O/c

BEFORE THE BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

CASE NO. 48 OF 1993

In Re : Binny Ltd

PRELIMINARY OBJECTIONS TO THE DRAFT SCHEME AND APPLICATION FOR DIRECTIONS FILED BY MADRAS LABOUR UNION

1. The Board has circulated a Draft Scheme along with its Record of Proceedings dated 30-03-1994 for the revival of Binny Limited. The Draft Scheme is based on a Scheme submitted by the Management and appraised by the Industrial Development Bank of India, the Operating Agency, pursuant to the proceedings of the Board dated 15.10.1993.

2. After the Draft Scheme was circulated, the Management of Binny Limited filed Special Leave Petition (Civil) No. 768 - 70 of 1994 in the Supreme Court against the orders dated 24.3.1994 and 29-03-1994 of the Madras High Court praying that the Board should be permitted to finalise the Scheme and implement it.

3. The Supreme Court, after hearing the Management and the Madras Labour Union which was Respondent No.1 before it, disposed of the Petition on 13.05.94 with the following Order :

> " Heard Learned Counsel for the Petitioner and respondent No. 1. The only modification that is needed in the order of the

High Court dated 29-03-1994 is that the B.I.F.R. may finalise the Scheme after hearing the Workmen. However, the Scheme so finalised will not become operative till the High Court either by final or interim order approves of the said scheme. The B.I.F.R. will hear the objections of the workmen and also furnish the relevant material to them that may be necessary to file their objections. The B.I.F.R. will act on this order.

The parties should approach the High Court for expeditious disposal of the writ petitions. The Special Leave Petitions are disposed of.

The transfer petitions are allowed to be withdrawn. "

4. The Madras Labour Union, the petitioner herein, is India's first Labour Union formed in the year 1918. The workers of the Buckingham & Carnatic Mills (hereinafter referred to as 'B & C Mills') at Madras, which is the largest industrial unit of Binny Limited, have had the unique and proud record of having had one trade union so far, which is the Madras Labour Union. It has been recognised so by the Company and all the negotiations and settlements have been only with the Madras Labour Union. That is why even in the proceedings initiated against the

Company suo motu by the B.I.F.R. on 26.06.1991, the Madras Labour Union alone was heard by the Board as representing the workers. The work force in the B & C Mills is also the largest of all the units of the Company.

5. Thus, the Madras Labour Union representing a majority of the workers has a great stake and interest in the proper running of the industry and the well-being of the workers. In fact, being the only Union for the workers of the B & C Mills, the Management of the Company has given the Madras Labour Union the facility of Check-off system for collecting its membership subscription. Even as late as in February 1994, the Management remitted an amount of Rs. 10,054/71 to the Union under the Check-off towards workers' subscription for January 1994 after deducting certain dues of the Union to the Management. Thus at Rs. 2/- per head which is the monthly Membership subscription of the Union, it shows that atmost all the regular workers of the B & C Mills out of the total strength of 5,314 has are its members.

OBJECTION TO THE PRESENT PROCEEDINGS :

6. The Madras Labour Union has a basic objection to the Draft Scheme on the ground the present proceedings before the Board are, and at any rate, a fresh scheme for revival as proposed now is, not necessary, since there already exists a scheme for revival and rehabilitation of Binny Limited, formulated pursuant to a writ proceedings before the Madras High Court (in W.P.No.5102/91)

and a Government Order dated 12.3.1992 issued by the Government of Tamil Nadu. The Management of Binny Limited and the I D B I were both parties to those proceedings and are bound by them. The proposed scheme, apart from not being in the interest of the industry, is in utter violation of the undertakings given by the Management and the I D B I to the Madras High Court and the Government of Tamil Nadu based on which the already existing Rehabilitation Scheme was framed and G.O. No. 28 dated 12.3.1992 was issued by the Government.

7. It is but proper that the B I F R takes note of and gives effect to the proceedings before the Madras High Court, which were not ordinary statutory proceedings, but one under the extraordinary Constitutional jurisdiction of the High Court under Article 226 of the Constitution, and are undoubtedly superior jurisdiction to the BIFR proceedings. In fact, the BIFR itself said so in its proceedings dated 11.11.91 in the case of this company and deferred its proceedings, since the High Court was seized of the matter. Further, the G.O.No. 28 dated 12.3.92 also cannot be ignored, since that is a legal order, based on which parties have acted and a statutory settlement under Section 12 (3) of the Industrial Disputes Act, 1947 has been entered into between the Management and the Madras Labour Union on 24.3.1992, which is the majority Union and the sole recognised Union until recently.

8. More significan..., the I.D.B.I. itself

sanctioned a rehabilitation scheme on that basis by its letter of Intent dated 22.12.1992. Further, based on the G.O. dated 12.3.1992 and the statutory settlement dated 26.3.1992, an Expert Tripartite Committee consisting of the South India Textile Research Association (hereinafter called SITRA), the Management's representative and the Madras Labour Union's representative undertook a detailed study on revision of work-load and work-norms and a unanimous Report has been given in 1993. In fact, the provisions of the said settlement and the 1993 Report of the SITRA Expert Committee form part of the proposed scheme incorporated in the Draft scheme, in so far as the workers' obligations are concerned, but not the Company's. The Management and the IDBI cannot be allowed to approbate and reprobate at the same time.

9. Thus when the Rehabilitation Scheme was in the process of implementation and the parties had acted on that basis, the Management has approached the BIFR with an application under Section 15, as if there was no scheme for the rehabilitation of the Company. They also deliberately chose not to make the Madras Labour Union a party to the present proceedings initially, though the Union was being heard by the BIFR in the suo motu proceedings against the Company. The purpose behind the Company's present application under Section 15 is thus clear.

10. It should also be noted that earlier when

the BIFR initiated suo motu proceedings on 26-6-91, the Company avoided the jurisdiction of the Board, though the industry had become sick even then. In fact, the BIFR found that the IDBI and the other financial institutions had also failed in their duty to check sickness. They thus failed in their statutory duty even to report sickness to the Board. Hence, the present application by the Company is not with the bonafide object of rehabilitation, but only to defeat the existing rehabilitation efforts and to appropriate the assets of the company. The observations of the IDBI itself in its Report submitted not to the BIFR says (para 2.12 of the Report)

> " ...... BIFR had conducted a suo motu enquiry on June 26th, 1991 to determine whether the company could be declared sick when it was observed by the Bench that the Company had been revaluing its real estate properties since 1982 and showing these as stock in trade. The book profit as a result of re-valuation of the fixed assets was being adjusted against the operational loss for that year. In case this was ignored, the company would qualify as a sick company under SIC Act, 1985. However, the said proceedings were stayed indefinitely by BIFR at hearing held on November 11, 1991 in view of pending litigation faced by the company in the matter of closure of B & C Mills, Madras. "

11. The conduct of the Company and the IDBI are relevant in order to test the bonafides behind their proposed scheme, which is the basis of the Draft Scheme, After the present proceedings were initiated, the Union now learns that the IDBI chose to cancel the sanction to the existing Rehabilitation Scheme by its letter dated 5.1.1994.

12. The present proceedings before the BIFR have been challenged in the Madras High Court on these grounds, among others, ... W.P.Nos. 5117 and 5118 of 94.

13. The said contentions are relevant to decide whether the Draft Scheme should be proceeded with or not. The Madras Labour Union requests that its affidavits filed before the Madras High Court may be treated as part of this Petition, for a complete statement of its case before the Board.

14. The B & C Mill has seen three closures in 1981, 1984 and in 1991 in recent times. Its problems have been mainly due .. mismanagement by the promoters and lack of modernisation. Every time the Madras Labour Union has had to make great efforts for reopening and the workers have made enormous sacrifices in terms of giving up certain allowances, wage freeze since 1979 (inspite of two wage revisions in the textile industry in the State since then) and also reduction of man-power. Their number once more than 15,000 strong, is now reduced to just 5,314 permanent workers and a

a couple of thousands trainees and badlis. The company has further retrenched about 1300 permanent workers and stopped all trainees and badlis.

