2.2 ASHOK PAPER MILLS (ASSAM) LIMITED

Implementation of revival package under 'Assam Accord'

Highlights

Jogighopa unit of Ashok Paper Mills Limited--a joint venture of the Governments of Assam and Bihar--was taken over, by the State Government and a Government company under the name of Ashok Paper Mills (Assam) Limited was formed.

(Paragraph 2.2.1)

Although, Rs.67.08 crore, for revival package sanctioned by the Government of India in March 1990, the Company failed to avail of the package/take up execution of the scheme till February 1995.

(Paragraph 2.2.6)

Well before the decision of the High Power Empowered Committee in January 1995, the State Government on their own decided (May 1994) to award the contract in favour of M/s Sanghi Group of Industries.

(Paragraph 2.2.9)

The Company suffered loss of Rs.1.52 crore due to lack of monitoring and control over the activities of the lessee, and not safeguarding the interest of the Company.

(Paragraph 2.2.10)

The lessee in connivance with the then Managing Director of the Company defrauded the Company and transferred assets worth Rs.5.19 crore on sale and lease basis.

(Paragraph 2.2.12)

The Company had to suffer revenue loss of Rupees five crore due to insertion of a clause in the lease deed not in conformity with the intent and purpose of the MoU.

(Paragraph 2.2.13)

Against entitlement of Rs.1.40 crore, Rs.2.97 crore released to M/s Soneko Paper Industries Limited, which resulted in excess payment of Rs.1.57 crore to the lessee.

(Paragraph 2.2.15)

Introduction

2.2.1 Under the 'Assam Accord (1985)', Government of India made a commitment to revive the 'Jogighopa unit (mill) of Ashok Paper Mills Limited (APM), a joint venture of the Governments of Assam and Bihar. Accordingly, on 24 September 1990, the mill was taken over by Government of Assam by virtue of the 'Jogighopa (Assam) unit of Ashok Paper Mills Limited (Acquisition and Transfer of Undertaking) Act, 1990'. Under the provisions of Section 7 (i) of the said Act, Ashok Paper Mills (Assam) Limited (Company) was later formed as a Government company and registered under the Companies Act, 1956 on 7 January 1991. Subsequently, as per State Government Notification (29 January 1991), the mill and the right, title and interest of the erstwhile Ashok Paper Mills Limited in relation to its undertaking, were transferred to and vested (8 January 1991) in the Government company, namely, Ashok Paper Mills (Assam) Limited (Company).

Scope of Audit

2.2.2 .This maiden review of the Company was attempted to analyse its performance *vis-à-vis* implementation of the schemes for revival of the mill under 'Assam Accord'. The activities of the Company in relation to the implementation of the revival package under 'Assam Accord' for the period 1995-2003 was reviewed in audit during August-November 2002.

To bring a pragmatic approach and sharing of knowledge and experience about the review topic, the Comptroller and Auditor General of India decided to constitute a State Level Committee *i.e.* Audit Review Committee for Comprehensive Appraisal of State Public Sector Enterprises (ARCPSE). So, the State Government was requested (December 2002 and February 2003 followed by reminder in May 2003) to direct the concerned Secretary of the Department and Managing Director of the Company for taking part in the proceeding of the Review Committee before issue of the comprehensive appraisal to the State Government. But no such discussion could take place due to non-receipt of any response from the State Government (May 2003).

Organisational set-up

2.2.3 The Management of the Company is vested in a Board of Directors consisting of minimum three and maximum 15 Directors. The Managing Director is the Chief Executive of the Company. As on 31 March 2003, the

Board comprised six Directors including a Chairman and a Managing Director.

Objectives

2.2.4 The main objectives of the Company, *inter alia*, as envisaged in the Memorandum of Association are to:

- acquire and takeover the Jogighopa unit of Ashok Paper Mills Limited and any other industrial undertakings as may be ordered by the Government of Assam;
- carry on business of manufacturing and dealing in all kinds and classes of paper, board and pulp, *etc*.;
- sell, improve, manage, develop, exchange, loan, lease or let under leases, sub-let, mortgage, dispose of, deal with in any manner, turn to account or otherwise deal with any rights or property by the Company.

During the five years ended 31 March 2003, due to lack of expertise, the Company engaged itself in pursuing private sector participation in the revival/reactivation of the paper mill at Jogighopa.

Financial Position and Working Results

2.2.5 The Company commenced its business with zero liability and the accounts of the Company did not reflect the liabilities of the erstwhile Company (APM).

