M/S Mehra Jewel Palace Pvt Ltd vs M/S Miniso Lifestyle Pvt & Anr. on 25 May, 2022

Author: Amit Bansal

Bench: Amit Bansal

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*     IN THE HIGH COURT OF DELHI AT NEW DELHI

%                              Judgment Reserved on : 06th May, 2022
                               Judgment Delivered on : 25th May, 2022

+     CS(COMM) 376/2020 & I.A. No.8044/2020 (u/O-XVA CPC), I.A.
      No.12139/2020 (for modification), I.A. No.12216/2021 (u/O-
      XXXVIII R-1 & 5 CPC), I.A. No.14659/2021 (for directions), I.A.
      No.182/2022 (u/S 151 CPC)

      MEHRA JEWEL PALACE PVT LTD.            ..... Plaintiff
                  Through: Mr. Kirti Uppal, Senior Advocate
                           with    Ms.    Shaini       Bhardwaj,
                           Mr.Shaurya Rohit and Mr.Devesh
                           Makhija, Advocates.
                  versus

      MINISO LIFE STYLE PVT. LTD. & ANR.        ..... Defendants
                    Through: Mr. Pawan Upadhyay with Mr.
                             Rajesh Chhetri, Mr. Rajeev Chhetri
                             and    Ms.     Meenakshi      Rawat,
                             Advocates.
      CORAM:
      HON'BLE MR. JUSTICE AMIT BANSAL

                               JUDGMENT
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AMIT BANSAL, J.

I.A. No.12212/2021 (u/O-XIII-A(4) of CPC)

1. The present application has been filed on behalf of the plaintiff under Order XIII-A of the Code of Civil Procedure, 1908 (CPC), as applicable to commercial suits, seeking a summary judgment in favour of the plaintiff for a sum of Rs.3,83,09,444/- along with pendente lite and future interest.

2. Notice in the present application was issued on 20th September, 2021 and reply to the application on behalf of the defendant no.1 was filed on 27 th CS(COMM) 376/2020 Signature PageNot 1 ofVerified Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 November, 2021. Thereafter, plaintiff also filed rejoinder to the reply of the defendant no.1 in December, 2021.

3. Vide order dated 03rd March, 2022, the submission of the parties has been recorded that for deciding the issue of whether or not the defendants are entitled to the benefit of the force majeure clause, oral evidence would not be necessary.

FACTUAL MATRIX

4. Brief facts culminating into filing of the present suit are as follows. 4.1 Plaintiff is the owner of the property bearing No.C-11, Connaught Place, New Delhi-110001 consisting of the Ground Floor measuring about 2400 square feet and basement measuring about 400 square feet (demised premises).

4.2 A tripartite Lease Deed dated 04th January, 2018 (Lease Deed) was entered into by the plaintiff, being the lessor, and the defendant no.1 along with one Keikaku India Private Limited, being the lessees for running a commercial business in the demised premises. The said lease deed was duly registered. The term of the Lease Deed was for nine years running from 1st December, 2017 up to 30th November, 2026 with monthly rent being Rs.27,00,000/- for the period commencing from 30th January, 2018 to 30th November, 2020. Along with the monthly payment of rent, the defendants were also liable to pay the statutory tax, being the Goods and Service Tax applicable on the monthly rent amount. The defendants had deposited a sum of Rs.1,08,00,000/- with the plaintiff towards Interest Free Refundable Security Deposit as per Clause 7 of the Lease Deed. 4.3 Subsequently, vide communications dated 10th January, 2019 the plaintiff was informed of Keikaku India Private Limited withdrawing from CS(COMM) 376/2020 Signature PageNot 2 ofVerified Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 the Lease Deed with effect from 01st February, 2019. Thereafter, the defendant no.2 was appointed as a new franchisee of the defendant no.1 and agreed to be bound by the terms and conditions of the Lease Deed. 4.4 On 30th March, 2020, the defendant no.1 sent an email to the plaintiff informing the plaintiff of the closure of the demised premises on account of the COVID-19 pandemic and requested the plaintiff to consider waiving off its obligation to pay rent.

4.5 Thereafter, on 03rd April, 2020, the defendant no.1 sent a notice of suspension of rent to the plaintiff, invoking the force majeure clause under the registered Lease Deed and asked for waiver of payment of rental dues till the time the demised premises became operational. Accordingly, rent was not paid by the defendants for the months of April, 2020 and May, 2020.

4.6 Vide email dated 28th May, 2020, the plaintiff informed the defendant no.1 that the force majeure clause embedded in the Lease Deed only provided for deferment of the date of paying rent and not for waiver of the rent. The plaintiff further offered the defendants a pre-approved payment plan in respect of the rent payable for the months of April, 2020 and May, 2020, whereby the defendant no.1 was given the option of making payment of Rs.48,60,000/- i.e., 50% of the amount due after deduction of Rs.5,40,000/- as Tax Deducted at Source, in two installments by 10th June, 2020 and 10th July, 2020 respectively.

4.7 Subsequently, the plaintiff reminded the defendant no.1 of the outstanding payment of rent for the months of April, 2020 and May, 2020 vide email dated 01st June, 2020.

