

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 17938 OF 2025

Hella Infra Market Metal Private Limited

...Petitioner

Versus

Pushkaraj Ispat (India) LLP

...Respondent

Mr. Aditiya Trivedi *i/b Induslaw for the Petitioner.***Mr. Chaitanya Nikate** *a/w Nilesh Tribhuvann, Burzin Bharucha, Ruchi Pawar, i/b White & Brief Advocates & Solicitors, for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.**DATE: APRIL 16, 2026****JUDGEMENT:****Context and Factual Background:**

1. This is a Petition under Section 37 of the Arbitration and Conciliation Act, 1996 (“***the Act***”), impugning an order dated April 30, 2025 (“***Impugned Order***”), passed under Section 17 of the Act.

2. The factual matrix relevant of this Petition may be summarised thus:

A] The Petitioner, Hella Infra Market Metal Pvt. Ltd. (“***Hella***”) and the Respondent, Pushkaraj Ispat (India) LLP (“***Pushkaraj***”) executed

an Operating License Agreement dated September 11, 2023 (“**Agreement**”), under which certain industrial sheds, office space and plant and machinery stationed therein in Ahmednagar (“**Licensed Property**”) were licensed by Pushkaraj to Hella;

B] Hella was entitled to operate and use the Licensed Property for five years until September 2028, taking it on an “as-is-where-is” basis, and using its own labour, raw material, water, electricity, etc. Hella would pay for electricity usage even while applications for transfer of electricity connection to its name were pending. The parties contracted a lock-in period of three years, Hella was to pay a Security Deposit of Rs. 3 crores and a monthly license fee of Rs. 30 lakhs;

C] Upon termination, the Licensed Property and the Security Deposit would be exchanged and any delay in refund of Security Deposit would attract interest at 18% per annum;

D] Pushkaraj filed the Section 17 Application seeking protective measures pending arbitration. The Learned Arbitral Tribunal has directed that the Licensed Property be handed over within six weeks (during the pendency of this Petition, the parties have agreed to implement this relief), with an undertaking that Pushkaraj would refund the Security Deposit along with interest depending on the outcome of the arbitration proceedings. A mandatory injunction against creating any third-party rights on the Licensed Property was

issued to Hella, coupled with a direction to deposit a sum of Rs. 5.31 crores towards half the license fees for early termination. Finally, the Impugned Order also directs Hella to pay a sum of Rs. ~2.71 crores towards electricity charges within two weeks and a sum of Rs. ~73.48 lakhs to the distribution company that supplied electricity. Certain disclosures were directed against each party.

Hella's Contentions:

3. Hella's grounds for challenging the Impugned Order is based on two foundational contentions:

A] The Impugned Order constitutes a final award without any direction to refund the Security Deposit; and

B] Electricity charges and license fees were directed to be paid without considering the submissions of Hella, thereby granting final relief at the interim stage;

4. Hella would contend that it was constrained to terminate the Agreement on March 18, 2024, which it was entitled to do in the event of a material breach by Pushkaraj, even during the lock-in period. Upon such termination, the exchange of the Licensed Property with the Security Deposit was to implemented. Hella would contend that Pushkaraj stopped Hella's trucks from leaving the premises, interfering with dispatch and delivery of goods to the Licensed Property. Electricity dues as of January 31, 2024, and

license fees as of February 29, 2024, are claimed to have been paid. In April, when Hella demanded a swap of the Licensed Property for the Security Deposit, Pushkaraj contended that the termination was illegal in view of the lock-in period and that the license fee for the remainder of the lock-in period was due.

5. On the electricity charges, Hella would contend that it has provided a detailed working to show that the principal amount of electricity charges is Rs. ~1.92 crores while arrears and interest towards electricity is Rs. ~7.54 crores. Hella would contend that there has been an ongoing past dispute between the electricity distribution company and Pushkaraj, and these were the subject matter of the Consumer Grievance Redressal Forum created under electricity laws.

6. Hella would also contend that the license fees for September 2023 to December 2023 had been waived by Pushkaraj's letter dated October 5, 2023, and license fees for January 2025 had been waived by letter dated March 4, 2024.

Pushkaraj's Contentions:

7. Pushkaraj would contend that the termination of the Agreement by Hella is not in dispute. Upon termination, the Licensed Property ought to have been handed over. The parties were conscious that the plant and machinery forming part of the Licensed Property were encumbered in favour

of a bank, and the parties even executed a tripartite agreement whereby the license fees payable by Hella were to be deposited with the lender for appropriation towards servicing of the loan. The value of the land, plant and machinery is contended to be of a value of about Rs. ~80 crores at the least, and it is stated that such property is unproductive, with the dispute between the parties rendering it impossible to put them to economic use.

