J.K. Synthetics Ltd.

Vs

J.K. Synthetics Mazdoor Union

Civil Appeal No. 1675 of 1970

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

09.09.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This Appeal is by Special Leave against the Award of the Industrial Tribunal, Rajasthan directing the payment of a bonus of Rs. 1,21,000/- apart from an amount of Rs. 90,000/- already disbursed to the workmen of the Appellant for the year 1962-63. The dispute for the bonus year beginning July 1, 1962 and ending June 30, 1963, was raised by the workmen because the Company which had admittedly made profits, did not pay them a bonus though a gratuity of one month was given to them. The following dispute was therefore referred to the Tribunal :

> "Whether workmen of Messrs. J. K. Synthetics Ltd., Kota are entitled to any bonus for the year 1962-63 and whether payment of one month's wages as gratuity by the management can be regarded as payment towards bonus for the year in question ?"

2. The Mazdoor Union (hereinafter called 'the Union') on behalf of the Workmen contended that on the basis of the calculations of available surplus they were entitled to a bonus of 60% in accordance with the bonus formula which will entitle them to a five months wages apart from the one month's wages already paid to them. The first statement of computation filed on behalf of the workers was obviously incorrect because it did not take into account the various prior charges such as Income-Tax, return on reserves, rehabilitation reserve, etc., which are deductible under the Full Bench formula as approved and accepted by this Court from time to time. It therefore filed another revised return showing an available surplus of Rs. 5.34 lakhs. The management on the other hand challenged the validity of the claim as according to it there was no available surplus for distribution even though they had already paid one month's bonus wrongly styled as gratuity. The calculations given by it were also found to be equally wanting. As such it filed a revised calculation showing a net deficit of Rs. 72.35 lakhs. It may, however, be mentioned that as pointed out by the Tribunal, there was no dispute with regard to any of the eight items which comprised the computation of gross profits amounting to Rs. 62.16 lakhs. The Union also did not dispute the deduction of interest on debentures of Rs. 0.06 lakhs; share transfer fee of Rs. 0.05 lakhs; the notional normal depreciation of Rs. 30.57 lakhs; and the return on share capital of Rs. 7.50 lakhs. It had however challenged the deduction of Rs. 4.1 lakhs received as dividend on shares as extraneous income which was being claimed as a deduction by the management. It also disputed an amount of Rs. 1,11,000/- shown as return on reserves employed in the business and Rs. 75.89 lakhs shown as the annual share required for rehabilitation. The method of calculation of Income-tax amounting to Rs. 15.23 lakhs was also objected to. The four items upon which the Tribunal was called on to adjudicate therefore were : (1) Deduction of Rs. 4.10 lakhs received as dividend on shares from the gross profits as extraneous

income; (2) Rs. 1,11,000/- as return on reserves employed in business; (3) Rs. 75.89 lakhs as annual share required for rehabilitation, and (4) Rs. 15.23 lakhs towards Income-Tax.

3. With respect to the first issue the Tribunal felt that even though there was share capital available to the Appellant, instead of utilising it as working capital it had borrowed amounts to work the Nylon factory for which they had to pay an interest of over Rs. 5 lakhs. In these circumstances it disallowed the claim for deduction on the ground that it would be unfair to allow the management to treat the income from investments as extraneous income and still reduce the profits by raising loans and pay interest resulting in diminution of the surplus. On the second issue the objection of the Union for a deduction of Rs. 1.11 lakhs as return on reserves employed as working capital was disallowed on the ground that the statement M.W. 2/1 produced by Talwar, established that the excess of liability over the assets was utilised as working capital during the course of the bonus year. The claim of the management for deduction of Rs. 75.89 lakhs as share required for rehabilitation was however disallowed, as the oral and documentary evidence produced on behalf of the management did not according to the Tribunal either establish that the life of the plant and machinery was only 10 years for 1961-62 Block (hereinafter called 'the first block') and 11 years for 1962-63 block (hereinafter called 'the second block') nor was the divisor of six years for both the first and the second block reasonable. It found that the more reasonable multiplier was 13 years for machinery purchased in respect of the first block and 14 years for machinery purchased in respect of the second block and likewise a reasonable divisor for these two blocks would be four years and two years respectively. In so far as rehabilitation requirements for buildings was concerned the Union did not raise any dispute to the claim of the management amounting to Rs. 0.90 lakhs. As there was also no dispute about the original cost of plant & machinery, the Tribunal by applying the multiplier and divisor as aforesaid computed the annual rehabilitation replacement for plant, machinery and buildings as follow s :

(Rupees in lakhs)----------Block Orig- Multi- Replac- Break- Bala- Funds Net Life Ann-of & inal plier cement down nce avai- Rep- requ-plant cost cost value lable lac- irem-machi eme- entnary ment cost----------1 2 3 4 5 6 7 8 9 10----------61-62 133.00 4 522.00 6.65 525.35 113.28 412.07 13 31.7062-63 15.00 2.0 30.00 0.75 29.25 - 29.25 14 2.10 --------Rehabilitation replacement for machinery = 33.80Rehabilitation replacement for(building as per Companycalculation) = 0.90 -------- Total = 34.70Accordingly the additional rehabilitation to be provided for wascalculated as under :Funds available :Depreciation up to 31-3-6 = Rs. 15.68 lakhsGeneral reserves = 12.00"Investments = 85.60" ------- 113.28"Annual rehabilitation replacement = 34.70"Less : Depreciation provided during the year = 30.57" ------- Additional rehabilitation tobe provided = 4.23"##