The Company finalised its accounts up to 2000-2001. The accounts for 2001-2002 were prepared on provisional basis. The financial position and working results of the Company during the five years[#] ending 31 March 2002 are tabulated in ***Annexure* 15**. It was observed that the Company has incurred losses in all the five years and accumulated losses increased from Rs.5.29 crore in 1997-1998 to Rs.17.80 crore (provisional) in 2001-2002.

60-95 *per cent* of total income represented by interest on Fixed Deposit.

Lease rent earned, which was the principal source of income of the Company, was not even sufficient to meet the employees' cost and administrative expenses of the Company. Interest on Fixed Deposit made out of fund received from Government of India to meet pre-takeover liabilities constituted 60-95 *per cent* of total income.

The fixed assets of the Company created out of the funds released to the lessee were not accounted for up to the financial year ended March 2000. The Company revalued the assets (assets of pre-takeover period as well as assets

[#] Figures for the year 2001-2002 are provisional.

created by lessee) and accordingly, increase (Rs.113.36 crore) in the value of fixed assets, was accounted for in the accounts for 2000-2001.

Unsecured loan, which comprised only loan from State Government, increased from Rs.2.85 crore in 1997-1998 to Rs.6.95 crore (provisional) in 2001-2002. The Company obtained the loan to meet its liabilities towards employees' claims pertaining to the period up to March 1995. As the Company has been incurring losses since beginning, the chances of repayment of such loan appears to be remote.

Sanction of funds

2.2.6 Government of India (GOI), as per its commitment made under the 'Assam Accord' sanctioned (26 March 1990) Rs.67.08 crore as rehabilitation package for revival of the mill. The package consisted of two components:

- Redemption of the liabilities (Rs.50.14 crore) of the erstwhile Company (APM) and
- Revival of the mill (Rs.16.94 crore).

The State Government appointed 'Commissioner of Payments' (COP) for settlement of claims against the erstwhile Company.

Details of funds released by GOI to the Company/COP for redemption of liabilities and revival of the mill with utilisation thereagainst are shown in the following table:

(Rupees in crore)

Components of the revival package	Funds sanctioned by GOI	Funds released by GOI	Funds utilised/ disbursed by Company/COP
Redemption of pre-takeover liabilities	50.14	7.25 (May 1995 to March 2002)	6.13
Revival of the mill			
Promoter's contribution	4.60	4.60 (May 1995 to April 1996)	4.60
Margin money for working capital	2.30	2.30 (April 1996)	2.30
Cash loss for first two years of operation	10.04	5.04 (June 1997 to June 1999)	5.04
Total	**67.08**	**19.19**	**18.07**

As could be seen from the above table, out of Rs.7.25 crore released by GOI towards redemption of pre-takeover liabilities, the Company released Rs.6.13 crore to the claimants and retained the balance (Rs.1.12 crore).

Although, the funds for revival package was sanctioned in March 1990, the Company failed to avail the package/take up execution of the scheme till

There was delay in availing of the revival package.

February 1995. In March 1995 and later in July 2000, the Company attempted to revive the mill through the lessees. However, due to lack of expertise and control/monitoring over the activities of the lessees, the objectives of the revival package could not be achieved as discussed in succeeding paragraphs.

Revival of the Mill through Private Sector Participation

High Power Empowered Committee (HPEC)

2.2.7 To re-activate/revive the mill with the financial assistance provided by GOI under 'Assam Accord', HPEC was set up (August 1990) by Government of Assam.

2.2.8 Company's first attempt (1992) to revive the mill through a private sector participant (Shri L.N. Dalmia) met with failure as the Memorandum of Understanding (MoU) entered into with the party had to be cancelled (1992) for non-fulfillment of the terms and conditions of the MoU by the participant. The terms not fulfilled and reasons thereof were neither available on records nor stated to audit by the Management.

Award of contract

2.2.9 At the instance of HPEC, the Company invited tenders (January 1994), for private sector participation for revival of the Jogighopa unit of the Company in any form *viz.*, lease, outright purchase or joint sector.

Basic tender documents as also deliberations (meeting held on 30 December 1994) of the Private Sector Participation Committee (a Standing Committee of the State Government) leading to finalisation of tenders, were not made available to audit either by the State Government or the Company despite repeated reminders. Company in their reply to the audit observation confirmed non-availability of records with it; reply of the State Government is still awaited (September 2003).

Recommendation was made after a lapse of more than four years of constitution of HPEC.

