

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

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**Ex. App. No.516/2009 in Ex.P. No.295/2003**

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**Date of decision: 9<sup>th</sup> February, 2010**

**V.K. UPPAL**

**..... Decree Holder**

Through: Mr. Rajat Aneja, Advocate.

Versus

**M/S AKSHAY INTERNATIONAL PVT. LTD.**

**..... Judgment Debtor**

Through: Mr. Santosh Paul & Mr. Arun Francis, Advocates for JD  
No.2&3.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**RAJIV SAHAI ENDLAW, J.**

1. The decree holder has applied for execution of arbitration award under the Arbitration Act, 1996, stated to be having force of a decree. The decree holder in the execution petition stated that as per the arbitration award, a sum of Rs.8,54,250/- along with costs of Rs.75,000/- and interest at 18% p.a. had been awarded to it against the judgment debtor company. The arbitration proceedings as well as the execution petition was filed only against the judgment debtor company i.e. M/s Akshay International Pvt. Ltd.

2. The judgment debtor company was sought to be served with the notice of execution through its Director Shri Prakash Baliga. On 19<sup>th</sup> May, 2005, the counsel for the judgment debtor company made a statement, recorded in the order of that the date that the judgment debtor company was in a bad shape and that Mr. Prakash Baliga was gathering resources and keen to settle the matter. Mr. Prakash Baliga was directed to remain present in the court on the next date of hearing. Mr. Prakash Baliga appeared before the court on 12<sup>th</sup> August, 2008 and again informed that the financial condition of

the judgment debtor company was very poor and he will have to consult “the other partners”. However, this court finding that the execution had been pending since the year 2003 issued warrants of attachment of a bank account particulars whereof were given by the decree holder. However on the next date of hearing i.e. 28<sup>th</sup> August, 2008 the decree holder informed the court that “the judgment debtor No.3” was co-operating and had already paid Rs.50,000/- and two post dated cheques to the decree holder in part satisfaction of the decree and sought recalling of the earlier order attaching the savings bank account “of the judgment debtor No.3 Mr. Prakash Baliga” and this court ordered accordingly. It may be mentioned that the execution as aforesaid was filed only against the judgment debtor company and there is nothing in the file to show that any of the Directors of the judgment debtor company were at any time also impleaded as judgment debtors.

3. This Court on 28<sup>th</sup> August, 2008 also directed the other two Directors of the judgment debtor company namely Mr. AJS Sidhu and Mr. S.S. Velkar to present themselves in the court. Subsequently, warrants of arrest of the said Mr. S.S. Velkar and Mr. AJS Sidhu were issued and they appeared before this Court on 1<sup>st</sup> July, 2009 and informed that the judgment debtor company has ceased operations and the only assets of the judgment debtor company are certain receivables from foreign parties and the judgment debtor company has no other means to satisfy the decree. They also contended that they were not personally liable. Per contra, the counsel for the decree holder contended on that date that the **third** Director Mr. Prakash Baliga has already paid Rs.6 lacs out of the decretal amount and the other two Directors should pay the balance decretal amount. This Court directed the balance sheet and statement of affairs of the company to be filed and the same were filed.

4. However, the decree holder rather than responding thereto has filed this application pleading that the judgment debtor company is a closely held company of the three Directors aforesaid who were friends; that keeping in view the nature of constitution of the judgment debtor, it has become extremely imperative for the court to direct the lifting of the corporate veil to provide justice to the decree holder; that the court

has already directed one of the Directors to pay part of the decretal amount to the decree holder and accordingly the other two Directors should also be directed to pay the decretal amount and upon their failing to do so the decree should be executed against their properties. No need was felt to call for a reply of the said application from the other two Directors against whom the application was directed and the counsel for the decree holder and the counsel for the other two Directors have been heard. It may be mentioned that there is no order of this Court directing Mr. Prakash Baliga, Director of Judgment Debtor company to pay any decretal debts of the company and the payment if any was a private arrangement between the Decree Holder and the said Director, who appears to have come under pressure owing to attachment of his personal bank account as aforesaid.

5. The counsel for the decree holder has relied upon (i) *Ashish Polyfibres (Bihar) Ltd. Vs. State Bank of India* 2009 (107) DRJ 1 (DB); (ii) *Jawahar Lal Nehru Hockey Tournament Vs. Radiant Sports Management* 149(2008) DLT 749; (iii) *M.R. Khanna Vs. Union of India* 133 (2006) DLT 114; (iv) *Iyer & Son Pvt. Ltd. Vs. LIC* 2007 X AD (Delhi) 643 and *Saurabh Exports Vs. Blaze Finlease & Credits Pvt. Ltd.* 129 (2006) DLT 429.

