

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

COMPANY PETITION NO.114 OF 2015

M/s. Kalpataru Ispat Private LimitedPetitioner
Vs.
Sarah Profiles India Private LimitedRespondent

Mr. Niraj Shah i/b. Mr. Siddharth Murarka for petitioner.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 14th DECEMBER, 2017**

PC.:

1 At the time of admission of the petition the following order
dated 17th March, 2015 came to be passed :

1. By the above Company Petition, the Petitioner seeks winding up of the Respondent Sarah Profiles India Private Limited (the Company) under the Companies Act, 1956. The Petition is taken up for admission.

2. According to the Petitioner, the Petitioner sold and supplied to the Company HR Plates (the said goods) vide invoice dated 26th December, 2013 for an amount of Rs.1,12,998/-. The Company accepted the said goods. The Company through its Director also issued a cheque for the sum of Rs.1,12,998/-dated 3rd March, 2014 in favour of the Company. However, the same was dishonoured and returned with the remark 'Account closed'. The Petitioner therefore through its Advocate issued a statutory notice dated 28th May, 2014 to the Company calling upon the Company to pay an amount of Rs.1,21,320/- along with additional interest to the Petitioner within a period of three weeks from the date of receipt of the said notice. The said notice was received by the Company. However, the Company failed and neglected to respond to the same or to make any payment as called upon therein.

3. The Petitioner therefore filed the present Petition seeking winding up of the Company on the ground that the Company is unable to pay its debts and sought to serve the same at the registered office address of the Company. However, the said packet containing a copy of the Petition is returned with the remark "left address". An Affidavit proving service of the Petition dated 11th March, 2015 is on record. It is therefore submitted on behalf of the Petitioner that the Petition be admitted and directed to be advertised.

4. From the aforesaid facts, I am prima facie satisfied that the amount as claimed by the Petitioner is due and payable by the Company to the

Petitioner. The Company has failed to reply to the statutory notice. A copy of the Petition was sought to be served on the Company. However, the packet containing a copy of the Petition is returned with the remark "left address". Since the Petition was sought to be served at the Registered Address of the Company, which address on that day was shown as the Registered Office of the Company in the record of the Registrar of Companies, the said Petition is deemed to have been served on the Company, though the same has been returned with the remark "left address". The Company has not come forward to oppose the Petition. In view thereof, the statements / submissions made by the Petitioner in the Company Petition have remained uncontroverted and there is no reason why the statements / submissions made by the Petitioner in the Company Petition should not be accepted. I am therefore prima facie satisfied that the Company is unable to pay its debts and the Company Petition deserves to be admitted and advertised. Hence, the following order :

xxxxxxxxxxxxxx

2 Thereafter, on 29th November, 2016 the following order came to be passed :

. After admission, this petition has been duly advertised and an affidavit proving the publication of the advertisement in local newspapers, and also in Government Gazette has been filed.

2. None appears for the Respondent. No reply has been filed as yet by the Respondent. However, with a view to give one more chance to the Respondent, the petition is stood over to 20 December 2016. The Petitioner is directed to give a notice of the next date of hearing together with a copy of today's order to the Respondent and file affidavit to that effect by the next date.

3 Mr. Shah, counsel for petitioner states that the order of 29th November, 2016 has been served upon respondent by email at the address given in the MCA website because the packet that was sent by speed post was returned undelivered with the endorsement "insufficient address". Mr. Shah further states that the address that was given in the packet was the same address as provided in the MCA website. Mr. Shah states that his instructions are that there is an affidavit of service already

filed but if the same is not traceable, petitioner will file a further affidavit within one week from today.

4 On record, there is also an affidavit of one Jaywant Kamble affirmed on 5th May, 2015 confirming publication in two newspapers, viz., Free Press Journal (in English) and Navshakti (in Marathi) and also in Maharashtra Government Gazette. The service report filed by the Company Department of this Court indicates that notice under Rule 28 of the Companies (Court) Rules, 1959 has been served upon respondent.

5 No reply has been filed by respondent. The averments in the petition are, therefore, uncontroverted. This Court while admitting the petition has also observed that it was prima facie satisfied that the company is unable to pay its debts and the company petition deserves to be admitted and advertised. I have considered the documents annexed to the petition. I am also satisfied that the company is unable to pay its debts, is commercially insolvent and requires to be wound up.

6 Company petition is therefore, allowed in terms of prayer clauses – (a) and (b), which read as under :

(a) that the Respondent Company, namely Sarah Profiles India Pvt. Ltd., having its registered office at S.N. 123/376, Santosh Nagar, BHD, Malhar Residency, Katraj, Pune – 411 046 be wound up by and under the orders, direction and supervision of this Hon'ble Court;

(b) that the Official Liquidator or some other fit and proper person be appointed as Liquidator of the Respondent

Company with all powers under the provisions of Companies Act, 1956 to take charge of the Respondent Company and to conduct its affairs during the course of its winding up.

7 Official Liquidator shall forthwith act on an authenticated copy of this order without waiting for any notification.

8 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)