IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10306 OF 2018
WITH
INTERIM APPLICATION 3399 OF 2026

Mahalakshmi Glass Works Pvt. Ltd. .....*Petitioner*

: Versus :

Sunil V. Magar and others ....*Respondents*

Mr. Kiran S. Bapat, Senior Advocate with Ms. Sanjana Das & Mr. Janmesh Vora i/b Mehta & Padamsey, for the Petitioner.

Mr. K.P. Anilkumar with Mr. Amit Saple, Ms. Priyanka Kumar & Ms. Chinmay Apte, for Respondents.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 20 AUGUST 2026.

Pronounced On : 10 September 2026.

Judgment:

1) The Petitioner-employer has filed the present Petition challenging the judgment and award dated 31 October 2017 passed by the

Industrial Tribunal Mumbai answering Reference (IT) No. 64 of 2006 in the affirmative and allowing the Review Application filed by the Respondent-Union under Section 25-O(5) of the Industrial Disputes Act,1947 **(ID Act)**. The Industrial Tribunal has set aside the order dated 29 July 2006 passed by the Appropriate Government permitting closure of establishment of the Petitioner under Section 25-O(2) of the ID Act and Petitioner's application dated 3 June 2006 for closure of the undertaking is rejected. On account of rejection of application under Section 25-O(1) of the ID Act, the Industrial Tribunal has directed that the affected workmen shall be treated in employment of the Petitioner and shall be entitled to all consequential benefits.

2) The Petitioner was engaged in the business of manufacturing of glass containers (SodaLime/Type-III) of various shapes and sizes and had its factory at Mahalaxmi, Mumbai. It had last employed about 512 employees comprising of 471 workmen and 41 staff members. Petitioner moved application before the Labour Commissioner, State of Maharashtra on 8 May 2006 under Section 25-O(1) of the ID Act seeking permission for closure of the industrial establishment at Mahalaxmi, Mumbai. At that time, Respondent No.7-Bhartiya Kamgar Sena was the recognized Union under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971(**MRTU & PULP Act**) and it used to represent majority of the workmen. Additionally, Respondent No.8 (*Akhil Bharitya Kamgar Sena)* was the recognised Union representing some of the workmen of the establishment.

3) Respondent Nos.7 and 8 filed their responses to the closure application opposing the same. The Labour Commissioner accorded permission for closure of the establishment vide order dated 29 July 2006. It is Petitioner's contention that it paid all legal dues to its employees including retrenchment compensation, gratuity, leave, wages and other dues vide cheques dated 31 July 2006. Since the closure was envisaged w.e.f 31 August 2006, Petitioner also paid notice pay to the workmen and closed down the factory w.e.f. 31 July 2006.

4) Respondent No.7-Union filed application dated 1 August 2006 under Section 25-O(5) of the ID Act for review of the order dated 29 July 2006. Respondent Nos. 1, 3, 4 and 6, along with three other workmen, who were individual workmen, filed an application dated 28 August 2006 claiming representation on behalf of 228 workmen demanding that the matter be referred to the Tribunal for adjudication under Section 25-O(5) of the ID Act. Petitioner filed its response to both the applications. During the pendency of the proceedings before the State Government, Respondent No.7-Union addressed letter dated 1 November 2006 to the Labour Commissioner stating that the workers were willing to accept the legal dues and expressed its desire not to pursue the matter further. However, the Labour Commissioner, by order dated 18 November 2006, referred the application dated 1 November 2006 preferred by Respondent No. 7-Union for adjudication before the Industrial Tribunal. Petitioner filed Writ Petition No.1228 of 2007 challenging the order of the Labour Commissioner, which was dismissed by order dated 29 June 2007. Petitioner thereafter filed Statement of Claim on 9 July 2007.

Respondent Nos.7 and 8-Union did not participate in the proceedings. However, Respondent Nos.1 to 5 filed their Written Statement dated 6 August 2007. Another set of workers filed a separate Written Statement on 30 August 2007. The prayer of Respondents for interim relief was rejected by the Tribunal by Part-I Award dated 7 May 2009. Petitioner led evidence of witnesses Mr. Narasimha Kashyap Sundareshwaran, General Manager and Mr. Naresh Chand-Director. Respondent No.1-Sunil Magar and Respondent No.3-M.B. Bhagyavan examined themselves. Additionally Respondents also examined Mr. Nasir Naikwade and Mr. Manohar Bhour from another set of workers.

5) After examining the pleadings, documentary and oral evidence, the Industrial Tribunal has passed Award on 31 October 2017 thereby allowing Reference (IT) No. 64 of 2006. The Industrial Tribunal has set aside the order dated 29 July 2006 granting closure permission and has rejected Petitioner's application dated 3 June 2006 for closure. The Industrial Tribunal has directed that the affected workmen shall be treated as in employment of the Petitioner with consequential benefits. Petitioner has challenged the Award dated 31 October 2017 in the present petition. By order dated 30 January 2020, this Court admitted the petition granting liberty to the Petitioner to move a separate application for interim relief. Accordingly, Petitioner has filed Interim Application No. 3399 of 2020 seeking stay of the impugned Award. The Interim Application is taken up for hearing alongwith the main petition.

6) Mr. Bapat the learned Senior Advocate appearing for the Petitioner submits that the Industrial Tribunal has committed a manifest error in misconstruing the scope and mandate of Section 36 of the ID Act by permitting the workmen to prosecute the Reference in their individual capacity despite existence of a recognized union (Respondent No.7). That Respondent No.7 alone was competent to represent the concerned workmen. That the Industrial Tribunal has erroneously relied on the provisions of Section 36(1)(c) of the ID Act *(as amended in Maharashtra)* to justify individual representation. That the Maharashtra proviso contemplates that where recognized union exists, the individual workmen are precluded from independently prosecuting the proceedings concerning collective industrial disputes. That Proviso to Section 36 does not differentiate between various proceedings and clearly bars representation otherwise than through the recognized union when the dispute is of collective nature. That the interpretation made by the Tribunal defeats the object of the Statute and undermines the status of a recognized union as sole bargaining representative. He relies on judgments this Court in ***Asian Paints India Ltd. Versus. Mazdoor Kranti Union & Anr.***[1], ***Hind Kamgar Sanghatana Versus. Dai-Ichi Karkaria Ltd. & Anr.***[2] and ***Britania Industries Ltd. Versus. Maharashtra General Kamgar Union & Anr.***[3] in support of his contention that raising of an industrial dispute and adjudication of the same are two distinct stages. He also relies on judgment of this Court in ***M/s. Godrej &***

