

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1129804

Court : Kolkata

Decided On : Feb-27-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.172 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF: SREE METALIKS LTD.AND IVR CRANES BEFORE: The Hon'ble JUSTICE PATHERYA Date : 27th February, 2014.

Mr.D.N.

Sharma, Mr.Sunil Singhania for petitioning creditor.

Ms.Manju Bhuteria, Mr.S.Banerjee, Ms.S.Purkayastha for the company.

The Court : A notice under Section 434 of the Companies Act, 1956 was issued by the petitioning creditor to the company on 8th October, 2012 and the same was received by the company.

In spite of receipt no reply has been given by the company to the statutory notice.

Therefore, it raises a statutory presumption of the inability of the company to pay its debts which presumption remains unrebutted.

In the affidavit-in-reply filed by the petitioning creditor a ledger account of the company has been disclosed wherefrom it appears that a sum of Rs.45,23,288/- has been admitted by the company.

Accordingly, the Company Petition be admitted for the sum of Rs.45,23,288/-.

Although Counsel for the petitioning creditor seeks admission of the company petition for the sum of Rs.52 lakhs, the ledger account on which reliance is placed does not evidence the said sum.

The bills in respect of which such payment is sought have also not been certified.

Therefore, except for the sum of Rs.45,23,388/- the company petition cannot be admitted for any other sum.

Accordingly, the company petition is admitted for the sum of Rs.45,23,288/- along with interest payable at 8% per annum on and from the date of issuance of the statutory notice till payment.

The original sum claimed is Rs.60,17,026/-.

As there is an admission with regard to Rs.45,23,288/-, for the balance sum the petitioning creditor is relegated to a suit.

Such suit be filed within eight weeks.

The sum mentioned above be paid in monthly instalment of Rs.5 lakhs each.

The fiRs.of such instalment be paid by 14th March, 2014 and the 14th day of each succeeding month.

In default of payment of any one instalment the petitioning creditor will be at liberty to advertise once in Dainik Statesman, Bengali edition and once in The Statesman, English edition.

Matter is made returnable twelve weeks hence.

All parties to act on a photostat signed copy of this order on the usual undertakings.

(PATHERYA, J.) pa

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