Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1137450

Court : Kolkata

Decided On : Apr-10-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER
SHEET CP846of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : NAROTTAM PLYWOOD INDUSTRIES PVT.LTD.AND L & T FINANCE LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 10th April, 2014.

Ms.Ranjaboti Sen, Adv.Mr.Saubhik Chowdhury, Adv.Mr.Debayan Ghosh, Adv.for the petitioner Ms.Baderqua Tasheen Ahmed, Adv.Mr.Apurba Kumar Ghosh, Adv.for the company The Court :-By this application the petitioner seeks to claim sums on account of a financing agreement between the parties.

Part payments were made and thereafter defaults committed.

For the defaulted sum a notice under Section 434 of the 1956 Act was issued on 25th June, 2013 and in spite of receipt of the said notice as will appear from the status certificate issued by the Director, Calcutta G.P.O., no reply has been given thereto.

Therefore a statutory presumption has arisen of the inability of the company to pay its debt and the petitioning creditor seeks orders as sought.

Counsel for the company prays for an adjournment on the ground that her client is not in Calcutta.

According to the company no copy of the agreement was handed to the company.

It was because of an attachment of bank account by the Sales Tax Authorities that payments could not be made.

Therefore no order be passed on this application.

Having considered the submissions of the parties, the existence of the agreement is not disputed.

All that is disputed is that no copy was given.

Part payments have also been made and demand promissory note executed.

It is only for sums which remain due and payable that this winding up application has been filed.

The company in its affidavit has admitted that it was in involved circumstance as Sales Tax Authorities had attached its bank account and electricity was disconnected.

Therefore payment could not be made.

This evidences the inability on the part of the company to make payment of its liability in excess of Rs.500/-.

Therefore the defence in the light of such admission cannot be accepted and accordingly C.P.846 of 2013 is admitted for the sum of Rs.4,40,882/- along with interest payable at 8% per annum on and from the issuance of statutory notice till realisation on the reducing balance.

Liberty is given to the company to make payment of the said admitted amount along with interest in two instalments.

FiRs.of such instalment be paid by 30th April, 2014 and 30th May, 2014.

In default of payment of any one instalemnt the petitioning creditor will be at liberty to advertise once in Dainik Statesman and The Statesman.

Matter is made returnable twelve weeks hence.

In respect of the balance claim, liberty is given to the petitioning creditor to take steps in accordance with law in any forum of its choice.

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/