However, records available with the Company revealed that HPEC recommended (January 1995), a panel of three firms with M/s Sanghi Group of Industries as the first preference. Accordingly, MoU and lease deeds were signed with M/s Sanghi Textiles Processing Limited (STPL--a unit of Sanghi Group of Industries) in March 1995 and September 1995 respectively.

In connection with the selection of the lessee, the following audit observations are made:

Government was pre-determined to award the lease to Sanghi Group of Industries.

- Well before the decision (January 1995) of HPEC, the State Government on their own decided (May 1994) to award the contract in favour of M/s Sanghi Group of Industries, giving rise to the conclusion that the recommendations of HPEC were merely a formality.

- The rent of Rupees one lakh per month offered by M/s STPL was preferred despite their having no previous experience of paper technology as against the lease rent of Rupees two lakh per month offered by M/s West Coast Paper Mills who was in the business of paper manufacturing.

Company suffered loss of revenue of Rs.50 lakh due to acceptance of lowest lease rent.

Thus, due to improper selection of the lessee, the Company suffered revenue loss of Rs.50 lakh (differential rent of Rupees one lakh per month from April 1995 to May 1999*)

Operation

2.2.10 After execution of MoU (March 1995), the mill was handed over to M/s STPL in April 1995

The MoU and the lease deed provided *inter alia* the following:

- The mill would be handed over to M/s STPL at zero liability;
- Rs.16.94 crore would be made available to the lessee on account of promoter's contribution (Rs.4.60 crore), margin money (Rs.2.30 crore) for working capital and cash loss (Rs.10.04 crore) for the first two years of operation;
- Government of Assam would nominate a member to be included in the Board of Directors of the lessee.

As per the terms of MoU and lease deed, the Company released (June 1995 to August 1997) a total amount of Rs.8.97 crore to the lessee as promoter's contribution (Rs.4.60 crore), margin money for working capital (Rs.2.30 crore) and cash loss for the first two years of operation (Rs.2.07 crore).

Mill being abandoned by the lessee, MoU and lease deed were terminated.

The lessee abandoned the mill on 7 April 1999 without prior notice to the Company. The Company took possession of the mill on 16 June 1999 and terminated the MoU and the lease deed on 1 July 1999 for violation of terms and conditions of the lease *viz.,* non-payment of lease rent, attempt to sub-let, failure to pay employees' wages and electricity dues, abandonment of the mill *etc.* The lessee filed (July 1999) a suit against the Company. The case is sub-judice (July 2003).

It was noticed from the valuer's report (December 1999) that against release of Rs.8.97 crore, the lessee actually utilised Rs.8.39 crore in creation of assets (Plant and Machinery) and the balance of Rs.58 lakh was retained by the lessee. The valuer's report also indicated that machinery installed at a cost of Rs.17.16 lakh had been damaged during commissioning. Further, there were some more assets, which were damaged due to mishandling by the lessee that

* In June 1999, the Company took possession of the mill.

would cost the Company Rs.77 lakh for re-commissioning/rectification of the same.

In this regard, the following audit observations are made:

Activities of the lessee were not monitored.

- The Company/State Government did not appoint any nominee in the Board of Directors of the lessee, as required under the provisions of the MoU. Thus, the Company lost an opportunity to closely monitor the working of the lessee.
- Before release of funds to the lessee, the Company did not ascertain the requirement of assets or repair/renovation work to be undertaken by the lessee.
- The Company, neither insisted the lessee for submission of vouchers/accounts in support of utilisation of funds nor verified the assets procured, repair/renovation works carried out by the lessee.
- Interest of the Company/Government was not secured prior to releasing funds to the lessee.

Company suffered loss of Rs.1.52 crore due to lack of control and monitoring.

Thus, due to lack of monitoring and control over the activities of the lessee, and not safeguarding its interest, the Company incurred loss of Rs.1.52 crore (damage of assets: 94 lakh and non-refund of Rs.58 lakh by lessee).

In their reply, Management stated (July 2003) that since the lease was to continue for 25 years and the lessee abandoned the mill without any prior notice to the State Government/Company, unutilised funds and other assets could not be recovered. However, the Company has approached (March 2002) the Court for recovery of the amount along with other losses.

Management's reply confirmed the audit contention that there was complete absence of control and monitoring by the Management over the activities of the lessee, since the fact of unauthorised retention of fund by the lessee and other losses and damages caused by the lessee came to the notice of the Management only through the valuer's report (December 1999) long after the lessee abandoned (April 1999) the mill.

