

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

CA Nos. 764 and 765/2008 in

Company Petition No. 438/2000

Date of decision: 15th October, 2008.

In the matter of M/s Khabros Steel India Ltd.

Through: Mr. R.S. Sharma and Mr. Karan Khanna,
Adv. for the applicant Khabros Steel Ltd.
Ms. Ananya Poddar, Adv. for the RFC
Mr. Dinesh Tripathiu, Adv. for Shri Amba Prasad
Chemicals

GITA MITTAL, J(Oral)

1. M/s Khabros Steel India Ltd. had made a reference to the Board for Industrial and Financial Reconstruction (herein referred to as BIFR) under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 on the ground that the accumulated losses of the company had rendered it a sick industry.
2. The company had been incorporated on 13th July, 1984 as a private limited company to manufacture stainless cutlery. It was promoted by the Khanna family comprising Sh. Arvind Khanna, Sh. Karan Khanna and Sh. Poonam Khanna who are the applicants in CA No. 764/2008. The company has its registered office at Delhi and factory at Bhiwadi in District Alwar, Rajasthan.
3. The BIFR issued notice of the petition to the secured creditors and after hearing all parties concerned, had arrived at a final opinion dated 7th September, 2000 that the company deserved to be wound up. The reference was forwarded to this court resulting in the commencement of the present winding up proceedings. Perusal of the record shows that despite receipt of reference, no substantial proceedings have taken place in the main winding up petition. The matter has been adjourned from time to time as for quite some period, the record of the case was also not available.
4. On notice being issued to the company, it has been represented by its management and a statement has been made that the company was endeavouring to arrive at a settlement with the secured creditors. The proceedings recorded before this court on 17th November, 2006 and 22nd May, 2007 show that the claims of IFCI and the State Bank of

India stood satisfied and only the Rajasthan Industrial Development Investment Corporation (RIICO) and the Rajasthan Financial Corporation remain to be paid. Again on 14th July, 2008, learned counsel appearing for the company had stated that a settlement has been arrived at with all secured creditors and that all of them have been paid. Time was sought to file an affidavit setting out the details of payment.

5. In the meantime, the company has filed CA No. 765/2008 seeking dismissal of the reference made by BIFR for liquidation of M/s Khabros Steel India Ltd. Another application being CA No. 764/2008 has been filed by M/s Shri Amba Prasad Chemicals Pvt. Ltd. - a strategic investor who submits that the liabilities of M/s IFCI and RIICO have been assigned to the applicant. The applicant has also sought dismissal of the reference made by the Board for Industrial and Financial Reconstruction for winding up of the company and had sought permission to liquidate all remaining liabilities of the secured creditors. The applicant seeks a declaration that it should be declared a secured creditor of the company with liberty to take further steps for its revival.

6. Notice of these applications was issued to all secured creditors. By an order passed on 11th August, 2008 it was directed that the notice issued shall indicate that in case of any objection to the prayer made in the applications, reply thereto shall be positively filed in this court within 10 days of the receipt of the notice.

7. In response to the notice issued by this court, an affidavit has been filed by Mr. Ashok Mathur, Deputy Manager (DOC) Rajasthan State Industrial Development and Investment Corporation Limited submitting that the debt owed by Khabros Steel India Ltd. stands assigned to the strategic investor and that it has no claims left against the company. The affidavit specifically submits that RIICO has no objection to the grant of the prayer made in CA No. 765/2008.

8. The State Bank of India has filed a response dated 20th September, 2008 to the prayers made in CA No. 764 and 765/2008. It has placed its no objection certificate so far as discharge of all liabilities of the company to it are concerned.

9. The petitioner has placed before this court copy of a letter dated 30th August and 1st September, 2008 issued by the Rajasthan Financial Corporation informing that the company had paid the amount of the one time settlement leaving a balance of Rs.52500/- payable as Advocate fees/legal expenses. The petitioner has placed a copy of a receipt dated 11th September, 2008 with the certificate dated 20th September, 2008 and a communication dated 8th October, 2008 manifesting that the company has paid the amount of Rs.52500/- to the Rajasthan Financial Corporation and that there is no outstanding of the company to this financial institution.