8. Pushkaraj would also contend that Hella raised the contention about the need to be given the Security Deposit back as an afterthought, since in its earlier correspondence between April 2024 and September 2024, Hella had always committed to handing over the Licensed Property after which the Security Deposit may be refunded. In May 2024, Hella threatened to remove security arrangements and called upon Pushkaraj to take over the Licensed Property, conscious that there are obligations owed that are of a scale larger than the Security Deposit. In December 2024, Hella even agreed to hand over possession and then deferred it, citing personal difficulties.

9. According to Pushkaraj, since the electricity supply has been cut off for non-payment, the plant and machinery are lying idle without constructive exploitation. As maintenance of the property is not possible without electricity, the Learned Arbitral Tribunal's arrangement is a reasonable protective package that cannot be regarded as perverse. The precise amount to be refunded is a matter for trial, Pushkaraj would contend, and therefore, the view adopted by the Learned Arbitral Tribunal is well-

thought-through, with only crystallised amounts having been directed to be paid over. Contractually, Hella is obliged to pay for the electricity consumed, and to pay half the license fees for the lock-in period. There are only minor differences in the monthly electricity bill amounts claimed, and in April 2024, Hella asked Pushkaraj to pay for electricity and absorb from the Security Deposit; even after that, there are dues owed by Hella.

10. The hindrance to the delivery and dispatch of goods is also stoutly denied by Pushkaraj. Non-payment of dues by Hella to labour led to unrest, and it is contended that strong-arm tactics were deployed against the labour leading to an escalation. On March 2, 2024, it was confirmed by Pushkaraj that there was a stoppage of vehicular traffic because of complaints allegedly made by Hella, through related parties, to the pollution control authorities; and it is clarified that on the same day, the matter was resolved and thereafter, Hella continued to use the Licensed Property right until March 18, 2024.

Analysis and Findings:

11. Having heard Mr. Karl Tamboly, Learned Advocate on behalf of Hella and Mr. Ashish Kamat, Learned Senior Advocate on behalf of Pushkaraj, and with their assistance, I have examined the material on record relied upon by them and the analysis by the Learned Arbitral Tribunal in the Impugned Order. It is evident that Hella raised a jurisdictional objection in the arbitral proceedings and this was repelled, among others, on the basis of the facts in hand being out of the purview of rent control laws and provisions governing

setting up of small cause courts. I find no fault with the findings. In any case, Mr. Tamboly has not pressed the jurisdictional objection in these proceedings. Therefore, the grounds pressed into service and summarised above are alone being dealt with.

12. The first issue to consider is whether the Impugned Order can be said to take the character of a final award in the garb of an interim order granting interlocutory protection. The Learned Arbitral Tribunal has noticed that the Licensed Property, including the plant and machinery, was lying unutilised, and owing to non-payment of electricity charges, exploitation of the same was also being frustrated. Therefore, the Learned Arbitral Tribunal analysed what would be a protective measure for the subject matter of the arbitration agreement and went on to examine the terms of the Agreement.

13. Interpreting Clause 3.6 of the Agreement, the Learned Arbitral Tribunal found that the refund of the Security Deposit was contractually agreed to be subject to deductions for amounts owed. A plain reading of Clause 3.6 would show that the reading of the provision by the Learned Arbitral Tribunal is not just reasonable and plausible, but it is an accurate reading. The parties had indeed contracted that in the event of an earlier termination of the Agreement, the refund of the Security Deposit would be subject to deduction of any amounts owed. Therefore, the core question to consider is whether the Learned Arbitral Tribunal has taken a perverse view

on what is crystallised as being owed by Hella to Pushkaraj for any deductions to be assessed from the Security Deposit.

14. Towards this end, the Learned Arbitral Tribunal was guided by Clause 1.4 and Clause 11.3 of the Agreement, which provided for Hella paying for the electricity consumed, at actuals even before the meter was formally changed to Hella's name, and thereafter, a sum of Rs. ~2.71 crores was admitted as being payable to Pushkaraj towards electricity used by Hella but paid by Pushkaraj. Another sum of Rs. ~73.48 lakhs was also admitted as payable towards the electricity used. Electricity consumed at the premises was exclusively used by Hella and the Learned Arbitral Tribunal found this to be a crystallised and clear liability owed, which could be set off against the Security Deposit. Clause 3.6 indeed provided for a deduction of amounts owed, from the Security Deposit. Clause 15.1 provided for half the license fee for the lock-in period being payable if the Agreement was sought to be terminated during the lock-in period.

