

IN THE COURT OF MS. MEENU KAUSHIK
DISTRICT JUDGE – 03, NEW DELHI DISTRICT
PATIALA HOUSE COURT

Ex 5581/16

MS Framework Interiors

...Decree Holder

Versus

Brushman India Ltd.

...Judgment Debtor

04.04.2026

ORDER

1. By way of this order, I shall dispose of the application moved on behalf of decree holder seeking lifting of corporate veil against the judgement debtor under Section 151 of CPC.
2. Arguments on the application already been heard.
3. It is submitted on behalf of DH that present execution petition is filed for enforcement of the award passed on 09.01.2016 by the Sole Arbitrator against the JD i.e. the company. It is further stated that Mr. Kapil Kumar is the Managing Director of JD company and he filed affidavit dated 02.06.2017 in compliance of provisions of order XXI Rule 41(e) of CPC stating that all the movable and immovable assets of JD including the JDs registered address situated at B-95/3, 61, Naraina Industrial Area, New Delhi have been **covered** by banks and have been left with no other assets to satisfy the decree which awarded in favour of DH. It is further stated that JD company is controlled by Mr. Kapil Kumar who is also the director and promoter of the company since 25.01.1993 till the

present date. It is further argued that JD company and Mr. Kapil Kumar despite claiming financial incapacity to pay the decreed amount had extended significant loan and financial support to another entity i.e. M/s Omega Brushware (partnership firm) which is controlled by Mr. Kapil Kumar himself. It is further stated that the amount of loan extended by the JD company to M/s Omega Brushware is Rs. 205.50 lacs and as per the report, no complete repayment was made. It is further stated that it appears that JD company and Mr. Kapil Kumar have made false statements in the affidavit that the property situated at Naraina stands covered under recovery certificate issued by the Debt Recovery Tribunal, New Delhi, and thus, left with no assets to satisfy the present decree. It is further stated that as per the master data stored at the website of Ministry of Corporate Affairs, the said property is currently being used by another company namely ProNails (India Pvt. Ltd.) which is being run by Ms. Rupali Kumar and Mr. Kanav Kumar. It is further stated that Ms. Rupali Kumar is daughter of Mr. Kapil Kumar and thus the acts of JD company are under control of its directors, specially Mr. Kapil Kumar and by the fraudulent and improper acts by Mr. Kapil Kumar, it resulted into depletion of company's assets and inability to make legal applications towards the DH.

4. It is further stated that Mr. Kapil Kumar has utilised the position to divert the company's funds to another entity to avoid payment. It is further argued that in the light of above facts, it is necessary to lift the corporate veil of JD company.

5. Per contra, it is argued that Mr. Kapil Kumar is not operating the company in any manner that can be termed to be fraudulent with the intent to defeat lawful claims of the creditors including the DH. It is further stated that JD company was

incorporated on 25.01.1993, and was conducting its business activities from the Naraina property. However, the company was not registered owner of the said property. It is further stated that the said property belonged to a partnership firm M/s Omega Brushware. It is further stated that balance sheet of the company mentions that a sum of Rs. 1.89 crore and Rs. 1.115 crore are shown as advances given by the company to M/s Omega Brushware for the purchase of the building in the year 2009, and this transaction was also reported by the auditors of the company in the balance sheet as on 31.03.2008 and then again in 31.03.2009.

6. It is further stated that the company was enjoying credit facilities with the State Bank of India from the year 2006-07 onwards and the transactions of the company were monitored by the lender. It is further stated that auditors themselves have mentioned in the report that *"in our opinion and according to the informations and explanations given by us, no fraud on or by the company has been noticed or reported during the year"*. It is further stated that JD company is listed company and thus have lot of fiduciary responsibilities to ensure the correct reporting in the audit report. It is further claimed that the statement of applicant/DH is absolutely frivolous and baseless.

7. It is further stated that the transaction highlighted by the applicant is more than **16 years old**. It is further stated that the JD company availed the credit facilities from the State Bank of India and partnership firm M/s Omega Brushware and its partners stood as guarantors to the credit facilities and the possession of Naraina property was also taken over by the State Bank of India along with all assets belonging to the company under SARFAESI Act vide letter dated 28.12.2011 and the said

property was later on sold by the bank and certificate of sale was issued on 18.10.2016 which shows that there was no mala fide on part of the promoter Mr. Kapil Kumar.

8. It is further stated that the company M/s ProNails (India) Pvt. Ltd. was incorporated in the year 2016, i.e. much after the possession of assets of the JD company. It is further stated that purchaser/new owner of the property can allow any business to be conducted from their property and as on date, there are lot of tenants in this property and multiple businesses are functioning from the property. It is further stated that daughter of Mr. Kapil Kumar is allowed by the new owner of the property to conduct her business from there and this does not make Mr. Kapil Kumar owner of the said property.

9. It is further argued that the allegation of the applicant that as there was diversion of funds or any fraudulent transactions/necessity of lifting of corporate veil is absolutely baseless and misconceived. It is further stated that paid up capital of M/s ProNails was only Rs. 1 lac which is in the form of 5,000 shares of Rs.10 each subscribed by the shareholders.

10. It is further argued that just because a new company has been started by the daughter of one of the directors of the JD company after the assets of JD company had been taken over, it cannot be said that there is any illegality on part of the JD company or its directors.

11. Submissions made on behalf of both the parties were taken into consideration.

12. As per the claim of Mr. Kapil Kumar/director of JD company, the property at Naraina has already been taken over by

State Bank of India along with all the assets belonging to the company under SARFAESI Act vide letter dated 28.12.2011. It is also claimed on part of Mr. Kapil Kumar that the said property has now been sold by the bank in auction and the certificate of sale has also been issued on 18.12.2016. Copy of sale certificate is enclosed along with reply. It is not denied on part of DH that the said property situated at Naraina was either not taken over by the State Bank of India or not sold in the auction thereafter. No document is placed on record on behalf of DH to show that Mr. Kapil Kumar or any of his family member or his partnership firm or company are the owner of the said property.

13. In view of above facts, the court is of considered opinion that there is no requirement of lifting up of corporate veil of JD company only on the basis of fact that the daughter of Mr. Kapil Kumar who is one of the directors of JD company is running business from the building situated at Naraina which is already been attached by the State Bank of India under SARFAESI Act .

14. Accordingly, present application stands disposed of as dismissed.

***(Announced in the open Court
on 04, April 2026)***

**(Ms. Meenu Kaushik)
DJ-03, New Delhi District
Patiala House Courts
New Delhi**