

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

PRESENT: THIRU.C.B.VEDAGIRI, B.PHARM, MS-IT (AUS)., L.L.M., Judge
Commercial Court, (Senior Civil Judge Cadre)
Coimbatore.

Dated this the 06th Day of March 2026, Friday

EP No.304 of 2024
(CNR.No.TNCB23-000858-2024)

M/s. Boncart Retail Services Pvt Ltd.,

Rep by its Managing Director,

Mr.K.P.Sampathkumar

... Petitioner/Decree Holder

//Vs//

M/s. Oodu Implementers Pvt Ltd.,

Formerly known as M/s. Itara IT Solutions Pvt Ltd.,

Rep by its Director

Mr.D.Purushothaman

...Respondent/Judgment Debtor

This Petition coming on this day for final hearing before me in the presence of Thiru. P. Sampath, Advocate for the Petitioner/ Decree Holder and Thiru. M.SundaraKadeswaran, Advocate for the Respondent/Judgment Debtor. Upon hearing the both counsels and on perusal of records, having stood over till this day for consideration, this Court passed the following:-

ORDER

The Petition has been filed by the Petitioner/Decree Holder under order XXI Rule 11(2) and Section 151 of CPC may be issue show cause notice to the respondent to release the amount and if the respondent fails to pay the entire amount of Rs.8,29,260.00 after receipt of the show cause notice, an arrest warrant may be ordered against the respondent under order 21 rule 37 and section 55 of CPC.

1. The sum and substance of the Petition:

The Petitioner/Decree Holder submits that the petitioner herein is also the petitioner in the main suit. The petitioner humbly submits that an agreement was entered into with the respondent for the development of software intended to support the petitioner's retail services. However, the respondent failed to develop and deliver the said software as agreed. Owing to this failure, disputes arose between the parties and the petitioner was constrained to file the main suit against the respondent on 23.09.2019, which was decreed in favour of the petitioner. Aggrieved by the said judgment, the respondent preferred an appeal before the Hon'ble Court in AOP No.43 of 2023. After hearing both sides, the Hon'ble Court dismissed the appeal on 12.09.2023, thereby confirming and reaffirming the judgment passed in the main suit. Despite the dismissal of the appeal and the confirmation of the decree, the respondent has failed and neglected to settle the amount due to the petitioner. Hence, the petitioner has filed the present Execution Petition seeking enforcement of the decree passed in the main suit. The petitioner further submits that the respondent possesses sufficient financial capacity to satisfy the decree amount. The respondent company is situated in a prime area of Coimbatore, has substantial employee strength, sound infrastructure and owns both movable and immovable properties whose value exceeds the decree amount. Therefore the respondent has the means and ability to repay the decretal amount. In these circumstances, the petitioner humbly prays that this Hon'ble Court may be passed to issue a Show Cause Notice to the respondent and pass such further orders as this Hon'ble Court may deem fit and proper.

2. The crux of the Counter filed by the Respondent:

The Respondent/Judgment Debtor states that the allegations contained in the Execution petition are false, frivolous, vexatious and except as to matters expressly admitted herein, the petitioner to strict proof of the rest of the allegations made in the application. The calculation made in column 9 of the petition is wrong and the award passed by the Learned Arbitrator is unenforceable and is against law and the same is beyond the timeline stipulated under section 29A of Arbitration and Conciliation Act and as such an award is passed subsequent to the Arbitrator becoming 'functus officio' is not valid in eye of law. The award of the Learned Arbitrator is perverse, patently illegal, erroneous on the face of it and is in contravention with the settled/fundamental law of India and is in conflict with the fundamental public policy of India and contrary to the most basic notions of morality and justice. The arbitrator award results in miscarriage of Justice wherein the petitioner has selected a particular version of ERP Software after discussion on various occasions, has made the respondent herein to spend time and labour. Any Judicial proceedings which results in an illegal windfall gain to one party over the other, and an irreparable injustice, is against the most basic notions of Justice and Morality and is also against the fundamental public policy of India. The Learned Arbitrator's finding that the respondent herein has Committed Breach of Contract without considering remaining part of the agreement is based on Surmises and conjunctures. The Learned Arbitrator has miserably failed to appreciate that a part of the agreement is unconscionable. Such contract is immoral and therefore this clause cannot be stressed upon by the petitioner for his service. The respondent herein therefore submits that as per Section 19 of the Contract Act, the contract is voidable at the option of the respondent herein. The respondent submits that the Learned Arbitrator failed to appreciate that the foundation of the Agreement, namely the implementation of ERP Software, continues to remain valid and the contract has not become incapable of performance. The Learned Arbitrator also failed to consider the subsequent event that occurred after execution of the agreement, namely the implementation of GST by the Government

