sanctioned. Under the circumstances a very heavy burden rests on the shoulders of KEU and the concerned employees. Tens of thousands of similarly situated workers would be watching with anxious eyes the outcome of this bold experiment undertaken by the workers of KTL. On their success or failure will depend the future hope and destiny of tens of thousands of similarly situated workers. Success of this venture will instil new confidence and enable the workers to try to build their own future with their own hands albeit at some initial sacrifice. Failure will be visited with disastrous consequences. We, therefore, not only hope and trust that KEU and the concerned workers will make themselves fully aware of this crucial factor, but also beseech them to rise to the occasion and individually and collectively do their best to make it a success. They will have an opportunity to show to the world that the workers in New India are capable of managing their own affairs, shaping their own destiny, and building their own future. They will also have an opportunity to establish that when the workers are inspired by an ideal

A they can produce optimum quantity as also the best quality. Because, they would be working for a great cause, and working for themselves instead of working for others who often deny to them their legitimate dues and even deprive them of such legitimate dues by appropriating to themselves the fruits of the worker's labour. Be it also realized that the Trade Union Movement, in the event of the success of this exer-
B cise, will be stepping into a new creative phase in the struggle of the working class to assert its identity. One can almost hear the footsteps of the new era in the corridors of future. The workers must therefore ensure the roaring success of this Scheme in this noble cause at any cost.

C We also hope and trust that the concerned nationalized Banks, IDBI, and the concerned Governments will continue to cooperate with the same enthusiasm and zeal and with the same motivation in order to make the Scheme a success so as to usher in a new era in the industrial history of New India. On this note of cautious optimism we conclude.

D R.S.S.