

**HIGH COURT OF GUJARAT (D.B.)**

**SAMVID STEEL PVT LTD**

*Versus*

**KROMA DYE STUFF -INDIA PVT LTD**

**Date of Decision:** 02 November 2012

**Citation:** 2012 LawSuit(Guj) 1161

**Hon'ble Judges:** [Ravi R Tripathi](#), [N V Anjaria](#)

**Case Type:** Original Jurisdiction Appeal; Company Petition

**Case No:** 39 of 2011; 236 of 2008

**Subject:** Company, Criminal

**Acts Referred:**

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

[Negotiable Instruments Act, 1881 Sec 138](#)

**Final Decision:** Appeal dismissed

**Advocates:** [A R Gupta](#), [Manish R Bhatt](#), [R C Jani](#)

**Ravi R. Tripathi, J.**

**[1]** The present appeal is filed by M/s.Samvid Steel Pvt. Ltd. being aggrieved by order dated 25.09.2009, 15.01.2010, 29.01.2010 and 04.05.2011 passed in Company Petition No.236 of 2008. A prayer to that effect is added by draft amendment.

**[2]** Heard learned Senior Advocate Mr.Manish R.Bhatt for learned Advocate Mr.R.C.Jani for the appellant.

**[3]** Learned Senior Advocate for the appellant submitted that without alleging anything against the Advocate engaged earlier by the present appellant to contest the Company Petition, it will suffice to say that the matter has gone by default and despite the appellant having given instructions to the learned Advocate, no reply was filed by the learned Advocate to contest the Company Petition and that is why the learned Company Judge initially passed an order on 25.09.2009, wherein it is recorded that:-

2. After the notice, the learned advocate has appeared, but inspite of the opportunity given, no reply has been filed and the learned counsel Mr. Pandit for Mr. Brahmhatt all the while has taken adjournment on the ground that his client is out of State and therefore, no reply is filed. The last opportunity was given on 11.09.2009 upto 24.09.2009, inspite of the same, no reply has been filed. Today again, the prayer is made for adjournment. The aforesaid shows that except buying time for delaying the proceeding, no genuine defence is available to the respondent Company.

3. Hence, Admit.

**[4]** The publication of the advertisement is differed till 30.11.2009. However, if the respondent deposits the amount of Rs.5 Lakhs with this Court, the Court may consider the aspects of dispensation of the advertisement and for passing further orders."

3.1 It is thereafter that the Court passed order on 04.05.2011, which reads as under:-

"Heard learned advocate for the petitioner.

No one appears for the respondent, though called out twice.

By order dated 19.9.2008, notice was issued and later on no reply was received, on 25.9.2009 learned Company Judge admitted the petition and ordered publication of the advertisement but considering facts and circumstances of the case the said publication of advertisement was deferred. From the proceedings later on it appears that on different occasions opportunities were given to the respondent either to pay dues or to file a reply but till today no defence is put forth. This Court is left with no alternative but to give effect to the order already passed on 25.9.2009 for publication of the advertisement and accordingly the petitioner is directed to publish advertisement in two daily newspaper one in English and another in vernacular (Gujarati) both Ahmedabad editions and publication of order in Official Gazette is dispensed with."

3.2 Learned Senior Advocate for the appellant invited attention of the Court to the following facts which are set out in para-4 of Civil Application No.277 of 2011:-

"4. The applicant submits that a friend of the applicant had engaged a Lawyer Mr. Bhadresh S. Brahmhatt to handle this petition before this Hon'ble Court. The applicant submits that one letter by RPAD was received by the petitioner wherein the date is mentioned 18th January, 2010 and the letter was received around 23rd January, 2010. A Xerox copy of the RPAD and the notice are annexed hereto as

Annexure "B". Looking to the notice, the allegation is made to the effect that the applicant has not co-operated and supplied the detail/information to file the reply to this petition. But below mentioned true and correct fact are required to be taken into consideration:-

(i) At no point of time, advocate Mr.Bhadresh S.Brahmbhatt except this notice dated 18th January, 2010, had informed regarding any procedure required to be completed on the side of the applicant.