15. The workers have struggled with their low wages to give maximum production and the Mill started showing cash profits after 1986-87. When a wage-revision was due, the management insisted on further rationalisation of man-power and the Union had in principle agreed to the same and was negotiating to identify specific categories for the purpose. While so, suddenly the management threatened closure with an application to the Tamil Nadu Government under Section 25-O of the Industrial Disputes Act, 1947. The reason given by the management was ~~xf~~ that the IDBI had framed a scheme for its rehabilitation and imposed a condition of shifting the Process House of the Mills to Bhuvanagiri, 240 kms from Madras. Since the workers did not agree to it, the management said it applied for closure since otherwise the IDBI would not find the rehabilitation package.

16. The Madras Labour Union demonstrated before the Commissioner of Labour, Madras, that the management had never discussed the question of shifting the Process House from Madras to Bhuvanagiri. The extracts from the 1989-90 IDBI scheme was given to it for the first time before the Labour Commissioner, wherein the workers found that the following adverse conditions were there :

a) Process House will be shifted from

Madras to Bhuvanagiri.

b) The weaving operations at the Madras Mill was to be reduced from 2074 looms to 808 looms and the spindleage was to be reduced from 88208 spindles to 66153 spindles.

c) After reducing the weaving activity, yarn was to be supplied by the B & C Mills to powerlooms, who would in turn weave the cloth. The said cloth woven by the power-loom was to be purchased by Binny Ltd. for processing in the Process House at Bhuvanagiri. The cloth will ultimately be sold with as Binny cloth. This process of buying cloth from power-looms was called 'Vendor Operations' and the process House at Bhuvanagiri by 1993 had to develop 100 % Vendor Operations.

d) On account of the above, work-force was to be reduced at B & C Mills from 8,947 including badlis and trainees to 3,335.

17. The workers through the management opposed the scheme as a ploy of the management to eventually close the Mill at Madras and to usurp the profits by doing real-estate business. They also stiffly opposed 'Vendor Operations' as it was a means to reduce the work-force, the loomage and finally the activity of B & C Mills. They also opposed shifting the Process House to Bhuvanagiri as a mala fide action of the management to ultimately

make it independent of the B&C Mills at Madras and appropriate the assets and profits. The Bhuvanagiri Project was to be put up in lands belonging to Thirumagal Mills owned by the present promoters of Binny Ltd., viz., the Udayar Group.

18. The Labour Commissioner rejected the management's request for closure on the geound that it should discuss the scheme for shifting the Process House with the workers. The Management challenged the Labour Commissioner's Order in W.P.No. 5102/91 before the Madras High Court.

19. The following facts with relevant dates during the proccedings before the Madras High Court and the Government thereafter are pertinent.

1.4.91	- The Management went ahead and affected an illegal closure despite denial of permission by the Labour Commissioner.
APRIL 1991	-W.P. 5102/91 filed by the Management challenging Labour Commissioner's Order.
25.4.91	- The Madras High Court appointed Mr. K.B.N.Singh (Former Chief Justice of Madras High Court) as Commission to resolve the problem. The following questions were referred to the Commission :
	(i) Whether for the proper running

of the Mills, the proposal to shift the process House to Bhuvanagiri is justified. Measures to protect workers' interests to be suggested

(ii) Whether shifting of process House will prejudice workers' interests.

- The Commission in its Report stated that shifting the Process House to Bhuvanagiri was not necessary. The " Vendor Operations" which the management wanted to resort were held to be unfair and against workers' interests.
- Though the Commission appointed by the High Court directed the IDBI to furnish documents to the Union, the IDBI refused to do so, because of the objections raised by the Management.
- The Management gave an assurance to the Commission that work-force at Madras will not be reduced on account of shifting the Process House to Bhuvanagiri. The Commission observed that the assurances given by the management is binging on IDBI and SBI also.

- IDBI agreed to reconsider revision of the scheme after discussions with workers.

- The High Court noted our objections that the scheme was only a device by the management to shift the Process House to Bhuvanagiri and make it an independent unit and ultimately close down the Mills at Madras, by disposin of the vast lands as real estate business.

- The Management gave an assurance to the High Court that

  (i) the work-force at Madras will not be reduced;
  (ii) "Vendor Operations" would be dropped; and
  (iii) that the Scheme was bonafide meant for rehabilitation and running the B & C Mills without any reduction of its activity.

27.9.91 - High Court disposed of W.P.5102/91 and the matter was remanded to Labou Commissioner to reconsider the case after issuing notice to all the parties and furnishing materials to the workers.

- Asfar as the proposal to shift the Process House to Bhuvanagiri, High Court observed " there will be sufficient materials, therefore available, which will go either way to show whether the Unions have taken a rigid stand or the Management has created some sort of contrivance to close the Mills finally at Perambur as the workmen alleged. "

26.6.91 - The BIFR initiated 'suo motu ' proceedings in Case No. 51/91 to enquire into the sickness of the Company.

- The BIFR observed that the Management' accounts were not proper and the Company had been revaluing its real estate properties since 1982 and showing these as stock in trade. Auditors, Government and the Financial Institutions including IDBI have not made a proper check and have been mere spectators to these irregularities. The Income tax authorities also have been misled in the matter and reserved orders. The BIFR ordered production of materials.
- The Petitioner- Union pointed out that closure proceedings were pending before the Labour Commissioner pursuant to orders of the High Court

11.11.91 - In view of the representation made by the Union, the BIFR deferred proceedings in order to avoid any conflict between its orders and the orders of the High Court, whose jurisdiction was superior.

22.11.91 - 2nd Order of Labour Commissioner on remand wherein he once again refused permission for closure.

- He held that the reasons for closure were not genuine and adequate.

- Before the Commissioner of Labour, the Management once again give an assurance that there would be no reduction of work-force at Madras including trainees with 3 years service.

- On the basis of the assurance given by he Management the Commissioner permitted shifting ofprocess house to Bhuvanagiri.

DECEMBER 1991 - Thereafter Review Applications were filed by both parties and heard by Secretary, Labour Department, Goverment of Tamil Nadu.

- Orders on Review Applications were reserved.

4.2.92 - A Tripartite Committee with State Government's representative was constituted and a report dated 29.2.92 was submitted.

29.2.92 - Before this Committee, the Management submitted a revised scheme, wherein they stated that there would be

(i) No Vendor Operations at Bhuvanagiri;

(ii) Old level of activity as in 1990 in Madras Mills will be continued and not reduced;

(iii) Work-force at Madras will not be reduced on account of shifting to Bhuvanagiri. ;

(iv) Process House at Bhuvanagiri will continue to be part of the B & C Mills at Madras.

12.3.92 - The Government of Tamil Nadu passed G.O.No. 27 allowing the Management's Review Application. The Government permitted the closure in view of the conditions of the revised scheme of the management.

12.3.92 - On the same day the State Government passed G.O.No.28 and directed the Mills to be re-opened by 13.4.92 (Tamil New Years day) accepting the assurance given by the Management and its revised scheme. Thus the closure permission was a limited one and was conditional on the Revised Scheme being implemented.

- The workers were denied wages from 1.4.91 to 13.4.92 .

- Several other conditions were imposed by the Government on thebasis of Management's assurances. An important one being that the Management should obtain prior permission of the T.N. Government before disposing of i immovable properties at Madras.

25.3.92 - Settlement under Section 12 (3) between the Management and the Madras Labour Union and the Binny Mills Staf Union on the basis of G.O. 28 was entered into before the Commissioner of Labour, Madras. The settlement contained, inter-alia, the following clauses :-

(i) Bhuvanagiri Process House will be part of B & C Mills ;

(ii) No reduction of work-force at Madra

(iii) Revision of Work-norms, work-load, etc. as per Textile Industry Award of M. Varadan ;

(iv) Three member Expert Committee was

to be constituted with SITRA, Management and Petitioner-Union. The unanimous recommendations of the committee were to be implemented.

(v) Revision of Wages w.e.f. 1.4.93

(vi) The settlement to be in force upto 31.3.96.

22.12.92 - IDBI sanctioned revised rehabilitation scheme for Rs. 125.64 crores.

JULY 1992 - The Expert Committee consisting of SITRA formed pursuant to the settlement submitted its report on work-force, work norms etc.

1.4.93 - Management refused to revise wages in terms of the 12(3) Settlement on the basis of the unanimous recommendation of the Expert Committee.