4.8 The defendant no.1 called the plaintiff to request a waiver of the contractual rent due for the months of April, 2020 and May, 2020, which request was declined by the plaintiff vide email dated 03 rd June, 2020. The plaintiff further requested the defendant no.1 to release the first installment amount under the pre-approved payment plan, however, the defendant no.1 only paid Rs.12,50,000/- on 17th June, 2020, and did not pay the balance amount, while continuing to enjoy possession of the demised premises. 4.9 There were various negotiations between the plaintiff and the defendants with regard to payment of rent on account of the impact of the COVID-19 pandemic, however, no agreement was reached. 4.10 Consequent upon the failure of the defendant no.1 in paying the outstanding rent, the plaintiff, in terms of Clause 14.1 of the Lease Deed, sent legal notice dated 11th July, 2020 calling upon the defendant no.1 to make payment of Rs.1,14,94,000/- along with 18% interest per annum within one month of receipt of the notice. The notice further stated that in the event the defendant no.1 failed to make the said payment within one month, the plaintiff would be constrained to terminate the lease. 4.11 In response to the aforesaid legal notice, on 23rd July, 2020, the defendant no.1 denied its liability towards payment of rent, raising the ground of force majeure due to the ongoing COVID-19 pandemic. 4.12 Subsequently, the rent for the month of August, 2020 was also not paid by the defendants. Consequently, the plaintiff issued the Notice dated 19th August, 2020, terminating the Lease Deed and calling upon the defendants to hand over vacant and peaceful possession of the demised premises.

PROCEEDINGS IN THE SUIT

5. The plaintiff filed the present suit on 4th September, 2020 seeking recovery of possession, arrears of rent, mesne profits and interest in respect of the demised premises.

6. While issuing summons in the suit on 11th September, 2020, the Court made the following observations:

> "9. Thus prima facie the case of the defendants was covered by force majeure clause and atleast for the months of April and May, 2020 when the premises could not be opened due to the embargo and the defendants could have omitted to perform the contract. However, subsequent to the opening of the leased premises defendants cannot continue to take the plea of force majeure. Therefore, considering the fact that

> the defendants had defaulted in making payments of the lease amount for the period of June, July, August, 2020 as well till the date of termination notice was issued, the defendants will deposit a sum of Rs.90 lakhs provisionally within a period of four weeks with the Registrar General of this Court, who will keep the said amount in the fixed deposit."

7. The parties were also relegated to mediation before the Delhi High Court Mediation and Conciliation Centre to explore the possibility of settlement. However, the mediation did not bear any fruits.

8. Vide order dated 24th November, 2020, the amount of Rs.90,00,000/- deposited by the defendants with the Registrar General of this Court, was directed to be released in favour of the plaintiff. During the hearing on 08th December, 2020, submission of the defendants was noted that they will vacate the demised premises on or before 13th December, 2020. The defendants were directed to furnish a bank guarantee of Rs.1,00,00,000/- in respect of the outstanding rental dues as well as to handover the keys and CS(COMM) 376/2020 Signature PageNot 5 ofVerified Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 vacant, peaceful possession of the demised premises to the plaintiff on or before 13th December, 2020.

9. The said bank guarantee has been duly filed by the defendants. Possession of the demised premises was handed over by the defendants to the plaintiff on 14th December, 2020.

SUBMISSIONS OF THE PLAINTIFF

10. Senior counsel for the plaintiff has made the following submissions:

> 10.1 The plaintiff, on several occasions, reminded the defendants to pay the outstanding rental dues, however, the defendants sought for waiver of rent for the period commencing from April, 2020 on account of force majeure.
>
> 10.2 The defendants were offered a pre-approved payment plan in respect of the rent for the months of April, 2020 and May, 2020, which was not adhered to by the defendants. The defendants only released part payment of Rs.12,50,000/- on 17th June, 2020.
>
> 10.3 Clause 12 of the Lease Deed does not list an epidemic/pandemic as a force majeure condition. Therefore, the COVID-19 pandemic does not qualify as a force majeure event for seeking waiver from payment of rental dues.
>
> 10.4 Clause 12 of the Lease Deed provides only for deferment of payment of rent in the event of force majeure and not for suspension or waiver in respect thereof.
>
> 10.5 In terms of Clause 14.2 of the Lease Deed, since the lease was terminated by the plaintiff on account of breach by the defendants, defendants are liable to pay six

months of rent.

10.6 The defendants were in wrongful occupation of the demised premises since 19th August, 2020, the date on which the lease was terminated by the plaintiff and therefore, were liable to pay double the amount of the last paid monthly rent in terms of Clause 7.2 of the Lease Deed. 10.7 It is a matter of fact that the demised premises re-opened on 19th May, 2020. Thereafter, the defendants cannot take the plea of force majeure to shirk away from payment of rent on account of the demised premises not being operational due to the COVID-19 pandemic. 10.8 The plaintiff has filed a calculation sheet on 12 th April, 2022, in terms of which the following amounts are due from the defendants:

PARTICULARS	AMOUNT (IN RS.)	SOURCE
Rent for the months of May, 2020 (19.05.2020 onwards) to August, 2020.	97,63,548	Para 17, Amended Plaint @ Pg19-20
Interest on Rent @18% (May, 2020 to Aug, 2020) (till 12.04.2022)	22,59,154	Clause 6.1, Lease Deed @Pg 10, Docs with Plaint
Liability under Clause 14.2 (Penalty in case of termination even after expiry of lock-in period).	1,91,16,000	Clause 14.2, Lease Deed @Pg 16, Docs with Plaint
Interest on Liability under Clause 14.2 (till 12.04.2022)	26,85,205	Contractual Rate of Interest
Unauthorised Occupation	2,42,54,710	Clause 7.2, Lease

Charges (21 Aug, 2020 to 14 Dec, 2020)		Deed @Pg 11, Docs with Plaint
Interest on Unauthorised Occupation Charges (till 12.04.2022)	32,49,032	Contractual Rate of Interest

Outstanding Electricity Bill	1,53,196	Para 25-A @ Pg28, Amended Plaint/Doc @ Pg 52-55,
Outstanding Water Bills	4,313	Para 25-A @ Pg28, Amended Plaint/Doc @ Pg 52-55,
Interest on GST (till 12.04.2022)	13,40,497	Clause 6.2, Lease Deed @Pg 10, Docs with Plaint
TOTAL	6,28,25,654/-	

AMOUNT TO BE ADJUSTED

Security Deposit	-1,08,00,000	
Security furnished before Court	-90,00,000	
Payment received in May, 2020	-12,50,000	
TOTAL AMOUNT DUE AS ON 12.04.2022		4,17,75,654

SUBMISSIONS OF THE DEFENDANTS

11. Per contra, following submissions have been made by the counsel for the defendants:

11.1 The COVID-19 pandemic is fully covered under the force majeure clause contained in the Lease Deed and would thus, exempt the defendants from any liability towards payment of rent for the period commencing from April, 2020.

