



C.S.No.630 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2022

PRONOUNCED ON : 11.11.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.S.No.630 of 2011

The Future Management & Consultancy Pvt Ltd.,
Suite No.913, Barton Centre,
M.G.Road, Bangalore – 560 001
(Rep.herein by its Authorized Signatory,
Girijashankar D.N.)

...

Plaintiff

VS.

1.M/s.Lancor Holdings Limited,
having its registered office
at Arihant VTN Square',
New No.58, (Old No.104),
G.N.Chetty Road, T.Nagar, Chennai – 600 017.

2. R.V.Shekhar
Managing Director
having its registered office
at Arihant VTN Square',
New No.58, (Old No.104),
G.N.Chetty Road, T.Nagar, Chennai – 600 017.

3.M/s.Lancor Projects Limited,
having its registered office
at Arihant VTN Square',
New No.58, (Old No.104),
G.N.Chetty Road, T.Nagar, Chennai – 600 017.



C.S.No.630 of 2011

WEB COPY

- 4.Blue Star limited,
having its office at 46 Garuda Buildings,
Cathedral Road, Chennai – 600 086.
- 5.BP ERGo Limited,
having its office, K – 52,
MIDC Industrial Area,
Hingna Road, Nagpur – 440 016.
- 6.Jaydheep Techno Enterprises Pvt, Ltd.,
having its office at Plot No.347, 348
2nd Main 4th Link Road, Nehru Nagar,
Old Mahabalipuram Road, Kottivakam,
Chennai – 600 096.
- 7.Peninsula Designs Pvt.Ltd.,
having its office at New No.18, old no.40,
Oliver Road Mylapore, Chennai – 600 004.
- 8.Shriji Kraft Pvt.Ltd.,
having its office at G-2, Parekh Appts,
34 Sarojini road,
Ville parle West, Mumbai – 400 056.
- 9.VDB Electrical Pvt.Ltd., having its office at B-2,
Ground Floor, Jasmine Gardens, #10,
Sabapathy Street,
Aminjikarai, Chennai- 600 029.

10. Kishore Kumar Menon,

11.Prem Menon

12.Christopher Menon

...

Defendants

Prayer: This Civil Suit is filed under Order IV Rule 1 of the O.S.Rules r/w Order VII of Code of Civil Procedure, for a decree and judgment directing (i) Defendant No.1 to pay to the plaintiff a sum of Rs.3,24,14,595/- along with



C.S.No.630 of 2011

interest @ 24% from the date of the plaint till realization; (ii) To direct defendant Nos.1 & 3 to jointly and severally pay to the plaintiff a sum of Rs.1,00,00,000/- along with interest @ 24% from the date of the plaint till realization; (iii) To direct defendant No.1 to pay to the plaintiff a sum of Rs.50,00,000/- as damages along with interest @ 24% from the date of the decree till realization; (iv) for costs of the suit.

For Plaintiff : Mr.K.F.Manavalan

For Defendant : Mr.P.R.Raman, Senior Counsel
Nos.1 to 3 for Mr.C.Seethapathy

For Defendant : Set Ex-parte
Nos.4 to 9

For Defendant : No appearance
Nos.10 to 12

J U D G M E N T

This is a suit for recovery of a sum of Rs.3,24,14,595/- along with interest @ 24% from the first defendant from the date of the plaint till realization; to direct defendant nos.1 & 3 to jointly and severally pay the plaintiff a sum of Rs.1,00,00,000/- along with interest @ 24% from the date of the plaint till realization; to direct defendant no.1 to pay the plaintiff a sum of Rs.50,00,000/- as damages along with interest @ 24% from the date of the decree till realization and for costs of the suit.



C.S.No.630 of 2011

WEB COPY

2.The plaintiff is part of the Future group of companies with interests ranging from minerals, metals, consultancy services etc., with a footprint in almost 32 countries. The plaintiff proposed to provide IT/ITES related support including business-process-outsourcing related work to its entire group of companies using cutting edge technology to optimize resource utilization and enhance performance of the group companies and was looking for office space in Chennai for such a centre. The first defendant is in the construction business and the 2nd defendant is the Managing Director of the first defendant. The third defendant is a subsidiary of the first defendant and controlled by the first defendant. Defendants 4 to 9 are vendors, who were paid for equipment for the interior work, which the first defendant had undertaken to perform for the plaintiff.

3.Kishore Kumar Menon, Prem Kumar Menon, & Christopher Menon claimed to be the owners of the land at Door No. 165 (Old Door No. 110), St. Mary's road, Alwarpet, Chennai - 600 018. The first defendant held out that it had entered into a Joint Development Agreement, dated 13/17th December 2004 and a Supplemental Agreement, dated 29.03.2006, with the owners of this property. The Defendants 1 & 2 and the Menons held out



C.S.No.630 of 2011

that a super-structure was to be put up in the property, whereby 20,678 sq.ft each of built up space would be available on the 5th & 6th floors of the said proposed structure on the said premises. It was further held by the first and second defendants that the 5th floor comprising 20,678 sq.ft was owned by defendants 1 & 2 and the Menons held out that a similar extent in the 6th Floor was owned by them. They held out and assured the plaintiff that they have necessary resources to complete the proposed super structure as per law, in time and in line with the plaintiff's requirements. They would obtain the completion certificate and requisite power supply of 2000 KVA. They agreed to handover the possession to the plaintiff in October 2008.

4.Plaintiff paid Rs.1,00,00,000/- to the first defendant on 22.07.2008 and a similar sum of Rs. 1,00,00,000/- was paid to the Menons on 22.07.2008 and an agreement dated 11.09.2008 was executed with the first defendant for the 5th floor and another agreement dated 30.09.2008 was executed with the Menons for the 6th floor. As per clause 3 of the agreement, dated 11.09.2008, lease will commence from 01.10.2008 or upon the lessor obtaining the completion certificate from the CMDA and the required power supply from the Tamil Nadu Electricity Board (TNEB). In order to trigger the commencement of the lease, the conditions precedent in



C.S.No.630 of 2011

the agreement dated 11.09.2008 had to be complied with and a registered deed ought to be entered into between the parties. At the request of the Defendant Nos. 1, 2 and the Menons, a sum of Rs.2,18,35,968/- each was paid by the plaintiff to defendant No.1 and the Menons on 05.11.2008. Thus, a sum of Rs. 4,36,71,936/- was paid to Defendant No.1 and the Menons.

5. Even after the receipt of these amounts, the defendants did not complete the constructions of the 5th & 6th floors and handed over the possession to the plaintiff in the manner known to law. They used the sum paid by the plaintiff to meet the existing liabilities. There were serious disputes between the defendants 1 & 2 on the one hand, and the Menons on the other, regarding the ownership of 5th & 6th Floors. There were legal proceedings including a criminal complaint were lodged against defendants 1 & 2 for surreptitiously and fraudulently registering the portions of the said premises in the name of the first defendant. Agreements dated 11.09.2008 and 30.09.2008 could not be acted upon for the reason that the possession of the premises was not delivered to the plaintiff in addition to the non fulfillment of the conditions of obtaining the requisite power supply of 2000 KVA. There was inter-se dispute over the title.