1 1997 SCC Online Bom 798
2 WP-5917-2012 dated 18 April 2019
3 2009 (3) MH.L.J. 968

Boyce Manufacturing Company Pvt. Ltd. Versus. Association of Engineering Workers and another[4]

7) Mr. Bapat further submits that the Industrial Tribunal has committed a serious error of law in questioning the genuineness of Petitioner's decision to close the establishment. The mere continuation of the Factory Manager on the Petitioner's payroll for a limited period after the cessation of manufacturing activities does not constitute evidence that the closure was not bonafide. That his continued engagement was exclusively for carrying out statutory obligations and that continuation of managerial personnel for limited statutory purposes neither revives nor invalidates an otherwise lawful closure. That the Tribunal has erroneously held that the Petitioner could have shifted manufacturing operations to a new unit at Taloja. That the decision whether to commence business at another location, expand, relocate or permanently discontinue operations is purely commercial and managerial prerogative lying within the exclusive domain of the employer and is not amenable to industrial adjudication. That the law does not cast any obligation upon an employer to establish an alternative unit merely because an existing undertaking has been closed. That the Tribunal has thus traveled beyond the permissible limit of its jurisdiction by substituting its own commercial wisdom with that of the employer.

8) Mr. Bapat further submits that the Industrial Tribunal has erred in reading the Balance Sheet for the financial year ending 31 March 2004 which actually indicates that the Petitioner was suffering loss of Rs.1.77

4 WP No. 96 of 1983 decided on 5 October 1985

crores which was erroneously considered as Rs.74.64 lakhs by the Tribunal. That the Tribunal has further erred in holding that losses for the year ending 31 March 2005 were only for Rs.79.54 lakhs whereas the Balance Sheet indicates that the Petitioner had taken into consideration surplus of the previous year and that therefore the resultant losses were in the sum of Rs.2.26 crores. That the Balance Sheets on record clearly discloses losses for 4 years at Rs.2.50 crores. That the Industrial Tribunal has also erred in not properly appreciating the evidence on record and has recorded perverse findings relating to cost of the furnace oil and light diesel oil. That the Tribunal has completely misread the letter dated 12 April 2006 addressed by Mahanagar Gas which did not agree to supply the requisite quantity of gas. That the Tribunal's opinion, that the Petitioner ought to have started utilizing available gas is recorded in ignorance of the position that the furnace is required to be run continuously for 24 hours. That the technology does not permit switching over from furnace oil to gas.

9) Mr. Bapat further submits that the Industrial Tribunal has rightly brushed aside the multiple reasons pleaded in the closure application, as well as evidence led by the Company. That the Tribunal has ignored the fact that the evidence led by the Petitioner regarding the impossibility of running the industry due to various constraints has virtually remained unchallenged.

10) Mr. Bapat further submits that Section 25-O(5) of the ID Act constitutes a special and self-contained statutory scheme and the legislative mandate is to pass award within 30 days from the date of Reference. He relies on judgment of the Apex Court in ***Orissa Textile & Steel Ltd. Versus. State of Orissa & Ors.***[5] in support of the contention that review must be disposed of within reasonable time. That the order granting closure permission was passed by the Appropriate Government on 29 July 2006, the application for review was filed on 1 August 2006, the order of the Commissioner of Labour was passed on 18 November 2006. However, the Reference is decided after a substantial delay on 31 October 2017. That the impugned Award therefore is a nullity. He relies on judgment of the Apex Court in ***Vazir Glass Works Ltd. Versus. Maharashtra General Kamgar Union and another***[6] in support of his contention that Reference in respect of the closure has to be decided within a period of 1 year. He also relies on judgments of this Court in ***Ambika Silk Mills Co. Ltd. Versus. Maharashtra General Kamgar Union and another***[7] and ***AEW Versus. Indian Hume Pipes***[8] in which it is held that time frame contemplated under Section 25-O is directory and not mandatory. However, he submits that in ***United White Metals Ltd. Versus. Bhartiya Kamgar Sena and others***[9] it is held that the view expressed in ***Ambika Silk Mills Co. Ltd.*** (supra) stands impliedly over ruled by the judgment of the Apex Court in ***Vazir Glass*** (supra). He further clarifies that in the judgment in ***Britania Industries Ltd.*** (supra), Single Judge of this Court, *prima-facie*, did not agree with the view taken in ***United White Metals Ltd.*** (supra). That since the statutory period is over, the impugned order is without jurisdiction. Lastly, Mr. Bapat submits that the subsequent events have been placed on record. That it is now impossible for the Petitioner to commence the manufacturing

5 (2002) 2 SCC 578
6 (1996) 2 SCC 118
7 1998 1 Mh.L.J. 568
8 1986 Mh.L.J. 34
9 2006 (4) Mh.L.J. 566

process. That as per the documents annexed to the appeal, manufacture of glass comes under red category and is not permitted to be operated beyond 5 years period, which expired in 2007. That Petitioner's establishment is located in a busy residential area at Mahalaxmi and it is otherwise not possible to commence any manufacturing activities therein. He accordingly prays for setting aside the impugned order.

11) Mr. Anilkumar the learned counsel appearing for Respondent Nos.1 to 6 opposes the petition. He submits that the Industrial Tribunal has rightly appreciated the entire material on record for rejecting the application for closure submitted by the Petitioner. That the order making Reference has been repealed by this Court vide order dated 29 June 2007. Therefore, Petitioner is now estopped from questioning maintainability of the Reference at the behest of individual workmen. He submits that Petitioner's witness, Mr. Narasimha Kashyap Sundareshwaran gave several important admissions in his evidence such as absence of short supply of material including furnace oil, failure to mention reasons for closure in the notice given to the employees, non-surrendering of license under the Bombay Shop and Establishments Act, 1948 directors of the Company looking after the estate of the Company and its net profit being Rs.1 crore, Company's attempt to relocate the Plant at Taloja when the Company has not been declared as a sick unit, continuation of license of the factory and employment of 24 employees etc. That even the second witness, Mr. Naresh Chand admitted that he was running the business and received Rs.1,70,000/- as a salary from the Company. He also admitted that the Company never attempted to modernize the Plant and that there were several clients with the Company at the time of closure. That the Tribunal has correctly appreciated the evidence appearing on record for rejecting the application for closure.

