$~23 to 32

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th October, 2021

\+ **W.P.(C) 3733/2020 & CM APPL. 13364/2020**

SMT. GEETA JEENA ..... Petitioner

Through: Ms. Seema Bengani, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

24 WITH

\+ **W.P.(C) 10519/2020 & CM APPLs. 33252/2020 & 16588/2021**

MS KAJAL & ORS. ..... Petitioners

Through: Mr. Himanshu Pathak, Ms. Priya Mishra and Mr. Prashant Rawat, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

25 WITH

\+ **W.P.(C) 3742/2020 & CM APPLs. 13416/2020 & 33596/2020**

SURENDER PAWAR ..... Petitioner

Through: Mr. Anuj Kapoor, Advocate.

versus

THE COMMISSIONER OF TRANSPORT CUM CHAIRMAN DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION ..... Respondent

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

26 WITH

\+ **W.P.(C) 3779/2020 & CM APPLs. 13520/2020 & 33577/2020**

UMESH KUMAR & ORS. ..... Petitioners

Through: Ms. Seema Bengani, Advocate.

versus

GOVERNMENT OF NCT OF DELHI THROUGH: ITS CHIEF SECRETARY & ORS. ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD

with Ms. Asmita Singh, Advocates.

27 WITH

+ **W.P.(C) 3781/2020 & CM APPLs. 13527/2020, 33184/2020 & 17467/2021**

GEETA JEENA ..... Petitioner

Through: Ms. Seema Bengani, Advocate.

versus

GOVT OF NCT OF DELHI, & ORS. ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

28 WITH

+ **W.P.(C) 3803/2020 & CM APPLs. 13633/2020, 16611/2021 & 28245/2021**

SUNIL KUMAR & ORS. ..... Petitioners

Through: Mr. Ajay Jain, Ms. Tannu and Ms. Mitika, Advocates.

versus

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. (AN ENTERPRISES OF GOVT. OF NCT OF DELHI) ..... Respondent

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

29 WITH

+ **W.P.(C) 4302/2020 & CM APPL. 15477/2020**

AFSHANA & ORS. ..... Petitioners

Through: Mr. Mehmood Pracha, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

30 WITH

+ **W.P.(C) 8951/2020 & CM APPL. 16523/2021**

MANOJ KUMAR SHUKLA ..... Petitioner

Through: Mr. Himanshu Pathak, Ms. Priya Mishra and Mr. Prashant Rawat, Advocates

versus

GOVERMENT OF NCT OF DELHI & ANR. ..... Respondents
Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

31 WITH

+ **W.P.(C) 5570/2021 & CM APPL. 17269/2021**

AMIT CHAWLA & ORS. ..... Petitioners
Through: Mr. Ajay Jain, Ms. Tannu and Ms. Mitika, Advocates.

versus

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED ..... Respondent
Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

32 AND

+ **W.P.(C) 6275/2021 & CM APPLs. 19824-25/2021**

GURMEET SINGH ..... Petitioner
Through: Mr. Ajay Jain, Ms. Tannu and Ms. Mitika, Advocates.

versus

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. ..... Respondent
Through: Mr. Gautam Narayan, ASC, GNCTD with Ms. Asmita Singh, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I) Background of the Case:

2. The COVID-19 pandemic (*hereinafter "the pandemic"*) has had a cascading effect not merely on human life but also on various contractual arrangements. The arrangements that are the subject matter of the present petitions relate to shops at various bus terminals in Delhi.

3. In the present cases, the Petitioners are all allottees of various shops at the Maharana Pratap Interstate Bus Terminal *(hereinafter as 'ISBT')* at Kashmere Gate, Vivekanand ISBT at Anand Vihar, and Vir Hakikat Rai ISBT at Sarai Kale Khan. The Petitioners had participated in a bidding process and had after completing the requisite formalities, deposited the advance monthly license fee equivalent for the period of six months, along with security deposits. Some of the Petitioners took possession of their respective shops on different dates. There are also cases where physical possession of the shops was yet to be given when there was an outbreak of the pandemic. In cases where the possession had taken place, hardly a period of around two months had lapsed, between the possession having been taken and the outbreak of the pandemic. Immediately, upon the outbreak of the pandemic, there was a complete lockdown which was announced across the country. The plying of buses, both interstate and intrastate, had come to a complete standstill.

4. The lockdown was slowly eased some time from June, 2020, onwards. However, it is the case of the Petitioners that the interstate bus services did not resume to pre-pandemic levels until much later and the effect of the pandemic on commercial activity at ISBT continues to be felt. The case of the Petitioners, therefore, was that the Respondents are not entitled to collect the monthly license fee and also that the termination of the licenses by the Respondents is invalid and unlawful.

5. The present writ petitions have been filed from time to time by the various allottees of the shops at ISBT. During the hearing of these matters, two periods of lockdowns were imposed.

First lockdown period: From 23rd March, 2020 till 3rd November, 2020, on which date 50% of the inter-state buses had started plying.

Second lock down period: From 19th April, 2021 till 30th May, 2021.

Thus, the total lockdown period during the years 2020 and 2021 was approximately for nine months.

6. Vide order dated 12th November, 2020, this Court had observed that the following issues are raised in the present petitions:

> *"i. Whether the present petitions are maintainable in view of the arbitration clause in the license agreement?*
> *ii. Whether the present petitions under Article 226 are maintainable in view of the fact that the license agreements are contractual in nature?*
> *iii. Whether licence fee is liable to be paid for the period of complete lockdown?*
> *iv. Whether licence fee is liable to be paid from the period when intrastate bus services commenced with effect from June, 2020?*
> *v. Whether licence fee is liable to be paid from the period when intrastate bus services became operational and whether any amount is payable from the period when interstate bus services resumed at 50% capacity?*
> *vi. Whether the Petitioners are liable to be given any remission/waiver of license fees and other charges during this period and, if so, how much?"*

7. On the said date i.e., 12th November 2020, this Court had also issued the following directions to the Petitioners:

> *"9. All Petitioners who wish to retain possession of the shops are permitted to open their shops and commence business activities, subject to the following conditions:*

> *i. With effect from November, 2020 the concerned Petitioners shall pay full license fee and other charges in terms of the license agreement.*
>
> *ii. Forfeiture of the security deposit shall be considered at the stage of final adjudication of the writ petition. No further security deposit shall be payable.*
>
> *iii. The question as to whether any amount was payable between March, 2020 to October, 2020 shall also be considered at the final stage.*
>
> *iv. If the electricity has been disconnected at the shop, the same shall be restored. Payment of any dues shall be the responsibility of the Petitioner."*

8. It is in the above background that the present petitions have been decided by this Court.

II) <u>Submissions of the Parties:</u>

<u>Submissions of Ms. Seema Bengani, ld. Counsel for the Petitioners in W.P.(C) 3733/2020, W.P.(C) 3779/2020 and W.P.(C) 3781/2020</u>