Non-recovery of lease rent amounting to Rs.23.50 lakh

2.2.11 Lease deed executed (September 1995) between the Company and the lessee pro*vide*d that the lease rent would be payable to the Company within seven days from the commencement of the month to which it relates failing which the lessee would be liable to pay interest at the rate of 15 *per cent* per annum on the outstanding rent. Further, in case the dues remained unpaid for three months, the lease deed would be deemed to have been terminated and the lessor, in that event, would have the right of re-entry after serving six months' notice to the lessee.

The Company did not exercise its right of re-entry at the appropriate time.

Scrutiny of records revealed that, though the lessee had been defaulting in payment of his dues since May 1996 and also failed to comply with its obligations under the lease deed, the Company did not exercise its right of re-entry at the appropriate time. The Company even did not take any action when cheques issued by lessee for payment of lease rent were dishonoured five times during August 1997 to January 1998. As a result, when the lease deed was subsequently terminated (July 1999) by the Company, the lessee's dues had accumulated to Rs.23.50 lakh.

The matter was reported to Management/Government in December 2002. In reply, the Management stated (July 2003) that stern action against the lessee was not taken since, in the event of such termination, it would not have been possible for the Company to carry on the financial burden on account of salary and wages of the employees, electricity charges and security charges (which otherwise were to be borne by the lessee) in view of poor financial condition of the Company.

Wages and electricity charges remained unpaid by the lessee.

Reply of the Management is not acceptable because the Company did not verify whether the wages of the employees and the electricity charges were paid on due dates. As observed in audit, employees' wages (Rs.3.05 crore) for the period September 1998 to June 1999 and electricity charges (Rs.3.96 crore) up to February 1999 remained unpaid by the lessee.

Thus, due to delay on the part of the Company to initiate timely action against the lessee, lease rent amounting to Rs.23.50 lakh[#] remained unrealised (July 2003) besides loss on interest thereon.

Unauthorised transfer of assets on sale and lease basis by the lessee in collusion with Management

2.2.12 The MoU signed between the Company and the lessee provided that:

- All movable and immovable assets, rights, titles and interest of the Company would be leased out to M/s STPL for a specific period of 25 years for operation and management of the mill without conferring any right to the lessee to sell/transfer the leasehold assets

- The mill would be handed over to the lessee only after execution of a lease deed.

The lessee without the knowledge of the Management transferred one plant at a cost of Rs.5.19 crore on sale and lease basis.

Before signing of the lease deed (September 1995), the mill was handed over to the lessee in April 1995. Later, the lessee without the knowledge of the Board of Directors of the Company transferred (May 1995) the 'Solid Waste Control Equipment Bleaching Plant' which was needed for operation of the mill, to M/s First Leasing Company of India Limited (FLCIL) at a cost of Rs.5.19 crore on sale and lease basis.

[#] For the period from July 1997 to 15 June 1999 @ Rupees one lakh per month.

On being requested (August 1995) by the lessee, the Managing Director (without the approval of Board of Directors) issued an undated certificate in their favour authorising the lessee to pledge, mortgage, or create such charge as may be necessary to obtain long term funding by way of long term loan, hire purchase, lease or sale and lease basis of the assets to restart the mill. The words 'sale and lease basis', included in the certificate was in contravention to the terms and conditions of MoU and lease deed.

M/s FLCIL lodged its claim on the 'Solid Waste Control Equipment Bleaching Plant' in January 2000.

Company did not take any action for offence/breach of trust and loss of assets.

It would thus, transpire from the above facts that the lessee in connivance with the then Managing Director had defrauded the Company and transferred assets on sale and lease basis. The Company, except lodging a First Information Report (FIR) with police (June 2002), neither took appropriate steps to realise the value (Rs.5.19 crore) of assets such transferred nor initiated any legal action for fraudulent transfer of assets against the then Managing Director for willful offence/breach of trust and loss of Company's assets till the date of audit (November 2002).

Extension of undue privilege to lessee resulted in loss of Rupees five crore:

2.2.13 The MoU as approved by the State Government did not stipulate any other benefit to the lessee from the mill except the benefit derived from operation and management of the mill. Scrutiny of lease deed revealed that in contravention to the terms of MoU, a clause authorising the lessee to identify the scrap and other materials not useful in operation of the mill and also to sell those materials in order to utilise the sale proceeds in the running of the mill was inserted in the lease deed by the Management.

Scrutiny revealed (November 2002) that taking advantage of the above clause, the lessee sold plant and machinery, already declared (October 1992) scrap by the registered valuer, at a price of Rupees five crore.