12) Mr. Anilkumar submits that Petitioner's objection about maintainability of the Reference at the behest of individual workmen has been properly dealt with by the Industrial Court and rejected. That the Tribunal has rightly arrived at the conclusion that Petitioner was unable to prove existence of circumstances pleaded in the application for closure. That the decision of the Industrial Court is supported by several judgments.

13) In support of his contention of maintainability of the Reference at the behest of individual workmen, he relies on judgment of this Court in ***Krantikari Kamgar Union Versus. Collector/Labour Commissioner & Ors.***[10]. That the Industrial Tribunal is entitled to go into the correctness of the reasons for closure. Mr. Anilkumar further relies on judgment of this Court in ***Maharashtra General Kamgar Union & Anr. Versus. Vazir Glass Works Ltd.***[11] in support of his contention that the Tribunal can go into the reasons for closure including the ground of public interest. Relying on judgment in ***Orissa Textile & Steel Ltd. Versus. State of Orissa & Ors.***[12] he submits that restrictions are imposed on closure on the basis of reasonableness and general public interest. In support of his contention that the Industrial Tribunal is entitled to go into the correctness of the reasons for closure and that closure application requires employer to indicate specific measures to

10 2023 SCC Online Bom 2245
11 1996 (3) LLN 747
12 (2002) 2 SCC 578

avoid proposed closure he relies on judgment in ***Voltas Employees Union, Mumbai Versus. Voltas Limited & Anr.***[13] In support of his contention that the workmen alone are required to be heard while deciding application for closure he relies on judgment of this Court in ***Krantikari Kamgar Union.***

14) Lastly, Mr. Anilkumar submits that the real reason for closure is the intention on the part of the Directors of the Petitioner to commercially develop the land which is situated at a prominent location in Mumbai. That several other employees are continued and are being paid salaries. He accuses Petitioner of entering into a secret deal with an unknown developer for development of the land. On above broad submissions, Mr. Anilkumar would pray for dismissal of the petition.

15) Rival contentions of the parties now fall for my consideration.

16) The Petitioner-employer has challenged the correctness of the Award dated 31 October 2017 passed by the Industrial Tribunal by which the Tribunal has adjudicated the Reference made to it by the Appropriate Government under Section 25-O. To appreciate the controversy at hand, it would be necessary to make reference to the statutory scheme relating to closure of an undertaking. Chapter V-B has been added to the ID Act by Act 32 of 1976. Provisions of Chapter V-B apply to industrial establishments where not less than 100 workmen are employed on an average per working day in the preceding 12 months. Section 25-O which is a part of Chapter V-B and deals with the procedure for closing down an undertaking. Under Section 25-O, an employer intending to close down an undertaking of an industrial

13 2003 (5) Mh.L.J. 43

establishment can apply for prior permission at least 90 days before the date on which intended closure is to become effective to the appropriate Government stating reasons for intended closure. Copy of such application is required to be served on the representatives of the workmen. After receipt of such application seeking permission for closure, the appropriate Government needs to make an inquiry and after granting reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure, the Government can either grant or refuse to grant such permission after having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of general public and all other relevant factors. The order passed by the appropriate Government granting or refusing to grant permission is final and binding on the parties subject to the provisions of sub-section (5). Under sub-section (5) of Section 25-O, the appropriate Government on its own motion or on an application made by the employer or any workmen review its order granting or refusing to grant closure permission. Alternatively, instead of reviewing the order itself, the appropriate Government can also refer the matter to the Industrial Tribunal for adjudication. Under Proviso to Section 25-O(5), once Reference is made to the Tribunal, it needs to pass an Award within a period of 30 days from the date of Reference. Provisions of Section 25-O of the ID Act are as under:

> **25-O. Procedure for closing down an undertaking.**—
>
> (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a

copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such

> exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.
>
> (8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17) In the present case, Petitioner filed application for closure of its undertaking at Mahalaxmi under Section 25-O(1) of the ID Act on 3 June 2006 proposing to close the establishment from 31 August 2006. Perusal of the application would indicate that the Petitioner pleaded several reasons and produced documents in support of its plea for permission to close the undertaking. At that time, Respondent No.7 was the recognized union, representing majority of the workers. Respondent No.8 was an unrecognized Union. Both the Unions opposed the application seeking permission of closure by filing their responses before the Commissioner of Labour. The Commissioner of Labour passed order dated 29 July 2006 granting permission for closure of the undertaking. Since the remedy is provided under sub-section (5) of Section 25-O to seek review of closure permission before the State Government, Respondent No.7-Union exercised that remedy and filed application for review of permission before the Government on 1 August 2006. In the pending proceedings for review before the Government, some of the Respondents jumped in and claimed representation on behalf of 228 workers and they also sought review of the closure permission. Petitioners questioned the right of Respondent Nos.1 to 6 to seek independent review when the recognised union had already filed its own application for review.

18) The Respondent No.7-Union, the only recognised Union, withdrew its application for review vide letter dated 1 November 2006. However, Respondent Nos. 1 to 6 continued the review proceedings before the appropriate Government. Instead of considering whether the closure permission should be reviewed or not, the appropriate Government decided to make a Reference for adjudication of the dispute to the Industrial Tribunal. In the Reference so made, which was registered as Reference (IT) No.64 of 2006, the impugned Award has been passed setting aside the closure permission dated 29 July 2006 and dismissing Petitioner's closure application dated 3 June 2006. The Industrial Tribunal has directed to treat the affected workmen in Petitioner employment by granting consequential benefits.

19) It is strenuously contended on behalf of the Petitioners that once there is a recognized Union in an establishment, individual workers cannot be permitted to seek adjudication of correctness of the closure permission. Reliance is placed by the Petitioners on the provision of Section 36 of the ID Act, which provides thus:

> **36. Representation of parties.**—
>
> (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—
>
> > (a) any member of the executive or office bearer] of a registered trade union of which he is a member:

> (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
> (c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.
>
> (2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—
>
> (a) an officer of an association of employers of which he is a member;
> (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;
> (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.
>
> (3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.
>
> (4) In any proceeding before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be.

