IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1689 OF 2006

Tilaknagar Industries Ltd. ….. Plaintiff
V/s
Umesh Jyantilal Mehta & Ors. ….. Defendants

Mr. Luvkush Sharma i/b M/s. L.J. Law for Plaintiff.
None for Defendants.

CORAM : A.A. SAYED, J.
DATED : 5 MAY 2015

P.C.

1 This Suit is filed by the Plaintiff seeking the following relief:

> *"a) That this Hon'ble Court be pleased to pass an Order and Decree directing the Defendants or either of them to jointly and severally pay to the Plaintiff a sum of Rs.7,62,23,884/- as per particulars of claim Exhibit "L" hereto together with further interest on the principal amount of Rs.5,26,30,870/- @ 18% per annum from the date of the Suit till payment and/or realization thereof."*

2 One Tilaknagar Distilleries and Industries Limited (TDIL) was running a Glass Bottle Manufacturing Unit (hereinafter referred to as Tilaknagar Factory). On 4 April 1992, TDIL entered into an Agreement with one Ramnath Glass Containers Private Limited (RGCPL) whereby the Tilaknagar Factory was given on lease to RGCPL. RGCPL was to run the Tilaknagar Factory on behalf of the said TDIL for a period of 10 years

commencing from 20 March 1992 on terms and conditions more specifically set out in the Lease Agreement. By an order dated 16 July 1993 TDIL was amalgamated with one Maharashtra Sugar Mills Ltd. and the name of the said Maharashtra Sugar Mills Ltd. was changed to Tilaknagar Industries Ltd. (TIL), the present Plaintiff. Pursuant to the order dated 16 July 1993 all the assets, properties, rights and obligations, debts and liabilities of the TDIL including Tilaknagar Factory stood transferred and vested in TIL i.e. the Plaintiff.

3 It is the case of the Plaintiff that some time in April 2000, RGCPL came into financial difficulties due to which they were unable to manage the Tilaknagar Factory which they had taken on lease from the Plaintiff under the Lease Agreement dated 4 April 1992. According to the Plaintiff RGCPL through its Directors and Shareholders had executed a Memorandum of Understanding dated 18 April 2000 with the Defendant Nos.1 and 2 whereby Defendant Nos.1 and 2 agreed to undertake the management and running of the Tilaknagar Factory which was given on lease to RGCPL and which lease was to expire on 19 March 2002. RGCPL and Defendant Nos.1 and 2 accordingly approached the Plaintiff seeking their consent to run the said Tilaknagar Factory. On 11 May 2000 a Tripartite Agreement was entered into between the Plaintiff as Lessor, RGCPL as Lessee and the Defendant Nos.1 and 2 herein. According to the Plaintiff under the said Tripartite Agreement it was

agreed and confirmed that the Lease Agreement dated 4 April 1992 is valid and subsisting and binding upon all parties and all the terms and conditions contained in the Lease Agreement would form an integral part of the said Tripartite Agreement. The recitals of the said Tripartite Agreement interalia provide in paragraphs G, H, I and J as follows:

> *"G. On account of uneconomic working of the said Glass Bottle Unit, the Lessee hereinabove came into financial difficulties and are not in a position to run the said Unit any more for remaining period of the Lease and negotiated and finalised an arrangement with one Mr. Umesh J. Mehta to manage and run the said Glass Bottle Unit.*
>
> *H. By and under the Memorandum of Understanding dated 18th April 2000 reached between Shri Akhil Sitaram Savant & others, the Directors and Shareholders of the Lessee Company M/s. Ramnath Glass Containers Pvt. Ltd., of the one Part and Shri Umesh Jayantilal Mehata and Mrs. Hema Jayantilal Mehta of the other Part hereinafter referred to as the said "Savant" and the "Mehtas", the said Sawant & Mehtas have agreed in mutual interest that the day-to-day management and running of the Glass bottle manufacturing Unit under the lease dated 4/4/1992 be handed over by the said Savant to the said Mehtas and Mehtas have agreed to manage and run the said Glass Bottle manufacturing Unit for remaining period of lease i.e. two years from 1/4/2000 to 20th March 2002 on the terms and conditions contained in said MOU.*

I. To facilitate & to be effective the intent & purpose of the said MOU, the parties approached to the Lessor the Party of the First Part to grant its consent and No Objection to the arrangement arrived at by and between the said Sawant and Mehtas.