of India and its impact on the ERP implementation process. The respondent further submits that the claim made by the petitioner after the implementation of GST and the award being silent on the same is against the public policy of India. Although the learned arbitrator held that time was the essence of the contract, he failed to consider the 'Note' in the project timelines and the "Assumptions" contained in the agreement and did not discuss the same in the award. The respondent finally submits that when certain aspects are not expressly agreed between the parties in the agreement, the arbitrator agreement cannot be stretched beyond its scope and therefore the alleged breach of contract due to delay falls outside the scope of the disputes submitted to arbitration. The respondent respectfully submit that the Learned Arbitrator while concluding that customization of the software was possible and agreed by the respondent herein, has failed even to discuss as to whether the customization sought for by the petitioner is within the structural parameters of the ERP Software agreed to be purchased by the petitioner. The respondent respectfully submits that the findings of the Learned Arbitrator are unsustainable in law, as the conclusion that the customization sought by the petitioner falls within the scope of the Agreement was arrived at without proper consideration of the Exhibits produced by the respondent and is contrary to basic notions of justice and morality. The Learned Arbitrator further failed to appreciate that the implementation of GST by the Government of India significantly contributed to the delay in execution and therefore the finding of breach is opposed to the public policy of India. Moreover, while directing refund of the advance amount the Learned Arbitrator did not consider the work executed and time expended by the respondent, despite there being no return policy under the Agreement, rendering the award contrary to the fundamental policy of Indian law. The learned arbitrator on a perverse understanding of the agreement, has decided that the respondent has committed Breach of Contract. Having rendered the finding that the respondent herein has agreed only for five modifications free of cost failed to observe that the demand of the petitioner is more than five modifications and as such a finding ought not to have been rendered. The arbitrator award results in an

irreparable injustice to the respondent, wherein the respondent has been ordered to pay the petitioner in spite of their expenditure in furtherance of discharge of the obligations arising out of the agreement whereas the petitioner have been unjustly enriched by the award and the same is unsustainable. The learned arbitrator had committed an impropriety and did not even bother to give any reasons as to how the claim of the petitioner for compensation on loss of business is sustainable. The arbitral award is silent as to when the learned arbitrator has got the notice of his appointment and failed to assert that the award is passed within the time limit prescribed under section 29A of the Arbitration & Conciliation Act, 1996. The Award passed by the Learned Arbitrator is based on surmises and conjectures as he has failed to consider all the relevant and material facts. The award thus being perverse is against the fundamental public policy of India. Therefore the respondent submits that the award passed by the learned arbitrator is a nullity as the same is in violation of the provisions of Arbitration & Conciliation Act. This respondent respectfully submits that, since the petitioner in the suit has filed a claim in violation of the Arbitration & Conciliation Act, the claim made by the petitioner is void-ab-intio and as such the decree pursuant to the same is hit by nullity. Therefore such an award cannot be executed. It is therefore the respondent prays that to dismiss the above execution petition.

2.1. The respondent's counsel filed an Additional Counter Petition in E.A. No.1 of 2025 on 02.09.2025 and the same was allowed with costs by order dated 18.11.2025.

2.1.a. The respondent respectfully submits that the respondent is a Private Limited Company which is an artificial person, represented by its Director. The respondent submits that the petitioner has sought relief for civil arrest and detention against the Director of the respondent Company herein. The respondent respectfully submits that the petitioner should have sought relief from the respondent Company and not against its Director who is an employee of the Company. The respondent respectfully submits that a Company is an artificial person and can necessarily only be represented by a natural person, but the same shall not render the natural person to be liable for the

