

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Friday, the 19th Day of December, 2025

E.A. No. 2 of 2025
in
E.P. No.1 of 2025
(CNR No.TNCB22-000001-2025)

M/s. Indo Shell Mould Limited
Coimbatore

.... Petitioner / 2nd Respondent /
2nd Judgment debtor

// Vs //

1. M/s. TVS Mobility Private Limited,
Chennai, Represented by its Director

.... 1st Respondent / Petitioner /
Decree Holder

2. M/s. J Technologies India Limited,
Coimbatore

... 2nd Respondent / 1st Respondent /
1st Judgment debtor

This petition came up for final hearing before me on 04.12.2025 in the presence of **M/s. Ramani & Shankar, Advocates** for the Petitioner / 2nd Respondent / Judgment Debtor and **Thiru.P.Aravind, Advocate**, for the 1st Respondent / Petitioner / Decree Holder and upon perusing the records, hearing both sides, and having stood over for consideration till this date, this Court passes the following:-

ORDER

The petition has been filed by the the Petitioner / 2nd Respondent / Judgment debtor under Section 47 r/w Order XXI Rule 66 and Section 151 of C.P.C. seeking to recall the Order dated 04.11.2025 proposing to attach the Plant II of the petitioner and sought for to allow the petition.

2. **The petition averments which are found essential for the Disposal of the petition is that:-**

a) It is the submission of the petitioner that as per the Award dated 26.04.2022 passed by the Arbitral Tribunal against the petitioner, the petition seeking execution proceedings have been filed by the 1st respondent. In the execution proceedings the 1st respondent has sought for to attach the property of the petitioner in Plant No. I, II, III, IV and V of the SIPCOT building in Kurinchi Village as per the schedule in the Execution Petition. In the meantime vide the Order dated 23.01.2025 this Court has passed an Order of attachment in respect of all the petition mentioned properties. Even as per the Execution Petition the outstanding principal amount is Rs.5,18,00,000/- is specified as due from the petitioner to the respondent. Further it is mentioned that the properties sought to be attached are part of the secured assets in respect of the loans availed by the petitioner. Further, it is mentioned that M/s. Hero Fincorp Ltd., has the first charge over the said properties and M/s. IDBI Bank has the Second charge

over the said properties. It is the submission that the total outstanding payable as on date by the petitioner to M/s. Hero Fincorp Ltd., is Rs.76 Crores and to M/s. IDBI Bank is Rs.23 Crores. As per the valuation report dated 14.01.2025 the said properties are valued at Rs.364,93,61,570/- and the same is filed as document No.2 along with the counter by the petitioner in the main execution proceedings.

b) In the above circumstances the petitioner has felt that the extent of attachment was excessive as the principal sum of claim was only about Rs.5.18 crores and has sought for modification of Order of attachment and has filed memo dated 06.02.2025. As per the Order in the memo dated 10.02.2025 this Court has mentioned to have modified the earlier Order of attachment and after deducting the value of the secured debits computing the residual value of approximately Rs.18 Crores, this Court has decided that the attachment of the properties in Plant No.I, III, IV & VI were sufficient and has left the II item of the petition mentioned property from the scope of attachment. In the above circumstances the Plant I, Plant III, Plant V and Plant VI of the property has been attached and state that there is no change in the factual circumstances from the date of passing of the Order dated 10.02.2025 and submit that the 1st respondent has not filed any application seeking modification or revival of the attachment of Plant II nor has there been any material placed before this Court to demonstrate that the presently attached properties are insufficient to satisfy

the decree. In the above circumstances this Court has passed an Order dated 04.11.2025 and proposed attach the Plant II of the petition mentioned property herein and submit that the Order dated 04.11.2025 is contrary to the Order of this Court dated 10.02.2025 and state that this Court has passed the Order dated 10.02.2025 only after reckoning the liability of the secured creditors, the valuation of properties sought to be attached etc., and state that as per the valuation report dated 14.01.2025, the Plant I, III, IV and VI were with aggregate value of Rs.130 crores and state that the same is sufficient to satisfy the Secured Creditors and also the award amount claimed by the 1st respondent herein.

