

IN THE COURT OF THE DISTRICT JUDGE, PALAKKAD
Present: Sri. K.P.Thankachan., III Additional District Judge

Tuesday the 25th day of February, 2025
(6th day of Phalguna, 1946 S.E)

EXECUTION PETITION No. 516/2023
MSEFC/CR/01/2012

Petitioner/Decree Holder:

S.J. Equipments, Flate No. 1, Shakthi Flats, 65, Kamaraj, Salai,
Virugambakkam, Chennai 600092. Rep. by A. Sri Sarann, Partner, aged 59
years.

By Advocate: Sri. Adarsh. K.V.

Vs.

Respondent/Judgment Debtor:

DRM/Works/PGT, Works Branch Divisional Office, Southern Railways,
Palakkad – 678002.

By Advocate : Sri. V.V. Girish.

This Execution petition having come up for hearing on 25-02-2025 and this court on the same day passed the following :-

ORDER

This is an execution petition filed by the decree holder with the prayer for realisation of the decree amount by the attachment and sale of movable and immovable properties belongs to the judgment debtor.

2. In the Execution Petition it is stated that, as per Order dated 4-12-2012, MICRO SMALL ENTERPRISES FACILITATION COUNCIL, CHENNAI REGION (MSEFC) allowed the Decree Holder (DH) to realise ₹10,96,250/- together with compounded interest from the Judgment Debtor (JD). The JD subsequently

made part payments and the DH is entitled to realise the balance amount of ₹2,31,62,764.43/- due from the JD as on 31-05-2023 with future penal compound interest. The DH is therefore, entitled to realise the above amount with interest and cost from the JD.

3. The JD entered appearance and filed counter statement with the following contentions :- The MSEFC ordered to pay an amount of ₹10,96,250/- together with compound interest with monthly rest, at three times of the Bank rate notified by the Reserve Bank of India (RBI) as stipulated in Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006). JD challenged that order by filing OP No.506/2013 before the Hon'ble High Court of Madras but it was dismissed. The total amount payable by JD up to 22-04-2013 was ₹14,36,211/- and an amount of ₹10,77,158/- being 75% of the above amount was deposited as precondition for filing the above OP challenging the order of the MSEFC, Chennai. Thereafter, the JD had paid an amount of ₹12,63,287/- to the DH. Thus, the JD has discharged the decree debt and therefore, the DH is not entitled to recover any amount from the JD. The interest calculated by the DH is not correct. The interest to be calculated is three times of 5%, whereas the DH has calculated it as three times of 9% for the entire period regardless of the amount already paid. The DH is not liable to pay any amount as they had already discharged the decree debt. Hence, the JD prayed to dismiss the execution petition.

4. The point that would arise for determination is :-

Whether the DH's prayer for realisation of the decree amount by attachment and sale of movable and immovable properties of the JD is allowable?

5. Heard both sides. Perused the records. The Hon'ble High Court of Kerala as per judgment dated 20-01-2025 in OP(C) No.114/2025 directed this court to dispose of the execution petition as expeditiously as possible, within a period of two months from the date of receipt of a certified copy of the judgment.

6. **Point** :- The DH is M/s. S.J. Equipments, a firm in Chennai. The JD is DRM / Works, Southern Railway, Palakkad. The DH had provided purified drinking water to various railway stations through water treatment system in Palakkad Division and on account of that, payment was due to the DH, and to realise that amount DH made a reference under the MSMED Act, 2006 before the MSEFC, Chennai. MSEFC, Chennai, as per order / award dated 4-12-2012 allowed the DH to realise an amount of ₹10,96,250/- together with compounded interest with monthly rest, at three times of the bank rate notified by the RBI as stipulated in MSMED Act 2006 from appointed due dates (31-03-2011 to 30-06-2011) respectively till the date of settlement. The JD challenged the above order by filing OP No.506/2013 before the Hon'ble High Court of Madras but it was dismissed. Thereafter, the DH filed

the present execution petition for realisation of the decree amount by the attachment and sale of movable and immovable properties belongs to the JD which are scheduled in the execution petition. The JD pleaded discharge. The JD contended that as a precondition for filing OP No.506/2013 before the Hon'ble High Court of Madras challenging the order of the MSEFC, Chennai, they deposited ₹10,77,158/- being 75% of the award amount and subsequently they had paid ₹12,63,287/- to the DH and thereby discharged the decree debt. But in this regard, it is pertinent to note that the calculation statement of the DH would reveal that they have filed the execution petition for realisation of the balance amount after adjusting the payments made by the JD. In that circumstances, there is absolutely no merit in the contention of the JD that they have discharged the decree amount.