15. Clearly, the parties have agreed on a soft lock-in period, where the Agreement could be terminated even during the lock-in period but half the license fee for the residual period would be payable by the party terminating the Agreement. This is a provision to enable crystallisation of what is payable in the event of such termination. Therefore, the Learned Arbitral Tribunal applied its reading of these provisions to arrive at the license fee payable for the residual period by Hella, which terminated the Agreement. The admitted

amounts towards electricity were also factored in. Thereby, the Learned Arbitral Tribunal arrived at what could be directed to be paid as a protective measure.

16. Indeed, the Learned Arbitral Tribunal could have asked for these amounts to be deposited instead of being paid over. That would be a plausible measure. However, the test under Section 37 is to see whether the measure adopted by the Learned Arbitral Tribunal is a plausible and reasonable one. If found to be so, it is not for the Section 37 Court to substitute one plausible view with another view that may appear more plausible.

17. Clause 15.3 of the Agreement provides for surrender of the premises, the right to remove the material kept on the Licensed Property, and the obligation to pay all outstanding dues. It is against these actions that the Security Deposit is required to be refunded. It is only if the Security Deposit is not refunded despite the surrender of the Licensed Property that Hella would be entitled to continue to use the Licensed Property without any payment, and also claim 18% interest on the Security Deposit.

18. Indeed, there is an entitlement to terminate the Agreement in the event of a material breach. Whether there has been a material breach is a matter of evidence to be led and assessed by the Learned Arbitral Tribunal. On the face of it, there has not only been a termination but also a proposed surrender of the Licensed Property proposed by Hella before it actually terminated the Agreement. There is an intense conflict on Pushkaraj having

stalled access to the Licensed Property on the ground that Hella had made related parties complain to the pollution control authorities. Equally, there is an apparent default in payment of dues admittedly owed for usage of electricity.

19. Therefore, when one looks at the Impugned Order, in my opinion, the Learned Arbitral Tribunal having examined the material on record and the conduct of the parties, has come to a reasonable view by factoring in only the crystallised amounts of license fees contracted and the admitted electricity consumption, and has applied the binding terms of contract between the parties to the factual matrix at hand. The electricity amounts claimed by the electricity distributor are far in excess of what Hella has been directed to pay. The Learned Arbitral Tribunal has taken care to ensure that the amounts directed to be paid are restricted to the usage by Hella.

20. I also note that the Learned Arbitral Tribunal has used the term “deposit with” for the amounts payable by Hella to Pushkaraj towards half the license fee payable, and the term “pay to” in relation to amounts payable to Pushkaraj towards electricity consumption and to the electricity distributor. This would indicate that the Learned Arbitral Tribunal has meant to keep the amount towards half the license fee as a deposit to be held by Pushkaraj to abide by the outcome in the arbitration, while for electricity payments, the amounts are meant to be paid since they have been incurred out of pocket. The rest of the measures sought by Pushkaraj have been rejected. The

Learned Arbitral Tribunal has ruled that it would examine evidence on the other claims and counterclaims.

21. The approach of the Learned Arbitral Tribunal is consistent with the Agreement. I am not satisfied that the direction to *deposit* and the direction to *pay* are perverse, since they are consistent with what the parties had agreed. Being a first appeal, I have also examined the material on record pressed into consideration by both sides and indeed there are various points presented by the parties for consideration by the Learned Arbitral Tribunal. The Impugned Order is restricted to the two crystallised and discernible amounts contractually committed as being payable. These amounts are in excess of the Security Deposit. Taking the electricity payments alone, the amounts are nearly equal to the Security Deposit. The amount equal to half the license fee for the residual lock-in period is far in excess of the Security Deposit. This amount is required to be deposited with Pushkaraj.

22. Whether the past electricity dues were the cause of electricity supply disruption or whether Hella's non-payment led to the same can be considered by the Learned Arbitral Tribunal at a later stage. The Impugned Order does not articulate how the deposit of half the license fee amount towards the residual lock-in period is to be maintained.

23. It is well-settled law that an appeal is to be regarded as a continuation of the original proceeding, and unless there is a statutory requirement to the contrary, the powers of the appellate forum are co-

extensive with the powers of the forum whose adjudication is under appeal¹. Therefore, considering that the amount of the license fee is directed to be deposited with Pushkaraj while the amounts towards electricity are directed to be paid, it is directed that Pushkaraj shall create a fixed deposit in the sum of Rs. 5.31 crores and mark a lien in favour of Hella and keep the deposit active without disturbance; such deposit shall abide by the outcome of the arbitration proceedings. This is the extent of intervention that I think is necessary with the Impugned Order, and such intervention is necessary to make the Impugned Order workable and meaningful to also sustain it, which I think is otherwise sustainable as a reasonable framework of interim protection and not in the nature of a final award.

