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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.P. 275/2012

1 M/S BHANDARI ENGINEERS
& BUILDERS PVT. LTD.Decree holder
Through: Mr. S.S. Jauhar, Advocate.

versus

M/S MAHARIA RAJ
JOINT VENTURE & ORS. Judgment debtors
Through: Mr. Sanjiv Kakra, Advocate as
amicus curiae.
Mr. Abhijat, Secretary, DHCBA with
Mr. Nikhil Mehta, Member
Executive, DHCBA and Mr. Arpit
Kumar Singh, Advocate.
Mr. Percival Billimoria, Advocate.
Ms. Manisha Agrawal Narain and Ms.
Rakshita Goyal, Advocates in I.A.
No.221/2018.
Mr. Sandeep Choudhary, Advocate
for judgment debtor No.4.
Mr. Muneesh Malhotra, Advocate.

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2 M/S BHANDARI ENGINEERS
& BUILDERS PVT. LTD.Decree holder
Through: Mr. S.S. Jauhar, Advocate.

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M/S YOU ONE MAHARIA (JV)
DELHI & ORS. Judgment debtors
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Mr. Abhijat, Secretary, DHCBA with
Mr. Nikhil Mehta, Member
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Mr. Percival Billimoria, Advocate.

Ms. Manisha Agrawal Narain and Ms. Rakshita Goyal, Advocates in I.A. No.221/2018.

Mr. Sandeep Choudhary, Advocate for judgment debtor No.4.

Mr. Muneesh Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

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11.02.2020

1. Mr. Abhijat, Honorary Secretary, Delhi High Court Bar Association submits that the guidelines laid down by this Court in judgment dated 05th December, 2019 are path breaking and will go long way in expeditious execution of the decrees. It is submitted that no suggestions have been received so far in respect of the guidelines.
2. Mr. Sanjiv Kakra, learned amicus curiae submits that the guidelines laid down by this Court are very comprehensive and the same be strictly implemented by all Courts. Learned amicus curiae seeks clarification that these guidelines can be implemented by Debt Recovery Tribunal and other Tribunals in recovery procedures. Paragraph No.5 of the judgment dated 05th December, 2019 is clarified to the extent that the Debt Recovery Tribunal and Recovery Officers are empowered to direct the parties to file the affidavits in the recovery proceedings.
3. Mr. Percival Billimoria, Advocate suggests that **Annexure - B** i.e. affidavit of assets and income of the company should be executed by all the promoters of a private limited companies, apart from the Directors. The learned amicus curiae as well as Mr. Abhijat, Honorary Secretary, Delhi High Court Bar Association welcome the suggestion. Paragraph No.45 of the judgment dated 05th December, 2019 is clarified to the extent that that affidavit (**Annexure - B**) of a private limited company shall be executed by

all its Directors as well as its promoters.

4. Mr. Sanjiv Kakra, learned amicus curiae and Mr. Abhijat, Honorary Secretary, Delhi High Court Bar Association suggest that the guidelines be laid down with respect to the principles for lifting of corporate veil. Let the note of submissions be submitted in this regard which shall be considered on the next date of hearing.

5. Mr. Muneesh Malhotra, Advocate submits that the guidelines laid down by this Court are very comprehensive and does not leave any scope for dishonest litigant to defeat the execution proceedings. He however, submits that Section 165 of the Indian Evidence Act cannot be invoked by the Execution Court. He submits that Section 165 of the Indian Evidence Act can only be invoked during trial. This Court finds this argument highly irresponsible. Reference is made to the judgments on the scope of Section 165 of Evidence Act cited in the judgment dated 05th December, 2019. The argument is, therefore, rejected

6. Mr. Muneesh Malhotra, Advocate further submits that it is not appropriate for the Court to direct the judgment debtor to disclose his assets in the first instance as the onus is on the decree holder to trace out the assets and judgment debtor has right to remain silent. Mr. Sanjiv Kakra, the learned amicus curiae and Mr. Abhijat, Honorary Secretary, Delhi High Court Bar Association strongly oppose this submission as fallacious. This Court fails to understand the spirit behind these submissions which are hereby rejected.

7. The Trial Courts have sent the reports in terms of the judgment dated 05th December, 2019 which shall be considered on the next date of hearing.

8. List on 13th March, 2020.

I.A. 193/2020

9. Issue notice. Learned counsel for the judgment debtor No.4 accepts

notice. Let the reply to the application be filed within two weeks.

10. The decree holder has also served the interrogatories on the judgment debtors. Let the reply to the interrogatories be also filed within two weeks.

11. Both the parties shall file brief note of submissions not exceeding three pages along with copies of the relevant documents/judgments on which they wish to rely with relevant portions duly highlighted for the convenience of this Court before the next date of hearing.

12. The judgment debtors shall remain present in Court on the next date of hearing.

13. Copy of this order be given *dasti* to counsel for the parties as well as to Mr. Sanjiv Kakra, Advocate as amicus curiae, Mr. Abhijat, Secretary, DHCBA, Mr. Percival Billimoria, Advocate, Mr. Muneesh Malhotra, Advocate under signatures of the Court Master.

J.R. MIDHA, J.

FEBRUARY 11, 2020

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