

1924

KENYA

37  
C. O.  
11873  
12 MAR 24

FROM *Sutton  
Commandery  
+ Oliver*

DATE  
*11th March, 1924*

CIRCULATION :-

Dr.  
to  
to  
at, U.S. of

*Ma... de Sada Co*

Secretary of State

Previous file

*11865*

MINUTE

*... with ...  
was reported. The ...  
a further adjournment ...  
see 13383/24*

*Sit by H.C.  
25.3.24*

*[Confidence between 1.98.24 ...  
Board of Trade attached]*

*Annex - 27 MAR 1924 on 13083/24  
copy to Sir Kya 334 - 27 MAR 1924 see 13083/24*

Subsequent Paper

*M.9.  
123878*

SUTTON, OSMANNEY & OLIVER.

E. O. OLIVER.

H. M. OSMANNEY.

TELEGRAPHIC ADDRESS: "OSMANNEY, LONDON."

NO 1289 }  
TELEPHONE: 9514 } LONDON WALL.

305  
33  
3 & 4, GREAT WINCHESTER STREET,

LONDON, E.C.2.



1462/24

12th March 1924

Sir,

Magadi Soda Co. Ltd.

We write to inform you that Messrs. Slaughter & May the solicitors to the Receiver of the Magadi Soda Co. Ltd. called upon us this afternoon with reference to the petition for compulsory winding up of the Company which has been presented against that Company on behalf of the Clearing Office.

We understand that you are fully informed as to the nature of the claim by the Clearing Office.

Messrs. Slaughter & May explain that the present position of the reconstruction is that Messrs. Brunner Mond & Co. have made certain proposals for providing capital for the Company in a manner which would obviate the necessity of issuing shares subject to an assessment, and which would, therefore, be likely to commend themselves to the shareholders. They say that these proposals have been already submitted to you in outline.

Messrs. Slaughter & May further state that you have made it a condition precedent to your approval of the altered scheme for reconstruction that suitable guarantees should be given by Messrs Brunner, Mond & Co. that the lake will be properly worked in future.

The petition for compulsory liquidation of the Company was heard by Mr. Justice Eve on 4th instant and was adjourned until Tuesday next the 15th instant, but the Judge stated that he was not prepared why the compulsory order should not be made, and that, unless good reasons to the contrary were shown, he should feel compelled to make the order on the adjourned hearing without granting any further time.

We may mention that, in our experience, this is the view Mr. Justice Eve usually takes at the present time of all applications for adjournment in liquidation proceedings, as he apparently desires to check the growing tendency on the part of petitioners in such liquidation proceedings merely as a lever for debt collecting. We think, however, that, if the Judge were satisfied that there was a genuine scheme of reconstruction in progress, which had a good chance

of being passed, and the passing of which would be beneficial to the creditors, shareholders and other parties interested, he would be prepared to grant a suitable further adjournment.

It seems to us that it would not be desirable in the interests of the Colony that a compulsory order should be made, as this would probably wipe out all chance of the business being carried on. If this view is correct you may think that some support should be given to the reconstruction scheme.

The most effective way of exerting pressure would seem to be by informing the Clearing Office that in the event of any compulsory order for liquidation being made the forfeiture which has already occurred of the Concession would be enforced by the Crown Agents, but we appreciate that there may be difficulties in the way of taking this course.

It is suggested by the Company's <sup>S</sup>advisers that we should be invited to attend the adjourned hearing before Mr. Justice Eve on Tuesday next and give support to the application which will then be made for a reasonable

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further postponement to enable the subject to be properly considered.

We shall be glad to have your instructions in this view.

Of course Mr. Oliver will be glad to attend at the Colonial Office at any convenient time to discuss the questions involved, if you think an interview would be of advantage.

We have the honour to be,

Sir,

Your obedient servants,

Arthur J. ... Oliver

The Under Secretary of State,  
Colonial Office.

17th March, 1934.

*My dear Thomas*

I have looked carefully into the question of the claim of the Clearing Office on the Magadi Soda Company, and I enclose, for your confidential information, a copy of a Memorandum prepared by the Controller of the Clearing Office, setting out the history of the matter from his point of view. You will see that these people are very difficult customers and that nothing is to be gained by treating them too tenderly. But, if satisfactory evidence is given by the Company of the promotion of a scheme which will make reasonable provision for dealing with the debt due to the Clearing Office, that Office will not press for the Order for Compulsory Winding Up at the Hearing on Tuesday.

*Yours truly,  
Sidney Webb*

The Rt. Hon.

J.H. Thomas, M.P.

Fried Krupp and Siemens-Schuckertwerke, two German firms, during 1913 and 1914 supplied to the Magadi Soda Co. Ltd., machinery for the development of its property to the value of about £21,000, all of which was due and owing at the 4th August 1914.