c) It is the prime submission of the petitioner that in the absence of any changing circumstances the proposed attached of Plant II is wholly unwarranted. Further it is the submission of the petitioner that the plant II proposed to be attached vide Order dated 04.11.2018, is valued as Rs.220 Crores and submit that such an attachment is grossly excessive and are not proportionate to liability to the Secured Creditors and the sum sought to be recovered in the present execution petition. Further it is mentioned that it is settled law that the attachment of property or assets in execution proceedings must be proportionate to the amount recoverable under the Decree / Award and the petitioner has also relied on the judgment of Hon'ble Supreme Court in ***Ambati Narasayya vs M.Subba Rao and another*** in paragraph No.7 and submit

that the attachment of plant II is legally unsustainable and state that it is an excessive attachment and it is contrary to the mandate under Order XXI Rule 64 of C.P.C. Further, It is mentioned that Order XXI Rule 64 casts an obligation on the Executing Court to ensure that only such portion of the property as is necessary to satisfy the decree is attached or brought for sale. The attachment of property of far higher value than decretal amount amounts to an abuse of process and is void to that extent. In the present case this Court while passing the Order dated 04.07.2025 observed that since all the five items of properties were mortgaged with the Secured Creditors, a partial attachment might not be enable effective sale or settlement of the decree and therefore proposed to attach Plant II.

d) By referring to the said reasoning it is the submission of the petitioner that the same is contrary to the settled legal position that the Court's power of attachment in execution is limited by proportionality and not by convenience of sale. Further it is submitted that the right of secured creditors who have first and second charge over the mortgaged assets cannot be used as a ground to justify attachment of property grossly disproportionate to the decretal amount. It is also submission that the modification order dated 10.02.2025 had already balanced these considerations by restricting attachment to four units which are adequate to safeguard both the secured creditors and the decree holder's principal claim of Rs.5.18 crores. Further it is mentioned that the

subsequent proposal to attach Plan II valued at about Rs.220 Crores amounts to reviving an attachment consciously withdrawn, leading to excessive-ness and jurisdictional error and warrants to be recalled. Further it is mentioned that the attachment of multiple property of the petitioner had crippled the operations and state that the petitioner's intends to carry on business encumbered by multiple orders of attachment. Unless the Order dated 04.11.2025 proposing to attach Plant II of the petitioner is recalled, the petitioner would be put to irreparable loss and hardship and state that no prejudice would be caused to the respondent if the petition is allowed and submit that the balance of convenience is in favour of the petitioner and sought for to allow the petition for the aforementioned relief.

3. **By denying the petition averments the 1st Respondent / Petitioner / Decree Holder has filed the counter. The sum and substance of the counter statement averments which are found essential for the Disposal of the petition is that:-**

a) By narrating the facts till the passing the order dated 10.02.2025 the respondent has also extracted the Order passed by this Court on 10.02.2025 in the counter and would submit that this Court has passed an Order on 10.02.2025 attaching the property No.I, III, IV and V of the petition mentioned property and submit that the Item No.II of the petition mentioned property was removed by this Court from the attachment and also has granted liberty to the 1st

respondent and submit that at this point of time the petitioner has filed the application in A No.1 2441 of 2025 in Arb.O.P. (Comm. Div.) No.594 of 2022 before the Hon'ble High Court of Madras seeking to stay the present execution proceedings and raising the Order of attachment passed by this Court on 10.02.2025. Further the order of Hon'ble High Court also has extracted by the respondent in the Counter and submit that so far the petitioner have not deposited any amount to prove their bonafides. Accordingly the application was dismissed by the Hon'ble High Court on 19.06.2025.

b) It is submission of the respondent that the respondent has filed the Sale Paper before this Court and it was also found correct and further submit that the sale notice is also issued by this Court and submit that the sale notice was duly effected. By that time the secured creditors M/s. Hero Fincorp Ltd., and M/s. IDBI Bank Ltd., have entered appearance through their counsel. The counsel from M/s. Hero Fincorp Ltd., have appeared and filed memo dated 26.09.2025 and informed this Court that the petitioner has been defaulted in payment and sum of Rs.85,00,50,084.52/- was due as on 02.08.2024 in respect of which a demand notice was claimed to have been issued by them to the petitioner. At this point of time the petitioner has approached the 1st respondent for settlement and submit that the respondent also have co-operated with the petitioner to arrive at a amicable settlement. The petitioner was made an offer and the 1st respondent made a counter proposal. Till date the same has not

attained any finality and submit that the petitioner has only the intention to drag the proceedings under the corp of settlement talks and submit that on 04.11.2025 the Court have decided to proceed to the next step in the execution proceedings and it was brought to the attention of the Court by the memo dated 26.09.2025 by one of the Secured Creditor M/s. Hero Fincrop Ltd., that a sum of Rs.85,00,50,084.52/- was outstanding by the petitioner to them as on 02.08.2024 and submit that this was contrary to the claim made by the petitioner in its counter that only a sum of Rs.76.09 Crores was payable as on 28.01.2025. Further the property is also secured with M/s. IDBI Bank Ltd., It is the contention that the debt of the 1st respondent in the execution proceedings could be realized only after fulfilling the mortgage right of M/s. Hero Fincorp Ltd., and M/s. IDBI Bank Ltd., to the extent of total outstanding amount payable by the petitioner to them. Under the circumstance the petitioner is mentioned to have filed this petition to recall the said Order of attachment.

