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

+ **ARB.P. 1980/2025**

ALFA COTEC INDUSTRIES

.....Petitioner

Through: Mr. Chaitanya Mahajan and Mr.
Keshav Garg, Advs.

versus

SYNCHRONIZED SUPPLY SYSTEMS LIMITED & ORS.

.....Respondents

Through: Mr. Yash Tandon and Mr. Sushil
Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

17.12.2025

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1. The present Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Rent Agreement dated 27.10.2017, and Lease Deeds dated 01.12.2018, 09.12.2019, and 17.12.2021.

2. Material on record indicates that the Petitioner herein entered into the afore-mentioned Rent Agreement with the Respondents for a period of five years from 20.08.2017 to 19.08.2022, whereby the Petitioner herein provided an area of about 4160 sq. meters in the ground floor of property at SP-162, EPIP Phase-II, Neemrana, District Alwar, Rajasthan – 301705, to the Respondents herein for managing logistics and warehousing.

3. It is stated that the Petitioner and the Respondents entered into three



Lease Deeds dated 01.12.2018, 09.12.2019 and 17.12.2021 for leasing the property in question to the Respondents from 01.12.2018 till 31.08.2022. It is further stated that a fire broke out in the property in question while it was under possession of the Respondents, resulting in complete destruction of the property including loss of life. It is stated that the Respondents have failed to comply with their obligations and, therefore, disputes have arisen between the parties. It is stated that Clause 16 of the Rent Agreement contains an Arbitration Clause which provides that disputes arising between the parties under the Agreement shall be decided by means of Arbitration. It is stated that a Notice under Section 21 of the Arbitration Act was issued by the Petitioner on 31.07.2023. It is stated since the Respondent has failed to reply to the said notice, the Petitioner has approached this Court by filing the present Petition.

4. Learned Counsel appearing for the Respondent opposes the present Petition on the ground that the present Petition is hit by territorial jurisdiction in as much as Clause 16 of the Agreement provides that the Courts at Rajasthan shall have the jurisdiction over the Agreement and the disputes emanating therefrom.

5. At this juncture, it is pertinent to reproduce Clause 16 of the Agreement and the same reads as under:

“Clause 16: ARBITRATION

All disputes and differences between the parties hereto regarding the interpretation scope or effect of any of the terms and condition herein contained or in any way touching or concerning these presents shall be referred to a sole Arbitrator appointed jointly by TENANT and LANDLORD and the same shall be deemed to be a



reference within the meaning of the arbitration and conciliation Act 1996 or any other statutory reenactment or modification thereto for the time being in force. The venue of such Arbitration shall be Delhi. The Courts of Rajasthan shall have jurisdiction over this Agreement as the immovable property is situated in Rajasthan. ”

6. Clause 16 of the Agreement specifically provides that the venue of Arbitration shall be Delhi. There is no other communication which shows that the parties have decided that the seat of the arbitration would be at any other place other than Delhi.

7. The Apex Court in Brahmani River Pellets Limited v. Kamachi Industries Limited, (2020) 5 SCC 462, has laid down the law regarding appointment of an arbitrator wherein there is an inconsistency between ‘venue of arbitration’ and ‘jurisdiction of the Court’ in the underlying agreement. The relevant extract is reproduced hereunder:

“10. As per Section 2(2) of the Act, arbitrations which take place in India are governed by Part I of the Act. The “court” which will have jurisdiction to decide the questions forming the subject-matter of arbitration is the “court” as defined by Section 2(1)(e) of the Act which reads as under:

“2. Definitions.—(1) In this Part, unless the context otherwise requires,—

(e) “court” means—

(i) in the case of an arbitration other than international commercial arbitration, the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-



matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decree or courts subordinate to that High Court.”

11. As per Section 2(2) of the Act, Part I would apply to all arbitration where the place of arbitration is in India. Section 2(1)(e) of the Act defines “court” with reference to Part I of the Act and would govern the place of arbitration.

12. In Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the issue that arose before the Constitution Bench was as to whether in international commercial arbitrations whose juridical or legal seat of arbitration was outside India whether the provisions of Part I of the Act would be applicable for grant of relief as held in Bhatia International v. Bulk Trading S.A. [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] The Constitution Bench in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] held that : (SCC p. 553)

“if the legal or juridical seat of arbitration is outside India, then Part I of the Arbitration and Conciliation Act, 1996 shall be inapplicable to such arbitrations; and even in case a clause in the arbitration agreement purports to apply Part I of the 1996 Act to an arbitration where the juridical seat of arbitration is outside India, Part I shall be



inapplicable to the extent inconsistent with the arbitration law of the seat of arbitration.”

