

## Indian Paper Scenario – February 2002

The Supreme Court has asserted that when the Government has "deep and pervasive" control over a company and its day to day administration, it would be deemed to be an instrumentality of the state with all its obligations. This ruling was made in the case of Mysore Paper Mills which had appealed against the Karnataka High Court judgment holding that the company was "state" and it could not violate the Fundamental Rights of citizens. Writ petitions could thus be filed against such a government company if they violate the guarantee of equality, act in an arbitrary manner, or pollute the environment. According to the Companies Act, a government company is a company in which not less than 51 per cent of the paid up share capital is held by the central or state government and includes a company which is a subsidiary of a government company. In this case, the question raised was whether the Mysore Paper Mills, incorporated under the Companies Act and which is a government company under section 617, could be called an arm of the state, with all its liabilities. The Supreme Court Bench, comprising Justice G B Pattanaik and Justice Doraiswamy Raju, said it was "state". The judgment emphasized that the "indisputable fact that the company is a government as envisaged in Section 617, that more than 97 per cent of the share capital has been contributed by the state government and the financial institutions controlled and belonging to the government of India on the security and undertaking of the state government and it is entrusted with public duties like rural development and economic welfare of the people, the fact that the five out of 12 directors are government and departmental persons, besides other elected directors with the concurrence and nomination of the government and various other forms supervision and control will go to show that the state government has deep and pervasive control of the company. The physical form of the company was merely a cloak or cover for the government, the judges stressed. In this case, the dispute started over the transfer of an official of the company. The court ruled that there was no mala fide motive behind the company's action. Nevertheless, the status of the company was the first legal question to be considered. While dismissing the arguments of the company, contending that it was not a government agency, the Supreme Court applied the tests laid down in the Ajay Hasia case of 1981 to find out when the corporation could be said to be an instrumentality or agency of the state. The tests include the nature of the holding of the share capital of the company, financial assistance of the state, whether it has monopoly status, the degree of government control, and whether its functions are close to governmental activities. In several judgments over decades, the Supreme Court has held that the electricity boards, the Children's Aid Society, Delhi Transport Corporation and other organization are "state".

Tamilnadu Newsprint & Paper Mills Limited (TNPL) has submitted an expression of interest regarding the purchase of 74 per cent of the equity stake in Hindustan Newsprint Limited (HNL), a subsidiary of state-owned Hisustan Paper Corporation (HPC). The EoI was submitted by TNPL in response to a global tender recently floated by the Union Government inviting price bids from prospective investors for HNL stake. The last date for receiving EoI was February 28. Available information suggests that the Tamilnadu Government controlled TNPL has till date emerged as the lone bidder for the HNL stake. Paper industry sources feel that the possibility of TNPL becoming the owner of HNL appears bright in view of its strength in newsprint manufacturing. It has a paper mill with an installed manufacturing capacity of about 2,00,000 tonnes of newsprint and writing & printing paper. Normally, it utilizes 30 per cent of its installed capacity to produce quality grade writing and printing paper, devoting the rest to producing newsprint. But the production mix varies depending on the behavior of the paper/newsprint market. HNL,

on the other hand, produces only newsprint and has an annual installed capacity of about 1,00,000 tonnes. Informed sources feel that TNPL may have to concentrate newsprint manufacturing activity at one place. And hence the move to acquire the controlling equity stake in HNL. Though the nature of TNPL's offer in its EoI is not yet known, it is presumed that the company may have to expand its production capacity of writing and printing paper. Even as the process of disinvestment is on, the HNL management is taking steps to overcome an impending raw material problem, following the Kerala Government's decision to revise the prices of cellulosic fibre. The company has reaffirmed its resolve to encourage farmers to raise quality homestead pulpwood species in line with the agro forestry initiatives and community forestry projects outlined in the National Forest Policy, 1988. Incidentally, HNL has plans to cover a total area of 5,600 hectares of Kerala Government owned degraded forest land. Of the targeted area, about 4,000 hectares have so far been covered under a captive plantation programme.

Angry creditors of Asia Pulp and Paper recently threatened legal action after the timber group unveiled an "insufficient" debt-restructuring plan for its more than US\$13 billion debt pile. The Singapore based group offered to pay its debts "in full", but few details of the plan were available after a closed door meeting with some 60 creditors, who did not vote on the proposal. Credit Suisse First Boston, APP's financial advisor, took months to come up with proposal, which outlines an extended repayment programme from March 2003. Several foreign creditors said the plan contained "insufficient information" and was "inconsistent with restructuring concepts considered to be fundamental". Creditors expressed frustration with the pace of the debt-restructuring talks after the meeting. They allege KPMG, the creditors' steering committee financial adviser, was having difficulty getting information from APP relating to its businesses, such as the role of trading companies used by the group and the sustainability of timber supplies from concessions held by family-controlled forestry companies. KPMG had also not yet been able to gain access to APP's large businesses in China, they said. One of the creditors said that there are probably individual creditors contemplating alternative action if they would not get the cooperation from APP soon. Possible alternatives could include squeezing the group's operations, such as through refusing letters of credit for trade purpose, or various forms of legal action.

The Calcutta High Court upheld the order of sanctioning the scheme of amalgamation of ITC Limited with ITC Bhadrachalam Paper Boards Limited. The order was passed by a single judge. The order of sanction was challenged by a shareholder in the division bench. The division bench of Justice T Chatterjee and Justice J Biswas rejected the application for stay of the order filed by the shareholder. However, the court directed that the appeal should be heard by the court. Tamal Majumdar, owner of six shares of ITC Limited filed objection before the single judge, who rejected his objection. Majumdar filed appeal in the division bench on the ground that the valuation of the shares was done correctly by the company. Earlier, ITC made an application before the court for holding its shareholders meeting for the purpose of considering the scheme of amalgamation, which was approved by the majority shareholders.

**BALLARPUR INDUSTRIES LIMITED:** This company has drawn up plans to come up with a rights issue of around Rs. 2100 million. The issue is likely during the company's financial year ending 30th July 2002. The rights issue is expected to be priced in the range of Rs.35-42.