The machinery was delivered and erected at Lake Magadi and has ever since been used by the Company for the production of soda products. In 1914 the Company issued debentures upon all its undertaking, including the machinery, the subject matter of the present claim, without, as was done by the majority of British firms of good repute during the war, setting aside funds for the payment of these debts.

In November 1920 claims were received through the German Clearing Office from the creditors for the debts in question. In 1921 the Company with full knowledge of the position and after negotiations with the Clearing Office for a settlement of the debts, issued, without the knowledge or consent of the Controller, further debentures to the extent of £200,000. on its property, again without making provision for payment of these debts. All the other unsecured debts of the Company outstanding at the 4th August 1914 have been paid. Negotiations have been pending between the Company and the Clearing Office for the payment of these debts since the receipt of the claims from Germany and Colonel Simon, one of the Directors of the Company, with whom such negotiations have been conducted, stated that Mr. Samuel Samuel, who is largely interested in the Company, would furnish his personal guarantee for

payment/

payment of the debts. Two instalments amounting together to £9,000. have been paid and the balance now outstanding, for which a petition for winding up the Company has been entered, including interest payable under Article 296 of the Treaty of Versailles is £9,004.1.-d. Ultimately Mr. Samuel Samuel, while declining to give his personal guarantee, caused the letter, a copy of which is attached hereto, to be written to the Controller.

The sum of £5,000. agreed to in the above letter was paid but as default was made in payment of the balance, the Controller on 2nd February 1924 presented a petition to wind up the Company, the position being that the debts were admitted by the Company and the guarantee of the British Government to the German Government for payment of such debts had come into operation. The Controller therefore in order to protect the Treasury from loss felt that he had no other option but to take these proceedings; in fact it was his duty to do so. It has been recently stated by the Company that a scheme for reconstruction would be put forward under which the Controller would receive 75% of his debt in shares of the reconstructed Company and the Controller offered if the purchase of these shares at a figure sufficient to cover the indebtedness was guaranteed to him by any responsible person, to raise no opposition to such a scheme of reconstruction. No offer, however, was forthcoming and on the 19th February 1924 the petition was heard by Mr. Justice Russell and was adjourned by him until the 4th March 1924 to enable the Company to satisfy the Court that there



had been an effective resolution passed for the voluntary winding up of the Company which was not in evidence at the hearing. On 4th March 1924 the matter came before Mr. Justice Eve who adjourned the petition for a further 14 days because the Company had not produced to him sufficient evidence regarding the proposed scheme for reconstruction and he said, in very definite terms, that unless he was satisfied as to this at the adjourned hearing he would most certainly make the winding up order. The petition stands adjourned until Tuesday next, the 18th instant when it will again come before Mr. Justice Eve.

In the short history of the Clearing Office there have been notable instances in which wholly inadequate offers have been made for settlement of debts, but under the pressure of a petition for winding up or bankruptcy, payment in full of the debt and interest has resulted. In one case, of which the Board of Trade is cognisant, a final offer of £3,000. was received from a Limited Company in respect of an admitted debt of £90,000. On a petition being filed for the winding up of the Company the whole of the debt and interest, and costs, were paid. This is only one instance out of many, and the Controller, in view of his past experience both of negotiations with this Company and in connection with other debtors and in the exercise of his duty, felt bound to put the matter to the test.

The Controller is unable to trace any statement to the Colonial Office that he hoped that the Kenya Government would pay off the debts, but

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he has expressed the hope that if the Kenya Government cancels the concession and takes over, and thereby acquires, the machinery which is the subject matter of this action, that Government would compensate the Clearing Office and therefore the Treasury for the loss which it would otherwise sustain. No suggestion has been made by the Clearing Office that the Chairman of the Company should put his hands into his own pockets and buy off the Clearing Office. The suggestion was made by Colonel Simon, who frankly admitted that the Clearing Office had been badly treated in this matter, that Mr. Samuel Samuel might be prepared to guarantee the debt and on that assumption from time to time enquiries have been made as to the terms and conditions on which that Gentleman would perform the undertaking offered by Col. Simon.

It is only right to say, in view of the statement that the Clearing Office will ruin all chances of a reconstruction under which they may eventually be paid in whole or in part, that no reconstruction scheme holding out any reasonable prospects of payment has been put forward to this Office. In the Controller's view, any scheme of reconstruction which will necessarily provide for the transfer of the assets to the new Company, should also provide for the payment of the debts.

14.3.1924.



EX/CD.

THE MAGADI SODA CO. LTD.,  
 Shell House,  
 25 Bishopsgate,  
 E.C.2.

Ref. GS/DCB.

13th December 1921.

The Secretary,  
 The Clearing Office,  
 Cornwall House,  
 Stamford Street,  
 S. E. 1.

