IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7992 OF 2023

General Motors Employees Union .. Petitioner
Versus
General Motors India Private Limited .. Respondent

WITH
WRIT PETITION NO. 9311 OF 2023
WITH
INTERIM APPLICATION (ST) NO.34925 OF 2023

General Motors Employees Union .. Petitioner
Versus
General Motors India Private Limited .. Respondent

.....

- Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Rahul Kamerkar and Brazillia Vaz, Advocates for Petitioner.
- Mr. J.P. Cama, Senior Advocate a/w. Mr. Zubin Behramkamdin, Senior Advocate a/w. R.N. Shah, Mr. Vijay Purohit, Mr. Ravish Kumar and Mr. Faizan M. Mithaiwala i/by P & A Law Office, Advocate for Respondent.

.....

CORAM : MILIND N. JADHAV, J.
RESERVED ON : SEPTEMBER 12, 2023
PRONOUNCED ON : JANUARY 09, 2024

JUDGMENT:

1. Both these Writ Petitions are disposed of by the following common Judgment.

2. Writ Petition No.7992 of 2023 is filed by the Petitioner - General Motors Employees Union (for short '**the Union**' hereinafter) to challenge the order dated 28.04.2023 passed below Exhibit "U-25" in

Reference (IT) No.15 of 2021. This Application was filed during the pendency of Reference before the Industrial Tribunal.

3. General Motors India Private Limited is nomenclatured as 'first party' before the Tribunal in the Reference whereas the Union is nomenclatured as 'second party'. They shall be referred to as "**Company**" and "**Union**" in this judgment for convenience. It was contended by the Union in the Application filed below Exhibit "U-25" that the Company has filed statutory Application for closing down of the Company under Section 25-O of the Industrial Disputes Act, 1947 (for short '**the said Act**') on 20.11.2020, intending to close down the Company with effect from 20.04.2021. It is further stated that the Government after hearing both parties by order dated 18.01.2021, refused to grant permission to the Company for closure. The Company therefore preferred Review Application against the order dated 18.01.2021 and the appropriate Government on its request referred the matter under Section 25-O (5) of the said Act for adjudication to the learned Tribunal by order dated 19.03.2021.

4. The Union has submitted that the order of Reference dated 19.03.2021 was challenged in the Writ Petition No.5139 of 2021 before this Court which came to be dismissed on 17.06.2022. This order of dismissal was reviewed before this Court vide Review Petition (St.) No.17048 of 2022. However, in the meanwhile, the Company

filed Special Leave Petition (Diary) No.33610 of 2022 before the Supreme Court against the order of Reference dated 19.03.2021. The Supreme Court by order dated 13.12.2022 dismissed the Special Leave Petition. In the meanwhile, Review Petition (St.) No.17048 of 2022 was also dismissed by this Court. Thereafter on 31.01.2023, the Company filed Special Leave Petition No.4473 of 2023 before the Supreme Court to challenge the order dated 17.06.2022 passed by this Court dismissing Writ Petition No.5139 of 2021. On 27.02.2023, the Supreme Court rejected Special Leave Petition No.4473 of 2023.

5. It was contended by Union that as per Section 25-O(6) of the said Act, order of refusing to grant permission for closure has to remain in force for one year from the date of such order. It was further contended that if a Reference is made under Section 25-O(4) of the said Act to the Tribunal, then under sub-section 2 thereof, Award has to be passed within thirty days.

6. It is therefore contended that in the present case, Award is not passed within thirty days and further the order of Reference of the appropriate Government has a binding effect from the date of such order and if one year lapses then the Reference would become infructuous if undecided. Therefore, directions were sought for disposal of the Reference.

7. The Company opposed the Application on various grounds, *inter alia*, stating that provisions under Section 25-O of the said Act requiring passing of the Award within a period of thirty days from the date of Reference, cannot be held to be mandatory and Reference validly made by the Government to the Tribunal cannot be rendered invalid if the Tribunal fails to pass the Award within thirty days for the circumstances beyond the control of the parties as well as the control of the Tribunal.

8. The learned Industrial Tribunal however by the impugned order dated 28.04.2023 rejected the Application. Both the learned Senior Advocates have referred to and relied upon several decisions of the Supreme Court and High Courts, including this Court. Five of those decisions are directly relevant and have been read ardently by both sides, namely:-

(i) ***Vazir Glass Works, Ltd. Vs. Maharashtra General Kamgar Union & Anr.***[1];

(ii) ***Ambika Silk Mills Company Vs. Maharashtra General Kamgar Union & Anr.***[2]

(iii) ***Bon Limited V/s. Hindustan Lever Employees Union and Anr.***[3]

(iv) ***United White Metal Ltd. V/s. Bhartiya Kamgar Sena & Ors.***[4]; and

1 1996 (1) L.L.N. 430
2 1997 SCC Online Bom 452
3 2008 (1) Mh.L.J. 683
4 2006 (2) L.L.N.628

(v) ***Britannia Industries Ltd. V/s. Maharashtra General Kamgar Union*** [5]**.**

8.1. It is submitted that Section 25-O of the said Act would have to be 'directory' and 'not mandatory' in the facts and circumstances of the present case considering that the parties had moved this Court as also the Supreme Court in the interregnum and various directions were passed. The aforementioned aspect of requiring disposal of the Reference within one year from date of refusal was therefore likely to have been taken into consideration by both the Courts while dealing with the issues which were challenged before them. In that view of the matter, Application below Exhibit "U-25" of the Union filed under Section 25-O of the said Act stood rejected. The aforesaid decision is under challenge and all that involves is the interpretation of provisions of Section 25-O of the said Act as interpreted and contemplated by the decisions of the Supreme Court.

9. In the meanwhile, Reference (IT) No.15 of 2021 came to be decided by Award dated 30.06.2023 by the learned Industrial Tribunal in the affirmative, *inter alia*, permitting the Company to close down its Talegaon MIDC plant as per the provisions of Section 25-O of the said Act with effect from 30.04.2021. This Award dated 30.06.2023 is challenged and is the subject matter of Writ Petition No.9311 of 2023. Issue in both the Petitions is identical as also the cause of action is

5 2009 SCC Online Bom 589

same. Hence, both the aforesaid Writ Petitions are heard and decided together.