(ii) By virtue of this notice, applicant is informed that unfortunately some orders are passed on 25th September, 2009, 15th January, 2010 and the matter is kept on 29th January, 2010. On receipt of this notice, the applicant contacted his Lawyer Mr.Bhadresh S.Brahmbhatt alongwith the papers which are asked for to settle i.e. (1) purchase register and one letter which are annexed hereto and marked as Annexure "C" Collectively. While handing over these papers Mr.Bhadresh S.Brahmbhatt has pointed out that now he is not going to appear in the matter and the matter will be handed over/handled by one Advocate Mr.Goyel who whom the applicant was not know him as a Lawyer. Looking to the order which is annexed with the notice dated 25th September, 2009 wherein it is mentioned that the opportunity was given on 11th September, 2009 upto 24th September, 2009 and the matter was adjourned on 30.11.2009 and the notice was given on 18th January, 2010. Therefore, the applicant is having the belief that the negligence is not on the part of the applicant, but the negligence was on the part of the Lawyer.

(iii) The applicant came to know from the Website of Ministry of Corporate Affairs, Government of India that the applicant original petitioner, who is claiming the dues in the name of M/s.Kroma Dye Stuff (India) Private Limited, such company is not registered with the Companies Act. To show the evidence, the applicant is annexing herewith as Annexure "D" which is the document taken from the Website on 9th May, 2011 at 6.13 p.m. and, therefore, the claim is bogus, concocted and got up. The applicant also came to know that there is no Value Added Tax registration of this Company. If the Company has got registration under the Companies Act, Company must have such kind of legal proceedings completed before the Company is started. A copy of the same taken from the Website from the Gujarat Commercial Tax is produced at Annexure "D-1" dated 9-5-2011.

(iv) The applicant submits that the very original petitioner present respondent has filed a complaint under Section 138 of the Negotiable Instrument Act and for the same, notice was served. The applicant is annexing herewith a signature of receiving person on behalf of the applicant at Annexure "D-2".

(v) The main grievance in the petition is that the applicant had not replied to their notice issued under Section 433 and 434 of the Companies Act. But looking to the evidence which is produced along with the Company Petition at page 14/A + 18, which are annexed herewith as Annexures D-3 and D-4, there is no signature except a simple line and no company stamp and, therefore, as such no notice is served under the Companies Act and just to get cause before this Hon'ble Court by virtue of this winding up petition, false and fabricated evidence is produced before this Hon'ble Court and, therefore, applicant is denying the service of notice under section 433 and 434 of the Companies Act, 1956.

(vi) The applicant submits that looking to the entire proceedings, the proceedings suggest that at no point of time, the applicant has filed a reply and, therefore, the Hon'ble Court has no option, but to pass such an order which is injuries and will have the effect of closing down this Company."

3.3 Learned Senior Advocate for the appellant first invited attention of the Court to cheque, a copy of which is produced at page No.9 along with the appeal memo. Learned Senior Advocate for the appellant submitted that the handwriting in the said cheque is different so far as 'the amount written' and 'the name of the payee'. Learned Senior Advocate for the appellant next invited attention of the Court to RPAD receipt, a copy of which is produced at page No.18, which only has a 'scribble line' for depicting the receipt of the letter as signature of the addressee. As against that, learned Senior Advocate for the appellant invited attention of the Court to page Nos.34 and 35 of Civil Application No.277 of 2011, wherein as an acknowledgment of receipt of the notice, the signature is seen with date of receipt of notice on 03.06.2008. On bare comparison of these two signatures, it is clear that the notice which is alleged to have been received by the addressee, "page No.18" of the appeal memo, does not inspire confidence.

3.4 Learned Senior Advocate for the appellant submitted that except mere assertion of having supplied 'some goods' to the appellant, the petitioner company-respondent herein has not produced any supporting document. It is only after the said contention was raised that 'an invoice' is produced at page No.59, which does not have legible contents. In the said invoice, against 'Transporter', it is mentioned 'N.A.' and so far as 'payment' is concerned, it is mentioned 'Against Cheque'. The description of the goods is 'SCRAP MACHINERY CHILLING PLANT, BOILER, VESSEL'. In support of this invoice, there is no evidence like 'Delivery Challan' or an acknowledgment by way of signature of the appellant on behalf of company for having received the goods.

