

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Apr-01-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.247 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE SREE METALIKS LTD.-ANDTIRUPATI CARRIER LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 1st April, 2014.

Mr.Jayanta Mitra, Sr.Adv.for petitioning creditor The Court : By order dated 13th March, 2014 an opportunity was given to the parties to reconcile the accounts.

It is submitted by counsel on behalf of the petitioning creditor that no effort was made by the company to negotiate reconciliation.

None has appeared on behalf of the company even at hearing this day.

Therefore the case must be decided on the basis of the pleadings filed by the parties.

The claim in this application arises out of transportation charges incurred by the petitioning creditor on behalf of the company for which bills have been raised but no payment made.

It is for this non-payment that a statutory notice was issued on 25th February, 2013 to the company by the petitioning creditor which was received by the company and in spite of receipt no reply was given thereto.

This therefore raised a statutory presumption of the company's inability to make payment of its debt which presumption was sought to be rebutted by filing of affidavit-in-opposition.

In the affidavit filed by the company for the FIRs.time, it has been alleged that the goods supplied were defective but there is no contemporaneous document of rejection of the goods or complaint of defective goods in the pleadings filed.

The explanation sought to be given for the cheques dishonoured is that post dated cheques were issued after receiving supplies on the understanding that the cheque would be presented for encashment on receipt of instruction from the company.

This defence by the company can also not be accepted as it is unbelievable that cheques though paid for the supplies made presentation whereof would be subject to receipt of instruction from the company.

Therefore admittedly the cheques were issued for the supplies made and assuming that the defence vis-a-vis such cheques is correct, on dishonour of cheques there is no letter protesting the presentation made.

Therefore the defence of the company cannot be accepted nor is it bonafide and accordingly C.P.247 of 2013 is admitted for the sum of Rs.44,95,659/- along with interest payable at 8 % per annum on the reducing balance on and from the date of issuance of statutory notice till realisation.

An opportunity is given to the company to make payment of the sums mentioned above in 12 equal monthly instalments.

The fiRs.of such instalment be paid by 16th April, 2014 and the 16th day of each succeeding month.

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

Matter is made returnable 12 weeks hence.

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

(PATHERYA, J.) TR/

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