10. Such of the relevant facts necessary for adjudication of the *lis* between the parties are outlined as under:-

(i) On 15.04.1994, the Company General Motors India Private Limited was incorporated and in the year 1996 it set up a plant at Halol, Gujarat (Halol Plant) for manufacturing of automotive vehicles (cars);

(ii) In the year 2008, the Company set up a second plant at Talegaon, Pune for manufacturing of Automotive vehicles and Powertrain (engine);

(iii) In 2017, the Company decided to close its Halol Plant in accordance with law due to accumulated losses of Rs. 8,500 Crores over the previous years, resultantly, withdrawing from the domestic market in India and focusing only on export of vehicles manufactured at the Talegaon Plant to export destinations;

(iv) Sometime in the year 2019-2020 when the issue of sustainability in the Indian automobile market arose, as a business initiative, it tied up for transfer of its business operations including the Talegaon plant to Great Wall Motors, China;

(v) In October 2020, Union filed Writ Petition No.5140 of 2021 to challenge the deal with General Motors – Great Wall Motors and transfer of Maharashtra Industrial Development Corporation (for short "MIDC") land to Great Wall Motors in this Court;

(vi) On 27.10.2020, Union filed complaint for Unfair Labour Practices (for short "**ULP**") for change of service conditions in violation of the long term settlement;

(vii) On 20.11.2020, Company filed Application seeking permission for closure of its Talegaon Plant under Section 25-O of the said Act, *inter alia*, on the ground of accumulated losses to the tune of more than Rs.8,500 Crores approximately. This is the first Closure Application filed by the Company;

(viii) By order dated 22.12.2020, the Industrial Court, Pune rejected interim relief in the Union's complaint for ULP;

(ix) On 24.12.2020, the Company declared end of production at its Talegaon Plant;

(x) On 18.01.2021, Closure Application was rejected by the Government of Maharashtra by closure rejection order, *inter alia*, on the ground that even though the Company had suffered accumulated losses of Rs.8,500 Crores approximately, it had the capacity to recover from these losses;

(xi) On 21.01.2021, the Company filed a Review Application before the Government of Maharashtra against the Closure rejection order;

(xii) Writ Petition No.5139 of 2021 was also filed before this Court for quashing the closure rejection order as also for expeditious disposal of the Review Application;

(xiii) Simultaneously, Writ Petition No.5140 of 2020 was filed by Union wherein this Court on 02.02.2021 directed the Government of Maharashtra to

expeditiously decide the Review Application;

(xiv) On 02.02.2021, MIDC filed Affidavit in this Court stating that the Company had not filed any Application for transfer of land before the MIDC;

(xv) On 18.03.2021, Government of Maharashtra considered the case of the Company and made a Reference to the Industrial Tribunal;

(xvi) On 16.04.2021 and 30.04.2021, the Company issued lay-off notices on the ground of Covid-19 pandemic with no production at its Talegaon Plant and faced with a (monthly) wage liability of approximately Rs.10 Crores per month;

(xvii) On 03.05.2021 and 05.05.2021, some of the workers challenged the lay-off notices. During the lay-off, the Company paid the lay-off compensation and a Reference was made to the Tribunal by the Government;

(xviii) In June 2021, the Company floated a Voluntary Separation Scheme (VSS) offering 110 days of wages for each completed year of service. Around 484 workers availed the benefits under the Scheme and took the separation benefit of Rs.25 to 35 lakhs each;

(xix) On 12.07.2021, the Company terminated the services of the remaining workmen under Clause 31.08 of the Certified Standing Order (CSO) that permitted the Company to terminate services of such workmen if they were laid-off for more than 45 days;

(xx) On 15.07.2021, Union filed Complaint (ULP) No.155 of 2021 before the Industrial Court challenging the termination of its 1086 members. In the Complaint, Union filed Application for interim relief;

(xxi) On 17.08.2021, Industrial Court framed issue of jurisdiction as a main issue but refused to decide it as a preliminary issue;

(xxii) On 03.09.2021, the Company challenged the order of learned Industrial Court refusing to decide the issue of jurisdiction as preliminary issue before this Court in Writ Petition;

(xxiii) On 06.10.2021, this Court not only dismissed Company's Writ Petition but also decided the question of jurisdiction in the Union's favour;

(xxiv) On 05.01.2022, the Industrial Court granted interim relief of 50% wages per month to the workmen from 07.04.2022 onwards;

(xxv) On 24.01.2022, the Company challenged the interim order dated 05.01.2022 in Writ Petition No.1420 of 2022 before this Court;

(xxvi) On 17.06.2022, this Court dismissed the Writ Petition No.5139 of 2021 challenging the order of Reference;

(xxvii) On 08.07.2022, Union filed criminal complaint against the Company;

(xxviii) On 13.07.2022, Union filed Review Petition (St) No.17047 of 2022 in this Court for review of order dated 17.06.2022;

(xxix) On 04.08.2022, process was issued in the criminal complaint against the Company;

(xxx) On 12.09.2022, after hearing both sides on all submissions, Writ Petition No.1420 of 2022 challenging the interim order dated 05.01.2022 of the Industrial Court was dismissed by this Court;

(xxxi) On 21.09.2022, the Company approached the Supreme Court challenging the order dated 12.09.2022;

(xxxii) On 21.10.2022, the SLP was dismissed and the Industrial Tribunal was directed to dispose of Complaint (ULP) No.155 of 2021 within four months;

(xxxiii) On 11.11.2022, after violating the interim order dated 05.01.2022 of the Industrial Court for almost a year, the Company sent a (blatantly) illegal notice to the Union demanding various (illegal) undertakings and information;

(xxxiv) On 14.11.2022, while the Review Petition (St.) No.17048 of 2022 was pending before this Court, the Company filed SLP (Diary) No.33610 of 2022 arising out of this Court's order dated 17.06.2022 dismissing the Writ Petition and challenging the order dated 19.03.2021 passed by the Labour Minister. On the same date Union filed Application before the Industrial Court to strike off the defence of the Company in accordance with the provisions of Order XXXIX Rule 11 of the Code of Civil Procedure (for short "**CPC**") since the Company was violating the interim order dated 05.01.2022 of the Industrial Court;

(xxxv) On 21.11.2022, Industrial Court dismissed the Application of the Union to strike off the defence of the Company under Order XXXIX Rule 11 of the CPC;

(xxxvi) On 13.12.2022, Union filed Application before the Industrial Court to lead evidence of only one witness on all issues and sought leave to file Affidavit of evidence on behalf of all workmen only for the issue of backwages; On the same date, the Supreme Court dismissed SLP (Diary) No.33610 of 2022 arising out of this Court's order dated 17.06.2022;

(xxxvii) On 17.01.2023, Union filed Contempt Petition against the Company and its Management for not complying with the interim order dated 05.01.2022 passed by the Industrial Court;

(xxxviii) On 18.01.2023, Review Petition (St.) No.17048 of 2022 was dismissed by this Court;

(xxxix) On 31.01.2023, Company filed SLP No.4473 of 2023 before the Supreme Court to challenge the order dated 17.06.2022 dismissing Writ Petition No.5139 of 2021 and the order dated 18.01.2023 dismissing the Review Petition;

(xl) On 06.02.2023, this Court issued notice to the Company in the Contempt Petition;

(xli) In February 2023, Union came to know that the Company was making a deal with Hyundai Motors and trying to transfer, alienate, create third party interest in the Company's Talegaon manufacturing plant;