3.5 Learned Senior Advocate for the appellant next invited attention of the Court to the 'result of inquiry from the Website of ROC (Registrar of Companies)', which is produced at page Nos.29 and 30 of Civil Application No.277 of 2011.

3.6 Learned Senior Advocate for the appellant then invited attention of the Court to page No.50 of Civil Application No.277 of 2011, which brings on record 'the conduct of the petitioner company' being in the nature of arm twisting of the appellant company. It is a communication from the petitioner company to the Bankers of the appellant company, wherein though no winding up order is passed, it is mentioned that, 'We Kroma Dyestuffs (India) Pvt. Ltd. want to inform you that we have WINDING UP ORDER OF SIMVID STEELS PVT LTD received from HON. HIGH COURT OF GUJARAT'. Learned Senior Advocate for the appellant company submitted that if Kroma Dye-Stuffs (India) Pvt. Ltd. has already got itself converted into other company, how a communication can be addressed in the name of Kroma Dye-Stuffs (India) Pvt. Ltd. The learned Senior Advocate for the appellant company submitted that this has already caused 'damage' to the appellant company as the Bankers have refused to extend further credit to the appellant company. He submitted that this is nothing but 'arm twisting' by the petitioner company. The learned Senior Advocate for the appellant company submitted that when the goods alleged to have been sold to the appellant company are not acknowledged, the petitioner company does not have any document to establish the transaction and the Hon'ble Court has not passed nay winding up order, so far the petitioner company could not have conducted itself in the manner aforesaid.

4. In response to the aforesaid submissions made by the learned Senior Advocate for the appellant, learned Advocate for the respondent herein-petitioner company submitted that the said submissions are without any substance inasmuch as, Company Petition was filed in the year 2008 and though served, the present appellant did not file any reply and therefore, the Court passed an order admitting the petition on 25.09.2009. Learned Advocate for the respondent also submitted that by the said order, the appellant company was granted two months' time to deposit the amount, but the appellant did not pay any heed to the same and therefore, by order dated 04.05.2011, an advertisement was ordered. Learned Advocate for the respondent submitted that to answer the submission about 'inquiry with the ROC', a document 'Certificate of Incorporation' is produced, which shows that Kroma Dye-Stuffs (India) Private Limited was registered with the Registrar of Companies, Gujarat. Not only that, another document dated 02.12.2009 is produced to show that the name of Kroma Dye-Stuff (India) Pvt. Ltd. was changed to Multichem Colorants Private Limited. Besides a xerox copy of PAN Card, in the name of Kroma Dyestuff (India) Pvt. Ltd. is also produced, wherein the

date of incorporation /formation is mentioned i.e. 02.07.1993. Last but not the least, income tax return of Kroma Dyestuff (India) Pvt. Ltd. for the year 2009-10 is produced.

4.1 Learned Advocate for the respondent-petitioner company submitted that taking into consideration the conduct of the appellant, the appeal deserves to be dismissed and the matter is required to be proceeded further for winding up of the appellant company.

**[5]** Taking into consideration the rival submissions of the parties and the provisions of Sections 433 and 434 of the Companies Act, 1956, this Court is of the opinion that the respondent herein-petitioner company is not able to make out any case for winding up of the appellant company, particularly when the demand made by the petitioner company is not supported by any document. There is not even an iota of evidence to show that the goods were received from the petitioner company. Last but not the least, the appellant company has produced copy of its Purchaser Register on page Nos.20 to 28 of Civil Application No.277 of 2011 for the period 01.04.2007 to 30.03.2008. If all other purchases are reflected in the said Purchaser Register, there is no convincing reason for which the appellant company will not incorporate 'purchase' from the petitioner company. Besides that, on the basis of the balance sheet of the appellant company, this Court is of the opinion that this is not a fit case wherein the petition for winding up can be entertained and allowed.

**[6]** In view of the aforesaid discussion, this Court finds that the petitioner company is not able to make out any case. In the result, the appeal is allowed. Orders dated 25.09.2009 and 04.05.2011 are quashed and set aside. As a necessary consequence, the petition (Company Petition No.236 of 2008) is dismissed.

In view of allowing of this appeal and dismissal of Company Petition No.236 of 2008, Registry is directed to refund the amount deposited by the appellant company within one week from the receipt of this order.