4. In so far as Income-tax calculation is concerned the Company's calculation of Rs. 15.18 lakhs was accepted as being in accordance with the calculations under the Income Tax Act with respect to which it was said the Union did not find itself in a position to contest. The Tribunal after giving its finding on the matters in issue computed the available surplus as follows :

#1. Gross profit : Rs. 62.11 lakhs2. Deduct prior charges : Rs.1. Notional normal depreciation = 30.57 lakhs2. Direct tax = 15.18"3. Return on share capital = 7.50"4. Return on reserves = 1.11"5. Additional requirement for rehabilitation = 4.23" ------ 58.59"Available surplus = Rs. 3.25 lakhs.##

Of this 60% payable as bonus would come to Rs. 2,11,000/-. As the Company had already disbursed Rs. 90,000, the Tribunal directed payment of the balance of Rs. 1,21,000-.

5. Before us only two items of controversy have been urged namely : (1) relating to extraneous income of Rs. 4.10 lakhs and (2) relating to rehabilitation requirement amounting to Rs. 75.89 lakhs, the first of which the Tribunal disallowed while in respect of the second it only admitted Rs. 4.23 lakhs. With respect to the first item, the disallowance of Rs. 4.10 lakhs, the management not only claimed this amount but also Rs. 7.5 lakhs as return on paid-up capital of Rs. 125 lakhs at 6% per annum. Obviously even on a cursory glance it would appear that the management was seeking to obtain double benefit in respect of investments made out of the paid-up capital. The reasons which impelled the Tribunal to reject the claim of the management have already been noticed and it would therefore be unnecessary to reiterate them. It however, appeared to the Tribunal that if the Company wanted to exclude income from investments it cannot also be allowed 6% return on that part of the share capital which is invested elsewhere and at the same time be allowed to treat the income of Rs. 4.10 lakhs earned therefrom as extraneous income, because apart from deducting income-tax on this amount the Company also meets the expenses of administration and management in respect of the said investments. In this view it sustained the objection of the Union.

6. The return on paid-up capital is one of the prior charges admissible under the Full Bench formula as approved by this Court. It is based on the principle that while the claim of labour to a share in the profits by way of bonus is in furtherance of social justice, the claim of the capital for a fair return to the investor and also to keep the industry running efficiently which will in the long run enure for the benefit of labour is equally based upon that principle. If therefore, any amount is earned from the employment of capital unconnected with the business of the Company, the labour cannot claim the right to participate in its returns. Apart from this if any reserves are utilised for working capital whether these reserves are depreciation reserves or any other, a return in respect of these also is allowed as a prior charge at a reduced rate because utilisation of such reserves would obviate the borrowing from outside sources for which a higher interest has to be paid and which in the long run will not be for the benefit of the workers. These principles have been laid down by this Court as well accepted in industrial adjudication. While it is true that the Company has the discretion to invest its capita in various activities it cannot on that account deprive the workmen of the benefits of the returns derived therefrom unless of course the investments in such activity is extraneous to the activities of the Company, in the earning of which they had not made any contribution. Whether in any particular case the return on investments amounts to an extraneous income will depend on the facts and circumstances of each case. So far as the case before us is concerned there can be no doubt that the return from the investments is a return on a part of the paid-up capital of the Company which is invested for the purpose of earning an income. It cannot therefore be construed as extraneous income. In Workmen of M/s. Hindustan Motors Ltd. v. M/s. Hindustan Motors Ltd. & Another, ((1968) 2 SCR 311 : AIR 1968 SC 968 : (1969) 1 Lab LJ 523.) to which one of us was a party (Vaidialingam, J.) no doubt where the income of the Company was from interest on fixed deposits, it was treated as extraneous income because it was held that it accrued to the Company without any contribution by the workmen. At the same time the Company was not permitted on equitable ground to claim the interest paid by it on its borrowings as business expenditure. Further in that case even the income received by the Company from its foreign collaborators as commission on sales effected by the said collaborators of their own cars in India was treated as extraneous income to which the Company's workmen made no contribution and was therefore not to be taken into account in calculating the available surplus. In the recent case of M/s. Gannon Dunkerlay & Co. Ltd. v. Their Workmen, (1971 (22) FLR 158.) by a reference to the decision in the Hindustan Motor's (supra) this principle was again reiterated. In that case one of the questions which this Court considered was whether dividends received from trade investments should be deducted from the gross profits for calculating the surplus available for bonus. It was held that "these trade investments

have to be treated as capital assets of the Company forming part of their trading activities. The income accruing from these dividends must therefore be related to the business of the Company as a whole and hence the income from these dividends has to be included in the income for purposes of calculation of surplus available for bonus". In this view we think the Tribunal was justified in disallowing the deduction of Rs. 4.10 lakhs and in fact on behalf on the appellant it was frankly conceded before us that the claim in respect of the said item cannot be pressed on any tenable or valid grounds.