Insertion of a clause in the lease deed not in conformity with the MoU led to loss of revenue of Rupees five crore.

Thus, insertion of a clause in the lease deed not in conformity with the intent and purpose of the MoU and absence of any provision in the lease deed to recover the sale proceeds of the assets from the lessee amounted to extension of undue privilege to the lessee and as a result, the Company had to suffer loss of revenue of Rupees five crore.

Inadequate return on investment on leased assets

Lease rent accepted represent 0.17 *per cent* of the assets leased out and 8.74 *per cent* of profits projected by the lessee.

2.2.14 To re-activate the mill, which had been under closure since July 1999, the Company on due invitation of tender *etc.*, handed over (02 August 2000) the mill on lease to M/s Soneko Paper and Industries Limited (SPIL) at zero liability in consideration of a monthly lease rent of Rs.1.50 lakh which worked out to an annual return of 0.17 *per cent* on the book value of the assets

(Rs.105.59 crore being the value of the assets of the mill excluding land as on October 1999) and only 8.74 *per cent* of the profits projected by the lessee (January 2002) at 56 *per cent* capacity utilisation. Leaving aside the question of generation of funds for recoupment of depreciation cost for replacement/renewal of the assets in future, lease rent fixed/accepted by the Management was not even sufficient to meet the Company's annual expenses (excluding depreciation) of Rs.67 lakh (2001-2002).

Though the plant was ready for commercial production, the present lessee deferred the commencement of commercial production on the ground that the benefits of excise duty exemption for a period of 10 years from the date of commercial production was not made available to the lessee as committed in the MoU/lease deed executed with the lessee. However, it was observed in audit that the deferment of commissioning of the mill on the stated ground was uncalled for because, though there was a mention in the MoU that State Government would take up the matter with Government of India for granting excise duty exemption, there was no commitment as such by the State Government/Company nor a pre-condition set out in the MoU/lease deed for granting such excise duty exemption.

Irregular release of funds for renovation of the Mill

2.2.15 As per MoU (26 July 2000) executed between the Company and the lessee (SPIL), the Company committed itself to bear the capital cost for renovation of the mill and allowed the lessee to mortgage its leasehold rights to any bank or financial institution to raise any loans or working capital facility.

Condition laid down by the Government of India for release of funds to M/s SPIL was not incorporated in the lease deed.

Accordingly, the Company with the approval (November 2000) from Government of India released to M/s SPIL an amount of Rs.2.97 crore, earlier earmarked to meet cash losses, against incremental capital investment. Government of India’s approval stipulated that since M/s SPIL was also funding the renovation work from its own sources, the amount should be disbursed on 1: 1 ratio. However, in the lease deed executed (January 2001) later, the condition was not incorporated.

Before taking up the work of renovation, the Company neither prepared any detailed estimate nor insisted upon the lessee to submit the same for perusal/approval of the Board of Directors.

Excess payment of Rs.1.57 crore was made due to non-compliance of Government of India’s guideline.

Scrutiny of records revealed that Rs.2.80 crore (approx) was spent by the lessee for creation of capital assets. However, against entitlement of Rs.1.40 crore (being 50 *per cent* of Rs.2.80 crore as per Government of India's guide line), Rs.2.97 crore was released to M/s SPIL, resulting in excess payment of Rs.1.57 crore (Rs.2.97 crore – Rs.1.40 crore) made to the lessee.

The matter was reported to the State Government/Management in December 2002. The part replies of the Management wherever received have been incorporated in the review, replies of the State Government, however, have not been received so far (September 2003).

Conclusion

Despite 12 years of its existence, and spending Rs.11.94 crore, the Company failed to take viable steps for revival of the mill. The Company's efforts in leasing out the available infrastructure and also release of funds to the lessees did not yield the desired results due to poor monitoring and control over the activities of the lessees. Unintended benefit of Rs.7.01 crore was given to the lessee in the form of non-payment of wages (Rs.3.05 crore) and electricity charges (Rs.3.96 crore) by the lessee. Strict action against the officials responsible for this needs to be taken. Further, by not safeguarding the due custody of assets (Rupees five crore) and also lacunae in lease deeds (Rs.1.57 crore) resulted in undue enrichment of the lessees to the tune of Rs.6.57 crore. Besides, *ultra vires* action of permitting the lessee to enter into financial lease led to litigation of assets of Rs.5.19 crore.

The Government/Company need to formulate viable scheme for attaining the intended purpose of the revival package.