

(2003) 11 CAL CK 0060
In the Calcutta High Court
Case No : C.P. No. 431 of 2002

Fortuna Agro Plantations Ltd.

APPELLANT

Vs

Rajesh Kejriwal

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (2004) 55 SCL 308

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Single Bench

Judgement

Pinaki Chandra Ghose, J.—It appears in this matter that the delivery of the goods are admitted by the company. It further appears that after receiving the goods in the year 2000, the cheque was issued in favour of the petitioning creditor. The date of the said cheque was 19th February, 2001 whereas the delivery took place on 2nd February, 2000. It further appears from the facts as has been pleaded and the documents in the petition that the said cheque was dishonoured on presentation by the drawee bank on account of payment stopped by the drawer. There is no reason given by the company for the same excepting coming out with a defence in the affidavit filed before this Court that the goods were not in accordance with the specification.

2. That defence of the company cannot be accepted after comparing the conduct of the company in the matter of receiving the goods and making payment made after an year. The goods were also not requested to be returned by the company to the petitioning creditor. Hence, there is no defence, in my opinion, in respect of the claim of the petitioning creditor for a sum of Rs. 47,773 because like amount was paid by the company by the said cheque.

3. Hence, the winding up petition is admitted subject to scrutiny by the department.

4. In view of that the company will pay the admitted claim of the petitioning

creditor to the tune of Rs. 47,773 together with interest at the rate of 9 per cent simple interest from the date of service of notice on 31st January, 2002 until the payment on the method of reducing balance. Such payment will be made in six (6) equal monthly instalments except for the last which will be for the balance amount then remaining due. The first of such instalments is to be paid on or before 15th December, 2003 and thereafter all subsequent instalments by the 15th day of each succeeding month. If the entire amount is paid in the above manner, the winding up petition shall remain permanently stayed.

5. In default of payment of the first or the last or any one instalments, there will be advertisements once in "The Statesman" and once in the "Ananda Bazar Patrika". Publication in the Calcutta Gazette is dispensed with.

6. In case of default, the winding up petition will be returnable three weeks after the publication of advertisements.