9. Ms. Seema Bengani, ld. Counsel for the Petitioners in ***W.P.(C) 3733/2020***, ***3779/2020*** and ***3781/2020***, submits that these petitions relate to three separate bus stations at Anand Vihar, Kashmere Gate and Sarai Kale Khan. In case of Anand Vihar ISBT and Sarai Kale Khan ISBT, the Petitioners had entered into an agreement for six months' license, and thereafter, for six months' extension. In case of Kashmere Gate ISBT, the license agreement was for three years. She has given the dates when the letter of possession was given to these Petitioners and possession was

handed over. In effect, as per the dates of possession which were handed over, in ***W.P.(C) 3733/2020*** for Shop Nos. 3 and 5, the six months' period almost came to an end in the end of March/early April. Their case is one involving renewal, and Ms. Bengani submits that they have already informed the Corporation that they do not want a renewal, despite a request for renewal having been made initially, prior to the outbreak of the pandemic. Insofar as Shop No.8 is concerned, she submits that the possession of the said shop was given only on 13th March, 2020. Therefore, the shop was operational only for nine days prior to the lockdown. Under these circumstances, she highlights the prayer in this petition, which is for quashing of demands of license fee and for refund of entire security deposit.

10. Similarly, it is pointed out in ***W.P.(C) 3781/2020*** that the petition relates to Kashmere Gate ISBT, where the license was for a period of three years. In this petition, the Petitioner had four outlets, out of which, one space has been surrendered and she is currently running three shops. In this petition, the prayer for waiver of license fee during the entire lockdown and for extension of license agreement by one year for the lockdown period.

11. In ***W.P.(C) 3799/2020***, the license period was for six months and since the Petitioner enjoyed the shop only for nine days, the complete quashing of the demand and refund of security deposit is sought. In this case, the Petitioner has surrendered the shop which was in her possession.

12. Insofar as the legal issues are concerned, the submissions of Ms. Bengani, ld. Counsel are as under:

i) Insofar as the renewal of license is concerned, the license of the shop could not be renewed beyond a period of one year and a fresh license agreement would have to be signed for the same.

Reference is made to Clause B.1 of the Leave and License Agreement to Operate a Shop/Outlet at ISBT dated 30th December, 2019 (*hereinafter "license agreement"*) executed between Petitioner, Ms. Geeta Jeena and the Respondent No.3/Delhi Transport Infrastructure Development Corporation (*hereinafter "DTIDC"*).

ii) Insofar as the maintainability is concerned, she submits that there are three aspects to the maintainability. She submits that since the Corporation is performing a public function or public duty, the writ petition is maintainable in case of a violation of Articles 14, 19 and 21 of the Constitution of India. She relies upon the following judgments:

- ***ABL International v. Export Credit [2004 3 SCC 553]***
- ***Bharti Devi & Ors. v. UOI & Ors. [WP(C) No. 1548/2007],***
- ***Joshi Technologies International Inc. v. Union of India & Ors., (2015) 7 SCC 728.***
- ***Rishi Kiran Logistics Pvt. Ltd. v. Board of Trustees of Kandla Port Trust & Ors., (2015) 13 SCC 233***

iii) On the question of whether a *force majeure* event has occurred and what would be the effect thereof, reliance is placed upon the judgment of a Ld. Single Judge of this Court in ***Bharti Devi v. Union of India [W.P.(C) 1548/2007, decided on 27th October, 2007].***

iv) Insofar as the arbitration clause is concerned, the same is contained in Clause H of the license agreement between the parties where the Managing Director has the power to appoint the Arbitrator. However, submits that this clause would apply only if the license agreement is signed. In most of the cases, the license agreement was only for a period of six months and for the purpose of renewal, a fresh license agreement was to be executed, which has admittedly not been executed. Thus, when the agreement itself is not signed, the arbitration clause cannot be held to be applicable. Ms. Bengani relies upon the ***Union of India v. Tatya Construction [SLP (C) No.18914 of 2010].s***

v.) Ms. Bengani, ld. Counsel further argues that if a dispute arises during the tender process, there is a separate mechanism to resolve the same. However, once the license is executed and during the license period, the dispute has to be referred to the Dispute Resolution Process (*hereinafter 'DRP'*) in terms of the license agreement. This DRP would apply only after signing of the license agreement and hence, in the cases where there was no renewal, this Clause would not be applicable.

Submissions of Mr. Himanshu Pathak, ld. Counsel for the Petitioners in W.P.(C) 8951/ 2020 and W.P.(C) 10519/ 2020

13. Mr. Himanshu Pathak, ld. Counsel, submits that the prayer in the petitions are two-fold. The first prayer being in respect of the termination of the license and second, that a comprehensive policy for waiver of the license fee or reduction of license fee, due to the pandemic are ought to be framed by the Respondents.

14. He submits that the Petitioners' shops have been allotted for three

years. The Respondents already hold advance license fee for a period of six months. Even the security deposits have been paid to the Respondents. Even, prior to the pandemic, there were more than 1,800 interstate buses that used to ply in Kashmere Gate ISBT, presently only 300 buses are plying. He submits that the bid was called prior to the pandemic. However, after the pandemic broke out, the footfall also decreased. He submits that the pandemic has also changed the taste of consumers and their preferences. The Petitioners, *qua* whom the license fee payable is Rs. 80,000/- to Rs. 1,00,000/-, are unable to do their business. The entire purpose for which the bids were called, i.e., allocation of shops to carry on business in ISBT Kashmere Gate, has been defeated with the pandemic.

15. He submits that the objection of the Respondents that writ petitions are not maintainable lacks merits, inasmuch as in ***W.P.(C) 8951/ 2020,*** even the contract is yet to be executed and considering that there is not even a written contract in some of the petitions, it proves that the *force majeure* event would have to be considered in writ jurisdiction. Even in the case of those Petitioners where contracts have already been executed, the mere fact that the *force majeure* clause may not be contained in the contract. In the alternative, even if the same is contained in the contract, the same would be a factor which the Court would be entitled to consider in a writ jurisdiction since the pandemic is not covered under it. Moreover, one of the Respondents being the GNCTD, it has a duty to also protect the various licensees who are the allotees of the shop. The reduction in traffic at the ISBT is a fact which cannot be ignored by the Government. Though, the intrastate buses may have started plying at Mori Gate, the place where the Petitioners shops are located is the Interstate bus terminal where the

reduction in the traffic is extremely stagnant. He submits that to date, there is no resumption of full-fledged traffic in the Interstate bus terminal. He relies upon the 37th meeting of the Respondents dated 7th August, 2020 which itself acknowledges that the buses are not plying.