debts of the company. The identity of employee/representative/director of the Company is distinct from that of its Company. Even in award passed by the Learned Arbitrator, it is observed that the Respondent Company herein is liable and not the director in his individual capacity. The petitioner has ignored the fact that there is no such provision as to execute a decree or an award against the employee/representative/director of the company. The respondent further submits that since the award is passed against the Company, the relief sought by the petitioner cannot devolve upon the director of the Company. The present execution petition as against the director of the respondent company is an abuse of the process of law in as much the director is merely the employee of the respondent company and no award has been passed against him personally but has been passed against the respondent company. The respondent further submits that, such an award cannot be executed against him by seeking his arrest and detention in civil prison. The present execution petition filed by the petitioner is totally misconceived, not maintainable in as much as it violated the provisions of Order XXI Rule 37 CPC. The respondent therefore most humbly prays to dismiss the above execution petition.

3. Heard both sides. Perused the record.

4. Point of determination:

The point for consideration is that whether the present petition by the petitioner/ Decree Holder is to be allowed or not?

5. The petitioner counsel urged that an agreement was entered into with the respondent for the development of software intended to support the petitioner's retail services and as the respondent failed to develop and deliver the said software as agreed, disputes arose between the parties, which constrained the petitioner to file the main suit against the respondent on 23.09.2019 and the same was decreed in favor of the petitioner.

6. The petitioner counsel also urged that the appeal preferred by the respondent before the Hon'ble Commercial District Court in A.O.P No.43/2023 was dismissed on 12.09.2023.

7. The learned counsel for the petitioner argued that despite the dismissal of the appeal and the confirmation of the decree, the respondent has failed and neglected to settle the amount due to the petitioner, constraining to file the present Execution Petition seeking enforcement of the decree passed in the main suit.

8. The petitioner counsel contended that the respondent possesses sufficient financial capacity to satisfy the decree amount. The respondent company is situated in a prime area of Coimbatore, has substantial employee strength, sound infrastructure and owns both movable and immovable properties whose value exceeds the decree amount.

9. The petitioner counsel urged that the present Execution Petition has been filed only to enforce the said award in accordance with law. The respondent was the principal person -in-charge and responsible for the conduct and affairs of the Judgment debtor company. The transactions between the parties were directly handled by him. The materials on record clearly show that the respondent had personally undertaken to discharge the liabilities of the company and had acted in a representative as well as personal capacity, thereby making himself liable for the debts arising under the award.

10. The petitioner counsel urged that the respondent is precluded to raise the legality of the award in the present proceedings and all the grounds mooted in the counter cannot be pressed in to service in the present petition as the appeal filed by the respondent was dismissed by the Hon'ble Commercial Court (District Judge Level) on 12.09.2023.

11. The petitioner counsel placed reliance on the decision of the **Hon'ble Madras High Court** in **Samson Maritime Ltd Vs Hardy Exploration and Production (India) Inc and Ors MANU/TN/0925/2019** wherein it was held that:

“The Application Nos.3047 to 3050 of 2018 in EP Nos.11 and 12 of 2017, seeking the following reliefs:

(i) To prohibit the 2 nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2 nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908.

(ii) *To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908*, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iii) *To detain the authorized signatory of the judgment debtor Mr.Sankalp Mitra in Civil prison as mandated under Order 21 Rule 41(3) of the Code of Civil Procedure 1908*, for concealing the details of the bank accounts in the letter dated 06.05.2016 and violating the order dated 27.04.2016.

(iv) To prohibit the 2 nd Garnishee Bank, from parting with the funds lying in Site Restoration fund Deposits (14 accounts) bearing CIF No.85024991365, as described in the schedule hereto, of which the Judgment Debtor is the sole account holder and further direct the 2 nd Garnishee Bank to deposit the funds lying in the accounts to the credit of the present execution petition hereto under Order 21 Rule 12 and 46 A of the Code of Civil Procedure, 1908.

21. I am therefore of the considered opinion that the judgment debtor had in fact disobeyed the order of this Court dated 23.03.2016. Therefore, ***it is liable to be committed to Civil Prison under Order 21 Rule 41 Sub Rule 3. Since the judgment debtor is a Company, its Principal Officer, has to be detained, as per the provision of***

code of Civil Procedure. Hence the applications in Application No.3048 and 3049 are allowed, with a direction to detain the Principal Officer of the judgment debtor - Mr.Sankalp Mitra, in Civil Prison for a period of 15 days. The warrant of arrest and detention to be issued after 10 days. There shall be no order as to costs.”