11.2 Force majeure is not restricted to the time period during which the demised premises was not operational and would therefore, extend beyond May, 2020.

11.3 The Lease Deed was wrongfully terminated by the plaintiff and therefore, Clause 14.1 of the Lease Deed would have no applicability in the facts and circumstances of this case. The said clause is only triggered in the event of a breach committed by the lessee. In the present case, the defendants only exercised their right to waiver of rent in terms of the force majeure clause in the Lease Deed. Therefore, the defendants did not commit any breach of the Lease Deed.

ANALYSIS AND FINDINGS

12. The impact of the coronavirus was beginning to be felt the world over, including India, from February, 2020 itself. On 19th February, 2020, the Ministry of Finance, Government of India issued an Office Memorandum (O.M.) with respect to invocation of the Force Majeure Clause provided in paragraph 9.7.7 of the Manual for Procurement of Goods, 2017. The same is set out below:

> "A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event CS(COMM) 376/2020 Signature PageNot 9 ofVerified Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.
>
> 2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural calamity and FMC may be invoked, wherever considered appropriate, following the due procedure as above."

13. Even though the aforesaid O.M. was in the context of the disruption of the supply chains due to the coronavirus in China, the O.M. specifically states that the COVID-19 pandemic will be covered in the force majeure clause, as provided in paragraph 9.7.7 of the Manual for Procurement of Goods, 2017. In the judgment dated 12th June, 2020 passed in W.P.(C) No.2241/2020 titled MEP Infrastructure Developers Ltd. v. South Delhi Municipal Corporation & Ors., a Co-ordinate Bench of this Court took into account the aforesaid O.M. while analysing the force majeure clause in a CS(COMM) 376/2020 Signature PageNot Verified 10 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 Toll Tax Collection Agreement dated 28th September, 2017. Placing reliance on the said O.M., the Co-ordinate Bench gave the benefit of the force majeure clause to the petitioner therein on account of the onset of the COVID-19 pandemic. As noted above, the O.M. uses the expression "Act of God", which is also used in the Lease Deed in the present case.

14. On 11th March, 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic. On 24th March, 2020, the National Disaster Management Authority (NDMA) passed an order in

exercise of its powers under Section 6(2)(i) of the Disaster Management Act, 2005 directing all Ministries and Departments of Government of India, Governments of States and Union Territories, and Disaster Management Authorities in the States and Union Territories to take effective measures to prevent the spread of COVID-19 in the country. The Ministry of Home Affairs (MHA) passed an order in terms of Section 10(2)(l) of the Disaster Management Act, 2005 in furtherance of the aforesaid order passed by the NDMA, issuing necessary guidelines to all Authorities in this regard.

15. The Delhi Disaster Management Authority (DDMA) passed an order dated 25th March, 2020 in terms of the aforesaid order of the NDMA and in exercise of its powers, issued guidelines for strict implementation of COVID-19 related restrictions. The relevant portion of the said guidelines are set out below:

> "4. Commercial and private establishments shall be closed down except the following:
>
> a. shops, including ration shops (under PDS), dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder. However, district administration may encourage and facilitate home delivery to minimize the movement of individuals outside their homes.

> xxx xxx xxx
>
> All other establishments may work from home only."

16. By virtue of the aforesaid order, "lockdown" was imposed in the Union Territory of Delhi in terms of which all the shops barring the shops selling essential commodities were directed to be closed. This order was set to remain in force till 14th April, 2020, but was subsequently extended from time to time, till 17th May, 2020.

17. In terms of the aforesaid orders, the demised premises was shut down from 24th March, 2020 till 17th May, 2020. It has been stated in the written statement that the demised premises re-opened only on 19th May, 2020. Therefore, it is an admitted position that the shop of the defendants remained completely shut for approximately two months.

18. At this stage, it is deemed apposite to make a reference to the relevant clauses of the Lease Deed:

> "2. LOCK-IN PERIOD:
>
> Out of the above Term of the Lease, initial period of Thirty (30) months commencing from the Rent Commencement Date shall be construed as the Lock-in Period, during

which the parties shall not be entitled to terminate the Lease deed nor be entitled to exercise the option of six (6) month notice to terminate, except for breach by the other party.

In the event that the Lessee desires to terminate the Lease Deed before the expiry of the Lock-in period, the Lessee shall be liable to pay the entire agreed rent for the entire Lock-in period plus an additional six (6) months of rent.

The Lessor is entitled to terminate the Lease Deed during the Lock-in period only in the event of any breach/default on the part of Lessee in payment of rent or other terms of the Lease deed in accordance with Clause 14.1. In the event that the Lessor terminates the agreement before the expiry of the Lock-in period on account of breach/default by the Lessee in payment of rent or CS(COMM) 376/2020 Signature PageNot Verified 12 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 other terms of the Lease deed, the Lessee shall be liable to pay the entire agreed rent for the entire Lock-in period plus an additional six months of rent.

xxx xxx xxx

6. MONTHLY RENT:

In consideration of lease granted, the Lessee has agreed to pay to the Lessor the monthly rent as mentioned hereunder, computable from Rent Commencement Day. Accordingly, the monthly rent payable by the Lessee to the Lessor during the term of lease shall be as follows:

SI	Duration	Monthly Rent
1	For the Period commencing Rent Commencement Day i.e. from January 30,2018 till November 30,2020,	Rs.27,00,000/-
2	For the period commencing from December 1, 2020 till November 30,2023,	Rs.31,05,000/-

xxx xxx xxx

6.1. The Lessee shall pay Monthly Rent to the Lessor on or before 07th day of every month in advance by deducting applicable tax on Rent. In the event of any delay by the Lessee in payment of rent beyond such due date, the Lessee shall also be liable to pay an interest of 18 % (eighteen percent) per annum for such delayed period.