7.7.93 - Company filed an application under section 15 before the BIFR, suppressing all these relevant facts.

12.8.93 - Union's letter to BIFR, enquiring about 'suo motu', enquiry initiated by the BIFR.

23.9.93 - Order of BIFR stating that the suo motu enquiry was dropped in view of management's formal application under section 15 of the SIC Act.

9.10.93 - Union's representation to the BIFR seeking a copy of the application filed by Binny Ltd. and Notice of next hearing.

15.10.93 - Proceedings of BIFR conducted without Notice to the Union and without reference to the earlier proceedings. IDBI appointed as O.A. to submit schem

-Management did not implead workers before the BIFR.

9.10.93 - Union's letter to BIFR to be informed about proceedings.

- No reply was received from the BIFR

24.10.93 - Union's representations to the Labour Commissioner.

17.11.93 - Management announced Voluntary Separa tion Scheme (VSS) even as State Gover ment was holding negotiations on wag revision.

- As per the VSS, the workers were entitled to only compensation equal to retrenchment compensation under the I.D.Act.

25.11.93 - Management put up a notice stating that amounts to workers opting under VSS will be paid by 31.3.93.

4.12.93 - IDBI / SITRA Report was submitted to BIFR. The recommendations were as follows :

(i) Restructure Binny Ltd.

(ii) Machinery at Madras to be scrappe

(iii) Bhuvanagiri was to form a separat company

(iv) Permanent manpower at Madras to be reduced by 2593. Trainees anc badlis irrespective of long years of service to be stopped from wo

- The Union was not consulted in the preparation of this report.

23.12.93 - Union's letter to BIFR and IDBI for information regarding the proceedings before the BIFR. However, there was no reply.

3.1.94 - Union represented to Labour Minister, Government of Tamil nadu

18.1.94 - The Union also represented to the State Government authorities to intervene in the matter.

29.1.94 - Management's agreement under Section

18 (1) of the I.D.Act with Anna Thozhilalar Sangam, which enjoys patronage of the ruling party in the State. The Union has no membership in the Mills. The Petitioner Union is the only one which is representative of workers in the Mills (demonstrated by check-off). Under the 18(1) settlement, the 5th Respondent Union agrees to December'94 IDBI/SITRA Report and to reduction of manpower contrary to the earlier 12 (3) Settlement dated 26.3.92.

- The Settlement dated 29.1.94 is illegal and is contrary to the statutory settlement dated 26.3.92.

31.1.94 - Management's Notice No. 7/94 on Voluntary Separation Scheme offering Rs. 1000.

31.1.94 - The Management put up a notice on Voluntary Separation Scheme that the workers should compulsority apply, if not they will be deemed to have left service.

- Around 1300 workers have been sent out by the Management forcibly under the guise of Voluntary

Separation Scheme. This really amounts to retrenchment in violation of Section 25-N of the Industrial Disputes. Act./

- Machineries and assets were removed and sold by the management from Buckingham Mill and new Mill area. Partial closure effected in violation of Section 25-O of the I.D.Act.

31.1.94 - Operations of the Mills brought down to 40 %. Management's Notice extendin time for Voluntary Separation Scheme.

11.02.94 - Petitioner gave further representation to the BIFR.

15.02.94 - Management's Notice No. 11/94 extendi time for Voluntary Separation Scheme till 26.2.94.

21.02.94 - BIFR's notice to the Union for the first time in Case No. 49/93

- Hearing on 30.3.94 to consider IDBI's scheme.

28.02.94 - Draft Report of the IDBI submitted before the BIFR, adopting the techno-economic report of SITRA, recommending inter alia.

1. Restructuring of Binny Ltd. into :-

(a) A Separate Engineering Division wherein the accumulated losses of about Rs. 5.30 crores to be absorbed by Binny Ltd., but assets to be transferred.

(b) Process House which is the most profitable unit of any mill was to be made a separate unit to install which Rs. 7 crores is to be invested by the Company towards equity and an interest free advance of over Rs. 15 crores will be provided by Binny Ltd.

(c) The remaining units in the textile division of the company, viz., B&C Mills, Madras, B W M and Silk Unit at Bangalore and the Real Estate Division Mill continue to be part of Binny Ltd.

2. The Buckingham Unit of the Textile Division having installed capacity of 29,200 spindles to be closed down.

3. The entire process house at Madras to be closed down.

4. In fact, closure of Buckingham Mills and retrenchment of around 1300 workers has already been illegally effected by the management. This has been done in violation of Sec. 25-O and 25-N of the I.D.Act.

20. The Scheme proposed by the management and recommended by the IDBI before the BIFR (and now incorporated in the Draft Scheme) is thus in gross violation of the proceedings in W.P.No. 5102/91 before the Madras High Court, G.O.No. 28 dt. 12.03.92 and the Statutory settlement dt, 26.03.92 with the Madras Labour Union, which are binding on the Management and the IDBI. It ignores the Scheme for Rehabilitation already under the process of implementation pursuant to the aforesaid proceedings. Further, it has the illegal settlement dt. 29.01.94, the forced termination of workers under the so-called Voluntary Separation Scheme and the partial closure and sale of machinery of B & C Mills, which are all illegal, as the basis for its implementation.

21. The proposed scheme of the management/IDBI incorporated in the Draft Scheme has restructuring of the Company as the basis of the Scheme and its Provisions fortify the contentions of the workers that the management wants to close the Textile Mills and walk away with its assets. This is precisely what was prevented by the High Court and the aforesaid G.O.No. 28 dated 12-03-92 and the statutory settlement. That should not be allowed to be grustrated through the present proceedings.

22. Hence the Madras Labour Union has challenged the present proceedings before the BIFR, the settlement dt. 28.01.94 and the management's action in effecting illegal closure and termination of workers' services in W.P.No. 5117 and 5118/94 in the Madras High Court. The Writ Petitions are pending and the decision of the

BIFR is subject to the decision of the High Court. The Madras High Court has by its interim order dt. 15.04.94 restrained the management from removing or selling the assets and machineries of the B & C Mills and also from terminating the workers.

23. Hence the Union files these objections to the Draft Scheme and an application for directions without prejudice to its rights in W.P.Nos. 5117 and 5118/94, aforesaid. Further, since complete details and information relevant for submitting objections are not available, the Union submits its Preliminary Objections, with a request to be permitted to submit a more detailed one later.

PRELIMINARY OBJECTIONS TO THE DRAFT SCHEME

24. The Madras Labour Union submits that apart from the above, the proposed revival plan under the Draft scheme is neither in the interests of the industry nor the workers nor the general public. The object of the Sick Industrial Companies (Special Provisions) Act, 1985 is to prevent the ill effects of sickness such as loss of production, loss of employment, loss of revenue to the Central and State Governments and looking up of investible funds of banks and financial institutions. The statement of Objects and Reasons to the Act says,

" It has been recognised that in order to fully utilise the productive industrial assets, afford maximum protection of employment and optimise the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. ".

25. The proposed scheme clearly does not achieve any of the said objects. It is not a scheme intended to revive or rehabilitate Binny Ltd., but one to put up a new Company called Binny Processors Ltd. and promote another new company viz., Binny Engineering Works Ltd. to take over the Engineering Division at the cost of the existing Company, the industry, the public funds and the workers. The Scheme envisages setting up of the new company for processing with a very low DSCR of 1.36 (which itself is an exaggerated figure as shown below) at enormous investments by the public financial institutions, as well as interest free funding by Binny Ltd. The major portion of the so-called revival package is to be an investment in the new Company, viz., Binny Processors Ltd. and Binny Engineering Workes Ltd. and not in the existing company, Binny Ltd.

26. As detailed below, in the name of revival of the existing concern, a plan to set up a new Unit and to liquidate the existing industry has been proposed. In the words of the South India Textile Research Association, (Referred to hereafter as SITRA) which undertook the Technoeconomic study for the operating Agency, restructuring of the Company has been proposed to enable the management to expand and promote the activities of the profit centres as well as to shrink the activities that are not viable. The Restructuring envisages hiving off the Engineering Division into a separate Company, consti-

tuting Binny Ltd. with only the Textile Mills, the Real Estate Division and the Services Division and the closure of the existing processing Department, not merely to form a centralised process house, but to form an independent Company, viz., Binny Processors Ltd. The Textile Division has been identified to be the losing centre and the Engineering and the new Process House are projected as profit centres. It is this recommendation of SITRA that has formed the basis of the proposed scheme of the Operating Agency and the Draft scheme. The intention is thus clear.

