

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

% **Judgment reserved on: 19 September 2022**
Judgment pronounced on: 20 October 2022

+ **W.P.(C) 134/2021, CM APPL. 34502/2021, CM APPL. 10988/2022**
& CM APPL. 25378/2022

DELHI INTERNATIONAL AIRPORT LIMITED Petitioner

Through: **Mr. Ramji Srinivasan, Senior**
Advocate with Mr. Milanka
Chaudhary, Ms. Naina Dubey, Ms.
Harshita Agarwal, Mr. Ravneet
Singh, Ms. Megha Dugar and Ms.
Shruti Pandey, Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Asheesh Jain, CGSC, Mr.**
Adarsh Kumar Gupta, Mr. Keshav
Mann and Mr. Jatin Puniyani,
Advocates for R-1
Mr. K.M. Nataraj, ASG with
Mr. Nikilesh Ramachandran,
Mr. Vinayak Sharma, Mr. Shubham
Seth and Ms. Mrinal Chaudhry,
Advocates for R-2
Mr. Siddhartha Dave, Sr. Adv. with
Mr. A.P. Singh and Mr. Shreyansh
Rathi, Advocates for HCI

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

A. PREFACE

1. **Delhi International Airport Private Limited**¹ has petitioned this Court challenging the letter dated 20 December 2019 issued by the **Ministry of Civil Aviation**² in the Union Government addressed to the third respondent, the **Hotel Corporation of India**³. It also seeks setting aside of the stand taken by the **Airport Authority of India**⁴ as recorded in paragraph 3 of the aforesaid letter. DIAL additionally assails the Minutes of the Meeting held on 04 November 2019 insofar as it carries directions framed by MoCA. For the sake of completeness of the record, the reliefs which are claimed in the writ petition are extracted hereinbelow:

“In view of the above facts and circumstances, it is most respectfully prayed that this Hon’ble Court be pleased to:

- a. Issue a writ of certiorari or any other appropriate writ, direction or order quashing the letter No. AV 18050/245/2015-AI dated 20.12.2019 issued by Respondent No. 1 to Respondent No.3;
- b. Issue a writ of certiorari or any other appropriate writ, direction or order setting aside the stand of Respondent No.2 reflected in paragraph (3) of the letter No. AV 18050/245/2015-AI dated 20.12.2019 issued by Respondent No. 1 to Respondent No.3;
- c. Issue a writ of certiorari or any other appropriate writ, order or direction quashing the directions passed by Respondent no.1 recorded in the minutes of the meeting held on 04.11.2019 circulated vide Respondent no.1’s letter no. AV 18050/245/2015-AI dated 05.11.2019;
- d. Issue a writ of certiorari or any other appropriate writ, direction or order quashing the Notice Inviting Tender No. HCI/RFP/2020/101 dated 16.09.2020 issued by Respondent No.3 titled ‘Request for

¹ DIAL

² MoCA

³ HCI

⁴ AAI

Proposal for Selection of Consultant to run Centaur Hotel and Chefair Flight Catering under O&M Contract’;

- e. Issue a writ of mandamus or any other appropriate writ, direction or order directing Respondent No.3 to handover vacant possession of the land, admeasuring approximately 45,000 square metres (forty five thousand square metres) and shown in red in the sketch annexed as Schedule A to the Lease Deed dated 21.03.2002 executed between Respondents No. 2 and 3;
- f. Issue a writ of mandamus or any other appropriate writ, direction or order directing Respondent No.3 to clear the outstanding dues of the Petitioner amounting to about Rs. 78.99 crores as claimed by the Petitioner in its letter no. DIAL/2020-21/CEO-Office/575 dated 05.11.2020 issued by the Petitioner to Respondent No. 3;
- g. Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice;”

2. The challenge is essentially mounted based on the decision of MoCA and AAI to resurrect and revive a lease which had been granted to HCI and is asserted to have been terminated in terms of the communication addressed by AAI dated 08 November 2016. The petitioner essentially contends that once AAI had proceeded to terminate the lease, they stood denuded of the jurisdiction to either issue directions permitting it to continue to occupy the land parcel which formed subject matter of the lease or to perpetuate the lease interest once the same had come to be terminated. The challenge is based upon the provisions of the **Operation, Management and Development Agreement**⁵ which came to be executed between AAI and DIAL on 04 April 2006 and the **DIAL Lease Deed dated 25 April 2006**⁶ executed between the aforementioned parties and in terms of

⁵ OMDA

⁶ DIAL Lease

which, on an early termination of “*existing leases*”, land comprised therein was to stand transferred to DIAL and form an integral part of “*demised premises*” as defined and envisaged therein. Before proceeding further and in order to appreciate the challenge which stands mounted it would be relevant to advert to the following salient facts.

B. ESSENTIAL FACTS

3. On 21 March 2002 AAI executed a **Lease Deed**⁷ in favor of HCI in respect of a land parcel comprising of 30,000 square meters on which the Centaur Hotel was situate and an additional 15,000 square meters of land on which **Chefair Flight Kitchen** operated. The aforesaid lease was to be effective from 01 April 2002 for a term of 30 years and thus to be operative till 31 March 2032. Clause 18 of the HCI Lease Deed stipulated that if the leased premises or any part thereof be required by AAI for the purposes of airport development, it would be open for it to determine the same by giving twelve months notice in writing. Clause 18 of the HCI Lease Deed reads as follows:

“18. If the Leased Premises or any part thereof shall during the Lease Period be required by the Lessor for the purpose of Airport Development (in the nature of runways, taxiways, aprons or terminal buildings), the Lessor shall be entitled by giving 12 months (twelve months) notice in writing to determine the Lease Agreement and call upon the Lessee to vacate the land/building/structures installations PROVIDED THAT the Lessor shall at the time of the service of such notice shall either

(A) Offer to the Lessee another plot of land next to the said airport for erection of similar buildings/ structure/ and/or installations for use for the purpose and Businesses of the Lessee on a fresh lease agreement comprising similar covenants relating to the approval of plans and

⁷ HCI Lease Deed

additions or alterations to the said structure and installations PROVIDED FURTHER THAT the amount payable by the Lessee under such fresh lease agreement during the remaining Lease Period under this Lease Agreement shall not exceed the amount which would have been payable for the remainder of the Lease Period in respect of the Leased Premises under this Lease Agreement AND in addition pay a compensation calculated in accordance with clause 19(A) of this Lease Agreement; or

(B) Offer to the Lessee compensation calculated in accordance with clause 19(B) of this Lease Agreement AND in addition shall pay a sum calculated in accordance with the following equation:

Sum payable by the Lessor to the Lessee = A * B

Where:

A= the highest annual profit in a period of three years immediately preceding the determination of the Lease Agreement;

B= the number of years remaining in the Lease Period immediately prior to the expiry of the Lease Agreement.

The Lessee hereby agrees that within the prescribed period of 12 months or any extension granted thereto the Lessee shall remove the structures and installations constructed by him on the Leased Premises as required by such notice or notices and shall level and restore the land to its original condition and the Lessee shall surrender and peacefully give up, and hand over possession to the Lessor of the Leased Premises as required in such notice UPON due compliance by the Lessor with the provisions of this clause 18.

Notwithstanding anything to the contrary contained in this clause 18, in the event that upon issue of a notice by the Lessor as aforesaid, the Lessor offers to the Lessee an alternate plot or plots of land as described in (A) above, the Lessee shall in its absolute discretion, be entitled to refuse any such land so offered and require the Lessor to compensate the Lessee on the basis of, and in accordance with the provisions of clause 18(B) above of this Lease Agreement.”

4. Pursuant to a decision taken by the respondents in public interest to transfer some of the functions of AAI for the better management of the **Indira Gandhi International Airport**⁸, a bidding process is stated to have

⁸ IGIA

been initiated. On the culmination of that process, DIAL was awarded the concession by AAI. DIAL is a joint venture company formed between AAI and the consortium of the GMR Group. Upon the grant of the aforesaid concession, AAI and DIAL executed the OMDA on 04 April 2006. The OMDA essentially placed DIAL in the shoes of AAI and conferred various rights earlier exercised by AAI to the former by virtue of being the chosen concessionaire and at the same time placing upon it the duty and the obligation to manage IGIA. In order to effectuate that transfer of functions and to enable DIAL to take over and effectively manage the affairs of the IGIA, OMDA incorporated various provisions, significant of which are noticed hereinafter. The scope of the grant as specified in Clause 2.1.1 reads as follows:

“2.1.1 AAI hereby grants to the JVC, the exclusive right and authority during the Term to undertake some of the functions of the AAI being the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and to perform services and activities constituting Aeronautical Services, and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport and the JVC hereby agrees to undertake the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and at all times keep in good repair and operating condition the Airport and to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport, in accordance with the terms and conditions of this Agreement (the “Grant”).”

5. The broad objectives of the handing over of the operation and management of IGIA were explained in Clause 2.2.1 which reads as follows:

“2.2.1 The JVC having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the JVC or any of its subsidiaries shall not, except with the previous written consent of AAI, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. Provided however that the JVC may engage in developing, constructing, operating or maintaining a second airport pursuant to exercise of the Right of First Refusal granted to the JVC under the State Support Agreement.”

6. Chapter 5 of the OMDA spelt out the various steps and activities which were to be undertaken during the transition process. Clause 5.2 to 5.4 which are relevant for the purposes of considering the issues which arise in the present writ petition are extracted hereinbelow: -

“5.2 Transition Phase

- (a) The period commencing from Effective Date and terminating three (3) months thereafter shall constitute the Transition Phase. Provided however that in the event the activities proposed to be undertaken during the Transition Phase have not been completed within the abovementioned period of three (3) months, then the Transition Phase shall be extended by an additional period of three (3) months, and in such event, the period commencing from Effective Date and terminating six (6) months thereafter shall constitute the Transition Phase.
- (b) During the Transition Phase, the following activities shall take place:
 - (i) Existing Contracts: The JVC shall take best efforts, and AAI shall render all reasonable assistance, to transfer / novate AAI under all existing contracts and agreements between AAI and any third party, as relatable to the Airport, with the JVC, on the principle that such transfer / novation would release AAI of all liabilities and obligations under such contracts or agreements as arising from and after the Effective Date (except those pertaining to Legacy Matters). The Parties, along with relevant third parties shall execute necessary documentation or put in place necessary arrangements for the aforesaid transfer / novation. The Parties expressly agree that in respect of existing arrangements of Indian Airlines Ltd. and Air India Ltd. for usage of land and/or building at the Airport and Public Sector

oil companies in respect of common hydrant infrastructure for aircraft fuelling at the Airport, for which no express written contract has been executed or presently exists, such existing arrangements shall continue for a period of six (6) months from the Effective Date and the JVC shall during such period mutually agree with Indian Airlines Ltd., Air India Ltd. and Public Sector Oil companies in respect of such arrangements going forward. Provided however that any third party contract that cannot be specifically novated to the JVC for any reason whatsoever shall be performed by the JVC (at its own risk and cost) for and on behalf of AAI (as if the JVC was an original party to the said contracts, in place of AAI). Provided further that JVC shall indemnify and keep indemnified the AAI against any liability or costs arising under such contracts (including, for the avoidance of doubt, contracts relating to capital works-in-progress included in the list of Mandatory Capital Projects), including specifically, payments due to the counter-parties of such contracts or to any other Entities pursuant to such contracts. Any benefits arising from such contracts shall also vest with JVC. Nothing contained in this Article 5.2 (b) (i) shall prejudice the payment obligation of the JVC in respect of payments due from August 30, 2005 under contracts for capital works-in-progress as contained in Article 5.2 (b) (ii) hereof.

- (ii) Work in Progress: Parties expressly agree that from the Effective Date, JVC shall be liable to perform all obligations of AAI (including payment obligations) under all contracts and agreements between AAI and any third party as existing on Effective Date. Without prejudice to the generality of the foregoing, from the Effective Date, the JVC shall be liable for performance of all works-in-progress at the Airport; provided however that notwithstanding the foregoing and Article 3 hereof, JVC shall be liable for making all payment in respect of all capital works-in progress at the Airport from August 30, 2005, which payment shall be made by JVC to AAI within 15 (fifteen) days of Effective Date on the basis of detailed separate accounts maintained by AAI in this regard and furnished to JVC on Effective Date. It is clarified that these capital works-in-progress are part of the Mandatory Capital Projects to be undertaken by the JVC. Furthermore, AAI hereby undertakes to provide to JVC, from time to time until Effective Date, provisional accounts in respect of the abovementioned capital works-in-progress.

In relation to the accounting treatment of capital works-in-progress, the expenditure incurred by the JVC from Effective Date will continue to be shown by the JVC in its books as capital work-in progress till such time the JVC completes the relevant capital work-in-progress. The amount shown in the books of account of the JVC will be restricted to the expenditure incurred by the JVC on such works till the time of its completion. On the completion of the capital works-in-progress, the JVC should transfer the same to the concerned completed works assets. Further the JVC should also provide depreciation on those portions of the completed assets.

- (iii) It is expressly agreed that notwithstanding anything contained in this Article 5, nothing contained in this Article 5 shall apply or relate to any contract entered into by AAI with any third Entity in respect of or relating to the provision of CNS-ATM Services to be provided by the AAI under the provisions of the CNS-ATM Agreement.
 - (iv) Joint Committee: Immediately after the date hereof, the Parties will constitute a joint committee for the duration of the Transition Phase consisting of 3 representatives each of AAI and the JVC, which joint committee shall be responsible for the overall supervision of the Airport operations. Provided however, the JVC shall have the responsibility of putting into place the Transition Plan and operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the Airport.
 - (v) List of Existing Assets: The JVC shall prepare a list of all Existing Assets at the Airport and AAI and JVC shall mutually agree on the same.
- (c) It is clarified that any actions of AAI during the Transition Phase pursuant to this Article 5.2 shall be undertaken by AAI not in its personal capacity. All benefits and burdens associated with the actions of the AAI pursuant to this Article 5.2 shall be to the account of the JVC and not the AAI. To this end, JVC shall indemnify and keep indemnified AAI, against any liability or cost, arising on account of any reason whatsoever (except any liability or cost arising due to gross negligence or willful default of the AAI), as relatable to the Airport, during the Transition Phase. It is further clarified that any portion of the charges (Aeronautical Charges and charges for Non-Aeronautical Services) as may be collected by the AAI during the Transition Phase shall be collected by AAI for and on behalf of the JVC and shall be deposited by AAI into the Escrow Account.

5.3 At the end of the Transition Phase, JVC would operate and maintain the airport independently.

5.4 Notwithstanding anything contained herein, JVC shall be liable for making all payment in respect of other capital works in addition to the abovementioned capital works-in-progress, incurred by AAI at the Airport from August 30, 2005, which payment shall be made by JVC to AAI within 15 (fifteen) days of Effective Date on the basis of detailed separate accounts maintained by AAI in this regard and furnished to JVC on Effective Date. Provided however that the above referred amount in this Article 5.4 shall not in any event exceed Rs. 50,00,00,000/- (Rupees Fifty Crore) in the aggregate (in respect of all such capital works until Effective Date). Furthermore, AAI hereby undertakes to provide to JVC, from time to time until Effective Date, provisional accounts in respect of the abovementioned capital works.”

