

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 3rd August, 2017**

+ **CM(M) 559/2017 & CM No.19057/2016 (for stay)**

ANIRBAN ROY & ANR

..... Petitioners

Through: Mr. J.P. Sengh, Sr. Adv. with
Mr. Lalit Bhardwaj, Ms. Priya
Sharma & Ms. Manisha Mehta,
Advts.

Versus

RAM KISHAN GUPTA & ANR

..... Respondents

Through: Mr. Hemant Malhotra & Mr.
K.J.S. Kalra, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the orders [dated 23rd February, 2017 and 17th March, 2017 in Execution No.97/2017 of the Court of Additional District Judge (ADJ)-03, New Delhi District, Patiala House Courts, New Delhi] in exercise of powers under Order XXI Rule 41 of CPC, directing the petitioners viz. Anirban Roy and Romira Roy being the Directors of the respondent no.2 / judgment-debtor Seed Infrastructure & Solutions Pvt. Ltd. to disclose their personal movable and immovable assets in terms of judgment dated 11th January, 2016 of this Court in Execution Petition No.275/2012 titled ***Bhandari Engineers & Builders Pvt. Ltd. Vs. Maharia Raj Joint Ventures & Ors.*** and on failure of the petitioners to do so, issuing bailable warrants in the name of the two petitioners.

2. The petition was entertained and vide *ad-interim* order dated 19th May, 2017, the direction for issuance of bailable warrants was ordered to be kept in abeyance.
3. The counsel for the respondent no.1 appears.
4. I have already in order dated 19th July, 2017 in CM(M) No.731/2017 titled ***Ashu Sharma Vs. Framework Interiors*** dealt with the identical order of the same learned ADJ and allowed the petition.
5. In the present case, the respondent no.1 is the holder of a decree against the respondent no.2 for recovery of Rs.30,66,740/- with interest and for mandatory injunction directing the respondent no.2 judgment-debtor to furnish TDS certificates and to pay arrears of electricity and maintenance charges.
6. In execution filed by the respondent no.1 of the said decree, an order under Order XXI Rule 41 of the CPC was issued and subsequently the directions as contained in the impugned order dated 23rd February, 2017 directing the petitioners, being the Directors of the respondent no.2 / judgment-debtor, to also disclose their personal movable and immovable assets was issued.
7. A routine direction against Directors and shareholders of judgment-debtor companies turns the elementary principle of company law, a company being a legal entity, is distinct from its shareholders and Directors, on its head.
8. It is settled principle of law that the Directors and shareholders of a company are not liable for the dues of the company except to the extent permitted by law.

9. I have in ***V.K. Uppal Vs. Akshay International Pvt. Ltd.*** 2010 SCC online Delhi 538 held; (i) that there is no provision in the CPC for execution of a money decree against a Pvt. Ltd company, against its directors; (ii) that though Order XXI Rule 50 of the CPC does provide for execution of a money decree against a firm, from the assets of the partners of the said firm mentioned in the said Rule but there is no provision with respect to directors of a company; (iii) that the Executing Court cannot go behind the decree and can execute the same as per its form only; (iv) that if the decree is against the company, the executing Court cannot execute the decree against anyone other than the judgment-debtor company or against the assets and properties of anyone other than the judgment-debtor company; (v) that the identity of a director or a shareholder of a company is distinct from that of the company—that is the very genesis of a company or a corporate identity or a juristic person;(vi) the classic exposition of law in this regard is contained in ***Solomon Vs. Solomon & Co. Ltd.*** 1897 AC 22 where the House of Lords held that in law, a company is a person all together different from its shareholders and directors and the shareholders and Directors of the company are not liable for the debts of the company except to the extent permissible; (vii) that though a Single Judge of this Court in ***Jawahar Lal Nehru Hockey Tournament Vs. Radiant Sports Management*** 149(2008) DLT 749 observed that there could be a case where the Court even in a execution proceeding lifts the veil of a closely held company, particularly a Pvt. Ltd company and in order to satisfy a decree, proceed against the personal assets of its directors and shareholders

but the said judgment was over ruled by the Division Bench EFA(OS) No.17/2008 decided on 7th November, 2008 and reported as MANU/DE/1756/2008, finding that the director of the company had agreed to be personally liable to satisfy the decree and for this reason holding him liable; however the Division Bench refrained from commenting authoritatively on the aspect of lifting of the corporate veil in execution; (viii) that though Section 53 of the Transfer of the Property Act, 1882 allows the creditors to have a transfer of property made with an intent to defeat the creditors set aside but a case therefor has to be pleaded; (ix) that it cannot be laid as a general proposition that whenever the decree is against a company, its Directors/shareholders would also be liable-to hold so would be contrary to the very concept of limited liability and obliterate the distinction between a partnership and a company; (x) that though the Courts have watered down the principle in *Solomon* supra to cover the cases of a fraud, improper conduct, etc. as laid down in *Singer India Ltd. Vs. Chander Mohan Chadha* (2004) SCC 1 but a case therefor has to be made out; (xi) that the decree holders in that case had not made out any case therefor; the directors were not parties to the proceedings in which decree was passed and were not impleaded in the execution petition also and there were no averments in the execution petition of fraud or improper conduct or of incorporation of the company to evade obligations imposed by law and in which situations Supreme Court in *Singer India Ltd.* supra has held that the corporate veil must be disregarded.

