

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Mar-31-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP NO.176 OF 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : M/S.NIVERA APPARELS PVT LTD -ANDIN THE MATTER OF : CASTLE COMMODEAL PVT LTD BEFORE: The Hon'ble JUSTICE PATHERYA Date : 31st March, 2014.

Mr.Om Narayan Rai, Mr.Prasant Agarwal, Advocates for petitioner Mr.Biswanath Mitra, Mrs.Sujata Mitra, Mr.Dilip Kr.Saila, Advocates for company The Court : This matter has appeared at the post advertisement stage.

By order dated 17th April, 2013, the company petition was admitted for the sum of Rs.25 lakhs along with interest payable at 18% per annum.

The said order was challenged in appeal which appeal was dismissed by order dated 2nd July, 2013.

An affidavit has also been filed by the company at the post advertisement stage and three documents that need to be considered of the company at this stage when winding up order is to be passed are reply to the statutory notice, the fiRs.affidavit filed before admission of the company petition and the affidavit filed at the post advertisement stage.

In the reply given to the statutory notice, the plea taken by the companys advocate was that the petitioning creditor was habituated to suppressing material facts.

It did not specifically state what material facts had been suppressed.

In fact, the company called upon the petitioning creditor to furnish documents and papers so that the disputes could be settled amicably by the accounts department.

It was also admitted in the reply that the cheque for Rs.25 lakhs had been encashed and although it was stated that the reasons and cause were otherwise, the said reasons and cause were not specified in the reply given.

In the Affidavit-in-Opposition, the plea taken is that the advance was for a period of ten years and the cheque was given as security.

The said case made out by the company in the preadmission stage was not accepted by the trial court.

The order was challenged in appeal and its case was not also accepted.

At the post advertisement stage two pleas have been taken in the affidavit filed; one is that the advance is a long term deposit and the second is that the cheque for Rs.25 lakhs was given as security, which had been renewed from time to time and the last renewal was in November 2012.

The submissions of the company is the same and in no way different from its plea at the pre-admission stage and cannot be accepted for the following reason.

The case made out in the opposition is not made out in the reply given to the statutory notice by the company.

What differentiates a long term advance from a short term advance has not also been clearly brought out.

But to understand short term and long term advance one has to revert to banking practice specially in the area of fixed deposit where short term fixed deposit would be for a period of ninety days or maximum six months and even at the highest would be for a period of one year.

But any deposit made beyond the period of one year cannot be termed as a short term deposit.

Therefore, assuming that the deposit was for a period of two years the said would definitely come in the zone of a long term deposit but this would not necessarily mean that a long term deposit would be for a period of ten years. Therefore, this case of long term deposit made out which is absent in the reply to the statutory notice cannot be accepted.

Another very interesting submission which has been made is with regard to security given against the advance.

The cheque for Rs.25 lakhs was issued on 15th November, 2012.

There is no case made out by the company that against the security of advance a cheque was issued in 2010 when the fiRs.advance was given nor is there a case made out that a renewed cheque was issued in 2011.

It is for the fiRs.time that a cheque surfaces in 2012 which, according to the company, was a security for the advance given.

Why such security was not given in the earlier years has not been explained by the company either in its reply to the statutory notice or in any correspondence exchanged with the petitioning creditor.

There is no dispute that interest was paid by the company to the petitioning creditor in August 2012 but there is no proof of payment of interest beyond August 2012.

Therefore, the defence of the company cannot be accepted and the inability of the company to meet its debt is evident.

Accordingly, the petitioner is entitled to an order in terms of prayer (a) of the petition.

The Official Liquidator is directed to forthwith take possession of the books, records, assets and properties of the company now in liquidation.

Urgent certified photocopies of this order be made available to the parties, if applied for, upon compliance with all requisite formalities.

(PATHERYA, J.) sb

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