

Strescon Industries Ltd. Vs. Gemus Engineering Ltd.

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Court : Kolkata

Decided On : Aug-11-2010

Judge : Pinaki Chandra Ghose ; Asim Kumar Ray, J J.

Appeal No. : C.P.No.422 of 2009

Appellant : Strescon Industries Ltd.

Respondent : Gemus Engineering Ltd.

Judgement :

The Court : Instead of taking up the stay petition first, by consent of the parties, we hear out the whole appeal since all the papers which have been used before the Hon'ble First Court have been placed before us along with the stay petition.

We have heard the learned Advocates for the parties at length. This appeal is directed against an order passed by the Company Court on 14.5.2010. The facts of the case are that the claim in the petition for winding up is for goods sold and delivered by the petitioning creditor to the company.

It further appears from the fact that the goods were supplied to the company in accordance with the specification and purchase order was placed for 40000 Pcs. of the inserts at Rs.55.00 per piece.

The total value of the purchase order inclusive of all duties and VAT was Rs.26,61,401.60.

It appears that the goods ought to have been inspected by RITES before supply was effected by the petitioning creditor to the company and RITES issued certificate in respect of the said goods in question, which was forwarded to the company after receipt of the certificate and the company used to take delivery of the goods in question.

All these steps were agreed between the parties. It further appears that the company issued two cheques for Rs.6,65,350/- and Rs.6,66,265/- on 22.3.2007 and 21.4.2007 respectively, and thereafter a post-dated cheque for Rs. 13,30,700/- was made over by the company to the petitioning creditor.

It appears that the company requested not to encash the said cheque without confirmation. It also appears that the said post dated cheque was presented and the same was dishonoured by the bank upon presentation of the same.

In these circumstances, notice was served under section 434 of the Companies Act on the company on behalf of the petitioning creditor resulting to this winding up petition, which was disposed of by the Company Court holding that the Company has no defence and has sought to put up a sham defence.

It is also a fact that a suit has been filed by the company before the learned City Civil Court of Calcutta after receiving of the notice, which has been admitted before us. Therefore, it can be easily stated to be a counter-blast suit in respect of the notice so received by them.

We have also perused the plaint filed before the learned City Civil Court at Calcutta and after perusing the plaint and the facts pleaded in the winding up petition and the affidavits filed in respect thereof, we do not have any hesitation to hold that the defence which is being tried to be set up by the company cannot be said to be a proper defence and on the other hand it can equally be said as moonshine defence.

Mr. Mitra, learned Senior Advocate appearing in support of the appeal contended before us that his client is agreeable to pay the value of the said post dated cheques being a sum of Rs.13,30,700/- along with interest at the rate of 8% per

annum from the date of receipt of the notice under Section 434 of the Companies Act till the payment is fully made in 15 equal monthly instalments. Accordingly, we direct the company/appellant to pay off the dues in 15 equal monthly instalments to the petitioning creditor.

The first of such instalment to be paid on or before 7th September, 2010 and thereafter subsequent monthly instalments are to be paid on or before 7th of each succeeding month along with interest at the rate of 8% per annum on the reducing balance until the full amount is paid. Upon payment of first instalment, the winding up petition will be remained permanently stayed.

In default of payment of any one instalment, the petition would be advertised once in The Statesman and once in The Statesman. Publication in the Official Gazette shall stand dispensed with. However, we only give a chance to the company by modifying the order of His Lordship to pay off the dues of the petitioning creditor as indicated hereinabove.

Accordingly, we dispose of this appeal and the stay application on the above terms. The stay already granted by us injunction the petitioning creditor to file suit is extended by eight weeks from date since we disposed of the appeal.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

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

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