

Nalawade

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

COMPANY PETITION NO.1001 OF 2015

M/s. Sandeep Steels	Petitioner.
vs.	
Shivalik Ventures Pvt. Ltd.	Respondent.

Mr. Siddharth Murarka with Mr. Niraj Shah i/by Law
Chamber of Siddharth Murarka for the petitioner.
Ms.Grgi Bhagwat i/by Divekar Bhagwat & Co. for the
Respondent.
Mr. Bhavin Mehta,C.A. Present in person.

CORAM :A.S.GADKARI, J.
DATE : 18th July, 2017

P.C.

1. By the present petition under Section 433(e)
and 434 of the Company Act, 1956 the petitioner has
prayed for winding up of the respondent company namely
Shivalik Ventures Pvt. Ltd.

2. It is the case of the petitioner that the petitioner
sold, supplied and delivered the goods to the respondent
under various invoices aggregating to Rs.6,59,507/-. There
is a clause in contract which provides the petitioner to
charge/levy interest at the rate of 24% per annum on
delayed payment. The record indicates that the respondent
made a payment of certain amount to the petitioner

leaving an outstanding amount of Rs.1,66,012/- as principal amount. It is further the case of the petitioner that the respondent is liable to pay interest on the principal amount and as per the particulars of claim interest of Rs.2,01,473/- has been claimed by the petitioner, aggregating to Rs.3,67,485/-. As the respondent did not pay that amount, the petitioner after following due process of law has filed the present petition on 21.7.2015. The petition is accepted on 15.9.2015 and in pursuance of the notice thereof the respondent caused its appearance and also has filed reply to the petition.

3. Heard the learned counsel for the respective parties and perused the record.

4. It is to be noted here that as per the pleadings of the petitioner out of the total amount of Rs.6,59,507/- the respondent has already made the payment of Rs.2,92,022/- to the petitioner leaving behind outstanding amount of Rs.3,67,485/- as on 31.5.2015 inclusive of interest. During the course of arguments the learned counsel appearing for the respondent made a statement that her client will further deposit a sum of Rs.1,75,000/- by way of demand draft in the registry of this Court within a period of two weeks from today. She submitted that as a matter of fact her client has taken out a demand draft for the said amount in the name of Prothonotary and Senior Master of this Court. The said statement is accepted.

In view of the said statement made by the learned

counsel for the respondent, it is apparently clear that the respondent is commercially solvent to pay the debts of the petitioner. In view thereof, I am inclined to relegate the petitioner to adopt the remedy to file suit. It is informed by the learned counsel for the petitioner that, as a matter of fact the S.C. Suit No.2293/2015 has already been filed by the petitioner in the City Civil Court at Dindoshi, Mumbai for the same claimed amount.

5. Hence, the following order.

a) The respondent is directed to deposit an amount of Rs.1,75,000/- by way of demand draft within a period of 2 weeks from today in the office of the Prothonotary and Senior Master of this Court. Upon such deposit, the petition shall stand dismissed by granting liberty to the petitioner to prosecute the aforesaid suit i.e. S.C. Suit No.2293/2015 pending on the file of City Civil Court, Dindoshi, Mumbai.

b) After deposit of the said amount by the respondent within the stipulated period the Prothonotary and Senior Master of this Court is directed to transfer the said amount in the account of the Registrar of the City Civil Court, Dindoshi, Mumbai where the aforesaid suit No.2293/2015 is pending for adjudication within a period of four weeks thereafter..

c) The learned Judge of the City Civil Court, Dindoshi, Mumbai seized of SC Suit No.2293/2015 is hereby directed to pass appropriate orders in respect of the

said amount at the time of final decision of the trial of the said suit.

d) It is made clear that if the respondent fails to deposit the said amount in the registry of this Court within the stipulated period, the petition shall stand automatically admitted.

e) The observations made herein above are in the context in deciding the present petition only and the learned Judge seized of the aforestated Civil Suit No.2293/2015 may not get influenced by it and shall decide the suit independently on its own merits.

f) Petition is disposed off in the aforesaid terms.

(A.S.GADKARI, J.)