

In Re: Charminar Papers Ltd.

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Court : Andhra Pradesh

Decided On : Oct-03-2007

Reported in : [2008]82SCL288(AP)

Judge : Ramesh Ranganathan, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 3(1), 16, 17(3), 20, 20(1), 20(2) and 22A; [Companies Act, 1956](#) - Sections 433, 434, 439, 440, 443 and 529A; Companies (Courts) Rules, 1959 - Rules 24, 24(1), 24(2), 95, 96, 98, 99, 103 and 104

Appeal No. : R.C.C. No. 13 of 2001

Appellant : In Re: Charminar Papers Ltd.

Advocate for Def. : L. Venkateswara Rao, ;T. Sandhya Sree, ;Y. Lohita, ;V.R. Reddy, Korvuri and ;M. Anil Kumar, Advs.

Judgement :

ORDER

Ramesh Ranganathan, J.

1. The Registrar, Board for Industrial and Financial Reconstruction (for short 'BIFR'), vide proceedings dated 29-11 -2001, informed this Court that, having conducted an enquiry under Section 16 of the Sick Industrial Companies (Special

Provisions) Act, 1985 ('SICA' in short), the Bench of the BIFR, in its proceedings dated 19-11-2001, had recorded an opinion under Section 20(1) that it was just and equitable that M/s. Charminar Papers Limited (hereinafter referred to as M/s. C.P.L), be wound up and that its opinion be forwarded to the High Court for further action in accordance with law.

2. In its proceedings dated 19-11 -2001, the BIFR noted that M/s. C.P.L. was declared a sick industrial company under Section 3(1)(o) of SICA, that State Bank of India was appointed as the Operating Agency under Section 17(3), that the scheme for rehabilitation was sanctioned vide order dated 12-1-1994, that the progress of its implementation was last reviewed at the hearing held on 15-10-1999 when the operating agency had informed that M/s. C.P.L. could not be revived within RBI parameters and that the operating agency was asked to submit a revised rehabilitation proposal based on one time settlement of the dues of financial institutions. The BIFR also noted that the performance of the company was much below the projected levels, that by 12-9-1999 its networth had become negative by Rs. 198 lakhs, that, on account of the company's failure to come up with a comprehensive revival proposal with firm tie-up of funds, the sanctioned scheme had failed that the operative agency was directed to explore chances of change in management, that two proposals were received which envisaged further working capital assistance of Rs. 1.5 crores and, since State Bank of India was not willing to take further exposure in the company, both these offers were found unacceptable. In its order dated 31-7-2001 the Bench of the BIFR formed a prima facie opinion that the company be wound up in terms of Section 20(1) of the Act and directed that a notice for winding up be issued calling for objections/ suggestions.

3. Both the financial institutions, i.e., APIDC and APSFC, vide letters dated 13-11-2001 and 16-11-2001 respectively, conveyed their no objection to the winding up of the company. State Bank of India also informed that they had no objection for the company being wound up. The BIFR noted that the factory of the company was lying closed since September, 1999 pursuant to the orders of the Pollution Control Board and that the Supreme Court, in its order dated 6-2-2001, had directed that 14 closed/ sick units, including the company's factory, should not be

permitted to be reopened in the present location. The BIFR also noted the submission that the company proposed to shift its plant and machinery to some other location, dispose of the existing land and buildings and, as the co-promoter was resourceful and had technical knowledge, the company should be allowed further time for revival. The BIFR confirmed its earlier prima facie opinion that, in spite of ample time and opportunity having been given to all concerned, no viable rehabilitation scheme with fully tied up means of finance could be worked out and that the sick company was not likely to make its networth exceed its accumulated losses within a reasonable time while meeting all its financial obligations. The Bench held that it would be just, equitable and in public interest that the company be wound up under Section 20(1) of the Act. The Bench ordered that its opinion be forwarded to the High Court along with copies of all the orders passed earlier. The company and its promoters were directed, in terms of Section 22A(b) of the Act, to ensure safety of the company's assets and take no action for disposal thereof until such time as either a selling agency was appointed by the BIFR or the receiver/Official Liquidator of the High Court took charge of the same.

4. This Court, by order dated 5-6-2006, appointed the Official Liquidator attached to the High Court as the Provisional Liquidator of the Company and directed him to take possession of the assets of the company after taking inventory and after issuing notices to the creditor-State Bank of India as well as the company. He was also directed to file a report along with a copy of the inventory.