24. The Learned Arbitral Tribunal's reliance on the law, now clearly declared on the scope of power under Section 17 of the Act as a protective interlocutory measure, cannot be faulted. In cases where there is practically no defence to the payability of an amount, if it is in the interest of justice to secure the amount which forms the subject matter of the arbitration agreement, it is certainly within the power of the Arbitral Tribunal to order suitable interim measures for its protection – a position in law supported by numerous judgements including ***Jagdish Ahuja***²; ***Valentine Maritime***³; ***Essar***

1 *Jute Corporation of India Ltd. Vs. CIT – 1991 Supp 2 SCC 744*

2 *Jagdish Ahuja v Cupino Limited, (2020) 4 Bom CR 1,*

3 *Valentine Maritime Ltd . v . Kruez Subsea Pte Limited, 2021 SCC OnLine Bom 75*

*House*⁴; *Kotak Mahindra*⁵; *Ultra Deep Subsea*⁶; and *J. P . Parekh*⁷. In *Essar House*, the Supreme Court has noticed and endorsed *Jagdish Ahuja* and *Valentine Maritime*.

25. In view of the Supreme Court decision in *Sanghi*⁸, there is often considerable debate in many a Section 37 proceedings about whether *Essar House* and *Sanghi* present conflicting positions or whether it is possible to reconcile the same, and indeed whether *Sanghi* was rendered without reference to *Essar House*. In *Sanghi*, a need to demonstrate a threat to the amount involved is indicated as being necessary, while in *Essar House*, it would appear that a crystallised amount being payable is permitted to be secured in exercise of powers under Section 17 of the Act.

26. In my opinion, the observations in each of *Essar House* as well as *Sanghi* cannot be read in isolation, without regard to the factual matrix in each case and the analysis contained in them, coupled with the risk perception discernible from them in exercise of the Section 17 jurisdiction. The abiding theme across this range of decisions is to consider whether the factual matrix before the Section 9 Court or, as the case may be, the Arbitral Tribunal under Section 17, presented a situation where the subject matter of the Arbitration Agreement was under threat, and what appropriate protective measures such

4 *Essar House Private Limited v . Arcellor Mittal Nippon Steel India Limited*, 2022 SCC OnLine SC 1219

5 *Kotak Mahindra Bank Ltd v . Williamson Magor & Co Ltd.*, 2021 SCC OnLine Bom 305

6 *Ultra Deep Subsea Pte Ltd v . Hindustan Oil Exploration Company Ltd.*, 2021 SCC OnLine Bom 5481

7 *J. P . Parekh v Naseem Qureshi*, 2022 SCC OnLine Bom 6716

8 *Sanghi Industries Ltd. Vs. Ravin Cable Ltd.*, 2022 SCC OnLine SC 1329

a forum would consider necessary, being the master of the evidence and having conducted its review of the same.

27. The admitted defaults in payment of electricity are clearly discernible. Without payment for electricity, it would not be possible even to maintain the plant and machinery taken on license, which would lead them to diminish in value. The protective measure of paying over the amounts towards electricity dues is defensible from this perspective.

28. Whether there was a material breach warranting an earlier termination, and whether the soft lock-in period and the obligation to pay half the amount of the license fee for the residual lock-in period are overtaken by such a claim of material breach, can also be considered at a later stage. At this stage, the amount due towards the residual lock-in is directed to be deposited, and I have made a marginal intervention on how such a deposit should be maintained, and this would sustain an otherwise reasonable and defensible Impugned Order. Pushkaraj too has not challenged the Impugned Order on the distinction between the direction to deposit and the direction to pay over, the respective amounts. Its written submissions too stick to this differentiation in characterisation.

29. Therefore, in my opinion, with my intervention on maintenance of the amount of half the license fee for the residual lock-in period in a fixed deposit with a lien being marked in favour of Hella, the Impugned Order could never partake the character of a final award at an interlocutory stage. I see no

reason to set it aside as perverse, and even the element that is missing has been addressed by me in the appellate jurisdiction under Section 37 of the Act read with Section 17 of the Act.

30. Therefore, the Petition is ***finally disposed of*** in the aforesaid terms, with the Impugned Order being modified marginally with the aforesaid direction on maintenance of a fixed deposit. No other intervention is necessary.

31. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]