6.2. In addition to rent, the Lessee shall also be liable to pay the statutory taxes, such as Goods & Service Tax, amount on above monthly Rent amount in advance within 7 (Seven) days of receiving proper invoices for such amount from the Lessor. In the

event of any delay by the Lessee in payment of statutory taxes, such as Goods & Service Tax, amount beyond such due date, the Lessee shall also be liable to pay an interest of 18 (Eighteen) % per annum for such delayed period. Notwithstanding anything herein, CS(COMM) 376/2020 Signature PageNot Verified 13 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 the Lessee may inform the Lessor in advance in writing, and the Lessor may grant an additional grace period for payment of Rent after the aforementioned seven (7) days in exceptional circumstances or as mutually agreed between the parties. 6.3. Lessor shall be duty bound to deposit the aforesaid Goods & Service Tax amount with the concerned authorities as per statutory timelines and shall also furnish to the Lessee receipts/challans for such payments made to the concerned authority, whenever requested by the Lessee. Interest or penalty, if any, charged by the Goods and Service Tax authorities, for delay by the Lessor in payment of service tax amount shall be the responsibility of the Lessor.

xxx xxx xxx

8. OBLIGATIONS OF THE LESSEE:

8.8. To hand over the vacant possession of the said premises on the expiry or earlier termination of the Lease deed in tenantable condition, normal wear and tear being exempted.

xxx xxx xxx

12. FORCE MAJEURE:

Neither party shall be liable to the other party for any delay or omission in the performance of any obligation under this Agreement where the delay or omission is due to any Force Majeure condition, i.e. Acts of God, flood, earthquake, tempest, war, riots, embargoes etc. (Force Majeure). If Force Majeure prevents or delays the performance by a Party of any obligation under this Agreement, then the Party claiming Force Majeure shall promptly notify the other party thereof in writing. Except as expressly provided otherwise in this Agreement, the date and time for the performance by any party of any obligation in this Agreement shall be postponed automatically to the extent, and for the period of time, that the party is prevented from doing so by an event of Force Majeure.

12.1. In case the 'Demised Premises' is destroyed or damaged by any Act of God, such as by fire, flood, Storm etc or in any other manner becomes unfit for occupation or use, the term of the Lease and rent payable by the Lessee to the Lessor shall be suspended till such time as the 'Demised Premises' is once again rendered fit by CS(COMM) 376/2020 Signature PageNot Verified 14 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 the Lessor at Lessor's cost and expenses for occupation or use for the Lessee. However, if the repair or restoration activity is not completed within 60 days of receipt of such notice, the Lessee shall be at liberty

> to terminate the Lease at its sole option with immediate effect without any obligation to serve a prior notice or without any payment for notice period in lieu of rent. In case, if Lessee exercises option to terminate the lease, then Lessor shall without any delay, demur or protest refund the Security Deposit in terms of this Deed."

19. The law with regard to force majeure clauses in contracts and the provisions of the Indian Contract Act, 1872 (Indian Contract Act) dealing with force majeure have been analysed by the Supreme Court in Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC

80. A Co-ordinate Bench of this Court in Halliburton Offshore Service Inc. v. Vedanta Limited and Anr., 2020 SCC OnLine Del 2068 has summarized the law laid down by the Supreme Court in Energy Watchdog supra in the following manner:

> "64. The law relating to Force Majeure has been recently settled by the Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80. The principles laid down by the Supreme Court in paragraphs 34-42 are as under:
>
> a) Force Majeure would operate as part of a contract as a contingency under section 32 of the Indian Contract Act 1872 („ICA).
>
> b) Independent of the contract sometimes, the doctrine of frustration could be invoked by a party as per Section 56, ICA.
>
> c) The impossibility of performance under Section 56, ICA would include impracticability or uselessness keeping in mind the object of the contract.

> d) If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement it can be said that the promisor finds it impossible to do the act which he had promised to do.
>
> e) Express terms of a contract cannot be ignored on a vague plea of equity.
>
> f) Risks associated with a contract would have to be borne by the parties.
>
> g) Performance is not discharged simply if it becomes onerous between the parties.
>
> h) Alteration of circumstances does not lead to frustration of a contract.

i) Courts cannot generally absolve performance of a contract either because it has become onerous or due to an unforeseen turn of events. Doctrine of frustration has to be applied narrowly.

j) A mere rise in cost or expense does not lead to frustration.

k) If there is an alternative mode of performance, the Force Majeure clause will not apply.

l) The terms of the contract, its matrix or context, the knowledge, expectation, assumptions and the nature of the supervening events have to be considered.

m) If the Contract inherently has risk associated with it, the doctrine of frustration is not to be likely invoked.

n) Unless there was a break in identity between the contract as envisioned originally and its performance in the altered circumstances, doctrine of frustration would not apply."

20. On the issue of whether or not the COVID-19 pandemic would justify non-performance or breach of a contract, the following observations were made in Halliburton supra:

"69. The question as to whether COVID-19 would justify non- performance or breach of a contract has to be examined on the facts and circumstances of each case. Every breach or non-

performance cannot be justified or excused merely on the invocation of COVID-19 as a Force Majeure condition. The Court would have to assess the conduct of the parties prior to the outbreak, the deadlines that were imposed in the contract, the steps that were to be taken, the various compliances that were required to be made and only then assess as to whether, genuinely, a party was prevented or is able to justify its non-performance due to the epidemic/pandemic.