5. C.A. No. 103 of 2007 was filed by the erstwhile Managing Director of M/s. C.P.L. seeking recall of the order dated 5-6-2006, for discharge of the Provisional Liquidator and for a consequential direction that the management of the company be handed over to the former Board of Directors of the Company represented by its Ex-Managing Director. In the affidavit, filed in support of the Company Application, it is stated that, while the reference of the BIFR recommending winding up of the company was pending before this Court, the erstwhile management of M/s. C.P.L. had reached an one time settlement of their outstanding dues with the three secured creditors, i.e., APSFC, APIDC and SBI. It is stated that, in terms of the settlement, the former management had raised the required finance, paid all the secured creditors and had obtained letters to that

effect, that in addition they had settled the claims of 36 workmen and had paid their legal dues which were received and accepted by the workmen in September, 2005, that the settlement was reported to the Labour Court II, Hyderabad, in M.P. No. 18 of 2003, that a portion of the outstanding dues of the commercial taxes department was also settled on payment of Rs. 7.50 lakhs, that the balance of Rs. 18.33 lakhs is subject to verification of the accounts, that while manufacturing activities cannot be taken up in the present location, in view of the prohibitory orders of the A. P. Pollution Control Board, Hyderabad pursuant to the orders of the Supreme Court, the factory premises can be utilized for conversion of paper for big paper mills like Rayalaseema Paper Mills, Bhadrachalam Paper Boards Limited etc. The Applicant submits that all the creditors had expressed their willingness to further support the management's quest of clearing their statutory dues and to extend all necessary help in reviving operations of the company and, therefore, the Provisional Liquidator should be recalled. Enclosed to the application are the letters addressed by APIDC to the Official Liquidator dated 18-12-2006, by the APSFC to the Company on 18-7-2006 and State Bank of India to the Official Liquidator on 18-10-2006. In their letters, both APIDC and APSFC informed that the company had paid the term loan OTS amount along with interest, had closed the term loan account with them and that they were not interested in the affairs of the company including its winding up. State Bank of India informed that, since a compromise had been entered into for repayment of the bank dues, they had no further interest in the affairs of the company including the winding up process.

6. In the additional affidavit filed on 30-4-2007 it is stated that the company had 24 unsecured creditors to whom it owed Rs. 1,91,79,711, of whom 10 were trade creditors to whom Rs. 25 lakhs was due, that these claims were more than 9 years old and had already become time-barred, that four of these trade creditors, who were due Rs. 17,49,284, had given their individual affidavits of consent to the revival operations of the company, that one trade creditor, M/s. Wire & Fabrics (SA) Limited, Bangalore, to whom Rs. 2,63,604 was due, had received Rs. 75,000 in full and final settlement of all dues, that another trade creditor, M/s. White Star Industries, Hyderabad had already written off the debt and had issued a letter to that effect, that M/s. Ivax Paper Chemicals Limited, Hyderabad had agreed in

principle to write off the debt and had issued a letter to that effect, that two more trade creditors, M/s. Paper Machine Wire Industries, Nasik and M/s. Swill Limited, Kolkatta had agreed for settlement, that negotiations were in progress and that M/s. Daram Rosen Private Limited, Daman was no longer functioning. It is stated that among the other unsecured creditors included loans given by the erstwhile Managing Director, his family members, his other concerns and the remuneration due to him, that these dues aggregating to Rs. 29.34 lakhs would be converted into equity once the operations of the company were revived, that the company had shown Rs. 7,51,820, received as incentive from the Director of Industries, Sangareddy, Medak District, in the list of unsecured creditors and that the same would continue once operations of the company were revived, that the company owed Rs. 32,500 to the auditors to repay which steps were being taken, that the remaining eight unsecured creditors had lent Rs. 1,30.07 lakhs to the company to enable it to pay the secured creditors in terms of the one-time settlement reached with them and that four creditors to whom Rs. 103.14 was due, had given their affidavits of willingness to receive the amount or in the alternative to have the loan converted into equity after the company was revived. It is stated that the company has 12 shareholders, that the paid up capital of the company is SEBI AND CORPORATE LAWS LJ MARCH 10, MARCH 16, 2008 O 54 Rs. 50,00,000, that eight shareholders, holding 3,75,500 shares of Rs. 10 each, had given affidavits in support of the revival operations, that APIDC which held 1,17,500 equity shares had disinvested in favour of the applicant, that transfer formalities would be completed once the provisional liquidator was discharged and that only three shareholders holding 7,000 equity shares of Rs. 10 each were yet to give their affidavits. It is stated that a positive response was received to the offers made to big paper mills, such as Bhadrachalam Paper Boards and Rayalaseema Paper Mills, to undertake paper conversion operation.