10. So far as the IFCI Ltd. is concerned, the petitioner has placed a copy of a letter dated 10th September, 2008 wherein the IFCI has confirmed that it has assigned its debts by a deed of assignment dated 28th August, 2007 to Shri Amba Prasad Chemicals Pvt. Ltd. The deed of assignment dated 12th March, 2008 between Rajasthan State Industrial Development and Investment Corporation Ltd. and Shri Amba Prasad Chemicals Ltd. as

assignee has also been placed on record and it was stated that an application to this effect was being filed in OA No. 25/01 pending before the Debt Recovery Tribunal. The deed of assignment has been placed on record which shows that the same has been duly registered with the Sub-Registrar, Delhi. So far as the assignment deed with RIICO is concerned, the same was duly registered with the Sub-Registrar of documents at Bhiwadi. For this reason the IFCI has no further surviving interest or claim in the matter.

11. In view of the position noticed hereinabove, it would appear that all secured creditors of the applicant stand satisfied or their debts assigned. The petitioner has satisfied the amount owed to State Bank of India and the Rajasthan Financial Corporation stand paid. So far as the dues of the company to M/s IFCI and RIICO are concerned, the debts have been assigned by these secured creditors to Sh. Amba Prasad Chemicals Pvt. Ltd. The company Khabros Steel India Ltd. confirms the assignment of the debt.

12. The applicants have placed copies of the registered assignment deeds dated 20th August, 2007 of the IFCI and 12th March, 2008 by the RIICO. So far as the assignment of deeds of the company in favour of Shri Amba Prasad Chemicals Ltd. is concerned, in view of the deed of assignment dated 28th August, 2007 executed between the IFCI and Shri Amba Prasad Chemicals Ltd. and the deed of assignment dated 12th March, 2008 between Rajasthan State Industrial Development and Investment Corporation Ltd. and Shri Amba Prasad Chemicals Ltd., the debt owed by the company M/s Khabros Steel India Ltd. shall stand assigned in favour of Shri Amba Prasad Chemicals Ltd. who has stepped into the shoes of these creditors. All consequences in law thereof shall consequently follow.

13. It has been stated that the company has no other secured creditors. In this view of the matter so far as prayer made in CA No. 765/2008 is concerned, the same has to be allowed. Shri Amba Prasad Chemicals Ltd. is consequently declared a secured creditor of the company having stepped into the shoes of IFCI and RIICO.

14. This brings us to the second prayer made in these applications that in view of the bonafide efforts of the company as well as the strategic investor to satisfy the claims of the secured creditors and the position noticed hereinabove, the main ground on which the company had been recommended to be wound up does not survive any more. It has been stated by the strategic investor that it has paid the amounts owed to the four secured creditors in view of the assignment of their interest in the securities given by Khabros Steel India Ltd. The strategic investor has submitted that as of now it is the only secured creditor of the company and that it would not permit the business of the company to be ruined. The application reflects that having regard to the position of the plant and machinery of the Khabros Steel India Ltd. there is every possibility of reviving the same. Based thereon, the company has prayed for permission to take over the assets and securities of the company and to deal with them in the best interest of the company.

15. Perusal of the order passed by the BIFR shows that the recommendation to wind up the company was based on its finding that the company was not in a position to pay its creditors. However, the promotor directors of the company appear to have made sincere

efforts to rehabilitate the company and have been able to motivate the strategic investor to invest in clearing the outstanding dues of the secured creditors of the company as well as to step into the shoes of such creditors to whom payments are still owed. The strategic investor has also expressed an intention to revive the company and put it back on its wheels.

16. There can be no dispute that revival of the company would not only benefit the company and the strategic investor but would also be in the interest of the economy and the industrial health of the area where the company is located. It would also generate employment and business opportunities for the local people and contribute to the prosperity of the people at large.

17. My attention is drawn to a pronouncement of the Bombay High Court dated 25th October, 2001 rendered in CA No. 483/2001 in Company Petition No. 404/1994 Punjab National Bank vs. Mansingka Industries Ltd. and Anr. Respondents and Sh. Pradeep Kumar Mansingka and Anr who was an applicant therein. I find that in similar circumstances, the Bombay High Court had accepted the prayer made on behalf of the company for its revival despite the reference made by the Board of Industrial and Financial Reconstruction. In fact in the case before the Bombay High Court an order of winding up had been passed and it was thereafter that the company had put forth a claim for revival. The instant case stands on a better footing inasmuch as no winding up order has been passed and the company on its own has been able to motivate the aforementioned actions.

