

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2016

Coram

THE HONOURABLE **MR. JUSTICE RAJIV SHAKDHER**

C.P.No.10 of 2016

and

Comp.A.Nos.134, 579 & 626 of 2016

M/s.Vincot Agencies,
rep.by its Proprietor,
A.P.Bharat Kumar,
carrying on business at
Indore Road, Khandwa-450 001,
Madhya Pradesh

.. Petitioner

.V.

Sri Ramajayam Spintext (P) Ltd.,
rep. by Managing Director,
K.B.Thulasi Rama Raja,
Door No.244, Cotton Market,
Rajapalayam, Virudhunagar Dist.

.. Respondent

Petition filed under Sections 433(1)(e), 434(1)(a) and 439 of the Companies Act, 1956, read with Rule 95 of the Companies (Court) Rules, 1959, prays (a) that the respondent company, namely M/s.Sri Ramajayam Spintext P Ltd., be ordered to be wound up under the orders and directions of this Court under the provisions of the Companies Act, 1956; (b) that this Court may be pleased to appoint the Official Liquidator of the respondent company to take charge of the business affairs and the assets of

the said company (c) that the costs of the petition.

For Petitioner : Mrs.S.Jeevitha Ramani
for Mr.A.Sivaji

For Respondent : Mr.K.M.Venugopal

ORDER

1. This is a petition filed essentially under Section 433(e) of the Companies Act, 1956.

2. It is the case of the petitioner that during the course of business transaction, the petitioner supplied raw ginned cotton to the respondent company. The respondent company, which is in the business of manufacturing yarn, accepted those supplies. The petitioner asserts that in respect of supplies made between 10.3.2014 and 10.5.2014, a sum of Rs.1,81,94,060/- became due and payable by the respondent company.

3. The petitioner also asserts that the respondent company was required to make payment within 15 days from the date of dispatch of the goods. It is also asserted by the petitioner that on two occasions, the respondent company paid amounts, albeit partially, towards goods supplied. The total amount paid by the respondent company to the petitioner as per the averments made in the Company

Petition, is a sum of Rs.8,33,602/-. On account of continued non-payment by the respondent company, the petitioner sent a communication dated 30.09.2014 to the respondent company. Qua this communication, the respondent company sent an interim reply dated 7.10.2014. The respondent company, by this communication, sought time to send a final reply.

4. The aforesaid communication was followed by the petitioner by dispatching communications dated 11.10.2014 and 1.11.2014. Insofar as communication dated 1.11.2014 is concerned, it was accompanied by a debit note dated 31.10.2014. The said debit note would indicate the sum claimed by the petitioner along with interest.

5. Evidently, after persistent demands made by the petitioner, the respondent company paid another sum of Rs.5 lakhs to the petitioner.

6. According to the petitioner, despite having made partial payments, a huge outstanding, amounting to Rs.1,78,24,193/- is still due and payable by the respondent company, in addition to interest. It is, in these circumstances, that the petitioner issued a statutory demand notice dated 7.12.2014, whereby, it demanded from the respondent company, re-payment of Rs.1,78,24,193/-.

7. The respondent company, upon receipt of the statutory

notice, sent a reply to the petitioner dated 30.12.2014. In this reply, the respondent company stated, for the first time, in clear terms, that the goods supplied by the petitioner was substandard/inferior quality. The petitioner refuted this allegation of the respondent company by sending a rejoinder dated 14.1.2015.

8. It is, in these circumstances, that the petitioner says he was constrained to file instant petition.

9. The petition was presented for the first time on 8.6.2015. Upon notice being issued in the petition, a counter affidavit has been filed by the respondent company.

10. The stand taken by the respondent company in the counter affidavit is similar to the one taken vis-a-vis the reply to the statutory demand notice sent by the petitioner. It is stated that the goods were not of good quality and therefore, while manufacturing the yarn, there was huge wastage of cotton. As regards the payments made by the respondent company, albeit partially, the stand taken was that the said payments were made under protest.

11. I have heard the learned counsel for the parties.

12. The record reveals that the amounts were claimed by the petitioner with respect to nine invoices; the details of which are as follows:

S.No.	Date	Sales Invoice No.	No.of Bales	Sale Amount Rs.
1.	10.03.2014	N/1053	100	20,57,561.00
2.	17.03.2014	N/1062	100	19,83,514.00
3.	25.03.2014	N/1074	100	20,51,580.00
4.	07.04.2014	N/1100	100	19,89,756.00
5.	14.04.2014	N/1108	100	20,14,101.00
6.	19.04.2014	N/1113	100	19,74,590.00
7.	28.04.2014	N/1122	100	19,68,688.00
8.	05.05.2014	N/1136	100	20,61,829.00
9.	10.05.2014	N/1156	100	20,92,441.00
		Total:		1,81,94,060.00

13. Admittedly, the respondent company has made payments twice, towards aforementioned invoices. First time, around a sum of Rs.8,33,602/- was paid, on 25.6.2014. Second time, around Rs.5,00,000/- was paid, on 20.11.2014.

14. Learned counsel for the respondent company concedes that no document has been placed on record to back the stand taken in the counter affidavit that the said payments were made under protest.

14.1 Clearly, the defence taken in reply dated 30.12.2014 was a sham defence and only to delay the payment claimed by the petitioner.

15. Accordingly, I am persuaded by the assertions made on behalf of the petitioner that an inference be drawn that

the respondent company is unable to pay its dues. In the absence of material to the contrary, the statutory assumption stands established

16. In view of the circumstances set out above, I am inclined to admit the petition. It is ordered accordingly.

17. The petitioner is directed to publish the citation in the Tamil daily "Malai Murasu" and in an English Daily, i.e., the "Indian Express" as also, have the same published in the Tamil Nadu Government Gazette.

17.1 The Official Liquidator (in short, O.L.), High Court, Madras is appointed as the Provisional Liquidator.

17.2 Mr.P.Atchuta Ramaiah, O.L., who is present in Court, is apprised of the order passed today.

17.3 The petitioner shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) towards initial expenses with the O.L.

17.4 The O.L. will take possession of all assets, as well as, books, documents and records etc., of the respondent company.

17.5 In case police assistance is required by the O.L. in carrying out his statutory duties, the concerned station House Officer is directed to render necessary assistance to the O.L. upon requisition being made in that behalf.

17.6 A copy of the petition along with the annexures will be supplied by the learned counsel for the petitioner to the O.L.

17.7 The respondent company is restrained from selling, transferring, alienating or creating any third party interest in its assets.

17.8 The Directors of the respondent company shall file their statement of affairs, as mandated under Section 454 of the Act within 21 days from today.

17.9 The Directors shall appear before the O.L. on the date upon notice being issued by him, for having their statement recorded under Rule 130 of the Company Court (Rules), 1959.

17.10 The O.L. will file a status report before the next date of hearing.

18. Re-notify on 24.10.2016.

sd/.R.S.A.J

31.08.2016

//Certified to be a true copy//

Dated this the day of 2015.

S.s/20.09.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.