

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2780 OF 2016
IN
WRIT PETITION NO.11356 OF 2016**

M/s. Fashion Lifestyle (India) Pvt. Ltd.

**..Applicant
(Original Respondent)**

IN THE MATTER BETWEEN

**Maharashtra State Electricity Distribution
Company Limited**

..Petitioner

Versus

M/s. Fashion Lifestyle (India) Pvt. Ltd.

..Respondent

**Mr. Sandesh Shukla a/w Mr. Amit Singh i/by Abhay Nevagi &
Associates for the Applicant/original Respondent.**

**Mr. Nivav Shah a/w Mr. Anuj Jaiswal i/by Little & Co., for the
Petitioner.**

CORAM : R. M. SAVANT, J.

DATE : 17th JANUARY, 2017

PC.

1 The above Civil Application has been filed by the Applicant/
original Respondent No.1 for the following relief :-

“a. allow the present civil application and permit the
Applicant to withdraw the amount of Rs.2,67,31,105/-
deposited by the Petitioner in pursuance to order dated
September 30, 2016 of this Hon'ble High Court in the
above writ petition;”

The said amount has been deposited by the Applicant as and by way of a
pre-deposit under Section 127 of the Electricity Act, 2003, to maintain

the Appeal filed against the order passed under Section 126 of the Electricity Act, 2003. In the said Appeal, the Applicant has succeeded before the Appellate Authority and the demand on the basis of the order passed under Section 126 of the Electricity Act, 2003, has been set aside by the Appellate Authority by the order impugned in the above Petition. In support of the aforesaid prayer, reliance is placed on the order of the Apex Court dated 12.01.2015 passed in *Special Leave to Appeal No.34247 of 204* in the matter of *M/s Reliable Space Pvt. Ltd. Vs. Maharashtra State Electricity Distribution Co. Ltd.* and the order passed by this Court (R. M. Savant, J) in *Civil Application No.801 of 2015 in Writ Petition No.8453 of 2013* in the matter of *Maharashtra State Electricity Distribution Company Ltd. Vs. Kalpataru Retain Ventures Pvt. Ltd. and another.*

2 In so far as the order of the Apex Court is concerned, the said SLP had arisen out of the order dated 30.01.2014 passed by a Learned Single Judge of this Court, by which order, the pre-deposit of Rs.2,86,00,0000/- was permitted to be withdrawn albeit on furnishing of a Bank Guarantee by the Applicant therein. The Applicant therefore approached the Apex Court challenging the said condition. The Apex Court by its order dated 12.01.2015 has set aside the said condition imposed by the Learned Single Judge. However prior thereto the Apex

Court has made the following observation :-

“In our opinion, the High Court was not justified in directing the appellant to furnish the bank guarantee of any nationalized bank to the tune of Rs.42 crores subject to the satisfaction of the Registrar, particularly when the appellant has succeeded before the appellate authority and the said amount of Rs.46 crores was deposited as required under the Statute to maintain the appeal.”

3 It is relying upon the said order dated 12.01.2015 that Civil Application No.801 of 2015 came to be filed by one Kalpataru Retail Venture Pvt. Ltd. in the said Writ Petition No.8453 of 2013, wherein it was prayed by the Applicant/original Respondent that refund of the pre-deposit made by it before the Appellate Authority be granted. This Court by order dated 23.06.2015 had allowed the said Civil Application relying upon the order passed by the Apex Court. This Court had further stayed the said order for a period of four weeks so as to enable MSEDCL to approach the Apex Court. However the Learned Counsel appearing on behalf of the MSEDCL Mr. Nirav Shah on instructions states that no SLP as yet has been filed against the order dated 23.06.2015.

4 The Learned Counsel Mr. Nirav Shah further relies upon the order dated 16.03.2016 passed by a Division Bench of this Court in Civil Application No.106 of 2016 in Writ Petition No.5398 of 2015 to contend that the relief by the Applicant in the instant Civil Application cannot be

granted. The relief sought in the Civil Application No.106 of 2016 is the relief that the MSEDCL be directed to deposit a sum of Rs.158,38,79,803/- and that the Applicant be permitted to withdraw the said amount on furnishing a Bank Guarantee. In view of the fact that the order passed by the Appellate Authority had been stayed by the Division Bench that the Division Bench refused to accede to the request of the Applicant therein. In the instant case, as indicated above, there is already an order passed by the Apex Court dated 12.01.2015 allowing the withdrawal without Bank Guarantee also an order passed by this Court, both the orders are in identical fact situation.

5 In my view, therefore the Civil Application is required to be allowed and is accordingly allowed in terms of prayer clause (a). However the Applicant would be permitted to withdraw the said amount deposited in this Court on furnishing an undertaking to this Court to the effect that in the event MSEDCL succeeds, it would redeposit the said amount as would be directed by this Court at the final hearing. Undertaking to be filed within two weeks from date. The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]