(xlii) On 21.02.2023, Union filed Application before the Industrial Court for restraining the Company from transferring, alienating or creating any third party rights in the 300 acres land and the machinery;

(xliii) On 27.02.2023, the Supreme Court rejected SLP No.4473 of 2023 and directed the Industrial Tribunal to decide the Reference within the time frame allowed in the statute or within the extended period of double the time allowed in the statute;

(xliv) On 08.03.2023, the Industrial Court dismissed the Application of the Union seeking restraint from transferring, alienating or creating any third party rights in the 300 acres land and machinery;

(xlv) On 13.03.2023, Hyundai Motors released a press note stating that it had signed a term sheet with the Company for potential acquisition of the manufacturing plant of the Company;

(xlvi) On 16.03.2023, the Company filed its statement of claim before the Industrial Court;

(xlvii) On 20.03.2023, the Supreme Court granted extension of 6 months in the Application filed by the Tribunal for an extension of one year to decide Complaint (ULP) No.155 of 2021;

(xlviii) On 06.04.2023, Union filed Application in the Reference, that since its President who was arguing the subject Reference met with an accident and was hospitalized, it be permitted to be represented by an Advocate. The Application was rejected by the

Industrial Tribunal;

(xlix) On 06.04.2023, Union filed another Application in the Reference praying for an adjournment of 10 days. The said Application was also rejected;

(l) On 06.04.2023, the Industrial Tribunal closed the cross-examination of the Company's witness even before it commenced;

(li) On 10.04.2023, Union filed Writ Petition before this Court against the order of the learned Industrial Tribunal closing cross-examination of the Company's witness even before it had commenced;

(lii) On 12.04.2023, Union filed Application before the Supreme Court for extension of time period to the Industrial Tribunal to decide the Reference;

(liii) On 19.04.2023, Union filed Application before the learned Tribunal stating that the Reference had become infructuous;

(liv) On 28.04.2023, the Tribunal rejected the Application filed by Union for the Reference being adjudicated as infructuous;

(lv) On 28.04.2023, the Tribunal re-opened the cross-examination of the Company's witness;

(lvi) On 23.05.2023, Mr. Prajot Gaonkar admitted in cross-examination that the deal with Great Wall Motors failed due to the requisite permission not being granted by the Government of India for FDI investment from China. Hence, the Company had then entered into a term sheet

for sale of its plant to Hyundai Motors;

(lvii) On 26.06.2023, during the hearing of the subject Reference before the Industrial Tribunal, the Company suppressed the fact that it was in the process of filing a second Closure Application;

(lviii) On 27.06.2023, during pendency of Reference (IT) No.15 of 2021, the Company filed a second Closure Application;

(lix) On 30.06.2023, Award was passed in Reference (IT) No.15 of 2021 permitting closure of the Company w.e.f. 30.04.2021;

(lx) On 03.07.2023, Union received a copy of the second Closure Application and hence it is only on this date the fact that the Company had filed a second closure Application during the pendency of the Reference was confirmed;

(lxi) On 05.07.2023, the Minister rejected the adjournment Application of the Union and allowed the Company's second closure Application;

(lxii) On 06.07.2023, Writ Petition to strike off the defences of the Company in accordance with the principles of Order XXXIX Rule 11 of the CPC was dismissed by this Court; and

(lxiii) On 21.07.2023, Writ Petition No.9311 of 2023 was filed for setting aside the Industrial Court's order dated 30.06.2023 allowing closure of the Company;

(lxiv) Both orders dated 28.04.2023 and 30.06.2023 are therefore challenged by the Union in the two Writ Petitions.

11. Mr. Singhvi, learned Senior Advocate appearing for the Petitioner - Union has made three broad submissions for maintaining the challenge to the impugned Award dated 30.06.2023. Firstly, he has opened his arguments on the issue of interpretation of Section 25-O of the said Act in allowing the Closure Application and permitting the Company to close down its Talegaon MIDC plant w.e.f. 30.04.2021. His next submission is challenge to the basis of accumulated losses being considered as the principal ground for allowing the closure and his third submission is whether in the Reference to the learned Tribunal for Closure, the date of closure in Application dated 20.11.2020 could be *suo moto* changed by the Tribunal to a future date being w.e.f. 30.04.2021.

11.1. He would submit that the date of first Closure Application filed by the Company is dated 20.11.2020. This Closure Application was refused / rejected by order dated 18.01.2021 and the subsequently referred to the Tribunal for adjudication by Reference order dated 19.03.2021. [After the rejection of the first Closure Application on 18.01.2021, Review application was filed by the Company before the Competent Authority]. He would submit that as per Section 25-O of

the said Act, the pending Reference itself became infructuous one year after the Competent Authority passed the order dated 18.01.2021 rejecting the first Closure Application. He would submit that on 19.04.2023, Petitioner filed Application before the Tribunal stating that in this view of the matter the Reference had become infructuous but this Application was rejected. His submission is that the Tribunal does not have the power to grant and allow Closure Application with retrospective effect from over two years prior to the date of the impugned Award. He would submit that despite pendency of the first Closure Application, the Company has now filed a second Closure Application before the Competent Authority which was allowed with certain conditions. Filing of the second Closure Application clearly implied that even according to the Company, the first Closure Application had lapsed and therefore as a matter of abundant caution the Respondent - Company filed the second Closure Application during pendency of the Reference before the Tribunal.

11.2. He would urge that if during pendency of the subject Reference (IT) No. 15 of 2021, Respondent – Company filed the second Closure Application then on this ground alone, the impugned Award deserves to be dismissed *in limine.* In that regard, he would submit that the learned Tribunal has completely misread and misinterpreted the provisions of Section 25 of the said Act and the ratio laid down in the decision of the Supreme Court in the case of

Vazir Glass Works Ltd. (1st supra) which clearly holds that the Reference would become infructuous after passing of one year from the date of rejection of the Closure Application by the Competent Authority. He would submit that in the present case, the Reference would thus stand infructuous on 17.01.2022 i.e. one year after the date of refusal of Closure order by the Competent Authority dated 18.01.2021 and continuation of Reference thereafter would be *non-est*. Hence, according to him on this ground alone the impugned Award passed on 30.06.2023 cannot withstand the statutory provisions of Section 25-O of the said Act and therefore deserves to be quashed and set aside. He would submit that the impugned Award is thus in breach of the statutory provisions of Section 25-O of the said Act.

