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In Re: Kanan Steels Ltd.

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Court : Allahabad

Decided On : Oct-20-2008

Reported in : [2009]90SCL127(All)

Judge : Sunil Ambwani, J.

Appellant : In Re: Kanan Steels Ltd.

Judgement :

Sunil Ambwani, J.

1. The matter was registered on a reference received from Board for Industrial and Financial Reconstruction (BIFR) recommending that M/s. Kanan Steels Limited be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.

2. It is reported that an appeal was filed before Appellate Authority for Industrial & Financial Reconstruction (AAIFR), New Delhi, and the matter was adjourned from time to time Shri Amit Negi had informed the Court earlier, that the appeal was dismissed by the AAIFR on 19-7-2005. Since thereafter the proceedings are being adjourned for one reason or other.

3. Shri Atul Dayal had sent an illness slip on 25-2-2008 and thereafter no one appeared on 13-2-2008. Today again when the matter is listed, a mention was made that Shri Atul Dayal is not well. Shri L.M. Singh appearing along with him

has not cared to appear in the matter.

4. It is very often found by the Court that after the recommendations of the BIFR to wind up the company and dismissal of the appeal, the company adopts dilatory tactics to avoid the winding up to siphon off or sell away the assets of the company. It becomes very difficult thereafter for the Official Liquidator to recover the document and the assets.

5. The order, by which the appeal against the order of the BIFR dated 26-3-2003 was dismissed by AAIFR on 19-7-2005, has been placed on record by Shri Amit Negi.

6. The company is represented by their counsels for long time and has not cared to file reply objecting the winding up of the company.

7. A perusal of the order of the BIFR dated 26-3-2003 would show that M/s. Canan Steels Ltd. the company filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short the Act), and was declared as 'sick industrial company' in the year 2000. The BIFR appointed Union Bank of India as Operating Agency to conduct a special investigative audit. After considering the report of the Operating Agency the Board dismissed the reference on 10-4-2001. The company filed an appeal in the AAIFR. The order of BIFR was set aside on 26-7-2001 and that the BIFR was directed to proceed as per law. The Board appointed Union Bank of India as the Operating Agency and that in the hearing held on 20-8-2008 the Board noted that the company/promoters had failed to submit any rehabilitation proposal to the Operating Agency despite adequate time and opportunities given to them. The Board thereafter issued advertisement for change of management. It was noted on 14-1-2003 that the enquiries were made by two parties, but no concrete proposal was received and that the proposal submitted by the company was not found acceptable in the meeting dated 16-11-2002 by the secured creditors. The projections were found to be unrealistic and unviable.

8. The Board thereafter found that there was no proposal for rehabilitation pending and 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. The BIFR found it just, equitable and in public interest that the company should be wound up under Section 20(1) of the Act. The Board thereafter appointed PICUP as 'Selling Agent' to dispose of the properties of the company in terms of Section 20(4) of the Act and to deposit the entire sale proceeds after deducting the expenses with the concerned High Court for orders regarding distribution of the amount in accordance with the provisions of Section 529A of the Companies Act. The PICUP was also directed to take up possession.

9. The PICUP has entered appearance through Shri Anurag Khanna in the year 2003 itself and had filed an application on 7-8-2003 supported by affidavit of Shri C.B. Lal, Junior Manager (Law), Grade-I, PICUP, Lucknow claiming that as a secured creditor it should be allowed to realise its dues by sale of its securities.

10. Shri Anurag Khanna informs that the PICUP had taken over possession. Taking into account the facts detailed as above, it is now apparent that the matter has been delayed for one reason or other for five years avoiding the winding up of the company. There is no objection on record or any proposal pending for rehabilitation/revival by any person.

11. The recommendations of the BIFR forwarded to the Court under Section 20(1) of the Act dated 26-3-2003 is accepted. The M/s. Kanan Steel Ltd.-company is wound up under Section 433 of the Companies Act, 1956 and the Official Liquidator is appointed as Liquidator of the company.

12. The PICUP will file a detailed affidavit with regard to the inventories and the assets of the company and the charge, which the PICUP may be having over the company. The Official Liquidator will issue notice to the Union Bank of India to put in appearance and give details of the charges. The notices shall be issued to the ex-directors to submit statement of affairs. If no statement of affairs is found within 21 days on the receipt of the notice, the Official Liquidator will move an application for prosecution of the ex-directors under Section 454(5) of the Act.

13. The PICUP has not taken any step for sale of the assets and has thus, lost the right given to it by the Board. The Court does not find that the PICUP should be

allowed to sell the assets. The PICUP however will continue to deploy security over the assets and keep accounts and claim expenses. The Official Liquidator will take over the possession of the assets. He shall get them valued and submit a report to the Court within two months.

14. The connected Company Petition Nos. 34 of 2000 and 9 of 2008 are accordingly disposed of.

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