20) In relation to State of Maharashtra, there is a amendment to Section 36 consequent upon enactment of the MRTU & PULP Act and a Proviso is added to sub-section (1) of Section 36 as under :

> Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised union.

21) Thus, as per the provisions of Section 36(1) of the ID Act, where there is a recognized Union in an Undertaking, no workman in the such Undertaking is entitled to be represented in any proceedings, except proceedings relating to dismissal, discharge, removal, retrenchment, termination, suspension, except by such recognised Union.

22) The Industrial Tribunal framed Issue No.1 relating to maintainability of the Reference and answered the same by holding as under:

> 19) Herein present case in hand even though Bhartiya Kamgar Sena is also one of the party in view of order passed by Appropriate Government on 18/11/2006, but failed to appear. This fact clearly shows that, recognized union do not want to espouse the cause of concerned workmen. As already stated that, the concerned workmen resigned from the membership of recognized union. Further the First party has not brought on record that, on the date of review application the status of recognized union was in existence and thereafter also. Further not brought on record any material to show that 30% membership of Bhartiya Kamgar Sena is still having. So at this stage it cannot be said that, Bhartiya Kamgar Sena is functioning still in the capacity of the recognized union. If considered above two aspects then Section 36(1)(c) shall be helpful to the concerned workmen as the workmen are not the members of any trade union. Therefore, they are represented through Shri. Sunil V. Magar and on these count it cannot be said that Section 36 of the I.D. Act is helpful to the first party for challenging representation of Shri. Sunil V. Magar. Hence the grounds shown by First party cannot be said legal and bonafide and therefore I come to the conclusion that reference is maintainable and accordingly I answered this issue affirmative.

23) Mr. Bapat has submitted that the provisions of Section 36 of the ID Act must be read harmoniously with the law relating to the recognition of trade unions which unequivocally contemplate that where a recognized union exists, individual workmen must be precluded from individually prosecuting the proceedings concerning collective industrial disputes. The contention is raised mainly on account of the fact that the recognized union gave up the claim during pendency of review proceedings before the appropriate Government. Since the Reference is made and finally adjudicated at the behest of individual workmen and the decision therein has gone against the Petitioner, it is making a desperate attempt to save the closure permission by contending that the Reference itself could not have been referred for adjudication and in any case, could not have been adjudicated, the moment recognized union withdrew the review application.

24) In my view, the scheme of closure under Section 25-O of the ID Act is entirely different and the usual limitations on persons and entities other than recognized units from seeking adjudication of disputes would not apply for proceedings relating to closure. As observed above, once an application for closure is made by the establishment, copy of the application is required to be served simultaneously on the '*representatives of the workmen*'. Section 25-O(1) does not stipulate that copy of the application must be served only on a recognized Union. On the contrary it uses the expression '*on the representatives of the workmen*'. While adjudicating closure application filed under Section 25-O(1) and while conducting an inquiry under Section 25-O(2), the appropriate Government needs to grant an opportunity of hearing to (i) the employer, (ii) '*the workmen*' and (iii) the persons interested in such closure. Under sub-section (5), the order granting or refusing to grant closure permission can be subject to review by (i) appropriate Government on its own motion or (ii) on the application made by the employer or (iii) on the application made by '*any workman*'.

25) Thus, the statutory scheme of Section 25-O permits 'any workman' to oppose a closure application as well as to seek a review. The right to oppose or seek a review is not restricted to a recognized union, and the same may be exercised by an individual workman as well. In relation to the State of Maharashtra, Section 25-O has been amended and substituted by following Section:

> **25-0. Application to be made for obtaining permission to close down any undertaking ninety days before closure.-**
>
> (1) An employer, who intends to close down an undertaking of an industrial establishment to which this Chapter applies, shall submit, for permission, at least ninety days before the date on which the intended closure is to become effective, an application, in the prescribed manner, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking. A copy of such application shall be served by the employer simultaneously on the representatives of the workmen in the prescribed manner:
>
> Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams, or other construction works.
>
> (2) On receipt of an application under sub-section (1), the appropriate Government, after holding such inquiry as it deems fit, and after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, may, for the reasons to be recorded in writing, by order grant the permission for closure, or if it is satisfied that the reasons given for the intended closure of the undertaking are not adequate and sufficient, or are not urged in good faith or are grossly unfair or unjust, and in any case such closure would be prejudicial to the interests of the general public, it may, for the reasons to be recorded in writing, by order refuse to grant the permission and direct the employer not to close such undertaking. A copy of any decision given by the appropriate Government under this sub-section shall be sent by it simultaneously to the representatives of the workmen.
>
> (3) Where an application for permission has been made under sub-section (1), and the appropriate Government does not communicate the refusal to grant the permission to the employer, within a period of sixty days from the date of

receipt of the application by it, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) Any employer or any workman affected by any order made under sub-section (2) or any workman affected by the permission deemed to be granted under sub-section (3), may, within thirty days from the date of the order or from the date from which the permission is deemed to be granted, as the case may be, prefer an appeal to such Industrial Tribunal as may be specified by the appropriate Government by notification in the Official Gazette for such area or areas or for the whole State, as may be specified therein. The Industrial Tribunal shall, after holding such inquiry as it deems fit, as far as possible within thirty days from the date of filing the appeal, pass an order, either affirming or setting aside the order of the appropriate Government or the permission deemed to be granted, as the case may be.

(5) Any order made by the appropriate Government under sub-section (2) or any permission deemed to be granted under sub-section (3), subject to an appeal to the Industrial Tribunal, and any order made by the Industrial Tribunal in such appeal, shall be final and binding on all the parties concerned.

(6) Any order refusing to grant permission for closure made by the appropriate Government under sub-section (2) shall remain in force for a period of one year from the date of such order, unless it is set aside earlier by the Industrial Tribunal in appeal.

(7) When no application for permission under sub-section (1) is made, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure, and the workman shall be entitled to all the benefits under any law for the time being in force, as if no notice has been given to him.

(8) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owning to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(9) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman in the said undertaking, who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section,

> shall be entitled to notice and compensation as specified in section 25-N, as if the said workman has been retrenched under that section.