J. AND WHEREAS upon the request of the said Savant and Mehta the Lessor has agreed to grant its No Objection to the arrangement under MOU and continuation of the said Lease on condition that the parties hereto execute these presents in the manner hereafter appearing;"

4 Paras 2, 3, 4, 8, 10 and 11 of the Triparte Agreement read as follows:

"2 It is agreed and understood that the Lessor has No Objection to the arrangement concluded by the said Sawant and Mehtas for management and running of the Glass Bottle Unit of the Lessor for the remaining period of the lease i.e. from 1/4/2000 to 20th March 2002 and continuation of the said lease dated 4th April 1992.

3 The parties hereto further agree and confirm that the Indenture of lease dated 4th April 1992 between the Lessor and Lessee shall be an integral part of the MOU reached between the said Sawant and Mehtas.

4 The said Mehtas and Sawant agree and undertake that notwithstanding contained in the said memorandum of understanding dated 8th April 2000 the Shareholding pattern presently existing of Ramnath Glass Containers

Pvt. Ltd. will no longer be changed or altered during the subsistence of resudual period of lease without prior consent of the Lessor.

8 It is agreed that neither the said Sawant nor Mehtas shall mortgage, charge or pledge the glass bottle unit, the machinery and equipments owned by Lessor in the said unit to any party or institution or banks.

10 It is agreed and understood by and between the parties that the said Shri Mehta shall in order to have an optimum output and smooth running of the said Glass Bottle Unit shall infuse and provide adequate funds for working capital requirements from their own resources.

11 The said Mehtas hereby indemnify and keep indemnified the Lessor against all actions, losses, damages, charges that may be caused, suffered or incurred by Lessor for non observance or for non performance of the any of the conditions or terms agreed upon by these presents and also under the Lease Deed dated 4th April 1992."

5 According to the Plaintiff as the lease period as specified in the Lease Agreement dated 4 April 1992 was to expire on 19 March 2002, on the request of RGCPL the Plaintiff agreed to grant a further limited license for a period of 12 months to the said RGCPL and permit the 'Mehtas' to continue to manage and run the Tilaknagar Factory. On 19 March 2002 a Leave and License Agreement was entered into between the Plaintiff as Licensor, RGCPL as a Licensee and the Defendant Nos.1 and 3, therein referred to as the Mehtas. By the said Leave and License

Agreement the Defendant Nos.1 and 3 were permitted to continue to run and manage the Tilaknagar Factory for a further duration of 12 months commencing from 20 March 2002 to 19 March 2003 on the terms and conditions more particularly set out therein. The recitals of Leave and License Agreement interalia provided as follows:

> *"AND WHEREAS in or around April 2000, on account of diverse reasons the Licensee requested the Licensor to permit the Mehtas to be involved in the day-to-day management and running of the said Unit and accordingly a Tripartite Agreement dated 11th day of May 2000 (the "**Tripartite Agreement**") was executed amongst the Licensor, the Licensee and the Mehtas in terms of which it was recorded that the Mehtas would run and manage the Unit of the remaining period of the Lease i.e. from 1st April 2000 to 20th March 2002;*
>
> *AND WHEREAS the said Lease will be expiring on 19th March 2002 and it has been agreed amongst the parties hereto for the Licensor to grant a licence to the Licensee to continue to manage and run the said Unit for a limited further period of 12 (twleve) months commencing from 20th March 2002 upto 19th March 2003 and in furtherance thereof to permit the Mehtas to continue to manage and run the said Unit on behalf of the Licensee for the limited duration of the licence hereby granted;"*

6 Some of the other terms of the Leave and License Agreement dated 19 March 2002 read as follows:

*“1. Subject to the terms hereof as hereafter stated, the Licensor hereby grants to the Licensee a bare license to continue to operate the said Glass Bottle Manufacturing Unit (i.e. the said Unit) of the Licensor comprising of said plot of land situate lying and being at Village Tilaknagar, Taluka Shrirampur, within the limits of Ranjankhol Grampanchayat, District Ahmednagar and together also with the services of the said staff whose list is annexed hereto and marked Annexure 'B' (the said property and the said plant being collectively the said Unit are hereinafter collectively called “**the licensed premises**”) for a period of **12 (twelve) months** commencing from the 20th day of March 2002 upto the 19th day of March 2003 on the same terms and conditions as contained in the said Lease read with the Tripartite Agreement.”*

“2. During the term of the licence hereby granted, the Licensee shall pay to the Licensor a sum of Rs.3,00,000/- (Rupees Three lakhs only) per month as and by way of licence fee, such fees to be paid in advance on or before the 10th day of each and every calendar month provided that the licence fee for the portion of the month of March 2002 amounting to Rs.1,25,806/- shall be paid by the Licensee to the Licensor simultaneously with the execution of these presents.

