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

COMPANY PETITION NO. 174 OF 2016

PRISMA (HK) LIMITED .. Petitioner
Vs.
VHCL INDUSTRIES LIMITED .. Respondent

Mr.Kumar Tolani for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 28TH JUNE 2018

P.C.

1. The petition is filed for winding up of respondent company – VHCL Industries Limited (the company), on the ground that it is unable to discharge its debt and is commercially insolvent.

2. On 26th February 2018, when the petition was taken up for admission, the following order came to be passed :-

> *"1 By this petition, petitioner is seeking winding up of respondent company – VHCL Industries Limited (the Company) under the Companies Act, 1956.*
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> *2 It is the case of petitioner, as it appears from the petition, that petitioner and respondent had entered into oral agreement whereby petitioner agreed to sell to company desired quantities of PE/PP Plant Sweeping and Virgin Plastic Scrap (the goods). Petitioner based on this agreement, opened Letter of Credit in favour of the supplier of the goods. The payment that was to be made by the company was on DP basis, viz., documents against payment. The goods were shipped under various bills of lading. Petitioner, thereafter forwarded the documents including bills of exchange drawn on the company favouring UCO Bank, Kowloon, Hong Kong branch for a total sum of US$ 2,04,140.10. The documents were forwarded by UCO Bank to State Bank of India, the designated bank of the company for release of documents on payment. The*

goods arrived in India between 13th July, 2013 to 23rd August, 2013. The company filed various bills of entry with the Customs Authorities and copies whereof are annexed to the affidavit in reply to the petition. It is stated that the company, however, did not collect the documents for making payment and after few correspondence exchanged between State Bank of India and UCO Bank, State Bank of India returned the documents to UCO Bank. It is stated that the company kept assuring petitioner that it will make the payment, but it came to light that the company has got the goods cleared by forging the delivery orders.

3 Mr. Tolani, counsel for petitioner states that the company used forged delivery orders purportedly issued by the shipping line and cleared the goods from the Customs nominated area.

4 Petitioner and shipping lines it appears have lodged criminal complaints. It is also alleged that the company filed a false report with Andheri Railway Police Station alleging that the bills of lading covering goods were lost. As no payments were coming forth from the company, petitioner caused a notice dated 15th November, 2014 issued to the company under the provisions of Companies Act, 1956. The company has received the notice and the stand of the company in the reply dated 1st December, 2014, copy whereof is annexed to the petition, is rather strange. At one point, the company states ".......... in the absence of the documents could not clear the consignment and abandoned the same within the knowledge of your clients ". In the following paragraph, it is stated " .... My clients state then Mr. Joshi, Director of your client came to Mumbai and was staying at Mulund who handed over the documents and instructed my client to get the consignment cleared, which was cleared by my client ".

5 More than three years after the reply to the statutory notice, respondent has filed affidavit in reply dated 16th January, 2018 which contains further contradictions and the stand taken by the company is different from the stand taken by the company in reply to the statutory notice. Firstly, the company states that there was a mutual oral agreement whereby the company was to sell the exported material and after deducting all expenses incurred by the company during transportation period, the company would pay the remaining amount later and petitioner had agreed to pay cost of services as a form of profit at the rate of Rs.5/ per kg. This stand has not *been taken in the reply to the statutory notice. It is also stated that the material received was bad in quality and hence part of the material is still stored in the destination godown of the company and petitioner was informed about the bad quality and petitioner assured to bear all expenses. This is also taken up for the first time. Then the next point is on the assurance of petitioner, the company had borne all the expenses including transportation charges, ICD, i.e., ground rent charges, clearance charges and detention charges, etc. and also paid import duty charges but now petitioner is denying repaying any of the charges to the company. This again is taken up for the first time. The next stand taken in the affidavit in reply is for the trade in dispute, the company has paid the entire cost of shipment to the foreign exporter, viz., one M/s. Star Impex and has received NOC from M/s. Star Impex to the effect that the consideration was entirely paid and they have no objection for clearance of the consignment. This is not only contradictory to the earlier stands taken but also is taken for the first time in the affidavit in reply. The next defence is false statement made in the affidavit in which it is stated that the company has filed a suit in the City Civil Court and petitioner had filed written statements after two years delay. Admittedly, petitioner is not even a party to the said suit.*

6 In reply to the statutory notice, the stand of the company is that the director of petitioner handed over original documents based on which the goods were cleared. No dates are mentioned. At the same time, the company has filed an FIR stating that all these documents were lost and if these documents were lost, how did they clear the consignment based on the said documents. In the affidavit in reply, on the one hand, the company states that they were to sell the goods and after adjusting all cost plus Rs.5/ per kg as profit, had to pay back the balance amount to petitioner. At the same time, the company states that they have paid the exporter M/s. Star Impex who gave them NOC to the effect that consideration was entirely paid. The company states that the goods supplied were of bad quality and part of it is still stored. Again no evidence and raised for the first time.

7 Therefore, it is rather obvious that the defences raised by the company are afterthoughts, moonshine, bogus and has to be rejected. There is nothing on record to even indicate that the company is financially sound.

8 In the circumstances, I am prima faice satisfied that the company is unable to discharge its debts, is commercially insolvent and requires to be wound up.”

3. After the petition was admitted, no further affidavit in reply opposing the petition has been filed.

4. Petitioner has filed an affidavit of one Pandurang Bhiwaji Shelar, affirmed on 4th June 2018 confirming advertising in Free Press Journal and Navshakti on 12th April 2018 and in the Maharashtra Government Gazette for the period April, 19-25, 2018 at Sr.No.1813. Notice under Rule 28 has been waived at the time of admission.

5. As the Court has considered the reply to the statutory notice and the affidavit in reply filed pre-admission and by the detailed order dated 26th February 2018, rejected the stand taken by the company and as no fresh grounds are raised by the company, in my view, this is a fit case to winding up the company.

6. Petition, therefore, is allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) the Respondent Company VHCL Industries Limited be wound-up under the provisions of the Companies Act, 1956 by and under the orders and directions of this Hon'ble Court.

(b) the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as the Liquidator of the Respondent Company with all requisite powers and authorities under the provisions of the Companies Act, 1956."

7. Petitioner's advocate, within two weeks, to forward an authenticated copy of this order to the official liquidator who shall take immediate steps without waiting for any notification.

8. Upon receipt of the authenticated copy from petitioner's advocate, the official liquidator shall forthwith cause notice to all concerned directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All directors of respondent company, now in liquidation, are hereby directed to file their respective statements of affairs as required under Section 454 of the Companies Act, 1956, failing which, the official liquidator shall proceed further and lodge criminal complaint against the erring directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

9. The company petition accordingly disposed.

Shraddha Kamlesh Talekar

(K.R. SHRIRAM, J.)

Digitally signed by Shraddha Kamlesh Talekar
Date: 2018.07.21 19:07:27 +0530

Shraddha Talekar PS