C.S.No.630 of 2011

WEB COPY

6.The plaintiff was constrained to cancel the agreements dated 11.09.2008 and 30.09.2008 on 11.04.2009 and 10.04.2009 respectively. Thus, they are liable to pay the sum of Rs. 4,36,71,936/- along with interest. Defendants 1 to 3 falsely induced the plaintiff to part with another Rs.1,00,00,000/- to the vendors for interior work. Payments were made to BP Ergo Limited, Shriji Kraft Pvt Ltd., Blue Star Limited, Peninsula Designs (P) Ltd., Jaydheep Techno Enterprises & VDB Electricals Private Limited. The plaintiff was denied access to the proposed demised premises. In the said circumstances, the agreement dated 30.09.2008 with the Menons was cancelled and refund of Rs. 2,18,35,968/- was sought for. A reply dated as 31.03.2009 was received with fraudulent claim.

7.When it is clear that the first defendant and the Menons were not in a position to hand-over possession of the premises, the plaintiff was forced to cancel the agreement with the first defendant and sought for re-payment of the sum of Rs. 2,18,35,968/-. First defendant sent a reply dated 14.05.2009 making false claims and allegations. First defendant show caused a notice dated 16.10.2009, making further false allegations that there was an agreement dated 11.11.2008 and that it had obtained the completion



C.S.No.630 of 2011

certificate on 14.10.2008 & power supply from TNEB. It was also alleged that the possession had been handed-over to the plaintiff and rentals were demanded. It is to be noted that the first defendant entered into a lease agreement with BNP Paribas Sundaram Global Securities Operations Pvt Ltd., for the same 5th floor for nine years starting from 01.12.2009. On 18.07.2011, the Menons paid a sum of Rs. 2,18,35,968/-. Defendants 1 to 3 are still in default. In the said circumstances, this suit is filed for the reliefs aforesated.

8.The case of the first defendant is that the agreement between the plaintiff and the first Defendant is an independent agreement and the other defendants are not parties to the agreement. Similarly, first defendant is not party to any agreement or arrangement between the plaintiff and other defendants. The suit is bad for misjoinder of parties and misjoinder of causes of action. The first defendant is the absolute owner of $\frac{1}{2}$ undivided share in the land in which the building bearing No.165, St.Mary's Road, Alwarpet, Chennai 18 is situated. It also owns 2nd, 3rd, 4th and 5th floors of the building and the northern half of the said structure. The plaintiff approached the first defendant to take lease of an extent of 20,678 sq. ft in the 5th floor. A written agreement dated 11.09.2008 was entered into between the first defendant and the plaintiff setting out the terms of the



C.S.No.630 of 2011

lease. The period of lease was to commence from 01.10.2008 or upon the first defendant obtaining completion certificate from CMDA and required power supply from TNEB, whichever was later. The initial monthly rent payable by the plaintiff was a sum of Rs.18,19,664/- and it is subject to increase as set out in the said lease deed. The period of lease was 3 years from the date of commencement. The plaintiff paid the first defendant a sum of Rs.2,18,35,968/- as security deposit. Though the effective date of lease was only from 01.10.2008, the plaintiff sought permission to carry out interiors and hence was permitted to enter and carry out interior work.

9.The building was duly completed and completion certificate was obtained from CMDA on 14.10.2008 and power supply from TNEB thereafter. Permission to occupy the premises for carrying out the interior work automatically stood converted into occupation, after obtaining power connection in December 2008. Since the plaintiff was already in occupation of the property, there was no formal documentation of taking possession as tenant. The plaintiff abandoned the premises and ceased to occupy the premises with effect from February 2009. After giving sufficient opportunity to the plaintiff, the defendants re-possessed the demised premises on 26.10.2009, exercising its rights as per the lease deed.



C.S.No.630 of 2011

WEB COPY

10. In a letter dated 11.04.2009, plaintiff falsely contended that it had not taken possession of the demised premises and the defendant was not in a position to lease out the demised premises owing to disputes with the erstwhile land owner. It was suitably replied on 14.05.2009 and the plaintiff was called upon to pay rents commencing from the effective date, till the date the first defendant took re-possession of the property. It was also informed to the plaintiff that the plaintiff was due to pay a sum of Rs.2,00,16,304/- towards rentals and that was deducted from rental advance of Rs.2,18,35,968/-. The plaintiff is still liable to pay Rs.18,19,664/- towards arrears.

11. The first defendant admits that subsequent to entering into lease, issues were raised by the defendants 10 to 12 with regard to the ownership of the building and the same was referred to arbitration and it was pending for award. The issue was in respect of whole structure and not restricted to the 5th or the 6th floor of the building. The dispute between this defendant and defendants 10 to 12 did not preclude the plaintiff from taking on lease the defendant's 5th floor of the premises. The agreement between this defendant and the plaintiff was de hors agreement between the plaintiff and



C.S.No.630 of 2011

defendants 10 to 12 in respect of the 6th floor. Therefore, the suit is liable to be dismissed.

12.The second and third defendant adopt the case of the first defendant by filing a brief written statement denying the allegations made in the plaint and adopting the written statement of the first defendant.

13.On the basis of the aforesaid pleadings, the following issues are framed:

1.Whether the suit is bad for mis-joinder of parties and causes of action as put forth in the written statement?

2.Whether the plaintiff is entitled to recover the suit amount of Rs.3,24,14,595/- with interest from the first defendant as claimed in the plaint?

3.Whether the plaintiff is entitled to recover the sum of Rs.1,00,00,000/- along with interest from the defendants 1 and 3 as put forth in the plaint?

4.Whether the plaintiff is entitled to seek and recover the damages from the first defendant as claimed in the plaint?



C.S.No.630 of 2011

14.PW1 was examined on the side of the plaintiff and Exs.P1 to P19 were marked. DW1 was examined on the side of the defendants 1 to 3 and Exs.D1 and D2 were marked.

15.The following additional issue was framed on 19.09.2022 .

Whether the plaintiff company is entitled to continue with the proceedings of the suit once it has been struck off from the register of companies from 26.09.2017?

16.Additional Issue:

When this case was taken up for arguments, the learned counsel for the defendants 1 to 3 submitted that the suit filed by the plaintiff is not maintainable for the reasons that the plaintiff company which was incorporated on 04.06.2007 was defunct, as the company status (e-filing) has been specified as “Strike Off” and the date of last AGM was on 30.09.2008. The plaintiff filed a reply dated 20.09.2021 claiming that the plaintiff company was struck off as per the Register of companies. In the light of the above admission that the plaintiff company was struck off, it is clear that the plaintiff company was not functioning. The authorised signatory of the plaintiff company Mr.Naveen Sriram was examined as PW1, vide board resolution, dated 29.05.2017, on 28.07.2017. His cross



C.S.No.630 of 2011

examination commenced on 04.10.2017 much after the company was struck off from the register of companies. Thus, it appears that the plaintiff suppressed material facts with malice and prosecuted the present suit with unclean hands and is therefore guilty of *suppressio veri and suggestio falsi*. As on today, there are no steps taken for restoring the company. Neither the a company nor the Directors bother to reply to the notice issued under Section 248 (1) (c) of the Companies Act 2013 (hereinafter referred to as "the Act"). As per Section 248 (5) of the Act, at the expiry of the time mentioned in the notice, the Company shall stand dissolved on the publication of the notice under Section 248 of Companies Act 2013 in the Official Gazette. Thus, the learned counsel for the defendants 1 to 3 submitted that the plaintiff cannot continue with the suit proceedings.