13. In Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the Court highlighted the distinction between the “seat” and “venue” in the context of Section 20(3) of the Act. Section 20(3) of the Act allows the parties to hold meetings, proceedings and hearings at any place agreed by the parties. In Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the Court has held that in an international commercial arbitration “seated” in India, parties may by mutual agreement, hold arbitral proceedings outside India. This, however, would not have the effect of changing the seat of arbitration which would continue to remain in India. The Court then envisages a situation where the arbitration agreement designates a foreign seat and also selects the Arbitration Act, 1996 as the law applicable to the conduct of arbitration proceedings and in such circumstances, hearing of the arbitration conducted at the venue fixed by the parties would not have the effect of changing the seat of arbitration which would remain in India. In para 100, the Supreme Court held as under : (SCC pp. 607-08)

“100. True, that in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India. The legal position in this regard is summed up by Redfern and Hunter, The Law and Practice of International Commercial Arbitration (1986) at p. 69 in the following passage under the heading “The Place of Arbitration”:



This, in our view, is the correct depiction of the practical considerations and the distinction between “seat” [Sections 20(1) and 20(2)] and “venue” [Section 20(3)]. We may point out here that the distinction between “seat” and “venue” would be quite crucial in the event, the arbitration agreement designates a foreign country as the “seat”/“place” of the arbitration and also selects the Arbitration Act, 1996 as the curial law/law governing the arbitration proceedings. It would be a matter of construction of the individual agreement to decide whether:

- (i) the designated foreign “seat” would be read as in fact only providing for a “venue”/“place” where the hearings would be held, in view of the choice of the Arbitration Act, 1996 as being the curial law, or*
- (ii) the specific designation of a foreign seat, necessarily carrying with it the choice of that country's arbitration/curial law, would prevail over and subsume the conflicting selection choice by the parties of the Arbitration Act, 1996.*

Only if the agreement of the parties is construed to provide for the “seat”/“place” of arbitration being in India — would Part I of the Arbitration Act, 1996 be applicable. If the agreement is held to provide for a “seat”/“place” outside India, Part I would be inapplicable to the extent inconsistent with the arbitration law of the seat, even if the agreement purports to provide that the Arbitration Act, 1996 shall govern the arbitration proceedings.”

(emphasis in original)

14. *As pointed out earlier, Section 2(1)(e) of the Act defines the “court” with reference to the term “subject-matter of the suit”. As per Section 2(1)(e) of the Act, if the “subject-matter of the suit” is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para 96*



of Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , the Supreme Court held that the term “subject-matter” in Section 2(1)(e) of the Act is to identify the court having supervisory control over the arbitral proceedings. The Supreme Court held that the provisions in Section 2(1)(e) of the Act have to be read in conjunction with Section 20 of the Act which give recognition to the autonomy of the parties as to “place of arbitration”. The observations in para 96 in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] pertaining to arbitrations governed by Part I of the Act i.e. where the “place of arbitration” in India read as under : (SCC pp. 605-06)

“96. ... We are of the opinion, the term “subject-matter of the arbitration” cannot be confused with “subject-matter of the suit”. The term “subject-matter” in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be



required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located.”

(emphasis in original)

The above observations in para 96 in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] are in the context that on many occasions, agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. In such circumstances, it was observed that the two courts would have jurisdiction that is the court within whose jurisdiction “subject-matter” of the suit is situated and the court within the jurisdiction of which the dispute resolution i.e. the “venue” of arbitration is located.

15. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more



competent courts having jurisdiction. This has been made clear in the three-Judge Bench decision in *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]

15.1. In the said case, respondent Indian Oil Corporation Ltd. appointed M/s Swastik Gases (P) Ltd. situated at Jaipur, Rajasthan as their consignment agent. The dispute arose between the parties as huge quantity of stock of lubricants could not be sold by the applicant and they could not be resolved amicably. In the said matter, Clause 18 of the agreement between the parties provided that the agreement shall be subject to the jurisdiction of the courts at Kolkata.