27. In this context, the following aspects of the Draft Scheme make the proposed plan for revival not worthy of acceptance, since they make it very clear that ultimately only the private interests of the inau promoters will be strengthened and not the interests of the industry, the public ar the public financial institutions.

I. BINNY PROCESSORS LTD.

The Draft Scheme proposes as under :

- To set up a new Process House with an installed capacity of 1.70 lakh metres per day (as against the combined installed capacity of 2.80 lakh metres per day at the existing process house.)
- Land of about 70 acres will be acquired from Thirumagal Mills at a cost of Rs. 75 lakhs. Considering that the lands are in a rural area it is highly questionable that the land cost is so

high. It is to be noted that the lands belong to Thirumagal Mills owned by the Udayar Group, the Promoters of Binny Ltd.

- Total estimated cost of the BPL project is Rs. 63.29 crores, which includes second hand machinery only to the extent of Rs. 1.20 crores to be purchased from Binny Ltd. Thus the whole investment is to put up a new industry.

- The Scheme of Finance is as follows :

		Rs. in Cr.		
1.	Equity Capital	12.00	Binny Ltd.	7.00 Cr.
			Public	5.00 Cr.
2.	17% Non-Convertible Debentures (NCD)	25.00	Public	
3.	Interest Free Unsecured Loans by Promoters of Binny Ltd.	11.00	These amounts would be repayable to Binny Ltd. after redemption of Debentures, at 10 % p.a. of interest or at the rate of devidend declare by BPL on its Equity	
4.	Advance by Binny Ltd. from real estate Dv.	15.29		

II. Viability of the New Processing Company (BPL)

a) It is projected that the New Process House will operate at 85% capacity level in the optimum year (85 % on 1,70,000 mts/day) - 1,44,500 mts/day

The Unit will do job work for B & C Mills (at 95% capacity)	-	85,000 mts/day
B W M (at 95% capacity)	-	35,000 mts/day
		1,20,000 mts/day

b) Debt-Equity Ratio is taken as - $\frac{\text{Rs. 25.00 cr.}}{\text{Rs. 38.29 cr.}}$ -- 0.65 — Advances by Binny & Ltd.

c) Considering a very low DER of 0.65 and cost of funds at 10, the projected average DSCR of 1.36 is very low.

d) In the Projected Profitability Statement, interest on Working Capital as follows has not been considered :

	Rs. in Lakhs.
Year Ending 31.3.1999	33.00
Year Ending 31.3.2000	48.00
Year Ending 31.03.2001	53.00
Year Ending 31.03.2002	53.00
Year Ending 31.03.2003	53.00
Year Ending 31.03.2004	53.00
Year Ending 31.03.2005	53.00
	346.00

Interest on Working Capital though mentioned in Annexure 3 has been purposely omitted to be considered in profitability statement - ANNEXURE 4 and ANNEXURE 6 given in the IDBI's Report to the Board.

e) If interest is considered even at 18% p.a. on Rs. 15.29 cr. (Advanced by Binny Ltd.) and also the interest on Working Capital is taken into account, the new processing unit will end up with an operating loss from 1999 to 2004 A.D. In other words, only the last projected year of 2005 will have a marginal/operating profit.

f) Even without considering the interest on working capital and interest on loan from Binny Limited, D S C R is only at 1.36. If the same is considered, DSCR will then work out to only less than 1.00 (Read with Guiдline (g) of BIFR)

g) Even without considering (f) it has been concluded by IDBI that

" settingup an independent process house is not an attractive proposition. In this case, since Binny will have to maintain the quality of its fabrics and considering large quantity of fabrics for processing, the idea of having an independent process house has been considered."

The reason given for setting up an independing process house, even assuming to be correct, cannot justify such a losing vanture at an enormous invest_ment by financial institutions and drain on Binny Ltd. There is also no guarantee that BPL will continue to service Binny Ltd.

Thus Binny Processors Ltd. will be a most un-viable project. It would also not give any benefit to Binny Ltd. and further serously affect the very existence of Binny Ltd.

III BINNY LIMITED

(a) Though the proceedings before the B I F R are meant to provide for rehabilitation of a Sick Industry, which is Binny Limited, in this case, the Draft Scheme hardly provides for any investment for modernisation or rehabilitation of the Textile Units, which are the major industrial units of the Company and which alone are going to be retained in Binny Limited, along with Real Estate and Services Divisions.

(b) The total cost of the Revival Scheme (as in the Draft Scheme) is as follows:-

	Rupees in crores
Cost of the Scheme	225.82
Sacrifices by Institutions and Banks.	58.99
Sacrifices by Government	20.00
	304.81

The cost of the Scheme as such viz., Rs.225.82 crores is distributed to the three proposed companies as follows:-

	Rupees in crores
Binny Limited (With the 2 Textile Mills, Real Estate and Services Division) ..	144.28
B E W	18.25
B P L	63.29

The investment in Binny Limited (B&C Mill, BWM and Sick Mill) is again to be distributed as follows:-

	Rupees in crores
(i) Capital expenditure	8.22
(ii) Renovation/Repairs	9.17
(iii) Contingencies (40% of (a) & (b)	6.95

24 Crores

	Rupees in crores
(v) Payments to FIs/etc.	69.13
(vi) Cash loss	12.37
(vii) Labour Rehabilitation	26.31
(viii) Additional margin money for working capital.	6.13
(ix) Real Estate Div. expenditure	5.00
	143.28 approx.

(c) Thus there is hardly any investment in Binny Limited for modernisation and rehabilitation of the Textile Mills, which are its productive units. On the other hand, the emphasis in the Draft Scheme is to reduce: Operations reduced

(i) The spinning activity -

	From	To
B W M	46500	Nil
B & C Mills	69024	51108

(ii) The weaving activity -

	From	To
B W M	742	288
B & C Mills	1816	808

(iii) Processing

From	To
2.80 2.70 lakh metres	NIL

Real Estate - disposal - not for reinvest

(d) Further, the Real Estate assets belonging to the Mills are to be disposed of, not for reinvestment ofthe proceeds in the Mills and depriving Binny Limited of the only security it now has. The Real Estate is also sought to be disposed of in a manner most unprofitable to the Company, as detailed below.

(e) Binny Limited will also be mulcted with heavy processing charges to be paid by it to Binny Processors Ltd.

at the market rate which erodes its profitability. At page 57 of its Report to the BIFR, the IDBI has said, Processing Charg

> "It may be mentioned here that with a separate process house, the Company would be paying average processing charge of Rs.9/- per metre, which is the market rate. As a Division, the processing charge would work out to around Rs.7/- per metre. The additional cost is also resulting in lower gross profit level."

IV - DIVERSION OF FUNDS FROM BINNY LIMITED

Binny Limited will advance Rs.15.29 crores INTEREST FREE to Binny Processors Ltd. during 1997-1998 out of the sale proceeds of its real estates on the one hand and on the other hand Binny Limited shall incur the following cost of funds:-

(i) Rate of working capital interest to be paid by Binny Limited - 17.50%

(ii) Out of Rs.54.13 crores payable as one-time settlement to Financial Institutions and Banks, Rs.27.13 crores is payable in six-half-yearly instalments commencing from 1-1-1995 carrying interest at 15% per annum.

(iii) Seeking loan from National Renewal Fund to the extent of Rs.26.31 crores, repayable in seven (7) years commencing from 1997-1998 carrying interest at 10% per annum.

(iv) To seek various reliefs and concessions from the Government of India, Government of Tamil Nadu and Government of Karnataka under the pretext that Binny Limited has acute paucity of funds.