11.3. He would next submit that Review contemplated under Section 25-O(6) of the said Act can neither be filed nor decided after the period of one year. He has drawn my attention to the decision in the case of *Vazir Glass Works Ltd. (1st supra)* to contend that the Supreme Court has held that if application for Review is filed within one year from the date refusal then the same cannot be decided after the expiry of the period of one year. He would submit that such is the case before the Court wherein the Review Application has been filed within one year of refusal and a Reference is made, but it has been decided after the expiry of one year and hence it is not maintainable. He would submit that this Court in the case of *Ambika Silk Mills Co.*

(2nd supra) followed the above decision of the Supreme Court in the case of *Vazir Glass Works Ltd. (1st supra)* and held that Application for Review can be made and decision thereon can be taken but only within the period of one year. He would attempt to sustain the above submission by referring to another decision of the learned Single Judge of this Court in the case of *Bon Limited (3rd supra)* to contend that the exception for filing of Review application or for a decision thereon beyond the period of one year is applicable only when such an Application is filed by the workmen and not in the case of an Application filed by the Company (employer). The decision in the case of *United White Metal Ltd. (4th supra)* is also relied upon by him in support of his above submissions.

11.4. In respect of his next principal submission on the issue of accumulated losses assigned by the learned Tribunal for granting the Closure, he has drawn my attention to paragraph No.25 of the Award and after reading the same taken me through the compilation filed on record and would make the following submissions thereon:-

(i) That the reasons applied by the learned Tribunal for granting closure on the basis of substantial accumulated losses are not genuine and clearly perverse in the facts of the present case;

(ii) That the evidence placed on record during witness action clearly showed that the Respondent – Company was profitable in respect of two out of the three years preceding the date for filing of Closure Application namely earning a profit of Rs.311 Crores and Rs.260 Crores in the years 2017-2018 and 2018-2019 respectively and incurring a minor loss of Rs.11 Crores for the year 2019-2020. He would submit that statutory requirement under Item 11 of Form XXIV-C calls for submission of the figures of profit/losses for the preceding three years only. He would submit that in this view of the matter the figure of accumulated losses of Rs.8,500 Crores accepted by the Tribunal to grant closure is not genuine at all. According to him, accumulated losses would be the entire losses that were added from all the previous financial years to read as a whole and therefore it is significant to consider that the Company never chose to close down when the accumulated losses were at an all time high in the previous at the end of decade or the financial year 2016-2017. He has drawn my attention to the balance-sheets of the Company in the compilation of documents at page Nos.304, 678 and 760 in support of his above

submissions. Hence, he would submit that the ground of accumulated losses is a completely irrelevant consideration as considered by the learned Tribunal which is contrary to record;

(iii) That it was a proven case, that the Company had in January 2020 signed a term-sheet with Great Wall Motors, China to handover the entire factory to them without the workers by December 2020. That though this deal could not fructify due to non-approval of the transaction by the Government of India under its FDI policy in respect of a China based Company, however the intention of the Company was clear to be understood. He would submit that it was only after the workers filed complaint seeking retention, that the Company desired to close the plant. He has drawn my attention to page No.44 of Writ Petition No.9311 of 2023 which gives a table of the accumulated losses from 2010 to 2022 on a yearly basis but would contend that the said table gives a completely misleading picture; he has painstakingly explained how the profits were earned in the preceding two years and a minor loss in the third year which showed that the Company was profitable in those years; while referring to the actual

balance sheets appended to the compilation of documents for the three preceding years, he has shown that for the years 2018-2019 there was a profit of Rs.260.12 Crores, for the years 2017-2018 there was a profit of Rs.308 Crores and the for the year 2019-2020 there was a loss of Rs.13.64 Crores.

11.5. Next, he would submit that the Application for Closure filed under Section 25-O read with Rule 82(b) and in Form XXIV-C is an incomplete Application which ought to have been rejected *in limine*. He has drawn my attention to the Application at page No.499 of the compilation to contend that if the same is compared with the format of Form XXIV – C then there is clear discrepancy as the specific words "***with effect from _____***" (to specifically state the date on which the proposed closure is to be done) are missing in the Application and hence the Application is not in the correct format; that it is vague and insufficient; that it does not disclose the date of closure and thus it can be gathered that there is therefore no real intention of closure. He would submit that such an Application made in a casual manner is impermissible because the Government does not get an opportunity to consider the date of closure and its impact as to whether it is in the public interest or not and equally the workers also do not get the opportunity to consider whether there is any infirmity or otherwise.

11.6. In the same breath, he would next submit that though the original Application does not mention any date, subsequently on 27.03.2023 the Company filed a *pursis* below Exhibit "C-12" seeking grant of permission to close down from 20.11.2020, which was the date of Application for Closure. He would submit that the learned Tribunal framed the issue wherein the date of Closure was initially stated as 20.11.2020 but for the first time on 26.06.2023, the Company in its written submissions in paragraph Nos.44 and 46 persuaded and sought the date of Closure to be taken as 30.04.2021. Thereafter the Award was passed on 30.06.2023 by incorporating the date of Closure w.e.f. 30.04.2021. He would submit that there is complete ambiguity and confusion about the date of closure and if the issues which was framed by the learned Tribunal is seen, the same has been overwritten by hand to change the date of closure stated therein without intimation to the Union. He would next submit that the date of closure under the impugned Award i.e. 30.04.2021 determined by the learned Tribunal is right in the middle of the lock-down when all employees of the Company were actually given a lay-off and were infact laid-off, which fact ought to have been considered by the Tribunal before granting that date. Hence, he would strongly oppose the date of Closure certified in the impugned Award.

11.7. Next, he would submit that it is not the Company's case that there was a loss but the Company actually desired to make a profit by

sale of its entire business to Great Wall Motors, China which was a commercial decision and hence the theory of accumulated losses leading to Closure of the plant was never in the public interest or in the interest of the workers. He would submit that though the impugned Award grants closure from 30.04.2021, it is an admitted fact that the workers were paid lay-off wages until the end of June 2021 and only after they rejoined, they were retrenched on 12.07.2021 which has also been challenged before the Industrial Court as illegal. He would finally submit that the Company as far late as 27.06.2023 has now filed a fresh Application for Closure again without any intended date thus implying that it will now be open for the Company to claim closure from 30.04.2021 under the impugned Award. This according to him, is one more ground for setting aside of the impugned Award.

12. ***PER CONTRA,*** Mr. Cama, learned Senior Advocate appearing for the Respondent - Company would submit that the accumulated and significant financial losses is one of the strongest reasons for closure of the Talegaon plant of the Company which is clearly evident from the evidence led by the Company of its two witnesses namely Prajyot Gavkar and Suryakant Katkar. The accumulated losses are evident according to the audited balance-sheets of the Company which are placed on record. He would submit that cross-examination of Mr. Sandeep Bhegde, President of Union in paragraph Nos.26 and 34 of his cross-examination duly accepts and supports the case of

accumulated losses suffered by the Company. He would submit that in order to overcome the losses and operationalize the Talegaon plant, the Company had to sell its Halol plant in Gujarat and shift substantial number of workers from the said plant to its Talegaon unit. He would submit that substantial accumulated losses of more than Rs.8,500 Crores got accumulated due to lack of orders, reduced capacity utilization, falling market share and therefore initially the Company took a conscious decision to exit from the domestic market and only concentrate on export of cars but that demand too declined due to change in statutory rules related to safety and emission norms and despite genuine efforts made by the Company to revive and make its business self sustainable and financially sustainable, the accumulated losses rose upto INR 9389.60 Crores over the past decade on the date of stoppage of production i.e. 24.12.2020.

