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

Date of decision: 16.08.2023

+ **CM(M) 1312/2023 & CM APPL. 42025/2023**

M/S ZEAL POLYRUBS PVT LTD

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Yashartha Gupta, Mr. Ashish
Pathak and Mr. Aditya Raj, Advocates

versus

M/S SPINKS INDIA

..... Respondent

Through: Mr. Natwar Rai and Ms. Aliya
Parveen, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 42026/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 1312/2023 & CM APPL. 42025/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 10.08.2023 passed by the District Judge, North West District, Rohini Courts, Delhi ('Executing Court') in Execution Civil No. 228/2021 titled as "M/s Spinks India vs. M/s Zeal Polyrubs Pvt. Ltd."



whereby the Executing Court declined to grant stay of execution of warrants of arrest issued against the Petitioner i.e., Judgement Debtor *vide* order dated 21.07.2023.

1.1. The Executing Court *vide* order dated 21.07.2023 issued warrants of arrest against the Judgement Debtor in exercise of its power under Order XXI Rule 41 (2) & (3) Code of Civil Procedure, 1908 ('CPC').

2. The learned senior counsel for the Petitioner states that the order dated 21.07.2023 was issued in view of the fact that the Petitioner herein had failed to file its affidavit of assets as per Order XXI Rule 41 (2) CPC.

2.1. He states that, however, subsequently the Petitioner herein along with the application seeking recall of the order dated 21.07.2023 filed an affidavit of assets, which was placed on record before the Executing Court on 10.08.2023, when the matter was taken up for hearing.

2.2. He states that with the filing of the affidavit of assets, the direction issued by the Executing Court for issuance of warrants of arrest should have been stayed, pending the final determination of the said application for recall.

2.3. He relies upon the judgement of this Court in "***M/s Bhandari Engineers & Builders Pvt. Ltd. Vs. M/s Maharia Raj Joint Venture & Ors.***" **2019:DHC:6663**; reported in EX. P. 275 of 2012 dated 05.10.2019; and more specifically paragraph '54' and '55' therein to contend that the Judgement Debtor ('JD') cannot be committed to the civil prison unless the Executing Court returns a finding in terms of para '54' and '55' therein. The relevant extract of the judgment reads as under:

"54. When the Executing Court finds that the judgment debtor is not satisfying the decree/award despite having means/capacity to pay, the decree-holder is at liberty to file an application for detention of the judgment debtor whereupon the Executing Court shall issue a show cause notice to the judgment debtor to show cause as to why he should not be committed to civil prison. The Court shall, upon being satisfied that the judgment debtor has



means to pay the decretal amount or substantial part thereof and has refused or neglected to pay the same, pass an order for detention of the judgment debtor in civil prison for a period not exceeding three months in terms of Section 58 (1) (a) of the Code of Civil Procedure. Even after release from detention, the judgment debtor shall remain liable to satisfy the decree/award in terms of Section 58 (2) of the Code of Civil Procedure. However, the judgment debtor who has no means to satisfy the decree/award, cannot be detained in civil prison. The Court shall follow the procedure laid down in Sections 51(c), 55 to 59 and Order XXI Rules 37 to 40 of the Code of Civil Procedure for detention of the judgment debtor.

55. In appropriate cases, the Executing Court may (i) issue notice and direct the Garnishee(s) to deposit in Court the amount due to the judgment debtor as per law; (ii) permit the decree-holder to inspect all the assets and the records of the judgment debtor in the presence of the Local Commissioner to be appointed by the Court; (iii) direct the auditor of the judgment debtor company to submit a report with respect to the affairs of the judgment debtor; (iv) permit the decree-holder to serve interrogatories on the auditors of the judgment debtor; (v) permit the decree-holder to inspect the records of the judgment debtor with the Income Tax and the other authorities to verify the disclosures made by the judgment debtor; (vi) in extreme cases, appoint a Chartered Accountant as a Local Commissioner to inspect all the records of the judgment debtor and submit a report to the Court with respect to the affairs of the judgment debtor; (vii) restrain the judgment debtor from leaving the country without the permission of the Court; and (viii) impound the passport of the judgment debtor.”

2.4. He further relies upon the affidavit of assets and states that at entry No. 26, the Petitioner herein has declared that it has as on date trade receivables to the tune of Rs. 67.83 lakhs. He states, however, the Executing Court will have to exercise its jurisdiction under Order XXI Rule 46 and 46A to attach the said receivables.

2.5. He states on instructions that the said trade receivables are unencumbered and are due and receivable by the JD as on date.

3. The learned counsel for the Respondent, who appears on advance notice states that the order dated 21.07.2023 issued by the Executing Court is correct in law and fact. He states that the Petitioner herein wilfully defaulted in complying with the directions issued by the Executing Court as early as on



06.01.2023 directing the Petitioner herein to file its affidavit of assets in terms of Order XXI Rule 41 (2).

3.1. He states that the objections filed by the Petitioner were dismissed on 25.02.2023 and since then the Petitioner has wilfully not filed its affidavit of assets in compliance with the directions issued *vide* order dated 06.01.2023.

3.2. He states the Executing Court issued the directions for arrest of the officers of the JD for wilfully failing to file the affidavit of assets on 25.02.2023.

3.3. He states that even after 25.02.2023 though the matter was listed on several dates before the Executing Court; no compliance of the directions issued by Executing Court on 06.01.2023 was carried out by the Petitioner.

3.4. He states it is in this background that on 21.07.2023, the Executing Court issued fresh directions to the Respondent herein to take steps for issuance of warrants of arrest of the officers of JD. He states that the order dated 21.07.2023 is a reiteration of the said order dated 25.02.2023.