3. During the term of the licence, the Licensee agrees as under:

(a) To pay the monthly licence fee hereby reserved regularly on or before the dates and in the manner of payment thereof as specified hereinabove;

(b) To pay to the Licensor any increases in the municipal taxes and outgoings payable in respect of the licensed premises by virtue of the Licensee running the said Unit;

(c) To bear and pay the electricity charges for the electricity consumed by the Licensee on the licensed premises and the water charges for the water consumed by the Licensee in the licensed premises;

(d) To bear and pay the rental and call charges in respect of the telephones which are installed in the licensed premises;

...

(e) To bear and pay income-tax, sales tax, excise duty or any other taxation liability payable in respect of the said Unit on the income and sales during the period of licence and to indemnify the Licensor and keep it indemnified from and against any claim that may be made against the Licensor on account of non-payment;

(h) To retain with the Licensor the sum of Rs.50,00,000/- (Rupees fifty lakhs only) heretofore deposited as interest free deposit (which amount shall be repaid by the Licensor to the Licensee without interest after the expiry of the period of licence hereby granted or sooner determination thereof as hereinafter provided);

...

(j) To pay the salary, wages, bonus, provident fund contribution during the period of licence and all other dues payable to the workers, labourers and staff as listed in Annexure "B" as also all statutory dues and arrears accruing during the period of the licence payable to the said workers, labourers and staff and to ensure that there are no arrears

thereof and to indemnify the Licensor and keep it indemnified from and against any such claim and liability;

...

(t) To hand over charge of the licensed premises and in particular the several articles and things comprised in and set out in the list annexed hereto and marked with Annexures 'A' and 'B' in good order and condition in which they were at the time when the Licensee entered into the licensed premises (reasonable wear and tear and deterioration always excepted), without claiming any right, title and interest of any nature under any statutory provisions for the time being in force;

...

(x) To indemnify and keep indemnified the Licensor from and against all actions, claims, proceedings, losses, damages, costs, charges and expenses that may be caused to or suffered or incurred by the Licensor due to non-observance or non-performance by the Licensee or the Mehtas of any of the terms and conditions of these presents.

...

5. The Licensee and the Mehtas agree to be bound by the terms and conditions of the Tripartite Agreement and the Mehtas agree and undertake to continue to manage and run the said Unit on behalf of the Licensee for the duration of the licence hereby granted in accordance with the terms of the Tripartite Agreement and on expiry of the licence hereby granted or sooner determination thereof, the Tripartite Agreement shall also determine. The Licensee and the Mehtas agree that though the primary liability of payment of the licence fee is that of the Licensee, they shall both be *jointly and severally liable for payment of the licence fee to the Licensor and for discharge of all obligations of the License hereunder.*

...

14. The Licensee and the Mehtas expressly agree that they shall not be entitled to terminate this licence for any reason whatsoever."

7 According to the Plaintiff, after execution of the Leave and License Agreement dated 19 March 2002 some time in February 2003 the Defendants abruptly shut down the Tilaknagar Factory on the pretext of renovating/rebuilding the same. It is averred in the Plaint that the Defendants were in management and control of the Tilaknagar Factory and the Plaintiff was under the bonafide impression that the renovation/rebuilding of the Glass Furnace was necessary and believed the representations made by the Defendants in that regard. The Defendants at the relevant time had taken necessary permission from the Deputy Commissioner of Labour, Nashik, who by an order dated 6 February 2003 had granted no objection for temporary lay-off of the workers for a period of four months for the purpose of renovating the Glass Furnace. According to the Plaintiff, the Defendants also caused damage to the other machinery installed in the Tilaknagar Factory.

8 It is the further case of the Plaintiff that the Defendants thereafter did not restart or refurbish the Glass Furnace and in fact the Glass

Furnace was getting junked in a totally dismantled condition. The fact that the Defendants had not restarted the said Glass Furnace was concealed by the Defendants. According to the Plaintiff, ultimately RGCPL by their letter dated 16 April 2003 informed the Plaintiff that as the Defendants were unable to manage and run the said Tilaknagar Factory, RGCPL could not continue with the Leave and License Agreement and wanted to terminate the same and handover possession of the Tilaknagar Factory to the Plaintiff. Ultimately by the letter dated 30 April 2003, RGCPL handed over charge of the Tilaknagar Factory along with the plant, machinery and other stock back to the Plaintiff. By the said letter dated 30 April 2003, RGCPL indemnified the Plaintiff for any acts committed by RGCPL for the period from 20 April 2000 till 30 April 2003. RGCPL further indemnified the Plaintiff against all liabilities, labour dues and other dues, electricity charges, other statutory dues and/or any other dues of whatsoever nature in respect of the Tilaknagar Factory pertaining to the period from 20 April 2000 to 30 April 2003.

