Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1133986

Court : Kolkata

Decided On : Mar-18-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER
SHEET CP NO.209 OF 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : SARAF IMPEX (P) LTD -ANDIN THE MATTER OF : THE FEDERAL BANK LTD BEFORE: The Hon'ble JUSTICE PATHERYA Date : 18th March, 2014.

MR.RAJSHEKAR MANTHA,ADVOCATE FOR PETITIONER MR.PRAMIT KR.RAY, MS.S.MUKHERJEE, MR.A.K.ROY, MR.A.DAVE, NR.S.BISWAS, ADVOCATES FOR COMPANY The Court : The petitioning creditor seeks admission of this winding up petition for the balance sum overdrawn by the company.

A statutory notice was issued on 22nd January, 2013 by the petitioning creditor and a reply thereto was also issued by the company.

In the said reply given, the company took the plea of not booking when request was made, by virtue whereof the company suffered loss.

This was in respect of the fiRs.letter of credit opened by the petitioning creditor in favour of the company.

The said fiRs.letter of credit was settled and except for loss suffered no other claim has been alleged by the company in its reply.

The issue raised in this winding up petition revolves around the second letter of credit dated 28th July, 2011.

The said letter of credit was to mature in January 2012 and undoubtedly certain fixed deposits created by the company were lying with the petitioning creditor.

There can be no dispute that the sums on maturity had been adjusted against sums covered by the second letter of credit.

For adjustment purpose the said fixed deposits would either have to be paid on maturity which was between 2nd February, 2012 and 5th February, 2012, encashed prematurely.

It is not the case of the company or the petitioning creditor that the fixed deposits were prematurely encashed.

Therefore, the question that remains to be answered is how did the company meet its liability which arose in January, 2012.

According to the petitioning creditor sums had been sanctioned against an application filed for advance by the company.

Such application was made on 31st January, 2012 on which date, according to the company, the Director of the company was not in Calcutta and in support thereof boarding pass and ticket of 31st January, 2012 have been disclosed.

A boarding pass has also been disclosed of 1st February 2012 from Delhi to Ahmedabad which is also in the name of the signatory director to the document of

31st January, 2012.

This, therefore, raises a dispute with regard to the application filed for advance.

Adjustment has been made against the fixed deposit cannot be disputed but the quantum adjusted is not known.

The petitioning creditor has proceeded on the basis of two documents, namely, the application for advance dated 31st January, 2012 and the confirmation of balance outstanding dated 6th February, 2012.

The application dated 31st January, 2012 has already been dealt with and the document of 6th February, 2012 has been disputed by the company as a manufactured document.

In fact, the company has gone a step further and said that although the bank had requested the company to confirm the balance but the company had refused to do so and the said document was never signed by the Director dealing with the petitioning creditor.

Therefore, the document dated 6th February, 2012 is also in question.

Assuming that the said two documents are not in favour of the petitioning creditor, it was open to the petitioning creditor to disclose the original amount deposited by the company with it in a fixed deposit.

It was also open to the petitioning creditor to disclose the amount which could have accrued in favour of the company on maturity in respect of the fixed deposits but the said finds no mention in the application filed.

The statutory notice is also silent in respect of the said amount and the statutory notice is only based on the document dated 6th February, 2012.

In the said statutory notice there is no mention also of the sanction letter dated 31st January, 2012.

Therefore, one is not aware of the matured amount and the amount which could have been deducted therefrom.

This is important as only then can entitlement accrue in favour of the petitioning creditor and the company can be made liable in respect thereof.

Not having stated so and only based on the documents which have been held to be of questionable nature this application merits no order and is accordingly dismissed.

Although a point was raised on behalf of the company with regard to election of forum by the petitioning creditor as proceedings had been initiated by the petitioning creditor before the Debts Recovery Tribunal but this issue need not be addressed as proceedings before the Debts Recovery Tribunal and before the winding up Court are under two separate, independent and distinct statutes and therefore, proceedings can be filed under the two separate statutes.

But this is of no relevance in view of the order passed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PATHERYA, J.) sb/pa