

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Apr-16-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP NO.423 OF 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : M/S.IMECO LTD AND IN THE MATTER OF : KHAGENDRA NATH DAS @ K .N.DAS BEFORE: The Hon'ble JUSTICE PATHERYA Date : 16th April, 2014.

MR.SUDIP GHOSH,ADVOCATE FOR PETITIONIG CREDITOR MR.NIKUNJ BERLIA,ADVOCATE FOR COMPANY The Court : In this winding up application the claim arises on account of electrical works executed and materials supplied.

The petitioning creditor was appointed as a sub-contractor by the company in whose favour work order has been issued by SAIL.

For works executed and supplies made, the petitioning creditor raised bills on the company and the company made part payments.

For the balance sum, a notice under section 434 of the 1956 Act was issued by the petitioning creditor to the company on 18th April, 2013 to which a reply has been given by the company on 14th May, 2013.

In the reply the company has denied that any payment is to be made to the petitioning creditor as according to the company, the petitioning creditor was responsible for delay in execution of works.

But this is incorrect as an extension was granted by the company to the petitioning creditor.

Even after issuance of letters from SAIL which have been annexed to the affidavit filed by the company no letter has been issued by the company to the petitioning creditor.

Therefore, the defence taken by the company is not bona fide and orders be passed as sought.

Counsel for the company submits that its agreement with SAIL was terminated for the delay caused in execution of works by the petitioning creditor.

Bills and challans which have been annexed to the petition do not evidence receipt of goods.

In the letter dated 28th June, 2011, the claim of the petitioning creditor is for Rs.12,79,631/- while in the statutory notice, the claim is for Rs.21,63,662/.

There has been delay in execution of works on the part of the petitioning creditor will be reflected from its letter dated 23rd August, 2010.

SAIL has initiated arbitration proceedings against the company and until the outcome of such arbitration proceedings is known, no payments can be directed to be made by the company to the petitioning creditor.

Therefore, this application merits no order and be dismissed.

Having considered the submissions of the parties it is an admitted fact that a contract was executed between SAIL and the company for installation inter alia of Knock-out Pot and Condensate Seal Pot (equipment).The company entered into a sub-contract with the petitioning creditor for execution of electrical works so also supply of electrical materials.

That there was delay is an admitted fact, as by letter dated 22nd May, 2010, the validity period of the work order was extended till September, 2010.

After grant of such extension two letters were issued by SAIL to the company on 1st June, 2011 and 25th November, 2011 and in spite of receipt of such letters there is no letter from the company to the petitioning creditor levelling any allegation against it.

The only letter on which the company seeks to place reliance is dated 23rd August, 2010.

This is prior to 1st June, 2011, in fact, the company has not been able to produce any receipt of such letter by the petitioning creditor.

A minute of the meeting dated 8th June, 2011 has been relied on by the company but this meeting was held between MECON, the consultant of SAIL and Rourkela Steel Plant.

At the said meeting neither the company nor the representative of the petitioning creditor was present.

Although the petitioner sought to rely on the companys ledger account wherefrom it will appear that as on 9th May, 2011, a sum of Rs.21,63,662/- was due and payable by the company to the petitioning creditor, on 28th June, 2011, a demand was made by the petitioning creditor on the company for the sum of Rs.12,79,631/-.

If the sum due and payable by the company to the petitioning creditor on 9th May, 2011 was Rs.21,63,662/- then there was no reason for the petitioning creditor to reduce its demand to Rs.12,79,631/-.

The reason for such reduction is unfathomable.

Although the company has sought to rely on letters dated 1st June, 2011 and 25th November, 2011 written by SAIL to it in spite of receipt of such letters there is no complaint made by the company with the petitioning creditor and the letter of 23rd August, 2013 in the absence of any receipt cannot be looked into.

In the light of the extension granted the dispute raised by the company is not bona fide and this company petition is, accordingly, admitted for the sum of Rs.12,79,631/- for the reason mentioned above and for the balance claim, the petitioning creditor is relegated to a suit.

An opportunity is given to the company to make payment of the sum of Rs.12,79,631/- in six equal monthly instalments along with interest at 8% per annum on and from the date of issuance of notice till realisation.

The fiRs.of such instalment be paid by 30th April, 2014 and the 30th day of each succeeding month.

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

The reply to the statutory notice in the light of the documents enclosed with the affidavit cannot be accepted.

The minutes of the meeting between Mecon, consultant of SAIL and Rs.has been disclosed in the affidavit filed by the company.

This could have been only possible if SAIL was a friendly party and not otherwise.

This is another reason for not accepting the defence of the company to be bona fide.

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.) sb.

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