17.Per contra, the learned counsel for the plaintiff submitted that it is true that the plaintiff company was struck off from the register of companies under Section 248 (5) of the Act on 26.09.2017 for non-filing of the annual returns. The suit was filed in the year 2011. The plaintiff was part of thriving 600 million Future group of companies. By not permitting the plaintiff to either use the premises or returning the amount, upon termination of the lease agreement, the first defendant practically drove the plaintiff to its current status. The first defendant unjustly enriched at the plaintiff's



C.S.No.630 of 2011

expense and it would be inequitable to permit the first defendant to continue to take advantage of its own wrong. If a company is struck off under Section 248 (5) of the Act, the effect is not as if it is wound up or liquidated. Before a company is struck off, a duty is cast on the Registrar to satisfy himself that sufficient provisions has been made for realization of the amounts due to the company before passing the order. The plaintiff was part of a mass striking off the companies for non-filing of annual returns and there is no material to establish that the Registrar of companies has examined as to whether any provision was made for the realization of the amount due to the plaintiff.

18.As per Section 250 of the Act, on being struck off under Section 248 (5), the company may cease to operate as a company and its certificate of incorporation is deemed to have been cancelled from such date. The certificate of incorporation is statutorily preserved for the limited purpose of realizing the amount due to the company. As per Section 252 (3) of the Act, if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of companies, the Tribunal, on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the official gazette of the notice under Section 248 (5) of the Act, if satisfied that



C.S.No.630 of 2011

the company was at the time of its name being struck off, carrying on business, or in operation, or otherwise it is just that the name of the company be restored to the Register of Companies, order the name of the company to be restored to the Register of Companies and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the Company had not been struck off from the Register of Companies.

19. On a harmonious reading of Sections 248 (5), 248 (6), 250 & 252 (8) of the Act, while a company struck off under Section 248 (5) of the Act may be rendered 'dormant' for all other purposes, the 'certificate of incorporation' is 'specifically' and 'statutorily preserved' for the limited purposes of realizing the amount due to the company. 20 years time is stipulated for restoring the company's name in the register of companies. In support of his submissions, he relied on the decision of NCLAT in ***Elektrans Shipping Pte Ltd. Vs. Pierre D'silva***. The relevant portions are extracted hereunder:

19. In terms of Part II of I&B Code, for the purpose of liquidation, except 'Voluntary Liquidation of Corporate Persons' under Section 59 of the I&B Code, procedure of



'Corporate Insolvency Resolution Process' is to be followed, if a proceeding is initiated under Sections 7 or 9 of the I&B code. Instead of liquidation, the first step to be taken is to ensure that in a time bound manner the value of assets of Corporate Debtor/ Company is maximized and to promote entrepreneurship, availability of credit by balancing the interest of all the stakeholders; within an active legal framework for timely resolution of insolvency and bankruptcy. Liquidation of assets of the 'Corporate Debtor'/ Company is not the object, but object is revival and rehabilitation of the 'Corporate Debtor'/ Company by way of 'Resolution' and maximization of the value of assets of the 'Corporate and balancing the interest of all the stakeholders.

20. The name of the 'Corporate Debtor' (Company) may be struck-off, but the assets may continue. present case, there are assets of the 'Corporate Debtor' or not Whether in the can be looked into only by the Interim Resolution Professional/ 'Resolution Professional'.

21. The name of the Company having been struck-off, the Corporate Person cannot file an application under Section 59 for Voluntary Liquidation. In such a case and in view of the provisions of Section 250 (3) read with Section 248 (7) and (8), we hold that the application under Sections 7 and 9 will be maintainable against the



C.S.No.630 of 2011

'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struck-off.

22. So far as, liability of the Ex-Directors or Shareholders or Officers are concerned, Section 248 (7) of the Companies Act being clear, we are not expressing specific opinion, till any order is passed by the Adjudicating Authority or demand is made by the 'Interim Resolution Professional'.

23. In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of "Corporate Insolvency Resolution Process" under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' (Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act.



C.S.No.630 of 2011

20. In reply, the learned counsel for the defendants 1 to 3 submitted that the claim of the plaintiff that the plaintiff can proceed with the case for realizing the amount due to the company is not correct for the reason that as on date, there is no money adjudicated to be due and payable to the plaintiff company by the defendants 1 to 3. As per the Black's Law Dictionary, meaning of the word 'due' is as follows:

"Just; proper; regular; lawful; sufficient; remaining unpaid; reasonable; as in the phrases "due care," "due process of law," "due notice."

Owing; payable; justly owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

Owed, or owing, as distinguished from payable. A debt is often said to be due from a person where he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived. The same thing is true of the phrase "due and owing."

21. In **Twine Vs.Locke**, it is observed as follows:

The word "due" always imports a fixed and settled obligation or liability, but with reference to the time for its payment there is considerable ambiguity in the use of the term, as will appear from the foregoing definitions,



WEB COPY



C.S.No.630 of 2011

the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at some time in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly, and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue," and the third by the word "payable." See Feeser v. Feeser, 93 Md. 716, 50 A. 406."

22. The amount due is an amount which is already determined as due and not the amount which is to be adjudicated in a litigation. There is a difference between recovery and realization. Only the amount determined can be realized and not the amount to be recovered by filing the suit. As per Section 252 (1) of the Act, only three years time is given for filing appeal. Sections 252 (3) is not applicable to the plaintiff company. So far the plaintiff has not taken any steps for restoring the name of the company in the register of companies. The judgment relied by the learned counsel for the plaintiff does not support the case of the plaintiff as 20 years period under Section 252 (3) of the Act is given for the benefit of the member or creditor or workman. When there is no steps taken for restoring the plaintiff



C.S.No.630 of 2011

company in the register of companies, who would give discharge receipt in case of payment of the amount claimed in the plaint? Thus, the learned counsel for the defendants 1 to 3 reiterated his submissions that the plaintiff company cannot continue with the proceedings and the suit is not maintainable and is liable to be dismissed on these grounds.

23. Section 248 of the Act reads as follows:

248. Power of Registrar to remove name of company

from register of companies.— (1) Where the

Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation; 1 [or]

2 * * * * *

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455;

he shall send a notice to the company and all the



WEB COPY



C.S.No.630 of 2011

directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the



WEB COPY



C.S.No.630 of 2011

application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations



WEB COPY



C.S.No.630 of 2011

by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of



C.S.No.630 of 2011

companies.

WEB COPY

This section deals with the power of Registrar to remove the name of company from the register of companies under certain contingencies, namely, (1) when a company has failed to commence its business within one year of its incorporation.

(2) a company is not carrying on any business or operation for a period of two years immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455 of the Act. In these circumstances, the Registrar shall send a notice to the company and all the Directors of the company of his intention to remove the name of the company from the register of companies with a request to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

24. Section 248(2) deals with the situation, where, the company may file an application for removing the name of the company from the register of companies. As per Section 248 (4) a notice issued under Sub section (1) or (2) shall be published in the prescribed manner and also in the official



C.S.No.630 of 2011

gazette for the information of the general public. At the expiry of the time mentioned in the notice, the Registrar may strike off the name of the company from the register of companies and shall publish notice thereof in the official gazette and on publication in the official gazette of this notice, the company shall stand dissolved as per Section 248 (5). As per Section 248 (6), the Registrar shall satisfy himself that sufficient provision has been made for the realization of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time before passing an order under sub section 248 (5) and the Registrar if necessary, obtain necessary undertakings from the Managing Director, Director or other persons in charge of the management of the company. Proviso to this section reads that notwithstanding the undertakings referred to, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order for removing the name of the company from the register of companies. Sub section 248 (7) of the Act reads that the liability, if any, of every director, manager or other officer who was exercising any power of management and of every member of the company dissolved under sub section (5) shall continue and may be enforced as if the company had not been dissolved.



