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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 14.07.2026*+ **W.P.(C) 9101/2026 & CM APPL. 42710/2026**

M/S SHAH CATERS

.....Petitioner

Through: Mr. Joydeep Sarma and Mr.
Sujal Bhatt, Advocates

versus

ARCHEOLOGICAL SURVEY OF INDIA Respondent

Through: Mr. Amit Tiwari, CGSC with
Ms. Ayushi Srivastava, Mr.
Arpan Narwal, Mr. Kushagra
Malik and Mr. Ujjwal Tyagi,
Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J. (Oral)****W.P.(C) 9101/2026 & CM APPL. 42710/2026**

1. By way of the instant petition, the petitioner seeks following prayer:

“(a) grant a writ of mandamus or such other appropriate writ/ order/ direction quashing the arbitrary demand and termination notices bearing F. No. DLH/573/2024-M2049 dated May 20, 2026 and bearing F. No. DLH/573/2024-M-2722 dated June 05, 2026 issued by Respondent to the Petitioner...”

2. Briefly stated, the facts of the present case are that, pursuant to a tender process, a Memorandum of Agreement [hereafter ‘**MoA**’]



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dated 11.09.2024 was executed between the President of India, acting through the Superintending Archaeologist, Archaeological Survey of India, and M/s Shah Caters for providing cafeteria and refreshment services to visitors at the Red Fort Complex for a period of three years. It is the petitioner's case that the Red Fort is a high-security monument and remains closed to the public for considerable periods during Independence Day and Republic Day celebrations, owing to security arrangements. Consequently, ancillary public utility services, including the cafeteria, parking and rickshaw services, also remain closed during such periods. According to the petitioner, no licence fee is charged for these closure periods. In this regard, reliance is placed upon Clause 5 of the MoA, which provides as under:

“5. The license fee is fixed and not on pro-rata basis and waive off request of licence fee will be entrained only in case of extreme circumstance like pandemic. However, the concession will not be payable for Independence Day and Republic Day celebrations period if any.”

3. The petitioner contends that a plain reading of Clause 5 shows that no licence fee is payable for the period during which the Red Fort remains closed for Independence Day and Republic Day celebrations. It is further submitted that the clause also contemplates waiver of licence fee in extreme circumstances, and that the closure following the bomb blast near the Red Fort falls within such circumstances. It is stated that between 01.10.2024 and 19.05.2026, the petitioner regularly deposited the advance licence fee, while excluding the pro-rata fee for periods during which the Red Fort



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remained completely closed to the public. These included closures for Republic Day 2025, Independence Day 2025, an international festival in November 2025, the bomb blast near the Red Fort in December 2025, and Republic Day 2026. The petitioner also addressed written communications to the respondent specifying the closure periods and requesting corresponding adjustment of the licence fee. According to the petitioner, these payments were accepted without objection for nearly one and a half years, thereby affirming the respondent's acceptance of this interpretation of the MoA. The petitioner states that after a change of the concerned officer, the respondent issued a demand letter dated 20.05.2026 raising a demand of ₹7,42,560/- towards alleged outstanding licence fee. The petitioner submitted a detailed representation dated 28.05.2026 seeking withdrawal of the demand, inter alia, relying upon the terms of the MoA, earlier practice, and the calculations of the licence fee paid. However, by communication dated 05.06.2026, the respondent rejected the representation, reiterated the demand, directed the petitioner to clear the outstanding amount by 15.07.2026, and further stated that in case of non-payment, the licence would stand terminated with effect from 31.07.2026.

4. Aggrieved by the demand and the consequential threat of termination, the petitioner has approached this Court by way of the present writ petition.

5. At the outset, the learned CGSC appearing for the respondent



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submits that the present writ petition is not maintainable as the petitioner has failed to avail the remedy provided under the MoA. In this regard, he draws the attention of this Court to the arbitration clause contained in the MoA.

6. The learned counsel appearing for the petitioner, however, submits that notwithstanding the existence of the arbitration clause, the present writ petition is maintainable since the impugned action of the respondent is arbitrary, unreasonable and *ex facie* contrary to the terms of the MoA.

7. The learned CGSC appearing for the respondent, on the other hand, contends that the respondent's action is in accordance with Clause 5 of the MoA.

8. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondent, on the point of maintainability of present writ petition.

9. The issue which arises for consideration is whether this Court ought to entertain the present writ petition under Article 226 of the Constitution of India, despite the existence of an arbitration clause in the MoA executed between the parties.