3.5. He states it is only under the pain of the order dated 21.07.2023 that the Petitioner herein belatedly on 10.08.2023 filed the application for recall of the order dated 21.07.2023 and enclosed with it an affidavit of assets.

3.6. He states that it is the stand of the Respondent herein that the said affidavit of assets suffers from suppression of material facts. He states that the declaration made by the Petitioner at entry No. 44 of the affidavit is false and incorrect to their knowledge.

3.7. He states that the Respondent herein is personally aware about three (3) criminal complaints, which are pending against the Petitioner, which has not been disclosed and in addition, there are proceedings pending against the Petitioner before the Executing Court and the same judge which have also not



been disclosed. He states that Respondent has not had an opportunity to file his objections to the said affidavit filed on 10.08.2023.

3.8. He further states that the address mentioned in the affidavit of the JD is incorrect as the JD was not found to be operating from the said address, when the Court Officer visited the said premises on 11.08.2023.

4. This Court has considered the submissions of the parties.

5. The Petitioner has not disputed that the initial order of the Executing Court for filing the affidavit of assets was issued to the Petitioner herein on 06.01.2023 and the said direction of the Executing Court remained not complied with till 10.08.2023.

6. It is also come on record that the Executing Court dismissed the objections filed by the Petitioner on 25.02.2023 with imposition of cost of Rs. 20,000/-. The said costs have also not been paid by the Petitioner till date.

7. In the aforesaid facts and circumstances, the wilful non-compliance of the Petitioner of the orders and directions of the Executing Court is writ large. In these circumstances, the issuance of the order dated 21.07.2023 for the arrest warrants of the Judgement Debtor is in accordance with Order XXI Rule 41 (2) & (3) CPC and it therefore, suffers from no error of law.

7.1. At this stage, the learned senior counsel for the Petitioner states that the cost of Rs. 20,000/- imposed *vide* order dated 25.02.2023 will be paid to the Respondent within a period of three (3) days from today i.e., on or before 19.08.2023.

8. Further, the learned counsel for the Respondent states that the Petitioner has failed to file an affidavit with respect to the payments purported to have been made by the Petitioner's herein to its creditors, which was specifically taken note of by the Executing Court at paragraph '10' of the order dated



25.02.2023.

8.1. The learned counsel for the Petitioner states that the affidavit disclosing the said details of payments made to the creditors will be filed before the Executing Court within three (3) days from today i.e., on or before 19.08.2023.

9. This Court has considered the submissions of the parties.

10. The Petitioner has filed an affidavit of assets dated 09.08.2023 and at entry '1', it is stated that the Petitioner has sufficient assets to satisfy the decree. The learned senior counsel has reiterated the said statement and relied upon the said assertion made in the affidavit. He relies on the declaration that the Petitioner has existing trade receivables of Rs. 67.83 lacs and states that the same are sufficient to satisfy the decree.

10.1. The statement of the learned senior counsel for the Petitioner that the receivables of Rs. 67.83 lacs are unencumbered as well as due and receivable by the JD as on date and the same have not been recovered by the JD from its debtors is taken on record and the Petitioner is bound down to the said statement.

11. In view of the fact that the Petitioner has now filed the affidavit dated 09.08.2023 before the Executing Court along with the application seeking recall of the order dated 21.07.2022; and the Executing Court has fixed the matter on 25.08.2023 for adjudicating upon the application of the Petitioner; this Court deems it appropriate to stay the operation of warrants of arrest until the Executing Court decides the said application on 25.08.2023.

12. This Court has passed the aforesaid stay order in view of the statements made by the senior counsel for the Petitioner, made on instructions during the course of the arguments. It is directed that if the statement made by the



Petitioner in its affidavit and before the Court today is proved to be false, the Executing Court is directed to initiate appropriate proceedings against the Petitioner and its officers for making false statement on oath.

13. The learned counsel for the Respondent states that he will file his objections to the said affidavit dated 09.08.2023 and the proposed affidavit referred to in paragraph 8.1 hereinabove, within a period of three (3) days i.e., on or before 23.08.2023.

13.1. It is clarified that no right to file rejoinder is being reserved to the Petitioner herein.

14. The Executing Court is requested to consider the affidavit dated 09.08.2023, the additional affidavit of the JD filed in terms of para 8.1 and the reply filed by the Respondent to the said affidavits on 25.08.2023.

14.1. In view of the fact that the Petitioner itself places reliance upon the judgement of this Court in *M/s Bhandari Engineers & Builders Pvt. Ltd. (supra)* and is offering itself for scrutiny and compliance in terms of the said judgment before the Executing Court.

14.2. The Executing Court is at liberty to scrutinize the affidavit dated 09.08.2023 of the JD and take further steps in execution proceedings as per paragraphs '54' and '55' of the said judgement.

15. It is made clear that if there is any default in filing the affidavit disclosing their detail sought in paragraph '10' of the order dated 25.02.2023 and/or making payment of costs of Rs. 20,000/- in terms of order dated 25.02.2023 on or before 19.08.2023, the stay order granted today shall stand automatically vacated without seeking any clarification from this Court.

16. It is made clear that this Court has not examined the merits of the averments made by the Petitioner in the application for recall dated



21.07.2023 filed by the Petitioner. The Executing Court shall decide the said application on its own merits and in accordance with law.

17. With the aforesaid directions, the present petition is disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 16, 2023/rhc/asb

[Click here to check corrigendum, if any](#)

