

(2004) 06 CAL CK 0019
In the Calcutta High Court
Case No : CP No. 91 of 2004
In Re: Neelkanth Tea Co. Ltd.

Date of Decision : 21-06-2004

Acts Referred:

Citation : (2005) 60 SCL 459

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Judgement

Ashim Kumar Banerjee, J.—This winding up petition relates to the balance price of the goods sold and delivered amounting to Rs. 2,33,360. Statutory Notice of Demand has not been replied to. On the self same cause of action earlier winding up petition was dismissed as withdrawn with liberty to apply afresh. Accordingly, the present application has been made by the petitioner. In the Affidavit-in-opposition the company has raised two defence namely (i) since the earlier winding up petition was dismissed on the self same cause of action the present winding up petition is not maintainable inasmuch as the de facto pointed out in the earlier application has not been removed; and (ii) another machine purchased from Eveready Industries Ltd. has been given to the petitioner for repair. The petitioner has refused either to repair it or to send it back to the company which has caused huge loss to the company.

2. On careful examination of the pleadings and documents annexed thereto as well as certified copy of the balance-sheet produced in court as on 31st March, 2003 it appears to me that the defence raised by the company is nothing but to avoid payment of the just dues as admitted by them in the balance-sheet.

3. Mr. D. Mitra, learned counsel appearing for the company submits that the amount which has been admitted in the balance-sheet might have been related to some other transactions entered into between the parties and not the identical one. To that, Mr. Ratnanko Banerjee, learned counsel appearing for the petitioning creditor submits that the subject transaction is the only transaction on which the petitioner is entitled to recover their G dues. Mr. Banerjee has also drawn by attention to the relevant annexures to the balance-sheet which would

show that the exact amount of the outstanding claim in the winding up petition has been admitted by the company in their balance-sheet. In such view of the matter, I admit this winding up petition for Rs. 2,33,360 together with interest at the rate of 6 per cent per annum from the last day of part payment i.e., on and from 2nd August, 2002 until payment. The said sum would be paid by the company in 12 equal monthly instalments.

4. In default of payment of any one instalment as directed above the petitioner would be at liberty to take appropriate steps for recovery of the balance sum then remaining due by initiating appropriate recovery proceeding including execution proceeding by treating this order as decree of this court.

5. C.P. No. 91 of 2004 is disposed of. There would be no order as to costs.