7. It is necessary to note that the aforesaid events, elaborately referred to in the affidavit filed in support of C.A. No. 103 of 2007, are subsequent to the opinion of the BIFR recommending winding up of the company on just and equitable grounds.

8. The questions which arise for consideration are whether this Court, while exercising its jurisdiction for winding-up a company under Section 433 of the Companies Act, would limit its enquiry only to the recommendations of the BIFR and whether it can examine events, brought to its notice by the erstwhile management of the company, even if they relate to a period subsequent to receipt of the opinion of the BIFR.

9. Exercise of jurisdiction, under Section 433 of the Companies Act for winding up of a company, is discretionary. It is only in the circumstances mentioned in Clauses (a) to (f) thereunder can a company be wound up. Under Section 439, an application to the Court for winding up of the company shall be by a petition presented either by company itself or its creditor or the contributory or the Registrar of Companies. Under Section 443 of the Companies Act the Court may, on the hearing of a winding up petition, dismiss it, adjourn the hearing, make an interim order, make an order for winding up of the company with or without costs, or any other order as it may think fit.

10. Part III of the Companies (Courts) Rules, 1959 relates to 'Winding Up'. Under Rule 95, a petition for winding up of a company shall be in Form Nos. 45, 46 and 47, as the case may be. Rule 96 relates to admission of the petition for winding up and directions as to advertisement and, thereunder, upon the filing of the petition, it shall be posted before the Judge in chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. Under Rule 96 the Judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition. Under Rule 98, every contributory or creditor of the company shall be entitled to be furnished by the petitioner, or by his advocate, a copy of the petition, within 24 hours of his requiring the same, on payment of the prescribed charges. Rule 99 relates to advertisement of the petition and, thereunder, subject to any directions of the Court, the petition shall be advertised in Form No. 48 within the time and in the manner provided by Rule 24. Under Rule 24(1), where any petition is required to be advertised it shall, unless the Judge otherwise orders, or the rules otherwise provide, be advertised, not less than fourteen days before the date fixed for

hearing, in one issue of the Official Gazette of the State, and in one issue each of a daily newspaper in the english language and a daily newspaper in the regional language circulating in the State, as may be fixed by the Judge. Under Rule 24(2), except in the case of a petition to wind-up a company, the Judge may, if he thinks fit, dispense with any advertisement required by these rules. It is evident from Rule 24(2) that, in the case of a petition for winding up of a company, the requirement of an advertisement, as prescribed in Rule 99, cannot be dispensed with. Under Rule 103, any affidavit intended to be used in opposition to the petition shall be filed not less than five days before the date fixed for the hearing of the petition, and a copy of the affidavit shall be served on the petitioner or his advocate forthwith. Copies of the affidavit shall also be given to any creditor or contributory appearing in support of the petition, who may require the same, on payment of the prescribed charges. Under Rule 104, an affidavit intended to be used in reply to the affidavit filed in opposition to the petition shall be filed not less than two days before the date fixed for hearing of the petition, and a copy of the affidavit in reply shall be served on the day of the filing thereof on the person by whom the affidavit in opposition was filed or his advocate.

11. The advertisement to be issued under Rule 99 is to be in Form 48 whereby notice is given that a petition for winding up has been presented before the High Court, that the petition is directed to be heard before the Court on a specified date, that any creditor, contributory or other person desirous of supporting or opposing the making of an order on the said petition can send to the petitioner or his advocate notice of his intention signed by him, or his advocate, with his name and addresses so as to reach the petitioner not later than five days before the date fixed for hearing of the petition and to appear at the hearing for the purpose, in person or by his advocate.

