

(2004) 02 MP CK 0054

In the Madhya Pradesh High Court

Case No : Company Petition No. 14 of 1995

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

G.M. Mittal Stainless Steels Ltd.

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (2004) 3 BC 548 : (2004) 55 SCL 702

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.R. Kochatta, for the Appellant; A.M. Mathur and Shrivastava, for the Respondent

Judgement

A.M. Sapre, J.—This is a Company Petition filed u/s 433(e) and (f) of the Companies Act seeking winding up of the respondent Company known as G.M. Mittal Stainless Steels Ltd. The winding up is sought essentially on the ground that respondent Company is unable to pay admitted debt of the petitioner Company to the tune of Rs. 16,17,790/- despite repeated demand made by the petitioner Company as contemplated u/s 434 of the Companies Act. The petition then avers the necessary facts duly supported by the documents to show that the debt alleged against the respondent Company is established on facts and that it is subsisting on the date of presentation of winding up petition. The respondent on being noticed filed reply but there is nothing to indicate that the debt in question is neither disputed nor denied or nor found payable. In other words there is nothing on record for coming to a conclusion that the petitioner has failed to establish the debt payable by the respondent.

2. Heard Mr. S.R. Kochatta, learned Counsel for the petitioner and Mr. A.M. Mathur, learned Sr. Counsel with Mr. Shrivastava for the respondent.

3. Having heard the learned Counsel for the parties and having perused the record of the case I am of the considered opinion that the petitioner has made out a case for winding up of respondent Company within the meaning of Section

433(e) of the Act.

4. It is not in dispute that this Court admitted this petition on 16.4.1999 and further directed advertisement of the petition in terms of the Company Court Rules. It is now a matter of record that even prior to advertisement as many as three Creditors had already filed the petition for winding up of respondent Company on the ground u/s 433(e) of the Act. All these petitions are also founded on the same allegations that the respondent Company has failed to pay their respective individual debts. These petitions are filed by the creditors. However, even in these petitions the respondent could not dispute their debts on any substantial grounds. These debts if consolidated together works out to substantial amount-running in lakhs.

5. It is not much in dispute that the respondent Company has closed their business activity. Indeed this position/fact was not disputed by the Counsel appearing for the respondent in his submission. The closure of running business coupled with the fact that there are no grounds for revival of business itself indicate that respondent company is unable to pay/liquidate any of the debts.

6. When there is no business activity, when there are huge outstanding dues payable by the Company and yet Company has not submitted any proposal much less viable proposal for its repayment; there is a prima facie case established for winding up of the Company. In fact it is a case where the substratum of Company has gone totally and liabilities have exceeded the assets. The respondent Company has not made any statement in regard to running of business in future on a profitable basis.

7. I am, therefore, satisfied that a case u/s 433(e) as also u/s 433(f) of the Company Act is made out. As a consequence the respondent Company is directed to be wound up in terms of the requirement of the Company Act.

8. Let the matter be listed for passing appropriate order in relation to appointment of Official Liquidator under the Company Court Rules for taking custody of the companies assets. List on 13.2.2004.