

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

COMPANY PETITION NO.1085 OF 2015

M/s. Trigo Quality Production Services Pvt. Ltd.Petitioner

Vs.

Rojee-tasha Stampings Private LimitedRespondent

Mr. Digajmaan Mishra i/b. Mr. V.S. Pandey for petitioner.

Mr. V.P. Sawant i/b. Mr. Nikhil Patil i/b. Mr. P.M. Jadhav for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 9th JANUARY, 2018

P.C.:

1 The petition is filed for winding up of respondent company on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner was appointed as agency for testing, inspection, certification of Chassis Frame Assembly by respondent company at the respondent's factory at Rudrapur. Petitioner for the services rendered, raised six invoices between 31st December, 2013 till 31st May, 2014 for a total sum of Rs.12,08,013.26/-. It is stated that respondent did not make the payments. Therefore, petitioner caused statutory notice to be issued under the provisions of the Companies Act, 1956. Respondent replied denying the liability. It is the stand of respondent that it was petitioner's scope of work to do quality inspection of Assembly Frames to be supplied to M/s. Tata Motors Ltd. and the Assembly Frames supplied by respondent

company to M/s. Tata Motors Ltd. came to be rejected. It is respondent's case that petitioner did not do the work which petitioner was supposed to do properly and if petitioner was more diligent and careful, Assembly Frames supplied by respondent would not have been rejected by M/s. Tata Motors Ltd. It is the stand of petitioner and it is stated in the petition itself that the Assembly Frames were bypassed without petitioner's certification/inspection and some of the Frames were found without petitioner's stamp.

3 Mr. Mishra, counsel for petitioner states that the stamps of the petitioner were wrongfully used by respondent company without the knowledge of petitioner and the Chassis that were rejected by M/s. Tata Motors Ltd. were not actually inspected and cleared by petitioner but by respondent company itself by misusing petitioner's stamps.

4 In my view, these are disputed questions of fact and it is settled law that when disputed questions of fact arise, the Court should not exercise its discretionary powers to order winding up of company.

5 In the circumstances, petition stands dismissed.

(K.R. SHRIRAM, J.)