WEB COPY

25.A combined reading of Sections 248 (6) and 248 (7) make it abundantly clear that though the name of the company was struck off from the register of companies for the circumstances mentioned in Sub sections 248 (1) and (2) after following the procedures under Sections 248 (4) and (5), still the Registrar should ensure that sufficient provision is made for realizing the amount due to the company and for the payments or discharge of its liabilities and obligations of the company. The assets of the company should be made available for the payments or discharge of all its liabilities and obligations even after the name of the company was struck off from the register of companies.

26.Section 249 deals with restrictions on making application under Section 248 in certain situations and Section 250 deals with effect of company notified as dissolved. It reads as follows:

250.Effect of company notified as dissolved. -

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the certificate of incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the



amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

As per this section, the effect of notification of a company as dissolved is that the company shall cease to operate as a company and the certificate of incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. Thus, it is clear that though the company itself ceases to operate as a company, the certificate of incorporation is yet alive for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

27. Section 252 deals with Appeal to Tribunal against the order of dissolution of companies under Section 248 of the Act. Section 252 reads as follows:

252. Appeal to Tribunal.— (1) *Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the*



WEB COPY



C.S.No.630 of 2011

opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned :

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.



C.S.No.630 of 2011

WEB COPY

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other



C.S.No.630 of 2011

WEB COPY

directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

We have seen from the submissions of the learned counsel appearing for the plaintiff that as per Section 252 (3), the company has a period of 20 years from the date of publication of the notice in the official gazette under Section 248 (5) to apply to the Tribunal against the order and for restoring the name of the company in the register of companies. However, it is submitted by the learned counsel for the defendants 1 to 3 that the plaintiff company has to apply only under Section 252 (1) of the Act and not under Section 252 (3). Section 252 (1) gives only three years period from the date of order of the Registrar. However, the plaintiff company has not produced any evidence to show that it appealed against the order of the Registrar within a period of three years.

28. On a close reading of Sections 252 (1) and 252 (3), we can gather that appeal to Tribunal can be preferred by any person aggrieved by an order of Registrar notifying the company as dissolved under section 252 (1)



C.S.No.630 of 2011

within a period of three years from the date of order. However, Section 252

(3) gives wider choice for the aggrieved to appeal like company or any member or creditor or workman thereof. If a company/the aforesaid persons is/are aggrieved against the order of the "strike off" of the company from the Register of companies, company or any one of the aforesaid person can file appeal. The period given for filing appeal is 20 years from the publication in the official gazette after notice under Section 248 (5). The Tribunal may order restoration, if it is satisfied that the company shall at the time of its name being struck off carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies. In case of order of restoration, the company and all other persons shall be placed in the same position as nearly as may be, as if the company had not been struck off from the register of companies. On a careful reading of both provisions, this Court is of the considered view that only Section 252 (3) applies to this case. The plaintiff company has 20 years time from the date of publication of notice under Section 248 (5) for filing appeal before the Tribunal for restoring its name in the register of companies.

29. With regard to the submissions of the learned counsel for the defendants 1 to 3 that the amount due to the company must have been



C.S.No.630 of 2011

already determined and not one which has to be determined in legal proceedings, this Court is not inclined to subscribe to this view expressed by the learned counsel for the defendants 1 to 3 for the reason that even as per the meaning of the term "due" in the Black's Law Dictionary, due includes lawful, remaining unpaid, reasonable, payable. If the plaintiff is able to prove his claim in the suit that claim is certainly an amount due to the plaintiff company, "Determined" and "determinable amount" due to the company can be enforced by the company.

30. In this view of the matter, this Court finds that the suit which was filed in 2011, commencement of examination of PW1 on 28.07.2017 on the basis of the board resolution on 29.05.2017, can be proceeded for recovery of the amount due to the company, despite the fact that the company had been struck off from the register of companies with effect from 26.09.2017. Accordingly, this issue is answered against the defendants 1 to 3.

31. Issue nos.2, 3 and 4.

It is submitted by the learned counsel for the plaintiff that the 5th and 6th floor together were required by the plaintiff for using its plug and play steps. If the use of any one of the said floors is disrupted, then the very purpose of taking the 5th and 6th floor would be defeated. The third



C.S.No.630 of 2011

defendant was engaged through the first defendant to carry out the interior work on the 5th and 6th floor. The defendants 4 to 9 were vendors for such interior work through the 3rd defendant. On payment of Rs.2,18,35,968/- to the first defendant and the defendants 10 to 12, plaintiff has been permitted through 3rd defendant to start interior work on 5th and 6th floor. Obtaining completion certificate from CMDA and providing necessary power connection (200KVA out of 2000KVA) for the exclusive use of the plaintiff, execution of registered lease agreement are pre-conditions for commencement of lease. The plaintiff was not put in possession of the premises as a lessee since the aforesaid pre-conditions were not completed. The first defendant has no financial capacity to complete the building and repay its bankers. There was dispute between the first defendant and the defendants 10 to 12 leading to initiation of criminal proceedings and arbitration proceedings. The first defendant had not raised any monthly rentals or electricity usage charges or monthly maintenance charges and produced proof of payment for service tax for the alleged lease. Alleged repossession by the first defendant was not in accordance with law. When the defendants 2 to 3 have not given any independent evidence, it has to be presumed that they admitted the case of the plaintiff. Defendants 4 to 9 have also not appeared after receiving the summons and contested the claim



C.S.No.630 of 2011

of the plaintiff.

WEB COPY

32.In response, the learned counsel for the defendants 1 to 3 submitted that the plaintiff was handed over possession to carry out the interior work. Only thereafter, the plaintiff made further payments. The dispute between the first defendant and D10 to D12 concerning sixth to tenth floors did not preclude the plaintiff from taking lease of the 5th floor. When the lock-in period of three years subsist, the plaintiff has no right to terminate the lease of the 5th floor. Plaintiff has to prove the payment of Rs.1crore to the defendants 1 & 3 towards interior work. There is no provision made in agreements dated 11.09.2008 for interior work. Ex.P7 is an internal communication between D1 and D10 to 12 and the plaintiff is not a party to the communication and he cannot rely on this document. The plaintiff has not come to this Court with clean hands and suppressed the material facts.

33.Since these issues are interconnected, they are taken up together for consideration. From the pleadings, evidence and submissions of the counsel appearing for the parties, there is no dispute regarding the fact that plaintiff company and the first defendant had entered into a lease agreement



C.S.No.630 of 2011

dated 11.09.2008 in respect of the 5th floor (Lancor's portion of the building). It is specifically claimed that the lease agreement dated 11.09.2008 was executed with the first defendant and in paragraph 13 of the plaint, clause 3 of the lease agreement, dated 11.09.2008 is extracted. As per clause 3 of the agreement dated 11.09.2008, the lease will commence from 01.10.2008 or upon the lessor (first defendant) obtaining the completion certificate from the CMDA and the requisite power supply from TNEB, whichever is later (hereinafter referred to as "Effective date").

