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W.P.No.10113 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10113 of 2024 and  
WMP.No.11148 of 2024

M/s.Oriental Lotus Hospitality Solutions Pvt Ltd.,  
Represented by its Managing Director, Manju Suresh,  
Having registered office at No.12,  
8<sup>th</sup> Cross, Kumara Park West,  
Bangalore 560 020  
Factory at Survey no.11,9/1,  
Vengadu Road,  
104, Navalur Village,  
Sriperumbudur,  
Kancheepuram 602 105

... Petitioner

Vs.

1.The Joint Director,  
Industrial Safety and Health,  
No.47/1, Thiru.Vi.Ka Industrial Estate,  
Guindy, Chennai 600 032

2.The Director,  
Industrial Safety and Health,  
No.47/1, Thiru.Vi.Ka Industrial Estate,  
Guindy, Chennai 600 032

3.M/s.Oriental Lotus Hotel Supplies Private Limited,  
Represented by its Director,



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Jay Raman, Villa No.15, Phas 1, Chettinad Enclave,  
S.Kolathur Road, Narayanapuram,  
Pallikaranai, Chennai 602 100  
(3<sup>rd</sup> respondent impleaded as per order dated 25.04.2024  
in WMP.No.12240 of 2024 in WP.No.10113 of 2024)

4.Brilliant Ace Communications Private Limited,  
Represented by its Authorised Signatory,  
Villa No.15, Phase-1, Chettinad Enclave,  
S.Kolathur Road, Narayanapuram,  
Pallikaranai, Chennai 602 100  
(4<sup>th</sup> respondent impleaded as per order dated 25.04.2024  
in WMP.No.12822 of 2024 in WP.No.10113 of 2024) ... Respondents

**PRAYER:**

Writ Petition is filed under Article 226 of Constitution of India  
praying to issue a writ of certiorarified mandamus calling for the records  
pertaining to the impugned order No.C/1051/2023 dated 03.04.2024  
passed by the first respondent and quash the same and further direct the  
first respondent to formally issue the Factory Licence to the petitioner  
which is deemed to have been granted by 02.06.2023 in terms of Section  
6(2) of the Act.

For Petitioner : Mr.P.Kavin Prabhu

For Respondents

For R1 & 2 : Mr.K.Tippu Sulthan,  
Government Advocate



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For R3 : Mr.M.S.Murali  
for M/s.R&P Partners

For R4 : Mr.G.Prabhakaran

### **ORDER**

This writ petition has been filed challenging the order passed by the first respondent dated 03.04.2024 thereby rejected the representation submitted by the petitioner seeking registration and grant of new license.

2. The petitioner-Company had entered into Business Transfer Agreement dated 08.09.2022 with M/s.Oriental Lotus Hotel Supplies Private Limited on the representation that its business had accumulated heavy loss and was in dire need of financial support. Therefore, the petitioner agreed to take over the factory situated at Door No.11, 9/1, Vengadu Road, Navalur Village, Sriperumbudur Taluk, Kancheepuram District. The petitioner also agreed to take over the entire premises by purchase and also agreed to take over the business of the third respondent along with their men, stock and machineries. The machineries were under poor condition and as such, the petitioner carried out renovations.



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Therefore, the petitioner carried out various renovations over the machineries and infrastructure at the cost of more than 2.5 crores. As per the agreement, the petitioner also paid a sum of Rs.4.75 crores to the third respondent. That apart, all liabilities were transferred to the petitioner. The petitioner also spent Rs.7.6 crores in pursuant to the agreement towards performing the supply orders. During the business, the payments were made from the clients in the name of the third respondent. While being so, in the year 2023, dispute arose between the petitioner and the third respondent pertaining to reconciliation funds received by the third respondent from the purchasers for the settlement made by the petitioner. In this regard, it was referred before mediator and the petitioner and the third respondent undertook to maintain status quo before the mediator.

2.1 While being so, the petitioner submitted application before the first respondent for factory licence along with the requisite fees on 02.03.2023. The application was submitted in Form 2 with all requisite documents including the lease agreement entered between the petitioner



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and the third respondent dated 21.10.2022. Even after period of eight months, it was not considered. On 03.10.2023, the petitioner was served with notice stating that the third respondent objected for grant of factory licence. Because of pendency of the said application for licence, the agreement also expired. Once again, the petitioner submitted detailed representation on 20.12.2023 to the first respondent to consider the application for issuance of licence. In fact, even before that, the first respondent inspected the petitioner and found that the petitioner was in absolute possession of the premises and its employees were running the business at the premises in compliance with all prevailing laws. Therefore, the petitioner filed application under Section 9 of Arbitration and Conciliation Act, 1996, wherein the District Commercial Court at Bengaluru granted interim injunction restraining the third respondent from taking any action directly or indirectly in furtherance to the termination of the business transfer agreement dated 08.09.2022. The petitioner also filed suit in OS.No.234 of 2023 on the file of the District Munsif Court, Sriperumbudur seeking protection against unlawful eviction from the factory premises.



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2.2 The application for licence was pending before the first respondent and as such, the petitioner had filed writ petition before this Court in WP.No.4435 of 2024 for direction and this Court by order dated 22.02.2024, directed the first respondent to call for personal hearing of the petitioner as well as the third respondent and to pass orders on the application submitted by the petitioner within a period of six weeks from the date of receipt of the order. However, the first respondent rejected the application.