12. On a conjoint reading of Rule 99 and Form No. 48, it is evident that creditors, contributories and others, desirous of supporting or opposing the making of an order for winding up of the company petition, are put on notice of a petition for winding up having been presented before the High Court. The purpose, which the advertisement seeks to serve, is to enable a creditor, contributory or any other person either to support or to oppose the making of an order of winding up. On

being put on notice, contributories, creditors and others are entitled to file their affidavits in opposition to the petition for winding up.

13. Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA') relates to winding up of a sick industrial company and reads as under:

(1) where the Board, after making inquiry under Section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the Sick Industrial Company in accordance with the provisions of the [Companies Act, 1956](#).

(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purpose of the winding up of the sick industrial company be deemed to be, and have all the powers of, the Official Liquidator under the [Companies Act, 1956](#).

(4) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of Section 529A, and other provisions of the [Companies Act, 1956](#).

14. As has been held by the Supreme Court, in V.R. Rama Raju v. Union of India [1997] 89 Comp. Cas. 610, Sub-section (2) of Section 20 of SICA has to be

construed to mean that the High Court, while deciding the question of winding up of the company, has to take into account the opinion of the BIFR forwarded to it under Section 20(1) and is not to abdicate its own function of determining the question of winding up.

15. The BIFR is an expert body constituted to examine and explore avenues for revival of sick industrial companies. It is only when it is of the opinion that the company cannot make its net worth exceed its accumulated losses within a reasonable time can it recommend that the company be wound. While the opinion of such an expert body is entitled to great weight it is, nonetheless, neither conclusive nor binding on the High Court.

16. The power conferred on the High Court under Section 433 read with Section 443 of the Companies Act, to order winding up of a company, is judicial in nature. The Company Court is required to apply its mind, consider the material on record and take an appropriate decision. While so doing, it is permissible for it to examine the correctness of the opinion of the BIFR and decide whether, in the light of the opinion furnished, the company should be wound up or not. From the language employed in Sub-section (2) of Section 20(1) of SICA, it is evident that the BIFR's opinion merely forms the basis for continuance of proceedings for winding up of the sick industrial company and that further proceedings, after receipt of the opinion of the BIFR, are to be conducted by the Company Court in accordance with the provisions of the Companies Act and the Rules made thereunder. (J.M. Malhotra v. Union of India [1997] 89 Comp. Cas. 600 (Mad.), Loharu Steel Industries Ltd. v. D.C.M. Ltd. [2001] 107 Comp. Cas. 353 (Kan).

17. The very fact that, under Section 20(2) of SICA, the High Court is required to proceed with the winding up in accordance with the provisions of the [Companies Act, 1956](#) would necessitate the conclusion that the High Court, even after receipt of the opinion of BIFR, still has the discretion under Section 433 of the Companies Act, read with Section 443 thereof, either to order or to refuse winding up of the Company. As noted above, Section 439 of the Companies Act permits an application for winding of a company to be made by the company itself, its creditors, its contributories or by the Registrar of Companies. Except for the

aforesaid, none other can file an application. What Sub-sections (1) and (2) of Section 20(1) of SICA, in effect, dispense with are the requirements of Section 439 for the purpose of initiating proceedings for winding up of the company under Part VII, Chapter II of the Companies Act. Proceeding for winding up shall have to be conducted, after receipt of the opinion of the BIFR, in accordance with the provisions of the Companies Act and the Companies Court Rules, 1959. J.M. Malhotra's case {supra}. If the Company Court is satisfied, prima facie, that the opinion of the BIFR justifies admission, then an advertisement, as prescribed under Rule 96 read with Rules 99 and 24 of the Company Court Rules, 1959, should follow.

18. While the Calcutta High Court has, in two cases, taken opposite views, the Gujarat High Court and this Court have held that the procedural requirements under the Companies Court Rules, 1959 must be adhered to. In *Debabrata Mukherjee v. Dunbar Mills Ltd.* [2002] 109 Comp. Cas. 710 : 39 SCL 247 a Division Bench of the Calcutta High Court observed:

In aid of such judgment he wanted to establish before this Court that even if the matter was recommended by the BIFR for the purpose of declaring winding up of a company but since the court has to give an independent application of mind whether such company will be wound up or not the Company Court has to apply the procedural aspects including admission and advertisement in connection thereto....