9 According to the Plaintiff, due to the failure and default of the Defendants in performing their contractual obligations as contemplated in the Tripartite Agreement dated 11 May 2000 and the Leave and Licence Agreement dated 19 March 2002 when the Tilaknagar Factory was handed over back to the Plaintiff, the Glass Furnace was in totally

dismantled and unworkable condition due to which the Plaintiff was not in a position to resume operation of the Tilaknagar Factory. According to the Plaintiff despite the efforts to either lease out and/or sell the Tilaknagar Factory they did not receive any vital offers for the same. The Plaintiff also appointed a technical agency to assess the viability or feasibility of restarting the Glass Furnace and as per the suggestions and report which was submitted by the said agency, a minimum investment of Rs. 8 Crores was required to restart the Glass Furnace and make the Glass Bottle Manufacturing Unit commercially operational. According to the Plaintiff, it also made an offer to the existing Labour Union of the Tilaknagar Factory to run the Glass Bottle Manufacturing Unit however the Unions were not ready to do so.

10 According to the Plaintiff, it had therefore no other option but to apply to the Government for necessary permission to close down the Tilaknagar Factory. Accordingly, the Plaintiff made an Application to the Commissioner of Labour, Mumbai, who by his order dated 15 October 2003 granted permission to the Plaintiff to permanently close down the Tilaknagar Factory. By the said order, the Plaintiff was also directed to pay closure compensation, Notice Pay and all other legal dues to the employees of the Tilaknagar Factory.

11 The Plaintiff averred that the order of closure dated 15 October 2003 passed by the Commissioner of Labour, Mumbai was challenged by the Labour Union at the Tilaknagar Factory. The Industrial Tribunal at Ahmednagar after hearing the parties, by speaking order dated 12 October 2004 granted permission to the Plaintiff to permanently and irrevocably close down the Tilaknagar Factory. The Plaintiff was also directed to pay closure compensation and other legal dues to the employees. According to the Plaintiff when the Tilaknagar Factory was handed back to the Plaintiff the same was totally in an unworkable condition and the Glass Furnace was in a dismantled condition due to which it was not possible and/or viable for the Plaintiff to continue to operate the Tilaknagar Factory. It is the Plaintiff's case that due to the breach of contractual obligations of the Defendants various claims were made upon the Plaintiff interalia by various agencies including Government Agencies, the performance whereof was the contractual obligations of the Defendants. According to the Plaintiff, they were compelled to sell the Glass Furnace and other plant and machinery at the Tilaknagar Factory at the total scrap value of Rs.2,10,23,041/-. According to the Plaintiff, they had to incur heavy loss and damages of an aggregate amount of Rs.7,62,23,884/- as per the Particulars of the Claim at Exhibit “L” to the Petition and they are entitled to interest on the principal amount at the rate of 18% per annum from the date of the suit

till payment of the realization as the claim had arisen due to the breach of contractual obligations by the Defendants. The Particulars of Claim (Exhibit 'L') to the Plaint is reproduced hereinbelow:

"Exhibit 'L'
Particulars of Claim

Sr.No.	Particulars	Period	Amount (Rs.)
1	Arrears of energy charges claimed by Mula Pravara Elec. Co-op. Society Ltd. for supply of electrical energy in respect of HT connection No.20 at Tilaknagar Factory. Mula Pravara Elec. Co-op. Society Ltd. have filed a Suit in the Co-operative Court against the Plaintiffs being Suit No.24 of 2004 including interest @ 18% per annum till 31st March, 2006 as claimed by the Co-operative Society in their Suit.	April 2002 to March 2003	1,27,25,533/-
2	Telephone Charges paid by the Plaintiffs to Bharat Sanchar Limited, Ahmednagar in respect of Telephone Nos.265155, 265134 & 265211 installed at the Tilaknagar Factory as per the Demand Note of Bharat Sanchar Limited dated 21st May, 2003 raised by Bharat Sanchar Limited, Ahmednagar on the Plaintiffs including interest @ 18% per annum till the date of filing the Suit.	October 2002 to April 2003	70,926/-
3	Provident Fund Dues which were not paid by the Defendants to the Employee Provident Fund Organisation in respect of the Employees	April 2002 to March 2003	14,90,525/-

