

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-27-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP5062013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction
ORIGINAL SIDE RE : SPOTLIGHT TRADECo.PRIVATE LIMITED -ANDL & T
FINANCE LIMITED BEFORE: The Hon'ble JUSTICE NADIRA PATHERYA Date :
27th January, 2014.

Mr.R.Banerjee, Adv., with Mr.P.Sinha, Adv.Ms.M.Bhutoria, Adv.Mr.S.Choudhury,
Adv.Mr.D.Ghosh, Adv., ..for petitioner.

The Court : This application for winding up has been filed after service of statutory
notice under section 434 on the company.

No reply has been given to the statutory notice.

In fact, the claim is based on advance made to the company by the petitioning
creditor of Rs.1,95,20,000/- equipments.

The agreement between the parties postulated that payments be made by instalments month by month.

for purchase of certain There is no dispute with regard to payment of the fiRs.and second instalment, so also part of the third instalment.

Thereafter the company defaulted in making payment on and from part of the fourth instalment and the petitioning creditor, left with no alternative, was compelled to issue a termination notice.

But such termination notice is of no relevance today as the statutory notice has been issued wherein a demand for payment has been made of suMs.The company has not disputed the said claim.

Even after filing of the winding up application, service was sought to be effected on the company and directions were also sought to be communicated.

The fiRs.service has returned with the endorsement addressee absent, intimation served, addressee moved.

Prior thereto, service was attempted and such service returned as will appear from the postal record that delivery attempted, addressee therefore, tantamounts affidavit in absent, to opposition intimation good and served, service.

therefore the The unclaimed.

company claim of has the This, filed no petitioning creditor is undisputed.

In cases where the claim remains undisputed, a petition of this kind will lie as the arbitration clause contemplates a dispute.

But here, in the absence of a dispute either by way of reply to the statutory notice or to the petition filed, it cannot be said that there exists a dispute which requires adjudication by arbitration.

stands admitted for a sum of Therefore the company petition Rs.1,87,32,340/- along with interest calculated at 8% per annum on and from the date of issuance

of the statutory notice till realisation.

Although the petitioning creditor has claimed sums on account of delayed payment charge so also cheque returning and other charges, the same have not been considered in this petition and it will be open to the petitioning creditor to seek remedies for the said sums in an appropriate forum.

An opportunity is being given to the company to make payment of the sum for which the company petition has been admitted in eight equal monthly instalments.

The fiRs.of such instalments be paid by February 14, 2014 and thereafter the 14th day of each succeeding month.

In default of payment of the fiRs.instalment, the petitioning creditor will be entitled to advertise once in the Bartaman and once in The Times of India, Kolkata Edition.

The matter is made returnable six weeks hence.

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

(NADIRA PATHERYA, J.) tk

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