But so far as the second part is concerned, i.e., in respect of the question of admission and advertisement etc., that cannot be made since there is a distinction between the proceeding ordinarily initiated under Sections 433, 434 and 439 of the Companies Act and the proceeding being recommended by the BIFR to adjudge its viability. Therefore, such part is to be dispensed with by the special Act being the Sick Industrial Companies (Special Provisions) Act, 1985.

We have considered the matter at length. Special law always has an overriding effect over the general law in the arena of conflict. Law is to be read that there is no necessity for the court to abdicate its own function of determining the question of winding up as to whether it is just and equitable by applying the requirements of

Section 439 or 440 as the case may be. In other words, applicability of such sections is dispensed with by appropriate provisions of the Special Act. Therefore, the rules under Companies (Court) Rules, 1959, as above specially Rule 96 as applicable under such provisions of the Companies Act made for the purpose of admission of petition and directions as to advertisement etc. have no leg to stand...

[Emphasis supplied]

19. However, in *Eastern Paper Mills Ltd. v. Board for Industrial and Financial Reconstruction* [2002] 109 Comp. Cas. 1065, another Division Bench of the Calcutta High Court held:

In the instant case, as noticed above, though the company was heard in the matter presumably upon notice having been given, the winding up petition was not admitted nor direction for advertisement, was issued. Instead, an order of winding up has been passed, based solely upon the opinion of BIFR/ AAIFR. There has, thus, been breach of the provisions of Rule 96 of the Companies (Court) Rules, 1959..Upon receipt of the opinion of the BIFR/AAIFR the learned company judge in accordance with the practice obtaining in this High Court, rightly in our opinion, gave notice to the company and also an opportunity of hearing was afforded to the company after it had filed its affidavit-in-opposition. The learned company judge ought to have thereafter formed the, prima facie opinion and directed admission of the petition and advertisement thereof in newspapers. It is only after advertisements are published, as held by the Division Bench in *Khaitan Paper Machine Ltd. v. Wires and Fabrics (S.A.) Ltd.* A.C.C. No 16 of 1999, C.A. No. 361 of 1999, C.P. No. 432 of 1997, the matter becomes a representative one. Even at the stage the court was not bound to wind up the company as it did.

[Emphasis supplied]

20. In *Board for Industrial & Financial Reconstruction v. Unity Steels Ltd.* [2002] 109 Comp. Cas. 236 the Gujarat High Court was of the view:

A conjoint reading of Rules 96, 99 and 24 would make it clear that admission of the petition for winding up and issuance of public advertisements while fixing date of final hearing would be mandatory inasmuch as it is only when a public notice is issued as provided under the aforesaid rules any one interested either in supporting the prayer for winding up or opposing such prayer might be in a position to appear before the Company Court and canvass his cause.

Having heard the learned advocates at length, I am of the opinion that when Section 20(1) of the SICA provides for tendering of board opinion for winding up of a sick industrial company, it would necessarily mean that the High Court to whom such an opinion is tendered will be required to follow the procedure with regard to admission of a petition registered as a result of such an opinion tendered under Section 20(1) of the SICA. Otherwise, the role of the High Court would be that of a rubber stamp upon the receipt of Board opinion as noted in the aforesaid Madras High Court decision as approved by the Supreme Court. The submissions of Mr. Singhi might sound attractive, but obviously run counter to the latest decision of the Supreme Court in V.R. Ramaraju v. Union of India [1997] 89 Comp. Cas. 609, where the Supreme Court has said that Section 20(2) of the SICA has to be construed to mean that the High Court in deciding the question of winding up of the company has to take into account the opinion of the Board forwarded under Sub-section (1) and is not to abdicate its own function of determining the question of winding up. If that is so the mandate of the statute as appearing in the aforesaid Rule 96 read with Rule 99 read with Rule 24 of the Companies (Court) Rules will stand violated and the very purpose behind the same will also stand defeated, in case winding up order is passed upon receipt of the Board opinion. In that view of the matter, the following order is required to be passed:

Admit. To be advertised in the Indian Express, English edition and Jansatta Gujarati edition. The operating agency, namely IFCI. will see to the advertisements being published. Such advertisements shall be published on or before 12-8-1999, stating herein the date of final hearing to be 9-9-1999. Notice shall also be published in the Government Gazette. The matter is fixed for final hearing accordingly on 9-9-1999.

It will be open to any of the petitioning creditors in other petitions to issue public advertisements in case the operating agency fails to issue public advertisements after obtaining necessary orders in that respect and in such eventuality the date of final hearing might have to be changed....

