OD-7

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/34/2025
WITH
CP/615/1998
CA/9/2024
IA NO: ACO/1/2025, ACO/2/2025

LAUSITIZER GLASS INDIA LTD. (IN LIQN.)
-AND-
IN THE MATTER OF:
OFFICE OF THE COMMISSIONER OF CUSTOMS (PORT), IMPORT BOND SECTION
VERSUS
THE OFFICIAL LIQUIDATOR, HIGH COURT, CALCUTTA AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 27th February, 2025.

Appearance:
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant

Mr. Ranajit Chowdhury, Adv.
Mr. Purnendu Modak, Adv.
Ms. Sampoorna Saha, Adv.
...for respondent no.1

Ms. Rakhi Purnima Paul, Adv.
...for respondent no.2

1. There is a delay of 177 days in preferring the appeal. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the period of limitation. Hence, the delay of 177 days is condoned. ACO/1/2025 is accordingly disposed of.

2. There is an inexcusable delay on the part of the Customs Authorities in providing the necessary documents in support of their claim. Although it has been argued that in view of Section 142A of the Customs Act, the Customs Authorities will have first charge over the assets, however, the fact remains that in the priority of creditors, they would come in the manner as provided under Section 529A of the Companies Act and other statutes mentioned in the said provision.
3. Section 529A and other provisions mentioned in the said Section would override any claim that the customs authorities might have over the assets of the company (in liquidation). It is not in dispute that the company has gone into liquidation on 12th June, 2002 and the Official Liquidator had taken possession of the assets and properties of the company and had invited claims from all the creditors.
4. In spite of several notices, the Customs Authorities did not furnish any affidavit of proof of debt. It was only on 12th October, 2023 that an affidavit of proof was sought to be filed on behalf of the customs authorities. The Customs Authorities were informed on December 21, 2011 i.e. almost 13 years after the winding-up order was passed that they would be required to file an affidavit of proof.
5. On 3rd February, 2012 a learned Single Judge had conclusively held that the claim of the Customs Authorities were restricted to the boiler that was charged for payment of sums due to the Customs Authorities. As observed by the learned Single Judge in

the impugned order, the Customs Authorities might have further rights on the glass molding machines relating to such boiler. However, till the date of the impugned order, the Customs Authorities had failed to produce anything to indicate that the charge for the claim of the customs went beyond the said boiler and/or the glass molding machines relating thereto. The status report filed by the Official Liquidator would show that boiler of glass machines were not part of the assets which were sold to arrive at the funds which is presently lying in the coffers of the company (in liquidation).

6. In such view of the matter, we are not inclined to interfere with the order passed by the learned Single Judge. The appeal fails.

7. Accordingly, the appeal (APOT/34/2025) and the application (ACO/2/2025) stand dismissed. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)

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