3. The learned counsel appearing for the petitioner would submit that the first respondent ought to have disposed of the application within a period of 30 days from the date of receipt of the application under Section 6(2) of the Factories Act, 1948. However, the first respondent kept the petition till the expiry of the lease agreement and now said that the petitioner is in unlawful occupation and rejected the application for licence. The third respondent having been received the entire amount for its machineries and other heads, now objected for grant



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of factory licence. In fact, there was no show cause notice issued by the first respondent for revocation of erstwhile factory licence stands in the name of the third respondent. At the time of filing the application, the lease agreement was still subsisting. After lapse of so many months, it got expired. Sub Sections 1(a) to 1(i) of Section 7 of Factories Act stipulates necessary information to be provided by the occupier of the premises. There is no requirement for the occupier to produce documents substantiating occupation of the premises in this provision. Further, sub rule 2 of Rule 3 of the Tamilnadu Factories Rules, 1950 does not require documents substantiating occupation of the premises to be submitted along with application. Further, the Notice of Occupation under Form 2 of the Rules also does not require any such 'documents substantiating occupation' of the premises. When the civil suit as against respondents 3 and 4 is pending, the tenancy rights of the petitioner are subjudiced. Therefore, the petitioner is in lawful possession and occupation of the premises and he is entitled for factory licence.



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4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of the counter filed by the third and fourth respondents and on submissions of the learned counsel appearing for respondents 3 & 4 revealed that on receipt of the application from the petitioner, respondents 3 and 4 had participated in the enquiry conducted by the first respondent. After detailed enquiry, the first respondent rejected the request made by the petitioner for issuance of factory licence. The entire premises situated at survey No.11, 9/1 Vengadu Road, 104, Navalur Village, Sriperumbudur, Kancheepuram together with the building admeasuring 70,000 sq.ft in the land to an extent of 3.9 acres belongs to the fourth respondent by having purchased by the registered sale deed dated 25.03.2014 vide document No.3492 of 2014. Thereafter, the revenue records were mutated in the name of the fourth respondent. The tax assessment also stands in the name of the fourth respondent. In the year 2014, the said premises was leased out to M/s.Telefield (Hotel supplies) Private Limited by the lease deed dated 14.07.2014 for a period



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of three years and subsequently it was renewed by the lease deed dated 29.01.2018. Thereafter, the name of the lessee was changed as the third respondent.

6. Once again, the lease agreement was renewed on 01.05.2020 for further period of five years. Therefore, the third respondent is the lawful lessee in respect of the subject property. While being so, the third respondent entered into business transfer agreement with the petitioner dated 08.09.2022. The petitioner was in need of GST registration, for which a lease agreement was executed for a period of 11 months. It was only for the purpose of obtaining GST registration and it cannot be used for any other purpose. Therefore, as per the lease deed, no right was created in respect of the subject property in favour of the petitioner. In fact, the third respondent is paying rent for the subject property to the fourth respondent. In fact, the said lease agreement dated 21.10.2022 was not supported by any consideration and no rent was received from the petitioner. That apart, the petitioner did not obtain any cosmetics manufacturing licence as provided under Form 32 of Drugs and Cosmetics Rules.



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7. Insofar as the application filed under Section 9 of the Arbitration and Conciliation Act before the District Commercial Court, Bengaluru, the fourth respondent is not a party in respect of the agreement entered between the third respondent and the petitioner. That apart, the issue of lawful occupancy is not the subject matter of application filed before the District Commercial Court, Bengaluru. Further, mere filing of suit in OS.No.234 of 2023 before the District Munsif Court, Sriperumbudur for injunction restraining from evicting the petitioner without following due process of law would not confer any right of occupation. The business transfer agreement dated 08.09.2022 entered between the petitioner and the third respondent revealed that it was recorded the sale of fixed assets (plant and machinery), electrical items, lab equipments, computer, etc and inventory (financial goods, chemical, raw materials, etc. That apart, it was already terminated on 23.01.2023. It does not whisper about the sale or ownership or occupation of the premises. Therefore, it cannot be used for the purpose of occupation in the premises by the petitioner.



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8. Further, though the petitioner raised specific contention that sub rule 2 of Rule 3 of Tamilnadu Factories Act, 1950, does not require documents substantiating the occupation of the premises to be submitted along with the application, as per Sub Rule 2 ( e) of Rule 3 and Proviso to Sub Rule 6 of Rule 4 says requirement of such particulars. Accordingly, legal documents for occupation of the premises are very much required from the petitioner before the registration / grant of licence. Admittedly, there is dispute between them in respect of their business transaction as stated supra. Therefore, for registration and licence of new factory, require the occupier to submit proof of occupation in the form of patta or sale deed or valid lease deed or latest rental agreement which is in force for time being. Accordingly, the application submitted by the petitioner for registration and grant of new licence was rightly rejected and this Court finds no infirmity or illegality in the impugned order passed by the first respondent dated 03.04.2024. As such, this writ petition is devoid of merits and liable to be dismissed.



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9. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order  
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To

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- 2.The Director,  
Industrial Safety and Health,  
No.47/1, Thiru.Vi.Ka Industrial Estate,  
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- 3.Director,  
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Jay Raman, Villa No.15, Phas 1, Chettinad Enclave,  
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- 4.Authorised Signatory,  
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**G.K.ILANTHIRAIYAN, J.**

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