16. He submits that even after the resumption of partial services at the ISBT Kashmere Gate, currently the bus traffic is extremely low because there are no buses plying between the state owing to the farmers' agitation which is supported by the GNCTD. Since the bid has been given taking into account the traffic of interstate buses, the closure of the ISBT or the reduction in traffic clearly shows that these are cases where the Court's intervention is required till the full resumption of bus services take place. He relies upon the recent tender called for by the GNCTD where the license fee which is now been demanded is reduced by more than 20%. This itself, according to Mr. Pathak, ld. counsel, shows that the Respondents acknowledge that the traffic has considerably reduced and there are no takers for these shops even at the advertised rates. It is, therefore, submitted that even if there is no *force majeure* clause in the agreement, the same shall be construed in the arrangement between the parties. Adequate benefits ought to be extended to the Petitioners considering the outbreak of the pandemic which is acknowledged by both the Central and the State Government to be a *force majeure* event.

17. He submits that in both the writ petitions i.e., ***W.P.(C) 10519/2020*** and ***W.P.(C) 8951/2020***, two fresh applications have been filed. He submits that in both these matters, the Petitioners have paid license fee till April, 2021, in terms of the order of this Court dated 12th November, 2020.

18. He submits that insofar as the month of May, 2021 is concerned, on a

daily basis, less than 100 buses are plying and, on most days, no buses are plying. This situation is completely outside the control of the Petitioners. The Respondents, who have themselves imposed restrictions, cannot demand license fee. Apart from the complete lockdown due to the Covid-19 pandemic, there are night and day curfews also which have been imposed, considering the movement of buses to neighbouring states. It is submitted that the GNCTD itself is responsible for the said directions. It is then pointed out that insofar as the farmers' agitation is concerned, the GNCTD is supporting the agitation and buses to Punjab are not plying. Under such circumstances, it is submitted that to demand license fee is unreasonable and completely arbitrary.

19. Insofar as the issue of maintainability is concerned, Mr. Pathak, ld. counsel submits that the present petition is not related to the interpretation of the clauses in the agreement. The Petitioners challenge the action of the Respondents in demanding license fee and seeking to take coercive measures, which, according to the Petitioners is violative of Articles 14, 19 and 21 of the Constitution of India. In several of the cases, the agreement itself is yet to be executed and hence, the action of the DTIDC is unjustified.

20. He finally concludes by submitting that considering the level of traffic which is currently there in the ISBT, the DTIDC ought to reduce the license fee. If not, the Petitioners ought to be permitted to surrender the shops without any forfeiture of the security deposit or payment of any license fee.

<u>Submissions of Mr. Jain, ld. Counsel for the Petitioners in W.P. (C) 3803/2020, W.P. (C) 5570/2021 and W.P. (C) 6275/2021</u>

21. Mr. Jain, ld. Counsel for the Petitioners in W.P. (C) ***3803/2020***,

5570/2021 and ***6275/2021***, takes this Court to license agreement dated 12th December, 2018 which sets out the terms and conditions of the license for the shop allotted to Petitioner No.13, being Shop Number 51, Departure Block, ISBT, Kashmere Gate, Delhi. Firstly, he submits that the Delhi Transport Infrastructure Development Corporation Ltd. *(hereinafter, "DTIDC")* is described as an enterprise of the GNCTD and this would be important fact to consider as DTIDC is run by the State.

22. The following clauses of the license agreement are relied upon by Mr. Jain, ld. Counsel:

(i) Clause C (d) - to show that advance license fee has been taken as a security deposit.

(ii) Clause E.3 - to show that the license agreement would not be extended and upon expiry of the same, the premises would be licensed by public auction.

(iii) Clause I - for the various government undertakings and warranties which stipulate that the licensed premises shall be under the ownership, possession control and supervision of the DTIDC. The only right of the Petitioner is the right to run the shop. The access, ingress, egress etc is also controlled by the DTIDC as per I(ii) and I(iii).

(iv) Clause J(i) - to argue that if there is any default, then the license agreement may be terminated/suspended without notice and the security deposit would be liable to be forfeited.

23. In the background of these clauses, Mr. Jain, ld. counsel refers to the

order of the GNCTD dated 23rd March, 2020 wherein the lockdown has been imposed and all movement of interstate buses suspended. He submits that this letter dated 23rd March, 2020 is signed by Mr. K.K Dahiya, Special Commissioner (Transport), who is also the Managing Director of the DTIDC. Reliance is also placed upon the MHA notification dated 24th March, 2020 wherein all transportation was suspended, except for essential goods, and any violation of these clauses made punishable under the Disaster Management Act, 2005. Thus, ld. counsel submits that there is a complete embargo on any kind of transportation and any persons accessing the Kashmere Gate bus station.

24. Thereafter, reliance is placed upon DTIDC's letter dated 26th August, 2020. This letter is emphasised by Mr. Jain, ld. counsel to argue that the DTIDC was completely conscious of the issues being faced by the licensees who were allotted shops. The DTIDC gave relief only to such allottees who had not yet taken possession that for such allottees, the date of license would be deemed to be the date when plying of inter-state buses resumed. On the strength of this letter, it is argued that the DTIDC is very conscious of the fact that there were no interstate buses which were plying and thus, provided this relief to shop keepers who had not yet taken possession.

25. Thereafter, reliance is placed upon the compilation filed by Mr. Jain, ld. counsel which contains order dated 2nd November, 2020 by which it was directed that inter-state bus services would commence w.e.f. 3rd November, 2020 at 50% of the pre-Covid-19 capacity. Ld. counsel submits that this is a recognition of the fact that even when the lockdown was lifted buses, did not resume on full strength. Reference and reliance is placed upon similar policies of the DMRC, which is also a corporation under the GNCTD, and

the Ministry of Railways. It is submitted that both these entities had given a complete waiver during the lockdown period and the Ministry of Railways had made it clear in their communication dated 21st May, 2020 that the lockdown period would be considered a *force majeure* event. Thus, prior to November, 2020, there were no buses plying. From November, 2020, buses had started plying at 50% capacity in a phased manner. However, immediately in the next month, the farmers' agitation commenced and all borders were sealed, leading to complete stoppage of the plying of buses. Thus, it is submitted that though this Court had, on 12th November, 2020, considering the letter dated 2nd November, 2020, ordered the Petitioners to pay 50% of the license fee, even that could not be paid by the allottees who were in enormous difficulty owing to the farmers' agitation.

26. Mr. Jain, ld. counsel then refers to an affidavit filed by the GNCTD wherein the GNCTD recognises that the traffic in the various bus terminals was considerably reduced. The following table is relied upon –

	JANUARY, 2020		**JANUARY, 2021**	
ISBT	Inter State Bus	Intra State Bus	Inter State Bus	Intra State Bus
Sarai Kale Khan	10,651	6,511	5,568	7,383
Anand Vihar	19,955	62,981	20,046	59,314
Kashmiri Gate	48,681	17,509	13,400	14,475
Total	79,287	87,001	39,014	81,172

27. Relying on the above chart, Mr. Jain argues that while the number of buses plying in January 2020 at ISBT Kashmere Gate were 48,681/-, a year later, in January, 2021, the buses plying were only 13,400/-, which is less

than 1/4th of the pre-pandemic traffic. The latest affidavit of the GNCTD is referred to, to argue that as of 23rd May, 2021, only 83 buses are plying on a particular date which shows that only 5% of the buses are running. Thereafter, it is emphasised that from 16th April, 2021, a weekly curfew had been imposed and from 19th April, 2021 to 31st May, 2021, there had been a complete lockdown and only essential services had been allowed. In view of this factual background, Mr. Jain, ld. counsel's submission is that the license fee is liable to be waived for the period of the lockdown. Insofar as the remaining period is concerned, the DTIDC ought to take a pragmatic view as to what was the percentage of traffic, and accordingly, give relief to the Petitioners.