(v) Further, as far as the repayment of the loan of Rs.15.29 crores to Binny Limited by Binny Processors Ltd. is concerned, it ranks subordinate to redemption of Non-Convertible Debentures. Even after redemption of these NCDs i.e. by 2005 A.M., the repayment of Rs.15.29 crores is spread over in the next 10 years i.e. by 2015 A.D. If a higher amount of loan i.e. Rs.25 crores can be repaid in 5 years as projected, the fact that a smaller loan of Rs.15.29 crores is contemplated to be repaid in 10 years thereafter, that too free of interest, gives room for suspicion as to whether the loan will be repaid at all and that too when the projected cash Flow Statement shows an accumulated cash surplus of Rs.13.75 crores as at 31-3-2005. In any case, there is no justification in mulcting Binny Limited with this burden.

(vi) It is important to mention here that Binny Limited will also have to pay the market rate for processing charges of Rs.9/- per metre to Binny Processors Ltd., as against Rs.7/- which would be the in-house charges. If the market rate goes up in future, the burden on Binny Limited will be more and its profits are thus sought to be diverted to Binny Processors Ltd.

(vii) The proceeds of the Real Estate belonging to Binny Limited also do not go to benefit Binny Limited. While the cost of the project for Binny Limited includes cash loss for 1994-1995 amounting to Rs.12.37 crores, the proceeds of real estates (Rs.64.56 crores) and machinery sales (Rs.6.70 crores) is sought to be included in the promoters contribution. Considering that Binny Limited has huge accumulated losses, the diversion of the Real Estate Proceeds to be treated as promoters' contribution and for advancing interest free loans is most unjustified and the reasons given are not convincing.

V-(A) -RESTRUCTURING - ULTIMATE DOOM TO BINNY LIMITED.

(i) Under the proposed scheme, Binny Limited is sought to be restructured by hiving off the Engineering Division into an independent Company viz., Binny Engineering Works Ltd., and the Process House of the Textile Mills to form a new Company viz., Binny Processors Ltd.

(ii) Among the documents that this Union has had access to, the first time restructuring has been discussed is in the Techno-Economic study report of SITRA given to the Operating Agency (IDBI) in December 1993. The only discussion found in the SITRA Report on this is (at Page 5 of the Report) as follows:

"...Restructuring of the company into various subsidiaries may be considered as this would enable the Management to expand and promote the activities of the profit centres as well as to shrink the activities that are not viable. Also, if each major activity is treated separately instead of all operations being clubbed together, then it would be possible to exercise closer controls. Another advantage is that the problems in one unit may not affect the other units."

Firstly, SITRA has no experience in engineering industry. Secondly, there has been no serious application of mind to such a major change sought to be brought about in the affairs of the company with extremely adverse consequences as shown below.

V (B) - CONSEQUENCES OF RESTRUCTURING

(i) BINNY LTD. TO BE REDUCED TO A MERE GREY CLOTH MANUFACTURER

One of the most significant consequences of the restructuring of Binny Limited will be the reduction of Binny Limited, a hitherto renowned producer of processed cloth to a mere producer of grey cloth. This would drastically reduce the competitiveness of the Mill in the market. It would be wholly dependent on the new Company i.e. the Binny Processing Ltd. for production of processed cloth. If for any reason the new Company (BPL) either refuses to process the cloth or delays the processing of the Binny Cloth, Binny Limited would not be able to market its grey cloth as there is no dearth of grey cloth manufacturers in South India. IT is the 'Binny' Brand Name and its processed cloth which are the strength of the Mills in the market.

Moreover, the experience of the National Textile Mills (Tamil Nadu and Pondicherry) has shown that a mere Grey cloth manufacturer, without a Process House would not be viable as the maximum value addition takes place at the processing stage. In fact, among all the NTC Mills, NTC (Tamil Nadu and Pondicherry) alone was able to turn the corner and is able to show profits, because it has also started processing its own cloth.

Hence, it does not stand to reason that the Process House should be hived off from Binny Limited to form a separate Company.

(ii) <u>BINNY LIMTTED WILL BE REDUCED TO A MERE SHELL.</u> ||

p-49 of IDBI Report- Equity 7 crores included in 49 crores of promoters' contribution.

In the restructuring as it is contemplated now, there is firstly no guarantee that B P L will continue to process the grey cloth produce by Binny Ltd. In the absence of such a clause, there is no guarantee that the B P Lwill not refuse to process Binny cloth, and instead process the cloth obtained from the other Vendors. In case of such an eventuality, Binny Limited would be left with the grey cloth and will not be able to market it.

On the other hand, there is no restriction on B P L to process Binny Ltd. cloth alone. In fact, the statement showing the capacity of the B P L shows that it has a surplus capacity of more than 40 lakh metres per day. Thus this will lead to an anamolous situation wherein Binny Limited will not be able to sell 'Binny' cloth, whereas the new Company B P L will be able to sell 'Binny' cloth by processing cloth purchased from other mills. The 'Vendor Operations' that were given up by the Company before the High Court will be resorted to in full swing, inthe name of restructuring. The Union submits that the BIFR should not sanction such a scheme. If the scheme is sanctioned, Binny Limited will be reduced to a shell in every sense of the term.

(iii) LOSS OF BRAND EQUITY

As demonstrated above, the new Company B P L will be able to sell cloth under the brand name 'Binny' without payment of 'Brand Equity'. It is well known that building up of a brand name is probably the most difficult inany business proposition. The present promoters have with the active assistance of the IDBI evolved this ingenious method of utilising the Branc Name of Binny to the exclusion of the parent company, Binny Limited, without paying as much as a paise towards Brand Equity. Going by the standing of Binny inthe market, the price for Brand Equity alone should be able to help it turn the corner.

(iv) DIVERSION OF FUNDS FROM BINNY LIMITED TO B P L.

The scheme provides for processing charges to be paid to B P L for processing Binny Limited cloth at Rs.9/- per metre, whereas the in-house cost to Binny Ltd. would be only Rs.7/- per metre. So it is difficult to understand as to why Binny Ltd. should process its cloth at a higher rate than what it would be if the Process House were a part of its own Company.

Moreover, the scheme does not provide for freezing of rates at Rs.9/- per metre, and the funds of Binny Limited would easily be diverted to B P L by enhancing the process rates even under threat because once Binny Limited is reduced to a mere grey cloth manufacturer, and B P L which will have the upper hand.

(v) PROMOTION OF B P L AT THE COST OF THE VERY EXISTENCE OF BINNY LIMITED.

It is difficult to comprehend as to in what manner the setting up of a totally new Company which is BPL, will help the revival of the sick mill. In fact, it is quite clear that B P L is being set up at the cost of Binny Limited.

Firstly, it has to be pointed out that no comparative statement of facts comparing the viability of the Mills with the Process House as an integral part of the Mills and the Process House as a separate Company has been made. In the absence of such a statement, it is not clear as to how the IDBI came to the conclusion that the setting up of the Process House as a separate Company should be undertaken.

In the name of a revival package for Binny Limited, B P L is getting a funding of Rs.63.29 crores. Of this, Binny Limited will be advancing an interest free loan of Rs.15.29 crores, which is to be treated as a 'subordinated loan'. This is wholly unwarranted, especially in view of the fact that B P L is in no way bound to process Binny cloth alone.

(vi) SEPARATION OF BINNY ENGINEERING AS AN INDEPENDANT COMPANY.

Similar is the case with Binny Engineering Works Ltd. After restructuring, B E W will have absolutely no transaction with or commitment to Binny Ltd. Yet the losses of the Engineering Division are proposed to be absorbed by Binny Limited and an amount more than Rs.10 crores has to be advanced by Binny Limited interest free to B E W.

VI - COLOURABLE EXERCISE OF B I F R PROCEEDINGS.

(i) Thus in the whole exercise of hiving off and restructuring and a scheme costing more than Rs.304 crores, there is no cash-in-flow at all to the parent company. On the other hand Binny Limited will have to bear the burden of

(a) high interest on its loans,

(b) eroded profitability due to reduction of operations and divesting the process house and engineering division,

(c) depletion of its funds due to loans advanced to BPL and BEW,

(d) no interest on the loans so advanced,

(e) threat to its future existence,

(f) loss of its Brand name and the consequences, &

(g) loss of the real estate.

p.49 of IDBI's Rept. Binny has no equity holding in the new equity holding - It is promoters

(ii) No investment is contemplated in the Textile Mills towards modernisation. In fact only a meagre amount of Rs.24.34 is provided towards renovation and repairs. On the other hand, two new Companies with fresh investments and Binny's funds and assets are sought to be formed to benefit the promoters only.

