

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.2654 of 2014 (O&M)
Date of decision: 3rd May, 2018

Lovlesh Sood & another

... Petitioners

Versus

Raj Kumar (deceased) through LRs & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Nitin Thatai, Advocate
for the petitioners.

Ms. Promila Nain, Advocate for the respondents.

FATEH DEEP SINGH, J.

Raj Kumar (since deceased) who then happened to be sole proprietor of M/s Jindal & Company and now represented through his legal heirs (in short, 'the respondents') had earlier filed a civil suit against respondent No.2 M/s Indian Dyeing & Finishing Mills Ltd. through its Director Uplesh Sood who is respondent No.3 before this Court for the recovery of Rs.3,48,786/- on account of principal as well as interest for the supply of certain goods. During the pendency of the suit, defendant appeared and a compromise was arrived at between the parties on 04.04.2001, a copy of which admittedly is (Annexure P2), on the basis of which compromise suit of the plaintiff stood decreed whereby defendant undertook to pay Rs.2,02,800/- to the plaintiff on or

before 31.03.2002 in lump-sum or in instalments, for the satisfaction of the decree. When nothing transpired, the decree-holder filed an execution application, in which orders dated 28.02.2014 (Annexure P8) and 20.03.2014 (Annexure P10) were passed by the Court of learned Civil Judge (Junior Division), Ludhiana whereby objections filed by the petitioners as well as application for deciding the aspect of executability of the decree against the Company and not against the Directors, had been dismissed. The same is subject matter of challenge in this revision petition.

Heard Mr. Nitin Thatai, Advocate for the petitioners; Ms.Promila Nain, Advocate representing the respondents and perused the records of the case.

So far as passing of the judgment and decree for a definite sum of money is concerned, the same could not be displaced by any of the parties to this Lis. The only question that comes up before this Court is the executability of the decree which is an outcome of compromise between the parties and since the same was never put to challenge has attained finality which is placed on record by way of compromise Ex.C1. It is case of the petitioner that nothing can be recovered except from the assets of the Company and the Directors

were not personally liable to pay the sum from their personal properties.

As is there and apparent from the records, it is a pure simplicitor suit for recovery of the dues regarding supply of goods by the decree holder and therefore, the provisions of Section 339 of the Companies Act, 2013 cannot be enforced for fulfillment of this liability from the personal assets of the Directors. It is not the case, either argued or prima facie brought to the satisfaction of the Court, that any of the revisionists at the time of passing of the judgment and decree (Annexure P3) and compromise (Annexure P2) was Director of the Judgment Debtor Company and therefore, can in any manner be held responsible to pay this amount from their personal properties. As per the Companies Act, 2013, the liabilities of Directors arises in four cases, i.e.:

- As officer
- As officer in default
- For fraud
- Personal liability

The Directors can be made personally liable if,

- *When the directors enter into contract in their own name.*

- *When they enter into contracts on behalf of Company but fails to use “Ltd. or Pvt. Ltd.”.*
- *When directors exceeds their powers.*
- *The BOD should act as an agent of Company, not of a single director. Therefore, a single director cannot enter into a contract on behalf of Company unless the BOD authorizes.*

Therefore, as per the law laid down above, this Court concludes that since it was the Company which during the business transactions owed money to the decree holder and recovery against the Company can only be made from the assets of the Company which were there at the time of filing of the initial suit and being a public limited Company, the liability would be only up to the extent of shares held by each of the Directors. Learned Court below in the impugned findings has drawn the presumption and consequently issued warrants of attachment of the property of judgment debtors/present revisionists which, certainly to the mind of this Court, is unwarranted and is excessive and wrong exercise of jurisdiction by the executing Court which should have been restricted only to the assets of the Company at the time of filing of the suit and being a public limited Company, to the extent of shares held by each of the Directors at that point of time.

In the light of these discussions, the impugned orders (Annexures P8 & P10) are set aside to that extent and the present revision petition is allowed and disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

May 3, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No