15.2. The appellant Swastik invoked Clause 18 — arbitration clause and filed application under Section 11(6) of the Act before the Rajasthan High Court for appointment of arbitrator. The respondent contested the application made by Swastik inter alia by raising the plea of lack of territorial jurisdiction of the Rajasthan High Court in the matter. The plea of Indian Oil Corporation was that the agreement has been made subject to jurisdiction of the courts at Kolkata and the Rajasthan High Court lacks the territorial jurisdiction in dealing with the application under Section 11(6) of the Act.

15.3. The Designated Judge held [*Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, 2011 SCC OnLine Raj 2758 : (2012) 3 RLW 2241] that the Rajasthan High Court did not have territorial jurisdiction to entertain the application under Section 11(6) of the Act and gave liberty to Swastik to file the arbitration application in the Calcutta High Court which order came to be challenged before the Supreme Court.



15.4. *Pointing out that the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used in the agreement and use of such words is not decisive and non-use of such words does not make any material difference as to the intention of the parties by having Clause 18 of the agreement that the courts at Kolkata shall have the jurisdiction, the Supreme Court held as under : [Swastik Gases (P) Ltd. case [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , SCC pp. 47-48, paras 31-33]*

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What the appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of the Chief Justice of the Rajasthan High Court has been excluded?

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”,



“exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement— is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in *Hakam Singh v. Gammon (India) Ltd.* [*Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286] , *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* [*A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, (1989) 2 SCC 163] , *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.* [*R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130] , *Angile Insulations v. Davy Ashmore (India) Ltd.* [*Angile Insulations v. Davy Ashmore (India) Ltd.*, (1995) 4 SCC 153] , *Shriram City Union Finance Corpn. Ltd. v. Rama Mishra*



[Shriram City Union Finance Corpn. Ltd. v. Rama Mishra, (2002) 9 SCC 613] , Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd. [Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd., (2004) 4 SCC 671] and Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd. [Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd., (2009) 9 SCC 403 : (2009) 3 SCC (Civ) 770] .”

(emphasis supplied)

16. *In Swastik [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , the Supreme Court held that clause like Clause 18 of the agreement will not be hit by Section 23 of the Contract Act and it is not forbidden by law nor it is against public policy. It was so held that as per Section 20 of the Act, parties are free to choose the place of arbitration. This “party autonomy” has to be construed in the context of choosing a court out of two or more courts having competent jurisdiction under Section 2(1)(e) of the Act.*

17. *The interplay between “seat” and “place of arbitration” came up for consideration in Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] After referring to Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] , Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] and Reliance Industries Ltd. v. Union of India [Reliance Industries Ltd. v. Union of India, (2014) 7 SCC 603 : (2014) 3 SCC (Civ) 737] and also amendment to the Act pursuant to the Law Commission Report, speaking for the Bench Nariman, J. held as*



under : [Indus Mobile Distribution (P) Ltd. case [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760] , SCC pp. 692-93, paras 18-20]

“18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai



would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.* [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in *B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd.* [B.E. Simoes Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [*Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd.*, 2016 SCC OnLine Del 3744 : (2016) 158 DRJ 391] is set aside.”

(emphasis supplied)

18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the “venue” of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157], non-use of words



like “exclusive jurisdiction”, “only”, “exclusive”, “alone” is not decisive and does not make any material difference.

19. When the parties have agreed to have the “venue” of arbitration at Bhubaneswar, the Madras High Court erred [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] is liable to be set aside.

20. In the result, the impugned order of the Madras High Court in Kamchi Industries Ltd. v. Brahmin River Pellets Ltd. [Kamchi Industries Ltd. v. Brahmin River Pellets Ltd., 2018 SCC OnLine Mad 13127] dated 2-11-2018 is set aside and this appeal is allowed. The parties are at liberty to approach the Orissa High Court seeking for appointment of the arbitrator.”

8. Since the parties have approached this Court for appointment of arbitrator for adjudication of the disputes before an arbitral tribunal, perusal of the Rent Agreement under which such disputes have arisen is necessary. The Rent Agreement contains an arbitration clause which provides that the venue of arbitration shall be in Delhi. Therefore, the Agreement levies the jurisdiction upon this Court to appoint an Arbitrator to adjudicate upon the disputes between the parties.

9. Accordingly, Mr. P. B. Suresh, Senior Advocate, (Mob. No: 9811135656) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.



10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2025

Prateek