

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1157626

Court : Kolkata

Decided On : Jul-23-2014

Judge : Arijit Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP4392014 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction IN THE MATTER OF: HIMANGINI GOLD INDIA LTD.-ANDSOUMEN BISWAS BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE Date : 22nd July, 2014.

Appearance: Mr.Chayan Gupta, Adv.Mr.A.K.Mishra ...for the petitioning creditor.

The Court : In or around October 2012 Himangini Gold India Limited (In short the company) invited applications for subscription to a gold scheme wherein at the end of the period of the scheme, and subject to payment of the specified instalments, gold jewellery of the equal value would be delivered by the company.

Pursuant to the offer, the petitioning creditor applied and subscribed to a scheme having a validity period of twelve months with instalment of Rs.17,000/- per month.

The said scheme was redeemable on November 1, 2013 and at the end of the scheme the petitioning creditor was to be delivered the gold jewellery worth Rs.2,29,500/-.

By its letter dated November 15, 2013, the petitioner wrote to the company for delivering the gold jewellery as per the scheme.

However, by a letter dated December 2, 2013 the company while acknowledging its liability, cited unavoidable sudden financial crisis and its immediate inability to deliver the jewellery.

The petitioning creditor caused a statutory notice to be served on the company for its winding-up.

There was no reply to the said notice.

The petitioning creditor is entitled to receive gold jewellery valued at Rs.2,29,500/- or its monetary equivalent from the company.

Hence, this winding-up petition.

The winding-up petition was served on the company.

However, on 9th June, 2014 when the matter appeared before this Court, nobody appeared on behalf of the company.

Direction was given for filing affidavits and the petitioning creditor was directed to communicate the order to the company.

Appearing for the petitioning creditor Mr.Chayan Gupta, learned Counsel, submits that the attempt to communicate the order dated 9th June, 2014 to the company has failed inasmuch as the envelop has been returned with an endorsement refused.

The same has been filed along with an affidavit of service in Court.

Refusal amounts to good service.

Hence, I have no hesitation in proceeding with the matter in the absence of the company.

It is clear from the conduct of the company that it is avoiding the petitioning creditor as also this proceeding.

The presumption of the company being unable to pay its debts is clearly attracted in the facts and circumstances of the case.

The company does not appear to have any defence to the petitioning creditors claim.

Accordingly, this winding-up petition is admitted for a sum of Rs.2,29,500/- along with interest at the rate of 10 per cent per annum from November 1, 2013 till repayment.

The company is granted an opportunity of paying the petitioner creditors dues in two equal monthly instalments, the first of which would be payable on or before the 10th of August, 2014 and the next one on the 10th of September, 2014.

There will be an unconditional stay of this order till 10th of August, 2014.

If the company makes payment as directed by this order, the order of stay will continue.

In default, the order of stay will stand vacated and the petitioning creditor will be at liberty to cause advertisement once in *Bartaman* and once in *The Statesman*.

If the entirety of the petitioning creditors dues are paid off by the company, this winding-up petition will remain permanently stayed.

The matter is made returnable six weeks hence.

The petitioning creditor is directed to make an attempt to serve a copy of this order on the company.

(ARIJIT BANERJEE, J.) sd/