	working in the Tilaknagar Factory due to which Employees Provident Fund Organisation at Nashik raised a Demand Notice dated 12/10/2004 on the Plaintiffs and which amount had to be paid by the Plaintiffs including interest @18% per annum till the date of filing the Suit.		
4	Share of Gratuity payable by the Defendants to the Employees working in the Tilaknagar Factory as Mehtas had not made payment of the Gratuity Dues, the Plaintiffs were required to make payment of the same to the Employees as per the directions of the Labour Commissioner including interest @18% per annum till the date of filing the Suit.	April 2000 to April 2003	18,92,045/-
5	Dues payable by the Defendants to Tilaknagar Parisar Udyog Samooh Pagardar Sevakanchi Sahakaari Patpedhi Ltd. the credit society who had granted loans to the employees at the Tilaknagar Factory as the said dues were not paid by the Defendants a claim was raised by the Credit Society on the Plaintiffs by their letter dated 11th June, 2004 together with further interest @ 18% per annum till the date of filing the Suit.		40,26,218/-
6	Closure compensation paid by the Plaintiffs to the Employees at the Tilaknagar Factory as per the Closure permission granted	November 2003 to April 2005	1,81,52,655/-

	by the Labour Commissioner on 17th November, 2003 including interest @ 18% per annum till filing the Suit.		
7	Three months notice pay paid by the Plaintiffs to the Employees at Tilaknagar Factory as per the Closure permission granted by the Labour Commissioner on 17th November 2003 including interest @18% per annum till filing the Suit.	November 2003 to April 2005	48,12,882/-
8	Wages claimed by the workers at the Tilaknagar Factory due to the dispute raised by the workers against the Plaintiffs at the Industrial Court at Ahmednagar including interest @ 18% per annum till the date of filing the Suit.	May 2003 to November 2003	1,12,30,059/-
9	Loss incurred by the Plaintiffs in the sale of Plant and Machinery at Tilaknagar Factory for scrap value as against original valuation of Rs.2,64,08,200/- (as assessed and certified by Rane Engineers & Surveyors) including interest @ 18% per annum till the date of filing the Suit.		2,04,94,628/-
10	Loss suffered by Plaintiffs on account of damage caused to the buildings and structures by the Defendants at the time of dismantling the Glass Furnace and the Plant and Machinery at the Tilaknagar Factory (as per the estimate given by Nikan Patil & Associates, Shriramur).		5,28,413/-

11	Sundry costs and expenses incurred by the Plaintiffs for effecting the Closure of the Tilaknagar Factory.		8,00,000/-
	Total amount claimed		**7,62,23,884/-**

Together with further interest on the Principal amount of Rs.5,26,30,870/- @ 18% per annum from the date of filing the Suit till payment and/or realisation."

12 The Defendants have filed their Written Statement dated 6 February 2008. According to the Defendants the suit is bad for non-joinder of necessary parties namely, M/s. Ramnath Glass Containers Pvt. Ltd. (RGCPL) who are a party to the Lease Agreement dated 4 April 1992, the Tripartite Agreement dated 11 May 2000 and the Leave and License Agreement dated 19 March 2002 and who have issued the Indemnity Certificate dated 30 April 2003. It is averred in the Written Statement that the Directors of the RGCPL were also parties to the Memorandum of Understanding dated 18 April 2000 referred to in para 4 of the Plaint and it was necessary that RGCPL and its Directors be impleaded as parties in the suit so as to enable the Court to completely and effectively adjudicate the disputes between the parties and RGCPL and its Directors, who have executed the MOU dated 18.04.2000 are necessary and/or proper parties to the suit. It is averred that in view of the Indemnity Certificate dated 30 April 2003 the cause of action. if any,

is against the RGCPL. The Defendants denied that they shut down the Glass Furnish abruptly. According to the Defendants that it was absolutely necessary to refurbish/rebuild the Glass Furnace for optimizing the production of the Factory and also for ensuring the safety of the workers. The Defendants denied that they caused any damage to the machinery. It is stated by the Defendants that the Tilaknagar Factory was in deteriorating condition when the Defendants entered on the scene and as a result whereof, the RGCPL could not run the Tilaknagar Factory profitably. It is stated by the Defendants that it was absolutely necessary that the renovations/ repairs be carried out so as to enable the Defendants to hand over the charge of the said Factory in March 2003, in the same order and condition in which it was at the time when the Defendants entered onto the scene.