7. OMDA also incorporated provisions for transfer of land details which stood set out in Schedule 25 thereof to DIAL in terms of Clause 2.6.1 which is extracted hereinbelow: -

“2.6.1 In consideration of the Lease Rent, this Agreement and the covenants and warranties on the part of the JVC herein, the AAI, in accordance with the AAI Act and the terms and conditions set forth herein, hereby, agrees to demise to the JVC under the Lease Deed, commencing from the Effective Date, all the land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in the Schedule 25 hereto, other than (i) any lands (along with any buildings, constructions or immovable assets, if any, thereon) granted to any third party under any Existing Lease(s) constituting the Airport on the date hereof; and (ii) any and all of the Carved Out Assets and the underlying land together with any buildings, constructions or immovable assets thereon, on an “as is where is basis” together with all Encumbrances thereto, (hereinafter “Demised Premises”) to hold the said Demised Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Demised Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the term hereof for the purposes permitted under this Agreement. In the event at any time during the Term, the JVC requires the hundred (100) hectares of land (or any part thereof) as identified in the Initial Development Plan and deducted for determining the Demised Premises (the “Excluded Premises”), for the purposes of provision of

Aeronautical Services, then JVC may request AAI to lease such Excluded Premises, or part thereof, as the case be, and upon such request the Parties shall enter in to a lease deed for grant of such lease.”

8. DIAL, in terms of the provisions of the OMDA, was also obligated to prepare a Master Plan for IGIA setting out the proposed development of the airport over a twenty-year period. The provisions relating to the preparation of the Master Plan and the Major Development Plan as embodied in Clauses 8.3.1, 8.4.1 and 8.4.2 are extracted hereinbelow: -

“8.3.1 The JVC shall prepare a Master Plan for the Airport setting out the proposed development for the entire Airport, planned over a 20 year time horizon. The Master Plan shall include traffic forecasts for this period and link all planned major development to these forecasts. The Master Plan shall be prepared in accordance with and include the following:

- (a) A statement of the overall development strategy and philosophy;
- (b) The Development Planning Principles set forth in Schedule 1 hereof.
- (c) Details of planned developments separately for each broad area, namely commercial development, surface transport, terminal area, runway system, environmental management (including aircraft noise);
- (d) Details of traffic forecasts and provide the traffic trigger points for all developments which are linked to traffic growth, indicating at what traffic level the project will be commenced and finished;
- (e) Vision of how the Airport and each of its precincts will look at the end of 20 years and at critical intermediate stages and the ultimate vision of the Airport, at the end of the period when it reaches capacity;
- (f) Report on the outcome of consultations with users, community, businesses and the government
- (g) Obstacle limitation surfaces for the airport and approach and takeoff areas
- (h) Noise exposure contours for areas surrounding the Airport for the traffic level forecast for the 20 year Master Plan period
- (i) Such other matters that may be specified by the GOI.

Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby acknowledge and agree that nothing in this Article 8.3 shall be deemed to be an approval by AAI of any Master Plan (or any part thereof) submitted by the JVC in accordance with the aforesaid provisions, including but not limited to any minimum projected traffic. It is expressly agreed that it shall be sole responsibility and obligation of the JVC to ensure that the final Master Plan is in full compliance with the requirements of this Agreement and is, additionally,

in accordance with the parameters set out in the State Support Agreement and nothing in this Agreement shall, in any way, absolve the JVC of its obligation to ensure that the final Master Plan is in accordance with the provisions of the OMDA and the State Support Agreement or any other obligations under any of the Project Agreements.

8.4.1 The JVC shall develop the Airport in accordance with the Master Plan. The JVC must prepare a Major Development Plan for each major development or any development, which is expected to have a capital cost in excess of Rupees 100,00,00,000/- (Rupees One Hundred Crores Only) and shall ensure that each such major development is undertaken by contractors selected pursuant to a competitive bidding process. The Major Development Plan must be in accordance with the finalised Master Plan and, in the case of aeronautical developments, must be the subject of full consultation with Airport users.

8.4.2 The JVC hereby agrees to submit each Major Development Plan to the AAI for its information and MCA for its review and comments. The Major Development Plan must be submitted to the MCA for its review and comments as soon as it is prepared.

Provided, however that, notwithstanding Article 3 hereof, the JVC shall submit the Major Development Plan(s) relating to the design, development and construction of (i) terminal buildings; and (ii) parallel runways at the Airport, within six (6) months of the date hereof.”

9. Clause 8.5.9 of the OMDA envisaged the constitution of an **OMDA Implementation Oversight Committee**⁹. Since that particular clause was extensively relied upon by and on behalf of the petitioners, it is reproduced hereinbelow: -

“8.5.9 OMDA Implementation Oversight Committee Notwithstanding Article 3 hereof, in order to perform its obligations hereunder, AAI shall within 30 (thirty) days of the execution hereof create a separate dedicated unit (the “OMDA Implementation Oversight Committee” or “OIOC”) under the chairmanship of Secretary, MCA and such other members as the MCA may determine. The OIOC will be responsible for ensuring that the Conditions Precedent as contemplated under this Agreement are duly met/fulfilled and this Agreement becomes fully effective within three (3) months as provided under Article 3 hereof. Further, the OIOC shall be the

⁹ OIOC

‘single point of contact’ for the JVC for all matters concerning this Agreement. The OOIC would meet as often as may be required with representatives of the JVC and conduct a joint review of emerging issues and concerns and keep an oversight of the development of the Airport.”

10. In terms of the provisions made in the OMDA and for the purposes of transfer of assets which were till then held by AAI, a lease deed came to be executed between the said entity and DIAL on 25.04.2006. The grant of lease was set forth in Article II and reads as follows:

**“ARTICLE II
GRANT OF LEASE**

2.1 Demised Premises

2.1.1 In consideration of the Lease Rental, OMDA and the covenants and warranties on the part of the Lessee therein and herein, the Lessor, in accordance with the AAI Act and the terms and conditions set forth herein, hereby, demise to the Lessee, commencing from the Effective Date, all the land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in the Schedule 1 hereto, other than (i) any lands (along with any buildings, constructions or immovable assets, if any, thereon) granted to any third party under any Existing Lease(s) constituting the Airport on the date hereof; and (ii) any and all of the Carved Out Assets and the underlying land together with any buildings, constructions or immovable assets thereon, on an “as is where basis” together with all Encumbrances thereto, (hereinafter “Demised Premises”) to hold the said Demised Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Demised Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Term for the sole purpose of the Project, and for such other purposes as are permitted under this Lease Deed.

2.1.2 It is understood and expressly agreed between the Parties that on the expiry or early termination of the Existing Leases, any land (along with any buildings, constructions or movable assets, if any, thereon) under such Existing Leases together with all and singular rights, liberties, privileges, easements, rights of access, benefits and appurtenances whatsoever to the said Existing Leases, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, shall, from the date of expiry or early termination of the Existing Leases, form an

integral part of the Demised Premises herein and the Lessee shall enjoy a leasehold interest over the same on the same terms and conditions as set out herein for the remainder of Term of this Lease Deed.”

C. CHAIN OF COMMUNICATIONS

11. Upon the transfer of demised premises AAI, in terms of its letter of 05 May 2006 informed all agencies, airlines, government departments and trading concessionaires to make payments towards landing, housing, parking license fee for space, lease fee for land, royalties, electricity bills, water charges etc. in favor of the petitioner. Upon taking over of the affairs of IGIA, the petitioner appears to have taken cognizance of the fact that HCI had fallen in arrears towards lease rent and thus violated the terms and conditions of the HCI Lease Deed. In view of the aforesaid, DIAL in terms of its letter of 04 October 2013 called upon AAI to take appropriate steps for termination of the HCI Lease Deed. The aforesaid issue also appears to have been raised in the meeting of the OIOC which took place on 23 April 2014. Agenda I which dealt with the aforesaid subject and the decision taken thereon is extracted hereinbelow: -

“1. Non-payment of dues by Centaur Hotel (Hotel Corporation of India)

DIAL apprised Secretary (MoCA) that Centaur Hotel is in occupation of 45000 sq mtr of land at IGIA. Since 3rd May 2006 they are not paying the land license fee, turnover levy and security deposit to DIAL. The matter was discussed with Secretary CA twice in 2012 and 2013, however till date the dues are not settled.

Decision:

DIAL was advised to review the Master Plan with regard to the requirement of the land for airport development and also DIAL to inform by when they require the land to enable HCI to plan their business accordingly.

The CMD of HCI is advised to come-up with payment plan and also to discuss with DIAL to resolve the issue of land license fee on priority.”

12. As would be evident from the aforesaid extract of the minutes which were drawn, the petitioner was advised to review the Master Plan which had been prepared and also indicate the timelines within which they required the land occupied at that time by HCI. The Committee also framed directions calling upon HCI to come up with a payment plan and to initiate discussions with DIAL so as to resolve the issue of license fee liability on priority.

13. On 29 May 2015 HCI for the first time raised an objection to the request as made by the petitioner and addressed to AAI requiring it to terminate the HCI Lease Deed. It asserted that AAI had never informed it of the transfer of the lease in favour of the petitioner and further contended that since the leased premises falls under Schedule 28 of the OMDA, the same can neither be transferred to DIAL nor was HCI liable to make over lease rentals to the petitioner.

14. It would be pertinent to note here that the land comprised in the HCI Lease Deed was originally included in the Fourth Phase Development Plan of IGIA which was to be implemented over the period 2026-2034. However, upon assessment of passenger growth and the requirements of infrastructure development, DIAL is stated to have submitted a revised plan for the consideration of the respondents firstly on 22 July 2015. This was followed by letters dated 31 December 2015, 22 April 2016 in terms of which DIAL apprised MoCA of the HCI Leased Land being required by 2019 for the purposes of developing aviation facilities such as maintenance

hangars and night parking stands for aircrafts. The aforesaid facilities were estimated to be completed by 2021.

15. It would be pertinent at this stage to observe that Schedule 28 of the OMDA sets out the details of “existing leases” and which in terms of Clause 2.1.1 stood excluded from the “demised premises”. Demised premises were those which came to be transferred and stood detailed in Schedule 1 to the DIAL Lease Deed. It would be pertinent to recollect that existing leases which stood specified in Schedule 28 of the OMDA stood excluded from the demised premises which were to be made over to DIAL immediately on the execution of the aforesaid lease and were to stand transferred to the petitioner only on the expiry of the lease or in the eventuality of a premature termination thereof.

16. The dispute with respect to the defaults committed by HCI and the failure of AAI to terminate the same continued to fester as would be evident from the further communications which came to be exchanged between the parties. However, and in the meantime, DIAL appears to have reviewed the requirement of the land comprised in the HCI lease deed for the purposes of airport development work as would be evident from its communications dated 22 July 2015, 31 December 2015 and 22 April 2016. DIAL, upon a reassessment of the development goals for IGIA, took the position that the land comprised in the HCI lease deed would be required by 2021 for developing facilities such as maintenance hangars and night parking space for aircrafts and for which work would have to commence from 2019 itself. It would be pertinent to note here that the land comprised in the HCI lease

deed in terms of the original Master Plan was to be utilized in the Fourth Phase of the development of IGIA which was to cover the period 2026 to 2034. DIAL in light of the review which was undertaken again reiterated its request for early termination of the HCI lease deed as would be evident from its letter of 20 June 2016. Taking note of the same, AAI issued a notice to HCI calling upon it to clear all outstanding dues which were payable towards license fee and royalty on 21 July 2016. It also in terms of a letter dated 13 July 2016 sought the advice of MoCA for premature termination of the HCI lease deed on account of requirement of the leased premises for airport development as suggested by the petitioner.

17. Responding to the aforesaid letter, MoCA on 22 August 2016 advised AAI to take appropriate steps to get the land falling within the HCI Lease Deed vacated by issuing an appropriate notice in terms of Clause 18 of that agreement. The letter of MoCA dated 22 August 2016 is reproduced hereinbelow: -

“F. NO. AV-24011/13/2016-AD
GOVERNMENT OF INDIA
MINISTRY OF CIVIL AVIATION
AD SECTION

‘B’ Block, Rajiv Gandhi Bhawan
Safdarjung Airport, New Delhi – 110003
Dated 22nd August, 2016

To,

**The Chairman,
Airports Authority of India,
Rajiv Gandhi Bhawan,
New Delhi – 110003**

**Sub: Termination of the Lease Agreement dated 21.03.2002
executed between AAI and the Hotel Corporation of India
(HCI)-reg.**

Sir,

I am directed to refer to AAI's letter No. AAI/MC/DIAL – 22/LM/2016/770 dated 13.07.2016 on the above subject and to say that the issue of vacation of Centaur Hotel Land has been examined in this Ministry. It has been observed that the Delhi airport Master Plan 2016 envisages airside development works viz Apron, Night Parking stands etc. on the land parcel on which the Centaur Hotel is situated Clause 18 of the Lease Agreement signed between AAI and HCI, stipulates that whenever, AAI (presently DIAL) requires the leased premises for the purpose of Airport Development, AAI may get it vacated with a notice period of 12 months and after suitably compensating HCI as per the provisions of Lease Agreement.

2. Hence, any further action on the request of DIAL for initiating vacation process is to be taken by AAI. Further settlement through alternate land or by way of monetary compensation under the Lease Agreement needs to be amicably carried out between AAI/DIAL and Air India.

Yours faithfully

Sd/-

(U.K. Bhatia)

Under Secretary to the Govt. of India

Tele: 24640217”

18. Since AAI failed to act in terms of the advice and decision of MoCA comprised in their communication of 22 August 2016, the petitioner again addressed a letter dated 06 October 2016 calling upon AAI to initiate the process for termination of the said lease deed. Ultimately and on 08 November 2016 AAI proceeded to terminate the HCI lease deed. The contents of that communication are extracted hereinbelow: -

“No.AAI/LM(NR)/Centaur Hotel/2016/3217-23 Dated:
08.11.2016

**The Managing Director
Hotel Corporation of India Ltd.
Transport Annexe Building**

**Air India Complex
Old Airport
Santa Cruz (East)
Mumbai- 400 029**

Sub: Termination of Lease Deed dated 21/03/2002 executed between Airports Authority of India (AAI) and Hotel Corporation of India(HCI) for Lease of land measuring 45000 sqm. at IGI Airport, New Delhi.

Sir,

1. That the Land admeasuring 45000 sqm. had been given by AAI to M/s HC on lease and the Lease Agreement was executed between the AAI and HCI on 21/03/2002 for the purpose of maintaining and running the hotel and flight kitchen for a period of 30 years w.e.f 01/04/2002 upto 31/03/2032. The Lessee for the said purpose had made Hotel Centaur on the said leased land.
2. That the Delhi Airport Master Plan 2016 has been approved by MoCA and as per the Plan, the air-side development work viz, Apron, Night Parking stands etc, which are for aeronautical puposes, coming on the land on which Hotel Centaur is situated. To carry out the said airport, development work, the said land is required for the said aeronautical purpose.
3. That the competent authority has entrusted the power with the RED, NR, AAI on the leases etc. executed on behalf of AAI, pertaining to the Delhi Airport.
4. That Undersigned, being an authorized officer on behalf of the Lessor(AAI) determine the Lease Agreement and put to the Lessee on Notice of 12 months under Clause 18 of the Lease Agreement (effective from the date of service of this Notice) and on expiry of the said 12 month' notice period, the Lessee be hand over the land (admeasuring 45000 sqm) to the Office of the undersigned.

Please acknowledge the receipt.

**(RAKESH KALRA)
REGIONAL EXECUTIVE DIRECTOR
(NORTHERN REGION)**

Copy to:

The Managing Director, Hotel Corporation of India Ltd., Centaur
Hotel, IGI Airport, New Delhi 110 037

NOO:

1. The Under Secretary, MoCA w.r.t letter No. AV.24011/13/2016
AD dated 22/08/2016 for information, pl.
- 2 ED(JVC)
3. GM(Law)
4. OSD to Chairman, AAI
5. OSD to Member (Finance), AAI”

19. HCI raised an objection to the aforesaid act of AAI in terms of its letter of 23 November 2016 asserting that the DIAL requirement of the subject land was not based on any map which may have been accorded approval. It was further urged that the twelve-month period was wholly inadequate to enable it to remove its effects from the land parcel in question. HCI thereafter appears to have moved MoCA for extension of time to enable it to vacate the leased premises. The aforesaid request came to be favorably considered by MoCA and it in turn permitted it to retain the land parcel till March 2019. The aforesaid decision stands evidenced in the letter of MoCA dated 17 April 2017 which is extracted hereinbelow: -

“F.No.A V-18050/245/2015-AI
Government of India
Ministry of Civil Aviation

Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi-110003, dated: 17.04.2017

To

Shri Pankaj Kumar
Managing Director,
Hotel Corporation of India,
Airlines House, New Delhi.