c) The respondent further submit that the present application is not maintainable on law and facts and state that this Court has excluded the Item No.II of the property from attachment. Based on the claim of the petitioner that the total outstanding payable to M/s. Hero Fincorp and M/s. IDBI Bank Ltd., was Rs.76.09 crores and Rs.23.13 crores as on 28.01.2025. But, as on 26.09.2025 the Hero Fincorp Ltd., has filed a memo stating that a sum of Rs.85,00,50,084.52/- is the due amount as on 02.08.2024 itself. Further it is

mentioned that the secured creditor has informed that the petitioner has been defaulting the monthly installments and they are in the process of taking steps under the SARFAESI Act. It is further submission of the respondent that as on date 12.11.2025 the outstanding due to the respondent from the petitioner is Rs.10,84,42,236/-. Even in the above circumstances it is mentioned that there is an outstanding due of Rs.1,19,46,63,635/- is due to the respondent. Mentioning that under the above circumstances when all the schedule mentioned properties are under mortgage with the said secured creditors applying the existing mortgage entirely on the items No.I, III, IV and V and then settling the award debt of the 1st respondent after securing the total extent of outstanding payable by the petitioner to the secured creditors is impractical, unreasonable and prejudicial to the 1st respondent and submit that the attachment of item No.II is necessary and justified.

d) It is also the contention of the respondent that the petitioner has filed this petition under Section 47 of the C.P.C. and also under Order XXI Order 66 C.P.C r/w Section 151 of C.P.C. and submit that the invocation of the above provision by the petitioner to file this petition is also totally misconceived and legally untenable. Further it is the submission of the respondent that the provision under Section 47 provides only for determining the questions arising between the parties relating to the execution, discharge or satisfaction of the decree and submit those provision shall not be applied for the enforcement of

the Arbitral Award. It is also the contention of the respondent that the questions related to execution, discharge or satisfaction of the decree for determination of this Court and submit that the Order passed by this Court attaching the Item No.II of the schedule mentioned property is also rightly exercised and state that the petitioner ought to have taken the steps to release the property from attachment under the appropriate provision of law and submit that the petition deserves to be dismissed on the ground of maintainability alone. Further it is also the contention of the respondent that the petition has been filed with an intention to derail the execution process and causing hindrance in the 1st respondent steps to realize the award and submit that there are all nothing but a dilatory tactic and submit that the petition is liable to be dismissed. With the aforementioned submissions the respondent also has placed their denial for each passage of the averments of the petitioner and sought for to dismiss the petition.

4. Point for Consideration:-

Whether the petition could be allowed?

Point:-

5. This petition has been filed by the petitioner / 2nd respondent / judgment debtor seeking to recall the Order of this Court dated 04.11.2025 from attaching the IInd item of the petition mentioned property. The petition for execution has been filed by the 1st respondent / petitioner / decree holder for

recovering the outstanding sum of Rs.10,03,68,209/- as on 31.10.2024. It is the submission of the learned counsel for the 1st respondent that the present outstanding due of the petitioner is Rs.10,84,42,236/- as on 12.11.2025. The outstanding due for the Secured Creditor M/s. Hero Fincorp Ltd., is Rs.85,00,50,084/-. But at the time of filing the petition the due amount of secured creditor M/s. Hero Fincorp Ltd., was Rs.76 crores as per the version of the petitioner. The petitioner would also submit the due amount of the other Secured Creditor M/s. IDBI Bank Ltd., is around Rs.23 crores. The other secured creditor has filed a memo through their counsel stating that the due amount as on date of filing of the memo after the filing of this petition is Rs.20.91 Crores in which the Secured Creditor / IDBI Bank have not come up with specific date. From the above, the outstanding due of the petitioner for the two Secured Creditors and the respondent in this petition comes around Rupees One Hundred and Crores, in total.

6. It is the submission of the petitioner in this petition that the value of the attached property leaving the Item No.II comes around Rs.130/- Crores and submit that the attachment of the properties leaving the IIInd Item ie., I, III, IV & V itself would be sufficient for realizing the due amount of the two Secured Creditors ie., M/s. Hero Fincorp Ltd., and M/s. IDBI Bank Ltd., along with the outstanding due of the 1st respondent herein and submit that the attachment of the II Item of the petition mentioned property would not be required.

