

In Re: Magnesite and Minerals Ltd.

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Court : Allahabad

Decided On : Dec-12-2001

Reported in : [2002]39SCL120(All)

Judge : Sunil Ambwani, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 20

Appeal No. : Misc. Company Application No. 10 of 2000

Appellant : In Re: Magnesite and Minerals Ltd.

Judgement :

Sunil Ambwani, J.

1. This company application was registered upon receipt of the opinion under Section 20(1) of the Sick Industrial Company (Special Provisions) Act, 1985, received from the Board for Industrial and Financial Reconstruction (BIFR) vide letter of its Registrar dated 27-9-2000 in case No. 302/87B(II) received by the Court on 9-10-2000.

2. The opinion dated 24-8-2000 appended to the letter records the conclusion of the Bench in paragraph-15 of the order that despite of sanctioning two schemes for its revival it has not been possible for the company to turn its net worth positive since 1987. In the absence of any firm commitment from any of the prospective

co-promoters, no scope was seen at that stage to work out another revival scheme which could enable the company to revive itself and discharge all its due financial obligations, and the Bench, therefore, confirmed its earlier prima facie opinion that it would be just equitable and in the public interest if the sick company, namely, Magnesite & Minerals Ltd. be wound up under Section 20(1).

3. Notices were issued to the company by order dated 16-7-2000. The office reports that in compliance with the order the notices were sent to the company, PICUP and UPFC on 27-7-2001 fixing 20-8-2001. In respect of the company and the UPFC neither acknowledgement due nor undelivered cover had been returned back. In respect of PICUP Sri Anurag Khanna has filed appearance, under rules of the Court, the service is deemed sufficient on the company as well as UPFC.

4. Since there is no objection or any proposal received from any person, the Court has no reason to differ from the opinion sent by the BIFR and that is to be wound up. The Official Liquidator U.P. detached to the Court is appointed as a Liquidator of the company. He will take over the possession of the assets of the company and will issue notice to the directors of affairs in accordance with the provisions of the Companies Act, 1956.

5. In paragraph 16 of the order of the BIFR, the Board allowed the PICUP to act as selling agent of the company under Section 20(4) and to follow the guidelines for sale of the assets which could be modified at their end, under intimation to the BIFR and consent with all secured creditors. An Assets Sale Committee with all representatives of secured creditors was directed to be constituted along with a representative of workers as observer. The PICUP was formally directed to take assets and books of account of the company and to prepare inventories. On the conclusion of sale, the sale proceed (less deductions mentioned in the guidelines) was to be deposited with the concerned High Court for distribution amongst the various parties as per the provisions of Section 529A of the Companies Act. The Bench had priced Rs. 10 lakhs as Assessing Officer's been and the dues up to Rs. 5 lakhs were considered to a prior charge on the sale proceeds defrayed by the Hon'ble Court in sale. PICUP was also directed to insure and secure assets.

The balance of the sale proceeds was directed to be deposited.

6. Sri Anurag Khanna who appears for PICUP states that PICUP is in possession of the assets, which have not been sold as yet. Since the company has been wound up and that the Official Liquidator has been appointed as Liquidator of the company, the PICUP is directed to hand over the possession of the entire assets of the company including books and accounts to the Official Liquidator as soon as possible in consultation with the Official Liquidator. The Official Liquidator will proceed in the matter in accordance with the companies Act and report to the Court.

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