

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

COMPANY PETITION NO.576 OF 2015

Kaleseramik Canakkale Kalebodur
Seramik Sanaya A.S.

....Petitioner

Vs.

Ramka Silk House Private Limited

....Respondent

Mr. Jitendra Ranawat i/b. Mr. Waquar Ahmad for petitioner.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 18th JUNE, 2018

P.C.:

1 This petition is for winding up of respondent company - Ramka Silk House Private Limited (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner's case is that petitioner is an unpaid vendor and the company has acknowledged its debts which the company has not paid and hence the company is unable to discharge its debts and should be wound up. Petitioner's case in the petition is that some time in or about 2011, petitioner exported goods at the request of the company in two different shipment for the value of USD 1,18,920 and raised commercial invoices. Petitioner after shipping the goods also collected the bills of lading and handed over the bills of lading to the company. In paragraph 5(b) of the petition it is stated that "the company opened a Letter of Credit for the

purpose of payment to petitioner, the value of the goods exported by petitioner”. In the next sentence, it is stated that “the company ought to have made the payment before delivery of the goods but failed to pay the amount and accepted the delivery of the goods without payment to petitioner”.

3 If the Letter of Credit has been opened by the company in favour of petitioner as beneficiary, there is no explanation as to why the documents including bills of lading were handed over to the company outside the Letter of Credit arrangement. Infact this query I had raised on the last occasion and the matter was stood over. Even in the statutory notice at Exhibit “B” to the petition, there is a reference that payment will be made by the company under the Letter of Credit opened through M/s. Trade Chartered Bank, Romania and then it straight away goes to say the company received the goods but no payment has been made without explaining how the goods were received by the company without collecting the bills of lading from the bank, when LC was opened and without paying under the LC. There is also a reference to one M/s. Monica International in the statutory notice. The statutory notice also refers to sell of Sinterflex but the invoice is for tiles.

4 In reply to the statutory notice, the company has denied any connection with the alleged M/s. Monica International. They have also

called upon petitioner to establish the connection between the alleged M/s. Monica International and the company. The commercial invoices states that the goods supplied are ceramics floor and wall tiles. Perhaps they are in trade parlance called Sinterflex. The defence raised otherwise is that the dispute resolution clause in the invoice refers to exclusive Courts in Istanbul/Turkey. Ofcourse that defence does not help the company because winding up petition can be disposed only by the Company Court within whose jurisdiction the company is registered. At the same time, certainly the fact that petitioner has not even explained how the documents were handed over to petitioner without payment when there was a Letter of Credit in place and the fact that at the contemporaneous time the company has denied any connection with M/s. Monica International and in the statutory notice it is stated "Our client entered into an agreement for sale of Sinterflex in seven different shipments with M/s. Monica International who is your associate concern" and after the performance of five loadings and collection of the relevant sale price of such loadings, M/s. Monica International informed the company that the remaining two shipments will be taken by the company under a Letter of Credit are all disputed questions of fact. I am, therefore, not inclined to entertain this petition.

5 Petition dismissed.

(K.R. SHRIRAM, J.)