

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-24-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.338 of 2012 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF : CONNECTIVA SYSTEMS INDIA PVT.LTD.AND SREI EQUIPMENT FINANCE PVT.LTD.(SEFPL) BEFORE: The Hon'ble JUSTICE PATHERYA Date : 24th January, 2014.

Ms.Manju Bhuteria for the petitioning creditor.

Mr.Dipanjan Sinha Roy for the company.

The Court : This application for winding up has appeared post advertisement.

Directions were given for filing affidavits and such affidavit has been affirmed on behalf of the company on 4th July, 2013 by one Mr.Amitava Maulik.

From the said affidavit filed, the only defence which emerges is in respect of a software supplied by Oracle India Private Limited whose assignee is the

petitioning creditor.

According to the company the software supplied by Oracle India Private Limited was not in utilizable condition.

Therefore, payment is not required to be made.

The said defence taken cannot be accepted as no communication has been annexed by the company to the affidavit filed by it disputing the supply.

This finds mention for the fiRs.time in the affidavit filed.

In fact, the order dated 13th February, 2013 was passed in presence of the Advocate for the company when no defence was indicated.

Therefore, the defence which has been taken in paragraph 9 of the affidavit of Mr.Maulik is no defence in the absence of documentary evidence.

In fact, no appeal has been filed from the order dated 13th February, 2013 and there exists no reason to either vary or modify the said order.

Accordingly, non-payment of sums mentioned in the order dated 13th February, 2013 and inability on behalf of the company to liquidate the sum warrants an order of winding up.

Let the company be wound up forthwith and the Official Liquidator is directed to take possession of all the assets and properties of the company including all the books, records and documents.

Official Liquidator and all parties to act on a photostat signed copy of this order on the usual undertakings.

(PATHERYA, J.) pa

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