(iii) Hence, all these put together show that the draft Scheme does not really contain any revival package for Binny Ltd., but is one meant to put up two new Companies for the promoters at the cost of the sick company. This is certainly a colourable use of the BIFR proceedings by the Company and the IDBI. The Board, which is a statutory authority, should not give its approval to it.

VII - OTHER ADVERSE FACTORS IN DRAFT SCHEME.

The package now finalised by the I D B I and adopted as a Draft Scheme by the B I F R has many adverse factors.

(a) The Draft Scheme has proposed drastic reduction in activity. The details for B & C Mills are as under:-

		1990 Level	Proposed Level
SPINNING.	No. of Spindles	88208	51089
WEAVING.	No. of Looms	2074	808

Processing capacity at B & C Mills, Madras and Bangalore Mills is now 2.8 lakh metres per day. The proposed Process House at Bhuvanagiri will have a capacity of only 1.7 lakhs metres per day.

This contravenes the assurance given by the Management to the High Court and the State Government that activity level as in 1990 would be maintained. It is also violative of the statutory settlement dated 26-3-1992.

(b) The Draft Scheme has proposed massive manpower rationalisation.

Surplus Labour	Workers	Staff
B & C Mills, Madras.	2593	474
Bangalore Mills	1552	192
TOTAL	4145	666

This violates the assurance given to the High Court, G.O. and the Statutory Settlement dated 26-3-1992 that there would be no manpower rationalisation. For reducing work-force, the Sraft Scheme has relied upon an MOU dated 29-01-94, which as statedabove has been signed with a Union that has no representation among the workers and which is challenged before the Madras High Court.

(c) The Draft Scheme proposes to restructure the Company and in particular to make the process House at Bhuvanagiri as a separate Company. This violates the assurance to the High Court, G.O.No. 28 and the committment in the binding settlement that the Process House at Bhuvanagiri would be part and parcel of the B&C Mills.

(d) The Draft Scheme proposes that " after implementation of VRS and on achieving the proposed laid down work norms in Textile Division conforming to SITRA Standards, the Company will implement the Varadan Award. This violates the settlement provision that the Varadan Award on wages etc. will be implemented from 1-4-1993.

(e) The Draft Scheme stipulates the obligations on the part of labour/staff as acceptance of reduction in workforce under the VRS and co-operation in total implementation of Memorandum of Understanding dated 29-1-1994 (for B& C Mills Workers). The VSS mentioned in the Scheme provides for a compensation of 15 days wages per year of completed service, which is nothing but compensation payable for statutory retrenchment or permitted closure. Thus the VSS is only an euphemism for compulsory retrenchment. A package by the Board cannot approve of such a scheme. If anything, workers who willingly want to leave ought to be offered a much higher compensation than the statutory compensation and if the Company is not willing to pay them now, the workers should be given proportionate equity holdings. In fact, in 1981, the Company had put up a scheme for VSS providing for 24 months wages as compensation. This can only be improved upon and not reduced.

(f) I submit the IDBI itself is aware of the binding character of the earlier proceedings in W.P.5102/91 before the Madras High Court and G.O.No.28 dated 12-3-92, which culminated in the Settlement with the Madras Labour Union on 26-3-92. It is also aware that the rehabilitation scheme had already come into operation with the SITRA Expert Committee undertaking a scientific study of work-load, etc. That is why, the Draft Scheme relies upon both the Settlement dated 26-3-92 and the SITRA 1992-93 Report. If so, there is no justification for the new proposal.

VIII. REAL ESTATE DEAL

The thrust area of the Draft Scheme is "Development and sale of the surplus landed properties located at Bangalore and Madras estimated to fetch an amount of Rs. 155 crores over next 10 years. "

Further the existing promoter group have entered into an MOU with Dynamix group (represented by Shri K.M. Goenka and G.K. Darpanani) to be inducted as co-promoters. This alliance ha been entered into ostensibly to take benefit of their experience in construction business and to augment funds for rehabilitation.

The IDBI has also noted that " major contribution in all the alternatives comes from sale of properties of real estate division. "

The value of real estate properties held as stokk-in-trade amounted to Rs. 53.53 crores as on 31.3.93. The Appendix on Real Estate Division states that " in 1994-95 the company proposes to transfer from fixed assets to stock-in-trade some more property. The total value of properties to be held on 31.3.1995 will be Rs. 7549 lakhs. "..

This only confirms the apprehension that the textiles division activity would be further shwunk and more of the textile mill properties would be made over to real estate business.

This viewed in the context of the observations of the BIFR in its suo motu proceedings dated

26.6.91 against the company makes it obvious that the promoters have set their eyes on the real estate belonging to the Mills and are really not interested in running the industry. The observations of the Board were as follows :

x " The Bench pointed out that the permissions for sale of some fixed assets obtained by the company from FIs/Banks/ State Govts. were for the express purpose of raising resources for financing its rehabilitation costs as the Company could not generate adequate cash surpluses from its unsatisfactory operations. The conditions stipulated were not for enabling the company to go into real estate business. In other words, it appears that on the one hand the Company approached the FIs/Banks/State Govts. for permission to raise resources for financing the cost of rehabilitation from the sale proceeds of real estate and on the other, the transactions have been shown in the books of accounts as " real estate business". The Tax authorities have also been misled in the matter. In this connection, the Bench desired the concerned State Governments to examine whether the Company had fulfilled all the terms and conditions stipulated by them while granting approvals x for sale of lands and building and to furnish their views to the Board with 15 days.

" The Bench noted with concern the absence of any representatives from the Central Government, Government of Karnataka, CBDT, CLB and the nominee Directors of FIs/ SBB, to whom notices of the hearing have been sent. The

Bench observed that, in the circumstances that obtained in the case, it appeared that the FIs/Banks/ State Governments/ Nominee Directors had not exercised care to obtain the correct financial position of the company and for making the requisite compulsory reference to the Board, as required under the Act. Shri T.M. Nagarajan, DGM, IDBI said that he had recently been placed on the BOD of the company, as a nominee Director and IDBI was under the impression that, the instant case being one of the exceptional cases, it was the exclusive responsibility of the company to make the reference to the Board. "

" In the light of the deliberations at the hearing, the Bench elicited the views of the Company, FIs/Banks, the State Govt. present, whether they still hold the view, that the company is not a sick industrial company. All of them agreed that, on the basis of the financial analysis made above, the company would fall under the purview of the Sick Industrial Companies (Special Provisions) Act, 1985, as a Sick Industrial Company. "

" The Bench directed that the following further materials be made available to the Bench by 10.7.1991 to enable the Bench to decide the matter properly ;

(i) A copy of the legal opinion of Shri K.R.Ramani dated 15.12.1989.

(ii) Copies of the Order of the Labour Commissioner, the Writ Petition filed before the High Court in respect of shifting of the process house.

(iii) Details of the rehabilitation package formulated by IDBI

(iv) Proforma/unaudited accounts of the company for the current year 1990-91 within a month

(v) Details of the cash losses, without taking into account the re-valuation of the stock in trade, and show the losses have been met.

(vi) copies of the assessment orders by the Income Tax Department.

(vii) Reports from the concerned State Governments whether the terms and conditions stipulated by them for the disposal of real estate have been complied with by the Company.

" The Bench reserved orders in the case."

Inspite of this, the Draft Scheme contemplates that the sale proceeds should be treated as promoters contribution and that the financial institutions should vacate their ~~x~~charges on them. Further, the Government of Tamil Nadu are also required to relax the condition in G.O.No. 28 dt. 12.3.92 that their priod permission should be obtained to ensure that the sale proceeds are ultimately utilised only for modernisation and rehabilitation of the Mills.

Moreover, the Real Estate properties have been grossly undervalued. The easiest indicator will be the guidelines values laid down by the state Governments for the lands and properties ~~with~~ concerned. The lands at Madras are situated in prime locations and will fetch Several lakhs per ground (2,400 sq.ft.), whereas the Scheme takes their value to be only a few thousands.