Dear Sir,

Your Ref. D.R.134062 - Arrears  
 re Friedr. Krupp.

We have to refer to your letters of the 11th November and 6th December, and the interview which we had with you on Monday last, the 12th instant.

As explained to you at that interview we are not in a position at the moment to liquidate this debt any further. We are, however, prepared to make the following proposal:-

The £9,064.8.7. plus additional interest which will have accrued since the 15th November 1921; we would pay you £5,000. during January, and the remainder at the end of March.

Yours faithfully,

THE MAGADI SODA COMPANY LTD.

M. SAMUEL &amp; CO. LTD., MANAGERS.

Shell House,  
25 Bishopsgate,  
E.C.2.

Ref. GS/DCB.

16th December 1921.

S. E. Moorcroft, Esq.,  
The Clearing Office,  
Cornwall House  
Stamford Street,  
S. E. 1.

Dear Sir,

Your Ref. D.R. 134062 - Arrears.  
re Friedr: Krupp!

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With reference to the interview which I had with you on Wednesday, I regret to say that I was quite unable to persuade Mr. Samuel Samuel to sign a letter on the line which you suggested, indicating that he was willing to give a personal guarantee for the payment of our debt to Messrs. Friedr. Krupp which has to be paid through your office.

Mr. Samuel is of opinion that having signed the letter, which I now enclose, on behalf of M. Samuel & Co. Ltd., the Managers of the Magadi Soda Co. Ltd., that this should be a sufficient guarantee to your Department that we will discharge our liability in the manner set forth in that letter.

Mr. Samuel's feeling is I think, that while he is willing, and is indeed giving a guarantee to the Bank for such sums as we require to enable us to carry on our business for the time being, he cannot see his way to giving a personal guarantee for the discharge of a debt owing by the Company.

Under the circumstances I hope you will be able to persuade the Controller to accept the arrangement which we proposed with regard to the liquidation of this debt.

I may further say with regard to the discharge of the debt owing to Messrs. Siemens-Schuckert, Mr. Samuel is willing to agree that a further payment will be made by us in June of next year in settlement of this account.

I am enclosing the letter signed by Mr. Samuel covering Messrs. Friedr. Krupp's debt, and a copy of your letter to which it is a reply.

Yours faithfully,

THE AGADI SODA COMPANY LTD.

(Sgd) illegible.

London Manager.

( Quarto for the Secretary of State's signature.)

URGENT.

*Light*

DRAFT.

Right Honourable  
Sidney Webb, M.P.

Downing Street,  
13<sup>th</sup> March, 1924.

MINUTE.

Mr. Calder, 12.3.24

Mr. Bottomley.

Mr.

Sir C. Davis.

Sir G. Hurdle.

Sir H. Read.

Sir J. Masterton Smith.

Lord Arnold

~~Mr. ...~~

Mr. Thomas.

~~...~~

(for conson.)

*13/3/24  
Jan*

I understand that the ~~business~~  
of the Clearing Office for ~~many~~ debts  
is controlled from the ~~Board of Trade~~  
and I write to ask for your assistance  
in the action which the Clearing  
Office is threatening in regard to  
the Magadi Soda Company.

The position is that that  
Company has gone into voluntary  
liquidation with a view to reconstruction.  
Its liabilities are over £300,000. The  
Clearing Office is an unsecured  
creditor of the Company for between  
£8,000 and £9000 for claims admitted  
by the Company to be due to

German Nationals, and has presented a petition for the compulsory liquidation of the Company which was heard by Mr. Justice Eve on the 4th inst. and adjourned till Tuesday the 18th.

There are two schemes under consideration for the reconstruction of the Company. One involves a levy on the existing shareholders, the other the acquisition of control of the reconstructed company by Messrs. Brunner Mond and Company. I am considering both schemes with a view to deciding which gives the greater prospect of the soda deposits in Lake Magadi being worked to the best advantage. There are various difficulties, however, and time is short, but what I want to emphasise is that, if an order is made on Tuesday for compulsory liquidation, it will prevent either reconstruction scheme being adopted, and that under compulsory liquidation there will be nothing from the wreck for unsecured creditors like the Clearing Office. When the Company got into difficulties,

the Kenya Government had, and still has, the power in accordance with the lease of the property, to determine the lease and re-enter upon the property. The Kenya Government has not exercised that power because it wishes to afford an opportunity for reconstruction, but it would do so at once upon an order being made for compulsory liquidation.

This position was explained to a representative of the Clearing Office who called at the Colonial Office on the 22nd of January. The action of the Clearing Office in threatening to force compulsory liquidation can be accounted for only on two hypotheses:

(1) they hope the Kenya Government will pay off their debt, a suggestion which was in point of fact made, but I do not feel that I should be justified in asking the Kenya