13 According to the Defendants they completed refurbishing of the Glass Furnace and denied that the Glass Furnace is getting junked in a totally dismantled condition. It is averred in the Written Statement of the Defendants that the deteriorating condition of the Factory was due to several other problems faced by the Factory including power supply, labour etc. which were known to all the parties concerned and which is evident from the letter dated 16 April 2003 addressed by RGCPL to the Plaintiff. The RGCPL expressed their inability to extend the Agreements.

A copy of the letter dated 16 April 2003 is annexed and marked as 'Exhibit 1' to the Written Statement. According to the Defendants the Plaintiff had appreciated the Defendants efforts, support and co-operation and the Plaintiff has recorded the same in their letter dated 21 April 2003 addressed to the Defendant No.1. A copy of the letter dated 21 April 2003 is annexed and marked as 'Exhibit 2' to the Written Statement. By the said letter, the Plaintiff not only recorded appreciation of the Defendants support and co-operation but also requested Defendant No.1 to reconsider his decision to discontinue with the arrangement of running the said Factory. The Defendants denied that they had committed any breach of their contractual obligations. According to the Defendants the allegations regarding breach by the Defendants are clearly an afterthought and, in any event, totally baseless, misconceived and untrue. The Indemnity Certificate dated 30 April 2003, was executed by RGCPL and the Plaintiff grievance/cause of action, if at all, lies against the RGCPL. According to the Defendants at the time of handing back charge on 30 April 2003, a detailed inventory of the machinery and stocks was prepared which sets out deficiencies/items not available and it is no where stated in the said detailed list that the Glass Furnace is unworkable or in a dismantled condition and the said contention was belated and false. The Defendants denied that it was not possible to revive the operation of the Tilaknagar

Factory. It is averred that the Defendants have no complaint of any nature was made against the Defendants at the time of handing over back the charge of the Factory on 30 April 2003. The indemnity was also taken from RGCPL and not from the Defendants. Thus, the Plaintiff by their own conduct, estopped from raising such belated claim.

14 It is the further case of the Defendants in the Written Statement that for the period from May 2001 to May 2003 the Tilaknagar Factory was run jointly by the Defendants and RGCPL. It is averred that by RGCPL's letter dated 16 April 2003, RGCPL has informed the Plaintiff that due to heavy loss due to consistent labour problem they were unable to run the Factory. According to the Defendants, the Plaintiff is dishonestly blaming the Defendants for their liabilities and dues for which the Defendants are not at all concerned and cannot be held responsible. According to the Defendants, the Tilaknagar Factory was not in a good condition when they entered upon the same and despite their best efforts, the Defendants had suffered heavy financial losses just as the said RGCPL had suffered. All the parties suffered losses primarily because of deteriorating condition of the Factory and the obsolete design of the factory for which Defendants cannot be blamed. The Defendants had communicated the sorry state of affairs about the factory to the Plaintiff by their letter dated 16 April 2003. The Defendants have stated

that they shall upon the reconciliation statement and the books of accounts of RGCPL as and when produced. The electricity charges had been adjusted and accounted for and therefore they are not liable to pay the sum of Rs.89,61,643/- towards the energy charges. The Defendants denied that the Plaintiff incurred loss of damages of Rs.7,62,23,884/- or any sum at all as alleged or otherwise and state that in any event the Defendants cannot be held responsible or liable for the said loss and that the claim was an after thought.

15 I have heard the learned Counsel for the Plaintiff and perused the Affidavit in lieu of Examination-in-Chief of Shri Satish Shantilal Godha on behalf of the Plaintiff as also the Compilation of the Documents. The Defendants have chosen to remain absent before the Court though they have filed their Written Statement.