IX. SACRIFICES BY FINANCIAL INSTITUTIONS

The aDraft Scheme proposes huge sacrifices on the part of the Financial Institutions, under the one-time settlement proposal.

The total sacrifices of institutions/banks aggregate to Rs. 59 crores approx. The major brunt of this huge sacrifice will have to be borne by the State Bank of India.

RBI guidelines in this regard stipulate that the amount sacrified by the instituions/banks should be converted into equity (share capital). The Draft Scheme violates the RBI gukdelines also in this regard.

As a matter of practice thereis unanimous opinion among the financial institutions, Reserve Bank of India and the BIFR also that one time settlements involving huge sacrifices should not be permitted in cases where the loans are backed by adequate security as in thiscase.

X. PROMOTERS CONTRIBUTION - APPROPRIATION OF COMPANY's ASSETS

According to the guidelines, the promoter's contribution should be not less than 30 % of the cost of the Scheme and the total sacrifices, which works out to Rs. 101.50 crores. But the promoters contribution has been worked out to Rs. 120.26 crores on by including proceeds of Real Estate as follows :

	Rs. in crores
Equity/ unsecured loans (from Promoters)	49.00
Sale Proceeds of Real Estate Properties during 1994-95 to 1998-99	64.56
Sale of old/surplus machinery	6.70
Total	120.26

As per BIFR guidelines, issued on 15.10.1993, the promoters, shall be required to bring in at least 30 % of the cost of rehabilitation including monetary value of sacrifices by Banks/ Institutions/ Government. The promoters' contribution of Rs. 49 crores only works out to 16 % of the total cost.

The draft Scheme justifies this in the following words :

" Considering the capital intensity of the scheme and co-promoters joining in the propsed scheme with attendant uncertainties regarding development of certain properties and higher cash loss in the textiles division which is to be met by promoters, inclusion of profitson sale from real estate to the extent of Rs. 6456 lakhs in first five years, out of total of Rs. 15,460 lakhs has been considered as part of promoters' contribution. On this basis, promoters contribution works out to 39 % of the cost of rehabilitation estimated at Rs. 30,481 lakhs.

The present promoters stepped into the management of Binny pursuant to an MOU reached between them and IDBI/ SBI only in 1987. Since then the promoters have merely contributed to hike the accumulated losses by their mismangement. The assets acquired decades before the present promoters took reins are to be sold and the sale proceeds reckoned as promoter's contribution giving reasons which are totally untenable.

XI. ROLE OF IDBI - PARTISAN AND MALA FIDE

The Petitioner- Union submits that considering the aforesaid shocking aspects of the Draft Scheme, which is based on the IDBI's Report, it is obvious that the IDBI has shown ~~tkm~~ utter lack of bonafide and has in fact contrived with the promoters to hatch a totally mala fide plan.

The marke~~t~~d preference shown by the IDBI to the Equity Shares present promoters is also clear from the fact while under the proposed scheme, the new co-promoters are to be allotted shares at a premium of Rs. 25/- per share, the existing promoter was allowed by it~~s~~ to convert their unsequred working capital loan to equity at par even before declaration of sickness. It is to be noted that in March 1990, the share holding of the Udayar Group was only Rs. 169.69 lakhs, but by such conversion of their loan to equity at par it had risen to a phenomenal Rs. 844 lakhs, by March 1993.

It is shocking that despite the criticism ~~t~~of the IDBI by the BIFR in its proceedings dated 26.6.91 against the company, the IDBI has deliberately bent backwards to enrich the promoters at the cost of the industry.

Further, the IDBI has never applied its mind independently to prepare a rehabilitation scheme for the company. Earlier, in 1990 when it sanctioned a scheme, it was on record before the High Court that the company had placed five alternative schemes and withdrew all of them, but the one containing the proposal to shift the Process House from Madras to Bhuvanagiri. The IDBI mechanically sanctioned the same without any demur. When the Madras High Court directed it to furnish all relevant materials and information to this Union, ~~s~~it refused to do so. Finally, at the intervention of the High Court and the Government of Tamil Nadu, the move to havevendor Operations, make the process house at Bhuvanagiri independant of the Mills and the reduction of work-force was prevented.

Having failed in their attempts then, the promoters, and the IDBI have joined together to frame a more fraudulent scheme for the company now.

In fact, even now, the Report of the IDBI as Operating Agency is not an independent one, but a plan putforth by the management and merely approved by it~~s~~. The unpardonable mistakes even in the calculations in the Annexures to its reports ommitting interest components, only demonstrate this.

Further, the IDBI is a State authority and a staturoty body. It has to function within constitutional and legal parametres. It cannot ignore the previous

Cannot ignore past proceedings

legal proceedings in this case and prepare a new scheme ignoring the earlier developments set out above.

The Union submits that the IDBI has prepared the Repor, which is the basis of the Draft Scheme, without considering all the alternatives and discussing with all concerned as directed by the Board. On coming to know that it has been appointed as the Operating Agency, the Madras Labour Union wroteto the IDBI repeatedly, as mentioned above, to be heard, but to no avail. The IDBI would not even acknowledge the Union's letters.

Parties not consulted with.

This can hardly be the attitude, when precious rights of the workers are sought to be violated and huge sacrifices are expected of them.

In formulating its scheme, the IDBI has not even consulted the State Bank of India, which has the largest stake of more than Rs. 100 cores in Binny Ltd.

The IDBI has also not performed the legitimate role of an Operating Agency and has been a party to the present promoters removing and selling the machinery and assets of the B&C Mills Madras after the present proceedings were initiated. In fact on 15.4.94 the Madras High Court had to pass an interim order restraining this. Thus the collusion between the IDBI and the present promoters is clear and the IDBI has been a party to the mis-

Sales of Asst closure of Depts in B&C

feasance and malafeasance of the Company's assets.

It is therefore submitted that IDBI is unfit x to be the Operating Agency both due to past negligence and its present partisan and mala fide conduct. The Draft Scheme prepared on the basis of its Report should not therefore be accepted by the BIFR, in the interest of the Industry and the Public.

28. Non-Reporting of Sickness, Malfeasance and Misfeasance

From the above, it is crystal x clear that the IDBI and the promoters have failed in their statutory duty to report sickness even as early as in 1991. They ought to be prosecuted for the same.

Further, the facts and circumstances of the case demonstrate how the promoters have been allowed to appropriate and dissipate the assets and funds of the company and the IDBI has convined in doing so. The proposed scheme is only to help them do so further. Both the promoters and the IDBI ought to be therefore prosecuted for malxfeasance and misfeasance. Considering the extent of funds and stakes involved, a probe in this direction and action thereon is seriously called for.

29. <u>ENORMOUS SACRIFICES MADE BY THE WORKERS</u>

Over the years, the workers of B & C Mills, Madras, have made considerable sacrifices in the interest of the Company. As already mentioned earlier, the strength of workers in Binny Limited has been reduced from over 15,000 workers to about 5,000 workers now. This was due to bring the Mill on par with the rest of the industry.

From the year 1979, the workers had suffered wage freeze, while the rest of the textile industry in the State had two wage revisions. The allowances they gave up in 1981 itself amounted to a saving of Rs. 15 Crores per annum to the Company.

Now the Scheme contemplates a further reduction of work force and about 2593 workers have been identified to be surplus. The average pay of the workers is about Rs. 2,300/- and that of the staff Rs. 2,800/-. Thus on an average, the sacrifice made by the workers would amount to roughly Rs. 14 Crores a year, apart from the loss of their very livelihood. This is far greater than the sacrifices made by the promoters. The compensation payable to the workers under the Scheme is about Rs. 26.31 Crores, which would be regained in the first two years itself.

30. In fact as pointed out earlier, the workers are being paid nothing more than the statutory retrenchment compensation provided for under the Industrial Disputes Act. Considering the fact that

the workers who have all put in the best of their years in the Company and have crossed their prime and in all likelihood will not find re-employment, it is only but fair and just that compensation paid to the workers should be much more than the statutory minimum.

31. In view of the enormous sacrifices made by the workers, it is only proper and just that workers be given equity holdings at par, proportionate to the dues payable to them and pave the way for an effective participation of workers in the Management which is the Constitutional goal.