12.1. He would submit that in the order dated 22.02.2022 passed by the learned Single Judge (Coram: Ravindra Ghuge J) in Writ Petition No.4967 of 2021, this Court has earlier acknowledged that the factory of the Respondent – Company is shut down and the reasons for Closure are genuine and adequate which have been considered by the learned Tribunal while returning its findings in paragraph No.32 of the impugned Award. His strongest submission is that the Company cannot be forced to continue operating a loss making entity and its balance-sheet over the years clearly proves the losses and the mere fact

that closure would amount to unemployment cannot be the basis for rejecting the Closure Application when the reasons are genuine and adequate and duly considered by the learned Tribunal. He would submit that it needs to be borne in mind that the Company is not engaged in any public utility services. He would submit that the term-sheet signed with Great Wall Motors, China did not materialize. He would submit that as part of its global business strategy the parent Company - General Motors discontinued and dis-invested from business not only in India but also from its businesses across Indonesia, Thailand, Vietnam, Australia and South Africa.

12.2. He would submit that the capacity utilization of the Talegaon plant fell from 62% in the year 2017 to 31% in the year 2020. He would submit that purchase orders stood reduced from the year 2017 to 2020, production for exports beyond the year 2020 could not be continued and all this was clearly documented in evidence before the Tribunal through the Company's witnesses and has been duly appreciated by the Tribunal.

12.3. He would therefore submit that the impugned Award takes in to cognizance the entire material evidence placed before the Tribunal and the same deserves to be upheld.

12.4. On the issue of the second Closure Application urged by the Petitioner, it is the Respondent's case that the second Closure

Application pertains to a completely different period which is different than that stated in the first Closure Application. It is submitted that there is no overlap of the two different periods contained in the two Closure Applications at all and the second Closure Application was filed as a matter of abundant caution and without prejudice to the first Closure Application and in that view of the matter the second order of the Government dated 05.07.2023 in the second Closure Application would have no effect on the impugned Award passed by the learned Tribunal. He would submit that the impugned Award is with respect to the Reference referred to the learned Tribunal and it cannot consider anything else or more than that.

12.5. Mr. Cama has referred to the following judgments which are in addition to the judgments referred to by Mr. Singhvi:-

(i) ***Excel Wear Vs. Union of India[6];***

(ii) ***Associated Cement Companies Vs. Union of India[7];***

(iii) ***Rengali Hydro Electric Project Vs. Giridhari Sahu[8];***

(iv) ***Anakapalle Co-op. Agricultural and Industrial Society Ltd. Vs. Workmen[9];***

(v) ***Workmen Vs. Metro Theatre Ltd.[10];***

(vi) ***Tatanagar Foundry Co. Ltd. Vs. Workmen[11];***

6 (1978) 4 SCC 224
7 1989 GLH (1) 30
8 (2019) 10 SCC 695
9 1962 SCC Online SC 18
10 (1981) 3 SCC 596
11 1962 Supp (3) SCR 795

(vii) *Universal Ferro and Allied Chemicals Ltd. Vs. Maharashtra Ferro Alloys Mazdoor Sangh*[12]*;*

(viii) *General Manager Vs. State of M.P.*[13]*;*

(ix) *Sugandhi Vs. P. Rajkumar*[14]*;*

(x) *Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh*[15]*;*

(xi) *Hind Syntex Ltd. Dewas Mazdoor Sangh*[16]*;*

(xii) *ONGC Vs. ONGC Contractual Workers Union*[17]*;*

(xiii) *Panjumal Hassomal Advani Vs. Harpal Singh*[18]*;*

(xiv) *Ranjeet Singh Vs. Ravi Prakash*[19]*;*

(xv) *Ahmedabad Mill Owners' Association and Ors. Vs. The Textile Labour Association*[20]*;*

(xvi) *Sonepat Co-op. Sugar Mills Ltd. Vs. Ajit Singh*[21]*;*

(xvii) *Regional Manager, SBI Vs. Rakesh Kumar Tewari*[22]*;*

(xviii) *Association of Engineering Workers Vs. India Hume Pipe Company Ltd.*[23]*;*

(xix) *Britannia Industries Ltd. Vs/ Maharashtra General Kamgar Union*[24] *and*

(xx) *Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd.*[25]

---

12 WP No.2973 of 2008 (Bombay HC)
13 ILR (2009) MP 591
14 MANU/SC/0792/2020
15 (2006) 1 SCC 75
16 2008 (2) M.P.L.J. 614
17 (2008) 12 SCC 275
18 AIR 1975 Bom 120
19 (2004) 3 SCC 682
20 AIR 1966 SC 497
21 (2005) 3 SCC 232
22 (2006) 1 SCC 530
23 1985 SCC Online Bom 154
24 WP No.2659 of 2005 decided on 30.10.2007
25 (1979) 3 SCC 762

13. On the basis of the above judgments, he has sought to distinguish the submissions made by Mr. Singhvi on the applicability and interpretation of Section 25-O of the said Act and the argument of one year limitation advanced by Union. So far as the period of one year specified in Section 25-O(6) of the said Act is concerned, Mr. Cama would submit that the period for decision of Review or for making Reference is merely directory and not mandatory. That this principle is recognized in *Britannia Industries Limited (5th supra).* He would submit that this principle has been recognized in the judgment of this Court in *Bon Limited (3rd supra)*. He would submit that the law requires that Application for Review must be filed within one year and there can be no time limit for decision of such Application. He would submit that once the Application is filed within the prescribed time limit, the decision on the Application is something which is beyond the control of the Company. So far as the judgment in *Vazir Glass (1st supra)* is concerned, Mr. Cama would submit that the Supreme Court treated the Application for review as a fresh Application for Closure. He would further submit that in paragraph No.35 of the said judgment, the Apex Court has noted that though the employer could have made a fresh Application for closure after one year, it did not do so on account of pendency of validly made Review Application within the time frame. It is in these circumstances that the Apex Court concluded that the Application for review could be treated as a fresh Application for

closure. That the directions to treat Application for Review as fresh Application for closure are not issued by the Apex Court in *Vazir Glass (1st supra)* under Article 142 of the Constitution of India and that therefore this Court can also issue similar directions. Mr. Cama would also invite my attention to the judgments in *Ambika Silk Mills Company (2nd supra)* and *Bon Limited (3rd supra)* to contend that the judgment in *Vazir Glass* Works Ltd. *(1st supra)* has been distinguished in peculiar facts and circumstances of each case by this Court. He would submit that the judgment in *Vazir Glass Works Ltd. (1st supra)* cannot be cited in support of an absolute proposition that in no case, Application for Review filed within prescribed period would be decided by the Government after expiry of one year. That the judgment of this Court in *United White Metal Ltd. (4th supra)* has been considered in *Bon Limited (3rd supra)* as not laying down correct law.