Subject: Termination of Lease Deed executed between AAI and HCI for Centaur Hotel and Chefair Flight Catering Delhi at IGI Airport - reg.

Sir.

I am directed to refer to HCI's letter No.MD/HCI/DEL/147 dated 01.02.2017 on the subject noted above and to say that the request of HCI for extension of Notice Period was considered in this Ministry. With the approval of competent authority, it has been decided that HCI may be allowed to retain the land parcel of Centaur Hotel and Chefair Flight Catering Delhi at IGI Airport till March, 2019.

2. HCI may take all necessary action to hand over the properties to AAUDIAL as per provisions in the Lease Agreement after the above-mentioned date. Further expenditure on development of Centaur Hotel and Chefair Flight Catering Delhi may please be made keeping in view the above date of handing over the property so as to avoid any infructuous expenditure.

3. During the notice period, if DIAL requires to undertake land survey, soil testing etc., as pre-development work, AI/HCI may allow them to do this without any restriction.

Yours faithfully,

(Chandra Kishore Shukla)

Under Secretary to the Government of India

Tel: 24619282

Copy to:

1. AAI (Attn: Ms V. Vidya, General Manager (F&C)-JVC, New Delhi) wri their letter No.AAV/MC/DIAL-22/LM/2017/63 dated 08.02.2017. The vacation notice dated 8.11.2016 issued to HCI may please be amended accordingly.
2. US(AD), MoCA
3. CEO, DIAL, New Delhi.
4. CMD, Air India, Airlines House, New Delhi.”

20. DIAL in the meanwhile addressed as many as eight letters commencing from 01 February 2017 upto 28 June 2018 requesting AAI to

take emergent steps to take over possession of the land parcel in question as also to resolve the issues relating to payment of compensation to HCI. These communications also highlighted the fact that HCI had failed to clear its outstanding dues. DIAL also requested AAI to appoint a government approved valuer in consultation with HCI in order to expedite the process of handing over of the land in question.

21. In accordance with the aforesaid decision taken by MoCA, AAI addressed an independent letter dated 01 May 2017 to HCI apprising it that it would have to vacate the leased premises held by it by 01 April 2019. Thereafter AAI appears to have raised the issue of settlement of outstanding dues by HCI as would be evident from the contents of its letter dated 11 July 2018. While the aforesaid dispute continued to linger, a meeting appears to have been convened on 26 March 2019 under the chairmanship of the Director (VH), MoCA and in which the authorities of AAI, Air India Limited, DIAL and HCI were also invited. In the aforesaid meeting a decision was taken to the effect that HCI would hand over the land parcel in question to AAI by 30 November 2019. Insofar as the issue of unsettled dues payable by HCI were concerned, it was resolved that the same may be mutually discussed by AAI, HCI and the petitioner and an Action Taken Report be forwarded to MoCA for information.

22. In terms of the decision taken in the aforesaid meeting, HCI on 05 September 2019 addressed a letter to AAI acknowledging its obligation to surrender the leased premises by 30 November 2019. It however additionally raised the issue of the compensation that was liable to be paid

to it by AAI. The contents of the aforesaid letter are extracted hereunder:-

"HQ/ACCTS/

September 5, 2019

**Mr. Anil Gupta,
Executive Director (BD & LM),
Airports Authority of India,
Rajiv Gandhi Bhawan,
New Delhi-110 003.**

**Sub: Surrender of leasehold land (Centaur Hotel & Chefair
Flight Catering, Delhi)**

Ref: Lease Agreement dated 21/03/2002 between AAI & HCI

In continuation of this office letter of even number HQ/ACCTS dated 9/8/2019, the following is submitted:

- a) This is with reference to the Lease Agreement dated March 21, 2002 ("**Lease Deed**") entered into between Airports Authority of India (AAI) and Hotel Corporation of India Limited ("**HCIL**") vide which AAI had granted lease of land admeasuring 45,000 square meters near Terminal 3 of the Indira Gandhi International Airport, New Delhi (**Leased Premises**) to HCIL. Two establishments of HCIL, namely Chefair Flight Catering, New Delhi and Centaur Hotel Delhi Airport (together, the "**Units**") are operating out of the Leased Premises.
- b) In terms of the Lease Deed, your good office had exercised its right to terminate the Lease Deed vide letter dated November 8, 2016 for the purposes of expansion of the Indira Gandhi International Airport, New Delhi
- c) Further, consequent to multiple correspondences with your office and in accordance with communication received from the Ministry of Civil Aviation, Delhi (**Ministry**)", the Leased Premises is now required to be surrendered by or before November 30, 2019. AAI and the Ministry have accordingly communicated that HCIL will be required to surrender the Leased Premises latest by November 30, 2019.
- d) Subsequently, a meeting was held on August 28, 2019 under the chairmanship of Joint Secretary, MOCA, wherein it was decided to seek compensation for early termination and surrender of Leased Premises pursuant to the proposed termination of the Lease Deed.

Under Clause 18 read with Clause 19 of the Lease Deed, AAI is required to compensate HCIL for the early termination and surrender of Leased Premises to AAI.

- e) We, for the mutual benefit of the parties, after due consideration and deliberation, had appointed M/s. Cushman & Wakefield (**Cushman & Wakefield**) for conducting a valuation of building, movable and immovable assets the Leased Premises and land value for the remaining period of the lease.
- f) In furtherance of the same, Cushman & Wakefield has provided us with a Valuation Report dated May 27, 2019 (copy enclosed). As per the Valuation Report, HCIL is entitled to the following compensation from AAI:

Sl. No.	Description	Compensation Amount (crores)
(a)	Valuation of building, movable and immovable assets at replacement cost under Clause 18A & 19A of the Lease Deed	INR 280.50
(b)	Value of the Leased Premises for the remaining period of lease by Discounted Cash Flow method under Clause 18A/19A of the Lease Deed.	INR 159.00
	Total	INR 439.50

2. In light of the foregoing and based on the Valuation Report, we humbly request you to kindly approve the total compensation amount as proposed.

3. We would also like to inform that the immediate pressing fund requirements in connection with the closure of Centaur hotel & Chefair flight catering, Delhi would be approximately as given below:

- i) Compensation to the workmen and officers of HCI based on DPE Closure Guidelines (estimated) - Rs. 140.00 crores
- ii) Liabilities on account of loan and other creditors as on 01/08/2019 - Rs. 240.00 crores

- iii) Waiver of claims made on HCI by - Rs. 83.00 crores
AAI/Dial for Rentals Turnover Lavy &
Interest (estimated)

4. This issues with the approval of the Chairman, HCI.

Thanking you

Yours faithfully,

For and on behalf of
Hotel Corporation of India Limited
(Kirti Rao)
President – Finance

Encl: Valuation Report dated 27/5/2019 issued by Cushman &
Wakefield.

Copy to : Joint Secretary, MOCA, Rajiv Gandhi Bhawan, New Delhi.”

23. While things stood thus, MoCA appears to have convened yet another meeting on 04 November 2019. It is the decisions taken in this meeting which are assailed by the petitioner. Taking note of the disputes which existed between HCI and AAI the parties in that meeting resolved as follows:

“No. AV.18050/245/2015-AI
Government of India
Ministry of Civil Aviation

Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi-110003, dated: 05.11.2019

Office Memorandum

Subject: Payment of compensation on termination of Lease Agreement to HCI Request for reimbursement of the subject cost to DIAL by AERA through Airport Tariff.

The undersigned is directed to refer to this Ministry's Meeting Notice No. AV. 17046/37/2019-AI dated 01.11.2019 regarding above mentioned subject and to forward herewith minutes of meeting held on 04.11.2019 under the Chairpersonship of Secretary, Ministry of Civil Aviation, for information and necessary action.

(Pranjol Chandra)
Director
Tele: 24649891

To

1. Chairman, Airports Authority of India
2. Chairman, Airports Economic Regulatory Authority
- 3 CMD, Air India Limited
4. CEO, Hotel Corporation of India
5. CEO, DIAL, IGI Airport, New Delhi.

Copy for internal distribution to: Sr. PPS to Secretary (CA)/ Sr. PPS to JS (SKM)

Minutes of the Meeting held on 04.11.2019 under the Chairpersonship of Secretary (Civil Aviation) to discuss the matter regarding compensation on termination of Lease Agreement to HCI

A meeting was convened under the chairpersonship of Secretary (CA) at 17.00 hrs on 04.11.2019 to discuss the matter regarding compensation on termination of Lease Agreement to HCI. List of participants is at Annexure.

2. HCI had entered in to a lease agreement for land with AAI on 21.03.2002 for centaur Hotel and Chefair Flight Catering, Delhi for a period of 30 years w.e.f 01.04.2002.

3. It was confirmed by both AAI and HCI that the agreement is between HCI and AAI and once the existing lease is over as per the OMDA, the property would become a demise property and go to DIAL.

4. It was clarified by AAI that as per the proposed Master Plan 2016 for IGIA, Delhi, the project at the HCI hotel sight is to be developed under phase of the Master Plan commencing 2026.

5. Representative of DIAL mentioned that in view of the growth in Aviation Sector, the project would need to be preponed as the space would be required for construction of Aprons.

6. It was confirmed that the HCI property is not infringing the proposed runway but the land would be required for parking of aircraft.

7. Secretary, Civil Aviation was of the view that AAI needed to take an economic call on the issue taking in to consideration the economics of allowing HCI to continue for the balance lease period viz-a-viz foreclosure of lease agreement along with a perspective planning for the future.

8. It was further deliberated that whether unused land of HCI could be immediately parcelled to AAI. It was the view of AAI that movements would be constrained and may not serve the purpose envisaged.

9. In view of the discussions and the fact that the agreement was between HCI and AAI, the following decisions were taken:

- i. AAI to examine the issue whether AAI requires this land for use of Aeronautical purposes.
- ii. In case, the land is required by AAI for Aeronautical purposes, a sole arbitrator may be appointed to resolve the issues between AAI and HCL
- iii. In case, AAI decides that the land is not required by AAI for aeronautical purpose then full permission may be given to HCI for commercial utilization including O&M contracts for the remaining period of the Lease.
- iv. An action taken report to be submitted by AAI to this Ministry within a period of 2 weeks

Ministry of Civil Aviation:

1. Shri P.S. Kharola, Secretary -Chairman
2. Shri Pranjol Chandra, Director
3. Shri Sanjay Singh, Under Secretary

Air India Limited

1. Shri Ashwani Lohani, CMD

Airport Authority of India

1. Shri Anuj Aggarwal, Chairman, AAI
2. Shri A.K. Pathak, Member (Planning)
3. Shri Anil Gupta, ED
4. Shri D.K. Kamra, ED

AERA

1. Shri S. Samanta, Member, AERA

HCI

2. Shri Pankaj Kumar, CEO
3. Shri J. Rajakumar
4. Shri Kirti Rao

DIAL

1. Shri K.N. Rao, Director
2. Shri Ramit Chaudhary”

24. The petitioner assails some of the decisions taken in this meeting and particularly the resolution requiring AAI to examine whether the leased premises is required for “*aeronautical purposes*”. The decision taken in this meeting further provided that in case the leased premises is required for aeronautical purposes a sole arbitrator may be appointed to resolve issues and disputes that existed between AAI and HCI. A further decision appears to have been taken to the effect that in case AAI comes to the conclusion that the land is not required for aeronautical purposes, HCI would be permitted to retain possession of the leased premises for the remainder term and thus upto 2032. Based upon the decisions taken in the aforesaid meeting, MoCA on 20 December 2019 proceeded to recall its order permitting HCI to occupy the premises up to March 2019. The

communication of 20 December 2019 is extracted hereunder: -

“No.AV.18050/245/2015-AI
Government of India
Ministry of Civil Aviation

Rajiv Gandhi Bhawan, Safdarjung Airport
New Delhi-110003, dated: 20.12.2019

To,

The CEO, HCI

Subject: Centaur hotel and Chefair Flight Catering-Lease Agreement between AAI and HCI in r/o land leased at IGI Airport.

Sir,

Please refer to this Ministry's letter of even No. dated 17.04.2017 wherein HCI was allowed to retain the land parcel of Centaur Hotel and Chefair flight catering Delhi at IGI Airport till March, 2019. Further, a meeting was held on 26.03.2019 wherein HCI was requested to handover the land to AAI by 30.11.2019.

2. Subsequently, a meeting was held on 04.11.2019 under the Chairpersonship of Secretary, Civil Aviation regarding compensation on termination of Lease Agreement to HCI.

3. In response to the same, AAI has submitted the following:

(i) AAI/DIAL require this land for aeronautical purpose in Phase-4 development as per Master plan submitted by DIAL in 2016 wherein the development is proposed during 2026-2034. Therefore, HCI may use the land/structure up to the expiry of the existing period i.e on 31.03.2032 only and to vacate the land positively upon expiry of existing lease period.

(ii) Since HCI has defaulted in payment of AAI dues from 2002 onwards as per terms of agreement, the arbitrator may be appointed as per provision of existing agreement wherein Chairman, AAI is empowered to appoint the arbitrator. HCI to request AAI for appointment of arbitrator.

4. Ministry's letter of even No. dated 17.04.2017 wherein HCI was allowed to retain the land parcel of Centaur Hotel and Chefair flight catering Delhi at IGI Airport till March, 2019 may therefore be treated as withdrawn and HCI is requested to take further necessary action in this regard as per Para 3(i) and (ii) above.
5. This has the approval of Competent Authority.

Yours faithfully,

(Sanjay Singh)

Under Secretary to the Government of India

Tele: 24640214”

25. The petitioner immediately raised an objection to the directions which had been issued by MoCA and stood recorded in the minutes of meeting which was held on 04 November 2019 in terms of a letter dated 28 November 2019. Additionally, and on 28 December 2019 the petitioner addressed a detailed letter to AAI explaining the imperatives of the premises comprised in the HCI Lease Deed being handed over to it. The relevant portions of the aforesaid letter are reproduced hereinbelow: -

**“DIAL/2019-20/CR/1416
December 28, 2019**

The Chairman
Airport Authority of India
Rajiv Gandhi Bhawan
Safdarjung Airport
New Delhi – 110003

Subject: Centaur Hotel and Chefair Flight Catering – Land admeasuring 45,000 sq mtr leased at IGI Airport (“Subject Land”) –

Re: Requirement of Subject Land for Airport expansion/development as per Master Plan 2016and termination of the HCI Lease Agreement.