[Emphasis supplied]

21. Following the judgment of the Calcutta High Court in Eastern Paper Mills Ltd. 's case (supra), a Division Bench of this Court in A. Rama Goud v. Omnitrode Aditya Electrodes (P.) Ltd. (In Liquidation) [2004] 118 Comp. Cas. 154 : [2003] 47 SCL 775 opined:. Such opinion can only form the basis for proceedings to be continued against the sick industrial company for purposes of winding up. Further proceedings ought to be conducted by the company court in accordance with the Companies Act and the Companies (Court) Rules to determine whether it is just and equitable to wind up such company, which procedure has not been followed and there is no adjudication by the learned company judge that it is just and equitable to wind up such company.

We have gone through the order passed by the learned company judge. By the impugned order the learned company judge did not follow the Companies (Court) Rules in order to determine whether it is just and equitable to wind up the company. After receipt of the opinion of the Board for Industrial and Financial Reconstruction, notices were issued, but, further adjudication has not taken place. While disposing of the miscellaneous application the learned company judge also proceeded to dispose of the company petition by ordering winding up which is contrary to the provisions of the Companies Act and the Companies (Court) Rules and the observations in Eastern Paper Mills Ltd. v. Board for Industrial and Financial Reconstruction [2002] 109 Comp. Cas. 1065 (Cal.)...

[Emphasis supplied]

22. Prior to admission of the company petition, the Companies (Court) Rules, 1959 do not require an advertisement to be issued. Ordinarily, a petition for winding up, under Section 433 read with Section 439 of the Companies Act, is posted for 'hearing on admission' after notice is given to the respondent-company, and it is

only after the petitioner and the respondents are heard, and if the Court is prima facie satisfied that the company petition justifies admission, would admission and an advertisement, as prescribed under the Company (Court) Rules, 1959, follow. While exercising its discretion, whether or not the winding up petition should be admitted, the Company Court can only examine the contents of the opinion and recommendations of the BIFR and nothing else. While the Court may well be hearing them on the validity of the opinion of the B.I.F.R, any other matter extraneous to the opinion and recommendation of the B.I.F.R including, as in the present case, the subsequent events, can only be examined after admission, on an advertisement being issued putting the creditors, contributories and others on notice of the B.I.F.R. having recommended winding up of the company on just and equitable grounds and they are informed that they are entitled either to support or oppose the petition for winding up. Neither the Companies Act, nor the Rules made thereunder, place any restriction on the grounds of opposition to an order of winding up. After an advertisement, as required under Rule 99 read with Rule 24 of the Company (Court) Rules, 1959, is issued it is always open to a creditor or a contributory to bring to the notice of the Company Court events subsequent to receipt of the opinion of the BIFR and plead that, in the light of these subsequent events, the opinion and recommendation of the BIFR should not be accepted and that the Company should not be wound up. On the basis of the affidavits filed in opposition and the evidence on record, either oral or documentary or both, the Company Court would have the power and the jurisdiction to examine these subsequent events during the course of hearing of the winding up proceedings and decide whether or not the company should be wound up.

23. It is not even the case of the ex-management of M/s. C.P.L. that the opinion of the B.I.F.R. is erroneous. The submission, on the other hand, is that while the opinion of the B.I.F.R. may be justified on the facts as existed then, events subsequent thereto would necessitate this Court to refrain from exercising its discretionary jurisdiction under Section 433 of the Companies Act, to wind up the company. Truth or otherwise of the factual assertions that a one time settlement has been entered into with all the secured creditors, that the dues of a majority of the unsecured creditors have already been paid, that the workmen dues have been settled etc., can only be ascertained after the prescribed notice is advertised

informing all concerned that the B.I.F.R. has recommended winding up of M/s. C.P.L. on just and equitable grounds, after affidavits are filed either in support or in opposition to the winding up and evidence, both oral and documentary, is adduced in the course of winding up proceedings.

24. Admit.

Let an advertisement be issued in New Indian Express (English daily) and Andhra Jyothi (Telugu daily), Hyderabad and Ranga Reddy District editions to be published on or before 22-10-2007 stating that the date of hearing shall be on 12-11-2007.

List the R.C.C. for hearing on 12-11-2007 before the regular Court hearing company matters.

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