26) Thus, even in relation to the State of Maharashtra, a reasonable opportunity of being heard needs to be granted to the representatives of the workmen under sub-section (4) of Section 25-O and even a workman affected by closure order can prefer an appeal to the Industrial Tribunal. The Legislature has not restricted the remedy of filing an appeal to a recognized union alone, even in relation to the State of Maharashtra.

27) In my view therefore the remedy of prosecuting the reference cannot be restricted only to a recognized union and even a workman can prosecute the same.

28) Also, Petitioner had challenged the Reference order dated 18 November 2006 by filing Writ Petition No. 1228 of 2007 which is dismissed by order dated 29 June 2007. After dismissal of the Petition, the Petitioner participated in the reference proceedings and now is turning around and questioning the maintainability of the reference at the instance of individual workman. In any case, even if the aspect of dismissal of Writ Petition No. 1228 of 2007 is ignored, the statutory scheme of Section 25(O) clearly permits an individual workman also to question the closure permission.

29) Mr. Bapat has placed reliance on judgment of this Court in ***Asian Paints India Ltd.*** (supra). However, the issue before this Court in ***Asian Paints India Ltd.*** was entirely different. In that case, Reference was made under Section 10 of the ID Act. Maintainability of the dispute was questioned since the worker had appeared in the individual capacity in the said Reference. In that case, the Company had closed its parent department whereby 14 workers had lost their jobs, and the recognised Union had accepted the closure. An unrecognized union raised industrial dispute relating to termination of services of the workers. During pendency of the Reference, 13 workers settled their claims on monetary claims whereas only one worker did not agree with the settlement and continued to prosecute the reference. It is in those peculiar facts of the case where the closure was admitted and not questioned and this Court held that an individual workman was not competent to prosecute the Reference. The judgment has no application to the facts of the present case.

30) Mr. Bapat has also relied upon judgment of Single Judge of this Court in ***M/s. Godrej & Boyce Manufacturing Company Pvt. Ltd.*** which is referred to in the judgment in ***Asian Paints India Ltd.*** Again, the issue in ***M/s. Godrej & Boyce Manufacturing Company Pvt. Ltd.*** was entirely different i.e. capacity of an unrecognized union to represent workers in proceedings relating to an industrial dispute where a recognized union already existed. The judgment therefore has no application for deciding the issue involved in the present case. Mr. Bapat has also relied upon judgment in ***Hind Kamgar Sanghatana*** (supra) in which reference was made under Section 12(5) of the ID Act in relation to demand for increase in allowances, wages and other benefits. In the light of such demand, the issue before this Court was whether it was permissible for non-recognized union to prosecute the Reference. The judgment therefore has no application for deciding the issue as to whether individual workmen can seek adjudication of disputes relating to closure of the establishment.

31) Therefore, the objection of locus of Respondent Nos. 1 to 6 to prosecute the reference sought to be raised on behalf of the Petitioner deserves outright rejection.

32) Coming to the merits of the decision of the Industrial Tribunal, it is seen that the Petitioner had pleaded several reasons for seeking closure permission in the application dated 3 June 2006. After the Reference was made for adjudication, the Petitioner challenged the Reference order dated 18 November 2006, by filing Writ Petition No. 1228 of 2007. One of the issues before this Court was about the burden of proof in respect of existence of valid reasons for closure. This Court held that the burden of proof was on the Petitioner. Thus it was the responsibility of the Petitioner to prove existence of circumstances warranting closure of the establishment. Accordingly, Petitioner filed Statement of Claim in Reference (IT) No.64 of 2006 pleading various reasons for justifying the closure.

33) The Industrial Tribunal framed Issue No. 2 as to whether Petitioner proved the reasons pleaded in paras-3(a) to 3(f) in the Statement of Claim. However, the reasons were pleaded in para-3(a) to (t) of Statement of Claim. Be that as it may, there can be a typographical error in framing Issue No.2 and it is not necessary to delve deeper into the said error. The Tribunal conducted a factual inquiry into the Petitioner proving existence of reasons for closure and proceeded to answer Issue No.2 in the negative. The findings recorded by the Industrial Tribunal on Issue No.2 are challenged by the Petitioner in the present petition. I accordingly proceed to examine whether the Petitioner has made out a case of gross perversity in the findings recorded by the Industrial Tribunal.

34) The Petitioner had contended in the statement of claim that the continuation of manufacturing operations had become a totally unviable business proposition and that the prospects of the business had become extremely bleak and uncertain. The Petitioner had pleaded that the cost of furnace oil used for melting the glass and light diesel oil for conditioning the oil had become uneconomical and very high. That the competitors had already started using natural gas in substitution of fuel such as furnace oil and light diesel oil. Petitioner contended that the cost of furnace oil and light diesel oil was about 25% of total sales revenue and that higher prices of furnace oil had affected company's cost of production making it totally unviable. Petitioner claimed that it had suffered losses to the tune of Rs. 4 crores by the financial year 2005-06. Petitioner produced Balance Sheets for the years ending 31 March 2004, 31 March 2005 and 31 March 2006. The Industrial Tribunal examined the Balance Sheets, but proceeded to hold that on the basis thereof, it could not be assumed that the continuation of operations had become an unviable business proposition or that the prospects of the business had become bleak or uncertain. I am in broad agreement with the findings recorded by the Industrial Tribunal. The balance sheets may depict losses suffered in two out of the three years and increase in the cost of fuel. However from the balance sheets it cannot be concluded that it became impossible to continue the operations. May be it was tough for the Petitioner to ensure profits every year but it cannot be concluded only on the basis of the balance sheets that the only option left was to close the establishment. This is discussed in greater details in the later part of the judgment.

35) The Industrial Tribunal thereafter went into the reasons pleaded in para 3(b) of the Statement of Claim about increase in the prices of furnace oil and light diesel oil. It has recorded following findings on this aspect:

> So far as reason 3(b) is concerned, it is admittedly since years together the first party was using furnace oil and light diesel oil. So the first party was well aware about the day to day cost of furnace oil and light diesel oil. First party compared to other competitors who were using natural gas and therefore, their production cost is upto 7 to 15% to sales revenue and first party company's cost is upto 35% to the sales revenue. So far as percentage of cost is concerned, no documentary material produced along with closure application. The cost of production shall be depend on particular functioning of undertaking. If the first party was known to them they would have to be utilized natural gas; but they failed to take proper steps and simply stated that sufficient natural gas was not available. Might be the natural gas shall be preferable for reducing the cost of product. But did not find on record really the first party had taken any experiment to use natural gas.