7. The JD further contended that the interest awarded is to be calculated at three times of 5% but the DH has calculated the interest at three times of 9% for the entire period and therefore, the amount sought to be realized in the execution petition is not correct. But in this regard, it is pertinent to note that as per order / award dated 4-12-2012 the DH was allowed to realise principal amount of ₹10,96,250/- together with compounded interest with monthly rest at three times of bank rate notified by the RBI as stipulated in MSMED Act, 2006 from the appointed due date i.e., from 31-03-2011 to 30-06-2011 till the date of settlement. It is pertinent to note that the actual RBI interest rate as per circular UBD BPD

(PCB) Cir. No.26/16.11.00/2011-12 dated March 7, 2012 as announced in the Monetary Policy Statement 2012-13 the interest rate is 9% w.e.f 17-04-2012 and therefore, while calculating the compounded interest as per the above RBI rate the interest will be 27% i.e., three times of interest @ 9%. The calculation statement produced as Annexure I & II in the execution petition would reveal that the compounded interest was calculated based on the RBI rate of interest as specified in the order / award of the MSEFC, Chennai. The Hon'ble High Court of Madras considered the dispute regarding the interest also, and dismissed OP No.506/2013. In that circumstances, the contention of the JD that the interest ought to have been calculated at three times of 5% is devoid of merits and it is only to be rejected.

8. The JD further contended that the order dated 04.12.2012 of the MSEFC Chennai is not an award under the Arbitration and Conciliation Act and therefore, this court has no jurisdiction to entertain the execution petition. But in this regard, it is pertinent to note that as per Sec.18(4) of the MSMED Act, 2006, the MSEFC has the jurisdiction to act as an Arbitrator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India, and the provisions of the Arbitration and Conciliation Act 1996 is applicable for such arbitration. In the present case the order / award dated 04.12.2012 passed by MSEFC Chennai as per Sec.18(4) of the Act is an Award within the meaning of the Arbitration & Conciliation Act, which can be executed before

this court as per Sec.36 of the Arbitration & Conciliation Act . It is also to be noted that in **Sundaram Finance Ltd. Vs. Abdul Samad, AIR 2018 SC 965**, the Hon'ble Supreme Court held that *"enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings"*. It is also to be noted that the JD challenged the order/ award by filing OP No.506/2013 u/s 34 of the Arbitration & Conciliation Act before the Hon'ble High Court of Madras, by considering the order as an award under the Arbitration & Conciliation Act. In the above circumstances, it can be concluded that the above contention of the JD is devoid of merits and it is liable to be dismissed.

9. The JD further contended that the Railway is owned by Union of India but Union of India is not made a party in the execution petition and therefore, the execution petition is not maintainable. But in this regard it is pertinent to note that the order of the MSEFC Chennai is against the JD only as JD was the only respondent in that proceedings. The JD had not made any contention before the MSEFC Chennai that Union of India is also a necessary party. The JD filed OP No.506/2013 before the Hon'ble Madras High Court challenging the above order but in that OP also JD has not made Union of India a party. In that circumstances, there is no merit in the above contention of the JD and it is only to be rejected.

10. In short the DH is entitled to realise the balance amount of ₹2,31,62,764.43/- from the JD as on 31-05-2023 with future penal compound interest. The DH had filed the execution petition as early as on 12-06-2023 but the JD has not so far paid any amount towards the above amount sought to be realised in the execution petition. In that circumstances, the prayer of the DH for realisation of the decree amount by attachment and sale of the properties of the JD is allowable.

11. The learned counsel for the DH at the time of hearing submitted that at present he is pressing only the prayer for realisation of the decree amount by attachment and sale of movable properties of the JD, scheduled in the petition.

12. The long and short of the above discussion is that at present the prayer for realization of the decree amount by the attachment and sale of movable properties of the JD is allowable.

In the result;

- 1) The prayer in the EP for realisation of the decree amount by attachment and sale of scheduled movable properties is hereby allowed.
- 2) The DH shall take steps for attachment of the scheduled movable properties within 2 days from today.

- 3) The Hon'ble High Court of Kerala as per judgment dated 20-01-2025 in OP(C) No.114/2025 has directed this court to dispose of the EP within 2 months. Therefore SHO Hemambika Nagar is hereby directed to assist the Amin to effect attachment of the scheduled movables to avoid delay by resistance,if any, in attachment of the movable properties.
- 4) The DH shall also assist the Amin for attachment of the scheduled movables belongs to the JD.
- 5) For taking steps by DH to 28.02-2025.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in the open court on this the 25th day of February, 2025.

Sd/-

III Addl. District Judge

Typed by :Rajagopalan G

Compared by: Sumaya Beegum

//True Carbon Copy//

Id/-

III Addl. District Judge

Fair / Copies of Order

EP No. 516/2023

Dated: 25-02-2025