

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-09-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.686 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction M/S.TANTIA CONSTRUCTIONS LTD.AND M/S.BALAJ.INDUSTRIES BEFORE: The Hon'ble JUSTICE NADIRA PATHERYA Date : 9th June, 2014.

Mr.Supratim Laha for petitioning creditor.

Mr.S.K.

Tiwary, Mr.S.K.

Baid for the company.

The Court : The claim in this winding up application arises on account of materials supplied by the petitioning creditor to the company.

The case of the petitioning creditor is that for Ircon-Ganga Project at Pahle Jaghat materials were supplied and bills raised in respect thereof.

Except for two bills payment of all other bills were made by the company to the petitioning creditor.

For the bills which remained unpaid a statutory notice was issued on 16th August, 2013.

A reply was also given and in the said reply a plea of the goods being defective and rejected has been taken.

Admission of outstanding in respect of the said two bills has been admitted.

For the reasons mentioned in the reply to the statutory notice the company has refused payment.

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

Counsel for the company submits that the materials supplied were tested and on inspection it was found that one of the materials was defective.

A defect found in any material will prove detrimental to the entire project.

In fact rejection orally was intimated to the petitioning creditor and in view of the bona fide dispute raised no order need be passed.

Having considered the submissions of the parties that materials were supplied and sums were due and payable for the two bills outstanding is not in dispute.

The only plea taken by the company is that the goods were defective which is borne out from the test certificate and as the materials were rejected no payment need be directed.

This plea would have been accepted in the event there was any contemporaneous document issued by the company to the petitioning creditor.

Undoubtedly it was a supply of August, 2012 and the statutory notice was issued in August, 2013.

What prevented the company from issuing a letter to the petitioning creditor of rejection is not known, similarly although oral rejection has been sought to be pleaded but oral rejection by whom and to whom finds no mention either in the pleadings or in the reply to the statutory notice.

In spite of one of the materials not conforming to specification as reflected in the test certificate no step was taken by the company to reject the said material by issuing necessary letter.

Therefore, the said plea will be of no assistance to the company.

In fact, the plea taken in the reply to the statutory notice so also in the opposition filed is contrary to the contents of the letter dated 20th July, 2013.

In view of the aforesaid therefore the defence of the company cannot be treated as bona fide and accordingly, C.P.686 OF2013 is admitted for the sum of Rs.13,23,021/-.

An opportunity is given to the company to make payment of the said sum in four equal monthly instalments.

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

Needless to mention that the said sum will carry interest at 8% per annum on and from the issuance of the statutory notice till realisation on the reducing balance.

In default of payment of any one instalment the petitioning creditor will be entitled to advertise once in Sangbad Pratidin and once in edition.

Matter is made returnable eight weeks hence.

The Statesman, English After passing of this order Counsel for the company seeks instalment to be increased to six.

Such prayer is allowed.

Accordingly, let the admitted sum of Rs.13,23,021/- be paid in six instalments as desired by the company.

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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