7. This brings us to the only remaining controversy, the provision for rehabilitation requirement. The claim for a prior charge on this account like any other prior charge has to be established by evidence but as this item results in a substantial deduction from the gross profits and reduces available surplus, materially, affecting the claim of the employees for bonus, each constituent element which is necessary for must be proved by satisfactory evidence and cannot be left to surmises and conjectures. It is idle to suggest that as the employees have not in any particular case given any evidence or have not produced any material to controvert the claim of the management that claim must be admitted, because it is the management that is in possession of all the relevant material and is accordingly required to satisfactorily substantiate that claim. The elements which are important for the computation of annual rehabilitation requirement, is, the price of the assets at the original cost, the period for which these assets can be used before requiring rehabilitation and the probable increase in the cost of rehabilitation, due to rise in prices, devaluation, etc. The probable increase in the price of assets at the time of the rehabilitation over the original cost is the multiplier, as it is measured in terms of multipler of the original cost. The number of years after which the asset requires replacement, rehabilitation or modernisation is termed the divisor because the probable cost on a future date has to be provided annually and therefore has to be divided by the number of years at the end of which the amount would be required. There is in this case no dispute between the parties as to the original cost of the plant and machinery which is for the first block Rs. 133.00 lakhs and for the second block Rs. 15.00 lakhs. The only controversy is about the multiplier and the divisor which has been adopted by the Tribunal. The Appellant had in its written statement claimed the multiplier for each of the two blocks as six and the deviser for the first block as 10 and for the second block as 11 but as we have already noticed earlier the Tribunal has accepted the multiplier as 4 for the first block and 2 for the second block and the divisor as 13 and 14 respectively. Even in respect of these the learned advocate for the Appellant admitted that he is not in a position to contest the reasonableness of what has been adopted by the Tribunal but the respondent has challenged the very basis adopted by the Tribunal as being more dependent on guess work than on any evidence or material before it.

8. On behalf of the management the right of the Union to challenge the multiplier and divisor, in the absence of an appeal by it is strenuously contested but in our view there is little force in this objection. The appeal by the employer is against the grant of bonus to the employeesa which implies that the method of computation of the gross profits, as well as of the available surplus and the rate at which the bonus is granted can be subjected to scrutiny. It is needless to recount the several priorities that have to be deducted and the items in respect of which amounts have to be added, before arriving at the available surplus. In an appeal, the several steps which have to be taken for computation of the available surplus either in respect of the actual amounts or the method adopted, can be challenged. If so the Union, even where it has not appealed against the Award, can support it on a method of computation, which may not have been adopted by the Tribunal but nonetheless is recognised by the Full Bench formula of this Court so long as in the final result the amount awarded is not exceeded. We are supported in this view by a decision of this Court in Management of Northern Railway Co-operative Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur and Another,

((1967) 2 SCR 476 : 1967 SC 1182 : (1968) 2 SCJ 379.) where it was held that the respondents were entitled to support the decision of the Tribunal even on grounds which were not accepted by the Tribunal or on other grounds which may not have been taken notice of by the Tribunal while they were patent on the face of the record.

9. A passage from the case of Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and Others, ((1956) 1 SCR 712.) will give the reasons adopted by this Court for the aforesaid view. That no doubt was an election appeal but it was said that though the rules framed by this Court in exercise of its rule-making powers do not contain any provisions analogous to Order XLI, Rule 22 of the Civil Procedure Code, which permits a party to support the judgment appealed against upon a ground which has been found against him in the judgment, it was held that this Court has the jurisdiction to sustain the judgment on grounds which have been found against the respondent.

10. Mudholkar, J., speaking for himself, Gajendragadkar, C.J., Wanchoo, Hidayatullah and Raghubar Dayal. JJ., after considering whether the provisions of Order XVIII, Rule 3 of the rules of this Court, which requires parties to file statement of the case, could limit it only to those contentions which deal with the points found in favour of that party in the judgment appealed from, observed at page 724 :

> "Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order XLI, Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Consideration of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment."

11. In the view we have taken, we will have to consider the plea on behalf of the respondents that the rehabilitation requirement has not been properly established, but this need only be entertained if we come to the conclusion on the main contention that the rehabilitation requirement has not been properly computed and if so computed there will be no available surplus for awarding bonus to the employees.