16 In my view, the Plaintiff is not entitled to any reliefs and the Suit is hit by the nonjoinder of necessary and proper parties i.e. RGCPL. Admittedly, the initial Lease Agreement dated 4 April 1992 in respect of running the Tilaknagar Factory was only between Plaintiff and RGCPL. One of the terms of the said Lease Agreement was that on or after the expiry of the working life of existing furnace (which is approximately 3 to 4 years) or shut down of the said furnace, to reline or reconstruct the

said furnace at its own costs or the costs of RGCPL or to put up the furnace with a larger capacity, and the entire work of reconstructing or relining of the furnace was to be done within a period of three months. In the Lease Agreement it is further provided that on the commencement of lease, the management of the Tilaknagar Factory shall stand transferred to the RGCPL and RGCPL as the new employer shall take over services of the workers etc. and their services shall be treated as continuous on the same terms and conditions. Even the Tripartite Agreement dated 11 May 2000 shows that the Plaintiff as the Lessor and RGCPL as the Lessee and the Defendant Nos.1 and 2 are referred to as “Mehtas” therein. From the recitals in the Leave and License Agreement dated 19 March 2002 it is seen that RGCPL was not in a position to run the Tilaknagar Factory for the remaining period of the lease and had negotiated and finalized an arrangement with the Defendant Nos.1 and 3 to run the said Tilaknagar Factory. On 18 April 2000 under a MOU (Memorandum of Understanding) between Shri Akhil Shriram Savant & Others, the Directors and Shareholders of the RGCPL of the One Part and the Defendant Nos.1 and 2 of the Other Part had agreed in mutual interest that the day-to-day management and running of the Tilaknagar Factory under the Lease Agreement dated 4 April 1992 be handed over by the said Savant to the said Mehtas and that Mehtas had agreed to manage and run the said Tilaknagar Factory for the remaining period of lease i.e. for about two years from 1 April 2000 to 20 March 2002 on the terms and conditions contained in the said MOU. Pertinently, the said MOU does not form part of the Compilation of Documents filed by the Plaintiff.

18 The recital of the Tripartite Agreement dated 11 May 2000 states that the Plaintiff had agreed to the arrangement under the MOU and continuation of the Lease. Under the said Tripartite Agreement it was further agreed and understood that the Plaintiff had granted No Objection to the arrangement concluded by the said Savants and Mehtas for managing and running the Tilaknagar Factory of the Plaintiff for remaining period of the lease i.e. from 1 April 2000 to 20 March 2002. It is provided in the Tripartite Agreement that the Lease Agreement dated 4 April 1992 between the Plaintiff and the RGCPL would be an integral part of the MOU reached between the Savant and Mehtas. The Tripartite Agreement further provides that Mehtas and Savant agree and undertake that the Board of Directors of RGCPL reconstituted under the MOU dated 18 April 2000 shall not be changed during the currency of the Lease dated 4 April 1992. It was agreed that Mehtas shall supply to the Plaintiff during the subsistence of the lease or renewal thereof such number of bottles every month as is required by the Plaintiff in preference to the others and on priority basis out of the Glass Bottles

manufactured by RGCPL in the Tilaknagar Factory. Under the Tripartite Agreement it was provided that Shri Mehta shall infuse and provide adequate funds for working capital requirements in order to have an optimum output and smooth running of the Tilaknagar Factory. The Tripartite Agreement further provides that the Plaintiff was entitled to terminate the Lease Agreement dated 4 April 1992 without prejudice to their other rights and remedies.

19 On 19 March 2002, Leave and Licence Agreement was entered into between the Plaintiff as a Licensor and RGCPL as a Licensee and Defendant No.1 & 3 referred to as "Mehtas" therein. As per the said Leave and License Agreement, the license was granted since the lease was expiring on 19 March 2002. The license was granted by the Plaintiff to the RGCPL to permit Mehtas to continue to run and manage the Unit for a further period of 12 months from 20 March 2002 to 19 March 2003. Under the said Leave and License Agreement, RGCPL agreed to pay the electricity charges and to indemnify the Plaintiff for claims that may be made against the Plaintiff on account of non-payment. Clause 5 of the said Leave and License Agreement provided as follows:

> *"5. The Licensee and the Mehtas agree to be bound by the terms and conditions of the Tripartite Agreement and the Mehtas agree and undertake to continue to manage and run the said Unit on behalf of the Licensee for the duration of the licence*

hereby granted in accordance with the terms of the Tripartite Agreement and on expiry of the licence hereby granted or sooner determination thereof, the Tripartite Agreement shall also determine. The Licensee and the Mehtas agree that though the primary liability of payment of the licence fee is that of the Licensee, they shall both be jointly and severally liable for payment of the licence fee to the Licensor and for discharge of all obligations of the License hereunder.”

20 From the Leave and License Agreement dated 19 March 2002, it would be apparent that it was the RGCPL as License who had agreed to various terms and conditions under the license and that the Mehtas had agreed and undertaken to continue to manage and run the Unit on behalf of the RGCPL. Under the Leave and License Agreement it was provided that RGCPL and Mehtas agree that though the primary liability of payment of the license fee was that of the Licensee RGCPL, they both would be jointly and severally liable for payment of the license fee to the Plaintiff for discharge of all the obligations of the license.