14. I have considered the rival submissions and contentions and they have received due consideration of the Court.

15. In the first instance, it needs to be clearly stated that if a Company approaches the Court for closure of its establishment on the ground of accumulated losses in accordance with law, then in that event the possible unemployment of the workers cannot be a ground to compel the Company to run its business and refuse closure. The facts in the present case attributable to the above proposition are in the

factual domain and are more or less admitted, save and except, the submissions made by the learned Senior Advocates on accumulated losses. The accumulated losses in the present case are substantial. They pan out over almost a decade prior to the closure announced by the Company. What is significant to be noted in the present case is that the Company has suffered significant losses over the past 28 years and at the end of the financial year 2021-2022, the progressing accumulated losses are Rs.9656.87 Crores.

16. It is seen that several reasons are attributable for the accumulated losses and evidence to that effect has been led by the Company, oral as well as documentary. The President of the Union who has stepped into the witness box has infact admitted the evidence led by the Company. Slowdown in the demand for cars manufactured by the Company over the last decade coupled with external factors has not only been proved but is also available in the public domain. Rise in cost of vehicles, high vehicle finance rates, changes due to various Government policies, ever changing emission norms, wide choices, shorter technology cycles, drastically changing customer demands and cost effectiveness in the competitive rising market have made the Company's operations in India economically unviable and thus reflected through the progressing accumulated losses as under:

YEAR	PROGRESSING ACCUMULATED LOSSES IN INR (CRORES)
2021 -22	9656.87
2020-21	9505.80
2019-20	5480.53
2018-19	8466.89
2017-18	8727.01
2016-17	9038.76
2015-16	8219.02
2014-15	7556.33
2013-14	6552.94
2012-13	2740.48
2011-12	598.48
2010-11	852.67

17. From the above, it is clearly seen that it is not a hidden fact that the losses have occurred progressively. Though it has been argued by the Union that in two financial years viz. 2017-18 and 2018-19 there was a profit of Rs.311 Crores and Rs.260.12 Crores, the accumulated losses have been progressively increasing before and thereafter. The argument of the Union that for the purpose of Closure Application, the profit earned by the Company during the above two financial years should be the only relevant consideration, cannot be accepted. The learned Tribunal while delivering the Award has considered the aforementioned argument of the Union on accumulated losses and returned reasoned findings in paragraph Nos.25 to 32 of the Award. The learned Tribunal has taken great pains to consider the evidence placed before it, to ultimately conclude that the Company has

virtually drained all its resources to make it financially strong and its business self-sustainable and only when all efforts failed, the decision of closure was taken. The efforts taken by the Company to come out of the losses have been clearly documented on the basis of the evidence placed on record in the aforementioned paragraphs of the impugned Award.

18. The Union's argument by referring to selective portions of the balance-sheets only to buttress the argument of the Company has also been extensively considered by the Tribunal. The observations and findings returned in paragraph Nos.48 to 50 are a testimony to that effect. I have perused the aforementioned paragraphs and once again, I find that the exercise undertaken by the learned Tribunal in dealing with the argument of accumulated losses has been taken to its fruition. Every balance-sheet which has been referred to and discussed by the learned Tribunal, has been placed on record under Exhibit "C-23" by the witness of the Company and he has also faced the test of cross-examination adequately. It needs to be reiterated once again that the Company is not a public limited company or a company concerned with public utility so as to force the Company to continue its operations despite accumulated losses. Hence, the submissions of the Union are not acceptable to this Court.

19. Mr. Cama has referred to the decision in the case of *Excel Wear (6th supra)* wherein it has been held that the right to close down a business is a fundamental right and a Company cannot be compelled to continue to run even if it suffers continuous losses. The relevant paragraphs in the aforesaid judgment which highlight and amplify the above finding are paragraph Nos.20, 24, 25, 26 and 34 and the same are reproduced hereinunder for reference:-

> *"**20.** We propose first to briefly dispose of the two extreme contentions put forward on either side as to the nature of the alleged right to close down a business. If one does not start a business at all, then, perhaps, under no circumstances he can be compelled to start one. Such a negative aspect of a right to carry on a business may be equated with the negative aspects of the right embedded in the concept of the right to freedom of speech, to form an association or to acquire or hold property. Perhaps under no circumstances a person can be compelled to speak; to form an associations or to acquire or hold a property. But by imposing reasonable restrictions he can be compelled not to speak; not to form an association or not to acquire or hold property. Similarly, as held by this Court in Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer [AIR 1954 SC 220 : 1954 SCR 873 : 1954 SCJ 246] ; Narendra Kumar v. The Union of India [AIR 1960 SC 430 : (1960) 2 SCR 375 : 1960 SCJ 214] , total prohibition of business is possible by putting reasonable restrictions within the meaning of Article 19(6) on the right to carry on the business. But as pointed out at p. 387 in the case of Narendra Kumar. "The greater the restriction, the more the need for strict scrutiny by the Court" and then it is said further:*
>
> > *"In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in that connection whether the restraint caused by the law is more than was necessary in the interests of the general public."*
>
> *But then, as pointed out by this Court in Hatisingh case the right to close down a business is an integral part of the right to carry it on.*

It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry on a business at all. The extreme proposition urged on behalf of the employers by equating the two rights and placing them at par is not quite apposite and sound. Equally so, or rather, more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral part of the right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(g) of the Constitution. In one sense the right does appertain to property. But such a faint overlapping of the right to property engrafted in Article 19(1)(f) or Article 31 must not be allowed to cast any shade or eclipse on the simple nature of the right as noticed above.

.....

24. *We now proceed to deal with the rival contentions. But before we do so, we may make some general observations. Concept of socialism or a socialist State has undergone changes from time to time, from country to country and from thinkers to thinkers. But some basic concept still holds the field. In the case of Akadasi Pradhan v. State of Orissa [AIR 1963 SC 1047 : 1963 Supp 2 SCR 691 : (1964) 2 SCJ 37] the question for consideration was whether a law creating a State monopoly is valid under the latter part of Article 19(6) which was introduced by the (First Amendment) Act, 1951. While considering that question, it was pointed out by Gajendragadkar, J., as he then was, at p. 704:*

> *"With the rise of the philosophy of Socialism, the doctrine of State ownership has been often discussed by political and economic thinkers. Broadly speaking, this discussion discloses a difference in approach. To the socialist, nationalisation or State ownership is a matter of principle and its justification is the general notion of social welfare. To the rationalist, nationalisation or State ownership is a matter of expediency dominated by considerations as economic efficiency and increased output of production. This latter view supported nationalisation only when it appeared clear that State ownership would be more efficient, more economical and more productive. The former approach was not very much influenced by these considerations, and treated it a matter of principle that all important and nation-building industries should come under State control. The first approach is doctrinaire, while the second is pragmatic. The first proceeds on the general ground that all national wealth and means of producing it should come under national control, whilst the second supports nationalisation only on grounds of*

efficiency and increased output."