34. Even in the written statement filed by the first defendant which was adopted by the defendants 2 and 3, it is admitted that "written agreement dated 11.09.2008" was entered into between the first defendant and the plaintiff setting out the terms of lease. The period of lease was to commence from 01.10.2008 or upon the first defendant obtaining the completion certificate from CMDA and the requisite power supply from TNEB, whichever is later. The initial monthly rent payable by the plaintiff was a sum of 18,19,664/- and the sum was subject to increase as set out in the said lease deed. The period of lease was three years from the date of commencement. The plaintiff paid the first defendant a sum of Rs.2,18,35,968/- as security deposit, such payment was effected in two parts



C.S.No.630 of 2011

on 22.07.2008 and 05.11.2008. Though the effective date of lease was only from 01.10.2008, plaintiff sought permission to carry out the interiors and hence was permitted to enter and carry out interior work. It is clear from the averments made in the plaint and written statement that there was written agreement entered into between the plaintiff and the first defendant on 11.09.2008, with regard to the terms of the lease. The lease was to commence from 01.10.2008 or upon the first defendant obtaining completion certificate from the CMDA and the requisite power supply from TNEB, whichever was later. In fact, the effective date of commencement of lease was 01.10.2008 or the date of obtaining completion certificate or power supply whichever is later.

35. The lease agreement dated 11.09.2008 is admittedly not registered. Unregistered lease deed dated 11.09.2008 was marked as Ex.D1 when PW1 was cross examined. It is submitted by the learned counsel for the plaintiff that though it is shown in the docket sheet of Ex.D1 that it was marked during the cross examination of PW1, evidence of PW1 does not indicate that it was, in fact marked. Therefore, he submitted that this document cannot be relied as it was not marked as an exhibit in the deposition of PW1 and that it is an unregistered document. In support of his contention that an



unregistered lease deed cannot be received in evidence, he relied on the

following judgments reported in (1) ***Bajaj Auto Ltd. v. Behari Lal Kohli,***

(1989) 4 SCC 39. The relevant portions are extracted hereunder:

6. There is no dispute that the appellant has put M/s United Automobiles in possession of the premises and has thus parted with the possession within the meaning of Section 14(1) proviso (b) of the Act. The appellant company has a separate legal entity and has nothing to do with M/s United Automobiles except that the latter is the dealer-distributor of some of its manufactured articles. M/s United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicle; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependent on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. The irresistible conclusion is that the appellant has created a sub-lease in favour of its dealer. The question now is whether the clause in the lease mentioned above amounts to the respondent's consent in writing.



7. *The contention of the learned counsel for the respondent that the aforesaid clause cannot be looked into for want of registration or the lease deed appears to be correct. Reliance has been placed on the observations of Fazl Ali, J., in Sachindra Mohan Ghose v. Ramjash Agarwalla [AIR 1932 Pat 97] that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.*

8. *The learned counsel for the appellant attempted to meet the point by saying that so far the consent of the landlord permitting sub-letting is concerned, it does not require registration and the clause, therefore, must be excepted from the requirement of registration and consequent exclusion from evidence. We do not see any force in this argument. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It follows*



that the appellant cannot, in the present circumstances, be allowed to rely upon the clause in his unregistered lease deed.

2. *K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd.*, reported in **(2008) 8 SCC 564**. The relevant portion of the judgment is extracted hereunder:

From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the



C.S.No.630 of 2011

value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

35. In our view, the particular clause in the lease agreement in question cannot be called a collateral purpose.

36. In reply, the learned counsel for the defendants 1 to 3 submitted that PW1 was extensively cross examined on Ex.D1 and he admitted the execution of lease agreement dated 11.09.2008 between the plaintiff and the first defendant and the execution of this lease agreement is admitted in the plaint as well. The omission to record the marking of Ex.D1 during the course of cross examination of PW1's evidence is only a mistake. An unregistered lease deed can be used for collateral purpose like, showing the nature of possession of the property. In the case before hand, the plaintiff company was put in possession of the suit property for carrying out interior work. The first defendant obtained completion certificate from CMDA on 14.10.2008 and power supply from TNEB thereafter. Thus, the permission to occupy the premises for carrying out interior work automatically stood converted to occupation after obtaining the power connection in December



2008. Since the plaintiff was already in occupation of the property, there was no formal document for taking possession of the property as a tenant.

The plaintiff abandoned the premises and ceased to occupy the premises from February 2009, therefore, it was let out to third parties. He further submitted that no particular form of words is essential to make a valid surrender. The lessee cannot surrender, unless, the permission is vested in him. In support of this proposition, he relied on the judgment reported in **(1976) 3 SCC 660 *Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage***. The relevant portions of the judgment are extracted hereunder:

11. The deed of mortgage shows these features indicating that there was surrender of tenancy and the appellant was only a mortgagee. The High Court found that there was a surrender of tenancy right. No particular form of words is essential to make a valid surrender. A surrender may be oral. A surrender may be express although delivery of possession is necessary for surrender in the facts and circumstances of a given case. In the present case, delivery of possession was immediately followed by a redelivery of possession of the appellant as mortgagee. The mortgage deed establishes beyond doubt that the effect of the deed was inconsistent with the continuance or subsistence of the lease because



the parties themselves stipulated that the lease was to exist only upto November 6, 1953. On the redemption of the mortgage the respondent had a right to recover possession both on the terms of the mortgage deed and under Section 62 of the Transfer of Property Act.

18. Section 111 of the Transfer of Property Act in clauses (e) and (f) deal with surrender, and in clause (d) with merger. Clause (d) states that lease in movable properties determines in case the interest of the lessee or the lessor in the whole of the property becomes vested at the same time in one person in the same right. When a leasehold and a reversion coincide there is a merger of a lesser estate in the greater. The leasehold is the lesser estate, for it is carved out of the estate of the owner, which is the reversion. The lesser estate is merged in the greater. The lease determines and merges in the reversion. If the lessor purchases the lessee's interest, the lease is extinguished, as the same man cannot be at the same time both landlord and tenant. The interests of the lessor and of the lessee must be in the whole of the property, otherwise there is no merger. The interest of the lessor and the lessee in the whole of the property should become vested at the same time in one person in the same right. Thus a lease is not extinguished because the lessee purchases a part of the reversion.



19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact. In the present case if the mortgagor was not able to redeem the appellant mortgagee was to enjoy the property in accordance with the terms of the mortgage and also to sell the property for recovery of debts.



C.S.No.630 of 2011

it is seen from his evidence that PW1 was extensively cross examined on Ex.D1. When he was questioned about Ex.D1 agreement that he referred the agreement dated 11.09.2008 in his proof affidavit as an informal agreement. When he was asked about whether he was relying on the terms set out in the agreement dated 11.09.2008 in support of the plaintiff's case, he answered in the affirmative. When he was asked about the agreement, he replied that it was misplaced during the transit from Chennai office to legal section at the head office. Therefore, it is quite apparent from the plaint pleadings and PW1's evidence that there was in fact Ex.D1 agreement executed between plaintiff and the first defendant. This Court finds acceptance in the submissions of the learned counsel for the defendants 1 to 3 that it was a mistake or omission to record in the deposition of PW1 with regard to the marking of this document. It is strengthened by the fact that the power of attorney deed given in favour of DW1 was marked as Ex.D2. Therefore, this Court finds that Ex.D1 was received in evidence but omitted to be recorded in PW1's evidence.