Reference:

- i) OMDA dated April 04, 2006 executed between Airports Authority of India (“AAI”) and Delhi International Airport Limited (“DIAL”).
- ii) Lease Deed agreement dated April 25, 2006 executed between AAI and DIAL (“**DIAL Lease Deed**”).
- iii) Lease Agreement dated March 21, 2002 (“**HCI Lease Agreement**”) executed between AAI and Hotel Corporation of India (“**HCI**”) for leasing the Subject Land.
- iv) DIAL’s letter no. DIAL/2016-17/CEO-Office/184, dated May 03, 2016 addressed to Secretary, MoCA – submitting the final Master Plan review report 2015-16 of IGI Airport.
- v) DIAL’s letter no. DIAL/2016-17/CEO-Office/464, dated June 20, 2016 addressed to Chairman, AAI – requesting to make available the Subject Land latest by 2019 by terminating the HCI Lease Agreement as the land is required for development of apron and night parking stands for aircrafts by 2021.
- vi) MoCA’s letter no. AV.24011/13/2016-AD, dated August 22, 2016 addressed to Chairman, AAI – stating the airside development works viz Apron, Night Parking stands on the Subject Land and allowing AAI to terminate the HCI Lease Agreement by issuing a 12 months’ notice.
- vii) DIAL’s letter no. DIAL/2016-17/CEO-Office/1127, dated October 06, 2016 addressed to Chairman, AAI – communicating the requirement of Subject Land by 2019 and requesting to terminate the HCI Lease Agreement.
- viii) AAI’s letter no. AAI/LM (NR)/Centaur Hotel/2016/3217-23, dated November 08, 2016 addressed to MD, HCI – communicating termination of the HCI Lease Agreement and advising to handover the Subject Land on expiry of 12 months’ notice.
- ix) MoCA’s letter no. AV-18050/245/2015-AI, dated April 17, 2017 addressed to MD, HCI – allowing to retain the Subject Land till March, 2019 and advising to take all necessary action to handover the properties to AAI/DIAL after the above mentioned date.
- x) AAI’s letter no. AAI/LM/NR/Centaur Hotel/2016/380, dated May 01, 2017 addressed to MD, HCI – communicating the extension of notice period upto March 31, 2019 and advising to make available the premises to AAI by April 01, 2019.
- xi) MoCA’s letter no. AV-18050/245/2015-AI, dated December 10, 2018 addressed to CMD, Air India – communicating to settle the matter of termination of HCI Lease Agreement between AAI and AI as per existing Agreement.

- xii) DIAL's letter no. DIAL/2018-19/LM/2249, dated March 26, 2019 addressed to JS, MoCA – communicating the additional parking stands i.e. 48, planned to develop in the coming 2-3 years and requesting for making available the on the Subject Land.
- xiii) MoCA's letter no. AV.24011/13/2016-AD, dated March 26, 2019 – circulating Minutes of the Meeting held on March 26, 2019 – recording the requirement of Subject Land by DIAL by December 31, 2019 – recording the requirement of Subject Land by DIAL by December 31, 2019 and requesting HCI to handover the land to AAI by November 30, 2019.
- xiv) MoCA's letter no. AV.18050/245/2015-AI, dated April 15, 2019 – circulating the Minutes of meeting held on April 9, 2019 – JS, MoCA directed that HCI should take appropriate actions to vacate the Subject Land well before December 31, 2019 as the land is required by DIAL by December 31, 2019.
- xv) Minutes of the Meeting held on May 02, 2019 circulated by MoCA – decision taken on valuation of properties of HCI and directed HCI to provide all relevant documents to DIAL.
- xvi) MoCA's letter no. AV.18050/245/2015-AI, dated July 30, 2019 – circulating minutes of meeting dated July 26, 2019 - ruling out the option to provide alternate land at IGI Airport and directed HCI to work out their demand for compensation.
- xvii) Minutes of the Meeting held on August 28, 2019 circulated by MoCA – mentioned the letter dated August 09, 2019 submitted by HCI to AAI and advising HCI to clarify the amount of compensation required.
- xviii) MoCA's letter no. AV.18050/245/2015-AI, dated September 20, 2019 – circulating the minutes of meeting held on September 19, 2019 – discussions held on amount of compensation to be paid to HCI for vacation of the Subject Land.
- xix) DIAL's letter no. DIAL/2019-20/CEO Office/1071, dated October 19, 2019 addressed to Chairman, AAI – stating the immediate requirement of Subject Land for airport development and requesting to decide the compensation as per terms of HCI Lease Agreement.
- xx) MoCA's letter no. AV.18050/245/2015-AI, dated November 05, 2019 – circulating the minutes of the meeting held on November 04, 2019 – advising AAI to examine the requirement of land for Aeronautical purpose and appointment of sole arbitrator, in case the land is required.
- xxi) DIAL's letter no. DIAL/2019-20/CEO Office/1308, dated November 28, 2019 addressed to Chairman, AAI – communicating 'no objection' for referring the compensation payment matter to a sole arbitrator as per HCI Lease Agreement

as per the requirement of land for airport development was a settled position among all parties involved in this matter.

Dear Sir,

This has reference to various communications as mentioned above exchanged between MoCA, AAI, Air India, HCI and DIAL and various meetings held at MoCA on the subject matter.

We have understood that AAI is proposing to allow HCI to continue to be in possession of Subject Land, in contradiction of the termination under the HCI Lease Agreement, the OMDA and DIAL Lease Deed. In this regard we submit as under:

DIAL has been communicating to AAI and MOCA, the requirement of the Subject Land for the development of Apron and Night Parking Stands for Aircrafts (“**Aviation Facilities**”) at the IGI Airport since 2016. As per Master Plan 2016 document, the Aviation Facilities were planned on the Subject Land as a part of Phase 4 development of IGI Airport, to be commenced in financial year 2025-26 to meet the growing demand and will cater upto financial year 2033-34.

We wish to bring to you notice that though the Master Plan 2016 of IGI Airport has forecasted the passenger traffic as 54.07 million by FY 2018-19, however the actual traffic handled was 69.23 million. This reflects an additional traffic of 26.6% over the Master Plan 2016 forecasted traffic. Considering the significant passenger growth, DIAL had entrusted L&B (master planning consultant) to re-assess the airport capacity and the required infrastructure to meet the growing traffic demand.

The year wise forecasted and actual passengers and ATMs at IGI Airport for the last three financial years and the revised forecast from 2020-21 as per the L&B Capacity Assessment Study (on-going) are presented below for your ready reference:

Table – A – Passenger Traffic (in million)

Financial Year	Annual Traffic		Absolute Increase wrt Master Plan	% Increase wrt Master Plan
	Master Plan Forecast	Actual/revised forecast		
2016-17	46.87	57.70	10.8	23.1

2017-18	50.69	65.69	15.0	29.6
2018-19	54.70	69.23	14.5	26.6
2019-20	58.82	71.10*	12.2	20.7
2020-21	63.09	78.10*	15.0	23.8
2021-22	67.43	85.91*	18.5	27.4
2022-23	74.73	94.50*	22.8	31.7
2023-24	75.93	103.95*	28.0	36.9
2024-25	80.06	114.35	34.3	42.8

* As per L&B forecast – IGIA – Capacity Study 2019 (on-going)

Table – B – Annual ATMs

Financial Year	Annual ATMs			
	Master Plan Forecast	Actual/ revised forecast	Absolute Increase wrt Master Plan	% Increase wrt Master Plan
2016-17	3,49,600	3,97,799	48,000	13.7
2017-18	3,75,700	4,41,299	65,000	17.4
2018-19	4,03,600	4,60,429	56,829	14.1
2019-20	4,30,600	4,72,231	41,631	9.70
2020-21	4,58,400	5,19,455**	61,055	13.3
2021-22	4,85,500	5,71,400**	85,900	17.7
2022-23	5,12,200	6,28,540**	116,340	22.7
2023-24	5,38,300	6,91,394**	153,094	28.4
2024-25	5,62,900	7,60,533**	222,223	41.3

*** Forecasted ATMs based on L&B IGIA Capacity Study 2019 (on-going)*

It can be observed from the above data that there is a significant increase in the Passengers as well as ATMs compared to the Master Plan forecasted values for the last three consecutive years, thereby necessitating the creation of aircraft parking facilities along with Phase 3A facilities instead of phase 4. Accordingly, aircraft parking facilities has to be developed in the land parcel of centaur hotel during the implementation of Phase 3A i.e. in the Financial Year 2020-21 and 2021-22.

DIAL has already handled 33 million number of passengers in the first half of financial year 2019-20 and expecting to handle 71 mppa by March 2020. L&B has estimated the number of aircraft stands required for meeting the traffic demand of 78mppa by 2021 and 100 mppa by 2024. The number of stands required by 2021 and 2024 is presented in below table.

Table – C – Stands Requirement

Financial Year	Master Plan 2016 forecast	available	Requirement as per revised forecast by L&B @ 10% traffic growth	Shortage
2020-21	143	181	199	18
2023-24	168 (2025/26)	193*	236	43

** By 2022, with the completion of phase 3A, IGIA will have 193 stands*

As per the L&B Capacity study, by 2020-21, the total stands requirement is 199 against the current 181 stands. Assuming the enhanced average overall throughput of stands at IGIA from the current 3,88,166 pax / year to 4,25,000 pax/year by 2024, 236 stands are required to meet the 100mppa traffic demand by 2023-24. After completion of phase 3A by 2022, the available stands would be 193. Therefore, the 43 more stands are to be made available by year 2024.

In view of the expected traffic growth rate upto 2024-25, there is a need for enhancement of airside infrastructure commensurate with the above growth.

The need to develop more night parking stands was communicated to AAI and MoCA vide letter dated June 20, 2016, October 6, 2016 and March 26, 2019. Accordingly, DIAL has planned to develop 43 new parking stands by using the land in and around the Subject Land.

Since the year 2016, there has never been any doubt or concern or objections expressed by MoCA / AAI/ HCI/ AI on the requirement of Subject Land parcel by DIAL by December 31, 2019. Accordingly, MoCA through its letter no. AV 24011/13/2016-AD, dated 22-08-2016 categorically advised AAI to terminate HCI Agreement by giving 12 months' notice as the said land parcel is requirement for airside development namely apron and night parking. In pursuance of the advise from MoCA, AAI issued termination notice vide its letter no. AAI/LM (NR) Centaur Hotel/2016/3217-23 dated 08-11-2016 advising HCI to handover the subject land to DIAL required for airport development. These developments and subsequent correspondence from AAI to HCI and MoCA clearly established the need and necessity of land parcel of Centaur Hotel for airport development by way of aircraft parking facilities. In none of the meetings held at MoCA on several dates including on 26.03.2019, 09.04.2019, 02.05.2019, 26.07.2019, 09.08.2019, 19.09.2019, there was any concern or query raised by MoCA nor AAI/HCI/AI on the land requirement for airport development.

It is pertinent to mention that Subject Land, as leased to HCI for Centaur Hotel and Chefair is included in the list of Existing Leases in the Schedule 28 of OMDA. Further, as per clause no. 2.1.2 of DIAL Lease Deed, *"on the expiry or early termination of the Existing Leases any land under such Existing Leases, shall from the date of expiry or early termination of the Existing Leases, form an integral part of the Demised Premises and JVC shall enjoy a leasehold interest over the same"*. Upon expiry of notice period [i.e., on March 31, 2019] as served by AAI on HCI, the said HCI Lease Agreement stood terminated and by virtue of the provision of aforesaid clause 2.1.2 of DIAL Lease Deed, the Subject Land, i.e. 45,000 sq. mtr. has already become a part and parcel of Demised Premises on the said date of expiry of notice period. Allowing HCI to continue the possession and operation on the Subject Land would be contrary to the provision of the DIAL's Lease Deed. Besides, continuation of HCI to possess the Subject Land would be in contravention of its HCI Lease Agreement and such unlawful possession will impact the development of Aviation Facilities.

In view of the above circumstances, and in the interest of airport development required at IGI airport, the stakeholders namely AAI and MoCA need to support DIAL in terms of making availability of Subject

Land for the airport development now itself as per the process already initiated starting from August 2016. In the normal circumstances, had it been the case of some other entity, continuous non-payment of lease rent for the last 17 years would have caused the termination of the lease and taking back the possession of the land parcel. However in the case of HCI, though it has violated the provisions of the HCI Lease Agreement due to non-payment of lease rent in the past 17 years, as a special case being a subsidiary of Air India, stakeholders have tried to see what best can be done for HCI to continue, though such non-payment was a sufficient cause to terminate the lease of HCI. Having stated so, the contentious issue of payment of compensation post termination of lease may be settled between AAI and HCI as per the HCI lease Agreement. But during the pendency whereof, HCI cannot continue to possess the Subject Land. It must vacate the Subject Land immediately.

Under the above explained circumstances, in pursuance of the decision taken under Chairmanship of Secretary, MoCA and as stated by us in our letter no. DIAL/2019-20/CEO Office/1308 dated 28-11-2019 addressed to MoCA and AAI for referring the compensation issue to a sole arbitrator, the matter be taken forward expeditiously.

Thanking you,

For **Delhi International Airport Ltd.**

K Narayana Rao
Deputy Managing Director (GMR Group)

CC to:

- a) The Secretary, MoCA, Rajiv Gandhi Bhawan, Safdarjung, New Delhi – 110 003.
- b) Chairman & Managing Director, Air India Limited, Airlines House, 113, Gurudwara Rakabgunj Road, New Delhi – 110 001.
- c) The Managing Director, Hotel Corporation of India, Airline House, 113 Gurudwara Rakabgunj Road, New Delhi – 110 001.
- d) Executive Director (LM), AAI, Third Floor, Block No.'C' Safdarjung, New Delhi – 110 003.
- e) Regional Executive Director, AAI, Operational Office (NR), Old Gurugram Road, IGI Airport, New Delhi – 110 037."

26. In the meanwhile, and acting upon the decision taken by MoCA and

AAI permitting it to continue to retain the premises and the recall of the termination notice, HCI addressed a letter dated 27 February 2020 to the petitioner seeking permission for installation of a PNG connection. It also apprised the petitioner of the decision of MoCA and AAI permitting it to retain the premises till the expiry of the lease term. The petitioner asserts that it was taken completely by surprise since it had received no independent intimation of any decision taken by MoCA or AAI permitting the respondent No.3 to continue to retain possession of the demised premises. The petitioner thereafter and by way of a letter of HCI dated 24 July 2020 was for the first time apprised of the communication of 20 December 2019. Aggrieved by the aforesaid action of the respondents, the petitioner addressed a communication to HCI taking the stand that since the lease itself had come to be terminated by AAI in light of its notice dated 08 November 2016, it had become part of demised premises as per Clause 2.1.2 of the DIAL Lease Deed and thus called upon it to vacate the leased premises and clear all outstanding dues. HCI on 16 September 2020 issued a notice inviting tenders for appointment of O&M Contractors for management of the Centaur Hotel. It was at this stage that the instant writ petition came to be filed.

27. It may lastly be noticed that on 21 February 2021 HCI addressed a letter to AAI to withdraw the termination notice of 08 November 2016. Acceding to that request AAI in terms of its letter of 31 March 2021 proceeded to withdraw the termination notice. The letter of 31 March 2021 is extracted hereinbelow: -

“No. AV21012/85/2010-LM

31 March, 2021

Chief Executive Director
Deepak Khullar
Hotel Corporation of India
Centaur Hotel Premises,
IGI Airport,
New Delhi-110037

Reference:-

- 1) Termination Notice bearing no. AAI/LM(NR)/Centaur Hotel/2016/ 3217-18 dated 08.11.2016
- 2) AAI letter bearing no. AAI/LM/NR/Centaur Hotel/2016/380 dated 01.05.2017
- 3) Minutes of the Meeting held on 26.03.2019 communicated by Ministry of Civil Aviation vide. letter no. AV.24011/13/2016-AD dated 26.03.2019
- 4) Minutes of Meeting held on 04.11.2019 communicated by Ministry of Civil Aviation vide letter no. AV.18050/245/2015-AI dated 05.11.2019
- 5) Ministry of Civil (MoCA) communication sent to HCI bearing no. AV.18050/245/2015-AI dated 20.12.2019.

Subject: Reply to HCI letter bearing no. CEO/HCI/025 dated 27.02.2021 seeking withdrawal of Termination Notice dated 08.11.2016

Sir,

This is with reference to the letter of HCI dated 27.02.2021 seeking withdrawal of Termination Notice dated 08.11.2016. HCI had entered into a lease agreement for land admeasuring 45,000 sqmts. with AAI dated 21.03.2002 for a period of 30 years w.e.f. 01.04.2002 (expiring on 31.03.2032) for establishment of Centaur Hotel and Chefair Flight Catering.