25. *In contrast to the other provisions, Section 25-0(2) does not require the giving of reasons in the order. In two of the impugned orders communicated to the petitioners, Excel Wear and Acme Manufacturing Co. Ltd., it is merely stated that the reasons for the intended closure are prejudicial to public interest suggesting thereby that the reasons given by the employers are correct, adequate and sufficient, yet they are prejudicial to the public interest. In cases of bona fide closures it would be generally so. Yet the interest of labour for the time being is bound to suffer because it makes a worker unemployed. Such a situation as far as reasonably possible, should be prevented. Public interest and social justice do require the protection of the labour. But is it reasonable to give them protection against all unemployment after affecting the interests of so many persons interested and connected with the management apart from the employers? Is it possible to compel the employer to manage the undertaking even when they do not find it safe and practicable to manage the affairs? Can they be asked to go on facing tremendous difficulties of management even at the risk of their person and property? Can they be compelled to go on incurring losses year after year? As we have indicated earlier, in Section 25-FFF retrenchment compensation was allowed in cases of closure and if closure was occasioned on account of unavoidable circumstances beyond the control of the employer a ceiling was put on the amount of compensation under the proviso. The Explanation postulates the financial difficulties including financial losses or accumulation of undisposed stocks etc. as the closing of an undertaking on account of unavoidable circumstances beyond the control of the employer but by a deeming provision only the ceiling in the matter of compensation is not made applicable the closure of an undertaking for such reasons. In 1972 by insertion of Section 25-FFA in Chapter VA of the Act, an employer was enjoined to give notice to the Government of an intended closure. But gradually the net was cast too wide and the freedom of the employer tightened to such an extent by introduction of the impugned provisions that it has come to a breaking point from the point of view of the employers. As in the instant cases, so in many others, a situation may arise both from the point of view of law and order and the financial aspect that the employer finds it impossible to carry on the business any longer. He must not be allowed to be whimsical or capricious in the matter ignoring the interest of the labour altogether. But that can probably be remedied by awarding different slabs of compensation in different situations. It is not quite correct to say that because compensation is not a substitute for the remedy of prevention of unemployment, the latter remedy must be the only one. If it were so, then in no case closure can be or should be allowed. In the third case namely that of Apar Private Ltd. the Government has given two reasons, both of them being too vague to give any exact idea in support of the refusal of permission to close down. It says that the reasons are not adequate and sufficient (although they may be correct) and that the intended closure is prejudicial to the*

public interest. The latter reason will be universal in all cases of closure. The former demonstrates to what extent the order can be unreasonable. If the reasons given by the petitioner in great detail are correct, as the impugned order suggests they are, it is preposterous to say that they are not adequate and sufficient for a closure. Such an unreasonable order was possible to be passed because of the unreasonableness of the law. Whimsically and capriciously the authority can refuse permission to close down. Cases may be there, and those in hand seem to be of that nature, where if the employer acts according to the direction given in the order he will have no other alternative but to face ruination in the matter of personal safety and on the economic front. If he violates it, apart from the civil liability which will be of a recurring nature, he incurs the penal liability not only under Section 25-R of the Act but under many other statutes.

26. *We were asked to read in Section 25-O(2) that it will be incumbent for the authority to give reasons in his order and we were also asked to cull out a deeming provision therein. If the Government Order is not communicated to the employer within 90 days, strictly speaking, the criminal liability under Section 25-R may not be attracted if on the expiry of that period the employer closes down the undertaking. But it seems the civil liability under Section 25-O(5) will come into play even after the passing of the order of refusal of permission to close down on the expiry of the period of 90 days. Intrinsically no provision in Chapter VB of the Act suggests that the object of carrying on the production can be achieved by the refusal to grant permission although in the Objects and Reasons of the Amending Act such an object seems to be there, although remotely, and secondly it is highly unreasonable to achieve the object by compelling the employer not to close down in public interest for maintaining the production.*

....

34. *Mr Deshmukh's argument that a right to close down a business is a right appurtenant to the ownership of the property and not an integral part of the right to carry on the business is not correct. We have already said so. The properties are the undertaking and the business assets invested therein. The owner cannot be asked to part with them or destroy them by not permitting him to close down the undertaking. In a given case for his mismanagement of the undertaking resulting in bad relationship with the labour or incurring recurring losses the undertaking may be taken over by the State. That will be affecting the property right with which we are not concerned in this case. It will also be consistent with the object of making India a Socialist State. But not to permit the employer to close down is essentially an interference with his fundamental right to carry on the business."*

20. On the issue of the Closure Application filed under form XXIV-C, it has been vehemently argued by the Union that it is not in

the proper format. Perusal of the Award shows that this issue was not agitated before the learned Tribunal by the Union and is agitated for the first time before me today. Be that as it may, provisions of section 25-O(1) of the said Act require the employer to apply in the prescribed manner who intends to close down for prior permission atleast 90 days *(emphasis supplied)* before the date on which the intended closure is to become effective. From the perusal of the above provision, it is clear that though employer can seek closure within the period of 90 days and 90 days is the minimum period of notice of intent to close, in the present case, the Application for Closure was filed by the Company on 20.11.2020. The relieving / releasing of different sets of workers undertaken by the Company was beyond 90 days period and admittedly, it is only after February 2021, that different sets of workers were released on different dates by adhering to the above condition. The separate periods on which the different sets of workers were released are 20.02.2021, 31.03.2021 and 30.04.2021.

21. Next, Mr. Cama has drawn my attention to the Application for Closure on page No.466 of the compilation of documents and would submit that as against the argument of the Union, this Court should look at the entire form and its annexures which give all requisite information as required by law. I have perused the said form. Perusal of the annexures to the said form are in extensive detail. On perusal of the annexures, I find that there is substantive compliance

with form XXIV-C. What is significant to note is the fact that, once again the argument that the form was defective has not been taken by the Union when it approached this Court in the interregnum by Writ Petition No. 5139 of 2021 as also when it approached the Supreme Court when it filed Miscellaneous Application No.15470 of 2023 in SLP (C) No.4519 of 2023 seeking extension of time for hearing the Reference. Once the Union has participated fully in the hearing, the objection raised on the basis of the above ground cannot be countenanced at this stage.