70. It is the settled position in law that a Force Majeure clause is to be interpreted narrowly and not broadly. Parties ought to be compelled to adhere to contractual terms and conditions and excusing non-performance would be only in exceptional situations. As observed in Energy Watchdog (supra) it is not in the domain of Courts to absolve parties from performing their part of the contract. It is also not the duty of

> Courts to provide a shelter for justifying non-performance. There has to be a „real reason and a „real justification which the Court would consider in order to invoke a Force Majeure clause."

21. In Halliburton supra, the Court did not give the benefit of the force majeure clause to the contractor on the ground that the contractor committed breach of the contract even prior to the onset of the COVID-19 pandemic. In the present case, admittedly, there was no default in the payment of lease rent till the onset of the COVID-19 pandemic.

22. In Ramanand and Ors. v. Dr. Girish Soni and Anr., 2020 SCC OnLine Del 635, a Co-ordinate Bench of this Court was ceased of an issue in relation to the applicability of the doctrine of force majeure in the context of lessor-lessee dispute during the period affected by the COVID-19 pandemic. The relevant observations of the Court are set out below:

> "12. In circumstances such as the outbreak of a pandemic, like the current COVID-19 outbreak, the grounds on which the tenants/lessees or other similarly situated parties could seek waiver or non-payment of the monthly amounts, under contracts CS(COMM) 376/2020 Signature PageNot Verified 17 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 which have a force majeure clause would be governed by Section 32 of the Indian Contract Act, 1872 (hereinafter, "ICA"). This section reads as under:
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> "32. Enforcement of contracts contingent on an event happening. - Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.
>
> If the event becomes impossible, such contracts become void.
>
> 13. „Force Majeure is defined by Black s Law Dictionary as "an event or effect that can be neither anticipated nor controlled". As per the dictionary, "The term includes both acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars)".

14. The Supreme Court in Energy Watchdog v. CERC & Ors., (2017) 14 SCC 80 has clearly held that in case the contract itself contains an express or implied term relating to a force majeure condition, the same shall be governed by Section 32 of the ICA. Section 56 of the ICA, which deals with impossibility of performance, would apply in cases where a force majeure event occurs outside the contract. The Supreme Court observed:

> "34. "Force majeure" is governed by the Contract Act, 1872. Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. Insofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contact Act."

Thus, in agreements providing for a force majeure clause, the Court would examine the same in the light of Section 32. The said clause could be differently worded in different contracts, as there is no standard draft, application or interpretation. The fundamental principle would be that if the contract contains a clause providing for some sort of waiver or suspension of rent, only then the tenant could claim the same. The force majeure clause in the contract could also be a contingency under Section CS(COMM) 376/2020 Signature PageNot Verified 18 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 32 which may allow the tenant to claim that the contract has become void and surrender the premises. However, if the tenant wishes to retain the premises and there is no clause giving any respite to the tenant, the rent or the monthly charges would be payable."

23. In Ramanand supra, the request of the tenant for suspension of payment of rent was rejected by the Court on the ground that there was no rent agreement or lease deed between the parties and hence, Section 32 of the Indian Contract Act had no applicability. It was further noted by the Court that the tenants were not even lessees as an eviction decree had been passed against them under the provisions of the Delhi Rent Control Act, 1958. What distinguishes the present case from Ramanand supra is that there is an elaborate force majeure clause in the present case, which has been invoked by the defendants.

24. The judgment in Professor P.R. Ramanujan v. Vice Chancellor (IGNOU) and Anr., 2020 SCC OnLine Del 1081 relied on behalf of the plaintiff has no applicability in the present case as the said judgment was in the context of a person occupying government premises even after his superannuation in August, 2019 before the outbreak of the COVID-19 pandemic. The Court had given time to the petitioner till 10 th August, 2020 to vacate the premises. It was in that context that this Court observed that force majeure condition would not mean that payment which the petitioner is liable to make can be completely discounted.

25. Now, I shall examine the facts of the present case in the context of the legal position discussed above.

26. Clause 12 of the Lease Deed enumerates the various events of force majeure i.e., Act of God, flood, earthquake, tempest, war, riots, embargoes, CS(COMM) 376/2020 Signature PageNot Verified 19 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 etc. The use of the word "etc." in Clause 12 makes it clear that the said force majeure conditions are illustrative and not exhaustive. As noted in Halliburton supra, Black s Law Dictionary defines force majeure as "an event or effect that can be neither anticipated nor controlled; The term also includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes and wars)". It is nobody s case that the COVID-19 pandemic was an event that could be anticipated or controlled. The pandemic came suddenly and affected our lives like no other event in recent memory. The impact of the COVID-19 pandemic was felt to a large extent by owners of shops and restaurants, which had to be forcibly shut down on account of orders passed by the Government/DDMA.

27. As noted above, the O.M. dated 19th February, 2020 recognizes the COVID-19 pandemic as an "Act of God" and this has been affirmed in the decision of this Court in MEP Infrastructure supra. In

view of the DDMA order dated 25th March, 2020, an "embargo" was imposed on the operation of shops which were not selling essential commodities. The demised premises was not covered in the said exception and was therefore, not operational. Therefore, in my view, the COVID-19 pandemic, to the extent that it resulted in the closure of the demised premises, would constitute a force majeure event in terms of Clause 12 of the Lease Deed, as the same would be covered under the expression "Act of God" as well as "Embargo" and therefore, would be a contingency under Section 32 of the Indian Contract Act. A similar view was also expressed by this Court while issuing summons in the suit vide order dated 11th September, 2020.