2. Delhi International Airport (P) Limited (DIAL) is a Joint Venture Company formed between GMR & AAI for operation, management and development of IGI Airport DIAL, vide letter bearing no. DIAL/2016-17/CEO Office /464 dated 20.06.2016 addressed to AAI with endorsement to Secretary, MoCA had informed that the leased premises to HCI were required for IGI airport development as per the Master Plan 2016.

Subsequently, AAI vide letter bearing no. AAI/LM (NR)/Centaur Hotel/2016/3217-18 dated 08.11.2016 had issued a Termination Notice to HCI under Clause 18 of the lease agreement to vacate the leased premises within a period of 12 months.

3. Thereafter, HCI vide letter bearing no. MD/HCI/DEL/137 dated 23.11.2016 had stated that the notice period of 12 months does not allow reasonable time to fully or even partially recover the investment and that it will severely affect 450 permanent employees working in both the units. HCI had thus requested AAI to review the said Termination Notice.

4. The matter was further deliberated upon in meetings held at the level of MoCA wherein the representatives of AAI, HCI & DIAL were present viz a viz the correspondence exchanged among MoCA & HCI, and it was decided by MoCA to allow HCI to put to commercial use of the leased premises at least till end of 2019.

5. Accordingly, AAI vide communication no. AAI/LM/NR Centaur Hotel /2016/380 dated 01.05.2017 informed HCI that the notice period (i.e. issued on 08.11.2016) stood extended upto 31.03.2019 (instead of 07.11.2017) by when HCI had to vacate the leased premises and make available the premises to AAI by 01.04.2019.

6. Further, meeting was chaired by Secretary, MoCA on 26.03.2019 and attended by the representatives of AAI, HCI & DIAL where DIAL had informed that they need the vacant leased premises by 31.12.2019 and HCI was requested to handover the leased premises to AAI by 30.11.2019.

7. It is pertinent to mention here that HCI has not paid the dues payable as per the terms of the lease agreement on account of lease rental, royalty /MGA and interest on delayed payment, which was communicated to HCI from time to time.

8. In the meantime, HCI has also raised the issue of provision of alternate land or payment of compensation in accordance with clause 19 (B) of the lease agreement.

9. Further, meetings were held before MoCA and attended by the representative of AAI, HCI & DIAL for exploring settlement of the issues stated in para 7 above. In the meeting held on 04.11.2019 chaired by Secretary (CA), MOCA, directions were issued to AAI to review the requirement of the leased premises for aeronautical development and for appointment of sole arbitrator for resolution of issues between AAI & HCI in case the leased premises are required by AAI for aeronautical development.

10. Accordingly, AAI reviewed the land requirement as per Master Plan 2016 wherein it was projected that the leased premises would be required for airport development in Phase -4 between 2026-2034. Since the agreement between AAI & HCI was expiring in 2032, AAI communicated to MoCA that HCI may be allowed to continue the lease upto the expiry of the present lease agreement and to handover the land to AAI positively upon expiry of the lease period (i.e. 31.03.2032).

11. Thereafter, MOCA vide letter no. A.V.18050/245/2015-AAI dated 20.12.2019 communicated to HCI as under:

- a) AAI/DIAL require this land for aeronautical purpose in Phase -4 development as per Master Plan submitted by DIAL in 2016 wherein the development is proposed during 2026-2034. Therefore, HCI may use the land/structure up to the expiry of existing lease period.
- b) Since HCI has defaulted in payment of AAI dues from 2002 onwards as per terms of agreement, the arbitrator may be appointed as per provision of existing agreement wherein chairman, AAI is empowered to appoint the arbitrator. HCI to request AAI for appointment of arbitrator.
- c) Ministry's letter of even no dated 17.04.2017 wherein HCI was allowed to retain the land parcel of Centaur Hotel & Chefair Flight catering Delhi at IGI Airport till March, 2019 may therefore be treated as withdrawn.

12. In view of the facts stated above and keeping in view the Master Plan 2016 wherein the leased premises are required for use for airport development only in Phase 4 (i.e. 2026-2034), and by virtue of issuance of MOCA's letter dated 20.12.2019 the said Termination Notice has become otiose with effect from 20.12.2019.

13. It is hereby reiterated that outstanding dues to the extent of approx.. Rs.133.17 crores (Rupees one hundred and thirty three crores and seventeen lacs) are payable in terms of lease agreement as communicated by AAI vide letter bearing no. AV.21012/85/2010-LM dated 04.02.2021. It is pertinent to note that HCI has only furnished a cheque of Rs.20 Lacs till date and also not requested AAI for appointment of arbitrator as directed by MoCA in its letter dated 20.12.2019. HCI is hereby once again called upon to clear the total outstanding dues as given in AAI letter dated 04.02.2021 within a period of 30 days from the date of this letter, failing which AAI will be constrained to initiate appropriate legal proceedings including but not limited to arbitration in accordance with the lease agreement against HCI. It is further clarified that withdrawal of the said

Termination Notice is without prejudice to any rights of AAI arising out of the lease agreement.

This is issued with the approval of the Competent Authority.

Yours faithfully,

(V Ramanathan)
General Manager (LM)”

D. DIAL SUBMISSIONS

28. Mr. Srinivasan addressing submissions on behalf of the petitioners has firstly contended that the directive of MoCA as embodied in the minutes of the meeting held on 04 November 2019 is wholly arbitrary and represents a complete *volte face* taken by it bearing in mind its decision as embodied in its communication of 22 August 2016. According to learned Senior Counsel, MoCA had in the aforesaid communication unequivocally accepted the assertion of the petitioner that the land in question was urgently needed for the purposes of airport development. Mr. Srinivasan laid stress upon the fact that on due consideration of the eminent requirement of the leased land parcel, MoCA had proceeded to direct AAI to get the same vacated within a period of twelve months. In view of the above, it was his submission there was no justification for the change in position as was struck by MoCA and AAI.

29. Learned Senior Counsel submitted that between 22 August 2019 and 04 November 2019, there was no change in circumstance which justified MoCA framing a direction calling upon AAI to re-examine the issue of

whether the land was required for aeronautical purposes. For the aforesaid reasons, Mr. Srinivasan urged that MoCA clearly acted in excess of its authority in observing that in case AAI ultimately comes to conclude that the land is not required for aeronautical purposes, permission may be accorded to HCI to hold on to the leased premises for the remainder period of the term.

30. It was submitted that the petitioner had in terms of a detailed letter of 28 November 2019 placed its objections on the record and apprised AAI of its stand that the directions as embodied in the minutes of 04 November 2019 were not only contrary to the provisions contained in the OMDA but would also adversely impact the plans for airport development which had been drawn. It was also pointed out that the aforesaid communication of the petitioner had duly brought to the attention of MoCA, the exponential increase in air and passenger traffic and thus there was no justification for MoCA having advised AAI to revisit and re-examine the question of whether the leased premises were required for airport development. The petitioner had also in terms of the said communication pointed out that HCI could not have been granted the permission to retain the leased land since it had in light of the termination notice issued by AAI ceased to be part of existing leases and would fall within the scope of demised premises as defined in the OMDA.

31. Mr. Srinivasan also laid stress on the data and information which was set out in the communication of 28 December 2019 addressed to AAI to submit that the second respondent despite being a member of the

consortium and a stakeholder in DIAL chose to completely ignore the imperatives which underlined and informed the insistence of the petitioner for the lease land being handed over. Mr. Srinivasan also took objection to the communication of 20 December 2019 and submitted that the decision taken by MoCA permitting retention of the leased premises by HCI up to 31 March 2032 was not even communicated to the petitioner here. It was submitted that the petitioners came to know of the aforesaid fact only when a copy of the said communication was provided to it by HCI on 24 July 2020.

32. It was further pointed out that even the withdrawal letter of 31 March 2021 was not marked to the petitioner. The aforesaid action of the respondents according to Mr. Srinivasan is also liable to be viewed in light of the fact that the aforesaid communication came to be issued and AAI proceeded to withdraw the termination notice after the instant writ petition had come to be preferred in January 2021.

33. Assailing the action of the respondents in granting the right of retention and withdrawal of the termination letter, Mr. Srinivasan submitted that the aforesaid act of AAI was wholly without jurisdiction and in clear violation of the provisions of OMDA. It was submitted that once the termination had come into effect, the land in terms of clause 2.1.1 read with 2.1.2 of the DIAL Lease Deed came to form an integral part of demised premises with DIAL being conferred the unfettered right to the leasehold interest embodied in the same and to hold and utilize the lease land for the remainder of its term. According to Mr. Srinivasan, the moment the lease

came to be terminated it ceased to be part of existing leases set out in Schedule 28 of OMDA and consequently AAI retained no right to either recall the termination letter or to permit HCI to retain the leased premises for the remainder of the term.

34. It was also highlighted that HCI itself had accepted the factum of termination and in fact had only raised the issue of compensation that was payable to it. It was in the aforesaid backdrop that learned Senior Counsel submitted that the action of AAI as well as MoCA is clearly violative of the rights as conferred on DIAL in terms of the provisions contained in the OMDA as well as the DIAL Lease Deed quite apart from being a decision which was patently arbitrary and illegal.

35. Continuing along this line, Mr. Srinivasan submitted that on an early termination of the HCI Lease Deed, the land comprised therein, automatically came to vest and form part of the premises leased to DIAL. In view of the aforesaid, it was submitted that AAI stood denuded of any right or authority to either deal with the same or resurrect the leasehold interest which was claimed by HCI.

36. It was then submitted that Clause 18 of the HCI Lease Deed cannot possibly be interpreted to mean that the termination would come into effect twelve months after the notice of termination. According to Mr. Srinivasan, the lease stood determined the moment, the termination notice came to be issued by AAI. According to learned Senior Counsel, the period of 12 months was factored in the lease only to enable HCI to vacate the land/building/structures and installations that may have existed thereon. Mr.

Srinivasan contended that this is clearly evident not just from the plain language of Clause 18, but also stands duly fortified from the provisions contained in sub-clause (B) thereof with the Lease Deed clearly stipulating that the lessee agrees to remove structures and installations constructed by it on the leased premises within the prescribed period of 12 months.

37. Clause 18 of the HCI Lease Deed is reproduced hereinbelow: -

“18. If the Leased Premises or any part thereof shall during the Lease Period be required by the Lessor for the purpose of Airport Development (in the nature of runaways, taxiways, aprons or terminal buildings), the Lessor shall be entitled by giving 12 months (twelve months) notice in writing to determine the Lease Agreement and call upon the Lessee to vacate the land/building/structures installations PROVIDED THAT the Lessor shall at the time of the service of such notice shall either

(A) Offer to the Lessee another plot of land next to the said airport for erection of similar buildings/ structure/ and/or installations for use for the purpose and Businesses of the Lessee on a fresh lease agreement comprising similar covenants relating to the approval of plans and additions or alterations to the said structure and installations PROVIDED FURTHER THAT the amount payable by the Lessee under such fresh lease agreement during the remaining Lease Period under this Lease Agreement shall not exceed the amount which would have been payable for the remainder of the Lease Period in respect of the Leased Premises under this Lease Agreement AND in addition pay a compensation calculated in accordance with clause 19(A) of this Lease Agreement; or

(B) Offer to the Lessee compensation calculated in accordance with clause 19(B) of this Lease Agreement AND in addition shall pay a sum calculated in accordance with the following equation:

Sum payable by the Lessor to the Lessee = $A * B$

Where:

A= the highest annual profit in a period of three years immediately preceding the determination of the Lease Agreement;

B= the number of years remaining in the Lease Period immediately prior to the expiry of the Lease Agreement.

The Lessee hereby agrees that within the prescribed period of 12 months or any extension granted thereto the Lessee shall remove the structures and installations constructed by him on the Leased Premises as required by such notice or notices and shall level and restore the land to its original condition and the Lessee shall surrender and peacefully give up, and hand over possession to the Lessor of the Leased Premises as required in such notice UPON due compliance by the Lessor with the provisions of this clause 18.

Notwithstanding anything to the contrary contained in this clause 18, in the event that upon issue of a notice by the Lessor as aforesaid, the Lessor offers to the Lessee an alternate plot or plots of land as described in (A) above, the Lessee shall in its absolute discretion, be entitled to refuse any such land so offered and require the Lessor to compensate the Lessee on the basis of, and in accordance with the provisions of clause 18(B) above of this Lease Agreement.”

38. In the alternative and without prejudice to the above, Mr. Srinivasan contended that even if it were assumed for the sake of argument that the termination would come into effect twelve months post the issuance of the termination notice dated 08 November 2016 and thus on 08 November 2017, that too would not sustain the impugned action as taken by the respondents. Mr. Srinivasan underlined the fact that both the decision of MoCA as embodied in the minutes of 04 November 2019 as well as the letter dated 20 December 2019 and the withdrawal letter of 31 March 2021 were decisions taken after 08 November 2017. According to Mr. Srinivasan, post 08 November 2017, both HCI and MoCA were rendered functus officio and could not have taken any decision to perpetuate the interest of HCI in the lease in question or to withdraw the termination notice.

39. It was further argued that the termination of the lease was also not contingent or dependent upon either the payment of compensation or the identification of alternative land and its allotment in favor of HCI. According to learned Senior Counsel, those aspects, in any case, could not have impeded or entrenched upon rights which came to accrue in favor of the petitioner consequent to an early termination of the HCI Lease Deed.

40. Referring to the provisions made in Clause 19 of the HCI Lease Deed Mr. Srinivasan submitted that as would be evident from the provisions incorporated in that clause, the issue of determination of compensation and the allotment of alternative land was one which could have at best given rise to claims which HCI could have raised against AAI. In any case, according to learned Senior Counsel, even if those issues remained unresolved, that would not detract from the termination which had in terms of the lease provisions, in any case, come into effect.

41. Assailing the basis for withdrawal of the termination notice, Mr. Srinivasan submitted that OMDA was an agreement executed by AAI in favor of the petitioner based on the statutory provisions contained in Section 12A of the **Airports Authority of India Act, 1994**¹⁰. Learned Senior Counsel highlighted the fact that OMDA obliged DIAL to plan, develop, construct and maintain IGIA and the said concession in fact placed DIAL in the shoes of AAI itself. Referring to Article 2 of OMDA, it was highlighted that AAI in terms thereof had granted DIAL the exclusive right and authority to undertake the functions of the said statutory authority and

¹⁰ Act

which included functions relating to operation, maintenance, development, design, construction, upgradation, modernization and management of IGIA.

42. Turning then to Article 8.3 of the OMDA, it was submitted that it was the principal obligation of DIAL to draw and prepare a Master Plan as well as the major development plan for IGIA. Referring to the provisions contained in Clauses 8.3.1-8.3.8, Mr. Srinivasan submitted that it was the principal responsibility of DIAL to draw up a Master Plan based upon the overall development strategy for IGIA, traffic forecasts and the vision of the airport itself over a twenty-year cycle. It was further submitted that in terms of the aforementioned provisions of the OMDA, the Master Plan was to be merely placed before AAI for its information and before MoCA for its review and comments. It was additionally submitted that while the original Master Plan was to cover a period of 20 years, Clause 8.3.5 conferred the right upon DIAL to update, review and revise the same every ten years. Learned Senior Counsel also laid stress upon the proviso to Article 8.3.5 which envisaged updation of the Master Plan even at shorter intervals if DIAL ultimately found that traffic growth was such as warranted more frequent updates or for any other reasonable reason. Mr. Srinivasan submitted that the detailed data and facts which stood embodied in the letter of DIAL clearly established the imperatives underlying its insistence that the HCI lease land be handed over to it.