38.Exhibit D1 is an unregistered lease deed. Unregistered lease deed can be received in evidence for collateral purposes. Collateral purposes is a purpose other than that are creating, declaring, assigning, limiting or



C.S.No.630 of 2011

distinguishing right to immovable property. An unregistered lease deed can

be looked into to prove the nature and possession of the occupant.

Irrespective of the controversies surrounding the registration of Ex.D1 and its admisability, this Court, in the light of the pleadings set out in the plaint and the written statement and the evidence of PW1 and DW1, is of the considered view that the rival claim of the parties can be decided even in the absence of Ex.D1, for the reason that the important terms of the lease agreement date 11.09.2008 are admitted by both the plaintiff and the defendants in their pleadings.

39.It is not in dispute that on the date of entering into the lease agreement dated 11.09.2008, the construction of the building was not fully completed. It is claimed in paragraph 21 of the plaint that D1 and D2 represented to the plaintiff that its subsidiary company Lancor Limited was into the business of doing interior work and that since handing over of possession to the plaintiff was delayed, it would commence the interior work simultaneously for the 5th and 6th floor. Defendants 1 to 3 falsely induced plaintiff to part with another sum of Rs.1crore to the defendants 4 to 9. This payment was made at the instance of the defendants 1 to 3. It is also admitted in the written statement of the first defendant that though the



C.S.No.630 of 2011

effective date of lease was only from 01.10.2008, the plaintiff sought permission to carry out interior work and hence was permitted to enter and carry out interior work. However, it is contended by the first defendant that it had not undertook to perform any interior work for the plaintiff. A perusal of the evidence produced in this case shows that the plaintiff has not produced any documentary evidence to show the payment of Rs.1crore for doing interior work in 5th and 6th floor either through defendants 1 to 3, to defendants 4 to 9 or to defendants 4 to 9 directly. However, the fact remains as claimed by the defendants that the custody of the premises was handed over to the plaintiff for doing interior work.

40.The next question that arises for consideration is that whether handing over the custody of the premises for doing interior work would automatically be converted as possession in terms of the lease agreement. We have already found from the plaint and written statement averments that the effective date of commencement of lease agreement is 01.10.2008 or the date of obtaining the completion certificate by the first defendant from CMDA and the requisite power supply from TNEB. Though it is claimed by the first defendant that the completion certificate from CMDA was obtained on 14.10.2008 and the power supply was obtained in December 2008, there



C.S.No.630 of 2011

is no material produced by the first defendant in support of its claim that the completion certificate for the building was obtained from CMDA on 14.10.2008 and power supply was obtained from TNEB in December 2008. According to the learned counsel for the plaintiff, these are the main reasons for not taking possession of the premises as a lessee. Apart from these, the first defendant was in financial difficulties and was not able to pay the loan due to the bank, there was dispute between the first defendant and the defendants 10 to 12 with regard to claim of ownership pending before the Arbitral Tribunal, interior work was not completed by the defendants 1 to 3 as undertaken. These reasons had also attributed for not taking possession in terms of the lease agreement.

41.We have seen that there is no documentary evidence produced to show the payment of Rs.1crore towards interior work. Similarly, there is no evidence produced by the defendants to show that the completion certificate was obtained from CMDA on 14.10.2008 and power supply from TNEB was retained in December 2008.

42.At this juncture, it is pertinent to refer to the documents filed by the plaintiff. Ex.P3 is an E-mail communication from the first defendant to



C.S.No.630 of 2011

the plaintiff. It is seen from the communication that the plaintiff visited the property developed by the first defendant known as “Menons Eternity” at St.Mary's Road, Alwarpet, Chennai -18 to take on lease of 5th and 6th floor of this building. It is referred that the construction of the premises is almost completed and awaiting issuance of various completion certificate, formalities from the Government. It is stated that “Menons Eternity” is a landmark building consisting of nine floors and it is approved for construction as the information technology building, as defined under the IT policy – 2002 of the Government of Tamil Nadu with the recommendations of ELCOT. The rate was Rs.88/-per sq.ft plus service taxes . The plaintiff company would be allotted 25 car parks at Rs.5,000/- per slot per month. The rate will be increased every year by 7% to meet inflation. The plaintiff has to keep an interest free security deposit of 12 months rent, which will be refunded at the time of termination of lease. The lease can be made for a period of six years,having a block of three years each. In the first block of three years, neither party has the option to terminate. In the second block of three years, the plaintiff has the option of termination with six months notice and the first defendant has no such option. The lease will commence from September 1, 2008. As the plaintiff had already inspected the building for its readiness to start the interior work and on first defendant's part, subject to



plaintiff making an earnest money deposit of Rs.1crore for each floors, pending the execution and signing of the agreement, first defendant will handover the custody of the floor for the interior work so that the work of the interiors is speeded up. During the execution of the interior work, whatever support plaintiff's engineers require, it will be provided by the first defendant. There are also terms with regard to the maintenance charges in this communication.

43.Subsequent to this communication, plaintiff paid a sum of Rs.1crore each to the first defendant and Kishore Kumar Menon, the 10th defendant on 22.07.2008. A copy of the communication and copies of the cheques are marked as Exs.P4 and P5. Thereafter, on 05.11.2008 the plaintiff had paid a sum of Rs.1,18,35,968/- through cheque to the first defendant as earnest money deposit for 5th floor. Ex.P3 to P6 prove that the plaintiff and the first defendant had entered into an agreement for leasing the fifth floor in Menons Eternity and the plaintiff paid a sum of Rs.2,18,35,968/- to the first defendant in this regard.

44.Then it appears that the dispute started between the parties and the plaintiff claims that the possession of the property as promised was not



C.S.No.630 of 2011

handed over and on the other hand, this claim is disputed by the first defendant claiming that the possession in respect of the 5th floor was already with the plaintiff. Ex.P8 is the copy of the communication from the plaintiff to the first defendant informing that when they visited the premises “Menons eternity” on 20.01.2009, to pursue the interior work on 5th and 6th floor, they found to their dismay that this floor has been locked and no interior work was carried out. Therefore, the plaintiff sought reasons for suspension of the work. Ex.P9 is the reply from Lancor Projects limited to the plaintiff informing that some Arbitration proceedings had been initiated between the developers to the project, namely, Lancor Holdings Limited and the Menon Family, who are the owners of 6th, 7th, 8th, 9th and part of 10th floors. No work to be taken up for completion until the arbitration proceedings are concluded. Ex.P10 is the copy of the communication from the plaintiff to Mr.Menon informing that 6th floor is locked and not accessible and it was informed by Lancor that there is a dispute over some non payments between two of them and that there will not be any progress till the arbitration proceedings are concluded. Therefore, it informed Menon that it decided against renting out the 6th floor and requested for refund of Rs.2.18crores. This was followed by another letter, Ex.P11 from the plaintiff to Mr.Kishore Kumar Menon seeking payment of Rs.2,18,35,968/- in view of the pending



C.S.No.630 of 2011

arbitration proceedings between the first defendant and Menon.