28. It is nobody s case that the defendants defaulted in any payment of the lease rentals prior to the onset of the COVID-19 pandemic. The lease CS(COMM) 376/2020 Signature PageNot Verified 20 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 rentals up till March, 2020 were duly paid by the defendants to the plaintiff. The default happened for the first time in the month of April, 2020, when the demised premises had to be shut down. The defendants promptly invoked the force majeure clause and notified the plaintiff of the same vide its e-mails dated 30th March, 2020, 2nd April, 2020 and 3rd April, 2020 and sought suspension of payment of the lease rent.

29. After the said communications, it appears that there were telephonic/oral discussions between the parties. However, the plaintiff responded to the defendants vide its e-mail dated 28th May, 2020 and disputed the stand of the defendants that the COVID-19 pandemic would constitute a force majeure event in terms of Clause 12 of the Lease Deed. It was further contended that even if the COVID-19 pandemic qualifies as a force majeure event, it can only lead to postponement of payment of rent and not a waiver of payment of rent. Accordingly, the plaintiff gave an option to the defendants to defer the payment of the lease rental, without any waiver thereof.

30. A sum of Rs.12,50,000/- was paid by the defendants to the plaintiff on 17th June, 2020 in accordance with a pre-approved payment plan offered by the plaintiff. However, upon failure of the defendants to pay the remaining amounts, a legal notice was sent on 11th July, 2020 on behalf of the plaintiff to the defendants calling upon them to pay the outstanding amounts in terms of the Lease Deed.

31. The aforesaid legal notice was replied to by the defendants vide reply dated 23rd July, 2020 where, once again, the defendants invoked the force majeure clause under the Lease Deed to justify non-payment of the rent. A rejoinder dated 2nd August, 2020 was sent on behalf of the plaintiff to the CS(COMM) 376/2020 Signature PageNot Verified 21 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 defendants in opposition to the claims raised by the defendants in their reply to the legal notice. Subsequently, vide notice dated 19th August, 2020, the plaintiff terminated the Lease Deed on account of non-payment of lease rentals and called upon the defendants to hand over possession of the demised premises to the plaintiff.

32. An analysis of the aforesaid communications exchanged between the parties would show that the force majeure clause was invoked by the defendants at the first instance in its e-mail dated 30th March, 2020. The same was contested by the plaintiff on the ground that the pandemic was not

covered under the terms of the force majeure clause and the payment of lease rental could not be deferred. Therefore, no agreement could be arrived at between the parties and in view thereof, the defendants did not pay any lease rental to the plaintiff other than the sum of Rs.12,50,000/-.

33. Therefore, I am of the view that the defendants are entitled to the benefit of the force majeure clause insofar as payment of rent for the months of April, 2020 and May, 2020 is concerned. I do not find any merit in the contention of the plaintiff that under the force majeure clause, the payment of rent can only be delayed or postponed and cannot be waived. Clause 12 of the Lease Deed specifically states that neither party shall be liable for any "delay" or "omission" in the performance of an obligation where such delay or omission is due to a force majeure condition

34. However, in my view, the force majeure clause cannot inure to the sole benefit of the lessee alone. If the lessee suffered a loss due to shut down of his shop on account of the COVID-19 pandemic, the lessor would have continued to incur various financial obligations, such as maintenance and upkeep of the demised premises, which he would have normally fulfilled CS(COMM) 376/2020 Signature PageNot Verified 22 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 from the lease rentals being received by him. Under Clause 9 of the Lease Deed, the lessor was obliged to pay property tax, provide for insurance and repairs of the demised premises. These obligations of the lessor would have remained whether the rent was paid by the lessee to the lessor or not. The lessor could not have claimed that he should be absolved of his obligations under the Lease Deed on account of the force majeure event.

35. Therefore, I am of the view that the ends of justice would be met if both the plaintiff and the defendants equally bear the impact of the COVID- 19 pandemic, and the defendants pay 50% towards the lease rentals for the months of April, 2020 and May, 2020.

36. It is an admitted position that the shop of the defendants remained completely shut from 24th March, 2020 to 17th May, 2020 i.e., almost two months and only re-opened on 19th May, 2020. The defendants claim that the force majeure conditions continued even beyond the re-opening of the demised premises and therefore, they would be entitled to waiver of rent for the period beyond May, 2020 also. If this was the position, the defendants ought to have terminated the Lease Deed and surrendered the demised premises. If on account of changing commercial realities, making payment of the lease rentals had become unviable, the defendants ought not to have continued with the lease. Admittedly, the lock-in period in respect of lease was already over on 1st June, 2020. In none of their communications, the defendants offered to surrender the possession of the demised premises to the plaintiff. Even after the termination notice was sent on behalf of the plaintiff, the defendants continued to hold on to the demised premises. The possession of the demised premises was ultimately handed over by the CS(COMM) 376/2020 Signature PageNot Verified 23 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 defendants to the plaintiff only on 14th December, 2020, after filing of the present suit by the plaintiff on 4th September, 2020.

37. Therefore, in my view, the defendants would be liable to pay the lease rentals as per the Lease Deed from 1st June, 2020 till 14th December, 2020, when the possession of the demised premises was handed over. The defendants would also be liable to pay interest at the rate of 18% per annum

as provided in Clause 6.1 of the Lease Deed.