36) The Tribunal has recorded a finding that no documentary material was produced with the closure application to demonstrate percentage of costs required for furnace oil and light diesel oil. Mr. Bapat has invited my attention to the balance sheets to demonstrate the figures of power, fuel, and water charges. He has submitted that for the year 2003-2004, the expenditure for power, fuel and water charges was Rs. 12,62,86,183/-as against the revenue figure of Rs.43.61 crores. However Rs. 12.62 crores is indicated as the cost of power, fuel, and water and not just for the fuel. Also, if Rs. 12.62 crores is compared with the total revenue of Rs. 43.61 crores, the percentage is 28% and not 35% as claimed by Petitioner. The Tribunal is, therefore, not entirely wrong in holding that there is no documentary evidence regarding the percentage of fuel costs as compared to sales revenue.

37) Going further, the Tribunal has faulted the Petitioner for failing to take appropriate steps to commence manufacturing activities using natural gas and has merely treated the non-availability of sufficient supply of natural gas as a pretext. The Tribunal has accepted that natural gas was preferable for reducing the cost. However, it has held that the Petitioner ought to have started at least experimenting use of natural gas. The Petitioner had produced a letter dated 12 April 2006 addressed by Mahanagar Gas Limited, wherein Mahanagar Gas Limited had agreed to supply 5000-6000 cubic meter gas per day. Petitioner claims that it needed 25000 cubic meter gas per day. It is contended that the Tribunal has failed to appreciate the peculiarity of the business and manufacturing process of glass. It is further contended that the technology does not permit shifting from furnace oil to natural gas like pressing a tab and that the manufacturer cannot use gas for some time and furnace oil at other times. It is further contended that the furnace needs to run for 24 hours failing which the molten gas solidifies and that therefore, use of natural gas cannot be undertaken merely as a matter of experimentation, as erroneously held by the Industrial Tribunal. However the letter of Mahanagar Gas Limited is dated 12 April 2006 and in two months thereafter, Petitioner filed application for closure of its establishment. By using expensive fuel also, it had managed to earn profits of Rs. 1,05,66,622/- as on 31 March 2005. Therefore it cannot be held that the findings of the Tribunal about non-supply of gas by Mahanagar Gas Limited was used by Petitioner as a pretext is perverse by any standard. It is a plausible finding.

38) Coming to the aspect of alleged losses claimed by the Petitioner, the Industrial Tribunal has refused to believe that the Petitioner faced losses as claimed. It has recorded following findings in this regard:

> Whatever as alleged loss shown of Rs. 4 crore in the financial year ending 31 March 2006 cannot be said on the fault of workmen, but it is the responsibility of first party how to maintain the cost of product for these types of manufacturing. If perused balance sheet at Exh. C-43 for year ending 31 March 2004 actual production is of 2,05,118 pieces and cost of power, fuel and water charges is Rs. 1,26,86,183/- and loss of Rs. 74,64,551/-. For the year ending 31 March 2005 actual production is 2,12,103 and profit is Rs. 1,05,66,622/- excluding the loss of Rs. 74,64,551/- of previous year. If peruse the balance sheet for the year ending 31 March 2006 actual production is 1,92,568 and again loss is shown Rs. 2,26,12,522/- without considering profit of Rs. 1,05,66,622/- of previous year. If considered profit of Rs. 1,05,66,622/- for the year as on March 2005 then loss of Rs. 2,26,12,522 shall reduce to the extent of Rs. 79,54,100/-. Even though the first party in its application contended loss of Rs. 4 crore which is beyond the figures of balance sheet. To know that, the cost of furnace oil and light diesel oil is higher and therefore, the functioning of first party was unviable, did not find figure in the balance sheet. Further, did not find much loss. Of course in the year 2006 there is loss of at about 80,00,000/- but the first party was required to consider that, since 1956 the Company is functioning and some time loss can be happened and some time they shall be in profit. If considered profit for years together it cannot be said that, the first party totally was unviable to continue its business activities.

39) The Tribunal has thus recorded a finding that the losses of Rs. 4 crores incurred during the financial year ending 2005-2006 could not be attributed to any fault on the part of the workmen. Whether losses result out of fault of the workmen or not is an irrelevant consideration. The relevant consideration is whether Petitioner indeed faced losses and whether closure of the undertaking was really required due to such losses. The Tribunal has held that for the year ending 31 March 2004, the loss was only Rs.74,64,551/-. According to Mr. Bapat, the actual loss for that year is Rs.1,77,94,080/- and that the Tribunal has erroneously picked up the figure of Rs.74,64,551/- indicated against entry '*balance carried to balance sheet'* for assuming the same as the loss may be the actual loss suffered during the year ending 31 March 2004 is Rs.1.77 crores. It however appears that Petitioner made adjustment of taxation of (-) Rs.1,64,00,000 and Rs.2,27,92,000/- and therefore the actual loss came to Rs. 1,14,17,084/-. To that figure surplus of the last year balance sheet of Rs. 39,52,533/- was added and this is how final loss figure of Rs. 74,64,551/- for the year 2003-04 was determined. Therefore, there was profit for the year ending 31 March 2005 of Rs.1,05,66,622/-. The losses for the year ending 31 March 2006 were Rs. 3,82,54,412/- and after adjusting the carried over profit of Rs.1,05,66,622/-, the actual loss is shown as Rs.2,76,87,790/-. Also, in only two out of the three years, there was loss and in one year, Petitioner had made profits. Thus the actual loss suffered by the Petitioner during the 3 years of operation is finally Rs. 2.76 crores and not 4 crores as sought to be projected by the Petitioner.

40) While discussing the Balance Sheet figures, the Tribunal has recorded a finding that the alleged increase in the cost of furnace oil and light diesel oil is not reflected in the balance sheet. However, if one compares the figures of expenditure towards fuel and water charges for the year 2003-04 of

Rs. 12,62,86,183/- with the figure of Rs. 13,13,91,754/- for the year 2004-05, it shows a 4.04% rise in the cost of power, fuel and water charges. The figure went up to Rs. 15,95,02,400/- during 2005-06. Thus, increase in the cost of power, fuel and water charges was discernible from the Balance Sheets. But the same is against the elements of power, water and fuel. Even if it is assumed that there was some increase in the fuel cost, the Petitioner was still able to generate profit of Rs.1,05,66,622/- in 2004-05.

