

Appellant Vs. Respondent

Appellant Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1155318

Court : Kolkata

Decided On : Jul-08-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP No.733 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF: DIVYA JYOTI SPONGE IRON PRIVATE LIMITED -AND SUPREME BOROCHEM PRIVATE LIMITED BEFORE: The Hon'ble JUSTICE PATHERYA Date : 8th July, 2014.

Mr.A.K.Routh Advocate with Mr.S.Pal Chowdhury, Advocate..for petitioning creditor.

The Court :-The claim in this winding up application arises on account of price of goods sold and delivered.

The case of the petitioning creditor is that pursuant to purchase order issued by the company supply of goods was effected.

Goods were not only received by the company but bills raised were also received without any objection.

The goods have been consumed as there is no letter of rejection.

For non-payment of suMs.statutory notice was issued on 2nd July, 2013 and on receipt thereof a reply has been given on 10th July, 2013.

The only defence taken in the reply is that the bills needed to be scrutinised.

No affidavit-in-opposition has been filed in spite of direction given and an extension sought.

Therefore, the statutory presumption of the companies inability to pay its debts stands un rebutted and orders be passed as sought.

Having considered the facts of the case purchase orders were issued by the company to the petitioning creditor in August, 2012 and pursuant thereto goods were supplied.

On receipt of goods bills were raised.

There is no dispute with regard to receipt of bill and therefore payments were to be made.

For nonpayment statutory notice was issued which on receipt was replied to.

The only defence taken in the reply to the statutory notice is that being a businessman and manufacturer on a Large-scale bills needed scrutiny and till such scrutiny was completed no step be taken.

No affidavit-in-opposition has been filed by the company in spite of time taken and an extension granted.

There is no letter issued by the company in rejection of the said goods.

The only defence taken in the reply to the statutory notice is that invoice needed scrutiny.

None has appeared this day to represent the company and it is unbelievable that the company would take a year to scrutinise the bills and transaction.

In view of no objection raised to the goods supplied nor any letter of rejection, CP No.733 of 2013 is admitted for the sum of Rs.4,23,596/- along with interest at 8% per annum on and from the date of issuance of statutory notice till realisation.

An opportunity is given to the company to make payment of the sum mentioned above in six equal monthly instalments.

The fiRs.of such instalment be paid by 1st August, 2014 and the 1st day of each succeeding month.

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

Matter is made returnable eight weeks hence.

The petitioning creditor is directed to communicate this order to the non-appearing respondent company.

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

(PATHERYA, J.) nm

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com