38. Next, it was contended on behalf of the plaintiff that the plaintiff is entitled to recover penal rent under Clause 14.2 of the Lease Deed. Clause 14 of the Lease Deed is set out below:

> "14. TERMINATION OF LEASE:
>
> 14.1. Notwithstanding the Lock in period clause, the Lessor is entitled to terminate this Lease in the event of breach of any term or condition of this lease by the Lessee, subject to the condition that the Lessor shall serve 1 (One) MONTH' notice in writing to the Lessee at its registered office address given above or at the address of the Premises, mentioning the breach and calling upon the Lessee to rectify such breach within notice period. If Lessee fails to cure or rectify such breach within the specified time period, then the Lessor shall be entitled to terminate the Lease after the last date of notice period of one month.
>
> 14.2. In the event that the Lessor terminates this lease for breach or defaults on the part of the Lessee during the lock in period, the Lessee shall be liable to pay the entire agreed rent for the entire lock in period, plus an additional 6 (Six) months of rent. Further, at any time after expiry of the Lock in Period, in the event that the Lessor terminates the lease for breach or default on the part of Lessee, such as in payment of rent or other obligations, even after expiry of cure period mentioned above, the Lessee shall be liable to pay 6 (SIX) Months of Rent to the Lessor.
>
> 14.3. The Directors and Promoters of the Lessee have represented and assured to the Lessor that in the event that the Lessor CS(COMM) 376/2020 Signature PageNot Verified 24 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 terminates the lease for breach or defaults the Lessee will not hold onto the possession of the premises, or create a dispute to hold onto the possession of the premises, and will forthwith hand over possession of the premises to the Lessor; and that the said representations are material to the Lessor agreeing to lease the said premises to the Lessee."

39. Penal rent in terms of Clause 14.2 could be recovered only in the event that the lessor terminated the lease on account of breach or defaults on the part of the lessee, including payment and other obligations. In the facts and circumstances of the present case, it cannot be said that the defendants committed breach of the terms of the Lease Deed. As already observed by me above, the defendants had validly invoked the force majeure clause in terms of the Lease Deed and therefore, the defendants were entitled to waiver of rent for the months of April, 2020 and May, 2020. Therefore, it cannot be said that there was a breach of contract on behalf of the defendants that justified termination of the Lease Deed. The plaintiff was insisting on rents for the months of April, 2020 and May, 2020 along with the rents of the future months. The defendants insisted that they were not liable to pay rents for the months of April, 2020 and May, 2020 under the force majeure clause. Since the plaintiff did not agree on the waiver of the rent at all, there was no agreement between the

parties with regard to payment of rent for the period of April, 2020 and May, 2020 and thereafter. Consequently, the plaintiff could not have invoked Clause 14.2 of the Lease Deed and demand additional six months payment.

40. Even otherwise, the plaintiff is claiming six months additional rent in terms of the latter part of Clause 14.2 of the Lease Deed. The former part of Clause 14.2 provides for additional six months of rent in the event the lessor terminates the lease for breach or defaults on the part of lessee "during the CS(COMM) 376/2020 Signature PageNot Verified 25 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 lock-in period". However, the latter part of the said clause provides that in the event the lessor terminates the lease for breach or default on the part of lessee, the lessee shall be liable to pay six months of rent to the lessor. The word "additional" is conspicuously missing from the latter part of the clause. Therefore, in terms of the latter part of Clause 14.2 of the Lease Deed, it cannot be said that the plaintiff is entitled to six months additional rent from the date of termination of the lease. After the lock-in period is over, the plaintiff would only be entitled to lease rentals for the period the plaintiff continued to be in occupation of the demised premises.

41. The plaintiff has also placed reliance on Clause 7.2 of the Lease Deed and claimed double the amount of last paid monthly rent as damages for the period the defendants continued to be in wrongful occupation of the demised premises. Clause 7 of the Lease Deed is set out as under:

> "7. SECURITY DEPOSIT:
>
> The Lessee has paid to and deposited with the Lessor a total sum of Rs.l,08,00,000/- (Rupees One Crore Eight Lakhs Only) towards Interest Free Refundable Security Deposit which is hereinafter referred to as "Security Deposit" ,vide cheque No.181646 dated 6/9/17 and the Lessor acknowledges the receipt of the same. 7.1 Subject to Lock-in period above and Clause-12 herein below, the Security Deposit shall be refundable by the Lessor to the Lessee, without any interest, on determination or earlier termination of this Lease, subject to deduction towards arrears of rent, electricity and water charges, or other outstanding dues, if any, as per mutual reconciliation of accounts by the parties, simultaneously at the time of Lessee vacating and handing over possession of the 'Demised Premises' to Lessor in tenantable condition, normal wear and tear being exempted. The Lessee shall not seek any adjustments of rent for the notice period before vacating from the security deposit and will continue to pay till the date of vacation.

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> 7.2 In the event of failure on the part of the Lessor to refund the Security Deposit, as detailed above, the Lessee shall be entitled to continue to occupy and use the 'Demised Premises' at its discretion, without paying Rent or other charges, until the Lessor refunds the Security Deposit to the Lessee, along with the interest at the rate of 18% (eighteen percent) per annum from the date of delay till full repayment, and such staying over by the Lessee in the 'Demised Premises' shall not constitute renewal or extension of Term of Lease, or breach on the part of Lessee or unauthorized occupation by the Lessee. However, despite the Lessor being ready & willing to refund the Security Deposit, if the Lessee fails to redeliver the 'Demised Premises' to the Lessor as agreed herein above, or continues to use the premises beyond the stipulated period pursuant to termination of lease for any reason, such occupation of the 'Demised Premises' by Lessee shall be treated as wrongful occupation, and the Lessor shall be entitled for double the amount of last paid monthly rent, as damages, during each month or part thereof of wrongful occupation of 'Demised Premises' by the Lessee till it hands over vacant peaceful possession.."

42. It is not the case of the plaintiff that it has suffered any loss or that the market rent has gone up in this period so as to justify payment of double rent as per Clause 7.2 of the Lease Deed. Under Section 73 of the Indian Contract Act, compensation for breach of contract can only be claimed upon damage or loss caused by such breach of contract by the other side. Section 74 of the Indian Contract Act provides that where an amount is mentioned in the contract as payable in case of breach, the party alleging breach is entitled to receive reasonable compensation, not exceeding the amount so named, whether actual damage is proved or not.

