



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 2213 OF 2023  
IN  
COMMERCIAL EXECUTION APPLICATION NO. 37 OF 2023

Bajaj Auto Limited

Applicant / Award  
.. Holder

*Versus*

Executive Motors Pvt. Ltd.

.. Org. Respondent

And

Arun Chanda A and Ors.

.. Addl. Respondents

- .....
- Mr. Karl Tamboly a/w. Ms. Swati Sutar i/b. Dhru & Co. Advocate for Applicant / Award Holder.
  - Mr. Aseem Naphade a/w. Mr. Ramiz Shaikh and Mr. Rishi Bindra i/b. Mr. Ramiz Shaikh Advocate for Org. Respondent.
  - Mr. Asadali Mazgoanwala a/w. Ms. Tanvi Shah i/b. Mr. Asadali Mazgoanwala Advocate for Addl. Respondents.
- .....

CORAM : ABHAY AHUJA, J.

DATE : 27 NOVEMBER 2024

**ORDER**

**1.** Pursuant to earlier orders of this Court, today when the matter is called out Mr. Tamboly, learned counsel appearing for the Applicant submits that the Interim Application seeks execution of arbitral Award dated 17<sup>th</sup> June 2021 whereby the Arbitral Tribunal directed the original Respondent– Judgment Debtor to pay the amount of

Rs.2,91,84,812/- together with interest at the rate of 10% on the outstanding principal amount of Rs.2,63,78,178/- from 1<sup>st</sup> March 2020 till payment. The original Respondent had filed a Counter Claim for Rs.4,85,77,976/- and costs which was dismissed by the Arbitral Tribunal. Admittedly, there has been no challenge to the Award or to the dismissal of the Counter Claim. Since no payment was received by the Applicant, the Applicant has filed the Execution Application seeking execution of the Award under Order XXI Rule 41 of the Code of Civil Procedure, 1908 [CPC]. An Interim Application in the Execution Application has also been filed as noted above.

**2.** From time to time this Court has passed various orders including order dated 13<sup>th</sup> December 2021 directing the original Respondent to make disclosure, pursuant to which the original Respondent has filed disclosure affidavit on 29<sup>th</sup> December 2021. Thereafter again pursuant to orders of this Court the Chartered Accountant of the original Respondent has also filed an affidavit dated 28<sup>th</sup> February 2023.

**3.** Mr. Tamboly, learned counsel for the Applicant has submitted that the disclosure affidavit as well as affidavit of the Chartered Accountant is fraught with discrepancies and inadequacies and has sought to submit before this Court that the accounts filed by the original Respondent who is the Judgment Debtor are not only forged but also fabricated and the account of each year is mere copy-paste of the other

year. Mr. Tamboly has submitted that with respect to discrepancies, it is sought to be explained by the Chartered Accountant that the same are mere inadvertent typographical errors. Mr. Tamboly has submitted that in fact the balance-sheet of 2020 has been signed in the year 2021. That therefore this Court direct oral examination of the Directors of the Judgment Debtor – Company under Order XXI Rule 41 of the CPC so that the information with respect to the means of satisfying the decree can be ascertained.

**4.** On the other hand Mr. Naphade, learned Counsel appearing for Judgment Debtor – Company as well as for two of its Directors would submit that the Applicant has to make out a case for seeking oral examination under Order XXI Rule 41 of CPC and mere non-payment of money would not be sufficient. Mr. Naphade would submit that the disclosures pursuant to the order of this Court have already been made and that therefore this Court cannot go after the Directors when the decree has been passed against the Company as then a case would have to be made out to lift the corporate veil. Mr. Naphade would submit that even the Chartered Accountant's affidavit has been filed pursuant to orders of this Court and if necessary this Court may direct the Chartered Accountant to remain present in the Court for oral examination as he has already been examined once by this Court.

**5.** I have heard the learned Counsel and considered their submissions. It is not in dispute that the Award under execution has not been challenged and the payment under the said Award has also not been made. It is therefore clear that the decree for payment of money is yet to be satisfied.

**6.** Order XXI Rule 41 of the CPC reads as under :

*(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.*

**7.** Under order XXI Rule 41 (2) it is provided that :

*(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.*

**8.** It is therefore clear that even if the disclosure affidavit has been filed, this Court can orally examine a Judgment Debtor or any other person as provided in sub-rule (1) of Rule 41 of Order XXI of the CPC. In

the case of a Company, it is the Board of Directors which manages the Company. A Company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. Whatever decisions are taken regarding running the affairs of the Company, they are taken by the Board of Directors. Therefore, if the Judgment Debtor is a Company, this Court, in view of the provisions of Rule 41, would be well within its powers to direct a Director of the Company to attend the Court for oral examination. That would not mean that this Court is piercing the corporate veil and seeking to enforce a Judgment against the Directors of the Company. Therefore, in my view Mr. Naphade's submission is misplaced and therefore rejected.

**9.** Considering that the decree is yet to be satisfied and although disclosure affidavit has been filed, the same does not appear to be adequate or sufficient to give an indication with respect to the debts owed to the Judgment Debtor or other property or means of satisfying the decree, I am of the view that Mr. Arun Chanda, one of the Directors of the Company, be directed to attend this Court on 19<sup>th</sup> December 2024 at 4:00 p.m. with information with respect to the other properties of the Judgment Debtor and the means of satisfying the decree alongwith all the books and documents in support thereof.

**10.** Registry accordingly to issue appropriate notice to Mr. Arun Chanda. Mr. Naphade, learned counsel appearing for Mr. Arun Chanda

waives notice and assures that Mr. Arun Chanda will remain present in this Court for oral examination alongwith appropriate information.

**11.** List on **19<sup>th</sup> December 2024** at 4:00 p.m.

(ABHAY AHUJA, J.)

KISHOR  
VISHNU  
KAMBLE

Digitally signed  
by KISHOR  
VISHNU KAMBLE  
Date: 2024.12.02  
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