28. Reliance is placed upon the following judgments:

- ***Bharti Devi & Ors. v. UOI & Ors. [W.P.(C) 1548/2007, decided on 23rd October, 2007]***
- ***R. Narayanan v. Govt. of Tamil Nadu & Ors. [W.P.(MD) No. 19596/2020, decided on 1st February, 2021]***
- ***Senior Divisional Commercial Manager & Ors. v. S.C.R. Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association & Anr. [Civil Appeal Nos. 618-20/2016, decided on 29th January, 2016]***
- ***Unitech Ltd. & Ors. v. TSIIC & Ors. [Civil Appeal No. 317/2021, decided on 17th February, 2021]***.
- ***Unitech (supra)*** and ***Harbanslal Sahni and Anr. v. Indian Oil Corporation. Ltd. & Ors., AIR 2003 SC 2021***

29. Insofar as ***W.P.(C) 6275/2021*** is concerned, Mr. Jain, ld. Counsel submits that the Petitioner in this case is operating a kiosk at ISBT, Kashmere Gate. He has been given a demand notice demanding license fee

for the months of May, 2021 and June, 2021, even though the traffic at Kashmere Gate is very low. It is therefore prayed that the Petitioner should be granted waiver of the license fee for the said months.

30. In conclusion, it is submitted by Mr. Jain, ld. counsel that the matter ought to be considered in favour of the Petitioner in view of the admitted lockdown and the absence of any traffic in the ISBT Kashmere Gate. The remaining arguments made on behalf of the other Petitioners who own shops at in ISBT, Kashmere Gate are reiterated in this case.

Submissions of Mr. Mehmood Pracha, ld. Counsel for the Petitioners in W.P.(C) 4302/2020

31. Mr. Mehmood Pracha, ld. Counsel appearing for the Petitioners in ***W.P.(C) 4302/2020***, submits that the DTIDC is nothing but the Delhi Government itself, and there is no difference in the identity of the DTIDC and the Government. He submits that the DTIDC is not a profit-making company and has only been set up for administrative convenience and nothing more. The DTIDC oversees the provision of bus transport services to various passengers in and out of Delhi. Thus, the DTIDC cannot claim to be a separate entity from the Government.

32. The main submission of Mr. Pracha, ld. counsel is that a perusal of the agreement dated 15th February, 2018 entered into by the DTIDC with the Petitioners would reveal that the objective of the contract is to meet the expectations of passengers and persons who visit the ISBT, Kashmere Gate. The purpose is to provide them with a good standard of food and beverages. If there are no passengers, the said objective cannot be achieved.

33. Ld. Counsel further highlights clauses A.1, A.17, C.1 as also I-8 of

Schedule-A to the contract to argue that all the allottees are bound by the said terms and conditions, which require them to adhere to all applicable laws, rules and regulations. His submission in a nutshell is that the directions issued under the Disaster Management Act, 2005 and other enactments, both by the GNCTD and the UOI have to be compulsorily adhered to by the Petitioners and hence, when a lockdown/closure is announced, the Petitioners do not have the option of opening their shops. If the Petitioners open their shops, in violation of the law, the agreement itself is liable to be terminated and the security deposit would be forfeited, as per clause I-8.

34. Thus, the submission is that while on the one hand, the Petitioners are contractually bound to adhere to the various laws, rules and regulations, on the other hand, the Respondents cannot expect the Petitioners to continue to open their shops, conduct business and then pay the license fee. This, according to the ld. Counsel, would be a situation where the Respondents are indulging in approbate and reprobate.

35. It is further urged that in fact, the Government, having itself announced the closure/lockdown, is bound by its own directions. It is the Petitioners who have suffered immense loss, including the loss of their livelihood, as they have been unable to carry on their business in the shops which have been allotted to them. Ld. Counsel submits that the Petitioners reserve their right to seek compensation for the closure/lockdown directions which have been issued by the Government.

36. It is finally submitted that the Government cannot take advantage of its own wrong. While on the one hand, it has imposed a lockdown and adherence to the same, on the other hand, it cannot demand the license fee and take coercive measures in respect thereof.

37. Reference is made to the submissions filed by the DTIDC wherein in an excel sheet it is shown that there are various revenue streams for the DTIDC and the license fee collected from the Petitioners is only one revenue stream. Since no coercive measure is being taken against similarly placed allottees/agencies, the Petitioners ought not to be singled out in this matter. This last submission is countered by Mr. Gautam Narayan, ld. Counsel for the GNCTD. He objects that there is no plea to this effect in the writ petition and hence, the Government has no opportunity to counter the same. In any case, he submits that it cannot be presumed that no action has been taken against the licensees.

38. Mr. Pracha, ld. Counsel finally relies upon the submissions made by the other counsel for the Petitioners who are similarly placed. The said arguments are not being repeated for the sake of brevity.

Submissions of Mr. Anuj Kapoor, ld. Counsel for the Petitioner in W.P.(C) 3742/2020

39. Mr. Anuj Kapoor, ld. Counsel appearing for the Petitioners in ***W.P.(C) 3742/2020*** submits that out of the seven Petitioners who have filed the present writ petition, only Petitioner No.1 has retained his shop. The remaining Petitioners have surrendered their shops on various dates.

40. Mr. Narayan, ld. ASC has filed a table in this regard. Reference is made to the said table as per which Petitioner No.7 surrendered his shop on 1st July 2020 and Petitioner Nos. 2 and 3 vacated their shops on 6th July 2020. Petitioner Nos. 4 and 6 vacated their shops on 1st October 2020 and Petitioner No.5 has surrendered his shop on 20th November 2020.

41. Insofar as Petitioner No.1 is concerned, Mr. Kapoor, ld. Counsel

submits that he is a handicapped person who was allotted the shop under the category meant for handicapped people. He has been allotted a kiosk at Platform No. C (Bus Bay No.109), ISBT, Anand Vihar, Delhi where buses to and from Uttar Pradesh are plying daily. Ld. counsel emphasizes the fact that DTIDC is a corporation run by the government itself and the national lockdown, which was announced on 22nd March 2020, which suspended all buses services, was an order passed by the Managing Director of the DTIDC. Any violation of that is also punishable under the Disaster Management Act, 2005 and therefore, the Government cannot contradict its own order.