32. INFORMATION AND MATERIALS REQUIRED:

The statements above show that a lot of materials and information have been manipulated and suppressed in the preparation of the Report by the Operating Agency. The Draft Scheme published by the B I F R also is bereft of many of the crucial details and information, which are necessary to test the credibility and viability of the Draft Scheme. In view of all the pitfalls and adverse consequences of the Scheme, it is necessary that the workers should be provided adequate opportunity to be heard on the Scheme. They are handicapped in making fuller comments on the Scheme in the absence of all the information and materials detailed below. This request is made without prejudice to the request that the proceedings be dropped.

The Union requests that the B I F R may therefore be pleased to furnish them the following information and materials before proceeding further to consider the objections to the Draft Scheme:

(i) The Revised Scheme sanctioned by the I D B I in December 1992 along with letters of intent by I D B I, I F C I, I C I C I etc, who have cleared the Scheme.

(ii) Copies of all the supporting statements and tables to the 1989-90 I D B I Scheme, the Revised Scheme of 1992 and the present Scheme. including the technical study Report of Ferguson & Co on

(iii) Copies of documents and information furnished to the B I F R pursuant to the directions at its hearing on 26.6.1991.

(iv) Copy of the Company's application to the B I F R in 1993 with all its Annexures made under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985.

(v) Copies of the proceedings of the Inter-Institutions Meetings convened by the I D B I from 1989 onwards.

(vi) Annual Reports of Binny Limited from 1987 onwards upto the latest published report.

(vii) Details of the properties held by the Real Estate Division as on 31.3.1993 (Valued at Rs. 53.53 Crores in the I D B I Scheme) and also of the fixed assets proposed to be transferred to stock-in-trade (enhancing the value of properties to to Rs. 75.49 crores).

(viii) Copies of all statements/information/ materials furnished by the Company and the I D B I to the Financial Institutions. B I F R and the State and Central Governments in connection with the present Scheme.

(ix) Details of all the assets and machineries belonging to the B & C Mills sold by the Company after 1981.

(x) Memorandum of Understanding signed by the Promoters with the I D B I and State Bank of India in 1987, when the present promoters were inducted into the Company.

(xi) Direct the IDBI & the Company to provide any of these information or materials that are not already with the BIFR.

OTHER DIRECTIONS SOUGHT

For the reasons stated above, the Madras Labour Union requests the following :

(a) to drop the proceedings before the Board in view of the Madras High Court's Proceedings in W.P. No. 5102/91, G.O. 28 dated 12.3.1992 of the Tamil Nadu Government and the Settlement dated 26.3.1992 between the Company and the Madras Labour Union.

(b) Without prejudice to the above, it is requested that in any case the present draft scheme should be rejected in toto.

(c) If the Board thinks fit to proceed furhter, a fresh draft scheme be prepared through a new Operating Agency after removing I D B I as the Operating Agency with specific guidelines that there should be no restructuring of the Company and the Scheme should only be for the modernisation and rehabilitation of Binny Limited and with the active participation of the Madras Labour Union.

(d) Without prejudice to the above, the draft scheme may be referred to 'CRISIL'(Credit Rating Information Services of India Ltd) for an independent assessment of the credibility and viability of the Scheme.

M A D R A S

8th June 1994

Sd/-
PRESIDENT

MADRAS LABOUR UNION.
176, Strahans Road
Madras - 600 012

AIR 1981 S.C. 1786 = 1982 (1) SCR 187
Shah Babulal Khimji
at p. 238 - Qu.
p. 245 → bottom = 'E'
at p. 255 → 'H' - decide matters of moment or affect vital & valuable rights.
at - 257

AIR 1981 S.C. 818
NTC Vs. Swadeshi
1981 (2) SCR 533.

1981 (1) LLJ 327
Grindlays Bank.

1990 (3) SCR 282.
- Barauni Refineries

p. 26 - Binny Processors Ltd. - p. 28 - reduction on working capital
p. 30 - Binny Ltd.
p. 32 - Funds diverted from Binny Ltd.
p. 34 - Restructuring
p. 39 - Colourable exercise
Real Estate
p. 46 - Gross undervaluation.
p. 47 - Violation of RBI guidelines
- sacrifices → equity
- Promoter's contribution - 120 crores.
- 49 / 64 - Real Est.
6.70 - Machineries
p. 49 - IDBI's Role
Conversion of loans into Equity
p. 53 - Workers' sacrifices

The Chairman & MD.
Binny Limited,
65, Armenian Street,
Post Box No.66,
Madras-600 001.

2. The General Manager,
State Bank of India,
Central Office,
Post Box No.12,
Madame Cama Road,
Bombay-400 021.

3. The Manager,
Credit Wing, Canara Bank,
Head Office, 112, J.C.Road,
Bangalore-560 002.

4. The Asstt.General Manager,
Indian Bank,
31, Rajaji Salai,
Madras-600 001.

5. The Chairman & MD.
Lakshmi Vilas Bank Ltd.,
Administrative Office,
Post Box No.42,
7/3, A. Ramakrishnapuram,
Karur-639 001.

6. The Chairman & MD.
Industrial Development
Bank of India,
IDBI Tower, Cuffe Parade,
Bombay-400 005.

7. The Chairman & MD.
Industrial Finance Corpn.
of India,
Bank of Baroda Building,
16, Sansad Marg,
New Delhi-110001.

8. The Chairman & MD.
Industrial Credit & Investment
Corporation of India,
163, Backbay Reclamation,
Bombay-400 020.

9. Secretary to Government
Handlooms,
Handicrafts Textiles Khadi Deptt.
Secretariat, Madras-600 009.

10. Joint Secy. to Govt.
Industries & Commerce Deptt.
Govt. of Andhra Pradesh,
Hyderabad.

11. Joint Secy. to Govt.
of Karnataka,
Commerce & Industries Deptt.
III Stage, Multy Storeyed Bldg.,
Sachivalaya-II,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

12. The Secretary,
Deptt. of Textiles,
Govt. of India,
Udyog Bhavan,
New Delhi.

Copy to:-

1. The Dy.General Manager,
State Bank of India,
Local Head Office,
Post Box No.398,
11, Sansad Marg,
New Delhi-110001.

2. The Asstt.General Mgr.
Canara Bank,
Prakash Deep Building,
4th Floor, No. 7,
Tolstoy Marg,
New Delhi-110001.

3. The Chief Officer,
Indian Bank,
Zonal Office, Upper-
Ground Floor, World-
Trade Centre,
Babar Road,
New Delhi-110001.

4. The Dy.General Manager,
Industrial Development
Bank of India,
Indian Red Cross Socy.
Bldg., Red Cross Road,
New Delhi-110001.

5. The Dy.General Manager,
Industrial Credit &
Investment Corpn. of
India, 6th Floor,
Jeevan Bharti Building,
Tower-2, New Delhi-1.

13. Shri C.Venkataraman,
Flat B, First Floor,
SRIJI Apartments,
25, Rajasekaran Street,
Mylapore, Madras-600 001.
(For Information Only)

14. The President/Gen.Secretary,
Buckingham & Carnatic Mills
Staff Union, No. 60,
Krishnadoss Road, Madras-600012.

15. The President/Gen.Secretary,
The Madras Labour Union. (B&C Mill
176, Strahans Road, Madras-600012

16. The President,
Binny Employees Union,
[illegible] Thambu Chetty Street,
Madras-600 001.

17. The President,
The Binny Bead [illegible] Anna
Thozhilalar Sangam,
5/100, Subedar Gardens,
Chellaimedu [illegible] Road
Madras-600 0[illegible].

18. The President,
The Binny Mills Labours Association
13/14, Madhurai Mudaliar Road
Jolly Mohalla ,
Cottonpet,
Bangalore-560053

19. M/s. Southern Alkalies And Marine
Products Pvt. Ltd.
59, Prince Market
Ulhasnagar- 420003

20. The President
Binny Beach Engg. Workers Union
2/83 GST Road
Meenambakkam
Madras-600 027

21. Additional Chief Officer
Reserve Bank of India
Industrial Expert Credit Deptt
Central Office Bldg., 12, Floor
Bombay-400 023