WEB COPY

45.Kishore Kumar Menon replied through Ex.P12 letter informing that the floor was locked due to the fact that the plaintiff wanted to renegotiate the agreed terms with Lancore. He claimed that 6th floor belongs to him and he had no knowledge about the payment of Rs.2crore for interior work. Ex.P13 is the copy of the legal notice dated 10.04.2009 sent on behalf of the plaintiff to defendants 10 to 12 reiterating the claim of 2,18,35,968/- with interest at 18% per annum. Ex.P14 is the copy of the legal notice dated 11.04.2009 to the first defendant terminating the lease agreement dated 11.09.2008 with immediate effect with a request to refund a sum of Rs.2,18,35,968/- with 18% interest per annum. Ex.P15 is the letter from Kishore Kumar Menon to the plaintiff to sort out the issue. It is seen from the plaint averments that defendants 10 to 12 had paid a sum of Rs.2,18,35,968/- to the plaintiff on 18.07.2011. Thus, it is apparent that the plaintiff has not claimed any relief against the defendants 10 to 12 for the reason that the defendants 10 to 12 had returned the sum of Rs.2,18,35,968/-

46.Ex.P16 is the copy of the letter from the first defendant to the



C.S.No.630 of 2011

plaintiff. It is claimed that the lease deed was executed between the plaintiff and the first defendant on 11.09.2008 clearly specifying that the lease would commence on obtaining the completion certificate from CMDA and power supply from TNEB. The plaintiff was handed over the keys of the premises on the same date of the lease deed. Only thereafter, the plaintiff paid Rs.1,18,35,968/- towards interest free refundable security deposit. The plaintiff had started interior work in the 5th floor, thereafter, had abandoned the premises despite knowing the obligation to pay the rent at Rs. 18,19,664/- for three years. The plaintiff cannot rely on the letter from Lancor Projects Limited for the reasons that the plaintiff has no connection with the Lancor Projects Limited. The issue between defendants 10 to 12 and the first defendant did not concern the plaintiff's continued occupation of the 5th floor of the building. Due to express lock-in period of three years, termination of the lease by the plaintiff is not valid and therefore, the plaintiff has to pay rental dues as per the lease deed.

47.Ex.P18 is the notice dated 16.10.2009 from the first defendant to the plaintiff informing the obtaining of completion certificate from CMDA on 14.10.2008 and power supply from TNEB. It was informed that upon request of the plaintiff, the plaintiff was put in possession in the demised premises as early as in the first week of November 2008. However, it was



C.S.No.630 of 2011

only agreed to commence lease from 01.10.2008. Soon after taking possession, the plaintiff started carrying out interior work. But for the reason known to the plaintiff, plaintiff suddenly stopped the interior work and abandoned the premises in and around February 2009. No rent was paid. The first defendant was raising invoices from time to time with regard to rental payables. Therefore, the plaintiff has to vacate and hand over the possession.

48.The important question which arises for consideration in the lis between the parties is that what is the actual date of commencement of lease and what is the actual date of handing over the possession of the 5th floor building, to the plaintiff. We have seen that the plaintiff has determined the lease agreement with defendants 10 to 12 and received the amount paid to the defendants 10 to 12. Therefore, we are concerned only with first defendant and 5th floor of the building. From the Exhibits produced, especially, Ex.P8 and Ex.P9, when the plaintiff inspected the premises on 20.01.2009, there was suspension of interior work and it was informed by the sister concern of first defendant, namely, Lancor Projects limited that there is arbitration proceedings pending between the first defendant and the defendants 10 to 12 and that no work would be taken up till the completion



C.S.No.630 of 2011

of arbitration proceedings. Though the first defendant claim that it is not bound by this letter, this Court is of the considered view that the first defendant cannot disown Ex.P9 letter for the reason that Ex.P9 reply was sent in response to the letter sent to the first defendant on 21.01.2009 through Ex.P8. Thus, it is made clear from Ex.P9 that there was arbitration proceedings pending between first defendant and defendants 10 to 12 with regard to the claim of the ownership. It is corroborated by Ex.P17 public notice issued by the defendants 10 to 12 informing about the dispute between Menon and first defendant on account of unlawful registration of 50% of the undivided interest in the land in favour of the developers (first defendant), without any authority. That apart, it is seen from Ex.P7 that the first defendant informed the defendants 10 to 12 to pay Rs.1.18crore for the reason that it has overspent to the tune of Rs.8 crore and is not able to honour its commitments to the HDFC loans. This letter strengthens the case of the plaintiff that due to financial difficulties, the first defendant was not able to complete the project.

49. When DW1 was cross examined about the completion certificate obtained from CMDA, he answered that the completion certificate was obtained on 14.08.2008. However, the completion certificate is not filed in



C.S.No.630 of 2011

this suit. He admitted that there was dispute between the first defendant and defendants 10 to 12 and the said dispute was referred to arbitration. The reference to arbitration was made on 05.01.2009 and the arbitral award was passed in March 2016. The arbitration award was partially in favour of the defendants 10 to 12 and no order was passed in favour of the first defendant. He admitted that the third defendant is the sister concern of the first defendant and Mr.Jayant Thivy was the General Manager of the third defendant. He admitted that Ex.P9 was written by Mr.Jayant Thivy. It is his evidence that electricity connection for the entire building was given on 19.08.2008. But, no record is available in this case to prove this claim. When he was asked as to whether any communication to the plaintiff was sent informing about the obtaining of electricity connection to the 5th floor, he answered that he did not remember and he has to check the records. He claimed that the possession of the premises was handed over to the plaintiff in November 2008, but did not remember about any written communication for handing over the possession as per the terms of the lease. He claimed that lease for the 5th floor commenced on 19.12.2008.

50.It is his evidence that the plaintiff did not hand over the possession back to the first defendant. He admitted that Ex.P3 is an email from the



C.S.No.630 of 2011

second defendant, on behalf of the first defendant, to the plaintiff. When he was asked as to whether Exs.P4 to P9, P14, P16 and P18 are exchanged correspondences between the plaintiff and the first defendant, he answered that except Ex.P8 and Ex.P9, rest of the documents pertaining to the suit transaction were exchanged between the plaintiff and the first defendant. He stated that he has not produced any rental invoice raised on the plaintiff by the first defendant for January and February 2009. He admitted that Ex.P17 public notice was issued by the defendants 10 to 12. He admitted the receipt of Rs.2,18,35,968/-.

51. When he was asked as to whether any sum was paid by the plaintiff to the third defendant for interior work, he answered that he did not remember. For another question, with regard to payment of Rs.2crore by the plaintiff to the defendants for interior work and no corresponding work was done by the third defendant, he denied the suggestion. He claimed that he is giving evidence only on behalf of the first defendant. He admitted that there was a complaint given by the defendants 10 to 12 against the first defendant and its officials and it is pending in C.C.No.9625 of 2009, on the file of XI Metropolitan Magistrate Court, Saidapet and he is one of the accused. He also admitted that D10 to D12 returned a sum of



C.S.No.630 of 2011

Rs.2,18,35,968/- on account of their inability to give sixth floor to the plaintiff. It is his evidence that as per Ex.P3, it was an offer covering the 5th and 6th floor. He admitted that the custody of the floor was proposed to be handed over for interior work. He also admitted the contents of Ex.P7 that the first defendant was not in a position to repay the HDFC loan. There is also an admission that the 3rd defendant was the entity entrusted with the interior work for 5th and 6th floors. It is stated that there is no record available to show the payments of service tax for the alleged lease of the 5th floor to the plaintiff and for raising invoice for the alleged electricity used by the plaintiff.