42. The lockdown extended till 3rd November 2020, and it was only w.e.f. 3rd November 2020 that buses started plying at 50% of the pre-covid capacity. It is submitted that similarly situated corporations and other government entities like the Railways and the DMRC have completely waived of the license fee for the entire lockdown period. After 3rd November 2020, the lockdown was again imposed on 19th April 2021 till 31st May, 2021. Petitioner No.1 is also stated to have deposited the license fee for the month of May.

43. Reliance is placed on the following judgments:

- ***Bharti Devi & Ors. v. Union of India & Ors. [W.P.(C) 1548/2007, decided on 23rd October 2007]***
- ***R. Narayanan v. Government of Tamil Nadu & Ors. [W.P.(MD) 19596/2020, decided on 1st February 2021***

44. Mr. Kapoor, ld. Counsel submits that the policy of the Government must be fair and reasonable, and it cannot be arbitrary and thus, he prays that:

a) the license fee payable during the lockdown period be completely waived off; and

b) the license fee of Petitioner No.1 be extended by a period equivalent to the entire lockdown period.

Submissions of Mr. Gautam Narayan, ld. ASC for GNCTD

45. Mr. Gautam Narayan, ld. ASC has raised issues with respect to two aspects. Firstly, on maintainability, and thereafter, on merits. His first submission is that DTIDC is a Corporation which took over the Delhi Transport Corporation w.e.f. 16th August 2010. It is governed by an independent board, and it is a corporation which deals with the maintenance and upkeep of the various bus terminals. It receives no funding from the Government and is thus, not comparable with corporations like the DMRC. He further submits that the frequency of buses plying is not the responsibility of the corporation as it has no control over the inflow and outflow of buses.

46. On maintainability, he submits that the allotment of the kiosks and shops is by a public tender. The corporation does not perform any public function. It earns revenue by renting out these kiosks and the operation of the DTIDC does not depend on these kiosks. The maintenance and upkeep of the bus terminals must be undertaken irrespective of the operation of these kiosks and hence, the operation of the kiosks cannot be said to be a public function.

47. He further submits that the Petitioners are all persons who are well aware of the pros and cons of bidding for these kiosks and shops and they are all cognizant of the commercial realities. In fact, even during the

pandemic, the Petitioners have re-bid for various shops and kiosks. It is submitted that they know that the entire bidding process is a commercial bargain which is profitable in nature for the entire duration of the license period. It is not a short-term profit that the bidder is looking for. Since they are aware that the terms are not onerous, they have applied for the bids and have been allotted the same. They do not now have a right to challenge the imposition of the license fee.

48. He submits that not all the Petitioners are individuals, some of them are even companies. Standard form contracts have been entered into with the allotees in which there is no guarantee of the minimum traffic in the terminals, and neither is the footfall guaranteed. There is also no *force majeure* clause in these contracts and hence, these contracts would be governed by the principles of Section 56 of the Indian Contract Act, 1872. Finally, he submits that there is also an arbitration clause in these contracts.

49. On maintainability, it is submitted that there is no public law element involved. Ordinarily, in a contractual dispute, writs ought not to be entertained. Unless and until the strict conditions for invoking the writ jurisdiction of the Court are satisfied, the same is not maintainable. Reliance is placed upon the following judgments:

> ***i) Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond & Gem Development Corporation Limited and Anr., (2013) 5 SCC 470.***
>
> ***ii) Joshi Technologies International Inc. v. Union of India & Ors., (2015) 7 SCC 728***.

50. In reply to the Petitioners' submissions, Mr. Gautam Narayan, ld. ASC has taken the Court through various judgments which have been placed

on record. The following judgments have been referred to and relied upon:-

(i) ***M/s Apana Logistics Pvt. Ltd. v. Container Corporation of India Ltd. & Anr [W.P.(C) 5840/2019, decided on 24th May, 2019]***

(ii) ***State of UP and Others v. Bridge and Roof Company (India) Limited, (1996) 6 SCC 22***

(iii) ***LIC v Escorts Limited and Others, (1986) 1 SCC 264***

(iv) ***M/S Halliburton Offshore Services Inc v. Vedanta Limited & Anr. [OMP (I) (Comm) 88/2020, decided on 29th May, 2020]***

(v) ***Energy Watchdog v. CERC & Ors., (2017) 14 SCC 80***

(vi) ***Ramanand & Ors. v. Dr. Girish Soni & Anr. [RC REV 447/2017, decided on 21st May, 2020]***

51. The following judgments of the Petitioners are distinguished by Mr. Narayan, ld. ASC:

(i) ***ABL International Ltd. & Anr v. Export Credit Guarantee Corporation of India Limited & Ors, (2004) 3 SCC 533*** – This judgment is distinguished on the ground that on a reading of paragraph 14, it is clear that there was no arbitration clause in the said case. The Supreme Court itself distinguishes ***Bridge and Roof Company (supra)*** on the ground that in the former there is an arbitration clause. Further, it is submitted that in paragraph 27 and 28, the Supreme Court clearly lays down that the jurisdiction under Article 226 would not be normally exercised though there cannot be a blanket proposition that the jurisdiction under Article 226 ought not to be exercised. The same can only be exercised in exceptional circumstances. Moreover, if the dispute is in the realm of private law and there is a *force majeure* clause, Article 226 ought not to be entertained.

(ii) ***Bharti Devi & Ors. v. UOI & Ors. [W.P.(C) 1548/2007, decided on 27th October, 2007]*** – This judgment is sought to be distinguished on the ground that the said judgment was rendered at the time when the Respondent bus services were being run by the Delhi Transport Bus Corporation. As on today, the Corporation in the present case, does not play a similar role as the Delhi Transport Bus Corporation. Thus, the said judgment would not be applicable.

(iii) ***R. Narayanan v. Government of Tamil Nadu & Ors. [W.P.(MD) No. 19596/2020, decided on 1st February, 2021]*** – A similar situation is stated to arise in this case as well where the bus terminals were run by the Municipality.