43. While interpreting Section 74 of the Indian Contract Act, a Constitution Bench of the Supreme Court in Fateh Chand v. Bal Krishan Das, (1964) 1 SCR 515 held that under Section 74 of the Indian Contract CS(COMM) 376/2020 Signature PageNot Verified 27 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 Act, where the compensation payable for breach of contract is pre- determined in a contract, the Court will only award to the aggrieved party reasonable compensation not exceeding the compensation so named.

44. The judgment in Fateh Chand supra was followed by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority and Anr., (2015) 4 SCC 136. The relevant paragraphs of the aforesaid judgment are set out hereinafter:

> "43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:
>
> 43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases

where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act. 43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section. 43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

45. Based on the aforesaid position of law, the Supreme Court in Kailash Nath supra held the forfeiture of earnest money by the Delhi Development Authority (DDA) to be bad as no losses could be stated to have been suffered by the DDA.

46. Applying the ratio of the aforesaid judgments in the present case, it emerges that the plaintiff has not even claimed in the plaint that it has suffered a loss on account of the defendants not vacating the demised premises after the termination of the lease. Therefore, even if it is assumed that the defendants are guilty of breach of contract, the amounts under Clauses 7.2 and 14.2 can only be claimed if the plaintiff has suffered any loss on account of the said breach. Otherwise, the plaintiff cannot be entitled to any amounts over and above the lease rentals provided under the Lease Deed. It is not the case of the plaintiff that the rentals had increased during this period or that the plaintiff had suffered losses for which the plaintiff was entitled to double the amount of monthly rent. Therefore, in view of the aforesaid position of law, the plaintiff would not be entitled to claim double the amount of monthly rent in terms of Clause 7.2 or additional six months rent in terms of Clause

14.2. In fact, judicial notice can be taken of the fact CS(COMM) 376/2020 Signature PageNot Verified 29 of 32 Digitally Signed By:AMIT BANSAL Signing Date:25.05.2022 12:11:08 that post the onset of the COVID-19 pandemic in March 2020, till December, 2020, there has been no increase in the rentals of commercial properties. Therefore, ends of justice would be met if the defendants pay to the plaintiff the lease rentals as per the Lease Deed even for the post termination period i.e., 20th August, 2020 till 14th December, 2020, the date on which the possession was handed over.

47. The rental dues owed by the defendants to the plaintiff, excluding the interest accrued on the outstanding rent, the GST payable on the outstanding rent along with interest accrued thereon, and any penalties/fines imposed by the GST Authorities, can be tabulated as under:

DURATION	MONTHLY RENT	CALCULATION	AMOUNT DUE
1st April, 2020 to 31st May, 2020	Rs.27,00,000/-	(27,00,000 + 27,00,000)*50/100	Rs.27,00,000/-
1st June, 2020 to 19th August,	Rs.27,00,000/-	27,00,000 + 27,00,000 + (27,00,000/31)*19	Rs.70,54,839/-
20th August, to 30th November,	Rs.27,00,000/-	(27,00,000/31)*12 + 27,00,000 + 27,00,000 + 27,00,000	Rs.91,45,161/-
1st December, to 14th December,	Rs.31,05,000/-	(31,05,000/31)*14	Rs.14,02,258/-

48. In view of the fact that even after the termination notice was served on the defendants, the defendants neither paid the lease rentals onwards of June, 2020, nor vacated the demised premises,

the defendants shall be liable to pay interest at the rate of 18% per annum as provided in the Clause 6.1 of the Lease Deed. Further, the defendants shall also be liable to pay arrears of GST on the aforesaid amounts of lease rentals along with interest at the rate of 18% per annum and shall also be liable for any penalty or fine that may be imposed by the GST authorities for non-payment of the amounts in a timely manner.

49. Though the present application has been filed by the plaintiff seeking summary judgment in respect of arrears of rent/mesne profits from 19th May, 2020 till 14th December, 2020, in view of the discussion above, nothing further survives in the suit. Accordingly, prayers „b , „c and „d in the suit are decreed in the following terms:

(i) Plaintiff is entitled to arrears of rent of Rs.27,00,000/- for the months of April, 2020 and May, 2020;

(ii) Plaintiff is entitled to arrears of rent of Rs.70,54,839/- for the period commencing from 1st June, 2020 till 19th August, 2020;

(iii) Plaintiff is entitled to mesne profits/occupation charges of Rs.91,45,161/- for the period commencing from 20th August, 2020 to 30th November, 2020;

(iv) Plaintiff is entitled to mesne profits/occupation charges of Rs.14,02,258/- for the period commencing from 1st December, 2020 to 14th December, 2020;

(v) Plaintiff is entitled to interest at the rate of 18% per annum on the aforesaid amounts from the date when they became due i.e., 07th day of each month, as per Clause 6.1 of the Lease Deed;

(vi) Defendants shall be liable to pay arrears of GST on the aforesaid amounts of lease rentals along with interest at the rate of 18% per annum and shall also be liable for any penalty or fine that may be imposed by the GST Authorities for non-payment of the amounts in a timely manner;

(vii) Plaintiff is entitled to recover the unpaid electricity charges amounting to Rs.1,53,196/-;

(viii) Plaintiff is entitled to recover the unpaid water charges amounting to Rs.4,313/-.

50. The defendants shall be entitled to claim set off in respect of the above amounts of (i) the Interest Free Refundable Security Deposit of Rs.1,08,00,000/-; (ii) the sum of Rs.90,00,000/- already released in favour of the plaintiff vide order dated 24th November, 2020; and, (iii) the sum of Rs.12,50,000/- paid on 17th June, 2020 by the defendants in furtherance of the pre-approved payment plan offered by the plaintiff.

51. Let decree sheet be drawn up.

52. All pending applications stand disposed of.

AMIT BANSAL, J.

MAY 25, 2022
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