

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Oct-09-2013

Judge : Harish Tandon

Appellant : Appellant

Respondent : Respondent

Judgement :

CA No.485 of 2013 CP No.659 of 2013 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION In the matter of: Southern Road Carriers LTD.(In Liqn.) And In the matter of: Jai Balaji Industries LTD.Before: The Hon'ble Justice Harish Tandon Date : 9th October 2013 Appearance : Mr.Shaunak Mitra, Advocate Mr.S.Jhunjhunwala, Advocate for the petitioner Mr.Abhrajit Mitra, Advocate Ms.Rajashree Kajaria, Advocate Mr.Jishnu Chowdhury, Advocate Ms.Sonia Sharma, Advocate for the company The Court: On the oral prayer of the advocate appearing for the petitioning creditor leave was granted for dispensation of service of the Judges Summons as it was submitted before this Court that there is an eminent urgency in moving the said application.

The petitioning creditor prays for an appointment of the provisional liquidator under Section 450 of the Companies Act.

My attention is drawn to Form 8 submitted by the company relating to the correction or modification of the charge.

Clause 10 thereof shows that the instrument of charge is created on 27th April 2013 whereas Clause 13 reveals that there was an existence of a master restructuring agreement on 28th September 2013 and a supplementary agreement dated 18th January 2013 and the loan agreement dated 19th February 2013 executed by the company.

Admittedly the statutory notice is sent in the month of September, 2013.

All the acts, according to the petitioner, require an immediate attention by appointing provisional liquidator relating to pre-statutory notice period.

The petitioner could not satisfy this Court that after receiving the statutory notice the action of the company are such which requires an immediate measures to be taken, more particularly by appointment of provisional liquidator.

This Court, therefore, does not find that the provisional liquidator at this stage should be appointed ex parte and feels that the company is required to be heard before passing any order under Section 450 of the said Act.

Mr.Mitra intervenes in the proceeding and submits that he is appearing on behalf of the company.

Let a copy of the affidavit along with the Judges Summons be served on the advocate-on-record of the company, M/S.Sharma Kajaria & Company in couRs.of this day.

The company is directed to file affidavit-in-opposition to the application within one week after reopening following the puja vacation.

Reply thereto, if any, shall be filed within a week thereafter.

Let this matter appear two weeks after puja vacation at the top in the supplementary list.

The company petition is filed at the instance of the creditor of the company alleging non-payment of the transportation charges.

The company has intervened through Mr.Mitra and prays for direction to file affidavits.

Let affidavit-in-opposition to the company petition be filed within one week after reopening following the puja vacation.

Reply thereto, if any, shall be filed within a week thereafter.

Let this matter appear two weeks after puja vacation.

Judges Summons be signed as of date.

(Harish Tandon, J.) R.

Bose AR(CR)

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