

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 508 OF 2015

Rosalind Pereira

...Petitioner

VS

M/s Kimaya Fashion Pvt. Ltd.

...Respondent

.....

Mr Shiraz Rustomjee, Sr. Advocate a/w Mr. Jai Chhabria i/b J. Sagar
Associates for the Petitioner
None for the Respondent

.....

CORAM : B. P. COLABAWALLA J.

JULY 14, 2016

P.C. :

This Company Petition has been filed seeking to wind up the Respondent Company M/s Kimaya Fashion Pvt. Ltd. that it is unable to pay its debts. It is the case of the Petitioner that the Respondent Company is indebted to the Petitioner in the sum of Rs.82,649.18 together with interest on account of jewelry and accessories supplied by the Petitioner to the Respondent. Since, the amount has remained outstanding since April - 2014, therefore, the present Petition.

2

The brief facts leading to the present controversy are

that, in or about September 2013, the Respondent Company had approached the Petitioner with a business proposition of the Petitioner supplying to the Respondent her merchandise under the name of “**Mayabazaar**” to be sent to the Head Office of the Respondent, from where it would be further distributed to the retail outlets of the Respondent. The supply of the Petitioner’s merchandise as above was to be on consignment basis and would be displayed at the Respondent’s retail outlet at the Indira Gandhi International Airport at New Delhi. Pursuant to the above arrangement the Petitioner started supplying her merchandise to the Respondent on consignment basis and issued tax invoices for the same. The Petitioner also issued a delivery challan to the Respondent Company together with the tax invoice in respect of the merchandise supplied.

3 Thereafter, as per the requirement of the Respondent, the Petitioner supplied its merchandise to the Respondent in the months of April, May, June, July and August 2014 and raised five separate invoices the details of which have been set out in paragraph 8 of the Petition. These invoices have also been annexed at Exh. D to H to the Petition. As these payments were not forthcoming, the Petitioner was following with the Respondent Company for these payments. In addition to the amounts outstanding under the aforesaid invoices, the

Petitioner's merchandise of the value of approximately Rs.23,000/- was lying with the Respondent's retail outlet at the New Delhi Airport. In view of the above, the Petitioner by her email dated 17 July, 2014 recorded the aforesaid and stated that in absence of the regular payment it would not be possible to supply further merchandise to the Respondent. Thereafter, several emails have been exchanged between the parties in relation to the outstanding dues as well as with reference to return of the stock lying with the Respondent Company.

4 Be that as it may, as no payment was forthcoming, the Petitioner was constrained to serve a statutory notice dated 21 October, 2014 under Section 433 and 434 of the Companies Act, 1956, on the registered office of the Respondent Company calling upon the Respondent Company to pay the dues mentioned therein failing which winding up proceeding would be initiated. The record indicates that the statutory notice has been duly served on the registered office of the Respondent Company. Despite service of the statutory notice, no reply was given and neither were the requisitions contained therein complied with. It is, in these circumstances, that the Company Petition is filed.

5 After the petition was accepted, the same was sought to be served first by hand delivery and thereafter by Registered Post A/D. When the Company Petition was sought to be served by the hand delivery, the Respondent Company refused to accept the service. However, they have accepted service when the same was served by Registered Post A/D. An affidavit of service dated 29 June, 2015 has been filed evidencing service of the Company Petition on the Respondent Company. Despite service of the Company Petition, none have appeared today and no affidavit in reply has been filed controverting the averments / allegations in the Company Petition.

6 After going through the papers and proceedings in the Company Petition, I find that the dues of the Petitioner are undisputed. There is no dispute raised by the Respondent in correspondence with reference to the material supplied by the Petitioner to the Respondent. In these circumstances, the Petitioner would be entitled to an order of admission. However, since the amount is only a sum of Rs.82,649.18, I am inclined to grant one last opportunity to the Respondent Company to make the aforesaid payment.

7 In these circumstances, the following order is passed:

- (i) The Respondent Company is directed to pay a sum of Rs.82,649.18 together with interest thereon at the rate of 12 % per annum from 1 April, 2015 till payment to the Petitioner on or before 16 August, 2016. If the said amount is paid on or before the said date, this Company Petition shall stand dismissed;
- (ii) In the event the Respondent Company fails to make the aforesaid payment of Rs.82,649.18 together with interest thereon at the rate of 12 % per annum from 1 April, 2015 till payment on or before 16 August, 2016, this Company Petition shall stand revived, admitted and made returnable on 27 September, 2016;
- (iii) In the event the Company Petition stands admitted, the Company Petition shall be advertised in two local newspapers viz. (i) **“Free Press Journal”** (in English) and (ii) **“Navshakti”** (in Marathi) as also in (iii) **“Maharashtra Government Gazette”**. Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice

shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959;

- (iv) In such an event, the Petitioner shall, on or before 24 August, 2016 deposit a sum of Rs.10,000/- towards publication charges with the Prothonotary and Senior Master of this Court under intimation to the Company Registrar, failing which the Company Petition shall stand dismissed for non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioner.

8 The Petitioner is directed to serve a copy of this order on the Respondent Company who shall act on an ordinary copy of this order duly authenticated by the Associate of this Court.

9 The Company Petition is disposed of in the aforesaid terms. Liberty to apply.

(B. P. COLABAWALLA J.)