6. The admitted position is that the arbitration award having force of the decree is against the judgment debtor company only and not against its Directors. The question which arises is whether a money decree against a Private Limited Co. can be executed against its Directors. There is no provision therefor in the CPC. Order 21 Rule 50 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 the Directors of a company. The executing court, as this Court is cannot go behind the decree and can execute the same as per its form only. The decree is against the company. This Court as the executing court cannot execute the decree against anyone other than the judgment debtor or against from the assets/properties of anyone other than the judgment debtor. 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. The classic exposition of law in this regard is contained in *Solomon Vs. Solomon*

**& Co. Ltd.** 1897 AC 22 where the House of Lords had 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 by law.

7. The counsel for the decree holder has sought to, by relying upon the judgments aforesaid make out a case for invoking the principle of lifting of the corporate veil. The question which arises is, in what circumstances and in which proceedings is the corporate veil to be lifted. Whether it can be lifted in execution proceedings also or it has to be lifted in the substantial proceedings, of orders/decrees wherein execution is sought. In the judgment of the single judge in **Jawahar Lal Nehru Hockey Tournament** (supra) there is an observation that there could be a case where the court even in an execution proceeding lifts the veil of a closely held company, particularly a private limited company and in order to satisfy a decree, proceeds against the personal assets of its Directors and shareholders. However, I may notice that the aforesaid judgment has been overruled by the Division Bench in EFA(OS) No.17/2008 decided on 7<sup>th</sup> November, 2008 and reported as MANU/DE/1756/2008. Though the Learned Single Judge had held no case of lifting of the corporate veil in execution to be made out in that case, the Division Bench found that the Director of the company had agreed to be personally liable to satisfy the decree and held him liable. However, the Division Bench refrained from commenting authoritatively on the aspect of lifting of the corporate veil in execution. Thus the said judgment cited by the counsel for the decree holder does not come to his rescue.

8. I also do not find any of the other judgments relied upon by the decree holder to be relevant. In **Ashish Polyfibres (Bihar) Ltd.**, in a suit by a bank for recovery of dues, decree had been passed not only against the company but also against its Directors. The said decree was under challenge before the Division Bench on the ground of the Directors being not liable. The Division Bench dismissed the appeal for the reason that in that case the money had been mistakenly credited by the bank in the account in the name of the company and it was found that the Directors of the company in spite of knowledge of

such mistake misappropriated the amounts. It was in those circumstance that they were held liable and not merely for the reason of being the Directors. Moreover that was a substantive proceeding and not an execution proceeding. **M.R. Khanna** (supra) was a case of recovery of dues under the Employees' State Insurance Act, 1948. The corporate veil was pierced in that case because the ESI's contributions recovered from the salaries of the poor workers had not been deposited but had been misappropriated by the Directors for their own benefit. That was also not a case of execution of a decree but of steps taken under the Employees' State Insurance Act, 1948. The observations relied upon in **Iyer & Son Pvt. Ltd.** (supra) were also made in the context of public dues. No public dues are involved in the present case; that was also not the case of a money decree. Similarly, **Saurabh Exports** (supra) was a suit for recovery of money against the company and its Directors and not a case of execution.

9. From the aforesaid, it would be evident that the counsel for the decree holder has been unable to show a single precedent where the money decree against a company has been executed against the Directors or against the assets of the Directors. The provisions of law as aforesaid, also do not permit the same. The Transfer of Property Act in Section 53 thereof allows a creditor to have a transfer of property made with an intent to defeat the creditor set aside. However, the decree holder has not made out/pleaded any case of transfer also.

10. It cannot be laid down 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. Though the courts have watered down the principle in **Solomon** (supra), to cover the cases of fraud, improper conduct etc, as laid down in **Singer India Ltd. Vs. Chander Mohan Chadha** (2004) 7 SCC 1 but a case therefor has to be made out. The decree holder in the present case has not made out any case whatsoever. As aforesaid not only were the Directors not parties to the arbitration proceedings but were not impleaded in the execution petition also. There are no averments whatsoever in the execution petition or even in the application under consideration of fraud or improper

conduct or of incorporation of the company to evade obligations imposed by law and in which situations the Supreme Court in *Singer India Ltd.* (Supra) has held that the corporate veil can be disregarded. All that the decree holder has pleaded is that one of the Directors has paid part of the decretal amount. Such voluntary payment by one of the Directors cannot entitle the decree holder to execute the decree against the other Directors also. The only other averments are that the income generated from the company was the income of the Directors. However there are no specific pleadings of fraud and as required to be made under Order 6 Rule 4 of the CPC. It is significant that the three Directors are not stated to be related to each other but are only described as friends of each other. Such faith amongst the Directors is implicit for them to come together to incorporate a company. However, the said circumstance alone is not sufficient to make out a case for lifting of the corporate veil. It has been vaguely stated that the claims of the decree holder are pending since 1996 and the assets of the company have been done away with. There are no averments whatsoever as to what were the assets of the company and as to when they were transferred. In *Saurabh Exports*, on the pleadings and evidence recorded, the court had found that the company was only a front for the business of its Directors and it was on such evidence that the decree was passed not only against the company but against the Directors also. In the present case no efforts whatsoever have been made out by the decree holder to even plead that the assets of the Directors against whom the decree is sought to be executed were not in existence prior to the incorporation of the company or that the business through the company was only a front for the business of the said Directors.

No case for attaching the properties of the Directors of the judgment debtor is, therefore, made out. There is not merit in the application, the same is dismissed.

**RAJIV SAHAI ENDLAW**  
**(JUDGE)**

**February 9<sup>th</sup>, 2010**

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