(iv) The judgment of the Supreme Court in ***Unitech Limited & Ors. v. TSIIC & Ors. [Civil Appeal No. 317/2021, decided on 17th February, 2021]*** is sought to be distinguished on the ground that though the Supreme Court holds that recovery of money can be claimed in writ jurisdiction, the exceptional circumstance was that in the said case, jurisdiction was not disputed and maintainability was not disputed. The Supreme Court found that the Respondent therein had reneged on its contractual obligations and the parties were *ad idem* on the question that the principal amount which was liable to be paid was to be refunded.

v) He relies on the judgment of the Supreme Court in ***Vidya***

Drolia & Ors. v. Durga Trading Corporation, 2020 SCC OnLine SC 1018 to argue that once there is an arbitration clause, the question of arbitrability ought to be considered by the Arbitrator under the principal of competence-competence. It is also submitted that once there is an arbitration clause, the lower Court ought not to interfere in the proceedings before the Arbitrator.

vi) He relies upon paragraph 45 of the judgment of the Supreme Court in ***Bharat Sanchar Nigam Limited v. M/s Nortel Networks India Pvt. Ltd., (2021) 5 SCC 738*** to submit that it is only if the subject matter is not arbitrable that the reference may be refused, otherwise, following the judgment in ***Vidya Drolia (supra)***, the matter ought to be referred to arbitration. Ld. Counsel also relies upon the order of this Court in ***Kake Finvest Pvt. Ltd. v. DMRC [W.P.(C) 11219/2020, decided on 22nd February, 2021]*** where under similar circumstances involving parking contractors, the Court had referred the dispute to arbitration after passing an interim arrangement.

vii) Finally, reliance is placed upon paragraph 67 of the judgment in ***Uttar Pradesh Power Transmission Corporation Ltd. & Anr. v. CG Power & Industrial Solutions Ltd. & Anr., (2021) SCC Online 383*** to argue that though there is no doubt that the existence of an arbitration clause does not debar a writ petition, paragraphs 67 to 70 lay down the exceptional circumstances under which a writ petition can be entertained. Ld. counsel submits that none of these exceptional circumstances are attracted in the present writ petitions.

52. In conclusion, the submission of Mr. Narayan, ld. ASC is that this is a case where Article 226 itself ought not to be invoked for the following reasons: -

(i) the contract is of a commercial nature

(ii) the Corporation runs the business with a commercial character.

(iii) the Contract provides for arbitration.

(iv) there is no public law element which is involved

(v) the allotees have a long period of the license term during which business can be conducted on a commercial basis. The lockdown is an exceptional circumstance. The fact that the same proves to be commercially onerous cannot be sufficient to give a complete waiver as is being sought.

<u>Concluding Submissions:</u>

53. At the conclusion of submissions i.e., on 15th September, 2021, this Court had issued directions to the DTIDC as under:

> *"5. Considering that authorities like the Delhi Metro Rail Corporation etc. have granted waiver of full license fee during the complete lockdown period, <u>the Court had, after hearing the submissions of the parties, requested the ld. Counsel for the GNCTD to seek instructions on the following issues:</u>*
> *<u>i) Whether complete waiver of license fee for the period when the complete lockdown was imposed can be granted?;</u>*
> *<u>ii) Whether there can be a corresponding extension of license payment for a period of nine months to all the licensees?;</u>*
> *<u>iii) Any other benefit can be extended to the licensees, owing to the lack of adequate traffic and plying of</u>*

buses at the ISBT.

6. Mr. Gautam Narayan, ld. ASC has reverted with instructions today. He submits that as per the instructions received from the Competent Authority, the matter would be placed before the Board of the DTIDC for consideration. Accordingly, it is directed that the Board of the DTIDC may take a decision on the above three issues and place its decision before this Court in order to enable this Court to take a final view in the matter. "

54. On the said date, Ld. Counsels for the Petitioners had also agreed as under:

"7. Insofar as the Petitioners are concerned, all the counsels for the Petitioners are agreeable to the fact that if the waiver is granted for the complete lockdown period and corresponding extension is granted of the license fee, along with the other benefits that the Board may grant, the licensees are willing to pay the monthly license fee in terms of the license agreement which has been executed with the Corporation."

55. Mr. Gautam Narayan, ld. ASC for the GNCTD, has now reverted with his instructions in respect of the above three issues. As per the submissions made today, i.e., on 27th October, 2021, upon instructions from the Chairman, DTIDC, the DTIDC states as under:

"In response to this, the Chairman, DTIDC has approved the above issues in the following manner:-

(i) Since there were Govt announced lock down period when shops weren't allowed to be opened, DTIDC may waive of the license fee for the same period.

(ii)Regarding (ii), DTIDC may not extend license any

further. All are free to participate in fresh tenders in future."

56. On the basis of above instructions of the Chairman, DTIDC, Mr. Narayan, ld. ASC submits that for the entire lockdown period as recorded i.e., from 23rd March, 2020 to 3rd November, 2020 and 19th April, 2021 to 30th May, 2021, full waiver of license fee would be granted by DTIDC. However, insofar as extensions of period of license and other reliefs sought are concerned, the licensees ought to participate in any fresh tenders.

57. In view of the above stand of DTIDC, the issue regarding waiver of license fee stands resolved. However, the question of corresponding extension of the licence agreements and the payment to be made, would have to be considered. Further, some of the allottees wish to surrender the shops without attracting any penal and other consequences as per the licence agreements. On these issues, the Court is to pass orders and accordingly ld. Counsels have made further brief submissions.

58. Mr. Narayan, ld. ASC, submits that insofar as the waiver of license fee is concerned, for the allottees who have suffered during both the lockdowns, waiver for the complete period ought to be granted. However, in respect of those allottees who have suffered only one lockdown, only the corresponding waiver ought to be granted and all such licensees ought to be directed to participate in the fresh tender process.

59. Ms. Bengani, ld. Counsel appearing for the Petitioners in ***W.P.(C) 3733/2020***, ***W.P.(C) 3779/2020*** and ***W.P.(C) 3781/2020*** submits that the DTIDC has floated various tenders in the last year or so for various shops. However, it is seen that most of the tenders are lapsing and there are hardly any bids, resulting in cancellation of the tender. Accordingly, she submits

that since the allottees have not been able to enjoy the full period of the license, a corresponding extension ought to be granted for the lockdown period with a nominal increase in the license fee.

60. Mr. Jain, ld. Counsel for the Petitioners in ***W.P. (C) 3803/2020***, ***W.P. (C) 5570/2021*** and ***W.P. (C) 6275/2021***, submits that he agrees with the waiver of license fee. However, he prays for complete extension for the corresponding period of the lockdown, without any increase of the license fee inasmuch as, according to him, the traffic in the bus terminals has still not resumed to pre-pandemic levels.

61. Mr. Himanshu Pathak, ld. Counsel for the Petitioners in ***W.P.(C) 8951/ 2020*** and ***W.P.(C) 10519/ 2020***, submits that apart from the waiver of the full license fee for the lockdown period, the allottees ought to be permitted to surrender the shops without any coercive measures being taken against the allottees in respect of penalties.

Analysis and findings:

62. There are broadly 98 shops which are the subject matter of these nine petitions. Out of the said 98 shops, the license period in respect of 36 shops has expired during the pendency of the present petitions. Further, in respect of 27 shops, the licenses have been terminated due to non-compliance of license conditions and non-payment of license fees as per the orders passed by this Court. Insofar as the remaining 35 shops are concerned, these can be bifurcated into three categories of shops, as follows:

i) Category I: Shops in respect of which the allottees have already enjoyed certain periods of extension due to pendency of these petitions;

ii) Category II: Shops in respect of which the allottees took possession pursuant to order dated 24th August, 2020, with effect from 4th November, 2020;

iii) Category III: Shops in respect of which the licenses are currently in operation.