12. The learned advocate for the Appellant as we said earlier has not seriously insisted on the adoption of the multiplier and the divisor claimed by the Appellant but on the other hand contends that even if the multiplier and the divisor as adopted by the Tribunal is followed the trade investments amounting to Rs. 85.6 lakhs cannot be said to be available for computation of rehabilitation requirement. On this assumption while not disputing the computation of the Tribunal in respect of the original cost which as we have earlier mentioned has not been disputed, even by accepting the multiplier, the breakdown value and the divisor as adopted by the Tribunal the annual amount required would be Rs. 10.71 lakhs and not Rs. 4.23 lakhs as computed by the Tribunal. The only variation between the computation of the appellant and that of the Tribunal is in respect of the funds available which according to the Tribunal is Rs. 113.28 lakhs including the trade investment of Rs. 85.6 lakhs and according to the Appellant it is Rs. 27.8 lakhs comprising of only two items

namely depreciation of Rs. 15.68 lakhs and general reserve of Rs. 12 lakhs. If this computation is accepted then there will be a negative balance of Rs. 2.9 lakhs. This result is arrived at as follows :

#Gross Profit : Rs. 62.11 lakhs.1. Notional normal depreciation = Rs. 30.57 lakhs.2. Direct tax = Rs. 15.18"3. Return on share capital = Rs. 7.50"4. Return on reserves = Rs. 1.11"5. Additional requirement for rehabilitation = Rs. 10.71" --------- Rs. 65.07 " Rs. 65.07 lakhs --------- Negative balance (-) Rs. 2.96 lakhs##

13. It will be observed that the prior charges comprised in Items 1 to 4 not really in dispute. It is only the additional requirement for rehabilitation that is the bone of contention between the parties and this is challenged on two grounds : firstly that the trade investment of Rs. 85.6 lakhs are available funds for rehabilitation requirement as admitted by the Appellant to be so available in the statement which it furnished to the Tribunal; secondly that no claim for rehabilitation requirement has been substantiated.

14. On the first ground it is contended that the question, what was the available amount for the annual requirement was specifically before the Tribunal, and that it was the case of the management and not of the workmen that an amount of Rs. 1,23,90,000/- was available consisting of Rs. 26.30 lakhs towards depreciation, Rs. 12 lakhs towards general reserves and Rs. 85.6 lakhs towards investments. In these circumstances the Tribunal was not called upon to investigate the question as to what exactly was the nature of the investments or whether any of them were realisable or were not available for meeting the rehabilitation requirements. Further there was no grievance made in this behalf in the Special Leave Petition and therefore the management is, it is submitted, estopped from challenging before this Court the validity of inclusion of this amount in the amount available for rehabilitation. It is further submitted that assuming that this question can be agitated, in the absence of any specific investigation as to the nature of the investments and more particularly when the management itself had shown this amount as being available, the Appellant cannot be permitted to say that it is not available. The contention of the respondents proceeds on a basic error namely that the Appellant had held out that the trade investments were available for rehabilitation requirement. This is not so. In the amended written statement filed on 4-7-69, after obtaining the permission of the Tribunal on 3-7-69, the Appellant claimed the annual share required for rehabilitation as Rs. 93,56,207/-. Even in the statement filed earlier on 10-4-69, it showed two amounts as being available namely depreciation of Rs. 26.31 lakhs and general reserves of Rs. 12 lakhs. It is submitted by the Appellant that only when the arguments were completed on behalf of the Company on 9-12-1969, having regard to the claim made by it for deduction of Rs. 4.1 lakhs as extraneous income derived from the trade investments, the corpus of Rs. 85.6 lakhs which earned that income was also shown as available and a statement to that effect was filed on the same day to facilitate the Tribunal in arriving at an Award. In asmuch as we are not allowing the deduction of Rs. 4.1 lakhs as extraneous income, the question whether the corpus should be treated as being available also has to be considered in the light of the decisions of this Court. The Appellant in our view is fully justified in urging this contention before us, as it cannot be said that this was not raised before the Tribunal. The Tribunal had ample opportunity of considering this aspect since it did specifically consider the nature of the income therefrom.

15. Assuming for the present that the adoption by the Tribunal of the multiplier and divisor can be justified, though the validity of the Tribunal's award in this behalf has been seriously challenged before us, the question to be determined is whether the investments of the Appellant amounting to Rs. 85.6 lakhs is available for rehabilitation which in turn will depend upon whether these investments are made in the course of the business of the Company or are unconnected with its

business and only invested with a view to earning extraneous income. The principles upon which rehabilitation grant is to be calculated as laid down by this Court is that the depreciation reserves, or in the case of other reserves only if they are available as liquid assets and cash and not earmarked for any specific purposes, are deemed to be available and can be taken into account in computing the annual requirement. The depreciation reserve, the object of which is to meet the requirement of replacement, rehabilitation and modernisation at a future date is considered to be always available Whether it is in the form of a liquid asset or not. It is obvious that even this amount will not achieve the purpose of recouping the cost of replacement of the wasted assets and it is for that reason the claim of the industry for rehabilitation in addition to the admissible depreciation has been recognised. Then there are the general reserves, capital reserves and development reserves all of which will be considered to be available if they are in the form of liquid assets or cash. The question in some of these cases will be whether they are considered to be the capital assets of the Company kept in that form in the course of its business or kept as investments outside the business of the Company for the purposes of earning an extraneous income. If it is the former then they are available but if it is the latter they cannot be brought into account for calculating the rehabilitation requirement. As it happens in most cases the claim by the employer is that the reserves are either wholly or partly not available because they have been used as working capital and consequently the amount to be utilised should not be excluded from the amount claimed towards rehabilitation. The principles governing what deductions should be made from out of reserves before calculating the amount in respect of rehabilitation for the bonus year were set out in the Full Bench formula and have been restated in Associated Cement Co. Ltd. v. Its Workmen. (1959 SCR 925 at 979 : AIR 1959 SC 967 : (1959) 1 Lab LJ 644.) The two items according to that decision that are to be taken into consideration are the general reserves available to the employer and the reserves which have been reasonably earmarked for specific purposes of the industry. In explaining what was meant by availability of the reserves or the earmarking for specific purposes Subba Rao, J., as he then was, in Khandesh Spinning & Wvg. Mills Co. Ltd. v. The Rashtriya Girni Kamgar Sang, Jalgaon, ((1960) 2 SCR 841 : AIR 1960 SC 571 : (1960) 1 Lab LJ 541.) observed at pages 845-846 :