43. It was pointed out that the Master Plan 2016 of IGIA was itself based on a Passenger Traffic Forecast of 54.07 million by Financial Year 2018-2019 when in fact the actual traffic handled in that period had itself reached

69.23 million. Mr. Srinivasan submitted that the aforesaid data clearly proved that IGIA had by that time itself handled traffic 26.6% in excess of that forecasted for the aforesaid period. Referring to the data set forth in its communication of 20 December 2019, it was highlighted that the increase in traffic as forecasted between 2021 to 2024-25 had risen from 23.8% to 42.8%. The communication of 28 December 2019 also laid out the imperative requirement of development of 43 new and additional parking stands. The revised Master Plan envisaged the additional parking stands being created over land which stands comprised in the HCI Lease Deed.

44. It was highlighted that the need to revisit and revise the infrastructure requirements was one which was duly highlighted in the various communications which were issued by DIAL including those dated 22 July 2015, 31 December 2015 & 22 April 2016. Mr. Srinivasan further laid stress upon the fact that MoCA itself had accepted the aforesaid assessment as would be evident from its letter of 22 August 2016. It was in the aforesaid light that MoCA had directed AAI to take appropriate steps for determination of the HCI Lease Deed. It was further pointed out that HCI itself in its letter of 23 November 2016 had duly acknowledged the receipt of MoCA's letter dated 06 June 2016 in terms of which it had been categorically intimated that the Centaur Hotel land parcel in terms of the Master Plan for IGIA would be required by 2019 itself as opposed to the original estimation of the same forming part of the fourth phase of the development plan which was to stretch over the years 2026 to 2034.

45. Referring the Court to the said letters, it was submitted that even in

these communications HCI did not question the assessment or estimation of the petitioner of the requirement of the land and only raised the issues of the twelve-month period not being reasonable or sufficient to enable HCI to take appropriate steps for relocation or to recoup its investments. According to Mr. Srinivasan, in any case, once the revision of the Master Plan had been duly accepted by both MoCA and AAI, there existed no justification for them to turn around and thereafter permit HCI to retain the land parcel till 2032.

46. It was in the aforesaid backdrop that Mr. Srinivasan submitted that the decision of MoCA requiring AAI to re-examine the aforesaid issues as well as to re-evaluate whether the land was required for aeronautical purposes was not only arbitrary but also clearly whimsical and illegal. The communication of MoCA dated 20 December 2019 was also assailed on similar lines with Mr. Srinivasan contending that the acceptance of AAI's contention that the HCI leased land would be needed only in 2026-2034 is contrary to the record and the revised development plans which had been duly accepted and acknowledged by the respondents.

E. CONTENTIONS OF HCI

47. Leading submissions on behalf of HCI, Mr. Siddhartha Dave, learned Senior Counsel firstly contended that the HCI Lease Deed was an instrument which independently created rights in its favor and thus could not have been interfered with based on directives issued by the petitioner. Mr. Dave laid emphasis on the fact that the HCI Lease Deed created a separate and independent relationship between it and AAI and therefor the

rights which flow to HCI from the said Lease Deed could not be said to be subject to the provisions made either in the OMDA or the DIAL Lease Deed. It was submitted that the Lease Deed itself created an interest in favor of HCI which was to continue till 2032 and therefore MoCA as well as AAI were clearly justified in permitting the retention of the premises.

48. Assailing the contentions addressed on behalf of the petitioner with respect to the notice of termination, Mr. Dave submitted that the termination could not be said to have come into effect prior to the twelve-month period which is stipulated under Clause 18 coming to an end. The submission essentially was that the termination would be deemed to have come into effect only twelve months after the issuance of the termination notice. In view of the above, it was his submission that it would be incorrect for Clause 18 and the act of termination being viewed as resulting in an automatic vesting of the leased premises in DIAL the moment that termination notice came to be issued. Continuing along this thread, it was further urged that Clauses 18 and 19 of the HCI Lease Deed clearly required and obligated AAI to specify the alternate land which was proposed to be offered to HCI as a consequence of termination of its lease interest. It was also argued that in terms of the aforementioned clauses, AAI was also obliged to specify in the alternative the compensation which was proposed to be offered to HCI in lieu of early termination. Mr. Dave laid stress on the fact that prior to the passing of the impugned orders, HCI had neither been offered alternate land nor had it been paid the compensation in accordance with the formula specified in the HCI Lease Deed. In view of the above, it was his submission that it cannot possibly be argued or urged

that the lease interest of HCI had come into an end on 08 November 2016 when the termination notice was issued.

49. It was then submitted that the leased premises stood incorporated and formed part of the Fourth Phase of IGIA development which was to roll over the period 2026-2034. In view of the above, it was submitted that both AAI as well as MoCA rightly took into consideration the aforesaid factors while proceeding to recall the directive for HCI to vacate the leased premises. In summation, it was urged that the petitioner, in any case, cannot be recognized to have a locus or the right to challenge decisions taken by MoCA or AAI based upon the provisions contained in the HCI Lease Deed.

F. THE STAND OF AAI

50. Appearing for AAI, Mr. Nataraj, the learned ASG submitted that the writ petition essentially seeks adjudication of contractual disputes. According to the learned ASG, Article 226 of the Constitution can be invoked only in case of statutory contracts. The learned ASG contended that disputes which stem from actions taken by contracting parties under the contract cannot form subject matter of consideration in a writ petition. In support of the aforesaid submissions, Mr. Nataraj, firstly placed reliance upon the following principles as enunciated by the Supreme Court in **Radhakrishna Agarwal v. State of Bihar**¹¹:-

“10. It is thus clear that the *Erusian Equipment & Chemicals Ltd. case* involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its

¹¹ (1977) 3 SCC 457

executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.

11. In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, “prerogative” powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Article 226 of the Constitution could be invoked.

21. In the cases before us, allegations on which a violation of Article 14 could be based are neither properly made nor established. Before any adjudication on the question whether Article 14 of the Constitution could possibly be said to have been violated, as between persons governed by similar contracts, they must be properly put in issue and established. Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been argued before the High Court. And, in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its

officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

51. Mr. Nataraj also drew the attention of the Court to the following passage from **Kerala SEB v. Kurien E. Kalathil**,¹²:-

“10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of

¹² (2000) 6 SCC 293

public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.”

52. Reliance in this respect was lastly placed upon the following observations as made by the Supreme Court in **Excise Commr. v. Issac Peter**¹³:-

“26. Learned counsel for respondents then submitted that doctrine of fairness and reasonableness must be read into contracts to which State is a party. It is submitted that the State cannot act unreasonably or unfairly even while acting under a contract involving State power. Now, let us see, what is the purpose for which this argument is addressed and what is the implication? The purpose, as we can see, is that though the contract says that supply of additional quota is discretionary, it must be read as obligatory — at least to the extent of previous year's supplies — by applying the said doctrine. It is submitted that if this is not done, the licensees would suffer monetarily. The other purpose is to say that if the State is not able to so supply, it would be unreasonable on its part to demand the full amount due to it under the contract. In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so,

¹³ (1994) 4 SCC 104

even if the contract is governed by statutory provisions, i.e., where it is a statutory contract — or rather more so. It is one thing to say that a contract — every contract — must be construed reasonably having regard to its language. But this is not what the licensees say. They seek to create an obligation on the other party to the contract, just because it happens to be the State. They are not prepared to apply the very same rule in converse case, i.e., where the State has abundant supplies and wants the licensees to lift all the stocks. The licensees will undertake no obligation to lift all those stocks even if the State suffers loss. This one-sided obligation, in modification of express terms of the contract, in the name of duty to act fairly, is what we are unable to appreciate. The decisions cited by the learned counsel for the licensees do not support their proposition. In *Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293] it was held that where a public authority is exempted from the operation of a statute like Rent Control Act, it must be presumed that such exemption from the statute is coupled with the duty to act fairly and reasonably. The decision does not say that the terms and conditions of contract can be varied, added or altered by importing the said doctrine. It may be noted that though the said principle was affirmed, no relief was given to the appellant in that case. *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] was a case of mass termination of District Government Counsel in the State of U.P. It was a case of termination from a post involving public element. It was a case of non-government servant holding a *public office*, on account of which it was held to be a matter within the public law field. This decision too does not affirm the principle now canvassed by the learned counsel. We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract. It is not as if the licensees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in

the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation. It is not necessary to say more than this for the purpose of these cases. What would be the position in the case of contracts entered into otherwise than by public auction, floating of tenders or negotiation, we need not express any opinion herein.”

53. Mr. Nataraj contended that while Article 14 and the duty of the State to act fairly may stand attracted at the pre-formation of contract stage, once the contract is entered into, any disputes arising therefrom are liable to be settled in accordance with the ordinary civil remedies which may be available and that in any case such disputes cannot form subject matter of consideration in a writ petition.

54. Turning then to the merits of the dispute, Mr. Nataraj firstly submitted that the decisions which stand impugned in the present writ petition are liable to be recognized as those taken mutually and arrived at after due deliberations between MoCA, DIAL, HCI and other stakeholders. It was contended that MoCA derives its authority and jurisdiction to oversee and administer the affairs relating to IGIA based upon the powers so conferred upon it in terms of Section 40 of the Act. According to Mr. Nataraj, MoCA was simply discharging the obligations placed upon it under the Act and assisting parties to arrive at a mutually acceptable resolution of the differences which had arisen. It was pointed out that although the termination notice was issued in 2016, the respondents took cognizance of the representation made by HCI on 17 April 2017 and upon an overall consideration of the stand expressed by parties, MoCA had

permitted it to continue to retain possession of the leased premises till March 2019. That extension was thereafter continued till 30 November 2019. However, subsequently and in the meeting which was held on 04 November 2019, MoCA had in clear and unequivocal terms called upon AAI to review the position bearing in mind the stand taken by HCI in its various communications which were exchanged. It was highlighted that based upon the representations that were received from HCI and the views expressed by the stakeholders in the course of the various meetings held in this regard, MoCA ultimately decided to permit AAI to independently examine and assess the imperatives of the HCI Leased Land being transferred. Learned ASG submitted that on an overall consideration of the representations that were received, AAI ultimately came to the conclusion that since the land was required only in the Fourth Phase, there was no eminent requirement to terminate the lease and hand over the land parcel to DIAL. According to Mr. Nataraj, the aforesaid decision taken upon a holistic examination of the attendant facts, merited no interference.

55. Mr. Nataraj further submitted that in light of the decisions which were taken in the meeting of 04 November 2019, AAI, as it was obliged to do, proceeded to examine whether the HCI Leased Land was required for aeronautical purposes. It ultimately came to conclude that the land in question formed part of the Fourth Phase Development Plan of IGIA and would thus only be required in 2026. It was further argued that AAI also took into consideration the fact that the HCI lease itself was to continue till 2032. According to the learned ASG, it was upon a comprehensive consideration of the aforesaid factors that AAI ultimately came to the

conclusion that the interest of all parties would stand balanced with HCI being permitted to retain the land till 2032 whereafter and in any case since the lease itself would have come to an end, the land could be transferred to DIAL for the purposes of implementation of the initiatives and objectives contained in the Fourth Phase development plan.

G. MoCA's RESPONSE

56. Mr. Jain learned CGSC firstly contended that MoCA was merely acting as a facilitator to enable DIAL, AAI and HCI to resolve the disputes which had arisen. One of the issues which arose was whether the decisions taken by MoCA could be recognized as being those taken by the authority constituted under the OMDA for the purposes of resolution of disputes. The said issue arose principally in light of the provisions contained in Clause 8.5.9 which has been extracted hereinabove and envisaged the constitution of the OIOC. On being queried further on this issue, the attention of the Court was also drawn to the communication of 13 June 2006 issued by MoCA which sets out the constitution of the OIOC. That communication reads thus: -

“ File No. AV 24011/004/2006-AAI
Government of India
Ministry of Civil Aviation
AD Section

“B” Block, Rajiv Gandhi Bhavan,
Safdarjung Airport
New Delhi-110 003
Dated: the 13 June 2006

Subject: Constitution of OMDA Implementation Oversight
Committee (OIOC) in respect of Delhi Airport

In accordance with Article 8.5.9 of Operation, Management & Development Agreement (OMDA) executed with the Delhi International Airport Private Limited (DIAPL), an OMDA implementation Oversight Committee (OIOC) under the chairmanship of Secretary, Civil Aviation, with following members is hereby constituted.

1. Additional Secretary and Financial Advisor, Ministry of Civil Aviation
2. Joint Secretary - in charge of Airports Authority of India in the Ministry of Civil Aviation.
3. Director General of Civil Aviation.
4. Chairman, Airports Authority of India.
5. Member (Planning) Airports Authority of India.
6. Member (Operations) Airports Authority of India.
7. Chairman, Delhi International Airport Private Limited.
8. Managing Director, Delhi International Airport Private Limited.

1. The OIOC could co-opt/invite any other persons required.
2. The OIOC shall be single point of contact for the Joint Venture Company (JVC) for Delhi Airport for all matters regarding any differences in the interpretation of the OMDA or major operational difficulties in implementing the project that are not being resolved in a timely manner The Terms of Reference of OIOC are as follows:
 - (i) OIOC may assist the JVC in case of major problems, which cannot be categorized as routine problems, faced by the JVC while obtaining various clearance during transition phase in connection with operation, management, development of the airport.
 - (ii) OIOC shall coordinate to ensure that the Ministry of Civil Aviation reviews and take appropriate action in a timely manner on the Master Plan and every Development Plan (s) submitted by the JVC for the airport as specified in the OMDA.
 - (iii) OIOC shall coordinate to ensure expeditious action by the relevant State Government of Delhi, and other Government of India agencies in the best interest of the airport. It may also coordinate to resolve any major disputes or difference of views amongst the users / stakeholders.
 - (iv) OIOC shall undertake to procure the execution of Memorandum of Understanding (MoU) between the Joint Venture Company and the Government of India agency/department viz. Customs,

Immigration Health, Plant, Quarantine and Animal Quarantine Services and oversea implementation thereof.

- (v) OIOC shall ensure that the Joint Co-ordination Committee and Airport Co-ordination Committee under the State Support Agreement (SSA) are set up in a timely manner.
- (vi) OIOC shall meet as often as may be required to review with the JVC any emerging issues and concerns with respect to the airport and oversee the development of the airport.

(Hemant Rao)

Director

Tel./Fax No. 24610386

1. Additional Secretary and Financial Advisor, Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Safdarjung airport, New Delhi.
2. Joint Secretary - in charge of Airports Authority of India in the Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Safdarjung airport New Delhi.
3. Director General of Civil Aviation, Directorate General of Civil Aviation, Opposite Safdarjung Airport, New Delhi.
4. Chairman, Airports Authority of India, Rajiv Gandhi Bhavan, Safdarjung airport, New Delhi.
5. Member (Planning) Airports Authority of India, Rajiv Gandhi Bhavan, Safdarjung airport, New Delhi.
6. Member (Operations) Airports Authority of India, Rajiv Gandhi Bhavan, Safdarjung airport, New Delhi.
7. Chairman, Delhi International Airport Private Limited, Fourth Floor, Birla Tower, 25, Barakhamba Road, New Delhi.
8. Managing Director, Delhi International Airport Private Limited, Fourth Floor, Birla Tower, 25, Barakhamba Road, New Delhi.

Copy to:

PS to HMCA/Sr. PPS to Secretary (CA)/PA to Director (HR)”

57. As would be evident from the contents of the communication of 13 June 2006, the OIOC was envisaged to comprise of officers attached to MoCA, AAI, the Director General of Civil Aviation and the representatives of DIAL. However, the composition and the list of participants who engaged in the deliberations which took place would clearly evidence that it did not strictly comply with or adhere to the composition of the OIOC as

envisaged in the communication of 13 June 2006. However, whether this factor would ultimately have a bearing on the challenge which stands raised is an issue which shall be dealt with in the latter parts of this decision.