22. In the present case, it is seen that issues were framed by the Tribunal on 20.11.2020 taking the date of Closure as 20.11.2020. There was an obvious error in framing of such an issue, because a Closure cannot come into force on the date of filing of the Closure Application and it necessarily has to be beyond the period of 90 days. As per the details supplied by the Company, since the last intended day of cessation of employment was 30.04.2021, the learned Tribunal on its own volition altered the said issue accordingly and signed on the original order of framing issues. No capital can be made out this by the Union that there is tampering of the issue framed or the date suggested for Closure is at the behest of the Company. Once the Union has fully participated in the proceedings in all forums, it does not lie in its mouth to make this argument about tampering / alteration of the date of Closure.

23. Another significant point which needs to be emphasized over here, is that fixing of the date 30.04.2021 as the effective date of Closure in the present case is not at all prejudicial to the workers of the Company as they have received full wages for the period from 20.11.2020 to 30.04.2021 and even thereafter till their subsequent termination on 12.07.2021 under the Certified Standing Orders and in accordance with law.

24. Lastly, on the issue of interpretation and applicability of the provision of Section 25-O of the said Act, much has been argued by the Union by relying upon the decision of the Supreme Court in the case of *Vazir Glass Works Ltd. (1st supra).* It clearly needs to be stated that the decision of the Supreme Court in the case of *Vazir Glass Works Ltd. (1st supra)* has been considered and distinguished by several other decisions of the Supreme Court and the said distinction is on the basis that the decision in *Vazir Glass Works Ltd. (1st supra)* is limited to a case where the Review and consequential Reference was made after the expiry of one year from the date of the original order and further, if the order of Reference is made within the aforesaid period of one year, the Reference would be valid even if it is actually heard and disposed, after the expiry of period of one year. It is therefore clearly seen and understood that it now stands established that the period of one year mentioned in Section 25-O(6) of the said Act and the period of 30 days mentioned in Section 25-O(4) thereto, is only 'directory'

and 'not mandatory'. In this regard, the decision of this Court in the case of *Britannia Industries Ltd. (5th supra)* finds favour as also the decision in the case of *Universal Ferro and Allied Chemicals Ltd. (12th supra).* Further, in the case of *Ambika Silk Mills Company (2nd supra)* at paragraph No.23 and the decision in the case of *Bon Ltd. (3rd supra)* at paragraph Nos. 14 and 16 and also in the case of *Universal Ferro and Allied Chemicals Ltd. (12th supra)* in paragraph Nos.10 and 12 thereof, this Court has distinguished the judgment in the case of *Vazir Glass Works Ltd. (1st supra)* and clearly held that its ratio would not apply to a case where the Review / Reference was sought within one year from the date of the original order. Further, in the decision in the case of *Bon Ltd. (3rd supra),* this Court has clearly considered in paragraph Nos.16 and 17 of the said judgment, that the judgment in the case of *Ambika Silk Mills Company (2nd supra)* was not brought to the notice of the said Judge who decided *United White Metal Ltd. (4th supra)*. Identically, it was also held in the case of *Universal Ferro and Allied Chemicals Ltd. (12th supra)* in paragraph No.14 thereof that if the judgment in *Ambika Silk Mills Company (2nd supra)* had been brought to the notice of the learned Judge he would not have held in the manner in which he did. Therefore it is seen that the judgment in *United White Metal Ltd. (4th supra)* cannot be considered as good law based on the doctrine of *per incuriam.* Though the Union has argued that the decision in the case of *United White Metal Ltd. (4th supra)* has

been affirmed by the Division Bench of this Court in the case of ***Santosh S. Salkar Vs. United White Metals Limited***[26] but on perusal of the said decision, it is seen that the issue relating to distinguishing the findings in *Vazir Glass Works Ltd. (1st supra)* was not argued before the Court and ultimately the said case of *Santosh S. Salkar (26th supra)* was dismissed on the ground of limitation.

25. The further argument of the Union that the judgment in *Ambika Silk Mills Company (2nd supra)* and *Association of Engineering Workers (19th supra)* has been impliedly overruled by the decision in *Vazir Glass Works Ltd. (1st supra)* is however specifically negated in the decision of *Britannia Industries Ltd. (5th supra)* in paragraph Nos.46 to 51 thereof.

26. From the above observations and findings as also the timeline, it is seen that there has been substantial litigation, *inter se,* between the parties in the present case. On 11.04.2023, the Union filed Miscellaneous Application No.15470 of 2023 in SLP (C) No.4519 and 4520 of 2023, requesting the Supreme Court for an extension of time for the learned Tribunal to decide the Reference. Thereafter on 19.04.2023, it raised an objection regarding the Industrial Tribunal's jurisdiction and validity of the Reference and on 24.04.2023, it appeared before the Supreme Court and obtained an extension of 60 days to have the Reference decided. The learned Industrial Tribunal

26 NMS No.2979 of 2006

has also noted the inconsistent approach of the Union in paragraph Nos.22, 23 and 24 of the Impugned Award and clearly held that the Union was raising such objections to delay the proceedings.

27. It is further crucial to note that the learned Industrial Tribunal had itself applied for an extension of 15 days on 16.06.2023, before the Supreme Court for deciding the Reference. The Supreme Court in its order dated 07.07.2023 passed in Miscellaneous Application (Diary) No.25973 of 2023 has mentioned that the decision taken by the learned Industrial Tribunal must be considered to be made within the time frame set out by the Supreme Court in its order dated 24.04.2023.

28. Based on the judicial pronouncements discussed above and the timeline of dates and events of the present case, it is established that the Application for Review was made and the Reference was initiated within the one year period, which essentially clears all doubts on the validity of the Reference. Therefore, there is no substance in the submission of the Union and the impugned Award passed by the learned Industrial Tribunal is in consonance with established law. I am therefore inclined to accept the submissions made by Mr. Cama in support of the Award.

29. On the issue regarding the submission of second Closure Application dated 27.06.2023, it is seen that according to the

Company, the same is filed out of abundant caution and without prejudice to the first closure application. A review of the second Closure Application dated 27.06.2023 which is appended at page No.899 of the compilation of documents, it is seen that it was filed out of abundant caution and without prejudice to the first Closure Application. Further, the two Closure Applications pertain to two different periods. The impugned Award operates retrospectively i.e. from the end of 90 days and considers the facts prevailing at the then time. The Government's second order dated 05.07.2023 operates prospectively and considers the continuing state of affairs as on 05.07.2023. Thus, there is no overlap of the two Closure Applications and one does not merge with the other. The second Closure Application was filed only out of precaution in case if the Company failed in the Reference.

30. In view of the above observations and findings, the impugned Award dated 30.06.2023 passed by the learned Industrial Tribunal is upheld and confirmed. Resultantly, both Writ Petition Nos. 7992 of 2023 and 9311 of 2023 stand dismissed. In view of dismissal of the Writ Petition No.9311 of 2023, Interim Application (St) No.34925 of 2023 is also dismissed.

Ajay

[MILIND N. JADHAV, J.]