> "We do not think that by using the said Words this Court meant to depart from the well recognised principle that if the general reserves have not been used as working capital, they cannot be deducted from the rehabilitation amount. The reserves may be of two kinds. Moneys may be set apart by a Company to meet future payments which the Company is under a contractual or statutory obligation to meet, such as gratuity, etc. These amounts are set apart and tied down for a specific purpose and, therefore, they are not available to the employer for rehabilitation purposes. But the same thing cannot be said of the general reserves; they would be available to the employer unless be has used them as working capital. The use of the words "reasonably earmarked" is also deliberate and significant. The mere nominal allocation for binding purposes, such as gratuity etc., in the Company's books is not enough. It must be ascertained by the Industrial Court on the material placed before it whether the said amount is far in excess of the requirements of the particular purpose for which it is so earmarked and whether it is only a device to reduce the claim of the labour for bonus."

What is meant by the above observations in Khandesh Spinning & Wvg Mills case (supra) was later explained by Wanchoo, J., as he then was in Bengal Kagazkal Mazdoor Union and Another v. The Titaghur Paper Mills Co. Ltd. ((1964) 3 SCR 38 : 1963-II LLJ 358 : 1963 (7) FLR 202.) This was what was said at page 54 :

> "All that that decision lays down is that that part of the reserves which go to make up the working capital which is in the shape of raw materials, etc., or earmarked reserve will not be deducted from the gross rehabilitation amount; it does not lay down that all cash reserves in the shape of depreciation reserve, general reserve, renewal reserve, and so on and also in the shape of investments and advances cannot be deducted from the gross rehabilitation amount as they may be used as working capital next year".

16. Now the question of trade investments unconnected with the purposes of the industry fell for consideration in the National Engineering Industries Ltd. v. Its Workmen. ((1968) SCR 779 : AIR 1968 SC 538 : (1968) l Lab 816.) In this case the Company had an investment of Rs. 18.22 lakhs in shares, which were treated by the Tribunal as liquid assets available for rehabilitation. But the Company contended that this investment can either be treated as a trading transaction carried out in the ordinary course of business or as a capital asset. If it was the former then it should have been allowed the loss of Rs. 1.72 lakhs as trading expenditure but instead the tribunal had added the profits therefrom to the gross profits, thereby treating the investment as capital asset. It could not, therefore, deduct Rs. 18.22 lakhs as a fund available for rehabilitation cost. Negativing this contention of the Company, Shelat, J., observed at pages 796-797 :

> "We fail to see any contradiction on the part of the Tribunal. The balance-sheet for the year 1956-57, contains two schedules : Schedule A shows fixed assets and Schedule B shows trade investments of the value of Rs. 18,21,571/-. The Company not being an investment Company the investment of Rs. 18.22 lakhs in shares of other joint stock companies prima facie represents extra capital not required as working capital for otherwise the Company could not have spared this amount for investment in the stocks of other companies. The Tribunal was right in treating this investment as a capital asset and in refusing to treat the loss therefrom as trading expenditure. The Tribunal at the same time could deduct this amount from the rehabilitation cost because that amount was available to meet the rehabilitation cost. The investment in shares could easily, if the Company was so minded, be converted into cash and utilised for replacement of its worn out machinery."

17. In Gannon Dunkerlay's case (supra) these principles were reiterated. It was held in that case that in calculating rehabilitation grant one of the principles which this Court has laid down is that the depreciation reserve must always be deducted irrespective of the fact whether it is available or not as a liquid asset. In addition other reserves like general reserve are also to be deducted if they are available as liquid reserves and are not ear-marked for any specific purpose. The capital reserve and the development reserve can also be deducted if there is material to show that they existed in the form of liquid assets or cash. The question would be whether they are capital assets of the Company kept in that form in the course of its business or whether they have been treated as investments outside the business for the purposes of earning extraneous income. If they are investments made in the course of its business they are to be treated as part of the capital but otherwise if they are extraneous to the business they do not form part of the reserves available for rehabilitation.

