

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Apr-03-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.642 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF : BRG IRON & STEEL CO.PVT.LTD.AND PARMESHWAR LAL SARAF BEFORE: The Hon'ble JUSTICE PATHERYA Date : 3rd April, 2014.

Mr.K.C.

Garg, Ms.Sunita Agarwal for petitioning creditor.

Mr.Siddhartha Chatterjee for the company.

The Court : This winding up application has been filed for price of goods sold and delivered.

The case of the petitioning creditor is that the goods were supplied not only to the company but also to one Bhueve Profiles & Stainless PVT.LTD.which at present

stands merged with the company.

Therefore, for supplies made to it a claim has also been made.

Bills were raised on the company for the supplies made and as the sum was not paid a statutory notice was issued on 18th July, 2013 which though received by the company, no reply has been given thereto.

Therefore, this company petition be admitted and orders be passed as sought.

Counsel for the company submits that from the ledger account of the company it will appear that four bills have only been received.

In respect of goods supplied under the said four bills too there is a dispute which is reflected in the electronic mail of August, 2013.

The rest of the bills have not been received nor do the challans evidence receipt.

Form C is issued along with the purchase orders to entitle the petitioning creditor to avail of tax benefits.

Therefore, this will not evidence receipt of goods.

In view of the aforesaid no order be passed on this application.

Counsel for the petitioning creditor, in reply, submits that goods have been received as will be evident from the challans to which signatures have been appended.

The dispute in respect of the goods supplied has been raised after issuance of the statutory notice.

Therefore, the same ought not to be looked into.

Having considered the submissions of the parties the claim made in this winding up petition is in respect of the goods supplied to the company so also to one Bhuvée Profiles & Stainless PVT.LTD. The bills are eight in number but four bills have undoubtedly been receipted by the company.

The bills so receipted are numbered 235 dated 12th December, 2012 for Rs.16,201.68p, 757 dated 1st March, Rs.52,905.36p and 2011 for 807 dated Rs.45,280.86p, 21st March, 783 2011 dated for 7th March, Rs.8,282.40p.

2011 The for bills mentioned above find mention in the ledger of the company itself and although a dispute is sought to be raised in respect of the goods supplied, such dispute has been raised in August, 2013 i.e.after receipt of the statutory notice issued under Section 434.

No contemporaneous document has been produced in evidence of either rejection of materials or raising any dispute in respect thereof.

Therefore, the defence of the company with regard to defective goods or goods rejected cannot be accepted and the company petition for the bills mentioned above stands admitted.

As regards the balance bills there is no evidence of either receipt of the bills by the company nor do the challans evidence delivery to the company.

The computerised print out with a printed name will not evidence delivery to the company.

Therefore, for the balance bills the claim of the petitioning creditor is relegated to a suit.

An opportunity is given to the company to make payment of the sums covered by the four bills mentioned above in three instalments along with interest at 8% per annum on and from the date of issuance of the statutory notice till realisation on the reducing balance.

The fiRs.of such instalment be paid by 17th April, 2014 and the 17th day of each succeeding month.

In default of payment of any one instalement, 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.

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

(PATHERYA, J.) pa

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