21 From the aforesaid facts and circumstances, it can be gathered that RGCPL was an integral part of the arrangement and understanding between the Plaintiff and the Defendants. The Defendants were essentially managing and running the Tilaknagar Factory for and on behalf of the RGCPL. Pertinently, at the time of handing over possession of the Tilaknagar Factory to the Plaintiff RGCPL had issued an Indemnity

Certificate dated 30 April 2003 in favour of the Plaintiff in the following terms:

> *<u>"To whomsoever it may concern</u>*
>
> *We, Ramnath Glass Containers Pvt. Ltd., do hereby certify that we have today handed over charge of the plant and machinery and other stocks pertaining to the Glass Bottle Plant – hitherto under our management under the terms of the Lease Agreement dated 4-4-1992, as per the enclosed list – to M/s. Tilaknagar Industries Ltd. - after due verification by the representatives of both Ramnath Glass Containers Pvt. Ltd., and the said Tilaknagar Industries Limited.*
>
> *The said Tilaknagar Industries Limited, however, stands fully indemnified as for any acts on the part of Ramnath Glass Containers Pvt. Ltd., during the lease period i.e. 20-4-2000 to 19-3-2003 and till 30-4-2003 i.e. the date on which the charges have been physically handed over by us – which, inter-alia, includes Duty liability in respect of clearances of goods during the said period, labour and other dues pertaining to the said period, Consequences of various labour and other litigations by and against the said Ramnath Glass Containers Pvt. Ltd., Electricity charges payable to the Mula Pravara Elec. Co-op. Society, Employees Credit Society dues, other statutory dues, and/or any other dues of whatsoever nature in respect of the Glass Division pertaining to the period 20-4-2000 to 30-4-2003 – and for which we hold ourselves fully responsible."*

22 Despite the aforestated facts, the Plaintiff has chosen not to proceed against the RGCPL and has not impleaded RGCPL as party

Defendant in the Suit. In my view, the primary liability towards the Plaintiff was that of the RGCPL. There is no explanation in the Plaint why RGCPL has not been impleaded as party Defendant and it does appear that there is something more than meets the eye and there seems to be some understanding/arrangement arrived at between the Plaintiff and RGCPL which is not placed on record. Pertinently, the letter dated 10 November 2005 referred to for the first time in the Compilation of Documents which is alleged to be a letter of settlement between the Plaintiff and RGCPL is not referred to in the Plaint which was filed on 28 April 2006. It is not disclosed in the Plaint how Defendant Nos.1 and 3 are connected with RGCPL as the said Defendant Nos.1 and 3 have signed the Leave and License Agreement dated 19 March 2002 on behalf of RGCPL also, as is evident from the signatures in the Leave and License Agreement. In the letter dated 21 April 2003 (Exhibit 'I' to the Written Statement) the Defendant No.1 is referred to as the Managing Director of RGCPL. In the said letter, the Plaintiff has requested the Defendant No.1 to reconsider his decision and to renew the Leave and Lincense Agreement of running the Tilaknagar Factory and as a matter of fact appreciated his support and co-operation and no grievance is made nor is there any mention about any liabilities or payments to be made by the Defendants while informing the Defendant No.1 that the possession of the Tilaknagar Factory be handed over to its authorised persons named in the said letter. The order dated 15 October 2003 of Commissioner of Labour (Exhibit 'E' to Plaint) makes a reference to the averment of the Plaintiff in its Application for closure of Tilaknagar Factory that the Defendant No.1 who was managing the Tilaknagar Factory had suffered losses and it appears that in the said Application the Plaintiff has not made any reference to the alleged liabilities of the Defendants. In my view, the conduct of the Plaintiff is not disclosing all the facts before the Court dis-entitles it to any relief and the claim appears to be only an afterthought. The Plaintiff has not come before the Court with clean hands. Apart from the above, I have my doubts whether the Plaintiff's claim is within limitation. However, it is not necessary for me to go into that aspect as I am inclined to dismiss the suit on the grounds stated earlier which are sufficient in my view to entail an order of dismissal.

23 In the circumstances, the Suit is dismissed. The Plaintiff shall pay costs of Rs.10,000/- to the High Court Legal Services Committee, Mumbai within a period of eight weeks from today.

(A.A. SAYED, J.)

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