18. It may be observed that in the National Engineering Industries Ltd. v. Its Workmen (supra) an exception had been made in the case of an investment Company, the investment of which is to be treated as working capital employed in the business of the Company. The Companies Act placed restrictions on the purchase of shares by one Company, of shares of any other body corporate except to the extent and except in accordance with the restrictions and conditions specified in Section 372

of that Act amended by Act 65 of 1960. By Section 373 onit is enjoined that companies investing after April 1, 1952 in shares of any other body corporate in exercise of the limit specified in sub-section (2) and the second proviso to the said sub-section of Section 372 to obtain the authority of the Central Government within six months from the commencement of the Act and if such authority and approval is not so obtained the Board of Directors must dispose of the investments in excess of the limits specified in the aforesaid provisions within two years from the commencement of the Act. It is also provided by Section 372(10) that after the commencement of the Companies Amendment Act a statement should be annexed to the balance-sheet giving the details of, the investments acquired; the bodies corporate in the same group, of which the shares have been acquired, whether the investments are existing or not, and the nature of the said investments. An exception however has been made by the proviso to the said sub-section in the case of investment Companies (which are those whose principal business is the acquisition of shares, etc.) that it shall be sufficient if the investments, existing on the date as at which the balance-sheet to which the statement is annexed has been made out.

19. From these provisions it is contended that the balance-sheet in this case shows only those details which are required to be given by an investment Company which is also consistent with the plea that the investments of the Appellant were made prior to 1952, when it was an investment Trust Company and these investments which are the same exceeded the limits prescribed by the Companies Amendment Act without having to conform to the conditions of having either to obtain approval of the Central Government or to dispose of the excess within two years, i.e. by March 31, 1962.

20. On behalf of the respondents however it is submitted that there has been no finding by the Tribunal that the Company is an Investment Company or that the investments were made prior to 1952, as an Investment Company which would entitle it to treat those investments as not available for the purposes of rehabilitation within the exception indicated in the National Engineering Industries case (supra). In our view this submission has no force. There is ample justification in the contention of the Appellant's Advocate that the Tribunal did advert to the fact that the Company invested initially a capital of Rs. 75 lakhs as an investment Trust Company and from its inception these investments have been made and that it is only after the amendment in 1960, when it was not possible for it to invest further amounts that it changed its name, increased its capital and started the present industry. On this aspect of the matter the Tribunal stated thus :

> "Originally the Company was floated as J. K. Investments Trust Ltd. It had a share capital of Rs. 75 lakhs. They invested this amount and some loans in debentures and loans. Due to amendments in Company law they had to stop further investment from 1960, onwards and changed the name of the Company to J.K. Synthetics Limited, raised additional Rs. 50.00 lakhs share capital and started this Nylon factory. Thus to date the share capital of the Company is Rs. 125.00 lakhs including the old share capital of Rs. 75.00 lakhs of the J. K. Investments Trust Ltd. Now instead of utilising the old share capital and loans invested in debentures the Company took separate loans to work the Nylon factory for which according to the balance-sheet they had to pay over Rs. 5 lakhs as interest on loans."

It is also apparent from Schedule 'E' statement forming part of the balance-sheet as on June 30, 1963, that a list of trade investments held by the Appellant has been given. There are two notes attached thereto. Note (1) states Investments in the Companies marked with asterisk exceed ten per cent. of their respective subscribed capital. These investments were acquired before the

commencement of the Companies (Amendment) Act, 1960, while Note (2) states - The total investments of the Company exceed thirty per cent. of its subscribed capital. These investments were acquired before the commencement of the Companies (Amendment) Act, 1960.

21. Having regard to these undisputed facts it appears to us clear that the trading investments were made prior to 1960, when the Company was an Investment Company, as such these investments are not connected with the activities of the Company, are extraneous to its business and do not form part of the reserve available for rehabilitation. In the circumstances the Tribunal is not justified in including this amount in the amounts available for rehabilitation purposes.

22. While this is so and the result of the non-exclusion of Rs. 85.60 lakhs would result in a negative balance, the respondents as we have already held are entitled to challenge the claim for rehabilitation on the ground that the essential requisites have not been established by any cogent or sufficient evidence. In computing the requirements for rehabilitation as has been stated often, regard must be had, to two imponderables out of the three main elements because one of them namely the original cost of the asset is specifically ascertainable while the other two have to be established as near as possible which might to some extent involve an estimate based on evidence deducible therefrom. These two imponderables are multiplier and the divisor. Unless all these elements elments are determined the amount required for rehabilitation cannot be ascertained. Of course, the scrap value of the old assets has also to be ascertained but this does not involve any difficulty because normally it is taken as 5% of the value of the assets at cost. Even so the determination of the amount for rehabilitation no doubt poses problems but it is suggested that a reasonable method would be to divide them into blocks, according to the nature of the asset and the year in which the assets have been acquired. The cost of the separate blocks has then to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the plant and machinery would need replacement and the probable price of such requirement at a future date when the asset requires replacement. In determining this difficult question the Tribunal as already observed must have before it all available evidence from which a reasonable and probable adjudication can be made in respect of these essential requisites.

23. The Respondent's Advocate submits that the Tribunal while quite properly rejecting the evidence produced on behalf of the Appellants indulged in guess work when it adopted arbitrarily the multiplier and the devisor. It is his case that the determination of the life of machinery depends on various factors such as for instance nature of the machinery, its quality, the nature of the industry, the efficiency of workmen, etc. In the Hindustan Motor's case, (supra), Bhargava J., after examining the several cases relating to this aspect of the matter observed at page 319 :

> "The life of machinery of one particular factory need not necessarily be the same as that of another factory. Various factors come in that affect the useful life of a machinery. There is, first the consideration of the quality of machinery installed. If the machinery is purchased from a country producing higher quality of machines, it will naturally have longer life than the machinery purchased from another country where the quality of production is lower. Again, the articles on which the machinery operates may very markedly vary the life of a machine. If, for example, a machine is utilised for grinding of cement the strain on the machine will necessarily not be the same as on a machine which operates on steel or iron."