12. The petitioner counsel thus urged that the respondent is liable for the non compliance of the decree, as the respondent has the means and ability to repay the decretal amount and thus prayed to allow the petition.

13. **Per contra**, the respondent/JD contended that the very petition is false, frivolous, vexatious and not maintainable both in law and on facts of the case.

14. The respondent counsel has urged that the calculation made in column 9 of the petition is wrong and the award passed by the Learned Arbitrator is unenforceable and is against law and the same is beyond the timeline stipulated under section 29A of Arbitration and Conciliation Act.

15. The respondent counsel urged that the award is passed subsequent to the Arbitrator becoming ‘functus officio’ is not valid in eye of law and is perverse, patently illegal, erroneous on the face of th record.

16. The respondent counsel argued that the very award is in contravention with the settled/ fundamental law of India and is in conflict with the fundamental public policy of India and contrary to the most basic notions of morality and justice.

17. The respondent counsel argued that the respondent is a Private Limited Company which is an artificial person, represented by its Director and that the petitioner has sought relief for civil arrest and detention against the Director of the respondent Company herein.

18. The respondent argued that the petitioner should have sought relief from the respondent Company and not against its Director who is an employee of the Company as the Company is an artificial person and can necessarily only be

represented by a natural person, but the same shall not render the natural person to be liable for the debts of the company. The identity of employee/representative/director of the Company is distinct from that of its Company.

19. The respondent counsel invited the court's attention to the award passed by the Learned Arbitrator, wherein it was observed that the Respondent Company is liable and not the director in his individual capacity. The petitioner has ignored the fact that there is no such provision as to execute a decree or an award against the employee/representative/director of the company. Since the award is passed against the Company, the relief sought by the petitioner cannot devolve upon the director of the Company.

20. The respondent counsel urged that the present EP as against the director of the respondent company is an abuse of the process of law in as much the director is merely the employee of the respondent company. Admittedly there is no award has been passed against the alleged director personally but has been passed against the respondent company. Thus such an award cannot be executed against him by seeking his arrest and detention in civil prison and prayed for dismissal of the petition as it violated the provisions of Order XXI Rule 37 CPC.

21. The respondent counsel placed reliance on the decision of the **Hon'ble Allahabad High Court in Dhanush Vir Singh Vs Dr.Ilasharma and 3 others 2024 AHC 113931** wherein it was held that:

“29. In view of the above, this Court comes to the irresistible conclusion that the application 57-Kha moved by the Decree Holder/Opposite Party seeking the arrest and detention of the Revisionist who admittedly is not the judgment debtor and only the Vice President of the Judgment Debtor Company is misconceived and was not liable to be entertained. The learned Additional District Judge, Court No. 6, Bareilly, committed manifest error of law in allowing the Application and issuing Warrant of Arrest under Order 21 Rule 38 against the Revisionist under the impugned order dated 16.01.2024. The order dated 16.01.2024 impugned in the instant SCC Revision

is set aside. The SCC Revision is allowed. However, this Court is conscious of the fact that a Money Decree has been passed against the Judgment Debtor Company, which is liable to be enforced against the Judgment Debtor Company. The Decree Holder/Respondent may take recourse to the specific provisions of Order 21 Rule 41 CPC to enforce the Decree passed in the SCC Suit No. 18 of 2016 and suitably amend the Execution Application No. 2 of 2021.

30. Learned counsel for the decree-holder may file an appropriate application at the earliest and in the eventuality of such an application being filed, it is expected that the Executing Court shall taken cognizance of the said application and pass appropriate orders expeditiously preferably within two months from the date of service of a certified copy of the order of this Court.”

22. It is from the record that the Petitioner / DH has filed the above EP for the execution of the arbitral award dated 23.09.2019 and the same has not been set aside or modified under Section 34 of the Arbitration and Conciliation Act, 1996. This court finds force in the argument of the respondent that the since the award was not challenged in the manner known to law, the same has become final, conclusive, and binding upon the parties. It is also from the record the the appeal against arbitral award dated 23.09.2019 under Section 34 of The Arbitration and Conciliation Act, 1996 was dismissed by the Hon’ble Commercial Court (District Level), Coimbatore in A.O.P.No.43/2023 dated 12.09.2023.

