

OD-12

APO No.380 of 2018
ACO No.44 of 2018
In
CP No.683 of 2014

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

M/S. PAHARPUR COOLING TOWERS LTD.
Versus
M/S. DIVINE VIDYUT LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE
And
The Hon'ble JUSTICE SUVRA GHOSH

Date : February 18, 2019.

Appearance:
Mr. Utpal Bose, Sr. Adv.
Mr. R.N. Ghose, Adv.
Ms. Ankita Mukherjee, Adv.
...Appellant

The Court : The respondent company was initially represented by Advocate but on several occasions thereafter, none has appeared on its part.

Pursuant to directions of this Court, notices have been issued to the company. By the latest notice of February 8, 2019, which the company appears to have received on February 11, 2019, the company was informed that the

matter would appear today and may be taken up ex parte if the company was not represented. The company is still not represented.

The company was not represented before the Company Court when the appellant creditor's petition for winding up the company was dismissed on the ground that the claim could not be established.

According to the appellant, there are at least two e-mails from the company dated March 31, 2012 and April 25, 2012 acknowledging the appellant to be a creditor of the company and promising to look into the matter.

Copies of the relevant correspondence have been appended to the appeal papers. In the light of such documents, it cannot be said that the company petition was liable to be dismissed without reference to the company. It is possible that the company may set up a defence or it is equally possible that the appellant may not be able to establish the quantum of its dues, whereupon appropriate consequence would follow. However, in the light of the two documents dated March 31, 2012 and April 25, 2012, it cannot be said that the debtor-creditor relationship between the company and the appellant has not been established.

In view of the above, the order impugned dated September 5, 2018 as modified by an order of October 3, 2018 stands set aside with a request to the Company Court to consider the matter afresh after affording the company a time to file its affidavit.

APO No. 380 of 2018 and ACO No. 44 of 2018 are disposed of with the observation that the Company Court would be entitled to proceed afresh, uninfluenced by the observations herein and there would be no fetters on the Company Court again dismissing the claim, if the facts so warrant.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(SUVRA GHOSH, J.)

sg.