24. In Honorary Secretary, South India Millowners' Association & others v. The Secretary, Coimbatore District Textile Workers' Union, ((1962) 2 Supp SCR 926 : AIR 1962 SC 1221 : (1962)

1 Lab LJ 223.) to which a reference had been made in the above case, after accepting, on the facts of that case, that the life of the textile machinery was adopted as 25 years, this Court laid down the following principle at page 933 :

> "We are not prepared to accept either argument because, in our opinion, the life of the machinery in every case has to be determined in the light of evidence adduced by the parties."

25. The Advocate on behalf of the Appellant on the other hand says that the Full Bench Formula for determining rehabilitation requirement as accepted in Associated Cement Companies' case (supra) laid down an elastic measure for determining the probable cost which was to be estimated "as near actualities or realities as possible". At pages 967-968 Gajendragadkar, J., as he then was observed :

> "The estimate about the probable life of the plant and machinery is itself to some extent a matter of guess work and any anticipation, however, intelligently made, about the probable trend of prices during the intervening period would be nothing but a guess. That is how, in determination of this problem, several imponderables face the tribunals. One of the points which raises a controversy in this connection is : What level of prices should the tribunal consider in making its calculations about the probable cost of replacement.....It seems to us that in order to enable the Tribunal to make an estimate in this matter as near actualities or realities as possible it is necessary that the Tribunal should be given full discretion to admit all relevant evidence about the trend in price levels.....The problem of determining the probable cost of replacement itself is very difficult; but the difficulty is immeasurably increased when it is remembered that the claim for rehabilitation covers not only cases of replacement pure and simple but of rehabilitation and modernisation. In the context rehabilitation is distinguished from ordinary repairs which go into the working expenses of the industry. It is also distinguished from replacement.....That is why we think it is necessary that the Tribunals should exercise their discretion in admitting all relevant evidence which would enable them to determine this vexed question satisfactorily."

26. Keeping these observations in view what we must see is whether the Tribunal was justified on the evidence in adopting the particular multiplier and the deviser. The stand taken by the management is that it has produced sufficient evidence in support of its own multiplier and divisor and in any case the learned advocate says the Tribunal is right in arriving at its own conclusion. In fact it is submitted, the management had made an application for appointment of an assessor to assist the Tribunal as an expert for determining the several questions appertaining to the computation of rehabilitation requirements, but that was rejected as the Tribunal did not feel any necessity for it and there is nothing more which the management could do in the circumstances.

27. It is pointed out that the Nylon industry was a new industry at the time when it was started and the evidence of the General Manager, who had been with the Company from the initial stages and throughout the negotiations for purchase of the machinery, says that according to the manufacturers the life of the machinery could only be six years. That apart the management also produced sample invoices for each year and adduced the evidence of the manager to prove what would be the cost of rehabilitation. In fact it is said that the Appellant was fortunate in having actual invoices of machinery purchased because the Company had only then expanded its undertaking. The Tribunal rejected the oral evidence on the ground that the witnesses produced by the management were no

experts and they did not throw any material light on the matters to be adjudicated by it. It also rejected the documentary evidence on the ground that the machinery which was said to have been purchased was not the same as was sought to be replaced and in any case there was not sufficient evidence for it to accept the multiplier and divisor as claimed by the management. Whether this criticism is valid or not will depend largely on what in fact weighed with the Tribunal in arriving at the multiplier and the divisor. No doubt the employer did make an application to the Tribunal as noticed earlier and the same was rejected on 5-8-1969 as it did not find it necessary to appoint an assessor. The application itself was for questioning the Tribunal to appoint an assessor if it thinks necessary. The management cannot without discharging its duty of placing all the necessary material before the Tribunal ask it to appoint an assessor who would be useless without that material. We do not think in the circumstances the Tribunal was wrong in rejecting the application.

28. The Tribunal considered the evidences of Sarva Shri Jain, Aggarwal and Talwar in detail. With respect to Jain it noted that certain machinery worth about Rs. 10 lakhs had already been replaced and that there had been hundred per cent. increase in prices also due to devaluation. The witness was however, not able to give any details as to when the replacement of the parts and machinery took place even though the management kept the record of the replacement of the machinery. He could not also explain what exactly was the impact of the devaluation of Rupee on prices. He did not see the quotations of the machinery. It was, therefore, concluded that his statement both with regard to the life of the machinery and the replacement cost was quite useless and was based on hearsay. Shri Aggarwal's evidence was also considered unsatisfactory, both with respect to the estimate of the replacement cost and the life of the machinery. His calculations was based on a comparison of the original cost of machinery in invoices Exs. M-1, M-2 and M-3 and their cost in 1967, as given in the corresponding invoices Exs. M-4, M-5 and M-6 and the devaluation of the Rupee. The Tribunal the considered the discrepancy between the machines mentioned in various exhibits. No doubt there is some justification in the comment of the learned advocate for the Appellant that some of these invoices were not relied upon by the Tribunal merely because the machines mentioned therein were different in size and weight from those which were installed in the factory. Undoubtedly there would be a variation because the ingenuity of the inventor and technician is not static and as time goes on there are improvements, renovations and changes that make the machine more sophisticated and efficient. While this is so the question is whether satisfactory evidence has been produced to prove the total cost of rehabilitation and also the life of the machinery. The evidence of Talwar was equally found to be defective. He was greatly relying on the Handbook of Chemical Engineers by John Parry for establishing the life of the machinery. He said that in that book the life of a Chemical plant working in three shifts is shown to be 11 years. He also admitted that the Author gives only the guideline for Income-Tax purposes only. An extract of the Parry's Handbook was also given by the Tribunal, which stated its conclusions as under :