10. In this regard, the attention of this Court has been drawn to the arbitration clause contained in the MoA, which is set out below:



Arbitration

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this MoA or the interpretation thereof. If any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of this MoA or breach thereof which parties are unable to settle mutually within 15 days from the commencement of settlement proceedings, the same shall be referred to Arbitration as provided hereunder:

- a) A party wishing to commence arbitration proceedings shall invoke arbitration clause by giving advance notice of 15 days to other party.
 - b) The party invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.
 - c) It is agreed that arbitration shall be done by the Secretary (Culture), Ministry of Culture, Government of India as the Sole Arbitrator or by such other officer, not below the rank of joint Secretary to the Government of India, as may be nominated by the Secretary (Culture). The Provisions of the Arbitration and conciliation Act, 1996 or any re-enactment or statutory modification thereof for the time being in force shall be applicable for settlement of the disputes.
 - d) In the event of Arbitrator(s) so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Parties to appoint another person in his/her place in same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor has left if both parties consent for the same; otherwise, he shall precede de novo.
 - e) The Arbitrator shall pronounce a reasoned and speaking award and the decision of the Sole Arbitrator shall be final and binding on the parties.
 - f) The parties agree that any party aggrieved or dissatisfied with the award made and passed by the Secretary (Culture), may make a further reference to the Secretary (Law), Government of India, Ministry of Law and Justice, within 30 days of the passing and making of the award by the Secretary (Culture), Ministry of Culture, and thereupon the award made and passed by the Secretary (Law), Government of India, Ministry of Law and justice shall become conclusive and binding upon the parties.
 - g) The venue of arbitration shall be New Delhi and the language of arbitration shall be English.
 - h) The parties to the arbitration shall bear the fees and expenses as determined by the Arbitrator.
- Governing Laws and Jurisdiction:-**
Subject to the above clause on Arbitration, the parties hereto unconditionally and irrevocably agree to submit to the exclusive jurisdiction of the competent courts in New Delhi only. This MoA shall be governed by and construed in accordance with the laws of India.

11. A perusal of the pleadings and the rival submissions shows that the dispute between the parties essentially arises out of the terms and conditions of the MoA. While the petitioner contends that, in terms of Clause 5 of the MoA, it was entitled to exclude the pro-rata licence fee for the period during which the Red Fort remained closed to the public on account of Independence Day and Republic Day celebrations and other extraordinary circumstances, the respondent



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disputes the said interpretation and argues that the petitioner was liable to pay the licence fee in accordance with the terms of the MoA. It is also evident that the dispute between the parties is not confined only to the interpretation of Clause 5 of the MoA, but it also involves questions relating to the payments made by the petitioner, the periods for which the licence fee was deducted or withheld, the amount allegedly remaining outstanding, and whether the respondent had accepted such payments without objection over a period of time. The determination of these issues would necessarily require examination of the factual matrix, the correspondence exchanged between the parties, and the manner in which the contractual terms were acted upon by them.

12. The legal position on the issue is no longer *res integra*. In the ***State of U.P. v. Bridge & Roof Co. (India) Ltd.***: (1996) 6 SCC 22, the Hon'ble Supreme Court held that where the parties have agreed to resolve their disputes through arbitration, the High Court should ordinarily decline to entertain a writ petition under Article 226 of the Constitution. The Hon'ble Supreme Court further observed that disputes involving the interpretation of contractual terms and conditions are matters falling within the realm of private law and are not amenable to writ jurisdiction. The relevant paragraphs of the said judgment are extracted hereunder:

“16. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, maybe, also by certain provisions of the Sale of Goods Act. Any dispute



relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.”

13. In ***ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.***: (2004) 3 SCC 553, the Hon’ble Supreme Court reiterated that although the existence of an arbitration clause does not operate as an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution, such jurisdiction ought to be exercised sparingly. It was also observed that where the dispute is essentially contractual in nature and the parties have agreed upon arbitration as the mode of dispute resolution, the High Court should ordinarily refrain from entertaining a writ petition, unless exceptional circumstances are made out. The relevant observations are extracted below:

“14. This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the Court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired from the parties to the present appeal before us and we have been told that there is



no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of *Bridge & Roof Co.* [(1996) 6 SCC 22] are of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.”

14. In *Joshi Technologies International Inc. v. Union of India*: (2015) 7 SCC 728, the Hon’ble Supreme Court examined the law governing the exercise of writ jurisdiction in contractual matters, and held that although the jurisdiction of the High Court under Article 226 is not ousted merely because the dispute arises out of a contract, such jurisdiction ought to be exercised with considerable restraint. It was observed that where the dispute pertains to enforcement of contractual rights, involves disputed questions of fact requiring appreciation of evidence, or where the contract itself provides an efficacious dispute resolution mechanism, including arbitration, the parties should ordinarily be relegated to such remedy. It was also clarified that while the State is required to act fairly and in a non-arbitrary manner even in contractual dealings, a mere allegation of arbitrariness would not justify the invocation of writ jurisdiction where the dispute essentially lies in the realm of private contract.

