



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

**COMMERCIAL CHAMBER SUMMONS NO. 104 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION (L) NO. 209 OF 2018**

L & T Finance Ltd. ... Applicant/Orig. Plaintiff
Versus
Cedar Infonet Pvt. Ltd. & Ors. ... Defendants

Ms. S.I. Joshi a/w Ms. Nikita Pawar i/b S.I. Joshi & Co. for the Applicant.
Ms. Krushi Barfiwala a/w Ms. Warisha Parkar i/b Parinam Law Associates
for Defendant No.1.

CORAM : R.I. CHAGLA, J.

DATED : 3rd JANUARY, 2020.

P.C. :

1 This Chamber Summons has been filed in the Execution Application which has sought execution of the award dated 27.04.2016 whereby Defendant No.1 has been directed to pay to the Plaintiff a sum of Rs.19,12,71,893.08 comprising of amount of outstanding installments, overdue interest, costs of arbitration with further interest on Rs.11,47,29,383.66 @15.5% p.a. from 11.01.2018 till the payment and/or

realization. The learned Counsel for the Applicant has in the present Chamber Summons sought relief including disclosure of the particulars of properties of the Defendant No.1 as well as consequential relief.

2 The learned Counsel for the Defendants has taken a preliminary objection to the maintainability of the Chamber Summons, qua the Defendants other than Defendant No.1 as the relief has been sought against all the Defendants despite the award having been passed by the Arbitral Tribunal only against Defendant No.1. The learned Counsel for the Defendants has also relied upon an order passed by the Company Law Tribunal, New Delhi Principal Bench, dated 19.09.2019 in the Petition which had been filed under Section 7 of Insolvency & Bankruptcy Code, 2016. By the said order, the Corporate Insolvency Resolution Process was permitted to be withdrawn by the Company Law Tribunal upon the details of the financial and other assets of the Defendant No.1 having been disclosed by the Applicant. She has accordingly submitted that since there has already been a disclosure of the details of financials and other assets, this Chamber Summons for disclosure is also not maintainable.

3 The learned Counsel for the Applicant has submitted that the order passed by the Company Law Tribunal is in a separate proceeding under the Insolvency & Bankruptcy Code, 2016 and considering that the

Corporate Insolvency Resolution Process has been permitted to be withdrawn by the National Company Law Tribunal, there is no moratorium with regard to the Execution Application which has been filed in this Court. Accordingly, she has sought the relief in the Chamber Summons.

4 Considering that the Chamber Summons has been taken out in the Execution Application and in particular prayer clauses (b) and (g) which have been sought for by the Applicant at this stage, it would be appropriate for the Defendant No.1 to file its affidavit of disclosure disclosing the particulars of its properties and assets. Particularly, considering that the award had been passed by the Arbitral Tribunal on 27.04.2016 against Defendant No.1. From the award it is apparent that the Defendant No.1 has been made liable to the Applicant for the sums awarded. Further the award in paragraph 25 has recorded that Respondent No.2 is a Pledgor and Respondent No.3 is a Director and as such cannot be made liable for the dues of the Respondent No.1/Defendant No.1 under the award. There is, therefore, substance in the preliminary objection raised by the learned Counsel for the Defendants. It would therefore, be appropriate that the relief sought for in the Chamber Summons is directed only against Defendant No.1 as well as disclosure of the properties sought for shall be the disclosure of properties of Defendant No.1 and not of the other Defendants. The Applicant is permitted to carry

out necessary amendment to the Chamber Summons and affidavit in support within a period of one week from the date of this order. Re-verification of the Chamber Summons is dispensed with.

5 The Defendant No.1 shall file the affidavit in reply to the Chamber Summons disclosing the details of financials and other assets as disclosed in the proceedings before the NCLT and which has been recorded in the order dated 19.09.2019 passed by the National Company Law Tribunal. The said affidavit in reply to the Chamber Summons shall be filed within a period of three weeks from being served with the amended Chamber Summons.

6 The Chamber Summons be placed on 07.02.2020.

(R.I. CHAGLA, J.)