23. This court is refers to Section 47 of the CPC which emphasizes that all questions regarding the execution, discharge or satisfaction of a decree must be decided by the court executing the said decree. This provision applies to civil court decrees. Section 36 of the Arbitration and Conciliation Act, 1996 deems an arbitral award enforceable “as if” it were a decree. Thus challenges to the validity of an arbitral award be under Section 34 of the Act and within time. Thus after the expiry of the statutory time limit for challenging the arbitral award in question is over, the award has to be enforced through the same process and procedure meant for a court decree under the

CPC. The arbitral award is treated at par with a decree because it has all the trappings of a decree, but not a decree passed under the CPC in the strict sense.

24. This court is also aware of the settled proposition of law that enforceability of arbitral awards with limited judicial interference is a fundamental principle under Section 5 of the Act, which restricts courts from intervening post-award, except for the specific grounds envisioned in Section 34.

25. This court refers to the decision of the **Hon'ble Delhi High Court** in **Amit Malik v. Kamlesh Malik** 2006 SCC Online Del 536, wherein the court rejected the belated objections during execution, calling Section 34 a “complete code”; once time lapses, validity objections cannot be smuggled in via Section 47.

26. Thus what emerges is that any judgment debtor aggrieved by an arbitral award is barred in law from challenging the validity or legality of the award at the stage of execution, even by resorting to the remedies enshrined under Sections 34 and 36 of the Act of 1996. While the executing court's power under Section 47 remains circumscribed, it is not altogether non-existent and could be pressed into service if there exist Patent Illegality, issue pertaining to inherent jurisdiction and constitution of the arbitral tribunal issuing the award and whether there been payment, set-off, or adjustment satisfying the decree.

27. Adverting to the facts of the present petition. The question that loom writ large is that can a director of a company be arrested because a court has issued a money decree against the company?

28. It is the consistent stand of the respondent/JD that the Companies are separate legal entities under the Companies Act, 2013 (Section 9), shielding directors from personal liability for corporate debts and that the Directors cannot be arrested for a company's money decree unless personally named as judgment debtors.

29. The learned counsel for the respondent contended that the Directors of a company cannot be held personally liable for the company's debts unless there is a specific decree against them and that arresting a director for a company decree is invalid without explicit personal liability.

30. This court is also of the view that merely being a director of a company against which a money decree has been passed does not automatically entail personal liability or obligation to furnish personal property details during execution proceedings.

31. The Code of Civil Procedure does not contain any provision for execution of a decree against the company. This court is also aware of the position of law that arrest of directors for executing money decrees is not automatic and must follow statutory conditions. This court finds force in the argument of the respondent counsel that the arrest of a director in execution of a decree against the company is not valid unless the decree explicitly includes the director as a judgment debtor.

32. In the present petition, the Petitioner / Decree Holder is seeking release of amount, upon failure for the arrest and detention of the Respondent who admittedly is not the judgment debtor and is only the Director of the Judgment Debtor Company. It is also from the cause title of the suit, arbitral award and the present petition that it is the respondent company is being shown as defendant/respondent/Judgment debtor being represented by the director.

33. From the cumulative analysis thus far, this court finds that a Money Decree being passed against the Judgment Debtor Company, is liable to be enforced only against the Judgment Debtor Company and that the present EP is dismissed as not maintainable. The Decree Holder/Petitioner may take recourse to the specific provisions of Order 21 to enforce the Decree against the Judgment Debtor Company in the manner known to law, subject to Law of Limitation.

IN THE RESULT, the present Execution Petition is dismissed. The Decree Holder/Petitioner may take recourse to the specific provisions of Order 21 to enforce the Decree against the Judgment Debtor Company in the manner known to law, subject to Law of Limitation.

The Order is directly typed in computer by Typist, corrected and pronounced by me in this Open Court on this 6th Day of March, 2026.

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

List of Documents:-

List of Documents the side of the Petitioners: Nil

List of Documents the side of the Respondents: Nil

Judge
Commercial Court
(Senior Civil Judge Cadre)
Coimbatore

Fair Order
EP No. 304 of 2024
Date: 06.03.2026
SCJ, CBE