15. In *Unitech Ltd. v. Telangana State Industrial Infrastructure Corpn.*: (2021) 16 SCC 35, the Hon’ble Supreme Court reiterated



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that the existence of an arbitration clause does not, by itself, exclude the jurisdiction of the High Court under Article 226 of the Constitution. At the same time, the Court emphasised that the extraordinary jurisdiction under Article 226 must be exercised with circumspection where the parties have consciously agreed upon an alternative dispute resolution mechanism. The Court observed that while a writ petition may still be maintainable where the action of the State or its instrumentality discloses arbitrariness or violation of constitutional obligations under Article 14, disputes which are essentially contractual in nature and arise out of the rights and obligations embodied in the contract should ordinarily be relegated to the contractual dispute resolution mechanism agreed between the parties. The relevant paragraphs are extracted hereunder:

“39.2. The decision in *ABL International*, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters.

39.3. Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.

39.4. If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie...”

16. As already noted in preceding discussion, the controversy between the parties arises directly from the rights and obligations



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flowing under the MoA dated 11.09.2024, which contains a specific arbitration clause governing disputes arising out of or in connection with the agreement. Apparently, the dispute between the parties is *inter alia* about the interpretation of Clause 5 of the MoA, with the petitioner contending that it was entitled to exclude the licence fee for the periods during which the Red Fort remained closed, whereas the respondent's case is that the impugned demand is strictly in accordance with the terms of contract. It is also well-settled that the interpretation of contractual terms is a matter which falls within the domain of the arbitral tribunal, even where such interpretation may involve the determination of a question of law, for which purpose the arbitrator may also be required to take into consideration the correspondence exchanged between the parties and other attendant circumstances [Ref: **McDermott International Inc. v. Burn Standard Co. Ltd.**: (2006) 11 SCC 181].

17. Moreover, the dispute between the parties in this case also include issues relating to the payments made by the petitioner, the periods for which deductions were claimed, the amount, if any, legally recoverable, the effect of the correspondence exchanged between the parties, and the significance of the respondent's conduct in accepting the petitioner's payments over a period of time. These are disputed questions of fact, the adjudication of which would necessarily require appreciation of documentary evidence and examination of the contractual conduct of the parties.



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18. In this background, this Court is unable to accept the contention of the petitioner that the present case warrants exercise of the extraordinary jurisdiction under Article 226 of the Constitution merely because the impugned demand is alleged to be arbitrary. As held by the Hon'ble Supreme Court in the aforementioned judicial precedents, though the existence of an arbitration clause does not, by itself, oust the writ jurisdiction of the High Court, it is also equally well-settled that where the dispute is essentially contractual in nature, involves interpretation of contractual clauses and disputed questions of fact, and the parties have consciously agreed to an efficacious dispute resolution mechanism, the High Court should ordinarily decline to exercise its discretionary jurisdiction under Article 226.

19. In the present case, this Court, *prima facie*, does not find any independent public law element or violation of any constitutional or statutory obligation *dehors* the contract so as to justify invocation of the extraordinary writ jurisdiction. The entire controversy revolves around reciprocal contractual obligations under the MoA. The allegation of arbitrariness raised by the petitioner is intrinsically linked to the interpretation and implementation of the contractual terms and does not warrant interference under Article 226 of the Constitution.

20. In view of the above, this Court is of the considered opinion that the disputes sought to be agitated by the petitioner fall squarely within the ambit of the arbitration clause contained in the MoA. The



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questions raised can be appropriately adjudicated by the arbitral tribunal, which would be competent to interpret the contractual provisions, examine the evidence placed by the parties, determine the correctness of the demand raised by the respondent, and adjudicate upon all factual and legal issues arising therefrom.

21. Accordingly, this Court is not inclined to entertain the present writ petition.

22. The writ petition is accordingly dismissed, leaving it open to the petitioner to invoke the remedy of arbitration in terms of the MoA, or other remedies available to it in accordance with law. Pending application, if any, also stands disposed of.

23. It is clarified that this Court has expressed no opinion on the merits of the rival claims, and all rights and contentions of the parties are left open to be urged before the competent forum/arbitral tribunal.

24. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 14, 2026/

T.S./T.D.