"In view of the above said infirmities it is evident that the management's claim for rehabilitation is very much inflated. The selection of the average multiplier is rather arbitrary or at least quite generous to the management and their estimate about the life of the machinery is slightly conservative. From the available evidence on record he then proceeds to make his own estimates which as far as the life of the machinery is concerned was placed between that adopted for textile machinery of 25 years and the life given in the Chemical Engineers Handbook of 11 years. It said after referring to the statement in the Chemical Engineer's Handbook that the life of a Chemical machinery must be more than 11 years in America where they work sufficiently to the maximum capacity of the machinery. It was observed here the working conditions being different the machinery is likely to last longer and certainly due to poor economic conditions in the country the management also cannot afford to discard such valuable machines in eleven years only. The life of

the plant therefore must be more than 11 years. On the other hand the ordinary life of textile machinery is taken to be 25 years or more. In this view of the matter if we take the life of the machinery as 14 years it would still be on the side of the conservation estimate."

29. Regarding the multiplier the Tribunal said that :

> "The 1961-62 Block of the machinery would require replacement according to our estimate in 1975-76. The Company's claim of six times the original cost based on a comparative study of invoices Exs. M-1 to M-3 on the one hand and Exs. M-4 to M-6 on the other is very much inflated.....The Company has not produced the current price list also of the machinery or any price indices indicating the trend of prices of machines. The prices of machines are more stabilised than prices of consumer goods. The production of the machines has also gone up in the country and it is not impossible that by 1975, we might manufacture our own machines for Nylon factory also. Even otherwise the prices of imported machines are not likely to be more than four times. Therefore, in our opinion the multiplier should only be four for the block of 1961-62. In awards also relied upon by Shri Talwar even though they considered only pre-war block of machines, in no case they allowed a multiplier of six. For the block of machines installed in the accounting year, ordinarily the unit is taken as the multiplier but as there has been in the meantime devaluation of the Rupee we think it would on the whole be fair to adopt two as a suitable multiplier for the block installed in the accounting year."

30. It appears to us that this is an unsatisfactory way of determining the two most important factors required for computing the rehabilitation requirement. The evidence produced before the Tribunal consisted only of a few invoices which were to serve as samples of the price of machines to show that they have gone up. We are not impressed with the submission of the learned Advocate for the Appellant that a complete set of invoices in respect of all the departments of the industry which required rehabilitation had been placed before the Tribunal. Indeed the very application for appointment of assessor demonstrably contradicts this assumption. In this application the management stated that it did "examine Serva Shri S. S. Aggarwal, A. C. Talwar as its expert witnesses and have filed some invoices by way of example to show the trend in rising cost in plant and machinery. With regard to useful life of the plant the Respondent places reliance on Chemical Engineer's Handbook, IVth Edition, by John Parry" (emphasis ours).

31. It is apparent from this application that the management was relying only on a few sample invoices which they said they had produced while depending heavily only on Parry's Handbook for ascertaining the life of the machinery and the probable cost.

32. We have also gone through the evidence of the three witnesses and the invoices referred to and we think that the Tribunal rightly rejected this evidence as not being of much assistance. It is quite probable that the price of the indigenous industry as appearing from the bulletin of the Reserve Bank of India has gone up but that does not furnish a basis for arriving at any specific multiplier or divisor for the Appellant's plant. All that the invoices produced before the Tribunal establish is only the probable cost of machinery of Rs. 2 1/2 lakhs, in an attempt to prove the cost of replacement of plant and machinery worth Rs. 825 lakhs. The Tribunal was therefore, amply justified in saying that the only evidence given is of the few invoices the value of which is only 2 1/2% of the requirement of the replacement cost which in our view is not sufficient to establish how many machines in each department of the industry are required, what is the nature of those machines and what is the

probable cost of each of these machines. We are far from satisfied that the management has placed before the Tribunal any satisfactory evidence much less sufficient evidence to arrive at a multiplier and divisor nor has the Tribunal any basis for arriving at its own multiplier and divisor except it be on a pure conjecture and guess work. The result is that though the Appellant is able to succeed in one of the main point of his Appeal, the Appeal will have to be dismissed as the Respondents are able to sustain the Award on other grounds. The circumstances of the case justify a direction for each party to bear its own costs

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