

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1153314

Court : Kolkata

Decided On : Jun-26-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.815 of 2013 IN THE HIGH COURT AT CALCUTTA ORIGINAL SIDE RE; M/S.JESSOP & COMPANY LTD.AND M/S.LALBABA INDUSTRIAL CORPORATION PVT.LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 26th June, 2014.

Mr.Supratim Laha, Adv.with Mr.Shantanu Saha, Adv., ..for Petitioning creditor.

Mr.Abhrajit Mitra, Adv.with Mr.Nirmalya Dasgupta, Adv..for the company.

The Court :-This application on the ground of suppression of material facts is dismissed.

The conciliation reference was filed before Facilitation settlement the West Council was Bengal by reached State the and Micro petitioning it was & Small Enterprises creditor mutually agreed herein.

that A the outstanding sums would be paid in instalments of Rs.5,00,000/- per month on and from April, 2011.

Payments were made and as reflected in the statutory notice dated 04.06.2013 a sum of Rs.68,81,398/became due and payable by the company to the petitioning creditor.

Statutory notice though received by the company no reply was given thereto, and winding up petition filed.

In the winding up petition filed the petitioning creditor did not inform the Court that an application had been filed by it for realisation of Rs.68,81,398/.The said application was filed by none other but the petitioning creditor and on basis thereof a notice was issued to both the company and the petitioning creditor by the Council on 5th October, 2012.

This was followed by the notice of 09.01.2013 again addressed both to the petitioning creditor and the company.

This second application filed by the petitioning creditor has been suppressed from Court.

It is quite possible that the petitioning creditor may be entitled to proceed before the Council but the fact of filing of the second application for a claim equivalent to the claim made by the statutory notice ought to have been brought to the notice of the Court.

It is only for suppressing this material fact that this application cannot be entertained and is accordingly dismissed.

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

(PATHERYA, J.) nm