

HIGH COURT OF GUJARAT

AMBICA SALES CORPORATION

Versus

AMPLE CIRCUIT PVT LTD

Date of Decision: 27 February 2007

Citation: 2007 LawSuit(Guj) 407

Hon'ble Judges: [M R Shah](#)

Case Type: Company Petition

Case No: 223 of 2004

Subject: Company

Acts Referred:

[Companies Act, 1956 Sec 433](#), [Sec 434\(1\)\(a\)](#), [Sec 434](#)

Final Decision: Petition disposed

Advocates: [Dipak R Dave](#), [R C Jani](#), [S P Singh](#)

[1] Present company petition has been filed under sections 433 and 434 of the Companies Act, 1956 (for short "the Act") for an appropriate order of winding up of the respondent company i.e. M/s AMPLE CIRCUIT PVT.LTD.

[2] It is the case on behalf of the petitioner that the petitioner has supplied the Copper Clade Laminate sheets to the respondent company and the said has been received by the respondent company and the company has never complained about the quantity of goods nor the company made a complaint about non-delivery of goods. It is further submitted that the company has indebted to the petitioner in the sum of Rs.6,52,591=00 and in spite of the repeated request and demand, the said amount has not been paid. It is further submitted that the statutory notice under sections 433 and 434 of the Act was served upon the respondent company and the respondent company has neglected to pay the aforesaid amount. However, in spite of the service of the said notice, the respondent company has neither replied to the same nor has paid the amount. Therefore, it is submitted that as the amount has not been paid within 21 days of service of notice, it is presumed that the respondent company is

unable to pay its debts. It is also further submitted that the respondent company has lost its financial substratum and the same is required to be ordered to be wound up.

The learned advocate appearing on behalf of the respondent company is absent though the matter is called out time and again and at least right from 4-12-2006, the matter is adjourned five times. Thereafter, the learned advocate appearing on behalf of the respondent company has chosen to remain absent. On 4-12-2006, when the matter was called out for final hearing, the learned advocate appearing on behalf of the respondent company was absent. Still this matter is absent. It is required to be noted that this company petition came up for hearing before the learned single Judge on 1-8-2006 (Coram: Anant S. Dave, J.) and one Shri Parshottambhai Gangabhai Patel of the respondent company is personally remained present and submitted that company would like to pay outstanding dues, if reasonable installments are granted by this Court. He further stated that if the matter is adjourned on 7-8-2006, Rs.50,000/- will be paid to the petitioner. It appears that the said amount was not deposited. Again this Court recorded the statement on behalf of the company that as assured on earlier date of order passed on 1-8-2006, Rs.50,000/- will be deposited with the Registry of this Court on or before 23-8-2006. It appears that the said amount has still not been deposited. As the learned advocate appearing on behalf of the respondent company has chosen to remain absent and this matter is adjourned sufficiently, this Court has no other alternative but to proceed further with the present company petition ex parte.

[3] This Court has considered the affidavit-in-reply. However, considering the statement made on behalf of the respondent company on 1-8-2006 to the effect that the company would like to pay outstanding dues, if reasonable installments are granted by this Court means that the respondent company has admitted the dues and/or not disputed the outstanding dues. Though, sufficient opportunity has been given, the respondent company has not come out with any concrete proposal nor has paid any amount to show their bona fide. In spite of the service of the statutory notice, neither there is any reply to the statutory notice nor any payment is made. Under the circumstances, the case squarely falls within section 434(1)(a) of the Act and it is to be presumed that the respondent company is not in a position to pay its debts. Considering the conduct on the part of the respondent company and non-payment of the outstanding dues of the petitioner (which are not disputed), it appears to the Court that the respondent company has lost its financial substratum and is unable to pay debts to the petitioner as well as to other creditors. Under the circumstances, the respondent company is required to be ordered to be wound up.

[4] For the reasons as stated above, the respondent company i.e. M/s AMPLE CIRCUIT PVT.LTD. is ordered to be wound up. The Official Liquidator attached with this Court is

appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby directed to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

[5] The petition is accordingly disposed of. No costs.