52.Thus, the reading of the evidence of DW1 shows that there is absolutely no piece of evidence to show that the completion certificate was obtained from CMDA and the electricity connection was obtained from TNEB as claimed by the first defendant. That apart, the interior work entrusted to the third defendant was not completed. There were disputes – civil and criminal between the first defendant and defendants 10 to 12 with regard to the ownership of the entire building. In the said circumstances, the only conclusion that is possible is that the plaintiff was handed over only the custody of 5th floor building for carrying out the interior work through the



C.S.No.630 of 2011

third defendant. Interior work was not completed. The claim of the first defendant that the completion certificate was obtained from CMDA on 14.09.2008 and electricity service connection was obtained in December 2008 are not proved. Handing over the custody of the 5th floor for interior work cannot be equated to handing over possession of a premises in the capacity as a lessee. When the lease itself has not commenced, question of enforcing terms with regard to lock in period of 3 years and surrendering of lease will not arise. In the facts and circumstances of this case, this Court finds that judgment relied by the learned counsel for the defendants 1 to 3 is of no use to the case of the defendants 1 to 3. Therefore, the irresistible conclusion that can be drawn is that the possession of the 5th floor building was not handed over to the plaintiff in its capacity as a lessee and that the lease had not commenced at all. That was the reason why the plaintiff terminated the lease and prayed for refund of the sum of Rs.3,24,14,595/-, which in the considered view of this Court, the plaintiff is entitled to claim as prayed for in the plaint. Thus, Issue No.2 is answered in favour of the plaintiff.

53.Though plaintiff has not produced any documentary evidence to show the payment of Rs.1,00,00,000/- for interior work, it is seen from the



C.S.No.630 of 2011

evidence of DW.1 that he admitted that the interior work was entrusted to third defendant. Third defendant is a subsidiary of first defendant. It is also admitted by first defendant that the custody of the 5th floor premises was handed over to plaintiff on undertaking the interior work. One of the reasons for discontinuance of the lease by the plaintiff is non-completion of the interior work. Third defendant has not given any evidence. Thus, the evidence available in this case supports the case of the plaintiff that the plaintiff paid Rs.1,00,00,000/- to the third defendant to be paid to defendants 4 to 10 for interior work. Interior work was not completed. Thus, this Court finds that the plaintiff is entitled to a sum of Rs.1,00,00,000/- along with interest from defendants 1 and 3 as claimed in the plaint, for Issue No.3.

54.As regards the claim of damages of Rs.50,00,000/- with interest, this Court finds that there is no specific pleading as to the manner in which loss has been caused to the plaintiff. It is admitted case that the last Annual General Meeting of the plaintiff was held on 30.09.2008. There is no material produced before the Court to show that the plaintiff had taken steps for restoring the plaintiff's company with the Registrar of Companies, after it had been struck off. When there is no evidence produced as to how the loss



C.S.No.630 of 2011

occurred, the claim of damages cannot be ordered merely on the basis of guess work. Therefore, this Court finds that the plaintiff is not entitled for the damages as claimed in the plaint. Accordingly, issue no.4 is answered against the plaintiff.

55.In the result,

- (i) The suit is decreed in part with proportionate costs.
- (ii) Plaintiff is entitled to recover a sum of Rs.3,24,14,595/- (Rupees Three Crores Twenty Four Lakhs Fourteen Thousand Five Hundred and Ninety Five only) from the first defendant with subsequent interest at 6% p.a from the date of plaint till the date of realisation of amount on Rs.2,18,35,968/- (Rupees Two Crores Eighteen Lakhs Thirty Five Thousand Nine Hundred and Sixty Eight only).
- (iii) Plaintiff is also entitled to claim a sum of Rs.1,00,00,000/- (Rupees One Crore Only) along with interest at 6% p.a from the date of plaint till the date or realisation from the defendants 1 and 3.
- (iv) Plaintiff is not entitled to claim a sum of Rs.50,00,000/- as damages with interest and therefore, the claim of damages against the



C.S.No.630 of 2011

defendants is dismissed.

WEB COPY (v) Second defendant is only an employee in the first defendant and therefore, is not personally liable and the suit against the second defendant is liable to be dismissed and accordingly dismissed.

11.11.2022

sli

List of witnesses examined on the side of the plaintiff:

PW1 - Mr.Naveen Sriram

List of documents marked on the side of the plaintiff:

<i>S.No.</i>	<i>Exhibit No.</i>	<i>Date</i>	<i>Description</i>
1	P1	29.05.2017	Certified copy of Board resolution of the plaintiff's company
2	P2	25.04.2011	Copy of the Board resolution of the plaintiff's company
3	P3	14.07.2008	Copy of the E-mail from the second defendant to plaintiff.
4	P4	22.07.2008	Copy of cheque No.035601 for Rs.1,00,00,000/- from the plaintiff to the first defendant.
5	P5	22.07.2008	Copy of cheque No.035603 for Rs.1,00,00,000/- from the plaintiff to the tenth defendant.
6	P6	05.11.2008	Copy of cheque No.035612 for Rs.1,18,35,968/- from the plaintiff to the first defendant.
7	P7	26.11.2008	Copy of the letter from first defendant to defendants 10 to 12.
8	P8	21.01.2009	Copy of the letter from plaintiff to the third defendant.
9	P9	22.01.2009	Copy of the letter from the third defendant to the plaintiff.
10	P10	30.01.2009	Copy of the letter from M/s.Future Metals Private limited to Menon.



C.S.No.630 of 2011

<i>S.No.</i>	<i>Exhibit No.</i>	<i>Date</i>	<i>Description</i>
11	P11	02.03.2009	Copy of the letter from the plaintiff to 10 th defendant.
12	P12	31.03.2009	Copy of the letter from 10 th defendant to Mr.P.Chandrasekhar, Future Tree Holdings.
13	P13	10.04.2009	Copy of the Legal notice from the plaintiff to the defendants 10 to 12.
14	P14	11.04.2009	Copy of the letter from plaintiff to first defendant.
15	P15	29.04.2009	Original letter from 10 th defendant to Mr.P.Chandrasekhar, Future Tree Holdings.
16	P16	14.05.2009	Copy of the letter from the first defendant to the plaintiff.
17	P17	15.07.2009	Copy of the public notice published by defendants 10 to 12 in the Hindu Newspaper.
18	P18	16.10.2009	Copy of the legal notice from the first defendant to the plaintiff.
19	P19	25.05.2011	Original Encumbrance Certificate in respect of the suit property.

List of witnesses examined on the side of the defendants:

DW1 – Chandrasekar J.M.

List of documents marked on the side of the defendants:

<i>S.No.</i>	<i>Exhibit No.</i>	<i>Date</i>	<i>Description</i>
1	D1	11.09.2008	Copy of the lease deed
2	D2	11.11.2020	Certified copy of the authorization letter

sli

11.11.2022

Index : Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



WEB COPY



C.S.No.630 of 2011

G.CHANDRASEKHARAN,J.

sli

C.S.No.630 of 2011



WEB COPY



C.S.No.630 of 2011

11.11.2022