

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 11655 OF 2025**

Maharashtra State Power Loom Corporation  
Through Its Managing Director

..Petitioner

**Versus**

Kontak Comforts Pvt Ltd

...Respondent

Mr. Nishigandh Patil, for the Petitioner.

Mr. Suresh Dhole, with Anuja Dhole/Trilokekar, Pushpa Shinde and  
Pravin Menghane, for the Respondent.

**CORAM: N. J. JAMADAR, J.**

**DATED : 20<sup>th</sup> SEPTEMBER 2025**

**ORAL ORDER:**

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 3<sup>rd</sup> May 2025 passed by the learned Civil Judge, Belapur, in Arbitration R.D. No. 517 of 2023, whereby the learned Civil Judge declined to certify the payment of Rs.77,03,791/- made by the Petitioner-Judgment Debtor under the provisions of Order XXI Rule 1(1)(b) and Rule 2(2) of the Code of Civil Procedure, 1908 ("the Code").
3. The execution proceeding was initiated by the Respondent for execution of the award passed by the MSEFC Council, Nashik, in a reference under Section 18 of the Micro, Small and Medium Enterprises (MSME) Development Act, 2006 ("the Act, 2006").

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4. On 8<sup>th</sup> August 2024, during the pendency of the said Execution Petition No. 703 of 2020, the Judgment Debtor credited a sum of Rs.77,03,791/-, by way of RTGS to the account of Respondent No.1-Decree Holder.

5. It is pertinent to note that there is no dispute about the fact that the aforesaid amount came to be credited to the account of the Respondent No.1-Decree Holder.

6. The Judgment Debtor, thereafter, preferred an Application seeking adjustment of the said payment towards the amount covered by the Award. The said Application was resisted by the Respondent-Decree Holder.

7. By the impugned order, the learned Civil Judge was persuaded to reject the Application observing *inter alia* that it was the contention of the Respondent-Decree Holder that the said amount was credited towards the payment of GST and the said contention was not denied by the Judgment Debtor. Moreover, the said payment was without the concurrence of the Decree Holder and sans the permission of the Court. Therefore, the prayer for adjustment of the amount was untenable.

8. Mr. Patil, the learned Counsel for the Petitioner, submitted that the learned Civil Judge lost sight of the provisions contained in Order XXI Rule 1 (1)(b) of the Code which enables the Judgment Debtor to pay the amount out of the Court to the Decree Holder by postal Money

Order or through a bank or by any other mode of payment which is evidenced by a writing. It was, therefore, not incumbent upon the Judgment Debtor to either seek the concurrence of the Decree Holder or obtain prior permission of the executing Court before making the said payment. If the provisions contained in Order XXI Rule 1(1)(b) are read in conjunction with the provisions contained in Order XXI Rule 2(2), it becomes clear that the learned Civil Judge was not justified in declining to certify the payment out of the Court, submitted Mr. Patil.

9. In opposition to this, Mr. Dhole, the learned Counsel for the Respondent, would urge that though the factum of payment of the aforesaid amount by the Petitioner-Judgment Debtor to the Respondent-Decree Holder, is not disputed, yet, the question towards which component of the decretal amount the aforesaid amount would be appropriated, warrants consideration.

10. An effort was made by the learned Counsel for the Respondent to draw home the point that the amount cannot be adjusted against the principal component of the award, as was sought to be canvassed on behalf of the Petitioner. To lend support to this submission, the learned Counsel for the Respondent placed reliance on the judgment of the Supreme Court in the case of **Bharat Heavy Electricals Ltd Vs R.S. Avtar Singh & Co.**<sup>1</sup>

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1 AIR 2013 SC 252.

**11.** The controversy is required to be approached in two parts. First, whether the learned Civil Judge was justified in declining to certify the payment of the aforesaid amount towards the satisfaction of the Award. Second, if not, the component towards which the said amount should be appropriated?

**12.** On the first count, recourse to the provisions contained in Order XXI Rule 1 becomes necessary. Under Clause (b) of Order XXI Rule 1(1) of the Code, Judgment Debtor is entitled to make payment to the Decree Holder, out of the Court, by any of the prescribed modes or in any manner which evidences the payment. Sub-Rule (2) of Rule (1) of Order XXI makes it clear that only where the payment is made under Clause (a) or Clause (c) of Sub Rule (1), the Judgment Debtor shall give notice thereof to the Decree Holder either through the Court or directly to the Decree Holder by registered post, acknowledgment due. For making payment, out of the Court, under Clause (b) notice to the Decree Holder is not warranted. Nor the permission of the Court is peremptory. Therefore, the learned Civil Judge, misdirected himself in declining to certify the payment on the ground that before making the payment the concurrence of the Decree Holder was not sought or the permission of the Court was not obtained.

13. Under Rule 2(2) of Order XXI of the Code, if the Decree Holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court is empowered to record the same.

14. In the case at hand, it is indubitable that the payment was made during the pendency of the execution proceedings. It could not be demonstrated that there was another transaction between the parties towards which such payment was made. In this view of the matter, the executing Court was in error in declining to certify the payment under Rule 2(2) of Order XXI of the Code.

15. On the aspect of the appropriation of the said payment, it does not appear that the Petitioner-Judgment Debtor has made the appropriation of said payment to a particular component of the award/decretal debt. In the absence thereof and in view of the fact that, the said payment of Rs. 77,03,991/- was only a part of the decretal debt, the legal position expounded by the Supreme Court in the case of **Bharat Heavy Electricals Ltd (Supra)** governs the case at hand. In paragraph 24, Clause (c), the Supreme Court has enunciated the manner in which the appropriation of payment in such a situation, where the payment made by the Judgment Debtor falls short of the decretal debt, is to be made, as under:

“24. From what has been stated in the said decision, the following principles emerge:

a) ... ..

b) ... ..

c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.

16. In view of the aforesaid position in law, the impugned order deserves to be quashed and set aside. However, it is necessary to clarify that the payment of the aforesaid amount of Rs. 77,03,991/- shall be adjusted against the total decretal debt in terms of the award passed by the MSEFC Council in Petition No. 703 of 2020.

17. Hence the following order:

**: O R D E R :**

(i) Petition stands allowed.

(ii) The impugned order stands quashed and set aside.

(iii) The payment of the sum of Rs.77,03,991/- shall be adjusted against the total decretal debt as it obtained on the date of the payment.

(iv) All contentions of the parties as regards the quantum of the decretal debt and the statutory deposit of 75% of the amount to

be made by the Judgment Debtor to challenge the said award, under the provisions of Section 19 of the Act 2006, before the Court, are kept open for consideration by the appropriate Court.

[N. J. JAMADAR, J.]