

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-10-2014

Judge : Soumen Sen

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.479 of 2013 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE IN THE MATTER OF: DURGAPUR STEELS LTD.And MEGHNA VYAPAAR PVT.LTD.BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 10th January, 2014.

Appearance: Mr.Chayan Gupta, Adv.The Court: The claim in the winding up petition is on account of money lent and advanced.

The petitioner has provided the company inter corporate loan of Rs.50 lakhs vide its cheque being No.232307 dated 14th September, 2010.

The company duly acknowledged receipt of the said loan by letter dated 13th September, 2010.

The said loan was repayable after 120 days from 13th September, 2010 which would carry an interest of 9%.

The company in discharge of its liability issued two several cheques dated 12th February, 2011 and 14th February, 2011 for Rs.25 lakhs each.

The said cheques, however, were dishonoured on presentation.

The petitioner/company issued a statutory notice on 12th October, 2011.

In spite of the receipt of the said notice, the company had failed to pay the aforesaid sum.

The company, in fact, in reply to the statutory notice acknowledged its liability and cited financial constraint as a reason for non-payment of the loan amount.

Although the company by the said aforesaid letter dated 30th October, 2011 agreed to pay the loan, and it is presumed within a reasonable time, the company, however, failed and neglected to pay the aforesaid sum.

In spite of service none appears on behalf of the company.

The petitioner/company has communicated the order passed by this Court with regard to the directions passed for filing of affidavits.

In spite of communication of the said order the company has failed to appear and file any affidavit.

Mr.Chayan Gupta, in all fairness, has submitted that during the pendency of the proceeding the company had paid a sum of Rs.15 lakhs in aggregate by two several cheques dated 6th September, 2013 for Rs.10 lakhs and 1st November, 2013 for a sum of Rs.5 lakhs.

The ledger account produced before this Court shows that the petitioner has given adjustment of the aforesaid sums and after adjustment a sum of Rs.61,52,571/- inclusive of interest is due and payable by the company to the petitioner.

Since the company has paid a sum of Rs.15 lakhs in aggregate the company is given another opportunity to repay the loan.

In the event the company pays a sum of Rs.35 lakhs along with interest at the rate of 9% per annum from 1st April, 2011 till September, 2013 in six equal monthly instalments commencing from 7th of February, 2014 and payable on the seventh of each succeeding months, the winding up petition shall remain stayed.

However, in default of making payment of the fiRs.instalment or any other instalment, the winding up petition shall be admitted for a sum of Rs.35 lakhs with an interest at the rate of 9% per annum from 1st April 2011 till January, 2014 and the petitioner shall be entitled to advertise the petition once in The Statesman and once in Bartaman.

Liberty to mention.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(SOUMEN SEN, J.) sp/

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