

**(1999) 10 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No : O.S.A. No"s. 41 and 45 of 1999**

Someswara Cements and Chemicals Ltd.

APPELLANT

Vs

Power Mak Industries and Another

RESPONDENT

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**Date of Decision :** 08-10-1999

**Acts Referred:**

**Citation :** (2000) 1 CompLJ 173

**Hon'ble Judges :** P. Venkatarama Reddi, J;B. Prakash Rao, J

**Bench :** Division Bench

**Advocate :** C. Kodanda Ram, P.V. Rama Raju, for the Appellant; B. Bimal Bhaskar, for the Respondent

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## **Judgement**

P. Venkatarama Reddi, J.—O.S. Appeal No. 45 of 1999 is filed against the order of the learned Single Judge, dated 6.8.1998 winding up the appellant company. The other appeal, viz., OSA 41 of 1999 is filed against the order of the learned Single Judge, dated 30.7.1999 refusing to set aside the order of winding up which was passed ex parte. The respondent herein who is an unsecured creditor filed Company Petition No. 18 of 1998, Power Max Industries v. Someswara Cements and Chemicals Ltd. (1999) 4 Comp LJ 349 (AP)., seeking an order to wind up the company on the ground of failure of the appellant company to discharge the debt due to the first respondent. Before the learned Single Judge, there was no contest from the respondent (appellant company). It appears that during the pendency of the winding up petition, there was change in the management of the company. The present managing director by name, Mr. Venkataratnam, has filed these appeals after the permission was granted to him to represent the company instead of the earlier managing director. It is the case; of the new managing director that the new management was not aware of the pendency of the winding up petition and it has come to know of the order only after the official liquidator took possession of the assets of the company. It is not in dispute that the debt due to the petitioning creditor, viz., respondent herein, has been discharged. The first respondent's counsel affirms this fact before us and submits that the

respondent is no longer interested in winding up the company. However, the learned Single Judge felt that an order of winding up once passed, it operates in favour of all the creditors and the contributories of the company, and therefore, the payment of debt to the petitioning creditor after winding up orders are passed, cannot be taken to be a ground for setting aside the winding up order. No doubt, what is stated by the learned Single Judge is the normal rule. But, the court is not powerless to take into account the subsequent events and also the fact that the proceedings for rehabilitation scheme are pending before the Board for Industrial and Financial Reconstruction. Hence, we thought it fit to order notice to the secured creditors who have a vital stake in the company. The four secured creditors are -- Industrial Development Bank of India, Industrial Credit and Investment Corporation of India, the Industrial Finance Corporation of India and the State Bank of India. Notices have been served accordingly. None appears for the State Bank. However, it is brought to our notice that during the pendency of the petition before the learned Single Judge, the Bank filed an affidavit stating that the Bank was not interested in the winding up of the company. The other three financing institutions (secured creditors) are represented by Shri C. Trivikrama Rao. The learned counsel has placed before us a copy of the status report submitted to the BIFR in April, 1999, and reiterated that there was no further development in the proceedings before the BIFR. The learned counsel for the said financing institutions also stated that he is not instructed to oppose the request to revoke the winding up order.

2. Inasmuch as the proposals for rehabilitation are pending with BIFR and the new management is prepared to mobilise additional resources and take necessary steps for the revival of the industry, naturally, the financing institutions do not prefer to support the winding up of the company at this stage in their own interest. Moreover, if the rehabilitation proposals do not fructify, and if it is found by BIFR that the revival is not feasible, or the industry has reached a state of non-viability, the BIFR can, at appropriate stage, after due consideration, suggest winding up of the company. That is all the reason why this court should refrain from ordering winding up at this juncture when there is no objection from any of the creditors and there could possibly be no objection from the shareholders. We, therefore, set aside the impugned orders and revoke the order of winding up. Accordingly, the appeals are allowed. It is made clear that the expenses incurred by the official liquidator for payment to the watch and ward staff should be paid [made ?], if not already paid according to the directions of the learned Single Judge ; and if there is any deficit, the same will have to be paid by the appellant. We make no order as to costs.