41) The Tribunal thereafter considered the life of the furnace and the cost criteria for its replacement. The Tribunal has held Petitioner responsible in not making arrangements for replacing the furnace by holding as under:

> If company is engaging in said business then they should have to take care to replace the furnace from time to time when normal life is over. So that irregularity on the fault of company cannot be compelled on workmen and public at large and that cannot be genuine and bonfaide reason for closure of undertaking.
>
> xxx
>
> So far as replacing cost of furnace is concerned that was up to the first party and it can be said that, this was negligence on the part of First Party.

42) According to Mr. Bapat, the cost of replacing the furnace was Rs.12 to 15 crores whereas according to the Respondent, the same was in the range of Rs.7 to 8 crores. Be that as it may, it appears that the company had reported losses in two out of the preceding three years. After adjusting the profit figure of Rs. 1,05,66,622/- of 2004-05, its actual loss for the year 2005-06 was 2.76 crores. May be in such circumstances, Petitioner did not desire to spend monies on purchase of new furnace.

43) The Tribunal once again adverted to the aspect of supply of gas by Mahanagar Gas Ltd. and has recorded a finding that the Petitioner failed to accept the offer of Mahanagar Gas Ltd. This is clear from the following findings:

> Further the first party company sought natural gas at about 25,000 cubic meter per day, but the Mahanagar Gas Ltd. assured to provide 5000 to 6000 cubic meters natural gas per day. If perused the letter of Mahanagar Gas Ltd. it appears that, this document clearly shows that, the Mahanagar Gas Ltd. Initially was ready to provide natural gas, but the first party declined to accept offer of Mahanagar Gas Ltd. Further the first party nowhere justified that per day 25000 cubic meters gas was required and further nowhere given bifurcation to that effect by orally or documentary. In fact the first party was required to utilize initially offered Natural Gas and thereafter it was possible to consider the decision of closure. This fact clearly shows that, knowing the fact that Mahanagar Gas Ltd. was unable to provide quantity as asked by the First party put up the demand of 25,000 cubic meter gas and had taken disadvantage of this fact. At least as per availability of gas first party was required to continue its activities and was required to wait and watch further development. Therefore reason assigned by first party not seems bonafide and genuine for closure.

44) The requirement of Petitioner was 25,000 cubic meters gas per day whereas Mahangar Gas Limited had assured to provide gas in the quantity of only 5,000-6,000 cubic meters per day. The offer made by Mahanagar Gas Limited was subject to the condition that it could stop the gas supply at any point of time. It would be apposite to reproduce relevant portion of letter dated 12 April 2006 of Mahanagar Gas Limited, which reads thus:

> 1. Initially, we would consider supply of PNG in the range of 5000 to 6000 SCMD to you.
>
> 2. You will strictly adhere to gas drawl limited to your NQ in day to day basis.

> 3. Yours gas supply would be on a fall back basis, treated separately from our other industrial customers In case of gas availability problems, you would shutdown gas consumption completely within 3 hours of such notice to you.

45) May be Petitioner is right in contending that Mahangar Gas Limited did not assure supply of requisite quantity of gas and made the supply subject to the condition of stoppage in the event of availability of problems. However, as observed above, the letter was received by the Peitioner on 12 April 2006 and immediately thereafter Petitioner made closure application on 3 June 2006. If it was possible to earn profits despite increase in fuel cost in 2004-05, may be the Petitioner could have attempted continuation of operations for some more time by taking measures like increasing cost of manufactured products, etc. May be Petitioner could have also pursued the matter with Mahangar Gas Limited for increasing the quantity of supply. In my view therefore continuation of operations for some more time was advisable in the facts of the present case.

46) The Industrial Tribunal then went into the aspect of salary costs which was claimed to be 21 to 23% of total revenue. The Tribunal has however recorded a finding that the Petitioner did not produce any material either before the appropriate Government or before it to indicate the costs of salary. However, the Balance sheet indicated the costs incurred towards salary. To illustrate, for the year 2005-06, the salary cost was at Rs. 5.90 crores as compared to the total income figure of Rs.45.80 crores. This would constitute cost of salary to be only about 12.88% as compared to the revenues. Therefore though the Tribunal is not correct in holding that Petitioner did not produce any material. The claim of Petitioner of salary cost constituting 21 to 23 % of revenues does not appear to be correct. Also in a labour-intensive industry the cost of labour is bound to be high. Even if 21 to 23 % is considered, it cannot be said that the labour cost was astronomically high in the present case. Even with the alleged high cost of labour, Petitioner was able to report profit of Rs.1,05,66,622/- for the year ending 31 March 2005.

47) One of the main reasons pleaded for closure of the undertaking was absence of demand of glass bottles by various industries. Mr. Bapat contends that it is a matter of public knowledge that over the years, soft drink manufacturers have switched from glass bottles to plastic bottles and that the liquor industry in India has also switched over to the plastic bottles. But was that the position in 2006 when closure was effected? Petitioner was also manufacturing glass bottles for pharma industry. No concrete evidence of decline in orders for glass bottles was proved. As a matter of fact, despite the alleged decline in demand, Petitioner still reported profit of Rs.1,05,66,622/- in FY 2004-05.

48) Another factor considered relevant by the Industrial Tribunal for setting aside approval to closure is retention of some of the staff by the Petitioner after closure. The Tribunal has recorded that a factory manager and personnel officer were continued in the employment even in the year 2010. The Tribunal has questioned as to how factory manager could be continued in 2010. It is the case of Respondent Nos. 1 to 6 that almost 50 staff members are still working at the factory. In my view however, continuation of staff members by the Petitioner is a less relevant factor. In my view, the relevant factor is whether the Petitioner-Company continued its manufacturing activities after the closure permission. There is no finding by the Tribunal that business of the Petitioner continued after the closure. It is not the case even of the Respondents that the manufacturing activity was outsourced or that Petitioner replaced the services of the permanent workers with temporary/contract workers and continued the business of manufacture and sale of glass bottles.