10. Applying the aforesaid principles, the decree in favour of the respondent No.1 and against the respondent No.2 for recovery of money cannot be executed against the petitioners for the reason of the petitioners being directors of the respondent No.2

11. The High Court of Madhya Pradesh in ***Vimalchand Vs. Arora Distillery Pvt. Ltd. Co., Vidisha*** 2009 (3) MPLJ 332 held that decree obtained against a private company cannot be executed against its managing director or directors and the managing director and directors cannot be held personally liable for the decretal amount.

12. This Court again in ***Balmer Lawrie & Co. Ltd. Vs. Saraswathi Chemicals Proprietors Saraswathi Leather Chemicals (P) Ltd.*** 2017 SCC OnLine Del 7519 held that the money due under arbitrator's award against a company could not be recovered from the directors of the company. It was further held that though the court can lift the corporate veil, the same can be done only in extra-ordinary circumstances and by due adjudicatory process and the executing Court cannot go behind the decree and it must enforce it as it is and that it is not open to a decree holder to enforce a decree against any person other than the one against whom the decree is. It was further held that a mere allegation that the directors have siphoned off the assets without any particulars, cannot be accepted as the ground for improper conduct.

13. Reference may also be made to ***Asian Granite Pvt. Ltd. Vs. Deen Dayal Aggarwal*** 2016 SCC OnLine Del 69 setting aside the sale of the property of a company in execution of a decree against the directors of the company.

14. As far as reference to ***Bhandari Engineers & Builders Pvt. Ltd.*** supra is concerned, a perusal thereof does not show this Court to have held that in every case of execution of a money decree against a company, the Directors of the judgment debtor company are required to furnish details of their personal properties. The direction to the Directors, in ***Bhandari Engineers & Builders Pvt. Ltd.*** supra, was on account of the business relationship as found therein. There is no such finding in the present case.

15. Once the decree against the respondent No.2 cannot be executed against the petitioners as its directors, the next question is whether under Order XXI Rule 41 of the CPC, a direction to the directors to disclose their personal movable and immovable assets can be issued.

16. Order 21 titled “Execution of Decrees and Orders”, in Rule 41 thereof provides as under:

“41. Examination of judgment debtor as to his property.- (1) Where a decree is for the payment of money the decree holder may apply to the court for an Order that—

(a) the judgment debtor, or

(b) where the judgment debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what other property or means of satisfying the decree; and the court may make an order for the attendance and examination of such judgment debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of, thirty days, the court may, on the application of the decree holder and without prejudice to its

power under sub-rule (1), by order require the judgment debtor or where the judgment debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment debtor.

(3) In case of disobedience of any order made under sub-rule (2), the court making the order, or any court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three month unless before the expiry of such term the court directs his release.)”

17. The direction impugned is evidently under sub-Rule (2) of Order XXI Rule 41. However what the said rule permits is a direction for disclosure of the particulars of the assets of the judgment-debtor and not assets of any other person. Though Order XXI Rule 41(1) also permits the Court to examine “any other person” but the words “any other person” are absent from sub-Rule (2) of Rule 41 which permits a direction only against the judgment-debtor where the judgment-debtor is a corporation, against any officer thereof and disclosure as aforesaid, of assets of the judgment debtor only and not of personal assets of such officer.

18. Once the directors of a company are not judgment-debtor in a decree against a company, there can be no direction to them to disclose their assets. Mr. Justice Chagla of the Bombay High Court, in ***Bachubai Manjrekar Vs. Raghunath Ghanshyam Manjrekar*** ILR 1942 Bombay 128 held that except in very exceptional circumstances, the Court should never make an order under Order XXI Rule 41 of CPC without in the first instance giving notice to the party against whom an order is sought. In the present case, the order against the petitioners has been made without even giving any opportunity to the

petitioners to show cause as to why the direction against them should not be issued.

19. Mention may also be made of *Bivi Ammal Vs. Union Bank Ltd., Kumbakonam* 48 LW part 4 157 laying down that “any other person” within the meaning of Order XXI Rule 41(1) includes a garnishee but if a garnishee denies a debt, he ought not to be examined under Order XXI Rule 41 of the CPC unless the Court is satisfied on affidavit or on examination of the judgment-debtor that in the interest of the decree holder, the garnishee should be examined and his books produced to better enable the decree holder to proceed with the execution and to prevent a possible fraud or collusion between the judgment-debtor and the garnishee. I may mention that no such finding also has been returned in the present case.

20. The direction contained in the impugned order dated 23rd February, 2017 directing the petitioners to on affidavit disclose their personal movable and immovable assets as distinct from the assets of the respondent no.2/judgment-debtor thus cannot be sustained and is set aside. Axiomatically, the impugned order dated 17th March, 2017 of issuance of bailable warrants against the petitioners for non-compliance with the directions dated 23rd February, 2017 also has to go.

21. The petition thus succeeds and is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 03, 2017

‘gsr’/’R’

(Corrected & released on 29th September, 2017)