63. Ld. Counsels for the parties have raised various legal issues for consideration. However, not all these issues need to be gone into. This is in view of the fact that, upon being asked to seek instructions from DTIDC, Mr. Narayan, ld. Counsel has reverted that during the complete period of the lockdown, all allottees would be given complete waiver of the license fee. To that extent, the DTIDC has taken a fair position. Thus, the only question that remains is whether the license agreement should be directed to be extended or not, and if so, on what terms.

64. There can be no doubt that the Covid-19 pandemic was a *force majeure* event. However, there is no *force majeure* clause in the license agreements executed between the Petitioners and DTIDC. The allottees of the shops have not been able to enjoy the full term of the license agreements, owing to the pandemic and the consequential lockdown. The shutting down of the shops was a result of the orders passed by the DDMA, which led to the complete closure of the bus terminals in Delhi. In such a scenario, none of the allottees could have ventured out to open their shops. Further, no useful purpose would have been served by opening the shops as there was no traffic and plying of buses during the lockdown period. The term in any license agreement ought to be construed in a reasonable fashion, especially because the Respondent/DTIDC is a public corporation.

65. It has also been noticed during the hearing of these writ petitions that

the license fee currently demanded for these various shops is not very high and a number of tenders are, in fact, lapsing as there are no bidders. Thus, commercially as well, the DTIDC would not incur any losses if the present allottees are given an extension of the license for a period equivalent to the complete lockdown period, subject to payment of the license fee as per the license agreement and a nominal enhancement for a reasonable period of time.

66. Plying of buses is a public amenity which is necessary for the movement of the general public. Various issues in respect of the arbitration clause in the license agreement have also been raised. However, in view of the fact that a substantial part of the disputes raised in these matters has already been resolved by the DTIDC by granting a complete waiver for the lockdown period, the said issues need not be gone into. Moreover, the writ petitions were initially preferred in respect of 98 shops, out of which the dispute is alive only *qua* 35 shops as of todat. Even in respect of these 35 shops, the waiver of license fee for the lockdown period has already been agreed upon. Thus, it is only the extension and the license fee payable for the extended period that remains to be addressed. The said issue can easily be resolved considering the previous orders that have been passed by this Court in the present petitions.

67. Vide the previous orders in these matters, this Court has already granted exemption from payment of license fee for the months of May, 2021 and June, 2021 i.e., the period of the second lockdown. The DTIDC has agreed to waive off the license fee for the period of six weeks during the second lockdown i.e., from 19th April, 2021 to 31st May, 2021. However, in view of the fact that some allotees had made payments for April, 2021 and

May, 2021, as also considering the hard impact of the second wave of the Covid-19 pandemic, this Court has granted waiver for two months i.e., for eight weeks instead of six weeks.

68. This would be in line with the judgment of the Madras High Court in ***R. Narayanan (supra)*** wherein the spirit of the said judgment is that the complete lockdown was not due to the fault of any allottees and the Corporation ought not to be permitted to take benefit of its own wrong of locking down the bus terminals. The relevant paragraphs from the said judgment are as under:

> *"9. The question is whether notwithstanding the stipulation of absolute performance cast on the licensee, this Court would be justified in treating the "lock down" as a force majeure event which will relieve the licensee from performing his obligation to the corresponding extent.*
>
> *10. My answer is in the affirmative. Section 51 of the Indian Contract Act, 1872 states that when a contract consists of reciprocal promise to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. As per Section 54, performance cannot be claimed till the other has been performed. The local body must keep the bus stand open and in good repair. The licensee must be permitted to keep the licensed shop open. If the local body had directed the licensee to close down the shop, it cannot demand fee from the licensee for the period when the shop remained closed. Of course, the licensee must be free of any wrong doing. If the licensee is made to suffer for no fault of his by direction to close down the shop, then, the question of payment of fee will not arise. This is clearly an implied term in the contract.*

11. There is a greater reason too. The petitioner has contracted not with a private party but with Nagercoil Corporation. It is a State instrumentality. Local bodies have been given constitutional status. In the case on hand, their actions have been governed by the directives issued by the Central and State Governments. When one party to the contract is the local body, then this Court would be justified in applying the principles of reasonableness and fairness."

69. It was further noticed, during the course of these proceedings, that the new tenders floated post lockdown by the DTIDC have, in fact, not met with very high success rates. The present allottees had all agreed to the license fee which was prior to the outbreak of the pandemic and thus, the said amounts are higher in comparison to the amounts that may be fetched in the tenders which have been floated after the outbreak of the pandemic.

70. There are various other reasons including the farmers' agitation etc. which have also led to lower traffic and footfall in the bus terminals. Accordingly, the effect of the pandemic continues to be felt in various dimensions of commercial activity. In this view of the matter, this Court is of the opinion that the increase in the license fee, which would be nominal, should be only for a period of six months and not for the entire extension period. The licenses would be liable to be extended for the entire period of lockdown i.e., a period of nine months.

71. Accordingly, this Court is of the view that as regards those allottees who have already enjoyed an extension of the license period which is beyond the period of the lockdown period, no further extension would be liable to the granted. However, as regards the other allottees, who have not

enjoyed the full period of the license, the extension can be granted proportionately in view of the period of the lockdown.

72. Therefore, in light of the Corporation's agreement to grant waiver of license fee for the entire period of the first lockdown and for the period of six weeks of the second lockdown, while taking the said stand on record, the following directions are issued:

(i) For the entire period of lockdown, of nine months there shall be a complete waiver of the license fee, as agreed by DTIDC.

(ii) In respect of the allottees who have suffered both the lockdowns, the waiver shall be complete.

(iii) In respect of those allottees who came into the possession of the shops post November 2020, the waiver of the license fee would be only for two months i.e., May, 2021 and June 2021.

(iv) <u>Extension of license agreements</u>:

a. In respect of those who have enjoyed extensions beyond nine months, the further extension is granted only till 31st December 2021 in order to enable them to wind down their businesses and take out their goods and belongings. However, for the said months, complete license fees as per the agreement shall be paid.

b. In respect of others, extension of license agreements is granted for a period of nine months to those who suffered both lockdowns subject to payment of increased license fees at the nominal rate of 10% for a period of six months.

c. In respect of allottees who suffered only the second lockdown the extension would be for a period of six weeks subject to payment of license fees as per the agreement.