49) Respondent Nos. 1 to 6 highlighted the position that the Petitioner purchased a land at Taloja out of the profits earned out of the business of glass factory at Mahalaxmi. Purchase of land at Taloja is proved before the Tribunal. It is also established that the Petitioner had plans to shift the factory to Taloja. However, the Petitioner ultimately did not start any manufacturing activity at Taloja. There is also no evidence on record to suggest that closure was effected with a view to get rid of permanent workers at Mahalaxmi and manufacturing activity was continued through other workers at Taloja. On the other hand, it is an admitted position that even at Taloja, there is no manufacturing activity.

50) Petitioner was running a glass factory at a busy location in the heart of the city at Mahalaxmi. Most of the industries in Mumbai city have been moved out. Continuation of manufacturing activity in busy residential area was otherwise feasible. According to the Petitioner, the industry manufacturing glass has been classified as a red category by Maharashtra

Pollution Control Board. Therefore, it is not known whether the Petitioner would otherwise been permitted to continue the manufacturing activities in busy residential location.

51) Considering the above position, in my view, though the Petitioner could not conclusively prove before the Tribunal about existence of circumstances warranting closure, there are certain mitigating circumstances in favour of the Petitioner since the factory is actually closed and Petitioner did not manufacture similar products or any other products either in the concerned factory or at any other premises. There is absolutely no evidence of any manufacturing activity by the Petitioner during last 20 long years.

52) Petitioner has also sought to raise the issue about violation of timeline of 30 days by the Industrial Tribunal for adjudicating the Reference. There appears to be no judgment holding that the Industrial Tribunal becomes functus officio upon expiry of the period of 30 days as specified in Section 25-O. In my view, therefore there is no warrant for interference in the impugned order on the ground of failure to adjudicate the Reference within 30 days. I therefore consider it unnecessary to deal with various judgments cited by the learned counsel appearing for the rival parties on the aspect of Industrial Tribunal's failure to adjudicate the Reference within a period of 30 days.

53) Mr. Anilkumar has relied on judgment of this Court in ***Britania Industries Ltd.*** in support of his contention that the Tribunal can go into the reasons for closure to find out as to whether it is genuine and that it also has power to revise the permission for closure including on the ground of public interest. Mr. Anilkumar has also relied on judgment of the Apex Court in ***Orissa Textile & Steel Ltd.*** in support of his contention that restrictions can be imposed on closure on the basis of reasonableness and general public interest. Mr. Anilkumar has also relied on judgment of the this Court in ***Voltas Employees Union, Mumbai*** in support of his contention that the Tribunal can go into the issue of genuineness and adequacy of reasons for closure and that application for closure must indicate specific measures undertaken by the employer to avoid a proposed closure.

54) Considering the overall conspectus of the case, it is seen that Petitioner could not establish consistent sufferance of losses for three years before closure. It did earn profits in one out of the three years. Just about one year before the closure it had earned profit of Rs. 1,05,66,622/- . Therefore, it is not possible to draw a conclusive presumption that sufferance of losses by the Petitioner in future was eminent. What if the Petitioner was to make profits in the year ending 31 March 2007 as it did two years earlier in 2005? Therefore, Petitioner could have continued its activities for couple of years more for examining the feasibility of running the business in profits. Therefore, technically the closure permission ought to have been rejected and Petitioner ought to have made a fresh application for closure in the next year after examining the feasibility to run the operations. Petitioner thus hurriedly went for closure option. However, while holding that the closure was in a hurry, it must also be borne in mind that rejection of closure permission would entail liability to pay wages to the workers without any manufacturing activity happening in the factory. As observed above, there are mitigating circumstances in favour of the Petitioner as it believed that continuation of the manufacturing activities would have led to further losses. Now a period of 20 long years has elapsed from halting of the manufacturing activities. It is now too late in a day to expect the Petitioner to commence the glass bottle manufacturing activities in the factory. It has also come on record that the activity is red flagged by the MPCB and cannot be carried out in busy residential area. Petitioner owns a large tract of land in south Mumbai which now is worth a fortune. In these circumstances in my view, it would be appropriate to award lump sum compensation to 472 workers, whose details are provided at Annexure-A1 to the closure application as well as at Exhibit G to the Interim Application No. 3399 of 2020. Petitioner can raise funds by providing security of the land or by entering into agreement for sale and pay the compensation to the workers. Considering the findings recorded that the operations could have been continued for a couple of more years, the workers can be awarded compensation by considering loss of wages for about 2-3 years and some interest component. Therefore compensation of Rs. 2,00,000/- can be awarded uniformly to each of the workers to prevent complicated computations. The financial liability to the Petitioner would be in the range of Rs. 9,44,00,000/- for 472 workers. Considering the land value of hundreds of crores, not much prejudice would be caused to the Petitioner on account of award of compensation of Rs. 2,00,000/- to 472 workers. This would balance the equities. Petitioner has apparently not dealt with the factory land due to pendency of the litigation. Once the awarded compensation is paid, Petitioner can develop or sell the land, which is now worth hundreds of crores. Considering the facts and circumstances of the case, it would be appropriate to award compensation of Rs. 2,00,000/- to each worker over and above what is already paid to them.

55) I am of the view that the impugned order passed by the Industrial Tribunal deserves to be modified by awarding lumpsum compensation of Rs. 2,00,000/- to each worker.

56) Accordingly, I proceed to pass the following order:

(i) The judgment and award dated 31 October 2017 passed by the learned Member Industrial Tribunal in Reference IT No. 64 of 2006 is modified by directing that Petitioner shall pay to each of the 472 workers/their legal heirs lump sum compensation of Rs. 2,00,000/- each within a period of 4 months.

(ii) The workers/legal heirs shall submit details of account numbers to the Petitioner for transmission of compensation expeditiously.

(iii) Beyond the lump-sum compensation so awarded to the workers, they shall not be entitled to any other service-related benefits/payments from the Petitioner.

57) The Writ Petition is partly **allowed** in above terms. Rule is partly made absolute. There shall be no order as to costs. Interim Application also disposed of.

NEETA SHAILESH SAWANT Digitally signed by NEETA SHAILESH SAWANT Date: 2026.09.10 20:55:51 +0530

(SANDEEP V. MARNE, J.)