

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-21-2013

Judge : Harish Tandon

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.378 of 2011 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction CARGO LINERS PVT.LTD.And UJALA MERCHANTS & TRADERS LTD BEFORE: The Hon'ble JUSTICE HARISH TANDON Date :

21. t June, 2013.

Appearance: Ms.Manju Bhuteria, Adv.Ms.Rakhi Shroff, Adv.The Court : The winding up petition was admitted on 16th May, 2012 for a sum of Rs.25 lakhs together with an interest at the rate of 10% per annum from the date of the dishonour of the cheque till payment.

This winding up petition is listed at the post advertisement stage.

counsel.

The company is represented by the On perusal of the order admitting the winding up petition, it appears that various defence both on merit as well as technical were taken and found by the Company Court to be moonshine.

Admittedly, the cheque for a sum of Rs.25 lakhs was issued by the company in favour of the petitioning creditor which was dishonoured.

Although under the Company Court Rules, 1959 the company is entitled to use affidavit-in-opposition but since at the initial stage the company has taken the plea available to the company to thwart the complaint of the petitioning creditor that has been found against it, it would be an idle formality for the company to use the affidavit at the post-advertisement stage.

Even today it does not appear from the submission of the company that why the Company Court should not exercise its discretion to pass an order for winding up of the company.

This Court has no hesitation in mind that the company is unable to pay its debts and has not put forth any plausible and/or sufficient ground for exercising the discretion against the order of winding up of the company.

The company, therefore, is liable to be wound up and is, accordingly, ordered to be wound up.

The official liquidator is directed to take possession and custody of all books, records, documents, assets of the company forthwith in accordance with the provisions contained in the Companies Act, 1956.

Both the petitioning creditor and the official liquidator are permitted to take steps required to be taken under the provisions of the Companies Act, 1956.

(HARISH TANDON, J.) B.Pal A.R.(C.R.)

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