18. I find that the Bombay High Court had relied on certain other judicial precedents wherein salutary principles which would guide consideration of such a prayer for revival as have been noted. In 1992 Company Cases 271 relating to M/s Rishi Enterprises, the Gujarat High Court had made the following observations :- There is no such law that a company which is a running company employing about 500 employees who are paid their wages regularly and which is having a business of crores of rupees every year should be brought to a grinding halt by admitting these petitions merely because it is in some financial difficulty at the moment. On the contrary even in those cases where the company is closed, it has been laid down that it is the duty of the court to welcome revival rather than affirm the death of the company. (emphasis supplied). It has been also held that it would not be right to say that creditors can insist on winding up of the company by the court as a matter of right if the position of the company is such that it would be unable to pay its debts to them even if the company can be resurrected. The petitioning creditor cannot be permitted to insist on his pound of flesh from the company which may be a death blow to the company only on the ground that for a temporary period a running company is not in a position to pay the debt. (emphasis supplied)

19. The aforementioned pronouncement of the Gujarat High Court placed reliance on a Division Bench pronouncement of the Bombay High Court reported in (1986) 59 Comp.Cases 183 in New Swadeshi Mills of Ahmedabad Ltd. vs. Dye-Chem Corporation wherein on page 186, the court held thus :- It is the case of the creditors that the company is unable to pay its debts and that it is just and equitable that the company should be

wound up. The circumstances call for no proof of inability on the part of the company to pay its debts as such inability is self-evident on the admitted facts. There are huge debts, secured as well as unsecured, which, as matters stand, are far beyond the means of the company to meet. Even so, a court will exercise a sound discretion in deciding whether to wind up a company or not and in doing so consider many relevant factors. It may be that despite the inability to pay its debts, a company has still prospects of coming back to life and if the court is told of any specific proposal, which in the opinion of the court is likely to materialize, the court will be inclined to give a chance to resurrect the company. It should be the policy of the court to attempt to revive though at the moment the company may not be solvent and may not be able to meet its obligations to its creditors. But this should be only if it is shown that there is reasonable prospect for resurrection and survival. It may be easy for a court when once it is shown that the company is unable to pay its debts to bury it deep and distribute whatever is available as distributable surplus. But it is the duty of the court to welcome revival rather than affirm the death of the company and for that purpose the court is called upon to make a discreet exercise. (Emphasis supplied)

20. On this issue, in the judgment reported at (1978) 48 Comp. Cases 402 in Re : Navjivan Trading Finance P. Ltd. the court observed thus :- It is no doubt true that the modern trend as etched by a number of pioneering decisions rendered by D.A. Desai, J. of this High Court (no wonder tens of thousands of workers with gratitude filled eyes feel beholden to him for it), is against winding up of a company so long as it is possible to resurrect the company. Winding up is the last thing that the court would do and not the first thing that the court would do having regard to its impact and consequences, for winding up of a company would result in (1) closing down of a unit which produces some goods or provides some services; (2) it would throw out of employment numerous persons and result in grave hardship to the members of families of such employees; (3) loss of revenue to the State by way of collection that the State could hope to make on account of customs or excise duties, sales tax, income tax etc.; (4) scarcity of goods and in diminishing of employment opportunities. The court would not, therefore, be too keen or too anxious to wind up a company by an order of court only on the ground that the company is unable to pay its debts. In fact, it would be a blow to do so, so long as there is any possibility of resurrecting the company. (emphasis supplied)

21. In the instant case, there can be no manner of doubt that the present proceedings have really commenced on a prayer of the company before the Board of Industrial and Financial Reconstruction. The matter is still pending at the stage of a reference having been made by the Board. However before the winding up order could be passed, positive efforts have been made by the company to meet its liabilities. In these facts it would be in the interest of justice if an opportunity is given to the applicants to make efforts for revival of the company. The applications being CA Nos. 764 and 765/2008 are hereby allowed. In view of the above, the reference made by the BIFR would not survive for adjudication and further orders towards winding up and not required to be passed. It is directed that the applicants shall pay Rs.1 lakh towards costs of these proceedings which shall be deposited within one week in the Common Pool Fund maintained by the official

liquidator. Proof of deposit shall be filed in the Registry. In view of the above, further proceedings in this matter shall stand closed. Copy of this order be sent to BIFR.

Sd./-
GITA MITTAL, J

October 15, 2008