

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-13-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CA No.375 of 2014 CP No.436 of 2014 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE REI AGRO LTD.AND UNITED BANK OF INDIA BEFORE: The Hon'ble JUSTICE PATHERYA Date : 13th June, 2014.

Mr.Mr.Mr.Mr.S.N.Mukherjee, Sr.Adv.S.K.Mal, Adv.A.Roy Chowdhury, Adv.D.N.Dey, Adv.for the petitioner Mr.Abhrajit Mitra, Sr.Adv.Ms.Manju Bhuteria, Adv.Mr.P.Basu, Adv.for the respondent The Court : By this application the company seeks dismissal of C.P.436 of 2014 and vacating of order dated 15th May, 2014.

The case of the applicant is that in C.A.336 of 2014 an order was passed on 15th May, 2014 whereby the applicant company was restrained from dealing with, disposing of, alienating or creating third party interest in its assets or transferring its shares till disposal of the winding up application.

There has been suppression of facts by the petitioning creditor as although it was submitted and recorded in order dated 15th May, 2014 that service had been effected on the company, such service was effected of the application filed in May, 2014 on 4th June, 2014.

Therefore this is the fiRs.suppression by the petitioning creditor.

The second suppression relates to a meeting held on 7th May, 2014 at which UBI was present and had agreed to the restructuring proposed.

The order was passed on 15th May, 2014.

Therefore there was no reason for the applicant to suppress the meeting of 7th May, 2014.

Subsequent to the order two other meetings have been held on 17th May, 2014 and 24th May, 2014.

In fact a consortium has been formed pursuant to RBI guidelines and being a SMA-2 bank the joint lender forum had to be mandatorily formed and such forum has been formed.

UCO bank is the lead bank in respect of such forum.

In the event the order of restraint is continued or allowed to exist, no step will be taken by the consortium which will be detrimental to the interest of the applicant company.

The agreement of the consortium postulates that any decision is to be passed by 60% in number and 75% in value and as the Reserve Bank of India is entitled to under Section 35A of the 1949 Act issue guidelines in the interest of banking policy, the restraint order be vacated and/or modified.

Counsel for the petitioning creditor submits that prior to meeting dated 7th May, 2014 a meeting was held on 23rd April, 2014 whereat the petitioning creditor informed the consortium of the statutory notice issued under Section 434 of the 1956 Act.

Being a member bank the petitioning creditor cannot be bound by the decision of the forum and direction be given for filing affidavits.

Having considered the submissions of the parties the only stumbling block which if at all will prevent the forum from taking a decision is the restraint order contained in order dated 15th May, 2014.

It has been contended by the applicant company that in the light of the said order the consortium will be hesitant in considering the matter in its correct perspective.

The Reserve Bank of India has issued guidelines and in the instant case the same is being followed by formation of a forum or consortium.

The petitioning creditor is a member of such consortium and having participated in the meeting will be aware of the decision which is to be taken but it is only to allow the forum to freely take a decision without being inhibited by any restraint order passed by Court, it is made clear that the restructuring process will be considered by the joint lenders forum in a free manner without being influenced in any way or inhibited in any way by the restraint order passed.

The restraint order is passed against the company to prevent it from dealing with its assets but will not be construed as a bar on the forum from passing any restructuring proposal that it so wishes to pass.

Needless to mention that any proposal or decision taken by the forum will be in accordance with law.

Directions are given for filing affidavits.

Affidavit-in-opposition be filed within a fortnight from date; reply, if any, be filed within a week thereafter.

Matter to appear in the list on 7th July, 2014 as For Orders.

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

(PATHERYA, J.) TR/pa

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