58. On being queried further, Mr. Jain further candidly submitted that the last meeting of the OIOC was held on 23 April 2014 and that thereafter, the various meetings which took place were based on the principled decision taken by MoCA to intervene in the matter and to resolve the disputes which had arisen. The Court had also invited the attention of Mr. Jain to the original communication of MoCA dated 17th April 2017 which had referred to the grant or permission to HCI to retain the leased premises till March 2019 being premised on the approval of the “*competent authority*”. Despite an opportunity being granted to disclose which competent authority was being referred to in the aforesaid communication, no clarification could be proffered.

59. Insofar as the merits of the challenge was concerned, Mr. Jain urged that the termination of the lease interest as per Clause 18 of the HCI Lease Deed was subject to AAI complying with the conditions of either offering an alternate plot of land or compensation in lieu thereof. Mr. Jain would submit that since the termination notice was not accompanied by either of the aforesaid offers, it clearly failed to comply with the mandatory requirements of Clause 18 and thus it must be held that the lease interest of HCI did not stand terminated in accordance with law.

60. According to Mr. Jain, MoCA came to conclude that these contentious issues would perhaps merit being referred to arbitration and

therefore ultimately decided that all these questions must be left for being independently evaluated and examined by AAI. Mr. Jain lastly submitted that HCI had in terms of its letter of 23 November 2016 clearly objected to the termination which had come to be affected by AAI and it was in the aforesaid backdrop that extension was granted permitting HCI to retain the leased premises till the entire issue is resolved. According to Mr. Jain, the aforesaid facts would clearly establish that MoCA had a very limited role to play in the entire episode and it had merely endeavored to enable parties to arrive at an amicable solution to the disputes which had arisen.

H. CONTRACTUAL DISPUTES AND ARTICLE 226

61. Before proceeding to deal with the principal questions which arise, it would be apposite to rule on the submissions which were addressed by Mr. Nataraj and related to the maintainability of the writ petition itself on account of the disputes being contractual in nature and in any case emanating from a non-statutory contract. Insofar as the issue of whether OMDA and the DIAL Lease Deed is liable to be characterized as a non-statutory contract, the Court takes note of the following provisions as incorporated in Section 12A of the Act: -

“12A. Lease by the authority.— (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:

Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.

(2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.

(3) Any money, payable by the lessee in terms of the lease made under sub-section (1), shall form part of the fund of the Authority and shall be credited thereto as if such money is the receipt of the Authority for all purposes of section 24.

(4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such function in terms of the lease.”

62. Section 12A empowers AAI to execute a lease with respect to the premises of an airport, if so required, in the public interest or for the better management of an airport. The aforesaid provision further sanctions the aforesaid route being adopted by AAI and thus enabling the identified lessee to carry out some of its functions as specified in Section 12. The various provisions of the OMDA which have been noticed by the Court in the preceding parts of this decision clearly appear to be in consonance with the powers that stand conferred on AAI by virtue of Section 12A. It would, therefore, be incorrect to characterize OMDA as a non-statutory contract.

63. Turning then to the decisions which were cited by Mr. Natraj, it becomes pertinent to note that in **Radhakrishna Agarwal**, the Supreme Court had observed that the contract which formed subject matter of consideration in that particular decision did not contain any statutory terms or obligations. The Supreme Court then further and more pertinently proceeded to observe in paragraph 21 of the report that a violation of Article 14 had neither been promptly raised nor established. The Supreme Court further observed that the question of whether Article 14 of the Constitution could be held to operate within the contractual field was one

which did not even appear to have been argued before the High Court. **Kerala SEB** was dealing with the issue whether the interpretation and implementation of a clause in a contract could be made the subject matter of consideration in a writ petition. It, however, becomes relevant to note that the said decision was dealing with a non-statutory contract. It was in the aforesaid backdrop that their Lordships proceeded to observe that the interpretation of a particular clause of a contract cannot form the subject matter of a writ petition under Article 226 of the Constitution. Regard may also be had to the fact that in **Kerala SEB** the issue which stood raised for determination arose out of certain claims for payment and the validity of which ultimately rested on an interpretation of the contractual terms. It was perhaps in the aforesaid backdrop that it was observed that such disputes must be left to be settled and resolved on principles governing the law of contract. This is evident from the observations as they appear in Para 11 of the report. **Issac Peter**, on the other hand, was not dealing with the question of interpretation or implementation of a contract which may have been entered into by an individual with the State. The principal question which arose for consideration in the said decision was whether the principles underlying Article 14 of the Constitution could be invoked to compel the State to modify or alter the terms of a contract. It was the aforesaid contention which came to be negated by the Supreme Court. It may also be pertinent to observe that while the Supreme Court did in that decision notice the judgments rendered in **Dwarkadas Marfatia V. Board of Trustees of the Port of Bombay**¹⁴ and **Shrilekha Vidyarthi (Kumari)**

¹⁴ (1989) 3 SCC 293

V. State of U.P.¹⁵, which had expanded the applicability of Article 14 to extend even to the contractual field involving the State or its instrumentalities, it was pertinently observed that even those two decisions could not be read as enunciating a principle that Article 14 and the doctrine of fairness informing the same could be invoked to modify the rights and liabilities of parties governed by the terms of the contract. This was thus not a case where the principles propounded in **Dwarkadas Marfatia** or **Shrilekha Vidyarthi** were either doubted or dissented from.

64. However, the Court notes that the distinction between the pre and post formation of contract and one which was commended by Mr. Nataraj for acceptance, clearly fails to consider and notice the body of precedents which has evolved on the subject and was noticed in some detail by the Supreme Court in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.**¹⁶ It would be pertinent to extract the following passages from that decision: -

“8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.

9. In our opinion this question is no more *res integra* and is settled by a large number of judicial pronouncements of this Court. In *K.N. Guruswamy v. State of Mysore* [AIR 1954 SC 592 : (1955) 1 SCR 305] this Court held: (AIR pp. 595-96, para 20)

“20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an

¹⁵ (1991) 1 SCC 212

¹⁶ (2004) 3 SCC 553

ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. ...

We would therefore in the ordinary course have given the appellant the writ he seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go. ... A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.”

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy v. State of Mysore* [AIR 1954 SC 592 : (1955) 1 SCR 305] was followed subsequently by this Court in the case of *D.F.O. v. Ram Sanehi Singh* [(1971) 3 SCC 864] wherein this Court held: (SCC p. 865, para 4)

“By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims *was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ*. In view of the judgment of this Court in *K.N. Guruswamy case* [AIR 1954 SC 592 : (1955) 1 SCR 305] there can be no doubt that the petition was maintainable, *even if the right to relief arose out of an alleged breach of contract*, where the action challenged was of a public authority invested with statutory power.”

(emphasis supplied)

11. In the case of *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.* [(1983) 3 SCC 379] this Court following an earlier judgment in *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] held: (SCC pp. 385-86, paras 9 & 11)

The instrumentality of the State which would be ‘other authority’ under Article 12 cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the State Financial Corporations Act, falls within the expression of ‘other authority’ in Article 12 and if it backs out from such a promise, it cannot be said that the only remedy for the

aggrieved party would be suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.

12. The learned counsel appearing for the first respondent, however, submitted that this Court has taken a different view in the case of *LIC of India v. Escorts Ltd.* [(1986) 1 SCC 264] wherein this Court held: (SCC p. 344, para 102)

“If the action of the State is related to contractual obligations or obligations arising out of the tort, *the court may not ordinarily examine it unless the action has some public law character attached to it.* Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder.”

(emphasis supplied)

13. We do not think this Court in the above case has, in any manner, departed from the view expressed in the earlier judgments in the case cited hereinabove. This Court in the case of *LIC of India* [(1986) 1 SCC 264] proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the Constitution is ousted. On the contrary, the use of the words “court may not ordinarily examine it unless the action has some public law character attached to it” itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available. The learned counsel then relied on another judgment of this Court in the case of *State of U.P. v. Bridge & Roof Co. (India) Ltd.* [(1996) 6 SCC 22] wherein this Court held: (SCC p. 31, para 21)

Further, the contract in question contains a clause providing *inter alia* for settlement of disputes by reference to arbitration. The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy — in this case, provided in the contract itself — is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226.

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.

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The

objects enumerated in the memorandum of association of the first respondent at para 10 read:

“To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export.”

Para 11 of the said object reads thus:

“To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest.””

65. **ABL International** is thus a decision rendered subsequently in point of time and one which categorically holds that an instrumentality of a State, even if it be operating in the contractual arena, is obligated in law to act fairly, justly and reasonably. In **ABL International**, the Supreme Court was considering the legality of a repudiation of a claim under a contract. It proceeded to observe that if the repudiation be found to be in contravention of the constitutional mandate of Article 14, a writ would issue to set right the arbitrary action of the State or its instrumentality.

66. In a more recent decision in **Unitech Ltd. V. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors.**¹⁷, while affirming and reiterating the principles which were elucidated in **ABL International**, the Supreme Court enunciated the legal position as follows:-

“38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing,

¹⁷ 2021 SCC OnLine SC 99

learned Senior Counsel appearing on behalf of the State of Telangana and TSIIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out of a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two judge Bench of this Court in *ABL International Ltd. v. Export Credit Guarantee Corporation of India* [*ABL International*] analyzed a long line of precedent of this Court to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N Santosh Hegde, the Court held:

“27. ...the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

40. This exposition has been followed by this Court, and has been adopted by three-judge Bench decisions of this Court in *State of UP v. Sudhir Kumar* and *Popatrao Vynkatrao Patil v. State of Maharashtra*. 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. 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 226.¹¹ 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. This principle was recognized in *ABL International*:

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1].) **And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.**”

(emphasis supplied)

67. The precedents which have come to be rendered on the aforesaid questions have principally followed the law as elucidated in the celebrated decision of the Supreme Court in **Shrilekha Vidyarthi**, where the application of Article 14 even where the State or its instrumentality operate in the contractual field was enunciated as under:-

“24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and

reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

26. A useful treatment of the subject is to be found in an article “*Judicial Review and Contractual Powers of Public Authorities*” [(1990) 106 LQR 277-92]. The conclusion drawn in the article on the basis of recent English decisions is that “public law principles designed to protect the citizens should apply because of the public nature of the body, and they may have some role in protecting the public interest”. The trend now is towards judicial review of contractual powers and the other activities of the government. Reference is made also to the recent decision of the Court of Appeal in *Jones v. Swansea City Council* [(1990) 1 WLR 54 : (1989) 3 All ER 162] where the court's clear inclination to the view that contractual powers should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed ‘solely in order that it may use them for the public good’. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.

29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489 : (1979) 3 SCR 1014] and *Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir* [(1980) 4 SCC 1 : (1980) 3 SCR 1338]). In *Col. A.S. Sangwan v. Union of India* [1980 Supp SCC 559 : 1981 SCC (L&S) 378] while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be

made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.”

68. On a consideration of the law as propounded by the Supreme Court in **ABL International, Unitech, and Shrilekha Vidyarthi**, the Court comes to conclude that it would be too late in the day to accept the proposition that Article 14 of the Constitution binds the State or its instrumentality only at the pre-formation stage of a contract whereafter it would stand absolved of adhering to the constitutional mandate of Article 14 of the Constitution. The fundamental ethos which permeates the jurisprudence which has evolved on the subject and the understanding of our courts of the essentials of constitutionalism is the doctrine of fair play and non-arbitrariness. The doctrine of fairness must guide and inform actions of the State and its instrumentalities in all its dealings with the individual. The State cannot today contend that once a contract is formed, it stands relieved of its constitutional duty to adhere to the command of Article 14 or have the freedom to act arbitrarily, irrationally or capriciously. As the Supreme Court aptly observed in **Shrilekha Vidyarthi**, the State cannot be permitted to don the split personality of Dr. Jekyll.

69. The Court may only observe that it does not intend to suggest that the State stands deprived of its right to exercise its contractual rights or that Article 14 could be invoked to seek alteration of the terms of the contract itself. While ordinary civil disputes which arise out of a contract and the

rights and liabilities of parties stemming therefrom may not be issues which could form subject matter of consideration ordinarily in a writ petition under Article 226 of the Constitution, that would not denude Courts from examining whether the action of the State, even if it be in the contractual field, is in consonance with the principles underlying Article 14 of the Constitution. The Court would thus be justified in examining whether the recall of the termination notice and the directives of MoCA in the present case could be said to be arbitrary, illegal or violative of the contractual provisions.

I. THE PIVOTAL ROLE OF DIAL

70. In order to appreciate the issues that arise, it would be pertinent to firstly advert to the relevant provisions of the OMDA and evaluate the role which DIAL was conferred under the aforesaid grant and the contemporaneous instruments which came to be executed thereafter. OMDA on a foundational level, represented a policy initiative transferring the statutory powers and obligations conferred and placed upon AAI to DIAL. It was an initiative embodying a transfer of the essential functions and powers statutorily conferred upon AAI to DIAL. The fundamental objective of the aforesaid policy measure appears to have been guided by the intent to transform IGIA into a gateway to the country which embodied, represented and stood testament to the nation itself having moved onto adopting standards of service and excellence in tune with modernity and progress. It was representative of the country adopting global standards of service and performance. The grant of the concession to DIAL was itself

representative of the acknowledgment of the imperatives to transfer the management and development of the IGIA, which constituted the face of a nation, to entities which had the requisite experience and the vision to transform. AAI by virtue of the powers conferred by Section 12A of the Act thus transferred the core of its powers and authority to DIAL in order to subserve the objectives of the aforesaid policy shift. Viewed in that backdrop, it cannot be possibly be doubted that the concession stood imbued with a public element.

71. The breadth of conferral and transfer of powers and obligations to DIAL are evident from the use of the words “*design, construction, upgradation, modernization, finance, and management of the Airport*” in Clause 2.1.1 of OMDA. To fortify and amplify the transfer of obligations, the OMDA in Clause 2.1.2 ordained that DIAL would enjoy “*complete and uninterrupted*” possession and control of the airport. DIAL was essentially transferred the power to formulate a vision for the IGIA itself. This is manifest from Clause 8.1 which obligated it to transform IGIA into an “*international world class airport*”. Clauses 8.3. and 8.4 placed upon DIAL the obligation to draw and adopt a road map spreading over a twenty-year period for the development of a world class airport ensuring that it met the changing standards of service, passenger traffic and constantly upgrading amenities and services offered at IGIA at all times.

72. It would be pertinent to note that the duty and obligation to draw up the Master Plan and Major Development Plan was placed upon DIAL with it being noted that the same would be placed before AAI for its

“information” and before MoCA for its *“review and comments”*. OMDA cast a duty upon DIAL to ensure that those plans were in accord with the quality and service performance standards specified in the agreement. DIAL was thus required to develop an overall strategy and philosophy for IGIA, take into consideration its commercial development based on traffic forecasts, incorporate traffic trigger points and develop a vision statement of how the airport would look at the end of the twenty-year cycle.

73. On a comprehensive reading of the OMDA, the Court comes to the irresistible conclusion that the duty and obligation for the future development of the airport, the creation of facilities, the requirement to upgrade continually and consistently were placed squarely on the shoulders of DIAL. While AAI may have retained the power to be periodically informed and MoCA the authority to review and offer comments, the principal duty to draw a road map for the IGIA stood placed solely upon DIAL. It was in that sense if not envisaged to be the *“sole arbiter”*, as the petitioner chose to describe it, at least the pivotal and decisive authority for the planning and development of IGIA. The Court also bears in mind Clause 8.3.5 of OMDA which in unambiguous terms conferred a right upon DIAL to frequently update and revise the Master Plan, target estimates based upon passenger traffic and capacity, cargo handling capabilities and other capacity constraints. DIAL thus came to be bestowed a critical and decisive role in respect of the development of the IGIA.