73. Therefore, in respect of each of the allottees, the following would be the waiver and the extension and the license fee payable:

Category I: 06 shops Extended by the court

S. No.	Name	Shop No.	Term	W.P. (C) No.	Extended Period	Extension Granted	License Fee Payable
1.	Sh. Surender Pawar	Bus Bay No. 109, Anand Vihar	06.01.2020 to 05.07.2020	3742/2020	15 Months	Vacate by 31st December 2021	As per license agreement
2.	Ms. Geeta Jeena	Shop No. 62-A, Kashmere Gate	06.12.2017 to 05.12.2020	3781/2020	10 Months	Vacate by 31st December 2021	As per license agreement
3.	Ms. Geeta Jeena	Space-B, Kashmere Gate	30.07.2018 to 29.07.2021	3781/2020	03 Months	No license fees payable for nine months complete lockdown period. License extended by six months.	For 6 months extended period 10% increased license fees payable.
4.	Sh. Amit Chawla	Shop no. 52, Kashmere Gate, Delhi	10.08.2018 to 09.08.2021	3803/2020 Sunil Kumar	02 Months	No license fees payable for nine months complete lockdown. License extended by seven months.	For 6 months extended period 10% increased license fees payable

5.	Ms. Munni Devi	Office Space, Kashmere Gate	19.09.2018 to 18.09.2021	3803/2020 Sunil Kumar	01 Month	No license fees payable for nine months complete lockdown. License extended by eight months.	For 6 months extended period 10% increased license fees payable
6.	M/s Atlantic Enterprises	Shop No. 51, Kashmiri Gate	19.09.2018 to 18.09.2021	3803/2020 Sunil Kumar	01 Month	No license fees payable for nine months complete lockdown. License extended by eight months.	For 6 months extended period 10% increased license fees payable

<u>Note:</u> In respect of allottees 3-6 above, except as contained in the table, license fees would be payable as per the license agreement for all the remaining months.

<u>Category II: 10 shops operated from 04.11.2020 in pursuance of order dated 24.08.2020</u>

S. No.	Name	Shop No.	W.P. (C) No.	Tenure	Extension Granted	Waiver Of License Fee/License Fee Payable
1.	Ms. Afsha	Shop No. 43, Kashmere Gate	4302/2020	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
2.	Sh. Gurpreet Singh	Shop No. 6, Kashmere Gate	6275/2021	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June

						2021. License fee payable as per agreement.
3.	Sh. Amit Chawla	Shop No. 56, Kashmere Gate	5570/2021	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
4.	Sh. Ramesh Kumar	Shop No. 15, Kashmere Gate	5570/2021	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
5.	Sh. Ashok Kumar	Shop No. 57, Kashmere Gate	5570/2021	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
6.	Ms. Geeta Jeena	Shop No. 9, Sarai Kale Khan	5570/2021	04.11.2020 to 03.11.2021	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
7.	Ms. Kajal	Shop No. 25A, Kashmere Gate	10519/2020	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
8.	M/s Moon Beverages Ltd.	Shop No. 48, Kashmere Gate	10519/2020	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.
9.	M/s Moon Beverages Ltd.	Shop No. 49, Kashmere Gate	10519/2020	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.

10.	M/s Moon Beverages Ltd.	Shop No. 54, Kashmere Gate	5570/2021	04.11.2020 to 03.11.2023	Six weeks	Waiver for months of May, 2021 & June 2021. License fee payable as per agreement.

Category III: 19 Shops Running

S. No.	Name	Shop No.	W.P. (C) No.	Tenure	Extension Granted	Waiver of License Fee/License Fee Payable
1.	Ms. Afsha	Shop No.45, Kashmere Gate	4302/2020	21.09.2019 to 20.09.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
2.	Ms. Geeta Jeena	Shop No.40, Kashmere Gate	3781/2020	10.01.2019 to 09.01.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
3.	Ms. Bharti Devi	Shop No.59, Kashmere Gate	3803/2020	06.01.2020 to 05.01.2023	Extension of nine months	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
4.	Sh. Guddu	Shop No.29, Kashmere Gate	3803/2020	12.03.2019 to 11.03.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.

5.	Sh. Deepak Pal	Shop No.51, Kashmere Gate	3803/2020	09.10.2019 to 8.10.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
6.	Ms. Sunita	Shop No.13, Kashmere Gate	3803/2020	21.09.2021 to 20.09.2022	No Extension	No Waiver
7.	M/s Manju Gaur & Associate	Shop No.29-A, Kashmere Gate	3803/2020	21.09.2019 to 20.09.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
8.	Sh. Ashok Arora	2nd Cluster of 08 shops, Kashmer Gate	3803/2020	30.12.2019 to 29.12.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
9.	Ms. Vandana Nagpal	Shop No.3, Kashmere Gate	3803/2020	16.01.2020 to 15.01.2023	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
10.	Ms. Vandana Nagpal	Shop No.7, Kashmere Gate	3803/2020	23.12.2019 to 22.12.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
11.	Sh. Manohar	Open Restaurant	3803/2020	16.09.2019 to	Extension of nine	Waiver granted for full lock

	Lal Sharma	Sarai Kale Khan		15.09.2022	months.	down period. Enhanced license fees of 10% for six months for the extended period.
12.	Sh. Manoj Kumar Shukla	Shop No.72, Kashmere Gate	8951/2020	24.12.2019 to 23.12.2022	Extension of nine months.	Waiver granted for full lock down period. Enhanced license fees of 10% for six months for the extended period.
13.	Sh. Ram Nath	Shop No.66, Kashmere Gate	5570/2021	05.03.2021 to 04.03.2024	Extension of six weeks	Full Waiver for the months of May-June 2021.
14.	Sh. Ram Nath	Shop No.3, Sarai Kale Khan	5570/2021	15.02.2021 to 14.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.
15.	Sh. Ramesh Kumar	Shop No.C-3 Bus Bay No.96, Anand Vihar	5570/2021	15.02.2021 to 14.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.
16.	Sh. Janmejay Kumar	Trolley at Platform-C, Bus Bay No.78, Anand Vihar	5570/2021	20.02.2021 to 19.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.
17.	Sh. Jai Prasad Mishra	Shop in front of old Deluxe Toilet, Anand Vihar	5570/2021	20.02.2021 to 19.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.
18.	Sh. Nandan Singh	Kiosk at Platform-C, Bus Bay No.76, Anand Vihar	5570/2021	20.02.2021 to 19.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.
19.	Ms. Deepa Devi	Kiosk Near Bus Bay No.121, Platform-D, Anand Vihar	5570/2021	23.02.2021 to 22.02.2022	Extension of six weeks	Full Waiver for the months of May-June 2021.

74. Insofar as the persons who want to surrender their shops are concerned, the terms of the license agreement would be applicable in respect of such allottees, prior to the expiry of the license period. However, if they wish to take benefit of the above directions, they would be permitted to do so.

75. Mr. Narayan, ld. counsel has submitted that even for the months where complete waiver has been granted by the DTIDC, owing to the applicability of GST law and the payments to be made thereunder, the Corporation had deposited GST with an expectation that the licensees would also pay the license fee. However, since the waiver has now been granted for the lockdown period by the Corporation, the DTIDC may apply for the refund of the GST with the concerned authority, which shall be processed expeditiously.

76. The present petitions, along with all pending applications, are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 27, 2021/*Rahul/MR/AD/T*

(*Corrected & released on 30th October, 2021)*