7. It is admitted fact that the petitioner has initially sought for to leave the II Item of the property from attachment for the reason that the outstanding due of the Secured Creditors and the respondent would be met out from the value of other properties. Further, it is admitted fact that as on today the entire properties are subjected to mortgage in the hands of the Secured Creditors M/s.Hero Fincorp Ltd., and also M/s. IDBI Bank Ltd., including the II Item of the property. Morefully this Court while passing the Order dated 10.02.2025 leaving the attachment of the II Item of the property has come up with the reason that in case if there is any change in future circumstances, the attachment of the IInd Item of the property would be considered in future if necessary. Accordingly, today after issuing sale notice and before commencing the sale process this Court ascertain the outstanding due of the two Secured Creditors and also the respondent and in which outstanding due to the one of Secured Creditor at the time of filing the main Execution Petition was Rs.76/- Crores and the present outstanding is over Rs.84/- Crores and nearly Rs.85/- Crores as on 02.08.2025.

8. Further the said Secured Creditor M/s. Hero Fincorp Ltd. in the counter has submitted that they have initiated steps to invoke the SARFAESI Proceedings to realize the debit, since the installments are not promptly paid by the petitioner to the Secured Creditor / M/s. Hero Fincorp Ltd. Under the circumstances from the date of filing of the petition the value of the outstanding

amount to the Secured Creditors and to the respondent has escalated near Rs.10/- Crores.

9. Now the outstanding due of petitioner to the Secured Creditors and the respondent is arrived as Rs.117/- Crores from the documents relied on by the petitioner and also by the Secured Creditors and by the respondent. Under the above circumstance if the property of the petitioner leaving the Item No.II is brought for Sale, it is probable that the entire due amount of the petitioner may be realized or may not be realized and this could be correctly known only during the sale process or when the property is brought for auction and it depends on the auction purchaser and it depends upon the future course to be adopted. Apart from that even leaving the attachment of the property this Court have in the order earlier mentioned that in case if there is a change in circumstances in future, the II Item of the property would be attached. But as of now the outstanding due of the petitioner have been increased to the respondent to Rs.10.84 Crores. Under the above circumstances the value of the total outstanding is very close to the value of the petition mentioned properties.

10. Apart from that the petitioner in this petition have not specified about the other dues of the petitioner to the third party creditor and there is a chance for other third party creditor to seek for attachment of the property of the petitioner in case if they have any dues and in such circumstances if this present due amount is unable to realized from the value of the property attached, then

this Court would be necessarily have to resort the steps to attach the other property and in case if that happens if some other third party creditor in a separate proceedings attaches the II Item of the property of the petitioner, then this respondent for this due amount will be having a claim next to that of the such claimant who attaches the property.

11. In the next circumstances, in case if as mentioned by the respondent in the counter, one of the Secured Creditor initiates proceedings under the SARFAESI Act, this Court may not be in a position to ascertain which portion of the property the secured creditor would seek for selling of the property and if the Secured Creditor sells away all the properties attached before this Court, then the petitioner will not have any claim over the II item of the property. Even if the secured creditor initiates the proceedings under the SARFAESI Act, this Court also may not have control over any of the proceedings as per the SARFAESI Act. Only if this Court have attachment over the IIInd Item of the property, the respondent in this petition will have some right to claim the outstanding from the residue after the sale of property.

12. On the other hand this Court has also considered that the attachment is not sale of the property. Sale is different from attachment. So, at the time of sale if this Court considers that the outstanding dues of the Secured Creditors and the respondent could be realized from the property I, III, IV & V, then this Court will consider to attach only those properties as per the Civil Procedure

Code which would be sufficient for realizing the outstanding dues of the Secured Creditors and then the respondent herein. Hence mere attachment will not also be concluded as a sale of the property. This Court would also consider that Order XXI Rule 55 of C.P.C. provides for deemed withdrawal of attachment in case if the outstanding due is realized over the immovable property. Hence this Court has find a change in circumstances of escalation of outstanding due of the Secured Creditors and also the respondent / petitioner / decree holder and which is very narrower to the value mentioned for the Item I, III, IV and I of the properties. At this juncture it cannot be confirmed that the property would be sold for the entire outstanding amount. To ensure that the petitioner's due as in this Execution Proceedings could be realized, this Court would consider appropriate to attach the II item of the property.

13. In the result the petition is dismissed. No Costs.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me in the open Court on this 19th day of December 2025.

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore