

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

COMPANY PETITION NO.364 OF 2016

M/s. Kapp Colour Chem

..Petitioner

Versus

M/s. Shanti Synthetic Processors Pvt. Ltd.

..Respondent

Mr. Dishang Shah a/w Ms. Meetal Savla i/by P. M. Shah, for the
Petitioner.

Mr. Thomas James i/by Auris Legal for Respondent.

CORAM : K. R. SHRIRAM, J.

DATE : 28th MARCH, 2018

PC.

1] This Petition is filed for winding up of respondent company -
M/s. Shanti Synthetic Processors Pvt. Ltd. (Company) on the ground that
the company is unable to discharge its debts and is commercially
insolvent.

2] The claim of petitioner is of unpaid vendor. Petitioner relies
on 19 invoices as listed in paragraph 6 of the petition. The earliest
invoice is of 23rd September 2003 and the last invoice is dated 23rd March
2004. The invoice also provide that payment should be made within 60
days. Therefore, the cause of action against each of the invoice will be
reckoned from 60 days of the date of invoice. The petition has been
lodged on 27.11.2015, i.e., more than 12 years after the first invoice was
raised and more than 11 years after the last invoice was raised. The

petition is absolutely silent as to how the petition filed is within limitation.

3] To a query raised by this Court, Mr. Dishang Shah, counsel for petitioner states that the company made payment in 2009 and therefore, from that date a fresh period of limitation has to be computed.

4] Section 18 of the Limitation Act, 1963 provides for computing a fresh period of limitation. The company or defendant should give an acknowledgement of liability in writing before the expiry of the prescribed period of a suit or application. Admittedly, the period prescribed for a claim under each of the invoice is three years after the expiry of 60 days credit given in the invoices. Even for the last invoice, three years period would have expired sometime around 21st May 2007. Therefore, petitioner's case that by making payment in 2009, a fresh period of limitation should be computed, cannot be accepted.

5] Petition dismissed with no order as to costs.

[K. R. SHRIRAM, J.]