Machine Tools (iIndia) Ltd.Vs. Stray Field Heating Pvt.Ltd.

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SooperKanoon Citation : sooperkanoon.com/902396

Court : Karnataka

Decided On : Aug-31-2010

Judge : H.N. Nagamohan Das, J.

Acts : Companies Act 1956 - Sections 433(e), 434, 439

Appeal No. : CO.P.No.174/2009

Appellant : Machine Tools (iIndia) Ltd

Respondent : Stray Field Heating Pvt.Ltd.

Advocate for Def. : Smt. N.S. Sandhya,Adv.

Advocate for Pet/Ap. : Sri. Rupert M.Rosario, Adv.

Judgement :
ORDER

1.The Petitioner Company is a commission agent for both Indian and foreign manufacturers of machine tools and spares with their head office at New Delhi and branch office in different parts of the country. For a long time the petitioner represented the respondent - company with various customers and sold the respondent company's heating machines and spares on commission basis. As per the debit notes raised by the petitioner company the respondent company is due in a sum of Rs.28,61,454.22 towards commission and interest as on 24.09.2009. Despite repeated requests, demands and letters the respondent company failed to pay the amount due to the Petitioner Company. Therefore the Petitioner Company is before this Court under Section 433(e) of the Companies Act, 1956 for winding up of the respondent company.

2.After service of notice the respondent company entered appearance and filed statement of objections inter alia denying and disputing the claim of Petitioner Company.

3.Heard arguments on both the side and perused the entire petition papers.

4.It is not in dispute that the Petitioner Company was representing the respondent company as commission agent in the matter of selling the products of respondent company. It is seen from the record that at an undisputed point of time the respondent company in its letter dated 27.10.2006 as per Annexure N admitted that they are liable to pay certain dues to the petitioner company. The non-payment was on account of the fact that the respondent company has not received 20% of sales price from the customers. In reply the petitioner company by its letter dated 23.11.2006 - Annexure P requested the respondent company to furnish the details with regard to non-receipt of 20% of the payments from the customers who had purchased the machines so that the petitioner company will take necessary steps. This evidence on record clearly establishes the fact that the respondent company is due certain amounts to the Petitioner Company and they have not paid the same. Even to the statutory notice issued by the Petitioner Company as per Annexure Q dated 24.02.2009 the respondent company has not sent any reply. Therefore the present denial in the statement of objections is only a moonshine defence.

5. The contention of the respondent company that the sales are incomplete, the claim of petitioner company is premature and that the petitioner company has failed to perform fully its part of obligation under the agreement between the parties are all untenable and they are only after thought. There is no material on record to substantiate the defence taken by the respondent company and that it is only an after thought.

6. Pursuant to the order of this Court the petitioner company had taken out advertisement in English daily THE HINDU' in its edition dated 01.02.2010 and the same is filed before this Court with a memo. Pursuant to the advertisement, nobody came forward either supporting or opposing winding up order. In the circumstances the following;

ORDER

i. The petition is hereby allowed.

Ii. The respondent company is directed to be wound up.

iii. The petitioner company is directed to deposit a sum of Rs.25,000/- with the Official Liquidator to meet the initial expenses of winding up proceedings.

iv. The Petitioner Company is directed to serve a copy of this order on the Registrar of Companies within 30 days from today.

v. The petitioner company is further directed to take out advertisement of this order in English daily ''THE HINDU' within 15 days from the date of receipt of copy of this order. Ordered accordingly.