Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1161928

Court : Kolkata

Decided On : Aug-12-2014

Judge : Arijit Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER
SHEET CP342of 2014 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE RE : JIBANDEEP GOLD LTD -ANDSUDHIN PAL & ORS.BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE Date : 12th August, 2014.

Ms.Ranjabati Sen, Adv...for the petitioning credit ORS.The Court: This is an application under Sections 433, 434 and 439 of the Companies Act, 1956.

As a preliminary point the Court had raised a query as to whether more than one creditor can maintain a winding up petition jointly.

Ms.Ranjabati Sen, learned Counsel appearing on behalf of the petitioning creditors drew this Courts attention to the language of Section 439 of the Companies Act which makes it abundantly clear that more than one creditor can jointly maintain a winding up petition.

She also placed reliance on a decision of the Karnataka High Court in the case of A.V.Krishna versus Karnataka Leasing & Commercial Corporation LTD.reported in I.L.R.1993 KAR338which also supports such contention.

Hence, this court is satisfied that this petition is maintainable in its present form.

It appears from the winding up petition as also from the submission made on behalf of the petitioning creditors that at all material times the company was carrying on the business of floating various schemes of investment including redeemable preference shares, monthly income scheme service and recurring deposit accounts.

Sometime in September, 2012 the company approached the petitioners to invest in the company by way of deposit for fixed terms with the promise of lucrative returns.

Relying upon the representations made by the company, the petitioners invested an aggregate sum of Rs.1.25 lakhs.

On receiving such payment from the petitioneRs.the company issued receipts in respect thereof which signified the date of deposit, principal amount, date of maturity / redemption and the maturity / redemption value.

In due couRs.the deposits made by the petitioners matured but the company did not repay to the petitioners the maturity value or any part thereof.

The total maturity value amounts to Rs.1,36,620/-.

In spite of requests and demands the company failed, neglected and refused to pay the said sum or any portion thereof.

Accordingly, statutory notices were issued addressed to the company and sent to its Registered Office.

However, the envelopes were returned with the endorsement left intimated addressee.

By an order dated 30th April, 2014, Patherya, J.directed substituted service.

Such substituted service was effected by advertisement in newspapeRs.However, on the subsequent date, i.e.9th June, 2014, when the matter appeared before this Court, nobody appeared for the company.

Direction was given for filing of affidavit and the petitioners were directed to communicate the order to the company.

On 22nd July, 2014 when the matter appeared before this Court, learned Counsel for the petitioners submitted that the attempt to communicate the order dated 9th June, 2014 to the company at its registered office failed as the envelope had come back with the endorsement left addressee and moved.

It was also submitted that the petitioners personally visited the city office of the company but the same was found to be under lock and key.

This Court requested the learned Counsel for the petitioners to make another attempt to communicate the order dated 9th June, 2014 as well as the order dated 22nd July, 2014 to the company through e-mail.

When the matter appeared before this Court on 24th July, 2014, it was submitted on behalf of the petitioners that the gist of the orders dated June 9, 2014 and July 22, 2014 were communicated to the company through e-mail but there was no response from the company.

The matter was adjourned for a fortnight.

On 7th August, 2014, the matter appeared before this Court but again nobody appeared for the company.

Ms.Ranjabati Sen, learned Advocate made submission at length on behalf of the petitioning credit ORS.She also prayed for leave to file a supplementary affidavit bringing on record a few documents which were referred to in the winding up petition, but inadvertently not annexed.

Such leave was granted.

Such supplementary affidavit has been filed today and the same be kept on record.

The matter was directed to appear as for Judgement on August 11, 2014.

Yesterday this Court did not sit.

Accordingly, this matter has come up for judgement today.

It appears from the facts narrated above that the company has been avoiding the petitioners as also the present proceeding from the very inception.

Repeated attempts to serve on the company failed.

However, substitute service was effected in terms of this Courts order and hence, I have no hesitation in proceeding with the matter in the absence of the company which has chosen to stay away from this proceeding.

In spite of service of the winding up petition by way of substitute service, the company has not come forward to oppose the application.

The company is deemed to be unable to pay its debts.

This company petition is admitted for a sum of Rs.1,36,620/-.

The company is granted time till 31st August, 2014 to pay off the petitioning credit ORS.In default, the petitioners will be at liberty to cause advertisement once in The Telegraph and once in the Ananda Bazar Patrika.

In the event the company pays off the petitioning creditors dues, this winding up petition will remain permanently stayed.

Let this matter be returnable on the 24th September, 2014.

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

(ARIJIT BANERJEE, J.) dg2