74. The aforesaid aspects are crucial in order to appreciate and evaluate the issues that arise. They assume significance since AAI after having

issued the termination notice attempted to recall the same. Similarly, MoCA after having accepted in clear terms the assertion of DIAL that the land was required prior to its original assessment of the subject land being required in the Fourth Phase, backtracked alluding to economic considerations that may weigh with AAI and leaving it open for the said authority to undertake a review. The action of the said respondents is thus liable to be tested both on the anvil of the contractual terms which applied as well as on whether it could be considered to be violative of Article 14 of the Constitution and thus rendered legally unjustifiable. The impugned action may at the outset be tested based on the terms of the contract.

J. VESTING OF EXISTING LEASES

75. Both the OMDA in Clause 2.6.1 and the DIAL Lease Deed incorporated provisions relating to “demised premises” and “existing leases”. While demised premises were made over to DIAL upon execution of the lease deed, existing leases stood excluded from the grant made in favor of DIAL originally. As per the terms of the OMDA and the DIAL Lease Deed, existing leases set out in Schedule 28 of the OMDA were to vest in DIAL either on the expiry of their term or in case of early termination. Undisputedly, the HCI Lease Deed came to be terminated by AAI on 08 November 2016. This act was impacted solely by the *pro tem* extensions which were granted by MoCA in terms of its communication of 17 April 2017 enabling it to retain possession upto March 2019 and thereafter till November 2019 in terms of the decision taken in the meeting of 26 March 2019. While no serious challenge or objection appears to have

been raised to these temporary extensions, it is the decisions taken on 04 November 2019 and thereafter which are challenged and assailed.

76. As this Court views Clause 2.1.1 and 2.1.2 of the DIAL Lease Deed, it is manifest that they envisaged a transfer and vesting of existing leases specified in Schedule 28 of OMDA in case of expiry of their term or in the event of early termination. That transfer and vesting was to be triggered automatically in the case of early termination. The clear intent of parties in respect of this issue is evident from the use of the phrase *“It is understood and expressly agreed between the Parties”* in Clause 2.1.2 of the DIAL Lease Deed. The said clause in imperative terms further provided that the existing lease in case of early termination *“shall from the date of expiry or early termination of the Existing Leases, form an integral part of the Demised Premises.....”*. The DIAL Lease Deed essentially provisioned for a novation the moment an existing lease came to be terminated. The novation was not made subject to any further instrument or deed being drawn or executed in favor of DIAL.

77. Before proceeding ahead, it may be observed that the Court, in the facts of the present case, is not called upon to examine the impact, if any, that a successful challenge to an early termination of an existing lease may have or had on the novation as contemplated under Clause 2.1.1. This since, HCI never assailed or challenged the act of termination in accordance with the procedure prescribed under its lease. The principal question which thus falls for determination is whether AAI or MoCA could have reversed a termination which had come into effect.

78. As this Court reads the various provisions of OMDA as well as the DIAL and HCI Lease Deeds, it finds a complete absence of conferral of any power on either of the said authorities to recall a termination of an existing lease. Neither of the aforementioned two instruments empowered either MoCA or AAI to reverse or review a termination of an existing lease. As was noted hereinabove, Clause 2.1.1 provisioned for an automatic novation of DIAL in existing leases the moment the same came to be terminated prior to its term coming to an end. The act of termination was to immediately precipitate a novation, transfer and vesting of interests in favor of DIAL. OMDA did not contemplate the drawing up of any further grant or instrument in its favor in order to effectuate, certify or acknowledge that transfer. In view of the above, the Court is of the firm view that MoCA and AAI retained no authority or power to recall or review the termination once the same had come into effect.

K. THE RECALL OF TERMINATION AND ARTICLE 14

79. Having tested the validity of the impugned actions on the anvil of the contractual provisions, the matter may then be examined in light of the contention of the petitioner that the recall and review of the termination notice was not only in stark violation of the provisions of the OMDA and DIAL Lease Deed but also manifestly arbitrary.

80. It becomes pertinent to reiterate that in the present case, both MoCA as well as AAI in unequivocal terms affected a termination of the HCI Lease Deed. This action was itself based upon due assessment of the

requirement of the land parcel by DIAL for the purposes of airport development. The decision taken to affect an early termination was one which was preceded by due deliberation amongst all stakeholders and upon both MoCA and AAI weighing in consideration the imperatives which had been pointed out and highlighted by DIAL in its various communications. The Court also takes into consideration the fact that the reversal of stand was not shown or established to be premised upon a change of circumstance between 2016 and 2019. The decision taken by AAI and MoCA was also not established to be based upon a reconsideration of the requirements of additional space as communicated and suggested by DIAL. The decision was also not proven to be based upon a review of the facts and data which had been provided by DIAL in support of its request for early termination of the HCI Lease Deed. The Court has noticed the position of preeminence which stands accorded to DIAL under the OMDA insofar as the planning and development of IGIA is concerned. The reason assigned by AAI for reversing its decision to terminate is solely based upon its understanding that the land would be required only in the Fourth Phase of airport development and thus in 2026. However, curiously that stand fails to either notice or consider the amendments to the Master Plan which had been submitted and accepted by the respondents themselves and stood duly acknowledged in their various communications. In fact, the original decision to terminate was itself based on the acceptance of the position that in light of the exponential growth in passenger traffic and the imperative to create night stands and parking facilities for aircrafts, the land would be required by 2019 itself. It becomes pertinent to underline the fact that it was

not the case of either MoCA or AAI that this requirement had ceased to exist or that a change in circumstance warranted the termination being reviewed.

81. The Court has while dealing with the preliminary submission addressed by Mr. Nataraj with respect to the maintainability of the writ petition and the jurisdiction of the Court to interfere in disputes which may arise out of contracts, had duly noticed the principles which were laid down in **ABL International** and reiterated in **Unitech**. As would be evident from the law as enunciated and expressed by the Supreme Court in **ABL International** and **Unitech**, the jurisdiction of the High Court under Article 226 of the Constitution and its powers of judicial review does not stand excluded merely because the dispute arises out of a contract. Those decisions had pertinently observed that while in a given set of facts, the High Court may refrain from invoking or exercising its powers conferred by Article 226, that would not be liable to be construed as the Court otherwise not having the power to examine whether the decision even if taken under a contract complies with the mandate of Article 14 of the Constitution. It is in light of the aforesaid principles that the action of respondents is liable to be adjudged.

82. On 08 November 2016, AAI proceeded to terminate the lease interest of HCI. This act of termination was preceded by both MoCA and AAI accepting the requirement of the land comprised in the HCI Lease Deed for the purposes of airport development. The correspondence which came to be exchanged between the parties between 08 November 2016 and till the

passing of the resolutions in the meeting of 04 November 2019 establish that the estimation of requirement of the land by DIAL was neither questioned nor doubted. DIAL had, in any case, placed both before MoCA as well as AAI the revised master plans in terms of which the requirement of the subject premises was established to be urgently required by 2019 itself. The dispute, if any, which continued to fester was restricted to the compensation which was liable to be paid to HCI consequent to the termination of its lease. While HCI had in terms of its communication of 23 November 2016 raised an objection to the termination notice, it ultimately and as would be evident from its letter dated 05 September 2019, duly accepted the factum of termination and only raised the issue of the compensation which was liable to be paid. Once the assessment of the leased premises had come to be duly accepted, there existed no justification for MoCA directing the AAI to reevaluate whether the HCI lease land was required for aeronautical purposes. The resolutions which came to be ultimately passed on 04 November 2019 clearly amounted to both MoCA and AAI seeking to reverse a position which had come to hold the field right from November 2016.

83. The Court also bears in mind the fact that insofar as the planning and development of facilities at IGIA was concerned, those were subjects which were to be fundamentally considered and evaluated by DIAL. As was noticed in the preceding parts of this decision, OMDA as well as the DIAL Lease Deed only obligated it to inform AAI of the proposed amendments in development plans and for MoCA to submit its comments upon the same. DIAL as was noticed above had been clearly accorded a position of

preeminence insofar as issues with respect to the development and creation of facilities in IGIA was concerned. Viewed in that backdrop, the Court is of the considered opinion that the direction for the entire issue being re-examined by AAI was clearly arbitrary and in any case totally without jurisdiction.

84. The respondents thereafter proceeded to take decisions ignoring the various communications which were issued by DIAL and which had set forth the reasons why the land in question was required by 2019 itself. DIAL had in its various communications set forth data and facts in support of its request for an early termination of the HCI Lease Deed. That data and facts which informed the request of DIAL was neither questioned nor doubted by the respondents either in their communications or in the course of submissions which were addressed before this Court. The ultimate decision taken by the AAI and MoCA based upon the unamended Fourth Phase Plan clearly proceeds in apparent ignorance of the fact that the plan had been duly reviewed and in fact accepted by both AAI as well as MoCA. In fact, it was the acceptance of the estimation as framed by DIAL which had, in the first instance, led to the HCI Lease Deed coming to be terminated. The impugned action is thus clearly established to be perverse and contrary to the records of the respondents themselves.

85. In view of the above, the Court is constrained to observe that the change in position which came to be struck by MoCA and DIAL is not only arbitrary, it is clearly liable to be viewed as an irrational and whimsical exercise of power. The aforesaid findings are without prejudice to the

Court having already found that once the lease had come to be terminated on 08 November 2016, there existed no jurisdiction or authority inhering in either MoCA or DIAL to seek to review that action.

86. In light of the aforesaid conclusions coupled with the fact that there did not exist any power either under the OMDA or the DIAL Lease Deed to reverse or review the event of termination, the Court is of the firm opinion that the impugned directives of MoCA and AAI are wholly without jurisdiction and ultra vires the provisions of the OMDA and the DIAL Lease Deed. The Court is also of the firm view that the turnaround as embodied in the impugned orders is not only arbitrary but clearly whimsical and capricious.

L. AUTOMATIC VESTING

87. The argument canvassed by the respondents that the termination was to come into effect after twelve months from the date of issuance of the termination notice may then be tested. The Court is of the considered view that the said contention is clearly unsustainable for the following reasons. Clause 18 of the HCI Lease Deed clearly contemplated AAI determining the lease if it came to conclude that the demised land was required for airport development. The twelve-month period stipulated under Clause 18 was merely to enable HCI to remove its effects existing in and over the demised premises. It was thus simply aimed at providing HCI a reasonable opportunity to manage its affairs and assist the transition process. The view taken by the Court is further fortified by Clause 18 mandating that the lessee would remove all its effects from the demised premises “*within the*

prescribed period of 12 months... ”. Clause 18 thus cannot be interpreted as deferring the termination or ordaining it to come into effect after twelve months. This issue in any case pales into insignificance in the facts of the present case since even it were assumed that the termination came into effect only on 08 November 2017 i.e., a year after the issuance of the termination notice on 08 November 2016, this too would not salvage the action of the respondents. This in light of the admitted fact that the steps to reverse the termination were initiated much after 08 November 2016 and only on 04 November 2019, 20 December 2019 and finally on 31 March 2021.

88. The Court also finds itself unable to countenance the submission that the termination could not have come into effect till such time as AAI had provided alternate land or paid compensation in terms of Clauses 18 and 19 of the HCI Lease Deed. Clauses 18 (A) and (B) provided two separate and independent modes to be adopted by AAI at the time of termination of the lease by either offering alternate land or paying compensation in case of early determination of the lease. However, those clauses neither stipulate nor mandate that the termination would come into effect only upon compensation being tendered or alternate land being provided. The Court thus finds itself unable to sustain the submissions addressed on this score. It additionally bears in mind the undisputed fact that HCI never assailed or questioned the termination in accordance with the procedure prescribed under the lease. In fact, and to the contrary, parties including HCI appear to have proceeded on the basis that the termination had already come into effect and the only issue which appears to have been remained unresolved

was the grant of reasonable time to HCI to vacate the premises and the quantum of compensation payable. This is manifest from a reading of the minutes of the meetings which were held on 09 April 2019, 26 July 2019, 28 August 2019 and 19 September 2019. The aforesaid position is then conclusively evidenced from HCI's own letter of 05 September 2019 in which the subject line read as **"Surrender of leasehold land (Centaur Hotel & Chefair Flight Catering, Delhi")**. In this letter, HCI in unequivocal terms accepts and acknowledges that the lease stood terminated and essentially raised the issue of amount of compensation payable. Accordingly, and for all the aforesaid reasons, the Court comes to the conclusion that the action of the respondents in seeking to restore the terminated lease cannot be sustained in law. The various contentions addressed and urged at the behest of the respondents based upon the terms of the contract are clearly untenable and stand negated.

89. Accordingly, and for the aforesaid reasons, the Court comes to hold that the action of the respondents in seeking to restore and revive the terminated lease deed was manifestly arbitrary and cannot possibly be sustained.

M. SECTION 40 AND MoCA

90. Another ancillary question which was raised pertained to the jurisdiction of MoCA itself to have passed resolutions or taken decisions which adversely impacted the interests of DIAL and clearly interfered with the development of the IGIA itself. These arguments were addressed in light of the constitution of the OIOC and the petitioner asserting that the

impugned actions cannot be said to be those taken by the authority nominated under the OMDA. It would be pertinent to recall that in terms of Clause 8.5.9 of OMDA, it was the OIOC which was envisaged to be the platform and forum for the resolution of all disputes and for ensuring that the terms of OMDA are duly implemented with all parties discharging their respective obligations. Undisputedly, the OIOC which came to be constituted in terms of the Office Memorandum dated 13 June 2006 never met after its 14th Meeting held in April 2014. It was in the aforesaid context that the petitioners asserted that MOCA clearly acted in excess of the authority which stood conferred upon it.

91. The respondents, however, referred to the provisions contained in Section 40 of the Act and which empowers the Union Government to issue such directions as may be considered appropriate for the purposes of guiding AAI in the discharge of its functions and duties. The Court finds itself unable to accept the aforesaid contention since Section 40 merely enables the Union to provide guidance to AAI in the course of the discharge its statutory functions and duties under the Act. However, the rights and obligations of parties here and more particularly DIAL and AAI were governed by the provisions contained in the OMDA and the DIAL Lease Deed. The Court thus finds itself unable to countenance the submission that notwithstanding the stipulations and the terms as contained in the OMDA and the DIAL Lease Deed, MoCA could have donned the role of an arbitrator to resolve issues and disputes that may have arisen between the parties.

92. Moreover, Section 40 deals with the power of the Union to issue directions on questions of policy to AAI. The Court notes that once the rights and obligations of parties were governed by contract and which charter also designated OIOC as the competent authority to act as the facilitator, strictly speaking MoCA clearly had a limited role to discharge in the entire dispute. In fact, this was the submission of Mr. Jain also. However, the Court does not deem it appropriate to strike down the impugned actions on this score bearing in mind the fact that MoCA appears to have essentially acted as a bridge between the parties providing them a neutral platform to explore the possibility of resolution of differences and disputes. In any case its authority and jurisdiction to initiate and undertake that consultative process and to resolve disputes never appears to have been challenged prior to the institution of the present proceedings.

N. DIRECTIONS

93. Accordingly, and for the aforesaid reasons the writ petition is allowed. The Minutes of the meeting dated 04 November 2019 permitting AAI to revisit and reevaluate the requirement of the HCI Lease Deed shall stand quashed. For reasons aforesaid, the letter of 20 December 2019 issued by the first respondent as well as 31 March 2021 issued by respondent No. 2 shall also stand quashed. AAI shall consequently take appropriate steps for handing over of the subject land to DIAL.

94. Since the Court has found that HCI retained no rights over the land consequent to the termination letter of 08 November 2016, the NIT dated 16 September 2020 shall also stand aside. The aforesaid directions shall be

without prejudice to the rights of HCI to draw appropriate proceedings in respect of its claim for compensation as permissible in law.

95. The Court also leaves it open to DIAL to initiate appropriate steps for recovery of any dues which are alleged to be payable by HCI in accordance with law.

YASHWANT VARMA, J.

October 20, 2022

rsk/neha/SU/bh

