In Re: Ferrum Steels (India) Ltd.

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Court : Allahabad

Decided On : Dec-12-2001

Reported in : [2002]40SCL438(All)

Judge : Sunil Ambwani, J.

Acts : Sick Industrial Companies (Special Provisions) Act, 1985 - Sections 20 and 20(1)

Appeal No. : Misc. Co. Application No. 11 of 2000

Appellant : In Re: Ferrum Steels (India) Ltd.

Judgement :
ORDER

Sunil Ambwani, J.

1. This company application has been registered upon the receipt of the opinion of the Board for Industrial and Financial Reconstruction under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ('the Act') vide its letter No. 34/99 BI dated 31-10-2000 received by this Court on 4-11-2000.

2. Vide order dated 10-8-2001, this Court issued notice to the company at its registered office 570K, Kidwai Nagar, Kanpur returnable in four weeks directing the matter to be listed on 10-9-2001. The office has reported that the notices were

sent but they have returned back with the endorsement to the effect that locks have been put on the gate for several months.

3. The court has perused the opinion of the Board and find that at the initial stage the company responded to the notice but thereafter absented itself and that in paragraph-5 of the order dated 29-9-2000, it has been recorded that the representatives of the company were not attending the hearing. The notices sent to their registered office were received back undelivered. Thereafter a public notice was issued in newspaper and that, inspite of said publication, no one appeared for the company. In the circumstances, the service shall be deemed to have effected on the company under the Rules of the Court.

4. From the opinion of the Board, the Court find that after the registration of reference and declaring the company to be a Sick Industrial Company on 22-6-1999, the operating agency, i.e., Bank of Baroda (BoB) was appointed to examine the viability of the company and to formulate a rehabilitation scheme. The company did not submit its proposal within stipulated period and that in spite of two extensions granted proposals were not submitted. The operating agency pointed out a number of deficiencies in the proposal made in the year 1999. The company, however, did not remove nor paid consultation fees of the agency. Notices for change of management were issued to the company. At the hearing held on 7-7-2000, the operating agency reported that on the basis of techno economic viability study got conducted by them, the company was neither technically feasible nor economically viable with reliefs and concessions as per RBI Parameters. Interest-free additional funds of Rs. 11.23 crores were required to be inducted in order to raise the DSCR to acceptable level of 1.33. UPFC had reported that UPSEB had obtained Recovery Certificate and had locked the unit which remained nonfunctional. The Board, therefore, found that there was no rehabilitation proposal with the means of finance fully tied-up for consideration of the Bench. In para 6 of the opinion, the Court came to the conclusion that the promoters were not serious in rehabilitating the company nor were they resourceful enough to mobilize the required funds for the said purpose and confirmed its opinion that the company was not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial

obligations and that the result thereof was not likely to become viable in future and hence it was just, equitable and in the public interest that it should be wound up under Section 20(1).

5. No objection has been received from any person to the opinion of the Board. The Court has perused the opinion and does not find any reason not to accept it. The company is, accordingly, directed to be wound up. The official liquidator, U.P. attached to this Court is appointed as Liquidator and is directed to proceed in accordance with the Companies Act to take over possession of the assets and accounts of the company and issue notices to Directors and officials of the company to file the statement of affairs in accordance with the provisions of the Companies Act, 1956. In the order of the Court dated 29-9-2000, it had appointed UPFC as operating agency to dispose of the assets of the company in accordance with Section 20(4) to deposit entire sale proceed after deducting the expenses incurred by them for sale of the assets to be distributed in accordance with the Companies Act, 1956.

6. The Official Liquidator shall issue notice to UPFC to hand over the assets and accounts of the company (in liquidation), which shall be deemed to be in custody of the court. The UPFC is directed not to proceed any further with the sale of the proceeds. In case any proceedings have been taken for sale, they shall not be proceeded with further except with the leave of the court. The Official Liquidator shall submit a report within four weeks.