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Obsolete legislation that prevents sick units from closure need to be overhauled says, advocate Alok Sinha



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EXPERT CORNER

An entrepreneur starts a business with a view to earn profits and recruits workforce in synchrony with the size, nature and profitability of the business. But what happens when the enterprise ceases to earn profits? What happens when running it becomes a liability for the entrepreneur rather than an asset? In such cases the employer is usually left with only two options:

- ◆ To reduce the redundant workforce and make the business profitable yet again, or at least put an effort in the same direction
- ◆ To close down the sick industrial unit and prevent further losses to invest the sum elsewhere.

The recent recession in the Indian industry leaves the entrepreneur with just these two options and this holds true for employers big or small. But what if the law prevents them from taking either of the two courses and suffer losses over losses?

Yes, under the Industrial Disputes Act, 1947 there is a clause which stipulates that if a unit employs more than three hundred employees in UP and over hundred in Delhi, the employer needs to take permission of the appropriate authorities before ordering a closure. The fact of the matter, however, is that such a per-

mission is never given. Though the law provides that the permission may be given after examining the facts and circumstances of the case, for all practical purposes, the permission is never granted.

Frankly, there are no laid down criterion on which this permission is given or rejected. It therefore amounts to vesting highly discretionary and arbitrary powers with the authority concerned who are often influenced by political or social reasons in their final decision.

This state of affairs was once divulged to me by P Luthra, chairman, Televista, after the government denied him permission to close his loss-making unit. I also remember the time when Nidhipati Singhanla, MD, Fibertech Engineers Ltd. (a unit of JK Synthetics), approached me on a similar issue. In this case, the Industrial relations

power. Definitely, good and big employers do not use such third degree methods or get involved in any criminal doings. But in almost all cases, the law appears to be encouraging the employer to manipulate or twist to beat a restraining provision.

Denying permission for closure is not only a liability on the employer, it also creates bad industrial relations for which the HRD department is later held responsible. The other alternative (for bigger units) is to go under the Board of Industrial Financial Reconstruction (BIFR). This, transfers the liability to the public as now the government spends huge sums on propping up sick units.

Unfortunately, in labour laws (unlike other laws), if an appointment letter contains a specific clause of termination after notice or in lieu of a notice pay, it is not sustainable in the eyes of law. Any other 'unreasonable' clause is also not sustainable because the apex court is of the view that in labour matters there is already so much unemployment, that the employer can misuse such clauses to force employees to accept unreasonable terms, conditions or wages at the time of an appointment.

These obsolete provisions need to be overhauled. The government should make provisions for some reserve money by way of nominal contribution and deduction which can be tapped on rainy days which is the time of closure, retrenchment and the like. This would ensure a good severance package for the employees so they voluntarily tender their resignations and start afresh without burdening the company in bad health. It is time that the various industrial chambers also lobby for such a policy.

HINDUSTAN TIMES CAREER 26/7/2001
Blocking closures

"Obsolete legislation that prevents sick units from closing or downsizing, need to be overhauled"

were disturbed over a dispute concerning dearness allowance, which was followed by an illegal strike, drubbing and violence. The company then declared a lockout which was held unjustified by the authorities. Subsequently, the company applied for closure but this proposal was also rejected. In both the cases, we (lawyers) somehow maneuvered the closure by other means, though an explicit permission was never granted.

It has been observed that desperate employers are often willing to offer good financial package in lieu of resignations (over and above the legal financial packets) or in extreme cases use muscle